

December 22, 2020

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V20011208-A20014001**

**PAMELA KYLE**

Animal Services Enforcement Appeal

Activity no.: A20014001

Appellant: **Pamela Kyle**



King County: Regional Animal Services of King County  
*represented by* **Tim Anderson**  
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) asserts that Pamela Kyle's dog, Apollo, qualifies as vicious. Ms. Kyle timely appealed, and we went to hearing. After entertaining the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal but reduce the penalty and enter modified compliance requirements.

## Background

2. On September 24, Stephen Fried reported to Animal Services that earlier that day Mr. Fried was approaching the Kyle house to complete a survey for Nationwide when Ms. Kyle's dog [Apollo] bit Mr. Fried multiple times. Ex. D2. Later that day, Animal Services spoke with the Kyles about the incident. Ex. D4 at 002, n.1. The following day, Animal Services delivered a violation notice and compliance order to the Kyles, asserting that Apollo qualified as vicious, setting certain requirements, and fining the Kyles \$500. Ex. D4 at 002, n.2; Ex. D6.
3. Pamela Kyle timely appealed. Ex. D7. We went to hearing on December 7, 2020. We then kept the record open for a few days to elicit additional information. Ex. D9.

## Hearing Testimony

### *Stephen Fried*

4. On September 24, Mr. Fried was visiting the Kyle property to complete an on-site inspection for his employer, Muller Reports, which handles on-site property inspections for insurance companies. The Kyles' insurance company requested that Muller send someone to the property and complete a property survey. It was not a scheduled appointment, but the homeowners' insurance company should have alerted the Kyles that a survey would be coming.
5. Mr. Fried parked on the street in front of the Kyle's property. He called the number that the insurance company provided. Someone picked up and said they were not Pamela and hung up. Mr. Fried then noticed a lady walking out to a car and pulling out of the Kyle driveway. Mr. Fried waved her down and asked if she was Pamela. She said no and motioned to the Kyle's house.
6. Mr. Fried was wearing a raincoat (it was raining). He was also either wearing a ball cap or had his hood up, and he was wearing a Covid mask. He was also wearing a work-issued lanyard and had a camera poll in his hand.
7. Mr. Fried walked up the Kyle's driveway and then continued on the path connecting the driveway to the front porch and front door. He saw Ms. Kyle sitting in a big bay window in the front of the house. He was around 12 to 15 feet from the front door when Ms. Kyle opened the front door. Two dogs came running out past Ms. Kyle and up to him.
8. Being familiar with dogs—he used to run dog-related businesses—Mr. Fried crouched down and raised his hand in a friendly manner so the dog could smell him. The dog (Apollo) smelled Mr. Fried's hand and then backed up. Believing that the dog was done smelling him, Mr. Fried stood up and began talking to Ms. Kyle. As he was talking, the dog circled behind him and bit his right leg, where his wallet sat. The wallet prevented the bite from breaking the skin, but Apollo follow that up by biting Mr. Fried's calf twice, drawing blood. Ex. D3.

9. Ms. Kyle called for the dog, but it was not responding. Mr. Fried believed that the dog was about to lunge at him again, so Mr. Fried used his camera poll to hold the dog off. Ms. Kyle continued to call for her dogs, and eventually the dogs both went back into the house. Mr. Fried asked if the dog was vaccinated and Ms. Kyle claimed her dog did not bite him. When Mr. Fried attempted to show Ms. Kyle the bite, she shut the door on him. Mr. Fried loudly asked if the dog was vaccinated, and Ms. Kyle did not reply. Mr. Fried called his boss and then went to the urgent care, where he was treated for the bites. Ex D3 at 001. The incident left such a bad taste in Mr. Fried’s mouth that he quit his job with Muller Reports, a job he really liked.

*Tony Kyle*

10. Mr. Kyle was not present for the September 24 incident, but that did not stop him from offering conspiracy theories that maybe Mr. Fried was lurking around or doing something other than walking along the path from the driveway to the door. He testified that from the giant window in the front of the house one is able to see the driveway and down to the road. The dogs are alert when people come up the driveway. In the past six to eight months, many delivery people have come onto their property and there has not been a single incident with the dogs. There are two Ring Video Cameras installed on their house, one positioned to capture video of the driveway and the other is mounted on the corner of the house. Neither Ring Camera picked up footage of Mr. Fried approach the property, but it picked up Mr. Fried leaving the yard.

*Pamela Kyle*

11. Ms. Kyle was home alone with her son on September 24. There was no one else at her house that day. She was not aware that someone was walking up the driveway until Mr. Fried was at the bay window of her house. He was wearing a hat or hood and mask, and she did not see his badge. Seeing him startled her, because she was not expecting anyone. Nationwide had not informed her that someone would be coming to the property. She did not receive a phone call that day.
12. She opened the front door and asked him what he was doing on her property. Her dogs could feel the concern in her voice and were acting in a protective manner. Ms. Kyle saw Apollo run up to Mr. Fried and nip him. She did not see Apollo bite, and Mr. Fried did not show her his wounds. She did not hear Mr. Fried ask if her dog was vaccinated.
13. Ms. Kyle stated that there is a sign on one of the trees by the road that the property uses an invisible fence. She is concerned that the viciousness designation would limit the activities her family does with their dogs.

Legal Standard

14. Animal Services asserts that Apollo is “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.

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.”

15. 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.B.

### Analysis

16. 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)). In addition, provocation requires the dog’s reaction to be proportional to the victim’s act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.
17. While Apollo and the other Kyle dog may very well have picked up on Ms. Kyle’s tension, Apollo’s reaction was not akin to the other Kyle dog’s, and nowhere near average. Barking, sure. Maybe even charging up to Mr. Fried and snarling to assert who was boss, fine. But not biting him multiple times while Mr. Fried’s back was turned.
18. Reaching one’s hand out intending to pet a dog typically does not constitute “provocation.” *State v. Ruisi*, 9 Neb. App. 435, 443, 616 N.W.2d 19, 26 (2000). However, even if we might find proportional, say, Apollo nipping Mr. Fried’s outstretched hand as a sort of a “get that hand out of my face” reaction, that is not what occurred here. Only *after* Mr. Fried stood up and started talking with Ms. Kyle did Apollo circle behind him and bite him, from behind, and more than once.
19. Apollo bit a person without provocation and constitutes a danger to the safety of persons lawfully on the animal’s premises. We sustain his viciousness designation.
20. That brings us to the confinement order. The four bulleted items listed in Animal Services’ order are not mandatory, but discretionary. Ex. D6 at 001; KCC 11.04.290.A.2. In past cases, we have eliminated some requirements, modified others, and substituted in still others. One factor we take into account in deciding whether to scale back restrictions—such as the requirement of a solid fence with a padlock, or the prohibition against using off-leash dog parks—has been whether the owners are in denial and thus whether they would be willing and able to keep the public safe even without the stricter requirements. The Kyles’ hearing presentation was troubling on that score.
21. It is one thing to explain what Ms. Kyle experienced in real time on September 24 — with no notice that anyone was coming, she got scared seeing a masked man hooded up

and carrying a stick. It is quite another thing—after learning he was the insurance inspector—to not only fail to apologize to Mr. Fried, but then to pedal baseless conjecture that maybe Mr. Fried was doing something other than what every other inspector who has ever come to our home has done—walk up to the front door to introduce themselves.<sup>1</sup>

22. Ms. Kyle’s “in the moment” response was understandable; one takeaway point from entertaining hundreds of dog appeals is that once an incident starts, the adrenaline starts pumping and people do some bizarre things and fail to do some commonsense things that would (under normal circumstances) be bizarre not to do. However, at our hearing ten-plus weeks after the fact, the Kyles’ attempt to shift responsibility for Apollo’s bite and to essentially blame Mr. Fried for just doing his job does not give us great confidence in them going forward.
23. However, Animal Services’ Tim Anderson noted there were some unique features here, and suggested that Animal Services would look for a middle ground. He emailed our office and Ms. Kyle with compliance modifications and a penalty reduction from \$500 to \$150. Ms. Kyle responded, and Sgt. Anderson followed up. Ex. D9. Although we are troubled by the Kyles’ hearing performance, we think the amended confinement terms probably sufficiently protect the public and that a penalty reduction is warranted.

#### DECISION:

1. We DENY the Kyles’ appeal as to the violation, except as modified below.
2. We REDUCE the penalty from \$500 to \$150.
3. We MODIFY the confinement terms, substituting the four bulleted items in the Animal Services September 25 order with:
  - A. Properly maintain the Kyles’ current invisible fence, batteries and collars;
  - B. Continue to license their pets annually; and
  - C. Either:
    - i. to prevent Apollo from running outside, complete a sit/stay at doorways and recall/“emergency” training with a Certified Professional Dog Trainer (CPDT), or
    - ii. purchase and use at all times a dog gate or dog exercise pen panel sufficient to prevent Apollo from leaving the porch when the door is open.

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<sup>1</sup> See also Ex. D7 at 001 (accusing Mr. Fried of having “walked on my outer property around the deck of my house and looped all the way to my front window on my porch[, w]hich is appalling to me why he didn’t simply walk to my front door knocked him notified me he was on my property”).

ORDERED December 22, 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 *January 21, 2021*. 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 DECEMBER 7, 2020, HEARING IN THE APPEAL OF PAMELA KYLE, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20011208-A20014001**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Tim Anderson, Stephen Fried, Tony Kyle and Pamela Kyle. 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 | Online Complaint form of September 24, 2020 incident by Stephen Fried, dated September 24, 2020 |
| Exhibit no. D3 | Photograph of Mr. Fried's injuries  |
| Exhibit no. D4 | RASKC investigation report no. A20014001  |
| Exhibit no. D5 | Bite Quarantine Notice, issued September 24, 2020   |
| Exhibit no. D6 | Notice of violation no. V20011208-A20014001, issued September 25, 2020                          |
| Exhibit no. D7 | Appeal, received October 11, 2020   |
| Exhibit no. D8 | Map of subject area   |
| Exhibit no. D9 | Email chain ending December 13, 2020, at 10:51 am.  |

DS/lo

December 22, 2020

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V20011208-A20014001**

**PAMELA KYLE**

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 December 22, 2020.



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Lauren Olson  
Legislative Secretary

**Anderson, Tim**

Regional Animal Services of King County

**Fried, Stephen**

Hardcopy

**Kyle, Pamela & Tony**

Hardcopy