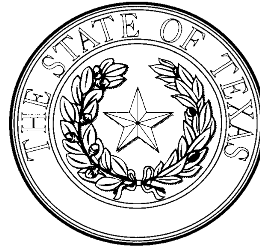
Opinion issued June 2, 2016



In The

Court of Appeals

For The

First District of Texas

NO. 01-14-00960-CR

WILLIAM K. GREEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Case No. 717215

MEMORANDUM OPINION

William K. Green was found guilty of capital murder and sentenced to life imprisonment. He appealed his conviction to this court and we affirmed.[1] *See*

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1 In the previous decision, the facts were described as follows:

Green v. State, No. 01-97-00011-CR, 1998 WL 268800, at *1 (Tex. App.—Houston [1st Dist.] May 28, 1998, pet. ref'd).

Almost two decades after his conviction, Green filed a request for post-conviction DNA testing, which the trial court granted. After the testing was conducted, the trial court entered findings of fact, including finding that the results were "unfavorable" to Green: "While the DNA results have the appearance of favorability, when weighed against the other compelling evidence against the defendant, they are not, in fact, favorable." Green has appealed that order. Green has not filed a brief in this court even though we abated his case numerous times and more than one year has passed since his brief was due.

> [Green] and three of his friends decided to rob a woman named Cathy Brown. They knew she kept a lot of money at her house, so they decided to go there and take the money. [Green's] friends armed themselves with guns, [Green] took a knife, and the four went to Cathy Brown's house. They planned to use the guns and knife to force Cathy Brown to give them the money.
>
> Once they got to the house, one of [Green's] cohorts stopped a man who was walking nearby and made him get on his knees. [Green] drew his knife, his friends drew their guns, and they took the man's wallet. They then ordered the man to go knock on Cathy Brown's door.
>
> Before Ms. Brown answered, the victim, Cherry Williams Taylor, approached the men and asked them what they were doing. [Green] grabbed Cherry Williams Taylor, and when she resisted, he stabbed her with the knife. She died one foot away from Cathy Brown's porch. There is some evidence to suggest that although Cathy Brown never answered the door, she was in the house.

Green v. State, No. 01-97-00011-CR, 1998 WL 268800, at *1 (Tex. App.—Houston [1st Dist.] May 28, 1998, pet. ref'd).

If a criminal appellant, like Green, fails to file a brief, we may consider the case without briefs and review the entire appellate record to determine if fundamental error exists. TEX. R. APP. P. 38.8(b)(4); *see Washington v. State*, No. 01-13-01038-CR, 2015 WL 7300511, at *2 (Tex. App.—Houston [1st Dist.] Nov. 19, 2015, no pet.) (mem. op., not designated for publication). Fundamental error falls into three classes: (1) errors recognized by the Legislature as fundamental; (2) the violation of waivable rights; and (3) the denial of absolute, systemic requirements. *Saldano v. State*, 70 S.W.3d 873, 887–88 (Tex. Crim. App. 2002). Fundamental error includes: "(1) denial of the right to counsel; (2) denial of the right to a jury trial; (3) denial of ten days' preparation before trial for appointed counsel; (4) absence of jurisdiction over the defendant; (5) absence of subject-matter jurisdiction; (6) prosecution under a penal statute that does not comply with the Separation of Powers Section of the state constitution; (7) jury charge errors resulting in egregious harm; (8) holding trials at a location other than the county seat; (9) prosecution under an ex post facto law; and (10) comments by a trial judge [that] taint the presumption of innocence." *Rostro v. State*, No. 01–11–00556–CR, 2014 WL 6068419, at *1 (Tex. App.—Houston [1st Dist.] Nov. 13, 2014, no pet.) (mem. op., not designated for publication) (citing *Saldano*, 70 S.W.3d at 888–89).

In a review of a trial court's DNA-testing order, we should limit our review to "the record related to the appellant's request for post-conviction DNA testing . . . ." *Watkins v. State*, 155 S.W.3d 631, 634–35 & 634 n.5 (Tex. App.—Texarkana 2005, no pet.) ("Our extension of the fundamental error doctrine to DNA testing cases should not be read to extend to fundamental errors that occurred at the original trial or that were not otherwise part of the trial court's decision to deny post-conviction DNA testing."). Limiting our review to the trial court's consideration of the DNA evidence, we do not find fundamental error.[2] Therefore, we affirm the trial court's order.

Harvey Brown
Justice

Panel consists of Justices Keyes, Brown, and Huddle.

Do not publish. TEX. R. APP. P. 47.2(b).

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[2] Because we do not have a reporter's record of Green's original trial, we cannot review whether there is legally sufficient evidence to support the trial court's finding that the DNA testing, combined with the "other compelling evidence" against Green, is unfavorable to Green.