

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR12-700

KURTIS A. JENSEN		Opinion Delivered May 15, 2013
	APPELLANT	APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. CR-2011-676]
V.		HONORABLE MARCIA R. HEARNSBERGER, JUDGE
STATE OF ARKANSAS	APPELLEE	AFFIRMED

RHONDA K. WOOD, Judge

On August 24, 2009, Kurtis Jensen wrecked his motorcycle. Jensen consented to a blood test at the hospital, which showed he had a blood-alcohol level of .15 percent.¹ Based on that information, a police officer wrote an affidavit and submitted an arrest warrant to a judge, who signed the warrant on September 25, 2009. A year passed until officers arrested Jensen on October 6, 2010. Jensen was charged in district court with driving while intoxicated, first offense; he filed a motion to dismiss the charges arguing that speedy-trial had expired, but the district court denied the motion. He was convicted on October 19, 2011, and appealed to circuit court. There, Jensen filed another motion to dismiss on speedy-trial grounds, but the circuit court denied the motion, too. As a result,

¹ The legal limit is .08. Ark. Code Ann. § 5-65-103(b) (Repl. 2005).

Jensen entered a conditional guilty plea under Ark. R. Crim. P. 24.3, preserving the speedy-trial issue for appeal. We affirm.

A defendant must be brought to trial within twelve months from the date of arrest or service of summons. Ark. R. Crim. P. 28.1, 28.2 (2012).² Jensen argues that speedy trial expired because more than one year elapsed between September 25, 2009—when the arrest warrant was issued—and October 6, 2010—when he was actually arrested. But Jensen focuses on the wrong dates. Speedy trial begins on the date of arrest, not when the arrest warrant is issued. Ark. R. Crim. P. 28.2(a). Jensen cites various cases to support his argument that an arrest warrant affidavit can sometimes constitute a charging document in misdemeanor cases and that speedy trial began to run back in 2009 when the arrest warrant was issued. *Watson v. State*, 358 Ark. 212, 188 S.W.3d 921 (2004); *Miles v. State*, 348 Ark. 544, 75 S.W.3d 677 (2002). Yet these cases are inapposite because they interpret an earlier version of Rule 28.2, which stated that “[t]he time for trial shall commence running from the date the charge is filed” Ark. R. Crim. P. 28.2(a) (2006). The 2007 amendment changed the speedy trial start date to the date of arrest, whether the charge was filed before or after that date. Ark. R. Crim. P. 28.2, Addition to Reporter’s Notes, 2007 Amendment. Thus, when a charge is filed is irrelevant because the date of arrest starts the speedy-trial clock. See *Robinson v. State*, 2013 Ark. 60, at 5 (holding that “the speedy-trial period begins to run on the ‘date of arrest or service of summons,’ not when an arrest warrant has been issued”).

² This requirement applies in district court. Ark. R. Crim. P. 28.1(e).

Here, the date of arrest was October 6, 2010, and the trial at district court occurred on October 19, 2011—the time period between the two exceeds twelve months by thirteen days. However, the time period excludes delay that results from a defendant’s request for a continuance. Ark. R. Crim. P. 28.3(c). 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, 267 S.W.3d 599 (2007).

The district court docket sheet reflects that Jensen requested and received a continuance on January 11, 2011, and the docket entry stated that speedy trial was tolled until the next hearing on March 15, 2011. Thus, the interim period, which exceeds thirteen days, is excluded from the speedy-trial calculation.³ Therefore, the circuit court’s denial of the motion to dismiss was correct because Jensen was brought to trial within one year of arrest after excluding the time charged to him under Rule 28.3.

Affirmed.

PITTMAN and WALMSLEY, JJ., agree.

Tapp Law Offices, by: *J. Sky Tapp*, for appellant.

Dustin McDaniel, Att’y Gen., by: *Laura Shue*, Ass’t Att’y Gen., for appellee.

³ The time to be excluded due to a defendant’s motion for a continuance under Rule 28.3(c) runs from the date the continuance is granted until the subsequent date specified in the order or docket entry. *Miles v. State*, 348 Ark. 544, 75 S.W.3d 677 (2002).