

Michigan murder trial of 13-year-old: Testimony undercuts prosecution case

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The prosecution rested its case November 2 in the murder trial of Nathaniel Abraham. The defense begins calling witnesses today. The case is being tried in the Pontiac, Michigan courtroom of Judge Eugene Moore.

Thirteen-year-old Nathaniel Abraham has been charged as an adult with first-degree murder in the October 29, 1997 shooting death of eighteen-year-old Ronnie Greene outside a Pontiac convenience store. The prosecution has also charged Abraham with assault with intent to murder his neighbor Michael Hudack, as well as two related weapons charges.

Nathaniel Abraham is the youngest child in the state of Michigan, and possibly the US, to be prosecuted as an adult on murder charges. The prosecution is trying him under a 1997 Michigan statute that allows children younger than 14 to be prosecuted as adults for serious and violent offenses such as murder, rape, arson and armed robbery.

Abraham was only 11 years old at the time of the shooting, and, according to psychologists, functioned at the mental level of an average child of six to eight years of age. If convicted, he faces life in prison without parole.

The prosecution, led by Oakland County Assistant Prosecutor Lisa Hulushka, began presenting its case last Friday. It became clear in the first three days of testimony that there is no evidentiary basis to support the charge of first-degree murder. Rather, the state has concocted a spurious case, seeking to leverage what is at most an instance of involuntary manslaughter into a murder charge, in an effort to set a precedent and legitimize the 1997 law.

In its opening statement and its cross-examination of prosecution witnesses, the defense was able to refute the major facets of the prosecution's case. As lead defense attorney Geoffrey Fieger said in his opening statement, the prosecution has "zero evidence" that Abraham set out to deliberately kill Ronnie Greene.

To obtain a conviction for first-degree murder, the prosecution must prove, beyond a reasonable doubt, both intent and motive. But by the prosecution's own admission, Abraham did not know Ronnie Greene. Fieger argued in his opening statement, "Where is the motive? He had no motive to kill anybody. He didn't know Ronnie Greene, let alone premeditatively kill anybody. Have you ever heard of a first-degree murder without a motive?"

To dispute the contention that Abraham fired the fatal shot with the intention of killing Greene, Fieger cited the original police report, which stipulates that the defendant was standing 288 feet

from Greene at the time of the shooting. The defense maintains that Abraham was shooting at a clump of trees situated about halfway between his location and the convenience store outside of which Greene and two friends were standing. This 10- to 20-foot-wide cluster of trees is followed by a steep decline that ends at the street where the store is located. If Abraham did, in fact, fire the fatal bullet, according to the defense, he was neither aiming at Greene nor intending to harm him.

The autopsy report underscores the physical implausibility, if not impossibility, of Abraham taking aim and deliberately firing at Greene. The report concludes that the bullet which killed Greene entered through the top of his head. This implies that a direct shot would have had to come from above. But Abraham was standing a considerable distance away, on the other side of the trees. The most logical explanation is that suggested by the defense—that the fatal bullet ricocheted off of a tree.

Under cross-examination, a prosecution witness acknowledged that the .22 caliber rifle that fired the shot had no stock and a damaged barrel, making it next to impossible to accurately aim at a target. Moreover, the shooting took place at night, after 10:00 p.m.

The opening days of the trial produced new evidence suggesting that the fatal shot may have come from somewhere else. Carlos Falu, who was outside of the convenience store at the time of the shooting, testified that he heard shots fired from a party of about 50 people located behind the store. He said he recognized the distinct click of a .22 caliber rifle being cocked and the sound came from the direction of the party.

Police Sgt. Brian York, the lead police investigator, admitted under cross examination that the police never searched the area of the party behind the store for spent cartridges. He also acknowledged that the police did not have the cartridge from the bullet that killed Greene.

The prosecution tacked on the supplementary charge of assault with intent to murder Michael Hudack in a transparent effort to demonstrate a pattern of homicidal violence on Abraham's part. The state alleges that Abraham had a pathological compulsion to kill, and having failed to kill Hudack, the 11-year-old seized on Greene as his victim. But the Hudack charge was also discredited in the course of testimony.

The prosecution claims that Abraham, while firing a .22 rifle in his backyard with his friend Marcel Moolhuizen earlier on the evening of October 29, 1997, attempted to shoot Hudack as the neighbor stood on his porch several houses away. Abraham and his

friend Marcel have admitted to shooting at the garage, lights and trees in the vicinity of Hudack's house. They both deny aiming at Hudack.

Hudack testified that he walked onto his porch when he heard what he thought were firecrackers. He felt something whiz by his head and thought it might be a bullet. He saw the two boys, but never saw either of them fire a gun. He did not make an emergency 911 call, but instead phoned the front desk of the Pontiac Police Department to report the incident.

The following day Hudack arrived home and found young Nathaniel outside his house. When he confronted Abraham about the previous night, the boy readily admitted he and a friend had been shooting a gun. Hudack said he scolded Nathaniel and told him to go get the gun. To his surprise, Abraham ran and got the rifle and gave it to him, telling him he was sorry. "Just get rid of it before I get into trouble with it," Abraham told Hudack.

Hudack hid the gun behind a couch. He did not call the police until the next day when he read in the paper that someone had been shot at the nearby convenience store. The police then came for the gun and later picked up Nathaniel from Lincoln Junior High School.

Asked by Fieger, "Do you have any evidence that Nate was trying to kill you?" Hudack answered, "No." Sgt. Brian York admitted in testimony that he, not Hudack, urged police to bring charges against Abraham for the incident.

Marcel Moolhuizen testified that he and Nathaniel were playing with the gun because "it was something to do." Under cross-examination by Fieger, the youth said he never saw Michael Hudack that night, and never saw Nathaniel aim at anyone.

In response to a question from Fieger, Moolhuizen said he was never asked by the police whether he intended to shoot Hudack. Moolhuizen has not been charged in the incident.

The testimony of Hudack and Moolhuizen supports the defense contention that the prosecutor's office and police concocted the attempted murder charge in an attempt to illustrate Abraham's intent to kill, and thereby bolster the first-degree murder charge for the shooting of Greene.

At the close of his opening statement to the jury, Fieger took the unorthodox step of playing excerpts from the audio-tape of Abraham's confession to the police, recorded on October 30, 1997. Judge Moore had earlier ruled that the confession could not be submitted as evidence because Abraham and his mother had not been told that the police were investigating a homicide. However the Michigan Court of Appeals overruled Moore's decision.

Far from boosting the prosecution's case, however, the taped confession exposed the crude manner in which the investigating detectives led and manipulated the child into saying what they wanted to hear.

The nine women and five men seated on the jury—who have revealed little emotion thus far in the trial—listened closely as Fieger played the tape. They heard the detectives repeatedly ask questions leading Nathaniel to admit that he fired the shot that killed Ronnie Greene. Nathaniel, audibly intimidated and confused, explained that he was shooting at trees. His statements indicated, moreover, that he was not even aware that he had hit anyone: "I didn't think nothing of it at first, and then I saw the

ambulance."

Fieger questioned how, in light of such a statement, the firing of the fatal shot could have been deliberate, involving "real and substantial reflection," as the prosecution must prove in order to convict Abraham of first-degree murder.

Assistant Prosecutor Halushka began her opening statement by scrawling in large letters on an easel, "I'm gonna shoot somebody." This comment, allegedly made by Abraham to an 11-year-old friend at school—and specifying no intended victim—was the foundation of the prosecution's argument that Abraham formed the intent to commit first-degree murder. Halushka sought to portray the pre-teen child as a cold-blooded criminal who would not rest until he satisfied his desire to kill.

Friends of Abraham called to testify by the prosecution failed to support Halushka's portrayal of the defendant as a predator. Frederick Jenkins, one of Nathaniel's best friends, testified he had told the police he thought the shooting was an accident because Nathaniel "wouldn't do anything like that ... he wasn't that type of kid." Stephanie Saldana, a reluctant witness for the prosecution, repeatedly said that Nathaniel "was only playing" when he told her that he was going to kill somebody.

One incident on the opening day of the trial provided a telling illustration of the prosecution's methods. During the lunch break following the opening arguments, the prosecution re-measured the distance that separated Abraham from Ronnie Greene on the night of Greene's death. For the past two years the prosecution has alleged that the fatal shot was fired from 288 feet. But after the lunch break the prosecution submitted into evidence a new report, claiming the previous estimate was inaccurate and the distance was actually 200 feet. Fieger objected, arguing that the prosecution "can't go out and start changing the evidence." The judge sidestepped the issue, ruling that both sets of evidence would be allowed.

The opening phase of the trial has already made clear that the state set out to exploit a tragic and accidental death, resulting from the actions of a mentally-impaired child, to set a precedent for trying and punishing children as adults. To validate the barbaric 1997 law, the prosecution had to turn a troubled child from a poor working class family into a predatory murderer, charging him with a suitably heinous offense—notwithstanding the fact that the evidence provided no support for such a charge.

What lies behind the concocted case against Nathaniel Abraham is the political motivation of the state: its drive to build up the repressive powers of the police and judiciary, in the first instance against the youth, but more fundamentally against the entire working class.



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