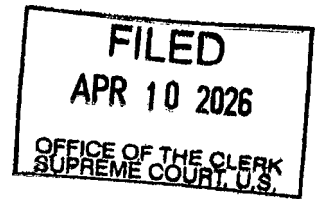


NO 26-5190

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES



LARRY DEAN COLE

Petitioner

V.

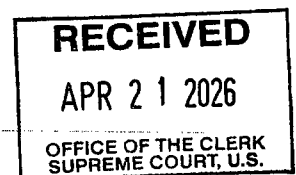
THE STATE OF TEXAS

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS OF TEXAS

PETITION FOR WRIT OF CERTIORARI

Larry Dean Cole
Petitioner, Pro Se
TDCJ# 02469203
William Clements Unit
9601 Spur 591
Amarillo, TX 79107-9606



QUESTION PRESENTED

Is it a violation of Cole's due process right to a fair trial for failure to transfer his case due to pretrial publicity and community prejudice?

LIST OF PARTIES BELOW

Petitioner

LARRY DEAN COLE

Represented by:

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Conroe, Texas 77301

Oscar L. Sommers III (Appeal)

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Conroe, Texas 77301

Respondent

THE STATE OF TEXAS

Represented by:

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Assistant District Attorney

Bratt Ligon (appeal)

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Amy Waddle

Assistant District Attorney

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Judge Presiding:

Honorable Phil Grant

9th Judicial District Court

Montgomery County, TX

TABLE OF CONTENTS

	<u>Page</u>
Questions Presented	1
List of Parties Below	3
Table of Authorities Cited	4
Opinions Below	6
Jurisdictional Statement	7
Controlling Statutes and Regulations	8
STATEMENT OF THE CASE	
1. Procedure History	9
2. Statement of Facts	9
Summary of Argument	10
ARGUMENT	
Did the Court of Criminal Appeals of Texas correctly conclude that the failure to grant Cole a change of venue, due to pretrial publicity and community prejudice was not a denial of due process to a fair trial?	11
a. <u>Size and Characteristic of the community in which the case occurred:</u>	12
1. SIZE	12
2. CHARACTERISTIC	13
b. <u>Whether the publicity contained a confession or other blatantly prejudicial and inflammatory information</u>	13
Conclusion	15
Prayer	16
APPENDIX.....	17
Facebook pages 17.1 - 17.16	
Court of Appeals, Ninth District, Beaumont, TX Opinion	
Court of Criminal Appeals decision	
Page 2	

TABLE OF AUTHORITIES CITED

<u>Federal Cases</u>	Page
Chambers v. Florida, 309 U.S. 227, 236-237 (1940)	10
Mu’Min v. Virginia, 500 U.S. 415, 429	13
Neil Pal v. Superintendent, 2024 U.S. Dist. Lexis 104032 (Pennsylvania Middle District Court)	11
Patton v. Yount, 467 U.S. 1025	12, 14
Skilling v. United States, 561 U.S. 358	13
United States v. Casellas-Toro, 807 F. 3d 380, 386 (11 th Cir. 2015)	13
 <u>Federal Statutes and Rules</u>	
28 U.S.C. 1257(a)	7
 <u>Federal Constitutions</u>	
Fourteenth Amendment	8,10
Sixth Amendment	8, 10
 <u>State Cases</u>	
Cole v. State, 2025 Tex. App. Lexis 8132	6,12
Corroll v. State, 2020 Tex. App. Lexis 1671	11
Gonzales v. State, 222 S.W. 3d 446 (Tex. Crim. App. 2001)	12
Halford v. State, 2017 Tex. App. Lexis 8720	12
Hussey v. State, 590 S.W. 2d 505, Tex. Cr. 106m234 S.W. 1980	12
In re Cole, 2026 Tex. Crim. App. Lexis 109 (Feb 12, 2026)	6
Williams v. State, 283 S.W. 2d 239 (Tex. Crim. App. 1955)	14

TABLE OF AUTHORITIES CITED (cont.)

<u>State Statutes</u>	Page
Tex. Penal Code, Sec. 22.021(a) (1) (B)	9, 10
Tex. Code of Crim. Proc., Art. 31.03(a)	11

OPINION BELOW

The original conviction of Petitioner was appealed in The Court of Appeals, for The Ninth District of Texas at Beaumont, Texas, NO.09-23-00322-CR, which affirmed the conviction in all respects in an Opinion reported at, Cole v. State, 2025, Tex. App. Lexis 8132.

The decision of The Court of Criminal Appeals of Texas, on Petitioner's Petition For Discretionary Review is reported at; In re Cole, 2026, Tex. Crim. App. Lexis 109 (Feb 12, 2026).

JURISDICTIONAL STATEMENT

The Texas Court of Criminal Appeals, entered its judgment on February 12, 2026.

This court has jurisdiction under, 28 USC, Section 1257 (a).

CONTROLLING STATUTES AND REGULATIONS

Constitution Provision Involved

The Fourteenth Amendment to the United States Constitution provides, in Pertinent parts:

“No person shall be deprived of life, liberty, or property, without due process of the law”

U.S. const. Amend. XIV.

The Sixth Amendment to the United States Constitution provides, in pertinent parts: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.

U.S. Const. amend VI.

STATEMENT OF THE CASE

1. Procedural History:

In March 2022, Petitioner was indicted for one count of Aggravated Sexual Assault of a Child, Tex. Penal Code, Sec. 22.021(a) (1) (B).

On September 25, 2023, Voir Dire, Jury sworn and trial began.

On September, 27, 2023, Judgment of conviction of LIFE by the Jury.

On October 9, 2023, Petitioner files notice of appeal.

On October 11, 2023, Appointment of appeal attorney.

On May 13, 2024, Attorney files "First amended brief on the merits."

On October 22, 2025, The 9th Court of Appeals AFFIRMED case in cause number 09-23-00322-CR.

On January 6, 2026, Petitioner files Petition for Discretionary Review with the Court of Criminal Appeals of Texas. PD-1007-25.

On February 12, 2026, refused Petition For Discretionary Review, PD-1007-25.

2. Statement of Facts:

Prior to the guilt and innocence trial, the trial court denied the request by defense counsel for a change of venue. The trial court also allowed testimony of extraneous conduct which greatly prejudiced the Petitioner.

SUMMARY OF ARGUMENT

This case presents the question whether consistent with the Sixth and Fourteenth Amendments to the United States Constitution, that a state can criminally convict a person of "Aggravated Sexual Assault of a Child" when pretrial publicity and community prejudice prevent him from obtaining a fair trial. Chambers v. Florida, 309 U.S. 227, 236-237 (1940).

Petitioner (Cole) filed a pro se Petition for Discretionary Review with the Texas Court of Criminal appeals (TCCA), challenging the Court of Appeals (COA) for the 9th District of Texas at Beaumont which affirmed his conviction of "Aggravated Sexual Assault of a Child, Tex. Penal Code, Sec. 22.021 (a) (1) (B), one count, arising from his state case motion for a change of venue. The TCCA refused Cole's contentions that his conviction violated the due process clause of the Fourteenth and Sixth Amendment to the United States Constitution of a fair trial.

ARGUMENT

Cole argues the Texas State courts erred by concluding that, in light of the inflammatory and widespread pretrial publicity in this case, particularly the daily facebook posting from Cole's 2017 case of a similar offense, in which Cole confessed, was not a denial of the due process clause to a fair trial. Cole contends that this posting was presumptively prejudicial because there was no "cooling off" period between the initial posting in 2017 and 2023 trial, which Cole was found guilty. The posting was put up prior to the 2017 trial dates and taken down after the conclusion of the instant case. See Neil Pal v. Superintendent, 2024 U.S. Dist. Lexis 104032 (Pennsylvania Middle District Court).

To justify a change of venue based on media attention, a defendant must show that the publicity was 'pervasive, prejudicial' and inflammatory. Corrol v. State, 2020 Tex. App. Lexis 1671; also see Tex. Code Crim. Proc., Art. 31.03 (a).

At the hearing on the motion for change of venue, Cole introduced into evidence, three affidavits from Cole, Mike Johnson and Joe Capers, that outlined hundreds of social media commentaries dating back to the 2017 case and also the instant case, which was submitted in support of the change of venue. (CR 84-87). The state only provided one affidavit from Brent Steward, an investigator with the office of the Montgomery County District Attorney's Office in rebuttal. (CR 121-127).

Cole points out that this is the same District Attorney's office that the Facebook posting "Protect the Unprotected" encouraged individuals to contact if they had any interaction with Cole. Gonzalez v. State, 222 S.W. 3d 446 (Tex. Crim. App. 2001; Halford v. State, 2017 Tex. App. Lexis 8720.

Cole argues that the State courts did not consider that the trial court was in the best position to evaluate the extent of the prejudice of the jury during voir dire. The preponderance of the evidence was in favor of Cole, because according to the record at hand the trial judge only asked the veniremen if they knew or had ever seen any of the parties before. Cole v. State 2025 Tex. App Lexis 8132, at 6. The evidence was insufficient at best. In Hussy v. State, 590 S.W. 2d 505, judgment had been remanded for inadequate evidence by the State, Tx. Cr. 106, 234 S.W. 1980. The trial judge never asked any of the veniremen about the facebook posting "Protect the Unprotected", who knew about it or how many veniremen had seen it, nor did the trial judge ask the veniremen open-ended questions and allow the potential jurors to give more meaningful information, ask prospective jurors about, inter alia, their sources of news and exposure to Cole related publicity. Patton v. Yount, 467 U.S. 1025; Gonzalez, supra. Which placed the trial court's decision outside the zone of reasonable disagreement. Cole points out that this case is distinguishable from Gonzalez, in regard to voir dire. In that case the trial court conducted an inquiry as to the number of jurors that were unable to serve on a jury and that case demonstrated the extent to which pretrial publicity had permeated the community.

The Supreme Court of the United States has held that there are several factors that weigh on whether there was unconstitutional jury prejudice. Skilling v. United States, 561 U.S. 358.

a. Size and Characteristic of the community in which the case occurred:

1. Size

Montgomery County's population consists of approximately 700,000 individuals, with approximately 250,000 adults for jury pool. Cole asserts that other jurisdictions in the circuit have larger jury pool populations based on the number of registered voters in those jurisdictions.

At the time of Cole's trial, Houston-Harris County which is separated by Beltway 8 of Montgomery County, and the fourth most populous city in the nation; had a population of more than 5 million individuals eligible for jury duty pool of potential jurors, the suggestion that 12 impartial individuals could not be impaneled is hard to sustain. Mu'Min v. Virginia, 500 U.S. 415,429; Skilling v. United States, 561 U.S. 358. Cole believes that there exists a more likely chance they would have found an impartial jury in another jurisdiction.

2. Characteristics:

Cole also believes an impartial jury would be easier to find in another jurisdiction because Montgomery County is likely to a "compact, close and firmly united community" that is highly susceptible to the impact of local and social media. United States v. Casellas-Toro, 807 F. 3d 380, 386 (11th Cir. 2015).

b. Whether the publicity contained a confession or other blatantly prejudicial and inflammatory information.

The facebook post around Montgomery and Harris Counties, published allegations of facts of the previous case, photos of Cole, letters about his employment, letters to his employer and vendors, upon which he was fired because of the letters.

The facebook post revealed:

- a. Cole's place of employment. (pages 17.11 & 17.13)
- b. Cole's home address.

- c. That Cole was a convicted sex offender who was out on a plea-bargain from the 2017 crime. (Page 17.15)
- d. That Cole had confessed to the 2017 crime, a similar offense for which he is now charged. (Page 17.5)
- e. Photos of Cole and other individuals whose faces were blacked out, except for Cole's, causing Cole's photo to stand out. (Pages 17.11 & 17.13)
- f. Encouraged people in Montgomery and Harris Counties to contact the Montgomery County District Attorney's Office if they or their family members had any interaction with Cole. (Page 17.6)
- g. The facebook post portrayed Cole as a danger to the Montgomery County community. The publicity revealed other allegations concerning Cole's life that was not admitted into evidence at the guilty phase of the instant trial. Williams v. State, 283 S.W. 2d 239 (tex. Crim. Ap. 1955); also see Patton v. Yount, Supra. (Pages 17.15 & 17.16)

CONCLUSION

Cole concludes that the record fails to show whose idea it was to make the facebook page concerning Cole and posting it over the local social media and then removing it after the instant case concluded, but what is known from the circumstances, is that the plan was carried out with the active cooperation and most likely participation of the Montgomery County District Attorney's Office and local law enforcement.

Lastly, Cole argues that it is denial of due process of law to refuse the request for a change of venue after the people of Montgomery County had been exposed repeatedly and in depth to the spectacle of Cole's personal life; confession to the crime from 2017. For anyone who has ever used facebook in Montgomery County the conclusion cannot be avoided that this posting, to the tens of thousands of people who saw it, in a real sense was Cole's trial, at which he was found guilty for sexual assault. Any subsequent proceeding in the community so pervasively exposed to such a posting could be but a hollow formality.

PRAYER

For reasons herein alleged, the Petitioner was denied a fair trial in cause NO:21-12-17156-CR. Therefore, Petitioner prays this court grant this petition, and upon reviewing the judgment, reverse the cause and remand for a new trial.

Dated 4/9/2024

Respectfully Submitted



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