NO. 93280-8

SUPREME COURT OF THE STATE OF WASHINGTON

FEARGHAL MCCARTHY; CPM, a minor, by and through Fearghal McCarthy, his father; and CCM, a minor, by and through Fearghal McCarthy, his father,

Petitioners,

v.

CLARK COUNTY, CITY OF VANCOUVER, and DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondents.

RESPONDENT CLARK COUNTY'S RESPONSE TO APPELLANTS' PETITION FOR REVIEW TO THE WASHINGTON STATE SUPREME COURT

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INTRODUCTION

The trial court and the Court of Appeals have correctly given effect to this Court's repeated holding that RCW 26.44 implies a *limited* negligent investigation cause of action only where there has been a harmful placement decision. *Tyner v. Dep't of Soc. & Health Servs.*, 141 Wn.2d 68, 82, 1 P.3d 1148 (2000); *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 601, 70 P.3d 954 (2003); *Roberson v. Perez,* 156 Wn.2d 33, 45, 123 P.3d 844 (2005). The implied cause of action recognized by this Court in *Tyner, M.W.,* and *Roberson* operates as a "narrow exception" to the general prohibition of negligent investigation claims in Washington. *Id.*[1] Petitioners have repeatedly conceded in this case that *M.W.* and *Roberson* explicitly require a nexus to a "harmful placement decision" and have advanced the novel argument that this requirement may be satisfied by a domestic violence arrest and/or the court's entry of a domestic violence no-contact order.[2] The trial court and the Court of Appeals

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[1] In 2012, following *Tyner, M.W.,* and *Roberson* the legislature further limited the negligent investigation cause of action by affording governmental entities and employees with statutory immunity in emergent placement investigations under RCW 26.44. *See* RCW 26.44.280.

[2] Fearghal McCarthy Reply Brief at page 24 ("Rather, legal liability accrues from any negligent investigation that 'leads to a harmful placement decision' even when the actual placement decision was made by a court. *M.W.* at 591 and *Tyner* at 86.") (emphasis added); CPM and CMM Opening Brief at 24-25 ("Damages are limited to a harmful placement decision or injuries resulting from such placement. *M.W. v. Dep't of Soc. and Health Servs.*, 149 Wn.2d 589, 602, 70 P.3d 954, (2003). These

correctly rejected this argument and declined to expand the definition of "placement decision" to include these events. *McCarthy v. County of Clark*, 193 Wn. App. 314, *15-17, ___P.3d __ (April 12, 2016). The Court of Appeals correctly reasoned that these events were not "placement decisions" within the meaning of RCW 26.44 because they did not arise from a dependency action, evaluate the fitness of a parent, establish residency or otherwise consider the best interests of a child. *Id.*

Petitioners now reverse course and invite this Court to revisit and overturn *M.W.* and *Roberson* to expand the RCW 26.44 cause of action by eliminating or expansively re-defining the "harmful placement decision" requirement. FM Pet. for Review, pp. 3, 16; CCM and CPM Pet. for Review, p. 15. However, the facts of this case demonstrate that altering the "placement decision" requirement as Petitioners suggest would dramatically expand the "narrow" RCW 26.44 cause of action into the realm of domestic violence criminal proceedings and beyond. Such an expansion would result in broad and unpredictable liability for law enforcement officers and agencies making lawful, and often mandatory, domestic violence arrests in challenging domestic violence cases involving

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standards apply to both DSHS and law enforcement, as the court has used them interchangeably.") (emphasis added)

parents and children.[3] This outcome would inevitably result in dangerous second-guessing by law enforcement officers and afford domestic violence victims with less protection and access to justice.

Ultimately, because none of the factors set forth in RAP 13.4(b) are met, this Court should decline review.

STATEMENT OF THE CASE

A. CLARK COUNTY'S DOMESTIC VIOLENCE INVESTIGATION AND ARREST FOLLOWING THE WITNESSED ASSAULT OF CCM BY FEARGHAL MCCARTHY.

On June 3, 2005, Clark County Sheriff's Deputy Edward Kingrey responded to Patricia McCarthy's 9-1-1 call that Fearghal McCarthy had assaulted their two-year old son (CCM) the previous day. (CP 1526-32). Deputy Kingrey made contact with Ms. McCarthy by telephone at the Highland Drive St. Joseph Catholic Church, where she had gone after the assault to seek shelter with her children, CCM and CPM. *Id.* During this conversation, Patricia told Deputy Kingrey that her husband, Fearghal McCarthy, had been physically and emotionally abusive to her and her sons and that he told her he would physically harm her if she ever reported the abuse to the police. (CP 1529-30). With respect to the reported incident, Patricia reported that her two-year old son, CCM, was crying

[3] RCW 10.99.030(6)(a) ("When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer **shall** exercise arrest powers with reference to the criteria in RCW 10.31.100."). (emphasis added).

while seated at the kitchen table when Mr. McCarthy told her to "shut him up or he would." (CP 1530). Patricia stated that CCM continued to cry, at which point, Mr. McCarthy came over and "whacked" CCM across the head, told him to shut up and then "whacked" him across the head again. (CP 1530). Patricia added that Mr. McCarthy hit CCM so hard that CCM hit his head on the table and then fell to the floor off of a stool he was sitting on. (CP 1530). Mr. McCarthy then pointed at Patricia and stated, "If you don't take responsibility for keeping him under control, I'm going to do that again. You need to slap him and show him who is boss." (CP 1530). When asked if there were any injuries to CCM, Patricia stated there were no visible marks. (CP 1530).

After receiving this information, Deputy Kingrey contacted Mr. McCarthy at his residence, where he denied striking CCM or physically assaulting Patricia. (CP 1531). When asked why Patricia would make up a story like that, Mr. McCarthy stated that she takes narcotics and medication for anxiety and that he believes the medication is making her delusional. (CP 1531). After interviewing Mr. McCarthy, Deputy Kingrey determined that he had probable cause to arrest Mr. McCarthy for Fourth Degree Assault – Domestic Violence. (CP 1526-32).

After Mr. McCarthy was booked into jail, Deputy Kingrey made face-to-face contact with Patricia and she completed a Domestic Violence

Victim Statement (aka: *Smith* Affidavit)[4]. (CP 1526 -1532; 1629-1632; CP 0192-0195). The *Smith* affidavit, which was *handwritten* by Patricia herself, reiterated what she had already told Deputy Kingrey regarding the assault of CCM by his father, Mr. McCarthy. (CP 1526-32; 1629-32; 0192-95). With regard to Mr. McCarthy's unsupported and self-serving allegation that Ms. McCarthy may have been under the influence of medication that influenced her account of the assault, Deputy Kingrey has testified that "I'd already spoken to her [Patricia] and I didn't detect any unusual behavior when she talked to me" (CP 1540) and "[s]he didn't sound delusional to me..." (CP 1540).

After arresting Mr. McCarthy, Deputy Kingrey completed a probable cause affidavit documenting Ms. McCarthy's eye-witness account of the assault and Mr. McCarthy's protestations of innocence. (CP 1556-58). In addition to this probable cause affidavit, Deputy Kingrey completed a full narrative report that addressed Mr. McCarthy's specific allegations regarding Ms. McCarthy's in greater detail. (CP 1526-32). The full police report was incorporated by reference into the criminal

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[4] A *Smith* affidavit is a sworn statement by a domestic violence victim obtained by police officers to be used as substantive evidence to prove the accused's guilt if the victim later recants. *See State v. Smith*, 97 Wn.2d 856, 861-63, 651 P.2d 207 (1982). This Court recognized in *Smith* that, "In many cases, the inconsistent statement is more likely to be true than the testimony at trial as it was made nearer in time to the matter to which it relates and is less likely to be influenced by factors such as fear or forgetfulness." *Id.* at 861.

citation that was reviewed by the District Court when it entered a domestic violence no-contact order at Mr. McCarthy's arraignment. (CP 1553-54).

B. COURT'S ENTRY OF NO-CONTACT ORDERS DURING DOMESTIC VIOLENCE CRIMINAL PROCEEDINGS AND UPON FEARGHAL MCCARTHY'S CONVICTION

On June 5, 2005, following Mr. McCarthy's domestic violence arrest, Judge Vernon Schreiber confirmed the existence of probable cause. (CP 1667-68). The next day, Mr. McCarthy was arraigned and Judge Schreiber entered a no-contact order that prevented Mr. McCarthy from contacting his alleged victims as a condition of Mr. McCarthy's release from jail. (CP 1670-71). The June 6, 2005, domestic violence no-contact order remained in effect until after Mr. McCarthy's conviction of the lesser offense of disorderly conduct. (CP 0280-89)

On August 1, 2006, following Mr. McCarthy's conviction of disorderly conduct, and after Patricia McCarthy vividly re-counted the assault of CCM, the court sentenced Mr. McCarthy and entered a post-conviction no-contact order preventing Mr. McCarthy from contacting CCM and Patricia McCarthy. (CP 0297-0327)

ISSUES PRESENTED FOR REVIEW

This case does not warrant this Court's review, but, if review is granted, the court should address the following issues:

1. Whether a lawful domestic violence arrest and/or the court's entry of a no-contact order pursuant to RCW 10.99 may constitutes a "placement decision" that gives rise to an RCW 26.44 negligent investigation cause of action?

2. Even if a domestic violence no-contact order could constitute a "placement decision," whether the court's entry of such an order constitutes an intervening superseding cause that eliminates proximate cause?

3. Even if a domestic violence arrest and/or no-contact order could constitute a "placement decision," does RCW 26.44.280 afford immunity for "placement decisions" under such emergent conditions?

ARGUMENT

I. The Court of Appeals Decision is consistent with this Court's repeated holding that RCW 26.44 implies a narrow cause of action only where there is a nexus to "a harmful placement decision."

Washington appellate courts have not recognized a general tort claim for negligent investigation. *Dever v. Fowler,* 63 Wn.App. 35, 44, 816 P.2d 1237 (1991); *Pettis v. State,* 98 Wn.App. 553, 558, 990 P.2d 453 (1999); *M.W. v. Dep't of Soc. & Health Servs,* 149 Wn.2d 589, 601 (2003); *Ducote v. State Dept. of Social & Health Services,* 144 Wn.App 531, 534, 186 P.3d 1081 (2008). This Court has created and maintained a *narrow* exception to this general rule, holding that RCW 26.44 implies a negligent investigation cause of action when that investigation results in a "harmful placement decision." *M.W.* at 595-601 (citing *Tyner Dep't of Soc. & Health Servs.*, 141 Wn.2d 68, 79-81, 1 P.3d 1148). In particular,

this Court held in *M.W* that "The negligent investigation cause of action [...] is a narrow exception that is based on, and limited to, the [RCW 26.44] statutory duty [...]."). *Id.* The *M.W.* Court also explicitly held that there must be a causal nexus between a child abuse investigation and a dependency or related "placement decision" arising from duties imposed by RCW 26.44.

> "Therefore, a claim for negligent investigation against DSHS is available only to children, parents, and guardians of children who are harmed because DSHS has gathered incomplete or biased information that **results in a harmful placement decision**, such as removing a child from a non-abusive home, placing a child in an abusive home, or letting a child remain in an abusive home."
>
> *Id.* (emphasis added)

In 2005, two years after *M.W.* was decided, this Court expressly *re-affirmed* the "harmful placement decision" nexus requirement in *Roberson v. Perez,* 156 Wn.2d 33 (2005) (citing *M.W.* for the proposition that "negligent investigation claims were cognizable **only** when DSHS conducts a biased or faulty investigation that leads to a harmful placement decision [...]." *Id.* at 45 (emphasis added). It is noteworthy that Petitioners do not even cite, let alone discuss, this Court's holding in *Roberson* where this Court expressly rejected the argument that a "constructive placement decision" by a parent could substitute for a placement decision by an agency or otherwise give rise to RCW 26.44 liability. *Id* at 45-48.

In establishing and then re-affirming a "narrow" cause of action that requires a nexus to a "harmful placement decision," this Court has repeatedly recognized that the legislature did not intend to trigger liability anytime a parent and/or a child are impacted by a state investigation or court order in a criminal proceeding. Indeed, there is no language in RCW 26.44 to suggest the legislature intended to authorize a sweeping negligent investigation cause of action that encompasses the facts of this case, where a parent was temporarily prohibited from contacting their child/victim pending the outcome of criminal proceedings and later as a condition of sentencing following the parent's plea and conviction of a crime.

Other Washington appellate courts have likewise concluded that in order to prevail in a negligent investigation claim, the claimant must prove that the faulty investigation was a proximate cause of a "harmful placement decision." *Petcu v. State,* 121 Wn. App. 36, 56, 86 P.3d 1234 (2004) ("To prevail, the claimant must prove that the allegedly faulty investigation was the proximate cause of the harmful placement"); *Albertson v. State,* 191 Wn.App. 284, 361 P.3d 808 (2015) ("Absent such 'a biased or faulty investigation that leads to a harmful placement decision,' DSHS is not liable for a plaintiff's claim of damages for an alleged negligent investigation."); *Lewis v. Whatcom County*, 136 Wn.App. 450, 457, 149 P.3d 686 (2006).

In each of these cases, the "placement decision" at issue arose from dependency proceedings initiated by DSHS or law enforcement where the issues before the agency or court were whether to maintain the parent-child relationship and/or where the children should live after considering their best interests. *Id.* They did not involve state or law enforcement action arising from domestic violence criminal proceedings, where, pursuant to RCW 10.99.030, law enforcement often has a statutory duty to arrest where there is probable cause to believe a crime has been committed.[5] Moreover, these cases did not involve criminal domestic violence no-contact orders, where the court is specifically empowered by statute to protect victims of domestic violence, regardless of the existence of a parent-child relationship. [6]

In this case, the Court of Appeals correctly concluded that the court's entry of an RCW 10.99 criminal no-contact order preventing Mr. McCarthy from contacting his domestic violence victim, CCM, did not constitute a "placement decision" giving rise to an RCW 26.44 cause of

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[5] "When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer **shall** exercise arrest powers with reference to the criteria in RCW 10.31.100." RCW 10.99.030(6)(a) (emphasis added).

[6] Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim." RCW 10.99.040(2)(a) (emphasis added).

action *McCarthy,* 193 Wn. App. 314, at 15-17. The Court of Appeals correctly observed that the entry of a no-contact order pursuant to RCW 10.99 following a lawful domestic violence arrest was not a "placement decision" because it was the result of a criminal charge, not a dependency petition or any other action adjudicating the parent-child relationship or a child's residence.[7] *Id.*

The Court of Appeals properly distinguished the facts of this case from those of *Tyner, M.W., Roberson* and *Petcu* where a "placement decision" had been requested and where the court engaged in a decision making process where it evaluated the parent-child relationship before making a residency determination for a child. *Id.* In the present case Deputy Kingrey arrested Mr. McCarthy and the court entered its various criminal no-contact orders without engaging in any such analysis. (CP 1557-58). Instead, Mr. McCarthy was arrested because there was probable cause to believe that he had committed a domestic violence assault. The court entered a criminal no-contact order pursuant to RCW 10.99.040(2)(a) to protect CCM from the likelihood of future violence, without regard to the existence or quality of a parent child relationship. The court's no-contact orders in this case document that the protection of

[7] In the unpublished portion of its opinion, the Court of Appeals affirmed the dismissal of Mr. McCarthy's false arrest and imprisonment claims based upon the existence of probable cause, which is a complete defense to these claims. *McCarthy,* 193 Wn. App. 314, at 28-31.

CCM and Patricia McCarthy as victims of domestic violence was the court's sole consideration. (CP 1670-71, 1699-1700).

Contrary to Petitioners' assertion, the Court of Appeals decision in this case is entirely consistent with this Court's "placement decision" nexus requirement in *M.W.* and *Roberson,* which has been followed by other Washington appellate and trial courts for more than a decade. Principles of stare decisis caution against revisiting these well-established cases absent compelling circumstances, which do not exist in this case. This Court recently re-affirmed that a request to overturn prior decisions "is an invitation that we do not take lightly. *State v. Otton,* 91669-1, 2016 WL 3249468, at 1-2 (Wash. June 9, 2016) (quoting *State v. Barber*, 170 Wn.2d 854, 863, 248 P.3d 494 (2011). In *Otton,* this Court addressed stare decisis considerations that are also present in this case.

> The question is not whether we would make the same decision if the issues presented were a matter of first impression. Instead, the question is whether the prior decision is so problematic that it must be rejected, despite the many benefits of adhering to precedent—" 'promot[ing] the evenhanded, predictable, and consistent development of legal principles, foster[ing] reliance on judicial decisions, and contribut[ing] to the actual and perceived integrity of the judicial process.' "

Otton, 2016 WL 3249468, at *1-2 (internal citations omitted).

The Court of Appeals appropriately declined Petitioners' invitation to disregard stare decisis considerations and expand the RCW 26.44

implied cause of action into the arena of criminal and/or dissolution proceedings. This Court should likewise decline Petitioners' invitation to revisit and overturn *M.W* and *Roberson*, especially when the requirements of RAP 13.4 are not met.

II. The Court of Appeals Decision is not in conflict with any other decision of the Court of Appeals.

Prior to this case, no other Washington appellate court had considered whether a criminal domestic violence arrest or no-contact order constituted a "placement decision" giving rise to RCW 26.44 liability. Accordingly, there is no conflict with another decision. Nonetheless, Petitioners appear to contend that a conflict exists with the Court of Appeals decision in *Rodriguez* v. *Perez,* 99 Wn.App. 439, 994 P.2d 874 (2000) merely because that case holds that law enforcement agencies may be liable for their role in conducting negligent investigations that result in "harmful placement decisions." This argument is misplaced because the question of whether law enforcement may theoretically be liable under RCW 26.44 is not at issue in our case. Likewise, the issue of whether a criminal arrest and/or no-contact order constituted a "placement decision" was not at issue in *Rodriguez. Id.*

Contrary to Petitioners' claims, the Court of Appeals' well-reasoned refusal to expand the definition of "placement decision" to

include criminal domestic violence arrests and criminal no-contact orders is not equivalent to immunizing law enforcement from RCW 26.44 claims. As *Rodriguez* demonstrates, law enforcement agencies like DSHS may be liable for conducting a negligent investigation that leads to a harmful decision in a dependency action or similar proceedings where the parent-child relationship is adjudicated. *Id.* This is not such a case. Prior to entering no-contact orders at Mr. McCarthy's arraignment and later at his sentencing, the court did not engage in any analysis of the McCarthys' fitness as parents or where the McCarthy children should live. Instead, the Court acted solely pursuant to RCW 10.99.040(2)(a) to protect CCM and Patricia McCarthy from the re-occurrence of domestic violence during the pendency of the criminal proceedings and following Mr. McCarthy's conviction.

III. This case does not present an issue of substantial public importance or precedential value because the legislature has afforded law enforcement with *statutory immunity* in cases arising from emergent placement decisions.

In 2012, this Court's rulings in *Tyner, M.W* and *Roberson*, the legislature amended RCW 26.44 to provide law enforcement with statutory immunity from claims arising from emergent placement

decisions. LAWS OF 2012, ch. 259 § 14, *codified at* RCW 26.44.280 (extending immunity provided in RCW 4.24.595).[8]

Thus, even if the Court were to accept Petitioners' argument that a domestic violence arrest and/or no-contact order somehow constituted an emergent "placement decision" the precedential impact of such a ruling has been rendered largely moot by the legislature's provision of statutory immunity in emergent cases like this one. Put simply, law enforcement is now entitled to broad statutory immunity for their role in emergent placement decisions even if the definition of "placement decision" were to include separations caused by criminal domestic violence arrests or no-contact orders. For this and other reasons, the issue presented by Petitioners is not one of substantial public importance or precedential value warranting review by this Court.

IV. Altering the *M.W.* and *Roberson* "placement decision" requirement would not change the outcome of this case because the court's no-contact orders cut off proximate cause.

Eliminating or re-defining the "harmful placement decision" requirement as Petitioners suggest would not change the outcome of this

[8] Because the Court of Appeals correctly determined that a domestic violence arrest and no-contact order was not a "placement decision," it did not reach the issue of whether RCW 26.44.280, as amended in 2012, affords Clark County with statutory immunity in this case. To the extent review is granted in this case, Clark County expressly preserves this statutory immunity defense and appellate issue pursuant to RAP 13.4(d).

case because the court's various no-contact orders were intervening causes that cut off proximate cause and extinguish Clark County's liability.

In *Tyner*, this Court considered whether a court's entry of a no-contact order in a dependency proceeding was an intervening cause that broke the chain of causation and defeated the Petitioners' negligent investigation claim. This Court reasoned that "if all material information is presented to the judge, cause in fact will not be found if the complained of action is linked to the judge's decision." *Tyner* at 86 (citing *Bishop v. Miche*, 137 Wn.2d 518, 973 P.2d 465(1999); *Hertog ex rel. S.A.H v. City of Seattle*, 138 Wn.2d 265, 979 P.2d 400 (1999)). Accordingly, the *Tyner* court held:

> "[A] judge's no-contact order will act as superseding intervening cause, precluding liability of the State for negligent investigation, only if all material information has been presented to the court and reasonable minds could not differ as to this question."
>
> *Id.* at 87.

Ultimately, this Court held in *Tyner* that the no-contact order did not constitute an intervening cause because DSHS had omitted its own internal and *exculpatory* conclusion that the allegations were "unfounded."

The Court of Appeals subsequently held in *Petcu* that the state and law enforcement are not the only sources of material information

informing a court's order and that a parent being investigated is also able to provide information to the Court. Specifically, the *Petcu* Court held:

> "[Plaintiff] suggests that for purposes of determining whether the court has been presented with all material information, we should consider only that information presented by DSHS, not by him. **We disagree because to do so would presuppose a much broader cause of action for negligent investigation than has been recognized by our courts**."

Id. at (emphasis added).

In the present case, as in *Petcu* and unlike in *Tyner,* the court had access to all material before it entered its various criminal no-contact orders. In particular, prior to entry of its June 6, 2005, no-contact order at Mr. McCarthy's arraignment, Judge Schreiber had access to Deputy Kingrey's probable cause statement, the criminal citation, and Deputy Kingrey's report (CP 1556-58; 1553-54; 1526-32). [9] In addition, Mr. McCarthy and/or his attorney attended the arraignment and could have presented any additional information he thought was material to the entry of a no-contact order, including his claim that Ms. McCarthy was

[9] Deputy Kingrey's full police report was expressly incorporated by reference in the citation reviewed by Judge Schreiber on June 6, 2005. (CP 1553-54) Specifically, the "officer report" section of the citation states: "See Report SO5-7914 for Narrative" which is the reference number for Deputy Kingrey's full report. While there is presently no evidence in the record regarding whether or not Judge Schreiber specifically reviewed this police report, the record reflects that he referred to its narrative contents prior to the entry of the June 6, 2005, no-contact order. (1670-71)

delusional and/or under the influence of certain prescription medications.[10] Mr. McCarthy could have also provided this supposedly material information to the court prior to the entry of a post-conviction no-contact order on August 1, 2006. He did not do so, presumably because the court already had this information from Deputy Kingrey's report and/or because it was not material. (CP1703-1731; 1699-1700).

The Court of Appeals did not explicitly perform a *Tyner* or *Petcu* intervening cause analysis in this case because it correctly determined that a domestic violence no-contact order is not a "placement decision" that gives rise to a RCW 26.44 cause of action. *McCarthy*, 193 Wn. App. at *30-31. However, the Court of Appeals performed a nearly identical analysis when it considered whether Deputy Kingrey's probable cause statement presented sufficient information to the court to support a finding of probable cause on June 5, 2005. *Id.* Specifically, the Court of Appeals considered Petitioners' argument that the omission of information from Deputy Kingrey's probable cause statement deprived the court of information that was material to the confirmation of probable cause. *Id.* In rejecting this argument, the Court concluded that Deputy Kingrey's probable cause statement provided sufficient information and that the omitted information was not material, exculpatory, or sufficient to negate

[10] Mr. McCarthy's claims regarding Patricia McCarthy were already documented in Deputy Kingrey's full police report. (CP 1526-1532)

probable cause. Specifically, the Court of Appeals noted that none of the omitted facts cited by McCarthy could "negate probable cause in the face of a detailed, eyewitness account of the crime. And none of these facts involve exculpatory evidence." *Id.*

The Court of Appeals' probable analysis is directly transferable to the *Tyner* and *Petcu* intervening cause analysis because Judge Schreiber confirmed probable cause and entered a no-contact order *simultaneously* on June 6, 2005, in reliance upon the same information. Petitioners rely upon the same exact omissions from Deputy Kingrey's probable cause statement regarding Patricia McCarthy to argue that Judge Schreiber was also somehow deprived of material information prior to entering its no-contact orders. These omissions were not material in *either* the probable cause or the no-contact order context because, as the Court of Appeals noted, there was "enough information to warrant a belief that Fearghal had assaulted CCM." *Id.* Ultimately, Judge Schreiber determined that the same information and resulting belief that Mr. McCarthy had committed a domestic violence assault also warranted the entry of a no-contact order pursuant to RCW 10.99 to protect CCM and Patricia McCarthy. To the extent such an order can even be considered a "placement decision," the court's entry of the order is an intervening and superseding cause that cuts off proximate cause and extinguishes Clark County's liability.

CONCLUSION

The Court of Appeals correctly applied this Court's well-reasoned holdings in *Tyner, M.W.* and *Roberson* setting forth the *limited* cause of action implied by RCW 26.44. In so doing, the Court of Appeals correctly concluded that a criminal domestic violence arrest and/or the court's entry of a criminal no-contact order did not constitute a "placement decision" giving rise to RCW 26.44 liability. For the reasons set forth above, and for the reasons advanced by DSHS and the City of Vancouver, this Court should decline review.

DATED this 16th day of August, 2016.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify pursuant to RAP 18.5(b) and 18.6(b) that on August 16, 2016, I served via U.S. mail, first class, postage prepaid, a copy of the foregoing document to each and every attorney of record herein, as identified below, at their last known email address(es):

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DATED this 16th day of August, 2016.

Mindy Lamberton, Legal Assistant
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Good afternoon,

Attached for filing please find Respondent Clark County's Response to Appellants' Petition for Review to the Washington State Supreme Court, as well as a Declaration of service.

Very truly yours,

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