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Alfaro, Blevin & Cohn LLP

Dear Ms. Maria Castille,

I am writing on behalf of Mr. Blake Davis with regard to the current charges against him for possession of cocaine. We represent Mr. Davis in this matter and seek to come to a quick resolution regarding this matter. It is our belief that the contraband that was obtained during the U.S Customs Agents' search of Mr. Blake's stateroom aboard the Espirit was illegally seized and thus will be suppressed under the Fourth Amendment. Our discussion of the matter below will further detail our belief that the evidence will likely be suppressed if presented for evidence.

I. The Fourth Amendment Protects Individuals at the Border, or Other Ports of Entry Into the United States

The Fourth Amendment of the Constitution protects "against unreasonable searches and seizures." See United States v Clark. Whether a search is reasonable will depend upon the totality of the circumstances surrounding it, Id.. One exception does apply to the Fourth Amendment requirement for warrantless searches and that is searches that occur at the border and "functional equivalent" of a border of the United States such as ports where a ship from a foreign country arrives, Id.. While this exception does give much more latitude to U.S Border and Customs Agents, the exception is not absolute. Under the precedent set forth in the 15th Circuit, there are certain exceptions to the border search which would allow for individuals to be protected under the Fourth Amendment of the Constitution. Under the precedent set forth in United States v. Clark, a search of a person's stateroom or cabin aboard a cruise ship may be afforded Fourth Amendment protection if (1) the search was

not a "routine border search" and (2) the agents did not possess "reasonable suspicion" to search the cabin or stateroom, Id.

These principles will be discussed in turn.

a. Searches That Are Not "Routine" Border Searches Require a Warrant

As stated above, searches at the border enjoy greater latitude than other searches within the country's borders, Id. An individual's privacy rights and the Government's interest in protecting its borders favors the Government at the border, Id. This latitude is provided to U.S Customs and Borders Agents if the search was a "routine search", Id. To determine whether a search is routine or not, the court will examine the degree in which the search intrudes upon a person's privacy, Id.

In Mr. Davis's case, the search took place in his cabin upon the *Espirit* cruise ship before departure. There is a presumption that there is a heightened expectation of privacy in the cabin of a cruise ship, similar to the expectation of privacy in one's home, Id. Similar to the appellant in Clark, Mr. Davis's cabin was overturned and searched without a warrant. Further, the luggage and belongings of Mr. and Mrs. Davis were overturned for the purpose of searching for evidence. Based on the precedent in Clark, Mr. and Mrs. Davis are afforded a heightened expectation of privacy in their cabin, even if it is temporary.

Further, the use of "routine" methods is not sufficient to overcome any warrant exception for border searches, Id. In United States v. Braun, the court found that the "routine" aspect of a search by use of trained canines was "routine" for the purposes of border searches when used in public hallways of the cruise ship. Similar to the situation in Braun, the Agents in this case boarded the *Espirit* and used a drug sniffing dog to locate contraband. Upon locating the contraband outside the door of Mr. Davis's cabin, they knocked on the door and

subsequently entered into the cabin where the dog "alerted" the Agents of contraband. While the search of the ship's hallway would be permissible as a "routine" search, the search of Mr. Davis's cabin was not, Id.

The search of Mr. Davis's cabin was highly intrusive, and because of this, the search cannot be labeled a "routine" search for the purposes of a warrantless border search. Thus, without the Agents meeting the requirement for a "routine" warrantless border search, there must be a certain standard of "reasonable suspicion" that is met when determining if the search violated Mr. Davis's Fourth Amendment rights.

b. Absence of Reasonable Suspicion, a Warrantless Border Search of an Individual's Cabin Will Violate the Fourth Amendment

The search of a private living quarters aboard a ship at the functional equivalent of a border is a non-routine search and must be supported by "reasonable suspicion." See United States v. Clark. Further, such searches of a private individual's quarters that are highly intrusive and implicate the dignity and privacy interests of an individual must be supported by "reasonable suspicion." Id. The reason for the reasonable suspicion standard when searching cabins of ships heralds back to the founding principles and traditions of the United States, Id. Such a reasonable suspicion standard properly strikes a balance between the privacy interests of the individual and the Government, Id.

In Mr. Davis's case, the Agents entered into his cabin after their drug sniffing dog alerted them to the presence of contraband in the hallway. A dog's alert in the hallway can establish reasonable suspicion for the purposes of a warrantless border search, See United States v. Braun. The reasonable search standard must be based on specific and articulable facts that the suspect is committing, or committed a crime in order to conduct a search, see United States v. Clark. While the alert from the Agents' dog does establish reasonable

suspicion that a crime is being committed, it was later determined and admitted by the Agents that there reasonable suspicion arose from mistake.

Suspicion can be found unreasonable if the suspicion arises from mistakes that are themselves unreasonable, Id. In the present case, the Agents arrived at Mr. Davis's door and asked for Mrs. Davis to stand aside while the Agents searched their cabin. The facts of the Agent's report shows that Agent Oliphant and his partner were in search of a passenger named "Blaine C. Daviss". Instead of recording the proper room of the suspect, Agent Oliphant erroneously put down Mr. Davis's room. While the rooms were on the same floor of the ship, the location of the rooms was on completely different sides of the ship, Davis on starboard side and Daviss on port side. This error, while seemingly trivial, is in fact unreasonable based on the error that resulted.

After the highly intrusive search of Mr. Davis's room, and his belongings, it wasn't until Mr. Davis's passport fell on the bed and his true identity was revealed. After this, the Agents realized that they had the wrong room because Agent Oliphant had recorded the wrong room number, and as a result searched the entire wrong side of the ship. Such an error could have been easily avoided had the Agents sought the true identity of the cabin members.

Following the ruling in Clark, an unreasonable mistake such as this negates the requisite reasonable suspicion that would allow the Agents to conduct a warrantless search of Mr. Davis's cabin.

Conclusion

Thus, based on our analysis of the facts of the case, and the precedent set forth by the Fifteenth District Court, the Agents search was both "non-routine" and lacked "reasonable suspicion." Mr. Davis, as a passenger onboard

the Espirit cruise line, had a heightened expectation of privacy in his cabin as a temporary home. The Fourth Amendment's foundational principles protect a person's expectation of privacy in such places where they reside, even if temporarily. Further, the highly intrusive search of Mr. and Mrs. Davis's belongings went beyond the scope of reasonable suspicion that was afforded the Agents after their drug sniffing dog had alerted them to a particular part of the room.

Therefore, Ms. Castille, it is our belief based on the analysis above, that any evidence procured by the Agents during the search of Mr. Davis's cabin would be suppressed for violating his Fourth Amendment rights.

We hope that this letter will help further any negotiations in favor of our client.

Very truly yours,

Applicant

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