IN THE SUPREME COURT
OF THE STATE OF IDAHO

Docket No. 47367

STATE OF IDAHO, **Plaintiff-Respondent,** **v.** **AARON JAMES HOWARD,** **Defendant-Appellant.**	**Boise, November 2020 Term** **Opinion Filed: October 5, 2021** **Melanie Gagnepain, Clerk**

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County, Fred Gibler, District Judge.

The decision of the district court is reversed, the judgment of conviction is vacated, and the case is remanded.

Eric D. Fredericksen, Idaho State Appellate Public Defender, Boise, for appellant. Jenny Swinford argued.

Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent. Andrew Wake argued.

BRODY, Justice.

Aaron Howard appeals from the denial of a motion to suppress evidence obtained after a police drug-sniffing dog put its nose through the open window of a car Howard had been driving. Howard argues the

intrusion of the dog into the physical space of the car was a trespass, and therefore, an unlawful search under the common law trespassory test articulated in *United States v. Jones*, 565 U.S. 400 (2012). We agree, reverse the denial of Howard's motion to suppress, vacate his conviction, and remand this case for further proceedings consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

In March 2019, police officers stopped Howard for a traffic violation and took him into custody after discovering an outstanding warrant for his arrest. Officers then brought in a drug-sniffing dog ("Pico") to sniff the exterior of the car. Pico alerted to the presence of illegal drugs, and a subsequent search of the car uncovered methamphetamine, heroin, and drug paraphernalia. Neither Howard nor his passenger was the registered owner of the vehicle, and police contacted the owner who took possession of the vehicle at the scene.

After prosecutors charged Howard with drug trafficking offenses related to the heroin and methamphetamine, Howard moved to suppress all evidence arising from the search of the car. During the hearing on the motion, Howard argued Pico momentarily put his nose through the open window of the car before giving his final, trained response to indicate the presence of illegal drugs, and that this was a trespass constituting an unlawful search in violation of his Fourth Amendment

rights under *United States v. Jones*, 565 U.S. 400 (2012). The only witness testifying at the hearing was Officer Amy Knisley, Pico's handler. A portion of Knisley's body camera footage showing the dog sniff was also admitted into evidence.

The district court orally denied the motion to suppress. Pursuant to a plea agreement, Howard entered a conditional plea of guilty to trafficking in heroin and the State moved to dismiss the methamphetamine charge. The district court sentenced Howard to six years imprisonment, with three years fixed. Howard timely appealed.

II. STANDARD OF REVIEW

We review of the denial of a motion to suppress using a bifurcated standard. *State v. Danney*, 153 Idaho 405, 408, 283 P.3d 722, 725 (2012). We will "accept the trial court's findings of fact unless they are clearly erroneous but will freely review the trial court's application of constitutional principles to the facts found." *Id.*

III. ANALYSIS

A. Pico's intrusion into the car constituted a search.

The district court denied Howard's motion to suppress because it found the Court of Appeals opinion in *State v. Naranjo*, 159 Idaho 258, 359 P.3d 1055 (Ct. App. 2015), was controlling. In *Naranjo*, the Court of

Appeals held that a drug dog's sniff through the open window of a vehicle had been "instinctual"—as opposed to facilitated or encouraged by the police—and therefore was not a "search" for the purposes of the Fourth Amendment. The district court found the decision in *Naranjo* was "definitely as close to being on point as one can imagine," and denied Howard's motion to suppress in reliance on that case.

Howard argues that *Naranjo* is inconsistent with *United States v. Jones*, 565 U.S. 400 (2012). In *Jones*, the United States Supreme Court articulated a trespassory test for determining when a Fourth Amendment search has occurred, which Howard argues renders *Naranjo* inapplicable. Howard contends that any trespass by the government against private property for the purpose of obtaining information—whether by dog or human, instinctual or otherwise—is a violation of the Fourth Amendment unless police have a warrant, or a warrant exception applies. Because Pico trespassed by putting his nose through the window of the car before giving his final indication, and a final indication was necessary before probable cause could exist to justify a warrantless search of the car, Howard argues that his Fourth Amendment rights were violated. The State counters that Officer Knisley had probable cause before Pico's entry, but in any event, that Pico's entry was instinctual, and the district court was correct to deny Howard's motion under *Naranjo*.

The Fourth Amendment to the United States Constitution protects citizens against unreasonable

searches and seizures. A warrantless search is presumed unreasonable unless it falls within a recognized exception to the warrant requirement. *State v. Anderson*, 154 Idaho 703, 706, 302 P.3d 328, 331 (2012). However, neither a warrant nor warrant exception is required for an *exterior* sniff of a car by a reliable drug dog. *See Illinois v. Caballes*, 543 U.S. 405, 409 (2005). This is so because there is no legitimate interest in possessing contraband. Because a sniff by a well-trained dog only reveals the presence of contraband, it does not compromise a legitimate privacy interest and is not a "search." *Id.*

We agree with Howard that *Naranjo* is inconsistent with *Jones* and that Pico's entry was a search. *Jones* is clear that for purposes of the Fourth Amendment, a search occurs when the government trespasses in order to obtain information. In *State v. Randall*, ___ Idaho ___, ___ P.3d ___ (2021), also decided today, we rejected the rule in *Naranjo* because there is no asterisk to the Fourth Amendment excusing the unconstitutional acts of law enforcement when they are accomplished by means of a trained dog. Here, much as in *Randall*, the drug dog entered the car during a sniff, an activity that is self-evidently conducted for the purpose of obtaining information. Further, the entry was a trespass because it was without Howard's express or implied consent. Thus, much as in *Randall*, a search occurred in this case to which the Fourth Amendment applies.

However, this case differs significantly from *Randall* in one way—the degree of the dog's intrusion. In

Randall, the dog leapt through an open window, fully entering the car, and it remained in the car until it alerted to the presence of narcotics. Here, only Pico's nose entered the car and the entry was momentary. We take this opportunity to observe there is no de minimis exception to the test articulated in *Jones*.

Though not squarely on point, and certainly not binding on this Court, we find that the Sixth Circuit Court of Appeals decision in *Taylor v. City of Saginaw*, 922 F.3d 328 (6th Cir. 2019) is instructive. In *Taylor*, the city enforced time limits for parking by tire chalking, i.e., placing chalk marks on the tread of car tires—marks that rub off as soon the cars are moved—to determine whether the cars have remained in place longer than allowed. *Id.* at 330–31. The plaintiff, apparently a frequent recipient of parking tickets, alleged that the practice violated her Fourth Amendment rights. *Id.* The city responded, in part, by arguing that chalking was not a search for purposes of the Fourth Amendment. *Taylor v. City of Saginaw*, No. 17-CV-11067, 2017 WL 4098862, *1 (E.D. Mich. Sept. 15, 2017), *rev'd and remanded*, 922 F.3d 328 (6th Cir. 2019). The Sixth Circuit disagreed. It held that chalking, though a slight interference with private property, was nevertheless an interference for the purpose of obtaining information and therefore a "search" under *Jones.* 922 F.3d at 332–33.

Like the marking of chalk on a car tire's tread, a dog's nose passing through an open window is a minimal interference with property. But the right to exclude others from one's property is a fundamental

tenet of property law, and we see no room in the *Jones* test for a de minimis exception. Further, by simply adhering to the *Jones* test as it is formulated, courts, law enforcement, and the public benefit from the clarity of a bright line rule for determining when a non-search exterior sniff becomes a search. We hold: when 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.

B. The State failed its burden to demonstrate probable cause existed before the search.

Though we conclude a warrantless search occurred, the State maintains the search was constitutional because the automobile exception to the warrant requirement still applies. Under the automobile exception, officers may conduct a warrantless search of a vehicle if they have probable cause to believe it contains contraband or evidence of a crime. *State v. Anderson*, 154 Idaho 703, 706, 302 P.3d 328, 331 (2012). "Probable cause is established when the totality of the circumstances known to the officer at the time of the search would give rise—in the mind of a reasonable person—to a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* A reliable drug dog's alert, standing alone, is sufficient to establish probable cause for a warrantless search of a car. *Id.*

Though Pico did not perform his trained alert before entry, the State argues that Officer Knisley's testimony about Pico's pre-entry behavior allows us to determine that probable cause existed to trigger the exception. On the record before us, we hold it did not.

Because the district court found no search had occurred under *Naranjo*, it did not consider whether probable cause existed before the entry. However, whether probable cause exists is a question of law we review de novo with deference given to the facts found by the trial court. *State v. Weber*, 116 Idaho 449, 451–52, 776 P.2d 458, 460–61 (1989). At the suppression hearing, Officer Knisley testified that Pico was a certified patrol dog trained to locate methamphetamine, marijuana, cocaine, and heroin. She also testified about Pico's trained final alert, his behavior during the search, and why she believed Pico had detected the scent of narcotics before the entry:

> THE PROSECUTOR: And your dog spent some time at the door handle, as you testified, correct?
>
> OFFICER KNISLEY: Yes.
>
> Q. And then we hear you say something to the effect of "show me," correct?
>
> A. Yes.
>
> Q. When you say "show me" to your dog, what does that mean?
>
> A. If Pico is in odor, he sometimes will stop and freeze.

THE COURT: I'm sorry, ma'am? I didn't hear that. If he's what?

OFFICER KNISLEY: When he's in odor, narcotic odor, his behavior changes will lead up to and he'll stop and stare, and I've tried to work for him to—his final response to be a sit, so I basically redirect him to find—to get as close as he can to source, which is show me, keep searching, get as close as you can to source, and he works as best as he can, and he'll either sit or lay down position.

THE PROSECUTOR: Okay. And so at that point, he sniffs the door handle, he's in odor, he's picked up a scent, as you put it, and he's standing there looking maybe at you, maybe at the door. He's still standing on all fours; is this correct?

OFFICER KNISLEY: Yes.

Q. And when you are looking for a finished alert or a positive alert, or when you're waiting for him to finish indicating, what exactly are you looking for?

A. His final alert that's been trained into him is to lie down, sit, or stand depending on the environment he's in and what position he can get into for his final.

Q. Okay. And so when he's still standing there on all fours, that's not his final alert?

A. It's not the one that we've trained into him, but he's—over time the dogs tend to cheat the system, and he'll stop, and he looks

back at me for his reward, his toy, once he's in odor.

Q. Okay. So you testified that at that point, despite him not sitting and indicating what his trained final alert is –

A. Yes.

Q. —you believe that he had already picked up the scent of controlled substance?

A. Yes.

Q. And he was already showing indications that it was present?

A. Yes, sir.

Q. And he was looking back to you for his reward?

A. Correct.

Q. And did you give him his reward at that point?

A. I did not at that point.

Q. And that's when you said, "Show me," correct?

A. Yes, sir.

Q. And as you testified earlier, that was with the intention of having your dog finish as he was trained?

A. Yes.

> Q. Okay. And was it at that point when he lifted himself up, put his paws on the vehicle, and followed the scent into the vehicle?
>
> A. Yes.
>
> . . .
>
> Q. And then after he removed his nose from the vehicle and his paws off the vehicle, is that when your dog sat and gave his final response or indication?
>
> A. Yes, sir.

Because the district court expressly found Officer Knisley's testimony was credible, and there is no assertion that this finding was clearly erroneous, we defer to that finding.

Knisley's testimony makes clear that she believed Pico had detected the odor of narcotics prior to entry. But Knisley's subjective belief is not relevant to a probable cause determination:

> When reviewing an officer's actions the court must judge the facts against an objective standard. That is, "would the facts available to the officer at the moment of the seizure or search 'warrant a [person] of reasonable caution in the belief' that the action taken was appropriate." Because the facts making up a probable cause determination are viewed from an objective standpoint, the officer's subjective beliefs concerning that determination are not material.

State v. Amstutz, ___ Idaho ___, ___, ___ P.3d ___, ___ (2021) (quoting *State v. Julian*, 129 Idaho at 136–37, 922 P.2d at 1062–63 (1996) (citations omitted). Here, considering the material evidence, we cannot conclude probable cause existed.

When the statements of Officer Kinsley's belief are excluded from our consideration of her testimony, these are the facts that remain: (1) Pico is a certified drug dog trained to sit or lie down to indicate the presence of drugs; (2) Pico did not sit or lie down before entering the car; (3) at least sometimes Pico "freezes" or tries to "cheat the system" by looking at the officer for his reward before indicating as he has been trained to do; (4) Pico froze and looked back at the officer before entering the car. From these facts, we cannot know whether Pico's freezing and looking back was a reliable indication that narcotics were present, and we cannot determine whether Officer Kinsley's subjective belief was objectively reasonable. For instance, how often does Pico freeze or look back at the officer before giving a final, trained alert? Does Pico only freeze when in odor? Does Pico only try to "cheat the system" when narcotics are present?

To be clear, we do not hold that answers to the above questions would be sufficient to establish probable cause. Nor do we suggest that the absence of a trained alert is *ipso facto* an absence of probable cause. It is simply the lack of objective indicia of reliability that undergirds our decision today. Instead, our purpose in asking these questions is to highlight that courts are not equipped to independently interpret

trained dogs' behavior. Without objective evidence bearing on the reliability of Pico's behavior before his trained alert, we are left with little more than our intuition about the significance of that behavior. Our intuition is not evidence. The State has not met its burden to show that a warrant exception applies. Therefore, we reverse the district court's denial of Howard's motion to suppress.

C. The State may not raise a lack of Fourth Amendment standing for the first time on appeal.

The State argues, for the first time on appeal, that Howard lacks standing to assert a violation of his Fourth Amendment rights. To have standing to claim the protection of the Fourth Amendment, a defendant bears the burden to demonstrate a privacy interest in the place searched. *State v. Mann*, 162 Idaho 36, 41, 394 P.3d 79, 84 (2017). Because Howard did not produce evidence at the suppression hearing that he was authorized to drive the car, the State argued that he had no legitimate expectation of privacy in the car and has no basis to seek suppression of evidence found within it. The State acknowledges it did not raise the issue of standing before the district court but argues that the Court of Appeals decision in *State v. Hanson*, 142 Idaho 711, 132 P.3d 468 (Ct. App. 2006), "shows that that fact is irrelevant." We disagree.

We have recently and repeatedly affirmed that we place "a premium on counsel presenting the facts and

law that it chooses to support its position in the trial court." *State v. Hoskins*, 165 Idaho 217, 226, 443 P.3d 231, 240 (2019). In *Hoskins*, we held that the State could not raise new grounds for a warrant exception on appeal. *Id.* In *State v. Wolfe*, 165 Idaho 338, 342, 445 P.3d 147, 151 (2019), we held the State cannot argue the independent source doctrine applies for the first time on appeal. In *State v. Fuller*, 163 Idaho 585, 590, 416 P.3d 957, 962 (2018), we held that the State cannot argue a new basis for reasonable suspicion on appeal. And in *State v. Garcia-Rodriguez*, 162 Idaho 271, 276, 396 P.3d 700, 705 (2017), we held the State cannot present new justifications for the lawfulness of an arrest on appeal. While the State is correct that the decision of the Court of Appeals fourteen years ago in *Hanson* would allow it to raise its standing argument for the first time on appeal, this Court has never endorsed this view and will not do so today.

Consistent with the decisions of this Court, we hold the State cannot challenge a defendant's Fourth Amendment standing for the first time on appeal. Our longstanding preservation requirement promotes the fair and efficient determination of matters before our courts by dividing fact-finding and law-stating functions between the trial courts and appellate courts, respectively. By insisting that facts and arguments first be developed in the trial courts, we assure that the records in cases before us are adequate to allow just determinations. Likewise, by requiring, as far as possible, that the parties' arguments first be passed upon below, we benefit from the refinement of those arguments on

appeal and the wisdom of the trial court in deciding the matter in the first instance. These are not mere courtesies to the Court, but vital aspects of the appellate process. *See Garcia-Rodriguez*, 162 Idaho at 276, 396 P.3d at 705 (quoting *Smith v. Sterling*, 1 Idaho 128, 131 (1867)); *see also State v. Islas*, 165 Idaho 260, 265, 443 P.3d 274, 279 (Ct. App. 2019) (providing a detailed discussion of the origin and function of the preservation doctrine).

The State argues that our decisions in *Hoskins*, *Wolfe*, *Fuller*, and *Garcia-Rodriguez* are distinguishable from the present case because they involved situations where the State bore the burden to show that a seizure was justified or that a warrant exception applied, whereas Howard bore the burden to establish standing in this case. Thus, the State argues it need not have objected to Howard's alleged lack of standing below to complain of it on appeal. At oral argument, counsel for the State likened its Fourth Amendment standing challenge to a defendant's challenge to the sufficiency of the evidence on appeal from a criminal conviction:

> Even if a defendant does not . . . make a motion for a judgment of acquittal . . . does not argue that the evidence on a particular element of a crime was insufficient, the defendant can always raise the sufficiency of the evidence as to that element on appeal. There's no requirement, in advance, to raise at trial the sufficiency of the evidence. You can raise it on appeal. This is that.

But this is not that. The right of a criminal defendant to challenge the sufficiency of evidence on appeal stems from the due process requirement that the government prove guilt beyond a reasonable doubt. *See In re Winship*, 397 U.S. 358, 363 (1970). Plainly, our preservation requirement must yield where doubt persists that the government has met its constitutional burden. However, where the government fails to object to a defendant's Fourth Amendment standing in the trial court, there is no comparable constitutional imperative requiring an exception to the preservation doctrine. Indeed, Fourth Amendment standing is regarded by many courts as an issue that is waived if not raised. *See e.g.*, *United States v. Ross*, 963 F.3d 1056, 1065 (11th Cir. 2020) ("All agree that in the typical Fourth Amendment 'standing' case . . . the government waives any standing objection that it fails to raise."); *United States v. Dyer*, 580 F.3d 386, 390 (6th Cir. 2009) ("[A]lthough [the defendant's] standing to challenge the search was debated before the district court, the government has not appealed the district court's determination that standing existed and has thus waived the issue."); *United States v. Huggins*, 299 F.3d 1039, 1050 n.15 (9th Cir. 2002) ("Standing to challenge a search or seizure is a matter of substantive Fourth Amendment law rather than of Article III jurisdiction, . . . meaning that the government can waive the standing defense by not asserting it. . . .").

Finally, we observe that this case illustrates the unsuitability of our determining a fact-intensive issue like Fourth Amendment standing without appropriate

factual development below. According to the State, whether Howard has standing depends on whether he owned or was authorized to drive the car. Because the State argues that no evidence establishes Howard was authorized to drive the car, and the probable cause affidavit of the officer who arrested Howard establishes he was not the car's owner, Howard does not have Fourth Amendment standing. Howard, on the other hand, points to the same probable cause affidavit to argue he did have standing. The affidavit indicates that police contacted the owner of the car and the owner arrived at the scene to retrieve it. Thus, Howard maintains "[i]f the owner had not given Mr. Howard permission to drive the car, the officer presumably would have reported that or even arrested Mr. Howard for additional offenses." These few facts are the whole of the evidence in the record that bears on whether Howard had standing to challenge the search of the car. We would be no more certain of doing justice by deciding the issue on the record before us than by tossing a coin.

"Our adversarial system of justice demands active and agile counsel at all levels." *Hoskins*, 165 Idaho at 226, 443 P.3d at 240. Indeed, the quality of our review depends on it. Whether the decision not to litigate the issue of standing below was the product of a strategy, of an oversight, or—as seems to be the case from the record—of an assumption by all parties that Howard had standing, we will not venture into the thicket to decide the issue for the first time on appeal. The initial

resolution of fact-intensive questions is the province of our capable trial judges.

IV. CONCLUSION

The decision of the district court denying Howard's motion to suppress evidence is reversed and the judgment of conviction is vacated. The case is remanded for further proceedings consistent with this opinion.

Justice MOELLER, and Justice Pro Tem BURDICK CONCUR.

STEGNER, Justice, concurring.

I concur with the Court's decision that an illegal search occurred in this case under the Fourth Amendment to the United States Constitution. However, for the reasons set forth in my concurrence in *State v. Randall*, ___ Idaho ___, ___P.3d ___ (2021), I would also hold that an illegal search occurred on independent state law grounds under Article 1, section 17 of the Idaho Constitution.

BEVAN, Chief Justice, dissenting in part.

I dissent from Parts III.A and III.B of the majority's decision. Unlike the majority, I do not believe that a drug-detection dog's instinctive action

instantaneously transmutes a warrantless, exterior sniff into an unconstitutional search. *See State v. Randall*, ___ Idaho ___, ___, ___P.3d ___, ___ (2021) (Bevan, C.J., dissenting). I would hold that the district court correctly determined that *State v. Naranjo*, 159 Idaho 258, 359 P.3d 1055 (Ct. App. 2015) applied and would affirm the denial of Howard's motion to suppress on that basis without reaching the question of whether probable cause existed before Pico's alert.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Plaintiff, vs. **AARON JAMES HOWARD**, Defendant.	Case No. CR28-19-3966 **ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**

This matter having come before the Court upon the defendant's Motion to Suppress; the State having been represented by Stanley T. Mortensen, Deputy Prosecuting Attorney; the defendant being present and represented by ~~Adrian Fox~~ [Jay Logsdon]; the Court having considered arguments on the matter, now therefore

IT IS HEREBY ORDERED that the defendant's Motion to Suppress is denied for reasons stated on the record.

ENTERED this 14th day of May, 2019.

/s/ Rich Christensen
JUDGE

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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STATE OF IDAHO, Plaintiff, vs. AARON JAMES HOWARD Defendant.	)	Case No. CR28-19-3966 Motion to Suppress

AT: Kootenai County Courthouse
Coeur d'Alene, Idaho

ON: April 29, 2019

BEFORE: The Honorable Rich Christensen,
District Judge

APPEARANCES:

For the State:
Kootenai County Prosecutors
Stan Mortensen, Esq.
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For the Defendant:
Kootenai County Public Defenders
Jay Logsdon, Esq.
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* * *

[7] April 29, 2019; 3:04 p.m.

PROCEEDINGS

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THE COURT: All right. We'll take up the matter of State versus Howard, CR-19-3966. This is the time set for a motion to suppress. Good afternoon, Counsel.

MR. LOGSDON: Good afternoon, your Honor.

THE COURT: Let me ask, does the State concede this was a warrantless search?

MR. MORTENSEN: Well, I do, your Honor. However, I don't think that that's the – I don't think that's the question to be answered today. I think that the defendant, and according to his briefing, has basically stated he's not contesting the search, so to speak.

He's questioning the conduct during the search. I don't want to put words in Mr. Logsdon's mouth, but to answer the Court's question, yes, I'm conceding this was a warrantless search. However, I do think that Mr. Logsdon and I – we've had a chance to talk, and I think we've made a lot of stipulations as far as the facts go.

THE COURT: Okay. Who wants to go ahead with that? Let's start there, I guess.

* * *

[17] THE COURT: Just to make sure, somebody want to recite those so that we have – we know what we're stipulating to, or are you going to stipulate the facts just as they appear? That would be the facts in the memorandum of Mr. Logsdon's on page 2

through and a little bit on page 4, and I think the same in your instance, Mr. Mortensen; is that correct?

MR. MORTENSEN: Yes, your Honor. And in [18] addition – other than the facts in the briefing, your Honor, the only thing we want to add was the stipulation that the window was rolled down by the defendant and left open by the defendant at the time the canine sniff.

THE COURT: Okay. Will accept that as a stipulation; is that correct, Mr. Logsdon?

MR. LOGSDON: Yes, your Honor.

THE COURT: All right.

* * *

[49] On the issue of the dog sniff and the issue of whether this trespass, then, violated – the trespass of the dog's nose into the car violated the Fourth Amendment and the subsequent findings of the controlled substances, Defendant's reliance on U.S. versus Jones, that being the GPS tracking case, the Court does not find the argument ridiculous. And there are issues with the idea that an officer, without finding something in plain view, cannot stick his or her head or hand in the car but a police dog can stick their nose in. That is interesting argument; however, the argument is for another day and for another court, as this Court is bound by the Court of Appeals' ruling in State versus Naranjo, 159 Idaho 258. It may not be on all fours, but it is definitely as close to being on point as one can imagine.

Specifically, at the end of the case in Naranjo, it says, "The district court found the dog putting his nose" – this is in the previous case from [50] 2015, putting – "The district court found the dog putting his nose in the window was an instinctual act that the police did not facilitate. Further, the district court found the dog was leading itself to the odor source, and after putting his nose in the window, the dog immediately thereafter sat down and indicated the presence of narcotics. Although the dog did not indicate he had detected an odor before entering the vehicle, the district court's finding established that the dog was instinctually following an odor into Naranjo's vehicle and police did not facilitate the dog's conduct."

And it was similar facts to what were here, and on those grounds, the motion is denied as well. So, Mr. Mortensen, would you draft that order?

MR. MORTENSEN: Certainly, your Honor.

THE COURT: All right. Is there anything else we need to take up today?

MR. LOGSDON: No, your Honor. Thank you.

MR. MORTENSEN: Not from the State. Thank you.

THE COURT: Thank you. We are adjourned. (Matter adjourned.)

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Plaintiff, V. **AARON J HOWARD,** Defendant.	**CASE NUMBER CR28-19-0003966** **MEMORANDUM IN SUPPORT OF MOTIONS TO SUPPRESS** (Filed Mar. 29, 2019)

COMES NOW, Aaron Howard, the above named defendant, by and through his attorney, Jay Logsdon, Deputy Public Defender, and hereby submits the following Memorandum in support of his Motion to Suppress previously filed with this Court.

I. ISSUE PRESENTED

A. The officers unlawfully extended the stop and unlawfully arrested Mr. Howard on March 12, 2019, because the bench warrants were invalid.

1. **The January 17, 2019, arrest pursuant to a bench warrant for missing court based on the conduct alleged in CR28-18-20043 was only valid insofar as the finding of probable cause for the charges in the case are valid.**
2. **Because the evidence relied on for probable cause in CR28-18-20043 was suppressed, the bench warrant in CR28-19-1032 was invalid, and all evidence gathered as a result of the service of the unlawful bench warrant from CR28-18-20043 on January 17, 2019 must be suppressed.**
3. **Because the evidence for probable cause in CR28-20043 was suppressed, and the *evidence* for probable cause in CR28-19-1032 should be suppressed, all evidence gathered as a result of the service of the unlawful bench warrants in CR28-18-20043 and CR28-19-1032 on March 12, 2019, must be suppressed.**

B. The officers unlawfully searched the vehicle by permitting their dog to trespass on and into the vehicle.

II. FACTS

On December 5, 2018, Trooper Seth Green of the Idaho State Police followed a Lexus containing a driver

and passenger at 11:55 PM around Frederick and 12th in Post Falls, ID. He thought he saw a blinker violation and was determined to speak with the driver. However, to his surprise, she simply walked away and into the house, the driveway of which she had parked at. The passenger, Mr. Howard, got out and asked to leave. Trooper Green demanded to know the young woman's name, and Mr. Howard refused to assist, again asking to leave. Trooper Green stated that because he thought she may have a warrant and Mr. Howard would not assist him he had to remain at the scene. Eventually contraband was located in the vehicle and the Trooper charged Mr. Howard with its possession because male clothing was found along with it. These charges are in CR28-18-20043.

The Trooper arrested Mr. Howard an initial probable cause determination was made by Magistrate Judge Walsh on December 6, 2018. Judge Walsh set conditions of bail for Mr. Howard on December 6, 2018. He bonded out on December 10, 2018. Mr. Howard did not appear on December 14, 2018, and Judge Walsh issued a bench warrant.

On January 17, 2019, Task Force law enforcement officers received information that Mr. Howard was in a hotel room in Post Falls. The officers were in possession of the bench warrant previously issued for a failure to appear in CR28-18-20043 by Magistrate Judge Walsh on December 19, 2018. They entered the hotel room and arrested Mr. Howard on the warrant. Searches done incident to this arrest located contraband, forming the charges in CR28-19-1032.

On February 1, 2019, Mr. Howard waived his preliminary hearings in cases CR28-18-20043 and CR28-19-1032 and was released on his own recognizance. He then did not attend his arraignment on March 1, 2019, and the District Court issued bench warrants in each case.

On March 12, 2019, Officer Nordman of the Coeur d'Alene Police Department notified Officer Cannon that a jeep had left an apartment complex they were surveilling. He told Officer Cannon the vehicle had not used a turn signal as it was leaving. Officer Cannon followed the vehicle and allegedly saw it not come to a complete stop at a stop sign. He followed it into a parking lot and stopped the vehicle.

Officer Cannon contacted the driver and passenger and informed them of the failure to use a turn signal back at the apartment complex. Both indicated that the driver had used his turn signal. The passenger identified herself as Bethany Bauer and the driver as James Sadler. However, upon being asked for a birthday, the driver provided his actual driver's license indicating that he was the defendant. He also admitted he had warrants. The officer detained him waiting for confirmation of the warrants. While Mr. Howard waited, the officers had Officer Knisley arrive with her dog Pecco. Mr. Howard was arrested on the warrants.

Officer Knisley went to the car with her dog and the dog went around the vehicle to the driver side. There, the dog jumped up onto the car door and stuck its head in the open window and sniffed. It then

indicated the presence of drugs. A search of the vehicle ensued and contraband located led to the current charges in this matter.

On March 26, 2019, this Court suppressed the evidence in case CR28-18-20043 but denied the Motion to Suppress for an invalid bench warrant in CR28-19-1032.

III. ARGUMENT

A. The officers unlawfully extended the stop and unlawfully arrested Mr. Howard on March 12, 2019, because the bench warrants were invalid.

1. The January 17, 2019, arrest pursuant to a bench warrant for missing court based on the conduct alleged in CR28-18-20043 was only valid insofar as the finding of probable cause for the charges in the case are valid.

The Magistrate Court issued a bench warrant in CR28-18-20043 when Mr. Howard failed to come to court. The Court acted under its authority provided by I.C. § 19-2915(1)(c). The issue for this Court is whether I.C. § 19-2915(1)(c) creates a warrant that stands on its own bottom, that is, is enforceable regardless of whether probable cause for the charges exists. The authorities show they do not.

First, the Idaho Misdemeanor Criminal Rules specifically require that probable cause for a crime be

found before a warrant may issue for failure to appear on a citation. I.M.C.R. 11. Had Mr. Howard received a summons, his failure to appear in court would also have required a judge to pass upon the probable cause underlying the charges before issuing a warrant, as a summon also can only issue once probable cause is found. I.C.R. 4. Thus, without probable cause, no warrant for failure to appear can exist.

It is true that failures to appear create civil liability. *See State v. Overby*, 90 Idaho 155, 157 (1965). It is also true that "subsequent proceedings with respect to the criminal charge against the accused have no bearing on the bail's civil liability arising for the defendant's failure to appear.." Id. But the question here is not the civil liability for the failure to appear but the validity of the warrant. The warrant's validity relies on a finding of probable cause.

In *State v. Parks*, 148 P.3d 1098 (Wash.App. 2006), the court held a bench warrant was invalid because probable cause had never been found. The court found that in order for an invasion of privacy that occurs when an arrest warrant is served there must be a probable cause finding under the Fourth Amendment. *Id.* at 1100. The state argued failure to appear could be the violation supporting the warrant, but the court disagreed that failing to appear was itself a crime. *Id.* at 1101. The court concluded that without a probable cause finding, a bench warrant for failure to appear is invalid. *Id.* 1102. This Court should as well.

2. Because the evidence relied on for probable cause in CR28-18-20043 was suppressed, the bench warrant in CR28-19-1032 was invalid, and all evidence gathered as a result of the service of the unlawful bench warrant from CR28-18-20043 on January 17, 2019 must be suppressed.

This Court must decide whether the granting of a motion to suppress as to evidence in one case (1) excises that evidence from the probable cause affidavit previously filed and used to find probable cause prior to the defendant's first appearance and (2) renders invalid bench warrants issued and served for missing court in the matter.

First, a Motion to Suppress, when granted, does not permit the government to use that evidence for any reason. See, State v. Rauch, 99 Idaho 586, 593 (1978). In *Rauch*, the Court quote the dissent of Justice Morgan in 1918:

> In order that the total disregard, disclosed by this record, of these constitutional safeguards may be effectual, the court must become a party to it by receiving the results as proof. I decline to do so, and hold that evidence procured by an illegal or unreasonable search, the purpose of which was to discover and seize it, is inadmissible if timely and proper objection be made to its introduction, because it was procured by an invasion of the rights guaranteed to all persons within this state by sec. 17, art. 1, of the Constitution, and to

> admit it, against a defendant in a criminal case over such an objection, would be a violation, by the court, of sec. 13 thereof
>
> These sections are guardians of American liberty and justice which come to us from the same source and with like sacrifice as did those, equally but not more greatly prized, whereby we are guaranteed religious liberty, trial by jury, the right to bear arms, to peaceably assemble, free speech, liberty of the press, and many other constitutional safeguards, which, because they have been faithfully upheld by the courts, have accomplished more than has any other agency to make this government one which the peoples of the earth may profitably copy.

Id. citing State v. Anderson, 31 Idaho 514, 527 (1918). Thus, it is clear that suppression is not simply an issue at trial. Indeed, cases involving the excising of unlawfully secured evidence from affidavits are legion. *See, e.g.*, *State v. Johnson*, 110 Idaho 516, 526 (1986); *State v. Bunting*, 142 Idaho 908 (Ct.App.2006); *State v. Buterbaugh*, 138 Idaho 96, 101 (Ct. App.2002).

While Idaho courts do not appear to have had occasion to apply this jurisprudence to arrest warrants or bench warrants, this Court need merely review the originating seed of this line of cases to see that clearly the Idaho Constitution requires the affidavit here be excised of the offending evidence. In *Johnson*, the Idaho Supreme Court reviewed the exclusionary rule under the federal and state constitution. 110 Idaho at 524-26. The Court concluded that Article I Section 17

applied, regardless of the Fourth Amendment's applicability. *Id.* The Court then held that the exclusionary rule required all evidence resulting from the unlawful entry in the case be excised from an affidavit filed for a search warrant. *Id.* at 526. The Court never indicated that this practice was somehow limited to search warrants, it was simply applying the exclusionary rule.

Similarly, the United States Supreme Court has lines of jurisprudence stemming from *Franks v. Delaware*, 438 U.S. 154 (1978), known and Franks and Reverse-Franks motions. The Franks decision, concerning itself with the validity of warrants containing false statements or statements made with reckless disregard for the truth by law enforcement, held that both search and arrest warrants would be invalid if they contain such egregious errors. *See*, Kimberly J. Winbush, *Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding Probable Cause With Reckless Disregard for the Truth- Underlying Homicide and Assault Offenses* 72 A.L.R.6th 437 (2012). The United States Supreme Court in *Franks* was specifically dealing with the possibility of the inviolability of affidavits for warrants already served. 438 U.S. at 160, 171-72. The Court declined to make it impossible for defendants to challenge warrants. The Supreme Court of Idaho was undoubtedly aware of *Franks*, in addition to its own jurisprudence, when it ruled in *Johnson*.

Thus, this Court should find that the probable cause affidavit passed upon and providing probable

cause in the first case in this matter must be excised and only if it survives the procedure may the warrant and its fruits in the second case survive.

3. Because the evidence for probable cause in CR28-20043 was suppressed, and the evidence for probable cause in CR28-19-1032 should be suppressed, all evidence gathered as a result of the service of the unlawful bench warrants in CR28-18-20043 and CR28-19-1032 on March 12, 2019, must be suppressed.

For the same reasons cited in the previous section, this Court should find that the bench warrants served on Mr. Howard on March 12, 2019, were invalid, causing the stop to be unlawfully prolonged and his unlawful arrest.

This Court might note (aside from the fact that it has already rejected this argument) that the warrants at issue on March 12, 2019, were in what might be considered a strengthened posture, as Mr. Howard had waived his preliminary hearing in both cases, which our Supreme Court has held to be an admission of probable cause. *See State v. Stewart*, 243 P.3d 707, 711-12 (2010) *quoting State v. Hendricks*, 80 Idaho 344, 348 (1958). But this Court should review foot note 2 on the same page of the opinion, which reads:

> If the affidavit of probable cause was insufficient, a defendant could still challenge the

> issuance of an arrest warrant even though he or she later waived a preliminary hearing on the charged felony.

Id. at 711, n. 2.

Additionally, as noted in the previous section and argued at the motion to suppress hearing on the two previous cases, Article I Section 17 requires that unlawfully gathered evidence not be used in any way in a court of this state. To paraphrase an old anecdote, if a criminal information is said to rest on a criminal complaint, and that complaint rested on an affidavit, and from there it is "affidavits all the way down," Article I Section 17 invalidates and excludes all the unlawfully gathered evidence in the stack. Article I Section 17, as it were, has no fear in the face infinite progression. The illegality must be excised in perpetuity from the moment it came into existence. Thus, even if a defendant were to stipulate to probable cause a preliminary hearing, which can hardly "cure" and sanctify the illegally gathered evidence. Especially where a preliminary hearing is not a suppression hearing.

B. The officers unlawfully searched the vehicle by permitting their dog to trespass on and into the vehicle.

Even if the warrants were valid, the state illegally searched the defendant's vehicle when its dog put its feet on his car and stuck its head inside.

The Fourth Amendment protects both privacy interests and property interests, and a violation of either

of these interests can constitute a search or seizure. *See Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765); *Katz v. United States*, 389 U.S. 347 (1967); *United States v. Jones*, 565 U.S. 945 (2012). In *Entick*, Lord Camden espoused the following principal:

> [O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law.

Entick, 95 Eng. Rep. at 817. This principal was verified by the Supreme Court in *Jones*, wherein the Court held that a physical trespass by the government for purposes of obtaining information did constitute a search. 565 U.S. at 949. In *Katz*, the Supreme Court explained that listings to a citizen's phone call violated his reasonable expectation of privacy and thus constituted a search, even though no physical intrusion of the citizen or his property had occurred. 389 U.S. at 353. Thus, a search can occur in one of two ways. First, a search occurs under *Entick* and *Jones* when the government commits a physical trespass while gathering information. Second, a search occurs under *Katz* when the government violates a citizen's reasonable expectation of privacy while gathering information, even if no physical trespass occurs.

This Court may note that a person has no legitimate privacy interest in illegal substance. *United States v. Jacobsen*, 466 U.S. 109, 123 (1984). Because a person has no privacy interest in illegal substances,

"government conduct that *only* reveals the possession of contraband" is not a search under the *Katz* analysis of the Fourth Amendment. *Caballes*, 543 U.S. at 408-410. For that reason, simply walking a drug dog around the exterior of someone's lawfully stopped vehicle in a public place is not a "search" within the meaning of the Fourth Amendment and does not require a warrant or any suspicion of illegal activity. *See Caballes*, 543 U.S. 405; *Parkinson*, 135 Idaho at 363, 17 P.3d at 307; *State v. Martinez*, 136 Idaho 436, 442, 34 P.3d 1119, 1125 (Ct. App. 2001). The Courts in *Caballes, Parkinson* and *Martinez* held that walking a drug dog around the exterior of a lawfully stopped vehicle does not constitute a "search" under the *Katz* analysis. However, these Courts never reached the question of whether the government's use of a drug dog might constitute a "search" under the *Entick* analysis.

Here, the dog entered the defendant's car and placed its feet upon it. "It is beyond dispute that a vehicle is an 'effect' as that term is used in the [Fourth] Amendment." *Jones*, 565 U.S. at 949 (citing *United States v. Chadwick*, 433 U.S. 1, 12 (1977)). Thus, a person's property interest in their vehicle is protected by the Fourth Amendment.

When the government (1) gathers information, (2) by physically intruding, (3) on persons, houses, papers or effects; a Fourth Amendment search has occurred. *Jones*, 565 U.S. 945; *Florida v. Jardines*, 569 U.S. 1 (2013). In *Jones*, the government "physically occupied private property for the purpose of obtaining information." *Id.* More specifically, the government

attached a GPS device to the undercarriage of the defendant's wife's car. The Court held, "Where, as here, the Government obtains information by physically intruding on a constitutionally protected area, such a search has undoubtedly occurred." *Id.*, at 964 n.3. It was clear in *Jones* that the defendant's reasonable expectation of privacy had not been violated, and no search had occurred under *Katz*. Defendant had no expectation of privacy in the underside of the vehicle and no expectation of privacy for the places he traveled to in public view. However, the Court found it did not matter that defendant's reasonable expectation of privacy had not been violated under *Katz* because **a trespass committed by the government for purposes of obtaining information constitutes a search under *Entick*, regardless of the defendant's reasonable expectation of privacy**. *Id.*, at 950.

This final premise was again echoed by the High Court only a year later when the Court analyzed a case involving a trespass by a drug dog. In *Jardines*, police officers and their drug dog stepped foot on defendant's property without his leave in order to gather information. 569 U.S. at 5. The Court distinguished this case from the *Caballes* line of cases by pointing out:

> While law enforcement officers need not "shield their eyes" when passing by the home "on public thoroughfares," *Ciraolo*, 476 U.S., at 213, 106 S.Ct. 1809, an officer's leave to gather information is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendment's protected areas.

Jardines, 569 U.S. at 7. Unlike *Caballes, Parkinson* and *Martinez*, the drug dog in *Jardines* left the public thoroughfares and physically intruded on a constitutionally protected area. The *Jardines* Court ultimately concluded, "When the Government obtains information by physically intruding on persons, houses, papers, or effects, a search within the original meaning of the Fourth Amendment has undoubtedly occurred." 569 U.S. at 6 (internal quotation omitted); *see also*, *Collins v. Virginia*, 138 S.Ct. 1663 (2018) (holding entry into driveway for purpose of searching a motorcycle for identifying information unconstitutional trespass requiring suppression).

The Court in *Jardines* worked through three different questions to arrive at its conclusion. First, the Court found that using a drug dog is an attempt by police to gather information. As we know from *Caballes*, just because police are attempting to gather information does not automatically mean a search has occurring. So, just because police are gathering information with a drug dog does not tell us whether or not a search has occurred. Second, the *Jardines* Court found that the information gathering took place by physically entering a constitutionally protected area. *Jardines*, 569 U.S. at 7 ("As it is undisputed that the detectives had all four of their feet and all four of their companion's firmly planted on the constitutionally protected extension of [defendant's] home, the only question is whether he had given his leave (even implicitly) for them to do so."). We know from *Jones* that a vehicle is a constitutionally protected effect; and *Jardines*

makes clear that placing your feet or paws on someone's property is a physical intrusion. Third, the *Jardines* Court looked to see whether the officers were entitled to step foot on defendant's property or whether they were trespassing. The Court first noted that an officer, like any other citizen, has an implied general right of entry onto a person's property. *Jardines*, 569 U.S. at 7-8. However, the Court found that an officer does not have an implied invitation to intrude on a citizen's property for purposes of conducting a search with a drug dog. *Id.*

Mr. Howard's case parallels the *Jones* and *Jardines* cases and is distinguishable from *Caballes, Parkinson* and *Martinez*. First, it is undisputed that Officer Knisley and her dog were attempting to gather information about the contents of Mr. Howard's vehicle. Second, case law is clear that a vehicle is a constitutionally protected "effect." *Jones*, 565 U.S. at 949. Third, Officer Knisley and her dog did "physically intrude" on Mr. Howard's "effects" when the dog jumped on Mr. Howard's car and stuck its head into the front seat area. This fact distinguishes Mr. Howard's case from *Caballes, Parkinson* and *Martinez* where no physical intrusion occurred, and brings the case in line with *Jones* and *Jardines* where a physical intrusion did occur. Finally, Officer Knisley and her dog did not have leave, either implicitly or explicitly, to physically intrude on Mr. Howard's vehicle. Mr. Howard never gave the officers permission to search his car or let the dog place its paws on the door and stick its head into the open window. There is also no implied invitation for an Officer

to allow his dog to jump on a citizen's car or put its head inside open windows. Indeed, most citizens would find cause for alarm to look out their window and see a neighbor's dog or a police dog jumping on their car.

To clarify, Defendant is not arguing that the use of the dog in this case was a search under *Katz*. *Caballes, Parkinson* and *Martinez* make clear that it was not. Had Officer Knisley and the dog simply walked around the exterior of Defendant's vehicle in the parking lot, no search would have occurred. But, Defendant is arguing that a search under *Entick* occurred because police trespassed on and into his vehicle without permission in order to uncover information.

Because a warrantless search occurred in this case, the State bears the burden of showing an exception to the warrant requirement.

IV. CONCLUSION

The defendant respectfully requests that this Court grant his Motion to Suppress on the basis that the police unlawfully extended their detention of him on March 12, 2019, unlawfully arrested him, and unlawfully and warrantlessly searched his vehicle, and that all evidence discovered on the basis of these illegalities must be suppressed.

DATED this 29 day of ~~February~~ March, 2019.

KOOTENAI COUNTY
PUBLIC DEFENDER

BY: /s/ Jay Weston Logsdon
JAY WESTON LOGSDON
CHIEF DEPUTY LITIGATION

[Certificate Of Service Omitted]

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Plaintiff, V. **AARON J HOWARD,** Defendant.	**CASE NO. CR28-19-3966** **MEMORANDUM IN OPPOSITION TO MOTION TO SUPPRESS** (Filed Apr. 26, 2019)

COMES NOW the State, by and through Stanley T. Mortensen, Deputy Prosecuting Attorney, and hereby submits its Memorandum in Opposition to Defendant's Motion to Suppress.

FACTS AND PROCEDURAL HISTORY

On December 5, 2018, the Defendant was a passenger in a vehicle pulled over by officers. Ultimately, the vehicle was searched, drugs were found, and the Defendant was arrested and charged with felony possession of a controlled substance in CR28-18-20043. The Defendant was released from jail but expected to be present at a December 14, 2018 preliminary hearing status conference. When the Defendant failed to

appear on December 14, 2018, the magistrate issued a bench warrant for the Defendant's arrest.

On January 17, 2019, the Defendant was located and arrested on the abovementioned bench warrant. Incident to this arrest, officer located drugs in the Defendant's possession. The Defendant was arrested and charged with felony possession of a controlled substance in CR28-19-1032. The Defendant was present, in custody, at the February 1, 2019 preliminary hearings in both CR28-18-20043 and CR28-19-1032. Upon waiving his preliminary hearings, the Defendant was released on his own recognizance.

Arraignments in both CR28-18-20043 and CR28-19-1032 were scheduled for March 1, 2019. When the Defendant failed to appear on March 1, 2019, the district judge issued bench warrants for the Defendant's arrest. On March 12, 2019, the Defendant was located on a traffic stop and arrested on the abovementioned bench warrants. Ultimately, this vehicle was searched, drugs were found, and the Defendant was arrested and charged with felony trafficking in heroin and felony possession of methamphetamine with the intent to deliver in the case at hand; CR28-19-3966. The search of this vehicle was preceded by a drug detection K9 sniff and alert in which the K9 instinctively followed a scent along the seam of the driver' s door, up to the driver's door handle, and finally up to the open driver's door window. After sniffing the driver's door handle, the K9's back stiffened out and its tail slightly curled. At this point, the K9 turned and looked at Officer Knisley, the K9's handler. Officer Knisley then said to the K9,

"Show me." It was at this time that the K9 raised itself up onto its hind quarters and placed its front paws on the driver' s door. The K9 then followed the scent into the vehicle through the open driver's window. In doing this, a portion of the K9's head entered the vehicle through the open driver's door window. The K9 then immediately lowered itself to the ground and sat.

The Defendant filed motions to suppress in CR28-18-20043 and CR28-19-1032. The Defendant alleged he was unlawfully detained during the December 5, 2018 traffic stop. The Defendant then alleged, despite his failure to appear for court on December 14, 2018, that if his December 5, 2018 detention was unlawful then the December 2018 bench warrant was invalid. A hearing on the Defendant's motions to suppress in CR28-18-20043 and CR28-19-1032 was held on March 26, 2019 in which evidence was heard. The Court held that the Defendant had in fact been unlawfully detained on December 5, 2018. Despite this, however, the Court held that the December 2018 bench warrant was valid.

In the case at hand, in what can only be described as an act of dogged persistence, the Defendant has filed a motion to suppress alleging, yet again, that despite his failures to appear in court, that the bench warrants were invalid. Additionally, the Defendant has alleged that a trespass occurred during the K9 sniff of the vehicle the Defendant was driving when he was pulled over on March 12, 2019.

LAW

Idaho Code §19-2915(1) and Idaho Criminal Rule 46(1)(1) authorize the issuance of a bench warrant when a defendant fails to appear in court without a sufficient excuse.

A drug dog's brief, spontaneous entry into the open window of a stopped vehicle does not constitute a search under the Fourth Amendment. State v. Naranjo, 159 Idaho 258 (Ct.App.2015); State v. George, 889 N.W.2d 244 (2016).

Additionally, as the Defendant has recently submitted additional authority in support of his motion to suppress (six days before the hearing), the State reserves the right to submit additional authority in opposition to the Defendant's motion to suppress.

ARGUMENT

The State will submit oral argument following the admitted facts and the Defendant's oral argument on the day of the hearing.

CONCLUSION

For the aforementioned reasons, the State respectfully requests that this Court deny the Defendant's Motion to Suppress.

Date this 26th day of April, 2019.

/s/ SM
STANLEY T. MORTENSEN
DEPUTY PROSECUTING
ATTORNEY

[Certificate Of Service Omitted]