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my view of the totality of the circumstances leads me to believe that there was a reasonable, articulable suspicion sufficient for the prolonged detention of Passerini.

Factors that would independently be consistent with innocent activities may nonetheless amount to reasonable suspicion when considered collectively. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008). And, an individual's criminal history may be a relevant factor when determining whether an officer has reasonable suspicion to detain an individual. *State v. Lee*, 265 Neb. 663, 658 N.W.2d 669 (2003). When considered collectively under the totality of the circumstances, Passerini's abrupt exit from the interstate after the law enforcement officers began to follow and then pull alongside Passerini, Passerini's travel over 1½ miles off the interstate before stopping at a gas station, Passerini's nervousness upon being detained and questioned, and Passerini's prior drug arrests created a reasonable, articulable suspicion sufficient for the prolonged detention of Passerini once the traffic stop had concluded. I would affirm the decision of the district court to deny Passerini's motion to suppress.

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ELENA DITMARS, APPELLEE, V.
CHALMER DITMARS, APPELLANT.

ELENA DITMARS ON BEHALF OF V.B., APPELLEE,
V. CHALMER DITMARS, APPELLANT.

788 N.W.2d 817

Filed September 14, 2010. Nos. A-10-009, A-10-010.

1. **Injunction.** A protection order pursuant to Neb. Rev. Stat. § 42-924 (Reissue 2008) is analogous to an injunction.
2. **Judgments: Appeal and Error.** The grant or denial of a protection order is reviewed de novo on the record.
3. ____: ____. In a de novo review, an appellate court reaches conclusions independent of the factual findings of the trial court. However, where the credible evidence is in conflict on a material issue of fact, the appellate court considers and may give weight to the circumstances that the trial judge heard and observed the witnesses and accepted one version of the facts rather than another.

Appeal from the District Court for Lancaster County: JEAN A. LOVELL, County Judge. Reversed and remanded with directions.

Julie A. Effenbeck, of Law Office of Julie A. Effenbeck, for appellant.

Mark T. Bestul, of Legal Aid of Nebraska, for appellee.

IRWIN, SIEVERS, and CARLSON, Judges.

CARLSON, Judge.

## INTRODUCTION

Elena Ditmars filed petitions for domestic abuse protection orders for herself and on behalf of her minor child, V.B., against her husband, Chalmer Ditmars. The Lancaster County District Court entered ex parte orders granting the requests. A hearing to show cause why the orders should not remain in effect was held, after which the court affirmed the protection orders. For the reasons set forth herein, we reverse, and remand with directions to vacate the protection orders and dismiss the actions. Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

## STATEMENT OF FACTS

Elena and her 12-year-old son are recent immigrants from Ukraine. Elena and Chalmer were married in February 2009, and her son lived with them in rural Washington, Kansas. On November 6, 2009, Elena filed a petition in the district court for Lancaster County, Nebraska, requesting a domestic abuse protection order against Chalmer for herself and a separate such petition on behalf of her son. The preprinted affidavit forms ask the affiant to list the most recent incidents of domestic abuse, giving dates and times. In Elena's affidavit filed in behalf of herself, she states that in September 2009, Chalmer insisted she have sex with him on a daily basis. She stated that she gave in to him out of fear of what he might do to her son. She alleged that in April 2009, Chalmer was angry because she would not have sex with him. He then insisted that she and

her son go shooting with him; she refused and remained in the house with her son. Chalmer went outside to shoot targets on a fence, and after each shot, he would pretend to shoot at the house and "laugh like he was crazy." She also stated that "all the time," Chalmer monitored her cellular telephone usage and kept her isolated in a rural area.

Similar allegations appear in the affidavit filed on behalf of Elena's son, along with some additional statements that Elena was afraid Chalmer would strike her son in anger when he needed help with his homework because of his lack of English language skills. Elena also stated that Chalmer would deliberately "spin out" on dirt roads when the three were traveling in the car together.

The district court entered ex parte domestic abuse protection orders, finding that Elena had stated facts showing that Chalmer attempted to cause—or intentionally, knowingly, or recklessly caused—bodily injury to Elena and her son or, by physical menace, placed them in fear of imminent bodily injury. The orders excluded Chalmer from Elena and her son's residence and enjoined him from imposing any restraint on them or from threatening, assaulting, molesting, attacking, or contacting them. Chalmer requested a hearing to show cause why the orders should not remain in effect.

On December 4, 2009, the district court held a hearing allowing Chalmer to show cause why the protection orders should not remain in effect. Both Chalmer and Elena testified at the hearing.

Chalmer denied or explained away Elena's allegations. He admitted that he was at times disappointed when Elena denied him sex, but he stated that he never forced her to have sex or became abusive or threatening. He denied threatening her son and stated that the only time he skidded the car was while on icy or slick roads. Chalmer stated that Elena visited relatives in Ukraine from June 9 to September 3, 2009; that shortly after her return, on September 25, Elena left his household; and that he has had no subsequent contact with her, although he stated that he has tried to call and e-mail her to check on her well-being. He has since instituted divorce proceedings.

Elena testified through an interpreter, repeating many of her allegations. She acknowledged that she had had no contact with Chalmer since September 25, 2009, and was willing to cooperate in the divorce proceedings. Elena and her son now live in Nebraska.

On December 4, 2009, the court entered orders which affirmed the ex parte domestic abuse protection orders. The district court made no specific factual findings, but concluded that Elena had shown that Chalmer "(1) attempted to cause or intentionally, knowingly, or recklessly caused, bodily injury to [Elena and her son], or (2) by physical menace, placed [Elena and her son] in fear of imminent bodily injury." Chalmer now appeals.

## ASSIGNMENTS OF ERROR

In each case, Chalmer asserts that the district court erred in determining that Elena produced sufficient evidence to grant the protection orders against him.

## STANDARD OF REVIEW

[1-3] A protection order pursuant to Neb. Rev. Stat. § 42-924 (Reissue 2008) is analogous to an injunction. *Cloeter v. Cloeter*, 17 Neb. App. 741, 770 N.W.2d 660 (2009). Accordingly, the grant or denial of a protection order is reviewed de novo on the record. *Id.* In such de novo review, an appellate court reaches conclusions independent of the factual findings of the trial court. *Id.* However, where the credible evidence is in conflict on a material issue of fact, the appellate court considers and may give weight to the circumstances that the trial judge heard and observed the witnesses and accepted one version of the facts rather than another. *Id.*

## ANALYSIS

The Protection from Domestic Abuse Act (the Act), Neb. Rev. Stat. § 42-901 et seq. (Reissue 2008), allows any victim of domestic abuse to file a petition and affidavit for a protection order pursuant to § 42-924. Abuse is defined under § 42-903(1) as

> the occurrence of one or more of the following acts between household members:
>
> (a) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;
>
> (b) Placing, by physical menace, another person in fear of imminent bodily injury; or
>
> (c) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318.

In the present case, the district court's preprinted orders state that Elena showed that Chalmer "(1) attempted to cause, or intentionally, knowingly, or recklessly caused, bodily injury to [Elena and her son], or (2) by physical menace, placed [Elena and her son] in fear of imminent bodily injury." However, Elena did not allege, nor does the record show, that Chalmer had caused bodily injury to her or her son. Accordingly, we limit our consideration to whether Elena has shown that Chalmer, by physical menace, placed her or her son in fear of imminent bodily injury as required by §§ 42-903(1)(b) and 42-924.

This court has recently concluded that imminent bodily injury within the context of the Act means an immediate, real threat to one's safety which places one in immediate danger of bodily injury, that is, bodily injury is likely to occur at any moment. *Cloeter v. Cloeter, supra.* In her affidavit, Elena alleged that Chalmer insisted she have sex with him on a daily basis and that he would threaten her when she refused him. Following one such incident, while Elena and her son remained in the house, Chalmer pretended to shoot at the house and laughed. Elena alleged that such incidents occurred in April and September 2009. Elena did not file her petitions until November 2009, after she and her son had moved to Nebraska.

Assuming without deciding that Elena's allegations rise to the level of abuse contemplated by the Act, we determine that the incidents alleged by Elena are too remote in time to support entry of a protection order. The allegations involve incidents that occurred months prior to Elena's filing the petitions. Moreover, Elena filed the petitions in Lancaster County,

after she and her son had moved away from Chalmer's home. It is undisputed that neither Elena nor her son has had any contact with Chalmer since they left the State of Kansas. It is also undisputed that Chalmer and Elena are both preparing to divorce.

We find that the record does not support a conclusion that Elena was placed in fear of imminent bodily injury. We reach this conclusion because of the combined facts that the incidents alleged occurred in another state and months prior to Elena's filing the petitions. The record does not support the district court's entry of protection orders for Elena and her son pursuant to § 42-924.

## CONCLUSION

We find that the record does not support a conclusion that Elena was placed in fear of imminent bodily injury. We reach this conclusion because of the combined facts that the incidents alleged occurred in another state, they occurred several months prior to Elena's filing the petitions, the parties are physically separated in that they now reside in different states, and they have not had any contact with one another since Elena moved to Nebraska. In short, the facts upon which the protection orders rest are stale, and as a result, the proof of fear of an imminent bodily injury is insufficient. We conclude that the district court's orders affirming the domestic abuse protection orders should be reversed, and we direct the district court to enter an order dismissing the domestic abuse protection orders against Chalmer.

REVERSED AND REMANDED WITH DIRECTIONS.