

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2019-0028

The State of New Hampshire

v.

Paul R. Spaulding

STATE'S OPPOSITION TO DEFENDANT'S MEMORANDUM ON BAIL

The defendant has appealed from an order of the Cheshire County Superior Court (*Ruoff*, J.) that he should be detained pending resolution of the charges against him.

STATEMENT OF THE CASE

On December 17, 2018, the defendant was arraigned in the Cheshire County Superior Court (*Ruoff*, J.) on two Class B felonies and three misdemeanor charges. 12/17/18 Tr.: 3.¹ He entered pleas of not guilty to each charge. 12/17/18 Tr.: 3. The court observed that the defendant had made threats toward the victim in the presence of the police officers. 12/17/18 Tr.: 11. Noting that “alcohol and firearms [are] a lethal combination,” the trial court ordered the defendant detained on the ground that he posed a risk to the victim. 12/17/18 Tr.: 11.

¹ “Def. Mot.:_” refers to the defendant’s motion and page number. Transcripts are identified by the date, followed by “Tr.:” and the page number.

On December 21, 2018, the trial court held a probable cause hearing. 12/21/18 Tr.: 5–46. At that point, the pending charges were two pending domestic violence charges, a felony reckless conduct charge, and a felony criminal threatening charge. 12/21/18 Order. At the conclusion of the probable cause hearing, the court dismissed the felony reckless conduct charge, but found that there was sufficient evidence to support the two pending domestic violence charges and the felony criminal threatening charge. 12/21/18 Order. The court then ordered that the defendant remain detained.

STATEMENT OF FACTS

The testimony at the December 21, 2018 probable cause hearing established the following facts:

On December 16, 2018, at approximately 2:00 a.m., two Hinsdale Police officers went to a multifamily apartment building located at 23 Canal Street. 12/21/18 Tr.: 7–8, 10–12. They were responding to a 911 call. 12/21/18 Tr.: 10–11. Jessica Atherton, who placed the call, told the dispatcher that the defendant and her mother, the victim, had been arguing and that the defendant had left the premises and discharged a firearm. 12/21/18 Tr.: 11. The call came from apartment number 5. 12/21/18 Tr.: 5.

The police officers were wearing body cameras and, as they approached, they could hear “argumentative behavior” coming from apartment 5. 12/21/18 Tr.: 16. One of the officer felt that, “based on the noise ... coming from inside,” there were exigent circumstances and he opened the door to apartment 5. 12/21/18 Tr.: 16–17. The victim was inside the apartment and the police gave “multiple commands” to the defendant to come out. 12/21/18 Tr.: 17. The defendant eventually appeared and he was “clearly not happy.” 12/21/18 Tr.: 17. The officers “immediately saw a firearm on the [d]efendant’s right hip.” 12/21/18 Tr.: 17. The firearm was a Kel-Tec 9-mm semiautomatic pistol. 12/21/18 Tr.: 20. As the police were standing there, the defendant told the victim, “[Y]ou did this to me, you did this to me.” 12/21/18 Tr.: 19.

“[B]ased on the type of call” and “the demeanor of the [d]efendant,” the officers decided to take him into custody. 12/21/18 Tr.: 17. The officers conducted an initial search of the defendant in the hallway of the apartment building and seized the Kel-Tek and a 9-mm Smith & Wesson handgun. 12/21/18 Tr.: 19, 20–21. They found the Smith & Wesson in the defendant’s back pocket. 12/21/18 Tr.: 21. The magazine in the Kel-Tek was missing a round; the Smith & Wesson was fully loaded. 12/21/18 Tr.: 21.

As they escorted him to the patrol car, the defendant was “very, very angry and vocal during [the] entire time.” 12/21/18 Tr.: 19. He was “not cooperative,”

“very angry, yelling, [and] growling.” 12/21/18 Tr.: 42. As they were placing him in the cruiser, the defendant shouted, “I’m going to kill the bitch.” 12/21/18 Tr.: 20. When the defendant arrived at the jail, he was searched more thoroughly. 12/21/18 Tr.: 37, 42. Law enforcement officers found a magazine of ammunition and a knife with a six-inch blade, tucked inside the defendant’s waistband. 12/21/18 Tr.: 37.

After the defendant was arrested and detained, one of the officers returned to 23 Canal Street and spoke to Atherton and the victim. 12/21/18 Tr.: 22. The officer learned that the victim actually rented the apartment and that Atherton lived with her. 12/21/18 Tr.: 23. Atherton’s children also lived in the apartment. 12/21/18 Tr.: 23. Hinsdale Police Chief Todd Faulkner also interviewed the victim later. 12/21/18 Tr.: 23.

From these interviews, the police learned that the victim had an “on, off again, on again” intimate relationship with the defendant. 12/21/18 Tr.: 24. On the evening of December 16, the defendant, the victim, and some other tenants from 23 Canal Street went to the Hinsdale VFW and had some drinks. 12/21/18 Tr.: 24. The defendant had “a couple of Jack and Cokes.” 12/21/18 Tr.: 24. The victim and the defendant returned to apartment 5 and they smoked some marijuana. 12/21/18 Tr.: 25–26.

The defendant “became enraged,” “became upset with her.” 12/21/18 Tr.: 25. The victim attempted to leave to “allow for a cool down,” but the defendant “wouldn’t let her leave and used his body and strength to pin her against the wall.” 12/21/18 Tr.: 25. He pinned her in this way twice. 12/21/18 Tr.: 27. He eventually allowed her to leave, but he continued to argue with her in the living room. 12/21/18 Tr.: 25.

The victim saw one of the children “looking up over the couch at her.” 12/21/18 Tr.: 26. She was then able to leave and went first to a neighbor’s apartment. 12/21/18 Tr.: 26. The victim heard the defendant leave and go outside, but he returned and began banging on the neighbor’s door. 12/21/18 Tr.: 28. His voice was “angry,” filled with “rage,” and he said, “[I]f you don’t open the door, I’m just going to shoot it down.” 12/21/18 Tr.: 28.

The victim was afraid. 12/21/18 Tr.: 28–29. Guns had been “contentious in their relationship” and they had discussed the fact that there were children in the apartment. 12/21/18 Tr.: 29. At some point, Atherton told the police, he had threatened to kill himself. 12/21/18 Tr.: 32. After he threatened to kill himself, the victim heard the defendant run down the stairs and go outside, and shortly thereafter, she heard a gunshot. 12/21/18 Tr.: 29. Upon hearing the gunshot, the victim left the neighbor’s apartment and went back to apartment 5. 12/21/18 Tr.:

30. When she returned to the apartment, Atherton was calling the police. 12/21/18 Tr.: 30.

The defendant came back to apartment 5 and called through the door that he wanted to come inside. 12/21/18 Tr.: 30. The victim refused, saying that the children were inside. 12/21/18 Tr.: 30. The defendant then asked for his leather vest and, when the victim opened the door to give it to him, he “took the door out of her hands” and entered. 12/21/18 Tr.: 30–31. At that point, the victim was on the phone with the dispatcher, but the victim gave the phone to the defendant and the call was disconnected. 12/21/18 Tr.: 34. The defendant continued to argue with the victim, but, shortly thereafter, the police arrived. 12/21/18 Tr.: 32.

ARGUMENT

The trial court found that “the combination of alcohol, domestic violence, threats to kill the victim, to shoot the door down, the discharge of a firearm, the defendant’s combativeness with police, and the fact that he was armed with a 12” knife and two loaded semi-automatic 9MM pistols all warrant detention without bail.” 12/21/18 Order. At the hearing, the court noted that these were “all red flags for potential violence.” 12/21/18 Tr.: 57.

This Court will review the superior court’s decision in its bail order for an unsustainable exercise of discretion. *See Petition of Second Chance Bail Bonds (State v. Castine)*, No. 2017-0557, slip op. at 5 (N.H. Feb. 13, 2019); *State v.*

Tsopas, 166 N.H. 528, 531 (2014). As demonstrated below, the superior court's decision was within its discretion.

The bail statute provides:

The court shall order the pre-arraignment or pretrial release of the person on his or her personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, or cash or corporate surety bail, subject to the condition that the person not commit a crime during the period of his or her release, and subject to such further condition or combination of conditions that the court may require unless the court determines by a preponderance of the evidence that such release will not reasonably assure the appearance of the person as required.

RSA 597:2, III(a) (Supp. 2018). The statute further provides: "A person who the court determines to be a danger to the safety of that person or the public shall be governed by the provisions of paragraph IV, except that such dangerousness determination shall not be based solely on evidence of drug or alcohol addiction or homelessness." RSA 597:2, III(a).

Paragraph IV of the same statute provides: "If a person is charged with any criminal offense, [or] an offense listed in RSA 173-B:1, I ..., the court may order preventive detention without bail ... only if the court determines by clear and convincing evidence that release will endanger the safety of that person or the public." RSA 597:2, IV(a). The statute allows the court to consider conduct as "evidence of posing a danger, including, but not limited to: ... (5) Death threats or threats of possessiveness toward another." RSA 597:2, IV(a)(5).

RSA 173-B:1 defines domestic abuse as the “commission or attempted commission of one or more of the acts described in subparagraphs (a) through (h) by... a current or former sexual or intimate partner, where such conduct is determined to constitute a credible present threat to the petitioner’s safety.” RSA 173-B:1, I (Supp. 2018). Included in the listed acts are “[a]ssault or reckless conduct” and “[c]riminal threatening.” RSA 173-B:1, I(a), (b).

In support of his contention that the trial court erred, the defendant first argues that “the record is silent on the reasons for the argument” between the victim and the defendant. Def. Mot.: 7. He contends that the argument may have been “over some transient concern” and not “a matter of continuing import.” Def. Mot.: 7. He points out that the witness said that the victim reported that she “had never seen [the defendant] act this way” and he concludes that the “behavior was out of character.” Def. Mot.: 7.

This argument, however, does not recognize several facts. First, the defendant was angry enough to follow the victim down the stairs when she fled to a neighbor’s apartment. He fired a pistol in the parking lot and threatened to shoot the door of the neighbor’s apartment. He threatened to kill the victim, threatened to kill himself, and continued his belligerence even after the police had arrested him. It seems unlikely, given the escalating nature of these events, that the argument was over a transient concern.

The defendant also challenges the trial court's consideration of his use of alcohol, contending that there was "no testimony that would permit the court to draw a nexus between alcohol and the offense." Def. Mot.: 8. This, again, does not recognize the sequence of events. The defendant and the victim went, with others, to the VFW hall that evening. The defendant consumed Jack Daniels mixed with Coca-Cola. After his return from the VFW and after he had smoked marijuana and taken PC 26, the defendant became embroiled in an argument in which he assaulted the victim, threatened her and her neighbor, fired a weapon in the parking lot, and demonstrated a total lack of constraint with the police. When he was arrested, he was armed with two firearms and a 12-inch knife with a 6-inch blade. The court properly considered the role that the "Jack and Cokes" played in an evening of escalating violence.

Although the defendant contends that the discharge of the firearm "endangered no one," Def. Mot.: 8, this again minimizes the event. The discharge, according to Atherton, occurred close to his threat of suicide. The discharge also occurred close to his threat to shoot down the neighbor's door. Even as he was being arrested, the defendant continued to be angry and uncooperative. Indeed, the victim told the police that, when she attempted to leave the apartment "for a cool down," 12/21/18 Tr.: 25, the defendant pinned her against the wall. The discharge took place in the parking lot near two apartment buildings. Since the bullet was

never found, it is not clear how close the defendant was to either building, both of which had multiple residences. The fact that the gun discharge did not hurt anyone is not proof that the discharge did not endanger anyone.

In short, the evidence clearly established that the defendant had engaged in “[a]ssault or reckless conduct” and “[c]riminal threatening,” RSA 173-B:1, I(a), (b), and the court properly concluded that the charged and uncharged acts of the defendant placed the victim at risk.

The defendant argues that the court was required to consider “less restrictive alternatives.” Def. Mot.: 9. But he did not explain to the court at the time what those less restrictive alternatives were.

For example, defense counsel told the court that the defendant could return to Hinsdale to live with his wife. 12/21/18 Tr.: 56. But this representation was inconsistent with the testimony at the hearing. At the hearing, the officer recounted that the victim said that the defendant was “staying” with her, but he “wasn’t really living” with her. 12/21/18 Tr.: 24. Instead, according to the victim, the defendant was living in Vernon, Vermont. 12/21/19 Tr.: 24. She made no mention of his wife or of his residence in Hinsdale. Further, although defense counsel had been in touch with her, 12/21/18 Tr.: 56, the defendant’s wife did not appear at the bail hearing. As a result, the record is not clear that residing in Hinsdale was a realistic alternative to detention.

Defense counsel also told the court that there were “bail conditions that [were] appropriate here” and that the defendant “would comply with them,” 12/21/18 Tr.: 56, but except for conditions prohibiting the possession of firearms and the use of alcohol, 12/21/18 Tr.: 57, she never told the court what those conditions would be or how the court could ensure compliance. When the State responded that the defendant was “on the body cam footage making statements about wanting to kill” the victim, 12/21/18 Tr.: 57, the defense offered no response.

This is particularly salient as, on December 17, the court had denied bail at the bail hearing, but acknowledged that the order “might change over time.” 12/17/ 18 Tr.: 11. The court told the defendant, “If circumstances change in the next couple of weeks and there’s more investigation, I’m sure your attorney will file a motion for a bail review.” 12/17/18 Tr.: 11. Four days later, the defense offered the court nothing to reconsider its earlier decision that the defendant needed a “cooling off period.” 12/21/18 Tr.: 58. In contrast, the State had presented the court with evidence that “caused [the court] concern” and constituted “red flags for potential violence.” 12/21/18 Tr.: 57–58. On this record, the court acted within its discretion in continuing to deny bail.

CONCLUSION

WHEREFORE, the State respectfully requests that this Court affirm the superior court's decision denying bail.


Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

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CERTIFICATE OF SERVICE

I, Elizabeth C. Woodcock, hereby certify that I have sent one copy of this opposition to bail to David M. Rothstein, counsel for the defendant through this Court's electronic filing system.

March 19, 2019


Elizabeth C. Woodcock