

December 15, 2023

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014744-A23005728**

ROSS SILBERFARB

Animal Services Enforcement Appeal

Activity no.: A23005723

Appellant: **Ross Silberfarb**

[REDACTED]
Renton, WA 98058

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
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. 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 Kota's potentially dangerous designation.

Background

2. On September 27, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V23014744-A23005728 to Ross Silberfarb for his dog, Kota, being unlicensed and qualifying as potentially dangerous. Exs. D10, D11. Mr. Silberfarb timely appealed. Ex. D12. We went to hearing on December 1.

Hearing Testimony

Kathryn Lenhardt Testimony

3. Kathryn Lenhardt testified that on September 20 she was on a walk with her leashed dog, Henry. They were across the street and two houses down from Mr. Silberfarb's house. Out of the corner of her eye she saw Kota, possibly coming out his gate; however, she is not sure exactly where Kota came from. Ms. Lenhardt stepped in front of Henry, put her arms out, and said "No!" loudly. The next thing she remembers is that Kota had knocked her to the ground and Kota attacked Henry. Kota plowed through her to get to Henry. It happened very fast and without warning. The two dogs were fighting over her head. Kota did not attempt to bite Ms. Lenhardt.
4. Ms. Lenhardt started screaming, and two of her neighbors came and went back inside to grab something to help break up the fight. Mr. Silberfarb then came outside and grabbed and pulled back Kota. Ms. Lenhardt was still sitting on the ground. Kota was growling at Ms. Lenhardt and Henry. She asked Mr. Silberfarb to bring Kota home. Mr. Silberfarb said he would pay the medical bills. Ms. Lenhardt said she would collect herself and come to his house to collect his information. Mr. Silberfarb picked up Kota and brought him home.
5. In the altercation, Henry received several wounds: a bloody paw, possibly from the sidewalk; one large laceration on his back; missing skin on his leg; a wound under his jaw; and another on his other leg. Ms. Lenhardt called her vet, who said they could bring Henry to the vet the following day. Henry received surgery and stitches.
6. Ms. Lenhardt's wrist was sprained, and she reinjured an old neck injury. She walks Henry twice a day, and she now has a panic attack almost every time because the incident was traumatic.
7. Ms. Lenhardt used to walk on the other side of the street from Mr. Silberfarb's house. Ms. Lenhardt did not walk Henry directly past Mr. Silberfarb's house because in the past, Kota has poked his head through the slats in the top of the fence and growled and barked at them. Mr. Silberfarb has now boarded up those holes in the fence. Kota is still able to put his upper body over the fence. Ex. D6.

Ross Silberfarb Testimony

8. Ross Silberfarb testified that he was not present at the time of the incident. He was about to head out when he went inside to grab his shoes. The gate did not latch shut, and Kota escaped. He heard dog noises and ran outside. He arrived at the scene and saw Kota and

Henry in a fight. Once he was close enough to know that Kota would respond to his voice command, he called Kota. Kota stopped, Mr. Silberfarb pulled Kota to about six feet away from Ms. Lenhardt, and everyone took a second to figure out what happened. Henry growled at Kota.

9. Kota sat between Mr. Silberfarb's legs while he spoke with Ms. Lenhardt. Once he arrived on the scene, there was no further aggression from Kota. Exs. A3, A4, A5. Mr. Silberfarb offered to pay for Henry's vet bills. Mr. Silberfarb brought Kota inside, and he went back outside. Ms. Lenhardt said she would come to his house after she collected herself. Ms. Lenhardt came to his house later that day with several people. Mr. Silberfarb said he would pay for Ms. Lenhardt's vet bills. There was no discussion about any injuries Ms. Lenhardt received. After the incident, he and Ms. Lenhardt exchanged texts. Ex. A2.
10. Ms. Lenhardt mentioned her worries regarding Kota putting his head between the slates in Mr. Silberfarb's fence. That weekend, Mr. Silberfarb covered all the holes in the fence. Kota did not leave the yard the day of the incident through the slates in the fence. Mr. Silberfarb purchased an auto shut latch for the gate. Ex. D12-004. He has never had a dog escape before.
11. Mr. Silberfarb noted that his yard is tiered. In exhibit D6, Kota is standing in the upper section of the yard and leaning on the lower section of the yard's fence. Mr. Silberfarb believes it is impossible for Kota to jump over the fence; however, he is completely okay with modifying the fence to make sure Kota cannot do that.
12. Kota is a large, 18-month dog. He goes to the dog park with no issues. Mr. Silberfarb does not believe Kota is potentially dangerous. He apologized for what happened to Ms. Lenhardt and Henry. Kota has wanted to play with Henry when he walks by. He does not believe Kota started the interaction.

Legal Standards

13. Mr. Silberfarb disputes that Kota meets the definition of "potentially dangerous animal," which means:
 - A. "Potentially dangerous animal" means any animal that when unprovoked: 1. Bites or inflicts injury on a human or domesticated animal; 2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack; 3. Has a known propensity, tendency, or disposition to attack, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or 4. Jointly engages, with one or more animals in conduct meeting subsections A.1., A.2., or A.3., of this section, in which case all animals are deemed potentially dangerous, absent an affirmative demonstration that a specific animal was not responsible for a qualifying act.

B. Regardless of provocation, an animal is a “potentially dangerous animal” if it enters onto private property without the consent of the owner or occupant and bites a human or animal or chases or approaches a person in a menacing fashion or apparent attitude of attack.

C. An animal shall not be declared a “potentially dangerous animal” if the threat, injury, or bite alleged to have been committed by the animal was sustained by a person who was at the time committing a willful trespass upon the premises occupied by the owner of the animal, or who was abusing or assaulting the animal, or who was committing, or attempting to commit a crime. This exclusion does not apply to actions taken in defense of oneself, other humans, animals, or property.

14. 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

15. On September 20, 2023, a gate to Mr. Silberfarb’s yard was left open and Kota was able to access the street where Ms. Lenhardt and her dog, Henry, were walking. Ms. Lenhardt and Henry were across the street and approximately two houses down from the Silberfarb house when they were approached by Kota. Kota knocked Ms. Lenhardt to the ground and Kota and Henry began fighting over her. During this altercation, Ms. Lenhardt was not bitten; however, reinjured an old neck injury and sprained her wrist. Henry sustained multiple severe injuries including: a hole in his leg, puncture wounds, and lacerations to his back, and jaw which required anesthesia and stitches. Mr. Silberfarb did not witness how the incident began and was only alerted to the situation by Ms. Lenhardt screaming for help and “dog noises”. Though Mr. Silberfarb does not refute anything that Ms. Lenhardt testified to, he insists that Kota was provoked somehow by Ms. Lenhardt and Henry.
16. KCC 11.01.350 states: “provocation” means “to torment, agitate, or harass an animal immediately before the attack, chase or menacing behavior. It does not include actions taken to defend oneself, other humans, animals or property. Further, in animal jurisprudence, reviewing courts focus 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

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)).

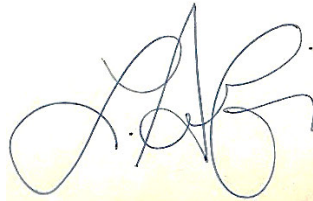
² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

17. Ms. Lenhardt simply walking her dog across and two houses down the street cannot be provocation under KCC 11.01.350. Walking dogs through a neighborhood is a well-accepted and common practice. Neighbors living closely in a residential neighborhood should expect that there will be others walking with dogs near their home. What is not expected is that a dog will escape his fence and attack passersby. We understand that gates sometimes fail or may be left open by human accident. However, we cannot find that an average dog, who found himself unsecured, would travel across and down the street, and attack another dog and their owner. Kota's action was grossly disproportional to Ms. Lenhardt's act of simply walking her dog. There is no indication that Ms. Lenhardt did anything to torment, agitate, or harass Kota by simply walking a distance away from the Silberfarb home.
18. Mr. Silberfarb asserted that Henry growling and making noises *after* being attacked and injured by Kota was somehow provocation. Further, Mr. Silberfarb asserted in his appeal statement that Kota is "big and young" and that "older male dogs look as him as a challenge to be overcome." Mr. Silberfarb's theory is a real reach. How would Mr. Silberfarb know how older male dogs (or any dog for that matter) view his dog? The defense employed by Mr. Silberfarb misses the statutory and jurisprudential mark in a consequential way and quite frankly, was a poor attempt at blame-shifting. This defense tactic was not well-received.
19. Mr. Silberfarb relied on several other irrelevant factors such as Henry's injuries not being "severe" because of the timeframe that Henry was seen by a vet and that Kota immediately disengaged when called. The severity of the injuries goes to whether an unprovoked bite qualifies as only "potentially dangerous" (our scenario) versus the harsher "dangerous" designation triggered when an animal inflicts severe injuries and requires a \$500,000 surety bond or liability insurance policy. *Compare* KCC 11.01.120 *with* KCC 11.01.320; KCC 11.04.285.B.7. And the statute and jurisprudence are clear and focus on the act of the dog rather than events that occurred after an attack. By the time an attack is completed, a dog either qualifies as "potentially dangerous" or it does not. In this case, we find that Kota's actions warrant the potentially dangerous designation.
20. We acknowledge the remedial measures that Mr. Silberfarb took by reconfiguring the locking mechanism on his gate to ensure that it automatically closes and covering the openings in the top of his fence where Kota was previously able to poke his head through. Kota has also been licensed since the incident. Due to Mr. Silberfarb's attention to this, we reduce the fine for the potentially dangerous dog violation from \$500 to \$300.
21. We also urge Mr. Silberfarb to make other modifications to his fence as Kota is still able to stand over the fence (as we saw in Exhibit D-6) with the top half of his body visible to passersby. The concern here is that Kota could breach the perimeter by jumping over the fence and onto the adjacent sidewalk.

DECISION:

1. We uphold the September 20, 2023, designation of potentially dangerous for Kota.
2. We reduce the potentially dangerous dog penalty from \$500 to \$300. Since Mr. Silberfarb licensed Luna, we reduce the licensing penalty from \$125 to \$50. The total penalty including the licensing fee is \$350.

ORDERED December 15, 2023.

A handwritten signature in black ink, appearing to read 'Leila Arefi', is positioned above a horizontal line. The signature is fluid and cursive.

Leila Arefi
Hearing Examiner *pro tem*

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 *January 15, 2024*. 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 DECEMBER 1, 2023, HEARING IN THE APPEAL OF ROSS
SILBERFARB, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V23014744-A23005728**

Leila Arefi was the Hearing Examiner *pro tem* in this matter. Participating in the hearing were Chelsea Eykel, Kathryn Lenhardt, and Ross Silberfarb. 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
Exhibit no. D2	RASKC investigation report no. A23005728
Exhibit no. D3	Online Complaint form of September 20, 2023, incident by Kathryn Lenhardt, dated September 24, 2023
Exhibit no. D4	Photograph of Henry’s injury
Exhibit no. D5	Vet bills
Exhibit no. D6	Photograph
Exhibit no. D7	Witness Statement from Marc Horn
Exhibit no. D8	Witness Statement from Soma Sekhar Karri
Exhibit no. D9	Witness Statement from Duane Ansel
Exhibit no. D10	Notice of violation no. V23014744-A23005728, issued September 27, 2023
Exhibit no. D11	Potentially Dangerous Animal Designation
Exhibit no. D12	Appeal, received October 11, 2023
Exhibit no. D13	Map of subject area

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

Exhibit no. A1	Rebuttal
Exhibit no. A2	Text Messages
Exhibit no. A3	Email chain
Exhibit no. A4	Email chain
Exhibit no. A5	Email chain

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014744-A23005728**

ROSS SILBERFARB

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 December 15, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Lenhardt, Kathryn

Hardcopy

Silberfarb, Ross

Hardcopy