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UNITED STATES v. BLAKE C. DAVIS

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United States v. Clark

U.S. Court of Appeals, 15th Circuit (2014).....

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Daniel Clark was convicted in the U.S. District Court for the Eastern District of Columbia of violating *21 U.S.C. § 846* (possession with intent to distribute a controlled substance) following the denial of a motion to suppress evidence. On appeal, Clark asserts the United States Custom Service failed to procure a warrant to search his cabin aboard the M/V *Enchanted Isle* where he was employed as a seaman. The judgment of the District Court is affirmed.

I. Facts

On September 7, 2010, the *Enchanted Isle* returned to her home port, Sealand, at approximately 4:30 a.m. after visiting Cozumel, Mexico, the Grand Cayman Islands and Jamaica. The ship was to depart again at about 4:00 p.m. U.S. Customs agents, with the cooperation of the vessel owner, routinely boarded and searched the ship upon reentry at Sealand.

Robert Sedge, a Customs Service agent, had received information from a reliable informant that two crew members, Alan Arch and Daniel Clark, would be transporting illegal narcotics. At approximately 2:30 p.m., Alan Arch, was seen by Sedge passing a package to Larry Bates. Although Clark was with Arch, there was no evidence Clark gave anything to Bates. Bates later was arrested by other Customs agents and a package containing shoes with cocaine hydrochloride innersoles was seized from him. This information was relayed to Sedge who, without a warrant, boarded the *Enchanted Isle* with a drug-trained dog.

Sedge went directly to the cabin assigned to Clark and, after knocking and being admitted by Clark's roommate, entered the cabin, whereupon the dog alerted to

the presence of drugs. Sedge did not have Clark's permission to enter the room; the roommate admitted Sedge based solely on the latter's claimed authority to do so. Clark's roommate informed Sedge that his was the top bunk and pointed out his belongings, with the inference that the remainder belonged to Clark. Upon searching the cabin and Clark's belongings, Sedge found two pairs of shoes with innersoles made of cocaine hydrochloride, one on the lower bunk and another between the bulkhead and the bed. These were the materials that were the subject of Clark's motion to suppress and are the basis of his appeal.

II. Discussion

The *Fourth Amendment* protects "against unreasonable searches and seizures." Whether a search is reasonable will depend upon its nature and all of the circumstances surrounding it but, as a general matter, warrantless searches are unreasonable. Searches conducted at the nation's borders, however, represent a well-established exception to the warrant requirement. The exception applies not only at the physical boundaries of the United States, but also at "the functional equivalent" of a border, including the first port where a ship docks after arriving from a foreign country. The search here, conducted as the *Enchanted Isle* arrived in Sealand, was therefore a border search.

Provided a border search is routine, it may be conducted, not just without a warrant, but without probable cause, reasonable suspicion, or any suspicion of wrongdoing. The expectation of privacy is less at the border than in the interior and the *Fourth Amendment* balance between the interests of the Government and the privacy right of the individual is much more in favor of the Government. Even at the border, however, an individual is entitled to be free from an unreasonable search and privacy interests must be balanced against the sovereign's interests. Consequently, certain searches, classified as "non-routine," require reasonable suspicion of wrongdoing to pass constitutional muster.

The question here, therefore, is not whether the Customs officers were required to have a warrant or probable cause in order to search Clark's private cabin, but, rather, whether reasonable suspicion was necessary. The parties agree that no suspicion is required in order for a Customs officer to board and search a cruise ship as part of a routine border search. They disagree, however, as to whether any *Fourth Amendment* protection applies to a search of a private sleeping cabin aboard a cruise ship.

To answer this question, we must first decide whether the border search at issue was routine or non-routine and, so doing, set forth the correct standard required under the *Fourth Amendment*. We turn to a determination of whether this search was conducted in accordance with it.

To ascertain whether a border search can be classified as routine, we must examine the degree to which it intrudes on a person's privacy. Highly intrusive border searches that implicate the dignity and privacy interests of the person being searched require reasonable suspicion. In the present case, Clark argues that the search of a cruise ship cabin is not a routine border search because the *Fourth Amendment's* primary purpose is the protection of privacy in one's home and the search of a home, by its nature, is highly intrusive. He makes a compelling argument that an individual's expectation of privacy in a cabin of a ship is no different from any other temporary place of abode. Because the search of his living quarters aboard the cruise ship intruded upon that most private of places – his home – he says it should be considered non-routine. In response to Clark's arguments, the Government contends that the search of the cabin was a routine border search and should be analyzed in the same way as that of a vehicle.

It is an open question whether the search of a cabin of a cruise ship sufficiently intrudes upon an individual's privacy to render it non-routine, so that reasonable

suspicion of criminal activity is required. Indeed, there is a surprising dearth of authority on the matter.

The authority the Government cites for the proposition that a search of a crew member's cabin amounts to a routine border search is readily distinguishable from the present case. In *United States v. Braun* (S.D. Fla. 2004), the "routine" aspect of the search was the use of trained canines to detect narcotic odor from the hallways of newly-arrived cruise ships in Key West. 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. While the court stated the search was a routine border search, clearly it was referring to the use of the dogs to "search" the ship's hallways, not the search of the cabin once there was reasonable suspicion based on the alert and all of the other circumstances. Here, by contrast, the dog did not alert until after the cabin was opened and the animal entered the room. The dog's alerting, therefore, cannot establish reasonable suspicion for the search. The routine search in *Braun*, done without reasonable suspicion, was of the ship's hallways -- public space; the search of Braun's cabin was done only after there was reasonable suspicion (or even probable cause) to search.

The relatively few decisions in this area counsel in favor of the approach urged by Clark. Other courts correctly recognize that 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. The cruise ship cabin is both living quarters and located at the national border. As a result, one principle underlying the case law on border searches -- namely, that a port of entry is not a traveler's home -- runs headlong into the overriding respect for the sanctity of the home embedded in our traditions since the origins of the Republic, foremost in our nation's *Fourth Amendment* jurisprudence. We find that requiring reasonable suspicion strikes the proper balance between the

interests of the government and the privacy rights of the individual. It also best comports with the case law, which treats border searches permissively but gives special protection to an individual's dwelling place, however temporary. We, therefore, join those courts that require reasonable suspicion to search a cabin of a passenger or crew member aboard a ship.

Here, the search was highly intrusive on Clark's privacy. Uninvited and in Clark's absence, the officers entered his *de facto* home, searched through his belongings, and subjected his private space to inspection by a drug-sniffing dog. Because of the high expectation of privacy and level of intrusiveness, the search cannot be considered "routine" and must therefore be supported by reasonable suspicion of illegal activity.

Under the reasonable suspicion standard, law enforcement officers, including Customs 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. In our view, the information known to the agent, including the informant's tip, his own observations, and the arrest and seizure of cocaine from Bates justified reasonable suspicion that Clark (and Arch) had contraband aboard the *Enchanted Isle*.

Clark argues that any suspicion the agent might have had *about him* was unreasonable because it supposedly arose from various mistakes the agent had made about his relationship with Arch. To be sure, suspicion is unreasonable if it arises from mistakes that are themselves unreasonable. But quibbles aside, Clark points to no evidence revealing *any* mistake by the agent, lest still any *unreasonable* one.

III. Disposition

For the foregoing reasons, we AFFIRM the denial of the motion to suppress and uphold Clark's conviction.