



LEGAL UPDATE

Delay in Obtaining Search Warrants for Cell Phones Must be Reasonable

Commonwealth v. Solis, Commonwealth v. Diaz, Mass. (August 12, 2026).

RELEVANT FACTS

Commonwealth v. Solis: On March 24, 2023, a 13 year-old male reported that he was sexually assaulted multiple times by a store clerk. The victim also reported that he believed the defendant used a cell phone to take a picture of the victim's penis during one of the assaults. The defendant was arrested that day and turned his phone over to police.

Three weeks after the arrest, the victim participated in a forensic interview. After the interview, the detective began preparing a search warrant application for the phone. Between the defendant's arrest and the submission of the search warrant application the detective testified in two court hearings, helped prepare 4-5 Superior Court trials and two District Court trials, participated in off-site trainings on eight days and was out of work for 8-9 days due to illness.

The search warrant application, including an 18 page affidavit, was submitted 109 days after the phone was seized. A photograph that matched the victim's description was recovered from the phone.

Commonwealth v. Diaz: In June 2019 the defendant was accused of sexually assaulting two foster children in his care, a 12 year old and an 11 year old, both female. Both girls participated in forensic interviews in July 2019 during which they each reported being sexually abused by the defendant on multiple occasions. The 12 year old also reported that the defendant contacted her via cell phone after she was removed from the home. He would then meet up with her and rape her. In addition, she reported that the defendant photographed her using his phone but could not remember if she was

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dressed or not at the time. The 11 year old reported that the defendant showed her an image on his phone of his wife performing oral sex.

The detective obtained an arrest warrant for the defendant the day of the last forensic interview. At the time of his arrest, officers seized his cell phone. Two weeks after the defendant's arrest, officers learned that the defendant's wife may have sexually assaulted the 11 year old. Another forensic interview occurred at which time she reported the defendant had used the flashlight feature of his phone while photographing her with her shirt lifted.

The detective prioritized other responsibilities ahead of applying for the search warrant of the phone. Those responsibilities related to his management of approximately 80 open sexual assault and child abuse investigations. The 27-page affidavit in this case took 4-5 eight hour shifts to draft and incorporated information from several sources, including the forensic interviews and prior DCF investigations. The warrant application was submitted 123 days after the seizure of the phone. Police recovered a picture of the defendant and his wife engaged in oral sex and pictures of both victims in various stages of undress.

Motions to suppress were filed in both cases. Both motions were allowed because the judge determined that the delays in each case between when the phones were seized and the search warrants were applied for were unreasonable. The Commonwealth appealed. The only issue on appeal was whether the delay in seeking warrants to search the phones rendered the initial seizures unreasonable.

DISCUSSION

At its core, the Fourth Amendment and art. 14 protect people from unreasonable searches and seizure. "A seizure that is 'reasonable at its inception... may become unreasonable as a result of its duration.'" *quoting Commonwealth v. White*, 475 Mass. at 593.

To determine whether a delay in seeking a warrant is reasonable, the court must balance the "nature and quality" of the intrusion against the importance of the government's interest. Each case must be determined based upon the totality of the circumstances that are present in each specific case.

When considering the reasonableness of any delay, the court will consider three factors:

1. the defendants' possessory interest in the seized cell phones;
2. the extent of the governmental intrusion on that interest; and
3. the strength of the Commonwealth's justification for continuing to retain the devices.

Possessory interest in seized cell phones

Cell phones, especially smart phones often store a wide range of information about a person, including communications, location data, pictures, and financial data. Much of that data could have nothing to do with the criminal investigation. For this reason, cell phones, much like computers, may implicate a substantial possessory interest. However, the facts of a case may show a reduced possessory interest in the phone.

The court identified several circumstances that may be relevant when determining the strength of the defendant's possessory interest:

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Relevant factors		
whether the record shows a defendant's concrete need for the device for work, family, financial, medical, or other daily obligations	whether the defendant requested the cell phone's return	the strength of the defendant's claim of ownership
whether officers permitted the defendant the opportunity to copy or remove personal content from the cell phone before the seizure	the defendant's ownership of another cell phone with equivalent functionality	the defendant's admission that the cell phone contains illicit material

Significance of the intrusion

The law requires that warrants for digital devices be prioritized by investigators. When determining the extent of the government's intrusion on the defendant's rights, the court will consider the length of time the police had custody of the phone and whether the defendant consented to the seizure.

Government Interest

The court identified various factors that are relevant to determining the strength of the government's interest:

Relevant factors		
the basis for the seizure of the cell phone	the device's evidentiary value independent of its contents	the nature of the offense
the strength of the government's justification for the delay (i.e., the complexity of the investigation, effort required to obtain a warrant)	the use of secure storage to prevent remote destruction of evidence	whether police acted diligently

The court then applied this framework to the facts of the cases before it.

Possessory Interest

In both Solis and Diaz the court found the possessory interest of the defendant was substantial because they were smartphones. However, these interests were diminished by the fact that neither defendant sought return of the phone and there was no evidence that the phones held any "particular significance" to their owners.

Extent of intrusion

The court found that the delay between when the phones were seized and when police obtained a warrant for the content of those phones (109 days in Solis and 123 days in Diaz) were significant intrusions on the defendant's possessory interests.

Government's interest

The government's interest in these cases was strong. In both cases police had probable cause to seize the phones and the phones were alleged to have been used to commit at least one of the charges against each of the defendants (posing a child in a state of nudity and, in the Diaz case, dissemination of matter harmful to a minor.) Because these crimes do not require that a photograph be introduced into evidence, the phones had independent evidentiary value apart from their content.

The court also recognized that the government has a "particularly strong" interest in crimes that involve the sexual exploitation of a child.

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There were also factors that diminished the weight of the Commonwealth's interest in both cases. In Solis, the court found the investigation was relatively straight forward: it involved one victim and one defendant and the warrant application itself was not complicated. While the affidavit was 18 pages, only a limited portion of it covered case-specific facts. The application relied on a limited number of sources and "did not require substantial investigative synthesis."

While an initial delay could be excused by the need for a forensic interview of the victim, the rest of the delay was attributed to the detective's workload and department staffing issues. The Commonwealth offered no case-specific reasons for most of the delay

The police did not act with the diligence that art. 14 demands. Investigative workload alone cannot justify extended delay; the Commonwealth must identify warrant-specific reasons for the lapse.

This lack of diligence was not dispositive. It was one factor the court considered in its analysis. Based on the totality of the circumstances in Solis, the court found the 109 day delay was not unreasonable.

The Diaz investigation was more complicated. The allegations involved multiple victims and took place over approximately 6 months. The investigation also involved reviewing information from several sources including DCF reports and multiple forensic interview. The drafting of the affidavit was also complicated. The 27 page affidavit took 32–40 work hours to draft and included extensive case-specific information that was obtained from multiple agencies and sources.

The detective admitted that the warrant application here was put on the "back burner" and that he prioritized other responsibilities over applying for the search warrant of the defendant's phone.

The lack of prioritization is serious and weighs against the reasonableness of the delay.

Ultimately, the court found that, when balancing the totality of the circumstances present in Diaz, the 123 day delay was not unreasonable. In its final paragraph, the court gave a warning to departments:

Nothing in this opinion should be read to condone delay. Article 14 requires that applications for warrants to search digital devices be treated as a priority, not as an afterthought. Our holding is narrow, and rests on the combination of probable cause, a continuing evidentiary basis for retaining the cell phones apart from their contents, serious offenses involving child sexual exploitation, and diminished possessory interests.

The motions to suppress should have been denied.

Key Takeaways:

- Officers must act with diligence in pursuing search warrants for the content of phones.
- The importance of the phone to the defendant will be a factor the court considers.
- The workload of the investigating officer is no excuse for delaying getting a warrant for phones.

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