IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	I.D. Nos. 2002010780
	)	2001013363
v.	)	
	)	
LAWRENCE HORSEY,	)	
	)	
Defendant.	)	

ORDER

Submitted: March 8, 2022
Decided: April 13, 2022

Upon Defendant's Motion to Transfer Charges to Family Court
DENIED

I. INTRODUCTION

1. Lawrence Horsey ("Defendant" or "Lawrence") is charged with two separate sets of offenses: 1) Assault First Degree, Possession of a Firearm During the Commission of a Felony ("PFDCF"), Burglary First Degree, Possession of a Firearm by a Person Prohibited, Wearing a Disguise During the Commission of a Felony, and Conspiracy Second Degree; and 2) Attempted Murder in the First Degree, Possession of a Firearm by a Person Prohibited, Wearing a Disguise During the Commission of a Felony, and PFDCF. These alleged sets of crimes occurred seven days apart from one another: the first set on January 12, 2020, and the second on January 19, 2020.

2. A reverse amenability hearing was held over the course of several months:[1] on November 22, 2021, January 19, 2022, and January 25, 2022. At the end of the hearing, the Court asked for briefing on three succinct legal issues and received Defendant's final response on March 8, 2022. Upon consideration of the parties' written submissions, evidence presented at the hearing, and oral argument, Defendant's motion to transfer charges to Family Court is **DENIED**.

II. FACTUAL AND PROCEDURAL HISTORY

A. First Charged Offense—January 12, 2020

3. Detective James Wood of the Dover Police Department recited the factual history of the first charged offense (also referred to as the "first set of charges"). It is alleged that on January 12, 2020, Defendant entered the residence of the victim, William Davis (hereinafter "Mr. Davis"), with a mask on in the company of three other youth, Syrian Grant, "Scrappy," and Jamar (collectively the "four"). The incident began when an individual known as "Jay Jay" entered the home of Mr. Davis to complete a drug transaction between him and Mr. Davis. Following the transaction, Jay Jay returned to a vehicle, and after some discussion between everyone in the car, the four then exited the vehicle and entered the home of Mr. Davis wearing masks partially covering their faces. Mr. Davis recalled that the four demanded money and marijuana from him. Detective Wood testified that the four took the money and marijuana from Mr. Davis, and at least one of the individuals repeatedly fired at him, striking him multiple times. Mr. Davis was shot in the wrist, elbow, groin, and on the right side of his chest.

4. Mr. Davis made two pertinent remarks to the officers when interviewed at the hospital: first, that there were multiple guns present during the assault; and

[1] Delays were attributable to: (1) unavailability of the State's witnesses; and (2) Defendant's COVID-19 exposure paired with defense counsel's request to continue the matter for an in-person hearing when offered virtual proceedings.

second, that Syrian Grant, one of the other three individuals accompanying Defendant, was the shooter. Jay Jay told the officers that Defendant had a firearm prior to entering Mr. Davis's home, and that Jay Jay and the four had discussed Mr. Davis in the vehicle prior to the entrance of the four into Davis's home, during which discussion Defendant stated that he (Defendant) was in possession of a firearm. Additionally, Jay Jay told the officers that after the four ran back to the vehicle, one of them stated that Defendant had shot Mr. Davis after the four allegedly stole items from him.

B. Second Charged Offense—January 19, 2020

5. Detective Ryan Wright of the Delaware State Police recited the factual history of the second charged offense (also referred to as "second set of charges"). He testified that several witnesses relayed to him that there was a fight that was arranged between some females, including Defendant's sister. During the fight, Defendant allegedly pulled up in a vehicle. He proceeded to get out of his car, with a mask partially covering his face, and discharged a gun into the air three times, and then fired several shots into the victim,[2] who was fighting with his sister. One witness specifically stated to Detective Wright that he or she identified "LJ" as the shooter, which is Defendant's known nickname. The witness went on to confirm that he or she was "ten out of ten" certain that it was Defendant who had discharged the firearm.

6. Defendant was initially arrested on January 23, 2020, for the Attempted Murder First Degree and accompanying charges, and again on February 28, 2020, for the Assault First Degree and accompanying charges. A competency hearing was held by this Court on October 12, 2020. This Court issued its decision on December

[2] Detective Wright testified that the witnesses relayed to him that Defendant first shot the victim, and that she fell to the ground. Defendant then approached the victim and fired several additional shots at her while she was on the ground.

9, 2020, finding that Defendant was competent to stand trial. On May 5, 2021, Defendant filed a Petition/Motion for Reverse Amenability Hearing for the first set of charges, and on May 4, 2021, for the second set of charges.[3]

III. STANDARD OF REVIEW

7. The reverse amenability process is meant to give juveniles who are charged as adults the opportunity to provide evidence of their amenability to the rehabilitative process of the Family Court.[4] "Upon application of the defendant in any case where the Superior Court has original jurisdiction over a child," this Court must hold a reverse amenability hearing to determine if "[t]he interests of justice would be best served by . . . transfer [to Family Court]."[5] The Court will weigh the four factors[6] set forth in 10 *Del. C.* § 1011(b) in making this determination.[7]

IV. DISCUSSION

A. Fair Likelihood of Conviction

8. If the juvenile files a motion to transfer the adult charges, this Court must "preliminarily determine whether the State has made out a *prima facie* case against the juvenile."[8] To do so, the Court considers "whether there is a fair likelihood that [the defendant] will be convicted of the crimes charged."[9] The Court must find that there is a real probability "that a reasonable jury could convict on the totality of the

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[3] Defendant is represented by separate defense counsel for each set of charges.
[4] *State v. Charles*, 2021 WL 3556780, at *2 (Del. Super. Aug. 6, 2021); *see also Hughes v. State*, 653 A.2d 241, 251 (Del. 1994) ("[T]here must be some mechanism in which a child may seek a disinterested examination into the basis of the felony charge to be prosecuted as an adult.").
[5] 10 *Del. C.* § 1011(b).
[6] The Court may consider evidence of: (1) "[t]he nature of the present offense and the extent and nature of the defendant's prior record, if any;" (2) "[t]he nature of past treatment and rehabilitative efforts and the nature of the defendant's response thereto, if any;" (3) "[w]hether the interests of society and the defendant would be best served by trial in the Family Court or in the Superior Court[;]" and (4) any "other factors which, in the judgment of the Court are deemed relevant." *Id.*
[7] *Charles*, 2021 WL 3556780, at *2.
[8] *State v. Harper*, 2014 WL 1303012, at *5 (Del. Super. Mar. 31, 2014) (citing *Marine v. State,* 624 A.2d 1181, 1185 (Del. 1993)).
[9] *Id.* (citing *Marine*, 624 A.2d at 1185).

evidence assuming that the evidence adduced at the reverse amenability hearing stands unrebutted by the defendant at trial."[10] The Court's role is to "'look at the totality of the limited evidence and to decide whether it establishes a fair likelihood of conviction,' not whether there was proof beyond a reasonable doubt of the charged offense."[11]

9. Since Defendant is also charged with PFDCF and had reached the age of sixteen at the time of the alleged crimes, the relevant statute[12] requires the Court to find proof positive or presumption great that the accused used, displayed, or discharged a firearm during the commission of a felony. Specifically,

> [e]very person charged under this section over the age of 16 years who, following an evidentiary hearing where the Superior Court finds proof positive or presumption great that the accused used, displayed, or discharged a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in § 4201 (c) of this title, shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law.[13]

10. The above provision entitles a juvenile defendant to an evidentiary hearing and grants this Court discretion[14] to transfer a firearm charge back to Family Court if the Court does not find proof positive or presumption great that the juvenile used, displayed, or discharged a firearm during the commission of a felony.[15] The proof positive or presumption great standard asks whether "after [a] full hearing 'there is good ground to doubt the truth of the accusation.'"[16] If so, then "the Court

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[10] *Id.* (citing *State v. Mayhall,* 659 A.2d 790 (Del. Super. 1995)).
[11] *Holder v. State*, 692 A.2d 882, 885 (Del. 1997) (quoting *Mayhall*, 659 A.2d at 792).
[12] 11 *Del. C.* § 1447A(f).
[13] *Id.*
[14] *State v. Dunn*, 2021 WL 2434041, at *2 (Del. Super. June 15, 2021) (holding that this Court "may exercise its discretion and determine whether to retain jurisdiction" even though "State failed to establish its burden under 11 *Del. C.* § 1447A(f) to mandate Defendants be tried as adults for the firearm charge").
[15] *State v. Sharpe*, 2020 WL 119647, at *3 (Del. Super. Jan. 10, 2020) (citing 11 *Del. C.* § 1447A(f)).
[16] *In re Steigler*, 250 A.2d 379, 382 (Del. 1969) (internal quotations omitted).

in its discretion [may] conclude[] from the evidence that the State does not have a fair likelihood of convicting the accused of the . . . offense."[17]

11. Under 11 *Del. C.* § 1447A(f), the Court does not find proof positive or presumption great that Defendant used, displayed, or discharged a firearm during the commission of a felony in connection with the first set of charges, and this Court, therefore, has discretion to transfer that PFDCF charge back to Family Court.

12. As to the first set of charges: 1) Mr. Davis identified that multiple firearms were displayed during the incident; 2) Jay Jay stated that Defendant had a firearm; and 3) Jay Jay also indicated that one of the four stated, upon reentering the vehicle after the assault took place, that Defendant possessed and shot the firearm. It is important to note that the indictment links the PFDCF charge to the Assault First Degree charge, not the Burglary First Degree charge. Therefore, in making this determination, the Court does consider the contradictory testimony of Mr. Davis identifying Syrian Grant as the shooter and therefore the one who "discharged" the weapon in assaulting Mr. Davis. Mr. Davis did this following a photo-lineup and was absolutely certain that it was Syrian Grant who shot him.

13. Here, this Court is asked to determine whether or not Defendant "used, displayed, or discharged" a firearm during the commission of the felony of Assault First Degree. Hence, although it appears that Defendant may have displayed a firearm during the commission of the burglary, this Court finds that there is "good ground to doubt the truth" of whether he discharged or displayed a firearm during the commission of Assault First Degree.[18] Accordingly, the Court does not find

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[17] *Id.* at 383.

[18] This Court has held that Section 1447A(f) requires the state to establish the elements of the PFDCF charge "against *the accused*. It is not enough that these elements can be established against his co-defendant." Memorandum Opinion, *State of Delaware v. Ameer Dunn*, Crim. ID. No. 2008008165, D.I. 17, at 12 (Del. Super. Apr. 15, 2021) (emphasis in original). Hence, accomplice liability cannot substitute Defendant for Syrian Grant with respect to Grant's alleged discharge of a firearm in committing Assault First Degree. Therefore, although accomplice liability can play a

proof positive or presumption great that Defendant used, displayed, or discharged a firearm during the commission of the felony of Assault First Degree.

14. As to the second set of charges, a witness clearly identified Defendant as the shooter with "ten out of ten" certainty. There is neither contradictory testimony among witnesses, nor evidence to suggest a different shooter. Thus, the Court finds proof positive or presumption great that Defendant displayed and discharged a firearm during the alleged commission of the Attempted Murder First Degree charge and accompanying charges.

15. Regarding the non-PFDCF charges, at this juncture, a reasonable jury could convict on both sets of charges based on the totality of the evidence assuming the State's evidence stood unrebutted. However, as the State developed on the record during the hearing, Defendant's guilt relating to the charge of Assault First Degree, alongside Syrian Grant in the indictment, would more than likely fall under accomplice liability. Importantly,

> Delaware's statutory accomplice liability law has abandoned the common-law distinctions between principals and accessories and has established a two-step process for liability under companion statutes. First, title 11, section 271 provides generally, that a person is guilty of an offense committed by another person if an appropriate degree of complicity in the offense can be proved. Second, title 11, section 274 provides that, despite being criminally liable for an offense under section 271, the *degree* of the offense for which the co-defendants are guilty depends upon each codefendant's own respective "culpable mental state" and "accountability for an aggravating fact or circumstance."[19]

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role in the underlying felony related to the PFDCF charge, as will be discussed *infra*, accomplice liability cannot be taken into account in the PFDCF analysis itself.

[19] *Allen v. State*, 970 A.2d 203, 210 (Del. 2009) (internal citations omitted).

16. The Court finds that, at this time, accomplice liability is a viable theory based on the indictment and evidence presented at the hearing.[20] There is enough evidence to show that Defendant was, at least, complicit in the alleged Assault First Degree incident. It is not appropriate at this time to determine Defendant's "culpable mental state" in considering whether a lesser degree of offense would be warranted. The Court now considers the factors for transfer of the non-PFDCF charges as to the second set, and all the charges as to the first set.

B. Weighing § 1011(b)'s Four Factors

17. Under 10 *Del. C.* § 1010, when a youth is charged with the crimes of Attempted Murder in the First Degree and Assault in the First Degree, among others, a child shall be proceeded against as an adult.[21] Accordingly, "[Defendant] has lost the benefit of Family Court adjudication by statutory pronouncement, [and] there is a presumption that need exists for adult discipline and legal restraint. Hence, the burden is upon the juvenile to demonstrate to the contrary."[22] The presumption stands when weighing the factors set forth in Section 1011.[23]

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[20] *See Dunn*, Crim. ID. No. 2008008165, at 9 ("[T]he specific identification of the principal and accomplice is not a prerequisite to a finding of guilt for two persons under an accomplice liability theory." (quoting *Stevenson v. State*, 709 A.2d 619, 634 (Del. 1998))); *Ayers v. State*, 844 A.2d 304, 308 (Del. 2004) ("It is well established under Delaware law that a defendant can be indicted as a principal and then convicted as an accomplice." (citing Del.Code. Ann. tit. 11, § 275(a) (2001))).

[21] 10 *Del. C.* § 1010(a)(1) ("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.").

[22] *Charles*, 2021 WL 3556780, at *3 (quoting *State v. Anderson*, 385 A.2d 738, 740 (Del. Super. 1978)).

[23] *Id.*

1. Section 1011(b) Factor One: Nature of Present Offense and the Extent and Nature of Defendant's Prior Record

18. The first factor is a two-pronged analysis. The first prong inquires into the nature of the present offenses. The offenses in this case are manifestly serious. Defendant is facing, cumulatively, a total of ten counts, with the most serious being attempted murder in the first degree. Defendant is alleged to have been involved in the shooting of a paraplegic and, seven days later, to have shot an unarmed female. Not only were these crimes serious, but their closeness to one another emphasizes a lack of reflection and appreciation for the rights of other human beings. The first prong weighs heavily against transfer.

19. The second prong deals with the Defendant's prior record. Defendant has no adjudicated charges: however, he has multiple minor offenses[24] that amounted to PBJ's that are still pending completion of Mental Health Court. Therefore, the second prong weighs in favor of transfer.

2. Section 1011(b) Factor Two: Nature of Defendant's Past Treatment and Rehabilitative Efforts and the Nature of Defendant's Response thereto

20. Defendant has had limited treatment. Both the State and the Division of Youth Rehabilitative Services (hereinafter "YRS") effectively conceded this point, indicating that the lack of treatment was due to Defendant's competency issues.[25] However, Defendant's history of rehabilitative efforts is articulated most clearly by Defendant's retained expert, Laura Cooney-Koss, Psy.D. As she writes, Defendant

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[24] These included Shoplifting <$1,500, Assault Third Degree, and Disorderly Conduct. Psychiatric Evaluation of Laura Cooney-Koss, Psy.D. (Def.'s Hr'g Ex. 2), at 9 (Oct. 29, 2021).

[25] The YRS representative, Andrew Szymanski, testified: "He has been arrested on multiple accounts, and due to his incompetency issues, the youth adjudications have rolled into the next—without really receiving any Division of Youth Rehabilitation Services." Hr'g Tr. (January 19, 2022, a.m. session), at 20. The State, similarly, in its closing argument, stated that "because in the Family Court he was determined to not be competent, the treatment that he got was very little . . . ." Hr'g Tr. (January 25, 2022, Closing Arguments), at 18.

"presented like a tortoise. He has an extremely dense protective layer" that made it difficult for her to parse out what he was subjectively feeling versus what he had objectively experienced.[26] Nonetheless, she concedes in her report that Defendant made "dichotomous statements . . . such as not caring about his future and not wanting to change and also wanting therapy and wanting to change."[27] He indicated to Dr. Cooney-Koss that "both are true," [28] and this Court finds substantiation of this in the record.

21. For example, Defendant's mother, Ms. Sudler, reported to the court, as outlined in the ODS mitigation report, that when Defendant was participating in Mental Health Court she would schedule him for therapy at the Mind and Body Consortium.[29] However, Defendant attended only his first session and failed to continue "beyond the intake appointment."[30] In contrast, during detainment at the Stevenson House, Defendant expressed to Dr. Cooney-Koss that he "greatly enjoys" the horse therapy sessions, where he has opportunity to care for the animals.[31]

22. To further evaluate Defendant's treatment prognosis, Dr. Cooney-Koss administered the Personality Assessment Inventory-Adolescent ("PAI-A"). She writes, *inter alia*:

> With regard to treatment prognosis, Lawrence's responses suggested that he has an interest in and motivation for therapy that is comparable to that of individuals who are not currently in treatment. His responses suggested that he is [sic] likes himself, is not distressed, and therefore, sees little need for change. The results additionally indicated that it would also be more challenging to engage Lawrence in treatment

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[26] Def.'s Hr'g Ex. 2, Psychiatric Evaluation of Dr. Cooney-Koss at 15.
[27] *Id.* at 12.
[28] *Id.* (quoting Defendant).
[29] *Id.* at 8.
[30] *Id.* at 8.
[31] *Id.* at 12.

because he tends to be defensive and reluctant to discuss his personal problems.[32]

23. An additional test indicated that Defendant was in the "Middle Offender Range," placing him in the "41st percentile" regarding treatment amenability.[33] The Court notes and takes into consideration the fact—stressed greatly by Defendant—of his "society" status at Stevenson House.[34] It appears that Defendant does well at refraining from criminal activity and applying himself to his academic work within a structured setting, although some fights have ensued.[35]

24. In evaluating Defendant's treatment and response thereto, this factor is at best slightly leaning in favor of transfer solely due to the limited amount of treatment. However, both Defendant's tests and his own conduct (*e.g.*, not attending therapy sessions beyond his initial appointment) point towards the likelihood, given his laissez-faire attitude, that further rehabilitation efforts may be a waste of State resources. In addition to therapeutic measures as mentioned *supra*, Dr. Mechanick's report indicates that Defendant participates in counseling on a weekly basis with "Miss Brandy,"[36] but that Defendant stated that "I don't meet with her because I barely be talking to her . . . because I don't like talking."[37]

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[32] *Id.* at 11.
[33] *Id.* at 14.
[34] YRS explained in its report that "society" status is the highest behavioral level at Stevenson House and is achieved by accumulating points based on good behavior. *See* YRS Reverse Amenability Report (State's Hr'g Ex. 1), at 4 (Sept. 22, 2021).
[35] According to the State's retained expert, Dr. Mechanick, Lawrence stated that "one fight occurred when someone threw a ping-pong ball at him[,] and he punched the other youth in the face." The second fight occurred because a youth took a basketball from him so he "beat up" the kid.[35] Psychiatric Evaluation of Stephen Mechanick, M.D. (State's Hr'g Ex. 3), at 10 (Sept. 9, 2021).
[36] *Id.*
[37] *Id.* (quoting Defendant).

3. Section 1011(b) Factor Three: Interests of Society and Defendant

25. Dr. Cooney-Koss's report indicates that Defendant "would be considered to have a greater risk [of dangerousness] as compared to other juvenile offenders."[38] This is reflected through his test scores, where he scored in the Higher Offender Range, 64th percentile, demonstrating a "greater degree of risk as compared to other juvenile offenders."[39] Although Dr. Cooney-Koss attempted to frame these findings in a positive light during her testimony, the Court is not convinced. Dr. Cooney-Koss stated that "Lawrence sometimes engages in criminal behavior, despite having an understanding that it is not a good idea and being able to understand some consequences of his actions."[40] With that in mind, Dr. Cooney-Koss expressed that "Lawrence displayed a nonchalant attitude regarding his current charges."[41] These observations concern the Court.

26. Two primary goals of the criminal justice system are (1) incapacitating the violence-prone offender and (2) rehabilitating the offender.[42] There is arguably a greater opportunity to rehabilitate youth because of their young age and more impressionable character. However, Defendant's two sets of charges display acts of moral turpitude, and his subsequent psychiatric evaluations reveal neither remorse[43] nor self-awareness for change.[44] The sets of charges are close in time and reflect an

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[38] Def.'s Ex. 3, Psychiatric Evaluation of Dr. Cooney-Koss at 13.
[39] *Id.* at 13, 17.
[40] *Id.* at 14.
[41] *Id.* at 8.
[42] *See* 11 Del. C. § 6580(c) (providing that the goals of Delaware's sentencing guidelines include "(1) Incapacitation of the violence-prone offender" and "(3) Rehabilitation of the offender."
[43] Dr. Mechanick's report stated that "Lawrence currently shows no remorse for his actions related to his current or prior offenses." State's Hr'g Ex. 3, Psychiatric Evaluation of Dr. Mechanick at 10.
[44] Dr. Cooney-Koss indicated in her report that Defendant "did not believe he needed to change anything in himself or that his family would identify something that he needed to change." Def.'s Ex. 3, Psychiatric Evaluation of Dr. Cooney-Koss at 8.

increasingly dangerous individual who circumvents the law without regard to the human consequences. Viewing Defendant's record as a whole, even despite a lack of adjudicated charges, there are a range of offenses to which Defendant has pled *nolo contendere*, and for which he has taken PBJs. In addition, the evaluations from YRS and Dr. Mechanick indicate uncharged conduct that included Defendant participating in multiple altercations against his peers over the years.[45] Although the Court does not view these incidents as materially negative in factor two, the Court does take notice of the escalation of severity of crimes and conduct from property damage to human injury, and the danger such crimes pose to society.

27. The interests of Defendant, in some ways, as argued by counsel, are integrated into society's interest in rehabilitating offenders. However, given the reasons mentioned *supra*, and the limited time and resources[46] that could be devoted to Defendant's treatment, any rehabilitation that could be afforded by such limited treatment is outweighed as a decisional factor by Defendant's potential danger to society, especially given that the prospects of rehabilitation are not without doubt in this case. Although Defendant has displayed improved behavior in a structured setting, there is no assurance that this behavior will carry over to the more unstructured setting in which therapeutic and rehabilitative measures would be administered. Moreover, there is evidence that Defendant's drive to change lacks

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[45] *See* State's Hr'g Ex. 1, YRS Reverse Amenability Report at 5 ("The severity of Lawrence's' [sic] charges have escalated since his first arrest in 2015. . . . Lawrence has a history of being physically violent towards peers in the community."); State's Hr'g Ex. 3, Psychiatric Evaluation of Dr. Mechanick at 12 (reflecting Lawrence's tendency of violence through fights with his peers, in which Lawrence indicated he "fought just to fight"). *See also* Def.'s Hr'g Ex. 2, Psychiatric Evaluation of Dr. Cooney-Koss at 17 ("With regard to Lawrence's risk for dangerousness, due to Lawrence's history of engaging in physical altercations with others and having delinquent peers . . . Lawrence would be considered to have a greater degree of risk as compared to other juvenile offenders.")

[46] YRS testified that it would not be able to provide any residential placements for youth past the age of nineteen. Hr'g Tr. (Jan. 19, 2022, a.m. session), at 61. Therefore, as of the issuance of this opinion, Defendant would be left with less than eight months of residential placement treatment.

conviction and determination on his part. The Court is not persuaded that, even if it did transfer the charges to Family Court, Defendant would actively attempt to rehabilitate his mindset towards a healthier and less criminally divergent lifestyle.

28. Taking all of this into account, this factor weights against the transfer of both sets of charges.

4. Section 1011(b)'s Catchall Provision: Other Factors Deemed Relevant

29. If Defendant is convicted of a PFDCF charge over which this Court has already determined *supra* that it must maintain jurisdiction, he faces a minimum mandatory incarceration period of three years, *i.e.*, well beyond his nineteenth birthday.[47] Thus, as this Court has previously noted in similar cases, he "will not be spared adult court proceedings in any event, regardless of the merit of the companion charges and the prospect for rehabilitation."[48]

30. The Delaware Supreme Court has acknowledged the peculiarity of splitting charges when 1447A(f) requires that this Court retain jurisdiction of PFDCF charges. The Delaware Supreme Court wrote:

> In most cases, we envision that the Superior Court most likely will decide to retain jurisdiction over companion charges simply because the standards of joinder may so suggest. In the reverse amenability process decision as to other offenses, the Superior Court is free, of course, to take into consideration as a factor, perhaps a significant factor, the fact that the felony/firearm offense must be decided in the Superior Court and that the juvenile will not be spared adult court proceedings in any event, regardless of the merit of the companion charges and the prospect for rehabilitation.[49]

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[47] *Compare State v. Rollins*, 2021 WL 5987795, at *3 (Del. Super. Dec. 17, 2021) (applying a similar analysis as an additional factor in a reverse amenability hearing).
[48] *Id.* (quoting *State v. Anderson*, 697 A.2d 379, 384 (Del. 1997)).
[49] *Anderson*, 697 A.2d at 384.

This Court has previously looked to "basic principles of joinder under Superior Court Criminal Rule 8" in analyzing this additional factor.[50] Such principles lead this Court to conclude that Defendant's Attempted Murder First Degree charge is inextricably intertwined with his PFDCF charge, as the witnesses and background information required for the charges would be identical. Thus, it is "illogical to ask a jury to hear the firearm charge without considering the accompanying felonies, and judicial economy leads to the conclusion that all charges should remain in one court."[51]

31. With regard to the PFDCF charge connected to the Assault First Degree charge, the Court, as explained *supra*, has found that the State has not shown proof positive or presumption great. However, this does not change the Court's analysis regarding the other three Section 1011(b) factors as to the first set of charges (*i.e.*, those including the Assault First Degree charge), and for the reasons given *supra* with respect to the first three factors, the Court does not find transfer of the first set of charges to Family Court to be appropriate.[52]

V. CONCLUSION

32. The Court finds that the State has established proof positive or presumption great that Defendant used or displayed a firearm during the commission of a felony for the second sets of charges pursuant to 11 Del. C. § 1447A(f). The State has also established a fair likelihood of conviction at trial on all of the charges. Weighing the

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[50] *Rollins*, 2021 WL 5987795, at *3; *see* Del. Super. Ct. Crim. R. 8 ("Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.").

[51] *Rollins*, 2021 WL 5987795, at *3.

[52] *Cf. Dunn*, 2021 WL 2434041, at *2 (finding that transfer to Family Court was inappropriate for a defendant after weighing the three factors, despite the failure to find proof positive or presumption great as to the relevant firearm charges).

enumerated factors under 10 Del. C. § 1011(b) for both sets of charges, transfer is not appropriate. Therefore, Defendant's motion to transfer charges to Family Court is **DENIED**.

IT IS SO ORDERED.

Noel Eason Primos, Judge

NEP:tls
Via Email
oc: Prothonotary
cc: Sean A. Motoyoshi, Esquire
Deborah L. Carey, Esquire
Andre M. Beauregard, Esquire