

June 21, 2021

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21011738-A20015176**

TEPPEI KONO

Animal Services Enforcement Appeal

Activity no.: A20015176

Appellant: **Teppei Kono**

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
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. After Teppei Kono's dog, Amarana, got loose and injured another dog, Regional Animal Services of King County served Mr. Kono a notice and order declaring his dog vicious, ordering her contained, and assessing a fine. Mr. Kono appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violation but we reduce the fine.

Background

2. On December 2, 2020, Henry Eiselstein filed a complaint, alleging that earlier that morning Mr. Kono's German Shepherd [Amarana] attacked his leashed dog, Neil. Ex. D2.
3. Animal Services investigated, and served Mr. Kono with the violation notice and order to comply. Exs. D3 & D7. Mr. Kono appealed. Ex. D8. We summarily dismissed, explaining that because of a quirk in Tukwila's code, we did not have jurisdiction over appeals arising out of Tukwila. We noted that our dismissal was not a ruling on the merits, but simply reflected that we would have no jurisdiction over such animal appeals until Tukwila amended its code. Ex. D9
4. Tukwila amended its code to give us jurisdiction, and Animal Services reissued its notice and order. Ex. D10. Mr. Kono again appealed, and we went to hearing on June 3.
5. At hearing, we noted that the original copy of Neil's veterinary records was somewhat difficult to read, so we requested that Mr. Eiselstein submit a more legible copy of exhibit D5. On June 7, we received a copy of the veterinarian's report and closed our hearing record.

Relevant Hearing Testimony

Henry Eiselstein

6. On December 2, Mr. Eiselstein was walking his dog, Neil, on a leash towards the dog area near the hotel he and Mr. Kono were staying at. An unleashed shepherd [Amarana] came running out of the bushes near the dog area. Neil and Mr. Eiselstein stood and watched Amarana approach, because they did not know what Amarana was going to do. Amarana was not growling or barking.
7. Amarana approached Neil and started biting him, without warning and or provocation. The dogs were going in circles. He kicked Amarana, there was then some separation between the two dogs, but then Amarana went back to biting Neil. Mr. Eiselstein pulled on Neil's leash during the entire incident, as Amarana continued to come at Neil. After his third kick, he was able to pick up Neil and head into the hotel. Amarana's owner was just standing and not intervening during the entire incident, which lasted several minutes.
8. Once he got into his room, he saw that Neil had several deep lacerations, so he took him to the vet. The vet put Neil under and stitched up the deep bite wounds. Exs. D4 and D5. It was traumatizing to them both.

Teppei Kono

9. Mr. Kono testified that his appeal statements are accurate, so we noted that we would treat those writings as testimony. Exs. D8 and D12. As he described the incident in his amended appeal statement:

My dog, Amarana, and I had been walking in this secluded area by the river.... When we turned around to head back, [Amarana] went ahead of me and laid down on the grass next to the entrance....

Suddenly, I saw her head perk up from where she was laying (due to the tall grass) and swiveled to the left[,] let out some barks (in terms of tone and pitch, I'd equate it to a bark you would most often hear when walking through any neighborhoods with dogs) jolted up and dashed through one of the paths continuing to bark running at a man and his dog [Neil] that was initially walking away in the parking lot of the Ramada Inn until hearing [Amarana]'s barking come closer.

When [Amarana] went near them, she stopped a few feet away and continued to bark at them hopping but never making an attempt to attack.

In response, the [Neil] (leashed) growled, showing teeth, snarled and lunged at forward at [Amarana], snapping its jaws where a short scuffle ensued until the owner pulled [Neil] back and away from [Amarana], corralling it to face the other direction eventually ending up between the owner's legs at one point from what seemed like trouble with the leash, which prevented it from turning around.

[Amarana] then lunged forward to get at [Neil] to continue their fight which squirmed between the owner's legs in it[]s attempt in trying to turn around, with limited success. At this point, [Amarana] made contact to its exposed back between the owner's legs resulting in scratch marks on the side and giving the owner a chance to drop kick [Amarana] away.

[Neil] snarled and fought back but wasn't able to do anything more than a few cuts to [Amarana] since the owner at this point was attempting to corral [Neil] counter-clockwise away from [Amarana]. While [Neil] was twisting and squirming around in its attempt to continue fighting, was when [Amarana] leapt onto [Neil] scratching the backside heavily in an attempt to grab the other dog (or what it looked like). The owner responded by drop-kicking [Amarana] who yelped and stumbled onto the ground. [A]nother round, [Amarana] shot right back up and was looking at [Neil] when she seemed to realize I was calling her name, to which she came running to where I was, ending the incident.

Ex. D12.

10. At hearing, Mr. Kono noted that he was on his phone, around 10-15 feet away from Amarana. Amarana, was in his vantage, but she did not have his full undivided attention on her. Amarana was barking as she approached Neil. Amarana stopped in front of Neil, who then snarled and lunged at Amarana. He agreed Neil was being protective, but that response excited Amarana. Exhibit D8-021 shows the path Mr. Kono took to get closer to Amarana. The incident lasted around 30 seconds. The bushes are at knee height and

he was quickly walking towards Amarana when she ran away from him, so he had a clear view of Amarana and the incident the entire time.

11. Amarana is always good at coming back to his side when he calls her. He has done the same walk every day for the last 10 months. People and dogs have walked past him and Amarana during their daily walks, and she has never had any incidents like this one on their walks. Amarana has ran up and barked at other dogs twice before, once in a dog park and another time in a national park. Since that type of incident had not occurred on his daily walks near the hotel, he did not expect it to happen here.

Factual Analysis

12. We found both witnesses generally credible.
13. Mr. Eiselstein stated that the altercation went on for minutes, while Mr. Kono thought it was over within 30 seconds. We find Mr. Kono’s estimate much more likely to be correct, but not in a way that severely compromises Mr. Eiselstein’s credibility. It is a well-observed phenomena that witnesses *invariably* overestimate the amount of time an activity took.¹ Mr. Eiselstein’s overestimate only very slightly cuts against his credibility.
14. Amarana did not just scratch Neil’s back, as Mr. Kono testified to, but bit Neil, causing a “deep puncture wound” serious enough to require “extensive” and the “multiple” laceration repair, sutures, and drainage tubes. Exs. D4 and D5. Mr. Kono not seeing that cuts a little more against his credibility than Mr. Eiselstein misjudging the duration.
15. There is no material dispute as to how the altercation began. Mr. Eiselstein was walking Neil on a leash, when Mr. Kono’s unleashed Amarana ran at Neil.
16. There is a dispute about what happened immediately thereafter. Mr. Eiselstein stated that Amarana started biting Neil without warning or provocation. Conversely, Mr. Kono stated that Amarana stopped in front of Neil, and it was Neil who first snarled and lunged at Amarana. We find Mr. Eiselstein’s version slightly more plausible, but even if we went we other way, it would not change our ultimate finding in this case, as the below analysis explains.
17. Whether Amarana just launched an attack against a dog (Neil) who was standing there (per Mr. Eiselstein) or there was some sort of “short scuffle” (in Mr. Kono’s words) while the dogs were facing each other, there is no dispute that this was not the end of the altercation. As Mr. Kono described it, Mr. Eiselstein pulled Neil back and away from Amarana, corralling Neil between his legs, with Neil’s back facing Amarana. And Amarana then lunged forward to get at Neil, getting on Neil’s exposed back, where the medical evidence is clear that Amarana seriously gashed Neil.

Legal Standard

¹ See, e.g., https://books.google.com/books?id=uBIAU24-qsoC&pg=PA30&lpg=PA30&dq=witnesses+overestimate+time&source=bl&ots=xzT0DFzVu_&sig=ACfU3U3oBGLp6ZKp0dvJjRjtTGeZA2UITQ&hl=en&sa=X&ved=2ahUKEwjatsfdq-TpAhVcPn0KHfTlCwYQ6AEwCnoECAGQAQ#v=onepage&q=witnesses%20overestimate%20time&f=false

18. Animal Services asserts that Amarana is “vicious,” which TMC 7.12.020.29 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.” TMC 11.04.230.7 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.”
19. 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.

Legal Analysis

20. Mr. Kono asserts that Amarana was provoked. The “provocation” inquiry in animal jurisprudence “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 a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction 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. There was certainly no provocation under Mr. Eiselstein’s version (the version we find slightly more likely), but there was no provocation even under Mr. Kono’s version.
21. Under Mr. Kono’s version, an unleashed Amarana dashed up a path, running at and barking at Mr. Eiselstein and Neil, stopping only a few feet away and continuing to bark and to hop around. Even if Neil growled, snarled, and lunged at Amarana, that was, as Mr. Kono recognized and we would if found regardless, “protective,” not offensive. Neil’s reaction may have, as Mr. Kono surmises, “excited” Amarana, but an action that merely stimulates or excites a dog, without more, cannot qualify as “provocation.” *Engquist v. Loyas*, 787 N.W.2d 220, 225 (Minn. App. 2010), *aff’d in relevant part*, 803 N.W.2d 400 (Minn. 2011). See *Robinson v. Meadows*, 203 Ill. App.3d 706, 710-11, 561 N.E.2d 111 (1990) (victim exciting a dog is insufficient to find “provocation”).
22. Moreover, if we found Mr. Kono’s description of the “short scuffle” accurate, Amarana, say, nipping Neil on the face as Neil (hypothetically) lunged at her might have been proportional to Neil’s supposed actions. But Amarana continuing to pursue Neil even after Mr. Eiselstein pulled Neil away, and jumping on Neil’s defenseless back and gashing him, was grossly disproportionate to any provocation.
23. Similarly, Mr. Eiselstein kicking Amarana does not change the analysis. Amarana was already coming at Neil, and so Mr. Eiselstein kicking Amarana was reasonable. That likely would not have been considered “provocation” even if Amarana subsequently bit Mr. Eiselstein. See *Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745 N.W.2d 824 (2008) (person intervening to protect a pet and getting bitten did not make the bite to that

person “provoked”). However, Mr. Eiselstein kicking Amarana was certainly not sufficient provocation for Amarana continuing to go after Neil.

24. Amarana endangered Neil’s safety without provocation, meeting TMC 7.12.020.29’s definition of “vicious.”
25. Under the version of events we find slightly more likely—Mr. Eiselstein’s testimony that Amarana charged at Neil and started biting at Neil before Neil lunged or made any attempt to bite Amarana, and Amarana continued to bite at Neil, even as Mr. Eiselstein pulled Neil back and tried to separate the dogs—we have little trouble determining that Amarana exhibited vicious behavior and constitutes a danger, meeting TMC 11.04.230.7.
26. Moreover, even if we found Mr. Kono’s description of the “short scuffle” as accurate, it would not change the outcome. Had Amarana stopped after, say, biting Neil as the dogs faced off, we might have concluded that, though legally unprovoked, Animal Services had not met its burden of proving that Amarana constitutes a safety danger. However, Amarana continued to go after a retreating Neil, gashing his defenseless back and causing a “deep puncture wound” serious enough to require “extensive” and the “multiple” laceration repair, sutures, and drainage tubes. Exs. D4 and D5. Under that scenario, we would have still found that Animal Services proved a violation of TMC 11.04.230.7.

Penalty

27. The above analysis turn solely on Amarana and not on Mr. Kono. (Mr. Kono admirably did extensive research, thoroughly documented the site, and provided thoughtful arguments.) Mr. Kono’s relative culpability as of December 20 does play into the penalty amount.
28. Animal Services noted that, walking Mr. Kono in an area dogs were known to be walked, and especially since he acknowledged that in the past Amarana had run up to people and their dogs to bark, Mr. Kono should have had her on a leash. That has some validity; a dog owner has a duty to keep their dog “under control” when off the dog’s property, meaning being “restrained from approaching any bystander or other animal.” TMC 7.12.020.28. But we also accept Mr. Kono’s assessment that Amarana had repeatedly walked in the subject area without incident, and that the past times where Amarana ran up to another dog were not at the subject property, and even those times Amarana did no more than bark.
29. Mr. Eiselstein complains that Mr. Kono was just standing and not intervening during the entire, several minute incident. That would be blameworthy if indeed Amarana’s attack went on for several minutes. But, as we explained above, we find Mr. Kono’s assessment, the altercation probably took no more than 30 seconds, likely the more accurate. And in countless cases we hear testimony admitting, or even see video confirming, that dogs’ owners often initially freeze when they see their dog go after someone or some other animal, and they do not immediately respond. We do not hold against Mr. Kono his initial inaction while Amarana went at and subsequently injured Neil.
30. We will reduce the \$500 penalty to \$250.

DECISION:

We DENY Mr. Kono’s appeal as to Amarana’s viciousness designation, but we REDUCE the corresponding penalty from \$500 to \$250.

ORDERED June 21, 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 *July 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 JUNE 3, 2021, HEARING IN THE APPEAL OF TEPPEI KONO, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21011738-A20015176

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Henry Eiselstein, and Teppei Kono. 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 2, 2020 incident by Henry Eiselstein, dated December 2, 2020 |
| Exhibit no. D3 | RASKC investigation report no. A20015176 |
| Exhibit no. D4 | Photographs of Neil’s injuries |
| Exhibit no. D5 | Veterinary Report (legible version received June 7, 2021) |
| Exhibit no. D6 | Photograph of Mr. Kono’s dog Amarana |
| Exhibit no. D7 | Notice of violation no. V20011448-A20015176, issued December 10, 2020 |
| Exhibit no. D8 | Appeal V20011448, received January 4, 2021 |
| Exhibit no. D9 | Hearing Examiner’s Dismissal of V20011448 |
| Exhibit no. D10 | Notice of violation no. V21011738-A20015176, issued March 11, 2021 |
| Exhibit no. D11 | Proof of Service |
| Exhibit no. D12 | Appeal, received April 5, 2021 (with two Zip files) |
| Exhibit no. D13 | Map of subject area |

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June 21, 2021

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21011738-A20015176**

TEPPEI KONO

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 June 21, 2021.



Lauren Olson
Legislative Secretary

Eiselstein, Henry Lou

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Kono, Teppei

Hardcopy