

## NEWS RELEASE

The Law Offices of Sanford F. Young, P.C. is proud to announce another appellate victory in a precedent setting case that has been reported on the front page of the New York Law Journal on July 10, 2003.

In that case, *Boyd v. City of New York*, which was argued by Sanford F. Young, the United States Court of Appeals (2nd Circuit) reinstated a malicious prosecution action to recover damages arising from two years spent in jail based upon a wrongful conviction. As the Court reasoned, in holding that a trial is warranted, "a jury could reasonably find that the indictment was secured through bad faith or perjury..."

For further information or a complete copy of the opinion, please contact Sanford F. Young or Jan B. Rothman.



# New York Law Journal

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## Malicious Prosecution Claim Allowed to Proceed

BY TOM PERROTTA

A MAN whose conviction for car theft was overturned on appeal should be allowed to proceed with a malicious prosecution claim, a federal appeals court ruled yesterday.

The unanimous ruling from the U.S. Court of Appeals for the Second Circuit partially reversed a trial court, which had granted summary judgment to New York City and its police department.

The appeals court agreed, however, that plaintiff Anthony Boyd could not bring a false arrest claim because police officers had probable cause to arrest him.

Mr. Boyd was arrested in January 1996 by two officers who were conducting surveillance of a stolen black Isuzu Amigo, which was parked in Jamaica, Queens.

When two men got into the vehicle, the officers stepped in. The men told the officers that the vehicle belonged to "Tony," who lived across the street.

The officers forcibly entered Mr. Boyd's building at around 4 a.m. and asked him his name and whether he owned a black Isuzu. He said yes and showed the officers an insurance card for the car, which carried the

name Anthony Lee, the owner who reported the vehicle missing.

Mr. Boyd and the officers testified to different versions of what happened next. According to Mr. Boyd, he was immediately handcuffed and arrested inside his apartment. He claimed the police questioned him as they walked him downstairs, and he told them he had purchased the car for \$75 from someone at a New York airport.

The police officers did not contest that Mr. Boyd had not been read his Miranda rights when he made this statement, but they testified that they did not arrest him until he was brought outside. His statement was made voluntarily before the arrest, they said. Mr. Boyd sought suppression of his statements in Supreme Court, but his motion was denied. He was later convicted and sentenced to 2 to 4 years in prison.

The Appellate Division, Second Department, subsequently reversed Mr. Boyd's conviction and ordered a new hearing on his statements. This time, a trial court suppressed the statements, finding that they were made while Mr. Boyd was in custody. The charges against him were then dropped, after he had served two years in jail.

Mr. Boyd filed a false arrest and

malicious prosecution suit against the city, which was summarily dismissed by Eastern District Judge Nicholas G. Garaufis.

Yesterday, however, the Second Circuit said Mr. Boyd should be given a chance to present the malicious prosecution claim to a jury.

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Writing for the majority, Judge Richard D. Cudahy, sitting by designation from the Seventh Circuit in Chicago, cited a booking sheet from the officers that said Mr. Boyd was arrested inside his building.

"When we consider the booking sheet and Boyd's testimony in combination with the police testimony,

we move beyond a simple conflict of stories or mistaken memories, and into the possibility that the police knew where they arrested Boyd, but lied in order to secure an indictment," the judge wrote in *Boyd v. City of New York*, 02-7574.

The court reasoned that Mr. Boyd could overcome a grand jury indictment to bring a malicious prosecution claim if he could establish that the indictment was produced by fraud or bad faith conduct by the police.

Jon L. Norinsberg, who represented Mr. Boyd, said the opinion was significant in that the court has shown that Mr. Boyd's claims were not dependent on each other.

"On malicious prosecution, they have really set it apart from false arrest," Mr. Norinsberg said.

Larry Sonnenshein, assistant chief of the appeals division for the Corporation Counsel's office, said in a statement, "We are confident that the defendants will ultimately prevail on this remaining cause of action."

Judges Guido Calabresi and Robert D. Sack concurred with Judge Cudahy's ruling.

The city was represented by Assistant Corporation Counsel Julian L. Kalkstein.

The decision will be published Tuesday.