[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 at
	: No. 3132 EDA 2010 dated October 5,
	: 2011, Reconsideration denied December
v.	: 12, 2011, Affirming the Judgment of
	: Sentence of the Chester County Court of
	: Common Pleas, Criminal Division, at No.
SIMON RABAN,	: CP-15-CR-845-2010 dated October 11,
	: 2010.
Appellant	:
	: ARGUED: March 5, 2013

OPINION IN SUPPORT OF AFFIRMANCE

MR. JUSTICE EAKIN **DECIDED: February 12, 2014**

In this appeal, we are asked to consider whether a second violation within one year of § 305(a)(1) of the Pennsylvania Dog Law, 3 P.S. § 459-305(a)(1), is an absolute liability offense. For the following reasons, we would find it is an absolute liability offense and would affirm the Superior Court.

The underlying facts are undisputed. On the evening of July 9, 2009, appellant's Giant Schnauzer, Muncy, left appellant's premises, crossed the street, and attacked another dog that was being walked by its owner. Approximately 10 to 15 minutes after the incident, a neighbor observed appellant place an electric fence collar on Muncy's neck. The local police were called concerning the incident, and issued appellant a citation pursuant to § 305(a)(1). Following a bench trial, the trial court found appellant

guilty of a second violation of § 305(a)(1) within one year,[1] a misdemeanor of the third degree;[2] he was sentenced to six months of non-reporting probation and ordered to pay a $500 fine. Based on its determination that a second violation of § 305(a)(1) is an absolute liability offense, the court did not require the Commonwealth to present evidence of appellant's intent or knowledge regarding Muncy's non-confinement.

Appellant appealed, claiming the trial court's interpretation of § 305(a)(1) as an absolute liability offense was erroneous. The Superior Court affirmed, finding scienter was not an element of the offense. Commonwealth v. Raban, 31 A.3d 699, 702 (Pa. Super. 2011). Specifically, the court agreed with the rationale of prior decisions interpreting § 305(a)(1) and its predecessor as an absolute liability offense given the clear legislative intent to further public safety by prohibiting roaming dogs. Id., at 702-03 (quoting Commonwealth v. Glumac, 717 A.2d 572, 574 (Pa. Super. 1998)) ("'In enacting [§ 305(a)(1)], the legislature intended to require dog owners to prevent their dogs from running at large. … The protection of the public's health and safety are attained when dogs are safely secured or accompanied when not so confined.'"); accord Baehr v. Commonwealth ex rel. Lower Merion Township, 414 A.2d 415, 417 (Pa. Cmwlth. 1980) (interpreting identical language in § 305(a)(1)'s predecessor and concluding it "unmistakably speaks in terms of strict liability for its violation, and a moment's reflection on the purpose of the statute buttresses [this] conclusion"). The court noted:

> The mandate to confine a dog is … stated absolutely and not in terms of reasonable care, which standard … would involve difficulties in ascertaining culpability and thus frustrate the legislative intent behind [§] 305(a)(1). Had the legislature intended [§] 305(a)(1) to condition culpability on the failure to make reasonable efforts at confinement, it could have easily

---

[1] The parties stipulated appellant was convicted within the past year of violating § 305(a)(1).

[2] See id., § 459-903(b)(2).

> stated so. As written, however, [§] 305(a) unequivocally proscribes the failure to confine one's dog to one's premises, period.

Raban, at 703.

This Court granted allocatur to determine whether § 305(a)(1) is an absolute liability offense. Commonwealth v. Raban, 52 A.3d 222 (Pa. 2012) (per curiam). As this issue presents a pure question of law, our standard of review is de novo and scope of review is plenary. Delaware County v. First Union Corporation, 992 A.2d 112, 118 (Pa. 2010) (citation omitted). Appellant urges this Court to reverse the Superior Court's decision, arguing it has the potential to lead to absurd results,[3] improperly elevates prosecution convenience to a primary concern, and ignores the requirement that the legislative intent to impose absolute liability plainly appear.[4] The Commonwealth counters that legislative intent to do away with a mens rea element is evident from the plain statutory language "shall be unlawful" and the omission of any express scienter requirement. To the extent this Court finds § 305(a)(1) unclear, the Commonwealth asserts the following considerations weigh heavily in favor of finding legislative intent to impose absolute liability: (1) "the mischief to be remedied is roving dogs which is in the public interest" and (2) § 305(a)(1)'s predecessor contained identical language and was interpreted as an absolute liability offense. Commonwealth's Brief, at 14-15 (citation omitted); see 1 Pa.C.S. § 1921(c)(3), (5) (delineating considerations to be applied in determining legislative intent). In response to appellant's examples of "absurd" results stemming from interpreting § 305(a)(1) as an absolute liability offense, the Commonwealth notes defenses focusing on third-party action are still available for

---

[3] Appellant posits examples where owners whose dogs are unconfined due to home burglary, assault while walking the dog, and other like circumstances could be found guilty for failure to confine if § 305(a)(1) were interpreted as an absolute liability offense.

[4] See 18 Pa.C.S. § 305(a)(2), discussed infra.

absolute liability offenses and contends appellant's argument is based on a misapplication of the absurdity doctrine. The Commonwealth contends "[t]he absurdity doctrine allows that a provision may be either disregarded or judicially corrected as an error … if failing to do so would result in a disposition that no reasonable person could approve" and only applies "to correct obviously unintended dispositions[.]" Commonwealth's Brief, at 17, 19. Section 305(a), the Commonwealth argues, was specifically written as a strict liability offense to "promote[] the public welfare by enforcing compliance through the regulation and confinement of dogs"; therefore, the absurdity doctrine does not apply. Id., at 19 (citations omitted).

We begin our analysis keeping in mind that absolute liability criminal offenses are "generally disfavored," and an offense will not be considered to impose absolute liability absent some indication of a legislative directive to dispense with mens rea. Commonwealth v. Mayfield, 832 A.2d 418, 426 (Pa. 2003) (citation omitted). The question of whether a culpability requirement applies to a given offense is a matter of construction to be determined by the language of the statute, in light of its manifest purpose and design. Commonwealth v. Ludwig, 874 A.2d 623, 630 (Pa. 2005). Accordingly, we turn to the Statutory Construction Act, 1 Pa.C.S. §§ 1501 et seq., which dictates that our primary goal is to effectuate the intent of the General Assembly. Id., § 1921(a). The best indication of such intent is the plain language of the statute; if such language is clear and unambiguous, it must be applied. Id., § 1921(b). However, where the statutory language is not explicit, we may apply several considerations to ascertain the legislative intent, including "[t]he mischief to be remedied[,]" "[t]he former law," and "[t]he consequences of a particular interpretation." Id., § 1921(c)(3), (5)-(6). Moreover, we are to assume the legislature did not intend a result that is unreasonable,

absurd, or impossible of execution. Id., § 1922(1). Lastly, since § 305(a) is a penal statute, it must be strictly construed. Id., § 1928(b)(1).

With these principles in mind, we turn to the relevant statutory language. Section 305(a)(1) states, in pertinent part: "It shall be unlawful for the owner or keeper of any dog to fail to keep at all times the dog … confined within the premises of the owner[.]" 3 P.S. § 459-305(a)(1). While a first violation is a summary offense, a second violation within a year of sentencing for the first violation is a third degree misdemeanor expressly punishable by a fine between $500 and $1,000 and/or up to one year imprisonment. Id., § 459-903(b)(1)-(2). Importantly for purposes of this appeal, the language proscribing the non-confinement of dogs is identical for first and second offenses.

Since § 305(a)(1) does not expressly denote a culpability element, further inquiry is required to discern whether the General Assembly intended it to be an absolute liability offense. Section 302 of the Crimes Code provides default culpability standards to be applied where such is not otherwise prescribed, 18 Pa.C.S. § 302(c); however, this default provision is inapplicable to summary offenses and offenses wherein the legislature's intent to impose absolute liability "plainly appears." Id., § 305(a). As noted previously, while a first violation of § 305(a)(1) is a summary offense, to which the default culpability provision is expressly inapplicable, a second violation is a third degree misdemeanor. Accordingly, we must determine whether it "plainly appears" the legislature intended § 305(a)(1) to be an absolute liability offense.

We find the statute's language denotes a purpose of imposing absolute liability, a purpose that "plainly appears," see id., § 305(a)(2), given the choice of the word "fail," a word that is unambiguous, and is utilized without mention or consideration of intent or excuse. See 3 P.S. § 459-305(a). Section 305(a)(1) speaks in clearly obligatory terms — "It shall be unlawful for the owner or keeper of any dog to fail to keep at all times" the

dog confined. Id., § 459-305(a)(1) (emphasis added). If one chooses to own or keep a dog, the failure to keep it confined violates the plain and unambiguous language of the statute, regardless of the reason for failure. Like failing to drive within the speed limit, the reasons for failing do not determine whether the driver is in violation. The driver's explanation may convince an officer not to write the ticket, or may convince a jurist to give the driver a pass, but if one fails to comply, one is in violation of the statute regardless of intent.

We find unconvincing the Opinion in Support of Reversal's conjecture that the word "'fail[s]' … could suggest an assessment of reasonableness of action taken to confine a dog, implying a culpability component." OISR Slip Op., at 11. Respectfully, this is a major stretch. The question here is legislative purpose — having to use "could suggest" and "implying" in the same sentence is not a persuasive endorsement of legislative purpose. There is nothing in the austere words of this statute that "could suggest" liability requires an assessment of "reasonableness of action." The word "fail" simply does not include a middle ground, nor does it envision explanations — if one fails, one fails.

That there is an excuse does not make the failure nonexistent — it may mitigate the consequences, but it does not erase the unassailable fact of failure. When a Giant Schnauzer is across the street attacking another dog, the keeper has failed to confine it, plain and simple. Why the keeper failed is not part of the statutory equation, and there is not one word in this law suggesting pre-failure actions are relevant in the least.

The classic law school illustration of absolute liability is the keeping of a tiger. If one keeps a pet tiger and it escapes, the keeper is responsible for the consequences of the escape regardless of the precautions taken to prevent the same. The choice to keep the tiger, like the choice to keep the dog, is yours to make, but it comes with absolute

responsibility if the animal becomes unconfined, regardless of the reason therefor. If § 305(a)(1) applied to tigers, no one would have any problem with calling it an absolute liability crime. The clear intent of the legislature is to keep the animals confined or controlled, and a keeper is not excused because they tried really, really hard to confine the dog but failed, a second time.[5]

Contrast, if you will, § 504-A of the very same dog law. If a dog has been determined by a court to be a "dangerous dog" because of prior attacks, it is a crime for the keeper of the dog "to permit the dog" to be outside the proper enclosure. 3 P.S. § 459-504-A (emphasis added). There is a significant difference between permitting[6] a dangerous dog to be outside — clearly involving an intent element — and failing to

[5] The OISR contends this example "actually sharpens [its] point[,]" and references the law applicable to "exotic wildlife," which includes tigers. Id., at 12 n.7 (citing 34 Pa.C.S. §§ 2961, 2963). The OISR highlights, "while the classic law school illustration may impose absolute liability on the keeper of a tiger, Pennsylvania law … [requires] the Commonwealth [to] establish that the possessor of a … tiger[] has failed to exercise due care, or was reckless, before imposing criminal liability[.]" Id. This, the OISR asserts, "supports [its] finding that a violation of [§] 305 regarding a failure to confine a domesticated dog should not be interpreted as an absolute liability offense." Id. However, the OISR fails to address the obvious distinctions between the dog law at issue and the exotic wildlife statute, which imposes criminal liability for "[f]ail[ing] to exercise due care in safeguarding the public from attack by exotic wildlife" or "[r]ecklessly engag[ing] in conduct which places or may place another person in danger of attack by exotic wildlife." 34 Pa.C.S. § 2963(c)(3)-(4) (emphasis added). These statutory subsections prescribe a culpability element and, contrary to the OISR's contention, do not expressly condone the failure to confine, but rather concern whether adequate precautions were taken to prevent attack.

[6] Webster's Dictionary defines "permit" as "to allow (something) to happen[,] to give permission for (something)[,] to allow (someone) to do or have something[, or] to make something possible[.]" Merriam-Webster, www.merriam-webster.com/dictionary/permit (last visited December 17, 2013).

confine[7] a dog, bespeaking nothing but absolute liability. Had the legislature wanted to make § 305(a)(1) a crime of intent, it would have made it illegal to permit any dog to be unconfined. Section 504-A demonstrates the legislature knew how, and chose not, to do so.[8]

"Fails" is a simple and definite word — absent an adjective suggesting that the reason for failure is relevant, the requirements of the statute are just as simple and definite. The reason for failure is simply not an element the legislature chose to put into the equation, and we should not add our own creative mathematics to it.

Our conclusion that a second violation of § 305(a)(1) is an absolute liability offense is further buttressed by the absurd result that would occur if we were to come to the opposite conclusion — the elements of the offense would differ depending upon whether the defendant was a first or second offender, with the Commonwealth being required to prove mens rea for a second offense but not a first. While the OISR dismisses this as an "oddity" mandated by § 305(a) of the Crimes Code, OISR Slip Op., at 13 n.8, our responsibility does not allow us to ignore such an interpretive disconnect. This is the type of unreasonable result we are to assume the legislature did not intend. See 1 Pa.C.S. 1922(1) ("In ascertaining the intention of the General Assembly in the enactment of a statute … [we are to assume] the General Assembly does not intend a result that is

[7] Webster's Dictionary defines "fail" as "to not succeed[,] to end without success[,] … to not do (something that you should do or are expected to do)[.]" Merriam-Webster, www.merriam-webster.com/dictionary/fail (last visited December 17, 2013). It does not imply or suggest a "culpability requirement."

[8] It is worth noting that the elements of § 305(a)(1) do not change at all for a misdemeanor. The change in grading is in § 903(b)(1)-(2), and the difference concerns prior offenses, not intent. See 3 P.S. § 459-903(b)(1)-(2).

absurd, impossible of execution or unreasonable."). This is not an oddity — it is the trout in the milk.

Accordingly, we would hold § 305(a)(1) is an absolute liability offense and would affirm the Superior Court.

Former Justice Orie Melvin did not participate in the consideration or decision of this case.

Mr. Chief Justice Castille joins this lead Opinion in Support of Affirmance.

Mr. Chief Justice Castille files an Opinion in Support of Affirmance in which Mr. Justice Baer joins.

Madame Justice Todd files an Opinion in Support of Reversal in which Messrs. Justice Saylor and McCaffery join.