

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, SS.

NO. SJ-2020-0601

JOHN W. VAZQUEZ DIAZ vs. COMMONWEALTH

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, SS.

NO. SJ-2020-0608

VICTORIA MARBLE vs. COMMONWEALTH

RESERVATION AND REPORT

Both petitioners are defendants in separate, unrelated criminal proceedings. They have filed substantially similar petitions, pursuant to G. L. c. 211, § 3, in the county court challenging the findings and orders of separate Superior Court judges. In each case, the judge denied their respective "objection[s] to conducting an evidentiary suppression hearing by video conference" during the current COVID-19 pandemic. In general, the petitioners seek orders staying pretrial evidentiary suppression hearings until such time as in-person hearings can be safely held in court. They argue, in part, that a virtual hearing differs qualitatively from a courtroom proceeding in myriad respects, and that it would violate their constitutional right among other things: to be physically present at all critical states of criminal proceedings; to confront the

witness against them and to present their own witnesses; and to a public trial. The petitioners both argue that there is no compelling governmental interest in holding an evidentiary suppression hearing, over a defendant's objection, in these circumstances, and that logistical considerations call into question the fairness of any such proceeding. On the petitioners' motions, I have stayed the Superior Court proceedings in both cases pending further order of this court.

In the Vasquez Diaz case, the Commonwealth has requested -- without objection -- that I reserve and report the question of the constitutionality of virtual evidentiary hearings in light of the COVID-19 pandemic. After consideration of the parties' submissions, I am of the view that these cases raise important and novel legal issues, the resolution of which will have a systemic impact on proceedings across the Commonwealth and that ought to be addressed by the full court. In the exercise of my discretion, I therefore reserve and report both cases to the full court. The cases shall be paired for argument.

In each case, the record before the full court shall consist of the pleadings and supporting materials filed in the county court. Further, if either side maintains that the judge's findings are inadequate to enable the court to resolve the legal issues raised in the pleadings, the parties are to prepare and file in the full court a sufficiently comprehensive statement of agreed facts that will enable it to do so. Any such statement of agreed facts shall be finalized in time for inclusion in the record appendix filed with the appellant's brief. The failure to agree on all the facts needed for a decision could impair the court's ability to decide the case.

The petitioners are designated as the appellants. This matter shall proceed in all respects in accordance with the Massachusetts Rules of Appellate Procedure. The parties shall consult with the Clerk of the Supreme Judicial Court for the Commonwealth regarding the service and

filing of briefs and date for oral argument, anticipating that the argument will be scheduled not later than December, 2020.

By the Court,

/s/ Kimberly S. Budd
Kimberly S. Budd
Associate Justice

Date: September 22, 2020