

The Home Not the Homeless: What the Fourth Amendment has Historically Protected and Where the Law is Going After *Jones*

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Introduction

THE HOMELESS ARE ESSENTIALLY UNPROTECTED from government surveillance.¹ When the government suspects a person of a crime, it may open an investigation and employ surveillance techniques in order to collect evidence. The home is a constitutionally protected area into which government surveillance cannot legally intrude without the judicial scrutiny of a warrant or an authorized exception.² Without the protection of a home, a person's daily life and property must, by definition, be out in public, and thus not private.³ This has been the prevailing logic in government surveillance jurisprudence for decades and has protected those with houses and money

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1. See, e.g., *United States v. Ruckman*, 806 F.2d 1471, 1472–73 (10th Cir. 1986) (finding that a homeless man did not have a reasonable expectation of privacy in a cave on government land where he lived); *People v. Thomas*, 45 Cal. Rptr. 2d 610, 613 n.2 (Ct. App. 1995) (finding no privacy expectation in cardboard box located on city sidewalk in which homeless defendant was residing); *State v. Cleator*, 857 P.2d 306, 308 (Wash. Ct. App. 1993) (finding no privacy expectation in tent pitched on public land without permission); Cynthia Lee, *Package Bombs, Footlockers, and Laptops: What the Disappearing Container Doctrine Can Tell Us About the Fourth Amendment*, 100 J. CRIM. L. & CRIMINOLOGY 1403, 1476 (2010) (“The Fourth Amendment provides even less protection for the homes of the homeless. Lower courts routinely hold that homeless persons lack a reasonable expectation of privacy in their homes when that home is a cardboard box or some other fixture on public property, either because the homeless person cannot claim an ownership interest in the property or because his home is open to public view.”).

2. See *infra* Part I.

3. *Id.*

far more than the homeless.⁴ Today, it may no longer hold because of *United States v. Jones*,⁵ which was decided January of 2012 by the United States Supreme Court. In this paper, I argue that *Jones* strengthens privacy protections for the homeless by altering how we answer the question: What is a search? Section I will describe how the Supreme Court's interpretation of Fourth Amendment protections from government surveillance have been focused on the home, and thus have been extremely limited for homeless people. Section II will introduce the *United States v. Jones* decision, and will parse the reasoning of the Court in detail. Section III will apply the reasoning of *Jones* to government surveillance of homeless people, and will explore whether *Jones* in fact affords the homeless a new argument for protection.

I. Privacy Protections from Government Surveillance Before *Jones*

The plain language of the Fourth Amendment protects “persons, houses, papers and effects” from unreasonable searches and seizures.⁶ In practice, this should mean that when the government wants to investigate someone to gather evidence of a crime, it may collect any physical evidence or piece of information as long as it can do so without doing anything illegal, like trespassing or invading someone's privacy. If government agents want to collect more private evidence and information, they must seek judicial oversight and approval of the “place to be searched, and the persons and things to be seized.”⁷

A. What is a Search?

Because our society and the courts are uncomfortable with vague and ambiguous distinctions like “more private,” or “unreasonable,”⁸

4. See Ronald J. Bacigal, *Some Observations and Proposals on the Nature of the Fourth Amendment*, 46 GEO. WASH. L. REV. 529, 541–42 (1978) (arguing that Fourth Amendment privacy exists only for “those wealthy enough to live exclusively in private places”); Christopher Slobogin, *The Poverty Exception to the Fourth Amendment*, 55 FLA. L. REV. 391, 401 (2003) (“Fourth Amendment protection varies depending on the extent to which one can afford accoutrements of wealth such as a freestanding home, fences, lawns, heavy curtains, and vision- and sound-proof doors and walls.”).

5. 132 S. Ct. 945 (2012).

6. U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

7. *Id.*

8. *Id.*

courts have provided numerous tests that have evolved over time to help them answer the threshold question which begins every criminal procedure analysis to determine whether a Fourth Amendment violation exists: What government actions, techniques and methods constitute a search? Or more simply put, what is a search under the Fourth Amendment?

1. The Rule Before 1968

When the framers enacted the Fourth Amendment, they could not have envisioned today's technological expansion. What early courts recognized as a search was limited to situations where the government physically entered a place they had no legal right to be, or in other words, conducted a physical trespass.⁹ For many years, physical trespass was determinative of whether particular government conduct constituted a search. The reverse was held to be true as well. When government action fell short of a trespass, the conduct was held not to be a Fourth Amendment search and was thus permitted without judicial oversight.¹⁰ In *Olmstead v. United States*,¹¹ the police listened to the defendant's home phone conversations from a telephone box outside his home. The Court held that there was no search under the Fourth Amendment because there was no trespass onto the defendant's property.¹²

2. The Rule After 1968

In 1968, *Katz v. United States*¹³ explicitly overturned *Olmstead*,¹⁴ altering for the first time the standard for whether a search had occurred. In *Katz*, the defendant entered a public telephone booth, closed the door behind him, and made a telephone call.¹⁵ The government obtained the conversation using an electronic listening device and, as in *Olmstead*, never physically trespassed into the telephone

9. *Boyd v. United States*, 116 U.S. 616, 627 (1886) (“[I]t is now incumbent upon the defendants to show the law by which this seizure is warranted. If that cannot be done, it is a trespass.”).

10. *See Olmstead v. United States*, 277 U.S. 438 (1928).

11. 277 U.S. 438 (1928).

12. *Id.* at 466 (finding no “actual physical invasion of his house ‘or curtilage’” and holding “that the wire tapping here disclosed did not amount to a search or seizure within the meaning of the Fourth Amendment.”).

13. 389 U.S. 347 (1967).

14. *Id.* at 353 (“We conclude that the underpinnings of *Olmstead* . . . have been so eroded by our subsequent decisions that the ‘trespass’ doctrine there enunciated can no longer be regarded as controlling.”).

15. *Id.* at 348–49, 352.

booth.¹⁶ The *Katz* Court held that this conduct was nonetheless a search and that the Fourth Amendment was not restricted to physical trespass because it protected “people not places.”¹⁷ *Katz* established that there could be a search under the Fourth Amendment without a physical trespass.¹⁸

Justice Harlan’s concurrence in the *Katz* decision created the reasonable expectation of privacy test to determine whether a search had taken place.¹⁹ A “search” was defined—independent of physical trespass—as government conduct that intruded into a person’s reasonable expectation of privacy.²⁰ By closing the telephone booth door in *Katz*, the defendant reasonably expected his conversation to be private. He subjectively expected his conversation to be private, and his expectation of privacy was objectively reasonable because it was one that society was willing to recognize as reasonable.²¹ This two-prong, subjective-objective test has defined the scope of government searches since *Katz*, and lower courts have applied it many times in subsequent years. Even though the reasonable expectation of privacy test purports to take circumstances and context into account, there are many limitations to its application.

B. Limitations on the Reasonable Expectation of Privacy Test

To better understand those limitations, I will explore how each limitation on the reasonable expectation of privacy test affects a hypothetical investigation.²² Imagine a homeless man named David who currently resides under a freeway overpass. He has made a bed out of old blankets, treats the support beams as shelves to hold his knickknacks, and keeps his clothes and valuables in a closed cardboard box and duffel bag. The police suspect him of a crime. While David is away from his overpass, officers search through his belongings, taking evi-

16. *Id.* at 352–53 (“The surveillance technique they employed involved no physical penetration of the telephone booth from which the petitioner placed his calls. . . . The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance.”).

17. *Id.* at 351 (“[T]his effort to decide whether or not a given ‘area,’ viewed in the abstract, is ‘constitutionally protected’ deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.”).

18. *Katz*, 389 U.S. at 361 (Harlan, J., concurring).

19. *See id.*

20. *Id.* at 361.

21. *Id.*

22. This example is based on the facts of *State v. Mooney*, 588 A.2d 145 (Conn. 1991).

dence that is later used to convict him. *Katz* says that the Fourth Amendment protects people not places.²³ Thus, even though David doesn't have a home or real property the way other people do, arguably a reviewing court could find, under *Katz*, that he has a reasonable expectation of privacy in his makeshift home under the freeway. Without a reasonable expectation of privacy, David would not have an actionable claim under the Fourth Amendment based on the search of his belongings.

1. The Home

Two cases following *Katz* made it clear that the home remains a specially protected place.²⁴ In *Payton v. New York*,²⁵ the Court had to determine whether an arrest warrant was required to enter a suspect's home to make a routine felony arrest. The Court had already decided that a warrant-less arrest in public did not violate the Fourth Amendment,²⁶ so the only issue was whether establishing probable cause alone was sufficient to justify police entry into a home. The Court held that a warrant was required, emphasizing the "sanctity of the home,"²⁷ and indicating that even with probable cause, entering the home without a warrant is unreasonable and thus a search under the Fourth Amendment.²⁸

David does not have a traditional home, as he does not reside inside a structure, but he does consider his place under the freeway to be his home. Is David's subjective belief relevant? Fourth Amendment jurisprudence seems to hold that it is not. Because David technically lives in a public place, he is unlikely to enjoy any Fourth Amendment protection from government arrest in his "home."²⁹

23. *Katz*, 389 U.S. at 351.

24. See Stephanie M. Stern, *The Inviolable Home: Housing Exceptionalism in the Fourth Amendment*, 95 CORNELL L. REV. 905, 912–13 (2010) ("Homes have achieved iconic status in the modern Fourth Amendment, with judicial rhetoric elevating residential search to the apex of protection."); Lee, *supra* note 1, at 1475 ("With privacy at the core of Fourth Amendment protections, one's activities in the privacy of one's home will be more protected than one's activities on the street. . . . [B]y focusing on privacy as the primary interest protected by the Fourth Amendment, the Court favors those who already have more privacy to begin with.")

25. 445 U.S. 573 (1980).

26. See *United States v. Watson*, 423 U.S. 411 (1976).

27. *Payton*, 445 U.S. at 601.

28. *Id.* ("[N]either history nor this Nation's experience requires us to disregard the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic.")

29. Slobogin, *supra* note 4, at 404 ("As a result, the police virtually never need a warrant to arrest . . . a homeless person.")

The second case, *Kyllo v. U.S.*,³⁰ demonstrated that, like the pre-*Katz* cases, the home is still a place protected from government surveillance even when applying *Katz*'s reasonable expectation of privacy test.³¹ In *Kyllo*, the government used a thermal imaging device to detect heat radiating from the defendant's garage in order to investigate the defendant's use of lamps to grow marijuana.³² The *Kyllo* Court held that this was a search, even though the officers never physically entered the home, because intimate information inside the home needed the protection of the warrant requirement.³³ The Court posited that with a heat vision sensor, the police could potentially know when a woman inside was taking a bath or entering her sauna.³⁴

David might not reasonably expect officers to use a thermal imaging device to survey his residence, but they would not need a warrant to do so because he does not have walls to look through. Once again, the fact that David does not have a traditional home is significant. *Kyllo* affirms Fourth Amendment jurisprudence, making it absolutely clear that the traditional home is a specially protected place.³⁵ Since David lacks a traditional home, *Kyllo* would not protect him.

The *Katz* reasonable expectation of privacy test consists of two parts: a person's subjective expectation that what he is doing is private, and an objective determination of the reasonableness of that expectation.³⁶ If a person does not expect something to be private, or if his expectation of privacy is unreasonable, he has no reasonable expectation of privacy. An expectation is unreasonable when a person constructively did not expect privacy or should not have expected privacy—this can be compared to an assumption of risk. In tort law, if you assume the risk of taking part in a dangerous activity, you cannot later establish that your injury was unexpected and compensable.³⁷ Following this logic, if one assumes the risk that what he is doing will

30. 533 U.S. 27 (2001).

31. *See id.*

32. *Id.* at 29–30.

33. *Id.* at 38 (“These were intimate details because they were details of the home, just as was the detail of how warm—or even how relatively warm—*Kyllo* was heating his residence.”).

34. *Id.* at 38 (“The Agema Thermovision 210 might disclose, for example, at what hour each night the lady of the house takes her daily sauna and bath—a detail that many would consider ‘intimate . . .’”).

35. *See id.* at 40 (“That line [at the entrance of the home], we think, must be not only firm but also bright—which requires clear specification of those methods of surveillance that require a warrant.”).

36. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

37. *See* *Murphy v. Steeplechase Amusement Co.*, 166 N.E. 173, 174 (N.Y. 1929) (“*Volenti non fit injuria*. One who takes part in such a sport accepts the dangers that

not be private by putting it out in public himself, then one cannot later claim he expected it would remain private.

2. Legitimacy

Cases limiting the reasonable expectation of privacy outside the home following the logic of an assumption of risk theory fall into three doctrinal categories: legitimacy, open-fields, and voluntary exposure.³⁸ On an intuitive level, legitimacy is the idea that a person cannot establish privacy in a place he was not supposed to be. The Court has held that when a person is on property that they don't have a legal right to be on, they do not have the same expectation of privacy as the owner or right-holder.³⁹ *Minnesota v. Carter*⁴⁰ reaffirmed the idea that without more, being merely present on someone else's property with consent is not enough for a guest to have a reasonable expectation of privacy in the goings-on of that house.⁴¹ The defendant in *Carter*, a drug dealer, was present in the house of one of his customers with the consent of the lessee.⁴² When the officers entered the house to investigate a crime, the Court reasoned held it was only a search with respect to the lessee, not the visitor.⁴³

Because David resides on public land, he has no ownership interest in the place he calls home. If he were squatting on private property, the owner could bring an eviction suit against him.⁴⁴ Under *Carter*, even if he had consent to be on the property, without more he still may not have a Fourth Amendment claim.

3. Open-Fields Doctrine

The open-fields doctrine is a subset of the plain-view doctrine, which holds that the government may observe that which is in the

inhere in it so far as they are obvious and necessary, just as a fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball.”).

38. See *infra* Parts I.B.2–4.

39. See, e.g., *Minnesota v. Carter*, 525 U.S. 83 (1998).

40. *Id.*

41. See *id.* at 90–91.

42. See *id.* at 86.

43. *Id.* at 86–88 (The issue before the court was worded as whether the defendant had standing to claim a Fourth Amendment violation, but is more clearly understandable as whether the defendant could claim the same Fourth Amendment protections as the person whose house he was in—the court held he could not.).

44. In an eviction suit, David's property could be moved by the court without his permission.

public eye without first obtaining a warrant.⁴⁵ The open-fields cases have strengthened the idea that the Fourth Amendment protections extend most notably to the home by holding that police may trespass on private property without conducting a Fourth Amendment search as long as they do not trespass in the home or surrounding curtilage.⁴⁶ Even if David did in fact own the land under the freeway where he was sleeping, because he was not sleeping inside a traditional home with walls, a floor, and a ceiling, he would likely have no reasonable expectation of privacy.

In *Oliver v. United States*,⁴⁷ officers entered the defendant's private property, passed a gate with a no trespassing sign, and continued on behind the defendant's house to find illegal marijuana crops growing in an open field, which was completely hidden from public roads by forestation.⁴⁸ The Court held that there was no search because the Fourth Amendment protects persons, houses, papers, and effects, but not open fields.⁴⁹ The Court found "societal understanding that certain areas deserve the most scrupulous protection from government invasion"⁵⁰ and those areas do not include open fields on private property. The area that deserves the most protection according to the *Oliver* Court is the physical home. Reaffirming the *Oliver* decision, the Court in *U.S. v. Dunn*⁵¹ extended *Oliver's* logic to barns.⁵² In *Dunn*, the officers entered the defendant's property, climbed over three fences with barbed wire, and looked inside a barn on the defendant's property that was not connected to his home.⁵³ The Court found no search, citing *Oliver* to once again announce that the Fourth Amendment is intended to protect the intimate activities that take place in the home. Defendant's barn was ostensibly unsuitable for those types of protected activities and thus there was no societal interest in protecting them.⁵⁴

45. See *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971) ("It is well established that under certain circumstances the police may seize evidence in plain view without a warrant.").

46. See *United States v. Dunn*, 480 U.S. 294 (1987); *California v. Ciraolo*, 476 U.S. 207 (1986); *Oliver v. United States*, 466 U.S. 170 (1984).

47. 466 U.S. 170 (1984).

48. See *Oliver*, 466 U.S. at 173-74.

49. *Id.* at 176-77.

50. *Id.* at 178.

51. 480 U.S. 294 (1987).

52. See *Dunn*, 480 U.S. at 294.

53. *Id.* at 297-98.

54. *Id.* at 304 ("Once at their vantage point, [the officers] merely stood, outside the curtilage of the house and in the open fields upon which the barn was constructed, and peered into the barn's open front.").

David's freeway overpass is open to the public and thus legally an open field—meaning that it lacks Fourth Amendment protection. In both *Oliver* and *Dunn*, the defendants placed gates and no trespassing signs in front of the searched area in an attempt to assert their expectation of privacy. In both cases the Court found no reasonable expectation of privacy.⁵⁵ What this means for David is that even if he erects a “privacy” sign or hides his property behind a fence or gate in an attempt to assert an expectation of privacy, he is unlikely to be successful.

*California v. Ciraolo*⁵⁶ reinforced the limit of Fourth Amendment protection to the home. In *Ciraolo*, the government took pictures of the defendant's back yard from an airplane flying 1000 feet in the air.⁵⁷ The Court held this was not a search because the backyard was visible from above, and the officers were not trespassing in public airspace.⁵⁸ The police had a right to be where they were and to see what they saw, just as if the officers were walking down the street next to the defendant's home.⁵⁹ The Court noted that the backyard was fenced and, while technically a part of the curtilage of the home, the conduct of the police did not amount to a search.⁶⁰ David's residence under the freeway is not fenced or walled and was easily seen by the common passersby so the *Ciraolo* Court would likely not find a reasonable expectation of privacy in it as well.⁶¹

4. Voluntary Exposure to the Public

Voluntary exposure is the most straightforward limitation on reasonable expectations of privacy under an assumption of risk logic. Intuitively, if one voluntarily exposes what he is doing to the public then

55. See *Oliver*, 466 U.S. at 170; *Dunn*, 480 U.S. at 294.

56. 476 U.S. 207 (1986).

57. *Id.* at 209.

58. *Id.* at 213 (“The observations by Officers Shutz and Rodriguez in this case took place within public navigable airspace, . . . in a physically nonintrusive manner; from this point they were able to observe plants readily discernible to the naked eye as marijuana.”).

59. *Id.*

60. *Id.* at 213 (“That the area is within the curtilage does not itself bar all police observation. The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares.”).

61. Slobogin, *supra* note 4, at 400–01 (“Instead of declaring that one's living space and belongings are automatically entitled to constitutional protection—a conclusion that would seem to follow from the Fourth Amendment's explicit mention of ‘houses’ and ‘effects’—the Court has signaled that the reasonableness of privacy expectations in such areas is contingent upon the existence of ‘effective’ barriers to intrusion. In other words, one's constitutional privacy is limited by one's actual privacy.”).

he cannot then claim privacy protections. Two government informant cases, *Hoffa v. United States*⁶² and *United States v. White*⁶³ provide the basic rule that when people trust others with their secrets, they cannot expect that whoever they told will not turn that information over to the government.⁶⁴ In *Hoffa*, the defendant admitted his crimes to his close friend.⁶⁵ The friend told this information to the government, presumably to bargain for a reduced punishment for himself. The Court held this was not a search.⁶⁶ In *White*, the defendant also admitted his crimes to a close friend. The friend was wearing a recording device that instantly transmitted the conversation to listening officers.⁶⁷ Again the Court found this not to be a search because it is unreasonable to expect that the people we talk to will not betray our trusts and not share our secrets with others.⁶⁸ The courts have expanded the voluntary exposure doctrine from government informants to the public at large.⁶⁹

In *California v. Greenwood*,⁷⁰ the defendant took a bag of trash outside his home and placed it on the public street for collection.⁷¹ Officers rummaged through the bag of trash and found incriminating evidence. The Court held that there was no search because the garbage was exposed to the public.⁷² The Court found that because any common passerby, or even the garbage man, could have opened the trash bag and seen what was inside, the defendant's expectation of privacy was not reasonable.⁷³

62. 385 U.S. 293 (1966).

63. 401 U.S. 745 (1971).

64. See *Hoffa*, 385 U.S. at 293; *White*, 401 U.S. at 745.

65. *Hoffa*, 385 U.S. at 296.

66. *Id.* at 310–11.

67. *White*, 401 U.S. at 746–47.

68. *Id.* at 751 (“For constitutional purposes, no different result is required if the agent instead of immediately reporting and transcribing his conversations with defendant, either (1) simultaneously records them with electronic equipment which he is carrying on his person; (2) . . . or carries radio equipment which simultaneously transmits the conversations either to recording equipment located elsewhere or to other agents monitoring the transmitting frequency.”).

69. See Stern, *supra* note 24, at 923 (“Low-income individuals spend a greater share of their time in public venues and socialize more frequently in public spaces, which typically receive less protection under the Fourth Amendment.”).

70. 486 U.S. 35 (1988).

71. *Id.* at 37.

72. *Id.* at 40 (“Here, we conclude that respondents exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment protection.”).

73. *Id.* at 40–41 (“It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. Moreover, respondents placed their refuse at the curb for

David's trash is in public as well as all of his other possessions including his cardboard box, duffel bag, and bedding in that any common passerby could see them. When the defendant in *Greenwood* took his closed trash bag out of his home and set it on the public street, he immediately lost his reasonable expectation of privacy in the contents of the trash bag.⁷⁴ David's box and duffle bag are already in a public place and thus the *Greenwood* Court would likely find he has no reasonable expectation of privacy in their contents either.

Further limiting David's privacy rights, *United States v. Knotts*⁷⁵ provides that a person does not have a reasonable expectation of privacy in his movements while traveling on a public road.⁷⁶ In *Knotts*, the government hid a beeper-tracking device in a can of chemicals and made it available to the defendant.⁷⁷ The defendant traveled around the city on public roads with the beeper in his car. Officers followed the defendant, and were able to remain out of sight because they tracked the beeper electronically.⁷⁸ The Court held that this was not a search because a person driving down a public road voluntarily exposes him or herself to the public.⁷⁹ Officers could have been stationed at every intersection to observe where the defendant drove and how long he stayed in any one place. Using the beeper was just a more efficient acquisition of the same information and thus the defendant had no reasonable expectation of privacy in his public movements.⁸⁰

the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through respondents' trash or permitted others, such as the police, to do so.").

74. *Id.* ("Accordingly, having deposited their garbage in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it, respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded." (internal quotations omitted)).

75. 460 U.S. 276 (1983).

76. *See id.*

77. *Id.* at 278.

78. *Id.* at 278-79.

79. *Id.* at 281-82 ("A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. When [the defendant] travelled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was travelling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination when he exited from public roads onto private property.").

80. *Id.* at 282 ("Visual surveillance from public places along [the defendant]'s route or adjoining [his] premises would have sufficed to reveal all of these facts to the police. The fact that the officers in this case relied not only on visual surveillance, but also on the use of the beeper to signal the presence of [the defendant]'s automobile to the police receiver, does not alter the situation.").

A limitation on the *Knotts* rule came from *United States v. Karo*.⁸¹ Similar to *Knotts*, the defendant traveled with a can of chemicals containing a beeper, but unlike in *Knotts*, the defendant drove to his home and unloaded the can into his house.⁸² The officers were able to tell from the beeper that the can remained in the house for a long period of time.⁸³ The Court held that the investigation violated the defendant's reasonable expectation of privacy and was a search, basing its ruling on the heightened expectation of privacy inside the home.⁸⁴

The *Knotts/Karo* distinction establishes that beeper surveillance is permissible if the subject is maneuvering about public roads, but not if the subject is in the home. Thus, if David is the target of electronic surveillance, he would likely be without Fourth Amendment protection, even at home, as his home is on public property.

C. Privacy Outside the Home: Closed Containers

A reasonable expectation of privacy outside the home may nonetheless be found when the object of the search is a closed container. The government cannot search inside closed containers a person keeps with them, like luggage, without a warrant.⁸⁵ Police can inspect a closed container without a warrant in a limited way, in other words, without opening it.⁸⁶ In *United States v. Place*,⁸⁷ the government employed drug-sniffing dogs to sniff airport luggage and bark if the dogs detected drugs.⁸⁸ The Court found this was not a search because there

81. 468 U.S. 705 (1984).

82. *Id.* at 708–09.

83. *Id.* at 715 (“[H]ere, as we have said, the monitoring indicated that the beeper was inside the house, a fact that could not have been visually verified.”).

84. *Id.* at 714, 716 (“This case thus presents the question whether the monitoring of a beeper in a private residence, a location not open to visual surveillance, violates the Fourth Amendment . . . we think that it does. . . . Indiscriminate monitoring of property that has been withdrawn from public view would present far too serious a threat to privacy interests in the home to escape entirely some sort of Fourth Amendment oversight.”); *see also* Stern, *supra* note 24, at 913 (“The perseverance of this ‘cult of the home’ in criminal search doctrine . . . has also justified, both politically and jurisprudentially, reducing protection in other search contexts.”); Slobogin, *supra* note 4, at 401 (“As a result, people who live in public spaces (for instance, the homeless who reside in boxes) and people who have difficulty hiding or distancing their living space from casual observers (for instance, those who live in tenements and other crowded areas) are much more likely to experience unregulated government intrusions.”).

85. *See* *United States v. Chadwick*, 433 U.S. 1 (1977), *abrogated by* *California v. Acevedo*, 500 U.S. 565 (1991).

86. *United States v. Place*, 462 U.S. 696 (1983).

87. 462 U.S. 696 (1983).

88. *Id.* at 699.

was no risk of finding intrusive or personal information.⁸⁹ The dogs barked only when they detected drugs, not when they detected undergarments or sex toys in people's luggage. Under *Place*, officers are permitted to walk drug-sniffing dogs around the perimeter of someone's house and it would still not be considered a search under the Fourth Amendment, but in David's case, there cannot be much distinction between walking the drug-sniffing dog around his living area and walking it through his bedroom.

David leaves his closed containers unattended under the freeway and not always on his person, which by itself has some legal significance.⁹⁰ *Bond v. United States*⁹¹ presents a realistic analogy to something a homeless person might encounter. In *Bond*, the defendant boarded a bus and stored his closed canvas bag in an overhead compartment. Police officers entered the bus and physically squeezed the defendant's bag in order to determine its contents.⁹² Although the Court found that by placing the bag out of reach and away from his person, the defendant assumed the risk that the bag would be handled by other passengers or bus personnel, he did "not expect that other passengers or bus employees [would] as a matter of course, feel the bag in an exploratory manner."⁹³ The Court concluded that the officer's squeeze was a search under the Fourth Amendment.⁹⁴

Under *Bond*, David arguably has a reasonable expectation of privacy in the contents of his possessions as long as he does not expect them to be felt in an exploratory manner by other ordinary citizens. In practice however, this rule allows the court to draw arbitrary lines between what is protected and what is not.

In *State v. Mooney*,⁹⁵ the Connecticut Supreme Court found a reasonable expectation of privacy in the defendant's closed containers,

89. *Id.* at 706.

90. In *Wyoming v. Houghton*, 526 U.S. 295 (1999), in the course of searching a car with probable cause, the officers asked all passengers to vacate the vehicle. *Id.* at 298. Defendant was a passenger in the back seat and when she exited the car, she left her purse on the seat. *Id.* The Court held that because the officers could legally search the car, they could also search all closed containers inside the car. *Id.* at 300. Hypothetically, if the Defendant had taken her purse with her before exiting the vehicle, the officers would not have been legally able to search it because they lacked the requisite probable cause to search her person. *Id.* at 302.

91. 529 U.S. 334 (2000).

92. *Id.* at 336.

93. *Id.* at 338–39.

94. *Id.*

95. 588 A.2d 145 (Conn. 1991).

which he left under a freeway overpass.⁹⁶ Our hypothetical homeless person, David, is based on the facts of *Mooney*, where a homeless man named David Mooney was living under a freeway overpass and was suspected of a crime.⁹⁷ He was arrested, and while he was in custody, his girlfriend showed police officers where he was staying.⁹⁸ The officers found the defendant's bedding, shelves, cardboard box and duffel bag, and proceeded to take them to the police station for inventory.⁹⁹ The Connecticut Supreme Court found that the defendant had a reasonable expectation of privacy in his closed duffel bag and his closed cardboard box, but not in his bedding or his shelving.¹⁰⁰ Ultimately, the court acquitted David Mooney because the evidence needed to convict him was located in his cardboard box and excluded at trial.

The Connecticut Supreme Court protected some of Mooney's possessions from unreasonable government search and seizure, but not all of them. Obviously, the *Mooney* court would not have made such distinctions between the defendant's various possessions had the defendant not been homeless. This holding, if it were binding precedent outside of Connecticut, would leave reviewing courts to protect closed possessions but not those considered open, a rather arbitrary distinction.

Some scholars have argued that the closed container doctrine has, or will soon become, obsolete.¹⁰¹ Justice Scalia himself has said that closed containers outside the home should not be protected by the Fourth Amendment.¹⁰² Whatever limited protection homeless persons are afforded through the doctrine of closed containers "it would be a mistake to conclude . . . that the Warrant Clause was . . .

96. *Id.* at 150.

97. *Id.* at 149–50.

98. *Id.*

99. *Id.*

100. *Id.* at 160 ("Our society has traditionally afforded a high degree of deference to expectations of privacy in closed containers because such an area is normally intended as a repository of personal effects.").

101. Lee, *supra* note 1, at 1403 ("In the 1970s, the Court announced in a series of cases . . . creating the Container Doctrine [that] put portable containers on an almost equal footing with houses, which enjoy unquestioned Fourth Amendment protection; . . . the Container Doctrine is fast becoming a historical relic.").

102. *California v. Acevedo*, 500 U.S. 565, 585 (1991) (Scalia, J., concurring) ("[T]he search of a closed container, outside a privately owned building, with probable cause to believe that the container contains contraband, and when it in fact does contain contraband, is not one of those searches whose Fourth Amendment reasonableness depends upon a warrant.").

intended to guard only against intrusions into the home.”¹⁰³ The homeless should be afforded more Fourth Amendment protection in the places they call home.

II. *United States v. Jones*

The Supreme Court’s recent decision in *United States v. Jones*¹⁰⁴ could alter our understanding of what a search is, and may extend greater Fourth Amendment protections to the homeless. In *Jones*, the defendant was suspected of dealing and trafficking drugs.¹⁰⁵ In order to find out where he was moving his supply, the government requested a warrant to attach a Global Positioning System (“GPS”) device to Jones’ wife’s car.¹⁰⁶ The warrant was issued and valid for ten days.¹⁰⁷ On the eleventh day, officers attached the GPS device to the car in a public parking lot outside the jurisdiction of the granted warrant.¹⁰⁸ The warrant had both expired and was inapplicable outside the jurisdiction, but the officers tracked the car for 28 days, 24 hours a day, creating more than 2000 pages of data on everywhere Jones went and how long he stayed in any one place.¹⁰⁹ Instead of arguing good faith reliance on a faulty warrant, the government argued that it did not need a warrant to track Jones’ car by GPS because Jones had no reasonable expectation of privacy in his physical location while in public, referencing *Knotts*.¹¹⁰ Furthermore, any data gathered while the car was parked at Jones’ home was suppressed and thus not at issue here.¹¹¹

A. The Majority

Justice Scalia wrote the opinion of the Court, which held that the government violated Jones’ Fourth Amendment rights when agents attached a GPS device to the car Jones drove and tracked his physical

103. *United States v. Chadwick*, 433 U.S. 1, 8 (1977), *abrogated by* *California v. Acevedo*, 500 U.S. 565 (1991).

104. 132 S. Ct. 945 (2012).

105. *Id.* at 947.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Jones*, 132 S. Ct. at 947.

110. *Id.* at 950 (“The Government contends that the Harlan standard shows that no search occurred here, since *Jones* had no ‘reasonable expectation of privacy’ in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all.”).

111. *Id.* at 947. The government forfeited its alternative argument—that if it was a search it was not unreasonable—by not timely raising it. *Id.* at 954.

location.¹¹² Justice Scalia focused on physical trespass and property rights as the basis for Fourth Amendment protection. The moment the officers touched the car to attach the GPS device, they physically trespassed on his personal property with the intent to obtain information, and thus executed a search.¹¹³ In his opinion, Justice Scalia recounted the evolution of doctrine surrounding Fourth Amendment searches.¹¹⁴ Originally physical trespass to property was required for a search until *Katz* extended the definition of a search to investigations that did not amount to a physical trespass, but instead intruded on reasonable expectations of privacy.¹¹⁵ Justice Scalia clarified that the reasonable expectation of privacy test did not withdraw the physical trespass test, but rather added to it.¹¹⁶

The majority decision affirmatively avoided relying on or performing the reasonable expectation of privacy test,¹¹⁷ and nonetheless found a Fourth Amendment violation, highlighting that there can be a search under the Fourth Amendment that does not amount to an intrusion into a reasonable expectation of privacy.¹¹⁸ Justice Scalia, writing for the Court, decided the matter on a narrow issue and did not address new constitutional issues that might have extensive and unknown ramifications, such as whether a person has a reasonable expectation of privacy in their physical location.¹¹⁹ The Court did not hold that the reasonable expectation of privacy test was dead, but

112. *Id.* at 949.

113. *See id.* (“The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted.”).

114. *Id.* at 949–50.

115. *Id.* For more on this see *supra* Part I.A.

116. *Jones*, 132 S. Ct. at 952 (“[T]he *Katz* reasonable-expectation-of-privacy test has been *added* to, not *substituted* for, the common-law trespassory test.”).

117. *Id.* at 950 (“Jones’ Fourth Amendment rights do not rise or fall with the *Katz* formulation.”).

118. *Id.*

119. *Id.* at 954 (“It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present case does not require us to answer that question. And answering it affirmatively leads us needlessly into additional thorny problems. . . . What of a 2–day monitoring of a suspected purveyor of stolen electronics? Or of a 6–month monitoring of a suspected terrorist? We may have to grapple with these ‘vexing problems’ in some future case where a classic trespassory search is not involved and resort must be had to *Katz* analysis; but there is no reason for rushing forward to resolve them here.”).

rather suggested that it could be turned to if trespass was insufficient to decide a case, which was not the case here.¹²⁰

Justice Scalia explained the rationale behind using property rights as a basis for Fourth Amendment protection. Even in the absence of property damage, the owner still has the legal right to keep anyone, including the government, off his personal property.¹²¹ The property at issue in *Jones* was a car parked in a public place, not real property or land. This is significant because in a tort cause of action for trespass to personal property—trespass to chattels—the plaintiff is normally required to prove damages to his property.¹²² *Jones* held that a defendant need not show damages in order to claim trespass as the basis for a Fourth Amendment search.¹²³ The opinion strengthened Fourth Amendment protections of personal property outside the home by both expanding the definition of what a search can be and extending the real property trespass rationale to personal property found outside the home.

B. The Concurring Opinions

Justice Sotomayor joined the majority, writing a concurring opinion in which she agreed that the matter could be decided on the basis of trespass.¹²⁴ She also argued that if trespass hadn't resolved the is-

120. *Id.* at 953 (“[W]e do not make trespass the exclusive test. Situations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis.”).

121. *See Jones*, 132 S. Ct. at 949 (“The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to ‘the right of the people to be secure against unreasonable searches and seizures’; the phrase ‘in their persons, houses, papers, and effects’ would have been superfluous.”).

122. *See* RESTATEMENT (SECOND) OF TORTS § 218 (1965) (“One who commits a trespass to a chattel is subject to liability to the possessor of the chattel if, but only if, (a) he dispossesses the other of the chattel, or (b) the chattel is impaired as to its condition, quality, or value, or (c) the possessor is deprived of the use of the chattel for a substantial time, or (d) bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.”). The Restatement test clearly requires damage to the chattel that was trespassed on. This can include physical damage to the chattel itself or damage to the possessor by substantial loss of use. *See Intel Corp. v. Hamidi*, 71 P.3d 296 (Cal. 2003) (holding that because the computer server owner could not prove damages to his server caused by the unauthorized use of another, that there was no trespass to chattels action).

123. *Jones*, 132 S. Ct. at 957 n.2 (Alito, J., concurring) (“[T]oday there must be ‘some actual damage to the chattel before the action can be maintained.’ Here, there was no actual damage to the vehicle to which the GPS device was attached.” (quotation omitted)).

124. *Id.* at 954–55 (Sotomayor, J., concurring) (“The Government usurped Jones’ property for the purpose of conducting surveillance on him, thereby invading privacy interests long afforded, and undoubtedly entitled to, Fourth Amendment protection. . . .

sue, then the reasonable expectation of privacy test would have found a Fourth Amendment violation.¹²⁵

Justice Alito wrote another concurring opinion, joined by Justices Ginsburg, Breyer, and Kagan, which similarly found that Jones' Fourth Amendment rights were violated when the government tracked the car by GPS.¹²⁶ However, Justice Alito's concurrence did not support Justice Scalia's trespass test, and instead focused on the reasonable expectation of privacy test, finding a search based on the prolonged and intrusive nature of the investigation for a crime not serious enough to warrant the intrusion.¹²⁷

III. Privacy Protections from Government Surveillance after *Jones*

As a new decision, *Jones* has not been revisited or applied in many cases. *Jones* might ultimately be limited to its facts. However, *Jones* could become a pro-privacy case that extends reasonable expectations of privacy far beyond the home to cover activities performed in public. In fact, it may extend Fourth Amendment protection to personal property outside the home that is not otherwise subject to reasonable expectations of privacy.

A. Reasonable Expectations of Privacy Outside the Home

Prior to *Jones*, the reasonable expectation of privacy test was severely limited in scope, as discussed, to protect activities inside the home.¹²⁸ Courts have been generally skeptical of a person's reasonable expectation of privacy in public, if for no other reason than the fact that the activities occurred in public. Now, under Justice Alito's interpretation of the Fourth Amendment, a person's reasonable expectation of privacy might be extended to activities performed in public. If the government collects information for a prolonged period of

Katz's reasonable-expectation-of-privacy test augmented, but did not displace or diminish, the common-law trespassory test that preceded it.”).

125. *Id.* at 954 (“Of course, the Fourth Amendment is not concerned only with trespassory intrusions on property.”).

126. *Id.* at 964 (Alito, J., concurring) (“Under this approach, relatively short-term monitoring of a person’s movements on public streets accords with expectations of privacy that our society has recognized as reasonable. False But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.”).

127. *Id.* (“For such offenses, society’s expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual’s car for a very long period.”).

128. *See supra* Part I.

time, which in turn reveals a great deal of private information, then the government has likely intruded on a person's reasonable expectation of privacy in public.

Although Justice Alito's opinion was a concurrence, his words should be taken seriously because Justice Sotomayor agreed with Alito's findings in her concurrence,¹²⁹ which means that at least five justices have expressed the desire to extend and strengthen the reasonable expectation of privacy test.¹³⁰

While Alito's concurrence would strengthen protections from prolonged government surveillance, in some cases its effects may be quite limited. The *Jones* prolonged surveillance rule would be inapplicable to the more common situations faced by the homeless because when the court applies the reasonable expectation of privacy test it must, as discussed above, include all its limitations.

B. Trespass to Personal Property

Under Justice Scalia's interpretation of the Fourth Amendment, however, the reasonable expectation of privacy analysis may not be necessary. First the Court asks whether there was a physical trespass to personal property.¹³¹ Because Justice Scalia found a Fourth Amendment search based in trespass that did not amount to an intrusion into a reasonable expectation of privacy, he clarified for us that they are independent parts of the search inquiry.¹³² If David can show that his belongings under the freeway belong to him, then even if he does not have a reasonable expectation that they will remain private, it will still be a search when the officers *take* his property and look through it.

There are two limitations to the trespass-based search that immediately come to mind. First, whether the law recognizes the property interests of the person being searched, and second, under what circumstances the new search inquiry should come into play. Since the new search inquiry would be based in trespass and trespass is a property concept, the same limitations that apply to property rights would also apply to the new search inquiry. For homeless people, legally rec-

129. *Jones*, 132 S. Ct. at 955 (Sotomayor, J., concurring) ("I agree with Justice [Alito] that, at the very least, 'longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.'").

130. Justices Alito, Ginsburg, Breyer, and Kagan all signed Alito's concurrence and Justice Sotomayor supported his conclusions in her own concurrence. *Id.*

131. *Id.* at 955 ("[T]he trespassory test applied in the majority's opinion reflects an irreducible constitutional minimum: When the Government physically invades personal property to gather information, a search occurs.").

132. *Id.* at 950.

ognized property rights can be complicated. When a homeless person's property is in his hands or immediate control, it is clear to the rest of the world that he has a property interest in it, but when he leaves his property behind in a place where others can find it, courts might determine he has abandoned his property and thus relinquished any property interest.¹³³ However, some courts have required that officers recognize the difference between abandoned property and unattended property.¹³⁴ This distinction is vital to not only homeless people's privacy, but also to their ability to live autonomously because, "the loss of items such as clothes and medicine affects the health and safety of homeless persons; the prospect of such losses may discourage the homeless from leaving parks and other areas to seek work or medical care."¹³⁵ This ultimately means that officers will need to be trusted to fairly distinguish between unattended property and abandoned property, something courts have trusted them to do before.¹³⁶

133. See *United States v. Landry*, 154 F.3d 897, 899 (8th Cir. 1998) (finding that walking fifty feet away from property was sufficient to be abandonment, regardless of intent).

134. Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities*, 66 TUL. L. REV. 631, 672 n.264 (1992) ("Officials may justify sweeps of unattended property of homeless individuals on the premise that the property seized is abandoned property. [H]owever, [the court] found a distinction between possessions of the homeless left unattended and abandoned property. The court required local officials to acknowledge and respect that distinction."); see also *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1559 (S.D. Fla. 1992) (finding that "by its appearance, the property belonging to homeless persons is reasonably distinguishable from truly abandoned property . . . and a homeless person's personal property is generally all he owns; therefore, while it may look like 'junk' to some people, its value should not be discounted.").

135. *Pottinger*, 810 F. Supp. at 1559 ("Carter, one of the named plaintiffs in this case, testified at trial that after being arrested for sleeping in Bicentennial Park, he returned to the park to find that all of his personal possessions were gone and that it took him three weeks to reassemble his personal papers. This loss affected his ability to obtain work because many prospective employers required identification. As a result, Carter, who now has a job and a place to live, remained on the street just that much longer."); see also Justin Stecal, *Search and Seizure Laws Strip Personhood from the Homeless*, 53 FED. LAW. 53, 53 (2006) ("Current search and seizure laws do not protect us all equally. . . . 'No one is free to perform an action unless there is somewhere he is free to perform.'" (quoting Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295, 296 (1991))).

136. *Pottinger*, 810 F. Supp. at 1559 ("(1) property belonging to homeless individuals is typically found in areas where they congregate or reside; (2) such property is reasonably identifiable by its nature and organization; it typically includes bedrolls, blankets, clothing, toiletry items, food, identification, and a means for transporting the property such as a plastic bag, cardboard box, suitcase or shopping cart; (3) police officers and city workers assigned to the various areas where homeless persons congregate should be well aware of the appearance of such property; . . . (5) the homeless often arrange their belongings in such a manner as to suggest ownership—e.g., they may lean it against a tree or other object or cover it with a pillow or blanket.").

As to the second limitation, the new trespass-based search inquiry should be triggered when the government takes, touches, or uses someone's property as part of an investigation for the purpose of collecting evidence or information.¹³⁷ The situation in which the new search inquiry will be most important is when there is a search of property that is neither concealed within a closed container nor openly in plain-view.¹³⁸ Consider three situations: a bloody knife in a box, a bloody knife on top of a pile of clothes and a bloody knife under a pile of clothes. Before *Jones*, when an officer opened a box to find a bloody knife, the officer likely intruded into someone's reasonable expectation of privacy under the closed container holdings of *Bond* and *Mooney*.¹³⁹ Under the trespass-based search this should not change.

Plain-view means the officer can see and identify clear evidence of a crime without touching or altering anything. If police officers, while on their routine safety rounds, innocently spot someone's belongings and by chance see a bloody knife on top of a pile of clothes, there would be no search.¹⁴⁰ Before *Jones*, when evidence of a crime was in plain-view, officers could take the evidence and search it without violating the Fourth Amendment—this would not change.

What *Jones* may have changed is when the police officers, while investigating someone, begin rummaging through his belongings and find a bloody knife under a pile of clothes, which was not immediately noticeable before the rummaging began. Here a trespass-based search has taken place. The new trespass-based search from *Jones* should al-

137. Note two distinctions, the first between inadvertent discoveries and intentional investigatory searches, and the second between seeing clear evidence of a crime in the open and touching or moving property in order to see evidence of a crime. Compare *Jones*, 132 S. Ct. at 949 ("The Government physically occupied private property for the purpose of obtaining information." (emphasis added)), with Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 768 n.38 (1994) ("Perhaps merely looking without touching is not a "seizure," but it surely should count as a "search" for one who believes in plain meaning . . ."). With this distinction "[a]t times . . . the Court has played word games, insisting that sunglass or naked-eye searches are not really searches. But if high-tech binoculars, or x-ray glasses are used, then maybe." Amar, *supra* note 137, at 768.

138. Before *Jones*, there was no case law which found Fourth Amendment protection for property that was not in a closed container and also not in plain-view. See *supra* Part I.

139. See *supra* Part I.

140. See Amar, *supra* note 137, at 768 ("Plain View Searches.—When a Secret Service agent at a presidential event stands next to her boss, wearing sunglasses and scanning the crowd in search of any small signal that something might be amiss, she is searching without a warrant. Yet surely this must be constitutional, and the Supreme Court has so suggested."); *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971) ("It is well established that under certain circumstances the police may seize evidence in plain view without a warrant.").

low the homeless to claim privacy protections not just for closed containers, but also for other personal property.

Conclusion

The Fourth Amendment protects “persons, houses, papers and effects,”¹⁴¹ but it does not protect them all to the same degree. The home has historically received the most Fourth Amendment protection.¹⁴² A person can be “stopped and frisked,” with less than probable cause, and an arrest in public can be made without a warrant.¹⁴³ Papers and effects are both listed in the text of the Fourth Amendment, but outside the home, have historically been searchable without a finding of probable cause unless they meet legal criteria like “closed containers.”¹⁴⁴ Homeless people do not live in homes, but should not be denied the same protections under the Fourth Amendment. The recent *Jones* decision redresses the inequality somewhat by finding Fourth Amendment protections outside the home based on trespass. In addition, the search in *Jones* did not rely on whether *Jones* had a reasonable expectation of privacy and thus was not limited by the mere fact that it occurred in public. It is unclear how *Jones* will be extended or applied in the future, but arguably, within the logic of *Jones*, the homeless will be able to claim Fourth Amendment protections outside a home that they could not claim before.

141. U.S. CONST. amend. IV.

142. See discussion *supra* Part I.

143. See *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Watson*, 423 U.S. 411 (1976).

144. See discussion *supra* Part I.