

August 28, 2023

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014275-A23003370**

TIANMIN SHI

Animal Services Enforcement Appeal

Activity no.: A23003370

Appellant: **Tianmi Shi**

[REDACTED]
Kenmore, WA 98028

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. Tianmin Shi appeals a notice and order citing his dog, Lulu, for running at large, being unlicensed, qualifying as vicious, and needing to be contained. 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 deny the appeal, except that we make two modifications to the licensing violation.

Background

2. On May 24, 2023, Animal Services issued violation notice V23014275-A23003370 to Tianmin Shi for his dog, Luna, being unlicensed unaltered, running at large, qualifying as vicious, and needing to be confined. Ex. D8. Mr. Shi appealed on June 18. Ex. D9. We went to hearing on August 15.

Hearing Testimony

Lance Roy Testimony

3. Lance Roy testified that he and his dog, Spark, had just picked up his ten-year-old son from the bus stop. They were talking with Mr. Derr and his children in front of the Derr property. Mr. Roy looked down and a German Shepherd [Luna] had Spark in her mouth and was shaking her head. There was no warning or growling before. Mr. Roy and Mr. Derr tried everything to get Luna off, but she would not let go. Mr. Derr grabbed Luna's scruff and twisted; Luna finally let go.
4. Luna was not wearing a collar, so Mr. Roy and Mr. Derr could not get a hold of her. Spark ran under a car and Luna circled the car, still trying to get Spark. Spark's leash had gotten stuck under the car tire. Mr. Roy tried to free Spark, but Spark did not let him, so Mr. Roy tried to keep Luna away. Mr. Derr (or Ms. Shi) got Luna, but Luna escaped again and continued to go after Spark. Mr. Derr retrieved Spark and put him in the bed of the truck. Mr. Derr and Ms. Shi were then able to get a hold of Luna.
5. Mr. Roy saw that Spark was bleeding and had a limp. Spark could not walk home, so Mr. Roy carried him. He brought Spark to an emergency vet. Spark received a lot of stitches on the front and back, both internal and external. One of the muscles was punctured; however, there did not seem to be any internal damage. Spark also needed two drainage tubes, including one with a pump. Spark stayed overnight at the emergency vet. The stitches eventually were removed, and Spark began playing again. Spark had a pocket of fluid which swelled; the vet gave him a shot and it went away. Spark seems to have recovered.
6. Every time Mr. Roy goes out, he is looking for an attacking dog. It was also a traumatic experience for Mr. Roy's son. Spark, who is thirteen pounds, is now barking in a way he was not before. However, Spark is okay with Lenny, the Derrs' dog.
7. Mr. Roy had seen Luna walked on leash prior to this incident, probably by Mr. Shi's girlfriend. He has seen Luna in her backyard, but she did not seem dangerous.

Brian Derr Testimony

8. Brian Derr testified that he had just picked up his six-year-old twins from the bus stop. He was in his driveway when he heard Mr. Roy in distress. He did not hear any barking or growling. Mr. Derr turned around and saw Mr. Roy hit Luna with a backpack to get her to release Spark. Mr. Derr then went over and tried to kick Luna to get her to release. None of that worked to disengage Luna, so Mr. Derr grabbed Luna's scruff and twisted.

Luna finally released, but it did not faze Luna. Mr. Derr grabbed Spark and put him in the bed of his truck. Luna circled the truck, in an attack mode, to get back to Spark. Mr. Derr continued to stop Luna's attack. Mr. Shi's mother came over, and Mr. Derr used his leash to get Luna under control. Mr. Shi's mother walked Luna home. However, Luna got out again, so Mr. Derr had to help wrangle Luna again.

9. The distance between the Shi garage and where the incident occurred in the Derr driveway is about 110 feet as the crow flies. Mr. Derr believes Mr. Shi's mother was present at the incident after he put Spark in the truck bed.

Nicole Derr Testimony

10. Nicole Derr testified that she was inside her house when she heard a commotion. She recognized Spark's sound. She went outside and saw Spark in the bed of the truck.
11. About one or two weeks after the incident, Ms. Derr pulled into her driveway with her daughter in the car and saw that Luna was loose. Luna seemed to be on the prowl. Ms. Derr corralled Luna and brought her back to her house.

Jacob Masen-Smith Testimony

12. Jacob Masen-Smith testified that he has seen Mr. Shi's mother walk Luna. A few times, he has seen Luna overpower the mother and aggressively approach him. Luna was lunging forward and not in a playful way. Mr. Masen-Smith was not attacked, but he was uncomfortable with the lack of control. He casually conveyed concerns to the mother about her lack of control.
13. Mr. Masen-Smith can see that the Shi fence is only a picket fence with some pallets on the side and is less than six feet tall. Mr. Masen-Smith is concerned about Luna and the inadequate fence.

Dan Corcoran Testimony

14. Dan Corcoran testified that his backyard shares a fence with Mr. Shi's yard. When anyone is in the Corcoran backyard, Luna is consistently and aggressively barking and pushing on the fence, making it wiggle.
15. After an incident his wife witnessed, Mr. Corcoran went to the Shi property twice to attempt to make contact, however both times no one was home. Mr. Corcoran's dog is often in his backyard. Luna will still bark and run against the fence even when it's just people in the yard.

Kelly Corcoran Testimony

16. Kelly Corcoran testified that she hears Luna barking and running into their fence. She began accompanying her twelve-pound dog outside to make sure Luna did not try to jump the fence. In March 2023, Ms. Corcoran went out with her dog when she saw Luna jumping. One time most of Luna's body got up and over the Shi fence. Ms. Corcoran

could see Luna’s torso and ribcage over the six-foot Corcoran fence. Ms. Corcoran brought her dog inside and asked her husband to speak with the Shis.

Tianmin Shi Testimony

17. Tianmin Shi testified that he was not present the day of the incident. That day, Mr. Shi brought Luna inside his house, but the door between the house and garage must have not closed all the way. Luna had gotten into the garage when his mother came home and opened the garage. It was Mr. Shi’s mistake in failing to close the door which led to Luna getting out. He does not think Luna should be punished for his mistake.
18. It is Mr. Shi’s understanding that his mother was present during the incident. Mr. Shi’s mother relayed to him that she saw Spark barking at Luna, which provoked Luna. Mr. Shi believes that his mother probably opened the garage using the remote while she was in the road in front of the house, so she was close to the incident. It was just a dog fight and Mr. Shi does not believe Luna is vicious. Luna has never had issues before this. Mr. Shi believes the incident was unfortunate. It is normal for Luna to run towards a barking dog.
19. Regarding Mr. Corcoran’s testimony, the Corcoran dog barks at Mr. Shi when he is in the backyard. Mr. Shi removes Luna from his yard when she barks. Luna is limited to a part of the yard, and she is actively supervised, and the yard has a small fence. Luna no longer has access to the area where the pallets are. Mr. Shi mostly exercises Luna on runs on trails.
20. Mr. Shi licensed Luna in the City of Seattle. Luna lives in Seattle and at his mother’s house. He did not know before our hearing that he needed to license Luna with King County.

Legal Standards

21. On May 16, was Luna in compliance with KCC 11.04.030.A, which requires all dogs eight weeks old and older that are harbored, kept or maintained in King County be licensed and registered?
22. On May 16, was Luna running at large, which in Kenmore means to be off the premises of the owner and not under the control of the owner by leash; provided, that an animal within an automobile or other vehicle of its owner shall be deemed to be upon the owner’s premises? Kenmore Code 6.10.020.A.
23. Does Luna 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 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.

24. 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

Viciousness

25. The facts here are disturbing. On May 16, Sparks was simply sitting out on the public sidewalk, in front of a different neighbor's house (Mr. Derr's). From a distance of over 100+ feet away, Luna charged out of the garage, seized Sparks, and shook him. Rather than immediately let go and retreat as Mr. Roy and then Mr. Derr tried to intervene, Luna continued her savage assault. Even Mr. Roy striking Luna with a heavy backpack and Mr. Derr kicking her did not deter her single-minded brutality. It took Mr. Derr twisting Luna's neck and restricting her oxygen supply to get her to release Sparks.
26. Even then, Luna would not be deterred, relentlessly trying to get back at her prey, including trying to burrow under the car to inflict more damage on a cowering Sparks. Yet still Luna was not done; after people managed to grab Luna and pull her back towards her house, Luna escaped and came back to inflict even more violence (though thankfully Sparks was safely in the truck bed by then). Luna did considerable damage, gashing Sparks, puncturing a muscle, creating a deep wound with an air pocket, caused a limp, and necessitated both internal (i.e., deep) and external stitches. Exs. D6-D7. It traumatized Sparks, the adults, and even a child.
27. Luna performed an act—several acts—endangering Sparks' safety on May 16, including attacking a domesticated animal. KCC 11.04.020.BB.
28. Mr. Shi asserts that Luna was provoked to act, though the only alleged source of provocation was the hearsay statement that his mom told him that Sparks was barking. His mom was not available to testify or answer questions—for example, did she hear Sparks barking *before* Luna charged out of the garage, or after? And that alleged statement contrasts with the sworn testimony of Mr. Derr and Mr. Roy that there was no barking by *either* dog until after Luna seized Sparks. But even if we assume that Sparks was barking on the sidewalk while Luna was still in the garage, that is nowhere close to legal provocation for anything that happened.
29. The “provocation” inquiry in animal jurisprudence focuses on how an average dog, neither unusually aggressive nor unusually docile, would react to an inciting act.¹ A dog barking in front of a different neighbor's house would not incite the average dog to leave the safety of its garage and charge 100-plus feet to attack another dog. And a key touchstone of courts' analyses is that “provocation” requires the dog's reaction to be

¹ *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)).

roughly proportional to the victim’s act.² So even if somehow Luna was justified in charging Sparks, the unrelenting violence she inflicted on Sparks was grossly disproportionate to any incitement Sparks’ barking could be said to have caused. Sparks was in no legal sense “provoked.”

30. That is not definitive, because in addition to the past tense “exhibited vicious propensities,” Animal Service must show that Luna “constitutes a danger” to people’s or their pets’ safety. KCC 11.04.230.H. While an unprovoked attack is typically enough to satisfy .230.H—after all, what is better evidence that a dog constitutes a danger than evidence that, given some set of circumstances not arising to legal provocation, a dog will attack another pet—in some appeals we have found extenuating circumstances such that we have overturned a viciousness designation even after an unprovoked endangering act. But those have been where, for instance, the endangering act is at the low end of the spectrum and represents an isolated showing of aggression.
31. May 16 was not that at all. The unrelenting nature of Luna’s attack—in the face of three adults trying desperately to get her to disengage—was at the high end of the viciousness spectrum. And while May 16, standing alone, would have been more than sufficient to uphold a KCC 11.04.230.H violation, unfortunately it was not a completely out-of-character event. Mr. Mason-Smith described Luna, while being walked by Ms. Shi, dragging her and lunging at him. Mr. Corcoran discussed numerous times Luna banged against the fence. And Ms. Corcoran described a time where Luna jumped so high as to get her rib cage poking over the top of the six-foot fence.
32. Animal Services easily meets its burden of proving that Luna qualifies as vicious.

Other Matters

33. We not uncommonly entertain appeals where an owner who did not actually witness the altercation, and whose personal observations of their dog have always been warm, files an appeal downplaying the incident. Mr. Shi’s appeal statement depicting the altercation as a dogfight and questioning whether Luna had been provoked was totally understandable. Ex. A9. However, sticking with that position even *after* hearing the live testimony about Luna’s brutal and sustained attack, showed a disappointing level of denial. May 16 was not a “dogfight”; it was a mauling.
34. Thus, we have concerns going forward about whether Mr. Shi really understands the gravity of what Luna did on May 16 or the danger she poses. But in any event, if Luna gets loose again, or otherwise is not in compliance with the terms set forth below in paragraph 2., the penalty will be another \$500—even if Luna does nothing aggressive that day. If there is additional violence, the consequences could be even worse. Because the Shi yard does not appear to be enclosed with a sufficiently secure and high fence, and with all passages padlocked to prevent accidental release, Luna is only allowed in the yard while being actively supervised. Plus, given Ms. Shi’s documented inability to control Luna on walks, Luna will need to be walked by an adult more capable of handling Luna.

² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

35. Mr. Shi did not dispute the running at large violation, so it stands.
36. Licensing is a different matter. First, because Luna was spayed, the maximum penalty would be \$125, not \$250. Second, because Luna was in King County (meaning unincorporated King County, plus the cities like Kenmore that contract with Animal Services) for more than thirty days,³ Luna needed a *County* animal license. KCC 11.04.030.A. Mr. Shi’s girlfriend did license Luna at the end of July, but in Seattle. Ex. A1. Seattle is not part of the Animal Services regulatory system—Seattle has its own system—but we completely get the confusion. If Mr. Shi or his girlfriend want Luna to live at both locations, he may need a County license (\$30) in addition to the Seattle license. Conversely, if Luna will simply be residing in Kenmore, they can transfer the Seattle license to King County for \$5, good for 12 months.
37. We will waive the licensing penalty so long as Luna is licensed in King County (either via a new license or via transferring the Seattle license) within the next month.⁴

DECISION:

1. We deny the appeal as to viciousness and running at large.
2. We modify Animal Services’ May 24, 2023, compliance order as follows:
 - A. Secure Luna in a fenced area suitable for her size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.
 - B. Restrain Luna using a leash no more than eight feet long, with a collar or harness, when taking Luna off your property. A competent and capable person—someone other than Ms. Shi—must handle Luna at all times when attended outside.
 - C. If not already completed, microchip Luna and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **September 27, 2023**.
 - D. Keep Luna current on her rabies vaccination.


³ In addition to unincorporated King County, the contract cites where the same legal standard applies are currently:

A.	Beaux Arts Village	B.	Bellevue	C.	Black Diamond
D.	Carnation	E.	Clyde Hill	F.	Covington
G.	Duvall	H.	Enumclaw	I.	Issaquah
J.	Kenmore	K.	Kent	L.	Lake Forest Park
M.	Maple Valley	N.	Mercer Island	O.	Newcastle
P.	North Bend	Q.	Redmond	R.	Sammamish
S.	SeaTac	T.	Shoreline	U.	Snoqualmie
V.	Tukwila	W.	Woodinville	X.	Yarrow Point

⁴ See <https://kingcounty.gov/depts/regional-animal-services/license-your-pet/purchase-renew-license.aspx>. Given that Luna appears to reside mostly full-time in Kenmore, we do not know whether Luna needs a Seattle license going forward. See SMC 9.25.05.

3. We uphold the licensing violation. However, Luna was spayed at the time, so the maximum penalty would be \$125. And if Luna gets licensed in King County by **September 27, 2023**, there is no licensing penalty.

ORDERED August 28, 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 *September 27, 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 AUGUST 15, 2023, HEARING IN THE APPEAL OF TIANMIN SHI, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V23014275-A23003370

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Lance Roy, Brian Derr, Nicole Derr, Jacob Masen-Smith, Dan Corcoran, Kelly Corcoran, and Tianmin Shi. 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 May 16, 2023, incident by Lance Roy, dated May 17, 2023
Exhibit no. D3	Statement from Brian Derr
Exhibit no. D4	Email from Masen-Smith household
Exhibit no. D5	RASKC investigation report no. A23003370
Exhibit no. D6	Photograph of Spark's injuries
Exhibit no. D7	Vet Record
Exhibit no. D8	Notice of violation no. V23014275-A23003370, issued May 24, 2023
Exhibit no. D9	Appeal, received June 18, 2023
Exhibit no. D10	Map of subject area

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

Exhibit no. A1	City of Seattle License
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August 28, 2023

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014275-A23003370**

TIANMIN SHI

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, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED August 28, 2023.



Lauren Olson
Legislative Secretary

Corcoran, Dan/Kelly

Hardcopy

Derr, Brian/Nicole

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Roy, Lance

Hardcopy

Shi, Tianmi

Hardcopy

Tiffany Masen-Smith, Jacob Smith

Hardcopy