

November 5, 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

CORRECTED REPORT AND DECISION¹

SUBJECT: Regional Animal Services of King County file no. **V20011040-A20013293**

JULIE HARRIS

Animal Services Enforcement Appeal

Activity no.: A20013293

Appellant: **Julie Harris**

[REDACTED]
Pleasant Hill, MO 64080

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served a violation notice asserting that Julie Harris's dog, Crash, was unlicensed, running at large, and qualifies as vicious. Ms. Harris timely appealed, and we went to hearing. After entertaining the

¹ Yesterday's decision employed an incorrect name in paragraph 29. Other than correcting that, today's decision is identical to yesterday's.

witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny her appeal as to the violations, but reduce the penalty attributable to the lack of a license.

Andrew Andersen Account

2. Andrew Andersen testified to a series of 2020 encounters involving Ms. Harris and her dog Crash.
3. The first two were, in his words, more minor, and he has no memory of a specific date. Once, as he walked through their apartment complex's forest area, a dog started to chase after him. He backed up to the sidewalk, and the dog retreated. The second encounter was basically the same. He noted that he did not notice the owner until after the dog ran back to her, the distance of maybe 150 feet. Testimony; Ex. D7.
4. On July 10, he saw the same woman and same dog. She was holding a leash, but the dog was not connected to it. The dog charged at him without hesitation. He tried to put a bush between himself and the dog, but the dog kept barking and lunging and jumping at his face. The woman was just standing there, watching, but not intervening. As he backed up, he reached into his bag and pulled a knife. He kept backing away, not wanting to hurt the dog. He was screaming "get your dog" for what seemed like five to ten minutes, as he attempted to evade the dog. Only after he said he might have to cut the dog if she did not intervene did the woman grab her dog. She did not apologize or even acknowledge the incident. Testimony; Ex. D7.
5. On August 6, he was taking his dog, Frodo, potty. Frodo was leashed and standing next to him. He saw the same dog 100 feet away. The dog at first did not notice them, which gave Mr. Andersen time to retrieve his pepper spray. After the dog saw them, the dog started charging. As the dog came close, he sprayed. He is not sure if the spray actually hit the dog, but the dog ran away. He was shaking. Testimony; Ex. D7.
6. Then came the pivotal night of August 7. He testified that as he left the apartment building, he did not immediately notice anyone in the outdoor parking lot. It was dark and he was focused on getting to the garage, from where he planned to retrieve his car and go pick up his wife. He estimated that the distance between the lobby door and the garage door was maybe 50 feet.
7. As he attempted to get the garage door open, he heard rapid footsteps behind him. He looked and saw the dog charging him. As this was not his first encounter with that dog, he raised his foot to try to deflect the dog. As he kicked at the dog, the dog bit his knee, pushing him back. He tried to retreat as the dog continued coming at him and barking. He backed towards a planter, then tried to jump up on the planter to escape.
8. He saw a man [Ms. Harris's boyfriend] rushing to the dog and grabbing the dog by the collar. The man kept asking if the dog had gotten him. The man tried to engage him. Mr. Andersen did not respond and left the scene. He did not remember what the woman was doing; his focus was only on the dog and getting to safety. He photographed the laceration on his knee. Ex. D9.

Ms. Harris's Account

9. Ms. Harris denied that three of those encounters (the two minor ones and the August 6 incident with Frodo) even happened. Mr. Andersen testified they happened in evening, but because of her seizure disorder, she never goes out at night. She would have remembered Crash running loose. August 6 could not have happened, because she had a seizure the previous day and only took Crash out for a few minutes to go to the bathroom.
10. Her version of July 10 was starkly different. Crash was wearing a harness and she was holding his leash. Crash stayed within three feet of her at all times. A man [Mr. Andersen] stepped into their path, changed directions at least four times to block her escape, had an aggressive stance, and yelled at her, and threatened to spray them. The man continued to threaten them. Testimony and Ex. D4 at 001.
11. On August 7, she let Crash get out of the car. She did not see the man, so she did not immediately recall Crash. When Mr. Andersen said he put his foot out and made contact, that never happened. She opined that if Crash was attempting to lunge, he would be in view of the office camera. She, not her boyfriend, grabbed the dog. The cut on Mr. Andersen's knee is consistent with him scraping a planter, but not with a dog bite. It was Mr. Andersen's fear that caused him to evade Crash and hurt himself. Crash running at Mr. Andersen cannot be described as "aggressive." She thinks Crash ran at him because Mr. Andersen threatened him in July.
12. As to the unaltered/unlicensed violation, Crash is neutered and microchipped. Ex. A2. As Crash is a service animal, he did not need a license. She has since moved Crash out-of-state, exhibit A1, and there is no licensing requirement in their new area.

Video of August 7

13. There are three apartment surveillance videos from the August 7 incident. Ex. D11.
14. The initial video starts with the taillights of the car Ms. Harris was exiting from in the parking lot. Mr. Andersen comes into the picture from inside the building. He exits and jogs diagonally away from them. He appears to take no notice of the car, with his head only facing forward towards the garage. Crash is still in the car until well after Mr. Andersen leaves the picture. Crash then gets out. He alerts on Mr. Andersen and begins going after him. Ms. Harris follows at a slow pace, and then her boyfriend starts running in that direction.
15. The next video shows Mr. Andersen continuing to make a beeline for the garage, with his back to the action. As he tries to open the garage door, Crash sprints at him. Mr. Andersen halfway turns at the last second and raises his leg to try to ward off the charge, as Crash bangs into him. Crash is momentarily knocked backwards by the collision, struggles for a split second to get traction with his back legs, and then continues pursuing Mr. Andersen off-screen.

16. The last video is mostly obscured by plants. It shows Mr. Andersen at the gate, with his back to the parking lot. He turns just as something knocks him slightly back. He then scrambles to get up on a planter. A person with a long sleeve black shirt (the boyfriend) attempts to engage Mr. Andersen, but Mr. Andersen ducks into the building.

Legal Standard

17. This case requires us to decide whether Crash was:
 - A. “Running at large” on August 7, 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;
 - B. Unlicensed and unaltered as of August 7, 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; and
 - C. 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.”
18. In answering those, we do not grant 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 11.04.210.B.

Factual Analysis

19. We did not find Ms. Harris credible. As to August 7, she wrote that “Crash ran towards the man only after being provoked” and that “[o]nly after the man yelled did [Crash] begin running towards him then barking.” Ex. D3 at 001. That is wholly inconsistent with the later-produced video. The first shows Mr. Andersen jogging straight ahead, diagonally away from the Harris party, and paying no attention to the Harris party, not even turning his head in their direction. Mr. Andersen is well out of the picture with (as the garage door video shows) his back to the vehicle, before Crash even emerges from the car and could have become visible to him, if he were even turning that way to look. The garage door video shows him oblivious to anything going on behind him, not engaged or even observant until Crash was virtually upon him.

20. In addition, Ms. Harris's wrote that "I can confirm that Crash never came in contact with the man." Ex. D3 at 002. Yet the videos show Mr. Andersen and Crash each being knocked backward. The video from inside the garage shows Crash briefly recoil from contact, the video from inside the lobby shows Mr. Andersen being knocked back. Crash did make contact with Mr. Andersen.
21. Turning to July 10, to accept Ms. Harris's version we would need to buy that, although having never encountered (per her account) Crash or Ms. Harris before, Mr. Andersen nonetheless randomly pulled a knife on her and started threatening her, and then at least four times decided to block her path as Crash stayed within three feet of her the entire time and did nothing offensive. Her version is theoretically possible, but highly unlikely. It is far less plausible than Mr. Andersen's explanation that Crash had threatened him and his dog before, and that Mr. Andersen was bobbing and weaving around in response to Crash continuing to come at him on July 10.
22. We also note that this was not a scenario where Mr. Andersen was accused of, say, assault with a knife and then, backed into a corner, made excuses about how he was wielding a knife only to defend himself. Soon after the altercation, and before Ms. Harris filed any report, Mr. Andersen volunteered that he pulled a knife.²
23. That does not mean Mr. Andersen hit on all points. He testified that on August 7 he saw a man (the boyfriend) rushing to the dog and grabbing the dog by the collar. The first part of that matches the evidence; the video shows Ms. Harris' boyfriend sprinting towards the action. However, second video shows the boyfriend slowing down as Ms. Harris overtakes him, and the final video shows the boyfriend somewhat obscured, but seemingly not holding a dog. That counts against the accuracy of Mr. Andersen's recollection, but who-grabbed-the-dog was *after* Crash accosted him. In dozens of vicious dog appeals, we have observed witness accuracy drop precipitously after contact is made and the recipient's focus dramatically narrows.
24. The other piece that gives us pause is that Mr. Andersen testified that the July 10 altercation went on for what seemed to him like 5 to 10 minutes. We think the altercation took at most a couple of minutes. That too does not strike at the heart of his veracity, however, because witnesses invariably overestimate the amount of time an activity actually took.³
25. Finally, there was a dispute over timing. Mr. Andersen initially stated that he recalled the encounters all being at night, although he hedged later to say that the first two encounters [the minor ones] could have been in the day. Ms. Harris testified that, given her seizures, she never goes out at night. We know from the video that the August 7 altercation occurred late at night, a little before midnight. And there is no question that

²Ms. Harris said someone advised her not to initially report the July 10 incident. That is possible, but seems counterintuitive if, in her version of events, a strange man with a knife repeatedly threatened her and at least four times changed direction to block her exit, all for no legitimate reason, as her dog was simply waiting at her side. Ex. D4.

³ See, e.g., https://books.google.com/books?id=uBIAU24-qsoC&pg=PA30&lpg=PA30&dq=witnesses+overestimate+time&source=bl&ots=xzT0DFzVu_&sig=ACfU3U3oBGLp6ZKp0dvJjRjTGeZA2UITQ&hl=en&sa=X&ved=2ahUKEwjatsfdq-TpAhVcPn0KHfTlCwYQ6AEwCnoEAgQAQ#v=onepage&q=witnesses%20overestimate%20time&f=false

July 10 happened. The timing issue gives us some pause, but we do not weigh it significantly.

26. In sum, we found Mr. Andersen significantly more credible than Ms. Harris. His initial complaint and hearing testimony much more closely matches the video we can see with our own eyes than either Ms. Harris' initial account or her hearing testimony. Ex. D6 at 002-03. And his version of July 10 is far more plausible than hers. We also found his accounts of the three other encounters straightforward. Although our decision turns primarily on July 10 and August 7, we found his account of other interactions with Crash more likely than Ms. Harris' they-never-met position.

Legal Analysis

27. As to the August 7 running at large violation, Crash was not under control when he charged across the parking lot and smacked into Mr. Andersen. We have interpreted “the premises of the owner” to mean private property, and not common areas like a condominium hallway, a lobby, or (in this case) an apartment’s parking lot. Crash was running at large on August 7. While running out of control in an apartment parking lot would not, for example, qualify as a violation of KCC 11.04.230.M (animals on public property not under control), Crash was not on his owner’s premises when he got loose and charged Mr. Andersen. He was running at large on August 7.
28. As to the viciousness designation, Ms. Harris asserts that Mr. Andersen provoked Crash on August 7. Contrary to her statement, Mr. Andersen did not yell at the Harris party or even recognize or acknowledge them. Instead he was briskly moving *away* from them, not interacting within them at all that night until Crash chased him down from behind. That is not even remotely provocation.⁴ Ms. Harris opined that their previous encounter qualified as provocation. Since she denied that any other encounter other than July 10 ever happened, that means July 10, four weeks before August 7, was the alleged provocation. We reject that assertion for several reasons.
- In *Stroop v. Day*, the court did not dispute the owner’s “claim that a dog is capable of remembering specific instances from the past,” and it accepted that the bite victim had chased the dog with a fence post four to six weeks prior to the incident in question. 271 Mont. 314, 319, 896 P.2d 439 (1995). Yet the court ruled that that past event could not, as a matter of law, qualify as provocation for a bite four to six weeks later. *Id.*
 - Mr. Andersen’s reaction—drawing a knife while continuing to retreat—to Crash repeatedly lunging at him on July 10 was reasonable and in no sense “provoked” Crash. *Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745 N.W.2d 824 (2008). The

⁴ 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)). And provocation requires the dog’s reaction to be proportional to the victim’s act. *Bradacs*, 244 Mich. App. 273-75; *Kirkham*, 311 Ill. App. 3d at 792; *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439, 442 (1995).

same holds true for Mr. Andersen pulling out a pepper spray to forestall a charging Crash on August 6.

- Even if there was something more to the July 10 or August 6 incidents than Mr. Andersen was conveying, the August 7 altercation in the parking lot was not a scenario where, for example Mr. Andersen walked up to Ms. Harris or Crash and there was some split-second interaction in passing. Instead, Crash chased down Mr. Andersen, from a significant distance, as Mr. Andersen briskly walked away from them, with his back turned and not at all engaged with—and in fact oblivious to—what was going on behind him. That was not provocation.
29. We find that Crash did bite Mr. Andersen on August 7, as Mr. Andersen tried to defend himself from a charging dog who had previously accosted him. However, the bite/no bite is not necessary to our holding. Biting without provocation meets the viciousness definition, but biting is in the category of “including, but not limited to.” Biting is an example of performing an act endangering a person’s safety, but it is not a requirement. Where an altercation did not result in an actual bite, our viciousness rulings have tracked RCW 9A.28.020’s definition of “criminal attempt” as requiring performance of an “act which is a substantial step toward the commission of that crime”—in our context, a dog taking some step towards contact, such as a lunge, and not simply aggressive barking or mere proximity to a person or other animal.
 30. In addition to charging into Mr. Andersen on August 7, Crash came after Mr. Andersen on July 10 and repeatedly lunged at him. Those were the two most serious, but he also came at Mr. Andersen on August 6; although Mr. Andersen forestalled actual contact with pepper spray, a person need not wait to be injured before taking defensive action against a menacing animal. *Matter of Brooks v. Hemingway*, 107 Misc. 2d 190, 192-93, 433 N.Y.S.2d 551 (1980). Crash has exhibited vicious propensities and constitutes a danger to personal safety. We uphold the viciousness violation.
 31. That leaves the violation for Crash being unlicensed and unaltered as of August 7. Crash was neutered well before 2020. Ex. A3. That means the penalty amount for a licensing violation is \$125, not \$250. KCC 11.04.035.C.5. Ms. Harris asserts that Crash did not need a local license because he is a service dog. That is not accurate. There is no charge for the license, but owners of service dogs are required to obtain a license. KCC 11.04.035.A.8. Crash was not licensed as of August 7. Normally, we reduce a licensing penalty only when an owner licenses the dog after the violation date but before our hearing. Ms. Harris has not licensed Crash. However, she moved him out of state in August. According to her, she is in a jurisdiction that does not require animal licenses. This is not a scenario we have encountered before, but it seems some reduction is warranted. We will reduce the licensing penalty down to \$50.

DECISION:

We DENY Ms. Harris's appeal, except that we REDUCE the licensing-related penalty from \$250 to \$50. That drops the overall penalty drops from \$800 to \$600.

ORDERED November 5, 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 7, 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 JULIE
HARRIS, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V20011040-A20013293**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Andrew Andersen, and Julie Harris. 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. V20011040-A20013293, issued August 16, 2020
Exhibit no. D3	Appeal, received September 9, 2020
Exhibit no. D4	Redmond Police Report, dated August 17, 2020
Exhibit no. D5	RASKC investigation report no. A20013293
Exhibit no. D6	Online Complaint form of date August 7, 2020, incident by Andrew Andersen, dated August 12, 2020
Exhibit no. D7	Additional incidents from Andrew Andersen
Exhibit no. D8	Email from Andrew Andersen, dated August 16
Exhibit no. D9	Photograph of injury
Exhibit no. D10	Map of subject area
Exhibit no. D11	Three Videos from Bond Apartments

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

Exhibit no. A1	Email from Ylyana Shershunova to Julie Harris, dated August 31
Exhibit no. A2	Certificate of Spay/Neuter, dated October 8, 2020
Exhibit no. A3	Email from Salt Lake County Animal Services, dated December 30, 2017
Exhibit no. A4	Notes from phone call with Officer Reyes

November 5, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011040-A20013293**

JULIE HARRIS

Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **CORRECTED 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 5, 2020.



Lauren Olson
Legislative Secretary

Andersen, Drew

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Harder, Evan

Hardcopy

Harris, Julie

Hardcopy

Russell, Shelby

Regional Animal Services of King County