

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2018-352

NOVEMBER TERM, 2018

State of Vermont v. Douglas Parker*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 1348-10-17 Rdcr

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

Douglas Parker, defendant, appeals the trial court’s denial of his motion to amend his conditions of release—specifically defendant asked the trial court to remove Condition #13, which prohibits defendant from possessing firearms, so that he can hunt in the upcoming deer season. We affirm.

On October 9, 2017, defendant was arrested following an altercation at his home with B.H. and A.H., the two complaining witnesses. It is not disputed that, at some point, defendant removed his shotgun from his bedroom and assembled it on the kitchen table. However, defendant’s account of the remainder of the evening’s activities is distinctly different from B.H.’s and A.H.’s.

In defendant’s sworn written statement, he asserts that around 9:30 PM, he retrieved his shotgun from his bedroom and assembled it on the kitchen table because he was planning on going bird hunting in the morning. After it was assembled, B.H. allegedly confronted defendant about having a gun in the house while B.H.’s four-month-old son and six-year-old daughter were in the house. In response, defendant asserts that he removed the gun from the kitchen to his truck outside, and, that is when the police arrived and arrested him.

In B.H.’s and A.H.’s sworn statements, they assert that defendant allegedly spent the evening drinking, becoming intoxicated, and threatening to kill himself. After he assembled his shotgun on the kitchen table, defendant went out to his car but left the gun in the kitchen. The complaining witnesses assert that B.H. went out to the truck to ask defendant to remove the gun from the house, to which defendant responded aggressively. Defendant allegedly returned to the home, retrieved the gun, opened the barrel of the gun as to load a round, and threatened to kill B.H. Defendant allegedly claimed to have four rounds on the stock of the gun and three or four rounds in the truck, and then took his gun out to his truck. At that point in time, the complaining witnesses claim they feared for their lives and their family and called the police.

Defendant was arraigned on October 10, 2017 and charged with first-degree aggravated domestic assault with a deadly weapon pursuant to 13 V.S.A. § 1043(a)(2). Based on the sworn statements submitted by the arresting state trooper, defendant, B.H., and A.H., the trial court did not find that defendant was at risk of failing to appear at future court hearings or of fleeing the area to avoid prosecution and therefore did not impose cash bail under 13 V.S.A. § 7554(a). The trial court went on to impose several conditions of release, including Condition #13, which prohibits defendant from possessing any firearms.

On October 23, 2018, defendant moved to amend his conditions of release by striking Condition #13. He argued that his counsel has made a reasonable effort to prepare the case for trial and has twice attempted to conduct the depositions of B.H. and A.H., but that this effort has been frustrated by the State because the scheduled depositions have been cancelled twice. And, because defendant is an avid hunter with no recent criminal involvement besides these charges, this delay has violated his Second Amendment rights to possess firearms.

The trial court held a hearing on the motion and then issued an order denying defendant's request for amendment. The court began by noting that "the passage of time in and of itself does not mitigate concerns about [defendant]'s behavior for which probable cause has been found." Further, the trial court explained that conditions of release are designed and imposed to reasonably assure public safety, and while they are generally not intended to last for years, trial preparation occasionally takes an extended period of time and conditions should be in effect during the pendency of the case, unless there is no longer "a reasonable basis for continuing the conditions imposed." 13 V.S.A. § 7554(d)(2). The trial court explained that, although defendant vehemently disputes the charges and argues that there was no basis for the initial probable cause finding because he did not commit the alleged crime, that is for a jury to decide. The court concluded that Condition #13 remained necessary to reasonably ensure public safety because defendant had not shown any difference in circumstances to mitigate the trial court's initial concerns expressed at defendant's arraignment over defendant's possession of a firearm—including defendant's alcohol use, suicidal ideation, and threats to others.

On appeal, defendant argues that the trial court erred when denying his request for amendment because Condition #13 is not warranted by the circumstances of the alleged crime, nor is it the least restrictive condition of release necessary to ensure public safety.

This Court will affirm the trial court's decision if it "is supported by the proceedings below." 13 V.S.A. § 7556(c). We will only reverse where we find that the trial court abused its discretion. State v. Hoffman, 2007 VT 141, ¶ 5, 183 Vt. 547, 944 A.2d 912. Under § 7554(a)(2), the trial court is required to impose "the least restrictive combination of . . . conditions that will reasonably ensure protection of the public." When determining what conditions to impose, the trial court must consider "the nature and circumstances of the offense charged, the weight of the evidence against the accused, [and] the accused's . . . character and mental condition." 13 V.S.A. § 7554(b)(2). Further, "history of actual violence or threats of violence may be considered . . . as bearing on the character and mental condition of the accused." Id. Once conditions are imposed, a defendant is entitled to have those conditions reviewed. 13 V.S.A. § 7554(d). And, upon that request, "[u]nless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed." Id.

Here, the trial court did just that. The trial court found that only differences between the current situation and the situation when Condition #13 was initially imposed were (1) a year had passed and (2) the complaining witnesses were no longer residing at defendant's home. Nothing had changed to mitigate the reasonable concern it possessed about defendant possessing a firearm. Although he denied the charges, he was charged with the felony of first-degree aggravated domestic assault with a deadly weapon, based on allegations that he threatened to shoot the complaining witnesses and their children with his shotgun. Defendant brought forth no evidence to show that the trial court should no longer have concerns over defendant's alleged substance abuse or mental health, other than that defendant is an avid hunter, did not hunt last year as a result of Condition #13, and wished to hunt in the upcoming deer season.

This Court cannot say that the trial court abused its discretion when outlining a reasonable basis for continuing the conditions imposed. Accordingly, we affirm.

FOR THE COURT:

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Marilyn S. Skoglund, Associate Justice