

ENTRY ORDER

SUPREME COURT DOCKET NO. 2021-008

JANUARY TERM, 2021

State of Vermont v. Robert L. Hagar*	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 1234-12-19 Wrcr
		Trial Judge: Elizabeth D. Mann

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

Defendant Robert Hagar appeals the superior court’s denial of his motion to amend his conditions of release. He seeks to strike the condition that prohibits him from having or using any firearms or dangerous weapons. We conclude that the court’s decision is supported by the record below and affirm.

Defendant is charged with: (1) attempting to take big game at a prohibited time under 10 V.S.A. § 4745; (2) attempting to take big game by shooting from a motor vehicle in violation of 10 V.S.A. § 4705(a); (3) unlawful possession of a firearm under 13 V.S.A. § 4017(a); (4) eluding law enforcement while negligently operating a motor vehicle under 23 V.S.A. § 1133(b)(2); and (5) attempting to take big game by aid of light under 10 V.S.A. § 4747.

The charges arose during a deer facsimile, or decoy, operation in Cavendish, Vermont. The State’s affidavits of probable cause alleged that on December 14, 2019, defendant illegally attempted to shoot a deer from his truck after hunting hours with the use of his truck’s headlights and fled from law enforcement when State Game Wardens tried to approach him. During the pursuit, the wardens lost sight of the truck due to poor weather and the truck’s high rate of speed. After following some tire tracks and speaking with another driver who saw the truck, the wardens came upon a residence where they recognized a vehicle as the truck from which they saw the operator shoot at the decoy. During subsequent searches of the residence and the truck, the wardens discovered several firearms, including a muzzleloader, a rifle, and a pistol, along with ammunition and other hunting equipment.

Defendant was arraigned on December 16, 2019. The trial court set defendant’s bail at \$1,000 and imposed several conditions of release. Condition # 13 states that defendant “must NOT buy, have or use any firearms or dangerous/deadly weapons.” In July 2020, defendant filed a motion to suppress evidence, a motion to quash search warrants, and a motion to dismiss for lack of prima facie case. A hearing on these motions is scheduled for February 5, 2021.

On November 25, 2020, defendant moved to amend his conditions of release and asked the court to strike Condition # 13. He argued that the condition addresses neither his risk of flight nor public protection. He asserted that his case will likely not go to trial until well into the next year, that he had complied with all conditions imposed on him for nearly a year already, and that he will likely be found innocent because no evidence existed to prove his guilt. He told the court that he is a lifelong hunter and asked the court to remove Condition # 13 so that he can participate in hunting season.

The trial court held a hearing on defendant's motion to modify the conditions of release on January 7, 2021 and denied defendant's request to strike Condition # 13. The court explained that because defendant is charged with hunting violations, the condition remains necessary for public protection to ensure that these hunting offenses will not reoccur, whether with a gun or other weapon. The court also explained that defendant is charged with unlawful possession of a firearm, and given the nature of the charges, Condition # 13 is reasonably necessary to protect the public.

The court acknowledged that defendant disputes these charges and noted that the court is scheduled to hold a hearing in February 2021 on defendant's other motions. However, until that hearing occurs, the court explained that Condition # 13 "was put into place in reliance on [the State's] affidavits which at this point have not been found by the Court to be unreliable." Accordingly, the court did not find grounds to disturb the condition but told defendant that it may "be appropriate to revisit that if the charges persist after the suppression motion is heard and perhaps there is a different understanding of the evidence that is available."

On appeal, defendant argues that the trial court improperly denied his request to strike Condition # 13. He argues that the condition is not the least restrictive condition necessary to ensure public safety, that his alleged conduct created no risk to the public, and that there is no evidence of guilt to support the charges. Further, he contends that the trial court erred by failing to consider each of the factors set forth in 13 V.S.A. § 7554(b) and by failing to consider information in the record aside from the State's affidavits.

This Court reviews the trial court's decision for abuse of discretion, State v. Pratt, 2017 VT 9, ¶ 20, 204 Vt. 282, and will affirm if the decision is "supported by the proceedings below." 13 V.S.A. § 7556(c).

Under 13 V.S.A. § 7554(a)(2), a judge may impose the least restrictive condition or combination of conditions that will "reasonably ensure protection of the public." In determining which conditions to impose, the judge must consider several factors based on "available information," including "the nature and circumstances of the offense charged" and "the weight of the evidence against the accused." Id. § 7554(b)(2). Once conditions are imposed, a defendant is entitled to have the conditions reviewed by the same court that imposed the conditions. Id. § 7554(d). The judge may amend the conditions at any time. Id. § 7554(e). "Unless 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. § 7554(d)(2).

The record here shows that the trial court set forth a reasonable basis for continuing to impose Condition # 13. The court imposed the condition to protect the public against subsequent violations by defendant. The court explained that the alleged violations—taking game out of

season, shooting from a motor vehicle, and possession of a firearm by a felon—all fall within the scope of conduct prohibited by Condition # 13. Defendant provided no evidence to mitigate the court’s concern about defendant’s possession of a firearm or deadly weapon, pointing only to the passage of time and alleging that the evidence does not demonstrate his guilt. Thus, this Court cannot conclude that the trial court abused its discretion here.

Defendant’s arguments do not convince this Court otherwise. Defendant first contends that the trial court failed to analyze any of the factors set forth in 13 V.S.A. § 7554(b). However, when reviewing conditions of release on a motion to amend, the trial court is not required to explicitly reconsider each factor listed in § 7554(b). All that § 7554(d) requires is that the court “set forth . . . a reasonable basis for continuing the conditions imposed.” See State v. Rougeau, 2019 VT 18, ¶ 14, 17, 209 Vt. 535 (alteration in original) (quotation omitted) (explaining that when court conducts bail-review hearing, it is not “required to explicitly connect the factors that it has relied upon with its ultimate conclusion”; rather, if “the factors relied upon are a ‘reasonable basis’ for continuing the conditions imposed, then the court has done all that it must”).

Defendant next argues that Condition # 13 is not the least restrictive condition because it prohibits defendant from possessing weapons that he could otherwise legally own, like a muzzleloader or a bow. Section 7554(b)(2) of Title 13 directs judges to consider “the nature and circumstances of the offense charged” when determining conditions of release, among other factors. Given that defendant is charged with hunting violations using a muzzleloader, as well as unlawful possession of a firearm, the court did not abuse its discretion by including in Condition # 13 weapons that may be used for hunting.

Defendant next argues that the trial court erred by relying exclusively on the State’s affidavits because § 7554(b) provides that the court shall consider the statutory factors based on “available information.” Defendant contends that in assessing the strength of the State’s case, the trial court should have considered additional evidence in the record, such as the wardens’ depositions. The trial court acknowledged that defendant had challenged the legitimacy of the wardens’ affidavits and noted that the court scheduled a hearing on defendant’s motions in February. In the meantime, the court explained that the affidavits were reliable evidence. The trial court did not err by relying solely on the affidavits. Absent an order suppressing the evidence, the evidence was properly considered by the court. Further, as the State notes, defendant did not proffer any additional evidence in his motion to modify conditions or at the hearing on January 7. Accordingly, the record supports the court’s determination that there continues to be a reasonable basis to impose Condition # 13 on defendant.

Defendant next argues that his conduct never threatened the public or any person. He contends that the public’s interest in wildlife is not the type of public protection contemplated by § 7554(b)(2). Even if wildlife protection were not enough, the allegations against defendant suggest a danger to the public in that he used firearms in an unsafe manner and possessed firearms illegally. This provided a reasonable basis for the trial court to conclude that Condition # 13 is necessary to protect the public. Further, nothing in the text of § 7554(b) limits the court from imposing conditions that protect the public from physical harm only. Vermont’s Fish and Wildlife laws provide that the “protection, propagation control, management, and conservation of fish, wildlife, and fur-bearing animals in this State are in the interest of the public welfare.” 10 V.S.A.

§ 4081(a)(2). The trial court did not abuse its discretion by imposing a condition that protects the public's interest in natural resources as well as against physical harm through misuse of firearms.

Lastly, defendant argues that there is no evidence of guilt. Based on the State's affidavits, the trial court found probable cause for each of the charges brought. Although defendant disputes the charges and challenges the legitimacy of the State's evidence, the court noted that this determination has not yet been made. As we explained, the court did not err by relying on the affidavits pending the suppression hearing. While defendant may eventually succeed in challenging these charges, the record before this Court supports the trial court's determination that there is a reasonable basis to continue to impose Condition # 13.

Affirmed.

FOR THE COURT:

Paul L. Reiber, Chief Justice