NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2003-KA-0277**
VERSUS	*	**COURT OF APPEAL**
BOBBY E. DICKERSON, JR.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 392-232, SECTION "C"
Honorable Robert J. Klees, Judge Pro Tempore
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray, and Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

The State brings this appeal, arguing that the trial court erred in granting the defendant's motion to quash. For the following reasons, we affirm the decision of the trial court.

Bobby E. Dickerson, Jr., was charged with and found to be guilty of attempted first degree murder after a trial on August 5 and 13, 1998. On December 7, 1998, he was sentenced to life imprisonment as a third felony offender under La. R.S. 15:529.1. He moved for an out-of-time appeal, and the motion was granted on April 15, 1999. In an unpublished opinion, this Court reversed his conviction and sentence and remanded the case. *State v. Dickerson*, 2000-2324 (La. App. 4 Cir. 3/28/01), 793 So.2d 571.

The facts of the case as presented in the earlier opinion are as follows:

> At trial on 5 August 1998, Officer Robert Stoltz testified that he investigated a shooting on 7 July 1997. About 10:30 p.m., the officer arrived at 2216 D'Abadie Street where he saw two victims in two ambulances. One had been shot in the face and the other in the buttocks. The officer interviewed two people who were at the scene and then returned to the Fifth District Station with a man who had been detained. After speaking to several people, the officer determined that the defendant was a suspect. A photographic line-up was shown to one of the victims, who identified the defendant as the gunman. Bobby Dickerson

was arrested on the 8th or 9th July. The second victim, Larry Thomas, was interviewed on 12 July, and he too named Bobby Dickerson as the man who shot him.

On 13 August 1998, Paul Dickerson, the defendant's brother, testified that Bobby Dickerson did not shoot Larry Thomas or Leroy Louding. Paul Dickerson stated that he and a man named Craig Johnson both shot at Thomas and Louding. Under cross-examination, Paul Dickerson said that he could not remember when the shooting occurred or even the time of day it happened. When asked what he had been doing that day, he answered that he was "walking around." He visited his girlfriend, Colita Robinson of Miro Street, but he could not recall the cross street near her house. Paul Dickerson said he had a loaded .357 magnum revolver, and he shot at Larry Thomas because Thomas had threatened to kill him even though the two did not know each other. Paul Dickerson later said that he shot into the air and did not aim at either victim. When asked if he had a drug problem, Paul Dickerson said he did not; however, he admitted to using marijuana "now and then" and having tried cocaine. If he were to take a drug test that day, Dickerson acknowledged he would have marijuana in his system.

The state called Officer Arthur Kaufman in rebuttal. The officer said that he interviewed Paul Dickerson on 5 July, and it was his understanding that Paul Dickerson was going to confess to the crime. However, at the meeting the officer realized that Dickerson was intoxicated. Paul Dickerson admitted then to having recently taken drugs. After being told his rights, Paul Dickerson refused to make a taped or video statement. Dickerson said that his mother and one of the attorneys wanted him to make a statement. The officer stated that Paul Dickerson did not seem to have any idea of the consequences of the statement he was making. Paul Dickerson told the officer

> his version of the events in which he and Bobby were at the scene but did not shoot anyone. After listening to his story, the officer did not arrest him.

State v. Dickerson, 2000-2324, pp. 1-3 (La. App. 4 Cir. 3/28/01), 793 So.2d 571.

On remand, the case was set for a hearing to determine defense counsel on December 19, 2001. On February 6, 2002, the defendant and his counsel appeared in court for a pretrial conference. On March 5th the defendant, who was incarcerated, arrived in court late, and the trial court declared a continuance for the defense. The matter was reset for trial on April 10th and May 23rd with no explanation of the delay. The defendant filed a pro se motion to quash on July 16th, and his attorney also filed a motion to quash on August 15th.

At the hearing on the motion to quash on October 29, 2002, the defense attorney argued that the State had one year from the date of this Court's opinion to retry the defendant and during that time there were no defense continuances. The State responded that two delays were the work of the defense: first, the defense filed a handwritten motion for discovery on February 6, 2002, and second, on March 5th when the State was ready for trial and the defendant and his attorney did not arrive before 11:30 a.m., the trial court declared a continuance for the defendant. On the next dates set

for trial, April 10th and May 23rd, the trial court was unable to try cases.

The defense attorney answered that the defendant was late to court through no fault of his own on March 5th but because he was in transit from Angola; however, the trial court had a policy of not beginning trials after a certain time in the morning and would not hear the case that day.

The court reluctantly granted the motion to quash on the grounds that more than a year had elapsed since April 11, 2001, the date on which this Court's opinion became final.

The State as appellant now makes the same argument offered at the motion to quash—that the time limitations for trial were suspended by the filing of the defense dilatory motions—and, alternatively, that the delay in bringing the defendant to trial was due to matters beyond its control.

When a defendant seeks to quash the charges against him due to a violation of the time limitations for commencing trial, the State bears the burden of showing that an interruption of prescription occurred. The State is held to a "heavy burden" of showing just and legal cause for the interruption. *State v. Joseph*, 93-2734 (La. 6/3/94), 637 So.2d 1032; *State v. Mattox*, 96-2370 (La. App. 4 Cir. 12/10/97), 704 So. 2d 380.

We find that the State has not met its burden. The State first argues that the defendant's dilatory motions suspended prescription. The first of

these motions is a motion for discovery, which was not part of the record. The motion is not mentioned in the minute entry or docket master, and, as the defense's brief notes, the State never answered the motion, the defense did not pursue it, and the trial court did not notice it. Because the motion did not promote any action that stalled the case, it cannot be considered to have suspended the time limitations under La. C.Cr.P. art. 580.

The State next argues that the defendant's motion for a continuance suspended prescription. The "continuance" of March 5, 2002, cannot be blamed on the defendant. He did arrive late to court but he was incarcerated, and the State was responsible for his being transported to court. While it is not the State's fault that the trial was not held on March 5th, it cannot be blamed on the defendant.

The State argues alternatively that the delay in bringing the defendant to trial was due to matters beyond its control. This case is governed by La. C.Cr.P. art. 582, which provides for the effect of a new trial. The article states:

> When a defendant obtains a new trial . . . The state must commence the second trial within one year from the date the new trial is granted . . . or within the period established by Article 578, whichever is longer.

This Court's decision was handed down on March 28, 2001, and became

final after fourteen days or on April 11, 2001, when neither party had applied for a rehearing. La. C.Cr.P. art. 922B. Therefore, the State had until April 11, 2002, to bring the defendant to trial.

The case languished for eight months between April 11, 2001 and December 19, 2001 with no action taken. Yet the State maintains that an interruption of the time limitations occurred under La. C.Cr.P. art. 579(2) when the trial court was unable to hear the case on April 10th and May 23rd in that the trial court's situation was beyond the control of the State. In its brief, the State claims that Judge Hunter was relieved of the responsibilities of her office on March 19, 2002, and Judge Winsberg was appointed to hear cases in that section of court. However, Judge Winsberg assumed authority over only administrative functions of Section C, and Judge Hunter maintained authority to hear trials for some time. *In re Hunter*, 2002-1975 (La. 8/19/02), 823 So. 2d 325, 328. The assistant district attorney claimed at the October 29th hearing that a letter was written to Judge Winsberg, urging him to hear this case; however, the letter is not part of the record nor does the State aver the date of the letter. We note also that the minute entries of April 10th and May 23rd do not show that the State objected to the resetting of the case.

When this case did not go to trial on March 5th, it was reset for April

10th and then for May 23rd. The fact that the trial was reset for April 10th indicates that there was a judge in that section hearing cases. The State cannot focus on the problem of the case not being heard on April 10th—the last day of the year that it could be heard under Article 582—when the case was not brought to trial for 364 days prior to April 10th. The trial court did not abuse its discretion in granting the motion to quash after the State failed to bring the case to trial within one year.

There is no merit in this assignment of error. Accordingly, for reasons cited above, the decision of the trial court is affirmed.

AFFIRMED