No. _____

IN THE

Supreme Court of the United States

TERENCE WILSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX

Pages

A. Order of the U.S. Court of Appeals for the Fifth Circuit (August 18, 2026) 1a-38a

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 18, 2026
Lyle W. Cayce
Clerk

No. 24-30684

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TRAVIS ENCLADE; TERENCE WILSON,

Defendants—Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC Nos. 2:22-CR-238-1,
2:22-CR-238-2

Before RICHMAN, HIGGINSON, and DOUGLAS, *Circuit Judges*.

STEPHEN A. HIGGINSON, *Circuit Judge*:

This appeal follows a jury's convictions of Terence Wilson and Travis Enclade for conspiring to distribute methamphetamine, fentanyl, and heroin. Wilson was additionally convicted of possessing those drugs with intent to distribute and unlawfully possessing two firearms found at the stash house as a convicted felon; Enclade was additionally convicted of unlawfully possessing those firearms and a third firearm found at his residence. The convictions stem from a two-month surveillance operation in New Orleans that ended with the search of three residences and the recovery of substantial

quantities of narcotics, multiple firearms, and a jailhouse call where Wilson directed Enclade to the stash. On appeal, the defendants raise nine issues, challenging the sufficiency of the evidence, the admission of certain evidence and testimony, the prosecutor's rebuttal closing argument, the district court's response to a jury question and denial of a continuance, cumulative error, Enclade's sentence, and the constitutionality of 18 U.S.C. § 922(g)(1). Finding no reversible error, we AFFIRM.

I.

In early 2022, a Drug Enforcement Administration task force led by Jefferson Parish Sheriff's Office narcotics agent Steven Brens began investigating Travis Enclade and Terence Wilson, relatives who were suspected of narcotics trafficking in the New Orleans area.

Beginning in August 2022, law enforcement installed pole cameras outside two residences associated with the defendants: 4558 Camelot Drive, where Enclade lived with his girlfriend, and 4235 Hollygrove Street, where Wilson's father lived. The cameras recorded automatically upon detecting movement and allowed law enforcement to capture still photographs. Through this video surveillance, supplemented by physical surveillance, GPS tracking, and phone toll analysis, Agent Brens observed Wilson and Enclade at both residences, along with several vehicles the two men used interchangeably—a practice Brens testified is intended to frustrate law-enforcement surveillance.

The pole cameras captured multiple brief visits to both residences that Brens testified were consistent with hand-to-hand narcotics transactions. On August 18, 2022, footage from Camelot Drive showed Enclade retrieving objects from Wilson's parked car; Brens opined, based on the activity and the appearance of a clear plastic bag, that Enclade was handling narcotics. On August 25, 2022, footage from Hollygrove showed an unknown man arriving

by truck and briefly interacting with Wilson and Enclade at a vehicle in what Brens identified as a hand-to-hand transaction; a still photograph taken shortly afterward showed Wilson exiting the same vehicle and entering the Hollygrove residence carrying a handgun. On August 26, 2022, footage showed Wilson retrieving an item from a vehicle that Brens "believe[d]" to be narcotics or currency, after which Wilson was observed placing a handgun in his waistband. Agent Brens later testified that a Smith & Wesson 9mm semi-automatic handgun recovered from the Hollygrove residence during the eventual search appeared to be the same firearm depicted in the footage, though the Government acknowledged it could not confirm the identification with certainty.

On September 22, 2022, law enforcement installed a third pole camera at 3511 Encampment Street. The residence had previously been rented by Stacia Caston, an acquaintance of Wilson's, who testified that she vacated the property on September 1 because she could no longer afford the rent and that Wilson thereafter arranged with her to take over the lease so that he could move his ailing father into more comfortable housing. After Caston moved out, Wilson began bringing items into the home, including a mattress, a television, and a black suitcase. Brens testified that he observed Wilson and Enclade accessing the Encampment residence with individual keys on repeated occasions, entering and exiting for brief periods—a pattern he described as consistent with a stash house maintained at a location deliberately distanced from the defendants through a third party. He similarly testified to near-daily hand-to-hand drug activity at the Hollygrove residence and to identifying several visitors there as narcotics customers through registration checks and prior law-enforcement contacts.

On September 28, 2022, Wilson contacted an individual later identified as an undercover officer working with the Plaquemines Parish major crimes task force, and the two arranged what the officer understood to

be a narcotics transaction; Wilson was arrested when he arrived at the agreed meeting location, a Home Depot, though no narcotics were found on his person. The following morning, while in custody, Wilson placed a recorded call to Enclade using another inmate's phone access. During the call, Wilson said, "Look ray." Enclade responded, "Yeah I already know where ray at." Wilson then said, "It's in the cabinet." Agent Brens testified that, based on the narcotics later recovered from a kitchen cabinet and his training and experience, he understood "ray" to be a coded reference to narcotics rather than to a person, a conclusion he maintained on cross-examination notwithstanding his acknowledgment that the term is not one commonly used in the drug trade. Pole camera footage captured Enclade entering the Encampment residence several hours after the call. Wilson was held for about twenty-four hours and then released.

On October 4, 2022, footage showed Enclade arriving at the Encampment residence carrying what Brens identified, based on the item's appearance, as a backpack; Brens later testified that a backpack matching those characteristics was recovered from a kitchen cabinet during the subsequent search, an identification he maintained on cross-examination despite challenges to the footage's clarity. On the evening of October 8, 2022, footage captured Wilson and Enclade moving Wilson's elderly father into the Encampment residence.

On October 12, 2022, law enforcement executed search warrants at all three residences. At Hollygrove, officers recovered marijuana, small quantities of cocaine and heroin, a handgun, and ammunition. At Encampment Street, officers recovered narcotics from several locations, including a black backpack in a kitchen cabinet consistent with Wilson's reference during the jailhouse call; the search yielded, in total, over 300 grams of methamphetamine, over 100 grams of fentanyl, and over 500 grams of heroin, later confirmed through forensic testing, along with distribution

paraphernalia including a vacuum sealer, digital scales, a blender, and a kilo press. Officers also recovered two firearms from the residence: a pistol found inside an open suitcase in a bedroom that pole camera footage had earlier shown Wilson carrying into the house, and a second pistol found in a bathroom. Wilson's bedridden father was found in the residence at the time of the search. At Camelot Drive, officers recovered synthetic marijuana and two firearms, including a pistol in the master bedroom closet whose location Enclade identified for officers.

A federal grand jury indicted Wilson and Enclade, charging both defendants with conspiracy to distribute and possess with intent to distribute methamphetamine, fentanyl, and heroin (Count 1); possession with intent to distribute the same substances (Count 2); being felons in possession of firearms, as to Wilson for the two firearms recovered at Encampment Street (Count 3) and as to Enclade for those same firearms and the pistol recovered at Camelot Drive (Count 4); and possessing firearms in furtherance of drug trafficking (Count 5). Before trial, the district court denied Wilson's motions in limine to exclude evidence of his firearm possession outside of the Hollygrove residence, and to dismiss his felon-in-possession count on Second Amendment grounds. On the morning trial was set to begin, the district court denied Enclade's request for new counsel and a continuance following an extensive colloquy with Enclade and his attorney.

At trial, the Government called nine witnesses, including Agent Brens, forensic chemists, the undercover officer involved in Wilson's arrest, Stacia Caston, and a firearms expert. Neither defendant testified, and the defense presented no case. During closing argument, the defendants argued primarily that the Government's evidence rested on inference and speculation rather than direct or forensic proof. During rebuttal, the prosecutor made remarks now challenged as improper, including a statement that "law enforcement knew who done it" when the warrants were executed.

The jury convicted both defendants on Count 1, acquitted both on Count 5, convicted Wilson alone on Count 2, and convicted Wilson and Enclade respectively on Counts 3 and 4. The district court sentenced Enclade to 288 months' imprisonment and Wilson to 240 months, both below the applicable Guidelines ranges.

II.

This appeal asks whether (A) the evidence was sufficient to support the convictions; (B) the district court committed plain error in admitting Agent Brens's lay opinion testimony; (C) the prosecutor's rebuttal closing argument constituted reversible misconduct; (D) the district court properly admitted other-acts evidence of Wilson possessing uncharged firearms; (E) the district court adequately responded to a jury question during deliberations; (F) the district court abused its discretion in denying a morning-of-trial continuance; (G) cumulative error warrants relief; (H) Enclade's below-Guidelines sentence was substantively reasonable; and (I) 18 U.S.C. § 922(g)(1) violates the Second Amendment and Commerce Clause. We address each issue in turn.

A

Enclade and Wilson moved for a judgment of acquittal following the close of the Government's case, preserving their challenges to the sufficiency of the evidence. Such preserved challenges "get *de novo* review, with a heavy thumb on the scale in favor of the verdict." *United States v. Cabello*, 33 F.4th 281, 288 (5th Cir. 2022). "[W]e consider the evidence, all reasonable inferences drawn from it and all credibility determinations in the light most favorable to the Government, and affirm if a reasonable jury could find the offense's essential elements beyond a reasonable doubt." *United States v. Medina*, 161 F.3d 867, 872 (5th Cir. 1998).

We proceed to address: (1) Enclade and Wilson's challenge to the sufficiency of the evidence on Count 1; (2) Wilson's challenge to the sufficiency of the evidence on Count 2; and (3) Enclade and Wilson's challenge to the sufficiency of the evidence on Counts 3 and 4.

(1)

The jury convicted Enclade and Wilson of Count 1, conspiracy to distribute and possess with intent to distribute at least 50 grams of methamphetamine, 40 grams of fentanyl, and 100 grams of heroin. "The essential elements of a drug conspiracy are (1) an agreement by two or more persons to violate the narcotics laws; (2) a defendant's knowledge of the agreement; and (3) his voluntary participation in the agreement." *United States v. Vargas-Ocampo*, 747 F.3d 299, 303 (5th Cir. 2014) (en banc); 21 U.S.C. §§ 841, 846. Enclade and Wilson challenge only the sufficiency of the evidence supporting the first element—an agreement. "A conspiracy agreement may be tacit, and the trier of fact may infer agreement from circumstantial evidence." *United States v. Thomas*, 12 F.3d 1350, 1356 (5th Cir. 1994) (quoting *United States v. Hernandez-Palacios*, 838 F.2d 1346, 1348 (5th Cir. 1988)).

The evidence was sufficient to establish an agreement between Enclade and Wilson. The Government presented evidence that the two men shared access to the Encampment Street residence, which Agent Brens identified as a stash house. Surveillance footage showed Enclade and Wilson repeatedly traveling to and from the residence, and both men possessed keys to the home. A search of the residence recovered narcotics, scales, a kilo press, a blender, a vacuum sealer, and packaging materials consistent with drug distribution. The jury also saw surveillance footage of what Agent Brens identified as hand-to-hand narcotics transactions involving Wilson and Enclade, both with each other and with third parties.

The jailhouse call between Enclade and Wilson following Wilson's arrest reinforces the jury's finding of an agreement. During the call, Wilson told Enclade, "Look ray." Enclade responded, "Yeah I already know where ray at." Wilson then stated, "It's in the cabinet." When law enforcement searched the Encampment Street residence, they recovered a black backpack containing narcotics from a cabinet under the sink. Agent Brens testified that, based on his experience, he understood "ray" to refer to narcotics and interpreted Wilson's statement as directing Enclade to the drugs in the cabinet. A rational jury could infer from the exchange that Enclade already knew the location of the narcotics and that Wilson expected him to understand the reference without further explanation. That evidence, combined with the surveillance footage and shared access to the stash house, was sufficient to establish a coordinated operation. *United States v. Grant*, 683 F.3d 639, 643 (5th Cir. 2012) ("An agreement may be inferred from concert of action . . . ." (quoting *United States v. Stephens*, 571 F.3d 401, 404 (5th Cir. 2009))).

To the extent Enclade and Wilson challenge Agent Brens's testimony as inadmissible opinion testimony, those arguments do not affect the sufficiency analysis. When a defendant separately challenges the admissibility of evidence supporting his conviction, sufficiency is considered first for double-jeopardy purposes, and the court considers all evidence presented to the jury, including evidence challenged as inadmissible. *United States v. Robinson*, 87 F.4th 658, 667 n.1 (5th Cir. 2023). Nor may the defendants defeat sufficiency by attacking Brens's credibility. This court does not reweigh witness credibility unless testimony is incredible as a matter of law—that is, unless the testimony "relates to facts that the witness could not possibly have observed or to events which could not have occurred under the laws of nature." *United States v. Green*, 180 F.3d 216, 221–22 (5th Cir. 1999) (first quoting *United States v. Bermea*, 30 F.3d 1539, 1552 (5th Cir.

1994); and then citing *United States v. Casteneda*, 951 F.2d 44, 48 (5th Cir. 1992)). Brens's testimony was not incredible as a matter of law, and it was for the jury to determine what weight, if any, to give that testimony.

Wilson counters that, at most, the evidence showed "mere parallel drug dealing," which is insufficient to establish a conspiracy absent evidence of a mutually dependent relationship, citing to *United States v. Holloway*, 377 F. App'x 383 (5th Cir. 2010). This case is unlike *Holloway*. There, the evidence showed only buyer-seller transactions and "conscious parallelism," without shared infrastructure, coordinated activity, or evidence that the defendants worked together toward a common distribution objective. *Id.* at 387–88. Here, by contrast, the evidence showed that Enclade and Wilson shared access to a stash house, engaged in transactions together, used shared resources, and communicated about the location of narcotics. The record therefore supports a finding of more than parallel drug activity.

Enclade's arguments—that his familial relationship with Wilson and the absence of forensic evidence undermine the verdict—are likewise unavailing. The Government never relied on the defendants' familial relationship, and the absence of fingerprints or DNA evidence does not preclude a finding of conspiracy based on circumstantial evidence, *Thomas*, 12 F.3d at 1356. Enclade's argument that Wilson's use of Enclade's truck, without Enclade present, during the Home Depot undercover-agent buy negates Enclade's participation in the conspiracy likewise depends on drawing an inference in his favor, contrary to the governing standard of review. *Medina*, 161 F.3d at 872.

A rational juror could find beyond a reasonable doubt that Enclade and Wilson agreed "to violate the narcotics laws." *Vargas-Ocampo*, 747 F.3d at 303. We therefore affirm their Count 1 convictions.

The jury also convicted Wilson of Count 2, possession with intent to distribute at least 50 grams of methamphetamine, 40 grams of fentanyl, and 100 grams of heroin. "The essential elements of possession with the intent to distribute controlled substances in violation of 21 U.S.C. § 841 are 1) knowledge, 2) possession, and 3) intent to distribute the controlled substances." *United States v. Delgado*, 256 F.3d 264, 274 (5th Cir. 2001). Wilson challenges only the sufficiency of the evidence establishing possession.

"Possession may be actual or constructive and may be proved by circumstantial evidence." *United States v. De Leon*, 170 F.3d 494, 496 (5th Cir. 1999). The Government proceeded under a constructive-possession theory. Constructive possession exists where the defendant has dominion or control over the item itself *or* over the premises in which the item is found. *Id.* But where, as here, the premises are jointly occupied, the Government must present "'some evidence supporting at least a plausible inference that the defendant had knowledge of and access to' the illegal item." *United States v. Hinojosa*, 349 F.3d 200, 204 (5th Cir. 2003) (quoting *United States v. Mergerson*, 4 F.3d 337, 349 (5th Cir. 1993)). Whether constructive possession exists is a fact-specific inquiry guided by common sense. *United States v. Wright*, 24 F.3d 732, 735 (5th Cir. 1994) (citing *Mergerson*, 4 F.3d at 349).

Wilson does not dispute that he had access to the Encampment Street house and its contents. Instead, he argues that the Government proved only joint occupancy, not that he knew of or exercised control over the narcotics found there. This argument is undermined by the jailhouse call, where Wilson told Enclade, "Look ray . . . It's in the cabinet." Officers subsequently recovered heroin and methamphetamine from a black backpack located in a cabinet under the sink. From this evidence, a rational jury could

infer that Wilson knew of the heroin and methamphetamine stored at the residence. And while Wilson does not separately identify any evidence undermining the inference that he knew of the fentanyl recovered from the house, the fentanyl was found in plain view in a closet at the Encampment Street residence. So, a jury could reasonably infer knowledge from that fact. *United States v. Meza*, 701 F.3d 411, 420–21 (5th Cir. 2012). The evidence was therefore sufficient to support Wilson's Count 2 conviction.

(3)

The jury convicted Wilson of Count 3, which charged him with being a felon in possession of two firearms recovered from the Encampment Street house: a Palmetto pistol found in a black suitcase in a bedroom and a Diamondback pistol found behind the door of a spare bathroom. To convict under 18 U.S.C. § 922(g)(1), the Government was required to prove that Wilson previously had been convicted of a felony, knowingly possessed a firearm, and that the firearm traveled in or affected interstate commerce. *United States v. Ferguson*, 211 F.3d 878, 885 n.4 (5th Cir. 2000). Wilson challenges only the sufficiency of the evidence establishing possession.

As with Count 2, the Government proceeded under a constructive-possession theory. The same principles apply: in a jointly occupied residence, the Government must present evidence supporting a plausible inference that the defendant had knowledge of and access to the firearm. *De Leon*, 170 F.3d at 496; *Hinojosa*, 349 F.3d at 204.

The jury heard evidence supporting an inference that Wilson constructively possessed both firearms. As to the Diamondback pistol, the jury heard evidence that the firearm was found lying on the bathroom floor near the open door, unobstructed by any container, furniture, or personal effects. Nothing in the photograph or the surrounding testimony suggests the firearm was shielded from view; it rested in open floor space visible to anyone

standing in the room. A firearm resting openly, with no intervening object blocking it from view, is a paradigm case of exposure. This court has repeatedly recognized that a firearm found in plain view in a jointly occupied residence supports an inference of constructive possession. *United States v. Fields*, 72 F.3d 1200, 1212 (5th Cir. 1996); *Meza*, 701 F.3d at 420–21. A rational jury therefore could find that Wilson constructively possessed the firearm.

The evidence was also sufficient as to the Palmetto pistol. The jury heard evidence that Wilson carried a black suitcase into the Encampment Street residence and that the Palmetto pistol was later found in a black suitcase inside the house. From that evidence, a rational juror could infer that Wilson brought the suitcase containing the firearm into the residence, establishing knowledge and access to the weapon. What's more, law enforcement found the Palmetto in plain view too. Though it was in a suitcase, that suitcase was found wide open on the floor in a bedroom, empty but for the pistol laid bare inside it, confirmed by Agent Brens's testimony that the Palmetto "was in plain view." *Fields*, 72 F.3d at 1212; *Meza*, 701 F.3d at 420–21. The evidence was sufficient to support Wilson's Count 3 conviction.

Next, the jury convicted Enclade of Count 4, which charged him with being a felon in possession of the same two firearms recovered from the Encampment Street house and a Ruger pistol recovered from his Camelot Drive residence. Enclade challenges only the sufficiency of the evidence establishing constructive possession. As to the Palmetto and Diamondback pistols, the evidence was sufficient for the same reasons discussed above. The jury heard that Enclade had access to the Encampment Street residence, possessed a key to the residence, and regularly entered and exited the house. Because both firearms were located in plain view, the jury could reasonably

infer that Enclade had knowledge of and access to them. *Fields*, 72 F.3d at 1212; *Meza*, 701 F.3d at 420–21.

The Ruger pistol presents an easier case. Enclade does not dispute that he exercised control over the Camelot Drive residence. Although his girlfriend also lived there, the jury heard that Enclade told officers where the firearm was located: in the master bedroom closet. Officers subsequently recovered the Ruger from that closet among men's clothing. This evidence provided more than a plausible inference that Enclade knew of and had access to the firearm. *Hinojosa*, 349 F.3d at 204. The evidence was therefore sufficient to support Enclade's Count 4 conviction.

B

Wilson and Enclade challenge the admission of Agent Brens's testimony on numerous grounds. Significantly, none of the theories now advanced was raised in the district court.[1] Review is therefore for plain error, under which a defendant must show (1) an error, (2) that is clear or obvious, (3) that affected his substantial rights, and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Puckett v. United States*, 556 U.S. 129, 135 (2009). We address each theory in turn.

(1)

Wilson and Enclade argue that Brens's testimony interpreting the word "ray" on the recorded jailhouse call exceeded the bounds of permissible lay opinion under Rule 701. A lay witness may offer an opinion only if it is "(a) rationally based on the witness's perception; (b) helpful to

[1] Government lead-agent testimony, whether lay or expert, requires close evidentiary scrutiny because of its impact and because it can implicate Confrontation Clause concerns as well as multiple Federal Rules of Evidence constraints. *E.g.*, FED. R. EVID. 602, 611, 701–04.

clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." FED. R. EVID. 701.

Our analysis is guided by *United States v. Haines*, 803 F.3d 713 (5th Cir. 2015), which addressed the admissibility of a DEA agent's testimony interpreting wiretapped calls in a heroin conspiracy. *Haines* organized such testimony into three categories. The first covers terms carrying a consistent, specialized meaning within the drug trade generally—testimony admissible as expert opinion under Rule 702. *Id.* at 728 (citing *United States v. Griffith*, 118 F.3d 318, 321–22 (5th Cir. 1997)). The second covers terms whose meaning derives not from general drug-trade expertise but from the agent's first-hand knowledge of the specific investigation—testimony admissible as lay opinion under Rule 701. *Id.* at 729 (first citing *United States v. Akins*, 746 F.3d 590, 599 (5th Cir. 2014); and then citing *United States v. Miranda*, 248 F.3d 434, 441 (5th Cir. 2001)).

The third category covers testimony interpreting language that the jury is equally capable of evaluating for itself, such as ordinary English words and pronouns. *Id.* at 733. Such testimony is inadmissible under either Rule 701 or Rule 702 because it does not assist the jury in understanding something beyond its own ability to evaluate; instead, it simply supplies the inference the jury must itself draw from the evidence. *See id.* at 734. In *Haines*, this category included the agent's interpretations of words like "what," "she," "that," and "stuff," as well as his testimony that "as soon as I can" referred to heroin distribution. Relying on *United States v. Freeman*, 730 F.3d 590, 598 (6th Cir. 2013), and *United States v. Grinage*, 390 F.3d 746, 750 (2d Cir. 2004), *Haines* explained that a case agent may not simply narrate the meaning of recorded conversations when the jury is equally capable of drawing the relevant inference from the evidence before it. *Id.* Testimony of this kind is inadmissible regardless of the agent's experience because the issue is not the

witness's qualifications, but whether the jury needs assistance in reaching the conclusion itself. *See id.* at 733.

Brens's testimony implicated the same Rule 701(b) helpfulness concern identified in *Haines*'s explication of Category 3.[2] Brens did not explain "ray" based on a broader pattern of usage or some investigative fact unavailable to the jury. He simply connected the term to the narcotics recovered from the Encampment Street residence. The jury had all the evidence necessary to draw or reject that inference itself: it heard the recording in which Wilson told Enclade to "look ray" and that "it's in the cabinet," and it heard that officers later recovered narcotics from a cabinet under the sink at the residence. Because the jury was equally capable of drawing the same inference from the evidence presented at trial, Brens's interpretation was not helpful under Rule 701(b).

The Government's principal authorities do not support a different conclusion. In *United States v. Churchwell*, 807 F.3d 107 (5th Cir. 2015), this court rejected the argument that a witness's opinion was unhelpful merely because the jury might reach the same conclusion. *Id.* at 119. But the witness there supplied something the jury did not otherwise have: his own prior, private interactions with the defendant, including the defendant's shifting admissions. *Id.* Similarly, in *United States v. El-Mezain*, 664 F.3d 467 (5th Cir. 2011), an FBI agent testified that a codefendant's recorded reference to someone being "sick" referred to Hamas leader Khalid Mishal, based on the agent's knowledge, drawn from the investigation, that Mishal had recently

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[2] Because Brens's "ray" testimony failed Rule 701(b), we do not reach the defendants' arguments that the testimony also lacked the personal knowledge required by Rule 701(a). Moreover, the defendants do not mount a Rule 701(c) challenge, seemingly because "ray" is not a term with a consistent, specialized meaning in the drug trade that would require expert testimony.

survived an assassination attempt and that the codefendant had telephoned Mishal's father shortly after the call. *Id.* at 514 & n.13. In both cases, the witness's testimony was helpful under Rule 701(b) precisely because it gave the jury access to a fact—developed independently through the investigation—that the jury had no other way of obtaining.

Testimony can also be helpful on a different footing; namely, sustained exposure to how a term was used across an investigation, rather than any single undisclosed fact, can give an agent's synthesis genuine value to the jury even where the jury hears the same underlying recordings. *See Akins*, 746 F.3d at 599–600; *Miranda*, 248 F.3d at 441. There, the assistance the testimony provides is not a fact the jury lacks but a pattern the jury, reviewing the same calls cold and in isolation, is not well positioned to reconstruct on its own.

Brens's testimony offered neither form of assistance. He identified no discrete fact, of the kind in *Churchwell* and *El-Mezain*, that the jury lacked; nor did he testify to any consistent usage of "ray" across other calls he had personally observed, in the manner of *Akins* and *Miranda*. His understanding arose from a single call, interpreted after the fact by connecting it to a search result the jury had already heard about. His testimony was therefore unhelpful under Rule 701(b)—it simply narrated an inference the jury was equally positioned to draw for itself—and it is what *Haines* forbids, resulting in error.

That conclusion does not end the inquiry, however, because Wilson and Enclade must also show that the error affected their substantial rights—that is, a reasonable probability that, but for the error, the outcome of the proceeding would have been different. *Id.* They have not made that showing here. Brens's interpretation was only one piece of a substantial body of evidence supporting the convictions, including surveillance footage of

repeated hand-to-hand transactions, the defendants' shared access to and use of the stash house, and the distribution paraphernalia and narcotics recovered during the search itself. Additionally, in closing argument, and arguably consistent with the failure to object earlier, defense counsel powerfully urged the jury to acquit in large part by highlighting that Brens was not "super natural" in his observations and comparisons. Given the strength of the independent evidence and the obviousness of the "ray" inference apart from Brens's gloss, Wilson and Enclade have not shown a reasonable probability that the erroneous admission of this testimony affected the outcome of trial. The error therefore does not warrant relief under plain-error review.

(2)

Wilson separately argues that various of Brens's opinions were improperly based on "the investigation as a whole" rather than his own perceptions, in violation of Rule 701(a), and that this same defect raises a Confrontation Clause problem.

Wilson relies on *United States v. Garcia*, 413 F.3d 201, 212 (2d Cir. 2005), where the Second Circuit found Rule 701(a) error because the testifying agent's opinions drew on "the total information developed by all the officials who participated in the investigation" rather than his own perceptions. The court emphasized the agent's repeated references to "our investigation" and what "we" learned, distinguishing testimony from an agent who personally participated in the events described. *Id.* "Precisely because Rule 701 limits the admissibility of lay opinions at trial to those based only on personal perceptions, an opinion . . . which appears to have been based on the totality of information gathered by various persons in the course of an investigation[] [i]s not admissible before a jury." *Id.* at 213.

Garcia does not resemble this case. Much of the testimony Wilson identifies was not opinion testimony at all. Brens's description of the investigative methods employed—such as aerial surveillance, GPS tracking, toll records, traffic stops, and pole cameras—was simply a factual account of the investigation. The same is true of his testimony that the lease on the Encampment Street residence automatically renewed at the end of its twelve-month term. And Wilson's reliance on statements made during the Government's closing argument is misplaced because closing argument is not evidence, much less testimony from Brens.

The remainder of the challenged testimony reflected Brens's own observations and conclusions. He repeatedly explained that his opinions rested on "my observations," "my investigation," and "my experience," while identifying the surveillance, investigative steps, and conduct that he personally observed. Although Brens's testimony occasionally used "we" when describing this surveillance, his testimony throughout established that "physical surveillance" meant conduct he personally undertook or monitored—"being in my vehicle, on foot," and pole-camera footage he personally watched and adjusted from the DEA office—not an opinion that, like the agent's in *Garcia*, drew on the total information developed by the investigative team without any limitation to what Brens personally perceived. Likewise, his testimony identifying recurring vehicles and customers at the Hollygrove residence was based on registration checks, traffic stops, and other investigative steps that he personally conducted.

Taken together, the challenged testimony reflects Brens's own perceptions rather than the collective knowledge of the investigative team. Wilson therefore cannot show that this case resembles *Garcia*. For the same reason, his related Confrontation Clause argument fails. Because Brens did not convey out-of-court statements or conclusions reached by other officers under the guise of lay opinion, his testimony did not implicate the

Confrontation Clause. *United States v. Hamann*, 33 F.4th 759, 767 (5th Cir. 2022).

(3)

Wilson and Enclade next argue that portions of Brens's testimony were expert testimony governed by Rule 702 masquerading as Rule 701 lay opinion. The challenged testimony shares a common structure: the Government asked Brens, "in your experience," to explain the significance of items, conduct, or patterns encountered during the investigation, and Brens answered by drawing on his experience investigating drug trafficking generally. The instances include testimony that the defendants' frequent switching of vehicles and phones was, in his experience, indicative of efforts to thwart law-enforcement surveillance; that it is common, in his experience, for drug dealers to carry firearms to protect their supply; that a vacuum sealer, sealed-bag remnants, and a blender found at the Encampment Street residence were, in his experience, indicative of drug packaging; that a razor blade is used, in his experience, to cut narcotics into distributable amounts and that brown sugar is used to spread narcotics further; that food coloring is used, in his experience, to change the color of narcotics for sale; that drug dealers, in his experience, sometimes keep guns near their drugs for protection; that a digital scale, scissors, a pan, gloves, sandwich bags, and a kilo press are, in his experience, used to prepare drugs for distribution; that the quantities of methamphetamine, fentanyl, and heroin recovered were, in his experience, consistent with quantities intended for distribution; that the conduct depicted in one pole-camera clip was, in his experience, consistent with a hand-to-hand transaction because purchasers "enter the vehicle for a very short period of time . . . to grab the narcotics and exchange the currency;" and that a second clip depicted a hand-to-hand transaction based

on, in his experience, "the amount of time that was spent there and the furtive movements."

Wilson and Enclade, who made no objection at trial, have not shown that the district court plainly erred by admitting this testimony as lay opinion. Our court has recognized that "[t]he 'distinction between lay and expert witness testimony is that lay testimony results from a process of reasoning familiar in everyday life, while expert testimony results from a process of reasoning which can be mastered only by specialists in the field.'" *United States v. Jackson*, 549 F.3d 963, 975 (5th Cir. 2008) (quoting *United States v. Yanez Sosa*, 513 F.3d 194, 200 (5th Cir. 2008)). Testimony does not become expert testimony merely because it reflects an officer's experience; it "must involve more than 'common sense or the officer's past experience formed from firsthand observation.'" *Id.* (quoting *Yanez Sosa*, 513 F.3d at 200); *see also United States v. VonWillie*, 59 F.3d 922, 929 (9th Cir. 1995) (similar). In *Jackson*, the challenged witness testified from his own firsthand experience "investigat[ing] various assaults and fights with knives and fights with fists," from which he had come to recognize a recurring pattern—shirts removed before fistfights, clothing padded before knife fights—and applied that pattern to explain the conduct he observed. 549 F.3d at 975. This court held that "any error in admitting his statements as lay rather than expert testimony was not plain." *Id.*

Brens's testimony has the same structure. He did not testify from training manuals or scientific literature on narcotics trafficking; he testified, as a DEA task force agent since 2017, from his own firsthand experience investigating narcotics conspiracies, through which he had come to recognize recurring patterns and applied them to explain the conduct and objects encountered in this investigation. As in *Jackson*, this is "past experience formed from firsthand observation," *id.* (quoting *Yanez Sosa*, 513 F.3d at 200), as opposed to the kind of scientific, technical, or specialized knowledge

that must be presented through a qualified expert. Wilson and Enclade cite no authority clearly establishing the contrary. Accordingly, they have not shown plain error.

(4)

Wilson and Enclade further argue that Brens improperly identified people and objects depicted in the pole-camera footage—including Wilson and Enclade themselves, a backpack and suitcase later recovered during the search, and a firearm allegedly matching one recovered from the Hollygrove residence—because the jury was equally capable of making those identifications for itself. *See* FED. R. EVID. 701(b).

A lay witness may identify a person or object depicted in surveillance footage if the opinion is rationally based on the witness's own perception and helpful to the jury. *United States v. Masha*, 990 F.3d 436, 445 (5th Cir. 2021). "Lay opinion testimony is admissible if it requires no great leap of logic and draws straightforward conclusions from observations informed by the witness's own experience." *Id.* (citation modified).

Brens's identification of Wilson and Enclade satisfies those standards. He testified that, over the course of his two-month investigation, he became familiar with both defendants through physical surveillance, pole-camera surveillance, photographs, and interviews. That familiarity was developed through the investigation itself, not from viewing the challenged footage in isolation, and therefore resembles the identification testimony approved in *United States v. Wilson*, 143 F.4th 647, 663 (5th Cir. 2025), where the witness's familiarity likewise arose during the investigation. Moreover, portions of the surveillance footage obscured the subjects' features, making Brens's independent familiarity more useful to the jury. *Id.* "There is nothing unusual about admitting lay opinion testimony during which the witness

identifies someone in a photograph or video." *Id.* at 662. The district court did not plainly err by admitting Brens's identification of the defendants.

The challenged object identifications stand on similar footing. Brens testified that the backpack and suitcase he identified were items he personally recovered and examined during the search of the Encampment Street residence. His testimony was grounded in his firsthand recovery and examination of the backpack and suitcase, together with his observations during the investigation, rather than solely in comparing the surveillance footage with the recovered items. That independent basis gave the jury something beyond its own side-by-side comparison of the images, which appears to satisfy Rule 701(b)'s helpfulness requirement. Defendants cite no authority clearly establishing the contrary. Instead, the closest authority they rely upon is from the Seventh Circuit and involved officers whose identification rested only on comparing photographs already before the jury, without independent familiarity. *United States v. Earls*, 704 F.3d 466, 472–73 (7th Cir. 2012) ("Rule 701 does not extend so far as to allow a witness to serve as the thirteenth juror and compare two pieces of evidence that are already available to the jury."). Whatever the precise limits of lay identification testimony regarding physical objects, Wilson and Enclade have not shown that the district court plainly erred in admitting Brens's testimony concerning the backpack and suitcase.

The firearm identification presents a closer question.[3] Unlike the backpack and suitcase, Brens did not personally recover the uncharged Smith

[3] During oral argument, Wilson's counsel suggested that trial counsel's one-word "speculation" objection preserved the challenge to Brens's firearm identification. That objection, however, sounds in Rule 701(a)—whether the opinion was rationally based on the witness's own perception—not the theory Wilson actually presses on appeal: that the identification was unhelpful under Rule 701(b) because the jury could compare the surveillance footage and the recovered firearm for itself. "Evidentiary errors must be

& Wesson handgun later seized from the Hollygrove residence. Nor did he identify any distinctive feature connecting the firearm depicted in the surveillance footage to the recovered weapon, instead testifying only that it "appear[ed] to be the same gun." The Government likewise acknowledged at trial that it could not "definitively say it's the same gun." Absent some independent basis for the comparison, Brens's testimony risked doing no more than inviting the jury to adopt his own assessment of two exhibits it was equally free to examine itself—the "thirteenth juror" concern *Earls* identified. 704 F.3d at 472–73. We need not decide whether admitting this testimony was error, however, because Wilson has not shown that any such error affected his substantial rights. He offers no developed explanation of how identifying the particular firearm itself—as distinct from generally identifying Wilson as the individual holding a firearm outside of the Hollygrove address—could reasonably have affected the verdict. *Puckett*, 556 U.S. at 135.

(5)

Finally, Wilson argues that Brens impermissibly bolstered his own testimony by referencing evidence unavailable to the jury, expressing a

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preserved by stating the specific ground of objection." *Wilson*, 143 F.4th at 662 (citing FED. R. EVID. 103(a)(1)(B)). "Because the primary purpose of FED. R. EVID. 103(a)(1) is to assist the judge in avoiding error and correctly ruling on evidentiary objections, the corollary is that to preserve the objection, the 'specific ground' for the stated objection must be the correct one." *Id.* (quoting *United States v. Seale*, 600 F.3d 473, 486 (5th Cir. 2010)). A bare "speculation" objection did not alert the district court to the distinct unhelpfulness theory Wilson now presses, so that theory remains subject to plain-error review. And to the extent the "speculation" objection preserved a personal-knowledge challenge under Rule 701(a), Wilson has not adequately briefed that theory on appeal, and it is therefore forfeited. *Rollins v. Home Depot USA, Inc.*, 8 F.4th 393, 397 (5th Cir. 2021).

personal view of the defendants' guilt, and invoking a prior judicial finding of probable cause.

Wilson first argues that Brens improperly suggested he possessed undisclosed knowledge by testifying that the footage shown to the jury was representative of conduct he observed "pretty much daily." Wilson characterizes this as an invitation for the jury to trust Brens's undisclosed knowledge rather than its own assessment of the evidence. The testimony does not support that gloss. Brens stated only that the admitted footage was representative of his broader observations during the investigation, without suggesting that the jury should rely on undisclosed evidence or defer to his conclusions in place of its own.

Wilson next points to Brens's testimony explaining why he did not seek fingerprint or DNA evidence—that he "had [his] two suspects," that he "clearly believed" the "suspects" to be "the targets of the investigation," and that he "felt confident" he had "the right individuals." We disagree that this testimony amounted to an improper expression of Brens's belief that Wilson was guilty. Brens used the investigative designation "suspects," not a statement of guilt, and he never told the jury that Wilson committed the charged offenses. Instead, he explained the investigative reasoning behind his decision not to pursue additional forensic testing based on his observations during the investigation.

Finally, Wilson points to Brens's testimony that a district judge had reviewed his affidavit and authorized the search warrants. Brens did not testify that the issuing judge believed Wilson guilty or that the warrants established any fact the jury was required to accept; he explained only the process by which law enforcement obtained judicial authorization to conduct the searches. Wilson identifies no authority holding that such background testimony is improper.

We find no plain error in any of the bolstering theories Wilson raises.

C

Wilson argues that his due process rights were violated when the AUSA made improper remarks during rebuttal closing argument by (1) characterizing an object depicted in a photograph as a search-team vest rather than a backpack, (2) referring to additional drug transactions and known drug customers not presented at trial, and (3) suggesting that law enforcement had already determined his guilt before trial.

"We apply a two-step analysis to claims of prosecutorial misconduct: First, we assess whether the prosecutor made an improper remark. If so, we determine whether the defendant was prejudiced . . . ." *United States v. Rodriguez-Lopez*, 756 F.3d 422, 433 (5th Cir. 2014). "[A] prosecutor is confined in closing argument to discussing properly admitted evidence and any reasonable inferences or conclusions that can be drawn from that evidence." *United States v. Ceballos*, 789 F.3d 607, 624 (5th Cir. 2015) (quoting *United States v. Reagan*, 725 F.3d 471, 492 (5th Cir. 2013)). Although "[t]he line separating acceptable from improper advocacy is not easily drawn," *United States v. Young*, 470 U.S. 1, 7 (1985), a prosecutor may not express a personal opinion on the merits of a case or the credibility of a witness except insofar as that opinion is based on the evidence, *United States v. Alaniz*, 726 F.3d 586, 616 (5th Cir. 2013). Nor may a prosecutor argue facts not in evidence or bolster a law-enforcement witness's credibility through personal assurances. *United States v. Delgado*, 672 F.3d 320, 336 (5th Cir. 2012) (en banc); *Rodriguez-Lopez*, 756 F.3d at 433–34.

Wilson first argues that the AUSA improperly relied on facts outside the record when discussing Government Exhibit 8, a photograph taken by law enforcement of an interior room in the Encampment house. We disagree.

Agent Brens testified that law enforcement recovered a black backpack containing drugs from a cabinet under the sink at the Encampment house and that Enclade had been captured on pole-camera footage carrying what Brens believed to be the same backpack into the residence. During closing argument, Enclade's counsel argued that Government Exhibit 8 depicted a backpack, undermining Brens's identification of the item carried by Enclade as the same item later recovered by law enforcement. In rebuttal, the AUSA responded: "That is a vest from the search team that was there that morning. That is not a backpack." After defense counsel objected that the statement relied on facts not in evidence, the district court sustained the objection. The AUSA then clarified: "If you zoom in, it appears to be a vest from a search team, not a backpack." Because Wilson objected only to the first statement, review of that statement is for abuse of discretion and review of the second is for plain error. *Alaniz*, 726 F.3d at 615; *Puckett*, 556 U.S. at 135.

Wilson's challenge fails because the AUSA's remarks were based on reasonable inferences from admitted evidence. *United States v. Morris*, 568 F.2d 396, 401 (5th Cir. 1978) (holding that role of the attorney in closing argument is "to assist the jury in analyzing, evaluating and applying the evidence. . . . The assistance permitted includes counsel's right to state his contention as to the conclusions that the jury should draw from the evidence."). The jury saw the photograph itself, heard testimony that law enforcement executed a tactical search of the Encampment house and took the photograph during that search, and heard Brens identify an item in the photograph as an "evidence box for DEA." From that evidence, the AUSA could argue that the object depicted in the photograph appeared to be a vest associated with the search team rather than a backpack. Indeed, no witness testified that the object was either a vest or a backpack; the parties instead

offered competing interpretations of the admitted photograph. The district court neither abused its discretion nor plainly erred.

Wilson next argues that the AUSA improperly referred to facts outside the record when she stated that there had been "several transactions by known drug customers, not Uber Eats drivers, but people whose license plates were checked and were known to law enforcement as drug customers," and that the transactions shown to the jury "were only a few" because Brens had testified there were "several more." Because Wilson did not object, review is for plain error. *Puckett*, 556 U.S. at 135.

This argument mischaracterizes the record. The jury heard testimony that the individuals depicted in the surveillance footage were known drug customers and that Wilson carried a firearm while interacting with them. Brens also testified that these exchanges occurred "pretty much daily" and "multiple times a day," throughout both daylight and nighttime hours. He further explained that the clips presented at trial were examples of the conduct captured by surveillance. Although the AUSA misstated "license check" rather than "registration checks," Wilson does not contend that this minor misstatement rendered the argument improper. The AUSA therefore did not introduce new evidence.

Finally, Wilson challenges the AUSA's statement that "[t]his was never really a case of who done it" because "[l]aw enforcement knew who done it" when they executed the search warrants:

> Part of the argument is that the government didn't fingerprint and DNA swab the evidence in this case. Why not? This was never really a case of who done it. Law enforcement knew who done it on October 12th, 2022, when they went to execute those search warrants. The video footage and the other evidence was overwhelming. It supported probable cause to get the search warrants. It wasn't a question of who did it. It was

> Mr. Enclade and Mr. Wilson in and out of that stash house. It was Mr. Wilson and Mr. Enclade conducting drug transactions on Hollygrove Drive conspiring together. On October 12th, the only question was how many drugs were they dealing?

Wilson did not object to these remarks, so review is for plain error. *Puckett*, 556 U.S. at 135. The remarks were plainly improper. A prosecutor may not suggest that the Government's pretrial investigation or charging decision establishes a defendant's guilt. Such arguments risk undermining the presumption of innocence by inviting jurors to defer to an institutional determination of guilt rather than independently evaluate the evidence presented at trial. *See United States v. Garza*, 608 F.2d 659, 664–65 (5th Cir. 1979) (condemning argument that "if I ever thought that I had framed an innocent man and sent him to the penitentiary, I would quit" as the "argument presumed that the whole government apparatus, and the prosecutor individually, had reached a determination of the defendant's guilt before the trial"); *Hall v. United States*, 419 F.2d 582, 587 (5th Cir. 1969) (condemning argument that "we try to prosecute only the guilty" as taking "guilt as a predetermined fact" and leading the jury to believe the "whole governmental establishment had already determined appellant to be guilty on evidence not before them"); *United States v. Lamerson*, 457 F.2d 371, 372 (5th Cir. 1972) (condemning argument that "had [the defendant] not committed a crime, we would not be prosecuting him").

The AUSA's statement that "law enforcement knew who done it" falls within the concern identified in *Garza*, *Hall*, and *Lamerson*. It suggested that law enforcement had already resolved Wilson's guilt before trial and implicitly invited the jury to defer to that conclusion rather than consider the lack of forensic evidence. The reference to probable cause for the search warrants reinforced that suggestion by implying that the pretrial judicial authorization of the searches confirmed Wilson's guilt. The remarks

therefore constituted error, and because they were contrary to this court's precedent, the error was plain. *Puckett*, 556 U.S. at 135.

The Government attempts to sanitize the AUSA's improper remarks by invoking the invited response doctrine and *United States v. Dorr*, 636 F.2d 117, 120 (5th Cir. Unit A Feb. 1981), which permits bolstering arguments in rebuttal made "to remove any stigma cast upon him or his witnesses." *Dorr* did not explain what "stigma" means, but its own citation tells the story. The case *Dorr* itself relied on, *United States v. Cotton*, 631 F.2d 63, 66 (5th Cir. 1980), involved a prosecutor who argued in rebuttal that its Secret Service witnesses were not the type of men to risk their careers by lying, bolstering their credibility—a direct response to defense counsel's baseless argument that those same agents were liars motivated by a desire to convict. Thus, the court in *Cotton* found that the prosecutor's comments were not "prejudicial error." *Id.* This is the invited response doctrine in action. *Young*, 470 U.S. at 11 (describing "an all too common occurrence in criminal trials—the defense counsel argues improperly, provoking the prosecutor to respond in kind, and the trial judge takes no corrective action").

Here, and as a threshold matter, the invited response doctrine has no purchase because it is only relevant to step two of the analysis—prejudice—not whether the prosecutor's comment was improper, *Young*, 470 U.S. at 11–13; *Cotton*, 631 F.2d at 66. And, in any event, defense counsel made no improper closing argument. Instead, counsel identified a gap in the investigation (a lack of forensic evidence), which is plainly permissible closing argument. Neither *Dorr*, *Cotton*, nor *Young* means that whenever defense counsel identifies weaknesses in the Government's case, prosecutors may respond with *Garza*-type remarks.

"Our finding that the prosecutor's comments were improper does not end our inquiry." *Garza*, 608 F.2d at 665. That is because Wilson cannot

succeed at the second step of the analysis: prejudice. A defendant seeking reversal based on improper prosecutorial remarks bears a substantial burden and must show that the "remarks cast serious doubt on the correctness of the jury's verdict." *United States v. Beaulieu*, 973 F.3d 354, 361 (5th Cir. 2020) (quoting *United States v. Mendoza*, 522 F.3d 482, 492 (5th Cir. 2008)). In evaluating prejudice, this court considers "(1) the magnitude of the prejudicial effect of the statements, (2) the efficacy of any cautionary instructions, and (3) the strength of the evidence of defendant's guilt." *Id.* (quoting *Mendoza*, 522 F.3d at 492).

Those factors weigh against reversal. First, the improper remarks were isolated statements in a relatively lengthy rebuttal argument. The AUSA did not repeat or emphasize them, and the remainder of her argument focused on evidence admitted at trial. Second, the district court instructed the jury that arguments by counsel were not evidence and that the defendants were presumed innocent, bore no burden to prove their innocence, and could be convicted only if the Government proved guilt beyond a reasonable doubt. We presume juries follow such instructions unless there is an "overwhelming probability" that they cannot do so and a "strong probability" that the statement's effect is "devastating." *United States v. Tomblin*, 46 F.3d 1369, 1390 (5th Cir. 1995) (quoting *United States v. Barksdale-Contreras*, 972 F.2d 111, 116 (5th Cir. 1992)). Nothing in this record approaches that threshold. Third, the evidence supporting Wilson's convictions was substantial, including extensive pole-camera surveillance, the jailhouse call directing Wilson to the stash house, the shared access to the stash house, and the firearms recovered there.

Accordingly, although the AUSA's "law enforcement knew who done it" remark was improper, Wilson has not shown prejudice sufficient to warrant reversal.

D

Wilson contends that the district court violated Rule 404(b) by permitting the Government to introduce pole-camera footage and accompanying testimony from Agent Brens depicting Wilson in possession of uncharged firearms on August 25 and August 26, 2022, outside the Hollygrove residence. Rule 404(b) is designed to "guard against the inherent danger that the admission of 'other acts' evidence might lead a jury to convict a defendant not of the charged offense, but instead of an extrinsic offense." *United States v. Sumlin*, 489 F.3d 683, 689 (5th Cir. 2007). Wilson preserved this challenge by filing a motion in limine that the district court definitively denied. FED. R. EVID. 103(b). Accordingly, "[w]e apply an abuse-of-discretion standard." *United States v. Kinchen*, 729 F.3d 466, 470 (5th Cir. 2013). "A trial court abuses its discretion when its ruling is based on an erroneous view of the law or a clearly erroneous assessment of the evidence." *Id.* at 470–71 (quoting *Yanez Sosa*, 513 F.3d at 200).

As to the August 25 footage, Agent Brens testified that surveillance video depicted an individual engaging in what Brens believed, based on his experience, to be a hand-to-hand drug transaction with a vehicle in which Wilson was present. Approximately fifteen minutes later, Wilson exited that same vehicle carrying a firearm and entered the Hollygrove Street residence associated with the conspiracy. Because Wilson remained in the vehicle throughout the transaction before immediately exiting it with a firearm, the jury could reasonably infer that he was armed during the transaction itself. As for the August 26 footage, Brens testified that surveillance video showed Wilson retrieve an item from a vehicle that had arrived at the Hollygrove residence, which Brens believed to be either narcotics or currency, and return to the porch. Moments later, Wilson was observed carrying a firearm in a single, uninterrupted sequence from which the jury could likewise infer that he remained armed throughout.

The district court properly admitted this evidence. Viewed in the light most favorable to the verdict, the surveillance footage depicted Wilson engaging in drug-trafficking activity during the charged conspiracy period while contemporaneously possessing firearms. His firearm possession was therefore intrinsic to Count 1 because firearms are the "tools of the trade" for drug traffickers. *See, e.g.*, *United States v. Goff*, 847 F.2d 149, 175 (5th Cir. 1988) ("Possession of weapons is highly probative as to an accused drug trafficker's criminal intent as 'tools of the trade.'" (quoting *United States v. Martinez*, 808 F.2d 1050, 1057 (5th Cir.), *cert. denied*, 481 U.S. 1032 (1987))). Because "Rule 404(b) is only implicated when the offered evidence is extrinsic," and "evidence intrinsic to the charged offense does not implicate the rule," Wilson's Rule 404(b) challenge fails. *United States v. Crawley*, 533 F.3d 349, 353–54 (5th Cir. 2008) (citing *United States v. Powers*, 168 F.3d 741, 749 (5th Cir. 1999)).

E

Enclade and Wilson argue that the district court erred by declining to "directly answer" the jury's question during deliberation. The jury asked: "Does living in a house with a firearm as a convicted felon constitute possession?" After conferring with counsel, the district court proposed re-reading the possession instruction, clarifying that it applied to firearms, and reminding the jury that Enclade's prior felony conviction could not be used as evidence that he committed the charged offense. Enclade's counsel agreed that the proposal was "an appropriate answer" and stated that he had "no objection." Wilson's counsel likewise responded, "Sounds good to me." The district court then recalled the jury and re-read the possession instruction, tracking the Fifth Circuit's Pattern Jury Instructions.

Any challenge to the district court's supplemental instruction was waived. *United States v. Rico*, 864 F.3d 381, 383 (5th Cir. 2017) ("Where a

defendant has intentionally relinquished or abandoned a known right, the issue is waived." (citing *United States v. Olano*, 507 U.S. 725, 733 (1993))). Counsel for both defendants expressly agreed to the district court's proposed response. That affirmative assent waived any objection. *United States v. Musquiz*, 45 F.3d 927, 931 (5th Cir. 1995) ("Waived errors are entirely unreviewable, unlike forfeited errors, which are reviewable for plain error.").

F

Enclade next argues that the trial court abused its discretion by denying his motion for a continuance. On the morning of trial, with the venire assembled, Enclade moved for substitute counsel and a continuance. He complained that counsel had not provided him discovery, doubted his chances of success at trial, and generally had not communicated with him. The district court then conducted an extensive colloquy with Enclade and his counsel concerning their attorney-client relationship. It ultimately denied the motion, explaining that the request came on the morning of trial after the case had been pending for approximately eighteen months, trial had already been continued several times, and the current trial date had been set months earlier. The court further found that counsel had sufficient time to prepare, was prepared to provide competent representation notwithstanding his disagreement with Enclade's decision to proceed to trial, and that this was a relatively straightforward drug-and-firearms conspiracy prosecution.

We review the denial of a motion for continuance for abuse of discretion. *United States v. Barnett*, 197 F.3d 138, 144 (5th Cir. 1999). Because the district court enjoys broad discretion in ruling on continuance motions, reversal is warranted only if the defendant demonstrates that "the denial resulted in 'specific and compelling' or 'serious prejudice.'" *Id.* (quoting *United States v. Krout*, 66 F.3d 1420, 1436 (5th Cir. 1995)).

Enclade has not made that showing. Without citing the record, he asserts that he never reviewed "numerous videos" and "[n]umerous key facts that he could have provided in defense of his claims were not developed, such as his familial relationship with his co-defendant, the actual meaning of 'Ray', and what surveillance videos actually depicted." But he neither identifies which videos he allegedly failed to review nor explains how reviewing them would have altered his defense. Likewise, he does not explain how the purportedly undeveloped facts would have affected the outcome of trial or cite any record evidence supporting his allegations. His assertions of prejudice are therefore unsupported and speculative and fall well short of the "specific and compelling" prejudice required under *Barnett*, 197 F.3d at 144. *See also United States v. Watson*, 790 F. App'x 651, 651 (5th Cir. 2020) (per curiam) (applying *Barnett* and rejecting continuance challenge where defendant's "assertion of prejudice is unsupported and speculative" and he did "not explain how the denial of a continuance prejudiced him or affected his counsel's performance at trial").

G

Wilson contends that "because the cumulative effect of the errors in this case prevented Mr. Wilson from receiving a fair trial, he is entitled to a new trial regardless of whether each independent error would mandate relief on its own." Under the cumulative error doctrine, "an aggregation of non-reversible errors (i.e., plain errors failing to necessitate reversal and harmless errors) can yield a denial of the constitutional right to a fair trial, which calls for reversal." *Delgado*, 672 F.3d at 343–44. But reversal is warranted only when errors "so fatally infect the trial that they violated the trial's fundamental fairness." *Id.* "We have repeatedly emphasized that the cumulative error doctrine necessitates reversal only in rare instances and have previously stated en banc that 'the possibility of cumulative error is often acknowledged but practically never found persuasive.'" *Id.* (quoting

Derden v. McNeel, 978 F.2d 1453, 1456 (5th Cir. 1992) (en banc)). "Its application is especially uncommon where, as here, the government presents substantial evidence of guilt." *Id.*

Wilson has not shown cumulative error warranting reversal. The nonreversible errors—the admission of Agent Brens's testimony identifying "ray" as drugs, the assumed error in admitting Brens's identification of the Smith & Wesson 9mm semi-automatic handgun recovered from the Hollygrove residence as the firearm Wilson possessed on August 26, and the prosecutor's "law enforcement knew who done it" remarks during rebuttal closing—did not render the trial fundamentally unfair. The evidence of Wilson's guilt was substantial, the improper remarks were isolated, and the district court instructed the jury that counsel's arguments were not evidence while reminding it of the presumption of innocence. On this record, the cumulative effect of the errors does not warrant reversal.

H

Enclade challenges both the procedural and substantive reasonableness of his below-Guidelines sentence of 288 months' imprisonment. We find no error.

Enclade first contends that the district court erroneously designated him a career offender. Our review is *de novo*. *Akins*, 746 F.3d at 611. Under U.S.S.G. § 4B1.1(a), a defendant qualifies as a career offender if he (1) was at least eighteen years old when he committed the instant offense, (2) was convicted of a felony that is either a crime of violence or a controlled substance offense, and (3) has at least two prior felony convictions for crimes of violence or controlled substance offenses.

Enclade disputes only the third requirement. The district court found it satisfied because Enclade had two prior Louisiana felony convictions involving heroin: possession with intent to distribute heroin and distribution

of heroin. Rather than challenge those convictions, Enclade relies on a proposed amendment to U.S.S.G. § 4B1.2 that was never adopted. Because "[t]he guidelines in effect at the time of sentencing are the appropriate source for determining a sentence," *United States v. Gonzales*, 988 F.2d 16, 18 (5th Cir.), *cert. denied*, 510 U.S. 858 (1993), the never-enacted amendment provides no basis to disturb the career offender designation on appeal.[4] *See* U.S.S.G. § 4B1.1(a).

Enclade next argues that his 288-month sentence creates an unwarranted disparity with Wilson's 240-month sentence because the PSR described Wilson as Enclade's supplier and the evidence showed Wilson was more deeply involved in the conspiracy. We review Enclade's challenge to the substantive reasonableness of his sentence under an abuse-of-discretion standard and consider the totality of the circumstances. *Gall v. United States*, 552 U.S. 38, 51 (2007). Section 3553(a)(6) concerns "disparities among defendants with *similar records* who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6) (emphasis added). Enclade and Wilson did not have similar records. Enclade qualified as a career offender; Wilson did not. As the Fourth Circuit has explained, differences in career-offender status necessarily produce sentencing disparities based on the defendants' criminal histories, and those disparities are not unwarranted under

[4] The career-offender designation resulted in an offense level of 37 and a criminal history category of VI, neither of which Enclade disputes. The district court calculated the Guidelines' range accordingly. Although Enclade now challenges the presentence investigation report's independent calculations of his offense level and criminal history category, those challenges do not affect the Guidelines' range: the undisputed career-offender designation produced a higher offense level than the PSR's independent calculation, and it independently fixed his criminal history category at VI under U.S.S.G. § 4B1.1(b)—the maximum category under the Guidelines—regardless of how the point-based calculation Enclade disputes would otherwise resolve. We therefore decline to reach his remaining objections to the PSR.

§ 3553(a)(6). *United States v. Fonville*, 5 F.3d 781, 784 (4th Cir. 1993); *cf. United States v. Candia*, 454 F.3d 468, 476 (5th Cir. 2006) ("Congress intended that certain disparities be caused by application of the federal guidelines, and 'a sentencing disparity intended by Congress is not unwarranted.'" (quoting *United States v. Duhon*, 440 F.3d 711, 720 (5th Cir. 2006))).

I

Finally, Wilson argues that his § 922(g)(1) conviction must be reversed because the statute violates the Second Amendment and the Commerce Clause, both facially and as applied to him. Because Wilson preserved his Second Amendment challenge below, review is *de novo*. *United States v. Copeland*, 820 F.3d 809, 811 (5th Cir. 2016). His Commerce Clause challenge, raised for the first time on appeal, is reviewed only for plain error. *Puckett*, 556 U.S. at 135.

Our precedent forecloses each challenge. *United States v. Diaz* rejected facial Second Amendment challenges to § 922(g)(1) because it identified at least one constitutional application of the statute. 116 F.4th 458, 471–72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025). *Diaz* also reaffirmed that § 922(g)(1) is a facially valid exercise of Congress's Commerce Clause authority. *Id.* at 462 (citing *United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013)). Wilson's as-applied Commerce Clause challenge likewise fails because he does not dispute that the firearms he possessed had previously traveled in interstate commerce. *United States v. Rawls*, 85 F.3d 240, 243 (5th Cir. 1996) (per curiam) (citing *Scarborough v. United States*, 431 U.S. 563, 575 (1977)). And *United States v. Kimble* forecloses Wilson's as-applied Second Amendment challenge because he has a prior narcotics distribution conviction. 142 F.4th 308, 318 (5th Cir. 2025).

III.

For the foregoing reasons, we AFFIRM the district court's judgment.