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

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_____AD3d_____ Submitted - June 19, 2008

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-08883 DECISION & ORDER

In the Matter of Demetrius B. (Anonymous), appellant.

(Docket No. D-5643-07)

Elliot Green, Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Susan Paulson 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, Kings County (Weinstein, J.), dated August 8, 2007, which, upon a fact-finding order of the same court dated June 27, 2007, made after a hearing, finding that the appellant committed acts which, if committed by an adult, would have constituted the crimes of gang assault in the second degree and menacing in the third degree, adjudged him to be a juvenile delinquent and placed him on probation for a period of 12 months. The appeal brings up for review the fact-finding order dated June 27, 2007.

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

A 12-year-old complaining witness is presumed competent to testify (*see* Family Ct Act 343.1[1], [2]; *cf. People v Martina,* 48 AD3d 1271, 1272; *People v Mann,* 41 AD3d 977, 980; *People v Peppard,* 27 AD3d 1143; *see also* CPL 60.20[1], [2]). The appellant failed to overcome that presumption, as the complainant possessed sufficient intelligence and capacity to justify the reception of his testimony, and understood and appreciated the nature of an oath (*see* Family Ct Act 343.1[2]; *Matter of David PP.,* 211 AD2d 995, 996; *cf. People v Morales,* 80 NY2d

450, 453; *People v Nisoff,* 36 NY2d 560, 566; *People v McIver,* 15 AD3d 677, 678; *People v McCall,* 277 AD2d 467, 468; *see also* CPL 60.20[2]).

The appellant's contention regarding an alleged *Brady* violation (*see Brady v Maryland,* 373 US 83) is unpreserved for appellate review (*cf. People v Higgins,* 298 AD2d 529, 530; *People v Rodriguez,* 281 AD2d 644, 645) and, in any event, is without merit (*see Strickler v Greene,* 527 US 263; *Matter of Jose A.,* 44 AD3d 756, 758; *cf. People v Campos,* 281 AD2d 638, 639).

MASTRO, J.P., DILLON, ENG and BELEN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court