

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

COREY J. THOMAS,

Defendant.

ORDER

08-cr-87-bbc

Defendant Corey J. Thomas has filed a second motion labeled a Rule 33 motion for a new trial. Dkt. #440. Like the first one, dkt. #429, this one must be dismissed for defendant's failure to show that he has any new evidence that would support a decision to grant him a new trial.

Defendant makes the same allegation in his new motion that he made in his previous one, which is that a co-defendant, Jarrell A. Murray, has declared under oath that defendant was not involved in the May 21, 2008 robbery of US Bank. (Defendant was convicted after a jury trial of robbing this bank.) As I explained in denying the first motion, this declaration is not a genuine claim of new evidence. It is not even a recantation of testimony given at defendant's trial because Murray did not testify at trial. As for the so-called new evidence,

Murray says only that defendant and co-defendant Prince Beck did not take part in the May 21, 2008 robbery. He does not identify the persons he considers the actual participants. June 3, 2011 Order, dkt. #434, at 2-3. I noted in the previous order that it was of little or no relevance to the case what Murray said about the robbery and how it took place because the government gathered the information that led to the charges before it ever had a chance to question Murray. Id. at 3.

Essentially, defendant's latest motion is an attempt to bolster his earlier motion with additional arguments, along with excerpts of testimony from the trial and the grand jury. None of this qualifies as "new" evidence that would entitle defendant to a new trial.

ORDER

IT IS ORDERED that defendant Corey J. Thomas's second motion for a new trial under Rule 33, dkt. #440, is DENIED.

Entered this 27th day of September, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge