

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

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O/kmb

_____AD3d_____

Submitted - December 8, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2011-01768

DECISION & ORDER

In the Matter of Christian W. (Anonymous),
appellant.

(Docket No. D-16729-10)

Diane B. Groom, Central Islip, N.Y., for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (James G. Bernet of counsel),
for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, Christian W. appeals from an order of disposition of the Family Court, Suffolk County (Genchi, J.), dated January 24, 2011, which, upon a fact-finding order of the same court dated November 19, 2010, made after a hearing, finding that he committed an act, which, if committed by an adult, would have constituted the crime of forcible touching, adjudged him to be a juvenile delinquent and placed him on probation for a period of one year.

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

The appellant's challenge to the legal sufficiency of the evidence is unpreserved for appellate review (*see Matter of Charles S.*, 41 AD3d 484; *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 Imani Mc.*, 78 AD3d 705, 706), we find that the evidence was legally sufficient to support the finding that the appellant had committed an act which, if committed by an adult, would have constituted the crime of forcible touching (*see* Penal Law § 130.52). Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see Matter of Hasan C.*, 59 AD3d 617, 617-618; *cf.* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342),

December 27, 2011

Page 1.

MATTER OF W. (ANONYMOUS), CHRISTIAN

we nevertheless accord great deference to the opportunity of the trier of fact to view the witnesses, hear the testimony, and observe demeanor (*see Matter of Ashley P.*, 74 AD3d 1075, 1076). Upon reviewing the record here, we are satisfied that the Family Court's fact-finding determination was not against the weight of the evidence (*see* Family Ct Act § 342.2[2]; *Matter of Ashley P.*, 74 AD3d at 1076). The discrepancies and inconsistencies between the then 13-year-old complainant's two sworn statements to the police were not of such a magnitude as to render his account of the incident incredible or unreliable (*see People v Allen*, 89 AD3d 741).

DILLON, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court