

COA Opinion: Testimonial evidence and criminal liability for aiding and abetting a murder

4. November 2010 By Jeanne Long

In the [consolidated appeals](#) of *Michigan v. Bennett*, No. 286960 and *Michigan v. Benson*, No. 287768, the Court of Appeals affirmed both defendants' first degree murder convictions, including one defendant's conviction for aiding and abetting a murder. Benson was convicted based on evidence that he killed an acquaintance who he believed had stolen several items from Benson's home. A second jury in the same proceedings concluded that Bennett was guilty of aiding and abetting Benson and therefore also guilty of first degree murder.

The Court of Appeals unanimously affirmed Benson's conviction, rejecting counsel's argument that insufficient evidence was presented to support a conviction. The Court also rejected counsel's contention that statements made by Benson to acquaintances were testimonial, and the Court accordingly held that the prosecution had not violated Benson's Sixth Amendment right when it introduced the statements at trial.

The Court also affirmed Bennett's conviction over a dissent. The Court held that the prosecution had presented sufficient evidence to support the conviction. The Court further held that the prosecutor had not committed misconduct when he introduced evidence at trial that demonstrated other suspects had been duly investigated and exonerated during the investigation.

[Dissenting](#) in part, Judge Shapiro would hold that Bennett's conviction should be reversed based on erroneous jury instructions. Judge Shapiro would hold that the standard Michigan aiding and abetting instructions given to the jury implied that Bennett could be found guilty if she negligently aided and abetted Benson. He would hold that the law requires a higher finding, specifically that Bennett could be found guilty only if she intended or knew that Benson was going to kill the victim. Justice Shapiro also would hold that the case should have been remanded for a hearing to determine the effectiveness of Bennett's counsel.