

July 29, 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. **V22013130-A22002175**

DONNA KALAULI AND MARVIN LOPEZ

Animal Services Enforcement Appeal

Activity no.: A2202175

Appellants: **Donna Kalauli and Marvin Lopez**

[REDACTED]
Kent, WA 98031

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King County: Regional Animal Services of King County
represented by **Chelsea Eykel**

Regional Animal Services of King County

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FINDINGS AND CONCLUSIONS:

[Overview](#)

1. Donna Kalauli and Marvin Lopez appeal a Regional Animal Services of King County (Animal Services) violation notice for their dog, Lilo, qualifying as vicious and needing to be confined. 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 find that while Lilo did bite the complaint, and that bite was not legally provoked, Lilo does not constitute a danger. We overturn the violation.

Background

2. On April 29 Hesamuddin Khamosh (spelled with one "o") filed a complaint asserting that that morning his nephew, Sultan Khamoosh (two "oo"s) was attacked by a large dog, later identified as Lilo. Ex. D2. Animal Services issued Ms. Kalauli a violation notice asserting that Lilo qualifies as vicious. Ex. D6.
3. Ms. Kalauli and Mr. Lopez timely appealed. Ex. D8. We went to hearing on July 15 and provided Mr. Khamoosh with a Farsi interpreter.

Hearing Testimony

Testimony of Sultan Khamoosh

4. Mr. Khamoosh testified that on the morning of April 29 he was standing outside, cleaning his car windows, when a large dog [Lilo] came slowly from behind and bit him on his back. Ex. D3. There was also a smaller dog present [Abu]. The owner was nowhere in sight.
5. Mr. Khamoosh was frightened, and started running about two to three meters before falling and scraping his hand and elbow. Ex. D4. Mr. Lopez came to the scene and called the dogs about three to four times before the dogs came back to him. He thinks the altercation lasted about four to five minutes.
6. Mr. Lopez did not say anything to Mr. Khamoosh. Mr. Khamoosh went home to recount the incident with his English-speaking uncle. Afterwards, they both went out to locate Mr. Lopez. When they confronted him, Mr. Lopez started swearing at them.

Testimony of Hesamuddin Khamosh

7. Mr. Khamosh testified that his nephew came home and let him know that he had been bitten by a dog. Mr. Khamosh became upset because the dog bit his nephew badly. When they confronted Mr. Lopez, Mr. Lopez began swearing at them. They could not respond with swear words of their own because they did not know any. Mr. Khamosh let Mr. Lopez know that they would be filing a complaint with property management.

Testimony of Marvin Lopez

8. Mr. Lopez testified that he was in his car, coming back from the off-leash dog park with Abu [a Chihuahua] and Lilo [a pit bull terrier]. He parked about four to five stalls away from where it turned out Mr. Khamoosh was parked. There were two cars between

them, and Mr. Lopez did not initially see Mr. Khamoosh, who was kneeling down on the driver' side of his car (the side opposite from where Mr. Lopez was).

9. Not seeing anyone in the parking lot, Mr. Lopez let the dogs out without leashes so they could run into the apartment. They all began heading home, with Abu in the lead, Lilo behind him, and Mr. Lopez bringing up the rear.
10. As soon as Mr. Khamoosh stood up to wipe the roof of his car, Abu got startled and started barking at Mr. Khamoosh. Mr. Khamoosh began violently waving his cleaning rag at Abu's face. This caused Lilo to react, shooting to where Abu was and joining in the barking.
11. Mr. Lopez attempted to call Abu back and advised Mr. Khamoosh not to react the way he was. Mr. Lopez told Mr. Khamoosh not to run and tried to calm Mr. Khamoosh down, while Mr. Lopez tried to catch Lilo. But Mr. Lopez realized that Mr. Khamoosh was not understanding him, and Mr. Khamoosh started running before Mr. Lopez could grab Lilo. Lilo chased after Mr. Khamoosh, on the opposite side of the car from where Mr. Lopez was. He did not see Lilo bite Mr. Khamoosh. After Mr. Khamoosh fell, Mr. Lopez offered to help him, but Mr. Khamoosh was busy attending to his elbow.
12. Mr. Lopez took Abu and Lilo back inside the apartment. When Mr. Lopez returned outside, Mr. Khamoosh was already walking towards his home. The Khamo(o)shes confronted Mr. Lopez; Mr. Khamoosh was furious. Mr. Lopez asked to see where the bite was, but they would only respond that it was in the parking lot; Mr. Khamoosh would not show Mr. Lopez the actual bite. After Mr. Khamoosh told Mr. Lopez that he would be calling the police, Mr. Lopez called him a liar.
13. At hearing, Mr. Lopez apologized for the incident.

Testimony of Donna Kalauli

14. Ms. Kalauli was in the apartment at the time and did not see the action in the parking lot. She also apologized for the incident. Lilo is her emotional support animal, as recommended by her therapist. They frequently take him to dog parks. Lilo is frequently around people and other animals, all without incident.
15. After the April 29 altercation, the property management sent her a ten-day notice to vacate Lilo from the premises. Lilo now lives with Ms. Kalauli's brother. Ms. Kalauli is taking the separation very hard.

Legal Standards

16. Does Lilo qualify 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.

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

Factual Findings

18. There is no question that Lilo bit Mr. Khamoosh. Ex. D3 at 001. If the situation unfolded like Mr. Khamoosh testified that it did—that as he stood there cleaning his car, Lilo silently snuck up on him and bit his back—Lilo would easily meet the criteria for a viciousness designation. But we are not confident that that is what happened. Indeed, the version Mr. Khamoosh and his uncle submitted the day of the incident was that “The dogs ran up... and Sultan began shouting and running around for 4 minutes until he was bit by the large dog and fell to the ground.” Ex. D2 at 003.
19. The problem is *not* Mr. Khamoosh’s estimate of the time the altercation in the parking lot took—per his complaint, four minutes, and per his testimony, four to five minutes. That likely grossly overestimates the actual duration. We think it likely the interaction with the dogs was over in less than a minute. But that is not a strike against Mr. Khamoosh’s credibility. Most people have enormous difficulty accurately estimating the duration of an event, and witnesses invariably *overestimate* the amount of time an event took.¹
20. Instead, the problem is that the account Mr. Khamoosh gave two-and-a-half months after the incident does not match the account he provided the day of the incident. In his hearing testimony, he stated that the altercation started with Lilo slowly approaching him and biting him, without warning, and with Mr. Khamoosh only reacting *after* being bitten, and then running and falling. That is very different from the account he provided the day of the bite, that the dogs ran (not walked) up to him, and that Mr. Khamoosh reacted and started running around for several minutes, and only *then* did Lilo bite him before Mr. Khamoosh fell to the ground.
21. Mr. Khamoosh’s account the day of the incident mostly matches the basic sequence of events Mr. Lopez described, both in his appeal statement a few weeks after the incident, and in his hearing testimony, namely that a dog (in Mr. Lopez’s version, Abu) approached Mr. Khamoosh, then Mr. Khamoosh reacted, there was a flurry activity, and only then did Lilo go at Mr. Khamoosh.

¹ See, e.g., https://books.google.com/books?id=uBIAU24-qsoC&pg=PA30&lpg=PA30&dq=witnesses+overestimate+time&source=bl&ots=xzT0DFzVu_&sig=ACfU3U3oBGLp6ZKp0dvJiRjiTGeZA2UITQ&hl=en&sa=X&ved=2ahUKewjatsfdq-TpAhVcPn0KHfTlCwYQ6AEwCnoECAGQAQ#v=onepage&q=witnesses%20overestimate%20time&f=false

22. Mr. Lopez initially denied that Lilo bit Mr. Khamoosh, and he testified that he did not see Lilo bite Mr. Khamoosh. Lilo clearly bit Mr. Khamoosh. But as with Mr. Khamoosh's overestimate on the time, that does really impact Mr. Lopez's credibility. We have reviewed almost 1,000 animal-related appeals. It is not uncommon that an eyewitness standing right there notes not actually seeing the bite. Sometimes even the *victim* acknowledges not realizing until later that they had been bitten. And here, as Animal Services pointed out, Mr. Khamoosh was on the opposite side of the car from Mr. Lopez, obstructing Mr. Lopez's view. Plus, the bite itself was a quick nip, not a situation where a dog clamps down or holds on.
23. In general, we found Mr. Lopez extremely credible, something Animal Services (to its credit) even pointed to in its closing argument. Mr. Lopez did not deny that Lilo chased after Mr. Khamoosh or that Mr. Lopez wound up cursing at the Mr. Khamo(o)shes. The sequence of events he described was internally consistent, and it matched similar pictures painted in similar cases.
24. Thus, the sequence of events we find that most likely is in keeping with the version Mr. Khamoosh gave the day of the incident and with how Mr. Lopez explained things in his appeal statement and then again in his hearing testimony. Abu ran up to Mr. Khamoosh. Mr. Khamoosh initially did no more than simply stand up, but that was enough to rankle Abu and get Abu to start barking at Mr. Khamoosh. Mr. Khamoosh attempted to defend himself, including swatting at Abu. This engaged Lilo, who then entered the fray. There was likely a flurry of activity between Mr. Khamoosh and the dogs, as Mr. Lopez unsuccessfully attempted to grab Lilo. As Mr. Khamoosh attempted to get away, Lilo nipped Mr. Khamoosh's side.

Analyzing those Facts under the Applicable Legal Standards

25. Mr. Khamoosh had every right to defend himself from an aggressive Abu. Nothing Mr. Khamoosh did amounted to legal provocation, as the courts interpret that term, for Lilo to bite him.² Thus, on April 29, Lilo performed an act endangering the safety of a person, specifically by biting Mr. Khamoosh without legal provocation, thus meeting the KCC 11.04.020.BB definition.
26. However, the actual violation criteria (KCC 11.04.230.H) contains both a past-tense, "exhibited" vicious behavior requirement (which Lilo satisfied on April 29), and also a present-tense, "constitutes a danger" requirement. To be sure, an unprovoked bite is *typically* enough to satisfy the danger criteria. After all, what is better evidence that a dog constitutes a danger than proof that, given some set of circumstances not arising to legal provocation, a dog will actually bite a person or pet? However, we interpret a statute so as not to render a term superfluous. *Chelan Basin Conservancy v. GBI Holding Co.*, 190

² 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 roughly 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.

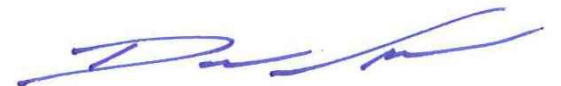
Wn.2d 249, 264, 413 P.3d 549 (2018). So, there must be some subset of cases where a dog who exhibited what is defined as “vicious” behavior will *not* be adjudged to constitute a danger.

27. Thus, in select appeals we have found extenuating circumstances such that we have overturned a viciousness designation even after an unprovoked bite. This is one of those. The April 29 incident started with *Abu*, not Lilo, being aggressive to Mr. Khamoosh. (The fact pattern of a yippy Chihuahua starting something it cannot stop is not, by any means, unique.) Mr. Khamoosh then swatted at Abu. That did not justify Lilo biting Mr. Khamoosh, but it very different from the scenario Mr. Khamoosh described at hearing of Lilo just walking up to him out nowhere and biting him. There was a lot of fast and stressful activity going on before the bite which, while not arising to the level of legal “provocation,” was in the ball park. And the bite Lilo delivered would be best be described at a nip, a superficial injury rather than something delivered with force (especially given the strength of a pit bull’s jaws) or with Lilo seizing Mr. Khamoosh. Ex. D3 at 001.
28. There is also no indication that Lilo has had any other instances of even aggression, let alone biting. Appellants are responsible owners, typically leashing Lilo when he is not in a sanctioned off-leash dog park. Letting the dogs run from the car to the apartment off-leash was a mistake, but was understandable given the scene as it appeared to Mr. Lopez (no people in the area, and the dogs eager to get inside the apartment). And it seems highly unlikely to occur again. We do not find that Lilo constitutes a danger.

DECISION:

We GRANT the appeal.

ORDERED July 29, 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 *August 29, 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 JULY 15, 2022, HEARING IN THE APPEAL OF DONNA
KALAU LI AND MARVIN ROLDAN, REGIONAL ANIMAL SERVICES OF KING
COUNTY FILE NO. V22013130-A22002175**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Sultan Khamoosh, Hesamuddin Khamosh, Donna Kalauli, and Marvin Lopez. 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 April 29, 2022, incident by Sultan Khamoosh, dated April 29, 2022
- Exhibit no. D3 Photograph of Mr. Khamoosh’s bite
- Exhibit no. D4 Photographs of Mr. Khamoosh’s injuries from his fall
- Exhibit no. D5 RASKC investigation report no. A22-002175
- Exhibit no. D6 Notice of violation no. V22013130-A22002175, issued April 30, 2022
- Exhibit no. D7 Notice of Bite Quarantine
- Exhibit no. D8 Appeal, received June 2, 2022
- Exhibit no. D9 Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013130-A22002175**

DONNA KALAULI AND MARVIN LOPEZ

Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 July 29, 2022.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Khamoosh; Sultan/, Hesamuddin

Hardcopy

Marvin Lopez, Donna Kalauli

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