

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAUREANO CALDERON-HERNANDEZ,

Defendant-Appellant.

UNPUBLISHED

December 14, 2004

No. 250230

Wayne Circuit Court

LC No. 03-001013-01

Before: Whitbeck, C.J., and Saad, and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317, and sentenced to a term of twelve to twenty years. He appeals as of right. We affirm.

Defendant argues on appeal that the evidence in this case was insufficient to support the charged offense of first-degree murder, because there was no evidence of premeditation and deliberation, or to support his conviction for second-degree murder. There is no merit to this claim. This Court reviews the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). The prosecutor need not negate every reasonable theory consistent with innocence. *Id.* The standard of review is deferential and this Court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000); *People v Griffin*, 235 Mich App 27, 31; 597 NW2d 176 (1999). Viewing the evidence in a light most favorable to the prosecution, decedent punched defendant in the face and then retreated to the basement and secured the door. Decedent phoned 911 for help while defendant and his brother tried to enter the basement. At some point defendant got in and stabbed decedent to death with a kitchen knife. Defendant testified at trial that he followed decedent into the basement to continue the fight because he believed his face was “sacred” and that no one should punch it. Although defendant testified that decedent was the one with the knife, the jury was free to disbelieve that testimony, particularly in light of other testimony that decedent was unarmed and evidence of three deep stab wounds to decedent’s chest and defensive wounds on decedent’s hands and forearms. The circumstantial evidence and reasonable inferences here were sufficient to support both the charge of first-degree murder and defendant’s conviction for second-degree murder.

Defendant also argues that the trial court should have suppressed his statement to police because the police continued to question him after he declined to answer questions about the stabbing. We disagree. A “person in custody can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation.” *People v Adams*, 245 Mich App 226, 230-231; 627 NW2d 623 (2001). Contrary to defendant’s argument, however, defendant did not unambiguously restrict the questioning. He simply responded to some questions by saying, “I do not want to answer at this time,” and did not invoke his right to remain silent or to counsel. We find no error.

Finally, defendant contends that he was denied a fair trial because of prosecutorial misconduct. This Court considers alleged prosecutorial misconduct in context to determine whether it denied defendant a fair and impartial trial. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). The prosecutor may use strong and emotional language in making his argument so long as it is supported by the evidence. *People v Ullah*, 216 Mich App 669, 678-679; 550 NW2d 568 (1996). A prosecutor may draw inferences from the testimony and may argue that a witness, including the defendant, is not worthy of belief. *People v Buckey*, 424 Mich 1, 14-15; 378 NW2d 432 (1985). Where, as here, defendant fails to object at trial, this Court will only review the defendant’s claim for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). We have reviewed the challenged remarks and, particularly in light of the evidence presented at trial, are not convinced that defendant was denied a fair and impartial trial on this basis.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Michael J. Talbot