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

D18006
O/kmg

_____AD3d_____ Submitted - January 11, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2005-11069 DECISION & ORDER

The People, etc., respondent,
v Juan Leon, appellant.

(Ind. No. 2794/04)

Susan V. Tipograph, New York, N.Y. (Thomas Eddy on the brief), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Ruth E. Ross of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Sullivan, J.), rendered November 16, 2005, convicting him of endangering the welfare of a child, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the court did not adequately respond to a jury note requesting clarification is unpreserved for appellate review and, in any event, without merit (*see* CPL 470.05[2]; *People v Slacks*, 90 NY2d 850). The court meaningfully responded by rereading its original instructions to the jury (*see People v Malloy*, 55 NY2d 296; *People v Crosby*, 33 AD3d 719).

Contrary to the defendant's contention, the court properly declined to limit its instruction to the jury on the count of endangering the welfare of a minor to include only allegations of physical contact. The indictment, the prosecution's theory, and the evidence adduced at trial were not limited to physical contact. Therefore, the charge, which mirrored the language of the indictment,

was proper (*cf. People v Grega*, 72 NY2d 489).

The defendant's remaining contentions are unpreserved for appellate review and, in any event, are without merit.

MASTRO, J.P., SKELOS, FLORIO and DICKERSON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court