

6)

To: Ms. Castile, Esq.

From: Applicant

Re: US v. Davis

PRIVILEGED AND CONFIDENTIAL

Dear Ms. Castile,

It is our position that the charge against our client, Mr. Davis, for felony possession of cocaine, relies on evidence obtained in an unconstitutional search. To prevent needless motion practice, my client respectfully requests that your office voluntarily drop this charge. Without admitting guilt by and through this negotiation offer, Mr. Davis is prepared to enter a plea of guilty to the misdemeanor of resisting arrest if and only if your office dismisses the possession charge on its own motion.

Unreasonable Search Without Warrant or Consent

As you know, the Fourth Amendment to the US Constitution protects people from unreasonable searches and seizures where they possess a reasonable expectation of privacy, and warrantless searches are generally deemed unreasonable. The remedy for such a violation is exclusion of the evidentiary fruits found in the search. In the case at hand, the CBP agents showed up with a dog, without warning or notice, at the closed cabin where my client and his partner had made their temporary home during the course of this cruise. Instead of requesting Ms. Davis' consent to perform a search, the agents instructed her to step out of the cabin. Ms. Davis then informed the agents that this search was mistaken, yet the agents persisted without attempting to obtain Ms. Davis' permission or confirming the accuracy of their information. Although Ms. Davis complied, we think that a court will agree with our position that complying with the demands of unexpected law enforcement agents, accompanied by a canine,

does not constitute consent. This will be further demonstrated by the fact that when our client Mr. Davis vocalized his refusal to consent and attempted to protect his constitutional privacy rights, the CBP agents responded by throwing him on the floor and arresting him. The facts and circumstances are clear as to the unconstitutionality of the search.

Holding in *Clark* is Not Dispositive

In defending against our Fourth Amendment motion, the only legal authority your office will be able to raise is the holding in *Clark*, which is not dispositive to my client's situation and therefore will not result in a ruling favorable to the US. While the *Clark* case involved a warrantless search by US Customs aboard an international cruise, the similarities end there. The *Clark* case involved a cruise ship employee who was observed delivering packages to another individual by a *reliable* informant. In Mr. Davis' case, the CBP agents openly admit that they were incorrect in their understanding of the information which led them to search Mr. Davis' cabin. The *Clark* case distinguished the reasonable expectation of privacy based on geographical location. While Mr. Davis was indeed outside of American borders, the relevant fact here is that he was not an employee of the ship but had made the cabin his temporary home.

Question #3 Final Word Count = 481

END OF EXAM