Cite as 2023 Ark. App. 554

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-23-156

JIMMY JACOBS APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** December 6, 2023 APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. 35CR-18-63] HONORABLE JODI RAINES DENNIS, JUDGE REVERSED AND DISMISSED

BRANDON J. HARRISON, Chief Judge

This is a speedy-trial challenge, so the calendar and a dizzying number of dates (reader beware) play the pivotal roles. To state the bottom line up front, Jimmy Jacobs entered a conditional plea of guilty to three counts of kidnapping and now appeals the circuit court's denial of his motion to dismiss on speedy-trial grounds. Our de novo review has revealed a total of 909 days that are not excluded for speedy-trial purposes. We therefore agree that his right to a speedy trial has been violated, and we vacate the convictions and dismiss the case.

On 31 January 2018, the State filed an information charging Jacobs, an inmate in the Arkansas Department of Correction (ADC), with three counts of kidnapping. The State alleged that on 7 August 2017, Jacobs and six other inmates held three ADC staff members hostage at the Tucker Maximum Security Unit.

On 7 February 2018, Jacobs appeared before the Jefferson County Circuit Court for his arraignment. The circuit court continued the matter until March 7 so that Jacobs could retain counsel and noted that "[t]he time between now and March the 7th goes to the defendant for speedy trial." The record shows that Jacobs was served with the arrest warrant on February 9, at which time the twelve-month period for bringing him to trial began to run.

On 7 March 2018, the circuit court appointed the public defender's office to represent Jacobs and scheduled a trial date of 20 June 2018. The scheduling order did not indicate that the time between March 7 and June 20 was excluded for speedy-trial purposes. The public defender's office later moved to be relieved as counsel because it represented Derrick Robertson, one of the other inmates. The circuit court granted the motion, and the Arkansas Public Defender Commission ultimately appointed Will Shelton, who entered his appearance as Jacobs's attorney on 9 April 2018. Also on April 9, Jacobs's counsel filed a motion for discovery.

The record reflects no further action in the case for a full year. On 10 April 2019, the State filed a response to Jacobs's discovery motion. On 16 May 2019, over one year after its 7 March 2018 scheduling order and nine months after Jacobs's scheduled trial date of 20 June 2018, the circuit court entered a scheduling order that noted a motion for continuance filed by "codefendant" Jordan Williams had been granted; therefore, the jury trial scheduled for 20 June 2018 had been rescheduled for 31 July 2019. The order also found that "the period of delay from June 20, 2018, until July 31, 2019, is excluded from the time calculated for speedy trial."

On 3 June 2019, Shelton moved for continuance and explained that he had a conflict with the 31 July 2019 trial date. On June 4, the circuit court granted the continuance and rescheduled the jury trial for 23 October 2019. The scheduling order noted that the delay from 31 July 2019 to 23 October 2019 was excluded from the time calculated for speedy trial.

Although Jacobs's jury trial was scheduled for 23 October 2019, the record does not reflect any further activity in the case until 3 December 2019; on that date, the circuit court entered a scheduling order that stated, "The motion to continue filed by the Defendant has been granted. The Jury Trial scheduled for October 23, 2019, is rescheduled for May 21, 2020. . . . [T]he period of delay from October 23, 2019, until May 19, 2020, is excluded from the time calculated for speedy trial."

In February 2020, Shelton filed a motion to withdraw at Jacobs's request. The motion explained that Jacobs had "clearly and unambiguously communicated that he does not want Mr. Shelton to represent him." On 30 March 2020, Shelton filed a second motion to withdraw and stated that had accepted a job with the Federal Public Defender's Office in Little Rock and was winding down his private practice. The court granted the second motion the same day it was filed. It appears that Jacobs was without counsel from 30 March 2020 to 22 April 2020, when he moved to have Jordan Tinsley appointed as his new counsel.

Also on 22 April 2020, Jacobs filed a motion for continuance and asserted that Tinsley needed additional time to review the case, conduct discovery, negotiate with the State, and otherwise prepare for trial. The motion also noted that due to the coronavirus outbreak, the Arkansas Supreme Court had suspended all jury summons through June 2020. Jacobs

agreed to toll speedy trial for any delay attributable to the granting of the motion and noted that the supreme court had held that delays caused by the coronavirus outbreak are excludable from any speedy-trial calculation.

On 18 May 2020, the circuit court entered an order finding that due to the ongoing public health crisis, there was good cause to continue the case and toll speedy trial until the next available court date. The court continued the case from 21 May 2020 to 3 December 2020 and found that "[s]peedy trial and the nine-month rule, if applicable, are tolled from the date of this order until the next court date, pursuant to Arkansas Rule of Criminal Procedure 28.3(h)." On 2 December 2020, the circuit court entered a second continuance order due to the ongoing public health crisis and set the trial date as 17 June 2021.

On 25 May 2021, the circuit court entered a new scheduling order after explaining that a continuance motion from "codefendant" Larry Pitchford had been granted. The jury trial scheduled for 17 June 2021 was rescheduled for 12 January 2022. The order noted that the period of delay was excluded from the time calculated for speedy trial.

On 21 December 2021, Jacobs moved to sever his "codefendants'" cases from his case. The motion explained that the allegations against him stem from an incident on 7 August 2017; that at least six other individuals had been charged in the same court with offenses that allegedly occurred during the incident; and that although there did not appear to be a formal order of joinder regarding the cases of his "codefendants," the court had treated the cases as such when adjudicating continuance motions made by the various defendants. Also on 21 December 2021, Jacobs moved to dismiss his case on speedy-trial grounds.

On 6 January 2022, the State responded to Jacobs's motion to dismiss and generally argued that all of the continuances in the case had been entered due to requests by Jacobs, by his "codefendants," or due to preemptive public health and safety concerns caused by the COVID-19 pandemic.

On 22 June 2022, the circuit court convened a hearing at which the parties debated the issues of speedy trial and severance. Also on June 22, the State moved to split the seven defendants into two trials: one with defendants Jacobs, Jordan Williams, and Larry Pitchford; and a second trial with defendants Derrick Roberson, Floyd Brownlee, Andrew Robinson, and Christopher Williams. The motion claimed that "currently, all defendants are joined pursuant to Ark. R. Crim Pro 23.1 and set for trial on July 6, 2022."[1]

On 28 June 2022, the circuit court entered an order of continuance from the scheduled 6 July 2022 trial date for six of the "codefendants" and explained that "codefendant" Floyd Brownlee's case had been severed and would proceed as scheduled on July 6. Also on June 28, the court entered a scheduling order setting Jacobs's new trial date for 14 November 2022. The order noted that the period of delay from 6 July 2022 to 14 November 2022 was excluded from the time calculated for speedy trial.

On 3 November 2022, the circuit court severed the trials for Jacobs and two other defendants from the remaining defendants. On November 7, the court summarily denied

---

[1]Arkansas Rule of Criminal Procedure 23.1 governs the consolidation and severance of defendants and offenses. It provides that the circuit court may order consolidation of two or more charges for trial if the offenses, and the defendants if there are more than one, could have been joined in a single indictment or information without prejudice to any defendant's rights to move for severance under preceding provisions. The court may sever offenses or defendants before trial if it could be obtained on motion of a defendant or the prosecution.

Jacobs's motion to dismiss for lack of speedy trial. One week later, Jacobs entered his conditional plea to the counts of kidnapping, and he received a sentence of fifteen years' imprisonment.

Before we reach the merits of Jacobs's argument on appeal, we first address the State's arguments that Jacobs has failed to bring up a record sufficient to support de novo review, so this court should summarily affirm; and Jacobs failed to preserve his claims by raising contemporaneous objections below to the continuance orders.

The State first contends that Jacobs's failure to supply a docket sheet and "other documentation contemporaneous with the relevant orders tolling his speedy-trial time" leaves this court unable to reach the merits of his claim. It cites two cases in support of this contention. In *Hoover v. State*, 2022 Ark. App. 188, 643 S.W.3d 891, the defendant argued that one of the charges against him should be dismissed on speedy-trial grounds because the same charge had been previously nolle prossed, and the nolle prosse order had not indicated that it was dismissed for good cause. On appeal, this court held that we could not determine what happened below because

> Hoover did not include in the record certain items that are pertinent to resolving his speedy-trial claim, including the docket sheet from the 2011 case; the motion for nolle prosequi; the transcript of the hearing on that motion (if there was one); or the order of nolle prosequi. Hoover has failed to bring up a record sufficient to demonstrate that he either made an objection to the lack of good cause when the State made a motion to nolle prosse or that he did not have the opportunity to do so.

Id. at 5, 643 S.W.3d at 894–95 (internal citations omitted).

In *Hicks v. State*, 340 Ark. 605, 12 S.W.3d 219 (2000), the defendant argued that the circuit court had erred in denying his motion to dismiss on speedy-trial grounds, but the

supreme court did not reach the merits of the argument because Hicks had "failed to include as a part of the record the docket sheet which might reflect relevant court notations that are pertinent to resolving his speedy-trial claim, and without this information we are unable to review this issue on appeal." *Id.* at 611, 12 S.W.3d at 223.

In reply, Jacobs argues that, according to the circuit clerk's certificate, the record in this case consists of 128 pages, which corresponds to the record that he filed. Further, after the State filed its response brief, Jacobs moved and was granted permission by this court to supplement the record with an affidavit from the circuit clerk; in that affidavit, the clerk attests that "the Circuit Judges in Jefferson County, Arkansas have not utilized docket sheets since 2015 or 2016," that "[s]uch document simply does not exist," and that Jacobs "did not omit any material records or documents maintained by the circuit court or circuit clerk" from the appellate record.

Jacobs also distinguishes the cases cited by the State. He explains that *Hoover* deals with the excludability of a period of time following a nolle prosse and, more specifically, the appropriate timing of an objection to whether good cause justifies a nolle prosse, which is not the case here. In *Hicks*, the appellant failed to include in the lodged record a docket sheet that was a part of the record below; but here, Jacobs lodged the complete record regarding his case's proceedings in the lower court.

We disagree with the State. Jacobs designated on appeal and filed with this court the complete record below. To the extent a docket sheet is not included in the record, it is because neither the circuit clerk nor circuit court keeps one. That fact has nothing to do

with Jacobs. One hopes the State concentrates its fire on more important facets of the case next time around. Cheap shots do not become a sovereign.

For its second point, the State says that Jacobs's arguments are not preserved for appellate review due to the lack of any objection, prior to his speedy-trial motion, to the continuance orders entered in his case. The State contends that all of the continuances were entered due to requests by Jacobs or his "codefendants" or due to preemptive public-health and safety concerns caused by the COVID-19 pandemic. While Jacobs concedes that some of these periods are excludable, for the time periods he asserts are not excludable, the State argues that he failed to preserve his claims by raising a contemporaneous objection or objecting at the earliest opportunity after the entry of each continuance order or scheduling order.

The State cites *Raymond v. State*, 2011 Ark. App. 179. There, Raymond and two codefendants were charged with multiple offenses. Raymond later moved to dismiss for lack of a speedy trial, and the contested time periods included delays caused by continuance motions filed by his codefendants. The State asserted that although Raymond did not join in these requests for continuances made by his codefendants, he did not object to the motions or the excluded periods in the orders granting the motions. The State also noted that 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 argued 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 affirming the denial of Raymond's motion to dismiss, this court held 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. Because Raymond failed to do so, the time was ruled excluded. *See also Smith v. State*, 2021 Ark. App. 253, 624 S.W.3d 718 (a contemporaneous objection to the excluded period is necessary to preserve the argument in a subsequent speedy-trial motion where was counsel present at hearing and court stated the time for speedy trial would be charged to defendant).

Jacobs responds that this argument was rejected in *Raglin v. State*, 35 Ark. App. 181, 816 S.W.2d 618 (1991). In that case, the circuit court announced at a hearing that it was setting Raglin's murder trial first and thus delaying Raglin's trial for possession of a controlled substance with intent to deliver. The State later pressed that he had "tacitly agreed" by not objecting when the circuit court announced the scheduling, but this court disagreed. *Id*. at 183, 816 S.W.2d at 619. This court explained that Raglin's trial on the possession charge was ordered on the court's own motion and that Raglin was not consulted. This court held:

> The fact that appellant did not affirmatively object to the court's statements in question does not alter our conclusion. Rule 28.2 provides that the speedy trial period commences to run "without demand by the defendant." The State's argument that a defendant must protest court-ordered delays, whether or not he is responsible for the delays or is even consulted about them, would place the burden on the accused to demand a speedy trial at every stage of the proceedings.

Id. at 184, 816 S.W.2d at 620.

Jacobs also cites case law holding that the contemporaneous-objection rule does not apply where there was no hearing at which the excludability of the period was discussed in the defendant's presence. *See Davis v. State*, 375 Ark. 368, 291 S.W.3d 164 (2009) (holding

that before a criminal defendant may be required to state a contemporaneous objection to the exclusion of time under speedy trial, the excludability of the period must be discussed during a hearing where the defendant and his counsel are present); *Robertson v. State*, 2019 Ark. App. 73, 568 S.W.3d 323 (holding that the contemporaneous-objection rule did not apply where defense counsel received the continuance order, but no hearing on the continuance took place, and there was no indication that defense attorney had an opportunity to object to the excluded period).

Both *Davis* and *Robertson* followed *Tanner v. State*, 324 Ark. 37, 918 S.W.2d 166 (1996), in which a defendant was originally scheduled to be tried on 13 December 1994; however, at a December 12 pretrial hearing, the court, on its own motion, reset the trial for 15 February 1995. There was nothing in the record to show that Tanner or his counsel was present at the hearing. On 14 December 1994, the court filed an order that excluded the delay from speedy-trial computation "due to commencement of capital murder trial of Frederick Jacobs." *Id*. at 39, 918 S.W.2d at 167. The order indicated that the prosecutor and Tanner's counsel were notified of the continuance by mail.

On 20 March 1995, Tanner moved to dismiss on speedy-trial grounds and argued that the court had erred in excluding the period of 13 December 1994 to 15 February 1995 from speedy-trial computation because the law allows exclusion for docket congestion only in exceptional circumstances. The court denied the motion to dismiss; the essence of the ruling was that Tanner had waited too long to contest the 14 December 1994 order. In reversing the circuit court, the supreme court explained that

> [i]t is generally recognized that a defendant does not have to bring himself to trial and is not required to bang on the courthouse door in order 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. In Arkansas, the speedy trial period commences to run "without demand by the defendant." Ark. R. Crim. P. Rule 28.2. Furthermore, the Rules of Criminal Procedure do not mention waiver of the right to a speedy trial unless the defendant fails to move for dismissal prior to a plea of guilty or a trial. Ark. R. Crim. P. Rule 28.1(f).
>
> With these considerations in mind, we hold that the appellant did not waive his right to move for dismissal based on a speedy trial violation. In *Hicks v. State*, *supra*, the state argued that, by waiting until the day after the speedy trial time ran to file his motion to dismiss, Hicks had waived his rights. We stated that Hicks's motion was made in advance of trial and was thus, timely. In *Raglin v. State*, 35 Ark. App. 181, 816 S.W.2d 618 (1991), the court of appeals held that a defendant need not affirmatively protest a court-ordered continuance at the time the continuance is granted because to do so would "place the burden on the accused to demand a speedy trial at every stage of the proceedings" in spite of the clear dictate of Rule 28.2. In this case, the appellant's motion to dismiss was made before trial, and, under the circumstances of this case, he was not required to challenge the court-ordered exclusion of time immediately upon issuance of the court's order. As we stated earlier, it is the burden of the prosecution and the courts to see that a defendant is brought to trial on time.

Id. at 42–43, 918 S.W.2d at 169 (internal citations omitted).

Jacobs also asserts that *Raymond*, the case cited by the State, appears to be an outlier (and does not mention *Tanner*), and *Bowen v. State*, 73 Ark. App. 240, 42 S.W.3d 570 (2001), which *Raymond* relies on, can easily be distinguished. In *Bowen*, the motion for continuance indicated that it was a joint request, and defense counsel did not object to the order of continuance prior to signing and forwarding it to the judge. The appellate court held that when a defendant takes exception to the wording of an order, it is incumbent on him to bring the matter to the attention of the trial court within a reasonable time.

Jacobs argues that there is no proof that he or his counsel received notice of the continuance motions, all filed in cases separate from his, that prompted the lower court to continue his trial several times. In addition, the circuit court never conducted a hearing on

the excludability of the time periods after receiving the continuance motions. Therefore, this case falls under the *Tanner*, *Davis*, and *Robertson* line of cases, and his arguments on his speedy-trial claim are preserved.

We agree that Jacobs's arguments are preserved. According to the cases, the general rule is that a contemporaneous objection to an excluded period is not necessary to preserve the argument in a subsequent speedy-trial motion if there was no hearing in which the excluded period was discussed in the presence of the defendant or his counsel. *See Tanner*, *supra*; *Smith*, *supra*; *Davis*, *supra*; *Robertson*, *supra*. Also, the State's cited authority, *Raymond*, is distinguishable; there is no question that the motions for continuance had been filed by Raymond's codefendants, whereas in this case, whether the other inmates charged in the 7 August 2017 incident were Jacobs's "codefendants" is very much at issue (*see infra*).

In sum, two of the three delays challenged by Jacobs were based on motions filed by other defendants; it is unclear what the third delay was based on, but it was not due to Jacobs's actions. There were no hearings preceding any of the scheduling orders that continued Jacobs's trial. Under these circumstances, and considering the applicable case law, we hold that no contemporaneous objections were necessary.

Finally, the merits of Jacobs's appeal. A defendant must be brought to trial within twelve months unless there are periods of delay that are excluded under Ark. R. Crim. P. 28.3. Ark. R. Crim. P. 28.1; *Rodgers v. State*, 2022 Ark. App. 388, 654 S.W.3d 68. The twelve-month period for bringing an accused to trial begins to run on the date of arrest or service of summons, whichever occurs first. Ark. R. Crim. P. 28.2(a). If the defendant is not brought to trial within the requisite time, the defendant is entitled to have the charges

dismissed with an absolute bar to prosecution. *State v. Crawford*, 373 Ark. 95, 281 S.W.3d 736 (2008) (citing Ark. R. Crim. P. 30.1).

When a defendant makes a prima facie showing of a speedy-trial violation, the burden shifts to the State to show that the delay was the result of the defendant's conduct or was otherwise justified. *Crawford*, *supra*. A prima facie case for a speedy-trial violation is made when there is a period of delay beyond twelve months from the date of the charge. *Id*. On appeal, we conduct a de novo review to determine whether specific periods of time are excludable under speedy-trial rules. *Id*.

Here, because Jacobs was not brought to trial within twelve months of the date of his arrest, he presented a prima facie case for a speedy-trial challenge; the burden of proving that the extra days were legally justified and excludable now shifts to the State. *See Crawford*, *supra*. The delay between the date of service of the arrest warrant and the date Jacobs's motion to dismiss was filed is 1,411 days; accordingly, the State bears the burden of showing that at least 1,046 days should not be included in the calculation. Jacobs concedes that there are 502 days that are properly excluded; however, he contends that there are three time periods that should not have been excluded from the speedy-trial calculation.[2]

I. *7 March 2018 to 31 July 2019*

---

[2]Jacobs lists a fourth time period, 12 January 2022 to 14 November 2022, as not excludable, but he also concedes that the speedy-trial calculation ended with the filing of his motion to dismiss on 21 December 2021. *See Parker v. State*, 93 Ark. App. 472, 220 S.W.3d 238 (2005) (explaining that a filing of a speedy-trial motion tolls the speedy-trial clock, and the speedy-trial date is assessed from the date the time began until the motion to dismiss was filed). Nevertheless, he contends that it is "worth noting that the lower court continued to violate Jacobs' speedy trial rights well after he sought to enforce them."

On this point, Jacobs first notes that the March 7 scheduling order did not designate the period of time from that date until the trial on 20 June 2018, a period of 105 days, as excluded from the time calculated for speedy trial. He also argues that the time period is not excludable under any provision of Ark. R. Crim. P. 28.3. In its brief, the State concedes that "a portion" of this time period is not excludable but does not identify which portion. We agree with Jacobs that this time period from 7 March 2018 to 20 June 2018—105 days—is not excluded. The time period was not designated as excluded, it is not excludable under any provision of Ark. R. Crim. P 28.3, and the State fails to articulate an argument for excluding it.

The second part of this contested time period is 20 June 2018 to 31 July 2019, consisting of 406 days, and the reason given for the delay in the scheduling order is that a motion for continuance filed by "codefendant" Jordan Williams had been granted. However, Jacobs denies that he was a "codefendant" with Williams or any of the other inmates involved in the 7 August 2017 incident until the circuit court entered an order on 3 November 2022 directing that his case and two other cases be severed from the remaining defendants. He asserts that all the inmates had been charged in separate charging instruments and had separate cases with separate case numbers; so, a motion for continuance granted in Jordan Williams's case did not apply to his case.

Jacobs cites *Webb v. Ford*, 340 Ark. 281, 9 S.W.3d 504 (2000), which held that the delay resulting from a pretrial motion to suppress filed by another defendant was not excludable in computing speedy-trial time for Webb's trial. Charges against Webb and another defendant, James Gwin, had arisen out of execution of the same search warrant, but

Webb did not file a motion to suppress or join Gwin's motion, and there was no showing that the evidence sought to be suppressed was applicable to Webb's charges. The supreme court noted that while Ark. R. Crim. P. 28.3(a) does provide that the "period of delay resulting from . . . hearings on pretrial motions" are excluded in computing the time for trial, "Arkansas speedy-trial rules do not contemplate that the filing of a suppression motion by one defendant should toll the time as to another defendant who is facing different charges filed in a distinct case." *Id.* at 283, 9 S.W.3d at 506. Likewise, Jacobs says, no provision in Rule 28.3 permits a court to continue a pending trial in a case involving a single defendant when a purported codefendant, charged in a separate case by a separate charging instrument, moves to continue a case.

The State, on the other hand, contends that the cases for all seven men involved in the 7 August 2017 incident "were set and joined for a single trial from the outset in 2018, until orders were entered in 2022 granting severances of the trials." The fact that Jacobs filed a motion to sever his trial from the other six defendants, the State argues, is proof that the cases were joined.

In reply, Jacobs points out that the State cites no document in the record showing that the defendants were charged together. Jacobs asserts that he was the only defendant listed in the original 7 March 2018 scheduling order,[3] and he also notes that the transcript

---

[3]Indeed, the first pleading in which Jacobs is not the sole named defendant is the State's motion for joinder/severance, filed on 22 June 2022.

from the circuit court's June 22 hearing demonstrates the defendants' unclear status as "codefendants."[4]

Arkansas Rule of Criminal Procedure 21.2 provides that two or more defendants may be joined in one information or indictment under certain circumstances, such as "when each of the defendants is charged with accountability for each offense included" or "when each of the defendants is charged with conspiracy and some of the defendants are also charged with one (1) or more offenses alleged to be in furtherance of the conspiracy." Ark. R. Crim. P. 21.2(a) & (b). Arkansas Rule of Criminal Procedure 28.3(g) allows a "reasonable period of delay" to be excluded for speedy-trial purposes when "the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance."

Here, Jacobs was the sole defendant listed in the criminal information, and as noted above, the sole defendant listed in all pleadings until June 2022, after he had filed his motion to dismiss on speedy-trial grounds. Simply put, the record does not support the conclusion that Jacobs and the other inmates charged in the 7 August 2017 incident were "codefendants" such that a continuance by one defendant would justify the exclusion of time in Jacobs's case. We therefore hold that the circuit court erred when it continued Jacobs's case based on a motion for continuance filed by separate defendant Jordan Williams,

---

[4]At the hearing, defense counsel argued that there had never been a formal order of joinder entered in the case and that "the only reason that the parties ha[ve] acted as if there was a joinder is because the Court was acting that way by granting its continuances on the basis of other defendants' motions." When the court asked the prosecutor how the defendants were clearly joined, she stated, "I have assumed by the Court's operation that they were joined."

and consequently, we hold that the period from 20 June 2018 to 31 July 2019, consisting of 406 days, is not excluded from the speedy-trial computation.

II. *23 October 2019 to 21 May 2020*

As noted above, the circuit court entered a scheduling order on 3 December 2019 that stated, "The motion to continue filed by the Defendant has been granted. The Jury Trial scheduled for October 23, 2019, is rescheduled for May 21, 2020. . . . [T]he period of delay from October 23, 2019, until May 19, 2020, is excluded from the time calculated for speedy trial." Jacobs argues that there is no evidence in the record that he moved for a continuance, nor was there any hearing held at which a motion for continuance could have been made. In addition, he asserts, it is unclear why the circuit court omitted May 20 and 21 from the excluded period in its order, but he argues that the entire period—211 days—is not excludable. The State has not addressed this specific time period in its response brief.

Jacobs is correct that there is no record of a motion for continuance filed by him or any other explanation that would justify the court's order rescheduling the jury trial for 21 May 2020 and excluding the time period from 23 October 2019 to 21 May 2020 (211 days). Consequently, that period is not excluded for purposes of speedy-trial computation.

III. *17 June 2021 to 21 December 2021*

As we have explained, the circuit court entered a new scheduling order on 25 May 2021; that order stated that a continuance motion from "codefendant" Larry Pitchford had been granted and rescheduled the jury trial from 17 June 2021 to 12 January 2022. The order noted that the period of delay was excluded from the time calculated for speedy trial.

Jacobs moved to dismiss on speedy-trial grounds on 21 December 2021, which tolled the speedy-trial clock.

For the same reasons argued under Point I above, we hold that this time period—187 days—is not excluded for speedy-trial purposes.

IV. *Conclusion*

The calculations we have provided—from the date Jacobs was served with the arrest warrant, 9 February 2018, to the date he filed his motion to dismiss, 21 December 2021—show that a total of 909 days passed during which speedy trial was not tolled. That far exceeds the 365-day period, Ark. R. Crim. P. 28.1(b), and is an egregious failure by the State to bring an accused to trial in a timely manner. *See Smith v. Plegge*, 342 Ark. 232, 27 S.W.3d 402 (2000) (holding that the State has a duty to make a diligent, good-faith effort to bring an accused to trial). Accordingly, we vacate Jacobs's convictions and dismiss the case.

Reversed and dismissed.

KLAPPENBACH and BARRETT, JJ., agree.

Tinsley & Youngdahl, PLLC, by: *Jordan B. Tinsley*, for appellant.

Tim Griffin, Att'y Gen., by: *David L. Eanes, Jr.*, Ass't Att'y Gen., for appellee.