

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE)
)
)
 v.) ID No. 1303016992
)
)
 RONDAIGES A. HARPER,)
 Defendant.)

MEMORANDUM OPINION

Upon Defendant's Motion to Be Transferred Back
to the Family Court of Delaware. Denied.

Date Submitted: August 22, 2013

Date Decided: March 31, 2014¹

John F. Brady, Esq., Murray Law LLC, 109 North Bedford Street, Georgetown,
DE 19947, Attorney for Defendant

Melanie C. Withers, Esq. and Casey L. Ewart, Esq., Delaware Department of
Justice, 114 East Market Street, Georgetown, DE 19947, Attorneys for the State

STOKES, J.

¹ The Court publishes three separate opinions for the three separate defendants in this case. However, the Court publishes these opinions simultaneously.

Defendant Rondaiges Harper (“Harper”), who was 17-years-old at the time of the charged crimes, will be tried as an adult in this Court. His application to transfer his case from this Court to the Family Court pursuant to 10 *Del.C.* § 1011(b) is **DENIED.**

In April 2013, Harper was charged with Kidnapping in the First Degree, a class B felony, Carjacking in the First Degree, a class B felony, and two counts of Conspiracy in the Second Degree, class G felonies. He is currently incarcerated at the Stevenson House, a juvenile residence.

Facts

Facts and Circumstances Hearing

A Facts and Circumstances hearing was held in this Court on July 18, 2013. The evidence presented pertained to the involvement of Defendants Harper,² Phillip Brewer (“Brewer”),³ Jackeline Perez (“Perez”)⁴ and Junia McDonald (“McDonald”)⁵ in the charged crimes.⁶ Harper, Perez, and McDonald were all present at this hearing.

² Date of birth: March 31, 1995.

³ Date of birth: January 27, 1996.

⁴ Date of birth: April 30, 1997.

⁵ Date of birth: November 1, 1998.

⁶ On September 5, 2013, Brewer pled guilty to one count of Carjacking in the Second Degree, three counts of Kidnapping in the Second Degree, and four counts of Conspiracy in the Second Degree. As part of his plea agreement, Brewer was required to testify truthfully in all

The following facts were taken from that hearing and are common to all three defendants.

Margaret Smith (“Mrs. Smith”) is an 89-year-old widow living in her own home in Milford, Delaware. At the fact hearing, Mrs. Smith gave a full rendition of the criminal incident. Although she was sometimes forgetful or confused about incidentals, she provided a consistent version of the material facts.

On March 18, 2013, at about 2:00 p.m., Mrs. Smith left her home to get an ice cream cone and buy a gift for her sister. Mrs. Smith carried some money in her purse, and a larger amount rolled up and pinned to the strap of her brasier. As she sat in her 2001 tan Buick Le Sabre at a convenience store called the Chicken Man, two female juveniles, later identified as Perez and McDonald, approached her car. They tapped on the driver’s side window and asked Mrs. Smith if she would take them home. At the fact hearing, Mrs. Smith referred to the girls as “teenagers,” stating that one was white and one was black, and that one was shorter and stockier than the other. Mrs. Smith did not observe any other physical traits.

At first Mrs. Smith hesitated, but then agreed to give the girls a ride home.

proceedings against his co-defendants. Brewer is currently being held at the Howard R. Young Correctional Institution. His sentencing date is to be determined, after the reverse amenability hearings and trials of his co-defendants take place. His cooperation will be given consideration at the time of his sentencing.

One juvenile got in the front passenger seat, and the other in the back. Mrs. Smith assumed that the juveniles lived in Milford; but they directed her to a residence farther away. Upon arriving at that residence, Mrs. Smith was told that the mother was not home and was asked to go to a second residence. Once there, Mrs. Smith was told that the aunt was not home.

The juveniles directed Mrs. Smith to a third residence where they asked for her keys. Mrs. Smith adamantly refused. Both juveniles then grabbed her while she struggled to remain in the car. Mrs. Smith was yanked out of the car, resisting until the three were at the rear of the Buick. The shorter juvenile wrestled the keys from Mrs. Smith and the trunk door was opened. Mrs. Smith was then shoved inside the trunk, and the trunk door slammed. The juveniles then got back in the car and, with the shorter juvenile driving, took off at a fast pace. Mrs. Smith hollered and knocked on the back of the trunk but received no response. Perhaps this could have been, in part, because the car's radio was playing at full volume. According to Mrs. Smith, while in the trunk, she received no food or water and was given no bathroom breaks. She also was not given the medication she took for high blood pressure or arthritis, which she carried with her.

During this episode, the two juveniles also took \$500 in cash from Mrs. Smith. They went to the Walmart to buy clothes and may have given some of the money to

two male juveniles to buy a new battery for the car. That evening, the juveniles used stolen money to book a room at the Days Inn in Seaford, Delaware. Mrs. Smith spent the night in the trunk of her car. In the morning, she was taken to a cemetery and dumped out, along with her cane and a black Ace Hardware bag of prescription medications.

Having wet herself in the trunk, Mrs. Smith apparently removed her pants and left them on the ground. She crawled around the cemetery looking for a road. The surface of the cemetery being part dirt and part grass, Mrs. Smith scraped her knees, but attained no other observable injuries. The cold temperatures caused numbness in her hands and feet, which is not yet resolved.

At approximately 9:00 p.m. on March 19, 2013, Trooper John Wilson (“Trooper Wilson”), a member of the Delaware State Police Department (“DSPD”), received a missing person call. A woman who identified herself as Sabrina Carol (“Ms. Carol”) said that she had not seen her elderly aunt, Margaret Smith, since 2:00 p.m. the previous day. Ms. Carol went to her aunt’s house, but neither she nor her purse were there. The family was concerned because Mrs. Smith showed early signs of either Alzheimer’s Disease or some form of dementia. The previous day, a neighbor saw Mrs. Smith putting things in her car at approximately 11:00 a.m., and drive away about an hour later. Mrs. Smith’s sister spoke to her on the phone at about

2:00 p.m. the previous day. Mrs. Smith was thought to be driving her tan 2001 Buick Le Sabre. Ms. Carol stated that her aunt often went to Milford to shop and to Rehoboth Beach to visit her sister.

Trooper Wilson entered Mrs. Smith's identification information into the national data base for missing persons and issued a Gold Alert which lists missing persons with mental conditions. He also filed a DSPD report.

On March 20, 2013, Corp. James Gooch, Jr. ("Corp. Gooch") received a call from a woman named Betty Edwards ("Ms. Edwards"). Ms. Edwards said that when she came to visit her son's tombstone at Mount Calvary Methodist Cemetery ("the cemetery") east of Seaford, she found a half-clothed, apparently disoriented elderly woman crawling on the ground. Corp. Gooch stated that the cemetery is not visible from King Road and is surrounded by trees. When Corp. Gooch arrived at the cemetery, Ms. Edwards told him that the elderly woman had initially tried to run from her, but Ms. Edwards reached her and convinced her to sit on one of the tombstones. Mrs. Smith was wearing brown spandex shorts and a coat, but no pants or shoes. Her hands were dirty and her knees were scratched.

Mrs. Smith initially told Corp. Gooch that she had walked from her home to the cemetery, but upon questioning, said that two girls in Milford asked her for a ride, and then took her money and keys and put her in the trunk of her car. She remained

in the trunk for two days, without food, water, or medication. Mrs. Smith was also forced to urinate on herself because her requests to use a bathroom were ignored. When she was left in the cemetery she was not familiar with her surroundings. Hence, she got on her hands and knees and crawled around looking for an opening to get to a road. The night was cold. Ms. Edwards told Corp. Gooch that Mrs. Smith had money rolled up and pinned to the strap of her brasier.

Corp. Gooch drove Mrs. Smith to Nanticoke Hospital where Ms. Carol met them. Mrs. Smith was able to give her name, date of birth, and age, although she was still somewhat confused. When Corp. Gooch ran her information in the police system, he found the Gold Alert with a photograph and a reference to possibly being armed. Corp. Gooch gave Mrs. Smith a light pat down and found no weapon. A nurse, having found money pinned to the strap of Mrs. Smith's brasier, put the money in a hospital safe. Mrs. Smith then told Corp. Gooch the rest of the details of the incident. Mrs. Smith was treated and then released to the care of Ms. Carol.

Corp. Gooch returned to the cemetery to look for Mrs. Smith's car because Mrs. Smith told him that at one point, the two juveniles drove her car up to the top of a hill and let it slide down so that she would meet her death. Corp. Gooch also hoped to find the wig that Mrs. Smith apparently wore in the Gold Alert photograph. Neither the car nor the wig was found. Corp. Gooch, however, found what looked

like the tracks of someone crawling in the sand over a recent grave site. He also saw tire tracks indicating that a vehicle had made a U-turn in an area of soft sand. Even with the aid of a DSPD helicopter, the car was not found. Later that day, Corp. Gooch removed Mrs. Smith's name, but not her missing car, from the Gold Alert.

At approximately 7:00 p.m. on March 20, 2013, Trooper Patrick Schlimer ("Trooper Schlimer") of the DSPD was sitting at one of his routine patrol sites at the intersection of Coverdale Road and Seashore Highway when a tan Buick with five passengers passed him. Trooper Schlimer ran the car's tag number and found a flag to stop the vehicle. He then followed the car, stopping it on Chapel Chapman's Road. None of the vehicle's occupants had any form of identification. Two of the three female occupants each stated that the vehicle belonged to the other's grandmother. The occupants were identified as McDonald in the driver's seat, Brewer in the front passenger seat, Harper in the rear left passenger seat, Perez in the rear right passenger seat, and Deniaya Smith ("Deniaya")⁷ in the center rear passenger seat.

Trooper Schlimer learned from police dispatch that the car had been involved in a carjacking. When his back-up arrived, the officers took the individuals and the

⁷ Upon being taken into custody, Deniaya stated that she had been picked up by the other four occupants on the afternoon of March 20, 2013, and that she discovered the car was stolen at the very last minute. Deniaya entered the scenario after Mrs. Smith was discovered in the cemetery.

car to Troop 4 in Georgetown, Delaware. Trooper Schlimer had no further discussion with any of the suspects.

After a search warrant for the car was obtained, Det. Michael Maher (“Det. Maher”) from the Evidence Detection Unit photographed the vehicle as well as the contents of the trunk. Among other things, the trunk contained seven bags of clothing, an Ipod lamp, three jackets, five cans of unopened ginger ale, and a so-called egg crate mattress. These items were left in the trunk, which measured 3 feet by 9 inches from front to back, 5 feet wide but 3 feet by 6 inches in the area where the tires were located, and 1 foot by 6 inches high.

On March 29, 2012, Det. Maher and Det. Robert Truitt, Jr. (“Det. Truitt”), the chief investigating officer, went to the cemetery. A residence is located on each side of King Road at the turn onto Calvary Road; but there is no signpost indicating the presence of the cemetery. The distance from King Road to the cemetery at the end of Calvary Road is 133 yards. The area is heavily wooded. Trash and debris are found all along the unpaved road, which is in a wretched condition. A chain link gate leads into the cemetery; and a chain link fence runs its perimeter. The area is surrounded by large trees, allowing for little light.

Det. Maher and Det. Truitt observed the tracks seen by Corp. Gooch indicating that someone had crawled over the sand. They did not observe shoe prints. To the

right of the entrance, the detectives found a black metal cane, a black bag from Ace Hardware containing prescriptions, and a pair of urine-soaked blue jeans on the ground near the fence.

On March 20, 2012, after being released from the hospital, Mrs. Smith and Ms. Carol went to the authorities to report her stolen car. Mrs. Smith was interviewed by Det. Truitt. She had been without her medication and was somewhat confused in her thinking. Ms. Carol stated that her aunt was in the early stages of dementia. During the interview, Mrs. Smith described the incident with the two girls stealing her keys and money and keeping her in the trunk of her car for two days without food, water, or bathroom stops. She stated that she had been dropped off in a cemetery, and then crawled around, in the cold, trying to find a road. After Mrs. Smith's car was located, Det. Truitt returned it to her.

Harper, McDonald, Brewer, and Perez were all interviewed about the incident. The interviews of McDonald and Perez are addressed in their respective opinions. Harper's interview is addressed below.

On April 4, 2013, Det. Truitt interviewed Mrs. Smith at her home. She showed him bruises and scrapes on her knees from crawling around the cemetery. She also stated that her hands and lower extremities were still numb from exposure to cold temperatures while in the trunk. She said that she had tried to talk to the kidnapers

but was told to “shut up,” and that one of the girls said they would kill her if she reported the incident to the police.

At the hearing, Det. Truitt testified that he found a receipt for clothing from the Walmart in Seaford. He reported that the temperature on the night of the kidnapping ranged from the mid-to-upper 30’s to the mid-to-lower 40’s. Det. Truitt stated that the girls blamed one another for the car theft, and that Brewer told him the Buick was stolen.

Harper’s Interview

In Harper’s interview, he stated that Perez and McDonald told him that someone was in the trunk while they were driving. The girls told him that they asked the car’s owner for a ride, and then took her money for beer and put her in the trunk. Upon hearing someone in the trunk, the girls opened the trunk for Harper and Brewer. The woman inside the trunk told Harper what had happened. The trunk was then closed and the youths went to the Days Inn in Seaford, where they used stolen money to book a room for the night.

Discussion

Reverse Amenability

Juvenile crimes are usually a matter for the Family Court.⁸ This Court, however, maintains original jurisdiction over a juvenile who commits specifically enumerated crimes.⁹ But this Court's jurisdiction is not absolute.¹⁰ Under 10 *Del.*

⁸ *State v. Anderson*, 385 A.2d 738, 739 (Del. Super. 1978). *See also State v. Anderson*, 697 A.2d 379, 382 (Del. 1997) [hereinafter Delaware Supreme Court *Anderson*] (“Age-based distinctions do not pertain to fundamental rights or affect a suspect class and such classifications, when attacked on equal protection or due process grounds, are presumed to be valid. They will not be set aside if any state of facts reasonably may be considered to justify [them].” (citations omitted) (internal quotation marks omitted)).

⁹ *Anderson*, 385 A.2d at 739–40 (citing 10 *Del. C.* § 938, which has been redesignated as 10 *Del. C.* § 1010 and amended by 69 Laws 1993, ch. 335, § 1, eff. July 8 1994). *See also* 10 *Del. C.* § 921 (“[Family] Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning . . . [a]ny child charged in this State with delinquency by having committed any act or violation of any laws of this State or any subdivision thereof, except murder in the first or second degree, rape in the first degree, rape in the second degree, unlawful sexual intercourse in the first degree, assault in the first degree, robbery in the first degree, (where such offense involves the display of what appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the crime, and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged under the laws of this State), kidnapping in the first degree, or any attempt to commit said crimes”); 10 *Del. C.* § 1010 (“A child shall be proceeded against as an adult where . . . [t]he acts alleged to have been committed constitute first- or second-degree murder, rape in the first degree or rape in the second degree, assault in the first degree, robbery in the first degree (where such offense involves the display of what appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the crime and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged under the laws of this State) or kidnapping in the first degree, or any attempt to commit said crimes”).

¹⁰ *Anderson*, 385 A.2d at 740 (citing 10 *Del. C.* § 939, which has been redesignated as 10 *Del. C.* § 1011 and amended by 69 Laws 1993, ch. 335, § 1, eff. July 8, 1994).

C. § 1011, (“Section 1011”)¹¹ this Court may transfer the original jurisdiction it maintains over a juvenile offender to the Family Court if this Court finds such a transfer to be in the interests of justice.¹² Before making this transfer, the Court must conduct what is known as a “reverse amenability hearing,” in which it considers evidence of statutorily specified factors.¹³ The Court may consider other relevant factors as well.¹⁴ The purpose of this Court’s determining a juvenile’s amenability

11

Upon application of the defendant in any case where the Superior Court has original jurisdiction over a child, the Court may transfer the case to the Family Court for trial and disposition if, in the opinion of the Court, the interests of justice would be best served by such transfer. Before ordering any such transfer, the Superior Court shall hold a hearing at which it may consider evidence as to the following factors and such other factors which, in the judgment of the Court are deemed relevant:

- (1) The nature of the present offense and the extent and nature of the defendant's prior record, if any;
- (2) The nature of past treatment and rehabilitative efforts and the nature of the defendant’s response thereto, if any; and
- (3) Whether the interests of society and the defendant would be best served by trial in the Family Court or in the Superior Court.

10 *Del. C.* 1011(b).

¹² *See Anderson*, 385 A.2d at 740.

¹³ 10 *Del. C.* 1011(b); *see also Anderson*, 385 A.2d at 740 (explaining how the Court may transfer jurisdiction back to the Family Court).

¹⁴ *State v. Doughty*, 2011 WL 486537, at *1 (Del. Super. Feb. 20, 2011).

is to place a judicial check on the prosecutorial charging of juveniles.¹⁵ Ultimately, though, “[s]ince a juvenile charged with a designated felony in the Superior Court has lost the benefit of Family Court adjudication by statutory pronouncement, there is [a] presumption that a need exists for adult discipline and legal restraint. Hence, the burden is upon the juvenile to demonstrate the contrary.”¹⁶

In rendering its decision, this Court must preliminarily determine whether the State has made out a *prima facie* case against the juvenile, meaning whether there is a fair likelihood that Harper will be convicted of the crimes charged.¹⁷ A real probability must exist that a reasonable jury could convict the juvenile based on the totality of the evidence, assuming that the evidence introduced at the hearing is unrebutted by the juvenile at trial.¹⁸

Because Kidnapping in the First Degree (“kidnapping 1st) is one of the crimes with which Harper is charged, this Court maintains original jurisdiction over his case. Harper’s statutory reverse amenability hearing was held on July 30, 2013. The parties

¹⁵ See Delaware Supreme Court *Anderson*, 697 A.2d at 383 (“It is true that we have viewed both the amenability and reverse amenability processes as containing pivotal constitutional safeguards providing independent judicial scrutiny over the charging of juveniles.” (citations omitted) (internal quotation marks omitted)).

¹⁶ *Anderson*, 385 A.2d at 740.

¹⁷ *Marine v. State*, 624 A.2d 1181, 1185 (Del. 1993).

¹⁸ *State v. Mayhall*, 659 A.2d 790 (Del. Super.1995), *aff’d sub nom Holder v. State*, 692 A.2d 1181 (Del. 1997).

submitted simultaneous briefs on August 22, 2013. In applying the factors of Section 1011 in order to decide where Harper will best be tried, the Court considers evidence presented at both the fact hearing and his reverse amenability hearing.

Section 1011 Factors

(1) Nature of the Present Offenses; Nature and Extent of Harper's Prior Record

The Court finds that the State can make out a *prima facie* case of kidnapping 1st against Harper, thus triggering its jurisdiction. Although Harper was not present at the time of the kidnapping of Mrs. Smith and the theft of her car, he admitted that he heard noises coming from the trunk and was told that the car was stolen. At some point, the car was stopped and Perez and McDonald opened the trunk. Harper then saw Mrs. Smith and heard her requests to be released from the trunk. The trunk was then closed; and the juveniles piled back into the car and continued on their way.

Additionally, as stated in the statute, kidnapping 1st involves the defendant's "not voluntarily releas[ing] the victim alive, unharmed *and* in a safe place prior to trial." 1st)¹⁹ When it came time to release Mrs. Smith, Harper suggested the cemetery

¹⁹ 11 *Del. C.* § 783A (emphasis added) ("A person is guilty of kidnapping in the first degree when the person unlawfully restrains another person with any of the following purposes: (1) To hold the victim for ransom or reward; or (2) To use the victim as a shield or hostage; or (3) To facilitate the commission of any felony or flight thereafter; or (4) To inflict physical injury upon the victim, or to violate or abuse the victim sexually; or (5) To terrorize the victim or a third person; or (6) To take or entice any child less than 18 years of age from the custody of the child's parent, guardian or lawful custodian; and the actor does not voluntarily release the victim alive,

as her drop off point, and may have “helped” her out of the trunk. Mrs. Smith was released by her captors voluntarily and alive. However, she most certainly was not released unharmed and in a safe place, having been abandoned in a cemetery without food, water, or methods of communication or transportation. Because the State can make out a *prima facie* case of kidnapping 1st against Harper, the Court applies the Section 1011 factors.

Regarding the first factor of Section 1011, the alleged facts of Harper’s offenses are, to say the least, troubling. The evidence shows that Harper was not an ignorant participant throughout this ordeal. Rather, at some point throughout the joyride, Harper learned that Mrs. Smith was in the car. Further, Harper was in a position to hear Mrs. Smith say things like the car was hers and that she wanted to go home. Thus, Harper’s culpability in this case is not slight.

Harper’s prior juvenile adjudications include Assault in the Second Degree in March 2011; Misdemeanor Theft in January 2013; and Conspiracy in the Third Degree in January 2013. The assault involved Harper and another individual throwing two paving stones into a residence in Lincoln, Delaware, during the night. The victim was injured by a stone striking him in the head and being covered with shards of glass. Harper stated that he threw one of the stones in retaliation for another

unharmed and in a safe place prior to trial.”).

incident. The theft adjudication involved Harper's theft of another student's watch, which occurred at the Sussex County Opportunity Program in Education ("SCOPE"), an alternative school in Bridegeville, Delaware. The conspiracy adjudication involved Harper's participation in joyriding in a stolen car with the same four teenagers involved in the kidnapping of Mrs. Smith a day before she was kidnapped.²⁰

Harper was also charged with assault resulting from an incident that occurred at Phyllis Wheatley Middle School. Harper approached another student from behind and choked him around the neck with both hands. The victim fell to the floor and cut his lip, almost losing consciousness. Harper admitted what he had done, but stated that it was done in jest.

In January 2013, Harper and another male were charged with shoplifting and conspiracy when they attempted to steal a car battery from the Walmart in Seaford.

When Harper was arrested on the instant charges, he was on probation with the Delaware Division of Youth Rehabilitative Services ("DYRS"). A plastic bag containing 0.3 grams of marijuana was found on his person.

The Court finds that the first Section 1011 factor weighs against Harper.

²⁰ On March 15, 2013, an officer with the Milford Police Department received a report of a stolen dark blue 2003 Honda Accord, taken from a parking lot on McColley Street. At the scene, evidence of glass was found, indicating that the car's back window had been broken out. Early on March 17, 2013, a DSPD trooper pulled over the stolen Honda, which was being used to transport the passengers back from a party in Dover. The driver was one Jermaine Roberts, who was 20-years-old. Harper, Perez, McDonald, and Brewer were all in the car as well.

Harper's participation in this criminal episode, coupled with his prior record, shows that he has little respect for the law or for other people. He is willing to conduct acts of violence when it suits him and shows no signs of remorse.

(2) Nature of Harper's Past Treatment and Rehabilitative Efforts and the Nature of Harper's Response thereto

The Court finds that this Section 1011 factor also weighs against Harper. In March 2011, Harper was sent to the Ferris School ("Ferris"), a juvenile detention center, on his assault adjudication. In September 2011, he successfully completed the program, which is both academic and rehabilitative. Harper then completed a step-down program at Mowlds Cottage ("Mowlds"), which is a required follow-up to Ferris. In October 2011, Harper completed the program at Mowlds, which consists of transitioning back into a community school and home visits. He was placed in SCOPE as preparation for entering Woodbridge High School. At SCOPE, Harper took academic classes, as well as programs such as anger management, conflict resolution, and addictions. Harper was scheduled to leave SCOPE at the end of the semester in January 2012 and begin the next semester at Woodbridge High School. However, Harper was removed from SCOPE prior to completion because of misconduct. Apparently, he took money from a younger student and threatened to beat him up. Harper was suspended for several days. Upon return to SCOPE, Harper

stole another student's watch, as stated above.

Several days later, a teacher overheard Harper talking to another student using violent and discriminatory language. After the teacher corrected him, Harper continued his unacceptable behavior. At this point, the administration took action. Harper's mother was contacted. She chose to remove him from school rather than have him expelled. Although Harper had the option to attend night school to obtain his GED, he did not do so. When he left SCOPE, he was failing three of his four academic classes and had achieved a passing grade of 74 in social studies.

Harper failed to keep appointments with his juvenile probation officer. Additionally, the Family Court issued a *capias* on him because he failed to make restitution payments stemming from his assault adjudication. Harper was released from probation as unimproved because of his arrest on the charges related to the kidnapping of Mrs. Smith.

The record thus shows that Harper failed to benefit from the programs and opportunities offered by Ferris and Mowlds. After his completion of these programs, he was removed from SCOPE and engaged in conduct leading to the instant charges. Testimonial evidence from Family Court probation officers confirms that Delaware has no other programs in which to place Harper, who is now 18-years-old.

A juvenile probation officer testified that DYRS does not seek extended

jurisdiction of the Family Court up to the age of 21.²¹

It is unclear that any out-of-state program with whom Delaware has a contractual relationship would accept Harper. It is also unclear whether such a program, if it did accept Harper, would benefit him. The recommendation of the Family Court is that Harper be tried as an adult in this Court because of his failure to show growth or maturation resulting from Family Court programs. The Court agrees with that recommendation.

(3 Interests of Society; Interests of Harper

The Court finds that the interests of both society and McDonald will best be benefitted by keeping Harper in the adult system. If Harper were to be tried and convicted in the Family Court, he might be sent to Ferris, followed by Mowlds. Harper has already completed those programs without success, however. Sending him back to Ferris a second time as an older student, more experienced in criminal behavior, could harden him further and thus work against the interests of society. If he were tried and convicted in this Court, the Court would have jurisdiction over him for a longer period and he would have the benefit of rehabilitative programs not available in the Family Court system.

If Harper were returned to Ferris, it is unlikely that the rehabilitative

²¹ See 10 Del. C. § 928(a).

opportunities would help him become a productive citizen. A Family Court probation officer testified that it would be potentially punitive for Harper to go back to Ferris for a second time, knowing that no benefit would accrue.

Harper has not responded to the rehabilitative opportunities offered by the Family Court. There is nothing to suggest that his interests would be served to duplicate what he has already experienced. The better course for both Harper and society is to be tried as an adult in this Court. If convicted to serve an adult sentence, Harper can make use of the programs and opportunities available to an adult offender.

Based on the foregoing, Harper's application to have his case transferred to the Family Court is **DENIED**.

IT IS SO ORDERED.

/s/ *Richard F. Stokes*

Richard F. Stokes, Judge

Original to Prothonotary

Cc: John P. Daniello, Esq.

Office of the Public Defender
Georgetown, DE 19947

Vincent H. Vickers III, Esq.

Stumpf Vickers & Sandy, P.A.
8 West Market Street,
Georgetown, DE 19947