

September 6, 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. **V23014282-A23003410**

HUANJIE WANG AND MARTHA HSUEH

Animal Services Enforcement Appeal

Activity no.: A23003410

Appellants: **Huanjie Wang and Martha Hsueh**

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

Overview

1. Huanjie Wang and Martha Hsueh challenge a Regional Animal Services of King County (Animal Services) notice and order for their dog, Tucker, running at large, qualifying as vicious, and needing to be confined. After hearing the witness testimonies and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violations but reduce the penalty.

Background

2. DC Ren, on behalf of his mother Lingyun Tian, filed a complaint for an incident involving Tucker on May 16. Ex. D2. A photograph of the injury was submitted. Ex. D4.
3. Animal Services issued a notice and order, which was timely appealed. Exs. D5 & D6. We held an August 29 hearing with a Mandarin interpreter.

Hearing Testimony

Lingyun Tian Testimony

4. On May 16, Ms. Tian took her grandson (Bicker) to the park. As they were crossing the park, they encountered the Hsuehs—Ms. Hsueh, her son (Eric), and her grandson (Luke). Eric was holding Tucker on a leash, while sitting on a bench. Luke approached Bicker and tried talking to him. Ms. Tian was sitting down. Ms. Hsueh tried talking with Bicker, but he was not understanding (his English being limited), so Ms. Tian walked over to them to answer their questions.
5. Because Ms. Tian's English was also limited, she and Bicker started walking away to go home. Then, Ms. Tian saw Tucker running towards Bicker when Tucker was about ten meters away from Bicker. As soon as Tucker got about five to six meters away, he stopped paying attention to Bicker. To protect Bicker, Ms. Tian got in front of Bicker and started kicking Tucker away; Tucker bit her right leg. Ms. Tian retreated back and Tucker bit her again on the right leg, near the same area. Tucker was not barking or growling.
6. Eric dragged Tucker away on his leash. Ms. Tian yelled that Tucker bit her. Since the Hsuehs did not respond, Ms. Tian left home with Bicker. Later, Ms. Tian was accompanied to the doctor. The doctor cleaned up her wound and gave Ms. Tian a tetanus shot.
7. Ms. Tian and Bicker have passed through that community park before to visit Mr. Ren's friends that live in that neighborhood. Ms. Tian understood that the park was private to the communities; her son's home is adjacent to the road next to the park. Ms. Tian detailed a long list of serious physical and emotional challenges she attributes to the bite.

DC Ren Testimony

8. Mr. Ren was at home during the incident. Ms. Tian arrived home about thirty minutes after the incident and recounted what occurred.

Martha Hsueh Testimony

9. At the outset Ms. Hsueh, her husband, son, and grandson (Luke), were walking along the path, not sitting. Her husband was walking Tucker. Bicker walked over to them to meet Luke, not the other way around. The toddlers mostly just looked at each other, and Ms. Hsueh asked Ms. Tian what her grandson's name was, and there was a brief conversation

about the name and how to spell it. Then, Ms. Tian and Bicker started walking away across the park's grassy area.

10. At that point, Mr. Hsueh tried passing the leash to his son, but the leash accidentally dropped. Tucker ran towards Mr. Tian and Bicker. When Ms. Hsueh saw Ms. Tian touching her leg, she apologized, but Ms. Tian did not hear, as she was looking down at her leg. Ms. Hsueh only saw Tucker touch Ms. Tian's leg once, not twice. Eric went to pick up Tucker from the grassy area.

Huanjie Wang Testimony

11. Mr. Wang adopted Tucker about four years ago and has never had an incident. Mr. Wang was not at the park on May 16. Mr. Wang believes that Tucker was running towards Ms. Tian and Bicker, but that did not mean Tucker was going to attack them. Mr. Wang believes that Ms. Tian's attempt at kicking Tucker away could have caused Tucker to bite; Tucker was also unfamiliar with Ms. Tian.
12. However, Mr. Wang has been cooperative and has taken care of medical costs for Ms. Tian. Mr. Wang believes that Ms. Tian is trying to use Mr. Wang's insurance for other purposes, other than the bite. Mr. Wang has security cameras that have recorded Ms. Tian returning to the community after the incident. There is a sign at the park, written in both English and Chinese, that states the park is private to the community and their guests. Guests should be accompanied by residents.
13. There were a couple of times when Mr. Wang's garage door was left open. If the persons do not make a move, Tucker just goes to them without biting.

Legal Standards

14. On May 16, was Tucker "running at large," meaning "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," with "under control" defined as "either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner"? KCC 11.04.020.W, .AA; .230.B
15. Does Tucker 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.
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

Our Facts

17. We did not find Ms. Tian nearly as credible a witness as Ms. Hsueh. To the extent that their versions of May 16 differ, Ms. Hsueh's version is significantly more likely to be correct. Thus, our facts are as follows.
18. Ms. Tian and Bicker were not just "passing by" the park as she swore to. Instead, she and Bicker were sitting *in* the park, despite the clearly marked sign—in English and Mandarin—that the park was available only to Belvedere residents and guests. Ms. Tian knew her son did not reside in Belvedere.
19. As Ms. Hsueh, her husband, son, grandson (Luke), and Tucker walked along the path at the edge of the park, Bicker approached them. As the two toddlers greeted each other, Ms. Hsueh asked Ms. Tian what her grandson's name was, and there was a brief conversation about the name. Then Ms. Tian and Bicker started walking away across the park's grassy area, as Ms. Hsueh marked up the map (exhibit D7) at hearing.
20. At that point, Ms. Hsueh's husband tried to pass Tucker's leash to her son, but it was dropped in the handoff. Tucker then ran at Ms. Tian and Bicker, who were standing roughly in a straight-line (i.e., Bicker was behind Ms. Tian from the charging Tucker). Ms. Tian attempted to place herself and her leg more directly in Tucker's path to Bicker. Tucker then bit Ms. Tian's leg once.
21. The bite was a relatively minor one, barely breaking the skin. We do not know what to make of the extensive physical and mental harm Ms. Tian blames on the bite. We have reviewed hundreds of dog bite cases, most involving lingering emotional, as well as some physical, impact. But we have never seen such a disconnect between the relatively minor bite here and the extensive and dramatic list of ills Ms. Tian blames on the bite. Even the most violent, gruesome attacks have typically not resulted in that level of claimed impact. It is an order of magnitude more disproportionate than any post-bite reaction we can recall in our entire animal case jurisprudence.

Application of Law to Facts

22. Mr. Wang's first line of defense is that because Ms. Tian and her grandson were trespassing at the time of the incident, they are not responsible.
23. That is probably correct as a matter of personal injury law. RCW 16.08.040(1) states that:

The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as

may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner’s knowledge of such viciousness.

And RCW 16.08.050 clarifies that:

A person is lawfully upon the private property of such owner within the meaning of RCW 16.08.040 when such person is upon the property of the owner with the express or implied consent of the owner: PROVIDED, That said consent shall not be presumed when the property of the owner is fenced or reasonably posted.

24. Ms. Tian and her grandson were in a private park, only open to Belvedere residents and guests. Neither she nor her grandson had anyone’s consent to be there; in fact, the park was posted to the contrary. Ms. Tian was not in a public place or lawfully in or on a private place at any point during the incident.
25. However, even if that would preclude Ms. Tian from recovering damages, the issue we have jurisdiction over today is whether or not *Tucker* qualifies as vicious under our code. Tucker performed an act endangering the safety of at least one person (Ms. Tian, if not also Bicker) when he charged and bit her.
26. Animal Services has to prove that that act was without legal provocation, which it easily does here. 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 And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be roughly proportional to the victim’s act.² Two toddlers looking at each other while the grandmas tried to converse was in no sense provocation for Tucker to tear across the field at them as they retreated. There was no testimony that, for example, Tucker was just approaching with a wagging tail, trying to explore and be friends; no, Tucker’s was an aggressive charge. And Ms. Tian raising a foot to defend herself or her grandson was not itself provocation; it was a proportionate defensive action against an already aggressive dog.³ Tucker meet’s KCC 11.04.020.BB definition of “vicious.”
27. That is not the end of the analysis, as the violation itself requires proof not only that the animal exhibited vicious propensities (which Tucker did on May 16) but also that he “constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.” KCC 11.04.020.230.H (*italics added*). An unprovoked bite 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 bite a person. However, in a select minority of appeals, such

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)).

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

³ *Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745 N.W.2d 824 (2008) (Victim’s response to dogs’ violent behaviors cannot be considered ‘provocation’ for the dogs biting victim); *Matter of Brooks v. Hemingway*, 107 Misc. 2d 190, 192-93, 433 N.Y.S.2d 551 (1980) (a “person need not wait till he or she is injured or maimed before taking defensive action against a menacing animal”); *Giandalone v. Zepieri*, 86 Misc. 2d 79, 80, 381 N.Y.S.2d 621 (1976) (where dog attacked first, victim’s action did not “provoke” dog).

as where two parties are passing each other and in that split second a dog nips, we have found the dog does not constitute a danger, despite being legally unprovoked. That is not our scenario. Tucker charged Ms. Tian and her grandson when they were a good distance off (see Ms. Hsueh's hand drawn map) and retreating still further away from the Hsueh's.

28. The danger to the safety of persons “off the animal’s premises or lawfully on the animal’s premises” does not add anything here. Ours was not a case where Tucker got a little too exuberant defending his home. The locus of the attack was in the Belvedere community’s park, and ours was not even a situation where Ms. Tian and her grandson trespassed into the park and approached the Hsueh family while the Hsuehs were in the park—instead Ms. Tian and her grandson were *already* in the park when the Hsuehs approached. And we have consistently treated areas such as an apartment’s common spaces (or in this case the Belvedere subdivision’s park) as not being the dog’s “premises.” Tucker’s behavior obviously was not influenced by the nuances of subdivision law and who was legally authorized to be in a common park area.
29. Tucker meets the code criteria for a viciousness designation. We sustain the violation.
30. In past cases where an owner showed that the animal did something despite (not due to a lack of) the owner’s responsible behavior and/or where the owner took steps after the violation to avoid a recurrence, we have often reduced the otherwise applicable penalty.
31. May 16 did not happen due to anything irresponsible the Hsuehs were doing. They had Tucker securely restrained on a leash. They were merely in the process of transferring the leash when the understandable happened—the leash dropped. Mr. Wang also took care of Ms. Tian’s initial medical costs. So, we reduce the penalty on that account.
32. It is unfortunate that, after the fact and even after hearing the responding officer’s May 20 suggestion that they seek out an animal behaviorist for a dog with such reactive tendencies (exhibit D3 at 003, n.1), Mr. Wang did not mention any training they have obtained for Tucker. (He seems somewhat in denial about Tucker’s aggression.) Such training could greatly reduce the risk of future attack if, for example, a leash gets dropped or a garage door is accidentally opened. And that apparently has not happened. So, we do not make a further reduction.

DECISION:

1. We uphold the running at large and viciousness violations.
2. We reduce the viciousness violation to \$250, dropping the total amount due to \$300.

ORDERED September 6, 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 *October 6, 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 29, 2023, HEARING IN THE APPEAL OF HUANJIE WANG AND MARTHA HSUEH, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V23014282-A23003410

David Spohr was the Hearing Examiner in this matter. Participating in the hearing Chelsea Eykel, Martha Hsueh, Huanjie Wang, DC Ren, and Lingyun Tian. 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 DC Ren, dated May 19, 2023
Exhibit no. D3	RASKC investigation report no. A23003410
Exhibit no. D4	Photograph of bite
Exhibit no. D5	Notice of violation no. V23014282-A23003410, issued May 31, 2023
Exhibit no. D6	Appeal, received June 8, 2023
Exhibit no. D7	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014282-A23003410**

HUANJIE WANG AND MARTHA HSUEH

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, 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 September 6, 2023.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Martha Hsueh, Huanjie Wang

Hardcopy

Ren, Dingcheng

Hardcopy

Tian, Lingyun