

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
PORTAGE COUNTY, OHIO**

STATE OF OHIO,	:	<b>OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NOS. 2010-P-0051 and 2010-P-0055</b>
ARTHUR JONES, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeals from Portage County Municipal Court, Ravenna Division, Case Nos. 2009 CRB 1736 R, and 2009 CRB 1737 R.

Judgment: Affirmed.

*Victor V. Viglucci*, Portage County Prosecutor, and *Timothy J. Piero*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

*Dawn M. King*, P.O. Box 2081, Akron, OH 44309 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} This appeal involves a misdemeanor complaint filed by a dog warden charging appellant with cruelty to animals. Appellant claims the Portage County Municipal Court did not have subject matter jurisdiction because the complaint was not brought by a “peace officer,” or filed by a “private citizen” after a review by a “reviewing official.”

{¶2} As we will explain, the trial court had subject matter jurisdiction in this matter whether we construe the instant complaint as having been filed by the dog

warden as a private citizen, or as a “peace officer.” Construing the complaint as the former, we find it valid under Crim.R. 3, which invoked the subject matter jurisdiction of the trial court; any defects in the institution of prosecution were waived when the defendant did not object before trial. Construing the complaint as the latter, we conclude dog wardens would have the authority to file a complaint charging cruelty to animals as a “peace officer” as they are enforcement agents charged with investigative duties and the responsibility of enforcing the statutes regulating and protecting dogs.

**{¶3} Substantive Facts and Procedural History**

{¶4} On June 24, 2009, a witness, Lisa Saltsman, saw a dog running loose in the intersection of Prospect Street and Lake Street in Ravenna, Portage County. The dog was running in the middle of the intersection, causing the cars to honk and swerve around the dog, which was later determined to be a four-month-old pit bull puppy. The witness pulled over and called the county’s dog warden for assistance. Appellant, Arthur Jones, emerged from his apartment nearby and began to yell for the dog to come to him. While scolding the dog, he grabbed the dog by its choke collar and lifted the dog off the ground. The dog dangled from its collar and swung back and forth for between ten to 20 seconds, according to the witness’ estimate.

{¶5} The witness called the dog warden’s office, again, to report what she had seen, and then went to the dog warden’s office. Jason Williard, a deputy warden, interviewed her, and she provided a statement of her account of the incident.

{¶6} Mr. Williard then filed four separate complaints with the clerk of courts for the Portage County Municipal Court. Mr. Jones was charged with (1) a failure to obtain liability insurance for a vicious dog in violation of R.C. 955.22(E), a misdemeanor of the first degree, (2) cruelty to animals in violation of R.C. 959.13(A)(3), a misdemeanor of

the second degree, (3) a failure to confine a vicious dog in violation of R.C. 955.12(D)(1), a misdemeanor of the first degree, and (4) a failure to register a dog for the current year in violation of R.C. 955.01, a minor misdemeanor.

{¶7} Mr. Jones pled not guilty to all charges. After a bench trial, the court granted Mr. Jones' Crim.R. 29 motion and dismissed the charge of failure to obtain liability insurance for a vicious dog. The court also acquitted him of a failure to properly confine a vicious dog and a failure to register a dog for the current year. The court, however, found him guilty of cruelty to animals. It sentenced him to a 90-day jail term and imposed a \$750 fine and court costs, but suspended 87 days of the jail term and the fine, on the conditions that he: perform 40 hours of community service; violate no law for two years; be placed on supervised probation for 12 months; pay the court costs; and own no animals.

{¶8} Mr. Jones now appeals from the trial court's judgment.<sup>1</sup> He raises the following assignments of error for our review:

{¶9} “[1.] The trial court did not enjoy subject-matter jurisdiction and as such, the conviction after trial is a nullity.

{¶10} “[2.] Mr. Jones was denied his right to effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, Sections 10 and 16 of the Ohio Constitution.”

{¶11} Mr. Jones claims that a dog warden does not have the authority to file a complaint, and therefore the municipal court lacked subject matter jurisdiction over this criminal matter; thus, his conviction is a nullity.

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1. Mr. Jones filed two notices of appeal from the two lower court cases, No. 2010-P-0051 and No. 2010 P-0055, which we consolidate for disposition.

{¶12} As an initial matter, a claim of lack of subject matter jurisdiction may be raised at any stage of the proceedings. *In re Byard* (1996), 74 Ohio St.3d 294, 296. We review a subject matter jurisdiction claim de novo. See *Swift v. Gray*, 11th Dist. No. 2007-T-0096, 2008-Ohio-2321, ¶38.

**{¶13} Crim.R. 3 Complaint**

{¶14} We begin our analysis with Crim.R. 3, which governs the requirements of a valid complaint in Ohio.

{¶15} Crim.R. 3 states, in its entirety: “The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.”

{¶16} As this court explained, in *State v. Patterson* (May 22, 1988), 11th Dist. No. 96-T-5439, 1998 Ohio App. LEXIS 2289, there are three requirements for a complaint to be valid under Crim.R. 3: “First, the complaint must set forth a written statement of the facts that constitute the essential elements of the offense charged. The essential elements of a given offense are those facts which must be proven to obtain a conviction of the accused. The complainant does not need to have personal knowledge of the facts stated in the complaint, but rather must only have reasonable grounds to believe that the defendant committed the crime charged. The second requirement is that the complaint must state the numerical designation of the Revised Code section or municipal ordinance which the defendant allegedly violated. Finally, the third requirement is that the complaint must be made under oath before any person authorized by law to administer oaths.” *Patterson* at \*7.

**{¶17} The Instant Complaint is Valid under Crim.R. 3**

{¶18} With that in mind, we now turn to the complaints against Mr. Jones. The documents filed by Mr. Williard were titled “Complaint,” although they were actually written in an affidavit form. The “Complaint” charging Mr. Jones with cruelty to animals stated, in pertinent part: “Before me, personally came Deputy Dog Warden Jason Williard \*\*\* [w]ho, being duly sworn according to law, deposes and says that on or about the 24[th] day of June, 2009, in the County of Portage, State of Ohio, one Arthur Jones Jr. \*\*\* [violated] 959.13(A)(3) [which states:] (A) No person shall: (3) [c]arry or [c]onvey an animal in a cruel or inhumane manner. On 6-24-2009 our office received a complaint about animal cruelty. The PR Mrs. Saltsman stated that she observed a pit bull running in the intersection of Prospect St. and Lake St. in Ravenna City. She advised that owner (Arthur Jones) came out into the road and picked the puppy up by it’s [sic] choker collar. She advised that the puppy was hanging in the air and Mr. Jones was yelling at the dog. Mrs. Saltsman yelled at Mr. Jones to not handle the dog in that manner. He told her to mind her business and he then threw the puppy into his apartment. Said act being CRUELTY TO ANIMALS M-2 [c]ontrary to and in violation of Ohio Revised Code City Ordinances 959.13(A)(3) and against the pace and dignity of the State of Ohio.”

{¶19} Below that statement, the deputy Clerk of Court signed her name after the jurat language “[s]worn to and subscribed before me this 25th day of June 2009.” Mr. Williard signed his name as the complainant.

{¶20} Although the “Complaint” is actually in the form of an affidavit, we note courts have not made a distinction between the terms “complaint” and “affidavit” as a charging instrument. As this court remarked in *Patterson*, “Crim.R. 3 does not distinguish between complaints and affidavits. Rather, it uses the word ‘complaint’ to

describe both.” *Patterson* at \*8. See, also, *State v. Miller*, 9th Dist. No. 3908, 1986 Ohio App. LEXIS 6372, \*5. (Crim.R. 3 makes no distinction between affidavits and complaints, utilizing the word “complaint” to describe both, defining same as a written statement of the essential facts constituting the offense charged; there is no specific provision or distinction with respect to a prosecutor’s complaint and both terms are used interchangeably in the Revised Code.)

{¶21} The charging complaint in this cruelty to animal case satisfies the three requirements of Crim.R. 3: (1) it set forth a written statement of the facts constituting the essential elements of the offense charged; (2) it stated the numerical designation of the Revised Code section, i.e., R.C. 959.13(A)(3), which Mr. Jones allegedly violated; and (3) it was made under oath before a person authorized by law to administer oaths—the complaint here was sworn to before a deputy clerk of court for the Portage County Municipal Court. See *Patterson* at \*10, citing *State v. Palider*, 9th Dist. No. 12557, 1987 Ohio App. LEXIS 5924, \*3 (a complaint before a deputy clerk of court authorized to administer oaths is valid). “The primary purpose of the charging instrument in a criminal prosecution is to inform the accused of the nature of the offense with which he or she is charged.” *City of Cleveland v. Simpkins*, 8th Dist. No. 95361, 2011-Ohio-1249, ¶6, citing *Akron v. Holland Oil Co.* (2001), 146 Ohio App.3d 298. The complaint charging Mr. Jones with cruelty to animal in this case clearly informed Mr. Jones the nature of the offense with which he was charged. Thus, the complaint is valid under Crim.R. 3.

**{¶22} Complaint Valid Under Crim.R. 3 Invokes Subject Matter Jurisdiction of Municipal Court**

{¶23} “Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits” and “defines the competency of a court to render a valid judgment in a particular action.” *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87.

“Subject matter jurisdiction defines the power of the court over classes of cases it may or may not hear. If a subject case falls within the class of cases over which the court has subject matter jurisdiction, it is properly before the court. It is a function of constitutional or legislative entitlement; *it is not a function of the charging instrument*. In criminal matters the inquiry is *whether the court is the proper forum to hear this type of case*.” (Emphasis added.) *State ex rel. Davet v. Pianka* (Sept. 16, 1999), 8th Dist. No. 76337, 1999 Ohio App. LEXIS 4456, \*12, citing *State v. Swiger* (1998), 125 Ohio App. 3d 456, appeal dismissed (1998), 82 Ohio St.3d 1411; *Avco Financial Services Loan, Inc. v. Hale* (1987), 36 Ohio App.3d 65; and *State ex rel. Willis Wright v. Judge Burt Griffin* (July 1, 1999), 8th Dist. No. 76299, 1999 Ohio App. LEXIS 3115.

{¶24} Municipal courts are created by statute and their subject matter jurisdiction is set by statute. *Cheap Escape Co. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, ¶7, citing R.C. 1901.01. With respect to criminal matters, the statute provides that a municipal court has subject matter jurisdiction over misdemeanors committed within its territorial jurisdiction. See R.C. 1901.20 (A)(1) (“[t]he municipal court has jurisdiction of \*\*\* the violation of any misdemeanor committed within the limits of its territory.”) See, also, *State v. Kendrick*, 1st Dist. No. C-10041 and C-100142, 2011-Ohio-212, ¶5. Furthermore, the filing of a complaint against a defendant invokes the jurisdiction of a municipal court. *City of Zanesville v. Rouse*, 126 Ohio St.3d 1, 2010-Ohio-2218, ¶4-5. More specifically, the filing of a valid complaint pursuant to Crim.R. 3 invokes the subject matter jurisdiction of the court. *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, ¶12. See, also, *State v. Robinette* (1997), 118 Ohio App.3d 450, 454-455, citing *New Albany v. Dalton* (1995), 104 Ohio App.3d 307. See, also, *In re Burton S.* (1999), 136 Ohio App.3d 386, 391.

{¶25} Here, the complaint charging Mr. Jones with cruelty to animals was, on its face, valid under Crim.R. 3 -- it set forth the facts constituting the elements of the offense charged; it stated the statutory section of the offense; and it was made under oath before a deputy clerk who was authorized to administer oaths. Thus, the Portage County Municipal Court's subject matter jurisdiction was properly invoked by the filing of the complaint.

**{¶26} Whether the Dog Warden Has the Authority to File the Complaint**

{¶27} Mr. Jones claims the trial court lacked subject matter jurisdiction because a dog warden has no statutory authority to file a complaint of cruelty to animals. Initially, we agree with Mr. Jones that R.C. 955.12, the statute governing dog wardens, does not expressly authorize a dog warden to file a complaint of cruelty to animals.

{¶28} Although the dog warden statute does not authorize a dog warden to file complaints of cruelty to animals, the issue remains as to whether a dog warden may file a complaint either as a "peace officer" or as a "private citizen," pursuant to R.C. 2935.09 ("Accusation by affidavit to cause arrest or prosecution"). This question would appear to present a case of first impression.

**{¶29} Prior Version of R.C. 2935.09**

{¶30} R.C. 2935.09 provides for the initiation of a criminal action by a "peace officer" or "private citizen." The statute was revised in 2006. The prior version stated:

{¶31} "In all cases not provided by sections 2935.02 to 2935.08, inclusive, of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer, or a private citizen having knowledge of the facts, shall file with the judge or clerk of a court of record, or with a magistrate, an affidavit charging the offense committed, or shall file such affidavit with

the prosecuting attorney or attorney charged by law with the prosecution of offenses in court or before such magistrate, for the purpose of having a complaint filed by such prosecuting or other authorized attorney.”

{¶32} This court, interpreting (the prior version) of R.C. 2935.09, explained the statute as follows:

{¶33} “\*\*\* [A] police officer or a private citizen may employ either of two methods ‘in order to cause the arrest or prosecution of a person charged with committing an offense[.]’ First, the complainant may allege that an offense has been committed by filing an affidavit with a judge, clerk of court of record, or magistrate. Second, the complainant may file such an affidavit with a prosecuting attorney. \*\*\*. In the former scenario, the affidavit is the charging instrument and, in effect, becomes the complaint. Under the latter scenario, the prosecuting attorney files a formal complaint and attaches the affidavit thereto.” *Patterson* at \*8, citing 2 Katz & Giannelli, *Criminal Law* (1996) 2-3, Section 35.3.

{¶34} Under the prior version of the statute, there were two ways that a prosecution could be initiated by a private citizen; the first method was by the filing of an affidavit with a judge or clerk of a court of record, and the second was by filing an affidavit with the prosecuting attorney who, in turn, would file a complaint. *State v. McNeese* (Oct. 23, 1995), 12th Dist. No. CA93-12-108, 1995 Ohio App. LEXIS 4665, \*14, citing *State v. Maynard* (1964), 1 Ohio St.2d 57, 58-59.

{¶35} **Current Version of R.C. 2935.09**

{¶36} The General Assembly amended R.C. 2935.09, effective June 30, 2006. Am.H.B. No. 214, 151 Ohio Laws, Part III, 5973. The current version of the statute states, in pertinent part:

{¶37} “(A) As used in this section, ‘reviewing official’ means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.

{¶38} “(B) In all cases not provided by sections 2935.02 to 2935.08 of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer or a private citizen having knowledge of the facts shall comply with this section.

{¶39} “(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.

{¶40} “(D) A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. \*\*\*”

{¶41} A comparison of the two versions shows that, under the amended statute, the ability of a private citizen to “cause prosecution” by filing an affidavit is now limited. Under the prior version, either a peace officer or a private citizen may file an affidavit with the judge or a clerk of court to commence prosecution. *State v. Hooper* (1971), 25 Ohio St.2d 59, 61. Under the current version of the statute, a “peace officer” may still “cause prosecution” by filing an affidavit with a “reviewing official” (i.e., a judge or a prosecutor) or the clerk of a court. R.C. 2935.09(C). However, a private citizen, to “cause prosecution,” now must file an affidavit with a “reviewing official” for the purpose

of review to determine if a complaint should be filed by the prosecutor.<sup>2</sup> R.C. 2935.09(D).

**{¶42} Whether the Dog Warden Could File the Complaint as Private Citizen**

{¶43} With that statutory background, we will now address first the question of whether Mr. Willard could file a complaint as a private citizen to cause prosecution under the current version of R.C. 2935.09.

{¶44} Under the amended statute, to “cause prosecution,” a private citizen must file an affidavit with a “reviewing official” (a judge or a prosecutor) for a review and determination of whether a complaint should be filed by the prosecutor.

{¶45} There is no doubt the proper procedure under R.C. 2935.09 was not followed in this case. Thus, even though the complaint in this case meets the requirements of Crim.R. 3 for a valid charging instrument, it does not meet the requirements of R.C. 2935.09, if the complaint is construed as having been filed by Mr. Willard as a private citizen. The issue is then whether the defect affects the trial court’s jurisdiction.

**{¶46} Defects in Institution of Prosecution are Waived if not Objected to**

{¶47} In a recent decision of the Supreme Court of Ohio, *State v. Mbodji*, supra, a wife filed a complaint of domestic violence against her husband without the complaint being first reviewed by a reviewing official pursuant to R.C. 2935.09. The court held that “[a] complaint that meets the requirements of Crim.R. 3 invokes the subject-matter jurisdiction of a trial court.” *Id.* at paragraph one of syllabus.

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2. The synopsis of the amendment provided by Ohio Advance Legislative Service states that the purpose of the amendment is “[t]o amend section 2935.09 of the Revised Code to limit the role of clerks of court in the procedures regarding the filing by private persons of affidavits alleging that a person committed a criminal offense and to require that an appropriate official review affidavits filed by private persons to determine if a complaint should be filed.”

Furthermore, when a defendant challenged the fact that the complaint was not reviewed by a reviewing official before filing, he was challenging a procedural defect in the prosecution of the case. *Id.* at ¶19. Crim.R. 12(C)<sup>3</sup> requires that objections based on the defects in the institution of the prosecution be raised prior to trial. *Id.* “When a criminal complaint and affidavit are signed by a private citizen but are not reviewed by a reviewing official before filing pursuant to R.C. 2935.09, the defect is not jurisdictional but may be the subject of a Crim.R. 12(C) motion before trial.” *Id.* at paragraph two of syllabus.

{¶48} Therefore, the fact that the complaint filed by Mr. Willard as a private citizen did not comply with the proper procedure under R.C. 2935.09 does not affect the trial court’s jurisdiction. Mr. Jones failed to raise his objections prior to trial pursuant to Crim.R. 12(C), and therefore he waived the issue.

{¶49} This case is to be distinguished from situations where the complaint is invalid under Crim.R. 3. While deficiencies in the institution of a criminal prosecution do not affect the subject matter jurisdiction of a court, the complaint must be valid under Crim.R. 3 in order to invoke the jurisdiction of the court. For instance, as this court pointed out in *Patterson*, a defect in the complaint such as the absence of a properly sworn affidavit is in violation of Crim.R. 3, and therefore, is a jurisdictional issue that cannot be waived by the defendant. *Patterson* at \*9, citing *State v. Bretz* (Aug. 27, 1983), 11th Dist. No. 92-P-0008, 1993 Ohio App. LEXIS 4142, \*3.

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3. {¶a} Crim.R. 12(C) provides, in pertinent part:

{¶b} “Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

{¶c} “(1) Defenses and objections based on defects in the institution of the prosecution[.]”

{¶50} Other appellate courts have reached a similar conclusion. In *Kendrick*, the appellant claimed the trial court lacked subject matter jurisdiction to proceed on several menacing complaints because they were filed by a private citizen without having been reviewed by a judge or prosecutor, in violation of R.C. 2935.09. The First District rejected the claim, holding the municipal court had subject matter jurisdiction over the misdemeanor charges because the complaints satisfied the requirements of Crim.R. 3. *Kendrick* at ¶9. See, also, *State v. Blair*, 1st Dist. No. C-100150 and C-100151, 2010-Ohio-6310 (the municipal court had subject matter jurisdiction over misdemeanor offenses when the complaints were valid under Crim.R. 3 even though the complaints filed by the private citizens were never assessed by a reviewing officer as required by R.C. 2935.09); *Simpkins*, supra (the municipal court had subject matter jurisdiction even though the complaint was deficient due to the deputy clerk of court's failure to date his or her signature).

{¶51} Construing the instant complaint as filed by Mr. Williard as a private citizen, we conclude a valid complaint meeting the requirements of Crim.R. 3 had been filed, which invoked the subject matter jurisdiction of the municipal court. Furthermore, Mr. Jones waived any deficiencies regarding the institution of the prosecution by failing to raise the issue before trial.

**{¶52} Whether a Dog Warden Can File Complaint of Cruelty to Animals as a "Peace Officer"**

{¶53} R.C. 2935.01(B) defines a "peace officer" and proscribes a lengthy list of those who are "peace officers." A dog warden is not specifically listed as one of them. However, we note that the dog warden statute vests a dog warden with police powers for certain matters under Chapter 955. That statute states, in pertinent part: "The wardens and deputies shall have the same police powers as are conferred upon sheriffs

and police officers in the performance of their duties as prescribed by sections 955.01 to 955.27, 955.29 to 955.38, and 955.50 of the Revised Code.” The filing of a complaint of animal cruelty is *not* referenced in any of the enumerated sections.

{¶54} Inasmuch as our earlier analysis disposes of the first assignment of error, we need not consider the issue of whether Mr. Williard could also file a complaint charging cruelty to animals under R.C. 2935.09 as a “peace officer.”

{¶55} While it may be argued that the legislature must have intended the dog wardens and his or her deputies to have the power to file an animal cruelty complaint as they are enforcement agents charged with investigative duties and the responsibility of enforcing the statutes regulating and protecting dogs, this question is best addressed by the General Assembly.

{¶56} The first assignment of error is overruled.

{¶57} **Continuance of Trial and Ineffective Assistance of Counsel Claim**

{¶58} Under the second assignment of error, Mr. Jones presents two claims. He claims the trial court’s denial of his request for a continuance of trial when his counsel was “unprepared” on the day of trial was an abuse of discretion, and, as a result, he was deprived of effective assistance of counsel.

{¶59} We review the trial court’s grant or denial of a continuance for abuse of discretion. *State v. Unger* (1981), 67 Ohio St.2d 65, 67.

{¶60} The record reflects the matter was initially set for trial on November 12, 2009. Mr. Jones failed to appear and the court issued a warrant. He was arrested on the warrant and the trial date was set for February 11, 2010. The notice for the new trial date was sent to Mr. Jones on December 7, 2009.

{¶61} On February 11, 2010, immediately prior to trial, his public defender reported to the court that Mr. Jones did not apply for representation by the public defender's office until December 2009, and she had just met with Mr. Jones that morning. She requested a continuance because Mr. Jones wanted to call some neighbors as witnesses. Mr. Jones told the court he was unprepared because he understood the notice to relate to a pretrial, even though the December 7, 2009 notice clearly stated "TRIAL" in capital letters. The trial court denied the request for continuance, allowed the state to present its case in chief, but permitted Mr. Jones to present his witnesses on a later date. On May 11, 2010, the trial resumed, and Mr. Jones presented a witness, an acquaintance who testified that the pit bull puppy was very friendly and lovable but who had no knowledge of the June 24, 2009 incident because he was out of town on that day.

{¶62} It is undisputed Mr. Jones received the notice from the court notifying him of the trial date. He failed to exercise diligence to contact his appointed counsel to prepare for the trial. Nor did he seek a continuance ahead of the trial date. The trial court allowed him to put on his defense on a later date to ensure adequate preparation. Under these circumstances, the trial court did not abuse its discretion in not continuing the trial on February 11, 2010.

{¶63} To establish his claim that his counsel provided ineffective assistance, Mr. Jones must demonstrate (1) his counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different. *Strickland v. Washington* (1984), 466 U.S. 668. A threshold issue in a claim of ineffective assistance of counsel is whether there was actual error on the part of appellant's trial counsel. *State v.*

*McCaleb*, 11th Dist. No. 2002-L-157, 2004-Ohio-5940, ¶92. In Ohio, every properly licensed attorney is presumed to be competent and therefore a defendant bears the burden of proof. *State v. Smith* (1985), 17 Ohio St.3d 98, 100. To overcome this presumption, a defendant must demonstrate that “the actions of his attorney did not fall within a range of reasonable assistance.” *State v. Henderson*, 11th Dist. No. 2001-T-0047, 2002-Ohio-6715, ¶14. Counsel’s performance will not be deemed ineffective unless and until the performance is proved to have fallen below an objective standard of reasonable representation and, in addition, prejudice arises from counsel’s performance. *State v. Iacona* (2001), 93 Ohio St.3d 83, 105.

{¶64} The trial transcript reflects that Mr. Jones’ trial counsel’s performance, despite the short notice, was more than adequate. She cross-examined at length the state’s two witnesses, the dog warden and the eyewitness; successfully moved the court under Crim.R. 29 to dismiss the charge of a failure to obtain liability insurance for a vicious dog; and obtained acquittals on the charges of a failure to confine a vicious dog and a failure to register for the current year. Mr. Jones fails to demonstrate that his counsel’s performance fell below an objective standard of reasonable representation. The claim of ineffective assistance of counsel is thus without merit.

{¶65} The second assignment of error is overruled.

{¶66} The judgment of the Portage County Municipal Court, Ravenna Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.