

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

D32897  
O/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 20, 2011

ANITA R. FLORIO, J.P.  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS  
JEFFREY A. COHEN, JJ.

2010-11601  
2011-00116

DECISION & ORDER

In the Matter of Mercedes K. (Anonymous),  
appellant.

(Docket No. D-1970-10)

Steven Banks, New York, N.Y. (Tamara Steckler and Marcia Egger of counsel), for  
appellant.

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

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, Mercedes K. appeals from (1) an order of disposition of the Family Court, Kings County (Elkins, J.), dated October 4, 2010, which, upon a fact-finding order of the same court dated June 18, 2010, made after a hearing, inter alia, finding that she committed acts which, if committed by an adult, would have constituted the crime of attempted abortion in the second degree, adjudged her to be a juvenile delinquent and placed her on probation for a period of 12 months, and (2) an order of disposition of the same court dated December 9, 2010, which, upon the court's own motion pursuant to Family Court Act § 355.1(1), in effect, vacated the prior order of disposition dated October 4, 2010, and, upon the fact-finding order, inter alia, finding that she committed acts which, if committed by an adult, would have constituted the crime of attempted abortion in the second degree, adjudged her to be a juvenile delinquent and placed her in the custody of the Administration for Children's Services through October 4, 2011. The appeal from the order of disposition dated December 9, 2010, brings up for review the fact-finding order dated June 18, 2010.

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MATTER OF K. (ANONYMOUS), MERCEDES

ORDERED that the appeal from the order of disposition dated October 4, 2010, is dismissed, without costs or disbursements, as that order was superseded by the order of disposition dated December 9, 2010; and it is further,

ORDERED that the appeal from so much of the order of disposition dated December 9, 2010, as placed the appellant in the custody of the Administration for Children's Services through October 4, 2011, is dismissed as academic, without costs or disbursements; and it is further,

ORDERED that the order of disposition dated December 9, 2010, is affirmed insofar as reviewed, without costs or disbursements.

The appeal from so much of the order of disposition dated December 9, 2010, as placed the appellant with the Administration for Children's Services through October 4, 2011, has been rendered academic, as the period of placement has expired (*see Matter of David H.*, \_\_\_\_\_ AD3d\_\_\_\_\_, 2011 NY Slip Op 07047 [2d Dept 2011]; *Matter of Vanna W.*, 45 AD3d 855, 856). However, because there may be collateral consequences resulting from the adjudication of delinquency, the appeal from so much of the order of disposition dated December 9, 2010, as adjudicated the appellant a juvenile delinquent, and which brings up for review the fact-finding order, has not been rendered academic (*see Family Ct Act § 783; Matter of Dorothy D.*, 49 NY2d 212).

The appellant contends that attempted abortion in the second degree is a nonexistent crime and, therefore "there could not be evidence to support conviction beyond a reasonable doubt" (*People v Martinez*, 81 NY2d 810, 812). Such a contention need not be preserved for appellate review (*see People v Stevenson*, 71 AD3d 796, 797). However, contrary to the appellant's contention, attempted abortion in the second degree (*see Penal Law §§ 110.00, 125.40*) is a legally cognizable crime. The crime of abortion in the second degree (*see Penal Law § 125.40*) imposes criminal liability for engaging in specified conduct and, therefore, attempted abortion in the second degree is legally cognizable, "since one can attempt to engage in conduct" (*People v Aponte*, 16 NY3d 106, 109, quoting *People v Prescott*, 95 NY2d 655, 659).

The appellant's challenge to the legal sufficiency of the evidence with regard to the finding that the appellant committed acts which, if committed by an adult, would have constituted the crime of attempted abortion in the second degree, is unpreserved for appellate review (*see Matter of Charles S.*, 41 AD3d 484, 485; *Matter of James G.*, 309 AD2d 935, 936; *cf. CPL 470.05[2]*). 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 Summer D.*, 67 AD3d 1008, 1009; *Matter of Davonte B.*, 44 AD3d 763, 764), we find that it was legally sufficient to establish, beyond a reasonable doubt, that the appellant committed acts which, if committed by an adult, would have constituted the crime of attempted abortion in the second degree (*see Family Ct Act § 342.2[2]*). Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see Matter of Steven L.*, 86 AD3d 613, 614, *lv denied* \_\_\_\_\_ NY3d\_\_\_\_\_, 2011 NY Slip Op 87121 [2011]; *cf. CPL 470.15[5]; People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the factfinder's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see Matter of Daniel R.*, 51 AD3d 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 determinations were not against the weight of the evidence (*cf. People v Romero*, 7 NY3d 633, 644-645).

FLORIO, J.P., DICKERSON, CHAMBERS and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court