

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-182

MAY TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Rutland Circuit
Matthew Waterman-Danyow	}	
	}	DOCKET NO. 643-5-07 RdCr

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

Defendant Matthew Waterman-Danyow appeals the district court's denial of his motion to reduce cash bail and to release him into the custody of his aunt under restrictive conditions of release. On appeal, defendant asserts that the \$100,000 bail amount set by the district court was not supported by the record, and was designed to keep him incarcerated to protect the complainant and her family. We reverse and remand.

In March 2007, defendant was arraigned on a felony charge of aggravated domestic assault and a misdemeanor offense of unlawful mischief and was released subject to conditions of release. On April 30, 2007, defendant allegedly violated his conditions of release by meeting the complainant at a parking lot on the campus of Castleton State College. According to the complainant's affidavit, defendant had contacted her repeatedly despite conditions of release prohibiting such contact. On the date in question, she claimed that an argument ensued in the parking lot and ended with defendant punching in the hood of her vehicle. Pursuant to this incident, defendant was arraigned on misdemeanor charges of domestic assault, stalking, and violation of conditions of release on May 1, 2007.

At the arraignment, the court set bail at \$100,000. Shortly thereafter, defendant filed a motion to review bail under 13 V.S.A. § 7554(d)(1). At the hearing on the motion, defendant presented the testimony of his aunt, Tracy Waterman, establishing her willingness to take defendant into her custody and ability to supervise defendant in accordance with a strict package of conditions of release. Ms. Waterman was formerly a state trooper for sixteen years and resides in Chocourua, New Hampshire, a village in the White Mountains. She assured the court that defendant would have no access to means of communication or transport while in her custody. The State conceded that she was an appropriate custodian, but represented that the complainant and her family preferred imposition of a bail amount that would ensure defendant's incarceration.

While the court indicated that it did not doubt the aunt's commitment to following court orders, it questioned whether defendant would abide by the orders. Thus, it determined that the combination of charges against defendant created a risk that defendant would fail to appear at trial, and declined to reduce the bail amount of \$100,000. This appeal followed.

Under 13 V.S.A. § 7556(b), this Court must affirm the district court's order "if it is supported by the proceedings below." The Vermont Constitution, as implemented by 13 V.S.A. § 7554(a) & (b), entitles defendant to reasonable bail and the least restrictive combination of conditions of release to ensure his appearance at trial and protect the public during his release. Here, the trial court erred in imposing \$100,000 cash bail, as there was insufficient evidence to support the court's determination that defendant posed a flight risk, and excessive bail may not be used to compel a defendant's incarceration when he is otherwise bailable within the terms of § 7554 and the Vermont Constitution.

Given that defendant does not pose a serious risk of flight and the conditions proffered by defendant in combination with a reduced bail would reasonably assure his appearance and the complainant's protection, I reverse the district court's decision. The State agrees that the proposed custodian and conditions outlined at the bail review hearing are "unusually appropriate," and suggests that a \$50,000 bail amount in combination with all of the conditions of release proffered by defendant are acceptable under the circumstances. Thus, the matter is remanded to the district court to impose \$50,000 bail, with a 10% cash deposit. In addition, the court will order defendant released into the custody of his aunt and will impose all of the conditions of release proffered at the motion hearing on May 11, 2007. Finally, the court will add a reasonable reporting condition to allow for monitoring of defendant while in his aunt's custody.

In the course of oral argument, an incident which may result in additional charges against defendant was brought to the Court's attention. The Court's decision today is based solely on the record before me, and I express no opinion as to what conditions the district court might impose—including continued incarceration—for any subsequent charges filed against defendant.

The trial court's decision is reversed and the matter is remanded for a new hearing at which the trial court will impose bail in the amount of \$50,000, with 10% cash deposit, all conditions of release proffered by defendant at the May 11, 2007 motion hearing, and such reporting condition as is reasonable in light of the custodian's out-of-state place of residence.

FOR THE COURT:

Denise R. Johnson, Associate Justice