

JUL 23 2009

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-210

JULY TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Windham Circuit
John Galanes	}	
	}	DOCKET NO. 207-2-09 Wmcr
	}	Trial Judge: Karren R. Carrol

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

Defendant John Galanes appeals the district court's March 31, 2009 order holding him without bail pursuant to 13 V.S.A. § 7553a on the charge of sexually assaulting his wife.¹ The undersigned, sitting as a specially assigned Supreme Court Justice, held a de novo bail hearing on July 7, 2009 pursuant to 13 V.S.A. § 7556(d) and hereby affirms the district court's decision to deny defendant bail pending trial.

Persons charged with felony acts of violence against others 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." 13 V.S.A. § 7553a. To assess whether the evidence of guilt is great, the court applies the standard set forth in Vermont Rule of Criminal Procedure 12(d), which governs motions to dismiss for lack of a prima facie case. *State v. Duff*, 151 Vt. 433, 440, 563 A.2d 258, 263 (1989). Thus, evidence of guilt is great where the prosecution establishes "that facts exist that are legally sufficient to sustain a verdict of guilty." *Id.* In making this assessment, the court evaluates the evidence "in the light most favorable to the State and excluding modifying evidence." *Id.*

¹ Relative to this bail appeal, defendant is charged with committing the following offenses on February 13, 2009: burglary into an occupied dwelling; aggravated stalking; sexual assault; interference with access to emergency services; and seven counts of violations of a relief from abuse order. Sexual assault is a felony act of violence. Burglary into an occupied dwelling and aggravated stalking are felonies. Violations of a relief from abuse order are misdemeanors. After defendant's arraignment on the above charges, the State amended the information and charged defendant with two additional counts of sexual assault alleged to have occurred in the eight months prior to February 13, 2009.

The evidence presented at the de novo hearing in this matter established the following facts.² The complainant and her two children from another relationship began living with defendant in November 2007. Defendant has two children from a prior marriage that ended in a divorce. Defendant and complainant separated in June 2008 but shortly thereafter resumed their relationship and married in September 2008. On December 18, 2008 defendant consulted an attorney regarding a divorce from the complainant.

On December 24, 2008 the complainant filed a complaint for relief from abuse in the Windham County Family Court. In that complaint she alleged that defendant sexually assaulted her on two occasions in 2008. Her affidavit further alleged that, during their relationship, defendant was verbally and physically abusive as well as controlling. A Temporary Relief from Abuse Order was issued by the Family Court, and a hearing was scheduled for December 31, 2008. That hearing was continued until January 7, 2009 because defendant was not served with the Temporary Relief from Abuse Order.

On January 5, 2009 the complainant filed for divorce in Windham County Family Court, and on January 6, 2009, defendant signed an acceptance of service for the divorce complaint and the Final Relief from Abuse Order. According to defendant, he did not know he was acknowledging service of the Final Relief from Abuse Order. He believed that he was signing papers solely concerning the divorce. The parties' written stipulation to the Final Relief from Abuse Order appears on the second page of the Order. That page provides for payment of temporary living expenses. The defendant was formally served with the Final Relief from Abuse Order on January 27, 2009. At no time did the defendant move to either amend or vacate the Final Relief from Abuse Order. Among other provisions limiting their contact, the Final Relief from Abuse Order required defendant to stay one hundred feet away from the complainant, her residence, car, and her children.

Notwithstanding this Final Relief from Abuse Order, complainant alleges that on February 13, 2009, defendant sexually assaulted her. Further, after the alleged assault, defendant contacted complainant on numerous occasions, returning to her house the next day with flowers and sending her text messages. Complainant did not initially report the alleged assault due to conversations with defendant during which he expressed his willingness to kill himself should she notify the authorities. She did, however, ultimately report the incident to the police on February 17, 2009, and her demeanor while making the report was consistent with having been assaulted.

During their initial investigation, police were able to record a telephone conversation between defendant and a friend of the complainant wherein defendant admitted that the complainant told him she did not want to have sex with him. Additionally, defendant's ex-wife signed a sworn statement wherein she noted that during a conversation with defendant, he admitted that complainant did not consent to his advances. The police also recovered the complainant's nightgown, which bore a dried stain consistent with her account of defendant ejaculating on it during the assault.

² At the hearing, the parties stipulated to the admission of certain documents as evidence, including, but not limited to, the transcript of the bail hearing held below on March 27, 2009, the probable cause affidavits, the sworn statements of the complainant, and the sworn statement of defendant's ex-wife. In addition, defendant presented the testimony of his brother.

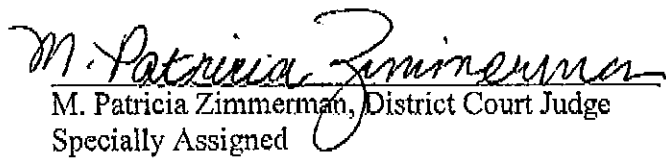
From the foregoing, the court concludes that the State has established a prima facie case sufficient to avoid a motion to dismiss; it has substantial and admissible evidence by which it could prove the elements of sexual assault beyond a reasonable doubt. In reaching this conclusion, the court notes that it has disregarded modifying evidence, including that put forth by defendant regarding other consensual sexual encounters and communications between he and complainant during the time that the Final Relief from Abuse Order was in effect. Moreover, even if this evidence were not considered modifying evidence, consensual sexual activity on a prior occasion does not preclude a finding that, on the charged date, the evidence of guilt is great.

The court next examines whether the State has established, by clear and convincing evidence, that should defendant be released, he poses a risk of physical harm to any person that cannot be prevented by a condition or combination of conditions of release. 13 V.S.A. § 7553a. Denying his risk of physical harm to others, defendant requests that he be released, pending resolution of this case, to the care of his cousin, who owns the Putney Inn. Defendant would work at the Putney Inn and would not venture into Brattleboro, where complainant resides. Putney is eleven miles distant from Brattleboro. According to defendant, doing so would allow him to see his children and adequately assure the safety of complainant and the public.

The court disagrees. There is considerable evidence that defendant has difficulty controlling his anger towards, and complying with court orders regarding, the complainant. The allegations supporting the Relief from Abuse Order state that defendant physically and emotionally abused his wife and children. Even after being formally served with the Final Relief from Abuse Order, which explicitly forbade him from coming into contact with complainant, defendant repeatedly did just that and now stands charged with sexually assaulting her during that time frame. Further, the State has found probable cause to charge him with two additional counts of sexual assault against complainant. Other evidence tends to suggest that defendant is obsessed with complainant and unable to come to terms with their pending divorce. Thus, the court concludes that the State has demonstrated that defendant poses a risk of physical harm to complainant that cannot be mitigated by conditions of release.³

Defendant shall be held without bail pending trial.

FOR THE COURT:


M. Patricia Zimmerman, District Court Judge
Specially Assigned

³ The court's conclusion in this regard is bolstered by the behavior defendant has exhibited while in custody on this charge. Although, to his credit, he did come to the assistance of a correctional officer who was being assaulted by another inmate, he has been disciplined on three other occasions for assaulting his cellmate, openly masturbating, and failing to comply with rules pertaining to appropriate conduct during visitation.