

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

D33756
C/kmb

_____AD3d_____

Submitted - January 9, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2011-01657

DECISION & ORDER

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

(Docket No. D-38687-09)

Geanine Towers, Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and
Scott Shorr of counsel), for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, Tyheem W. appeals from an order of disposition of the Family Court, Kings County (Elkins, J.), dated January 11, 2011, which, upon a fact-finding order of the same court dated November 24, 2010, made after a hearing, finding that the appellant committed (1) acts which, if committed by an adult, would have constituted the crime of criminal possession of a weapon in the second degree, and (2) unlawful possession of weapons by persons under 16 (two counts), adjudged him to be a juvenile delinquent, and placed him on probation for a period of 18 months. The appeal brings up for review the fact-finding order dated November 24, 2010.

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

As a mere passenger, the appellant lacked standing to challenge the search of a lawfully stopped livery cab with respect to which he demonstrated no legitimate expectation of privacy (*see People v Robinson*, 38 AD3d 572, 573; *People v Ballard*, 16 AD3d 697, 698). Moreover, the appellant did not have automatic standing, since the presentment agency was not solely relying on the statutory presumption of Penal Law § 265.15(3)(a) (*see People v Millan*, 69

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NY2d 514, 520; *People v Robinson*, 38 AD3d at 572; *People v Fredericks*, 234 AD2d 472, 473; *People v Carter*, 199 AD2d 817, 819, *affd* 86 NY2d 721).

Viewing the evidence in the light most favorable to the presentment agency (*see Matter of David H.*, 69 NY2d 792; *People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish beyond a reasonable doubt that the appellant committed an act which, if committed by an adult, would have constituted the crime of criminal possession of a weapon in the second degree, and that he committed two counts of unlawful possession of weapons by persons under 16 (*see* Penal Law §§ 265.00[15], 265.03[3]; § 265.05; *Matter of Macye Mc.*, 82 AD3d 892; *Matter of Darnell C.*, 66 AD3d 771). Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*cf.* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342), we nevertheless accord deference to the factfinder's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see Matter of Darnell C.*, 66 AD3d 771; *cf. People v Mateo*, 2 NY3d 383, *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 determination was not against the weight of the evidence (*cf. People v Romero*, 7 NY3d 633).

RIVERA, J.P., ENG, LOTT and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court