[Cite as *Middleburg Hts. v. Troyan*, 2017-Ohio-7074.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 105132, 105133, 105134, and 105135

CITY OF MIDDLEBURG HEIGHTS

PLAINTIFF-APPELLEE

vs.

MIRIAM TROYAN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Berea Municipal Court
Case Nos. 15 CRB 00177, 15 CRB 00178, 15 CRB 00179, and 15 CRB 00787

BEFORE: Kilbane, P.J., E.T. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: August 3, 2017

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MARY EILEEN KILBANE, P.J.:

{¶1} In this consolidated appeal, defendant-appellant, Miriam Troyan ("Troyan"), appeals from her convictions in the Berea Municipal Court.[1] For the reasons set forth below, we affirm.

{¶2} In 2015, Troyan was charged in four separate cases with violations of R.C. 955.22(C), Ohio's "dog at large" statute. The charges stem from allegations by her neighbors, Annie and Justin Ricker (collectively the "Rickers," seperately "Annie" and "Justin"), that Troyan's dog escaped from her yard on four separate occasions. These cases were tried together before the bench. The following evidence was adduced at trial.

{¶3} At the time relevant to these cases, the Rickers lived behind Troyan in Middleburg Heights. Annie testified that there was a wood fence between the properties and a chain link fence that ran along the side of Troyan's yard. Annie explained that there was a gap where the wood fence and the chain link fence met. She stated that she had observed Troyan's dog escape through this gap in the fence and run around the neighborhood unattended on multiple occasions, specifically on January 21, 29, and 30, 2015 and May 14, 2015. Justin also testified that he had observed the dog escape through the gap in the fence and run around his yard and other nearby yards on these dates.

{¶4} Annie and Justin each stated they were familiar with Troyan's dog because they had often seen Troyan walking her dog. They both acknowledged they had never

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[1]This appeal is a companion case to the consolidated appeal in *Middleburg Hts. v. Miriam Troyan*, 8th Dist. Cuyahoga Nos. 105128 and 105131.

discussed the dog's escape with Troyan, but directly contacted Middleburg Heights Animal Control in response to the dog running at large on their property and throughout the neighborhood. Justin described the dog as copper colored and testified that it appeared to be a "German Shepherd mix." Middleburg Heights Animal Control Officer Laura Takacs also testified, describing the dog as a "larger dog" with reddish, medium-length hair.

{¶5} The trial court found Troyan guilty of all four charges. She now appeals, raising the following two assignments of error for our review:

Assignment of Error One

> The trial court erred to the prejudice of [Troyan] when it failed to determine the existence of a requisite *mens rea*.

Assignment of Error Two

> The trial court erred to the prejudice of [Troyan] in denying her motion for acquittal made pursuant to Crim.R. 29(A).

Mens Rea

{¶6} In her first assignment of error, Troyan argues that R.C. 955.22(C) does not specify a degree of mental culpability and that recent legislation reflects an intent to reduce the number of strict liability offenses. R.C. 955.22(C) provides:

> Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harborer, or handler of the dog, no owner, keeper, or harborer of any dog shall fail at any time to do either of the following:
>
> (1) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harborer by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;
>
> (2) Keep the dog under the reasonable control of some person.

{¶7} We previously addressed whether a mens rea is required under R.C. 955.22(C) in Troyan's prior appeal, declining to reconsider our holding that it is a strict liability offense. *Middleburg Hts. v. Troyan*, 2016-Ohio-5625, 70 N.E.3d 1083 (8th Dist.) ("*Troyan I*").

{¶8} In *Troyan I* and the instant appeal, Troyan asks this court to reconsider our previous holding in *Gates Mills v. Welsh*, 146 Ohio App.3d 368, 766 N.E.2d 204 (8th Dist.2001). In *Gates Mills*, we considered R.C. 955.22(C) in light of R.C. 2901.21 and held that R.C. 955.22(C) is a strict liability offense.[2] *Id*. at 373-375. We found that R.C. 955.22(C) is "manifestly intended to protect the public safety and well-being" and thus plainly indicates a purpose to impose strict liablity. *Id*. at 374. Other Ohio courts have held the same, finding that because R.C. 955.22(C) was enacted to protect the health, safety, and well-being of the community, it is therefore among the types of statutes amenable to strict liability. *State v. Squires*, 108 Ohio App.3d 716, 718, 671 N.E.2d 627

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[2] R.C. 2901.21 provides in pertinent part:

> (B) When the language defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense.
>
> * * *
>
> (C)(1) When language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly.

(2d Dist.1996); *State v. Miller*, 9th Dist. Wayne No. 2820, 1994 Ohio App. LEXIS 756 (Feb. 23, 1994); *State v. Judge*, 1st Dist. Hamilton No. C-880317, 1989 Ohio App. LEXIS 1404 (Apr. 19, 1989).

{¶9} Troyan argues that *Gates Mills* "was adopted under a legislative mindset which has since become outdated." In support of this argument, Troyan relies on recent legislation, S.B. 361, which enacted R.C. 2901.20 in March 2015. R.C. 2901.20 mandates that every *new* criminal offense shall specify a degree of mental culpability or be void. It provides in pertinent part:

> (A) Every act enacted on or after the effective date of this section that creates a new criminal offense shall specify the degree of mental culpability required for commission of the offense. A criminal offense for which no degree of mental culpability is specified that is enacted in an act in violation of this division is void.

{¶10} R.C. 2901.20(B) limits this requirement to offenses enacted after its effective date, stating:

> (B) Division (A) of this section does not apply to the amendment of a criminal offense that existed on the effective date of this section, but it does apply to a new criminal offense added to a statute that existed on the effective date of this section.

{¶11} R.C. 2901.20 became effective on March 15, 2015; whereas the latest version of R.C. 955.22 became effective on May 22, 2012. Since R.C. 2901.20 was enacted after the effective date of R.C. 955.22, it does not apply here.

{¶12} Accordingly, this first assignment of error is overruled.

Sufficiency of the Evidence

{¶13} In her second assignment of error, Troyan argues that the trial court erred in denying her Crim.R. 29 motion for acquittal because the state failed to present sufficient

evidence to establish beyond a reasonable doubt that she committed each offense. Crim.R. 29(A) provides:

> The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses.

{¶14} Our standard of review for the denial of a Crim.R. 29 motion is the same as the standard of review for the sufficiency of the evidence. *State v. Bridgeman*, 55 Ohio St.2d 261, 381 N.E.2d 184 (1978), paragraph one of the syllabus. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶15} Troyan argues that the city "presented no evidence at trial as to who was keeping, harboring, or handling the dog at the time it escaped." She admits that although she owns the dog, "it is unknown who let it escape" and the dog "could have been harbored by, handled by, or under the control of anyone other than [Troyan] at the time of the escapes."

{¶16} As we discuss above, R.C. 955.22(C) prohibits a dog owner from failing to "keep the dog physically confined or restrained upon the premises of the owner * * * by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape" or, alternatively, from failing to "[k]eep the dog under the reasonable control of some person." *Id*. at (1) and (2).

{¶17} The Rickers testifed that Troyan's dog had escaped from her yard through a gap in the fence and into nearby yards on the dates alleged in the complaints. It follows that at these times the dog was neither "confined and restrained" as required by R.C.

955.22(C)(1), nor under the "reasonable control of some person" as required by R.C. 955.22(C)(2). Viewing all the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could find the essential elements of R.C. 955.22(C)(1) proven beyond a reasonable doubt. *Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), at paragraph two of the syllabus.

{¶18} Based upon the foregoing, we find that the city presented sufficient evidence to support Troyan's convictions.

{¶19} Accordingly, the second assignment of error is overruled.

{¶20} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the municipal court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR