

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 31, 2017 CASE NUMBER: 2017SC271
Certiorari to the District Court, Pitkin County, 2015CV30044 County Court, Pitkin County, 2014M143	
Petitioner: Jan Hamilton, v. Respondent: The People of the State of Colorado.	Supreme Court Case No: 2017SC271
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the District Court of Pitkin County and after review of the record, briefs, and the judgment of said District Court,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, JULY 31, 2017.

DISTRICT COURT, PITKIN COUNTY, COLORADO Court Address: 506 East Main Street Aspen, CO 81611 (970) 925-7635		DATE FILED: March 3, 2017 CASE NUMBER: 2015CV30044
THE PEOPLE OF THE STATE OF COLORADO Plaintiff(s) vs. JAN HAMILTON Defendants(s)	▲ COURT USE ONLY ▲	
	Case Number: 2015CV30044 Division 5 Courtroom	
ORDER ON APPEAL		

These appeal arises out of an action originally filed in the Pitkin County Court. After Judge Erin Fernandez Ely disqualified herself, the cases procceded before Garfield County Judge Paul Metzger, who presided by designation. The Appeal was reassigned to this Division after Judge Petre retired and Judge Norrdin disqualified herself.

I. FACTUAL BACKGROUND

The relevant facts are straightforward. The appeal relates to an April 2, 2015 decision entered by Judge Metzger after a bench trial in Case No. 14M143 finding Defendant Jan Hamilton guilty of violating a protection order. The count appealed is Count Three.

Chief Judge Boyd authorized a warrant for Ms. Hamilton's arrest on May 22, 2014 after concluding probable cause existed to believe that Ms. Hamilton had committed the crime of harassment. R. at 5. Peter Waanders, an employee of the Aspen Institute, was listed as the victim in the warrant application. R. at 4.

On May 23, 2014 Ms. Hamilton was arrested pursuant to the warrant. She bonded out of the Pitkin County Jail that same day after posting a \$1,000 bond. R. at 16-18.

Included among the documents Ms. Hamilton initialed and signed when bonding out was an "ADVISEMENT OF MANDATORY RESTRAINING ORDER PURSUANT TO C.R.S. 18-1-1001" that named Peter Waanders as the victim. R. at 17. Paragraph 2 of

that Advisement states: "You are restrained from harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victims of the crimes charged."

Paragraph 4 of the Advisement informed Ms. Hamilton that violating the restraining order may result in conviction of a separate offense.

Ms. Hamilton initialed paragraphs 2 and 4, along with all of the other numbered paragraphs contained on the Advisement form. Her witnessed signature appears at the bottom of the form, acknowledging her awareness of the restraining order.

There is no contention that Ms. Hamilton lacks the ability to read or understand English. Indeed, the record is replete with her own lengthy writings, demonstrating her literacy.

On June 6, 2014, the trial court issued a "Mandatory Protection Order Pursuant to § 18-1-1001, C.R.S." wherein it named Ms. Hamilton as the restrained party and Peter Waanders among the protected parties. R. 19-20; TR.6/2/14 at 22-31.

On July 7, 2014, Ms. Hamilton filed what was in effect a complaint against her court appointed attorney, Peter Rachesky. *See* R. 31-40. The grounds stated were, among other things, overbooking by her attorney and discrimination against her due to her lesbian lifestyle.

The trial court permitted Mr. Rachesky to withdraw in light of this filing and conflict between counsel and Ms. Hamilton. During the hearing in which Judge Metzger granted Mr. Rachesky's request to withdraw, the District Attorney orally raised the issue of Ms. Hamilton's competency. Mr. Rachesky, though having been granted permission to withdraw, argued that the People must file such a motion in writing, and raised concerns about Ms. Hamilton being held in custody as a consequence of the competency motion. Judge Metzger expressed concerns about Ms. Hamilton's competency, but concluded "out of an abundance of caution" that the People must file a motion in writing.

No written motion followed and the issue of competency never came up again.

On July 21, 2014, Patrick Genzler, Esq. entered an appearance and began serving as Ms. Hamilton's counsel. *See* R. 84.

On December 16, 2014 the People filed an Amended Summons and Complaint that included Count Three. R. 277. Count Three charged Ms. Hamilton with violation of a protection order under § 18-6-803.5, C.R.S. on the basis of activity that Ms. Hamilton

undertook on June 3, 2014. Specifically, on June 3 she sent a letter to the Trustees of the Aspen Institute attacking Mr. Waanders. This letter was admitted as Exhibit 22 at trial. R. 372. June 3 was after the date of the Advisement she signed at the jail, but before the date of the Protection Order entered by Judge Metzger.

II. DISCUSSION

A. Timing of Protection Order Underlying Count Three

The parties agree that the Court reviews *de novo* Ms. Hamilton's challenge to her conviction under Count Three.

Section 18-6-803.5, C.R.S. (2014) provides:

(1) A person commits the crime of violation of a protection order if, after the person has been personally served with a protection order that identifies the person as a restrained person *or otherwise has acquired from the court or law enforcement personnel actual knowledge of the contents of a protection order that identifies the person as a restrained person*, the person:

(a) Contacts, harasses, injures, intimidates, molests, threatens, or touches the protected person . . . identified in the protection order

(Emphasis added).

Section 18-1-1001 provides:

There is hereby created a mandatory protection order against any person charged with a violation of any of the provisions of this title, which order shall remain in effect from the time that the person is advised of his or her rights at arraignment *or the person's first appearance before the court and informed of such order* until final disposition of the action.

Colo. Rev. Stat. Ann. § 18-1-1001(1) (2014) (Emphasis added).

The parties debate the effect of the foregoing statutory language on this case, but provide no citation to case law or any other authority that sheds light on the issue presented. Ms. Hamilton's argument on appeal is crisp and simple: how could she have violated a protection order on June 3 when the trial court did not issue its protection order until June 6?

There is no dispute that Ms. Hamilton did not appear before the trial court itself prior to the harassment of Mr. Waanders at issue in the violation of protection order charge. However, that is not the end of the analysis, because § 18-1-1001(8)(a) defines “court” to mean “the trial court or a designee of the trial court.”

It is clear that for at least 100 years, county sheriffs in Colorado have administered pretrial release based on directions from courts. *See, e.g., People v. Pollock*, 65 Colo. 275, 277, 176 P. 329, 330 (1918) (citing statute “which authorizes a sheriff to let persons to bail upon their entering into a recognizance with one or more sureties.”) Today, this is a sufficiently well-established practice that the very statute at issue in Count Three makes reference to it in directing how to process a person arrested for violating a protection order. *See* § 18-6-803.5(3)(d), C.R.S. (providing direction to arresting law enforcement agency that “the arrested person may be held or released in accordance with the adopted bonding schedules for the jurisdiction in which the arrest is made”); *see also* § 16-4-103(1), C.R.S. (2016) (noting that “first appearance” for purposes of establishing bond may be before a “person designated by the court to set bond,” and that such person “shall determine the type of bond and conditions of release.”)

Such a procedure has been in place in Pitkin County for many years, and was specifically in place in 2014 pursuant to Administrative Order No. 13-10, which Chief Judge Boyd issued on September 23, 2013.

The Court concludes it may take judicial notice, even on appeal, of Administrative Order 13-10 as its existence is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” namely the Court’s own records. *See* C.R.E. 201(b)-(c); *Harriman v. Cabela’s Inc.*, 371 P.3d 758, 765 (Colo. App. 2016) (citing *Prestige Homes v. Legouffe*, 658 P.2d 850, 852 (Colo. 1983)). A certified copy of Administrative Order 13-10 is appended hereto. “[T]here appears to be little question concerning judicial notice of the occurrence or operable effect of various judicial actions or proceedings as evidenced by court record.” *Doyle v. People*, 343 P.3d 961, 965 (Colo. 2015). The Court will therefore judicially notice the existence, and operable effect, of Administrative Order 13-10.¹

Administrative Order 13-10 puts in place a bond schedule to “be applied by the Sheriffs of Garfield, Pitkin and Rio Blanco Counties with respect to releasing on bond any person arrested within their respective counties.” Footnote 1 of that Administrative Order

¹ Pursuant to C.R.E. 201(e), the parties are entitled to an opportunity to be heard with regard to this judicial notice, and may do so via a petition for rehearing.

specifies that the defendant in domestic violence and stalking cases “must acknowledge protection order.”

The Administrative Order therefore specifically contemplates that the sheriff may administer the sort of protection order Advisement at issue here. Although the Administrative Order does not specifically reference a *requirement* for defendants in cases other than domestic violence and stalking to acknowledge a protection order, it is clear that the Sheriff has the *authority* to administer such an advisement. The Court does not perceive a limitation on the Sheriff’s ability to issue such advisements in other cases where protection orders are required by law, and it is clearly in the interest of both public safety and a defendant’s opportunity to secure early release to recognize such authority. The Court therefore concludes this Administrative Order establishes the Sheriff as the Court’s “designee” for purposes of § 18-1-1001(8)(a).

It is worth emphasizing that the practice of authorizing law enforcement to release persons on bond actually works to the benefit of criminal defendants like Ms. Hamilton who have the capability to post bond right away. By posting bond with the sheriff, they avoid continuing confinement in jail until they can be personally advised of a protection order by a judge or magistrate.

Thus, the Court concludes that Ms. Hamilton’s “first appearance” for purposes of the protection order established by § 18-1-1001 occurred when she met with the court’s designee: the jail personnel who processed her bond paperwork. Since she initialed and signed the protection order Advisement, there is sufficient evidence to support the trial court’s conclusion that Ms. Hamilton “acquired from the court or law enforcement personnel actual knowledge of the contents of a protection order.” The June 3, 2014 letter to the Trustees of the Aspen Institute similarly provides a sufficient evidentiary basis for the trial court’s conclusion that she violated the protection order.

Accordingly, the trial court did not err when it concluded Ms. Hamilton violated the protection order.

D. Competency

With regard to competency, Ms. Hamilton claims *de novo* review applies. The People argue for abuse of discretion and plain error review. The Court agrees with the People.²

Ms. Hamilton did not object to proceeding at trial on grounds of competency. Indeed, she identifies no place in the record where she or her trial counsel raised concerns over her competency.³ To the contrary, it was the People who brought the issue to the court's attention, with particular reference to Ms. Hamilton's ability to cooperate with her counsel. The county court acknowledged the issue and tended to agree with the People's belief that there was a concern. It awaited, however, a motion from the People delineating the concern in greater detail. Such a motion never came, and the issue of competency did not again arise in the case.

Because Ms. Hamilton failed to preserve this issue with an objection below, plain error review applies. *See People v. Wingfield*, 2014 COA 173, ¶¶ 29-30 (Colo. App. 2014).

The record indicates that the competency question arose in connection with conflict between Ms. Hamilton and her court-appointed counsel Peter Rachesky. Once Mr. Genzler took over the case, the indicia of client-attorney conflict subsided.

The record would support a conclusion by the trial court that a change in court-appointed counsel had alleviated the concerns over conflict between Ms. Hamilton and Mr. Rachesky that the People had previously suggested may have resulted from concerns about competency. Competency is generally raised by defense counsel, who is usually in the best position to determine if it is an issue. The trial court similarly was in a position to evaluate whether competency remained an issue as the case went forward, but it did not raise those concerns after the change in counsel. This record does not support reversing for plain error or abuse of discretion.

² The issue raised here is essentially identical to the competency arguments presented by Ms. Hamilton to this Division in 15CV30042 and 15CV30043. The Court in those cases rejected the competency arguments, and the Supreme Court denied certiorari to review those determinations. The Court concludes the same reasoning applies here.

³ If anything, Mr. Rachesky's comments on Ms. Hamilton's behalf indicated a belief that another competency evaluation (she had apparently been evaluated in connection with prior cases) would prejudice Ms. Hamilton by subjecting her to confinement during the evaluation process.

DISTRICT COURT, PITKIN COUNTY, COLORADO
The People of the State of Colorado Vs. Jan Hamilton
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ORDER ON APPEAL

III. CONCLUSION

Accordingly, the Court AFFIRMS the judgment of the County Court.

BY THE COURT


Christopher G. Seldin
District Court Judge

DISTRICT COURT 9 TH JUDICIAL DISTRICT, COLORADO Garfield County Courthouse 109 8 th Street, Suite 104, Glenwood Springs, CO 81602 Phone Number: (970) 945-5075	
ADMINISTRATIVE ORDER	▲ COURT USE ONLY ▲ Administrative Order 13-10
ADMINISTRATIVE ORDER ON BOND SCHEDULE	

Unless superseded by a court order, the following bond schedule shall be applied by the Sheriff's of Garfield, Pitkin and Rio Blanco Counties with respect to releasing on bond any person arrested within their respective counties.

HOLD DEFENDANT WITHOUT BOND UNTIL DEFENDANT SEES A JUDGE OR MAGISTRATE

Class 1 felony

Sex Assault as Class 2, 3, 4 or 5 felony

Domestic Violence Offenses or Stalking¹

Fugitive From Other State²

CAVOP, if defendant's probation was transferred to another state³

NOTE: For an offense to be a "drug felony", a "drug misdemeanor" or a "drug petty offense," the offense must be committed or allegedly committed on or after October 1, 2013. For earlier offense dates, the scheduled bond amount shall be the amount for the "class" of felony, misdemeanor or petty offense charged as set forth below. The reference to a "class" of offense applies to offenses not statutorily defined as a "drug" offense.

<u>FELONIES</u>	<u>SCHEDULED BOND AMOUNT</u>
Class 2 and Drug Felony 1	\$25,000
Class 3 and Drug Felony 2	\$10,000
Class 4 and Drug Felony 3	\$ 5,000
Class 5, Class 6 and Drug Felony 4	\$ 2,500
Unclassified	\$ 2,500

¹ See C.R.S. §16-4-105(4) and 18-1-1001(5). Defendant must acknowledge protection order.

² See C.R.S. § 16-19-117.

³ See C.R.S. § 16-19-117.

Administrative Order 13-10
Bond Schedule

<u>MISDEMEANORS</u>	<u>SCHEDULED BOND AMOUNT</u>
Class 1 and Drug Misd. 1	\$1,000
Class 2 and Drug Misd. 2	\$ 750 cash or \$1,000 surety
Class 3	\$ 250 cash or \$1,000 surety
Unclassified	\$ 250 cash or \$1,000 surety
DUI / DWAI	\$1,000 ⁴
DUR-Alcohol Related	\$1,000 ⁵

<u>PEITY OFFENSES</u>	<u>SCHEDULED BOND AMOUNT</u>
Class 1	\$ 250 cash or \$1,000 surety
Class 2 and Drug Petty Offense	\$ 50 cash or \$1,000 surety

For the Drug Petty Offense of possession, a defendant not being arrested on any other charges shall be released on a written summons and promise to appear so long as the defendant signs the promise to appear.

<u>TRAFFIC OFFENSES</u>	<u>SCHEDULED BOND AMOUNT</u>
Class 1	\$ 750 cash or \$1,000 surety
Class 2	\$ 250 cash or \$1,000 surety
Class A	\$ 75 cash or \$1,000 surety
Class B	\$ 75 cash or \$1,000 surety
No Proof of Insurance	\$ 750 cash or \$1,000 surety

All bonds are cash or surety bonds unless otherwise indicated. Property bonds shall not be accepted unless previously approved in writing by the court.

Whether or not a bond previously has been posted under the provisions of this schedule, whenever the issue of bond is considered or reconsidered at an appearance of a defendant before a court of record, the Court shall determine the type of bond and conditions of release according to the standards and appropriate factors required by § 16-4-101, C.R.S., et seq.

⁴ If defendant has one or more prior convictions for DUI/DWAI or their equivalent from another state, the bond shall have attached to it the conditions set forth on the attached Exhibit A. See C.R.S. §16-4-105(6)(a). In addition, defendant charged with DUI/DWAI may not attend bail hearing until sober and "shall be held in custody until the person may safely attend the bail hearing." C.R.S. § 16-4-104(4).

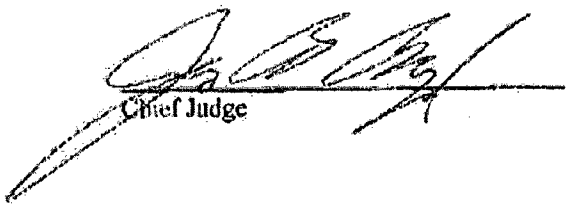
⁵ Bond must include the following condition: No Driving a motor vehicle while license is under restraint. C.R.S. § 16-4-105(5).

Administrative Order 13-10
Bond Schedule

This Administrative Order supersedes all previous Administrative Orders or Rules regarding pretrial release and bond schedules, except for Pitkin County Court Judge Ely's Administrative Orders that address bond.

Done on September 23, 2013.

BY THE COURT



Chief Judge

EXHIBIT A

**BOND CONDITIONS THAT MUST BE IMPOSED ON DEFENDANTS ARRESTED FOR
DUI OR DWAI AND THE DEFENDANT HAS ONE OR MORE PREVIOUS CONVICTIONS
FOR DUI, DWAI OR ITS EQUIVALENT FROM ANOTHER STATE¹**

Defendant shall put his or her initials next to each condition to acknowledge that defendant is aware of these conditions of bond. This form shall be attached to the bond.

____ YOU MAY NOT CONSUME ALCOHOL OR ILLEGAL DRUGS

____ YOU MUST PARTICIPATE IN A PROGRAM THAT MONITORS YOU FOR
THE USE OF ALCOHOL OR ILLEGAL DRUGS

____ Within 5 business days from your release from jail, you must enroll in a drug and alcohol monitoring program. The Clerk's Office in the County Courthouse has a list of businesses that provide drug and alcohol monitoring programs.

____ You must pay for your participation in the drug and alcohol monitoring program.

____ You shall maintain records of your enrollment in a drug and alcohol monitoring program and maintain records of your testing results. You shall produce those records upon request of the court.

NOTICE: You have a right to ask the Court to eliminate these conditions of your bond. To do so, you must file a request **IN WRITING** asking that the Court eliminate these conditions and also asking the Court to set a hearing on your request.

**Additional material
from this filing is
available in the
Clerk's Office.**