

December 21, 2020

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RE: **FINAL DECISION IN THE MATTER OF THE APPEAL OF A DISPOSAL ORDER
PLACED ON THE DOG DEXTER OWNED BY ANNIE AND NEIL HORNISH**

STATE OF CONNECTICUT

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL OF A DISPOSAL ORDER
ISSUED BY THE TOWN OF SUFFIELD

“DEXTER”

FINAL DECISION

I am the Final Decision maker in the matter of the appeal of a Disposal Order issued by the Town of Suffield (“the Town”), for the dog named “Dexter,” owned by Annie and Neil Hornish (“the Dog Owners” or “the Owners”).

A Proposed Final Decision (PFD) of Hearing Officer Carole Briggs was sent to the parties by email on October 20, 2020. With that email, the parties and the intervenor were given the opportunity to file exceptions or a brief and/or to request an oral argument for my consideration. In response, on November 3, 2020, the Dog Owners filed forty-two (42) exceptions lettered A through PP, to the Findings and Conclusions Relating to the Disposal Order and Dexter’s Solitary confinement. On November 3, 2020, the Town issued a request for oral argument on the

proposed exceptions filed by the dog owners. On that same date, the Dog Owners objected to the Town's request for oral argument. On November 10, 2020, I issued a "Response to the Town's Request for Oral Argument on the Proposed Exceptions Filed by the Owners." Thereafter, on November 10, 2020, the Town then withdrew its request for oral argument. No oral argument will be held in this matter and the Dog Owners' objection was denied as moot. On November 10, 2020, the Dog Owners objected to allowing the Town Intervenor to file comments. On November 10, 2020, the Intervenor stated it would not be filing any comments and on November 12, 2020, the Town stated that it will not be filing any comments. For that reason, the Dog Owners' Objection was denied as moot.

I have read the entire record in this matter. Upon careful consideration of the entire record, I have determined that the Town of Suffield has proved, by a preponderance of the evidence in the record, that the statutory elements for issuance of a Disposal Order have been satisfied, in that a bite(s) has occurred and a Disposal Order was necessarily issued by a municipal animal control officer for public safety. I hereby adopt the October 20, 2020 Proposed Final Decision in its entirety (attached), and in addition to the PFD, I also include the following responses to the Dog Owner's Exceptions. For clarification, the Final Decision in this matter is comprised of both the October 20, 2020 Proposed Final Decision **and** the additional responses included herein. **I affirm the Disposal Order issued by the Town of Suffield for the dog named Dexter.**

I have reviewed and assessed each and every Exemption and the Conclusion stated in the Dog Owners' November 3, 2020 Exceptions. I want to make it clear that even if I did not specifically denote a response to each and every paragraph or to each subpart of each of the paragraphs herein, that I did in fact thoroughly assess each and every Exception.

1. Exception paragraph A: It is not unusual to include photographs of injuries inflicted by a dog bite(s) subject to a Conn. Gen. Stat. § 22-358 Order as evidence during a hearing. That is because photographs assist the Final Decision maker in assessing, for instance, the severity of injuries caused by a bite or bites at or near the time the incident occurred, the number of bites, and/or the location of a bite(s) on a victim. The photographs in the record here were relevant, material and not unduly repetitious. The extent of the injuries sustained by the victim is one consideration of whether a Disposal Order should be affirmed. The dog owners were not prejudiced or prejudged by photographic depictions of the injuries sustained by the victim just because they did not want evidence of the extent of their dog's bite(s) included in the record. Of import, I note that the photographs were just one piece of evidence that I have considered in the totality of the evidence in the record in making my Final Decision, that the photographs did not cloud my judgment, and that I am and remain unbiased. I find that there is no evidence in the record to reflect any bias of the Hearing Officer. Stating that "a picture says a thousand words," does not make the Hearing Officer biased or reflect that she was biased. The Dog Owners' claim that the photographs were non-probative in determining whether the injuries were pre or post mortem or whether the dog was provoked, but those considerations do not bear on the determination of whether the photographs were properly admitted or properly considered. The photographs were properly admitted and properly considered as one piece of evidence in the totality of this record.

2. Paragraphs B, C, D, E, F, G, and Y make statements questioning Detective St. John, including statement that he was not credible, that he made things up, that he was not thorough, that his report was false, that his investigation was incomplete and untimely, and also that he was biased. Statements that any witness, here a police officer, created falsehoods and then testified about falsifications under oath, are strong accusations. I do not find that those accusations are substantiated with record evidence. Also, the Hearing Officer, who is tasked with assessing witness credibility at a hearing, believed the testimony of Detective St. John and the Hearing Officer specifically determined that Detective St. John was credible. PFD at p. 27. In contrast, the Hearing Officer did not believe the Dog Owners' version of events. And *See* Exception T discussion of the Dog Owners' theories. The Hearing Officer specifically determined that the Dog Owners' theories (which were in contradiction to Detective St. John and also ACO Selig), were not credible theories. PFD at p. 29. "In determining whether an administrative finding is supported by substantial evidence, a court must defer to the agency's assessment of the credibility of the witnesses and to the agency's right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part." *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 400 (1998). From my reading of the record, I am in agreement with the Hearing Officer's assessments of the witnesses and of their credibility.
3. At the hearing, the Dog Owners testified that Dexter did bite the victim, but they contend that Dexter was provoked, and in Exception Paragraph H, the Dog Owners believe that Dexter was provoked to bite the victim because they allege that Dexter was being beaten by a stepstool. From my review of the record, I disagree with the Dog Owners, and I agree with the Hearing Officer's determination that Dexter was not provoked.
4. The Dog Owners take exception to the weight of evidence given to the statement of witness Elizabeth Nichols, and to crediting the initial statement made by witness Ms. Wosko. Exceptions K and H. The Hearing Officer specifically determined that the initial, spontaneous statements of Ms. Wosko, that were made on the day of the attack, and that corresponded with what was happening at and during the incident, was the more credible version of Ms. Wosko's two different versions. From my reading of the record, I am in agreement with those assessments and I find there was no error in the admission or weight of such evidence.
5. The Dog Owners contend that: "it is possible that the stepstool may have caused some of the injuries." Exception O. From the evidence in the record, the injuries inflicted upon the victim do not appear to all have been caused by "possible strikes," by a stepstool. Exception L. *Assuming arguendo*, that, in an attempt to stop Dexter's attack on the victim, Ms. Nicholls may have accidentally hit the victim with a stepstool that was intended for Dexter, this possibility does not negate or erase all of the other record evidence. Dexter attacked and bit Ms. Janet D'Aleo ("the victim") and her injuries and wounds from Dexter's bite or bites were severe. In affirming the Disposal Order, it is not necessary to parse in any further detail, which of the victim's many serious injuries and wounds were from Dexter's teeth (from his bites), or from Dexter's nails during his attack, in order to reasonably conclude that the bite or bites inflicted by Dexter on the

victim were very serious and that Dexter is a risk to public safety. In affirming the Disposal Order, it is also not necessary to parse, in any further detail, whether the wounds inflicted on the victim were made before or after her death, to reasonably conclude that the bite or bites inflicted by Dexter were very serious and that Dexter is a risk to public safety. Exceptions O, L, S, U, Z, and HH.

6. Despite a *potential* inconsistency with regard to blood on Dexter's muzzle, there is nevertheless a preponderance of evidence in the record that Dexter bit the victim, and that for reasons of public safety, the Disposal Order should be affirmed. Exception M.
7. There is credible evidence in the record that the victim sustained an injury to her hip during Dexter's attack. PFD Findings of Fact 14 and 24. With or without a more particularized determination that this one injury to the victim's hip was caused by a bite from Dexter or by some other means by Dexter during Dexter's attack, there is a preponderance of evidence in the record that Dexter bit the victim, and that for reasons of public safety, the Disposal Order should be affirmed. Exceptions N and HH. Assessing the injuries sustained to Ms. D'Aleo by Dexter in their totality, the manner of Ms. D'Aleo's death, as stated by the Massachusetts Office of the Chief Medical Examiner and as listed on her Death Certificate, is an attack by a dog. Town Exhibits 8 and 9. The evidence in the record presented by the Town, which includes evidence of a bite(s) by Dexter, would support this determination.
8. The Dog Owners acknowledge that the condition of the victim's skin was not the cause of her injuries. Exception P. There is no other evidence in the record, beyond the owners' unsubstantiated assertion, that the victim had friable tissue or that friable tissue could make the injuries much more severe. Exceptions P and Z. Evidence in the record that the victim was coming from a wound clinic where she had been treated for *healed* leg wounds does not provide evidence regarding these assertions. June 2, 2020 Transcript at pp. 40, 86-87.
9. Despite evidence from fact and expert witnesses that Dexter was of a docile nature on certain days, both before and after November 6, 2019, Dexter was obviously not docile on November 6, 2019, when he attacked and bit the victim. There is substantial evidence in the record that on November 6, 2019, Dexter's actions, including his attack and bite(s) to the victim were dangerous, and in light of the totality of evidence in the record, it is reasonable to conclude that Dexter remains a risk to public safety and I agree with the assessment of the Hearing Officer. Exception Q, T, and HH.
10. The Dog Owner's expert Ms. Joyner, did not assess Dexter's behavior on November 6, 2019, she had no knowledge of what happened on that date, and she did not consider Dexter's prior bite history (or any other evidence). PFD Findings of Fact 44 and 49. Dr. Borchelt also did not offer any opinion about Dexter's behavior other than on the date he evaluated Dexter. *See* DO Exhibit 6. Both experts provided their opinions with blinders on – they did not consider or assess the reason that Dexter was in confinement and those experts did not have the benefit of the evidence that is in this record. From my own assessment of the record, I agree with the Hearing Officer's determination that the Dog

Owners' experts did not provide opinions addressing Dexter's behavior on November 6, 2019 and that without such assessment, those experts could not properly or credibly speak as to whether or not Dexter is a risk to public safety. "In determining whether an administrative finding is supported by substantial evidence, a court must defer to the agency's assessment of the credibility of the witnesses and to the agency's right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part." *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 400 (1998) (emphasis added). Exceptions R, T, KK, and LL.

11. In his testimony, owner Neil Hornish testified that no autopsy was performed. June 4, 2020 Transcript at p. 96. If it is accurate that no autopsy was performed, I do not find error that the victim's family chose not to perform an autopsy, or that an autopsy report is not a part of the record, in order to reasonably conclude, on this record, that the bite or bites inflicted by Dexter were very serious and that Dexter is a risk to public safety, and that the Disposal Order should be affirmed. Exception V.
12. It is not a failure of proof under the UAPA or the Department's Rules of Practice for a party to decide not to call a particular witness. From the record at issue, in affirming the Disposal Order, I find that the Town met its burden of proof. Exceptions W and Y.
13. In Exception X, the Dog Owners state that the Town did not meet its burden to show that there was a Level 6 bite because "[b]ites occurring post-mortem do not apply to the Dunbar Scale." Even assuming that such statements are accurate, *i.e.*, that certain of the bites by Dexter to the victim occurred after the victim had died, or that post-mortem bites do not apply to the Dunbar scale, it is unsettling that the owners believe there is a meaningful distinction to be made. A life was lost here. Statements by the Dog Owners, such as those made in Exception X, led me to determine that the dog owners were not credible and led me to question the judgment of the Dog Owners in their assessment of Dexter's bite(s) and attack on Ms. D'Aleo, their assessment of Dexter's role in Ms. D'Aleo's death, and their inability to view this situation with sufficient objectivity. Even if the statements made in Exception X are accurate, from this record, the bite or bites inflicted by Dexter were very serious, Dexter is a risk to public safety, and the Disposal Order should be affirmed.
14. The Dog Owners' Exhibit Z is a confusing argument about spoliation of evidence relating to the holding of Dexter in isolation at the Town facility. I found no reference to spoliation of evidence in the hearing transcript. I do not agree with the Dog Owners' theory/conclusion, which appears to be: that because Dexter is being held at the Town facility by himself, and because a dog behaviorist(s) did not find him aggressive during their evaluation at the Town facility, that this is evidence that Dexter was provoked on November 6, 2019.
15. That the Intervenor victim may have a civil case related to his matter has no bearing at all in my decision to affirm the Disposal Order and I know nothing about such other civil matter. Exception AA.

16. Conn. Gen. Stat. § 22-358(c) Order authority provides that a municipal animal control officer may issue an order as such ACO deems necessary. Exceptions BB and CC (and see also Exception PP) primarily addresses a challenge(s) to the constitutionality of this aspect of Conn. Gen. Stat. § 22-358(c), as it relates to holding Dexter in Town custody during the pendency of the appeal. A constitutional determination is beyond the scope of an administrative agency decision. The Exceptions also allege seemingly unrelated interpersonal communication difficulties between the parties outside of the hearing venue itself (*e.g.*, refusing to communicate, or to mediate, and “stonewalling”), and problems obtaining each other’s evidence. For purposes of a response here, the UAPA and the Department’s Rules of Practice, do not speak to providing discovery amongst the parties in the same fashion as in a Court proceeding. *See* Conn. Gen. Stat. § 4-177b. In order to facilitate a virtual hearing, the record reflects that the parties all agreed to provide one another their lists of witnesses and their proposed exhibits prior to the virtual hearing, pursuant to a Pre-Hearing Management Order and that this occurred.
17. Exception DD is a constitutional challenge to Conn. Gen. Stat. § 22-358(c), as it relates to holding Dexter alone while in Town custody during the pendency of the appeal. A constitutional determination is beyond the scope of an administrative agency decision.
18. The owners state that fact alternatives to “disposal” were not weighed and balanced adequately, or at all. I have reviewed the entire record and have assessed the preponderance of evidence in the record as to whether the Town’s Disposal Order should be affirmed, revoked, or modified. In doing so, I did carefully assess alternatives to this Disposal Order, and have determined otherwise, and again find that there is a preponderance of evidence in the record that the Disposal Order was properly deemed necessary by a municipal animal control officer for public safety. Exception EE and HH.
19. Exception FF provides statements about the Dog Owners’ opinion about the nature of their dog and about the victim Intervenor’s civil case. I have approached this case as a fair and impartial decision maker, with a background as a licensed veterinarian, and use of the word “desperately,” in the PFD and use of the term “vicious mauling,” did not compromise my judgment, nor create heightened emotion, and neither of these words/terms impacted this Final Decision. *See* previous comments provided for Exceptions X and AA.
20. The standard of proof in administrative hearings is the preponderance of the evidence standard. *Jones v. Connecticut Med. Examining Bd*, 309 Conn. 727, 734-35 (2013). Exception GG.
21. The Dog Owners state that ACO Selig is not competent to serve as an expert in dog behavior. Exception II. The owners do not state or argue what further, or what other qualifications an animal control officer would need to possess, beyond those possessed by ACO Selig, in order to provide opinion testimony that a biting dog is dangerous to the public. Here, Conn. Gen. Stat. § 22-358(c) is triggered after an animal bites an individual. After an individual is bitten, and after an investigation, an animal control officer may issue a restraint or disposal order. Based on both ACO Selig’s investigation,

and his experience and training, it was appropriate for him to provide opinion testimony about the bite incident and temperament of Dexter. The qualification of a witness as an expert is well within the Hearing Officer's discretion. *Cetnarowski v. Ferris*, 2000 Conn. Super. LEXIS 1961 at *7-8.

22. I have reviewed Exception JJ, and the information therein has no bearing on my determination that the victim's injuries and wounds from Dexter's bite or bites were severe and that there is a preponderance of evidence in the record that the Disposal Order was properly deemed necessary by a municipal animal control officer for public safety. I again note that the UAPA and the Department's Rules of Practice do not speak to providing discovery amongst the parties in the same fashion as in a Court proceeding, and it was the Dog Owners' determination that they did not want to proceed with the hearing on the initial hearing date set by the Department, and that they requested (and received) additional time.
23. The Dog Owners' experts both evaluated Dexter on a particular date, which was after, but not including, the events of November 6, 2019. *See* previous discussion in ¶10. On the date of their evaluations, the Dog Owners' experts did not determine that solitary confinement was negatively impacting Dexter, and they did not determine that Dexter was the subject of psychological abuse or cruelty. Exceptions LL, MM, and NN. In addition, the Dog Owners have stated that in light of the COVID-19 pandemic, the Town's visitation policy was understandable. HO 26 at p.5. The pandemic health crisis remains today. The Hearing Officer previously ruled on Dexter's confinement and visitation in HO Exhibits 18 and 27 and in the PFD. I agree with those determinations and find nothing contrary in law or in the record.
24. Exception OO repeats the Dog Owners' previous exceptions. None of the information in Exception OO alters my decision that Dexter is a dangerous dog and that the victim's injuries and wounds from Dexter's bite or bites were severe, and that there is a preponderance of evidence in the record that the Disposal Order was properly deemed necessary by a municipal animal control officer for public safety.
25. I have reviewed and assessed the owners' Conclusion on pages 10-11.

PROPOSED FINAL DECISION ATTACHED AND INCORPORATED HEREIN.

Date: December 21, 2020
SO ORDERED.



Bruce A. Sherman, DVM, MPH
Director, Bureau of Regulatory Services
Final Decision Maker

STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL OF A DISPOSAL ORDER
ISSUED BY THE TOWN OF SUFFIELD

“DEXTER”

PROPOSED FINAL DECISION

I, Carole W. Briggs, the designated Hearing Officer in the Appeal of a Disposal Order issued by a Town of Suffield Municipal Animal Control Officer (“the Town”), in the Matter of a dog named “Dexter” owned by Neil and Maryanne “Annie” Hornish (collectively referred to as “owner” or “owners” or “Hornish”), hereby issue the Proposed Final Decision in this matter. I have thoroughly reviewed the entire record, including the transcript of the hearing, all of the admitted exhibits, and all other related submissions of the parties. The Proposed Final Decision recommends affirming the Disposal Order as follows:

FINDINGS OF FACT:

- 1) Commissioner Bryan P. Hurlburt appointed me to act as Hearing Officer in this matter and to issue to him a Proposed Final Decision. Connecticut General Statute (C.G.S.) § 4-179. Hearing Officer (“HO”) Exhibit (“Ex.”) 8. On December 5, 2019, the Notice of Hearing was sent via certified mail/return receipt to the Town and its attorney, and to the owner of Dexter, for a hearing that was scheduled for January 7, 2020. HO Ex. 3.
- 2) By letter dated December 4, 2019, the Estate of Janet D’Aleo (“the Estate”) filed a one-page request that it be made a party in the appeal of the Town of Suffield disposal order placed on the dog Dexter. On December 20, 2019, the Hearing Officer requested that counsel for the Estate, the Town, and the dog owner(s) file briefs for the Hearing Officer’s consideration in ruling on the request for party status. On January 10, 2020, the dog owner Annie Hornish filed an objection to the Estate being made a party to the appeal proceeding. The Town of Suffield did not take any position regarding the request as the Town did not submit a filing in response. On January 17, 2020, the Estate filed a reply

to the dog owner's objection. On January 27, 2020, the Hearing Officer granted intervenor status to the Estate. HO Ex. 21

- 3) There were two additional requests by the parties to continue the hearing, which requests were each granted by the hearing officer. HO Ex. 8, and HO Ex. 22. On May 12, 2020, the hearing officer scheduled a hearing to be conducted remotely¹, commencing June 2, 2020. HO Ex. 36. The hearing commenced that date, and continued on a second date of June 4, 2020. The hearing concluded on June 4, 2020 after the Town, the owner, and the intervenor each called all of their respective witnesses, put in all of their exhibits, and stated that they did not have any other evidence to be submitted into the record. June 4, 2020 Transcript (Tr. 2) at p. 292.
- 4) The hearing was conducted in accordance with the Uniform Administrative Procedures Act, and the Department's Rules of Practice pertaining to contested cases, which regulations were provided to the parties. June 2, 2020 Transcript (Tr. 1). at p. 4-5. The hearing followed the Department Order of Procedure, a copy of which was also provided to the parties prior to the hearing. Tr.1 at p. 11-12.
- 5) At issue is the appeal of a Disposal Order issued by the Town on November 14, 2019 to Hornish, concerning the dog named Dexter. Ex. T 2. Also at issue in this case, is whether the Town had the authority to hold Dexter in isolation during the pendency of this matter.
- 6) The parties stipulated to the following facts in a Joint Hearing Management Report dated May 27, 2020. HO Ex. 38:
 1. The impounded dog, Dexter, is owned by Neil & Maryanne Hornish ("Owners") of 584 Thrall Avenue Suffield, CT 06078.
 2. Dexter has lived with the Owners since June 2019.
 3. A quarantine order was issued for Dexter by Town of Suffield ACO Ryan Selig on 11/6/2019.
 4. The 11/6/2019 quarantine order was issued following an incident inside the home at 584 Thrall Avenue Suffield, CT 06078 that occurred 11/6/2019.
 5. The Owners were not home at the time of the incident.
 6. A disposal order was issued for Dexter by Town of Suffield ACO Ryan Selig on 11/14/2019.
 7. The 11/14/2019 disposal order was issued pursuant to C.G.S. 22-358(c).
- 7) The Town offered the testimony of Suffield Detective Shawn St. John, (Det. St. John), Officer Justin Fuller, Officer Thomas Kieselback, and Animal Control Officer Ryan Selig (ACO Selig) and Exhibits T1 through T9. The Town was represented by Suffield Town Attorney Derek Donnelly. The dog owners, Hornish, were not represented by counsel at the hearing. The owners offered testimony through Jessica Kaczynski, Dr. Peter Borchelt, Christie Romano, Karen Syner, Marie Joyner, Neil

¹ A remote hearing via videoconference was necessary in light of the COVID-19 crisis and applicable Executive Orders of the Governor. The parties agreed to compile a joint hearing management report and agreed to have the hearing in a video format. June 2, 2020 Tr. 1 at p. 8.

Hornish and Annie Hornish during the hearing proceedings, and Dog Owner (DO) Exhibits 1-7, 17-20. The Estate did not offer any testimony, but entered into the record Exhibits 11-12.

- 8) Det. St. John testified that he was assigned to investigate the matter to determine if any criminal charges should be brought. Tr. 1 at p. 57. During his investigation he spoke with Neil Hornish, Annie Hornish, Elizabeth Nicholls ("Nicholls"), Agnes Wosko ("Wosko"), Beth Sanchez ("Sanchez") and Jessica Kaczynski ("Kaczynski"). T1 at pp. 28-30, 40.
- 9) Ms. Nicholls, the aide to the victim, Janet D'Aleo ("D'Aleo"), was present during the attack on November 6, 2019 and witnessed it. After the attack on November 6, 2019, she described the events involving the dog Dexter and D'Aleo to Det. St. John, which he related in his testimony, in part, as follows:

17 Q Okay. Now, when -- did you speak with any of the
18 other witnesses at the property? You mentioned Mr. Hornish
19 and Ms. Wosko. Did you speak with any other witness?

20 A Yes. I spoke with Annie Hornish regarding the dog
21 and being in her room and she assisted with getting a leash
22 to put Dexter inside the truck, and I spoke with witness
23 Nicholls, the aide to the victim.

24 Q Okay. And when you say aide to the victim, could
25 you just describe for the record what you mean by that?

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1 A She is a home healthcare aide that lives -- lived
2 with the victim, helped her out with her daily activities.

3 Q Okay. And was Ms. Nicholls present for the dog
4 attack?

5 A Yes, she was.

6 Q Can you tell us what she explained to you happened
7 with respect to the dog injuries?

8 A Yes. When I spoke with her, she stated that she and
9 the victim were in Enfield attending a doctor's visit for

10 the victim. The victim wanted to go see her friend that
11 lived on Thrall Avenue, Ms. Wosko, so they drove over to
12 Thrall Ave. She assisted her into walking into the home.

13 So they knocked on the door, she heard the dog
14 barking. Ms. Wosko opened the door. They noticed a black
15 and white small dog, that's determined to be Dexter,
16 barking at them. Ms. Wosko said that the dog was not
17 violent and so they proceeded in.

18 Somehow the dog circled around. And as they were
19 walking down the front hallway, through the front door,
20 Dexter nipped the victim in her backside. At this point,
21 they became scared of the dog. They both asked Ms. Wosko
22 could she secure the dog in a room or they would leave.
23 Ms. Wosko secured the dog in a front office, at which point
24 the two went -- I'm sorry, Ms. Nicholls stated that she was
25 going to go park the car correctly. She exited the front

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1 door, walked to her car.

2 As she parked -- after she parked the car, she began
3 to walk back into the residence. The dog was able to free
4 himself from the room and charge at either -- towards the
5 door that Ms. Nicholls had just opened. Ms. Nicholls
6 fearing that the --

7 Q Let me stop you there for a second. So when
8 Ms. Nicholls went to park the car, she left Mrs. D'Aleo in
9 the residence; is that correct?

10 A Yes.

11 Q Okay.

12 A Mrs. D'Aleo has a walker so she -- she has a walker
13 to move around. So Ms. Nicholls assisted her into getting
14 inside. And then once she got inside, she went to move the
15 car because she left it right at the entrance to the front
16 door, the entrance ramp.

17 Q And what did Ms. Nicholls tell you that happened
18 when she returned to the house after parking the car, if
19 you could start there?

20 A She stated that she observed Dexter, the dog, get
21 out of the room and start charging towards the front door
22 that she had just opened, barking. She feared that the dog
23 was either attempting to attack her or trying to get out,
24 so she slammed the door shut. At which point, she was able
25 to -- the door has side pane glasses on each side of the

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1 door.

2 She was able to look through the side pane and saw
3 Dexter spin and turn and attack, knocking the victim to the
4 ground. Then she observed the victim being mauled by the
5 dog, at which time she entered the house to try to help the
6 victim. She picked up a box or attempted to pick up a box
7 but it was too heavy for her. So then she saw like a metal
8 stool, grabbed the metal stool, struck the dog, she said,
9 about five or six times, approximately five or six times.
10 This had no effect on the dog, who was still attacking the
11 victim. So she ran outside to get some help. At that
12 point that's --

13 Q Let me stop you there for a second. And was she
14 able to get help when she ran outside?

15 A She observed Annie Hornish pulling into the driveway
16 as she ran outside. She flagged Annie down and explained
17 to her that the dog was attacking Janet, so Annie ran
18 inside to help.

19 Annie said that she -- Annie, I believe, called 911,
20 as she ran inside and then she ran inside to help.

21 Q And was Mrs. Hornish able -- according to
22 Ms. Nicholls, was Mrs. Hornish able to get the dog off the
23 victim?

24 A Yes.

25 Q Okay. And did you prepare a written statement for

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1 Ms. Nicholls to sign regarding the attack?

2 A Yes, I did.

3 Q And was that a sworn statement that she made under
4 oath?

5 A Yes, she did.

6 Q And she signed that statement -- she gave you that
7 statement at the scene of 584 Thrall Avenue on the date of
8 the attack, correct?

9 A Yes, she did.

10 Q And she reviewed and signed that sworn statement at
11 a later date, correct?

12 A Yes, she did.

(Tr. 1 at pp. 29-33)

9) Ms. Wosko was present during the attack on November 6, 2019 and witnessed it. After the attack on November 6, 2019, she described the events involving the dog Dexter and D'Aleo to Det. St. John, which he related in his testimony, in part, as follows:

16 Q And you spoke to Ms. Wosko at the crime scene on
17 November 6, 2019, correct?

18 A Yes.

19 Q Okay. Do you recall what she told you about what
20 occurred?

21 A Agnes was very distraught, crying, and she kept on
22 repeating, "I can't believe this happened" or to the
23 effects of "I can't believe this happened. I couldn't get
24 him off. I couldn't get him off. There's so much blood.
25 I can't believe this happened. There's so much blood."

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1 Q Okay. And did you write a sworn statement for
2 Ms. Wosko regarding the attack?

3 A No, I did not.

4 Q Okay. Did you ever receive a sworn statement from
5 Ms. Wosko regarding the attack?

6 A Yes, I did.

7 Q Okay. And do you know if Ms. Wosko wrote that
8 statement?

9 A No, she did not. I believe she dictated it to Annie
10 Hornish.

11 Q Okay. And was her written account of what occurred
12 consistent with what she said or you observed her saying on
13 November 6, 2019?

14 A No.

2 How did her statement that you received after, and
3 that was dictated to her daughter and provided to you, how
4 did that differ from what she told you on-scene on November
5 6, 2019?

22 THE WITNESS: Okay. It seems like she
23 downplayed the whole incident. She only saw
24 Dexter have the victim's shoe in his mouth.
25 She did not see Dexter biting her. And she

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1 saw Witness Nicholls strike the dog several
2 times and then that's what time Annie ran in.
3 And when Annie ran in, I don't believe she
4 said that the dog, Dexter, was attacking her,
5 but was over near the couch.

6 BY MR. DONNELLY:

7 Q Detective St. John, did you attempt to interview
8 Ms. Wosko in order to understand the discrepancies between
9 what she told you at the scene and what was provided to you
10 in a written statement after the event?

11 Yes. I spoke with the Hornishes and I asked could I
12 make an appointment to come and take a sworn statement on a
13 Suffield Police Department statement form. They informed
14 me that they had retained counsel and that I would have to
15 speak with the counsel. When I spoke with the counsel,
16 they said that negative. The statement that I had is --
17 had been enough and that they will not be giving --
18 Ms. Wosko would not be giving another statement.

(Tr. 1 at pp. 33-34, 36, and 37). And see Tr. 1 at p. 171: On November 6, 2019, the day of the incident, Ms. Wosko , “was yelling about how much blood and how the dog wouldn’t let go of Mrs. D’Aleo’s legs.” Ms. Wosko’s written statement, made a day following the incident with the owner, was then not consistent with her statement made on the scene of the incident. Tr. 1 at p. 171-172 and 202-203.

10) Det. St. John further testified that he spoke with Annie Hornish, who arrived while the attack was ongoing. He testified that Ms. Hornish provided a description of the events and a written statement which he did not find credible.

23 Q Okay. And I believe you touched on this earlier,
24 but based on your investigation, was Annie Hornish present
25 when the attack began?

39

1 A No, she was not.

2 Q Okay. And she arrived on-scene during the attack,
3 correct?

4 A Yes.

5 Q Okay. When did you receive, if you remember, a
6 sworn statement from Annie Hornish?

7 A I don't know the exact date. It must have been, I
8 want to say, the 7th or the 8th she came down to the police
9 department with her husband to give a statement. I do not
10 know the exact date. I can look it up in the report but I
11 do not know the exact date.

12 Q Detective, what was your impression of her sworn
13 statement?

14 A Once again, it kind of downplayed what happened and
15 was more putting blame or downplaying and saying that
16 possibly the dog did not cause the injuries.

17 Q Okay. And did you find her statement credible?

18 A No, not really. Certain pieces of it, when she

19 came -- she said that she came in the door and that the
20 dog -- when she came in the door, that the dog was over
21 near the couch and was not attacking the victim, and that
22 the amount of blood did not fit the injuries that the
23 victim sustained.

24 Q And did she raise any questions in her sworn
25 statement about Mrs. D'Aleo, the victim?

40

1 A She, to the point where I believe it was in her
2 victim statement that this possibly could have been because
3 she had -- the victim had fresh wounds or open wounds that
4 possibly the injuries were not from the dog attack because
5 she had fresh wounds, and because she's older, that her
6 skin could have tore easier.

7 Q And with respect to the fresh wounds, you mentioned
8 earlier that the victim and Ms. Nicholls came from a
9 doctor's appointment?

10 A Yes.

11 Q Was that related to the wound?

12 A Yes.

13 Q Okay. And did you investigate whether or not she
14 left the doctor's appointment with any open wounds?

15 A Yes, I did. I got a letter, that's attached in the
16 report, from the doctor -- from the wound -- she went to a
17 wound clinic and that all her injuries were healed and that
18 she was release from her treatment because all her injuries
19 were healed.

20 Q Okay. So based on your investigation, she did not

21 have an open wound when she arrived at the Hornish
22 household on November 6, 2019; is that accurate?

23 A Yes, it is.

(Tr. 1 at pp. 38-40)

11) After speaking with Ms. Hornish, Det. St. John contacted the prior owner of the dog, Jessica Kaczynski, to learn about the history and temperament of the dog, Dexter. Det. St. John provided the following testimony, in part, regarding Kaczynski's description of Dexter:

9 Q Okay. And did you speak with the prior owner,
10 Jessica Kaczynski?

11 A Yes, I did.

12 Q And did Ms. Kaczynski, when you spoke to her,
13 identify any prior owners of the dog, Dexter?

14 A Yes, she did.

15 Q Okay. And did Ms. -- what else did Ms. Kaczynski
16 identify for you?

17 A Ms. Kaczynski said that she obtained the dog from a
18 Beth Sanchez in Norwich because the owner was getting
19 evicted and had no place to keep her and they were going to
20 put the dog to sleep, so she took the dog in to keep it
21 from being put to sleep. She brought the dog to her
22 parents' home. And Ms. Kaczynski said the dog was a good
23 dog. She never saw any violence from the dog but that the
24 dog had separation anxiety and that the dog, if you left
25 the dog home alone, would jump out windows, damage screens,

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1 break the screens, and that's why they had to put the dog
2 up to have somebody adopt it because they were afraid that
3 the dog was going to hurt itself jumping out windows and it

4 was causing property damage.

(Tr. 1 at pp. 41-42)

12) Det. St. John also testified that he spoke with Beth Sanchez, who had cared for the dog Dexter for approximately two years, and during that time, the dog was involved in three instances of aggression or bite events. Two had been reported to the Norwich police, while the third had not. Through a photo confirmation, Sanchez confirmed to ACO Selig that the dog she had cared for was the dog Dexter. (Tr. 1 pp. 42-45)

13) Det. St. John testified that D'Aleo's emergency call button triggered a recording of the event, but the recording quality was degraded and unclear.

6 A The sound quality was not very good. You had the
7 operator continuously asking "what's your location" and you
8 could hear a female that was identified as the victim
9 screaming "oh God, oh God" and then you can hear Witness
10 Nicholls screaming as well. Ms. Nicholls was screaming "oh
11 God." And the clarity wasn't very good at all.

12 Q Okay. Did you do anything to attempt to improve the
13 clarity of the call?

14 A Yes. I brought it to Hartford. They have a crime
15 center that deals with -- a bunch of analysts that deal
16 with audiotapes and video. They were unable to clear it
17 up. I sent it down to the FBI branch in Hartford to see if
18 they can send it to Quantico to get it cleaned up. They
19 stated that it was possible but they would only do it if
20 there was going to be an arrest made in this. And we
21 determined that there wasn't going to be an arrest made, so
22 they said they would not be able to clean up the tape for
23 us.

(Tr. 1 at p. 46, Ex. DO-17). Acknowledging that the sound quality of the audio was not clear, Det. St. John stated that he possibly heard yelling of: "get him or it off of me," and that is why he put this statement in his report. Tr. 1 at p. 112, 116, and 120.

14) The Town introduced a series of photographs, and log of same, prepared by the police which showed the injuries sustained by D'Aleo. The photographs show extensive damage to the lower extremities, and hip of D'Aleo, with wounds exposing the bones of D'Aleo's legs. T. Ex. 5.

15) Det. St. John testified that he spoke with the medical examiner about the injuries depicted in the photos and the medical examiner determined that the dog was the "mechanism of attack" on D'Aleo. He stated the medical examiner's findings as follows:

22 Q Detective, again, this was not an autopsy, correct?

23 A No, it was not.

24 Q Okay. So other than some of the photographs which
25 depicted the medical examiner holding up some of the

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1 wounds, the victim was not altered in any way prior to the
2 photograph being taken or during the process of the medical
3 examination, correct?

4 A No, sir.

5 Q Okay. Did the medical examiner determine a cause of
6 death in this incident?

7 A The medical examiner that conducted that day?

8 Q No. After the inspection, did the medical examiner
9 determine a cause of death?

10 A Yes. It was blunt and sharp force damage.

11 Q Okay. And did the medical examiner determine what
12 the mechanism for death was?

13 A Yes, the dog.

14 Q Okay. And is that -- is the dog listed as the

15 mechanism of attack on the death certificate of the victim?

16 A It's listed, I want to -- I believe it's listed as
17 an accident, and yes, the dog was a contributing factor to
18 that accident.

19 Q Okay. Detective, during the course of your
20 investigation -- I'm sorry. Withdrawn.

21 When you spoke with the medical examiner during the
22 exam, were there any other theories about what could have
23 possibly caused these horrific injuries other than the dog?

24 A No, not at all.

25 Q Okay. And based on your conversation with the

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1 medical examiner, was it clear from the wounds that these
2 injuries were cause by a dog?

3 A Yes.

4 Q Okay. During your investigation, did you rule out
5 any of potential forms of mechanism for injury other than
6 the mauling by Dexter?

7 A No, I did not rule any -- everything else was ruled
8 out except for mauling by Dexter.

9 Q Very good. Okay. And was the medical examiner's
10 determination consistent with what you determined during
11 your investigation?

12 A Yes.

(Tr. 1 pp. 55-57) (T Ex. 5, 8, 9)

- 15) During cross examination by the Intervenor's attorney, Det. St. John was asked about whether or not Nicholls or D'Aleo provoked the attack, and he replied that he determined that there had not been any provocation which triggered the attack, based on his investigation of the matter. (Tr. 1 at pp. 60-63).
- 16) Det. St. John was questioned about any pre-existing wounds that D'Aleo might have had that caused some or all of the blood at the scene. Det. St. John testified that D'Aleo did not have any pre-existing wounds that would have caused the amount of blood at the scene, based on the note he had received from D'Aleo's doctor. (Tr. 1 at pp. 40, 62; Ex. T-7, p. 6) (The note is not attached to the report.)
- 17) Officer Justin Fuller testified on behalf of the Town that he took pictures of the scene after the victim was transported to the hospital, which are contained in Ex. T-3. (Tr. 1 at pp. 149-154)
- 18) Officer Thomas Kieselback testified that he took pictures of the victim's injuries at the hospital the day of the attack. (Tr. 1 at pp. 160-163; Ex. T-4)
- 19) ACO Selig testified about his training and experience as an animal control officer for the Town of Suffield. He testified that he issued the quarantine order due to the severity of the attack. (Tr. 1 at pp. 166-168, 174-176; Ex. T-1)
- 20) ACO Selig testified that he inquired about the three prior bite incidents involving Dexter in Norwich which factored into his decision making about issuing a disposal order for Dexter. (Tr. 1 at pp. 178-181)

21) He testified:

22 A So we have the two confirmed reports within the
 23 Norwich Police Department of the prior bite history, as
 24 well as one that was never reported to the police
 25 department.

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1 With this being a level 6 bite which is going be the
 2 highest ranking, where, ultimately, the victim has died
 3 from multiple 4 and 5 level bites, that's how I came to my
 4 conclusion. It was not a good prognosis for the animal if
 5 they have poor bite inhibition and there's a propensity for
 6 it to occur again.

(*Id.*)

22) ACO Selig then described what he meant by a level 6 bite by explaining the Ian Dunbar scale for dog bites.

22 Q And I probably should have put this up before your
23 last answer, Officer Selig, but we'll kind of review this
24 for a second. Can you identify for the record what this
25 exhibit is?

182

1 A Yeah. So this is the Dr. Ian Dunbar Dog Bite Scale.
2 It's an objective assessment on evaluating dog bites and
3 how they are against other animals and against people.

18 Q Officer Selig, you mentioned the level 6 bite. And
19 if you look at the top of the page, the outcome of the bite
20 is that the victim is deceased; is that accurate?

21 A Yes.

22 Q And what does the Ian Dunbar Scale prescribe for a
23 dog following the level 6 bite, which you can review the
24 full Exhibit Number 6 to refresh your recollection, if you
25 need to?

183

1 A Yeah. So at both levels 5 and 6 the recommendation,
2 per the assessment scale, would be to recommend euthanasia,
3 due to the poor quality of life for the dog and it's not
4 safe to be around people.

(Tr. 1 at pp. 181-183; Ex. T-6)

23) ACO Selig then testified that based on the level 6 bite, he issued the disposal order.

5 Q And when you made the assessment that this was a
6 level 6 bite, you had, of course, subsequently learned that
7 the victim had perished from the injury, correct?

8 A Correct.

9 Q And based on this assessment, what was your

10 recommended course of action -- I'm sorry. Withdrawn.

11 What action did you take next after making this
12 assessment on the Dunbar Scale?

13 A So on November 14th I had issued a disposal order to
14 the Hornish family for Dexter.

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12 Q And what did factor into your decision to ultimately
13 issue the disposal order?

14 A It's going to be the previous bite history of the
15 dog, and that it was just so high up on the Dunbar Scale
16 that it's a public safety risk at that point. He's not
17 safe, I believe, to have out in a public setting. Those
18 are my primary assessments and the fact that he's bitten on
19 numerous occasions before, and the bite that I investigated
20 resulted in a level 6.

21 Q And does a level 6 means it's possible that the
22 animal could bite again?

23 A Yes.

24 Q Okay. And in issuing the disposal order, there's
25 consideration for public safety, is there not?

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1 A Yes, there is.

2 Q So a dog who has bitten and killed someone can have
3 the propensity to bite and kill again, according to the
4 Dunbar Scale?

5 A Yes.

6 Q Okay. And did that factor into your decision
7 making?

8 A Yes, it did.

23 Q Okay. And Mr. Selig, is Dexter a danger to the
24 public if he were to be released?

25 A Yes, he is.

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1 Q Okay. And can you explain why?

2 A Again, with it having two, possibly three prior
3 bites, before the level 6 bite that occurred on
4 November 6th of 2019, it would be best to look at the
5 interest of public safety. If he's demonstrated that he's
6 bitten on multiple occasions, it would be quite common for
7 this to occur again, and for the public safety of elderly,
8 children, and just anyone that could possibly come in
9 contact with the dog. That all came into a factor of the
10 disposal order as well.

(Tr. 1 at pp. 183, 188-190; Ex. T-2). And see Tr.1 at p. 64, "this was, by far, the worst attack I have seen." Tr. 1 at p. 169, "this is the most severe dog bite that I've ever encountered. I would say it was nothing short of the worst that I've seen." Tr. 1 at p. 175, "Due to the severity of the incident. Like I stated before, I've never actually had an incident of this severity. This is the worst dog on human bite I've ever seen. So for public safety reasons, I had him quarantined at River Valley Animal Center." ACO Selig testified that the wounds were caused by a dog bite, i.e., There was no doubt in ACO Selig's mind that the wounds were caused by something other than a dog bite. Tr. 1 at p. 184 and p. 193-194 and p. 221 ("the witness states that she saw the dog biting at the leg-hip area and bringing her to the ground, I don't see that as a possibility").

24) In ACO Selig's opinion, the wounds to the victims were definitely caused by the dog bite. Tr. 1 at p. 184. ACO Selig believes that Dexter is a danger to the public if he were to be released. Tr 1 at p. 189. ACO Selig believes that the victim was bitten multiple times and that it would have been extremely difficult to count the number of bites as there was a severe amount of flesh, skin, and muscle missing

from the victim's body. Tr. 1 at p. 191 and 255. ACO Selig stated that the victim's legs were missing flesh 360 degrees around and it was caused by more than one bite on her legs. Tr. 1 at p. 254. There was a bite mark on the victim's hip. Tr. 1 at p. 254-255. The victim was missing a toe. Tr. 1 at p. 255. ACO Selig agreed that there were multiple and horrific bites. Tr.1 at p. 255.

25) During cross examination, ACO Selig was asked if there was any evidence supporting a claim that Dexter was provoked into attacking D'Aleo. He stated that there was none. (Tr. 1 at pp. 193-194). ACO Selig did not see any evidence that would suggest that Dexter was provoked. Tr.1 at p. 194 and 241.

26) Following ACO Selig's direct testimony, the Intervenor offered a number of statements in support of affirming the disposal order, none of which provided information regarding the facts of this case on November 6, 2019. (Ex. I-1 – I-12)

27) ACO Selig also testified during cross examination that it was his decision to keep Dexter isolated from other dogs and all physical contact, after consultation with the board of selectmen, the Town attorney, and other town officials responsible for safety. (Tr. 1 at pp. 240-241)

28) Hornish offered a number of photos to demonstrate the temperament of Dexter. Tr. 2 at pp. 14-22) (Ex. DO-1A-1J, DO-1K-1M, DO-1O, DO-1Z, DO-1 pp. 24-26 (DO-1 is a full exhibit except for pp.17-23))

29) Annie Hornish testified to her mother's mental condition (Ms. Wosko is Annie Hornish's mother), and that she suffers from cognitive problems and short-term memory loss. (Tr. 2 at p. 26)

30) She described the adoption of Dexter from Kaczynski in 2019, and the temperament of Dexter as being gentle and obedient, and behaved well in social interactions. (Tr. 2 at pp. 26-30)

31) Annie Hornish described Dexter in his confinement as lacking stimulation. (Tr. 2 at p.32)

32) Annie Hornish described the events of November 6, 2019, arriving after the attack had started. Annie Hornish testified that she was not present on November 6, 2019 when the victim was being bitten, and she had no firsthand knowledge of the day. Tr. 2. at p. 154. She stated:

2 Q What happened when you first came home that
3 afternoon?

4 A I pulled into the left side of our
5 driveway. And as I was exiting the car, Elizabeth ran
6 out and was screaming that the dog was attacking
7 Janet.

8 Q Did Dexter chase Elizabeth out of the

9 house?

10 A No.

11 Q How did you react to seeing Elizabeth?

12 A I instantly knew something was very wrong.

13 It was obvious. I began dialing 911 as soon as I saw

14 Elizabeth screaming as I was exiting the car. And I

15 ran into the house as fast as I could.

16 Q What did you see when you ran into the

17 house?

18 A I first saw my mother in the foyer,

19 slightly to the right.

20 Q So your mother was located between the

21 front door and where Mrs. D'Aleo was laying?

22 A Yes. My mother was slightly to the right

23 of center in her power wheelchair, yup.

24 Q Did you see Mrs. D'Aleo?

25 A Yes. Yes, I saw Mrs. D'Aleo lying on her

37
1 back with her head closer to the door. Her eyes were
2 shut and she was not speaking or moving. I remember
3 noticing a small red mark on her right hip, which I
4 guess at the time it was from Dexter jumping on her,
5 from maybe one of his toenails. That's what I just
6 assumed seeing. But that wasn't bleeding heavily.
7 However, Mrs. D'Aleo's left lower leg seemed to have a
8 very grievous injury. And there was blood on the
9 floor, some blood on the floor. It was not as much as

10 I would have expected considering the injury.

11 Q You said she used a walker. Where was her
12 walker?

13 A Her walker was near her feet, maybe a foot
14 away from her feet. That was about 18 feet from the
15 front door.

16 Q Did you stop to check Mrs. D'Aleo?

17 A No.

18 Q Why not?

19 A Elizabeth was right there behind me. I was
20 on the 911 call. And I saw Dexter by the couch, and I
21 thought -- you know, he was a little bit away from the
22 couch and I thought I should first remove him from the
23 area.

24 Q I'm sorry. Where was Dexter when you first
25 walked -- ran into the house?

1 A He was by the couch towards the kitchen, 38
2 around 10 feet away from where the walker was. And he
3 was standing there. And I remember seeing blood on
4 his front toes.

5 Q So Dexter was not touching Mrs. D'Aleo at
6 all when you ran in?

7 A That is correct.

8 Q You did not need to pull Dexter off
9 Mrs. D'Aleo?

10 A Absolutely I did not.

11 Q There is an inconsistency in the police

12 report. Elizabeth's statement claims you had to
13 wrestle Dexter off Mrs. D'Aleo. You say that Dexter
14 had already moved away from Mrs. D'Aleo.

15 Can you verify that your statement is the
16 correct version?

17 A Yes. I was on the phone talking with the
18 911 dispatcher by the time I entered the house. I
19 wouldn't have been able to wrestle a dog at the same
20 time.

(Tr. 2 at pp. 36-38)

33) Annie Hornish testified that her mother's statement about the events was dictated to her and she did not tell her mother what to say. She explained further that due to her mother's short-term memory loss and declining mental functions it didn't make sense for Wosko to give another statement to Det. St. John. (Tr. 2 at p. 67-73; Ex. DO-20)

34) Annie Hornish testified to an encounter between Dexter and three visitors shortly before the attack, which occurred without any incident. (Tr. 2 at pp. 73-74)

35) Annie Hornish described Dexter's confinement conditions at River Valley Animal Center as being extremely harmful to the dog:

21 Q Okay. After Dexter was removed from the
22 scene by ACO Selig, when did you next see Dexter?

23 A Sometime during the 10-day quarantine.

24 Q Where was he confined?

25 A River Valley Animal Center.

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1 Q Were you able to have contact?

2 A No.

3 Q Were you able to provide him any type of
4 comfort?

5 A No.

6 Q After the rabies quarantine, were you able

7 to visit Dexter?

8 A We were able to visit only one hour one day
9 per week.

10 Q What were the conditions of these one-hour
11 once-a-week visits?

12 A We were not allowed to touch Dexter. We
13 could only view him through the glass door. We were
14 allowed to bring sheets and blankets from home so he
15 could occupy himself with the sense of our other
16 animals. But we could not touch him. We couldn't
17 walk him.

18 We just resumed visiting Dexter this week
19 after 10 weeks of no contact whatsoever due to
20 COVID-19 precautions.

21 Q How did Dexter behave during these visits?

22 A He always was well behaved. But as the
23 months have worn on, he now looks unhappy and he's
24 gained weight.

25 Q Can you describe the physical conditions of
76
1 his confinement?

2 A Yeah. He has a heated and unheated space
3 separated by a guillotine door. He is not allowed to
4 be walked or touched by anyone on a regular basis,
5 even though we've offered to pay for professional
6 insured dog handlers. We were not allowed to even
7 give him any food like hemp treats or food from a

8 restaurant as a treat, and to try to soothe his
9 frustration from the monotony of being in solitary
10 confinement.

(Tr. 2 at pp. 74-76)

- 36) Neil Hornish entered into the record a January 24, 2020 behavioral assessment of Dexter performed by Dr. Borchelt, an animal behavior consultant, in which he described visiting with Dexter in person, and viewing a January 20, 2020 video of Dexter showing him happy and friendly, even in his confinement. However, he offered no opinion assessment of the dog's behavior or temperament at or during the incident on November 6, 2019. (Tr. 2 at pp. 77-88; Ex. DO-6, DO-3)
- 37) Annie Hornish testified that she thought Dexter had been provoked and proceeded to describe her theory of what occurred, based on the police report and her view of Dexter's temperament. (Tr. 2 at pp. 90-97)
- 38) Annie Hornish stated that she believed Dexter greeted D'Aleo enthusiastically and knocked her down. She believed that Nicholls responded by attacking Dexter with the stool which provoked Dexter into attacking D'Aleo; and that once Nicholls ran outside and Dexter wasn't being hit, he stopped his attack. Tr. 2 at pp. 90-91.
- 39) On cross-examination, Annie Hornish conceded that Dexter did bite D'Aleo. (Tr. 2 at pp. 105, 140, 141, and 161)
- 40) Romano, a niece of Annie Hornish, testified that Dexter was gentle and friendly while she and her children visited the Hornish residence on numerous occasions. (Tr. 2 at pp. 149-154; Ex. DO-1Z). Romano did not testify to Dexter's behavior or temperament at or during the incident on November 6, 2019.
- 41) Synar testified that when she visited the Hornish residence Dexter was "friendly, lovable, mellow" and showed no signs of aggression. (Tr. 2 at pp. 156). Synar did not testify to Dexter's behavior or temperament at or during the incident on November 6, 2019.
- 42) Neil Hornish testified during cross-examination that while he wasn't a first-hand witness, he agreed with his wife's theory about the sequence of events relating to the incident. (Tr. 2 at pp. 164-166)
- 43) Kaczynski, one of the prior owners of Dexter, testified that Dexter had a very gentle disposition, but suffered from separation anxiety. On several occasions, he broke through window screens to try to escape after everyone left the house. As a result of the anxiety, she gave Dexter up for adoption to Annie Hornish. She did not have any first-knowledge of the events on November 6, 2019 and she did not testify to Dexter's behavior or temperament at or during the incident on November 6, 2019. She

had written a letter which also described her experiences with Dexter, consistent with her testimony. (Tr. 2 at pp. 173-197; Ex. DO-7, p. 2)

- 44) The Hornishes called Marie Joyner (“Joyner”) as an expert witness regarding animal behavior. Joyner is the co-founder and canine operations director for Our Companions Animal Rescue. (Tr. 2 at pp. 198-199, 204-208). Ms. Joyner did not see any photographs of the severity of the victim’s wounds, she goes into an assessment cold. Tr. 2 at p. 231 and 250-251. Mr. Joyner did not know about the death of Mrs. D’Aleo prior to her evaluation in February of 2020 and she had no knowledge of what happened on November 6, 2019. Tr. 2 at p. 234 and 241. Ms. Joyner has never done an assessment on a dog other than Dexter that was involved in an attack resulting in a human fatality. Tr. 2 at p. 240. Ms. Joyner did not testify to Dexter’s behavior or temperament at or during the incident on November 6, 2019.
- 45) Joyner has extensive experience in evaluating dogs, including assessments for animal control officers on whether or not a dog is safe to go out in the public or not. (Tr. 2 at pp. 201-203)
- 46) Joyner described her interactions with Dexter on February 3, 2020. She found Dexter to be friendly, not aggressive, and very tolerant of her interactions with him, including touching him on various body parts. She remarked that there were no red flags even though he had been in isolation for many months. (Tr. 2 at pp. 215-218; Ex. DO-3)
- 47) Joyner testified regarding Dexter’s nonvicious temperament on February 3, 2020, and a dog’s possible reaction to being provoked:

6 Q Okay. So based on your evaluation of
7 Dexter on February 3rd, is Dexter a public safety
8 risk?

9 A I did not see a public safety risk on
10 February 3rd.

11 Q In your opinion, based on the evaluation
12 of Dexter on February 3rd, is Dexter an aggressive
13 dog?

14 A I did not see an aggressive dog. I saw no
15 signs of aggression from him on February 3rd.

16 Q In your opinion, based on the evaluation of
17 Dexter on February 3rd, is Dexter a vicious dog?

18 A I did not see a vicious dog.

19 Q In your opinion, can or will most dogs bite
20 if sufficiently provoked?

21 A Any dog can bite.

22 Q In your opinion, would a person striking a
23 dog five or six times with a metal stool, could that
24 be sufficient provocation for a dog to bite?

25 A It could.

1 Q In your opinion, would it be considered 221
2 normal dog behavior to intervene if a violent attack
3 is occurring on his property?

4 A Dogs have an inclination to protect their
5 people and their property. That definitely could be
6 cause for a bite, yes.

(Tr. 2 at pp. 220-221)

- 48) During cross-examination by the Intervenor's attorney, Joyner acknowledged that dogs with vicious dispositions might still act appropriately during an evaluation if the behavioral sensitivities weren't triggered during the evaluation. (Tr. 2 at pp. 243-245)
- 49) On cross- examination she further testified that a dog may not bite the person causing pain, but redirect their attention to an innocent party or take flight. (Tr. 2 at pp. 253-255). When Ms. Joyner stated that Dexter is not a risk to public safety on February 2, 2020, she wasn't considering any prior bite history. Tr. 2 at p. 250.

LEGAL DISCUSSION

Connecticut General Statute §22-358(c) provides that "the commissioner, the Chief Animal Control Officer, any municipal animal control officer . . . may make any order concerning the restraint or disposal of any biting dog or other animal as the Commissioner or such officer deems necessary." It further

provides that following a hearing on such order the Commissioner may affirm, modify or revoke such order as the Commissioner deems proper.”

Ruling re Confinement of Dexter

As a first matter, I will address the claim by the Hornishes that Dexter was being held in conditions that violated CGS 22-336 while this case has proceeded. They objected to the no contact rule, and restrictive conditions under which he was being held as adversely affecting the dog’s health. However, given the COVID-19 health pandemic, the Hornishes have acknowledged that it has been reasonable to restrict access to the facility where Dexter is being housed since the start of the pandemic.² In addition, given that Dexter was being confined after he bit a victim, Mr. D’Aleo, and the victim died, it was not unreasonable for purposes of public safety to keep Dexter in isolation. There was no evidence presented that Dexter was suffering under those conditions. In fact, both Dr. Borchelt and Ms. Joyner, the Hornishes’ two dog behavior experts, both opined that Dexter’s temperament and behavior after months of confinement was friendly and nonaggressive. He did not show any signs of stress from his confinement. Dexter has been properly fed, housed, and kept safe. The Hornishes have not offered any legal argument beyond their prior filings, and therefore, I find that Dexter being held River Valley Animal Center, under the conditions described above, was reasonable, and consistent with the law.

Ruling re Disposal Order

Turning to the question of whether the disposal order issued by the Town of Suffield should be affirmed, upon careful consideration of the entire record, including the hearing testimony and exhibits, and, after much reflection, I find that there is a preponderance of evidence in the record to recommend affirming the Disposal Order on the dog Dexter.

Det. St. John, the Town’s criminal investigation officer, was credible and thorough in his investigation and testimony. He described the statement of Nicholls, a first-hand witness, that Dexter attacked and bit Janet D’Aleo numerous times. Based on the Medical Examiner’s statement, and the Certificate of Death, those bites during the attack were the cause of Ms. D’Aleo’s death. He noted that the eye-witness statements of Ms. Wosko on the date of the attack differed from her statement the next day as dictated to

² But for the owners’ request to continue the original hearing, the hearing would have taken place prior to the COVID-19 pandemic.

her daughter, Annie Hornish. The statement written with Annie Hornish the next day no longer referenced Dexter attacking and biting the victim. Ms. Wosko stated on the day of the attack that the dog kept biting Ms. D'Aleo, and she couldn't get Dexter to stop. However, the next day, her statement did not include any reference to Dexter biting Ms. D'Aleo, she did not think it was an attack. I am of the opinion that the statements given by Ms. Wosko on the day of the attack, that corresponded with what was happening during the events in question (the statements could be deemed, or are like, excited utterances), is the more credible version and I credit her version of events given on November 6, 2019. Det. St. John said he attempted to obtain a sworn statement from Ms. Wosko, to address this discrepancy, but she declined to give one. Given his investigation, the photos of the severe wounds to Ms. D'Aleo, and the medical reports, Det. St. John reasonably relied on that evidence to conclude that Dexter bit Ms. D'Aleo repeatedly, causing injuries that led to her death.

ACO Selig stated that the Disposal Order was issued on the dog Dexter because of the previous bite history and the severity of the bite attack on Ms. D'Aleo. However, the Norwich attacks are not fully documented (one of the attacks was not even reported to the police), and there is no discussion of whether Dexter was provoked in any of those incidents. One of the incidents involved two dogs fighting over a female dog in heat. That could be considered a provocation to a dog. Another of the incidents occurred in the midst of a domestic dispute, where Dexter attacked his owner. Of the two documented incidents, no restraint orders were issued against Dexter. For these reasons I discount the prior Norwich events as being indicative of the need to issue a disposal order, and focus solely on the attack and bites by Dexter to the victim Ms. D'Aleo.

The attack involving Ms. D'Aleo, was of a far different nature and was far more significant. ACO Selig explained in great detail his evaluation of the evidence provided by his colleague's (Det. St. John) investigation, along with his own independent investigation of the matter. ACO Selig explained the purpose and applicability of the Ian Dunbar Bite Scale in this type of situation for evaluating the public safety risk of an animal. His testimony that the bites registered as level 6 bites due to multiple severe bites where the victim died, is strongly supportive of ACO Selig's decision to issue a disposal order rather than any less restrictive order. ACO Selig explained that Dexter posed a public safety risk and, as a result, issued the disposal order. Also, in this tragic matter, a picture speaks a thousand words. The photographs of the victim's wounds were, quite simply, devastating, and along with the testimony of the Town's witnesses, the Town's exhibits, including the reported cause of death, the photographs contributed to my assessment of the potential danger that Dexter poses to public safety.

The owners were not home at the time of the incident. HO Ex. 38, Fact No. 5. The owners offered a theory that Dexter was provoked into attacking Ms. D'Aleo, but did not provide any first-hand evidence to support this theory, nor does any evidence on the record suggest that the dog was provoked prior to attacking Ms. D'Aleo. Although the owners begrudgingly do admit that Dexter bit the victim, as they stated in their opening statement at the hearing, the owners' goal was to "present information that casts doubt on the explanations that will be provided by the police and the ACO." Tr. 1. at p. 21. It was apparent that the owners love and desperately want to save Dexter. Yet with no first-hand knowledge, I found their testimony to amount to mere argument of non-credible theories, as to what otherwise could have, or might have occurred. The theories the owners provided did not make sense given the contradictory evidence in the record, and it did not make sense given the type and severity of injuries that the victim sustained. Ms. D'Aleo sustained injuries so severe, that her skin, muscles and tendons were removed from her body, and these injuries occurred all the way around her lower legs. Her toe was missing. There was a bite wound to her hip. I therefore did not credit the owners' theories and I do not credit their other explanations of what could have otherwise caused the victim's wounds depicted in the record photographs of the deceased Ms. D'Aleo. For instance, the photographs of the victim's injuries do not appear to be from an attempt by Ms. Nicholls to save the victim from Dexter, and given the totality of evidence in the record to the contrary, I do not credit the theory of the owners, that a stool caused the injuries that killed the victim. As another example, the photographs of the victim's wounds depicted in the record photographs of the deceased Ms. D'Aleo do not appear to be caused by the victim having thin skin, and given the totality of evidence in the record to the contrary, I do not credit the theory of the owners, that the victim had thin skin and that that could have caused the injuries that killed the victim.

The additional owner witnesses who testified on behalf of the owners who had interacted with Dexter on previous occasions testified to Dexter's docile behavior during those interactions, but did not offer any relevant testimony about his behavior on the actual day of the incident. None of the witnesses (either character witnesses or expert witnesses) presented by the owners spoke to any first-hand knowledge on the day of the incident, none of the witnesses testified that they spoke with, for instance, any of the officers that investigated this incident, or that they saw the photographs of the deceased victim. So while both the owners' character and expert witnesses provided testimony that Dexter was a nice, non-aggressive dog on the day or during the time they encountered Dexter, they did not witness Dexter on the day in question, November 6, 2019, and they did not provide an opinion as to whether Dexter was a nice or non-aggressive dog on that particular day. It is Dexter's behavior on November 6, 2019, that I find to be of the utmost importance.

Dr. Borchelt, one of the Hornish's experts, who offered his testimony through a written report, opined as to Dexter's temperament and behavior on the day of his evaluation. He did not offer any opinion about Dexter's behavior on the day of the incident. Similarly, Ms. Joyner also could only opine as to Dexter's temperament and behavior on the day of her evaluation of Dexter. She did not offer any opinion about Dexter's behavior on the day of the incident, and did not even review that information as part of her evaluation. Thus, while the experts appeared credible as to their assessment of Dexter's behavior when they evaluated Dexter, their opinions do not address Dexter's behavior on November 6, 2019, and without that assessment, I am of the opinion that they cannot not properly or credibly speak to whether Dexter is a risk to public safety. The focus of ACO Selig's investigation and decision to issue a disposal order was based on Dexter's behavior on November 6, 2019. On that day, it is clear that Dexter was a risk to public safety, and in light of his behavior on November 6, 2019, I believe Dexter is and remains a danger to public safety.

Given the totality of the evidence, I find that there is a preponderance of the evidence in the record that Dexter bit Ms. D'Aleo, and that for reasons of public safety, I recommend that the Town's Disposal Order should be affirmed.

Dated: October 20, 2020


Carole W. Briggs, Hearing Officer