

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

D22254
O/kmg

_____AD3d_____

Submitted - January 29, 2009

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2008-04558

DECISION & ORDER

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

(Docket No. D-33449-07)

Emmanuel F. Ntiamoah, Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and
Ronald E. Sternberg 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 (Turbow, J.), dated April 22, 2008, which, upon a fact-finding order of the same court dated January 30, 2008, made after a hearing, finding that the appellant had committed an act which, if committed by an adult, would have constituted the crime of menacing in the third degree, adjudged her to be a juvenile delinquent and placed her with the Office of Children and Family Services for a period of 12 months. The appeal brings up for review the fact-finding order.

ORDERED that the order of disposition is reversed, on the law, without costs or disbursements, the fact-finding order is vacated, the petition is dismissed, and the matter is remitted to the Family Court, Kings County, for further proceedings in accordance with Family Court Act § 375.1.

As correctly conceded in the presentment agency's brief, the complainant in this case did not testify to the effect that she feared death, imminent serious physical injury, or physical injury. Thus, even when reviewing the evidence in the light most favorable to the presentment agency (*see*

February 24, 2009

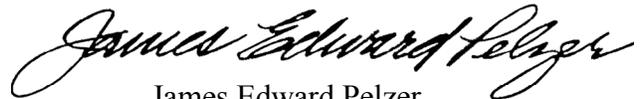
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Matter of David H., 69 NY2d 792, 793), we conclude that the evidence was legally insufficient to support the finding that the appellant committed an act which, if committed by an adult, would have constituted the crime of menacing in the third degree (see Penal Law § 120.15; *Matter of Davonte B.*, 44 AD3d 763, 764-765; *Matter of Willie W.*, 32 AD3d 479, 480; *Matter of Anisha McG.*, 27 AD3d 749, 750-751; *Matter of Rosalis D.*, 305 AD2d 407, 408; *Matter of Wanji W.*, 305 AD2d 690, 691-692; *Matter of Michael H.*, 294 AD2d 364, 365; *Matter of Steven W.*, 294 AD2d 370, 371; *Matter of Akida L.*, 170 AD2d 680, 681; see also *People v Peterkin*, 245 AD2d 1050, 1051; cf. *Matter of John F.*, 12 AD3d 509). The order of disposition therefore should be reversed, the fact-finding order vacated, and the petition dismissed.

RIVERA, J.P., COVELLO, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court