

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-191

JUNE TERM, 2018

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| State of Vermont* v. Walter Taylor III | } | APPEALED FROM: |
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| | } | Superior Court, Windham Unit, |
| | } | Criminal Division |
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| | } | DOCKET NO. 34-1-18 Wmcr |

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

The State appeals from the trial court’s grant of home detention for defendant Walter Taylor III. The State argues that the court abused its discretion by improperly relying on its assessment of the State’s likelihood of securing a conviction as the dispositive factor in its analysis of the home detention request under 13 V.S.A. § 7554b. Because § 7554b does not authorize the trial court to hinge its home detention analysis on its assessment of the likelihood of conviction, the home detention order is reversed.

On the basis of a series of events on January 10, 2018, defendant was charged with kidnapping with bodily injury or fear of bodily injury, 13 V.S.A. § 2405(a)(1)(C); second degree aggravated domestic assault, 13 V.S.A. § 1044(a)(1)(B); and interference with access to emergency services, 13 V.S.A. § 1031. The State sought to hold defendant without bail. See 13 V.S.A. § 7553 (establishing that defendant can be held without bail if defendant is charged with an offense punishable by life imprisonment and evidence of guilt is great).

At the weight-of-the-evidence hearing in March 2018, the State apparently presented evidence that the complaining witness reported right after the January 10 events that defendant had physically forced her into his car by grabbing her arm and hair, slammed her right hand into the car door in the ensuing struggle, attacked her when she tried to call 911, and pulled her hair and threw her on the ground when she tried to leave after they got out of the car.¹ Her hand was swollen when she reported these events. In addition, the State presented evidence that following this incident defendant admitted that he grabbed the complaining witness with both arms around the waist and forced her into his vehicle, drove around town with her in his car, grabbed her cellphone from her and threw it near his feet on the driver’s side floorboard after she tried calling 911, and then ultimately took her to the hospital when he realized she was injured.

The defendant called the complaining witness, who testified that she could not remember the events in question. The court declined to consider the complaining witness’s amnesia and declined to hear evidence supporting the alibi defense because this evidence was modifying. See *State v. Sawyer*, 2018 VT 43, ¶ 4, __Vt.__, __ A.3d __ (explaining that under § 7553, State must present evidence that, “taken in the light most favorable to the State and excluding modifying

¹ This summary is based on the trial court’s subsequent written opinion in connection with defendant’s request for home detention as well as a review of the police affidavits accompanying the charging documents in this case. The State did not order a transcript of the § 7553 hearing itself so this general summary is offered only as background.

evidence, can fairly and reasonably show defendant guilty beyond a reasonable doubt” (quotation omitted)).

The court concluded that the weight of the evidence was great and encouraged defendant to apply for home detention. Shortly thereafter, defendant applied for home detention pursuant to 13 V.S.A. § 7554b, and the court issued an entry order stating:

Excluding modifying evidence, the state has a prima facie case under the 12(d) standard. The court has reservations about the ultimate strength of the state’s case and is uncomfortable continuing Mr. Taylor in prison. The court is likely to put Mr. Taylor in home detention if he has a suitable residence. It is requested that DOC evaluate his proposed residence.

After a hearing in May, the court issued a written order releasing defendant on home detention. The court analyzed the three statutory factors in § 7554b. Under the first factor (the nature of the charged offense), the court noted that defendant’s charged offenses “were violent and concerning” and that, even while incarcerated, he violated his conditions of release by contacting his victim. Under the second factor (prior convictions, history of violence, health needs, history of supervision, and risk of flight), the court explained that it was “comfortable that a bracelet will alleviate any risk of flight” but emphasized that the defendant “has exhibited controlling behavior with respect to his victim in the past” and “has a concerning disciplinary record from the correctional facility.” Under the third factor (risk or undue burden to third parties or public safety), the court found that “the house [defendant] proposes to live in was cluttered,” which may inhibit a law enforcement search for weapons. The court also expressed concern about the potential of defendant’s minor niece also living in the house.

After examining these factors, the court explained that its decision really came down to its assessment of the strength of the State’s case—including modifying evidence that the court could not consider in its § 7553 weight-of-the-evidence determination:

To be clear, if the State’s case were strong; in looking at the 7554b(b)(1-3) factors, I would not put [defendant] onto home confinement. The decision to release him is based on a concern that he may be held for an extended period and there is a reasonable possibility of dismissal or acquittal at the end of it.

The court granted the State an interlocutory appeal and granted its motion to stay the order pending appeal.

On appeal, the State contends that the trial court abused its discretion because it “was erroneously focused on the State’s current ability to succeed at an eventual trial—despite finding for the State under the V.R.Cr.P. 12(d) standard—and failed to consider the facts it was required to, pursuant to 13 V.S.A. § 7554b(b)(1)-(3).”

We agree and conclude that section 7554b does not authorize a court to hinge its home-detention determination on its assessment of the strength of the State’s case. We base our conclusion on the language and purpose of the statute.

Pursuant to the Vermont Constitution, Vt. Const. ch. II, § 40, and the Legislature’s codification of that constitutional provision, 13 V.S.A. § 7553, a person charged with a crime that carries the potential for life in prison may be held without bail if the evidence of guilt is great. The

hold-without-bail determination has two-parts. First, the court must determine whether the evidence of guilt is great under the V.R.Cr.P 12(d) standard. Sawyer, 2018 VT 43, ¶ 4. Second, if the evidence of guilt is great, the court must exercise its discretion to determine whether to nevertheless impose bail or conditions of release pursuant to the factors in 13 V.S.A. § 7554. State v. Morris, 2008 VT 126, ¶ 2, 185 Vt. 573, 967 A.2d 1139. In a § 7553 analysis, “the ordinary presumption in favor of bail is switched so that the norm is incarceration” and the defendant bears the burden of proof. State v. Pelletier, 2014 VT 10, ¶ 9, 197 Vt. 644, 108 A.3d 221.

Under the law that applies to this case, if the court decides to hold the defendant without bail pursuant to the framework described above, it may still order defendant released on home detention.² § 7554b. The statute states:

(b) Procedure. . . . At arraignment or after a hearing, the court may order the defendant be released to the Home Detention Program, providing the court finds placing the defendant in home detention will reasonably assure his or her appearance in court when required and the proposed residence is appropriate for home detention. In making this determination, the court shall consider:

- (1) the nature of the offense with which the defendant is charged;
- (2) the defendant’s prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and
- (3) any risk or undue burden to other person who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

§ 7554b(b)(1)-(3).

Because defendant is subject to a hold-without-bail order pursuant to § 7553, the presumption is in favor of incarceration, defendant bears the burden to prove otherwise. Whiteway, 2014 VT 34, ¶ 18. The trial court has discretion in deciding whether to grant home detention considering the factors in § 7554b(b)(1)-(3). See id. (“We think the required factors limit the court’s discretion so it is not quite so broad as in cases governed by § 7553.”); Pelletier, 2014 VT 110, ¶ 9 (“Although the court has discretion to grant or deny defendant’s request for home detention, its decision must be rooted in factors specific to defendant under § 7554b.”). Whether the trial court may rely on its assessment of the likelihood of conviction is a legal question that we review without deference. State v. Therrien, 2011 VT 120, ¶ 5, 191 Vt. 24, 38 A.3d 1129.

² This Court has construed the statute authorizing consideration of home detention for defendants detained pretrial “for lack of bail” to include those who are being held without bail under § 7553. See 13 V.S.A. § 7554b(b); State v. Whiteway, 2014 VT 34, ¶ 16, 196 Vt. 629, 95 A.3d 1004. The Legislature has recently amended § 7554b to explicitly exclude those being held without bail under § 7553 from eligibility for home detention. 2018, No. 164, § 7. Although this new law provides that defendants held pursuant to sections 7553 and 7553a are not eligible for release to the home detention program on or after June 1, 2018, the effective date of the new law is not until July 1, 2018 so this provision is not yet in effect. Moreover, as the State concedes, defendant’s request for home detention preceded June 1. Accordingly, we apply the pre-July 1, 2018 law.

Here, the trial court exceeded its discretion by basing its home detention determination on its conclusion that defendant would likely be acquitted. The trial court's sense that it would undermine our legal norms to detain defendant for a lengthy pre-trial period, only to see him acquitted, is understandable. But neither the language of §7554b, nor the purposes of the statute, support the court's reliance at this juncture on its assessment of the likelihood of conviction.

The language of the statute is clear; section 7554b(b) specifies a list of factors the court must consider in evaluating a request for home detention. The strength of the State's case is not among them. We need not decide here whether the list in 7554b(b) is exclusive to any other considerations, but do conclude that the strength of the State's case in and of itself is far afield from the other factors in the list.³

The purpose of the home detention statute likewise does not support the trial court's actions. In a case like this, in which the §7554b application follows a hold-without-bail determination, the court has generally already determined that the weight of the evidence is great and has declined to exercise its discretion to release defendant on conditions pursuant to factors in § 7554. The focus of the §7554b analysis is whether home detention will provide ample assurance of defendant's appearance and public safety—considerations that are generally distinct from the likelihood of conviction.

The trial court's home detention order is reversed, and this case is remanded.

Reversed and remanded.

FOR THE COURT:

Beth Robinson, Associate Justice

³ A court can properly consider the strength of the State's case, and the likelihood of conviction, in assessing the risk of flight. See *id.* §7554b(b)(2). Moreover, the relative strength of the State's case may in some cases be relevant, not based on the likelihood of eventual conviction, but instead because the strength of the State's evidence of particular allegations may influence the court's assessment of various factors under § 7554b(b). In this case, the statutory factors clearly were not the trial court's touchstone in its consideration of the strength of the State's case.