

**IN THE  
COURT OF SPECIAL APPEALS OF MARYLAND**

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September Term 2019

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**No. 1253**

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**IN RE: S.B.**

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On Appeal from the Circuit Court for Baltimore City  
(Hon. Emanuel Brown, presiding)

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**BRIEF OF APPELLANT**

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*March 9, 2020*

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## STATEMENT OF THE CASE

At the heart of due process is the guarantee of a fundamentally fair trial. *In re Gault*, 387 U.S. 1, 36 (1967). One key component of this guarantee is the right of an accused to have his case decided by a trier of fact who has personally heard all of the evidence—particularly when the trier of fact has found facts *against* the accused. As the Supreme Court has put it, “[t]he one who decides must hear.” *Morgan v. United States*, 298 U.S. 468, 481 (1936).

In this case, S.B. was denied this fundamental protection. S.B. was tried in a juvenile adjudication on charges stemming from an alleged altercation in a Baltimore parking garage. After an adjudication hearing before a magistrate, the magistrate determined that the State had not proven its case. The magistrate explained that he reached this conclusion because he believed key testimony of the defense witness over the testimony of the prosecution witness. App. 12. Accordingly, he recommended that S.B. be found “facts not sustained” on all charges. App. 14. After the State filed an exception, the circuit court judge reversed the magistrate’s credibility determination and resulting factual findings, even though he had not seen the witnesses’ live testimony. App. 18-19. He then found that the State had proven its case beyond a reasonable doubt on all charges. App. 19-21.

The circuit court’s rejection of the magistrate’s credibility assessment, without having personally observed the witnesses’ testimony, violated S.B.’s due process rights under the Fourteenth Amendment to the U.S. Constitution and Article 24 of the

Declaration of Rights of the Maryland Constitution. The magistrate who actually “saw and heard the witnesses and was able to make the subtle judgments based upon appearance, upon tone of voice, upon even non-verbal communication, etc.,” was in the best position to determine whether those witnesses were credible. *Wenger v. Wenger*, 42 Md. App. 596, 604 (1979). When the circuit court reversed the magistrate’s credibility determinations without seeing the live testimony—changing the outcome of the proceeding to S.B.’s detriment—it deprived S.B. of those safeguards fundamental to reliable factfinding. Indeed, for similar reasons, multiple federal courts of appeals reviewing pretrial suppression and postconviction proceedings have held that a trial court may not reverse a magistrate’s outcome-determinative credibility assessments without hearing the live testimony first-hand. *See infra* at 19-22.

In the alternative, even if the circuit court’s reversal of the magistrate’s credibility determinations did not violate S.B.’s due process rights, the circuit court erred by failing to apply a clear-error standard of review to the magistrate’s credibility determinations and resulting factual findings. Because the magistrate is the one who “heard the witnesses and observed their demeanor,” Maryland case law requires the circuit court to give “great deference” to the magistrate’s credibility determinations and other factual findings, “unless such fact-finding is clearly erroneous.” *Wenger*, 42 Md. App. at 604. The circuit court failed to apply that deferential standard here, when it reversed the magistrate’s findings without having seen the live testimony, without

providing a sufficient explanation for disagreeing with those findings, and without addressing several discrepancies in the prosecution witness's testimony.

Because the record in this case establishes that the magistrate's credibility determinations were outcome-determinative, and no reassessment of the magistrate's factual findings based on those credibility determinations could lead to a different conclusion about whether the State met its burden of proof, this Court should reverse the judgment of the circuit court and remand with instructions to adopt the magistrate's recommendations and enter an order of "facts not sustained" on all counts.

### **QUESTIONS PRESENTED**

1. Did the circuit court violate S.B.'s due process rights when, without observing the live testimony of the witnesses at S.B.'s juvenile delinquency adjudication, it rejected the magistrate's assessment of the credibility of that testimony and found the State met its burden of proof, contrary to the magistrate's recommendation?

2. Did the circuit court abuse its discretion when, without hearing live testimony, it failed to apply the clear-error standard to the magistrate's findings of fact, including its credibility determinations; rejected the magistrate's conclusion that the State had failed to produce sufficient evidence in S.B.'s case; and found the State had met its burden of proof?



## STATEMENT OF FACTS

On May 4, 2018, 16-year-old S.B. and two of his friends, T.N. and K.R., were arrested after an altercation with an adult, John McDaniel, in a Baltimore parking garage. The State of Maryland filed a juvenile delinquency petition against S.B., alleging attempted robbery, conspiracy to commit robbery, two counts of attempted theft, and assault.<sup>1</sup> Juvenile Pet., *In re S.B.*, at 1-2 (May 9, 2018). The State filed separate juvenile petitions containing similar allegations against T.N. and K.R. All three denied the charges.

### **A. July 2018: Adjudication Hearing Before Magistrate**

S.B., T.N., and K.R. were tried jointly. The adjudication hearing, assigned to Magistrate James P. Casey, began on July 3, 2018. *See* Md. Code, Courts & Jud. Proc. § 3-807 (appointment of magistrates in juvenile cases); Md. Rule 11-111 (rules governing magistrate adjudications in juvenile proceedings). The State's primary evidence consisted of testimony from McDaniel and video surveillance footage of the parking garage, which showed S.B., T.N., and K.R. enter and leave the garage, but did not show the incident in question. T.N. testified for the defense.

1. McDaniel testified on direct examination that, on the morning of May 4, 2018, he was retrieving tools from his pickup truck in his office parking garage.

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<sup>1</sup> *See* Md. Code, Crim. Law §§ 3-402, 3-203, 7-104(g)(2)(i), 6-206(b).

T1.32-34.<sup>2</sup> According to McDaniel, after he opened the passenger door, he was attacked by three young-looking African-American males, whom he identified in court as T.N., S.B., and K.R. T1.34-37. McDaniel claimed that he was “surprised from behind” by T.N., who began punching him in the face. T1.34, 39-40. McDaniel asserted that T.N. “didn’t say anything” before the alleged attack began. T1.34.

McDaniel further asserted that “another person in the backseat of my vehicle also began assaulting me[,] ... punching me in the head.” T1.35. He said that person wore a “gray hoodie.” T1.36. He testified that a third person wearing an orange striped shirt was also present during the assault. T1.36-37. McDaniel later identified the person wearing the orange shirt as S.B.; however, he also later claimed that S.B. was the one in the backseat “[r]ummaging through the truck, assaulting me from behind and attacking me in the head.” T1.40-41. McDaniel identified K.R. as the person in the gray hoodie, T1.41, although, after seeing the video surveillance footage, he admitted that his testimony was “mistaken” and that the hoodie was maroon. T1.49.

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<sup>2</sup> As used in this brief, “T1” refers to the transcript of the adjudication hearing before Magistrate James P. Casey on July 3, 2018; “T2” refers to the transcript of the continuation of that hearing on August 2, 2018; “T3” refers to the transcript of the exception hearing before Judge Emanuel Brown on October 5, 2018; “T4” refers to the transcript of the continuation of that exception hearing on November 9, 2018; and “T5” refers to the transcript of the hearing on remand before Magistrate Casey on February 13, 2019.

McDaniel testified that the people who assaulted him appeared on the surveillance footage, which the State played at the hearing. T1.43-49. He explained that the footage showed the ramp to the garage's second floor, but that the alleged assault happened in the first-floor parking area off camera. T1.45-46, 55-56. He said that S.B., K.R., and T.N. could be seen in the video running in the direction of the exit after the incident and that he (McDaniel) appeared shortly thereafter, on the phone with police, T1.45-46, 51-53. He stated that no property was taken. T1.43; *see also* T1.62, 64 (confirming that, although he "had two phones and a personal wallet" on him, and there were tools in the truck bed, no one tried to take property from his person or the truck).

On cross examination, McDaniel gave a different version of events. He said that, while he was getting tools from his truck, he "saw people moving around the truck" and "running around" the parking area through the truck's window. T1.56, 57. According to McDaniel, "[t]hey were just kids it looked like at the time running around just playing.... I didn't see it as an immediate threat." T1.68. McDaniel testified that he then asked one of the kids "if the truck parked next to me was his." T1.58-59. McDaniel claimed that the person responded by punching him in the face, unprovoked. T1.59-60. McDaniel denied provoking the assault by using a racial slur. T1.59. He alleged that a second person in the backseat, wearing a hoodie, and a third person in the bed of the truck, wearing an orange striped shirt, also assaulted him. T1.60, 75-76.

At the close of the State's case in chief, S.B., K.R., and T.N. moved for a judgment of acquittal. T2.7-9. Magistrate Casey said he would grant their motions as to the robbery and theft counts, but not the assault count. He explained: "Even looking at it in a light most favorable to the State there is just nothing here that indicates an attempted taking. The items were there for the taking and the people did not take them." T2.14-16.

2. T.N. testified for the defense. He admitted that he hit McDaniel after being provoked, but indicated that neither S.B. nor K.R. participated in the assault. He explained that he and his friends were in the parking garage because "my friend had said he had never been to the top of a parking garage." T2.19. According to T.N., as they were walking up the ramp, he dropped a dollar bill, "and we were going down to look for it." T2.19. He testified that, after they climbed down the ramp, they found the dollar bill under the truck next to McDaniel's. T2.20-21. T.N. said that McDaniel then asked him if the truck was his, and that after T.N. said no, McDaniel called him a racial slur: "As we went to go away I heard him say 'black bitch.' ... I asked him what did he say. He didn't say nothing, so I ... walked away. I heard him say it again as I am walking away.... And that's when I responded with a punch to the face." T2.21-22; *see also* T2.28-29 (admitting on cross examination that he hit McDaniel multiple times).

T.N. testified that McDaniel's remark made him "angry," and that he hit McDaniel because "he kept provoking me by calling me a 'black bitch.'" T2.23-24.

T.N. stated that “[a]s I hit him he fell to his truck so I kept on hitting him in his face,” at which point S.B. and K.R. ran away. T2.24. According to T.N., he tried to follow, but McDaniel “was grabbing my hair making sure I don’t leave.” T2.24. T.N. explained that he ended up “running away from [McDaniel]” shortly thereafter, consistent with the surveillance video showing him as the last one of the three boys to leave the garage. T2.24.; *see also* T2.29 (testifying on cross examination that S.B. and K.R. ran out of the garage “before” he did).

Both sides’ closing arguments focused on the witnesses’ credibility. The State contended that T.N. “is not a credible witness” and that his testimony should not be believed, whereas “Mr. [McDaniel’s] description of what happened is credible” and “supported by the surveillance video.” T2.45, 47. Defense counsel argued that T.N. “was the most credible witness in this trial,” while McDaniel’s “story changed at least three times.” T2.51; *see also* T2.55-56 (McDaniel’s testimony “changed on multiple occasions”); T2.56-57 (McDaniel’s testimony “was inconsistent” whereas T.N.’s was credible). In particular, defense counsel asked the magistrate to give careful consideration to McDaniel’s demeanor:

Do you remember when I asked ... [McDaniel] didn’t you call him a ‘black bitch’ and he sort of slumped down in his chair and looked over there and said, uh, that’s not the kind of person I am. All of a sudden his demeanor changed when I asked him that question. The guy was lying.

T2.54; *see also* T2.61 (State arguing McDaniel “took the stand, he didn’t hedge, he didn’t act funny”).

3. At the end of the hearing, Magistrate Casey announced that the State's evidence was sufficient to sustain the assault charge against T.N., but not against S.B. and K.R. T2.67. He made clear, "I believe [T.N.'s] testimony" and "found [him] to be a very credible witness," whereas "there were some problems with" McDaniel's testimony. T2.67. The magistrate explained: T.N. "said there was no involvement of [S.B. and K.R.], Mr. McDaniel said there was." T2.68. He refused to credit McDaniel's testimony that S.B. and K.R. participated in the assault because "I believed [T.N.]'s testimony." T2.68.

On August 2, 2018, Magistrate Casey issued a written order recommending dismissal of all counts against S.B. because "the evidence was not sufficient to sustain the charge(s)." App. 2. The order reiterated the magistrate's previous reasons for granting a judgment of acquittal on the robbery and theft charges. It also reiterated his reasoning for finding S.B. not guilty of assault, explaining that McDaniel and T.N. gave conflicting testimony, but "[t]he court believed [T.N.]'s account." App. 2.

### **B. State's First Exception**

The State filed an exception to the magistrate's recommendation under Maryland Rule 11-111(c).<sup>3</sup> Mem. in Support of State's Exception on the Record (Sept. 20, 2018). S.B. opposed, arguing that the magistrate correctly assessed the

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<sup>3</sup> The State filed a similar exception in K.R.'s case. Although T.N. was also found "facts not sustained" on the attempted robbery and theft counts, the State did not file an exception in his case.

evidence, including witness credibility, and that a remand for a second adjudication would violate double jeopardy. Mem. in Opp. to State's Exception on the Record at 5-9, 10-11 (Oct. 1, 2018).

Circuit Court Judge Emanuel Brown heard argument on the State's exceptions on October 5, 2018. S.B.'s attorney emphasized that "this case was decided on a credibility issue of the complaining witness" and the circuit court "can't assess the credibility of the witness" without having observed the live testimony. T3.14, 15. The judge announced that, after "review[ing] the transcript" and "the video from the garage," he believed the magistrate erred. T4.5-6.

On November 30, 2018, Judge Brown issued a written order rejecting the magistrate's recommendation and holding that, under Maryland law, a "Motion for Judgment of Acquittal does not exist in juvenile court." App. 7. He also stated that, even if such motions were recognized, "the State presented sufficient evidence to overcome the motion, when considering the evidence in the light most favorable to the State." App. 7. He therefore remanded to the magistrate for further proceedings.

### **C. February 2019: Hearing Before Magistrate On Remand**

1. On February 13, 2019, Magistrate Casey held a hearing on remand, during which no new evidence was presented. After hearing argument from counsel, the magistrate announced his ruling from the bench, explaining that the State failed to prove its case beyond a reasonable doubt. On the key issue of what precipitated the assault, the magistrate recounted T.N.'s testimony that "Mr. McDaniel had called Mr.

N. this ... racially offensive name, and that that's what resulted in Mr. N. hitting him. Frankly, I am unable to find why Mr. McDaniel's version should be believed as opposed to Mr. N.'s version." T5.48. The magistrate explained that, although it was a close call, "I just wasn't able to find Mr. McDaniel's testimony such that it overcame the credibility of Mr. N.'s testimony and therefore, since I was unable to do that, I'm unable to find beyond a reasonable doubt." T5.50.

2. In his February 19, 2019, written order, the magistrate reiterated that the "State failed to prove beyond a reasonable doubt the elements of each of the charges." App. 10. He first considered the State's evidence, finding the surveillance video established that S.B., K.R., and T.N. "were in the garage at the time of the assault" and "ran from the garage after the assault occurred." App. 11. He noted McDaniel "testified that [K.R.] and [S.B.] were in the truck or the bed of the truck. On direct examination he said one of them was rummaging through the truck. On cross examination he seemed less sure." *Id.* Based on McDaniel's testimony, the magistrate found that "McDaniel correctly identified [K.R.] and [S.B.] as the young men who were with [T.N.] in the garage when [T.N.] assaulted him," that "[T.N.] struck Mr. McDaniel in the face and injured him," and that "no property was taken from Mr. McDaniel." App. 11-12. He then concluded as a matter of law that the State's evidence, "when looked at *in the light most favorable to the State, absent other evidence*, was sufficient to make a facts sustained finding on each of the charges against [K.R.] and [S.B.]." App. 12 (emphasis added).



However, the magistrate made clear that T.N.'s testimony changed his assessment of the evidence. Although he found "[T.N.] and Mr. McDaniel to be credible witnesses at times and not credible witnesses at other times," he stated:

On the key issue of what led to the assault, I believed [T.N.]'s testimony. I did not believe Mr. McDaniel's testimony. In my opinion, Mr. McDaniel called [T.N.] a racially offensive name and [T.N.] retaliated by assaulting Mr. McDaniel. I believed [T.N.'s] testimony that neither [S.B.] nor [K.R.] struck or touched Mr. McDaniel.

*Id.*

In light of this credibility finding, the magistrate addressed the State's argument that certain inferences should be drawn from the video footage of the boys before and after the incident. He acknowledged that an inference that they "were up to no good when they entered the garage" was reasonable. *Id.* However, the magistrate declined to draw other inferences that the State claimed were supported by McDaniel's testimony. Specifically, although the State argued that S.B. and K.R. "ran from the garage because they had just committed an offense," they "may have been running because they had committed an offense, or they may have been running because their companion committed an offense and they didn't want to get into trouble." App. 12-13. In addition, the magistrate rejected the State's claim that the video showed the three juveniles walking around the garage, "lying in wait" before taking McDaniel by surprise: Although "[m]uch of Mr. McDaniel's testimony is consistent with the state's lying in wait theory," "[s]ome of Mr. McDaniel's testimony undermines that theory. Mr. McDaniel testified that he was aware of the presence of

[T.N., S.B., and K.R.]. He did not feel threatened by them at first. [They] took nothing from him.” App. 13.

Based on all of the evidence, the magistrate found “as a fact that neither [S.B.] nor [K.R.] had any physical contact with Mr. McDaniel” but was “unable to make a factual determination as to whether [S.B.] or [K.R.] had any contact with the truck.” *Id.* “While it is possible that Mr. McDaniel’s testimony more accurately portrayed what happened than [T.N.’s] testimony, I found [T.N.’s] testimony to be more persuasive.” *Id.* Accordingly, the magistrate was “unable to find, beyond a reasonable doubt, facts sustained on any of the [robbery or theft] counts.” *Id.*

On the assault count, he found that “the evidence does not support a finding that either [S.B.] or [K.R.] struck Mr. McDaniel. I believe [T.N.’s] description of the assault.” App. 14. The magistrate rejected the State’s conspiracy count because it “offered no evidence in support of that theory which was not also evidence of assault.” *Id.* The magistrate also rejected the State’s accomplice theory because

[T.N.] struck Mr. McDaniel spontaneously when Mr. McDaniel called him a “black bitch.” There is no evidence that either [S.B.] or [K.R.] expected this. ... They did not act in concert with [T.N.]. They did not assist [T.N.]. There is not enough evidence to find, beyond a reasonable doubt, that either ... assaulted Mr. McDaniel.

*Id.* Therefore, the magistrate “recommend[ed] that the court find facts not sustained on all counts for [S.B.] and [K.R.]” *Id.*

#### **D. State's Second Exception**

The State once again filed an exception to the magistrate's recommendation, challenging his assessment of the evidence, which S.B. and K.R. opposed. Mem. in Support of State's Exception on the Record at 2-4 (Mar. 1, 2019). S.B. argued, among other things, that because the circuit court did not observe the witnesses' live testimony, "the court must defer to the magistrate's findings of fact, especially of credibility" and that its failure to do so would violate due process. Mem. in Opp. to State's Exception at 3, 4-11 (Mar. 12, 2019) (capitalization altered).

On April 25, 2019, Circuit Judge Brown heard arguments on the State's exception. Although he had not observed the witnesses' live testimony, Judge Brown rejected Magistrate Casey's factual findings—including his credibility determinations—and entered an order on June 28, 2019, that the State had proven its case beyond a reasonable doubt on four of five counts. App. 16-21. The court did not address S.B.'s due process argument.

The court found "[T.N.]'s testimony to be incredible" because, although T.N. had testified that he and his friends walked down the ramp in search of his dollar bill, "the [surveillance] video does not depict [T.N.] dropping anything over the wall" or "searching for any items." App. 19. By contrast, the court found "Mr. McDaniel's testimony credible with respect to the allegations of attempted robbery." *Id.* The court believed that the video footage of the juveniles in the garage before and after the incident corroborated McDaniel's testimony. *Id.* Although the court

acknowledged that the magistrate “found ... credible” T.N.’s testimony that “Mr. McDaniel called [T.N.] a ‘racially offensive name,’” the court dismissed that finding, reasoning that “[w]hether Mr. McDaniel called [T.N.] a racially offensive term, which purportedly precipitated a separate assault is not a part of this Exception regarding [S.B.] and [K.R.]” *Id.* It made no further factual findings regarding the assault charge.

“[B]ased upon the testimony of Mr. McDaniel and the video clips,” the court found “beyond a reasonable doubt that [K.R.] and [S.B.] did use force and or threat of force to attempt to rob and to conspire to rob Mr. John McDaniel of unknown property” and that they “got on the truck bed and/or in the truck cab with the intent to steal from Mr. McDaniel.” *Id.* It entered an order of facts sustained against S.B. on all counts, except for the count of attempted theft of property valued between \$100 and \$1500 because there was “no evidence of exactly what [S.B.] was attempting to steal.” App. 20.

On July 29, 2019, S.B. sought reconsideration, which Judge Brown denied. Shortly thereafter, S.B. was adjudicated delinquent and placed in the care and custody of the Maryland Department of Juvenile Services. S.B. filed a notice of appeal on August 27, 2019.<sup>4</sup>

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<sup>4</sup> Since filing the notice of appeal, S.B. has successfully completed all of his court-ordered conditions of supervision.

## STANDARD OF REVIEW

This court reviews questions of law, including whether an individual has been denied due process, de novo. *Regan v. Bd. of Chiropractic Examiners*, 120 Md. App. 494, 509 (1998) (citing *Liberty Nursing Center v. Dept. of Health & Mental Hygiene*, 330 Md. 433, 443 (1993)).

“When reviewing a [magistrate]’s report, both a trial court and an appellate court defer to the [magistrate]’s first-level findings (regarding credibility and the like) unless they are clearly erroneous,” but give “less deference to ‘conclusory or dispositional’ findings.” *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014).

Although the trial court “may be ‘guided’ by the [magistrate]’s recommendation, [it] must make its own independent decision as to the ultimate disposition, which the appellate court reviews for abuse of discretion.” *Id.* (internal citations omitted).

## ARGUMENT

### **I. The Circuit Court’s Reversal Of The Magistrate’s Credibility Determinations Without Seeing The Live Testimony Violated S.B.’s Due Process Rights**

Under the due process guarantees of the U.S. and Maryland Constitutions, children facing delinquency adjudications are entitled to hearings with procedures that ensure “fundamental fairness” and reliable factfinding. *In re Thomas J.*, 372 Md. 50, 65-66 (2002). In this case, S.B. received no such hearing: Although the magistrate who presided over his adjudication concluded that the State did not meet its burden of proof based on his assessment of the witnesses’ credibility, the circuit court

rejected that conclusion, making opposite credibility determinations. This reversal of the magistrate’s credibility determinations without the benefit of observing the witnesses’ live testimony—including their demeanor, body language, and other key indicia of truthfulness—undercut the reliability of S.B.’s adjudication and deprived him of due process under the Fourteenth Amendment to the U.S. Constitution and Article 24 of the Maryland Declaration of Rights.

**A. A Circuit Court’s Reversal Of A Magistrate’s Credibility Determinations In A Juvenile Adjudication, Without Having Observed The Live Testimony, Violates Due Process**

1. “Both the Due Process Clause of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights protect interests in life, liberty and property from deprivation or infringement by government without appropriate procedural safeguards.” *Roberts v. Total Health Care, Inc.*, 349 Md. 499, 508-509 (1998).

Accordingly, “courts have long equated the Due Process Clause and Article 24” and “Supreme Court decisions interpreting the Due Process Clause ‘are practically direct authority for the meaning of the Maryland provision.’” *Samuels v. Tschachtelin*, 135 Md. App. 483, 522-523 (2000).

The right to due process in juvenile proceedings is well established. For decades, the Supreme Court has held that, because a “proceeding where the issue is whether the child will be found to be ‘delinquent’ and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution,” such proceedings “must measure up to the essentials of due process and fair treatment”

under the Fourteenth Amendment. *In re Gault*, 387 U.S. 1, 36 (1967). Maryland courts, too, have recognized that the Fourteenth Amendment and the parallel due process protections under Article 24 of the Declaration of Rights require that children in juvenile proceedings be afforded “fundamental fairness.” *Thomas J.*, 372 Md. at 65-66.

Procedures that protect the integrity of factfinding during juvenile adjudications are critical to ensuring the “fundamental fairness” that due process requires. *In re Winship*, 397 U.S. 358, 365 (1970) (“The same considerations that demand extreme caution in factfinding to protect the innocent adult apply as well to the innocent child.”); *Thomas J.*, 372 Md. at 65 (“as the [due process] standard is applied, the emphasis is on fact-finding procedures”). As the Supreme Court has explained, “procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts” and “enhance the possibility that truth will emerge” from an adjudication. *Gault*, 387 U.S. at 21. Therefore, children facing juvenile adjudications are entitled to procedures designed to safeguard the reliability of the factfinding process, including, among other things, a fair hearing, adequate notice of the charges against them, the right to assistance of counsel, the privilege against self-incrimination, the right to confront and cross-examine witnesses, *id.*; the right to proof beyond a reasonable doubt, *Winship*, 397 U.S. at 368; the right to a speedy trial, *Thomas J.*, 372 Md. at 70; and the applicability of criminal statutes of limitations, *In re Anthony R.*, 362 Md. 51, 76 (2000).

2. Allowing a circuit court judge who did not observe the live witness testimony at a child's adjudication to overturn the outcome-determinative credibility findings of the presiding magistrate strikes at the heart of this due process guarantee. Diminishing the reliability of the factfinding process deprives the child of a fundamentally fair adjudication. As Maryland courts have consistently recognized, the magistrate is in the best position to judge witness credibility because he "saw and heard the witnesses and was able to make the subtle judgments based upon appearance, upon tone of voice, upon even non-verbal communication, etc. that are never available upon the pages of a transcript perused after the fact." *Wenger v. Wenger*, 42 Md. App. 596, 604 (1979); *see also Maness v. Sanyer*, 180 Md. App. 295, 312-313 (2008) ("[B]ecause only [the magistrate] sees the witnesses and the parties [and] hears the testimony," he "is in a far better position than is [a reviewing] court, which has only a cold record before it, to weigh the evidence." (citation and internal quotation marks omitted)); *United States v. Raddatz*, 447 U.S. 667, 679 (1980) (a hearing record after the fact "cannot give the look or manner of the witness: his hesitation, his doubts, his variations of language, his confidence or precipitancy ... without its spirit; which is supplied, when given openly and orally, by the ear and eye of those who receive it" (quoting *Queen v. Bertrand*, 16 Eng. Rep. 391, 399 (1867))).

For this very reason, the Supreme Court has suggested that such reversal of a magistrate's credibility assessment presents serious due process concerns. In *Raddatz*, 447 U.S. 667, the Court considered whether a district court's decision to *accept a*



magistrate’s credibility findings without observing the live testimony in a pretrial suppression hearing violated the defendant’s due process rights. Emphasizing that “[t]he guarantees of due process call for a ‘hearing appropriate to the nature of the case,’” *id.* at 677 (quoting *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)), it balanced three factors to determine whether due process had been satisfied: “(a) the private interests implicated; (b) the risk of an erroneous determination by reason of the process accorded and the probable value of added procedural safeguards; and (c) the public interest and administrative burdens, including costs that the additional procedures would involve.” *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

Although it cautioned that “courts must always be sensitive to the problems of making credibility determinations on the cold record,” the Court held that the defendant’s due process rights were sufficiently protected. *Raddatz*, 447 U.S. at 678. According to the Court, “the interests at stake in a suppression hearing are of a lesser magnitude than those in the criminal trial itself,” and the risk of an erroneous determination was low where the district judge was not second-guessing the credibility determination of the magistrate who heard the live testimony. *Id.* at 679. Importantly, the Court also made clear that it was not addressing a scenario in which a district court *reversed* a magistrate’s credibility determinations, stressing that for a court “to do so without seeing and hearing the witness or witnesses whose credibility is in question could well give rise to serious questions.” *Id.* at 681 n.7.

In the years since *Raddatz*, multiple federal courts of appeals reviewing pretrial suppression and postconviction proceedings have answered the question that the Supreme Court left open: A trial court may not reverse a magistrate’s outcome-determinative credibility assessments without hearing the live testimony first-hand. See, e.g., *Jackson v. United States*, 859 F.3d 495 (7th Cir. 2017); *United States v. Hernandez-Rodriguez*, 443 F.3d 138 (1st Cir. 2006); *United States v. Ridgway*, 300 F.3d 1153 (9th Cir. 2002); *United States v. Cofield*, 272 F.3d 1303 (11th Cir. 2001); *Cullen v. United States*, 194 F.3d 401 (2d Cir. 1999); *Hill v. Beyer*, 62 F.3d 474 (3d Cir. 1995); *Louis v. Blackburn*, 630 F.2d 1105 (5th Cir. 1980). When a federal district judge agrees with the credibility determinations of the magistrate, “the possibility of an erroneous decision is minimal because of the safeguards built into the [magistrate] referral system” including a “carefully developed record, a magistrate’s thoughtful consideration of the issues, and argument of counsel regarding specifics not agreeable to the parties.” *Louis*, 630 F.2d at 1110 (internal quotation marks omitted). By contrast, “when the district judge rejects the magistrate’s credibility determinations,” “these safeguards are no longer present.” *Id.* In such circumstances, unlike in *Raddatz*, “Due Process is not satisfied” because the district judge has not “see[n] and hear[d] the witnesses himself.” *Jackson*, 859 F.3d at 499 (quoting *Louis*, 630 F.2d. at 1109).

In juvenile delinquency adjudications, the interests of the child are even greater than the interests of a criminal defendant in suppression and postconviction hearings. *In re Pima County, Juvenile Action, No. 63212-2*, 631 P.2d 526, 528 (Ariz. 1981) (“the

interests implicated in an evidentiary hearing to adjudicate the delinquency of a juvenile are deserving of more protection than those implicated in an evidentiary hearing on a motion to suppress an involuntary confession”). The juvenile adjudication—whose purpose is to determine whether a child violated criminal law and can result in the deprivation of the child’s liberty—is “comparable in seriousness to a felony prosecution.” *Gault*, 387 U.S. at 36.

When the circuit court has not had the opportunity to judge the credibility of the witnesses in person, any credibility determination that deviates from the magistrate’s first-hand assessment necessarily runs a high risk of error. *Pima County*, 631 P.2d at 530 (“personal observation of witnesses is crucial to accurate fact-finding when the outcome of a juvenile delinquency adjudication depends on an assessment of the credibility of the witnesses”); see *Holiday v. Johnston*, 313 U.S. 342, 352 (1941) (“[o]ne of the essential elements of the determination of the crucial facts is the weighing and appraising of the testimony,” which should be done by the court that observed it first-hand). A child accused of violating a criminal statute and facing the possible loss of his liberty does not receive an “appropriate hearing” for due process purposes when a court rejects the credibility assessments made by a magistrate—changing the outcome of the proceeding to the child’s detriment—without personally observing the live witness testimony.

## **B. S.B.'s Due Process Rights Were Violated In This Case**

The procedure in this case violated S.B.'s due process rights to a “fundamentally fair” proceeding with reliable factfinding. After presiding over S.B.'s adjudication and observing the live witness testimony, the magistrate concluded that the State had not proven the charges against S.B. beyond a reasonable doubt. This conclusion hinged on a credibility determination: The magistrate believed T.N.'s testimony about the key events and not McDaniel's. In rejecting the magistrate's recommendation, the circuit court made inconsistent findings regarding the credibility of those witnesses—without having seen them testify in person—in violation of S.B.'s due process rights.

Specifically, what precipitated the assault and who was involved were key issues related to both the assault and the robbery and theft charges. Under the State's theory of the case, S.B. and his friends entered the parking garage with the intent to steal; were “lying in wait” before McDaniel entered the garage; and attacked McDaniel while looking for items to steal from his truck. App. 13; T5.6-10, 14-17. The principal witnesses, McDaniel and T.N., gave directly conflicting testimony on these issues: McDaniel testified that T.N. hit him without provocation and that S.B. and K.R. joined in the attack while “rummaging” through the truck, *see supra* at 4; T.N. testified that he hit McDaniel only after McDaniel provoked him by calling him a racially offensive name and that S.B. and K.R. ran away once the assault began, *see supra* at 7-8.

Having presided over the adjudication hearing, the magistrate personally observed the testimony from both witnesses. Although he found “[T.N.] and Mr. McDaniel to be credible witnesses at times and not credible witnesses at other times,” the magistrate expressly credited T.N.’s version of the critical events:

On the key issue of what led to the assault, *I believed [T.N.]’s testimony. I did not believe Mr. McDaniel’s testimony.* In my opinion, Mr. McDaniel called [T.N.] a racially offensive name and [T.N.] retaliated by assaulting Mr. McDaniel. I believed [T.N.’s] testimony that neither [S.B.] nor [K.R.] struck or touched Mr. McDaniel.

App. 12 (emphasis added). Because he believed T.N.’s testimony about the events leading to the assault, the magistrate further found that the evidence was not sufficient to prove that S.B. or K.R. participated in the assault. App. 14. Moreover, because he did not credit McDaniel’s testimony that T.N., S.B., and K.R. attacked McDaniel without provocation, which the State argued supported an inference they intended to rob him—and because he was unable to determine whose testimony was more credible regarding “whether [S.B.] or [K.R.] had any contact with the truck”—the magistrate was “unable to find, beyond a reasonable doubt, facts sustained on any of the [robbery or theft] counts.” App. 13.

By contrast—without having observed the live witness testimony firsthand—the circuit court judge expressly found “[T.N.]’s testimony to be incredible” and “McDaniel’s testimony [to be] credible.” App. 19. In particular, the judge explained that he believed McDaniel’s testimony “with respect to the allegations of attempted robbery.” *Id.* He also refused to consider the fact that the magistrate “found ...

credible” T.N.’s testimony that “McDaniel called [T.N.] a ‘racially offensive name,’” which the magistrate found led to the altercation. *Id.* Therefore, largely “based upon the testimony of Mr. McDaniel,” the circuit court found that S.B. used force to attempt to rob McDaniel and “got on the truck bed and/or in the truck cab with the intent to steal from Mr. McDaniel.” *Id.* It reversed the magistrate’s conclusions and held that the State presented sufficient evidence to sustain the facts alleged on four counts. App. 20.

\* \* \*

For all of the reasons discussed above, the circuit court’s reversal of the magistrate’s outcome-determinative credibility findings, without the benefit of observing the live testimony, was not the product of a sufficiently reliable factfinding process. Due process requires that the circuit court accept the credibility findings of the magistrate who personally saw and heard the live testimony of the witnesses.<sup>5</sup>

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<sup>5</sup> State law and double jeopardy concerns prohibit the remedy of a de novo hearing to allow the circuit court to judge the witnesses’ credibility in this case. The Maryland Rules generally forbid a de novo hearing in juvenile cases where, as here, the excepting party is the State. Md. Rule 11-111(c) (“An excepting party other than the State may elect a hearing de novo or a hearing on the record. *If the State is the excepting party, the hearing shall be on the record*, supplemented by such additional evidence as the judge considers relevant and to which the parties raise no objection.” (emphasis added)); *see also* Md. Code, Courts & Jud. Proc. § 3-807(c)(2).

And although the federal cases discussed above held that de novo hearings would cure the due process violations in the circumstances of those cases, all of those cases involved pretrial suppression or postconviction hearings—not trials adjudicating an individual’s guilt or innocence. Because “there is little to distinguish [a juvenile] adjudicatory hearing such as was held in this case from a traditional criminal

Although a remand to the circuit court to rehear the case after accepting the credibility determinations of the magistrate might be appropriate in some cases, given the unique circumstances of this case, this Court should simply order the circuit court to adopt the magistrate's recommendation that S.B. be found "facts not sustained" on all counts. As described above, the outcome of this case depends wholly on a credibility determination between the testimony of T.N. and McDaniel. The State presented no other evidence of what happened during the altercation at McDaniel's truck. The video footage of the parking garage did not show McDaniel's truck or the incident itself. It is undisputed that nothing was taken from McDaniel or the truck. And no other witnesses besides T.N. and McDaniel testified about the altercation. Once T.N.'s account of that incident is properly credited over McDaniel's, no court could find beyond a reasonable doubt that S.B. participated in the assault or attempted to rob McDaniel. Accordingly, there is nothing left for the circuit court to determine on remand.

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prosecution," *Breed v. Jones*, 421 U.S. 519, 530 (1975), double jeopardy principles prohibit taking new evidence on remand. See *Swisher v. Brady*, 438 U.S. 204, 216 (1978) (explaining that Maryland's juvenile adjudication system does not violate due process because, under Maryland's rules, although the State may file exceptions to a magistrate's conclusion that it did not meet its burden of proof, the State does *not* have the right to present additional evidence after the initial hearing); *In re Mark R.*, 294 Md. 244, 259-260 (1982).

## II. In The Alternative, The Circuit Court Abused Its Discretion When It Rejected The Magistrate’s Determination That The State Failed To Meet Its Burden Of Proof

In the alternative—even if this Court does not find a due process violation—the circuit court in this case abused its discretion when it rejected the magistrate’s recommendations and concluded the State had met its burden of proof.

As an initial matter, the circuit court failed to apply the required clear-error standard to the magistrate’s findings of fact and credibility determinations. Maryland case law “is replete with statements about the deference that will be paid to the findings of fact by the [magistrate], who heard the witnesses and observed their demeanor, unless such fact-finding is clearly erroneous.” *Wenger*, 42 Md. App. at 604; accord *McAllister*, 218 Md. App. at 407; *In re Priscilla B.*, 214 Md. App. 600, 623-624 (2013). “If *any* competent material evidence exists in support of the [magistrate]’s factual findings, those findings cannot be held to be clearly erroneous.” *Figgins v. Cochrane*, 403 Md. 392, 409 (2008) (citation omitted; emphasis added); see also *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) (a factual finding “is not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion”). Because, as discussed above, the magistrate who presided over the hearing is in a “far better position” to judge witness credibility than the reviewing court, the magistrate’s “findings of fact from the evidence are prima facie correct,” *Bar Ass’n v. Marshall*, 269 Md. 510, 516 (1973), and owed “great deference,” *Wenger*, 42 Md. App. at 604.



The circuit court did not apply this deferential standard to the magistrate’s factual findings. As explained above, the magistrate found, among other things, that T.N. assaulted McDaniel after McDaniel provoked him by calling him a racially offensive name, and that neither S.B. nor K.R. participated in the assault. *See supra* at 10-13; App. 12, 14. These and other of the magistrate’s key factual findings regarding the events leading to the altercation with McDaniel, and of the events surrounding the altercation itself, were supported by ample evidence in the record—principally, the testimony of T.N., which the magistrate found to be credible. *See supra* at 12-13; App. 12, 13. However, the circuit court, which had not personally observed the testimony, simply reversed the magistrate’s credibility and resulting factual findings without finding they were clearly erroneous or suggesting they were unsupported by evidence in the record. *See supra* at 14-15; App. 19.

Moreover, the circuit court did not address the discrepancies in McDaniel’s testimony that tend to undermine his credibility. For instance, McDaniel testified on direct examination that he was “surprised from behind” by T.N., who then began punching him in the face without provocation, *supra* at 4-5; McDaniel later testified on cross examination that T.N. punched him in the face in response to McDaniel’s question about whether the truck parked next to his was T.N.’s, *see supra* at 6. In addition, McDaniel’s identification of S.B. and K.R. and his description of their alleged roles in the assault and attempted robbery were inconsistent throughout his testimony. *See supra* at 5-6.

Furthermore, the circuit court disregarded what was possibly the magistrate's most critical finding: that McDaniel provoked the assault by calling T.N. a "black bitch"—which not only undermined the State's theory that T.N., S.B., and K.R. assaulted McDaniel in an attempt to steal from him, but also supported the magistrate's finding that S.B. and K.R. did not participate in the assault and instead ran when T.N. began hitting McDaniel. Rather than addressing this finding and its implications for the State's theory of the case, the circuit court inexplicably stated that "[w]hether Mr. McDaniel called [T.N.] a racially offensive term, which purportedly precipitated a separate assault is not a part of this Exception." App. 19. That assertion is incorrect. The State's brief in support of its exception argued that "the court erred in not finding the respondent facts-sustained." Mem. in Support of State's Exception on the Record, at 2 (Mar. 1, 2019) (capitalization altered). In making his recommendation, the magistrate expressly relied on his factual finding that McDaniel provoked T.N. by using a racial slur. *See* App. 12, 14. The circuit court erred by failing to consider and defer to the magistrate's finding on this crucial fact, which it implicitly (and incorrectly) rejected when it instead credited McDaniel's testimony "with respect to the allegations of attempted robbery." App. 19.

Finally, the circuit court found that the surveillance footage of the garage ramp corroborated McDaniel's testimony. *Id.* But any corroboration the footage may have provided was too weak to justify reversing the magistrate's findings. The incident at McDaniel's truck occurred off camera; the surveillance footage, which contains no

audio, shows only T.N., S.B., and K.R. entering and exiting the parking area. *See supra* at 6. At most, the footage proves that the three boys were together in the parking garage at the time of the incident and that they ran out afterward. Any additional inferences drawn from the video necessarily depend on which testimony about the events that occurred off camera the court chose to believe.

All of this makes clear that the circuit court did not apply the clear-error standard to the magistrate's credibility determinations and resulting factual findings. Applying the proper standard, and with deference to the magistrate's observations of the witnesses' demeanor while testifying, no court could have found the magistrate's factual findings clearly erroneous. And on the facts found by the magistrate, no court could have found that the State proved its case beyond a reasonable doubt. Accordingly, the circuit court abused its discretion when it failed to apply the proper standard of review to the magistrate's factual findings and overruled the magistrate's conclusion that the State failed to prove its case beyond a reasonable doubt. Under the correct standard, the circuit court should have adopted the magistrate's findings of fact and ultimate recommendation to find "facts not sustained" on all counts.

As discussed above, given that the magistrate's credibility findings determine the outcome in this case, there is no need for this Court to remand to the circuit court with orders to apply the correct standard in the first instance. Because the magistrate's credibility findings—which were not clearly erroneous—require a finding

of “facts not sustained,” this Court should simply remand with instructions to adopt the magistrate’s recommendation.

### CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the circuit court and remand with instructions to adopt the magistrate’s recommendation.

Respectfully submitted,

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*March 9, 2020*

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## **STATEMENT REGARDING ORAL ARGUMENT**

Counsel for S.B. respectfully requests oral argument. Oral argument would be likely to facilitate the court's decision-making process in light of the novel issues that this case raises. The case is scheduled for the June 2020 session.

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the font, spacing, and type-size requirements of Maryland Rule 8-112. I further certify that this brief contains 7,769 words, excluding the portions of the brief excluded from the word count by Rule 8-503.

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NICOLAS Y. RILEY  
*Counsel for Appellant*

## **ADDENDUM OF PERTINENT AUTHORITIES**

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## Md. Rule 11-111

### Rule 11-111. MAGISTRATES

#### a. Authority.

1. *Detention or Shelter Care.* A magistrate is authorized to order detention or shelter care in accordance with Rule 11-112 (Detention or Shelter Care) subject to an immediate review by a judge if requested by any party.
2. *Other Matters.* A magistrate is authorized to hear any cases and matters assigned to him by the court, except a hearing on a waiver petition. The findings, conclusions and recommendations of a magistrate do not constitute orders or final action of the court.

**b. Report to the Court.** Within ten days following the conclusion of a disposition hearing by a magistrate, he shall transmit to the judge the entire file in the case, together with a written report of his proposed findings of fact, conclusions of law, recommendations and proposed orders with respect to adjudication and disposition. A copy of his report and proposed order shall be served upon each party as provided by Rule 1-321.

**c. Review by Court if Exceptions Filed.** Any party may file exceptions to the magistrate's proposed findings, conclusions, recommendations or proposed orders. Exceptions shall be in writing, filed with the clerk within five days after the magistrate's report is served upon the party, and shall specify those items to which the party excepts, and whether the hearing is to be de novo or on the record.

Upon the filing of exceptions, a prompt hearing shall be scheduled on the exceptions. An excepting party other than the State may elect a hearing de novo or a hearing on the record. If the State is the excepting party, the hearing shall be on the record, supplemented by such additional evidence as the judge considers relevant and to which the parties raise no objection. In either case the hearing shall be limited to those matters to which exceptions have been taken.

**d. Review by Court in Absence of Exceptions.** In the absence of timely and proper exceptions, the magistrate's proposed findings of fact, conclusions of law and recommendations may be adopted by the court and the proposed or other appropriate orders may be entered based on them. The court may remand the case to the magistrate for further hearing, or may, on its own motion, schedule and conduct a further hearing supplemented by such additional evidence as the court considers relevant and to which the parties raise no objection. Action by the court under this section shall be taken within two days after the expiration of the time for filing exceptions.

## **Md. Code, Courts and Judicial Proceedings § 3-807**

### **§ 3-807. Appointment and powers of master for juvenile causes**

#### **Appointment of master**

- (a)(1) The judges of a circuit court may not appoint a magistrate for juvenile causes arising under this subtitle and Subtitle 8A of this title unless the appointment and the appointee are approved by the Chief Judge of the Court of Appeals.
- (2) The standards expressed in § 3-806(b) of this subtitle, with respect to the assignment of judges, are applicable to the appointment of magistrates.
- (3) A magistrate, at the time of appointment and at all times while serving as a magistrate, shall be a member in good standing of the Maryland Bar.

#### **Hearings and proceedings**

- (b)(1) A magistrate appointed for juvenile causes may conduct hearings.
  - (2) Each proceeding shall be recorded, and the magistrate shall make findings of fact, conclusions of law, and recommendations as to an appropriate order.
  - (3) The proposals and recommendations shall be in writing, and, within 10 days after the hearing, the original shall be filed with the court and a copy served on each party to the proceeding.

#### **Exceptions to findings, conclusions, and recommendations of master**

- (c)(1) Any party, in accordance with the Maryland Rules, may file written exceptions to any or all of the magistrate's findings, conclusions, and recommendations, but shall specify those items to which the party objects.
  - (2) The party who files exceptions may elect a hearing de novo or a hearing on the record before the court unless the party is the State in proceedings involving juvenile delinquency under Subtitle 8A of this title.
  - (3) If the State is the excepting party in proceedings involving juvenile delinquency, the hearing shall be on the record, supplemented by additional evidence as the judge considers relevant and to which the parties raise no objection.
  - (4) In either case, the hearing shall be limited to those matters to which exceptions have been taken.

#### **Proposals and recommendations not orders or final action of court**

- (d)(1) The proposals and recommendations of a magistrate for juvenile causes do not constitute orders or final action of the court.

- (2) The proposals and recommendations shall be promptly reviewed by the court, and, in the absence of timely and proper exceptions, they may be adopted by the court and appropriate orders entered based on them.
- (3) Detention, community detention, or shelter care may be ordered by a magistrate pending court review of the magistrate's findings, conclusions, and recommendations.

**De novo hearings by court**

- (e) If the court, on its own motion and in the absence of timely and proper exceptions, decides not to adopt the magistrate's findings, conclusions, and recommendations, or any of them, the court shall conduct a de novo hearing, unless all parties and the court agree to a hearing on the record.