

September 14, 2023

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014316-A23003613**

MELISSA SAMSELL

Animal Services Enforcement Appeal

Activity no.: A23003613

Appellant: **Melissa Samsell**

[REDACTED]
Maple Valley, WA 98038

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Melissa Samsell appeals a finding that her dog, Billie, qualifies as vicious and needs to be contained. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we find that, although in June Billie ran across the street and bit a passerby dog doing nothing more than jogging, and while Billie would qualify as "potentially dangerous" had the incident occurred under the current code, Animal Services has not shown that Billie qualifies as vicious under the code in place in June.

Background

2. On June 3, 2023, Animal Services issued violation notice V23014316-A23003613 to Melissa Samsell for her dog, Billie, running at large, qualifying as vicious, and needing to be confined. Ex. D5.
3. Ms. Samsell timely appealed. Ex. D6. We went to hearing on August 31.

Hearing Testimony

David Steele Testimony

4. Mr. Steele testified that he was jogging with his dog, Chugger, the morning of June 1. They were passing Ms. Samsell's property, on the other side of the road. He was due south of the red mark in exhibit D7, heading west. Mr. Steele looked over his right shoulder and saw out of the corner of his eye a large white dog [Billie] coming towards him. Mr. Steele turned to his left to shield Chugger. Billie came around him and, without hesitation, did a full mouth bite on Chugger's backside. There was no interaction between the two dogs prior to the bite. Mr. Steele was stunned. Chugger yelped.
5. Mr. Steele pushed Billie and picked up Chugger. Billie circled around as if she was going to come at them again. At that moment, Ms. Samsell came out and called back Billie. Mr. Steele told Ms. Samsell what happened and that he was very upset. Mr. Steele brought Chugger to the vet that morning. The vet could not find any puncture wounds on Chugger but said that is not uncommon.
6. Mr. Steele vividly remembers the bite to Chugger. Mr. Steele was not afraid of Billie; he was upset that his dog was bit. Mr. Steele did not take filing the complaint lightly; however, he did because he was in a public place minding his own business.

Allison Wilcox Testimony

7. Ofc. Wilcox testified that she spoke with Ms. Samsell on the phone. Ms. Samsell told Ofc. Wilcox that she opened the gate and Billie got out. Ms. Samsell did not see the incident. She also said she was going to get an invisible fence.

Melissa Samsell Testimony

8. Ms. Samsell testified that she was heading to school that morning. Billie was by the barn when she opened the gate. She had no reason to think Billie would run out the gate. Ms. Samsell is not disputing that Billie left her property. Ms. Samsell did not see the incident. When she and her daughter got out of the car and called Billie back, Billie came back. Her daughter put Billie in the house. Ms. Samsell then spent a few minutes with Mr. Steele and his dog. Chugger did not hesitate or show fear towards Ms. Samsell. She did not feel any saliva on Chugger and did not see any sign of a bite. There is no evidence Billie was aggressive, just startling.

9. Billie is a big, working farm dog but she is also a pet to the family. The purpose of a farm dog is to protect her animals.
10. There are a lot of people who come on and off the Samsell property, and Billie has never shown any aggression to them or other people or dogs. Billie will bark, but she is not aggressive towards them.

Legal Standards

11. Given that Ms. Samsell does not challenge the running at large violation, our question is whether Billie qualifies as vicious, defined as, “Having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation,” with the violation framed as, “Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.” KCC 11.04.020.BB; KCC 11.04.230.H.
12. We do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. For those matters or issues raised in an appeal statement, Animal Services bears the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed. KCC 20.22.080.G; .210.B.

Analysis

13. We found Mr. Steele extremely credible. He was clear about what he knew for sure, namely that Billie charged and, without hesitation, closed her jaws on Chugger’s back. He was clear about what he did not know for sure, namely how exactly Billie got back to the house after Ms. Samsell called Billie off and Billie stopped her assault. And he was clear that after biting Chugger once, Billie came around “*like* she would bite again,” but he did not imply an actual lunge or snapping teeth before Ms. Samsell successfully recalled Billie. Additionally, he did not exaggerate the bite, volunteering that there was no actual puncture, nor was he hyperbolic about the lasting impact of the bite on he or Chugger.
14. Ms. Samsell agreed that she did not actually see the altercation, only seeing the aftermath as she called Billie back. So, we have no conflicting testimony to wade through.
15. We find our facts are essentially as Mr. Steele testified to. He and Chugger were on the opposite side of the street, doing nothing more inciting than simply jogging, when Billie sprinted off the Samsell property through an open gate, charged Chugger, and immediately bit Chugger. The bite was a mild one, not puncturing the skin or even leaving visible marks or bruises. There is some evidence that Billie intended to bite Chugger again, but that is not definitive because Ms. Samsell called Billie and she immediately responded and backed off.
16. Our first inquiry is an easy one. Animal Services has convincingly proven that Billie meets KCC 11.04.020.BB’s definition of “vicious,” having, on June 1, performed an act

endangering Chugger’s safety, biting him without provocation. The “provocation” inquiry in animal jurisprudence focuses on how an average dog, neither unusually aggressive nor unusually docile, would react to an inciting act.¹ And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be roughly proportional to the victim’s act.² An average dog would not charge across the street to bite another dog doing nothing more than jogging with its owner, and biting Chugger was grossly disproportionate to anything Mr. Steele or Chugger did that day.

17. Under the code in effect since July, Billie would qualify as a potentially dangerous animal, having bit a domesticated animal (Chugger) without provocation. KCC 11.01.320 & KCC 11.04.230.F. However, the altercation occurred on June 1; the code in place at the time did not have a potentially dangerous animal violation. The old code—which controls the outcome for this case—requires Animal Services to prove not only that Billie exhibited vicious propensities (which she did on June 1) but also that she “constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.” KCC 11.04.230.H. It is a closer call as to whether Animal Services has proven this second part, though not for the reasons Ms. Samsell advanced.
18. It is understandable that Ms. Samsell would expect Animal Services to visit her dog; she is far from the first appellant to express that. But such a visit would not have helped her. In numerous previous appeals, even a dog that fatally injured another pet without provocation was friendly to the responding officer. A visit can really only work *against* an appellant, as when the dog exhibits aggressive behavior similar to that described by a complainant, behavior an officer can then document. And a visit from an officer well *after* an incident says very little about how that dog acted in a heightened state of arousal *during* the incident.
19. There is no question that Billie is normally a friendly dog, as the testimonials describe. But that is true for an overwhelming number of dogs that met the criteria for “vicious” under the former version of the code.
20. Some of what Ms. Samsell submitted actually undercut her case. For example:
 - Cindy Breda’s remarks on neighbors who make a mountain out of a molehill were not well received. Ex. A1 at 004. Mr. Steele was simply going for a run on a public street when a dog charged at him and Chugger and bit Chugger. We have seen hypersensitive complainants, and Mr. Steele was far from that. It is hard to see how she could have gotten that unless Ms. Samsell had falsely maligned Mr. Steele.
 - Julie Evenson’s remarks that because she bred and socialized Billie, Billie “knows the difference between a real threat entering the property and just a

¹ *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)).

² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

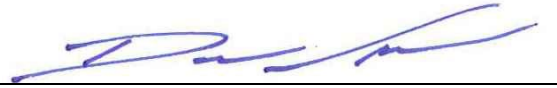
family pet walking by on a leash. I can assure you Billie did not attack another dog or human that was no threat to her livestock” were even less well received. Ex. A1 at 002. Even under *Ms. Samsell’s* version of June 1, Mr. Steele and his pet, Chugger, were jogging on the *other side of the street*, perpendicular to the Samsell property, when Billie left her property and charged across the street at them. Thus, at least on June 1, Billie decidedly did *not* know the difference between a real threat entering the property and just a family pet walking by on a leash.

21. Instead, the crux of the matter is a simpler one. An unprovoked bite is typically enough to satisfy .230.H—after all, what is better evidence that a dog constitutes a danger than evidence that, given some set of circumstances not arising to legal provocation, a dog will bite another animal. However, this case has an atypical fact pattern. In most cases where a dog expends the effort to charge a long distance to get at another pet, the dog comes with a lot more ferocity. The dog (especially a large one) typically inflicts a real bite leaving at least some mark—if not a gash, then at least a puncture or certainly some bruising. Yet that is not what Billie’s bite did. And while we share Mr. Steele’s inkling that after Billie turned back at Chugger, Billie *may* have been readying to lunge and deliver another (and potentially more serious) bite, Billie immediately stopped when Ms. Samsell called her, leaving us to speculate as to exactly what Billie *would have* done if her family was not in the vicinity.
22. That Billie immediately responded to Ms. Samsell’s recall also makes this case different. In similar appeals where a dog expends the effort to charge a long distance to get at another pet, the dog is consumed with the attack, continuing to try to get at the pet even as people shout, punch, kick, and try to pull the dog away, often continuing to lunge as the owner struggles to drag the dog away. Yet here Billie immediately ceased her assault and retreated when Ms. Samsell called her. That is atypical.
23. So, what are we left with? We have a bite at the low end of the spectrum, followed only by a strong suspicion that Billie *may* have wanted to continue biting, and then clear testimony from both witnesses that Billie immediately stopped her assault and retreated when called off. And on top of that, Ms. Samsell has installed electric fencing and taken steps to better prevent a repeat. It is a close call, but Animal Services has not proven a KCC 11.04.230.H violation.
24. Obviously, Ms. Samsell should do everything to prevent another altercation. If Billie’s assault had occurred a month or so later, Billie would now be settled with a potentially dangerous designation, facing not only the same \$500 penalty but also the need to obtain (and annually renew) a \$125 potentially dangerous animal registration, post warning signs, construct an escape proof fence, and muzzle Billie when taking her off the property. KCC 11.04.275. Ms. Samsell is catching a break because of the timing of Billie’s assault.

DECISION:

We sustain the \$50 running at large violation and overturn the viciousness violation and containment order.

ORDERED September 14, 2023.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *October 16, 2023*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

**MINUTES OF THE AUGUST 31, 2023, HEARING IN THE APPEAL OF MELISSA
SAMSELL, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V23014316-A23003613**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, David Steele, Allison Wilcox, and Melissa Samsell. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record by Animal Services:

- Exhibit no. D1 Regional Animal Services of King County staff report to the Hearing Examiner
- Exhibit no. D2 Online Complaint form of June 1, 2023, incident by David Steele, dated June 1, 2023
- Exhibit no. D3 RASKC investigation report no. A23003613
- Exhibit no. D4 Vet Bill from the day of the attack
- Exhibit no. D5 Notice of violation no. V23014316-A23003613, issued June 3, 2023
- Exhibit no. D6 Appeal, received June 27, 2023
- Exhibit no. D7 Map of subject area

The following exhibits were offered and entered into the record by the appellant:

- Exhibit no. A1 Character Statements

September 14, 2023

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014316-A23003613**

MELISSA SAMSELL
Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED September 14, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Samsell, Melissa

Hardcopy

Steele, David

Hardcopy

Wilcox, Allison

Regional Animal Services of King County