STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, V JOHN WESLEY JANES, Defendant-Appellee.	FOR PUBLICATION July 25, 2013 9:10 a.m. No. 312490 Alger Circuit Court LC No. 2012-002004-FH

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

M. J. KELLY, J.

In this interlocutory criminal appeal, the prosecutor appeals by leave granted the trial court's order denying defendant John Wesley Janes' motion to quash his bindover on the charge of owning a dangerous animal causing serious injury. See MCL 287.323(2). Although the trial court denied Janes' motion to quash, it also determined that the statute at issue was not a strict liability offense, as the prosecutor contended, and it warned the prosecutor that she would have to prove that Janes had a negligent criminal intent at trial. On appeal, the prosecutor argues that the trial court erred when it imposed a criminal intent requirement on the statutory language because the Legislature intended MCL 287.323(2) to be a strict liability offense. We conclude that, although the statute is silent on criminal intent, that silence is not dispositive. The statute must be interpreted in light of the background principles of the common law and, when read in that light, this offense is not a strict liability offense; rather, the statute requires proof that the owner knew that his or her animal was a dangerous animal within the meaning of the dangerous animal statute prior to the incident at issue. For this reason, we affirm the trial court's order and remand for further proceedings consistent with this opinion.

I. BASIC FACTS

At Janes' May 2012 preliminary examination, Carol Karr testified that she assisted Cheryl Anderson with caring for Anderson's ailing mother. Karr stated that she helped Anderson at her home, which was in the country, several days each week. A few months before the incident at issue, Janes, and later his adult son, moved into Anderson's home. Janes was recovering from knee surgery at the time.

Anderson owned a cocker spaniel and, after he moved in with Anderson, Janes went to a local shelter and acquired a pit bull. Karr said that Anderson and Janes would let the dogs out into the yard and they would play. However, she saw the pit bull get aggressive with the cocker spaniel; he would "stand over the [c]ocker and not let the [c]ocker get up." She stated that the pit bull had bitten the cocker spaniel, but did not injure it.

Karr testified that, on the day at issue, Anderson had gone to work, but called to say that she expected a friend's child to visit. Anderson told Karr that the child would be dropped off by the school bus. Karr said she was on the phone when she saw the child coming up the driveway and went onto the porch to greet her. At the time, the dogs were on the wheelchair ramp in the front yard.

Karr stated that the cocker spaniel jumped on the child, but ceased when Karr told it to stop. At that point, the pit bull jumped up and bit the child's face and then her arm. Karr told the person she was speaking with on the phone to call 9-1-1 as she grabbed the child and lifted her up and away from the pit bull. The pit bull then began to attack the child's legs: "He bit her, grabbed her, started shaking her. He was pulling her out of my arms." She described the dog's demeanor as "very fierce." Karr said a neighbor heard her screaming for help and came over and used a shovel to separate the dog from the child, but even then the dog would "spin around and attack again." Eventually, Janes' son got the dog into the house and police officers arrived. Karr said that, after the dog was removed, she could see that the child had injuries to her face and arm, but she said the injuries to the child's leg were the most severe: "her knee was torn up bad right to the bone."

Karr testified that the pit bull did not, to her knowledge, threaten or attack any people during the six weeks that she knew it. She did, however, testify that Janes' son told her that the pit bull had bitten him.

Bill Carlson testified at the preliminary examination that he was a deputy with the Alger County Sheriff's department. He investigated the pit bull and determined that the dog was surrendered to the local shelter on April 23, 2012 and adopted by Janes on April 27, 2012. He stated that the incident occurred on May 18, 2012.

Carlson said that the staff at the shelter were surprised to hear that the dog was involved in an attack because they thought the "dog was a friendly dog." He also contacted the previous owner and learned that the previous owner had taken the dog in as a "rehab" that had been "abused prior to her receiving it." The previous owner had indicated that she was wary of the dog, but she did not report any attacks or biting incidents. Indeed, when she surrendered the dog she signed a statement that the "animal has not bitten anyone to my knowledge in the past 14 days." The previous owner told Carlson that she surrendered the dog because she could no longer give it the time it needed. Carlson related that, when he went to the shelter to ensure that the dog was properly secured, it charged him.

After hearing the testimony at the preliminary examination, the district court determined that MCL 287.323(2) was a strict liability offense and that there was sufficient evidence to bind Janes over.

In June 2012, Janes moved to quash the bindover and dismiss the charge against him. Specifically, Janes argued that MCL 287.323(2) must be read to include criminal intent and, because the prosecutor failed to present any evidence that he "caused the attack, had any knowledge or notice of the dog's dangerous nature, or that [he] acted with gross negligence," the charge must be dismissed.

In an opinion and order entered in July 2012, the trial court agreed that MCL 287.323(2) was not a strict liability offense, but nevertheless denied the motion to quash the bindover and dismiss the charge. The court explained that the bindover was valid because there was evidence that Janes was negligent or reckless. It also stated that all "future proceedings shall be conducted and tried with the understanding that" this mens rea "shall be part and parcel of any jury instruction on the charge."

The prosecutor then appealed to this Court by leave granted.

II. THE ELEMENTS OF MCL 287.323(2)

A. STANDARDS OF REVIEW

Whether the Legislature intended a statute to impose strict liability or intended it to require proof of criminal intent is a matter of statutory interpretation. *People v Quinn*, 440 Mich 178, 185; 487 NW2d 194 (1992). This Court reviews de novo the proper interpretation and application of statutes. *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008).

B. BACKGROUND PRINCIPLES ON CRIMINAL INTENT

Under Michigan's common law, the commission of every offense required proof that the defendant committed a criminal act (actus reus) with criminal intent (mens rea). *People v Likine*, 492 Mich 367, 393; 823 NW2d 50 (2012); *People v Tombs*, 472 Mich 446, 451 (Kelly, J.), 466 (Taylor, C.J.); 697 NW2d 494 (2005), citing *People v Rice*, 161 Mich 657, 664; 126 NW 981 (1910) and *People v Roby*, 52 Mich 577, 579; 18 NW 365 (1884) (COOLEY, C.J.). Criminal intent can be one of two types: the intent to do the illegal act alone (general criminal intent) or an act done with some intent beyond the doing of the act itself (specific criminal intent). *People v Langworthy*, 416 Mich 630, 639; 331 NW2d 171 (1982). Thus, where a statute prohibits the willful doing of an act, the act must be done with the specific intent to "bring about the particular result the statute seeks to prohibit." *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983).

In contrast, a strict liability offense is one where the prosecutor need only prove beyond a reasonable doubt that "the defendant committed the prohibited act, regardless of the defendant's intent and regardless of what the defendant actually knew or did not know." *Likine*, 492 Mich at 394. Our Supreme Court has recognized that the Legislature can constitutionally enact offenses that impose criminal liability without regard to fault. *Quinn*, 440 Mich at 188. And whether the Legislature intended to enact a strict liability offense is generally a matter of statutory

interpretation. *Id.* at 185-188. In determining whether the Legislature intended to dispense with criminal intent, our Supreme Court has adopted the analytical framework first stated by the United States Supreme Court in *Morissette v United States*, 342 US 246; 72 S Ct 240; 96 L Ed 288 (1952). See *Quinn*, 440 Mich at 185-188.

In *Morissette*, the Court recognized that the contention that a criminal act must normally be done with criminal intent is "no provincial or transient notion"; it "is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Morissette*, 342 US at 250. The principle that an offender cannot be convicted of a crime unless it is proved that there was a "concurrence of an evil-meaning mind with an evil-doing hand" "took deep and early root in American soil." *Id.* at 251-252. And, for that reason, when legislatures began to codify the common law, courts generally assumed that those statutes included criminal intent:

> As the state codified the common law of crimes, even if their enactments were silent on the subject, their courts assumed that the omission did not signify disapproval of the principle but merely recognized that intent was so inherent in the idea of the offense that it required no statutory affirmation. [*Id.* at 252.]

For these reasons, courts will not lightly presume that the Legislature intended to dispense with the criminal intent traditionally required at common law: "the omission of any mention of criminal intent" must not "be construed as eliminating the element from the crime." *Tombs*, 472 Mich at 454 (Kelly, J.), citing *Morissette*, 342 US at 272-273. Instead, courts will "infer the presence of the element unless a statute contains an express or implied indication that the legislative body wanted to dispense with it." *Id.*

With these background principles in mind, we shall now examine the elements of the statute at issue.

C. THE DANGEROUS ANIMAL STATUTE

Whether the Legislature intended to impose strict liability under MCL 287.323(2) is a matter of legislative intent. *Quinn*, 440 Mich at 185. And determining legislative intent, by necessity, must begin with a review of the language actually used by the Legislature in drafting the statute. *People v Williams*, 491 Mich 164, 172; 814 NW2d 270 (2012). Where the statutory language is clear and unambiguous, this Court must enforce it as written. *Id.*

In 1989, the Legislature enacted a statutory scheme to deal with dangerous animals. See 1988 PA 426; MCL 287.321 *et seq*. As part of that scheme, the Legislature provided criminal penalties for the owners of dangerous animals that injure or kill persons. See MCL 287.323(1)-(3). In this case, the prosecutor charged Janes with violating MCL 287.323(2), which penalizes the owner of a dangerous animal that causes a serious injury:

> 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.

To prove a violation of this statute, the prosecutor must prove beyond a reasonable doubt that the defendant was an owner, which is defined to mean "a person who owns or harbors a dog or other animal." MCL 287.321(c). The prosecutor must also prove that the owner's animal attacked a person and caused "serious injury other than death" to that person. MCL 287.323(2); see also MCL 287.321(e) (defining serious injury as "permanent, serious disfigurement, serious impairment of health, or serious impairment of a bodily function of a person"). Finally, the Legislature also required the prosecutor to prove that the animal was one "that meets the definition of a dangerous animal." MCL 287.323(2).

By referring to an animal "that meets" the definition of a dangerous animal at the time that the animal "attacks a person", the Legislature indicated that the animal must meet the definition even before the attack at issue. For that reason, it necessarily follows that the prosecutor cannot use the incident at issue to prove that the animal was a dangerous animal. To hold otherwise would be to rewrite the statute to state: "If an animal [] meets the definition of a dangerous animal in section (1)(a) [by attacking] a person and causes serious injury other than death, the owner . . . is guilty of a felony . . . . But the Legislature did not write the statute in that way—it chose to require proof that the animal is one "that meets" the definition *and* "attacks a person causing serious injury . . . ." MCL 287.323(2) (emphasis added). The Legislature used the present tense for both meet and attack in the conditional clause (if the animal "meets" the definition and "attacks" a person) to show that the animal must meet the definition of a dangerous animal prior to and throughout the attack giving rise to criminal liability. Thus, the prosecutor must prove both that the animal qualified as a dangerous animal prior to the incident at issue and continued to qualify as a dangerous animal throughout the incident. MCL 287.321(a); MCL 287.323(2).

Consequently, we hold that, in order to establish that a defendant violated MCL 287.323(2), the prosecutor must prove beyond a reasonable doubt that the defendant (1) owned or harbored a dog or other animal; (2) the dog or other animal met the definition of a dangerous animal provided under MCL 287.321(a) prior to and throughout the incident at issue; and (3) the animal attacked a person causing serious injury, as defined under MCL 287.321(e), other than death.

From a review of these elements, it is apparent that the Legislature did not specifically address any particular criminal intent that must be proved in order to establish a violation of MCL 287.322(2). But the "'simple omission of the appropriate phrase'" from the statute is not, by itself, sufficient to "'justify dispensing with an intent requirement.'" *Liparota v United States*, 471 US 419, 426; 105 S Ct 2084; 85 L Ed 2d 434 (1985), quoting *United States v United States Gypsum Co*, 438 US 422, 438; 98 S Ct 2864; 57 L Ed 2d 854 (1978). Because we must construe the statute in light of the background principles of the common law, "in which the requirement of some *mens rea* for a crime is firmly embedded," *Staples v United States*, 511 US 600, 605; 114 S Ct 1793; 128 L Ed 2d 608 (1994), we must infer that the Legislature intended some criminal intent in the absence of an indication that the Legislature expressly or impliedly intended to dispense with that element. *Tombs*, 472 Mich at 454 (Kelly, J.) and 466 (Taylor, C.J.). Recognizing that this Court must infer the existence of a criminal intent element unless the Legislature explicitly or implicitly provided otherwise, the prosecutor argues on appeal that there is "abundant and compelling" evidence that the Legislature intended to impose strict liability under MCL 287.323(2).

1. PUBLIC WELFARE STATUTE

The prosecutor first argues that this offense is a "public welfare offense", which offenses do not traditionally require any criminal intent. Specifically, the prosecutor contends that mere ownership of an animal—because animals are "potentially dangerous thing[s]"—is sufficient to warrant the imposition of criminal liability when the animal causes death or serious injury without regard to knowledge or intent. For that reason, the prosecutor maintains, there need be no proof that the owner had "prior knowledge of the animal's particular propensity for dangerousness" or otherwise acted negligently in handling the animal.

In *Staples*, the petitioner appealed his conviction for possessing an unregistered machinegun (an assault rifle that had been modified to be capable of fully automatic fire). *Staples*, 511 US at 603. On appeal, the petitioner argued that, in order to be convicted of possessing an unregistered machinegun, the prosecutor had to prove that he "knew the weapon he possessed had the characteristics that brought it within the statutory definition of a machinegun." *Id.* at 602. In considering the matter, the Supreme Court first analyzed the statute and noted that it was silent as to the criminal intent necessary to convict, but that this silence did not "necessarily suggest that Congress intended to dispense with a conventional *mens rea* element, which would require that the defendant know the facts that make his conduct illegal." *Id.* at 605. Similar to the case here, the prosecutor in *Staples* argued that the statute at issue was a public welfare offense that regulated inherently dangerous devices—firearms—and, for that reason, Congress' silence on criminal intent should not give rise to a "presumption favoring *mens rea*." *Id.* at 606.

The United States Supreme Court recognized that the presumption in favor of imposing criminal intent as an element does not invariably apply to public welfare or regulatory offenses: "In construing such statutes, we have inferred from silence that Congress did not intend to require proof of *mens rea* to establish an offense." *Staples*, 511 US at 606. The Court explained that public welfare offenses generally apply to items whose character is such that a reasonable person would understand that he or she may be held strictly liable for his or her possession of the item:

> In such situations, we have reasoned that as long as a defendant knows that he is dealing with a dangerous device of a character that places him "in responsible relation to a public danger," he should be alerted to the probability of strict regulation, and we have assumed that in such cases Congress intended to place the burden on the defendant to "ascertain at his peril whether [his conduct] comes within the inhibition of the statute." Thus, we essentially have relied on the nature of the statute and the particular character of the items regulated to determine whether congressional silence concerning the mental element of the offense should be interpreted as dispensing with conventional *mens rea* requirements. [*Staples*, 511 US at 607 (citations omitted).]

In rejecting the prosecutor's contention that the presumption should not apply, the Supreme court noted that it typically avoids construing a statute to dispense with criminal intent "where doing so would 'criminalize a broad range of apparently innocent conduct.'" *Id.* at 610, quoting *Liparota*, 471 US at 426. And it stated that dangerousness alone did not put the average person on notice of the potential for strict liability:

> Under [the prosecutor's] view, it seems that *Liparota's* concern for criminalizing ostensibly innocuous conduct is inapplicable whenever an item is sufficiently dangerous—that is, dangerousness alone should alert an individual to probable regulation and justify treating a statute that regulates the dangerous device as dispensing with *mens rea*. But that an item is "dangerous," in some general sense, does not necessarily suggest, as the Government seems to assume, that it is not also entirely innocent. Even dangerous items can, in some cases, be so commonplace and generally available that we would not consider them to alert individuals to the likelihood of strict regulation. As suggested above, despite their potential for harm, guns generally can be owned in perfect innocence. [*Staples*, 511 US at 611.]

Here, it is beyond dispute that a significant portion of Michigan's citizens own animals, including a large portion who own dogs. It is similarly beyond reasonable dispute that almost all dogs have the potential to inflict injury—that is, that dogs are, in "some general sense," dangerous. *Id.* But, that being said, there has been widespread lawful ownership of dogs in this nation since before its founding. See *Id.* at 610 (finding it significant that there has been a "long tradition of widespread lawful gun ownership" in the United States). And the danger posed by dogs in the general sense is not such as to "alert an individual to probable regulation" that might render him or her a felon if the dog injures a person. *Id.* at 611. As was the case in *Liparota* and *Staples*, we are reluctant to construe this statute in a way that "would impose criminal sanctions on a class of persons whose mental state—ignorance of the characteristics of [the animal] in their possession—makes their actions entirely innocent." *Id.* at 614-615. To paraphrase the United States Supreme Court, we find it unthinkable that the Legislature intended to subject law-abiding, well-intentioned citizens to a possible four-year prison term if, despite genuinely and reasonably believing their animal to be safe around other people and animals, the animal nevertheless harms someone. See *Id.* at 615. That is, we are reluctant to impute our Legislature with the purpose to dispense with the criminal intent requirement where it would "mean easing the path to convicting persons whose conduct would not even alert them to the probability of strict regulation" under the statute. Rather, we think the Legislature intended to impose criminal liability under MCL 287.323(2) only when the owner *knows* that his or her animal possessed the characteristics that brought it within the statutory definition. See *Staples*, 511 US at 602. Indeed, we find it compelling that the Legislature has already demonstrated that it can—when it wishes—draft a statute that imposes strict liability on dog owners, but nevertheless chose not to do so here. See MCL 287.351(1) ("If a dog bites a person, without provocation . . ., the owner of the dog shall be liable for any damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness."). Accordingly, given the Legislature's failure to explicitly or impliedly provide for strict liability, we hold that the prosecutor must prove beyond a reasonable doubt that the owner knew that his or her animal was a dangerous animal within the meaning of MCL 287.321(a) prior to the incident at issue.

2. STATUTORY SCHEME

We also do not agree with the prosecutor's contention that the statutory scheme as a whole evinces a legislative intent to dispense with proof of criminal intent. The prosecutor relies heavily on the fact that the Legislature provided for criminal penalties where an owner has an "animal previously adjudicated to be a dangerous animal" that causes an injury that is not serious or allows the animal to "run at large." MCL 287.323(3) and MCL 287.323(4). Specifically, the prosecutor contends that, by requiring prosecutors to prove that the animal was previously "adjudicated to be a dangerous animal", the Legislature indicated that those offenses required a showing that the owner had prior knowledge of the animal's dangerous character, which, the prosecutor further maintains, is in stark contrast to the requirements stated under MCL 287.323(1) and MCL 287.323(2). However, MCL 287.323(3) and MCL 287.323(4) do not in fact require proof that the owner had prior knowledge of the animal's dangerous propensities—it only requires that the animal, without regard to the owner's knowledge, have been adjudicated as such. However, an owner may acquire an animal that has been previously adjudicated to be a dangerous animal within the meaning of MCL 287.321(a) without any knowledge that the animal has been so adjudicated. And the additional requirement that the animal be previously adjudicated to be a dangerous animal is consistent with a scheme that imposes some level of knowledge before criminal liability can attach; that is, the Legislature might reasonably have determined that an owner's knowledge that an animal has bitten or attacked someone in the past—without a specific adjudication of dangerousness—is sufficient by itself to warrant the imposition of criminal liability when the animal subsequently injures or kills another, see MCL 287.323(1) and MCL 287.323(2), but that a higher showing is necessary to impose criminal liability for lesser injuries or for allowing such an animal to run at large.

For similar reasons, we also do not agree that the Legislature's decision to include exceptions to the general definition of a dangerous animal shows that it intended to dispense with a criminal intent element. As we have already explained, the Legislature's decision to limit an owner's liability to situations where an animal "that meets" the definition of a dangerous animal "attacks" a person means that the prosecutor must prove, in relevant part, that the animal has previously bitten or attacked a person. MCL 287.323(2); MCL 287.321(a). The definition for a dangerous animal is quite broad and could subject an owner to liability for any harm subsequently caused by his or her animal even when the prior incident was not representative of the animal's dangerous propensities. As such, the Legislature decided to exclude some animals from the definition even though the animal may have previously bitten or attacked a person. The Legislature determined that an animal should not be deemed a dangerous animal if it bit or attacked a trespasser, or where the animal bit or attacked a person who provoked or tormented it, or if the animal was responding to protect a person. MCL 287.321(a)(*i*)-(*iii*). The Legislature also determined that the definition should not apply to livestock. MCL 287.321(a)(*iv*).

These exclusions are consistent with a legislative intent to impose a criminal intent element premised on the owner's knowledge that the animal meets the definition of a dangerous animal. The Legislature could reasonably conclude that an owner who is aware that his or her animal bit or attacked a person in the past, but who knows that the bite or attack occurred under unique circumstances not indicative of a dangerous propensity, is not on notice that the animal possesses a higher degree of danger to the public at large. Therefore, it could reasonably believe that such an owner should not be held criminally liable for any future harm caused by that

animal. In contrast, an owner who knows that his or her animal has bitten or attacked a person in the past and did so under circumstances that did not exclude the animal from the definition provided under MCL 287.321(a) is on notice that his or her animal poses a danger to the public and, accordingly, the Legislature could reasonably conclude that the owner should be held criminally liable for any future harm that the animal causes.

3. GROSS NEGLIGENCE

Although we agree that MCL 287.323(2) includes a criminal intent element, we do not agree with the trial court's decision to impose a negligence standard. We also disagree with Janes' contention on appeal that the prosecutor must prove that his gross negligence caused the injuries at issue. We acknowledge that this Court has previously held that, in order to establish a violation of MCL 287.323(1), the prosecutor must prove that the defendant's gross negligence in handling the animal caused the victim's death. See *People v Trotter*, 209 Mich App 244; 530 NW2d 516 (1995). However, the Court in *Trotter* premised its holding on the Legislature's decision to state that a person who violated that section was guilty of involuntary manslaughter, which was a common law offense with a criminal intent element. *Id.* at 248-249.

In contrast to that section, none of the remaining sections make any reference—implied or otherwise—to negligent conduct. Rather, the primary focus in the remaining sections is on the defendant's status as an "owner" of an animal that meets the definition of a dangerous animal under MCL 287.321(a) and which causes the specified injuries or engages in the proscribed behavior. See MCL 287.323(2) to (4). Although it is clear that the Legislature's purpose in enacting these sections was to prevent the harms identified in the statute (i.e., to prevent dangerous animals from running at large or injuring persons), it is equally clear that it sought to discourage these harms by placing owners on notice that they will be held criminally liable for any harms caused by his or her dangerous animal. Stated another way, it is evident to us that the Legislature sought to curtail the *ownership* of dangerous animals and not the negligent *keeping* or *handling* of dangerous animals. Consequently, we believe the most natural reading of this statutory scheme is to impose liability on owners who *knowingly* keep a dangerous animal that causes the specified harm and to do so without regard to the reasonableness of the owner's conduct.

III. CONCLUSION

The trial court did not err when it determined that the Legislature's silence as to criminal intent required under MCL 287.323(2) did not render that offense a strict liability crime. Michigan courts must infer a criminal intent for every offense in the absence of an express or implied Legislative intent to dispense with criminal intent. Because there is no indication that the Legislature intended to make MCL 287.323(2) a strict liability offense, we infer that the Legislature intended to require the prosecution to prove criminal intent. We further conclude that the requisite intent is proof that the owner knew that his or her animal met the definition of a dangerous animal under MCL 287.321(a). For these reasons, we hold that a prosecutor must prove the following elements beyond a reasonable doubt in order to convict Janes under MCL 287.323(2): (1) Janes owned or harbored a dog or other animal, (2) that the dog or other animal met the definition of a dangerous animal provided under MCL 287.321(a) prior to and throughout the incident at issue, (3) that he knew that the dog or other animal met the definition

of a dangerous animal within the meaning of MCL 287.321(a) prior to the incident at issue, and (4) the animal attacked a person and caused a serious injury other than death.

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Stephen L. Borrello