

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-003

JANUARY TERM, 2003

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

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

Defendant appeals an order of the Franklin District Court denying bail pursuant to 13 V.S.A. § 7553a. 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. Defendant was denied bail on December 27, 2002, 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.

A de novo evidentiary hearing was held before the undersigned, specially assigned Supreme Court Justice on January 17, 2003, in St. Albans, pursuant to 13 V.S.A. § 7556(d). At the hearing, the parties stipulated to the evidence contained in the transcripts of the prior bail hearing, and defense counsel called one additional witness, a co-worker of the alleged victim who was at her residence on the evening of the alleged assault.

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 a 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).

The evidence in this case is largely circumstantial. It establishes that, on the evening of November 18, 2002, defendant was at the alleged victim's apartment, and had an argument with her. He followed her from the apartment to the adjacent store, where her sons had a brief confrontation with him, before he left. The evidence includes excited utterances of the victim, made to her friend and daughter the morning after the alleged events, stating that she had been raped. It also includes her fifteen year old son's testimony that he had heard a slap from the next room and his mother saying "Get off me." The State also submitted photographs of torn underwear that belonged to the alleged victim taken by the State Police.

Taking the evidence presented by the transcripts and the hearing in a light most favorable to the State, the evidence of

guilt is great. However, §7553a requires a further demonstration that a person's release poses a substantial threat to any person and that no conditions of release will sufficiently protect that person. In this case, the attached conditions of release are likely to protect the individuals involved, therefore, we are releasing defendant under the conditions described in the Amended Conditions of Release, executed January 17, 2003.

FOR THE COURT:

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

Specially Assigned