

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

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_____AD3d_____

Submitted - September 27, 2010

FRED T. SANTUCCI, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2009-09973

DECISION & ORDER

In the Matter of Joye G. (Anonymous), appellant.

(Docket No. D-8361-09)

Joan N.G. James, Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath and Ellen Ravitch 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 (Hunt, J.), dated October 2, 2009, which, upon a fact-finding order of the same court dated August 13, 2009, made after a hearing, finding that the appellant committed acts which, if committed by an adult, would have constituted the crimes of attempted robbery in the second degree in violation of Penal Law §§ 110.00 and 160.10, attempted grand larceny in the fourth degree in violation of Penal Law §§ 110.00 and 155.30, and assault in the third degree in violation of Penal Law § 120.00(1), adjudged him to be a juvenile delinquent and placed him on probation for a period of 18 months. The appeal brings up for review the fact-finding order dated August 13, 2009, and an order of the same court, dated June 25, 2009, denying, after a hearing, the appellant's application to suppress identification evidence.

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

Viewing the evidence in the light most favorable to the presentment agency (*see Matter of David H.*, 69 NY2d 792, 793; *Matter of Shaquana S.*, 9 AD3d 466, 467; *Matter of Shamasia M.*, 4 AD3d 359, 361), we find that the evidence was legally sufficient to support the determination made in the fact-finding order (*cf.* Penal Law §§ 110.00, 160.10, 155.30, 120.00).

October 19, 2010

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Upon the exercise of our factual review power, we are satisfied that the Family Court's fact-finding determination was not against the weight of the evidence (*cf. People v Romero*, 7 NY3d 633; CPL 470.15[5]).

Contrary to the appellant's contention, the showup identification, which was conducted in close geographic and temporal proximity to the incident, was reasonable under the circumstances and not unduly suggestive (*cf. People v Brisco*, 99 NY2d 596, 597; *People v Clinding*, 40 AD3d 1117; *Matter of David B.*, 244 AD2d 405; *see also Matter of Sadira Mc.*, 45 AD3d 847, 848-849).

SANTUCCI, J.P., BALKIN, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court