

VERMONT SUPREME COURT  
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Case No. 24-AP-199

## **ENTRY ORDER**

AUGUST TERM, 2024

State of Vermont* v. Samantha Brennan	}	APPEALED FROM:
	}	Superior Court, Windsor Unit,
	}	Criminal Division
	}	CASE NO. 24-CR-07240
	}	Trial Judge: Heather J. Gray

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

The State appeals from a criminal division order denying its request to hold defendant Samantha Brennan without bail, pursuant to 13 V.S.A. § 7553a. The State argues that the trial court erred in concluding that, absent a determination that the evidence of guilt was great, it lacked discretion to hold defendant without bail pending a weight-of-the-evidence hearing. However, the record reflects that the State never requested such a hearing and that no hearing was ever scheduled. Instead, the court decided the motion outright at arraignment, denying the request based on its conclusion that the evidence of guilt was not great. Because the State raises no challenge to the merits of this decision, we affirm.

Defendant was arraigned on July 18, 2024, and charged with three counts of violating an abuse prevention order under 13 V.S.A. § 1030(a), six counts of violating conditions of release under 13 V.S.A. § 7559(e), and one count of aggravated stalking in violation of a court order under 13 V.S.A. § 1063(a)(1). The final count was a felony charge, for which the State sought a hold-without-bail order under 13 V.S.A. § 7553a.

To support a finding of probable cause, the State submitted an affidavit from Officer Jonathan Cyran, which alleged the following. As part of her professional duties as a teacher, the complainant attends the weekly farmer's market in West Hartford, handing out books. The complainant had previously obtained a relief-from-abuse (RFA) order against defendant, which required defendant to "stay 500 feet away from" the complainant. Defendant was also on conditions of release in several active court cases, which prohibited her from "knowingly initat[ing] or maintain[ing] contact" with the complainant or "intentionally plac[ing her]self or knowingly remain[ing] within 1000 feet of" the complainant.

On June 25, and again on July 2 and 9, the complainant saw defendant at the farmer's market, within the proscribed radius under the RFA order and the conditions of release. On the first two occasions, the complainant averred that defendant pulled into the parking lot at a high

speed, attracting significant attention, and then sped off while laughing and shaking her head. On at least the first occasion, the complainant made direct eye contact with defendant. On the third occasion, the complainant approached her own vehicle a few minutes after defendant's arrival, prompting defendant to drive away. Defendant did not leave her vehicle on any of the three occasions. The complainant provided a photograph of defendant from one of the days, which, in Officer Cyran's estimate, showed approximately 100 feet between defendant and the complainant.

At defendant's arraignment, the court determined that there was no probable cause as to the first three counts, relating to the June 25 contact, because there was no evidence that defendant knew the complainant would be at the farmer's market and therefore no evidence that she acted with the requisite intent to violate either the conditions of release or the RFA order. However, the court found probable cause for the remaining counts, relating to the July 2 and 9 encounters, concluding that once defendant knew the complainant was working at the farmer's market, there was sufficient evidence to infer her intent.

Following the court's probable cause determination, the State moved to hold defendant without bail. The State referred the court to our decisions in State v. Bickel, 166 Vt. 633 (1997) (mem.), and State v. Passino, 154 Vt. 377 (1990), for the proposition that a court has discretion to temporarily hold a defendant without bail after arraignment, pending a weight-of-the-evidence hearing. However, the State never requested a weight-of-the-evidence hearing. In the absence of such a request, the court denied the hold-without-bail request outright at the arraignment, concluding that "looking in the light most favorable to the State, I'm not finding that [the evidence of guilt] is great under the circumstances." Consistent with this conclusion, the court ordered defendant released, subject to \$5,000 cash bail and conditions of release.

The State's sole argument on appeal is that the court applied the incorrect standard by "requir[ing] the State to prove that the weight of the evidence was great at arraignment." The State asks that we "reaffirm Bickel and Passino and recognize that, because the trial court found probable cause that the defendant had committed a qualifying offense, the trial court had the authority to hold the defendant without bail pending a full weight of the evidence hearing." As a remedy, the State asks that we remand and order the court to exercise its discretion in deciding whether to hold defendant without bail pending a weight-of-the-evidence hearing.

In Passino, we held that when the State moves to hold a defendant without bail under 13 V.S.A. § 7553, the court "can hold a defendant . . . for such time as is necessary to enable the parties to prepare for a full bail hearing and to make appropriate motions." 154 Vt. at 383. This conclusion was based on our recognition that "[i]t will rarely be possible to hold a full hearing on whether evidence of guilt is great at the first appearance" given that "[q]uestions on admissibility of evidence will not yet have surfaced." Id. In Bickel, we expanded this rule to proceedings under 13 V.S.A. § 7553a given the similar standards required by the two statutes. 166 Vt at 634.

The State fails to show any inconsistency with Passino and Bickel, and its arguments are at odds with the posture of the case. Passino and Bickel authorize courts to exercise discretion in holding a defendant without bail pending a weight-of-the-evidence hearing, provided one is "scheduled as soon as reasonably possible." Passino, 154 Vt. at 383. But here, no such hearing was ever requested or scheduled. Absent any request for a weight-of-the-evidence hearing, the court opted to decide the State's hold-without-bail request based on the evidence presented at arraignment. Thus, the court did not, as the State asserts, "require[] the State to prove that the

weight of the evidence was great at arraignment” to impose a temporary hold pending a weight-of-the-evidence hearing; rather, it made a final determination of the merits of the State’s request.

While we have held that such a decision “will rarely be possible” at arraignment, Passino, 154 Vt. at 383, we have left open the option to do so in certain circumstances. In State v. Downing, for example, we recognized that courts may hold a defendant without bail prior to a weight-of-the-evidence hearing only “if one is necessary.” 2020 VT 101, ¶ 28, 213 Vt. 468. The State does not argue that such a hearing was necessary here, nor does it challenge the trial court’s finding that the evidence of guilt was not great. Accordingly, the State has failed to raise any cognizable argument as to the merits of the court’s decision.

Affirmed.

FOR THE COURT:

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Paul Reiber, Chief Justice