

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

D32714  
C/ct

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Submitted - October 11, 2011

WILLIAM F. MASTRO, J.P.  
RANDALL T. ENG  
ARIEL E. BELEN  
L. PRISCILLA HALL, JJ.

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2011-00650

DECISION & ORDER

In the Matter of Gilberto M. (Anonymous) III, appellant.

(Docket No. D-1614/10)

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Steven Banks, New York, N.Y. (Tamara A. Steckler and Judith Stern of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Norman Corenthal of counsel; Meredith E. Dempsey on the brief), for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, Gilberto M. III appeals from an order of disposition of the Family Court, Kings County (Freeman, J.), dated July 2, 2010, which, upon a fact-finding order of the same court dated May 24, 2010, made after a hearing, finding that he had committed acts which, if committed by an adult, would have constituted the crimes of attempted gang assault in the first degree, assault in the second degree (two counts), and criminal possession of a weapon in the fourth degree, adjudged him to be a juvenile delinquent, and conditionally discharged him for a period of 12 months. The appeal from the order of disposition brings up for review the fact-finding order.

ORDERED that the appeal from so much of the order of disposition as conditionally discharged the appellant for a period of 12 months is dismissed as academic, without costs or disbursements, as the period of conditional discharge has expired; and it is further,

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

The appellant contends that the evidence was legally insufficient to support the

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fact-finding determination as to attempted gang assault in the first degree and assault in the second degree. Insofar as this contention relates to the issues of justification and physical injury, it is unpreserved for appellate review, as he failed to raise those specific claims before the Family Court (see *Matter of Rodolfo M.*, 79 AD3d 752; *Matter of Melissa N.*, 62 AD3d 884; *Matter of Anthony R.*, 43 AD3d 939; cf. CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 492). In any event, viewing the evidence in the light most favorable to the presentment agency (see *Matter of David H.*, 69 NY2d 792, 793; *Matter of Christopher C.*, 54 AD3d 757; *Matter of Christian M.*, 37 AD3d 834), we find that it was legally sufficient to establish, beyond a reasonable doubt (see Family Ct Act § 342.2[2]), that the appellant committed acts which, if committed by an adult, would have constituted the crimes of attempted gang assault in the first degree and assault in the second degree (two counts) (cf. Penal Law §§ 110.00, 120.07, 120.05[2]). Moreover, upon our independent review of the record (cf. CPL 470.15[5]; *People v Danielson*, 9 NY3d 342, 348), we are satisfied that the fact-finding determination as to those acts was not against the weight of the evidence (see *Matter of Devon A.*, 78 AD3d 1171, 1173; *Matter of Hasan C.*, 59 AD3d 617).

MASTRO, J.P., ENG, BELEN and HALL, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court