[Cite as *State v. Rucci*, 2015-Ohio-1882.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 13 MA 34
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
SEBASTIAN RUCCI	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the County Court No. 4 of Mahoning County, Ohio Case No. 12 CRB 573-574

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

Atty. Paul J. Gains
Mahoning County Prosecutor
Atty. Ralph M. Rivera
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

For Defendant-Appellant:

Atty. Jeffrey A. Kurz
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JUDGES:

Hon. Cheryl L. Waite
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: May 12, 2015

[Cite as *State v. Rucci*, 2015-Ohio-1882.]
WAITE, J.

{¶1} Appellant Sebastian Rucci has appealed a March 3, 2013 Mahoning County Court conviction on two counts of illegal sale of alcohol ("illegal sale") and one count of keeper of a place where intoxicating liquors are sold in violation of law ("keeper of a place") following a bench trial. Appellant first argues that the state failed to present sufficient evidence showing that his establishment lacked a liquor license, which is an element of all of these charges. He asserts that a federal injunction prohibiting the Ohio Division of Liquor Control ("Liquor Control") from revoking his license was in effect during the time period involved in these charges. Further, he argues that Liquor Control failed to take any steps to personally determine whether his establishment had a valid liquor license at the time.

{¶2} Secondly, he claims that the deputy clerk who signed his arrest warrant lacked the ability to make a probable cause determination. He argues that the police report used to secure the warrant was neither signed nor sworn to by any officer. For these reasons, Appellant argues that the trial court erred in denying his motion to dismiss. Finally, Appellant argues that his motion to suppress the evidence was sufficient to place the state on notice of the factual and legal grounds that formed the basis for his motion. Thus, Appellant claims that the trial court erred in denying this motion.

{¶3} In response, the state disputes Appellant's assertion that the federal injunction was still in effect at the time of the arrest. Contrary to Appellant's argument, the state contends that the injunction terminated over a year before the time period at issue in this case. The state also contends that it obtained a certificate

from the Department of Commerce confirming that Appellant did not have a valid liquor license. Thus, the state argues that it presented sufficient evidence showing that Appellant lacked a valid liquor license.

{¶4} Secondly, the state argues that under *State v. Jones,* 7th Dist. No. 11 MA 60, 2012-Ohio-1301, a police report satisfies Crim.R. 4 when it is either signed or referenced in a document signed under oath. As the complaint attached to the incident report was sworn to under oath and referenced the incident report, Crim.R. 4 is satisfied, here. Even so, the state urges that under Ohio law, a clerk is permitted to make a probable cause determination and sign a warrant. Further, the state argues that the deputy clerk in this case testified that she reviews every complaint and affidavit before signing a warrant and has refused to sign warrants based on a lack of probable cause in the past. Thus, the trial court properly denied Appellant's motion to dismiss. Finally, the state asserts that Appellant's motion to suppress the evidence was untimely and failed to place the state on notice as to the motion's factual and legal grounds. For the following reasons, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶5} Appellant's establishment, the GoGo Cabaret, Inc. ("GoGo"), previously held a liquor license. However, on June 12, 2009, Liquor Control denied Appellant's liquor license renewal request. Appellant obtained a federal injunction which prohibited the revocation of his license "until the appeal is heard and decided by the Commission in his favor or, if the Commission's decision is unfavorable to The GoGo,

until a subsequent appeal has been heard and decided by the appropriate state court." *5455 Clarkins Drive, Inc., et al. v. Poole, et al.,* N.D. Ohio No. 1:09-CV-01841, 2009 WL 2567761, *8 (Aug. 17, 2009).

{¶6} After obtaining the injunction, Appellant unsuccessfully appealed the denial of his renewal request to Liquor Control. Appellant unsuccessfully appealed this decision to the Franklin County Court of Common Pleas. After the trial court denied his appeal, he filed a motion to the trial court which delayed his filing with the court of appeals and caused him to miss the 30-day appeal period. Accordingly, on June 28, 2010, the Tenth District denied his appeal as untimely. On September 29, 2010, the Ohio Supreme Court declined to accept the case.

{¶7} Appellant then attempted to file a second appeal to the Tenth District alleging several assignments of error, including the issues presented in his first appeal. The Court held that as Appellant had already raised the issues regarding his liquor license denial once before the court *res judicata* barred him from bringing these issues a second time.

{¶8} After receiving complaints that Appellant's establishment was selling liquor without a license, the Ohio Department of Public Safety ("Public Safety") began an investigation. As part of the investigation, Public Safety conducted a series of undercover operations where agents entered the GoGo and ordered, paid for, and received alcoholic beverages. The investigation revealed that the GoGo sold alcohol on its premises without a liquor license from at least November 15, 2011 until December 2, 2011.

{¶9} On December 2, 2011, Agent Patricia Csuhta from Public Safety applied for and obtained a search warrant. Before executing the warrant, Agent Csuhta entered the GoGo and conducted one last undercover operation. Agent Csuhta sat down inside the premises and ordered, paid for, and received two alcoholic beverages. Shortly thereafter, the search warrant was executed and several items of evidence were seized. During the execution of the warrant, Appellant informed the agents that he owned the GoGo.

{¶10} Subsequently, Appellant was charged with two counts of illegal sale and one count of keeper of a place. At least one of Appellant's employees, Tara Giancola, was also charged. Prior to trial, both Appellant and Giancola filed a motion to dismiss the charges due to the deputy clerk's alleged inability to make a probable cause determination. As the two cases had been consolidated and both parties' motions were identical, the parties' motions to dismiss were jointly scheduled for a hearing on the same date and time. Appellant failed to attend this hearing. To avoid the issuance of a bench warrant, Appellant's motion was withdrawn. The hearing was held on Giancola's identical motion, which the trial court denied.

{¶11} Before trial, the state agreed to reduce Giancola's charges in return for her testimony against Appellant. Also before trial, Appellant filed two additional motions to dismiss and two more motions to suppress the evidence. Appellant's second motion to dismiss was stricken, as it was not signed and was filed in violation of the trial court's rules. His second motion to suppress was denied. Although the trial court found errors in the warrant, none were deemed fatal. His third motion to

dismiss was virtually identical to that filed by both Giancola and Appellant some months earlier. Since Giancola's motion was heard and decided, Appellant's third motion was denied by the trial court because the issue raised had already been decided. His third motion to suppress was likewise denied as the court determined that the issue raised had been determined.

{¶12} Appellant's case proceeded to a bench trial and he was convicted on both counts of illegal sales and the sole count of keeper of a place. Appellant filed a stay pending this timely appeal, which was granted by the trial court.

ASSIGNMENT OF ERROR NO. 1

> THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST DEFENDANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION, AND THAT CONVICTION WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE

{¶13} Appellant appears to argue both sufficiency of the evidence and manifest weight of the evidence in his assignment of error. Although Appellant mentions both sufficiency and manifest weight, his actual argument addresses only the sufficiency of the evidence. Accordingly, we will address solely his sufficiency of the evidence claim.

{¶14} A sufficiency of the evidence review focuses on the prosecution's burden of production, while a manifest weight of the evidence review centers on the prosecution's burden of persuasion. *State v. Merritt*, 7th Dist. No. 09-JE-26, 2011-Ohio-1468, ¶34. In a sufficiency review, an appellate court does not determine

"whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *Merritt* at ¶35, citing *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).

{¶15} Appellant was convicted under both R.C. 4301.58(A) and R.C. 4399.09. Pursuant to R.C. 4301.58(A):

> No person, personally or by the person's clerk, agent, or employee, who is not the holder of an A permit issued by the division of liquor control, in force at the time, and authorizing the manufacture of beer or intoxicating liquor, or who is not an agent or employee of the division authorized to manufacture such beer or intoxicating liquor, shall manufacture any beer or intoxicating liquor for sale, or shall manufacture spirituous liquor.

{¶16} R.C. 4399.09(A) provides in relevant part that: "[n]o person shall keep a place where beer or intoxicating liquors are sold, furnished, or given away in violation of law."

{¶17} Appellant contends that the state failed to present evidence at trial showing that the liquor permit was revoked or that the establishment otherwise lacked operating privileges at the time the charges were filed. Thus, he claims that the state failed to establish one of the elements of both offenses: that he sold alcohol in violation of the law. He claims that the federal court's injunction prohibited Liquor Control from revoking his license until all appeals had been heard. He further argues that the public safety agent who testified did not personally speak to Liquor Control or

look up the status of the license, so had no personal knowledge of the matter. Thus, he asserts that the state failed to establish an element of both offenses.

{¶18} The state contests Appellant's argument that the federal injunction was in effect at the time the charges were filed. The state notes that the period of time Appellant sold liquor without a license at issue was from November 15, 2011 until December 2, 2011. The state contends that the federal injunction ended after exhaustion of his administrative appeals, when the Ohio Supreme Court declined to hear the matter on September 29, 2010. Thus, as the injunction expired before the illegal sales took place, the state argues that it is not a factor in Appellant's sufficiency argument.

{¶19} The state then highlights testimony from one of the agents who stated that she confirmed Appellant did not have a liquor license through the Department of Commerce. This testimony was uncontroverted. As an appellate court must accept all undisputed facts as true, the state asserts that sufficient evidence was presented to show that Appellant did not have a valid liquor license during the relevant time period.

{¶20} Despite Appellant's claims, the injunction specifically stated that it would remain in effect only "until the appeal is heard and decided by the Commission or, if the Commission's decision is unfavorable to the GoGo, until a subsequent appeal has been heard and decided by the appropriate court." Appellant filed an administrative appeal of his denial or renewal in the Tenth District, which was dismissed as beyond time on June 28, 2010. After Appellant's motion for

reconsideration was denied, he appealed to the Ohio Supreme Court. That Court declined review of the case on September 29, 2010.

{¶21} Appellant argues that because his first attempt at appeal was dismissed, an appeal actually was not "heard" until March 29, 2012 when the Tenth District ruled on the merits of the case. However, in the March 29, 2012 decision, the Tenth District rejected all of Appellant's arguments in the matter as *res judicata*. The Tenth District noted that Appellant attempted to raise the same arguments in his earlier appeal, but it was untimely filed. Hence, he was barred from his second attempt to raise these issues. Appellant's argument that the issue was not "heard" until the Court's March 29, 2012 opinion issued is misguided. Appellant exhausted his administrative appeals regarding non-renewal of his liquor license on September 29, 2010, when the Supreme Court declined to hear the matter. On that date, the injunction would expire based on its own language. September 29, 2010 obviously preceded the dates of the liquor sales at issue. In addition to showing the expiration of the injunction, the state presented evidence that Liquor Control confirmed through the Department of Commerce that Appellant did not possess a valid liquor license. As the state presented evidence that liquor was sold in violation of the law, Appellant's sufficiency of the evidence argument is without merit. Accordingly, Appellant's first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED WHEN IT OVERRULED THE MOTION TO DISMISS.

{¶22} Appellant maintains that, pursuant to *Jones, supra*, the trial court erred when it overruled his motion to dismiss. Appellant urges that the incident report used to secure the warrant was not signed or sworn to by any officer, in direct violation of *Jones*. As an unsworn incident report cannot establish probable cause, Appellant contends that the warrant should have been quashed.

{¶23} Appellant also argues that the deputy clerk who signed the arrest warrant was neither neutral nor capable of determining probable cause. Appellant contends that the deputy clerk, who is not a lawyer, testified that she did not know the elements of the offense. Thus, he claims that she demonstrated that she is not capable of determining probable cause as a matter of law.

{¶24} The deputy clerk also testified that she "works together" with the prosecutor in some ways. Thus, Appellant claims she is not neutral. Appellant argues that the trial court erred in not setting the motion for a hearing so that his lawyer could directly examine the deputy clerk on these issues, and that the court's reliance on its decision on the Giancola motion, which argued the same points, was error.

{¶25} In response, the state contends that *Jones* held that a police report satisfies Crim.R. 4 when it is signed under oath or is referenced in a document signed under oath. As the affidavit in this case referenced and incorporated the police report and was sworn to and signed under oath by the submitting officer, it was appropriately used to establish probable cause. Moreover, the state accurately points out that in Ohio a deputy clerk is permitted by law to make a probable cause

determination and issue a warrant. Here, the deputy clerk testified that before determining the existence of probable cause, she reviews the complaint and affidavit to make her determination. This is sufficient to support her probable cause determination in this matter.

{¶26} Additionally, the deputy clerk testified that there are times when she has refused to sign a warrant because the documents did not support probable cause, and she does not "rubber stamp" what is put before her. Therefore, the state argues that the deputy clerk was capable of independently making a probable cause determination.

{¶27} Pursuant to R.C. 2935.09(C), "[a] peace officer who seeks to cause an arrest or prosecution under this section may file with a reviewing official or the clerk of a court of record an affidavit charging the offense committed." Further, R.C. 2935.10(A)-(B)(1) provides that a judge, clerk, or magistrate may issue an arrest warrant on the filing of an affidavit or complaint charging a misdemeanor.

{¶28} Although Appellant argues that a deputy clerk should not be permitted to sign a warrant, the legislature is clear on this issue. Even if we were to agree with Appellant, an amendment to state law is within the province of the legislature, not the courts.

{¶29} Appellant also alleges that this particular deputy clerk lacked the ability to make a probable cause determination because she did not know the elements of the charged offenses. While it is true that the deputy clerk stated that she did not

know the elements of the offense, the word "element" is a term of art with which a non-lawyer may not be familiar.

{¶30} Thus, the real issue is whether the deputy clerk was able to make an independent probable cause determination by applying the facts contained within the affidavit to the relevant law. Crim.R. 4 provides that:

> If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

{¶31} The issuing authority cannot merely accept the officer's conclusions that the person sought to be arrested committed the alleged crime. *Jones, supra,* at ¶29-30, citing *Giordenello v. U.S.,* 357 U.S. 480, 484, 78 S.Ct. 1245, 2 L.E.2d 1503 (1958); *State v. Gill,* 49 Ohio St.2d 117, 360 N.E.2d 693 (1977). He or she is required to make an independent finding of probable cause and must judge the persuasiveness of the facts within the complaint for him or herself. *Id.*

{¶32} Further, an officer seeking an arrest warrant must establish grounds for the belief that the subject committed the alleged offenses. *Jones, supra,* at ¶40. In the body of the complaint or affidavit the officer must provide facts in sufficient detail to answer the question "[w]hat makes you think that the defendant committed the

offense charged?" *Id.,* citing *Jaben v. U.S.,* 381 U.S. 214, 223-224, 85 S.Ct. 1365, 14 L.E.2d 345 (1965).

{¶33} In this case, the deputy clerk was able to clearly annunciate the elements, even if as a layperson she was unfamiliar with the term "elements." In *Jones,* we found that the complaint, unaccompanied by an affidavit, merely stated that the defendant committed the offense on a specific date at a specific place. It lacked an explanation as to the officer's source of knowledge or why the officer believed the defendant committed the crime. Unlike *Jones,* the complaint in this case was attached to a sworn affidavit incorporating an incident report which provided sufficient factual grounds to find that Appellant committed the offense.

{¶34} The incident report in this case described several undercover operations that had been carried out at the GoGo after the investigating agency learned that employees of the establishment were selling alcohol without a liquor license. During each of these undercover operations, agents from the investigating unit entered the GoGo, sat in the seating area and ordered, received, and paid for alcoholic beverages. On November 28, 2011, the investigating agency received a "letter of certificate" from the Department of Commerce stating that the GoGo had not been issued a valid liquor license.

{¶35} After several undercover operations, Agent Csuhta obtained a search warrant. On December 2, 2011, before executing the search warrant, Agent Csuhta completed one last undercover operation. Shortly thereafter, the search warrant was

executed and evidence of liquor sales was obtained. During execution of the search warrant, Appellant informed the agents that he was the owner of the GoGo.

{¶36} Accordingly, the incident report established why the officer believed that Appellant (who admitted to the agents that he owned the business) committed the offense of selling alcohol (the agent stated that she personally bought several alcoholic drinks at the business, which were served to her by GoGo employees) without a permit (the Department of Commerce provided a letter of certificate showing that the business did not have a liquor license). As this incident report established grounds from which an issuing authority could find probable cause to support the officer's belief that Appellant committed the offense in question, Appellant's argument is without merit.

{¶37} Appellant also submits that the incident report was not signed, so that it did not comply with Ohio warrant requirements. The Fourth Amendment of the U.S. Constitution states that "[n]o warrant shall issue but upon probable cause supported by oath or affirmation."

{¶38} The Fourth Amendment specifically states that probable cause can be supported by oath *or* affirmation. The use of the word "or" implies that a warrant need only be supported by one of the requirements. Thus, although the incident report in this case was not signed, the record clearly shows it was sworn to under oath through an affidavit. Therefore, the incident report was properly used to determine probable cause.

{¶39} Next, Appellant asserts that the deputy clerk's statement that she "works together" with the prosecutor makes her simply a rubber stamp for the state. More accurately, however, the deputy clerk actually stated that if she did not find probable cause or if there was a defect in the affidavit she would refer the case back to the prosecutor. Appellant also complains that the deputy clerk has no guidance. However, this is contrary to the deputy clerk's testimony that she was trained by her supervisors in the clerk's office.

{¶40} Finally, Appellant argues that despite the issues he raised in regards to the competency of the deputy clerk, the trial court denied his request to question her at a hearing. The record shows that Appellant had several different attorneys represent him in this matter, and that there was a brief period of time in which he represented himself *pro se*. We note that Appellant himself is a lawyer. Even though his most recent attorney was not permitted to question the deputy clerk in a hearing on his third motion to dismiss, the record establishes that the trial court correctly denied his request.

{¶41} Initially, this matter involved four cases that were consolidated: two cases against Appellant (12-CRB-573, 12-CRB-574) and two against Tara Giancola (12-CRB-571, 12-CRB-572). Because the matter was consolidated, at every stage of this case any motions pertaining to each defendant in this matter were heard together, until Giancola's charges were dismissed as part of a plea bargain. Before the charges against Giancola were dismissed, Giancola and Appellant each filed virtually identical motions to dismiss based on the clerk's alleged lack of ability to

make a probable cause determination. We note that these motions were each filed by the same attorney, as both defendants had the same counsel for a period of time.

{¶42} Appellant and Giancola's motions to dismiss in this consolidated matter were scheduled to be heard on the same date and time. The motions involved the same facts, same issue, and same deputy clerk. However, Appellant failed to appear for this hearing. In order to avoid the issuance of a bench warrant, he waived his *pro se* motion to the court. His former attorney, who was also Giancola's attorney, did proceed with the hearing on the motion, which was denied.

{¶43} After Giancola was dismissed from the case, Appellant filed a second *pro se* motion to dismiss. However, he failed to sign the motion in violation of the court's rules and the court struck this motion as improper. Appellant then obtained new counsel who requested permission to file a third motion to suppress. This third motion forms the basis for Appellant's issues now on appeal. The trial court denied the third motion to dismiss and informed counsel that another motion could not be filed. The judge stated: "[h]e cannot. It's already used. It's withdrawn. It's gone. People can't just keep refiling the motions, no. It's gone." (1/30/13 Hearing Tr., p. 29.)

{¶44} In denying Appellant's third motion, the trial court determined that as the first motion to dismiss filed in the consolidated case was to be heard at the same time and date as the motion filed by his then co-defendant, and the two motions were virtually identical, the denial of Appellant's co-defendant's motion also served as a denial of Appellant's.

{¶45} The trial court emphasized that Appellant had filed three identical motions to dismiss in this matter. The trial court explained that "it's the same issue. I'm not going to just let you keep filing -- not you, but anybody, just keep filing motions because you don't like the way they are ruled on or something, so I'll try another one." (1/30/13 Hearing Tr., p. 27.) Therefore, the trial court found it improper for Appellant to repeatedly file the same motion as the trial court had already ruled on the issue. The record reflects that the trial court did not err in denying Appellant's third motion. We also note that Appellant waived hearing on his first motion to avoid issuance of an arrest warrant for his failure to appear at that hearing. This record reflects no error on the part of the trial court.

{¶46} Accordingly, Appellant's second assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 3

THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANTS' MOTION TO SUPPRESS WITHOUT A HEARING.

{¶47} An appellate review of a motion to suppress evidence presents a mixed question of law and fact. *State v Smith,* 7th Dist. No. 13 CO 10, 2014-Ohio-2933, ¶9, citing *State v. Burnside,* 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8. As the trial court is the trier of fact during a suppression hearing, it is "in the best position to resolve factual questions and evaluate the credibility of witnesses." *Smith* at ¶9, citing *State v. Mills,* 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). As such, "an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Smith* at ¶9, citing *Burnside, supra,* ¶8. Accepting the

findings of facts as true, the appellate court then conducts a de *novo* review to determine whether the facts satisfy the applicable legal standards at issue. *Id.*

{¶48} Appellant first argues that the search warrant fails to state that it was issued on a finding of probable cause, in violation of the Fourth Amendment. As no reasonable officer could believe that a warrant signed without a finding of probable cause is valid, Appellant argues that the warrant was facially defective. Second, Appellant contends that although the warrant provided language indicating that an affidavit was attached, no affidavit was attached to the warrant. Thus, Appellant argues that the warrant violated R.C. 2933.24. Appellant also asserts that the affidavit failed to inform the judge that a federal injunction had been obtained.

{¶49} As a preliminary matter, the state argues that Appellant filed his motion to suppress only one day before trial, in violation of Crim.R 12(D). Thus, the trial court had no obligation to hold a hearing. Even so, the state asserts that Ohio law clearly establishes that Crim.R. 47 requires a defendant to state with particularity the grounds upon which the motion to suppress is made. The state explains that Appellant merely said in his motion that "the officers/agents lacked reasonable suspicion to initiate the investigation * * *." (Appellee's Brf., p. 17.) As the motion was untimely and failed to state its grounds with particularity, the trial court properly denied Appellant's motion to suppress.

{¶50} The state correctly notes that Crim.R. 12(D) provides that "[a]ll pretrial motions except as provided in Crim. R. 7(E) and 16(M) shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier." The state is

equally correct in its assertion that the motion did not specify on what grounds it was being advanced. The trial court was within its power to simply dismiss the motion out of hand. However, although Appellant's motion was untimely filed on the day before trial, the record shows that the trial court briefly entertained the motion.

{¶51} On the first day of trial, Appellant's motions to suppress, to dismiss, and in limine were all addressed. The record clearly shows that the trial court stated that the issues surrounding the search warrant had already been resolved. In relevant part, the following colloquy occurred:

> **THE COURT**: State want to add anything in here? Didn't we have a suppression motion on the search warrant itself?
>
> **[THE STATE]**: Yes, we did, Your Honor.
>
> **THE COURT**: We have a copy of it right here.
>
> **[THE STATE]**: An exhaustive hearing. It lasted for hours.
>
> **THE COURT**: I do recall --
>
> **[THE STATE]**: On whether or not there was pending a restraining order against the state from enforcing the Liquor Control law against GoGo Girl Cabaret, Inc., the holder of the liquor license. * * *
>
> **THE COURT**: Here's a well written entry by this Court on January 30 of 2012.

(2/20/13 Hearing Tr., pp. 34-35.)

{¶52} Contrary to Appellant's arguments, his counsel was given the opportunity to present arguments on the record. Although the trial court could have entirely refused to hear the motion as it was untimely filed, the court clearly determined that the issues raised by all three of Appellant's untimely motions were already resolved by the court. As such, Appellant's argument that the trial court failed to hear his motion is not well taken. Accordingly, Appellant's third assignment is without merit and is overruled.

Conclusion

{¶53} As the state provided evidence that the federal injunction had terminated before the relevant time period and that it had confirmed that Appellant lacked a valid liquor license with the Department of Commerce, sufficient evidence was presented to show that Appellant sold alcohol in violation of the law. The Ohio legislature has clearly stated that a clerk is permitted to issue a warrant and although the deputy clerk in this case was not familiar with the legal term "elements," she clearly was able to annunciate the necessary elements of the crimes and make a probable cause determination. The incident report was referenced within the complaint and was sworn to, thus it complied with Crim.R. 4 and provided the deputy clerk with grounds to find probable cause. Finally, the trial court did not err in denying Appellant's repetitive and untimely motions to dismiss and suppress, as Appellant had already been given an opportunity to present arguments on both motions before the trial court earlier in the case. Accordingly, Appellant's arguments are without merit and are overruled. We hereby affirm the trial court's judgment in full.

DeGenaro, J., concurs.

Robb, J., concurs.