

ENTRY ORDER

SUPREME COURT DOCKET NO. 2021-123

JUNE TERM, 2021

State of Vermont v. Cody Davis*	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 20-CR-01986

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

Defendant Cody Davis appeals the superior court’s decisions revoking bail under 13 V.S.A. § 7575 and denying his motion to reconsider the revocation of bail. For the reasons set forth below, the decisions are affirmed.

The record indicates the following. Defendant and complainant had been in a relationship for about four years and have one child together. On March 23, 2020, after the couple had separated, complainant allowed defendant to stop by her apartment to visit their child. Defendant began going through complainant’s phone. Complainant asked him to leave, but he threw something at her. Complainant tried to retrieve her phone to call the police, but defendant refused; in the process, defendant bent her phone. Complainant called out for help, and defendant threatened to “knock her out.” Defendant grabbed complainant by her face and held her down, bruising her face. He also grabbed a kitchen knife and held it to his throat, and then pointed the knife at complainant. At some point, complainant retrieved her phone and called the police. Defendant grabbed the phone from her and hung up, but once he realized that she had connected with the police, he ran off. Defendant was charged with three counts of first-degree aggravated domestic assault under 13 V.S.A. § 1043(a)(2), (3); one count of interference with access to emergency services under 13 V.S.A. § 1031; and one count of unlawful mischief under 13 V.S.A. § 3701(b). A warrant for defendant’s arrest was issued, but police did not locate him for approximately two months.

On May 18, 2020, defendant and complainant were arguing about money over text message. The next day, complainant heard noises outside her apartment. She looked at her phone and realized that she missed a call from defendant; she called him back and told him to leave. Defendant told her that if she did not let him into her apartment, he would kick her door in. She told him no and that she was calling the police. She then heard a loud bang. As she was calling the police, defendant entered her apartment, took her phone, and began to look around her apartment to see if she was with anyone. After completing his search, defendant gave complainant her phone back and begged her not to call the police, offering her money. Defendant was arrested on May 19 and additionally charged with one count of burglary under 13 V.S.A. § 1201(a), one count of obstruction of justice under 13 V.S.A. § 3015, one count of stalking under 13 V.S.A. § 1062, and one count of interference with access to emergency services under 13 V.S.A. § 1031.

After he was arrested, defendant was held without bail pending a weight-of-the-evidence hearing. The court held the hearing on June 3, 2020, and ordered defendant held without bail under 13 V.S.A. § 7553a. The court held a bail-review hearing on July 15. See 13 V.S.A. § 7553b (mandating that, if person is held without bail under § 7553a and trial does not begin within sixty days, court must hold bail hearing and set bail). At the hearing, defendant was released on \$5000

bail and conditions, including: a 24-hour curfew; no contact with complainant or their child; not to abuse or harass complainant or their child; and not to come within three hundred feet of complainant or her residence, vehicle, or place of employment. Defendant posted bail and was released from incarceration on July 20.

On July 28, 2020, defendant went to complainant's apartment in violation of his conditions of release. Complainant threatened to call the police and told defendant to leave and not to come in, but defendant continued to approach her and followed her inside. Defendant ignored complainant's requests to leave and argued with her, slamming things around her apartment for approximately twenty minutes. When defendant left, he slashed the tires on complainant's vehicle. He texted and called complainant, telling her not to call the police and promising to buy her new tires. Complainant was intimidated by defendant's actions and did not immediately contact the police. On August 26, defendant was arraigned on the following charges: one count of burglary under 13 V.S.A. § 1201(a), one count of obstruction of justice under 13 V.S.A. § 3015, one count of unlawful mischief under 13 V.S.A. § 3701(c), and four counts of violation of conditions of release under 13 V.S.A. § 7559(e).¹ Defendant was released on condition that he abide by all existing conditions of release.

On October 1, 2020, defendant again went to complainant's apartment in violation of his conditions of release. He was arrested and released. Shortly thereafter, he called complainant, demanding to know where she was and threatening her life. Complainant was afraid and decided to spend the night at her sister's house. Defendant continued to try to contact her, and eventually, complainant's sister answered the phone. Defendant again threatened complainant's life and said that he was going to break into her apartment and destroy everything. Complainant went to check on her apartment with a friend and saw that defendant had broken the window of her front door and broke into her apartment. She discovered that defendant had stolen her phone, her keys, and her mail; ransacked her personal belongings and stole items from her bedroom; and had eaten her food. Complainant called the police. Defendant was charged with one count of burglary under 13 V.S.A. § 1201(a), one count of aggravated stalking under 13 V.S.A. § 1063(a)(1), one count of petit larceny under 13 V.S.A. § 2502, one count of unlawful mischief under 13 V.S.A. § 3701(c), and three counts of violation of conditions of release under 13 V.S.A. § 7559(e).

Defendant was arraigned on October 5, 2020 and held without bail pending a weight-of-the-evidence hearing on the aggravated stalking charge. The State also filed a motion to revoke bail with regard to the March, May, and July incidents, pursuant to 13 V.S.A. § 7575. Section 7575 provides that the "right to bail may be revoked entirely" in certain circumstances, including if the accused has "intimidated or harassed a victim, potential witness, juror, or judicial officer in violation of a condition of release" or "been charged with a felony or crime against a person or an offense similar to the underlying charge, for which, after hearing, probable cause is found" in violation of a condition of release. 13 V.S.A. § 7575(1), (5).

In hearings on October 6 and 9, the court considered the State's motion to revoke bail and also held a weight-of-the-evidence hearing. The State introduced probable cause affidavits from the above incidents, as well as a risk assessment interview with complainant. Complainant also testified at the hearing. Defendant participated in the hearing by video from the correctional facility. He repeatedly tried to speak directly to complainant, despite warnings from the court. When complainant began to speak, she was unable to testify when she could see and hear

¹ Defendant was also charged with one count of aggravated stalking in violation of a court order under 13 V.S.A. § 1063(a)(1). The court found no probable cause on this count as no court order against stalking was identified.

defendant. Eventually, the court turned off defendant's monitor because he failed to abide by its instructions not to speak, especially to complainant. Once defendant was no longer present, complainant resumed her testimony. She testified about the October 1 incident. She also explained that defendant intimidated her and threatened her life multiple times. As a result, she was concerned for the safety of herself and her family.

On October 14, 2020, the trial court issued an order granting the State's motion to revoke defendant's bail. The court explained that complainant testified credibly that she was intimidated by defendant because of his actions. The court observed that, while testifying, complainant was "highly emotional and clearly afraid of [defendant]." It also noted that complainant was unable to testify in defendant's presence.

Considering the evidence presented at the hearing, the court concluded that the State proved, by a preponderance of the evidence, that defendant violated his conditions of release by contacting complainant, harassing her, entering her apartment, and breaking his curfew. The State also proved that defendant threatened and intimidated complainant in order to prevent her from testifying against him, and was successful to the extent that she was not able to testify in his presence at the hearing. The court further concluded that the State established probable cause that, on October 1, defendant committed the felony of aggravated stalking against complainant in violation of his conditions of release. As such, defendant's actions constituted a threat to the integrity of the judicial system. Accordingly, the court granted the State's motion to revoke defendant's bail under 13 V.S.A. § 7575(1) and (5).²

On March 30, 2021, defendant filed a motion to review the court's order revoking bail, arguing that his detention violated his due process rights. The court held a hearing on May 19 and issued an order on May 24 denying defendant's motion. Looking to the Court's analysis of a similar due process claim in State v. Labrecque, 2020 VT 81 (mem.), the court applied the test articulated in United States v. Briggs, 697 F.3d 98, 101 (2d Cir. 2012), and concluded that detention did not violate defendant's due process rights.

Defendant appealed, renewing his argument that his pretrial detention violates due process. He asks this Court to reverse the revocation of bail and remand the matter for the trial court to consider bail and conditions of release under 13 V.S.A. § 7554.

This Court will affirm the lower court's ruling "if it is supported by the proceedings below." 13 V.S.A. § 7556(b); see State v. Gates, 2016 VT 36, ¶ 8, 201 Vt. 502. We review de novo defendant's claim that his detention violates due process. Labrecque, 2020 VT 81, ¶ 18.

The Vermont Constitution entitles all persons to bail, except in circumstances where a person is accused of an offense punishable by death or life imprisonment or of a felony involving an act of violence against another person, and the evidence of guilt is great. Vt. Const., ch. II, § 40. In the face of this constitutional right, a court may only deny bail in "very limited and special circumstances where the State's interest is legitimate and compelling." State v. Blackmer, 160 Vt. 451, 456 (1993). In State v. Suave, the Court explained that bail revocation in response to

² As to the State's motion to hold defendant without bail under 13 V.S.A. § 7553a regarding the October incident, the court concluded that the State showed that the evidence of guilt was great as to all elements of the aggravated stalking charge, except that defendant's actions violated a court order that prohibited stalking, see 13 V.S.A. § 1063(a)(1), because there was no condition of release that specifically prohibited defendant from stalking complainant at the time of the offense. Accordingly, the court denied the State's motion to hold defendant without bail under § 7553a.

“palpable threats to the judicial process,” such as the destruction of evidence or intimidation or endangerment of witnesses, constituted a legitimate and compelling State interest. 159 Vt. 566, 574 (1993). The Court concluded that revocation of bail under § 7575(1) and (3) met the constitutional standard. *Id.* Further, the Court determined that, to revoke bail, “the State must prove that defendant violated conditions of release by a preponderance of the evidence.” *Id.* at 577.

The record here supports the trial court’s conclusion that revocation of bail was warranted under § 7575(1). See 13 V.S.A. § 7575(1) (“The right to bail may be revoked entirely if the judicial officer finds that the accused has intimidated or harassed a victim, potential witness, juror, or judicial officer in violation of a condition of release.”). The State met its burden of proving by a preponderance of the evidence that defendant intimidated and harassed complainant—defendant’s alleged victim and the State’s primary witness—in violation of his conditions of release. Because the evidence is sufficient to affirm the court’s decision under § 7575(1), the Court need not analyze § 7575(5).

Turning to defendant’s due process claim, the Court likewise finds no error. In *Labrecque*, this Court considered a similar due process challenge to pretrial detention and explained that “pretrial detention satisfies substantive due process only where its purpose is regulatory rather than punitive.” 2020 VT 81, ¶ 15 (quotation omitted). The Due Process Clause thus permits pretrial detention where it is reasonably related to a permissible regulatory purpose, such as protecting the integrity of the judicial process. See *id.* ¶ 16; *Sauve*, 159 Vt. at 573-74. But if pretrial detention is excessive in relation to the regulatory goal, the detention violates due process. *Labrecque*, 2020 VT 81, ¶ 16. To determine whether the defendant’s detention was excessive, the Court applied the test laid out in *Briggs*. *Id.* ¶ 17. There, the Second Circuit explained that to analyze a due process claim:

[W]e consider the strength of the evidence justifying detention, the government’s responsibility for the delay in proceeding to trial, and the length of the detention itself. The longer the detention, and the larger the prosecution’s part in prolonging it, the stronger the evidence justifying detention must be if it is deemed sufficient to justify the detention’s continuance.

Briggs, 697 F.3d at 101 (citation and footnote omitted).

Here, defendant raises no challenge to the strength of the evidence supporting the revocation of bail, but even if he had, the State presented strong evidence that revocation was warranted. Defendant was released on conditions requiring him to follow a 24/7 curfew and prohibiting him from contacting complainant, coming within three hundred feet of her or her residence, and abusing or harassing her. The State presented evidence showing that defendant continually violated these conditions. In fact, his violations began only eight days after he was released. Defendant repeatedly assaulted complainant, burglarized her, and threatened her life. Complainant credibly testified that she was afraid of defendant and intimidated by him; the trial court witnessed her inability to testify when she could see and hear defendant. Accordingly, the evidence supporting the revocation of bail is strong and weighs against finding a due process violation.

As to the next factor, *Labrecque* recognized that the delay caused by the suspension of jury trials under A.O. 49 is attributable to the government. 2020 VT 81, ¶ 26. However, given the public health emergency posed by the pandemic, the Court explained that “the delay was neither

intentional nor unwarranted,” and was imposed to protect the health and safety of all, including the defendant, and therefore “weigh[ed] against finding a due process violation.” *Id.* ¶ 28 (quotation omitted). The same reasoning applies here. Additionally, the Bennington criminal division has recently been authorized to re-commence jury trials, as the trial court noted.

As to the final factor, defendant has been detained for approximately eight months. As the trial court explained, this period “is not a long delay for complex felony cases.” While defendant points to pending charges dating back to January 2019, such charges did not form the basis for the instant bail revocation and thus do not weigh into this due process analysis. See *id.* ¶ 19 (explaining that *Briggs* analysis pertains to “specific decision to detain defendant prior to trial”). Considering each of these factors, the Court concludes that defendant’s detention does not violate due process.

Nonetheless, defendant maintains that because pretrial detention is an exception to the constitutional norm and jury trials were suspended due to the COVID-19 pandemic, the trial court should review the revocation of bail and consider imposing conditions of release under § 7554. However, where revocation is justified under § 7575, the court need not consider less restrictive conditions. See *State v. Stimpson*, 2017 VT 97, ¶ 14, 205 Vt. 642 (mem.).

In sum, defendant has provided no basis on which to overturn the trial court’s decision to revoke bail or its decision denying defendant’s motion to review the revocation of bail. Accordingly, these orders are affirmed.

Affirmed.

FOR THE COURT:

Paul L. Reiber, Chief Justice