

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

D14185
W/gts

_____AD3d_____

Submitted - February 1, 2007

FRED T. SANTUCCI, J.P.
GLORIA GOLDSTEIN
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-05649

DECISION & ORDER

In the Matter of Louis C. (Anonymous), appellant.

(Docket No. D-17805/05)

Steven Banks, New York, N.Y. (Tamara A. Steckler, Amy Hausknecht, and Steve Levine of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath and Alan Beckoff of counsel), 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, Queens County (Hunt, J.), dated May 15, 2006, which, upon a fact-finding order of the same court dated April 5, 2006, made after a hearing, finding that the appellant had committed an act which, if committed by an adult, would have constituted the crime of assault in the third degree, adjudged him to be a juvenile delinquent, and placed him on probation for a period of 12 months, with the directive, inter alia, that he perform 100 hours of community service. The appeal from the order of disposition brings up for review the fact-finding order dated April 5, 2006.

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

Viewing the evidence in the light most favorable to the presentment agency (*see Matter of David H.*, 69 NY2d 792, 793; *Matter of Jonathan D.*, 33 AD3d 996, 997; *Matter of Carl F.*, 25 AD3d 696), we find that it was legally sufficient to establish, beyond a reasonable doubt, that the appellant committed an act which, if committed by an adult, would have constituted the crime of assault in the third degree (*see* Penal Law § 120.00[1]; *Matter of Crystal R.*, 10 AD3d 397; *Matter*

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of Gregory B., 242 AD2d 295; *Matter of O'Shanna T.*, 238 AD2d 287, 288). The evidence was also legally sufficient to disprove the appellant's justification defense beyond a reasonable doubt (*see* Penal Law § 35.15[1]; *Matter of Y.K.*, 87 NY2d 430, 433; *Matter of Luis S.*, 290 AD2d 337). Upon the exercise of our factual review power, we are satisfied that the Family Court's fact-finding determination was not against the weight of the evidence (*see* Family Ct Act § 342.2[2]; *Matter of Anthony S.*, 305 AD2d 689, 690; *cf.* CPL 470.15[5]).

SANTUCCI, J.P., GOLDSTEIN, CARNI and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court