

November 17, 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](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V21012283-A21002615**

**MARIKO DYSON**

Animal Services Enforcement Appeal

Activity no.: A21002615

Appellant: Mariko Dyson  
*represented by* **Quinlan Wheeler**  
Law Office of Quinlan Wheeler PLLC  
220 13th Avenue East, D  
Seattle, WA 98102  
Telephone: (206) 225-8107  
Email: [quinlanwheeler@icloud.com](mailto:quinlanwheeler@icloud.com)

King County: Regional Animal Services of King County  
*represented by* **Mari Isaacson**  
Prosecuting Attorney's Office  
King County Courthouse  
516 Third Avenue Room W400  
Seattle, WA 98104  
Telephone: (206) 477-1961  
Email: [mari.isaacson@kingcounty.gov](mailto:mari.isaacson@kingcounty.gov)

## FINDINGS AND CONCLUSIONS:

### Overview

1. Mariko Dyson appeals an Animal Services of King County (Animal Services) notice of violation for an unlicensed dog qualifying as vicious and needing to be contained. 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 deny her appeal.

### Background

2. Animal Services issued Mariko Dyson a violation notice for her dog being unlicensed unaltered, qualifying as vicious, and needing to be contained. Ex. D9. Ms. Dyson timely appealed. Ex. D11. The thrust of the appeal was that she had no connection to the dog and thus should not have been cited. That is fairly standard fare in our cases. However, she then challenged "all alleged violations, descriptions of violations and each of the abatement/corrective actions," without explaining what in particular she took exception to or why, if she had no interest in the dog or knowledge of the incident, she wished to dispute a violation ostensibly involving a foreign dog.
3. We held a pre-hearing conference on September 22 and went to hearing on November 2.

### Hearing Testimony

#### *Teresa Richards Testimony*

4. Teresa Richards testified that she works at the South Park industrial park, unit EF. She owns and operates commercial pool services company with her husband. They have a small staff and have been at the South Park location for about 10 years.
5. Ms. Richards has three English springer spaniels, including 11-year-old Bella. She periodically walks her leashed dogs to the mailboxes, a walk she has taken ever since her company rented the unit. June 1 was a normal day; around midday, she walked her three dogs toward the mailboxes and towards 93<sup>rd</sup> street. Ex. D12. Her dogs were not barking or growling.
6. At the corner of the building, a dog launched out from her right side and targeted Bella. Bella was thrown a couple feet by the impact. Ms. Richards dropped the leash to let Bella run away. Ms. Richards screamed at the lady with the dog, and the lady replied that the attacking dog had no teeth. The attacking dog had a leash, but the lady was not holding that leash. Bella froze and cried. Ms. Richards asked the lady who she was and where she worked. The lady refused to tell her, and just walked away. Ex. D12. Ms. Richards had never seen the lady or the dog before on the property.
7. Ms. Richards went back to her workspace and Bella slept for most of the day. Ms. Richards was fearful that Bella might have broken a rib, because the other dog was big and heavy and hit her like a missile or torpedo and Bella went rolling about three or four

feet. Bella did not have any puncture wounds. Bella was emotionally traumatized and thereafter feared walking to the mailboxes.

8. Several days later, around June 8, Ms. Richards left her office and was in her car heading home, when she again saw the lady and the dog. Ms. Richards took pictures of them and waited to see where they would go next. Ex. D4-001. The lady and the dog walked through the door of unit F17 (one of Ms. Dyson's units). Ms. Richards followed her to the unit. She asked the men working inside the bay if they knew who owned the dog, and none of them replied.
9. A younger lady, who she later realized was (and identified at the hearing as) Mariko Dyson, came out the door, along with the dog-walking woman and the dog. The three of them were standing in the same vicinity, about five feet apart. Ms. Dyson and the other woman did not exchange any words, but the other lady was in Ms. Dyson's view. The woman with the dog casually approached and Ms. Richards attempted to back away from her and use body language to communicate that she was uncomfortable.
10. Ms. Richards asked Ms. Dyson if she owned the dog, and Ms. Dyson said no. Ms. Richards told Ms. Dyson that she was going to let Animal Control and the landlord know about the incident and the dog. Ms. Dyson asked Ms. Richards what she could do to make this go away and offered money. Ms. Richards was a few feet away from the dog when she snapped the pictures in exhibit D4-002 and D4-003.
11. Ms. Richards has not seen the dog since the incident, but her husband has. Ms. Richards believes that the two women are family, the woman being Ms. Dyson's mother.

#### *Mariko Dyson Testimony*

12. Mariko Dyson testified that she first heard about this incident the second week of June. Her business has four units, including unit F17, in the business park, and one retail store in Capitol Hill. On June 1 [the day of the altercation], Ms. Dyson was at the retail store.
13. Ms. Dyson testified that she met Ms. Richards for the first time when she came by the warehouse [approximately June 8]. Ms. Dyson told Ms. Richards that she does not have a dog and did not know whose dog it was. Ms. Dyson did not offer Ms. Richards money. She does not remember the dog going into her office. Ms. Dyson told her landlord that she does not have a dog.
14. Ms. Dyson testified that Animal Services left a yellow card at the warehouse. Later, Animal Services came back to the warehouse and spoke with Ms. Dyson. There was no dog or person with a dog at the warehouse that day.<sup>1</sup> Animal Services told her that Ms.

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<sup>1</sup> The responding officer wrote that when he went to Ms. Dyson's shop to investigate on July 6, he observed inside an older woman resembling the woman in the pictures; when he tried to go in to talk to that woman, Ms. Dyson asked him to leave. Ex. D6 at 006, n.2. Ms. Dyson denied the woman or dog was in her facility on the day of the officer's visit. For whatever reason Animal Services did not call the officer of the stand to testify to his July 6 observations. We do not rely on what is essentially a hearsay statement about the dog walker being with Ms. Dyson on the day.

Richards' dog was not hurt. Ms. Dyson was under the impression that Animal Services was going to give her a warning.

15. Ms. Dyson testified that she does not know who the lady in exhibit D4 is. Ms. Dyson said the woman looks similar to one of their cleaning people, but she does not know that person's name because they have had independent people clean the warehouse. Ms. Dyson has seen a dog like that dog before. She has seen several dogs looking like the dog in exhibit D4 around the office, and she could not be sure it was the same dog.
16. Ms. Dyson testified that her mother has probably gone to her business before. Her mother is not an owner in the business. Her landlord has never met her mother. She has never talked to her landlord about her mother. Her mother is not a business partner and Ms. Dyson does not physically work with her. Her mother will drop off stuff at the store or run errands. She has a male business partner.

#### Legal Standard

17. "Vicious" is defined as, "performing the act of... 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," with "[a]ny 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" qualifying as a nuisance. KCC 11.04.020.BB; KCC 11.04.230.H.
18. 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

19. We start with Ms. Dyson's challenge to the merits of the violation, disputing at hearing that Animal Services had proven the attack was without provocation. Provocation is frequently the focus of an appeal statement. Where it is duly raised, we explain in our prehearing order that although provocation is typically an affirmative defense, because a lack of provocation is part of the vicious definition itself, at hearing Animal Services will bear the burden to prove, by a preponderance of the evidence, that the animal's action was legally unprovoked.
20. Here, Ms. Dyson's appeal statement did not mention anything about provocation, either by name or by any reference to the complainant or one of the complainant's dogs or anyone else somehow triggering the altercation. Ex. D11. And the scope of an appeal is limited to matters or issues raised in an appeal statement. KCC 20.22.080.G. Even generously treating a one-sentence, nonspecific, general denial of everything as somehow putting provocation in play, there is no whiff of legal provocation here.

21. 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 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. There is no evidence Ms. Richards or her leashed dogs did anything other than follow their usual route to the mailboxes. There is not even an alleged act of provocation against which we could try to examine how an average dog might react. Launching into Bella was grossly disproportionate to any “provocation” the mere act of walking dogs on leashes could have created. We find that the pit bull endangered Bella, attacking Bella without provocation, and constitutes a danger.
22. However, Ms. Dyson’s challenge to the merits of the viciousness designation is telling. We have received many not-my-dog challenges in our close to 700 animal appeals. Until today, appellants’ positions had uniformly been internally consistent: appellants did not challenge the existence of a violation for an animal they disclaimed any interest in, instead rejecting responsibility for what the allegedly foreign, interloping animal had done. Yet, here, rather than being freaked out that some ostensibly random dog was launching into leashed dogs in her business park, Ms. Dyson defended that dog, challenging whether that behavior qualified as vicious. Arguing “provocation” without any factual support (such as eyewitness testimony) is a pattern we often see: an appellant, whose dog is always gentle and friendly in their presence, has difficulty accepting that their dog would be capable of such behavior without being provoked. Thus, such appellants assert, even without actually having observed the altercation, that, gosh, the person or other animal just had to have done something to cause a completely-out-of-character outburst from their dog. But a provocation defense is inconsistent with Ms. Dyson’s position that she has no connection to the attacking dog.
23. Even without Ms. Dyson’s challenge to the merits of the violation, we would not have found her case compelling. Her testimony came off as evasive: the dog looks like a dog she had seen before, but she has seen many dogs like that so she does not know; she does not know who the lady in exhibit D4 was, but she looks similar to one of her cleaning people, but she does not know that person’s name, etc. And if indeed the woman was some random person on one of Ms. Dyson’s crews, and not someone closer to Ms. Dyson, Ms. Dyson had *months* to figure out that person’s identity, clear her own name, and ensure the right person licenses the dog and keeps it in compliance: Ms. Dyson was standing right next to the woman on about June 6, and she was then shown the woman’s picture at some point before Ms. Dyson commented on the photos in her July 27 appeal statement. (Again, our hearing occurred on November 2.)
24. The interaction with Ms. Dyson and Ms. Richards in front of Ms. Dyson’s office on approximately June 6 further undercuts Ms. Dyson’s credibility. Even if we set aside Ms. Dyson asking what she could do to make the case go away, or assume Ms. Richards misunderstood the intent behind Ms. Dyson’s response, given that the three women were standing there in close proximity as Ms. Richards and Ms. Dyson spoke, Ms.

Dyson's denials related to positively identifying the woman make no sense. While we found Ms. Richards credible, we did not find Ms. Dyson at all credible.

25. In sum, we are not sure whether the dog actually belongs to Ms. Dyson, or to a family member, or to someone else Ms. Dyson is trying to protect. In any event, she must now face the consequences from her lack of candor to the tribunal, especially during testimony given under oath. We sustain the violations and the penalties.
26. Forward-looking, whoever handles the dog in the future must stay vigilant, now that the dog is under an order of confinement. Failing to restrain the dog in the future could lead to serious monetary penalties; the penalty for a vicious animal running at large is 10 times the penalty for a normal running at large violation. And it could potentially result in an order to remove the dog from King County.

DECISION:

We deny Ms. Dyson's appeal.

ORDERED November 17, 2021.



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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 17, 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 NOVEMBER 2, 2021, HEARING IN THE APPEAL OF  
MARIKO DYSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.  
V21012283-A21002615**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mari Isaacson, Teresa Richards, Quinlan Wheeler, and Mariko Dyson. 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	Email from Teresa Richards, dated June 9, 2021
Exhibit no. D3	Online Complaint form of June 1, 2021 incident by Teresa, dated June 9, 2021
Exhibit no. D4	Photograph of dog and handler
Exhibit no. D5	Emails from business park manager
Exhibit no. D6	RASKC investigation report no. A21002615
Exhibit no. D7	Driver’s License
Exhibit no. D8	Photograph
Exhibit no. D9	Notice of violation no. V21012283-A21002615, issued July 7, 2021
Exhibit no. D10	NVOC mail tracking
Exhibit no. D11	Appeal, received July 28, 2021
Exhibit no. D12	Map of subject area

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V21012283-A21002615**

**MARIKO DYSON**

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 November 17, 2021.



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Lauren Olson  
Legislative Secretary



**Dyson, Mariko**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Isaacson, Mari**

Prosecuting Attorney's Office

**Richards, Teresa**

Hardcopy

**Wheeler, Quinlan**

Law Office of Quinlan Wheeler PLLC

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