ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-385

SEPTEMBER TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Steven Martin	}	
	}	DOCKET NO. 3815-9-06 Cncr

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

Defendant appeals from a September 8, 2006 order of the district court revoking defendant=s conditions of release and holding him without bail under 13 V.S.A. ' 7575. The court issued its ruling from the bench following an evidentiary hearing on the State=s motion to revoke conditions of release. Pursuant to 13 V.S.A. ' 7556(b), this Court held a telephonic hearing on Friday, September 22, 2006 with Deputy State=s Attorney John St. Francis and defense counsel Jasdeep Pannu. For the reasons explained below, the district court=s order is reversed.

In August 2006, defendant was charged with aggravated assault, reckless endangerment, and disorderly conduct, arising out of a confrontation between defendant, Ronald Douglas, and others. Mr. Douglas provided a written statement to police about the incident. Defendant was released on conditions, one of which being that he not have contact with Mr. Douglas.

The charges in this docket resulted from an incident on September 5, 2006, when defendant encountered Mr. Douglas, apparently by chance, outside a neighborhood grocery store. Words were exchanged between the two men. Based on the conduct alleged at this encounter, the State charged defendant with obstructing justice and violating his conditions of release and moved for revocation of bail in the August case.

At the hearing on the State=s motion to revoke bail, Mr. Douglas testified that he was walking up to the store with his wife and child when defendant and another man exited the store. According to Mr. Douglas, defendant was Arunning his mouth@ and said the he would Afuck up@ Douglas the next time Douglas spoke to police and that he would make sure Douglas did not speak to police again. The man accompanying defendant made a gesture of putting a hand in his pants that Mr. Douglas interpreted as indicating that the man had a gun. Mr. Douglas estimated that the encounter lasted three or four minutes and that it occurred about five feet outside the entrance to the store. Mr. Douglas denied being afraid of defendant but was fearful of what defendant=s companion might do and feared for the safety of his wife and child. The encounter ended when Mr. Douglas escorted his family into the store.

Defendant called the store=s deli worker, Douglas Olsaver, as a witness. Mr. Olsaver testified that he was working near the entrance at the time defendant left the store and that the door was propped open at that time. Mr. Olsaver indicated that from where he worked he could frequently hear loud noises, such as radios, coming from outside. He denied hearing raised voices or anything else from outside the door at the time of the encounter. Mr. Olsaver admitted, however, that his attention was on preparing sandwiches, that he may have had his back to the door at the time, and that he probably could not hear normal-volume conversations occurring five to ten feet outside the door.

Mr. Olsaver also testified that Mr. Douglas seemed calm while in the store and did not appear to be upset.

The court concluded the Mr. Douglas credibly testified that a conversation took place between himself and defendant and that Mr. Douglas found defendant=s statements Aintimidating to his family.@ The court also found the conversation to be harassing to Mr. Douglas.[1] Accordingly, the court revoked bail pursuant to 13 V.S.A. ' 7575(1), which provides that

> [t]he right to bail may be revoked entirely if the judicial officer finds that the accused has:
>
> (1) intimidated or harassed a victim, [or] potential witness . . . in violation of a condition of release . . . .

Defendant then filed this appeal pursuant to 13 V.S.A. ' 7556(b).

Under ' 7556(b), defendant may appeal the district court=s order to a single justice of this Court. This Court applies the standard of review set forth in the statute: AAny order so appealed shall be affirmed if it is supported by the proceedings below.@ Id. ' 7556(b). The district court=s findings with respect to violations of a conditions of release must be supported by a preponderance of the evidence. State v. Sauve, 159 Vt. 566, 577 (1993).

The court concluded that defendant intimidated Mr. Douglas=s family. Assuming intimidation of a witnesses=s family met the criteria of the statute, the court=s conclusion that defendant was the cause of the intimidation is not supported by the record. Mr. Douglas was adamant in his testimony that he was not afraid of defendant. The basis for the court=s finding of intimidation arises from Mr. Douglas=s expressed fear for his family. However, that fear for family was caused by defendant=s companion=s indication that he had a gun. Mr. Douglas testified AI wasn=t afraid of what Mr. Martin was going to do. I was afraid of what his friend was going to do because he was indicating that he had a gun.@ Further, Mr. Douglas described that the encounter ended when the companion indicated that he had a gun and Mr. Douglas Aabruptly . . . pushed my wife and my baby to get them in the store, to get them out of harm=s way.@ Though there was arguably some evidence of concerted action between defendant and his companion, the court made no finding in that regard, nor any findings at all connecting defendant=s statement to Mr. Douglas= fear for his family. We thus hold that the court=s conclusion that defendant intimidated Mr. Douglas is not supported by the findings.

The court=s second basis for revoking bail was that defendant=s threats to Mr. Douglas constituted harassment. Harassment is undefined for purposes of ' 7575. In construing a statute, the Legislature is presumed to have intended the plain meaning when that meaning is unambiguous. Farris v. Bryant Grinder Corp., 2005 VT 5, & 8, 177 Vt. 456. AHarass@ is ordinarily understood to consist of repeated acts that irritate, torment, or wear out another. American Heritage College Dictionary 618 (3d ed. 2000).[2] Further, it must be noted that ' 7575 is an exception to the to the Vermont Constitution=s provision that Aall persons shall be bailable by sufficient sureties,@ chap. II, ' 40, and detention prior to trial is a Acarefully limited exception.@ Sauve, 159 Vt. at 573 (internal quotations omitted). The record in this case does not support a finding of harassment, as that term is commonly understood. Apart from the one encounter at the store, there was no evidence of any other acts by defendant against Mr. Douglas while he was subject to the condition that he not have contact with Douglas. The multiple threats to Mr. Douglas in the course of a single conversation/encounter are not sufficient to constitute multiple acts. In the absence of repeated acts that would constitute harassment, the court was without a basis to revoke

Accordingly, for the reasons set forth above, I reverse the district court=s order revoking defendant Steven Martin=s conditions of release and holding him without bail.

Reversed. Defendant shall be released from custody in docket number 3815-9-06 Cncr. All conditions in effect at the time of bail revocation remain effective.

FOR THE COURT:

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Brian L. Burgess, Associate Justice

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[1] The court noted that defendant=s witness did not disprove the intimidating or harassing nature of the encounter because the conversation was not alleged to have been loud and a normal-volume conversation could be harassing or intimidating and may well have occurred beyond the witnesses=s range of hearing.

[2] For purposes of the criminal stalking statute, the Legislature has adopted a definition of Aharassing@ that may include single acts of threatening behavior. See 13 V.S.A. ' 1061(4) (Cum. Supp. 2005). However, it cannot be presumed that the Legislature intended a similar meaning in other statutes when it declined to provide a definition. If any significance can be assigned to this, it is that the opposite conclusion must be drawn. Cf. State v. Squiers, 2006 VT 26, & 9, ___ Vt. ___ (concluding that Legislature did not intend to limit definition of lewd acts to contact with or between certain body parts when Legislature adopted such limits in other statutes).