

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-269

AUGUST TERM, 2018

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| State of Vermont v. Sheldon G. Rheume* | } | APPEALED FROM: |
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| | } | Superior Court, Chittenden Unit |
| | } | Criminal Division |
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| | } | DOCKET NO. 2678-8-18 Cncr |

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

Defendant filed a notice of appeal from an order of the criminal division on August 14, 2018 temporarily holding him without bail pending further hearing on the State’s motion to hold without bail under 13 V.S.A. § 7553a, citing Vermont Rule of Appellate Procedure 9(a) and 13 V.S.A. § 7556(e). We conclude that to the extent defendant seeks to appeal the decision as one under § 7553a, it is premature insofar as there has not yet been a hearing on the matter and the court has not made a final decision as to whether to hold defendant without bail under 13 V.S.A. § 7553a. We further conclude that the court did not err in holding defendant without bail pending the weight-of-the evidence hearing scheduled for August 20, 2018.

On August 14, 2018, defendant was arraigned on three charges, including aggravated assault with a deadly weapon in violation of 13 V.S.A. § 1024(a)(5). The court found that there was probable cause that defendant committed the alleged offenses. The State moved to have defendant held without bail under 13 V.S.A. § 7553a. The court ordered that defendant be held without bail pending a weight-of-the-evidence hearing to be held on August 20, 2018. Defendant appeals the court’s hold-without-bail order.

Section 7553a permits the denial of bail when the evidence of guilt is great and “the person’s release poses a substantial threat of physical violence.” 13 V.S.A. § 7553a. A defendant may be held temporarily without bail under 13 V.S.A. § 7553a if, “at arraignment, the court finds probable cause to believe a qualifying offense was committed and defendant committed it.” State v. Bickel, 166 Vt. 633, 633, 698 A.2d 243, 243 (1997) (mem.); see also State v. Falzo, 2009 VT 22, ¶ 7, 185 Vt. 616, 969 A.2d 694 (holding that under 13 V.S.A. § 7553 court may order defendant held without bail pending outcome of hearing when court determines evidence of guilt is great based on record) (mem.); State v. Passino, 154 Vt. 377, 383, 577 A.2d 281, 285 (1990) (“Based on the initial determination that there is probable cause to believe that the offense was committed and that defendant committed it . . . the court can hold a defendant charged with an offense punishable by life imprisonment without bail for such time as is necessary to enable the parties to prepare for a full bail hearing and to make appropriate motions.”). We have “emphasize[d] that the bail hearing must be scheduled as soon as reasonably possible to protect defendant’s right to bail.” Passino, 154 Vt. at 383, 577 A.2d at 285.

In Bickel, we explained that § 7553a “is similar to § 7553 in that both provisions permit detention only if the evidence of guilt is great, and neither section guarantees an evidentiary hearing prior to the order of detention.” Bickel, 166 Vt. at 633, 698 A.2d at 243. As such, a defendant may be held without bail following arraignment if the court finds probable cause that defendant committed the offenses charged.

Here, the court found probable cause that defendant committed aggravated assault with a deadly weapon in violation of 13 V.S.A. § 1024(a)(5)—a felony charge that involves an act of violence. The court then promptly scheduled a weight-of-the-evidence hearing to review the hold-without-bail order within one week—a reasonable amount of time. We see no error in the procedure followed by the court. The Vermont Rules of Appellate Procedure provide this Court with jurisdiction to review courts’ hold-without-bail orders under § 7553a “based on the record.” V.R.A.P. 9(b)(1)(F). However, defendant’s appeal of the § 7553a issue is premature: there was no hearing before the criminal division, no decision, and no record for this Court to review. The court acted within its authority in holding defendant without bail pending the hearing on the State’s motion under § 7553a.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice