

June 2, 2022

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V2203043-A22001474**

**PHOEBE SCHULTZ**

Animal Services Enforcement Appeal

Activity no.: A22001474

Appellant: **Phoebe Schultz**

[REDACTED]  
Issaquah, WA 98027

Telephone: [REDACTED]

Email: [REDACTED]

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. Phoebe Schultz appeals a violation notice for her dog being unlicensed and unaltered, qualifying as vicious, and needing to be confined. After hearing witnesses' testimony and observing demeanor, studying the exhibits, and considering the parties' arguments and the relevant law, we find that although the dog bit a visitor unprovoked, given the mild bite and the dog being pulled towards the victim, we reverse the viciousness violation.

### Background

2. On March 25, Joshua Guerrero filed a complaint asserting that the previous day, as he was delivering a package to the Schultz residence that required Ms. Schultz's signature, her dog [Piper] bit him. Ex. D2. Animal Services issued Ms. Schultz a violation notice. Ex. D6. Ms. Schultz timely appealed. Ex. D7. We went to hearing on May 19.
3. During the hearing, Ms. Eykel corrected the licensing violation; after investigating further she found that Piper was actually altered, dropping the \$250 fine to \$125. Since Ms. Schultz had already paid for an unaltered pet license (\$60, double the \$30 altered pet license) prior to hearing, Ms. Eykel will research what the correct process is for refunding Ms. Schultz the difference or at least applying it to future licenses. (That seems unnecessary, since the penalty we uphold below is greater than \$30, meaning the ledger sheet still has Ms. Schultz owing Animal Services a little.)

### Hearing Testimony

#### *Testimony of Josh Guerrero*

4. Mr. Guerrero is a FedEx driver. On March 24 he was delivering a package to the Schultz residence that required a signature. During prior deliveries at that location, he had never seen a dog. However, on March 24 he saw a dog [Piper] running around outside the house, barking aggressively at him. Mr. Guerrero did not think much of it; it is common for dogs to get excited when package drivers arrive, and he has never had an incident with any other dog before.
5. A young girl opened the door. He asked her if an adult was present. Ms. Schultz then came to the door to sign for the delivery. The girl, aware that Piper was outside, went to retrieve him. As the daughter and Piper walked past Mr. Guerrero to reenter the house, Piper came from behind him on his left side, biting his left leg, just above his knee. The bite broke the skin, enough to see a few spots of blood. The bite left four small abrasions. Ex. D5. Mr. Guerrero felt Piper clamp down hard and as he gave Ms. Schultz her package he stated, "Oh your dog bit me," to which she responded, "Oh really?"
6. Mr. Guerrero walked back to his truck and initially drove away. He was unsure how to handle the incident, so he called his manager for guidance. Mr. Guerrero returned to talk to Ms. Schultz. As he arrived back at the Schultz residence, he noticed a different dog with a black coat barking at him, so he did not get out of the truck and come to the door again, instead honking for a few minutes before Ms. Schultz came out. Ex. A2.
7. He showed Ms. Schultz Piper's bite marks on his leg, and she said she could see that. Ms. Schultz asked him if he needed medical attention, adding that it did not look like he needed stitches. He felt like that it was wrong for her to minimize things that way. He then asked for her homeowner's insurance information so he could go to the doctor. Ms. Schultz was cordial and gave him her phone number, first and last name, and address, but she was uncomfortable giving him additional information—a decision he said he respected.

8. Mr. Guerrero left and went to the Overlake Clinic in Issaquah, where he waited two hours to receive a tetanus shot and antibiotics. Because he had gotten a tetanus shot, he did not see a real need to pick up the antibiotics. He finished his deliveries with difficulty, due to the pain, and felt some pain the rest the week.
9. After returning from vacation, he learned that a coworker that had been bitten by a dog on a delivery to the Schultz's street. Concerned that the other biter may have been a Schultz dog, Mr. Guerrero filed a complaint.<sup>1</sup> He felt a safety concern for other delivery drivers that may have larger vehicles and may be unable to drive through the narrow bridge to the Schultz residence, thus having to park before the bridge and walk into the neighborhood.
10. Mr. Guerrero explained that in 2006 he had surgery on his left knee that left incisions and scarring. Ex. D3. In response to Ms. Schultz's testimony that he concocted the dog bite, he argues that would not have benefited him because, as a delivery driver, if he loses time in his route, it rolls over into this lunch and makes for a longer day. He would not have made up a dog bite and ruin his day. Mr. Guerrero filed a personal injury claim to prevent a similar incident to happen to him or anyone else again. He is fearful of dogs after this incident, especially as a delivery driver.

*Testimony of Phoebe Schultz*

11. Ms. Schultz believes that Mr. Guerrero's statement in his complaint was false. When she signed for the package, at no point during that first encounter with Mr. Guerrero did he mention to her that he had been bitten. He walked away and was not limping. Ex. A1. Mr. Guerrero came back thirty minutes later and told her that Piper bit him. He showed her a red mark on top of his right thigh under his shorts. He never showed her his knee or left leg. Ms. Schultz asked him if he was bleeding or injured and whether he needed medical attention; he declined.
12. Ms. Schultz theorizes that Mr. Guerrero was coached by his supervisor to return and request her information. She believes that Mr. Guerrero concocted the dog bite entirely. As Mr. Guerrero obtained a personal injury lawyer, she believes that he is taking advantage of this situation for financial gains.
13. Since the incident, Ms. Schultz built a pet enclosure in her yard.

Legal Standards

14. Animal Services asserts that Piper was unaltered (now amended to altered) and unlicensed as of March 24, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered. Ms. Schultz has since licensed Piper; where an individual has duly licensed a pet after the violation but before our hearing, we have never eliminated—but we have sometimes reduced—the penalty.

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<sup>1</sup> We allowed in the testimony about the coworker's statement not for the truth of what it asserted (that a Schultz dog had actually bitten anyone) but for impression the statement made on Mr. Guerrero.

15. More seriously, Animal Services asserts that Piper 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. Ms. Schultz disputes this.
16. 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

17. We first thought Ms. Schultz’s claim that Mr. Guerrero concocted the injury (or was injured somewhere else and tried to blame that on Piper) had more weight than the usual conspiracy theories we often entertain; the photos Mr. Guerrero submitted from well after the event showed a long scar inconsistent with the pinprick bite marks in the initial photo. *Compare* Ex. D3 at 001-03 *with* Ex. D5 at 001. We thought Mr. Guerrero was attempting to attribute the healed gash to Piper. However, Mr. Guerrero clarified at hearing that no, the scar was from an unrelated, earlier knee surgery, not from Piper.
18. We hear witnesses embellish or fabricate many things under oath. However, there was nothing dramatic about Mr. Guerrero’s testimony. If he was looking to build a claim, why not put on a show for Ms. Schultz that day—double over and scream, then pitch her a story of excruciating suffering? If he was going to the trouble of jabbing himself in a way that looks remarkably like a dog bite, at least do it right and get some blood to stream down for dramatic effect—a mild bite with small pricks would not do much for a jury. If he wanted to make a case for real damages, maybe assert the bite to his repaired knee did something to exacerbate that earlier, much more serious injury. In any event, certainly do not admit that he was not worried enough about the bite that day to even bother picking up antibiotics. And, for gosh sakes, definitely do not say the real pain only lasted the rest of that day and that by the end of the week the pain was behind him.
19. Certainly, Mr. Guerrero’s personal injury claim, with alleged mental suffering, gives us pause, for it gives Mr. Guerrero a motive. But the basic narrative that, after being bitten while making a delivery, the driver found it stressful or difficult to resume delivery work, is in keeping with what past delivery drivers have testified that they experienced post-bite, albeit typically after having more serious bites than the minor one Piper inflicted. We recall one driver—who did *not* seek any compensation—testifying that he had left the delivery field entirely, because it was too difficult to resume approaching houses after having been bitten on the job. And there too, Mr. Guerrero has a consistent narrative—he was upset because Ms. Schultz brushed him off that day, then he really got riled up after hearing another dog had bitten another delivery driver at or near the Schultz

property.<sup>2</sup> (Ms. Schultz's accusatory and dismissive attitude to Mr. Guerrero at the hearing may make settling the claim harder for her; in hindsight it was not the wisest strategy.)

20. In the end, Mr. Guerrero is either (a) a really ineffective personal injury scammer, or (b) just a delivery guy who got bit doing his job, and in the stress of the moment Ms. Schultz (who was still visibly stressed out at our hearing) mis-remembered Mr. Guerrero showing her his other leg. We find the second scenario far more probable. And, unlike the criminal arena, where proof beyond a reasonable doubt is the standard, we apply a more probable than not standard. More probably than not (significantly more probably than not, in fact) Piper bit Mr. Guerrero.
21. The other crucial issue is how Piper came to bite Mr. Guerrero. Mr. Guerrero agreed that, after seeing Piper a good distance behind him and hearing Ms. Schultz's daughter callout for Piper, he did not notice Piper again until Piper actually bit him. We find Ms. Schultz's narrative—that her daughter went out, retrieved Piper, and brought him inside, passing Mr. Guerrero who was standing just to the side of the door—the most probable. And as the daughter pulled Piper past Mr. Guerrero, Piper bit Mr. Guerrero.
22. Applying those facts to the controlling legal standard, Piper performed an act endangering the safety of a person, biting someone doing nothing more provocative than talking calmly to Ms. Schultz as he got her signature on a package she had ordered.
23. The basic fact pattern here—a dog circles around a visitor, then comes up and bites them from behind—is one we have encountered multiple times before. We have almost always found that sufficient proof that the dog constitutes a danger to persons lawfully on the animal's premises. And we would uphold Piper's vicious designation here, but for the key distinction: Piper did *not* come at Mr. Guerrero at all. Instead, Piper remained a good distance from Mr. Guerrero until the daughter pulled Piper right by Mr. Guerrero—a visitor Piper already feared. Only as the daughter dragged Piper past Mr. Guerrero did Piper bite him. And the bite was only a minor one. On these fairly unique facts, we do not find that Animal Services has proven that Piper constitutes a danger.
24. As to the licensing violation, the penalty for an unlicensed but altered dog (\$125) is half that of an *unaltered* one (\$250). And where an owner licenses the dog between the time of the violation and our hearing, we typically reduce the licensing penalty.

#### DECISION:

1. We overturn Piper's viciousness designation.
2. We reduce the licensing penalty to \$60. Unless we have misunderstood something, because Ms. Schultz overpaid for an annual license (paying \$60, when an altered license is \$30), it would appear that the sum total Ms. Schultz owes Animal Services is \$30.

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<sup>2</sup> Again, whether Piper or another Schultz dog *actually* has a history of aggression is irrelevant to the impression the coworker's story made on Mr. Guerrero.

ORDERED June 2, 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 *July 4, 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 MAY 19, 2022, HEARING IN THE APPEAL OF PHOEBE SCHULTZ, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V2203043-A22001474**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Joshua Guerrero, and Phoebe Schultz. 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 March 24, 2022, incident by Joshua Guerrero, dated March 25, 2022
Exhibit no. D3	Photograph of injury taken March 25
Exhibit no. D4	RASKC investigation report no. A22001474
Exhibit no. D5	Photograph of injury taken March 29
Exhibit no. D6	Notice of violation no. V2203043-A22001474, issued March 30, 2022
Exhibit no. D7	Appeal, received April 8, 2022
Exhibit no. D8	Map of subject area

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

Exhibit no. A1	Video - Ring_FrontDoor_20220324_1044
Exhibit no. A2	Video - Ring_WaterShed_20220324_1117

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V2203043-A22001474**

**PHOEBE SCHULTZ**

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 June 2, 2022.



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Jessica Oscoy  
Office Manager

**Eykel, Chelsea**

Regional Animal Services of King County

**Guerrero, Joshua**

Hardcopy

**Schultz, Phoebe**

Hardcopy