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

STATE OF DELAWARE	)
	)
	)
v.	) ID No.
	) 1304002943
	)
JACKELINE H. PEREZ,	)
Defendant.	)

MEMORANDUM OPINION

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

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

Vincent H. Vickers III, Stumpf Vickers & Sandy, P.A., 8 West Market 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 Jackeline Perez ("Perez"), who was 15-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, Perez 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 Perez's alleged involvement in a criminal episode inflicted by Perez 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] Junia McDonald ("McDonald"),[4] and

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

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

[4] Date of birth: November 1, 1998.

Perez[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: April 30, 1997.

[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 McDonald and Harper are addressed in their respective opinions. Perez'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 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.

Perez's Interview[8]

Upon being arrested, Perez was interviewed by Det. Truitt. She stated that she and McDonald met Mrs. Smith at the Chicken Man in Milford, where they asked her for a ride. Perez stated that she told Mrs. Smith that the girls needed to go to Perez's house. When they got there, Perez told Mrs. Smith that no one was home. They then

[8] At the fact hearing, defense counsel discussed issues of admissibility relating to Perez's statement under *Miranda v. Arizona*, 384 U.S. 436 (1966). Suppression issues are not to be decided at the amenability stage. *See State v. Woodlin*, 1999 WL 1241060, at *3 n.10 (Del. Super. Sept. 30, 1999) ("[A]ny issue concerning the suppression of a [juveline-defendant's] statement should be addressed prior to the trial [and] not at this stage."). Reverse amenability proceedings are generally dispositional as to an appropriate forum and are not adjudicatory in nature.

went to a second house, and then told Mrs. Smith that they needed to use her car. McDonald asked for Mrs. Smith's keys. Perez stated that Mrs. Smith was a little hesitant to give the keys over, and then agreed that Mrs. Smith resisted in giving over the keys. The girls then put her in the trunk.

Perez then stated that the girls went to Coverdale for awhile, and then picked up Brewer and Harper. That night, Harper heard Mrs. Smith speaking from the trunk. After riding around smoking marijuana, the four rented a room at the Days Inn in Seaford. Perez indicated that they spent Mrs. Smith's money on clothes from Walmart, food, gas, and the hotel room. She claimed that she got $500 from Mrs. Smith's purse. Perez also stated that Brewer and Harper got money from Mrs. Smith at some point, as well.

Perez stated that, once inside the cemetery, they opened the trunk and Mrs. Smith got out of the trunk. She claimed that all four were present for this. Perez claimed that Mrs. Smith got out of the trunk, fell, and was caught by Perez, who sat her down on the ground.

Brewer's October 16, 2013 Testimony

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. He also stated that he was not in the

cemetery. As part of his agreement with the State, Brewer testified at one of Perez's subsequent reverse amenability hearings.[9] 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.[10]

At the time of Mrs. Smith's kidnapping and his testifying, Brewer was 17-years-old. He grew up in Coverdale, a part of Bridgeville, Delaware. He attended Woodbridge High School through the ninth grade. He also attended the Sussex County Opportunity Program in Education ("SCOPE"), an alternative school in Bridegeville, for six months. He was 16-years-old when he ultimately left school. In Coverdale, he lived with his mother.

Brewer knew Harper all of his life. He knew Perez and McDonald for only a few days before he was arrested. The first time he met the girls was in Coverdale. On that occasion, the girls were with Harper in a dark blue car that had the back

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[9] Defense counsel thoroughly explored Brewer's potential bias in testifying at these reverse amenability hearings.

[10] Brewer also explained how, the year prior to this incident, he was arrested for a home invasion that involved six individuals, one of whom were armed. During the commission of this crime, the firearm was discharged. Brewer was not armed during this incident. Brewer could have had a reverse amenability hearing on this matter, but chose to be sentenced as an adult to Boot Camp, completion of which allowed him to return home. He was 16-years-old at the time. At the time of kidnapping Mrs. Smith, Brewer was on probation, facing up to 8 years incarceration for the home invasion incident. For his agreement with the state in this case, he faces an additional 22 years of incarceration.

windows smashed. McDonald was driving. Brewer asked them for a ride to Seaford; and they took him. Harper stayed behind. Brewer was around the girls that day for about a couple of hours. He did not strike a friendship with either girl in particular. Brewer was supposed to meet up with the girls later that night; but they did not arrive.

The girls said for Harper and Brewer to meet up the next night to go a party in Dover. The plan was for the girls to provide the transportation. The next night, the girls picked Harper and Brewer up in the same dark blue car. The four went to Dover, but could not find the party. They therefore returned to Coverdale, picked another person up, and went back to Dover. Once there, they still could not find the party. On the way back from the second trip to Dover, a policeman stopped the car. At some point, McDonald, who drove sometimes but not all of the time, had told Brewer that the car was her mother's, but when it was pulled over, stated that it was stolen.

That night, McDonald sent Brewer a message on Facebook asking him how he was and stating that they would meet up. The next day, around 12:00 p.m. or 1:00 p.m., McDonald and Perez showed up in what Brewer believed to be a tan Mercury. McDonald was driving. Brewer got in the car; and they went to pick up Harper. McDonald informed Brewer that the car was her aunt's.

The four then went to a community park in Coverdale. They sat in the parking

lot for about a half an hour talking, and then went to Royal Farms to get gas. McDonald and Perez paid for the gas in cash. Brewer did not see how much money the girls had on them, but knew they had money. They then went back to the park in Coverdale. They sat there for a couple of hours until the tan car died. While they had been sitting there, the engine was running, the heater was turned on, and the radio was playing.

Brewer told the group he would get his mother's car. He and Harper then left for his mother's house, which was around the corner from the park. Brewer drove his mother's car back to the park. Brewer told the group he was going to try and get some jumper cables, and left and brought someone back to jump start the tan car. The car's battery, however, could not be found. The person who was brought back to jump start the car[11] told the group to open the trunk. Brewer tried to do this, but McDonald and Perez would not let him. McDonald then said that her uncle was coming. The person brought to jump start the car then left.

Brewer's mother's car and the tan car sat side-by-side. Brewer and McDonald then got into Brewer's mother's car and had sex. Harper and Perez got into the tan

[11] Brewer identifies this person as "the lady." Reverse Amenability Hr'g, *State v. Perez*, I.D. No. 1304002943, at D-52:16 (Del. Super. Oct. 16, 2013) (TRANSCRIPT) [hereinafter October 16th Hearing].

car.[12] At some point, Harper came over to Brewer's mother's car and asked for Brewer's cell phone because Perez wanted to listen to some music. Brewer said no. Harper then came back a little later and said "Yo, I hear someone in the trunk. I hear someone in the car."[13]

Brewer testified that at that point, he had to check the trunk. He got out of his mother's car, and ordered that the trunk be opened. McDonald remained in Brewer's mother's car. Brewer also stated that one of the youths knocked on the trunk and asked if anyone was there. The voice inside responded by saying "This is my car."[14] The trunk was opened, revealing an old African American woman. Because it was nighttime, Brewer could not see her face. He thought she was wearing something dark. According to Brewer, upon opening the trunk, Perez acted like she was surprised. Brewer stated that he was shocked.

Harper and Brewer then helped the woman, Mrs. Smith, out of the trunk.[15] Harper and Brewer asked the girls why the woman was in the trunk. The girls claimed that she was an alcoholic, had traded them her car for liquor, and did not

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[12] Brewer testified that Harper and Perez had oral sex. He knew this because Perez and McDonald teased Harper for how he performed oral sex.

[13] October 16th Hearing at D-54:19–21.

[14] *Id.* at D-55:23.

[15] Apparently, all Mrs. Smith said during this time was the car was hers.

want to be in the backseat. Harper and Brewer placed Mrs. Smith back in the trunk. Brewer never asked her if she wanted to get back into the trunk. However, according to Brewer, Mrs. Smith did not try resist, which allowed him to believe the girls' story about the liquor. Mrs. Smith did not ask for help or to be released.[16]

The four then got into Brewer's mother's car and went to his grandmother's house. They left Mrs. Smith and the tan car in the park in Coverdale. They stayed at Brewer's grandmother's house for at least four or five hours. During the night, the four returned to the park in order to check to see if there were jumper cables in the trunk of the tan car. They opened its trunk a second time, with Mrs. Smith still there. They asked her if there were jumper cables in the trunk. She responded that she did not know, but that there should be. Mrs. Smith stayed in the trunk while it was searched for the cables. Also, according to Brewer, Mrs. Smith actually helped search for the cables.[17] Brewer then found the cables; and Harper assisted Mrs. Smith out of the trunk a second time.[18] The girls remained in Brewer's mother's car.

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[16] According to Brewer, "we just helped her back in the trunk. She ain't – she's just, like – she actually helped. I mean, she ain't refusing nothing. She just got back in the trunk." October 16th Hearing at D-106:19–22. When asked to confirm that Mrs. Smith simply gave Brewer her hand so that she could get back in the trunk, Brewer responded "Yeah, kind of. We thought she was drunk that night." *Id.* at D-108:15–16.

[17] Brewer claimed that at this point, Mrs. Smith did not seem to injured or intoxicated. She also was not complaining about the cold.

[18] Brewer did not actually see Harper assist Mrs. Smith out of the trunk. He did, however, see Harper assist her back into the trunk. He also could not hear if Harper spoke to Mrs. Smith

Brewer tried to jump start the car; but the cables did not work. Harper then assisted Mrs. Smith back into the trunk. The four returned to Brewer's grandmother's house for the rest of the night.[19]

In the morning, Brewer went to his uncle for assistance in jump starting the tan car. Brewer's uncle did not have jumper cables. Therefore, Brewer got cables from another person in Coverdale. Brewer then brought his uncle to the park to jump start the tan car using his mother's car.[20] The tan car started. Afterward, Brewer, McDonald, and Brewer's uncle got into Brewer's mother's car and drove to Brewer's uncle's house to drop his uncle off, with Harper and Perez following in the tan car. Brewer then drove his mother's car back to her house. The four all got into the tan car, and decided to get a hotel room.

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during this time.

On cross-examination, Brewer agreed that, upon his discovery of Mrs. Smith in the trunk, the girls were, essentially, not involved in Mrs. Smith's removal and reentrance into the trunk during this time. Brewer also agreed that while he knew he was doing something wrong, he did not think anything bad would happen to Mrs. Smith; if he thought something bad would have happened, he would not have left her there. He would have removed Mrs. Smith from the trunk and not allowed her to be placed back inside it.

[19] On cross-examination, Brewer claimed that on this night, the group made three or trips to Coverdale in his mother's car to buy marijuana. On all of these trips, Brewer drove because he knew where in Coverdale to buy the marijuana and he wanted to drive.

[20] Apparently, Brewer's uncle was never aware of Mrs. Smith's presence in the trunk of her Buick. No one mentioned her being in the trunk; and the trunk was never opened.

The youths went to the Days Inn in Seaford,[21] but could not rent a room because none of them were of age. Therefore, the group went back to Coverdale to pick up Harper's cousin. They brought Harper's cousin back to the hotel; and the girls gave Harper and his cousin cash to rent the room. Harper and Brewer then drove Brewer's cousin back to Coverdale, and stopped at Harper's house for Harper to pick up some clothes. The girls stayed behind in the hotel room. Harper and Brewer were gone for about a half hour. They returned to the hotel room. The girls then took the car to the Walmart to buy some clothes. Harper and Brewer stayed behind in the hotel room. The girls were gone for about a half hour, and returned with purchased items, stating that they paid for them with their money. During all of this, Mrs. Smith remained in the trunk.

The group left the Days Inn to go back to Coverdale to buy marijuana. Harper paid for the marijuana in cash, apparently from a $100 bill he claimed he received from Mrs. Smith. Harper said that Mrs. Smith gave it to him for jump starting her car. According to Brewer, the group bought a lot of marijuana, which all four smoked.

At some point in the two days that Mrs. Smith was in the trunk, the four stopped at a McDonald's restaurant. Each youth paid for his or her own food. While

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[21] When asked whose idea it was to rent a hotel room, or to pick the Days Inn, Brewer responded that he thought it was his and Harper's idea.

they were getting their food, McDonald pulled down the armrest in the back seat, which opened into the trunk, and asked Mrs. Smith if she was hungry and wanted any food. Mrs. Smith answered no and said she wanted to go home. Mrs. Smith was not given any food or anything to drink, nor was she given a chance to use a restroom.[22]

In his testimony, Brewer was asked whether the group decided to do something with Mrs. Smith. He stated that the group left the hotel room during the night, and drove back to Coverdale. During this ride, the girls brought up the idea that the car should be taken back to Milford and burned with Mrs. Smith in it.[23] Brewer stated that he was not going to do that. Harper agreed with him.

The group was driving, with Brewer at the wheel, on a road where a cemetery was located. Harper suggested dropping Mrs. Smith off in the cemetery. Harper was familiar with the cemetery because his sister was buried there. Brewer initially disagreed with this plan. He wanted to be dropped off at the Days Inn instead because he did not like the idea of leaving Mrs. Smith in the cemetery. The others, however, "said, like, [m]ight as well drop her off now while we're already here."[24]

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[22] Brewer testified that he and Harper were concerned about Mrs. Smith not eating. According to him, however, offering Mrs. Smith food was McDonald's idea; and McDonald was the only one who actually made the offer.

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

[24] October 16th Hearing, at D-73:6–7. It is unclear from Harper's testimony who said this. At point, he states that "they" said this. At another, he states that "he" said this, referring to

Brewer eventually capitulated and turned the car around, heading for the cemetery.

The cemetery was circular, with a dirt road with trees around it that went straight through it, and then curved at a loop. On the corner of a stone road which leads into the dirt road, there is a home with a security light on the outside of it.[25] The group drove the car to the back of the center road. According to Brewer, he did not get out of the car. Rather, McDonald, Harper, and Perez got out of the car and removed Mrs. Smith and her cane from the trunk.[26] During this time, the car's windows were up, with the heater running. Brewer could not hear what anyone in the group was saying. He could sort of hear Mrs. Smith through the car as the trunk was opened. All he heard was her kind of whimpering, perhaps crying.[27] Mrs. Smith was

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Harper.

[25] Brewer did not know whether the house was occupied and the light lit when the group drove past it. When asked whether the distance from the house to where Mrs. Smith was left was the distance of a football field, Brewer responded that it was not that big. When asked whether it would take Brewer three minutes or less to walk that distance, he responded affirmatively.

[26] On cross-examination, Brewer stated that the cane was in the backseat of the car the entire time the group possessed the car. It was not, however, there the day the group left Mrs. Smith in the cemetery. Therefore, Brewer assumed that the cane was left with Mrs. Smith in the cemetery.

[27] On cross-examination, Brewer admitted that when he testified in McDonald's reverse amenability hearing, he first stated that he heard nothing, and then later stated that he heard whimpering and crying. Brewer was also directed to prior testimony where he claimed at first that he could not see Mrs. Smith as the group pulled away, and then later stated that he could see her.

When asked, Brewer denied that anyone in the group threatened Mrs. Smith or did anything to try and hurt her. At the point that she was on the ground, Brewer did not know Mrs. Smith's condition. He did not know if she was hurt, or if there was anything wrong with her.

placed somewhere on the outside of the passenger's side of the car. As the group drove away, Brewer saw Mrs. Smith laying on the ground.[28] Brewer could not tell if she was making any attempt to get to her feet.[29] He also did not know how some of her belongings got to the front gate of the cemetery. Brewer was also familiar with the cemetery and knew it was a dark place.[30] The time was around 9:00 or 10:00 p.m. The temperature was cold enough for the group to be wearing jackets.[31] After they left her, the group had no thought to call 911, or drop Mrs. Smith off in a more well-lit, populated place.[32]

The group returned to the Days Inn, staying there for the rest of the night. The

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When asked on cross-examination whether he thought Mrs. Smith, upon being left in the cemetery, was intoxicated, insane, or suffering from a mental health issue that would make it difficult for her get herself of the cemetery and up to the road, Brewer responded negatively.

[28] Defense counsel thoroughly explored the fact that Brewer did not look to see where Mrs. Smith was actually placed. Brewer also affirmed that he did not know whether Mrs. Smith had her medicine bag or cane with her.

[29] Brewer admitted that he only saw Mrs. Smith for a few seconds.

[30] On cross-examination, Brewer agreed that although it was dark, the road could be seen and followed.

[31] On cross-examination, Brewer agreed that the weather was chilly, but not freezing.

[32] Brewer stressed that he did not want to leave Mrs. Smith there, but he was not thinking. He did not think Mrs. Smith would die in the cemetery; but he did state that anything could have happened to her. He was aware of this when the group left Mrs. Smith. Defense counsel, however, pointed out that Brewer knew a house was a short walk away from where Mrs. Smith was left, and that Brewer did not believe Mrs. Smith to be intoxicated or insane, or that someone was in the cemetery who would harm her. Brewer also knew that Mrs. Smith had gotten out of the trunk on two prior occasions without much assistance.

next day, the four checked out of the room and went to a nail salon in Seaford for the girls to get their nails manicured. Brewer was in the salon, as well, and saw them pay for their manicures in cash. After the nail salon, the group drove around Coverdale, and picked up Deniaya.

Brewer did not believe that Mrs. Smith wanted to be in the trunk of her car. Brewer also did not believe that she wanted to be left in the cemetery. When asked why he did not do things differently, Brewer responded "I don't know if it was because of the girl, [McDonald]. I don't know if I got feelings for her or what. I don't know why I didn't leave and tell somebody."[33] When asked on cross-examination what he was thinking through all of this, Brewer responded "I wasn't thinking."[34]

According to Brewer, Perez never drove the car, nor did she try to drive the car. The other youths, at one point or another, drove the car. Perez also never revealed her age to Brewer. Brewer also agreed that in terms of everything that happened in Coverdale, such as buying marijuana, Perez did not have any connections to or knowledge of Coverdale. Also, as far as Brewer knew, McDonald was responsible for the group getting together the day Mrs. Smith was kidnapped.

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[33] October 16th Hearing at D-82:17–20.

[34] *Id.* at D-123:22. Brewer also stated that he and Harper knew it was wrong that Mrs. Smith was in the back of the car; but they were not afraid for her safety.

Discussion

Reverse Amenability

Juvenile crimes are usually a matter for the Family Court.[35] This Court, however, maintains original jurisdiction over a juvenile who commits specifically enumerated crimes.[36] But this Court's jurisdiction is not absolute.[37] Under 10 *Del.*

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[35] *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)).

[36] *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 . . . .").

[37] *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")[38] 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.[39] 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.[40] The Court may consider other relevant factors as well.[41] The purpose of this Court's determining a juvenile's amenability

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> 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).

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

[40] 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).

[41] *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.[42] 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."[43]

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 Perez will be convicted of the crimes charged.[44] 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.[45]

Kidnapping in the First Degree ("kidnapping 1st") is one of the crimes with which Perez is charged. Therefore, this Court maintains original jurisdiction over her case. Perez's statutory reverse amenability hearings were held on September 5,

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[42] *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)).

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

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

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

October 2, 3, and 16, 2013. The parties submitted memoranda for decision on January 31, 2014. In applying the Section 1011 factors in order to decide where Perez will best be tried, the Court considers evidence presented at both the fact hearing and Perez's subsequent reverse amenability hearings.

Section 1011 Factors

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

Perez 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 Perez can be tried in this Court. She first asserts that when this Court maintains jurisdiction over juvenile crimes, the crime usually involves death or threat of death, rape, or robbery involving a weapon.[46] A kidnapping charge, Perez claims, usually is concomitant to a more serious charge.

Perez next claims that the State cannot establish the elements of a kidnapping 1st charge. A kidnapping 1st charge requires that the victim not voluntarily be

[46] Perez provides a string of citations in which this Court maintained jurisdiction over a juvenile's crimes. The charges in those various cases ranged from Murder in the First Degree, Unlawful Sexual Penetration in the Second Degree, Murder in the Second Degree, and Unlawful Sexual Contact in the Second Degree. (citations omitted). In *State v. Caldwell*, 1999 WL 743925 (Del. Super. Sept. 17 1999), a case in which the Court denied the juvenile-defendant's Motion to Transfer to the Family Court, the juvenile-defendant was charged with one count of Kidnapping in the Second Degree. This charge, however, accompanied various other charges, including one count of Robbery in the First Degree and one count of Possession of a Firearm During the Commission of a Felony.

released "alive, unharmed and in a safe place prior to trial."[47] The evidence established that Mrs. Smith was released voluntarily and alive. Furthermore, Perez claims that no evidence suggests that Mrs. Smith suffered any harm, with the exception of minor injuries, which occurred after her release and required minimal medical treatment. She cites *Tyre v. State*, a case in which the Delaware Supreme Court affirmed the defendant's conviction for, *inter alia*, kidnapping 1st.[48] In that case, the Court found evidence of harm justifying the charge. In contrast, Perez argues that in her case, there was no evidence that Mrs. Smith was seriously injured. Mrs. Smith was not physically attacked or assaulted, with the exception of having her car keys pulled away from her and being lifted in and out of her trunk. Nor was a weapon ever used in handling her. Additionally, Perez argues that the kidnapping 1st charge cannot stand because Mrs. Smith was released in a safe place prior trial. The cemetery where she was left, while remote, sat directly next to a paved roadway with

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[47] 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.").

[48] *See* 412 A.2d 326 (Del. 1980). Perez also points out that the Court in *Tyre* noted that both sides agreed that the defendant's leaving the victim in a culvert, where he had dragged her before sexually assaulting her, constituted the defendant's leaving the victim in a "safe place" for purposes of the kidnapping 1st charge.

an adjoining house, and other residences nearby.

Perez concedes that the alleged facts of this case are, viewed objectively, outrageous. She stresses, however, that her age deserves some consideration, arguing that young offenders do not fully appreciate the ramifications of their actions, and are considered, because of their age, capable of rehabilitation through maturity, regardless of the severity of their crimes.[49] Indeed, the United States Supreme Court has recognized this principle on multiple occasions in recent years.[50] Perez claims that her behavior was a fleeting example of her untamed youth, and not evidence that she is beyond help.

Regarding her prior record, Perez claims that her criminal history is minor,

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[49] Perez accuses the State of overdramatizing the circumstances of Mrs. Smith's kidnapping and Perez's past disciplinary isses, yet oversimplifying her current needs and future.

[50] Perez cites *Miller v. Alabama*, 132 S.Ct. 2455 (2012) ("[C]hildren are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform . . . they are less deserving of the most severe punishments. [*Roper v. Simmons* and *Graham v. Florida*] relied on three significant gaps between juveniles and adults. First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable ... to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." (citations omitted) (internal quotation marks omitted) (brackets omitted)); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005) for this proposition.

These cases, while instructive, deal with the *sentencing* of a juvenile offender, rather than a juvenile offender's *amenability*. These are two separate issues.

especially in comparison to the current charges. She recites the relevant evidence of her troubled past, which was a mix of disciplinary problems and criminal behavior. Perez also explains the treatment, or lack thereof, that she has received. The Court summarizes Perez's iteration of her history below. This history is relevant to both this Section 1011 factor, and the Section 1011 factor dealing with her rehabilitative treatment and response thereto. For efficiency purposes, the Court mentions it only in this section of its opinion.

Perez came to the United States from Mexico illegally with her mother and other relatives when she was 8-years-old. She attended elementary school in Milford, but had to repeat the third grade because of trouble with the English language. She did, however, successfully complete the fourth and fifth grades. In the sixth grade, Perez became involved in disciplinary issues, including truancy and vandalism, although she completed that grade.

In the seventh grade, Perez was arrested for Burglary in the Third Degree and Theft for an incident in December 2010 in which a high school student's book bag and its contents were stolen from a car. In January 2011, Perez pled guilty to amended charges of Theft Misdemeanor and Criminal Trespass in the Second Degree, and was sentenced to one year supervised probation, which she successfully completed. Also during this time, Perez was investigated for a vandalism incident in

which she and some friends wrote their names in wet concrete on a new sidewalk on a school's property. No charges were brought against her for this.

Perez failed the seventh grade. Because of her continuing disciplinary problems in school and truancy, she attended SCOPE, the alternative school, in order to repeat the seventh grade. Although she completed the program, she remained at SCOPE because she was two grades behind where she should have been. Perez completed the seventh, but not the eighth grade. Her behavior was not stellar at SCOPE. She repeatedly ignored the school's cell phone policy, and argued with authority figures. On one occasion , Perez and another girl failed to place their cell phones in a lock box at the school's entrance, per a school rule. When confronted, the girls became disorderly and began cursing at teachers and staff. A police officer was called in to speak with the girls about the consequences of their behavior.[51]

While at SCOPE, Perez successfully completed programs dealing with anger management and emotional skills building. She also completed a conflict resolution program. Perez's mother, however, never followed through with an offer of individual counseling with a psychologist. At one of her reverse amenability hearings, a social worker who worked with Perez testified that she believed that Perez

[51] The State notes that SCOPE officials calling the police about a student, which occurred in Perez's case, is a rare occurrence.

needed more intensive counseling based on the social worker's performance of a "Teen Screen," a test which, when performed on Perez, showed evidence of depression, anger, frustration, and low self-esteem. The counselor also implored probation officials to seek judicially-ordered treatment, but was unsuccessful.

In March 2012, Perez was arrested for Shoplifting. She pled guilty and was sentenced to a higher degree of probation than her 2011 conviction. Her probation officer performed an assessment on her, which showed that Perez had antisocial friends, lack of positive adult relationships outside of family, lack of close relationships within her family except with her mother, and inconsistent and insufficient discipline from her mother. The assessment also demonstrated Perez's depression, lack of self-esteem, and alcohol and drug abuse. Based on this assessment, Perez's probation officer referred her to Psychotherapeutic Children's Services ("PCS"). A social worker with PCS met with Perez bi-monthly. Eventually, however, Perez began to miss appointments and had a problem with doing her required community service hours. She was also having disciplinary and attendance problems at SCOPE. The PCS social worker also explained difficulty contacting and meeting with Perez and her mother. Perez points out that her mother is Spanish-speaking only. However, all attempts to contact and involve Perez's mother in her daughter's treatment were in English, with a translator rarely being involved.

The PCS social worker arranged for Perez to meet with a drug and alcohol counselor. The counselor met Perez in August 2012 and then scheduled counseling sessions in Perez's home. The counselor went to the Perez home and no one answered. She also tried unsuccessfully to contact Perez. She did not meet with Perez again until November 2012 at an after-school counseling program at SCOPE. At SCOPE, the counselor noticed a change in Perez for the worse. She "saw a broken child."[52] The counselor recognized that Perez's issues were replete, including the tribulations of life as an illegal immigrant. According to the counselor, Perez was in need of intense treatment.

In November 2012, because of continual behavior problems, missed meetings, and failure to complete community service, the PCS social worker referred Perez back to her probation officer. Beginning in 2013, Perez's probation officer met with Perez three times. The probation officer also experienced language problems while working Perez's case, even though the probation officer herself spoke Spanish.

In November 2012, Perez was also arrested for a charge of Offensive Touching, involving a brawl with another girl at that girl's home. Perez pled guilty in February 2013 and received the same level of probation she had received for her 2012

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[52] Reverse Amenability Hr'g, *State v. McDonald*, I.D. No. 1304002931, at B-61:14 (Del. Super. Oct. 2, 2013) (TRANSCRIPT).

Shoplifting conviction. For this conviction, she was transferred to a different probation officer who was intended to provide a higher degree of supervision. This probation officer also had difficulty reaching Perez's mother. He also did not have any contact with Perez until March 7, 2013, on which day Perez was arrested for Possession of Marijuana at Milford Central Academy ("Milford Central"), resulting in suspension.[53] The probation officer had no further contact with Perez. At one of Perez's reverse amenability hearings in this case, this probation officer testified not only as someone with experience with working with Perez, but also as a spokesman for the Delaware Division of Youth Rehabilitative Services ("DYRS"). He stated that, to date, Perez had not received the full benefits of DYRS's treatment, but that she would receive such benefits if her case was transferred to the Family Court. He also agreed that DYRS could provide Perez with the help that she needs.

The Court also heard testimony regarding two incidents involving both Perez and McDonald. The first incident occurred in February 2013. One day, Emna Alvarado ("Ms. Alvarado") brought her car to her friend Karen Perez's ("Ms. 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.

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[53] This charge was apparently prosecuted by summons and eventually dismissed.

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. Ms. Alvarado spoke to Perez's mother about the incident, and spoke to Perez herself at one point, who told Ms. Alvarado that she did not have the car but would instruct that it be returned quickly. At the time of her testimony, Ms. Alvarado's car had not been found. A woman named Brenda Castillo ("Ms. Castillo") 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. In March 2013, Perez's mother gave Ms. Alvarado $500 for towing and storing the car.

Perez identifies the theft of Ms. Alvarado's car as a missed opportunity for authorities to intervene in her life. She points out that the authorities had her identity. No steps were taken at this point, however.[54] A short time after this incident, the kidnapping of Mrs. Smith occurred.

The Court also heard testimony of an incident occurring after the theft of Ms.

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[54] Perez was formally arrested for this incident in May 2013, and adjudicated delinquent for Theft of a Motor Vehicle, a class G felony, in June 2013. Sentencing awaits the Court's ruling on this Motion.

Alvarado's car. 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 one Jermaine Roberts ("Roberts"), who was 20-years-old. Harper, Perez, McDonald, and Brewer were all in the car as well. Because the crime began in Milford, the matter was turned over to the Milford Police Department. Ultimately, the four juveniles were released without consequence.[55] Perez labels this incident another missed opportunity for appropriate services to intervene in her life.

The State responds to Perez's preliminary claim that this Court lacks jurisdiction over her by pointing out that a kidnapping 1st charge requires that the victim not voluntarily be released "alive, unharmed *and* in a safe place prior to trial."[56] While Perez and her co-defendants may have released their captive voluntarily and alive, Mrs. Smith was neither unharmed nor in a safe place when she was released. She suffered both physically and mentally throughout her ordeal. The

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[55] Roberts was the only individual eventually charged in relation to this incident.

[56] 11 *Del. C.* § 783A (emphasis added).

fact that very little physical force was used on Mrs. Smith only shows the ease by which the youths subdued her. Furthermore, she was essentially dumped in an isolated cemetery without sustenance or medication at night in 30-degree weather.[57] Such a scenario clearly justifies a kidnapping 1st charge.

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

Concerning the nature of Perez's prior record, the State also iterates Perez's past criminal and behavior problems, including the incidents involving the theft of Alvarado's car and the Honda with the back window smashed out.[58] The State also mentions other past instances in which Perez got into trouble. For example, at around 3:00 a.m. on March 18, 2012, two officers with the Milford Police Department observed two females walking along the road, one female holding the other one up,

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[57] Perez notes that Mrs. Smith's ordeal lasted approximately one and half days (from the afternoon of Sunday, March 18, 2013, to the evening of Monday, March 19, 2013). She also notes that Ms. Edwards, the woman who found Mrs. Smith in the cemetery, stated that she found Mrs. Smith wearing a winter coat. Additionally, Perez stresses that Mrs. Smith suffered no physical injury or harm throughout her ordeal.

As to whether Mrs. Smith was released in a safe place, Perez stresses that Mrs. Smith was left in the cemetery with her cane and medicine bag. Mrs. Smith was also fully clothed. Furthermore, a residence was located a short distance from where she was left. Mrs. Smith did not find the residence, which may be a result of her dementia; but Perez argues that the juveniles had no knowledge of her ailment when they released her.

[58] Perez counters that, with the exception of the 2010 incident involving the theft of the book bag, all of her encounters with the criminal justice system have been for misdemeanor offenses. She posits that this Court and the Family Court have in the past encountered juveniles who had much worse histories than herself.

keeping her from falling. The officers made contact with the girls. The one slumping down was 14-year-old Perez. Perez stated that she had been to a house party in the area, where she drank alcohol. She was asked to blow into a breathalyzer, revealing her blood alcohol level to be .072. She was therefore arrested and given a criminal summons for underage consumption, which was later dropped.

The State mentions another incident in July 2012. On a particular occasion, police were investigating a string of car break-ins and came in contact with Perez and two other juveniles, roaming the streets in the early hours of morning without adult supervision.[59] The State also refers to two other incidents in which a former friend of Perez's became the subject of Perez's negative attention.[60]

The Court finds that the State can make out a *prima facie* case of kidnapping 1st against Perez, thus triggering its jurisdiction. As stated in the statute, kidnapping

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[59] Perez counters that on cross-examination, the officer who described this event admitted that he was not the officer that had contact with Perez, did not know where or when this contact occurred, did not know Perez's demeanor or whether she had an explanation during this event, and did not know whether her mother was contacted.

[60] The girl, Chastity Mosely ("Chastity"), and her mother testified at one of Perez's reverse amenability hearings. According to Chastity's mother, she came home one day and found Perez and other juveniles in her front yard. They would not leave; and Perez, allegedly, threatened to go into the house and engage in fisticuffs with Chastity. The police were called; and Perez and the others were told to leave. Perez was also told not to walk on the same side of the street as Chastity's house.

A Milford police officer testified that on a different occasion, Chastity's older sister called the police to report that Perez was following Chastity down the street and harassing her. The Mosely family did not want Perez arrested, but told to leave Chastity alone or face being arrested. The police so warned Perez.

1st involves the defendants' "not voluntarily releas[ing] the victim alive, unharmed *and* in a safe place prior to trial."[61] These requirements are inclusive, in that they *all* must be met. Mrs. Smith was released by her captors voluntarily and alive; but she most certainly was not unharmed and in a safe place, having been abandoned in a cemetery without food, water, or methods of communication or transportation. Perez seems to equate "harm" for purposes of a kindapping 1st charge with the infliction or causation of physical injury. In *Tyre v. State*, to which Perez cites, the Delaware Supreme Court discussed the issue of "harm" in the context of a kidnapping 1st charge:

> [T]he defendant claims the evidence at trial was insufficient to show the victim had been harmed and thus insufficient to justify the verdict of kidnapping in the first degree. We find the evidence was sufficient to justify the conclusion that the victim was harmed. Eliminating the charges rejected by the jury, the testimony is undisputed that the victim removed her clothes and her testimony was to the effect that this was done, after physical capture, at the defendant's order accompanied by a punch in the mouth corroborated by a cut lip. There was medical testimony as to definite emotional distress including crying and evidence of discoloration and scratches on the victim's back, discoloration to knees and a bruised hip. In short, we think there was evidence from which the jury could find substantial harm resulting from nonconsensual events on the victim's part. She was attacked from behind, dragged down a hill, forced into a culvert, forced to remove her clothing and then was assaulted in some degree sexually.[62]

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[61] 11 *Del. C.* § 783A (emphasis added).

[62] 412 A.2d 326, 329–30 (Del. 1980).

The *Tyre* holding did not rest on the infliction of physical injuries alone (*i.e.* on the cut lip, discoloration, and scratches on the victim's back). Rather, the Court looked at the entire set of circumstances surrounding the victim's ordeal, and determined that a jury could conclude that the nonconsensual events inflicted on the victim could constitute substantial harm. The nonconsensual events in this case are comparable to those endured by the victim in *Tyre*. The evidence shows that after a struggle with Perez and McDonald for her car keys, Mrs. Smith was physically captured and taken, or rather stored, in the trunk of her car against her will. During her captivity, she was provided nothing, and was forced to urinate on herself. Upon release, she supposedly cried or whimpered, thus showing that she suffered emotional distress. Therefore, Mrs. Smith suffered harm for purposes of a kidnapping 1st charge.

Additionally, the Court finds that even if Mrs. Smith could be considered unharmed, she was not released in a "safe" place prior to trial for purposes of the kidnapping 1st charge. In *Tyre*, the parties conceded that the culvert in which the victim was left constituted a safe place.[63] Here, the parties do not so concede. Mrs. Smith was released by her captors in an isolated, dimly-lit cemetery. Such cannot be

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[63] *Id.* at 328 ("While there were differences in the testimony of the victim and the defendant as to the victim's departure from the scene, each version indicates the victim left the defendant's company on the night in question at the scene and there appears to be no dispute that it was a safe place in statutory terms.").

considered a safe area. The fact that a residence was located within a short walking distance of the cemetery is irrelevant. The fact that Mrs. Smith could have, theoretically, come into contact with another human being before being ultimately discovered the next morning does not render her drop-off point safe. Indeed, Mrs. Smith remained in the place where she was left until Ms. Edwards fortuitously encountered her. Because the State can make out a *prima facie* case of kidnapping 1st against Perez, the Court applies the Section 1011 factors.

Regarding the first Section 1011 factor, the alleged facts of Perez's offenses are, to say the least, troubling. Although perhaps the most passive, easily manipulated player in this episode, Perez, as impetuous and prone to peer pressure as she may have been, engaged in a course of conduct lasting over 24 hours that 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]."[64]

Most significantly, during one of Perez's reverse amenability hearings, the Court learned from Brewer one alleged fact that it finds particularly shocking. According to Brewer, dumping Mrs. Smith in the cemetery was not the initial

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[64] *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).

intention of Perez and McDonald for their prisoner:

> Q: At some point, did you all decide to do something with [Mrs. Smith]?
>
> A: *When we left the hotel – it was at night to go out to Coverdale – we was riding, like – we was riding through Concord. And, like, that's when* [*Perez*] *and* [*McDonald*] *brought up the fact, like, we should burn the car while she was in it.*
>
> Q: Did they have a specific plan that they talked about?
>
> A: *I think they said they would take them to Milford, like, and burn the car while she was in it.*
>
> Q: So when they went home to Milford, they would set the car on fire –
>
> A: Yes.
>
> Q: – and then leave her in the car when they did that?
>
> A: Yes.[65]

Brewer further discussed this topic in his direct examination:

> Q: [D]o you specifically recall today who first mentioned the idea of setting the car on fire with M[r]s. Smith in it?
>
> A: Yes, it was – *I think it was* [*Perez*].
>
> Q: Where was everybody sitting in the car when this discussion was taking place?

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[65] Reverse Amenability Hr'g, *State v. Perez*, I.D. No. 1304002943, at D-71:21–23; D-72:1–14 (Del. Super. Oct. 16, 2013) (TRANSCRIPT) (emphasis added).

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

Q: Did [McDonald] and [Perez] talk about this idea or – I mean, what was said?

A: I think it was just out of the blue. Like, *they just said,* [*w*]*hen we go back to Milford, we should set the car on fire with her in it.*

Q: Okay. What prompted that conversation, what was going on immediately before that was said?

A: I don't know. They just, like – they just said it.
. . . .
I think they'd have never told us the lady was in there if the car hadn't died.[66]

Brewer further discussed this topic on his cross-examination:

Q: All right. Now, the version of events that you described to the Court today and in your taped statement, that version of the four people involved, you'll agree, it makes you look the best? It makes you look like the hero of the bunch, doesn't it?

A: I guess.
. . . .

Q: All right.
And it makes you look like the hero because you prevent [Perez] and [McDonald] from coming up with some sort of a plan – *some kiddy plan to hurt this old lady by burning up her car*; isn't that correct?

A: Yes.
. . . .

[66] October 16 Hearing, at D-80:21–23; D-81:1–20.

Q: And your relationship with . . . Perez, you really have no relationship with her at all, do you?

A: No.

Q: You've never met her before?

A: Besides this time, no.[67]

Brewer further elaborated on this issue in his cross-examination:

Q: All right. Now, the discussion about, we should burn the car with her in it, when you're asked about that, you said "I think [Perez] said it."?

A: Yes.

Q: All right. Do you 100 percent remember [Perez] saying it; do you remember [McDonald] saying it; or they both came up with it at about the same time?

A: *I remember hearing* [*Perez*] *saying it.*

Q: Okay. And when it was said, it was in response to what, what was the conversation? What was going on?

A: *They just said it out of the blue, like,* [*w*]*hat should we do? That's when* [*Perez*] *was like,* [*w*]*e should take her to Milford and burn the car while she was in it.*

Q: All right. Now, did anybody do anything to try to accomplish that?

A: No.

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[67] *Id.* at D-92:9–15; D-93: 1–2, 15–20 (emphasis added).

Q: All right. Did anybody even say it another time? Was it even brought up a second time?

A: No.

Q: In fact, immediately after that, the next thing that's said is, [h]ey, there's the cemetery. Let's stop over there. And that was Harper's idea; right?

. . . .

Did you see them plan anything; take any steps to make a plan; take any steps to accomplish that plan? Did they do anything besides, some kid said it and another kid agreed?

A: *I'm saying, if they can kidnap a lady, like what should stop them from burning her in the car?*

Q: All right. You kidnapped a lady. What's to stop you –

. . . .

– from burning her in the car?[68]

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

Q: You testified that you believed it was [Perez] who, in fact, said that they should burn the car with M[r]s. Smith in it?

A: Yes.

Q: What makes you think it was [Perez] rather than [McDonald] who said it?

A: *Because I knew her voice. I just heard her say it.*

Q: *You heard her say it and you knew her voice?*

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[68] *Id.* at D-146:13–23; D-147: 1–17, 23; D-148: 1–8, 11. A few moments later, Brewer was asked whether this was a fleeting idea, and he responded that he did not know.

A: Yes.[69]

Brewer's alleged disclosures are appalling.[70] 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,[71] weighs heavily in favor of trying Perez in this Court.

Furthermore, as extensively demonstrated throughout her reverse amenability hearings, Perez's past is fraught with unruly behavior, some of which resulted in run-ins with the criminal justice system. The Court is not insensitive to the problems, both internal and external, which Perez has faced in the past and continues to face.

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[69] *Id.* at D-155:4–14 (emphasis added).

[70] 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.

[71] The Court notes the alleged offering of food to Mrs. Smith during the ordeal. As this was done by McDonald rather than Perez, the Court does not find it relevant here.

At some point, however, the culpability of Perez's own actions throughout this episode must be recognized. She was not a girl who did not know what she was doing. She might have had cognitive problems and a troubled past; but she was an equal participant throughout this ordeal. Moreover, according to Brewer, it was Perez who came up with the idea of burning Mrs. Smith alive in her car. Be that an admission resulting from cognitive underdevelopment and unstable external forces, the Court concludes that it strongly supports trying Perez in this Court. This is not a case involving a juvenile's immature, cognitively unstable childish misdeeds. This is a case involving a juvenile's immature, cognitively unstable violent criminal behavior.[72]

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[72] Indeed, under Delaware law, kidnapping 1st is a violent crime, as is Robbery in the First Degree. 11 *Del. C.* § 4201(c). *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 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.")).

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

Perez stresses that all who have worked with her agree that she needs help, and that the circumstances of her life have not afforded her an adequate opportunity to receive the appropriate help that she needs.

The State points out that, according to a school resource officer in the Milford School District, Perez had visible disciplinary problems. The principal at SCOPE testified that Perez's performance while at the school varied, with the cell phone incident described above leading to the very infrequent measure of a three-day out-of-school suspension. Eventually, due to lack of progress, Perez left SCOPE. Perez also spent a lot of time with SCOPE's social worker, who referred Perez to the services of a psychologist which ultimately went unutilized. Perez also met with a drug and alcohol counselor once in August 2012, but never followed up with scheduled appointments. The counselor met with Perez again in November and December 2012, encouraging Perez's mother to contact a service which provided low-cost services to Hispanic people, to no avail. The Dean of Students at Milford Central testified that, while at that school, Perez's behavior would culminate in the issuance of over 100 demerits, well over the 30-demerit norm. In fact, Perez's behavior at Milford Central caused her to be sent to SCOPE. Upon returning from SCOPE back to Milford

Central, she continued to be a disciplinary problem, ultimately leading up to the March 2013 incident involving possession of marijuana in school.

The State iterates that Perez's 2011 convictions of Theft Misdemeanor and Criminal Trespass in the Second Degree placed her under the guise of DYRS, during which she completed the Project Redirect Program. Her 2012 conviction for Shoplifting caused her to be placed on probation again with DYRS. During that probation, her performance on an evaluation caused her to be referred to a program through a company contracted with DYRS which provides psychological services. Because of Perez's failure to perform her required community service hours, she was released from that program and returned to DYRS. Perez's 2013 conviction for Offensive Touching caused her again to be placed on probation with DYRS. Her probation officer that time tried to meet with Perez and her mother at home, but to no avail. He arrived at Milford Central to meet her on the very day Perez was arrested for the marijuana incident at the school.

The State points to the testimony of Perez's probation officer at Stevenson House, where Perez is currently placed. Perez's behavior there is average; and she is performing well academically. The probation officer did claim, however, that Perez may not take things seriously at times. The probation officer stated that Perez does not appear to appreciate the severity of her conduct or the resulting

consequences.

The Court finds that this factor also weighs against Perez. Perez has been on probation for various offenses several times, and is no stranger to the work of DYRS. As demonstrated at the reverse amenability hearings, however, it does not appear that past efforts to curb her behavior have been successful. Perez strenuously asserts that the treatment she has received has been inadequate, and that DYRS has committed itself to providing her the proper treatment if permitted. The Court is not convinced, however, that placing all of the blame on the inadequacy of her past treatment, while understanding her own efforts to respond to that treatment should sway this factor in Perez's favor. The simple fact is that in the last few years, prior to this incident, Perez found herself in trouble and never changed her ways. The principal blame must fall on the offender herself. Furthermore, it seems that Perez's biggest success to date comes from being incarcerated at Stevenson House as the result of being charged with five felonies.[73]

(3) Interests of Society; Interests of Perez

Perez claims that this element weighs in her favor by explaining the logistical

[73] *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 is aware that Perez will not remain at Stevenson House permanently.

problems with trying her as an adult. If the Court denies this Motion, DYRS immediately loses jurisdiction over her and she will be remanded to the auspices of the Delaware Department of Corrections ("DOC"). DOC, however, does not have a facility for housing female juveniles. Thus, if she were housed in an adult facility in Delaware pending her trial, or if convicted before her 18th birthday, DOC would be required, under federal law, to completely segregate Perez both visually and auditorily from the facility's adult population. Essentially, she would be in solitary confinement for roughly a year, until she turns 18. For the period of overlap in which Perez is a juvenile but being housed as an adult, she should receive some treatment for her social and psychological issues; but in an adult facility, this is a secondary concern. Additionally, she will need to be educated and socialized, thus adding to the complexity of housing her in an adult facility.

The other option is to send Perez to a facility out-of-state that houses juveniles serving adult sentences. Perez notes that a facility in North Carolina appears to be an option, but stresses that her placement there is merely speculative. Even if she were sent there, Perez claims, she could be sent back to Delaware at the will of the North Carolina facility.

An adult conviction also presents Perez with problems because of her status as an illegal immigrant. The Court heard testimony from an immigration attorney who

explained the problems that an adult conviction would pose to her from an immigration standpoint. Her convictions in this case, which will constitute convictions of aggravated felonies, will cause Perez to face an administrative removal process, and face certain deportation to her home country of Mexico. The only way Perez could avoid this would be to successfully prove that she is entitled to protection under the United Nations Convention Against Torture, which would stay, but not eliminate her chances of deportation.[74] The chances are strong, however, that Perez would be deported to her home country of Mexico. This presents the possibility that Perez will fall victim to the drug and human trafficking which occurs in her home region of Mexico.

If Perez's case is transferred to the Family Court, however, she will receive the services promised to her by DYRS, which could very well include incarceration, albeit age-appropriate incarceration. Additionally, a juvenile adjudication would not render deportation a relative certainty. She still would be subject to it, as she is an illegal immigrant. However, without adult convictions for aggravated felonies there exists many pathways for her to avoid deportation. Furthermore, under 10 *Del. C.* § 928, the Family Court could maintain jurisdiction over Perez until her 21st birthday,

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[74] Apparently, to be successful under the Convention, Perez would need to show that there existed a greater than 50% chance that she would be tortured upon her return to Mexico.

which can still include incarceration and extended treatment.

Lastly, Perez points to the testimony of Dr. Edward Wilson ("Dr. Wilson"), a psychologist who performed a comprehensive evaluation on her. According to Dr. Wilson, Perez has a slightly below average IQ, and scored very poorly in her ability to understand and use language and to think and reason through problems. Indeed, the results of one test demonstrated that Perez's ability to understand and reason equated to that of a 10-year-old. From a behavioral standpoint, Dr. Wilson explained that, based on another test, Perez's behavior is motivated by external influences, meaning that she is easily manipulated by peer pressure. This went along with her other issues, including depression and low self-esteem. Perez's personalty issues were also analyzed via psychological test, revealing Perez's introversion, self-devaluation, identity issues, impulsivity, and substance abuse. Also, although mentally competent, Dr. Wilson stated that the ability to understand and reason the severity of the charges against her and the consequences therefrom was beyond her ability. While cognitively she should be able to think abstractly, currently, she can only think concretely in terms of the impulsive black and white and right and wrong, which equates to the cognitive subset of a 10 to 12-year-old. She is also socially and emotionally underdeveloped. Regarding the former, she must be told how to feel about successes and failures. Regarding the latter, she has a significantly

underdeveloped sense of identity, thus making her very susceptible to peer pressure. Her cognitive and moral development are that of a much younger child. Perez contends that her issues cannot be adequately addressed in the adult system.

The State asserts that prior to kidnapping Mrs. Smith, Perez was an out-of-control youth who did not respond to any external assistance offered to her. Dr. Wilson himself testified that the strictures of life in Stevenson House have been beneficial for her.[75] Placement in Stevenson House would be unavailable if Perez's case were transferred to the Family Court.

Additionally, the State points out that if Perez's case were transferred to the Family Court, she will not be facing a mandatory sentence of incarceration. Instead, she might be placed on probation, thereby reentering the community.[76] If she did receive a sentence of incarceration from the Family Court, DYRS would have to send her out-of-state. DYRS currently has a contract with a facility in Indiana, which has stated that it would not be able to meet Perez's needs.[77] An adult sentence of

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[75] Perez notes that this fact is a sign that she is amenable to structured life with other juveniles.

[76] Perez counters that it is highly unlikely that a sentence from the Family Court would not contain any incarceration.

[77] The State also points out that the program in Indiana lasts for only six to nine months. Therefore, a juvenile who stays at the facility for a longer period simply repeats the program.

Perez counters that just because the facility in Indiana is reluctant should not dispose of the issue.

incarceration would result in two possibilities: (1) being housed in a Delaware facility, separate from adult inmates,[78] or (2) being sent out-of-state to a facility that houses juvenile offenders serving adult sentences. A facility in North Carolina is the currently the most promising option, as that facility is currently preparing a separate building solely for juveniles. The facility also offers educational opportunities, recreation, and mental health treatment, all of which, according to Dr. Wilson himself, would benefit Perez. Upon reaching the age of majority, Perez can be returned to Delaware to serve the remainder of her sentence.[79]

Dr. Wilson stated that it would be beneficial for Perez to confined, and that she should be confined with other juveniles. The State asserts that DYRS would need to conduct a nationwide search, as the Indiana facility will not accept Perez. The State also claims that, at best, DYRS would be able to supervise Perez until she turns 19, regardless of the progress in her treatment or whether it is safe to release her into society.

Regarding the issue of deportation, the State counters that her risk of deportation upon conviction in this Court is not too dissimilar from a her risk of

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[78] Perez states that this option is not only impractical, but dangerous to her development.

[79] Perez counters and reminds the Court that her placement in North Carolina is not certain. On the other hand, according to Perez, DYRS has committed to finding a suitable placement for Perez if her case is transferred to the Family Court.

deportation upon conviction in the Family Court, given the nature of her current charges. The State urges the Court not to forget that regardless of the forum in which her case is tried, Perez is an illegal immigrant. Even if she was treated as a juvenile and applied for asylum in the United States, Perez would still face an 80% chance of being deported.[80] Furthermore, there is no evidence that Perez or her mother would attempt to seek asylum; rather, Perez's immigration attorney's testimony regarding the options available to them was complete conjecture. The theory that Perez might have a slightly better chance of not facing deportation if her case is transferred is, according to the State, too attenuated to be considered meritorious.[81]

The State additionally notes that DYRS has stated that, if found amenable, Perez will receive their services. DYRS has not stated, however, that it is their

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[80] *See* Reverse Amenability Hr'g, *State v. Perez*, I.D. No. 1304002943, at B-162:15–16 (Del. Super. Oct. 2, 2013) (TRANSCRIPT) ("80% of asylum applications are denied."). The State also notes that, according to Perez's immigration attorney expert, the chances of deportation proceedings being commenced stemming from convictions from the Family Court on her current charges are almost certain.

[81] The State also notes the irony that, where Perez discusses the troubles that await a juvenile in her home region of Mexico, an adult sentence from this Court would keep Perez in the United States for a longer period than a Family Court sentence, thereby prolonging Perez's return to Mexico into adulthood.

Perez counters that the State fundamentally misunderstands the nature of the issue. If she is convicted in this Court, she will be convicted of aggravated felonies. Thus, deportation proceedings will begin without her being before an immigration judge. If, on the other hand, she is convicted of all charges in the Family Court, her convictions will not be considered aggravated felony convictions. Her deportation proceedings would be before an immigration judge; and she would have a great chance at staying in the United States.

recommendation that Perez be found amenable. This demonstrates, according to the State, that officials at DYRS themselves are not completely comfortable with Perez returning to them. Also, the State points out that finding Perez amenable will not vitiate many of the factors Perez herself attributes to causing her problems (*i.e.*, poverty and status as an illegal immigrant). By Perez's own admission, the services of DYRS have not helped her; yet she wishes to return to the auspices of DYRS.[82]

The Court finds that the interests of both society and Perez will best be served by keeping Perez in the adult system. It cannot be denied that Perez needs help, which must entail intense supervision. Dr. Wilson, who advocated Perez's amenability, thoroughly explained how Perez's background and cognitive abilities led to her participation in this criminal episode. Dr. Wilson could not state, however, when Perez could re-enter society, although he believed she could re-enter at some point if her needs were met. Perhaps no expert could prudently make this prediction. Indeed, Dr. Wilson attested to this fact. The Court is convinced, however, that while

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[82] Perez urges the Court to conclude that Perez never received the *appropriate* services from DYRS. She reminds the Court that she successfully completed one year at SCOPE; and a SCOPE official noted that Perez needed intensive treatment, and that probation was not helping her. Perez also claims that her treatment for alcohol and drug abuse were inadequate. Indeed, while such inadequate treatment was being provided, Perez continued to experience both internal and external problems. Indeed, from February 2013 to March 2013, when she was arrested for the marijuana incident, Perez was essentially ignored; and after that incident she was provided no treatment.

Perez stresses that she has never received the highly intensive, yet age-appropriate help that she needs and that is available.

Perez may require incarceration, the time for her rehabilitation is beyond the purview of the Family Court. Allowing for the possibility of Perez's release upon reaching18, 19, or 21-years-old, without being fully rehabilitated, is simply too troublesome a possibility for this Court to permit.[83] There is no concrete evidence that, more likely than not, Perez could be and would be fully rehabilitated by the time the Family Court relinquished its jurisdiction over her.

Lastly, the Court finds Perez's arguments regarding deportation unavailing. It is true that Perez faces immigration difficulties by remaining under the auspices of this Court. The Court agrees with the State that she faces similar difficulties if her case is transferred to the Family Court. Additionally, these concerns cannot take precedence over the nature of the charges which Perez faces.

After finding that the State can make out a *prima facie* case of kidnapping 1st and examining the Section 1011 factors, the Court's role in these reverse amenability

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[83] *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)).

proceedings is to "balance or weigh its respective findings in reaching its ultimate decision on the application to transfer."[84] 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 Perez as an adult, along with the previously discussed considerations.[85]

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

[85] *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.").

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

IT IS SO ORDERED.

/s/ Richard F. Stokes

Richard F. Stokes, Judge

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