

December 19, 2019

**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

CORRECTED¹ REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19009920**

SERGEY KARASHCHUK
Animal Services Enforcement Appeal

Activity no.: A19006842

Appellant: **Sergey Karaschuk**

[REDACTED]
Kent, WA 98042

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 In the last few days, we have discovered that our recently-ungraded legal files software has been populating fields incorrectly. Here, the decision we issued December 13 had a November 22 order date and an artificially-shortened appeal window. We have corrected those errors. The substance of the decision remains the same.

1. On the evening of September 27, 2019, Carol Erskine’s goat was mauled to death by an animal she identified as Sergey Karashchuk’s German Shepherd (Rex). Animal Services issued a notice asserting that Rex was trespassing and qualifies as vicious and ordering various compliance items. Ex. 5. Mr. Karashchuk timely appealed, explaining that Rex is not aggressive, asserting that Ms. Erskine has a history of harassing the Karashchuks, disputing her factual account, and noting that neighbors said they heard coyotes in the area that night. Ex. 6. 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 deny Mr. Karashchuk’s appeal.

Standard

2. Unless directed to by law—and no special directive applies to today’s case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. 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.

3. Animal Services asserts that Rex is “vicious,” which KCC 11.04.020.BB defines 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.

KCC 11.04.230.H declares as a nuisance, “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.”

Evidence

4. Ms. Erskine testified that she heard her goat, Wannie, screaming and went outside to investigate. She came upon Mr. Karashchuk’s dog on top of Wannie, chewing on him. She kicked at the dog to get it away. She recognized the dog as Rex because she had seen him before and because she had to get within six inches of him that evening to get him to retreat. Rex ran to her horse pen, then to the back of her yard, and eventually circled back out toward the Karashchuk property. She saw Mr. Karashchuk out with a flashlight looking for Rex. Wannie died from his injuries in the early morning hours. Exhibit 4 depicts the brutal aftermath of the fatal attack.²

² At one point during the hearing, we took strong exception to Mr. Karashchuk’s line of questioning, which was:

Mr. Karashchuk: When you say that he killed your goat, was Wannie dead on the spot?
 Ms. Erskine: No he ripped him apart and he fatally injured him.

5. Mr. Karashchuk agreed that earlier that evening Rex had gotten loose from the tether restraining him in the Karashchuk yard. He went out looking for Rex, including driving by the Erskine property and calling for Rex. It was only after he was back in his garage that he heard Ms. Erskine scream. He went back to the Erskine property, and after 15-20 seconds Rex came to him from the alley area abutting her property.
6. Mr. Karashchuk stated that there was another German shepherd barking on a neighbor's property that evening, and there are other German shepherds in the neighborhood. Rex typically clings to him, so he is surprised that Rex would not have come to him immediately when he called to Rex either in the car or later when walking. Ms. Erskine has attacked his family in the past, causing him to think she was fabricating things.

Analysis

7. The charge that Ms. Erskine is a harasser that might be embellishing has some legs, because in the 10 days following the attack she sent Mr. Karashchuk a harassing series of 17 texts that included:
 - “put the motherf--- down” (i.e. demanding that Mr. Karashchuk euthanize Rex);
 - “I will be calling every hour until I see your dogs corpse”;
 - “I’m not going to let my goats death go unpunished”;
 - “if [Rex] gets loose on my watch, I’ll kill him! Too bad it will be fast and he won’t get to suffer like my goat did. I’ll try to hit him so he lives long enough to bleed out!” and
 - “I hope [Rex] eats your baby.” Ex. 8.
8. It could have been that those texts were simply the inappropriate—but temporary—result of a fresh trauma. Other than one additional text containing four middle fingers she sent Mr. Karashchuk on October 19, her texts stopped. However, at hearing—which was a full eight weeks after the incident—Ms. Erskine’s continuing lack of emotional and behavioral control was almost unprecedented. After repeated outbursts and interruptions, we had to remove her from the courtroom. She is only the second

Mr. Karashchuk: And you can prove this how?

Mr. Karashchuk stated later that he was not trying to question *whether* the attacker fatally injured Wannie, but *whether* Rex was the attacker, and that he had simply misspoken. That was not what that line of questioning asked, but as a lay participant, perhaps he did not convey what he meant to convey. There is zero question that the attack directly caused Wannie’s death a few hours later. Moreover, unlike a state dangerous dog designation, the inquiry of which can turn on whether a dog “killed” a domesticated animal, the viciousness requirements under the County code do not require a fatality. *Compare* RCW 16.08.070 *with* KCC 11.04.020.BB & .230.H.

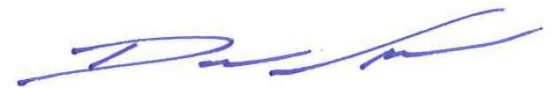
participant—from out of the thousands of participants that have appeared before us—we have ever had to remove from a hearing room.

9. However, witness instability is not quite the same thing as witness credibility, though there is certainly overlap. In the typical vicious designation appeal, the case turns on testimony about split-second actions and precise details. Did the complainant step on the dog just before the dog bit the complainant? Did the dog actually lunge at the complainant or merely get uncomfortably close and snarl? Did dog *A* trespass way onto dog *B*'s yard just before dog *B* reacted, or was dog *A* simply walking along the curb when dog *B* pounced? For such close calls, Ms. Erskine repeatedly texting and saying things consistently undermining her reliability would likely be the tipping point.
10. However, the facts here go far beyond Ms. Erskine's testimony. Even if we reject as untrustworthy her statement that she recognized Rex from past encounters—after all, it was dark enough at that point that Mr. Karashchuk came with a flashlight—we know that, earlier that evening, Rex got loose from his tether and escaped the Karashchuk yard. The Karashchuks were unable to retrieve him. Mr. Karashchuk heard Ms. Erskine scream. As he walked towards the Erskine property, he saw Rex coming towards him from the alley area abutting the Erskine property.
11. Mr. Karashchuk is correct that there are “plenty of possibilities” other than Rex. That would matter a lot in a criminal context, where the government's burden is proof is beyond a reasonable doubt. It is certainly a possibility, as Mr. Karashchuk opined in his appeal statement, that coyotes could have been responsible for Wannie's death. And it is also possible that during the precise window that Rex was on the loose and then in the seconds that preceded Mr. Karashchuk spotting Rex emerging from the alley area abutting Ms. Erskine's property, a different German shepherd just happened to be marauding the neighborhood and mauling Wannie.
12. However, we decide cases based on a preponderance of the evidence. Even figuring in Ms. Erskine's harassing texts and unacceptable hearing behavior, we find it significantly more likely than not that Rex trespassed onto the Erskine property and attacked (and killed) Wannie. Rex meets the criteria for both trespass and a viciousness designation.

DECISION:

1. We DENY Mr. Karashchuk's appeal.

ORDERED December 19, 2019.



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 *January 21, 2020*. 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 NOVEMBER 22, 2019, HEARING IN THE APPEAL OF SERGEY KARASHCHUK, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009920

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Carol Erskine, and Sergey Karashchuk. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record:

- | | |
|---------------|---|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. 2 | Online Complaint form of September 27, 2019 incident by Carol Erskine, dated September 28, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A19006842 |
| Exhibit no. 4 | Photographs of Wannie's injuries |
| Exhibit no. 5 | Notice of violation no. V19009920, issued October 5, 2019 |
| Exhibit no. 6 | Appeal, received October 17, 2019 |
| Exhibit no. 7 | Map of subject area (with Ms. Erskine's markings on Rex's route) |
| Exhibit no. 8 | Appellant: Text conversations, submitted November 22, 2019 |

DS/jo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19009920**

SERGEY KARASHCHUK
Animal Services Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **CORRECTED 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, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED December 19, 2019.



Jessica Oscoy
Legislative Secretary

Erskine, Carol

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Karaschuk, Sergey

Hardcopy