ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-027

JANUARY TERM, 2019

State of Vermont v. Evan Hart*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 30-1-19 Rdcr

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

Defendant appeals the trial court's order setting $10,000 bail. He argues that the court abused its discretion in imposing cash or surety bail without making findings supported by the record of his risk of flight from prosecution, and in ordering $10,000 bail without findings to support that amount or sufficient consideration of his financial means. We affirm.

Defendant was arrested on charges of first-degree aggravated domestic assault, second-degree unlawful restraint, interference with access to emergency services, reckless endangerment, and domestic assault.

At his arraignment, the State sought $10,000 bail, arguing that amount was necessary because the defendant "appears to be without any strong ties to the community, lacking employment or a residence." Additionally, it noted that the defendant had a recent history of violent threats and actions; and that he faced a possible sentence of more than fifteen years. The State noted that, while it had not found that defendant had any criminal record, he "told the officer that he has a pending domestic-assault charge out of Oregon." Defendant contended that he had strong ties to the community: he was raised in East Dorset, Vermont, and had spent all but six months of his life in the state; he had a tattoo of Vermont on his chest with "East Dorset, Vermont" written on it; he graduated four years prior from Burr & Burton Academy in Manchester; his parents, siblings, and grandfather live in Vermont; and he had just submitted an application to work at a ski mountain in the state. As to the purported charge in Oregon, he admitted that he "did go to court in Oregon, but that was all" and asked the court "not to assign much value to that . . . very flimsy information."

The trial court made the following findings: Defendant and the complainant had been living together in defendant's truck. After an argument arose, defendant physically hurt plaintiff and, when she said she was calling the police, smashed her phone. He then repeatedly threatened to kill her and tried to prevent her from escaping. The court found that defendant is "a long-time Vermonter" who, at the time of his arrest, was transient. It noted that defendant indicated he could stay at his father's house, but his father had not confirmed that, and there was no evidence as to whether this would be a stable living situation, or even whether his father would allow it. Defendant is unemployed and made approximately $3000 in the past year.

The court found that the seriousness of the charged offense, the nature and circumstances of the charges, defendant's character and mental condition, his recent history of violent actions and threats, his connection to Oregon, and the absence of confirmation that he could reside at an "actual residence in Vermont" together indicated that he posed a risk of potential flight. It noted this risk was mitigated somewhat by his absence of prior convictions or failures to appear and his

family ties in Vermont. The court then considered conditions of release, taking into account the factors it considered to assess risk of flight, as well as the instability of his current living situation and "the seriousness; number of offenses; nature and circumstances; weight of the evidence; lack of employment; the character and mental condition [of the defendant], including threats of violence; the . . . issue from out in Oregon; and the absence of confirmation about where he could live." It imposed a number of conditions of release, including a twenty-four-hour curfew, and $10,000 cash or surety bail, which it held was "appropriate to mitigate the risk of flight from prosecution."

Defendant argues on appeal that the court abused its discretion in ordering cash or surety bail without making findings supported by the record of risk of flight to avoid prosecution. He argues that the facts before the court militated in favor of finding he was not a flight risk, and the court impermissibly relied on the fact that he was living in his truck in finding he posed a risk of flight. Next, defendant argues that the court abused its discretion in ordering $10,000 bail without consideration of his financial means beyond its observation that on his public-defender application form he listed an income of $3000 from the previous year, or findings demonstrating that amount was necessary.

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 trial court's decision was "supported by the proceedings below." 13 V.S.A. § 7556(b). We find the trial court's decision was supported by the proceedings and thus within its discretion.

Defendants must be released pretrial unless they are subject to certain exceptions, 13 V.S.A. § 7554(a), and must be "released on personal recognizance or upon the execution of an unsecured appearance bond" unless this would "not reasonably mitigate the risk of flight from prosecution." Id. § 7554(a)(1). To determine whether a defendant poses a risk of flight, the court must consider the number and seriousness of the charged offenses, in addition to any other factors. Id. If the court finds that the defendant poses a risk of flight, it must impose the least restrictive conditions upon the defendant that would "reasonably mitigate the risk of flight." Id. § 7554(a)(1). In determining what conditions to impose, the court must consider the nature and circumstances of the offense charged, the weight of the evidence, and the defendant's employment, financial resources, character and mental condition, length of residence in the community, and record of appearance or nonappearance at court proceedings or of flight to avoid prosecution. Id. § 7554(b).

If the court determines that cash bail is the least restrictive condition that would reasonably mitigate risk of flight, it must set it "[u]pon consideration of the defendant's financial means." Id. § 7554(a)(1)(E). "Consideration of the defendant's financial means" does not mean that the court must always set bail at an amount the defendant can pay, but the court must set an amount no higher than is necessary to ensure the defendant will not flee. See State v. Duff, 151 Vt. 433, 442, 563 A.2d 258, 264 (1989). We have emphasized that courts should only rarely set bail a defendant cannot afford, and "should be particularly circumspect in exercising their discretion to set bail at a level that a defendant cannot meet." Pratt, 2017 VT 9, ¶ 17. Money bail should never be imposed with the purpose of keeping the defendant in jail. Id. ¶ 1 ("In setting bail, courts must always be guided by the goal of securing a defendant's appearance at trial, and should not set bail at an unattainable level for the purpose of detaining a defendant rather than assuring the defendant's appearance."). However, a court "may impose a bail requirement even when the defendant is indigent, as long as the bail decision is supported by findings that show the defendant presents a risk of nonappearance and that the conditions are the least restrictive means of assuring the defendant's appearance." Id. ¶ 18.

The court's finding that defendant posed a risk of flight from prosecution is supported by the proceedings. As to the question of risk of flight, the court considered the seriousness and number of the charged offenses, as required under § 7554(a)(1). It also weighed each of the factors laid out in § 7554(b)(1). Given the seriousness of the charged conduct and the evidence that the defendant could face a sentence of more than fifteen years, and the lack of evidence that he had any current ties to Vermont—while he grew up here and has relatives here, he had recently spent time in Oregon, and there was no evidence of his current state of contacts with family or others who live here—the court was within its discretion to find defendant posed a significant risk of flight.

The court's imposition of bail was likewise within its discretion. Based on its finding that defendant posed a flight risk, it held that $10,000 money bail was "appropriate to mitigate the risk of flight from prosecution." It noted that it had "considered whether an unsecured appearance bond or a deposit towards the amount would be appropriate, but on the available information . . . the Court does think there is a significant risk [of flight]." It considered the defendant's financial means, citing the public-defender application form showing that defendant had made $3000 in the past year. (Defendant did not proffer any additional evidence concerning his income or access to resources.)[1] There is no indication in the record that the court imposed the bail for any purpose other than to secure defendant's appearance in court. See Pratt, 2017 VT 9, ¶ 15 (holding $25,000 bail for indigent defendant within court's discretion given "no indication on the record that the court imposed bail for any reason other than to assure [defendant's] appearance, and there is therefore no sign that bail was used for improper purposes"). The trial court was thus within its considerable discretion to impose this amount of bail.

Affirmed.

FOR THE COURT:

Beth Robinson, Associate Justice

[1] We note that this appeal comes to us directly from the court's bail determination at arraignment. See 13 V.S.A. § 7556(b). The parties did not further develop evidence or even proffers for the court in the context of a bail review hearing. Id. § 7554(d).