

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

D25563  
Y/nl

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 13, 2009

JOSEPH COVELLO, J.P.  
FRED T. SANTUCCI  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

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2007-00778

DECISION & ORDER

The People, etc., respondent, v  
Kimark Smith, appellant.

(Ind. No. 10173/06)

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Lynn W.L. Fahey, New York, N.Y. (Paul Skip Laisure and Katherine R. Schaefer),  
for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,  
Johnnette Traill, and Danielle Hartman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (McGann, J.), rendered January 17, 2007, convicting him of criminal possession of a controlled substance in the fifth degree and endangering the welfare of a child (two counts), and imposing sentence. The appeal brings up for review the denial, without a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court properly denied, without a hearing, that branch of his omnibus motion which was to suppress physical evidence (*see People v Montero*, 44 AD3d 796). The defendant's supporting papers were conclusory and failed to set forth factual allegations sufficient to warrant such a hearing (*see CPL 710.60[3][b]*; *People v Wright*, 54 AD3d 695, 696; *People v Montero*, 44 AD3d at 797).

The defendant's contention that the evidence was legally insufficient to support his convictions of endangering the welfare of a child is unpreserved for appellate review (*see CPL 470.05[2]*; *People v Hawkins*, 11 NY3d 484). In any event, viewing the evidence in the light most

favorable to the prosecution (*People v Contes*, 60 NY2d 620), we find that the evidence was legally sufficient to establish beyond a reasonable doubt the defendant's guilt of endangering the welfare of a child (*see* Penal Law 260.10[1]; *People v Hitchcock*, 98 NY2d 586, 592). Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt on those counts was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

COVELLO, J.P., SANTUCCI, CHAMBERS and HALL, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court