

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH ANDREW FLOWERS,

Defendant-Appellant.

UNPUBLISHED

August 28, 2007

No. 267943

St. Joseph Circuit Court

LC No. 05-013075-FC

Before: Bandstra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions for first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

On appeal, defendant solely argues that the prosecutor improperly granted an eyewitness transactional immunity “contrary to Michigan law which limits a grant of immunity to only use immunity” after the witness indicated that he intended to exercise his Fifth Amendment right. Defendant’s claim as to Michigan law is noticeably lacking in citation to supporting authority. In any event, we need not decide whether defendant is correct in arguing that Michigan law “limits a grant of immunity to only use immunity” because even if we agreed, we would still conclude that defendant’s challenge is without merit.

The eyewitness testimony, even if it followed an improper grant of immunity, was admissible. See *People v Jones*, 115 Mich App 543, 547; 321 NW2d 723 (1982). The eyewitness could have chosen **not** to assert his Fifth Amendment privilege, which is a personal right, and his testimony would have been admissible. Thus, defendant, who did not object to the admission of the eyewitness testimony, has failed to establish plain error affecting his substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Further, if anything, this eyewitness testimony actually helped support defendant’s theory of self-defense.

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh