

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 16 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-30227

Plaintiff-Appellee,

D.C. No.

v.

2:20-cr-00124-DCN-1

NATHANIEL JOHNSON BOYCHIEF,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Idaho  
David C. Nye, Chief District Judge, Presiding

Argued and Submitted December 7, 2022  
Seattle, Washington

Before: O'SCANNLAIN, McKEOWN, and MILLER, Circuit Judges.

Nathaniel J. Boychief contests the district court's denial of his motion to suppress evidence found during a search of his vehicle after a traffic stop. We review de novo the district court's denial of a motion to suppress and its factual findings for clear error. *United States v. Lopez-Soto*, 205 F.3d 1101, 1103 (9th Cir. 2000). We review evidentiary rulings for abuse of discretion. *See United States v.*

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

*Ubaldo*, 859 F.3d 690, 700 (9th Cir. 2017). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The initial traffic stop for a mud flap violation under Idaho Code Section 49-949(1)(a) was supported by reasonable suspicion. Officer Inman testified that he saw there were no mud flaps on Boychief’s truck and that, based on his experience, the bed of the full-size four-wheel-drive pickup truck appeared to be higher than ten inches off the ground, which was a violation of the statute. The fact that Officer Inman was later proven correct—the lift of Boychief’s truck was measured at fourteen inches—is evidence that Officer Inman apprehended facts that could form a basis for reasonable suspicion.

The district court did not abuse its discretion in preventing Boychief’s counsel from testing the officer’s ability to detect hypothetical violations in photographs at the evidentiary hearing. Boychief is correct that the district court erred when it referred to the reasonable suspicion test as subjective. *See United States v. Magallon-Lopez*, 817 F.3d 671, 675 (9th Cir. 2016). But it was not an abuse of discretion to conclude that testing the officer’s skill was irrelevant to whether the officer had reasonable suspicion, which requires only that the officer was “aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for *particularized* suspicion.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc).

The dog sniff around Boychief's vehicle was supported by additional reasonable suspicion and in any event it did not unlawfully extend the stop. Officer Inman's testimony that he smelled marijuana, paired with the information that the truck had been seen leaving a house suspected of narcotics activity, provided the officer reasonable suspicion that illegal narcotics were present. Regardless, the Supreme Court instructs that the "critical question" is "whether conducting the sniff 'prolongs'—*i.e.*, adds time to—"the stop.'" *Rodriguez v. United States*, 575 U.S. 348, 357 (2015). Here, the dog sniff did not temporally extend the traffic stop, as Boychief was still searching for his insurance on his phone. Officer Inman was not required to complete the purpose of the original stop to measure the mud flaps before prioritizing what he suspected to be more serious illegal activity. *See United States v. Willis*, 431 F.3d 709, 717 (9th Cir. 2005).

The officers had probable cause to search the vehicle. Boychief challenges the reliability of K9 Bindy's alert. The district court determined that it did not need to reach the issue because, even without the alert, the officers had probable cause to search. We agree. The smell of marijuana and Boychief's pre-arrest admission that there was marijuana on his person and in the car supplied probable cause to search his truck.

**AFFIRMED.**