[Cite as *In re C.B.*, 2010-Ohio-2129.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

IN RE: C.B.	:	
	:	C.A. CASE NO. 23615
	:	T.C. NO. JCA 20094316
	:	(Civil appeal from Common Pleas Court, Juvenile Division)
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O P I N I O N

Rendered on the 14th day of May, 2010.

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FROELICH, J.

{¶ 1} Appellant State of Ohio appeals from an August 7, 2009, trial court decision and judgment overruling the State's objections to a magistrate's decision, which adjudicated the juvenile defendant, C.B., as a delinquent child, and denying

the State's motion to set aside that decision. For the following reasons, the judgment of the trial court will be affirmed.

I

{¶ 2} On the morning of May 14, 2009, Miamisburg Police Officer Bell was dispatched to Miamisburg High School on a complaint of an assault. Upon arriving at the school, Officer Bell learned that C.B., a juvenile, had repeatedly punched S.E. (Complainant) in the face. Officer Bell noted in his report that Complainant's mouth was bleeding profusely, making it difficult to assess the extent of his injuries. It appeared that some of Complainant's teeth had been knocked out and were only being held in place by his braces.

{¶ 3} Officer Bell transported C.B. to the juvenile detention facility. Officer Bell signed a complaint alleging that C.B. had assaulted Complainant, in violation of R.C. 2903.13.

{¶ 4} The following day, May 15, C.B. was brought before a magistrate for a detention hearing pursuant to Juv.R. 7.[1] Present at the hearing were C.B., his mother, and his attorney Mike Deffet. The Montgomery County Prosecutor's Office

[1]"When a child has been admitted to detention or shelter care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is placed in detention or shelter care or the next court day, whichever is earlier, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention hearing shall be given to the child and to the parents, guardian, or other custodian, if that person or those persons can be found." Juv.R. 7(F)(1). At the hearing "[t]he court may consider any evidence, including the reports filed by the person who brought the child to the facility and the admissions officer, without regard to formal rules of evidence. Unless it appears from the hearing that the child's detention or shelter care is required under division (A) of this rule, the court shall order the child's release to a parent, guardian, or custodian * * *." Juv.R. 7(F)(3).

was notified of a detention hearing several hours prior to its taking place, but the Complainant was not notified.

{¶ 5} At the close of the detention hearing, the magistrate started to schedule a preliminary hearing date. However, C.B.'s attorney suggested that the matter could be resolved that day. The following exchange occurred:

{¶ 6} "The Court: Well, the problem is, is one, I don't have a police report. Only have what's on intervention. And normally, I would - I would consider, you know, a resolution. I just don't have all the information, and I'm not comfortable doing -

{¶ 7} "Mr. Deffet: So, he may admit today, but you don't want to do disposition?

{¶ 8} "The Court: I would do disposition today if he admitted, but I wouldn't amend it today is what I'm saying. If you want to make an admission today, you can do that. But, I just can't amend it, because I don't have the police report. I'm not comfortable doing that, an amendment. Because sometimes I will amend it to a disorderly conduct when I have a police report. I just don't have that in front of me. * * *"

{¶ 9} The magistrate accepted C.B.'s admission to the "misdemeanor" assault charge at the detention hearing, and immediately proceeded to disposition, ordering six months of probation, counseling, and restitution in an amount to be determined at a later date. The magistrate's decision and the attached judge's preliminary order adopting the magistrate's decision were filed on May 27, 2009. On June 1, 2009, Complainant's mother filed objections to the magistrate's decision

in which she requested that the case be reargued and dealt with "properly."[2] Four days later, the State joined in those objections and filed a motion seeking to set aside the magistrate's decision (which were considered by the court as objections by the State) and asking for a hearing on the motion. On August 7, 2009, the juvenile court judge overruled the objections and denied the motion to set aside the magistrate's decision. On August 26, 2009, following a restitution hearing and over the objection of C.B., the trial court judge ordered C.B. to pay restitution in the amount of $3,654.26, which was the amount of medical bills incurred by Complainant's mother on behalf of her son as of the date of the hearing.[3]

{¶ 10} The State filed a timely appeal, raising two assignments of error.

II

{¶ 11} At the outset, we point out that the State may appeal a juvenile court's delinquency decision only in limited circumstances. Ohio Constitution, Article IV, Section 3(B)(2); R.C. 2945.67; *State ex rel Leis v. Kraft* (1984), 10 Ohio St.3d 34; *State v. Rogers* (1996), 110 Ohio App.3d 106. Pursuant to R.C. 2945.67(A), the State "may appeal as a matter of right any decision * * * of a juvenile court in a delinquency case, which grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return

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[2]We question whether a juvenile victim's mother has standing to object to the adjudication of her son's assailant. However, as the State joined in the mother's objections, we need not address the issue.

[3]It is not until the order of restitution is entered that the trial court's decision is complete and becomes a final appealable order. See, e.g., *State v. Plassenthal,* Montgomery App. No. 22464, 2008-Ohio-5465, ¶8.

of seized property or grants post conviction relief * * * and may appeal by leave of court to which the appeal is taken any other decision, except the final verdict * * * of the juvenile court in a delinquency case."

{¶ 12} By arguing that the court abused its discretion in adopting the magistrate's decision which found C.B. delinquent, the State purports to appeal a final verdict rendered against C.B., which it may not do. *State v. Rogers* (1996), 110 Ohio App.3d 106; R.C. 2945.67. Principles of double jeopardy preclude the State from seeking a reversal of the juvenile court's adjudication. See, e.g., *In re Matter of Tripplett* (Dec. 10, 1999), Lake App. No. 98-L-161.

{¶ 13} However, in any case where a defendant is found delinquent (or guilty) which the State believes was based on erroneous interpretation of law by the court, there is no opportunity for appellate review. See, e.g., *In re J.P.,* Licking App. No. 08-CA-148, 2009-Ohio-4730, ¶63 for the rationale behind Crim.R. 12(J) [now 12(K)]. At the same time, if we permitted an appeal every time the State believed the trial court erred in its final judgment, we would be merely issuing advisory opinions and potentially impliedly commenting on the final verdict, which we do not do. See, e.g, *State v. Brown* (Jan. 24, 2000), Stark App. No. 1999CA00188. Here, however, the State's argument involves a substantive legal issue as to the effect of a magistrate's acceptance of a plea concerning which the trial court, in affirming that acceptance, explicitly opined. Thus, although we cannot review the juvenile court's final verdict itself, we may review a substantive law ruling made by the juvenile court when we are presented with an underlying legal question that is capable of repetition yet evading review. *Tripplett,* supra,

citing *State v. Bistricky* (1990), 51 Ohio St.3d 157, 158. See, also, *In re Bennet* (1999), 134 Ohio App.3d 699, 701, citing *Bistricky,* supra. The State did ask this Court for leave to appeal, which we granted.

III

{¶ 14} We begin with the State's second assignment of error, which states:

{¶ 15} "THE JUVENILE COURT JUDGE ABUSED HIS DISCRETION BY OVERRULING THE OBJECTIONS TO THE MAGISTRATE'S DECISION AND THE MOTION TO SET ASIDE THE MAGISTRATE'S DECISION."

{¶ 16} In its second assignment of error, the State contends that the trial court abused its discretion in overruling both the State's objections and its motion to set aside the magistrate's decision. The court's ruling was based on its conclusion that "[s]ince the Court adopted the Decision of the Magistrate, jeopardy attached." In essence, the State argues on appeal that the trial court's decision was based on a premature attachment of jeopardy which prevented the court from conducting a de novo review on the merits of the State's objections as required by Juv.R. 40(D)(4).

{¶ 17} The precise question before this Court is whether a trial court's adoption of a magistrate's decision adjudicating a juvenile delinquent - following the magistrate's acceptance of the juvenile's admission of responsibility taken during a detention hearing and issued prior to the filing and consideration of timely objections - causes the Double Jeopardy Clause to prohibit the judge from conducting a de novo review of the magistrate's decision pursuant to Juv.R. 40(D)(4)(d).

Applicability of the Double Jeopardy Clause in Juvenile Court Proceedings.

{¶ 18} The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution states that "[n]o person shall * * * be subject for the same offence to be twice put in jeopardy of life or limb." The bar against double jeopardy is applicable to the states through the Fourteenth Amendment to the United States Constitution. See, e.g., *Benton v. Maryland* (1969), 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707. Article I, Section 10 of the Ohio Constitution also affords protection against double jeopardy for criminal defendants.

{¶ 19} "The very history of the juvenile system has, essentially, mandated a disparity in treatment between adults and juveniles. As explained by the United States Supreme Court, '[f]rom the inception of the juvenile court system, wide differences have been tolerated indeed insisted upon between the procedural rights accorded to adults and those of juveniles.'" *In re Gillespie,* Franklin App. No. 02AP-592, 2002-Ohio-7025, ¶20, quoting *In re Gault* (1967), 387 U.S. 1, 14, 87 S.Ct. 1428, 18 L.Ed.2d 527. See, also, *In re Kash,* Warren App. No. CA2001-06-057, 2002-Ohio-1425, quoting *Bellotti v. Baird* (1979), 443 U.S. 622, 635, 99 S.Ct. 3035, 3044, 61 L.Ed.2d 797 ("'acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults'"). "The State has 'a parens patriae interest in preserving and promoting the welfare of the child' * * * which makes a juvenile proceeding fundamentally different from an adult criminal trial." *Gillespie,* supra, at ¶20, quoting *Schall v. Martin* (1984), 467 U.S. 253, 263, 104

S.Ct. 2403, 81 L.Ed.2d 207.

{¶ 20} The juvenile system, historically, is "neither a criminal prosecution, nor a proceeding according to the course of the common law." *In re Agler* (1969), 19 Ohio St.2d 70, 72, quoting *Prescott v. State* (1869), 19 Ohio St. 184. This is because, "[f]rom their inception, juvenile courts existed as civil, not criminal courts. The basic therapeutic mission of these courts continues to this day. Therefore, the Supreme Court of Ohio has held that 'a juvenile court proceeding is a civil action.'" *Kash,* supra, quoting *In re Anderson,* 92 Ohio St.3d 63, 67, 2001-Ohio-131.

{¶ 21} Nevertheless, juvenile delinquency proceedings do carry inherently criminal aspects. *In re A.J.,* 120 Ohio St.3d 185, 2008-Ohio-5307, ¶26, citations omitted. Therefore, "certain basic constitutional protections afforded adults, for example the right to counsel, the privilege against self-incrimination, and freedom from double jeopardy, are applicable to juvenile proceedings." *Gillespie,* supra, at ¶20, citing *Schall,* supra, at 263. See, also, *A.J.,* supra, at ¶25, citing *In re Cross,* 96 Ohio St.3d 328, 2002-Ohio-4183, ¶¶23-24, in turn citing *Breed v. Jones* (1975), 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346.

Authority of Juvenile Court Judges and Magistrates.

{¶ 22} Double jeopardy being applicable to juvenile court delinquency proceedings, we turn next to the source and scope of the authority of a juvenile court judge in relation to that of an appointed magistrate. Article IV, Section 1 of the Ohio Constitution vests the State's judicial power "in a supreme court, courts of appeals, courts of common pleas and divisions thereof * * * as * * * established by law."

{¶ 23} Juvenile court judges are given the authority to appoint magistrates pursuant to Juv.R. 40, and the authority of juvenile court magistrates is both established in and limited by the Rule. Magistrates are authorized, in part, to "[c]onduct the trial of any case that will not be tried to a jury, except the adjudication of a case against an alleged serious youthful offender." Juv.R. 40(C)(1)(b). Making a comparison to Civ.R. 53, after which Juv.R. 40 was patterned, the Ohio Supreme Court has pointed out, however, that "rulings of a [magistrate] before and during trial are all subject to the independent review of the trial judge. Thus, a [magistrate's] oversight of an issue or issues, or even an entire trial, is not a substitute for the judicial functions but only an aid to them. A trial judge who fails to undertake a thorough independent review of the [magistrate's] report violates the letter and the spirit of Civ.R. 53, and we caution against the practice of adopting [magistrate's] reports as a matter of course, especially where a [magistrate] has presided over an entire trial." *Hartt v. Munobe* (1993), 67 Ohio St.3d 3, 6. See, also, *Quick v. Kwiatkowski,* Montgomery App. No. 18620, 2001-Ohio-1498, (cautioning in the context of Civ.R. 53, against the dangers of allowing trial courts "to elevate the status of their magistrates to independent courts * * *")

{¶ 24} As we have previously explained, "[m]agistrates are neither constitutional nor statutory courts. Magistrates and their powers are wholly creatures of rules of practice and procedure promulgated by the Supreme Court. Therefore, magistrates do not constitute a judicial tribunal independent of the court that appoints them. Instead, they are adjuncts of their appointing courts, which remain responsible to critically review and verify the work of the magistrates they

appoint." *Quick,* supra, citing *Normandy Place Assoc. v. Beyer* (1982), 2 Ohio St.3d 102. Furthermore, "[t]he magistrate is a subordinate officer of the trial court, not an independent officer performing a separate function." Id. "[W]e cannot lose sight of the functional differences between the trial and appellate courts, the role of the magistrate within the trial court, and the constitutional requirements which govern the creation of courts in Ohio. Those matters require us to support and enforce the distinctions which result from them." Id.

{¶ 25} Juv.R. 40(D)(4)(a) states that a magistrate's decision is "not effective" unless adopted by the court. Juv.R. 40(D)(3)(b) provides that the parties may object to any magistrate's decision. "[T]he timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." Juv.R. 40(D)(4)(e)(i). When timely objections are filed, "[t]he court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate." Juv.R. 40(D)(4)(d).

{¶ 26} When a trial court reviews timely objections to a magistrate's decision, the review is made de novo. See, e.g., *In re A.W.,* Franklin App. No. 08AP-442, 2008-Ohio-6312, ¶5, citation omitted. Therefore, although an appellate court may

not merely substitute its own judgment for that of a trial court, "that is precisely the duty of the trial court in reviewing a magistrate's judgment." *In re S.S.,* Miami App. No. 09-CA-36, 2010-Ohio-992, ¶22, citing *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169. A trial court's initial order adopting a magistrate's decision of adjudication, when timely objections to the decision are thereafter filed, is not final because "'the judgment may yet be vacated and a contrary judgment thereafter entered * * *.'" *In re F.D.M.,* Montgomery App. No. 23021, 2009-Ohio-5609, ¶28, quoting *In re N.C.,* Clark App. No. 09CA0023, 2009-Ohio-4603, ¶16. In other words, the order is not final "'unless and until the court rules on the objections * * *'" *F.D.M.,* supra, at ¶28, quoting *N.C.,* supra, at ¶16.

Double Jeopardy in the Context of a Two-Tiered System.

{¶ 27} Considering the significant differences between the roles of magistrates and judges, the United States Supreme Court in *Swisher v. Brady* (1979), 438 U.S. 204, 98 S.Ct. 2699, 57 L.Ed.2d 705, reviewed a Maryland procedural rule similar to Ohio's Juv.R. 40. Therein, a juvenile court magistrate heard evidence before concluding that the State had failed to prove beyond a reasonable doubt that the juvenile had committed the acts of which he was accused. Id. The State filed objections, as it was permitted to do under the procedural rule, and the juvenile moved to dismiss, claiming that the rule's provision for a de novo review violated the Double Jeopardy Clause. Id. Maryland state courts denied relief, the juvenile filed a habeas corpus petition in federal court, and the case made its way to the United States Supreme Court. The Court held that Maryland's procedural rule allowing a juvenile court judge to conduct a de novo

review of a magistrate's finding of non-delinquency did not violate the Double Jeopardy Clause because "the initial jeopardy does not end until there is a final decision." *Smith v. Massachusetts* (2005), 543 U.S. 462, 469 fn. 4, 125 S.Ct. 1129, 160 L.Ed.2d 914, (emphasis in original) citing *Swisher,* supra, at 216.

{¶ 28} The *Swisher* Court pointed out that in *United States v. Scott* (1978), 437 U.S. 82, 98 S.Ct. 2187, 57 L.Ed.2d 65, the Court previously found "that it is not all proceedings requiring the making of supplemental findings that are barred by the Double Jeopardy Clause, but only those that follow a previous trial ending in acquittal; in a conviction either not reversed on appeal or reversed because of insufficient evidence, see *Burks v. United States* [(1978), 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1], or in a mistrial ruling not prompted by 'manifest necessity,' see *Arizona v. Washington,* 434 U.S. 497, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978)." *Swisher,* supra, at 218. See, also, *State v. Gustafson* (1996), 76 Ohio St.3d 425, 432. The Court explained that it faced a different situation because Maryland had created a system, "in which an accused juvenile is subjected to a single proceeding which begins with a master's hearing and culminates with an adjudication by a judge." Id. at 215. Ohio's Juv.R. 40 establishes a very similar two-step, one-proceeding process that subjects a juvenile to a single proceeding that, in cases not involving an alleged serious youthful offender, is intended to begin with an adjudicatory hearing before a magistrate and to culminate with a judge's final adjudication of delinquency or non-delinquency after the trial court's de novo review of any timely objections.

{¶ 29} The Supreme Court explained that Maryland's rule did not serve to

put the juvenile through the ordeal of a second procedure because the juvenile did not have to be brought before the judge when the court reviewed the master's decision. However, even if the juvenile were brought before the judge, "the burdens are more akin to those resulting from a judge's permissible request for post-trial briefing or argument following a bench trial than to the 'expense' of a full-blown second trial as contemplated by the Court in *Green*." Id. at 216-17, citing *Green v. United States* (1957), 355 U.S. 184, 78 S.Ct. 221, 2 L.Ed.2d 199. Therefore, "regardless of which party is initially favored by the master's proposals, * * * the judge is empowered to accept, modify or reject those proposals." Id. at 216.

{¶ 30} Moreover, the *Swisher* Court distinguished *Breed,* supra, wherein the Court held that a juvenile was placed in jeopardy twice when, after an adjudication before a juvenile court judge, he was transferred to an adult criminal court where he was tried and convicted of the same offense. The Court found *Breed* "inapplicable to the Maryland scheme, where juveniles are subjected to only one proceeding or 'trial.'" Id. at 217-18. The case before us is more akin to the two-part, one-trial system addressed in *Swisher* than it is to the bindover procedures considered in *Breed*.[4] As is true in Maryland, the State of Ohio has the power "to designate and empower the factfinder and adjudicator," and, via Juv.R. 40, the State has chosen

[4] An important difference between Ohio's Juv.R. 40 and the rule in Maryland is that the latter allows a judge to hear additional evidence only if there is no objection by the parties, while consent of the parties is not required under Juv.R. 40. This is significant in that under certain circumstances, which are not present in the case at bar, Juv.R. 40 could be interpreted as providing the State with the prohibited "second crack" at adjudication that the Double Jeopardy Clause was intended to prevent. *Swisher,* supra, at 216.

to confer those roles only upon the judges, not the magistrates. Id. at 216.

{¶ 31} Relying on *Swisher,* supra, other courts have upheld different two-step, one-proceeding processes, finding that they were not in violation of the Double Jeopardy Clause. For example, in *United States v. Bearden* (C.A.6 2001), 274 F.3d 1031, the court considered Fed.R.Crim.P. 11(b), which permits a defendant to plea nolo contendere "only with the consent of the court." The defendant entered a nolo plea before a magistrate, but the district court judge declined to approve the plea. The appellate court concluded that since "the district court retained this ultimate power of review, we hold that jeopardy could not attach until the district court accepted the plea." Id. at 1036, citing *United States v. Williams* (C.A.2 1994), 23 F.3d 629, cert denied 513 U.S. 1045, 115 S.Ct. 641, 130 L.Ed.2d 547; *United States v. Dees* (C.A.5 1997), 125 F.3d 261 ("The taking of a plea by a magistrate judge does not bind the district court to accept that plea. Rather the district court retains ultimate control over the plea proceedings, which are submitted to the court for its approval. Moreover, district courts review plea proceedings on a de novo basis."). Furthermore, "[t]o hold that jeopardy attached when the magistrate judge accepted Bearden's plea * * * would lead to the conclusion that the district court does not, in fact, retain the ultimate decision making responsibility regarding pleas, a conclusion that would raise Article III concerns." *Beardsley,* supra, at 1038.

{¶ 32} Additionally, in *Justices of Boston Municipal Court v. Lydon* (1984), 466 U.S. 294, 104 S.Ct. 1805, 80 L.Ed.2d 311, the United States Supreme Court upheld the constitutionality of a two-tier trial system in which a defendant who

chooses to have his case tried to the bench and is dissatisfied with the outcome could elect to have his case re-tried to a jury. Finding that the state law did not accord finality to the disposition of the first trial, the Double Jeopardy Clause did not prohibit a second trial. The court characterized the two-trial system as a single, continuous process for the determination of guilt or innocence, Id., although it did not address the "finality" of a not guilty verdict (since the rule did not permit such a procedure).

Expectation of Finality in Magistrate's Decision.

{¶ 33} The primary purpose for the prohibition against double jeopardy "is to preserve the finality or integrity of judgments." *In re Kelly* (Nov. 7, 1995), Franklin App. No. 95-APF05-613, citing *United States v. DiFrancesco* (1980), 449 U.S. 117, 128, 101 S.Ct. 426, 66 L.Ed.2d 328. Therefore, any "[a]pplication of the Double Jeopardy Clause depends upon the legitimacy of a defendant's expectation of finality in the judgment." *In re Burt,* Stark App. No. 2006-CA-00328, 2007-Ohio-4034, ¶61, citing *Kelly,* supra, in turn citing *DiFrancesco,* 449 U.S. 117.

{¶ 34} Accordingly, we have previously held that a magistrate's adjudication of delinquency is not a final appealable order precisely because Juv.R. 40(D)(4)(a) requires the trial court to consider objections, and the court may choose to vacate the magistrate's decision pursuant to Juv.R. 40(D)(4)(c)(i). *F.D.M.,* 2009-Ohio-5609, ¶28, citing *N.C.,* 2009-Ohio-4603. See, also, *In Matter of Jerry W.* (Aug. 6, 1999), Erie App. No. E-98-042. We explained that a magistrate's decision of adjudication and even the court's interim order is interlocutory in nature until such time as the juvenile court rules on any timely objections. *F.D.M.,* supra,

at ¶28, citing *N.C.,* supra.

{¶ 35} In *In the Matter of T.W.,* Cuyahoga App. No. 88818, 2007-Ohio-2775, during the adjudicatory hearing and over the juvenile's objection, the magistrate vacated its finding of delinquency based upon the juvenile's admission, after being advised that the charge should have been a felony rather than a misdemeanor. The Eighth District held that jeopardy did not attach when the magistrate accepted the admission. Id. at ¶8.

{¶ 36} The court explained that "[a]cceptance of a guilty plea or admission to delinquency is qualitatively different from a factfinder's determination of guilt. It does not carry with it the same expectation of finality that a jury verdict or a judgment and sentence does. Among other things, the acceptance of a plea or admission to a lesser offense carries with it no implied acquittal of a greater offense. *Ohio v. Johnson* (1984), 467 U.S. 493, 501-2; *Jeffers v. United States* (1977), 432 U.S. 137. In a case such as this, where the appellant's admission was accepted and then vacated within a single proceeding, appellant was not placed in jeopardy in any meaningful sense. *United States v. Santiago Soto* (1st Cir.1987), 825 F.2d 616, 620.

{¶ 37} "In any case, although the magistrate indicated that he had accepted the appellant's admission, the court did not. A magistrate's decision is not effective unless adopted by the court. Juv.R. 40(D)(4). Until the magistrate's decision was adopted by the court, jeopardy did not attach." *T.W.,* supra, at ¶¶6-7, citing *Bearden,* 274 F.3d at 1036-68. We agree.

{¶ 38} Moreover, we clarify that this final adoption does not refer to the

judge's preliminary adoption, which is stamped at the end of each magistrate's decision, when there is a timely objection. In the case at bar, for example, the preliminary adoption read, "The above Magistrate's Decision is hereby adopted as an Order of this Court. The parties have fourteen (14) days to object to this decision and may request Findings of Fact and Conclusion of Law pursuant to Civil Rule 52[5] and Montgomery Count Juvenile Court Rule 5.11.2. A party shall not assign as error on appeal the Court's adoption of any findings of fact or conclusion of law, in that decision, unless the party timely and specifically objects to that finding or conclusion as required by Juvenile Rule 40(E)(3)." A stamp of the judge's signature follows this language. This adoption is preliminary or tentative in nature, and it cannot be allowed to replace or negate the trial court judge's de novo review mandated by Juv.R. 40(D)(4). In fact, by acknowledging the right of either party to object, the court puts the parties on notice that the finality of the order is dependent upon the trial court's de novo review of any timely objections, as required by the Juvenile Rules.

{¶ 39} In concluding that jeopardy attached upon the court's initial adoption of the magistrate's decision, the trial court relied on *State v. Reddick* (1996), 113

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[5] As we have previously explained, "Civ.R. 52 has no application to proceedings in the Juvenile Court. Juv.R. 1(A) provides that the Rules of Juvenile Procedrue 'prescribe the procedure to be followed in all juvenile courts of the state in all proceedings' except those identified in paragraph (c), which have no application to this case and it is Juv.R. 40 which governs proceedings before magistrates." *In re R.H.,* Montgomery App. No. 22352, 2008-Ohio-773, ¶29.

Ohio App.3d 788. However, that case is distinguishable from the present case. The *Reddick* court held that the State could not seek bindover of a juvenile to the common pleas court after a referee had accepted his admission to the charges during an adjudicatory hearing; the holding is very similar to *Breed,* supra, which was cited extensively in *Reddick.* Not only did that case involve an adjudicatory hearing rather than a detention hearing, but the court's focus was on the unique situation of a juvenile's being bound over from juvenile court to adult court, and the court was dealing with the "fundamental prohibition against double jeopardy in the context of transfer hearings for those unable to benefit from the juvenile system's special programs." *Reddick* at 791. Because "the state had failed to transfer him in a timely manner, Reddick's liberty was placed at risk when the court proceeded with the adjudicatory hearing." Id. at 793. The *Reddick* court never had reason to address the differences between the roles of magistrates and judges when the case stays in the juvenile system. Nor did the court consider the significance of the Supreme Court's decision in *Swisher* discussed above.

{¶ 40} The trial court, citing *In re Hutchison,* Belmont App. No. 07-BE-28, 2008-Ohio-3237, also found that any amendment to the charge subsequent to C.B.'s admission would violate Juv.R. 22(B), since the State would not have been permitted to amend the complaint from assault to felonious assault unless the juvenile agreed. Juvenile Rule 22(B) reads as follows: "Any pleading may be amended at any time prior to the adjudicatory hearing. After the commencement of the adjudicatory hearing, a pleading may be amended upon agreement of the parties or, if the interests of justice require, upon order of the court. A complaint

charging an act of delinquency may not be amended unless agreed by the parties, if the proposed amendment would change the name or identity of the specific violation of law so that it would be considered a change of the crime charged if committed by an adult. * * *" Since there was no amendment of the charge, we will not address this issue.

{¶ 41} For the foregoing reasons, we hold that a trial court's preliminary adoption of a magistrate's decision adjudicating a juvenile delinquent - following the magistrate's acceptance of the juvenile's admission of responsibility taken during a detention hearing and issued prior to the filing and consideration of timely objections - does not cause the Double Jeopardy Clause to prohibit the judge from conducting a de novo review of the magistrate's decision pursuant to Juv.R. 40(D)(4)(d). See, e.g., *Bennett,* supra, at 702; *Tripplett,* supra. However, regardless of the trial court's finding that, despite timely objections, jeopardy attached upon the magistrate's acceptance of C.B.'s admission and the court's interim adoption of that acceptance, jeopardy did attach upon the court's August 7, 2009, final adoption of the magistrate's decision, following the court's consideration of the State's objections. Therefore, notwithstanding the basis for the trial court's decision, in accordance with the principles of double jeopardy, the trial court's judgment is affirmed.

IV

{¶ 42} The State's First Assignment of Error:

{¶ 43} "THE JUVENILE COURT MAGISTRATE ABUSED HIS DISCRETION BY ACCEPTING AN ADMISSION TO THE COMPLAINT FOR MISDEMEANOR

ASSAULT TENDERED DURING APPELLEE'S INITIAL COURT APPEARANCE AND IMMEDIATELY PROCEEDING TO DISPOSITION OF THE CASE WHEN NEITHER THE STATE NOR THE VICTIM HAD BEEN GIVEN LEGAL NOTICE OF THE HEARING."

{¶ 44} The State argues in its first assignment of error that the juvenile court magistrate abused his discretion in accepting Appellee's admission and in immediately proceeding to disposition during his detention hearing, without notice or opportunity to be heard being given either to the State or the Complainant. On the other hand, Appellee points out that the State was given notice of the Juv.R. 7 detention hearing, and he insists that the Juv.R. 29 notice of an adjudicatory hearing was not necessary because the State was aware that "[t]he magistrate's practice of accepting pleas at detention hearings has gone on for years on the Montgomery County Juvenile Court."

{¶ 45} While we appreciate both the realities of a heavy case load and issues concerning the impact that the procedures may have on victims' rights and the rights and obligations of the State[6], see, e.g., Ohio Const., Sec. I, Art. 10(a); R.C. 2929.19; R.C. 2930.14(A), in light of our holding in response to the State's second assignment of error, we find this argument moot.

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[6]We note that at the restitution hearing the trial court "apologize[d] for the issues that our procedure created for the victim and the victim's family." The court explained, "we have attempted to change our process and procedure to some extent, where personal injury is involved, to try and avoid this kind of thing happening in the future." We do not know specifically what changes have been implemented.

V

{¶ 46} The judgment of the trial court is affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

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Hon. Nick Kuntz