

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HASSAN MOHAMAD RIZK,

Defendant-Appellant.

UNPUBLISHED

October 16, 2007

No. 269865

Wayne Circuit Court

LC No. 05-011168-01

Before: Owens, P.J., and White and Murray, JJ.

MURRAY, J., (*concurring*).

I concur in everything that the majority has concluded in its opinion. However, I would also uphold the conviction based upon a conclusion that defendant's Fifth Amendment right against self-incrimination was not violated by use of his pre-arrest silence as substantive evidence. We specifically approved the use of such evidence some 15 years ago, *People v Schollaert*, 194 Mich App 158, 164-165; 486 NW2d 312 (1992), and more recently in *People v Solomson*, 261 Mich App 657, 665; 683 NW2d 761 (2004). Although there is a split of authority amongst the federal circuit courts of appeal, those cases forbidding such use of pre-arrest silence do not persuade me that either *Schollaert* or *Solomson* should be overturned. See *Jenkins v Anderson*, 447 US 231, 243-244; 100 S Ct 2124; 65 L Ed2d 86 (1980) (Stevens, J., concurring).

/s/ Christopher M. Murray