

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-057

FEBRUARY TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Washington Circuit
Dodzi Kpesse	}	
	}	DOCKET NO. 1019-8-05 WnCr

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

Defendant Dodzi Kpesse appeals a district court order setting bail at \$5,000. Defendant argues that the record does not support a risk of nonappearance, and, in the alternative, that an unsecured personal appearance bond satisfies the court=s conditions of release. We affirm.

Defendant, a permanent resident alien, has been held since August 2005, when he was charged with assault and robbery. Defendant is alleged to have robbed a convenience store using two pellet guns that were replicas of semi-automatic handguns. On August 29, 2005, at arraignment, District Court Judge Geoffrey W. Crawford set bail at \$5,000 cash or surety bond. On November 8, 2005, District Court Judge Walter M. Morris, Jr., heard defendant=s motion to reconsider bail. At the hearing, several members of the community testified on behalf of defendant, asserting his ties to the community and his general reliability. Defendant=s motion to reduce or strike the requirement of bail was denied. On December 20, 2005, Judge Morris heard a second motion to reduce bail. At this second hearing, defendant requested that bail be reduced to \$2,000, which he represented had been raised by members of the community on his behalf. This motion was also denied. Finally, on January 31, 2006, Judge Morris heard defendant=s motion to allow his release upon acceptance of an unsecured promise by defendant=s brother, Olivier Kpesse, to pay \$5,000 in the event of defendant=s nonappearance. Judge Morris denied this motion by written order on February 15, 2006.

Defendant has appealed pursuant to 13 V.S.A. ' 7556(b), which allows appeal to a single justice of this Court, but requires that the district court=s order shall be affirmed if it is supported by the proceedings below.@ Defendant contends that the court=s order is not supported because: (1) the proceedings below do not support the court=s conclusion that the amount of bail was justified by the risk of defendant=s nonappearance; and (2) the court erred in refusing to allow defendant=s release upon his brother=s undertaking.

The court must release a person charged with an offense prior to trial on personal recognizance unless the court determines that Asuch a release will not reasonably assure the appearance of the person as required.@ 13 V.S.A. ' 7554(a)(1). This determination is to be made based on consideration of such factors as Athe seriousness of the offense charged and the number of offenses with which the person is charged.@ 13 V.S.A. ' 7554(a)(1). If the court determines that conditions of release are required, these conditions are to be set based on consideration of Aavailable information@ regarding the nature of the offense, the evidence against the defendant, the defendant=s ties to the community, his financial resources, past history of appearance or flight, and other factors. 13 V.S.A. ' 7554(b).

Here, the court determined that the seriousness of the crime with which defendant is charged and the circumstances indicating that defendant poses a flight risk justify the imposition of \$5,000 bail as a condition of release.

This determination is adequately supported by the record. Defendant is charged with a crime that, while it is by no means as serious as an armed robbery involving genuine handguns, can at least be characterized as violent and dangerous. More importantly, it is a crime that puts defendant at risk of substantial prison time and, because he is a non-citizen, possible deportation. The State also showed below that the weight of the evidence against defendant is great, including videotapes showing the crime in progress. Both the likelihood of defendant's conviction and the severity of the punishment defendant faces if convicted make his appearance at trial less certain. Defendant is also alleged to have made statements that he committed the crime hoping to be deported, as he was no longer happy living in the United States. The court interpreted this as an indication that defendant would likely attempt to leave the area if released. Despite defendant's ties to his community, and despite the difficulty that a person with defendant's apparent resources and language skills might have in fleeing, the record contains some support for the court's conclusion that he posed a flight risk, and for the conclusion that requiring \$5,000 bail was a reasonable way to reduce the risk of defendant's nonappearance. We thus conclude that the court's orders refusing to reduce bail were supported.

Defendant next contends that Judge Crawford's initial order requiring a surety bond in lieu of \$5,000 cash required Judge Morris to accept Olivier Kpessé's promise to pay \$5,000 in the event of defendant's nonappearance as a substitute for cash bail. A surety bond is defined by statute as a written agreement, in a form established by the court administrator, under which a surety guarantees the appearance in court of a person charged with a criminal offense, and pledges to pay the court a specified amount if the person fails to appear. 13 V.S.A. § 7576(5). The court determined that such an agreement was not alone sufficient to meet the conditions of defendant's release. The proceedings below support this conclusion. The initial order setting defendant's conditions of release required a surety bond or cash in the amount of \$5,000. There is no indication as to whether the surety bond was required to be secured by property. The bail statute, however, lists such a bond as a condition of release with sufficient solvent sureties. 13 V.S.A. § 7554(a)(1)(E). While it is possible that Judge Crawford intended to craft a less burdensome condition of release when he issued his order, Judge Morris noted that at the initial bail hearing, Judge Crawford used the term sufficient surety to refer to the surety bond alternative, and he did not mention the possibility that defendant could be released upon another person's unsecured promise to pay. This contextual evidence of Judge Crawford's intent in crafting the order setting the conditions of release, together with the statute's description of the usual practice with respect to surety bonds, supports Judge Morris's refusal to allow an unsecured surety bond to substitute for bail.

Affirmed.

FOR THE COURT:

Denise R. Johnson, Associate Justice