

UNPUBLISHED  
**UNITED STATES COURT OF APPEALS**  
**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>
v.
DWAYNE DELESTON, <i>Defendant-Appellant.</i>

No. 01-4129

Appeal from the United States District Court  
for the District of South Carolina, at Charleston.  
David C. Norton, District Judge.  
(CR-99-751)

Submitted: November 9, 2001

Decided: November 30, 2001

Before LUTTIG, MOTZ, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

J. Seth Whipper, WHIPPER LAW FIRM, North Charleston, South Carolina, for Appellant. Scott N. Schools, United States Attorney, Miller W. Shealy, Jr., Assistant United States Attorney, Charleston, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

**OPINION**

## PER CURIAM:

Dwayne Deleston appeals his conviction and 240-month sentence after his conditional guilty plea to possession with intent to distribute crack cocaine, in violation of 18 U.S.C.A. § 2 (1994) and 21 U.S.C. § 841(a)(1) (1994). Deleston argues the district court erred in denying his motion to suppress evidence seized from the vehicle he was driving because the officers lacked probable cause to make the traffic stop. He avers that the court should have relied upon records offered to show that he was using his cell phone at the time his vehicle was stopped to reject testimony that the officers' actions were legitimately prompted by a reasonable belief that Deleston was violating a local noise ordinance. We affirm.

We review a district court's factual findings underlying its denial of a motion to suppress for clear error, while reviewing its legal conclusions de novo. *United States v. Rusher*, 966 F.2d 868, 873 (4th Cir. 1992). In addition, in reviewing the denial of a motion to suppress, we review the evidence in the light most favorable to the government. *United States v. Seidman*, 156 F.3d 542, 547 (4th Cir. 1998). Under these standards, we conclude the district properly found the police officers' stop of Deleston's car was not pretextual and properly denied Deleston's motion to suppress evidence discovered in a consensual search of his vehicle.

For these reasons, we affirm Deleston's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid in the decisional process.

*AFFIRMED*