

October 19, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40306  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALPHONSO GAINER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:03-CR-165-RC-WCR  
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Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Alphonso Gainer appeals his conviction for forcibly assaulting a federal officer. He challenges the sufficiency of the evidence and, additionally, argues that the district court abused its discretion when it excluded from the evidence a report prepared by Agent Derric Wilson.

With regard to Gainer's sufficiency-of-the-evidence argument, we hold that when the evidence is considered in the light most favorable to the guilty verdict, a reasonable trier of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

fact could have found beyond a reasonable doubt that Gainer assaulted Officers Theis and Rivers and, further, that Gainer possessed the requisite mens rea. See United States v. Feola, 420 U.S. 671, 686 (1975); United States v. Mendoza, 226 F.3d 340, 343 (5th Cir. 2000). The testimony of the defense's medical witnesses does not render the Government's evidence insufficient, because a resultant injury is not necessary for a 18 U.S.C. § 111 conviction. See United States v. Ramirez, 233 F.3d 318, 321 (5th Cir. 2000), overruled on other grounds by, United States v. Longoria, 298 F.3d 367, 372 n.6 (5th Cir. 2002).

With regard to Gainer's evidentiary argument, the district court excluded Agent Wilson's report pursuant to FED. R. EVID. 403 based on a determination, unchallenged by Gainer, that there existed a substantial risk that the jury would be misled by Agent Wilson's opinion in its efforts to evaluate the same evidence that was considered by Wilson in making the report. Gainer's failure to challenge the district court's evidentiary decision on this basis renders the issue waived. See United States v. Thames, 214 F.3d 608, 611 n.3 (5th Cir. 2000).

AFFIRMED.