

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14126
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_____AD3d_____

Submitted - January 25, 2007

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2006-01954

DECISION & ORDER

In the Matter of Omar G. (Anonymous), appellant.

(Docket No. D-1957-05)

Steven P. Forbes, Jamaica, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Tahirih M. Sadrieh of counsel; Maria Caceres on the brief), for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, the appeal is from an order of disposition of the Family Court, Kings County (McLeod, J.), dated February 7, 2006, which, upon a fact-finding order of the same court dated December 15, 2005, made after a hearing, finding that the appellant committed acts which, if committed by an adult, would have constituted the crimes of attempted gang assault in the first degree, attempted assault in the first degree (two counts), assault in the second degree (two counts), attempted assault in the second degree, menacing in the second degree (two counts), criminal possession of a weapon in the fourth degree (two counts), assault in the third degree, attempted assault in the third degree, menacing in the third degree, criminal possession of stolen property in the fifth degree, and petit larceny, adjudged him to be a juvenile delinquent and placed him on probation for a period of 15 months. The appeal brings up for review the fact-finding order dated December 15, 2005.

ORDERED that the order of disposition is affirmed, without costs or disbursements.

The appellant failed to preserve for appellate review his contention regarding legal sufficiency of the evidence (*see Matter of Bryan C.*, 23 AD3d 652; *Matter of Ricky A.*, 11 AD3d 532, 533). In any event, viewing the evidence in the light most favorable to the presentment agency (*see*

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People v Matter of David H. 69 NY2d 792; *Matter of Dan H.*, 26 AD3d 438), we find that it was legally sufficient to establish beyond a reasonable doubt that the appellant committed acts which, if committed by an adult, would have constituted the crimes charged, either personally or as an accessory (*cf.* Penal Law § 20.00).

Moreover, resolution of issues of credibility is primarily a matter to be determined by the trier of fact, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see Matter of Christian M.*, _____AD3d_____ [2d Dept, Feb 27, 2007]). Upon the exercise of our factual review power (*cf.* CPL 470.15[5]), we are satisfied that the Family Court's fact-finding determination was not against the weight of the evidence (*cf. People v Romero*, 7 NY3d 633).

The appellant's remaining contention is without merit.

MASTRO, J.P., FISHER, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:


James Edward Felzer
Clerk of the Court