

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-290

AUGUST TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
James Shappy III	}	
	}	DOCKET NO. 2845-7-07 Cncr

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

Defendant James Shappy is charged with one count of setting off an explosive device near a residence in violation of 13 V.S.A. § 1602. He appeals from the district court's imposition of \$250,000 bail.<sup>1</sup>

At a hearing on the State's motion to hold defendant without bail, ultimately denied, the court heard testimony from two witnesses inside the house who described hearing an explosion and seeing bushes against the front of the house on fire. Defendant's cousin was riding in a vehicle with defendant and testified to seeing defendant throw a cluster of fireworks towards the residence and then seeing a fireball outside the residence as they drove away. Also admitted was the affidavit of an investigating officer who found one of the fireworks at the scene, which failed to ignite, to be a roman candle altered and taped in such a way to cause it to explode in one ball of fire. The affidavit also relates that defendant admitted to others that it was he who tossed the device. Finally, the court considered defendant's record of convictions, including a violation of an abuse prevention order (VAPO) and a probation violation (VOP); as well as multiple pending charges against defendant, including a felony VAPO. The court considered the VAPO conviction and pending VAPO as "serious" and the new felony charge involving the explosive device as "very serious."<sup>2</sup>

This court must affirm the order of the district court "if it is supported by the proceedings below." 13 V.S.A. § 7556(b). Here, the court characterized the new charge, together with the

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<sup>1</sup> In addition to bail, the court set conditions of release in the event that bail was posted. Those conditions were not appealed.

<sup>2</sup> The court also referred to a third VAPO as "very serious," but this charge does not readily appear on the criminal record check supplied in this bail appeal.

already pending felony charges, as having “upped the ante dramatically . . . .” Defendant interprets this phrase to mean the court imposed high bail because it perceives defendant as violent. This appears unlikely, however, given that the State’s motion under § 7553a to hold without bail on account of violence had been just denied by the court. Instead, the court’s reference to the seriousness of the pending charges is entirely consistent with the statutory mandate that it consider the “seriousness of the offense charged and the number of offenses with which the person is charged” when “determining whether the person presents a risk of nonappearance.” 13 V.S.A. § 7554(a)(1).

The charges are indeed serious because, if convicted, defendant is at risk to lose his liberty. Such a serious consequence is an incentive not to appear, particularly in the face of defendant’s apparent admissions and confirmation by an eyewitness. This, in turn, and as contemplated by the Legislature, leads to a logical risk of nonappearance or flight. The ante may be “upped” quite a bit under such circumstances and, given defendant’s convictions for VAPO and VOP, bail as high as \$250,000 may be justified, absent evidence or proffers sufficient to diminish the risk of nonappearance to the satisfaction of the trial court, to ensure that defendant or others on his behalf are substantially invested in his future return to court.

While the seriousness and number of pending charges are significant factors in determining whether the person presents a risk of nonappearance, they are to be considered “in *addition* to any other factors” when determining whether bail is necessary. 13 V.S.A. § 7554(a)(1) (emphasis added). The proceedings below did not address other factors, presumably because the attention of the parties and of the court was focused on the hold-without-bail elements of §7553a, rather than the bail factors of § 7554(a)(1). The “other factors” should be those as listed in subsection (b) of the same statute dealing with conditions of release, including family and economic ties to the community and the defendant’s history of compliance with past court process, to the extent that they are relevant to risk of nonappearance or flight.

The matter must therefore be remanded for consideration of such other factors as may be presented by the parties relating to risk of nonappearance or flight.

Remanded for the district court to consider all factors relating to assurance that the defendant will appear in court as required and to impose an amount of bail, if any, necessary under 13 V.S.A. § 7554.

FOR THE COURT:

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Brian L. Burgess, Associate Justice