

COURT OF APPEALS, TENTH APPELLATE DISTRICT OF TEXAS

Tyrone Shepard v. The State of Texas

No. 10-25-00100-CR (Tex. App.—Waco Apr. 23, 2026) · No. 10-25-00100-CR · Decided April 23, 2026

SUMMARY

The Tenth Court of Appeals of Texas affirmed Tyrone Shepard’s conviction for possession of a controlled substance in an amount less than one gram, modifying the trial court’s judgment to correct non-reversible recitations concerning the plea and jury trial waiver. The court rejected challenges to the jury charge, the State’s reopening of its case to present extraneous-arrest evidence, and the denial of Shepard’s speedy-trial motion. The court held that the jury instruction concerning the date of the offense was legally correct and did not comment on the weight of the evidence, and that the Barker factors did not establish a speedy-trial violation.

CASE DETAILS

COURT	Court of Appeals, Tenth Appellate District of Texas
WRITING FOR THE COURT	Lee Harris; Chief Justice Johnson; Justice Smith; Justice Harris
JURISDICTION	Court of Appeals, Tenth Appellate District of Texas
DECIDED	April 23, 2026
DOCKET	10-25-00100-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Shepard appealed his conviction for possession of a controlled substance in an amount less than one gram, challenging a jury-charge instruction, the trial court’s decision to allow the State to reopen its case, and denial of his speedy-trial motion. The State requested modification of clerical errors in the judgment.
STANDARD OF REVIEW	Jury-charge error is reviewed under the two-step Almanza procedure: the court first determines whether charge error exists and, if so, analyzes harm. The decision to allow the State to reopen its case is reviewed for abuse of discretion. Speedy-trial claims are reviewed under a bifurcated standard: abuse of discretion for factual components and de novo for legal components; the Barker balancing test as a whole is reviewed de novo.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; the opinion states 'Do Not Publish.'

TOPICS

speedy trial

jury instructions

appellate procedure

criminal procedure

evidence

PRACTICE AREAS

Texas criminal law

criminal procedure

appellate procedure

constitutional criminal procedure

evidence

QUESTIONS PRESENTED

1. Whether the trial court erred by instructing the jury that the State did not have to prove the exact date alleged in the indictment, so long as the offense occurred within the limitations period.
2. Whether the date instruction improperly commented on the weight of the evidence or uncoupled possession from the required culpable mental state.
3. Whether the trial court abused its discretion by allowing the State to reopen its case to present evidence of Shepard's 2019 extraneous arrest without a showing of materiality.
4. Whether Shepard's constitutional right to a speedy trial was violated under the Barker v. Wingo balancing test.
5. Whether the appellate court should modify clerical errors in the trial court's judgment concerning waiver of jury trial, plea, and verdict.

HOLDINGS

1. The trial court did not err by instructing that the State was not required to prove the exact date alleged in the indictment and could prove the offense on any date before presentment of the indictment and within the applicable limitations period.
2. The instruction was not an improper comment on the weight of the evidence because it correctly stated the law and did not assume the truth of the contested issue of Shepard's mental state.
3. The trial court did not abuse its discretion by allowing the State to reopen its case without a showing that the additional evidence would materially change the case in the State's favor.
4. Shepard's speedy-trial right was not violated, and the trial court properly denied his motion to dismiss.
5. The judgment was properly modified to delete the recitation that Shepard waived a jury trial, reflect a plea of not guilty, and reflect that the jury—not the trial court—returned the guilty verdict.

KEY QUOTATIONS

“Once the Barker test is triggered, courts must analyze the speedy-trial claim by first weighing the strength of each of the Barker factors and then balancing their relative weights in light of the conduct of both the prosecution and the defendant.” (7-8)

“Dismissal of the charging instrument with prejudice is mandated only upon a finding that an accused's speedy-trial right was actually violated.” (8)

“Having found no reversible error but only non-reversible error in the trial court's judgment, we affirm the trial court's judgment as modified.” (16)

FACTUAL BACKGROUND

During a traffic stop, Shepard was arrested on an active warrant and searched. A small methamphetamine pill was found in his pocket during a second search at the jail, and Shepard claimed it was heart medicine. Shepard remained in jail until trial, where the jury found him guilty of possession of a controlled substance in an amount less than one gram. The relevant delay from his June 27, 2023 arrest to his December 9, 2024 trial was slightly more than seventeen months, much of which the appellate court attributed to Shepard's actions or to crowded trial settings.

PROCEDURAL HISTORY

A Brazos County jury found Shepard guilty on December 11, 2024, and the trial court assessed a twelve-year prison sentence on February 26, 2025. The trial court denied Shepard's motion to dismiss for lack of a speedy trial. On appeal, the court found no reversible error, modified the judgment to correct its recitations concerning the jury trial, plea, and verdict, and affirmed as modified.

DISPOSITION

affirmed

CASES CITED

- Almanza v. State, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984)
- Alcoser v. State, 663 S.W.3d 160, 165 (Tex. Crim. App. 2022)
- Balentine v. State, 71 S.W.3d 763, 774 (Tex. Crim. App. 2002)
- Kirsch v. State, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012)
- State v. West, 632 S.W.3d 908, 913 (Tex. Crim. App. 2021)
- Munos v. State, No. 10-18-00035-CR, 2019 Tex. App. LEXIS 9718, at *9 (Tex. App.—Waco Nov. 6, 2019, pet. ref'd)
- Taylor v. State, 332 S.W.3d 483 (Tex. Crim. App. 2011)
- Kelley v. State, 429 S.W.3d 865 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd)
- Morales v. State, 357 S.W.3d 1, 5 n.15 (Tex. Crim. App. 2011)
- Walters v. State, 247 S.W.3d 204, 212 (Tex. Crim. App. 2007)
- Aschbacher v. State, 61 S.W.3d 532, 538 (Tex. App.—San Antonio 2001, pet. ref'd)
- Wilson v. State, 419 S.W.3d 582, 595 (Tex. App.—San Antonio 2013, no pet.)
- Whaley v. State, 717 S.W.2d 26, 32 (Tex. Crim. App. 1986)
- Goode v. State, No. 06-24-00172-CR, 2025 Tex. App. LEXIS 4666, at *11-12 (Tex. App.—Texarkana July 2, 2025, no pet.)

- *Thibodeaux v. State*, No. 09-09-00174-CR, 2010 Tex. App. LEXIS 7437, at *15-16 (Tex. App.—Beaumont Sept. 8, 2010, no pet.)
- *Nava v. State*, No. 08-08-00197-CR, 2010 Tex. App. LEXIS 4514, at *7-8 (Tex. App.—El Paso June 6, 2010, pet. ref'd)
- *Simmons v. State*, Nos. 02-05-00172-CR, 02-05-00173-CR, 2006 Tex. App. LEXIS 6359, at *17 (Tex. App.—Fort Worth July 20, 2006, pet. ref'd)
- *Peek v. State*, 106 S.W.3d 72, 79 (Tex. Crim. App. 2003)
- *Garcia v. State*, 630 S.W.3d 264, 267 (Tex. App.—Eastland 2020, no pet.)
- *State v. Lopez*, 631 S.W.3d 107, 113-14 (Tex. Crim. App. 2021)
- *Hopper v. State*, 520 S.W.3d 915, 923-24 (Tex. Crim. App. 2017)
- *Vermont v. Brillon*, 556 U.S. 81, 89 (2009)
- *Dragoo v. State*, 96 S.W.3d 308, 313, 315 (Tex. Crim. App. 2003)
- *Cantu v. State*, 253 S.W.3d 273, 281, 283, 286 (Tex. Crim. App. 2008)
- *Balderas v. State*, 517 S.W.3d 756, 767-68, 772 (Tex. Crim. App. 2016)
- *State v. Munoz*, 991 S.W.2d 818, 822, 826 (Tex. Crim. App. 1999)
- *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986)
- *Gonzales v. State*, 435 S.W.3d 801, 809-11 (Tex. Crim. App. 2014)
- *Porter v. State*, 540 S.W.3d 178, 184 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd)
- *United States v. Casas*, 425 F.3d 23, 34-35 (1st Cir. 2005)
- *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992)