

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-032

JANUARY TERM, 2019

State of Vermont	}	APPEALED FROM:
	}	
v.	}	Superior Court, Windham Unit,
	}	Criminal Division
Blake Pierce	}	
	}	DOCKET NO. 1244-10-18 Wmcr

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

This is an appeal from the decision of the trial court holding defendant without bail under 13 V.S.A. § 7553a. The appeal is de novo. 13 V.S.A. § 7556(d). A hearing was conducted on February 1, 2019. The parties stipulated to the admission of the entire record from the weight-of-the-evidence hearing on appeal, including the admitted exhibits. The Court also received additional evidence consisting of the testimony of defendant’s sister, Bailey Strange. Bailey Strange is also the daughter of the alleged victims, Lori and Patrick Strange.

I. Procedural History

Defendant is charged with one count of first-degree aggravated domestic assault with a deadly weapon under 13 V.S.A. § 1043(a)(2) and one count of criminal threatening under 13 V.S.A. § 1702(a). He was on probation at the time of the alleged crimes. He is also charged with violating his conditions of probation based on the same conduct that is the basis of the criminal charges.

Defendant was arraigned in both matters on November 15, 2018. He was held without bail in the criminal proceeding under 13 V.S.A. § 7553a. He was also held without bail in the separate violation-of-probation proceeding under 28 V.S.A. § 301(5)(A).

A weight-of-the-evidence hearing was conducted on November 26, 2018. The trial court received evidence consisting of affidavits of the complaining witnesses, Lori and Patrick Strange, and testimony of defendant’s probation officer. Defendant presented no evidence. The trial court again ordered defendant to be held without bail in both the criminal proceeding under 13 V.S.A. § 7553a and in the violation-of-probation proceeding under 28 V.S.A. § 301(5)(A). The findings and orders holding defendant without bail were made on the record. On January 13, 2019, defendant filed a notice of appeal in the criminal proceeding. Defendant did not appeal from the decision holding him without bail in the violation-of-probation proceeding.

II. Facts

The Court makes the following findings of fact from the evidence received. The Court has applied the clear-and-convincing standard of proof in making the findings. See 13 V.S.A. § 7553a; State v. Lontine, 2016 VT 27, ¶ 46, 201 Vt. 637 (mem.) (“The evidentiary standard to be applied to the analysis of facts found under § 7553a is the clear-and-convincing evidence standard.”). Defendant was on probation at the time of the events that led to the criminal charges in this case. He was placed on probation following convictions for simple assault and

grossly negligent operation of a motor vehicle. The factual basis for the simple assault was that defendant threatened his roommate with a knife on January 26, 2018. The specific conditions of probation imposed following the simple assault conviction are not in the record. On one occasion, defendant's probation officer directed him to report on a specific date, and defendant did not comply with that directive. Defendant reported to his probation officer approximately one week later than directed.

A friend of defendant committed suicide in October 2018, and defendant became emotionally distraught. On October 16, 2018, defendant met with his parents, Lori and Patrick Strange, at their home to seek emotional comfort. After some discussion together, Lori Strange remarked that she needed to go to sleep because she had to go to work in the morning. She said that she did not have the luxury of quitting her job. This provoked defendant, who went outside the home and retrieved a hammer. He then returned to the home and started to go after his mother in a threatening manner. He attempted to strike his mother with the hammer. Patrick Strange grabbed defendant and threw him down the stairs. Defendant then swung the hammer at Patrick Strange in an attempt to hit him with the hammer. Patrick Strange struck defendant and physically ejected him out of the front door of the home. Neither Lori Strange nor Patrick Strange was physically injured in the incident. As of the date of the weight-of-the-evidence hearing, Lori Strange remained fearful that defendant would hurt her if he were released.

If released, defendant's sister will permit him to live with her, her fiancé, and her newborn child. Defendant's sister works full time from 9 a.m. to 3 p.m. Her fiancé works from 4 p.m. to 11 p.m. Defendant's sister testified that she will prevent defendant from having contact with the alleged victims. The Court is not persuaded that she has the ability to do so, given her work schedule and her other circumstances. The Court is not persuaded that defendant's sister has the ability to ensure that defendant will refrain from violent behavior toward others.

III. Decision

The issue before the Court is whether defendant should be held without bail under 13 V.S.A. § 7553a. The initial questions under the statute are whether defendant is charged with an offense that is a felony and whether one of the elements of the charge involves an act of violence against another person. Here, defendant is charged with first-degree aggravated domestic assault under 13 V.S.A. § 1043(a)(2), which qualifies as a felony offense. See *id.* §§ 1, 1043(b). The conduct that constitutes a violation of the statute involves a violent act against another person. *Id.* § 1043(c).

The next question under 13 V.S.A. § 7553a is whether the evidence of guilt is great. When determining whether the evidence of guilt is great, the Court applies the standard under Vermont Rule of Criminal Procedure 12(d). *State v. Duff*, 151 Vt. 433, 439-40 (1989). That is, the Court must determine whether there is sufficient evidence to make out a prima facie case. V.R.Cr.P. 12(d). The State must present substantial, admissible evidence that is sufficient to sustain a guilty verdict on each element of the crime. *Id.*; *State v. Hugerth*, 2018 VT 89, ¶ 6 (mem.). The evidence, when viewed in the light most favorable to the State, and excluding the effect of modifying evidence, must fairly and reasonably show that defendant is guilty of the charged crime beyond a reasonable doubt. *Duff*, 151 Vt. at 439.

Here, the State has met its burden of showing that the evidence of guilt is great as to the charge of first-degree aggravated domestic assault. "A person commits the crime of first degree aggravated domestic assault if the person . . . uses, attempts to use or is armed with a deadly

weapon and threatens to use the deadly weapon on a family or household member.” 13 V.S.A. § 1043(a)(2). The term “deadly weapon” includes “any firearm, or other weapon, device, instrument, material, or substance, whether animate or inanimate which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.” *Id.* § 1021(a)(3). A hammer can constitute a deadly weapon. See *State v. Stevens*, 2003 VT 15, ¶¶ 7-8, 175 Vt. 503 (mem.) (holding that evidence that defendant attacked victim with hammer supported aggravated-assault charge, which “requires proof of the use of a deadly weapon”). “Serious bodily injury” includes “bodily injury which creates any of the following: (i) a substantial risk of death; (ii) a substantial loss or impairment of the function of any bodily member or organ; (iii) a substantial impairment of health; or (iv) substantial disfigurement.” 13 V.S.A. § 1021(a)(2).

The evidence presented by the State includes the affidavits of Lori and Patrick Strange, which state that defendant attempted to strike both of his parents with a hammer, a deadly weapon. This evidence is sufficient to establish that the evidence of guilt is great within the meaning of 13 V.S.A. § 7553a.

The final question under 13 V.S.A. § 7553a is whether the State has shown by clear and convincing evidence that defendant’s “release poses a substantial threat of physical violence to any person and that no condition or combination of conditions of release will reasonably prevent the physical violence.” Here, the State has met its burden. Defendant’s violent behavior was virtually unprovoked. The conduct occurred at a time when he was on probation after a conviction for simple assault involving a threat of physical harm to another with a knife. Conditions of release designed to prevent him from engaging in similar unprovoked violent behavior in the future will not reasonably prevent him from behaving in a similar fashion in the future. Defendant has demonstrated that he is unwilling, or unable, to avoid violent behavior toward other persons following perceived slights, even though he is on probation and facing possible incarceration in the event he were to commit another crime.

The Court concludes that the State has met its burden in support of its request that defendant should be held without bail under 13 V.S.A. § 7553a. Nevertheless, the Court has considered whether defendant should be released on conditions and bail in the exercise of the court’s discretion, applying the factors set forth in 13 V.S.A. § 7554(b). Although the evidence before the Court does not support a finding that defendant presents a significant risk of flight, the Court is nevertheless persuaded that the danger he presents to the public, including the alleged victims, is very high unless he is detained pending trial. Again, the court is persuaded that there is no set of conditions that could be fashioned that would reasonably protect the public from violent conduct on the part of defendant. The Court is not persuaded that defendant’s sister is able to control defendant’s conduct or to prevent defendant from behaving in a violent manner similar to his behavior described above.

Defendant shall be held without bail under 13 V.S.A. §7553a.

FOR THE COURT:

Robert P. Gerety, Jr., Superior Judge,
Specially Assigned