

Appendix B

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT
THE ALABAMA COURT OF CRIMINAL APPEALS

CR-10-1892

Tawuan Townes, Appellant

vs.

State of Alabama, Appellee

Appeal from Houston Circuit Court No. CC-08-1656

ORDER

On June 13, 2014, this Court unanimously reversed Tawuan Townes's capital-murder conviction and sentence of death. Specifically, this Court held that the circuit court erroneously instructed the jury that "intent must be inferred if the act was done deliberately and death was reasonably to be apprehended or expected as a natural and probable consequence of the act." Townes v. State, [Ms. CR-10-1892, June 13, 2014] ___ So. 3d ___, ___ (Ala. Crim. App. 2014). This Court reasoned that the circuit court's instruction erroneously created a mandatory presumption that intent must be inferred and, thus, constituted plain error. Id. at ___.

On June 19, 2014, the circuit court issued the following notice to this Court:

"The Alabama Court of Criminal Appeals issued an opinion June 13, 2014 reversing and remanding the above style case. The reason for the reversal was because the trial court allegedly gave a mandatory-conclusive presumption instruction using the word 'must'. Upon reviewing the Court of Criminal Appeals opinion this court listened to the court reporter's tape recording of the jury instruction and the tape reveals this court used the word 'may' and not 'must'. The word 'may' allows for a permissive inference and not a mandatory-conclusive inference. Therefore, the transcript submitted to the Alabama Court of Criminal Appeals is incorrect."

Thus, the circuit court has notified this Court that there may have been an error in the transcription of the circuit court's guilt-phase jury instructions.

Rule 10(g), Ala. R. App. P., provides in relevant part, that, "[t]he appellate court may, on motion of a party or on its own initiative, order that a supplemental or corrected record be certified and transmitted to the appellate court if necessary to correct an omission or misstatement" See

also In re Holmes, 821 N.E.2d 568, 571 (Ohio 2004) (holding that "[a]n appellate court has the power on its own initiative to order the correction of an imperfect trial record," and the failure to do so constituted an abuse of discretion); Bishop v. State, 833 So. 2d 92, 93 (Ala. Crim. App. 2002); Zwerin v. 533 Short North LLC, 15 F. Supp. 3d 769, 772 (S.D. Ohio 2014); People v. Ray, 302 P.3d 289, 292 (Colo. App. 2012). In accordance with Rule 10(g), Ala. R. App. P., this Court remands this cause with instructions for the circuit court to appoint a different court reporter to transcribe the guilt-phase jury instructions and to transmit a supplemental/corrected transcript to this Court. Cf. Edwards v. State, 628 So. 2d 1021, 1024 (Ala. Crim. App. 1993). The supplemental record shall be filed with this Court as soon as practicable and no later than 56 days from the date of this order.

REMANDED WITH INSTRUCTIONS.

Windom, P.J., and Welch, Kellum, Burke, and Joiner, JJ., concur.

Done this 4th day of March, 2015.



MARY BECKER WINDOM, PRESIDING JUDGE

cc: Hon. Larry K. Anderson, Judge
Hon. Carla Woodall, Clerk
Sheila Hanson, Court Reporter
Angela Setzer, Esq.,
Bryan A. Stevenson, Esq.
Randall S. Susskind, Esq.
Beth Jackson Hughes, Esq.
Office of the Attorney General