

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PHILLIP BREWER,

Petitioner,

V.

STATE OF DELAWARE,

Respondent.

C.A. No: S25C-07-007 MHC

OPINION AND ORDER

Submitted: September 4, 2026

Decided: October 12, 2026

*Upon Consideration of Petitioner's Motion Application for Delaware Wrongful Conviction Compensation and Services Act, **DENIED.***

Phillip L. Brewer, *Pro Se.*

Daniel B. McBride, Esquire, and Robert M. Kleiner, Esquire, State of Delaware
Department of Justice, *Attorneys for the Respondent.*

CONNER, J.

INTRODUCTION

Before the Court is Phillip Brewer's ("Brewer") Motion for Compensation under the Delaware Wrongful Conviction Compensation and Services Act ("the Act").

This case involves a criminal episode that occurred in March of 2013, where Margaret Smith ("Mrs. Smith"), an 89-year-old widow, was kidnapped and locked in the trunk of her car for two days. During this time, she was denied food, water, and access to a restroom. There were four individuals involved in the criminal episode: Brewer, Rondaiges Harper ("Harper"), Junia McDonald ("McDonald"), and Jackeline Perez ("Perez") (collectively, the "Group"). Each co-defendant had a varying level of involvement in the criminal episode.

In April of 2013, Brewer was charged with Carjacking in the First Degree, two counts of Conspiracy in the Second Degree, and Kidnapping in the First Degree.¹ On September 5, 2013, Brewer pled guilty to Carjacking in the Second Degree, Kidnapping in the Second Degree, and Conspiracy in the Second Degree.² However, Brewer's charges were nolle prossed after the Supreme Court held that Brewer's co-defendant, Harper, was not criminally liable in the initial kidnapping or carjacking, as the crimes took place before Brewer and Harper were involved.³

¹ Compl., D.I. 1, at 12.

² *State v. Perez*, 2014 WL 1303146, at *1 n.6 (Del. Super. Ct. 2014).

³ Compl., D.I. 1, at 5.

Now, Brewer seeks ten million dollars in damages under the Act, alleging he was wrongfully convicted for the crimes he pled guilty to in September of 2013.⁴ This is the Court's Opinion after reviewing the facts and evidence on the record and the parties' submissions.

STATEMENT OF FACTS

I. The Facts and Circumstances Hearing

The Court held a Facts and Circumstances Hearing on July 18, 2013, to present evidence regarding the Group's involvement in the criminal episode against Mrs. Smith in March of 2013.⁵ Mrs. Smith testified at the hearing, and while she was noted to be forgetful or confused, her rendition of facts was consistent with the material facts.⁶ The facts stated hereinafter were obtained during this hearing.

On March 18, 2013, at around 2:00 p.m., Mrs. Smith left her home in Milford, Delaware to stop for ice cream and purchase a gift for her sister.⁷ Mrs. Smith was eating ice cream in her car, a 2001 tan Buick Le Sabre ("tan car" or "Mrs. Smith's car"), at the Chicken Man in Milford, Delaware.⁸ While in her vehicle, she was approached by McDonald, who was fourteen years old, and Perez, who was fifteen

⁴ Am. Mot. for Compensation, D.I. 9, at 2.

⁵ *Perez*, 2014 WL 1303146, at *1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

years old (collectively, the “female juveniles”).⁹ The female juveniles asked Mrs. Smith for a ride home.¹⁰ Initially, Mrs. Smith refused, but ultimately agreed.¹¹

One of the female juveniles sat in the front passenger seat, while the other sat in the back seat.¹² The female juveniles directed Mrs. Smith to various locations throughout Milford. After arrival to the first location, the female juveniles told Mrs. Smith that the mother was not home, and asked Mrs. Smith to drive them to a second location.¹³ At the second location, the female juveniles told Mrs. Smith that the aunt was not home, and directed Mrs. Smith to a third location.¹⁴ Upon arrival to the third location, the female juveniles asked Mrs. Smith for her car keys.¹⁵ Mrs. Smith refused. The female juveniles grabbed Mrs. Smith, and a struggle ensued.¹⁶ Mrs. Smith was then yanked out of her car and shoved into the trunk.¹⁷ The female juveniles got back into Mrs. Smith’s car and sped away at a fast rate of speed.¹⁸ Mrs. Smith hollered and knocked on the back of the trunk, but the female juveniles did not respond.¹⁹ During this episode, the female juveniles stole \$500 from Mrs.

⁹ *Id.*; see also *State v. McDonald*, 2014 WL 1316147, at *1 (Del. Super. Ct. 2014).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at *2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

Smith's purse.²⁰ Brewer and Harper were not involved in this portion of the criminal episode.

On March 19, 2013, at approximately 9:00 p.m., Trooper John Wilson, a Delaware State Police officer, received a call reporting a missing person.²¹ The caller, Sabrina Carol, reported that she had not seen her elderly aunt, Mrs. Smith, since 2:00 p.m. the previous day.²² Ms. Carol went to Mrs. Smith's house, but neither Mrs. Smith nor her purse were present.²³ Ms. Carol expressed concerns because her aunt showed early signs of Alzheimer's disease or dementia.²⁴ Mrs. Smith's neighbor reported that she saw Mrs. Smith outside of her house the previous day around 11:00am, then saw her leave the house about an hour later.²⁵ Mrs. Smith's sister spoke to her on the phone around 2:00 p.m. the previous day.²⁶ Mrs. Smith was thought to be driving her tan 2001 Buick Le Sabre.²⁷ Trooper Wilson issued a Gold Alert, which lists missing persons with mental conditions.²⁸

The next morning, on March 20, 2013, Corporal James Gooch, Jr. ("Corp. Gooch") received a call from a woman named Betty Edwards.²⁹ Ms. Edwards was

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

visiting her son's grave at the Mount Calvary Methodist Cemetery, which is east of Seaford.³⁰ She saw Mrs. Smith half-clothed and crawling on the ground.³¹ Mrs. Smith initially tried to run from Ms. Edwards, but Ms. Edwards reached her and convinced her to sit down on a tombstone.³² Mrs. Smith was wearing brown spandex shorts and a coat, but no pants or shoes.³³ Ms. Edwards called 911.

Corp. Gooch responded to the call. He found Mrs. Smith to be disheveled and confused. He noted that the cemetery was not visible from King Road and was surrounded by trees.³⁴ He took Mrs. Smith to the hospital and notified Ms. Carol that her aunt had been found.³⁵ Although she was still somewhat confused, Mrs. Smith told Corp. Gooch the details of the incident.³⁶ Corp. Gooch returned to the cemetery to look for Mrs. Smith's car because Mrs. Smith had told him that two juveniles drove the car to the top of a hill, and let it slide down the hill with the intent to run her over.³⁷ During this search, the officers were unable to locate Mrs. Smith's car.³⁸ However, they observed tire tracks indicating that a vehicle made a U-turn.³⁹ The officers also found what Trooper Gooch referred to as, "crawling marks, hands,

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at *3.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

knees, and toes.”⁴⁰ Corp. Gooch removed Mrs. Smith from the Gold alert, but kept a Gold Alert for her car.⁴¹

Later that day, Delaware State Trooper Patrick Schlimer was on patrol, and noticed a 2001 tan Buick Le Sabre with five passengers.⁴² The officer ran the vehicle’s tag and saw that the vehicle was involved in a carjacking.⁴³ Trooper Schlimer stopped the car. There were five individuals inside the vehicle: Brewer, Harper, McDonald, Perez, and Daniya Smith, an individual who had joined the Group after Mrs. Smith was left in the cemetery.⁴⁴ None of the occupants had identification.⁴⁵ Two of the three female occupants claimed the car belonged to the other’s grandmother.⁴⁶ The passengers were taken to Troop 4 for processing.⁴⁷

The police obtained a search warrant for the vehicle.⁴⁸ Among other things, the trunk contained an Ipod lamp, three jackets, five cans of unopened ginger ale, and an egg crate mattress.⁴⁹ The trunk “measured 3 feet by 9 inches from front to

⁴⁰ *Harper v. State*, 121 A.3d 24, 28 (Del. 2015).

⁴¹ *Perez*, 2014 WL 1303146, at *3.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

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.”⁵⁰

On March 29, 2021, Detective Maher and Detective Truitt Jr. went to the cemetery.⁵¹ The detectives noted that there is a residence located on both sides of King Road at the turn onto Calvary road, however, there is no signage indicating that there is a cemetery.⁵² The distance from King Road to the cemetery is 133 yards.⁵³ The area is heavily wooded, and the unpaved road is in “wretched condition.”⁵⁴ There was trash and debris all along the unpaved road.⁵⁵ A chain link gate leads into the cemetery and runs around the perimeter.⁵⁶ The detectives found tracks indicating that someone crawled over the sand, a black metal cane, a black bag containing prescription medicine, and a pair of urine-soaked jeans on the ground near the fence.⁵⁷

On March 20, 2013, Mrs. Smith and Ms. Carol went to the police to report the stolen car.⁵⁸ Mrs. Smith was interviewed and described the incident to the police officers. While in the trunk, Mrs. Smith received no food or water, and was given

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at *4.

⁵⁸ *Id.*

no bathroom breaks.⁵⁹ She also was not given her high blood pressure medication or arthritis medication, which she carried with her.⁶⁰ During her time locked in the trunk, she hollered and banged on the trunk. Mrs. Smith was forced to urinate on herself, which led her to remove her urine-soaked pants at the cemetery and leave them on the ground.⁶¹ Mrs. Smith was dropped off at the cemetery and forced to crawl around to find a road.⁶²

On April 4, 2013, Mrs. Smith was interviewed at her residence.⁶³ Mrs. Smith showed the detective the scrapes and bruises on her knees from crawling around the cemetery.⁶⁴ Her hands and lower extremities were still numb from the exposure to cold temperatures while in the trunk.⁶⁵ The temperature during the criminal episode was around mid-to-upper 30's to the mid-to-low 40s.⁶⁶ Mrs. Smith told the police that the girls threatened to kill her if she reported the accident to the police.⁶⁷

⁵⁹ *Id.* at *2.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at *4.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

At the hearing, Detective Truitt testified that he found a receipt from Walmart for clothing.⁶⁸ He also testified that the female juveniles blamed the other for the carjacking, and Brewer told him the car was stolen.⁶⁹

The Group forced Mrs. Smith to remain in the trunk for two days, without food, water, or medication, and forced her to urinate on herself. She was then dumped on the side of a remote, unpaved road in “wretched condition,” located in a heavily wooded area, with trash and debris. It was truly a miracle that Mrs. Smith survived the ordeal.

II. Brewer’s Testimony from McDonald’s Reverse Amenability Hearing on September 18, 2013, and Perez’s Reverse Amenability Hearing on October 16, 2013

As part of his plea agreement, Brewer testified and provided a play-by-play of what transpired during the two days that Mrs. Smith was held captive in the trunk of her car.⁷⁰ Initially, Brewer denied having any knowledge of the stolen car or that Mrs. Smith was in the trunk.⁷¹ He also stated that he was not in the cemetery.⁷² However, as part of his agreement with the State, Brewer testified at McDonald’s and Perez’s reverse amenability hearings. Realizing his best way to minimize his

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at *5.

⁷¹ *Id.*

⁷² *Id.*

criminal exposure, Brewer agreed to cooperate with the authorities. His recounting of the criminal episode is stated hereinafter.

Brewer testified that he had known Harper his whole life.⁷³ Brewer met Perez and McDonald a few days before the arrest.⁷⁴ Brewer met the girls when they were driving Harper around in a black/dark blue car with a smashed window.⁷⁵ McDonald was driving the car.⁷⁶ Brewer asked the female juveniles for a ride to Seaford, and the female juveniles drove Brewer to Seaford and back.⁷⁷ The female juveniles made plans to meet up with Harper and Brewer again the following night.⁷⁸

The next night, the female juveniles picked up Brewer and Harper in the same black/dark blue car to drive them to a party in Dover, Delaware.⁷⁹ However, the Group could not find the party, so they returned to Coverdale, where they picked up another person.⁸⁰ The Group then drove back to Dover, but still could not find the party.⁸¹ On their way back to Coverdale, the Group was stopped by a policeman.⁸²

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ In Perez's reverse amenability hearing, Brewer referred to the vehicle as dark blue. However, in McDonald's reverse amenability hearing, he testified that the car was black. The other details are consistent between the two testimonies.

⁷⁶ *Perez*, 2014 WL 1303146, at *5.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

McDonald initially told Brewer that the car belonged to her mother, but once the Group was stopped, she informed him that the car was stolen.⁸³

That night, McDonald messaged Brewer on Facebook, stating that she wanted to hang out with him again.⁸⁴ The next day, the female juveniles drove Mrs. Smith's car to Coverdale, where they picked up Brewer.⁸⁵ This is the beginning of Brewer's involvement in the criminal episode against Mrs. Smith. Then, McDonald, Perez, and Brewer drove to pick up Harper.⁸⁶ At this time, it was allegedly unknown to Brewer and Harper that Mrs. Smith was in the trunk. Even though the Group had been stopped in a stolen car a few days prior, Brewer testified that he believed the car belonged to McDonald's aunt.⁸⁷

Brewer testified that the Group went to a park in Coverdale, where they hung out for about thirty minutes.⁸⁸ Then, the Group went to Royal Farms, where the female juveniles purchased gas using cash.⁸⁹ Brewer testified that he knew the female juveniles had cash, but was unsure how much.⁹⁰ The Group then returned to

⁸³ *Id.*

⁸⁴ *Id.* at *6.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

the park, where they sat for a few hours with the car running, heater on, and the radio playing.⁹¹ The car battery eventually died.

Then, Brewer and Harper walked to Brewer's mother's house, which was a short distance away, to get her car.⁹² Neither Harper nor Brewer had a driver's license, but Brewer drove his mother's car back to the park.⁹³ Upon returning to the park, Brewer found someone to help jumpstart the car.⁹⁴ However, no one could locate the battery under the hood.⁹⁵ The person who Brewer found to help jumpstart the car suggested that they look in the trunk.⁹⁶ The female juveniles refused, and McDonald said her uncle would help jumpstart the car.⁹⁷ The person left.

Brewer's mother's car and Mrs. Smith's car remained at the park.⁹⁸ Brewer and McDonald went into Brewer's mom's car, while Perez and Harper went into the tan car.⁹⁹ A little later, Harper walked over to Brewer's mother's car to ask Brewer if he could borrow his phone to play music.¹⁰⁰ Brewer said no, and Harper returned to the tan car.¹⁰¹ Shortly thereafter, Harper approached Brewer again, this time to

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

tell him that there was someone in the trunk of the tan car.¹⁰² Harper and Brewer opened the tan car's trunk and found Mrs. Smith inside.¹⁰³ When Brewer and Harper asked the female juveniles why there was a person in the trunk, McDonald and Perez responded that the woman was an alcoholic, traded her car for liquor, and preferred to be in the trunk rather than sit in the back of the car.¹⁰⁴ Brewer testified that he was shocked to see the woman and that the woman told Brewer the car belonged to her.¹⁰⁵ Brewer and Harper removed Mrs. Smith from the trunk.¹⁰⁶ However, the Group decided to go to Brewer's grandmother's house, so Brewer and Harper put Mrs. Smith back into the trunk.¹⁰⁷ Brewer claims that she did not resist or ask for help.¹⁰⁸ The Group left Mrs. Smith in the trunk, and went to Brewer's grandmother's house to smoke marijuana.¹⁰⁹ Brewer drove the Group in his mother's car.

The Group stayed at Brewer's grandmother's house for several hours.¹¹⁰ Sometime that night, the Group returned to the park to search for jumper cables.¹¹¹ The Group opened the trunk and began to search for the cables.¹¹² Mrs. Smith

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at *7.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

remained in the trunk.¹¹³ Brewer testified that Mrs. Smith helped the Group search for the cables.¹¹⁴ Brewer found the cables, and Harper helped Mrs. Smith out of the trunk for the second time.¹¹⁵ Brewer attempted to jump start the car, but was unsuccessful.¹¹⁶ Harper put Mrs. Smith back in the trunk, and the Group returned to Brewer's grandmother's house for the remainder of the night, leaving Mrs. Smith in the trunk of her car once again.¹¹⁷

The next morning, the Group returned to the park with Brewer's uncle to jumpstart the car.¹¹⁸ Brewer's uncle jumpstarted the battery, but apparently, no one informed him that there was a person in the trunk.¹¹⁹ Brewer drove his mother's car to drop his uncle off at his house.¹²⁰ Then, Brewer and McDonald drove to Brewer's mother's house, where they dropped off Brewer's mother's car, and were picked up by Harper and Perez in Mrs. Smith's car.¹²¹ Brewer and McDonald got back into Mrs. Smith's car, and Brewer took over as the driver.¹²² Harper told Brewer that Mrs. Smith gave him \$100 "for the battery."¹²³

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at n.20.

¹²⁰ *Id.* at *7.

¹²¹ *Id.*

¹²² *McDonald*, 2014 WL 1316147, at *6.

¹²³ *Id.*

Then, the Group drove to the Days Inn in Seaford, Delaware.¹²⁴ The Group wanted to rent a room, however, no one was old enough.¹²⁵ The Group picked up Harper's cousin to assist the Group in renting a room.¹²⁶ The female juveniles gave cash to Harper's cousin to pay for the room.¹²⁷ Brewer and Harper drove Mrs. Smith's car to drop the cousin off at his house. Then, Brewer and Harper returned to the hotel room.¹²⁸ Mrs. Smith remained in the trunk the entire time.¹²⁹

After settling into the hotel room, Perez and McDonald took Mrs. Smith's car to Walmart to buy clothes.¹³⁰ After the female juveniles returned, the Group stayed at the hotel room for a few hours, then left to go to Coverdale to buy marijuana.¹³¹ Harper used Mrs. Smith's \$100 to purchase the marijuana.¹³² The Group purchased a lot of marijuana, which all four of them smoked.¹³³ Brewer testified that he and Harper thought it was "crazy" that they were driving the car while Mrs. Smith was in the trunk, but neither of them said that she needed to be released.¹³⁴

¹²⁴ *Id.*

¹²⁵ *Perez*, 2014 WL 1303146, at *7.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *McDonald*, 2014 WL 1316147, at *6.

The Group smoked “a fair amount of marijuana” throughout the incident, but allegedly did not drink alcohol.¹³⁵ The Group made several trips from Seaford to Coverdale to purchase marijuana. During one of these trips, the Group stopped at a fast-food restaurant.¹³⁶ McDonald asked Mrs. Smith if she wanted something to eat, in which Mrs. Smith replied that she just wanted to go home.¹³⁷ Mrs. Smith was not given food, water, or the opportunity to use the restroom.¹³⁸

During one of the trips to Coverdale, the Group discussed what they should do with Mrs. Smith.¹³⁹ According to Brewer, the female juveniles suggested that they drive the car back to Milford and burn it with Mrs. Smith trapped inside.¹⁴⁰ Brewer and Harper disagreed with this plan.¹⁴¹ Harper suggested that they drop Mrs. Smith off at a cemetery in Seaford.¹⁴² Brewer was familiar with the cemetery, and knew it was isolated and not well-lit.¹⁴³ At Perez’s hearing, Brewer testified that he wanted to drop Mrs. Smith off at the Days Inn Hotel, but the others wanted to drop

¹³⁵ *Id.*

¹³⁶ *Perez*, 2014 WL 1303146, at *8.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *McDonald*, 2014 WL 1316147, at *6.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

her off at the cemetery.¹⁴⁴ In the end, Brewer turned the car around and drove to the cemetery.¹⁴⁵ At this time, it was roughly 9:00 p.m. on Tuesday, March 19, 2013.¹⁴⁶

The cemetery was oval shaped, with a road traveling through the center toward the back of the cemetery.¹⁴⁷ Brewer drove down this road to the back of the cemetery.¹⁴⁸ Then, Harper, Perez, and McDonald got out of the car to get Mrs. Smith out of the trunk.¹⁴⁹ Mrs. Smith was left at the very back of the cemetery, far away from the entrance.¹⁵⁰ When asked how her cane, bag, and clothes were left with her, Brewer responded, “[t]hey probably threw it out.”¹⁵¹

There is a small discrepancy between Brewer’s testimony at McDonald’s hearing and Perez’s hearing. At McDonald’s hearing, Brewer said he did not hear Mrs. Smith after they left her at the cemetery, but saw her lying on the ground.¹⁵² He said, she “was, like, there. I mean, she couldn’t walk. You know what I mean? She was just, like sitting there, laying there.”¹⁵³ When asked why they decided to leave Mrs. Smith at the cemetery, Brewer responded “I guess they didn’t want her

¹⁴⁴ *Perez*, 2014 WL 1303146, at *8.

¹⁴⁵ *Id.*

¹⁴⁶ *McDonald*, 2014 WL 1316147, at *6.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

to be found.”¹⁵⁴ However, at Perez’s hearing, Brewer testified that he could not hear what the others were saying, but testified that he heard Mrs. Smith whimpering or crying.¹⁵⁵ As the Group drove away, Brewer saw Mrs. Smith laying on the ground.¹⁵⁶ Despite having a cell phone, Brewer did not call 911, and no one discussed taking Mrs. Smith to a different location.¹⁵⁷

Brewer drove the Group back to the hotel room, where they spent the night.¹⁵⁸ The Group checked out the next day and went to a nail salon, at the request of the female juveniles.¹⁵⁹ Brewer saw the female juveniles pay with cash at the nail salon.¹⁶⁰ Deniaya Smith joined the Group at this time.¹⁶¹

Brewer testified that throughout the time that Mrs. Smith was in the car, he never saw anyone give her food, water, or take her out of the trunk to use the restroom.¹⁶² He claimed that he did not hear her in the trunk due to loud music.¹⁶³ Brewer testified that he did not believe that Mrs. Smith wanted to be in the trunk of her car, or that she wanted to be left in the cemetery.¹⁶⁴ When he was asked why he

¹⁵⁴ *Id.* at *7.

¹⁵⁵ *Perez*, 2014 WL 1303146, at *8.

¹⁵⁶ *Id.*

¹⁵⁷ *McDonald*, 2014 WL 1316147, at *7.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Perez*, 2014 WL 1303146, at *9.

¹⁶¹ *Id.*

¹⁶² *McDonald*, 2014 WL 1316147, at *7.

¹⁶³ *Id.*

¹⁶⁴ *Perez*, 2014 WL 1303146, at *9.

did not do things differently, he 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.” He said he “wasn’t thinking.”¹⁶⁵

PROCEDURAL POSTURE

As aforementioned, in April of 2013, Brewer was charged with Carjacking in the First Degree, two counts of Conspiracy in the Second Degree, and Kidnapping in the First Degree. On September 5, 2013, Brewer plead guilty to Carjacking in the Second Degree, Kidnapping in the Second Degree, and Conspiracy in the Second Degree.¹⁶⁶

On July 25, 2014, Brewer’s codefendant, Harper, was found guilty of Kidnapping in the First Degree, Carjacking in the First Degree, and two counts of Conspiracy in the Second Degree.¹⁶⁷ Harper appealed his conviction to the Supreme Court. On August 13, 2015, the Supreme Court of Delaware issued its decision on Harper’s appeal. The Supreme Court held that the carjacking was completed before Harper’s involvement.¹⁶⁸ Each of Harper’s convictions depended on the carjacking as a predicate crime, therefore, the Court reversed and remanded the case.¹⁶⁹

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at *1 n.6.

¹⁶⁷ *Harper*, 121 A.3d at 28.

¹⁶⁸ *Id.* at 34.

¹⁶⁹ *Id.* at 25.

On August 18, 2015, Brewer filed a Motion for Withdrawal of Guilty Plea pursuant to Rule 32(d) and Rule 61, relying on the Supreme Court’s finding in Harper’s appeal. The State did not oppose Brewer’s Motion. On October 23, 2015, the Court granted Brewer’s Motion for Withdrawal, and the Sentence Order was vacated. On January 20, 2016, the State nolle prossed all of the charges.¹⁷⁰

On July 15, 2025, Brewer filed a Petition under the Delaware Wrongful Conviction Compensation and Services Act, requesting one million dollars in damages due to his incarceration.¹⁷¹ On August 8, 2025, Brewer filed an Amended Petition, seeking five million dollars in damages.¹⁷² On September 12, 2025, Brewer filed a Motion for Default Judgment due to a lack of response from the State.¹⁷³ On September 12, 2025, Brewer also filed a Motion for Guardian Ad Litem, requesting that a woman named Krystle T. Blackwell be appointed as his guardian ad litem due to “incompetence of state codes and laws.”¹⁷⁴ On September 16, 2025, the Court denied Brewer’s Motion for Guardian Ad Litem because Ms. Blackwell is not a Delaware attorney.¹⁷⁵ The Court strongly suggested that Brewer obtain Delaware counsel if he believes he cannot effectively represent himself. On September 18,

¹⁷⁰ Compl., D.I. 1, at 14.

¹⁷¹ *Id.* at 2.

¹⁷² Am. Mot. for Compensation, D.I. 3, at 2.

¹⁷³ Mot. for Default J., D.I. 5.

¹⁷⁴ Mot. for Guardian Ad Litem, D.I. 6, at 1.

¹⁷⁵ Order, D.I. 7.

2025, Brewer filed another amended Petition, now seeking ten million dollars in damages.¹⁷⁶ On September 18, 2025, Brewer filed a Motion to Compel.¹⁷⁷

The hearing was originally set for November 4, 2025. On November 4, 2025, the Court did not hold the hearing. Instead, the Court ruled on the various motions and set forth the scheduling order.¹⁷⁸ The Court denied Brewer's Motion for Default Judgment and Motion for Guardian Ad Litem.¹⁷⁹ The Court ordered Brewer to inform the Court of his decision to continue as a pro se litigant or obtain a Delaware attorney by December 1, 2025.¹⁸⁰ The Court also found that Brewer's Motion to Compel was moot.¹⁸¹ Brewer appealed the Court's Order on November 13, 2025.¹⁸² On November 19, 2025, Brewer wrote to the Court to express his intent to continue as pro se.¹⁸³

On December 8, 2025, Brewer filed a Motion to Reconsider the denial of his Motion for Default Judgment.¹⁸⁴ On December 12, 2025, the Supreme Court

¹⁷⁶ Am. Mot. for Compensation, D.I. 9, at 2.

¹⁷⁷ Mot. to Compel, D.I. 40.

¹⁷⁸ Civil Judicial Action Form, D.I. 14.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Notice of Appeal to Supreme Court, D.I. 15.

¹⁸³ Letter to Court, D.I. 17.

¹⁸⁴ Pl.'s Mot. to Reconsider, D.I. 19.

dismissed Brewer's interlocutory appeal.¹⁸⁵ On January 5, 2026, this Court denied Brewer's Motion for Reconsideration due to untimeliness and lack of merit.¹⁸⁶

On February 12, 2026, the Court held a scheduling conference with the parties. The parties agreed to obtain discovery.¹⁸⁷ A Scheduling Order was filed on February 20, 2026, ordering that discovery shall be completed by May 29, 2026, and set the pretrial conference for August 12, 2026 and the hearing date for September 16, 2026.¹⁸⁸ On April 20, 2026, the State filed a Motion to Compel discovery, which Brewer replied to on April 29, 2026.¹⁸⁹ Brewer filed a Motion to Compel discovery and to deem requests for admissions admitted on April 29, 2026.¹⁹⁰ On May 29, 2025, the Court denied Brewer's Motion to Compel and granted the State's Motion to Compel.¹⁹¹ The Court ordered Brewer to disclose all documents he intended to use at the hearing, identify all witnesses, and fully respond to the State's interrogatories and Request for Production, by June 12, 2026.¹⁹² Brewer failed to comply with this Court Order.

¹⁸⁵ Supreme Court Mandate, D.I. 21.

¹⁸⁶ Order, D.I. 22.

¹⁸⁷ Judicial Action Form, D.I. 27.

¹⁸⁸ Trial Scheduling Order, D.I. 30.

¹⁸⁹ State's Mot. to Compel, D.I. 37; Brewer's Resp. to State's Mot. to Compel, D.I. 39.

¹⁹⁰ Brewer's Mot. to Compel, D.I. 40.

¹⁹¹ Judicial Action Form, D.I. 47.

¹⁹² *Id.*

On July 10, 2026, the State filed a Motion for Summary Judgment and a Motion to Dismiss.¹⁹³ Brewer did not respond to either Motion, or the State's correspondence regarding the pretrial stipulation. The Court held the pretrial conference on August 12, 2026. Brewer did not appear. The Court ordered Brewer to respond to the State's Motion to Dismiss and Motion for Summary Judgment before September 4, 2026.¹⁹⁴ The Court found that Brewer forfeited his right to a hearing on September 16, 2026, due to his non-compliance with Court orders. The matter will be decided on the papers.¹⁹⁵ Brewer failed to respond to the Motions for Summary Judgment and Motion to Dismiss.

STANDARD OF REVIEW

Brewer brings his claim under Delaware Wrongful Conviction and Services Act. The purpose of this Act is as follows:

The State recognizes that certain individuals have served sentences of incarceration, parole, probation, and sex offender registration in the State for crimes they did not commit, and that such individuals have been denied compensation for their wrongful convictions unless they can prove their wrongful incarceration was caused by official misconduct. The State believes that individuals who were innocent of the crimes for which they were convicted suffer long-term hardships as a result of their wrongful convictions, and are entitled to compensation for the sentences they wrongfully served, regardless of whether their convictions resulted from official misconduct. Therefore, this chapter provides compensation to individuals whose convictions have been

¹⁹³ Mot. for Summ. J., D.I. 51; Mot. to Dismiss, D.I. 52.

¹⁹⁴ Judicial Action Form, D.I. 58.

¹⁹⁵ *Id.*

overturned followed by either acquittal or dismissal of charges, and who are found to have been factually innocent of the crime or crimes at issue, for time that they served sentences due solely to the wrongful conviction.¹⁹⁶

An individual claiming wrongful conviction may bring a petition for an award and other relief against the State by filing a petition in the Superior Court.¹⁹⁷ The Department of Justice may offer evidence and argue in opposition to the claim.¹⁹⁸ The burden is on the petitioner to make a prima facie showing of entitlement to compensation under this section by establishing six required elements by a preponderance of the evidence.¹⁹⁹ If the petitioner establishes the six necessary elements, the petitioner is entitled to an award under § 7005, unless the Department of Justice establishes one of the following by a preponderance of the evidence:

(1) That the petitioner committed the crime for which the petitioner was convicted; (2) That the petitioner was an accomplice in the commission of the crime for which the petitioner was convicted; or (3) That the petitioner intentionally and voluntarily caused the conviction at issue by committing perjury at trial or fabricating evidence at trial, in order to prevent the conviction of the true perpetrator of the crime at issue.²⁰⁰

A petitioner who prevails on a cause of action under § 7004 of the Act is entitled to damages, which is set forth in the Act.²⁰¹

¹⁹⁶ 10 *Del. C.* § 7002 (amended 2026).

¹⁹⁷ 10 *Del. C.* § 7004(b) (amended 2026).

¹⁹⁸ *Id.*

¹⁹⁹ 10 *Del. C.* § 7004(c) (amended 2026).

²⁰⁰ 10 *Del. C.* § 7004(e) (amended 2026).

²⁰¹ 10 *Del. C.* § 7005 (amended 2026).

DISCUSSION

I. The State's Motion to Dismiss and Motion for Summary Judgment

Before addressing the merits of the Petition, the Court must address the State's Motion to Dismiss and Motion for Summary Judgment. For the reasons stated hereinafter, the Motion to Dismiss is **DENIED** and the Motion for Summary Judgment is **GRANTED IN PART**.

A. The State's Motion to Dismiss is Denied.

The State's Motion to Dismiss pursuant to Superior Court Civil Rule 41(b), failure to prosecute the case, is denied.²⁰²

Superior Court Civil Rule 41(b) states: "[f]or failure of the plaintiff to prosecute or to comply with these Rules, or any order of Court, a defendant may move for dismissal of an action or of any claim against the defendant."²⁰³ The Court must consider the following factors when determining a motion to dismiss under Rule 41(b): (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary; (3) a history of dilatoriness; (4) whether conduct was willful or in bad faith; (5) the effectiveness of other sanctions other than dismissal; and (6) the merits of the claim or defense.²⁰⁴

²⁰² Respondent's Mot. to Dismiss, D.I. 52.

²⁰³ Super. Ct. Civ. R. 41(b).

²⁰⁴ *Swen v. Miller*, 2024 WL 4930039, at *3 (Del. Super. Ct. 2024)(citing *Abdallah v. Rago*, 2016 WL 6246891 at *3 (Del. Super. Ct. 2016); *Drejka v. Hitchens Tire Serv., Inc.*, 15 A.3d 1221 (Del. 2010)).

The first factor, the extent of the party's personal responsibility, weighs in favor of granting the Motion. Brewer has not responded to the State's correspondence or complied with the Court's order. Brewer has not provided a reason for his lack of response. Therefore, the Court finds that the first factor weighs in favor of granting the Motion.

The second factor, the prejudice to the adversary, weighs in favor of denying the Motion. Due to Brewer's absence and lack of response, the Court will decide Brewer's Petition on the papers, instead of holding a hearing. Because of the Court's decision, the State is not substantially prejudiced by Brewer's lack of response regarding the pretrial stipulation and the discovery responses.

The third factor, history of dilatoriness, weighs slightly in favor of denying the Motion. Prior to the pretrial conference on August 12, 2026, Brewer attended every court proceeding. Brewer was responsive in the beginning as well. However, the Court recognizes the State's argument that he delayed his case by failing to respond to the discovery requests, filing various amendments, and filing an appeal. However, as this is his first missed court proceeding and the first violation of a Court order, the third factor weighs in favor of denying the Motion.

The fourth factor, whether the conduct was willful or in bad faith, weighs slightly in favor of granting the Motion. However, as aforementioned, the pretrial conference was the first court proceeding Brewer missed. Brewer has not provided

an explanation as to why he missed the pretrial conference or why he has not responded to the State.

The fifth factor, the effectiveness of sanctions other than dismissal, weighs in favor of denying the Motion. The Court imposed a sanction during the pretrial conference. As a result of Brewer's absence at the pretrial conference, the Court will no longer hold a hearing for his Petition. The Petition will be decided on the papers. This is an effective sanction for Brewer's failure to respond to the State, failure to comply with the Court order, and failure to appear for the pretrial conference. Therefore, the fifth factor weighs in favor of denying the Motion.

Lastly, the sixth factor, the merits of the claim or defense, will be discussed in a later section of the memo. The Court prefers to decide issues on the merits. Both of the parties had the opportunity to submit briefs to the Court, explaining the merits of the claim and defenses, which this Court has reviewed.

For these reasons, the Motion to Dismiss pursuant to Civil Rule 41(b) is **DENIED**.

B. The State's Motion for Summary Judgment is **GRANTED IN PART**.

In the Motion for Summary Judgment, the State brings forth two arguments. First, the State argues that Brewer cannot establish by a preponderance of the evidence that he served all, or part of his sentence based solely on the vacated

conviction.²⁰⁵ For the reasons stated below, the Court is not granting summary judgment as to this argument. Second, the State argues that Brewer cannot establish by a preponderance of the evidence that he did not commit any felony arising from the same transaction as the crime for which the petitioner was originally convicted.²⁰⁶ The State's arguments are better addressed in the section below, where the Court analyzes each of the elements under the Delaware Wrongful Conviction Compensation and Service Act. As to this argument and for the reasons explained in the next section, the State's Motion for Summary Judgment is **GRANTED**.

II. The Petition Under the Delaware Wrongful Conviction Compensation and Service Act

This is a case of first impression. In deciding this case, the Court has carefully examined the elements under § 7004, reviewed the facts of the case, and conducted research to determine the legislative intent behind the Act.

In order to bring a claim under this Act, the Petitioner must show:

(1) that the petitioner was convicted; (2) the petitioner served all of or part of a sentence of incarceration, time spent in a psychiatric institution, probation, parole, or registration on the sex offender registry; (3) the conviction was overturned, reversed, or vacated on direct or collateral review; (4) after the conviction was overturned, reversed, or vacated on direct or collateral appeal, the charge at issue was dismissed or the petitioner was acquitted of the charge upon retrial; or the petitioner entered a Robinson plea, or entered a plea of no contest, while maintaining a claim of innocence, after the conviction was overturned, reversed, or vacated on direct or collateral review when the

²⁰⁵ Respondent's Mot. for Summ. J., D.I. 51, at 6.

²⁰⁶ *Id.* at 10.

petitioner would otherwise be entitled to a new trial; (5) petitioner was not convicted of any lesser included felony arising from the same transaction as the crime for which the petitioner was originally convicted; and (6) petitioner did not commit the crime that resulted in the conviction, or there was no crime committed.²⁰⁷

If the Petitioner establishes all of the six elements, the State may present an affirmative defense in opposition to the petition if the State establishes at least one of the following by a preponderance of the evidence:

(1) that the petitioner committed the crime for which the petitioner was convicted; (2) that the petitioner was an accomplice in the commission of the crime for which the petitioner was convicted; or (3) that the petitioner intentionally and voluntarily caused the conviction at issue by committing perjury at trial or fabricating evidence at trial, in order to prevent the conviction of the true perpetrator of the crime at issue.²⁰⁸

After reviewing the factual background of this case, it is abundantly clear that Brewer is not factually innocent of the criminal episode that occurred in March of 2013, involving Mrs. Smith. A careful reading of the statute and an understanding of the background of the Act demonstrates that Brewer is not the intended recipient of compensation under the Act. Hereinafter, the Court will perform an analysis of Brewer's case in relation to 10 *Del. C.* § 7004.

A. Brewer Established Elements (1) Through (5) by a Preponderance of the Evidence.

i. The First Element is Established.

²⁰⁷ 10 *Del. C.* § 7004(c) (amended 2026).

²⁰⁸ 10 *Del. C.* § 7004(e) (amended 2026).

The first element under the Act requires the petitioner to establish that he was convicted. The Court agrees that Brewer is a petitioner who was convicted. Under the Act, “conviction” is defined as “a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.”²⁰⁹ “Conviction also includes a case in which a person is adjudicated under § 1002 of this title.”²¹⁰ It is undisputed that Brewer is a convicted petitioner because he pled guilty, which was accepted by the Superior Court.

ii. The Second Element is Established.

Next, the Act requires that the petitioner serve all or part of the sentence incarcerated, in a psychiatric institution, probation, parole or registration on the sex offender registry based on that conviction.²¹¹ Incarceration, in addition to its ordinary meaning, is defined as “(1) imprisonment in a Department of Correction facility; (2) involuntary confinement in the Delaware Psychiatric Center; (3) placement in custody of the Department of Services for Children, Youth and their Families; or (4) pretrial detention.”²¹² The Court notes that Brewer was incarcerated for pretrial detention and was sentenced to incarceration at a Department of Correction facility. For these reasons, Brewer has established the second element.

²⁰⁹ 10 Del. C. § 7003(1) (amended 2026).

²¹⁰ *Id.*

²¹¹ 10 Del. C. § 7004(c)(2) (amended 2026).

²¹² 10 Del. C. § 7003(4) (amended 2026).

In its Motion for Summary Judgment, however, the State argues that Brewer cannot establish this element because Brewer's sentence was not based solely on the vacated conviction. On December 18, 2012, prior to the criminal episode involved in this Petition, Brewer pled guilty to Burglary Second Degree, Robbery Second Degree, and Conspiracy Second Degree ("case number 1207018106"). Brewer was sentenced to five years at supervision Level V, which was then deferred, and Brewer was ordered to complete the Boot Camp Diversion Program and Aftercare Programs set forth in 11 *Del. C.* §§ 6705 and 6712. On March 22, 2013, a violation report was submitted to the Court in case number 1207018106. There are two violations listed: (1) Brewer committed a new criminal offense; and (2) Brewer failed to report to his supervising officer. The Court found Brewer in violation of his probation. Brewer was sentenced to serve the full unexpired term of the original sentence, which was five years at Level V, not including the sentence he received for the criminal episode involving Mrs. Smith. The State argues that because Brewer violated his probation by failing to report to his supervising officer, the Court was required to sentence him to five years at Level V, not considering the new offenses, which were nolle prossed. The statute states that if the participant does not complete bootcamp, violates terms of probation, or violates the conditions of the program, the Court "shall proceed to sentencing on all charges for which sentencing was originally deferred."²¹³ For these

²¹³ Respondent's Mot. for Summ. J., D.I. 51, at 8; 11 *Del. C.* § 6712(h).

reasons, the State argues that even though the Court later vacated the violation of probation sentence, it was not legally required to do so. Brewer's claim that he is entitled to compensation for serving a sentence based solely on a wrongful conviction must fail.

However, the Act does not require the petitioner to serve a sentence based solely on the alleged wrongful conviction. The criminal episode involving Mrs. Smith was one of two violations considered in Brewer's violation of probation. The Act requires that the petitioner serve all or part of the sentence incarcerated based on that conviction.²¹⁴ Brewer served part of a sentence based on the conviction of the criminal episode involving Mrs. Smith. The Court chose to vacate the violation of probation based on the Supreme Court's rulings in *Harper v. State*, even though it was not legally obligated to do so. By vacating the violation of probation, the Court acknowledged that Brewer's sentence was based on the criminal episode involving Mrs. Smith. Brewer was sentenced due to his violation of probation based on both violations of probations, and the Act does not state that the conviction must be based solely on the alleged wrongful conviction.

The Court is not persuaded by the State's argument and finds that Brewer established the second element. Brewer was incarcerated based on the criminal episode involving Mrs. Smith.

²¹⁴ 10 *Del. C.* § 7004(c)(2) (amended 2026).

iii. The Third Element is Established.

Next, the petitioner must demonstrate that the conviction was overturned, reversed, or vacated on direct or collateral review.²¹⁵ Vacate is not defined under the Act, however, Black's Law Dictionary defines "vacate" as "to nullify or cancel; make void; invalidate."²¹⁶ The State nolle prossed his charges. Additionally, Brewer's violation of probation was vacated. Therefore, Brewer has met this element as well.

iv. The Fourth Element is Established.

Next, the Petitioner must establish one of the following: (1) "After the conviction was overturned, reversed, or vacated on direct or collateral appeal, the charge at issue was dismissed or the petitioner was acquitted of the charge upon retrial;"²¹⁷ or "(2) the petitioner entered a Robinson plea, or entered a plea of no contest, while maintaining a claim of innocence, after the conviction was overturned, reversed, or vacated on direct or collateral review when the petitioner would otherwise have been entitled to a new trial."²¹⁸ Brewer's charges were nolle prossed, therefore, Brewer has established that after his charges were overturned, reversed, or vacated, the charges were dismissed, or he was acquitted.

²¹⁵ 10 Del. C. § 7004(c)(3) (amended 2026).

²¹⁶ VACATE, Black's Law Dictionary (12th ed. 2024).

²¹⁷ 10 Del. C. § 7004(c)(4)(a) (amended 2026).

²¹⁸ 10 Del. C. § 7004(c)(4)(b) (amended 2026).

v. The Fifth Element is Established.

The fifth element requires the petitioner to demonstrate that he was not convicted of a lesser-included felony arising from the same transaction as the crime for which the petitioner was convicted.²¹⁹ There is no evidence that Brewer was convicted of any lesser included felonies. This element was amended in May of 2026, however, to require the petitioner to establish that he did not commit any felony arising from the same transaction as the crime for which he was originally convicted.²²⁰ The amendment does not apply retroactively.

In its Motion for Summary Judgment, the State argues that Brewer cannot establish by a preponderance of the evidence that he did not commit any felony arising from the same transaction as the crime for which he was originally convicted. However, this argument is based on the amendment to the Wrongful Conviction Compensation Act. As aforementioned, the amendment does not apply retroactively. Under Delaware law, there is a presumption against retroactive application of legislation.²²¹ Delaware Courts have found that “[l]aws apply retroactively only where the General Assembly has made its intent plain and unambiguous.”²²² The amendment is silent as to whether it applies retroactively,

²¹⁹ 10 Del. C. § 7004(c)(5) (amended 2026).

²²⁰ 10 Del. C. § 7004(c)(5).

²²¹ *Rutledge v. Clearway Energy Grp. LLC*, 2026 WL 548504, at *13 (Del. 2026).

²²² *Id.*

therefore, it applies prospectively. The amendment will be discussed in further detail in a later section.

There is no evidence that Brewer was convicted of any lesser included felonies. For these reasons, the Court finds that Brewer established the fifth element by a preponderance of the evidence.

B. Brewer did not Establish the Sixth Element.

Lastly, the petitioner must demonstrate that he did not commit the crime that resulted in the conviction, or there was no crime committed.²²³ When determining whether Brewer has made a prima facie showing of this element under the Act, the Court turns to the legislative intent behind the Act. Based on a review of the Senate and House of Representative legislative sessions, it is clear that this element is meant to protect those who are factually innocent of the crime that resulted in the conviction, not merely, someone who is not guilty of the crime in which they were charged.

The Wrongful Conviction Compensation Services Act was unanimously approved in both the Senate and House of Representatives. Senator Hoffner was the primary sponsor, as well as Representative Bush.

The purpose of the Act is to provide compensation to individuals whose convictions have been overturned followed by acquittal or dismissal of charges, and

²²³ 10 *Del. C.* § 7004(c)(6) (amended 2026).

are factually innocent of the crime(s) at issue.²²⁴ While the legislative intent is not expressly written in the Act, it can be inferred that the Act is meant to apply to those who did not commit the crime, or any related crime, and were wrongfully convicted.

*i. The Senate Legislative and the House of Representatives
Legislative Sessions*

In the Senate Legislative Session on May 23, 2024, the Bill was unanimously passed. Senator Hoffner spoke to the Senate in support of the Bill. She focused on innocence, and made comments such as “we will not allow the innocent to suffer in silence.”²²⁵ Senator Hoffner discussed how devastating it is for someone to be accused of a crime that he/she did not commit, and to be labeled as a criminal despite being innocent.²²⁶ The compensation from the Act is an acknowledgement of a profound wrong, and a small amount of justice in a world where justice was denied.²²⁷ She states that the “tragedy doesn’t end with exoneration.”²²⁸ The Act is for “those who are factually innocent of a crime or crimes at issue.”²²⁹ Her comments regarding the Bill show that the Act is intended for those who are factually innocent.

²²⁴ 10 Del. C. § 7002 (amended 2026).

²²⁵ Senate Legislative Session, Session 2, 34th Legislative Day, at 4:41:17.

²²⁶ *Id.* at 4:39:13.

²²⁷ *Id.* at 4:40:09.

²²⁸ *Id.* at 4:39:40.

²²⁹ *Id.* at 4:41:57.

Next, Senator Pettyjohn spoke to the Senate. He asked to co-sponsor the Bill. While speaking to the Senate, Senator Pettyjohn stated that the act is for the “falsely accused” and the “factually innocent.”²³⁰ He further states that “there is a difference between not guilty and innocent. This addresses the people that were innocent, should’ve never spent a day in jail, but some of them have spent the majority of their lives incarcerated for crimes they did not commit.”²³¹ This comment from Senator Pettyjohn indicates that the petitioner must be factually innocent in order to be eligible for compensation. He stated that the State has a duty to “get it right” and sometimes that does not happen.²³² Sometimes, because of “what happened during the crime [or] witnesses that were present, there have been people that were falsely accused, falsely convicted, that were factually innocent.”²³³ This statement further supports the notion that the legislative intent behind the Act is to compensate those who are completely factually innocent, but were wrongfully convicted due to things such as evidentiary issues. Other senators asked to co-sponsor the Bill, but did not provide additional commentary, other than statements regarding the protection of the innocent.

²³⁰ *Id.* at 4:46:55.

²³¹ *Id.* at 4:46:59.

²³² *Id.* at 4:46:32.

²³³ *Id.* at 4:46:48.

After hearing the other Senators speak, Senator Hoffner concluded the discussion by stating that she does not blame the prosecutors or police for wrongful convictions. She stated, “police and prosecutors did the best they could do at the time of the situation with the information they had.”²³⁴ This statement also supports the notion that the Act is intended to compensate those who were wrongfully convicted because the State did not have all of the necessary information at the time of the wrongful conviction. This further supports that the legislative intent behind the Act is to provide compensation for those who are factually innocent of the crime they were convicted of.

Lastly, Senator Hoffner thanked “After Innocence” for their help in drafting the Bill.²³⁵ After Innocence is a nonprofit organization, whose mission is to “reach every person in America released after wrongful imprisonment, provide them with reliable post-release assistance, and advocate with them for a more accountable justice system.”²³⁶ After Innocence also worked with the Delaware Innocence Project, whose mission is to “secure justice for individuals wrongfully imprisoned for crimes they did not commit.”²³⁷ The Delaware Innocence Project’s website lists “leading factors in wrongful convictions.”²³⁸ The leading factors are: (1) false

²³⁴ *Id.* at 4:49:37.

²³⁵ *Id.* at 4:36:45.

²³⁶ After Innocence, <https://www.after-innocence.org/legislative-advocacy-1> (last visited Aug. 24, 2026).

²³⁷ Innocence Project Delaware, <https://www.innocencede.org/issues> (last visited Aug. 24, 2026).

²³⁸ *Id.*

confessions; (2) eyewitness misidentification; (3) official government misconduct; (4) ineffective assistance of counsel; (5) jailhouse informants; and (6) misapplication of forensic science.²³⁹ Clearly, this is not a comprehensive list. Furthermore, the list does not provide the legislative intent behind the Act. However, it provides further insight into the intent of the organizations that helped draft the Bill.

On June 30, 2024, during the House of Representative Legislative Session, the House unanimously voted to pass the Bill, with an amendment that alleviated a few concerns from the Department of Justice.²⁴⁰ During the session, Representative Bush stated, “this is a bill about justice, doing the right thing, and fixing a wrong.”²⁴¹ When addressing his fellow representatives, Representative Bush stated that Senator Hoffner has a personal connection to the Bill because her father-in-law was wrongfully convicted in New York.²⁴² After conducting research, it is likely that Senator Hoffner’s father-in-law is Louis Hoffner, a man who was convicted of murder and sentenced to life imprisonment.²⁴³ Louis Hoffner spent twelve years incarcerated due to evidentiary issues.²⁴⁴ He filed a motion to vacate the judgment of conviction, which was granted.

²³⁹ *Id.*

²⁴⁰ House of Representatives Legislative Session, Session 2, June 30, 2024, at 7:21:45.

²⁴¹ *Id.* at 7:22:09.

²⁴² *Id.* 7:22:45.

²⁴³ *People v. Hoffner*, 129 N.Y.S.2d 833 (Co. Ct. 1952).

²⁴⁴ *Hoffner v. State*, 142 N.Y.S.2d 630 (Ct. Cl. 1955).

Even though this does not directly define the legislative intent behind the Act, it provides some background information for Senator Hoffner's intent behind sponsoring the Act. Her father-in-law was wrongfully convicted, and his judgment was vacated when new evidence came to light that supported his innocence. Senator Hoffner likely intended to sponsor this Act to compensate those, like her father-in-law, who had their judgments vacated when new evidence was discovered to show wrongful conviction.

Based on a review of the legislative intent, it is clear to the Court that Brewer cannot make a prima facie showing to establish the sixth element, that he did not commit the crime that resulted in the conviction, or there was no crime committed.

Brewer argues that he is entitled to compensation under the Act because the Supreme Court found that his co-defendant, Harper, could not be guilty of carjacking or kidnapping, because both the carjacking and kidnapping had occurred prior to Brewer and Harper's involvement. Brewer's charges were vacated, and the State decided to not pursue charging Brewer under other applicable crimes. Brewer may be "not guilty" of the kidnapping and carjacking charges, but he is not factually innocent. Brewer testified in great detail about his involvement in the criminal episode to gain a lighter sentence, realizing he had participated in committing horrible atrocities against a vulnerable victim.

Brewer argues that he is innocent because Mrs. Smith stated that she witnessed two females, and did not witness any males.²⁴⁵ Brewer also argues that there are statements from Perez and McDonald stating that Brewer was not involved. However, Brewer testified about what transpired during the two-day criminal episode involving Mrs. Smith. He testified that he and Harper took Mrs. Smith out of the trunk and put her back in the trunk several times. He testified that no food or water was given to Mrs. Smith. He testified that he knew Mrs. Smith did not want to be held in the trunk. He knew the car was stolen, and continued to drive his co-defendants around the State of Delaware, despite not having a drivers' license. He and his co-defendants repeatedly drove the car with Mrs. Smith in the trunk. He admitted that it was "crazy" that they were driving the car with her in the trunk. They made several trips to purchase marijuana. The Group left Mrs. Smith in the trunk overnight on two separate occasions: one to go to a different location to smoke marijuana, and the other to go into a hotel room to party. He testified that he drove Mrs. Smith's car to the cemetery and left her there. He testified that he knew the cemetery was a remote and secluded place, and it was wrong to leave her there. Brewer admitted to being involved throughout the criminal episode and testified to his involvement. He cannot discount the play-by-play testimony of the criminal episode he provided to the State to gain a benefit in sentencing.

²⁴⁵ Compl., D.I. 1, at 2.

The facts of this case do not represent someone who was falsely accused and is factually innocent. As Senator Pettyjohn stated, this Act is for “[t]he people that were innocent, should’ve never spent a day in jail, but some of them have spent the majority of their lives incarcerated for crimes they did not commit.”²⁴⁶ Brewer does not meet this standard. Therefore, he cannot establish the sixth element.

ii. The April 22, 2026, Amendment to the Act

As aforementioned, the amendment to the Act applies prospectively. Even though the amendment does not apply to Brewer’s Petition, it provides further insight into the legislative intent of the Act.

The amendment changes the fifth element that the petitioner must establish to make a prima facie showing of entitlement to compensation under the Act. The amendment changes the fifth element to state: “[t]he petitioner did not commit any felony arising from the same transaction as the crime for which the petitioner was originally convicted.”²⁴⁷ The language of this amendment further shows the legislation’s intent behind the Act. The petitioner must establish that they did not commit any felony arising from the same transaction as the crime for which the petitioner was committed.

²⁴⁶ Senate Legislative Session, Session 2, 34th Legislative Day, at 4:46:59.

²⁴⁷ 10 Del. C. § 7004(c)(5).

The Act's amendment, while to the fifth and not sixth element, further establishes that Brewer is not the intended recipient of compensation under the Act. He committed a crime arising from the same transaction as the crime for which he was originally convicted. While Brewer's charges for kidnapping and carjacking were overturned, he is not innocent in this horrific criminal episode. He actively participated in holding Mrs. Smith hostage in the trunk, drove her vehicle around Delaware, did not give Mrs. Smith food or water, did not allow Mrs. Smith to use the bathroom, and dumped her on the side of an isolated road in a cemetery. In Brewer's co-defendant's appeal, the Supreme Court wrote:

In the event a carjacker does take the victim hostage, the carjacker commits separate and distinct offenses – kidnapping or unlawful imprisonment. Smith might have been the victim of a continuing crime, but the continuing crime was not carjacking; it was the distinct crimes of kidnapping or unlawful imprisonment, punishable under 11 *Del. C.* §§ 781-783A.²⁴⁸

The Supreme Court's findings in *Harper v. State* further demonstrate that Harper and Brewer were not factually innocent.

Therefore, even though Brewer was given the benefit of a Supreme Court ruling vacating the carjacking and kidnapping charges, he is not factually innocent. While the amendment to the Act does not apply retroactively, it further demonstrates that Brewer is not the intended recipient of compensation under the Act.

²⁴⁸ *Harper*, 121 A.3d at 32-33.

CONCLUSION

The State's Motion to Dismiss is **DENIED** and the State's Motion for Summary Judgment is **GRANTED IN PART**. Further, after reviewing the language of the Act and the legislative intent for implementing the Act, it is clear that Brewer is not an intended recipient of compensation under the Act. Brewer has not made a *prima facie* showing of entitlement to compensation under the Act by a preponderance of the evidence. For these reasons, Brewer's Petition for Compensation under the Delaware Wrongful Conviction Act is **DENIED**.

/s/ Mark H. Conner

Mark H. Conner, Judge

cc: Prothonotary