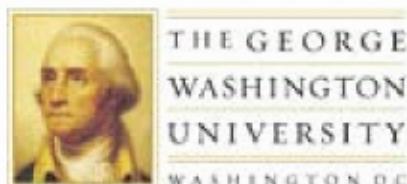


The Burger Court Opinion Writing Database

Costarelli v. Massachusetts

421 U.S. 193 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1975

Re: 73-6739 - Costarelli v. Massachusetts

Dear Bill:

I join your per curiam opinion dated April 21, 1975.

Regards,

WJ

Mr. Justice Rehnquist

Copies to the Conference.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1975

Re: 73-6739 - Costarelli v. Massachusetts

Dear Bill:

I join your per curiam opinion dated April 21, 1975.

Regards,

WS

Mr. Justice Rehnquist

Copies to the Conference

P. S. (for WHR only) Two small matters: (1) would it be worth noting that to "agree to a finding of guilty" may, in this context, be equivalent to a conventional guilty plea; and (2) we postponed jurisdiction rather than voting on October 21, 1974, as you recite.

WS

*all but word
has joined you.*

THE HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Stanford, California 94305-6000



NOTICE: THIS MATERIAL MAY
BE PROTECTED BY COPYRIGHT
LAW (TITLE 17, U.S. CODE)

or distributed without the specific authorization of the Hoover Institution Archives.

11-4-51

2nd DRAFT

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

STEVEN COSTARELLI v. COMMONWEALTH OF
MASSACHUSETTS

Circulated: 10-17

Recirculated: _____

ON APPEAL FROM THE MUNICIPAL COURT OF THE CITY OF
BOSTON, MASSACHUSETTS

No. 73-6739. Decided October —, 1974

MR. JUSTICE DOUGLAS, dissenting.

Appellant was tried and convicted in the Municipal Court of Boston, Massachusetts, for the unauthorized use of an automobile, a criminal offense carrying a possible two-year jail sentence. Mass. Gen. Laws, c. 90, § 24 (2)(a). He asked for a trial by jury based on the Sixth Amendment and *Duncan v. Louisiana*, 391 U. S. 145, but this right was denied him. He also raised the other federal questions on which he seeks review. Appellant comes here directly from the Municipal Court, for he argues that he has already obtained a final judgment from "the highest court of a State in which a decision could be had" as required by 28 U. S. C. § 1257.

There is no doubt that appellant raises a substantial constitutional issue in this appeal. Under Massachusetts law defendants in felony cases involving not more than five years imprisonment as a maximum penalty may be tried first in a nonrecord district court where there is no jury.¹ "Appeal" consists of a right to trial *de novo* in the superior court, where jury trial is available.² A

¹ Mass. Gen. Laws, c. 218, § 26. Such initial trials are also possible for other offenses, including all misdemeanors except libels.

² Under some circumstances the defendant may elect to "appeal" to a different judge of the nonrecord district court. In such cases a six-member jury is available. Such an "appeal" is a trial *de novo* and is in all respects similar to the conventional "appeal" to the superior court. See Mass. Gen. Law, c. 212, § 6, *id.*, c. 218, § 27A; *id.*, c. 278, § 18, as amended (Mass. Leg. Service, c. 657, 1973).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 17, 1975

RE: No. 73-6739 Costarelli v. Commonwealth of Mass.

Dear Bill:

I agree with the Per Curiam you have prepared in
the above.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20530

CHAMBERS OF
JUSTICE POTTER STEWART

October 17, 1974

Re: No. 73-6739, Costarelli v. Massachusetts

Dear Bill,

Please add my name to your dissenting opinion
in this case.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 18, 1975

73-6739 - Costarelli v. Massachusetts

Dear Bill,

If you would consider substituting "Sixth and Fourteenth Amendments" for "Sixth Amendment" in the 3rd line of the second paragraph on page 2, I would be glad to join the Per Curiam you have circulated in this case.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 18, 1975

Re: No. 73-6739 - Costarelli v. Massachusetts

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

Supreme Court of the United States
Washington, D. C. 20543

April 21, 1975

Re: No. 73-6739 -- Steven Costarelli v. Commonwealth
of Massachusetts

Dear Bill:

I agree with your suggested Per Curiam in
this case.

Sincerely,

JR
T. M.

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION
LIBRARY OF CONGRESS

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 18, 1975

Re: No. 73-6739 - Costarelli v. Massachusetts

Dear Bill:

Please join me in the per curiam you have prepared
for this case.

Sincerely,

W. B.

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUFACTURER'S
TRADADY OF THE CONFERENCE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 18, 1975

Re: No. 73-6739 - Costarelli v. Massachusetts

Dear Bill:

Please join me in the per curiam you have prepared
for this case.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

P. S. I believe we postponed jurisdiction rather than noting it,
as stated on page 2.

or distributed without the specific authorization of the Hoover Institution Archives.

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94305-6010



NOTICE: THIS MATERIAL MAY
BE PROTECTED BY COPYRIGHT
LAW (TITLE 17, U.S. CODE)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 18, 1975

No. 73-6739 Costarelli v. Massachusetts

Dear Bill:

Please join me in your Per Curiam opinion for the Court.

I think it is important enough to be a signed opinion.

Sincerely,

L. Lewis

Mr. Justice Rehnquist

CC: The Conference

LFP/gg

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell

From: Rehnquist, J.

APR 17 1975
 Circulated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-6739

Steven Costarelli,
 Appellant,
 v.
 Commonwealth of Massachusetts. } On Appeal from the Municipal
 Court of the City of Boston,
 Massachusetts.

[April —, 1975]

PER CURIAM.

Under Massachusetts procedure, a "two-tier" system is utilized for trial of a variety of criminal charges. The initial trial under this system is in a county district court or the Municipal Court of the City of Boston. No jury is available in these courts, but persons who are convicted in them may obtain a *de novo* trial, with a jury, in the appropriate superior court by lodging an "appeal" with that court.¹ At the *de novo* trial, all issues of law and fact must be determined anew and are not affected by the initial disposition. In effect, the taking of the appeal vacates the district or municipal court judgment, leaving the defendant in exactly the position of defendants in other States which require the prosecution to present its proof before a jury.²

¹ See Mass. Gen. Laws c. 218, § 27A (1975 Supp.); c. 278, §§ 18 (1975 Supp.), 18A (1972).

Unlike the situation in *Colten v. Kentucky*, 407 U. S. 104 (1972), the initial trial cannot be avoided by a plea of guilty without also waiving the right to a jury trial in superior court.

² Appellant argues that in several respects the district or municipal court judgment remains in effect despite the lodging of an appeal. In particular, he points to the facts that if a defendant defaults in superior court, the first-tier judgment becomes the legal basis for imposing sentence, and that appeal does not eliminate such

P 12

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circulated:

Recirculated 4/21/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-6739

Steven Costarelli,
Appellant,
v.
Commonwealth of Massachusetts.

On Appeal from the Municipal
Court of the City of Boston,
Massachusetts.

[April —, 1975]

PER CURIAM.

Under Massachusetts procedure, a "two-tier" system is utilized for trial of a variety of criminal charges. The initial trial under this system is in a county district court or the Municipal Court of the City of Boston. No jury is available in these courts, but persons who are convicted in them may obtain a *de novo* trial, with a jury, in the appropriate superior court by lodging an "appeal" with that court.¹ At the *de novo* trial, all issues of law and fact must be determined anew and are not affected by the initial disposition. In effect, the taking of the appeal vacates the district or municipal court judgment, leaving the defendant in the position of defendants in other States which require the prosecution to present its proof before a jury.²

¹ See Mass. Gen. Laws c. 218, § 27A (1975 Supp.); c. 278, §§ 18 (1975 Supp.), 18A (1972).

Unlike the situation in *Colten v. Kentucky*, 407 U. S. 104 (1972), the initial trial cannot be avoided by a plea of guilty without also waiving the right to a jury trial in superior court.

² Appellant argues that in several respects the district or municipal court judgment remains in effect despite the lodging of an appeal. In particular, he points to the facts that if a defendant defaults in superior court, the first-tier judgment becomes the legal basis for imposing sentence, and that appeal does not eliminate such

To: The Other Justices
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell

P 7

RECORDED

APR 23 1975

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-6739

Steven Costarelli,
Appellant,
v.
Commonwealth of Massachusetts.

On Appeal from the Municipal Court of the City of Boston, Massachusetts.

[April —, 1975]

PER CURIAM.

Under Massachusetts procedure, a "two-tier" system is utilized for trial of a variety of criminal charges. The initial trial under this system is in a county district court or the Municipal Court of the City of Boston. No jury is available in these courts, but persons who are convicted in them may obtain a *de novo* trial, with a jury, in the appropriate superior court by lodging an "appeal" with that court.¹ At the *de novo* trial, all issues of law and fact must be determined anew and are not affected by the initial disposition. In effect, the taking of the appeal vacates the district or municipal court judgment, leaving the defendant in the position of defendants in other States which require the prosecution to present its proof before a jury.²

¹ See Mass. Gen. Laws c. 218, § 27A (1975 Supp.); c. 278, §§ 18 (1975 Supp.), 18A (1972).

Unlike the situation in *Colten v. Kentucky*, 407 U. S. 104 (1972), the initial trial cannot be avoided by a plea of guilty without also waiving the right to a jury trial in superior court.

² Appellant argues that in several respects the district or municipal court judgment remains in effect despite the lodging of an appeal. In particular, he points to the facts that if a defendant defaults in superior court, the first-tier judgment becomes the legal basis for imposing sentence, and that appeal does not eliminate such

W.H. Rehnquist
CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Supreme Court of the United States
Washington, D. C. 20543

May 1, 1975

MEMORANDUM TO THE CONFERENCE:

Re: Case Held for Costarelli v. Massachusetts, No. 73-6739.

No. 74-5852, Whitmarsh v. Massachusetts, is an appeal from a Massachusetts district court, raising precisely the same contentions, and presenting the same procedural posture, as did Costarelli. It should be dismissed for want of jurisdiction, perhaps with a citation to Costarelli. One reason for simply denying, without citation, is that the appeal was taken long after the judgment of the district court was entered -- prior to taking his appeal here, appellant sought review in the Massachusetts Supreme Judicial Court. That court concluded that it was without jurisdiction, because of the existence of a remedy in the superior courts (it was this latter decision which we relied on in Costarelli in concluding that there was no judgment of the highest available court of a state).

Sincerely,

*Wm. Dwyer
5/1/75*