

# New York Law Journal

NEW YORK, TUESDAY, OCTOBER 24, 2006

## Pawn Shop Fights Use of Regulation To Probe Crimes

BY MARK HAMBLETT

A GOLD BANGLE bracelet worth less than \$500 has spawned a court case testing the power of police to investigate a crime using their powers of inspection under an administrative scheme.

A Bronx pawn shop owner is suing the Town of Clarkstown Police Department for using the pretext of an administrative inspection to examine records and find and seize the bracelet, which had been stolen in one of a series of burglaries they were investigating.

On Friday, Southern District Judge Leonard Sand ruled first that the police "were entitled to access to records under the administrative scheme regulating the second hand dealer industry."

But the judge, in *We Buy, Inc. v. Town of Clarkstown*, 06 Civ. 1794, also ruled that the propriety of the seizure of the bracelet was an open question and he declined to dismiss what he said was admittedly "not a high stakes case" but nonetheless a case that raised "difficult and important" constitutional issues.

The dispute began Feb. 24, 2006, when at least eight police officers from the towns of Ramapo and Clarkstown in Rockland County accompanied by New York City police officers, went into a pawn shop owned by We Buy and told employee Andre Santiago they wanted to see his ledger.

Mr. Santiago, assuming the officers were conducting an administrative inspection, complied. But when they asked to see a bracelet purchased by the store from burglary suspect Dennis Young, Mr. Santiago got his boss, Harold Dambrot, on the phone.

Mr. Dambrot consented to having the bracelet photograph and to having copies of the records made, but he told the police they would need a warrant if they wanted to seize the bracelet.

The police returned three days later, still without a warrant. One officer allegedly told Mr. Santiago "Clarkstown doesn't use or need warrants . . . they make numerous seizures during investigations based on identifications (of property) by victims."

Another officer allegedly threatened to close the shop down if the bracelet was not turned over. Still another threatened to arrest Mr. Santiago if he did not comply.

Mr. Dambrot, again summoned to the phone, relented. We Buy then sued for a civil rights violations under 18 U.S.C. §1983.

Judge Sand, deciding motions for summary judgment, said it is "by no means clear that the police cannot constitutionally use an administrative inspection to uncover evidence of criminality."

The U.S. Court of Appeals for the Tenth Circuit, he noted, held in *United States v. Johnson*, 994 F.2d 740 (1993), that administrative searches "may not be used as a pretext solely

to gather evidence of criminality." In *Johnson*, a federal agent used state agents to conduct a regulatory inspection of taxidermist to uncover evidence of smuggling.

But that holding, he said, is "in tension" with the U.S. Supreme Court's ruling in *New York v. Burger*, 482 U.S. 691 (1987), where the court upheld a police search of an automotive junk yard that recovered stolen vehicles using a local law that required yard owners to maintain a "police book" recording information about all the cars and car parts on the premises.

"Burger's federal constitutional rights were not offended by the use of an administrative inspection to uncover evidence of criminality," Judge Sand said.

The *We Buy* case was more closely analogous to the facts in *Burger* than those in *Johnson*, he said, because the police in *We Buy* were entitled to see the records.

"When they uncovered evidence of criminality, they obtained consent to investigate further under no claim of administrative authority," Judge Sand said. "As in *Burger* the investigation they were pursuing was directly related to the goals of the administrative scheme."

### Fact-Specific Inquiry

One Fourth Amendment claim made by We Buy was based on the police examination of the shop's records.

"It is, however, difficult to see how We Buy could have a reasonable expectation of privacy in those records protected by the Fourth Amendment when they were subject to an inspection by the police at any time under the administrative scheme," Judge Sand said.

We Buy had also challenged the seizure of the bracelet itself - an issue that turned on whether or not the bracelet was in "plain view" and whether We Buy consented to produce it.

This, the judge said, was a very fact - specific inquiry, one inappropriate for summary judgment, because a "reasonable jury could find that the government failed to meet its burden" on showing the consent was voluntary.

The judge went on to find that one police detective and one sergeant were shielded by qualified immunity because of uncertainty over whether their actions amounted to a violation of clearly established constitutional right.

He granted summary judgment to the Town of Clarkstown on the warrantless search of We Buy's records during the first police visit to the shop, but denied the town summary judgment on the warrantless seizure of the bracelet "pending discovery on the issue of the Town's policies or customs."

Paul Joseph Solda, Esq. represented We Buy. Harold MacCartney of MacCartney, MacCartney, Kerrigan & MacCartney represented the police.

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