

ENTRY ORDER

DEC 10 2009

SUPREME COURT DOCKET NO. 2009-442

DECEMBER TERM, 2009

State of Vermont

v.

Carlos Castillo-Vasquez

} APPEALED FROM:
}
}
} District Court of Vermont,
} Unit No. 2, Rutland Circuit
}
} DOCKET NO. 1495-10-09 Rdcr
}
} Trial Judge: Thomas A. Zonay

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

Defendant appeals from the district court's partial grant of his motion to review bail. Under 13 V.S.A. § 7556(b), defendant may appeal a condition of release to a single justice of this Court. "Any order so appealed shall be affirmed if it is supported by the proceedings below." *Id.* This Court held a telephone hearing with Deputy State's Attorney Kevin Klamm and defense counsel Mary Kay Lanthier on Tuesday, December 8, 2009.

The facts and procedural history are as follows. Defendant was arraigned on charges of obstruction of justice, unlawful mischief, and reckless endangerment on October 5, 2009, stemming from events that occurred on September 29, 2009. On that evening, police responded to reports of shots fired at a residence in Rutland. At the home, officers found evidence of shotgun damage to a car parked in the driveway, bird-shot from a shotgun lodged in the front door, and pellet or BB impressions in the bricks and windows in front of the residence. The complaining witness eventually identified defendant as the shooter. It is also alleged that complaining witness received what the State characterizes as a threatening phone call from defendant concerning what would happen if she told the police of his involvement.

At his arraignment on October 5, the trial judge conditioned defendant's release on nine separate conditions—including prohibiting contact with the complaining witness or her family—and a surety bond of \$50,000. Defendant subsequently moved the court to reconsider the bail conditions, specifically the monetary amount, claiming that he was financially unable to pay such an amount and had more significant ties to the community than originally presented. Defendant also argued that the nature of the state's case against him had shifted dramatically as both the other person allegedly involved in the shooting and the complaining witness had apparently left the jurisdiction.

Based on more information concerning defendant's ties to the community offered at the reconsideration hearing, the court reduced the bail amount to \$35,000. Defendant appeals that decision, arguing that there is insufficient evidence of risk of flight and that the State's case has

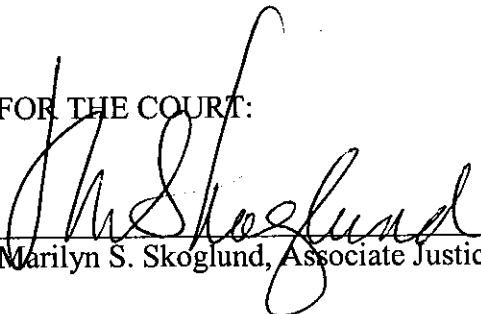
been severely compromised by the complaining witness' departure from Vermont. Defendant argues that the court should have considered the current state of the weight of the evidence and granted a much reduced bail amount.

In setting bail, the judicial officer must determine which conditions will reasonably assure the appearance of the defendant. 13 V.S.A. § 7554(a). Under 13 V.S.A. § 7556(b), this Court must affirm the district court's order setting bail conditions "if it is supported by the proceedings below." State v. Parda, 142 Vt. 261, 262, 455 A.2d 323, 324 (1982) (citing 13 V.S.A. § 7556(b)).

The trial court properly considered the serious nature of the crimes charged, the evidence of defendant's culpability, and the need to assure his appearance. The record supports the trial court's decision to condition defendant's release from custody on the bail amount imposed.

Affirmed.

FOR THE COURT:


Marilyn S. Skoglund, Associate Justice