

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-352

OCTOBER TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Rutland Circuit
Baron Watson	}	
	}	DOCKET NO. 3-1-07 RdCr

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

Defendant Baron Watson appeals from his conditions of release, claiming that the \$750,000 cash bail amount set by the trial court is excessive given the charges against him. He claims that imposing such high cash bail is tantamount to being held without bail. Under 13 V.S.A. § 7556(b), the Court must affirm the district court’s conditions of release, including bail, if they are supported by the proceedings below. If, however, the order is unsupported, the Court may remand the matter for further hearing. As the record does not support imposition of \$750,000 bail, the matter is remanded for a new hearing at which a reasonable cash bail amount will be set.

Defendant is charged with aggravated assault with a weapon, possession of cocaine, and driving with a suspended license. At arraignment, the district court found that defendant has significant ties to the community based on the following facts: (1) he has lived in Vermont for three years, (2) he is not transient, and (3) he owns a business with a lease at the local mall. Nonetheless, the court imposed the \$750,000 cash bail requested by the State based on the “seriousness of the allegations,” and “the fact that a weapon was involved.” Defendant timely filed a motion to review bail with the district court. At hearing, the reviewing judge denied defendant’s motion to reduce cash bail. The court noted that the charges against defendant were serious, that defendant had previously been convicted of sexual offenses and had failed to register as a sex offender as required. Furthermore, the court contradicted the arraigning judge’s findings, stating that there was no indication that defendant could resume his local business, that there was no evidence as to the stability of his local relationships, and that the nature of his residences prior to April 2003 was unknown. Findings by both courts were made solely on the basis of assertions made by counsel, as no testimony was presented at either hearing.

While the record supports imposition of cash bail, there is nothing in the record

supporting such a high amount. The overarching purpose of cash bail under 13 V.S.A. § 7554 is to assure the defendant's appearance. In this case, there was insufficient evidence to show that \$750,000 cash bail was the "least restrictive . . . condition" that would "reasonably assure the appearance of [defendant]," given the factual disputes regarding defendant's ties to the local community and his risk of flight. 13 V.S.A. § 7554(a)(1). The amount appears to have been set at \$750,000 at the request of the State's Attorney and without further discussion. The seriousness of the charges alone, however, cannot support imposition of high cash bail. See State v. Duff, 151 Vt. 433, 436 (1989). Where cash bail is set at such a high amount, the inference is that it is meant to keep the defendant incarcerated rather than ensure his appearance at future proceedings. See State v. Wood, 157 Vt. 286, 289 (1991). Such a condition of release violates the defendant's constitutional right to bail and undermines the presumption of innocence to which defendants are entitled. See State v. Pray, 133 Vt. 537, 542 (1975).

As a final matter, we decline to address defendant's pro se argument that the high cash bail amount was a result of racial discrimination. Defendant failed to raise this argument both at the arraignment and the bail review hearing. In any event, however, the remedy that defendant would be entitled to if successful on this claim—a new bail hearing—is the same remedy he will receive as a result of the lower court's imposition of a bail amount that is unsupported by the record.

The trial court decision is reversed and the matter remanded for a new bail hearing at which the trial court will set a cash bail amount supported by 13 V.S.A. § 7554.

FOR THE COURT:

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Denise R. Johnson, Associate Justice