

October 20, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41110
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PAUL BREWER,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:03-CR-34-2

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Paul Brewer appeals his jury conviction and sentence for conspiracy to possess with intent to distribute more than 50 grams of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 846. Brewer contends that the district court abused its discretion when it allowed the government to present evidence of other crimes, wrongs, or bad acts unrelated to the charged offense.

The indictment specifically alleged that on or about February 19, 2003, Brewer, Tremaine D. Richardson, and Marcus L. Sims

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

conspired with each other, Marcus D. Campbell, Julian L. Block, Jr., Bobby Ray Jones, Tony B. Nelson, and others to possess with intent to distribute more than 50 grams of cocaine base. At trial, Kerese Cooper testified that he saw Brewer in possession of cocaine or crack cocaine while "hang[ing] out" with Brewer and Richardson at Brewer's house six to seven weeks before November 15, 2002. This evidence established the connection between Cooper, Richardson, and Brewer and provided the jury with necessary background information regarding their relationship as co-conspirators. Therefore, the evidence was intrinsic to the charged conspiracy and not subject to the requirements of FED. R. EVID. 404(b). See United States v. Miranda, 248 F.3d 434, 440-41 (5th Cir. 2001).

Brewer also contends that the district court clearly erred when it sentenced him based on the court's incorrect recollection of the evidence. Further, Brewer contends that the district court's determination as to the quantity of drugs attributable to him was based on evidence that lacked sufficient indicia of reliability.

According to Campbell's and Block's trial testimony and statements to law enforcement officers set forth in the presentence report, Brewer delivered approximately 453.6 grams of cocaine base to Magnolia, Arkansas, on February 19, 2003. This evidence has sufficient indicia of reliability to support its probable accuracy, and Brewer has not demonstrated that the evidence is materially

untrue. See United States v. Davis, 76 F.3d 82, 84 (5th Cir. 1996). Therefore, the district court's determination that Brewer was responsible for 453.6 grams of cocaine base was plausible in light of the record read as a whole, and Brewer has not shown clear error. See United States v. Shipley, 963 F.2d 56, 58 (5th Cir. 1992).

Finally, Brewer contends that to determine the statutory minimum sentence under § 841(b)(1), the district court must determine the quantity of drugs personally attributable to the defendant. As the district court did not clearly err in determining that Brewer was personally responsible for 453.6 grams of cocaine base, Brewer's argument is unavailing.

Accordingly, the district court's judgment is
AFFIRMED.