ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-295

SEPTEMBER TERM, 2018

State of Vermont	}	APPEALED FROM:
	}	
v.	}	Superior Court, Bennington Unit,
	}	Criminal Division
Steven A. Sweet	}	
	}	DOCKET NO. 867-8-18 Bncr
	}	
		Trial Judge: John W. Valente

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

A de novo hearing was held in the above-captioned case on September 24 and 27, 2018 before the undersigned, pursuant to 13 V.S.A. § 7556(d), on the State's request to hold defendant without bail. Based on the credible evidence adduced at the hearing, the State's request to hold defendant without bail is denied.

Defendant stands charged with First-Degree Aggravated Domestic Assault (Count 1), Unlawful Mischief (Count 2), Resisting Arrest (Count 3), Disorderly Conduct (Count 4), and Domestic Assault (Count 5). Count 1 alleges that defendant "at Bennington on or about August 29, 2018, willfully caused serious bodily injury to a family or household member, to wit: strangled [S.S.], in violation of 13 V.S.A. § 1043(a)(1)." Count 1 is a felony, an element of which involves an act of violence against another person. This case was arraigned on August 31, 2018.

A defendant charged with an offense that is a felony, an element of which involves an act of violence against another person, "may be held without bail when the evidence of guilt is great" and the court finds, "based upon clear and convincing evidence, that the person's release poses a substantial threat of physical violence to any person and that no condition or combination of conditions of release will reasonably prevent the physical violence." 13 V.S.A. § 7553a.

Evidence of guilt is great when "[t]he evidence, viewed in the light most favorable to the State and excluding the effects of modifying evidence, fairly and reasonably show defendant guilty beyond a reasonable doubt." State v. Madison, 163 Vt. 390, 394 (1995). In our case, defendant does not contest that the evidence of guilt is great, as the standard has been defined by our caselaw.

The State did not call witnesses at the hearing. The State relied upon affidavits and other documentary evidence. Defendant called one witness, his sister.

Reviewing the evidence admitted, the facts, when viewed in the light most favorable to the State, are as follows. Defendant and S.S. had been in a romantic relationship. They have a young child together. The assault occurred on August 29, 2018. Defendant had been regularly contacting S.S. and calling her names, despite S.S.'s requests that he not contact her. On August 29, 2018, defendant told S.S. that she deserved to be beat up, and he threatened to destroy her car. S.S. decided to apply for a restraining order against defendant. S.S. went to the court and obtained the

paperwork. She then returned to her apartment to fill out the paperwork. She did not fill it out at the courthouse, because she had her young child with her and the child was fussing. When S.S. pulled into her driveway, defendant was there. S.S. asked him to leave, but he would not. S.S. got her daughter out of her car seat and walked upstairs to her apartment. She shut the door behind her. She put her daughter in her crib. Defendant followed her up the stairs and opened the door. S.S. told him to leave; he did not. This made S.S. feel "uncomfortable, hopeless, stressed." S.S. tried to text her mother about what was going on, but defendant knocked the phone out of her hands several times. Defendant screamed at S.S. loudly. She tried to get away from him, but she could not. Defendant pushed S.S. onto the couch, grabbed her throat, and choked her twice. When she screamed for help, defendant put his hand over her mouth. S.S. told him to leave or she would call the police. Defendant then went to take something from the refrigerator that was not his. S.S. physically blocked him from doing that, and things, again, got physical, but S.S. does not remember what happened at this point. S.S. texted her mother to call the police. S.S.'s sister arrived, and defendant threw a coffee table across the room and left. Defendant went outside, and he smashed the windshield of S.S.'s car with a skateboard. At this time, a plain-clothed law enforcement officer, Sgt. Cole arrived on the scene. Sgt. Cole ordered defendant to stop and to put the skateboard down. Defendant tried to leave the scene. Sgt. Cole tried to grab him but was unsuccessful. Defendant ran away. Sgt. Cole caught him and held him until other officers arrived, although defendant continued resisting. Defendant had been consuming alcohol.

Defendant is thirty-two years old. His Vermont criminal history includes: a conviction for Disorderly Conduct (misd.) (4/6/18); a conviction for Unlawful Trespass (misd.) (3/12/07); and a conviction for minor in possession of alcohol (misd.) (8/2/05). Defendant has failed to appear for court hearings on March 13, 2006, October 4, 2005, and September 27, 2005. Defendant has no charges or convictions for violating conditions of release. Defendant has the following convictions in Connecticut: Strangulation-Third Degree (misd.) (7/23/09) and Violation of a Protective Order (fel.) (11/12/09). He was also convicted for violating the terms of his probation on April 26, 2012. Defendant does not have a Connecticut record for violating conditions of release.

Defendant proposes that he reside with his sister and her husband in Rutland County. S.S. resides in Bennington County.

Defendant's sister testified. She is thirty-six years old. She lives with her husband and their three children (ages eighteen, twelve, and nine) in a home, which she and her husband own. Defendant's sister and her husband own their own business–a property maintenance business. Neither his sister nor her husband have a criminal record. Defendant has lived with them in the past, approximately four or five times. The last time he lived with them was three years ago; he lived with them for one year. Defendant transitioned from their residence to move in with a woman. The sister testified that defendant could live with them again now. They have an extra bedroom. She testified, credibly, that both she and her husband would report any violations of conditions of release to law enforcement. In the past, when defendant has lived with them, he has been out on conditions of release and has never violated his conditions of release or had contact with law enforcement while living with them. There is no alcohol in the house. There are firearms in the house, but they are kept in a locked safe and defendant would not have access to them. Similarly, defendant would not have access to the family's vehicles. In the past when defendant has resided with his sister and her family, he has gone to work with his sister's husband. Defendant has never exhibited any violence towards his sister or her family. His sister feels safe with defendant in her house.

Considering all the facts, the court concludes that the State has not met the high burden established by the Legislature to hold someone without bail under 13 V.S.A. § 7553a. The State must prove by "clear and convincing evidence," that defendant's release poses a "substantial threat of physical violence to any person and that no condition or combination of conditions of release will reasonably prevent the physical violence." Id. (emphases added). As has been demonstrated by the facts of this case and defendant's history, defendant poses a threat of violence to S.S. and any other woman that he enters into a romantic relationship with. However, the State has not proven by clear and convincing evidence that any such threat of violence (even if it is considered a substantial threat) cannot reasonably be prevented by strict conditions of release, including the requirement that he reside with and be supervised by his sister and her family. When defendant has resided with his sister and her family in the past, he has followed his conditions of release and has not had additional involvement with law enforcement. Their supervision has proven effective. Defendant's sister and her husband will supervise defendant in person any time he is outside their residence. They will report any violations promptly to law enforcement. There is no alcohol in their residence, and defendant's criminal history appears tied to alcohol. They reside in a separate county from the complainant. They do not have any reason to travel to the County of Bennington.

At the hearing on September 27, 2018, the parties agreed upon conditions of release, if defendant was not held without bail. The court will impose those agreed upon conditions of release as necessary to protect the public and to ensure defendant's appearance.*

The State's request to hold defendant without bail is denied. Defendant shall be released on the following conditions: 1, 2, 4 (defendant is released into the custody of his sister and her husband, and they shall report any violations of these conditions of release promptly to the Bennington Police Dept.), 11 (curfew 24/7 at defendant's sister's home in Wallingford, except when within the direct eyeball supervision of defendant's sister or her husband), 12 (defendant must not buy, have or drink any alcoholic beverage), 13 (defendant must not buy, have or use any firearms, but it is not a violation of this order if defendant's residence keeps firearms in a locked container and defendant does not have access to the keys), 14 (S.S.), 15 (S.S.), 31 (defendant must not enter the lands or premises of the home, school, or workplace of persons named in Condition 14 and must remain 300 feet away from her at all times), 36 (defendant must submit to alcohol testing at any time upon request of any law enforcement officer), 39 (defendant shall not enter the Town of Bennington, except to attend defendant's scheduled court hearings).

FOR THE COURT:

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Cortland Corsones, Superior Judge,
Specially Assigned

* These conditions of release may vary slightly from those stated in the courtroom, but the Court does not believe that either side will find them to be objectionable and the Court concludes that they are necessary for public safety.