

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2010-104

MAR 25 2010

MARCH TERM, 2010

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|---------------------|---|------------------------------|
| State of Vermont    | } | APPEALED FROM:               |
|                     | } |                              |
|                     | } |                              |
| v.                  | } | District Court of Vermont,   |
|                     | } | Unit No. 2, Rutland Circuit  |
| Griffith P. Mahoney | } |                              |
|                     | } | DOCKET NO. 314/315-2-10 Rder |
|                     | } |                              |
|                     | } | Trial Judge: Thomas A. Zonay |

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

Defendant Griffith P. Mahoney appeals a condition of his release, imposed by the Rutland District Court, that precludes him from having in-person contact with his sister, girlfriend, and seven-month-old daughter. Defendant also appeals the court's condition of release requiring him to attend substance abuse counseling as a condition precedent to resuming in-person contact with his sister, girlfriend, and daughter. We affirm.

The relevant facts for the purposes of this appeal, and as set forth in the arresting officer's affidavit of probable cause, are as follows. On the morning of February 24, 2010, defendant argued over cigarettes with his girlfriend. Defendant's sister and girlfriend each witnessed defendant storm out of the residence, yelling "watch this trick!" A few moments later they observed him brandishing a large butcher's knife and yelling "watch, watch!" Defendant then drove away.

Defendant eventually returned to the residence. When his sister told him that the police had been called, he responded, "[g]ood, I will stab them, those pig fucks." The police, who had been called by defendant's sister, arrived shortly thereafter. Upon arrival, police were directed to a separate trailer. Defendant complied with requests to come outside but was agitated, yelling, and using obscenities during questioning. He admitted to fighting with his girlfriend and to driving away but denied brandishing the knife or threatening to harm himself. The arresting officer reported that during his interview at the residence with defendant's sister, she said that defendant routinely yells at his girlfriend and scares his seven-month-old daughter, and that he has severe anger issues and at times loses control of his emotions. Defendant's girlfriend stated to the police that "[defendant] does . . . need mental help" and that "he throws . . . fits in front of the baby and it's not healthy for her." Both witnesses acknowledged that there have been physical altercations between defendant and his girlfriend in the past. After discussions with defendant, defendant's girlfriend, and defendant's sister, the police learned defendant was on conditions of release from a prior charge and that his driver's license was suspended. The police then informed defendant that he would be arrested for violating the conditions of his release and for driving with a suspended license.

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Before transporting him to the police department, the officers granted defendant's request to kiss his daughter goodbye. Defendant entered the residence and kissed the daughter, but soon

began arguing with his girlfriend. He then “lunged” at his girlfriend, who was still holding the baby at the time, and was quickly taken to the floor by the police. While on the floor, defendant yelled obscenities and began to push up from the floor using his legs. Police again restrained him on the floor. Defendant was escorted away, continuing to yell obscenities. On February 25, defendant was arraigned for driving with a suspended license in violation of 23 V.S.A. § 674(a)(2) and disorderly conduct in violation of 13 V.S.A. § 1026(1). Defendant was then ordered into the custody of the Vermont State Hospital for a treatment assessment. The trial court also set conditions of release.

On March 10, the trial court, at defendant’s request, held a hearing to review defendant’s conditions of release. The trial court took evidence from defendant’s father, defendant’s sister, and a Department for Children and Families worker, and issued an amended conditions-of-release order that ultimately was based on the arresting officer’s affidavit of probable cause. The amended order stated, among other things, that defendant “must NOT have contact” with his sister, girlfriend, or daughter, except by telephone, writing, email, or third party. The trial court also required that defendant commit to a substance abuse assessment within seven days of release. The court indicated that the no-contact restrictions are “temporary” **Tr 16** and that, as defendant completed steps toward rehabilitation, the court would consider modifying such restrictions accordingly. The court indicated its reliance on the statutory factors set forth in 13 V.S.A. § 7554(b), recounting that defendant grabbed something from, and yelled at, his girlfriend while she was holding his daughter; defendant exhibited potentially threatening behavior with a knife; defendant routinely yells at his girlfriend and scares his daughter; and defendant sometimes gets so angry that he is unable to control himself. The court concluded that the conditions imposed were the “least restrictive . . . that [are] necessary to reasonably assure public safety.”

Pursuant to 13 V.S.A. § 7556(b), defendant timely appealed the amended conditions of release order to this court, contending that the trial court abused its discretion in imposing the no-contact condition and in requiring him to attend substance abuse counseling. This Court held a telephone hearing with State’s Attorney Jane O’Neill and defense counsel Matthew Branchaud on Wednesday, March 24, 2010.

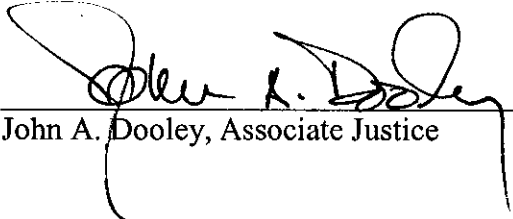
Our review of a conditions of release order is limited by statute. See 13 V.S.A. § 7556(b). We will affirm a district court’s decision “if it is supported by the proceedings below.” *Id.* In establishing conditions of release, a trial court must impose the least restrictive conditions necessary to reasonably assure protection of the public. *Id.* § 7554(a)(2). Here the conditions imposed by the trial court are supported by the record below as the least restrictive to assure public safety and to secure the appearance of the defendant. In particular, the court permitted defendant, under the no-contact order, to have telephone, email, written, and third party contact with his sister, girlfriend, and daughter—it prohibited only in-person contact. While acknowledging that this exception was unlikely to foster contact within his seven-month-old daughter, the court also recognized the temporary nature of the condition and indicated a willingness to modify it as defendant completed steps toward rehabilitation. This condition is appropriate. Given the evidence of observed violence as well as the account by defendant’s girlfriend and sister that defendant brandished a knife in front of them while demanding “watch, watch!” the court reasonably could believe that defendant had physically threatened others and continued to pose a threat to the public.

Similarly, the requirement that defendant seek substance abuse treatment is also narrowly tailored and directed toward ensuring a safe environment for defendant’s sister, girlfriend, and

daughter. Defendant objected at the hearing and reiterates here that the condition of release requiring defendant to attend substance abuse treatment do not fit the charges here. At the appeal hearing, defendant also objected to the condition requiring defendant to have a substance abuse assessment completed and reported to the court. First, a requirement that defendant participate in substance abuse treatment is clearly reasonable under the statute. Section 7554 allows the judicial officer to direct such treatment as a condition either to assure the appearance of the defendant or in the interest of public safety pending trial. 13 V.S.A. § 7554(a)(1)(C), (a)(2)(C). The requirement that defendant complete an assessment is a necessary prerequisite to entering a treatment program. Second, the court noted that it made its decision not on the seriousness of the charges but based on the underlying conduct reported in the affidavit, and that defendant's conduct was related to his substance abuse. Defendant addressed the court and specifically agreed that, "my anger issues came due to the substance abuse." Furthermore, the court noted that as defendant makes progress through his rehabilitation and demonstrates his ability to remain in control, his contact rights will expand in a manner that mitigates risk to others. It therefore makes sense that defendant should report his progress toward treatment. The trial court determined that the no-contact order, when combined with the substance abuse treatment condition, would "facilitate [defendant] getting back with his family, . . . but . . . in a balanced way, one step at a time." Under these circumstances, we find that the trial court's amended order setting forth defendant's conditions of release is supported by the record. Therefore, we affirm.

Affirmed.

FOR THE COURT:



John A. Dooley, Associate Justice