

October 28, 2020

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20010974-A20013063**

AMBER SHAW

Animal Services Enforcement Appeal

Activity no.: A20013063

Appellant: **Amber Shaw**

[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:

1. **Hearing.** A telephonic hearing was held on October 15, 2020. Appellant Amber Shaw appeared, as did Sergeant Eykel, Code Enforcement Officer for King County Regional Animal Services.

2. **Exhibits.** The exhibits in the minutes below were admitted without objection. On Examiner request, Animal Services submitted a more legible copy of the appeal (Exhibit D5).
3. **Witnesses.** Sworn testimony was received from Officer Diana Fowler and Amber Shaw.
4. **Notice of Violation.** King County Regional Animal Services issued a Notice of Violation and Order to comply to Ms. Shaw for: Neglect to Animal, KCC 11.04.250(A)(2), with a \$500 fine.¹ The fine was issued to Ms. Shaw for leaving her dog, Sumo, in a car without adequate ventilation to keep the car from over-heating. Ms. Shaw timely appealed.
5. **Neglect - Meaning.** It is a civil violation to:

By reason of neglect or intent to cause or allow any animal to endure pain, suffering or injury or to fail or neglect to aid or attempt alleviation of pain, suffering or injury the person has so caused to any animal.²

The code does not define “neglect,” so its normal dictionary definition of “fail to care for properly” is used. Neglect is an objective inquiry into whether a person has done her duty.³ On the culpability spectrum (willfully, knowingly, recklessly, or negligently), neglect falls at the lowest end.

6. **Incident – August 1, 2020.** Officer Fowler received a call from King County Sheriff dispatch at 3:10 p.m., reporting a dog confined in a hot car at Fred Meyer, 26520 Maple Valley Black Diamond Road SE, Maple Valley. The call came into King County dispatch at 3:04 or 3:05, with the caller stating the car had been parked for about ten minutes in direct sunlight.

When Officer Fowler arrived at the scene at 3:24, King County Sheriff Deputy Speight was already present. Officer Fowler observed a black and white long-haired, chihuahua/daschund mix, exhibiting signs of heat distress (excessive panting, going from window to window and moving to the floorboards). The vehicle was in direct sunlight with the windows rolled down one to two inches. Officer Fowler saw no food or water in the car.

Officer Fowler entered the store to locate the car owner and Officer Speight released the dog from the car. Officer Fowler returned and provided the dog with water which he immediately guzzled in large quantities, and moved the dog to her air-conditioned car. Officer Fowler measured the external temperature at 79 degrees Fahrenheit, the passenger seat at 114.6, and the floorboards at 111. At about 3:45, Ms. Shaw returned to the vehicle.

¹ Exhibit D3 (Notice of Violation).

² KCC 11.04.250(A)(2).

³ See e.g., *Neglect*, BLACK’S LAW DICTIONARY (16th ed. 2014).

Ms. Shaw stated she had only been gone ten minutes and had returned to her car briefly before Officer Fowler's arrival. She stated that when she returned to check on Sumo, she ran the car with the air conditioning on while she was waiting on photographs to be printed. She stated the dog was fine then. She then shut the car off and returned to the store for 15 minutes. Upon returning again to her car, she said when she saw Sumo he seemed fine. She said Sumo pants due to separation anxiety, so his symptoms were normal to her. Also, she stated there originally was a water bowl, but it must have been moved under the seat.

Officer Fowler explained that the reason the dog was fine is the dog had been removed from the car, provided water, and put in an air-conditioned vehicle. Officer Fowler described the elevated car temperatures and the dog's distressed behavior.

On cross-examination, Ms. Shaw was asked about being in the store for only about 20 minutes before her initial return to the vehicle; given the call originated at 3:04. Ms. Shaw did not change the narrative. She said she was in the store at about 3, shopped for 15-20 minutes, and did check on the dog. Just before Officer Fowler arrived, Ms. Shaw said she had returned to the car and put on the air conditioning to cool it down. She didn't see Sumo as being uncomfortable. He was panting, but she thought this was because he was excited. She explained their living situation has lacked stability recently. Ms. Shaw's appeal states she is homeless and unemployed. This was not disputed.

It was pointed out that the temperature in the vehicle was 114 degrees, and that it is not credible to have this temperature reading if her testimony were accurate. Officer Fowler took the internal temperature almost immediately. It did not make sense that someone would leave a dog at that temperature with the exhibited symptoms. Sumo would not have acted as he did had, had he been sitting in an air-conditioned car just minutes earlier. Also, the person who had called in the incident walked over and told Officer Fowler they were glad she was there.

Officer Fowler has worked at Animal Services just over six years, and was a veterinary technician for about nine years. In this work, she has seen heat distress, and is familiar with these symptoms. Sumo would likely not have died within the next minute or two, but if the situation had gone on much longer he could have come close. His panting was not generic. His tongue was out far, with saliva pouring from his mouth. He was trying to get to gaps in the windows and down to the floorboards. His ears were pinched back, which is a sign of heat distress, and he guzzled the water Officer Fowler provided.

7. **Penalty.** A \$500 penalty is sought. Though authorized by code, this is the same penalty amount also applied to more egregious irresponsibility cases. Ms. Shaw's testimony was not credible as to the sequence of events, and she did not take responsibility for the situation. However, she was away from the car for just under an hour, the animal quickly recovered, and Ms. Shaw had left the windows cracked. A penalty reduction is not unreasonable.
8. **Enforcement Considerations.** The point of a penalty is primarily to ensure the situation does not repeat. It would be ideal if Animal Services had options such as dog

care training in lieu of penalties or penalty waivers if the situation does not repeat in a certain number of years. Such mechanisms incentivize compliance and improve animal care, while being more readily tailored to various situations than the standard penalty structure. This structure is not presently outlined in code.

CONCLUSIONS:

1. **Jurisdiction.** The Examiner has jurisdiction over appeals of King County Regional Animal Services civil citations.⁴ In defending the appeal of these citations, it has the burden of proof.
2. **Negligence.** Animal Services has met its burden of proof. Sumo was not afforded proper or reasonable care while the car was parked at Fred Meyer. Sumo over-heated and was in considerable distress by the time Officer Fowler arrived. Had Animal Services not responded, more lasting injury was likely.
3. **Penalty.** Given the ameliorating circumstances detailed in Finding 7 above, a \$250 penalty is reasonable. Alternatively, it would be reasonable to further reduce the penalty to \$100, if Ms. Shaw is able to take a dog owner training class.

DECISION:

1. Ms. Shaw's appeal is DENIED as to the violation.
2. Ms. Shaw's appeal is GRANTED IN PART as to the penalty amount. Ms. Shaw shall pay \$250 to Animal Services within 90 days, unless Animal Services provides for payment by installment or affords further leniency on payment timing. Alternatively, Ms. Shaw shall pay \$100 to Animal Services within 90 days, and provide proof of taking a dog owner training class within 180 days.⁵

ORDERED October 28, 2020.



Susan Drummond
King County Hearing Examiner *pro tem*

⁴ KCC 11.04.270.

⁵ Given the COVID-19 situation, there is some uncertainty on scheduling, though online dog training is available.

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 *November 27, 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 OCTOBER 15, 2020, HEARING IN THE APPEAL OF AMBER SHAW, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010974-A20013063

Susan Drummond was the Hearing Examiner pro tem in this matter. Participating in the hearing were Diana Fowler, Amber Shaw, Chelsea Eykel. 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	RASKC investigation report no. A20013063
Exhibit no. D3	Notice of violation no. V20010974-A20013063, issued August 1, 2020
Exhibit no. D4	King County Sherriff CAD Report
Exhibit no. D5	Appeal, received August 25, 2020
Exhibit no. D6	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010974-A20013063**

AMBER SHAW

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, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED October 28, 2020.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Fowler, Diana

King County Sherriff Dispatch

Hardcopy

Shaw, Amber

Hardcopy