

[Cite as *In re S.J.*, 2003-Ohio-5071.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 82106

IN RE: S.J., :
a minor child : JOURNAL ENTRY
: AND
: OPINION
: :
: :
DATE OF ANNOUNCEMENT :
OF DECISION : SEPTEMBER 25, 2003
: :
CHARACTER OF PROCEEDINGS : Civil Appeal from the
: Common Pleas Court,
: Juvenile Division,
: Case No. DL-02104805
: :
JUDGMENT : DISMISSED.
DATE OF JOURNALIZATION :

APPEARANCES:

For appellee: WILLIAM D. MASON, ESQ.
State of Ohio Cuyahoga County Prosecutor
BY: BLAISE D. THOMAS, ESQ.
JON W. OEBKER, ESQ.
Assistant County Prosecutors
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

For appellant: ROBERT L. TOBIK, ESQ.
S.J. Cuyahoga County Public Defender
BY: ROBERT M. INGERSOLL, ESQ.
Assistant Public Defender
1200 West Third Street N.W.

100 Lakeside Place
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶1} This case came on for consideration upon the Motion to Dismiss Appeal filed by the appellee. For the following reasons, we find the motion well taken, and appellant's appeal is hereby dismissed.

{¶2} On November 20, 2002 the appellant, State of Ohio, filed a notice of appeal to this court regarding the Juvenile Court's decision in a mandatory bind-over hearing held October 16, 17 and 18, 2001.

{¶3} The State originally alleged that the appellee, the child who is the subject of the complaint, was a delinquent child because she purposely caused the death of another, an act which would constitute the crime of murder under R.C. 2903.02(A). The State subsequently amended the complaint to add a second count of murder, alleging that the death occurred while the appellee was committing the crime of felonious assault under R.C. 2903.02(B).

{¶4} After hearing, the trial judge found that the State failed to show probable cause that the appellee committed murder under either applicable statute. The court did find, however, that there was probable cause that the appellee committed voluntary manslaughter, R.C. 2903.03. Therefore, the court ordered that the complaint be amended to reflect the same, and the case was continued for an amenability hearing under Juv.R. 30.

{¶5} At the amenability hearing, held November 20, 2001, the prosecution withdrew its motion for discretionary bind-over and requested a continuance. The court denied that request based on the amount of time the child had been in the custody of the Juvenile Detention Center. The court proceeded with adjudication and the child admitted to the charges, as amended. The court then moved on to the dispositional hearing. The child was adjudicated delinquent and remanded to the custody of the Ohio Department of Youth Services for not less than three years.

{¶6} In this case, the prosecution was unprepared to proceed with the amenability hearing on November 20, 2002. Instead, on that day, the child made known to the court her desire to admit to the amended charge of voluntary manslaughter. The Juvenile Court is vested with broad discretion in the adjudication of delinquency proceedings, including the granting or denial of a motion for continuance. *State v. Burke* (1995), 73 Ohio St.3d 399; *In re Gearhart* (June 26, 1984), Franklin App. No. 83AP-878, 83AP-879. We will not usurp the power of the Juvenile Court to control its own docket by mandating otherwise.

{¶7} More importantly, the double jeopardy clause of the U.S. Constitution applies to delinquency cases. *Illinois v. Vitale* (1980), 447 U.S. 410. Whether the juvenile court should or should not have granted the prosecution a continuance at the November 20, 2002 hearing, jeopardy attached when the court proceeded with the adjudication. The child may not now be tried

as an adult for the same crime for which she has already been adjudicated delinquent. *In re Cline*, 2002-Ohio-271; see *Breed v. Jones* (1975), 421 U.S. 519; *State v. Turner* (May 3, 1979), Cuyahoga App. No. 39951. Any appeal of the probable cause findings made in the mandatory bind-over proceedings now would be moot.

{¶8} Therefore, we find that the appellant's Motion for Leave to Appeal was improvidently granted by this court and the appellee's Motion to Dismiss Appeal is well taken.

Appeal Dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR.
PRESIDING JUDGE

DIANE KARPINSKI, J., AND

JOHN T. PATTON*, J., CONCUR.

(*SITTING BY ASSIGNMENT: JUDGE
JOHN T. PATTON, RETIRED, OF THE
EIGHTH DISTRICT COURT OF APPEALS.)

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).