

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

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_____AD3d_____

Submitted - November 18, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2007-09687

DECISION & ORDER

In the Matter of Robert A. (Anonymous), appellant.

(Docket No. D-5444-06)

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

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Susan B. Eisner of counsel), for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, the appeal is from an order of disposition of the Family Court, Richmond County (DiDomenico, J.), dated September 20, 2007, which, upon a fact-finding order of the same court dated July 23, 2007, finding that the appellant had committed an act which, if committed by an adult, would have constituted the crime of reckless endangerment in the second degree, adjudged him to be a juvenile delinquent and placed him on probation for a period of 12 months. The appeal brings up for review the fact-finding order dated July 23, 2007.

ORDERED that the appeal from so much of the order of disposition as placed the appellant on probation for a period of 12 months is dismissed, without costs or disbursements, as the period of probation has expired (*see Matter of Daniel R.*, 51 AD3d 933); and it is further,

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

December 16, 2008

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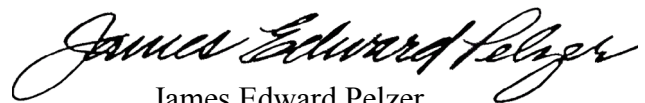
MATTER OF A. (ANONYMOUS), ROBERT

Viewing the evidence in the light most favorable to the Presentment Agency (*see Matter of David H.*, 69 NY2d 792, 793; *Matter of Charles S.*, 41 AD3d 484, 485), we find that it was legally sufficient to support the finding that the appellant recklessly engaged in conduct that created a substantial risk of serious injury and which, if committed by an adult, would have constituted the crime of reckless endangerment in the second degree (*see* Penal Law § 120.20; *Matter of Kadeem W.*, 5 NY3d 864, 865; *Matter of George V.*, 231 AD2d 641, 642; *Matter of James D.*, 231 AD2d 631; *see also Matter of Jehadh S.*, 24 AD3d 128, 128-129; *Matter of Rydell D.*, 285 AD2d 592). The complainant observed the appellant during the incident under good lighting conditions, and subsequently identified the appellant at a showup that took place 15 minutes after the incident. Under these circumstances, the identification testimony was legally sufficient (*see Matter of Jonathan A.*, 36 AD3d 697, 698; *People v Rodgers*, 6 AD3d 464, 465; *People v Terrill*, 265 AD2d 587; *People v Baptiste*, 201 AD2d 659, 660-661).

Moreover, in conducting an independent review of the weight of the evidence (*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 (*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 findings of fact were not against the weight of the evidence (*cf.* *People v Romero*, 7 NY3d 633).

SPOLZINO, J.P., FLORIO, CARNI and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court