

January 30, 2023

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

King County Courthouse
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Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V22013699-A22005727**

DAPHNE SUMPTER

Animal Services Enforcement Appeal

Activity no.: A22005727

Appellant: **Daphne Sumpter**

Bellevue, WA 98004

Telephone: [REDACTED]

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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. Daphne Sumpter appeals a notice and order asserting running-at-large and viciousness violations, assessing monetary penalties, and setting containment terms for her dog, Ranger. After hearing witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violations, reduce the monetary penalty, amend the compliance order to allow dog park usage, and provide an option for commuting Ranger's viciousness designation.

Background

2. In 2018, Animal Services issued a warning notice to Ms. Sumpter for Ranger trespassing on private property and running at large. Ex. D8.
3. On November 2, 2022, Animal Services issued a violation notice to Daphne Sumpter for her dog, Ranger, running at large, qualifying as vicious, and needing to be confined. Ex. D5. Ms. Sumpter timely appealed on November 26. Ex. D9. We went to hearing on January 13, 2023.

Hearing Testimony

Testimony of Karen Canon

4. Karen Canon testified that on October 24, 2022, she was walking west, approximately three feet into the street. She heard a dog [Ranger] bark and then growl, and suddenly Ranger was at her legs. Ms. Canon did not see Ranger before he was at her feet.
5. Ms. Canon started kicking and yelling. Ranger was snapping and nipping at her feet. Ranger did not physically bite her leg, though she remembered Ranger tugging at her pant legs. Ms. Canon is 72 years old, and she was worried about falling. She was mostly focused on maintaining her balance and not focusing on Ranger. Ms. Canon was moving from side-to-side and flailing her arms to try to look bigger. She also kicked towards Ranger to keep him back.
6. The owner [Ms. Sumpter] called Ranger and got a hold of him. Ms. Canon believes it did not take long for Ranger to respond to Ms. Sumpter, but Ranger was constantly at her feet. Since Ranger was barking, growling, and then nipping, Ms. Canon interpreted that as an attack, and not Ranger playing.
7. Ms. Canon started to gather herself, but Ranger circled back and immediately lunged at her upper body. Ranger was physically coming at her repeatedly. She had to push off Ranger with her right arm and protect her face with her left arm. Ms. Canon has a vivid memory of Ranger's open mouth about a foot away from her face. She has never seen a dog do something like that before. Throughout this incident, Ms. Sumpter was calling for Ranger.
8. Ranger finally responded to Ms. Sumpter and returned to her. Ms. Sumpter put Ranger in a car in the driveway. Ms. Canon said she thought she might have been bitten, and Ms. Sumpter asked to see it. Ms. Canon's upper left arm was hurting. She did not feel any moisture on her fleece jacket, and she did not feel any bite marks under her shirt. She felt a small bump/red mark on her skin. Ex. D4. It never bled. She did not see any holes in her jacket, shirt, or pants. At first Ms. Canon thought she was bit because the contact hurt, but she is now fairly confident that Ranger did not bite her. She is certain that the bruise on the upper left arm is from Ranger.
9. Ms. Canon went to Animal Services because she does not want a child to be hurt by the dog. Ms. Canon is comfortable around dogs; she had a Pitbull mix for a number of years.

When she played with her dog in the past, when its head hit Ms. Canon, it would hurt (just like Ranger's). She has never had a dog biting at her feet before, like how Ranger did.

Testimony of Daphne Sumpter

10. Daphne Sumpter testified that Ranger is a seven-year-old Labrador retriever who is admittedly a jumpy dog. He is friendly and exuberant; he is interactive when he wants to play. Ms. Sumpter has contacted a trainer to work with Ranger to stop jumping.
11. On the day of the incident, Ms. Sumpter tried to walk Ranger to her car in the driveway. She has a spinal-cord injury, which causes her to lose grip of things sometimes. Ms. Sumpter wished she had Ranger on a leash, but instead she only had him by the collar.
12. Ranger slipped from her grip and ran to the edge of her property or to the road, and approached Ms. Canon. Ranger was barking and jumping around, like how he does when he wants to engage with people. Ranger was leaping, not lunging. Ms. Sumpter did not recall seeing Ranger nip, but there was a lot of adrenaline. She understands that people could be scared of Ranger because he is a big, dark colored dog. When Ranger first approached Ms. Canon, she was yelling and waving her arms. Ms. Sumpter does not use this as an excuse for Ranger, but she knows that he gets riled up, more jumpy, and approaches instead of retreats, when people raise their arms and yell.
13. Ms. Sumpter called Ranger back, and it took him a minute to return to her. When Ranger was heading back to Ms. Sumpter, he turned around back to Ms. Canon, and Ms. Sumpter called him again, and he then returned to Ms. Sumpter. Ms. Sumpter does not remember Ranger barking at Ms. Canon's face, but she remembers him trying to approach Ms. Canon again, and she remembers calling Ranger again. She does not recall a second aggressive incident. She then put Ranger in her house. Ms. Sumpter then checked on Ms. Canon to see if she was okay.
14. Ranger has never attacked anyone, but he does go up to people and jump and want to play. She brings him to dog parks where she knows people are used to dogs approaching. She understands the concern of falling when you are on a walk on the street. Ms. Sumpter's other dog just died, so she is now able to focus more on Ranger.
15. Ms. Sumpter believes Ranger's issues are only around her home. She does not think what he does is right, but she does not believe he is being aggressive. She is training Ranger to stay back and not jump when people enter her house.
16. In the 2018 event, the neighbor involved is very uncomfortable with big dogs. She picked up her small dog in the air and started screaming. Also, Ms. Sumpter has two kids and students living at her house, so occasionally her dogs have gotten out. Ms. Sumpter lets Ranger out in her fenced back yard. She now puts Ranger on a leash when she brings him to the front yard. She generally has good voice control with Ranger but now she adapts considering the incident.

Legal Standards

17. Was Ranger “running at large” on October 24, defined as “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control” and “under control” itself including the need to be “restrained from approaching any bystander or other animal” when “off the premises of the owner”? BMC 8.04.060.W, .AA; .300.B.
18. Does Ranger qualify as “vicious,” defined as, “performing the act of... 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 “[a]ny 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” qualifying as a nuisance? BMC 8.04.060.BB, .300.H.
19. 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

20. Both witnesses were credible. Ms. Canon had the closer and more unobstructed view, so to the extent there is a discrepancy, we adopt her version of events. Essentially, Ranger broke free from Ms. Sumpter and charged off his property at Ms. Canon as she walked into the street (meeting the requirements for a running-at-large violation). Ranger nipped at her feet but did not actually bite Ms. Canon, as Ms. Canon kicked and moved side-to-side to avoid him while she tried to maintain her balance and yelled at him to stop.
21. Ranger briefly returned towards Ms. Sumpter, but then circled back and came at Ms. Canon again, this time lunging at her upper body. Ms. Canon tried to push off Ranger with her right arm while protecting her face with her left arm. Ranger bruised Ms. Cannon’s arm but did not actually bite her. Despite Ms. Cannon’s defensive actions, Ranger’s open mouth got within a foot of her face. Ranger finally returned to Ms. Sumpter for good.
22. Biting a person (along with attacking a person or animal) without provocation is one of the two *examples* the code calls out as explicitly meeting the “vicious” definition. And it is much easier for Animal Services to justify a viciousness designation when an unprovoked bite is involved. But the basic touchstone of “vicious” is performing an unprovoked act endangering a person’s safety. BMC 8.04.060.BB. There is nothing objectively provocative about Ms. Canon walking in the street or trying to defend herself from a charging Ranger. Even assuming Ranger would not have actually bit Ms. Canon if she had not taken evasive measures, Ranger certainly endangered Ms. Cannon’s safety on October 24 (regardless of what his intent was). He easily could have knocked her down if she had not been so nimble for her age, and at 72 there is no such thing as harmlessly getting knocked to the ground.

23. In addition to a vicious act, the code also requires a showing that the animal constitutes a danger to safety. BMC 8.04.300.H. Occasionally, when the endangering act is at the low end of the spectrum (not involving bite, or it was a relatively superficial bite), and there is some strange confluence of events showing the endangering act was a bizarre one-off, we have found extenuating circumstances such that we have overturned a viciousness designation despite a vicious act. Suppose it is the evening of July 4. A dog with no history of aggression has been exposed all day to loud firework explosions and is freaked out. A visitor slowly approaches the cowering dog to provide comfort. She gently extends her hand as she speaks soothingly to the dog. The dog, however, lashes out, and he bites her extended hand. Her actions would not qualify as legal provocation, yet given the totality of the circumstances, we might find that the dog does not constitute a danger and overturn the viciousness designation.

24. That is not our scenario here.

- We have not one, but two sets of endangering acts—going after Ms. Canon’s feet, and then later returning to go after her upper body. So even if, say, Ranger came out simply to play (as Ms. Sumpter thinks) and got an unexpected reaction from Ms. Canon, October 24 was not a situation where, after his initial interaction with Ms. Cannon’s feet thought, “Wow, that didn’t go like I anticipated,” and then left the scene. Instead, Ranger retreated but then came back full-force and went after Ms. Cannon’s upper body.
- Although we do not put much weight on the written complaint Ms. Sumpter’s neighbor submitted in 2018 (as she was not present at our hearing to testify under oath and subject to cross-examination, making her statements hearsay), the scenarios she described occurring in 2018 and 2017 are eerily similar to Ms. Cannon’s—Ranger bounding up and making contact with, though not biting, a person. Ex. D7.
- Ms. Sumpter acknowledged that Ranger does go up to people and jump, especially near the home or guests entering her home, something Ms. Canon and the neighbor experienced.

We thus uphold Ranger’s viciousness designation and compliance order. However, we make three caveats.

25. First, although there is some history of Ranger accidentally getting loose, that is not what happened on October 24. Ms. Sumpter had him by the collar to take him to the car, but with her pre-existing medical condition, he broke free from her grasp. A penalty reduction seems in order.

26. Second and as Sumpter noted, the compliance order terms would preclude her from taking Ranger to dog parks again. She testified that Ranger has had problems around the house, but not in dog parks; Ms. Sumpter certainly seemed credible to us. Animal Services agreed both that Ms. Sumpter was credible that the dog park scenario is different because dogs there are focused on other dogs, not on approaching people. We will modify the order terms to allow Ranger to run in dog parks.

27. Finally, when we uphold a viciousness violation, it is normally a permanent designation. And we are wary of that for a dog with no history of biting. It carries on, for instance, even if ownership changes. Plus, relatively few dogs bite people (unprovoked) but a larger percentage jump up on people. Additionally, Ms. Sumpter really needs professional training for Ranger; October 24 did not happen because she was not paying attention; she had a hold of Ranger, but was not able to hold on to a powerful dog bent on going at Ms. Canon or have sufficient voice control to recall him before he got to Ms. Canon.
28. Thus, we take the unusual (though not unprecedented) step of retaining jurisdiction over this case until the end of this calendar year, to see if Ranger can take and pass the Canine Good Citizen (CGG) training course. If, by **December 27, 2023**, Ms. Sumpter submits a CGG along with a request that we commute Ranger’s viciousness designation, we will consider that. If not, we will close the case for good on December 29.

DECISION:

1. We DENY Ms. Sumpter’s appeal as to the running-at-large and viciousness violations.
2. We REDUCE the otherwise-applicable penalty for the viciousness violation to \$200, meaning the total due is \$250.
3. We MODIFY Animal Services’ December 2, 2022, compliance order as follows (A. through D. being substantively unchanged, and E. being new):
 - A. Secure Ranger in a fenced area suitable for his size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.
 - B. Restrain Ranger using a leash no more than eight feet long, with a collar or harness, when taking Ranger off your property. A competent and capable person must handle Ranger at all times when attended outside.
 - C. If not already completed, microchip Ranger and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **February 13, 2022**.
 - D. Keep Ranger current on his rabies vaccination.
 - E. Ranger is allowed to run in sanctioned off-leash dog parks, provided Ranger is leashed at all times when not in the car or in the fenced, off-leash area.
4. We RETAIN JURISDICTION until **December 27, 2023**. If on or before that date Ms. Sumpter submits a Canine Good Citizen (CGG) certificate, we will consider commuting Ranger’s viciousness designation.

ORDERED January 30, 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 as to Ranger's viciousness violation (amended) compliance order, and monetary penalty unless appealed to superior court by *March 1, 2023*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW. Today's decision is *not* final as it relates to potentially lifting the designation at the end of 2023.

MINUTES OF THE JANUARY 13, 2023, HEARING IN THE APPEAL OF DAPHNE SUMPTER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013699-A22005727

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Karen Canon, and Daphne Sumpter. 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 October 24, 2022, incident by Karen Cannon, dated October 27, 2022
Exhibit no. D3	RASKC investigation report no. A22005727
Exhibit no. D4	Photograph of Ms. Cannon's injury
Exhibit no. D5	Notice of violation no. V22013699-A22005727, issued November 2, 2022
Exhibit no. D6	RASKC investigation report no. A18004274
Exhibit no. D7	Complaint form of August 28, 2018, incident by Mary Pyrah, dated August 28, 2018
Exhibit no. D8	Warning Notice V18-8600
Exhibit no. D9	Appeal, received November 26, 2022
Exhibit no. D10	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013699-A22005727**

DAPHNE SUMPTER

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 30, 2023.



Lauren Olson
Legislative Secretary

Canon, Karen
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Sumpter, Daphne
Hardcopy