

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

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Submitted - January 22, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2007-04323

DECISION & ORDER

In the Matter of Kenyetta F. (Anonymous),
appellant.

(Docket No. E-24559-06)

Steven Banks, New York, N.Y. (Tamara A. Steckler and Raymond E. Rogers of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Barry P. Schwartz and Julie Steiner 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 (Modica, J.), dated April 24, 2007, which, upon a fact-finding order of the same court, dated January 19, 2007, made after a hearing, finding that the appellant had committed acts which, if committed by an adult, would have constituted the crimes of robbery in the second degree, assault in the second degree, assault in the third degree, attempted robbery in the second degree, conspiracy in the fourth degree, conspiracy in the fifth degree, conspiracy in the sixth degree, and criminal facilitation in the fourth degree, adjudged her to be a juvenile delinquent and placed her with the Office of Children and Family Services for a period of 18 months. The appeal brings up for review the fact-finding order dated January 19, 2007.

ORDERED that the order of disposition is modified, on the law, by deleting the provisions thereof adjudicating the appellant a juvenile delinquent based upon the finding that she committed acts which, if committed by an adult, would have constituted the crimes of conspiracy in the fifth degree and conspiracy in the sixth degree, and substituting therefor a provision dismissing

March 4, 2008

Page 1.

MATTER OF F. (ANONYMOUS), KENYETTA

those counts of the petition; as so modified, the order of disposition is affirmed, without costs or disbursements, and the fact-finding order is modified accordingly.

The appellant approached the complainant on a city street and detained him with questions, thereby enabling other individuals to beat him and steal his property. During this incident, the appellant did nothing to intervene or summon help. She then fled with the attackers.

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), we find that it was legally sufficient to establish that the appellant committed acts which, if committed by an adult, would have constituted robbery in the second degree and assault in the second degree on a theory of accomplice liability (*see* Penal Law §160.10[1]; § 120.05[6]; § 20.00). The evidence of her conduct before, during, and after the acts established beyond a reasonable doubt that she acted in concert to commit the charged acts (*see Matter of Jonathan V.*, 43 AD3d 470; *Matter of Justice G.*, 22 AD3d 368; *Matter of Joseph J.*, 205 AD2d 777; *Matter of Aida S.*, 189 AD2d 818, 819). Moreover, upon the exercise of our factual review power, we are satisfied that the findings of fact were not against the weight of the evidence (*cf.* CPL 470.15[5]).

The Family Court properly found that giving the appellant credit for the time she was in detention would not serve her best interests or adequately protect the community (*see* Family Court Act § 353.3[5]; *Matter of Nikson D.*, 15 AD3d 656; *Matter of Mack M.*, 175 AD2d 869).

However, as the presentment agency currently concedes, the counts of conspiracy in the fifth degree and conspiracy in the sixth degree should have been dismissed as lesser-included offenses of conspiracy in the fourth degree (*see Matter of Jaleel H.*, 36 AD3d 808).

The appellant's remaining contentions are without merit.

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court