

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2020-016

JANUARY TERM, 2020

State of Vermont	}	APPEALED FROM:
	}	
v.	}	Superior Court, Orange Unit,
	}	Criminal Division
Gregory Torrey	}	
	}	DOCKET NO. 14-1-20 Oecr
		Trial Judge: Thomas A. Zonay

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

Defendant Gregory Torrey appeals from the Orange Superior Court Criminal Division’s denial of his motion to amend conditions of release. Specifically, defendant argues that the court erred when it declined the vacate conditions limiting contact with complainant and prohibiting him from going to their residence without a third-party present. I affirm.

On January 13, 2020, the State charged defendant with violation of an abuse prevention order. The information alleged that defendant contacted complainant via text message shortly after law enforcement served him with the temporary relief-from-abuse order which prohibited contact with her. Defendant pled not guilty to the charge and the court released him on conditions, including that he have no contact with either the complainant or his daughter and that he not enter or remain on the premises where he resided with the complainant and his daughter. The next day, defendant filed a motion to amend these two conditions of release.<sup>1</sup>

The court held a hearing on January 16, 2019. It noted that the relief-from-abuse order had expired by its terms because complainant did not appear for the hearing on the petition. Complainant then testified and explained that she and defendant have been together for four years and have a child together. She loves and cares about defendant, but both have said hurtful things about each other. She does not fear defendant and he has never physically abused her. She believes he would never hit her or their child. Complainant let her family talk her into seeking a restraining order, which she regretted. As a result, she did not appear for the final hearing on the order because she wanted it to be dropped. Complainant believes that defendant “said that stuff to get under [her] skin and make [her] mad” because they are both people who like to get under each other’s skin.<sup>2</sup> Complainant called the police immediately upon defendant contacting her in violation of

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<sup>1</sup> The motion sought to vacate conditions 14 and 21. Condition 14 prohibited contact with complainant and defendant’s daughter. However, a condition 21 was not imposed by the court. I assume that defendant intended to refer to condition 31 which restricts defendant’s access to his residence.

<sup>2</sup> The court did not rely on the affidavit supporting the petition for a relief-from-abuse order and neither party had a copy of it at the time of the hearing. Complainant did not testify to the specific circumstances that caused her to seek the order.

the order but she “wasn’t really concerned.” She was, however, “a little ticked off” that he had violated the order so quickly.

After complainant testified, the court explained that, despite complainant’s position that defendant had not abused her and she is not fearful of him, it was clear that something had happened which caused complainant to seek a relief from abuse order and a judge to find that abuse had occurred. The court expressed concern that defendant had violated the order so quickly after it had been served on him, stating, “[i]t’s one thing to go back and live in the house. It’s another to have telephonic or electronic contact.” The court considered the volatility of the situation and noted that the violation of the order occurred very recently, only six days prior to the bail review hearing. The court summarized its concern:

The court’s view is that, where you have a violation of an abuse prevention order within several hours, based upon allegations of contact, where the order had been issued. The court understands the putative victim has indicated that she was upset and didn’t want it to go forward.

The court does think that the facts amply demonstrate a level of tension, stress, and instability that needs to be rebuilt one step at a time, and that there has been nothing to demonstrate that simply deleting these conditions is appropriate at this time. And so, even though the court doesn’t think that the least-restrictive standard applies under [§] 7554, the court actually is imposing conditions to reasonably assure safety, within a week of the events which bring us here.

The court modified the condition prohibiting contact with complainant to allow telephonic, electronic, and written communication and contact in person with a third-party present only during exchanges of the child. It struck the no-contact condition with respect to the parties’ child. Finally, the court modified the condition prohibiting defendant from entering or remaining on the land and premises of his residence by allowing him to be at the property for the sole purpose of exchanges of the child. Defendant appealed.

Defendant argues that the court erred in imposing the two modified conditions at issue because they are not necessary to protect the public or complainant, especially since defendant has no prior criminal record, there is no history of violence between the couple, and the existing condition prohibiting defendant from abusing or harassing complainant would remain in effect. Furthermore, defendant submits, there is no nexus between the conditions and the conduct alleged.

We review the court’s imposition of conditions of release for an abuse of discretion. State v. Cushing, 2015 VT 114, ¶ 3, 200 Vt. 646 (mem.). We will not reverse such discretionary rulings unless “the court failed to exercise its discretion, or exercised it for reasons clearly untenable or to an extent clearly unreasonable.” State v. Barrows, 172 Vt. 596, 596 (2001) (mem.) (quoting State v. Patch, 145 Vt. 344, 353 (1985)). An order “shall be affirmed if it is supported by the proceedings below.” 13 V.S.A. § 7556(b).

“Any person charged with an offense, other than a person held without bail under 13 V.S.A. section 7553 or 7553a,” shall “be ordered released pending trial in accordance with [§ 7554].” Id. § 7554(a). If a condition of release imposed to mitigate a risk of flight will not reasonably protect

the public, the court may impose the least restrictive condition or combination of conditions. Id. § 7554(a)(2). Finally, the court may impose a condition that a defendant “not harass or contact or cause to be harassed or contacted a victim or potential witness.” Id. § 7554(a)(3).

Defendant’s argument that the court erred by imposing the two conditions at issue, because they are not necessary to protect either the public or complainant, is unavailing. The court is not required to find that extraordinary circumstances exist before imposing this condition and “it may simply order that no contact occur.” Cushing, 2015 VT 114, ¶ 11 (stating that court “muddied the waters” when indicating that a no-contact provision required a finding that it was necessary to protect the public). The court is not required to impose the least restrictive condition when making a no-contact order pursuant to § 7554(a)(3). Id. Although the condition prohibiting defendant from going to his residence, except with a third-party present to exchange his child, is not specifically addressed in § 7554(a)(3), in this case its imposition flows directly from, and is required by, the no-contact provision authorized by that section. The no-contact order would be meaningless if defendant was allowed unfettered access to the residence he shared with complainant.

The proceedings below support the decision to impose the modified conditions of release. Despite complainant’s testimony, the court did not abuse its discretion in imposing these conditions after finding that the parties were involved in a very recent incident that resulted in complainant seeking a relief-from-abuse order that defendant allegedly violated by contacting complainant within hours of service of the order. See State v. Woods, No. 2016-333, 2016 WL 7183282, \*2 (Vt. Dec. 1, 2016) (unpub. mem.), <https://www.vermontjudiciary.org/sites/default/files/documents/eo16-333.bail.pdf> [<https://perma.cc/PK7B-QXQ2>] (holding court did not err when it imposed a more restrictive no-contact condition after defendant violated the original condition by contacting his wife and discussing the pending case). Furthermore, the fact that a judge had reviewed the relief-from-abuse petition and found that abuse had occurred, coupled with the current tension, stress, and instability caused by defendant’s violation of the order, provided the court with a sufficient basis to impose the modified conditions. The court used sound discretion in imposing conditions meant to protect complainant that are reasonably related to the conduct underlying the charge of violation of the relief from abuse order.

Affirmed.

FOR THE COURT:

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Karen R. Carroll, Associate Justice