

**Affirmed and Memorandum Opinion filed January 12, 2016.**



**In The**

**Fourteenth Court of Appeals**

---

**NO. 14-15-00045-CR**

---

**RENE RIVERA HERNANDEZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

**On Appeal from the 434th Judicial District Court  
Fort Bend County, Texas  
Trial Court Cause No. 11-DCR-056418**

---

**M E M O R A N D U M   O P I N I O N**

Appellant Rene Rivera Hernandez appeals his aggravated assault conviction, arguing in a single issue that the State violated his right to a speedy trial. We affirm.

**I.     B A C K G R O U N D**

A jury found appellant guilty of aggravated assault with a deadly weapon for an incident that occurred on January 19, 2009. The record reflects that appellant was

charged by indictment with this offense on January 31, 2011.<sup>1</sup> The record reflects that appellant never moved for a speedy trial or otherwise brought the issue to the attention of the trial judge. After finding appellant guilty, the jury assessed punishment at ten years' confinement, with a community-supervision recommendation and a \$10,000 fine. The trial court sentenced appellant accordingly. Appellant filed a timely notice of appeal on January 8, 2015.

## II. ANALYSIS

Appellant's sole issue on appeal is whether the State violated his right to a speedy trial under the United States and Texas Constitutions. *See* U.S. CONST. Amends. VI, XIV; TEX. CONST. art. 1, §10; *see also Webb v. State*, 36 S.W.3d 164, 172 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd) (en banc) (sixth-amendment right to speedy trial under the federal constitution applies to states through the Fourteenth Amendment).

To preserve error for appellate review, a defendant generally must make a timely request, objection, or motion in the trial court, even when the complaint is rooted on constitutional grounds. Tex. R. App. P. 33.1; *Henson v. State*, 407 S.W.3d 764, 767 (Tex. Crim. App. 2013); *see Guevera v. State*, 985 S.W.2d 590, 592 (Tex. App.—Houston [14th Dist.] 1999, pet. denied). The right to a speedy trial can often benefit the defendant. *Henson*, 407 S.W.3d at 767. Requiring defendants to preserve a speedy-trial claim in the trial court forces them to pick one strategy—either fail to insist on a speedy trial and reap the benefits caused by the delay, or raise the issue of speedy trial, and if it is not granted, argue for dismissal. *Id.* A defendant may not do both. *Id.*

The preservation requirement for speedy-trial claims allows the trial court to develop the record sufficiently for a *Barker* analysis. *Id.* (citing *Barker v. Wingo*, 407

---

<sup>1</sup> Appellant asserts in his brief that “the State charged” him with this crime in March 2009 and that the case was dismissed when the complainant did not show up for trial. The record does not support appellant's assertion of these facts.

U.S. 514, 532, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)); *Guevara*, 985 S.W.2d at 593. By bringing a speedy-trial claim to the trial judge’s attention, the prosecution has an opportunity to establish reasons for the delay and both sides can establish or refute prejudice, two key factors in the *Barker* analysis. *See Guevara*, 985 S.W.2d at 593. For these reasons, Texas courts have upheld a preservation requirement for speedy-trial claims. *See Henson*, 407 S.W.3d at 769; *Guevara*, 985 S.W.2d at 593.

Appellant argues that his failure to assert a speedy trial right in the trial court does not amount to waiver because at each new jury trial setting, appellant showed up with his attorney, announced ready, and was willing and able to defend himself at trial. But, appearing at every trial setting and announcing “ready” does not satisfy the preservation requirement for a speedy trial nor does it allow the trial court to sufficiently develop the record for an appellate court to determine whether the State violated the accused’s right to a speedy trial. *See Henson*, 407 S.W.3d at 767; *Guevara*, 985 S.W.2d at 593. Appellant made no request, objection, or motion in the trial court regarding his right to a speedy trial. Appellant cannot assert his right to a speedy trial for the first time on appeal. Therefore, appellant’s sole point of error is overruled.

### III. CONCLUSION

The accused must preserve speedy trial complaints in the trial court by making a timely request, objection, or motion. *See Tex. R. App. P. 33.1; Henson*, 407 S.W.3d at 769; *Guevara*, 985 S.W.2d at 593. Appellant did not do so and cannot do so for the first time on appeal. Having determined that appellant waived his sole appellate issue, we overrule that issue and affirm the trial court’s judgment.

/s/      Kem Thompson Frost  
            Chief Justice

Panel consists of Chief Justice Frost and Justices Christopher and Donovan.  
Do Not Publish — Tex. R. App. P. 47.2(b).