

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO**

PLAINTIFF-APPELLEE

-vs-

**JOHN E. DRUMMOND**

DEFENDANT-APPELLANT

CASE NO.: **2004-0586**

ON APPEAL FROM **MAHONING  
COUNTY** COURT OF COMMON  
PLEAS.

TRIAL COURT  
Case No. **2003 CR 358**

**DEATH PENALTY CASE**

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**MOTION TO SET DATE FOR EXECUTION**

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**DAVID L. DOUGHTEN, 0002847**

4403 ST. CLAIR AVENUE  
CLEVELAND, OH 44103-1125  
PH: (216) 361-1112  
[ddoughten@yahoo.com](mailto:ddoughten@yahoo.com)

**ALAN C. ROSSMAN, 0019893**

FEDERAL PUBLIC DEFENDER  
CAPITAL HABEAS UNIT  
1660 W. 2<sup>ND</sup> STREET, SUITE 750  
CLEVELAND, OH 44113  
PH: (216) 522-4856  
FX: (216) 522-1951  
[Alan\\_Rossman@fd.org](mailto:Alan_Rossman@fd.org)

COUNSEL FOR DEFENDANT-  
APPELLANT

**PAUL J. GAINS, 0020323**

MAHONING COUNTY PROSECUTOR

**RALPH M. RIVERA, 0082063**

ASSISTANT PROSECUTOR  
*Counsel of Record*

OFFICE OF THE MAHONING COUNTY  
PROSECUTOR

21 W. BOARDMAN ST., 6<sup>TH</sup> FLOOR  
YOUNGSTOWN, OH 44503

PH: (330) 740-2330

FX: (330) 740-2008

[rivera@mahoningcountyoh.gov](mailto:rivera@mahoningcountyoh.gov)

COUNSEL FOR PLAINTIFF-APPELLEE

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**Introduction**

Defendant-Appellant John E. Drummond is an Ohio Death Row inmate who was convicted and sentenced to death for the March 24, 2003 aggravated murder of three-month-old Jiyen Dent, Jr. in Youngstown, Mahoning County, Ohio. Defendant has exhausted all of his state and federal remedies. The State of Ohio respectfully requests that this Honorable Court issue an Order and Death Warrant setting an execution date for Defendant-Appellant John E. Drummond.

**Statement of the Case and Facts**

**A. Indictment**

On April 3, 2003, the Mahoning County Grand Jury indicted Defendant-Appellant John E. Drummond was indicted as follows: Count One, Aggravated Murder, in violation of R.C. 2903.01(A), with two accompanying Capital Specifications, in violation of R.C. 2929.04(A)(5) and R.C. 2929.04(A)(9); Count Two, Aggravated Murder, in

violation of R.C. 2903.01(C), with two accompanying Capital Specifications, in violation of R.C. 2929.04(A)(5) and R.C. 2929.04(A)(9); Counts Three and Four, Attempted Murder, in violation of R.C. 2923.02(A) and R.C. 2903.02(A), felonies of the first degree; Counts Five and Six, Felonious Assault, in violation of R.C. 2903.11(A), felonies of the second degree; Count Seven, Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1), a felony of the second degree; and Count Eight, Having a Weapon While Under Disability, in violation of R.C. 2923.13(A), a felony of the third degree. Each count had an accompanying Firearm Specification, in violation of R.C. 2941.145(A). The case was assigned number 2003 CR 358 in the Mahoning County Common Pleas Court. *See State v. Drummond*, 111 Ohio St.3d 14, 2006 Ohio 5084, 854 N.E.2d 1038.

**B. Trial**

This Court previously summarized the facts that were presented at Defendant's trial:

The state presented several witnesses who testified at Drummond's trial that Drummond and Brett Schroeder were members of the Lincoln Knolls Crips gang and considered themselves "original gangsters," or "OGs." Schroeder died from gunshot wounds in May 1998 in a death ruled a homicide. The perpetrator was convicted and is serving time in prison.

The Dent family, Jiyen Dent Sr., Latoya Butler, his girlfriend, and their son, Jiyen Dent Jr., had moved into a home at 74 Rutledge Drive in Youngstown around March 20, 1998. Dent did not know Drummond, Gilliam, or Schroeder.

In the early evening of the shooting, a few days after Dent moved in, ten to 20 people gathered for a party outside the home of Gail Miller on Duncan Avenue in Youngstown to drink and listen to music. Sometime that evening, Drummond and Gilliam arrived.

During the party, James “Cricket” Rozenblad overheard Drummond, Gilliam, and Andre Bryant talking about a “guy moving in in [their] neighborhood [who] could have had something to do with the death of Brett Schroeder.” Yaraldean Thomas also saw Drummond and Gilliam whispering to one another and heard Drummond say “It’s on” after they finished talking.

Drummond left the party and returned a short time later with an assault rifle. He and Gilliam then got into Gilliam’s burgundy Chevrolet Monte Carlo and drove down Duncan Lane toward Rutledge Drive. Approximately five to 15 minutes later, 11 shots were fired from an assault rifle into the Dent home. Within a few seconds, a 9 mm round was fired into the Dent home, and five 9 mm rounds were fired into the home of Diane Patrick, the Dents’ next-door neighbor, who lived at 76 Rutledge Drive.

At around 11:25 p.m. that evening, Dent was in the living room watching a movie, Butler was in the kitchen, and Jiyen was in a baby swing in the living room. While watching TV, Dent heard gunshots and saw “bullets start coming through the windows and the walls.” He then picked up the baby and ran down the hallway towards the bathroom. Dent fell in the hallway and noticed that Jiyen had been shot in the head. After making sure that his girlfriend was safe, Dent called 911.

That same night, Rebecca Perez, who lived nearby on Rutledge Drive, heard two series of shots when taking her trash outside. She saw shots coming from the corner of Duncan Lane and Rutledge Drive and noticed “a shadow up the street.” Shortly thereafter, Perez saw a maroon car pull out of the driveway next to 65 Rutledge Drive, where Drummond lived. The car then drove without any headlights on past the Perez home. Approximately half an hour to 45 minutes later, Perez noticed that the maroon car had returned to the driveway next to Drummond’s home. At trial, Perez identified Gilliam’s Monte Carlo as the car she had seen that night.

Leonard Schroeder, the brother of Brett Schroeder, who had been killed nearly five years before, lived near Rutledge Drive. On the evening of March 24, Leonard heard a series of gunshots. Shortly afterwards, Drummond and Gilliam arrived at Leonard’s home in Gilliam’s car. Leonard asked Drummond about the shots, and Drummond said that he “didn’t know who it is. It was probably Cricket and Wany.” Gilliam said only that “some fools are shooting over there.”

Arriving police and paramedics found that Jiyeen had been killed. Investigators secured the scene and began their investigation. Officer Kerry Wigley walked down Rutledge Drive, looking for shell casings, and noticed two men in the dark, leaning against a car parked in a driveway. Wigley intercepted the two men, asked for their identification, and identified them as Drummond and Gilliam.

During the investigation, Patrolman David Wilson found ten cartridge casings from assault-rifle ammunition lying between two houses that were across the street and several houses away from the Dent home on Rutledge Drive. The police also found six 9 mm shell casings at the corner of Rutledge Drive and Duncan Lane.

Investigators found that someone had fired 11 bullets from an assault rifle into the Dent home. Three bullets had hit the house near the front door, three others had hit elsewhere on the front of the house, and five bullets had hit the west side of the house where the bedrooms were located. A 9 mm bullet hole was also found on the east side of the Dent home.

Ed Carlini, an Ohio Bureau of Criminal Investigation (“BCI”) agent, examined the trajectory of the bullets entering the Dent home. Carlini determined that the shots had originated from a location on Rutledge Drive where ten shell casings were found. He also determined that the 9 mm shot that hit the Dent home originated from east of the house.

Carlini and Officer Anthony Marzullo, a crime lab technician, examined bullet holes inside the Dent home. There were five bullet holes inside the southwest bedroom and three bullet holes inside the northwest bedroom. One bullet entered the living room, fragmented, and was found in the far living-room wall. A 9 mm slug was found in the kitchen wall. Marzullo recovered other bullet fragments and copper-jacketed slugs inside the house. He also recovered bullet fragments and bits of blue plastic that had been removed from the victim during the autopsy.

Andrew Chappell, a ballistics expert, compared the ten 7.62 x 39 mm assault-rifle cartridge casings and concluded that they could have been fired from the same firearm. He stated that an assault rifle such as an AK-47 semiautomatic rifle would have fired this ammunition. Chappell examined the six 9 mm cartridge casings and concluded that each of the casings had been fired from the same firearm. Chappell also examined the slugs and bullet fragments obtained from the Dent home and identified one 9 mm

Luger bullet, a 7.62 mm bullet, a 7.62 mm bullet jacket fragment, a piece of metal, and a couple of lead fragments. He determined that the 7.62 bullet and the 7.62 bullet jacket fragment were fired from the same weapon, but he was unable to make any comparisons with the lead fragment and the blue plastic recovered from the victim at the autopsy.

As the murder investigation progressed, Drummond and Gilliam were identified as suspects. On March 27, 2003, the police searched Drummond's Rutledge Drive residence and arrested him. When he was arrested, Drummond told police "that he had nothing to do with the shooting of the baby. He was on Duncan Lane that night and heard gunshots and he walked to Rutledge to see what had happened." During the search, the police seized a drum containing 75 rounds of 7.62 x 39 mm ammunition, three boxes containing 46 rounds of 7.62 x 39 mm ammunition, a single round of 7.62 x 39 mm ammunition, an empty AK magazine, a Taurus 9 mm handgun with no barrel, a bulletproof vest, and several rounds of 9 mm, .45 caliber, and .357 caliber ammunition.

During the search of Drummond's residence, police also seized an album of gang photographs of the Lincoln Knolls Crips. Drummond appears in many photographs. The album also contained a number of photographs and tributes to Brett Schroeder and other members of the gang who had been killed. One page of the album shows two photographs of Drummond with a cake that says, "RIP Brett." Another photograph shows tattoos of guns, tombstones, and other symbols on Drummond's back. The tombstone tattoo contains Schroeder's name and names of Drummond's other dead friends.

Dr. Dorothy Dean, Deputy Coroner for Franklin County, conducted the autopsy of three-month-old Jiyen. Dean testified that Jiyen died from a gunshot wound to the head. The entry wound was on the back of Jiyen's head, and the exit wound was just below the left eye.

Between March and August 2003, Chauncey Walker and Drummond were incarcerated in the same cellblock at the Mahoning County jail. Drummond talked to Walker about his case almost "[e]very single day." Walker testified, "[A]s soon as he'd come out of his cell, he'd come directly to my cell \* \* \* [and] he'd be talking to me about that case." As to what happened on March 24, Drummond told Walker that he "was sitting in his sister[s] driveway and Wayne pulled up, and \* \* \* he asked Wayne to take him to go get a gun somewhere. \* \* \* So Wayne gave him a ride to

go get the gun. \* \* \* [W]hen Wayne backed up in the driveway after he \* \* \* got the gun, the dude, Jiyen, supposed to have stayed \* \* \* a couple houses up from his sister or right around the corner, \* \* \* [and] he said he got out the car and fired some shots at the house and then he got back in the car and pulled off.” Drummond told Walker that “he intended to hurt whoever the bullet hit,” but “he didn't intend to kill no baby.”

Nathaniel Morris was another inmate in the same cellblock with Drummond and Walker. During May 2003, Morris overheard Drummond tell Walker that “he didn't meant [sic] to kill the baby; he was trying to get at somebody else \* \* \*.” On more than one occasion, Morris overheard Drummond asking Walker, “[Y]ou think I'm going to get convicted on this, you think they have anything on me, stuff like that.”

Drummond called five witnesses. William Harris, an inmate at the Mahoning County jail, was incarcerated in a cell adjacent to Walker's. He said that in March 2003, Walker told Harris that “he knew how [Walker] could get outta of jail. [Walker] would have to go over and talk to the prosecutor and say that John [Drummond] admitted to his part in the case.” Harris also said that Walker's cell was some distance from Drummond's cell and that Drummond and Walker “couldn't talk unless they yelled across the range.” On another occasion, Harris saw Walker enter Drummond's cell after he “told the deputy he was gonna get a magazine, and he come out with [Drummond's] discovery pack [i.e., court papers].”

Elisa Rodriguez, who lived next door to Drummond on Rutledge Drive, testified that on the evening of March 24, she was at home with her eight-year-old son. Rodriguez observed Gilliam's car parked in front of her house. While in her back bedroom, she heard voices, looked into the back yard, and saw Gilliam and a “tall, skinny guy.” She saw them walk towards the front of her home and then heard shooting. Rodriguez and her son went to the living room, looked out the front window, and saw Gilliam standing in her neighbor's front yard shooting a “big gun” at a house across the street. Rodriguez said that after the shooting stopped, Gilliam got into his car alone and fled the scene. Rodriguez then saw Jawany, who was a “tall, skinny black man” from the neighborhood, running down Rutledge Drive shooting a gun. She next said that she heard Jawany firing his last gunshot in front of the Dent home and saw him flee down an alleyway between two houses. Rodriguez testified that she did not see Drummond in the area when the gunshots were fired.

Rodriguez's son, Jimmy Figuera, testified that on that evening, he heard gunshots while at home with his mother. He looked out the front window and saw Wayne shooting a “big” gun. He then saw “Wayne comin' down the street shootin' from Duncan.” Jimmy did not see Drummond, whom he referred to as “Uncle J,” when the shootings took place.

*Drummond*, 111 Ohio St.3d at 15-19. Defendant was convicted as charged (Count Eight was later dismissed) and sentenced to death. *See id.* at 19.

**C. Direct Appeal**

Defendant filed his direct appeal of right with this Court, and on October 18, 2006, this Court affirmed Defendant’s convictions and death sentence. *See id.* at 52. On April 18, 2007, this Court denied Defendant’s Application for Reopening. *See State v. Drummond*, 113 Ohio St.3d 1463, 864 N.E.2d 651 (2007).

**D. Postconviction Proceedings**

On January 28, 2005, Defendant filed a petition for postconviction relief pursuant to R.C. 2953.21 in the Mahoning County Common Pleas Court. *See State v. Drummond*, 7<sup>th</sup> Dist. No. 05 MA 197, 2006 Ohio 7078, ¶ 10. On September 29, 2005, the trial court granted the State’s motion for summary judgment. *See id.* at ¶ 11. Defendant did not appeal to the United States Supreme Court.

The Seventh District affirmed the trial court’s denial of Defendant’s petition for postconviction relief on December 20, 2006. *See id.* at ¶ 128. This Court then declined jurisdiction on May 16, 2007. Defendant did not appeal the denial to the United States Supreme Court. This completed Defendant’s state appeals.

**E. Federal Habeas Corpus Proceedings**

On June 15, 2007, Defendant filed a notice of intent to file a habeas corpus petition, and on May 5, 2007, Defendant filed an Amended Petition for a Writ of Habeas

Corpus pursuant to 28 U.S.C. 2254 in the United States District Court for the Northern District of Ohio in which he raised thirteen claims for relief. *See Drummond v. Houk*, 761 F.Supp.2d 638, 658 (N.D. Ohio 2007).

On January 26, 2010, the District Court “issued an Order to Show Cause (ECF No. 61) wherein the Court required Respondent to show cause why the Court should not hold an evidentiary hearing on Drummond’s claim of ineffective assistance of counsel during the mitigation, or penalty, phase of the trial.” *Id.* at 659-660.

In Defendant’s first ground for relief, he argued that “his Sixth Amendment right to a public trial was violated when the trial court closed the courtroom for portions of his trial on February 4 and February 5.” *Id.* at 665. In short, the District Court found that “the trial court’s partial closure of the courtroom on February 4 resulted in structural error and, therefore, Drummond’s Sixth Amendment right to a public trial was violated. Accordingly, Drummond’s first ground for relief is granted in part.” *Id.* at 680.

The District Court then issued Certificate of Appealability pursuant to 28 U.S.C. 2253(c), 28 U.S.C. 1915(a)(3), and Fed. R.App. P. 22(b) for Defendant’s second ground for relief—Defendant’s limited cross-examination of James Rozenblad. *See id.* at 716-717.

In conclusion, the District Court granted Defendant’s petition for writ of habeas corpus in-part and ordered a new trial after it found “meritorious that portion of Ground One that asserts a denial of Drummond’s Sixth Amendment right to a public trial because of the partial closure of his trial on February 4, 2004[.]” *Id.* at 718.

Following the District Court’s granting of Defendant’s petition for writ of habeas corpus in-part, both parties appeal. *See Drummond v. Houk*, 728 F.3d 520 (6<sup>th</sup> Cir., 2013).

The Sixth Circuit affirmed the District Court's granting of Defendant's petition for writ of habeas corpus in-part and order for a new trial. *See id.* at 534.

On April 28, 2014, the United States Supreme Court granted the warden's petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit, and remanded the case to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *White v. Woodall*, 572 U.S. \_\_\_, 134 S.Ct. 1697, 188 L.Ed.2d 698 (2014). *See Robinson v. Drummond*, 134 S.Ct. 1934 (Mem), 188 L.Ed.2d 957, 82 USLW 3262 (2014).

Upon remand, the Sixth Circuit reversed the District Court's granting of Defendant's petition for writ of habeas corpus in-part and order for a new trial after it concluded, in light of *White v. Woodall*, 572 U.S. \_\_\_, 134 S.Ct. 1697, 188 L.Ed.2d 698 (2014), that the partial closure of courtroom during the testimony of prosecution witnesses did not violate Defendant's Sixth Amendment right to a public trial. *See Drummond v. Houk*, 797 F.3d 400 (6<sup>th</sup> Cir., 2015). The Sixth Circuit then denied Defendant's motion for an *en banc* hearing on September 14, 2015.

The United States Supreme Court denied *certiorari* on May 16, 2016. *See Drummond v. Robinson*, \_\_\_ S.Ct. \_\_\_, 2016 WL 542380 (Mem) (2016).

## Conclusion

With this procedural history, it is clear that Defendant-Appellant John E. Drummond has exhausted all of his state and federal court reviews of his convictions and death sentence. In *State v. Steffen*, this Court held that “[w]hen a criminal defendant has exhausted direct review, one round of postconviction relief, and one motion for delayed reconsideration under *State v. Murnahan* in the court of appeals and in the Supreme Court, any further action a defendant files in the state court system is likely to be interposed for purposes of delay and would constitute an abuse of the court system.” *State v. Steffen*, 70 Ohio St.3d 399, 412, 1994 Ohio 111, 639 N.E.2d 67 (1994). Thus, Defendant must petition this Court for a stay to allow further litigation.

The family of Jiyen Dent, Jr. and the citizens of Mahoning County await justice. Accordingly, the State of Ohio respectfully moves this Honorable Court for an Order and Death Warrant setting forth an Execution Date without further delay.

Respectfully Submitted,

**PAUL J. GAINS, 0020323**  
MAHONING COUNTY PROSECUTOR BY:

/s/ Ralph M. Rivera

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**RALPH M. RIVERA, 0082063**  
ASSISTANT PROSECUTOR  
*Counsel of Record*

Office of the Mahoning County Prosecutor  
21 W. Boardman St., 6<sup>th</sup> Fl.  
Youngstown, OH 44503-1426  
PH: (330) 740-2330  
FX: (330) 740-2008  
[pgains@mahoningcountyoh.gov](mailto:pgains@mahoningcountyoh.gov)  
[rrivera@mahoningcountyoh.gov](mailto:rrivera@mahoningcountyoh.gov)  
Counsel for the State of Ohio-Appellee

**Certificate of Service**

I certify that a copy of the State of Ohio's Motion to Set Date for Execution was sent by **Electronic Mail** to counsel for Defendant, **David L. Doughten, Esq.**, at [ddoughten@yahoo.com](mailto:ddoughten@yahoo.com), and **Alan C. Rossman, Esq.**, at [Alan\\_Rossman@fd.org](mailto:Alan_Rossman@fd.org), on May 20, 2016.

So Certified,

/s/ Ralph M. Rivera

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**Ralph M. Rivera, 0082063**  
Counsel for the State of Ohio