

January 10, 2023

**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. **V22013670-A22003913**

COELEEN KENT

Animal Services Enforcement Appeal

Activity no.: A22003913

Appellant: **Coeleen Kent**

North Bend, WA 98045

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Coeleen Kent appeals notice and order involving her two dogs. 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 Sylvie's viciousness designation and compliance order, overturn Sylvie's vaccination violation, and sustain Sylvie and Culley's licensing violation but reduce the licensing penalty.

Background

2. On August 3, 2022, Animal Services issued a violation notice to Coeleen Kent for her dog, Culley, being unlicensed and unaltered, and her other dog, Sylvie, being unlicensed and unaltered, with no rabies vaccination, qualifying as vicious, and needing to be confined. Ex. D6.
3. After a dispute about service, Animal Services reissued the violation on October 19. Ex. D8. Ms. Kent timely appealed the second notice on October 28. Ex. D10. We went to hearing on January 5, 2023.

Hearing Testimony

Testimony of Bryce Kaestner

4. Bryce Kaestner testified that on July 21 he picked up his mail and notice he had received a letter addressed to Ms. Kent. This was the first time he had received mail addressed to her. There were previous issues between him and Ms. Kent, so Mr. Kaestner decided he would take the opportunity to discuss those when he brought her the mail.
5. As Mr. Kaestner walked up Ms. Kent's driveway, her dogs barked at him. He had met the older dog [Culley] before, and Culley was never aggressive towards him. When he was about halfway up the driveway, he stopped and let the dogs come to him and sniff him. The dogs were barking, and Ms. Kent was calling for the dogs. Ms. Kent's younger dog [Sylvie] turned around and started walking toward Ms. Kent.
6. Mr. Kaestner waived the piece of mail in the air and told her he had mail for her. He continued to walk up the driveway, when Sylvie turned around, aggressively barked at him, and then bit him hard on his right thigh. This was the worst bite, and it punctured the skin.
7. Mr. Kaestner stopped and told Ms. Kent that her dog bit him. Sylvie then bit him twice after that: once on the left leg, which did not puncture the skin but left bruising, and once on the right calve, which punctured the skin. Sylvie bit him two more times, but those did not leave any lasting marks. In total Sylvie bit him five times. Mr. Kaestner was wearing Carhartts, which are a thicker material.
8. He told Ms. Kent that Sylvie had bit him multiple times. Ms. Kent did not say anything to him; she only called for her dogs. When Ms. Kent had Sylvie by the collar, Mr. Kaestner continued to walk up. He told her that he was frustrated about her dog biting him multiple times. He has had issues with Ms. Kent being aggressive towards his dogs; she hit his dog with a stick and fired a gun. He handed Ms. Kent her mail and left the property.
9. Later that day, Mr. Kaestner sent Ms. Kent a text message with photos of the bite. He never received a response from Ms. Kent. He also reached out to the property management company on July 27 regarding the incident, and he received no reply from

them. Mr. Kaestner is renting a house on Ms. Kent's property. At that point, Mr. Kaestner had felt enough pain at work, so he decided to reach out to Animal Services.

10. Mr. Kaestner took the photograph of his right thigh in exhibit D4-001 the day of the incident. He took the photograph of his right calf in exhibit D4-002 the day after the incident. Exhibit D4-003 is a photograph of his calf taken two days after the incident.

Testimony of Coeleen Kent

11. Coeleen Kent testified that her statement in her exhibits is the truth. Ex. A1, A2. She does not believe that Sylvie bit Mr. Kaestner. Mr. Kaestner has lied to Ms. Kent repeatedly. Mr. Kaestner has not paid his rent; he has lied about garbage. He has been a very difficult tenant.
12. On the day of the incident Ms. Kent was sunning in her yard with her dogs, who started barking. Ms. Kent saw a man walking up her driveway, so she put her shirt on. She did not have shoes on. She got her dogs to come to her. Mr. Kaestner said something about a letter, and then he started to yell at her. He was yelling at her about a previous incident with their sons and a gun in the woods. She just stood there and waited until he left.
13. Ms. Kent did not see Sylvie bite Mr. Kaestner and he never said anything to her about a bite. She did not see Sylvie circle him or see Mr. Kaestner react as if he was bitten. Later that day she received a text with photos from Mr. Kaestner; she did not respond to it. She does most of her communication with Mr. Kaestner through the property management company, and they never told her that he claimed he was bit.

Issues and Standards

14. Were Sylvie and/or Culley unaltered and unlicensed as of July 21, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered? What is the appropriate penalty?
15. Was Sylvie unvaccinated as of July 21, in violation of KCC 11.04.520, which requires all dogs and cats six months of age or older be vaccinated against rabies?
16. Does Sylvie 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; KCC 11.04.230.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

Tangential Issues

18. Ms. Kent and Chelsea Eykel offered conflicting testimony about events surrounding delivery and receipt of the first notice and order. Those were relevant to *Sgt. Eykel's* assessment that Ms. Kent was not credible, but we have to independently assess credibility. And even assuming that Ms. Kent's account of what she received or did not receive and what she said or did not say to Sgt. Eykel was 100% accurate, it would not change our findings and conclusions below. So, we did not clutter the above testimony summary with that.
19. Similarly, Ms. Kent and Mr. Kaestner discussed a pre-July 21 event involving their sons, guns, and Ms. Kent. That could have been relevant, because it might have been a dress rehearsal where we could gauge whether Ms. Kent or Mr. Kaestner's accounting was more credible, and thus we could make some inferences as to the contested events of July 21. There was nothing seemingly off with Ms. Kent's description, but Mr. Kaestner was not present, and so he was relying only his son's account. Whether or not Mr. Kaestner's *son* is more or less credible than Ms. Kent is irrelevant to our decision. That there was an argument involving armed people is relevant in terms of motive (bad blood) but the precise chronology of what happened that day does not impact our analysis. So, we did not clutter the above testimony summary with that either.

Viciousness

20. We have two starkly different versions of July 21.
21. Per Mr. Kaestner, he received mail addressed to her. It being the first time he received mail addressed to her residence—which is consistent with Ms. Kent's testimony that she only uses a P.O. Box and does not get mail at her house—he took the mail to her as an opportunity to talk with her about earlier conflicts. He walked up her driveway, stopped as the dogs approached and let them sniff him, only continuing to walk when the dogs returned to Ms. Kent. Sylvie then turned around and bit him five times, two of which were hard enough to break the skin and two of which did not cause any damage. He told Ms. Kent her dogs had bitten him, but she did not respond.
22. Per Ms. Kent, Sylvie did not bite Mr. Kaestner or even circle him, Mr. Kaestner never mentioned he was bit, and Mr. Kaestner made up a bite story to get back at her.
23. So where does that leave us? Conceivably, Mr. Kaestner jabbed himself or in some other way sustained injuries that look remarkably like the dog bites we have seen in hundreds of other cases. Certainly, there was a lot of bad blood between he and Ms. Kent, which would have given him motivation to concoct or embellish a story. Yet there was nothing fantastical with his version of events—and we hear lots of witnesses embellish events. And his version was consistent across conversations with Animal Services, his written complaints to the real estate company and Animal Services, and his testimony at hearing. Exs. D12, D2 at 003, n.4, D3 at 003.

24. We do not decide cases on a beyond-a-reasonable-doubt standard, but on a more-probable-than-not standard. And we find it more probable than not—actually, significantly more probable than not—that Sylvie bit Mr. Kaestner basically as he explained it and as the photos of Sylvie’s two bites that broke his skin, even though his thick Carhartts,¹ illustrate.
25. That does not necessarily mean Ms. Kent is not being truthful when she says she did not see the bites. We have reviewed over a thousand animal-related appeals. It is not uncommon, even in hearings where the fact of a bite is not in dispute, that an eyewitness standing right there later acknowledges not actually seeing a bite. Sometimes even the *victim* acknowledges not immediately noticing they had been bitten. It is a little odd that she would not have seen any of the bites, but she apparently did not even notice Sylvie at Mr. Kaestner at all, and she was flustered by his approach, especially given she was initially shirtless and shoeless and the past bad blood.
26. Although Ms. Kent did not raise provocation (because she was adamant that Sylvie did not bite Mr. Kaestner at all) before upholding a viciousness designation we want to satisfy ourselves of that, as (per the code criteria noted above) provoked bites do not qualify.
27. It is conceivable Mr. Kaestner started yelling at Ms. Kent before Sylvie bit him. That would make sense if Mr. Kaestner had, say, come over hot directly after the gun incident. But it seems highly improbable that he used receiving mail as an opportunity to approach her—which matches Ms. Kent’s testimony that he did bring her a piece of mail, even if she argued he should not have done that—and yet started yelling at Ms. Kent before Sylvie accosted him. Even if he had started yelling, that probably would not qualify as legal provocation for multiple bites, but that is an academic question, because, more likely than not, Mr. Kaestner only shouted *after* Sylvie bit him. Biting Mr. Kaestner more than once, let alone five times, was grossly disproportionate to any incitement Mr. Kaestner walking up the driveway created and was in no sense legal provocation.²
28. Animals Services has met its burden of showing that Sylvie meets the code criteria for a vicious animal. We sustain that violation.

Other Items

29. As to the vaccination, if Ms. Kent responded to Animal Services’ door hanger and provided Animal Services with Culley’s vaccination history, the process would have been

¹ In one of the odder moments of the hearing, Ms. Kent questioned why Mr. Kaestner would wear Carhartts; we take judicial notice that Carhartt outerwear are fairly ubiquitous among trade workers.

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.

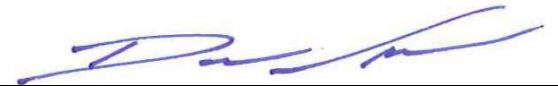
streamlined. But in any event, Sylvie was vaccinated as of July 21, and so there was no vaccination violation. Ex. D10 at 004.

30. As to licensing, if Ms. Kaestner had responded to Animal Services' door hanger, Animal Services might not have issued a licensing violation at all. In any event, that did not happen, and there is no question that neither dog was licensed on July 21. They were, however, altered, meaning the penalty should have been assessed at \$125 per each dog, not \$250. Ex. D10 at 003-04; KCC 11.04.035.C.5. Where an animal is not licensed at date of the violation but the owner licenses the animal before our hearing, we typically reduce the penalty amount; we do so here as well.

DECISION:

1. We uphold Sylvie's viciousness violation, confinement order, and \$500 penalty.
2. We overturn Sylvie's vaccination violation and \$50 penalty.
3. We uphold the licensing violation for each dog. However, both dogs were altered, meaning the licensing-related penalties should have totaled \$250 (not \$500). And because Ms. Kent licensed both dogs before hearing, we reduce the \$250 penalty to \$150.

ORDERED January 10, 2023.



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 *February 9, 2023*. 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 JANUARY 5, 2023, HEARING IN THE APPEAL OF
COELEEN KENT, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V22013670-A22003913**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Bryce Kaestner, and Coeleen Kent. 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. A22003913
Exhibit no. D3	Online Complaint form of July 21, 2022, incident by Bryce Kaestner, dated July 27, 2022
Exhibit no. D4	Photograph of Mr. Kaestner's injuries
Exhibit no. D5	Photograph taken by Officer Wilcox 6 days later
Exhibit no. D6	Notice of violation no. V22013394-A22003913, issued August 3, 2022
Exhibit no. D7	USPS tracking
Exhibit no. D8	Notice of violation no. V22013670-A22003913, issued October 19, 2022
Exhibit no. D9	NVOC mailing/tracking history
Exhibit no. D10	Appeal, received October 28, 2022
Exhibit no. D11	Map of subject area
Exhibit no. D12	Email: FW: Neighbor/landlords dog bite

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

Exhibit no. A1	Appeal
Exhibit no. A2	Letter

January 10, 2023

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013670-A22003913**

COELEEN KENT

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 January 10, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Kaestner, Bryce

Hardcopy

Kent, Coeleen

Hardcopy