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Washington Supreme Court

Ct. of Appeals Div. I Docket No. 72622-6-1

King Cy. Sup. Ct. Cause No. 14-2-20857-0KINTE

CLORRISSA ESTRELLA,

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STATE OF WASHINGTON

Plaintiff-Petitioner

-against-

KING COUNTY, et al.,

Defendants-Respondents.

PETITION FOR REVIEW (RAP 13.4)

ADAM P. KARP, ESQ.
ANIMAL LAW OFFICES
Attorney for Plaintiff-Petitioner
114 W. Magnolia St., Ste. 425
Bellingham, WA 98225
(888) 430-0001
WSBA No. 28622

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TABLE OF CONTENTS

I. IDENTIFY OF PETITIONER.....1

II. COURT OF APPEALS DECISION.....1

III. ISSUES PRESENTED FOR REVIEW1

IV. STATEMENT OF THE CASE.....2

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.....8

 1. Standard for Review – RAP 13.4(b)(1, 2, 4)8

 2. Speculative Evidence (RAP 13.4(b)(1, 2, 4)).....9

 3. Statutory Misconstruction (RAP 13.4(b)(1, 2, 4)15

VI. CONCLUSION.....20

TABLE OF AUTHORITIES

CASES

Guillen v. Contreras, 147 Wash.App. 326 (2008).....8

Hobbs v. Kent Cy. SPCA, Inc., 2011 WL 773448 (Del.Com.Pl.2011).....12, 13

In re Estate of Haviland, 161 Wash.App. 851 (2011)8

Internet Comm. & Entertainment Corp. v. State, 148 Wash.App. 795 (2009).....20

Leocal v. Ashcroft, 543 U.S. 1 (2004).....20

Morawek v. City of Bonney Lake, 337 P.3d 1097 (Wash.App.II, 2014).....9, 11

People v. Noga, 168 Misc.2d 131 (N.Y.App.1996).....12

State v. Ankney, 53 Wash.App. 393 (1989)15

State v. Franklin, 180 Wn.2d 371 (2014)14

State v. Jacobs, 154 Wn.2d 596 (2005)19

State v. Kilgore, 107 Wash.App. 160 (2001).....10

State v. McGee, 122 Wn.2d 783 (1993).....20

State v. Watson, 155 Wn.2d 574 (2005)8

Stone v. Chelan Cy. Sheriff's Dept., 110 Wn.2d 806 (1988)16

U.S. v. Plaza Health Labs., 3 F.3d 643 (2nd Cir.1993)20

U.S. v. Thompson/Center Arms Co., 504 U.S. 505 (1992)20

STATUTES AND REGULATIONS AND RULES

KCC 11.04.1908, 9

KCC 11.04.2009

KCC 11.04.230(H).....9

KCC 11.04.230(I)16

KCC 11.04.2609

I. IDENTITY OF PETITIONER

Clorrissa Estrella, through her attorney of record Adam P. Karp, makes this petition for review pursuant to RAP 13.4(b)(1, 2, and 4).

II. COURT OF APPEALS DECISION

Ms. Estrella seeks reversal of the Oct. 26, 2015 Court of Appeals *Unpublished Opinion (Exh. A)*, affirming King County Superior Court Judge John Chun's Oct. 13, 2014 *Order on Writ of Review*, as clarified by his Oct. 14, 2014 *Order Re: Motion for Clarification (Exh. B)*,¹ relative to review of the Jun. 30, 2014 *Decision* of the King County Board of Appeals (**Exh. C**), which, in turn, upheld the Mar. 3, 2014 *Notice of Violation and Order to Comply* issued by Regional Animal Services of King County (**Exh. D**).

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals disregard binding Supreme Court precedent and conflicting Court of Appeals precedent in relying on speculative evidence to uphold vicious animal public nuisance charges and a related confinement order?

2. Did the Court of Appeals disregard well-established principles of statutory construction in interpreting various provisions of Chapter 11.04

¹ Ms. Estrella does not challenge the court's finding and conclusion that the Defendant King County/Board denied her procedural due process as applied.

of the King County Code, which would have extensive civil and criminal repercussions for the citizens of King County, the most populous County in Washington?

IV. STATEMENT OF THE CASE

Defendant Regional Animal Services of King County (“RASKC”) issued Ms. Estrella a *Notice and Order of Violation with Order to Confine* (“NVOC”), alleging two violations of KCC 11.04.230(K), for which a fine of one hundred (\$100) dollars was levied, and two violations of KCC 11.04.230(H), for which a fine of one thousand (\$1000) dollars was levied. The Order also subjected her other dog, Cortana, to a confinement order per KCC 11.04.290.

The stated Date and time of violation(s) was “12/23/13 15:15” at “19034 RIDGE RD SW/ VASHON” wherein it was further alleged that:

On the above date and approximate time the 2 dogs owned by the defendant were seen trespassing on private property. The property owner saw the dogs inside his goat pen and 2 of his goats had been killed. Also dead in the yard was several of the complainant’s geese and many of the remaining animals had been injured.

RASKC held Ms. Estrella’s two dogs, Godric and Cortana, responsible.

At the contested hearing before the King County Board of Appeals, Ron Weston testified that at about 3:15 p.m. on Dec. 23, 2013, he saw two dogs in his cattle-fenced, one-fifth acre, goat enclosure with

dimensions of 100 by 75-80 feet. **VRP 7:9-15, 23:14-18.**² After closing a dutch door to his goat *pen*, a small structure situated in the much larger goat *enclosure* and within which were four or five unharmed goats were huddled (**VRP 8:3-8**), Mr. Weston drove to his house, retrieved a shotgun, and drove back to the enclosure. Ms. Estrella does not dispute that one of her dogs, Godric, was in the enclosure (but not the pen).

Mr. Weston then described Godric's demeanor, noting he was "still roaming around in the enclosure. I wasn't conscious of him barking or growling." Mr. Weston then "fired one shot," missing. When Godric "circled around and tried to come past him" to escape, Mr. Weston fired again, killing him, even though Godric "was trying to evade [him]" and not acting aggressively toward him or any other animal at the time. **VRP 9:11-21, 21:1-8.**

Importantly, no witness, including Mr. Weston, ever saw Godric or Cortana touch any of his animals that day. **VRP 14:25—15:3.** In fact, Mr. Weston's own statement to RASKC on Dec. 24, 2013 confirms it could *not* have been Cortana, for he claimed to be "certain" that the two dogs in his enclosure the day prior were the ones who killed his neighbor Gus Schairer's cat.³ Mr. Weston's statement also contended that he did not get

² The Verbatim Report of Proceedings ("VRP") is attached as **Exhibit E.**

³ Ms. Estrella submitted animal control records appended to her hearing brief

to the enclosure and first observe the dogs until 3:15 p.m. that day. **VRP 10-15.**

Walter Weston, the complainants' son, testified that on Dec. 23, 2013 he first saw two dogs in the goat enclosure from the family residence, a considerable distance away or certainly far enough to require Mr. Weston to drive. When Walter observed the aftermath, he saw "blood—lots of it." **VRP 25:1-2.** However, no witness saw any blood on Cortana or Godric. **VRP 21:15-20** (R. Weston saw no blood anywhere on the dogs); **VRP 33:24—34:8, 34:11-13** (Kellogg); see Ms. Estrella's offer of proof re: Thomas Ranada. Further, Walter Weston had never seen the dog he claimed to be Cortana prior to that day. **VRP 25:21-24.**⁴

On Dec. 23, 2013, Ms. Estrella lived with her boyfriend Leon Kellogg and two roommates, Cindy Moreno and Michael Didrickson. Mr. Kellogg testified that at about 9 a.m. on Dec. 23, 2013, he placed Godric and Cortana in a secure kennel on her property and then left for work. There had been no prior issues with its security. **VRP 30:2-13.** Neither dog had ever escaped prior to that day. **VRP 30:11-17.** He received a

demonstrating that the dogs responsible for killing the feline belonged to Dee Stoddard and her daughter, not Ms. Estrella. **CP 172-73, 178-83.** At hearing, Mr. Weston admitted that his statement identifying Ms. Estrella's dogs as the ones who attacked Mr. Schairer's cat "was inaccurate" and "incorrect." **VRP 16:24—17:5.**

⁴ Yet, he later identified her under highly questionable circumstances, i.e., "based on the photos that were posted online" by Ms. Estrella after RASKC accused Cortana of being involved. **VRP 25:25—26:3** (seeing photograph of only Godric and Cortana on a

panicked call from Ms. Estrella at about 1:45 p.m. stating that she came home to find the dogs gone. Mr. Kellogg returned home and began fixing the kennel when Cortana arrived at about 2 p.m. **VRP 31:7-13; VRP 38:11-18** (confirmed by Ms. Estrella). He immediately took Cortana inside and locked her in the room where she remained the rest of the night. He then went outside to continue fixing the enclosure. **VRP 31:13-19**. About two hours later he received a call from Ms. Estrella to meet her at the Weston property. He arrived to find Godric's body lying in front of a large tree, observing no feathers, blood, or defensive wounds. **VRP 33:24—34:8**. When he returned home he inspected Cortana as well, finding no signs of blood or feathers on her. **VRP 34:11-13**.

Ms. Estrella lived on Vashon Is. since 1996 and testified that loose dogs were a "common sight," including in the six months around the time of the incident. **VRP 35:12-18**. An animal caretaker, entrusted by her clients to walk dogs, care for cats and horses, and make private house-calls to animals all over Vashon, Ms. Estrella had a firm grasp of geography and animal movement patterns. **VRP 35:19—36:1**. At no time prior to Dec. 23, 2013 did Cortana or Godric ever escape or had been reported to show aggression to any animal or person. **VRP 36:2-9**. Indeed, she submitted photographs showing Godric peaceably in the presence of a

website prepared by Ms. Estrella to raise money for her appeal); **CP 325-329**.

raccoon and a mouse. **VRP 35:10-15; CP 193-198.**

While Mr. Kellogg left earlier in the morning, Ms. Estrella testified that she last saw her dogs at about 1 p.m., when leaving for work, at which time she put them in the kennel. While engaged in this activity, she heard a loud ruckus of agitated and scared geese honking from the Weston property. **VRP 36:16—37:5.** Ms. Estrella then drove off to care for four dogs and twelve cats, distribute medication and clean litter boxes, after which she returned home between 1:30 and 1:45 p.m. to find her dogs missing. **VRP 37:6-14.** Mr. Didrickson told her that her dogs escaped, that he put them back, and they escaped again. **VRP 37:15-19.**

Meanwhile, Ms. Estrella continued searching for Godric. Her cell phone lost service, but when regained, she noticed a voicemail from a woman down the street, prompting her to call and speak to Mrs. Weston. On reaching Mrs. Weston, she told Ms. Estrella that her “dog,” *not* “*dogs,*” killed their livestock. **VRP 39:19-25.** When Ms. Estrella arrived to the Westons’ property to find Godric with a bullet in his head, Mrs. Weston volunteered, “You know your dogs were involved in killing my neighbor’s cat last summer or ... a couple of summers ago[.]” **VRP 41:12-14.** Aside from the fact that Mr. Weston later recanted on this point, it was

simply not possible, as Cortana was not even alive.⁵

Testifying by declaration, Cindy Moreno stated that she saw Cortana and Godric break free from the kennel at about 1:30 p.m. and Cortana return at about 2:30 p.m. while Mr. Kellogg repaired it. **CP 176-77**. Ms. Estrella submitted declarations from several other individuals. All confirmed that neither Cortana nor Godric ever showed a vicious propensity.⁶

Procedural History

On May 21, 2014, the King County Board of Appeals conducted an evidentiary hearing on RASKC's Mar. 3, 2014 NVOC. On Jun. 30, 2014, it upheld the NVOC. **CP 5-9**. Ms. Estrella timely sought a writ of review before the King County Superior Court. **CP 1-4, 10-11**. The parties stipulated to issuance of the writ. **CP 13-14**. On Oct. 13, 2014, Judge Chun reversed and remanded for further proceedings by the Board, noting that it "deprived plaintiff of procedural due process." **CP 69-70**. Judge

⁵ Cortana was born Sept. 13, 2012.

⁶ For instance, see *Yelinek Decl.* (Godric would not even snarl at another living thing, would not chase cats, hide from puppies at times) [**CP 169-71**]; *Carey Decl.* (volunteer with Vashon Island Pet Protectors, testifying that Dee Stoddard, on same street as Westons, reported that the Stoddards' dogs were at large at least half a dozen times and that others reported them being at large "on at least a monthly basis"; that the Westons' dog was picked up and returned more than once after being at-large; and that since 2011, she received hundreds of calls from individuals seeing dogs at large on the island, including the generalized area near where the Westons live) [**CP 172-73**]; *Miksch Decl.* (Godric sweet, pleasant) [**CP 174-75**]; *Britz Decl.* (Godric showed no aggression toward livestock or chickens, though he had opportunity) [**CP 184-86**]; *Smith Decl.* (Godric

Chun issued an order on clarification as stated in **CP 71-72**. Thereafter, Ms. Estrella timely sought review as of right from the Court of Appeals. **CP 353-63**. On Oct. 26, 2015, the Court of Appeals affirmed and remanded. This petition for review timely followed.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Standard for Review – RAP 13.4(b)(1, 2, 4)

Issues of first impression that affect not only the parties at bar but potentially thousands of other daily interactions throughout this State, warrant review under RAP 13.4(b)(4). *State v. Watson*, 155 Wn.2d 574, 577 (2005).⁷ Where the decision of the Court of Appeals conflicts with another decision of the Court of Appeals or Supreme Court, grounds for review exist under RAP 13.4(b)(1 and 2). Two RAP 13.4(b) issues exist – crediting speculative evidence and improper application of rules of statutory construction.⁸

played with baby raccoon and bugs) [**CP 187-88**]; *Housholder Decl.* (Cortana’s gentle temperament) [**CP 189-90**].

⁷ Examples where the Court of Appeals has granted RAP 2.3(d)(3) review include *Guillen v. Contreras*, 147 Wash.App. 326, 330 (III, 2008)(noting matter was also of first impression regarding statutory interpretation); *In re Estate of Haviland*, 161 Wash.App. 851, 854 (I, 2011)(first impression).RAP 2.3(d)(3) serves as a rough analog to RAP 13.4(b)(4).

⁸ Code sections at issue follow:

11.04.190 Violations - Misdemeanor - Penalty. Any person who allows an animal to be maintained in violation of this chapter is guilty of a misdemeanor punishable by fine of not more than two hundred fifty dollars and/or imprisonment for a term not to exceed ninety days.

2. Speculative Evidence (RAP 13.4(b)(1, 2, 4)).

This issue sweeps beyond King County boundaries. Specifically, the Court of Appeals's analysis of the distinction between speculative evidence and admissible inference, particularly in the context of animals blamed for harm to others when the actual insult was never witnessed, will impact animal control and law enforcement applications statewide, promoting review under RAP 13.4(b)(4). Furthermore, such ruling against Ms. Estrella triggers RAP 13.4(b)(2) in that it conflicts with *Morawek v. City of Bonney Lake*, 184 Wash.App. 487 (II, 2014), which reversed a

11.04.200 Violations - civil penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person whose animal is maintained in violation of this chapter shall incur a civil penalty in an amount not to exceed one thousand dollars per violation to be directly assessed by the manager of the animal care and control authority plus billable costs of the animal care and control authority. The manager, in a reasonable manner, may vary the amount of the penalty assessed to consider the appropriateness of the penalty to the nature and type of violation; the gravity of the violation; the number of past and present violations committed and the good faith of the violator in attempting to achieve compliance with prescribed requirements or after notification of a violation. All civil penalties assessed shall be enforced and collected in accordance with the procedure specified in this chapter.

11.04.230 Nuisances defined. For purposes of this chapter, nuisances are violations of this chapter and shall be defined as follows:

(H) 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. However, in addition to other remedies and penalties, the provisions of this chapter relating to vicious animals shall apply;

11.04.260 Violations – notice and order. (A) Whenever the manager of the regional animal services section or animal care and control officer has found an animal maintained in violation of this chapter, the manager of the regional animal services section shall commence proceedings to cause the abatement of each violation.

dangerous dog designation because the City could produce no eyewitness testimony to which animal instigated the conflict that resulted in the cat's death.⁹ Admission of speculative evidence also conflicts with *State v. Kilgore*, 107 Wash.App. 160, 185 (II, 2001), *aff'd*, 147 Wn.2d 288 (2002), quoting *State v. Jones*, 67 Wn.2d 506, 512 (1965) ("Courts should exclude evidence that is remote, vague, speculative, or argumentative because otherwise 'all manner of argumentative and speculative evidence will be adduced,' greatly confusing the issue and delaying the trial."), creating a RAP 13.4(b)(1) issue, as well.

In reversing a dangerous dog designation concerning a dog who admittedly killed a cat on the cat owner's property, the *Morawek* court found that the City failed to present substantial evidence that the incident occurred without provocation. As nobody saw how the fight between Scout and Oriel began, no direct or satisfactory circumstantial evidence existed to disprove the contention that Oriel provoked Scout. That Oriel likely inflicted a scratch to Scout's nose and that Oriel shrieked under the porch prior to being seen carried away in Scout's mouth, did not persuade

⁹ Though not cited as precedent, it should be noted that Division II again decided a case concerning the issue of speculation in the context of dogs responsible for killing animals. See *Downey v. Pierce Cy.*, 165 Wash.App. 152 (II, 2011), unpub. in part.

the court of nonprovocation, either, for such arguments are “rooted in speculation.” *Id.*, at 495.

Facts here compel a similar conclusion.¹⁰ Assuming for the sake of argument that Cortana was even on the Westons’ property, there was no admissible evidence that Cortana (or Godric, for that matter) were observed chasing, biting, attacking, injuring, or killing any person or animal. No witness saw either dog touch any goat or goose. No witness found blood or feathers anywhere on the bodies of Godric or Cortana. The County’s contention that each of these dogs caused the mayhem claimed is based on speculation, for it must resort to guesswork as to whether Godric acted alone, Cortana acted alone,¹¹ both acted in concert, or neither was to blame (and instead a third animal – wild or domestic – was run off after inflicting harm). In an effort to establish guilt by mere association, however, the County held that both dogs exhibited vicious propensities although it could not prove *which* dog allegedly injured or killed the complainant’s animals. Both KCC 11.04.230(H) charges fail on that basis.

¹⁰ While the argument certainly applies to the element “without provocation” as contained in KCC 11.04.020(BB), it preliminarily applies to the question of whether substantial evidence exists to support that claim that Cortana and Godric, individually, bit or killed the Westons’ animals.

¹¹ Again, Ms. Estrella reiterates that Cortana was at home when Mr. Weston allegedly found two dogs in his enclosure.

This same evidentiary question of identification of the alleged assailant (among multiple suspects) resulted in reversals in *People v. Noga*, 168 Misc.2d 131 (N.Y.App.1996) and *Hobbs v. Kent Cy. SPCA, Inc.*, No. CPU5-10001252, 2011 WL 773448 (Del.Com.Pl.2011). In *Noga*, there was no dispute that between two dogs Jasmine and Thor, only Jasmine attacked the complainant's poodle, while Thor stood to the side. Yet animal control declared both dogs dangerous and ordered their destruction. The appellate court spared Thor's life in part because eyewitness testimony confirmed Jasmine's, but not Thor's, involvement. *Id.*, at 132 (agreeing that basis for reversal included fact that "only one of his dogs was actually involved in any aggressive behavior.") By that same logic, the total absence of eyewitness testimony should spare both Godric and Cortana.

Similarly, in *Hobbs*, the court properly reversed the dangerous dog order because no person testified that a particular, identifiable dog bit Ms. Pryor, and there was confusion as to which dog may have been the culprit. In sparing Raven's life, the *Hobbs* court recognized the defect of insufficient, speculative evidence, adding:

If there were no other dogs in the vicinity on the date in question, [the fingering of Raven, one of the three dogs owned by Hobbs] might have been sufficient to meet the standard of proof. However, the victim, Ms. Pryor, made a statement, which was testified to at the hearing through

hearsay, that there were three dogs being walked by Vonda earlier that day.

Id., at *5 (opinion attached per GR 14.1(b) as **Exhibit F**).

Additionally, the County presented not a shred of evidence (circumstantial or direct) that indicated that the Westons' animals were killed by *both* Godric and Cortana, as opposed to *just* Godric (if him at all) – whether by blood or feathers in the muzzle or on the hair of either dog; paw prints in the pen that match those of either dog; medical evidence showing the passing of any disease or parasite from deceased animal to either dog; measuring distances between, and lengths of, puncture wounds and matching them to the mouths of Godric and Cortana; taking a DNA sample from the bite wounds and matching them to either dog, or any other vector of proof.

With greater force, the facts at bar fail to make either or both Godric and Cortana responsible for biting or killing any goats or geese. Such pyramiding of inferences buckles under the weighty absence of evidence (i.e., the County asks that the mere presence of each dog allows one to draw the inference that both were present at the time of the killings, and further, that they each participated in the killings). While the County's attempt to arbitrarily and capriciously accuse both Cortana and Godric must fail, at the risk of playing into the speculation, another factor to

consider is that Godric remained long enough to be shot, while the other dog (alleged to be Cortana, but disputed by Ms. Estrella) ran off immediately, suggestive that the escaping dog was not guarding its kill.¹²

In the human accused context, and by rough analogy only, consider other-suspect evidence. In *State v. Franklin*, 180 Wn.2d 371 (2014), this Court found the harmful trial error in rejecting a proffer by the accused that another was responsible for the alleged crime. Albeit in a criminal setting with a different standard of proof, the notion that the defendant has the right to present other suspect evidence if she can show “a train of facts or circumstances as tend clearly to point out some one besides the [accused] as the guilty party.” *Id.*, at 379 (quoting *State v. Downs*, 168 Wash. 664, 667 (1932)) bears reflection here. Refined over the years, the other-suspect defense would be regarded as inadmissible speculation unless “motive” or “motive coupled with threats of such other person” was coupled with “other evidence tending to connect such other person with the actual commission of the crime charged.” *Id.*, at 379-80.

Apply the other-suspect doctrine to a variation of this dispute: Assume that the County only blamed Godric for the animals’ deaths, yet another dog was also present when approached by Mr. Weston. Could Ms. Estrella have argued that the other dog was responsible? Would she have

¹² Note that Godric was attempting to run off when shot in the head by Mr. Weston.

laid the “train of facts or circumstances” sufficient to “clearly” point to the other dog as guilty? If not, then assuredly the County, who bore the burden of proof, could not do so. While there may have been substantial evidence to support that both dogs were *at-large* (again, a genuine issue of material fact exists here and will be challenged on remand, if need be), there simply was none that both killed animals.

2. Statutory Misconstruction (RAP 13.4(b)(1, 2, 4).

Unincorporated King County is home to 325,002 people based on 2010 U.S. Census statistics.¹³ It is the most populated county in Washington State.¹⁴ Among counties, it follows that it has the greatest number of enforcement actions taken against animal owners in the State of Washington. The Code at issue, Ch. 11.04 KCC, and, indeed, the very subsection at issue, KCC 11.04.230(H), has been subject to appellate review. *See State v. Ankney*, 53 Wash.App. 393, 399 (I, 1989) (examining vagueness of phrase “lawfully on”). As discussed in *Ankney*, KCC 11.04.230(H) has both civil and criminal repercussions; not only may a dog owner be criminally charged, but a dog owner who violates an order of confinement (as issued to Ms. Estrella) may be prosecuted, fined up to

¹³ <https://data.kingcounty.gov/Census/Unincorporated-King-County-Population-2000-2010/t7m5-d3dx>

¹⁴ <http://data.spokesman.com/census/2010/washington/counties/>.

an additional \$1000, and her dog confiscated and killed. See KCC 11.04.200 and KCC 11.04.290(A)(3).

Only one incident is described in the NVOC. However, KCC 11.04.230(H) requires proof of at least two – the *prior one* where the animal “exhibited” vicious propensities, and a *subsequent one* where the animal “constitutes” a danger. Note the difference in verb tense. If the County Council intended to deem a dog a public nuisance for a single incident, as alleged, it would have used the past tense form of the verbs “exhibit” and “constitute.” A plain reading requires proof of distinct elements at two different time points. Any other reading would render the phrase “and constitutes a danger to the safety of persons or property of the animal’s premises or lawfully on the animal’s premises” mere surplusage, contrary to the rules of statutory construction.¹⁵

Also within the nuisance section of KCC 11.04.230, one finds:

I. Any vicious animal or animal with vicious propensities that runs at large at any time is off the owner's premises not securely leashed on a line or confined and in the control of a person of suitable age and discretion to control or restrain the animal. However, in addition to other remedies and penalties, the provisions of this chapter relating to vicious animals shall apply;

¹⁵ *Stone v. Chelan Cy. Sheriff's Dept.*, 110 Wn.2d 806, 810 (1988)(statutes must be interpreted and construed so all language used is given effect, with no portion rendered meaningless or superfluous).

KCC 11.04.230(I). Here, the County again requires proof of two incidents—viz., conduct giving rise to a declaration of the animal as “vicious” or a historical record of “vicious propensities” *followed by* that animal “run[ning] at large at any time[.]” Despite the two-incident argument made herein, the panel concluded that,

Under a straightforward reading, the second clause of KCC 11.04.230(H), “and constitutes a danger,” does not refer to a subsequent vicious act. Rather, it describes an animal that has become a public nuisance because it has performed or shown the propensity to perform any vicious act. We disagree that “[a] plain reading requires proof of distinct elements at two different time points.” This reading would create a “one free bite” rule, contrary to the statute’s public safety purpose.¹⁶

Dec., at 8-9. Yet, in the next paragraph of the opinion, it states that Ms. Estrella was appropriately cited for Godric’s behavior even though he was dead since he “barked and growled threateningly at Ron Weston” after “attacking, injuring, and killing the Westons’ domesticated animals” and thus “presented a danger ... after the attack ... until the moment Weston shot him.” *Id.*, at 9. In other words, the panel takes the internally contradictory position that KCC 11.04.230(H) requires that only *one*

¹⁶ The panel’s citation to KCC 11.04.010 is inapposite for it is not a rule of construction but simply a policy statement as to the tasks and functions of animal control. That said, it speaks to controlling errant animal behavior so that it *shall not become* a public nuisance. So stated, it addresses an earlier time point. It does not speak to the interpretation of laws that in fact define a public nuisance and enforce restrictions on dogs declared such. If anything, it supports the view that becoming a public nuisance signals a significant change in legal status that does not result unless the animal’s misbehavior has ripened over the course of *more than one* incident.

incident be proved, while then proceeding to argue that the second incident satisfied the second clause and warranted issuance of the citation. It should be noted that the NVOC never alleged that either dog constituted a danger by barking and growling and, in briefing before the Board, superior court, and Court of Appeals, the County essentially conceded that a dead dog cannot constitute a danger and that the relevant time point for determining danger is the *time of issuing the citation*.¹⁷ At that time, Godric was long deceased.

KCC 11.04.230(I), quoted above, serves to further undermine the panel's unpersuasive reasoning that a dog violates KCC 11.04.230(H) if it simply meets the definition of "vicious," explaining that the second clause ("constitutes a danger") merely "describes an animal that has become a public nuisance because it has performed or shown the propensity to perform any vicious act." *Dec.*, at 9. Is not the purpose of KCC 11.04.020(BB) to define what makes a dog "vicious"? If so, why would

¹⁷ In attempting to elide the distinction, the County claims that KCC 11.04.230 "obvious[ly]" provides that "any animal which has exhibited vicious propensities *some time before the moment the owner was cited*, and *still* constitutes a danger to the safety of persons or property, is a nuisance." In so doing, it inserts language (i.e., the citing moment) not found in the code. The County's reading into the ordinance a time-of-citing element proves the ordinance's vagueness. While Ms. Estrella disputes the County's interpretation, its own logic necessarily excuses at least one \$500 fine since the County impliedly concedes that Godric would not still constitute a danger after the date cited. **CP 56:10-11** ("Both dogs met the definition of vicious, including Godric, for as long as he lived between killing the livestock and being shot himself..."); **CP 216:1-3**(emphasis added) ("Cortana continues to constitute a danger **because she is still alive** and could be involved in another such attack.").

the second clause of KCC 11.04.230(H) be necessary? To further define what makes a dog vicious?

The answer is simple: it is neither definitional nor elucidative, but a material element that defines “nuisance.” A “vicious” dog is not, in and of itself, a “nuisance.” The second clause should not be rendered a mere superfluity but instead given meaning, which the panel has refused to do, in conflict with Supreme Court statutory construction rules. If a dog were a public nuisance solely for exhibiting vicious propensities on one occasion, then why would the County have enacted yet another nuisance subsection (KCC 11.04.230(I)) with a second clause that further outlines the violation? The panel’s ruling also has broad public importance in that it will affect civil and criminal applications of this code (not just as applied to Ms. Estrella on remand).

While there is nothing ambiguous about past tense and present tense, if the court finds it such, then Ms. Estrella’s strict reading is required under the rule of lenity, given that a violation of KCC 11.04.230(H) is also a crime. KCC 11.04.190; see also *State v. Ankney*, 53 Wash.App. 393 (I, 1989). “If a statute is ambiguous, the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary.” *State v. Jacobs*, 154 Wn.2d 596, 600


(cit. om.) (2005). “A statute is ambiguous if it is subject to two or more reasonable interpretations.” *State v. McGee*, 122 Wn.2d 783, 787 (1993). “Under the rule of lenity, the court must adopt the interpretation most favorable to the criminal defendant.” *Id.* The rule of lenity serves an important tie-breaking function, in favor of Ms. Estrella. While it is true that the lenity rule is traditionally a method of statutory construction applicable to criminal, not civil, proceedings, civil lenity applications have been endorsed by the United States Supreme Court.¹⁸ If the County wanted to declare dogs as nuisance for past misconduct, it simply could have drafted the code to encompass “any animal that has exhibited vicious propensities.” and left it at that.

VI. CONCLUSION

This court should grant review on any or all grounds articulated above.

Dated this Nov. 25, 2015.

ANIMAL LAW OFFICES


Adam J. Karp, WSB No. 28622

¹⁸ See *United States v. Thompson/Center Arms Co.*, 504 U.S. 505 (1992); *Leocal v. Ashcroft*, 543 U.S. 1 (2004); *Clark v. Martinez*, 543 U.S. 371 (2005); *United States v. Plaza Health Laboratories*, 3 F.3d 643 (2nd Cir.1993); *Internet Community & Entertainment Corp. v. State*, 148 Wash.App. 795 (2009).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Nov. 25, 2015, I caused a true and correct copy of the foregoing to be served upon the following person(s) in the following manner:

[X] Email (stipulated)

Nancy A. Balin
King County Prosecuting Attorney's Office
W400 King County Courthouse
516 3rd Ave.
Seattle, WA 98104
(206) 477-1120
Nancy.balin@kingcounty.gov

A handwritten signature in black ink, appearing to read 'Karp', written over a horizontal line.

Adam P. Karp, WSBA No. 28622
Attorney for Plaintiff-Appellant

A

RICHARD D. JOHNSON,
Court Administrator/Clerk

October 26, 2015

Nancy Anne Balin
Office of Pros Atty
516 3rd Ave Rm W400
Seattle, WA 98104-2388
nancy.balin@kingcounty.gov

Prosecuting Atty King County
King Co Pros/App Unit Supervisor
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104
paoappellateunitmail@kingcounty.gov

CASE #: 72622-6-1
Clorissa Estrella, Appellant v. King County, Respondent
King County, Cause No. 14-2-20857-0 KNT

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We affirm the Board's interpretation of KCC and its evidentiary decisions"

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of \$200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

ssd
Enclosure

c: The Honorable John H. Chun

*The Court of Appeals
of the
State of Washington
Seattle*

DIVISION I
One Union Square
600 University
Street
98101-4170
(206) 464-7750
TDD: (206) 587-

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CLORRISSA ESTRELLA,)	No. 72622-6-1
)	
Appellant,)	DIVISION ONE
)	
v.)	
)	UNPUBLISHED OPINION
KING COUNTY,)	
)	
Respondent,)	
)	
KING COUNTY BOARD OF APPEALS;)	
REGIONAL ANIMAL SERVICES OF)	
KING COUNTY,)	
)	
Defendants.)	FILED: October 26, 2015
_____)	

LEACH, J. — Regional Animal Services of King County issued an order to Clorissa Estrella alleging multiple violations for animal trespassing and vicious animal and requiring her to confine her dog. After the King County Board of Appeals (Board) affirmed the order, Estrella requested superior court review. She claimed that the Board's hearing procedures violated due process. She also challenged the Board's interpretation of the applicable ordinance, its evidentiary rulings, and the sufficiency of the evidence.

The superior court decided that the Board's procedures, as applied to Estrella, violated due process. It affirmed the Board's ordinance interpretations and declined to review the evidentiary challenges. Estrella appeals these

decisions. She claims the superior court should have accepted her facial due process challenge to the Board's hearing rules and renews her challenges to the Board's legal and evidentiary decisions.

Because Estrella cannot show that she has been aggrieved by the superior court's due process decision, we decline to review it. We conclude that the Board correctly applied the King County Code (KCC) and its rules of evidence. And while the Board's record includes sufficient evidence to support its decision, on remand the Board may receive different or additional evidence that changes that decision.

FACTS

Ron and Laura Weston own approximately 20 mostly forested acres on Vashon Island, Washington. There, they raise goats, sheep, and poultry. They keep their goats in a fenced enclosure. Around 3:15 on the afternoon of December 23, 2013, as Ron Weston parked his truck, he saw two dogs in the goat enclosure, barking and snarling. He found two of his goats and a goose dead and four or five more goats huddled together in a corner of the nearby shed. One of the dogs "ran off up the driveway," but the second one remained in the enclosure.

Weston drove back to his house, got a shotgun, and returned to the goat enclosure. He shot and killed the second dog, a male.

Estrella, who lived nearby, had learned earlier that afternoon that her two dogs had escaped from their kennel. After searching for them for “almost two hours,” she learned that one of her dogs was at the Westons' property. She and her boyfriend, Leon Kellogg, met the Westons at their driveway and retrieved the body of her male dog, Godric. Estrella disputes that the second dog Weston saw was her female, Cortana, maintaining that Cortana returned home around 2:00 p.m., too early to have been at the Westons' farm at the time of Ron Weston's discovery.

Estrella posted photos on a fundraising website called “Justice for Godric and Cortana.” From these photos, the Westons' son Walter identified the female dog he had seen emerge from bushes near the Westons' house as Cortana. On March 3, 2014, Regional Animal Services of King County issued Estrella a notice of violation and order to comply (NVOC). The order cited Estrella for two violations of KCC 11.04.230(K) (animal trespassing on private property) and two violations of KCC 11.04.230(H) (vicious animal). The citation also ordered Cortana confined under KCC 11.04.260 and .290. Estrella's fines totaled \$1,100. Estrella appealed.

On May 21, 2014, the King County Board of Appeals conducted a contested hearing. After swearing in the witnesses, the chair told the parties, “[Y]ou will each have 15 minutes to make your main presentation. The

remainder of the time will be for questions and closing.” Estrella’s counsel told the chair, “I do have three witnesses to call, and I don’t know I can get that done in 15 minutes.” Counsel acknowledged that at his request, the Board had doubled the hearing time from the normal allotment of less than 25 minutes to 45 minutes but noted that he did not think 15 minutes would be adequate. The chair replied, “Please do your best, [counsel].” At the end of the hearing, the chair thanked the parties “for staying within our time period.”

On June 30, 2014, the Board upheld the NVOC. Estrella filed a petition for judicial review and complaint. The parties stipulated to the superior court’s issuance of a writ of review.

On October 13, 2014, the superior court reversed the Board’s decision and remanded, ruling, “In the circumstances presented by this case, allotting only 25 minutes for the contested hearing—with no notice of duration being given to plaintiff until the beginning of the hearing, and with no opportunity to request additional time—deprived plaintiff of procedural due process.” The court directed, “The Board shall give the plaintiff the option, in advance of hearing, of selecting a 30-minute, 45-minute, or 60-minute hearing.”

The following day, the court ruled on Estrella’s motion for clarification. It denied Estrella’s request for a ruling on her facial challenge to the Board’s time allotment protocols. The court also explicitly ruled that KCC 11.04.230(H) does

not require proof of two incidents, a specific mental state, that a dog be alive at the time citation issues, or that the county identify “which dog bit, injured, or killed an animal.” And the court referred two evidentiary issues Estrella raised to the Board on remand.

Estrella appeals the Board’s decision and both orders of the superior court. The county does not seek any affirmative relief from this court.

STANDARD OF REVIEW

In an appeal of a superior court order on writ of review, except one claiming manifest error affecting a constitutional right, this court reviews the challenged administrative decision on the record of the administrative tribunal, not the decision of the superior court acting in its appellate capacity.¹ This means we do not rely on the superior court’s findings or conclusions.² Instead, on issues of law, we review the agency decisions de novo.³ On issues of fact, we decide if substantial evidence supports the agency decisions.⁴ Substantial evidence is evidence sufficient to persuade a fair-minded and rational person of

¹ Hilltop Terrace Homeowner’s Ass’n v. Island County, 126 Wn.2d 22, 29-30, 891 P.2d 29 (1995); Morawek v. City of Bonney Lake, 184 Wn. App. 487, 491, 337 P.3d 1097 (2014); Mansour v. King County, 131 Wn. App. 255, 262, 128 P.3d 1241 (2006).

² Morawek, 184 Wn. App. at 491; Bassani v. Bd. of County Comm’rs, 70 Wn. App. 389, 393, 853 P.2d 945 (1993).

³ Morawek, 184 Wn. App. at 491-92.

⁴ Hilltop Terrace, 126 Wn.2d at 29.

the truth of the declared premise.⁵ This standard “is deferential and requires the court to view the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority.”⁶ Rules of statutory construction apply to local ordinances.⁷ Statutory interpretation presents a question of law we review de novo.⁸

ANALYSIS

Due Process

First, Estrella appeals the superior court due process decision. She complains that the court decided her challenge on an “as applied” basis instead of her facial challenge. In other words, she has no complaint about the result, only the legal theory used by the trial court to reach its decision.

We decline to address Estrella's due process claim. Under RAP 3.1, “[o]nly an aggrieved party may seek review by the appellate court.” “When the word ‘aggrieved’ appears in a statute, it refers to ‘a denial of some personal or property right, legal or equitable, or the imposition upon a party of a burden or

⁵ Mowat Constr. Co. v. Dep’t of Labor & Indus., 148 Wn. App. 920, 925, 201 P.3d 407 (2009).

⁶ Mansour, 131 Wn. App. at 262-63 (quoting Sunderland Family Treatment Servs. v. City of Pasco, 127 Wn.2d 782, 788, 903 P.2d 986 (1995)).

⁷ Sleasman v. City of Lacey, 159 Wn.2d 639, 643, 151 P.3d 990 (2007).

⁸ Sleasman, 159 Wn.2d at 642.

obligation.”⁹ Estrella prevailed on an “as applied” constitutional challenge. Although she would prefer to prevail on a facial challenge to the Board procedures, “[t]he mere fact that one may be hurt in his feelings, or be disappointed over a certain result, or feels that he has been imposed upon, . . . does not entitle him to appeal. He must be “aggrieved” in a legal sense.”¹⁰ Because Estrella is not an aggrieved party as to the superior court’s due process decision, she may not appeal it.¹¹

Interpretation of KCC 11.04.230(H)

Next, Estrella contends that the Board misinterpreted KCC 11.04.230(H). When construing a statute, this court primarily seeks to ascertain and carry out the legislature’s intent.¹² Statutory interpretation begins with the statute or ordinance’s plain meaning, which this court discerns from the ordinary meaning of its language in the context of the whole statute, related statutory provisions,

⁹ State v. G.A.H., 133 Wn. App. 567, 574, 137 P.3d 66 (2006) (internal quotation marks omitted) (quoting Sheets v. Benevolent & Protective Order of Keglers, 34 Wn.2d 851, 854-55, 210 P.2d 690 (1949)).

¹⁰ Sheets, 34 Wn.2d at 855 (quoting State ex rel. Simeon v. Superior Court, 20 Wn.2d 88, 90, 145 P.2d 1017 (1944)).

¹¹ Although we decline to review Estrella’s due process challenge, we note that the superior court’s “as applied” constitutional ruling appears to be based on two factual errors. First, the Board allotted 45, not 25, minutes for Estrella’s hearing. Second, in a March 2014 e-mail to a King County employee, Estrella’s counsel requested “at least 45 minutes” for Estrella’s May 2014 hearing, noting, “Last hearing was way too short.” Thus, Estrella cannot fairly say that as applied, she had no notice of the Board’s protocols before the hearing started.

¹² State v. Gray, 174 Wn.2d 920, 926, 280 P.3d 1110 (2012).

and the statutory scheme as a whole.¹³ If we find the statute's meaning unambiguous, our inquiry ends.¹⁴

KCC 11.04.230(H) defines as a "nuisance" "[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." The code defines "vicious" 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."¹⁵

First, Estrella contends that this provision requires proof of two incidents: "the *prior one* where the animal 'exhibited' vicious propensities, and a *subsequent one* where the animal 'constitutes' a danger." We disagree.

The code defines an animal as "vicious" if it has performed or shown the propensity to perform any act "endangering the safety of any person, animal or property of another."¹⁶ Under a straightforward reading, the second clause of KCC 11.04.230(H), "and constitutes a danger," does not refer to a subsequent vicious act. Rather, it describes an animal that has become a public nuisance

¹³ State v. Evans, 177 Wn.2d 186, 192, 298 P.3d 724 (2013); Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010).

¹⁴ Lake, 169 Wn.2d at 526.

¹⁵ KCC 11.04.020(BB).

¹⁶ KCC 11.04.020(BB).

because it has performed or shown the propensity to perform any vicious act. We disagree that “[a] plain reading requires proof of distinct elements at two different time points.” This reading would create a “one free bite” rule, contrary to the statute’s public safety purpose.¹⁷ And because the provision is not ambiguous, we also reject Estrella’s argument that the rule of lenity requires us to interpret the provision in her favor.

Estrella also asserts that she should not have been cited for Godric’s allegedly vicious behavior because Godric is dead and therefore no longer constitutes a danger. We disagree. Evidence in the record supports a finding that after attacking, injuring, and killing the Westons’ domesticated animals without provocation, Godric barked and growled threateningly at Ron Weston. Thus, Godric presented a danger to the safety of persons and property after the attack on the Westons’ animals until the moment Weston shot him. This warranted the county’s citation of Estrella for Godric’s actions. The Board did not err in finding that KCC 11.04.230(H) does not require that a dog be alive at the time of citation.

Estrella also asserts that the code requires a culpable mental state on the part of a dog’s owner and the county did not prove this. Under KCC 11.04.190 and .200, “[a]ny person who allows an animal to be maintained in

¹⁷ KCC 11.04.010(A).

violation of this chapter is guilty of a misdemeanor" and potentially liable for both criminal and civil penalties. Estrella argues that "the verb 'allow,' like the word 'permit,' necessarily requires proof of at least knowledge." Therefore, she contends, the county needed to prove that she "harbored a culpable mental state (mens rea) when she acted or failed to act in a way that caused the prohibited conduct." Without this proof, Estrella argues, the county cannot prove nuisance. The Board disagreed, finding that neither KCC 11.04.230(H) nor (K) required proof of any specific mental state.

The legislature has the authority to define strict liability crimes.¹⁸ To determine legislative intent where a statute does not specify a mental element, courts have considered a number of factors:

Factors to consider that bear upon legislative intent to impose strict liability include: (1) the background rules of the common law, and its conventional mens rea requirement, (2) whether the crime can be characterized as a public welfare offense, (3) the extent to which a strict liability reading of the statute would encompass innocent conduct, (4) the harshness of the penalty, (5) the seriousness of the harm to the public, (6) the ease or difficulty of the defendant ascertaining the true facts, (7) relieving the prosecution of time-consuming and difficult proof of fault, and (8) the number of prosecutions expected.^[19]

¹⁸ State v. Bash, 130 Wn.2d 594, 604, 925 P.2d 978 (1996).

¹⁹ State v. Semakula, 88 Wn. App. 719, 723-24, 946 P.2d 795 (1997) (citing Bash, 130 Wn.2d at 605-06).

Generally, the harsher the possible punishment, the more likely the legislature intended to require some fault. The lighter the punishment, the more likely lawmakers intended to impose punishment without fault.²⁰

To decide if a crime is a public welfare offense with strict liability, courts have distinguished between crimes regarded as mala in se, which require some degree of "guilty knowledge," and statutory offenses regarded as mala prohibita, which, "if properly enacted within the police power, are often upheld without proof of an evil intent, and even without any mental element at all."²¹ When adopting a public welfare offense, the legislature decides that "the doing of the act itself imperils the public safety or welfare."²² Public welfare offenses often involve "regulatory measures in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of mala in se."²³

²⁰ Bash, 130 Wn.2d at 608-09, 610.

²¹ Bash, 130 Wn.2d at 606-07 (citing State v. Turner, 78 Wn.2d 276, 280, 474 P.2d 91 (1970)).

²² City of Seattle v. Gordon, 54 Wn.2d 516, 519, 342 P.2d 604 (1959) (citing 1 FRANCIS WHARTON & J.C. RUPPENTHAL, WHARTON'S CRIMINAL LAW § 113, at 160 (12th ed. 1932)).

²³ Morrisette v. United States, 342 U.S. 246, 258-59, 72 S. Ct. 240, 96 L. Ed. 288 (1952) (quoting United States v. Balint, 258 U.S. 250, 252, 42 S. Ct. 301, 66 L. Ed. 604 (1922)).

For example, City of Seattle v. Koh²⁴ involved a section of the Seattle Building Code making it a misdemeanor “to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the city, or allow the same to be done, contrary to or in violation of any of the provisions of this Code.” In that case, we concluded that King County did not have to prove intent as an element of a violation. Consequently, we upheld a landlord’s criminal convictions for illegally subdividing his apartment building, despite the lack of any proof of knowledge: “Even assuming that Koh was not aware of the details of the plan submitted in his name, and approved by the Department, we would still uphold Koh’s conviction because intent is not an element of the crime.”²⁵ We reasoned, “We believe the Code is a type of police regulation, designed to protect public safety and health, the penalty for which is ‘imposed without regard to any wrongful intention, in order to insure such diligence as will render a violation of the law practically impossible.’”²⁶ Along with building, plumbing, and electrical codes, legislative bodies have adopted strict liability for public welfare offenses in areas

²⁴ 26 Wn. App. 708, 714, 614 P.2d 665 (1980) (quoting former Seattle Building Code 204).

²⁵ Koh, 26 Wn. App. at 713.

²⁶ Koh, 26 Wn. App. at 714 (quoting State v. Burnam, 71 Wash. 199, 200, 128 P. 218 (1912)).

such as food and drugs, labeling, weights and measures, fire safety, environmental protection, sanitation, and highway safety.²⁷

In support of her argument, Estrella cites State v. Bash,²⁸ in which our Supreme Court held that a dangerous dog statute was not a strict liability crime. The State charged Bash and a second dog owner with felonies after their pit bulls attacked and killed a wheelchair-bound 75-year-old man and seriously wounded a second man who tried to protect him.²⁹ Our Supreme Court noted that the statutory language “whether the dog has previously been declared potentially dangerous or dangerous,” while ambiguous, “envisioned some notice [to the owner] of the dog’s status.”³⁰ Therefore, the court concluded that the State needed to prove “that the defendant either knew or should have known that his or her dog was a potentially dangerous or dangerous dog as an element of the crime.”³¹ Since the court’s decision in Bash, the legislature has clarified the language of RCW 16.08.100(3) further, amending the provision to read, “whether or not the dog has previously been declared potentially dangerous or dangerous”

²⁷ Bash, 130 Wn.2d at 607 (quoting Turner, 78 Wn.2d at 280).

²⁸ 130 Wn.2d 594, 611, 925 P.2d 978 (1996). Former RCW 16.08.100(3) (1987) provided in pertinent part, “The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether the dog has previously been declared potentially dangerous or dangerous, shall be guilty of a class C felony punishable in accordance with RCW 9A.20.021.”

²⁹ Bash, 130 Wn.2d at 597-98.

³⁰ Bash, 130 Wn.2d at 605.

³¹ Bash, 130 Wn.2d at 611.

and adding, "In such a prosecution, the state has the burden of showing that the owner of the dog either knew or should have known that the dog was potentially dangerous as defined in this chapter."³²

We distinguish Bash. In that case, the potential penalties for the felony charges included five years' imprisonment, a \$10,000 fine, or both.³³ Here, although a dog owner can be charged with a misdemeanor for violating KCC 11.04.230(H), King County cited Estrella for a civil violation. The potential criminal penalties for violating the KCC are much less severe than the possible punishment for the Class C felony at issue in Bash.

Moreover, RCW 16.08.090(2) provides, "Potentially dangerous dogs shall be regulated only by local, municipal, and county ordinances. Nothing in this section limits restrictions local jurisdictions may place on owners of potentially dangerous dogs." The chapter defines "potentially dangerous dog" as including "any dog that when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property."³⁴ On this record, this definition includes Godric and Cortana, and the legislature has conferred authority on King County to regulate them and place restrictions on their owner. In several different sections of chapter 16.08 RCW, the legislature has recognized the

³² LAWS OF 2002, ch. 244, § 3 (emphasis added).

³³ Bash, 130 Wn.2d at 609.

³⁴ RCW 16.08.070(1).

dangerousness of marauding dogs to both humans and livestock.³⁵ These statutes, as well as KCC 11.04.230(H), which the statutes authorize, regulate vicious or potentially dangerous dogs without "encompass[ing] seemingly entirely innocent conduct"³⁶ by dog owners.

The statutory scheme as a whole, low risk that the code will penalize innocent conduct, relatively light penalties, and seriousness of the potential harm to the public weigh in favor of the conclusion that RCW 11.04.230(H) and (K) do not require proof of a specific mental state. Other public welfare statutes support this conclusion. In Koh, the ordinance at issue provided "minimum standards to safeguard life or limb, health, property, and public welfare" by regulating the design, construction, and maintenance of buildings.³⁷ Similarly, KCC 11.04.010 defines the purpose of the chapter in terms of public welfare: "It is declared the public policy of the county to secure and maintain such levels of animal care and control as will protect animal and human health and safety, and to the greatest degree practicable to prevent injury to property and cruelty to animal life." We

³⁵ See RCW 16.08.100(3) (dog that aggressively attacks and causes severe injury or death to human to be humanely destroyed upon conviction of owner); RCW 16.08.040 (strict liability for owner of dog that bites any person who is in public place or lawfully in private place, including the property of the dog owner); RCW 16.08.030 (owner of dog found killing any domestic animal has duty to kill such dog); RCW 16.08.020 (lawful to kill any dog chasing, biting, injuring, or killing any domestic animal; duty of dog owner to keep confined any dog found chasing, biting, or injuring any domestic animal).

³⁶ Bash, 130 Wn.2d at 605.

³⁷ Koh, 26 Wn. App. at 714.

note that inconsistent with Estrella's argument about the verb "allow," this court construed the code provision in Koh as lacking an intent element despite the legislature's use of the words "maintain" and "allow." KCC 11.04.230(K) does not require a specific mental state.

Evidence for Board's Decision

Estrella challenges the sufficiency of the evidence to support the Board's decision, noting that "the County had no direct evidence that Cortana and Godric were involved in harming any animal or exhibiting any vicious propensities." The county's burden of proof is a preponderance of the evidence.³⁸ "Evidence can be either direct or circumstantial, and one type of evidence is not necessarily more or less valuable than the other."³⁹

Contrary to Estrella's assertions, sufficient evidence supported a finding that both of Estrella's dogs participated in killing and injuring the Westons' animals, and King County did not simply establish "guilt by mere association." Ron Weston found two dogs barking and snarling in his goat enclosure, surrounded by dead and injured goats and geese. One dog was indisputably Godric. The Board weighed conflicting testimony and determined that the second dog was Cortana. Estrella's arguments that a coyote, another dog, or

³⁸ Mansour, 131 Wn. App. at 259; King County Bd. of Appeals R. 25(D)(1)(a).

³⁹ Morawek, 184 Wn. App. at 493 (citing Rogers Potato Serv., LLC v. Countrywide Potato, LLC, 152 Wn.2d 387, 391, 97 P.3d 745 (2004)).

even the Westons' own livestock protection dog killed and injured the animals involve speculation and invite this court to reweigh the evidence. In this context, this court does not weigh the evidence.

And the foreign cases she cites do not support her position. In People v. Noga,⁴⁰ for example, undisputed evidence showed that only one of two dogs had injured the complainant's poodle, while the other "remained to the side of the incident, and did not exhibit any aggressive behavior." Because of this evidence and the fact that neither dog had injured a person, the appellate court concluded that the lower court erred by ordering that both dogs be destroyed.⁴¹ In Hobbs v. Kent County SPCA, Inc.,⁴² the reviewing court reversed the Dog Control Panel's euthanasia order after finding that the victim had not testified at the hearing and had only identified the premises from which the dog came, not the actual dog that bit her. Given that on that day, the victim had seen a person walking three different dogs from the same property, the court concluded that substantial evidence did not support the panel's decision.

Estrella's further allegations of "misidentification and suggestive cross-species lineup" do not persuade us. In the cases Estrella cites, all of which

⁴⁰ 645 N.Y.S.2d 268, 268, 168 Misc. 2d 131 (N.Y. Sup. Ct. 1996).

⁴¹ Noga, 645 N.Y.S.2d at 269.

⁴² 2011 WL 773448, at *5-6 (Del. Com. Pl. Feb. 4, 2011). This is an unpublished case; Delaware law permits its citation in briefs. Del. Sup. Ct. R. 14(g)(ii). Estrella did not file and serve a copy of the opinion with her brief, however, and thus did not comply with GR 14.1(b).

involve human criminal defendants and not dogs, reviewing courts disapproved police photographic identification procedures where witnesses “had little opportunity to observe the [defendant]”⁴³ or where police presented a single “impermissibly suggestive” photograph.⁴⁴ Estrella’s case involves no criminal charges and no government-directed identification procedure. Ron and Walter Weston directly observed the dogs and later identified them from several photographs posted on Estrella’s own website. King County did not unfairly suggest, via photographs or otherwise, that Godric and Cortana were the dogs involved.

Although we conclude that sufficient evidence supported the Board’s determination, we recognize that the parties may introduce additional or different evidence on remand. This opinion does not purport to recommend any particular result at a new hearing.

⁴³ State v. Burrell, 28 Wn. App. 606, 609, 625 P.2d 726 (1981) (citing State v. Thorkelson, 25 Wn. App. 615, 619, 611 P.2d 1278 (1980)); Simmons v. United States, 390 U.S. 377, 383, 88 S. Ct. 967, 19 L. Ed. 2d 1247 (1968) (danger of improper suggestion by police procedure higher where witness “obtained only a brief glimpse of a criminal”); State v. Jaime, 168 Wn.2d 857, 869-71, 233 P.3d 554 (2010) (Sanders, J., concurring) (poor lighting, focus on weapon, stress, and cross-racial identification issues all affected reliability of eyewitness identification of defendant).

⁴⁴ State v. Maupin, 63 Wn. App. 887, 896, 822 P.2d 355 (1992).

Evidentiary Issues

Estrella challenges Board evidentiary rulings that may arise at the new hearing on remand. Under county rules of practice and procedures,

The Board of Appeals should be liberal in passing on the admissibility of evidence. All relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might otherwise bar the admission of such in civil actions.^[45]

We generally review agency decisions to admit or exclude evidence for abuse of discretion.⁴⁶ An agency abuses its discretion when it makes a manifestly unreasonable decision or bases its decision on untenable grounds or reasons.⁴⁷

First, Estrella argues the chair erred by failing to rule on the county's objection to counsel's cross-examination of Ron Weston and motion to strike Weston's answer. Weston testified that in 2008, dogs belonging to renters living in the house Estrella occupied in 2013 attacked the Westons' goats, and the dogs were removed from the county after an animal control action. Counsel then asked, "And you know that based on personal knowledge? Or hearsay?" The prosecutor objected, asserting, "It's a legal question that doesn't belong here." After Estrella's counsel moved to strike Weston's answer, the prosecutor

⁴⁵ King County Bd. of Appeals R. 25(D)(1).

⁴⁶ State v. Perez-Valdez, 172 Wn.2d 808, 814, 265 P.3d 853 (2011).

⁴⁷ Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

objected again, arguing that Weston “said what he knew and there’s been no basis that he doesn’t have the foundation for it. We’d ask the Board to consider it.” The chair said only, “All right.” Estrella’s counsel responded, “Okay. All right,” and continued cross-examination.

We reject Estrella’s claim. As a threshold matter, Estrella does not show that she is an aggrieved party to the chair’s failure to rule on the county’s objection. And because she did not lodge her own objection to the chair’s implicit denial of her motion to strike, RAP 2.5 bars her from raising this issue on appeal.

Second, Estrella assigns error to the Board’s consideration of written statements from Walter Weston and Ryan Harrigan. Estrella’s counsel objected to the county’s offer of the statements before closing argument, based on timeliness and the fact that Harrigan’s statement was not in declaration form. Counsel then made an offer of proof for a witness who did not testify, to which the prosecutor objected. The chair intervened: “Excuse me. Excuse me. Now, both of you are offering after testimony has been—after you’ve made your presentations, so we will consider both” and “[g]ive the evidence the weight that we believe it should be given.” The chair allowed Estrella’s counsel to complete his offer of proof.

Under the Board’s “liberal” rules of evidence, the chair did not abuse its discretion by admitting Walter Weston’s and Harrigan’s statements. The Board

rules permit even hearsay testimony, provided it is used for the purpose of supplementing or explaining direct evidence.⁴⁸ The rules do not require that written statements be in any specific form, and Estrella cites no authority for her assertion that the statements here, which Weston and Harrigan made under penalty of perjury, are inadmissible. Estrella's counsel was able to make an offer of proof and could have instead chosen to submit this witness's testimony in declaration form. The chair did not err in any of its evidentiary decisions.

Attorney Fees

Estrella seeks reasonable attorney fees under RAP 18.1 "on the equitable basis that she is conferring a substantial benefit to an ascertainable class (taxpayers and dog owners) by protecting constitutional principles." Under the equitable "common fund" doctrine, a successful litigant "who confers a substantial benefit on an ascertainable class" may recover attorney fees.⁴⁹

Because Estrella's appeal fails, we deny her request.

Estrella's Statements of Additional Authorities

One day before oral argument, Estrella filed with this court a statement of additional authorities raising three new arguments. The morning of oral

⁴⁸ King County Bd. of Appeals R. 25(D)(4).

⁴⁹ Blue Sky Advocates v. State, 107 Wn.2d 112, 124, 727 P.2d 644 (1986) (Dore, J., dissenting); Pub. Util. Dist. No. 1 of Snohomish County v. Kottsick, 86 Wn.2d 388, 390-91, 545 P.2d 1 (1976); Weiss v. Bruno, 83 Wn.2d 911, 912-13, 523 P.2d 915 (1974).

argument, Estrella filed a second statement of additional authorities, citing a 2014 case and the Restatement (Second) of Torts (1979). At oral argument counsel acknowledged that all legal authority cited in the statements was available at the time of filing of the appellant's briefs.

RAP 10.8 permits parties to file statements of additional authorities. However, RAP 10.8 specifies that such a statement "should not contain argument, but should identify the issue for which each authority is offered." Moreover, we understand the purpose of this rule as providing parties with an opportunity to bring to the court's attention cases decided after the parties submitted their briefs. "We do not view it as being intended to permit parties to submit to the court cases that they failed to timely identify when preparing their briefs."⁵⁰

The appellate rules provide an orderly briefing process for each party to advance its arguments and respond to those of the opposing party. Submitting new arguments at the last minute in the guise of a statement of additional authorities frustrates this orderly exchange of arguments, denies the opposing party a fair opportunity to respond, and wastes the court's time.

⁵⁰ O'Neill v. City of Shoreline, 183 Wn. App. 15, 23, 332 P.3d 1099 (2014).

CONCLUSION

Because Estrella is not an aggrieved party for purposes of appealing the superior court's order on writ of review, we decline to review the court's due process ruling. We affirm the Board's interpretation of the KCC and its evidentiary decisions. While we conclude on this record that sufficient evidence supported the Board's decision, we do not intend this opinion to suggest any particular result at a new hearing.

Leach, J.

WE CONCUR:

Trickey, J

Schuch, J

2015 OCT 26 AM 9:45

OFFICE OF THE CLERK
SUPERIOR COURT OF WASHINGTON

B

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

CLORRISSA ESTRELLA,

Plaintiff,

vs.

KING COUNTY et al.,

Defendants.

NO. 14-2-20857-0KNT

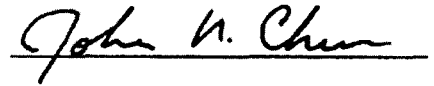
ORDER ON WRIT OF REVIEW

This matter comes before the Court on plaintiff's Writ of Review and demand for declaratory judgment and injunctive relief. A hearing took place on October 10, 2014. Plaintiff was represented by Adam Karp and defendant was represented by Nancy Balin. The Court has reviewed all materials submitted in connection with the matter and considered the arguments of counsel. The Court hereby ORDERS as follows:

In the circumstances presented by this case, allotting only 25 minutes for the contested hearing—with no notice of duration being given to plaintiff until the beginning of the hearing, and with no opportunity to request additional time—deprived plaintiff of procedural due process. Accordingly, the decision of the Board of Appeals is REVERSED and this matter is REMANDED for further proceedings. The Board shall give plaintiff the option, in advance of hearing, of selecting a 30-minute, 45-minute, or 60-minute hearing.

IT IS SO ORDERED.

DATED this 13th day of October, 2014.

A handwritten signature in black ink, reading "John H. Chun", is written over a horizontal line.

Judge John H. Chun

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

CLORRISSA ESTRELLA,

Plaintiff,

vs.

KING COUNTY et al.,

Defendants.

NO. 14-2-20857-0KNT

ORDER RE: MOTION FOR
CLARIFICATION

This matter comes before the Court on plaintiff's Motion for Clarification. The Court has reviewed the material submitted in connection with the motion. The Court understands that Defendants will not be responding to the motion. The Court hereby ORDERS as follows:

The numbered paragraphs below correspond with those in the motion.

1. Denied.
2. Denied.

Notwithstanding the rulings above, the Order on Writ of Review dated October 13, 2014, remains in effect; such order is limited to this case.

3. KCC 11.04.230(H) does not require proof of two incidents.
4. The terms of KCC 11.04.230(H) do not require proof of a specific mental state.
5. KCC 11.04.230(H) does not require a dog to be alive at the time of citation.
6. KCC 11.04.230(H) does not require a county to identify which dog in fact bit, injured, or killed an animal.

ORDER RE: MOTION FOR CLARIFICATION - 1

**HON. JOHN H. CHUN
KING COUNTY SUPERIOR COURT
401 FOURTH AVENUE NORTH
KENT, WA 98032**

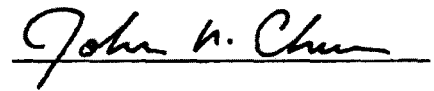
7. The terms of KCC 11.04.230(K) do not require proof of a specific mental state.
8. This evidentiary matter may be resubmitted to the Board on remand.
9. This evidentiary matter may be resubmitted to the Board on remand.
10. The Court is not staying all containment restrictions imposed upon the dog

Cortana.

Accordingly, the motion for clarification is GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED.

DATED this 14th day of October, 2014.



Judge John H. Chun

C

BEFORE THE BOARD OF APPEALS FOR KING COUNTY

Clorissa Estrella

BA14-271

Appellant

vs.

KING COUNTY RECORDS AND LICENSING SERVICES DIVISION

Animal Services Section

Respondent

This matter came before the Board of Appeals for King County on May 21, 2014, on the appeal of Clorissa Estrella of a Notice and Order issued by King County Animal Services Section.

The Appellant, Clorissa Estrella, was present, represented by Attorney Adam Karp. The Appellant's roommate on the date of the incident, Leon Kellogg, was present and testified at the hearing. Sergeant Aaron Wheatley represented King County Animal Services Section. King County Prosecuting Attorney, Nancy Balin, was present at the hearing. The Reporting Party, Ronald Weston, his wife, Laura Weston, and their son, Walter Weston, were all present and testified at the hearing.

I.
STATEMENT

A Notice of Violation and Order to Comply (NVOC) was issued on March 3, 2014, declaring that the Appellant's dogs "Godric," a neutered male Pit Bull, and "Cortana," a female Cocker Spaniel/Staffordshire Bull Terrier, are in violation of King County Code (KCC) 11.04.230 K, Animal Trespassing on Private Property 1st Violation; and KCC 11.04.230 H, Vicious Animal 1st Violation. Additionally, pursuant to KCC 11.04.290 the Appellant was issued a Notice and Order for Confinement for her dog "Cortana." Based on these violations a civil penalty totaling \$1,100 was issued to the Appellant.

II.
FACTS AND CONTENTIONS

1. All parties to this action have been given notice as is required by the Ordinances of King County and by the Rules of the Board of Appeals.
2. All the procedural requirements to perfect this appeal have been fulfilled.
3. On March 3, 2014, King County Animal Services issued the above described NVOC which set a \$100 (\$50 each) civil penalty for violating KCC 11.04.230 K, Animal Trespassing on

Private Property 1st Violation; and a \$1,000 (\$500 each) for violating KCC 11.04.230 H, Vicious Animal 1st Violation.

4. On December 23, 2013, after being placed in a kennel on the Appellant's property, the Appellant's dogs "Godric" and "Cortana" managed to escape.
5. Ronald Weston, 19034 Ridge Rd. SW, Vashon, testified that he raises goats. On December 23, 2013, as he approached his goat pen to feed his animals he witnessed two dogs inside the enclosure barking and growling. At the time he saw two (2) dead goats and several dead bodies of chickens and geese. He immediately went home to retrieve his gun, returned and shot and killed the Appellant's dog "Godric." Although he admits he never saw the dogs physically touching his animals, they were inside his goat pen with his dead goats and it is rare to see marauding dogs on his property.
6. Walter Weston, 2300 NE 65th St., Apt. 204, Seattle, was visiting his parents on December 23, 2013. He witnessed his father with an agitated dog, heard two gunshots. He had not seen the Appellant's dogs before but was later able to identify them online.
7. Shortly after the incident occurred, Ronald Weston set about to find the owner of the dog he shot and the second dog that ran off up the driveway. He was later contacted by the Appellant, and his son Walter advised her that one of her dogs was dead.
8. Shortly after the Appellant was advised of the death of her dog "Godric," she and her friend/roommate, Leon Kellogg arrived at the Weston property and picked up her dog's remains.
9. Sergeant Wheatley testified citing KCC 11.04.020 BB which defines "Vicious" as having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal, property of another, including but not limited to, biting a human being or attacking a human being or domesticated animal, without provocation.
10. Leon Kellogg, after fixing the area where the Appellant's dogs escaped went to the Weston property where he saw "Godric's" body. He testified that he hadn't seen any blood on either "Godric" or "Cortana" who had meantime returned home.
11. The Appellant testified that she has lived on Vashon Island since 1996 and loose dogs on the island are common. She stated that she is an animal care/trainer and contends her dogs were never ever aggressive. She did not allow dogs off her property but they escaped on the day of the incident.

III. HOLDING

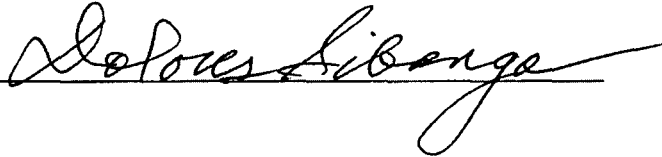
After weighing the evidence and testimony provided by the parties, the Board concludes a preponderance of evidence confirms that the above listed violations did occur. In accordance

with this finding the Board UPHOLDS the requirements set forth in King County Animal Services' March 3, 2014, NVOC, and the \$1,100 civil penalty.

This action was entered and effective this 30th day of June 2014.

KING COUNTY BOARD OF APPEALS

By



The decision was unanimous. The following members of the Board participated in the hearing on the above matter:

Joanne Cisneros
Anthony Ogilvie
Dolores Sibonga
Kay Slonim

NOTICE

Either party may appeal this decision by applying for a Writ of Review in the Superior Court of Washington in and for King County in accordance with Chapter 7.16 RCW and other applicable law and local court rules within thirty (30) days from the date of this order.

D



King County

Regional Animal Services of King County
Records and Licensing Services Division
Department of Executive Services
21615 64th Avenue South
Kent, WA 98032-1301

NOTICE OF VIOLATION and ORDER TO COMPLY

V14-003270

ISSUED TO:

CLORRISSA ESTRELLA P094518		9/25/91	Violation Number A13-007847	
Owner/Custodian Name	Date of Birth	Drivers License #	Activity Case #	
8410 SW 184TH ST	VASHON WA 98070	(206) 251-1282, (206) 432-0096		
Owner/Custodian Street Address	City / State / Zip	Phone #		
12/23/13 15:15	19034 RIDGE RD SW/ VASHON	KING COUNTY		
Date and time of violation(s)	Place of violation(s)	Jurisdiction of violation(s)		

PIT BULL, BROWN & WHITE, NEUTERED MALE DOG, named "GODRIC"	A429936
COCKER SPANIEL \ STAFFORDSHIRE BULL TERRIER, FAWN & WHITE, FEMALE DOG, named "CORTANA"	A429937
Animal Involved Description, Color, Sex, Name	Animal ID

Description of Violation(s): On the above date and approximate time the 2 dogs owned by the defendant were seen trespassing on private property. The property owner saw the dogs inside his goat pen and 2 of his goats had been killed. Also dead in the yard was several of the complainant's geese and many of the remaining animals had been injured. AAW50

PLEASE TAKE NOTICE

THE UNDERSIGNED ANIMAL CONTROL OFFICER HAS DETERMINED THAT YOU HAVE VIOLATED THE FOLLOWING ANIMAL CARE AND CONTROL LAWS AND ARE ORDERED TO PAY THE FOLLOWING CIVIL PENALTIES IN ACCORDANCE WITH K.C.C. 11.04.035:*

A429936 "GODRIC", ANIMAL TRESPASSING ON PRIVATE PROP. 1ST VIOLATION K.C.C. 11.04.230 K	\$50.00
A429936 "GODRIC", VICIOUS ANIMAL 1ST VIOLATION K.C.C. 11.04.230 H	\$500.00
A429937 "CORTANA", NOTICE AND ORDER FOR CONFINEMENT K.C.C. 11.04.290	\$0.00
A429937 "CORTANA", ANIMAL TRESPASSING ON PRIVATE PROP. 1ST VIOLATION K.C.C. 11.04.230 K	\$50.00
A429937 "CORTANA", VICIOUS ANIMAL 1ST VIOLATION K.C.C. 11.04.230 H	\$500.00

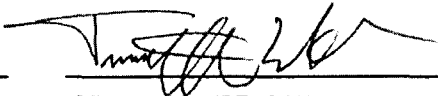
Total Penalties Due **\$1,100.00**

You are also hereby ordered pursuant to K.C.C. 11.04.260 to abate/correct the above violations as follows:

- Secure your animals in a fenced area suitable for the size of the animal when your animal is unattended and outside your home. Lock all passages with a padlock to prevent accidental release. (K.C.C. 11.04.230 (I), 11.04.290 and/or)
- Restrain your animal using a leash with a collar or harness when taking it off your property. Your leash can extend no longer that 8' in length. A competent and capable person must handle the animal at all times when attended outside. (K.C.C. 11.04.230 (C), 11.04.290 and/or)
- Microchip your animal and provide the microchip number to the King County Animal Licensing Office (206-296-2712) within 14 days. (K.C.C. 11.04.290 (A) (2))
- Vaccinate your animal for rabies, if not current. If you were provided with a quarantine notice, vaccinate for rabies within 72 hours of the expiration of the quarantine period. Do not vaccinate your animal during the quarantine period. (K.C.C. 11.04.290 (A) (2), K.C.C.11.04.520).

Without admitting guilt, I acknowledge that I have received a copy of and promise to respond to this Notice of Violation and Order to Comply as directed.

I certify under penalties of perjury that I have reasonable grounds to believe and do believe the above person committed the above violation(s) contrary to law.

<u>EMAILED TO ADAM KARP</u>	<u>3/3/14</u>		058	03/03/2014
Signature	Date	Officer: TIM ANDERSON	Badge #	Date

YOU MUST pay civil penalties described above within fourteen (14) days (due by March 17, 2014) following your receipt of this Notice and Order. Your payment by check should be made payable to "Regional Animal Services of King County" and mailed to: **Manager of Animal Services, Attn: Payments, 21615 64th Ave S., Kent, WA 98032.** If you do not appeal or make payment as directed, the civil penalty will be referred to a private collection agency pursuant to RCW 19.16. *et seq.*

YOU MUST comply with abatement/corrective actions described above within the time period specified above. Failure to comply constitutes a misdemeanor and may result in your animal(s) being ordered removed from King County or confiscated and declared unredeemable. **In addition, if you fail to undertake such actions within the time periods specified, the manager of the regional animal services section shall proceed to cause abatement and charge the costs thereof to the owner.**

YOU MAY APPEAL this Notice and Order to the King County Board of Appeals pursuant to K.C.C. 11.04.270. Such an appeal must be filed in writing within fourteen (14) days (due by March 17, 2014) from the service of the notice of violation, and order and mailed to the Manager of Regional Animal Services of King County Attn: Appeals, 21615 64th Ave S, Kent, WA 98032. Pursuant to K.C.C. 11.04.270, your written appeal must contain the following:

- (1) A heading in the words: "Before the Board of Appeal of the County of King";
- (2) A caption reading: "Appeal of _____" giving names of all appellants participating in the appeal;
- (3) A brief statement setting forth the legal interest of each of the appellants in the animal involved in the notice and order;
- (4) A brief statement in concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant;
- (5) A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside;
- (6) The signatures of all parties' named as appellants, and their official mailing addresses; and
- (7) The verification, by declaration under penalty of perjury, of at least one appellant as to the truth of the matters stated in the appeal.

Your obligation to pay civil penalties and undertake abatement/corrective actions described in this Notice and Order and other enforcement of this Notice and Order shall be stayed during the pendency of an administrative appeal, except impoundment of an animal that is vicious or dangerous or cruelly treated. Penalties upheld by the Board of Appeals are payable to Regional Animal Services, 21615 64th Ave. S., Kent, WA 98032. Please note case number with payment.

Failure to file an appeal in accordance with K.C.C. 11.04.270 shall constitute a waiver of your right to an administrative hearing and shall render this Notice and Order a final determination that you have violated animal care and control laws specified in this Notice and Order and that you are liable for the civil penalties and the abatement/corrective actions described herein.

E

BEFORE THE BOARD OF APPEALS FOR KING COUNTY

CLORISSA ESTRELLA,)
Appellant,)
vs.)
) NO. BA14-271
KING COUNTY RECORDS AND LICENSING)
SERVICES DIVISION, Animal Services)
Section,)
Respondent.)

MAY 21, 2014, HEARING BEFORE THE BOARD OF APPEALS

Transcribed by Julie A. Espinoza
Certified Court Reporter
WA CCR #3094

INDEX PAGE
EXAMINATION OF:
RONALD WESTON 6
WALTER WESTON 23
LEON KELLOGG 29
CLORISSA ESTRELLA 35
LAURA WESTON 43

APPEARANCES

FOR THE APPELLANT:

ADAM P. KARP
Animal Law Offices
114 W Magnolia Street, Suite 425
Bellingham, Washington 98225
888.430.0001
adam@animal-lawyer.com

FOR THE RESPONDENT/KING COUNTY ANIMAL SERVICES:

NANCY BALIN
Office of Prosecuting Attorney
516 3rd Avenue, Room W400
Seattle, Washington 98104-2388
206.296.9015
nancy.balin@kingcounty.gov

SERGEANT AARON WHEATLEY

FOR THE BOARD:
DOLORES SIBONGA
JOANNE CISNEROS
ANTHONY OGILVIE
KAY SLONIM

MS. SIBONGA: Good afternoon. I'll call to order the
King County Board of Appeals on Wednesday, May 21st, 2014. The
members present on the Board are Joanne Cisneros, Tony Ogilvie,
Kay Slonim. I'm Dolores Sibonga. Our clerk is Kelly Williams.
The first case is BA14-271, the case of Clorissa Estrella.
Notice and order -- let's see. Notice of violation and Order
to Comply with a \$1,100 penalty.
Would those who are going to testify, please stand and be
sworn.
THE CLERK: Do you solemnly -- do you solemnly swear
or affirm that all testimony you're about to give in this
matter will be the truth, the whole truth, and nothing but the
truth?
UNIDENTIFIED SPEAKER: I do.
UNIDENTIFIED SPEAKER: I do.
UNIDENTIFIED SPEAKER: I do.
MS. SIBONGA: Thank you. You can be seated. Let me
advise the parties that you will each have 15 minutes to make
your main presentation. The remainder of the time will be for
questions and closing. All right?
MR. KARP: If I may be heard just on the record?
MS. SIBONGA: Yes.
MR. KARP: So Adam Karp representing the Petitioner
Ms. Estrella. Today I -- I do have three witnesses to call,
and I don't know I can get that done in 15 minutes. I realize

1 you -- you did provide a double slot for us today, and I
2 assumed that that would be enough time to -- to handle the
3 matter. I will -- I will strive to get in their testimony as
4 quickly as possible, but I'll just note for the record that I
5 don't think 15 minutes will be adequate to --

6 MS. SIBONGA: Please do your best, Mr. Karp.

7 MR. KARP: I will.

8 MS. SIBONGA: All right.

9 MR. KARP: Thank you.

10 MS. BALIN: Ms. Sibonga, could I just get
11 clarification, is the whole -- so double time, does that mean
12 this hearing is going to last an hour?

13 MS. SIBONGA: No.

14 MS. BALIN: No. So it's 30 minutes total, 15 each
15 side --

16 MS. SIBONGA: Right. Right. 15 each side and then
17 the remainder of the time of the 45 minutes will be for cross
18 and closing.

19 MS. BALIN: Thank you.

20 MS. SIBONGA: Okay. Does appellant wish to proceed?

21 MR. KARP: We can, but I -- since the County has the
22 burden of proof, should they go first to present their case?
23 Or do you prefer that we do --

24 MS. SIBONGA: It's your choice.

25 MR. KARP: Okay. I'd ask that they go first so that I

Page 5

1 can then perhaps whittle down the testimony on my side after I
2 hear what they say.

3 MS. SIBONGA: All right. Fine.

4 MR. KARP: Thank you.

5 MS. SIBONGA: The Department?

6 MR. WHEATLEY: So on December 23rd --

7 MS. SIBONGA: Would you identify yourself, please --

8 MR. WHEATLEY: Sergeant Aaron Wheatley, King County
9 Animal Control. So on December 23rd, 2013, Mr. Weston went
10 down to his fields where his animals are kept and found that
11 many of his animals were dead with two of the dogs, who have
12 been identified as belonging to Ms. Estrella, inside the field.
13 So I'm going to let him say what he saw and experienced at that
14 time.

15
16 EXAMINATION OF RONALD WESTON

17 MS. SIBONGA: Would you identify yourself, please, and
18 give us your address.

19 MR. WESTON: Yes, Madam Chair. I'm Ron Weston. And
20 my wife and I own --

21 MS. SIBONGA: Your address, please.

22 MR. WESTON: Excuse me. 19034 Ridge Road Southwest,
23 Vashon, Washington.

24 MS. SIBONGA: Thank you.

25 MR. WESTON: My wife and I own approximately 20 acres

Page 6

1 of heavily forested land on Vashon Island where we raise goats,
2 sheep, and a variety of poultry. There are four separate
3 parcels. There are two homes. We have a main home at 19034.
4 There's a smaller home, which was our original home, at 19022,
5 which is on the largest piece of property. It's a 17 acre
6 piece that goes from the county road at 300 feet elevation all
7 the way to Puget Sound, which, of course, is at sea level.

8 So you can imagine, it's a quite -- topographically, it's
9 rather steep. There's about a 1,000 foot driveway down to
10 where we have a goat enclosure. It's a fenced area, about a
11 fifth of an acre, with a milking room and a shed.

12 And I was coming down in my pickup truck on the afternoon
13 of December 23rd -- time to feed the animals. And as I drove
14 up, I didn't see any -- I didn't see my goats, but I saw two
15 dogs in the enclosure. I had a very sinking feeling about
16 that.

17 As I pulled up and parked -- the driveway is about 20 feet
18 from the fence. It's a five foot wire fence. The two dogs
19 were junkyard dog ballistic. They were just growling and
20 barking, pogo-sticking like they wanted to get me.

21 I stepped out of my truck. I still had -- I could see a
22 dead goose on the ground. In the fenced enclosure, I could see
23 a black body, which was one of our goats, down by the far
24 fence. I couldn't see anything else at that moment.

25 And these two dogs were -- I was worried they were going to

Page 7

1 come out after me. So I went around behind the building so I
2 was out of sight and slipped into the milking room. And then I
3 was able to open the door to duck into the shed area where
4 the -- I saw the -- there were four or five goats huddled in a
5 corner, you know, just looking at these dogs through the open
6 doorway of their shed, you know, terrified. I slipped in and I
7 was able to reach over and close the dutch door lower half,
8 which I hoped would keep them out of the immediate side of that
9 shed area.

10 There was a dead goat in the other doorway. There was two
11 doorways into that shed area. It's a lean-to shed off of the
12 milking room. There was a dead goat in the doorway -- a second
13 dead goat. I couldn't tell and I didn't check to see what the
14 condition of the other animals were, but later we found that
15 there was an injured goat actually under the stoop. She was
16 not even able to stand for four or five days after. Her leg
17 had been badly -- and there was some -- anyway, other damages
18 that we discovered later.

19 I got back to my truck -- as I was going back to my
20 truck -- actually, I was still in the milking room, I could see
21 the female dog -- I later learned it was female -- slip out
22 under the gate. There's a vehicle gate that had a slight
23 depression under it where the geese could squeeze under to get
24 to the water source inside, and it's also where they spend
25 their nights. She went -- started up the driveway. I lost

Page 8

2 (Pages 5 to 8)

1 sight of her.

2 I got in my truck, drove up the driveway back to my house,
3 which is on the upper -- you know, at the county road level,
4 but overlooks the property, told my son what had -- what had
5 happened, grabbed my shotgun, got back in the truck, went back
6 down.

7 I think on the drive either up or down, I saw at least one
8 live goose alongside the driveway. There were three more in
9 the orchard area immediately adjacent to the goat area. And so
10 I -- I parked my truck and I -- I got out.

11 The male dog -- I guess Godric was his name -- was still
12 roaming around in the enclosure. I wasn't conscious of him
13 barking or growling. I was really kind of just in a mental
14 state of, you know, stopping the threat to my animals.

15 But my son -- tells me here -- he was up above at that
16 point on the deck watching and he said he heard -- could hear
17 him barking and growling. He was moving out along the back
18 fence line. I fired one shot. I did -- I wasn't moving my gun
19 so I missed. He then circled around and tried to come past me
20 and I -- and then I killed him. I shot him. It was a very
21 clean kill. He died immediately.

22 It's very rare for us to have dogs in that property because
23 of its topography. It's relatively isolated. We had a house
24 rented to a young family for nine months from January through
25 October of that year. I have a sworn statement from my renter.

Page 9

1 The only occasion that there was any dogs, other than my
2 livestock protection dog, on the property in those nine months
3 was when these same two Pit Bulls came up from the beach and
4 were chasing my geese, and that occurred sometime last summer.
5 We don't have an exact date, but his statement reflects the
6 fact that the dogs were not -- he was concerned about his own
7 well-being. He called me saying that --

8 MR. KARP: Objection. Hearsay. I haven't seen this
9 statement at all.

10 MR. WESTON: Well, I have it. I can provide it to the
11 Board and to Mr. Karp.

12 (Inaudible.)

13 MR. WESTON: Okay. All right. Okay. Well, I guess
14 what I'm trying to establish is the fact that it's a -- it's a
15 rare thing to have marauding dogs on -- on my property. And I
16 think Ms. Estrella is not able to accept that her dogs were
17 capable of the behavior that they demonstrated on the 23rd.
18 And I think that that's, you know, kind of a key of the case,
19 that they couldn't have done this because they just aren't
20 capable of it.

21 Well, anyway, after this -- after killing her dog, I then
22 set about to try to find the owner. I went to the location of
23 the -- what I was told was the parents of the owner of two dogs
24 that had attacked my neighbor's cat earlier in the fall, and I
25 had assumed that they must be these same two dogs.

Page 10

1 So I went to that house and I met a young woman walking out
2 the driveway. She said she was a visitor. She didn't live
3 there. And she didn't know where the two Pit Bulls resided,
4 but she knew that Ms. Estrella -- she had said Rissa was
5 looking for them. Because she had had some kind of a message a
6 couple of hours earlier that she was looking for her dogs, so
7 -- I said, Well, do you know where she lives? And she said,
8 Well, no, but I can contact her. So she sent a message to
9 Rissa.

10 I told her to contact my wife's cell phone, which -- which
11 she later did. And my wife spoke to her and said to meet her
12 at the Ridge Road edge of our property, which we have a sheep
13 pasture at that location. And they conversed. My wife told
14 her that she needed to come see the damage her dogs had done.

15 Ms. Estrella wanted to know what the status of her dogs
16 was -- are they all right. And my son apparently told her that
17 no, one of them was dead. And then Ms. Estrella became very
18 distraught. I wasn't -- I was part way up the driveway at that
19 point, and I could hear her from several hundred feet away
20 obviously in great distress; crying, shouting.

21 Again, this is based -- I know from phone records that my
22 wife made a phone call to her boyfriend, at Ms. Estrella's
23 request, relayed a message from the boyfriend that her other
24 dog had returned home. Her boyfriend came to the -- that
25 location where Ms. Estrella was waiting and then they proceeded

Page 11

1 down in their truck down the -- the driveway to collect the
2 body of her dog, which I had removed from the enclosure and
3 placed alongside the -- the driveway.

4 We had been spending that entire day getting ready for a --
5 (Inaudible.)

6 MR. WESTON: Okay. All right. Okay. All right. All
7 right.

8 This was very devastating to us. These goats were -- goats
9 are very social animals. We're very attached to them. One of
10 the females that was killed, we had spent -- a vet visit in the
11 middle of the night after a difficult birth, basically sleeping
12 with her and her kid to nurse her through the night. So the
13 loss of those animals was quite devastating to us. I don't
14 think that Ms. Estrella fully comprehended how affected we were
15 by the attack.

16 And I personally have been very offended by the postings
17 online that she's made in raising money to fund this appeal
18 basically claiming that I caught her dog, placed it in the
19 enclosure in order to murder it.

20 Vashon Island is a very small community, you know. There
21 aren't too many livestock owners on Ridge Road and there aren't
22 too many retired lawyers that are raising livestock. And so I
23 think -- you know, I feel like my reputation has been sullied,
24 you know, with basically fabricated imaginings of what actually
25 occurred. I was the only one there who actually witnessed what

Page 12

3 (Pages 9 to 12)

1 occurred, and I'm afraid her dogs did, in fact, do what I said,
2 so...
3 MS. SIBONGA. Thank you, Mr. Weston.
4 MR. WHEATLEY: I'm going to ask that Mr. Weston's son
5 also -- he -- he witnessed Cortana on the property as well, so
6 I'm just going to have him speak to that.
7 MR. WESTON: Absolutely. So --
8 MR. KARP: If I could, are -- are you going to take
9 cross-examination with each witness --
10 MS. SIBONGA: Yes. Cross. Yes.
11 MR. KARP: Okay.
12 MS. SIBONGA: Go ahead, Mr. Karp.
13 MR. KARP: Thank you.

14 CROSS-EXAMINATION

15 BY MR. KARP:

16 Q Mr. Weston, you are a lawyer?
17 A I'm a retired lawyer.
18 Q You're an inactive lawyer, but you're not resigned from the
19 bar?
20 A No. I'm inactive.
21 Q Okay. And what type of law did you practice?
22 A I was on active duty with the Coast Guard for 31 years and I
23 practiced a variety; military criminal law, environmental law,
24 legislative -- I was in charge of the Coast Guard legislative
25 program for a while.

1 Ms. Estrella. But you never actually saw either dog touch any
2 of your animals, did you?
3 A No, I did not.
4 Q And so you never witnessed even dogs chasing either of your --
5 any of your animals whether they be poultry or goats?
6 A Not on the 23rd. Last summer, the previous summer, I witnessed
7 both the dogs chasing geese and grabbing geese by the butt as
8 it was trying to get away, but we did not suffer any loss.
9 Q And that was summer of what year?
10 A 2013.
11 Q Okay. And you say they actually were grabbing, like making
12 contact with the geese?
13 A Yes. Chasing the -- one goose was trying to get into the goat
14 enclosure and had to slow down to try to scoot under the gate
15 where they pass in and out. And the one dog -- I think
16 Cortana, but I'm not certain, grabbed it by the tail and the
17 goose was able to struggle free and so she only had a mouthful
18 of feathers.
19 Q But that's not in here, any indication, is it, to
20 Animal Control? You just said that they chased your geese and
21 chickens. There's no comments here about them making contact
22 or grabbing, is there?
23 A Well, there -- no, there is not.
24 Q Okay. And when in the summer was that?
25 A Just during the summer months. Neither the renter, nor I,

1 Q Okay. So you then would understand the importance when you
2 send a letter or a complaint to a government agency that it
3 needs to be accurate and complete?
4 A Yes.
5 Q Okay. And that it also needs to be truthful?
6 A Yes.
7 Q All right. So in your statement here, you indicate that --
8 A My e-mail statement to the Animal Control -- the complaint?
9 Q Right. So this is -- for the Board's benefit, it's Estrella
10 page 23 and 24 in the materials. This is your e-mail of
11 December 24th, 2013.
12 MS. BALIN: Counsel, are you going to be providing him
13 with a copy, or should I get one out?
14 MR. KARP: If you could.
15 MS. BALIN: Because it's -- this is not a memory test,
16 so -- okay --
17 MR. KARP: Well --
18 MS. BALIN: -- allow that to turn into that. Are you
19 referring to the one that starts with, Here's what happened
20 yesterday 12 --
21 MR. KARP: That's right.
22 MS. BALIN: Okay. So providing our witness with a
23 copy.
24 Q (By Mr. Karp) Okay. So you say here that your reputation has
25 been sullied, that these are just the mere imaginings of

1 could -- you know, since there was no loss of life, it wasn't a
2 -- kind of a watershed event. We tried to find the owner for
3 the dogs -- went down to the beach. They could have gone in
4 either direction and we didn't -- we didn't really know.
5 MS. BALIN: Excuse me. Madam Chair --
6 MS. SIBONGA: Yes --
7 MS. BALIN: I just want to confirm that this
8 cross-examination so far doesn't have anything to do with the
9 present case -- it's not counting from our time?
10 MS. SIBONGA: No, it's not --
11 MS. BALIN: Because we still have another witness --
12 MS. SIBONGA: -- no, it's not.
13 MS. BALIN: Thank you.
14 Q (By Mr. Karp) So the -- this incident, would you say, was six
15 months before the one in December? I mean, the summer could be
16 a --
17 A It could have been, yeah. We couldn't pin it down. Neither
18 Mr. Harrington, nor I could. It was just warm -- warm weather,
19 which, you know, put it summer. It was sunny, you know. We
20 just didn't have a date.
21 Q Okay. And this was -- that was the only time you're claiming
22 to have seen Godric and Cortana before --
23 A Yeah. That's the only time I've seen them before.
24 Q Okay. And then in your statement here you say, More recently
25 our neighbor, Gus Sherrer (phonetic), had his cat attacked by

1 these same two dogs. And you added, So we are certain they
2 were the same animals. You said that?
3 A I did say that. That was inaccurate.
4 Q Okay. So that was incorrect?
5 A Yes.
6 Q All right. And you also talked --
7 A If I -- if I could explain, the --
8 Q I don't want -- I'm just -- you've answered my question.
9 A All right.
10 Q Okay. 12/23/2013, what were you doing up until 3:15 p.m. when
11 you're claiming that you first came out and observed the dogs
12 in the enclosure?
13 A We were getting ready for a neighborhood Christmas party we
14 were hosting the next day. So we were cleaning house and
15 inside doing a lot -- my wife was doing a lot of cooking.
16 Q Okay. You mentioned in your report to Animal Control that you
17 believe the dogs were, quote, Probably on the property for
18 several hours based on the unexpected appearance of two geese
19 at your home earlier in the afternoon several hundred feet away
20 from where they normally are.
21 A Right.
22 Q So how -- what time in the afternoon did you observe the geese?
23 A It was when I was coming back from taking my son to the ferry
24 and so it was probably somewhere around 2 o'clock -- 2:00 p.m.
25 Q So that's several hours --

Page 17

1 A Rough -- roughly.
2 Q Okay. But you found the goat -- you found the dogs, you're
3 claiming, at 3:15 p.m., so you're saying --
4 A Roughly --
5 Q -- an hour and 15 minutes is what you meant by several hours?
6 A Well, I could have been -- it could have been -- it could have
7 been a little bit prior to that, but it was -- it was earlier
8 in the afternoon.
9 There was so many -- there was so many dog tracks in the
10 mud in so many different places and there were feathers so many
11 different places that it looked like the dogs had been there
12 for a while and -- although the geese sometimes do come up to
13 our property to crop the grass and the lawn, it had not
14 happened for a while so it was unusual. They were in the
15 company of a pea hen and they all seemed to head off together
16 down to the forest and I thought, Well -- it just didn't occur
17 to me that there might be a problem.
18 Q Okay. So you -- you never investigated from the moment that
19 the geese appeared in an unnatural location --
20 A I wouldn't call it unnatural. It was unusual. At that time of
21 year, it was unusual, but not unnatural. We've had geese up on
22 the lawn before. But, no, we did not -- normally my -- my
23 Great Pyrenees is a livestock protection dog. She is pretty
24 good about alerting us when there's something that she thinks
25 is a problem, but she had been sick and was in the garage

Page 18

1 basically, you know, prostrate that day. And I really wish I
2 had investigated.
3 Q Are you saying that she was ill and needed vet care? Or no?
4 A She didn't need -- well --
5 MS. BALIN: Madam --
6 A She was ill. She was lying -- she was sleeping in the garage.
7 MS. BALIN: Madam Chair, this is so far afield, that
8 I'm finally going to object --
9 MS. SIBONGA: Yeah. And we need to move along,
10 Mr. Karp.
11 MR. KARP: Well, then offer of proof -- what I'd
12 like -- he's trying to demonstrate here that this particular
13 dog couldn't possibly have been involved in killing his own
14 animals because she was prostrate in the garage. I wanted to
15 just explore that, but I'll move on.
16 MS. BALIN: Madam Chair, there's no evidence
17 whatsoever that their own dog was involved. This is a complete
18 detour that means nothing and is wasting time.
19 MS. SIBONGA: That's fine, Ms. Balin.
20 MS. BALIN: Thank you.
21 MR. KARP: Well, I'll save that for argument then. I
22 think she's missing the argument.
23 Q (By Mr. Karp) The next issue here, you say that at -- I think
24 I heard you say that there wasn't any prior time where dogs had
25 come on your property and harassed --

Page 19

1 A No. I said it was rare.
2 Q It was rare. So in 2008, though, it would be accurate then
3 that you had dogs on your property that apparently attacked
4 your goats and seriously injured one of them?
5 A Yes. They chased -- yes. One of the ones was injured and did
6 have a bite mark on it. Those dogs -- ironically, those dogs
7 were owned by renters who were living in the house that
8 Ms. Estrella now occupies.
9 Q Okay.
10 A And they were taken out of the county as a result of an
11 Animal Control enforcement action.
12 Q And you know that based on personal knowledge? Or hearsay?
13 MS. BALIN: I'm going to object to that. It's a legal
14 question that doesn't belong here.
15 MR. KARP: Well, then I'll move to strike based on
16 hearsay.
17 MS. BALIN: Thank you.
18 MR. KARP: All right. Move to strike his answer, not
19 my question.
20 MS. BALIN: And I'm going to object to that. He said
21 what he knew and there's been no basis that he doesn't have the
22 foundation for it. We'd ask the Board to consider it.
23 MR. KARP: Okay.
24 MS. SIBONGA: All right.
25 MR. KARP: All right.

Page 20

5 (Pages 17 to 20)

1 Q (By Mr. Karp) Next, you -- you said that Godric was coming --
2 you fired twice and Godric was coming back at you as if to
3 attack you, is that what you're saying?
4 A No. I think he was trying to evade me.
5 Q Evade you. Okay. All right. Because I was left with the
6 impression that you were suggesting that he was acting
7 aggressively toward you at the time you shot --
8 A I didn't mean to say that.
9 Q Okay. Thank you. Is there a reason why you didn't choose to
10 investigate several hours prior when you had the unexpected
11 appearance of the two geese at your home and other evidence
12 that you believe that the dogs were there for several hours?
13 A It was only in retrospect that I had reason to believe that
14 they were there for several hours.
15 Q Did you see any type of blood on either of these dogs, other
16 than the blood that -- that came out of the wound that you
17 inflicted upon Godric with a shotgun?
18 A I don't recall seeing blood anywhere including on the dead
19 goats -- puncture wounds to the neck. No. Minor bleeding, but
20 no. No.
21 Q So -- okay. So the goats who were deceased had wounds to the
22 neck to the jugular area?
23 A Yes.
24 Q Okay. All right. So you agree now then that Cortana and
25 Godric were not responsible for the death of Mr. Sherrer's cat?

Page 21

1 A Yes.
2 MS. BALIN: Objection. Completely irrelevant --
3 MS. SIBONGA: Yeah.
4 MS. BALIN: -- wasting time.
5 A I had made an incorrect assumption based on the fact that there
6 were two dogs involved; one of which my wife said was a
7 Pit Bull because she had held it. And because of the rarity of
8 dog attacks. It just seemed likely that since we had -- I had
9 two Pit Bulls on my property attacking animals that they were
10 the same ones. And I wanted to add -- I wanted to essentially
11 amplify the importance to Animal Control that there was, you
12 know -- there seemed to be a problem.
13 MR. KARP: I do have more and -- but I will -- I will
14 move on to ensure that I have ability to put on my case.
15 MS. SIBONGA: All right. Thank you.
16 MS. BALIN: I'm going to ask one question on
17 re-direct.
18 EXAMINATION - (Continuing)
19 BY MS. BALIN:
20 Q Mr. Weston, you, with your own eyes saw petitioner --
21 Ms. Estrella's two dogs inside your goat enclosure at the same
22 time you recognized that you had dead goats; is that right --
23 with your own eyes you saw her dogs inside your goat pen?
24 A Yes.
25 Q Right?

Page 22

1 A And their demeanor was incredibly agitated, aggressive, scary.
2 MS. BALIN: Thank you.
3 A It was not, you know, innocent sniffing around, just happened
4 upon the scene behavior.
5 MS. BALIN: Thank you.
6 MR. KARP: I need a follow up.
7 EXAMINATION - (Continuing)
8 BY MR. KARP:
9 Q You said pen. That's not correct, is it? They weren't in the
10 pen, meaning the shed area where you found the goats huddled,
11 correct?
12 MS. BALIN: I called it a pen.
13 A No. They were in the -- the outer enclosure fenced area.
14 Q (By Mr. Karp) And how big is that fenced area, so the Board can
15 understand?
16 A It's probably 100 feet by 75 feet, 80 feet. It's not -- it's
17 not a rectangle precisely. And the lean-to shed off of the
18 milking room extends into that area.
19 MS. SIBONGA: Thank you, Mr. Weston.
20 MR. KARP: Thank you.
21 MR. WHEATLEY: I'm going to have Mr. Weston's son
22 speak to him seeing Cortana on the property.
23
24 EXAMINATION OF WALTER WESTON
25 MS. SIBONGA: Yes. Please identify yourself.

Page 23

1 MR. WESTON: Stand up?
2 MS. BALIN: Yeah.
3 MR. WESTON: My name is Walter Weston. I was --
4 actually, my address is 2300 Northeast 65th Street, Apartment
5 204, Seattle -- in the Ravenna area. And --
6 MS. SIBONGA: Go ahead.
7 MS. BALIN: I'm having him stand just to make sure you
8 can see him --
9 MS. SIBONGA: Yes.
10 MS. BALIN: If you'd rather he sit --
11 MS. SIBONGA: No. That's fine.
12 MR. WESTON: Well, right around -- I was visiting my
13 parents for Christmas Eve. And my dad came up, was out of
14 breath, and said that -- that there was two dogs in our
15 enclosure down below, and it was like a war zone. He said
16 there was a bunch of dead animals, didn't know the damage. And
17 he got his shotgun and drove down.
18 I stood on top of the deck, and I could see down the deck.
19 I watched my dad and I could see the one dog that was
20 identified later as the male dog acting agitated. I saw my dad
21 walk into the enclosure. I heard two shots. Upon that point,
22 I heard a rustling in the bushes and that was when the female
23 dog came out of the bushes. I was afraid of our animals up
24 there, so I scared -- scared the dog away.
25 At that point, I -- I called down to my parents to see if

Page 24

6 (Pages 21 to 24)

1 everything was okay. I went down to -- to -- with them to the
2 animal enclosure to foresee the -- to look at the damage. And
3 I'm told, I'm done.
4 The one thing I want to add, though, there was -- I have
5 pictures on my iPhone. There was blood -- lots of it.
6 MR. WHEATLEY: So the dogs were charged with a vicious
7 act --
8 MR. KARP: But, actually, I'm sorry -- very quickly --
9 CROSS-EXAMINATION
10 BY MR. KARP:
11 Q Okay. Mr. Weston, so what time did you arrive at the property
12 that day?
13 A That day -- or -- I don't remember. I was visiting for
14 Christmas -- Christmas following.
15 Q Your father mentioned something about taking you to a ferry.
16 I'm --
17 A Other brother -- another brother.
18 Q Oh --
19 MR. RONALD WESTON: I have four sons.
20 MR. KARP: Thank you.
21 Q (By Mr. Karp) And had you ever seen this female dog that
22 you're claiming was Cortana before that day?
23 A No. But I later identified it based on the photos that were
24 posted online.
25 Q And those photos were photos of just one dog?

Page 25

1 A There were two dogs.
2 Q Which were my client's dogs?
3 A Godric and -- yes, correct.
4 MR. KARP: Okay. Thank you.
5 MR. WESTON: Thank you.
6 MR. WHEATLEY: So the dogs were charged with a vicious
7 attack so, A, for the attack on the actual goats and then the
8 dogs also acted aggressively towards Mr. Weston when he
9 approached the first time.
10 Under King County Code, the Vicious Title, VT, a dog either
11 has to attack an animal or a person or show the propensity to
12 attack an owner or a person. The domesticated animal in this
13 case is defined under King County Code Title G -- is a sheep or
14 a goat, any sort of livestock, so that's -- there.
15 Under King County Code 11.04.200 violation of civil
16 penalty, which is the applicable case on this, any person whose
17 animal is maintained in violation of this chapter shall incur a
18 civil penalty not to exceed \$1,000 per violation.
19 So under maintained, King County Code also defines that as,
20 Harbored, kept, or maintained means performing any of the acts
21 of providing care, shelter, protection, refuge, food, or
22 nourishment in such a manner as to control the animal's actions
23 or that the animal or animals are treated as living at one's
24 house by the homeowner.
25 So Ms. Estrella has a cage in the back of the property

Page 26

1 where she keeps the animals when she puts them outside and then
2 leaves, so the dogs are kept there and maintained as -- you
3 know, as defined by King County Code.
4 So, because they violated, while they were being maintained
5 at her property, she was given the vicious charge for each
6 animal, the confinement order for the one remaining dog, and
7 then because they were seen by both Mr. Weston and his son, for
8 the trespass on his property.
9 MS. SIBONGA: Thank you.
10 MS. BALIN: Madam Chair --
11 MS. SIBONGA: Yes?
12 MR. KARP: I'm sorry.
13 MS. BALIN: Sorry. Well, that was argument, so no --
14 MR. KARP: But I didn't -- I didn't follow -- I want
15 to make sure I understood correctly here, are you saying that
16 these dogs were declared vicious or potentially dangerous
17 before the incident with Mr. Weston?
18 MR. WHEATLEY: No.
19 MR. KARP: Okay. Because I thought I heard you say
20 that there was confinement and then they were violating -- she
21 violated that and they were (inaudible) vicious?
22 MR. WHEATLEY: No --
23 MS. SIBONGA: No --
24 MR. WHEATLEY: -- there was no confinement. It was
25 just the actions on this date.

Page 27

1 MS. BALIN: Madam Chair, the younger Mr. Weston has,
2 at my request, checked his iPhone for the pictures that he
3 testified about. What I would like to do is to offer those as
4 part of King County's case.
5 And the way that I propose doing that, since it's an
6 iPhone, is to just give him -- I guess, your -- what I'd
7 probably do is just have -- give him my e-mail address and Mr.
8 Karp's e-mail address and then we would -- I would forward them
9 to you or we can give him also your clerk's address, whatever
10 you'd like.
11 But I would like those photos entered as part of
12 King County's case. And we'd just seek your -- your idea for
13 what's the easiest and best way for you for us to do that. But
14 we have -- and I -- and I'd also be happy to show them to
15 Mr. Karp while we're here in the room and then to show them to
16 the Board. They actually are quite -- they support his
17 testimony in the condition -- into the condition of the
18 animals.
19 MS. SIBONGA: Mr. Karp?
20 MR. KARP: Okay. I mean, I'd like to see them, of
21 course, and have the opportunity to cross-examine. But are
22 these photographs of the dogs that were seen that day?
23 MR. WALTER WESTON: No. This would be the livestock
24 that was killed.
25 MR. KARP: Okay. Then no. No objection.

Page 28

7 (Pages 25 to 28)

1 MS. SIBONGA: No objection.
2 MR. KARP: That's fine. But I'd like to get a copy,
3 so please --
4 MS. BALIN: So would you like me to carry it up to you
5 right now, or would you like to receive it later by e-mail? I
6 want to be respectable of your time.
7 MS. SIBONGA: I think later by e-mail is fine.
8 MS. BALIN: Great.
9 MS. SIBONGA: And Mr. Karp has not objected, so...
10 MS. BALIN: Thank you.
11 MS. SIBONGA: All right. Mr. Karp?
12 MR. KARP: The other point I wanted to make sure,
13 though, is there -- you were discussing propensity, and I want
14 to -- I was taking notes while you were talking. Was there a
15 claim here that they're being declared potentially dangerous
16 under state law?
17 MR. WHEATLEY: No.
18 MR. KARP: Okay. Fair enough. I'd like to call --
19 no. Let's see. Leon Kellogg.

20
21 EXAMINATION OF LEON KELLOGG

22 BY MR. KARP:

23 Q So, Mr. Kellogg, where did you reside on December 23, 2013?
24 A 8410 Southwest 184th Street, Vashon, Washington.
25 Q And you lived with whom at the time?

Page 29

1 A When we were -- when I arrived, I met up with Clorissa and we
2 went looking for the dogs very briefly, because she had to get
3 back to work.
4 Q Did you find them during that search?
5 A No.
6 Q Okay. What happened next?
7 A We came back home. I proceeded to fix the fence where they had
8 gotten out. She left to go to work. And shortly after that
9 Cortana showed up.
10 Q Around what time, would you say?
11 A I want to say it was around 2 o'clock, maybe a little
12 afterwards.
13 Q What did you do when Cortana arrived?
14 A I immediately took her inside and locked her in the room, and I
15 went back out and began fixing the fence.
16 Q Did she stay in the -- the room?
17 A Yes, she did.
18 Q For how long?
19 A For the remainder of the night.
20 Q Okay. All right. Let's move forward now. Did you end up
21 going to the Weston's property later that day?
22 A Yes, I did.
23 Q Around what time?
24 A Oh, it's hard for me to say. I want to say it was around
25 4 o'clock.

Page 31

1 A Clorissa Estrella; Mike and Cindy, our other two roommates.
2 Q So because we have limited time, let's move to December 23,
3 2013. When was the last time that you saw Godric alive?
4 A That would be around 9 o'clock in the morning when I left for
5 work. I had helped put them in the enclosure.
6 Q Okay. And was the enclosure secure?
7 A It was.
8 Q Had there ever been any issues with the security of that
9 enclosure?
10 A Not to my knowledge.
11 Q Had, to your knowledge, Godric ever escaped from the property
12 or that kennel before that day?
13 A No.
14 Q Now, had Cortana ever escaped from the property prior to that
15 day -- I'm not suggesting she did escape that day, but prior to
16 that day, did she?
17 A No.
18 Q All right. So did you return to the home later that day?
19 A I did.
20 Q Around what time?
21 A I want to say about 1:45.
22 Q And what brought you home?
23 A I got a call from Clorissa just a little bit before that saying
24 that the dogs were missing and that we needed to find them.
25 Q What did you do when you arrived?

Page 30

1 Q Okay. When you arrived, did you see Godric's body?
2 A I did.
3 Q Okay. And you've previously drawn for me a general map here
4 and I can show this to opposing counsel, take a picture of it,
5 or I can have him -- if we have time -- to draw it on the
6 board.
7 MS. SIBONGA: We don't have time.
8 MR. KARP: You don't have time?
9 MS. SIBONGA: Maybe show it to Counsel --
10 MR. KARP: I'll show it --
11 MS. BALIN: So he's drawn this --
12 MR. KARP: He's already drawn this.
13 MS. BALIN: And this is of the Weston's house?
14 MR. KARP: I'll have him describe it.
15 MS. BALIN: Why don't you just tell me so I know what
16 we're looking at.
17 (Inaudible.)
18 MR. RONALD WESTON: Well, I wouldn't draw it that way,
19 but, you know, from his recollection, that's probably somewhat
20 close.
21 MS. BALIN: Okay. Thanks.
22 MR. KARP: All right.
23 MS. BALIN: Do you have a copy of that?
24 MR. KARP: I don't.
25 MS. BALIN: Okay.

Page 32

8 (Pages 29 to 32)

1 MR. KARP: Sorry. I'll take a picture of it.
2 Q (By Mr. Karp) So this was a drawing, Mr. Kellogg, that you had
3 prepared before this meeting today?
4 A Yes.
5 Q Okay. And I'm going to pass it up to the Board. Do -- do you
6 need to see it in order to talk about it --
7 A No --
8 Q -- or could you explain what's on it?
9 A -- explain.
10 MR. KARP: All right. Thank you. If you could mark
11 that as an additional exhibit --
12 UNIDENTIFIED SPEAKER: Okay.
13 MR. KARP: -- thank you.
14 Q (By Mr. Karp) While she's preparing the exhibit, if you could
15 explain to the Board what's in the image?
16 A There's a long, winding driveway down to the house. To your
17 immediate left would be the goat pen area. There was a -- or
18 sorry -- goat fence area. And there was a pen located
19 somewhere inside there. Directly in front of me was a very
20 large tree and Godric was laying in front of that tree. And
21 that's basically what I focused on. Back behind there was a
22 house and there was a chicken coop also off to the left hand
23 side. And that's about pretty much what I remember.
24 Q Did you inspect Godric's body?
25 A I did.

Page 33

1 Q Did you see blood on him anywhere?
2 A I did not.
3 Q Did you look in his mouth?
4 A I did. I pulled up his lips and looked.
5 Q Did you see feathers anywhere on him?
6 A I did not.
7 Q Did you see bite marks on him?
8 A I did not.
9 Q Any wounds on him other than the gunshot wound?
10 A Other than the gunshot wound, no.
11 Q Did Cortana -- did you have a chance to look at her afterward
12 and see whether she had any signs of blood or feathers on her?
13 A Afterwards, yes, I did look at her and I did not see anything.
14 Q There are photographs in the materials here -- I believe you've
15 seen them before -- for the benefit of the Board, I believe
16 they're pages 32 and 31 -- are these accurate representations
17 of the condition in which you found Godric that day?
18 MS. BALIN: Counsel, could I see what you're showing
19 him just so -- thank you.
20 A Yes.
21 MR. KARP: Okay. Nothing further.
22 MS. SIBONGA: Cross?
23 MS. BALIN: We have no cross-examination. Thank you.
24 MS. SIBONGA: Mr. Karp?
25 MR. KARP: Next witness, due to time, I will call

Page 34

1 Clorissa Estrella.

2
3 EXAMINATION OF CLORISSA ESTRELLA

4 BY MR. KARP:
5 Q Ms. Estrella, you are still under oath. So you live at the
6 same address as indicated by Mr. Kellogg?
7 A Yes.
8 Q Okay. And was Cindy Moreno a roommate at the time?
9 A At the time, yes.
10 Q Okay. And her declaration is submitted in the materials?
11 A Yes.
12 Q Okay. How long have you lived on the island?
13 A I have lived on the island since '96.
14 Q Are loose dogs in that area common or an uncommon sight?
15 A It's a common sight.
16 Q And around the time of this incident, say give or take six
17 months, was it equally common?
18 A It was equally common.
19 Q Now, the type of work that you were doing around the time, was
20 what?
21 A I'm an animal caretaker. I walk dogs and I take care of cats
22 and horses. I distribute medication and I do training. I do
23 private house-calls to animals all over Vashon.
24 Q Do your clients trust that animals under your care will not
25 escape?

Page 35

1 A They trust me a lot, yes.
2 Q Okay. Had -- let's speak to Cortana. Had she ever escaped
3 from that enclosure before this day?
4 A She has never, ever escaped from that enclosure until that day.
5 Q What about Godric?
6 A Godric had never escaped the enclosure.
7 Q Have you ever seen or been told that either Godric or Cortana
8 had shown aggression to any animal or person?
9 A Never, ever.
10 Q There are photographs in the materials here that show Godric
11 with a raccoon and a mouse. Did you take those pictures?
12 A Yes, I took the pictures.
13 Q And about how old was he at the time?
14 A A few of those pictures were taken about a year ago. And
15 others more recent than that.
16 Q So let's talk about the day of the incident. When was the last
17 time that you saw the dogs alive?
18 A The last time I saw Godric alive was just before 1 o'clock. I
19 had to leave for work, so I put them in the kennel and left.
20 Q Around the time that you were putting them in the kennel, did
21 you hear anything?
22 A Absolutely. Through the woods I could hear geese honking and
23 there was a lot of honking going on. And I thought about it, I
24 was like, Wow. That's kind of weird that there's all that
25 honking coming from over there, but I didn't really think

Page 36

9 (Pages 33 to 36)

1 anything of it and I got in my car and I left for work.
2 Q And the honking was coming from what direction?
3 A South.
4 Q Is that the direction of the Weston property?
5 A Yes.
6 Q So you left to work. You were going to -- what? -- see a
7 client for a pet sitting or visitation?
8 A I was going to work to take care of four dogs and about 12 cats
9 and distribute medication and clean litter boxes.
10 Q When you completed that, what did you do?
11 A I went home.
12 Q Around what time?
13 A I got home right around 1:45 -- between 1:30 and 1:45.
14 Q When you arrived, did you see your dogs?
15 A I did not see my dogs. Actually, when I arrived, I got out of
16 my car and my roommate, Michael Dedrickson (phonetic), opened
17 the door and he went, Oh, hey, your dogs got out. I put them
18 back in, just so you know. So I went over there, and he goes,
19 Oh, I guess they got out again.
20 Q What did you do once you learned they were out?
21 A I panicked and I called Leon. He was luckily close by and I
22 asked him to come home and help me look. We went, looked
23 around the house really quick, looked down in the ravine really
24 quick. We hopped in the car together, ran around in a circle
25 down 184th, down Ridge Road -- all the way around --

1 Q It's okay. How long were you gone?
2 A We were gone for only -- between five and ten minutes.
3 Q Okay.
4 A It's not a very far drive.
5 Q So you then returned to the home and then what?
6 A We returned back. I asked Leon to stay there so that if they
7 came home, he would be able to tell me and to hold onto them.
8 I asked him to start fixing the kennel, which he started to do.
9 I jumped in my car and I had to go and -- go complete another
10 job real quick.
11 Q Okay. So when you left to complete the other job, around what
12 time was it?
13 A That was right around 2 o'clock. It wasn't -- it was right
14 around there. I can't put an exact time. It was clustered.
15 Q And it's your understanding that Cortana came home while Leon
16 was fixing the kennel shortly after you left?
17 A Yeah. It's my understanding that pretty much almost as soon as
18 I left, Cortana came running back.
19 MS. BALIN: I'm going to object to this. This is
20 hearsay. She wasn't there. She doesn't know. There's no
21 foundation --
22 MS. SIBONGA: (Inaudible.)
23 MR. KARP: Okay. I'd just note the rules apparently
24 are lax on hearsay that's corroborated independently of
25 Mr. Keller, so...

1 MS. SIBONGA: Okay.
2 Q (By Mr. Karp) Now, moving forward, you -- I'm skipping
3 through. A couple hours elapsed and you then came to the
4 Weston property. Is that fair?
5 A Yes.
6 Q Okay. And how did you know to go there? Did you have a phone
7 call with a person at the Weston household?
8 A After I completed my last job, I was searching for about almost
9 two hours going around in circles, getting out of my car,
10 calling their names, and I finally got to a point where my
11 phone received signal again, and I got voicemails and texts.
12 So I checked the voicemails and I had a phone call from a woman
13 who lived down the street --
14 Q That's okay. I -- I really just need to jump forward. Did you
15 speak to Mrs. Weston?
16 A I did.
17 Q Okay. Did you initiate the call to her?
18 A Yes.
19 Q All right. And briefly, what transpired? What did you say and
20 what did she say?
21 A I said that, I heard that you have my dog. And she goes,
22 Excuse me? Who is this? I was like, Do you have a dog? And
23 she goes, Yes. I think your dog just killed our livestock.
24 Q She said dog, not dogs?
25 A It was -- it was dog, singular.

1 Q Okay. So then I assume she gave you the address and you went
2 to the property?
3 A I asked her to meet me at the top of the driveway. I'm bad
4 with addresses.
5 Q Okay. On your way to the property, are there livestock or
6 birds that are along the roadside?
7 A There are many livestock enclosures and free-roaming chickens
8 all the way around.
9 Q Okay. When you arrived, did Ms. -- did you ask Ms. Weston what
10 happened? Where's your dog?
11 A Yes.
12 Q Okay. What did she say?
13 A She said, Come down and see.
14 Q All right. Did you ask her if he was alive, your dog?
15 A I asked her many times if he was injured, if he was okay, if he
16 was dead, if he was alive.
17 Q What did she say?
18 A Just come down and you'll see. Just come down and you'll see.
19 When I asked if she had killed him, she said, Oh, God, no.
20 Q All right. At that point, did you have any understanding that
21 they were claiming two dogs were on their property?
22 A None at all. They never mentioned a second dog.
23 Q Did you say anything that would lead her to believe that you
24 had another dog who -- who had left your property --
25 A I --

1 Q -- or had left the kennel?
 2 A After I learned that Godric was dead, I didn't know which dog
 3 it was -- if it was Cortana or Godric because I wasn't aware
 4 that Cortana was home yet. And I asked, Is it the dog -- is it
 5 a boy or a girl? She goes, I don't know. You have to come
 6 down and see. Does it have a pink collar or a green collar?
 7 Just come down and see.
 8 Q Did she -- did she accuse your dogs of being involved with
 9 Mr. Sherrer's cat?
 10 A Absolutely, yes.
 11 Q What did she say?
 12 A She said, You know your dogs were involved in killing my
 13 neighbor's cat last summer or -- I think she actually said it
 14 was a couple of summers ago, but it was the previous summer.
 15 Q And how did you respond?
 16 A I said, No, they didn't. And that was it.
 17 Q And then was there anything that she said before you left that
 18 you found to be odd or --
 19 MS. BALIN: Madam Chair, at this point now I'm going
 20 to object. Again, it's purposeless. It's taking a lot of
 21 time, and it's all hearsay.
 22 MR. KARP: This is my last question.
 23 MS. SIBONGA: Okay.
 24 A What was the question?
 25 Q (By Mr. Karp) Was there anything that Mrs. Weston said to you

1 that you considered to be odd or out of place as you were
 2 leaving?
 3 A Yeah. We were putting Godric in the back of the truck -- we
 4 had wrapped him up in a blanket -- and she looks at me and kind
 5 of giggles and goes, Merry Christmas.
 6 MR. KARP: Nothing further.
 7 MS. SIBONGA: All right. Cross? Do you wish to
 8 cross?
 9 MS. BALIN: Well, since Ms. Weston has been discussed
 10 and discredited and insulted, I would like to put on -- her on
 11 for very brief testimony to talk about what actually happened
 12 given that the direct of the petitioner is now on and we have
 13 rebuttal. And I can make it five minutes. But I think that
 14 the County deserves that, and, certainly, Ms. Weston does.
 15 MS. SIBONGA: Make it -- make it three minutes --
 16 MS. BALIN: All right --
 17 MS. SIBONGA: -- you did open it up.
 18 MR. KARP: And -- but I will -- and that's fine. I
 19 don't mind if you want to do that for rebuttal, of course. If
 20 I could make a short offer of proof at least as to Mr. Renata
 21 (phonetic). I was only going to need two or three minutes with
 22 him because he observed the body and that's all I was going to
 23 elicit.
 24 MS. BALIN: Madam Chair, that the dog is dead is not
 25 disputed by the County, nor is the fact that Mr. Weston shot it

1 after he saw what it had done, so it's not at issue that Godric
 2 is dead or who shot him. It's irrelevant.
 3 MR. KARP: If I may, what is at issue is that if the
 4 dog was allegedly vicious and had killed goats in a bloody mess
 5 as they're claiming, you would expect to see evidence of blood
 6 on the dog or feathers and there isn't any.
 7 MS. BALIN: The pictures are in evidence already of
 8 the dead Godric.
 9 MS. SIBONGA: We do have pictures.
 10 MS. BALIN: Thank you.
 11 MS. SIBONGA: Yes.
 12 MS. BALIN: Ms. Weston, three minutes. If you
 13 would --
 14
 15 EXAMINATION OF LAURA WESTON
 16 BY MS. BALIN:
 17 Q You heard what Ms. Estrella just testified to. If you could
 18 just say --
 19 A Well, maybe I'll just explain that Merry Christmas thing.
 20 Q And your position with Ms. Estrella while you were talking with
 21 her and just how you -- apparently most of what just came out
 22 seems to be impugning your manner, your temperament --
 23 A Oh, okay.
 24 Q -- with her, so that's what I'd like you to address.
 25 A Walking down the driveway with her, I felt like she was -- I

1 felt very sorry for her. This was her dog that she loved. And
 2 I actually -- thinking about this, I had my arm around her, you
 3 know, I'm comforting her while I was just devastated because of
 4 the animals down below. And it's just part of our life and
 5 we've never had a situation like that and to see the animals
 6 all dead like that was just horrible.
 7 And I'll refer quickly just to the Merry Christmas thing
 8 because we had -- I had been very busy trying to cook for the
 9 next day and probably a little distracted in getting everything
 10 ready and knowing that -- what was going on.
 11 Anyway, when everything was said and done, I thought to
 12 myself, Oh, my God. After I looked at the devastation in our
 13 yard and this poor dog wrapped up in a truck, and it's the day
 14 before Christmas, and I said, Oh, my God, Merry Christmas.
 15 And I'm very sorry they took that as an affront to them,
 16 but I really was including us all, and that's all I need to
 17 say.
 18 MS. BALIN: Thank you for allowing that.
 19 MS. SIBONGA: Thank you.
 20 MR. KARP: No questions.
 21 MS. SIBONGA: All right. Okay.
 22 MS. BALIN: We certainly appreciate all the time
 23 you've taken on this case -- very, very appreciate -- very much
 24 appreciate your hearing all the witnesses and we have two more
 25 exhibits to add to the record, which Mr. Weston talked about,

1 and we have copies for Counsel. It's a statement of a
2 Mr. Ryan Herrigan, who lived in the Weston's house last year.
3 And from a --

4 MR. RONALD WESTON: Walter --

5 MS. BALIN: Oh, from the son, Walter, who -- some of
6 whose testimony you've heard. So I will just hand -- may I
7 keep one of each and then I'm going to hand up the rest of them
8 to your clerk.

9 MR. KARP: I'll object. My objection is based on
10 timeliness. Taking a look at a five or six page statement from
11 Walter Weston after he's already testified is a bit late. It
12 doesn't give me an opportunity to review it or cross-examine.

13 And I'll also note that, just as a technical matter, the
14 statement of Ryan Herrigan is not technically in compliance as
15 a declaration, so it's inadmissible on that basis, and I
16 object. Also, Ryan Herrigan was never disclosed as a potential
17 witness. There was a Cosmo Harrington. Maybe that's who
18 Animal Control meant. But I was unaware of this witness by
19 this name. And so I move to strike that as well.

20 MS. BALIN: I've already made my offer. And I've
21 given them to your clerk, and I'll leave it to the Board to
22 rule.

23 MR. KARP: And, if I could, since we're making offers
24 of proof, what I would offer for Mr. Renata specifically then
25 is that he had lived on the island for 17 years. He would

Page 45

1 testify that animals are at large all of the time --

2 MS. BALIN: Madam Chair, I would object to this. We
3 didn't know about him. This is not for proof after the case is
4 over. What's good for the --

5 MR. KARP: Well --

6 MS. BALIN: If I may --

7 MS. SIBONGA: Well, both of you --

8 MS. BALIN: What's good for the goose is good for the
9 gander --

10 MS. SIBONGA: Excuse me. Excuse me. Now, both of you
11 are offering after testimony has been -- after you've made your
12 presentations, so we will consider both.

13 MS. BALIN: Thank you.

14 MS. SIBONGA: Okay.

15 MR. KARP: Actually, I hadn't --

16 MS. SIBONGA: Give the evidence the weight that we
17 believe it should be given.

18 MS. BALIN: I appreciate that.

19 MR. KARP: I will just note procedurally, I hadn't
20 closed and said I was done. I -- I did have Mr. Renata here
21 live. Kerrigan is not here live, and it's not even an
22 admissible declaration, so, you know, I do feel the need then
23 to just complete the offer if you won't allow me to call him.

24 And that is that he would testify that he'd been on the
25 island for 17 years, he had seen animals at large routinely,

Page 46

1 that neither of these dogs had escaped or shown aggression to
2 anyone whatsoever and that he inspected Godric and opened his
3 mouth, checked the canines, saw no blood, saw no evidence of --
4 of, you know, defensive marks. And he's a combat medic in the
5 Navy as a SEAL and so he would have that -- he would draw from
6 that foundational experience.

7 Furthermore, he would talk about the firearm discharge, but
8 that's not an issue here given the clarification. So that
9 completes my offer on Mr. Renata. And then I am done --

10 MS. SIBONGA: Thank you very much, Mr. Karp.

11 MR. KARP: Thank you.

12 MS. BALIN: No objection.

13 MS. SIBONGA: All right. Well, let's have closing
14 arguments then. Ms. Balin or Sergeant --

15 MS. BALIN: I will make a very, very brief one. And I
16 submitted a brief yesterday in response to Ms. Estrella's brief
17 and so I'm going to boil that down to a very short statement,
18 which is, Mr. Weston is here, Mr. Weston saw the two dogs of
19 the petitioner inside his -- what I call a goat pen -- whatever
20 it really is -- in my mind it's a pen. Saw them inside an
21 enclosure that was meant to keep goats in and everybody else
22 out. Both dogs inside the enclosure at the exact same moment
23 that he saw that he had two dead goats and then found some
24 injured, terrified, shivering ones later including one that he
25 couldn't even find until much later, plus a lot of goose body

Page 47

1 parts, as you saw from his statement, and -- at the time that
2 her dogs were inside his pen. That's really all we needed to
3 prove.

4 And he dispatched with Godric because he was afraid that
5 the rest of the goats were going to be next, while Cortana was
6 able to run away. That's what the case is about. It's not
7 about who killed Sabi (phonetic), the cat, the year before.
8 And that was an error and he admitted that in his statement and
9 today. He thought it was the same dogs. It wasn't.

10 Ms. -- the younger Mr. Weston could hear the dogs bellowing
11 from the pen -- I forgot if he called it warfare, or I can't
12 remember the term that he used -- was afraid for his father and
13 also saw what was happening from down below and was afraid for
14 his father.

15 This really is not a -- this is a simple case. This isn't
16 a difficult case. It's a simple case. Both dogs were vicious.
17 Both dogs were vicious on the day that they were inside
18 trespassing in the Weston's goat pen and when they killed
19 those -- those geese and when they killed those goats. How
20 much they bled -- Godric bled when Mr. Weston hit him the
21 second time with the shotgun? Okay, it was a good shot.

22 The pictures that you're going to see that the younger
23 Mr. Weston is going to send to all of us, including to counsel,
24 show not very much blood on the goat because what the dogs did
25 was tear their throats out. That's a pretty small area and

Page 48

12 (Pages 45 to 48)

1 that took care of it. So there wasn't a huge amount of blood.
2 They were dead and they were dead at the time that those dogs
3 were inside their pen. That's it. Thank you very much.

4 MS. SIBONGA: Thank you. Mr. Karp?

5 MR. KARP: So there are a number of discreet issues
6 before you today. There are -- there's an allegation that
7 Godric exhibited vicious propensities and constitutes a danger
8 under Subsection K for a \$500 fine. I'll start with that one.
9 I think the County has more or less conceded that there's no
10 basis for that. If you saw in the brief, in discussing the
11 issue of constituting a danger, she focused -- Ms. Balin
12 focused on the fact that Cortana was still alive, that, of
13 course, Godric is not alive, therefore, he was not a danger and
14 could not constitute a danger following the incident. On that
15 basis alone, you should reverse on the \$500 and the declaration
16 of vicious.

17 But there are other issues here too. The identification of
18 Mr. Weston. He's a lawyer. He submits a statement. He says
19 he's absolutely certain, even vouches for his wife, and
20 Animal Control initially acts on that. True. They then
21 confirm and he did candidly concede to you that it was not the
22 same dog. However, he's linking it up to yet another incident.
23 There was the incident with Mr. Sherrer and there was this
24 apparent summer foray into his property chasing geese. He
25 identifies them as the same animal. Therefore, I think there's

Page 49

1 he believed was Cortana 45 minutes to an hour and 15 minutes
2 later. They can't be in two places at the same time a mile
3 apart.

4 His son, Mr. Walter Weston, his identification of a dog he
5 had never seen before, except on that occasion and but for a
6 glimpse here or there was looking at a Website that apparently
7 was prepared by my client showing her two dogs. That's highly
8 suggestive, of course, and if he's looking at that and there's
9 this assertion that her dogs were responsible, he's going to,
10 of course, suggest that that is the one who is responsible.
11 Animal Control never independently provided a photo montage to
12 him to have him actually pick out the dog responsible. This
13 was highly suggestive and self-directed.

14 The other issue here is that Ms. Estrella heard a ruckus of
15 geese honking, a sound of what would appear to be an attack.
16 And that was around 12:45 p.m. when she was putting the dogs in
17 the secure kennel -- at least what she believed to be secure
18 that day. That's consistent with Mr. Weston's testimony that
19 several hours before 3:15 p.m. he saw geese at an unexpected
20 location several hundred feet away. That would be consistent
21 with an attack that was ongoing that was for several hours that
22 initiated when both her dogs were in their kennel.

23 It's -- you need to consider there are other alternatives
24 here. There are dogs loose on the island. There are dogs who
25 attacked Mr. Sherrer's cat just two months before or maybe a

Page 51

1 a great deal of doubt, there's a lack of reliability as to his
2 percipient-ness as a witness.

3 And to say that this particular dog, Godric and/or Cortana,
4 were involved in those two prior matters -- I think you have in
5 front of you the fact that Animal Control did, in fact, deem
6 Ms. Stoddard's dogs in violation for killing Mr. Sherrer's cat.
7 I included in the back of the prehearing brief here a map so
8 you can see -- this is page 38 -- you can see the relative
9 location of the properties. And so that would be highly strong
10 evidence that the dogs responsible were Ms. Stoddard's dogs,
11 who had already shown a propensity to attack and kill, who had
12 been loose and running loose at least half a dozen times,
13 according to Ms. Kerry, who works at Vashon Island Pet
14 Protectors.

15 So, you know, the evidence that you have in front of you,
16 remember, the burden is on the County to prove it. If you
17 think that the evidence is a draw, then you must find for
18 Ms. Estrella.

19 On her side, what do you have? -- at least as to Cortana,
20 you have the fact that three witnesses have confirmed that
21 Cortana was off the property for a very short period of time
22 and that she returned between 2:00 and 2:30 p.m. That's what
23 you have from the testimony in front of you. There's no
24 evidence to counter that. And, yet, we have Mr. Weston, in his
25 statement to Animal Control, saying that he first saw the dog

Page 50

1 month and a half before. It's highly probable that there were
2 other dogs responsible for this. And that, true, Godric was
3 there, but they don't have proof that Godric actually inflicted
4 injury to any of those animals. He could have arrived at the
5 scene after they had already been deceased for several hours.

6 The other issue here, the Downey case that I cited,
7 Ms. Balin objects invoking GR 14.1. I'll just note that, I
8 looked at the King County Board Rules. You do not adopt the
9 general rules for courts of limited jurisdiction of Superior
10 Court, so the rule doesn't apply. Still, I offer to you as
11 persuasive evidence of how -- or persuasive authority of how to
12 view this case and how to assign the burden.

13 Also, they ignore this issue, but they fail to identify
14 which dog allegedly killed which animal. That's important.
15 There is no rule here, like in Snohomish County, that says that
16 if a dog is running with another, all dogs are guilty -- sort
17 of guilt by association. King County requires that you prove a
18 specific dog acted viciously to a specific animal. The only
19 evidence they have is Mr. Weston, who admittedly saw no attack,
20 saw no contact between the dogs.

21 And, finally, the culpable mental state is completely
22 ignored by the County. I noted here that in order for them to
23 issue a citation, they have to prove that she maintained a
24 nuisance. That's just not strict liability. That means that
25 they have to prove that she permitted or allowed it to occur.

Page 52

13 (Pages 49 to 52)

1 There's no evidence in front of you that she did so. If
2 anything, you have the fact that the dogs had never escaped
3 before and the County's come forward with no affirmative
4 evidence of citing her for that purpose and that on this day in
5 question, the kennel seemed to be secure. She ensured it was
6 so and left. As soon as she realized that the dogs had gotten
7 out, she undertook a search and did her best to find them.
8 Cortana came back on her own volition. That is not permitting
9 or allowing this to occur. It's just an unfortunate fact that
10 they escaped the kennel that day.
11 And, for that reason, we ask that you vacate the \$1,100,
12 that you vacate the vicious labels. And I was unclear, because
13 the officer was speaking to propensity, and so I wasn't sure if
14 there was any attempt to declare them potentially dangerous,
15 but to the extent that that argument was made, we object to
16 that as well. Thank you.
17 MS. SIBONGA: Thank you very much. Is there a motion
18 to close the hearing?
19 UNIDENTIFIED SPEAKER: Motion.
20 MS. SIBONGA: And a second?
21 UNIDENTIFIED SPEAKER: I second.
22 MS. SIBONGA: Those in favor, say aye.
23 THE BOARD: Aye.
24 MS. SIBONGA: Motion passed. The hearing then is
25 closed. Thank you all very much and thank you for staying

1 within our time period.
2 (End of hearing.)
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1 CERTIFICATE
2 STATE OF WASHINGTON)
3) ss.
4 COUNTY OF SNOHOMISH)
5 I, JULIE A. ESPINOZA, Certified Court Reporter, do hereby
6 certify:
7 That the foregoing is a full, true, and correct transcript of
8 the hearing taken in the above-entitled cause;
9 Dated this ____ of _____, 2014.
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Julie A. Espinoza
CCR #3094

F

Hobbs v. Kent County SPCA, Inc., Not Reported in A.3d (2011)
2011 WL 773448

2011 WL 773448

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Common Pleas of Delaware,
Kent County.

Titus Wade HOBBS, Appellant,

v.

KENT COUNTY SPCA, INC., Delaware
Animal Care & Control, Appellees.

C.A. No. CPU5-10-001252. | Submitted:
Dec. 15, 2010. | Decided: Feb. 4, 2011.

West KeySummary

1 Animals

Weight and Sufficiency of Evidence

Determination that owner's dog was dangerous was not supported by substantial evidence. Owner's dog was declared dangerous after it allegedly bit a woman. Officers had prior experience with the dog and owner had been ordered to keep it under control. At the hearing to determine if the dog was dangerous, the officers presented hearsay testimony from the alleged victim which established that the woman was bitten by a dog that came from the owner's property and that the woman had seen multiple dogs on the owner's property. The hearsay testimony, although permissible, was insufficient to establish with the required specificity which dog actually bit the victim. Del.Code Ann. tit. 7 § 1735.

Cases that cite this headnote

Attorneys and Law Firms

Titus W. Hobbs, Camden, DE, pro se, Appellant.

Robert F. Phillips, Esquire, Deputy Attorney General,
Wilmington, DE, for Appellees.

DECISION ON APPEAL FROM DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL, DIVISION OF FISH AND WILDLIFE, *DOG CONTROL PANEL*

REIGLE, J.

*1 This is a civil appeal from the decision of the Dog Control Panel ("the Panel") to euthanize a dog owned by Titus W. Hobbs ("Mr. Hobbs"). After reviewing the record presented to the Court by the Panel and the letters and briefs of both parties, this Court has determined that the decision of the Panel shall be *Reversed*.

Underlying Facts and Dog Control Panel Hearings

Appellant, Mr. Hobbs, owns a female black Shepherd mix named Raven, who is approximately three years old. There have been several contacts between Mr. Hobbs and Animal Control officers with respect to his dog, Raven. They follow chronologically.

1. Determination as Potentially Dangerous

On April 2, 2008, July 3, 2008 and September 14, 2008, it was alleged that Raven attacked three separate individuals. Following a hearing on October 2, 2008, the Panel issued a decision and found Raven to be a "potentially dangerous dog." The Panel's order was rendered on a typed form with some items circled, other items crossed out and items where blanks were filled in. It stated, in pertinent part:

Based upon evidence and testimony provided to this Panel during the hearing held this day, under Delaware Code, Title 7, Chapter 17, Subchapter 3, §§ 1732-1736, the DE Dog Control Panel finds Raven, owned by Titus Hobbs, to be in violation of § 1736 and has been found Potentially Dangerous.

Hobbs v. Kent County SPCA, Inc., Not Reported in A.3d (2011)
2011 WL 773448

See Panel Decision, October 2, 2008. Due to this finding, the Panel ordered Mr. Hobbs to comply with certain conditions. They included that the dog must be spayed, that while on the dog owner's property, it must be kept indoors or within a securely fenced yard and when off the premises, that the dog be restrained by a substantial chain or lease or be under the control of a responsible adult. Del.Code Ann. tit. 7 § 1736(b)(1)(2)(3). As of October 2, 2008, Raven was labeled a "potentially dangerous dog" and Mr. Hobbs was required to satisfy the conditions.

II. Dog At Large Report

Over one year later, on December 8, 2009, Animal Control officers discovered Raven wandering at large near Mr. Hobbs' residence at 6636 Mud Mill Road, Camden, Delaware. The officers determined that Mr. Hobbs was Raven's owner and Mr. Hobbs was questioned about the loose dog. Mr. Hobbs blamed someone else for allowing his dog to leave his premises. In its decision, the Panel claims that Mr. Hobbs was found guilty of the law and fined. In his testimony at the hearing, Mr. Hobbs claimed that he was not convicted.

III. Alleged Subsequent Dog Bite

Four months later, on April 8, 2010, Ms. Jennifer Pryor reported to Animal Control officers that she was bitten by a dog while she was walking in the street in front of Mr. Hobbs' residence on Mud Mill Road. Officer Bartlett responded to the scene to investigate. He observed and photographed puncture wounds and scrapes on Ms. Pryor's leg. Ms. Pryor identified Mr. Hobbs' residence. Officer Bartlett responded to the property and observed a dog that he identified as Raven lying near the front porch. He approached the dog but she charged at him and he called for back up. Eventually, with the assistance of Mr. Hobbs' mother, Sandra Hobbs, who also arrived on the scene and lives in the residence, and a neighbor, Robert Sawyer, Raven was captured. It was held by Animal Control.

*2 In order to secure the return of a dog that has been deemed "dangerous" by Animal Control, a dog owner must request and obtain a hearing in front of the Dog Control Panel. A

hearing was held on May 13, 2010. After the hearing, the Panel deliberated in executive session, and found Raven to be dangerous with euthanasia ordered.

The Panel's order was rendered by a typed form with some items circled, other items crossed out and items where blanks were filled in. It stated, in pertinent part:

Based upon the preponderance of evidence and testimony provided to this Panel during the hearing [sic] held today, 13 May 2010, the Panel finds Raven (as described above), owned by Titus Hobbs, to be in violation of § 1735(a)-Dangerous, with euthanasia ordered as per subsection § 1734(c).

See Panel Decision, May 13, 2010.

Appeal to Court of Common Pleas

By statute, if it is determined by the Panel that the dog is dangerous and euthanasia is ordered, "the owner may appeal the Panel's decision to the Court of Common Pleas..."Del.Code Ann. tit 7 § 1734(d). Mr. Hobbs appealed to this Court, as self-represented litigant, which acted as a stay of the Panel's decision. § 1734(d). A letter, dated August 16, 2010, was accepted as Mr. Hobbs' Opening Brief. The State filed an Answering Brief to uphold the decision of the Panel on September 14, 2010. A responsive letter, dated September 24, 2010 was accepted as Mr. Hobbs' Reply Brief.

The Court wrote to Deputy Attorney General Phillips on October 4, 2010 requesting clarification of the record. On October 11, 2010, he answered the questions propounded.

Subsequently, on October 29, 2010, Mr. Hobbs submitted a letter to the Court containing additional legal argument and factual assertions. Deputy Attorney General Phillips followed up on November 17, 2010 asking that either Mr. Hobbs additional arguments not be addressed by this Court or that he be permitted to follow additional argument as well in the form of a sur-reply brief. Mr. Hobbs submitted another letter on December 15, 2010 asking that the Court allow both sides to be heard on additional argument rather than strike his brief. The Court has declined to consider any of Mr. Hobbs' new factual assertions outside of the scope of the Panel hearing. His additional legal argument after his Reply Brief will not be

Hobbs v. Kent County SPCA, Inc., Not Reported in A.3d (2011)

2011 WL 773448

considered by the Court. For this reason, no additional filing by Mr. Phillips is necessary.

The Dog Control Panel Hearing

Dog Control Panel hearings are not as formal as trials. Rather, they are informal hearings run by members of a lay board with expertise in the subject matter and attended by parties who are either members of law enforcement or self-represented litigants. Conformity to the rules of evidence is not required. Hearsay evidence is allowed but it may not be the sole evidence relied upon in the Panel's determination. Del.Code Ann. tit. § 1734(b). In addition, the introduction of improper evidence by the Panel or a lack of due process during the hearing can amount to reversible error. *Roberts v. Kent County SPCA, Inc.*, 2010 WL 2513424 (Del.Com.Pl.2010).

The Record

*3 There are two types of appeal to the Court of Common Pleas. Some matters come to this court as *appeals de novo*, which means that a new trial is held and the judge makes a new decision on the facts. Other matters are *appeals on the record*, which means that the Court does not reconsider the facts, but rather reviews the record from the board below and determines if the decision will be affirmed based upon the applicable standard of review. *See generally* Del. C.C.P. Civ. Rules Proc. 71.1, 72.2.

Since this Dog Control Panel appeal is not *de novo*, but rather *on the record*, this Court is limited to a review of the record, which is the transcript of the Panel hearing and any exhibits viewed by the Panel members at that hearing. In order for this Court to review the decision of the Panel, it must have the full record. The Court of Common Pleas Civil Rules provide that on such appeals, upon its request to the custodian of record, a certified copy of the record of the proceedings below be sent to the Court. Del. C.C.P. Civ. Rules Proc. 72.1.

Because of the less formal nature of the Dog Control Panel which does not have a specific custodian for its records, Deputy Attorney General Mr. Phillips, responded to the Court's request to make the record as complete as possible. Mr. Phillips informed the Court that he is not the attorney for

the Dog Control Panel nor is he the custodian of its records; however, the Court greatly appreciates his assistance in this regard.

There are essentially three problems with the record from the Dog Control Panel. First, it is very difficult to match the provided copies of the photographs with the references in the transcript. Exhibits were not marked with letters or numbers. In several places, a witness testified to "pictures" that were taken and described the scene but did not identify the "pictures" by an exhibit number or even denote how many photographs were being reviewed by the witness and the Panel. Not all of the photographs were dated and there was testimony regarding two incidents, December 8, 2009 and April 8, 2010, in which photographs were taken of Mr. Hobbs' property and dog. It was difficult to tell which photographs went with which incident. There is one set of photographs of a woman and a dog that appears to have been taken near Mr. Hobbs' property but the photographs do not appear to be referenced in the transcript and neither the woman nor the dog are identified in the transcript. It is unclear if the photographs were relevant at all or how it fit into the facts of the case.

Second, there are attachments to the Decision by the Panel dated May 13, 2010. They are numbered one through seven and they appear to have all been provided to this Court. Some of them are referenced in the transcript. It would be easier to follow the transcript if these documents were identified as Exhibits during testimony.

Third, the transcript makes references to a "folder" that was provided to the Panel members and also to Mr. Hobbs before the hearing. Mr. Phillips did provide some information to the Court regarding the "folder." It is unclear if the Court was provided all of the contents as part of the record from the Panel. Two documents, which are referred to in the transcript and decision, were not provided to the Court. They include the expired dog license and the expired rabies inoculation. It is unclear if they were contained in the "folder." Since the record was either incomplete or confusing, it made it difficult for this Court to review the Panel's decision and therefore only items properly identified have been considered.

Burden of Proof Discussion

Hobbs v. Kent County SPCA, Inc., Not Reported in A.3d (2011)

2011 WL 773448

*4 After the hearing, “[t]he Panel may declare a dog to be dangerous if it finds by a *preponderance of the evidence* that the dog killed or inflicted physical injury upon a human being. Del. Code Ann. tit. 7 § 1732(a)(2). (emphasis added). See also *Leech v. Caldwell*, 2000 WL 33653457 (Del.Com.Pl.) at *3 citing *Hill v. Ginn*, 157 Pa.Super. 578, 43 A.2d 608 (Del.Super.1899).

The Panel's Decision

In this case, the Panel found that Ms. Pryor suffered puncture wounds and scrapes as a result of Raven's attack upon her. Photographs of the bites were introduced at the hearing. The Panel found that Ms. Pryor identified Raven as being the dog that bit her. The Panel further found that euthanasia would be ordered for Raven. The Panel articulated several aggravating factors in addition to the bite. First, the dog was already labeled “potentially dangerous” as a result of a prior hearing before the panel in October of 2008. A “potentially dangerous dog” is returned to the owner with certain statutory conditions in place that must be followed for the owner to keep the dog. In the Panel's decision it specifically notes that there was a requirement that the dog be kept indoors or within a securely fenced yard from which she could not escape. The dog was found running at large in December of 2009.¹ In April of 2010, it was alleged that Raven was at large when she bit Ms. Pryor. An open window was observed at the residence which enabled Raven to exit the house freely which demonstrated a callous disregard and a pattern of non-compliance by Mr. Hobbs of the requirements of managing a potentially dangerous dog. In addition, the Panel considered as aggravating factors that Raven's rabies vaccination and dog license status were both expired as an additional threat to the community. The Panel pointed to the ongoing violations of the potentially dangerous dog conditions, the severity of the incident and the request of Animal Control that the dog be deemed dangerous and euthanized.

Standard of Review

An appeal from the Dog Control Panel is conducted according to the provisions governing judicial review of case decisions under the Administrative Procedures Act. Del.Code Ann. tit. 7 § 1734(d). The standard of review is set forth in the

Administrative Procedures Act. It states, “The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.” § 10142(d). See also *Downs v. Emory*, 2007 WL 3231611, at *2 (Del.Com.Pl.) (citing *Mooney v. Benson Mgmt. Co.*, 451 A.2d 839, 840 (Del.Super.1982).

Substantial evidence is further defined as “such relevant evidence as a legal mind may accept as adequate to support a conclusion.” *Downs* at *2 (citing *DiFilippo v. Beck*, 567 F.Supp. 110, 113 (D.Del.1983).

*5 In addition, “[t]he reviewing Court must also determine whether the findings of the Panel are free from legal error and the product of an orderly and logical deductive process.” *Downs*, at *2 (citing *In re Surcharge Classification 0133 ex rel. Del. Comp. Rating Bureau*, 655 A.2d 295, 299 (Del.Super.1994).

Discussion

“The Panel may declare a dog to be dangerous if it finds by a preponderance of the evidence that the dog ... inflicted physical injury ... upon a human being.” Del.Code Ann. tit. 7 § 1735. This Court finds that there is insubstantial evidence to support the Panel's conclusion, in this case, that Raven inflicted physical injury to Jennifer Pryor and that Raven is therefore a “dangerous dog.” The evidence presented to the Panel members was inadequate to support its conclusion.

Ms. Pryor was not present at the hearing. There was hearsay testimony by two Animal Control Officers that Ms. Pryor stated to them that she was bitten by a German Sheppard mix dog while walking in front of Mr. Hobbs' house on Mud Mill Road on April 8, 2010. There was also testimony by the officers that Ms. Pryor identified the property from which the dog came on that date and the officer further identified Mr. Hobbs' residence. There was also sufficient testimony that the dog at Mr. Hobbs' residence when the officers arrived that day was Raven, because the dog was known to the officers.

Hobbs v. Kent County SPCA, Inc., Not Reported in A.3d (2011)
2011 WL 773448

The officers also testified, through hearsay, that Ms. Pryor had related an incident earlier that same day where she saw three dogs being walked by a woman from that same property who she knew as Vonda.² In addition, there was direct testimony from Mrs. Sandra Hobbs that she resides with Mr. Hobbs, who is her son and that she has a daughter named Vonda who has access to the premises.

The Panel's acceptance of all of these facts, through direct or hearsay testimony, is permissible. However, nowhere in the transcript or documents provided to this Court is there an assertion that Ms. Pryor identified Raven as in fact being the dog that bit her on April 8, 2010. Rather, she identified the premises from which the dog came. The Animal Control officers seem to have made the connection that it was Raven because Raven was a dog owned by the owner of that property, Mr. Hobbs, and she matched the general description given by Ms. Pryor. Mr. Hobbs' history with Animal Control and Raven's previously declaration of being "potentially dangerous" may also have lead the officers to conclude that it was Raven that bit Ms. Pryor. If there were no other dogs in the vicinity on the date in question, this might have been sufficient to meet the standard of proof. However, the victim, Ms. Pryor, made a statement, which was testified to at the hearing through hearsay, that there

were three dogs being walked by Vonda earlier that day. If Ms. Pryor did clearly identify Raven as the dog that bit her to Animal Control, then that identification was not clearly conveyed at the hearing through testimony and part of the transcript or was not introduced in an exhibit that was made part of the written record for this Court's review.

Decision

*6 The Panel's findings that Animal Control proved by a preponderance of the evidence that Raven injured Ms. Pryor on April 8, 2010 and therefore could properly be deemed to be a dangerous dog under the Delaware Code is not supported by substantial evidence and therefore not free from legal error under Delaware statutes and case law. For the foregoing reasons, the decision of the Panel is *Reversed*. In addition, Mr. Hobbs cannot be held liable for costs of impoundment under Del.Code Ann. tit. 7 § 1737.

IT IS SO ORDERED.

All Citations

Not Reported in A.3d, 2011 WL 773448

Footnotes

- 1 Mr. Hobbs asserts that there was no conviction for this offense, however, the facts of the incident can still be used as part of an administrative hearing where the standard is preponderance of the evidence and hearsay is admissible.
- 2 The incident report listed the name Fonda.

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Cc: Adam Karp <adam@animal-lawyer.com>
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Animal Law Offices of Adam P. Karp
Licensed in Washington, Oregon, and Idaho
114 W. Magnolia St., Ste. 425
Bellingham, WA 98225
[\(360\) 738-7273](tel:(360)738-7273)
Outside Bellingham: **(888) 430-0001**
Fax: [\(866\) 652-3832](tel:(866)652-3832)
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Sent: Monday, November 23, 2015 9:32 PM

To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Adam <adam@animal-lawyer.com>

Subject: Re: Question about PFR

Correction: i see that the COA upload page says I pay the pfr fee to you. May I do that by credit card over the phone?

Animal Law Offices of Adam P. Karp

Licensed in Washington, Oregon, and Idaho

114 W. Magnolia St., Ste. 425

Bellingham, WA 98225

(360) 738-7273

Outside Bellingham: **(888) 430-0001**

Fax: (866) 652-3832

Web: www.animal-lawyer.com

Email: adam@animal-lawyer.com

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On Mon, Nov 23, 2015 at 9:28 PM, Adam Karp <adam@animal-lawyer.com> wrote:

Good evening,

May I pay the \$200 petition for review fee online? If not, may I still file the PFR on the 30th day and mail a check on the 30th day without the filing being deemed untimely?

Animal Law Offices of Adam P. Karp

Licensed in Washington, Oregon, and Idaho

114 W. Magnolia St., Ste. 425

Bellingham, WA 98225

(360) 738-7273

Outside Bellingham: **(888) 430-0001**

Fax: (866) 652-3832

Web: www.animal-lawyer.com

Email: adam@animal-lawyer.com

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