

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD ERIC KALINOWSKI,

Defendant-Appellant.

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UNPUBLISHED

December 27, 2007

No. 273913

Oakland Circuit Court

LC No. 2006-209085-FH

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of domestic violence, MCL 750.81(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction stems from his assault on his wife, complainant Jill Kalinowski, during an argument between the couple about defendant's late return to their home. During the argument, defendant allegedly grabbed complainant and threw her to the ground. In return for this assault, which injured complainant's foot, and defendant's concurrent verbal insults, complainant threw a rock at the couple's vehicle. Defendant, who called the police, maintained that complainant had injured herself in a fall. During his initial interview with police, defendant did not state that he had been injured. However, after his arrest, defendant asserted that complainant should have been arrested because she had scratched him. The arresting officer provided the following testimony in response to the prosecutor's question about his observations of defendant:

*Q.* Okay. Did--when he was commenting about Jill getting in trouble, were there any observations you made about that? Anything unusual?

*A.* It almost seemed like it was just the way he was saying, it was almost like a retaliation, just to get her in trouble or something. That's kind of the way I took it at the scene.

The officer also testified that defendant told him that defendant had received the scratch marks when complainant fell. When asked whether the marks were consistent with the "way [defendant] was saying that he had got them," the officer replied that he did not think so.

On appeal, defendant argues that the trial court erred when it allowed the prosecution to introduce testimony by the officer that he did not find defendant credible. Defendant did not object to the introduction of this evidence. We review unpreserved issues for plain error affecting the defendant's substantial rights, i.e., that affected the outcome of the proceeding. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). A plain error merits reversal only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.* at 773.

It is generally improper for a witness to comment on the credibility of another witness, *People v Buckey*, 424 Mich 1, 17-18; 378 NW2d 432 (1985), or to express an opinion on the defendant's guilt or innocence of the charged offense, *People v Bragdon*, 142 Mich App 197, 199; 369 NW2d 208 (1985). However, a police officer may provide lay opinion testimony regarding topics within his or her personal knowledge and experience. *People v Oliver*, 170 Mich App 38, 50; 427 NW2d 898 (1988), modified and remanded on other grounds 433 Mich 862 (1989).

The trial court did not clearly err when it permitted the prosecution to introduce the disputed testimony. The officer's comments that defendant's scratches were inconsistent with defendant's explanation of how he received them were not opinions on the veracity of defendant's trial testimony or opinions on defendant's guilt. And, the officer's testimony that he thought defendant was trying to retaliate against complainant was not equivalent to stating that the victim was a credible witness or that defendant was not a credible witness. Rather, the officer was properly expressing his lay opinion regarding the source of defendant's injuries and defendant's attitude at the scene in light of the officer's training and experience. While this testimony was probative concerning defendant's credibility and guilt, it did not remove these questions from the province of the jury.

Defendant raises a concurrent claim of ineffective assistance of counsel. However, because the testimony was not improper, counsel's decision to not challenge its introduction did not constitute ineffective assistance. Counsel is not ineffective for failing to make a futile objection. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder