

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-1056

CHARLES RAYMOND

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MARCH 2, 2011

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-08-816-1]

HONORABLE BERLIN C. JONES,
JUDGE,

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant Charles Raymond was charged with possession of a firearm by certain persons, aggravated robbery, first-degree battery, theft of property, and kidnapping. Two codefendants were charged with the same offenses. On August 30, 2010, Raymond filed a motion to dismiss the charges for lack of a speedy trial. On that same date, a hearing was held, the motion was denied, and Raymond entered a guilty plea. The plea was conditional pursuant to Rule 24.3 of the Arkansas Rules of Criminal Procedure so that Raymond could appeal the circuit court's denial of his motion to dismiss for violation of his speedy-trial right. We affirm.

Pursuant to Arkansas Rule of Criminal Procedure 28.1, the State is required to try a criminal defendant within twelve months, excluding any periods of delay authorized by

Arkansas Rule of Criminal Procedure 28.3. The speedy-trial calculation begins on the date of the defendant's arrest. Ark. R. Crim. P. 28.2(a). If a defendant is not brought to trial within the requisite time, the defendant will be discharged and such a discharge is an absolute bar to prosecution of the same offense and any other offense required to be joined with that offense. Ark. R. Crim. P. 30.1. 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. *Romes v. State*, 356 Ark. 26, 36, 144 S.W.3d 750, 757 (2004).

Here, the record reflects that Raymond was arrested on November 25, 2008. On August 30, 2010, Raymond filed a motion to dismiss for violation of his speedy-trial rights based on the scheduled trial on that same date. Because Raymond had not been brought to trial within twelve months from the date of arrest, he made a prima facie case of a speedy-trial violation, and the burden shifted to the State to show that the delay was the result of the defendant's conduct or otherwise justified.

On appeal, we conduct a de novo review to determine whether specific periods of time are excludable under our speedy-trial rules. *Branning v. State*, 371 Ark. 433, 437, 267 S.W.3d 599, 602 (2007). Raymond's defense counsel and the prosecutor agreed at the speedy-trial hearing that the time period from November 25, 2008, the date of Raymond's arrest, to April 7, 2009, the original trial date, would count in the speedy-trial calculation and amounted to 134 days. However, Raymond's codefendant Terrell Dorsey filed a motion for

continuance, which was granted on January 20, 2009, and the court reset the trial for May 5, 2009. Codefendant Ashley Reynolds filed a motion for continuance that was granted on April 2, 2009. The trial court reset the trial for July 7, 2009. Both Reynolds and Dorsey filed another motion for continuance that resulted in the trial being reset for October 20, 2009. This order was granted on August 12, 2009. The court's orders granting the motions stated that the time between the trial dates would be excluded periods.

Delays resulting from a continuance granted at the request of the defendant are excluded in calculating the time for speedy trial. Ark. R. Crim. P. 28.3(c). The period of delay shall be from the date the continuance is granted until such subsequent date contained in the order or docket entry granting the continuance. *Id.* The State argues that although Raymond did not join in these requests for continuances made by his codefendants, Raymond made no objections to the motions, no objections to the orders granting the motions, and no objections to the excluded periods set forth in the orders. Raymond's name was in the style of each order, and the orders reflected that they were sent to his attorney, the public defender.

Raymond argues that he should not be bound by a motion made by a codefendant and that he had no duty to object to every exclusion caused by the motions he did not file. In *Bowen v. State*, this court held that a contemporaneous objection to the excluded period is necessary to preserve the argument in a subsequent speedy-trial motion if defense counsel is present at the hearing and has an opportunity to object. 73 Ark. App. 240, 243, 42 S.W.3d 579, 582 (2001). Here, as the State points out, the docket is not part of the record so it is

uncertain if these continuances were discussed and granted in the presence of Raymond and his counsel. However, the *Bowen* court went on to hold that even if defense counsel received notification after the order granting the continuance was signed, the defendant had the obligation to object to the exclusion of the time at the earliest opportunity after receiving this notice, rather than over a year later in the speedy-trial motion to dismiss. *Id.* at 246, 42 S.W.3d at 584. Raymond received notice and failed to object to the orders; thus, the time from January 20, 2009, to July 7, 2009, and from August 12, 2009, to October 20, 2009, is excluded.

On October 15, 2009, Raymond filed a motion for severance, but this motion was never ruled upon. Under Arkansas Rule of Criminal Procedure 28.3(g), the defendant acting with due diligence shall be granted a severance so that he may be tried within the time limits applicable to him. Raymond's motion for severance failed to allege that severance was necessary to protect his right to a speedy trial, one of the grounds for severance under Arkansas Rule of Criminal Procedure 22.3(b)(i).

On October 19, 2009, Dorsey filed a motion for continuance, and on October 27, 2009, the court granted that continuance and reset trial for February 23, 2010. Dorsey's motion for continuance stated that the public defender had no objection to the continuance. The court ordered the time from October 20, 2009, to February 23, 2010, to be an excluded period. In *Key v. State*, the motion for continuance was made by Key's codefendant. 300 Ark. 66, 67, 776 S.W.2d 820, 820 (1989). The trial judge asked Key's attorney how she

responded to the motion for continuance, and she responded that she had no problems with it. The motion was granted and the trial reset. The failure to make a docket entry or enter an order setting out the continuance as an excluded period did not affect the application of the excluded period to Key because one cannot agree with a ruling by the trial court and then attack that ruling on appeal. *Id.* Here, Raymond agreed with the motion for continuance made by Dorsey, so he is prohibited from challenging that time period on appeal. Thus, the time period from October 27, 2009, to February 23, 2010, is excluded.

On February 5, 2010, Raymond filed a motion for continuance, which was granted on February 8, 2010. The court reset the trial for May 4, 2010, ordering that the time from February 23, 2010, to May 4, 2010, would be charged to the defendant. Subsequently, Raymond filed another motion for continuance, which was granted on April 29, 2010. The trial was reset for August 30, 2010, and the court ordered the time from May 4, 2010, to August 30, 2010, to be charged to the defendant. As these delays were requested by Raymond, the time from February 23, 2010, to August 30, 2010, is excluded under Arkansas Rule of Criminal Procedure 28.3(c).

Therefore, from the time of Raymond's arrest on November 25, 2008, to his trial date on August 30, 2010, the only periods that count towards his speedy-trial calculation are the following: (1) the 56 days from his date of arrest to the time the first motion for continuance was granted on January 20, 2009; (2) the 35 days between the July 7, 2009 trial date and the August 12, 2009 order granting a continuance from the July 7 trial date; and (3) the 6 days

Cite as 2011 Ark. App. 179

between the October 20, 2009 trial date and the October 27, 2009 order granting a continuance from the October 20 trial date. As this is less than 365 days, we affirm the denial of Raymond's motion to dismiss.

GLOVER and ABRAMSON, JJ., agree.