

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 8, 2020

Lyle W. Cayce
Clerk

No. 19-10967
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LABRANDON MARQUISE GILL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:19-CR-93-1

Before KING, SMITH, and WILSON, *Circuit Judges.*

PER CURIAM:*

LaBrandon Gill was convicted by a jury of two counts of bank robbery by intimidation per 18 U.S.C. § 2113(a). The district court sentenced him to 210 months of imprisonment and three years of supervised release on each count, to run concurrently, and \$3,879 in restitution.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 19-10967

On appeal, Gill argues that the evidence was insufficient to satisfy the intimidation element of § 2113(a) for each robbery. Although Gill concedes that his motion for judgment of acquittal was untimely, he contends that he preserved the issue because he challenged the sufficiency of the evidence in his motion for a mistrial. That motion concerned a witness's credibility and alleged perjury as distinguished from the sufficiency of the evidence. Thus, plain-error review applies, and Gill must establish "(1) an error (2) that is clear or obvious and that (3) affected [his] substantial rights." *United States v. Reed*, 974 F.3d 560, 561 (5th Cir. 2020) (internal quotation marks and citation omitted). "If the first three prongs are satisfied, we may exercise our discretion to correct the error only if it (4) seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks and citation omitted).

When robbing the first bank, Gill gave a note to a teller that said "\$10,000 in bundles" and orally told her to "just make this easy." When robbing the second bank, he gave a note to a teller instructing her to "go to the vault and get \$10,000" and not to "make this harder than it has to be." Gill cannot show that it was a clear or obvious error to consider his demands for money and instructions to the tellers as implicit threats and thus sufficient evidence of intimidation. See *United States v. McCarty*, 36 F.3d 1349, 1357–58 (5th Cir. 1994).

Accordingly, the conviction and sentence are AFFIRMED.