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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

NO. 36

ERIC J. IVERSON,

Respondent.

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

NO. 37

JACK J. CUCCERALDO,

Respondent.

20 Eagle Street
Albany, New York
May 4, 2021

Before:

- CHIEF JUDGE JANET DIFIORE
- ASSOCIATE JUDGE JENNY RIVERA
- ASSOCIATE JUDGE LESLIE E. STEIN
- ASSOCIATE JUDGE EUGENE M. FAHEY
- ASSOCIATE JUDGE MICHAEL J. GARCIA
- ASSOCIATE JUDGE ROWAN D. WILSON

Appearances:

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Karen Schfifmiller
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The first appeal, two
2 appeals, on this afternoon calendar, number 36, People v.
3 Eric Iverson, and number 37, People v. Jack Cucceraldo.
4 Attorney - - - the attorney for the appellant will not be
5 appearing for oral argument. He is submitting on his
6 briefs.

7 Counsel, we'll start with you and end with you.

8 MR. LOCKWOOD: So I'm the alpha and omega. All
9 right. May it please the court. I was actually very
10 excited when this case got granted leave, because it's
11 actually a very important case, and not for the usual
12 importance that this court has, like for example, Mr. Cohn
13 and Mr. Zeno, with right to counsel or First Amendment or
14 anything like that.

15 But this is an important case because this is the
16 type of case that defines the justice system for most
17 people in New York State, because for most people, the only
18 time they're going to have contact with the justice system,
19 and more specifically, in a criminal justice system, is
20 through a traffic ticket. So if they're not treated with
21 honor and dignity and respect, it will color the way they
22 feel about all of us. So that's why it is very important,
23 this case, and that their rights be scrupulously honored.

24 JUDGE STEIN: Counsel, what do you think of - - -
25 that the Bureau should have done? Is it okay, if they had



1 the police officer testify as to what happened, and what
2 the charges were and why, and then granted default? Is
3 that permitted?

4 MR. LOCKWOOD: Well, I would certainly say that
5 would present a much tougher case for me. Fortunately,
6 they didn't do that. But even in that situation under
7 Parker - - - People v. Parker, which, you know, obviously,
8 everybody knows, the hearing officer or the judge would
9 have a burden to show, or at least make some finding as to
10 why this individual didn't show, and it has to be an
11 intentional failure to appear on a criminal case, as per
12 Parker, and Epps, and those decisions.

13 So like I said, that would present a much, much
14 more difficult case than this one, but - - -

15 CHIEF JUDGE DIFIORE: And Counsel, regarding
16 1806-A(1), what's the effect of the legislature's omission
17 of the district court from the listing of the local
18 criminal courts?

19 MR. LOCKWOOD: Actually, it was interesting,
20 because I was just talking to a village judge, Billy
21 Wexler. And village courts and town courts, as I'm sure
22 you're aware, meet infrequently. And Judge Wexler's court
23 actually is on an island, on Fire Island, Ocean Beach. So
24 sometimes the court shuts down for the winter. So that's
25 really a normative, regulatory rule setting up the timing



1 for things. So I don't think, it - - - because district
2 courts meet every day. So that's what - - - that's what I
3 think that was meant to address.

4 JUDGE FAHEY: Counsel, if - - - on 1806-A, do you
5 think it's necessary to draw a distinction in cases where
6 someone's appeared, entered a plea - - - let's say in this
7 case, like in this case - - - a plea of not guilty, and
8 then fails to appear for trial, to a no-show, somebody who
9 doesn't show at all, a no-show initially?

10 MR. LOCKWOOD: Oh, you mean, the failure to
11 answer? Which - - -

12 JUDGE FAHEY: Right. Failure to answer at all.
13 You don't show up; there's a no-show.

14 MR. LOCKWOOD: I - - -

15 JUDGE FAHEY: Do you think an 1806-A is limited
16 simply to the entry of the plea, because you could read it
17 that way, or you could read it that it would apply to both
18 situations, both a plea and a no-show at all?

19 MR. LOCKWOOD: Well, I think 1806-A is set up for
20 the situation where the individual gets the ticket, and
21 goes, you know what, they got me or I don't have time to
22 fight it. And that's really what it's set up for. And I -
23 - - it specifically says, failure to answer. And as we
24 know - - -

25 JUDGE FAHEY: So you would say it applies to a



1 failure to answer in any form?

2 MR. LOCKWOOD: Correct, correct.

3 JUDGE FAHEY: I see.

4 MR. LOCKWOOD: Just like I said, it's for the
5 person who says, you know what, they got me.

6 JUDGE FAHEY: And what about the argument that -
7 - - that this is going to burden the system with an
8 enormous number of bench warrants?

9 MR. LOCKWOOD: I've been doing this for twenty-
10 six years; I don't think so. I honestly don't. I think
11 it's a - - -

12 JUDGE FAHEY: Well, what's the basis for you - -
13 - besides your personal experience - - - to say it wouldn't
14 - - - it wouldn't affect it?

15 MR. LOCKWOOD: What do you mean, the - - - vacate
16 the defaults?

17 JUDGE FAHEY: Yeah.

18 MR. LOCKWOOD: Like I said, it's - - - you know,
19 I think the system was - - - they had it in Cooper Street,
20 this type of set up in Nassau County for decades, since the
21 1970s, and they've never had this issue before. It's - - -
22 you know, and, Cooper Street didn't do the default
23 conviction. What would happen in Cooper Street, in Nassau
24 County, if you don't show up for trial, they send you out a
25 letter and say, we've rescheduled your trial, show up on



1 this date, or you know, certain actions can be taken, and
2 they list it all.

3 JUDGE FAHEY: Uh-huh.

4 MR. LOCKWOOD: And that's the problem as well
5 here with 1806-A. It says you have to have the thirty-day
6 notice, which they didn't do either. They just - - - you
7 know, the court - - - Ive- - - Mr. Ive - - -

8 JUDGE RIVERA: So what happens after the notice?
9 Let's say they had done that. What happens after that, if
10 the person doesn't show up again?

11 MR. LOCKWOOD: Then I believe they could probably
12 do a default or - - -

13 JUDGE RIVERA: At that point they do a default,
14 or they proceed with a hearing?

15 MR. LOCKWOOD: I would say - - - my gut would be
16 proceed with the hearing, but certainly an argument could
17 be made for the former as well. But like I said, they
18 didn't comply with any of 1806-A, so you know - - -

19 JUDGE FAHEY: Normally, you have the sheriff, the
20 deputy, the officer is there. If the person doesn't show
21 up, they default. You put him on the stand, you ask him
22 five questions, and then you have a record for a
23 conviction.

24 MR. LOCKWOOD: Right, but you know - - -

25 JUDGE FAHEY: That would be the normal process,



1 right?

2 MR. LOCKWOOD: Well, like I said, well, if you do
3 the Parker, you know, issue beforehand, and you know, make
4 sure there is a valid reason. Like for example, Mr.
5 Iverson ended up there late, you know, and showed up late,
6 and they had already defaulted him. And Mr. Cucceraldo had
7 some kind of personal issue, which you know, resulted in
8 the default, so you know, they - - - they didn't do
9 anything. They just - - - there was no testimony taken, no
10 evidence given, they just - - -

11 JUDGE GARCIA: Counsel, I have a question.

12 MR. LOCKWOOD: Sure.

13 JUDGE GARCIA: District court, just for me, does
14 that cover one town?

15 MR. LOCKWOOD: No, it's - - - it's - - -
16 actually, in Suffolk, it's most of the county. It's most
17 of western Suffolk, so.

18 JUDGE GARCIA: Um-hum.

19 MR. LOCKWOOD: I'm assuming you're from upstate -
20 - -

21 JUDGE GARCIA: Actually I'm from Long Island, but
22 - - -

23 MR. LOCKWOOD: Oh, oh - - -

24 JUDGE GARCIA: - - - fortunately never found my
25 way into district court. But so the - - - there are



1 certain towns, though, that don't have town courts, right?

2 MR. LOCKWOOD: Correct. The - - -

3 JUDGE GARCIA: And those are - - -

4 MR. LOCKWOOD: Mainly the five western towns.

5 JUDGE GARCIA: And those are then covered by the
6 district court?

7 MR. LOCKWOOD: Correct.

8 JUDGE GARCIA: There's five, let's say, in
9 Suffolk County.

10 MR. LOCKWOOD: Yeah, it's Babylon, Islip,
11 Brookhaven - - - I'm forgetting somebody.

12 JUDGE GARCIA: And so going back to that last
13 sentence of 1806-A, couldn't you read that sentence to say
14 - - - it doesn't say "town court", it says court of such -
15 - - the - - - "The court of such city, village, or town."
16 So isn't the court of such town, you could read that to be
17 a district court, right, where the town doesn't have a town
18 court?

19 MR. LOCKWOOD: I mean, it certainly could be. It
20 may very well be a legislative oversight. I don't - - -

21 JUDGE GARCIA: But that wouldn't be an oversight.
22 I mean, they didn't say town court. They just said court
23 of such town, and where - - -

24 MR. LOCKWOOD: Correct.

25 JUDGE GARCIA: - - - the town doesn't have a



1 court, the court of such town is the district court, right?

2 MR. LOCKWOOD: I'm very angry I didn't think of
3 that argument myself. That's very good. So but yes, I
4 agree with that.

5 JUDGE GARCIA: You see that I have Long Island
6 roots, I guess, but yeah.

7 MR. LOCKWOOD: But yes, I do agree with that, so,
8 you know, I've read it as an oversight, but it may very
9 well not be. But like I said, I think 1806-A also shows
10 why traffic infractions - - - the appellant made the
11 argument that traffic infractions are just different, so
12 that's why they can do this in this situation, but I think
13 1806-A shows very specifically why they can't, because
14 there had to be legislative carve-outs. And the items that
15 he cites in his brief, right to counsel under 170.30 and a
16 right to a jury trial under VTL 155, those are specific
17 legislative carve-outs. There is no specific legislative
18 carve-out for a default, except CPL 620 for corporations
19 and 1806-A for failure to answer.

20 So like I said, I think that argument, you know,
21 the - - - the traffic infractions are different cuts
22 against him, because of the fact that I think it shows why
23 they're not different or why there has to be a legislative
24 carve-out for them.

25 So, unless anybody else has anything - - -



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CHIEF JUDGE DIFIORE: Thank you, Counsel.

MR. LOCKWOOD: Thank you.

CHIEF JUDGE DIFIORE: Thank you very much.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Karen Schfifmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York v. Eric J. Iverson, No. 36, and People of the State of New York v. Jack J. Cucceraldo, No. 37 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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