

October 16, 2020

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

King County Courthouse
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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. **V20010976-A20012699**

DENICA GRIMM

Animal Services Enforcement Appeal

Activity no.: A20012699

Appellant: **Denica Grimm**

[REDACTED]
Covington, WA 98042

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 July 4, 2020, Denica Grimm's dog, Ivory, bit and killed Jacqueline Giordano's dog, Peanut. Regional Animal Services of King County (Animal Services) served a violation notice and confinement order to Ms. Grimm, asserting that Ivory qualifies as vicious and was unlicensed. Ms. Grimm appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the notice and order but reduce the monetary penalties.

Testimony and Evidence

2. On July 4, there was a gathering of about 30 people on Daniel Grimm’s property. Jacqueline Giordano (Mr. Grimm’s girlfriend) and her Chihuahua, Peanut, started off inside. At some point that afternoon, Mr. Giordano brought Peanut outside to meet the other dogs: Samson, Poppy, and Ivory.
3. Participants spent an inordinate amount of statements and exhibits arguing over who wanted whose dogs to meet, and whether Ms. Giordano was asked to bring Peanut outside that afternoon to meet the other dogs or whether she did it of her own volition, and whether she was encouraged or discouraged to bring Peanut out. Here, *why* Peanut came outside is not relevant to our analysis of whether Ivory meets the code criteria (below) for a viciousness designation.
4. Ms. Giordano testified that after she brought Peanut out, she was crouching down with Peanut in her arms. Ms. Grimm was holding Ivory. Poppy, licked Peanut. Samson was initially standing between Ivory and Peanut; Samson was fine with Peanut. Peanut was shaking, but was not barking or growling.
5. Ms. Giordano explained that as Ms. Grimm shifted positions, Ivory pounced and ripped Peanut out of her arms. Ivory crushed Peanut’s head and gashed her neck. It took her a while to realize Peanut was dead, because Peanut’s neck was flopping and her eyes were open. It was only when they were in the car heading to the emergency room that Ms. Giordano realized Peanut was dead; they returned to the residence.
6. Daniel Grimm testified that he was standing to the side of Ms. Grimm, as Peanut was introduced to the other dogs. Peanut was just sitting there being quiet. Poppy had licked Peanut, and Samson was fine with Peanut. Ivory was panting, but seemed happy, showing no signs of aggression. However, as Ms. Grimm shifted, Ivory dragged her three feet to get at Peanut. Ms. Grimm did not let go of Ivory’s leash and received cuts on her wrist trying to restrain Ivory. Ivory’s attack “literally came out of nowhere.”
7. Mr. Grimm explained that at some earlier date, Ivory had nipped at Peanut, but he assumed that had been because of the new baby in the house. On another occasion, Ivory had become aggressive with a child.
8. Dana Grimm, Denica and Daniel’s mom, had been in the kitchen on July 4, but she came out to the fire pit area where the parties were sitting. Denica told her they were introducing the dogs. Poppy and Samson were both “great” with Peanut. The only thing the Dana could see of Peanut was Peanut’s head poking out from Ms. Giordano’s hold. Peanut was not growling. Ivory did not growl or get her hackles up; there was no indication anything was going to happen. Ivory’s attack happened so fast that Denica could not stop it.
9. Dana Grimm described several instances of Ivory being aggressive in the past. In April, when midwives were over for a birth, Ivory acted so terribly that they had to lock her in the bedroom; at the time she chocked that up to a stressful day, with a lot of screaming accompanying the baby’s delivery. Another time, in Maple Valley, her granddaughter told

her Ivory was biting at her as she swung; the senior Ms. Grimm then saw Ivory nipping at the granddaughter, and observed some marks on her granddaughter, but no blood. Samson, her 120-pound dog, will not play with Ivory any longer because Ivory goes for his neck.

10. Appellant Denica Grimm testified that they brought out a trainer after the incident on the swing. The trainer said Ivory was playful, and they have since trained her not to do that. She noted that Ivory and Samson played fiercely, and Samson bit her son on the face. On July 4, Ivory had been outside all day, and when she looked up and saw Ms. Giordano on the hill with Peanut, Ms. Grimm freaked out and asked Jackie to move.
11. Ms. Grimm asserted that Ms. Giordano made the choice to sit Peanut near Ivory. Ms. Grimm explained that she had Ivory by the collar. After Ms. Giordano sat by the fire pit and Poppy and Samson greeted her, Ms. Grimm walked Ivory over, but stayed back to see how Ivory would react. Ivory was not doing anything, not even growling. Mr. Grimm was just petting Ivory. Ivory pounced when Mr. Grimm stood up. Ivory did not rip Peanut out of Ms. Giordano's arms; Jackie was holding on as Ivory latched on to Peanut.
12. Ms. Grimm explained that she takes Ivory to training, and Ivory's July 4 reaction was out of the blue. Ms. Grimm submitted a letter from Ivory's trainer, that he had witnessed Ivory around new people and unfamiliar dogs and that Ivory was not aggressive and had never shown any signs of aggression. Ex. A14. Ms. Grimm asserted that the July 4 altercation was human error and that Ivory "had no choice in the matter."
13. Tonya Allen describes the conversations about bringing Peanut outside on July 4. She has never seen Ivory be vicious. In the past there had been barking upstairs from Peanut, but she does not remember any dogs barking on July 4. She was irritated that other dogs were there when she brought Poppy. She was only at the scene of the altercation for a short time. She saw a little of Peanut's teeth, but she was not sure if that was from the cold or whatnot. As to whether Peanut was barking or growling, she only saw Peanut shaking. She did not witness Ivory's attack.
14. Jaimille Leavitt testified that she had never seen Ivory be aggressive or vicious. She explained that her initial worry with bringing Peanut outside was that *Samson*, not Ivory, would be aggressive to Peanut. She remembered Ms. Grimm coming out and grabbing Ivory, because Ms. Grimm was worried. Ms. Leavitt did not observe the actual attack.

Issues

15. Animal Services asserts that, as of July 4, Ivory was unlicensed, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older that are harbored, kept or maintained in King County be licensed and registered. Ivory was not licensed at the time of violation, but Ms. Grimm has since licensed her.
16. Animal Services asserts that Ivory 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,” while 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.” Ms. Grimm disputes this.

17. 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. Specifically, Animal Services bears the burden of proving that Ivory’s attack was unprovoked.

Analysis

18. Ms. Grimm contends that Ivory was provoked to bite Peanut. Provocation is perhaps the most analyzed word, across the 50 states, in all of dog bite jurisprudence. It is often a difficult proposition to apply to a given set of facts, frequently coming down to the minutia of who did precisely what at exactly what point (spatially and temporally). Today’s case, in contrast, is nowhere close to the line.
19. Ms. Grimm stated that she told Ms. Giordano to move. Ms. Giordano explicitly denied that Ms. Grimm told her to move. While the witnesses Ms. Grimm called—Ms. Allen or Ms. Leavitt—testified to conversations about bringing Peanut out of the house on July 4, neither mentioned Ms. Grimm telling Ms. Giordano to get away *after* Ms. Giordano brought Peanut out. Ms. Grimm’s version is inconsistent with her account that she walked Ivory over, but stayed back to see how Ivory would react. And, of course, Ms. Grimm had plenty of time to remove Ivory from the scene, if she thought Ivory might turn violent.
20. However, we can perform our analysis by assuming the factual conflicts in Ms. Grimm’s favor: Ms. Giordano knew Ivory did not like Peanut, Ms. Giordano was advised not to bring Peanut outside but did anyway, and Ms. Grimm asked her to move.
21. Ours is not a scenario where Ms. Giordano shoved Peanut into Ivory’s face or Peanut charged Ivory. It was not some sort of split second reaction, like we see in appeals when, for example, two dogs, or a person and a dog, pass inches away from each other on a trail or sidewalk, and in that second of crossing, something happens. The witnesses were clear that Ivory spent considerable time staring at Peanut from a few feet away, while Ms. Giordano held Peanut and Peanut interacted well with Samson and Poppy. Then Ivory suddenly launched at Peanut with zero warning.
22. Regardless of how Ivory and Peanut happened to arrive at their starting points, they were sitting there calmly (at least outwardly), several feet apart, for some period of time. Samson was actually in between them.¹ Only after Samson got out of the way did Ivory have a straight attack path. Peanut was sitting in Ms. Giordano’s arms, not even barking, let alone charging, when Ivory launched her attack. Several eyewitnesses stated that Ivory

¹ Ms. Grimm’s witness, Ms. Allen, confirmed this. Ex. D10.

would not let go of Peanut’s head and neck until someone dumped a big ice drink on Ivory’s head. Ex. D5 at 003; D7 at 003; D8 at 003.

23. The “provocation” inquiry “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)). Even Samson—a dog with admittedly aggressive tendencies, who had bitten before and had people worried he might go after Peanut—observed nothing provocative enough from Peanut to react negatively to, let alone bite and fatally injure, Peanut. We firmly reject Ms. Grimm’s spin that Ivory “had no choice in the matter.” Ivory very much had a choice, one she exercised lethally. Our scenario comes nowhere close to any judicial opinion we are aware of where a court found sufficient provocation.
24. Moreover, even if something about Peanut’s behavior while sitting in Ms. Giordano’s lap was antagonistic—and nothing in the record shows this—it still would in no sense justify Ivory dragging Ms. Grimm several feet and launching at Peanut and biting her, let alone clamping down on Peanut’s head and neck and fatally wounding her. “Provocation” requires the dog’s reaction to be proportional to the victim’s act. *Bradacs* at 273–75; *Kirkham* at 787, 792; *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995). Ivory’s response was grossly disproportionate to any alleged provocation.
25. While Ms. Grimm admitted a few days after the attack that Ivory had become overly protective, possessive, and dog aggressive, and had killed Peanut with no warning or sign of aggression, exhibit D17 at 002, she changed her tune later. Ivory’s trainer opined that Ivory was not aggressive, although he was not there to witness the horrific July 4 events. Ex. A14. And some witnesses testified that they had never observed Ivory being aggressive (while others testified they had, repeatedly).
26. One case where a trainer’s opinion and lay testimonials about how good a dog generally was tipped the scales was *Chancellor*, where the complainant (Mr. Wassell) wielded a shovel and froze an approaching, trespassing dog (Austin) when Austin was still 15 feet away. Mr. Wassell testified he thought Austin would attack him. We concluded that:

testimonials and [expert] opinions [about how sweet Austin was] would ring hollow if Austin had actually bitten Mr. Wassell, or if it was clear that Austin had already “attacked” Mr. Wassell before Mr. Wassell staved off any actual physical contact. But here Mr. Wassell stopped Austin in his tracks while Austin was still a ways off.²
27. Thus, in *Chancellor* we were not dealing with evidence of *actual* violence. Instead, we were left to extrapolate what most likely *would* have happened if Mr. Wassell had not interrupted things by wielding the shovel? That left us to sift through secondary information like testimonials and inferences. We reversed Austin’s viciousness designation.


² https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2016/V16005716_Chancellor_corrected.ashx?la=en.

28. This is not our scenario. Here we have not just unprovoked violence, but unprovoked lethal violence. Ivory exhibited vicious behavior (attacking and even killing Peanut, unprovoked) and constitutes a danger—an extreme danger—to people and their pets lawfully on Ivory’s premises. We sustain Ivory’s viciousness designation and confinement terms.
29. That leaves the penalty amount. Ms. Grimm exhibited some serious victim blaming and denial. For example, she asserted that Ms. Giordano knew Ivory did not like Peanut, exhibit D3 at 002, as if that made it Ms. Giordano’s responsibility to avoid Ivory or justified Ivory’s violence. She blamed Ms. Giordano—who had just seen her dog’s head crushed and throat ripped—for panicking and failing to put pressure on Peanut’s wounds. Ex. D3 at 002. And she closed her presentation with one of the more extreme statements we have heard in any appeal, that Ivory “had no choice in the matter”; of course Ivory could have stayed by Ms. Grimm’s side and not dragged her to get at and kill a tiny dog sitting in its owner’s lap.
30. Moreover, Ms. Grimm’s testimony that she (and everyone else) knew Ivory did not get along with Peanut actually cuts *against* her. If she knew that, and had some basis to suspect Ivory might go after Peanut, the responsible action would have been to drag Ivory away from where Peanut, Samson, and Poppy were interacting. Instead she, in her words, “walked Ivory over” toward the interaction, before “staying back.” The other witnesses testified that she let Ivory remain in the vicinity of Poppy, Samson, and Peanut as those three dogs interacted.
31. However, Ms. Grimm’s outlandish statements aside, nobody disputed that Ms. Grimm hustled and grabbed a hold of Ivory when she learned Peanut was outside. Everyone that testified had the same assessment of Ivory’s pre-attack behavior: Ivory was not growling or getting her hackles up or exhibiting any visible signs of aggression. Ms. Grimm was holding Ivory several feet back, seemingly in control. Ms. Grimm did not let go, even as Ivory dragged her to Peanut. In Mr. Grimm’s words, Ivory’s attack “literally came out of nowhere.” We do not think that it is unreasonable or irresponsible for Ms. Grimm not to withdraw Ivory from an interaction that seemed, at least outwardly, to be going so well for all four dogs. And even before July 4, Ms. Grimm retained a trainer and continues to have Ivory trained.
32. No matter how disappointed we were with her approach here, where an owner shows that the animal did something despite (not due to a lack of) the owner’s responsible ownership, and/or where the owner has taken responsible steps to avoid a recurrence, we typically reduce the penalty. Applying that standard here, we think some reduction on the viciousness penalty is in order.
33. The same goes for the licensing violation. We typically reduce the licensing penalty where the appellant licenses the animal after the initial violation but before the time of our hearing. Ms. Grimm has done so here.

DECISION:

1. We DENY Ms. Grimm’s appeal as to licensing violation, Ivory’s viciousness designation, and the confinement order.
2. We REDUCE the viciousness violation penalty from \$500 to \$300 and the \$250 licensing penalty to \$125. The remaining penalty is \$425.

ORDERED October 16, 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 *November 16, 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 7, 2020, HEARING IN THE APPEAL OF DENICA GRIMM, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010976-A20012699

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Jacqueline Giordano, Daniel Grimm, Dana Grimm, Denica Grimm, Tonya Allen, and Jaimille Leavitt. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

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

- | | |
|----------------|---|
| Exhibit no. D1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. D2 | Notice of violation no. V20010976-A20012699, issued August 2, 2020 |
| Exhibit no. D3 | Appeal, received August 24, 2020 |
| Exhibit no. D4 | RASKC investigation report no. A20012699 |
| Exhibit no. D5 | Online Complaint form of date July 4, 2020 incident by Jacqueline Giordano, dated July 14, 2020 |
| Exhibit no. D6 | Online Complaint form of date July 4, 2020 incident by Denica Grimm, dated July 13, 2020 |

Exhibit no. D7	Online Complaint form of date July 4, 2020 incident by Dana Elizabeth Grimm, dated July 14, 2020
Exhibit no. D8	Online Complaint form of date July 4, 2020 incident by Daniel Grimm, dated July 15, 2020
Exhibit no. D9	Email Correspondence from Jaimie Leavitt, dated July 29, 2020
Exhibit no. D10	Email Correspondence from Tonya Allen, dated July 29, 2020
Exhibit no. D11	Email Correspondence from Denica Grimm, dated July 29, 2020
Exhibit no. D12	Screen shots of text messages
Exhibit no. D13	Ivory's license history
Exhibit no. D14	Ivory's Animal Information Screen
Exhibit no. D15	Parcel Viewer Screen Shot with highlighted area
Exhibit no. D16	Map of parcel area
Exhibit no. D17	Email with text message communications, submitted October 7, 2020

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

	Table of Contents
Exhibit no. A1	Private Invitation to July 4 th Celebration
Exhibit no. A2	List of past events held at residence
Exhibit no. A3	Testimony of Jaimille Leavitt and Tonya Allen
Exhibit no. A4	Text Message Screen Shot conversation between Daniel Grimm and Denica Grimm
Exhibit no. A5	Text Message Screen Shot conversation between Denica Grimm and Daniel Grimm
Exhibit no. A6	Text Message Screen Shot conversation between Daniel Grimm and Denica Grimm
Exhibit no. A7	Statement from Kody Grimm
Exhibit no. A8	Text Message from Dana Grimm to Kody Grimm
Exhibit no. A9	Text Message from Daniel Grimm to Denica Grimm
Exhibit no. A10	Text Message from Daniel Grimm
Exhibit no. A11	Email/Text sent to Daniel Grimm and Dana Grimm
Exhibit no. A12	Text Message from Dana Grimm
Exhibit no. A13	Text Message from Dana Grimm to Kody Grimm
Exhibit no. A14	Witness Expert Testimony from Marcus Wright
Exhibit no. A15	Facebook Message from Jacquie Giordano
Exhibit no. A16	Copy of Receipt from King County Animal License

DS/lo

October 16, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010976-A20012699**

DENICA GRIMM

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 16, 2020.



Lauren Olson
Legislative Secretary

Allen, Tonya
Hardcopy

Giordano, Jacqueline
Hardcopy

Grimm, Dana
Hardcopy

Grimm, Daniel
Hardcopy

Grimm, Denica
Hardcopy

Russell, Shelby
Regional Animal Services of King County

Taylor, Jaimille
Hardcopy