NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13084
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNSON SAINT-LOUIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cr-00207-ACC-LHP-1

Before ROSENBAUM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Johnson Saint-Louis appeals his convictions and sentence for armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d), and brandishing a gun during and in relation to a crime of violence, in

violation of 18 U.S.C. § 924(c)(1)(A)(ii). He argues that cumulative trial error occurred because of improper closing argument by the prosecutor and insufficient identity evidence, that the armed-bank-robbery statute is indivisible and does not qualify as a crime of violence for purposes of § 924(c), and that the district court erred in applying a two-level sentence enhancement for "physical restraint" of a victim, *see* U.S.S.G. § 2B3.1(b)(4)(B). After careful review, we affirm Saint-Louis's convictions, but we vacate his sentence and remand for resentencing.

I.

A federal grand jury indicted Saint-Louis for armed bank robbery "by force and violence, and by intimidation," *see* 18 U.S.C. § 2113(a) & (d) (Count 1), and brandishing a firearm during and in relation to a crime of violence, *see* 18 U.S.C. § 924(c)(1)(A)(ii) (Count 2). The charges stemmed from the February 2021 robbery of a Bank of America automated teller machine ("ATM") in Longwood, Florida. Saint-Louis pled not guilty.

A.

According to the trial evidence, Saint-Louis was a former ATM technician for Hyosung, which provided and maintained ATMs for Bank of America. At around 10:30 p.m. on February 16, 2021, Hyosung received a cash-dispenser-malfunction alert for a Bank of America ATM in Longwood, Florida. A repair technician arrived just before midnight, discovering that a sensor in the cash dispenser unit was broken, which was unusual. Fixing the sensor required accessing the cash vault.

While the technician worked, a man dressed all in black, with gloves, a hood, and a face covering, jumped a nearby fence and pointed a gun at the technician, stating, "Stay there, stay there, I just need the money." The robber took the technician by the shoulder, put the gun to the back of his head, had him kneel next to his work van, and ordered him to remain there, taking his cell phone and car keys. The robber proceeded to load cash from the ATM into a black backpack before fleeing the area on foot. The jury saw surveillance footage and still images of the robbery.

The government's investigation revealed that Saint-Louis had used the Longwood ATM repeatedly in the weeks before the robbery, often making transactions with a business account under the name H-Wrong Inc., which he opened in November 2019. And Saint-Louis's use of the ATM was associated with several cash-dispenser-malfunction alerts, including the one that preceded the robbery.

After making five transactions at the ATM on the night of January 26, 2021, Saint-Louis returned to the ATM the next day and made a withdrawal. About ten minutes later, Hyosung received an ATM malfunction alert for a cash-dispenser-hardware error. A technician responded, but no repair details were noted. Saint-Louis came back the following night, making a deposit and two withdrawals. Again, Hyosung received a cash-dispenser-malfunction alert about ten minutes after Saint-Louis used the ATM. The repair technician noted damage to the cash dispenser. Then, on the night of the robbery on February 16, Saint-Louis was recorded using the

ATM at approximately 10:14 p.m., and Hyosung received a cash-dispenser-malfunction alert about fifteen minutes later, at 10:29 p.m.

The government also presented evidence of three other ATM robberies—in November 2019 in Boca Raton, Florida; in August 2021 in Raleigh, North Carolina; and in September 2021 in Tallahassee, Florida—that were preceded by cash-dispenser-hardware errors associated with Saint-Louis's use of the ATM and that were committed in substantially similar fashion. Saint-Louis was convicted of the Tallahassee robbery in November 2022. And the government offered other evidence that Saint-Louis had scouted numerous other ATMs in Florida, Georgia, and North Carolina, conducting transactions and triggering cash-dispenser-malfunction alerts. The district court admitted this evidence to prove identity, *modus operandi*, motive, and intent for the Longwood robbery.

In November 2021, during a traffic stop and search of Saint-Louis's rental vehicle, police officers found a Ruger 5.7 handgun with black tape covering the make, model, caliber, and serial number on the gun. Officers also found gloves; a black, hooded jacket; several masks; Bank of America receipts; and handwritten notes listing addresses of Bank of America branches and short comments about each location, such as "not really too open," "'maybe' not enough exit points," and "#HYO# Posible [sic]." Saint-Louis was arrested about one week later.

During a later search of Saint-Louis's personal vehicle, federal agents again found the Ruger 5.7 handgun with black tape covering all identifying marks on the gun. Agents also found, among other things, a black Jansport backpack that contained black gloves, a black hat, a mask, tape, rubber bands, and numerous Bank of America receipts. As before, the car contained papers with handwritten notes about various Bank of America ATMs.

After his arrest, Saint-Louis signed a *Miranda*[1] waiver and was interviewed by the Federal Bureau of Investigation ("FBI"). An FBI agent testified about statements Saint-Louis made during the interview.

B.

After the parties rested, the district court explained that the government and defense counsel would make their final arguments to the jury. The court told the jury, "[A]s you've previously been instructed, the [g]overnment has the burden of proving the defendant guilty beyond a reasonable doubt, and this burden never shifts from the [g]overnment to the defendant."

Then, in closing arguments, the prosecutor argued that during Saint-Louis's interview with law enforcement, "he refuse[d] or [was] incapable of explaining this road trip that he went on in the rental car where he went to Tennessee and Missouri and Georgia." The prosecutor commented that when Saint-Louis was asked about the notes in his car with the addresses of multiple Bank of

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

America ATMs, he said "'Well, that's an incriminating question.' He can't come up with an explanation for those." The prosecutor further said that when Saint-Louis was asked why he "was driving around from bank to bank on November 4th, the night that he was pulled over, he sa[id], 'I don't have a good explanation for that.' Indeed, because there [was] none. He gave nonsensical and vague answers."

The prosecutor also discussed evidence of "suspicious behavior with no innocent explanation." Citing the gloves, masks, tape, rubber bands, and Bank of America receipts found in Saint-Louis's backpack, the prosecutor asked, "What innocent person keeps this combination of items in the back of their car, readily available?" The prosecutor also referred to the handwritten notes, asking the jury, "Can you come up with a reasonable explanation for that? Because he couldn't." The prosecutor opined that "[i]t's difficult to come up with an innocent explanation for even one of these things that I just listed."

After closing arguments, the district court instructed the jury that "[t]he defendant does not have to prove his innocence or produce any evidence at all," among other things. Rather, the court stated, "[t]he [g]overnment must prove guilt beyond a reasonable doubt" and "[i]f it fails to do so, you must find the defendant not guilty."

The jury found Saint-Louis guilty of both counts.

II.

Saint-Louis's presentence investigation report ("PSR") calculated a guideline range of 87 to 108 months for Count 1, based on a total offense level of 28 and a criminal-history category of II, plus a consecutive term of seven years for Count 2. The offense level included a two-level increase under U.S.S.G. § 2B3.1(b)(4)(B), which, at the time, applied when a convicted robber "physically restrained" a victim to commit the offense. The PSR applied the enhancement because Saint-Louis "pointed a firearm at the [technician] while demanding orders."

At sentencing, the district court adopted the factual statements and guideline calculations in the PSR. The court sentenced Saint-Louis to a term of 87 months' imprisonment as to Count 1, plus a consecutive term of 84 months as to Count 2. Saint-Louis now appeals.

III.

Saint-Louis first argues that cumulative trial error occurred because the prosecutor made improper burden-shifting comments in closing arguments, and that the circumstantial evidence of identity was insufficient to link Saint-Louis to the Longwood robbery.

We review de novo whether the evidence was sufficient to sustain a criminal conviction. *United States v. Chun*, 187 F.4th 1336, 1343 (11th Cir. 2026). We consider the evidence in the light most favorable to the government, "drawing all reasonable inferences and credibility choices in favor of the jury's verdicts." *Id.*

A prosecutorial misconduct claim presents a mixed question of law and fact that we review de novo. *United States v. Eckhardt*,

466 F.3d 938, 947 (11th Cir. 2006). But "[i]f the defendant fails to object to the alleged misconduct below, this Court reviews for plain error." *United States v. Frank*, 599 F.3d 1221, 1238 (11th Cir. 2010). *Id.* at 1238. Under the plain-error standard of review, we will reverse a conviction "only if a miscarriage of justice would otherwise result." *Id.* (quotation marks omitted).

We review de novo "the cumulative impact of trial errors." *United States v. Daniels*, 91 F.4th 1083, 1092–93 (11th Cir. 2024). No cumulative error exists unless the defendant can "establish that the combined errors affected his substantial rights." *Id.* at 1092 (quotation marks omitted). We evaluate the asserted errors separately before assessing their cumulative effect.

A.

Sufficient evidence supports a conviction if a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Chun*, 187 F.4th at 1343. But "[a] jury is free to choose among reasonable constructions of the evidence and [t]he government need not disprove every hypothesis of innocence." *United States v. Defilippis*, 174 F.4th 1291, 1301 (11th Cir. 2026) (quotation marks omitted). In other words, "[t]he guilty verdict need not be inevitable based on the evidence presented at trial; it need only be reasonable." *Chun*, 187 F.4th at 1343.

Circumstantial evidence can be "sufficient to establish guilt beyond a reasonable doubt on substantive charges." *United States v. Mapson*, 96 F.4th 1323, 1336 (11th Cir. 2024). "But when the government relies on circumstantial evidence, reasonable inferences,

not mere speculation, must support the conviction." *Id.* (brackets and quotation marks omitted).

Here, the evidence was sufficient for a reasonable jury to conclude beyond a reasonable doubt that Saint-Louis committed the Longwood ATM robbery on February 16, 2021. The circumstantial evidence of Saint-Louis's guilt was substantial. The evidence showed that Saint-Louis, a former ATM technician, conducted suspicious transactions at the Longwood ATM in the weeks before the robbery, and that his use of the ATM was associated with multiple cash-dispenser-malfunction alerts, including the one that preceded the robbery. Then, after the robbery, searches of Saint-Louis's home and car turned up clothing and other items consistent with those used during the robbery, including the black Jansport backpack, black gloves, and a handgun with black tape covering all identifying marks.

What's more, the government's evidence reflected that Saint-Louis was scouting additional ATMs, and that his use of those ATMs was associated with similar ATM cash-dispenser errors in several states. In three of those instances, an ATM technician was robbed in substantially similar circumstances to this case shortly after responding to the malfunction alert, and Saint-Louis was convicted of one such robbery.[2]

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[2] We affirmed this conviction on appeal. *See United States v. Saint-Louis*, No. 23-12379, 2024 WL 4948291 (11th Cir. Dec. 3, 2024).

This is not an exhaustive account of the evidence. But it suffices to show that the jury had enough information to connect the dots and to reasonably infer that Saint-Louis was the person who committed the February 16, 2021, Longwood robbery. So the district court correctly denied the motion for judgment of acquittal.

B.

Prosecutorial misconduct requires reversal only when a prosecutor makes statements at trial that (1) are improper, and (2) prejudice the defendant's substantive rights. A defendant's substantive rights "are prejudicially affected when a reasonable probability arises that, but for the [prosecutor's] remarks, the outcome of the trial would have been different." *United States v. Merrill*, 513 F.3d 1293, 1307 (11th Cir. 2008) (quotation marks omitted).

In proving guilt, prosecutors generally "may not comment about the absence of witnesses or otherwise attempt to shift the burden of proof." *United States v. Hernandez*, 145 F.3d 1433, 1439 (11th Cir. 1998). Nor may the prosecution comment on the defendant's failure to testify. *United States v. Chirinos*, 112 F.3d 1089, 1099 (11th Cir.1997). "A prosecutor impermissibly comments on a defendant's right to remain silent where: (1) the statement was manifestly intended to be a comment on the defendant's failure to testify; or (2) the statement was of such a character that a jury would naturally and necessarily take it to be a comment on the failure of the accused to testify." *United States v. McGarity*, 669 F.3d 1218, 1241 (11th Cir. 2012). But "a comment by the prosecutor on the failure by defense counsel, as opposed to the defendant, to

counter or explain evidence does not violate a defendant's Fifth Amendment right not to testify." *Hernandez*, 145 F.3d at 1439.

To assess the prejudicial impact of the comments, we evaluate them in the context of the trial as a whole and assess their probable impact on the jury. *Id.* Any potential prejudice on burden-shifting is diminished by the court's explicit instructions about the burden of proof in the jury charge. *Id.*

Here, Saint-Louis has not shown reversible prosecutorial misconduct. For starters, we're not persuaded that the prosecutor made any improper burden-shifting arguments or commented on Saint-Louis's failure to testify.

In *United States v. Beechum*, 582 F.2d 898 (5th Cir. 1978) (en banc), for example, the prosecutor in closing argument commented about the defendant's post-arrest conduct, observing that he "gave no explanation for his possession of the silver dollar. In fact, he told (the inspector), 'You have all the answers, and I don't have any for you.'" *Id.* at 906. The defendant argued that the prosecutor had improperly commented on his silence, but our predecessor court disagreed, reasoning that the prosecutor's statement was not improper because it was "not a comment on Beechum's silence but rather an appraisal of what Beechum said." *Id.*

Similarly, here, several of the prosecutor's remarks cited by Saint-Louis were not comments on Saint-Louis's silence but rather appraisals of what he said during a post-arrest interview with the FBI. *See id.* And the prosecutor's remaining comments about the lack of an "innocent explanation" for various suspicious items or

circumstances can "more reasonably be viewed as [] comment[s] on logical inferences from all of the evidence rather than an argument requiring a negative inference from the defendant's failure to testify." *United States v. Rutkowski*, 814 F.2d 594, 597 (11th Cir. 1987); *see also United States v. Diaz*, 190 F.3d 1247, 1255 (11th Cir. 1999) (stating that the prosecutor's question, "Where else would $12,000 come from?," was "a permissible comment based on logical inferences from all the evidence produced at trial").

Even assuming the prosecutor's remarks went too far and improperly sought to shift the burden of proof or to comment on Saint-Louis's silence, Saint-Louis has not shown that his substantial rights were affected. *See Merrill*, 513 F.3d at 1307. As we've explained, the evidence of Saint-Louis's guilt, though circumstantial, was strong. And the district court mitigated any potential prejudice stemming from the prosecutor's comments by instructing the jury that "[t]he defendant does not have to prove his innocence or produce any evidence at all," and that "[t]he [g]overnment must prove guilt beyond a reasonable doubt" and "[i]f it fails to do so, you must find the defendant not guilty." *See Hernandez*, 145 F.3d at 1439. On this record, Saint-Louis has failed to show plain error from any prosecutorial misconduct. *See Frank*, 599 F.3d at 1238.

C.

For these same reasons, Saint-Louis cannot establish cumulative error that affected his right to a fair trial. "Where there is no error or only a single error, there can be no cumulative error." *Daniels*, 91 F.4th at 1101 (quotation marks omitted). And we see

no indication that any error or "combined errors affected his substantial rights." *Id.* at 1092 (quotation marks omitted).

IV.

Whether an offense qualifies as a "crime of violence" for purposes of § 924(c) is a question of law we review de novo. *United States v. Solomon*, 136 F.4th 1310, 1316 (11th Cir. 2025). Nevertheless, "[u]nder the prior precedent rule, we are bound to follow a prior binding precedent unless and until it is overruled by this court en banc or by the Supreme Court." *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008).

A "crime of violence" is a felony offense that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3). To determine whether an offense qualifies as a crime of violence, we apply either a categorical or a modified categorical approach, which depends on whether the statute is indivisible or divisible, respectively. *See United States v. Armstrong*, 122 F.4th 1278, 1285 (11th Cir. 2024). An indivisible statute defines a single set of elements with alternative means of commission, while a divisible statute defines multiple crimes with alternative elements. *See id.* When the modified categorical approach applies, we "look[] to a limited set of documents—the indictment, jury instructions, plea agreement, and plea colloquy—to determine which specific crime, comprising which elements, the defendant committed." *Id.*

In *Armstrong*, we held that 18 U.S.C. § 2113(a) "is a divisible statute that prohibits two distinct offenses: bank robbery and bank

extortion." 122 F.4th at 1285. And under our precedent, "a bank robbery conviction under § 2113(a) by force and violence or by intimidation qualifies as a crime of violence under the § 924(c)(3)(A) use-of-force clause." *In re Sams*, 830 F.3d 1234, 1239 (11th Cir. 2016). *Sams* remains good law. *See Armstrong*, 122 F.4th at 1288.

Because § 2113(a) is divisible, we apply the modified categorical approach to determine whether Saint-Louis was convicted of bank robbery or bank extortion. *See id.* at 1287–88. The indictment and jury instructions clearly show that Saint-Louis was convicted of bank robbery "by force and violence, or by intimidation," and not of bank extortion. For this reason, his § 2113(a) conviction qualifies as a "crime of violence" for purposes of § 924(c). *See id.*; *Sams*, 830 F.3d at 1239.

V.

Finally, Saint-Louis argues that the district court erred in applying the two-level physical-restraint enhancement under U.S.S.G. § 2B3.1(b)(4)(B). We agree that Saint-Louis is entitled to resentencing under our recent decision in *United States v. Brown*, ___ F.4th ___, No. 23-13326, 2026 WL 3023730 (11th Cir. Oct. 8, 2026).

The question in *Brown* was whether the district court plainly erred by imposing the two-level enhancement under U.S.S.G. § 2B3.1(b)(4)(B). When the defendant in that case was sentenced in 2022, "§ 2B3.1(b)(4)(B) provided for a two-level enhancement if any person was physically restrained to facilitate commission of the offense or to facilitate escape." *See id.* at *4 (quotation marks omit-

ted). We had interpreted this enhancement to apply broadly whenever "a defendant creates circumstances allowing his victims no alternative but compliance," such as giving commands at gun point. *Id.* Other circuits had interpreted the enhancement more narrowly. *See id.* Then, in 2025, the Sentencing Commission amended the guideline to resolve the circuit split and make the enhancement applicable when "any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up." *Id.* at *5.

In *Brown*, we first held that § 2B3.1(b)(4)(B)'s amended text was "clarifying, rather than substantive." *Id.* at *5–6. That means "it applies retroactively." *Id.* at *6. Because the amendment was retroactive, we concluded that the court "erred in relying on our old law to impose the two-level enhancement." *Id.*

Next, we held that this error was plain because it was "clear that the district court applied the wrong legal standard at sentencing, relying instead on our previous interpretation of the old version of the Guideline." *Id.* at *7. In other words, "the district court's imposition of the two-level enhancement wasn't proper at the time of sentencing, regardless of what our then-existing precedent said." *Id.*

Third, we held that this plain error affected the defendant's substantial rights because there was a reasonable probability of a different sentence but for the error. *Id.* Looking to the record of sentencing, we found no reason to depart from the general rule that "a defendant who has shown that the district court mistakenly

deemed applicable an incorrect, higher Guidelines range demonstrates prejudice to his substantial rights." *Id.* at *7–8.

Finally, we exercised our discretion to correct a plain guidelines error. *Id.* at *8; *see Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) ("A plain Guidelines error that affects a defendant's substantial rights is precisely the type of error that ordinarily warrants relief."). We therefore remanded to give the defendant "a shot at resentencing under the proper legal standard." *Brown*, 2026 WL 3023730, *8.

Here, as in *Brown*, the district court erred in applying § 2B3.1(b)(4)(B)'s two-level sentencing enhancement. It's "now clear that the district court applied the wrong legal standard at sentencing, relying instead on our previous interpretation of the old version of the Guideline." *Id.* at *7. That error was not harmless because "an error resulting in a higher range than the Guidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence that is more than 'necessary' to fulfill the purposes of incarceration." *Rosales-Mireles*, 585 U.S. at 139. And the record here does not suggest that the court thought the sentence it chose was appropriate irrespective of the guideline range. *See Brown*, 2026 WL 3023730, at *8.

We therefore vacate Saint-Louis's sentence and remand for resentencing under the proper legal standard. *See id.*

VI.

In sum, we affirm Saint-Louis's convictions because we conclude that sufficient evidence supports the jury's verdict, that Saint-

Louis has not established reversible prosecutorial misconduct, and that Saint-Louis's bank-robbery conviction under § 2113(a) qualifies as a "crime of violence." We vacate Saint-Louis's sentence, and we remand for resentencing.

AFFIRMED in part; VACATED and REMANDED in part.