

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

D26227
C/prt

_____AD3d_____

Submitted - January 26, 2010

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2009-05473
2009-09574

DECISION & ORDER

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

(Docket No. D-24817-08)

Larry S. Bachner, Jamaica, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath and Susan B. Eisner of counsel), for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, the appeals are from (1) a fact-finding order of the Family Court, Queens County (Hunt, J.), dated March 16, 2009, which, after a hearing, found that the appellant committed acts which, if committed by an adult, would have constituted the crime of criminal possession of a weapon in the fourth degree, and (2) an order of disposition of the same court dated May 18, 2009, which, upon the fact-finding order and after a dispositional hearing, adjudged him to be a juvenile delinquent and placed him on probation for a period of 15 months.

ORDERED that the appeal from the fact-finding order is dismissed, without costs or disbursements, as the fact-finding order was superseded by the order of disposition and is brought up for review on the appeal from the order of disposition (*cf.* CPLR 5501); and it is further,

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

When read in its entirety, the petition, including the supporting depositions, contained nonhearsay allegations establishing, if true, every element of criminal possession of a weapon in the

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fourth degree and the appellant's commission thereof (*see* Family Ct Act § 311.2[3]; *Matter of Andre S.*, 51 AD3d 1030, 1032).

Viewing the evidence in the light most favorable to the presentment agency (*see Matter of David H.*, 69 NY2d 792, 793; *Matter of Davonte B.*, 44 AD3d 763; *Matter of Charles S.*, 41 AD3d 484, 485), 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 crime of criminal possession of a weapon in the fourth degree (*see* Family Ct Act § 342.2[2]; Penal Law § 265.01[2]; *Matter of Brandon C.*, 66 AD3d 893). Moreover, upon our independent review of the record, we are satisfied that the fact-finding determination was not against the weight of the evidence (*see Matter of Darnell C.*, 66 AD3d 771, 772).

The appellant's contention with respect to the showup identification is without merit (*see People v Samuels*, 39 AD3d 569, 570; *People v Loo*, 14 AD3d 716).

FISHER, J.P., FLORIO, BELEN and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court