

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAULA RENAI BENNETT,

Defendant-Appellant.

FOR PUBLICATION

November 2, 2010

9:10 a.m.

No. 286960

Wayne Circuit Court

LC No. 07-024733-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KYRON DARELL BENSON,

Defendant-Appellant.

No. 287768

Wayne Circuit Court

LC No. 07-024733-FC

Advance Sheets Version

Before: METER, P.J., and BORRELLO and SHAPIRO, JJ.

BORRELLO, J.

In these consolidated appeals, both defendants appeal their convictions arising out of the shooting death of Stephanie McClure in 2007.

In Docket No. 286960, defendant, Paula Renai Bennett, appeals as of right her conviction by a jury of first-degree murder, MCL 750.316. Bennett was sentenced to life in prison. For the reasons set forth in this opinion, we affirm.

In Docket No. 287768, defendant, Kyron Darell Benson, appeals as of right his convictions by a jury of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, possession of a firearm by a felon, MCL 750.224f, and first-degree murder, MCL 750.316. Benson was sentenced to two years in prison for the felony-firearm

conviction, one to five years in prison for the felon-in-possession conviction, and life in prison for the first-degree-murder conviction. For the reasons set forth in this opinion, we affirm.¹

I. FACTS

Defendants lived together in Bennett's apartment. The victim, Stephanie McClure, was Bennett's friend and sometimes stayed at Bennett's apartment. In October 2007, defendants discovered that several items, including a PlayStation 2, clothes, and shoes, had been stolen from Bennett's apartment. Benson became angry over the stolen items and began to blame McClure for stealing them. Benson started making threatening comments to several people about McClure, including commenting that he wanted to kill McClure for stealing the items. Benson told one of the persons to whom he had indicated that he wanted to kill McClure, Breanna Kandler, one of Bennett's friends, that he would kill Kandler too if she "[said] anything" about his threats. Benson wanted Kandler to drive him to McClure's trailer to get the apartment key back from McClure. Kandler testified that she took Benson's threats seriously and, accordingly, refused to take Benson to McClure's trailer.

Later in the evening, defendants and several of their friends were at Bennett's apartment. They noticed that defendants' puppy was missing and were looking around the apartment for the dog. Benson joked that maybe the dog was in the freezer, and when he checked in the freezer, he did indeed find the puppy, which was dead. Benson immediately accused McClure of killing the dog as well. Two of Bennett's friends testified that they thought Benson had killed the dog because of the way he reacted to finding it. After the dead dog was disposed of, defendants and their friends went to a Dairy Mart. While at the Dairy Mart, Kandler saw Benson take a gun out of his car and put it in his pants. Another friend, Jessica Fritz, testified that she had previously seen her boyfriend sell a gun to Benson. Later that evening, Bennett and Benson left their friends, stating that they were going to "get [their] stuff back."

Benson then called his friend Michael Larvaian and asked him to meet defendants at a Kroger store. Larvaian had spoken to Benson about the stolen items several times in the preceding days. He testified that he tried to get Benson to calm down about the incident. According to Larvaian, while at Kroger, Benson was angry and "going on about trying to get his stuff back, . . . talking about going to kill [McClure]." Benson showed Larvaian a gun while he was talking about this. After Larvaian got into the car with defendants, Bennett directed Benson to go to "Holiday West," the trailer park where McClure lived. Benson drove according to Bennett's directions. Once they reached the trailer park, Bennett specifically directed Benson to McClure's trailer. They saw McClure standing outside by the trailer, in front of a car. Benson said, "That's her."

¹ Defendants were tried together before separate juries. This Court consolidated the appeals in the interest of the "efficient administration of the appellate process." *People v Bennett*, unpublished order of the Court of Appeals, entered July 23, 2009 (Docket Nos. 286960 and 287768).

Larvidan testified that he told Benson, “[D]rive off.” Benson drove around the trailer park and then parked the car. Larvidan told him “just to talk to her. Don’t do nothing stupid.” Benson got out of the car and walked toward McClure’s trailer. Bennett moved to the driver’s seat, and she and Larvidan continued to drive around the trailer park. While they were driving around, Larvidan saw Benson talking to McClure. After several minutes they heard three or four gunshots and then saw Benson running away. Bennett started crying as soon as they heard the gunshots. Bennett drove toward where Benson was running, and Benson got back in the car. Larvidan asked Benson, “Why?” Benson responded that “he would have lost respect in the . . . hood.” Larvidan also said, “[You] better hope she’s dead . . . ‘cause if she’s not, [you’re] going to jail.”

Because Bennett was charged with murder on a theory of aiding and abetting Benson, several witnesses testified regarding the interactions between defendants and Bennett’s conduct toward Benson. The evidence presented demonstrated that Bennett was present when Benson started making threats about killing McClure, as well as threats toward Kandler. Benson was also yelling at Bennett at this time, telling her that she “was dumb for giving [McClure] a key.” Kandler testified before Bennett’s jury only that Bennett told her that she thought Benson “looked pretty serious” about killing McClure, although Kandler testified that she never witnessed Bennett agree to kill McClure.

Fritz testified that she heard defendants arguing for an extended period before they went to McClure’s trailer; Benson was again yelling at Bennett because she had given a key to McClure. Bennett told Benson that she had filed a report with the police and that the police would take care of it. Fritz could not recall Benson’s response to Bennett. After the argument, Bennett told Fritz that she and Benson were “leaving to get their stuff back.”

Finally, Larvidan testified that Benson was talking openly in the car about shooting McClure just before Bennett gave Benson directions to McClure’s trailer. Bennett did not respond to these comments. Larvidan also testified that after they heard gunshots, Bennett immediately began crying and drove back around toward McClure’s trailer, where they observed Benson running away.

Following numerous seemingly erroneous leads, the police eventually arrested defendants for the murder of Stephanie McClure. After defendants were arrested, Benson was observed telling Bennett under the door between their jail cells, “Don’t talk.”² Following trial, defendants were found guilty on all counts and sentenced as previously stated. These appeals ensued.

II. DOCKET NO. 286960: *PEOPLE v BENNETT*

Bennett’s first argument on appeal is that there was insufficient evidence to prove that she aided and abetted Benson in the commission of first-degree murder.

² This evidence was presented to Benson’s jury only.

This Court reviews de novo claims of insufficient evidence, viewing the evidence in the light most favorable to the prosecution, to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005) (opinion by KELLY, J.). Further, this Court must defer to the fact-finder's role in determining the weight of the evidence and the credibility of the witnesses. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). “[C]onflicts in the evidence must be resolved in favor of the prosecution.” *Id.* at 562. Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

The elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation. *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007); MCL 750.316(1)(a). A defendant may be vicariously liable for murder on a theory of aiding and abetting. *People v Usher*, 196 Mich App 228, 232-233; 492 NW2d 786 (1992), overruled in part on other grounds by *People v Perry*, 460 Mich 55, 64-65 (1999). The elements of aiding and abetting are

(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement. [*People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (quotation marks and citations omitted).]

See also MCL 767.39. Bennett asserts that the prosecution did not prove the third element of aiding and abetting—that Bennett *knew* Benson intended to kill the victim at the time she directed him to where the victim lived.

There was evidence presented to the jury that demonstrated Bennett's desire to let the police resolve the issue of the victim's alleged theft of items from Bennett and Benson. Testimony elicited at trial clearly indicated that Bennett went to the police station to report the theft. Fritz testified that Bennett and Benson fought about the theft and that Benson blamed Bennett for giving the victim a key to their apartment. When Bennett and Benson left to go to the victim's trailer, Bennett told Fritz only that they were going to retrieve the stolen items. Nobody heard Bennett agree to help Benson kill the victim. Fritz testified that Bennett told Benson at one point while he was making his threats, “No, I can't do it.” Finally, Bennett acted shocked and upset after the victim was shot.

There was also evidence presented at trial from three witnesses who testified that during the day preceding the murder, Benson threatened, in Bennett's presence, to kill the victim. Kandler testified that she took Benson's threats seriously enough to refuse to drive Benson to see the victim. Kandler also testified that Bennett told her that Benson seemed serious when he was making his threats. After Bennett's statement to Fritz about retrieving the stolen items, Benson repeated his threat in Bennett's presence, and Bennett saw Benson show a gun to Larvaidan just before the murder. Bennett agreed to direct Benson directly to the victim's trailer even after Bennett saw Benson with the gun and heard his threats to kill McClure and even though she took the threats seriously. Larvaidan also testified that Benson talked openly in the car about shooting the victim just before Bennett gave Benson directions to the victim's trailer. Testimony further

indicated that after Bennett had directed Benson to the victim's trailer and Benson had got out of the vehicle after positively identifying the victim, Bennett then assumed the wheel of the car, drove around the trailer park, and drove the car back around toward the victim's trailer after she and Larvaidan heard shots and observed Benson running away.

Pursuant to *Robinson*, 475 Mich at 6, in order for the prosecution to prevail on the element of aiding and abetting raised in Bennett's appeal, the prosecution must prove that the defendant either intended the commission of the crime or had knowledge that the principal intended its commission at the time that the defendant gave aid and encouragement. To the extent that Bennett directs this Court to conflicts in the testimony, we note that it is the jury's role to weigh the evidence and resolve any conflicts. *Fletcher*, 260 Mich App at 561-562. An aider and abetter's knowledge of the principal's intent can be inferred from the facts and circumstances surrounding an event. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995), disapproved in part on other grounds in *People v Mass*, 464 Mich 615, 628 (2001). Despite Bennett's directing this Court's attention to some evidence that suggests that it was not Bennett's desire to kill the victim, there was considerable evidence from which the jury could have inferred that Bennett knew of Benson's intent. She observed and heard Benson make multiple and serious threats to kill the victim. She saw him with a gun immediately before directing him to the location of the shooting and driving there with him. Consequently, the evidence presented at trial belies Bennett's argument on appeal that she did not want Benson to kill the victim. However, even if we concluded that the evidence established that Bennett may have been reluctant to have Benson kill the victim, that evidence does not negate the critical element of Bennett's knowledge of Benson's specific intent to kill the victim. The evidence proffered by Bennett on appeal merely demonstrates that Bennett may have been unenthusiastic about the prospect of Benson's killing the victim. Such evidence does not negate the fact that Bennett was aware of Benson's specific intent to kill the victim. Thus, we find that there was sufficient evidence from which the jury could conclude that Bennett was guilty of first-degree murder on a theory of aiding and abetting.

Bennett next argues that the prosecutor committed misconduct by failing to adequately plumb the depths of the investigation by the officer in charge into prior suspects in the case. Bennett also argues that the prosecutor bolstered the officer's testimony in her closing argument.

In order to preserve an issue of prosecutorial misconduct, a defendant must contemporaneously object and request a curative instruction. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008). Bennett's trial counsel objected to the prosecutor's questioning in one instance, with respect to whether the officer's investigation changed his recommendation of whom to charge in this case. Thus, with respect to this alleged error, this issue was preserved. Bennett's trial counsel did not raise any other objections concerning this issue; therefore, the issue was not preserved with respect to other alleged errors.

Issues of prosecutorial misconduct are reviewed de novo to determine whether the defendant was denied a fair and impartial trial. *People v Akins*, 259 Mich App 545, 562; 675 NW2d 863 (2003). Further, allegations of prosecutorial misconduct are considered on a case-by-case basis, and the reviewing court must consider the prosecutor's remarks in context. *Id.*

Unpreserved issues are reviewed for plain error affecting substantial rights. *Carines*, 460 Mich at 763. "Reversal is warranted only when plain error resulted in the conviction of an

actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). “Further, [this Court] cannot find error requiring reversal where a curative instruction could have alleviated any prejudicial effect.” *Id.* at 329-330.

Bennett argues that the prosecutor “vouched [for] or bolstered” Officer John Toth’s testimony by eliciting answers from him about the nature of his investigation and the exoneration of prior suspects. Bennett argues that the prosecutor asked Toth whether his investigation eliminated possible suspects other than defendants but did not provide corroborating evidence to support Toth’s conclusions. Bennett cites *United States v Francis*, 170 F3d 546, 551 (CA 6, 1999), which stated, in relevant part:

A prosecutor may ask a government agent or other witnesses whether he was able to corroborate what he learned in the course of a criminal investigation. However, if the prosecutor pursues this line of questioning, she must also draw out testimony explaining how the information was corroborated and where it originated.

The *Francis* court also discussed the rationale underlying this discussion: “The prosecutor’s failure to introduce to the jury whether the information was corroborated via documents, searches, conversations, or other means, would lead a reasonable juror to believe that the prosecutor was implying a guarantee of truthfulness based on facts outside the record.” *Id.*

This underlying rationale is echoed in Michigan caselaw: “Included in the list of improper prosecutorial commentary or questioning is the maxim that the prosecutor cannot vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness’ truthfulness.” *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). The danger is that the jury will be persuaded by the implication that the prosecutor has knowledge that the jury does not and decide the case on this basis rather than on the evidence presented. *Id.*; *People v Matuszak*, 263 Mich App 42, 54-55; 687 NW2d 342 (2004).

In this case, the prosecutor took Toth through a lengthy discussion of his investigation of multiple suspects and drew out the chain of interviews and the investigation that led to suspicion of defendants. The questioning about which Bennett complains relates to the exoneration of the prior suspects. Bennett argues that the prosecutor left the jury with the impression that the prosecutor had special knowledge regarding the innocence of the prior suspects by failing to elicit details regarding their alibis or other exonerating details.

Bennett’s entire argument relies on an analogy to the *Francis* case. However, the facts presented in this case differ substantially from the circumstances in *Francis*. In *Francis*, the officer was testifying about statements he received from a witness about the defendant. *Francis*, 170 F3d at 551. He testified that he corroborated the statements without indicating how he had done so. *Id.* In this case, the testimony Bennett questions pertained merely to the exoneration of other suspects, none of whom were on trial or witnesses against defendants in this case. The credibility of other suspects’ alibis was not directly relevant to defendants’ guilt or innocence. The purpose of the prosecutor’s line of questioning did not pertain to evidence regarding the guilt or innocence of defendants, but merely provided a context for the jury of the officer’s investigation and how it eventually led to defendants. Further, the prosecution is not required to

disprove everyone else's guilt; rather, the prosecution is only required to present evidence of the defendant's guilt. Because the truth or falsity of the prior suspects' alibis was not directly relevant to defendants' guilt, the failure to pursue the question did not raise an inference of special knowledge regarding the truth of Toth's testimony. *Bahoda*, 448 Mich at 276.

Bennett also argues that the prosecutor improperly bolstered Toth's testimony in her closing argument. A prosecutor may not vouch for the credibility of his or her witnesses. *People v Schutte*, 240 Mich App 713, 722; 613 NW2d 370 (2000), overruled in part on other grounds by *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004). However, a prosecutor may comment on his or her own witnesses' credibility, especially when credibility is at issue. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004); *Schutte*, 240 Mich App at 721-722. The prosecutor is free to argue from the evidence and its reasonable inferences in support of a witness's credibility. *Schutte*, 240 Mich App at 721. The prosecutor must refrain from commenting on his or her "personal knowledge or belief regarding the truthfulness of the . . . witnesses," *Thomas*, 260 Mich App at 455, or "convey[ing] a message to the jury that the prosecutor had some special knowledge or facts indicating the witness' truthfulness," *Bahoda*, 448 Mich at 277.

The prosecutor argued that the jury should focus on the evidence against defendants rather than consider the possibilities raised by defense counsel that someone else could have committed the crime and that the police did not adequately rule out other suspects. She stated, "[F]rankly, Martians from outer space might have done it, too. But that's not what happened. That's not what the evidence shows." Additionally, the prosecutor argued that the police conducted a proper investigation by not jumping to conclusions about possible suspects.

We cannot identify in the prosecutor's closing argument any intimation that she had special knowledge regarding Toth's investigation or that she put a "stamp of approval" on the testimony. She merely summarized Toth's testimony that the police investigated several leads before identifying defendants as suspects to rebut the suggestion that the police haphazardly identified defendants. She made no comments about the substance of Toth's investigation. The closest she came to putting her "stamp of approval" on the testimony was by stating that the officers did the investigation "to the best of their ability" and that Toth "did what an officer should do and try to get to the truth." These statements were innocuous and unspecific, again simply rebutting the suggestion that the officers did not do an adequate investigation. Further, the statements developed an argument based on the evidence and the reasonable inferences arising from the evidence. *Schutte*, 240 Mich App at 721. Finally, the prosecutor did not claim to know anything about the investigation beyond what was shown by the evidence—that the police investigated multiple leads before focusing on defendants. *Bahoda*, 448 Mich at 277. The prosecutor's remarks were proper.

We affirm the conviction and sentence of defendant Paula Renai Bennett.

III. DOCKET NO. 287768: *PEOPLE v BENSON*

Benson initially argues that the trial court erred when it denied his motion to quash the district court's bindover decision. "A circuit court's decision to grant or deny a motion to quash charges is reviewed de novo to determine if the district court abused its discretion in binding over a defendant for trial." *People v Jenkins*, 244 Mich App 1, 14; 624 NW2d 457 (2000).

Questions of constitutional law are reviewed de novo. *People v Davis*, 472 Mich 156, 159; 695 NW2d 45 (2005).

At the preliminary examination, Fritz and Kandler testified against both defendants. Fritz testified that Bennett told her after the murder that Benson “did it.” This testimony was admitted only against Bennett.³ Benson argues that, absent this testimony, the prosecution failed to produce sufficient evidence to bind him over on the charges at his preliminary examination.

“The purpose of a preliminary examination is to determine whether probable cause exists to believe that a crime was committed and that the defendant committed it.” *People v Lowery*, 274 Mich App 684, 685; 736 NW2d 586 (2007). Accordingly, the prosecutor need not demonstrate guilt beyond a reasonable doubt at the preliminary-examination stage. *Id.* Probable cause is established if “a person of ordinary caution and prudence [could] conscientiously entertain a reasonable belief of the defendant’s guilt.” *Id.* (quotation marks and citation omitted).

At the preliminary examination, Fritz testified that Benson was angry at the victim for stealing the items and he threatened to kill the victim. Fritz testified that she witnessed Benson and Bennett leave together to find the victim just before the killing. She testified that Bennett returned from that trip and looked upset. Kandler also testified that she had heard Benson threatening to kill the victim earlier in the day before she was killed. Thus, multiple witnesses heard Benson threaten to kill the victim, Benson was observed leaving to look for the victim just before her death, and Bennett returned from the trip crying and upset. Benson argues that the district court must necessarily have considered Fritz’s further testimony that Bennett told her that Benson killed the victim because this other evidence was insufficient to establish probable cause. However, we conclude that even without Bennett’s statements, there was legally sufficient evidence for a “person of ordinary caution and prudence” to have a reasonable belief that Benson committed the crime of murdering the victim. Moreover, the presentation of sufficient evidence to convict at trial renders any erroneous bindover decision harmless. *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002).

Benson next argues that the trial court erred when it admitted on several occasions testimonial hearsay that violated his right of confrontation. Benson raised these issues in a motion for a new trial and argues on appeal that the trial court should have granted a new trial. The decision whether to grant a new trial is within the trial court’s discretion and is, therefore, reviewed for an abuse of discretion. *People v Brown*, 279 Mich App 116, 144; 755 NW2d 664 (2008); *People v Lester*, 232 Mich App 262, 271; 591 NW2d 267 (1998). Questions of constitutional law are reviewed de novo. *Davis*, 472 Mich at 159.

“The Confrontation Clause of the Sixth Amendment bars the admission of ‘testimonial’ statements of a witness who did not appear at trial, unless the witness was unavailable to testify and the defendant had a prior opportunity to cross-examine the witness.” *People v Walker (On Remand)*, 273 Mich App 56, 60-61; 728 NW2d 902 (2006). In *People v Taylor*, 482 Mich 368,

³ At trial, the testimony was admitted against Benson as an excited utterance.

378-379; 759 NW2d 361 (2008), our Supreme Court held with regard to whether a statement is testimonial:

The overruling of [*Ohio v Roberts*, 448 US 56; 100 S Ct 2531; 65 L Ed 2d 597 (1980)] by the United States Supreme Court in *Crawford* and *Davis* [*v Washington*, 547 US 813; 126 S Ct 2266; 165 L Ed 2d 224 (2006)] undermines the analytical underpinnings of this Court’s decision in [*People v Poole*, 444 Mich 151; 506 NW2d 505 (1993)], which was entirely predicated on *Roberts*. Thus, the holding in *Poole* that a codefendant’s nontestimonial statement is governed by both MRE 804(b)(3) and the Confrontation Clause is no longer good law. . . . Accordingly, the admissibility of the statements in this case is governed solely by MRE 804(b)(3). This Court’s MRE 804(b)(3) analysis in *Poole* remains valid, however, and provides the applicable standard for determining the admissibility of a codefendant’s statement under the hearsay exception for statements against a declarant’s penal interest. MRE 804(b)(3) provides:

“(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

* * *

“(3) *Statement against interest*. A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.”

In *Poole*, this Court held:

“[W]here, as here, the declarant’s inculcation of an accomplice is made in the context of a narrative of events, at the declarant’s initiative without any prompting or inquiry, that as a whole is clearly against the declarant’s penal interest and as such is reliable, the whole statement—including portions that inculcate another—is admissible as substantive evidence at trial pursuant to MRE 804(b)(3).” [*Poole*, *supra* at 161.]

Thus, our Supreme Court has ruled that a statement made to an acquaintance, outside a formal proceeding, is a nontestimonial statement and may be admitted as substantive evidence at trial pursuant to MRE 804(b)(3). *Taylor*, 482 Mich at 378-379. Benson argues that Fritz’s testimony that Bennett told her that Benson killed the victim violated his right of confrontation. Bennett’s statements were made to Fritz, a friend, and not within a formal proceeding. Thus, they were nontestimonial and do not implicate the Confrontation Clause. *Id.* Benson next argues that Kandler’s testimony that Bennett told her cousin that Benson was threatening to kill the victim was a Confrontation Clause violation. Because this statement was to an acquaintance and there

is no indication that it was made for the purposes of identifying the perpetrator of a crime, the statement was nontestimonial and did not implicate the Confrontation Clause. *Id.* at 378; *Walker*, 273 Mich App at 63.

Benson next argues that Larvaidan’s testimony about a conversation he had with his father about whether to talk to the police violated his right of confrontation. Larvaidan’s father told Larvaidan to “tell the truth.” This statement was not hearsay because it did not contain an assertion; it was a command. MRE 801; *People v Jones (On Rehearing After Remand)*, 228 Mich App 191, 204-205; 579 NW2d 82 (1998), mod 458 Mich 862 (1998). Moreover, the statement was nontestimonial because it had nothing to do with Benson or his alleged conduct and it was not made for testimonial purposes. *Taylor*, 482 Mich at 378; *Walker*, 273 Mich App at 63.

Finally, Benson argues that Kathleen McIntyre’s testimony that her mother told her “to leave the room” while she spoke to Bennett on the phone also violated his right of confrontation. Like Larvaidan’s testimony, this statement was not even an assertion, let alone testimonial. *Taylor*, 482 Mich at 378; *Walker*, 273 Mich App at 63; *Jones*, 228 Mich App at 204-205.

Benson also argues that the prosecutor committed misconduct by referring in her opening statement to Fritz’s testimony regarding Bennett’s statements. However, because the statements were in fact admitted, and we have concluded that they were properly admitted, the prosecutor did not err. *People v King*, 215 Mich App 301, 307; 544 NW2d 765 (1996).

Benson finally makes the same argument as Bennett that the prosecutor improperly vouched for and bolstered Toth’s testimony through her questioning and closing remarks. We have already concluded that the questioning of Toth did not constitute misconduct. Further, the prosecutor’s argument to Benson’s jury was largely the same as her argument to Bennett’s jury, and we conclude that she was not bolstering Toth’s testimony or intimating to the jury that she had special knowledge regarding Toth’s investigations.⁴

We affirm the convictions and sentences of defendant Kyron Darell Benson.

Affirmed.

/s/ Stephen L. Borrello

/s/ Patrick M. Meter

⁴ Benson also raises in his statement of questions presented the argument that Fritz’s testimony was inadmissible hearsay erroneously admitted. Benson waived this argument because he failed to provide any support for the contention. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims” *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Benson also argued that the same testimony was a violation of the Confrontation Clause, but neglected to present the issue in his statement of questions presented. Thus, this argument is also waived. *English v Blue Cross Blue Sheild of Mich*, 263 Mich App 449, 459; 688 NW2d 523 (2004).