

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-5110

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

OLIVER JAMES ZIMMERMAN,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., District Judge. (CR-05-19)

Submitted: May 31, 2006

Decided: June 16, 2006

Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Benjamin D. Porter, MORROW ALEXANDER & PORTER, PLLC, Winston-Salem, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Douglas Cannon, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Oliver James Zimmerman appeals his conviction for brandishing a firearm during and in relation to a bank robbery. On appeal, he argues that the evidence was insufficient to support the jury's verdict because there was no evidence that he knew that Luther Ware--with whom he agreed to rob the bank--actually had a gun. We affirm.

At Zimmerman's trial, Zimmerman, the bank manager, two tellers, and two customers who were present at the time of the robbery, testified. The government presented evidence that Zimmerman and Ware entered the bank. Zimmerman went directly to the teller line, vaulted over the counter, and directed the teller to assist him by opening the money drawers.

The second man, Luther Ware, wore a mask and brandished a firearm. He directed the bank branch manager, the two customers and the other teller to lie on the floor in the lobby area of the bank. The bank manager testified that he heard Ware threaten the people to be still or he would "blow their brains out." Zimmerman immediately responded, "No, no, no. We're not going to hurt anybody." Kathy Mitchell, a bank customer, also testified that she heard the threat and heard Zimmerman respond, "No, there won't be a shooting."

Gail Libbey, the second teller, testified that Ware threatened to "blow their heads off." She did not hear Zimmerman

say anything in response. Tonya Mills, the other customer, also did not hear Zimmerman say anything after Ware threatened to shoot the occupants of the bank.

Danielle Emmons, the teller who was behind the counter when the robbery started, testified that she heard Ware's threat to "Be quiet or I'll blow your heads off." She testified that, upon hearing this, she realized the seriousness of the situation, and she started shaking. Zimmerman told her to "stay calm, nothing was going to happen, no one was going to get hurt."

Zimmerman testified that he and Ware did not plan the robbery and did not discuss what they would do once they entered the bank. He testified that he did not know that Ware had a gun and did not see the gun while they were in the bank. When asked what prompted him to say that no one was going to get hurt, Zimmerman stated that he noticed Emmons' hands shaking and made the statement to calm her and reassure her.

We find that, viewing the evidence in the light most favorable to the government, there was sufficient evidence for a jury to conclude that Zimmerman had actual knowledge that a gun would be used. See United States v. Spinney, 65 F.3d 231, 237 (1st Cir. 1995). Therefore, we conclude that the evidence was sufficient to support the jury's verdict. See Glasser v. United States, 315 U.S. 60, 80 (1942); United States v. Wills, 346 F.3d 476, 495 (4th Cir. 2003), cert. denied, 542 U.S. 939 (2004).

Accordingly, we affirm Zimmerman's conviction for brandishing a firearm during and in relation to a bank robbery. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED