

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

IN THE MATTER OF TYLER DIEHL, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

-vs-

TYLER DIEHL,

Respondent-Appellee.

Supreme Court
No. 160457

Court of Appeals
No. 345672

Oakland Circuit Court
Family Division
No. 2017-855352-DL

PETITIONER-APPELLANT'S APPENDIX

JESSICA R. COOPER
Prosecuting Attorney
Oakland County

THOMAS R. GRDEN
Chief, Appellate Division

BY: JEFFREY M. KAELIN (P51249)
Assistant Prosecuting Attorney
Oakland County Prosecutor's Office
1200 North Telegraph Road
Pontiac, Michigan 48341
(248) 858-0656

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JCC040-2 OAKLAND COUNTY CLERKS OFFICE - LISA BROWN 10/12/18
PAGE NO: 001 OF 009 DOCKET DISPLAY - IMAGE RETRIEVAL 08:23:59
NEXT PAGE: 002 ACT: 07/27/2017

CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER
DISP:

JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT, ,

07/27/2017 COMPLAINT FILED	C
07/27/2017 PETITION FILED	PTN
07/27/2017 PRELIMINARY/BOND HEARING FILED	PRH
07/27/2017 WAIVER/NOTICE OF HEARING FILED	WNH
07/27/2017 DEMAND FOR JUDGE FILED	DFC
07/27/2017 COMPLAINT FILED	C
07/27/2017 REQUEST FOR ATTORNEY/REIMBURSEMENT FILED MINOR	O
07/27/2017 PETITION FILED	PTN
07/27/2017 PRELIMINARY/BOND HEARING FILED	PRH
00 07/27/2017 DATE SET FOR PRETRIAL ON 08082017 01 30 PM	APR
00 07/27/2017 DATE SET FOR PRETRIAL ON 08082017 01 30 PM Y	APR
08/02/2017 PAYMNT SERV/ORD PYMNT OF CAA FILED	PAY

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Trial Court Register of Actions

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JCC040-2 OAKLAND COUNTY CLERKS OFFICE - LISA BROWN 10/12/18
PAGE NO: 002 OF 009 DOCKET DISPLAY - IMAGE RETRIEVAL 08:24:12
NEXT PAGE: 003 ACT: 07/27/2017

CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER
DISP:

JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT,,

—	08/04/2017	CERT OF FINGERPRINTING FILED	CFP
—	08/04/2017	CERT OF FINGERPRINTING FILED	CFP
—	08/07/2017	ORDER FOR FINGERPRINTS FILED	FIN
—	08/07/2017	TEMP/DETENTION CSTDY ORDER FILED	TP
—	08/07/2017	TEMP/DETENTION CSTDY ORDER FILED	TP
—	08/07/2017	ORDER FOR FINGERPRINTS FILED	FIN
—	08/07/2017	AFFIDAVIT/PROOF OF SERVICE FILED	POS
24	08/08/2017	PRETRIAL HELD	OTH
24	08/08/2017	PLEA NO CONTEST	OTH
24	08/08/2017	MATTER TO BE REVIEWED ON 8/15/17 @ 0130	OTH
	08/08/2017	DISPOSITION SCHEDULED FOR 10/17/17 @0130	
00	08/08/2017	DATE SET FOR REVIEW HRG ON 08152017 01 30 PM	APR

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JCC040-2 OAKLAND COUNTY CLERKS OFFICE - LISA BROWN 10/12/18
PAGE NO: 003 OF 009 DOCKET DISPLAY - IMAGE RETRIEVAL 08:24:14
NEXT PAGE: 004 ACT: 07/27/2017

CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER

JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT, ,

00	08/08/2017	DATE SET FOR HEARING	ON 10172017 01 30 PM	APR
24	08/15/2017	REVIEW HELD		OTH
24	08/15/2017	SET FOR REVIEW 9/1/17 @0830		OTH
00	08/15/2017	DATE SET FOR REVIEW HRG ON 09012017 08 30 AM		APR
-	08/23/2017	WITNESS LIST FILED MINOR		WLT
-	08/23/2017	REQUEST FILED FOR DISCOVERY/MINOR		REC
-	08/23/2017	AFFIDAVIT/PROOF OF SERVICE FILED		POS
-	08/31/2017	AFFIDAVIT/PROOF OF SERVICE FILED		POS
24	09/01/2017	REVIEW HELD		OTH
24	09/01/2017	SET FOR REVIEW 10/17/17 @1:30PM		OTH
00	09/01/2017	DATE SET FOR REVIEW HRG ON 10172017 01 30 PM		APR
-	09/01/2017	TRANSCRIPT FILED PROBABLE CAUSE HRG 07/24/17		TRN

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JCC040-2 OAKLAND COUNTY CLERKS OFFICE - LISA BROWN
PAGE NO: 004 OF 009 DOCKET DISPLAY - IMAGE RETRIEVAL
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10/12/18
08:24:15
ACT: 07/27/2017

CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER
JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT, ,

09/01/2017 TRANSCRIPT FILED PROBABLE CAUSE HRG 07/26/17
09/07/2017 PAYMNT SERV/ORD PYMNT OF CAA FILED
09/25/2017 DISPOSITION ORDER FILED
09/25/2017 DISPOSITION SHEET FILED
09/25/2017 SUPPLEMENTAL ORD DISP/REVIEW HRG FILED
09/25/2017 DISPOSITION SHEET FILED
09/25/2017 ORD AFTER PRELIM/HRG/INQUIRY (CCP) FILED
09/25/2017 PLEA OF RESPONDENT FILED
09/25/2017 ORDER ADJUDICATION (DELINQUENT) FILED
09/25/2017 DISPOSITION SHEET FILED
09/26/2017 AFFIDAVIT/PROOF OF SERVICE FILED
09/28/2017 PROBATIONARY RULES & REG FILED

TRN
PAY
DSF
DSF
SOD
DSF
OAF
PLR
OAD
DSF
POS
PR

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PAGE NO: 005 OF 009 DOCKET DISPLAY - IMAGE RETRIEVAL 08:24:16
NEXT PAGE: 006 ACT: 07/27/2017

CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER
JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT, ,

-	09/28/2017	AFFIDAVIT/PROOF OF SERVICE FILED	POS
-	10/06/2017	NOTICE FILED OF INTENT TO INTRODUCE STATEMNTS/PEOPLES	NT
-	10/06/2017	NOTICE FILED OF INTENT TO INTRODUCE ACTS OF DV/PEOPLES	NT
-	10/06/2017	WITNESS LIST FILED /PEOPLES	WL
-	10/06/2017	REQUEST FILED FOR DISCOVERY/PEOPLES	REQ
-	10/06/2017	AFFIDAVIT/PROOF OF SERVICE FILED	POS
-	10/06/2017	REQUEST FOR TRANSCRIPT FILED GRANTED	RF
-	24 10/17/2017	REVIEW HELD P/T ON PETITION 2 AND REVIEW TO BE HELD IN	OTH
-	10/17/2017	3 MONTHS	
-	00 10/17/2017	DATE SET FOR PRETRIAL ON 01302018 01 30 PM	APR
-	10/26/2017	PAYMNT SERV/ORD PYMNT OF CAA FILED	PAY
-	10/31/2017	AFFIDAVIT/PROOF OF SERVICE FILED	POS

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PAGE NO: 006 OF 009 DOCKET DISPLAY - IMAGE RETRIEVAL 08:24:17
NEXT PAGE: 007 ACT: 07/27/2017

CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER
JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT, ,

10/31/2017	ORD AFTER PRELIM/HRG/INQUIRY (CCP) FILED	OAF
10/31/2017	SUPPLEMENTAL ORD DISP/REVIEW HRG FILED	SOD
10/31/2017	DISPOSITION SHEET FILED POS	DSF
12/05/2017	ORDER FOR REIMBURSEMENT FILED /POS	OFF
01/23/2018	AFFIDAVIT/PROOF OF SERVICE FILED	POS
01/23/2018	NOTICE OF HEARING FILED	NOH
01/23/2018	PETITION FILED	PTN
01/23/2018	COMPLAINT FILED	C
01/29/2018	ORDER FOR FINGERPRINTS FILED	FIN
24 01/30/2018	PRE-TRIAL HELD	PTH
24 01/30/2018	PLEA TAKEN UNDER ADVISEMENT	OTH
24 01/30/2018	SET FOR DISPOSITION 04/24/2018 AT 1:30P	OTH

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PAGE NO: 007 OF 009 DOCKET DISPLAY - IMAGE RETRIEVAL 08:24:18
NEXT PAGE: 008 ACT: 07/27/2017

CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER
JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT, ,

-	02/06/2018	AFFIDAVIT/PROOF OF SERVICE FILED	POS
-	02/06/2018	ORDER OF ADJOURNMENT FILED HRG	ADJ
-	02/06/2018	SUPPLEMENTAL ORD DISP/REVIEW HRG FILED	SOD
-	02/06/2018	DISPOSITION SHEET FILED	DSF
-	02/06/2018	PLEA OF RESPONDENT FILED	PLR
-	02/06/2018	WAIVER/NOTICE OF HEARING FILED	WNH
00	04/18/2018	DATE SET FOR HEARING ON 04242018 01 30 PM Y	APR
00	04/24/2018	DATE SET FOR REVIEW HRG ON 07162018 01 30 PM Y 24	APR
-	05/03/2018	AFFIDAVIT/PROOF OF SERVICE FILED	POS
-	05/03/2018	SUPPLEMENTAL ORD DISP/REVIEW HRG FILED	SOD
-	05/03/2018	ORDER OF ADJOURNMENT FILED MATTER	ADJ
-	05/03/2018	DISPOSITION SHEET FILED	DSF

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CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER

JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT, ,

05/07/2018	PAYMNT SERV/ORD PYMNT OF CAA FILED	PAY
06/05/2018	NOTICE FILED OF OBJ TO CONSENT CALENDAR/PEOPLES	NTC
06/05/2018	AFFIDAVIT/PROOF OF SERVICE FILED	POS
00 07/16/2018	DATE SET FOR HEARING ON 10102018 01 30 PM Y 24	APR
00 07/26/2018	DATE SET FOR HEARING ON 09102018 01 30 PM Y 24	APR
08/09/2018	AFFIDAVIT/PROOF OF SERVICE FILED	POS
08/09/2018	NOTICE OF HEARING FILED	NOH
08/09/2018	SUPPLEMENTAL ORD DISP/REVIEW HRG FILED	SOD
08/09/2018	NOTICE FILED TO THE PROSECUTOR OF REMOVAL OF CASE/POS	NTC
08/09/2018	DISPOSITION SHEET FILED	DSF
08/24/2018	ORDER FILED GRANT REQ FOR TRNS	ORD
09/07/2018	TRANSCRIPT FILED HRG 04/24/18	TRN

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Trial Court Register of Actions

JCC040-2 OAKLAND COUNTY CLERKS OFFICE - LISA BROWN 10/12/18
PAGE NO: 009 OF 009 DOCKET DISPLAY - IMAGE RETRIEVAL 08:24:20
NEXT PAGE: 01 ACT: 07/27/2017

CASE NO: 2017 855352 DL IN THE MATTER OF ATTY: JESSICA R. COOPER
JUDGE: VICTORIA VALENTINE DIEHL, TYLER, JOSEPH, PARNES, ELLIOT, ,

09/07/2018 TRANSCRIPT FILED HRG 07/16/18 TRN
24 09/10/2018 PRE-TRIAL HELD PTH
00 09/10/2018 DATE SET FOR REVIEW HRG ON 12112018 01 30 PM Y 24 APR
09/17/2018 PAYMNT SERV/ORD PYMNT OF CAA FILED PAY
10/02/2018 REQUEST FOR TRANSCRIPT FILED RQT
10/03/2018 AFFIDAVIT/PROOF OF SERVICE FILED POS
10/03/2018 SUPPLEMENTAL ORD DISP/REVIEW HRG FILED SOD
10/03/2018 ORDER FILED RE NTC REMOVAL OF CASE/POS ORD
10/03/2018 DISPOSITION SHEET FILED DSE
10/03/2018 CLAIM OF APPEAL & ORDER APPT ATTY FILED AAA
LAST OF CASE DATA

ENTER KEY FOR NEXT PAGE, OR ENTER REQUESTED PAGE NO.
ATTYS(Y): FEES(Y):
ALL RECORDS HAVE BEEN DISPLAYED FOR THIS CASE

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STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION OAKLAND COUNTY	Authorized Delinquency Petition 1 for 7/23/2017 domestic assault PETITION <input type="checkbox"/> SUPPLEMENT	OAKLAND COUNTY 17-855352-DL  JUDGE VICTORIA VALENTINE IN THE MATTER OF DIEHL TYLER
--	--	---

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ORI **MI** Police Agency Report No. **17-15024** CTN **63-17-959999-01** SID **DOB 3/26/2005**

- In the matter of **TYLER JOSEPH DIEHL**
- The above named minor(s) come(s) within the provisions of MCL 712A.2.
Citations and allegations:

did on or about July 23, 2017, in the Township of White Lake, County of Oakland, State of Michigan, make an assault or an assault and battery upon Linda Diehl, a resident or former resident of his household; Contrary to the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan. MCL 750.81(2). [750.812]

DOMESTIC VIOLENCE
 NOTICE: This incident resulted in Personal Injury.

- This petition contains a reportable offense under MCL 28.243.
 See attached sheet for further allegations. Member of or eligible for membership in American Indian Tribe or Band, state above.

3. An action within the jurisdiction of the family division of circuit court involving the family or family members of the minor has been previously filed in Court, Case Number , was assigned to Judge , and remains is no longer pending.

4. I designate this case as a case in which the juvenile is to be tried in the same manner as an adult.
 5. The above named minor(s) is(are) resident(s) of Oakland County, and reside(s) in the care and custody of his mother.

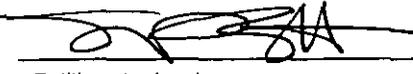
6. The names and addresses of the parents, guardians, custodians, or nearest known relative are as follows:

NAME	ADDRESS	HOME PHONE	WORK PHONE
Father UNKNOWN	Putative <input type="checkbox"/>	UNKNOWN	UNKNOWN
Mother Linda Diehl	551 Woodsedge, White Lake, MI 48386	248-933-2295	

Guardian/Custodian Nearest known relative

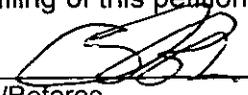
7. I request the court to: (check either box a, b or c)
 a. review the information and make an appropriate decision.
 b. authorize this petition and take temporary custody of the minor(s).
 terminate the mother's parental rights. terminate the father's parental rights.
 c. designate this case as a case in which the juvenile is to be tried in the same manner as an adult.

I declare that the statements in this petition are true to the best of my information, knowledge, and belief.


 Petitioner's signature
Sandra P. Scott, A.P.A.
 Date **7/24/17**
 (P.T.)

Oakland County Prosecutor's Office
 1200 North Telegraph, Pontiac, Michigan 48341
 (248) 858-0656

8. A preliminary inquiry and/or hearing has been conducted and the filing of this petition is is not authorized.

Date: 7/24/17
 Judge/Referee  Bar No. P33804

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JUDGE VICTORIA VALENTINE
IN THE MATTER OF DIEHL, TYLER,

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STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

In The Matter Of:
TYLER JOSEPH DIEHL

File No. 17-001128-IN

_____ /

2017 SEP -1 PM 3:17

2017 SEP -1 PM 3:17

PROBABLE CAUSE HEARING

BEFORE THE HONORABLE DAVID BATDORF-BARNES, CIRCUIT COURT REFEREE

Oakland, Michigan - Monday, July 24, 2017

APPEARANCES:

For Petitioner: MARY A. LARKIN (P41951)
Assistant Prosecuting Attorney
Oakland County Prosecutor's Office
1200 North Telegraph Road
Pontiac, Michigan 48341-1032
(248) 452-9196

For Respondent: AMY J. WECHSLER (P60942)
Law Offices of Amy J. Wechsler
P.O. Box 576
Sylvan Lake, Michigan 48320-0576
(248) 760-6935

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Linda Bacon, CER #8970
P.O. Box 21067
Lansing, Michigan 48909-1067

TABLE OF CONTENTS

WITNESSES: PETITIONER

PAGE

LINDA DIEHL

Direct Examination by Ms. Larkin

5

Cross-Examination by Ms. Wechsler

28

Redirect Examination by Ms. Larkin

31

DETECTIVE MIKE SIMSACK

Direct Examination by Ms. Larkin

34

WITNESSES: RESPONDENT

None

OTHER MATERIAL IN TRANSCRIPT:

None

EXHIBITS:

INTRODUCED

ADMITTED

PX-A-F Photographs

32

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Preliminary Hearing Transcript dated 7/24/2017

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1 Oakland, Michigan

2 Monday, July 24, 2017 - 1:46:21 p.m.

3 THE COURT: All right, good afternoon. For
4 the Record, my name is David Batdorf-Barnes. I'm an
5 attorney referee. I'm calling matter of Tyler Diehl, case
6 number 17-001128-IN. The matter comes to the Court's
7 attention pursuant to a petition submitted by the Oakland
8 County Prosecutor. The -- the petition alleges a July 23rd
9 incident of domestic violence.

10 We have, as a matter of law, appointed
11 counsel as --(inaudible)-- prosecutor is present. We have
12 a Court case worker present. May I have appearances for
13 the Record, please.

14 MS. LARKIN: Good afternoon, Mary Larkin,
15 Assistant Prosecutor on behalf of the People.

16 MS. WECHSLER: Good afternoon, Amy Wechsler.
17 I am the attorney for Tyler Diehl.

18 THE COURT: And your client's mother is also
19 present?

20 MS. WECHSLER: My client's mother is present
21 and my client is present and in custody.

22 THE COURT: All right, Ms. Wechsler, you
23 acknowledge receipt of the copy of the petition and waive
24 formal reading?

25 MS. WECHSLER: I do, your Honor.

Preliminary Hearing Transcript dated 7/24/2017

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1 THE COURT: Ms. Larkin, did you want to take
2 testimony to preserve evidence or is this a contested
3 prelim?

4 MS. LARKIN: I'm not sure if respondent's
5 attorney was intending to waive, your Honor. I'm not sure
6 of that.

7 THE COURT: You want to hear evidence or is
8 there a --

9 MS. WECHSLER: But I did -- I did --

10 THE COURT: -- waiver of probable cause?

11 MS. WECHSLER: There is a waiver of probable
12 cause, but I do want to be able to ask mother questions.

13 THE COURT: Under oath?

14 MS. WECHSLER: Yes. Well --

15 THE COURT: Go ahead.

16 MS. WECHSLER: -- she's going to be
17 preserving testimony and I want to be able to get my -- you
18 know, my question preserved as well.

19 THE COURT: Ms. Larkin?

20 MS. LARKIN: Thank you. Yes, at this time,
21 People would call Linda Diehl --(multiple speakers)--

22 THE COURT: Ms. Diehl, step forward. Raise
23 your right hand for me. Do you swear or affirm the
24 testimony that you'll offer in the matter pending before
25 the Court would be the truth, the whole truth, nothing but

Preliminary Hearing Transcript dated 7/24/2017

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1 the truth?

2 MS. DIEHL: I do.

3 (At 1:48:01 p.m., witness sworn)

4 THE COURT: Okay, come up and have a seat.
5 won't pretend that I can't see a couple of the evident
6 black eyes.

7 MS. LARKIN: That's correct, your Honor.

8 THE COURT: Go ahead.

9 LINDA DIEHL

10 (At 1:48:16 p.m., witness sworn, testified as follows):

11 DIRECT EXAMINATION

12 BY MS. LARKIN:

13 Q Ms. Diehl, can you tell us your full name for the Record,
14 please.

15 A Linda Ari (ph) Diehl.

16 Q And how's your last name spelled?

17 A D-I-E-H-L.

18 Q Okay. And are you the mother of child Tyler Joseph Diehl,
19 date of birth, March 26th, 2005?

20 A Yes.

21 Q Okay. Directing your attention to July 23rd, 2017, that
22 being yesterday, do you live in the same household as
23 Tyler?

24 A Yes.

25 Q And was that in Whitelake Township at 551 Woods Edge?

1 A Yes.
2 Q Is that the family home?
3 A Yes.
4 Q Okay. Who are all the individuals who live in the home?
5 A Myself, Tyler and his brother, Colin, who is also 12.
6 Q Okay. Is Colin the young man who's here today --
7 A Yes.
8 Q -- in the hearing room?

9 THE COURT: (Inaudible) Record should reflect
10 it in petition. Proceed.

11 BY MS. LARKIN:

12 Q And do you have any other children?
13 A Yes.
14 Q Okay, and who are they?
15 A Jeffrey Mattson, Stephen Mattson and Christopher Diehl.
16 Q And how old is Christopher?
17 A Christopher is 16.
18 Q Sixteen. And how old is Stephen?
19 A Twenty-five.
20 Q And how old is Jeffrey?
21 A Twenty-eight.
22 Q Okay. So none of your other boys live in the home with
23 you, correct?
24 A Correct.
25 Q Okay. On Sunday, July 23rd, were you at your home in

Preliminary Hearing Transcript dated 7/24/2017

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1 Whitelake Township with your son, Tyler, present?

2 A Yes.

3 Q Okay. Sometime in the early evening hours, around 5:00

4 o'clock or so, did something occur where Tyler lost his

5 control or he became upset for some reason?

6 A Yes.

7 Q Okay. What was happening just before Tyler became upset?

8 A He has a biological sister --(multiple speakers)--

9 Q What is her name?

10 A And he has a biological sister that had been staying with

11 us --

12 Q Okay.

13 A -- for a couple days. She told him she wanted to stay

14 three more days and he was very excited and then she

15 suddenly changed her mind and called her mom and wanted to

16 be picked up.

17 Q How did Tyler react to that development?

18 A Well, Tyler first kept asking her over and over again, "Why

19 were you doing that? You know it's going to hurt -- you

20 know, that hurts. You're betraying me. You said you were

21 going to stay," and she didn't -- really wasn't giving much

22 response and he was getting very upset and very hurt and

23 when she actually left, at that point, he started screaming

24 at her --

25 Q What was he screaming?

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1 A -- "You're betraying me. You betray" and after they -- she
2 left, he was just so angry.

3 Q Was he -- what was he doing to show that he was angry?

4 A Originally, what he did is he -- we had an empty Lego
5 container outside and he started just pounding the heck out
6 of that.

7 THE COURT: Started what?

8 THE WITNESS: Pounding -- pounding it.

9 THE COURT: Okay.

10 THE WITNESS: Stomping on it.

11 BY MS. LARKIN:

12 Q Okay. And did you take any action then to try to diffuse
13 or limit his anger by having him talk to somebody?

14 A Eventually, you know, my -- my -- my son calls.

15 Q And what's -- which son is that?

16 A Stephen.

17 Q Okay, so he's the 25 year old?

18 A Correct.

19 Q Okay, and where does he live?

20 A California.

21 Q So he called from California?

22 A Correct.

23 Q Okay. Did Tyler have a chance to talk to Stephen on --

24 A Yes.

25 Q -- the phone? Okay. Did that seem to help calm him down?

- 1 A Yes.
- 2 Q Okay. And then did the phone call end?
- 3 A Yes.
- 4 Q Okay. And later the same day -- now getting up into the
5 evening hours around 10:00 p.m., did another incident with
6 Tyler happen?
- 7 A Yes.
- 8 Q What was happening just before this occurred with Tyler?
- 9 A He had come -- after he had been calmed down, he had come
10 in, he did dinner, he -- you know, he was agitated, still
11 hurt, but -- but calm -- but not doing anything. And that
12 night when I said it was bedtime and he came back with a
13 newspaper and I said, "Well, but it's bedtime," and he just
14 kinda got very upset, obviously, from the anger from
15 before, and started throwing things around the house.
- 16 Q When this first started with him now in the evening hours,
17 where were you physically located in the house?
- 18 A My bedroom.
- 19 Q And did -- was Tyler in your bedroom or were you having
20 discussion --
- 21 A Yes.
- 22 Q -- with him elsewhere?
- 23 A No, he was in my bedroom.
- 24 Q Okay. So you had told him it was time for bed. He told
25 you he wanted to read the newspaper? Okay.

1 THE COURT: (Inaudible) response for the
2 Record.

3 MS. LARKIN: Thank you.

4 BY MS. LARKIN:

5 Q And if -- just to remind you, if you can, answer out loud.
6 I know it's -- we'll remind you if you forget. There's a
7 recording made of everything that's being said.

8 A Okay.

9 Q Thank you. So after he became angry, did you stay in your
10 bedroom or did you go elsewhere?

11 A No, he was throwing things in my bedroom so I thought it
12 best, you know, to get out --(multiple speakers)--

13 Q And what -- what was he throwing?

14 A Books.

15 Q Okay. And --

16 A (Inaudible) think if there was anything else.

17 Q What kind of books were they? Hardcover or soft-cover?

18 What --

19 A Soft.

20 Q Okay.

21 A Paperbacks.

22 Q Okay. How -- where was he in relation to you when he was
23 throwing the books?

24 A He was in my bedroom and I was in my bedroom, so he was
25 close by.

1 Q Okay.

2 A And tried to calm him down.

3 Q Did he ever throw anything other than the books?

4 A I think so --(inaudible)-- for a minute. I think it was

5 books --(inaudible)--

6 Q Okay. Did you leave the bedroom at some point --

7 A Yes.

8 Q -- and did this -- this incident with Tyler continue

9 outside the bedroom?

10 A Yes.

11 Q What room did you go into?

12 A I went into the next room and --

13 Q And what's that room?

14 A Great Room --(multiple speakers)--

15 Q Okay --(multiple speakers)--

16 A -- and -- then he threw -- then he came out there and

17 started throwing things. So I had Colin -- Colin was

18 outside and I went outside and then --

19 Q When you say he was --

20 A -- periodically, I would try to just come in and calm him

21 down and that's when I got --(multiple speakers)--

22 Q Did you go outside for your protection?

23 A It seemed to be agitating him more when I tried to calm him

24 down so I would just him a few -- I said, "I'll give you a

25 few minutes and then -- you know, but you" -- and then try

1 to talk to him through the door. You know
2 --(multiple speakers)--
3 Q So you were outside at that point with your -- with your
4 other son, Colin?
5 A Mm-hmm, yes.
6 Q Had you informed -- or instructed Colin to go outside?
7 A Yes.
8 Q Okay, cuz it's now after 10:00 p.m., correct?
9 A No.
10 Q Or -- or what time --(multiple speakers)--
11 A Well, yes, I'm sorry. You're correct.
12 Q Okay.
13 A You're correct.
14 Q So it's dark out and you had Colin go outside?
15 A Mm-hmm, yes.
16 Q Okay. Was that for his safety and protection?
17 A Yes, and so he didn't have to see it.
18 Q Okay. When he was -- when Tyler was in the Great Room, you
19 said he was throwing things. What objects was he throwing
20 then?
21 A He had the -- we have these cork placemats and they're
22 about -- I guess a normal placemat size, but they're
23 heavier and he was whipping them at the wall and the door.
24 Q Okay.
25 A And --

- 1 Q Were they thrown in your direction?
- 2 A One ended up --(inaudible)-- hitting me, yes.
- 3 Q Okay --(multiple speakers)--
- 4 A But it was not -- it was -- I don't think it was
5 intentional. He was just throwing them. That is my
6 belief.
- 7 Q Okay. Where on your body were you hit by the cork
8 placement?
- 9 A On my face.
- 10 Q Okay.
- 11 A My glasses. My glasses kinda of hit back and --
- 12 Q Okay, and today, do you have some marks under your eyes?
- 13 A Yes.
- 14 Q Okay, and are they from this incident?
- 15 A Yes.
- 16 Q They look today to be bruised, black and blue?
- 17 A Yes.
- 18 Q Okay, and is it your testimony that was caused by the
19 eyeglasses hitting your skin?
- 20 A Well, the eyeglasses kinda pushing --(inaudible)-- and then
21 the bruises have spread.
- 22 Q Okay.
- 23 A Nobody punched me. That's the only thing that hit me in
24 the face.
- 25 Q Okay.

- 1 A I also bruise very easily --
- 2 Q Okay.
- 3 A -- and so. Anything that --
- 4 Q Okay. There's -- there's some photographs that were taken
5 of you right after the incident, correct? The police were
6 called to the scene. In fact, did you call 911?
- 7 A I did.
- 8 Q Okay. So I'll get to that in just a minute. I just wanted
9 to back up. Was Tyler saying anything at the time he was
10 throwing the placement and other objects?
- 11 A No. He was not yelling at us. To my -- best of my
12 knowledge, I think he -- well, he was screaming. He scream
13 -- screaming, but not like -- was more --(inaudible)-- you
14 know, "I'm so". -- he was still mad at his sister --
- 15 Q Okay.
- 16 A -- so he was saying some stuff, yes --(inaudible)-- now he
17 was screaming about his sister --
- 18 Q Okay.
- 19 A -- and -- like mostly just kinda throwing things.
- 20 Q Okay. And part of this time, you were outside as well with
21 Colin --
- 22 A Yes.
- 23 Q -- giving him sort of some space?
- 24 A Yes.
- 25 Q Okay. Did you have concern for your safety then, too?

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- 1 A No. Well, yes and no. I -- I -- I can remove myself from
2 the situation so I wasn't scared. But there's no reason to
3 stay in a room when objects are flying.
- 4 Q Okay.
- 5 A He was not trying to go after me. He was not trying to hit
6 me, so -- but yeah, there's no reason to stay in a room
7 with objects flying. So I was trying to get my son back on
8 the phone --
- 9 Q Okay.
- 10 A -- or somebody --
- 11 Q The objects that were flying were heading in your
12 direction, weren't they?
- 13 A In the direct of the -- he was --
- 14 Q Where you were?
- 15 A -- throwing at the door and stuff -- the door and the wall
16 and sometimes I'd come in and -- and say, "Tyler, no." And
17 then one hit me.
- 18 Q Now was there ever a time when Colin (sic) was throwing any
19 rocks that hit you?
- 20 A No. He -- he's throwing rocks -- he's throwing rocks --
- 21 Q Okay, where was he at when he was throwing rocks?
- 22 A Wait. He throws them at the house. He's throwing at the
23 house -- you know, back a couple weeks. Up until about a
24 couple weeks ago, I didn't -- not a problem. Not a problem
25 with him. The last couple weeks, he's been throwing a lot

1 of rocks at the brick and at the door.

2 Q Okay. Have any of them hit you?

3 A No.

4 Q Okay, so on this day of July 23rd, yesterday, did he throw

5 any rocks while you were out there outside?

6 A Not at me.

7 Q Okay, was he throwing rocks in general?

8 A In the first -- I think in the first episode, he threw some

9 rocks, yes.

10 Q First episode on July 23rd?

11 A Yes.

12 Q Okay. Okay. Was -- was he throwing them inside or outside

13 the house?

14 A Outside the house.

15 Q When the police arri -- so after this incident, you called

16 911, correct?

17 A Yes.

18 Q Okay. And they came out and met with you and interviewed

19 you, correct?

20 A Yes.

21 Q And then took some photographs?

22 A Yes.

23 Q Okay, and I just want to show you in some of the

24 photographs to ask you about some injuries. There's a

25 series of them.

1 MS. LARKIN: I think counsel has seen them,
2 but --
3 MS. WECHSLER: I have.
4 MS. LARKIN: You have seen them?
5 MS. WECHSLER: Yep.
6 MS. LARKIN: Okay, thanks.
7 MS. WECHSLER: Thank you.
8 THE COURT: All right.
9 MS. LARKIN: May I approach, your Honor?
10 THE COURT: The proposed exhibits been shown
11 to defense counsel --(multiple speakers)--
12 MS. LARKIN: I don't have them marked, but
13 does the Court have an Exhibit sticker?
14 THE COURT: I do.
15 MS. LARKIN: Thank you.
16 THE COURT: Thank you.
17 MS. LARKIN: Thank you so much.
18 THE COURT: Ms. Wechsler, clearly there were
19 numerous photographs. Have you had a chance to see all of
20 these?
21 MS. WECHSLER: I have.
22 THE COURT: Okay.
23 MS. WECHSLER: Thank you.
24 THE COURT: Thank you.
25 MS. LARKIN: Your Honor, may I just inquire

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1 if there's an intake number that I can put on the exhibit
2 tape? I don't have a --(multiple speakers)--

3 THE COURT: Intake number is 17-001128 --

4 MS. LARKIN: Thank you.

5 THE COURT: -- IN.

6 MS. LARKIN: IN. Thank you.

7 BY MS. LARKIN:

8 Q So Ms. Diehl, I'm just showing you now what's been marked
9 as A through F, so. It's a series of photos with an
10 exhibit tag of Number 1. If you wouldn't mind, just can
11 you take a look at those? Do you recognize yourself in
12 those photographs?

13 A Yes.

14 Q In some of them? Okay. Were they taken, as far as you
15 know, last night --

16 A Yes.

17 Q -- after the incident, by the police? Okay. And is there
18 -- direct your attention now, in particular, if I may just
19 take those back from you for one second. Thank you. Okay.
20 And so I'm going to direct your attention to Exhibit 1A,
21 which is a photograph of yourself sitting on the grass.

22 MS. LARKIN: Showing counsel 1A.

23 BY MS. LARKIN:

24 Q Okay, and --

25 MS. WECHSLER: Thank you.

- 1 BY MS. LARKIN:
- 2 Q -- Ms. Diehl is there a photograph -- does that photograph
3 depict an injury to your forehead?
- 4 A Yes.
- 5 Q Okay, and is it -- does it appear that there's fresh blood
6 there?
- 7 A Yes.
- 8 Q Okay, and did that injury occur as a result of this
9 incident with Tyler throwing things?
- 10 A The face -- I believe everything on the face would, yes.
- 11 Q Okay, so on the face, you're referring to under your eyes
12 as well?
- 13 A Yes.
- 14 Q Okay, and then you have a mark on the bridge of your nose
15 --(multiple speakers)--
- 16 A (Multiple speakers) the glasses when I had --
- 17 Q Okay.
- 18 A -- did that.
- 19 Q Okay. And then there's some other bruising on your face.
20 Is that also from this incident --
- 21 A Yes.
- 22 Q -- with Tyler? Okay. Any other injuries on your face that
23 are a result of the incident with Tyler? It appears
24 there's some bruising on the side of your
25 --(multiple speakers)-- perhaps it's

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1 --(multiple speakers)--

2 THE COURT: You can see the left side of your
3 face, there's appear -- there's to be a bruise on your jaw
4 line and on your chin as well.

5 THE WITNESS: I don't -- I honestly didn't
6 even know I had bruises there.

7 BY MS. LARKIN:

8 Q Okay. And then the photographs --

9 A On the chin, I -- excuse me, I -- I know and I acknowledge,
10 but on -- on the jaw line --

11 THE COURT: Yes.

12 BY MS. LARKIN:

13 Q Okay. Then I'm going to show you what's identified as B,
14 the second in a series of these photographs and is it a
15 photograph of your legs?

16 A Yes.

17 Q Okay, and is there fresh blood streaming -- or dripping
18 down --(multiple speakers)--

19 A There's -- there was blood, yes.

20 Q Okay. And how did you sustain that injury?

21 A I don't know, but I -- if -- if you noticed the dry skin as
22 a skin disorder and I -- it may have --

23 Q Did it happen as a result --(multiple speakers)--

24 A -- I don't know, so I -- I -- it's not uncommon for me to
25 have little cuts like that. So it may have happened in

- 1 something. I don't know, to be honest with you.
- 2 Q Did any of the objects that Tyler --(multiple speakers)--
- 3 A (Multiple speakers) blood from -- excuse -- I didn't mean
- 4 to interrupt you.
- 5 Q That's okay.
- 6 A Blood from -- you know, my arms were bleeding. Some scabs
- 7 came off. It could have been that. I don't know what
- 8 that's from. Like I said, as you can see from the picture
- 9 --(multiple speakers)--
- 10 Q That's okay. It looks like there's a wound though, or some
- 11 type of an abrasion on the leg with blood streaming down.
- 12 Do you see that?
- 13 A Yes, but as I said, if you notice my skin disorder, I -- I
- 14 -- it -- it -- like --(multiple speakers)--
- 15 Q If I may ask, what -- what is the skin disorder?
- 16 A I'd rather not get into it.
- 17 Q Okay, so are -- did any of the objects that Tyler was
- 18 throwing hit you in your leg?
- 19 A No --(multiple speakers)--
- 20 Q Any of the rocks that were being thrown?
- 21 A No.
- 22 Q Okay. So there's a photograph that's marked E that shows
- 23 your arms -- forearms.
- 24 A Yes.
- 25 Q And they have several wounds on them, some of them open

- 1 wounds, correct?
- 2 A Yes.
- 3 Q Okay. Were those injuries as a result of this incident
- 4 with Tyler?
- 5 A No.
- 6 Q Okay. How did you --
- 7 A (Inaudible) say, the scabbing was -- some -- some of the
- 8 scabbing may have come off. These -- these were when I
- 9 fell into the woods. I was dumping the weeds and
- 10 --(inaudible)-- backwards and I fell and -- into all this
- 11 stuff and again, I scratch easy, I bruise easy. And so
- 12 unfortunately, these wounds are not healing very well and
- 13 --(multiple speakers)--
- 14 Q How long ago --(multiple speakers)--
- 15 A -- some scabs came off.
- 16 Q -- when you fell?
- 17 A About a week ago. But they have been re-injured with
- 18 different things. I bump them sometimes. So the one just
- 19 got re-opened couple days ago.
- 20 Q Are you under a doctor's care for a medical condition?
- 21 A I'd rather not answer that at this time. I don't want to
- 22 get into my medical condition if I don't need to.
- 23 Q I'm just trying to understand how these injuries played
- 24 into what happened on July 23rd.
- 25 A They were not -- I did not receive them July 23rd.

- 1 Q Okay. Did anybody cause them to you?
- 2 A No.
- 3 Q And then there's a photograph marked F that, I believe, is
4 showing part of your home. Is that the front porch?
- 5 A Yes.
- 6 Q Okay, and are there some rocks shown in that porch -- that
7 photo?
- 8 A Yes.
- 9 Q Okay. Would those be landscape rocks, sometimes --
- 10 A Yes.
- 11 Q -- called lava rocks?
- 12 A Yes.
- 13 Q Sometimes red in color?
- 14 A Yes.
- 15 Q Okay. Is that what Tyler was throwing earlier in the
16 evening?
- 17 A Yes.
- 18 Q Okay. And then there's some books on the porch. Are those
19 where he threw them?
- 20 A He -- he -- he threw them, yes.
- 21 Q Okay. The -- you mentioned that there'd been a bad couple
22 of weeks.
- 23 A Yes.
- 24 Q What time period are you going back to when these incidents
25 started?

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1 A Well, we returned from a trip on June 27th and the first
2 week was just so, so bad, shouting, and then it es -- been
3 escalating where his anger is getting out of control and he
4 would go in the basement and -- just hopefully just use a
5 punching bag, sometimes he'll throw the rocks at the house,
6 at the brick.

7 Q Okay. Does Tyler have any mental health diagnosis?

8 A ADHD.

9 Q Okay. Does he take prescription medication?

10 A He does not take it during the summer months, but he does
11 take it during the school year.

12 Q Is Tyler in any type of ongoing counseling for emotional
13 issues?

14 A No, but he's -- that is the plan now.

15 Q Has he demonstrated any violence or anger toward his
16 sibling in the home, Colin?

17 A No.

18 Q Do you recall when the police came out to your house July
19 23rd in the evening and interviewed you, you telling them
20 that Tyler had been throwing things at you?

21 A No.

22 Q You don't recall that?

23 A No.

24 Q Okay. Did you need any medical treatment today -- between
25 last night and today?

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- 1 A No.
- 2 Q Okay. And your arms are wrapped today --
- 3 A Yes.
- 4 Q -- your forearms. Okay. Did any medical professionals do
5 that or did you wrap them yourself?
- 6 A I wrapped them.
- 7 Q Okay. So at this point in time, there is no counseling in
8 place for Tyler?
- 9 A Correct.
- 10 Q Okay. Do you work outside the home?
- 11 A No. In the home.
- 12 Q Okay. Do you work in the home? You're home all day with
13 him?
- 14 A Yes.
- 15 Q And your other son, Colin, as well?
- 16 A Yes.
- 17 Q Okay. Have you had to have an occasion to call the police
18 before for behavioral issues with Tyler?
- 19 A No. Til a couple weeks ago, he didn't have any behavior
20 issues.
- 21 Q Okay.
- 22 A Just really been a very different couple weeks.
- 23 Q And -- and since that time, is it when you got back from
24 vacation where he visited with his older brother in
25 California?

1 A Yes.

2 Q Okay. And do you believe that had some emotional
3 significance for Tyler?

4 A Well, he's going through a lot of different things. So
5 there's a lot of things that -- turmoil and he did miss his
6 brother a lot and -- and wanted to stay there longer and so
7 -- but I mean, he's -- there's a lot of different things on
8 his plate. His sister's moving to Kansas. His -- you
9 know, he's got an open abuse case that he's testifying in
10 and he's got a lot going on. A lot on his plate.

11 Q Is the abuse case in which he is the victim?

12 A Yes.

13 Q Okay. And did he -- was he required to testify recently in
14 connection with that case?

15 A Yes.

16 Q Okay. And that does not involve a family member, correct?

17 A Correct. It was before I -- when he came to live with me
18 and it was a family friend of his biological family.

19 Q Okay. Thank you.

20 MS. LARKIN: I have nothing further.

21 THE COURT: Ms. Wechsler?

22 MS. WECHSLER: I -- I just want to start by
23 saying that I have some concerns about the police report
24 that was the basis of the probable cause to charge an
25 arrest. My client -- and based on the testimony of the

1 mother, I hate to do this, but I believe that this is going
2 to turn into a contested hearing because I do not believe
3 that this rise to the level of probable cause based on her
4 testimony. That everything in the police report is not
5 accurate. That was the basis of the arrest.

6 THE COURT: I don't know if the prosecutor
7 has -- I haven't heard that the prosecutor is saying that
8 she's rested at --

9 MS. LARKIN: I have not. I intend to
10 --(multiple speakers)--

11 THE COURT: -- this point.

12 MS. WECHSLER: No, no. I -- no, I
13 --(multiple speakers)--

14 THE COURT: Nor have I reviewed the exhibits
15 --

16 MS. WECHSLER: Sure.

17 THE COURT: -- and would not ordinarily do
18 that prior to cross-examination.

19 MS. WECHSLER: Sure. I'm just saying I don't
20 -- I -- I -- based on a conversation I had with the
21 prosecutor, she doesn't seem to be backing down from the
22 case that she believes is -- you know, she wants
23 --(inaudible)-- However --(multiple speakers)--

24 THE COURT: My decision in this case will be
25 dependent upon what the evidence is --(multiple speakers)--

1 that's proffered.

2 MS. WECHSLER: I do still intend to call
3 Detective Simsack, your Honor.

4 THE COURT: All right.

5 MS. WECHSLER: I -- I just needed that for
6 the Record.

7 THE COURT: Thank you.

8 MS. WECHSLER: So may I question the witness?

9 THE COURT: You may.

10 CROSS-EXAMINATION

11 BY MS. WECHSLER:

12 Q Mrs. Diehl, may I read a couple statements to you and you
13 can tell me if you told the police this?

14 A Yes.

15 Q Did you tell the police that Tyler became violent with you?

16 A No.

17 Q Did Tyler throw books and lava stones at you?

18 A He threw books in our direction, yes. Not the rocks, the
19 rocks were at the house.

20 Q Okay, you had testified that he was throwing the books at
21 the doors and you were coming in --(multiple speakers)--

22 A The place -- the placemats were at the --(inaudible)-- one
23 time when I came in. The books were kind of at us, but
24 they -- yes. The books were in our direction. We were
25 quite far down the things. They were on -- they were on

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- 1 the front porch. No, not at us cuz we were farther down,
2 but I mean, in our direction.
- 3 Q Okay. Do you feel that Tyler was intentionally try to hit
4 you and harm --(multiple speakers)--
- 5 A I don't know if he was trying to hit us with anything, but
6 -- I mean, we did not get hit by the books.
- 7 Q Okay. Did you tell the police that, due to the books and
8 the lava stones, they caused lacerations and contusions to
9 your leg?
- 10 A No. I said the opposite. I said if the -- the -- the only
11 -- they kept saying there's fresh blood and I kept saying
12 those are not from this. And they did not agree.
- 13 Q Did you tell them that the -- throwing the books and the
14 lava stones caused the lacerations and contusions to your
15 arms?
- 16 A No.
- 17 Q Okay. How about to your face?
- 18 A They -- no, I did not tell them that the -- I -- I did not
19 tell them the books and lava stones did it to my face, no.
- 20 Q Okay. What did you tell them happened in your facial
21 --(multiple speakers)--
- 22 A I don't know if they even asked what happened specifically
23 of that. They were so concentrated in that there were so
24 many injuries.
- 25 Q Okay. I feel really bad. I'm sorry. I just had to ask

1 you about this medical condition. I -- I will keep it, you
2 know, very surface, but do you believe that the injuries
3 that you sustained to your face were because of your
4 medical condition and not because of how hard or the book
5 -- or the -- what was it, the placemat -- the cork
6 placemat, you had stated was thrown --

7 A I think they look worse. I think the bruising looks worse
8 and becomes bigger. My -- I mean, it -- you know, it hit
9 -- it hit very hard and -- and it might have been some
10 bruising. But I -- I bruise bigger and better, as I say.
11 But no, I mean, it hit me.

12 Q Okay, and when you say that it -- it hit hard, is that
13 because of the weight of the object or how hard Tyler threw
14 it in the direction and what -- what do you mean by that?

15 A Well, I mean, I -- I think it would have bruised me no
16 matter what.

17 Q Okay. Do you fear Tyler?

18 A No.

19 Q Have you ever feared Tyler?

20 A No.

21 Q Do you fear for the safety of your other children around
22 Tyler?

23 A No.

24 Q Has Tyler ever been violent to you?

25 A No.

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1 Q You had stated that it's just been a really bad couple
2 weeks. So do you feel that this is -- was it a bad temper
3 tantrum on his part?

4 A Yes.

5 Q You had mentioned that Tyler does stuff in the community
6 and he does well in school. Can you tell us a little bit
7 about him?

8 A He's had no behavior problems at school. He got straight
9 As last year --(multiple speakers)--

10 Q I'm sorry?

11 A He got straight As.

12 Q Oh, good.

13 A No behavior problems. I haven't had behavior problems at
14 home. He does volunteer at a senior center. He's
15 volunteered at the food bank. Turned the last couple of
16 weeks and just -- you know, with everything going on, I
17 guess, so.

18 Q Okay. Do you want to have him to come home?

19 A Yes.

20 Q Okay.

21 MS. WECHSLER: I have no more questions.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MS. LARKIN:

25 Q Ms. Diehl, you felt it was necessary to call 911 after this

1 incident happened, correct?

2 A I did call 911, yes --(inaudible)-- 911

3 --(multiple speakers)--

4 Q Okay. And you also felt it was necessary while it was
5 happening to have brother Colin remain outside for his
6 safety for a period of time, correct?

7 A Yes.

8 Q And you also remained outside for your safety for a period

9 --

10 A Yes.

11 Q -- of time. Thank you.

12 MS. LARKIN: I have no further questions.

13 THE COURT: You moving for the admission of
14 this --(multiple speakers)--

15 MS. LARKIN: Yes, your Honor. There's a
16 letter --(inaudible)-- in the upper right corner. I don't
17 think I have them in order. Thank you very much.

18 (At 2:16:55 p.m., Petitioner's Exhibits A
19 through F are offered)

20 THE COURT: Thank you, deputy.

21 UNIDENTIFIED SPEAKER: Yep.

22 THE WITNESS: Am I done?

23 MS. LARKIN: Not until he dismisses you.

24 THE COURT: Give me just a minute.

25 THE WITNESS: I'm sorry.

1 THE COURT: Acknowledge receipt of the series
2 of exhibits marked People's Exhibit 1A through F. They are
3 kind of done on multi-use office paper, color photographs,
4 approximately eight and a half by eleven inches. Give me
5 just a moment. All right.

6 MS. LARKIN: I just have one additional
7 question of mother if I may?

8 BY MS. LARKIN:

9 Q Ms. Diehl, did you make it known to the police officers who
10 responded last night about your skin condition?

11 A No. He didn't want to listen. I tried to explain that
12 those were not injuries from that night. I tried to
13 explain and he did not care to listen.

14 Q Okay. You did tell the -- some of the injuries were new
15 and some were old, correct?

16 A I told him the -- the scabbing probably came off. Just
17 because he kept focusing on the blood.

18 Q Okay. Thank you.

19 MS. LARKIN: Nothing further.

20 THE COURT: Anything else --

21 MS. WECHSLER: No.

22 THE COURT: -- from this witness? Any reason
23 the witness can't step down?

24 MS. LARKIN: No, your Honor. Thank you.

25 THE COURT: Thank you, Ma'am.

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1 (At 2:18:50 p.m., witness excused)

2 MS. DIEHL: Thank you.

3 THE COURT: Your next witness?

4 MS. LARKIN: Yes, Detective Simsack.

5 THE COURT: Detective, step forward. Raise
6 your right hand. Do you swear or affirm that the testimony
7 that you'll offer in the matter pending before the Court
8 will be the truth, the whole truth and nothing but the
9 truth?

10 MR. SIMSACK: Yes, Sir.

11 (At 2:19:04 p.m., witness sworn)

12 THE COURT: All right. Have a seat, be
13 comfortable. Once you're comfortable, tell us your name,
14 spell your last name.

15 THE WITNESS: Detective Mike Simsack,
16 S-I-M-S-A-C-K.

17 THE COURT: The witness.

18 MS. LARKIN: Thank you.

19 DETECTIVE MIKE SIMSACK

20 (At 2:19:19 p.m., witness sworn, testified as follows):

21 DIRECT EXAMINATION

22 BY MS. LARKIN:

23 Q Detective, are you employed with the --(inaudible)--
24 Township Police Department?

25 A Yes, I am.

1 Q And have you had an occasion to review a report written by
2 one of your colleagues. Is it a Detective Ivory (ph)?
3 A It's Sergeant Ivory.
4 Q I'm sorry --
5 A Yes --
6 Q -- Sergeant --(multiple speakers)--
7 A Yes, I have.
8 Q Okay, and what is Sergeant Ivory's first name?
9 A Matthew.
10 Q Matthew? Okay. And is that in connection the case we're
11 here today on involving Tyler Diehl?
12 A Yes, it is.
13 Q And just to be clear, are you referring to Incident Report
14 Number 17-15024 that you reviewed?
15 A Correct.
16 Q Okay. And did that deal with a domestic violence situation
17 in the home on July 23rd with mother as the victim?
18 A Yes, it did.
19 Q Okay. In reviewing the police report, did you determine
20 whether mother, Ms. Linda Diehl, was interviewed at the
21 scene?
22 A Yes, she was.
23 Q Was there one officer or more than one officer who
24 interviewed her?
25 A The report reflects that Office Swellwell (ph) and Sergeant

- 1 Ivory spoke with Linda Diehl.
- 2 Q Okay. And did the detectives -- or the detective who wrote
3 -- excuse me -- sergeant who wrote the report, did he note
4 observing any physical injuries on mother at the time?
- 5 A Yes, he did.
- 6 Q And did he elaborate in the report on what injuries he
7 observed?
- 8 A Yes, he did.
- 9 Q And could you please tell us what they were?
- 10 A He said, "While speaking with Linda, I observed various
11 cuts, scrapes and contusions to Linda's arms, legs and
12 head."
- 13 Q And then did -- was any blood observed on her body that was
14 actually streaming at the time?
- 15 A Yes. And he advised Linda -- this would be Sergeant Ivory
16 writing the scenario -- that he -- she still had blood
17 running down her legs and arms.
- 18 Q Okay. And did the sergeant ask her how she obtained those
19 injuries?
- 20 A Yes, he did.
- 21 Q And what did Ms. Diehl explain?
- 22 A She said that Tyler started throwing various objects at
23 her.
- 24 Q Did sergeant specifically use the word "at her"?
- 25 A Yes, he did.

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- 1 Q Okay. Is it your understanding there he was describing
2 what Ms. Diehl had told him?
- 3 A Yes.
- 4 Q Okay. Did she indicate whether some of those injuries were
5 new and some may not have been new?
- 6 A Yes, she did.
- 7 Q Okay. And was she asked to elaborate on that?
- 8 A She was asked -- well, she stated that some injuries were
9 new, but would not elaborate.
- 10 Q Okay. When the officers were attempting to take
11 photographs of mother's injuries, was she determined -- was
12 it noted in the report whether she was cooperative or not?
- 13 A It states that she was not cooperative.
- 14 Q And then did officers at the scene have an opportunity to
15 speak with Tyler?
- 16 A Yes, they did.
- 17 Q Okay. And did he explain any details of the incident that
18 night?
- 19 A Yes, he did.
- 20 Q And was he in custody at the time?
- 21 A No, he was not.
- 22 Q Were -- were the officers still investigating?
- 23 A Correct, on the scene.
- 24 Q And what did Tyler state, if anything, about the incident?
- 25 A He stated he became angry because he wanted to read the

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1 paper before bed. His mom wouldn't let him. He then
2 stated that while he was upset, he started throwing various
3 objects at his mother.

4 Q Okay. And did the report specifically use the word
5 "throwing objects at his mother"?

6 A Yes.

7 Q Was there a determination made whether or not the sibling,
8 Colin, 12 year old brother of Tyler, was present at the
9 time?

10 A Yes, he was present.

11 Q Okay. And did he have any information regarding what had
12 transpired?

13 A Just states that he could not tell us what happened during
14 the incident.

15 Q Okay. Was there a serious concern for the safety of Ms.
16 Diehl at that time?

17 A I would assume so, yes.

18 Q Okay, and was Tyler arrested and taken into custody?

19 A Yes, he was.

20 Q Okay, and was he lodged then at Children's Village?

21 A He was.

22 Q Thank you.

23 MS. LARKIN: I have no further questions of
24 detective.

25 THE COURT: Cross?

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1 MS. WECHSLER: I have no questions.

2 THE COURT: Any reason that detective can't
3 step down?

4 MS. LARKIN: No, your Honor.

5 THE COURT: Thank you.

6 (At 2:23:48 p.m., witness excused)

7 MR. SIMSACK: Thank you.

8 MS. LARKIN: No further witnesses on behalf
9 of the petitioner.

10 THE COURT: You rest?

11 MS. LARKIN: Yes, your Honor.

12 THE COURT: What's your argument here?

13 MS. LARKIN: Your Honor, the testimony for a
14 probable cause standard, I believe has been established. I
15 believe at that -- it's potentially a question of fact
16 whether the objects that were thrown and hit mother were
17 thrown intentionally to place -- to -- to do harm to
18 mother. But what's clear is she was in fear. There were
19 times when she had to step outside the house. She had
20 sibling, Colin, 12 years old, step outside the house
21 because it wasn't safe to be in the same room as Tyler
22 based on what he was throwing, his behaviors. He was out
23 of control.

24 She's not running into the line of fire. He
25 is throwing things that are hitting her and coming at her.

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1 In other words, if he weren't intending to hit her, he
2 could just as easily be whipping things across the room,
3 not going in her direction.

4 But instead, there's at least one cork
5 placemat that mother described as being heavy that actually
6 hits her in the head with enough force that it causes her
7 glasses to push into her face that leaves her with the
8 black and blue marks that are visible today -- very visible
9 today as well as a -- a mark of pressure over her nose and
10 then in the area of a bridge of eyeglasses.

11 So I think it's very significant. I think it
12 at least raises a question of fact. But both mother and
13 Tyler, when they are interviewed by the police say that
14 Tyler was throwing objects at mother. Even Tyler
15 acknowledges that. That there was no sense of out -- "This
16 was an accident. I didn't mean to hit her." He was mad.
17 He was mad at mother for making him go to bed when he
18 wanted to read the paper and he lashed out at her and threw
19 whatever he could get his hands on.

20 Mother has fresh injuries that the Court is
21 able to see in the photographs. They don't appear to be --
22 at least the wound on the foot does not appear to be an old
23 wound that's reopened. I would certainly acknowledge that
24 there are indications in those photographs of some forearm
25 injuries that appear to have scabbing and perhaps recently

1 reopened.

2 But the injuries on her forehead as well as
3 on her leg -- or her foot, excuse me -- appear to be fresh.
4 And mother -- I think, also of great concern is that mother
5 right now does not recognize the fact that Tyler's behavior
6 cannot safely be managed at home.

7 Despite her calling 911, which is a pretty
8 desperate act to do -- that means things were out of
9 control to the point where she didn't feel safe in having
10 her young son leave the home, too, for his safety as well,
11 I think points to the fact that this wasn't a purely
12 accidental incident. This was done with intention and I
13 think that that's difficult for mother to acknowledge right
14 now, but I believe that we have established by a probable
15 cause standard that there was, at a minimum, an attempt to
16 place mother in fear. Otherwise, objects wouldn't be
17 thrown in her direction.

18 THE COURT: All right.

19 MS. LARKIN: Thank, your Honor.

20 THE COURT: Ms. Wechsler?

21 MS. WECHSLER: I -- when -- when mother was
22 testifying, had basically read what the basis for the
23 charge was and she completely denied every single thing
24 that was in there besides her face.

25 She had testified that this was an accident.

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1 She does not believe that Tyler intentionally meant to harm
2 her or put her in harm's way. She went outside because she
3 stated that it was more agitating to Tyler to try to calm
4 him down. We believe that this was an accident. We
5 believe that Tyler was basically having a temper tantrum.

6 You heard mother. "It's been a bad couple
7 weeks." He has an adopt -- or a -- a sister that changed
8 his -- her mind and upsetting Tyler that he thought that
9 she was going to be staying longer and he just basically
10 didn't know how to express that anger.

11 You heard mother testify he gets all As in
12 school. This is not a problem child. This was not an
13 incident that warrants Court intervention, I believe. I
14 believe that she can get him into counseling and manage
15 this. I think that this was an unfortunate accident and I
16 think that Tyler understands, you know, that he has to be
17 able to control his anger when he gets frustrated and I
18 think that mom called 911 because she wanted him to calm
19 down and she probably didn't anticipate that it would get
20 to this point.

21 I don't think that she's in denial about
22 anything. She knows her child better than anybody. She's
23 been with him for -- since 2013, since he's been eight
24 years old and he's never been a problem before.

25 If this was a case where this was somebody

1 that gets bad grades and acts out and, you know, throws
2 rocks at chipmunks and is, you know, a danger to the
3 family, I think that mom would have no problem testifying
4 to such. But it couldn't be more opposite. And everything
5 that -- the basis for the probable cause for the -- the
6 charge was untrue and mom testified to such and we ask that
7 the case be dismissed.

8 THE COURT: All right. Domestic violence
9 requires either an assault or a battery, both specific
10 intent offenses are committed against a person who is a
11 resident or former resident of the same household.
12 Clearly, these two people reside in the same household.
13 Clearly, mom was struck and evidently struck repeatedly.
14 And the question becomes that of the question of intent.

15 Mom is interviewed by two police officers who
16 were present at the scene. She told those officers or told
17 at least one of those officers that he was throwing things
18 at her. Then the youngster was interviewed at the scene
19 and he said that he was throwing things at her.

20 I can't discern any circumstances within this
21 constellation of facts that would give a police officer
22 bias or was to fabricate something that wasn't there. I
23 can discern some bias with regard to -- to the victim in
24 this case in that she has a child who's 12 years of age and
25 is suddenly confronted with the awesome power of the state.

1 But I -- I think the prosecutors met their
2 burden as to whether there's probable cause, as to whether
3 he specifically intended to strike her. I haven't heard
4 what the dimensions of the room were. If he was throwing
5 objects in her direction and she was struck more than once.
6 I think that the prosecutors met their burden as to
7 probable cause.

8 This -- I -- I don't know specifically what's
9 going on in this family. Obviously something. Now it is,
10 as the prosecutors ended -- indicated somewhat of an
11 extraordinary circumstance for a parent to pick up the
12 phone and call 911 because of a tantrum of a 12 year old
13 child. Now it is more frequently seen when a child is
14 being violent within intent of injury. And this may be
15 this injury.

16 So I'm going to recommend authorization of
17 the petition. I'm not referring the matter to alternative
18 services. I think it gets authorized
19 --(inaudible)-- People's position that this young man
20 should be --(inaudible)--

21 MS. LARKIN: Should remain detained, your
22 Honor. I do not believe that -- it just happened yesterday
23 -- last night. Hasn't even been a full 24 hours and I am
24 concerned with mother's lack of recognition of the harm --
25 or potential harm that Tyler poses right now based on his

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1 behaviors. She did tell us that it's been the last couple
 2 of weeks where he has been expressing more anger, more
 3 volatility. I don't think we can assure his safety at
 4 home.

5 There is no counseling that is presently in
 6 place. So to place him back at home now, I think is -- is
 7 a very risky step and we would ask that the Court detain
 8 him until at least the next pretrial hearing.

9 THE COURT: How many police contacts have
 10 there been with -- between Whitelake Police Department and
 11 this residence, if you know?

12 MS. LARKIN: With this residence, there have
 13 been several, your Honor. I inquired if any of them were
 14 related to Tyler and they're not specifically related to
 15 Tyler. There -- there have been calls, I believe,
 16 regarding --

17 MR. SIMSACK: At last five since this.

18 MS. LARKIN: At least five police runs to the
 19 home. Do any of them involve concerns for behaviors in the
 20 home?

21 MR. SIMSACK: I believe yes, at least one of
 22 them.

23 MS. LARKIN: Okay. Are they related --

24 MR. SIMSACK: Yes.

25 MS. LARKIN: -- to --(multiple speakers)--

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1 MR. SIMSACK: There was an assault and
2 battery there.

3 MS. LARKIN: Okay. Do you know who the
4 potential suspect was?

5 MR. SIMSACK: You know, I can't tell you
6 exactly if it was Tyler.

7 THE COURT: Are you looking under -- is it --
8 at a clinic report?

9 MR. SIMSACK: Yes -- yes, Sir -- (inaudible) --

10 THE COURT: All right.

11 MS. LARKIN: Is it -- is it identified as a
12 male being the suspect?

13 MR. SIMSACK: Actually, Tyler was a witness.
14 This person code is a witness --

15 MS. LARKIN: I see.

16 MR. SIMSACK: -- in that case -- (inaudible) --

17 MS. LARKIN: Okay.

18 MR. SIMSACK: That was listed as a suspect or
19 arrestee in -- in any of them except this -- (inaudible) --

20 MS. LARKIN: I see. Okay.

21 THE COURT: What are you proposing? Secure
22 detention pending pretrial?

23 MS. LARKIN: Yes, your Honor.

24 THE COURT: Mr. Wechsler?

25 MS. WECHSLER: We are proposing that Tyler be

1 released to his mother. She wants to get him into
2 counseling as soon as possible and this family needs to
3 begin healing.

4 Having Tyler in custody is not going to
5 address the problem. I think that it's very scary for him
6 to be away from his mom and he's expressed to me that he
7 is, you know, understands his actions and he wants to be
8 home and wants to be -- you know, the mom wants to start
9 therapy. And I think that that should start immediately.
10 I don't see that it's a benefit to keep him locked up. She
11 doesn't -- she testified she's not in fear of him.

12 THE COURT: Ms. Diehl?

13 MS. DIEHL: Yes.

14 THE COURT: Who's in your home now?

15 MS. DIEHL: Colin, myself and Tyler were in
16 it --(inaudible)--

17 THE COURT: Do you work out of the home or --
18 or --

19 MS. DIEHL: No.

20 THE COURT: All right. How are you
21 supported?

22 MS. DIEHL: I do grant writing, but from
23 home.

24 THE COURT: I'm sorry?

25 MS. DIEHL: I do grant writing from home.

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1 THE COURT: Okay. What grade's Tyler in?
2 MS. DIEHL: Seventh.
3 THE COURT: No school suspensions?
4 MS. DIEHL: No.
5 THE COURT: Give some insight on why this is
6 happening, something more than I've heard in evidence.
7 MS. DIEHL: Well, I -- I think I mentioned
8 most of the things I think is happening, is the abuse from
9 before maybe coming back, his sister moving to Kansas.
10 Like I said, he's test -- he just testified in a trial
11 against somebody who would abuse him. Those are the things
12 I'm guessing he's --(inaudible)-- not expressed
13 --(multiple speakers)--
14 THE COURT: All right. (Inaudible) right to
15 trial before judge or jury unless somebody's demanding that
16 Judge Valentine hear the case. I'll clear it before
17 Referee Hand.
18 MS. LARKIN: That's fine, your Honor, on
19 behalf of the People.
20 MS. WECHSLER: We are fine with that. Thank
21 you, your Honor.
22 (Telephone call)
23 UNIDENTIFIED SPEAKER: (Inaudible).
24 THE COURT: I need a pretrial date on Referee
25 Hand's docket. This is the Diehl case.

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1 UNIDENTIFIED SPEAKER: Which one?
2 THE COURT: Diehl.
3 UNIDENTIFIED SPEAKER: Okay. (Inaudible).
4 THE COURT: Is that morning or afternoon?
5 UNIDENTIFIED SPEAKER: Afternoon, morning at
6 8:30 or 9:30.
7 THE COURT: First available date is August
8 29th, 8:30 or 9:30.
9 MS. LARKIN: August 29th at -- I'm sorry,
10 8:30 or --(multiple speakers)--
11 THE COURT: 8:30 or 9:30.
12 MS. LARKIN: Whichever is -- I mean
13 --(inaudible)--
14 THE COURT: We'll take 8:30 on the 29th.
15 UNIDENTIFIED SPEAKER: 8:30 on the 29th?
16 Okay.
17 THE COURT: Thank you.
18 UNIDENTIFIED SPEAKER: Bye.
19 MS. WECHSLER: May I say something since the
20 pretrial is going to be so far out as part as
21 --(inaudible)--
22 THE COURT: I'm taking that into
23 consideration. I'm going to release your client to -- to
24 his mother under home detention with a requirement that she
25 arrange counseling for Tyler with the arrangements to be

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1 made within 48 hours. Can we do that?

2 MS. DIEHL: Yes, Sir.

3 MS. WECHSLER: Referee Barnes, I gave Ms.
4 Diehl the number for Siri (ph).

5 THE COURT: I'm additionally making -- having
6 a requirement of home detention. Tyler's not to be out of
7 the residence unless he's in the supervision of his mother
8 or an adult over the age of 21 of his mother's choosing,
9 pending further hearing.

10 MS. DIEHL: Okay.

11 THE COURT: (Inaudible).

12 MS. WECHSLER: Oh, I gave mom the contact
13 information for Siri to help her cuz --(inaudible)-- under
14 Medicaid, to get that going.

15 THE COURT: All right. Ms. Larkin, anything
16 else?

17 MS. LARKIN: And will that be a requirement
18 of Tyler's release, your Honor, that he must attend the
19 counseling? Mother has advised --

20 THE COURT: Absolutely.

21 MS. LARKIN: -- in the past he has refused to
22 attend. So it will be a requirement?

23 THE COURT: She's to -- she's to secure the
24 counseling within 48 hours once -- as arranged. Tyler is
25 to attend.

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1 MS. DIEHL: But he's to be released

2 --(multiple speakers)--

3 THE COURT: Failure or refusal to engage in
4 the counseling will result in -- result in further hearing.

5 MS. WECHSLER: Okay. Just to be clear, he's
6 released immediately though?

7 THE COURT: Yes.

8 MS. WECHSLER: Okay, thank you.

9 THE COURT: (Inaudible) some recommendations.

10 Tyler, if you disagree with them, you have the right to
11 request a review of them, but to protect that right, you
12 must file a written request with the Court in the next
13 seven days in pursuant to the applicable court rule, I find
14 that it's in best interest to both the juvenile and the
15 public that the --(inaudible)-- is authorized and addressed
16 on the phone. Nothing else. We stand adjourned. Thank
17 you.

18 MS. WECHSLER: Thank you very much.

19 MS. LARKIN: Thank you.

20 THE COURT: Deputies --(inaudible)--

21 (At 2:39:55 p.m., hearing concluded)

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of fifty-two (52) pages, in the 6th Circuit Court for the County of Oakland:

In The Matter Of:
TYLER DIEHL

_____ /

Location: Circuit Court

Date: Monday, July 24, 2017

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ Linda Bacon

Linda Bacon, CER #8970
Certified Electronic Recorder

Dated: August 21, 2017

Theresa's Transcription Service, P.O. Box 21067
Lansing, Michigan 48909-1067 - 517-882-0060

STATE OF MICHIGAN
JUDICIAL CIRCUIT - FAMILY DIVISION
OAKLAND COUNTY

PETITION
 SUPPLEMENT

OAKLAND COUNTY
JUDGE VICTORIA VALENTINE
IN THE MATTER OF DIEHL TYLER
SID DOB
3/26/2005

ORI MI Police Agency Report No. 17-15104 CTN 63-17-960004-01

- 1. In the matter of TYLER JOSEPH DIEHL
- 2. The above named minor(s) come(s) within the provisions of MCL 712A.2.
Citations and allegations:

did on or about July 25, 2017, in the Township of White Lake, County of Oakland, State of Michigan, make an assault or an assault and battery upon Linda Diehl, a resident or former resident of his household; Contrary to the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan. MCL 750.81(2). [750.812]

DOMESTIC VIOLENCE

- This petition contains a reportable offense under MCL 28.243.
- See attached sheet for further allegations. Member of or eligible for membership in American Indian Tribe or Band, state above.

3. An action within the jurisdiction of the family division of circuit court involving the family or family members of the minor has been previously filed in Court, Case Number , was assigned to Judge , and remains is no longer pending.

4. I designate this case as a case in which the juvenile is to be tried in the same manner as an adult.

5. The above named minor(s) is(are) resident(s) of Oakland County, and reside(s) in the care and custody of his mother.

6. The names and addresses of the parents, guardians, custodians, or nearest known relative are as follows:

NAME	ADDRESS	HOME PHONE	WORK PHONE
Father Putative <input type="checkbox"/>			
Unknown	Unknown	Unknown	Unknown
Mother			
Linda Diehl	551 Woodsedge, White Lake, MI 48386	248-933-2295	17
Guardian/Custodian Nearest known relative			

7. I request the court to: (check either box a, b or c)

- a. review the information and make an appropriate decision.
- b. authorize this petition and take temporary custody of the minor(s).
 terminate the mother's parental rights. terminate the father's parental rights.
- c. designate this case as a case in which the juvenile is to be tried in the same manner as an adult.

I declare that the statements in this petition are true to the best of my information, knowledge, and belief.

Denise Brainard, A.P.A.

7/26/17
(cg)

Oakland County Prosecutor's Office
1200 North Telegraph, Pontiac, Michigan 48341
(248) 858-0656

8. A preliminary inquiry and/or hearing has been conducted and the filing of this petition is not authorized.

Date: 7/26/17

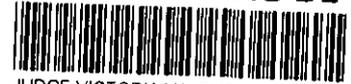
Judge/Referee

Bar No.

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OAKLAND CO.

BY: DEPUTY COUNTY CLERK
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-OCP-C-INT-BY-



JUDGE VICTORIA VALENTINE
IN THE MATTER OF DIEHL, TYLER,

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STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

In The Matter Of:
TYLER JOSEPH DIEHL

File No. 17-001153-IN

2017 SEP -1 PM 3:17
DEPUTY CLERK

OAKLAND COUNTY CLERK

PROBABLE CAUSE HEARING

BEFORE THE HONORABLE DAVID BATDORF-BARNES, CIRCUIT COURT REFEREE

Oakland, Michigan - Wednesday, July 26, 2017

APPEARANCES:

For Petitioner: BETSEY ANNE-STaab HAGE (P69981)
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Oakland County Prosecutor's Office
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(248) 858-0656

For Respondent: H. ELLIOT PARNES (P28529)
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TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Linda Bacon, CER #8970
P.O. Box 21067
Lansing, Michigan 48909-1067

BA

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WITNESSES: RESPONDENT

None

OTHER MATERIAL IN TRANSCRIPT:

None

EXHIBITS:

INTRODUCED

ADMITTED

None

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1 Oakland, Michigan

2 Wednesday, July 26, 2017 - 2:27:37 p.m.

3 THE COURT: All right, good afternoon. For
4 the Record, my name is David Batdorf-Barnes. I'm an
5 attorney referee. I'm calling the matter of Tyler Diehl,
6 case number 17-001153-IN. The matter comes to the Court's
7 attention pursuant to a petition submitted by the Oakland
8 County Prosecutor charging of July 25th incident of
9 domestic violence.

10 Now the Record should reflect that I
11 conducted a hearing regarding Tyler about two days ago, on
12 July 24th. That was in reference to an allegation of
13 domestic violence said to have occurred on July 23rd. I
14 found a probable cause basis to believe that the
15 allegations in the petition were true and I authorized that
16 petition. Tyler had been placed in custody on the
17 proceeding day and I declined to continue him in detention
18 and released him to his mother's care under conditions.

19 Then yesterday, I was advised by the court
20 support staff that one of my colleagues had authorized
21 detention of Tyler based upon the subsequent incident of
22 domestic violence and we appear today pursuant to the
23 petition that's been submitted by the prosecutor'.

24 Now Amy Wechsler had been counsel of Record
25 with regard to the petition alleging the incident of July

1 23rd. I spoke with Ms. Wechsler and Ms. Hage off the
2 Record before engaging in the proceeding today and I'm
3 advised that Ms. Wechsler may well have been an auditory
4 witness to the incident that brings us here today.

5 And since the ethical rules prohibit the
6 representation of counsel by a lawyer who knows or may have
7 reason to know that he or she may be called as a witness in
8 the event that the case goes to trial, then that lawyer
9 cannot represent the youngster in court.

10 So I'm releasing Ms. Wechsler from the prior
11 case, which is scheduled, incidentally, for pretrial before
12 Referee Hand on August 29th at 8:30 in the morning and
13 instead, appointing Mr. Parnes, who will be appointed as
14 counsel of Record in this matter. Appearances, please.

15 MS. HAGE: Betsey Hage on behalf of the
16 People.

17 MR. PARNES: Good afternoon, your Honor. May
18 it please this Honorable Court. Elliot Parnes on behalf of
19 Mr. Diehl who's seated to my right.

20 THE COURT: All right. And I see that Ms.
21 Creedle (ph) is here from the case work department, Ms.
22 Wechsler's still here and Tyler's mom, Linda Diehl -- is
23 that correct?

24 MS. DIEHL: Yes.

25 THE COURT: Is also present. Mr. Parnes, you

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1 acknowledge receipt of the copy of the petition?

2 MR. PARNES: I do, your Honor.

3 THE COURT: Do you waive formal reading?

4 MR. PARNES: I do.

5 THE COURT: Issue a probable cause evidence?

6 MR. PARNES: I'd like testimony, your Honor.

7 THE COURT: Call your first witness.

8 MS. HAGE: Your Honor, we'd call Officer
9 Sarasin to the stand.

10 THE COURT: Raise your right hand. You can
11 stay right where you are. We're a little short on chairs.
12 Do you swear or affirm the testimony that you'll offer in
13 the matter pending before the Court will be the truth, the
14 whole truth and nothing but the truth?

15 MR. SARASIN: I do, your Honor.

16 (At 2:30:41 p.m., witness sworn)

17 THE COURT: All right. Tell us your name.

18 THE WITNESS: Detective Thomas Sarasin,
19 S-A-R-A-S-I-N, White Lake Police Department.

20 THE COURT: Okay. Your witness.

21 DETECTIVE THOMAS SARASIN

22 (At 2:30:50 p.m., witness sworn, testified as follows):

23 DIRECT EXAMINATION

24 BY MS. HAGE:

25 Q And I'm sorry, did you say detective or sergeant?

- 1 A Detective.
- 2 Q Detective. Detective, with regard to Tyler Diehl on July
3 25th, was your agency contacted regarding him?
- 4 A Yes.
- 5 Q And what was the nature of that call?
- 6 A Our police department received a call from the Diehl's
7 neighbor, Evan Denoe (ph), stating that he observed and
8 witnessed a assault on -- on Linda from Tyler.
- 9 Q Okay, and did Mr. Denoe execute any written statement with
10 regard to what he observed on July 25th?
- 11 A Yes, he did.
- 12 Q And did that written statement indicate what assaults he
13 observed?
- 14 A It did.
- 15 Q Specifically, with regard to the assault, what did he say?
- 16 A Regarding the specific assault, upon hearing much yelling
17 back and forth between Linda and Tyler, he observed Tyler
18 strike Linda in the stomach, knocking Linda to the ground.
19 He stated it appeared that Tyler was either stomping or
20 kicking Linda's legs before Linda was able to say something
21 to Tyler to get him to stop.
- 22 Q And did police respond to the location as a result of Mr.
23 Denoe's call?
- 24 A Yes.
- 25 Q Did they speak to mother?

1 A Yes.

2 Q And that is mother Linda Diehl?

3 A Yes, Ma'am.

4 Q And what did she indicate occurred?

5 A She indicated to responding officers that, while Tyler was
6 agitated about going to his court-appointed therapy
7 session, he became agitated and began swinging a bag. She
8 denied any punching of Tyler onto her -- her body.
9 However, she did admit that he pushed her, causing her to
10 fall to the ground.

11 Q And where did this assault take place?

12 A Outside of the residence.

13 Q And where is that located?

14 A 551 Woods Edge in White Lake Township.

15 Q And that was the County of Oakland?

16 A County of Oakland, state of Michigan.

17 Q And did mother indicate to the police that when he pushed
18 her -- that when Tyler pushed mother, did she indicate that
19 he did so with her permission?

20 A No.

21 MS. HAGE: Thank you, your Honor. No further
22 questions.

23 THE COURT: Cross?

24 CROSS-EXAMINATION

25 BY MR. PARNES:

- 1 Q Officer, my -- officer, would you mind -- I have hearing
2 aids, so if you could turn around just sorta -- so I can
3 see. Thank you. I'm going to ask you some questions. If
4 you don't understand any of my questions, please ask me to
5 repeat them, okay?
- 6 A Yes, Sir.
- 7 Q And if you do answer, it'll be assumed that you understood
8 my --
- 9 A Yes, Sir.
- 10 Q -- question. Is that fair?
- 11 A Yep.
- 12 Q You have to answer "yes" or "no."
- 13 A Yes, Sir.
- 14 Q Okay. How far away was -- what was the last name of -- of
15 Evan? What's his --
- 16 A Denoe.
- 17 Q Denoe? How far away was he from Colin and -- and his
18 mother when he claims he saw them? Tyler?
- 19 A He stated that he was taking the trash to the curb at the
20 residence next door. I don't know in feet how far it is.
- 21 Q And does he -- did he tell you that he saw this incident at
22 the curb or as he got out of his garage with the -- with
23 the trash can?
- 24 A I do not believe that that was specified in the report.
- 25 Q And you -- you saw the lawn where it took -- allegedly took

1 place?

2 A I did not see the lawn --(multiple speakers)--

3 Q Oh, you're not the officer who went to talk to the mom?

4 A No, Sir.

5 Q Who's the officer that went to talk to the mom?

6 A Officer Jeffrey Barber and Christopher Mesaros.

7 Q Can you just enlighten me? Why are you then here instead

8 of them?

9 A I'm a detective that's working the case. They're both off

10 -- they're both in training.

11 Q So you don't have any firsthand knowledge of anything that

12 you just testified to, right?

13 A Just the report.

14 Q Well, but you got the report from the officers that went

15 there, correct?

16 A Yes.

17 Q Okay. So my question is, you don't have any firsthand

18 knowledge of any of the incident that took place, correct?

19 A No.

20 Q No, that's not correct or yes, that is correct?

21 A Yes, that's correct.

22 Q Okay. So the witness statement that Ms. Diehl wrote, that

23 was not given to you. That was given to the other

24 officers?

25 A Correct.

- 1 Q Have you ever spoken to Tyler?
- 2 A No.
- 3 Q Have you ever spoken to Ms. Diehl?
- 4 A No.
- 5 Q And you've never spoken to Mr. Denoe?
- 6 A No.
- 7 Q You are aware that the mom denies that Tyler hit her in the
8 stomach, correct?
- 9 A Yes.
- 10 Q And you are aware that she denies that Tyler pushed her,
11 correct?
- 12 A No.
- 13 Q That's not correct? She's -- she did say that he pushed
14 her?
- 15 A According to the report that she made to the officer, yes.
- 16 Q Could you show me where -- I have the -- I have the written
17 statement. Could you show me where it states -- cuz I -- I
18 just got it real quick. Can you show me where it states
19 that she stated that Tyler, in fact, pushed her?
- 20 A It doesn't state in the written statement. However, she
21 did, according to the report, she did state it to the
22 officer.
- 23 Q Well, but whose report are you referring to?
- 24 A The Officer Jeffrey Barber's report.
- 25 Q But -- and his report is different than what's in the

1 written statement, correct?

2 A Yes.

3 MR. PARNES: Can I just have --(inaudible)--
4 I guess I just got this --(inaudible)-- while he's in the
5 middle of interrogation, I'm not sure that's appropriate,
6 your Honor.

7 THE COURT: Please continue with your
8 examination.

9 MR. PARNES: Thank you.

10 BY MR. PARNES:

11 Q Did the officer who wrote the report witness or view any
12 signs of bruises in -- on the mother's stomach?

13 A No.

14 Q Did the officer observe any bruises on any part of her body
15 that wasn't already there?

16 A According to the report, he did observe injuries that she
17 claimed were from previous incident.

18 Q So he -- in his report, he -- he didn't say that he saw any
19 different injuries than what the mother had already told
20 him that she had already suffered, correct?

21 A Yeah, that had reopened. She told him.

22 Q All right, so you're -- you're testifying under oath that
23 she told the officer that some of the prior injuries had
24 reopened?

25 A That's the information I have, yes.

- 1 Q Could you show me in her written statement where that might
2 occur -- where that might be?
- 3 A It's not in her written statement.
- 4 Q Was -- when you -- do you ever go out and take statements?
- 5 A I'm a detective, Sir. I --
- 6 Q I mean, do you ever interview witnesses -- I mean, or a
7 potential witness --(multiple speakers)--
- 8 A Yes.
- 9 Q Okay. When you go -- or if you know, do you take tape
10 recorders where the -- where the interviews are taped?
- 11 A Yes.
- 12 Q Do you know, was the interview between the officer and the
13 mother taped in this incident?
- 14 A I believe that the -- both officers were wearing
15 microphones at the time of the incident.
- 16 Q Does that mean their discussions were taped, or does -- I
17 don't understand what you're saying, microphone.
- 18 A There -- there should be, yes. We -- all of our -- all of
19 our microphones go to the system, a software in the station
20 that we can access.
- 21 Q And is there a -- isn't there something on your -- on your
22 checklist or report that says these are the things that are
23 either exhibits or things that you want -- the police are
24 going to keep when -- when an alleged crime takes place?
25 Do you understand my question?

- 1 A No, I don't.
- 2 Q Okay. I'm sorry. It wasn't phrased very well. Are the
3 tapes -- do you know, are the tapes marked and kept in a
4 secure place right now?
- 5 A In a secure place, yes. If they're -- if they're a
6 recording, which I believe they were, they would be kept in
7 a software system at the station.
- 8 Q Did the officer tell you that he did a tape recording and
9 that -- and that there are tape recordings of his
10 discussion with the mother, number one?
- 11 A Did he tell me specifically?
- 12 Q Right.
- 13 A No.
- 14 Q Did he tell you that there was a tape recording between him
15 and Mr. Denoe?
- 16 A No.
- 17 Q In your experience and in -- how long you been a detective?
- 18 A Detective, about six months. Officer, about seven years.
- 19 Q Okay. In your experience, when you -- when the officer
20 would have been talking to Mr. Denoe, would that microphone
21 also have been working then and there would have been a
22 tape recording of that discussions?
- 23 A In my experience, yes.
- 24 Q So I would be able to, at some point in time, request those
25 tape recordings, correct?

- 1 A Yes.
- 2 Q Okay. Would you know, would the officer had made any
3 written notes that he used to prepare his typewritten
4 report?
- 5 A I don't know what -- what he used to prepare.
- 6 Q Do you -- you -- do you -- when you're out on the field, do
7 you take notes of your discussions with alleged victims and
8 witnesses?
- 9 A I do personally.
- 10 Q Okay.
- 11 A I can't testify to what the officer --(multiple speakers)--
- 12 Q I understand that. And what -- tell me, and what was the
13 name of the officer that spoke to the mother and Mr. Denoe?
- 14 A It was Officer Jeffrey Barber and Officer Christopher
15 Mesaros.
- 16 Q You don't know which one spoke to which -- to whom though?
- 17 A Well, the report's written by Officer Barber, but they both
18 responded to the scene so typically, the interview would be
19 on one or both of their microphones.
- 20 Q Okay, and -- and I -- I'm sorry, I didn't catch the last
21 name of Officer Christopher.
- 22 A Mesaros, M-E-S-A-R-O-S.
- 23 Q And when you -- you don't know for sure whether or not
24 either officer made any written notes of their discussions?
- 25 A I do not.

1 Q When you take -- when you do written notes and then you put
2 it into the -- your typed narrative, do you get rid of
3 those notes?

4 MS. HAGE: Your Honor, I'm going to object.
5 I think this goes outside the scope of probable cause
6 testimony.

7 THE COURT: Sounds like it's preparation for
8 a discovery request.

9 MR. PARNES: Maybe.

10 THE COURT: What's the relevance at -- at
11 this point in the proceeding?

12 MR. PARNES: I'll -- I'll leave that for now,
13 your Honor.

14 BY MR. PARNES:

15 Q Did -- to your knowledge, did an officer -- did any officer
16 ever speak to an individual by the name of Amy Wechsler
17 regarding this incident?

18 A I don't believe so.

19 Q Does the reports indicate in any way that Ms. Wechsler was
20 on the phone and may have heard what was taking place
21 between Tyler and his mother?

22 A I have not seen her name in this report.

23 Q Did Tyler make any statements to either of the police
24 officers?

25 A No definitive statements that I know of at this time.

- 1 Q Well, when you say "no definitive statements," if there
2 would have been a written statement, it would have been in
3 the package that I was provided -- (multiple speakers) --
- 4 A Correct.
- 5 Q -- because Evan Denoe wrote a statement and so did mother?
- 6 A Correct.
- 7 Q Would there be a notation somewhere in the police report
8 whether or not Tyler even spoke to the police?
- 9 A There would be.
- 10 Q Okay, and is there?
- 11 A No.
- 12 Q Does that lead you to believe that there was no discussion
13 with Tyler?
- 14 A No. The officer did tell me that they asked him questions.
15 However, the officer had to leave the station for another
16 call and the report was not able to be completed.
- 17 Q So are you telling me that they attempted to start asking
18 him questions at the -- at the police department or outside
19 -- where -- where -- where were those discussions?
- 20 A At the -- at the residence.
- 21 Q Oh, okay. And is there any indication what Tyler may have
22 said? Or were you told anything by either officer that
23 Tyler said A, Tyler said B, anything?
- 24 A I wasn't told anything that I can testify here today, no.
- 25 Q I'm not sure what you mean, that you can't testify today.

- 1 Either --
- 2 A I -- I don't have any -- any narrative for Tyler in my
- 3 report.
- 4 Q Oh, okay. Do you think -- is there -- is this everything
- 5 there is or is there some narrative or -- regarding Tyler?
- 6 A I'm sure there -- I'm sure there will be a narrative, yes.
- 7 Q Well, when this incident took place -- what time,
- 8 allegedly, did it take place?
- 9 A I believe the call came in at 11:16 hours. They responded
- 10 around 11:20 hours.
- 11 Q That's in the morning?
- 12 A Yes.
- 13 Q Did you speak to the mother about today?
- 14 A No.
- 15 Q Well, the mother indicated to your -- or at least to the
- 16 police officer that she had a skin disorder, correct?
- 17 A I believe so, yes.
- 18 Q And that her arms have scabs on them, correct?
- 19 A Yes.
- 20 Q Is there any indication in any of the reports or statements
- 21 that Evan (sic) intended in any way to injure his mother?
- 22 A Including the written statement from the neighbor?
- 23 Q Yes.
- 24 A Yes.
- 25 Q That he wasn't standing right next to Evan -- I mean, to

1 Tyler when that took place, correct? He was somewhere on
2 his driveway or near the --(multiple speakers)--

3 A He affirmed it from his residence, yes.

4 Q Did he indicate to the police officer that he heard
5 anything that either Tyler or his mother said, or is it
6 just what he saw?

7 A He indicated in his written statement that he heard them
8 yelling.

9 Q Did he indicate what he heard them yelling? Anything
10 specific?

11 A No.

12 Q So he heard them both yelling, is that what --

13 A Yes.

14 MR. PARNES: I don't have any other questions
15 at this point, your Honor.

16 THE COURT: Redirect?

17 MS. HAGE: I don't have any redirect.

18 THE COURT: Your next witness?

19 MS. HAGE: I don't have any additional
20 witnesses, your Honor.

21 THE COURT: Your argument?

22 MS. HAGE: (Inaudible) testimony has shown by
23 a probable cause --

24 MR. PARNES: Well, can I call the mom?

25 THE COURT: Then we're getting in -- it's up

1 to the prosecutor to establish probable cause --

2 MR. PARNES: Got you.

3 THE COURT: -- evidence based upon their
4 proofs.

5 MR. PARNES: Got you.

6 MS. HAGE: Your Honor, I think that we've
7 established by a probable cause standard that there was a
8 crime, in fact, committed and that the respondent was, in
9 fact, the person who committed that crime against his
10 mother. I would ask that the -- the Court does authorize
11 the petition.

12 THE COURT: All right. Mr. Parnes?

13 MR. PARNES: I respectfully disagree with the
14 prosecutor. This police officer has no firsthand knowledge
15 of anything. He didn't see it. He didn't hear it. He
16 didn't talk to any of the witnesses. All we have is a
17 supposed hearsay statement from this Evan Denoe who claims
18 he may have seen or heard something.

19 The mom told the police officer, according to
20 her written statement, that Tyler didn't push her, didn't
21 jump on her legs as the -- as the -- as the petition in the
22 complaint states. And there's no evidence that he
23 intended, in any way, to injure his mother. I would ask
24 the Court not to authorize this petition.

25 THE COURT: All right. I'm going to

1 recommend authorization. I think there's a question of
2 fact as to whether an assault or an assault and battery
3 occurred by Tyler against his mother --(inaudible)--
4 residen -- residence of the same household. That he either
5 struck or pushed his mother so as to call her -- cause her
6 to fall to the ground. Date of the incident would be
7 yesterday and I'm going to recommend authorization of the
8 petition. People's position on the issue of placement?

9 MS. HAGE: Your Honor, I would ask that the
10 -- I don't mean to --(inaudible)-- pending pretrial on the
11 matter.

12 As this Court indicated on the Record prior
13 to the outset --(inaudible)-- here on Monday with regard to
14 a domestic violence charge against his mom and I understand
15 --(inaudible)-- testimony regarding that. There was a
16 denial in that case with regard to what -- what might have
17 happened and I don't believe mother --(inaudible)-- with
18 him in her home and -- and quite frankly, it seems that his
19 behavior's becoming more brazen, because now we're doing
20 this on the lawn where everyone can see it. Additionally,
21 your Honor, I would --

22 MR. PARNES: I'm missing -- I'm sorry, I'm
23 missing what you're saying --(multiple speakers)--

24 MS. HAGE: Okay. Your client's becoming more
25 brazen in his assaults on his mother, given that they're

1 now occurring on the lawn of his home and not just inside
2 the home. So I have grave concern regarding what exactly
3 is going on in that home.

4 Additionally, my understanding is with regard
5 to your 7/23 order, is he had to go to a therapeutic
6 session within a certain amount of time. I don't believe
7 that occurred. In fact, this breakdown occurred while that
8 was trying to be arranged. So I would ask that this Court
9 does --(inaudible)-- continue him in detention until a
10 pretrial hearing.

11 THE COURT: Mr. Parnes?

12 MR. PARNES: I'd ask the Court to consider
13 placing Tyler in some form of inpatient program. I don't
14 disagree with the prosecutor that there are issues that he
15 probably has and that he needs therapy and that's why the
16 Court, on the 23rd, in his wisdom, determined that he needs
17 to be in therapy. The mom is prepared -- and I ask that
18 you ask her in regards to allowing him to be placed back in
19 the home as long as there's some intensive therapy or some
20 kind of inpatient therapy.

21 THE COURT: Ms. Diehl, what's your proposal?

22 MS. DIEHL: I do think he needs therapy very
23 badly. He's --

24 THE COURT: I do, too.

25 MS. DIEHL: An inpatient would be probably

1 appropriate.

2 THE COURT: I don't know how long this has
3 been going on, but it's certainly been intense this week.

4 MS. DIEHL: It -- it -- it really -- it
5 started a couple weeks ago and just escalated and escalated
6 and escalated and, you know, there's a lot of reasons that
7 -- and pieces that could be causing it, but --

8 MR. PARNES: Your Honor --

9 MS. DIEHL: -- and now he needs help.

10 MR. PARNES: Your Honor, my understanding is
11 that he's an all A student. That's what I've been led to
12 believe from people I've spoken to today, which is sort of
13 a --

14 THE COURT: I think --(multiple speakers)--

15 MR. PARNES: -- anomaly.

16 THE COURT: -- in the hearing the other day
17 was that no discipline referrals at school and good
18 student. I don't remember hearing about grades, but
19 --(inaudible)-- student certainly characteri -- is
20 characterized as a good student. What services have been
21 utilized previously? Can you tell me?

22 MS. CREEDLE: (Inaudible) Community Mental
23 Health, Oakland Community Health Network. As far as I'm
24 aware, at least, not through our agency there weren't any
25 services previously. I had -- mother had touched base with

1 me on Monday because she said that she needed to get Tyler
2 into services relatively soon and had scheduled an
3 --(inaudible)-- an eligibility screening over the phone
4 yesterday morning at 9:00 a.m., which we did complete and
5 found him eligible for services. Mother had chosen Oakland
6 Family Services as the provider and --(multiple speakers)--

7 THE COURT: Which would be outpatient
8 treatment?

9 MS. CREEDLE: Correct. Which can be
10 home-based or commuted. Oakland Family Services would
11 determine that level of care. And I was actually able to
12 get the mother and Tyler an intake appointment the same day
13 at 4:00 p.m. So that was, as far as getting services,
14 going as fast as possible.

15 At the beginning of the phone call, there was
16 arguing going on in the family and I could hear Tyler in
17 the background. I tried to evaluate the situation
18 --(inaudible)-- if there was concern about immediate help
19 that could be utilized through Common Ground, but the
20 mother, at that very moment, didn't feel like that Tyler
21 was a danger to --(inaudible)-- others, so we continued on
22 with the eligibility screen but did inform mother if
23 anything were to change, that Tyler could be taken to
24 Common Ground for an emergency --(multiple speakers)--

25 THE COURT: My conjecture, given Tyler's

1 present demeanor, is if the deputies were to pack him up
2 and take him to Common Ground for an assessment today,
3 they'd say no present risk.

4 MS. CREEDLE: Correct.

5 THE COURT: He's calm and quiet. Mr. Parnes
6 we have a pre-existing date of August 29th. That's based
7 on the matter being on Referee Hand's docket. I guess I
8 should inquire what the -- now that we have another
9 petition, are either of you submitting a judge demand?

10 MS. HAGE: Who's the judge?

11 THE COURT: I think it's Mattis. Give me a
12 minute.

13 MS. HAGE: I'm not in --(inaudible)-- Mattis.

14 THE COURT: No, I beg your pardon, Valentine.

15 MS. HAGE: (Inaudible) for the People?

16 MR. PARNES: I --(inaudible)--

17 THE COURT: Judge demand?

18 MR. PARNES: Yes.

19 THE COURT: Does that apply to both?

20 MR. PARNES: (Inaudible) I think both matters
21 should be heard by the same juris.

22 (Telephone call)

23 THE COURT: Yeah, this is Referee Barnes.

24 Hello, I need a pretrial date on the judge's docket,

25 delinquency matter. All right, this is Referee Barnes, I

1 need -- have a delinquency matter and --(inaudible)-- a
 2 judge demand. I need a pretrial date --(inaudible)-- time?
 3 Eighth at what time? Mr. Parnes, the eighth?

4 MR. PARNES: Of August?

5 THE COURT: Yes.

6 MR. PARNES: At what time?

7 THE COURT: 1:30?

8 MR. PARNES: That's fine. Well, I've got
 9 --(multiple speakers)--

10 THE COURT: Ms. Diehl?

11 MR. PARNES: -- Referee Hamilton, but I'll go
 12 there first.

13 MS. DIEHL: That's fine.

14 THE COURT: We'll take it. Last name
 15 D-I-E-H-L. I can't give you when I'm still in intake.
 16 Thank you.

17 MR. PARNES: Your Honor, would the Court
 18 consider putting in your recommend -- recommended order a
 19 psychiatric evaluation for Tyler while he's over at the
 20 Village, because I assume you're keeping him at the
 21 Village.

22 THE COURT: I am keeping him at the Village.
 23 Would you encourage your client in this matter to sign a
 24 waiver of summons and notice of hearing?

25 MR. PARNES: I will do a verbal. By -- by

1 signing this, you avoid having a deputy having to come
2 serve you with notice of the hearing the next appearing
3 because --(multiple speakers)-- today.

4 THE COURT: Tyler, were you fingerprinted --

5 MR. DIEHL: Yes.

6 THE COURT: -- yesterday?

7 MR. DIEHL: Yes, your Honor.

8 THE COURT: At the -- did you go to the
9 police department, or did you go straight to the Village?

10 MR. DIEHL: In -- what do you mean?

11 THE COURT: Where were you fingerprinted?

12 MR. DIEHL: I was finger at the police
13 station and when I came here, I was fingerprinted.

14 THE COURT: Okay. How many times have you
15 been fingerprinted?

16 MR. DIEHL: No other time except these two.

17 THE COURT: Okay. Were you ever
18 fingerprinted when they took you over to the Children's
19 Village?

20 MR. PARNES: I'm sorry, he didn't -- he
21 probably didn't hear cuz I was talking to him.

22 THE COURT: Miss Creedle, yes?

23 MS. CREEDLE: He said, "yes." That's what he
24 said.

25 THE COURT: I didn't include it in the order

1 --(inaudible)-- Tyler, I find it contrary to your welfare
2 to be placed at home because I don't think your mom can
3 provide you with sufficient supervision and to stop the
4 conduct that's repeatedly bringing you to the Court's
5 attention. I think reasonable efforts have been made to
6 avoid the need for out of home placement. There's -- there
7 have been multiple police interventions at this point. You
8 were placed in the Children's Village overnight. You were
9 released to your mother's custody.

10 I'm satisfied that reasonable efforts have
11 been made to avoid the need for out of home placement at
12 this point now without success. And I recommend that you
13 be placed in the Children's Village in secure detention
14 pending the next hearing before Judge Valentine.

15 As to the issue of psychiatric evaluation,
16 I'm going to leave that open to be addressed at pretrial by
17 Judge Valentine. If there is any need for psychiatric
18 treatment between now and the time of the next court
19 appearance, the Village can take care of that with on-staff
20 psychiatric consultation --(multiple speakers)-- necessary,
21 the use of Common Ground. And there is a staff
22 psychiatrist. So if there is observed conduct that
23 requires the Village staff to address that issue, they'll
24 do so. But I'm not going to require a psychiatric
25 evaluation on a pretrial basis at this point.

1 MR. PARNES: Would you consider bond?

2 THE COURT: No, because of the repetitive --
3 repetitive nature of the incidents that's --(inaudible)--
4 bringing the matter to the Court's attention and bond would
5 release him to the custody of his mother who's his only
6 parent and she's the alleged victim in both of these cases.
7 So I -- I'm declining the issue of bond.

8 MR. PARNES: Thank you, your Honor.

9 THE COURT: Ms. Hage, anything else?

10 MS. HAGE: No, your Honor.

11 THE COURT: Mr. Parnes, anything else?

12 MR. PARNES: May I approach?

13 THE COURT: Sure.

14 MR. PARNES: Thank you.

15 THE COURT: Tyler, as to my findings and
16 recommendations, if you disagree with them at all, you have
17 the right to request a review of them, but to protect that
18 right, you must file your written request to the Court
19 within the next seven days. Deputies, thank you. When
20 he's transported, let the Village know that I will fax the
21 order --(inaudible)-- all right? Thank you.

22 MR. PARNES: Okay? All right, I'll be over.

23 (At 3:01:48 p.m., hearing concluded)

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of twenty-nine (29) pages, in the 6th Circuit Court for the County of Oakland:

In The Matter Of:
TYLER DIEHL

_____ /

Location: Circuit Court

Date: Wednesday, July 26, 2017

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ Linda Bacon

Linda Bacon, CER #8970
Certified Electronic Recorder

Dated: August 22, 2017

Theresa's Transcription Service, P.O. Box 21067
Lansing, Michigan 48909-1067 - 517-882-0060

STATE OF MICHIGAN
6th JUDICIAL CIRCUIT - FAMILY DIVISION
OAKLAND COUNTY

PLEA OF RESPONDENT
(DELINQUENT PROCEEDINGS)



JUDGE VICTORIA VALENTINE
COURT TELEPHONE NO. (248) 858-0112

Court address 1200 N. Telegraph Road, Pontiac, MI 48341

In the matter of Tyler Dehl 7/24/17

- 1. I have received a copy of the petition dated _____
- 2. I am pleading responsible/guilty/no contest to the following charge(s) in that petition:
Domestic Violence
- 3. Is this plea the result of an agreement between you, your attorney (if one is desired) and the Assistant Prosecutor?
No (Yes or No) if so, what is your understanding of the agreement?

- 1. I understand that if my plea is accepted, the court may take jurisdiction over me and order me to complete a term of probation, place me in an Oakland County program such as Children's Village or Crossroads for Youth, or commit me to the Department of Human Services under Public Act 150 for treatment, or make some other disposition.
- 1. I understand that I have a right to have a lawyer represent me during all proceedings if I so desire and that if I cannot afford one, the court will appoint a lawyer for me, if I so desire.
- 1. I understand that I have a right to a trial by jury or by the court without a jury.
- 1. I understand that I am presumed to be innocent until proven guilty beyond a reasonable doubt.
- 1. I understand that the prosecutor has the burden of proof and that I don't have to prove anything.
- 1. I understand that I have a right to have all witnesses against me appear at trial and to have my lawyers question those witnesses.
- 2. I understand that I have a right to call my own witnesses to testify and the court will order them to appear and testify if they won't come to court on their own.
- 1. I understand that I do not have to testify at trial, and no one can say anything about my not testifying or hold it against me. On the other hand, I understand that I may testify if I want to.
- 2. I understand that if the court accepts my plea, I will not have a trial of any kind, and I will be giving up these trial rights.
- 3. I understand that a plea of responsible/guilty/no contest results in the court taking jurisdiction over me and that the judge can make decisions about me and keep jurisdiction over me until I am 19 years of age.
- 1. (For §2a(2) extension of jurisdiction offenses only) I understand that since I am pleading to _____, upon request of the prosecution or the Department of Human Services the court might extend jurisdiction until I am 21 years of age.
- 1. I understand that this plea may be considered in future dispositions in this court or in sentencing should I be convicted of a felony as an adult.
- 1. (For sex offenses only) I understand that following acceptance of my plea the court will order HIV testing and DNA profiling. Additionally, I will have to notify local police agencies of my address for the next 25 years/for the rest of my life in compliance with the Sex Offender Registration Act, and that failure to do so is a felony.
- 1. (For traffic and certain drug offenses only) I understand the court will notify Secretary of State and the Secretary of State may restrict my driving privileges in addition to what happens here.
- No one has threatened me to get me to plead.
- (For guilty or responsible pleas) In my words, this is what I did that makes me think I am responsible/guilty:
11

(For no contest pleas) I understand the basis for my plea will be provided by Police Report

It is my choice to plead responsible/guilty/no contest to the allegations in the petition.

a: 8/8/17

Tyler Dehl
(Signature of Respondent)
Tyler Dehl
(Printed Name of Respondent)

BE COMPLETED BY PARENT(S) OR LEGAL GUARDIAN:

Do you know of any reason why the court should not accept the plea offered by the juvenile? _____ If yes, explain

(sex offenses only) Do you understand that as long as your child is a minor, you must register the address of your child as required by the Sex Offender Registration Act, and that failure to do so is a felony? _____

Relationship	Date	Relationship
Relationship	Date	Relationship

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FAMILY DIVISION

IN THE MATTER OF:

Case No. 2017-855352-DL

TYLER JOSEPH DIEHL,

Respondent.

PLEA

BEFORE THE HONORABLE VICTORIA A. VALENTINE, CIRCUIT JUDGE

Pontiac, Michigan - Tuesday, August 8, 2017

APPEARANCES:

For the People:

ANTHONY CHRISTOPHER MAREK (P76767)
Oakland County Prosecutor's Office
1200 N. Telegraph Road
Pontiac, MI 48341-1032
248-858-0656

For the Respondent:

H. ELLIOT PARNES (P28539)
H. Elliot Parnes, PLLC
7117 Glenburnie Drive
Clarkston, MI 48346-1424
248-736-4955

On Behalf of
Casework Services:

LOUISE STREHL

Videotape Transcription Provided By:

Kimberly D. Pernick, CER 0715
About Town Court Reporting, Inc.
248-634-3369

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WITNESSES:

None

EXHIBITS:

None

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Transcript of plea on Petition 1 dated 8/8/2017

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Pontiac, Michigan

Tuesday, August 8, 2017 - at 1:47 p.m.

- - -

THE CLERK: Calling case number 2017-855352-DL,
in the Matter of Tyler Diehl.

MR. PARNES: Good afternoon, Your Honor. May
it please this Honorable Court, Elliot Parnes on behalf
of Tyler Diehl, who is standing to my left, and his
mother is present.

MR. MAREK: Anthony Marek for the People.

THE COURT: Where's his mother?

MR. PARNES: Mom is right --

THE COURT: Come on up, mom.

MR. PARNES: She's asking you to come up.

LINDA DIEHL: Oh, I'm sorry, I apologize.

MR. PARNES: Your Honor, I informed Mr. Marek
that as there are two petitions, one is dated July 24th
and the other one is dated July 26th, my client is
prepared to enter a plea of no contest to the July 24th.
He does not recall everything that took place on that
day. At this time he's not prepared to enter a plea as
it relates to the petition dated July 25th -- or July 26th.
We may have to set that one for trial. And after I
receive all discovery, our position might change.

THE COURT: Okay. There is a petition,

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1 supplemental petition in the file that didn't have time
2 to be sent out for notice. Mr. Parnes, here's your copy.
3 Mr. Marek, here's your copy.

4 MR. PARNES: And I do have a plea form if you
5 -- if the Court would like me to approach.

6 THE COURT: Well, let me -- let me get a little
7 more information. Mr. Marek, there's a petition that's
8 currently pending, and then an additional petition?

9 MR. MAREK: Yeah, Judge, I think what Mr.
10 Parnes and I just received from the Court are in fact
11 both petitions as we have previously seen them, as well
12 as a copy of the order after the preliminary hearing.
13 So, I don't think there's an additional petition. I
14 think the two petitions before the Court are as Mr.
15 Parnes summarized them.

16 MR. PARNES: I agree.

17 THE COURT: Okay. And then with regard to the
18 domestic violence, that's what the plea is for today?

19 MR. PARNES: Yeah. I mean, both petitions are
20 domestic violence. He's prepared to enter the no contest
21 plea as it relates to the July 23rd incident. And I'm
22 requesting the prosecutor to consider dismissing the
23 second count since the Court will already have
24 jurisdiction after you accept the plea. I'm sure he has
-- 'cause I just had the chance to speak to him, I don't

1 think he's had the opportunity to think about that, and I
2 understand that.

3 MR. MAREK: That's correct, Judge. And I will
4 send Mr. Parnes discovery for that case. And I will
5 consider that request.

6 THE COURT: Okay. Approach, please.

7 (At 1:50 p.m., pause in proceedings)

8 (At 1:54 p.m., proceedings resumed)

9 THE COURT: I thought you said you were
10 pleading to the 8-24 incident, is what the plea is to?

11 MR. PARNES: I'm sorry, I didn't hear, Your
12 Honor, I'm sorry. I did not have the mother sign yet
13 because she's the victim. So, I think any questions you
14 want to ask the mom, I'm sure can be done verbally.
15 But --

16 THE COURT: Okay. Swear the witness and the
17 mother, please.

18 THE CLERK: Please raise your right hand to be
19 sworn.

20 MR. PARNES: Raise your right hand.

21 THE CLERK: Both of you.

22 LINDA DIEHL: Oh.

23 THE CLERK: Do you solemnly swear or affirm to
24 tell the truth, the whole truth, and nothing but the
truth, so help you God?

Transcript of plea on Petition 1 dated 8/8/2017

1 LINDA DIEHL: I do.

2 TYLER DIEHL: Yes, Your Honor.

3 MR. PARNES: All right. You got to speak real,
4 real loud, okay?

5 TYLER DIEHL: Mm-hmm.

6 MR. PARNES: Look at the judge.

7 (At 1:55 p.m., Linda Diehl and Tyler Diehl were
8 sworn by the clerk, testified as follows)

9 THE COURT: Okay. Mr. Diehl, we're here today,
10 and I'm told that you're going to enter a plea of no
11 contact -- no contest, is that correct, sir?

12 TYLER DIEHL: Yes, Your Honor.

13 THE COURT: Okay. Tell me your name for the
14 record.

15 TYLER DIEHL: My name is Tyler, and my middle
16 name is Joseph, and my last name is Diehl.

17 THE COURT: And what's your date of birth?

18 TYLER DIEHL: 3-26-2005.

19 THE COURT: Okay. Did you receive a copy of
20 the petition dated 7-24-2017?

21 MR. PARNES: That's the one that we went
22 through.

23 TYLER DIEHL: Yes, Your Honor.

24 THE COURT: Okay. Are you pleading no contest
to the charges of domestic violence?

Transcript of plea on Petition 1 dated 8/8/2017

1 TYLER DIEHL: Yes, Your Honor.

2 THE COURT: Is this a result of a plea -- of an
3 agreement between you, your attorney, and the assistant
4 prosecutor?

5 MR. PARNES: Not -- no, no.

6 TYLER DIEHL: No, Your Honor.

7 THE COURT: Do you understand that if your plea
8 is accepted, the Court will take jurisdiction over you
9 and order you to complete a term of probation, place you
10 in the Oakland County Program such as Children's Village,
11 or Crossroads for Youth, or commit you to the Department
12 of Health and Human Services under Public Act 150 for
13 treatment or make some other disposition?

14 TYLER DIEHL: Yes, Your Honor.

15 THE COURT: Do you understand that you have the
16 right to have a lawyer present with you during all
17 proceedings if you so desire. And if you cannot afford
18 one, the court will appoint a lawyer for you if you so
19 desire?

20 TYLER DIEHL: Yes, Your Honor.

21 THE COURT: And you have next to you Mr.
22 Parnes, is that correct, sir?

23 TYLER DIEHL: Yes, Your Honor.

24 MR. PARNES: Yes.

THE COURT: Okay. And you understand that you

1 have a right to trial by jury or by the Court without a
2 jury?

3 TYLER DIEHL: Yes, Your Honor.

4 THE COURT: You understand that you are
5 presumed innocent until proven guilty beyond a reasonable
6 doubt?

7 TYLER DIEHL: Yes, Your Honor.

8 THE COURT: Do you understand that the
9 prosecutor has a burden of proof and that you don't have
10 to prove anything?

11 TYLER DIEHL: Yes, Your Honor.

12 THE COURT: Do you understand that you have the
13 right to have all witnesses against you appear at trial
14 and to have the lawyer question those witnesses?

15 TYLER DIEHL: Yes, Your Honor.

16 THE COURT: Do you understand that you have the
17 right to call your own witnesses to testify, and the
18 Court will order them to appear to testify if they won't
19 come to court on their own?

20 TYLER DIEHL: Yes, Your Honor.

21 THE COURT: Do you understand that you do not
22 have to testify at trial, and no one can say anything
23 about you not testifying or hold it against you?

24 TYLER DIEHL: Yes, Your Honor.

THE COURT: On the other hand, you are entitled

1 to testify if you would like to.

2 TYLER DIEHL: Yes, Your Honor.

3 THE COURT: Do you understand that if the Court
4 accepts your plea, that you will not have a trial of any
5 kind and you will be giving up the rights to trial?

6 TYLER DIEHL: Yes, Your Honor.

7 THE COURT: And do you understand that a plea
8 of no contest results in the Court taking jurisdiction
9 over you, and that the judge can make decisions about you
10 and keep jurisdiction over you until you're 19 years of
11 age?

12 TYLER DIEHL: I don't understand that.

13 THE COURT: Okay. So, if you plead no contest,
14 then the Court can tell you -- take jurisdiction over you
15 and keep jurisdiction till you're 19.

16 MR. PARNES: She can make decisions about you
17 until you're 19.

18 TYLER DIEHL: Oh, yes, Your Honor.

19 THE COURT: You understand that?

20 TYLER DIEHL: Yes.

21 THE COURT: Okay. And you're indicating that
22 you're going to plead no contest, is that correct, sir?

23 TYLER DIEHL: Yes, Your Honor.

24 THE COURT: What is the reason why I would
allow a no contest plea?

1 MR. PARNES: Based on his lack of memory, Your
2 Honor, as to the details that were alleged in the
3 petition. I've stipulated that the police report or any
4 other pictures that the Court -- the prosecutor wants to
5 submit for the factual basis.

6 THE COURT: Okay. Sir, tell me in your words
7 what you think that you're pleading no contest to?

8 MR. PARNES: Well, no, that's -- because he's
9 pleading no contest, I'm going --

10 THE COURT: Okay, you're going to --

11 MR. PARNES: We're going to rely upon the --

12 THE COURT: Police report?

13 MR. PARNES: -- police report.

14 THE COURT: Okay. Mr. Marek, your basis for
15 the plea?

16 MR. MAREK: May I approach with the police
17 report, Judge?

18 THE COURT: Yes.

19 (At 1:58 p.m., pause in proceedings)

20 (At 2:00 p.m., proceedings resumed)

21 THE COURT: Okay. Are you going to take any --
22 put anything on the record with regard to police report?

23 MR. MAREK: No, Judge. If the Court's
24 satisfied with the police report, then I don't have
anything further.

Transcript of plea on Petition 1 dated 8/8/2017

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1 THE COURT: Okay. Can you state the date of
2 the police report, where it's from, and who authored it,
3 please?

4 MR. MAREK: Police report is a White Lake
5 Township police report; it indicates that there was an
6 occurrence on July 23rd, 2017, at approximately 10:15
7 p.m., at 551 Woodsedge Drive in White Lake, which is the
8 address of the respondent and his mother.

9 THE COURT: Mr. Parnes, you've had an
10 opportunity to look at the police report?

11 MR. PARNES: I have, Your Honor.

12 THE COURT: Okay. Are you satisfied with
13 regard to the factual basis?

14 MR. PARNES: The Court has complied with the
15 court rule regarding taking the plea, and I believe
16 there's a sufficient factual basis to accept the no
17 contest plea.

18 THE COURT: Okay. Mr. Diehl, this is your
19 signature on the bottom, is that correct, sir?

20 TYLER DIEHL: Yes, Your Honor.

21 THE COURT: And is it dated today, 8-8-2017?

22 TYLER DIEHL: Yes, Your Honor.

23 THE COURT: Okay. With regard to the mother,
24 Mother, do you believe that this Court should accept a
plea of your son of a no contact -- no contest with

1 regard to the petition dated 7-24-2017 on the counts of
2 domestic violence?

3 LINDA DIEHL: I've been told since I'm the
4 victim, I didn't have a say in any of this. Now, you're
5 asking my opinion? I'm not trying to be dis -- I'm
6 confused because I was told I did not -- you know,
7 because I'm the victim. He did go into a rage, in his
8 rage, injuries were caused. I don't know that he had
9 intent. But, yes, I will accept that he -- if he would
10 like to plead no contest, yes.

11 THE COURT: Since you are the mother, my
12 question is directed towards you because of the fact that
13 your son is 12 years old, and I'm looking for your input
14 with regard to him pleading no contest to the allegations
15 in the petition dated 7-24-2017.

16 LINDA DIEHL: Yes, I guess, yes.

17 THE COURT: Okay. Based upon the record and on
18 the statements that have made the factual basis, this
19 Court is satisfied with regard to the plea of Tyler Diehl
20 for the petition dated 7-24-2017, that was knowingly,
21 voluntarily, and understandingly made, and that the
22 mother has indicated that she does not see a reason why
23 we should not accept the plea of Mr. Tyler Diehl of no
24 contest with regard to these charges. So, I will enter
the plea.

1 Okay. Mr. Marek?

2 MR. MAREK: Judge, what I would suggest is, if
3 we pick a date in about six weeks, that could double as
4 the disposition date in this hearing and then, sort of, a
5 control date on the other petition. So, I'll be prepared
6 for a trial on that date as well. But I'll be in contact
7 with Mr. Parnes about my office's decision on that second
8 petition.

9 So, if we could possibly schedule one day for
10 disposition and a bench trial on the second petition.

11 MR. PARNES: That's fine, Your Honor. I don't
12 know how much time Miss Strehl needs. So, she's -- why
13 don't you come up.

14 MR. MAREK: And I -- I mean, I think a half-day
15 for the trial should be fine, so short hearing.

16 THE CLERK: Be Thursday, September 28th.

17 MR. PARNES: I'm sorry?

18 THE CLERK: Thursday, September 28th afternoon.

19 THE COURT: 1:30?

20 THE CLERK: Yes.

21 MR. MAREK: Do you have anything else? Got a
22 training on that day.

23 MS. STREHL: Do you have a Tuesday?

24 MR. MAREK: Oh, Miss Strehl is a Tuesday worker
as well if we could do it Tuesday if at all possible.

1 Like the --

2 THE CLERK: Tuesday, October 17th, 1:30.

3 MR. PARNES: That's fine.

4 MR. MAREK: It's okay?

5 MS. STREHL: Mm-hmm.

6 MR. PARNES: Obviously, we'd like to talk about
7 placement pending that hearing.

8 Your Honor, Miss Strehl just provided me -- and
9 it did refresh my recollection. At the preliminary
10 hearing, I did request a psychiatric evaluation for Tyler
11 because of his age and because of the allegations. I
12 don't know if it was ordered, and I don't think it was
13 done.

14 But it can be ordered, and the mom will bring
15 him into a -- if he's allowed to go home, she could bring
16 him in for the psychiatric evaluation by the clinic.

17 THE COURT: Okay.

18 MR. PARNES: I think it might be helpful, so we
19 might be familiar with some things. I'm just -- I'm
20 concerned, obviously, because of the allegations.

21 THE COURT: Okay. So, the psych of the child
22 has been ordered, or you need me to order it?

23 MR. PARNES: I'm trying to see if it was --

24 MS. STREHL: We need you to order it.

MR. PARNES: -- if Referee Barns put that in

1 the order.

2 LINDA DIEHL: He did not.

3 MR. PARNES: Did not?

4 THE COURT: Okay, I'll order it.

5 LINDA DIEHL: You can double-check, but I
6 believe he denied that request.

7 MR. PARNES: Well, it says a mental health
8 referral for services has been sought. But -- okay, but
9 I don't see the order for a psychiatric eval.

10 LINDA DIEHL: He said he was too calm on the
11 class -- the courtroom, excuse me.

12 MS. STREHL: I think what happened is prior to
13 that request, mother was in contact with our community
14 mental health liaison, and she did get an appointment
15 scheduled with Tyler at Easter Seals, and that was for
16 the day after that hearing. And according to my notes
17 from the previous worker, that set Tyler off having to go
18 to that appointment, which resulted in the second
19 assault, which, you know, we're not addressing today.
20 But that was part of the information that was relayed to
21 the worker the following day at the next hearing, which
22 ultimately led to his detention.

23 And because of that, Casework would prefer that
24 he have that evaluation and get the recommendations
before he's returned home based on the volatile nature of

1 the relationship.

2 THE COURT: Okay. And they're requesting so
3 that he remain in Children's Village for the placement
4 until the psychological is done?

5 MS. STREHL: Yes.

6 THE COURT: Mother?

7 LINDA DIEHL: I would like him home so I can
8 get him into therapy and get him some help. I've got
9 family that's ready to step in and help. This is a
10 little boy who has spent half of his life being abused,
11 and something set him off that weekend, and I understand
12 that. But before that, he had never had an incident.
13 And so, he's got a lot of trauma. That doesn't excuse
14 the behavior, don't misunderstand me. But he had been
15 doing well, and something set him off. And I think he,
16 you know, he needs help, not jail. And I will get him to
17 the psych eval, and I will get him to therapy. He has
18 now agreed to go to therapy.

19 MR. PARNES: Obviously, Your Honor, I'd request
20 that he not be detained, because I don't know how long
21 that psych eval will take. Even if they can do the
22 intake today, they may not be able to do it for another
23 four or five weeks.

24 THE COURT: Okay. Well, we have two domestic
violence against the mom, and another instance that, you

Transcript of plea on Petition 1 dated 8/8/2017

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1 know, we're not -- hasn't been adjudicated yet. But my
2 concern is, it's against the mom, he's going to be
3 returned home with the mom. Who else is in the home,
4 ma'am?

5 LINDA DIEHL: Pardon me?

6 THE COURT: Who else is in the home?

7 LINDA DIEHL: I have another 12-year-old son.

8 THE COURT: You have another 12-year-old son?

9 LINDA DIEHL: Yes.

10 THE COURT: Twins or --

11 LINDA DIEHL: Pardon me?

12 THE COURT: Are they twins?

13 LINDA DIEHL: No, they're both adopted.

14 THE COURT: Okay. Is he on any medication?

15 LINDA DIEHL: He is on ADHD medication, 18
16 milligrams of CONCERTA daily.

17 THE COURT: Is that new?

18 LINDA DIEHL: No, it's not new. He doesn't
19 normally take it in the summer. But I put him back on
20 it; I gave it to Children's Village. I do have a lot of
21 brothers and sisters who are willing to step in and help.

22 THE COURT: Will they be at the home with you?

23 LINDA DIEHL: If he starts to even act up at
24 all, they'll come right over. But no --

THE COURT: Well, how close are they?

1 LINDA DIEHL: -- they won't be living in the
2 home. But they will be coming over and talking to him on
3 the phone. My older son, I have an older son in
4 California, that sometimes, you know, he loves talking to
5 him about what's bothering him. So, he will, in addition
6 to real therapy, be able to talk to his family, which is
7 sometimes easier for a while. It doesn't replace
8 therapy, but it's important.

9 And for him to be isolated from family right
10 now and get no therapy and get nothing there, he needs
11 help. I mean, you know, whether it's PTSD or what,
12 something triggered him. Like I said, many, many years
13 of abuse, so.

14 MR. MAREK: Judge, if I -- for my part, I think
15 everybody in this room agrees that Tyler needs help. The
16 reason that I'm requesting continued detention until the
17 next hearing is for Tyler's safety and for the safety of
18 everybody in that home.

19 And I do need to stress that the second
20 petition has not been adjudicated yet. But I think the
21 Court should consider, in its placement decision, this is
22 his second incident that happened while the mother was
23 actually on the phone discussing therapy for Tyler.

24 And the fact that the best assurance that we
have today is that Tyler is now willing to go to therapy,

1 I don't think that's good enough. I don't think it's
2 safe yet.

3 So, it think that the evaluation should be done
4 first before the Court consider the change of placement.

5 LINDA DIEHL: I think his time in Children's
6 Village has made him want to go to therapy much more than
7 staying in Children's Village, and he realizes the
8 importance of it.

9 MR. PARNES: I'm just concerned, Your Honor,
10 with the length of time that it would take for the psych
11 eval to take place.

12 THE COURT: Okay. Mr. Diehl?

13 TYLER DIEHL: Yes, Your Honor.

14 THE COURT: Your mother would like you home.
15 My concern is that you have been acting out against her.
16 Do you understand my concern?

17 TYLER DIEHL: Yes, Your Honor.

18 THE COURT: Okay. You're ready to go into
19 therapy?

20 TYLER DIEHL: Yes, Your Honor.

21 THE COURT: And you're ready to get some
22 treatment?

23 TYLER DIEHL: Yes, Your Honor.

24 THE COURT: So, we can help you out here?

TYLER DIEHL: Yes, Your Honor.

Transcript of plea on Petition 1 dated 8/8/2017

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1 THE COURT: Okay. This is what I'm going to
2 do, okay? I'm going to keep you there for another week.
3 I'm going to ask that they get you in for a psych eval at
4 the end of this week, okay?

5 TYLER DIEHL: Okay, yes, Your Honor.

6 THE COURT: And then, hopefully, we can get you
7 on track and figure out what's going on, that's making
8 you upset and acting out like this. Maybe we can find a
9 different way to put our energy instead of hurting
10 somebody, okay?

11 TYLER DIEHL: Yes, Your Honor.

12 THE COURT: You going to be okay with that?

13 TYLER DIEHL: Yes, Your Honor.

14 THE COURT: Okay, Mom?

15 LINDA DIEHL: Yes, thank you.

16 THE COURT: Okay. So, the placement will
17 remain in Children's Village. We'll do a review in seven
18 days.

19 MR. PARNES: So, that would be what date now?

20 THE CLERK: Tuesday, August 15th.

21 MR. PARNES: What date, I'm sorry?

22 THE CLERK: August 15th.

23 MR. PARNES: That's fine. 1:30?

24 THE CLERK: Yes.

THE COURT: Okay. So, August 15th, we'll do a

1 review at 1:30. Placement will remain in Children's
2 Village, psych of Mr. Diehl needed.

3 MR. MAREK: Judge, was that a psychiatric or
4 psychological?

5 THE COURT: What are you requesting,
6 psychological?

7 MR. PARNES: Psychological, because I don't
8 know if the clinic will do a psychiatric.

9 MS. STREHL: Well, Children's Village will do a
10 psychiatric, but the clinic will do a psychological. But
11 you asked for a psychiatric?

12 MR. PARNES: I did, if the Village will do it.

13 MS. STREHL: I can ask.

14 MR. PARNES: Okay.

15 MR. MAREK: They will, they will.

16 THE COURT: Okay. Clarify for me, want
17 psychiatric or psychological?

18 MR. PARNES: I would like whatever can be done
19 as quickly as possible. I don't know the inner dealings
20 of Children's Village and the clinic. I know the clinic
21 usually takes a while. But if the Court issues an order,
22 that might then speed things up, but --

23 MR. MAREK: I know that -- yeah, I know that
24 psychiatric evaluations are done at Children's Village.
And if we're talking about a possible medication

1 adjustment, then I think that's the correct request,
2 psychiatric.

3 MR. PARNES: I have more -- I guess I'm more
4 concerned about what's going on and why he's acting the
5 way he is. The meds -- if the mom will, you know, after
6 he's released and take him to, you know, get a med
7 review, then I think that would be appropriate.

8 THE COURT: So, is it going to be done at
9 Children's Village or is it going to be done here?

10 MR. MAREK: It will be done at Children's
11 Village, Judge.

12 THE COURT: Okay. Anything further?

13 MR. PARNES: I don't believe so. Thank you,
14 Your Honor.

15 MR. MAREK: Judge, if -- you might want to
16 clarify. I don't know how backed up the staff is at CV
17 with the psychiatric evaluations, or you can just clarify
18 that the evaluation has to be done before the 15th.

19 THE COURT: It says must be done within seven
20 days.

21 MR. MAREK: Thank you.

22 LINDA DIEHL: Thank you.

23 MR. PARNES: Thank you, Your Honor.

24 MS. STREHL: Thank you.

THE COURT: Okay, Mr. Diehl.

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(At 2:14 p.m., proceedings concluded)

- - -

CERTIFICATION

I certify that this transcript, consisting of 23 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Tuesday, August 8, 2017, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

Kimberly D. Pernick

/s/ Kimberly D. Pernick, CER-0715
About Town Court Reporting, Inc.
248-634-3369

Transcript of Disposition on Petition 1 dated 9/1/2017

STATE OF MICHIGAN

2017-855352-DL

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FAMILY DIVISION

IN THE MATTER OF:

Case No. 2017-855352-DL

TYLER JOSEPH DIEHL,

Respondent.

DISPOSITION

BEFORE THE HONORABLE VICTORIA A. VALENTINE, CIRCUIT JUDGE

Pontiac, Michigan - Friday, September 1, 2017

APPEARANCES:

For the People:

ANTHONY CHRISTOPHER MAREK (P76767)
Oakland County Prosecutor's Office
1200 N. Telegraph Road
Pontiac, MI 48341-1032
248-858-0656

For the Respondent:

H. ELLIOT PARNES (P28539)
H. Elliot Parnes, PLLC
7117 Glenburnie Drive
Clarkston, MI 48346-1424
248-736-4955

On Behalf of
Casework Services:

LOUISE STREHL

Videotape Transcription Provided By:

Kimberly D. Pernick, CER 0715
About Town Court Reporting, Inc.
248-634-3369

Transcript of Disposition on Petition 1 dated 9/1/2017

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WITNESSES:

PAGE

None

EXHIBITS:

None

Transcript of Disposition on Petition 1 dated 9/1/2017

1 Pontiac, Michigan

2 Friday, September 1, 2017 - at 9:15 a.m.

3 - - -

4 THE CLERK: Calling case number 2017-855352-DL,
5 in the Matter of Tyler Diehl.

6 MR. MAREK: Good morning, Judge. Anthony Marek
7 for the People.

8 MR. PARNES: Good morning, Your Honor. May it
9 please this Honorable Court, Elliot Parnes on behalf of
10 Tyler Diehl, who is standing to my left.

11 MS. STREHL: Good morning, Your Honor. Louise
12 Strehl, Casework Services.

13 THE COURT: Good morning.

14 LINDA DIEHL: Linda Diehl, parent.

15 THE COURT: Thank you.

16 MR. PARNES: Think we're here for a
17 disposition, Your Honor, regarding the July 23rd incident.

18 THE COURT: Okay. I have a report.

19 MR. PARNES: Have you had the opportunity to
20 read the psychological evaluation?

21 THE COURT: I have.

22 MR. PARNES: Thank you.

23 THE COURT: Mr. Marek?

24 MR. MAREK: Do you want to present your
recommendation?

Transcript of Disposition on Petition 1 dated 9/1/2017

1 MS. STREHL: Yeah, thank you. Your Honor,
2 Casework is asking that you place Tyler on standard
3 probation. We got the recommendations from the court
4 psychological clinic, including individual and family
5 counseling, anger management, and participation in a
6 mentor program.

7 It appears that this juvenile is appropriate
8 for community placement. Mrs. Diehl has no reservations
9 about him returning home. He's an above-average student.
10 He seems to be responding well to the ABILIFY, which was
11 changed at the Children's Village during his placement
12 there. He is agreeable to going to counseling, so
13 they've already had their intake appointment at Oakland
14 Family Services, and another appointment will be
15 scheduled after he's released from the Village.

16 And the staff at Children's Village report that
17 he has improved and done much better overall since the
18 change in his medicine. He's had no need for any
19 physical management and has avoided all major crisis
20 situations. There are a few peer interactions, but there
21 was no need for a staff invention. He's been easily
22 redirected and following staff directions.

23 So, we ask that you adopt that recommendation.

24 MR. PARNES: Thank you, Your Honor. I guess
I'm going to start by saying as a parent, I was appalled

1 and beyond angry upon what I read in the report what took
2 place when he lived with his biological parents. It is
3 -- as long as I've been doing this, almost 40 years, this
4 is one thing I still cannot put my hand around.

5 He has a right to be angry, but he understands
6 that he has to find ways to control the anger and to deal
7 with the angry. I'd ask the Court to adopt the
8 recommendation.

9 I do have a concern, we are scheduled for trial
10 on 10-17-17 as to the other count. I asked the
11 prosecutor to consider dropping that count. I know that
12 he's subpoenaed his younger brother. I'm concerned about
13 that. But that's a prosecutorial decision.

14 So, I'd ask the Court to adopt the
15 recommendation as it relates to this charge.

16 THE COURT: Okay, thank you. What's the status
17 with regard to the second count?

18 MR. MAREK: Well, I'll get to that in a second,
19 Judge. I do want to, maybe just for the record, kind of
20 spin my wheels about the recommendation of Miss Strehl,
21 if I can for just a second.

22 I think Tyler will do well on probation. I
23 guess the one reservation that I have is, I do have a
24 concern that there's another child in the home, his
brother Colin, we've just mentioned him. I have a

Transcript of Disposition on Petition 1 dated 9/1/2017

1 concern that if any more violent incidents occur with
2 Tyler, whether it's between his mother or his younger
3 brother, I have a concern that those incidents wouldn't
4 be reported.

5 I want the Court to know that with regard to
6 this second incident that occurred really hours after
7 Tyler's first court appearance before Referee Barnes, it
8 was a neighbor who happened to witness the second
9 incident occur on the front yard, on the front lawn.

10 I don't really think this incident would have
11 been reported to the police by the mother had, you know,
12 had the police not shown up based on the neighbor's 9-1-1
13 call.

14 So, that's my reservation, is if we send Tyler
15 back into the community, we're not going to hear about
16 what's going on in that home, possibly putting Colin at
17 risk.

18 I would like the Court to consider adjourning
19 the disposition so that the Out-of-Home Screening
20 Committee can just -- my understanding is that the
21 committee has not considered this case, it hasn't been
22 screened yet. And so, it might be worth it to come back
23 in a couple of weeks to have the matter screened, to run
24 all the information by them.

I told Miss Strehl that I have no problem with

1 releasing Tyler in the meantime so that he can start
2 school on Tuesday. I guess that would be my request,
3 just to make sure that all of our bases are covered and
4 the committee's aware of all the information. And if
5 they decide that all facts considered Tyler might not be
6 suitable for community placement, then they could make
7 the Court aware of that through Miss Strehl.

8 MR. PARNES: I guess in response, Your Honor,
9 not every case is sent to the Out-of-Home Screening
10 Committee. I've known Miss Strehl for years. She's very
11 thorough in her work, she takes it very seriously. If
12 she felt that she needed the assistant of the Out-of-Home
13 Screening Committee, I'm sure she would have done so.

14 I'm not saying that the Out-of-Home Screening
15 Committee doesn't do their object either, but I think
16 Miss Strehl is very well aware of all the facts in this
17 case. I'd ask the Court to adopt the recommendation
18 without having to take it to the Out-of-Home Screening
19 Committee.

20 THE COURT: Okay. Miss Strehl?

21 MS. STREHL: Your Honor, I guess, all I can say
22 is if I felt this needed to be presented to the
23 committee, I would have done so. I think based -- this
24 report, this recommendation, is based on his offense. I
know that there's an open petition that hasn't been

1 processed yet.

2 I feel like supervising him in the community up
3 until that point will give me the opportunity to better
4 understand the relationship between Tyler and his mother
5 and monitor all the comings and goings that are
6 happening. And I will be the first one to bring this
7 back to Court should I have any concerns and definitely
8 present it to the committee. But if you would like me to
9 do that, I'd be more than happy to.

10 THE COURT: So, if I -- if I did send this to
11 the Out-of-Court -- the Screening Committee, then what
12 additional information would they need or have?

13 MS. STREHL: I think that they would have all
14 the information they need, including the psychological
15 from the clinic, the psychiatric. There's a chance that
16 they may say that Tyler needs a different level of
17 supervision or out-of-home placement. And that would be
18 the only recommendation I could provide you. I don't --

19 THE COURT: So, they wouldn't collect more
20 information to make --

21 MS. STREHL: The only information that I don't
22 have is the intake assessment from Oakland Family
23 Services where they just decide at that appointment, they
24 take the information down, they decide treatment goals
for Tyler. So, that's the only piece of information that

Transcript of Disposition on Petition 1 dated 9/1/2017

1 I would be providing them. And then, of course, I'm not
2 quite sure, but I'm confident that they would want to
3 know the outcome of the second petition as well.

4 THE COURT: And with regard to the mother, do
5 you have a concern that she's not going to -- that if
6 there's additional problems in the home, that she's not
7 going to report them?

8 MS. STREHL: Yes.

9 THE COURT: You do have that concern as well?

10 MS. STREHL: Mm-hmm.

11 THE COURT: How do we put our finger on the
12 pulse for that?

13 MS. STREHL: Well, that's where the community
14 monitoring takes place. You know, you go to the school,
15 you meet with the social worker, you talk with the
16 counselor, you get -- you know, you make sure mom is
17 following through with the therapy appointments and, you
18 know, other than physically seeing her every other week,
19 I mean, that's where we start. But they'll be signs if
20 there's trouble within the home.

21 I don't think Tyler can -- can do what he did
22 to his mother on two separate occasions and not have that
23 explosive behavior again in the near future. But without
24 returning him home, we won't know that. And it's
unfortunate because I don't want Mrs. Diehl to get

1 injured by any means. But because of the change in the
2 medication and the improvement in the behavior at the
3 Children's Village, I'm willing to monitor him in the
4 community.

5 THE COURT: Okay. And you believe that
6 returning him home now that he's on this new medicine, do
7 you think that he is at less risk to have a replay of
8 those situations?

9 MS. STREHL: I think that that's an accurate
10 statement. I also think that he is in a structured
11 setting at this point in time, and there is staff
12 monitoring him 24 hours a day. So, when he gets home and
13 the structure is removed, and the stressors of life
14 continue as they did prior to these incidents, time will
15 tell.

16 I'm pleased to report that he has not had any
17 further physical management at the Village though. That
18 can be a very stressful place to stay, and there's a lot
19 of kids that try to instigate and get you into trouble.
20 So, for him to be able to withhold any further aggression
21 is positive.

22 THE COURT: Okay. Mom?

23 LINDA DIEHL: You know, I think the biggest
24 thing that set Tyler off was his sister; adoptive parents
would like to -- I don't know what the correct word is,

1 rescind the adoption or -- and he got scared, like, and
2 just blew up. Like, I was going to -- he was going to be
3 next.

4 And he said that a few days later, like, you
5 told me adoption was forever, mom, you told me that. And
6 I said for you and me it is, and that will never change.
7 But that, I think it was, like, I'm going to reject you
8 before you can reject me.

9 So, there was a lot of anger from all the past,
10 and it did explode. I don't believe it's going to happen
11 to that magnitude again. We have the therapy in place.
12 I've met with the therapist, Tyler's met with the
13 therapist, and I have an appointment set up for next week
14 assuming he comes home for us -- you know, for the
15 in-home therapy.

16 And I will do whatever the Court -- other
17 classes or what the Court orders.

18 THE COURT: Okay. Now, you hear the concern
19 that's being voiced, which is that if there's another
20 incident, that you will protect him and not let the
21 court --

22 LINDA DIEHL: Absolutely.

23 THE COURT: Okay. But we want to make sure
24 that everyone's made aware of it, so that we can get him
whatever resources that he needs.

1 LINDA DIEHL: I'm sorry, pardon me?

2 THE COURT: The Court must make sure that if
3 there's another incident, that the Court's made aware.

4 LINDA DIEHL: They will be. And the reason I
5 didn't call on the incident the prosecutor is referring
6 to is, again, he did not hit me. The neighbor saw, he
7 was pushing -- I mean, I know this will all go to trial.
8 But he was pushing the phone away from me, he didn't want
9 to talk to the person, I was trying to get him to talk to
10 someone on the phone. So, we deny that allegation. He
11 was acting up, he was, you know, throwing things, he was
12 not acting appropriate.

13 That is -- but he did -- I deny the charge that
14 he hit me.

15 THE COURT: Mr. Diehl, how you doing?

16 TYLER DIEHL: I'm doing great.

17 THE COURT: You feel better?

18 TYLER DIEHL: Yes, Your Honor.

19 THE COURT: Okay. Do you think that you have
20 your mind set on why that happened; why these incidents
21 happened and can make them -- find a different way to
22 deal with your anger?

23 TYLER DIEHL: Yes, Your Honor.

24 THE COURT: Okay. What did you determine while
you've been in Children's Village, how would you deal

Transcript of Disposition on Petition 1 dated 9/1/2017

1 with it?

2 TYLER DIEHL: Like, I can, like, use a stress
3 ball, or color, or (indiscernible).

4 THE COURT: Okay. Go in your room? Okay. Are
5 you going to fight with your siblings?

6 TYLER DIEHL: No, Your Honor.

7 THE COURT: Okay. It's not great in Children's
8 Village, is it?

9 TYLER DIEHL: No, Your Honor.

10 THE COURT: You'd rather be at home, right?

11 TYLER DIEHL: Yes, Your Honor.

12 THE COURT: Okay. And you can make sure that
13 you're going to be safe to yourself and safe to your
14 family?

15 TYLER DIEHL: Yes, Your Honor.

16 THE COURT: You think you're ready for that?

17 TYLER DIEHL: Yes, Your Honor.

18 THE COURT: You're agreeable to go to
19 counseling?

20 TYLER DIEHL: Yes, Your Honor.

21 THE COURT: You didn't want to go to counseling
22 before, is that right?

23 TYLER DIEHL: Yes, Your Honor.

24 THE COURT: But you do want to go now?

TYLER DIEHL: Yes, Your Honor.

Transcript of Disposition on Petition 1 dated 9/1/2017

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1 THE COURT: And do you understand they can help
2 you?

3 TYLER DIEHL: Yes, Your Honor.

4 THE COURT: Okay. You've gone through a lot,
5 but now you're in a really good place, okay?

6 TYLER DIEHL: Yes, Your Honor.

7 MR. PARNES: Your Honor, just as aside, this if
8 the first that I read in the report that a child this age
9 has a 12th grade math level. I've never seen that before.

10 THE COURT: Yeah, what are you going to --

11 MR. PARNES: And I have some 12th graders that
12 really are 5th grade level.

13 THE COURT: Right. What are we going to do
14 about that, are you going to be, like, an astronaut, a
15 scientist, what are you thinking?

16 TYLER DIEHL: An engineer.

17 THE COURT: An engineer? Tell me the biggest
18 thing you're going to build or do?

19 TYLER DIEHL: I might build a car or something.

20 THE COURT: A car? Well, you're already in 12th
21 grade math. I mean, you could build a whole plant and
22 all the cars, right?

23 TYLER DIEHL: Mm-hmm.

24 THE COURT: All right. So, do you like math or
is it just easy?

Transcript of Disposition on Petition 1 dated 9/1/2017

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1 TYLER DIEHL: I like math, it's not -- it's not
2 really easy, but it's easy to me.

3 THE COURT: So, are you going to start, like,
4 college classes now?

5 TYLER DIEHL: No, I'm only in 7th grade.

6 THE COURT: I know, but math, I mean if you're
7 doing that well in math, that's pretty amazing. So, do
8 you get extra math books, do you get the --

9 TYLER DIEHL: Um, mom --

10 THE COURT: How do you study for all this
11 advanced level?

12 TYLER DIEHL: My mom teaches me some college
13 math and some 12th grade math and stuff.

14 THE COURT: Wow. She's a pretty good mom?

15 TYLER DIEHL: Yes.

16 THE COURT: All right. I'm going to bring you
17 back in for some more reviews so I can make sure you're
18 doing okay.

19 TYLER DIEHL: Yes, Your Honor.

20 THE COURT: And if you start feeling angry or
21 you have concerns and you're -- before you act out, tell
22 somebody that you're getting angry, okay?

23 TYLER DIEHL: Yes, Your Honor.

24 THE COURT: Okay. Mr. Marek, with all due
respect, the Court is going to adopt the standard

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Transcript of Disposition on Petition 1 dated 9/1/2017

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1 probation, it's going to adopt the recommendations that
2 were provided. Mr. Diehl is going to attend counseling,
3 he's going to stay on his medicine.

4 With regard to his additional charge, I'll
5 allow you to determine how you're going to handle that,
6 if you want that in a place for safeguarding any
7 additional behavior. I'm going to allow the child to be
8 released.

9 MR. MAREK: Your Honor, would you like to
10 schedule a review on the day of the trial, which is
11 October 17th, we could do an early review on this case?

12 THE COURT: Yes. What time's the trial?

13 MR. PARNES: 1:30.

14 MR. MAREK: It's at 1:30.

15 THE COURT: I'm sorry?

16 MR. PARNES: 1:30.

17 THE COURT: Miss Strehl, is Tyler, he's in --
18 signed up for school right now?

19 MS. STREHL: He is eligible to return to
20 Clifford Smart Middle School. I know the registration
21 has taken place, but mom can bring him on Tuesday on the
22 5th. He has no -- there's no holds, he's in good standing
23 at the school.

24 THE COURT: And I take it you get really good
grades?

Transcript of Disposition on Petition 1 dated 9/1/2017

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1 TYLER DIEHL: Yes, all A's.

2 MS. STREHL: All A's.

3 THE COURT: Really?

4 MS. STREHL: Mm-hmm.

5 THE COURT: Okay. So, you're going to go to
6 school?

7 TYLER DIEHL: Yes.

8 THE COURT: On Tuesday?

9 TYLER DIEHL: Yes, Your Honor.

10 THE COURT: No fighting at school either.

11 TYLER DIEHL: No, I never do fights or
12 anything.

13 THE COURT: Okay. We'll have additional, I
14 think, eyes on him for being at school as well. So, that
15 gives the Court more comfort as well, is the fact that
16 he'll be in school, he's going to have the oversight of
17 the department, he's going into counseling. So, I think
18 we have --

19 MR. PARNES: Did you put in the mentor program,
20 too?

21 THE COURT: I did not.

22 MR. PARNES: I know it was a recommendation.

23 MS. STREHL: The only reason I did not order
24 that is because they're hard to find.

MR. PARNES: Oh.

Transcript of Disposition on Petition 1 dated 9/1/2017

1 MS. STREHL: And I don't want the family to be
2 in violation of an order if they can't find a mentor for
3 him at this time. I'm going to be referring him to the
4 Mentors Plus Program. We don't need an order for that.

5 THE COURT: Okay.

6 MS. STREHL: Your Honor, mom's already
7 registered Tyler at Clifford Smart.

8 THE COURT: School?

9 MS. STREHL: Yep.

10 THE COURT: Okay. I have that in my order --

11 MS. STREHL: Thank you.

12 THE COURT: -- that he's to attend school and
13 to remain in school. And that we can release the child
14 to the mother.

15 Okay. So, our review date is going to be
16 10-17-2017 at 1:30. And that will be a review. Mr.
17 Marek, is that also going to be a trial with regard to --

18 MR. MAREK: That's correct, Judge.

19 MR. PARNES: Your Honor, I just -- as aside,
20 Mr. Marek has provided some discovery to me. I re-read
21 the transcript from the preliminary hearing, and the
22 police officers indicated that -- well, the police
23 officer indicated he wasn't the officer on duty that day.
24 But he indicated that the officers carry microphones, or
some kind of video, and he believed that any discussions

1 that would have taken place between the mother and the
2 neighbor who allegedly said he saw something should be on
3 some tapes, because I specifically asked that regarding
4 any tapes.

5 So, I'd ask Mr. Marek to make sure that there
6 are or are not any tapes that the police took of any --
7 of the individuals there. And if so, provide them to me.

8 MR. MAREK: Your Honor, I'll double-check with
9 the police officer -- with all the police officers who
10 responded and see if there's any recordings.

11 THE COURT: Okay. Do you know of any at this
12 point?

13 MR. MAREK: No.

14 THE COURT: Okay. You have not been provided
15 with any?

16 MR. MAREK: That's correct, Judge.

17 THE COURT: Okay. It says I need the father's
18 name and address. Is there a father?

19 LINDA DIEHL: No.

20 THE COURT: Okay. Okay.

21 LINDA DIEHL: Thank you.

22 THE COURT: Thank you.

23 MS. STREHL: Thank you.

24 MR. PARNES: Thank you, Your Honor.

THE COURT: Mr. Diehl, hang in there, buddy.

Transcript of Disposition on Petition 1 dated 9/1/2017

1 TYLER DIEHL: Thank you, Your Honor.

2 THE COURT: I want to see some good math when
3 you come back.

4 TYLER DIEHL: Okay.

5 (At 9:33 a.m., proceedings concluded)

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CERTIFICATION

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I certify that this transcript, consisting of 21 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Friday, September 1, 2017, as recorded by the clerk.

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Kimberly D. Pernick

/s/ Kimberly D. Pernick, CER-0715
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STATE OF MICHIGAN
JUDICIAL CIRCUIT - FAMILY DIVISION
OAKLAND COUNTY

PETITION
 SUPPLEMENT

OAKLAND COUNTY 17-855352-01



JUDGE VICTORIA VALENTINE
IN THE MATTER OF TYLER JOSEPH DIEHL
SID DOB
03-26-05

ORI MI Police Agency Report No. 17-223856 CTN 63-17-960427-01

- 1. In the matter of TYLER JOSEPH DIEHL
- 2. The above named minor(s) come(s) within the provisions of MCL 712A.2.
Citations and allegations:

did on or about November 28, 2017, in the Township of Commerce, County of Oakland, State of Michigan, commit the crime of larceny in a school by stealing money; Contrary to the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.
MCL 750.360. [750.360]

LARCENY IN A BUILDING

- This petition contains a reportable offense under MCL 28.243.
- See attached sheet for further allegations. Member of or eligible for membership in American Indian Tribe or Band, state above.

3. An action within the jurisdiction of the family division of circuit court involving the family or family members of the minor has been previously filed in Court, Case Number , was assigned to Judge , and remains is no longer pending.

4. I designate this case as a case in which the juvenile is to be tried in the same manner as an adult.

5. The above named minor(s) is(are) resident(s) of Oakland County, and reside(s) in the care and custody of Linda Diehl.

6. The names and addresses of the parents, guardians, custodians, or nearest known relative are as follows:

NAME	ADDRESS	HOME PHONE	WORK PHONE
Father Putative <input type="checkbox"/>			
Unknown	Unknown	Unknown	
Mother			
Unknown	Unknown	Unknown	
Guardian/Custodian Nearest known relative			
Linda Diehl	551 Woodsedge Dr., White Lake, MI 48386	248-933-2295	

DEPUTY CLERK
2018 JUN 23 PM 3:01

- 7. I request the court to: (check either box a, b or c)
 - a. review the information and make an appropriate decision.
 - b. authorize this petition and take temporary custody of the minor(s).
 terminate the mother's parental rights. terminate the father's parental rights.
 - c. designate this case as a case in which the juvenile is to be tried in the same manner as an adult.

I declare that the statements in this petition are true to the best of my information, knowledge, and belief.

Jeanette D. Kowaleski, A.P.A. 1-11-18
Petitioner's signature Date
Jeanette D. Kowaleski, A.P.A. (aw)

Oakland County Prosecutor's Office
1200 North Telegraph, Pontiac, Michigan 48341
(248) 858-0656

8. A preliminary inquiry and/or hearing has been conducted and the filing of this petition is is not authorized.

Date: 1/19/18

Judge/Referee [Signature] Bar No. P38804

18 JUN 18 P2:21

Do not write below this line - For court use only

0001 INT BY

VICTIMS' RIGHTS

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STATE OF MICHIGAN
6th JUDICIAL CIRCUIT - FAMILY DIVISION
OAKLAND COUNTY

Plea Form for Petitions 2 and 3 dated 1/30/2018
PLEA OF RESPONDENT
(DELINQUENT PROCEEDINGS)

OAKLAND COUNTY

17-855352-DL



JUDGE VICTORIA VALENTINE
IN THE MATTER OF DIEHL, TYLER

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OFFICE OF
CLERK

19 FEB - 6 AM 10:17

Court address 1200 N. Telegraph Road, Pontiac, MI 48341

In the matter of Tyler Diehl

- 1. I have received a copy of the petition dated 7/20/17 & 12/7/17
- 2. I am pleading responsible/guilty/no contest to the following charge(s) in that petition: DOMESTIC VIOLENCE (1 ACCUSED JUVENILE PERSON)
- 3. Is this plea the result of an agreement between you, your attorney (if one is desired) and the Assistant Prosecutor? NO (Yes or No) if so, what is your understanding of the agreement?

Continue

- 4. I understand that if my plea is accepted, the court may take jurisdiction over me and order me to complete a term of probation, place me in an Oakland County program such as Children's Village or Crossroads for Youth, or commit me to the Department of Human Services under Public Act 150 for treatment, or make some other disposition.
- 5. I understand that I have a right to have a lawyer represent me during all proceedings if I so desire and that if I cannot afford one, the court will appoint a lawyer for me, if I so desire.
- 6. I understand that I have a right to a trial by jury or by the court without a jury.
- 7. I understand that I am presumed to be innocent until proven guilty beyond a reasonable doubt.
- 8. I understand that the prosecutor has the burden of proof and that I don't have to prove anything.
- 9. I understand that I have a right to have all witnesses against me appear at trial and to have my lawyer question those witnesses.
- 10. I understand that I have a right to call my own witnesses to testify and the court will order them to appear and testify if they won't come to court on their own.
- 11. I understand that I do not have to testify at trial, and no one can say anything about my not testifying or hold it against me. On the other hand, I understand that I may testify if I want to.
- 12. I understand that if the court accepts my plea, I will not have a trial of any kind, and I will be giving up these trial rights.
- 13. I understand that a plea of responsible/guilty/no contest results in the court taking jurisdiction over me and that the judge can make decisions about me and keep jurisdiction over me until I am 19 years of age.
- 14. (For §2a(2) extension of jurisdiction offenses only) I understand that since I am pleading to ~~_____~~, upon request of the prosecution or the Department of Human Services the court might extend jurisdiction until I am 21 years of age.
- 15. I understand that this plea may be considered in future dispositions in this court or in sentencing should I be convicted of a felony as an adult.
- 16. (For sex offenses only) I understand that following acceptance of my plea the court will order HIV testing and DNA profiling. Additionally, I will have to notify local police agencies of my address for the next 25 years/for the rest of my life in compliance with the Sex Offender Registration Act, and that failure to do so is a felony.
- 17. (For traffic and certain drug offenses only) I understand the court will notify Secretary of State and the Secretary of State may restrict my driving privileges in addition to what happens here.
- 18. No one has threatened me to get me to plead.
- 19. (For guilty or responsible pleas) In my words, this is what I did that makes me think I am responsible/guilty:

20. (For no contest pleas) I understand the basis for my plea will be provided by Police Reports

21. It is my choice to plead responsible/guilty/no contest to the allegations in the petition.
Date: 1/30/18
X Tyler Diehl (Signature of Respondent)
Tyler Diehl (Printed Name of Respondent)

TO BE COMPLETED BY PARENT(S) OR LEGAL GUARDIAN:

Do you know of any reason why the court should not accept the plea offered by the juvenile? NO If yes, explain

(For sex offenses only) Do you understand that as long as your child is a minor, you must register the address of your child as required by the Sex Offender Registration Act, and that failure to do so is a felony?

Signature Linda Diehl Date 1/30/18 Relationship Mother

Signature _____ Date _____ Relationship _____

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FAMILY DIVISION

IN THE MATTER OF:

Case No. 2017-855352-DL

TYLER JOSEPH DIEHL,

Respondent.

PLEA

BEFORE THE HONORABLE VICTORIA A. VALENTINE, CIRCUIT JUDGE

Pontiac, Michigan - Tuesday, January 30, 2018

APPEARANCES:

For the People:

QAMAR LINA ENAYAH-STAMOS (P80248)
Oakland County Prosecutor's Office
1200 N. Telegraph Road
Pontiac, MI 48341-1032
248-858-0656

For the Respondent:

H. ELLIOT PARNES (P28539)
H. Elliot Parnes, PLLC
7117 Glenburnie Drive
Clarkston, MI 48346-1424
248-736-4955

Of Behalf of
Casework Services:

LOUISE STREHL

Videotape Transcription Provided By:
Kimberly D. Pernick, CER 0715
About Town Court Reporting, Inc.
248-634-3369

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WITNESSES:

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None

EXHIBITS:

None

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Pontiac, Michigan

Tuesday, January 30, 2018 - at 1:51 p.m.

- - -

THE CLERK: Now calling case number 17-855352-DL, in the Matter of Tyler Diehl.

MS. ENAYAH-STAMOS: Qamar Enayah-Stamos on behalf of the People.

MR. PARNES: Good afternoon, Your Honor. May it please this Honorable Court, Elliot Parnes on behalf of Tyler Diehl, who is present with his mother.

MS. STREHL: Louise Strehl on behalf of Casework Services.

THE COURT: Okay.

MR. PARNES: Your Honor, I've provided your clerk with a plea form regarding both outstanding petitions, one alleging domestic violence and one alleging larceny from a person. He's prepared to enter a plea of no contest. And the prosecutor has the police reports for same.

THE COURT: Okay. Here is a waiver I need from mother. Mr. Diehl --

MR. PARNES: May I approach?

THE COURT: Yes. Mr. Diehl, put your name on the record for me, sir.

MR. PARNES: Put your name -- got to state your

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1 name.

2 TYLER DIEHL: I, Tyler Diehl.

3 THE COURT: Can you swear him?

4 THE CLERK: Yeah. Please raise your right hand
5 to be sworn. Do you solemnly swear or affirm to tell the
6 truth, the whole truth, and nothing but the truth, so
7 help you God?

8 TYLER DIEHL: I do.

9 (At 1:52 p.m., Tyler Diehl was sworn by the
10 clerk, testified as follows)

11 MR. PARNES: Tyler, come on over here.

12 THE COURT: Okay. And, Mrs. Diehl, can you put
13 your name on the record, please?

14 LINDA DIEHL: What's that?

15 THE COURT: Put your name on the record.

16 LINDA DIEHL: Linda Diehl.

17 THE COURT: Okay. Miss Stamos, are you going
18 to request to go to immediate sentencing?

19 MS. ENAYAH-STAMOS: Your Honor, Miss -- I
20 believe that Miss Strehl would like to take the matter in
21 front of the Out-of-Home Screening Committee as she can't
22 give an official recommendation before.

23 We're not requesting residential placement.
24 But in order to be requesting even intensive probation,
it has to be screened to make a recommendation. So, I

1 believe that that's going to be her request.

2 THE COURT: Okay. Mr. Diehl, you're planning
3 on pleading no contest today?

4 TYLER DIEHL: Yes, Your Honor.

5 MS. ENAYAH-STAMOS: But, Your Honor, I would
6 make the request of the Court if Your Honor is inclined
7 to place him on intensive probation, as that's the
8 People's request, but I do know that Miss Strehl cannot
9 make that request unless it is screened.

10 THE COURT: Miss Strehl, tell me what you think
11 your request is going to be?

12 MS. STREHL: Intensive probation. I did my
13 report prior to the charge -- the petition coming
14 through. So, I was unclear on what was going to happen
15 with that. So, my recommendation remained the same based
16 on the two domestic charges that we were aware of. And
17 then after that was authorized, I thought to myself
18 immediately that he probably needs intensive oversight.
19 Things are getting a little out of hand.

20 But on his behalf, he is starting to work on
21 things in therapy, which is going to cause these types of
22 reactions. And the therapist forewarned me about that.
23 She wrote a letter, and I sent it into the Court for your
24 review. He's starting to get into the trauma of what
happened to him when he was younger.

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1 But I think the support of the intensive
2 department, it would be a very good thing for Tyler at
3 this point in time. He's going to be going through a lot
4 of changes. You know, he started a new semester at
5 school. His brother is starting to come home from his
6 placement. And based on the propensity for acting out,
7 it would be a good recommendation I think.

8 MR. PARNES: Your Honor, I'd also like to
9 approach with his grades.

10 THE COURT: I know he's a superstar.

11 MR. PARNES: Well --

12 THE COURT: I already know how good he is in
13 math.

14 MR. PARNES: Well, he has all A's except for
15 one B+.

16 THE COURT: B+, is that in gym?

17 MR. PARNES: In Math.

18 THE COURT: Math? How can he have a B+ in
19 math?

20 TYLER DIEHL: I do not know, Your Honor.

21 THE COURT: I mean, before you were doing
22 college math, right?

23 TYLER DIEHL: No, Your Honor.

24 THE COURT: Yes you were, with your mom.

 LINDA STREHL: Yeah, well, they tested him at

1 that 12th grade level. But he's had a lot of days off,
2 too, with the flu and the suspension. So, to keep up in
3 school is good, and his citizenship has been good.

4 MR. PARNES: That's what I was going to
5 indicate. He has all ones. I did pretty good on grades.
6 My citizenship in school wasn't very well, though, Your
7 Honor. I had trouble not raising my hand wanting to
8 talk, so I --

9 THE COURT: And now you ended up being an
10 advocate?

11 MR. PARNES: I had to -- unfortunately, I try
12 not to do the same thing here, Your Honor. May I
13 approach?

14 THE COURT: Okay. Okay, Mr. Diehl, you're
15 doing really well in school. I know you can get more out
16 of that math, though. I expect your math to be higher.

17 THE COURT: All right. I'm going to take the
18 plea.

19 TYLER DIEHL: Thank you, Your Honor.

20 THE COURT: Okay. State your name for the
21 record, please.

22 TYLER DIEHL: Tyler Diehl.

23 THE COURT: Okay. Sir, and you've received a
24 copy of the petitions dated 7-26-2017 and 12-7-2017?

TYLER DIEHL: I believe my mom has them, Your

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1 Honor.

2 THE COURT: Okay.

3 MR. PARNES: We went through them.

4 THE COURT: Okay. And you understand that
5 they're indicating that there's a domestic violence and a
6 larceny charge, correct; you understand that?

7 TYLER DIEHL: Yes, Your Honor.

8 THE COURT: Okay. And that you're planning to
9 plead no contest, is that correct?

10 TYLER DIEHL: Yes, Your Honor.

11 THE COURT: Is the plea the result of an
12 agreement between you, your attorney, and the assistant
13 prosecutor?

14 TYLER DIEHL: No, Your Honor.

15 THE COURT: Do you understand that if your plea
16 is accepted, the Court will take jurisdiction over you
17 and order you to complete a term of probation, place you
18 in an Oakland County Program such as Children's Village,
19 or Crossroads for Youth, or commit you to the Department
20 of Health and Human Services under Public Act 150 for
21 treatment, or to make some other disposition?

22 TYLER DIEHL: Yes, Your Honor.

23 THE COURT: And do you understand that you have
24 the right to have a lawyer represent you during all
proceedings if so desired, and that if you cannot afford

Transcript for 1/30/2018 hearing

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1 one, Court will appoint a lawyer for you if so desired.

2 TYLER DIEHL: Yes, Your Honor.

3 THE COURT: And you do have a lawyer appointed
4 for you, is that correct, sir?

5 TYLER DIEHL: Yes, Your Honor.

6 THE COURT: Okay. Mr. Parnes, correct?

7 TYLER DIEHL: Yes, Your Honor.

8 THE COURT: Okay. You understand that you have
9 the right to have trial by jury or by the Court without a
10 jury?

11 TYLER DIEHL: Yes, Your Honor.

12 THE COURT: You understand that you're presumed
13 innocent until proven guilty beyond a reasonable doubt?

14 TYLER DIEHL: Yes, Your Honor.

15 THE COURT: Do you understand that the
16 prosecutor has the burden of proof, and that you do not
17 have to prove anything?

18 TYLER DIEHL: Yes, Your Honor.

19 THE COURT: Do you understand that you have the
20 right to have all witnesses against you appear at trial
21 and to have your lawyer question those witnesses?

22 TYLER DIEHL: Yes, Your Honor.

23 THE COURT: Do you understand you have the
24 right to call your own witnesses to testify and the Court
will order them to appear and testify if they will not

Transcript for 1/30/2018 hearing

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1 come to court on their own?

2 TYLER DIEHL: Yes, Your Honor.

3 THE COURT: You understand that you cannot --
4 that you do not have to testify at trial and that no one
5 can say anything about you not testifying or hold it
6 against you?

7 TYLER DIEHL: Yes, Your Honor.

8 THE COURT: You understand on the other hand
9 that if you would like to testify, you are permitted to
10 testify?

11 TYLER DIEHL: Yes, Your Honor.

12 THE COURT: You understand that if the Court
13 accepts your plea, you will not have a trial of any kind,
14 and you'll be giving up your right to the trial?

15 TYLER DIEHL: Yes, Your Honor.

16 THE COURT: You understand that your plea of no
17 contest will result in the Court taking jurisdiction over
18 you, and that the judge can make decisions about you, and
19 keep you in its jurisdiction until you're 19 years of
20 age?

21 TYLER DIEHL: Yes, Your Honor.

22 THE COURT: Do you understand that this plea
23 can be used in future dispositions in this court for
24 sentencing should you be convicted as a felony as an
adult?

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1 TYLER DIEHL: Yes, Your Honor.

2 THE COURT: Has anyone threatened you to get
3 you to plead no contest?

4 TYLER DIEHL: No, Your Honor.

5 THE COURT: Your basis for the plea?

6 MS. ENAYAH-STAMOS: Your Honor, I have the
7 police report from the domestic violence; that police
8 report is dated July 23rd of 2017. I also have the police
9 report from the larceny in a building; that report is
10 dated December 7th of 2017. If I may approach with both
11 reports?

12 THE COURT: Yes.

13 MS. ENAYAH-STAMOS: I have the one with -- for
14 the larceny in a building labeled larceny in a building.

15 (At 1:59 p.m., pause in proceedings)

16 (At 2:02 p.m., proceedings resumed)

17 THE COURT: Okay, the Court has looked at
18 Oakland County Sheriff report CR#17-0223856 with regard
19 to the larceny and White Lake Township Police Department
20 CR#17-0015024 with regard to the assault and battery.
21 Mr. Parnes, you've had an opportunity to review the
22 police reports?

23 MR. PARNES: Yes, Your Honor, I have.

24 THE COURT: And are you satisfied with this
with regard to a factual basis?

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1 MR. PARNES: They do, Your Honor. And the
2 Court has complied with the court rule regarding the
3 taking of the plea.

4 THE COURT: Okay. Mr. Diehl, with regard --
5 have you seen the police reports, Mr. Diehl, or have they
6 been explained to you?

7 TYLER DIEHL: Yes, Your Honor.

8 THE COURT: Okay. And with regard to the
9 factual allegations contained in the police report,
10 that's what I'm basing my -- your no contest plea on; do
11 you understand that?

12 TYLER DIEHL: Yes, Your Honor.

13 THE COURT: Okay. And based upon the police
14 reports, I am satisfied with regard to your plea. And I
15 believe that your plea is given knowingly, voluntarily,
16 and willingly made. And I will accept your plea of no
17 contest.

18 Mr. Diehl, with regard to this matter, did you
19 sign this plea of respondent today, 1-30-2018; is this
20 your signature at the bottom, sir?

21 TYLER DIEHL: Yes, Your Honor.

22 THE COURT: Okay. And did you go over this
23 form with your counsel?

24 TYLER DIEHL: Yes, Your Honor.

THE COURT: Okay. And, mother, you signed this

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1 document as well?

2 LINDA DIEHL: Yes, Your Honor.

3 THE COURT: And you've indicated that you see
4 no reason why the Court shouldn't accept the plea, is
5 that correct?

6 LINDA DIEHL: Correct.

7 THE COURT: Okay. Okay. When do you want this
8 disposition?

9 MS. ENAYAH-STAMOS: Your Honor, I believe that
10 Mrs. Strehl would need about, what? Five weeks for --
11 Your Honor --

12 MR. PARNES: May we approach?

13 THE COURT: Yep.

14 (At 2:03 p.m., pause in proceedings)

15 (At 2:09 p.m., proceedings resumed)

16 THE COURT: Okay. Mr. Diehl, after having a
17 sidebar here and after considering this police report a
18 little bit more, I am going to -- I'm going to strike
19 your plea, and I'm going to take your plea under
20 advisement, okay? And I'm going to have you guys come
21 back in three months.

22 MS. STREHL: Sure. Your Honor, would you
23 consider making this on a Tuesday afternoon?

24 THE COURT: Oh, sure.

MS. STREHL: Thank you.

1 THE COURT: So, I'm going to hold your
2 disposition for -- when is it? April 24th, 2018, at
3 1:30. Okay.

4 And Mr. Diehl, let me tell you why. I've read
5 the reasons why you took the money. And you were trying
6 to help another child who was starving. And with regard
7 to the alleged domestic violence here, we've gone through
8 the issues with regard to your history and your past.
9 And upon speaking with both the -- all counsel here, it's
10 indicated that my -- I can't give more probation or more
11 services to you than you have right now even if I
12 sentence you in a disposition.

13 And so, I'm going to hold everything under
14 advisement, we're going to send it to committee to see
15 what a recommendation would be, and I'll determine
16 whether or not I'm going to proceed with the accepting
17 your plea or not, okay?

18 TYLER DIEHL: Yes, Your Honor.

19 THE COURT: So, I need you to understand a
20 couple things. We're all here to help you, okay? You
21 had a tough past, okay? But now you have a really good
22 future. You need to trust your mom, you need to let your
23 mom help you, you need to talk to your therapist, and you
24 need to work through all these issues without any
violence, okay, and with doing the right thing all the

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1 time. If you would have told somebody in the office that
2 the kid didn't have lunch money, I bet you someone would
3 have gave him some lunch money, okay? Without you having
4 to go take it out of someone's purse, okay?

5 TYLER DIEHL: Yes, Your Honor.

6 THE COURT: Okay. So, you know if your
7 intention is to be goodhearted, that's great; you have to
8 do it the right way.

9 TYLER DIEHL: Yes, Your Honor.

10 THE COURT: Okay. All right. And I want an A
11 in math.

12 TYLER DIEHL: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. PARNES: Your Honor, was this waiver for
15 today's hearing or for the one in April?

16 THE COURT: Oh, it says take the waiver today.

17 MR. PARNES: May I approach?

18 THE COURT: Yes, please. Okay, Miss Strehl,
19 we're on target with this?

20 MS. STREHL: We are.

21 THE COURT: Okay.

22 MS. STREHL: Thank you, Your Honor.

23 THE COURT: Okay.

24 MS. STREHL: Thank you very much.

THE COURT: Thank you, everyone.

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MR. PARNES: Thank you, Your Honor.

LINDA DIEHL: Thank you.

THE COURT: Miss Stomas, did you want your reports back?

MS. ENAYAH-STAMOS: Oh, yes, please. Thank you.

(At 2:12 p.m., proceedings concluded)

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CERTIFICATION

I certify that this transcript, consisting of 17 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Tuesday, January 30, 2018, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

Kimberly D. Pernick

/s/ Kimberly D. Pernick, CER-0715
About Town Court Reporting, Inc.
248-634-3369

Transcript for 4/24/2018 hearing

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STATE OF MICHIGAN 2017-855352-DL

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

IN THE MATTER OF: Case No. 2017-855352-DL

TYLER JOSEPH DIEHL,

/

HEARING

BEFORE THE HONORABLE VICTORIA A. VALENTINE, CIRCUIT JUDGE

Pontiac, Michigan - Tuesday, April 24, 2018

APPEARANCES:

For the People: ADAM MICHAEL NAEL (P69146)
Oakland County Prosecutor's Office
1200 N. Telegraph Road
Pontiac, MI 48341-1032
248-858-0656

For the Respondent: H. ELLIOT PARNES (P28539)
H. Elliot Parnes, PLLC
7117 Glenburnie Drive
Clarkston, MI 48346-1424
248-736-4955

Of behalf of LOUISE STREHL
Casework Services:

Videotape Transcription Provided By:
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WITNESSES:

None

EXHIBITS:

None

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Pontiac, Michigan

Tuesday, April 24, 2018 - at 1:48 p.m.

- - -

THE CLERK: Now calling case number 2017-855352-DL, In the Matter of Tyler Diehl.

MR. PARNES: Good afternoon, Your Honor, may it please this Honorable Court, Elliot Parnes on behalf of Tyler Diehl, who is coming up, going to be standing to my right.

THE COURT: Good afternoon, Mr. Parnes.

MS. STREHL: Louise Strehl on behalf of Casework Services.

MR. NAEL: Adam Nael, (indiscernible) attorney on behalf of the People.

THE COURT: Thank you. Ma'am, your name for the record?

LINDA DIEHL: Oh, Linda Diehl.

THE COURT: Thank you. Sir?

TYLER DIEHL: Tyler Diehl.

THE COURT: You look very nice.

TYLER DIEHL: Thank you, ma'am.

THE COURT: Did you dress up for me?

TYLER DIEHL: Pardon, Honor?

THE COURT: Did you dress up for me?

TYLER DIEHL: Yes, Honor.

Transcript for 4/24/2018 hearing

1 THE COURT: Okay. Go ahead, Miss Strehl?

2 MS. STREHL: Thank you, Your Honor. The
3 recommendation is to continue on standard probation. We
4 have two issues that are -- need to be addressed or
5 adjourned, the second domestic violence and the larceny
6 in a building. The larceny in a building occurred since
7 we were last in court. You knew about this, it was the
8 money he stole from the teacher to feed his hungry
9 friend.

10 So, he has been officially charged with that.
11 And I'm aware of these offenses, and I've been aware of
12 them all along, and the recommendation remains the same.

13 Part of what we did is consequences for Tyler
14 in regards to these new offense -- or the old offense of
15 domestic, the continued police contact at the family home
16 between the months of February and March, and the larceny
17 in a building, I sent him to Mid-Course Corrections. He
18 seemed to gain a lot of -- he gained a lot from attending
19 the program. He didn't want to go to the program. One
20 weekend was his birthday weekend, that was the second
21 weekend. And the first one he just didn't want to go.
22 But he understood it was necessary. And he learned to be
23 respectful, honorable, own up to his mistakes. And he
24 also attended a second group called the honor's program.
And I don't remember the specific group off the top of my

Transcript for 4/24/2018 hearing

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1 head that he was referred to. But the staff said he did
2 a remarkable job given his age, and they would like to
3 have him back if necessary.

4 THE COURT: Okay.

5 MS. STREHL: So, he has managed to bring up all
6 of his grades per your request at our last hearing. I
7 provided you with some letters from his teachers, which
8 he gave me today before court. I haven't had a chance to
9 give them to Mr. Nael here. He's in therapy. His
10 therapist reports he's doing well. He's participating,
11 and the number of police contacts have been reduced. So,
12 we're pleased to report that as well.

13 THE COURT: Okay. And your recommendation is
14 just to continue him on?

15 MS. STREHL: Standard probation.

16 THE COURT: Okay. And then with regard to -- I
17 thought we addressed larceny in a building before?

18 MS. STREHL: Did we?

19 THE COURT: Yeah.

20 MS. STREHL: Okay.

21 THE COURT: I think both of those, and I -- he
22 would like to -- he want --

23 MR. PARNES: Held them in abeyance, I believe.

24 THE COURT: Yep. He wanted to give a plea, and
I wouldn't accept it.

Transcript for 4/24/2018 hearing

1 MS. STREHL: Right.

2 THE COURT: Okay. Go ahead, Mr. Nael?

3 MR. NAEL: If someone could help me as to -- so
4 I understand the procedure where we're at.

5 THE COURT: So what, are you saying you're new?

6 MR. NAEL: Yes, I'm very new to this file. As
7 I understand, we're here for dispose today on this file?

8 THE COURT: Well, I haven't accepted the plea
9 so you can't be in dispose.

10 MR. PARNES: Well, there's a plea that I think
11 that was on January the 30th. Is that -- that was the
12 last time we were here, I believe.

13 THE COURT: That was the second domestic
14 violence and the larceny in a building. Those were the
15 ones he tried to tender a plea, and I didn't accept the
16 plea.

17 MR. PARNES: That's true.

18 THE COURT: So, we can't be at disposition if I
19 didn't accept the plea.

20 MR. NAEL: Okay. So, where are we at? Are we
21 -- are you -- I'd ask you to accept the plea? Is that
22 the case --

23 THE COURT: Denied.

24 MR. NAEL: -- where we're at? I'm confused as
to what --

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1 THE COURT: Yeah.

2 MR. NAEL: -- we should be addressing.

3 THE COURT: I'm not accepting the plea. I'm
4 not going to accept the plea.

5 MR. NAEL: Then, I'm --

6 THE COURT: I'm going to allow him on the path
7 that he's on. My indication from Miss Strehl at the time
8 was that he wouldn't be doing anything different as far
9 as services, his services remain the same.

10 He is among the youngest children that I have
11 in front of me. Giving him two additional charges is
12 just stacking a child's juvenile record. And so, I am
13 holding everything in abeyance and having him get through
14 all of his services, trying to get him on the right path.
15 His history is -- I'm not sure if you know about it. Do
16 you know about his history?

17 MR. NAEL: No.

18 THE COURT: Okay. His history is that he's
19 been recently adopted. He had quite a horrific childhood
20 for six years. And I think he's got to work through some
21 of his problems. And I want to make sure we're getting
22 him the best treatment. And I don't think that giving
23 him a huge criminal record at age -- are you 12, you're
24 10?

TYLER DIEHL: Thirteen, Honor.

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1 THE COURT: Thirteen. You were 12 when these
2 happened, right?

3 TYLER DIEHL: Yes, Your Honor.

4 THE COURT: Is in the best interest of justice
5 or this child's future.

6 MR. NAEL: Okay. So, as far as the People's
7 position, I need to request as these are formalized
8 petitions alleging delinquency, I would ask the Court to
9 accept his plea, and I would ask for a date of
10 disposition to be set.

11 THE COURT: Thank you; denied. Go ahead,
12 anything else?

13 MR. PARNES: Your Honor, I think he clearly
14 followed your order about his grades. He's got all A's
15 from what he tells me.

16 THE COURT: I know, good job.

17 TYLER DIEHL: Thank you.

18 THE COURT: You still doing college math?

19 MR. PARNES: He upped his grade in math to an
20 A, right?

21 TYLER DIEHL: Yes, Your Honor.

22 THE COURT: Okay. Ninety-two percent in the
23 class here, teacher says you're doing great. Okay. How
24 you doing with your mom?

TYLER DIEHL: The last two months I have been

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1 behaving, Your Honor.

2 THE COURT: Thank goodness, okay. Now, how do
3 we stay on this track?

4 TYLER DIEHL: By doing my therapy and Tae Chi.

5 THE COURT: Okay. And talking and
6 communicating?

7 TYLER DIEHL: Yes, Your Honor.

8 THE COURT: Okay. Telling your mom if you get
9 scared?

10 TYLER DIEHL: Yes, Your Honor.

11 THE COURT: Before you act out, talking through
12 it?

13 TYLER DIEHL: Yes, Your Honor.

14 THE COURT: Okay. And are the programs that
15 you're -- are they working, the programs you're with?

16 TYLER DIEHL: Mid-Course Corrections, Your
17 Honor?

18 THE COURT: I'm sorry?

19 TYLER DIEHL: Mid-Course Correction?

20 THE COURT: Yes.

21 TYLER DIEHL: Yes, Your Honor.

22 THE COURT: Does it help?

23 TYLER DIEHL: Yes, Your Honor.

24 THE COURT: Would you recommend it?

TYLER DIEHL: Yes, Your Honor.

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1 THE COURT: Okay. What else can I do to help
2 you?

3 TYLER DIEHL: Nothing else, Your Honor.

4 THE COURT: Nothing else?

5 TYLER DIEHL: Yes, Your Honor.

6 THE COURT: Okay. Mr. Parnes, anything else?

7 MR. PARNES: I don't believe so, Your Honor,
8 thank you.

9 THE COURT: Okay. Anything else?

10 MR. NAEL: No, Your Honor, thank you.

11 THE COURT: Anything else?

12 MS. STREHL: No, Your Honor, thank you.

13 THE COURT: You want a three-month review?

14 MS. STREHL: Three-month review is good, thank
15 you.

16 THE CLERK: July 16th at 1:30.

17 MR. PARNES: At what time?

18 THE CLERK: 1:30.

19 MR. PARNES: Yes, that's fine.

20 THE COURT: Do not get in any more trouble.

21 TYLER DIEHL: Yes, Your Honor.

22 THE COURT: Deal?

23 TYLER DIEHL: Deal, Your Honor.

24 THE COURT: That's in Tyler deal?

TYLER DIEHL: Yes, Your Honor.

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THE COURT: Okay.

MR. PARNES: Thank you, Your Honor.

THE COURT: Thank you.

LINDA DIEHL: Thank you.

TYLER DIEHL: Thank you Your Honor.

(At 1:56 p.m., proceedings concluded)

- - -

CERTIFICATION

1
2
3 I certify that this transcript, consisting of 12
4 pages, is a true and accurate transcription, to the best
5 of my ability, of the video proceeding in this case
6 before the Honorable Victoria A. Valentine on Tuesday,
7 April 24, 2018, as recorded by the clerk.

8 Videotape proceedings were recorded and were
9 provided to this transcriptionist by the Circuit Court
10 and this certified reporter accepts no responsibility for
11 any events that occurred during the above proceedings,
12 for any inaudible and/or indiscernible responses by any
13 person or party involved in the proceedings, or for the
14 content of the videotape provided.

15 *Kimberly D. Pernick*

16

/s/ Kimberly D. Pernick, CER-0715
17 About Town Court Reporting, Inc.
248-634-3369

Transcript for 7/16/2018 hearing

STATE OF MICHIGAN **2017-855352-DL**

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

IN THE MATTER OF: Case No. 2017-855352-DL
TYLER JOSEPH DIEHL,

HEARING

BEFORE THE HONORABLE VICTORIA A. VALENTINE, CIRCUIT JUDGE

Pontiac, Michigan - Monday, July 16, 2018

APPEARANCES:

For the People: ADAM MICHAEL NAEL (P69146)
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For the Respondent: H. ELLIOT PARNES (P28539)
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Of behalf of LOUISE STREHL
Casework Services:

Videotape Transcription Provided By:
Kimberly D. Pernick, CER 0715
About Town Court Reporting, Inc.
248-634-3369

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WITNESSES:

None

EXHIBITS:

None

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Pontiac, Michigan

Monday, July 16, 2018 - at 1:57 p.m.

- - -

THE CLERK: Now calling case number 2017-855352-DL, In the Matter of Tyler Diehl.

MR. NAEL: Good afternoon, Your Honor, Adam Nael, assistant prosecuting attorney on behalf of the petitioner -- or, um, the People.

MR. PARNES: Good afternoon, Your Honor. May it please this Honorable Court, Elliott Parnes on behalf of Tyler Diehl, who is standing to my left, and his mother is standing to my right.

THE COURT: All right.

MS. STREHL: Good afternoon, Your Honor. I'm sorry, Louise Strehl, Casework.

THE COURT: Sir, your name for the record?

TYLER DIEHL: Tyler Diehl.

THE COURT: Thank you, sir. Go ahead, mom.

LINDA DIEHL: Linda Diehl.

THE COURT: Okay. Go ahead, Mr. Nael.

MR. NAEL: Your Honor, I'd have to defer to Miss Strehl. And I guess, as I understand it, we're here -- the last dispositional sheet set this matter for review. But I procedurally would show it as a disposition. So, I'd ask to -- ask the Court what

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1 exactly are we addressing today?

2 THE COURT: What do you mean what are we
3 addressing today?

4 MR. NAEL: Well, I'm asking, requesting to go
5 forward with the disposition that we were here for last
6 time yet did not object.

7 THE COURT: But the objective of the juvenile
8 court is to ensure that we are putting procedures in
9 place to help the children. And with regard to the two
10 issues that we have before me now, there's no additional
11 services that we granted, and we're really trying to work
12 on Mr. Diehl getting through the severe issues he's had,
13 of no fault of his own, with regard to his past history.

14 So, I'm not inclined just to make a record of
15 offenses without benefit to a juvenile, especially
16 someone as young as Mr. Diehl.

17 MR. NAEL: Respectively, Your Honor, I'm
18 representative of the elected prosecutor in the county
19 who is charged with dispensing and adjudicating, in
20 particular, what comes to juveniles' delinquencies. And
21 the matter is subject to delinquency in violation of the
22 statute. And as such, we are respectfully requesting
23 that the Court, having taken the factual basis for the
24 plea, held it under abeyance -- well, I'll cut to the
chase -- I previously filed People's notice of objection

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1 and consent wherein I raised those issues. I won't
2 reiterate them here.

3 THE COURT: You didn't praecipe it, though.

4 MR. NAEL: I'm sorry?

5 THE COURT: You didn't praecipe it at all.

6 MR. NAEL: It's not a motion, Your Honor. It
7 was just the People's notice of objection.

8 THE COURT: Okay.

9 MR. NAEL: And ultimately, the concern as
10 stated by the People that we had previously had a
11 pretrial in this matter, an actual basis was tendered for
12 the plea, that the Court accepted it, but then later
13 decided to hold it in abeyance. We came back for what
14 was the disposition at that time. The Court continued to
15 hold it in abeyance and did not make a -- address the
16 disposition.

16 So, it is our request today --

17 THE COURT: I haven't accepted it, so I
18 couldn't accept disposition.

19 MR. NAEL: I'm requesting that you accept the
20 plea formally, we hold the disposition. I know Miss
21 Strehl is prepared to make a dispositional
22 recommendation.

23 In the alternative should the Court not go
24 forward with the disposition, we would ask the matter be

1 set for trial as we have a -- two valid petitions
2 alleging violation of the law. We'd ask as a party of
3 the matter, that our due process be recognized and that
4 we be permitted to try the matter in a timely fashion to
5 address those charges.

6 THE COURT: Okay. Go ahead, Mr. Parnes.

7 MR. PARNES: Yes, Your Honor. I don't think
8 I've ever said to the Court I'd leave it in your
9 discretion because it's always your discretion for
10 whatever you do.

11 I will, as an officer of court, indicate that I
12 don't have an argument against Mr. Nael's statements
13 based upon the law and the statute regarding consent.
14 But I will leave it to your discretion and Miss Strehl's
15 discretion.

16 THE COURT: Okay. Go ahead, Miss Strehl.

17 MS. STREHL: Thank you, Your Honor. In regards
18 to the matter that we were just discussing, I did let the
19 prosecutor know that my recommendation for disposition on
20 these two additional charges would not change. That it
21 would remain the same as his original charge, the
22 domestic violence.

23 So, in regards to that charge, which we're here
24 for a review hearing on, I did send your office a copy of
Tyler Diehl's most recent report card. I'm not sure if

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1 you've seen it. He did manage to bring up of all his
2 grades per your instruction, and he did quite well.

3 He did write a letter to me, which I did not
4 get to the Court file because I just received it at 1:15,
5 which I would like to share with you.

6 THE COURT: Okay.

7 MS. STREHL: Should I --

8 THE COURT: Yeah, please. Thank you.

9 MS. STREHL: Thank you. I also wanted to
10 remind the Court that I did have a conversation with Mary
11 about an upcoming trial that's occurring in Macomb
12 County.

13 THE COURT: Yes, I had her call you with regard
14 to that.

15 MS. STREHL: The only correction I need to make
16 in regards to that is that it was mother's boyfriend, not
17 the juvenile's father who's on trial.

18 MR. PARNES: I'm sorry, I didn't hear that.

19 MS. STREHL: So, it's mother's boyfriend --

20 THE COURT: Who was abusing him.

21 MS. STREHL: Not the father.

22 MR. PARNES: Right, yep.

23 MS. STREHL: Tyler did have a contact with the
24 White Lake Police during this reporting period again.
Many of his issues at this point in time are related to

1 the stress of having to testify at this trial and talking
2 about his past.

3 It appears that this case has -- he -- the
4 matter was brought to the authorities' attention in 2015,
5 and trials were supposed to be starting in May of this
6 year, and they've been adjourned until August.

7 So, and the juvenile knows about the
8 adjournments, and then he gets prepped for testimony, and
9 then it's adjourned, and then he gets stressed out.

10 So, I can understand him being frustrated at
11 home and tearing put the place. But I'm not making
12 excuses for his behavior. So, he wrote that letter to me
13 as type of an explanation of what's going on. He
14 continues to be involved in therapy. He's doing the
15 trauma therapy and the home-based services, he passed all
16 of his classes, he just got done with basketball camp, he
17 did well.

18 In regard to the larceny in the building, which
19 we haven't gone to disposition on, the juvenile and his
20 mother paid the restitution requested by the victim
21 directly to the teacher whose money was stolen. We sent
22 that in through the school.

23 And I'm just asking that the jurisdiction
24 continue and he remain on standard probation with all the
prior orders in effect. Thank you.

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1 MR. NAEL: Your Honor, with regard to her
2 disposition recommendation, I have no -- I support and I
3 would ask the Court to adopt that recommendation as it
4 pertains to the other two after, of course, you would
5 accept the plea.

6 THE COURT: Okay. But nothing's changing.

7 MR. NAEL: No, nothing's changing. I'm not
8 asking to add anything. We're just asking to address
9 what we need to -- what we're here to address.

10 THE COURT: Okay. Anything?

11 MR. PARNES: Nothing else, Your Honor. You
12 know, the grades are -- have always been good. And I
13 can't imagine what he's going through to testify. But I
14 know that he'll testify truthfully and do the best that
15 he can.

16 THE COURT: Okay. Mr. Diehl, I have a copy of
17 the letter that you wrote. And I just want to ask you a
18 question about the last sentence, okay?

19 TYLER DIEHL: Okay.

20 THE COURT: Okay. It says please don't send me
21 back. Send me back where?

22 TYLER DIEHL: To OCCV.

23 THE COURT: Oh, to Children's Village?

24 TYLER DIEHL: Yes, Your Honor.

THE COURT: Okay. There's nothing on the table

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1 for you to go back there, okay? Understand?

2 TYLER DIEHL: Okay.

3 THE COURT: It's not -- no one's asking for
4 that right now; you understand?

5 TYLER DIEHL: Yes, Your Honor.

6 THE COURT: And I know this is very stressful
7 for you because you have a past that no one should have
8 to deal with, okay?

9 TYLER DIEHL: Yes, Your Honor.

10 THE COURT: But you have so many people in your
11 future and in your present time that are rooting for you
12 and helping you, okay?

13 TYLER DIEHL: Yes, Your Honor.

14 THE COURT: And we have to deal with the bad
15 people that come into other people's lives and that's
16 being dealt with in a court proceeding, okay?

17 TYLER DIEHL: Yes, Your Honor.

18 THE COURT: So, I know it's hard for you, but
19 you have to stay strong, and you have to know how much
20 love you have, your mother is amazing, she really is
21 doing a great job with you. And you just need to get
22 through everything, okay?

23 TYLER DIEHL: Yes, Your Honor.

24 THE COURT: Okay. Is there any special
services we can get him with regard to this trial and,

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1 like, the fact that these keep coming up for him again
2 and keeps tormenting him?

3 MS. STREHL: Yes, Your Honor, I -- I --

4 THE COURT: I mean, these are big issues for a
5 child of his age. I mean, this is something, you know,
6 an adult would have an extremely difficult time going
7 through.

8 MS. STREHL: Yes, I did reach out to the victim
9 advocate in Macomb County, Miss Karen Phillips (phonetic
10 spelling). We had a lengthy conversation about the
11 delays and the adjournments in this hearing. She's not
12 making any apologies. There was a murder trial that ran
13 over in May, which forced the adjournment to June.
14 Something else came, there's the one courtroom that
15 they're assigning this case to. There's a new prosecutor
16 assigned to the case as well.

17 They are going to be inviting the family in to
18 view the courtroom, sit at the witness stand, meet the --
19 I know he's met the prosecutor, but because it's been so
20 long, reintroduce them to the prosecutor. And she's
21 going to speak with the family and Tyler on August 27th,
22 expect testimony on the 28th, and that should be it she
23 said.

24 So, she is working with the family, she's a
very busy, difficult person to get a hold of. She's got

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1 lots of other things going on. But --

2 THE COURT: Who's the prosecutor?

3 MS. STREHL: I don't know who the prosecutor
4 is, but the victim advocate is Miss Karen Phillips from
5 Macomb County. And she is very much aware of this case
6 and how much it's impacting this juvenile. So, I did get
7 a sense that she was very genuine and cares, it's just
8 unfortunate how busy she is. But she is working with
9 special preparations and such. And I do have her contact
10 information if you want me to send it.

11 THE COURT: Yeah, that would be great.

12 MS. STREHL: Okay.

13 THE COURT: Okay. And with regard to
14 everything that's going on in the two matters that we
15 have, or the matters that we have Mr. Diehl under, he's
16 doing okay?

17 MS. STREHL: Absolutely, Your Honor.

18 THE COURT: Doing good -- he's doing really
19 well?

20 MS. STREHL: Yes.

21 THE COURT: Go ahead, Mr. Parnes?

22 MR. PARNES: Nothing else, Your Honor.

23 THE COURT: Nothing else?

24 MR. PARNES: No.

THE COURT: Okay. Mr. Nael, with regard to

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1 your motion, I'll take a look at it, or your objection,
2 I'll take a look at it again. My job is dispensing
3 justice, is to make sure that if we're going to be
4 charging juveniles, that we have some procedure that
5 we're putting in place. Our goal is not to punish a
6 child, especially someone of this age. And you're really
7 not telling me anything that we're going to do different
8 other than punish.

9 MR. NAEL: Certainly, Your Honor, and I
10 understand your objective. That's wholly within your
11 purview even if we asked for punishment and you
12 determined punishment was not proper. But I'm talking
13 procedurally. Procedurally, there's a separation of
14 powers, and there's a prosecutor who's been elected by
15 the citizens of this county to represent the prosecution
16 of state law and violations of the state law. And
17 there's a process by which those allegations are
18 reviewed. If they're determined to be appropriate
19 alleged violations, a petition can be brought. And then
20 there's even diversionary process set in place by this
21 court prior to us getting to this point wherein they
22 could determine that these should be diverted or they
23 should be put on an informal calendar. And none of those
24 actions were taken.

So, what we're left with were duly and validly

1 authorized petitions that were drafted by my office,
2 which were authorized by this Court, which were brought
3 to you, perhaps, on --

4 THE COURT: So, would you be offering a consent
5 on these at all?

6 MR. NAEL: No. At this time, we are objecting.
7 But I think we've kind of gotten past the point of really
8 exploring a dispositional option as much as procedurally.
9 That's what we've been focused on addressing.

10 Nothing's been submitted to me. I'm learning
11 new information today even that I had not known before
12 that would potentially impact our position for
13 disposition.

14 But first and foremost, it's more of a
15 procedural issue that these really can't languish. I
16 understand you are -- you may hold matters in abeyance,
17 but ultimately with the intention or idea of abeyance is
18 that they be addressed or some sort of condition
19 precedent occur, and then we address them.

20 So, to answer your question, I don't disagree
21 with your dispositional objective. I do disagree with
22 procedurally how you are attempting to arrive there. And
23 so, I must state that objection and ask for the two
24 course of action, accept the plea and disposition. Or in
the alternative, I must request a jury trial.

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1 THE COURT: Okay.

2 MR. PARNES: Well, I think, like I indicated, I
3 cannot disagree with -- I'm not sure that I know that I'm
4 saying this -- but I can't disagree with Mr. Nael's
5 dissertation of the procedural issues and where we're at.
6 I've been involved with this since day one. And again, I
7 ask the Court to make whatever due considerations and
8 discretion that the Court wishes to make in this case.

9 THE COURT: If I don't accept the plea, are you
10 intending on going to trial?

11 MR. PARNES: No.

12 THE COURT: Okay. I'll issue an opinion.

13 MR. NAEL: Or, Your Honor, having stated that
14 our position is an objection to consent, if the Court
15 were inclined to accept the plea, hold the disposition
16 today or at least hold the portion of disposition in
17 abeyance, if counsel wanted to submit a memo as to -- I
18 would certainly be willing to review it in preparation
19 for our position with regard to the request of consent.

20 At this point based on the information we had,
21 I had to object.

22 THE COURT: Okay.

23 MR. NAEL: Obviously, there's more information
24 than we're aware of --

THE COURT: Are you aware of the new

1 information?

2 MR. NAEL: I'd be more --

3 THE COURT: Are you aware of the history?

4 MR. NAEL: You gave me a brief synopsis of it
5 last time. I reviewed the files. I spoke with Miss
6 Strehl. There's information here today that I'm learning
7 that is new to me. So --

8 THE COURT: As far as the underlying life that
9 this poor child has had to endure?

10 MR. NAEL: I probably don't know as fully as
11 all the parties here. So, typically, if someone were
12 seeking, I would not -- this is not uncommon that we take
13 a position based on what we know. And parties send us
14 memos or requests and provide us additional information
15 that we are not privy to.

16 THE COURT: Okay.

17 MR. NAEL: And sometimes it's very --

18 THE COURT: So, I'm going to ask Mr. Parnes to
19 do that, to ask him for the consent. And I'm going to
20 let you guys come to me and tell me if you have an
21 agreement before I do an opinion then.

22 So, I'm not going to accept the plea because I
23 want to understand --

24 MR. NAEL: Well --

THE COURT: I want the prosecutor's office to

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1 realize the gravity of the situation we're dealing with
2 with the little --

3 MR. NAEL: We fully realize the gravity, that's
4 why we're here now and addressing this issue.

5 THE COURT: I thought you said you didn't.

6 MR. NAEL: No, the gravity of the issue as we
7 see it with regard to procedurally that's --

8 THE COURT: Okay, I understand your procedural
9 issue.

10 MR. NAEL: But --

11 THE COURT: I want you to understand Mr.
12 Diehl's -- what he endured through half of his life and
13 why he is having a hard time coming to terms with things,
14 the reason to have to go testify in a trial where he was
15 severely abused by a boyfriend for years.

16 MR. NAEL: I can almost certainly -- so much as
17 a guarantee, that my office will not change its position
18 if it's on a position of your determination as to how to
19 proceed. Procedurally, it's conditioned upon us to
20 agreeing to something, which is effectively achieving the
21 same results, that procedurally does --

22 THE COURT: To get reverse --

23 MR. NAEL: Right. So, at that point, you know,
24 if we were at -- as we, you know, this is not a unique
case. I mean, there's unique circumstances, certainly.

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1 But if this matter was not unique as procedurally how it
2 occurred, if we were here for a disposition, I would look
3 at is as not provide any preferential treatment to any
4 other respondent.

5 But if this were procedurally where we're at,
6 having accepted the plea, and set it, I, as a prosecutor,
7 would look at this the same as I would cases in that I
8 would keep an open eye toward new information and
9 ultimately seek a reduction if it's warranted based on
10 that information with my boss, which is not a decision
11 that we've gotten to at this point.

12 But as you indicated, I guarantee we would not
13 be offering consent as a condition to achieve what we
14 believe should be procedurally appropriate stance.

15 MR. PARNES: So, am I hearing -- this is what I
16 understand. I'll prepare a memo, but if I prepare the
17 memo, am I doing it --

18 MR. NAEL: In vein?

19 MR. PARNES: -- just to do it? Because I
20 understand he's already -- I mean, there's been a
21 decision that he wouldn't -- they wouldn't consider
22 consent anyway, or I just --

23 MR. NAEL: Yes.

24 MR. PARNES: I just want to know what I'm
doing.

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1 MR. NAEL: It's in vein, because ultimately if
2 the Court is only willing to hold the disposition if we
3 reach an agreement to consent, then we're not going to
4 enter into some sort of consent or disposition of
5 negotiations when really the two options on the table are
6 jury trial or addressing the matter.

7 THE COURT: Right. So, and I'm not suggesting
8 it has to be consent. I'm suggesting that there needs to
9 be -- you have to understand that you're not offering any
10 additional services for this child. There's nothing --
11 under my job, I'm to make sure that we are trying to make
12 sure that these children are getting all the services
13 that they need to address themselves. We are not here to
14 punish.

15 But when you're asking me to just stack a
16 juvenile record for a child who is going through some
17 severe emotional issues with regards to a trial that's
18 coming up and having to testify, I'm having a hard time
19 balancing that with my job, which is to make sure that
20 it's not a punishment.

21 MR. NAEL: Well, respectfully, I see it a
22 little bit differently than you, Your Honor. I don't see
23 you as stacking his juvenile record because you're not
24 doing that. His actions have gotten him here on the
valid petitions. He's here on -- I see you as actually

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1 doing everything you can for him within what you're
2 permitted to do and recognizing there are not additional
3 services. So, perhaps, even a warning and dismiss would
4 be appropriate because there are no additional services.

5 THE COURT: But under a warning and dismiss,
6 he's still going to have a juvenile record.

7 MR. NAEL: Certainly. But that is -- that's an
8 effect that neither you nor I are in a position to
9 control at this point.

10 THE COURT: Okay. I'm going to just make sure
11 I can control it. Anything else?

12 MS. STREHL: No.

13 MR. PARNES: I just want to make sure where
14 we're at.

15 MR. NAEL: Yeah.

16 MR. PARNES: You want me to submit a memo to
17 Mr. Nael regarding the --

18 THE COURT: I would love for Mr. Nael to come
19 forward and tell me he has a plan in place and that the
20 prosecutor's office have looked at everything and they
21 want to reduce it, or they want to do something
22 differently, that would be great.

23 In the meantime, I will look at everything and
24 determine whether or not I can proceed and in what
direction.

Transcript for 7/16/2018 hearing

1 MR. PARNES: Understood.

2 MR. NAEL: So, where are we setting it for?
3 So, at this time, we're not holding disposition and we're
4 not setting it for a jury?

5 THE COURT: No. Did you serve Mr. Parnes with
6 your objection?

7 MR. PARNES: Yes, I have -- I received it.

8 THE COURT: Okay.

9 MR. PARNES: I got it, Judge.

10 THE COURT: Okay, because I didn't know when I
11 received it, I didn't see a motion or anything on it.
12 So, I wasn't really certain what the status was.

13 Okay. So, I'll give you a return date. How
14 much time, Mr. Nael, do you need here if you're going to
15 go to a jury trial or have some other conversation with
16 the prosecutor's office with regard to the charges?

17 MR. NAEL: Well, as to the jury trial issue,
18 because there will be no discussion of the charges under
19 our current posture; in other words, they'll be no
20 discussion of charges either way. The charges are the
21 charges, we're asking for disposition on those, or we're
22 asking for a jury trial on those.

23 Ultimately going to additional conversation I
24 would have with my office about potentially considering
our position regarding consent in lieu of new

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1 information, but that's only going to be a discussion
2 I'll have once we have an acceptance of the plea and
3 we're actually looking at a disposition.

4 So, as far as the jury trial, we're looking at
5 two separate jury trials, two separate incidents --

6 THE COURT: Why would I do that? I couldn't
7 have them in one jury trial? That seems like a waste of
8 resources.

9 MR. PARNES: I'm sorry, I couldn't hear you,
10 Your Honor?

11 THE COURT: I said that seems like a --

12 UNIDENTIFIED SPEAKER: I'll deal with that for
13 you.

14 THE COURT: I'm sorry.

15 UNIDENTIFIED SPEAKER: I'll see if I can --

16 THE COURT: Oh.

17 MR. NAEL: Well, they're two separate
18 incidents, two separate dates separated by
19 approximately --

20 MR. PARNES: Yeah, I mean, they're not related
21 offenses.

22 MR. NAEL: Yeah. Generally, I have never seen,
23 in this type of circumstance, with them held at the same
24 time because they would be more than likely prejudicial,
the jury would be prejudiced by the fact that there's

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1 more than one offense. I can imagine counsel -- every
2 attorney I've known, of course, would object to that.
3 And if the Court permitted would be filing a motion to
4 separate, bifurcate the matter.

5 I'm concerned procedurally that there would be
6 undue influence or prejudiced on the respondent if they
7 heard of multiple delinquencies.

8 MR. PARNES: I agree with that.

9 THE COURT: Okay.

10 MR. NAEL: And they really have no bearing on
11 one another as far as the types of the offenses. So, I
12 think a normal pretty quick time line would be six to
13 eight weeks. I don't know as to the status of the
14 discovery, whether or not it's been conducted completely
15 or fully. I don't want to redo it since I'm new to the
16 file.

17 THE COURT: So, I'll give you a pretrial in six
18 weeks.

19 MR. NAEL: On both the July 23rd -- I'm sorry.

20 THE COURT: I want to go seven weeks because of
21 the trial in Macomb County.

22 MR. NAEL: Sure.

23 THE COURT: So, that will be September 3rd.

24 MR. PARNES: Your Honor, I think that's the day
I'm coming back from my vacation. Is that Labor Day or

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Transcript for 7/16/2018 hearing

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1 is that the day after Labor Day? September 3rd is Labor
2 Day.

3 THE COURT: It is? Okay. So, what works for
4 you guys? You want the 4th, 5th, 6th, 10th?

5 MR. PARNES: I'm in a jury trial in front of
6 Judge McDonald on the 6th and 7th. In fact, I can't do the
7 10th --

8 THE COURT: Want to do --

9 MR. PARNES: -- 10th and 11th, that week is clear
10 for me.

11 THE COURT: Okay. How about the 10th?

12 MR. PARNES: For pretrial?

13 THE COURT: Yep.

14 MR. PARNES: At what time?

15 THE COURT: Does -- Miss Strehl, does 1:30 work
16 for you?

17 MS. STREHL: Yes.

18 MR. NAEL: Your Honor, we also have a -- on
19 that date, we have a 3.972 hearing on a neglect case,
20 allegations of a sexual assault. I expect it to be a --
21 should take a large part of the afternoon.

22 THE COURT: Okay. I'll take this first at
23 1:30, okay?

24 MR. PARNES: Okay.

MR. NAEL: Yes. And the pretrial, Your Honor,

Transcript for 7/16/2018 hearing

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1 is on the outstanding domestic violence and larceny in a
2 building offenses?

3 THE COURT: Yes.

4 MR. NAEL: All right. And at this time are you
5 then rejecting the plea outright?

6 THE COURT: I haven't made a decision.

7 MR. NAEL: Okay.

8 THE COURT: I'm holding it under abeyance like
9 I have.

10 MR. NAEL: Okay.

11 THE COURT: Thank you.

12 MR. NAEL: Thank you, Your Honor.

13 MR. PARNES: Thank you, Your Honor.

14 MS. STREHL: Thank you, Your Honor.

15 (At 2:21 p.m., proceedings concluded)

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CERTIFICATION

1
2
3 I certify that this transcript, consisting of 26
4 pages, is a true and accurate transcription, to the best
5 of my ability, of the video proceeding in this case
6 before the Honorable Victoria A. Valentine on Monday,
7 July 16, 2018, as recorded by the clerk.

8 Videotape proceedings were recorded and were
9 provided to this transcriptionist by the Circuit Court
10 and this certified reporter accepts no responsibility for
11 any events that occurred during the above proceedings,
12 for any inaudible and/or indiscernible responses by any
13 person or party involved in the proceedings, or for the
14 content of the videotape provided.

15 *Kimberly D. Pernick*

16

/s/ Kimberly D. Pernick, CER-0715
17 About Town Court Reporting, Inc.
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

IN THE MATTER OF

TYLER DIEHL,

Respondent.

OAKLAND COUNTY 17-855352-DL



JUDGE VICTORIA VALENTINE
IN THE MATTER OF DIEHL, TYLER.

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 26th day of July, 2018.

M. Robertoy
M. Robertoy

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Clarkston, MI 48346
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BY: DEPUTY COUNTY CLERK

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**NOTICE TO THE PROSECUTOR OF
REMOVAL OF THE CASE FROM THE ADJUDICATIVE PROCESS**

Tyler Diehl is a 12-year-old juvenile who has endured a past that no child should have to undergo. Mr. Diehl is alleged to have suffered repeated and continuous sexual and physical abuse at the hands of his biological mother's boyfriend. Mr. Diehl has come before this Court due to his emotional outbursts related to his suffering and enduring years of sexual and physical. Mr. Diehl has a very difficult time discussing these past abuses with his counselor. Mr. Diehl has also had a difficult time continuously having to prepare to testify at the alleged perpetrator's criminal jury trial in Macomb County; which has been adjourned on several occasions. Mr. Diehl has a victim's advocate through the Macomb

County Court, but unfortunately, the advocate does not have control over the trial of the alleged abuser.

Tyler Diehl (DOB 3/26/2005) is before the Court on three alleged violations:

(1) A domestic violence pursuant to MCL 750.812 with a petition date of July 24, 2017, for an incident that occurred on July 23, 2017.

(2) A domestic violence pursuant to MCL 750.812 with a petition date of July 26, 2017, for an incident that allegedly occurred on July 25, 2017.

(3) A felony larceny in a building under MCL 750.360 with a petition date of January 19, 2018, for an alleged incident that occurred on November 28, 2017.

On August 8, 2017, Mr. Diehl pled no contest on the July 24, 2017 Domestic Violence charge. Mr. Diehl was placed on standard probation.

Mr. Diehl tendered a plea of no contest on additional charges of Domestic Violence and Larceny in a Building. The Court, however, held the pleas in abeyance, indicated it would not accept the pleas and continued to hold them in abeyance. And, while the Prosecuting Attorney filed The People's Notice of Objection to Consent Calendar dated May 31, 2018 it was not praeciped or noticed for hearing. The People's Objection, however, was raised at the July 16, 2018 review hearing.

Ms. Strehl, the Case Worker on this case, indicated on several occasions that there are no further services that can be offered to Mr. Diehl. In addition, Ms. Strehl's reports indicate that Mr. Diehl is doing well and his emotional issues are being addressed. Further, there have been numerous letters submitted on the Mr. Diehl's behalf by his teachers. Each letter details what a wonderful student Mr. Diehl is and what a compassionate and caring child he is.

This Court notes that juvenile delinquency proceedings are not criminal proceedings.

MCL 712A.1(2); *In re Lee*, 282 Mich App 90, 99 (2009):

Because the disposition of a juvenile in a delinquency proceeding is governed by the Juvenile Code, the penalty provisions contained in criminal statutes are generally inapplicable. MCR 3.943(E)(1) provides that “[i]f the juvenile has been found to have committed an offense, the court may enter an order of disposition as provided by MCL 712A.18.” (MCL 712A.1(2)).

‘[J]uvenile justice procedures are governed by the applicable statutes and court rules, with an emphasis on rehabilitation rather than retribution.’ Emphasis added, *Lee*, 282 Mich. App. at 99 (citation omitted). (MCL 712A.1(2)). (Emphasis added).

MCR 3.902(B) provides that:

(B) Philosophy. The [court] rules must be interpreted and applied in keeping with the philosophy expressed in the Juvenile Code. The court shall ensure that each minor coming within the jurisdiction of the court shall:

(1) receive the care, guidance, and control, preferably in the minor’s own home, that is conducive to the minor’s welfare and the best interests of the public; and

(2) when removed from parental control, be placed in care as nearly as possible equivalent to the care that the minor’s parents should have given the minor. (MCR 3.902(B)).

MCL 712A.1(3) contains similar language.

In keeping with the philosophy that juvenile delinquency proceedings are to rehabilitate juveniles by ensuring minors receive care, guidance, and control - preferably in the minor’s own home - that is conducive to the minor’s welfare and the best interests of the public, this Court is satisfied that the screening committee has reviewed the additional charges of Domestic Violence and Larceny in a Building and that there are no further services and or programs that can or will be offered to Mr. Diehl.

Pursuant to MCL 780.786b:

A case involving the alleged commission of an offense, as defined in section 31, by a juvenile shall not be diverted, placed on the consent calendar, or made subject to any other prepetition or preadjudication procedure that removes the case from the adjudicative process unless the court gives written notice to the prosecuting attorney of the court's intent to remove the case from the adjudicative process and allows the prosecuting attorney the opportunity to address the court on that issue before the case is removed from the adjudicative process. Before any formal or informal action is taken, the prosecutor shall give the victim notice of the time and place of the hearing on the proposed removal of the case from the adjudicative process. The victim has the right to attend the hearing and to address the court at the hearing. As part of any other order removing any case from the adjudicative process, the court shall order the juvenile or the juvenile's parents to provide full restitution as provided in section 44. (MCL 780.786(b)).

This Court is focused on rehabilitation of juveniles. In addition, it cannot be ignored that this child has been a victim of continuous sexual and physical abuse and neglect. Mr. Diehl has also been involved in a neglect proceeding in which his parents' rights were terminated. Mr. Diehl has been adopted by a supportive and loving mother who is attempting to attend to Mr. Diehl's emotional needs. Mr. Diehl is an extremely promising child with above average intelligence. With the help from the Court and the community, Mr. Diehl will be a survivor of abuse. Mr. Diehl has made progress and has received amazing reviews from numerous teachers.

This Court also notes that Mr. Diehl did pay restitution of \$57.98 and, therefore, as stated in MCL 780.786b, "[a]s part of any other order removing any case from the adjudicative process, the court shall order the juvenile or the juvenile's parents to provide full restitution as provided in section 44."

Since there are no services that can be provided, should the Court adjudicate Mr. Diehl, the Court would essentially be punishing Mr. Diehl with a juvenile record without

providing any additional rehabilitation as required. Adding these charges without providing additional services is not in the best interest of Mr. Diehl or the best interest of the public.

This Court intends on unauthorizing and, thereby, removing the petitions from the adjudicative process for the July 26, 2017 Domestic Violence petition and the June 19, 2018 Larceny in a Building petition for the reasons stated above.

The Prosecuting Attorney is hereby given Notice of the Court's intent to remove these matters from the adjudicative process and will allow the Prosecuting Attorney the opportunity to address the Court on that issue before the case is removed from the adjudicative process.

The hearing regarding the removal of the Petitions is set for **SEPTEMBER 10, 2018, AT 1:30 PM BEFORE JUDGE VALENTINE.**

[Handwritten signature]
Dated: 7/26/18

[Handwritten signature]

HON. VICTORIA A. VALENTINE (P58546)
CIRCUIT COURT JUDGE
FAMILY DIVISION

Transcript of 9/10/2018 hearing

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FAMILY DIVISION

IN THE MATTER OF:

Case No. 2017-855352-DL

TYLER JOSEPH DIEHL,

Respondent.

_____ /

HEARING

BEFORE THE HONORABLE VICTORIA A. VALENTINE, CIRCUIT JUDGE

Pontiac, Michigan - Monday, September 10, 2018

APPEARANCES:

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Of Behalf of
Casework Services:

LOUISE STREHL

Videotape Transcription Provided By:

Kimberly D. Pernick, CER 0715
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Pontiac, Michigan

Monday, September 10, 2018 - at 1:58 p.m.

- - -

THE CLERK: Now calling case number 2017-855352-DL, in the Matter of Tyler Diehl.

MR. NEAL: Good afternoon, Your Honor, Adam Neal, assistant prosecuting attorney, on behalf of the People.

MR PARNES: And good afternoon, Your Honor. May it please this honorable Court -- I apologize for my cold -- attorney on behalf of Tyler Diehl, who's standing to my left, mom is standing to my right. Is Miss Strehl here?

THE COURT: She is right here.

MR PARNES: Oh, okay.

MS. STREHL: Good afternoon, Your Honor.

THE COURT: Good afternoon, Miss Strehl. Appearance for the record, please? Miss Strehl, put your appearance on.

MS. STREHL: Louise Strehl on behalf of Casework Services.

THE COURT: Did you already put your --

MR. NEAL: Yes, I did, thank you.

THE COURT: Okay. Mr. Parnes, Mr. Diehl?

TYLER DIEHL: Tyler Diehl.

Transcript of 9/10/2018 hearing

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1 THE COURT: Thank you, sir.

2 MR PARNES: Go have a seat, Tyler.

3 THE COURT: Go ahead, mom.

4 MR PARNES: 'Cause he's going to be talking for
5 a while.

6 THE COURT: Okay. Mom, your name for the
7 record?

8 LINDA DIEHL: Linda Diehl.

9 THE COURT: Thank you. Okay, go ahead, Mr.
10 Neal.

11 MR. NEAL: Well, Your Honor, today is your
12 hearing. You scheduled the matter for a hearing, and we
13 were provided notice about the -- about the removal of
14 the case and adjudicative process. I guess I would ask,
15 first, is that still the Court's intention at this time?

16 THE COURT: It is.

17 MR. NEAL: Well, Your Honor, consistent with
18 the statements I made on the record previously that on
19 April 24th, 2018 and July 16th of 2018, I would adopt all
20 those prior statements and objections to this course of
21 action.

22 The Court was suggesting this course of action
23 at those prior proceedings. And as a result, I did file
24 a notice of our objection to consent and ask that the
matter be -- People's notice of objection to consent

1 calendar. And ask that the matter be formally
2 adjudicated, and the Court accept the plea that had
3 previously been held -- held in abeyance. And we'd ask
4 that you accept the plea and set the matter for a
5 disposition. That was our prior position, that is
6 currently our position.

7 I've have the opportunity to review your notice
8 to the prosecutor of removal of the case from the
9 adjudicative process. I believe our previous statements
10 and arguments are still consistent and would still oppose
11 this course of action.

12 I would note, Your Honor, that the authority
13 cited by the Court in support of their intended course of
14 action is based largely on the philosophy and the idea as
15 to rehabilitation versus retribution, and ultimately, a
16 concern as to the -- and record for the juvenile. And
17 cited also as MCL 780.786b, which I believe the Court
18 references as an authority.

19 However, I would note that within that statute
20 it references prepetition and pre-adjudicative procedure.
21 And that before that to be -- a case to be removed,
22 notice needs to be given to the prosecution.

23 I would note that posturally, we're on a
24 different posture in that this is not pre-petition, this
is not pre-adjudicative. As I previously stated, as we

1 all are aware, there is a duly authorized petition that
2 had been set for a pretrial, and a plea was in fact
3 tendered just not accepted fully, it was instead held in
4 abeyance by this Court.

5 So, the procedure which you cited, the statute
6 which you cited is not applicable to this case as it
7 currently sets.

8 And again, as I've discussed previously with
9 regard to the separation of powers, if the Court were
10 able to go down this course of action as proposed, as you
11 stated you intend to do, it would be effectively to
12 sidestep the perimeters and the procedure that we have in
13 place for juvenile delinquency proceedings. And
14 effectively, it would be giving the Court the ability to
15 grant consent over the People's objection because you
16 would just sidestep and unauthorize petitions after
17 they've been authorized.

18 And so for that reason, we object. We'd ask
19 that you, again, hold the matter -- accept the plea, no
20 longer hold these pleas in abeyance, and go directly
21 toward disposition.

22 I spoke to Miss Strehl, and consistent with her
23 previously recommendations, and I believe as the Court
24 even cited in your notice, there are likely no further
dispositional options. Our assertion is there are

1 dispositional options. There are no further services
2 necessary. And I can understand a recommendation for a
3 warn-and-dismiss but, ultimately, that would be a proper
4 dispositional option. But it would first necessarily
5 need an adjudicative finality, which would be your
6 acceptance of the plea.

7 So, I would ask that we proceed to that end,
8 accept the plea, have the adjudication, and then we could
9 proceed to the proper dispositional step.

10 THE COURT: Okay. And what would the proper
11 dispositional step be?

12 MR PARNES: Your Honor, could you speak up, I'm
13 sorry?

14 THE COURT: What would the proper dispositional
15 step be?

16 MR. NEAL: Well, generally, as I do in most --
17 I'd say 99 percent of the cases, especially with working
18 with Miss Strehl as long as I have and many other case
19 workers, her recommendation as I understand, would be a
20 warn-and-dismiss, as there's likely no -- you know, we
21 don't need intensive probation, don't need standard.
22 I'm not aware of any other service that we could offer.
23 And again that's --

24 THE COURT: But a warn-and-dismiss just stacks
 a record for what reason?

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1 MR. NEAL: Warn-and-dismiss is a --

2 THE COURT: Will put it on his record; yes?

3 MR. NEAL: Warn-and dismiss is a dispositional
4 option when there is nothing further that we can do for a
5 child dispositionally. That is the proper procedural
6 option.

7 So, I'm not asking or aware of any other
8 dispositional options available that we need to put in
9 place. And so, if the Court wanted to warn and dismiss
10 and release jurisdiction, having conferred with Miss
11 Strehl, I believe that -- I defer to her recommendation.
12 I think that may be appropriate in this situation.

13 What is not appropriate is to circumvent the
14 delinquency procedure without authority. I do not
15 believe the authority you cited stands for what it --
16 what you put forth here. And I do not believe there's
17 authority for unauthorizing an authorized petition in the
18 posture where we currently are.

19 THE COURT: I disagree.

20 MR. NEAL: Respectfully.

21 THE COURT: Go ahead, Mr. Parnes?

22 MR PARNES: Yes, Your Honor, I believe the
23 Court's notice was -- cited the law appropriately. And I
24 don't believe the Court is really granting consent. It's
just basically removing the petitions from the

1 adjudicative process.

2 THE COURT: Okay. Miss Strehl, do you have
3 anything that you wanted to add?

4 MS. STREHL: Your Honor, just a -- just a brief
5 update in regards to this matter. Tyler did provide
6 testimony in Wayne County on August 29th. The jury found
7 the defendant guilty as charged and his sentencing is
8 October 10th, which is a huge weight off this juvenile's
9 shoulders, as well as his mother. The victim advocate
10 said that she -- Tyler did a really nice job testifying,
11 and that the relief that she heard in his voice after
12 finding out the verdict was incredibly moving.

13 In addition to that, Tyler was sent to STRIDE
14 on two separate occasions during this reporting period.
15 And what's noteworthy about those weekends, and part of
16 the reason why I send them, is that this juvenile has the
17 ability to behave in school, he has ability to behave in
18 the community, he has ability to behave at other
19 programming. Comments include very prompt, good
20 attitude, respectful, mindful worker, eager to work, well
21 mannered. And the only problem that we continue to have
22 is his behavioral outbursts at home.

23 And I'm hoping that now that this trial is over
24 in Macomb County, mom and the children can move forward
and start working on their individual communication and

1 relationships.

2 His older brother Christopher's case is
3 downstairs before Referee Hand today. And he's a PA-150,
4 and he's supposed to be returning home as well. So, the
5 family is going to be joined together in its unity. And
6 I'm hoping that they can move forward and continue to
7 work with Oakland Family Services on their in-home
8 counseling, group needs, trauma needs, and that mom
9 reconsiders the help of the parent support partner, which
10 she declined, in the future. Thank you.

11 THE COURT: Who declined this parent support
12 help?

13 MS. STREHL: Mrs. Diehl.

14 THE COURT: When was that?

15 MS. STREHL: I spoke with the therapist on
16 Friday, so approximately two weeks ago. She had an
17 intake with the parent support partner, and then one
18 session, and then she declined further services. And I
19 only had a chance to speak with Mrs. Diehl about that at
20 the end of last week and then today.

21 I have encouraged her to reconsider that. I
22 think it's a very important aspect to the family's
23 treatment in a whole. And it can provide an outside
24 perspective in the home on what could be some of the
common denominators of the outbursts and things like that

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1 that are going in within the home.

2 THE COURT: Miss Diehl?

3 LINDA DIEHL: Yes.

4 THE COURT: What's the reason that you're not
5 embracing the support?

6 LINDA DIEHL: I will do it if the Court would
7 like that. I did not find it helpful. I know that was
8 only two sessions. Perhaps, I was a little bit quick,
9 but it was not -- there were problems, you know, it
10 didn't seem like she fit in with what the therapists were
11 saying. And so, we've got this other person. So, I did
12 meet with her twice, and I will meet with her -- I will
13 see if they can get that going again or get somebody
14 else. I don't know.

15 THE COURT: Okay. I think you need to embrace
16 all the resources.

17 LINDA DIEHL: Okay.

18 THE COURT: Okay. So, this Court's satisfied
19 with regard to the unauthorization of the petitions
20 pursuant to MCL 780.786, and that's further addressed in
21 the opinion. I don't believe that the larceny in a
22 building was properly authorized, number one. And I am
23 unauthorizing both petitions. There is nothing further
24 that this Court can provide with regard to a benefit to
the child other than just creating a record for the

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1 child, and the Court's not willing to do so. So, those
2 matters will be unauthorized and dismissed.

3 MR PARNES: Thank you, Your Honor. Is
4 jurisdiction going to continue on the one case?

5 THE COURT: Jurisdiction is going to continue
6 on the one case. Mr. Diehl, how are you doing?

7 TYLER DIEHL: Good, Your Honor.

8 THE COURT: Sir, did you just hear what Miss
9 Strehl said?

10 TYLER DIEHL: Yes, Your Honor.

11 THE COURT: With regard to the fact that you
12 behave everywhere except at home?

13 TYLER DIEHL: Yes, Your Honor.

14 THE COURT: Why?

15 TYLER DIEHL: I'm trying to figure that out,
16 Your Honor.

17 THE COURT: You have a good mom?

18 TYLER DIEHL: Yes, Your Honor

19 THE COURT: Is it 'cause you're close to her
20 that you're -- that you feel like you cannot always
21 behave with her?

22 TYLER DIEHL: I don't know, Your Honor.

23 THE COURT: Okay. How we going to figure this
24 out?

TYLER DIEHL: Try to behave and get off

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1 probation, Your Honor.

2 THE COURT: Okay. Well, what makes you get mad
3 at your mom or take it out on your mom?

4 TYLER DIEHL: Over stupid things like video
5 games.

6 THE COURT: Oh. You don't play Fortnite, do
7 you?

8 TYLER DIEHL: No, Your Honor.

9 THE COURT: PUBG?

10 TYLER DIEHL: No, Your Honor.

11 THE COURT: Which one?

12 TYLER DIEHL: Neither, Your Honor.

13 THE COURT: What is the video game that makes
14 you mad?

15 TYLER DIEHL: Need for Speed.

16 THE COURT: Need for Speed?

17 TYLER DIEHL: Yes.

18 THE COURT: Video games are not my friend
19 either. How many hours do you want to be playing them?

20 TYLER DIEHL: I don't know, probably an hour at
21 the most.

22 THE COURT: Do you think that's fair?

23 TYLER DIEHL: Yes.

24 THE COURT: Is it when she takes it away that
you get mad?

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1 TYLER DIEHL: Yes.

2 THE COURT: Hmm. What are you playing it on?

3 TYLER DIEHL: The Wii.

4 THE COURT: The Wii, hmm. Is that what
5 happened last time?

6 TYLER DIEHL: Pardon?

7 THE COURT: Is that what happened last time
8 when you got mad at your mom?

9 TYLER DIEHL: Ah, no, Your Honor.

10 THE COURT: It wasn't the Wii?

11 TYLER DIEHL: No, Your Honor.

12 THE COURT: Okay. What was it?

13 TYLER DIEHL: It was over pizza.

14 THE COURT: Pizza? What do you mean?

15 TYLER DIEHL: Like, I was hungry, and I didn't
16 get it at that time, and so I was angry about that, that
17 she didn't make it right then, there, and now.

18 THE COURT: How old are you?

19 TYLER DIEHL: Thirteen.

20 THE COURT: Can't you make your own pizza?

21 TYLER DIEHL: Yes.

22 THE COURT: Why are you getting mad at your
23 mom?

24 TYLER DIEHL: Well, there was oven pizza in the
freezer.

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1 THE COURT: Okay. But you're 13, right?

2 TYLER DIEHL: Yes.

3 THE COURT: You feel better now that the
4 trial's over?

5 TYLER DIEHL: Yes, Your Honor.

6 THE COURT: Like you can maybe not have as much
7 anger?

8 TYLER DIEHL: Yes, Your Honor.

9 THE COURT: Is that what was causing you to get
10 upset?

11 TYLER DIEHL: Yes, Your Honor.

12 THE COURT: You going to counseling?

13 TYLER DIEHL: Yes, Your Honor.

14 THE COURT: How often?

15 TYLER DIEHL: Every week.

16 THE COURT: Is it enough?

17 TYLER DIEHL: Yes, Your Honor.

18 THE COURT: What else can we do, Miss Strehl?

19 MS. STREHL: Just encourage mom to utilize the
20 resources that are provided to her, monitor his behavior
21 now that the trial's over since that's been quite a
burden to the family, I'm anticipating improvements.

22 Should he need some intervention, I'm sending
23 him to STRIDE. You know, and that's -- it's a good thing
24 that mom can spend time with the other kids without

1 having to constantly battle -- Tyler's battling for her
2 attention all the time, so --

3 THE COURT: With regard to the report you sent
4 today, I just read it. So, the last two STRIDE referrals
5 were in relationship to the trial when?

6 MS. STREHL: They were -- well, over this
7 reporting period, mom's had to call the police on several
8 occasions. Tyler's been unruly over the pizza, there was
9 an ice cream incident. Mom even had one of her
10 biological older sons come home and help with Tyler over
11 the summer. He's been a handful.

12 So now that the trial's over, which just
13 happened last Friday, or the 30th, we haven't had any
14 incidents so far. But then school has started, so he's
15 got that structure and routine. He's continued to
16 receive the home-based services through Oakland Family
17 Services, he has group therapy with Oakland Family
18 Services.

19 So, now that the trial's over should they need
20 some additional interventions, you know, I'll certainly
21 be able to provide them with those resources. It may
22 even include out-of-home placement for the weekend. It's
23 called a work weekend, or a weekend over at Children's
24 Village if this behavior continues at home. 'Cause,
clearly, he can maintain his emotions and himself outside

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1 of the home. So --

2 THE COURT: Did you hear all that?

3 TYLER DIEHL: Yes, Your Honor.

4 THE COURT: Do you understand it?

5 TYLER DIEHL: Yes, Your Honor.

6 THE COURT: Do you understand that if you keep
7 acting up, that you're going to get placed in Children's
8 Village?

9 TYLER DIEHL: Yes, Your Honor.

10 THE COURT: You okay with that?

11 TYLER DIEHL: I don't know, Your Honor.

12 THE COURT: Would you rather be in Children's
13 Village?

14 TYLER DIEHL: No, Your Honor.

15 THE COURT: Okay. Do you understand I'm going
16 to take this very seriously, but I need you to take it
17 more seriously than me?

18 TYLER DIEHL: Yes, Your Honor.

19 THE COURT: I know you're on that Concerta.
20 Does that make you -- are you going long periods of time
21 without eating?

22 TYLER DIEHL: No, Your Honor.

23 THE COURT: Okay. Well, two of the incidents
24 you got mad about were food, true?

TYLER DIEHL: Pardon?

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1 THE COURT: Two of the matters you got mad
2 about were food, right?

3 TYLER DIEHL: Yes, Your Honor.

4 THE COURT: One pizza, one ice cream, right?

5 TYLER DIEHL: Yes, Your Honor.

6 THE COURT: Okay. Are you going a long period
7 of time without eating?

8 TYLER DIEHL: No, Your Honor.

9 THE COURT: Okay. Maybe you need to snack a
10 little bit more because next time you get in a fight with
11 your mom or you give her a problem, I'm not going to let
12 you sit here and be a nice child and structure with
13 everyone else except your mom. Do you understand?

14 TYLER DIEHL: Yes, Your Honor.

15 THE COURT: Okay. Okay. So, we'll do a review
16 in -- how long did you want, Miss Strehl?

17 MS. STREHL: Three months. Can we do a
18 Tuesday, please?

19 THE COURT: Can you come back in if he's having
20 more problems, though?

21 MS. STREHL: Absolutely.

22 THE CLERK: I have Tuesday, December 11th at
23 1:30.

24 MR PARNES: At what time?

THE CLERK: 1:30.

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MR PARNES: 1:30, thank you.

THE COURT: You said the 11th?

THE CLERK: Yes, December 11th at 1:30.

MS. STREHL: Thank you.

THE COURT: Okay. Okay. And, mom, I am ordering that you use the services that are provided, okay?

LINDA DIEHL: Yes, Your Honor, yes.

THE COURT: I want to make sure we do everything we can to get Tyler on track here.

LINDA DIEHL: Absolutely.

THE COURT: Anything else?

MS. STREHL: No, Your Honor, thank you very much.

MR PARNES: Thank you, Your Honor.

MR. NEAL: Your Honor, thank you.

THE COURT: Thank you.

(At 2:18 p.m., proceedings concluded)

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CERTIFICATION

I certify that this transcript, consisting of 20 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Monday, September 10, 2018, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

Kimberly D. Pernick
/s/ Kimberly D. Pernick, CER-0715
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

IN THE MATTER OF

TYLER DIEHL,

Respondent.

"OAKLAND"
"COUNTY" 17-855352-DL



JUDGE VICTORIA VALENTINE
IN THE MATTER OF DIEHL, TYLER,

13

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 10th day of September, 2018.

M. Robertoy

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DEPUTY COUNTY CLERK

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ORDER

At a session of said Court held on the 10th day of September, 2018 in the County of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

Pursuant to the Notice to the Prosecutor of Removal of the Case From the Adjudicative Process dated 7/26/2018 and for the reasons stated in that Notice and as further stated on the record; and while the victims had the right to appear and address the Court, the Prosecutor did not inform the Court of any victim wishing to address the Court.
NOW THEREFORE:

81

THIS COURT HEREBY unauthorizes and removes the July 26, 2017 Domestic Violence Petition and the January 19, 2018 Larceny in a Building Petition from the adjudicative process.

IT IS SO ORDERED.

Dated: 9/10/18



HON. VICTORIA A. VALENTINE (P58546)
CIRCUIT COURT JUDGE
FAMILY DIVISION

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STATE OF MICHIGAN
COURT OF APPEALS

In re D., Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

T. J. D.,

Respondent-Appellee.

FOR PUBLICATION

September 19, 2019

9:10 a.m.

No. 345672

Oakland Circuit Court

Family Division

LC No. 2017-855352-DL

Advance Sheets Version

Before: BORRELLO, P.J., and K. F. KELLY and SERVITTO, JJ.

K. F. KELLY, J.

The prosecution appeals as of right the trial court’s order “unauthorizing” two juvenile-delinquency petitions that alleged respondent had committed domestic violence, MCL 750.81(2), and larceny in a building, MCL 750.360—both of which are offenses defined in § 31(1)(g) of the Crime Victim’s Rights Act (CVRA), MCL 780.781 *et seq.*—and removing those petitions from the adjudicative process. We affirm the trial court’s order but remand this case to the trial court to complete the ministerial tasks of (1) assigning separate petition numbers to each of respondent’s three juvenile-delinquency petitions and (2) placing the separate petition numbers on all documents within respondent’s case file that are related to each petition.

I. BASIC FACTS

This case arises out of three juvenile-delinquency petitions issued by the prosecution against respondent. The first petition, dated July 24, 2017, alleged that respondent committed domestic violence against his adoptive mother, Diehl. Specifically, respondent was then 12 years old and had resided with Diehl since he was eight years of age. On July 23, 2017, respondent’s biological sister was visiting the family but abruptly decided to end her visit. This caused respondent to scream at his sister, but respondent’s brother called from California and was able to calm respondent down. Hours later, respondent wanted to read the newspaper, but Diehl told him that it was time to go to sleep. This caused respondent to become enraged, and he began to throw

objects. Diehl went outside and called 911. The police photographed injuries to Diehl, but she attributed her bruises to a prior fall and an unspecified medical condition. Moreover, she opined that respondent did not intend to throw objects at her. The first petition was authorized after a preliminary hearing,¹ and respondent was released into Diehl's custody with the condition that Diehl arrange counseling for respondent.

Two days after respondent was released into Diehl's custody, however, a second petition dated July 26, 2017, was issued, alleging that respondent had committed another act of domestic violence against Diehl. Specifically, the police² were called by Diehl's neighbor who reported that respondent struck Diehl, causing her to fall to the ground and that respondent then continued to kick her. Diehl reportedly told the officers that respondent was agitated about attending court-ordered therapy and began to swing a bag. Although she denied being punched, Diehl reportedly admitted to the responding officers that respondent pushed her, causing her to fall to the ground. Following this preliminary hearing, the second petition was authorized. With regard to placement, it was noted that respondent was a good student with no disciplinary issues at school. It was determined that respondent would remain in custody until a pretrial was held. Pursuant to respondent's judge demand, the case was assigned to Oakland County Family Court Judge Victoria Valentine for its duration.

On August 8, 2017, a hearing was held before Judge Valentine. Respondent entered a plea of no contest to the domestic-violence charge in the first petition.³ Respondent did not enter a plea to the domestic-violence charge in the second petition at that time. With regard to the second petition, it was requested that the matter be set for trial with discovery occurring in the interim. Respondent's counsel requested that "the prosecutor . . . consider dismissing the second [petition] since the Court will already have jurisdiction after you accept the plea." The prosecutor agreed that he would send respondent's counsel the necessary discovery and contemplate the dismissal of the second petition. When addressing services, Louise Strehl of Casework Services⁴ requested an

¹ Under MCR 3.935(A)(1), a "preliminary hearing" must occur with 24 hours of the juvenile being taken into custody. On the other hand, when a petition is not accompanied by a request to detain the juvenile, the court may conduct a "preliminary inquiry" to determine how to proceed with allegations in a petition. MCR 3.932(A).

² A detective testified to the substance of the police run because the responding officers were in training.

³ The police report served as the foundation for the no-contest plea because respondent did not have an independent recollection of the event.

⁴ Casework Services is the division responsible for authorized delinquency cases in Oakland County. The entity is available before the filing of petitions to provide community-based resources and to make recommendations regarding disposition to address both the needs of the child and the protection of the community. Casework Services monitors compliance and reports to the court on a regular basis. "Unlike with adult courts, there are no fixed sentences in the Family/Juvenile Court. Recommendations from Casework Services, and the resulting court orders decided upon by a referee or judge, involve choosing from among the many programs, services and creative

evaluation before respondent was returned home because of the volatile relationship with his mother. Diehl preferred to bring respondent home and get him help and therapy, “not jail.” She stated that respondent “was a little boy who has spent half of his life being abused, and something set him off that weekend, . . . [b]ut before that, he had never had an incident.” Diehl further stated that although respondent had been opposed to therapy, his time spent at Children’s Village caused him to realize the importance of it. The trial court ordered placement to continue at Children’s Village with a psychological evaluation to occur within seven days.

On September 1, 2017, a dispositional hearing was conducted on the first petition. At the hearing, respondent’s counsel expressed that despite his 40 years of practice, he “was appalled and beyond angry” to learn of “what took place when [respondent] lived with his biological parents.” His counsel stated that although respondent had the right to be angry, respondent had learned of the need to find methods to address his anger. Respondent’s counsel again asked the prosecutor to consider dropping the second petition but acknowledged “that’s a prosecutorial decision.” The prosecutor agreed to discuss the second petition but first addressed his reservations regarding the recommendation by Casework Services. Specifically, the prosecutor requested an adjournment of the dispositional hearing to allow the out-of-home screening committee to evaluate the case in light of the prior violence in the home; he also questioned whether Diehl would report the violence if it recurred. Strehl stated that if she felt the case needed to be presented to the committee, she would have done so. Strehl opined that supervising respondent in the community would allow her the opportunity to understand the relationship between him and Diehl, and she would report her concerns to the court and the committee if necessary. With respondent scheduled to start school, Strehl would engage in community monitoring by meeting with the school’s social worker and counselor as well as monitor respondent’s therapy to learn of signs of trouble in the family home. Respondent’s medication had been changed while he was placed in Children’s Village, yet he had not required recent physical management there. Strehl credited respondent’s lack of physical involvement, noting that Children’s Village was a stressful environment and children would incite others to get into trouble.

Diehl also offered that respondent’s violent reaction was triggered by his sister who had mentioned that parents could rescind an adoption, causing him to fear it would happen to him. She assured the court that resources, including therapy, were in place to prevent an incident of that magnitude from recurring and that she would comply with any court orders. In response to questioning by the court, respondent indicated that he would deal with anger in a different way, by using a stress ball or coloring, and he now wanted to attend counseling. Respondent stated that Diehl taught him math at a twelfth grade level even though he was only in seventh grade and that he would like to be an engineer. The court adopted the recommendation that respondent be placed on standard probation, attend counseling, attend school, remain on prescription medication, and be released to Diehl. The prosecutor never stated his position on the record regarding the second petition. However, the trial court addressed it by stating, “With regard to his additional charge,

solutions, and consequences available.” Oakland County, *Juvenile Casework* <<https://www.oak.gov/courts/circuit/family/court-services/Pages/juvenile-casework.aspx>> (accessed September 5, 2019) [<https://perma.cc/WBS3-LVV6>].

I'll allow you to determine how you're going to handle that, if you want that in a place for safeguarding any additional behavior. I'm going to allow the child to be released." The prosecutor offered to schedule a review on this case on the date scheduled for the trial on the second petition. Further, the prosecutor agreed to provide any video or audio recordings made by the responding police officers to the alleged act of domestic violence that was the subject of the second petition.⁵

While on probation, a third petition, dated January 19, 2018, was issued, alleging that respondent had committed larceny in a building by stealing money from a school teacher's purse in November 2017. This third petition was authorized after a preliminary-inquiry hearing under MCR 3.932(A).

On January 30, 2018, the hearing commenced with the representation that respondent was prepared to enter a plea of no contest to the domestic-violence offense raised in the second petition, as well as the larceny-in-a-building offense delineated in the third petition. Prior to the taking of the plea, the prosecutor and Strehl discussed the services that should be imposed. Strehl learned from respondent's therapist that he was starting to address the trauma that occurred when he was younger, and the therapist wrote a letter forewarning that respondent might begin to react or act out because of the work occurring in therapy. Consequently, Strehl forwarded the letter to the trial court and recommended intensive probation oversight.

The trial court advised respondent of the consequences of the plea and initially accepted it. However, respondent's counsel asked to approach the bench, and a six-minute sidebar conference occurred off the record.⁶ After the sidebar, the trial court reconsidered its decision, took respondent's plea "under advisement," and set the matter for review a few months later.

The trial court placed its rationale for rejecting the plea on the record as follows:

⁵ On October 17, 2017, a pretrial hearing was held. The court scheduled a review hearing on the first petition and a pretrial hearing on the second petition. All prior orders were to remain in effect.

⁶ The prosecution faults the trial court for failing to provide a transcription of this sidebar conference, citing a transcript from an unrelated criminal case before the circuit court for the proposition that the court is responsible for eliminating sidebar discussions from the public record but may obtain separate transcriptions of sidebar discussions. Yet an affidavit from the court administrator or transcript services regarding the process and availability of transcripts of sidebar conversations occurring in family court was not presented. The prosecution, as the appellant, had the duty to file with the trial court the complete transcript of testimony and other proceedings, and appellate review is limited to what is presented on appeal. *Band v Livonia Assoc*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). Curiously, although the prosecution contends that "the impact of this sidebar forms the basis of Petitioner's appeal," there is no indication it took steps to order its preparation if it exists. Furthermore, a summation of the prosecutor's recall of the sidebar discussion is contained within a footnote of the brief on appeal, yet an affidavit from the prosecutor was not submitted.

The Court: So, I'm going to hold your disposition for—when is it? April 24th, 2018, at 1:30. Okay.

And [respondent], let me tell you why. I've read the reasons why you took the money. And you were trying to help another child who was starving. And with regard to the alleged domestic violence here, we've gone through the issues with regard to your history and your past. And upon speaking with both the—all counsel here, it's indicated that my—I can't give more probation or more services to you than you have right now even if I sentence you in a disposition.

And so, I'm going to hold everything under advisement, we're going to send it to committee to see what a recommendation would be, and I'll determine whether or not I'm going to proceed with the accepting [of] your plea or not, okay?

[Respondent]: Yes, Your Honor.

The Court: So, I need you to understand a couple things. We're all here to help you, okay? You had a tough past, okay? But now you have a really good future. You need to trust your mom, you need to let your mom help you, you need to talk to your therapist, and you need to work through all these issues without any violence, okay, and with doing the right thing all the time. If you would have told somebody in the office that the kid didn't have lunch money, I bet you someone would have gave him some lunch money, okay? Without you having to go take it out of someone's purse, okay?

[Respondent]: Yes, Your Honor.

The Court: Okay. So, you know if your intention is to be goodhearted, that's great; you have to do it the right way.

[Respondent]: Yes, Your Honor.

On April 24, 2018, the hearing commenced with a summation by Strehl of Caseworker Services. She noted that the petitions for the second domestic violence and the larceny in a building⁷ needed to be addressed or adjourned. Strehl stated that the larceny in a building arose from respondent's theft of money from a teacher to feed his hungry friend. Despite these new allegations, the recommendation of probation remained the same, but Strehl imposed consequences for the second domestic-violence petition, the police contact at the family home, and the third petition for larceny in a building. Despite his birthday, respondent was required to attend and complete midcourse corrections, a program in which he learned to be respectful, honorable,

⁷ The elements of larceny in a building are “(1) a trespassory taking (2) within the confines of a building and (3) the carrying away (4) of the personal property (5) of another (6) with intent to steal that property.” *People v Thorne*, 322 Mich App 340, 344; 912 NW2d 560 (2017). The court's rejection of the plea also apparently took issue with whether the elements could be established through the police report in light of respondent's motive.

and accept his mistakes. Additionally, he completed an honors program in which the staff commented on his remarkable job despite his young age. Respondent continued to participate in therapy. Therefore, Strehl recommended that respondent continue with standard probation.

Although Strehl summarized the current status of the petitions, the new prosecutor asked, “If someone could help me as to—so I understand the procedure where we’re at.” The trial court advised that respondent’s plea was not accepted and that disposition had not occurred. The prosecutor requested that the plea be accepted, but the court denied the request. The following transpired on the record:

The Court: I’m going to allow him on the path that he’s on. My indication from Miss Strehl at the time was that he wouldn’t be doing anything different as far as services, his services remain the same.

He is among the youngest children that I have in front of me. Giving him two additional charges is just stacking a child’s juvenile record. And so, I am holding everything in abeyance and having him get through all of his services, trying to get him on the right path. His history is—I’m not sure if you know about it. Do you know about his history?

[*The Prosecutor*]: No.

The Court: Okay. His history is that he’s been recently adopted. He had quite a horrific childhood for six years. And I think he’s got to work through some of his problems. And I want to make sure we’re getting him the best treatment. And I don’t think that giving him a huge criminal record at age—are you 12, you’re 10?

[*Respondent*]: Thirteen, Honor.

The Court: Thirteen. You were 12 when these happened, right?

[*Respondent*]: Yes, Your Honor.

The Court: Is in the best interest of justice or this child’s future.

[*The Prosecutor*]: Okay. So, as far as the People’s position, I need to request as these are formalized petitions alleging delinquency, I would ask the Court to accept his plea, and I would ask for a date of disposition to be set.

The Court: Thank you; denied.

Respondent then advised the trial court that he had improved his grade in math as requested and that he had participated in therapy and tai chi “to stay on track.” A three-month review was scheduled.

On June 5, 2018, the prosecution filed a “Notice of Objection to Consent Calendar” in the court file. This pleading objected to consideration of respondent for the consent calendar,

diversion, or informal status for the remaining petitions alleging domestic violence and larceny in a building. It was requested that the trial court accept respondent's plea to those offenses and proceed to disposition or schedule a jury trial for those petitions.

On July 16, 2018, a hearing was held. Again, the prosecutor requested acceptance of the plea to the second and third petitions and disposition. In response, the trial court stated:

But the objective of the juvenile court is to ensure that we are putting procedures in place to help the children. And with regard to the two issues that we have before me now, there's no additional services that we granted, and we're really trying to work on [respondent] getting through the severe issues he's had, of no fault of his own, with regard to his past history.

So, I'm not inclined just to make a record of offenses without benefit to a juvenile, especially someone as young as [respondent].

Despite the prosecutor's continued insistence on acceptance of the prior no-contest plea and disposition or scheduling of the petitions for trial, Strehl testified that her recommendation for disposition would not change even if two additional offenses were added. She submitted respondent's most recent report card to the trial court, stating that respondent did "quite well." Additionally, respondent wrote a letter to Strehl to explain his behavior, and she submitted it to the court. Respondent was preparing to testify in Macomb Circuit Court against his abuser, the boyfriend of his biological mother. Although the report of abuse was raised in 2015, the trial was adjourned on multiple occasions, which caused respondent substantial stress. Strehl noted that respondent continued to see a therapist, engaged in trauma therapy and home-based services, passed his classes, and attended basketball camp. With regard to the petition raising larceny in a building, respondent and his mother paid restitution to the teacher whose money was stolen. Thus, Strehl requested that jurisdiction continue, respondent remain on standard probation, and all orders remain in effect. The trial court inquired whether there were services that could be provided to respondent to help address the continued adjournment of the trial of his assailant. Strehl notified the court's victim advocate of the stress the adjournments placed on respondent and the impact it had on the delinquency proceeding. The trial court agreed to consider the prosecutor's continued objection to procedure, but noted that its role was to dispense justice, and the goal was not to punish a child, particularly a child so young, stating:

But the objective of the juvenile court is to ensure that we are putting procedures in place to help the children. And with regard to the two issues that we have before me now, there's no additional services that we granted, and we're really trying to work on [respondent] getting through the severe issues he's had, of no fault of his own, with regard to his past history.

So, I'm not inclined to just make a record of offenses without benefit to a juvenile, especially someone as young as [respondent].

The prosecutor continued to allege that procedure was not followed, and he would not agree to proceed on the consent calendar until there was a disposition, despite learning of respondent's history of abuse. The court again noted that the effect of the prosecutor's request

was to “just stack a juvenile record for a child who is going through some severe emotional issues with regards to a trial that’s coming up and having to testify, I’m having a hard time balancing that with my job, which is to make sure that it’s not a punishment.” Although the prosecutor noted that a “warning and dismiss” might be appropriate because no additional services were being offered to respondent, the trial court acknowledged that the prosecutor’s recommendation nonetheless placed additional offenses on respondent’s juvenile record. The trial court continued to hold the plea in abeyance and scheduled the matter for a pretrial.

At the next pretrial hearing on July 16, 2018, the prosecution again requested that the trial court accept respondent’s plea, framing its argument as procedural and stating that the trial court was beyond the point in which it could dispose of the second and third petitions by informal means—i.e., consent calendar, diversion, or dismissal. The trial court denied the prosecution’s request, continued to take respondent’s plea under advisement, and held its decision in abeyance.

In August 2018, the trial court issued a “NOTICE TO THE PROSECUTOR OF REMOVAL OF THE CASE FROM THE ADJUDICATIVE PROCESS” stating that the trial court planned on unauthorizing the second and third petitions and removing them from the adjudicative process. At the next pretrial hearing on September 10, 2018, the prosecution argued that the trial court’s decision was not only adverse to the governing statutes and court rules but violated the separation-of-powers doctrine. The trial court disagreed, unauthorized respondent’s second and third petitions, and removed the petitions from the adjudicative process. The prosecution now appeals this decision. However, after the claim of appeal was filed, respondent successfully completed his probation and case-service plan for the disposition related to the first petition. The trial court terminated its jurisdiction over respondent in December 2018.

II. JUVENILE LAW AND APPELLATE REVIEW

The trial court’s entry of an order of disposition in a juvenile-delinquency proceeding is reviewed for an abuse of discretion, while its factual findings are reviewed for clear error. *People v Brown*, 205 Mich App 503, 504-505; 517 NW2d 806 (1994); *In re Scruggs*, 134 Mich App 617, 622-623; 350 NW2d 916 (1984). “A trial court abuses its discretion when it chooses an outcome falling outside the range of principled outcomes.” *In re Kerr*, 323 Mich App 407, 411; 917 NW2d 408 (2018) (quotation marks and citation omitted). This Court will reverse a trial court’s finding of fact only if “this Court is left with a definite and firm conviction that a mistake has been made.” *Brown*, 205 Mich App at 505. In addition, this Court reviews de novo the interpretation of statutes and court rules. *Kerr*, 323 Mich App at 411.

“The rules of statutory construction apply equally to court rules.” *In re Lee*, 282 Mich App 90, 93; 761 NW2d 432 (2009). “Construction begins by considering the plain language of the statute or court rule in order to ascertain its meaning.” *Patel v Patel*, 324 Mich App 631, 639-640; 922 NW2d 647 (2018). “[U]nambiguous language is given its plain meaning and is enforced as written.” *Id.* at 640 (quotation marks and citation omitted). “A provision in a statute is ambiguous only if it irreconcilably conflicts with another provision or it is equally susceptible to more than a single meaning.” *Lee*, 282 Mich App at 93.

“In construing a legislative enactment we are not at liberty to choose a construction that implements any rational purpose but, rather, must choose the construction which implements the

legislative purpose perceived from the language and the context in which it is used.” *Frost-Pack Distrib Co v Grand Rapids*, 399 Mich 664, 683; 252 NW2d 747 (1977). The legislative chapter governing juveniles plainly states that it:

shall be liberally construed so that each juvenile coming within the court’s jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile’s welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents. [MCL 712A.1(3); see also MCR 3.902(B).]

Further, juvenile matters are not criminal proceedings. MCL 712A.1(2). “Juvenile justice procedures are governed by the applicable statutes and court rules, with an emphasis on rehabilitation rather than retribution.” *Lee*, 282 Mich App at 99 (quotation marks, citation, and brackets omitted).

III. TRIAL COURT’S AUTHORITY TO UNAUTHORIZE A PETITION AND REMOVE IT FROM THE ADJUDICATIVE PROCESS

The prosecution argues that the trial court abused its discretion when it unauthorized the second and third petitions and removed them from the adjudicative process without the consent of the prosecution. We disagree.

“In general, the family court has jurisdiction over juveniles within its judicial circuit that have ‘violated any municipal ordinance or law of the state or of the United States.’ ” *Id.* at 93, quoting MCL 712A.2(a)(1). The two petitions at issue in this case (dated July 26, 2017, and January 18, 2018) contained, respectively, allegations that respondent committed domestic violence against his adoptive mother and that respondent committed larceny in a building. Both domestic violence and larceny in a building are “offenses” under the CVRA. See MCL 780.781(1)(g)(i) and (ii). MCR 3.932(B) states that “[a] case involving the alleged commission of an offense listed in the [CVRA] may only be removed from the adjudicative process upon compliance with the procedures set forth in [MCL 780.786b].” MCL 780.786b(1) provides, in relevant part:

[A] case involving the alleged commission of an offense, as defined in [MCL 780.781], by a juvenile shall not be diverted, placed on the consent calendar, *or made subject to any other prepetition or preadjudication procedure that removes the case from the adjudicative process* unless the court gives written notice to the prosecuting attorney of the court’s intent to remove the case from the adjudicative process and allows the prosecuting attorney the opportunity to address the court on that issue before the case is removed from the adjudicative process. . . . As part of any other order removing any case from the adjudicative process, the court shall order the juvenile or the juvenile’s parents to provide full restitution as provided in [MCL 780.794]. [Emphasis added.]

In *Lee*, 282 Mich App at 94, this Court interpreted the phrase “adjudicative process” in MCR 3.932(B) and MCL 780.786b(1). The *Lee* Court stated that, while the phrase is not defined by statute or court rule, “it is the judicial procedure that could lead to the court’s fact-finding determination that the petition’s allegations are true. This would constitute an ‘adjudication,’ analogous to a criminal conviction, that the court has jurisdiction over the juvenile under MCL 712A.2(a)(1).” *Id.*, citing former MCR 3.903(A)(26), now MCR 3.903(27).

At the time respondent attempted to enter a plea of no contest to the charges in the second and third petitions, respondent had previously entered a plea of no contest to the domestic-violence charge in the first petition and had been ordered to complete standard probation and counseling for the first petition’s disposition. The trial court would not accept respondent’s plea to the offenses in the second and third petitions, explaining that no additional probation, services, or programs would aid respondent in his rehabilitation and that accepting his plea would unfairly “stack” additional adjudications onto respondent’s juvenile record. Instead, the trial court took respondent’s plea under advisement—which is permitted by MCR 3.941(D)—held its decision on whether to accept respondent’s plea in abeyance, and ultimately decided to unauthorize those petitions and remove them from the adjudicative process. Because the trial court never accepted respondent’s plea, the second and third petitions were never “adjudicated.” See *Lee*, 282 Mich App at 94; MCR 3.903(A)(27). Without an adjudication, the trial court was permitted to remove the second and third petitions from the adjudicative process. *Lee*, 282 Mich App at 94; MCR 3.903(A)(27); MCL 780.786b(1).

When a new prosecutor appeared at the next hearing, he insisted that the court must accept the no-contest plea tendered at the prior hearing and proceed to disposition. Judge Valentine declined the request, instead determining that respondent should remain “on the path that he is on,” because it was in the “best interest of justice,” as well as in the “child’s future.” Judge Valentine noted that respondent was “among the youngest children” to appear before her, and she was concerned with getting him “through all of his services, and trying to get him on the right path.” Because the prosecutor was new to the case, the court explained to him that respondent was only 12 years old and had suffered horrific abuse for half of his life. Consequently, he was addressing those issues, and it was the court’s intent to provide him with the best treatment, and a “huge criminal record” would not serve any proper purpose.

Accordingly, although the second and third petitions may have been authorized, the trial court did not proceed to adjudicate the offenses. Specifically, during the plea proceeding, there was a bench discussion addressing the impact of the additional petitions and the recourse available in light of the no-contest plea. Furthermore, there was a question regarding the police report serving as the factual basis for the larceny plea in light of respondent’s purported benevolent purpose for allegedly taking the money. As noted, juvenile matters are not criminal proceedings, MCL 712A.1(2), and the purpose of juvenile-justice procedure is not to punish the offender, but to ensure that the juvenile receives the care, guidance, and control necessary to serve his or her welfare as well as to ensure the best interests of the state, MCL 712A.1(3). Judge Valentine repeatedly expressed that respondent’s recommended disposition was probation, irrespective of whether he pleaded no contest to one or all three petitions and that the net result solely affected the number of adjudications that appeared on his juvenile record. Moreover, respondent’s therapist and Strehl forewarned the judge and the parties that as respondent began to address his early childhood abuse in therapy, to expect that respondent would engage in acting-out behaviors as a

result. Thus, Judge Valentine conducted this juvenile's proceeding in accordance with the manner the Legislature expected and directed, *Frost-Pack Distrib Co*, 399 Mich at 683, and it resulted in a successful outcome. When met with the prosecutor's repeated request to simply accept a plea and follow an expected procedure, Judge Valentine instead insisted on a course of action designed to ensure that respondent would receive individualized beneficial services to address the underlying cause of his inappropriate behavior. That is, respondent was not treated as a habitual criminal offender, see MCL 712a.1(2), and the services were imposed with the intent of rehabilitating a young child who was acting out in an unsuitable manner when addressing an abusive childhood, MCL 712A.1(3).

The prosecution argues that the trial court lacked the authority to unauthorize validly authorized petitions and remove them from the adjudicative process. However, authorization is not the equivalent of adjudication. See MCR 3.903(A)(21) (" 'Petition authorized to be filed' refers to written permission given by the court to file the petition containing the formal allegations against the juvenile or respondent with the clerk of the court.") and MCR 3.903(A)(27) (" 'Trial' means the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court."). Here, respondent's second and third petitions were in between the authorization and the adjudication stage of the juvenile-delinquency proceedings. While there does not appear to be any explicit statute, court rule, or published caselaw that refers to the "unauthorization" of a petition, the authorization of a petition simply means the court's written permission to file the petition containing formal allegations against the juvenile. MCR 3.903(A)(21). When the trial court provided written notice to the prosecution of its intent to remove the case from the adjudicative process, its choice of label for that removal is irrelevant because it nonetheless retained the authority to act on the petition in the manner that best served both the juvenile and the community. Moreover, there is also no authority prohibiting the trial court from taking such action—particularly when the juvenile is already under the trial court's jurisdiction and supervision because of an earlier, separate adjudication and disposition, as respondent was here. The trial court concluded that it was not in the best interests of either respondent or the public to add more adjudications to respondent's juvenile record because he was already on probation from an earlier disposition and no additional services would be provided to him if the second and third petitions proceeded to disposition. This ruling falls within the range of reasonable, principled outcomes, and thus, it cannot be said that the trial court abused its discretion by unauthorizing respondent's second and third petitions and removing them from the adjudicative process. *Kerr*, 323 Mich App at 411.

The prosecution also contends that the trial court's reliance on MCL 780.786b(1) is erroneous because the CVRA only requires the trial court to give the prosecution notice before removing a case from the adjudicative process and does not grant a trial court "the independent authority to dismiss or remove an already authorized delinquency petition case from the adjudicative process." It is true that MCL 780.786b(1) requires the trial court to give notice to the prosecution before conducting a "prepetition or preadjudication procedure that removes the case from the adjudicative process" However, MCL 780.786b recognizes a trial court's authority to remove a case from the adjudicative process *preadjudication*, so long as the trial court complies with certain procedural requirements. *Lee*, 282 Mich App at 95 ("The plain language of MCL 780.786b(1) contains several procedural steps that the family court must fulfill before deciding to remove from the adjudicative process a juvenile case in which it is alleged that the minor

committed a CVRA offense.”). Accordingly, on the basis of the plain language of MCL 780.786b(1), the trial court was permitted to remove the second and third petitions from the adjudicative process because those petitions had not yet been adjudicated. *Id.* at 93-96.

Next, the prosecution argues that respondent had already tendered his plea of no contest to the charges in the second and third petition and that, as a result, the trial court was required to accept the pleas and set the matter for a dispositional hearing. This contention is erroneous because the trial court never actually accepted respondent’s plea of no contest to the charges in the second and third petitions. “[A] court speaks through its written orders and judgments, not through its oral pronouncements.” *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009). While the trial court initially stated that it would accept respondent’s plea of no contest to the charges in the second and third petitions, it later stated—both during the hearing and in its written order—that the trial court would take respondent’s plea under advisement. Moreover, the police reports provided the factual basis for the plea. The trial court expressly stated that it had reservations regarding the satisfaction of the elements of larceny in a building given that respondent reportedly took money from a purse to feed a hungry classmate. Therefore, the trial court never accepted respondent’s plea to the charges in the second and third petitions. *Id.*

The prosecution further contends that under MCL 722.823(1), once the second and third petitions were authorized and filed with the court clerk, respondent “was no longer eligible to participate in the diversionary services available before [the] petition [was] authorized.” However, the trial court did not *divert* the charges in the second and third petitions against respondent; rather, the trial court *dismissed* the charges—before adjudication—in the petitions altogether. See MCL 722.822(c) (stating that diversion occurs before a petition is authorized). Thus, MCL 722.823(1) is inapplicable to the facts of this case.

The prosecution’s reliance on MCR 3.932(C)(2) is also unpersuasive. MCR 3.932(C)(2) requires that the trial court obtain the consent of the prosecution before placing a juvenile’s case on the consent calendar. The trial court placed respondent’s cases on the formal calendar after authorizing the second and third petitions. Then, before adjudicating the cases (through either a plea or a trial), the trial court decided to unauthorize the petitions and remove them from the adjudicative process altogether. At no point did the trial court indicate that it would place respondent’s cases on the consent calendar; therefore, MCR 3.932(C)(2) is inapplicable.

IV. HARMLESS ERROR

Even if the trial court did err by unauthorizing the second and third petitions and removing them from the adjudicative process, the error was harmless. MCR 3.902(A) incorporates the harmless-error standard of civil procedure into juvenile-delinquency proceedings, stating that “[l]imitations on corrections of error are governed by MCR 2.613.” See *Lee*, 282 Mich App at 99 (acknowledging that the harmless-error analysis applies to juvenile-delinquency proceedings). MCR 2.613(A) provides, in relevant part:

[A]n error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order,

unless refusal to take this action appears to the court inconsistent with substantial justice.

The lower court record establishes that had the trial court accepted respondent's plea to the charges in the second and third petition and proceeded to disposition, no additional probationary period, services, or programs would have been recommended by respondent's caseworker. In fact, the prosecution did not recommend any additional probation or services either, and it even suggested that the trial court, after accepting respondent's plea, "warn" respondent and "dismiss" the second and third petitions under MCL 712A.18(1)(a)—which would do nothing more than add two additional adjudications onto respondent's juvenile record. Further, respondent's counsel indicated that respondent did not wish to proceed to a jury trial if the trial court did not accept respondent's plea. Notably, since the prosecution filed this appeal, respondent has successfully completed his case-service plan from the first petition's disposition, and the trial court has terminated its jurisdiction over respondent.

Ultimately, it would not be in the best interests of either respondent or the public to adjudicate the second and third petitions, but then not impose any additional services to rehabilitate respondent at disposition. See *Lee*, 282 Mich App at 99 (noting that courts should interpret the applicable statutes and court rules governing juvenile-delinquency proceedings procedures with an emphasis on rehabilitation, not retribution); MCL 712A.1(3); MCR 3.902(B)(1). Respondent's completion of his probation and case-service plan from the first petition's disposition demonstrates his rehabilitation, and a remand of this case to the trial court with an instruction to proceed to adjudication of the second and third petitions would be inconsistent with substantial justice. *Lee*, 282 Mich App at 99-100. Therefore, even if the trial court erred by unauthorizing respondent's second and third petitions and removing them from the adjudicative process, the error was harmless and reversal would be inconsistent with substantial justice and the goals of juvenile-delinquency proceedings. *Id.*; MCL 712A.1(3); MCR 3.902(B)(1).

In summary, this case presented the circumstance in which respondent, an adopted 12-year-old juvenile with good grades, began to act out in a violent manner that was precipitated by his upcoming testimony in a criminal trial against his childhood abuser. Unfortunately, respondent's reactions were of a severity that prompted police involvement. Although the trial court authorized a petition for domestic violence for an incident between respondent and his adoptive mother, Caseworker Services and respondent's therapist cautioned the trial court that as respondent began to recall and confront the horrific abuse that he had suffered when he was younger, he would act out. This forecast proved to be true, and it was the prosecution's choice to reduce his acting-out behavior to offenses that became the subject of multiple petitions. However, the trial court also was charged with applying the juvenile law in accordance with its expressed purpose, to ensure that the juvenile received care, guidance, and control in the environment conducive to the child as well as the state's interest. MCL 712A.1(3). To assist the court in its decision-making, respondent's attorney as well as Caseworker Services examined the circumstances that would best equip respondent with the means to address his prior abuse. The caseworker noted that she could not provide additional services in relationship to each offense that was the subject of a petition. To that end, Judge Valentine noted that the continued adjudication of petitions would merely serve to provide respondent with a history of offenses, and the purpose of juvenile intervention—to rehabilitate in lieu of punishment—would not be served. The Legislature provided the court with the mechanism to address a juvenile's adjudications in a manner best suited to the juvenile's

circumstances and needs, MCL 780.786b, and the learned trial judge in this case applied the provisions to best suit the needs of the child and the state.

V. SEPARATION-OF-POWERS DOCTRINE

The prosecution argues that the trial court violated the separation-of-powers doctrine by unauthorizing the second and third petitions and removing them from the adjudicative process without proper authority and without the prosecution's consent. We disagree.

“[W]hether a violation of the separation of powers doctrine has occurred is a question of law that this Court reviews de novo.” *Martin v Murray*, 309 Mich App 37, 45; 867 NW2d 444 (2015) (quotation marks and citation omitted).

The separation-of-powers doctrine is set forth in Const 1963, art 3, § 2, which states:

The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

However, the separation-of-powers doctrine does not mandate complete separation, and overlap between the functions and powers of the branches is permissible. *People v Conat*, 238 Mich App 134, 146; 605 NW2d 49 (1999). “Rather, the evil to be avoided is the accumulation in one branch of the powers belonging to another.” *Id.* In criminal cases, a trial court possesses the “power to hear and determine controversies,” while “the decision whether to bring a charge and what charge to bring lies in the discretion of the prosecutor.” *Id.* at 147, 149 (quotation marks and citation omitted).

The governing statutes and court rules permit a trial court to remove a case from the adjudicative process before an adjudication is entered, which is precisely what occurred here. *Lee*, 282 Mich App at 94, citing MCL 780.786b; see also MCR 3.932(B) (“A case involving the alleged commission of an offense listed in the [CVRA] may only be removed from the adjudicative process upon compliance with the procedures set forth in [MCL 780.786b].”). Moreover, the trial court's removal of the second and third petitions from the adjudicative process was in conformity with the ultimate goal of juvenile-delinquency proceedings, which is to provide services to minor children to aid them in the rehabilitation process. *Lee*, 282 Mich App at 99. Accordingly, the trial court did not violate the separation-of-powers doctrine.

The prosecution relies on *People v Smith*, 496 Mich 133, 141-142; 852 NW2d 127 (2014), in arguing that the trial court impermissibly “stepped into the role of the prosecutor and, without a scintilla of valid legal authority, dismissed these two cases” in violation of the separation-of-powers doctrine. In *Smith*, our Supreme Court reversed a trial court's dismissal of a criminal case after the defendant pleaded to the charges, holding, in relevant part:

Without citing a scintilla of legal authority, the trial court *dismissed* the case over the objection of the prosecutor. Aside from flagrantly ignoring contrary Court of Appeals precedent in entirely dismissing the case, the trial court usurped the

prosecutor's role in violation of the separation of powers principles contained in our constitution. It is axiomatic that the power to determine whether to charge a defendant and what charge should be brought is an executive power, which vests *exclusively* in the prosecutor. The trial court had no legal basis to trump the prosecutor's charging decision, much less dismiss the case *after* the defendant had pleaded to the charge and had never sought to withdraw his plea. [*Id.* at 140-141 (citations omitted).]

The prosecution's reliance on *Smith* is unpersuasive. Whereas the defendant in *Smith* actually pleaded guilty to the criminal charge against him, the trial court here took respondent's plea to the charges in the second and third petitions under advisement and never accepted respondent's plea of no contest. *Id.* Thus, unlike *Smith*, no adjudication occurred in this case, and the trial court was permitted to remove the second and third petitions from the adjudicative process without respondent having tendered a plea. *Lee*, 282 Mich App at 94; MCL 780.786b; MCR 3.932(B).⁸

VI. ASSIGNING SEPARATE PETITION NUMBERS TO MULTIPLE PETITIONS WITHIN A SINGLE CASE FILE

Finally, the prosecution argues that this Court should remand this case in order for the trial court to correct its error in (1) failing to assign a unique petition number to each of the three original petitions within respondent's combined case file and (2) failing to place the separate petition numbers on each document within the case file. We agree.

"To preserve an issue for appellate review, the issue must be raised before, addressed by, and decided by the lower court." *In re Killich*, 319 Mich App 331, 336; 900 NW2d 692 (2017). The prosecution did not argue below that the trial court failed to assign separate petition numbers to each of respondent's three separate juvenile-delinquency petitions. Accordingly, this issue is unpreserved.

Generally, this Court reviews de novo the interpretation of statutes and court rules. *Kerr*, 323 Mich App at 411. However, unpreserved issues are reviewed for plain error affecting a party's substantial rights. *In re Tiemann*, 297 Mich App 250, 257; 823 NW2d 440 (2012), citing *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Carines*, 460 Mich at 763. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. *Id.* at 763-764.

MCR 8.119(D)(1) states that in juvenile-delinquency cases, "a separate petition number shall be assigned to each petition filed under the juvenile code, MCL 712A.1, *et seq.*, as required under MCR 1.109(D)(1)(d)." Both the case number and the petition number "shall be recorded in the court's automated case management system and on the case file." MCR 8.119(D)(1). "In a

⁸ In light of our holding that the trial court acted in accordance with MCL 780.786b in ultimately dismissing the second and third petitions, there is no basis to remand before a different judge.

case filed under the juvenile code, the caption must also contain a petition number, where appropriate.” MCR 1.109(D)(1)(d).

It does not appear that the trial court assigned a separate petition number to each of the three separate petitions against respondent as required by the Michigan Court Rules. MCR 8.119(D)(1); MCR 1.109(D)(1)(d). The fact that the trial court unauthorized the second and third petitions is irrelevant because MCR 8.119(D)(1) specifically requires that all petitions *filed* under the juvenile code contain a separate petition number, not just those petitions that are *authorized*. The prosecution contends that the trial court’s failure to assign separate petition numbers for each of the three petitions in respondent’s combined case file “hinders the People’s . . . ability to identify which documents in the casefile apply to which of Respondent’s delinquency cases.” Accordingly, a limited remand is appropriate for the trial court to complete the ministerial tasks of (1) assigning a separate petition number to each of the three petitions filed against respondent and (2) placing the separate petition numbers on each case file document that relates to the corresponding petition. MCR 8.119(D)(1); MCR 1.109(D)(1)(d).

VII. CONCLUSION

Accordingly, we affirm the trial court’s order unauthorized respondent’s second and third petitions and removing them from the adjudicative process. However, we remand this case to the trial court in order to complete the ministerial tasks of (1) assigning separate petition numbers to each of respondent’s three juvenile-delinquency petitions and (2) placing the separate petition numbers on all documents within respondent’s case file that are related to each petition. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello
/s/ Deborah A. Servitto