

ENTRY ORDER

SUPREME COURT DOCKET NO. 2021-016

JANUARY TERM, 2021

State of Vermont v. Stephanie A. Deaette*	}	APPEALED FROM:
	}	
	}	Superior Court, Orleans Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 583-10-20 Oscr
		Trial Judge: A. Gregory Rainville

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

Defendant Stephanie Deaette appeals a superior court order imposing a pretrial condition of release compelling her to open her door to law enforcement during reasonable times. Because the record does not support the challenged condition, the order is reversed and the matter remanded.

Defendant was charged with aggravated assault with a deadly weapon, criminal threatening, and obstruction of justice following an incident in which she allegedly struck her neighbor on the head with a wrench in her apartment building in Newport, Vermont. See 13 V.S.A. §§ 1024(a)(2), 1702(a), 3015. At arraignment, the superior court released defendant subject to conditions of release, including residing with, and under the supervision of, her father and stepmother under a twenty-four-hour curfew in Jericho, Vermont. Among other conditions, defendant was not to possess firearms or other dangerous weapons, and she was not to contact complainant or be within 300 feet of her, her home, work, or vehicle.

The living arrangement placing defendant, her three children, the father, and stepmother in a home proved problematic, so the court granted defendant's request to amend the conditions. Under the new conditions, defendant could reside with her three children in a hotel room in Williston, Vermont under curfew from 7:00 p.m. to 7:00 a.m. She was placed under the supervision of her father, who was obliged to monitor defendant "through electronic means" and to "physically check on her." Defendant was also prohibited from traveling to Orleans County, which encompasses Newport. The other noted conditions were retained.

Subsequently, on two separate days, during defendant's curfew hours, police officers knocked on defendant's hotel room door to check her compliance with the curfew, but defendant did not open the door. The officers called the room telephone on one occasion and received no answer. From a window, the officers saw that the television and lights were on and an unidentified person was in bed, but the officers could not verify that defendant was in the room.

In consequence, the State charged defendant with two counts of violating the curfew condition and moved the superior court to add a new condition requiring defendant to answer the door to law enforcement. The court held an arraignment on the new charges on December 22, 2020. Defendant opposed the new condition at that hearing and filed a written memorandum. She argued that there was no legal justification for the condition and that compelling her to open her door would violate her rights under the Fourth Amendment to the U.S. Constitution and Chapter I, Article 11 of the Vermont Constitution. Defendant further maintained that the condition could

expose her and her children to COVID-19 and to criminals impersonating police officers. At the arraignment hearing, the court found probable cause on the new violations, but took the State's motion for a new condition under advisement without making any findings.

Without an additional hearing or any findings, on January 8, 2021, the court added condition 37, which provides in relevant part that defendant "shall respond to law enforcement and answer the door to the residence at all reasonable times."

On appeal, defendant renews her constitutional arguments and maintains that condition 37 must be struck because it is not necessary to mitigate a risk of flight from prosecution or to ensure protection of the public, as required by 13 V.S.A. § 7554(a)(1)-(2).

This Court affirms an order imposing conditions of release "if it is supported by the proceedings below." *Id.* § 7556(b); *State v. Pratt*, 2017 VT 9, ¶ 20, 204 Vt. 282.

Under 13 V.S.A. § 7554(a)(1), the court may impose "the least restrictive combination" of several enumerated conditions "that will reasonably mitigate the risk of flight of the defendant." One such condition is "any other condition found reasonably necessary to mitigate the risk of flight." *Id.* § 7554(a)(1)(F). Under § 7554(a)(2), the court may also impose "the least restrictive combination" of several listed conditions "that will reasonably ensure protection of the public." One of these is "any other condition found reasonably necessary to protect the public." *Id.* § 7554(a)(2)(D). In deciding the conditions of release to impose under § 7554(a)(1) and (2), the court "shall take into account," based on "available information," several considerations, including:

[T]he nature and circumstances of the offense charged; the weight of the evidence against the accused; and the accused's family ties, employment, character and mental condition, length of residence in the community, record of convictions, and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

Id. § 7554(b)(2); see also *State v. Rougeau*, 2019 VT 18, ¶ 13, 209 Vt. 535 (explaining that court "must" take into account § 7554(b) factors).

Here, given the absence of any findings demonstrating that the superior court undertook the analysis required under § 7554, this Court cannot find that the order imposing condition 37 is supported by the proceedings below. Despite defendant's opposition to the new requested condition, the court failed to explain how condition 37 is reasonably necessary, as part of the least restrictive combination of conditions, to mitigate defendant's risk of flight or to protect the public. There is also no indication in the record that the court examined the factors in § 7554(b) before imposing condition 37. Accordingly, the order must be reversed and the matter remanded for the court to engage in the appropriate analysis.

The following observations are offered to guide the superior court on remand. The record indicates that the need for the condition arose from evidence that the police were unable to ensure defendant's compliance with the curfew. But the condition is silent as to the curfew and compels defendant to "answer the door to the residence at all reasonable times." If the reason behind the condition is ensuring compliance with the curfew, it is not clear why compelling defendant to answer the door at other times is necessary for that purpose. Additionally, it is not clear why compelling defendant to answer the door is the least restrictive means to ensure compliance with

the curfew when there may be technological alternatives, including a phone call to the room, that may serve that purpose.

Finally, while this Court addresses issues likely to arise on remand, see, e.g., State v. Tribble, 2012 VT 105, ¶ 1, 193 Vt. 194, it does not decide constitutional questions unnecessarily, see, e.g., In re M.C., 2018 VT 139, ¶ 9, 209 Vt. 219; In re Picket Fence Preview, 173 Vt. 369, 375 (2002). On remand, after conducting the § 7554 analysis, the superior court may deny the State's request or impose an entirely different condition. Because resolving the constitutional questions is not necessary for the disposition of this appeal, and because the questions may not arise after remand under the present facts, it is inappropriate to consider defendant's constitutional arguments at this time.

Reversed and remanded for further proceedings consistent with this opinion.

FOR THE COURT:

William D. Cohen, Associate Justice