

Commonwealth v. Michael A. Diaz, Jr.

SJC-13825

Where the police lawfully seize a cell phone incident to an arrest, and where there is a lengthy delay (here, 123 days) between the date that the police seize the phone and the date that the police apply for, and receive, a search warrant to search the phone, (1) whether the delay is unreasonable under the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights; and (2) whether, or how, the facts that the Commonwealth will retain possession of the phone until trial because the phone itself may have independent evidentiary value or that the defendant has not asked for the phone to be returned are relevant to the consideration whether the delay is unreasonable and a violation of the defendant's rights (Note that this case will be argued with SJC-13823, Commonwealth vs Jose N. Solis).