[Cite as *Lane v. Brewster*, 2012-Ohio-1290.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

CHARLENE LANE,	:	
Petitioner-Appellee,	:	CASE NO. CA2011-08-060
	:	O P I N I O N
- vs -		3/26/2012
	:	
JARROD L. BREWSTER,	:	
Respondent-Appellant.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2010 CVH 1780

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POWELL, P.J.

{¶ 1} Respondent-appellant, Jarrod Brewster, appeals a decision of the Clermont County Court of Common Pleas granting a civil stalking protection order (CPO) prohibiting him from contacting petitioner-appellee, Charlene Lane.[1]

{¶ 2} On August 30, 2010, Lane filed a petition for a CPO for herself, her ex-

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this appeal from the accelerated calendar.

husband, her daughter, and her grandson against Brewster. The petition stated, among other things, that Brewster drove by Lane's house on several occasions, and once used his car to block Lane's path as she was driving, causing her to call the police. Two days later, a magistrate granted a temporary CPO and scheduled a full hearing on the matter for September 13, 2010.

{¶ 3} During the full hearing, Lane presented five witnesses who described the incidents that prompted her to request the CPO. First, Lane and her friend, Susana Yingling, testified that in April 2010, Brewster entered Lane's apartment uninvited and "screamed" at his wife, Marie, who was living with Lane at the time. Yingling testified Brewster was "very volatile" for 15 to 20 minutes, which made Lane "extremely distraught" and "very afraid, very, very afraid." Lane testified that during the incident, she stood poised with a phone in her hand and intended to call 911 as soon as Brewster left.

{¶ 4} Next, in June 2010, Brewster made several phone calls to Lane, calling her a "whore" and claiming she owed him money, which he would get "one way or the other." Lane testified she took these statements as threats.

{¶ 5} The next incident occurred on August 27, 2010, at approximately 4:15 p.m., when Brewster pulled his car in front of Lane as she was leaving Home Depot. According to Lane, Brewster crossed the yellow line on Independence Drive and blocked her path with his white work van. Lane testified she was fearful and was "on a mission to get away from him." When Brewster opened his car door, Lane managed to drive around him and continue home. Lane indicated this was not the first time she had seen Brewster in the Home Depot parking lot, which was across from her apartment building. Margie Render, who was following Lane at the time, witnessed a white van stop in the middle of the road, but was too far away to identify the driver. However, Lane later told Render that Brewster was driving the van.

{¶ 6} During Lane's case-in-chief, Brewster, acting pro se, made several objections to

the testimony, but did not present any witnesses or evidence on his behalf.

{¶ 7} After hearing the evidence, the magistrate granted a CPO requiring Brewster to remain 500 or more feet away from Lane and her family. The magistrate made the terms of the CPO effective for five years.

{¶ 8} On September 23, 2010, Brewster filed pro se objections to the magistrate's decision. He also filed a handwritten document asking to have his "day in court," arguing the evidence against him was "all lies." On January 7, 2011, the trial court agreed to hold a partial rehearing to hear Brewster's case-in-chief. On June 15, 2011, with the assistance of appointed counsel, Brewster called four witnesses to testify on his behalf.

{¶ 9} First, Brewster's wife, Marie, testified that in April 2010, Brewster was allowed into Lane's apartment, at which time they went into Marie's bedroom and had a "normal conversation." According to Marie, Lane even asked Brewster to stay and watch a movie with them. Marie also testified that on August 27, 2010, the date of the Home Depot incident, Brewster was getting a tattoo. However, on cross-examination, Marie admitted she could not verify Brewster's whereabouts at 4:15 p.m., the alleged time of the incident. Marie also testified that any white van used to harass Lane that day did not belong to Brewster, as he was driving her blue SUV while his van was in the repair shop.

{¶ 10} Brewster's cousin, Clarence Greene, also testified Brewster was driving Marie's blue SUV on August 27. Greene testified he was with Brewster from 8:30 a.m. until 2:00 p.m., when Brewster left to get a tattoo. That said, Green could not verify Brewster's whereabouts or what he was driving after 2:00 p.m., and admitted he only heard Brewster's side of the story as to what happened at 4:15 p.m.

{¶ 11} David Crawford, Brewster's tattoo artist, testified that from 2:00 p.m. until 6:30 p.m. on August 27, Brewster was getting a tattoo. In support of his testimony, Crawford offered a consent form that Brewster purportedly signed before getting started. Oddly,

however, the tattoo described on the form did not match the one Brewster claimed to have received that day. As to Brewster's vehicle, Crawford testified Brewster did not drive his white work van to the tattoo shop, but could not specifically recall whether he saw Marie's blue SUV.

{¶ 12} Lastly, Brewster presented the testimony of his mother, Bobbie. However, Bobbie only testified to Brewster's whereabouts after 6:00 p.m. on August 27, two hours after the Home Depot incident allegedly occurred, and could not remember what vehicle Brewster was driving.

{¶ 13} At the close of the evidence, the trial court upheld the magistrate's decision, but modified the CPO to last only three years. In so holding, the court found Brewster's witnesses could not testify with any certainty as to Brewster's activity on the dates alleged in the petition. While the court declined to determine whether Brewster's witnesses were "covering" for him, it found their credibility was limited, at best.

{¶ 14} Brewster timely appeals, raising four assignments of error for review.

{¶ 15} Assignment of Error No. 1:

{¶ 16} THE TRIAL COURT ERRED BY APPLYING AN INCORRECT STANDARD OF LAW[.]

{¶ 17} In his first assignment of error, Brewster argues the trial court applied an incorrect standard of law in determining whether his actions constituted menacing by stalking.

{¶ 18} Issuance of a protection order pursuant to R.C. 2903.214 requires the petitioner to establish that the respondent engaged in conduct constituting menacing by stalking. R.C. 2903.214(C)(1). Menacing by stalking is defined as "engaging in a pattern of conduct" that knowingly "cause[s] another to believe that the offender will cause serious physical harm to the other person or cause mental distress to the other person." R.C. 2903.211(A)(1). A preponderance of the evidence standard applies to the granting of a

stalking civil protection order. *Henry v. Coogan*, 12th Dist. No. CA2002-05-042, 2002-Ohio-6519, ¶ 15.

{¶ 19} After hearing the evidence, the trial court found Brewster engaged in a pattern of conduct causing Lane to suffer "some fear of physical harm, and more importantly some fear of mental distress." According to Brewster, however, it is not enough that *Lane* suffered mental distress or fear of physical harm. Brewster argues the trial court was required to determine whether a reasonable person in the "same or similar circumstances" would suffer mental distress or fear of physical harm. We disagree.

{¶ 20} The plain language of the statute simply refers to conduct that will affect "the other person." R.C. 2903.211(A)(1). This language does not require a court to determine the respondent's effect on the "reasonable" person, only those specifically involved. Brewster provides no legal support that would convince us otherwise. The cases he does cite are distinguishable and do not stand for the proposition that he contends.

{¶ 21} For example, in *Caban v. Ransome*, 7th Dist. No. 08 MA 36, 2009-Ohio-1034, the sole issue was whether mental distress must, in fact, be caused, or whether a *belief* that it will be caused is sufficient to prove menacing by stalking. Further, any discussion of mental distress was focused on petitioner's fear, not a reasonable person's. Brewster's reliance on *State v. Werfel*, 11th Dist. No. 2006-L-163, 2007-Ohio-5198, is similarly misplaced. In *Werfel*, the appellate court addressed an entirely different element of the statute, finding respondent "knowingly" caused petitioner mental distress, as his actions would clearly have distressed any reasonable person. *See* R.C. 2903.211(A)(1).

{¶ 22} Brewster also misconstrues the holding in *Needhamer v. Carlozzi*, 11th Dist. No. 2010-L-015, 2010-Ohio-4562. In that case, respondent, not the court, attempted to employ a reasonable person test to determine whether mental distress occurred. Lastly, as Lane correctly points out, *Lemley v. Kirk*, 10th Dist. No. 06AP-890, 2007-Ohio-1016, quotes a

magistrate's finding on a point not ultimately addressed, let alone adopted, by the court of appeals.

{¶ 23} We find the trial court was not required to use an objective "reasonable person" test in determining whether Brewster's conduct caused mental distress or fear of physical harm under R.C. 2903.211(A)(1). *See Short v. Walker*, 12th Dist. No. CA2000-08-009, 2001 WL 32808, * 3 (Jan. 16, 2001).

{¶ 24} Brewster's first assignment of error is overruled.

{¶ 25} Assignment of Error No. 2:

{¶ 26} THE TRIAL COURT ERRED BY ALLOWING THE SEPTEMBER 2010 HEARING TO MOVE FORWARD WITHOUT INFORMING BREWSTER OF HIS RIGHT TO OBTAIN A CONTINUANCE TO HIRE AN ATTORNEY[.]

{¶ 27} Brewster next argues the trial court erred in holding the full CPO hearing without first offering him a continuance to obtain an attorney. Although the trial court later granted Brewster a continuance, he argues the "damage had [already] been done," as he lacked counsel to make objections during the full hearing on Lane's petition.

{¶ 28} R.C. 2903.214(D)(2)(a) addresses full hearings and continuances as follows:

> If the court, after an ex parte hearing, issues a protection order described in division (E) of this section, the court shall schedule a full hearing for a date that is within ten court days after the ex parte hearing. The court shall give the respondent notice of, and an opportunity to be heard at, the full hearing. The court shall hold the full hearing on the date scheduled under this division unless the court grants a continuance of the hearing in accordance with this division. Under any of the following circumstances or for any of the following reasons, the court *may* grant a continuance of the full hearing to a reasonable time determined by the court:
> * * *
> (iii) The continuance is needed to allow a party to obtain counsel. (Emphasis added.)

{¶ 29} Here, Brewster argues that prior to the full CPO hearing, the trial court was

required to offer him a continuance to obtain an attorney. However, R.C. 2903.214(D)(2)(a) clearly maintains the court's discretion regarding continuances, and we are aware of no authority for the apparent proposition that the court must inform the respondent of this matter in every civil protection proceeding. Indeed, the majority of Ohio cases find the respondent must request a continuance, and the trial court is not required to inform him of this option. *See Evans v. Evans*, 10th Dist. No. 08AP-398, 2008-Ohio-5695, ¶ 9 ("respondent bears the burden of * * * seeking a continuance"); *Luttrell v. Younce*, 2nd Dist. No. 09-CA-45, 2011-Ohio-4458, ¶ 30-31 ("a party must request a continuance of the full hearing if he or she wants additional time in order to obtain counsel"); *Dupal v. Sommer*, 5th Dist. No. 2009CA00032, 2009-Ohio-5791, ¶ 19 ("[i]t is unfortunate that some parties [proceed] pro se, but the trial court * * * is not there to try their case or to exercise their rights for them"); *Oddo v. Spencer*, 5th Dist. No. 2008 CA 00215, 2009-Ohio-4320, ¶ 16 (magistrate at full CPO hearing was not required to inquire about respondent's readiness to proceed or his "interest in obtaining an attorney"). *See also Walker v. Walker*, 5th Dist. No. 2010CA00311, 2011-Ohio-3933, ¶ 16.

{¶ 30} Further, the sole case Brewster cites to support his position is inapposite. *See Lindsay v. Jackson*, 1st Dist. Nos. C-990786, A-9905306, 2000 WL 1268810 (Sept. 8, 2000). In *Lindsay*, the First District Court of Appeals reversed the issuance of a CPO upon finding the trial court denied respondent due process of law when it failed to inform him that he could: (1) receive a continuance, (2) cross-examine witnesses, and (3) present his own witnesses. The court explained that under the very specific circumstances of that case, the court denied respondent any "opportunity to fairly present his side of the case and to demonstrate the impropriety of the step asked to be taken." *Id.* at * 4.

{¶ 31} Like *Lindsay*, we recognize that procedural due process requires notice and an opportunity to be heard. *See, e.g., Ohio Valley Radiology Assoc., Inc. v. Ohio Valley Hosp. Assn.*, 28 Ohio St.3d 118, 125 (1986); *Solon v. Geiger*, 8th Dist. No. 87716, 2006-Ohio-6032

(respondent was denied due process when he lacked opportunity to cross-examine witnesses and present rebuttal evidence). In defining the scope of an opportunity to be heard with regard to a stalking CPO, Ohio courts have stated a "full hearing" is "one where ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety of the step asked to be taken." *Geiger* at ¶ 13. When the issuance of a CPO is contested, "the court must, at the very least, allow for the presentation of evidence, both direct and rebuttal, as well as arguments." *Id.* at ¶ 14.

{¶ 32} Here, we find Brewster had an open and meaningful opportunity to be heard consistent with due process. While the trial court did not specifically inquire as to Brewster's preference on counsel, it indisputably gave him time to request a continuance when it asked, "Mr. Brewster, are you prepared to go forward today?" When Brewster responded in the affirmative, the hearing commenced as scheduled. During Lane's case-in-chief, Brewster was also allowed to cross-examine the witnesses and raise various objections, which the court graciously entertained. Moreover, when Lane rested, the following exchange took place:

> THE COURT: Mr. Brewster, did you want to testify or did you have any witnesses?
> MR. BREWSTER: No.
> THE COURT: So you rest at this time?
> MR. BREWSTER: Yes.

{¶ 33} The court also permitted Brewster to make a closing argument. Under these circumstances, we fail to see how the trial court's failure to unilaterally suggest a continuance for an attorney raised due process concerns or was otherwise problematic.

{¶ 34} Further, "[w]ith respect to any error assigned, it must be shown that the complaining party was prejudiced by the error involved." *Younce*, 2011-Ohio-4458 at ¶ 35. Even if we were to theoretically accept Brewster's argument, any alleged prejudice was

rendered harmless when the trial court reopened the record to hear Brewster's case-in-chief in June 2011.

{¶ 35} For the foregoing reasons, Brewster's second assignment of error is overruled.

{¶ 36} Assignment of Error No. 3:

{¶ 37} THE TRIAL COURT ERRED BY GRANTING LANE'S REQUEST FOR A CIVIL PROTECTION ORDER BASED ON A PETITION THAT FAILED TO COMPLY WITH R.C. 2903.211 AND R.C. 2903.214[.]

{¶ 38} In his third assignment of error, Brewster presents two arguments for review. Initially, he claims the trial court erroneously granted the CPO based on a faulty petition.

{¶ 39} Pursuant to R.C. 2903.214(C), a petition for a CPO must state:

> (1) An allegation that the respondent is eighteen years of age or older and engaged in a violation of section 2903.211 of the Revised Code against the person to be protected by the protection order * * * including a description of the nature and extent of the violation; [and]
> * * *
> (3) A request for relief * * *.

{¶ 40} In her petition, Lane sought protection of herself and three others, alleging Brewster: (1) drove by her house in his work van on several occasions, (2) "removed tags off car" on July 6, 2010, and (3) used his vehicle to block Lane's path in the roadway on August 27, 2010, prompting her to call the police.

{¶ 41} Brewster claims that as described, these allegations did not constitute violations of the statute, thus the trial court was precluded from issuing the CPO. This argument is akin to a Civ.R. 12(B)(6) motion, in that Brewster essentially argues the petition failed to state a claim upon which relief, i.e., the CPO, could be granted.

{¶ 42} Upon review, we find the petition, on its face, sufficiently described at least two instances of Brewster's behavior that, if believed, would warrant the issuance of the CPO. R.C. 2903.211(D)(1) ("pattern of conduct" requires only "two or more actions or incidents

closely related in time"). *See also Coogan*, 2002-Ohio-6519 at ¶ 15. Moreover, these were not "broad" allegations, as Brewster claims. The petition provided context for the encounters, including specific dates and locations, and even described Lane's fear-driven response to some of Brewster's behavior. Based on the foregoing, we find Lane's petition clearly met the minimal requirements of R.C. 2903.214(C), and we reject Brewster's first argument. *See Jenkins v. May*, 5th Dist. No. 08COA024, 2009-Ohio-1388, ¶ 34.

{¶ 43} Brewster next argues the trial court erroneously permitted Lane to present evidence on incidents not pled in the petition and that he was prejudiced by this decision. We disagree.

{¶ 44} Although the pleadings did not precisely define each and every instance of stalking alleged against Brewster, they were sufficient to inform him that he was alleged to have engaged in a pattern of conduct that amounted to the stalking of Lane and her family. As such, Lane was entitled to offer evidence to further describe her allegations, and the trial court did not err in relying on these incidents as a basis for finding that Brewster's conduct constituted menacing by stalking. *See Coogan*, 2002-Ohio-6519 at ¶ 10-13. Brewster's claim of prejudice is even less convincing when we consider the fact that the court reopened the record to hear his case-in-chief in June 2011. Brewster was appointed counsel in November 2010, thus he had seven months to prepare a defense to Lane's additional allegations.

{¶ 45} In sum, we have no reason to reverse on these issues. Even if we were to apply the doctrine of plain error, as Brewster suggests, this is not an "extremely rare" case requiring reversal to prevent a "manifest miscarriage of justice * * *." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997). *See also Palo v. Palo*, 11th Dist. Nos. 2003-A-0049, 2003-A-0058, 2004-Ohio-5638, ¶ 20. As we have said, not only did the petition sufficiently inform Brewster of the alleged conduct, but he was also given a rare second opportunity to refute

the evidence during the partial rehearing on the matter.

{¶ 46} Brewster's third assignment of error is overruled.

{¶ 47} Assignment of Error No. 4:

{¶ 48} THE TRIAL COURT ERRED BY ISSUING THE CPO ABSENT SUFFICIENT EVIDENCE IN SUPPORT[.]

{¶ 49} In his final assignment of error, Brewster challenges the sufficiency of the evidence used to support the CPO.

{¶ 50} As stated earlier, issuance of a protection order pursuant to R.C. 2903.214 requires the petitioner to establish, by a preponderance of the evidence, that the respondent engaged in conduct constituting menacing by stalking. R.C. 2903.214(C)(1). *See Coogan*, 2002-Ohio-6519 at ¶ 15. Menacing by stalking is defined as "engaging in a pattern of conduct" that knowingly "cause[s] another to believe that the offender will cause serious physical harm to the other person or cause mental distress to the other person." R.C. 2903.211(A)(1).

{¶ 51} Brewster argues the evidence was insufficient to show: (1) that he engaged in a "pattern of conduct," and (2) that he knowingly caused Lane to suffer mental distress or believe she would be physically harmed. We disagree.

Pattern of Conduct

{¶ 52} A pattern of conduct requires only two or more actions closely related in time. R.C. 2903.211(D)(1). During the hearing before the magistrate, Lane provided evidence that two, perhaps three threatening incidents occurred between April 2010 and August 2010.

{¶ 53} First, Lane testified that in April 2010, Brewster entered her apartment uninvited and "screamed" at his wife, Marie, in a nearby room. Susana Yingling, who also witnessed the incident, indicated Lane was visibly frightened and was prepared to dial 911 when Brewster left. Thereafter, in June 2010, Brewster made several phone calls to Lane,

calling her a "whore" and vowing to get his money "one way or the other." Lane testified she took these statements as threats to her safety. Lastly, Lane presented evidence that on August 27, 2010, she was driving on Independence Drive when Brewster came across the yellow line in his vehicle and blocked her path. Brewster made eye contact with Lane as he opened his car door, at which point Lane was able to drive into a nearby parking lot and get away.

{¶ 54} Despite this evidence, Brewster claims he reasonably explained his conduct during his case-in-chief. Specifically, he points to Marie's testimony that the conversation in Lane's apartment in April 2010 was calm and nonthreatening. He further claims he presented an "air tight" alibi for August 27, 2010, when he was getting a tattoo. Lastly, Brewster argues the phone calls in June 2010 could not be considered as part of a pattern of conduct because they were not "face-to-face" encounters.

{¶ 55} In cases such as this, it is not unusual for the court to hear conflicting testimony from two different parties. *See Davis v. DiNunzio*, 11th Dist. No. 2004-L-106, 2005-Ohio-2883, ¶ 43. While we acknowledge Brewster's innocent explanations, it was up to the trial court to determine the weight and credibility to afford Brewster's version of the events versus Lane's version. *See Coleridge v. Tomsho*, 5th Dist. No. 2002CA00280, 2003-Ohio-650, ¶ 9. *See also In re S.C.T.*, 12th Dist. No. CA2004-04-095, 2005-Ohio-2498, ¶ 24 ("[a] trier of fact is free to believe all, part, or none of the testimony of each witness"). Appellate courts typically defer to trial courts on issues of weight and credibility because, as the trier of fact, the trial court is better able "to view the witnesses and to observe their demeanor, gestures, and voice inflections and then to use those observations in weighing credibility." *Smith v. Wunsch*, 162 Ohio App.3d 21, 2005-Ohio-3498, ¶ 22 (4th Dist.).

{¶ 56} With respect to the credibility of Brewster's alibi witnesses, the trial court made the following statements:

> THE COURT: They all had some belief that Mr. Brewster was not where he was alleged to have been by the findings of the magistrate, but upon cross examination it was clear, Mr. Brewster, that they were not your babysitters, and that they clearly didn't know where you were at all the times that are alleged in this petition. So I'll say for the record that their credibility in this matter was limited. * * * [W]hat was clear from their testimony was they really didn't know everything that went on in this case, and they were incapable of testifying credibly that you couldn't have been anywhere or done anything that was brought up in the original petition * * *.

{¶ 57} Upon review, we decline to substitute our judgment for that of the trial court. As the court noted, the majority of Brewster's witnesses could not personally account for Brewster's whereabouts at the time of the incident on August 27. Instead, it was clear that three out of the four witnesses relied solely on Brewster's statement that he was getting a tattoo.

{¶ 58} The same goes for Brewster's evidence that he and his wife, Marie, had a calm conversation in Lane's apartment in April 2010, rather than a "blowup" that caused Lane mental distress. Again, the trial court was in the best position to view the witnesses and observe their demeanor, and it clearly chose to believe Lane's witnesses over Brewster's. This assessment is well within the trier of fact's province, and we find no error in that regard.

{¶ 59} Finally, we reject Brewster's contention that the phone calls he made in June 2010 cannot be considered as part of a pattern of conduct because they were not "face-to-face." When looking at a pattern of conduct, the court "must take into consideration everything; i.e., the forcible entries, the *phone calls*, the thinly veiled threats, and the face-to-face meetings between the parties," even if some of respondent's actions comprising this behavior, "considered in isolation, might not appear to be particularly threatening." (Emphasis added.) *Tuuri v. Snyder*, 11th Dist. No. 2000-G-2325, 2002 WL 818427, * 3 (Apr. 30, 2002). *See also Van Vorce v. Van Vorce*, 3rd. Dist. No. 2-04-11, 2004-Ohio-5646 (pattern of menacing conduct included calling petitioner on the phone). Accordingly, we find

the trial court was entitled to consider the phone calls in determining whether Brewster had engaged in a "pattern of conduct."

{¶ 60} Given the evidence before the court, we find Lane produced evidence that was sufficient to establish a "pattern of conduct" for the purposes of R.C. 2903.211. Thus, we reject Brewster's first argument.

Mental Distress

{¶ 61} Brewster also argues there was insufficient evidence to show Lane suffered "mental distress" as a result of his behavior. Again, we disagree.

{¶ 62} Under R.C. 2903.211(D)(2), "mental distress" is defined as:

> (a) Any mental illness or condition that involves some temporary substantial incapacity;
> (b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

{¶ 63} We find the evidence presented was sufficient to establish that Brewster's actions caused Lane mental distress, as well as fear of physical harm. *Walker*, 2001 WL 32808.

{¶ 64} First, it should be noted that R.C. 2903.211(D)(2)(b) does not require the prosecution to prove that the victim actually received treatment for mental distress. However, in this case, Lane sought treatment for the stress Brewster caused, asking her physician to prescribe additional anxiety medication. *See, e.g., State v. Szloh*, 189 Ohio App.3d 13, 2010-Ohio-3777 (2nd. Dist.). Moreover, Lane testified she felt threatened during the phone calls in June 2010, and thought Brewster was going to come after her to get his money. Lane further testified she feared for her safety when Brewster entered her apartment and "screamed" at his wife in April 2010. Lastly, the incident at Home Depot clearly frightened Lane to the point that she felt compelled to contact the police.

{¶ 65} In sum, we find there was sufficient evidence to support the issuance of the CPO. Brewster's fourth assignment of error is overruled.

{¶ 66} Judgment affirmed.

PIPER and YOUNG, JJ., concur.

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.