

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID WILLIAM PERKINS,

Defendant-Appellee.

UNPUBLISHED

January 12, 2001

No. 215279

Oakland Circuit Court

LC No. 93-129964-FH

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

MEMORANDUM

Defendant appeals as of right from his jury trial conviction of arson of insured property, MCL 750.75; MSA 28.270. Thereafter sentenced to two years' probation, with the first thirty days to be served in the county jail. We affirm.

Defendant's conviction arises out of a fire that occurred at his home. His sole claim on appeal is that the testimony of William Jackson, an employee of Allstate Insurance Company, regarding the denial of defendant's insurance claim, was improper opinion evidence of defendant's guilt. We disagree.

Because defendant did not preserve this issue with an appropriate objection we review the alleged error under the plain error rule. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain . . . , 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice" *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Further, if the three elements of the plain error rule are established, "[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error ""seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence."" *Id.* at 763-764, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 555 [1936]). We review the trial court's decision denying defendant's motion for a new trial for an abuse of discretion. *People v Crear*, 242 Mich App 158, 167; 618 NW2d 91 (2000).

The opinion of a lay witness may be admitted as evidence if it is rationally based on the witness' perception and is helpful to a clear understanding of a fact at issue. MRE 701; *People v*

Daniel, 207 Mich App 47, 57; 523 NW2d 830 (1994). “Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” MRE 704. See *People v Williams (After Remand)*, 198 Mich App 537; 499 NW2d 404 (1993).

Contrary to defendant’s assertion, Jackson’s testimony did not focus on defendant’s guilt. The reasons for Allstate’s denial of defendant’s insurance claim were at issue during trial. Jackson’s testimony focused on the reasons for the denial of defendant’s claim and rebutted defendant’s suggestions that the insurance company’s denial of his claim was baseless and unreasonable and resulted from the purported self-interest of the insurance company and those who investigated the fire. Because the admission of this testimony was not erroneous, the requirements of the plain error rule are not satisfied. Accordingly, the trial court did not abuse its discretion in denying defendant’s motion for a new trial where defendant failed to show that admission of Jackson’s testimony constituted plain error that prejudicially affected defendant’s substantial rights. *Carines, supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy