

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

Brian Cole v. The State of Texas

No. 02-25-00090-CR · No. No. 02-25-00090-CR · Decided January 15, 2026

SUMMARY

The Texas Court of Appeals, Second Appellate District, reviews Brian Cole’s pro se appeal from his conviction for driving while intoxicated, enhanced by a prior DWI conviction. The court addresses issues involving speedy trial, blood-alcohol evidence, compulsory process, suppression, continuance, representation by a non-attorney, punishment, and constitutional protections, concluding that the issues lack merit and affirming the conviction.

CASE DETAILS

COURT	Court of Appeals, Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Elizabeth Kerr; Sudderth, C.J.; Kerr, J.; Birdwell, J.
JURISDICTION	Court of Appeals, Second Appellate District of Texas at Fort Worth
DECIDED	January 15, 2026
DOCKET	No. 02-25-00090-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cole appealed his conviction for driving while intoxicated, enhanced by a prior DWI conviction and a prior conviction for interfering with an emergency call. The court of appeals considered ten issues concerning speedy-trial preservation, admission and suppression of blood-alcohol evidence, compulsory process, continuances, representation by an unlicensed layperson, punishment, double jeopardy, and alleged record defects.
STANDARD OF REVIEW	Evidentiary rulings and rulings on motions for continuance are reviewed for abuse of discretion. Preservation issues are reviewed under Texas Rule of Appellate Procedure 33.1. A trial court's ruling will not be disturbed if correct under any applicable legal theory.
PRECEDENTIAL VALUE	memorandum opinion; designated not for publication
PARTIES	Brian Cole v. The State of Texas

TOPICS

criminal procedure

evidence

authentication

expert testimony

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Cole preserved a speedy-trial claim under the United States and Texas Constitutions.
2. Whether the trial court abused its discretion by admitting the blood-kit evidence without adequate authentication or proof of scientific reliability.
3. Whether the trial court violated Cole's Sixth Amendment right to compulsory process by denying or limiting his ability to call witnesses.
4. Whether the trial court erred by failing to suppress blood evidence allegedly obtained under an invalid warrant.
5. Whether the trial court abused its discretion by denying Cole's mid-trial motion for continuance.
6. Whether Cole had a Sixth Amendment right to representation by an unlicensed layperson.
7. Whether the trial court failed to consider the full range of punishment, including community supervision.
8. Whether use of Cole's prior convictions for enhancement violated double jeopardy.
9. Whether inaccurate reporter's-record footers required abatement or other relief.
10. Whether Cole was denied due process because of alleged lack of access to the clerk's record and transcripts.

HOLDINGS

1. A speedy-trial complaint is not preserved when the defendant does not timely present the complaint to the trial court, obtain a ruling, or object to the court's refusal to rule.
2. Blood-test evidence is sufficiently authenticated when the State presents evidence establishing the beginning and end of the chain of custody and there is no showing of tampering or alteration; gaps generally affect the weight rather than admissibility of the evidence.
3. Scientific evidence is admissible when the proponent establishes the validity of the underlying theory, the validity of the technique, and the proper application of the technique on the occasion in question.
4. The Sixth Amendment right to compulsory process does not excuse compliance with applicable procedural and evidentiary rules, and a defendant cannot complain that he was denied the opportunity to call a witness when the record shows he chose not to call the witness or failed to subpoena the witness.
5. A mid-trial continuance may be denied when the defendant fails to show an unexpected occurrence that could not reasonably have been anticipated, unfair surprise, inability to obtain a fair trial, diligence, and prejudice.

6. A defendant who elects self-representation has no right under the Sixth Amendment to be represented during trial by an unlicensed layperson.
7. A defendant is not denied due process merely because the jury does not recommend community supervision when the jury was instructed on the full lawful range and no evidence shows that it failed to consider that range.
8. Using prior convictions to enhance punishment for a new DWI offense does not violate double jeopardy because the current prosecution punishes only the new offense.
9. Nonprejudicial errors in reporter's-record footers do not require abatement when the parties agree on the correct information and the errors do not affect resolution of the appeal.
10. A due-process claim based on lack of access to appellate records fails absent a showing that the defendant was actually denied access or that the method of access prevented presentation of appellate issues.

KEY QUOTATIONS

“In fact, Cole’s request to delay his trial is wholly inconsistent with his complaint about the alleged denial of his speedy-trial rights.” (at 4)

“Any gaps in the chain of custody go to the weight of the evidence, not to its admissibility.” (at 7)

“A layperson has a right to self-representation, see Faretta v. California, 422 U.S. 806, 819, 95 S. Ct. 2525, 2533 (1975); Burton v. State, 634 S.W.2d 692, 694 (Tex. Crim. App. 1982), but such a person does not have a right to representation by an unlicensed layperson” (at 17)

FACTUAL BACKGROUND

A Bartonville police officer encountered Cole in a stationary vehicle, observed him accelerate, turn without signaling, and drive over a curb, and stopped the vehicle. The officer observed multiple signs of intoxication, and Cole refused field-sobriety testing. Pursuant to a blood-alcohol search warrant, Cole's blood was drawn and tested at 0.202, more than twice the legal limit. Cole represented himself at trial, denied being the driver despite admitting he had been drinking, and was convicted and sentenced after the jury found two enhancement allegations true.

PROCEDURAL HISTORY

A jury found Cole guilty of driving while intoxicated with a blood-alcohol concentration of 0.15 or more. During punishment, the jury found two enhancement allegations true and assessed 335 days in county jail and a \$3,350 fine; the trial court sentenced Cole accordingly. The court of appeals overruled all ten issues and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Henson v. State, 407 S.W.3d 764, 768-69 (Tex. Crim. App. 2013)
- Thomas v. State, 505 S.W.3d 916, 924 (Tex. Crim. App. 2016)
- Everitt v. State, 407 S.W.3d 259, 262-63 (Tex. Crim. App. 2013)
- Clark v. State, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012)
- Fletcher v. State, No. 05-17-00750-CR, 2019 WL 1033865, at *3-4 (Tex. App.—Dallas Mar. 5, 2019, pet. ref'd)
- Quigley v. State, No. 02-15-00441-CR, 2017 WL 930066, at *12 (Tex. App.—Fort Worth Mar. 9, 2017, no pet.)
- Grimaldo v. State, 130 S.W.3d 450, 454 (Tex. App.—Corpus Christi–Edinburg 2004, no pet.)
- Fragoso v. State, No. 08-22-00182-CR, 2023 WL 4295855, at *2, *6 (Tex. App.—El Paso June 30, 2023, pet. ref'd)
- Zuliani v. State, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003)
- Montgomery v. State, 810 S.W.2d 372, 379 (Tex. Crim. App. 1990)
- De La Paz v. State, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009)
- Qualls v. State, 547 S.W.3d 663, 675, 680 (Tex. App.—Fort Worth 2018, pet. ref'd)
- Astalas v. State, No. 2-02-237-CR, 2004 WL 2320362, at *3 (Tex. App.—Fort Worth Oct. 14, 2004, no pet.)
- Durrett v. State, 36 S.W.3d 205, 208 (Tex. App.—Houston [14th Dist.] 2001, no pet.)
- McGregor v. State, 394 S.W.3d 90, 125 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd)
- Patel v. State, No. 2-08-032-CR, 2009 WL 1425219, at *2 (Tex. App.—Fort Worth May 21, 2009, no pet.)
- Williams v. State, No. 2-06-416-CR, 2008 WL 1867979, at *9, *11 (Tex. App.—Fort Worth Apr. 24, 2008, pet. ref'd)
- Stature v. State, No. 02-23-00304-CR, 2024 WL 3458078, at *5 (Tex. App.—Fort Worth July 18, 2024, pet. ref'd)
- Kelly v. State, Kelly v. State, 824 S.W.2d 568, 572-73 (Tex. Crim. App. 1992)
- Somers v. State, 368 S.W.3d 528, 536 (Tex. Crim. App. 2012)
- Yanez v. State, No. 07-23-00161-CR, 2024 WL 1814058, at *5 (Tex. App.—Amarillo Apr. 25, 2024, no pet.)
- Williams v. State, 525 S.W.3d 316, 322 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd)
- Crane v. Kentucky, 476 U.S. 683, 690 (1986)
- Coleman v. State, 966 S.W.2d 525, 527-28 (Tex. Crim. App. 1998)
- Washington v. Texas, 388 U.S. 14, 19 (1967)
- Vasquez v. State, 67 S.W.3d 229, 240 (Tex. Crim. App. 2002)
- Dotson v. State, 146 S.W.3d 285, 297 (Tex. App.—Fort Worth 2004, pet. ref'd)
- Gonzales v. State, 304 S.W.3d 838, 843-44 (Tex. Crim. App. 2010)
- Faretta v. California, 422 U.S. 806, 819 (1975)
- Burton v. State, 634 S.W.2d 692, 694 (Tex. Crim. App. 1982)
- Johnson v. State, No. 03-99-00159-CR, 1999 WL 1072604, at *2 (Tex. App.—Austin Nov. 30, 1999, no pet.)
- Ex parte Brown, No. 05-92-02785-CR, 1993 WL 96400, at *2 (Tex. App.—Dallas Mar. 30, 1993, no writ)

- Baldwin v. State, 756 S.W.2d 91, 93 (Tex. App.—San Antonio 1988, pet. ref'd)
- Swain v. Dobbs, 692 S.W.3d 720, 732 (Tex. App.—Corpus Christi–Edinburg 2023, no pet.)
- Turner v. Am. Bar Ass'n, 407 F. Supp. 451, 476-77 (N.D. Tex. 1975), aff'd sub nom. Taylor v. Montgomery, 539 F.2d 715 (7th Cir. 1976), and aff'd sub nom. Pilla v. Am. Bar Ass'n, 542 F.2d 56 (8th Cir. 1976)
- Garrett v. State, No. 02-25-00049-CR, 2025 WL 3039150, at *4-5 (Tex. App.—Fort Worth Oct. 30, 2025, pet. filed)
- Ette v. State, 559 S.W.3d 511, 515 (Tex. Crim. App. 2018)
- Monge v. California, 524 U.S. 721, 728 (1998)
- Cherry v. State, 447 S.W.2d 154, 157-58 (Tex. Crim. App. 1969)
- Bailey v. State, No. 03-09-00276-CR, 2010 WL 2428085, at *6 (Tex. App.—Austin June 18, 2010, pet. ref'd)
- Rosas v. State, No. 02-24-00318-CR, 2025 WL 2370588, at *4 (Tex. App.—Fort Worth Aug. 14, 2025, pet. ref'd)
- Pena v. State, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009)
- Barnes v. State, No. 12-22-00077-CR, 2023 WL 2766095, at *7 (Tex. App.—Tyler Mar. 31, 2023, no pet.)