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===== Start of Answer #6 (1213 words) =====

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Ms. Maria Castile:

As I am sure you are aware our firm, Alfaro, Blevin & Cohn, LLP., represents Mr. Blake C. Davis. Mr. Davis was taken into custody due to a grave error on part of CBP Officer Ralph Oliphant. Due to this error, the search of Mr. Davis' cabin aboard the cruise ship was unreasonable under the Fourth Amendment to the United States Constitution and hence a possession charge should not be brought because the drugs were illegally seized and will be suppressed.

The Fourth Amendment protects "against unreasonable searches and seizures" (*Clark*). Whether a search is reasonable will depend upon its nature and all the circumstances that surround it (*Id*). It can generally be said that warrantless searches are unreasonable (*Id*). Although searches that occur at the border have an exception to the warrant requirement, it must be routine in order to be conducted without a warrant, without probable cause, reasonable suspicion, or any suspicion of wrongdoing (*Id*). On the other hand, non routine searches require reasonable suspicion of wrongdoing because although they are conducted at the border, an individual is entitled to be free from unreasonable search and the privacy interests must be balanced against the sovereigns interests (*Id*).

In order to determine whether a border search is routine, the court examines the degree to which it intrudes on the person's privacy (*Clark*). The court in *Clark* states that the cruise ship cabin is both living quarters and located at the national border. Moreover, the court notes that the room in the ship was Clark's *de facto* home and like in Mr. Davis case, they searched through his belongings, and subjected his private space to inspection by a drug sniffing dog. Therefore, the search of 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 of criminal conduct due to the fact that there is a high expectation of privacy and a level of intrusiveness (*Id*).

Mr. Davis and his wife were on the Esprit cruise in order to celebrate their 40th wedding anniversary. Although the incident happened the morning that they were going to disembark, they still had a reasonable expectation of privacy in their room because they still had all their belongings with them and were having breakfast before disembarking. Although it could be said that they were going to disembark, that still had not occurred and therefore they still had a reasonable expectation of privacy at that time. Thus, before a non-routine search could occur, CBP Officer Oliphant needed reasonable suspicion of criminal conduct.

In *Braun*, the search of Braun's cabin occurred only after the drug sniffing dog had alerted to the presence of drugs in the cabin while still in the hallway. Mr. Davis' case is similar to Braun because CBP Officer Oliphant can claim that he had reasonable suspicion because after boarding the ship the drug sniffing dog "alerted" in the hallway which indicated that cocaine had been deposited at the site within a year, and this routine search was done in the ships hallways, like Braun. Therefore, the search of Mr. Davis' cabin was done after there was reasonable suspicion to search. Albeit true that the dog sniff gave CBP Officer Oliphant reasonable suspicion, this suspicion was erroneous under the reasonable suspicion standard.

Under the reasonable suspicion standard, officers must have reasonable suspicion based on specific and articulable facts, that the suspect committed, is committing or is about to commit, a crime in order to conduct a search (*Clark*). In *Clark*, the defendant argued that any suspicion that the agent had about him was unreasonable because of the various mistakes that the agent had made. There, the court states that suspicion is unreasonable if it arises from mistakes that are themselves unreasonable. Although the court in *Clark* found that there was no evidence revealing any mistake by the agent because the agent had received information from a reliable informant that two crew members would be transporting illegal narcotics, these facts are vastly different from our case.

In our case, CBP Officer Oliphant had accessed the Treasury Enforcement Communications System's (TECS) and had found that there was a lookout for a white male named Blaine C. Daviss who was 6'4", 260 lbs., and 21 years old. The report further states that Daviss had traveled to other drug source countries in the Caribbean and South America and had purchased his ticket last minute and was traveling alone. Although mistakes can occur, especially with regards to similar last names like Davis and Daviss, this mistake was unreasonable because Mr. Davis is 5'7", 140 lbs., and 61 years old. Further, Mr. Davis had planned his trip as a 40th wedding anniversary, was traveling with his wife, and moreover, had three suitcases which included all their clothing, toiletries, etc. The drug sniff dog even went to sniff the three pieces of luggage on the bed and it sniffed each one but did not alert that there was any drugs inside, even with no alert from the dog, the CBP Officer still went ahead and opened each bag and found nothing suspicious.

Additionally, the sole fact that Mrs. Davis opened the door, should have alerted the Officers that there was an unreasonable mistake since the TECS report stated that Daviss was traveling alone. Moreover, when Mr. Davis showed up, the Officers should have noticed how starkly different Mr. Davis was from the report he had read. Further, when the CBP Officers finally noticed the error

because they saw Mr. Davis passport, they probably also noticed that Mr. Davis has not travelled to all the places that were listed on the TECS report that Daviss had gone to. All of this points to the suspicion that the Officer had was unreasonable. Because the CBP Officers suspicion was erroneous, and they themselves note in their report "we had made an error" the drugs were illegally seized and will be suppressed.

Although Mr. Davis did not want to hand over his briefcase, his reasons for doing so were based on the confidential information of the contents the briefcase contained. Mr. Davis is an engineer with Allied Industries and was working on a patent application for breakthrough technology that would revolutionize the business. He was told by lawyers, chief engined, and the CEO of Allied Industries to make sure no one viewed the confidential documents. Therefore, Mr. Davis refusal to hand over the briefcase was not due to his resisting arrest but due to the confidential nature of the documents that were in the briefcase. Moreover, Mrs. Davis complied with the search when asked by the CBP Officer when he first knocked and Mr. Davis complied to all requests made prior to the CBP Officer asking him about the briefcase.

Although CBP Officer Oliphant told Mr. Davis that they had evidence he was in possession of drugs and he suspected more was in the briefcase, this conclusion was erroneous because the suspicion the Officer had was unreasonable. Therefore, since the drugs were illegally seized and will be suppressed Mr. Davis is willing to accept a guilty plea to misdemeanor resisting.

We look forward to hearing from you.

/s/ Applicant

Question #3 Final Word Count = 1213

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