

## Triangle

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## State drops murder charge

*Doubt is cast on identification*

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**DURHAM** — Prosecutors dropped a murder charge against a Durham man after they said the only eyewitness took back his statement.

But Durham defense lawyer Michael Driver said the state's star witness said from the start that he did not see who killed Devondre Antwan Peace, 25, who was shot to death in September 2003. The best piece of evidence the state had, Driver said, was a photo lineup that included a picture that might or might not have been of Kirk Orlando Smith, 25.

"At best, I think it's really sloppy police work. At worst, who knows?" Driver said. "Knowing everything I know about this case now, Kirk Smith never should have been arrested on this."

Assistant District Attorney Freda Black declined to comment beyond the signed dismissal, which states the charge was dropped because "the only eyewitness to this homicide has recanted."

Durham Investigator Terry Mikels, who handled the case, said the investigation was handled professionally.

Smith, of 2112 Broad St., is in jail for a probation violation. He is scheduled to be released later this month, Driver said.

On Sept. 20, 2003, Peace was sitting in a van parked at 1027 Rosedale Ave. with two other men. One of those men, Reginald D. Richardson, who lived at the Rosedale address, was in the backseat working on a stereo setup, Driver said. Someone approached and shot Peace in the head.

Driver said Richardson told authorities he did not see who fired the shot.

But shortly after the killing, Richardson signed an affidavit stating that he picked a photograph out of a lineup as the person who committed the murder.

Richardson could not be reached Thursday.

Driver said he learned later that the lineup was the third or fourth Richardson had seen. Previously he had looked through hundreds of mug shots without identifying anyone. When Driver and an investigator talked to Richardson, he told them that despite the affidavit he did not see the shooter.

In a pretrial hearing, Driver tried to have the lineup thrown out of the case. It was at that hearing that Driver said he questioned Mikels about where the picture of Smith came from and whether it was actually Smith in the picture. Driver said that at the hearing Mikels could not identify the other men in the photo lineup. Because the defense attorney did not know which pictures Richardson had previously seen, it was impossible to say whether he had passed over Smith's picture several times.