

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

MICHAEL COLLINS, a/ka MARCUS
JACKSON,

Defendant-Appellant.

UNPUBLISHED

March 25, 2003

No. 237809

Wayne Circuit Court

LC No. 99-006194

Before: Meter, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carrying a concealed weapon, MCL 750.227, and was sentenced to two years' imprisonment. Defendant appeals as of right. We affirm defendant's conviction but remand for correction of the judgment of sentence.¹

Defendant asserts numerous instances of prosecutorial misconduct, none of which were preserved by an objection below. Therefore, we review the allegations of misconduct for plain error under the standard articulated in *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

The prosecution has conceded that the prosecutor's questioning of defendant concerning his view of the "perjury" committed by the police officers was improper. As explained in *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985), the rule that witnesses are not to comment on the credibility of another witness applies when the defendant is the witness asked to provide an opinion on the credibility of prosecution witnesses. The defendant's opinion is not probative of the matter. *Buckey, supra*, 424 Mich 17; see also *People v Knapp*, 244 Mich App 361, 384; 624 NW2d 227 (2001), citing *People v Loyer*, 169 Mich App 105, 117; 425 NW2d 714 (1988).

¹ The straight two-year sentence imposed by the trial court violates the indeterminate sentencing act, MCL 769.8, by not providing a minimum term and a maximum term of imprisonment. Because the conviction offense, in this case, carries a maximum penalty of no more than five years' imprisonment, we must remand the case and direct the trial court to amend the judgment of sentence to reflect a minimum prison term of two years and maximum term of five years. See *People v Mitchell*, 175 Mich App 83, 94; 437 NW2d 304 (1989); *People v Maxson*, 163 Mich App 467, 471; 415 NW2d 247 (1987).

Nevertheless, we conclude that reversal is not required. As in *Buckey, supra*, “This was not a case where the defendant might have been prejudiced by improper bolstering of the credibility of prosecution witnesses or by allowing an opinion on his guilt or credibility to be expressed.” *Id.* at 17. The prosecutor’s questioning, in this case, emphasized that the version of events given by defendant on direct examination contradicted that of the police officers in several respects. Although defendant did not explicitly state that the police were lying, it was clear, from his testimony that was his position. To the extent that defendant was discredited in this exchange, the detrimental effect was attributable to the implausibility of his position that the police officers were conspiring against him—the position he took in his direct examination. Defendant has not shown that the error in this questioning affected the outcome of the trial.

Within the argument concerning the prosecutor forcing defendant to comment on the credibility of the witnesses, defendant argues that the prosecutor “insinuated the existence of evidence that was not in the record and may never even have happened.” Defendant does not specify any basis for urging error in this regard except for the rule that a witness may not be asked to comment on the credibility of the witness, which was previously addressed. To the extent that defendant is urging error on another basis, the point is not adequately briefed. “A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim.” *People v Griffin*, 235 Mich App 27, 45; 597 NW2d 176 (1999).

Contrary to defendant’s argument, the prosecutor’s characterization of the house, where the incident occurred, as being “in shambles” was supported by the testimony of the police officers. To the extent that the prosecutor argued facts not in evidence by referring to the cost of a door exceeding \$200, any prejudice was cured by the court’s instruction that counsel’s arguments were not evidence.

Defendant argues that the prosecutor denigrated defense counsel. However, defendant does not identify the objectionable statement, and we deem the issue abandoned as inadequately briefed. *Griffin, supra*.

Defendant also argues that the prosecution impermissibly shifted the burden of proof to defendant by asserting that defendant’s testimony was not corroborated. Contrary to defendant’s argument, the prosecutor’s references to defendant’s failure to produce corroborating evidence did not shift the burden of proof. *People v Fields*, 450 Mich 94, 105-112; 538 NW2d 356 (1995).

Finally, the court did not abuse its discretion in admitting Investigator Harris’ testimony concerning a statement made by Officer Stallworth. The evidence was not hearsay because the statement was not offered to prove the truth of the matter asserted. MRE 801(c); *People v Flaherty*, 165 Mich App 113, 122; 418 NW2d 695 (1987); *People v Harris*, 201 Mich App 147, 151; 505 NW2d 889 (1993).

Defendant’s conviction is affirmed and the case is remanded for correction of the judgment of sentence.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Michael J. Talbot