

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 03 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KEVIN FUQUA,

Defendant-Appellant.

No. 15-10278

D.C. No. 4:14-cr-00287-JD-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
James Donato, District Judge, Presiding

Submitted December 16, 2016\*\*  
San Francisco, California

Before: HAWKINS, BERZON, and MURGUIA, Circuit Judges.

Kevin Fuqua (“Fuqua”) appeals his conviction under 18 U.S.C. § 922(g)(1).

We affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

On appeal, Fuqua presents an argument for suppressing evidence in his case that he did not raise before the district court. By not raising it below, Fuqua has waived the argument. *See* Fed. R. Crim. P. 12(b)(3)(C). Fuqua has not shown why he should be granted relief from his waiver. While intervening changes in law may provide grounds for such relief, contrary to Fuqua's argument, *United States v. James*, 810 F.3d 676 (9th Cir. 2016), does not represent an intervening change in pertinent Fourth Amendment law.

Even if Fuqua did not waive this argument, the police officers' conduct here did not violate the Fourth Amendment. Fuqua was not seized when officers knocked on the window of the car he was sleeping in, woke him in the process, and asked to speak with him. *See United States v. Washington*, 490 F.3d 765, 770 (9th Cir. 2009).

**AFFIRMED.**