

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-373

SEPTEMBER TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Washington Circuit
Dana P. Patten	}	
	}	DOCKET NO. 714-6-05 Wncr

In the above-entitled cause, the Clerk will enter:

Defendant appeals from the district court=s denial of his motion to amend his conditions of release to remove the imposition of a curfew. This court must affirm the order of the district court Aif it is supported by the proceedings below.@ 13 V.S.A. ' 7556(b).

Defendant is charged with grossly negligent operation of a motor vehicle, attempting to elude a law enforcement officer, and impeding a police officer. At his arraignment, the district court imposed as a condition of release a curfew from 7:30 pm to 5:00 a.m. Defendant moved to amend the conditions of release, objecting to the curfew and arguing that the curfew has no relevance to the alleged incident. After a hearing on the motion, the district court did not remove the curfew as a condition, citing public safety concerns as the reason for the curfew. However, the court altered the time of the curfew to 8:30 p.m to 5:00 a.m.

Upon review of the proceedings below, the Court concludes that there is insufficient support in the record for a condition that confines defendant to his home between the hours of 8:30 p.m. and 5:00 a.m. as reasonably necessary to protect the public. The record reflects the district court=s concerns about defendant=s conduct in operating motor vehicles. This concern for public safety is supported by the information and affidavit outlining defendant=s alleged conduct in speeding off in the middle of a traffic stop by a law enforcement officer and operating his vehicle in a grossly negligent manner in his attempt to elude the officer, defendant=s prior record of at least five speeding offenses and one DUI charge, and additional past conduct described in the affidavit which reflects unsafe motor vehicle operation. While the district court=s concern in prohibiting defendant from unnecessary driving is justified and supported by the record, a curfew is not supported and is not the Aleast restrictive ... condition which will reasonably assure protection of the public.@ 13 V.S.A. ' 7554(a)(2).

For the foregoing reasons, the imposition of a curfew cannot be affirmed. Pursuant to 13 V.S.A. ' 7556(b), the Court remands the matter to the district court to consider a condition prohibiting defendant from driving except as necessary for employment, or such other conditions as may be necessary to protect the public.

The district court's imposition of Condition 11, Curfew 8:30 p.m. to 5:00 a.m. is vacated. Conditions 1, 2, 3, 10, and 31 are affirmed. The matter is remanded for the district court to consider a condition prohibiting or limiting driving, or the imposition of other suitable conditions of release.

FOR THE COURT:

Brian L. Burgess, Associate Justice