

June 17, 2020

**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. **V20010574**

LATRICE BELL

Animal Services Enforcement Appeal

Activity no.: A20010827

Appellant: **Latrice Bell**

[REDACTED]
Kent, WA 98032

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by Shelby Russell
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. On April 9, Latrice Bell's dog, Baby, bit a delivery person. Animal Services designated Baby as vicious and cited Ms. Bell for not duly licensing Baby. Ms. Bell licensed Baby and timely appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we do not find that Animal Services met its burden of proving that Baby's bite was unprovoked. We thus overturn Baby's viciousness designation. We also reduce the licensing penalty.

Evidence

2. Kenneth Ricker testified that he was delivering a package to the second floor of what turned out to be Ms. Bell's apartment building. He had seen a dog (Baby) playing with kids at a distance, but he did not think he was in any danger in proceeding with his delivery. He knocked on a second-floor door and laid the package down, unaware that there was a dog in the vicinity.
3. After he left the package, Mr. Ricker turned to his left and—startled to see Baby—screamed. He stated that Baby was “pretty close” and on the landing. However, could not offer a foot-distance estimate. He was not blocking the landing, and Baby could have gotten by him. He almost fell as he turned, pushing himself on the door with his right hand as he twisted to get his balance. Baby bit his left-hand (meaning his lead hand as he rotated left). He then hit Baby with his signing board, and Baby went upstairs to the Bell residence on the third floor.
4. Mr. Ricker went to the office manager and told the manager what happened. He then called 911. He went to the hospital, where he received x-rays, a tetanus shot, and medication.
5. Ms. Bell testified that she was watching from her balcony as her children played with Baby in a fenced common area. She saw Baby escape through a hole in the fence, and she called to Baby to come home. At the time she tried her retrieve Baby, she was unaware that Mr. Ricker (or anyone) was in the stairwell.
6. She stated that the stairwell was about three feet from the landing wall, and that if one holds on to the stairwell and leaned, one could touch the landing wall. The area proved too narrow for her to earlier move a couch up.

Legal Standard

7. All dogs eight weeks old and older that are harbored, kept or maintained in King County be licensed and registered. KCC 11.04.030.A. Ms. Bell does not dispute that Baby was unlicensed as of April 9, but she licensed Baby the same day she received the violation. She requests a penalty reduction.
8. More seriously, Animal Services asserts that Baby qualifies as “vicious,” defined as, “performing the act of... 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 “[a]ny 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” qualifying as a nuisance. KCC 11.04.020.BB; KCC 11.04.230.H. Ms. Bell questions whether Baby bit Mr. Ricker and asserts that, if she did, whether Baby was provoked to do so.
9. In answering those, 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. 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. Because lack of provocation is part of the definition itself, and because Ms. Bell’s appeal raised provocation, Animal Services must show, by a preponderance of the evidence, that Baby’s action was unprovoked. KCC 11.04.020 (“biting a human being or attacking a human being or domesticated animal without provocation”). *See also Morawek v. City of Bonney Lake*, 184 Wn. App. 487, 495, 337 P.3d 1097, 1101 (2014).

Analysis

10. Ms. Bell was suspicious that Mr. Ricker had been bitten, and pointed to the lack of any pictures or any medical records showing there had been a bite. Her suspicions are misplaced; Mr. Ricker seemed credible. And why in the world would he (or anyone) take time out of his day to cook up a bite that never happened, when he had so little to gain from it? And if one is going to fabricate something, we would expect to see the tale spiced up with a little drama—snarling pit bull, ears pinned back, bared teeth, maybe a little drool. Mr. Ricker exhibited none of that. We have zero doubt that Baby bit Mr. Ricker.
11. The lack of *any* physical evidence documenting that bite is unusual. Typically, the record contains pictures and/or medical files. Certainly, there is nothing in our record inconsistent with Baby’s bite being a “back-off” nip. Animal Services described the bite as leaving “minor punctures.” Ex. 2 at 001. And, Baby is a pit bull, meaning she surely would have inflicted much more damage if she wanted to attack Mr. Ricker.
12. That does not mean that a minor bite is insufficient to sustain a viciousness designation. As noted above, biting a human is on the short list of “including, but not limited to” behaviors that can qualify as vicious. We have consistently required some attempt, some step towards actual contact more than just proximity and aggressive barking, but an actual bite is not even required element for a viciousness designation. And nothing in the code implies that, if there is an actual bite, the bite must be particularly brutal to qualify.
13. However, the relatively minor extent of Baby’s bite is important because legal “provocation” requires the dog’s reaction to be proportional to the victim’s act. *Bradacs v. Jacobone*, 244 Mich. App. 263, 273–75, 625 N.W.2d 108 (2001); *Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000). As we have written before, “an act that might qualify as ‘provocation’ for a nip on the hand barely breaking the skin would not necessarily qualify as ‘provocation’ for a more serious bite.” Thus, a minor puncture does not take Baby’s bite out of the conceivable provocation ballpark.
14. One scenario we often encounter involves an appellant’s dog who runs at a complaint (or a complainant’s dog) and winds up biting the complainant (or the complainant’s dog). The appellant typically argues that the complainant’s (or complainant’s dog’s) reaction “provoked” the bite. In that scenario, we have almost always held that the complainant (or complainant’s dog’s) defensive countermeasures to appellant’s approaching dog was *not* legal provocation for the appellant’s dog to bite.

15. Our initial take was that this was the box Baby’s interaction with Mr. Ricker fit neatly into: Baby saw Mr. Ricker and pursued him, following him up the stairs until she confronted him and then bit him. That Mr. Ricker was surprised and screamed or twisted stumbled or flashed his arms or took defensive measures to try to protect himself against Baby would not have qualified as a legal justification for Baby to bite.
16. However, the critical feature here is Ms. Bell’s testimony that she called to Baby to come home and Baby complied. That sets a very different scene. In that scenario, Baby was coming up the stairs not to get at Mr. Ricker but to get to the third floor. Under those terms, as Baby rounded the stairs and hit the landing, not only was Mr. Ricker surprised to see Baby, but Baby was surprised to see Mr. Ricker. In that scenario, the nuances of the interaction become much more important than in the scenario where Baby pursued Mr. Ricker and instigated the altercation.
17. None of this is anything to do with whether Mr. Ricker behaved appropriately. It was totally understandable for Mr. Ricker to turn around, see a pit bull right there, scream, lose his balance and flash his arms. Provocation, however, usually does *not* look at the victim’s intent. “[P]rovocation is a matter of whether particular actions are likely to cause a dog to react by biting,” and courts “disregard whether the actor intended to provoke.” *Toney v. Bouthillier*, 129 Ariz. 402, 405, 631 P.2d 557, 560 (1981). Instead, the “provocation” inquiry typically “focuses ‘on how an average dog, neither unusually aggressive nor unusually docile, would react to an alleged act of provocation.’” *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)). There are exceptions, but our focus is typically on the *dog*, since the dog is one potentially saddled with a lifelong viciousness designation.
18. Today’s is a case where nuance and spaces really count. Despite asking numerous questions to Ms. Bell and Mr. Ricker trying to clarify the landing/stair area and distances between things, we still have a hard time wrapping our hands around the scene.
19. Under Mr. Ricker’s version, it sounds like Baby was not just traveling up the stairs, but instead left the stair area and intentionally came well into the landing to get at Mr. Ricker. If so, then Mr. Ricker’s reaction to Baby’s approach was not “provocation.”
20. Conversely, Ms. Bell asserted that the door Mr. Ricker was delivering to was right by the stairs. In her version, if Mr. Ricker turned around, leading with his arm, and screamed, he was practically in Baby’s face as she made her way to the third floor. While his reaction would be totally understandable, it would also be totally understandable that a dog— simply heading home and unexpectedly confronted with a man screaming and swinging toward the dog—would react. And in that scenario, a back-off nip (as opposed to a more aggressive bite) seems proportional to that provocation.
21. It may be that the door Mr. Ricker was delivering to is well off the stairwell, and the only way the altercation could have happened was if Baby had already left the stairwell to confront Mr. Ricker, who was well away from the stairs. However, without pictures of the incident area or clear testimony about distances and positioning, we cannot make that

finding. And, if Baby was simply following instructions and returning home, and got waylaid as he rounded the stairs, then Animal Services has not proven that Baby's bite was unprovoked.

22. On our limited record, our decision turns largely on whether we find the core of Ms. Bell's testimony—Baby bounding up the stairs not to confront Mr. Ricker but to obey Ms. Bell and get home, and the narrow layout of the stairwell/landing area—is accurate. Her conspiracy-like insinuation that Mr. Ricker was making up the bite certainly hurt her credibility. Still, the core of her testimony seems pretty plausible. That does not mean Mr. Ricker was not credible—he certainly was. But with that minor a back-off nip, two plausible scenarios of how the confrontation happened, and no great way (such as with a photograph) to understand Baby's/Ricker's locations, we do not have a clear picture of how it all went down. And given that Animal Services bears the burden of proving that Baby's bite was not provoked, we cannot say that Animal Services has met its burden. We overturn Baby's viciousness determination.
23. As to the licensing violation, Ms. Bell had not licensed Baby as of April 9, but she has since. In that scenario we typically reduce the penalty somewhat. Here, we reduce the penalty to \$60.

DECISION:

1. We GRANT Ms. Bell's appeal as to Baby's viciousness determination.
2. We DENY Ms. Bell's appeal as to the licensing violation, but reduce the penalty owed to Animal Services to \$60.

ORDERED June 17, 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 *July 17, 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 JUNE 3, 2020, HEARING IN THE APPEAL OF LATRICE BELL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010574

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sgt. Russell, Kenneth Ricker, and Latrice Bell. 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 | Notice of violation no. V20010574, issued April 9, 2020 |
| Exhibit no. 3 | Appeal, received April 11, 2020 |
| Exhibit no. 4 | Appeal, of Latrice Bell |
| Exhibit no. 5 | RASKC investigation report no. A20-010827-01 |
| Exhibit no. 6 | Complaint form of April 9, 2020 incident by Rick Kenneth, dated April 9, 2020 |
| Exhibit no. 7 | Map of subject area |

DS/jf

June 17, 2020

**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. **V20010574**

LATRICE BELL

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 June 17, 2020.



Jessica Oscoy
Legislative Secretary

Bell, Latrice
Hardcopy

Ricker, Kenneth
Hardcopy

Russell, Shelby
Regional Animal Services of King County

Valley Community Dispatch