

March 30, 2022

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V21012788 and V21012789**

LUCERO PADRON DOMINGUEZ
Animal Services Enforcement Appeal

Activity no.: A21006325

Appellant: **Lucero Padron Dominguez**

[REDACTED]
Lynnwood, WA 98036

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by **Rebecca Smokoska**
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FINDINGS AND CONCLUSIONS:

Overview

1. This case involves an appeal of a notice designating a dog as vicious and of an order removing that dog from King County. 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 both the notice and the order, but we reduce the monetary penalty and we modify the removal terms.

Background

2. On December 21, 2021, Regional Animal Services of King County (Animal Services) issued violation notice V21012788-A21006325 to Lucero Padron Dominguez for her dog, Rocky, qualifying as vicious and needing to be confined. Ex. D4. Animal Services also issued order V21012789-A21006325 to Ms. Padron for her to remove Rocky from King County. Ex. D6. Ms. Padron filed an appeal on January 9, 2022. Ex. D9. We went to hearing on March 16.

Hearing Testimony

Testimony of Emily Jie-sarinian

3. Emily Jie-sarinian testified that on December 20, 2021, she was volunteering at an event at a school. She asked Ms. Padron if she could pet Ms. Padron's dog [Rocky] because she loves animals. Ms. Padron said she could. They went out to the car Rocky was in.
4. Rocky was attached to the back seat with a leash. Ms. Jie-sarinian asked Ms. Padron again if she could pet Rocky, and Ms. Padron said it was okay. Ms. Padron unlocked the car, and Ms. Jie-sarinian opened the car door. Ms. Jie-sarinian pet Rocky, who was wagging his tail and seemed to be happy. There were no indications Rocky was going to attack. Ms. Jie-sarinian trusted Ms. Padron, who said Rocky was friendly.
5. As Ms. Jie-sarinian pet Rocky, he opened his jaws and clenched down on her face. Ms. Jie-sarinian pushed Rocky away and screamed. She felt a tingling sensation and there was blood running down her face. She could only see out of one eye. She was in shock and worried that Rocky tore her face apart. Ex. D8.
6. Ms. Padron ran and banged on the school door, seeking help. Ms. Padron gave Ms. Jie-sarinian a scarf and some towels, which quickly filled with blood. Ms. Jie-sarinian saw a puddle of blood below her.
7. An ambulance arrived. The responders wrapped gauze and bandages around Ms. Jie-sarinian and brought her to the emergency room.

Testimony of Lucero Padron Dominguez

8. Lucero Padron Dominguez testified that she and Ms. Jie-sarinian were talking during the volunteer event lunch break. The Padron family was about to leave, so Ms. Padron's mother told her to make sure Rocky was secured in the car. Ms. Jie-sarinian asked if she could see Rocky. Ms. Padron warned her that Rocky is very friendly and likes to lick and jump on people. Ms. Padron told Ms. Jie-sarinian that she wanted to make sure Rocky was first secured in the car, which he was.
9. Ms. Jie-sarinian opened the door and quickly started petting Rocky. Ms. Padron was surprised because people usually put their hands out first and let the dog smell them.

10. Ms. Padron did not see any signs of aggression. She lost sight of Rocky and Ms. Jie-sarinian momentarily when she slipped on the snow. This is when Rocky bit Ms. Jie-sarinian.
11. Ms. Padron saw that Ms. Jie-sarinian was bleeding. Ms. Padron did not know what to do. She ran to the school to get help. The event coordinator called 911. Within seconds Animal Services, the police, and an ambulance arrived. Ms. Padron spoke with them. The event coordinator was screaming at Rocky. The ambulance took Ms. Jie-sarinian to the hospital. Ms. Padron left Ms. Jie-sarinian's bag and water bottle with the front desk at the hospital.
12. This was the first time Rocky has been aggressive. Ms. Padron reached out to several trainers. Due to Rocky's history, they directed her to a special dog training group. Ms. Padron reached out to the group. They said that there were two trainers qualified to see Rocky. The supervisor said she could start training at the end of March or in early April. Ms. Padron emailed the group, but they have not gotten back to her. Ms. Padron is planning on reaching out to them again in early April.
13. Ms. Padron has a muzzle for Rocky. When he is near kids or when the Padrons have guests over, Rocky wears the muzzle.
14. Ms. Padron and Rocky already live in Snohomish. Ms. Padron is concerned about Rocky's veterinary situation because he is due for vaccines soon. Ms. Padron brings Rocky to the free King County clinics for exams and vaccines because she is low income. She wants to continue to do this.

Legal Standards

15. In V21012788, Animal Services asserts that Rocky qualifies as vicious, defined 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,” with the violation itself framed as, “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.” BMC 8.04.060.BB, .300.H.
16. In V21012789, Animal Services ordered Rocky removed under BMC 8.04.370.A.1.i, which states that, in prescribing the requirements for a vicious animal, the manager must consider, among other factors, the “[e]xtent of injury or injuries” the animal caused.
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. It was not clear, even by the end of the hearing, if Ms. Padron was really challenging the viciousness designation and the order removing Rocky from King County (since she lives in Snohomish County anyway), or was simply wanting a penalty reduction and seeking permission to continue bringing Rocky into King County periodically for things such as low-cost veterinary clinic and training. Still, we undertake the full analysis.
19. Rocky certainly endangered Ms. Jie-sarinian when he bit her. Our inquiry, then, is whether that bite 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 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.
20. Rocky being strapped into a seat left him fewer options to avoid unwanted attention; he could not retreat. It is possible that his owner (Ms. Padron) slipping may have startled him. But both witnesses agreed that Rocky gave no back-off warning—either pulling back or growling or even showing any discomfort—before he latched onto Ms. Jie-sarinian’s face. So, ours is not the scenario where Ms. Jie-sarinian ignored a yellow flags or created a scenario a reasonable person would have seen as ripe for violence.
21. Moreover, even if a light “backoff” nip could have been excused, the gashes Rocky delivered to Ms. Jie-sarinian’s face were grossly disproportionate to any incitement Ms. Jie-sarinian caused. Analyzing our facts in the context of the hundreds of dog appeals to reach us (many of which we have granted) and the dozens of judicial opinions we have read honing the contours of “provocation” in bite cases, we conclude that Rocky was in no way legally provoked. And given the serious bite to a person’s face, Rocky constitutes a danger—a significant danger. We uphold his viciousness designation.
22. We clarify that our analysis has nothing to do with Ms. Padron’s behavior. She did nothing irresponsible, nor was there any act she failed to take that a responsible person should have. Rocky was not out and running amok; instead, not only was he in the car, he was actually secured in his seat. That is a far cry from the garden-variety scenarios we review where a dog escapes from a vehicle and goes on the attack, or at least thrusts a head out an open window and bites a passerby. Nor was there anything irresponsible in allowing Ms. Jie-sarinian to pet a dog with (at least per our record) no history of violence who (according to both Ms. Jie-sarinian and Ms. Padron) started off the interaction receptive to the attention and gave no clue—until a millisecond before he bit—that there was any trouble in paradise.
23. As the above legal standard indicates, none of that has anything to do with whether Rocky meets the code criteria. BMC 8.04.060.BB, .300.H. But it does play into the penalty amount. Penalties are meant to deter or encourage certain behaviors. And we see

nothing that a reasonable person would have done differently, based on events as they unfurled on December 20. We reduce the penalty from \$500 to \$100.

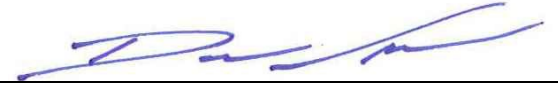
24. Removal is a much closer call. We are wary of upholding removal orders for first-time events; we have overturned more removal orders than we have sustained. However, the most salient factor here is the location of the bite—a human face. Though not delivered with the force of the bites in some removal order appeals, the gash, right at the edge of the eye, is just so serious. And what makes Rocky even more dangerous is the complete lack of any signal from him that he was even uncomfortable, let alone poised to attack, before he launched onto Ms. Jie-sarinian’s face. That greatly increase the difficulty for Ms. Padron, or anyone in the general public, to predict consequences and to adjust behavior. We sustain Rocky’s removal order.
25. However, several things distinguish this scenario from others where we upheld a removal order.
 - Rocky *already* lives outside of King County; Rocky was only in Bellevue on December 20 because his family was volunteering at a Toys-or-Tots drive. That changes the calculus, because assessing risk involves numbers—the less time Rocky is in King County, the less chance something could go wrong in King County. Even without the removal order, Rocky is only occasionally in King County anyway.
 - While the *result* was traumatic (a face injury), the activity that caused that result—a single bite, without tremendous force, and with immediate release—was not ultraviolent. And the was not a scenario where a dog leaped up to go after a person’s throat or face (a dramatic escalation); instead, Rocky bit the closest part of Ms. Jie-sarinian to him.
 - The Padron family has already showed responsible ownership. Rather than have the dog in amongst hordes of children at a Toys-for-Tots event, they had Rocky in the car—and not just in the car, but strapped in his harness. Plus Ms. Padron acted quickly and decisively immediately after the bite. And she then sought out training for Rocky.
26. Given the above, we amend the removal order to allow Ms. Padron to periodically make day trips into King County with Rocky, so long as at all times in King County Rocky has a basket muzzle securely affixed to his face. And, if Rocky does not violate the removal order itself (as we amend it today), the \$1000 penalty associated with violating the removal order will not come due.

DECISION

1. We UPHOLD Rocky’s viciousness designation and removal order.
2. We REDUCE the otherwise-applicable penalty associated with the viciousness violation from \$500 to \$100.

3. Ms. Padron shall microchip Rocky (if not microchipped already) **by April 20, 2022**, and continue to keep him out of King County, *except* that she may periodically make day trips into King County with Rocky, so long as at all times Rocky is in King County he has a basket muzzle securely affixed to his face.
4. If Ms. Padron complies with the amended removal order, the \$1000 penalty attached to the removal order is waived. If not, the \$1000 penalty is reinstated and Animal Services may impound Rocky.

ORDERED March 30, 2022.



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 *May 5, 2022*. 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 16, 2022, HEARING IN THE APPEAL OF LUCERO PADRON DOMINGUEZ, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V21012788 AND V21012789

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska, Emily Jie-sarinian, and Lucero Dominguez Padron. 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 | RASKC investigation report no. A21006325 |
| Exhibit no. D3 | Online Complaint form of December 20, 2021 incident by Emily Jie-Sarinian's attorney, Neil Lindquist, dated February 14, 2022 |
| Exhibit no. D4 | Notice of violation no. V21012788, issued December 21, 2021 |
| Exhibit no. D5 | NVOC mailing/tracking history |
| Exhibit no. D6 | Notice and order for removal no. V21012789, issued December 21, 2021 |
| Exhibit no. D7 | NVOC mailing/tracking history |
| Exhibit no. D8 | Photograph of Emily Jie-Sarinian's Injuries |
| Exhibit no. D9 | Appeal, received January 9, 2022 |
| Exhibit no. D10 | Map of subject area |

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CERTIFICATE OF SERVICE

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LUCERO PADRON DOMINGUEZ
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 30, 2022.



Lauren Olson
Legislative Secretary

Dispatch, Norcom

Hardcopy

Jiesarinian, Emily

Hardcopy

Padron Dominguez, Lucero

Hardcopy

Smokoska, Rebecca

Regional Animal Services of King County