

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-60378

United States Court of Appeals
Fifth Circuit

FILED

November 6, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

RICHARD BEN,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 4:16-CV-1

Before CLEMENT, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Richard Ben pled guilty to violating 18 U.S.C. § 924(c)(1) for using a firearm during a crime of violence. Ben argues his conviction should be vacated because the predicate crime of robbery, 18 U.S.C. § 2111, is no longer “a crime of violence” under § 924(c)(1). In *United States v. Brewer*, we held that robbery by intimidation under 18 U.S.C. § 2113(a) is “a crime of violence.” 848 F.3d 711, 716 (5th Cir. 2017). The definitions of robbery under both § 2113(a) and §

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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2111 are the same. Ben's counsel conceded that *Brewer* controls in this case during oral argument. Ben cannot prevail because *Brewer* forecloses the argument that robbery under § 2111 is not a predicate "crime of violence."

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