FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-11893

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KEITH BERNARD MILLER,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:23-cr-60199-RKA-1

No. 24-12950
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Before NEWSOM, GRANT, and LAGOA, Circuit Judges.

LAGOA, Circuit Judge:

Over a two-week period, Keith Miller entered four banks[1] and demanded each bank's money from a teller. His demands, conveyed by note, did not explicitly threaten violence. In two banks Miller successfully secured the bank's money, in two others he left empty-handed. After a jury trial, Miller was convicted of two counts of attempted credit-union robbery by intimidation, one count of credit-union robbery by intimidation, and one count of

[1] We use the term "bank" throughout even though three of the counts technically concerned credit unions.

bank robbery by intimidation, all under 18 U.S.C. § 2113(a). In this consolidated appeal,[2] Miller argues that the government did not present sufficient evidence for a reasonable jury to determine beyond a reasonable doubt that he committed each attempted and completed robbery *by intimidation*. After careful review, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

From September 29, 2023, through October 10, 2023, Miller robbed or attempted to rob four banks. We recount these four incidents below, as well as Miller's arrest, trial, and conviction.

1. Tropical Financial Credit Union

On September 29, 2023, Miller, disguised in a wig, walked into a Tropical Financial Credit Union branch, approached the teller, Darren Braun, and slid a large plastic bag and note under the plexiglass barrier. The note instructed Braun to "Put all money inside envelope. No dye packs.[3] No old bills. Return note to me. Hurry up!"

Braun read the note, turned to the neighboring teller, Alexis Rubio, and said, "I think this guy's robbing me." Braun sought confirmation from Miller, who "kind of nodded his head." He then

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[2] We consolidated Miller's appeal from the district court's initial judgment with his appeal from the district court's amended judgment, which imposed restitution.

[3] A dye pack is a device used by banks to impede robberies by releasing a red dye that permanently stains the stolen bills when it senses that they have crossed the threshold of the bank.

triggered the bank's silent alarm, to which Miller challenged, "Is that how it's going to be?" Braun responded, "Yes that's how it is." So Miller tried to get the demand note back from Braun, but Braun would not give it back. Braun then handed the note to Rubio, Rubio read the note, and she too activated the silent alarm. Rubio tried to finish up with the customer she was helping to "get him out of the situation" but Miller "nudge[d]" between Rubio and the customer and assertively demanded his note back. Rubio refused, so Miller responded, "Okay, I'll be back." After Miller left the bank, Rubio informed management of the incident. Security locked the bank doors to prevent Miller's return and law enforcement then arrived to close the bank early.

At trial, Braun testified that he disregarded bank protocol to hand over money to a suspected robber upon demand because he did not think "there was a threat of violence" and assumed that the situation was either a "test" or a "bad joke." But he also acknowledged that when Miller later told Rubio that he "would be back," it "click[ed] in that this could have been a threatening situation." For her part, Rubio testified that she felt "extremely concerned," in part because Miller was "looking directly at [her]" and "could see [her face]."

2. Space Coast Credit Union

After failing to rob Tropical Financial, Miller drove a few miles to a Space Coast Credit Union branch to try his luck there. He swapped out his wig for a baseball cap, approached the bank's teller, Avril Sayers, and passed the following note: "Put all the money in the envelope. No dye pack. No old bills. Please return note. They making me do this." Sayers at first had trouble deciphering the note, but when she realized its import, she went to hit the silent alarm under her desk. As she did this, Miller stated in a "clear" and "very direct" tone "I can see you doing that." Sayer's nerves started to kick in, but she still told Miller that she would not give him any money and that he could not make a withdrawal without a debit card. Miller "stared [Sayers] down for a little bit" and then decided to leave the bank. Sayers told management what had happened and they closed the bank early.

At trial, Sayers testified that she felt "slight intimidation" when Miller stared her down, but that she only felt the full impact of her encounter with Miller after he left. It was then that "a lot of nerves started to kick in," her "heart started to pound," and her body "started to shake a little bit."

3. South Atlantic Federal Credit Union

About a week after his unsuccessful attempts at Tropical Financial and Space Coast, Miller tried his hand at robbing a South Atlantic Federal Credit Union branch. This time he had better luck. Wearing a baseball cap, Miller entered the bank, approached the teller, Steve Robert, and slipped him a note stating "Good morning, please empty the drawer in the bag."[4] Miller then reached behind him, pulled out a bag, and, motioning to the note, directed Robert

[4] The parties dispute the precise wording of the note, but all agree that its substance was a demand for money.

to "follow protocol," i.e., comply with Miller's demand in accordance with standard bank protocol in these situations. Miller repeated this directive about two more times until Robert finally handed him cash (about $1,674). Miller grabbed the money, put it into his bag, and left. Robert then notified his supervisor that the branch had been robbed, and the supervisor triggered an alarm that blared loudly throughout the building.

At trial, Robert testified that, at first, he did not take Miller seriously, but when Miller "proceeded to reach behind him" he "lost [his] nerves a little bit" because he "thought [Miller] might have been reaching for a weapon." Robert explained that it was this loss of nerves that "propelled" him to give Miller the money. He also testified that he was glad he didn't set off the alarm—which at the time he did not realize was not silent—because doing so "might have give[n] [Miller] a reason to react in ways that could be regretful."

4. Synovus Bank

About a week after robbing South Atlantic, Miller went to rob Synovus Bank. He walked into a Synovus branch and handed the teller, Nancy Bautista, a note stating, "Please give me all that you have, no alarms, no dye packs. I have a family." As Bautista considered her options, Miller rested with his hands on her counter, and "locked into [her] eyes." At one point, he also gestured with his hands at Bautista. Bautista handed Miller some money (about $1,369) and Miller took the cash, "grabbed" the demand note, and left. After he left, Bautista activated the silent alarm, notified her manager of what transpired, and the bank locked its doors.

At trial, Bautista testified that Miller's stare-down "intimidated" her and that she felt like if she did not comply, she "did not know what could proceed." She explained that she did not know what Miller had "in his pockets" and that he was a "very tall guy" who could "easily jump over the counter." Law enforcement arrested Miller the same day he robbed Synovus Bank.

5. Indictment and Trial

Following his arrest, Miller was indicted on two counts of attempted credit-union robbery, one count of credit-union robbery, and one count of bank robbery, in violation of 18 U.S.C § 2113(a). A trial was held in February 2024. After close of the government's case, Miller moved under Rule 29 for judgment of acquittal, arguing that the government failed to prove that he committed the accused acts through "intimidation," a required element of all four counts.

The district court denied the motion, explaining that there was ample persuasive authority, including a Sixth Circuit decision, *United States v. Gilmore*, 282 F.3d 398 (6th Cir. 2002), suggesting that demanding money alone constitutes intimidation because it comes with the implication that non-compliance may be met with physical compulsion, and, that in any event, testimony at trial established that Miller did much more than non-threateningly demand money from bank tellers. The defense proceeded with its closing argument, largely echoing the point raised in its failed Rule 29 motion. The jury found Miller guilty on all counts. Miller timely appealed.

II. STANDARD OF REVIEW

We review *de novo* a challenge to the sufficiency of the evidence supporting a conviction and the denial of a Rule 29 motion for a judgment of acquittal, viewing the evidence in the light most favorable to the verdict and making all reasonable inferences and credibility choices in favor of the jury's verdict. *United States v. Gamory*, 635 F.3d 480, 497 (11th Cir. 2011). We will uphold the denial of a Rule 29 motion unless no reasonable factfinder could have found proof of guilt beyond a reasonable doubt. *Id.*

III. ANALYSIS

To sustain a conviction for bank robbery under 18 U.S.C. § 2113(a), the government must prove that the defendant (1) took or attempted to take from the person or presence of another, any property or money belonging to or in the care, custody, control, management, or possession of any bank, credit union, or savings and loan association; and (2) did so "by force and violence, or by intimidation." 18 U.S.C. § 2113(a); *see United States v. Kelley*, 412 F.3d 1240, 1244 (11th Cir. 2005).

On appeal, Miller contends that the jury incorrectly convicted him of completed and attempted bank robbery "by intimidation" because the evidence only showed that he passed demand notes to tellers at each bank, that these demand notes were not only non-threatening but in fact polite, and that some of the tellers did not perceive themselves to be in harm's way. This "gentleman thief" defense misstates the law and misconstrues the evidence.

We start with the applicable legal framework. Under § 2113(a), intimidation means "to make fearful or to put into fear." *United States v. Jacquillon*, 469 F.2d 380, 385 (5th Cir. 1972).[5] We have explained that intimidation is therefore present "when an ordinary person in the teller's position reasonably could infer a threat of bodily harm from the defendant's acts." *Kelley*, 412 F.3d at 1244 (quoting *United States v. Cornillie*, 92 F.3d 1108, 1110 (11th Cir. 1996)). This is an objective inquiry; a defendant need not actually intimidate a teller to violate the statute, *see id.*, although a teller's attestation that the defendant intimidated him (or not) often contributes to our objective assessment of the defendant's actions, *see, e.g.*, *id.* at 1245 (affirming § 2113(a) conviction in part because "[b]oth tellers testified that they were so frightened they failed to activate the bank's silent alarm"); *Cornillie*, 92 F.3d at 1110 (affirming § 2113(a) conviction in part because the "evidence showed…that the bank tellers complied with [the defendant's] demands out of fear"); *United States v. Graham*, 931 F.2d 1442, 1443 (11th Cir. 1991) (affirming § 2113(a) conviction in part because the "bank teller's testimony clearly showed that she was intimidated…").

[5] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

In *Graham*, we further clarified that a bank robber's actions can constitute intimidation even where he "did not have a weapon, did not use force, and did not verbally threaten the bank teller." 931 F.2d at 1442; *see also United States v. Higdon*, 832 F.2d 312, 315 (5th Cir. 1987) ("[N]either the plain meaning of the term 'intimidation' nor its derivation from a predecessor statute supports [defendant's] argument that a taking 'by intimidation' requires an express verbal threat or a threatening display of a weapon."). Indeed, in *Graham*, the robber presented a teller with a demand note stating, "This is a robbery. Please give me small, unmarked bills, touch off no alarms, and alert no one for at least ten minutes. Thank you." *Id.* at 1443. We explained that this facially non-threatening demand coupled with the defendant's "subsequent glares and stares" at the teller amounted to intimidation under § 2113(a). *Id.*

Several of our sister circuits have gone even further than *Graham*, holding that, in the context of a suspected bank robbery, "a demand for money in itself is sufficient to support a jury's finding of intimidation." *United States v. Gilmore*, 282 F.3d 398, 403 (6th Cir. 2002) (collecting cases).[6] As the Sixth Circuit explained in

[6] *See United States v. Clark*, 227 F.3d 771, 773–775 (7th Cir. 2000) (affirming § 2113(a) conviction where robber handed teller a demand note stating, "It is important that you remain calm and place all of your twenties, fifties and hundred dollar bills on the counter and act normal for the next fifteen minutes" and then clarified to the teller, "Yes, Ma'am this is holdup," because the robber's "mere demand…[for] money not belonging to him is behavior that may rise to the level of intimidation"); *United States v. Hopkins*, 703 F.2d 1102, 1103 (9th Cir. 1983) (affirming § 2113(a) conviction where robber handed teller a demand note stating, "Give me all your hundreds, fifties and twenties. This is

Gilmore, "making a written or verbal demand for money to a teller is a common means of successfully robbing banks. Demands for money amount to intimidation because they carry with them an implicit threat: if the money is not produced, harm to the teller or other bank employee may result." 282 F.3d at 402. And because "[b]ank tellers who receive demand notes are not in a position to evaluate fully the actual risk they face.... An 'ordinary person' in the teller's position could reasonably...infer an implicit threat in the demand, 'Give me all your money,' accompanied by the

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a robbery" and verbally reiterated, "[G]ive me what you've got," because "[a]lthough the evidence showed that Hopkins spoke calmly, made no threats, and was clearly unarmed...the threats implicit in Hopkins' written and verbal demands for money provide sufficient evidence of intimidation"); *United States v. Henson*, 945 F.2d 430, 439 (1st Cir. 1991) (affirming § 2113(a) conviction where robber handed teller a demand note directing her to "put fifties and twenties into an envelope now!!" because "[a]lthough no weapon was displayed and no threat of bodily harm was expressed, a rational juror reasonably could find that Henson's emphatic written demand for the immediate surrender of the bank's money was enough to cause fear in an ordinary person under these circumstances"); *United States v. Ketchum*, 550 F.3d 363, 367 (4th Cir. 2008) ("[I]ntimidation generally may be established based on nothing more than a defendant's written or verbal demands to a teller."); *United States v. Smith*, 950 F.3d 893, 895 (D.C. Cir. 2020) (citing *Gilmore* and *Clark* approvingly for the proposition that "demands for cash can, under certain circumstances, carry with them an implicit threat: if the money is not produced, harm to the teller or other bank employee may result" (quotations omitted)); *see also United States v. Andrews*, 337 F. App'x 227, 231 (3d Cir. 2009) ("Courts have consistently held that merely presenting a bank teller with a demand note is sufficient to satisfy the 'intimidation' element of § 2113, even in the absence of any accompanying explicit threat of violence.").

presentation of a 'black pouch.'" *Id.* at 402–03 (quoting *United States v. Robinson*, 527 F.2d 1170, 1172 (6th Cir. 1975)).

We find *Gilmore*'s reasoning persuasive—when a robber approaches a bank teller and demands "Give me the money," the threat of "or else" is implied. This is presumably why, as Miller himself acknowledges and as multiple witnesses testified at trial, standard bank protocol instructs tellers to give up money demanded by suspected bank robbers "no matter the situation" to avoid risking employee safety. Banks operate under the assumption, consistent with law enforcement recommendation, that noncompliance with a demand for cash always carries the potential for violence. *See* U.S. Dep't. of Justice Office of Community Oriented Policing Services, Problem Oriented Guides for Police Problem-Specific Guides Series, No. 48: Bank Robbery at 9 (2007).[7] And in light of *Gilmore*'s observation that tellers cannot possibly make a comprehensive risk assessment in the split-second they receive such a demand, *see* 282 F.3d at 403, the "ordinary person in [a] teller's position reasonably could infer a threat of bodily harm"

[7] "During a robbery, bank practices are highly standardized; consequently, robbers know that they can count on compliant victims. Most banks—consistent with police advice—direct employees to comply quickly with robbers' demands. *Tellers willingly empty their cash drawers when presented with a simple robbery demand note, whether or not violence is threatened* or a weapon is displayed. The bank's primary objective is to protect the safety and security of its employees and customers by reducing the likelihood of violence." (emphasis added). Available online at https://portal.cops.usdoj.gov/resource-center/content.ashx/cops-p119-pub.pdf.

from a suspected bank robber's demand for money alone, *see Kelley*, 412 F.3d at 1244.

We also stress that, contrary to Miller's contention, such a demand is not lacking for intimidation merely because it is made with a smile and handshake. While common courtesy is undoubtedly a virtue, remembering to say "please" and "thank you" will not spare a bank robber from criminal liability under § 2113(a). Accordingly, we now hold, in the context of a suspected bank robbery, an individual's demand for cash from a teller, verbal or written, threatening or polite, provides sufficient evidentiary grounds to affirm a jury's finding of intimidation under § 2113(a).[8]

[8] We are not convinced by Miller's argument that adopting *Gilmore*'s rule would "render § 2113(a)'s intimidation requirement largely superfluous." An individual who walks into a bank and simply retrieves (or attempts to retrieve) money from a cash drawer would not be liable under § 2113(a). Indeed, Miller himself cites one such case. *See United States v. Wagstaff*, 865 F.2d 626, 627, 629 (4th Cir. 1989) (finding no intimidation where the "thief was neither wearing nor carrying a weapon, produced no note and said nothing, and made no threatening gestures" as he took "money from a teller's open cash drawer."). And while this scenario may not be typical, as Miller maintains, its plausibility suffices to ensure that § 2113(a)'s intimidation requirement has real bite. It is also conceivable that many attempted robbery prosecutions will fail for lack of intimidation. *See, e.g.*, *United States v. Thornton*, 539 F.3d 741, 750 (7th Cir. 2008) (vacating conviction for attempted robbery for failure to show intimidation where individual in masked disguise approached a bank's exterior door carrying a duffle bag but "had no contact with any bank personnel" and "there was no evidence of either an explicit or implicit threat"); *United States v. Bellew*, 369 F.3d 450, 451–56 (5th Cir. 2004) (vacating conviction for attempted robbery for failure to show intimidation where individual wearing a wig and carrying a briefcase containing a firearm, instructions on how to rob a bank, and

Applying our holding to the evidence at trial resolves this appeal. Miller does not dispute that at each of the four banks, he presented a note to the teller demanding the bank's money. As we explained, presenting such a note reflected Miller's intent[9] to ensure compliance through an implicit threat of harm, i.e., intimidation. On that ground alone, we can affirm the district court's denial of Miller's Rule 29 motion as to all four counts.

IV. CONCLUSION

For the foregoing reasons, we affirm Miller's convictions for attempted and completed robbery by intimidation.

AFFIRMED.

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a demand note asked to speak to a manager, waited several minutes, left, returned to learn that the manager was still unavailable, and was then arrested).

[9] Unlike completed bank robbery, which does not require proving an intent to intimidate, *see Kelley*, 412 F.3d at 1244, attempted bank robbery does require such proof. This is because "a defendant is guilty of attempt when (1) he has a specific intent to engage in the criminal conduct for which he is charged and (2) he took a substantial step toward commission of the offense." *United States v. Jockisch*, 857 F.3d 1122, 1129 (11th Cir. 2017). We thus held in *United States v. Armstrong* that attempted bank robbery under § 2113(a) includes as an element the use of "force and violence, or by intimidation." 122 F.4th 1278, 1289–91 (11th Cir. 2024).