

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-556

JANUARY TERM, 2005

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| State of Vermont | } | APPEALED FROM: |
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| | } | |
| v. | } | District Court of Vermont, |
| | } | Unit No. 2, Rutland Circuit |
| Richard Ayala | } | |
| | } | DOCKET NO. 1504-10-04 Rdc |

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

Defendant appeals from the district court's denial of his motion to reduce his cash bail from \$15,000 to \$5,000. Under 13 V.S.A. § 7556(b), defendant may appeal a condition of release (including cash bail) to a single justice of the Court. "Any order so appealed shall be affirmed if it is supported by the proceedings below." *Id.* This Court held a telephone hearing with Deputy State's Attorney Peter Neary and defense counsel Matthew Anderson on Monday, January 24, 2005.

The facts and procedural history are as follows. On October, 29, 2004, defendant was arrested and charged with possessing one gram of heroin, and 2.5. grams of cocaine, following a motor vehicle stop. According to defendant, a police officer pulled him over in Ludlow for speeding and the officer requested permission to search the vehicle. Defendant granted permission and relinquished a small quantity of marijuana. The officer conducted a further search and found no additional illegal contraband. The officer went back to the police station and discovered that, according to the police database, defendant was a Person of Interest in Chittenden County for his connection with drugs. The officer then called the Rutland police and informed them of the situation. Subsequently, two Rutland police officers, Officer Lemieux and Officer Post, pulled defendant over for lack of a registration sticker on his van's license plate. According to the officers' affidavits, Officer Lemieux requested to search the van and defendant granted the request. Defendant's wife and two young children were also in the van and were removed to Officer Post's vehicle. While searching the van, Officer Lemieux found a small amount of cocaine. After the search was complete, defendant's wife and children were allowed to return to the van. Officer Post returned to the police cruiser where defendant's wife had been and found large amounts of cocaine and heroin.

Defendant was arraigned and a hearing was held where the district court set a bail of \$100,000 or \$15,000 cash bail. In setting the cash bail, the district court stated that "[t]he most important [factors] to The Court . . . are the ties to the state and the risk that he might flee based on the seriousness of the charges and his limited ties."

On December 7, 2004, defendant made a motion for bail reduction arguing that he could only produce \$5000. The district court held a hearing on December 15, 2004.

The court denied defendant's motion to reduce the cash bail amount. In an oral ruling from the bench, the district court explained that defendant was a flight risk and therefore the court would deny his request. The court relied on certain factors in its bail analysis: the crimes charged were serious; defendant was selling drugs for housing which indicated the lack of ties to the community and lack of financial stability; defendant has a long prior criminal record including the issuance of arrest warrants and parole revocations; and he travels outside of Vermont to secure drugs.

This appeal followed.

Under 13 V.S.A. § 7556(b), this Court will affirm the district court’s order setting bail conditions “if it is supported by the proceedings below.” When setting a cash bail, the district court must fix a reasonable figure in light of the constitutional prohibition on excessive bail and the presumption of innocence to which all defendants are entitled. State v. Pray, 133 Vt. 537, 542 (1975). Excessive bail cannot be used to compel a defendant’s incarceration under 13 V.S.A. § 7554, when he is otherwise bailable under the terms of the statute and the Vermont Constitution. See Vt. Const. ch. II, § 40 (prohibiting excessive bail for bailable offenses).

The district court’s decision denying defendant’s motion to reduce cash bail is supported by the proceedings below. First, defendant lacks sufficient ties to the community. He had resided at his apartment for less than a week and he has no known employment in this state. We recognize that defendant’s children are in state custody, and his wife is currently incarcerated in Vermont, but these ties alone do not guarantee his appearance in court. Second, as the district court noted, he has a lengthy criminal record involving arrest warrants and parole revocations. I do not rely on defendant’s juvenile criminal record—the parole revocations he received as an adult indicate that he cannot abide by court orders. Third, these are serious felonies. Therefore, defendant’s motion to reduce the cash bail amount is denied.

FOR THE COURT:

Marilyn S. Skoglund, Associate Justice