

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

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CAF 11-02198

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

IN THE MATTER OF SHAWN D.R.-S.,
RESPONDENT-APPELLANT.

WAYNE COUNTY ATTORNEY,
PETITIONER-RESPONDENT.
(APPEAL NO. 2.)

MEMORANDUM AND ORDER

ROBERT A. DINIERI, ATTORNEY FOR THE CHILD, CLYDE, FOR
RESPONDENT-APPELLANT.

DANIEL M. WYNER, COUNTY ATTORNEY, LYONS (KATHLEEN H. POHL OF COUNSEL),
FOR PETITIONER-RESPONDENT.

Appeal from an order of the Family Court, Wayne County (Dennis M. Kehoe, J.), entered September 19, 2011 in a proceeding pursuant to Family Court Act article 3. The order, among other things, placed respondent with the New York State Office of Children and Family Services upon an adjudication of juvenile delinquency.

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 on the finding that he committed an act that, if committed by an adult, would constitute the crime of criminal trespass in the second degree (Penal Law § 140.15 [1]). Contrary to respondent's contention, the evidence presented at the hearing, when viewed in the light most favorable to the presentment agency, is legally sufficient to establish that respondent was not licensed or privileged to be in or upon the premises (see § 140.00 [5]; *People v Daniels*, 8 AD3d 1022, 1023, lv denied 3 NY3d 705; see generally *Matter of David H.*, 69 NY2d 792, 793). The testimony of the three residents of the home in question established that respondent entered the home through the locked back door, that respondent was located on the second floor of the home and that none of the residents gave respondent permission to enter or remain inside the home (see generally *Daniels*, 8 AD3d at 1023; *People v Matuszek*, 300 AD2d 1131, 1131-1132, lv denied 99 NY2d 630; cf. *Matter of Quanel M.*, 8 AD3d 386, 386-387; *Matter of Daniel B.*, 2 AD3d 440, 441). We reject the further contention of respondent that Family Court's findings are against the weight of the evidence (see *Matter of Travis D.*, 1 AD3d 968, 969).

Entered: April 27, 2012

Frances E. Cafarell
Clerk of the Court