IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-8340
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee,

versus

JOHNNY GONZALES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
A 91 CR 04

(May 27, 1993)

Before HIGGINBOTHAM, SMITH and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

Johnny Gonzales appeals his conviction, by a jury, of one count of conspiracy to possess with intent to distribute marihuana and cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846, one count of possession of marihuana with intent to distribute in violation of § 841(a)(1), and one count of possession of cocaine with intent to distribute in violation of § 841(a)(1). He also

[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

appeals his sentence. Finding that the evidence was sufficient to support Gonzales's convictions on counts one and two and that his other arguments raised on appeal lack merit, we affirm.

I.

In October 1989, Patrick Huggins was arrested in Louisiana with fifty pounds of marihuana that he had purchased from Gonzales. Since 1985, Huggins had purchased, in Austin, Texas, hundreds of pounds of marihuana from Gonzales, including single loads of up to 180 pounds, at $825 to $900 per pound, which Huggins distributed from his base of operations in North Carolina. Occasionally, Huggins purchased two loads in one month from Gonzales.

When Huggins was arrested in 1989, Gonzales requested that he make a telephone call to Gonzales's co-conspirators explaining Huggins's arrest and urged Huggins to accept responsibility for the loss of the marihuana in order to get Gonzales's co-conspirators "off [Gonzales's] back." Soon thereafter, Huggins came to Texas and volunteered to work with the Federal Bureau of Investigation (FBI) in the investigation of Gonzales. The government agreed that Huggins's cooperation might help him with his pending case in Louisiana.

Huggins cooperated by making controlled purchases of cocaine from Gonzales and Gonzales's partner, Donnice Estrada, and arranging to purchase a large quantity of marihuana from Gonzales. Additionally, in September 1990, Gonzales asked Huggins to construct a hidden compartment in Gonzales's trailer. Huggins com-

pleted the project, constructing the compartment underneath the wood-plank floor. Thereafter, Huggins made numerous recordings of his encounters and conversations with Gonzales and Estrada.

In the first recorded conversation between Huggins and Gonzales on September 27, 1990, Gonzales offered Huggins marihuana at $825 per pound. Gonzales would deliver the marihuana in Austin, and Huggins would pay cash. Gonzales assured Huggins of the quality of the marihuana and gave Huggins advice regarding how much Huggins should charge his purported buyers in North Carolina. Gonzales told Huggins that within a week, Gonzales would receive 4,500 pounds of marihuana from his sources. Gonzales also stated that he was expecting additional marihuana from "Danny" and Danny's father, which could arrive at any time. Gonzales emphasized that if he had to transport the marihuana to North Carolina, the price would increase to $1,150 per pound, because Gonzales had to pay his drivers.

Gonzales cautioned Huggins that Gonzales would be in trouble with his suppliers if the marihuana were seized, as it had been when Huggins was arrested in Louisiana. Gonzales stated that his suppliers would call him when the marihuana was about to arrive, using their own telephone system, because they did not use the telephones in their own houses. Gonzales named three of his employees that might act as intermediaries when Huggins brought the money to Gonzales and assured Huggins that he could provide more marihuana as Huggins desired.

On October 9, 1990, Huggins tape-recorded a conversation with

Gonzales in which Gonzales told Huggins that he had "been movin' ounces of coke." Gonzales also admitted that he had put up his house as collateral for a large load of marihuana and that the suppliers of that load were living in his house at that time. Gonzales said that he soon would be receiving $1,000,000 worth of marihuana.

In their next conversation on October 11, 1990, Huggins asked Gonzales about the price of some cocaine; Gonzales quoted $1,000 per ounce. Gonzales indicated that he would arrange for Huggins to purchase cocaine through Gonzales's partner, Estrada, and assured Huggins of the high quality of the cocaine.

On October 14, Huggins met with Estrada and recorded their conversation. Estrada weighed out twenty-eight grams of cocaine and handed it to Huggins, who left with the cocaine and took it to two federal drug agents, who gave him $1,000 to pay Estrada. When Huggins returned with the money, he inquired about the status of the load of marihuana.

Huggins next met with Gonzales on November 2, 1990. When Huggins told Gonzales, in their recorded conversation, that Huggins's buyers had been satisfied with the cocaine Gonzales had provided, Gonzales offered another ounce for sale and stated that he had other customers waiting for cocaine that Gonzales expected from his supplier. Gonzales again assured Huggins of the high quality of the cocaine, and Huggins took the one ounce and brought back $1,000 obtained from federal agents in order to pay Gonzales. At that time, Gonzales explained that his cocaine was brought over

the border hidden in a tire and that thirty-four kilograms of cocaine had been in the tire from which Huggins's purchase had come.

On November 3, 1990, in another recorded conversation, Huggins indicated to Estrada that he was interested in a third ounce of cocaine, which Estrada then gave to Huggins. Huggins again inquired about the marihuana shipment, and Estrada indicated that Gonzales was waiting for a shipment in a pasture.

The next recorded conversation occurred on November 5, 1990, at the appliance dealership owned by Gonzales and Estrada in Austin. Huggins returned with the $1,000 payment for the third ounce of cocaine, which he paid to Estrada. When Gonzales arrived, he promised Huggins that a marihuana truck soon would be coming. Gonzales told Huggins that he had lost a load when he had been unavailable to pick up the marihuana and that he had about twenty people waiting for a shipment, but he assured Huggins that Huggins would receive his share.

On November 13, 1990, Huggins advised Gonzales that Huggins's buyers were on their way to Texas, and Gonzales recommended that the buyers stay in Austin, because "the Feds are all in Hayes County." In this recorded conversation, Gonzales discussed his recent loss of 10,000 pounds of marihuana resulting from a seizure in Eagle Pass, Texas, and assured Huggins that despite the large seizure, more marihuana was forthcoming. Gonzales offered to pay for lodging for Huggins's buyers and complained about his small profit margin on each pound of marihuana.

On November 12, 1990, in Eagle Pass, federal agents seized approximately 7,000 pounds of marihuana from a truck with a hidden compartment. No other seizures had taken place at Eagle Pass in the previous six months, and no other seizures were made during the following seven months. On that day, Gonzales had been followed to a ranch outside Johnson City, Texas.

On November 15, 1990, Gonzales told Huggins that he would have some marihuana for him that night. Gonzales, in a recorded conversation, quoted Huggins a price of $850 per pound for what he claimed to be high-quality marihuana. Gonzales's wife assisted Huggins in calculating his profit margin on his purported deal with the North Carolina buyers, and Gonzales offered to provide samples of the marihuana.

In the next recorded conversation on December 3, 1990, Gonzales told Huggins that he would have 500 pounds of marihuana for him. Gonzales warned Huggins not to shortchange him on the money and stated that he had a buyer in Dallas, Texas, waiting for 1,000 pounds. Gonzales said he had two people bringing in marihuana for him and stated that he would give Huggins a good price because Huggins had waited so long for the shipment. He offered Huggins a discount, asking $850 to $875 per pound instead of his usual price of $1,000 per pound.

Gonzales discussed the hidden compartment that Huggins had constructed in Gonzales's trailer, the possibility of using a trash compactor to prepare marihuana for transport in the compartment, and the use of trees to cover the hidden compartment.

He again expressed his surprise to Huggins that the large load had been seized, stressing that he had taken two months to set up the load and that "everything was paid." Gonzales said he was equipped with gas masks and camouflaged uniforms, which were necessary for protection against the caustic soda placed on marihuana to disguise the smell.

On December 11, 1990, Huggins and Estrada discussed another possible cocaine sale. Gonzales arrived, bringing the news that he had arranged for marihuana to be shipped to Houston, Texas, and that Huggins would get the first 300 pounds. Subsequently, in a similarly recorded conversation on December 18, 1990, Gonzales stated that he had inspected the 4,000 pounds of marihuana contained in thirty-pound bags and had arranged for 300 pounds to be loaded into a van or pickup truck and brought to Austin. Gonzales reminded Huggins that the agreed-upon purchase price was $875 per pound and again complained of his small profit margin, bemoaning his obligation to pay his employees every week. Gonzales gave Huggins samples of marihuana to show to his purported buyers.

Gonzales subsequently informed Huggins that the load from which Gonzales had obtained the samples also had been seized. In the recorded conversation on December 20, 1990, Gonzales indicated that he had sent Estrada to Houston for another marihuana load. Gonzales said they would make the transfer near Bergstrom Air Force Base.

On December 18, 1990, police seized approximately 3,000

pounds of marihuana contained in thirty-pound bags in a garage in Pasadena, Texas, near Houston. No other large seizures had taken place in the Houston area in the preceding months.

On December 19, 1990, Houston police maintained surveillance on what appeared to be the loading of cargo from a location on Sellers Road, in Houston, to a white pickup truck owned by Gonzales. Upon searching the location, police uncovered approximately 400 pounds of marihuana and continued to follow Gonzales's pickup truck, which returned to the Austin area.

David Alexander Del Rio, an indicted coconspirator who was arrested with Gonzales, pleaded guilty to misprison of a felony and testified against Gonzales. Del Rio stated that on December 19, 1990, he was with his cousin at a hotel in Houston when he was met by Gonzales and Estrada. During this time, Del Rio overheard a conversation in which the quantity "300" was mentioned. Gonzales asked Del Rio to rent a room for him, and Del Rio admitted that he suspected an illegal transaction, although Gonzales called Del Rio the next morning and assured him that nothing was going to happen.

On December 20, Del Rio met with Gonzales at the appliance shop in Austin. Del Rio discussed the large marihuana bust in Houston with Gonzales and overheard Gonzales say to someone else that he "was getting some somewhere else." Estrada and Alonzo Rodriguez, a coconspirator, left the shop and headed for Houston.

Later that evening, while at the appliance shop, Del Rio overheard that Estrada was back from Houston. Everyone in the

shop suddenly prepared to leave, and Del Rio overheard Gonzales instructing Armando Dominguez and Martin Coronado, also coconspirators, that they "knew what to do." Gonzales and Del Rio then drove to Del Valle, Texas, because Gonzales wanted to know whether his truck was back. When Gonzales and Del Rio approached Gonzales's truck, Gonzales uttered some exclamations, expressing his dismay upon seeing his truck surrounded by police officers.

As Gonzales approached his truck, a police offer pulled in front of him. Gonzales, Del Rio, Estrada, and the others were arrested. Police discovered a marihuana shipment in Gonzales's truck.

II.

Gonzales contests the sufficiency of the evidence to support his conviction on count one, conspiracy to possess with intent to distribute marihuana and cocaine, and count two, possession with intent to distribute marihuana. We conclude that sufficient evidence supported Gonzales's convictions on both counts.

In reviewing challenges to the sufficiency of the evidence, we must determine whether a reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979); United States v. Gardea Carrasco, 830 F.2d 41, 43 (5th Cir. 1987); United States v. Bryant, 770 F.2d 1283, 1288 (5th Cir. 1985), cert. denied, 475 U.S. 1030 (1986). We must sustain a jury's verdict if substantial evidence, taking the view most favorable to the

government, supports the verdict. Glasser v. United States, 315 U.S. 60, 80 (1942). It is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982) (en banc), aff'd, 462 U.S. 356 (1983), and the standard is the same whether the evidence is direct or circumstantial, Gardea Carrasco, 830 F.2d at 44; Bryant, 770 F.2d at 1288.

A.

To sustain a conspiracy conviction, the government must establish (1) that a conspiracy existed, (2) that the accused knew of the conspiracy, and (3) that the accused knowingly and voluntarily joined in the conspiracy. United States v. Rodriguez-Mireles, 896 F.2d 890, 892 (5th Cir. 1990); United States v. Osgood, 794 F.2d 1087, 1094 (5th Cir.), cert. denied, 479 U.S. 994 (1986); United States v. Vergara, 687 F.2d 57, 60 (5th Cir. 1982). While each element of the conspiracy charge must be proved beyond a reasonable doubt, no element need be proved by direct evidence but may be inferred from circumstantial evidence. United States v. Espinoza-Seanez, 862 F.2d 526, 537 (5th Cir. 1988).

No showing of an overt act is necessary in a drug conspiracy prosecution. United States v. Prieto-Tejas, 779 F.2d 1098, 1103 (5th Cir. 1986); United States v. Stanley, 765 F.2d 1224, 1237 (5th Cir. 1985). A conviction may be based solely upon the uncorroborated testimony of an accomplice if the testimony is not

incredible or otherwise insubstantial on its face. United States v. Moreno, 649 F.2d 309, 312 (5th Cir. 1981).

The essence of a conspiracy in violation of section 846 is an agreement to violate the narcotics laws. Prieto-Tejas, 779 F.2d at 1103. An express, explicit agreement is not required, and a tacit, mutual agreement with common design, purpose, and understanding usually will suffice. Id.

The evidence offered by the government to establish the existence of a conspiracy included Huggins's testimony that Gonzales provided him with hundreds of pounds of marihuana between 1985 and 1990, Huggins's apprehension in Louisiana with fifty pounds of marihuana that he had purchased from Gonzales, and Huggins's continuing negotiations to purchase marihuana from Gonzales. The government established Gonzales's knowledge of the conspiracy through evidence, in Gonzales's own words as recorded by Huggins, of Gonzales's knowledge about the marihuana trade and about grades and prices of marihuana, and, most importantly, of his own organization's methods and practices. The government specifically points to Gonzales's statement that members of his organization used their own phone systems, his regular payments to his employees, and his knowledge about his organization's practice of covering the marihuana with caustic soda and about the areas in Texas where greater federal drug enforcement existed.

Finally, the government established Gonzales's participation in the conspiracy through evidence of his continuing negotiations with Huggins and Gonzales's request that Huggins construct a

hidden compartment in Gonzales's trailer for use in transporting marihuana. The government also relies upon evidence of Gonzales's arrest in close proximity to his associates and the marihuana that was transported in Gonzales's pickup truck and the statements made in the presence of Del Rio indicating Gonzales's knowledge of, and responsibility for, the transportation of the marihuana.

B.

With regard to the conspiracy to possess with intent to distribute cocaine, the government presented tape-recorded evidence that Gonzales personally delivered one ounce of the cocaine and evidence that Gonzales and Estrada sold the remaining two ounces in concert, with Gonzales quoting the price and arranging for the delivery by Estrada. Gonzales indicated that he had other customers for the cocaine and continually assured Huggins of its high quality. Gonzales again was familiar with the methods and practices of his organization in transporting cocaine, such as the practice of smuggling cocaine across the border in a tire.

Finally, all of the cocaine transactions took place in the office of Gonzales and Estrada. The government contends that this evidence was sufficient to show existence of a conspiracy, Gonzales's knowledge of the conspiracy, and his voluntary participation therein.

Gonzales contends that his conviction cannot stand because the testimony of Huggins and Del Rio was not credible and because

the government failed to present sufficient evidence beyond the testimony to sustain its burden of proof. Weighing the evidence and the credibility of witnesses is the sole province of the jury. United States v. Martin, 790 F.2d 1215, 1219 (5th Cir.), cert. denied, 479 U.S. 868 (1986); United States v. Davis, 752 F.2d 963, 968 (5th Cir. 1985). We will intervene and declare testimony incredible as a matter of law only when it is so unbelievable on its face that it defies physical laws. United States v. Lindell, 881 F.2d 1313, 1323 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990); Gardea Carrasco, 830 F.2d at 44.

In this case, we do not find Huggins's or Del Rio's testimony so unbelievable on its face that it defies physical laws or that the testimony was unsupported by other evidence. Huggins's testimony was supported and supplemented by tape recordings of his conversations with Gonzales and Estrada, many of which were played for the jury. The jury was in a unique position to hear and evaluate Gonzales's assertions in his conversations with Huggins, including any exaggerations of his ability to obtain and deliver marihuana and cocaine and the amounts of money he received for the deliveries. Gonzales's contention that his exaggerations on these counts were incredible fails in light of the jury's role as ultimate arbiter of credibility.

Additionally, Del Rio's testimony was not so incredible as to defy physical laws. The government correctly points out that defense counsel fully explored, in cross-examination, Del Rio's role in the offense and his motivation for testifying.

We conclude that substantial evidence, viewed in the light most favorable to the prosecution, supported the jury's verdict in this case. A rational trier of fact could have found that the government proved the essential elements of conspiracy)) existence, knowledge and participation)) beyond a reasonable doubt. Therefore, we hold that sufficient evidence existed to sustain a conviction for conspiracy to possess with intent to distribute marihuana and cocaine.

C.

To establish the offense of possession with intent to distribute, the government must prove that the defendant (1) knowingly possessed the drug and (2) intended to distribute it. United States v. Landry, 903 F.2d 334, 339 (5th Cir. 1990); United States v. Molinar-Apodaca, 889 F.2d 1417, 1423 (5th Cir. 1989). Possession of a controlled substance may be either actual or constructive and may be proved by direct or circumstantial evidence. United States v. Galvan-Garcia, 872 F.2d 638, 640 (5th Cir.), cert. denied, 493 U.S. 857 (1989); Gardea Carrasco, 830 F.2d at 45. Constructive possession is the knowing exercise of, or the knowing power or right to exercise, dominion and control over the proscribed substance. Molinar-Apodaca, 889 F.2d at 1423; United States v. Glasgow, 658 F.2d 1036, 1043 (5th Cir. 1981).

One who owns or exercises control over a motor vehicle in which contraband is concealed may be deemed to possess the contraband. Landry, 903 F.2d at 339; United States v. Hernandez-

Palacios, 838 F.2d 1346, 1349 (5th Cir. 1988); United States v. Kaufman, 858 F.2d 994, 1000 (5th Cir. 1988). Intent to distribute may be inferred from the quantity of the controlled substance. See Kaufman, id. (holding that jury had substantial evidence of intent to distribute where defendant possessed larger quantity of marihuana than ordinary user would possess for personal consumption).

The government offered testimony that Gonzales owned the white pickup truck in which police officers found a shipment of marihuana at the time of Gonzales's arrest in Houston on December 20, 1990. Gonzales's ownership of the truck is undisputed. The jury reasonably could conclude from testimony concerning Gonzales's ownership of the truck that he possessed the marihuana.[1]

With regard to Gonzales's knowledge and intent to distribute the marihuana, the jury heard repeated taped admissions from him that he was a participant in high-volume marihuana distribution. There was testimony and taped conversations of Huggins's

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[1] In support of his argument that sufficient evidence did not exist for a reasonable jury to conclude that he possessed the marihuana, Gonzales cites United States v. Onick, 889 F.2d 1425 (5th Cir. 1989), in which we held that the evidence could not support a jury finding that Onick possessed illegal drugs. Onick is easily distinguished from the case at bar. There, police searched a house, where they found illegal drugs. The police found Onick in the house in a room where no drugs were found. Additionally, Onick was not carrying drugs. We stated that we will not lightly impute dominion or control, and hence constructive possession, to one found in another person's house. Id. at 1429.

In the case at bar, the police found marihuana in a pickup truck owned by Gonzales. The jury need not speculate in order to impute dominion or control of the marihuana to him, as the evidence provides a direct link between Gonzales and the truck.

negotiations with Gonzales to purchase a shipment of marihuana and evidence that provided a reasonable inference that Gonzales went to Houston to arrange for delivery of a shipment of marihuana, as he had promised Huggins he would. Del Rio testified concerning certain phrases uttered by Gonzales from which the jury could infer that Gonzales was arranging the final marihuana deal that he had discussed with Huggins. Finally, when Gonzales observed that his truck was surrounded by police officers, he uttered exclamations expressing his dismay. A reasonable jury could conclude from this evidence that Gonzales knowingly possessed and intended to distribute the marihuana.

Viewing the evidence in the light most favorable to the government, we find that a rational trier of fact could have found that the government had established all essential elements of the crime of possession with intent to distribute beyond a reasonable doubt. We hold that sufficient evidence existed to sustain Gonzales's conviction.

III.

Gonzales contends that the district court's refusal to ask two specific questions during the voir dire of the jury impaired his ability to exercise his peremptory challenges and challenges for cause and thus constituted reversible error.[2] We review a

[2] Defense counsel requested that the district court ask the following questions:

(continued...)

district court's failure to ask specific questions during voir dire under an abuse of discretion standard. United States v. Goland, 959 F.2d 1449, 1454 (5th Cir. 1992). An abuse of discretion will be found if the voir dire is not reasonably sufficient to test the jury for bias or partiality. Id. The means employed to test impartiality must create a reasonable assurance that prejudice will be discovered if present. United States v. Saimiento-Rozo, 676 F.2d 146 (5th Cir. 1982).

The voir dire was reasonably sufficient to test the jury for bias or partiality. The court gave the government and the defense an opportunity to explain the nature of the case. The government explained that the defendants had been charged with participating in a drug conspiracy.

Both attorneys indicated that certain amounts of marihuana and cocaine were involved. Gonzales's counsel told the potential jurors that they also would hear evidence concerning drug possession. After the court explained that an indictment was not evidence, the government read the indictment to the panel members. The court instructed them on the presumption of innocence and the government's burden of proof and questioned them regarding their understanding of, and ability to apply, the presumption. The

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(...continued)

> Based on one of those juror's response about drug problems, I would ask the court they [sic] could ask the jury if any of them had any problems with drugs such as in a drug conspiracy case that may affect their ability to be fair.
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> And I would ask that you ask the jury if they hear evidence of drug dealing if this would)) if they have a problem in considering a defense.

court questioned the entire panel regarding their ability to be fair and impartial and to follow the law given by the court at the close of the case.

The district court was correct that it already had covered the material contained in defense counsel's proposed questions. The panel members knew the nature of the case and had been instructed on their duty to apply the law as given by the court. The potential jurors had more than ample opportunity to express any reservations concerning their ability to be fair and impartial. The means employed by the district court created a reasonable assurance that prejudice would be discovered if present.

IV.

Huggins testified on direct examination that he had built a security door on a trailer belonging to Gonzales and had constructed a concealed compartment underneath the center of the trailer. Huggins described the nature of the compartment and its exact location. Gonzales did not object.

Only when the government identified and offered photographs of the hidden compartment did Gonzales object to the evidence on relevance grounds. The court overruled the objection, observing that Huggins had constructed the compartment during what the government alleged was an ongoing conspiracy. Gonzales contends on appeal that Huggins's testimony constituted evidence of an extrinsic offense that the district court erroneously admitted in

violation of Fed. R. Evid. 404(b).[3]

Because defense counsel failed to object to evidence of the hidden compartment at the first available opportunity, we review the district court's admission of the evidence for plain error. United States v. Vesich, 724 F.2d 451, 462 (5th Cir. 1984). Plain error occurs when the evidence is so prejudicial as to undermine the fairness, integrity, or public reputation of the trial. Id.

The government urges, we think correctly, that the evidence of the hidden compartment did not constitute extrinsic evidence. An act is not extrinsic, and rule 404(b) is not implicated, where the evidence of that act and the evidence of the crime charged are inextricably intertwined. United States v. Torres, 685 F.2d 921, 924 (5th Cir. 1982); United States v. Aleman, 592 F.2d 881, 885 (5th Cir. 1979). In Torres, we held that evidence of sample transactions in which the defendants sold small quantities of cocaine did not constitute extrinsic evidence when the government demonstrated that the sample transactions were necessary preliminaries to the larger cocaine sale that led to the defendants' arrests. 685 F.2d at 924. We determined that

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[3] Rule 404(b) provides as follows:

> Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

although the other acts occurred at different times, they were part of a single criminal episode and that evidence concerning the other acts was necessary to provide coherence to the government's case. Id.

Huggins's construction of the concealed compartment at Gonzales's request was integral to the circumstances surrounding what the government sought to prove was an ongoing conspiracy. In one of the conversations recorded by Huggins, Gonzales discussed how he planned to use the compartment to transport marihuana. The government introduced the evidence to demonstrate Gonzales's knowledge and intent to distribute drugs, not to impugn Gonzales's character. The evidence of the concealed compartment was relevant to the issue of an ongoing conspiracy and was not so prejudicial as to undermine the fairness of Gonzales's trial. The district court therefore did not err in admitting it.

V.

Prior to trial, Gonzales filed a motion for relief pursuant to 18 U.S.C. § 3162, stating that the government had violated his right to a speedy trial under 18 U.S.C. § 3161. The district court denied the motion. Gonzales subsequently filed a supplemental motion for relief pursuant to section 3162, specifying dates that he contended did not constitute excludable delay in calculating the time before trial. The district court denied Gonzales's supplemental motion. Gonzales contends on appeal that the district court erred in denying his motion.

We review the facts supporting a Speedy Trial Act ruling using the clearly erroneous standard, and the legal conclusions de novo. United States v. Ortega-Mena, 949 F.2d 156, 158 (5th Cir. 1991). Section 3161(c)(1) provides in pertinent part,

> In any case in which a plea of guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. . . .

18 U.S.C. § 3161(c)(1) (1985).[4] Gonzales first appeared before the court on December 20, 1990. Over a year elapsed between the date of Gonzales's first appearance and April 27, 1992, the date on which his trial began.

Section 3161 provides for excludable periods of delay in calculating the seventy-day limit. Section 3161(h)(1)(F) states in pertinent part,

> The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:
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> > Any period of delay resulting from other proceedings concerning the defendant, including but not limited to --
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[4] Section 3162(a)(2) provides in pertinent part,

> If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant . . . .

18 U.S.C. § 3162(a)(2) (1985).

> delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;
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> * * *

18 U.S.C. § 3161(h)(1)(F) (1985). This exception applies to any period of delay resulting from any pretrial motion. Henderson v. United States, 476 U.S. 321, 326-27 (1986); United States v. Gonzales, 897 F.2d 1312, 1316 (5th Cir. 1990), cert. denied, 498 U.S. 1029 (1991); United States v. Castellano, 848 F.2d 63, 65 (5th Cir. 1988).

The record indicates that a period of excludable delay caused by to hearings on pretrial motions began on January 25, 1991, and continued through September 5, 1991. Gonzales filed a motion in limine on September 3, 1991. In an order dated September 5, 1991, the district court reserved the motions in limine filed by all defendants for consideration the morning of trial.

A period following the filing of a motion in limine is excludable under section 3161(h)(1)(F). United States v. Santoyo, 890 F.2d 726, 728 (5th Cir. 1989), cert. denied, 495 U.S. 959 (1990). "Pending motions will toll the trial clock indefinitely; there is no independent requirement that the delay attributable to the motions must be `reasonable.'" Id. (quoting United States v. Kington, 875 F.2d 1091, 1109 (5th Cir. 1989)). Therefore, the time between Gonzales's filing of his motion in limine on September 3, 1991, and the time of trial on April 27, 1992, is excludable in calculating time to trial under section

3161(h)(1)(F). When that period is combined with the excludable period beginning on January 25, 1991, the nonexcludable days between December 20, 1990, and the date of trial total thirty-three. Because less than seventy nonexcludable days passed between Gonzales's first appearance and the date his trial began, the district court did not err in denying his motion for relief under the Speedy Trial Act.

VI.

Gonzales argues that the district court erred in considering the approximately 7,000 pounds of marihuana seized at Eagle Pass on November 12, 1990, and the 3,000 pounds of marihuana seized in Houston on December 18, 1990, as relevant conduct upon which to base his sentence.[5] Gonzales contends that sufficient evidence did not exist to link him to the two transactions.

We review factual findings of the quantity of drugs involved in a crime for clear error. United States v. Kinder, 946 F.2d 362, 366 (5th Cir. 1991); United States v. Thomas, 870 F.2d 174, 176 (5th Cir. 1989). The district court need only determine its factual findings at sentencing by a preponderance of the evidence. United States v. Angulo, 927 F.2d 202, 205 (5th Cir. 1991). In making its findings, the district court may consider a wide variety of evidence, not limited to amounts seized or specified in

[5] Gonzales admitted at the sentencing hearing that he was guilty of possession of the 300 pounds of marihuana that police seized from his truck on December 20, 1990.

the indictment. Thomas, 870 F.2d at 176.

The court may rely upon uncorroborated hearsay testimony. United States v. Rodriguez, 897 F.2d 1324, 1328 (5th Cir.), cert. denied, 498 U.S. 857 (1990). Nevertheless, information used in sentencing must have some indicia of reliability. Kinder, 946 F.2d at 366. A defendant who objects to the use of information must show that the information is materially untrue, inaccurate, or unreliable. Id.; Angulo, 927 F.2d at 205. The district court is not bound to accept a defendant's own declarations, made with the purpose of reducing his sentence, about the circumstances of his crime. United States v. Buenrostro, 868 F.2d 135, 138 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990).

The district court heard sufficient evidence to support a finding, by a preponderance of the evidence, that Gonzales was responsible for the large amounts of marihuana seized at Eagle Pass and in Houston. The court heard evidence that Gonzales had been supplying Huggins with marihuana for several years prior to Huggins becoming an informant; tape recorded admissions from Gonzales about large-scale transportation of marihuana; admissions from Gonzales, at around the time of the Eagle Pass and Houston seizures, that loads of marihuana had been seized; admissions from Gonzales that he had used his house as collateral for a large load of marihuana; and various admissions from Gonzales placing him in Houston at the same time as the large load of marihuana and obtaining samples of the marihuana load. Additionally, at the sentencing hearing, an FBI agent testified concerning Gonzales's

admissions of his knowledge of both seizures. We conclude that the district court did not err in considering the large loads of marihuana as relevant conduct in sentencing Gonzales.

The judgments of conviction and sentence are AFFIRMED.