

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

514

KA 11-02368

PRESENT: CENTRA, J.P., CARNI, SCONIERS, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MANNIX A. MITCHELL, 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 Monroe County Court (Melchor E. Castro, A.J.), rendered August 26, 2011. The judgment convicted defendant, upon a jury verdict, of criminal contempt in the first 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 criminal contempt in the first degree (Penal Law § 215.51 [b] [v]), defendant contends that County Court violated *Crawford v Washington* (541 US 36, 50-54) and his rights under the Confrontation Clause of the Sixth Amendment of the United States Constitution when it admitted in evidence the order of protection. We reject that contention inasmuch as "the order of protection and the statements contained therein were not testimonial in nature . . . The order of protection, which indicated that the defendant was present in court when it was issued and that the defendant was advised of it, constituted a contemporaneous record of objective facts and was not directly accusatory" (*People v Lino*, 65 AD3d 1263, 1264, lv denied 13 NY3d 940; see *People v Myers*, 87 AD3d 826, 829, lv denied 17 NY3d 954; see generally *People v Pealer*, 20 NY3d 447, 453, cert denied ___ US ___, 134 S Ct 105, rearg denied 24 NY3d 993).

Entered: May 1, 2015

Frances E. Cafarell
Clerk of the Court