

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JESSE JOSEPH RODRIGUEZ,

Defendant-Appellant.

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UNPUBLISHED

January 26, 2001

No. 219437

Washtenaw Circuit Court

LC No. 97-008566-FC

Before: Saad, P.J. and Griffin and R. B. Burns\*, JJ.

PER CURIAM.

Defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and was sentenced to five to ten years' imprisonment. Defendant appeals as of right, and we affirm.

Defendant first contends that there was insufficient evidence that he stabbed the victim. We disagree. In determining whether sufficient evidence has been presented, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Parcha*, 227 Mich App 236, 238-239; 575 NW2d 316 (1997).

Here, the victim testified that he believed defendant stabbed him because defendant was the only person standing close to him. Significantly, the victim testified that he saw defendant making uppercut motions with his arm at the time he felt something hitting the right side of his torso. Further, he indicated that defendant's brother was standing in front of him, holding his arm and hitting him, and that the other man there was not involved as he was standing too far away.

Viewing the above evidence in a light most favorable to the prosecution, we believe that a rational trier of fact could have found that defendant committed the stabbing.

Next, defendant argues that the prosecutor violated his rights under *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1996). We disagree. There was no objection. To

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

merit reversal, defendant must show a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Here, defendant's silence did not occur during a custodial interrogation situation, see *People v Mendez*, 225 Mich App 381, 382-383; 571 NW2d 528 (1997), and it was not in reliance on *Miranda* warnings. Accordingly, his silence was not constitutionally protected, and his rights were not violated by the witness' testimony. *People v Stewart (On Remand)*, 219 Mich App 38, 43; 555 NW2d 715 (1996); *People v Schollaert*, 194 Mich App 158, 166-167; 486 NW2d 312 (1992). Accordingly, there was no plain error that affected defendant's substantial rights.

Furthermore, we reject defendant's contention that he was deprived of the effective assistance of counsel because there was no objection to the testimony. As noted above, there was no basis for excluding the evidence. Trial counsel was not required to advocate a meritless position. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Affirmed.

/s/ Henry William Saad  
/s/ Richard Allen Griffin  
/s/ Robert B. Burns