

June 17, 2021

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21011840-A21001475**

PATRICK CONLEY

Animal Services Enforcement Appeal

Activity no.: A21001475

Appellants: **Patrick Conley and Jessica Crance**

[REDACTED]
Shoreline, WA 98133

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. Patrick Connolly appeals a Regional Animal Services of King County (Animal Services) notice declaring his dog vicious. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violation but reduce the penalty.

History

2. Mr. Conley owns Leilani, a pitbull long suffering from a degenerative disease who by 2020 was functionally a paraplegic. Ex. D12.
3. In 2014, Leilani bit a visitor to the Conley home, then located in Seattle. The bite was hard enough to remove part of the victim’s lip and fracture her jaw. Ex. D7. This resulted in a personal injury lawsuit from the victim and administrative enforcement by Seattle.
4. The civil case ended in a voluntary 2015 dismissal on unspecified terms. Ex. D10. The administrative action resulted in a stipulated 2015 agreement, with Seattle agreeing not to proceed with a dangerous dog case so long as Mr. Conley and his late wife kept Leilani outside Seattle and agreed to a citation for violating SMC 9.25.084.G.1, essentially a lesser charge.
5. Leilani was first introduced to Dana Neely a few years later. Mr. Conley had her in a muzzle, and told Ms. Neely about Leilani previously biting a person. After a few times being around Leilani with a muzzle on, both Mr. Conley and Ms. Neely felt comfortable enough to take Leilani’s muzzle off when Ms. Neely visited. Ms. Neely had even taken care of Leilani at times, without any problems.
6. That changed on June 25, 2020. Ms. Neely was sitting at one end of the Conley couch, with Leilani in the middle and Mr. Conley on the other end, all watching a movie. Ms. Neely had been at the Conley home for a few hours, without incident. However, after Mr. Conley momentarily stepped away, without warning Leilani bit Ms. Neely’s face. Leilani slit both Ms. Neely’s upper and lower lips, pulled her lower lip away from her jaw, and—she discovered after she became confused and started vomiting a few days later—concussed her. She required stitches in both lips, and between her lip and jaw. Ex. D3. She continues to have a hole inside her lip, and the blunt force trauma has created vision problems for her.
7. Mr. Conley questions whether Leilani actually concussed Ms. Neely and the link between that and eyesight degeneration, but he agreed with the other details. For the reasons discussed below, we need not tackle the concussion or eyesight issues.
8. Animal Services served Mr. Conley with a violation notice declaring Leilani vicious. Ex. D11. Mr. Conley timely appealed. Ex. D12.

Legal Standards

9. Animal Services asserts that Leilani is “vicious,” which SMC 6.05.020.JJ 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 SMC 6.30.010.A.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.”

10. 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

11. Mr. Conley asserts that Leilani’s 2014 bite was provoked. He submitted a 2015 report from a canine behaviorist explaining that the victim there had grabbed Leilani’s head, one hand on each side of Leilani’s face, and opining that this took away Leilani’s ability to retreat, leaving fight her most natural response. Ex. D9. However, in 2015 Mr. Conley and his late wife stipulated to a violation of SMC 9.25.084.G.1, which covers an animal “when unprovoked” biting a human being. At that point, the lack of provocation for Leilani’s 2014 bite became a fixed fact, and not one that can be challenged in today’s proceeding.
12. However, if such a fact scenario had freshly come to us, it is highly unlikely that—even accepting as completely accurate the behaviorist’s assessment—we would have adjudged that bite legally unprovoked. A touchstone of “provocation” in animal jurisprudence is that the dog’s reaction must be *proportional* to the victim’s act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs v. Jiacobone*, 244 Mich. App. 263, 273-75, 625 N.W.2d 108 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). Someone holding Leilani’s face and improvidently invading Leilani’s close personal space might have been incitement enough for Leilani to, say, give a “back off” nip. But biting hard enough to remove part of the victim’s lip and fracture her jaw was grossly disproportionate.
13. In any event, the 2015 stipulation to SMC 9.25.084.G.1 violation is what we have to go on. And, as we emphasize directly below, our decision today would be the same even if we completely ignored both the 2014 incident and the concussion and eyesight impacts Ms. Neely testified to.
14. On June 25, 2020, Leilani bit Ms. Neely without provocation, meeting the “vicious” definition. SMC 6.05.020.JJ. The severity of the injury to the face—tearing the lips and pulling the lower lip partly away from the jaw—is sufficient for Animal Services to meet its burden of showing that Leilani performed a vicious act and constitutes a danger to the safety of persons lawfully on Leilani’s property. SMC 6.30.010.A.7. Leilani’s 2014 bite confirms the danger, but it is not necessary to our holding. We uphold the designation
15. None of that cast dispersions on Leilani. Likely she was in her own world of hurt, as she continued to degenerate. But the code criteria for a viciousness designation does not inquire into whether the animal was mean-spirited or malicious, only whether the animal performed a qualifying act, which Leilani did in at least 2020, and whether it constitutes a danger, which we would conclude in the affirmative even without any reference to the 2014 incident or to the disputed portions of Ms. Neely’s testimony.

16. That leaves only the penalty amount. At hearing, Animal Services noted that Mr. Conley had not made risky choices, observed that given the six-year span between bites there was no reason to “beat up” on Mr. Conley, and noted that in light of his euthanasia plans this (by which we assume Animal Services meant its objective of protecting the public) matter was no longer so relevant.
17. While there is some dispute about who Mr. Conley asked to dog sit Leilani and when, he clearly took things seriously after the 2014 altercation. He took Leilani to an animal behaviorist. He informed Ms. Neely about the bite. He kept Leilani muzzled around a visitor until they both felt comfortable removing the muzzle. And since the altercation he has covered at least a fair amount of Ms. Neely’s medical bills. At the hearing he expressed remorse and stated his intention to euthanize Leilani. And post-hearing he confirmed to our office that he has her put down, thus eliminating any chance that Leilani could injure anyone again.
18. In the end, this is a miserable situation. Through no fault of her own, Ms. Neely suffered a traumatic injury with potentially permanent impacts; our condolences. And Mr. Conley did what he could to keep Leilani from reinjuring anyone, yet he has now put his beloved dog down; our sympathies there as well. A penalty reduction seems warranted.

DECISION:

We deny Mr. Conley’s appeal as to the viciousness violation, but we reduce the penalty from \$500 to \$200.

ORDERED June 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 *July 19, 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 PATRICK
CONLEY, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V21011840-A21001475**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Dana Neely, Patrick Conley, and Jessica Crance. 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 June 25, 2020 incident by Dana Neely, dated April 2, 2021
Exhibit no. D3	Photograph of Bite wound
Exhibit no. D4	Medical record
Exhibit no. D5	RASKC investigation report no. A21001475
Exhibit no. D6	Photograph of Leilani
Exhibit no. D7	Seattle Animal Control report
Exhibit no. D8	Negotiated removal order from Seattle
Exhibit no. D9	Statement from Academy of Canine Behavior regarding prior bite
Exhibit no. D10	Dismissal of Seattle Case without prejudice
Exhibit no. D11	Notice of violation no. V21011840-A21001475, issued April 3, 2021
Exhibit no. D12	Appeal, received April 24, 2021

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21011840-A21001475**

PATRICK CONLEY

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 17, 2021.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Jessica Crance, Patrick Conley

Hardcopy

Neely, Dana

Hardcopy