

4-28-1975

## 04-28-1975 Per Curiam

William H. Rehnquist  
*US Supreme Court Justice*

Follow this and additional works at: <http://ir.library.illinoisstate.edu/costarellivmass>



Part of the [Criminal Law Commons](#)

---

### Recommended Citation

Rehnquist, W.H. Per Curiam, Costarelli v. Massachusetts, 421 U.S. 193 (1975). Box 367, Harry A. Blackmun Papers, Manuscript Division, Library of Congress, Washington, D.C.

This Opinion is brought to you for free and open access by the U.S. Supreme Court papers, Justice Blackmun at ISU ReD: Research and eData. It has been accepted for inclusion in Costarelli v. Massachusetts, 421 U.S. 193 (1975) by an authorized administrator of ISU ReD: Research and eData. For more information, please contact [ISURed@ilstu.edu](mailto:ISURed@ilstu.edu).

(file copy)

(Slip Opinion)

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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 28, 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.<sup>1</sup> 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.<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> 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