

ENTRY ORDER

SUPREME COURT DOCKET NO. 2021-115

JUNE TERM, 2021

State of Vermont v. Jeremy Wade*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 21-CR-04056

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

On May 24, 2021, defendant was arraigned on charges of aggravated domestic assault and domestic assault. The State moved to hold defendant without bail pursuant to 33 V.S.A. § 7553a. The trial court ordered that defendant be held without bail pending further proceedings and set a weight-of-the-evidence hearing for July 15, 2021. Defendant appealed to this Court both the order holding him without bail on its merits and the scheduling order setting the merits hearing for seven and a half weeks after defendant was initially held. We agree with defendant that scheduling the weight-of-the-evidence hearing for July 15 does not meet the constitutional imperative, and we order the trial court to schedule the hearing promptly.

To the extent defendant appeals the merits of the court’s decision to hold him without bail under § 7553a, this appeal is dismissed as premature. See State v. Rheume, No. 2018-269, 2018 WL 4210698, at *1 (Vt. Aug. 15, 2018) (unpub. mem.), <https://www.vermontjudiciary.org/sites/default/files/documents/eo18-269.pdf> [<https://perma.cc/6TZL-3EQR>] (dismissing appeal as premature where defendant was held pending weight of the evidence hearing). The trial court has not yet held the weight of the evidence hearing or made the requisite findings to hold defendant pursuant to § 7553a.

This Court has said that the State may hold a defendant without bail temporarily pending a weight-of-the-evidence hearing if the court first finds probable cause to believe that a qualifying offense was committed, and defendant committed it. Id. But, we have also said that such hearing “must be scheduled as soon as reasonably possible to protect defendant’s right to bail.” Id. (quotation omitted) (concluding six-day pre-hearing hold was a “reasonable amount of time”); see also State v. Bickel, 166 Vt. 633, 634 (1997) (mem.) (holding that defendant made no objection to one-week delay, so no evidence it was unreasonable). We agree with defendant that scheduling the weight-of-the-evidence hearing for July 15—a seven and a half week pre-hearing hold—does not meet the constitutional imperative. See Vt. Const., ch. II, § 40; see also State v. Suave, 159 Vt. 566, 574 (1993) (“Our constitutional values require that liberty is and must remain the norm and detention prior to trial or without trial is the carefully limited exception.” (quotation omitted)).

We acknowledge that in light of court restrictions related to the COVID-19 pandemic, the push to restart jury trials, and other competing interests, courts are under tremendous scheduling pressure. However, this temporary hold-without-bail order pending a § 7553a hearing implicates the most fundamental of constitutional rights, and scheduling a § 7553a hearing takes top priority.

The appeal is hereby dismissed as premature, and we order the trial court to schedule a weight-of-the-evidence hearing forthwith.

FOR THE COURT:

Beth Robinson, Associate Justice