



**SHERIFF APPEAL COURT**

**[2025] SAC (Crim) 4  
SAC/000014/AP**

Sheriff Principal A Y Anwar KC  
Appeal Sheriff I M Fleming  
Appeal Sheriff D A C Young KC

**OPINION OF THE COURT**

delivered by SHERIFF PRINCIPAL AISHA Y ANWAR KC

in

Appeal by Stated Case against Conviction

by

JANET MACFARLANE

Appellant

against

PROCURATOR FISCAL, INVERNESS

Respondent

**Appellant: Osborne; Faculty Services Limited (for Craig Wood Solicitors Ltd, Inverness)  
Respondent: Prentice KC (sol adv) AD; Crown Agent**

27 May 2025

**Introduction**

[1] The appellant is the owner of a German Shepherd named Diego. On 4 September 2024, the appellant was found guilty of the following charge:

“on 14 April 2023 at [locus] you were the owner of a dog, namely a German Shepherd whereby said dog was dangerously out of control in any place in respect that the said dog did bite [the complainer] and did cause him injury;  
CONTRARY to the Dangerous Dogs Act 1991, section 3(1) as amended.”

[2] The sheriff imposed an order for contingent destruction of the dog in terms of section 4A of the 1991 Act requiring that Diego is kept on a lead and muzzled when in public places. The sheriff also made a compensation order in the sum of £600.

[3] Section 10(3) of the 1991 Act provides that a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person, whether or not it actually does so. The appellant appeals her conviction on the basis that there were no grounds for a reasonable apprehension that Diego would injure any person.

#### **The circumstances of the offence and the trial**

[4] On 14 April 2024 the complainer attended at the appellant's property to deliver a parcel. He approached the front gate and saw the appellant's dog. The dog was barking and had his two front paws up on the gate of the property. A man in the garden of the property shouted a command to the dog. The dog left the gate and disappeared towards the house. The appellant walked towards the complainer at the gate, which remained closed, with the complainer on the street side. As the complainer passed the parcel over to the appellant, the dog put his head through the bars of the gate and bit the complainer's right hand.

[5] There were four warning signs erected at the entrance of the appellant's property. These read: "BEWARE OF THE DOG"; "Private"; "Beware of the Dog. It may bite. You have been warned"; and one sign bore the image of a dog.

[6] The sheriff made the following findings in fact which are relevant for the purposes of this appeal:

- “6. In returning [to the gate] Diego did not obey a command to leave the gate.  
...  
8. The complainer told the appellant that her dog had just bit him. The appellant seemed not at all concerned by this. She pointed to the sign... in order to advise the complainer he had been warned of (sic) by that sign.  
...  
15. Prior to 14 April 2023 the dog Diego had never been dangerously out of control and had never bitten nor injured any person or other animal.  
16. There were grounds for reasonable apprehension that the dog Diego would injure a person at the locus on 14 April 2023.  
17. The dog Diego was dangerously out of control at the locus on 14 April 2023 when it bit the complainer.”

[7] The sheriff heard evidence from: the complainer; two police witnesses; and the appellant. She concluded that there was a reasonable apprehension that the dog would injure a person on the basis of: (a) the signs displayed at the appellant’s property; (b) the dog’s failure to obey a command by returning to the gate; (c) the dog’s breed, size and strength; and (d) the appellant’s evidence that it was her normal practice to put the dog in a car when anyone attended at the property. The sheriff did not accept the appellant’s evidence that the signs displayed at the property had been erected by the previous owners of the property.

[8] The following questions have been stated by the sheriff for the opinion of this court:

1. Upon the evidence was I entitled to make finding in fact 16?
2. Upon the evidence, was I entitled to make finding in fact 17?
3. Upon the facts found to be admitted and proved was I entitled to find that there was a reasonable apprehension that the appellant’s dog would injure someone?
4. Upon the facts found to be admitted and proved was I entitled to find that the appellant’s dog was dangerously out of control?

## Submissions

[9] On behalf of the appellant it was submitted that the findings in fact did not support the sheriff's assessment that there had been a reasonable apprehension that the dog would injure a person. The test in section 10(3) was an objective one: *McLaughlin v Harvie* 2014 SLT 961. It required the court to look at the whole circumstances of the case. For reasonable apprehension to be established, the facts must give rise to a concern which emanates from the circumstances prior to the incident or the nature of the incident, the duration of the incident and the failure of the dog to desist during an evolving incident: *Reid v Murphy* [2015] HCJAC 60 and *Thomson v Hutchison* 2010 SLT 158. The evidence before the court did not indicate anything concerning in the dog's behaviour prior to the incident. Until the incident, the dog was under control and had obeyed a command to leave the gate. The complainer had stated in evidence that he was not concerned by the dog's behaviour prior to the incident. The incident was an instantaneous episode, involving a single bite and one moment of contact with the dog appearing from behind the complainer when the incident occurred. There was no evidence that any intervention had been necessary to bring the incident to an end. There had been no opportunity for the appellant to issue a command to the dog to desist. The police officers who attended after the incident did not assess the dog as aggressive. In light of finding in fact 15, the assessment of reasonable apprehension required to be determined by the sheriff on the evidence available of the incident as it unfolded on that day. There was no direct evidence before the sheriff of any prior concerning behaviour of the dog or of its behaviour during the incident which would justify a determination that there was a reasonable apprehension of injury. While finding in fact 15 was not determinative, in the absence of any direct evidence of the dog's prior behaviour or

of the nature of the incident, the objective test in section 10(3) had not been met. Finding in fact 15 restricted the evidence before the court to the events of the day in question.

[10] On behalf of the respondent, reference was made to a number of English authorities namely, *R v Bezzina* [1994] 1 WLR 1057, *Rafiq v DPP* 1997 WL 1106030, *R v Gedminintaite* [2008] EWCA Crim 814; however, it was submitted that there was no difference of approach between the English and the Scottish courts. The relevant question is whether the dog was under control. In the present case, the dog had bitten the complainer who exhibited no provocative behaviour. Finding in fact 15 was not fatal; there does not require to have been a previous incident to assert reasonable apprehension (*Thomson v Hutchison* 2010 SLT 158). The test in section 10(3) was an objective one. The sheriff had been entitled to have regard to the dog's size and strength, its propensities and its refusal to obey a command by returning to the gate. The sheriff had been entitled to make finding in fact 17 on the basis that the dog was not in control when it returned to the gate and bit the complainer. The appellant had failed to keep control of the dog by failing to issue a further command for it to return to the house.

## **Decision**

[11] The question for this court is narrow and focussed; each of the questions posed in the stated case is directed at the same central issue: was the sheriff entitled to find that there were grounds for a reasonable apprehension that the dog would injure anyone?

[12] The correct approach to section 10(3) of the 1991 Act has been considered on a number of occasions. The following general principles can be distilled from the authorities:

- (a) whether there are grounds for a reasonable apprehension that a dog will injure someone is an essential fact which requires corroboration (*Littlejohn v McLeod* 1999 JC 333; *Reid v Murphy*);
- (b) whether such grounds exist will turn on the facts of each case (*Thomson v Hutchison*);
- (c) grounds for a reasonable apprehension that a dog will injure someone can arise even if the dog has never previously injured anyone (*Thomson v Hutchison*; *Murdoch v Corrins* 2024 SC (SAC) 79), provided there is evidence giving rise to a reasonable apprehension that the dog will do so (*Thomson v Hutchison*);
- (d) that evidence may include previous aggressive or uncontrollable behaviour (*McIlwaine v Higson*, High Court of Judiciary, unreported, 2000 GWD 31-1211);
- (e) the size, strength and breed of the dog is a relevant consideration (*Reid v Murphy*; *McIlwaine v Higson*);
- (f) grounds for a reasonable apprehension that a dog would injure someone might emerge at some point during the course of a single incident; the particular circumstances of the incident, including the length of the incident and a failure by a dog to respond to commands or discipline before or during the incident are relevant considerations (*Thomson v Hutchison*);
- (g) whether or not there is a basis for such reasonable apprehension is a matter for the court on the evidence available and is not restricted to the owner's apprehension or to his perception of the dog's character (*Murdoch v Corrins*; *Reid v Murphy*). The test in section 10(3) is an objective one (*Reid v Murphy*).

[13] Applying these principles to the present case, the sheriff was entitled to conclude that there was a reasonable apprehension that the dog would injure someone and the appeal falls to be refused.

[14] We accept that finding in fact 15 may be apt to lead to confusion and sits unhappily with findings in fact 16 and 17. However, findings in fact do not exist in isolation; they are made upon a consideration of the evidence which has been accepted or rejected. The sheriff was entitled to reject the appellant's evidence that she had only installed one of the signs displayed at the property; the sheriff assessed the appellant's evidence that the remaining signs had been displayed by the previous owners of the property as lacking in credibility. The sheriff was entitled to accept the evidence of the complainer that after he had been bitten by the dog, the appellant had shrugged her shoulders and walked away; she then returned to the gate and pointed to a sign in order to advise the complainer that he had been warned of the danger presented by the presence of the dog. The sheriff had regard to the terms of the appellant's reply to caution and charge to the effect that she normally places her dog into a car if someone approaches the gate of the property. While that reply to caution and charge ought to have formed a distinct finding in fact, it was an adminicle of evidence which supported the sheriff's finding that there were grounds for reasonable apprehension that the dog would injure a person. We note that finding in fact 15 was inserted into the draft stated case by way of an unopposed adjustment proposed by the appellant. Properly understood, in light of the sheriff's other findings, and in particular finding in fact 8, finding in fact 15 simply reflects the evidence, namely that the dog had never previously bitten nor injured any person or animal; the use of the words "had never been dangerously out of control" while reflecting the statutory language of section 3 of the Act, are not directed at any inference or finding in terms of section 3.

[15] The presence of signs alone would, in our judgment, be a precarious basis upon which to seek a conviction under section 3 of the Act. Warning signs can be displayed for a number of reasons by responsible and considerate dog owners, including to warn those who dislike or are nervous of dogs, for security purposes or to warn other dog owners who may be concerned and may wish to ensure their own dog is on a leash when passing. In the present case, however, the evidence before the sheriff did not comprise the signs alone.

[16] The sheriff carefully considered the evidence in light of the principles set out in the authorities. She had regard to the signs displayed at the property, and in particular to: the warning that the dog may bite; the appellant's reaction to the complainer's injury; the dog's failure to obey a command to stay away from the gate; the appellant's normal practice of commanding the dog to remain in a car when anyone attended at the gate which was indicative of an unusual level of concern about its behaviour; and she had regard to the dog's breed, size and strength. There was sufficient evidence pointing to knowledge on the part of the appellant prior the incident as to the dog's potential behaviour to allow the sheriff to find that there were grounds for reasonable apprehension that the dog would injure someone.

[17] Accordingly, we shall answer questions 1 to 4 in the affirmative and refuse the appeal.