

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-353

SEPTEMBER TERM, 2003

	} APPEALED FROM:
	}
State of Vermont	} District Court of Vermont, Unit No. 3, Franklin Circuit
	}
v.	}
	} DOCKET NO. 1951-12-02 FrCr
Stephen M. Desautels	}
	}
	}
	}

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

Defendant appeals an order of the Franklin District Court denying bail. Defendant was charged with two counts of sexual assault and three counts of second degree domestic assault, in violation of 13 V.S.A. ' ' 3252(a)(1) and 1044(a)(2) respectively, as well as three counts of attempting to suborn perjury in violation of 13 V.S.A. ' 2903. Defendant was denied bail by Judge Michael S. Kupersmith on July 31, 2003.

Pursuant to 13 V.S.A. ' 7556(d), a de novo evidentiary hearing was held before the undersigned on September 8, 2003 in St. Albans. During the hearing, the Court heard testimony from Joanne Kane, Corey Mott, Kim Murray, and Desiree Murphy for the State, and Jeff Cota for the defense.

Our review of this issue is governed by 13 V.S.A. ' 7553a which provides as follows:

A person charged with an offense that is a felony, an element of which involves an act of violence against another person, may be held without bail when the evidence of guilt is great and the court finds, based upon clear and convincing evidence, that the person's release poses a substantial threat of physical violence to any person and that no condition or combination of conditions of release will reasonably prevent the physical violence.

To show that evidence of guilt is great, the State must establish a prima facie case under V.R.Cr.P. 12(d), which we have determined means that A [t]he evidence, when viewed in the light most favorable to the State and excluding the effects of modifying evidence, must > fairly and reasonably= show defendant guilty beyond a reasonable doubt. @ State v. Madison, 163 Vt. 390, 393-94, 659 A.2d 124, 126 (1995) (citing State v. Duff, 151 Vt. 433, 439, 563 A.2d 258, 263 (1989)).

After reviewing the evidence and testimony presented during the hearing in the light most favorable to the State, I find that the State has presented a prima facie case and met its burden under 13 V.S.A. ' 7553a. The State's witnesses testified that on the evening of November 18, 2002, the victim and the defendant had a violent argument in the victim's apartment. The victim testified to having been sexually assaulted by the defendant during the argument, an allegation supported by the victim's daughter and a friend who testified that on the morning following the incident, the victim told them she had been sexually assaulted. The victim's minor son also testified to seeing and hearing the defendant and victim arguing in the apartment, as well as overhearing what sounded like a slap and his mother crying. Despite numerous contradictions in its witnesses' testimony, the State presented sufficient evidence to prove it has substantial, admissible evidence on each element of the offenses charged. Madison, 163 Vt. at 394, 659 A.2d at 126.

Having established that the State met its primary evidentiary burden, we look to the second requirement of ' 7553a,

whether the State presented clear and convincing evidence that the defendant's release poses a substantial threat to any person, and that no conditions of release will adequately protect the individuals involved. The standard is high and I find that the State's evidence was insufficient to meet its burden on this point. The State did not present any evidence that defendant's release poses any threat of physical violence to anyone or that defendant has threatened violence to the victim or any of the individuals involved in this case. To the contrary, the victim's own testimony established that since she wrote the defendant a letter in April, 2003 telling him she planned to testify against him in this matter, he has not tried to contact her in any way.

Furthermore, the State failed to prove that there are no conditions under which the defendant could be released that would protect the safety of the individual's involved. Although there was evidence that the defendant has violated past parole and/or probation conditions, there was no indication of the nature or severity of the violations. Without more, I cannot find that there are no release conditions for this defendant under which the individuals involved could be protected.

On this basis, the defendant shall be released subject to the following conditions:

1. Defendant shall execute a bail bond with sufficient sureties, or deposit cash in the amount of \$25,000.00.
2. Defendant shall personally appear in court, as required by notice to the defendant or the defendant's attorney, or be in violation of this order.
3. Defendant shall let his attorney or the court clerk know where he is at all times, and a telephone number and address where he can be reached.
4. Defendant shall not be charged with, and have probable cause found for, a felony, a crime against a person, or an offense like the offenses with which he is now charged.
5. Defendant shall report to FCSD twice daily between 8-11 AM and again between 4-7 PM.
6. Defendant shall reside in Franklin County and shall not travel outside of Franklin County without written permission from the Franklin County District Court.
7. Defendant shall not purchase, possess, or consume any alcoholic beverages. Defendant shall not purchase, possess, or consume any regulated drugs unless prescribed for use by his physician.
8. Defendant shall not be within 500 feet of Joanne Kane, Corey Mott, Joseph Mott, Alfreda Kane, Kim Murray, Desiree Murphy, or Jeff Cota. This condition bars all association, harassment, or contact, direct or indirect, including contact by mail, telephone, or other electronic devices with any of the individuals listed.
9. If any of the above conditions are violated, the defendant may be arrested without a warrant and incarcerated pending a hearing.
10. If necessary, additional conditions will be imposed, or the defendant will be held without bail.

Defendant shall not be released until a proper Amended Conditions of Release form is properly and completely executed.

FOR THE COURT:

Marilyn S. Skoglund, Associate Justice