

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

SEP 10 2010

SUPREME COURT DOCKET NO. 2010-320

AUGUST TERM, 2010

State of Vermont

v.

Wyndham C. Lee

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APPEALED FROM:

Chittenden Superior Court,
Criminal Division

DOCKET NO. 3096-8-10Cncr

Trial Judge: Matthew I. Katz

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

Defendant appeals from the trial court's denial of his motion to amend a condition of release imposed by the court following his arraignment on a charge of reckless or grossly negligent operation of a motor vehicle under 23 V.S.A. § 1091(b). The specific condition at issue stated: "Suzuki is to be placed on blocks, wheels off the ground by today 8/19/10 @ 4pm." The motion claims that the condition at issue is unnecessary to protect the public because there is no evidence that defendant poses any risk of failing to abide by the other condition of release that he not drive any motor vehicle.

Under 13 V.S.A. § 7556(c), a defendant may appeal a condition of release to a single justice of this Court. "Any order so appealed shall be affirmed if it is supported by the proceedings below." *Id.*

The record indicates that at the time of the charged incident, defendant was driving the Suzuki at issue and was allegedly speeding on Interstate 89 at speeds of up to 101 miles per hour. The vehicle was owned by defendant's father but is now owned by him.

The relevant statute in this case is 13 V.S.A. § 7554(a)(2), which gives a judicial officer general authority to protect the public by imposing "the least restrictive" condition or combination of conditions of release described in the statute. Unlike the situation in which a defendant faces conviction of a second or subsequent offense of operating a motor vehicle while under the influence, the Legislature has not created a specific procedure for the immobilization of a motor vehicle operated by a defendant convicted of reckless or grossly negligent operation. See 23 V.S.A. §§ 1213a, 1213b, & 1213c. The authorization, if any, for the condition of release is a general authorization that allows a judicial officer to impose "any other condition found reasonably necessary to protect the public." 23 V.S.A. § 7554(a)(2)(D). In determining appropriate conditions of release, the judicial officer must take into account a variety of factors

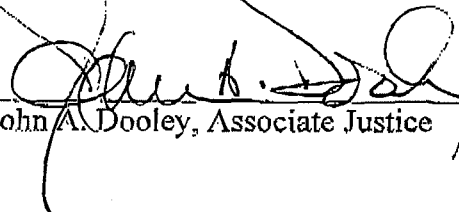
including the offense charged, the weight of the evidence, the defendant's record of convictions, and the defendant's record of appearance at court proceedings.

I conclude that the court's decision in this case exceeds its authority under 23 V.S.A. § 7554(a)(2). While I agree with the trial court's assessment that defendant's alleged manner of driving poses a danger to the public, the statute does not support the court's immobilization of the Suzuki. The court imposed two conditions of release. The first condition of release, that defendant not drive any motor vehicle, is appropriate and sufficient. The additional condition that the Suzuki be immobilized causes the conditions of release to go beyond the "least restrictive" means of protecting the public. 23 V.S.A. § 7554(a)(2). Nothing from the record in this case or from defendant's prior record suggests that defendant is likely to violate the condition that he not operate any vehicle. Therefore, I do not believe that the added condition that his car be immobilized is "reasonably necessary to protect the public." 23 V.S.A. § 7554(a)(2)(D).

I hereby strike the condition of release requiring that the Suzuki be placed on blocks.

Condition 31 is stricken; the remaining condition shall stay in effect.

FOR THE COURT:


John A. Dooley, Associate Justice