

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

449

CAF 09-02234

PRESENT: SMITH, J.P., CENTRA, LINDLEY, SCONIERS, AND PINE, JJ.

IN THE MATTER OF JAVIER R.,
RESPONDENT-APPELLANT.

ONEIDA COUNTY ATTORNEY,
PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

WILLIAM L. KOSLOSKY, LAW GUARDIAN, UTICA, FOR RESPONDENT-APPELLANT.

LINDA M.H. DILLON, COUNTY ATTORNEY, UTICA (RAYMOND F. BARA OF
COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Family Court, Oneida County (James R. Griffith, J.), entered March 25, 2009 in a proceeding pursuant to Family Court Act article 3. The order, inter alia, adjudicated respondent to be a juvenile delinquent.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent appeals from an order adjudicating him to be a juvenile delinquent based upon a finding that he committed acts that, if committed by an adult, would constitute the crime of attempted robbery in second degree (Penal Law §§ 110.00, 160.10 [1]). Respondent contends that the presentment agency's failure to provide him with the transcript of the testimony of the complaining witness from the corespondent's hearing constitutes a *Rosario* violation. The transcript was not prepared because the hearing in question had occurred only the day before, and respondent declined Family Court's offer for an adjournment to allow the transcript to be produced (*cf. Matter of John G.*, 91 AD2d 685). We thus conclude that respondent waived his contention by declining the court's offer for an adjournment (*see generally People v Welch*, 2 AD3d 1354, 1356, *lv denied* 2 NY3d 747).

Respondent failed to preserve for our review his contention that the evidence is legally insufficient to establish that he used force and was "aided by another person actually present" to support the finding that he committed acts constituting the crime of attempted robbery in second degree (Penal Law § 160.10 [1]; *see People v Gray*, 86 NY2d 10, 19). In any event, respondent's contention lacks merit. Viewed in the light most favorable to the presentment agency, the evidence at the hearing established that respondent shoved the victim and was aided by at least one companion in the immediate vicinity (*see People v Elliot*, 57 AD3d 1095, 1096-1097, *lv denied* 12 NY3d 783;

Matter of Tyrone S., 232 AD2d 318).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court