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===== Start of Answer #6 (2595 words) =====

July 25, 2017

Maria Castile  
Assistant US Attorney

re: U.S. v. Blake C. Davis.

Ms Castile,

As you know, this office represents Mr. Blake C. Davis in the above titled action.

On or about July 16, 2017, Mr. Davis, and his wife Ann Davis had arrived back into port from their seven day cruise on the Esprit.

The boat was docked at the Port Columbia. What transpired at that time was an unfortunate incident prompted by significant investigative error made by Customs officers Ralph Oliphant and Veronica Brown.

It is our understanding that your office is currently seeking to indict Mr. Davis for Misdemeanor resisting the U.S. Customs and Boarder Protection Services Agent (CBP) and for felony possession of cocaine. After interviewing my client and his wife, Ann, as well as reviewing the incident/Arrest report of Mr. Davis, We wish to offer a compromise that Mr. Davis will plead to misdemeanor resisting, if any other charges, including the charge of felony possession of cocaine be dropped.

It is our contention that the search of Mr. Davis' cabin aboard the cruise ship was unreasonable under the Fourth Amendment to the US constitution, and hence a possession charge should not be brought because the drugs were

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illegally seized and will be suppressed.

Search and Seizure of the Cocaine

While the Fourth Amendment protects against unreasonable searches and seizures, the reasonableness depends upon the nature of the circumstances surrounding it, as a general matter warrantless searches are unreasonable. We do however concede that there is a well-established exception to the warrant requirement for border searches and that case law has held that searches on cruise ships docked at first port after arriving from foreign countries may be considered a border search, and thus maybe conducted without a warrant, and if routine, may also be conducted without probable cause, reasonable suspicion or any suspicion of wrong doing. (*Clark pg. 3*)

Although the expectation of privacy is less at the boarder than the interior, the Fourth Amendment balance between the interests of the government and the privacy rights of the individual swings in favor of the government. However, even at the boarder (boarder searches) an individual is still entitled to be free from an unreasonable search and privacy interests must be balanced against the sovereign's interests. Searches classified as "non-routine" require reasonable suspicion of wrongdoing to pass constitutional muster. (*Clark pg. 3*)

Here, the boat was docked at the first port of entry back into the U.S., as such, Our Client Mr. Davis, is still entitled to be free from an unreasonable search, and as the facts show, this "non-routine" search of the Davis cabin required reasonable suspicion to be valid.

Under *Clark*, the deciding factor of whether a boarder search can be classified as routine, an examination of the degree to which the search intrudes on a person's privacy is examined. Highly intrusive boarder searches that implicate the dignity and privacy interests of person being

searched, require reasonable suspicion. In *Clark*, a compelling argument was made that an individual's expectation of privacy in a cabin of a ship is no different than any other temporary place of abode, and as such it should be considered non-routine.

Here, our client's room was searched by Agents. Their room was fully searched, looking under the bed, in drawers, and then their luggage after being pressed and examined from the outside, as well as checked by the drug sniffing dog that was on sight. (which did not detect anything in the luggage) The bags were then further opened, and the contents of each and every bag was dumped out on the bed, every item of clothing, toiletries, and other personal items such as books were probed and examined. The items were then strewn across the floor and the bed and left by the agents. This method of searching the Davis' bags was highly intrusive, and lacked any respect for their dignity or privacy. Further the search was conducted of their belongings without reasonable articulable suspicion.

Infact it was only the mistake of the officer as to the identity of Mr. Davis (rather than Mr. Daviss) and the mistaken selection of the Davis room (8132 rather than room #8086) and the room that prompted the agents to have contact with our Client. The mistakes of the officers in no way can justify reasonable articulable suspicion of Mr. Davis.

Under the Federal Constitution, a person is entitled to be secure in their person, property, papers and possessions. Here the cabin of the Davis' is akin to their personal abode. The court concedes that there is a surprising dearth of authority on the matter, however in the relatively few decision in this area, counsel in favor of the approach urged by Clark. Namely that other courts correctly recognize the search of living quarters on the ship, even at the functional equivalent of a boarder is a non-routine search, and must be supported by reasonable suspicion of criminal conduct. Further the court held that *requiring reasonable suspicion strikes a proper balance between the interests of the government and the*

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*privacy rights of individuals. (Clark, pg. 6 - emphasis added)* This balance allows boarder searches to be conducted permissively but gives special protections to individual's dwelling places, however temporary.

Here, Officer Oliphant states in his arrest report that they boarded the ship to conduct a "routine enforcement action". While reasonable suspicion of officers to the activities of Mr. Blaine C. Davis, is certainly likely given the information in the TEC report. It is doubtful that officers had reasonable suspicion based on specific and articulable facts that Mr. Blake C. Davis had committed, was committing or was about to commit a crime in order to conduct a search.

Officer Oliphant, used the passenger data base (TEC) and found a 'look out' was issued for a BLAINE C DAVISS (two s's) who is a 21yr old white Male, 6'4" tall and traveling alone. Mr. DAVISS, had prior arrests for drug convictions and sales, and was known to purchase last minute tickets for travel on cruise ships using cash.

To the contrary, our client BLAKE C. DAVIS, (one s) is a 61yr old white male, 5'7" and 140 pounds who is married and was traveling with his wife of 40 years Ann Davis. Although both gentlemen are white, the similarities stop there. When officers knocked on the door of the cabin, they first encountered Mrs. Ann Davis who identified herself as such.

Here, the agent had no informant tips, TEC report information or observations, or specific and articulable facts that Mr. Davis had committed, was committing or was about to commit any crime that would pass muster under the reasonable suspicion standard to allow the officers to conduct a search of the Davis's cabin.

On point with *Clark*, any suspicions that the agents may have had about Mr. Davis, was unreasonable because it arose from various mistakes the agent had made regarding the person they were looking to search (in *Clark*, in regards to

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the relationship of Clark with another shipmate, here the mistake is material in nature as to the identity between BLAINE C. DAVISS and BLAKE C. CLARK) The court further concluded, "to be sure, suspicion is unreasonable if it arises from mistakes that are themselves unreasonable."

Again, here, it was the mistake of the Agent, in reviewing the TEC report, and erroneously selecting the wrong cabin to search on the wrong side of the ship, and further, unreasonably mistaking Mr. Davis, a 61yr old married man who is 5'7 and a mere 140 pounds for a 21 yr old single male who is 1/3rd of his age, nearly 9" taller than Mr. Davis and nearly double his weight.

As such, it does not appear that Officer Oliphant has reasonable, articulable facts to base his search of the cabin of the Davis couple, which makes the search unreasonable, and a direct violation of their rights under the Fourth Amendment.

In Officer's arrest report, he states that the dog, "alerted" in the hallway on approach to cabin 8132 which was the Cabin in which the Davis family stayed. Further, Officer states that an "alert" indicated that cocaine had been deposited at the site within a year. This is an extremely large time frame to consider as to the reasonableness of the dog's alert. Here most of the trips the ship embarks on are 7 day excursions, meaning that there could be up to 52 different occupants/families utilizing the room within that year.

Under the holding in *Braun*, the "routine" aspect of the search was the use of trained K-9s to detect narcotic odor from the hallways of cruise ships. In *Braun*, the search of the cabin only occurred after the drug-sniffing dog had alerted to the presence of drugs in the cabin while still in the hallway. While the court stated that the search was a routine boarder search, it clearly was referring to the use of the dogs to search the hallways - not the search of the cabin once there was a reasonable suspicion based on the alert and all the other

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circumstances. -- The routine search in Braun, done without reasonable suspicion of the hallways - was in public space; the search of Barn's cabin was done *only after* there was reasonable suspicion, or even probable cause to search. (Clark, pg 5, *emphasis added*).

Here, if the dog 'alerted' in the hallway, then all adjoining areas of the hallway should have been searched in the public area, and the officers should not have taken the dog's 'alert' to substantiate their mistaken information, to support searching the wrong cabin, on the wrong side of the ship.

Further, after the dog did not 'alert' on any of the personal possessions of Mr. and Mrs. Davis, the dog went and sat in the corner, near the balcony door. It was only then, after officers had finished tearing apart the contents of the Davis luggage, and to their dissatisfaction did not find any contraband, did they return their focus on the dog with according to the Officer's report was then and 'alerting' to the wall near the balcony. After using an implement and the assistance of Officer Brown, and the dog - Officer Oliphant pried the panel off the wall, to expose a large plastic bag -- which is claimed that it tested positive for cocaine.

However no further reporting was made as to any trace of the cocaine to being the property of either Mr. or Mrs. Davis. Again, this room is likely used by various passengers and guests of the cruise ship during the year, not under the exclusive control of Mr. and Mrs. Davis. To ascertain that the cocaine belonged to Mr. Davis is suspect, and there is no further information to corroborate this, except for a unreasonable search that yielded an illegal seizure.

Search of Mr. Davis' briefcase and resist by Mr. Davis

At some point during the search of the cabin by the officers, upon concluding his breakfast, Mr. Davis returned from having his breakfast, with his briefcase. Blake

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Davis is an engineer with Allied Industries, and has been working with his company's corporate counsel to put together a patent application for breakthrough technology. As such, due to the fast approaching deadline for Mr. Davis to submit the final patent paperwork, essentially as immediately after he deboarded the ship, Mr. Davis had the confidential paperwork on his person during the trip, as he was making final adjustments to the documents to complete the project by the rapidly approaching deadline. Mr. Davis took the instructions given to him by the corporate counsel, CEO and Chief Engineer on the project very serious, as he was to make sure that no one viewed the papers, because the technology being patented would likely revolutionize their business.

After the upheaval of the room and luggage, Officer Oliphant stated to Mr. Davis that they had 'reliable information' that the Davis' had illegal drugs. It was at this point, Officer Oliphant demanded that Mr. Davis turn over his brief case. Mr. Davis, declined to do so stating that the briefcase contained confidential business materials. Officer Oliphant based his reasonable articulable search of the briefcase on the fact that they had found drugs in the wall of the cabin, and used that suspicion as his reason to wish to search the briefcase.

Then, the officer attempted to grab the briefcase out of the hands of Mr. Davis, when he would not let go, both officers threw Mr. Davis to the ground and handcuffed him. They then searched his pockets for the keys to the briefcase, and began removing items, tossing everything onto the bed with the other items previously strewn about.

Here again, Mr. Davis' personal belongings were subject to a warrantless search, which was unreasonable under the Fourth Amendment, as he is entitled to be secure in his person, property, possessions, and most namely his papers, papers which at this time, Mr. Davis were carrying that had extreme value to them based on their confidential nature.

It was at this point when reviewing Mr. Davis' passport, that Officer Oliphant realized the mistake in identity, of Mr. Davis, and he was not BLAINE C. DAVISS, white male, age 21, 6 foot 4, 260 pounds. Although the officers apologized to our clients, and stated that they wanted Mr. Daviss, who apparently had a room on the same floor on the other side of the ship. Our Client, Mr. Davis was still taken into custody and was told he would likely be charged with resisting a legal search and possession of cocaine.

Given the bizarre set of circumstances, and the obvious and apparent mistake of the officers in failing to distinguish Mr. Blake C. Davis, a married 61 yr old 5'7" 140 pound gentlemen traveling with his wife Ann Davis, from Blaine C. Davis, a 21 yr old 6'4" 260 pound male purported to be traveling alone, and Mr. Davis, coming in to the situation in the middle of the happenings, to a room with he and his wife's personal affects strewn about by two officers with a drug sniffing dog, obviously would cause confusion and grief in a man, who had something highly important to his company and his career in his possession. The fact that the officer said they had found drugs belonging to the couple likely seemed ludicrous and a ploy to Mr. Davis to get him to open the case, and expose the sensitive information, which he so believed required protection from prying eyes.

Our client concedes that he did not wish to have the officers search his briefcase, however, Mr. Davis believes that due to the nature of the documents and the sensitive and confidential information on them, that he was required by his employer to uphold his duty to not allow the information to be viewed by outside persons.

Due to the unreasonable search of his cabin and personal affects under the Fourth Amendment of the United States Constitution, hence a cocaine possession charge should not be brought because the drugs were illegally seized and the evidence will be suppressed at trial.



In closing, Mr. Davis would like to negotiate an offer of pleading to the misdemeanor of resisting the officers in lieu of having the felony cocaine charges dropped. I invite you to contact me directly to discuss the matter further. On behalf of Mr. Davis, we would like a response to our offer in the next seven business days, or we will begin preparing his defense.

Sincerely,

Applicant.

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Question #3 Final Word Count = 2595

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