STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	FOR PUBLICATION July 25, 2013
v	No. 312490 Alger Circuit Court
JOHN WESLEY JANES, Defendant-Appellee.	LC No. 2012-002004-FH

Before: BORRELLO, P.J., and JANSEN and M. J. KELLY, JJ.

JANSEN, J. (*dissenting*).

In my opinion, the Michigan Legislature intended to make the criminal offense set forth in § 3(2) of the dangerous animals act, MCL 287.323(2), a strict-liability crime. Therefore, I respectfully dissent.

Section 3(2) of the dangerous animals act, MCL 287.323(2), provides:

> If an animal that meets the definition of a dangerous animal in section 1(a) attacks a person and causes serious injury other than death, the owner of the animal is guilty of a felony, punishable by imprisonment for not more than 4 years, a fine of not less than $2,000.00, or community service work for not less than 500 hours, or any combination of these penalties.

In turn, § 1(a) of the dangerous animals act, MCL 287.321(a), provides:

> "Dangerous animal" means a dog or other animal that bites or attacks a person, or a dog that bites or attacks and causes serious injury or death to another dog while the other dog is on the property or under the control of its owner. However, a dangerous animal does not include any of the following:
>
> (*i*) An animal that bites or attacks a person who is knowingly trespassing on the property of the animal's owner.
>
> (*ii*) An animal that bites or attacks a person who provokes or torments the animal.

(*iii*) An animal that is responding in a manner that an ordinary and reasonable person would conclude was designed to protect a person if that person is engaged in a lawful activity or is the subject of an assault.

(*iv*) Livestock.

The use of the present tense in § 1(a) suggests that an animal can meet the definition of a "[d]angerous animal" the very first time it "bites or attacks" a person or another dog. Noticeably absent from § 1(a) is any indication that, in order to meet the definition of a "[d]angerous animal," an animal must have a known propensity for dangerousness. Nor does § 1(a) require that the animal has previously bitten or attacked a person or another dog. Accordingly, it is clear that an animal may constitute a "[d]angerous animal" within the meaning of § 1(a) the very first time it "bites or attacks" a person or another dog.

Similarly, § 3(2) does not require that the owner of the animal know of the animal's propensity for dangerousness. The only elements enumerated in § 3(2) are: (1) that the animal "meets the definition of a dangerous animal," and (2) that the animal "attacks a person and causes serious injury other than death."

I fully acknowledge that "where [a] criminal statute is a codification of the common law, and where mens rea was a necessary element of the crime at common law," courts generally "will not interpret the statute as dispensing with knowledge as a necessary element." *People v Quinn*, 440 Mich 178, 185-186; 487 NW2d 194 (1992); see also *Morissette v United States*, 342 US 246, 250-251; 72 S Ct 240; 96 L Ed 288 (1952). But unlike § 3(1) of the dangerous animals act, MCL 287.323(1), which specifically references MCL 750.321, which in turn codifies the prohibition against the common-law offenses of voluntary and involuntary manslaughter, see *People v Trotter*, 209 Mich App 244, 248-249; 530 NW2d 516 (1995), § 3(2) of the dangerous animals act is not a codification of the common law. "[W]here the offense in question *does not* codify a common-law offense and the statute omits the element of knowledge or intent," this Court must examine "the intent of the Legislature to determine whether it intended that knowledge be proven as an element of the offense, or whether it intended to hold the offender liable regardless of what he knew or did not know." *Quinn*, 440 Mich at 186 (emphasis added).

It is well established that, pursuant to the state's general police power, the Legislature may enact criminal statutes that punish certain conduct irrespective of the actor's intent, knowledge, or state of mind. *Id*. at 186-187; see also *Shevlin-Carpenter Co v Minnesota*, 218 US 57, 69-70; 30 S Ct 663; 54 L Ed 930 (1910). Especially in the context of public-welfare legislation, the Legislature may choose "to protect those who are otherwise unable to protect themselves by placing 'the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger.'" *Quinn*, 440 Mich at 187, quoting *United States v Dotterweich*, 320 US 277, 281; 64 S Ct 134; 88 L Ed 48 (1943). I conclude that § 3(2) is just such a public-welfare statute, and that the criminal offense set forth therein contains no scienter requirement because the Legislature intended to shift "the burden of acting at hazard" to those who own and possess animals in this state. See *id*.

I find support for this conclusion in the legislative history of the dangerous animals act. I recognize that legislative bill analyses "are 'generally unpersuasive tool[s] of statutory

construction'" and "do not necessarily represent the views of any individual legislator." *Kinder Morgan Michigan, LLC v City of Jackson*, 277 Mich App 159, 170; 744 NW2d 184 (2007) (citation omitted). But "legislative bill analyses do have probative value in certain, limited circumstances." *Id*.

The dangerous animals act was added by way of 1988 PA 426, effective March 30, 1989. 1988 PA 426 was originally introduced as House Bill 4897, and went through several minor revisions before it was ultimately enacted by the Legislature. The final legislative bill analysis of HB 4897 provided in relevant part, "[T]he bill would provide stiff penalties for irresponsible pet owners who endangered others by their failure to properly train or restrain their pets. Such penalties would encourage owners to take their responsibilities seriously." House Legislative Analysis, HB 4897 (as enrolled), January 20, 1989. This language further supports my conclusion that, in enacting § 3(2), the Legislature intended to shift the burden of acting to pet owners in an effort "to protect those who are otherwise unable to protect themselves," *Quinn*, 440 Mich at 187, irrespective of any particular pet owner's knowledge or state of mind.

I conclude that the offense set forth in § 3(2) of the dangerous animals act is a strict-liability crime, containing no scienter requirement. Accordingly, I would affirm the circuit court's denial of defendant's motion to quash, but reverse the circuit court's warning to the prosecution that it will have to prove defendant's criminal intent at trial.

/s/ Kathleen Jansen