

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	No. 2018-0601
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Hamilton County Court of Appeals,
-vs-	:	First Appellate District
	:	
JOSEPH JONES,	:	Court of Appeals
	:	Case No. C-160908
	:	
Defendant-Appellee.	:	Municipal Court
	:	Case No. 16/CRB/13505

MERIT BRIEF OF PLAINTIFF-APPELLANT STATE OF OHIO

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INTRODUCTION

This cause reaches the Supreme Court of Ohio on a certified conflict. This Court ordered the parties to brief the issue, “[m]ust a dog have been previously designated as a ‘dangerous dog’ under Chapter 955 of the Ohio Revised Code before its owner may be prosecuted for a violation of R.C. 955.22?” The First District of Ohio answered this question in the affirmative. *State v. Jones*, 1st Dist. Hamilton No. C-160908, 2018-Ohio-565. (Appendix 1). The Fifth District of Ohio answered this question in the negative. *State v. Crocker*, 5th Dist. Coshocton No. 2012 CA 0021, 2013-Ohio-3100. (Appendix 2).

The Fifth District’s analysis is more correct. Whether a dog is “dangerous” (pursuant to R.C. 955.11(A)(1)(a), Appendix 3) merely elevates this offense to a misdemeanor of the fourth degree. In this context, a prior designation is not a mandatory pre-requisite for prosecution and procedural due process is satisfied through a Municipal Court trial.

The Plaintiff-Appellant, State of Ohio, represented by the City of Cincinnati (hereafter “the State”), respectfully asks this Court to reverse the First District’s decision in the present matter and reaffirm responsible dog ownership in Ohio.

STATEMENT OF FACTS

The Defendant-Appellee, Joseph Jones (hereafter “Mr. Jones”), walked to his apartment building with his dog, an American Pit Bull named Prince Bane, on May 15, 2016, at about 3:30 in the morning. (T.p. 58, 60-61). Mr. Jones unleashed his dog during the walk so that it could interact with a stray female dog. (T.p. 59-60).

Alyssa Rushing (hereafter “Ms. Rushing”), who lived in the same apartment building, also walked her dog, a Chinese Crested Hairless, that night. (T.p. 16, 20). Ms. Rushing and her dog were on the steps to the apartment building when Mr. Jones, Prince Bane, and the stray

approached. (T.p. 17). Ms. Rushing saw both dogs running at her and attempted to pick up her dog. (T.p. 17). In her own words:

I walked outside in the late evening hours to take my dog out. As I was walking out the front door and taking the steps down to the street level, I saw two dogs come running at me. I saw Mr. Jones walking behind them, neither of them were on a leash. I grabbed my dog and tried to get back in, his dog grabbed ahold of my hands and pulled me down, and the other dog grabbed ahold of my dog. And he pulled his dog off of my dog, so I fought to get my dog back. (T.p. 16-17).

Ms. Rushing received bite wounds to her hands and wrist, the scars of which were visible at trial. (T.p. 17-18). Ms. Rushing further testified she was certain it was Prince Bane, and not the stray, that was biting her as she attempted to free her dog from the stray. (T.p. 19-25).

Mr. Jones acknowledged at trial that his dog was in “protection training” at a Dayton area kennel where they train police dogs. (T.p. 55). In this training, they use an “armed guard” or “bodysuit” and the dog is trained to “never let go[.]” (T.p. 56). Mr. Jones further insinuated that he used his dog for protection on the day of the incident because he was walking downtown with “a lot of money in [his] pocket.” (T.p. 58-59).

In addition, Mr. Jones made statements on Facebook that his dog “used to try and smell or bite everybody.” (T.p. 73; State’s Trial Exhibits 1, 2 & 3). The Trial Court acknowledged this evidence during sentencing; “[Y]our Facebook post says the reason you brought [...] the dog to training it was because it would bite people, and that’s the reason you brought the dog to training.” (T.p. 77).

At trial, Mr. Jones agreed that Prince Bane was present and off the leash. (T.p. 43, 60). Mr. Jones mostly argued that Prince Bane “didn’t do the bite” and disputed whether he was on the premises or not. (T.p. 43, 48-54). There was no testimony or evidence that Prince Bane had been formally designated as a “dangerous dog” under Chapter 955 of the Ohio Revised Code.

But whether Mr. Jones' dog was a "dangerous" dog pursuant to R.C. 955.11(A)(1) was never questioned at trial.

The trial court entered a finding of guilty for "Failing to Confine a Dangerous Dog" in violation of R.C. 955.22. (T.p. 75). The First District reversed Mr. Jones' conviction. *State v. Jones*, 1st Dist. Hamilton No. C-160908, 2018-Ohio-565. This Court determined that a conflict existed and ordered the Parties to brief the issue, "[m]ust a dog have been previously designated as a 'dangerous dog' under Chapter 955 of the Ohio Revised Code before its owner may be prosecuted for a violation of R.C. 955.22?"

ARGUMENT

State's Sole Proposition of Law: Under these circumstances, there is no requirement for a dog to have been previously designated as a "dangerous dog" under Chapter 955 of the Ohio Revised Code before its owner can be prosecuted for a violation of R.C. 955.22.

The Fifth District of Ohio was mostly correct in *State v. Crocker*, 5th Dist. Coshocton No. 2012 CA 0021, 2013-Ohio-3100. That case was on point because there had been no hearing pursuant to R.C. 955.222 and the dog had not been previously designated as a "dangerous dog" at the time of the violation. Id. at ¶ 31. The Fifth District held:

[W]e find no support for Appellant's position that a dog has to have previously violated the "dangerous dog" statute to be designated as a "dangerous dog". Here, the dog in question both injured a person and killed another dog. As such, the dog was a "dangerous dog" within the meaning of the statute and the offense was a fourth degree misdemeanor. Crocker at ¶ 32.

The Fifth District's conclusion (that a dog's status as "dangerous" can be proven by its actions rather than a prior hearing) is further supported by the plain language of Chapter 955 of the Revised Code, this Court's analysis of due process in other dog cases, and public policy concerns.

In this brief, the State examines Chapter 955, the case law, and public policy concerns in turn. In the end, the State respectfully requests this Court to reverse the First District's decision in the present matter.

I. Chapter 955 of the Revised Code does not explicitly require dogs to have been previously designated as “dangerous” before their owners may be prosecuted for violations of R.C. 955.22.

This case is about “Failing to Confine a Dangerous Dog” in violation of R.C. 955.22. (T.p. 75). This Court ordered the parties to brief the issue, “[m]ust a dog have been previously designated as a ‘dangerous dog’ under Chapter 955 of the Ohio Revised Code before its owner may be prosecuted for a violation of R.C. 955.22?” The First District was wrong because nothing in Chapter 955 (specifically R.C. 955.11 or R.C. 955.22 (Appendix 4)) explicitly requires a prior formal designation (pursuant to R.C. 955.222(Appendix 5)). The State uses this section of its argument to delve further into what these statutes say and what they don't say.

Contrary to the First District's analysis, R.C. 955.11(A)(1)(a) simply defines a “[d]angerous dog” as “a dog that, without provocation, and , and subject to division (A)(1)(b) of this section, has done any of the following: (i) [c]aused injury, other than killing or serious injury, to any person; (ii) [k]illed another dog; [or] (iii) [b]een the subject of a third or subsequent violation of division (C) of section 955.22 of the Revised Code.” The exception referenced in R.C. 955.11(A)(1)(b) pertains to police dogs and is not applicable. Notably, R.C. 955.11 was substantially amended by 2011 Ohio HB 14, enacted on February 21, 2012. This is the same legislation that created R.C. 955.222 (regarding jurisdiction for hearings, discussed *infra*) and yet R.C. 955.11 makes no reference to R.C. 955.222 or the necessity of a prior formal designation.

In this context, the First District further erred in its interpretation of R.C. 955.11(A)(1)(a). The First District observed that R.C. 955.11(A)(1)(a) “defines ‘dangerous dog’ in the past-perfect tense, which means that the conduct that triggers the designation must precede the designation.” The State agrees the prior injury to a person, the prior killing of another dog, or the prior third or subsequent violation of R.C. 955.22(C) must have occurred prior to the incident for which a dog owner is prosecuted.¹ That’s why the State introduced evidence at trial that Prince Bane had previously bitten people. (T.p. 73; State’s Trial Exhibits 1, 2 & 3). But the First District’s statutory analysis that the legislature’s use of “past-perfect tense” further requires a prior formal designation pursuant to R.C. 955.222 is unsupported by statute and a step too far.

Instead, R.C. 955.22 explicitly adopts the definition of “dangerous dog” from R.C. 955.11(A)(1)(a). It further addresses the requirements for all dogs and the requirements for “dangerous dogs”:

Section (C) addresses all dogs and requires “[e]xcept 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: [...] (2) Keep the dog under the reasonable control of some person.” (Emphasis added).

Section (D) addresses dangerous dogs and specifically requires, “(2) While that dog is off the premises of the owner, keeper, or harborer, keep that dog on a chain-link leash or tether

¹ The State indicated the Fifth District was “mostly correct” in *State v. Crocker*, 5th Dist. Coshocton No. 2012 CA 0021, 2013-Ohio-3100. The State does not claim that the present conduct of a dog can satisfy the elements of R.C. 955.11(A)(1)(a). Instead, the State only asserts that prior conduct, proven beyond a reasonable doubt, can satisfy the elements of R.C. 955.11(A)(1)(a) and elevate a violation of R.C. 955.22 to a misdemeanor of the fourth degree. In this context, a prior hearing pursuant to R.C. 955.222 isn’t explicitly required by statute.

that is not more than six feet in length and additionally do at least one of the following: [...] (b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person[.]”

The State acknowledges that R.C. 955.22(D) (regarding “dangerous dogs”) imposes additional and more specific requirements on dog owners than R.C. 955.22(C) (regarding “any dogs”). But the categories of “dangerous dogs,” referenced in section (D), and “any dogs,” referenced in section (C), still overlap. And, both sections would prohibit Mr. Jones from failing to control Prince Bane while off the premises. (T.p. 43, 59-60). The only difference, regarding the facts of this case, is whether Prince Bane met the criteria of R.C. 955.11(A)(1)(a) to be a “dangerous dog” (which elevates this offense from a MM under section (C) to a M4 under section (D)).

Moreover, R.C. 955.221 recognizes the application of local ordinances or resolutions pertaining to dog control, including “the restraint of dogs[.]” In this context, Cincinnati Municipal Code 701-2 bridges the gap between section (C) and section (D) of R.C. 955.22 by requiring “any” and all dogs “[w]hen off the premises of the owner, keeper or harborer” to be kept “on a leash under the reasonable control of some person who is of suitable age and discretion.” See, C.M.C.N. 701-2 (Appendix 6). Significant to due process and notice, the law imposes a leash requirement regardless of whether Prince Bane had previously bitten people or not. (Explained *infra*).

The point is, Mr. Jones was prosecuted for failing to control Prince Bane, leading to the injury of Alyssa Rushing. (T.p. 43, 59-60). This was not a prosecution for the additional and

more specific requirements placed on dog owners by R.C. 955.22(D). Instead, this was a prosecution for failure to adhere to a common-sense requirement imposed by R.C. 955.22(D), R.C. 955.22(C) and CMCN 701-2. The fact that Prince Bane was, by definition, a “dangerous dog” pursuant to R.C. 955.11(A)(1)(a), merely elevated this offense to a misdemeanor of the fourth degree and allows the State to seek restitution. (Explained *infra*).

Finally, the biggest change in this area of Ohio law (at least since the last time the Supreme Court of Ohio considered Ohio’s dog statutes in 2009) is the enactment of R.C. 955.222 in 2012. This statute allows for judicial designations of dogs and offers dog owners the opportunity to request a hearing, challenge or appeal these designations. The State acknowledges, this statute was enacted in response to this Court’s opinion in *State v. Cowan*, 103 Ohio St.3d 144, 2004-Ohio-4777, 814 N.E.2d 865 (discussed *infra*); as noted by the First District in *State v. Jones*, 1st Dist. Hamilton No. C-160908, 2018-Ohio-565, ¶ 11. However, the First District wrongly interprets R.C. 955.222 as a “prerequisite to finding a violation of R.C. 955.22(D).” That statute actually says “[t]he municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harbinger of a dog **shall conduct any hearing** concerning the designation of the dog as a nuisance dog, dangerous dog, or vicious dog.” In this case, a Municipal Court trial constitutes a “hearing” and the fact of a dog being “dangerous” pursuant to R.C. 955.11(A)(1)(a) was proven beyond a reasonable doubt.

Contrary to the First District’s reasoning in *State v. Jones*, 1st Dist. Hamilton No. C-160908, 2018-Ohio-565: Nothing in R.C. 955.11(A)(1)(a) (which defines a dangerous dog) or R.C. 955.22 (the prohibition against failing to confine the same) references a “designation” or a formal “prerequisite” designation. Also, nothing about the State’s “interpretation of R.C. 955.22(D) would render R.C. 955.11 superfluous” because the definition of a dangerous dog

contains legal elements that still have to be proven beyond a reasonable doubt at trial. Instead, the application of R.C. 955.222 is necessitated solely by due process concerns for the additional and more specific requirements placed on dog owners by R.C. 955.22(D).

The State acknowledges that R.C. 955.222 offers one statutory avenue to designate a dog as “dangerous” and provide notice regarding the additional and more specific requirements on dog owners imposed by R.C. 955.22(D). But it’s not the exclusive means when the offense involves a violation that’s not unique to “dangerous dogs” (because a dog owner is always required to keep their dog under control). And the plain language of Chapter 955 certainly does not mandate a prior formal designation as a prerequisite to a prosecution under R.C. 955.22.

Ultimately, the Fifth District’s conclusion in *State v. Crocker*, 5th Dist. Coshocton No. 2012 CA 0021, 2013-Ohio-3100, is more faithful to the letter of the law. It doesn’t assume the necessity of R.C. 955.222 or impose additional obstacles to prosecution for a common-sense requirement imposed by R.C. 955.22(D), R.C. 955.22(C) and CMCN 701-2.

For all of the foregoing reasons, Chapter 955 of the revised code does not explicitly require dogs to have been previously designated as “dangerous” before their owners may be prosecuted for violations of R.C. 955.22. The plain language of the statute answers the certified question in the negative.

II. Neither case law nor due process actually require dogs to have been previously designated as “dangerous” before their owners may be prosecuted for violations of R.C. 955.22.

Again, this case is about “Failing to Confine a Dangerous Dog” in violation of R.C. 955.22. (T.p. 75). This Court ordered the parties to brief the issue, “[m]ust a dog have been previously designated as a ‘dangerous dog’ under Chapter 955 of the Ohio Revised Code before its owner

may be prosecuted for a violation of R.C. 955.22?” The First District was wrong because due process does not require notice to a dog owner of a responsibility they were always required to undertake (regardless of whether the dog was dangerous pursuant to R.C. 955.11(A)(1)(a)). The State uses this section of its argument to delve further into this Court’s procedural due process jurisprudence and the dangerous dog case law.

First, contrary to the First District’s analysis, procedural due process is flexible and doesn’t obviate common sense. Due process under the Ohio and United States Constitutions demands that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner where the state seeks to infringe a protected liberty or property interest. See, e.g., *Ohio v. Hochhausler*, 76 Ohio St.3d 455, 459, 1996-Ohio-374, 668 N.E.2d 457. However, the concept of due process is flexible and varies depending on the importance attached to the interest and the particular circumstances under which the deprivation may occur. *Id.*, citing, *Walters v. Natl. Assn. of Radiation Survivors*, 473 U.S. 305, 320, 105 S. Ct. 3180, 3189, 87 L. Ed. 2d 220, 232 (1985).

Following this Court’s analysis in *Hochhausler*, this Court has applied the three-pronged balancing test set forth in *Mathews v. Eldridge* 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), to determine whether a prosecution violates due process. See, e.g., *Hochhausler* at 460; citing *City of Maumee v. Gabriel*, 35 Ohio St.3d 60, 61, 518 N.E.2d 558 (1988) (regarding License Forfeiture Suspensions). That test requires the consideration of the following factors:

“First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (Emphasis added.) *Mathews* at 335, 96 S. Ct. at 903, 47 L. Ed. 2d at 33.

In this analysis, the private interest that will be affected (of elevating a minor misdemeanor to a misdemeanor of the fourth degree) for a dog owner's failure to confine a dog is minimal. This is because a dog owner was always required to keep their dog under control. And the State did not endeavor to prosecute the dog owner for any of the additional or more specific requirements placed on dog owners (which would require notice).

In this analysis, the risk of an erroneous deprivation of such interest through the procedures used is minimal. This is because a prior hearing pursuant to R.C. 955.222 only requires proof "by clear and convincing evidence" that the dog is a "dangerous dog" pursuant to R.C. 955.11(A)(1)(a). The method employed in this case of proving a dog is dangerous at trial actually required proof beyond a reasonable doubt of the elements contained therein. As such, burden of proof is higher and the risk of erroneous designation is lower.

In this analysis, the probable value of additional or substitute procedural safeguards is low because dog owners were always required to keep their dogs under control. Adding a mandatory layer of hearings and objections prior to prosecution (to protect against other situations involving additional and more specific requirements) fails to recognize the flexible nature of due process.

In this analysis, the Government's interest in this matter is to promote responsible dog ownership and seek restitution for victims of "dangerous dogs" from dog owners that fail to confine the same. Here, the function of notifying every "owner, keeper, or harbinger" of every "dangerous dog" in Ohio that it's especially important for them to follow the common-sense law of keeping their dog creates an unnecessary burden.

For all of the foregoing reasons, due process does not actually require dogs to have been previously designated as “dangerous” before their owners may be prosecuted for violations of R.C. 955.22.

Second, contrary to the First District’s analysis, this Court’s analysis of “dangerous dog” cases has evolved significantly since *State v. Cowan*, 103 Ohio St.3d 144, 2004 Ohio 4777, 814 N.E.2d 846 (which is the primary precedent on which the First District based its decision in this matter). The State explains the evolution:

In *State v. Cowan*, 103 Ohio St.3d 144, 2004 Ohio 4777, 814 N.E.2d 846, this Court examined whether a prior version of R.C. 955.22 violated procedural due process. This Court held that statute was unconstitutional because it failed to provide the dog owner with a meaningful opportunity to be heard on the dog’s classification and labeled dogs dangerous or vicious because of their breed only.²

Later, in *Toledo v. Tellings*, 114 Ohio St.3d 278, 2007 Ohio 3724, 871 N.E.2d 1152, this Court clarified that it was the unilateral classification of the dogs as vicious by a state actor that trampled the defendant’s due process rights by failing to give the defendant notice and opportunity to be heard.³

Finally, in *Youngstown v. Traylor*, 123 Ohio St.3d 132, 2009-Ohio-4184, 914 N.E.2d 1026, this Court upheld a Youngstown City Ordinance where dogs are rendered “vicious” by their propensity to attack or by their attack, and dog owners are merely required to keep such dogs confined. In satisfaction of due process, Traylor’s dogs were alleged to be vicious in his criminal

² A former version of R.C. 955.11, in effect at the time, included a definition for a “dangerous dog” which relied heavily on whether the dog was a pit-bull. Subsequent legislation, 2011 Ohio HB 14, enacted on February 21, 2012, rewrote much of the chapter.

³ Notably, both *Cowan* and *Tellings* refer to the pre-amended Chapter 955 of the Revised Code.

complaint, and Traylor was given an opportunity for meaningful review in front of the trial court. Similar to Mr. Jones, Traylor was not prosecuted for any additional or more specific requirements placed on dangerous dog owners. This distinction was clearly critical to the outcome of Traylor's appeal.⁴

The State's point is that, consistent with *Traylor*, there is case law precedent for using a statutory definition (without a prior designation) to prosecute a "vicious" dog owner for failing to confine their dog (without offending procedural due process). It follows, the same should be true for using the definition found in R.C. 955.11(A)(1)(a) to prosecute a dog owner for failing to confine their "dangerous dog" pursuant to R.C. 955.22(D).

For all of the foregoing reasons, case law does not actually require dogs to have been previously designated as "dangerous" before their owners may be prosecuted for violations of R.C. 955.22. Analysis of this Court's case law and due process jurisprudence answer the certified question in the negative.

III. Common-sense and public policy concerns obviate the need for a dog to be previously designated as a "dangerous dog" before its owner may be prosecuted for a violation of R.C. 955.22.

The effect of requiring a formal prior designation pursuant to R.C. 955.222 before a dog owner may be prosecuted for a violation of R.C. 955.22 is detrimental to common-sense responsible dog ownership, creates a "free bite" rule before the State can pursue restitution for injuries caused by "dangerous dogs," and leads to a slippery slope regarding procedural due process concerns for all definitions in the Ohio Revised Code.

⁴ Notably, *Traylor* dealt with YCO 505.19, which under which dogs were "rendered vicious under the ordinance by their propensity to attack or by their attack, and dog owners are merely required to keep such dogs confined." Traylor at ¶ 26.

First, a dog owner doesn't need to be notified that their dog is formally dangerous before being required to take steps to ensure their dog doesn't injure other people. Mirroring R.C. 955.11(A)(1)(a): not every injury perpetuated by a dog to a human, nor every instance of killing another dog, nor violation of R.C. 955.22(C) comes to the attention of the dog warden. Not every action by a dog results in a Municipal Court proceeding pursuant to R.C. 955.222. That doesn't mean that dog owners should have to wait for a formal hearing to responsibly control their dog when they have knowledge that their dog is dangerous to others / and they were required to keep their dog under control regardless of any designation.

In this case, Mr. Jones acknowledged that his dog had been dangerous in the past. Mr. Jones trained and used his dog like a dangerous ordnance (for protection). And when Mr. Jones' dog, Prince Bane, got startled and was off its leash—it injured the victim in this case. This is exactly the type of conduct that R.C. 955.22(C) and (D) were designed to protect against. In this narrow context, common-sense and public policy obviate the need for a prior hearing or formal designation pursuant to R.C. 955.222.

Second, the First District's analysis creates a "free bite" rule before the State can pursue restitution for injuries caused by "dangerous dogs." A violation of R.C. 955.22(C) for failure to confine non-dangerous dogs is only a minor misdemeanor. A violation of R.C. 955.22(D) for failure to confine dangerous dogs is a misdemeanor of the fourth degree. And R.C. 2929.28(A)(1) (regarding financial sanctions for misdemeanors) mandates that a "court may not impose restitution as a sanction pursuant to this division if the offense is a minor misdemeanor[.]" As such, the State has no statutory mechanism to pursue restitution for injuries caused by "dangerous dogs" that haven't previously come to the attention of authorities.

In this case, Ms. Rushing received bite wounds to her hands and wrist, the scars of which were visible at trial. (T.p. 17-18). Ms. Rushing further testified she was certain it was Prince Bane that was biting her as she attempted to free her dog. (T.p. 19-25). This is exactly the type of injury that the State should be able to pursue restitution for. In this narrow context, common-sense and public policy obviate the need for a prior hearing or formal designation pursuant to R.C. 955.222.

Third, the overuse of procedural due process as an obstacle to prosecution is a slippery slope that could invalidate numerous sections of the Ohio Revised Code that rely on similar definitions. For example, there's little distinction between the definition of a "dangerous dog" pursuant to R.C. 955.11(A)(1)(a) and a "dangerous ordnance" defined by R.C. 2923.11(K) and (L). The First District's notice pre-requisite would seemingly require a hearing that an "automatic or sawed-off firearm" or "explosive device or incendiary device" is such before a person could be prosecuted for carrying a concealed weapon pursuant to R.C. 2923.12(A)(3). But there is no support in case law for such a requirement. And there's no reason to apply procedural due process as an obstacle to prosecution in either context.

For all of the foregoing reasons, common-sense and public policy concerns obviate the need for a dog to be previously designated as a "dangerous dog" before its owner may be prosecuted for a violation of R.C. 955.22.

CONCLUSION

This is a narrow case where a dog owner, Mr. Jones, was prosecuted for failing to confine a dog, Prince Bane, (in such a way that he would have always been required to do), when he knew was dangerous, (based the dog's prior acts of biting everybody). Nothing about this prosecution offends the plain language of Chapter 955, case law, or procedural due

process. Moreover, common-sense and public policy concerns weigh in favor of a nuanced approach to Chapter 955 of the revised code.

Put simply, the answer to the certified question “[m]ust a dog have been previously designated as a ‘dangerous dog’ under Chapter 955 of the Ohio Revised Code before its owner may be prosecuted for a violation of R.C. 955.22?” is a resounding “NO.” The State can always prosecute a dog owner for failing to confine “any dog” pursuant to R.C. 955.22(C). And the State can prosecute a dog owner for failing to confine a “dangerous dog” (which is by definition “dangerous”) pursuant to R.C. 955.22(D), so long as it’s not a violation for the additional and more specific requirements placed on dog owners thereunder.

This option exists because the plain language of Chapter 955 of the Revised Code does not explicitly require that a dog have been previously designated as a “dangerous dog” before its owner may be prosecuted for a violation of R.C. 955.22. Also, there is case law precedent for using a statutory definition (without a prior designation) to prosecute a “vicious” dog owner for failing to confine their dog (without offending procedural due process).

To hold otherwise reads Chapter 955 of the revised code to say something it doesn’t: That R.C. 955.222 is a mandatory and exclusive prerequisite for a prosecution under R.C. 955.22. To hold otherwise imposes procedural due process obstacles where it is unnecessary pursuant to the *Mathews* test. To hold otherwise runs afoul of common-sense and public policy concerns explained herein.

For all of the foregoing reasons, the State respectfully asks this Court to reverse the First District’s decision in the present matter and reaffirm responsible dog ownership in Ohio.

Respectfully submitted,

Paula Boggs-Muething (#0080018)
City Solicitor

Natalia S. Harris (#0072431)
City Prosecutor

/S/Christopher Liu
Christopher Liu (#0086504)
Appellate Director
City of Cincinnati

Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief on Behalf of Plaintiff-Appellant State of Ohio was sent via email to Counsel for Defendant-Appellee, David Hoffmann, dhhoffmann@cms.hamilton-co.org, on this 17th day of September, 2018.

Respectfully submitted,

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APPENDIX 1

(*State v. Jones*, 1st Dist. Hamilton No. C-160908, 2018-Ohio-565)

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JOSEPH JONES,

Defendant-Appellant.

APPEAL NO. C-160908
TRIAL NO. 16CRB-13505

OPINION.

PRESENTED TO THE CLERK
OF COURTS FOR FILING

FEB 14 2018

COURT OF APPEALS

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Reversed and Appellant Discharged

Date of Judgment Entry on Appeal: February 14, 2018

Paula Boggs Muething, City Solicitor, *Natalia Harris*, City Prosecutor, and
Christopher Liu, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Raymond T. Faller, Hamilton County Public Defender, and *David Hoffman*,
Assistant Public Defender, for Defendant-Appellant.

FILED
FEB 14 2018
CLERK OF COURT
HAMILTON COUNTY
OHIO
COMMON PLEAS



D120938922

MILLER, Judge.

{¶1} Defendant-appellant Joseph Jones was found guilty of failing to confine a dangerous dog, a fourth-degree misdemeanor, in violation of R.C. 955.22(D). In a single assignment of error, Jones now claims that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. For the following reasons, we reverse Jones's conviction.

Facts

{¶2} Jones walked to his apartment building with his dog, an American Pit Bull named Prince Bane, on May 15, 2016, at about 3:30 a.m. Jones unleashed his dog during the walk so that it could interact with a stray female dog. At trial, Jones testified that the stray looked like an American Pit Bull and was almost the same color as Prince Bane, but was about half his size.

{¶3} Alyssa Rushing, who lived in the same apartment building, also walked her dog, a Chinese Crested Hairless, that night. Rushing and her dog were on the steps to the apartment building when Jones, Prince Bane, and the stray approached. Rushing saw both dogs running at her and attempted to pick up her dog. Prince Bane attacked her, biting her hands and pulling her down.

{¶4} Jones countered that the stray had attacked Rushing's dog and bit Rushing as she struggled to protect her dog. Jones grabbed the stray and threw it to the sidewalk below, ending the attack. Jones contended that his dog was innocent and that Rushing was confused because Prince Bane and the stray were similar in color.

Jones's Appeal is not Moot

{¶5} Even though Jones has already served six months of probation following the trial court's denial of his motion to stay his sentence, the appeal of his

conviction is not moot. While Jones did not subsequently file a motion to stay his sentence with this court, the Ohio Supreme Court has said that such an appeal is not moot. "The completion of a sentence is not voluntary and will not moot an appeal if the circumstances surrounding it demonstrate that the appellant neither acquiesced in the judgment nor abandoned the right to appellate review, that the appellant has a substantial stake in the judgment of conviction, and that there is subject matter for the appellate court to decide." *Cleveland Hts. v. Lewis*, 129 Ohio St.3d 389, 2011-Ohio-2673, 953 N.E.2d 278, ¶ 26. See *State v. Farris*, 1st Dist. Hamilton No. C-150567, 2016-Ohio-5527, ¶ 4. While we cannot restore the time served on probation, we can reverse his conviction.

Sufficiency of the Evidence

{¶6} Jones asserts that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. We will address only the sufficiency of the evidence. A conviction is supported by sufficient evidence when, after viewing all evidence in the light most favorable to the prosecution, a rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt. *State v. Grice*, 180 Ohio App.3d 700, 2009-Ohio-372, 906 N.E.2d 1203 (1st Dist.).

{¶7} In this case, Jones was charged with, and convicted of, a violation of R.C. 955.22(D), which states in relevant part that

(D) * * * no owner, keeper, or harbinger of a dangerous dog shall fail to do either of the following: (1) While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top; (2) While that dog is off the premises of the owner, keeper,

or harborer, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally * * * [m]uzzle that dog.

{¶8} R.C. 955.11 defines a “dangerous dog” as “a dog that, without provocation * * * has done any of the following: (i) Caused injury, other than killing or serious injury, to any person; (ii) Killed another dog; (iii) Been the subject of a third or subsequent violation of division (C) of section 955.22 of the Revised Code.”

{¶9} R.C. 955.222 sets forth how dangerous-dog designations are made, and affords a right to request a hearing. It requires notice by certified mail. Any hearing shall occur in “[t]he municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harborer of a dog.” R.C. 955.222(A).

{¶10} In this case, Prince Bane was not previously designated a dangerous dog under R.C. 955.11. This designation is a prerequisite to finding a violation of R.C. 955.22(D), as the designation is an element of the offense. If the designation were not prerequisite, Jones would not have been put on notice as to the statutory requirements for confining his dog, or had the opportunity to challenge the designation and consequent restriction on his property rights. Any other interpretation of R.C. 955.22(D) would render R.C. 955.11 superfluous and deprive dog owners of their statutory and constitutional rights to due process. The Ohio Supreme Court already said as much in *State v. Cowan*, 103 Ohio St.3d 144, 2004-Ohio-4777, 814 N.E.2d 864, when it struck down a former version of the “dangerous dog statute” for infringing upon the due process rights of dog owners for the same reason, leading to the enactment of R.C. 955.222.

{¶11} *Cowan* involved a dog owner who was charged with failing to confine a vicious dog and a dangerous dog—labels that were applied, as in this case,

concurrent with the prosecution for failure-to-confine. The court held that the former version of “R.C. 955.22 violates procedural due process insofar as it fails to provide dog owners a meaningful opportunity to be heard on the issue of whether a dog is ‘vicious’ or ‘dangerous’ as defined in R.C. 955.11(A)(1)(a) and (A)(4)(a).” *Cowan* at ¶ 13. Not requiring compliance with R.C. 955.22’s notice and hearing requirements would do the same here.

{¶12} The state would like us to follow *State v. Crocker*, 5th Dist. Coshocton No. 2012-CA-0021, 2013-Ohio-3100, which it argues is indistinguishable from this case. In *Crocker*, a pit bull broke its leash, attacked and killed another dog, and bit two people. The dog was not previously designated a dangerous dog, but the court nonetheless found the owner in violation of R.C. 955.22(C) for harboring a dangerous dog. The Fifth District simply stated that there was

no support for Appellant’s position that a dog has to have previously violated the “dangerous dog” statute to be designated as a “dangerous dog.” Here, the dog in question both injured a person and killed another dog. As such, the dog was a “dangerous dog” within the meaning of the statute and the offense was a fourth degree misdemeanor.

Crocker at ¶ 32.

{¶13} We disagree with the Fifth District. First, *Crocker* ignores the plain language of R.C. 955.11, which defines “dangerous dog” in the past-perfect tense, which means that the conduct that triggers the designation must precede the designation. While the dog in *Crocker* was certainly a dangerous dog within the meaning of R.C. 955.11 *after* the attack, it does not follow that the harbinger of the dog was on notice of the dangerous propensities of the dog prior to the attack, and

therefore violated R.C. 955.22. Moreover, *Crocker* completely ignores *Cowan* and R.C. 955.222. Without a designation that the dog was dangerous, the owner was not put on notice of the necessary precautions to take to avoid prosecution under R.C. 955.22. We decline to follow *Crocker*.

Conclusion

{¶14} We sustain Jones's sole assignment of error. We reverse the judgment of the trial court and hereby discharge Jones from further prosecution.

Judgment reversed and appellant discharged.

DETERS, J., concurs.

MYERS, P.J., concurs in judgment only.

Please note:

The court has recorded its own entry on the date of the release of this opinion.

APPENDIX 2

***(State v. Crocker, 5th Dist. Coshocton No. 2012 CA 0021,
2013-Ohio-3100)***

State v. Crocker

Court of Appeals of Ohio, Fifth Appellate District, Coshocton County

July 15, 2013, Date of Judgment Entry

Case No. 2012 CA 0021

Reporter

2013-Ohio-3100 *; 2013 Ohio App. LEXIS 3148 **; 2013 WL 3779905

STATE OF OHIO, Plaintiff-Appellee -vs- VICKIE
CROCKER, Defendant-Appellant

Prior History: [**1] CHARACTER OF PROCEEDING:
Criminal Appeal from the Municipal Court, Case No. CRB
1200509.

Disposition: Affirmed.

Core Terms

dog, dangerous dog, designation, pit bull, harbinger, leash

Case Summary

Procedural Posture

Defendant appealed a judgment by the Coshocton County Municipal Court (Ohio) that convicted her of failing to maintain control of a dangerous dog in violation of [R.C. 955.22\(C\)](#); defendant claimed that the evidence was insufficient to support the trial court's finding.

Overview

Defendant was out with a friend's pit bull when it broke its leash and attacked her neighbor's Schnauzer and bit the neighbor and another person when they tried to separate the dogs. The Schnauzer died as a result of injuries sustained in the encounter. The owner of the pit bull was served with the dangerous dog designation notice and did not appeal that designation. Defendant claimed that since there was no evidence that the pit bull had previously bitten, injured, threatened, or killed anyone or anything, it was not a "dangerous dog." The appellate court found, inter alia, no support for defendant's position that a dog had to have previously violated the "dangerous dog" statute, [R.C. 955.11](#) to be designated as a "dangerous dog." The dog in question both injured two people and killed another dog. As such, it was a "dangerous dog" within the meaning of the statute and

the offense was a fourth degree misdemeanor under [R.C. 955.99](#). Consequently, there was sufficient evidence to substantiate a finding of guilty under [§ 955.22\(C\)](#).

Outcome

The sole assignment of error was overruled, and the judgment was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of
Review > Substantial Evidence > Sufficiency of
Evidence

Evidence > Weight & Sufficiency

[HNI](#) **Substantial Evidence, Sufficiency of Evidence**

An appellate court's function when reviewing the sufficiency of the evidence is to determine 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.

Criminal Law & Procedure > Criminal
Offenses > Miscellaneous Offenses > General Overview

Governments > Agriculture & Food > Pets & Service
Animals

Torts > ... > Types of Negligence Actions > Animal
Owners > Control & Restraint

[HN2](#) **Criminal Offenses, Miscellaneous Offenses**

See [R.C. 955.22\(C\)](#).

Criminal Law & Procedure > Criminal
Offenses > Miscellaneous Offenses > General Overview

Governments > Agriculture & Food > Pets & Service
Animals

Torts > Strict Liability > Harm Caused by
Animals > Dangerous Animals

[HN3](#) **Criminal Offenses, Miscellaneous Offenses**

See [R.C. 955.11](#).

Criminal Law & Procedure > Criminal
Offenses > Classification of Offenses > Misdemeanors

Governments > Agriculture & Food > Pets & Service
Animals

Torts > ... > Types of Negligence Actions > Animal
Owners > Control & Restraint

[HN4](#) **Classification of Offenses, Misdemeanors**

See [R.C. 955.99](#).

Counsel: For Plaintiff-Appellee: ROBERT A. SKELTON,
LAW DIRECTOR, Coshocton, Ohio.

For Defendant-Appellant: JEFFREY G. KELLOGG,
ASSISTANT PUBLIC DEFENDER, Coshocton, Ohio.

Judges: Hon. W. Scott Gwin, P. J., Hon. John W. Wise, J.,
Hon. Craig R. Baldwin, J. Gwin, P. J., and Baldwin, J.,
concur.

Opinion by: John W. Wise

Opinion

Wise, J.

[*P1] Appellant appeals her conviction on one count of failing to maintain control of a "dangerous dog" entered in the Coshocton County Municipal Court.

[*P2] Appellee is State of Ohio.

STATEMENT OF THE FACTS AND CASE

[*P3] The facts stipulated to at trial are as follows:

[*P4] Appellant Vicki Crocker was the harbinger of a pit bull named Blaze.

[*P5] On September 1, 2012, Vicki was out with the dog when it broke its leash.

[*P6] Mary Skarke was out next door with her Schnauzer.

[*P7] The Pit Bull attacked the Schnauzer and bit Mary Skarke and Jane Hopes when they tried to separate the dogs.

[*P8] The Schnauzer died as a result of injuries sustained in the encounter.

[*P9] The owner of the Pit Bull, David Kelly, was served with the dangerous dog designation notice and did not appeal that designation.

[*P10] On September 6, 2012, Appellant Vickie Crocker was charged [*P2] with harboring a "dangerous dog" in violation of [R.C. 955.22\(C\)](#).

[*P11] On October 31, 2012, a bench trial commenced in this matter. The trial court found Appellant guilty and ordered her to pay a \$75.00 fine, \$195 in court costs and restitution in the amount of \$620.00.

[*P12] The facts determined at trial were:

[*P13] On September 1, 2012, the Dog Warden responded to 1310 Elm Street and 1311 Orange Street on a report of a loose dog. After investigation he determined that Vicki Crocker was out with a Pit Bull on a leash. The Pit Bull broke its leash, crossed the alley between Elm and Orange Street and attacked Mary Skarke's Schnauzer. When Mary and Jane Hopes attempted to separate the dogs, they were bitten by the Pit Bull as well.

[*P14] There was no evidence that the Pit Bull had previously bitten, injured, threatened or killed anyone or anything until the incident on September 1, 2012.

[*P15] On September 5, 2012, the Schnauzer died. The dog warden served a ticket on Crocker alleging a violation of [R.C. 955.22\(C\)](#) with the additional specification that the pit bull was a dangerous dog pursuant to [R.C. 955.11\(A\)](#)

[*P16] On September 5, 2013 the Dog Warden served a dangerous dog designation notice on the Pit Bull's owner David [*P3] Kelly. Crocker was not served with a notice. David Kelly did not appeal the dangerous dog designation.

[*P17] It is from this conviction Appellant now appeals, assigning the following error:

ASSIGNMENT OF ERROR

[*P18] "I. THERE WAS INSUFFICIENT EVIDENCE SUPPORTING THE COURT'S FINDING THAT APPELLANT VICKIE CROCKER FAILED TO MAINTAIN CONTROL OF A "DANGEROUS DOG."

I.

[*P19] Appellant claims there was insufficient evidence to support her conviction. We disagree.

[*P20] [HN1](#)^[↑] An appellate court's function when reviewing the sufficiency of the evidence is to determine 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 (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.*

[*P21] In this case, Appellant was charged with and convicted of a violation of [R.C. §955.22\(C\)](#) which states:

[*P22] [HN2](#)^[↑] "(C) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of any dog shall fail at any time to do either of the following:

[*P23] "(1) Keep the dog physically confined or restrained upon the [*P4] premises of the owner, keeper, or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;

[*P24] "(2) Keep the dog under the reasonable control of some person."

[*P25] [R.C. §955.11](#) defines a "dangerous dog" as:

[*P26] [HN3](#)^[↑] "(1) (a) " ... a dog that, without provocation, and subject to division (A)(1)(b) of this section, has done any of the following:

[*P27] "(i) Caused injury, other than killing or serious injury, to any person;

[*P28] "(ii) Killed another dog ... "

[*P29] The penalties for violating [R.C. §955.22](#) are set forth in [R.C. §955.99](#), which states, in relevant part:

[*P30] [HN4](#)^[↑] "(G) Whoever commits a violation of

[division \(C\) of section 955.22 of the Revised Code](#) that involves a dangerous dog or a violation of division (D) of that section is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to [division \(E\) of section 955.22 of the Revised Code.](#)

[**5] The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society at the owner's expense. With respect to a violation of [division \(C\) of section 955.22 of the Revised Code](#) that involves a dangerous dog, until the court makes a final determination and during the pendency of any appeal of a violation of that division and at the discretion of the dog warden, the dog shall be confined or restrained in accordance with [division \(D\) of section 955.22 of the Revised Code](#) or at the county dog pound at the owner's expense.

[*P31] In the case sub judice, Appellant admitted that she was the harbinger/keeper of the dog in question but challenges the "dangerous dog" designation. It is Appellant's position that while the dog herein is now properly designated as a "dangerous dog" based on the events which occurred on September 1, 2012, such dog had not been designated as a "dangerous dog" at the time it broke its leash. Appellant submits that such designation only applies to a dog that has previously violated [R.C. §955.11](#) as set forth above.

[*P32] Upon review, we find no support for Appellant's position that a dog [*P6] has to have previously violated the "dangerous dog" statute to be designated as a "dangerous dog". Here, the dog in question both injured a person and killed another dog. As such, the dog was a "dangerous dog" within the meaning of the statute and the offense was a fourth degree misdemeanor.

[*P33] Based on the foregoing, we find there was sufficient evidence to substantiate a finding of guilty.

[*P34] Appellant's sole Assignment of Error is overruled.

[*P35] For the foregoing reasons, the judgment of the Municipal Court of Coshocton County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Baldwin, J., concur.

JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Municipal Court of Coshocton County, Ohio, is affirmed.

Costs assessed to Appellant.

End of Document

APPENDIX 3
(R.C. 955.11)

955.11 Transfer of ownership certificate.

(A) As used in this section:

(1)

(a) "Dangerous dog" means a dog that, without provocation, and subject to division (A)(1)(b) of this section, has done any of the following:

(i) Caused injury, other than killing or serious injury, to any person;

(ii) Killed another dog;

(iii) Been the subject of a third or subsequent violation of division (C) of section [955.22](#) of the Revised Code.

(b) "Dangerous dog" does not include a police dog that has caused injury, other than killing or serious injury, to any person or has killed another dog while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

(2) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(3)

(a) Subject to division (A)(3)(b) of this section, "nuisance dog" means a dog that without provocation and while off the premises of its owner, keeper, or harbinger has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(b) "Nuisance dog" does not include a police dog that while being used to assist one or more law enforcement officers in the performance of official duties has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(4) "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

(5) "Serious injury" means any of the following:

(a) Any physical harm that carries a substantial risk of death;

(b) Any physical harm that involves a permanent incapacity, whether partial or total, or a temporary, substantial incapacity;

(c) Any physical harm that involves a permanent disfigurement or a temporary, serious disfigurement;

(d) Any physical harm that involves acute pain of a duration that results in substantial suffering or any degree of prolonged or intractable pain.

(6)

(a) "Vicious dog" means a dog that, without provocation and subject to division (A)(6)(b) of this section, has killed or caused serious injury to any person .

(b) "Vicious dog" does not include either of the following:

(i) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

(ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.

(7) "Without provocation" means that a dog was not teased, tormented, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

(B) Upon the transfer of ownership of any dog, the seller of the dog shall give the buyer a transfer of ownership certificate that shall be signed by the seller. The certificate shall contain the registration number of the dog, the name of the seller, and a brief description of the dog. Blank forms of the certificate may be obtained from the county auditor. A transfer of ownership shall be recorded by the auditor upon presentation of a transfer of ownership certificate that is signed by the former owner of a dog and that is accompanied by a fee of five dollars.

(C) Prior to the transfer of ownership or possession of any dog, upon the buyer's or other transferee's request, the seller or other transferor of the dog shall give to the person a written notice relative to the behavior and propensities of the dog.

(D) Within ten days after the transfer of ownership or possession of any dog, if the seller or other transferor of the dog has knowledge that the dog is a dangerous dog, the seller or other transferor shall give to the buyer or other transferee, the board of health for the district in which the buyer or other transferee resides, and the dog warden of the county in which the buyer or other transferee resides, a completed copy of a written form on which the seller shall furnish the following information:

(1) The name and address of the buyer or other transferee of the dog;

(2) The age, sex, color, breed, and current registration number of the dog.

In addition, the seller shall answer the following questions, which shall be specifically stated on the form as follows:

"Has the dog ever chased or attempted to attack or bite a person? If yes, describe the incident(s) in which the behavior occurred."

"Has the dog ever bitten a person? If yes, describe the incident(s) in which the behavior occurred."

"Has the dog ever seriously injured or killed a person? If yes, describe the incident(s) in which the behavior occurred."

The dog warden of the county in which the seller resides shall furnish the form to the seller at no cost.

(E) No seller or other transferor of a dog shall fail to comply with the applicable requirements of divisions (B) to (D) of this section.

Amended by 129th General Assembly File No. 75, HB 14, §1, eff. 5/22/2012.

Effective Date: 07-10-1987

Related Legislative Provision: *See 129th General Assembly File No. 75, HB 14, §3 .*

APPENDIX 4
(R.C. 955.22)

955.22 Confining, restraining, debarking dogs; dangerous dog registration certificate.

(A) As used in this section, "dangerous dog" has the same meaning as in section [955.11](#) of the Revised Code.

(B) No owner, keeper, or harbinger of any female dog shall permit it to go beyond the premises of the owner, keeper, or harbinger at any time the dog is in heat unless the dog is properly in leash.

(C) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger 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 harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;

(2) Keep the dog under the reasonable control of some person.

(D) Except when a dangerous dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of a dangerous dog shall fail to do either of the following:

(1) While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top ;

(2) While that dog is off the premises of the owner, keeper, or harbinger, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

(a) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;

(b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

(c) Muzzle that dog.

(E) No person who has been convicted of or pleaded guilty to three or more violations of division (C) of this section involving the same dog and no owner, keeper, or harbinger of a dangerous dog shall fail to do the following:

(1) Obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence because of damage or bodily injury to or death of a person caused by the dangerous dog if so ordered by a court and provide proof of that liability insurance upon request to any law enforcement officer, county dog warden, or public health official charged with enforcing this section;

(2) Obtain a dangerous dog registration certificate from the county auditor pursuant to division (I) of this section, affix a tag that identifies the dog as a dangerous dog to the dog's collar, and ensure that the dog wears the collar and tag at all times;

(3) Notify the local dog warden immediately if any of the following occurs:

(a) The dog is loose or unconfined.

(b) The dog bites a person, unless the dog is on the property of the owner of the dog, and the person who is bitten is unlawfully trespassing or committing a criminal act within the boundaries of that property.

(c) The dog attacks another animal while the dog is off the property of the owner of the dog.

(4) If the dog is sold, given to another person, or dies, notify the county auditor within ten days of the sale, transfer, or death.

(F) No person shall do any of the following:

(1) Debark or surgically silence a dog that the person knows or has reason to believe is a dangerous dog;

(2) Possess a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

(3) Falsely attest on a waiver form provided by the veterinarian under division (G) of this section that the person's dog is not a dangerous dog or otherwise provide false information on that written waiver form.

(G) Before a veterinarian debarks or surgically silences a dog, the veterinarian may give the owner of the dog a written waiver form that attests that the dog is not a dangerous dog. The written waiver form shall include all of the following:

(1) The veterinarian's license number and current business address;

(2) The number of the license of the dog if the dog is licensed;

(3) A reasonable description of the age, coloring, and gender of the dog as well as any notable markings on the dog;

(4) The signature of the owner of the dog attesting that the owner's dog is not a dangerous dog;

(5) A statement that division (F) of section 955.22 of the Revised Code prohibits any person from doing any of the following:

(a) Debarking or surgically silencing a dog that the person knows or has reason to believe is a dangerous dog;

(b) Possessing a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

(c) Falsely attesting on a waiver form provided by the veterinarian under division (G) of section 955.22 of the Revised Code that the person's dog is not a dangerous dog or otherwise provide false information on that written waiver form.

(H) It is an affirmative defense to a charge of a violation of division (F) of this section that the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver form that complies with division (G) of this section and that attests that the dog is not a dangerous dog.

(I)

(1) The county auditor shall issue a dangerous dog registration certificate to a person who is the owner of a dog, who is eighteen years of age or older, and who provides the following to the county auditor:

(a) A fee of fifty dollars;

(b) The person's address, phone number, and other appropriate means for the local dog warden or county auditor to contact the person;

(c) With respect to the person and the dog for which the registration is sought, all of the following:

(i) Either satisfactory evidence of the dog's current rabies vaccination or a statement from a licensed veterinarian that a rabies vaccination is medically contraindicated for the dog;

(ii) Either satisfactory evidence of the fact that the dog has been neutered or spayed or a statement from a licensed veterinarian that neutering or spaying of the dog is medically contraindicated;

(iii) Satisfactory evidence of the fact that the person has posted and will continue to post clearly visible signs at the person's residence warning both minors and adults of the presence of a dangerous dog on the property;

(iv) Satisfactory evidence of the fact that the dog has been permanently identified by means of a microchip and the dog's microchip number.

(2) Upon the issuance of a dangerous dog registration certificate to the owner of a dog, the county auditor shall provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall renew the certificate annually for the same fee and in the same manner as the initial certificate was obtained. If a certificate holder relocates to a new county, the certificate holder shall follow the procedure in division (I)(3)(b) of this section and, upon the expiration of the certificate issued in the original county, shall renew the certificate in the new county.

(3)

(a) If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address within the same county, the owner shall provide notice of the new address to the county auditor within ten days of relocating to the new address.

(b) If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address within another county, the owner shall do both of the following within ten days of relocating to the new address:

(i) Provide written notice of the new address and a copy of the original dangerous dog registration certificate to the county auditor of the new county;

(ii) Provide written notice of the new address to the county auditor of the county where the owner previously resided.

(4) The owner of a dangerous dog shall present the dangerous dog registration certificate upon being requested to do so by any law enforcement officer, dog warden, or public health official charged with enforcing this section.

(5) The fees collected pursuant to this division shall be deposited in the dog and kennel fund of the county.

Amended by 129th General Assembly File No. 75, HB 14, §1, eff. 5/22/2012.

Effective Date: 10-10-2000

APPENDIX 5
(R.C. 955.222)

955.222 Hearings for dog designation.

(A) The municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harbinger of a dog shall conduct any hearing concerning the designation of the dog as a nuisance dog, dangerous dog, or vicious dog.

(B) If a person who is authorized to enforce this chapter has reasonable cause to believe that a dog in the person's jurisdiction is a nuisance dog, dangerous dog, or vicious dog, the person shall notify the owner, keeper, or harbinger of that dog, by certified mail or in person, of both of the following:

(1) That the person has designated the dog a nuisance dog, dangerous dog, or vicious dog, as applicable;

(2) That the owner, keeper, or harbinger of the dog may request a hearing regarding the designation in accordance with this section. The notice shall include instructions for filing a request for a hearing in the county in which the dog's owner, keeper, or harbinger resides.

(C) If the owner, keeper, or harbinger of the dog disagrees with the designation of the dog as a nuisance dog, dangerous dog, or vicious dog, as applicable, the owner, keeper, or harbinger, not later than ten days after receiving notification of the designation, may request a hearing regarding the determination. The request for a hearing shall be in writing and shall be filed with the municipal court or county court that has territorial jurisdiction over the residence of the dog's owner, keeper, or harbinger. At the hearing, the person who designated the dog as a nuisance dog, dangerous dog, or vicious dog has the burden of proving, by clear and convincing evidence, that the dog is a nuisance dog, dangerous dog, or vicious dog.

The owner, keeper, or harbinger of the dog or the person who designated the dog as a nuisance dog, dangerous dog, or vicious dog may appeal the court's final determination as in any other case filed in that court.

(D) A court, upon motion of an owner, keeper, or harbinger or an attorney representing the owner, keeper, or harbinger, may order that the dog designated as a nuisance dog, dangerous dog, or vicious dog be held in the possession of the owner, keeper, or harbinger until the court makes a final determination under this section or during the pendency of an appeal, as applicable. Until the court makes a final determination and during the pendency of any appeal, the dog shall be confined or restrained in accordance with the provisions of division (D) of section [955.22](#) of the Revised Code that apply to dangerous dogs regardless of whether the dog has been designated as a vicious dog or a nuisance dog rather than a dangerous dog. The owner, keeper, or harbinger of the dog shall not be required to comply with any other requirements established in the Revised Code that concern a nuisance dog, dangerous dog, or vicious dog, as applicable, until the court makes a final determination and during the pendency of any appeal.

(E) If a dog is finally determined under this section, or on appeal as described in this section, to be a vicious dog, division (D) of section [955.11](#) and divisions (D) to (I) of section [955.22](#) of the Revised Code apply with respect to the dog and the owner, keeper, or harbinger of the dog as if the dog were a dangerous dog, and section [955.54](#) of the Revised Code applies with respect to the dog as if it were a dangerous dog, and the court shall issue an order that specifies that those provisions apply with respect to the dog and the owner, keeper, or harbinger in that manner. As part of the order, the court shall require the owner, keeper, or harbinger to obtain the liability insurance required under division (E)(1) of section [955.22](#) of the Revised Code in an amount described in division (H)(2) of section [955.99](#) of the Revised Code.

(F) As used in this section, "nuisance dog," "dangerous dog," and "vicious dog" have the same meanings as in section [955.11](#) of the Revised Code.

Added by 129th General Assembly File No. 75, HB 14, §1, eff. 5/22/2012.

APPENDIX 6
(C.M.C.N. 701-2)

Sec. 701-2. - Leash Required; Responsibility for Injury.

- (A) Except when a dog is lawfully engaged in a competition or hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger 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 harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;
 - (2) When off the premises of the owner, keeper, or harbinger, keep the dog on a leash under the reasonable control of some person who is of suitable age and discretion;
 - (3) This subsection does not apply when the dog is within a designated dog park pursuant to Rule 41 of the Board of Park Commissioners of the City of Cincinnati.
- (B) *Violations.*
- (1) *Off Leash* . A violation of subsection 701-2(A) shall constitute a Class A Civil Offense.
 - (2) *Menacing Fashion* . A violation of subsection 701-2(A) which results in the dog behaving in a menacing fashion shall constitute a Class C Civil Offense. A dog which has behaved in a menacing fashion may meet the definition of a nuisance dog under section 701-1-N and may be designated as a nuisance dog in accordance with section 701-50 of this chapter.
 - (3) *Injury* . A violation of subsection 701-2(A) which results in injury to any person or domestic animal shall constitute a Class C Civil Offense. A dog which has caused injury to any person or domestic animal may meet the definition of a dangerous dog under section 701-1-D-1 and may be designated as a dangerous dog in accordance with section 701-50 of this chapter.
 - (4) *Serious Injury* . A violation of subsection 701-2(A) which results in serious injury to any person or domestic animal shall constitute a Class E2 Civil Offense. Subsequent violations of subsection 701-2(B) which result in serious injury to any person or domestic animal shall constitute a Class F Civil Offense. A dog which has caused serious injury to any person or domestic animal may meet the definition of a vicious dog under section 701-1-V and may be designated as a vicious dog in accordance with section 701-50 of this chapter.

(Ordained by Ord. No. 460-1999, eff. Dec. 24, 1999; a. Ord. No. 062-2015, § 1, eff. April 4, 2015; Emer. Ord. No. 183-2015, § 1, eff. June 17, 2015)

Cross reference—Penalty, § 701-99.

APPENDIX 7
(Final Appealable Order from
Hamilton County Municipal Court)

CLERK'S USE ONLY

INITIALS: _____

PAYMENT DATE: _____

RECEIPT NO: _____

FINE: _____

COSTS: _____

CONCAR: _____

WIT FEES: _____

JURY FEES: _____

P.D. FEES: _____

LIP FEE: _____

BMV FEE: _____

TOTAL PAID: _____

HAMILTON COUNTY MUNICIPAL COURT

PAGE: _____

JOURNAL ENTRY - MITTIMUS

PRE-ROLL: **GINOCCHIO/JACKIE**

ACTIVATE DATE: 06/14/2016

CASE: **/16/CRB/13505**

COMM. CONTROL

VIOL.: _____

DEFENDANT: **JONES/JOEY/VERTIS**

CTLNO: **2086585**

TICKET: **87C/368932**

SEC. VIOL: **955-22D1 ORCN**

M4

CHARGE: **FAILURE TO CONFIN**

ARREST DATE: **05/15/2016**

JMS NUMBER:

SEX: **M**

D.O.B. **06/14/1984**

DEF. COUNSEL: **MOORE/JAMES/Y**

PROS. WIT: **GALBRAITH/PO**



TO THE SHERIFF OF HAMILTON COUNTY, GREETINGS: Where as, the above defendant was arrested and charged with the above section number. For good cause shown, the defendant is ordered to give bail in the sum indicated below. You are, therefore, commanded to receive the defendant into your custody until the trial date, or until he/she gives bail as ordered. Or, whereas, the above defendant, having been tried and convicted of said charge(s) is sentenced, as indicated below. Therefore, we command you to receive the defendant into your custody, there to remain until he/she has fully executed the terms of the sentence, or until otherwise discharged by due course of law.

DATE	ACTION	SIGNATURE OF JUDGE/MAGISTRATE
04/12/2017	<i>Nunc pro tunc finding guilty</i>	<i>JML</i>
ENTERED	<i>Same sentence from 12/06/16</i>	
APR 12 2017	<i>* no rescheduling</i>	
	<i>30/30</i>	
	<i>\$100 + costs</i>	
	<i>Comas, probation non reporting</i>	
	<i>Pay tru</i>	
	<i>* no contact w/ alyssa Rushing</i>	
Date	The decision of the magistrate is adopted and the recommended sentence is entered as the judgment of the court.	JUDGE