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

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O/kmb

_____AD3d_____ Argued - January 4, 2011

ANITA R. FLORIO, J.P.
RANDALL T. ENG
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2010-05525 DECISION & ORDER

In the Matter of James T. (Anonymous), respondent;
Presentment Agency, appellant.

(Docket No. D-01950-10)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers, Mordecai Newman, and Norman Corenthal of counsel), for appellant.

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

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, the Presentment Agency appeals from an order of the Family Court, Kings County (Elkins, J.), dated May 10, 2010, which dismissed the petition. The appeal brings up for review the granting, after a hearing, of the respondent's motion to suppress identification testimony.

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

The respondent, James T., was charged with acts which, if committed by an adult, would have constituted, inter alia, attempted robbery in the second degree. At a *Wade* hearing (*United States v Wade*, 388 US 218) he argued that the showup identification was tainted by an unduly suggestive police procedure. We agree with the Family Court that the showup at which the defendant was identified by the complainant was unduly suggestive.

At the *Wade* hearing, the testimony established that, shortly after the alleged incident, the complainant called the police and a police officer promptly arrived at the complainant's location. While the officer was in the presence of the complainant, a radio broadcast was transmitted indicating that individuals matching the description of the suspects given by the complainant had been

apprehended. The complainant overheard this broadcast. The complainant testified that he walked with the responding officer to where the suspects had been apprehended and, when he and the officer arrived, the defendant and the two other suspects were standing together against a fence surrounded by ten police officers. The suspects were either handcuffed or had their hands behind their back as if they were under arrest.

When the circumstances are viewed cumulatively, the showup identification was unduly suggestive and the identification testimony was properly suppressed (*see People v Francis*, 303 AD2d 598; *People v James*, 218 AD2d 709).

FLORIO, J.P., ENG, BELEN and AUSTIN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court