

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

May 11, 2011

Lyle W. Cayce  
Clerk

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No. 10-50747  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KENNETH WAYNE MARION,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 7:09-CR-173-1

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Before DeMOSS, STEWART, and ELROD, Circuit Judges.

PER CURIAM:\*

Kenneth Wayne Marion appeals his conviction for aiding and abetting the manufacture of more than 100 marijuana plants. *See* 21 U.S.C. §§ 841(a)(1), 802(15), (22). His girlfriend and codefendant, Bianca Nichole Mancha, pleaded guilty and testified against him.

Marion challenges the sufficiency of the evidence linking him to the manufacture (i.e., growing) of marijuana plants on or about April 14, 2009, the date alleged in the indictment. He argues that the Government's evidence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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demonstrated that he may have been on the same property as the marijuana plants between 2007 and May 27, 2008, but there was insufficient evidence that he manufactured (i.e., grew) marijuana on or about April 14, 2009.

In reviewing a challenge to the sufficiency of the evidence, we view the evidence and the inferences that may be drawn from it in the light most favorable to the verdict, and determine whether a reasonable jury could have found the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The evidence established that Marion lived in or frequented his trailer at 2905 South County Road 1199, that there was marijuana growing on the property on April 15, 2009, and that the marijuana was planted and watered by Marion and Mancha. From the time Mancha moved out of Marion's trailer on May 27, 2008 until at least April 14, 2009, Marion and Mancha were smoking marijuana provided by Marion. In addition, Marion was seen at the property up until April 14, 2009, and was still receiving mail at the property on April 14, 2009. On April 14, 2009, Marion knew the police were looking for him and he hid on his father's property. By September 2009, when police executed a search warrant at 2905 South County Road 1199, it looked as if someone had tried to move out of the trailer in a hurry.

The precise date of the offense was not significant, and the evidence was sufficient to support Marion's conviction. *See United States v. Tunnell*, 667 F.2d 1182, 1186 (5th Cir. 1982).

AFFIRMED.