

COURT OF APPEALS, SECOND APPELLATE DISTRICT OF TEXAS AT FORT WORTH

Stephen Joseph Boswell v. The State of Texas

No. 02-25-00205-CR (Tex. App.—Fort Worth Apr. 30, 2026) (mem. op., not designated for publication) · No. 02-25-00205-CR · Decided April 30, 2026

SUMMARY

The Texas Court of Appeals, Second Appellate District, held that a discrepancy between an indictment's "on or about" date and the date proven at trial did not support an evidentiary-sufficiency challenge to the aggravated-assault conviction. The court vacated the conviction for continuous family violence and rendered an acquittal because punishing the defendant for both that offense and the aggravated assault violated double-jeopardy principles, while affirming the other convictions.

CASE DETAILS

COURT	Court of Appeals, Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Dabney Bassel; Sudderth, C.J.; Kerr, J.; Bassel, J.
JURISDICTION	Court of Appeals, Second Appellate District of Texas at Fort Worth
DECIDED	April 30, 2026
DOCKET	02-25-00205-CR
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from jury convictions for aggravated assault, assault involving family violence, and continuous family violence.
STANDARD OF REVIEW	For evidentiary sufficiency, the court applied the hypothetically correct jury-charge standard and held that the indictment's 'on or about' date was not an element or variance on which a sufficiency challenge could be based. The double-jeopardy issue was reviewed to determine the proper remedy for multiple punishments.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Stephen Joseph Boswell v. The State of Texas

TOPICS

- criminal procedure
- appellate procedure
- double jeopardy
- fourteenth amendment

PRACTICE AREAS

Texas criminal law

criminal appellate practice

constitutional criminal procedure

QUESTIONS PRESENTED

1. Whether the evidence was insufficient to support the aggravated-assault conviction because the indictment alleged that the offense occurred 'on or about' August 30, 2023, while the evidence showed that the charged conduct occurred on a different date.
2. Whether Boswell could receive multiple punishments for aggravated assault and continuous family violence when the aggravated assault was one of the discrete acts underlying the continuous-family-violence offense.
3. What remedy was required for the double-jeopardy violation.

HOLDINGS

1. An indictment's allegation that an offense occurred 'on or about' a specified date does not make that date an element of the offense. When the offense is proved to have occurred on another date within the applicable limitations period and before presentment of the indictment, the discrepancy is not a variance and cannot support an evidentiary-sufficiency challenge.
2. Punishing Boswell for continuous family violence and for aggravated assault violated the Double Jeopardy Clause because the aggravated assault was one of the discrete acts underlying the continuous-family-violence offense.
3. The court retained the aggravated-assault conviction and reversed the continuous-family-violence conviction because both received five-year sentences, but aggravated assault was the greater-degree felony.

KEY QUOTATIONS

“At the end of the day, Appellant’s contention fails that the evidence is insufficient because of a discrepancy between the indictment’s allegation that he exhibited a deadly weapon “on or about” a certain date while the evidence showed that the alleged act occurred on a different date—that discrepancy is not a variance upon which a sufficiency complaint may be predicated.” (at 6)

“We reverse the trial court’s judgment of conviction for the continuous-family-violence offense and render a judgment of acquittal on Appellant’s conviction for continuous family violence (count four). We affirm the trial court’s judgments of conviction for aggravated assault (count one) and assault/family violence (count two).” (at 9)

FACTUAL BACKGROUND

The evidence concerned Boswell's abusive relationship with the complainant. The aggravated-assault indictment alleged that Boswell used or exhibited a deadly weapon on or about August 30, 2023, but the evidence showed that he threatened the complainant with a handgun several months earlier. The continuous-family-violence conviction was based in part on discrete acts that also supported the aggravated-assault conviction. The

sentences for aggravated assault and continuous family violence were both five years, but aggravated assault was a second-degree felony and continuous family violence was a third-degree felony.

PROCEDURAL HISTORY

A jury convicted Boswell of aggravated assault, assault involving family violence, and continuous family violence and assessed sentences of five years, two years, and five years, respectively. The trial court rendered a judgment of acquittal on a separate assault/family-violence count. On appeal, Boswell challenged the aggravated-assault conviction based on a discrepancy between the indictment's 'on or about' date and the date proved at trial, and challenged the continuous-family-violence conviction. The State conceded that the continuous-family-violence conviction created a multiple-punishment double-jeopardy violation.

DISPOSITION

other

CASES CITED

- Brooks v. State, 323 S.W.3d 893, 894-95 (Tex. Crim. App. 2010)
- Garcia v. State, 981 S.W.2d 683, 686 (Tex. Crim. App. 1998)
- O'Connell v. State, 18 Tex. 343, 366 (1857)
- Presley v. State, 131 S.W. 332, 333 (Tex. Crim. App. 1910)
- Sledge v. State, 953 S.W.2d 253, 255-56 & n.8 (Tex. Crim. App. 1997)
- Lingenfelter v. State, 163 S.W. 981, 983 (Tex. Crim. App. 1914) (op. on reh'g)
- Thomas v. State, 444 S.W.3d 4, 9 (Tex. Crim. App. 2014)
- Thomas v. State, 753 S.W.2d 688, 693 (Tex. Crim. App. 1988)
- Hart v. State, 721 S.W.3d 667, 676 (Tex. App.—Corpus Christi–Edinburg 2025, pet. ref'd)
- Shaw v. State, No. 02-25-00139-CR, 2026 WL 628150, at *12 (Tex. App.—Fort Worth Mar. 5, 2026, pet. filed) (mem. op., not designated for publication)
- Brown v. Ohio, 432 U.S. 161, 165 (1977)
- Ex parte Adams, 586 S.W.3d 1, 4 (Tex. Crim. App. 2019)
- Speights v. State, 464 S.W.3d 719, 722 (Tex. Crim. App. 2015)
- Littrell v. State, 271 S.W.3d 273, 275, 279 n.34 (Tex. Crim. App. 2008)
- Birdo v. State, No. 02-22-00142-CR, 2023 WL 4630627, at *5-6 (Tex. App.—Fort Worth July 20, 2023, pet. ref'd) (mem. op., not designated for publication)
- Rachal v. State, Nos. 02-18-00500-CR, 02-18-00501-CR, 2019 WL 5996985, at *6-7 (Tex. App.—Fort Worth Nov. 14, 2019, pet. ref'd) (mem. op., not designated for publication)
- Bien v. State, 550 S.W.3d 180, 188 (Tex. Crim. App. 2018)