[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,	:	
	:	ARGUED: March 5, 2013
Appellant	:	

OPINION IN SUPPORT OF REVERSAL

MADAME JUSTICE TODD **DECIDED: February 12, 2014**

The issue in this appeal by allowance is whether a second violation, within one year, of Section 305(a)(1) of the Pennsylvania Dog Law ("Dog Law"),[1] which makes it illegal, *inter alia*, for an owner to fail to confine his or her dog and which is graded a misdemeanor of the third degree, is an absolute liability offense. 3 P.S. § 459-305(a)(1). For the reasons that follow, we would find that it is not an absolute liability offense, but, rather, that the Commonwealth must establish that the accused acted intentionally, knowingly, or recklessly, 18 Pa.C.S.A. § 302(c), and so we would reverse the determination of the Superior Court.

[1] Act of December 7, 1982, P.L. 784, No. 225, art. III, § 305, effective January 1, 1983, *as amended*, 3 P.S. § 459-305.

The underlying facts of this dispute, as found by the trial court, are as follows. On July 7, 2009 at approximately 7:15 p.m., "Muncy," Appellant Simon Raban's black giant schnauzer, which was not restrained by a leash or electric fence collar, left Appellant's premises, crossed Barrington Road in Chester Springs, Pennsylvania, and attacked a Bernese mountain dog named "Hubble." Hubble and his owner, Austin Alvin, were walking on the opposite side of the street in front of Appellant's residence when Muncy approached and grabbed Hubble by the neck. While Alvin reported that Hubble limped after the incident, the dog did not sustain any long-term injury. Approximately 10 to 15 minutes after the events occurred, a neighbor, George Sawicki, observed Appellant place an electric fence collar on Muncy's neck.

The West Vincent Township Police Department responded to a call concerning the matter, and Appellant was issued a citation pursuant to Section 305(a)(1) of the Dog Law. Five months earlier, as stipulated to by the parties, Appellant had been convicted of a violation of Section 305(a)(1) for failing to properly confine his dog. Following a bench trial in the instant case, the Court of Common Pleas of Chester County found Appellant guilty of a second violation of Section 305(a)(1), a misdemeanor of the third degree, 3 P.S. § 459-903(b)(2), and sentenced him to six months of non-reporting probation and a $500 fine. In so doing, the trial judge determined that, because Section 305 imposed absolute liability for a violation of the statute, the Commonwealth was not required to establish evidence of Appellant's intent or knowledge. Trial Court Opinion, 2/2/2011, at 3, 7. Appellant appealed his conviction.

In a unanimous, published opinion, a three-judge panel of the Superior Court affirmed Appellant's judgment of sentence. Commonwealth v. Raban, 31 A.3d 699 (Pa. Super. 2011). Before the court, Appellant claimed, *inter alia*, that the trial court erroneously interpreted Section 305(a)(1) to have no culpability requirement, improperly

rendering Appellant absolutely liable for the violation. The Superior Court, after reviewing prior case law from both the Commonwealth Court and the Superior Court, affirmed the trial court's conclusion that scienter was not an element of the offense.

Specifically, the Superior Court reviewed Baehr v. Commonwealth ex rel. Lower Merion Twp., 414 A.2d 415 (Pa. Cwmlth. 1980), which interpreted former Section 702 of the Dog Law, the identically-worded predecessor to Section 305(a)(1), and found that the mandatory nature of the offense and the predominating concern for public safety, as well as the difficulty in establishing culpability, led to the conclusion that Section 305 imposed absolute liability. Similarly, the Superior Court also relied upon its own subsequent decision in Commonwealth v. Glumac, 717 A.2d 572 (Pa. Super. 1998), wherein the court stressed that the purpose behind Section 305 was to require dog owners to prevent their dogs from roaming the streets, and that the protection of the public's health and safety is best attained when dogs are secured or accompanied when not confined.

Based upon Baehr, as well as Glumac, the Superior Court in this matter reasoned that the legislative intent under Section 305 favored the interest in protecting the public from roving dogs. According to the court, the plain language of the statute mandated that it "shall be unlawful" to fail to keep at all times one's dog within the confines of one's premises. Therefore, the court opined that the mandate to confine one's dog was stated absolutely, and not in terms of reasonable care, which, in its view, would complicate the ascertainment of culpability, and frustrate the legislative intent. Thus, the Superior Court affirmed the trial court's finding that there was no scienter element in Section 305(a)(1).

This Court granted allocatur to determine whether Section 305(a)(1) of the Dog Law is an absolute liability offense. As the issue before us is a pure question of law, our

standard of review is *de novo* and our scope of review plenary. Buffalo Twp. v. Jones, 813 A.2d 659, 664 n.4 (Pa. 2002).

Section 305 of the Dog Law makes it illegal for an owner to, *inter alia*, fail to confine his or her dog, and provides:

> 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).

Appellant argues that the Superior Court erroneously concluded that Section 305(a)(1) is an absolute liability offense. According to Appellant, absolute liability crimes are problematic in that they "can lead to absurd, unreasonable, cruel, unusual, unjust, or bizarre consequences," Brief of Appellant at 8, offering a hypothetical in which a person could be found in violation of Section 305(a) if a burglar breaks into an individual's home, and the dog, while chasing the intruder, escapes confinement. Appellant submits that, if the reason as to why a dog was not restrained is irrelevant, it will lead to an absurd result that the General Assembly did not intend. See 1 Pa.C.S.A. § 1922. Appellant also challenges the Superior Court's proffered reason that it would be difficult to establish culpability in the absence of absolute liability, asserting that, while the mandate to confine a dog is stated in absolute terms, convenience of investigation and prosecution is not the primary inquiry in ascertaining the elements of an offense, citing Commonwealth v. Barone, 419 A.2d 457 (Pa. Super. 1980). Appellant adds that absolute liability offenses are disfavored, and, absent a clear

indication by the legislature to eliminate a *mens rea* requirement, should not be so construed. Commonwealth v. Gallagher, 924 A.2d 636, 638-39 (Pa. 2007). According to Appellant, the Superior Court turned this presumption on its head, determining that, because the statute is silent, the General Assembly intended that this be an absolute liability crime. Thus, Appellant seeks a new trial.

The Commonwealth responds that it is accepted that the legislature may impose absolute liability for "public welfare offenses" to enhance the common weal. Brief of Commonwealth at 7. According to the Commonwealth, the imposition of absolute liability is appropriate as the penalties for such regulatory offenses are generally minimal. The Commonwealth argues that the language of the statute is clear and that the legislature intended to "remove evidence of a dog's history or propensity to attack as criteria under the section, therefore imposing absolute criminal liability for any unprovoked attack." Brief of Commonwealth at 10. The Commonwealth asserts that the Superior Court properly determined, relying on Glumac and Baehr, that the intent of the General Assembly was to favor the public interest in preventing roving dogs, which supports the conclusion that Section 305(a)(1) imposes strict liability. According to the Commonwealth, the omission of terms such as "knowingly" or "willfully" is significant and indicates a legislative intent to impose absolute liability.

Even if it is ambiguous whether there is a culpability requirement in Section 305, the Commonwealth offers that requiring owners to confine their dogs coincides with the General Assembly's goal of minimizing safety risks to dogs and innocent bystanders. Finally, the Commonwealth refutes Appellant's assertion that to impose absolute liability would lead to an absurd result, as Appellant's hypothetical involves the intervention of a third party, which would constitute a defense to the crime, and, here, according to the Commonwealth, the absurdity doctrine is inapplicable because the statute is intended to

promote the public welfare by enforcing compliance through the regulation of the confinement of dogs.

We begin our analysis by noting that, historically, common law crimes have required that defendant's actions be accompanied by some type of fault or bad intent. See Wayne R. LaFave, Criminal Law 288 (5th ed. 2010). Wrongful intent is usually an element of a crime, this concept being part of the fundamental concept of *mens rea*. Commonwealth v. Samuels, 778 A.2d 638, 642 (Pa. 2001) (Saylor, J. concurring). *Mens rea* generally connotes a guilty mind, or a wrongful purpose. Id. By contrast, "[c]riminal liability in the absence of intention, belief, recklessness or negligence is generally termed strict or absolute liability." Id. (citing 87 J. Crim. L. & Criminology 1075, 1080 (Summer 1997)). Because of the traditional requirement of *mens rea*, i.e., culpability and condemnation, absolute liability offenses are not favored. Samuels, 778 A.2d at 643; Gallagher, 924 A.2d at 639 (opining that absolute liability crimes 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); Staples v. United States, 511 U.S. 600, 605-06 (1994). Indeed, there "is a long-standing tradition . . . that criminal liability is not to be imposed absent some level of culpability." Gallagher, 924 A.2d at 639.

Generally, the question of whether there is a culpability requirement for a statutory 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); Commonwealth v. Weiss, 21 A. 10, 10 (Pa. 1891). As our analysis involves the interpretation of a statute, we necessarily begin by considering the Statutory Construction Act ("SCA"). 1 Pa.C.S.A. §§ 1501 *et seq*. The object of all

interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa.C.S.A. § 1921(a). The best indication of the legislature's intent is the plain language of the statute. When the words of a statute are clear and unambiguous, we may not go beyond the plain meaning of the language of the statute under the pretext of pursuing its spirit. Id. § 1921(b). Only when the words of the statute are ambiguous should a reviewing court seek to ascertain the intent of the General Assembly through considerations of the various factors found in Section 1921(c) of the SCA. Id. § 1921(c); Bayada Nurses, Inc. v. Dep't. of Labor and Indus., 8 A.3d 866, 880-81 (Pa. 2010). Concomitant with these principles, the SCA and our case law provide for other presumptions to be applied when discerning the intent of the General Assembly. Specifically, the legislature does not intend a result that is unreasonable, absurd, or impossible of execution. 1 Pa.C.S.A. § 1922(1). Moreover, since Section 305(a)(1) of the Dog Law is a penal statute, it must be strictly construed. 1 Pa.C.S.A. § 1928(b)(1).

With these principles in hand, we first consider the statutory language at issue. As noted above, Section 305(a)(1) of the Dog Law provides that 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). Importantly for purposes of this appeal, for a first time violation, the defendant shall be deemed to be guilty of a summary offense. 3 P.S. § 459-903(b)(1).[2] For a second violation which occurs within

[2] Section 903(b)(1) provides: "Unless otherwise provided under this act, a person who violates a provision of Articles II through Article VII or a rule or regulation adopted or order issued under this act commits the following: (1) For the first offense, a summary offense and shall, upon conviction, be sentenced for each offense to pay a fine of not less than $100 nor more than $500 or to imprisonment for not more than 90 days, or both."

one year of sentencing for the first violation, the individual shall be guilty of a misdemeanor of the third degree. 3 P.S. § 459-903(b)(2).[3]

Section 305(a)(1) of the Dog Law does not expressly provide a culpability element, and, therefore, is subject to further inquiry to determine whether the General Assembly intended a violation thereof to be an absolute liability offense. Generally speaking, Section 302 of the Crimes Code provides minimum culpability provisions in order to uphold a conviction for criminal offenses, and, specifically, Section 302(c) provides certain culpability requirements when such culpability is not otherwise prescribed by law. 18 Pa.C.S.A. § 302(c). However, for certain offenses, before Section 302 is implicated, another more directly controlling section of the Crimes Code must be considered. Specifically, Section 302 is made inapplicable to certain offenses pursuant to Section 305 of the Crimes Code, which concerns further limitations on the scope of culpability requirements, and, thus, absolute liability. Therefore, we turn to an examination of Section 305 of the Crimes Code.

Section 305(a) of the Crimes Code provides that the minimum culpability requirements provided in Section 302 of the Crimes Code do not apply to summary offenses and certain offenses defined by other statutes. Specifically, Section 305(a) states:

> **(a)** ***When culpability requirements are inapplicable to summary offenses and to offenses defined by other statutes.*** -- The requirements of culpability prescribed by section 301 of this title (relating to requirement of voluntary

[3] Section 903(b)(2) provides: "For a subsequent offense that occurs within one year of sentencing for the prior violation, a misdemeanor of the third degree and shall, upon conviction, be sentenced for each offense to pay a fine of not less than $500 nor more than $1,000 plus costs of prosecution or to imprisonment of not more than one year, or both."

> act) and section 302 of this title (relating to general requirements of culpability) do not apply to:
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> (1) summary offenses, unless the requirement involved is included in the definition of the offense or the court determines that its application is consistent with effective enforcement of the law defining the offense; or
>
> (2) offenses defined by statutes other than this title, in so far as a legislative purpose to impose absolute liability for such offenses or with respect to any material element thereof plainly appears.

18 Pa.C.S.A. § 305(a)(1), (2).

Subsection (a)(1) is directed to summary offenses. Under that subsection, when a summary offense is silent regarding a culpability requirement, the General Assembly itself has provided that culpability requirements are inapplicable for such offenses (unless defined otherwise or a court determines the application of Section 302 is consistent with effective law enforcement), and, thus, has rendered these offenses to be of absolute liability in nature.[4]

Appellant, however, was not charged or convicted of a summary offense. Rather, Appellant was charged with a *second* violation of Section 305 of the Dog Law which is graded as a misdemeanor of the third degree, 3 P.S. 459-903(b)(2), and which carries with it possible imprisonment for up to one year. Thus, Section 305(a)(2) is

[4] Pennsylvania's limitations on culpability requirements are derived from Section 2.05 of the Model Penal Code. 18 Pa.C.S.A. § 305, Official Comment-1972. The Model Penal Code provides that default culpability provisions do not apply to "violations" — offenses which are not crimes and which did not result in a sentence of probation or imprisonment. See Model Penal Code §§ 1.04(5), 6.02(4). Significantly, however, the Pennsylvania legislature replaced the concept of "violations" under the Model Penal Code, with "summary offenses." Therefore, while absolute liability remains limited in scope, pursuant to Section 305 of the Crimes Code, such absolute liability offenses may be punishable with imprisonment up to 90 days, as a general rule. See generally, Samuels, 778 A.2d at 646 (Saylor, J. concurring).

triggered herein as it concerns non-summary violations defined by statutes other than the Crimes Code, which includes the Dog Law. Under subsection (a)(2), the generally-applied culpability requirements found in Section 302 of the Crimes Code are inapplicable, and, thus, the offenses impose absolute liability, only where the legislature's intent to impose absolute liability "plainly appears."

Therefore, we turn to analyze whether it "plainly appears" that the legislature intended to impose absolute liability for establishing a *second* violation of Section 305(a)(1) of the Dog Law, an offense punishable for up to one year imprisonment. Of course, if the culpability requirement, or lack thereof, was explicit, there would be no need to engage in this exercise. By the terms of Section 305(a)(2) of the Crimes Code, in exploring whether the legislature's intent "plainly appears," we look to see if the intent is clear and obvious.[5] Thus, governed by the limiting language contained in Section 305(a)(2) — requiring that the legislative intent "plainly appears" — our analysis allows us to discern the General Assembly's intent from something less than an express or explicit statement that the offense imposes absolute liability, but nevertheless requires an expression of legislative intent that is more definite than may be possibly gleaned after a statutory construction analysis employing secondary inferential considerations.[6]

While Section 305(a)(1) of the Dog Law speaks in somewhat obligatory terms — "[i]t shall be unlawful for the owner or keeper of any dog to fail to keep at all times" the

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[5] See The American Heritage Dictionary of the English Language 1001 (1981) (defining "plain" as "Free from obstructions; open to view; clear"); Webster's New Collegiate Dictionary 871 (1980) (defining "plain" as "evident to the mind or senses," "obvious," and "clear").

[6] This approach dovetails with the SCA, which requires us to initially discern legislative intent from the language of the statute itself when the language is clear and unambiguous, 1 Pa.C.S.A. § 1921(b), but limits consideration of the various factors found in Section 1921(c) of the SCA, to when the words of the statute are ambiguous. 1 Pa.C.S.A. § 1921(c).

dog, confined, secured, or under reasonable control, 3 P.S. § 459-305(a) — this mandate does not necessarily equate to an intent to impose absolute liability. Indeed, the statutory language concerning a violation if an owner "fail[s]" to confine his or her dog on the premises could suggest an assessment of reasonableness of action taken to confine a dog, implying a culpability component. In any event, these competing possibilities indicate that an intent to make the offense one of absolute liability certainly does not, in our view, "plainly appear." Moreover, as noted above, we are mindful that absolute liability crimes are disfavored, and Section 305(a)(1) of the Dog Law is a penal statute that must be strictly construed. 1 Pa.C.S.A. § 1928(b)(1).

Thus, in light of the language of Section 305(a)(1) of the Dog Law, as well as the context in which we must view that language, we conclude that it does not "plainly appear" that the General Assembly intended for a second violation of Section 305(a)(1) of the Dog Law to be an absolute liability offense. Simply stated, if the legislature sought to have Section 305(a)(1) "plainly appear" to impose absolute liability, the language it employed in drafting the statute lacks the definiteness to accomplish that goal.[7]

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[7] Justice Eakin in his Opinion in Support of Affirmance offers that the term "fails" renders the statute unambiguous, and that the General Assembly intended to impose absolute criminal liability for a second conviction for failing to keep one's dog confined. Opinion in Support of Affirmance (Eakin, J.) at 5-6. Justice Eakin contrasts this with Section 504-A of the Dog Law, 3 P.S. § 459-504-A, regarding dangerous dogs, and its use of the term "permit," which in his view "clearly involv[es] an intent element." Id. at 7. In our view, Justice Eakin's distinction between these terms is overstated, as both "permitting" and "failing" suggest at least a degree of culpability. Moreover, the term "fail" is not as categorical in meaning as suggested by Justice Eakin, as other statutes containing such language have not been deemed to be absolute liability crimes. See Commonwealth v. Bready, 286 A.2d 654, 656-57 (Pa. Super. 1971) (concluding statute imposing criminal liability on magistrate "who shall fail to" make monthly reports did not impose strict liability). Also, notably absent from Justice Eakin's analysis is any recognition that our statutory construction be performed through the lens that it "plainly appear" the (continued…)

As we find it does not "plainly appear" that the legislature intended to render the culpability requirements in 18 Pa.C.S.A. § 302(c) inapplicable to a second violation of Section 305(a)(1) of the Dog Law, we return our focus to Section 302 to consider what culpability requirement is applicable to a second violation of the statute. Pursuant to Section 302(c), when no culpability is prescribed by law, the culpability element is established if the defendant acts "intentionally, knowingly, or recklessly with respect thereto." 18 Pa.C.S.A. § 302(c). Thus, to establish a second violation of Section 305(a)(1) of the Dog Law, a misdemeanor of the third degree, the Commonwealth is

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(…continued)
legislature intended to impose strict liability on dog owners or that the law disfavors absolute liability crimes.

Furthermore, Justice Eakin's analogy to the keeping of a tiger imposing absolute liability actually sharpens our point. Under the Game and Wildlife Code, a tiger is defined as an "exotic wildlife," which, in addition to tigers, includes, *inter alia*, lions, cheetahs, cougars, and bears. 34 Pa.C.S.A. § 2961. Possession of such exotic wildlife requires a permit. Id. at § 2963. A possessor of such wildlife may be criminally liable if he or she "fail[s] to exercise due care in safeguarding the public from attack by exotic wildlife" or "[r]ecklessly engage[s] in conduct which places or may place another person in danger of attack by exotic wildlife." 34 Pa.C.S.A. § 2963(c)(3), (4). Thus, while the classic law school illustration may impose absolute liability on the keeper of a tiger, Pennsylvania law does not. That the Commonwealth must establish that the possessor of a wild animal, such as a tiger, has failed to exercise due care, or was reckless, before imposing criminal liability, supports our finding that a violation of Section 305 regarding a failure to confine a domesticated dog should not be interpreted as an absolute liability offense. Indeed, it would, in our view, be absurd to impose absolute liability on a pet owner who fails to confine his or her dog, but not upon one who fails to confine his or her lion, tiger, or bear. See 1 Pa.C.S.A. § 1922. Finally, Justice Eakin's analogy to speeding, while having visceral appeal, is similarly problematic, as the Motor Vehicle Code provision involving maximum speed limits mandates that "no person shall drive a vehicle at a speed in excess of" a maximum limit, 75 Pa.C.S.A. § 3362, arguably a more unqualified command than a failure to confine.

required to establish that the owner or keeper acted at least recklessly to sustain a conviction.[8] [9]

In light of the issue on which this Court granted allocatur, we would reverse the determination of the Superior Court and remand to the Superior Court, to remand to the trial court, for further proceedings consistent with our opinion today.

Jurisdiction relinquished.

Messrs. Justice Saylor and McCaffery join this Opinion in Support of Reversal.

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[8] We acknowledge the oddity of a first violation of Section 305(a)(1) of the Dog Law being an absolute liability offense, but, despite the same language, a second violation requiring at least a showing of recklessness. Yet, as explained above, Section 305 of the Crimes Code, by its terms, mandates this result. Moreover, in light of the significant prison term for conviction of a second violation, this approach is in keeping with the legislature's mandate to "'tone down' absolute or strict liability in penal law as a whole," where such application of absolute liability "cannot be readily defended where the offense carries a possible jail sentence." 18 Pa.C.S.A. § 305, official cmt.

[9] Contrary to Chief Justice Castille's concern that our interpretation "effectively neuters the statute," Opinion in Support of Affirmance (Castille, J.) at 2, we are confident that the Commonwealth would not be handicapped by the requirement of proving recklessness, and would be able to meet its burden with circumstantial evidence, just as it does in numerous other areas of criminal law, and, indeed, as noted above, is required to do so under the Game and Wildlife Code. See supra note7.