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

STATE OF DELAWARE	)
	)
	)
v.	) ID No. 1304002931
	)
	)
JUNIA MCDONALD,	)
Defendant.	)

MEMORANDUM OPINION

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

Date Submitted: January 6, 2014
Date Decided: March 31, 2014[1]

John P. Daniello, Esq. Office of the Public Defender, 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 Junia McDonald ("McDonald"), who was 14-years-old at the time of the charged crimes, will be tried as an adult in this Court. Her application to transfer her case from this Court to the Family Court pursuant to 10 *Del.C.* § 1011(b) is **DENIED**.

In April 2013, McDonald was charged with Kidnapping in the First Degree, a class B felony, Carjacking in the First Degree, a class B felony, Robbery in the First Degree, a class B felony, and three counts of Conspiracy in the Second Degree, class G felonies. These charges stemmed from McDonald's alleged involvement in a criminal episode inflicted by McDonald and her co-defendants upon Margaret Smith ("Mrs. Smith"), who, at the time of her encounter with the defendants, was 89-years-old.

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 Rondaiges Harper ("Harper"),[2] Phillip Brewer ("Brewer"),[3] Jackeline Perez ("Perez")[4] and

[2] Date of birth: March 31, 1995.

[3] Date of birth: January 27, 1996.

[4] Date of birth: April 30, 1997.

McDonald[5] in the charged crimes.[6] Harper, Perez, and McDonald were all present at this hearing. 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

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[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 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.

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. 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 Seaford 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 cemetary") 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.

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[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

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 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

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cemetery.

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 hosptial, 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 Harper and Perez are addressed in their respective opinions. McDonald's statement 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 kidnappers 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.

McDonald's Interview

Upon being arrested, McDonald was interviewed by Det. Truitt, who summarized her interview at the fact hearing. Det. Truitt testified that McDonald was with Perez when the car was taken from Mrs. Smith, and that they did this approximately two days prior to her interview, which would have been on a Monday. She stated that they were in Milford at the Chicken Man convenience store when they came into contact with Mrs. Smith. Det. Truitt stated that McDonald initially claimed that Mrs. Smith gave them the keys to her car. When confronted with whether Mrs. Smith was left in the trunk of her car for two days, McDonald nodded and said "I

guess so." When asked who dropped Mrs. Smith off in the cemetery, McDonald stated that she did not know because she was not in the car. McDonald also stated that Perez dropped Mrs. Smith off. When asked if anyone else was with Perez, McDonald responded in the negative. When asked why she placed Mrs. Smith in the trunk in the first place, McDonald responded that she did not know and that she was "tripping."

At a later reverse amenability hearing, the Court watched McDonald's videotaped interview with Det. Truitt. First McDonald stated that she thought the car belonged to Deniaya's grandmother. She then stated that she and Perez got a ride from Mrs. Smith at the Chicken Man convenience store in Milford. According to McDonald, Mrs. Smith gave them the keys upon request. She then stated that she did not know how they got the keys to the car that McDonald was driving. McDonald denied knowing Mrs. Smith was in the trunk, but then stated that Mrs. Smith wanted to be in trunk. Regarding the location of where Mrs. Smith was left, McDonald first stated that Mrs. Smith was dropped off on a dark back road. She then stated that she did not know where and when Mrs. Smith was abandoned because Perez performed that action alone. McDonald, however, admitted to leaving Mrs. Smith in the trunk of her car for two days.

Brewer's September 18, 2013 Testimony[8]

After being arrested, Brewer gave a statement to the police in which he claimed that he did not know that during this criminal episode the youths were driving a stolen car with its owner locked in the trunk. As part of his agreement with the State, Brewer testified at one of McDonald's subsequent reverse amenability hearings. At this hearing, he gave a much different account of events. The Court summarizes Brewer's testimony below because Brewer essentially provided a play-by-play account, albeit alleged, of what happened during the two days that Mrs. Smith was held captive by the defendants.

Brewer testified that he had known Harper all of his life. He had not met the girls, however, until a few days before his arrest. Brewer met them because they were driving around with Harper in a black car with a smashed back window. McDonald, who told Brewer the car was her mother's, was driving. That day, the girls gave Brewer a ride to Seaford and back,[9] with Harper staying behind.

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[8] Statements that Brewer testified McDonald made are admissible as admissions by a party-opponent under D.R.E. 801(2). Statements that Brewer testified that he made are admissible at this preliminary stage. *See In re J. H. B.*, 578 P.2d 146, 150 (Alaska 1978) ("Hearsay evidence and reports may in the discretion of the court be employed to accomplish a fair and proper disposition of a children's matter in the dispositive phase. Before such evidence is used, however, the child and is counsel should be clearly advised that it is being considered so that opposing evidence or explanations may be presented." (footnote omitted)). *See also United States v. Calandra*

[9] Brewer stated that in Seaford, he went to a store called Gold for Cash and exchanged some necklaces for $100 or $102.

After meeting Brewer, McDonald texted him stating that she wanted to hang out with him. McDonald also contacted Brewer on Facebook.[10] Brewer asked her how she would get to him, and, according to Brewer, McDonald said that she was going to get "her aunt's car."[11] The next day, the girls, with McDonald driving, went to pick up Brewer and then Harper. According to Brewer, they drove "[a] tan Mercury."[12]

Brewer stated that once all four youths were in the tan car, they went to a park in Coverdale. They then went to a Royal Farms, where the girls paid for gas, and then returned to the park.[13] The car's battery then died, apparently because it had been running all night. Harper and Brewer, who did not have a driver's license, left on foot to get his mother's car in order to jump start the tan car. Brewer stated that once

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[10] According to Brewer, at some point in their interactions, McDonald told Brewer on Facebook that she was 16, instead of 14-years-old.

[11] Reverse Amenability Hr'g, *State v. McDonald*, I.D. No. 1304002931, at A-89:21, 23–A-90:1 (Del. Super. Sept. 18, 2013) (TRANSCRIPT) [hereinafter September 18th Hearing].

Brewer stated that he did not question McDonald's representation that the car belonged to her aunt, even though the prior day, the four had been stopped in a car which Brewer knew to be stolen.

[12] *Id.* at A-91:3. Brewer was asked if this car was a four-door sedan. He stated that he did not know. He thought it was a Mercury because that is what it looked like to him. Assumedly, this car was Mrs. Smith's tan Buick.

[13] At one point in his testimony, Brewer stated that the group decided to get gas at Royal Farms on the afternoon of March 20, 2013, the day after they left Mrs. Smith in the cemetery. *See id.* at A-123:13–19.

the tan car died, he left to get his mother's car quickly because the girls rushed both he and Harper out of the car. Once he had his mother's car, Brewer drove it back to the park, having tried unsuccessfully to find someone in the area to render assistance. The tan car's battery could not be located under its hood; and according to Brewer, both girls told Harper and him not to check the back of the tan car. One girl then stated that her uncle would come and jump the car.[14]

Brewer and McDonald then got into Brewer's mother's car and had sex.[15] Perez and Harper were in the tan car. A little later, Harper came over to Brewer's mother's car and asked if he could use Brewer's cell phone to play some music. Brewer said no. Harper went back to the tan car. Harper then returned to Brewer's mother's car, telling Brewer that he had just heard someone in the trunk of the tan car. Brewer then got out of his mother's car. Harper popped open the trunk, and Brewer saw an old, African American woman awake in the trunk. According to Brewer, the girls told him that the woman was an alcoholic, and that they had paid her in liquor for use of her car.[16] The girls further told Brewer that the woman did not want to get

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[14] Assumedly, this girl was McDonald.

[15] At one point in his testimony, Brewer affirmed that he had sex with McDonald before and after he learned that Mrs. Smith was in the trunk. September 18th Hearing at A-125:10–14.

[16] Brewer stated that he guessed this use was "for a little bit, for a couple hours." *Id.* at A-98:15–16. Brewer also testified that the girls told him that Mrs. Smith was alcoholic who traded the car for liquor once they were at Brewer's grandmother's house, after he and Harper

into the backseat, and wanted to be placed in the trunk. Brewer stated that he was shocked to see this woman. He and Harper helped her climb out of the trunk. The woman stated that the car was hers. Harper and Brewer then put the woman back into the trunk.[17] The four then got into Brewer's mother's car and, with Brewer as the driver, drove to Brewer's grandmother's house. At this time, it was evening. They left the tan car and the woman inside, who was Mrs. Smith, behind.

At Brewer's grandmother's house, the four "sat there and chilled."[18] They stayed overnight, eventually noticing that it was almost daytime. Then, the four drove back to the tan car to see if they could jump start the car's battery. Harper helped Mrs. Smith out of the trunk in order to look for the battery. After discovering that the jumper cables would not work, Mrs. Smith got back in the trunk[19] and the four left again, back to Brewer's grandmother's house. At some point, they picked up Brewer's uncle in Brewer's mother's car and brought him to the tan car in order to

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discovered Mrs. Smith in the trunk.

[17] Brewer's testimony is not exactly clear on how Mrs. Smith got back in the trunk. *E.g.*, *id.* at A-100: 8–9 ("I mean, she got back in. We put her back in the trunk."); A151:15–16 ("She just got in the trunk. She didn't refuse or nothing. She just got in the trunk.").

[18] *Id.* at A-102:6.

[19] According to Brewer, "Mrs. Smith got back in the trunk . . . ." *Id.* at A-104:18–19.

jump start it, which he did.[20] Brewer, McDonald, and Brewer's uncle then drove Brewer's mother's car back to Brewer's house, with Harper and Perez following in the tan car. Brewer and McDonald then got into the tan car, with Brewer taking over as the driver. Harper produced a $100 dollar bill and said "Yo, she gave me a hundred dollars."[21] Brewer "asked him why she gave it. [Harper] said, '[s]he give it to me for the battery.' We left it at that."[22]

The four then drove to the Days Inn in Seaford. Because none of them had identification, they could not rent a room. Therefore, they went and picked up Harper's cousin, bringing him to the hotel in the tan car. Harper's cousin assisted them in attaining a room. McDonald and Perez paid for the room in cash. Harper's cousin was then transported back to his house. All this time, Mrs. Smith was still in the trunk of the car.

After the group settled into their hotel room, McDonald and Perez took the tan car to the Walmart to buy some clothes. Harper and Brewer stayed behind. Brewer fell asleep. The four then stayed in the room for a few hours, and then left to go to

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[20] Brewer did not clearly explain how Mrs. Smith's car got started. Ultimately, Brewer's uncle got the car started, but apparently never knew that Mrs. Smith was in the trunk.

[21] September 18th Hearing at A-108: 7–8. Brewer testified that by "she," Harper meant Mrs. Smith.

[22] *Id.* at A-109: 3–5.

Coverdale. Harper and Brewer believed it was "crazy" that a woman was in the trunk of the car that they were driving; but at no time did either say to the girls that the the woman needed to be released.

The group went to Coverdale in order purchase marijuana, for which Harper paid in cash. In his testimony, Brewer affirmed that a fair amount of marijuana smoking occurred during this incident, including in the Days Inn hotel room. The group did not, however, consume any alcohol. At some point, the four made an additional trip to Coverdale to buy more marijuana. They were at the hotel all night.

After buying the marijuana, the four drove around, discussing what they should do with Mrs. Smith. According to Brewer, both girls discussed driving the car back to Milford and burning it with Mrs. Smith in the trunk.[23] Brewer and Harper disagreed with that plan. Harper then suggested leaving Mrs. Smith in the cemetery where his sister was buried. Brewer also knew of this cemetery, and knew it was rather isolated and not well lit at night. The road going into the cemetery is dirt, with trees around it.[24] At this point, it was roughly 9:00 p.m. on Tuesday, March 19, 2013.

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[23] This fact takes on major significance *infra* in the Court's decision denying this Motion.

[24] Brewer stated that the four were in the car, with Brewer driving, when they rode past or came along beside the cemetery. Harper then got the idea to dump Mrs. Smith there. Brewer stated that he was against the idea at first, and kept driving the car past the cemetery. He stated that the others in the car kept bringing up the cemetery; so they turned around and entered it.

On cross-examination, Brewer claimed that there was no discussion amongst the four to just abandon the car. Brewer also admitted that around this time, he knew he was in trouble, and

The cemetery was oval-shaped, with a road going through the center, and a loop that came around. Brewer drove the car through the center road to the back of the cemetery. He remained inside the car while the other three hopped out and "helped" Mrs. Smith out of the trunk.[25] With all four back in the car, Brewer then drove down the loop to exit the cemetery. On the way out, Brewer saw, but could not hear Mrs. Smith.[26] He stated that she "was, like, there. I mean, she couldn't walk. You know what I mean? She was just, like, sitting there, laying there."[27] Mrs. Smith was left in the very back of the cemetery, away from the entrance. When asked how her cane, bag, and some clothes were left with her, Brewer answered "[t]hey probably threw it out."[28]

Brewer had a cell phone, but no one called 911 or anyone else. They also did not discuss taking Mrs. Smith to a different place. When asked why the cemetery was

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that he had been in trouble on prior occasions.

[25] September 18th Hearing at A-119:17–18 ("They took the lady out. They helped her out. You know what I mean?").

[26] At one point in his testimony, Brewer contradicted this and stated that he heard Mrs. Smith say that she could not walk. She was not hysterical, but rather whining, although crying. *Id.* at A-129:21 –23; A-130:1–22.

[27] September 18th Hearing at A-121: 1–3.

[28] *Id.* at A-129:3.

picked, Brewer answered "I guess they didn't want her to be found."[29]

The group then went back to the hotel room, spent the night, and checked out the next day, March 20, 2013. Then, at the girls' request, they went to a nail salon. Deniaya then joined the group.[30]

Throughout the time Mrs. Smith was in the car, Brewer never saw anyone give her food, water, or take her out to use the bathroom. Nor did he hear her in the trunk because loud music was playing in the car. At some point in the two days in which Mrs. Smith was in the trunk, the four ate food from a McDonald's restaurant. Around the time they ate this food, which was during the daytime, Brewer stated that "they" yelled from the interior of the car into the trunk, asking Mrs. Smith if she wanted food. Brewer clarified that the idea of offering Mrs. Smith food came up while the four were in the Days Inn hotel room. In the car, McDonald opened the backseat arm rest, which connected to the trunk, and through it, asked Mrs. Smith if she wanted anything to eat. Mrs. Smith was not offered an opportunity to use the bathroom, however. To the offer of food, Mrs. Smith replied that she wanted to go home.

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[29] *Id.* at A-122: 8–9.

[30] Brewer did not clearly explain how Deniaya ended up with the group.

Discussion

Reverse Amenability

Juvenile crimes are usually a matter for the Family Court.[31] This Court, however, maintains original jurisdiction over a juvenile who commits specifically enumerated crimes.[32] But this Court's jurisdiction is not absolute.[33] Under 10 *Del.*

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[31] *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)).

[32] *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 . . . .").

[33] *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")[34] 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.[35] 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.[36] The Court may consider other relevant factors as well.[37] The purpose of this Court's determining a juvenile's amenability

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[34]

> 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:
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> (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
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> (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).

[35] *See Anderson*, 385 A.2d at 740.

[36] 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).

[37] *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.[38] 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."[39]

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 McDonald will be convicted of the crimes charged.[40] 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.[41]

Kidnapping in the First Degree ("kidnapping 1st") is one of the crimes with which McDonald is charged. Therefore, this Court maintains original jurisdiction over her case. McDonald's statutory reverse amenability hearings were held on

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[38] *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)).

[39] *Anderson*, 385 A.2d at 740.

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

[41] *State v. Mayhall*, 659 A.2d 790 (Del. Super.1995), *aff'd sub nom Holder v. State*, 692 A.2d 1181 (Del. 1997).

September 18, 19, and 20, 2013. The parties submitted memoranda for decision on January 6, 2014. In applying the Section 1011 factors in order to decide where McDonald will best be tried, the Court considers evidence presented at both the fact hearing and McDonald's subsequent reverse amenability hearings.

Section 1011 Factors

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

McDonald submits as a preliminary matter that the Court does not have jurisdiction over her because the State cannot established a *prima facie* case for kidnapping 1st, the sole charge by which she can be tried in this Court. She argues that because by all accounts, including that of victim, Mrs. Smith was assisted out of the trunk and released voluntarily, thus precluding the kidnapping 1st charge.[42]

McDonald next concedes that the alleged facts in this case are disturbing, but asserts that the Court should not overlook the United States Supreme Court's

[42] 11 *Del. C.* § 783A ("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, unharmed and in a safe place prior to trial.").

observation that juvenile offenders are different from adult offenders.[43] Also, McDonald notes that while the actions of she and Perez were troubling, the girls did not cause a direct infliction of harm to Mrs. Smith, nor did their actions stem from a desire to cause Mrs. Smith harm. Rather, McDonald claims that their conduct, while serious, was the result of childish lack of aforethought, immature ignorance of the gravity of the situation, lack of ability to empathize with the victim, and intoxication from drugs and alcohol. As noted by the defense psychiatrist Dr. Susan Rushing ("Dr. Rushing"), the facts of this case are demonstrative of McDonald's immaturity, puberty, and childlike need to satisfy desires without contemplation of consequences.

Regarding her prior record, McDonald stresses that, unlike her co-defendants, she has no prior criminal record at all. The State's pointing to her alleged involvement in the theft of a motor vehicle in February 2013, a case which remains unadjudicated by the Family Court, exhibits her amenability to that Court.

The State responds to McDonald's preliminary claim that this Court lacks jurisdiction over her by pointing out that the key factor of a kidnapping 1st charge is that the victim is not voluntarily released "alive, unharmed *and* in a safe place prior

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[43] *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551 (2005) (explaining how the "[t]hree general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.").

to trial."[44] While McDonald and her co-defendants may have released Mrs. Smith voluntarily and alive, the State counters that Mrs. Smith was not released unharmed and in a safe place, as the defendants essentially dumped their victim in an isolated cemetery without sustenance or medication.

Concerning the nature of the present offenses, the State provides a thorough recitation of the facts.

Concerning McDonald's prior record, or lack thereof, the State concedes her lack of prior arrests or convictions. The State, however, provides the string of events which it established at McDonald's reverse amenability hearings, and argues that in the period prior to kidnapping Mrs. Smith, McDonald engaged in various forms of serious criminal conduct. In February 2012, McDonald allegedly left her house to go to a party with Perez against her mother's orders, causing her mother to contact the police to locate her after she was missing for almost a day. In March 2012, McDonald's mother again called the police, reporting that her daughter skipped school with Perez and had not returned home. Her mother claimed that she texted her daughter to come home, to which McDonald responded that she would be spending the night in Dover, Delaware. The authorities were notified the next day that McDonald had returned home, apparently having been found by her grandmother at

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[44] 11 *Del. C.* § 783A (emphasis added).

a party, where some kind of verbal altercation took place.

In January 2013, McDonald's mother again contacted the police reporting that her daughter had run away, which she claimed was something that McDonald was doing frequently. McDonald also skipped school that day. Three days later, McDonald's mother contacted the authorities and reported that a family member had seen a picture on Facebook of McDonald and an 18-year-old man. Upon being questioned, this man stated that he did not know McDonald's whereabouts and that he wanted nothing to do with her because she had misrepresented her age to him. The next day, McDonald's mother reported that her daughter had returned home.

Less than two weeks after that incident, McDonald's mother again reported her daughter's absence. The officer who took this complaint was also investigating an incident involving another teenaged girl who alleged that McDonald grabbed her hair and hit her in the head multiple times.[45] A few days later, McDonald's mother reported that her daughter had returned home. An investigator tried to determine McDonald's whereabouts during her absence, but found her uncooperative. McDonald's mother told the investigator that her daughter was not listening, was using alcohol and drugs, and being truant from school. The investigator gave her

[45] The State also points out that this girl testified that on other occasions, McDonald and Perez taunted her and came over to her house trying to instigate an altercation.

mother information about a youth-assistance program.

This Court also heard testimony from several witnesses regarding an incident occurring in February 2013. One day, Emna Alvarado ("Ms. Alvarado") brought her car to her friend Karen Perez's ("Ms. Karen Perez's") house, left the keys on a shelf in the bathroom downstairs, and then got a ride to work. That day, Ms. Karen Perez was hosting a party at her house and had invited Perez's mother. During the party, Perez and McDonald showed up uninvited. Ms. Karen Perez saw the girls go downstairs toward the bathroom where Ms. Alvarado had left her keys. Later in the day, Ms. Alvarado was informed that her car and car keys were missing from Ms. Karen Perez's house. At the time of her testimony, Ms. Alvarado's car had not been found. A woman named Brenda Castillo ("Ms. Castillo"), however, testified that, subsequent to Ms. Alvarado's car going missing, Ms. Castillo was stopped at a stop sign in her own car when Perez and McDonald approached Ms. Castillo's car window. McDonald allegedly tossed the keys into Ms. Castillo's open window, said "sorry," and the girls left. Ms. Castillo returned the keys to Ms. Alvarado.

The Court also heard testimony of an incident occurring a month later. 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 smashed. Early on March 17, 2013, a trooper with the Delaware State Police Department ("DSPD") pulled over the stolen Honda, which was being used to transport the passengers back from a party in Dover. The driver was 20-year-old Jermaine Roberts. Harper, Perez, McDonald, and Brewer were all in the car as well.

The Court finds that the State can make out a *prima facie* case of kidnapping 1st against McDonald, thus triggering its jurisdiction. 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."[46] These requirements are inclusive, in that they *all* must be met. Mrs. Smith was released by her captors voluntarily and alive. However, she most certainly was not released unharmed. Despite the lack of an infliction of any serious physical injury, she was held captive in the trunk of her car for two days without food, water, or an opportunity to use a restroom.[47] Furthermore, she was not released in a safe place prior to trial, having been abandoned in a cemetery without food, water, or methods of communication or transportation. These were perilous circumstances for a person of her age and condition. Because the State can make out a *prima facie* case of kidnapping 1st

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[46] 11 *Del. C.* § 783A (emphasis added).

[47] *See Tyre v. State*, 412 A.2d 326, 329–30 (Del. 1980) (listing the various factors that culminated into "harm" for purposes of a kidnapping 1st charge).

against McDonald, the Court applies the Section 1011 factors.

Regarding the first Section 1011 factor, the alleged facts of McDonald's offenses are, to say the least, troubling. Although the youngest player in this episode, McDonald engaged in a course of conduct which traumatized Mrs. Smith, who, fortunately, survived her ordeal. This case presents a clear example of utter disregard for the safety and well-being of others. Indeed, "[t]he potential for tragedy was high in th[ese] crime[s]."[48]

Moreover, during one of McDonald's reverse amenability hearings, the Court learned from Brewer one alleged fact that is a particularly shocking overlay of the episode. According to Brewer, dumping Mrs. Smith in the cemetery was not the girls' initial intention for their prisoner:

> Q: And then where do you go?
>
> A: We went – after that, I mean we was driving. We was discussing what we were going to do with her. I don't know. *They were discussing what they were going to do with her. I mean, they was like – I mean, we should burn it. Burn the car.*
>
> Q: *Who was saying that they should burn her and the car?*
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> A: [*McDonald*] and [*Perez*].

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[48] *State v. Roscoe*, 2000 WL 973132, at *5 (Del. Super. May 1, 2000) (adopting the Commissioner's Report and Recommendation to deny the defendant's Motion to Transfer to Family Court).

Q: Where did this conversation take place, [Brewer]?

A: We was driving. I mean, we was on our way back to the hotel, and we was like cutting through Concord.

The Court: I want to be certain I understood what you said. Would you repeat that again? What was the discussion? Who said what?

A: [Perez] was, like, talking about burning the car.

Q: Burning the car or burning Mrs. Smith?

A: The whole thing.

Q: The whole thing?

A: Yes.

Q: What were the girls talking about doing?

A: *They just – when they go back to Milford, they were going to burn the car with her in it.*

Q: They were going to drive the car back to Milford?

A: Yes.

Q: With her in it?

A: Yes.

Q: *Did* [*McDonald*] *participate in that discussion?*

A: *Yes.*

Q: *Was she in favor of burning Mrs. Smith alive in the car?*

A: *Yes. They said it, yes.*

Q: What did you and . . . [Harper] say about that plan?

A: I said no.

Q: What did [Harper] say?

A: He was agreeing with me.

Q: You and [Harper] said, "No, not a good idea[?]"[]

A: Yes.

Q: Were there other discussions about ways of getting rid of Mrs. Smith?

A: After that, we was driving. I mean, that's when [Harper] brought up the fact, you know, "Let's drop her at the graveyard." You know what I mean?[49]

Later on in his direct-examination, Brewer further discussed the topic of burning the car with Mrs. Smith inside:

Q: Okay. When the idea to burn the tan car with Mrs. Smith in it came up, who first mentioned that idea?

A: I think it was – it was [Perez].

Q: Where was everybody sitting in the car when this discussion was going on?

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[49] Reverse Amenability Hr'g, *State v. McDonald*, I.D. No. 1304002931, at A-114:18–A-117:4 (Del. Super. Sept. 18, 2013) (TRANSCRIPT) [hereinafter September 18th Hearing] (emphasis added).

A: I was in the driver's seat. [McDonald] was in the passenger seat. [Perez] and [Harper] was in the back.

Q: Do you specifically recall today who came up with the idea to burn the car?

A: It was [Perez]

Q: *And what did* [*McDonald*] *say about it, if anything?*

A: *They was, like, agreeing. They was agreeing.*

Q: *How did she agree? What did she say?*

A: *It was like they both kind of came up with the idea. I mean, as soon as, like – "I'm going to go back to Milford. I'm just going to set the car on fire."*

Q: Did they have any idea where they would do this in Milford?

A: I don't know.

Q: Did they have any idea how they would set the car on fire?

A: I don't know.

Q: *Why did they think that setting the car on fire was a good idea?*

A: *Probably so they would get away with it.*

Q: Did they discuss what they thought the fire would do?

A: I mean, everybody knows what it would have done.

Q: *What would it have done?*

A: *Probably killed her.*[50]

Brewer also discussed this topic on his cross-examination:

Q: And then it's on that return trip that you indicate that the conversation came up about what they were going to do with her?

A: Yes.

Q: Precisely who initiated that conversation?

A: [Perez]

Q: What exactly did she say?

A: She said we can go out to Milford and just burn it. Burn the car.

Q: Out of the blue she said we're going to go to Milford and burn the car?

A: She said –

Q: Nobody said beforehand, what are we going to do? What should we do? Just [Perez] out of the blue says, "We're going to go burn the car?"

A: They was like, what are we going to do with her. That's when she was like, we can burn her. We can go back to Milford and burn her in the car. Go back to Milford and set the whole car on fire.

Q: Did she suggest anything else?

A: No. After that, we was going past the graveyard. That's when [Harper] was like just drop her off at the graveyard.

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[50] *Id.* at A-126:3–23; A-127:1–18 (emphasis added).

Q: Do you think they were serious?

A: When they said drop her off at the graveyard?

Q: No. When they said to burn the car.

A: I don't know. I don't know if they were serious or not.

Q: I mean, did it seem to you that it was a thought out plan?

A: What do you mean?

Q: When they say, "Well, what are we going to do with her? We should burn the car."

Is it something that sounded to you like they had thought about it, that they had talked about it and that was the plan, or was it more of a statement out of frustration?

A: I don't know. They just – they just said it. Like, I don't know if they thought about it or not.

Q: But, you indicated that it was you and [Harper] that said "No, we're not going to do that[]"?

A: Right.[51]

Brewer again was asked about this topic on his re-direct examination:

Q: [W]hy did you object to the plan to burn her up in the car?

. . . .

A: It wasn't – it wasn't – I wouldn't burn the car. I didn't – I don't know. I just didn't want – I think that was – I don't know. That's just not what I wanted to do.

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[51] *Id.* at A-161:12–23; A-162:1–23; A-163:1–13.

Q: You knew she'd been in the trunk for a couple days while you all were partying. You knew she didn't want to be in the trunk; right?

A: (No response.)

Q: So what was wrong with the idea of getting rid of her so that she couldn't tell anybody what happened to her by killing her?

A: That's – I don't know. I just wasn't doing that.[52]

Brewer's alleged disclosures are appalling.[53] The supposed intentions of Perez and McDonald, if believed by the trier of fact, show them, individually and separately, capable of terrible depravity. They show impulses of attempted murder. There is a disturbing theme of thinly veiled force, coercion, and the total disregard for Mrs. Smith's safety during her kidnapping, where she was imprisoned in the trunk of her car for almost two days after being robbed. Indeed, these circumstances are like a war crime and were the worst possible nightmare for the victim. This particular Section 1011 factor is the most persuasive one. This, combined with the complete lack of care showed to Mrs. Smith from kidnapping her to releasing her,[54] weighs

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[52] *Id.* at A-172:7–8, 14–23; A-173 1–3.

[53] These disclosures are admissible as an admission by a party-opponent under D.R.E. 801(2). Perez's statements are admissions. Also, the statements of McDonald and Brewer as co-conspirators would bind Perez as well.

[54] The Court notes that, according to Brewer, McDonald allegedly offered food to Mrs. Smith while she was in the trunk, to which Mrs. Smith declined, stating that "[s]he wanted to go home." September 18th Hearing, at A-161:4.

heavily in favor of trying McDonald in this Court.

The Court acknowledges that prior to this incident, McDonald had no formal involvement with the criminal justice system. A juvenile's lack of a prior record, however, does not *ipso facto* require transfer to the Family Court.[55] Furthermore, as the State extensively demonstrated at her reverse amenability hearings, McDonald's behavior prior to kidnapping Mrs. Smith was neither tamed nor disciplined. Unquestionably, McDonald has had a dysfunctional childhood. The Court acknowledges that her misbehavior followed the death of her father, the relocation of her half-sister, with whom McDonald was close, and McDonald's arrival in Delaware and introduction to Perez. The Court cannot ignore, however, the seriousness of the present offenses and how McDonald, immature and misguided as she might have been, participated in this violent episode.[56]

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[55] *See, e.g.*, *State v. Dellaversano*, 1998 WL 1029291, at *3 (Del. Super. Dec. 21, 1998) ("This decision is a difficult one given the penalties the Defendant will face as an adult. However, the severity of the offenses, including the injuries inflicted on the victims, the extent of the Defendant's contact with the criminal justice system before and after the . . . incident, as well as the age of the Defendant and the lack of available treatment options in the Family Court and/or the juvenile correction, militate against a transfer to the Family Court. *While the Defendant's lack of a prior record weighs heavily*, it is overcome by the previously mentioned factors. There is little or no benefit gained from the limited period of supervision/treatment that would be available to the Defendant if this motion were granted." (emphasis added)).

[56] Indeed, under Delaware law, kidnapping 1st is a violent crime, as is Robbery in the First Degree. *See generally Holmes v. State*, 322 Ark. 574, 576–79 (Ark. 1995) ("[T]he serious and violent nature of an offense is a sufficient basis for denying a motion to transfer and trying a juvenile as an adult. No element of violence beyond that required to commit the crime is necessary . . . . [T]he trial court could have relied on the nature of the crime of aggravated

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

McDonald begins by stating that because she lacks any prior involvement with the criminal justice system, she has had no contact with the Delaware Division of Youth Rehabilitative Services ("DYRS"). She acknowledges her escalating misconduct prior to the kidnapping of Mrs. Smith. McDonald asserts, however, that her multitude of problems were never addressed by anyone capable of helping her. She had a turbulent upbringing, and was then introduced to Perez, which coincided with McDonald's poor behavior and substance abuse. McDonald also claims that she might have undiagnosed Attention Deficit and Hyperactivity Disorder ("ADHD"), which, as Dr. Rushing explained, may have slowed her brain maturation by three years, thus rendering her with the maturity level of an 11-year-old at the time of the incident. Yet McDonald, as a 14-year-old girl, was left to fend for herself through all

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robbery in denying appellant's motion to transfer to juvenile court. No violence beyond that necessary to commit the offense of which the defendant is necessary." (citations omitted) (internal quotation marks omitted)).

Even though Mrs. Smith was not beaten, the Court finds that her being stuffed in a trunk for two days without food, water, or medication, and then dumped in a desolate cemetery constitutes violence. *Cf. Holmes*, 322 Ark. at 577 (quoting the opinion of the trial court, which the appellate court affirmed ("Aggravated robbery–violence as such may not have occurred in the traditional sense. In other words, no guns were fired or no one was assaulted or battered but certainly when a citizen looks down the barrel of a loaded revolver in the process of being help up, in my judgement that is a violent act.")).

of this turmoil.[57]

McDonald concedes that she undoubtedly needs help. She argues, however, that the Court cannot determine whether McDonald has had a positive response to past treatment because she has never received the assistance that she needs. Currently, she is performing well both academically and socially at the New Castle County Detention Center ("NCCDC"). Therefore, McDonald contends that she is amenable to appropriate, structured assistance. In fact, the psychologist at NCCDC commented on McDonald's improvement and stated that no reason existed as to why McDonald would not be amenable to and benefit from the services of DYRS. For the State to argue that the Family Court is ill-equipped to oversee her future is unmeritorious.

The State begins by noting that McDonald has had opportunities for assistance in the past; but her own behavior caused her lack of success. While never having been incarcerated, in April 2012, McDonald's discipline problems caused her to be sent to Parkway Academy Cental ("Parkway"), an alternative school in Dover. A counselor at the school testified at the reverse amenability hearings that from

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[57] McDonald states that during this time, she received little help from her mother and the proper authorities. She points to the incident in January 2013, mentioned *supra*, in which she was seen in a Facebook picture with an 18-year-old man, and how no further investigations were conducted into this matter.

McDonald's entrance until June, when the school dismissed its students for the summer, McDonald's performance was mixed. Therefore, the school brought her back in the fall of that year. The counselor stated that when she returned, McDonald's behavior was noticeably worse. She was continuously truant, and disobedient when she did show up to school.[58] McDonald was doing poor academically; and her mother informed the counselor of her concerns with her daughter's substance abuse. Despite the counselor's referrals for assistance, McDonald's mother claimed that, despite trying, she could not get in contact with the referred professionals.

McDonald's lack of prior rehabilitative treatment due to lack of a prior record render this Section 1011 factor neutral.[59] The Court notes, however, that prior to her arrest, McDonald was not responding to any sort of structure. While her home-life, social influences, and psychological makeup could be to blame for this, the fact remains that voluntary treatment, even if only limited to her experience at Parkway,

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[58] The State claims that from the end of Parkway's Christmas break in 2012–13 to McDonald's arrest in March 2013, McDonald only attended school on three dates. During McDonald's time at Parkway, she missed a total of 61 days, 4 of which were excused. She was also tardy on 10 occasions.

[59] This Court has before adjudicated cases involving juvenile defendants who lacked past rehabilitative treatments because of lack of a prior record, and yet still had their reverse amenability motions denied. *See, e.g.*, *State v. Roscoe*, 2000 WL 973132, at *4 (Del. Super. May 1, 2000 (adopting the Commissioner's Report and Recommendation to deny the defendant's Motion to Transfer to Family Court).

was not the answer for her. Indeed, it took incarceration at NCCDC after being charged with five felonies for McDonald's behavior to alter.[60]

(3 Interests of Society; Interests of McDonald

McDonald asserts that, if convicted, she potentially faces a significant period of incarceration. She will, however, at some point be released back into society, having spent her formative years in an adult detention facility. Therefore, when released, she will be a dysfunctional burden on society. McDonald posits that treating her as a child and allowing her access to her the assistance of the Family Court, which she needs, as opposed to confining her as an adult offender only to be released years later, best serves the interests of society.

As far as her own interests, McDonald stresses the hardship involved in cutting her off from the resources of the Family Court and forcing her to endure life as an adult offender. She argues that the impracticality of life as an adult offender would be significant. The Chief of the Bureau of Prisons for the Delaware Department of Corrections ("DOC") testified that he would be concerned for the safety of an inmate

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[60] *Cf. State v. Doughty*, 2011 WL 486537, at *3 (Del. Super. Feb. 10, 2011) ("During his incarceration in NCCDC, [Defendant] has had no incident reports. Thus, Defendant functions well in a structured environment, which cannot be offered by the Family Court beyond [the date that court retains jurisdiction of Defendant]."). The Court recognizes that the defendant in *Doughty* had a history of juvenile adjudications, whereas McDonald has had none. The Court believes, however, that supervision in a detention facility is beneficial for McDonald. In order to safely reenter society, structured supervision must extend beyond the period over which the Family Court will have jurisdiction over her.

as young as McDonald being housed in an adult facility. He also testified that if McDonald was adjudicated as an adult and sentenced to DOC, she would have to be sent to a facility out of state, and that currently a facility in North Carolina seemed to be the most promising option for placing her, although this placement is not certain. Additionally, outsourcing the placement of an adult offender of juvenile age is an alternative that has not before been performed in Delaware. Furthermore, if the Court finds McDonald non-amenable, she would have to be housed in an adult facility while her permanent placement is arranged. This would involve two impractical possibilities: (1) forcing her to stay in isolation at the facility, or (2) shutting down an entire unit at the facility and relocating the inmates so that McDonald could be housed alone.

Besides the issue of her placement, McDonald also points to the testimony of numerous individuals, all of whom have experience working with juvenile offenders, attesting that McDonald should remain in the juvenile system. The psychologist at NCCDC, the Chief of Community Services for the State of Delaware, McDonald's case worker at NCCDC, DYRS officials, and Dr. Rushing all believe that this Court is the wrong forum for her. To the extent the State contends that a transfer to Family Court would unduly depreciate the crimes and punishment, McDonald states that the Family Court continuously deals with troubled youths like herself; and points out that

if she were in the Family Court system, she would be incarcerated for a period of time.

The State asserts that for at least a year prior to her arrest, McDonald was an out-of-control teenager who did not respond in the slightest to authority figures. As McDonald points out, her current experience at NCCDC seems to be positive; but she could not remain at that facility if her case was transferred. The State chastises McDonald's harping on the impracticality of keeping her in the adult system by pointing out first that under the jurisdiction of the Family Court, McDonald could essentially be released back into the community without any incarceration at all.[61] Second, just as a sentence requiring incarceration from this Court would necessitate sending McDonald out-of-state, the same type of sentence from the Family Court would also necessitate sending McDonald out-of-state. DYRS has a contract with a facility in Indiana for housing juveniles. That facility has informed DYRS, however, that it would not accept either McDonald or Perez. Thus, DYRS would need to conduct a nationwide search for McDonald's placement. On the other hand, the North Carolina facility, available to McDonald via sentencing from this Court, is the

[61] McDonald counters that the State inappropriately assumes that the Family Court would not hand down an appropriate sentence.

more promising option.[62] After reaching 18, McDonald could then return from North Carolina to Delaware to serve the remainder of her sentence. The State stresses that if McDonald's case is transferred back to the Family Court, the most DYRS can oversee her is until her 18th birthday. All parties agree that McDonald needs extensive care and supervision.[63] Indeed, Dr. Rushing herself noted that confinement will benefit McDonald. Thus, the State submits that it is imprudent to allow McDonald to enter a system where, at best, her treatment will only continue until she reaches the age of majority, regardless of her progress.

The State concedes that pondering McDonald's future in the criminal justice system is a complex ordeal, and that McDonald is a young offender who has not received much help throughout her life. The State argues, however, that McDonald, whose crimes "shock the conscience," is dangerous to society, and as such, should not be overseen by the auspices of the Family Court. Keeping her within the jurisdiction of this Court ensures that McDonald will receive the supervision and treatment she needs for the appropriate amount of time, serving both the interests of society and

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[62] The State points out that the facility in North Carolina is in the process of preparing a facility specifically for juveniles, separate from adult inmates.

[63] McDonald does not dispute this point, but notes that this Court should focus not only on incarceration, but on the age-appropriate treatment she will receive within that incarceration. McDonald contends that being incarcerated as an adult offender would not be beneficial to her at all. She claims that adult incarceration is a short-sighted, heavily complicated solution that denies her of the benefits she could receive from DYRS.

McDonald.

The Court finds that both the interests of society and McDonald will best be benefitted by keeping McDonald in the adult system. McDonald needs long-term help, which must entail intensely structured supervision. As McDonald points out, those with experience working with juvenile offenders believe McDonald to be amenable to the Family Court. Dr. Rushing advocated this point, extensively detailing how McDonald's cognitive and social immaturity, combined with peer pressure, and intoxication all contributed to a crime that was juvenile in nature.[64] Dr. Rushing also stated that, no matter what, confinement is appropriate for McDonald.

Significantly, Dr. Rushing did not specifically state that McDonald would be or could be rehabilitated by the time she reaches 18 or 21:

> Q: Are you able to quantity how much time she needs in order to mature to a level where she's going to be safe if she's back out in society?
>
> A: I think that's something that would have to be reassessed periodically. I would say on my assessment, she wasn't at a point where I would recommend her being released back into society.[65]

Perhaps no expert could prudently place an exact time frame on the rehabilitation of

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[64] *See* Reverse Amenability Hr'g, *State v. McDonald*, I.D. No. 1304002931, at A-239:5–7 (Del. Super. Sept. 18, 2013) (TRANSCRIPT) ("In terms of the actual offense that happened, the motivator and drivers here were incredibly juvenile.").

[65] *Id.* at A-250:2–10.

a juvenile offender. The Court is convinced, however, that while McDonald may require incarceration, the time for her rehabilitation is beyond the purview of the Family Court. She might be released at 18 or 21 without being fully rehabilitated. Thus, with this murky question unanswered, the Court finds that McDonald should be adjudicated as an adult, despite the fact that those with experience in working with juvenile offenders advocate otherwise.[66] Moreover, even if the Court were presented with concrete evidence that, more likely than not, McDonald could be and would be fully rehabilitated by the time the Family Court relinquished its jurisdiction over her, the Court still finds that McDonald should be tried as an adult. The first Section 1011 factor simply outweighs the other two factors.

After finding that the State can make out a *prima facie* case and examining the Section 1011 factors, the Court's role in these reverse amenability proceedings is to "balance or weigh its respective findings in reaching its ultimate decision on the

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[66] *Cf. D.E.P. v. State*, 727 P.2d 800, 802–03 (Alaska Ct. App. 1986) ("The consensus of the expert testimony was that treatment in a juvenile setting would be preferable and would optimize the potential for rehabilitation. Under [prior precedent], however, *it is clear that the desirability of treating* [the defendant] *in a juvenile facility cannot be determinative on the issue of waiver unless the evidence further establishes a likelihood that rehabilitation of* [the defendant] *will be accomplished by his twentieth birthday.*" (emphasis added)). *But cf. State v. Moore*, 2003 WL 23274842, at *2 (Del. Super. Dec. 31, 2003) ("The Defendant has not previously had the occasion to undergo any rehabilitative program relating to sex offenses. Through Family Court, several out-of-state, Level IV sex offender programs are available, generally ranging in length from nine to 18 months. *It would appear that there is still time for the Defendant to be considered for entry into one of such programs and to complete such a program before he becomes 18 years of age.*" (emphasis added)).

application to transfer."[67] On balance, the seriousness of the crime, committed by a juvenile just as culpable as her co-defendants, against a person, rather than property, in an aggressive manner, tips the scale in favor of adjudicating McDonald as an adult.[68]

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[67] *See Marine v. State*, 624 A.2d 1181, 1183 (Del. 1993).

[68] *Cf. J.S. v. State*, 372 S.W.3d 370, 374–75 (Ark. Ct. App. 2009) (affirming trial court's adult disposition of a juvenile even though "appellant had no criminal history and that there were rehabilitation facilities available, the court also found that the alleged offenses were serious; that the alleged crimes were committed in an aggressive, willful, or premeditated manner; that the offenses were against persons rather than property; that appellant was as culpable as his codefendants; that appellant had the benefit of a supportive family willing to intervene directly when he was not making good choices; and that appellant participated in the planning of the offense shortly after this intervention.").

The Court notes that throughout this criminal episode, the presence of intoxicants rendered McDonald dazed. Dr. Rushing testified that McDonald "did not have a sense of a time line for what happened there. [McDonald] describes the whole event seeming like one day. It's all blurry, and that's, you, typical of someone who is intoxicated." September 18th Hearing, at A-240:22–23; A-241: 1–3. Detective Robert Truitt Jr., the chief investigating officer in this case, testified that upon interviewing McDonald after her arrest, he suspected her to be under the influence of "something," and that McDonald "just didn't act like someone that you would sit and have a conversation with about a very serious incident. She seemed to be somewhat – just, you know, not overly caring about what was going on." Reverse Amenability Hr'g, *State v. McDonald*, I.D. No. 1304002931, at B-126:17, 22–23; B127:1–3 (Del. Super. Sept. 19, 2013) (TRANSCRIPT). The Court reiterates, however, the well-settled principle that voluntary intoxication is not a defense to a criminal act. *See, e.g.*, *Davis v. State*, 522 A.2d 342, 344–46 (Del. 1987) (quoting and citing 11 *Del. C.*§ 421).

Based on the foregoing, McDonald'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
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