

4-28-1975

04-28-1975 Per Curiam

William H. Rehnquist
US Supreme Court Justice

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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.

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(Slip Opinion)

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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.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