

IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 53539

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	Boise, May 2026 Term
	)	
v.	)	Opinion Filed: October 14, 2026
	)	
SHAWNA RAE PENDLETON,	)	Melanie Gagnepain, Clerk
	)	
Defendant-Respondent.	)	
	)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Jason D. Scott, District Judge.

The district court's order granting the motion to suppress is reversed and the case is remanded.

Raúl R. Labrador, Idaho Attorney General, Boise, for Appellant. Kale D. Gans argued.

Erik R. Lehtinen, Idaho State Appellate Public Defender, Boise, for Respondent. Sally J. Cooley argued.

BEVAN, Justice.

This case presents a novel question in Idaho's continuing effort to define the constitutional boundaries of drug dog sniffs during traffic stops: Does a drug dog's momentary contact with the exterior of a vehicle transform an otherwise lawful free-air sniff into a trespassory search under the Fourth Amendment? In October 2021, Shawna Rae Pendleton was stopped by police because her vehicle registration had expired. During the stop, Officer Tad Miller and his drug dog, Edo, were summoned to conduct a free-air sniff of Pendleton's vehicle. As Edo worked around the vehicle, he closely sniffed the driver's-side and passenger-side doors, briefly touching at least one door handle with the tip of his nose. Edo alerted to the odor of illegal drugs, and a subsequent search of the vehicle revealed methamphetamine, marijuana, alprazolam, and drug paraphernalia. Pendleton was subsequently arrested and charged with three counts of possession of a controlled substance and one count of possession of drug paraphernalia.

Pendleton moved to suppress the evidence obtained from the stop, arguing that Edo's brief contact with her vehicle constituted a trespass that transformed the free-air sniff into a search under

the Fourth Amendment. The district court, relying on *State v. Dorff*, 171 Idaho 818, 526 P.3d 988 (2023), agreed and granted Pendleton’s motion. The State appealed, contending that Edo’s momentary contact with the exterior of the vehicle was not a trespass because it did not amount to intermeddling as defined in *Dorff*, 171 Idaho at 826–27, 526 P.3d at 996–97. Alternatively, the State argues that Edo’s behavior prior to the contact constituted an alert, giving the State probable cause to search the vehicle regardless of any subsequent contact. The Court of Appeals heard this case initially and agreed with the State, reversing the district court. Pendleton filed a petition for review with this Court, which was granted. As set forth below, we reverse the decision of the district court.

I. FACTUAL AND PROCEDURAL BACKGROUND

This is the second time this case has come before this Court. Three years ago, we decided *State v. Pendleton (Pendleton I)*, 172 Idaho 825, 537 P.3d 66 (2023). That appeal centered on Pendleton’s discovery requests related to Edo’s past performance. *See id.* at 831, 537 P.3d at 72. We ultimately held that the district court had not abused its discretion in compelling the State to produce the requested material. *See id.* at 837–38, 537 P.3d at 78–79. This appeal turns on a different issue: whether Edo transformed the free-air sniff into an unreasonable search by touching Pendleton’s vehicle with his nose. While there is some relation between the two appeals, this appeal focuses on facts that were not relevant in *Pendleton I*. As such, a brief factual background will highlight those differences.

A. Factual Background

On October 29, 2021, Officer Miller and Edo were asked to conduct a free-air sniff around Pendleton’s vehicle. Officer Miller and Edo arrived at the scene and exited the police vehicle after Officer Miller had attached a six-foot leash to Edo’s collar. Officer Miller then walked Edo to a spot a few feet in front of Pendleton’s car where he ordered Edo to sit. Once Edo was situated, Officer Miller ordered the dog to begin the free-air sniff. Edo began by rapidly approaching the vehicle’s driver side door, “making a huffing sound about three times along the way.” Officer Miller interpreted Edo’s behavior, “especially the huffing, a product of intense, closed-mouth sniffing—as a signal that Edo had detected a drug odor and was tracking the odor to its source.” Edo briefly paused near the exterior handle of the driver’s door and “nosed” it before turning his head sharply toward Officer Miller. This movement, which Officer Miller calls a “head snap,” is Edo’s “final alert” to the presence of drugs.

After Edo gave this first “final alert,” Officer Miller instructed Edo to continue the free-air sniff. Edo then “exhibited substantially the same behavior” as he approached the front passenger side door. Edo “pressed his nose toward that door’s exterior handle, likely touching it as well, and exhibited substantially the same final-alert behavior” as before. The entire free air sniff only lasted about ten seconds. Based on Edo’s behavior, Officer Miller determined that Edo had alerted to the presence of drugs, giving the police probable cause to search the car. The police then searched the car and found some of the contraband at issue, leading to Pendleton’s arrest. The police found additional contraband on Pendleton’s person after conducting a search incident to arrest. The police did not have a search warrant before conducting either search.

B. Procedural Background

After this Court issued its decision in *Pendleton I*, Pendleton filed a motion to suppress the evidence gathered from the traffic stop. Pendleton raised two arguments in her motion to suppress. The first was that Edo had trespassed against her car by touching it with his nose, thereby converting the free-air sniff into an unlawful search. The second was that Edo was unreliable as a drug dog. The State opposed Pendleton’s motion to suppress, maintaining that Edo was a reliable drug-detection dog, and that the sniff did not constitute a trespass. Specifically, the State contended that Edo’s brief contact with the vehicle did not amount to intermeddling and was therefore not trespassory. Alternatively, the State asserted that Edo had already alerted to the presence of illegal drugs before making contact with the vehicle, thereby providing probable cause to conduct the search.

The district court bifurcated its consideration of Pendleton’s motion, choosing to first focus on Pendleton’s argument that Edo had trespassed against her vehicle. It reserved consideration of Edo’s reliability for a later date, in the event it concluded Edo had not trespassed against the vehicle. At the hearing on the trespass issue, the State presented witness testimony from Officer Miller and Corporal Steve Bonas about the behaviors that Edo exhibited when alerting to drugs. Officer Miller also testified that he believed that Edo had started alerting to the presence of narcotics prior to touching Pendleton’s vehicle with his nose. Pendleton did not present any witnesses, though she did introduce a video exhibit of the sniff itself. Both parties also presented argument, reiterating their positions from their earlier filings. Following those arguments, the district court took the issue under advisement.

The district court issued an order granting Pendleton’s motion to suppress. While the district court found the State’s witnesses to be generally credible, the court ruled that the sniff had escalated to an unlawful search. The court determined that Edo had trespassed against Pendleton’s vehicle by touching it with his nose, and that the contact had been initiated in the pursuit of additional information. The district court also concluded that a reasonable person would not have discerned that Edo had tracked the drug odor to the vehicle before Edo touched the vehicle with his nose. The district court noted that the sniff was “very brief,” and that Edo had nosed the door handle only a few seconds after the sniff had started. The district court doubted that Officer Miller or a reasonable person could have identified the split second that Edo traced the odor to the door before Edo made contact because “Edo nosed the door handle almost immediately after the sniff began.” As such, the district court determined that fidelity to this Court’s precedent in *State v. Dorff*, 171 Idaho 818, 526 P.3d 988 (2023), required suppression.

The State appealed the district court’s order, and the appeal was assigned to the Court of Appeals. That court reversed on both grounds, determining that the contact was not a trespass and that Edo’s behavior before contact gave the police probable cause to search the vehicle. *See State v. Pendleton*, No. 51881, 2025 WL 2485591 (Ct. App. Aug. 29, 2025). Pendleton timely filed a petition for review with this Court, which was granted.

II. STANDARDS OF REVIEW

“When reviewing a case on petition for review from the Court of Appeals this Court gives due consideration to the decision reached by the Court of Appeals” *State v. Miramontes*, 170 Idaho 920, 923, 517 P.3d 849, 852 (2022) (quoting *State v. Gonzales*, 165 Idaho 667, 671, 450 P.3d 315, 319 (2019)). However, we directly review the decision of the district court. *Id.* (citation omitted). “When this Court reviews a district court’s order granting or denying a motion to suppress, the standard of review is bifurcated.” *Id.* (citation modified). This Court accepts the trial court’s findings of fact “unless they are clearly erroneous,” but “freely review[s] the trial court’s application of constitutional principles in light of the facts found.” *Id.* (quoting *Gonzales*, 165 Idaho at 671, 450 P.3d at 319).

III. ANALYSIS

The State advanced two grounds for reversing the district court’s suppression order. Because we conclude that Edo’s contact with Pendleton’s vehicle did not constitute a search under

the Fourth Amendment, we need not address the State’s alternative argument that probable cause existed before Edo made contact with the vehicle.

A. The district court erred by concluding that the drug dog’s minimal contact with the vehicle’s door constituted a search.

The State concedes that Edo touched Pendleton’s car briefly with his nose, but the State argues that this contact did not transform the free-air sniff into an unreasonable search, asserting that Edo did not trespass against Pendleton’s vehicle because his contact with the vehicle’s door handles was “minimal” and “incidental.” We agree and hold that Edo did not trespass against Pendleton’s vehicle by briefly contacting the handle of the car with the tip of his nose.

It is the well-established, fundamental right of all Americans “to be secure in their persons, houses, papers, and effects[] against unreasonable searches and seizures” U.S. Const. amend. IV. And “[i]t is beyond dispute that a vehicle is an ‘effect’ as that term is used in the [Fourth] Amendment.” *United States v. Jones*, 565 U.S. 400, 404 (2012) (citation omitted). However, free-air sniffs by well-trained narcotic dogs are considered “*sui generis*” in that they are typically not treated as searches under the Fourth Amendment. *Illinois v. Caballes*, 543 U.S. 405, 408–09 (2005) (citations omitted); *see also State v. Dorff*, 171 Idaho 818, 828, 526 P.3d 988, 998 (2023) (recognizing that a “free-air” sniff is not a search under the Fourth Amendment because there is no privacy interest in the free-air that surrounds a vehicle). Nevertheless, there are instances in which drug dog sniffs can become unreasonable searches. *See Florida v. Jardines*, 569 U.S. 1, 11–12 (2013) (holding that a drug dog sniff was an unreasonable search because it was conducted while standing on the curtilage of the defendant’s home).

The U.S. Supreme Court has identified two different tests for determining if government action constitutes a search under the Fourth Amendment: the “reasonable-expectation-of-privacy test” and the “common-law trespassory test.” *Jones*, 565 U.S. at 409. Action that constitutes a search under either test may violate the Fourth Amendment if unreasonable. *See id.* In this case, the relevant test is the “common-law trespassory test,” also referred to as the “property-based test” in *Dorff*. *See Dorff*, 171 Idaho at 821, 823–24, 526 P.3d at 991, 993–94.

The common-law trespassory test, which encompasses the “traditional property-based understanding of the Fourth Amendment,” considers whether “the Government obtain[ed] information by physically intruding” on constitutionally protected areas. *Jardines*, 569 U.S. at 5, 11 (citations omitted). If the government has trespassed against this “proprietary interest” for the purpose of obtaining information, then a Fourth Amendment search has occurred. *See Dorff*, 171

Idaho at 824, 526 P.3d at 994. *See also Jardines*, 569 U.S. at 5, 11. In the drug dog context, a sniff of a vehicle becomes a search for Fourth Amendment purposes when the dog has “(1) trespassed against [the defendant’s] vehicle (2) for the purpose of obtaining information about, or related to, the vehicle.” *Dorff*, 171 Idaho at 824, 526 P.3d at 994 (citation modified). In Idaho, a drug dog trespasses against a defendant’s vehicle when the dog “intermeddles” with the vehicle. *See id.* at 826–27, 526 P.3d at 996–97. Contact that does not rise to the level of intermeddling does not constitute a trespass for Fourth Amendment purposes. *See id.* at 827–28, 526 P.3d at 997–98.

The disagreement over whether Edo trespassed boils down to the parties’ differing interpretations of the word “intermeddle.” This Court in *Dorff* stated that it “is often relatively straightforward” to determine if something constitutes intermeddling. *Id.* at 827, 526 P.3d at 997. This Court stated that intermeddling is “the difference between someone who brushes up against your purse while walking by—and someone who, without privilege or consent, rests their hand *on* your purse or puts their fingers *into* your purse” *Id.* “It is also the difference between a dog’s tail that brushes against the bumper of your vehicle as it walks by—and a dog that, without privilege or consent, approaches a vehicle to jump *on* its roof, sit *on* its hood, stand *on* its window or door—or enter *into* your vehicle.” *Id.*

In this case, the district court took an expansive view of the term “intermeddle.” Relying on this Court’s statement in *Dorff* that “intentionally bringing about a physical contact with the chattel” constitutes intermeddling, 171 Idaho at 826, 526 P.3d at 996 (quoting Restatement (Second) of Torts § 217 cmt. e (1965)), the district court concluded that Edo’s contact with the door handle was sufficient to constitute a trespass to chattels. In reaching that conclusion, the district court analogized Edo’s conduct to a thief brushing the outside of a purse to discern its contents, reasoning that the contact was intentionally made to obtain information and therefore constituted intermeddling.

The State stresses that intermeddling is a “heightened form of contact” that “violates the rights to possess, use, or exclude, or some combination of those rights.” (Quoting *Dorff*, 171 Idaho at 827–28, 526 P.3d at 997–98). Accordingly, the State argues that intermeddling requires intentional contact of such a character or degree that it meaningfully interferes with the owner’s possessory interest in the property. Because Edo only briefly touched the door handle with the tip of his nose, the State contends that the contact was neither intermeddling nor trespassory. We

agree. Intermeddling requires more than minimal physical contact; it requires a meaningful interference with the owner's possessory interest in property.

In *Dorff*, this Court noted the historical meaning of “intermeddling” as “[i]nterposing officiously’ or ‘intruding[.]” 171 Idaho at 826–27, 526 P.3d at 996–97 (quoting *Intermeddling, Webster’s Dictionary* (1828), <https://webstersdictionary1828.com/Dictionary/intermeddling>). Historically, to “interpose” meant “[t]o place between or among; to thrust in; to intrude, as an obstruction, interruption or inconvenience.” *Interpose, Webster’s Dictionary* (1828), <https://webstersdictionary1828.com/Dictionary/interpose>. These concepts contemplate conduct that intrudes upon, obstructs, or interferes with another’s possessory interests; they do not encompass every physical contact with property. A fleeting, momentary contact with another’s property, standing alone, does not constitute an obstruction, interruption, or inconvenience and therefore does not amount to an interference with the owner’s possessory interest. See *Dorff*, 171 Idaho at 827, 526 P.3d at 997 (noting that persistent contact may amount to a continuing trespass because it interferes with the owner’s exclusive, sole right of possession).

Indeed, this Court has described intermeddling as a “heightened form of contact” that violates the “dignitary or property interests in the inviolability of th[e] chattel” *Id.* at 826–27, 526 P.3d at 996–97. The adjective “heightened” modifies the nature of the contact itself, not merely the actor’s state of mind. To be sure, the accidental or unavoidable nature of the conduct may excuse contact that would otherwise be objectionable. But the converse does not follow. Contact does not become a heightened intrusion simply because it was intentional. Rather, the contact must itself be of such a character or degree that it meaningfully interferes with the owner’s possessory interest in the property. A person who briefly places a hand on another’s vehicle while walking through a crowded parking lot has intentionally touched the vehicle, but few would characterize that minimal contact as an intrusion upon the owner’s possessory rights. Intentional contact alone is therefore insufficient.

Indeed, the Restatement language (as quoted in *Dorff*) relied upon by the district court reinforces this distinction. As noted above, the district court quoted *Dorff* as stating that “[i]ntentionally bringing about a physical contact with the chattel” constitutes intermeddling. (Quoting *Dorff*, 171 Idaho at 826, 526 P.3d at 996). However, that quotation was only part of the Restatement’s definition. In full, the Restatement, as quoted in *Dorff*, defines “intermeddling” as “intentionally bringing about a physical contact with the chattel[,] *as when an actor beats*

another's horse or dog, or by intentionally directing an object or missile against it." *Id.* at 826, 526 P.3d at 996 (emphasis added) (citation modified).

The Restatement's illustrations are significant. They do not describe mere intentional contact with another's property. Instead, they describe the kind of intentional physical contact that intrudes upon or interferes with the owner's possessory interest in the property. *See* Restatement (Second) of Torts § 217 cmt. e (1965). In *Dorff*, this Court was describing a "heightened" form of intentional contact, not just any kind of intentional contact. Thus, the phrase "physical contact" cannot be read in isolation. After all, the Restatement did not define intermeddling as petting a dog without permission. *See* Restatement (Second) of Torts § 217 cmt. e (1965). Rather, the Restatement described intermeddling as *beating* a dog without permission. *Id.* That understanding sheds light on *Dorff*'s description of intermeddling as a "heightened form of contact." *See* 171 Idaho at 827, 526 P.3d at 997.

Applying the foregoing analysis, we conclude that Edo's contact with the car did not rise to the level of intermeddling. The exhibit provided by Pendleton shows that Edo approached the door handle and briefly touched it with the tip of his nose. The contact lasted for less than one second and ended when Edo pulled away to give his final alert. Edo neither entered nor occupied any portion of the vehicle, and his momentary contact was not the type of contact that interfered with Pendleton's possessory interest in the property. *See id.* (noting that it is a continuing trespass to make "persistent contact" with another's effects, interfering with the owner's exclusive, sole right of occupation).¹

In short, Edo's contact with the door handle did not obstruct, interrupt, or inconvenience Pendleton's possession of the vehicle. Nor did the contact meaningfully interfere with Pendleton's right to possess, use, or exclude others from the vehicle. Accordingly, we hold that the contact did not constitute intermeddling and therefore was not trespassory.

Edo's contact with Pendleton's vehicle did not constitute a trespass. Absent a trespass, the sniff did not become a search within the meaning of the Fourth Amendment, regardless of whether

¹ Note that the duration of the contact is relevant only to the question of continuing trespass. *See Dorff*, 171 Idaho at 829, 526 P.3d at 999 (holding that the amount of time that the drug dog had his paws on the vehicle was "not dispositive" of whether the contact amounted to intermeddling, but "the seconds that d[id] pass" while the dog "occupied" the vehicle were sufficient to constitute intermeddling).

the contact was made for the purpose of obtaining information. The district court therefore erred in granting Pendleton's motion to suppress on that basis.

IV. CONCLUSION

We hold that the district court erred by granting Pendleton's motion to suppress. We reverse and remand for further proceedings consistent with this opinion.

Chief Justice BRODY and Justice ZAHN CONCUR.

MOELLER, J., concurring in the result.

I concur in the majority's holding that a drug dog's brief contact with the exterior of a car does not constitute an unreasonable search under the Fourth Amendment. This outcome is logically and legally sound. However, I write separately because this case continues to raise the very concerns I expressed in my dissent in *State v. Dorff*, 171 Idaho 818, 526 P.3d 988 (2022) (Moeller, J., dissenting), and further steers our dog sniff jurisprudence deeper into the same "murky and uncertain legal waters" of which I warned.

Unfortunately, the majority opinion follows the path of *Dorff* by scrutinizing the natural animal behavior of a drug detection dog, viewing it through the lens of human intent, and then deciding whether the dog "intermeddled." While in this instance the majority correctly concluded that the dog's brief touching of the exterior of the car with its nose was insufficient to establish that the dog had intermeddled, the majority has again tethered itself to the troubling common law trespass analysis established in *Dorff*. Thus, we will continue to require trial judges to ascertain whether a drug detection dog's action violated a defendant's rights by relying on principles grounded in tort law, not the Fourth Amendment to the United States Constitution.

In *Dorff*, the Court held that a drug dog's contact must amount to "intermeddling" to qualify as a "trespass" under its property-based test. The Court defined the term "intermeddling" as "[i]ntentionally bringing about a physical contact with the chattel[,] as when an actor beats another's horse or dog, or by intentionally directing an object or missile against it." *Dorff*, 171 Idaho at 826, 526 P.3d at 996 (quoting RESTATEMENT (SECOND) OF TORTS § 217 cmt. e (1965)). Thus, the dog's intent was unavoidably made part of the analysis. Heeding this precedent, the district court in this case concluded that Edo's brief contact with the car door's handle was an intentional touch and constituted a trespass of chattels. In reversing that decision, the majority has clarified that the intermeddling described in *Dorff* refers to a heightened form of intentional

contact. However, by continuing to rely on the concept of intermeddling, an approach grounded in common law trespass, the Court has repeated its earlier constitutional misstep.

This Court’s reasoning in *Dorff* relied heavily on the United States Supreme Court’s ruling in *United States v. Jones*, 565 U.S. 400 (2012). However, to understand the changes *Jones* wrought in Fourth Amendment law, we must first harken back to the status of the law before *Jones* was decided. In *Silverman v. United States*, 365 U.S. 505 (1961), the United States Supreme Court explicitly rejected a trespass-based analysis and adopted a physical intrusion test in evaluating searches under the Fourth Amendment. The Supreme Court then explained: “Fourth Amendment rights are not inevitably measurable in terms of ancient niceties of tort or real property law. . . . [The] decision here does not turn upon the technicality of a trespass upon a party wall as a matter of local law. It is based upon the reality of an actual intrusion into a constitutionally protected area.” *Id.* at 511–512. Later in *Katz v. United States*, 389 U.S. 347, 353 (1967), which concerned an electronic listening recording device attached to a public telephone booth, the Court clarified that an unconstitutional search can still occur even without a physical intrusion. The Court reasoned that, “once it is recognized that the Fourth Amendment protects people—and not simply areas—against unreasonable searches and seizures it becomes clear that the reach of the Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure.” *Katz*, 389 U.S. at 353 (internal quotation marks omitted).

Following *Katz*, the Supreme Court seemed to depart from its prior property-based test and began looking to the “reasonable-expectation-of-privacy test” as the only relevant search test. In *Smith v. Maryland*, 442 U.S. 735, 739 (1979), the Supreme Court explained that *Katz* is “our lodestar” in determining whether governmental activities constituted a search. The Fourth Amendment landscape suddenly changed again in 2012 with the United States Supreme Court’s decision in *United States v. Jones*, 565 U.S. 400, 406 (2012), which breathed new life into the “property-based approach” that preceded *Katz*. (citing *Kyllo v. United States*, 533 U.S. 27, 31 (2001). See Orin S. Kerr, *The Two Tests of Search Law: What Is the Jones Test, and What Does That Say About Katz?*, 103 Wash. U.L. Rev. 309, 325 (2025).

The majority in *Dorff* quoted heavily from *Jones* in support of their holding. For example, it highlighted the following language: “Although neither test [property-based or reasonable expectation of privacy] is exclusive or necessary to determining whether a ‘search’ occurred within the meaning of the Fourth Amendment, . . . the traditional property-based test endures as a

‘baseline’ of protection against governmental searches as it existed when the Fourth Amendment was adopted.” *Dorff*, 171 Idaho at 823, 526 P.3d at 993 (citing *Jones*, 565 U.S. at 411). The *Dorff* majority then opted to apply *only* a trespass-based analysis, holding: “Like our decisions in *Randall*, [169 Idaho 358, 370, 469 P.3d 844, 856 (2021)], and *Howard*, [169 Idaho 379, 382–83, 496 P.3d 865, 868–69 (2021)], this case is *only* concerned with the property-based test—not the “reasonable expectation of privacy” test under *Katz*.” *Id.* (emphasis in original).

It is this statement in *Dorff* that clearly illuminates where its constitutional misstep occurred. The Idaho cases *Dorff* relied on, *Howard* and *Randall*, concerned significant intrusions into a constitutionally protected area (drug dogs entering the interior of a vehicle), as did *Jones* (affixing a GPS device to a car was deemed a “physical intrusion”). *Jones*, 565 U.S. at 404. However, *Dorff* was not an intrusion case—and neither is the case at hand. The drug dog in *Dorff* and in this case only made contact with the *exterior* of the vehicles. Thus, there was no “intrusion” into a constitutionally protected area.

An examination of Fourth Amendment law after *Jones* helps clarify that *Jones* implemented an intrusion standard—not the trespass-based standard applied by the majority here and in *Dorff*. Two major Supreme Court cases following *Jones*, *Florida v. Jardines*, 569 U.S. 1 (2013), and *Grady v. North Carolina*, 575 U.S. 306 (2015), clarified that the pre-*Katz* test restored in *Jones* was actually the *Silverman* intrusion test—not a common law trespass test. Both cases described *Jones* as an intrusion case, and, more importantly, never once used the word “trespass” in their analysis. See Kerr, at 334. Accordingly, the *Jones* test is best understood as an intrusion standard applicable when there is an actual *intrusion of the interior*, or the government *physically attaches* something to the surface of one’s person, house, paper, or effects. See *Grady*, 575 U.S. at 309. While physical attachment may not actually breach the exterior, the attachment is such a substantial interference that “the Government obtain[ed] information by physically intruding on a constitutionally protected area, such [that] a search [] undoubtedly occurred.” *Grady*, 575 U.S. at 309.

In sum, *Dorff* went wrong when it utilized a tort-based trespass analysis, reserved for cases where there was an actual intrusion into a constitutionally protected area, and applied it to a case where there was no such intrusion. Unfortunately, such an approach is as improper in this case as it was in *Dorff*. The first question asked in both cases should have been: absent a physical intrusion into the vehicle, did the defendant in either case have a reasonable expectation of privacy in the

exterior portions of the vehicle touched by the drug dogs? Instead, the Court asked the wrong question in both cases: did the contact with the exterior of the vehicle amount to intermeddling, thereby rendering it a trespass of chattels?

It is worth remembering that not so long ago, this Court cautioned against relying on trespass law to define Fourth Amendment rights:

As the Supreme Court of the United States has explained, there is no constitutional nexus between criminal or civil trespass laws and Fourth Amendment jurisprudence:

[I]t does not follow that the right to exclude conferred by trespass law embodies a privacy interest also protected by the Fourth Amendment. To the contrary, the common law of trespass furthers a range of interests that have nothing to do with privacy and that would not be served by applying the strictures of trespass law to public officers.

Oliver v. United States, 466 U.S. 170, 184 n.15 (1984). In other words, trespass laws are not rooted in the same constitutional soil from whence the reasonable expectation of privacy standard has grown. *See Kyllo v. United States*, 533 U.S. 27, 34 (2001).

State v. Albertson, 165 Idaho 126, 130–31, 443 P.3d 140, 144–45 (2019) (internal citations modified). Unfortunately, since *Dorff*, it appears that we may have retreated from this principle.

Idaho is not alone in confronting troublesome dog-sniff cases. Following our opinion in *Dorff*, the Iowa Supreme Court addressed an almost identical issue in *State v. Bauler*, 8 N.W.3d 892, 894 (Iowa 2024), and reached the opposite conclusion. They held that “the legality of a dog sniff does not turn on the fine point of whether the handler or the dog briefly touched the outside of the vehicle, so long as there was no entry into the private space inside the vehicle.” *Id.* at 894–95.² This is consistent with our pre-*Dorff* dog-sniff jurisprudence, which I continue to believe was the proper approach. *See, Howard*, 169 Idaho at 382–83, 496 P.3d at 868–69 (“[W]hen a law enforcement drug dog intrudes, to any degree, into the interior space of a car during a drug sniff, without express or implied consent to do so, a search has occurred under the Fourth Amendment.”); *State v. Randall*, 169 Idaho at 370, 469 P.3d at 856 (“[T]hough an exterior sniff of a car is not a search under *Caballes*, it becomes a search under *Jones* when a drug dog trespasses into the car’s interior.”).

² Of note, the Iowa Supreme Court facetiously referred to its holding as “ruff justice.” *Bauler*, 8 N.W.3d at 894.

Moreover, the Iowa Supreme Court’s reasoning for treating a dog sniff differently from a search by a human actor was both constitutionally grounded and logically compelling. First, they cited *United States v. Place*, 462 U.S. 696, 707 (1983), for the longstanding principle that “a canine sniff is sui generis. We are aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure.” Next, referencing our decision in *Dorff*, they considered the real-world implications of what they were deciding:

Obviously, a dog is not the same as a human. No one cares if a dog examines their cell phone or follows them into the bathroom. So applying common law concepts derived from human interactions in an anthropomorphic manner to dog sniffs makes no sense. When a handler, in the course of an otherwise lawful exterior dog sniff, briefly touches and allows the dog to briefly touch the outside of the vehicle, that innocuous occurrence should be considered a nonevent. Would anyone complain if a dog sniffing parked cars for explosives outside our state capitol building briefly put its paws on one of those vehicles? If there's an issue, it's the dog sniff itself, not the paws. A dog sniff that takes place in the open air, and does not go beyond the normal scope of a dog sniff, is as valid under article I, section 8 as it is under the Fourth Amendment.

This is the very point made by the dissenters in *Dorff*.

Bauler, 8 N.W.3d at 906.

Here, in addition to its Fourth Amendment infirmities, the majority’s ruling continues to improvidently sail in *Dorff*’s wake by ignoring the very nature of dogs. The unavoidable truth that no one has confronted is that Edo, as the district court found, most likely *did intend* to contact Pendleton’s car with his nose. He did so because dogs instinctively use their entire body when picking up a scent—not because they are attempting to intermeddle with someone’s personal chattels. *See Dorff*, 171 Idaho at 831, 526 P.3d at 1001 (Moeller, J., dissenting). Put simply, a dog is not capable of formulating the requisite intent to intermeddle.³ Thus, an instinctive act by a dog is not the equivalent of an intent to intermeddle even if we were to apply the tort-based trespass analysis from *Dorff*. Again, as the Iowa Supreme Court aptly observed: “applying common law concepts derived from human interactions in an anthropomorphic manner to dog sniffs makes no sense.” *Bauler*, 8 N.W.3d Id. at 906.

Returning to the facts of this case, whether Edo “intermeddled” is irrelevant because his actions (sniffing a car door’s handle and briefly contacting it with his nose) did not touch upon the

³ However, as most feline owners can attest, the jury may still be out on cats.

core purpose of the Fourth Amendment—protecting the privacy and security of individuals against *unreasonable government intrusions*. See *State v. Rebo*, 168 Idaho 234, 238, 482 P.3d 569, 573 (2021) (quoting *Carpenter v. United States*, 585 U.S. 296, 303 (2018)). Simply put, a dog’s brief, minimal, and noninjurious contact with the exterior of a vehicle should not be considered a constitutional violation when it threatens neither the privacy nor security of citizens—it is “just a dog behaving like a dog.” *Dorff*, 171 Idaho at 831, 526 P.3d at 1001 (Moeller, J., dissenting). If a car is somehow damaged by the dog’s contact, this can be resolved through a civil proceeding—which is precisely where a common law trespass of chattels analysis belongs. Moreover, police remain “responsible for training and controlling drug dogs as tools of enforcement” to ensure that they follow proper procedures. *Id.* (citing *Randall*, 169 Idaho at 369, 496 P.3d at 855). However, this does not mean the Court should regulate such a tool into inefficacy by imposing unrealistic requirements that go against a drug dog’s very nature and create arbitrary distinctions unrelated to the purposes of the Fourth Amendment.

My colleagues who have separately concurred deem my disagreement with *Dorff*’s rationale as “purely academic.” It is not. The rule the Court leaves in place has a concrete and unfortunate consequence: Idaho’s trial courts must continue to parse a drug dog’s intent through *Dorff*’s tort-based intermeddling analysis, when a far simpler—and more constitutionally sustainable—inquiry is available to them. The Fourth Amendment question is not what the dog meant to do; it is what the dog did. In other words, our constitutional query should be whether the drug dog *actually intruded* upon a constitutionally protected area or violated a reasonable expectation of privacy, not what it *intended* to do. Ultimately, this approach would allow our trial courts to fulfill the core purposes of the Fourth Amendment without requiring judges to borrow from tort law and undertake the absurd task of divining a drug dog’s intentions.

Justice MEYER CONCURS.

BRODY, C.J., concurring.

I concur with the majority’s holding, consistent with *State v. Dorff*, 171 Idaho 818, 526 P.3d 988 (2023), that Edo’s incidental contact with Pendleton’s car does not rise to the level of intermeddling sufficient to violate the Fourth Amendment’s prohibition against unreasonable searches. I write separately to address the concurrence’s unfounded assertion that common-law trespass doctrine should have no place in the Court’s Fourth Amendment jurisprudence.

I begin by surveying the unresolved questions in the United States Supreme Court’s Fourth Amendment “search” caselaw, which, contrary to the concurrence’s portrayal, accounts for the “murky and uncertain legal waters” in this area. *See Dorff*, 171 Idaho at 829, 526 P.3d at 999 (Moeller, J., dissenting). I then explain why the use of common-law trespass principles to identify a Fourth Amendment “search,” as embraced by a majority of this Court in *Dorff*, better accords with the text and history of the Fourth Amendment than the physical intrusion standard the concurrence urges this Court to adopt. The bottom line is that, until the Supreme Court revisits its holding in *Jones*, I will not endorse overruling *Dorff* because of a purely academic disagreement over the framework it adopted. The use of common-law trespass principles, like the physical-intrusion standard, may be debated among scholars. But when we all agree on the outcome that framework produces here, abandoning stare decisis to make a theoretical point would elevate academic debate over judicial responsibility.

I.

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” U.S. Const. amend. IV. Its text evinces a concern both for “protecting people’s ‘persons’ and people’s relationships with certain aspects of their external environment (their ‘houses, papers, and effects’).” Margaret Jane Radin, *Property and Personhood*, 34 Stan. L. Rev. 957, 1001 (1982). Those dual concerns explain why the United States Supreme Court has applied two distinct tests in the Fourth Amendment “search” context. The first test looks to “common-law trespass,” *United States v. Jones*, 565 U.S. 400, 405 (2012), and other property-based principles, *see Florida v. Jardines*, 569 U.S. 1, 6–7 (2013). The second test looks to a person’s “reasonable expectations of privacy.” *See Katz v. United States*, 389 U.S. 347, 362 (1967) (Harlan, J., concurring). Taken together, these alternative tests stand for the proposition “that government conduct can constitute a Fourth Amendment search *either* when it infringes on a reasonable expectation of privacy *or* when it involves a physical intrusion (a trespass) on a constitutionally protected space or thing (‘persons, houses, papers, and effects’) for the purpose of obtaining information.” *United States v. Ackerman*, 831 F.3d 1292, 1307 (10th Cir. 2016) (citing *Jones*, 565 U.S. 400).

Admittedly, common-law trespass and the Fourth Amendment have had a fraught relationship over the Supreme Court’s 125 years of grappling with their intersection. *See generally* Laurent Sacharoff, *Constitutional Trespass*, 81 Tenn. L. Rev. 877, 883–92 (2014). The starting

point in this history is *Boyd v. United States*, in which the Supreme Court held that a Fourth Amendment “search” was not limited to “the breaking of [a man’s] door, and the rummaging of his drawers” but included “all invasions on the part of the government . . . of the sanctity of a man’s home and the privacies of life.” 116 U.S. 616, 630 (1886). *Contra id.* at 641 (Miller, J., concurring) (“If the mere service of a notice to produce a paper to be used as evidence . . . is a search, then a change has taken place in the meaning of words.”).

The Supreme Court later reversed course in *Olmstead v. United States*, 277 U.S. 438 (1928). There, the Supreme Court adopted the rule that the Fourth Amendment applies only where “an official search and seizure of [a man’s] person or such a seizure of his papers or his tangible material effects or an actual physical invasion of his house ‘or curtilage’” occurs. *Id.* at 466. *Olmstead*’s property-based inquiry was complicated further by the Supreme Court’s holding in *Silverman v. United States*, 365 U.S. 505 (1961). There, the Supreme Court addressed whether law enforcement’s insertion of a “spike mike” through an apartment wall into the heating duct of an adjoining unit for the purpose of listening to conversations constituted a search. *Id.* at 506. The Supreme Court held that employing the “spike mike” in this way amounted to a search because “the officers overheard the petitioners’ conversations only by usurping part of the petitioners’ house or office—a heating system which was an integral part of the premises occupied by the petitioners, a usurpation that was effected without their knowledge and without their consent.” *Id.* at 511. In the Supreme Court’s view, the use of evidence obtained through such a physical invasion without a warrant amounted to a violation of the Fourth Amendment. *Id.* at 512.

Olmstead—and later *Silverman*—took a narrow, literal view of what constitutes a Fourth Amendment “search,” a view later rejected in *Katz*, 389 U.S. 347. In that seminal decision, the Supreme Court first articulated the reasonable-expectation-of-privacy inquiry. Building on *Boyd*’s recognition of “the privacies of life,” 116 U.S. at 630, the Supreme Court held that “the Fourth Amendment protects people—and not simply ‘areas’—against unreasonable searches and seizures,” and that its protections therefore “cannot turn upon the presence or absence of a physical intrusion into any given enclosure,” *Katz*, 389 U.S. at 353. *Katz* effectively entombed Fourth Amendment property-based inquiries.

Forty-five years after *Katz*, however, the Supreme Court once again revived a property-based Fourth Amendment inquiry in *Jones*. There, law enforcement agents placed a GPS tracking device onto the undercarriage of the defendant’s Jeep while it was in a public parking lot. 565 U.S.

at 403. They proceeded to monitor the defendant's location for nearly a month without a warrant, collecting location data that eventually supported numerous drug trafficking charges. *Id.* The Supreme Court began its analysis by describing the government's installation of the GPS device as a "physical intrusion" that "would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." *Id.* at 404–05.

Writing for the majority, Justice Scalia relied on the Fourth Amendment's "close connection to property," and common-law trespass principles in particular, to dismiss the government's contention that the protections of the Fourth Amendment turn exclusively on "the *Katz* formulation." *Id.* at 405–06. Because the Fourth Amendment "embod[ies] a particular concern for government trespass upon the areas ('persons, houses, papers, and effects') it enumerates," the Supreme Court held that, "[b]y attaching the device to the Jeep, officers encroached on a protected area" and, in doing so, they had conducted a "'search' within the meaning of the Fourth Amendment when it was adopted." *Id.* at 404–06, 410. The majority described the facts in *Jones* as a "classic trespassory search." *Id.* at 412–13.

Yet, once again, the Supreme Court's notion of "a classic trespassory search" became less clear in the cases that followed. In an opinion also authored by Justice Scalia, the Supreme Court held in *Jardines* that police officers' and their forensic narcotics dog's "physical intrusion of a constitutionally protected area"—to wit, the curtilage of the defendant's home—without explicit or implicit permission amounted to a Fourth Amendment "search." 569 U.S. at 5–8, 11 (citation omitted). Curiously, the Supreme Court's opinion does not expressly reference the common-law trespass principles it surveyed extensively in *Jones* just a year earlier. The closest the Supreme Court comes in *Jardines* to referencing those principles is in describing the officers' and dog's entry into the curtilage as an "unlicensed physical intrusion." *Id.* at 7.

Finally, in *Grady v. North Carolina*, the Supreme Court extrapolated on *Jones* to address Grady's mandatory enrollment in a monitoring program requiring him to wear a tracking device for the remainder of his life for a prior sex offense for which he had already completed his sentence. 575 U.S. 306, 307 (2015) (per curiam). Adding to its semantic confusion, the Supreme Court described the State's placement of the device on Grady's body as "physically intruding," even though there was no intrusion in the literal sense. *Id.* at 310. Nevertheless, the Supreme Court held, unanimously, that "a State . . . conducts a search when it attaches a device to a person's body, without consent, for the purpose of tracking that individual's movements." *Id.* at 309.

In truth, *Jones*, *Jardines*, and *Grady* raised more questions than they answered. There is disagreement over whether *Jones* inaugurated a “physical intrusion” test or a broader inquiry grounded in the common-law trespass doctrine. Orin S. Kerr, *The Two Tests of Search Law: What Is the Jones Test, and What Does That Say About Katz?*, 103 Wash. U. L. Rev. 309, 311–12 (2025). A number of state and federal courts, including this Court, look to common-law trespass to determine whether a Fourth Amendment “search” of “effects,” such as vehicles and other personal property, has occurred. *See Dorff*, 171 Idaho at 823–28, 526 P.3d at 993–98 (majority opinion); *United States v. Richmond*, 915 F.3d 352, 358 (5th Cir. 2019) (holding police officer’s “‘relatively minor’ act of tapping tires” to detect drugs during a traffic stop is a trespass and thus a search); *Taylor v. City of Saginaw*, 922 F.3d 328, 332–33 (6th Cir. 2019) (holding parking enforcement officers’ use of chalk to mark tires of parked vehicles was a search because it constituted a common-law trespass for the purpose of obtaining information); *Ackerman*, 831 F.3d at 1308 (holding public entity’s examination of defendant’s email was akin to a trespass to chattel amounting to a Fourth Amendment search); *State v. Jean*, 407 P.3d 524, 528–29 (Ariz. 2018) (relying on Restatement (Second) of Torts §§ 216, 217 (1967) to conclude that the defendant lacked standing to challenge the State’s placement of a tracking device on a vehicle in which he was merely a passenger, because he was neither the vehicle’s owner nor its bailee and therefore there could be no “common law trespass as to him”); *State v. Organ*, 726 S.W.3d 346, 350, 362 (Tex. Crim. App. 2025) (holding police dog effected common law trespass amounting to Fourth Amendment search when it “leaned against [defendant’s] car with [its] front paws, and stuck [its] nose through the open window”). *But see State v. Bauler*, 8 N.W.3d 892, 906 (Iowa 2024) (holding common-law trespass principles do not apply against dog sniffs because “applying common law concepts derived from human interactions in an anthropomorphic manner to dog sniffs makes no sense”).

And numerous scholars agree that common-law trespass offers a useful rubric for determining whether a Fourth Amendment search has occurred. *E.g.*, Sacharoff, *supra*, 81 Tenn. L. Rev. at 898 (arguing that “contemporary trespass principles better capture . . . evolving social arrangements while still furthering the same general goal the founders sought: to preserve certain areas from government intrusion and surveillance”); Danielle D’Onfro & Daniel Epps, *The Fourth Amendment and General Law*, 132 Yale L. J. 910, 956–57 (2023) (“Trespass—unlawful interference with another’s right to possession—is the original common-law touchstone for the

Fourth Amendment.”); Arnold H. Loewy, *United States v. Jones: Return to Trespass—Good News or Bad*, 82 Miss. L.J. 879, 884 (2013) (“[I]t is clear that once there is a trespass, the amorphous privacy question does not even have to be reached. I regard this as salutary.”). *But see, e.g.*, Nicholas A. Kahn-Fogel, *The Benefits of the Fourth Amendment’s Property-Rights Baseline*, 70 Vill. L. Rev. 219, 233 (2025) (“[A] property approach requiring an actual, legal trespass . . . as a prerequisite for government conduct to qualify as a Fourth Amendment search would produce absurd results that the [Supreme] Court could not have intended.”); Kerr, *supra*, 103 Wash. U. L. Rev. at 334–35 (“By relying exclusively on a physical intrusion standard, and by never using the term ‘trespass,’ *Jardines* and *Grady* make clear that the *Jones* test is the *Silverman* physical penetration rule.”).

The concurrence breezes past this turbulent history of Fourth Amendment “search” cases and the legal academy’s rich debate about their meaning. It approaches the physical intrusion standard without acknowledging that this body of law is largely unsettled, with sound arguments both for and against the physical intrusion standard. The “murky and uncertain legal waters” it cites arise chiefly from this ongoing debate, *see Dorff*, 171 Idaho at 829, 526 P.3d at 999 (Moeller, J., dissenting), and from the Supreme Court’s reluctance to resolve it—not from this Court’s use of trespass law to define a Fourth Amendment “search” in certain contexts, as other courts have done.

The concurrence does acknowledge that applying *Dorff* in this case leads to the conclusion we all agree is correct: on these facts, Pendleton did not suffer a violation of her Fourth Amendment rights. At bottom, then, the concurrence’s critique is purely academic and has no meaningful bearing on the outcome of Fourth Amendment litigation in Idaho courts. As discussed, *Dorff*’s adoption of trespass-based principles is a position endorsed by courts and scholars alike. Thus, it is hardly “manifestly wrong.” *State v. Delling*, 152 Idaho 122, 131, 267 P.3d 709, 718 (2011). And nothing suggests that *Dorff* “has proven over time to be unjust or unwise” or that “overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice.” *Id.*

II.

For my part, I read *Jones* as adopting a Fourth Amendment “search” inquiry grounded in the common-law trespass doctrine—an inquiry that *Jardines*, *Grady*, and this Court’s decision in *Dorff* continued to follow. In addition to adhering to the decisions of the Supreme Court, the

approach adopted in *Dorff* is consistent, as a matter of first principles, with the text and history of the Fourth Amendment.

In *State v. Randall*, we held that a drug-detection dog's entry into the interior of the defendant's vehicle to sniff for illegal drugs amounted to a "search" because it was a trespass—an entry made without the defendant's consent—conducted for the purpose of obtaining information. 169 Idaho 358, 368–69, 496 P.3d 844, 854–55 (2021) (The dog's "entry was a trespass."). Similarly, in *State v. Howard*, we held that a drug dog's insertion of its nose through an open car window—again without the defendant's consent—was also a "search" because it violated the defendant's right to exclude no less than the intrusion in *Randall*. 169 Idaho 379, 382, 496 P.3d 865, 868 (2021) ("[T]he entry was a trespass because it was without Howard's express or implied consent."). *Randall* and *Howard* stand for the proposition that a police dog's trespass against a defendant's vehicle for the purpose of making a drug-detecting sniff is a "search."

My concurring colleagues maintain that *Dorff*, 171 Idaho 818, 526 P.3d 988 (majority opinion), represents a departure from this rule. In their view, *Randall* and *Howard* adopt an "intrusion" standard—despite both decisions' express references to "trespass," *Randall*, 169 Idaho at 368–69, 496 P.3d at 854–55; *Howard*, 169 Idaho at 382, 469 P.3d at 868—which they attribute to *Jones*, *Jardines*, and *Grady*. By the concurrence's telling, *Dorff* went astray in relying on the common-law trespass doctrine to analyze the more nuanced scenario in which the police dog "plant[ed] his front paws to stand up on the door and window as he sniffed the vehicle's upper seams." 171 Idaho at 821, 526 P.3d at 991. As noted, I recognize that there is much debate surrounding the characterization of *Jones* and its progeny as cases about trespass law or a strict physical intrusion standard. But I continue to believe that these cases are fundamentally about trespass principles and *Dorff*'s adoption of the common law trespass test was therefore the wiser course.

Start with *Jones*. The concurrence contends that "the *Jones* test is best understood as an intrusion standard applicable when there is an actual *intrusion of the interior*." Moeller, J., Concurring Op. at 11. But the device at issue in *Jones* was attached to the exterior of the defendant's vehicle, just as according to the concurrence "the drug dog in *Dorff* and in this case only made contact with the *exterior* of the vehicles." Alternatively, the concurrence posits that *Jones* applies when "the government *physically attaches* something to the surface of one's person, house, paper, or effect," a better statement of *Jones*' holding, to be sure, but one that does not

support what the concurrence previously insisted was a strict “*intrusion* standard.” To the contrary, “physically attaching” an object to the exterior surface of a car sounds quite like a trespass to chattel. *Cf. Dorff*, 171 Idaho at 821, 825–28, at 991, 995–98 (holding that drug dog “intermeddled” with defendant’s vehicle when it “jumped onto the driver side door and window, planted two of its paws, and sniffed the vehicle’s upper seams.”); *see also* 75 Am. Jur. 2d Trespass § 13 (2026) (explaining trespass to chattel arises from “[a]ny unlawful interference, *however slight*, with another’s enjoyment of personal property.” (emphasis added)).

Grady presents the same problem for the concurrence. It treats *Grady* as yet another Supreme Court case adopting a “physical intrusion” standard. But in *Grady*, the government’s monitoring device did not “physically intrude.” Instead, much like the device placed on the *exterior* of the Jeep in *Jones*, the government’s monitoring device was placed on the *exterior* of Grady’s body. *But see Maryland v. King*, 569 U.S. 435, 446 (2013) (holding that the state’s buccal swab of a person’s cheek to obtain a DNA sample is a Fourth Amendment “search”).

Furthermore, while *Jardines* might be a closer call, its focus on the license—actual or implied—that the officers had to enter the curtilage of Jardines’ home, a concept intrinsically related to trespass of property, indicates to me that the case was largely decided on common-law trespass principles. *See* 569 U.S. at 7 (“Since the officers’ investigation took place in a constitutionally protected area, we turn to the question of whether it was accomplished through an unlicensed physical intrusion.”); *see also* Sacharoff, *supra*, at 891–92 (“[T]he Court assessed not simply whether the police had physically intruded, but whether they had done so without the owner’s permission—a trespass inquiry.” (footnote omitted)).

In short, I do not find support for a physical intrusion rule in these cases. Rather, it is apparent to me that *Jones*, *Jardines*, and *Grady* expressly or impliedly rely on the common-law trespass doctrine to determine whether a Fourth Amendment “search” has occurred. I do not deny that the government’s physical intrusion into a constitutionally protected area *can* constitute a “search” under the Fourth Amendment; the point is that a “classic trespassory search” is not limited to physical intrusion. *Jones* and *Grady* teach that other forms of trespass can qualify.

What is more, I take the view that using the common-law trespass doctrine in the context of Fourth Amendment search jurisprudence is consistent with the text and history of that Amendment. Its plain language reveals an intent to “secure” “persons” and property, *see* U.S. Const. amend. IV, against specific government-inflicted torts, namely trespass to land, trespass to

chattel, and battery or false imprisonment. Sacharoff, *supra*, at 893. Broadly speaking, only when the government obtains a warrant in the manner prescribed by the Fourth Amendment’s Warrant Clause may it search or seize persons and property. U.S. Const. amend. IV. At the founding, the purpose of a warrant was to provide immunity to government officials who conducted searches and seizures and were subsequently sued by the “citizen target” under common-law trespass. Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 772, 774, 776–79, 786–87 (1994); D’Onfro & Epps, *supra*, at 944; Sacharoff, *supra*, at 895–98.

Against that historical backdrop, it stands to reason that trespass plays a role in the construction of the Fourth Amendment. I am therefore unwilling to adopt an approach that would set *Dorff* aside and, as a consequence, divorce this Court’s Fourth Amendment jurisprudence from the Amendment’s original meaning. *Dorff*’s reliance on the common law-trespass doctrine in the construction of the Fourth Amendment is consistent with that amendment’s text, history, and Supreme Court precedent. Until the Supreme Court chooses to revisit its holding in *Jones*, I cannot endorse overruling *Dorff* on the basis of property law nuances that, however one resolves them, have no meaningful bearing on the disposition of the cases we adjudicate.

Justice ZAHN CONCURS.