

November 2, 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. **V20010977-A20012939**

ALICIA ARCHER

Animal Services Enforcement Appeal

Activity no.: A20012939

Appellant: **Alicia Archer**

[REDACTED]
Issaquah, WA 98027

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served a notice and order on Alicia Archer, asserting that her dog, Buckaroo, ran at large and attacked another dog on July 23. Ex. D2. Ms. Archer appealed, asserting that Buckaroo was not involved. Ex. D3. We went to hearing on October 21. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we find Animal Services has not quite met its burden. We grant Ms. Archer's appeal.

Hearing Testimony

1. Ofc. Marcy Goldstone testified that she reviewed the July 26 complaint from Peter Kraetsch and Lisa Yacalavitch, asserting that a dog from Ms. Archer's address had attacked one of their dogs. The following day, Ofc. Goldstone visited Ms. Archer. Goldstone saw Buckaroo. She stated that Ms. Archer described a couple recently walking nearby with a Chihuahua and a pit bull; the Chihuahua barked at her dog before Ms. Archer retrieved him. Ofc. Goldstone assumed Ms. Archer was referring to the complainants' dogs. Ofc. Goldstone has never seen the complainants' dogs.
2. Mr. Kraetsch testified that on July 23 they were dog sitting for their kids. He was walking Lu, a docile boxer/pit mix, while his wife, Lisa Yacalavitch, was a little behind, walking their eight-pound Cairn terrier, Leo. Both their dogs were on a leash, heading down an alleyway to Confluence Park. As they passed a driveway, a dog came charging out at Lu and got on top of her. He described the dog as maybe 40 pounds and brownish, maybe reddish gray. A lady yelled at the dog, then came out, grabbed the dog's collar, and brought him back in.
3. At the Park, Mr. Kraetsch noticed Lu had a tooth-sized injury above the eye. Later they noticed Lu had a larger injury on the bottom of her jaw. They cleaned the wound, which at that time seemed fine. However, a day or so later it started swelling and oozing, so they took Lu to the veterinarian; he recalled the vet being closed on Sunday and them taking Lu on Monday when the vet reopened. Both the vet and one of their children suggested they report the incident.
4. Ms. Yacalavitch testified she was walking Leo, a little bit behind. She saw a brindle-colored, 40-pound dog leap from a bed and blanket just outside the garage and hop on Lu. She picked up Leo. A lady came out of the garage, grabbed the dog by the collar, and took the dog back. They had no conversation. She recalls the owner shouting, "oh Bob," but she and Mr. Kraetsch were wearing hearing aids. It all happened so fast, and Lu initially appeared to be fine, so she thought nothing else of the incident at the time, other than that the dog should have been on a leash.
5. Later Ms. Yacalavitch also noticed the cut above Lu's eye. Still, Lu seemed fine at the Park. They had no interactions with any other dogs at the Park that day, keeping a safe Covid distance. Lu seemed agitated in the car, so they took Lu home and washed her. That was when they noticed the other mark on the jaw.
6. Ms. Archer testified that the incident described did not happen or did not involve her or Buckaroo. There is a woman two doors down who does not control her dog. The only interaction Buckaroo had with dogs around that time was with a Chihuahua and a pit bull, but that was actually on July 24. At first, she thought that was the interaction Ofc. Goldstone was referring to. They do not call Buckaroo "Buck," because that sounds too close to that other "_uck" word. Instead, they call him "Roo." Buckaroo is not 40 pounds; he is 65 pounds. Buckaroo is now in Canada, but when he was here, his dog mat was always inside, never outside.

Legal Standard

7. Animal Services asserts that Buckaroo was “running at large” on July 23, meaning “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control,” with “under control” itself including “restrained from approaching any bystander or other animal” when “off the premises of the owner.” KCC 11.04.020.W, .AA; .230.B.
8. More seriously, Animal Services asserts that Buckaroo 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.”
9. 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.

Analysis

10. We found the complainants credible, although Mr. Kraetsch’s recollection that the vet was closed on Sunday, they took Lu there on a Monday, and the vet suggested they file a complaint does not mesh with the altercation being Thursday, July 23, and him filing the complaint on Sunday, July 26. Still, we conclude the altercation happened basically as they have consistently stated it did: as they walked down the alley towards Confluence Park on July 23, a dog came off the property and bit Lu, then a woman came out and retrieved the dog. The issue, however, is whether the property was Ms. Archer’s and the dog was Buckaroo. We have several concerns on this score.
11. In their initial complaint, filed three days after the incident, Mr. Kraetsch wrote that, “We think the address is 835 Rainer Blvd N, but it happened so fast, we can’t be positive.” *Id.* at 002-03. Their candor is appreciated—again, we conclude they are telling the truth—but it raises a question. If Ms. Archer’s driveway was the only driveway in that stretch that matched their description at the hearing, thinking and not being positive might not have been problematic. However, the few pictures in the record show several seemingly-identical looking driveways on that stretch. Ex. D7. Officer Goldstone did not question any other neighbors; they might have provided some insight as to dogs on that stretch.
12. Second, although Mr. Kraetsch testified that the woman who retrieved the attacking dog called the dog Buck or Bob or something similarly sounding, his original July 26 written statement and then oral statement the following day were consistent that the woman called the dog “Bob.” Ex. D5 at 002. To us “Bob” does not sound that close to “Buck.” Moreover, it is not exactly clear how “Buck” entered the picture. Ofc. Goldstone

included “Buck” in her notes of her interview with Ms. Archer, but the notes do not state whether that was Ofc. Goldstone’s terminology or Ms. Archer’s. Ex. D4 at 003, n.2. At hearing, Ms. Archer testified that the short version she uses for Buckaroo is “Roo,” instead of a near swearword. That is simply her testimony; it is possible that Ms. Archer referred to her dog as “Buck” on July 27, and then later shifted her story to distance herself and Buckaroo from responsibility. However, there was no rebuttal testimony from Ofc. Goldstone on this topic.

13. Third, in his conversation with Ofc. Goldstone Mr. Kraetsch described the attacker as blonde, his initial complaint said brindle, and his hearing testimony was brownish, maybe reddish gray. Ex. D4 at 003; D5 at 003. Those descriptions are not necessarily incompatible, but they raise questions. A picture of Buckaroo could have helped the complainants and us.¹ Absent a visual, we are somewhat left to speculate.
14. Fourth, the complainants estimated that the attacking dog weighed approximately 40 pounds. Ms. Archer stated that Buckaroo weighs 65 pounds. People are not necessarily good at estimating dog weights, but if Buckaroo weighs 62% more than complainants’ estimate, that is concerning. That does not mean Buckaroo actually weighs 65 pounds—it was just her testimony, and not something like a veterinarian examination. But it does raise another question. A picture might have helped.
15. That is not the end of our analysis, because Ms. Archer did not come across as especially credible. For example, her initial statement to Ofc. Goldstone—four days after the altercation—was that she recalled a recent incident where a couple walking a Chihuahua and a pit bull got close to their property. That sounds suspiciously like the incident with the complainants, although what we think of as a typical Chihuahua does not much resemble the complainants’ Cairn terrier. At hearing Ms. Archer stated that the interaction she was referring to was on July 24, the day after the incident the complainants reported. That seems quite a coincidence, although there is nothing implausible about it.
16. This might have been a hearing where Zoom would have been better than telephone, because it could have allowed the complainants to see whether Ms. Archer looked like the woman they recall coming out and retrieving the dog on July 23. In the absence of a visual, testimony from the complainants on the appearance of the woman who retrieved the dog, or from Ofc. Goldstone about what Ms. Archer looked like, might have enabled a compare or contrast. There is nothing along those lines in our record.
17. Today’s is not a scenario like *Remy/Larsson—V16006269*, where appellants first raised identity during the hearing.² We wrote there that, had appellants

raised identity either in their initial appeal statement, or in something filed in response to our Notice of Hearing and offer of a subsequent filing, we

¹ Ofc. Goldstone noted that there were dog-related pictures in the file. However, those did not make it into evidence. The only pictures submitted to us were views of the alleyway and houses. Ex. D7.

² https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/february%202017/V16006269_Remy_Larssen.ashx?la=en at ¶¶ 13-16.

would have required Animal Services to meet its burden of proof on this issue. However, “The scope of an appeal shall be limited to matters or issues raised in the appeal statement and any amendments to the appeal statement the examiner may authorize.” KCC 20.22.080(G). Animal Services had no burden to bring such photographs, witnesses, or other proof on issues or matters beyond the scope of the appeal.

Here, in contrast, Ms. Archer’s appeal asserted that this was a case of “mistaken identity,” exhibit D3 at 004, and our notice of hearing stated that, “This case seems to turn heavily on identity.” There was no unfair surprise.

18. In the final analysis, something seemed less than fully credible about Ms. Archer. We have a sinking suspicion that the incident happened just as the complainants explained: Ms. Archer was home in her garage on July 23. Buckaroo came out into the alley and bit Lu. Whether she saw the bite or not, Ms. Archer then retrieved Lu and took Lu back into the garage. And then later Ms. Archer denied knowledge of that interaction and changed several aspects of her story. However, given the identification problems described above related to Buckaroo, the location of the attack, and Ms. Archer, our hunch is not enough here. Animal Services has not quite met its burden of proof.

DECISION:

We grant Ms. Archer’s appeal.

ORDERED November 2, 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 *December 2, 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 21, 2020, HEARING IN THE APPEAL OF ALICIA
ARCHER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V20010977-A20012939**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Tim Anderson, Marcy Goldstone, Peter Kraetsch, Lisa Yacalavitch, and Alicia Archer. 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	Notice of violation no. V20010977-A20012939, issued August 2, 2020
Exhibit no. D3	Appeal, received August 25, 2020
Exhibit no. D4	RASKC investigation report no. A20012939
Exhibit no. D5	Online Complaint form of date July 23, 2020 incident by Peter Kraetsch, dated July 26, 2020
Exhibit no. D6	Photographs from Officer Goldstone of alley
Exhibit no. D7	Map of subject area

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

Exhibit no. A1	Map of subject property, submitted October 6, 2020
Exhibit no. A2	Names and contact information for all witnesses, submitted October 6, 2020
Exhibit no. A3	Witness and character statements with contact information, submitted October 15, 2020

DS/lo

November 2, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010977-A20012939**

ALICIA ARCHER

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 November 2, 2020.



Lauren Olson
Legislative Secretary

Anderson, Tim

Regional Animal Services of King County

Archer, Alicia

Hardcopy

Goldstone, Marcy

Regional Animal Services of King County

Kraetsch/Yacalavitch, Peter/Lisa

Hardcopy

Russell, Shelby

Regional Animal Services of King County