

# Michigan judge rejects appeal for a new trial in Nathaniel Abraham case

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On May 4, Oakland County Probate Judge Eugene Moore issued a decision rejecting an appeal for a new trial for Nathaniel Abraham, the Pontiac, Michigan boy prosecuted for first-degree murder for a crime committed when the boy was 11 years old.

Abraham was charged in the shooting death of 18-year-old Ronnie Greene, Jr. who was killed by a bullet on the night of October 29, 1997 as he and two friends walked away from a convenience store. In November 1999 a jury convicted Abraham of second-degree murder and in January 2000 Moore sentenced the 14-year-old child as a juvenile. Lawyers for Abraham have not stated whether they will appeal the latest decision.

The prosecution of Abraham, deemed the youngest child in Michigan and possibly the US to be prosecuted for first-degree murder as an adult, has become a symbol of the reactionary and unjust judicial system in America that now tries children as adults. Abraham was the first child prosecuted as an adult in Michigan following the passage of a new crime law by the legislature. Since the early 1990s most states have authorized the prosecution of children 14 and older to be tried as adults, but only Michigan and Nebraska have no minimum age for the prosecution of children.

Moore sentenced Abraham as a juvenile in opposition to demands by the Oakland County Prosecutor's office to sentence the child as an adult with a blended youth and adult sentence, whereby he would have been sent to a juvenile center under the provisions that any infraction would automatically institute an adult sentence of life in prison. He is presently in a juvenile detention facility until he turns 21.

In the appeals brief, Abraham's lawyer Geoffrey Fieger cited 10 reasons why the young boy did not receive a fair trial, including that the evidence did not

prove beyond a reasonable doubt that Abraham was responsible for the death of Greene, Abraham's Miranda rights were violated, the jury decision was illogical and repugnant, and that Abraham was unconstitutionally subjected to a trial as an adult.

Challenging the notion that the trial established proof beyond a reasonable doubt, Fieger's appeal motion stated: "Decedent Ronnie Greene, was shot from a different direction than from where the Defendant was alleged to have been located at the time of the shooting. Evidence also established that the .22 caliber shots were being fired from a home directly behind the party store and in the same direction from where the shot came that [hit] Ronnie Greene; in addition, there was no valid conclusive ballistic evidence establishing that the bullet came from a gun fired by the Defendant."

Testimony at the trial revealed that Abraham was either telling the truth when he said he was shooting at trees and that the death of Greene was an accident, or that someone else was responsible for Ronnie Greene's death. Dr. Werner Spitz, a world-renowned forensic pathologist, established at the trial that the bullet that killed Greene was on a downward 90-degree trajectory, indicating the bullet hit a tree and ricocheted downward, hitting Greene at the top of the forehead. Dr. Peter Fragatos, chief of trauma surgery at Pontiac Osteopathic Hospital who treated Greene after the shooting, presented similar testimony. He confirmed the direction of the bullet was downward, traveling through the brain and stopping at the brain stem, where the bottom of the head and the neck meet.

Ronnie Greene's friends testified at trial that they heard someone else shooting a gun from a gang members party nearby. On the night of his death, Greene walked to a convenience store with two friends, Carlos Falu and Corey Brock. Falu testified that he

urinated on the back wall of the store and heard shooting from a .22 caliber rifle coming from a party behind the store. “I heard a shot from a .22,” stated Falu, indicating he was familiar with the gun. “I know how it clicks.”

Falu stated there were at least 50 people at the gang party. “I could see people walking back and forth,” he stated. Falu also said he told Brock earlier to stop making gang member signs to motorists because they were being followed by a police officer. “She was waiting for us as soon we came out of the store. She was right there.”

Falu said the policewoman arrested him as soon as his friend was shot, thinking he was responsible for shooting Greene. Under questioning, the lead investigative detective for the Pontiac Police Department, Brian York, admitted he never investigated the party behind the store even though the police were in the area during the shooting.

Despite the significance of Falu's and Brock's testimony the jury rejected the possibility that the shot that killed Greene came from the party or that the bullet could have ricocheted off a tree. They found Abraham guilty of second-degree murder. While Moore stated Brock and Falu testified to the gang party he opposed the argument that there was insufficient evidence for a jury to conclude Abraham was responsible for Greene's death.

In his decision, Judge Moore stated the jury also heard the controversial police taped “confession” of Abraham, where the 11-year-old could be heard saying that after he fired the gun one of three people he had seen walking in front of the party store had disappeared from sight.

Moore's decision does not address the Miranda rights issue raised in Fieger's appeal even though it played a significant role in the preparations of the trial. Nathaniel was taken from his school by the police two days after the shooting, on October 29, 1997, and questioned under false pretenses. Both he and his mother, Gloria Abraham, were told the police only wanted to question the boy about a gun and they were asked to sign a waiver giving away their Miranda rights—the right to remain silent and to have a lawyer present when questioned by the police.

At a May 1998 hearing called by Abraham's lawyers to have the confession thrown out, Moore agreed that

the procedures used by the police were a violation of Abraham's rights. Moore—who heard testimony from two psychologists who agreed the boy functioned at the level of a six-year-old, had learning and emotional disabilities, and had an IQ of 78 bordering on retardation—said the young boy could not have understood he was giving away his rights. In addition, Moore said Nathaniel's mother was deceived and would not have signed the waiver had she known her son was under investigation for murder.

Seven months later, in January 1999, the Oakland County Prosecutor's office argued before the Michigan Court of Appeals to have the confession reinstated. In April 1999 the appeals court supported the prosecutor's office and allowed the confession to be used.

Fieger's appeal brief characterized the jury's second-degree murder decision as repugnant and self-contradictory for convicting Abraham of murder without convicting on the charge of using a weapon to carry out the crime. Fieger placed emphasis on the need for the jury to establish a “rational basis” for a decision, calling otherwise for the conviction to be overturned.

Moore rejected this argument, stating a jury may deliver an inconsistent verdict when it wants to show mercy, “releasing a defendant from some of the consequences of his act,” he stated, “without absolving him of all responsibility.” Under Michigan's Supreme Court ruling, Moore commented, “juries are not held to any rules of logic nor are they required to explain their decisions.”



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