

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

1032

**CAF 08-02082**

PRESENT: MARTOCHE, J.P., SMITH, PERADOTTO, CARNI, AND GREEN, JJ.

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IN THE MATTER OF HOWARD M.,  
RESPONDENT-APPELLANT.

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MONROE COUNTY ATTORNEY,  
PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

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CHRISTOPHER S. BRADSTREET, LAW GUARDIAN, ROCHESTER, FOR  
RESPONDENT-APPELLANT.

DANIEL M. DELAUS, JR., COUNTY ATTORNEY, ROCHESTER (DAVID VAN VARICK OF  
COUNSEL), FOR PETITIONER-RESPONDENT.

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Appeal from an order of the Family Court, Monroe County (Joseph G. Nesser, J.), entered July 25, 2008 in a proceeding pursuant to Family Court Act article 3. The order, among other things, adjudged that respondent is a juvenile delinquent.

It is hereby ORDERED that the order so appealed from is unanimously reversed in the interest of justice and on the law without costs and the petition is dismissed in its entirety.

Memorandum: Respondent appeals from an order adjudicating him a juvenile delinquent based on findings that he committed acts that, if committed by an adult, would constitute the crimes of, inter alia, arson in the third degree (Penal Law § 150.10 [3]) and burglary in the third degree (§ 140.20). We agree with respondent that Family Court's findings were based on the uncorroborated testimony of accomplices, in violation of Family Court Act § 343.2 (1). Indeed, no independent corroborative evidence was offered at the fact-finding hearing (see generally *People v Johnson*, 1 AD3d 891; *People v McGrath*, 262 AD2d 1043), and the evidence introduced by the presentment agency has no "real tendency to connect [respondent] with the commission of the crime[s]" (*People v Kress*, 284 NY 452, 460). Although respondent failed to preserve his contention for our review, we nevertheless review it in the interest of justice (see *Matter of Yadiel Roque C.*, 17 AD3d 1168), and we conclude that the evidence is legally insufficient to support the court's findings (see *Matter of Jonathan S.*, 55 AD3d 1324; see generally *People v Bleakley*, 69 NY2d 490, 495).

Entered: October 2, 2009

Patricia L. Morgan  
Clerk of the Court