

proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

Id. § 7554(b)(1).

“[B]ail may be used only to assure the defendant’s appearance and cannot be used as a means of punishing the defendant, nor of protecting the public.” State v. Pratt, 2017 VT 9, ¶ 13, 204 Vt. 282. “The touchstone for identifying excessive bail under the Eighth Amendment is . . . whether bail is set at a figure higher than an amount reasonably calculated to fulfill the purpose of giving adequate assurance that [the defendant] will stand trial and submit to sentence if found guilty.” Id. ¶ 15.

Here, the court found that defendant had a minimal prior record, modest financial resources, and no failures to appear. Nonetheless, the court found that defendant posed a risk of flight based on the violent nature of the charged conduct, the number of charges, and defendant’s additional charges while on conditions of release. The court found that some cash bail or surety was thus appropriate.

Although the court’s analysis of the factors supports its decision to impose bail, the amount of bail imposed is not justified by the facts as found, particularly given defendant’s limited financial resources and past record of appearance. In State v. Duff, this Court explained that allowing imposition of high bail based solely on the serious nature of a crime would result in “the constitutional right to bail [being] a nullity for all defendants charged with serious crimes.” State v. Duff, 151 Vt. 433, 436 (1989). Because the trial court does not articulate its reasoning for increasing the amount of bail required for defendant’s release, from \$130 to \$5,000, the record necessarily cannot support that the figure was the least-restrictive condition available and “reasonably calculated to fulfill the purpose of giving adequate assurance that defendant” will appear. Pratt, 2017 VT 9, ¶ 15. Thus, the bail amount of \$5,000 is struck with the original \$130 bail amount being reimposed until the trial court issues an order pursuant to the remand.

The trial court’s imposition of \$5,000 bail is struck and the \$130 bail reimposed. This case is remanded to set bail at an amount that is reasonably related to the facts as found and the least restrictive condition necessary to ensure defendant’s appearance. Mandate to issue forthwith.

FOR THE COURT:

Nancy J. Waples, Associate Justice