

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-238

MAY TERM, 2004

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| | } | APPEALED FROM: |
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| State of Vermont | } | District Court of Vermont, Unit No. 1, |
| | } | Orange Circuit |
| v. | } | |
| | } | |
| John Hasham | } | DOCKET No. 89-2-04 OeCr |
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In the above-entitled cause, the Clerk will enter:

Defendant, John Hasham, appeals, pursuant to 13 V.S.A. § 7556(b), the district court's order establishing a \$250,000 cash bail condition of release. On May 17, 2004, the district court affirmed this condition after a hearing on defendant's motion for reconsideration. Upon review of the May 17 transcript, the Court concludes that the proceedings below do not support the amount of cash bail imposed, and thus the matter is remanded to the district court. See 13 V.S.A. § 7556 (on appeal, single justice of the Supreme Court may remand for further hearing if justice finds district court's order unsupported by proceedings below).

The parties agreed, despite a statement to the contrary by the trial court, that defendant is entitled to bail as a matter of right and that the applicable statute is 13 V.S.A. 7554. All persons are bailable by sufficient sureties, except that a person charged with an offense punishable by life imprisonment may be held without bail when the evidence of guilt is great. Vt. Const. ch. II, § 40; 13 V.S.A. § 7553. Although defendant is charged with second degree murder under 13 V.S.A. § 2301, an offense that is punishable by life imprisonment, the district court found that the charge was supported by probable cause. It made no finding, as would be required to deny bail under § 7553, that evidence of guilt was great. Therefore, this Court's task is to examine whether or not the proceedings below support the trial court's decision under § 7554.

Under 13 V.S.A. § 7554, the district court shall release defendant prior to trial, and may impose such conditions and/or bail as the court determines will "reasonably assure the appearance of the person as required." The trial court must determine whether the person presents a risk of nonappearance by considering several factors: the seriousness of the offense charged, the number of offenses charged, the character and reputation of the accused, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, mental condition, length of residence in the area, record of convictions, and his record of appearance at court proceedings. State v. Pray, 133 Vt. 537, 542 (1975). The district court made findings as to many of these factors, although its decision appears to rely exclusively on the fact that the offense charged carries a life sentence and thus creates a great flight risk especially with a defendant who is only 47 years old. The district court reasoned that the bail, which is set at approximately twice defendant's net worth, was the only condition, short of twenty-four hour supervision by law enforcement, that would reasonably assure his appearance. In State v. Duff, 151 Vt. 433, 435-36(1989), this Court rejected the notion that the seriousness of the offense alone can support a high cash bail. We recognized that, to support a high cash bail, the record must contain some evidence of risk of flight beyond the charge. Id. The Court finds such evidence lacking here.

The totality of the factors do not support the conclusion that defendant poses a flight risk that cannot be minimized by the imposition of less restrictive conditions than the \$250,000 cash bail set by the district court. Defendant has no prior criminal record. Defendant also has strong ties to the community. After years of regular stays at his home in Brookfield,

Vermont, defendant has recently moved to Vermont full-time. Defendant has no residence other than the one located in Brookfield which is valued at \$100,000. His father gave him the home sixteen years ago, and he owns it free and clear. He sold his other home in Massachusetts and, as the trial court found, defendant intends to reside exclusively in Vermont. He holds a Vermont driver's license and is registered to vote in Vermont. Even assuming a reduced cash bail, his resources appear insufficient to sustain him if he flees the jurisdiction. His liquid assets amount to \$25,000 in sale proceeds from the Massachusetts home - money which would likely be posted as bail. Otherwise, the Vermont home is his main asset, and because of a past history of claims he will not be able to insure the home unless it is occupied. Furthermore, defendant's main source of income is derived from two partial pensions from the Navy and Postal Service respectively. He earns approximately \$21,000 annually from these sources. If defendant were to flee, he would not be able to collect this income without alerting the government to his whereabouts. His family consists of two sisters who live in Massachusetts. Defendant's unblemished twenty-two year record of employment with the United States Postal Service, and his honorable discharge from the Navy reflect positively on his character. Defendant has no record of nonappearances, and the State does not dispute that he has cooperated fully with the police investigation of the homicide. The record in the criminal case is not yet fully developed, so it is difficult to accurately weigh the evidence against defendant. Defendant admits shooting the victim, and, in fact, reported the crime, but asserts that his actions were justified self-defense. The victim was found with a gun by his side, and investigators did note bullet holes at the crime scene that could have been made by the shots victim allegedly fired at defendant before defendant shot victim. In light of all the foregoing, the Court cannot agree that the factors, other than the seriousness of the charged offense, support the district court's conclusion.

The matter is remanded for reconsideration by the district court. Defendant's lack of a criminal record, ties to the community, lack of substantial liquid assets, positive record of cooperation with the investigation, good character, and lack of any history of nonappearance provide sufficient evidence that less restrictive conditions should reasonably assure his appearance, notwithstanding the severity of the penalty he could face if convicted. See Duff, 151 Vt. at 436. Furthermore, the evidence, at this stage of the proceedings, is not overwhelming on the degree of defendant's culpability. On remand, the district court is ordered to reduce bail and impose such other conditions that will reasonably assure defendant's future appearances.

FOR THE COURT:

Denise R. Johnson, Associate Justice