

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-067

FEBRUARY TERM, 2002

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	
William Cerretani	}	Unit No. 2, Bennington Circuit
	}	DOCKET NO. 389-4-01 Bncr
	}	
	}	Trial Judge: Karen R. Carroll
	}	
	}	
	}	

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

Defendant appeals an order of the Bennington District Court denying bail pursuant to 13 V.S.A. § 7553a.

Defendant was charged with: one count of aggravated domestic assault, in violation of 13 V.S.A. § 1043 (a)(1); one count of attempted aggravated domestic assault, in violation of 13 V.S.A. § 1043(2); one count of aggravated domestic assault, second offense, in violation of 13 V.S.A. § 1044(a)(2); one count of felony unlawful trespass, in violation of 13 V.S.A. § 3705(d); and one count of simple assault in violation of 13 V.S.A. § 1023(a)(1). He was denied bail on April 18, 2001, pursuant to 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.

Following his arraignment on April 18, 2001, defendant was held without bail on the first four charges, and has since then, remained incarcerated. Defendant filed his first notice of appeal on May 16, 2001. On May 31, 2001, defendant withdrew his bail appeal and on June 12, 2001, this Court dismissed the appeal pursuant to his withdrawal. State v. Cerretani, Doc. No. 2001-216 (June 12, 2001) (unpub.). On August 6, 2001, defendant refiled his appeal pro se and on August 9, 2001, we denied defendant's appeal holding the appeal was not properly filed with this Court, as defendant had an attorney of record. State v. Cerretani, Doc. No. 2001-353 (August 9, 2000) (unpub.). Defendant filed this appeal on February 4, 2002.

A de novo evidentiary hearing was held before the undersigned, specially assigned Supreme Court Justice in February 12, 2002, in Bennington, pursuant to 13 V.S.A. § 7556(d). At the hearing, the State presented evidence through several exhibits, and through the testimony of three witnesses, including a state police officer, the defendant's girlfriend and neighbor.

The evidence establishes that, on April 8, 2001, defendant and his girlfriend were arguing. Defendant had been drinking, and during the course of the argument defendant became violent, choking his girlfriend in their living room. Defendant asked his girlfriend, "are you ready to die" and threatened to hill her and then himself. Defendant then went into the kitchen, and returned holding a knife. Defendant's girlfriend then fled the home and ran to a neighbor's house.

Defendant followed his girlfriend, forcing his way into his neighbor's home. Neighbor demanded defendant leave the house and he refused, she then called the police and defendant told her to put the phone down. She complied. Defendant left the house, and walked towards his own home. Defendant's girlfriend and neighbor saw defendant pick the knife up from a snow bank on his way back into the house. Neighbor and girlfriend again called the police. Approximately ten

minutes later, defendant returned, pounding on the neighbor's door. Defendant only ceased his violent pursuit of his girlfriend when the police arrived.

The State's burden to show that the evidence of guilt is great can be met by establishing a prima facie case as required by V.R.Cr.P. 12(d), which requires that the prosecution show it has substantial, admissible evidence on the elements of the offenses. State v. Madison, 163 Vt. 390, 394, 659 A.2d 124, 126 (1995) (citing State v. Blackmer, 160 Vt. 451, 454, 631 A.2d 1134, 1136 (1993)). The State has met the burden of a prima facie case where the evidence, taken in the light most favorable to the State, excluding modifying evidence, would fairly and reasonably tend to show the defendant committed the offenses, beyond a reasonable doubt. State v. Dixon, 169 Vt. 15, 17, 725 A.2d 920, 922 (1999); V.R.Cr.P. 12(d)(2).

In this case, the State met its burden under 13 V.S.A. § 7553a by introducing substantial admissible evidence on each of the elements of the offenses charged for which he was being held. The State introduced substantial evidence that defendant had attempted, and had in fact caused serious bodily injury to a household member, in violation of 13 V.S.A. § 1043(a)(1); that defendant had attempted to use or had been armed with a deadly weapon, and threatened to use it on a household member, in violation of 13 V.S.A. § 1043(a)(2); that defendant had caused serious bodily injury to his girlfriend and had previously been convicted of aggravated domestic assault, in violation of 13 V.S.A. § 1044(a)(2); and that defendant had entered his neighbor's home without her permission, and remained despite her notice to him that he was not welcome there, in violation of 13 V.S.A. § 3705(d).

The State further established that the defendant posed a substantial threat of physical violence to his girlfriend. Defendant's prior conviction for assault to a his minor child in 1998, followed by one serious incident of domestic violence towards his girlfriend, prior to the April 2001 incident, establishes a pattern of violent behavior towards his household members. Furthermore, there are no conditions that the Court could set that would reasonably assure the Court of the victim's safety.

The State successfully met its burden under 13 V.S.A. § 7553a. Defendant is ordered held without bail pending trial.

FOR THE COURT:

Hilton H. Dier, Jr., Superior Judge (Ret.)
Specially Assigned