

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, May 4, 2021 (arguments begin at 2 p.m.)

No. 36 People v Eric J. Iverson

No. 37 People v Jack J. Cucceraldo

In separate incidents in Suffolk County, Eric Iverson and Jack Cucceraldo were issued traffic tickets charging them with Vehicle and Traffic Law violations, including driving without insurance and driving while using a cell phone. Both men pled not guilty and requested trials. The Suffolk County Traffic and Parking Violations Agency (SCTPVA) notified them by letter of their trial dates and warned, "If you fail to answer at that time, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST OR PROCEED IN YOUR ABSENCE AND YOU WILL BE LIABLE FOR ANY SENTENCE AND/OR FEES IMPOSED...." When they failed to appear for trial, SCTPVA hearing officers entered default judgments against them without conducting trials and imposed fines.

The Appellate Term, 9th and 10th Judicial Districts, reversed the convictions of both men "since no trial was held before the court entered the judgments of conviction." It said, "While Vehicle and Traffic Law § 1806-a(4) permits 'a default judgment of a fine' to be entered against a defendant who ... failed to 'answer within the time specified,' the statute expressly provides that '[w]hen a person has entered a plea of not guilty and has demanded a hearing, no fine or penalty shall be imposed for any reason, prior to the holding of the hearing which shall be scheduled by the traffic and parking violations agency.'" In Cucceraldo, it expressly rejected the SCTPVA's argument that Vehicle and Traffic Law article 2-A authorized it to enter default judgments for failure to appear. The court said, "We note that the SCTPVA in an 'arm of the District Court' ... and 'operate[s] under the direction and control of the county executive,'" and article 2-A is not applicable to the agency because "article 2-A applies only to traffic violations bureaus, which are administrative tribunals wherein hearings are conducted before hearing officers appointed by the Commissioner of Motor Vehicles ... and their determinations are submitted for review to an administrative appeals board..., with judicial review only as permitted by CPLR article 78...."

The SCTPVA argues the Appellate Term erred in applying the prohibition against default judgments in section 1806-a(1) to it because the statute "clearly and unambiguously" applies to city, village and town courts, while the SCTPVA is "a branch of the district court.... Nowhere in §1806-a(1) or any other provision of either the Criminal Procedure or the Vehicle and Traffic Law is there a prohibition against a district court and by extension a TPVA from imposing a fine or penalty against a defendant who has pled not guilty and requested a trial and then failed to appear (defaulted) for said trial." The agency also argues that article 2-A provides "statutory authority for both traffic violations bureaus and [traffic and parking violations agencies] to enter a default conviction when a defendant fails to appear for trial."

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For respondents Iverson and Cucceraldo: Scott Lockwood, Deer Park (631) 242-3369

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To be argued Tuesday, May 4, 2021 (arguments begin at 2 p.m.)

No. 38 People v Cesar Garcia

Cesar Garcia was arrested by two plain clothes officers who followed him as he traveled on the Lexington Avenue subway line in Manhattan in June 2015, after they saw him masturbate on a platform at Union Square, rub up against a woman on a northbound subway car, and rub up against another woman on a southbound train. He was charged with five class-B misdemeanors: two counts each of forcible touching and sexual abuse and one of public lewdness.

Garcia, an undocumented immigrant from Mexico, moved for a jury trial. Although B misdemeanors are generally “petty offenses” that do not require a jury trial under the Sixth Amendment because the maximum sentence is less than six months, Garcia argued that he would be subject to deportation under federal immigration law if he were convicted, a “serious” consequence that should entitle him to a jury. Criminal Court denied his motion. After a bench trial in August 2016, Garcia was convicted of public lewdness and acquitted of the other four counts. He was sentenced to seven days of community service.

In 2018, while his appeal was pending at the Appellate Term, the Court of Appeals held for the first time in People v Saylor Suazo (32 NY3d 491) that “a noncitizen defendant who demonstrates that a charged crime carries the potential penalty of deportation – i.e. removal from the country – is entitled to a jury trial under the Sixth Amendment.”

The Appellate Term, First Department, affirmed Garcia’s conviction in 2019, saying he “is not entitled to a jury trial, since he failed to meet his burden to establish that a conviction for public lewdness carries the potential for deportation (see People v Suazo ...). Even assuming that public lewdness ... is a crime of moral turpitude” under federal law, “an issue that has not yet been categorically decided..., defendant would still not be deportable ... because that provision requires convictions for two or more crimes involving moral turpitude to subject an individual to deportation... Moreover, even if we now consider all the crimes for which defendant was tried, including the offenses of which he was acquitted, as two or more crimes of moral turpitude, he would not have been subject to deportation by a conviction because the charges arose out of a single scheme of criminal misconduct.” The federal statute “makes deportable any alien who has been convicted of ‘two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct’ (emphasis added).”

Garcia argues that he “faced trial for an assortment of charges relating to three incidents: public lewdness on the subway platform, and forcible touching and third-degree sexual abuse against” different victims on different trains. “Each one of these offenses was a crime involving moral turpitude under federal immigration law subjecting noncitizen defendants to the potential penalty of deportation. A showing that a crime is classified as a crime of moral turpitude alone is enough to establish jury-trial entitlement for a noncitizen. More, because the charges here involved three separate incidents, a conviction arising from any two of those incidents would have mandated Mr. Garcia’s deportation. That Mr. Garcia was ultimately convicted of only the public lewdness charge does not change this result, because entitlement to a jury trial is measured by the potential penalty defendant faces when the trial begins, not the ultimate penalty imposed.”

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