[Cite as *State v. Rucci*, 2015-Ohio-2097.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 14 MA 47
	)	
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. 13 CRB 249-253

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

Atty. Paul J. Gains
Mahoning County Prosecutor
Atty. Ralph M. Rivera
Assistant Prosecuting Attorney
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For Defendant-Appellant:

Sebastian Rucci, Pro se
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JUDGES:

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

Dated: May 28, 2015

[Cite as *State v. Rucci*, 2015-Ohio-2097.]
WAITE, J.

{¶1} Appellant Sebastian Rucci appeals his March 31, 2014 Mahoning County Court conviction on four counts of illegal sale of alcohol ("illegal sale") following jury trial, and his March 31, 2014 bench trial conviction on four counts of keeper of a place where intoxicating liquors are sold in violation of law ("keeper of a place"). Appellant argues that the deputy clerk who issued his arrest warrant was incapable of making a probable cause determination and was not neutral and detached. Appellant also asserts that the state failed to present sufficient evidence that he owned the GoGo Girls Cabaret, Inc. ("GoGo") and that liquor was sold in violation of the law. Thus, he argues that his conviction was not supported by sufficient evidence.

{¶2} Appellant also argues that at least one of the complaints failed to include one of the essential elements of the crime. Thus, he was not placed on notice as to the nature of the charges being filed against him. He asserts that the trial court improperly denied his timely request for a jury trial on charges of keeper of a place, as all of the fines in the aggregate reached the threshold necessary to assert a right to a jury trial. Finally, he claims that the prosecutor made several comments during trial that equated to prosecutorial misconduct, and affected his right to a fair trial.

{¶3} In response, the state argues that Appellant has failed to show that the deputy clerk was not neutral and detached. The state urges that the deputy clerk's testimony establishes that she is capable of making a probable cause determination. Further, the testimony of Tara Giancola, Appellant's employee, and two agents from

the Ohio Department of Public Safety ("ODPS") was sufficient to prove each element of both offenses. The state also argues that before the right to a jury trial attaches, a defendant must face both a $1,000 fine and the possibility of jail or prison, exempting Appellant. Finally, the state argues that the prosecutor's comments did not rise to the level of prosecutorial misconduct. For the reasons provided, Appellant's arguments are without merit and are overruled.

Factual and Procedural History

{¶4} While at one time Appellant held a valid liquor license for his establishment, the Ohio Department of Liquor Control denied Appellant's request to renew this license. In response, Appellant implemented a bring your own beverage ("BYOB") policy at the GoGo. Under this policy, if a patron wanted to drink an alcoholic beverage in the GoGo, they were required to bring their own and surrender it to the bartender in exchange for tickets.

{¶5} The tickets were then given back to the bartender, who would retrieve the patron's stored drinks for a fee of $1.25 per beer and $1.75 fee per other alcoholic beverage. For example, a patron would bring in a six-pack of beer and receive six tickets. If the patron wanted a beer, they would exchange one ticket and pay $1.25 and receive one of their beers. The establishment operated under this BYOB policy from January of 2012 until September of 2012, when the ODPS conducted a raid.

{¶6} The raid resulted from ODPS's ongoing investigation of the GoGo. The investigation was comprised of several undercover operations carried out by ODPS

agents. During one of the undercover operations, when two agents entered the GoGo an employee informed the agents that if they wanted to drink alcohol they would have to provide their own. The employee explained the BYOB policy to the agents, who left and purchased a case of beer.

{¶7} The agents returned to the GoGo and were instructed to give their beer to the bartender. The bartender took the agents' case of beer and provided them with tickets. The agents each requested one of their beers and the bartender asked for two tickets and $1.25 per bottle. The agents complied and each received a beer from their case. Shortly thereafter, a raid was conducted and several items of evidence were seized.

{¶8} As a result of this raid, Appellant was charged with four counts of illegal sales (R.C. 4301.58) and four counts of keeper of a place (R.C. 4399.09). Appellant requested a jury trial on all eight counts, but his request was granted only as to the four illegal sales counts. Appellant was convicted on all four illegal sales counts by the jury and found guilty of all four counts of keeper of a place following a bench trial. He was sentenced to 180 days in jail (150 days suspended), $500 and costs, and the option of either posting a $1,000 bond or one-year abatement for the illegal sales charges. He was fined $250 and costs for the keeper of a place charges. Appellant's motion for a new trial was denied; however, the trial court granted a stay of his sentence pending this timely appeal.

First Assignment of Error

Probable Cause Determination by Non-Neutral Clerk, With No Legal Education or Training, Violates the Fourth Amendment.

{¶9} An arrest warrant "shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge." *State v. Jones*, 7th Dist. No. 11 MA 60, 2012-Ohio-1301, ¶17, citing Crim.R. 4(A)(1). A defendant bears the burden of showing that a clerk lacks the capacity to determine probable cause. *Jones* at ¶18, citing *Shadwick v. City of Tampa*, 407 U.S. 345, 350-351, 92 S.Ct. 2119, 32 L.E.2d 783 (1972).

{¶10} A reviewing court should give great deference to an official's determination of probable cause and resolve all doubtful or marginal cases in favor of upholding the warrant. *State v. Mendell*, 2d Dist. No. 24822, 2012-Ohio-3178, ¶10. A reviewing court's role in such cases is to determine whether there was a substantial basis to find probable cause existed. *Id.*, citing *State v. Tibbetts*, 92 Ohio St.3d 146, 153, 749 N.E.2d 226 (2001).

{¶11} Appellant first argues that clerks lack the necessary legal training to issue a warrant as a matter of law. However, the Ohio legislature has clearly stated that a clerk can issue a warrant. 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) states that a judge, clerk, or magistrate may issue an arrest warrant on the filing of an affidavit or complaint charging a misdemeanor.

{¶12} In fact, the U.S. Supreme Court has noted that no court has held that only a lawyer or a judge has the authority to grant a warrant; rather, it has been recognized that lay people may issue warrants. *Shadwick* at 350-351, 92 S.Ct. 2119, 32 L.E.2d 783 (1972). We recognized the *Shadwick* holding in *Jones, supra.*

{¶13} As the Ohio legislature has clearly determined that a clerk is capable of issuing a warrant, the question becomes whether the deputy clerk is this case was capable of finding probable cause based on this record. Appellant urges that here, the deputy clerk testified that she did not know the elements of the charged offense. However, the word "elements" is a legal term of art that a lay person may not necessarily know.

{¶14} A judge, magistrate, clerk of court, or an officer of the court shall issue a warrant "[i]f 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." (Emphasis deleted.) *Jones*, at ¶27. In determining whether probable cause exists, the issuing authority must determine whether probable cause exists without relying on the conclusions of the police officer. *Id.* at ¶30, citing *State v. Gill*, 49 Ohio St.2d 177, 360 N.E.2d 693 (1977).

{¶15} Before finding probable cause in this case, the deputy clerk testified that she reviewed the complaint and the attached sworn incident report. According to the incident report, on August 24, 2012, two agents arrived at the GoGo and were advised of the BYOB policy. After leaving to purchase a case of beer, the agents

returned and were instructed to take the beer to the bartender. The bartender took the agents' beer and provided them with tickets. The agents then asked for two beers and the bartender took two tickets and charged the agents $1.25 per bottle.

{¶16} The officer also stated in the incident report that Appellant had previously represented himself as the owner of the establishment in official court proceedings and to the media. Further, the officer noted that Appellant had made similar representations to the Ohio Investigative Unit. Although Appellant argues that his previous statements were stale evidence, a probable cause finding does not require the officer to prove that Appellant owned the club. It requires only reasonable grounds for belief of guilt. Accordingly, as the incident report detailed the officer's grounds for believing that Appellant committed the charged offenses, the deputy clerk was capable of making a probable cause determination.

{¶17} Appellant next argues that the deputy clerk was not neutral and detached. A two-prong test is employed when this issue is raised. In this test, Appellant bears the burden of showing by a preponderance of the evidence that the clerk did not make an independent determination of probable cause in issuing the warrant. *State v. Beard*, 12th Dist. No. CA82-01-0013, 1983 WL 4395, *5 (June 15, 1983).

{¶18} Under the first prong, Appellant must show that the clerk was not neutral and detached. *Jones, supra,* at ¶18. The general presumption is that "unless it is shown to the contrary, it is presumed that a public official properly and regularly discharges his duties in accordance with the law and the authority conferred upon

him, and that he will not do any act contrary to his official duty." *Beard* at *4 citing *State v. Williams*, 19 Ohio App.2d 234, 250 N.E.2d 907 (11th Dist.1969).

{¶19} Appellant claims the clerk was trained by the prosecutor, and is controlled by that office. However, Appellant has not provided any support for his belief that the deputy clerk was trained by the prosecutor. To the contrary, she testified that she received training from her supervisor, the Mahoning County Chief Deputy Clerk. Appellant also claims that the deputy clerk testified that she would often confer with the prosecutor when she had a question regarding probable cause, hence relies on him in making probable cause determinations. Again, there is no evidence in the record to substantiate these claims.

{¶20} As to the argument that her work with the prosecutor somehow makes her a rubber stamp for the office, the deputy clerk repeatedly testified that she does not work for or answer to the prosecutor. She merely acknowledged that clerks have frequent contact with the prosecutor and police by the very nature of their work. The fact that the clerk has frequent interaction with the prosecutor does not suggest that she is not neutral and detached.

{¶21} Appellant also grossly exaggerates the prosecutor's alleged role in the probable cause determination made by the clerk. Although the deputy clerk testified that she often turns to the prosecutor when she has questions, her testimony indicates this is designed to ensure that the correct charges are filed and that the facts are correct. Appellant attempts to argue that the prosecutor developed the clerk's affidavit procedure. However, the prosecutor was merely one of three people

who explained a new affidavit form to this deputy clerk. This record reflects that Appellant has not met his burden under the first prong.

{¶22} Under the second prong, we must determine whether the facts support the finding of probable cause. As we have already discussed that the record shows the deputy clerk's determination has support, it is unnecessary to repeat the analysis. Appellant has not met his burden as to either prong of the test. Accordingly, Appellant's arguments are without merit and his first assignment of error is overruled.

Second Assignment of Error

The Criminal Complaints Fail to Charge an Offense for Selling Alcohol Without a License in Violation of R.C. § 4301.58.

{¶23} Appellant argues that the complaint should have been dismissed because the phrase "shall sell, keep, or possess beer, intoxicating liquor, or alcohol" is missing from the complaint. As the complaint failed to include an essential element of the charged offense, he urges that it did not fairly and reasonably inform him of all essential elements of the charges against him. Further, he asserts that the incomplete nature of the complaint has stripped the trial court of subject matter jurisdiction to hear the case.

{¶24} The state argues in response that the requirements for a complaint only require a written statement of the essential facts of the charged offense and the statute's numerical designation. In this case, the state argues that the complaint set forth the essential facts of the charged offense and the relevant statute's numerical designation. Thus, the state asserts that the requirements of Crim.R. 3 were met.

{¶25} According to Crim.R. 3, a valid complaint must meet three requirements: (1) a written statement of the essential facts constituting the charged offense; (2) the numerical designation of the applicable statute or ordinance; and, (3) it must be made under oath. A complaint must provide reasonable notice to a defendant of the nature of the charged offense. *State v. Andrews*, 10th Dist. No. 98AP-1098, 1999 WL 569268 (Aug. 5, 1999), citing *State v. Sweeney*, 72 Ohio App.3d 404, 406, 594 N.E.2d 1000 (10th Dist.1991). A complaint provides reasonable notice when it includes: "the nature of the offense, the time and place of the alleged offense, the statutory language, the statute number, and a brief description of the conduct alleged, thus stating all of the essential elements of the offense." *Andrews* at *1, citing *Sweeney*.

{¶26} Appellant's argument is made as though there was only one complaint filed in this matter. In fact, Appellant attaches a copy of one complaint involving an R.C. 4301.58 offense that lacks the language "shall sell, keep, or possess beer, intoxicating liquor, or alcohol." However, there are four complaints involving R.C. 4301.58 filed against Appellant and each complaint was filed on the same date. The remaining complaints charging this identical offense do include the phrase "shall sell, keep, or possess beer, intoxicating liquor, or alcohol."

{¶27} The goal of a complaint is to ensure that a defendant is aware of the nature of the charges against him. *State v. Echemendia,* 6th Dist. No. OT-95-059, 1996 WL 475994, *1 (Aug. 23, 1996). A person is placed on notice when an "individual of ordinary intelligence would not have to guess as to the type and scope

of the conduct prohibited." *Id.,* citing *People v. Taravella,* 13 Mich.App. 515, 522, 350 N.W.2d 780, 784 (1984). Although one of four complaints might be lacking here, the remaining complaints charging the same offense contain all the essential elements of the offense. Thus, even if the disputed language is missing from one complaint, Appellant was clearly placed on notice of the charges against him through the other complaints regarding the same offense. Accordingly, any arguable defect in one of the four complaints is harmless to his conviction.

{¶28} As the remaining R.C. 4301.58 complaints are valid on their face and the R.C. 4399.09 complaints do not appear to be insufficient, Appellant's argument is without merit and his second assignment of error is overruled.

Third Assignment of Error

> Sebastian Rucci Filed a Timely Demand For a Jury Trial and the Trial Court Lacked Jurisdiction to Conduct a Non-Jury Trial on the Charges for Violating R.C. § 4399.09.

{¶29} R.C. 2945.17(A) provides a defendant with the general right to a jury trial. R.C. 2945.17(B) provides in relevant part that:

> The right to be tried by a jury that is granted under division (A) of this section does not apply to a violation of a statute or ordinance that is any of the following:
>
> (1) A violation that is a minor misdemeanor;

> (2) A violation for which the potential penalty does not include the possibility of a prison term or jail term and for which the possible fine does not exceed one thousand dollars.

{¶30} Appellant argues that he faced a possible fine that exceeded $1,000 and he timely requested a jury trial. Therefore, he claims the trial court erred in denying this request. While he was granted a jury trial on his R.C. 4301.58 charges, the request as to charges filed pursuant to R.C. 4399.09 was denied. Appellant notes that each of the four counts under R.C. 4399.09 carried a possible $500 fine; thus, if convicted of all of them he faced a possible fine in excess of $1,000 which entitled him to a jury trial.

{¶31} Appellant also argues that R.C. 4399.09 permits a business to be abated as a nuisance if the statute is violated. Appellant alleges that the cost of an abatement exceeds the $1,000 threshold, as the business cost him $700,000 to open. Finally, Appellant notes he faced a possible $1,000 bond. He thus asserts that the trial court erred in denying his request for a jury trial on all issues and the trial court lacked jurisdiction to try him without a jury.

{¶32} The state responds that the maximum penalty for a violation of R.C. 4399.09 does not involve jail time and carries a fine of less than $1,000. Thus, the trial court properly denied Appellant's request for a jury trial.

{¶33} Appellant's charges pursuant to R.C. 4399.99 do not carry the possibility of jail time. R.C. 2945.17(B) specifically excludes from the jury's purview "[a] violation for which the potential penalty does not include the possibility of a prison

term or jail term *and* for which the possible fine does not exceed one thousand dollars." (Emphasis added.) The word "and" means that both jail time and a fine must be possible before the right to a jury trial attaches. As Appellant's charges did not carry the possibility of prison or jail time, our review of this matter is at an end. Appellant's third assignment of error is without merit and is overruled.

Fourth Assignment of Error

Appellant's Convictions Are Not Supported Legally By Sufficient Evidence.

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

{¶35} Appellant was convicted under both R.C. 4301.58 and R.C. 4399.09. Pursuant to R.C. 4301.58(A), "[n]o 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." 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."

{¶36} Appellant claims that there was no evidence to prove beyond a reasonable doubt that Appellant or his clerk, agent, or employee, sold alcohol without a valid permit. He also argues that there was no evidence to prove that he was the keeper of the business during the relevant time period. In support of his argument, Appellant cites to Giancola's testimony where she stated that at some point she had begun answering to a new owner who was in charge of the day-to-day operations. Appellant notes that Giancola also testified that she did not remember whether Appellant was involved in the business during the relevant time period. Additionally, Appellant argues that the agents did not provide any testimony linking him to the business during the relevant time period.

{¶37} Appellant argues that he sold the business on two separate occasions. Relevant to this appeal, he states that he sold the business to Norman Dunlap. He alleges Dunlap owned the business during the relevant time period. According to Appellant, Dunlap ran the business even though he still owed Appellant half of the purchase price. Appellant additionally contends that he retained no operational authority after selling the business to Dunlap and that he allowed Dunlap to use the Go-Go name and signage.

{¶38} The state argues in response that Giancola testified that she understood Appellant owned the establishment from January of 2012 until August 2012 and that he was her employer. The state notes she testified that although

Dunlap was involved in the business' operations, Appellant had told her that the two were partners. The state also argues that the record reflects Appellant held himself out to be the establishment's owner and operator and he was often seen in the establishment's office.

{¶39} Appellant did not contest that the BYOB policy was designed at a meeting in which he took part. After the meeting, the state contends that the establishment reopened under this BYOB system and that the establishment continued to so operate from January to August of 2012.

{¶40} Addressing Appellant's arguments regarding the sufficiency of the evidence as to R.C. 4301.58(A), the state was charged with presenting evidence that Appellant, his agent, or employee(s) sold, kept, or possessed alcohol without a valid permit. Appellant admits that the establishment lacked a permit, conceding the final element. The only issue remaining is whether Appellant's employees sold, kept, or possessed alcohol at the establishment.

{¶41} As a threshold issue, we must determine whether the state presented sufficient evidence that Appellant owned or controlled the business before we can determine whether his employees sold alcohol. It is not disputed that Appellant owned the business at least until the liquor license was non-renewed. As to the relevant time period, the state presented Tara Giancola who testified that Appellant attending a meeting with her, his attorney, and his attorney's son (also an employee) to discuss the implementation by her and other employees of the BYOB policy. Appellant concedes that he was present at this meeting. It is further noted that

Norman Dunlap, who Appellant says owned the club during this time period, did not attend the meeting. Giancola testified that at some later point Appellant introduced her to Dunlap as his business partner. Giancola testified that she believed Appellant was her boss and that he was active in the business' daily operations and decision making. In contrast, Appellant concedes that he has no documentation or evidence other than his testimony to show that he sold the business at any time. Thus, the record reflects sufficient evidence that Appellant owned or controlled the establishment.

{¶42} Next, we must determine whether an employee of the business sold alcohol during the relevant time period. Appellant concedes that the establishment operated under a BYOB policy during the relevant time period. Giancola explained the policy during her testimony. She stated that patrons would enter the bar area and exchange their beer and liquor for tickets. Employees would then hold the beer/liquor until the patron gave an employee a ticket and paid a fee per beer or alcoholic beverage.

{¶43} Additionally, the investigating agents testified that during an undercover operation they obtained beer, brought it into the establishment, and exchanged it with the bartender for tickets and for payment of a fee. As Giancola and the agent's testimony presents evidence that money was exchanged for alcohol and Appellant has conceded the final element, the state presented sufficient evidence on each element of R.C. 4301.58(A).

{¶44} In regard to the R.C. 4399.09 charges, the state was required to show that Appellant was the keeper of a place where alcohol was sold or given away in violation of the law. As earlier addressed, the record contains sufficient evidence that Appellant operated the establishment and that liquor was sold without a permit in violation of the law. Accordingly, Appellant's fourth assignment of error is without merit and is overruled.

Fifth Assignment of Error

Appellant's Convictions Are Not Supported By the Manifest Weight of the Evidence.

{¶45} Although the wording of Appellant's assignment appears to raise a manifest weight argument, in actuality his arguments are addressed solely to the issue of prosecutorial misconduct. As such, we will discuss this assignment under a prosecutorial misconduct analysis, as framed. As Appellant did not object to any of the prosecutor's comments at trial, he has waived all but a plain error review. See Crim.R. 52(B). Under the plain error doctrine, the record must present an obvious error that affected Appellant's substantial rights under exceptional circumstances. *State v. Collins,* 7th Dist. No. 10 Co 10, 2011-Ohio-6365, ¶33. To determine whether an appellant's substantial rights have been affected, the test is whether the outcome would clearly have been different if not for the error. *Id.*

{¶46} During trial, the prosecutor stated that Appellant was using an "empty chair defense," as he testified that a person named Dunlap actually owned the club but Dunlap was not present and never called as a witness. There is nothing to

suggest that these comments impacted the outcome of the trial in any way, nor do they appear to be error. Appellant also alleges that the prosecutor called him a liar during his closing arguments. Although the prosecutor questioned the credibility of Appellant's testimony, he never used a pejorative term. As none of the prosecutor's comments appear to be outside the bounds of conduct or clearly affected any of Appellant's substantial rights, Appellant's arguments are without merit. Accordingly, his fifth assignment of error is overruled.

Sixth Assignment of Error

> The Trial Court Incorrectly Denied Appellant's Motion for Acquittal in Violation of Criminal Rule 29.

{¶47} Crim.R. 29(A) provides:

> The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

{¶48} An appellate court reviews the denial of a Crim.R. 29 motion for acquittal under the same standard used to review a sufficiency of the evidence claim. *State v. Monigold,* 7th Dist. No. 03 CO 25, 2004-Ohio-1554, ¶24, citing *State v. Rhodes*, 7th Dist. No. 99 BA 62, 2002-Ohio-1572, ¶9; *State v. Carter*, 72 Ohio St.3d 545, 553, 651 N.E.2d 965 (1995). When reviewing sufficiency of the evidence, "[t]he

relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Smith*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997), citing *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶49} As previously discussed, the state presented sufficient evidence as to each element of both offenses. Thus, in looking at the evidence in a light most favorable to the state, a rational trier of fact could have found that each element was proven beyond a reasonable doubt. Accordingly, Appellant's arguments are without merit and his sixth assignment of error is also overruled.

Conclusion

{¶50} Appellant has failed to show that the deputy clerk was not neutral and detached. Further, he has not shown that she lacked the ability to make a probable cause determination and the trial court did not err in denying Appellant's motion to dismiss on this basis. This record also reflects that Appellant was fully placed on notice of the charges against him looking at all of the complaints regarding the same offense which were filed on the same day as a whole. As to Appellant's jury trial argument, his possible punishment did not include jail or prison time and he was clearly not entitled to a jury trial on those charges. Additionally, the state presented sufficient evidence on each element of both offenses. As his convictions were supported by sufficient evidence, the trial court did not err in denying his motion for acquittal. Finally, there is nothing in the record to suggest that comments made by

the prosecutor were in any way improper. Accordingly, Appellant's arguments are without merit and are overruled.

DeGenaro, J., concurs in judgment only.

Robb, J., concurs.