

DISTRICT COURT 125 North Spruce St. Grand Junction, Mesa County, Colorado	DATE FILED: November 7, 2017 9:53 PM CASE NUMBER: 2017CR1974
THE PEOPLE OF THE STATE OF COLORADO, v. DAVID LAWRENCE COX, Defendant.	COURT USE ONLY
Attorney or Party Without Attorney Name: Address: Phone Number: FAX Number: Atty. Reg. #	Case Number: 17 CR 1974 Division: 10 Courtroom: Flynn
<p style="text-align: center;">ORDER GRANTING DEFENDANT'S MOTION TO ALLOW HIM TO HAVE UNFETTERED CONTACT WITH HIS CHILDREN</p>	

During the hearing held this morning, the Court heard arguments regarding Defendant's pending motion to modify the protection order that currently prohibits Defendant from having all but telephone contact with his two young children. Having considered the parties' positions, I now find and order as follows:

1. Upon review of the Court's file, I conclude that not only did the county court issue a protection order which limits Defendant's ability to have contact with his children (it restricts his contact to telephone contact only), but the same restriction was put in place as a condition of Defendant's bond. Considering the nature of Defendant's request, the Court considers Defendant's motion to also be a motion to modify bond as to do otherwise would render Defendant's motion meaningless.
2. The right to parent one's children is a fundamental liberty interest. The right to raise one's own children is "essential," *Stanley v. Illinois*, 405 U.S.

645, 651 (1972), and “far more precious than any property right,” *Santosky v. Kramer*, 455 U.S. 745, 758–59 (1982). Thus, Defendant unquestionably has due process rights stemming from his fundamental liberty interest in the care, custody, and control of his children. Subsequently, the Supreme Court reaffirmed these fundamental parental rights in *Troxel v. Granville*, 530 U.S. 57 (2000).

3. *Troxel* and *Santosky* give form to the long-standing tenet that parents have a fundamental liberty interest in the care, custody, and control of their children, which courts must presume to be valid. *Troxel* creates a presumption in favor of natural parents and adds that there must be special factors that justify the state interfering with parental rights, while *Santosky* holds that the state must overcome this presumption and find those special factors by clear and convincing evidence. Thus, taken together, *Santosky* and *Troxel* give direction to courts when entering orders that affect parental rights. The cases state that courts may interfere with parents’ liberty interests in their children only if there is **clear and convincing evidence of special factors** that justify doing so.
4. On May 11, 2013 Governor Hickenlooper signed into law H.B. 13-1236 (C.R.S. 16-4-103), which substantially alters the way bail is administered by judges in Colorado pursuant to the guidelines established by the Colorado Commission on Criminal and Juvenile Justice. Pursuant to C.R.S. 16-4-103, judges **must use** an empirically developed risk assessment instrument that classifies a person based upon predicted levels of risk of pretrial failure.
5. Per the Pretrial Services Report filed on October 16, 2017, Defendant has a CPAT (an empirically developed risk assessment instrument) risk score consistent with Mesa County defendants whose average public safety success rate is 80%. Defendant is in the second best category (the only one better is a 91% public safety rate). Addition-ally, Defendant has no prior felony convictions and his last misdemeanor conviction (which was for driving under restraint) is from 2003.
6. Not only does Defendant have a fundamental liberty interest in the care, custody, and control of his children, but he is also presumed to be innocent of the charges. Furthermore, during the hearing defense counsel and Defendant provided significant exculpatory information that the People did not dispute, including that Defendant had a license to produce hemp products, that alleged items of contraband were hemp, that Defendant is a caregiver under

Colorado's medical marijuana laws, and that Defendant had no access to a locked area where alleged extraction equipment was found. Furthermore, law enforcement returned the alleged extraction equipment to another person whom they had determined was the owner of the alleged extraction equipment.

7. Defendant's firearms have been seized by law enforcement and he is otherwise currently, as part of the protection order and as a condition of bond, prohibited from possessing firearms and ammunition.
8. Defendant has complied with the conditions of the protection order, as well as his bond, for several weeks.
9. Defendant and the children's mother have a custody case and issues involving restrictions on parenting time and the parties' liberty interests with regard to this issue could properly be addressed in that case, including, if necessary, on an emergency basis.
10. The People have not met their burden of showing by clear and convincing evidence that it is appropriate to interfere in Defendant's liberty interests with regard to parenting his children and therefore the Court must vacate the orders that are currently in place.

For these reasons, the condition of the protection order and Defendant's bond that prohibit Defendant from having contact with his children are therefore ordered vacated.

SO ORDERED this 7th day of November, 2017.

BY THE COURT:

Brian J. Flynn
District Court Judge 