

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PA,	:	
Plaintiff	:	
	:	
v.	:	NO. SA-111-07
	:	
DONNA YACHA,	:	
Defendant	:	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

The Defendant has appealed this court’s order of February 5, 2008, finding the Defendant guilty of violating 3 P.S. §459-305(3). That section makes it a summary offense for the owner or keeper of any dog to fail to keep the dog at all times “under the reasonable control of some person”

The facts, as found by this court, are as follows:

On the afternoon of August 4, 2007 Matthew Mayer was playing football with his brother at the Creekside Manor Campground. While bending over to retrieve the football, Matthew heard his brother yell “Matt, Matt.” When Matthew looked up, he was attacked by the Defendant’s dog, Teddy, a ninety to one-hundred pound mixed breed dog. Matthew sustained serious injuries to his leg, arm and the back of his head. Matthew was taken via ambulance to the Williamsport Hospital, and exhibits scars as a result of the dog’s attack.

The parties presented very different accounts of the events leading up to the attack. According to the Defendant, Donna Yacha, the boy approached running with his hands in the air, screaming and yelling, and then after yelling “get out of here” to the dog, kicked and hit the dog, thus provoking the dog’s attack. The Defendant and her husband maintain that the dog remained cabled throughout the attack, and the cable

only broke following the Defendant's attempts to restrain the dog. The Court does not find this testimony credible.

The Court, however, found credible the testimony of Mr. and Mrs. Steve Woodring, who also maintained a camper at the camp site. Teresa Woodring testified that on August 4, 2007 she witnessed the boys playing football together. As they were playing catch, the Defendant's dog jumped off of the porch, lunged at Matthew Mayer and started to bite him. Teresa's husband, Steve, was getting something out of his truck at the time. When Mr. Woodring observed the attack, he ran to the boy and assisted in restraining the Defendant's animal. Mrs. Woodring clearly testified that at the time that the dog attacked the boy, "He was not hooked. He was free. He lunged in the air at Matt. He was not hooked at anything." N.T. 2/5/08, p. 34. Mr. Woodring similarly testified that he did not see a leash or anything tied to the animal at the time of the attack. N.T. 2/5/08, p. 47.

In his Concise Statement of Matters Complained of on Appeal, defense counsel argues that "reasonable control" and "due care" go hand in hand. He cites several civil cases involving liability for damage done by dogs, in which the "due care" standard is applied. Defense counsel then argues the Defendant exercised due care because Teddy had been chained and cabled before he broke loose.

The court disagrees with this analysis because the standard for civil liability is very different from the elements of the crime for which Defendant was convicted. In fact, 3 P.S. §459-305(3) is a "strict liability" crime. As the Commonwealth Court stated in Baehr v. Commonwealth of Pennsylvania ex rel. Lower Merion Township, 414 A.2d 415 (Pa. Commw. 1980), the section Defendant was convicted under

unmistakably speaks in terms of strict liability for its violation, and a moment's reflection on the purpose of the statute buttresses our conclusion. "The reasons for sustaining legislation which makes certain acts crimes and punishable as such without regard to defendant's motive, intent, reasonableness or good faith are . . . (1) To require a degree of diligence for the protection of the public and (2) Convenience of enforcement."

Id. at 417, citing Commonwealth v. Fine, 166 Pa. Super. 109, 113-14, 70 A.2d 677, 679 (1950). That holding is dispositive to the present action.

When the statute uses the phrase “reasonable control,” the adverb “reasonable” is modifying the noun “control.” Therefore, it is the reasonableness of the control that is at issue, and not the reasonableness of the defendant’s actions in attempting to control the dog. In this case, the dog was not under reasonable control, or he would not have attacked Matthew Mayer. Accordingly, the testimony clearly supports the Defendant’s conviction.

BY THE COURT,

Richard A. Gray, J.

cc: District Attorney
Lloyd Hampton, Esq.
Hampton and Hampton
400 Broad St.
Ashland, PA 17921