

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

D32808
G/kmb

_____AD3d_____

Submitted - October 13, 2011

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
JEFFREY A. COHEN, JJ.

2011-03021

DECISION & ORDER

In the Matter of Richard M. (Anonymous), appellant.

(Docket No. D-21359/10)

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

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F.X. Hart and Drake A. Colley of counsel), for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, Richard M. appeals from an order of disposition of the Family Court, Queens County (Lubow, J.), dated February 28, 2011, which, upon a fact-finding order of the same court dated January 21, 2011, made after a hearing, finding that he committed acts which, if committed by an adult, would have constituted the crimes of burglary in the second degree, grand larceny in the fourth degree, criminal possession of stolen property in the fourth degree, and criminal trespass in the third degree, adjudged him to be a juvenile delinquent, and placed him in the custody of the New York State Office of Children and Family Services for a period of 18 months. The appeal from the order of disposition brings up for review the fact-finding order.

ORDERED that the order of disposition is modified, on the law, by deleting the provision thereof adjudicating the appellant a juvenile delinquent based upon the finding that he committed an act which, if committed by an adult, would have constituted the crime of criminal trespass in the third degree, and substituting therefor a provision dismissing that count of the petition; as so modified, the order of disposition is affirmed, without costs or disbursements, and the fact-finding order is modified accordingly.

November 9, 2011

Page 1.

MATTER OF M. (ANONYMOUS), RICHARD

The appellant contends that the expert witness in fingerprint comparison and identification did not give adequate factual detail to support his conclusion that three latent fingerprints left at the scene of the burglary matched known fingerprints of the appellant. Contrary to the appellant's contention, the opinion of the expert witness was supported by a sufficient factual basis establishing that an accepted methodology was appropriately employed (*see People v Jones*, 73 NY2d 427, 430; *People v Garcia*, 299 AD2d 493; *see generally Parker v Mobil Oil Corp.*, 7 NY3d 434, 447).

Viewing the evidence in the light most favorable to the presentment agency (*see Matter of David H.*, 69 NY2d 792, 793; *cf. People v Contes*, 60 NY2d 620, 621), we find that there was legally sufficient evidence to prove that the appellant committed acts which, if committed by an adult, would have constituted the crimes of burglary in the second degree, grand larceny in the fourth degree, and criminal possession of stolen property in the fourth degree (*cf. People v Urquidez*, 5 AD3d 800, 801; *People v Hirsch*, 280 AD2d 612; *People v Murray*, 168 AD2d 573, 573). Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see Matter of Michale A.C.*, 73 AD3d 1042, 1043; *cf. 470.15[5]*; *People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the opportunity of the finder of fact to view the witnesses, hear the testimony, and observe demeanor (*see Matter of Hasan C.*, 59 AD3d 617, 617-618; *cf. People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon our review of the record, we are satisfied that the Family Court's determination is not against the weight of the evidence (*see Family Ct Act* § 342.2[2]; *cf. People v Romero*, 7 NY3d 633).

Criminal trespass in the third degree (*see Penal Law* § 140.10[a]) is a lesser-included offense of burglary in the second degree (*see Penal Law* § 140.25[2]; *Matter of Jay R.*, 255 AD2d 134). Accordingly, the count of the petition charging criminal trespass in the third degree should have been dismissed (*see CPL* 300.40[3][b]; *Matter of Jaleel H.*, 36 AD3d 808, 809-810).

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court