

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	
	:	
Appellant,	:	Case No. 2018-0601
	:	
v.	:	
	:	
Joseph Jones,	:	On Appeal from the Hamilton
	:	County Court of Appeals,
	:	First Appellate District
Appellee.	:	

MERIT BRIEF OF APPELLEE JOSEPH JONES

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STATEMENT OF FACTS

On May 16, 2016, at about 3:30 a.m., Alyssa Rushing took her pet dog, a Chinese Crested Hairless, outside her apartment building at 305 West Fourth Street in Cincinnati. (T.p. 16). At the same time, Defendant-Appellant Joseph Jones was approaching the same building entrance on his way home. (T.p. 60-61). They both rented apartments on the same floor. (T.p. 20). Ms. Rushing did not testify her dog was on a leash.

Mr. Jones also had his dog, Prince Bane, which was described as an American Pit Bull. (T.p. 58). Prince Bane was not on a leash, but Mr. Jones testified that the dog had been "off-the-leash" trained such that it obeyed only his commands and remained at his hip when off-leash. (T.p. 56). Prince Bane was initially leashed at the start of Mr. Jones's walk home. (T.p. 59). Prince Bane attracted the attention of a stray female pit bull, however, and Mr. Jones allowed Prince Bane to proceed off-leash in case it became necessary for Prince Bane to protect him from the stray. (T.p. 60). The two dogs behaved in a cordial manner, and Mr. Jones allowed Prince Bane to remain off-leash to allow the two dogs to interact more freely. (*Id.*). He testified the stray was smaller than Prince Bane, but was almost the same color. (T.p. 60, 61).

There was no testimony that Prince Bane had been designated by a judge or animal control officer as a dangerous dog prior to the date in question.

As Mr. Jones approached the apartment building, Ms. Rushing was on steps that lead from the sidewalk to the door. (T.p. 16). Ms. Rushing testified she saw both dogs running at her, and she attempted to remove her dog. She testified Prince Bane attacked her by biting her hands and pulling her down. (T.p. 17). The stray attacked her dog. (*Id.*).

Mr. Jones, on the other hand, testified when he and the dogs approached the steps, Prince Bane went up the steps first. (T.p. 60). Ms. Rushing and her dog were also at the steps, and Ms. Rushing was startled, so Mr. Jones put Prince Bane on the leash and escorted the dog back down the stairs. (*Id.*). The stray, however, attacked Ms. Rushing's dog, and she struggled with the stray to free it and called for help. (T.p. 61). Mr. Jones grabbed the stray and threw it to the sidewalk below. (*Id.*). Ms. Rushing promptly entered her building, and the stray ran away. (*Id.*).

Ms. Rushing received bite wounds to her hands and wrist, the scars of which were visible at trial. (T.p. 17-18). She filed a civil law suit, demanding \$25,000 in damages from Mr. Jones. (T.p. 62-63). At trial, Ms. Rushing testified she had seen Mr. Jones's dog on occasions both before and after the event in question, and she was certain his dog, not the stray, was biting her as she attempted to free her dog from the stray. (T.p. 19-25).

On May 24, 2016, Defendant-Appellant Joseph Jones was charged with failure to confine a dangerous dog under R.C. 955.22(D). (T.d. 2). The matter proceeded to a trial to the bench, at the conclusion of which the court found Mr. Jones guilty. The trial court sentenced him to 60 days in jail and imposed a \$100 fine and court costs. The trial court suspended 30 days of the sentence and placed Mr. Jones on probation for a period of six months. (Judge's Sheets).

ARGUMENT

Proposition of Law No. I: A dog must 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.

Appellee Joseph Jones was convicted of failure to confine a dangerous dog under R.C. 955.22(D), which provides as follows:

(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.

Failure to confine under R.C. 955.22 has been held to be a strict-liability offense. *State v. Moore*, 10th Dist. Franklin Nos. 11AP-1116, 11AP-1117, 2013-Ohio-3365, ¶ 32. The degree of seriousness for failure to confine a dangerous dog under R.C. 955.22(D) as a first-offense is a misdemeanor of the fourth degree. R.C. 955.99(G). A first-offense failure to confine a dog that has not been designated as a nuisance, dangerous or vicious

dog is only a fine of up to \$100. R.C. 955.99(E)(1). The dangerous-dog designation is defined in R.C. 955.11(A)(1) as follows:

(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.

A dog that injures a person or kills another dog is, by definition, a dangerous dog. R.C. 955.11(A). Under R.C. Chapter 955, animal control officers have the authority to designate dogs as dangerous dogs. R.C. 955.222. Owners must be notified of the designation and they may avail themselves of a civil mechanism for challenging it in a municipal or county court. *Id.* A trial judge may also designate a dog as a dangerous dog in the context of a prosecution for failure to confine under R.C. 955.22(C). *State v. Byrd*, 7th Dist. Belmont No. 04 BE 40, 2005-Ohio-2720; R.C. 955.99(G). In either case, the designation must be based upon a showing that the dog was not provoked. R.C. 955.11(A).

Only a preexisting designation of dangerousness can support a conviction for failure to confine a dangerous dog under R.C. 955.22(D). The offense of failure to confine

a dangerous dog is committed by the failure to follow certain confinement requirements.

Id. An owner of a dangerous dog has a legal duty to follow those requirements. *Id.* There is no legal duty to follow the requirements if a dog has not been classified as being dangerous. R.C. 955.22(B) and (C); *City of Lima v. Stepleton*, 3rd Dist. Allen No. 1-13-28, 2013-Ohio-5655, ¶ 23.

Mr. Jones could not have failed to confine a dangerous dog because his dog had not been designated to be a dangerous dog until the trial. Only then did Mr. Jones have the particular duties to confine Prince Bane according to R.C.955.22(D). Because he did not have those duties at the time Prince Bane allegedly bit Ms. Rushing's hand, he could not have violated them. The state improperly bootstrapped the dangerousness of Mr. Jones's dog to obtain a violation of R.C. 955.22(D).

Accepting the state's interpretation of R.C. 955.22(D) leads to an absurd result, and this Court must not accept it. *See State v. Smith*, 104 Ohio St.3d 106, 2004-Ohio-6238, 818 N.E.2d 6238, *superseded by statute*, *State v. Wagers*, 12th Dist. Preble No. CA2009-06-018, 2010-Ohio-2311 (Holding that a sexually violent predator specification cannot be based upon the substantive offense in the same indictment.). The Smith case involved a sentencing-enhancement specification and not an element of an offense, but in both cases, the application of logic reveals the proper interpretation of the statutes.

R.C. 955.22(D) requires a previous determination of dangerousness for a violation of failure to confine a dangerous dog. Here, the finding of guilt was not based upon any evidence of a prior determination that Prince Bane was dangerous. There was no evidence Prince Bane had ever been designated as a dangerous dog prior to the event in question.

Therefore, the evidence was not sufficient for a conviction for failure to confine a dangerous dog under R.C. 955.22(D).

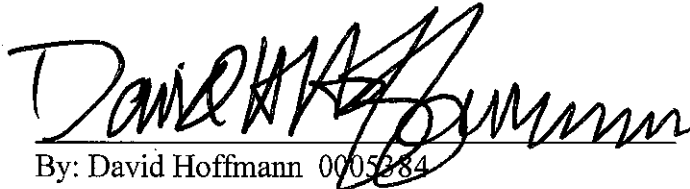
The court of appeals correctly noted that his conviction was not supported by evidence of a prior designation and reversed the conviction. The judgment of the court of appeals must therefore be affirmed.

CONCLUSION

Mr. Jones has a right to the due process of law, and the operation of R.C. Chapter 955 has been lost on authorities in Cincinnati, Hamilton County, and other jurisdictions in Ohio in prosecuting dog owners under R.C. 955.22(D) when the dog had not been previously designated as a dangerous dog. For this reason, the Court must clarify that a violation of that statute requires a prior designation of a dog as a dangerous dog.

Respectfully submitted,

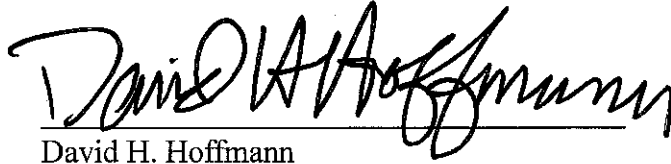
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PROOF OF SERVICE

The undersigned counsel certifies that a true and accurate copy of the foregoing brief was sent by regular U.S. mail to Counsel for the Appellant, Mr. Christopher Liu, at his office address of 801 Plum Street, Room 226, Cincinnati, Ohio 45202, this 17th day of October, 2018.

A handwritten signature in black ink, appearing to read "David H. Hoffmann", written over a horizontal line.

David H. Hoffmann

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