

November 5, 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. **V21012355-A21003607**

ROBIN BLACK

Animal Services Enforcement Appeal

Activity no.: A21003607

Appellant: **Robin Black**

[REDACTED]
Tukwila, WA 98188

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. Robin Black appeals an Animal Services order that her dog qualifies as vicious and must be contained. After hearing witness testimony, observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal, but we modify the compliance terms and reduce the monetary penalty.

October 22, 2021, Hearing Testimony

Dereck Tolson Testimony

2. Dereck Tolson started by testifying about the events of July 26, 2021. He was on his patio when he first saw Ms. Black and her dog [Kwaya], who was not on a leash, in the parking lot. She was trying to get Kwaya to go into her car.
3. Mr. Tolson's lighter was out, so he lit a candle using matches to try to light his cigarette. He decided to go buy a lighter, so he blew out the candle and left his apartment. As he was leaving the building, he could see Ms. Black was still trying to get Kwaya into the car.
4. Mr. Tolson got to the end of the driveway, when he thought he should check to see that he had actually blown out the candle. He walked back towards his apartment. When he was about five to ten feet from Kwaya and Ms. Black, Kwaya bit him. He immediately told Ms. Black Kwaya had bitten him.
5. After Kwaya let go of his leg, Mr. Tolson started running. Kwaya ran after him. Mr. Tolson jumped on top of a car to get away. Ms. Black was then finally able to get ahold of Kwaya and put it inside her car. Mr. Tolson then went back to his apartment and took pictures of his wounds. He went to the doctor and they cleaned up the wounds.
6. There have been other times Mr. Tolson has seen, from his apartment, Kwaya off leash.

Ted Branstetter Testimony

7. Ted Branstetter testified that, earlier this year, he observed Ms. Black attempting to get control of her whippet [Kwaya]. Kwaya was disobedient, and it took Ms. Black several minutes to get Kwaya under control.
8. Earlier in the day of the altercation, he observed, from his balcony, Kwaya running laps through the parking lot, unattended. A little later Mr. Branstetter was back on his balcony, finishing a smoke, when he heard a commotion and yelling out in the parking lot. He immediately recognized his neighbor, Mr. Tolson's, voice.
9. Mr. Branstetter went down to the parking lot, and Mr. Tolson told him that he had been bitten. Mr. Tolson showed him where Kwaya had torn through his heavy denim jeans. Mr. Branstetter took pictures of the puncture wounds on Mr. Tolson that were red, swollen, and leaky. Mr. Tolson told him that Ms. Black did not apologize and told him to go home.
10. Mr. Branstetter took Mr. Tolson to his apartment to clean the wound and take more pictures. Mr. Branstetter did not see the actual bite happen, because it occurred on the west side of a building between his building and Ms. Black's building.
11. He took Mr. Tolson to an urgent care about a mile away. They were not able to see him in that day. They could not find a place Mr. Tolson's insurance would cover that would see him for a few days. They decided to check how the wound was in the morning,

because Mr. Tolson cannot drive himself and Mr. Branstetter had to get back to work. The wound had swollen, so they went to urgent care that next day. Mr. Branstetter paid the bill. Mr. Tolson has a disability and cannot read, which is why Mr. Branstetter helps him out.

Robin Black Testimony

12. Robin Black testified that she does not allow her dog [Kwaya] to run wild. Whippets can run 35 miles per hour. Her apartment is close to a major boulevard, and Kwaya could get into an accident and be harmed. Mr. Branstetter may have seen Kwaya out, but not for hours. Kwaya has escaped from the house one other time, while she was following Ms. Black's mom out the door.
13. The day of the incident, Kwaya was running around for about ten minutes, as Ms. Black tried to keep her somewhat contained. She did not see Mr. Tolson leave his apartment, but she did see Mr. Tolson as he was walking back. She saw Kwaya run and jump on him while barking. She then saw Mr. Tolson jump onto the car, and then she tried to get Kwaya to go home. She told Mr. Tolson to go home.
14. After Kwaya and Mr. Tolson were separated, she was able to get Kwaya closer to her apartment, but it took ten to fifteen minutes to actually get Kwaya inside. She has seen the photos (exhibit D3) and believes the wounds were from her dog jumping on Mr. Tolson.
15. Ms. Black brings Kwaya to the local dog park, because it is the only opportunity to work on off-leash recall. Kwaya will jump and bark at people when running.

Legal Standards

16. Animal Services asserts that Kwaya qualifies as “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,” while 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.”
17. 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

18. The definition of “vicious” is framed in terms of behavior endangering a person’s safety, “including, but not limited to, biting a human being...without provocation.” So an actual bite is not a necessary element of “vicious.” But it is certainly more significant than

something like a scratch. Having reviewed hundreds of pictures, we are confident Kwaya bit Mr. Tolson. We would have been surprised if a dog, especially a whippet-sized one, jumping on someone would deliver enough force to tear through denim. Ex. D3 at 004. Moreover, the marks themselves have all the hallmarks of a bite, not of a scratch. Rather than solid, straight dragging lines that would be expected from claws, they are two curved, intermittent indentations, far more indicative of the way teeth are laid out. We find it significantly more likely than not that Kwaya bit Mr. Tolson.

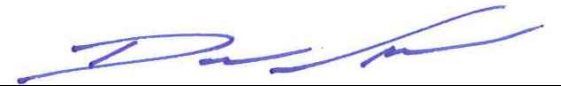
19. And this is not a scenario where, say, Mr. Tolson brushed past a cornered Kwaya and, in a split second Kwaya delivered a back-off nip. Kwaya closed the distance, jumped up on Mr. Tolson and bit him. Ms. Black noted that Kwaya has a history of jumping at people. But the jump/bite here was not the end. As Mr. Tolson attempted to retreat, Kwaya chased him, causing him to have to scramble up on a car to find safety. Kwaya constitutes a danger to personal safety. We uphold Kwaya's viciousness designation.
20. A default confinement term is that a vicious dog must always be on an eight-foot or shorter leash when outside its own fenced area. Ex. D8 at 001. That essentially creates a lifetime bar against taking a dog to run in off leash dog parks. We share Animal Services concern that the "training" Ms. Black described doing was not necessarily safe. However, we consistently apply a gas-and-clutch analysis to assessing remedies: the more damage the animal has a history and capability of inflicting, the more airtight the containment must be going forward. Here, the injury Kwaya inflicted on July 26 was towards the more mild end of the vicious scale, and Kwaya is, after all, a whippet.
21. Thus, we will amend the compliance terms to allow Ms. Black, under certain conditions, to continue taking her to official off-leash dog parks. And we realize funds may be scarce, and dog training classes especially difficult to get into given the canine population explosion during Covid, but we strongly suggest that Ms. Black seeks professional training. Because if an incident happens again—either Kwaya escapes confinement at home or there is an altercation within a dog park, not only might there be more serious monetary consequences, but the looming prospect of an order requiring Kwaya's removal from the County.
22. Finally, Animal Services cited Ms. Black for Kwaya not being licensed as of July 26. Ex. D8. Ms. Black did not challenge this, but she has since licensed Kwaya. Ex. D9. In such scenarios, we typically reduce the licensing penalty. We also reduce the viciousness penalty somewhat, as although Kwaya's escaping and jumping at a person was not an unexpected one-off, there is no evidence that Ms. Black had reason to suspect that Kwaya would bite a person.

DECISION:

1. We DENY appeal as to the licensing and viciousness violations.
2. We REDUCE the otherwise-applicable licensing penalty from \$250 to \$100 and the \$500 viciousness penalty to \$150. The total amount due is thus \$250, not \$750, provided Ms. Black pay this amount to Animal Services by **January 5, 2021**.

3. We MODIFY Animal Services' July 27, 2021, compliance order as follows (A. through D. being substantively unchanged, and E. being new):
- A. Secure Kwaya in a fenced area suitable for his size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.
 - B. Restrain Kwaya using a leash no more than eight feet long, with a collar or harness, when taking Kwaya off your property. A competent and capable person must handle Kwaya at all times when attended outside.
 - C. If not already completed, microchip Kwaya and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **January 5, 2021**.
 - D. Keep Kwaya current on his rabies vaccination.
 - E. Kwaya is allowed to run in sanctioned off-leash dog parks, provided Ms. Black is present, and provided Kwaya is leashed at all times when not in the car or in the fenced, off-leash area.

ORDERED November 5, 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 *December 6, 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 OCTOBER 22, 2021, HEARING IN THE APPEAL OF ROBIN
BLACK, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V21012355-A21003607**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Dereck Tolson, Ted Branstetter, and Robin Black. 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 Bite Victim, dated July 26, 2021
Exhibit no. D3	Photographs of the Bite wounds
Exhibit no. D4	Online Complaint form of July 26, 2021 incident by Derek Tolson, dated July 27, 2021
Exhibit no. D5	RASKC investigation report no. A21003607
Exhibit no. D6	Tukwila Police Report, dated July 27, 2021
Exhibit no. D7	Official Quarantine Notice
Exhibit no. D8	Notice of violation no. V21012355-A21003607, issued July 27, 2021
Exhibit no. D9	Appeal, received August 14, 2021
Exhibit no. D10	Map of subject area

DS/lo

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CERTIFICATE OF SERVICE

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ROBIN BLACK

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 5, 2021.



Lauren Olson
Legislative Secretary

Black, Robin
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Tolson/Branstetter, Dereck/Ted
Hardcopy