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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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In re the Matter of:

BRENNAH JEAN GURLEY, *Petitioner/Appellee*,

*v.*

STEVEN RICHARD GURLEY, *Respondent/Appellant*.

No. 1 CA-CV 21-0025 FC  
FILED 10-19-2021

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Appeal from the Superior Court in Maricopa County  
No. FC2020-053614  
The Honorable Richard F. Albrecht, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

Pinnacle Law PLLC, Scottsdale  
By John M. Rhude  
*Counsel for Petitioner/Appellee*

Law Office of Jose De La Luz Martinez Esq., Phoenix  
By Jose De La Luz Martinez  
*Counsel for Respondent/Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Randall M. Howe delivered the decision of the court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

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**H O W E**, Judge:

¶1 Steven Richard Gurley (“Father”) appeals the superior court’s order of protection in favor of Brennah Jean Gurley (“Mother”). For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 We view the facts in the light most favorable to upholding the trial court’s ruling. *Mahar v. Acuna*, 230 Ariz. 530, 532 ¶ 2 (App. 2012). Father and Mother are married and share one child. The parties have a dissolution petition pending in the Maricopa County Superior Court. In October 2020, the Moon Valley Justice Court issued an ex-parte order of protection for Mother and the child against Father based on allegations that he committed acts of domestic violence against her and endangered their child. The order marked Father as a credible threat under Arizona law and prohibited him from having contact with Mother and their child and possessing a firearm. In November, the case was transferred from the Moon Valley Justice Court to Maricopa County Superior Court because the parties’ dissolution petition was pending there. In December, at Father’s request, the court held a contested order of protection hearing over two days and heard testimony from both parties.

¶3 During the hearing, Mother testified that on multiple occasions Father acted aggressively and grabbed her throat, even though she pleaded out of fear that he stop. Specifically in January, during an argument, Father “grabbed [her] neck very hard, to a point that [she] couldn’t breathe and told [her] to keep it down.” Again in May, while Mother was working at her desk, Father came behind her, grabbed her neck, and stated, after Mother expressed her fear, “My girlfriend likes it.” Mother replied, “I don’t like it. It’s creepy. Please don’t do that to me ever again.” Father replied, “Don’t be so sensitive.” The following month, Mother was in their bedroom when Father came in and grabbed her neck. After Mother said, “Please don’t do that,” Father replied, “You are so sensitive.”

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¶4 Mother also testified that Father inappropriately parented their child on an airplane and boat during a family trip in August to visit Father's family. Mother testified that Father let their child lie on the floor of the airplane after Father became frustrated with him. Then, while on a boat during the trip, Father stated that their child did not need a life vest and soon after held their child over the railing of their boat.

¶5 During this trip, Father threatened Mother by saying that he has connections with his family in law enforcement and stating, "Sometimes life would be better if you disappeared." Mother continued to fear for her life. She testified about several other occasions during which Father was argumentative, verbally abusive, and physically violent, at one point throwing a frying pan at her after they had returned from their trip. Mother also revealed that she owned a gun. She testified that Father would often put the gun in her purse and she in turn would put it in the safe. A short time after returning from the trip, Mother found her gun on the nightstand where their child could reach it and where she claimed that she had not placed it. Around this time Mother also found a life insurance policy for her and their child that she did not know about.

¶6 During the hearing, Father testified that he acted in response to Mother's aggressive behavior toward him. Father denied physically attacking Mother and grabbing her throat. He testified that he took out the insurance policies after the parties talked about doing so. Father also stated that he had never handled Mother's gun before, claiming that Mother always misplaced it; he admitted, however, to owning a gun. Father also denied Mother's allegations that he inappropriately parented their child on the airplane and boat. The court received exhibits, including text messages between the parties about Father's aggression, the life insurance policies, and photos that portray Father inappropriately parenting their child.

¶7 The superior court continued the October 2020 order of protection because it found by a preponderance of the evidence reasonable cause to believe that Father committed within the last year, or will commit in the future, an act of domestic violence against Mother. The court found it appropriate to amend the order of protection to remove their child from the list of protected persons. The court also approved and settled the Notice of Brady Indicator ("Brady Notice") issued in December 2020 and entered a hearing order, which noted that Brady applies. Father timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(5)(b).

## DISCUSSION

### 1. The Oath

¶8 Father argues that the order of protection must be vacated because the record does not disclose that Mother was sworn in as a witness before she testified at the hearing. We review the continuation of an order of protection for an abuse of discretion. *Michaelson v. Garr*, 234 Ariz. 542, 544 ¶ 5 (App. 2014).

¶9 No error occurred. Arizona Rules of Protective Order Procedure (“ARPOP”) Rule 38(g)(2)<sup>1</sup> requires the court to “administer an oath or affirmation to all parties and witnesses at all hearings.” Because administering an oath to witnesses is a routine duty of court officers, a presumption of regularity exists that oaths were administered even if the record does not reveal that they were. *State v. Navarro*, 132 Ariz. 340, 342 (App. 1982). A party may rebut that presumption, but failing to object to the lack of an oath or affirmation waives the issue on appeal because the court could easily correct the error if a party brought it to the court’s attention. *Id.*; *State v. Ebert*, 192 Ariz. 286, 288–89 ¶ 8 (App. 1998); *State v. Marcham*, 160 Ariz. 52, 53 (App. 1988).

¶10 Although Father argues that Mother was not sworn in before testifying, the record is silent on this issue, and we presume, absent contrary evidence, that Mother was sworn in before she testified. Because Father did not raise this issue to the court, which could have easily cured any error if error occurred, he has waived the issue on appeal.

### 2. Brady Notice

¶11 Father argues that the Brady Notice must be quashed because (1) the trial court did not explicitly find that he posed a credible threat to Mother’s physical safety in the amended order of protection and the court’s hearing order pursuant to A.R.S. § 13-3602(G)(4) and 18 U.S.C. § 922(g)(8)(C), and (2) no evidence supports a finding that he posed such a threat. We “review the application of Arizona and federal law to the facts de novo,” *Mahar*, 230 Ariz. at 534 ¶ 14 (emphasis omitted), but “[w]hen reviewing the sufficiency of the evidence, an appellate court does not

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<sup>1</sup> Father cites this as Rule 38(f)(2). As of January 2021, after Father’s appeal, amendments to this rule changed the provision from 38(f)(2) to 38(g)(2).

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reweigh the evidence to decide if it would reach the same conclusions as the trier of fact," *State v. Barger*, 167 Ariz. 563, 568 (App. 1990).

¶12 No error occurred. The firearms prohibition under Arizona law requires that the court find the defendant is a credible threat to the physical safety of the plaintiff. A.R.S. § 13-3602(G)(4). The firearms prohibition under the Brady law applies if the court finds that the defendant "represents a credible threat to the physical safety of" the intimate partner or if the order of protection "by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner." 18 U.S.C. § 922(g)(8)(C). The federal statute does not require a finding that the defendant is a credible threat, just that one of the two prongs is met.

¶13 Because Father contests only the validity of the Brady Notice, we need not consider how state law applies to the facts. The court satisfied the second prong of 18 U.S.C. § 922(g)(8)(C) because the amended order of protection contains the explicit statutory language on the first page. The parties' testimony and text messages support this prohibition. The court's hearing order marked "Brady applies." Contrary to Father's assertion, marking "Brady applies" indicates that the trial court has done the Brady analysis outlined in the Brady Notice. One part of the Brady analysis includes explicitly prohibiting Father's use, attempted use, or threatened use of physical force against Mother in the order of protection. 18 U.S.C. § 922(g)(8). Therefore, the trial court complied with Brady.

¶14 Father also argues that the court did not ask Mother about his use of or access to firearms to determine whether he is a credible threat as ARPOP Rule 23(i)(1) requires. Because we find that the court complied with Brady's second prong, determining Father's status as a credible threat is unnecessary. Nevertheless, during the contested hearing, the parties' testimony revealed that Father owns and has access to a gun. This testimony satisfies the ARPOP Rule 23(i)(1) inquiry.

¶15 Even so, nothing in the record shows that Father contested the following provision of the original order of protection: "Under A.R.S. § 13-3602(G)(4), the court finds that Defendant poses a credible threat to the physical safety of Plaintiff or Protected Persons. Therefore, Defendant shall not possess, receive, or purchase firearms and shall surrender same within 24 hours of service to: Scottsdale Police Department." The superior court amended the original order; thus, we can presume that these prior findings remain in effect.

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**3. Attorneys' Fees**

¶16 Father requests attorneys' fees on appeal under ARPOP Rule 39 and A.R.S. § 13-3602(S). We deny his request because he is not the prevailing party.

**CONCLUSION**

¶17 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court  
FILED: JT