

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

1117

KA 11-00253

PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CARL F. NELSON, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (ROBERT J. SHOEMAKER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered November 23, 2010. The judgment convicted defendant, upon a jury verdict, of murder in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon a jury verdict of murder in the second degree (Penal Law § 125.25 [1]), defendant contends that Supreme Court erred in refusing to charge the jury with respect to the voluntariness of defendant's statements to the police. We reject that contention. "A court is required to provide a charge regarding the voluntariness of defendant's statements only if defendant raises that issue, and 'evidence sufficient to raise a factual dispute [is] adduced either by direct or cross-examination' " (*People v Nathan*, 108 AD3d 1077, 1078, lv denied 23 NY3d 966, quoting *People v Cefaro*, 23 NY2d 283, 288-289). Here, defendant did not submit any evidence presenting a genuine issue of fact concerning the voluntariness of his statements, and we therefore conclude that the court was not required to instruct the jury on that issue (see *People v Canfield*, 111 AD3d 1396, 1396, lv denied 22 NY3d 1087; *Nathan*, 108 AD3d at 1078).

Entered: November 13, 2015

Frances E. Cafarell
Clerk of the Court