

[J-3-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 77 MAP 2012
	:	
Appellee	:	Appeal from the Order of Superior Court
	:	dated October 5, 2011 at No. 3132 EDA
	:	2010, affirming the Judgment of Sentence
v.	:	of the Chester County Court of Common
	:	Pleas, Criminal Division, dated October
	:	11, 2010 at No. CP-15-CR-845-2010
SIMON RABAN,	:	
	:	
Appellant	:	
	:	ARGUED: March 5, 2013
	:	
	:	
	:	

OPINION IN SUPPORT OF AFFIRMANCE

MR. CHIEF JUSTICE CASTILLE

DECIDED: February 12, 2014

I join Mr. Justice Eakin’s Opinion in Support of Affirmance, because the statute at issue unambiguously creates an absolute liability offense. Section 305 of the Dog Law provides, in pertinent part, that it “shall be unlawful for the owner or keeper of any dog to fail to keep at all times the dog in any of the following manners: (1) confined within the premises of the owner; (2) firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or (3) under the reasonable control of some person, or when engaged in lawful hunting, exhibition, performance events or field training.” 3 P.S. §459-305(a). The Opinion in Support of Reversal (“OISR”) argues that this statute includes “somewhat obligatory terms” that do “not necessarily equate to an intent to impose absolute liability.” OISR at 10-11. But,

just like Justice Eakin, I cannot agree that the language of Section 305 provides a mere suggestion. The plain language of the statute is mandatory, and clearly it includes no express *scienter* requirement. See, e.g., Baehr v. Commonwealth, ex rel. Lower Merion Twp., 414 A.2d 415, 417 (Pa. Cmwlth. 1980) (identically-worded predecessor statute “unmistakably speaks in terms of strict liability for its violation, and a moment's reflection on the purpose of the statute buttresses our conclusion”). See also Commonwealth v. Glumac, 717 A.2d 572 (Pa. Super. 1998) (purpose of Section 305 is to prevent dogs from roaming streets and thus to protect public health and safety). Given the obvious public welfare purpose of the statute, I find no ambiguity in its language. And, at the time of the incident involved here, Muncy the dog was not confined within the owner's premises, was not confined by means of a collar or chain or other device to prevent its straying beyond those premises, and was not under anyone's reasonable control. Muncy ran freely across the street and attacked another dog. The evidence presented was sufficient to find a violation. The mere fortuity that there were no serious injuries involved here does nothing to diminish the fact that Muncy's uncontrolled and potentially dangerous behavior clearly demonstrates the reason why such a statute exists, and why its violation should constitute an absolute liability offense. Indeed, requiring *scienter* effectively neuters the statute; which is ironic since the statute is intended to neuter the carelessness of dog owners such as appellant.

Accordingly, I would affirm the decision of the Superior Court.

Mr. Justice Baer joins this Opinion in Support of Affirmance.