

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

D27831
G/kmg

_____AD3d_____

Submitted - May 27, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-07136

DECISION & ORDER

In the Matter of Iyanna D. (Anonymous), appellant.

(Docket No. D-17257-08)

Michael A. Fiechter, Bellmore, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and
Dona B. Morris 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 (Lubow, J.), dated July 6, 2009, which, upon a fact-finding order of the same court dated April 6, 2009, made after a hearing, finding that the appellant committed an act which, if committed by an adult, would have constituted the crime of attempted assault in the third degree, and after a dispositional hearing, adjudged her to be a juvenile delinquent and placed her on probation for a period of 12 months under stated terms and conditions. The appeal from the order of disposition brings up for review the fact-finding order dated April 6, 2009.

ORDERED that the appeal from so much of the order of disposition as placed the appellant on probation for a period of 12 months under stated terms and conditions is dismissed as academic, without costs or disbursements, as that portion of the order of disposition expired by its own terms (*see Matter of Trayvond W.*, 71 AD3d 683); and it is further,

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

Viewing the evidence in the light most favorable to the presentment agency (*see*

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Matter of David H., 69 NY2d 792, 793; *cf. People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to support the finding that the appellant committed an act which, if committed by an adult, would have constituted the crime of attempted assault in the third degree (*see Matter of Shaheed W.*, 298 AD2d 204; *Matter of Kristie II*, 252 AD2d 807, 807-808; *Matter of Marcel F.*, 233 AD2d 442, 443). Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see Matter of Hasan C.*, 59 AD3d 617, 617-618; *cf. CPL 470.15[5]*; *People v Danielson*, 9 NY3d 342, 880), we nevertheless accord great deference to the opportunity of the trier of fact to view the witnesses, hear the testimony, and observe demeanor (*see Matter of Daniel R.*, 51 AD3d 933, 933-934; *cf. People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, 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 Marcel F.*, 233 AD2d at 443; *cf. People v Romero*, 7 NY3d 633).

The appellant's remaining contentions are without merit.

DILLON, J.P., BALKIN, ENG and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court