

SEP 27 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERICK DAVID LOPEZ, AKA Spooky,

Defendant - Appellant.

No. 09-10326

D.C. No. 3:08-cr-00342-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, N.R. SMITH, Circuit Judges.

Erick David Lopez appeals from his conviction and 360-day sentence for being an illegal alien in possession of a firearm, in violation of 18 U.S.C.

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

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

§ 922(g)(5)(A), and for illegal reentry, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Lopez seeks to challenge the district court's denial of his motion to suppress evidence of a firearm discovered during a traffic stop. The government contends that Lopez's appeal is moot because he stipulated that he possessed a firearm which in turn formed the basis of his conviction. Giving Lopez the benefit of the doubt that his appeal is not moot, *see United States v. Larson*, 302 F.3d 1016, 1020-22 (9th Cir. 2002) (discussing when an appeal may be moot following a stipulation), we conclude that the district court did not err in denying Lopez's motion to suppress, *see United States v. Wallace*, 213 F.3d 1216, 1220 (9th Cir. 2000).

AFFIRMED.