

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-008

JANUARY TERM, 2019

State of Vermont v. Clayton Turner*	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit
	}	Criminal Division
	}	
	}	DOCKET NO. 672-6-11 Wmcr

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

Clayton Turner, defendant, is charged with one count of aggravated domestic assault of the second degree based on a prior conviction for domestic assault, 13 V.S.A. § 1044(a)(2)(B), and one count of simple assault, 13 V.S.A. § 1023(a)(1). Defendant appeals the trial court’s decision to hold him without bail under 13 V.S.A. § 7553. We affirm.

On November 28, 2018, defendant was arrested pursuant to a seven-and-a-half-year-old Vermont arrest warrant which was issued on June 16, 2011.* The next day, defendant was arraigned and held without bail under § 7553, pending the weight of the evidence hearing.

At the weight of the evidence hearing on December 20, 2018, the State introduced various affidavits and called C.L. and J.B.—the complaining witnesses—to testify. J.B. testified that on the night of the assault, when she and her cousin, C.L., returned home, C.L. and defendant started fighting. Ultimately defendant left. J.B. and C.L. went to sleep but were awoken around 5AM when defendant returned and begin to verbally assault them. J.B. testified that the verbal fight escalated, that defendant grabbed a knife and threatened to hurt himself, and that defendant tried to choke C.L. When J.B. attempted to run upstairs to call the police, defendant stopped her by grabbing her by the hair, causing pain. J.B. escaped defendant’s grasp by kicking him in the groin and called the police. However, by the time the police came, defendant had fled on foot.

C.L.’s testimony largely corroborated J.B.’s account of the alleged assault. C.L. explained that defendant was her boyfriend at the time of the alleged assault and father of her children. She testified that during the argument with defendant, he grabbed her and squeezed her throat, and that she could not breathe and was scared and in pain. C.L. testified that this alleged assault was not the first, nor last, time defendant physically assaulted C.L. and that defendant had threatened to kill C.L. in the past. When the State asked about a letter that C.L. had sent to the prosecutor’s office several years prior, C.L. explained that she had gotten back together with defendant and that defendant had her write a letter indicating that she had made up the alleged assault. C.L. testified

* There was also an arrest warrant pending in New Hampshire at the time of defendant’s arrest.

that defendant knew there was an arrest warrant out for his arrest, and that he wanted C.L. to write the letter so he would not get in trouble with the police. She explained that her testimony at the weight of the evidence hearing was accurate, and that the letter was inaccurate.

The State offered into evidence exhibits that showed three violations of conditions of release and two felony convictions for escape to establish that defendant had a history of failing to abide by court orders and escaping custody, and exhibits which showed convictions for domestic and aggravated assault to establish that defendant had a history of threatening, violent behavior and the requisite three prior felony convictions to make defendant eligible for habitual offender status. Based on all the evidence presented by testimony and exhibits, the State asserted that it had met its burden to show that the weight of the evidence of guilt was great, and that the trial court should hold defendant without bail.

Upon review of the transcript, it appears counsel for defendant conceded that the State met its burden of proof and established that the weight of the evidence of guilt was great, but argued that the trial court should exercise its discretion to release defendant on bail so that defendant could “avail himself of process in New Hampshire and take care of business there” regarding his outstanding New Hampshire arrest warrant.

The trial court found that the State had shown that evidence of guilt was great as to the second degree aggravated domestic assault and that the offense was eligible to be enhanced to one punishable by life imprisonment under the habitual offender statute based on defendant’s three prior felony convictions. See 13 V.S.A. § 11. Additionally, the trial court decided not to exercise its discretion to release defendant or to set bail because defendant had multiple prior convictions for violating conditions of release and had two prior felony convictions for escape.

On appeal, defendant rested on the arguments made below. Therefore, we accept defendant’s concession that the State met its burden of establishing that the evidence of guilt was great. Thus, we need only determine if the trial court abused its discretion under § 7553.

Once the State has met its burden in establishing that the evidence of guilt is great, “a presumption in favor of incarceration arises, but the court has discretion to decide whether to hold the defendant without bail or, instead, to impose bail and conditions of release.” State v. Shores, 2017 VT 37, ¶ 16, 204 Vt. 630 (mem.) (quotation omitted). This Court will find an abuse of discretion where “the court either totally withheld its discretion or exercised it on clearly untenable or unreasonable grounds.” Brown v. State, 2018 VT 1, ¶ 38.

We find that the trial court soundly exercised its discretion in holding defendant without bail. The court weighed multiple factors, as listed in 13 V.S.A. § 7554(b), when considering whether defendant posed a risk of flight or danger to the community, including “the nature and circumstances of the offense charged,” “the weight of the evidence against the accused,” “record of convictions,” and “record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.” Furthermore, defendant failed to introduce any evidence or argument, before the trial court or on appeal, as to why he was likely to abide by conditions if

released on bail or why he was otherwise bailable. See State v. Blow, 2015 VT 143, ¶ 12 n.1, 201 Vt. 633 (mem.). Thus, we find no abuse of discretion and affirm.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice