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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 46893-2019**
Plaintiff-Respondent,	)	
	)	**Bannock County Case No.**
v.	)	**CR-2017-10456**
	)	
JACOB STEELE RANDALL,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HONORABLE ROBERT C. NAFTZ
District Judge

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

CONSTITUTIONAL PROVISIONS **PAGE**

OTHER AUTHORITIES

STATEMENT OF THE CASE

Nature Of The Case

Jacob Steele Randall appeals from his conviction, entered on a conditional guilty plea, for trafficking in marijuana. On appeal, he argues that the district court erred by denying his motion to suppress the roughly sixty-five pounds of marijuana found in his rental car after a drug-detecting dog repeatedly alerted. He also argues that his sentence, to a unified term of seven years with three years fixed, is excessive.

Statement Of The Facts And Course Of The Proceedings

Trooper Tyler Scheierman, a K-9 officer with the Idaho State Police (Tr., p. 32, Ls. 14-25), was parked in the median of Interstate 86 near the border between Power and Bannock counties when he encountered Jacob Steele Randall at approximately 8:30 a.m. (Tr., p. 19, L. 17 – p. 20, L. 5; p. 52, Ls. 14-17).[1] Randall was travelling eastbound at or below the speed limit when he appeared to decrease his speed on seeing Trooper Scheierman's patrol car and, as he drove past the patrol car, Trooper Scheierman observed him sitting in a "very rigid, uncomfortable, unnatural driving position, and pressing himself backwards in his seat." (Tr., p. 20, L. 6 – p. 21, L. 11; p. 45, L. 11 – p. 46, L. 1.) Trooper Scheierman pulled behind Randall and, after Randall made two lane changes without properly signaling for five seconds, initiated a traffic stop. (Tr., p. 21, Ls. 12-19; p. 23, L. 22 – p. 24, L. 10.)

[1] Reference to "Tr." are to the file titled "Appeal Transcripts Volume 1" containing the transcripts of the hearings on Randall's motion to suppress, his change of plea, and sentencing. The traffic stop was captured on Trooper Scheierman's dash-cam and that recording was admitted as State's Exhibit 1 at the hearing on his motion to suppress. (Tr., p. 41, L. 20 – p. 42, L. 22.) Reference to 'Ex. 1' are to that video, which is contained in the record in a file titled "Randall – 46893 – State's Ex. 1 Part 1.mp4."

Trooper Scheierman approached and spoke with Randall at the passenger-side window, explaining why he was pulled over; requesting Randall's driver's license and, when informed that the car was a rental, the car-rental agreement; and asking about his travel plans as Randall provided those documents. (Tr., p. 24, L. 21 – p. 26, L. 19; Ex. 1, 01:31 – 03:08.) Randall said that he was driving home to St. Paul, Minnesota from Las Vegas, Nevada to which he had flown to take a vacation because the flight "only cost $75." (Tr., p. 26, L. 23 – p. 27, L. 19; Ex. 1, 02:30 – 02:45, 05:50 – 06:17.) Trooper Scheierman noticed that the cost to rent the car in Las Vegas to drive back to St. Paul was five hundred dollars and thought it odd to incur that expense to drive back when flights were so inexpensive. (Tr., p. 27, Ls. 6-19.) He also noted that Randall appeared extraordinarily nervous, with visibly shaking hands and a pulsing carotid artery. (Tr., p. 27, L. 20 – p. 28, L. 10.) The car he was driving also appeared "lived in," with food wrappers, jugs of water, and toiletries strewn about. (Id.)

Trooper Scheierman asked Randall to come back to his patrol car while he checked Randall's driving status and for warrants. (Tr., p. 28, L. 14 – p. 29, L. 1; Ex. 1, 03:08 – 03:22.) As he ran those checks, he continued to talk with Randall. (Tr., p. 29, Ls. 2-6.) Asked whether he had travelled any further west than Las Vegas, Randall paused briefly and responded, "Nah." (Tr., p. 29, Ls. 5-18; Ex. 1, 05:00 – 05:05.) Asked if he was sure, Randall again paused for about five seconds before saying that he went to Reno, Nevada. (Tr., p. 29, L. 19 – p. 30, L. 4; Ex. 1, 05:06 – 05:15.) Trooper Scheierman noticed that Randall appeared to become even more nervous when asked these details about his travel, exhibiting heavier breathing and shortness of breath. (Tr., p. 30, Ls. 5-23.) He also recognized that Reno is seven hours from Las Vegas and further west, taking Randall the wrong direction from Minnesota. (Id.) According to Randall, he had flown in to Las Vegas on "late Wednesday night" (Ex. 1, 06:06 – 06:14), or Wednesday,

August 30. The car was rented the next day on August 31 in Las Vegas and the traffic stop was in the morning of September 3. (Tr., p. 52, Ls. 10-17.) Trooper Scheierman recognized that Randall could "not have spent much time in Las Vegas" and "would have been spending his entire trip driving." (Tr., p. 30, Ls. 17-23.)

Trooper Scheierman expressed concern at this time about the possibility that Randall was engaged in drug trafficking. (Tr., p. 31, Ls. 9-19; Ex 1, 06:30 – 06:52.) He noted that he "quite often" sees drug traffickers taking a one-way flight to a destination, spending a short period of time there, and renting a car to return a long distance, but does not often see average travelers doing so. (Ex 1, 06:30 – 06:52.) Randall denied that he was involved in drug trafficking. (Id.) Trooper Scheierman then asked if Randall would mind if he ran his drug detection dog, Bingo, around the car. (Tr., p. 31, L. 20 – p. 32, L. 13; Ex. 1, 06:52 – 06:58.) Randall responded that he did not mind, Trooper Scheierman asked if Randall was "sure," and Randall confirmed that he did not mind. (Tr., p. 31, L. 20 – p. 32, L. 13; Ex. 1, 06:52 – 06:58.)

For safety purposes while his attention was distracted from Randall, Trooper Scheierman asked and received permission to briefly pat Randall down for weapons. (Tr., p. 35, Ls. 7-17; Ex. 1, 06:58 – 07:25.) After frisking Randall for weapons, Trooper Scheierman let Bingo out of the patrol car on a leash and Bingo immediately walked in front of Trooper Scheierman to the driver's-side window of Randall's car, which Randall had left open. (Tr., p. 35, L. 22 – p. 36, L. 12; p. 74, Ls. 3-9; Ex. 1, 08:45 – 08:52.) Bingo put his paws on the door, sniffed, and "propelled himself inside of that open window." (Tr., p. 35, L. 22 – p. 36, L. 12; Ex. 1, 08:45 – 08:52.) Trooper Scheierman testified that as Bingo was jumping into the car he "got hung up" and Trooper Scheierman assisted the dog to prevent him from injuring himself and to prevent damage

to the car. (Tr., p. 68, L. 6 – p. 69, L. 7; Ex. 1, 08:45 – 08:52.) Trooper Scheierman then observed Bingo alert to the presence of narcotics near the back seat. (Tr., p. 36, Ls. 13-19.)

After Bingo later alerted again on the outside of the car at the trunk (Tr., p. 36, L. 20 – p. 37, L. 24; Ex. 1, 9:30 – 09:45), Trooper Scheierman put Bingo back in the patrol car, read Randall his rights, and informed him that the car would be searched (Tr., p. 37, L. 25 – p. 38, L. 14; Ex. 1, 09:45 – 11:20). When Trooper Scheierman and another officer now on the scene searched the car, they found four duffel bags containing approximately sixty-five pounds of marijuana in the trunk. (Tr., p. 38, L. 25 – p. 39, L. 24; R., pp. 15-16; Ex. 1, 11:20 – 12:15.) Randall was arrested. (Tr., p. 39, L. 25 – p. 40, L. 5; Ex. 1, 12:17 – 13:12.) He stated that he was "not sure" how much marijuana was in the car, that this was the first time he had been involved in drug trafficking, and that he was getting paid "7 or 8 [thousand dollars]." (Ex. 1, 12:42 – 13:12.)

Randall was charged with violating Idaho Code § 37-2732B(a)(1)(C), trafficking in marijuana in excess of twenty-five pounds. (R., pp. 47-48.) He filed a motion to suppress claiming that the initial stop was illegal, that it was unlawfully extended, and that the search of the car was unlawful. (R., pp. 59-61.) After a suppression hearing at which Trooper Scheierman testified, the parties submitted briefing. (R., pp. 71-111.) Randall argued that the Fourth Amendment was violated because the stop was unreasonably extended for a dog sniff (R., pp. 78-82), and because Bingo entered the car (R., pp. 82-83). The state responded that Trooper Scheierman had reason to suspect drug trafficking and that Randall consented to a dog sniff. (R., pp. 94-97.) With respect to Bingo's entry into the car, the state argued that Bingo was merely instinctively following the odor of narcotics through a window that Randall left open (R., pp. 99-100) and, at any rate, Bingo later alerted on the exterior of the car (R., p. 101). The district court

then issued an order denying the motion. (R., pp. 112-25.) It held that the initial traffic stop was justified by Randall's failure to properly signal lane changes (R., pp. 115-17), Trooper Scheierman had reasonable suspicion necessary to briefly extend the stop for a dog sniff (R., pp. 117-20), and Bingo's act of jumping into the car did not transform an otherwise lawful investigative detention into a Fourth Amendment violation because doing so was instinctive and in no way associated with police misconduct (R., pp. 120-24). The court also held that Bingo subsequently alerted on the exterior trunk of the car as well. (R., p. 123.)

Randall then agreed to enter a conditional guilty plea to violating Idaho Code § 37-2732B(a)(1)(B), trafficking in marijuana of between five and twenty-five pounds, while reserving the right to appeal the denial of his motion to suppress. (R., pp. 139-45; Tr., p. 85, L. 15 – p. 87, L. 4.) The district court accepted that plea. (Tr., p. 98, L. 5 – p. 99, L. 16; R., pp. 151-53.) Randall was sentenced to seven years with three years fixed. (R., pp. 160-63.) He timely appealed. (R., pp. 164-68.)

ISSUES

Randall states the issues on appeal as:

I. Did the district court err when it denied Mr. Randall's motion to suppress?

II. Did the district court abuse its discretion when it imposed a unified sentence of seven years, with three years fixed, upon Mr. Randall following his plea of guilty to trafficking in marijuana?

(Appellant's brief, p. 6.)

The state rephrases the issues as:

1. Has Randall failed to show that the district court erred by denying his motion to suppress?

2. Has Randall failed to show that the district court abused its sentencing discretion by imposing a unified sentence of seven years with three years fixed?

ARGUMENT

I.
Randall Has Failed To Show That The District Court Erred By Denying His Motion To Suppress

A. Introduction

On appeal, Randall makes two arguments with respect to the denial of his motion to suppress, both addressed to the Fourth Amendment.[2] First, he argues that Trooper Scheierman did not have reasonable articulable suspicion of criminal conduct necessary to extend the traffic stop to conduct a dog sniff. (Appellant's brief, pp. 8-15.) Second, he argues that the entry of the drug detection dog, Bingo, into the car constituted a Fourth Amendment violation. (Appellant's brief, pp. 15-22.) Both arguments fail. As the district court correctly found, Trooper Scheierman had reasonable articulable suspicion necessary to justify the brief extension of the stop required for a dog sniff. (R., pp. 117-20.) Second, the district court also correctly found that Bingo's instinctive act of jumping unprompted into a window left open by Randall involved no police misconduct and does not constitute a violation of the Fourth Amendment. (R., pp. 120-24.) In addition, however, even if it did, Bingo's subsequent indication on the exterior trunk of Randall's

[2] "The Fourth Amendment to the United States Constitution and Article I, Section 17 of the Idaho Constitution protect people against unreasonable searches and seizures. The guarantees under the United States Constitution and the Idaho Constitution are substantially the same." State v. Ballou, 145 Idaho 840, 845, 186 P.3d 696, 701 (Ct. App. 2008). While Randall's motion to suppress cited Article I, Section 17 (R., pp. 59-61), his memorandum in support focused exclusively on the Fourth Amendment (R., p. 78 (claiming that officers violated his "Fourth Amendment rights" in two ways)). He has never argued that the Idaho Constitution provides greater protection than does the United States Constitution in this case. He has therefore waived any such argument. See State v. Vasquez, 129 Idaho 129, 131, 922 P.2d 426, 428 (Ct. App. 1996) (hold that though the appellant's "suppression motion cited both the United States and Idaho constitutions, his argument to the trial court was based upon the Fourth Amendment. . . . [h]e did not at any point argue that the Idaho constitution extended greater protection than that afforded by the federal constitution," and had therefore waived the argument).

car implies that Bingo's entry into the car was not the but-for cause of the discovery of the marijuana in the trunk.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court "defers to the trial court's findings of fact unless the findings are clearly erroneous," and "freely reviews the trial court's application of constitutional principles to the facts as found." State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009). "[I]n conducting that review the appellate court 'should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.'" State v. Munoz, 149 Idaho 121, 127, 233 P.3d 52, 58 (2010) (quoting Ornelas v. United States, 517 U.S. 690, 699 (1996)). "The review must be based upon the totality of the circumstances, not upon an individual examination of each observation by the officer taken in isolation." Id. "Findings of fact are not clearly erroneous if they are supported by substantial and competent evidence. Decisions regarding the credibility of witnesses, weight to be given to conflicting evidence, and factual inferences to be drawn are also within the discretion of the trial court." Id. at 128, 233 P.3d at 59 (internal quotation marks omitted).

C. The District Court Correctly Concluded That Reasonable Articulable Suspicion Supported The Brief Extension Of The Traffic Stop

The Fourth Amendment of the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. While routine traffic stops by police officers implicate the Fourth Amendment's prohibition against unreasonable searches and

seizures, the reasonableness of a traffic stop is analyzed under Terry v. Ohio, 392 U.S. 1 (1968), because a traffic stop is more similar to an investigative detention than a custodial arrest. Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). "[A]n investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity." Sheldon, 139 Idaho at 983, 88 P.3d at 1223 (citing Terry, 392 U.S. at 21).

An investigative detention must not only be justified at its beginning, but must also be conducted in a manner that is reasonably related in scope and duration to the circumstances which justified the interference in the first place. Florida v. Royer, 460 U.S. 491, 500 (1983); State v. Roe, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct. App. 2004) "There is no rigid time limit for determining when a detention has lasted longer than necessary; rather, a court must consider the scope of the detention and the law enforcement purposes to be served, as well as the duration of the stop." State v. Grantham, 146 Idaho 490, 496, 198 P.3d 128, 134 (Ct. App. 2008) In addition, "[t]he purpose of a stop is not permanently fixed . . . at the moment the stop is initiated, for during the course of the detention there may evolve suspicion of criminality different from that which initially prompted the stop." Sheldon, 139 Idaho at 984, 88 P.3d at 1224. "The officer's observations, general inquiries, and events succeeding the stop may—and often do—give rise to legitimate reasons for particular lines of inquiry and further investigation by an officer." Grantham, 146 Idaho at 496, 198 P.3d at 134. For example, after initiating a traffic stop, an officer who acquires reasonable suspicion that a car contains narcotics may extend the duration of the stop to deploy a drug-detecting dog. See State v. Brumfield, 136 Idaho 913, 917, 42 P.3d 706, 710 (Ct. App. 2001) (holding that detention of roughly forty-five minutes before

drug dog arrived was permissible where officer who initiated traffic stop reasonably suspected drug trafficking); State v. Keene, 144 Idaho 915, 919, 174 P.3d 885, 889 (Ct. App. 2007) (detention for fifteen minutes until arrival of drug dog was permissible in light of reasonable suspicion regarding the presence of narcotics).

"The justification for an investigative detention is evaluated upon the totality of the circumstances then known to the officer." Sheldon, 139 Idaho at 983, 88 P.3d at 1223. An investigative detention is justified if an officer has "reasonable suspicion to believe that criminal activity *may* be afoot." United States v. Arvizu, 534 U.S. 266, 273 (2002) (emphasis added, internal quotation marks omitted). "An investigatory stop does not deal with hard certainties, but with probabilities." Munoz, 149 Idaho at 126, 233 P.3d at 57 (internal quotation marks omitted). "The standard of 'reasonable articulable suspicion' is not a particularly high or onerous standard to meet." State v. Danney, 153 Idaho 405, 410, 283 P.3d 722, 727 (2012). "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." Navarette v. California, 572 U.S. 393, 397 (2014) (internal quotation marks and citations omitted). Whether reasonable suspicion exists is evaluated in light of the officer's experience and expertise. Danney, 153 Idaho at 410, 283 P.3d at 727.

Less than nine minutes passed from the time Randall was pulled over until the time Bingo alerted on the trunk of the rental car. (Ex. 1, 01:00 – 09:47.) There is no dispute that during much of that time Trooper Scheierman was pursuing the initial purpose of the traffic stop by, for instance, checking Randall's driving status and for warrants. See State v. Renteria, 163 Idaho 545, 549, 415 P.3d 954, 958 (Ct. App. 2018) (holding that "an officer's purpose during a traffic

stop also may also include conducting ordinary inquiries incident to the traffic stop," including "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance"). There was therefore only a very brief extension of the stop prior to Bingo's alert on the car, which provided probable cause to search the car and detain Randall. See State v. Anderson, 154 Idaho 703, 706, 302 P.3d 328, 331 (2012) (holding that alert by trained drug dog provides probable cause for detention and search). The district court found that Trooper Scheierman "has been trained and is experienced in identifying the indicators of drug trafficking" (R., p. 120), and Randall does not challenge that finding on appeal. In light of that experience and expertise, the facts provided Trooper Scheierman the reasonable suspicion necessary to justify the very short extension of the traffic stop necessary to conduct a dog sniff.

First, though Trooper Scheierman estimated that Randall's car was traveling at or below the speed limit initially, Randall slowed his car as he approached Trooper Scheierman's patrol car and, as he passed Trooper Scheierman, sat in an awkward manner with his face shielded from view. (Tr., p. 20, L. 6 – p. 21, L. 11; p. 45, L. 11 – p. 46, L. 1.) Trooper Scheierman believed that that conduct was unusual and suspicious. (Tr., p. 21, Ls. 12-19.) See State v. Nevarez, 147 Idaho 470, 475-76, 210 P.3d 578, 583-84 (Ct. App. 2009) (holding that where passengers of car were seated so as to obscure the officer's view and slowed upon seeing the officer despite already traveling at or below the speed limit, these facts suggested an attempt "to avoid police contact" and contributed to reasonable suspicion justifying brief investigatory detention); State v. Troughton, 126 Idaho 406, 410, 884 P.2d 419, 423 (Ct. App. 1994) (apparent attempt by passenger to shield his face from view contributed to reasonable suspicion justifying investigatory detention).

Second, Randall was unusually nervous for a driver in a routine traffic stop, with his carotid artery "beating profusely" and his hands shaking as he handed Trooper Scheierman documents. (Tr., p. 27, L. 20 – p. 28, L. 10.) While Randall is correct that the typical nervousness accompanying a traffic stop is of "'limited significance'" for purposes of establishing reasonable suspicion precisely because it is typical (Appellant's brief, pp. 13-14 (quoting State v. Gibson, 141 Idaho 277, 285-86, 108 P.3d 424, 432-33 (Ct. App. 2005)), excessive nervousness that is atypical for a traffic stop *does* contribute to a finding of reasonable suspicion, see State v. Chapman, 146 Idaho 346, 352, 194 P.3d 550, 556 (Ct. App. 2008) (nervousness and "shaking" contributed to probable cause to arrest and search for drugs); State v. Johnson, 137 Idaho 656, 660, 51 P.3d 1112, 1116 (Ct. App. 2002) (citing "excessive nervousness" as factor justifying detention); Grantham, 146 Idaho at 497, 198 P.3d at 135 (same); United States v. Koshnevis, 979 F.2d 691, 695 (9th Cir. 1992) (holding that out-of-the-ordinary nervousness, including shaking hands, contributed to probable cause for search of car). In addition to visibly shaking, Randall's demeanor changed, and he appeared even more nervous, with shortness of breath, when he was questioned regarding his travel. (Tr., p. 30, Ls. 5-23.) See Grantham, 146 Idaho at 497, 198 P.3d at 135 (holding that where defendant's demeanor "changed visibly when asked whether there was methamphetamine in the car," that fact contributed to reasonable suspicion). According to Trooper Scheierman, the prolonged and increasing indications of extreme nervousness were unusual for a normal traffic stop. (Tr., p. 71, L. 8 – p. 72, L. 2.)

Third, Randall's car appeared "lived-in," with "food wrappers, gallon jugs of water, [and] toiletries strewn across the vehicle loose." (Tr., p. 28, Ls. 2-5.) Trooper Scheierman testified that this is consistent with criminal activity involving long, continuous road trips (Tr., p. 28, Ls. 5-

10), such as drug trafficking. Though not every car that looks "lived-in" is associated with drug trafficking, it is nevertheless a factor contributing to reasonable suspicion in the totality of the circumstances, particularly in light of Trooper Scheierman's experience and expertise. See United States v. Lebrun, 261 F.3d 731, 733 (8th Cir. 2001) (holding that disheveled appearance of car, while consistent with innocent travel, contributed to reasonable suspicion in the totality of the circumstances and in light of officer's expertise and experience); United States v. Contreras, 506 F.3d 1031, 1036 (10th Cir. 2007) (same).

Fourth, Randall's responses to questions regarding his travel plans were hesitant and inconsistent. Asked about his origin, Randall said that he was driving from Las Vegas to his home in Minnesota. (Tr., p. 26, L. 23 – p. 27, L. 5.) Asked whether he had travelled any further west than Las Vegas, Randall paused briefly and then responded, "Nah." (Tr., p. 29, Ls. 7-18; Ex. 1, 05:00 – 05:05.) Because of Randall's strange hesitancy and indecisiveness in responding to a simple question, Trooper Scheierman asked if he was "sure," causing Randall to pause again for approximately five seconds and eventually respond that he had driven to Reno, Nevada. (Tr., p. 29, L. 19 – p. 30, L. 4; Ex. 1, 05:06 – 05:15.) Confused or inconsistent answers to questions regarding travel is a factor supporting reasonable suspicion. See State v. Kelley, 159 Idaho 417, 425, 361 P.3d 1280, 1288 (Ct. App. 2015) (pointing to hesitant answers to basic questions regarding travel as contributing to reasonable suspicion); United States v. Gonzalez, 328 F.3d 755, 758 (5th Cir. 2003) (same); United States v. Kopp, 45 F.3d 1450, 1454 (10th Cir. 1995) (same).

In addition, Trooper Scheierman was aware that Reno is a "source area for contraband" for drug trafficking, and that Minnesota is a destination. (Tr., p. 60, L. 18 – p. 61, L. 7; p. 72, Ls. 18-21.) Such travel contributes to reasonable suspicion. See Danney, 153 Idaho at 411, 283 P.3d

at 728 (holding that travel from known source city contributes to reasonable suspicion); United States v. Forero-Rincon, 626 F.2d 218, 223 (2d Cir. 1980) (same); United States v. Bejarano-Ramirez, No. CR 00-1066 LH, 2000 WL 36739625, at *3-4 (D.N.M. Dec. 7, 2000) (same), aff'd, 35 F. App'x 740 (10th Cir. 2002).

Next, even setting aside that Reno is a source city for trafficking, Randall's reported travel was suspicious. He claimed that he had flown from Minnesota to Las Vegas for a vacation and did so because flights "only cost $75." (Tr., p. 26, L. 23 – p. 27, L. 19; Ex. 1, 02:30 – 02:45.) He got in late "Wednesday" (Ex. 1, 05:50 – 06:17) or August 30, and then rented a car in Las Vegas the next day, on August 31, for five-hundred dollars (Tr., p. 27, Ls. 9-17; p. 52, Ls. 10-17). Before being pulled over near Pocatello, he had visited Reno, Nevada, which is approximately seven hours from Las Vegas. (Tr., p. 29, L. 19 – p. 30, L. 23.) The drive from Reno to Pocatello is at least another eight hours. (Tr., p. 51, L. 12 – p. 52, L. 4.) He was on his way back to St. Paul, Minnesota in his rental car when he was pulled over on Sunday, September 3, at around 8:30 a.m., just inside of Bannock County on Highway 86. (Tr., p. 24, Ls. 17-20; p. 26, L. 23 – p. 27, L. 5; p. 52, Ls. 14-17.)

So, according to Randall, he flew to Las Vegas for a vacation specifically because flights there were cheap, but instead of purchasing a cheap return flight home and staying longer in Las Vegas, he paid five hundred dollars for a rental car to drive back.[3] With the three full days between his arrival in Las Vegas and the date he was pulled over, he spent at least fifteen hours driving, in part in the opposite direction from St. Paul and to a city that Trooper Scheierman

[3] According to Google Maps, the approximate drive time from Las Vegas to St. Paul, Minnesota along the fastest route, which Randall did not take, is twenty-three hours and forty minutes. See https://google.com/maps.

recognized as a source for drug traffickers. When he was pulled over, he had another eighteen hours of driving before he reached St. Paul.[4] As Trooper Scheierman told Randall at the time of the stop, his travel—flying to a city, spending a very short period of time there, renting a car in order to drive a very long distance back, and driving from a city known as a source for drug trafficking—was typical of drug traffickers and unusual for ordinary travelers. (Ex. 1, 06:30 – 06:50.) This sort of unusual travel contributes to reasonable suspicion. See Kelley, 159 Idaho at 425, 361 P.3d at 1288 (holding that "confusing and suspicious" travel plans, involving a "quick back and forth trip, with little luggage, in a third-party-owned vehicle from the Lake Tahoe area to Jackson Hole, Wyoming, via central Oregon, which was not the most direct route," contributed to reasonable suspicion); Contreras, 506 F.3d at 1036 (holding that travel plans that were "suspicious at best," involving a very long trip with a quick turn-around, contributed to reasonable suspicion).

While insufficient individually, these facts collectively raise a reasonable suspicion of drug trafficking, particularly in light of Trooper Scheierman's experience and expertise. Contreras, 506 F.3d at 1036 (holding that where driver was extraordinarily nervous, with shaking hands, and her travel plans were "suspicious at best," involving a very long trip with a quick turn-around, using a rental car, which was littered with food wrappers, officer had reasonable suspicion for investigative detention in light of a set of facts that "begins to strongly resemble that of a narcotics courier"). Again, it is important to note that reasonable suspicion "is not a particularly high or onerous standard to meet," Danney, 153 Idaho at 410, 283 P.3d at 727, and requires "considerably less than proof of wrongdoing by a preponderance of the evidence, and

[4] According to Google Maps, the approximate drive time from Pocatello to St. Paul, Minnesota along the fastest route, is eighteen hours and thirty-three minutes. See https://google.com/maps.

obviously less than is necessary for probable cause." Navarette, 572 U.S. at 397 (internal quotation marks omitted). In Terry v. Ohio, 392 U.S. 1 (1968), the case out of which investigative detentions and the reasonable suspicion standard were born, the facts that generated reasonable suspicion were three men talking, standing on a corner for an extended period of time, and repeatedly walking past and looking into a store window. Id. at 6. While those facts were surely amenable to innocent explanation, the officer was entitled to briefly detain the men to investigate the possibility that they were "casing" the store for a robbery. Id. at 28. Likewise here, while the facts are amenable to innocent explanation and do not entail that Randall was trafficking in drugs, the totality of the circumstances justified Trooper Scheierman in briefly detaining Randall—a detention that lasted minutes at best—to investigate his suspicion that Randall's car contained narcotics.

Randall's argument to the contrary focuses heavily on State v. Kelley, 160 Idaho 761, 379 P.3d 351 (Ct. App. 2016), in which the Court of Appeals determined that an officer did not have reasonable suspicion justifying the extension of a traffic stop for a dog sniff. (Appellant's brief, pp. 12-13.) While Kelley does bear some similarities to this case, it does not control this case. In Kelley, though the court's discussion is quite brief, it emphasized that while the defendant was, for example, nervous and had unusual travel plans, there were no "objective facts linking" those facts to criminal conduct. Id. at 764, 379 P.3d at 354. Though it is not entirely clear what the court was implicitly requiring in the way of "objective facts" and "linking," Trooper Scheierman certainly stated why, in light of his experience and expertise, he believed the facts about which he was aware, which certainly appear objective, suggested criminal conduct and drug trafficking. He stated that Randall was travelling from Reno to St. Paul and those were an origin and destination, respectively, for drug trafficking. He noted that Randall became even more nervous

when he was questioned regarding this travel, and that he initially tried to hide that he had travelled to Reno. He stated that Randall's travel—involving a one-way flight and the use of a rental car to return a long distance after a very short stay—was typical of drug traffickers and not ordinary travelers. He noted that the state of Randall's car was indicative of criminal conduct involving long trips, like drug trafficking. In light of those facts, other facts —like Randall's apparent attempt to avoid contact with police and his extraordinary nervousness—take on additional significance in the totality of the circumstances.

The district court correctly found that the totality of the circumstances, considered in light of Trooper Scheierman's experience and expertise, justified the very brief detention at issue in this case.

D. The District Court Correctly Determined That Bingo's Entry Into The Car Did Not Justify The Suppression Of Evidence

Warrantless searches are "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). One such exception to the warrant requirement is the "automobile exception," which allows warrantless searches of cars when there is probable cause to believe that the car contains contraband or evidence of criminal activity. See California v. Acevedo, 500 U.S. 565, 572 (1991); State v. Tucker, 132 Idaho 841, 842, 979 P.2d 1199, 1200 (1999). Officers may deploy a drug dog on the exterior of a lawfully stopped car without a warrant or probable cause to believe that it contains narcotics. Illinois v. Caballes, 543 U.S. 405, 409-10 (2005); State v. Parkinson, 135 Idaho 357, 363, 17 P.3d 301, 307 (Ct. App. 2000). "A reliable drug dog's alert on the exterior of a vehicle is sufficient, in and of itself, to establish probable cause for a

warrantless search of the interior." State v. Anderson, 154 Idaho 703, 706, 302 P.3d 328, 331 (2012).

Randall argues that his motion to suppress should have been granted because Bingo did not merely sniff the exterior of his car, but entered it without his permission. That argument fails for two reasons. First, even if there was a Fourth Amendment violation, it was not the but-for cause of the discovery of the evidence Randall seeks to suppress. Second, there was no Fourth Amendment search because, as the district court found, Bingo entered the open car window instinctively and not as the result of any misconduct by Trooper Scheierman.

1. Bingo's Entry Into The Car Was Not The But-For Cause Of The Discovery Of The Evidence Randall Seeks To Suppress

"[E]vidence will not be excluded as fruit unless the illegality is at least the but-for cause of the discovery of the evidence. Suppression is not justified unless the challenged evidence is in some sense the product of illegal governmental activity." Segura v. United States, 468 U.S. 796, 815 (1984) (internal quotations marks omitted). "Where a defendant has moved to suppress evidence allegedly gained through unconstitutional police conduct, the State bears the ultimate burden of persuasion to prove that the challenged evidence is untainted, but the defendant bears an initial burden of showing a factual nexus between the illegality and the State's acquisition of the evidence." State v. Dahl, 162 Idaho 541, 546, 400 P.3d 629, 634 (Ct. App. 2017). "This requires a prima facie showing that the evidence sought to be suppressed would not have come to light but for the government's unconstitutional conduct." Id. The defendant must "show that, on the events that did take place, the discovery of the evidence was a product or result of the unlawful police conduct." Id.

Trooper Scheierman searched the car and discovered the roughly sixty-five pounds of marijuana in the trunk only *after* Bingo alerted on the exterior of the trunk. (Tr., p 36, L. 20 – p. 38, L. 14; Ex. 1, 09:31 – 11:50.) That alert provided Trooper Scheierman probable cause to search the car. Randall has never argued or suggested otherwise, focusing instead on the fact that Bingo had previously entered the car without his permission. But whether Bingo did so, and whether Bingo doing so constituted a Fourth Amendment search, is ultimately irrelevant to his suppression motion in light of Bingo's subsequent alert on the exterior of the car. Because of that alert, Trooper Scheierman had probable cause to search the car that was entirely independent of Bingo's entry. Bingo's entry into the car was therefore not the but-for cause of the discovery of the marijuana.

Though involving different facts, the Court of Appeals' opinion in State v. Wigginton, 142 Idaho 180, 125 P.3d 536 (Ct. App. 2005), is nevertheless instructive. In Wigginton, an officer pulled a car over for a traffic violation, observed indications that Wigginton was intoxicated, and smelled alcohol in the car. Id. at 181-82, 125 P.3d at 537-38. Though Wigginton passed field-sobriety tests, the officer informed him that he was going to search the car due to the odor of alcohol. Id. In the meantime, another officer with a drug-detecting dog arrived. Id. That officer walked his dog around the car and the dog alerted. Id. The officers searched the car, recovering ingredients and equipment used to manufacture methamphetamine. Id. Wigginton moved to suppress the evidence found in his car on the grounds that the traffic stop was unlawfully extended by the dog sniff. Id. The Court of Appeals concluded that Wigginton had failed to establish the "factual nexus" between any illegality involving the dog sniff and the discovery of the evidence in the car. Id. at 184, 125 P.3d at 540. It held that the search of the car was independently justified by the odor of alcohol and, as a result, any illegality

associated with the dog sniff "only briefly delayed an already justified search, and it cannot be said that the challenged evidence would not have come to light if that delay had not occurred." Id. Because the search of the car was justified by probable cause with respect to which there was no claim of associated illegality, the alleged illegality was not the but-for cause of the discovery of the evidence.

Likewise, here, Trooper Scheierman had probable cause to search based on Bingo's alert on the exterior trunk of Randall's car. Setting aside the claim that Trooper Scheierman did not have the reasonable suspicion necessary to extend the stop, there is no claim of illegality associated with that alert and Randall has never argued that it did not provide probable cause to search the car. Just as there was no evidence in Wigginton that the search of the car would not have occurred if the dog sniff had not been conducted, Wigginton, 142 Idaho at 184, 125 P.3d at 540, there is no evidence here that the search of the car would not have occurred if Bingo had not first jumped into the car. The evidence is to the contrary. Trooper Scheierman was conducting a dog sniff on the exterior of the car. He would not have abandoned that task if Bingo had not jumped into the car. Nor is there any reason to think that Bingo would not have alerted on the exterior trunk of the car if he had not first jumped into the car. There is simply no causal relationship between the probable cause Trooper Scheierman acquired when Bingo alerted on the exterior of the car, which permitted him to conduct the search resulting in the discovery of the marijuana, and Bingo's prior act of jumping into the car. See United States v. Gastelo-Armenta, No. 8:09CR92, 2010 WL 1440418, at *3-4 (D. Neb. Apr. 8, 2010) (holding that though officer violated the Fourth Amendment by opening defendant's car door so narcotics dog could enter, the violation was not a but-for cause of the discovery of drugs located in the car because the dog later alerted on the exterior of the car); United States v. Lyons, 486 F.3d 367, 373-74 (8th Cir.

2007) (holding that where dog's other indications on the exterior of the car provided probable cause to search it, dog's entry into the car did not require suppression of evidence found therein).

Even if Bingo's entry to the car constituted a Fourth Amendment search, Randall cannot show that it was the but-for cause of the discovery of the marijuana. The district court therefore properly denied his motion to suppress.

2. Bingo's Entry Into The Car Did Not Constitute A Fourth Amendment Search

The district court concluded that Bingo's entry into the car did not constitute a Fourth Amendment search because it was instinctual and not instigated by police or otherwise the result of police misconduct. (R., pp. 122-24.)

> Based upon the testimony and the evidence presented, Trooper Scheierman's drug dog made independent entry into the Defendant's car because the dog detected an odor emanating from the vehicle. While Trooper Scheierman testified that he did assist the dog's entry into the vehicle, that assistance was only given to prevent injury to the animal and car and came only after the dog had independently placed its paws on the open front driver's side window and jumped inside. Trooper Scheierman did nothing to initiate the dog's entry into the vehicle. Further, there is nothing to indicate the detention lasted longer than necessary to satisfy the conditions of the investigative seizure. Therefore, because Trooper Scheierman conducted a lawful stop of the Defendant's vehicle, and his reliable drug-detection dog instinctively and without police misconduct indicated the presence of controlled substances inside that vehicle, there was no violation of the Fourth Amendment.

(R., pp. 123-24.) In reaching that conclusion, the district court relied on State v. Naranjo, 159 Idaho 258, 359 P.3d 1055 (Ct. App. 2016). (R., p. 122 n. 62.) In that case, officers initiated a traffic stop and, during a sniff of the exterior of the car, a drug-detecting dog spontaneously moved his head up and into the open window of the car and alerted to the presence of narcotics. Naranjo, 159 Idaho at 259-260, 359 P.3d at 1056-1057. Naranjo, and not the officers, had opened the window in the course of the traffic stop and left it open. Id. Naranjo argued that the Fourth Amendment was violated when the dog's head entered the car. Id. The Idaho Court of Appeals

held that the dog's intrusion through the window did not constitute a Fourth Amendment search because the dog instinctively followed an odor into Naranjo's car without any police misconduct, and in particular without having been prompted or instructed by officers to enter the car. Id. at 259-261, 359 P.3d at 1056-1058. According to the court, "absent police misconduct, the instinctive actions of trained drug dogs do not expand the scope of an otherwise legal dog sniff to an impermissible search without a warrant or probable cause." Id. at 260, 359 P.3d at 1057. See also State v. Cox, Docket No. 46219 (Idaho App., Jan. 16, 2020) (holding, under facts very similar to Naranjo, that no Fourth Amendment search occurred where officer knocked on driver's-side window, the driver opened the car door in response, and a drug-detecting dog later sniffed the interior of the car through the still-open door during a sniff of the car's exterior).[5]

On appeal, Randall appears to make two arguments. First, he argues for a per se rule that the entry of a drug-detecting dog into a car constitutes a Fourth Amendment search, even where the dog acts on instinct and there is no misconduct on the part of officers. (Appellant's brief, pp. 15-17.) Second, he argues that the district court's factual finding that Bingo entered the car on instinct, without any misconduct on the part of Trooper Scheierman, is clearly erroneous. (Appellant's brief, pp. 17-22.)

Randall's first argument has already been squarely rejected by the Court of Appeals in Naranjo, as well as the many federal cases on which it relied, and is unsupported by any of the cases he cites. Both the district court in this case (R., p. 122 ns. 32-65), and the Court of Appeals in Naranjo, 159 Idaho at 260-261, 359 P.3d at 1057-1058, cited numerous federal appellate cases that have—like the district court in this case and the Court of Appeals in Naranjo—held that a drug dog's entry into a car does not constitute a Fourth Amendment search if the dog acted

[5] While Cox is a published opinion, it is non-final.

instinctively and without police misconduct. See United States v. Pierce, 622 F.3d 209, 214 (3rd Cir. 2010) (finding no Fourth Amendment search when, without encouragement by police, the dog instinctively entered a car door that was left open by the defendant after officers asked him to leave the car); United States v. Sharp, 689 F.3d 616, 620 (6th Cir. 2012) (finding no Fourth Amendment search when a dog jumped through an open window because "absent police misconduct, the instinctive acts of trained canines . . . do[] not violate the Fourth Amendment" (citation omitted)); United States v. Stone, 866 F.2d 359, 362-364 (10th Cir. 1989) (finding no Fourth Amendment search when dog jumped in hatchback that was not opened for the purpose of permitting dog to enter, and police did not otherwise encourage entry); United States v. Hutchinson, 471 F.Supp.2d 497, 510-511 (M.D. Pa. 2007) (finding no Fourth Amendment search where a drug dog instinctively entered car window that suspect had opened, equating the scenario with the plain smell/plain view doctrines); United States v. Woods, 2008 WL 11396770 *5 (D. Kan. 2008) (citing Stone and finding no Fourth Amendment search in similar circumstances); Felders ex rel. Smedley v. Malcom, 755 F.3d 870, 880 (10th Cir. 2014) (collecting cases). By contrast, when a drug-detecting dog enters a car because it was provoked or prompted to do so by officers, or through misconduct serving no purpose but to facilitate a sniff of the car's interior, the Fourth Amendment is violated. See United States v. Winningham, 140 F.3d 1328, 1331 (10th Cir. 1998) (holding that dog's entry into van constituted a search because the officers opened a door, left it open, and there was no reason to do so but to facilitate the dog's entry); Gastelo-Armenta, 2010 WL 1440451 at *21-23 (finding Fourth Amendment search where officer opened car doors, ordered occupants out, shut one car door but left another open, and where canine officer instructed dog to enter car through open door). The per se rule advocated by

Randall—that any unauthorized entry of a drug-detecting dog constitutes a Fourth Amendment search—is foreclosed both by federal and Idaho case law.

Nor is any such rule supported by the cases he cites. He relies primarily on Florida v. Jardines, 569 U.S. 1 (2013), and United States v. Jones, 565 U.S. 400 (2012), for the proposition that there is a Fourth Amendment search where police gather information by means of conduct constituting a trespass. (Appellant's brief, pp. 16-17.) But Naranjo is perfectly consistent with those cases. In Jones, the Court held that where officers trespassed on an automobile by placing an electronic tracking device on it to gather information, doing so constituted a Fourth Amendment search requiring probable cause. Id. at 404-05. In Jardines, the Court held that where an officer takes "a trained police dog to explore the area around the home [onto the front porch] in hopes of discovering incriminating evidence," that act involves a trespass and a Fourth Amendment search. Id. at 9-10. In both cases, officers trespassed for the purpose of gathering information. But where a drug dog instinctively—without facilitation, prompting, or provocation from officers—enters a car, it is simply not true that *officers* trespassed for the purpose of gathering information. Naranjo and the many federal cases on which it relied correctly recognize that a drug dog's instinctive and unprovoked behavior cannot be attributed to law enforcement and does not constitute a trespass by officers, much less a trespass for the purpose of gathering information. See, e.g., State v. Miller, 766 S.E.2d 289, 296 (N.C. 2014) (addressing and rejecting argument that Jones and its emphasis on trespass suggests that a drug dog's instinctive entry into a car constitutes a Fourth Amendment search).

Randall's second argument focuses on the district court's factual findings regarding the nature of Bingo's entry into the car. The district court found that Trooper Scheierman "did nothing to initiate the dog's entry into the vehicle" and that "the drug dog made independent

entry into the Defendant's car because the dog detected an odor emanating from the vehicle." (R., pp. 123-24.) Randall argues that these factual findings are clearly erroneous and Bingo entered the car only as a result of misconduct on the part of Trooper Scheierman. (Appellant's brief, pp. 17-21.)

According to Randall, Trooper Scheierman somehow prompted or provoked, or, at least anticipated, Bingo's jump into the car. He claims that "it is clear in the trooper's dash-camera video that Trooper Scheierman walked the dog directly over to the open driver's side window," and "[i]t is clear from his position that he anticipated the dog would enter through the open window, which it did, because he positioned the dog directly in front of the driver's side window." (Appellant's brief, p. 19.) But the evidence is exactly to the contrary. As the district court found and as Trooper Scheierman testified, Bingo led Trooper Scheierman to the driver's-side window left open by Randall, not the other way around. (R., p. 123; Tr., p. 35, L. 22 – p. 36, L. 12.) The dash-cam video clearly shows Bingo leading Trooper Scheierman, walking in front of Trooper Scheierman and directly to the driver's-side window of the car, and jumping in with very little hesitation. (Ex. 1, 08:45 – 08:51.) Both the video and Trooper Scheierman's testimony support the district court's factual finding and there is no contravening evidence.

Randall also argues that the district court's factual finding that Bingo entered the car because he was following an odor is not supported by substantial and competent evidence. (Appellant's brief, pp. 21-22.) As an initial matter, it does not much matter why Bingo jumped into the car, so long as he was not prompted or provoked to do so by Trooper Scheierman. In Naranjo, for instance, the Court of Appeals rejected an argument similar to the one Randall is making here. The district court found that the drug dog in that case was "'acting by instinct and *leading itself to the odor source.*'" Naranjo, 159 Idaho at 260, 359 P.3d at 1057 (quoting the

district court) (emphasis in original). Naranjo argued that this was error because the dog had not indicated on the presence of narcotics prior to placing its head in the car. Id. The Court of Appeals rejected the view that "a drug dog's behavior before entering a vehicle is constitutionally significant," concluding instead that what is relevant is whether the dog's entry was instinctual or was encouraged or facilitated by police. Id. at 260-61, 359 P.3d at 1057-58. There is simply no evidence to suggest that Trooper Scheierman prompted Bingo's initial jump into the car.

But, contrary to Randall's suggestion, there is also substantial and competent evidence from which the district court reasonably concluded that Bingo was following an odor. Trooper Scheierman testified that Bingo is trained to track and indicate passively on the source of the odor of narcotics. (Tr., p. 34, L. 11 – p. 35, L. 6.) He testified that when Bingo was at the window, Bingo "paused briefly as he was sniffing, and then propelled himself inside of that open window," after which he immediately went into the back seat and indicated the presence of narcotics. (Tr., p. 35, L. 22 – p. 36, L. 19.) Though it is possible that Bingo entered the car for some other reason, it was surely reasonable for the district court to conclude that a drug dog trained to follow the scent of narcotics was following the scent of narcotics when he sniffed at the open window, immediately jumped into the car without any command or prompting from Trooper Scheierman, and then alerted to narcotics.

Next, Randall claims that even if Bingo instinctively jumped into the car without having been provoked or prompted to do so by Trooper Scheierman, "when the dog only jumped halfway up, [Trooper Scheierman] boosted the dog in through the window" and "[t]he dog probably would not have made the jump without the boost from Trooper Scheierman." (Appellant's brief, p. 19.)

Trooper Scheierman testified that when Bingo jumped into the window, he was about halfway in and got "hung up," at which point he assisted Bingo to avoid injury to the dog and damage to the car. (Tr., p. 68, L. 10 – p. 69, L. 7.) When Trooper Scheierman intervened, Bingo had already made entry to the car, though not completely so. As the district court found, Trooper Scheierman's "assistance was only given to prevent injury to the animal and car and came only after the dog had independently placed its paws on the open front driver's side window and jumped inside." (R., p. 123.) The video of the stop reflects that Bingo was at least halfway in the car when Trooper Scheierman pushed him the rest of the way in. (Ex. 1, 08:46 – 08:51.)

Contrary to Randall's suggestion, there is nothing in that video, and there is no other evidence, to suggest that Bingo was not going to make it all of the way into the car.[6] More importantly, Trooper Scheierman was in a difficult position and had little option but to assist Bingo all of the way into the car at that point. Randall apparently thinks that Trooper Scheierman should have done one of two things after Bingo jumped on his own initiative halfway into the car: pull him out backwards or let him try to complete entry into the car without assistance. Neither was a realistic option. As the video reflects, Bingo is a large dog and was at least halfway through the window when Trooper Scheierman assisted him. At that point, pulling

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[6] Randall also suggests that the district court's finding—that "'Trooper Scheierman did nothing to initiate the dog's entry into the vehicle'"—was erroneous in light of the video and Trooper Scheierman's testimony. (Appellant's brief, p. 19 (quoting R., p. 124).) That claim involves a clear misreading of the district court. Just prior to that sentence, the district court explicitly found that, after Bingo jumped and was halfway in the car, Trooper Scheierman assisted Bingo into the car to avoid injury to Bingo and damage to the car. (R., p. 123.) In the sentence identified by Randall as allegedly erroneous, the district court was not denying what it had just acknowledged, but was finding that Trooper Scheierman did nothing to *initiate* Bingo's entry into the car—that is, that Bingo jumped into the car without any prompting, encouragement, or provocation from Trooper Scheierman and Bingo was halfway in before Trooper Scheierman intervened to prevent injury to the dog. There is nothing in the record to suggest that that finding is erroneous, much less clearly erroneous.

Bingo out of the car backwards would have guaranteed that Bingo would fall out backwards and land awkwardly, risking injury to both Trooper Scheierman and the dog. The second option, letting Bingo finish his attempt to follow the scent without assistance, would either have ended with Bingo completely in the car, as in fact occurred, or with Bingo falling backwards out of the car, again risking injury. It would also have risked damage to the car as Bingo tried to scramble the rest of the way through the window. It was therefore perfectly reasonable under the circumstances for Trooper Scheierman to react as he did, and the circumstances that made it reasonable had nothing to do with facilitating a sniff of the car's interior.

There is thus no objective reason to believe that Trooper Scheierman was engaged in misconduct. He did not open the driver's-side window through which Bingo gained entry to the car and did not instruct Randall to leave the window open. (Tr., p. 74, Ls. 3-9.) Bingo instinctively jumped into the window, halfway into the car, without any instruction, provocation, or encouragement from Trooper Scheierman. (R., pp. 123-24.) Trooper Scheierman's testimony (Tr., p. 35, L. 22 – p. 36, L. 12) and the dash-cam video (Ex. 1, 08:45 – 08:51) both support that conclusion and there is no contrary evidence. He assisted Bingo the rest of the way into the car only *after* Bingo was already halfway into the car and doing so was an objectively reasonable means of preventing injury to his dog and to the car. (Ex. 1, 08:46 – 08:51; R., p. 123; Tr., p. 68, L. 10 – p. 69, L. 7.) Under the unique circumstances of this case, Trooper Scheierman's response to Bingo's unprovoked, instinctive jump into the window was objectively reasonable as a means of preventing injury to the dog and the car and did not constitute misconduct that transformed that entry into a Fourth Amendment search.

II.

Randall Has Not Shown That The District Court Abused Its Sentencing Discretion

Randall argues that his sentence of seven years with three years fixed is excessive, though he acknowledges that it is within statutory limits. (Appellant's brief, p. 23.)

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry into whether the trial court: "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018).

Randall cannot challenge the three-year, fixed portion of his sentence. He pled guilty to one count of trafficking in marijuana weighing between five and twenty-five pounds, which is associated with a mandatory-minimum sentence of three years in prison. (R., p. 160; I.C. § 37-2732B(a)(1)(B).) He cannot argue that a mandatory minimum sentence is excessive. See State v. Hansen, 138 Idaho 791, 797, 69 P.3d 1052, 1058 (2003) (holding that defendant could not challenge a mandatory minimum sentence as excessive). Because the three-year portion of his sentence was required to be fixed, neither can he argue that it should have been partially indeterminate. See I.C. § 37-2732B(a)(1)(B) (requiring a "mandatory minimum fixed term" of three years); State v. Ephraim, 152 Idaho 176, 179, 267 P.3d 1291, 1294 (Ct. App. 2011)

(holding that mandatory minimum sentences are fixed sentences). Further, he specifically requested a three-year mandatory minimum term of imprisonment at sentencing. (Tr., p. 111, Ls. 9-13.) He cannot then argue on appeal that the district court erred by imposing one. See State v. Griffith, 110 Idaho 613, 614, 716 P.2d 1385, 1386 (Ct. App. 1986) (holding that the invited error doctrine precludes a defendant from recommending a particular sentence and then arguing on appeal that the district court erred by imposing it).

Randall's argument with respect to his sentence, then, must be limited to the four-year indeterminate period. In reviewing that portion of his sentence, this Court assumes that he will be paroled at his first opportunity. Oliver, 144 Idaho at 727, 170 P.3d at 392. He therefore "apparently contends that it is unreasonable for him to be on parole supervision for four years after he is released from incarceration." Id. In support of that claim, he points to his family support and his regret about having trafficked marijuana. (Appellant's brief, pp. 24-25.)

The record supports the district court's exercise of sentencing discretion. Though Randall pled guilty to a violation of I.C. § 37-2732B(a)(1)(B), trafficking between five and twenty-five pounds of marijuana, he admitted to a more serious violation of I.C. § 37-2732(B)(a)(1)(C), trafficking between twenty-five and one hundred pounds of marijuana. (PSI, p. 5 (admitting that he was trafficking sixty-five pounds of marijuana).[7]) The offense that he actually committed is associated with a mandatory minimum of five years in prison. I.C. § 37-2732(B)(a)(1)(C). In addition, Randall received an LSI-R score of 22, reflecting that he was a moderate risk to reoffend. (PSI, p. 12.) He stated that he is a daily user of marijuana (PSI, p. 9), and reported "severe substance use problems" (PSI, p. 20). The district court could reasonably

[7] References to "PSI" are to the file titled "Appeal Certificate of Exhibits Confidential PSI Volume 1," which includes the presentence report.

conclude that, in addition to programming while in prison, both Randall and the public would benefit from a period of supervision following his release. See Oliver, 144 Idaho at 727, 170 P.3d at 392 (holding that four-year period of supervised release was reasonable in light of substance abuse issues). Finally, the district court noted that the indeterminate portion of the sentence would be beneficial as motivation to ensure that Randall does well in the prison setting. (Tr., p. 115, Ls. 2-15.) That consideration too suggests that the sentence was reasonable. See State v. Wright, 134 Idaho 79, 84, 996 P.2d 298, 303 (2000) (holding that indeterminate portion of sentence was not excessive where it was intended by the district court, in part, to provide "leverage or motivation" to ensure rehabilitation and good behavior in prison).

Notwithstanding the allegedly mitigating factors to which Randall points, and about which the district court was well-aware, Randall has not shown that the district court abused its sentencing discretion by requiring Randall to submit to four years of supervised release.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 24th day of January, 2020.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of January, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Andrew V. Wake
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Deputy Attorney General

AVW/dd