

March 17, 2021

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

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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20011503-A20015564**

Yael Tellez-Rodriguez

Animal Services Enforcement Appeal

Activity no.: A20015564

Appellant: **Yael Tellez-Rodriguez**

[REDACTED]
Kent, WA 98031

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King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
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FINDINGS AND CONCLUSIONS:

Overview

1. Yael Tellez-Rodriguez appeals a Regional Animal Services of King County (Animal Services) determination that her dog, Prieta, qualifies as vicious and must be confined. Exs. D6 & D8. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violation notice and the confinement order, but we significantly reduce the penalty.

Hearing Testimony

Christopher Dimmick

2. Mr. Dimmick testified that around 9:00 p.m. on December 26 he was walking his chihuahua mix, Carlos, to go potty before bed. They were walking near a row of apartments. Each apartment has a cement porch. Past the cement porch is a small strip of grass. Then there is a walkway. Then past that walkway is a larger grass area. Exs. D9 & A9.
3. Mr. Dimmick was on the walkway, with his back turned to Ms. Tellez-Rodriguez's apartment. Carlos was on the side of Mr. Dimmick furthest away from her apartment, sniffing and going potty in the larger grass area. Mr. Dimmick had seen a dog [Prieta] in its apartment, lying on the floor, but Carlos did not even notice [Prieta], let alone have any interaction with [Prieta].
4. Mr. Dimmick heard a noise behind him, started turning in response, and within a split second, [Prieta] ran out of the apartment, bit, picked up, and tossed Carlos. As soon as [Prieta] bit down on Carlos, Carlos yelped extremely loudly. Mr. Dimmick yelled, grabbed [Prieta], and threw her. At this point, Ms. Tellez-Rodriguez came out from the apartment and told [Prieta] to go back into the apartment; Prieta obeyed. Ms. Tellez-Rodriguez picked up Carlos. Mr. Dimmick asked her to give Carlos back to him. He then yelled at her to give Carlos back. When she handed Carlos to Mr. Dimmick, he saw the wound, a single gash down Carlos' side.
5. Mr. Dimmick said that the glass door of Ms. Tellez-Rodriguez's apartment was open and the screen door shut, but [Prieta] knocked it off its track. Mr. Dimmick called the police. He went to a 24-hour veterinary in Auburn. Carlos underwent surgery to have the wound cleaned and have four drainage tubes inserted. Exs. D3-D4. The surgery and vet bills cost Mr. Dimmick \$1,500. Carlos has healed up and is now doing okay.
6. There have been instances with other dogs off leash at the apartment building, including a few times [Prieta] has been off-leash. Mr. Dimmick said he loves his dog and the idea of Carlos being hurt would upset him greatly.

Yael Tellez-Rodriguez

7. Ms. Tellez-Rodriguez testified that, on December 26, she was cooking dinner. It was making the kitchen smoky, so she opened the balcony door a little but kept the screen door closed, so she could vent out the smoke. Keeping the balcony door open is the only source of ventilation in the apartment. She did not know how Prieta managed to open the screen door. She did not know anything had happened until she heard yelping and yelling.
8. As soon as she heard it, she ran out the back door. She saw Mr. Dimmick grabbing, kicking, and throwing Prieta. She yelled at Prieta to go inside. She picked up [Carlos] to see if she could see a wound. She was pretty much in shock. Mr. Dimmick left, cursing, and saying he was going to call the police.

9. Ms. Tellez-Rodriguez's stayed outside to see if any neighbors had seen what happened. Her neighbors heard yelling, but they did not see anything. She went inside her apartment. Mr. Dimmick's girlfriend came and spoke with Ms. Tellez-Rodriguez.
10. Prieta is a really good dog all around and is very friendly. Exs. A3-A8. Everyone in her unit has bigger black dogs; Prieta is not the only such dog.

Legal Standard

11. Animal Services asserts that Prieta 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.
12. 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.”
13. 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.

Analysis

Factual Determinations

14. Ms. Tellez-Rodriguez felt it unfair for us to accept Mr. Dimmick's version of events when he was the only to initially see it. We do not simply accept anyone's testimony. However, Mr. Dimmick being the only eyewitness until *after* Prieta bit Carlos and Mr. Dimmick separated the dogs is not fair or unfair—it simply reflects the action sequence. It means that unlike, many cases where we have to sift through conflicting eyewitness testimony, here we have only Mr. Dimmick's testimony to scrutinize. We turn to that next.
15. Having entertained hundreds of dog cases, we heard nothing in Mr. Dimmick's description that stood out to us as at all unusual. To summarize, he was walking Carlos along the sidewalk behind the row of apartments. Carlos was on the lawn-side of the sidewalk (i.e. away from Ms. Tellez-Rodriguez's apartment). Carlos did not engage with or even notice Prieta until after Prieta charged out of the door at Carlos. Carlos did not make any sounds until Prieta bit him. Prieta bit Carlos, picked him up, and tossed him. Mr. Dimmick then intervened to stop it.
16. Mr. Dimmick's testimony materially matched Ms. Tellez-Rodriguez's from that point forward: she came out from her apartment and told Prieta to go back into the apartment.

Prieta obeyed, and Ms. Tellez-Rodriguez picked up Carlos. So, ours is not a scenario of dueling, post-bite descriptions where, if we found Ms. Tellez-Rodriguez's account more credible, it might raise red flags regarding Mr. Dimmick's description of events *prior* to Ms. Tellez-Rodriguez coming onto the scene.

17. In addition, Mr. Dimmick's description of events matches the physical evidence. The photos of Carlos's wounds are more consistent with his description of a larger dog biting and tossing Carlos than, say, one would expect for a minor, "back-off" nip.
18. Finally, while we hear lots of embellishment and hyperbole, nothing in Mr. Dimmick's testimony gave any inkling of that. For example, he did not lay it on thick about Carlos' condition. Instead, he noted that after surgery and recovery, Carlos has healed up and was, by the time of our hearing, doing fine.
19. In sum, we find Mr. Dimmick's account credible, and we adopt as the facts those set out in paragraph 15. Next, we apply the applicable law to those facts.

Application of Law to Facts

20. As noted above, attacking a domesticated animal qualifies as endangering the safety of an animal, but only if the attack was "without provocation." And Animal Services bears the burden of proving a lack of provocation.¹
21. Ms. Tellez-Rodriguez's initial position was that, after she exited the apartment, Mr. Dimmick was aggressive, which she felt amounted to provocation. Ex. D8 at 001. The problem there is that by the point Ms. Tellez-Rodriguez came onto the scene, Prieta had already charged at Carlos, bit him, and tossed him. Mr. Dimmick's response to that attack, even if it was an overreaction (and we do not find that it was) would not retroactively make Prieta's attack provoked.
22. Ms. Tellez-Rodriguez is correct that we do not know what caused the attack. Prieta undoubtedly had her reasons. But that is not how "provocation" is understood in the dog bite context.² "Provocation" is a staple of animal jurisprudence, and numerous courts that have analyzed the term in depth have noted that although dictionary definitions of "provocation" can be quite broad, the term applies more narrowly in the dog bite context. Otherwise, animal control ordinances "could be interpreted to mean that provocation exists whenever any external stimulus has precipitated the attack or injury by an animal, *i.e.*, whenever the animal's actions are not completely spontaneous." *Robinson v. Meadows*, 203 Ill. App. 3d 706, 710, 561 N.E.2d 111 (1990).

¹Although provocation is typically an affirmative defense, *Patterson v. New York*, 432 U.S. 197, 202-03 (1977), here lack of provocation is part of the definition itself. KCC 11.04.020. Thus, an appellant does not bear the burden of showing that the animal's action was provoked; instead, Animal Services bears the burden of showing, by a preponderance of the evidence, that the action was unprovoked. *See also Morawek v. City of Bonney Lake*, 184 Wn. App. 487, 495, 337 P.3d 1097 (2014).

²As our High Court instructs us, when analyzing "terms of art" we look to "well-established meanings" of words in their specific context. *State, Dept. of Ecology v. Theodoratus*, 135 Wn.2d 586, 589, 957 P.2d 1241 (1998).

23. Ours is unlike the scenario where Carlos charged off the sidewalk, crossed the porch area, and came at the apartment's screen door to get at Prieta, or even one where Carlos walked up to the screen door to try to play. Instead, Carlos was on the lawn, across the walkway from the door. Carlos was not engaging with Prieta in *any* way, friendly or not. Carlos was minding his own business, when Prieta charged him, seized him, and tossed him. 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 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). An average dog would not have reacted to Carlos in that way.
24. Moreover, provocation requires the dog's reaction to be proportional to the victim's act. *Bradacs*, 244 Mich. App. at 273–75; *Kirkham*, 311 Ill. App.3d at 792; *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995). Even if, under generous view of the facts, an average dog would have interpreted something about the scene as provocative enough to bark at Carlos (sure) or even push through the screen door to snap at Carlos to scare him off (maybe), Prieta's actual reaction was grossly disproportionate to any incitement.
25. Prieta endangered Carlos when she attacked him without provocation, meeting KCC 11.04.020.BB. And ours is not the scenario where the vicious act in question was, say, a “back-off” nip. Instead Prieta lifted Carlos in her jaws and tossed him, causing a nasty gash requiring surgery, and Mr. Dimmick needed to step in to prevent more. We do not discount that Prieta is typically a well-behaved and friendly dog, exhibits A3-A8, but we conclude that she constitutes a danger to the safety of someone like Mr. Dimmick walking his dog in the vicinity of Prieta's apartment. She meets KCC 11.04.230.H and will need to be contained to prevent a repeat.
26. Ms. Tellez-Rodriguez expressed concern that sustaining a viciousness violation would make it harder to rent an apartment in the future. We do not know how that landlord-tenant dynamic might work. We do know that ,although the terms are sometimes conflated, a viciousness declaration is not the same as a “dangerous dog” designation.
- a dangerous dog designation means something far more serious; Prieta would have had to kill Carlos to qualify, RCW 16.08.070(2), which obviously did not come close to happening;
 - the consequences of a dangerous dog designation are very serious: huge surety bonds and liability insurance requirements, plus an obligation to muzzle the dog, RCW 16.08.080(6) and .090(1), none of which apply to a vicious dog; and
 - an owner must obtain a certificate of registration for a dangerous dog, RCW 16.08.080(6), but not for a vicious dog, so there is no vicious dog registry to check.
27. At the end of the analysis, our role is to determine whether Animal Services has met its burden of proof. And we conclude that it has. The private implications of that determination are beyond our control.

Penalty Amount

28. Upholding the viciousness determination and compliance order does not mean that we find the full \$500 penalty is warranted here. This is not a scenario where Ms. Tellez-Rodriguez ignored obvious warning signs, allowed Prieta to maraud, or nonchalantly allowed Prieta to continue her attack. Instead, she had Prieta enclosed behind what at the time appeared a sufficient barrier, and she reacted quickly to race out, scoop up Carlos, and get Prieta inside. It is not clear what more she could have done. Going forward she has some additional responsibilities (see bullet points on compliance order, exhibit D6), but those were not in place on December 26. We reduce the \$500 penalty to \$100.

DECISION:

1. We deny Ms. Tellez-Rodriguez's appeal as to the violation and the compliance order.
2. We partially grant Ms. Tellez-Rodriguez's appeal as to the penalty amount, reducing the \$500 penalty to \$100.

ORDERED March 17, 2021.



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 *April 16, 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 MARCH 3, 2021, HEARING IN THE APPEAL OF Yael TELLEZ-RODRIGUEZ, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V20011503-A20015564**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Christopher Dimmick, and Yael Tellez-Rodriguez. 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 December 26, 2020 incident by Christopher Dimmick, dated December 29, 2020
Exhibit no. D3	Photograph of bite wound
Exhibit no. D4	Vet Reports, dated December 27, 2020
Exhibit no. D5	RASKC investigation report no. A20015564
Exhibit no. D6	Notice of violation no. V20011503-A20015564, issued December 29, 2020
Exhibit no. D7	Proof of Service
Exhibit no. D8	Appeal, received January 22, 2021
Exhibit no. D9	Map of subject area

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

Exhibit no. A1	History of my maintenance requests. Had a screen door been broken a service request would have needed to be made in order to get it fixed.
Exhibit no. A2	Picture of the intact screen door.
Exhibit no. A3	V-20011503-A20015564_YaelTR_Prieta Grandview.MOV; Prieta playing with a dog at Grandview park in SeaTac.
Exhibit no. A4	V-20011503-A20015564_YaelTR_PrietaPlaying.MOV; Prieta playing with a dog her size at Morrill Meadows park in Kent.
Exhibit no. A5	V-20011503-A20015564_YaelTR_Prieta 1:1.MOV; Prieta playing with another dog her size at Morrill Meadows park in Kent. The dog's owner can be seen in the background, he later came and commented how impressed he was with Prieta's ability to engage with his dog as he typically does not play with any dogs.
Exhibit no. A6	V-20011503-A20015564_YaelTR_Prieta w/ little dog.mov; Prieta playing with a dog smaller than her.
Exhibit no. A7	V-20011503-A20015564_YaelTR_Prieta w/ Blacky.MOV; Prieta with my mom's dog Blacky. They aren't playing and Blacky does not like to engage with any dogs but both can be observed respecting each other's boundaries.
Exhibit no. A8	V-20011503-A20015564_YaelTR_Prieta with big dogs.MOV; Prieta playing with a number of big dogs at Morrill Meadows park. She does not engage aggressively despite everything going on.
Exhibit no. A9	Picture of the heavily traversed walkway that leads directly to the parking lot. Highlighted in yellow are all the walkways that can lead to my apartment (circled in blue).

DS/lo

March 17, 2021

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011503-A20015564**

Yael Tellez-Rodriguez

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 March 17, 2021.



Lauren Olson
Legislative Secretary

Dimmick, Christopher

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Tellez-Rodriguez, Yael

Hardcopy