

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 14, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHILLIP SERAPIO BACA,

Defendant - Appellant.

No. 22-1377
(D.C. No. 1:22-CR-00042-RM-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **McHUGH, MURPHY, and CARSON**, Circuit Judges.

Phillip Serapio Baca appeals the district court’s denial of his motion to suppress evidence, specifically a firearm and ammunition discovered following a traffic stop. This evidence, which Mr. Baca claims was discovered in violation of the Fourth Amendment, led to Mr. Baca’s conviction for unlawful possession of a firearm and ammunition by a prohibited person, in violation of 18 U.S.C.

§ 922(g)(1). Mr. Baca appeals the district court’s denial of his motion to suppress for

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

preservation purposes only, conceding that his argument is foreclosed by this court's holding in *United States v. DeLuca*, 269 F.3d 1128 (10th Cir. 2001). Because Mr. Baca's argument is squarely foreclosed by binding precedent, we affirm.

I. BACKGROUND

In January 2022, Denver police officers pulled over a vehicle, in which Mr. Baca was the front-seat passenger, for not having a front license plate and having tinted windows. After approaching the vehicle, Officer Christopher Gergits recognized Mr. Baca's adult son, Phillip Baca Jr.,¹ who was sitting in the back seat. Officer Gergits believed Phillip Baca Jr. was a member of a criminal gang that was currently engaged in a street feud with a second gang, and therefore suspected Phillip Baca Jr. was "armed and dangerous." ROA Vol. 1 at 19. Officer Gergits observed that Phillip Baca Jr. looked "extremely nervous" and "was looking around the car and grabbing at his pockets with his hands." *Id.* Officer Gergits then asked the driver, Anthony Medina, to exit the vehicle, and other officers asked the remaining passengers to leave the vehicle. The officers suspected there may be weapons in the vehicle that could pose a threat to their safety. Once the vehicle was unoccupied, the officers spotted a handgun in plain view in the rear passenger compartment. Officer Gergits then walked to the front passenger side of the vehicle where he discovered a second firearm, "a black handgun in a holster partially under the front

¹ We refer to appellant, Phillip Serapio Baca, as "Mr. Baca," and his adult son, Phillip Baca Jr., by his full name, "Phillip Baca Jr.," throughout this order and judgment.

passenger seat.” *Id.* The handgun had “one round in the chamber and eighteen rounds in the magazine.” *Id.* at 37. In his plea agreement, Mr. Baca, who had been sitting in the front passenger seat, admitted he had been in constructive possession of the firearm and ammunition.

A grand jury indicted Mr. Baca for being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). Mr. Baca submitted a motion to suppress the firearm and ammunition, arguing the officers unlawfully prolonged their stop of the vehicle beyond the time needed to address the license plate and tinted window violations. *See Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (holding that seizures for traffic violations may last only as long as necessary “to address the traffic violation that warranted the stop”). Mr. Baca also argued the search of the vehicle was not justified by the plain-view exception or probable cause. However, Mr. Baca conceded in his motion that relief was “foreclosed by the ‘factual nexus’ requirement set forth in *United States v. DeLuca*, 269 F.3d 1128 (10th Cir. 2001).” ROA Vol. 1 at 15. Accordingly, Mr. Baca explained that he was filing the motion solely to preserve an argument that *DeLuca* was wrongly decided. The district court denied the motion, agreeing with Mr. Baca that the motion was foreclosed by *DeLuca*. Mr. Baca entered a conditional guilty plea, reserving the right to appeal the district court’s denial of his motion to suppress. The court sentenced Mr. Baca to 30 months’ imprisonment and Mr. Baca timely filed a notice of appeal.

II. ANALYSIS

Mr. Baca argues on appeal, for preservation purposes only, that *DeLuca* was wrongly decided and should be overruled. Specifically, Mr. Baca argues that but for *DeLuca*'s holding that a passenger in a vehicle must demonstrate “the evidence sought to be suppressed would not have been discovered but for his—and only his—detention,” his motion to suppress would have been granted. Appellant's Br. at 8.

In *DeLuca*, we held that a defendant who “lack[s] the requisite possessory or ownership interest in a vehicle” may not “directly challenge a search of that vehicle,” but “may nonetheless contest the lawfulness of his own detention and seek to suppress evidence found in the vehicle as the fruit of the defendant's illegal detention.” *DeLuca*, 269 F.3d at 1132 (quotation marks and brackets omitted). Under *DeLuca*, “[t]o suppress evidence as the fruit of his unlawful detention, [a defendant] must make two showings: (1) that the detention did violate his Fourth Amendment rights; and (2) that there is a factual nexus between the illegality and the challenged evidence.” *Id.* (internal quotation marks omitted). To show there was a factual nexus between the occupant's illegal detention and the evidence subsequently discovered, a defendant with no possessory or ownership interest in the vehicle where the evidence was discovered must show “that the [evidence] would never have been found but for *his*, and only his, unlawful detention.” *Id.* at 1133. A defendant may make this showing by demonstrating “that had he requested to leave the scene of the traffic stop, he would have been able to do so in” the vehicle where the evidence was discovered. *Id.*

Mr. Baca had no possessory or ownership interest in the vehicle where the gun and ammunition were discovered, so he needed to demonstrate the evidence was the fruit of *his* illegal detention. *See id.* Mr. Baca conceded before the district court, and concedes on appeal, that he is unable to make the second *DeLuca* showing—demonstrate a factual nexus between his detention and the discovery of the firearm and ammunition. ROA Vol. 1 at 15; Appellant’s Br. at 11. Specifically, Mr. Baca is unable to show that “the evidence sought to be suppressed would not have been discovered but for his—and only his—detention.” Appellant’s Br. at 5.

We agree with Mr. Baca that the district court correctly denied his motion to suppress where he concedes there was no factual nexus between his detention and the discovery of the firearm and ammunition. As Mr. Baca recognizes, we, as a panel of this court, cannot reach his argument that *DeLuca* was wrongly decided. *See In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993) (“We are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court.”). Accordingly, we affirm the district court’s denial of Mr. Baca’s motion to suppress.

III. CONCLUSION

We AFFIRM the district court’s judgment of conviction.

Entered for the Court

Carolyn B. McHugh
Circuit Judge