

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-429

NOVEMBER TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
v.	}	Superior Court, Chittenden Unit
	}	Criminal Division
Jeffrey R. Gay II	}	
	}	DOCKET NO. 3905-10-10 Cncr
	}	
	}	Trial Judge: Linda Levitt

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

Defendant Jeffrey R. Gay II appeals from the trial court’s denial of his motion to amend the pre-trial conditions of release imposed following his arraignment on charges of domestic assault. Defendant requests a modification of the conditions of release to permit contact with the alleged victim. See 13 V.S.A. § 7556(b) (defendant may appeal condition of release to single justice of this Court). Based on my review of the record and the pleadings, I find that the record below amply supports the condition of release. See *id.* (“Any order so appealed shall be affirmed if it is supported by the proceedings below.”).

The State alleges that defendant struck the pregnant victim, hitting her stomach, in their home. On the evening of the incident, the alleged victim called 911 and filed a statement with the police. Two weeks later, the police arrested defendant for one count of domestic assault in violation of 13 V.S.A. § 1042. Following defendant’s arraignment, the trial court imposed conditions of release, including that defendant not have contact with the alleged victim.

Defendant filed with the trial court a motion to amend the no-contact condition of release. At the motion hearing, the alleged victim testified that she wants contact with defendant and sought to minimize a history of domestic violence. Defendant’s mother testified that she could supervise contact. Both witnesses attributed defendant’s violence to a medical condition, diabetes, suggesting that defendant involuntarily assaults people when his blood sugar drops precipitously. The court denied defendant’s motion, impliedly rejecting the alleged victim’s recantation and citing defendant’s inability to control his behavior and his long criminal history, which includes violations of conditions of release and of probation, drug offenses, and assaultive behavior. It was well within the court’s discretion to deny defendant’s motion, leaving in place the requirement that defendant have no contact with the alleged victim. Given the potential hazard defendant poses to the alleged victim, especially at a critical time in her own health, I affirm the trial court’s decision.

Affirmed.

FOR THE COURT:

Denise R. Johnson, Associate Justice