



CONVICTIONS OF INCLUSORY CONCURRENT COUNTS OF AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE FIRST DEGREE VACATED (SECOND DEPT).

The Second Department determined vacated defendant's conviction of two inclusory concurrent counts of the court alleging aggravated operation of a motor vehicle in the first degree:

... [T]he counts alleging driving while intoxicated as a felony in violation of Vehicle and Traffic Law § 1192(3) and aggravated unlicensed operation of a motor vehicle in the second degree were inclusory concurrent counts of the count alleging aggravated unlicensed operation of a motor vehicle in the first degree (see CPL 300.30[4]; 300.40[3][b]; Vehicle and Traffic Law §§ 511[2][a][ii]; [3][a][i]; 1192). Accordingly, the defendant's convictions of driving while intoxicated as a felony in violation of Vehicle and Traffic Law § 1192(3), and aggravated unlicensed operation of a motor vehicle in the second degree and the sentences imposed thereon must be vacated, and those counts of the indictment dismissed. Under the circumstances of this case, the defendant's contention that the mandatory surcharge and crime victim assistance fee must be reduced is more appropriately raised before the Supreme Court and, accordingly, we remit the matter to the Supreme Court, Nassau County, to consider this issue [People v Delcid, 2019 NY Slip Op 05788, Second Dept 7-24-19](#)