State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Tuesday, January 5, 2016

No. 22 People v Oscar Sanders

In August 2010, Oscar Sanders arrived at Jamaica Hospital in Queens with two bullet wounds in his upper right leg. A nurse reported the gunshot wounds to the police and officers were sent to investigate. Sanders, lying on a gurney, told one of them he had been shot in nearby Liberty Park. Sanders was wearing a hospital gown and his own clothes were in a clear plastic bag on the floor of a trauma room about 15 feet away. Without asking permission, the officer retrieved the bag and searched through the clothes. When the officer found two singed holes in the right leg of Sanders' boxer shorts and no holes in his jeans, he concluded the wounds were self-inflicted and arrested Sanders for weapon possession. A bullet was found in one of Sanders' sneakers, but no gun was ever recovered.

Prior to trial, Sanders moved to suppress the clothing as the fruit of an illegal search conducted without a warrant or his consent. Supreme Court denied the motion, saying that Sanders had no reasonable expectation of privacy with regard to his clothes left in a clear bag and that the clothing "potentially was evidence of a crime." After an unrecorded Sandoval hearing, the court ruled that, if Sanders took the stand, the prosecutor could ask if he had any prior convictions. Sanders was found guilty of criminal possession of a weapon in the second and third degrees and sentenced to eight years in prison.

The Appellate Division, Second Department affirmed, finding the search was valid. "Since the defendant's clothing was lying on the floor of a hospital room in a clear plastic bag, the clothing was openly visible...," it said. "Moreover, the police had probable cause to seize the defendant's clothing as evidence of a crime of which they believed the defendant had been a victim...." It also rejected Sanders' claim that he was not present for the Sandoval hearing, saying he "failed to rebut the presumption of regularity that attaches to official court proceedings by coming forward with substantial evidence demonstrating that the Sandoval hearing was conducted in his absence...."

Sanders argues the search was illegal because the officer had neither a warrant nor consent, "had no reason to believe that appellant had committed a crime" before his clothing was searched, "and no exception to the warrant requirement existed" because "there are no 'crime victim' or 'evidence of a crime' exceptions" to the Fourth Amendment. "[T]here can ... be no argument that an apparent crime victim waives his Fourth Amendment rights. Since a crime victim has not chosen his status, he cannot be understood to have affirmatively waived this essential right of privacy." Under the lower court rulings, he says, victims of violent crimes "could be searched by the police without a warrant, without consent, and without probable cause," and could be subject to arrest if officers find illegal drugs or other evidence of unrelated crimes. He also contends the conduct of the Sandoval hearing violated his right to be present at all material stages of his trial.

For appellant Sanders: Rahshanda Sibley, Manhattan (212) 693-0085
For respondent: Queens Assistant District Attorney William H. Branigan (718) 286-6652

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Tuesday, January 5, 2016

No. 6 People v Scott Barden

In February 2010, Scott Barden stayed five nights at the Thompson LES Hotel in Manhattan at the expense of a business associate, Anthony Catalfamo, who authorized the hotel in a third-party billing agreement to charge up to $2,300 to his American Express card. He did not give his credit card information to Barden. Although Catalfamo made clear to the hotel that he would not agree to additional charges and wrote on the agreement that he was authorizing "one swipe one charge ONLY!," the hotel did not delete his card information when Barden checked out and the card remained linked to Barden's account on the hotel's computer system. After their business relationship soured a month later, Barden stayed at the hotel for three days in March 2010 and told the staff to charge it to the American Express card on file, which was Catalfamo's. He returned to the hotel at the end of that month, beginning a stay of nearly six weeks, and he continued to tell the staff to bill the charges to the American Express card. Catalfamo discovered the unauthorized charges in mid-April 2010 and American Express notified the hotel it was declining more than $10,000 in charges. The hotel then mistakenly linked Barden's account to the Visa card of another guest, who had the same last name, and Barden told the staff to bill that card. The other guest discovered the charges and Visa notified the hotel it was declining them in mid-May 2010, when the unpaid charges totaled about $50,000 for both cards. The hotel then called the police.

Barden was convicted of first-degree identity theft and fourth-degree criminal possession of stolen property, both based on the charges made to Catalfamo's American Express account, and two misdemeanor counts of theft of services. He was sentenced to concurrent terms of 2⅓ to 7 years for identity theft and 1⅓ to 4 years for possession of stolen property.

The Appellate Division, First Department vacated the identity theft conviction, for lack of proof that Barden ever assumed Catalfamo's identity, and otherwise affirmed. It rejected the argument that the stolen property statute (Penal Law § 165.45[2]) applies only to possession of a tangible credit card, not to an intangible credit card number. "[T]he mention of 'tangible property' in [Penal Law §] 10.00(8) cannot strictly apply to criminal possession of stolen property, because to do so would thwart the legislative intent to criminalize the knowing possession of certain types of intangible stolen property," including "any ... computer data, computer program" or "thing of value" under Penal Law § 155.00, it said. "It is irrelevant whether defendant had physical or constructive possession of a tangible credit card, because he had access to the full value of Catalfamo's account as if he had possessed the credit card itself."

Barden argues that, "for purposes of the stolen property statute, 'credit card' is defined as an actual, physical card, and not merely its number. Moreover, the law requires possession of 'tangible' property; the unlawful possession of personal identifying information, such as a credit card number, is a separate chargeable offense, but it is not criminal possession of stolen property." Even if possession of the card number could suffice, he says, he "never even knew the credit card number, and certainly did not possess it."

For appellant Barden: Richard M. Greenberg, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney David M. Cohn (212) 335-9000

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Tuesday, January 5, 2016

No. 7 Sangaray v West River Associates, LLC

In August 2009, Yousufu Sangaray was walking on a sidewalk along Amsterdam Avenue in Manhattan when he tripped and fell over an uneven joint between flagstones, fracturing his right leg. The accident occurred in front of 1785 Amsterdam Avenue, owned by Sandy and Rhina Mercado, and 1787 Amsterdam, owned by West River Associates, LLC. The flagstone on one side of the uneven joint was entirely abutted by the Mercados' property and was flush and level. The flagstone on the other side, more than 90 percent of which was abutted by West River's property, was sunken and sloped down toward the joint due to settling of the soil beneath it, leaving a height differential between the stones that posed a tripping hazard. Two to four inches of the defective flagstone -- and the joint between the stones -- were on the Mercados' side of the property line, according to a survey.

Sangaray brought this personal injury action against West River and the Mercados under New York City Administrative Code § 7-210, which provides that "the owner of real property abutting any sidewalk ... shall be liable for any ... personal injury ... proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition." West River moved to dismiss the complaint against it, arguing it was not liable under section 7-210 because the uneven joint where Sangaray tripped and fell was on the Mercados' side of the property line.

Supreme Court dismissed the complaint against West River based on Montalbano v 136 W. 80 St. CP (84 AD3d 600 [1st Dept 2011]), which held in a similar case that a defendant, whose property abutted the largest portion of a defective flagstone, was not liable for a trip and fall injury because the plaintiff actually fell in front of a neighboring property. Supreme Court said it was "constrained to follow Montalbano..., notwithstanding that it would appear to be difficult or impossible for the 10% owner of a flagstone to fix such an alleged defect...."

The Appellate Division, First Department affirmed. Three justices, citing Montalbano, said West River was not liable because it "did not own the property that abutted the sidewalk where plaintiff tripped and fell." Two justices "reluctantly" concurred. Section 7-210 was enacted in 2003 to shift liability for sidewalk injuries from the City to abutting property owners and, secondly, to encourage abutting owners to keep sidewalks in good repair "in order to avoid liability," they said, but it "fails to achieve" the second purpose "in circumstances such as these.... West River is being allowed to avoid liability for the consequences of its failure to maintain its own sidewalk. Nevertheless, the law as it now stands permits the imposition of liability ... only on the Mercados."

Sangaray argues the Appellate Division ruling "is irreconcilable with the plain wording of the statute, which does not restrict a landowner's liability to accidents occurring entirely in front of its property, and incorporates only a conventional, flexible proximate cause requirement." He says, "By its plain terms, the statute imposes a duty upon landowners to maintain their sidewalks in a reasonably safe condition, and makes them liable for 'any injury' that is 'proximately caused' by a breach of that duty.... The Appellate Division's location rule was not intended by the legislature, and should not be grafted onto the statute."

For appellant Sangaray: Joshua D. Kelner, Manhattan (212) 425-0700
For respondent West River: Timothy J. Dunn III, Farmingdale (631) 249-6600