

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2019

NO. 1253

IN RE: S.B.

APPEAL FROM THE CIRCUIT COURT
FOR BALTIMORE CITY
SITTING AS A JUVENILE COURT

(Hon. Emanuel Brown, Judge)

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

In juvenile petition no. 318129011, filed in the Circuit Court for Baltimore City, sitting as a juvenile court, Appellant S.B. was charged with Count 1—attempted robbery, Count 2—conspiracy to commit robbery, Count 3—second-degree assault, Count 4—attempted theft of property having a value of between \$100 and \$1,500, and Count 5—unlawfully being in or on a motor vehicle with the intent to commit theft. (R. 1). S.B. was tried jointly with co-respondents T.N. (petition no. 318129012) and K.R. (petition no. 318128006). The adjudication hearing (Family Magistrate James P. Casey, presiding) was held on July 3, July 26, and August 2, 2018. The magistrate granted the respondents’ joint motion for judgment of acquittal and, with respect to S.B., dismissed all of the charges except for Count 3—second-degree assault. (T2. 7-9, 14).¹

¹ The State adopts S.B.’s method of transcript citation, but notes that additional transcripts in the record were not cited by S.B.

Those additional transcripts will be cited as follows: July 26, 2018 (continuation of adjudication hearing)—“T1A”; October 19, 2018 (continuation of first exceptions hearing)—“T3A”; March 29, 2019 (status conference)—“T6”; April 26, 2019 (second exceptions hearing)—“T7”; June 7, 2019 (resetting announcement of circuit court’s decision)—“T8”; June 20, 2019 (resetting announcement of

At the close of all the evidence, the magistrate found, as to S.B., that the facts were not sustained as to second-degree assault. (T2. 69). In a written order, the magistrate recommended that the circuit court find all S.B.'s charges "facts not sustained." (App. 1-2).

The State filed an exception. ("List of Documents/Docket Entries" at 2, 3). On October 5, October 19, and November 9, 2018, the circuit court (Judge Emanuel Brown, presiding), sitting as a juvenile court, held an exception hearing on the record. The circuit court determined that the magistrate erred in granting the motion for judgment of acquittal and in finding facts not sustained on the second-degree assault charge, and remanded for a continuation of the adjudication hearing. (T4. 5-6). In a written memorandum and order, (App. 4-9), the court directed the magistrate to continue the adjudication hearing beginning with S.B.'s and K.R.'s case and to consider all of the charged offenses in ruling on the case. (App. 8-9).

circuit court's decision)— "T9"; August 23, 2019 (hearing on motion for reconsideration)—"T10."

On February 13, 2019, the continuation of the adjudication hearing was held before Magistrate Casey. The magistrate found that none of S.B.'s charges were facts sustained and recommended that the case be dismissed. (T5. 46-50). The magistrate issued a written order and recommendation. (App. 10-15).

The State filed a second exception. ("List of Documents/Docket Entries" at 1-2). On April 25, 2019, a second exception hearing on the record was held before Judge Brown. In written memorandum and order dated June 28, 2019, the circuit court found facts sustained as to attempted robbery (Count 1), conspiracy to commit robbery (Count 2), second-degree assault (Count 3), and unlawfully being in or on a motor vehicle with the intent to commit theft (Count 5). The court found facts not sustained as to attempted theft of property valued between \$100 and \$1,500 (Count 4). (App. 16-21).

On August 23, 2019, Judge Brown held a hearing on S.B.'s motion for reconsideration. He denied the motion and sent the case to Judge Robert B. Kershaw for disposition and review. (T10.

15).² A disposition hearing was held on the same date. (“Chronological Case Summary” at 3-4).

QUESTION PRESENTED

Did the circuit court properly exercise its discretion in reviewing the first-level facts and making its own determination that the facts were sustained?

STATEMENT OF FACTS

The hearing before Magistrate Casey and his findings and recommendation

S.B. was with T.N. and K.R. when he encountered John McDaniel in a parking garage. McDaniel, who had been working on the sixth floor of a building located at 1100 Wicomico Street in Baltimore, went to retrieve some tools from a 2001 Dodge Ram pickup truck he had borrowed,³ which was parked on the first (or ground floor) level of the building’s parking garage. (T1. 14, 33,

² It appears from the record that Judge Kershaw was handling another matter in which S.B. and K.R. were involved. (T9. 9-17).

³ Edward Uhlman, the truck owner, testified that McDaniel was using the truck with his permission. (T1. 34; T1A. 10-12, 16).

43, 58; T1A. 1-12). Surveillance cameras were located throughout the garage and loading dock. (T1. 14). Video clips of footage from cameras located at the loading dock on the ground level and on the ramp leading from the ground floor to the second floor were downloaded and entered into evidence as State's Exhibit 1. (T1. 15-25; T1A. 5). The video showed the juveniles entering and moving about the garage prior to the incident and running away afterwards. The attack itself occurred about two parking spaces out of the range of the surveillance cameras. (T1. 46).

McDaniel testified that he did not see anyone as he walked to his vehicle. (T1. 56, 57). As he stood in the open doorway on the passenger side of the pickup truck retrieving his tools, he saw through the vehicle windows and out of his peripheral vision three male African-American youths running around the truck. (T1. 56-58, 67-68). McDaniel identified the three juveniles in court and on the surveillance video as T.N., S.B., and K.R. (T1. 35-36, 39-41, 48-49, 63).

A heavysset African-American youth, identified as T.N., approached McDaniel from behind and got in between the open passenger door and the vehicle parked next to McDaniel's truck.

(T1. 35-36, 39-40, 68). McDaniel turned and asked T.N. if the vehicle parked next to McDaniel's truck belonged to him. (T1. 58-59, 68). T.N., who was larger than McDaniel, did not reply, but instead began punching McDaniel in the face repeatedly (more than five times), pinning him between the open door and the cab of the truck. (T1. 34-35, 59, 68-70). On cross-examination, T.N.'s counsel asked McDaniel whether he twice called T.N. a "black bit*h" before T.N. punched him. (T1. 59). McDaniel responded that he "absolutely" did not, adding that he does not "speak that way to anybody." (T1. 59).

While McDaniel was being assaulted by T.N., a second juvenile entered the truck through the "suicide door"⁴ and began "[r]ummaging through the truck" and punching McDaniel in the back of the head from the backseat. (T1. 35, 40-41, 49, 60, 69-71, 74-75).⁵ During the assault, McDaniel saw the third juvenile in

⁴ "A 'suicide door' is the slang term for an automobile door hinged at its rear rather than the front." In the era before seat belts, airflow pushed such doors open, creating a greater risk of falling out of the vehicle compared to front-hinged doors. *See* en.wikipedia.org/wiki/Suicide_door (last visited 4/20/20).

⁵ Uhlman, the owner of the truck, testified that he had a toolbox and other property in the truck. (T1A. 14).

the open bed of the pickup truck rummaging through items. (T1. 35, 41, 48-49, 63, 69).⁶ McDaniel testified that he was “very aware” of each of the three juveniles because he was afraid a weapon would be produced or that the assault would intensify. (T1. 63-64). None of the three juveniles made any statements to McDaniel or demanded his property. (T1. 54, 62, 67).

It was unclear from McDaniel’s testimony whether S.B. was in the backseat and K.R. was in the truck bed, or the other way around. In his identifications in court and on the video, McDaniel identified S.B. as the juvenile in the backseat wearing an orange striped shirt and K.R. as the juvenile in the truck bed wearing a hoodie. (T1. 40-41, 48-49). However, McDaniel initially testified on direct examination that the person in the backseat was wearing a hoodie, and at the end of the cross-examinations, he again testified that the person in the backseat was wearing a hoodie and that the person in the truck bed was wearing an orange striped shirt. (T1. 36-37, 75-76). Regardless of their respective roles, both

⁶ McDaniel testified that tools such as a “Sawzall, possibly an extension cord,” and trash were in the truck bed. (T1. 64).

S.B. and K.R. “rummaged” through the cab and the bed of McDaniel’s truck. (T1. 40, 63, 69, 81).⁷

McDaniel testified that he yelled for help toward the loading dock during the attack. (T1. 42). At one point he was able to push T.N. away and get away from the truck. (T1. 60-61). At that point, the third juvenile in the truck bed circled around the front of the truck and began attacking McDaniel from behind. (T1. 60-61, 75). McDaniel was able to “gain[] some distance” and all three juveniles “took off running” out of the parking garage toward Ostend Street. (T1. 42). No items were taken from McDaniel or the truck. (T1. 54; T1A. 15). As McDaniel walked out of the garage, he called the police. (T1. 42, 53).

McDaniel’s injuries included a hematoma in his right eye and other bumps and bruises. (T1. 53). At the time of trial, McDaniel was continuing to see a doctor to assess possible nerve damage to his eye. (T1. 53).

⁷ After viewing the surveillance video, which McDaniel saw for the first time during his testimony, McDaniel acknowledged that the hoodie was maroon in color, not gray. (T1. 48-49; T5. 40-41).

At the close of the State's case-in-chief, T.N., joined by S.B. and K.R., moved for a judgment of acquittal. (T2. 7-9). The magistrate granted the motion on all the counts except for second-degree assault. (T2. 14-15). The magistrate found that, viewing the evidence in the light most favorable to the State, there was no evidence that there was an attempted taking. (T2. 14). The magistrate observed that no items had been taken and, despite testimony to the contrary, found that there was no evidence that any of the juveniles were rifling through the truck. (T2. 14-15). In his written findings, the magistrate again observed that "[t]he respondents had opportunity to steal and they did not." (App. 1). The magistrate applied the "beyond a reasonable doubt" standard in granting the motion. (App. 1-2).

T.N., age 15, elected to testify. He stated that he, S.B., and K.R. were in the garage because his friend had never been to the top. (T2. 19). According to T.N., as they were walking up the ramp to the second floor, he dropped a dollar bill over the side. (T2. 19). They all climbed over the ramp wall and walked around looking for it. (T2. 19-20, 34). They saw McDaniel, and walked around his vehicle looking for the dollar bill, which they found underneath the

truck parked next to McDaniel's truck. (T2. 21). According to T.N., McDaniel turned and asked T.N. if the vehicle was his, and T.N. said no. (T2. 21). McDaniel turned back around and as they were leaving, said "black bit*h." (T2. 21). T.N. said he turned and asked McDaniel "what did he say," but McDaniel did not reply. (T2. 21). As they walked away, T.N. again heard McDaniel say "black bit*h," and T.N. angrily punched McDaniel in the face repeatedly with a closed fist, causing McDaniel to fall in his truck and be pinned within the open door. (T2. 22-24, 28, 33-34). When S.B. and K.R. were leaving, McDaniel grabbed T.N.'s hair to prevent him from following, but T.N. pushed him away and ran after his friends. (T2. 24). As they ran, McDaniel yelled, "I'm calling the police." (T2. 26). T.N. acknowledged that he never told police that McDaniel called him a "black bit*h." (T2. 33).

The magistrate found that the facts were sustained on second-degree assault as to T.N., but not as to S.B. or K.R. (T2. 67, 69). Magistrate Casey stated that he believed T.N.'s testimony and that the biggest problem he had with McDaniel's description of the assault was that "it came out of the blue, and . . . that is certainly possible but I can't find beyond a reasonable doubt that that's what

happened, and I also found Mr. N. to be a very credible witness.” (T2. 67).

With respect to S.B.’s and K.R.’s involvement in the assault, the magistrate said, “frankly, I don’t know.” (T2. 68). The court observed that T.N. “said there was no involvement of the Respondents, [McDaniel] said there was. [McDaniel] [was] being hit in the face at the time so it may well be that they were involved, but I can’t find beyond a reasonable doubt that they were involved.” (T2. 68).

In his written findings, the magistrate acknowledged McDaniel’s testimony that S.B. and K.R. also hit him, but observed that McDaniel “was fighting [T.N.] at the time,” and stated that he “believed [T.N.’s] account.” (App. 2). The magistrate stated that he believed T.N.’s testimony that he struck McDaniel because T.N. was “upset and he acted immediately” and found that he did not act in concert with S.B. and K.R. because they “had no way of knowing he was going to do that and they had no way of intervening and they had no way of planning.” (T2. 68; *see also* App. 2).

The first exception hearing and ruling of Judge Brown

The State filed an exception stating that (1) the magistrate erred in granting the motion for judgment of acquittal because such motions are not authorized in juvenile proceedings, the magistrate applied the wrong standard of review, and there was evidence to support the dismissed charges; and (2) the magistrate erred in finding that the facts were not sustained based on the evidence. An exceptions hearing was held on October 5, October 19, and November 9, 2018. (*See* T3; T3A; T4). At S.B.'s urging, the court reviewed the video of the adjudication hearing. (T3A. 9-10). The court also reviewed the transcript of the adjudication hearing, it viewed the surveillance video (State's Exhibit 1), and it heard the arguments of counsel. S.B.'s attorney argued in part that the court should not review the surveillance video, that it showed only that the juveniles were present, and that a court may properly make credibility determinations on a motion for judgment of acquittal. (T3. 14, 42-43, 47).

Judge Brown determined that there is no provision for motions for judgment of acquittal in juvenile court, citing Title 11 of the Maryland Rules, Rule 1-101(b) & (d), and caselaw. (App. 7).

The court further found that the magistrate erred in granting the motion because the State produced sufficient evidence. (App. 7). The court stated that it was for the magistrate to articulate whether T.N.'s testimony was "totally or partially credible" and inquired: "Even if the Magistrate found the third co-Respondent [T.N.] credible, how does that apply to the other two Respondents?" (App. 8). The court ordered the magistrate to continue the adjudicatory hearing beginning with S.B.'s and K.R.'s case, and instructed the magistrate to consider "all of the charged offenses" in ruling on the case. (App. 8-9). Finally, the court stated that it would hold *sub curia* the State's request to enter a "facts sustained" finding on second-degree assault.

The continuation of the hearing on remand and Magistrate Casey's findings and recommendation

S.B. and K.R. did not offer any evidence on remand. (T5. 5-6). S.B.'s attorney argued that McDaniel was not credible and urged the magistrate to make "clear" whether the basis for his "facts not sustained" finding was McDaniel's credibility. (T5. 26, 31, 34). The State argued that the surveillance video did not

support T.N.'s testimony that he had dropped a dollar bill and that he, S.B., and K.R. were looking around the garage for it. (T5. 44).

The magistrate stated that he "believe[d]" T.N. because his testimony was "clear," but he did not disbelieve McDaniel's testimony, which he found, "by and large, to be credible." (T5. 48, 50; *see also* T5. 47 ("Mr. McDaniel's testimony, I found basically credible.")). The magistrate did have "problems" with McDaniel's testimony that T.N. struck him "out of the blue." (T5. 47-48). But because "both" T.N. and McDaniel "ha[d] a fair amount of credibility," the magistrate concluded, he was "unable to find beyond a reasonable doubt that McDaniel's version was accurate and [T.N.'s] version was not accurate." (T5. 48; *see also* T5. 48 ("Frankly, I am unable to find why Mr. McDaniel's version should be believed as opposed to [T.N.'s] version."); T5. 48 ("It seems to me that [T.N.'s] version is every bit as plausible as Mr. McDaniel's version")). The magistrate concluded:

Basically, the ruling is that it made much more sense to me that he would punch Mr. McDaniel in the face after this insult, than it made that he would just punch him out of the clear blue.

(T5. 49).

“The rest of Mr. McDaniel’s testimony,” the magistrate added, “I certainly find credible, although not necessarily clear.” (T5. 48). The magistrate stated that McDaniel’s confusion did not go to his credibility, however. (T5. 48).

In his written findings, Magistrate Casey stated that he “found both [T.N.] and McDaniel to be credible witnesses at times and not credible witnesses at other times.” (App. 12). Specifically, the magistrate made the following credibility findings:

(1) he believed T.N.’s testimony that McDaniel called T.N. “a racially offensive name,” and

(2) he believed T.N.’s testimony that “neither [S.B.] nor [K.R.] struck or touched Mr. McDaniel.”

(App. 12, 13).

With respect to the attempted robbery and theft charges, Magistrate Casey stated that he was unable to resolve the discrepancy between McDaniel’s and T.N.’s testimony “[o]n the issue of whether [S.B.] or [K.R.] had contact with the truck being used by Mr. McDaniel.” (App. 12, 13). The magistrate agreed with the State that a “reasonable inference” from the evidence was that “the respondents were up to no good when they entered the

garage.” (App. 12). The magistrate also found that the juveniles’ flight from the scene was susceptible to two “plausible inferences”: (1) they were running “because they had committed an offense” and (2) they were running because T.N. “committed an offense and they didn’t want to get into trouble.” (App. 13).

The magistrate recommended the court find the facts not sustained on the attempted robbery and theft counts because he was unable to find, beyond a reasonable doubt, that the offenses occurred. (App. 13-14). The magistrate found that neither S.B. nor K.R. had any physical contact with McDaniel, but he was “unable to make a factual determination as to whether [S.B.] or [K.R.] had any contact with the truck being used by Mr. McDaniel.” (App. 13). The magistrate added that, “[w]hile 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.” (App. 13).

The magistrate also recommended the court find the facts not sustained on the second-degree assault charge, based on T.N.'s testimony that neither S.B. nor K.B. struck McDaniel.⁸

The second exception hearing and ruling of Judge Brown

The State filed a second exception asking the circuit court to review the basis articulated by the magistrate for his “facts not sustained” determination, and to review the evidence and find that the facts were sustained. (T7. 41). The circuit court issued a written ruling⁹ summarizing the evidence, which including a detailed description of the events depicted in the surveillance video. (App. 17-18).

Based on the facts, the court made the following findings:

⁸ The court also made findings about conspiracy to commit second-degree assault, but only K.R. was charged with that offense. (T2. 40-42).

⁹ The case was reset several times so that Judge Brown could state his ruling on the record. (T7. 43; T8. 4-5; T9. 15, 17). Although the docket entries indicate that Judge Brown's ruling may have been delivered on the record on August 28, 2019 (“List of Documents/Docket Entries at 1), a transcript of those proceedings was not prepared.

(1) the video showed that T.N., S.B., and K.R. were working together because of the manner in which they entered and moved about the garage and interacted with each other;

(2) T.N.'s testimony that, prior to the assault, he dropped a dollar bill over the ramp wall and that he, S.B., and K.R. went down to look for it, which placed them in proximity to McDaniel, was not credible because

(a) the surveillance video did not show T.N. dropping anything over the ramp wall while he was walking up the ramp,

(b) it did not show any of the juveniles searching for items when nearing or jumping over the ramp wall, and

(c) there was no reason for the juveniles to go deeper into the garage, as the video showed, if they were looking for T.N.'s dollar bill.

(3) McDaniel's testimony was supported by

(a) the three juveniles' "furtive, stealth-like movements about the garage as depicted in the video clips,"

(b) their "collaborative and coordinated movement in the garage," as shown on the video, and

(c) their “flight from the garage just before Mr. McDaniel emerged on the video.”

(App. 18-19). “But to be clear,” the court emphasized, “this Court finds Mr. McDaniel’s testimony credible with respect to the allegations of attempted robbery,” (App. 19), an issue on which the magistrate expressly had not opined.

With respect to the magistrate’s credibility determination, the court stated: “Whether 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.]” (App. 19).

“[B]ased upon the testimony of Mr. McDaniel and the video clips,” the court found beyond a reasonable doubt that S.B. and K.R. “did use force and or threat of force to attempt to rob and to conspire to rob” McDaniel. The court found that the “force or threat of force is attributed to the three against one scenario, and [T.N.] hitting and pinning Mr. McDaniel to the truck.” (App. 19). The court also found beyond a reasonable doubt that both S.B. and K.R. “got on the truck bed and/or in the truck cab with the intent to steal from Mr. McDaniel.” (App. 19). Accordingly, the court

found that the facts were sustained as to Count 1 (attempted robbery), Count 2 (conspiracy to commit robbery), Count 3 (second-degree assault), and Count 5 (being in or on a vehicle with the intent to commit theft). The court declined to speculate about the value of the property the juveniles were attempting to steal and thus found that the facts were not sustained as to attempted theft (Count 4).

ARGUMENT

THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN REVIEWING THE FIRST-LEVEL FACTS AND MAKING ITS OWN DETERMINATION THAT THE FACTS WERE SUSTAINED.

According to S.B., the circuit court, sitting as a juvenile court, “reversed” or rejected the magistrate’s “outcome-determinative” credibility findings without having “seen the witnesses’ live testimony,” thus violating his right to due process. (Appellant’s Br. 1-2). Alternatively, S.B. contends that the court abused its discretion by failing to review the magistrate’s

“outcome-determinative” credibility findings for clear error. (Appellant’s Br. 2-3).¹⁰

The circuit court did not reject the magistrate’s credibility findings, nor did those findings dictate the outcome of the attempted robbery and related charges against S.B. and K.R. The magistrate’s credibility findings were limited to a portion of T.N.’s testimony involving T.N.’s assault on McDaniel: the magistrate believed T.N.’s testimony that McDaniel called T.N. “a racially offensive name,” and that “neither [S.B.] nor [K.R.] struck or touched Mr. McDaniel.” (App. 12, 13). The circuit court did not make its “facts sustained” determination that S.B. and K.R. were involved in attempted robbery and related offenses by rejecting those credibility findings. To the contrary, the circuit court expressly stated that “[w]hether Mr. McDaniel called [T.N.] a racially offensive term, which purportedly precipitated a separate assault[,] is not part of this Exception regarding [S.B.] and [K.R.]” (App. 19).

¹⁰ The summary of S.B.’s argument is in his Statement of the Case.

Notably, with respect to whether S.B. and K.R. attempted to rob McDaniel, the magistrate stated that he was unable to make a factual finding; he concluded only that he was not persuaded beyond a reasonable doubt that the facts were sustained. (App. 12, 13). The circuit court made its “facts sustained” determination that S.B. and K.R. were involved in the attempted robbery and related offenses after reviewing a significant body of evidence, none of which conflicted with the magistrate’s credibility findings related to T.N.’s assault on McDaniel. The court’s “facts sustained” determination, therefore, was not an abuse of its discretion, and this Court should affirm.

A. The circuit court defers to the magistrate’s factual findings unless clearly erroneous, but makes its own determination of the meaning of those facts, which this Court reviews for an abuse of discretion.

In Maryland, a magistrate (previously called a master) is authorized to hear juvenile delinquency and other matters assigned to him by the circuit court. *In re Marcus J.*, 405 Md. 221, 227 (2008); Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 3-807 (2013 Repl. Vol., 2019 Supp.); Md. Rule 11-111.a.2. After the magistrate

holds a hearing, he is to transmit to the circuit court judge the entire file, including a written report of his proposed findings of fact, conclusions of law, and recommendations. Md. Rule 11-111.b.

Either party may file exceptions to the magistrates proposed findings, conclusions, or recommendations. Pertinent to this case, Rule 11-111.c provides:

Upon the filing of exceptions, a prompt hearing shall be scheduled on the exceptions. . . . 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.

See also CJP § 3-807(c) (same).

By filing exceptions, the State does not require the juvenile to stand trial a second time. Rather, under Maryland's procedure, when a matter is assigned to a magistrate, the juvenile "is subjected to a single proceeding which begins with a master's hearing and culminates with an adjudication by a judge." *Swisher v. Brady*, 438 U.S. 204, 215 (1978). Accordingly, the findings, conclusions and recommendations of a magistrate do not constitute orders or final action of the court." Md. Rule 11-111.a.2; *see also* CJP § 3-807(d)(1) (2013 Repl. Vol., 2019 Supp.) ("The

proposals or recommendations of a magistrate for juvenile causes do not constitute orders or final actions of the court.”).

“A master is not a judicial officer, and the Maryland Constitution does not vest a master with any judicial powers.” *State v. Wiegmann*, 350 Md. 585, 593 (1998) (quotation marks and citations omitted). A magistrate is “[si]mply put, . . . a ministerial and not a judicial officer,” *Marcus J.*, 405 Md. at 228 (quoting *Levitt v. Levitt*, 79 Md. Ap. 394, 399 (1989)), and the circuit court may not “delegate away a part of the decision making function to a master – a non-judicial officer.” *Id.* (quoting *Wenger v. Wenger*, 42 Md. App. 596, 602 (1979)). “Consequently, even when a judge defers to a master’s fact-finding, the judge does not defer to the master’s recommendation as to the appropriate course of action.” *Id.*

This Court explained the critical role of the circuit court by comparing appellate review of a lower court’s factual findings with circuit court review of a magistrate’s findings of fact:

When an appellate court, absent clear error, defers to a trial court, it defers not only to the fact-finding but to any legitimate verdict, disposition or judgment emanating from that fact-finding. The function of the chancellor vis-à-vis the master is quite different. . . .

Where he chooses to rely exclusively upon the report of the master, . . . he should defer to the fact-finding of the master where that fact-finding is supported by credible evidence and is not, therefore, clearly erroneous. *The chancellor, however, (unlike the appellate court) always reserves unto himself the prerogative of what to make of those facts—the ultimate disposition of the case.*

In re Danielle B., 78 Md. App. 41, 58-59 (1989) (quoting *Wenger*, 42 Md. App. at 602)) (emphasis in *Danielle B.*). Accordingly, although the circuit court reviews the magistrate’s first-level findings of fact, including credibility, for clear error, *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014), the court then takes the factual record and “make[s] its own judgment of what those facts mean.” *Danielle B.*, 78 Md. App. at 58 (emphasis added).

On appellate review, this Court, like the circuit court, “defer[s] to the magistrate’s first-level findings (regarding credibility and the like) unless they are clearly erroneous.” *McAllister*, 218 Md. App. at 407. With respect to the circuit court’s independent decision as to the ultimate disposition, this Court’s review is for an abuse of discretion. *Id.* To constitute an abuse of discretion, the circuit court’s decision “has to be well removed from any center mark imagined by the reviewing court and beyond the

fringe of what that court deems minimally acceptable.”
McAllister, 218 Md. App. at 400 (quoting *North v. North*, 102 Md.
App. 1, 14 (1994)).

B. The circuit court did not reject the magistrate’s limited credibility findings regarding T.N.’s assault on McDaniel, nor were those findings outcome-determinative of whether S.B. and K.R. attempted to rob McDaniel.

The only credibility findings the magistrate made in this case were (1) that he believed T.N.’s testimony that he struck McDaniel because McDaniel made an offensive comment, and (2) he believed T.N.’s testimony that S.B. and K.R. did not physically assault McDaniel. (App. 12-14). The circuit court did not reject those findings, as S.B. repeatedly states. (*See* Appellant’s Br. 1-2, 14-15, 19, 25, 27-28, 30). It did not find that McDaniel did not make the offensive remark, that T.N.’s assault was unprovoked, or that S.B. (or K.R.) struck McDaniel. The court made no contrary finding at all. As the circuit court noted, because the exception pertained to the magistrate’s “facts not sustained” finding with respect to S.B.’s and K.R.’s attempted robbery of McDaniel, whether McDaniel called T.N. “a racially offensive term,” which

provoked T.N. to assault McDaniel, was not before the court. (App. 19).

The issue before the court was whether S.B. and K.R. attempted to rob McDaniel – an issue on which the magistrate did not make any credibility or other factual findings that were contrary to the State. The magistrate stated only that it was reasonable to infer that S.B. and his friends were “up to no good when they entered the garage,” and agreed that a plausible inference from the juveniles’ flight was that were running “because they had committed an offense.” (App. 12). Further, the magistrate stated that he was unable to resolve the conflict between McDaniel’s and T.N.’s testimony as to whether S.B. and K.R. had any contact with McDaniel’s truck. (App. 12).

Consistent with its judicial duty, the circuit court reviewed the body of evidence before it, which included the surveillance video evidence from the garage, which showed the juveniles’ “furtive, stealth-like movements about the garage,” their “collaborative and coordinated movement in the garage,” and their “flight from the garage just before Mr. McDaniel emerged on the video.” (App. 19). The court also considered McDaniel’s testimony

that S.B. and K.R. were in the cab and/or bed of the truck rummaging through items while McDaniel was being assaulted and pinned to the truck by T.N. – testimony that was not subject to a credibility finding by the magistrate – as well as the video evidence of their flight from the garage after the incident. From this evidence, the court determined that McDaniel’s testimony about the attempted robbery was credible and supported by the video evidence. (App. 19).

The court also determined that T.N.’s innocent explanation for why he and his friends approached McDaniel and were in proximity to him before the incident was not credible. The video contradicted T.N.’s account that he dropped a dollar bill over the ramp, and that he and his friends were looking for it next to McDaniel’s truck, which was deeper in the garage and away from where the dollar bill allegedly was dropped. (App. 18-19). Again, this portion of T.N.’s testimony was not the subject of any credibility findings by the magistrate.

The court found that S.B. and K.R. used force or the threat of force to attempt to rob McDaniel based on the evidence that he was outnumbered three to one and was being assaulted and pinned

against the truck by T.N. (App. 19). The court also found that S.B. and K.R. were in the truck bed and/or truck cab with the intent to steal. (App. 19), consistent with McDaniel’s testimony that they were rummaging around the truck. Based on all the evidence, the court made an independent “facts sustained” determination that S.B. and K.R. conspired and attempted to rob McDaniel. The circuit court did not abuse its discretion in concluding that the facts sustained the charges, and the court did not contravene the magistrate’s credibility determinations regarding T.N.’s assault of McDaniel.

C. S.B.’s claims to the contrary should be rejected.

Relying on *United States v. Raddatz*, 447 U.S. 667 (1980), and its progeny, S.B. claims that he was denied due process because the circuit court allegedly rejected the magistrate’s “outcome-determinative credibility assessments without hearing the live testimony first-hand.” (Appellant’s Br. 20-25). As discussed, the court neither rejected the magistrate’s narrow credibility findings, nor were the credibility findings related to T.N.’s assault on McDaniel determinative of the outcome of S.B.’s

and K.R.'s attempted robbery case. The circuit court properly made an independent determination on the facts before it.

Further, S.B. contends that the court made "inconsistent findings regarding the credibility of th[e] witnesses," (Appellant's Br. 23), but fails to support that claim. First, S.B. contrasts the State's theory and the defense theory, (Appellant's Br. 23), but the parties' theories did not inhibit the court's review of the evidence or its independent determination based on the evidence.

Second, S.B. argues that the court's finding that one portion of T.N.'s testimony was not credible (his innocent explanation for why they were in proximity to McDaniel) was inconsistent with the magistrate's credibility finding as to T.N., but the magistrate's finding pertained to a *different* portion of T.N.'s testimony, i.e., his testimony that McDaniel's offensive comment provoked him to assault McDaniel. (Appellant's Br. 24).

Third, S.B. suggests that the court's finding that a portion of McDaniel's testimony was credible (with respect to the attempted robbery) was inconsistent with the magistrate's finding that McDaniel was not credible. (Appellant's Br. 24). But the magistrate's finding was also as to a *different* portion of McDaniel's

testimony, i.e., that McDaniel did not make an offensive remark to T.N. (T5. 49; App. 12). The magistrate expressly stated that he could not resolve the conflict between T.N.'s testimony and McDaniel's testimony as to whether S.B. and K.R. were rummaging through McDaniel's truck. (App. 12).

S.B. also suggests that the circuit court's determination was an abuse of discretion because it did not address alleged "discrepancies" in McDaniel's testimony. (Appellant's Br. 28). It was not an abuse of discretion for the circuit court to determine that McDaniel's testimony about the attempted robbery was credible where it was supported by the video evidence. (App. 19). Moreover, McDaniel did not testify to different versions of the events, as S.B. states. (Appellant's Br. 6, 28). He simply added more detail about the events as he was asked additional questions by the attorneys. Likewise, the magistrate did not find that the victim's testimony was inconsistent. He found only that the victim was confused about who was in the truck bed and who was in the cab, but determined that McDaniel's confusion did not affect his credibility. (T5. 48).

S.B. contends that the court “disregarded” or “refused to consider” the magistrate’s “critical” credibility findings in determining that S.B. (and K.R.) were involved in the attempted robbery. (Appellant’s Br. 24-25, 29). The magistrate’s credibility finding that the victim’s comment precipitated T.N.’s assault and that S.B. and K.R. did not strike McDaniel, led him to make a “facts sustained” finding that T.N. was involved in the assault, and a “facts not sustained” finding with respect to T.N.’s involvement in the attempted robbery, to which no exception was filed. As discussed, however, the magistrate’s credibility finding was not “critical” to whether S.B. or K.R. attempted to rob McDaniel. With respect to that issue, the magistrate expressly declined to make a factual finding or resolve the conflict between T.N.’s testimony and McDaniel’s testimony. The circuit court, therefore, properly reviewed the evidence and determined that S.B. and K.R. were involved in an attempted robbery of McDaniel. It did not “disregard” a “critical” credibility finding of the magistrate in so doing.

Finally, S.B. argues that the surveillance video evidence was “too weak to justify reversing the magistrate’s findings” with

respect to McDaniel's testimony. (Appellant's Br. 29-30). As discussed, the circuit court did not "reverse" the magistrate's credibility finding that McDaniel made an offensive remark to T.N. The circuit court found credible a *different* part of McDaniel's testimony "with respect to the allegations of attempted robbery," on which the magistrate had not made any factual finding. (App. 19). Moreover, S.B.'s argument about the relative weight of the evidence fails to demonstrate that the circuit court's determination was an abuse of discretion.

The magistrate's limited credibility findings as to T.N.'s assault of McDaniel did not determine the outcome of S.B.'s and K.R.'s attempted robbery and related charges. To the contrary, unable to resolve the conflict in the evidence between McDaniel's testimony that S.B. and K.R. were attempting to rob him and T.N.'s testimony that S.B. and K.R. ran away, the magistrate made no factual finding, but simply was not persuaded beyond a reasonable doubt that the facts were sustained as to those charges. The circuit court properly deferred to the magistrate's factual findings, but was not required to defer to the magistrate's conclusion that he was not "persuaded." To the contrary, the court

was required to make its own determination after carefully reviewing the facts. The court's conclusion that S.B. and K.R. conspired and attempted to rob McDaniel was grounded in the evidence and was not an abuse of discretion.

CONCLUSION

The State respectfully asks the Court to affirm the judgment of the Circuit Court for Baltimore City.

Dated: April 23, 2020

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH THE MARYLAND RULES

This filing was printed in 13-point Century Schoolbook font; complies with the font, line spacing, and margin requirements of Maryland Rule 8-112; and contains 6,361 words, excluding the parts exempted from the word count by Maryland Rule 8-503.

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IN RE: S.B.

IN THE
COURT OF SPECIAL APPEALS
OF MARYLAND
September Term, 2019
No. 1253

CERTIFICATE OF SERVICE

In accordance with Maryland Rule 20-201(g), I certify that on this day, April 23, 2020, I electronically filed the foregoing “Brief of Appellee” using the MDEC System, and served by email (nr537@georgetown.edu), S.B.’s counsel, Nicholas Y. Riley, Assigned Public Defender, Institute for Constitutional Advocacy & Protection, Georgetown University Law Center, 600 New Jersey Ave. NW, Washington, D.C. 20001.

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