

May 9, 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 no. **V21012959-A22000999**

SETH LEWIS

Animal Services Enforcement Appeal

Activity no.: A22000999

Appellant: **Seth Lewis**

[REDACTED]
Kent, WA 98031

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Seth Lewis appeals a notice and order declaring his dog vicious, unlicensed, and needing to be confined, along with associated monetary penalties. 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 violations and confinement order, but we reduce the fine.

Background

2. On March 1, 2022, Regional Animal Services of King County (Animal Services) issued a violation notice to Seth Lewis for his dog, Nadia, being unlicensed unaltered, qualifying as vicious, and needing to be confined. Ex. D2. Animal Services assessed \$750 in penalties.
3. Mr. Lewis appealed on March 7. Ex. D7. We went to hearing on April 26.

Hearing Testimony

Testimony of Devon Thompson

4. Devon Thompson testified that on February 26 he was at a bar and grill for a dart tournament. The bar was very crowded with dart players. Mr. Thompson is a dog owner, and he would have never brought his dog to a bar that busy.
5. Mr. Thompson approached the bar and ordered a beverage for his dart partner. He then stepped away from the bar. The bartender handed the beverage to Mr. Thompson, and he handed it to his dart partner. As Mr. Thompson re-approached the bar to get his change, he heard a growl, looked down, and saw a dog [Nadia] moving towards his leg. Nadia was about six inches from Mr. Thompson. Nadia bit his left leg twice. Mr. Thompson hopped back, and Nadia then retreated. Ex. D8. Mr. Thompson was not aware of a dog under the bar until he heard the growl. Mr. Thompson did not step on Nadia.
6. Mr. Thompson explained to Mr. Lewis that he was bit. It appeared that Mr. Lewis thought Mr. Thompson was making up the bite. Mr. Thompson was unable to show the bite by pulling up his pant leg, so he dropped his pants past his knees and showed Mr. Lewis the bite. Mr. Lewis still believed the bite was made up. Mr. Thompson walked to his spouse, Robin Donovan, and told her about the bite.
7. Mr. Lewis went outside and argued with Ms. Donovan. Mr. Lewis then came back inside and asked to see the bite again. Mr. Thompson did not show Mr. Lewis the bite at that time, because he had already showed him the bite. Mr. Thompson continued to play darts.
8. Mr. Thompson went to urgent care the next day. The doctor put Mr. Thompson on antibiotics and told him to keep an eye on the bite for changes.

Testimony of Robin Donovan

9. Robin Donovan (Mr. Thompson's wife) testified that on February 26, Mr. Thompson came over to her in the bar and told her he had just been bitten by a dog. He then pulled his pants down and showed Ms. Donovan the puncture wound. She went to the owner of the bar, who said she had heard that Mr. Thompson had been bitten by a dog.

10. The bar owner brought Ms. Donovan outside to where Mr. Lewis was with his dog. Mr. Lewis gave Ms. Donovan his contact information. A lady at the bar asked Mr. Lewis to leave, which he did.

Testimony of Seth Lewis

11. Seth Lewis testified that in the seven years he has had Nadia, she has never done anything like this. He has brought Nadia to busy bars in the past with no issues.
12. On the day of the incident, Nadia was on the step between the bar and the chairs. Mr. Lewis did not feel Nadia moving around to try to avoid people. When Mr. Lewis asked Mr. Thompson to show him the bite, Mr. Thompson then squared up and tried to fight. Mr. Thompson said he was not going to pull down his pants, and he did not show Mr. Lewis the bite mark. Mr. Lewis still believes that Mr. Thompson is fabricating the bite.

Legal Standards

13. Animal Services asserts that, as of February 26, Nadia was unlicensed and unaltered, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered.
14. More seriously, Animal Services asserts that Nadia 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.” KCC 11.04.020.BB; .230.H.
15. 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.
16. Because Mr. Lewis raised a provocation defense, Animal Services bears the burden to prove Nadia acted without legal provocation. 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.

Analysis

17. The first question is whether Nadia actually bit Mr. Thompson. Mr. Lewis believes Mr. Thompson is lying about this. That may have seemed plausible at first, especially if Mr.

Thompson did not show him the bite and had an attorney send a demand letter for such a minor (alleged) injury (exhibit D6) that did not even cause Mr. Thompson to stop playing darts. Where Mr. Lewis lost his credibility was maintaining that position *even after seeing the video*. If a picture is worth a thousand words, the video here is worth ten thousand words.

18. The video shows Mr. Thompson lean and give something to another man maybe ten feet from the bar, consistent with his testimony that he stepped away from the bar to hand a beer to his dart partner. Then Mr. Thompson returns to the bar, consistent with his testimony that he was coming back to get change. He then mills about behind Mr. Lewis for awhile until the change is ready. He then reaches to receive something the bartender is handing him (presumably, his change). We then see Nadia approach him from the left and lunge twice at the middle of Mr. Thompson's leg, causing Mr. Thompson to lurch backwards. We find that Nadia bit a human being, Mr. Thompson, at least once and likely twice.
19. As to whether Mr. Thompson provoked Nadia to bite, our first thought was that maybe Mr. Thompson had inadvertently stepped on Nadia. After all, the provocation inquiry in a dog bite case disregards whether the actor intended to provoke, focusing instead on whether particular actions are likely to cause a dog to react by biting. *Toney v. Bouthillier*, 129 Ariz. 402, 405, 631 P.2d 557, 560 (1981). Had Mr. Thompson stepped on Nadia, her bites would likely have been proportional enough to be deemed "provoked." *Nelson v. Lewis*, 36 Ill. App. 3d 130, 134, 344 N.E.2d 268, 272 (1976). But that is not what the video shows. Mr. Thompson keeps his feet in basically the same place, while Nadia comes from his left and bites him.
20. Mr. Lewis submitted a statement from Brenton Millard, a portion of which relates to provocation. Ex. A1. Mr. Millard states that while he did not witness what occurred, he heard other people saying Mr. Thompson was aggressive and edgy around Nadia and seemed like he was instigating things. While the video speaks for itself, it is certainly conceivable that *before* the video picks up Mr. Thompson did something to antagonize Nadia, such that when Mr. Thompson came back to the bar, his re-approach, coupled with that earlier instigation, amounted to provocation.
21. However, Mr. Millard's statements are *double* hearsay. They are hearsay in that Mr. Millard was not available to testify under oath and subject to cross-examination. But more importantly, even if he had testified, he would not have been testifying to anything he actually observed, only what he heard other people say they had observed. And the text does not even explain whether the "instigating" meant before the bite or Mr. Thompson's hostile reaction to Mr. Lewis *after* the bite.
22. In our prehearing notice we emphasized that "tracking down those customers who actually saw what happened, and getting their testimony in the record, is critical." Mr. Millard's written submission about what he heard *other* people say Mr. Thompson did is not actual evidence of provocation. (Typically, the hearsay issue comes up in the reverse context, say a complainant testifying that other people had said the appellant's dog had

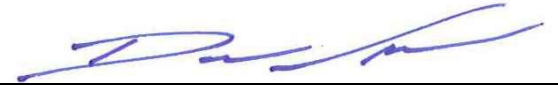
prior instances of aggressive or violent behavior; our answer there is consistent—that type of hearsay is worth very little.) We find Nadia’s bites unprovoked.

23. Discrepancies about who said or did what *after* the bites is not critical here. By the time Mr. Thompson retreated, at the end of the video, Nadia had either met the qualifications for a vicious dog, or she had not. And nothing about the post-bite interactions here seemed out of the ordinary anyway. Tempers often flare after an altercation, both from the person who was just accosted, and from the owner of the dog who feels their beloved pup has been unjustly maligned.
24. We do not have any reason to doubt Mr. Lewis’s testimony and Mr. Millard’s written statement that Nadia had been in the bar, perhaps hundreds of times, without incident and showing nothing but friendliness. But a vicious designation is not about whether a dog is mean-spirited, only that it meets the code criteria. And now we know that, for a given set of circumstances not approaching legal “provocation,” Nadia will bite. Nadia constitutes a danger to the safety of persons off her premises and needs to be contained, especially to avoid a second bite of a person within two years (from February 26), which could result in Nadia’s removal. KCC 11.04.290.B.2.
25. Turning to the penalty amount, although we criticize Mr. Lewis for his later response—continuing to accuse Mr. Thompson of lying about being bitten even *after* Mr. Lewis reviewed the video—we do not find much fault in his actions leading up the bite itself. Nadia had apparently been in the bar hundreds of times without anything other than friendly encounters. Mr. Thompson’s criticism that Mr. Lewis should not have had a dog in a bar *that crowded*, and Animal Services’ criticism that in that crowded situation Mr. Lewis set up Nadia for failure because Nadia did not have room to get away, has some merit; a crowded bar exacerbated things. But there is no causal relationship here. Ours is not a scenario where Mr. Thompson stepped into Nadia’s personal space, and the bar was so crowded that when she had nowhere to retreat. Instead, Mr. Thompson’s feet were stationary, a fair distance away from Nadia, when Nadia came into the picture and bit him. We reduce the viciousness penalty accordingly.
26. As to the licensing penalty, Nadia was unlicensed as of the February 26 altercation. Mr. Lewis licensed her on March 7. Where an individual has duly licensed a pet after the violation but before our hearing, we have never eliminated—but we often reduce—the penalty. We do so here as well.

DECISION:

1. We deny Mr. Lewis’s appeal as to Nadia’s viciousness designation and confinement order.
2. We reduce the viciousness penalty from \$500 to \$200 and the licensing penalty from \$250 to \$120.

ORDERED May 9, 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 *June 8, 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 APRIL 26, 2022, HEARING IN THE APPEAL OF SETH LEWIS, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012959-A22000999

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Devon Thompson, Robin Donovan, and Seth Lewis. 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 | Notice of violation no. V21012959-A22000999, issued March 1, 2022 |
| Exhibit no. D3 | RASKC investigation report no. A22000999 |
| Exhibit no. D4 | Online Complaint form of February 26, 2022, incident by Devon Thompson, dated February 27, 2022 |
| Exhibit no. D5 | NVOC mailing/tracking history |
| Exhibit no. D6 | Photograph of injury |
| Exhibit no. D7 | Appeal, received March 7, 2022 |
| Exhibit no. D8 | Video of incident |
| Exhibit no. D9 | Map of subject area |

The following exhibits were offered and entered into the record by the appellant:

| | |
|----------------|--------------------------------|
| Exhibit no. A1 | Statement from Brenton Millard |
|----------------|--------------------------------|

DS/lo

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CERTIFICATE OF SERVICE

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SETH LEWIS

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 May 9, 2022.



Lauren Olson
Legislative Secretary

Devon Thompson, Robin Donovan

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Lewis, Seth

Hardcopy

Smokoska, Rebecca

Regional Animal Services of King County