

JUN 09 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL ROY GUSHWA,

Defendant - Appellant.

No. 08-30328

D.C. No. 4:08-CR-00024-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted June 5, 2009**
Portland, Oregon

Before: GOODWIN, O'SCANNLAIN and FISHER, Circuit Judges.

Michael Gushwa appeals the district court's denial of his suppression motion, after which he entered a conditional guilty plea to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Gushwa, a passenger

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

in a car that police lawfully stopped, lied when officers asked for his name. The officers knew he was lying, and after further questioning found that he had an outstanding warrant. A pat-down search revealed a handgun.

Gushwa argues that during a traffic stop, a police officer may not ask a passenger his name where the officer lacks reasonable suspicion or probable cause to question the passenger. However, “even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual [and] ask to examine the individual’s identification.” *Muehler v. Mena*, 544 U.S. 93, 101 (2005) (quoting *Florida v. Bostick*, 501 U.S. 429, 434-35 (1991)) (internal alteration omitted). This standard applies in traffic stops. *United States v. Mendez*, 476 F.3d 1077, 1080 (9th Cir. 2007) (*Muehler*’s “reasoning is equally applicable in the traffic stop context”). Thus, no “independent reasonable suspicion” was required for the police officer to ask Gushwa for identification. *Muehler*, 544 U.S. at 101; *see also Mendez*, 476 F.3d at 1080-81 (holding that, under *Muehler*, “expanded questioning [during a traffic stop] need not have been supported by separate reasonable suspicion”).

AFFIRMED.