

September 8, 2020

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20010403-A20001652**

CHRISTINA AND GREGORY WARNOCK

Animal Services Enforcement Appeal

Activity no.: A20001652

Appellants: **Christina and Gregory Warnock**

Maple Valley, WA 98038

Telephone: [REDACTED]

Email: [REDACTED]; [REDACTED]

King County: Regional Animal Services of King County

represented by **Shelby Russell**

21615 64th Avenue S

Kent, WA 98032

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FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served a notice and order asserting that Christina and Gregory Warnock's dog, Harley, bit Laura Kohls and qualifies as vicious. Ex. D2 at 001. The Warnocks appealed, disputing that Harley bit Ms. Kohls and instead asserting that Harley put her hand into Harley's mouth, with enough pressure to gash her hand on Harley's tooth. Ex. D3 at 001. 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 the appeal.

Evidence

2. Ms. Kohls testified that as she walked along the sidewalk on February 21, she saw the Warnocks and their dog (Harley) about a block away, walking towards her. She explained that when she walks, she does not engage animals she does not know. That day she was walking at her full, brisk pace, which she has timed at between 3.5 to 4.5 miles an hour.
3. Ms. Kohls saw that the woman (Ms. Warnock) was holding Harley's leash. As Ms. Kohls approached, Ms. Kohls shifted towards the street side of the sidewalk. She noticed Ms. Warnock did not have the level of control over Harley that Ms. Kohls expected her to have. As she passed, Harley crossed the sidewalk and Ms. Kohls pulled her hands towards her body. Harley bit her hand anyway. The Warnocks' first words were that they were sorry, and that Harley had never done anything like that.¹
4. Ms. Kohls presented pictures of an approximately four-inch gash to her palm. Ex. D6 at 001–03. When we asked at hearing whether there were pictures of the backside of her hand, she stated that was not where the wound was. The gash required seven stitches to repair. Ex. D6 at 004–06. She had a severe reaction to the antibiotic, which caused her to miss three workdays. The wound has not completely healed, and she has visited a hand specialist.
5. Greg Warnock testified that as they turned the corner, he saw Ms. Kohls coming towards them. Ms. Warnock had Harley on a harness, wrapped close. When Ms. Kohls came within 4–5 feet, she put her hand out to pet or pat Harley. Harley was panting and may have lifted her head, but she did not otherwise acknowledge Ms. Kohls. Harley did not lunge, and the harness would have pulled her feet out if she tried, so she could not have made it to Ms. Kohls.
6. Mr. Warnock did not notice that anything had happened until after Ms. Kohls passed. If the 108-pound Harley had bit, there would have been multiple wounds to the top and bottom of her hand. He thinks what happened was the equivalent of someone dragging a hand across a nail and snagging their hand.
7. Ms. Warnock testified that when someone walks towards them, she tightens up her hold on Harley. She had 100% of control of Harley on February 21. Harley wears a harness designed to drop her down if she tries to lunge. Harley never looked to her left, towards Ms. Kohls. Harley did not bite Ms. Kohls.
8. Ms. Warnock did not know anything had happened until after Ms. Kohls passed. She opined that Ms. Kohls' hand entered Harley's mouth and collided with Harley's bottom canine.

¹ There was discussion about Ms. Kohls and Mr. Warnock's later interactions related to her medical care. Those do not seem particularly relevant to whether Harley meets the code criteria here. We do touch on that below in relation to the penalty amount.

Legal Standard

9. Our question is whether Harley qualifies as “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.”
10. In answering that, 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.

Analysis

11. Ours is not the usual scenario where an appellant is arguing that the complainant (or complainant’s dog) legally provoked the appellant’s dog to bite, or that there were other extenuating circumstances around the bite such that the appellant’s dog does not meet the code criteria. Instead, the Warnocks put their eggs in the Harley-didn’t-bite-at-all basket.
12. The one item supporting the Warnocks’ version is the lack of a wound to the backside of Ms. Kohls’ hand. That is in no way dispositive, judging from the hundreds of pictures we have reviewed in animal appeals. Visible marks of an altercation are sometimes significantly greater—or, conversely, significantly milder—than we would have expected, given the context. But the lack of a wound to the back of Ms. Kohls’ hand does cut slightly in the Warnocks’ favor.
13. Virtually all the other evidence and logic cut in favor of Ms. Kohls’ version:
 - A. Although the Warnocks’ described why they thought Harley did not and could not have “lunged,” reviewing Ms. Kohls’ complaint and testimony, at no point did she claim Harley “lunged,” only that Harley crossed the sidewalk and deliberately bit her. Ex. D5 at 002; hearing testimony. And the sidewalk, as the Warnocks’ helpful exhibits showed, is relatively narrow. Ex. A1 at 001, 003. Moreover, the Warnocks assert (and depict) that Ms. Kohls was not as far to the right (on the sidewalk) as the sidewalk allowed. Ex. A1 at 003. Thus, Harley only had to cover a short distance to bite Ms. Kohls’ left hand.
 - B. Ours in not a scenario where Ms. Kohls claims she was just briskly walking by (as she does here), while the Warnocks counter that, no, Ms. Kohls stopped and tried to engage Harley. Instead, in the Warnock’s version, a woman walking by randomly stuck out her hand, *as she continued walking by*, and drew her hand through Harley’s mouth. That is not impossible, but it makes the Warnock’s version decidedly implausible. To draw from common experience, numerous

times we (or someone we were observing) walked or jogged towards an oncoming dog and stopped to engage with the dog (however improvidently). But never have we, or anyone we have observed, randomly stuck out a hand to drag it over a dog *while* keeping a pace and during a spilt-second crossing.

- C. Based on our hearing, we would not describe Ms. Kohls as friendly. While we (perhaps foolishly) often engage with strangers (of the two- and four-foot varieties) we encounter on the street, nothing in Ms. Kohls’ demeanor made it seem likely that Ms. Kohls would have voluntarily done that on February 21.
- D. If the incident happened as the Warnocks described it, with Harley simply facing forward and Ms. Kohls—coming from the opposite direction—running her hand through Harley’s mouth, Ms. Kohls’ hand would have been going in the *same direction* as the canine tooth’s curve, not against the tooth’s curve. That makes it even less likely that a hand passing over that tooth would have had enough pressure to snag and cause such a gruesome gash.
- E. Occam’s Razor is the principle that, of two explanations that account for all the facts, the simpler one is more likely to be correct. To use a human-human example, at some points in history there must have been times where jaws were injured because people jammed their faces into what just happened to be other persons’ stationary, clenched fists. Strictly speaking, it is not impossible that Ms. Kohls decided to jab her hand towards a dog’s mouth and wound up gashing that hand, and that this is the first in our hundreds of vicious dog appeals where a dog’s mouth slashed a person without actually biting. However, it is a far more convoluted and implausible explanation.
14. In sum, we are weighing the likelihood that Harley deliberately bit and left a serious gash in the palm but no wound on the backside against a mountain of contrary indicators. Whether or not the Warnocks’ evidence and theory would be enough to create “reasonable doubt” in the criminal context, in a civil matter like this, Animal Services’ burden is to prove its case by a “preponderance of the evidence.” KCC 20.22.210.B.² Animal Services has met its burden of showing that Harley bit a person without provocation and—especially given the severity of the gash—constitutes a danger.
15. That is not a judgment that Warnock are prevaricating. Given how quickly the altercation Ms. Kohls described was and at such close quarters, it would be no surprise that the Warnocks (or anyone else) could have missed the bite. In numerous animal appeals where the bite was *not* in dispute, eyewitnesses noted not seeing the actual bite—even when they themselves wound up being bitten—despite being right there. A usual refrain in our animal jurisprudence has been, “It all happened so fast....” We find the

² See also *Mansour v. King County*, 131 Wn. App. 255, 265, 128 P.3d 1241, 1246 (2006) (rejecting “arbitrary and capricious” as too low a standard, but rejecting “beyond a reasonable doubt” and “clear and convincing evidence” as too high a standard, and determining that a “preponderance of the evidence” was the correct standard for animal enforcement cases). *Mansour* occurred during an era where a different County tribunal, not the examiner, entertained animal enforcement appeals.

Warnock's version significantly less probable than Ms. Kohls' version, but we do not make findings related to candor.

16. Finally, we turn to the penalty amount. Animal Services has not asserted that the Warnocks were on notice before the altercation. And on February 21, Harley was not running amok, but was on a leash. After the bite, there was some conflicting discussion about exactly who said what and why about medical treatment and coverage, but no dispute that Mr. Warnock drove Ms. Kohls home and offered to drive her to seek medical attention. We find a penalty reduction is warranted.

DECISION:

We deny the Warnocks' appeal, except that we reduce the penalty from \$500 to \$250.

ORDERED September 8, 2020.



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 8, 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 AUGUST 26, 2020, HEARING IN THE APPEAL OF CHRISTINA AND GREGORY WARNOCK, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010403-A20001652

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Laura Kohls, Shelby Russell, and Greg and Christina Warnock. 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
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Exhibit no. D2 Notice of violation no. V20010403-A20001652 with certified mail receipts, issued February 25, 2020
Exhibit no. D3 Appeal, received July 16, 2020
Exhibit no. D4 RASKC investigation report no. A20001652
Exhibit no. D5 Online Complaint form of February 21, 2020 incident by Laura Kohls, dated February 22, 2020
Exhibit no. D6 Photograph of Laura Kohl's wounds, received from Davis Law Group
Exhibit no. D7 Medical records submitted by Davis Law Group, dated February 21, 2020
Exhibit no. D8 Medical records submitted by Davis Law Group, dated February 21, 2020
Exhibit no. D9 Medical bill submitted by Davis Law Group, dated June 17, 2020
Exhibit no. D10 Map of subject area

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

Exhibit no. A1 Response to Exhibit D5-0001, Q.28, sent August 18, 2020

DS/jo

September 8, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010403-A20001652**

CHRISTINA AND GREGORY WARNOCK

Animal Services Enforcement Appeal

I, Jessica Oscoy, 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, 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 8, 2020.



Jessica Oscoy
Office Manager

Khols, Laura
Hardcopy

Russell, Shelby
Regional Animal Services of King County

Warnock, Christina/Greg
Hardcopy