

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR10-1086

JAMES CORTEZ ARNOLD  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** June 22, 2011

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[NOS. CR 2008-1829-1, CR 2008-2198-1]

HONORABLE WILLIAM A. STOREY,  
JUDGE

AFFIRMED

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## DAVID M. GLOVER, Judge

Appellant, James Cortez Arnold, appeals from the trial court's order denying his motion to dismiss for violation of the speedy-trial rule and his subsequent conditional plea and conviction.<sup>1</sup> In this appeal, he contends that the trial court erred in denying his motion to dismiss. We affirm.

### *Background*

Arnold was arrested in Washington County for drug charges on August 31, 2008, and for additional drug charges on September 10, 2008; he was then released and formally

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<sup>1</sup>Although Case No. CR08-2198 is listed in the caption of the notice of appeal, Arnold has not provided us with a record of a judgment and conviction order being entered in that Case. Consequently, the only case number being appealed here is CR08-1829-1, which involves the conditional plea of guilty to several drug offenses in Washington County Circuit Court.

charged by information filed on October 9, 2008. He was scheduled to appear for trial in Washington County on December 12, 2008, but failed to do so, resulting in a warrant being issued for his arrest. On July 1, 2009, he was arrested in Pulaski County on unrelated charges. On that same date, Washington County issued a warrant hold, requesting that Pulaski County jail officials hold Arnold when the Pulaski County proceedings were completed. On July 27, 2009, Arnold was transported from the Pulaski County jail to Lonoke County, where he was sentenced to a term of imprisonment (when either a suspended sentence or probation was revoked) and returned to the Pulaski County jail on that same date. Then, on December 16, 2009, he was transported to the Arkansas Department of Correction – Diagnostic Unit.

On March 1, 2010, the Washington County prosecutor's office learned that Arnold was in the Arkansas Department of Correction (ADC) despite the fact that Pulaski County had been requested to hold him. By order entered on March 8, 2010, the Washington County Circuit Court ordered ADC to release/transfer Arnold to the Washington County Sheriff. The transfer order was not served on Arnold at that time, however, because he had been returned to Pulaski County. The transfer order was eventually served on Arnold on April 8, 2010, when he returned to ADC. He was then transported to Washington County and appeared on April 9, 2010. On June 14, 2010, Arnold filed his motion to dismiss, contending that the charges against him in this case should be dismissed because his right to a speedy trial had been violated.

*Parties' Stipulations*

The parties stipulated to the following facts before the trial court:

1. Defendant was arrested in the above referenced case [2008-1829-1] on counts 8–9 on August 31, 2008, which initiated speedy trial for counts 8–9;
2. Defendant was arrested on counts 1–7 on September 10, 2008, which initiated speedy trial for charges 1–7;
3. Defendant did not appear in court on December 12, 2008, and a bench warrant was issued for his arrest;
4. Defendant was arrested in Pulaski County on July 1, 2009, on charges unrelated to the current charges;
5. The 200 days from December 12, 2008, (failure to appear) until July 1, 2009, (Pulaski County arrest) are excluded from the speedy trial period;
6. On July 1, 2009, the Washington County Sheriff's Office placed a hold on the Defendant;
7. Defendant remained in the Pulaski County jail until December 16, 2009, when he was transported to the Diagnostic unit at the Department of Correction;
8. On counts 8–9, 669 days have elapsed since the day of arrest;
9. On counts 1–7, 659 days have elapsed since the day of arrest;
10. The following time is excluded for purposes of speedy trial:
  - a. 200 days (December 12, 2008 – July 1, 2009)
  - b. 17 days (June 14, 2010 – June 30, 2010)
11. The time period in dispute is July 2, 2009, through December 16, 2009, (169 days) when the Defendant remained in the Pulaski County Jail.

*Discussion*

As explained in *May v. State*, 94 Ark. App. 202, 207–08, 228 S.W.3d 517, 521–22 (2006):

Pursuant to Ark. R. Crim. P. 28.1, the State is required to try a criminal defendant within twelve months, excluding any periods of delay authorized by Ark. R. Crim. P. 28.3. *Moody v. Arkansas County Circuit Court*, 350 Ark. 176, 85 S.W.3d 534 (2002); *Turner v. State*, 349 Ark. 715, 80 S.W.3d 382 (2002). The accused must be tried within twelve months of the date the charges were filed, except that if prior to that time the defendant has been continuously held in custody, or has been lawfully at liberty, the time for trial commences running from the date of arrest. See Ark. R. Crim. P. 28.2. If a defendant is not brought to trial within the requisite time, Ark. R. Crim. P. 30.1 provides that the defendant will be discharged, and such discharge is an absolute bar to prosecution of the same offense and any other offense required to be joined with that offense. *Moody, supra*; *Turner, supra*. Once the defendant presents a prima facie case of a speedy-trial violation, *i.e.*, that the trial is or will be held outside the applicable speedy-trial period, the State has the burden of showing that the delay was the result of the defendant’s conduct or was otherwise justified. *Ferguson v. State*, 343 Ark. 159, 33 S.W.3d 115 (2000). A defendant is not required to bring himself to trial or “bang on the courthouse door” to preserve his right to a speedy trial; the burden is on the courts and the prosecutors to see that trials are held in a timely fashion. *Nelson v. State*, 350 Ark. 311, 86 S.W.3d 909 (2002); *Jones v. State*, 347 Ark. 455, 65 S.W.3d 402 (2002).

Rule 28.3 of the Arkansas Rules of Criminal Procedure sets forth periods of time that may be excluded in applying the speedy-trial rules:

**Excluded Periods.**

The following periods shall be excluded in computing the time for trial. Such periods shall be set forth by the court in a written order or docket entry, but it shall not be necessary for the court to make the determination until the defendant has moved to enforce his right to a speedy trial pursuant to Rule 28 unless it is specifically provided to the contrary below. The number of days of the excluded period or periods shall be added to the time applicable to the defendant as set forth in Rules 28.1 and 28.2 to determine the limitations and consequences applicable to the defendant.

*(a) The period of delay resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on the competency of the defendant and the period during which he is incompetent to stand trial, hearings on pretrial motions, interlocutory appeals, and trials of other charges against the defendant. No pretrial motion shall be held under advisement for more than thirty (30) days, and the period of time in excess of thirty (30) days during which any such motion is held under advisement shall not be considered an excluded period.*

. . . .

*(e) The period of delay resulting from the absence or unavailability of the defendant. A defendant shall be considered absent whenever his whereabouts are unknown. A defendant shall also be considered unavailable whenever his whereabouts are known but his presence for the trial cannot be obtained or he resists being returned to the state for trial.*

(Emphasis added.)

Here, the speedy-trial clock started ticking with Arnold's arrests on August 31, 2008, and September 10, 2008; it stopped on June 14, 2010, when he filed his motion to dismiss. Because twelve months would have passed on August 31, 2009, and September 10, 2009, the burden shifted to the State to prove that enough of the total days could be justifiably excluded to bring the number of days within the twelve-month speedy-trial limit. Pursuant to the parties' stipulation, the only time period in dispute involves the 169-day period from July 2, 2009, through December 16, 2009, the time period Arnold remained housed in the Pulaski County Jail.

Arnold argues that this disputed period cannot be excluded because Washington County authorities not only knew his whereabouts during the entire time, but also actually had a "hold" placed on him with the Pulaski County Jail. He reasons that he was

available to be brought to trial in a timely fashion on the pending charges in Washington County but that Washington County authorities failed to diligently undertake efforts to timely bring him back for trial.

The State counters by arguing that the disputed time period is properly excluded in the speedy-trial calculation because Rule 28.3(a) excludes periods of delay resulting from other proceedings, including but not limited to trials of other charges against the defendant. The State explains that Arnold was placed and then remained in the custody of the Pulaski County Jail due to proceedings that were unrelated to the Washington County proceedings, and that because he was being held in another county pending the outcome of unrelated charges, the period that he was in that county's jail is an excludable period. The State also argues that the fact that the Pulaski County charge "apparently did not result in a trial is of no moment, as the delay under Rule 28.3(a) need only be for other proceedings concerning the defendant."

In short, the State contends, and we agree, that by putting a "hold" on Arnold, Washington County authorities informed Pulaski County that they wanted him as soon as Pulaski County officials were finished with him, *i.e.*, as soon as the Pulaski County proceedings were completed and he was available for trial in Washington County; and that in placing the "hold" on Arnold, Washington County authorities distinguished their situation from those in the cases relied upon by Arnold, *i.e.*, *Lively v. State*, 326 Ark. 398, 930 S.W.2d 339 (1996), *Tlapek v. State*, 305 Ark. 272, 807 S.W.2d 467 (1991), and *State*

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*v. Washington*, 273 Ark. 82, 617 S.W.2d 3 (1981), where the authorities did not establish that they had taken the proper steps to procure the defendant's presence in court for trial. We conclude that the State satisfied its shifted burden in this case to establish that the disputed period of time was properly excluded and that the speedy-trial rule was not violated.

Affirmed.

VAUGHT, C.J., and HART, J., agree.