

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-239

JUNE TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont, Unit 2, Bennington Circuit
	}	
	}	
Michael LaPlante	}	DOCKET NO. 476-5-08 BnCr
	}	
	}	

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

Defendant moves for amendment of the conditions of release imposed by the district court. Specifically, defendant requests that condition fourteen, which requires him not to harass or have contact with the victim, be removed.

On May 8, 2008, defendant was arraigned on charges of second-degree unlawful restraint, see 13 V.S.A. § 2406, and misdemeanor domestic assault, see 13 V.S.A. § 1042. The charges arose from an incident on May 7, 2008. When police officers responded to a domestic-assault dispatch at the victim’s home in Bennington, Vermont, they observed that the victim was “crying very hard” and trying to catch her breath. The victim went on to tell police that defendant, her boyfriend, had assaulted her and “stomped on her foot.” Later, the victim completed a sworn affidavit that included the following information.

Defendant and the victim had been involved in a sexual relationship and cohabiting for approximately five months. On May 4, 2008, however, because she felt that defendant had a drinking problem, she had moved out of his apartment and taken up residence at the Vermonter Motor Lodge. On May 6, 2008, following a conversation in which defendant promised the victim that he “would change,” the victim agreed to move back in with him. At some point, defendant asked the victim if they could stop to buy some beer. Another dispute about defendant’s drinking developed, and defendant became verbally abusive, accusing the victim of cheating on him. The victim became upset and told defendant that she preferred to stay in the Vermonter. At this point, the victim went with defendant to the Vermonter to get her key. At the top of the stairway leading to the victim’s room, another argument began, and defendant stomped on the victim’s foot three times. The victim tried to walk around defendant, but he positioned himself between her and the exit, again accused her of cheating on him, pushed her back onto the bed, and straddled her. In the ensuing struggle, the victim tried to knee defendant in the groin and

missed. At this point, defendant grabbed the victim by the hair, pulled her up, and repeatedly hit her head against his groin, causing the victim to experience stiffness and soreness in her neck. According to the victim, defendant stopped only when he realized that she was having trouble breathing.

After some time, defendant allowed the victim to use her cell phone, after which she called her mother, who, in turn informed the police.

During arraignment, the district court ordered that defendant be released upon conditions, including a requirement that he not contact or harass the victim. See 13 V.S.A. § 7554(a)(3) (“A judicial officer may as a condition of release order that a defendant not harass . . . a victim or potential witness.”). Later, on June 6, 2008, defendant received a hearing on his motion to amend the conditions of release. See 13 V.S.A. § 7554(d)(2). At the hearing, defendant presented the testimony of the victim. The victim testified that she was now engaged to defendant and had sent a letter to the court indicating that she wanted to renew contact with defendant. On direct examination, the victim stated that she was not afraid that defendant would cause her any physical harm. On cross-examination, however, the victim mentioned that she would have to have some contact with defendant in order for her to be able to stay at her current residence. On re-direct, defense counsel asked the victim to account for the injuries described in the police report of the incident. The victim stated that she had hurt her toe while “moving [her] stuff down the stairs” and could offer no explanation for the soreness in her neck.

Defense counsel went on to draw the court’s attention to the letter, in which the victim claimed to have fabricated the entire incident at a time when she was suffering from an untreated mental illness. In conclusion, defense counsel recommended alternative conditions of release, noting that the victim had stated that she would contact the police if she felt threatened and that she and defendant would abide by any conditions of release imposed by the State.

After hearing further arguments about appropriate conditions of release, the court imposed, *inter alia*, a condition that defendant not harass or have contact with the victim. In particular, the court mentioned that the standard applied was “to look at the evidence in the light most favorable to the State.” In applying this standard, the court mentioned: (1) the need to keep the public safe; (2) the need to keep the witness safe; and (3) the risk to defendant if another domestic assault occurred. This appeal followed.

On appeal, defendant argues that the court abused its discretion in denying defendant contact with the victim because: (1) the State offered no mitigating evidence or testimony that contradicted the victim’s statements; and (2) the court did not impose the least restrictive condition or conditions necessary to protect the victim’s safety.

In imposing conditions of release, § 7554 instructs the court to consider, “on the basis of available information,” the nature of the offense, the evidence of defendant’s guilt, and the defendant’s family ties, record of convictions and appearances at prior court appearances, and character and mental condition. § 7554(b) notes that “[r]ecent history of actual violence or threats of violence may be considered by the judicial officer as bearing on the character and mental condition of the accused.” The purpose of such conditions of release is either to “assure the appearance of the person” in court or to “protect the public.” 13 V.S.A. § 7554(1)-(2).

§ 7554(a)(2) explicitly authorizes the court to impose, as a condition, that defendant not harass a victim.

This court will reverse a bail determination “if it is supported by the proceedings below.” 13 V.S.A. § 7556. In this case, the record below supports the courts imposition of a no-contact condition. The court made several findings under § 7554(b), including those related to the evidence of defendant’s guilt, the nature of the offense, and the recent violence or threats of violence allegedly committed by the defendant. Given the threat of potential harm to the victim and to the safety of the public, the court did not abuse its discretion in imposing the no-contact/no-harassment condition. Cf. State v. Hendricks, 173 Vt. 132, 147, 787 A.2d 1270, 1282 (2001) (“Like child abuse, domestic violence is rarely a single, isolated act. Rather, it is a recurring and escalating pattern of behavior in which each episode of abuse is interconnected through the abuser's ultimate goal of obtaining control over the victim.”).

Defendant responds that the State presented no evidence contradicting the victim’s claims that no assault had occurred, that she wanted contact with the victim, and that she had fabricated the account of the assault against her while suffering from metal illness. What defendant ignores is that the State cross-examined the victim and solicited damaging testimony, including an admission that the victim would not be able to remain at her current residence if she could not resume contact with defendant.

The State argues that this is a classic case of victim recantation in a setting of domestic violence. In effect, the district court saw it the same way. As the Kansas Court of Appeals recognized when faced with a similar claim, “defendant is asking this court to evaluate the credibility of the witnesses who testified at trial.” State v. McGuire, 77 P.3d 1288, 2003 WL 22283162 at *1 (Kan. App. 2001). “In matters of personal relations, such as abuse prevention, the family court is in a unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing.” Raynes v. Rogers, 2008 VT 52, ¶ 5, __ Vt. __, __ A.2d __. The court was within its discretion in finding credible the victim’s original statement rather than her subsequent recantation and in re-imposing the no-contact condition on appeal.

Affirmed.

FOR THE COURT:

John A. Dooley, Associate Justice