

In the Court of Appeals of the State of Alaska

Jeffrey Dyson,

Appellant,

v.

State of Alaska,

Appellee.

)
) Court of Appeals No. **A-13334**
)

Order

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) Date of Order: **January 14, 2019**
)

Trial Court Case # **3AN-18-10279CR**

Before: Chief Judge Mannheimer and Judge Allard

Jeffrey Dyson is charged with second-degree assault for allegedly strangling his wife in October 2018. This is the first time that Dyson has been charged with a crime.

Dyson is currently out of custody on bail conditions that include a \$5,000 appearance bond and 24-hour house arrest on electronic monitoring administered by the Pretrial Enforcement Division, with passes for work, medical appointments, court appearances, and attorney visits. Dyson's bail conditions also require him to remain in Alaska. These conditions were set at Dyson's arraignment, prior to the appointment of counsel to assist him.

Dyson now seeks modification of his bail conditions so that he continue to work as a pilot for Atlas Air Cargo. As part of his duties, Dyson is routinely required to fly cargo planes outside Alaska.

At a December 11, 2018 bail hearing in the superior court, Dyson asked the court to remove the electronic monitoring condition and the “do not depart Alaska” condition. Dyson offered to post additional monetary bail in lieu of electronic monitoring, and he also offered to sign a waiver of extradition.

Dyson’s wife was present at the bail hearing, and she stated that she did not oppose the Dyson’s request to remove the electronic monitoring requirement. However, the judge commented that Dyson’s wife seemed “hesitant” about this matter. In response to the judge’s comment, Dyson’s wife reaffirmed that she did not oppose Dyson’s request, but she questioned whether removal of the electronic monitoring condition was actually necessary for Dyson to continue working as a pilot for the air cargo company.

Dyson’s attorney stated that Dyson really did not need to alter the electronic monitoring condition except for the time that he needed to fly out-of-state. Accordingly, Dyson’s attorney indicated that, if the court removed the electronic monitoring condition while Dyson was flying out-of-state, Dyson would be willing to resume electronic monitoring within 12 hours of his return to Anchorage.

In an attempt to resolve this matter, the judge asked the prosecutor whether the State would oppose the removal of the “do not depart Alaska” requirement if Dyson signed a waiver of extradition. But the prosecutor did not have a chance to reply to the judge’s question, because the defense attorney interrupted.

At this point, the judge declared that he was not sure whether the Pretrial Enforcement Division would be able to repeatedly interrupt and resume electronic monitoring, as Dyson was proposing. The judge asked the defense attorney to check with the Division, to see if the Division was agreeable to the defense attorney’s

proposal, or if there was some other arrangement that the Division was willing to agree to. But instead of agreeing to this course of action, the defense attorney declared that he and his client would simply “take our shot on appeal,” and then he left the bail hearing.

Dyson now appeals the superior court’s decision. But the record shows that the bail hearing ended without the judge issuing a final ruling on Dyson’s alternative proposal of intermittent electronic monitoring or on the deletion of the “do not depart Alaska” requirement. We accordingly find that Dyson’s bail proposal is not yet ripe for review.

Because the superior court has yet to issue a final order on these matters, this appeal is DISMISSED as not ripe.

Dyson should return to the superior court and resume his litigation of these matters. At any new hearing, the superior court is entitled to inquire whether the Pretrial Enforcement Division (or any other electronic monitoring entity) is able to accommodate the intermittent monitoring envisioned by Dyson’s proposal. But the court’s ultimate task is to identify the least restrictive conditions required to reasonably assure the defendant’s presence at future court proceedings and the safety of the victim and the community.

We also direct the superior court to provide clear findings regarding the reasons why the imposed conditions are necessary, and we also suggest that if the judge intends to rely on non-verbal communication that takes place in the courtroom, the judge should describe that non-verbal communication for the record, so that these aspects of the judge’s findings are available for review.

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Entered at the direction of the court.

Clerk of the Appellate Courts

/s/ M. Montgomery

Meredith Montgomery

cc: Court of Appeals Judges
Judge Franciosi
Trial Court Appeals Clerk- Anchorage

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