

DOG CONTROL PANEL HEARING
OFFICE OF ANIMAL WELFARE
DELAWARE DIVISION OF PUBLIC HEALTH

Re: John and Nancy Smith)
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The above matter came on for hearing, taken before Pamela C. Herrmann, (formerly Pamela C. Washington), Registered Professional Reporter and Notary Public, at Sussex County Council Chambers, 2 The Circle, Georgetown, Delaware on April 13, 2015, beginning at 7:00 p.m.

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BEFORE: MICHAEL L. STEINBERG, J.D., Hearing Officer

APPEARANCES:

On behalf of the Dog Control Panel:
BETTY JANNUZZIO
LEONARD AGUILAR
BETH PETERSON

On behalf of the Delaware Animal Care & Control:
CAPTAIN SHERRI WARBURTON
SERGEANT KIM SCHNARES

On behalf of the Smiths:
Law Office of Michael R. Abram
MICHAEL R. ABRAM, ESQ.
115 South Bedford Street
Georgetown, Delaware 19947

I-N-D-E-X

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1 HEARING OFFICER: Okay, good evening to
2 everyone. Today is the 13th of April in the year of
3 2015. My name is Michael Steinberg, I'm a contract
4 hearing officer, I'll be conducting the hearing this
5 evening. Starting from my right-hand side, will you
6 please identify who you are for the audience?

7 CAPTAIN WARBURTON: Captain Sherri
8 Warburton --

9 HEARING OFFICER: With your title.
10 Thank you.

11 CAPTAIN WARBURTON: Captain Sherri
12 Warburton, Delaware Animal Care and Control.

13 SERGEANT SCHNARES: Sergeant Kim
14 Schnares, Delaware Animal Care and Control.

15 BETTY JANNUZZIO: Betty Jannuzzio,
16 representative of the Delaware SPCA.

17 CORPORAL AGUILAR: I'm Corporal Leonard
18 Aguilar with the Delaware State Police.

19 BETH PETERSON: I'm Beth Peterson, the
20 animal behaviorist today.

21 MR. ABRAM: I'm Michael Abram, I'm the
22 attorney for the Smiths.

23 HEARING OFFICER: Might as well tell
24 them who you are.

25 COURT REPORTER: I am Pam Washington-

1 Herrmann, the court reporter.

2 HEARING OFFICER: Okay, this evening's
3 hearing will be done according to Title 9, Chapter 9
4 of the Delaware Code. I am going to ask for an
5 opening statement for both parties, so if the Animal
6 Control agency would give the opening statement first.

7 CAPTAIN WARBURTON: Good evening, Panel
8 Members, ladies and gentlemen. Last year, the
9 Delaware Animal Care and Control activity reports show
10 that Animal Control officers responded to 1,525
11 contacts in regards to dog-on-dog or dog-on-human bite
12 cases. Out of all those responses, we only requested
13 four cases to be heard before the Delaware Dog Panel.
14 When suspecting a dog is dangerous or potentially
15 dangerous, in addition to the elements that must be
16 met in the law, Delaware Title 9, Subchapter II,
17 Subsection 922, there is additional criteria that is
18 evaluated.

19 I look at the dog's prior history. In
20 July of 2012, the dog we are here about tonight,
21 Millie, was being walked by John and Nancy Smith,
22 leashed, when a senior Yorkie approached them. The
23 Yorkie left the yard, barking at Millie. Millie
24 grabbed Max and shook him. Although Sussex County
25 does not have a law requiring that all dogs be

1 leashed, that case would not have been brought before
2 the Panel because Max was not under the control of his
3 owner, however, it is indicative of Millie's behavior
4 around small dogs.

5 I also look at the reason for the dog's
6 escape. In this case tonight, you will hear how the
7 residents of the development of Woodgate would simply
8 avoid the Smiths and Millie when they were out on a
9 walk to avoid trouble. Spike's owner, the victims --
10 Spike's owner, the victim dog, having knowledge of the
11 prior mentioned incident, saw Millie and Nancy walking
12 towards them approximately 400 feet away. Michelle
13 Keck and Spike saw them and began her routine walk;
14 out of sight, out of mind, right?

15 Michelle attempted to keep that
16 distance, if you will, an imaginary cushion of space
17 to ensure the distance would not lessen between them
18 and Miss Smith and Millie. That imaginary cushion of
19 distance vaporized.

20 Miss Keck turned back and saw the white
21 blur of Millie pursuing Spike. She started to pull
22 Spike to her, but Millie got there first, seized Spike
23 in her mouth, and as her teeth punctured through the
24 Yorkie's skin, began to shake him back and forth.

25 Dogs who pursue people and animals are the reason this

1 Panel was created to evaluate.

2 Another factor that I look at is the
3 viciousness of the current attack. When Michelle Keck
4 realized what was going on, she sprang into action to
5 save her Spike. You will hear how Spike was in the
6 jaws of Millie as Michelle Keck screamed for Nancy
7 Smith's dog to quit killing her dog, but Nancy Smith
8 was not there.

9 What would you do as your beloved
10 little Yorkie dog is crying out in pain, being shaken
11 back and forth, helpless? You're going to stop the
12 attack, and Michelle Keck did; she physically
13 separated them, thought the attack was over, but
14 Millie wasn't done and attacked again. Michelle Smith
15 was bitten because Nancy Smith was not there to
16 control her dog, and arrived at about the same time as
17 the Moores who reside approximately 100 feet away from
18 the scene of the attack.

19 Finally, the last factor in this
20 determination is Millie's future and her potential for
21 dangerous behavior. Who will be exposed to Millie in
22 the neighborhood? There are a few other dogs of
23 course in this development. Everyone walks on
24 eggshells around the Smiths and modifies their
25 behavior to ensure no confrontation occurs. I was

1 told Millie was loose last year, and a family went
2 inside their home to avoid confrontation, and they
3 don't even own a dog.

4 No one wants to cause trouble so
5 everyone simply ensures there's little contact.
6 Although we will not hear from those people who did
7 not witness the attack, whom is exposed to Millie is a
8 factor in my assessment. The Smiths did take
9 responsibility and told the Kecks they would pay the
10 medical bills for both Spike and Michelle.

11 But here is the million dollar
12 question: Is it reasonable that we, as a society, for
13 us to tell the Smiths they have to muzzle their dog as
14 per Subsection 925 and follow the other conditions? I
15 think that answer is yes.

16 My name is Captain Sherri Warburton,
17 and tonight with my co-chair, Sergeant Kim Schnares,
18 through testimony you'll hear tonight, we will prove
19 that Millie, a white and brown terrier mix, altered
20 female canine, should be declared a Dangerous Animal,
21 and therefore must follow the conditions as set forth
22 in Title 9, Subchapter II, Subsection 925. Delaware
23 Animal Care and Control will call five witnesses,
24 lasting approximately 30 minutes. Thank you.

25 HEARING OFFICER: Thank you.

1 Mr. Abram?

2 MR. ABRAM: Thank you. Good evening.
3 On behalf of the Smiths, we appreciate you all coming
4 out here this evening. I know most of you are
5 volunteering your time to come here, and we do
6 appreciate it, this is very important.

7 As for the incident that brought us
8 here today, it's tragic, it's unfortunate, it's an
9 accident. Millie, you will hear that there were other
10 interactions between Millie and the dogs that were
11 involved in this other incident, the dog that was bit.
12 In every other incident, Millie was on a leash; this
13 one, Millie slipped the leash. It happens. Could it
14 have been prevented? Probably, but it didn't. Will
15 it be prevented in the future? Absolutely. But we
16 have to deal with what we have here today.

17 There's been mention of past incidents.
18 There were two past incidents that stick out in the
19 Smiths' mind: The first one was where we believe the
20 brother or somebody related to the dog that was bit
21 that brought us here today back in 2012 came out and
22 bit Millie, at which point Millie bit back. That dog
23 was not leashed, that dog ran into the street, and
24 that dog bit Millie. And you will see veterinarian
25 bills showing that Millie was bit by that dog to show

1 you that this did in fact happen.

2 There was another incident where one of
3 these terriers ran out from I believe it was a travel
4 trailer that was in the front yard of these -- of the
5 people who owned the dog, came out unleashed, was
6 running towards Millie, and the owner had to come up
7 and grab it as the dog was charging Millie and
8 yapping.

9 I think it's very important to pay
10 attention to the fact that these dogs are terriers
11 that were bit, these are Yorkies. These are obnoxious
12 dogs that think they are bigger than they are, that's
13 just what Yorkies are. They think they're a hundred
14 pounds when they weigh ten, is what happens, and they
15 like to bark and they like to antagonize. And usually
16 when they're on the leash, they won't get close enough
17 because they're not that heavy and you can hold them
18 back.

19 But why this is important here is
20 there's a history between these dogs. Millie has
21 been -- there's two dogs, I don't know how they're
22 related, we believe they're brothers because they look
23 exceptionally similar. These two dogs, one of these
24 dogs has antagonized Millie and bit Millie before;
25 there's a history between them, which is why in this

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1 case Millie saw them and Millie charged. It's
2 unfortunate, but this does not rise to the level of
3 Millie being this terrifying dog.

4 Millie is about a 45-pound dog, very
5 short. This is not your walk by the fence, see a
6 Rottweiler growling at you, want to rip your face off,
7 that's not what this is. It's a small little dog who
8 doesn't like these other dogs because these other dogs
9 don't like Millie, and sometimes these things happen.

10 Millie is not a threat to the
11 neighborhood, and in fact we're not here to have
12 testimony about everything else; we're here about
13 this. We can get into too far afield if you want to
14 bring in everybody in the world that likes Millie and
15 pets Millie and has no problems with Millie. Millie
16 has a problem with these Yorkies, these Yorkies have a
17 problem with Millie, that's it. It does not rise to
18 the level where Millie should be considered a
19 dangerous dog.

20 And we'll put on -- I'm not sure how
21 many witnesses we'll put on; we'll wait to see how the
22 Animal Control puts on their case, but I don't expect
23 it to be terribly long. Thank you.

24 HEARING OFFICER: Thank you so much.
25 You may present now.

1 CAPTAIN WARBURTON: Delaware Animal
2 Care and Control calls Michelle Keck.

3 HEARING OFFICER: Is that Michelle
4 Kecks?

5 MICHELLE KECK: Keck, K-e-c-k.

6 HEARING OFFICER: There's a sign-in
7 sheet there in front of you, be kind enough to sign
8 in, please, just follow the instructions, thank you.

9 WHEREUPON:

10 MICHELLE KECK,
11 having first been duly sworn/affirmed by the court
12 reporter, thereupon testified upon her oath as
13 follows:

14 BY CAPTAIN WARBURTON:

15 Q Good evening, Miss Keck.

16 A Hi.

17 Q Can you identify the dog in this
18 picture? And this is Delaware Animal Care and Control
19 Number 4.

20 A That's Spike.

21 Q This is your dog Spike?

22 A Yes.

23 Q What type of dog is Spike?

24 A Spike is a nine pound Yorkshire
25 Terrier.

1 Q And how old is Spike?

2 A Ten.

3 Q And to regards why we're here, on
4 3/16/2015 you were walking your dog, Spike?

5 A Yes, ma'am.

6 Q Was it just you and Spike?

7 A Yes.

8 Q Were you wearing headphones?

9 A No.

10 HEARING OFFICER: Excuse me for
11 interrupting. Can we grab a microphone and put a
12 microphone on the counter so it will be closer to you
13 so we can pick you up? Thank you.

14 BY CAPTAIN WARBURTON:

15 Q Do you normally walk on Woodgate Road?

16 A Yes.

17 Q And on that day, what did you see when
18 you approached Woodgate Road?

19 A Coming out of my street, my street is
20 Branch Creek Court and it intersects with Woodgate.
21 And so when I get to the corner, I usually make a
22 left, but I always scan the area to make sure I don't
23 see the Smiths with their dog, just to make sure the
24 area is clean. And then so if they're at that end, I
25 will go past and continue on my walk going left. And

1 if they have walked past -- or in this little
2 round-about way, then I usually walk back home and
3 wait for them to finish walking their dog, then I will
4 go back out.

5 Q So that day, did you see Nancy Smith
6 and Millie?

7 A Yes, I did. She was down the road, and
8 in my mind it was about a soccer field's length away.
9 And so I thought, okay, she's either finishing or on
10 her way back home or she would see me and maybe go the
11 other way, and so I proceeded to cross diagonally the
12 street and just walk with my dog, Spike. Spike didn't
13 pay any attention to her, didn't see them; I saw them.

14 Q Okay. Have you walked Spike past other
15 people and other dogs before?

16 A Yes, I have.

17 Q Okay. And why did you not want to pass
18 Mrs. Smith and her dog?

19 A Just because of the barking, it's
20 always a struggle, it's, you know, awkward going past
21 them. And also because of just the previous history
22 that we've had with Millie and my parents' dog.

23 Q What about your parents' dog?

24 A Like their attorney said, there was an
25 incident where my mom's dog was in their yard,

1 actually was in the garage, and saw Jake Smith walking
2 by -- their driveway meets the road, and it's not a
3 very long driveway, and Max ran out and barked and
4 ran up to Millie, and Millie went after Max, and had
5 some pretty significant damages to his back, his back
6 end. They took him to Savannah Animal Hospital, had
7 to have drainage tube, stitches, and that kind of
8 thing.

9 Q So knowing of the prior attack, you
10 just wanted to avoid any encounter with the Smiths and
11 their dog?

12 A Yes.

13 Q And you have the same type of small
14 dog?

15 A Yes.

16 Q And have you seen the Smiths' dog
17 before?

18 A Yes, I have.

19 Q Can you identify this dog?

20 A Yes.

21 Q And who is it?

22 A That's Millie.

23 Q This is Delaware Animal Care and
24 Control Number 1. Delaware Animal Care and Control
25 Number 2.

1 A Yes.

2 Q This is a side view. And Delaware
3 Animal Care and Control Number 3, this is the other
4 side view?

5 A Yes.

6 Q Okay.

7 HEARING OFFICER: You're entering these
8 in as exhibits right now?

9 CAPTAIN WARBURTON: Yes.

10 HEARING OFFICER: Okay, so we will mark
11 all three -- there's three of them there, correct?

12 CAPTAIN WARBURTON: Yes, sir.

13 HEARING OFFICER: We will mark all
14 three as Exhibit 1.

15 (Exhibit 1, marked for identification
16 and retained by the Panel.)

17 BY CAPTAIN WARBURTON:

18 Q So getting back to March 16, you saw
19 Mrs. Smith and her dog as you know is Millie walking
20 down the road, correct?

21 A Yes.

22 Q Okay. This is a map, do you recognize
23 this area?

24 A Yes, I do. It's my development.

25 Q And what's the name of your

1 development?

2 A Woodgate.

3 Q This is Delaware Animal Care and
4 Control Number 5, a map of the Woodgate development.
5 And I do have a closer view, this is Delaware Animal
6 Care and Control Number 6; is this the same
7 development?

8 A Yes, ma'am.

9 Q Okay, I'm going to put it up here on
10 the --

11 HEARING OFFICER: All three of them as
12 Exhibit 1.

13 BETTY JANNUZZIO: Oh, I'm sorry.

14 HEARING OFFICER: Exhibit 2 will be
15 considered the map.

16 BETTY JANNUZZIO: Got you.

17 (Exhibit 2, marked for identification
18 and retained by the Panel.)

19 BY CAPTAIN WARBURTON:

20 Q Can you show me where you were
21 approaching Woodgate Drive in your road? Go ahead and
22 mark that spot.

23 A Okay. I live on this street right
24 here, and --

25 Q That street is?

1 A This is Woodgate. This is Branch Creek
2 Court. And my house is about here. And so I walked
3 to this corner right over here and saw that Millie was
4 right about here. And I proceeded to go diagonally to
5 this little round-about area because I usually walk
6 this and then go back down my street.

7 Q Okay.

8 A And so where did you say you would like
9 me to --

10 Q Yeah, right when you --

11 A This is where I was when I saw.

12 Q Yeah. And then right where you saw --

13 A Millie?

14 Q -- Mrs. Smith and Millie?

15 A Right about here.

16 Q Okay. And how far would you estimate
17 that to be?

18 A I think it's about 3- to 400 feet.

19 Q Okay. And was Millie leashed?

20 A She was leashed, yes.

21 Q Okay. What was Spike doing as you made
22 your left-hand turn onto Woodgate?

23 A He was just going through his normal
24 routine smelling around and --

25 Q You didn't have to drag him?

1 A -- enjoying his walk. No, he just was
2 walking.

3 Q He was ahead of you?

4 A Yes, he was ahead of me.

5 Q Okay. So you made it out here then;
6 and what happened next?

7 A Just was, you know, standing there, I
8 was hearing barking in the distance because with
9 that -- I didn't think anything of that because that
10 normally happens when you pass. So I was trying to
11 kind of quickly walk to be out of view of the -- of
12 Nancy Smith. And I just happened to look up and I saw
13 a white blur and realized that Millie was charging
14 towards us. So, yes.

15 Q And what did you do next?

16 A I was like oh, oh, my goodness. And so
17 I bent down and tried to reel Spike in on his leash,
18 and I wasn't able to get him. And so I was bending
19 down, and then she just pounced on him and started
20 tearing into him, and it was like horrendous.

21 Q So where did Millie grab Spike?

22 A On his back area.

23 Q And then what was she doing once she
24 grabbed him?

25 A She was shaking him. It was like a

1 shark attack, just like shaking him. And he was
2 screaming and it was horrible.

3 Q Was Mrs. Smith there to get her dog?

4 A No, she was down the road. And I was
5 yelling to her, "Please come get your dog, it's
6 killing my dog, please," I was yelling to her to do
7 that. And she, you know, I guess maybe she couldn't
8 hear me, you know.

9 And so I just then kept -- I got in the
10 mix there and tried to keep the dog from shaking
11 Spike. I was under the impression a lot of the damage
12 is done when they're shaking, so I was trying to kind
13 of stabilize her head. So I put my arm around her
14 neck and was trying to minimize the shaking that was
15 going on.

16 Q And what did you do with your other
17 hand?

18 A And then with my other hand, I was
19 trying to hold her -- pull her jaw down to have her
20 release Spike.

21 Q And what was Spike doing?

22 A Screaming, and looking at me, and his
23 eyes were like white with fear, and he was looking at
24 me like.

25 Q So when you put your hand under

1 Millie's jaw, was Spike's mouth right there by you?

2 A He was nowhere near my hand.

3 Q Okay. And what was Millie doing as you
4 were trying to take her jaw and get her to release?

5 A It was like a vice, couldn't -- she was
6 maintaining her hold on him and, you know, thrashing
7 about and like that.

8 Q Okay, and then what happened? Because
9 you're in a head-lock with him?

10 A Yeah. And I was able to get her to
11 release him, and so he kind of was limping away. And
12 I let go of Millie and I went to go pick up Spike, and
13 said, "Come here, Spikey, mommy will pick you up," and
14 he -- she got him again, like just charged him before
15 I could get to him, and started all over again. And
16 he was -- this time, he was like on his back and
17 she's, you know, shaking him.

18 Q Was Mrs. Smith there to control her dog
19 then?

20 A No, she still wasn't there, and again
21 I'm yelling, "Come get your dog. Come get your dog."
22 And, you know, and then at that point, I looked up and
23 I saw my father come.

24 Q So Millie was grabbing Spike again; did
25 you grab her again?

1 A Yes, I wrestled her again.

2 Q Okay.

3 A Did the same thing, held her by a
4 head-lock and, you know, tried to maintain -- I was
5 putting my body weight on her, I was on my knees, and
6 trying to just keep her still so that she wouldn't
7 be -- not as much damage would be done to Spike.

8 Q Okay. And were you saying anything,
9 were you yelling, were you screaming?

10 A Yeah, I was yelling, "Please come get
11 your dog."

12 Q And who heard your screams?

13 A Well, my parents, they ended up coming
14 outside because they had seen Millie run by -- their
15 kitchen window faces Woodgate and so they have a big
16 five-window kitchen window, and they saw her start
17 there and charge, and they were like oh, no, something
18 must be going on.

19 Q So how far is your dad's house away
20 from where the bite occurred?

21 A My dad, he is on this corner so he's
22 about right here, my house is right here.

23 Q Okay. So did Mrs. Smith -- once your
24 parents got there, did Mrs. Smith arrive then?

25 A After my parents. Because my dad was

1 there, and I still had Millie, and I said, "Dad,
2 please go get Spike." And so my dad told my mom to
3 get him, and she went around the corner to go get him,
4 and my dad stayed with me until Nancy Smith got there,
5 and then I released the dog to her. I was afraid to
6 let go of the dog again to get Spike, because
7 obviously she wasn't finished, you know, so she was --
8 so I just maintained her until the owner got there
9 because I was afraid she would attack for a third
10 time.

11 Q Now, did Spike bite you at any time
12 during the first or second attack?

13 A No, he was nowhere near my hands.

14 Q And how can you be so sure?

15 A Because I saw his face and his eyes.

16 Q Okay. So after your parents got there,
17 Mrs. Smith was able to get Millie back; what happened
18 next?

19 A So there -- my mom was able to get
20 Spike, and my dad was, you know, trying to console me
21 because I was beside myself with what happened. And I
22 had blood all over my hands, and he's like, "Let's go,
23 I'm going to take you to the animal hospital, let's go
24 get -- I'm going to take you home, get the truck, and
25 we'll get a towel." And so I walked back to my house

1 and got a towel for Spike and wrapped him in it, and
2 my dad picked me up and we went to the hospital.

3 Q Okay. And what did the doctors tell
4 you at Savannah Hospital?

5 A That it was -- he was looking in pretty
6 bad shape, he was in shock from a lot of blood loss.
7 And, you know, that they were going to have to operate
8 because he had holes, he had hernias, and there was
9 fat and intestines kind of poking through, and they
10 were going to have to do exploratory things to make
11 sure like organs weren't damaged.

12 Q And how many days did Spike stay at
13 Savannah Hospital?

14 A He was there for two nights.

15 Q Now, you stated you were bitten by
16 Millie; did you seek treatment for your bite wound?

17 A Yes, I went to the -- it's called like
18 Got A Doc on Savannah Road, and they treated me for
19 the dog bite, puncture wounds, and with a tetanus shot
20 and antibiotics.

21 Q This is Delaware Animal Care and
22 Control number 22, this is the medical treatment
23 report. Could you please read the highlighted area?

24 A "44-year-old female presents with
25 animal bite. Animal bite form filled out. Patient

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P.O. Box 99

Milford, Delaware 19963

1 reports a neighbor Pitbull was biting her dog. In
2 rescuing her dog, the Pitbull bit her finger. Patient
3 not sure about the immunizations of the Pitbull."

4 Q Okay, thank you. Does it still cause
5 you pain?

6 A It does.

7 Q And did you miss work because of this
8 injury?

9 A The first two nights after it happened
10 I did, because I waitress tables and my finger was
11 completely swollen for three days. And they couldn't
12 stitch it or cover it, they wanted me to leave it open
13 because the punctures were really deep and so it
14 needed to air out, and just how could I, you know,
15 work with that?

16 CAPTAIN WARBURTON: I have pictures of
17 Miss Keck's wound, Delaware Animal Care and Control
18 number 13A and B, 14A and B, 15 --

19 HEARING OFFICER: Excuse me, could you
20 pass down those two exhibits to me, I'll mark them?

21 BY CAPTAIN WARBURTON:

22 Q Do you recognize this picture?

23 A Yes, that's me.

24 Q Okay.

25 A Outside of the animal hospital after it

1 happened.

2 Q Okay, and that's your hand?

3 A Yes.

4 Q Okay. And number 14?

5 A Yes.

6 Q That's still your hand? Okay.

7 HEARING OFFICER: The medical report, I
8 believe is --

9 BY CAPTAIN WARBURTON:

10 Q And number 15 is a closer view?

11 A Yes.

12 HEARING OFFICER: Is the medical report
13 being submitted as an exhibit?

14 CAPTAIN WARBURTON: Yes, it's in the
15 packet.

16 HEARING OFFICER: Okay, that will be 3.

17 (Exhibit 3, marked for identification
18 and retained by the Panel.)

19 BY CAPTAIN WARBURTON:

20 Q And finally number 16, where was this
21 taken at?

22 A At home.

23 HEARING OFFICER: Thank you so much.

24 And the pictures will be Exhibit 4.

25 (Exhibit 4, marked for identification

1 and retained by the Panel.)

2 BY CAPTAIN WARBURTON:

3 Q So rewinding this entire incident,
4 would you have acted in the same way to rescue your
5 dog?

6 A Yeah, absolutely. I had thought about,
7 you know, you play over this kind of thing over and
8 over in your mind, and I just was like thinking this
9 whole thing through, like what if my daughter was
10 walking him? Or what if my little nephew was there?
11 And she wouldn't have known what to do; it would have
12 torn Spike to shreds. So I'm so thankful I was there
13 to -- I think I helped minimize some of what could
14 have potentially happened.

15 Q After the incident when you guys got
16 home, did you go over and see the Smiths?

17 A Yes. Jake Smith had left a message on
18 our machine that he wanted to speak with us and -- or
19 for me to please call him. And I would rather just
20 talk in person, so I went over, my husband and I, went
21 over to their house. And they invited us in, and they
22 said how sorry they were what happened. And I asked
23 them if they could, you know, be kind enough to pay
24 for the animal bills for the vet, and they said yes,
25 they would do that.

1 And I also asked them if they would not
2 walk their dog past our -- because they always walk in
3 that direction, they have a whole development. And
4 they said, "We don't know why our -- or why Millie,
5 you know, just has a thing about your mom's dog and
6 your dog. But, yes, we will not walk in that
7 direction, and we'll keep the dog in our yard." And
8 we were appreciative of that.

9 Q Okay. This is Delaware Animal Care and
10 Control exhibit number 32, this is an article from
11 WMDT that appeared online. Could you please read the
12 yellow highlighted portion?

13 A Yes. It says, "Still to this day, they
14 met the neighbors to apologize, paid for the Yorkie's
15 medical bills, and thought they could move on."

16 Q Yes. And then down below, it says that
17 there was a neighbor dispute; was any dispute over the
18 pay -- of them paying the bills or --

19 A No.

20 Q Okay.

21 A No dispute.

22 Q Okay.

23 HEARING OFFICER: Are you submitting
24 that as an exhibit?

25 CAPTAIN WARBURTON: Yes. I still need

1 it for further.

2 HEARING OFFICER: Okay, so that will be
3 Exhibit 5, though, when we mark it.

4 (Exhibit 5, marked for identification
5 and retained by the Panel.)

6 BY CAPTAIN WARBURTON:

7 Q Okay. Was Mr. John Smith, was he
8 present during any time of the attack?

9 A No, he was not.

10 Q He was not, okay.

11 CAPTAIN WARBURTON: I have no further
12 questions.

13 HEARING OFFICER: Mr. Abrams?

14 MR. ABRAM: I don't know how the Board
15 wants me to do this.

16 HEARING OFFICER: Whichever makes you
17 most comfortable, you can be there.

18 MR. ABRAM: I'll pop down, too, a
19 little tall and imposing up here.

20 BY MR. ABRAM:

21 Q Miss Keck, you mentioned the prior
22 incident, and you described it as Millie attacking, is
23 it Max?

24 A Yes.

25 Q Were you present for that incident?

1 A No, I was not.

2 Q You were not? Okay. But what you
3 heard was that Max charged down the driveway at
4 Millie, just a short driveway at Millie?

5 A Yeah.

6 Q Okay.

7 A My mom called me immediately after it
8 happened, beside herself that Millie had bitten Max.

9 Q Okay.

10 A So I came right over.

11 Q Okay. Did you ever hear that Max bit
12 Millie?

13 A I have heard that Max bit Millie, but
14 Max has no teeth, so I don't know how that could
15 have -- he could have puncture wounds and she could
16 have puncture wounds but Max doesn't have any teeth.

17 Q Okay. But you still, even I guess in
18 your mind, you characterized the one dog charging, the
19 Yorkie charging and getting bit, as Millie attacking
20 even though Millie was on a leash in the street?

21 A Millie was on a leash in the street,
22 Max was in the garage, saw them at the end of the
23 driveway, and Max ran out barking at Millie.

24 Q Is Max ever on a leash?

25 A Yes.

1 Q Yes?

2 A Yes, he is.

3 Q But not that day?

4 A Because he was in the garage in the
5 house, so my mom was just feeding the birds. And Max
6 is -- under normal circumstances, doesn't bother with
7 people walking by or, you know, it just is because of
8 the aggression, I believe, of how Millie is with the
9 barking and --

10 Q This was the first incident between
11 them, right?

12 A Not with walking in the neighborhood.

13 Q Are you saying they bark at each other
14 when they go by?

15 A Sure.

16 Q Okay. Now, you testified earlier that
17 you were yelling and screaming at Miss Smith, and she
18 was just kind of back there, right?

19 A I assume she was coming.

20 Q Okay.

21 A I would think so.

22 Q I mean did you see what she was doing?

23 A No.

24 Q No, okay. And how long -- you said
25 that Millie came up, grabbed on Spike, and you got

1 them separated then came back again; how long of a
2 time frame are we talking?

3 A It was fairly quickly, I guess. It's a
4 blur so I don't know time. Three minutes? I don't
5 know how long it took.

6 Q You're guessing three minutes?

7 A No, I'm not guessing three minutes. I
8 don't know how long it was; it was as long as it took
9 for it to be happening, I don't know the time.

10 Q Okay. Now, you were aware that
11 Miss Smith was yelling at you to try to get your
12 attention, correct?

13 A She told me when we went to their house
14 that she was yelling, "Help, help." I did not hear
15 her.

16 Q Okay.

17 A I assumed it was because of the barking
18 or the distance away, but I did not hear her.

19 Q Because you told Animal Control that
20 she was yelling, didn't you?

21 A Because she told me she said she was
22 yelling, I didn't hear her. I was saying that to show
23 that the distance away that she was and because of the
24 barking.

25 Q Okay. Now, you also testified that you

1 saw -- you could see Spike's mouth the entire time --

2 A Yeah.

3 Q -- right?

4 A Pretty much because his head was
5 turned, looking at me.

6 Q Okay. But you were obviously focused
7 on Millie's mouth, correct?

8 A I was focusing on keeping her head
9 still so she wouldn't be shaking Spike, and trying to
10 get her to release, so I was not focused on her mouth.
11 I was trying to maintain her from shaking Spike, and
12 looking at Spike; I was looking at him and trying to
13 hold the dog.

14 Q And you were -- let's see, you were
15 trying to hold, pull open Millie's mouth or just hold
16 her head still?

17 A I was holding her head in a head-lock
18 like this, and with my hand I was trying to pull her
19 jaw down --

20 Q Okay.

21 A -- to get her to release.

22 Q And then eventually that worked?

23 A I don't know if that's what did it, but
24 she dropped him.

25 Q Okay, eventually she dropped him? Did

1 you notice an injury on your hand at that point?

2 A No, but I was looking at my dog, I
3 wasn't thinking about me.

4 Q Okay, so you didn't notice any injury
5 at that point?

6 A No.

7 Q And then Millie came back again after
8 you -- Spike was on the ground, he limped off, he was
9 come -- you said come with you, and then Millie
10 charged again, correct?

11 A Absolutely.

12 Q Okay. And then after -- how did they
13 get separated this time?

14 A Same thing happened, I got ahold of her
15 again and she dropped him.

16 Q Okay. And did you notice when the
17 injury happened to your hand?

18 A No.

19 Q No, okay. Were you kind -- you were
20 rolling around on the ground, correct?

21 A I was on my knees.

22 Q Right, okay. And the dogs were on the
23 ground?

24 A Yes.

25 Q Did your hands like hit the ground

1 or -- do you know? I mean it was kind of a blur, you
2 don't really know what happened?

3 A Yeah. But no, I just -- I didn't fall;
4 I was purposely going down. So, no, my hands didn't
5 hit the ground like in a fall, no.

6 Q Okay. So you don't recall getting bit?

7 A No. But, again, when you're in that
8 torturous situation, I was thinking about my poor dog
9 that was screaming and whaling; I wasn't thinking
10 about myself. It was just, you know --

11 Q Okay, it's hard to remember?

12 A The actual moment, no, I don't
13 remember, I don't remember.

14 Q Okay. Are you aware of any other
15 incidents outside of the house where either your dog
16 or your mother's dog -- let me go back. Are they
17 brothers?

18 A No.

19 Q They just look similar?

20 A They actually don't look similar. Max
21 is black, and Spike is silver and tan.

22 Q Okay.

23 A Spike's a little bigger, Max is
24 smaller, he's seven pounds, Spike is nine.

25 Q Okay, and how old is Spike?

1 A Ten.

2 Q Spike is ten, okay. And is Spike
3 licensed?

4 A Yeah.

5 Q He is now, right, but he wasn't before?

6 A No, yeah.

7 Q Right?

8 A Yes.

9 Q And at the time of this attack, he
10 didn't have his rabies shots either, did he?

11 A He had lapsed six months, which I was
12 fined for.

13 Q Okay.

14 A And paid the fine, and he's updated.

15 Q Okay. So are you aware of any other
16 incidents where either your dog or your mother's dog
17 has kind of run out into the street at Millie?

18 A No. My dog is always on a leash.

19 Q Okay. You might not know, I'm just
20 asking. And any other incidents where both dogs have
21 been leashed where there's been any kind of violence?

22 A Not that I'm aware of.

23 Q Okay, because you guys kind of stick
24 far away?

25 A I stay away from them.

1 Q Okay. And you said that after this
2 incident, you went and you talked with the Smiths, and
3 the Smiths said, "Look, we'll walk in a different
4 direction, we're sorry."

5 A Yes.

6 Q Did you believe anything about what
7 they said to be disingenuous?

8 A At that moment, no, I thought they were
9 sorry. And but since then, with the media circus that
10 they have created, it made me doubt their sincerity.
11 But the reason that we reported the incident is
12 because we talked to the three different authorities,
13 and they all told us that we should report the dog
14 bite, and the doctor reported my bite, and then we
15 also reported that. That's just the right thing to
16 do, I mean if this dog is dangerous --

17 Q I don't know what question you're
18 answering, but I didn't ask that question, okay?

19 A It seemed like that's what you were
20 asking. Ask it again though, please.

21 Q I don't recall. What I was asking,
22 there was no other incidents between -- no, I'm sorry,
23 I asked if you believed them at the time to be genuine
24 about what they were doing, and they did pay the
25 medical bills?

1 A Two nights?

2 Q Two nights? What did he have, one
3 follow-up after that?

4 A He had two.

5 Q Two follow-ups?

6 A He had a follow-up right away because
7 he was just hiding and sick, and so they thought that
8 he was in a lot of pain, I needed to go in and have
9 them adjust the pain medication. Then he went in the
10 next Monday and had his drain tubes out, and then the
11 following Monday for stitches to be removed.

12 Q Okay. So he had a hernia -- hernia
13 fixed and some stitches?

14 A Two.

15 Q Two hernias and some stitches?

16 A Drain tubes, um-mmm.

17 Q Do you have to go back for further
18 follow-ups now or is he good to go?

19 A He's good to go at this point.

20 Q And how long has it been since this
21 attack?

22 A It's almost a month.

23 Q Almost a month, and he's good to go?

24 A Yeah.

25 MR. ABRAM: Okay, I don't have any

1 other questions.

2 BY CAPTAIN WARBURTON:

3 Q Miss Keck, when you were -- when the
4 attack was occurring, the first or the second attack,
5 was your adrenaline pumping?

6 A Absolutely.

7 Q Yes. And so you weren't really aware
8 if you were injured; it was only after when you were
9 at the vet's office when you were able to kind of calm
10 down?

11 A It was before the vet's office. It was
12 after I released the dog, my dad had me and I was
13 looking at myself, and I saw that my hand was bit.

14 Q Okay.

15 A And I'm like oh, my goodness, you know.

16 Q And when you went to seek medical
17 treatment, did they look and see there was a dog bite?

18 A Uh-huh, yes.

19 CAPTAIN WARBURTON: No further
20 questions.

21 HEARING OFFICER: Okay, thank you. Can
22 this witness step down then, if there's nothing
23 further? I'm sorry, do you have any questions?

24 MR. AGUILAR: Yes, I do.

25

1 BY MR. AGUILAR:

2 Q Are you able -- when this incident
3 occurred, can you tell me, I know you put a pin on the
4 map, can you describe the area? Was it in a yard, on
5 the sidewalk, or in the street?

6 A We don't have sidewalks. It was in --
7 we have like these drainage areas where the water
8 goes, and it's rocky around there; it happened like in
9 a ditch, kind of in the ditch is where the accident --
10 where the attack happened. So on the street kind of
11 in the grass on the side of the road.

12 Q So just off the side of the road then?

13 A Yes.

14 Q Would you consider that to be on
15 private property or public property at that point?

16 A I think that's part of like the
17 easement. I think the first 20 feet or so of the
18 yards is not owned by the actual owner of the lot, so
19 I don't know where that ...

20 Q When you walk your dog, how do you walk
21 your dog?

22 A On the street. I walk him on the road
23 and then he goes around the -- this little area right
24 here is where they were going to put mailboxes at one
25 time, there's no lots there, and so this is why I walk

1 in this area, because this would really be more
2 public. Right here, someone owns this but that's a
3 very short distance to -- no one lives there, they
4 haven't built the house up so -- but I try not to go
5 on anyone's yard, I just try to stay ...

6 Q So right on the edge of the roadway
7 then?

8 A Yes, sir.

9 Q When you saw Millie, initially saw
10 Millie coming towards you, I'm going to guess then
11 Millie was crossing the hardtop, the hard road, to get
12 to you then?

13 A No, she didn't, she was walking --
14 here's my road, I was right here, and then she was
15 here. So she ran along the grass to get to me.

16 Q Okay.

17 A Uh-huh.

18 MR. AGUILAR: No further questions.

19 HEARING OFFICER: Any questions?

20 MS. PETERSON: No.

21 BETTY JANNUZZIO: I do not.

22 HEARING OFFICER: Thank you, you may
23 step down.

24 CAPTAIN WARBURTON: Delaware Animal
25 Care and Control calls Jacqueline Moody.

1 HEARING OFFICER: Will you please sign
2 your name there, please, and print your name as well.

3 WHEREUPON:

4 JACQUELINE MOODY,
5 having first been duly sworn by the court reporter,
6 thereupon testified upon her oath as follows:

7 BY CAPTAIN WARBURTON:

8 Q Good evening, Miss Moody. Can you tell
9 me what you were doing on 3/16/2015 at around 9:30 in
10 the morning?

11 A I had just gotten home from walking my
12 dog, I was in my kitchen. And my husband had just
13 gotten home from an errand and so he was coming in the
14 kitchen. We were both standing there when I saw
15 Millie darting across the way. And I said to my
16 husband, I said, "Oh, my goodness, look, there's
17 Millie, she's after something." She was lickety
18 split.

19 Q So you said she was after something,
20 why would you say that?

21 A Well, because she wasn't -- like she
22 wasn't like meandering around, sniffing, you know
23 looking around about. She was darting, you know.

24 Q She had a purpose?

25 A Yes, running straight.

1 Q Okay. Have you had an incident with
2 Millie before?

3 A I have.

4 Q And what was that incident?

5 A I was out, I was in my garage, I was
6 going to feed my -- feed the birds. And so I was in
7 my garage, coming out the door, and as I went out the
8 door, my Yorkie, Max, was with me. And as I opened
9 the door, he came out, and he saw Mr. Smith walking
10 Millie by our driveway, and he proceeded to run up the
11 driveway.

12 Q You provided us medical records that
13 Max had surgery in his mouth and had teeth pulled --

14 A Yes.

15 Q -- is that true?

16 A Max has no canine teeth, no teeth all
17 in here, he's got like a couple -- a molar back here
18 and molar back here or something, and he had that done
19 in -- a couple months before that. So there's no way
20 Max could bite, he's -- Max is six pounds, and he's
21 this big, he's got a mouth like this, and he has no
22 teeth except for like something way in the back; he
23 could not bite anybody.

24 Q Okay. So he didn't have any canines?

25 A No. Or front teeth, or any of his

1 teeth.

2 Q And how old is Max?

3 A He's 12.

4 Q How old was he in 2012 at the time of
5 the incident?

6 A Ten.

7 Q Ten, okay. So he was enjoying the day
8 with you outside?

9 A Well, we weren't really even outside;
10 we were just -- you know, he's in the garage, I just
11 wanted to feed the birds. And I just went out my
12 driveway -- well, I went out my door, and then our
13 driveway is right there, and Mr. Smith was walking
14 right by my driveway.

15 Q And has Max attacked other dogs before?

16 A No, he's never.

17 Q Okay, so what did the Smiths do when
18 this incident occurred?

19 A He -- I don't know. I ran after my
20 dog. And when I got to the driveway, I just picked
21 him up, he was screaming, I picked him up off the
22 driveway.

23 Q So you felt it was your fault that Max
24 approached Millie?

25 A Well, yes, you know, yes. Although,

1 you know, we were -- I was in my yard, my driveway,
2 but, yes.

3 Q And Sussex doesn't have a leash law.
4 Did Max need surgery?

5 A He didn't have surgery but he had
6 extensive damage on his back. And they did -- they
7 had to do stitches, he had stitches. He had like the
8 tubes that were all coming out of his back for
9 drainage. He was in pretty bad shape.

10 Q Delaware Animal Care and Control number
11 10, 11, and 12, these are pictures; can you tell me
12 what they are of and who took them?

13 A Yeah. They're pictures of Max. He's
14 in my house. I took them because they were horrible.

15 Q Okay.

16 HEARING OFFICER: There are three
17 pages, we will mark them as Exhibit 6.

18 (Exhibit 6, marked for identification
19 and retained by the Panel.)

20 BY CAPTAIN WARBURTON:

21 Q So after this, you were pretty wary of
22 Millie then with your dog --

23 A Yes.

24 Q -- Max? Okay. And so having prior
25 knowledge that Millie was small dog aggressive, you

1 were alarmed when you saw her running at a high rate
2 of speed by your kitchen window?

3 A Definitely.

4 Q Okay. When you saw Millie, did you see
5 Mrs. Smith running immediately behind her?

6 A No.

7 Q And then what happened next?

8 A Well, when I saw Millie, my husband --
9 we saw her, and I said what I said, and then we ran to
10 go out our front door. I went out -- my husband went
11 first and then I followed him. And when I opened the
12 door, I heard screaming and yelping, so I ran down my
13 porch, my husband was ahead of me.

14 And then when I got to the scene, my
15 husband was with Michelle and the dog. And then they
16 said get Spike, and so I kept -- I went and got Spike.
17 And then I turned around and I had Spike, and my
18 husband had Michelle, and Miss Smith had her dog.
19 And I was waiting for her to go away so I could get
20 home.

21 My husband started walking with
22 Michelle, and then they were calling me. And then I
23 was looking at Nancy, she looked at me, and I'm like,
24 you know, why don't you go away? And then she said --
25 because I didn't want to walk by her with Spike. And

1 so then she said to me, I guess she didn't want me to
2 walk by her either because she said to me, "I will
3 come this way around the cul-de-sac, and you go all
4 the way around this way," so that there's no passing.

5 Q Okay.

6 A I guess she didn't feel comfortable
7 turning around and going back home, I don't know.

8 Q Okay.

9 A So that's what I did. And I took Spike
10 into the house and took him to the vet.

11 Q So when you were running towards your
12 daughter holding Millie, was Mrs. Smith there, did you
13 see her there?

14 A I didn't.

15 Q You didn't?

16 A Didn't notice her, no.

17 Q So then you went and picked up Spike?

18 A Right.

19 Q What was Spike doing?

20 A Spike was just, you know, shaking and
21 standing there. And he looked at me, and I picked him
22 up. And when I picked him up, you know, he had a
23 horrible smell, it was like the same exact smell, I
24 guess it was blood, that my Max had had the same exact
25 smell, and just brought like all that back to me.

1 Q Okay.

2 A But he was shaking and just, you
3 know ...

4 Q So just to rewind what you had said,
5 you looked out the window, you saw Millie running, you
6 didn't see Nancy Smith?

7 A I did not.

8 Q You guys opened up the door, you ran --
9 how far approximately is it from your home to where
10 the incident occurred, if you could kind of give me an
11 estimate of how many feet?

12 A Oh, gosh, I don't know.

13 Q It's a good little distance?

14 A Yeah. It's our whole front yard and
15 then around the corner, yeah.

16 Q Okay.

17 CAPTAIN WARBURTON: Okay, I have no
18 further questions. Thank you.

19 BY MR. ABRAM:

20 Q Miss Moody, this incident, the first
21 incident where your dog was bit, you said your dog ran
22 down the driveway at Millie, is that correct?

23 A That's correct.

24 Q Was your dog barking when your dog did
25 that?

1 A Probably, I don't remember.

2 Q Okay. So if your dog was running and
3 barking at Millie, wouldn't you say that your dog was
4 the aggressor in that incident?

5 A Well, he did run down the driveway,
6 yes.

7 Q Okay. So -- and he was barking at
8 Millie, so --

9 A I don't remember he was barking, to
10 tell you the truth, I don't remember.

11 Q You don't remember, okay. So now, the
12 Animal Control officer asked you an interesting
13 question, I think she was putting words in your mouth.
14 Afterwards -- she said after that incident, did you --
15 you viewed Millie as small dog aggressive. Did you
16 view Millie as small dog aggressive after your dog
17 charged down and aggressively came at Millie?

18 A Well, I don't view Millie as a small
19 dog; I view her as, you know, a sturdy, strong,
20 vicious dog.

21 Q Let me hold you up there, I don't think
22 you understand. What I interpreted it to be was that
23 Millie would be -- after that incident, did you
24 consider Millie aggressive to small dogs?

25 A Yes.

1 Q Even though it was your dog that ran
2 down the driveway?

3 A He ran down the driveway, yes, he did.

4 Q Okay. Now, was there another --

5 A But other dogs encounter -- you know,
6 have encounters where there's not an attack.

7 Q Does your dog run down the driveway at
8 lots of dogs?

9 A No, we don't have lots of dogs in our
10 neighborhood.

11 Q Does your dog run down the driveway at
12 other dogs?

13 A No, he has not.

14 Q So it was just Millie that she ran down
15 there to --

16 A It was that one time.

17 Q -- or he ran down there? I'm sorry.
18 Now, was there another incident where your dog got
19 away from you?

20 A No. I was in my, again, in my
21 driveway, in my yard, and I was right by -- we just
22 got a camper, and we were like outside looking at the
23 camper, you know. And my dog was right here, and
24 Mrs. Smith was walking her dog by our house, and Max
25 saw her. And I yelled at Max, and then picked him up;

1 he didn't run after anybody.

2 Q Did you hurt yourself in this incident?

3 A Did I hurt myself?

4 Q Yeah, did you hurt yourself?

5 A Oh, I stumbled, yes.

6 Q You stumbled?

7 A Yes.

8 Q So you didn't just pick him up; you had
9 to go after Max, right?

10 A Well, I was there, and Max was like
11 there, and there was a piece of wood laying right here
12 and I didn't see it and I stumbled because I was
13 terrified when I saw the dog.

14 Q So was Max inside the camper or outside
15 the camper?

16 A We were in my driveway.

17 Q Okay, you were outside looking at it?

18 A Right.

19 Q And you're saying Max didn't move but
20 you stumbled when you went to pick Max up?

21 A Yes. As soon as I saw her, he was over
22 here, I yelled, and I went, and I fell on the piece of
23 wood.

24 Q Okay.

25 A And I got Max. But he was still in my

1 yard, he was not out of my yard.

2 Q Okay, but you were in fear -- because
3 Millie was on a leash, correct?

4 A Yes.

5 Q Okay. So you were in fear that Max was
6 going to run at Millie again?

7 A Yes.

8 Q Okay.

9 A But he didn't.

10 Q No, he didn't. Okay. Is Max typically
11 outside without a leash on or --

12 A No. In my yard sometimes when I'm
13 puttering around, he's a very small dog, he's a little
14 lap dog, he follows me around, yes. But obviously I
15 try and whenever I walk him, put him on a leash.

16 Q Okay. And your yard isn't fenced?

17 A No, it is not, but it's tree-lined.

18 MR. ABRAM: I don't have any other
19 questions.

20 THE WITNESS: Thank you.

21 BY CAPTAIN WARBURTON:

22 Q Has Max attacked any other dogs?

23 A No, he has never.

24 CAPTAIN WARBURTON: No further
25 questions.

1 MS. PETERSON: I do have a question.

2 HEARING OFFICER: Please.

3 MS. PETERSON: Was Millie, did she slip
4 her leash or her collar, or did she have a leash and
5 collar on her while she was attacking not your dog but
6 Spike?

7 THE WITNESS: I didn't see any leash
8 dangling or -- and I don't think a collar, but I
9 couldn't swear to that. But I didn't see anything
10 trailing to her, no.

11 MS. PETERSON: Okay, thank you.

12 HEARING OFFICER: Anything further from
13 the Panel? No?

14 CAPTAIN WARBURTON: Delaware Animal
15 Care and Control calls Martin Moody.

16 HEARING OFFICER: Will you please be so
17 kind to write your name and then print it as well in
18 the box, and your relationship, and we'll swear you
19 in.

20

21

22

23

24

25

1 WHEREUPON:

2 MARTIN MOODY,

3 having first been duly sworn/affirmed by the court
4 reporter, thereupon testified upon his oath as
5 follows:

6 BY CAPTAIN WARBURTON:

7 Q Good evening, Mr. Moody.

8 A Hi.

9 Q You just heard your wife's testimony
10 where she said you were both looking out the window on
11 March 16th and you saw Millie running at a high rate
12 of speed; your wife stated that she told you that that
13 dog is up to something; what did you do?

14 A Well, I said the same thing to her, I
15 said it must be Michelle, and Michelle's walking her
16 dog out there. So I ran out, ran out the front door
17 and ran up and --

18 Q So when you opened up your front door,
19 what did you see?

20 A I couldn't -- I couldn't see anything
21 because of the woods that surround our house.

22 Q Okay.

23 A But as soon as I broke past the front
24 yard, I saw something laying in the dirt wrestling
25 with the dog, and ran up to Michelle, and she was

1 crying and bleeding, and trying to get Spike out of
2 Millie's mouth.

3 Q Did you see Mrs. Smith there --

4 A No.

5 Q -- when you got there? You did not?

6 A No.

7 Q Okay. And then what did you do when
8 you arrived on scene with Michelle on the ground?

9 A Well, I knelt down and I tried to calm
10 her down. And she was bleeding and crying and very
11 upset.

12 Q When did Mrs. Smith show up?

13 A Well, I don't know exactly, but when I
14 knelt down, she wasn't there, and then I looked up and
15 a short time afterwards, and she was there, but I
16 don't know what the time period was.

17 Q Okay. And did you see Spike after the
18 attack?

19 A I saw Spike running away when Millie
20 broke loose around the other side of the cul-de-sac.
21 And then when my wife came --

22 (Whereupon, the last question of the
23 record was read.)

24 A Yes, Spike had run away. And then my
25 wife came up, she was shortly in back of me, and then

1 I asked her to go get Spike, and I took care of
2 Michelle, and picked her up, and helped her, and we
3 walked back to the house.

4 CAPTAIN WARBURTON: Okay, I have no
5 further questions.

6 MR. ABRAM: I have no questions.

7 HEARING OFFICER: All right, thank you.
8 You rest?

9 SERGEANT SCHNARES: I have two officers
10 I'd like to question briefly.

11 HEARING OFFICER: Okay.

12 SERGEANT SCHNARES: I'd like to call
13 Officer Pepper from Delaware Animal Care and Control.

14 HEARING OFFICER: Officer, please write
15 your name and print it as well.

16 WHEREUPON:

17 OFFICER KATELYN PEPPER,
18 having first been duly sworn/affirmed by the court
19 reporter, thereupon testified upon her oath as
20 follows:

21 BY SERGEANT SCHNARES:

22 Q Good evening, Everybody. Officer
23 Pepper, on March 16 of 2015, were you dispatched out
24 by Delaware Animal Care and Control's dispatch center?

25 A Yes.

1 Q You were? Okay. Did you go to 21879
2 Spring Forest Way in Milton, Delaware?

3 A I did.

4 Q And what was the address there for?

5 A Say it again.

6 Q Is that where the victim lived or is
7 that where --

8 A No, the dog owner.

9 Q The dog owner?

10 A The Smiths, yes.

11 Q At this time, I'd like to enter this
12 form into evidence to the Panel under Delaware Animal
13 Care and Control number 21. This is actually the
14 report of potential human to rabies exposure sheet
15 that was filled out by Got A Doc, okay?

16 HEARING OFFICER: We will mark that as
17 Exhibit 7.

18 (Exhibit 7, marked for identification
19 and retained by the Panel.)

20 SERGEANT SCHNARES: Thank you.

21 BY SERGEANT SCHNARES:

22 Q Were you able to make contact with the
23 owner or the owners at this time?

24 A No.

25 Q No? Okay. Did you place a contact

1 notice or where did you place those notices?

2 A Yes, I did, I posted a contact notice
3 on the back garage door.

4 Q Okay. So at that time, you weren't
5 able to verify a current rabies inoculation on Millie?

6 A No, not at that time.

7 Q Did you receive a phone call or a
8 message from the owner of the dog?

9 A Yes. Mr. Smith.

10 Q Mr. Smith?

11 A Uh-huh.

12 Q Okay. Did you go over and educate
13 Mr. Smith the proper quarantine under the guidelines
14 per Delaware Department of Health and Delaware State
15 law when you spoke with him on the phone?

16 A Yes, I did.

17 Q You did? Okay. Did you speak with him
18 about Millie?

19 A Yes.

20 Q What was the demeanor of Mr. Smith's
21 conversation with you at that time?

22 A He became very irate, he was very upset
23 that I was calling him about Millie.

24 Q Okay. At that time on the phone, did
25 you again explain the quarantine of the dog --

1 A Yes.

2 Q -- under the guideline?

3 A Uh-huh.

4 Q And what was his response to that?

5 A That I was not to come to his house and
6 quarantine his dog because he was not quarantining his
7 dog when his dog did not do anything, and his lawyer
8 needed to be present for me to come there.

9 Q Okay. Did you ask Mr. Smith if you
10 could get in contact with his lawyer or --

11 A Yes.

12 Q -- or he could contact you?

13 A Uh-huh.

14 HEARING OFFICER: That's a yes?

15 THE WITNESS: Yes. I'm sorry.

16 HEARING OFFICER: That's fine.

17 THE WITNESS: Can you still not hear
18 me?

19 HEARING OFFICER: The microphone was
20 pushed in. Could you just grab the microphone and
21 pull it towards you, the center piece? Thank you.

22 SERGEANT SCHNARES: I have no further
23 questions for Officer Pepper at this time.

24 HEARING OFFICER: All right, thank you.

25

1 BY MR. ABRAM:

2 Q Miss Pepper, how long have you been an
3 Animal Control officer?

4 A Since September.

5 Q Since September?

6 A Um-hmm.

7 Q And what kind of training do you get
8 before you become an Animal Control officer?

9 A I think it's on-the-job training.

10 Q Okay, so you don't have like an academy
11 or anything before you start the job?

12 A Um-hmm, you go through classes, yes.

13 Q How long are the classes?

14 A A few days, I assume.

15 Q Well, you did them; do you know?

16 A Each was a few days.

17 Q Okay. Now, you were attempting to get
18 ahold of Mr. Smith to quarantine his dog, correct?

19 A Uh-huh. Yes.

20 Q And why did you have to quarantine his
21 dog?

22 A Because we had the report that Millie
23 had attacked Spike.

24 Q Okay, but you don't quarantine dogs in
25 every dog attack, do you?

1 A Yes -- oh, when a dog bites a person,
2 yes.

3 Q Every time?

4 A Um-hmm.

5 Q Under what law do you do that?

6 A I want to say Title 9, I believe.

7 Q You have no idea, do you?

8 A I believe it's Title 9.

9 Q Title 9 is an entire section; do you
10 know what law you're looking at? Do you think it
11 might be Title 3, Section 8208 perhaps?

12 A I guess so.

13 Q Okay. Well, is it because you were
14 doing this because you thought rabies might have been
15 active, is that why you quarantine someone when they
16 bite a dog -- bite a person?

17 A Um-hmm. Yes.

18 Q Okay. Well, you created an incident
19 report for this, didn't you?

20 A Yes, uh-huh.

21 Q So if at 2:06 according to your
22 incident report you talked to Savannah Animal Hospital
23 and they told you Millie's rabies were up to date on
24 March 16th, why would you then attempt to quarantine
25 the dog?

1 A It's just procedure, you have to
2 quarantine the dog.

3 Q And you have no idea why?

4 A Yeah, that's the procedure that you
5 have to do when a dog bites a person.

6 Q Okay. So you don't -- you think it's
7 somewhere in Title 9 that every time a person bites a
8 dog, you have to quarantine them -- a dog bites a
9 person, I'm sorry?

10 A Yes.

11 Q Boy, that would be a different story.
12 Okay. And you do this in every case?

13 A Uh-huh. Yes.

14 Q And you have never been trained as to
15 why you do that?

16 A Yes.

17 Q Okay, so you have been trained. Why do
18 you do that?

19 A Because that's the law, you have to.

20 Q But you don't know what the law is?

21 A Yes, any dog that bites a person has to
22 be quarantined.

23 Q Okay. If I can point out to the Board
24 that 8208 says the owner of any dog, dog, cat or
25 ferret that exposes a human being to rabies, said

1 dog, cat or ferret shall be quarantined, not every dog
2 that bites a person. So if the law is that you only
3 quarantine a dog if they might have rabies, and you
4 had already established that the dog didn't have
5 rabies, weren't you -- you weren't following the law
6 at that point, were you?

7 A No; I was.

8 Q Okay. Now, at some point, your
9 investigation, it turned from a quarantine into a
10 dangerous dog, correct?

11 A Uh-huh.

12 Q And did you make that decision?

13 A I did not, no.

14 Q Who made that decision?

15 A I would assume my captain.

16 Q And who is your captain?

17 A Captain Warburton.

18 Q Captain Warburton you believe made that
19 decision?

20 A I believe so, yes.

21 Q Okay. So at some point, you switched
22 from a quarantine to a seizure of the dog?

23 A I assume so. I'm not the one who did
24 the search and seizure.

25 Q No, okay. So when did your involvement

1 end in all this?

2 A After I spoke with Mr. Smith.

3 Q On the first day?

4 A Uh-huh.

5 Q Okay. And he told you and in maybe
6 forceful language that he wasn't going to do anything
7 without his lawyer present?

8 A Yes.

9 Q And then did you attempt to contact the
10 lawyer or did his lawyer --

11 A No.

12 Q -- attempt to contact you at that time?

13 A Uh-huh, he did, yes.

14 Q Did you speak to him?

15 A No; it was then taken over by my
16 lieutenant.

17 Q Okay, so that was the end for you?

18 A Uh-huh.

19 Q Were you present when the dog was
20 picked up?

21 A No.

22 Q You weren't there then?

23 A Um-mmm, nope.

24 MR. ABRAM: Okay, I have no other
25 questions.

1 HEARING OFFICER: Fine, thank you.

2 BY SERGEANT SCHNARES:

3 Q Officer Pepper, how long have you been
4 employed with Delaware Animal Care and Control?

5 A Since September 29th.

6 Q So you're a relatively new officer?

7 A Uh-huh.

8 Q And do you have a cheat sheet that you
9 use that gives you the codes?

10 A I do.

11 SERGEANT SCHNARES: You do? Thank you,
12 no further questions.

13 BY MR. AGUILAR:

14 Q I just have one question. In your
15 phone conversation with Mr. Smith, I guess that's
16 Millie's owner, you said you were explaining to him
17 the quarantine procedures or that you needed to
18 quarantine his dog?

19 A Yes.

20 Q At any time did you ask if his dog was
21 current on rabies, its rabies vaccination?

22 A Yes, I did.

23 Q And can you tell us what his reply was?

24 A He told me yes, it was.

25 Q Were you able to confirm that, other

1 than just his verbal acknowledgment to it?

2 A Yes, through Savannah Hospital.

3 Q Okay. And it was confirmed that the
4 rabies were current?

5 A Uh-huh.

6 MR. AGUILAR: That's all I have.

7 HEARING OFFICER: Okay, fine, thank
8 you. If there's nothing further, you may step down.

9 SERGEANT SCHNARES: At this time, I'd
10 like to call Lieutenant Palacio from Delaware Animal
11 Care and Control.

12 HEARING OFFICER: Will you be so kind
13 to sign in, please.

14 WHEREUPON:

15 MARY PALACIO,
16 having first been duly sworn/affirmed by the court
17 reporter, thereupon testified upon her oath as
18 follows:

19 BY SERGEANT SCHNARES:

20 Q Were you advised by Officer Pepper of
21 the noncompliance to quarantine the dog for
22 Mr. Smith --

23 A Yes.

24 Q -- before she went off duty?

25 A Yes.

1 Q Okay. And how many days was she off
2 duty after that?

3 A Three days.

4 Q Okay. Who took over her case?

5 A I did.

6 Q You did? Okay. Were you able to make
7 contact with Mr. Smith at that time?

8 A Yes, I phoned both the victim and
9 Mr. Smith that day to see if I could make contact with
10 both of them.

11 Q Okay. Did you go to Savannah Animal
12 Hospital on 3/18/15 and for what reason?

13 A Yes. When I had phoned the victim, she
14 told me that her dog was still at Savannah, undergoing
15 surgery. So I figured I would stop in on the way,
16 pick up vet reports. And then when I phoned them,
17 they told me they had discs of Spike's pictures and
18 his surgery report after.

19 Q Did you contact Captain Warburton about
20 the dog-on-dog incident?

21 A Yes.

22 Q And what did she advise you?

23 A To gather all the evidence and get the
24 bite case done for the human first, and then to gather
25 the evidence on the dog involved because that gets

1 submitted to the Department of Ag.

2 Q Okay. And after you gathered all your
3 evidence, were you able to at that time place Spike on
4 the proper quarantine?

5 A Yes. Spike was still at the hospital
6 at that time. But then when he went home, I made two
7 visits to Mrs. Keck and checked on him while he was
8 home to make sure that he was quarantined.

9 Q Okay. Were you also at that time able
10 to place Millie on the proper quarantine?

11 A No, I was not.

12 Q Why?

13 A Mr. Smith would not allow me to come to
14 his home without his lawyer there. I made a phone
15 call and an attempt, I sat out on the street in front
16 of his house, and I could not get into his house
17 without his lawyer.

18 Q Okay. Were you able to make contact
19 with the bite victim, Michelle Keck, and obtain a
20 voluntary statement from her?

21 A Yes, I was.

22 SERGEANT SCHNARES: I'd like to enter
23 that in, it's D at number 23, it's going to be a
24 voluntary statement form of the incident.

25 HEARING OFFICER: Mark that as Exhibit

1 8.

2 (Exhibit 8, marked for identification
3 and retained by the Panel.)

4 BY SERGEANT SCHNARES:

5 Q And what did Miss Keck say to you about
6 the incident, briefly, if you could?

7 A She explained to me where she was and
8 where the Smith's dog was, and how Millie was running
9 loose and came down and had an attack on Spike and
10 then she was bitten in the process.

11 Q Okay.

12 A I did take pictures of her wounds,
13 which is what we're required to do by Department of
14 Health.

15 Q Absolutely, all right. After reviewing
16 everything and you spoke with Captain Warburton, did
17 Millie fit the criteria to go before the Dangerous Dog
18 Panel?

19 A Yes.

20 Q And was this discussed with Mr. and
21 Mrs. Smith's lawyer at that time?

22 A Yes, it was.

23 Q Were you and Lieutenant Hoss advised by
24 John Brady that a search warrant would be necessary to
25 remove Millie from the residence?

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P.O. Box 99

Milford, Delaware 19963

1 A Yes. We were supposed to meet him, we
2 made arrangements to meet him out there on that
3 morning to pick Millie up for the dangerous dog, and
4 his lawyer advised us that we were not able to remove
5 Millie unless we had a signed court document.

6 Q Okay. Once the search warrant was
7 executed and Millie was placed aboard the Animal
8 Control truck, what happened then?

9 A We took Millie on the Animal Control
10 truck to Miss Keck's house, we had her come out and
11 identify Millie as being the exact dog that was in the
12 incident with her and with Spike, and they did
13 identify Millie as the dog.

14 SERGEANT SCHNARES: Okay, I have no
15 further questions for Lieutenant Palacio at this time.

16 HEARING OFFICER: Mr. Abram?

17 MR. ABRAM: Thank you.

18 BY MR. ABRAM:

19 Q Good evening, Lieutenant.

20 A Hi.

21 Q Lieutenant, at what point did you
22 decide that Millie was a dangerous dog?

23 A I don't decide that, sir. I just
24 gather the evidence and I present it to my superiors,
25 and they make the decisions talking to the Animal

1 Welfare department.

2 Q Okay.

3 A It goes that way which dog they want
4 before the Panel and which they don't.

5 Q Okay. At what point were you aware
6 that a decision was made to attempt to classify Millie
7 as a dangerous dog?

8 A Once I -- we always do the dog-on-dog
9 and the dog-on-human. The dog-on-dog has to be
10 investigated, the dogs have to be checked for their
11 rabies, and has to be investigated. If it's just a
12 typical bite, it goes just to the Department of Ag,
13 they impose the quarantine. If it's something a
14 little more --

15 Q Lieutenant, it's getting late, I'm
16 sorry, I don't mean to cut you off, but just what
17 day --

18 A I'm just trying to tell you what --

19 Q I just need to know what day it was, I
20 don't need the whole procedure.

21 A This is the criteria we use, sir.

22 Q Lieutenant --

23 A Yes.

24 Q -- I asked you a question. You're not
25 testifying independently. I'm not trying to be

1 rude --

2 A I understand.

3 Q -- but I asked you what day you became
4 aware, I didn't ask you your procedure. So if you
5 could please answer my questions as to when you
6 became --

7 HEARING OFFICER: Excuse me a second.
8 Do you want to read that back?

9 (Whereupon, the pertinent part of the
10 record was read as follows:

11 "Question: At what point were you
12 aware that a decision was made to attempt to classify
13 Millie as a dangerous dog?")

14 THE WITNESS: By probably the second
15 day of the investigation or the third day of the
16 investigation when I took it over.

17 BY MR. ABRAM:

18 Q Okay, so it would be about the 20th --
19 the 19th or 20th of March?

20 A Uh-huh.

21 Q Okay. Now, at that point, were you
22 attempting to pick up where Officer Pepper was to
23 quarantine the dog?

24 A Yes.

25 Q And why were you trying to quarantine

1 the dog?

2 A Because we work as agents for the
3 Department of Health. Department of Health requires
4 us to put the dog on a watch, which they call a
5 quarantine but it's actually a watch, it's a watch for
6 a current dog; if they're not current, they come with
7 us or at a licensed vet that can impose a proper
8 quarantine.

9 Q Okay. Now, so this is -- you're saying
10 this is not because of the rabies issue?

11 A It is. The Department of Health
12 considers it a rabies issue, but we have a form that
13 they require us to get signed by the owner. We read
14 them the stipulations of watching for certain things
15 during this period that they inform us or they inform
16 Department of Health. I could not get to Mr. Smith to
17 have him sign that, nor could I see that his dog was
18 alive and well at that time.

19 Q Okay. But you were aware that the dog
20 had been vaccinated for rabies?

21 A Savannah let me know that, yes.

22 Q Okay. So you're saying there's a
23 Department of Health regulation, you're not following
24 the Delaware statutes for guidance as to why you did
25 this?

1 A Yes, we do this for the Department of
2 Health.

3 Q Okay. And they say every dog, even if
4 they're vaccinated, you have to do that --

5 A Yes.

6 Q -- or is this just something your
7 department has done?

8 A Every dog that bites, we go out and get
9 a picture of the victim, a picture of the dog that
10 he's alive and well, and we have them sign it's a post
11 bite paperwork for Department of Health which gets
12 turned back to them.

13 Q Okay. But are you aware of the law
14 that says you have to do this?

15 A No. It's what they require of us,
16 working as their agent.

17 Q Okay. So were you present when Millie
18 was picked up --

19 A Yes.

20 Q -- from the Smiths' residence?

21 A Yes.

22 Q And how was Millie when you met Millie?

23 A She seemed fine with me.

24 Q Okay. Would you say she was even nice
25 and pleasant with you?

1 A I didn't load her on the truck;
2 Mrs. Smith did.

3 Q Mrs. Smith? Okay. Did Millie come out
4 of the house and sniff you on your leg --

5 A Uh-huh, uh-huh.

6 Q -- and Millie was perfectly friendly?

7 A She was friendly.

8 Q Okay, and you called her, you know,
9 nice little dog names and everything and petted
10 Millie, didn't you?

11 A Uh-huh.

12 Q Yeah. Were you in any fear for your
13 safety with Millie?

14 A She is not human aggressive that I know
15 of.

16 Q Okay. So you felt no concerns for your
17 safety when Millie came out?

18 A No, but I'm trained not to -- to know
19 when a dog's going to come after me or not.

20 Q Okay. Well, you felt --

21 A We're not here because Millie's people
22 aggressive; we're here because Millie's dog
23 aggressive.

24 Q Okay. So when Millie came out, again,
25 even though you didn't expect it because of your

1 investigation, she didn't give you any signs or any
2 reason for you to be concerned at all when she came
3 out, correct?

4 A Correct.

5 MR. ABRAM: Okay. I have no other
6 questions.

7 HEARING OFFICER: Thank you.

8 BY MS. JANNUZZIO:

9 Q Actually, I have a question. When you
10 interviewed Mrs. Keck, did she state which dog she
11 believed bit her --

12 A She knew --

13 Q -- or she just said that she got bit?

14 A Yeah, she said it was Millie.

15 Q Okay.

16 A Because her dog wasn't -- she was
17 trying to get her dog out of Millie's mouth.

18 MS. JANNUZZIO: All right, thank you.

19 BY MR. AGUILAR:

20 Q I have a question.

21 A Oh, I'm sorry.

22 Q At one point in time in your
23 investigation, did you become knowledgeable that Spike
24 was not current on the rabies vaccination?

25 A When I went to Savannah, I asked, I

1 checked when I got the records, and they told me that
2 they believed Spike was not current but they weren't
3 positive, but they did confirm that Millie was because
4 she was a client of their's. So when I -- as soon as
5 I left there, I went to Mrs. Keck's to take a picture
6 of her wound and do my bite report, and I asked her to
7 prove if Spike was current, and he was not. So I did
8 cite her for failing to inoculate her dog.

9 Q Now, would that pose a concern for the
10 health of the dog that bit Spike for possible
11 contamination of rabies then if that --

12 A It could. And that's why when we get
13 back when we do reports, that's why it's so important
14 to get them in done in a timely manner. Because when
15 the report comes back, they get faxed to the
16 Department of Ag and faxed to the Department of
17 Health.

18 Q Well, my question is that if a dog that
19 has been vaccinated with rabies bites another dog or
20 animal that there is not confirmation of current
21 rabies vaccination, then there would be a concern?

22 A Yes.

23 Q Even though it's vaccinated, there's
24 still a concern?

25 A And that's where Department of Ag comes

1 in; we fax it right to them and they impose the
2 quarantine immediately.

3 MR. AGUILAR: I have no further
4 questions.

5 THE WITNESS: Thank you.

6 HEARING OFFICER: Do you have any
7 questions?

8 MS. PETERSON: No.

9 HEARING OFFICER: Thank you.

10 CAPTAIN WARBURTON: We rest.

11 HEARING OFFICER: Mr. Abrams?

12 MR. ABRAM: Yes. If I can call John
13 Smith.

14 CAPTAIN WARBURTON: Objection, he was
15 not there at the time of the incident.

16 MR. ABRAM: Neither were half of your
17 officers. I mean that's --

18 HEARING OFFICER: And you're going to
19 be overruled on that one.

20 CAPTAIN WARBURTON: Okay.

21 HEARING OFFICER: Please sign in, thank
22 you.

23

24

25

1 WHEREUPON:

2 JOHN SMITH,

3 having first been duly sworn/affirmed by the court
4 reporter, thereupon testified upon his oath as
5 follows:

6 BY MR. ABRAM:

7 Q Good evening, Mr. Smith. Mr. Smith,
8 were you present in July of 2012 for an incident that
9 occurred between Millie and Max?

10 A Yes. I was walking my dog, Millie,
11 leashed, in the middle of the street at 5:00 p.m. on
12 the 5th of July on 2012, when the Moodys' dog, Max,
13 ran out of an open door, ran past the driveway into
14 the middle of the street, and bit my Millie in the
15 back paw, opening up a wound. So even dogs with no
16 teeth can still bite and cause injury.

17 Q And what was Millie's reaction to that?

18 A Millie was stunned. She -- I actually
19 still see her doing this, she turned around her head
20 and grabbed Max and pulled her off her. Now, was she
21 shaking Max? Yeah, she grabbed, she was shaking. And
22 by that time, Mrs. Mooney ran, I might add, into the
23 middle of the street, crying and screaming like it was
24 my fault that her dog, which is never controlled, came
25 up and bit my Millie.

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1 Q Okay. Now, did you have to take Millie
2 for treatment as a result of that?

3 A Yes, we had to take her to Savannah
4 Animal Hospital to have that wound taken care of.

5 Q Now, if I can show you this, is this a
6 copy of that bill?

7 A Yes, it is.

8 Q And the second page of that, is that a
9 copy of the doctor's note you got with the bill?

10 A Yes, it is.

11 MR. ABRAM: Okay, I'd like to have this
12 admitted as Smith Exhibit 1.

13 HEARING OFFICER: We will mark it as
14 1A. One second please. Can we move that to A1?

15 You may continue.

16 MR. ABRAM: Thank you.

17 BY MR. ABRAM:

18 Q You were not present at the incident in
19 March of this year, correct?

20 A That is correct, I was not present.

21 Q And you were not present for any
22 incidents last year involving Max and --

23 A That is correct.

24 Q Okay. Now, this incident back in 2012,
25 where were you walking Millie?

1 A I was walking Millie in the middle of
2 Woodgate Drive, passing by the Moodys' driveway.

3 Q Okay. Now, at what point did you
4 notice Max come out?

5 A I just happened to turn my head and see
6 this dog, Max, running out of an open doorway and
7 running towards Millie. The dog runs pretty fast, and
8 was right on top of Millie before you knew it.

9 Q Was the dog barking?

10 A I don't recall if the dog was barking,
11 but clearly the dog acted in a provocative action
12 towards Millie; what was she supposed to?

13 Q And you had Millie on a leash at that
14 time?

15 A Correct. Millie's always on a leash.

16 Q Now, were you present when the Animal
17 Control officers came to pick up Millie?

18 A I was.

19 Q And how was Millie's demeanor towards
20 the Animal Control officers?

21 A Very friendly. She thought that they
22 were friends coming into our house to see her.
23 Lieutenant Palacio actually petted Millie and called
24 her honey and several other affectionate names. She
25 basically went to everyone there, sniffing and licking

1 them, but that's the way Millie is generally with
2 everybody.

3 Q Okay. Now do you have concerns that
4 Millie is a dangerous dog?

5 A Absolutely not.

6 Q Would anything occur when you would
7 walk Millie past the Moodys' residence?

8 A After the July 5th, 2012 incident,
9 whenever we walked past the Moodys' driveway, Millie
10 always looked to see if Max was running towards her.
11 You know, I mean, listen, Max's a little dog, Millie's
12 a little bit bigger than her, but let's face it, it
13 was a traumatic incident for Millie, she never forgot
14 it. And every time we walked past that driveway, she
15 always looked to see if that dog was running towards
16 her.

17 Q Okay. Did Animal Control ever advise
18 you why they wanted to quarantine Millie?

19 A Yes, they said she didn't have her
20 rabies vaccine, and I tried to inform them that she
21 did.

22 Q Okay. And they still attempted to
23 quarantine after you advised them of that fact,
24 correct?

25 A Well, yeah, I mean I -- what I told

1 Officer Pepper and I told Lieutenant Palacio was that
2 we would voluntarily comply with the quarantine until
3 such time that our lawyer and them could meet, because
4 we wanted this to be done properly from a legal
5 perspective. We had our issues with the Moodys and we
6 did not want to leave ourselves open to problems.

7 Q Does Millie have any problems with any
8 other dogs?

9 A No, never.

10 Q When you walk Millie in the
11 neighborhood, does Millie interact with other dogs?

12 A Millie has never had a problem with
13 other dogs other than those two Yorkies.

14 Q But what I was asking is does Millie
15 come across other dogs while you're walking?

16 A Yeah, once in a while. We really don't
17 have many dogs. We had our neighbors that live on the
18 next block, Jim and Johanna, they had a dog, Millie
19 used to see her almost every day, I'd walk her and
20 they got along, they used to sniff each other just
21 fine. Where we lived prior to moving to our current
22 house, Millie was exposed to a lot of dogs at
23 Independence when we lived there, and she never had
24 any problems with any dogs over there either; it was
25 always a sniff fest.

1 Q One last question. Do you have a
2 fenced-in yard at your house?

3 A Yeah, completely fenced in.

4 MR. ABRAM: I have no other questions.

5 HEARING OFFICER: Please stay at the
6 stand.

7 BY CAPTAIN WARBURTON:

8 Q Good evening. Has Millie ever gotten
9 loose before?

10 A No.

11 Q She's never gotten away from you guys
12 and ran down Woodgate Drive?

13 A No. Millie's always controlled. We
14 have a fenced-in yard, we walk her on a leash, she has
15 never gotten away from us other than the day in
16 question which was the 16th of March.

17 Q Okay, and you had stated that Millie
18 was a little nervous walking by the Moodys' home?

19 A Well, she was attacked. How would you
20 feel if you were walking by a place that you were
21 attacked?

22 Q Just answer that question. Was she
23 nervous, or you said she was anxious when she walked
24 by --

25 A She would always turn her head to see

1 if that dog was running towards her, that's the answer
2 to your question, yes.

3 Q Can you tell me why she darted past the
4 Moodys' home when she got loose from your wife, do you
5 know why she did that?

6 MR. ABRAM: I'm going to object. I
7 don't think he can know what the dog was
8 thinking.

9 MR. AGUILAR: He claims that he knows
10 that it's nervous when it's walking by a certain
11 house.

12 BY CAPTAIN WARBURTON:

13 Q So you don't know? Does Millie, is she
14 a quick dog, is she energetic?

15 A I take her out in the back yard and let
16 her run once a day and play with her, yeah.

17 Q Does she act excited when vehicles pass
18 when you're walking by?

19 A Sometimes a motorcycle.

20 Q Okay. And what does she do, does she
21 like pull at the leash?

22 A Yeah, she pulls with the leash, that's
23 right.

24 Q Okay.

25 A Loud noises of motorcycles probably are

1 upsetting for her.

2 Q Okay. And you did not witness the
3 incident that occurred on the 16th of March?

4 A No, no. I'm recovering from surgery, I
5 was unfortunately -- I usually walk Millie, but I was
6 not walking Millie that day, no.

7 CAPTAIN WARBURTON: Okay, no further
8 questions, thank you.

9 MR. ABRAM: I have no follow-up.

10 HEARING OFFICER: Okay, thank you.

11 MR. ABRAM: I call Nancy Smith.

12 HEARING OFFICER: Please sign in.

13 WHEREUPON:

14 NANCY SMITH,
15 having first been duly sworn/affirmed by the court
16 reporter, thereupon testified upon her oath as
17 follows:

18 BY MR. ABRAM:

19 Q Good evening, Miss Smith. Miss Smith,
20 were you present in March of this year when Millie bit
21 Spike?

22 A Yes.

23 Q Can you tell me what happened? Start
24 out when you started walking Millie.

25 A It was a little -- can you hear me?

1 I'm sorry, I have laryngitis. Okay. On March 16th a
2 little bit after 9:00 o'clock, I took Millie out for a
3 walk, she was on her leash.

4 We left our home, went down Spring
5 Forest Way. We crossed the street of Woodgate. I
6 usually walk Millie along the tree line, I'm not a fan
7 of walking her in the street. Dogs have their
8 favorite place to do what they do.

9 And so when we got to the tree line,
10 Millie started to pull. I looked at why she was
11 pulling, and there it was Michelle Keck and Jackie
12 Moody who were walking side by side down Woodgate
13 Drive. Millie pulled, I pulled back. Millie pulled,
14 she sat, looked at me, ducked her head, and pulled her
15 head out of the collar. At that point, she headed
16 toward Michelle Keck and Jackie Moody.

17 Q Okay. At that point, Millie was pretty
18 far away from you, correct? So you didn't see exactly
19 what happened with Millie and Spike, is that right?

20 A I ran after Millie, I started yelling.
21 I didn't have laryngitis then. I yelled Michelle's
22 name two or three times as I am running. They didn't
23 hear me, there was no reaction. I then started
24 yelling help with the hopes that Mr. Moody was in his
25 house to help come -- come out.

1 Q Okay. And then when you arrived there,
2 were you able to secure Millie?

3 A Yes. If you look at the push pins,
4 yelling and running, it did not take me very long to
5 get to the scene.

6 Q Okay. And did you hear Miss Moody
7 testify that you were trying to be very careful at the
8 end of this how to remove Millie so there wouldn't be
9 any more contact?

10 A I never remember talking to her. I
11 remember seeing her in the short distance, she was
12 holding a dog. I never saw --

13 Q Was it your intention to make sure that
14 Millie avoided that dog?

15 A Yes. Well, my concern at that point,
16 Millie was not in her collar, my concern was to get
17 the collar back on Millie.

18 Q And how did you end up doing that?

19 A I had to unhook her collar and then
20 hook it back on her.

21 Q So you ran up with it?

22 A Yes. I ran down the street, but it
23 wasn't as far as they're indicating.

24 Q Okay. Were you present for an incident
25 last year between Millie and Max?

1 A Yes.

2 Q And can you tell me about what
3 happened?

4 A It was either late summer, early fall
5 of 2014. The Moodys got a new camper/trailer. Millie
6 and I were walking, it was by their driveway. Millie
7 and I walked past their driveway as we usually do.
8 Millie did her business, and on our return home, as we
9 passed the driveway, the door of the trailer opened.
10 Mrs. Moody came out after the dog in her pajamas;
11 apparently they were trying out the vehicle prior to
12 perhaps making their first trip.

13 Q And was there an altercation between
14 Millie and Max?

15 A Max came running down the driveway,
16 Mrs. Moody running after her. I yelled that I was
17 there with Millie. She fell as she did a run and
18 scoop. The dog is never leashed. Millie and I were
19 in the street on our way for our walk. We do the tree
20 line, that's where she does her business, and on the
21 way home, we walked down the street. Millie never
22 goes in their driveway.

23 Q Okay. Were you also present when the
24 Animal Control officers picked up Millie?

25 A Yes, it was a terrible day.

1 Q Terrible day? Were you stressed out?

2 A Very. They told me that I needed to
3 put her in the Animal Control truck. I said I was too
4 distraught, I could not do that. They then told me
5 they would have to get a six-foot pole with a lasso
6 because she was a dangerous dog. There's no way I
7 could let that happen. But my dog, tomorrow is day
8 26, how many times --

9 Q Okay. So you routinely walk Millie
10 around the neighborhood?

11 A Yes.

12 Q Okay. Does Millie have interactions
13 with other dogs?

14 A There are no other dogs currently. She
15 used to get along well with the Hosleys' dog.

16 Q But that dog is no longer there?

17 A That dog has passed.

18 Q Okay. And have you had Millie in other
19 settings with other dogs?

20 A Millie has been -- we had a party at
21 our home, 30 people plus another dog for an entire
22 weekend, a little hectic and chaotic in our home; no
23 incidences with the dog. My husband would walk our
24 grand-dog and Millie together, not the same leash but
25 within inches of one another, no issues. We lived at

1 Independence, an over-55 community, used to walk
2 Millie there, other dogs, no incidents.

3 Q No problems, okay. Do you have any
4 concern that Millie has any other issues with anything
5 else except for these terriers?

6 A None whatsoever.

7 Q Okay. And do you feel confident that
8 if you were to walk Millie again and if you got more
9 of a harness than a leash, that you could keep Millie
10 under control?

11 A Yes.

12 MR. ABRAM: I have no further
13 questions.

14 BY CAPTAIN WARBURTON:

15 Q Good evening, Mrs. Smith. When you
16 first saw Mrs. Keck and Spike, is this about accurate
17 where you were, about here, and she was about there at
18 that junction?

19 A Just about.

20 Q Okay. So did you follow her?

21 A I ran right after Millie.

22 Q No, no, I mean when you still had
23 Millie, were you still walking this direction when you
24 saw her?

25 A I wasn't walking in any direction. I

1 walked straight to the tree line, that's where I
2 always go. We go to the stop sign, she does her
3 business -- her tinkle, we go across the street, we go
4 to the tree line.

5 Q Okay.

6 A And then Millie --

7 Q So you weren't walking down Woodgate,
8 you had just went over to the --

9 A I just got across to the tree line, I
10 didn't decide if I was going right or left.

11 Q Okay. So you looked down and you said
12 you saw two people walking?

13 A Yes, I did. I only noticed them after
14 Millie started to pull.

15 Q And you heard testimony that Mrs. Keck
16 was by herself walking Spike?

17 A I did hear that, and that is not true.

18 Q So is she lying?

19 A Yes.

20 Q Why would she lie?

21 A I don't know.

22 Q Okay.

23 A That is not what happened. I arrived
24 at the scene before Mr. Moody arrived at the scene; he
25 arrived after me.

1 Q He arrived after you?

2 A Yes, he did.

3 Q So their stories are just fabricated?

4 A Oh, most -- you have to also
5 understand, four families of Moodys live on the same
6 block.

7 Q Yes, ma'am; that's not unusual.

8 A I think it is. I think the deck is
9 stacked.

10 Q So how did Millie get loose from her
11 collar?

12 A I just told you.

13 Q I'd like you to --

14 HEARING OFFICER: Just please answer
15 it.

16 THE WITNESS: I'm sorry, sir. Millie
17 started to pull in the direction. Then I looked, I
18 saw the two of them together. I pulled back on the
19 leash, Millie pulled the leash, I pulled back tighter
20 on the leash. Millie sat down, looked at me, tucked
21 her head, out she went.

22 BY CAPTAIN WARBURTON:

23 Q So from here, then you started running
24 after her?

25 A Yes.

1 Q Okay. And so --

2 A Running right after her and yelling
3 Michelle's name, with no response.

4 Q So the statement that Mr. and
5 Mrs. Moody were looking out their window and they saw
6 Millie run by their window, that's not a true
7 statement --

8 A No.

9 Q -- according to you?

10 A Perhaps Mr. Moody heard me yelling
11 help, help. But Mrs. Moody was there, holding a dog.
12 Mr. Moody arrived after I arrived. I did not see the
13 incident. I never saw the wounded dog.

14 Q So if you never saw the incident, you
15 don't know, then, if the Moodys were there?

16 A I know there were two people. I know
17 there were two people there.

18 Q Okay. And is this flat where you can
19 see?

20 A Yes.

21 Q It's not curved at all?

22 A No.

23 Q Okay. Another question --

24 A How long do you -- sorry.

25 HEARING OFFICER: She's doing the

1 questions, okay?

2 THE WITNESS: I'm sorry, sir. I'm
3 sorry.

4 BY CAPTAIN WARBURTON:

5 Q All right, ma'am, so your testimony is
6 that everybody that witnessed the attack is lying,
7 that it's just -- you observed the Moodys and the
8 Kecks walking together?

9 A I stand by my statement. Michelle and
10 her mother were walking heading that direction.

11 Q Do you deny that Millie bit Spike?

12 A No.

13 Q And one question, when Mrs. Keck --

14 A I did not see the bite.

15 Q When Mr. and Mrs. Keck went to your
16 home after the incident -- --

17 A Yes.

18 Q -- did you guys agree that you would
19 walk Millie a different direction away from the Kecks?

20 A Michelle had asked us if we would
21 please walk Millie in the opposite direction, and my
22 husband said we will keep Millie from this point in
23 our fenced yard. It is obvious that --

24 Q So then you agree that Millie does have
25 a problem with smaller dogs?

1 A She has a problem with that dog, those
2 two dogs.

3 Q So Millie does have a problem with
4 smaller dogs?

5 A No, I'm not saying that. There were
6 smaller dogs at Independence where we lived, so I'm
7 not saying that.

8 Q So Millie has a problem with just two
9 Yorkies in your development?

10 A Well, I would say she has an issue with
11 the Moodys' dog, Max.

12 Q Okay, just specifically the Moodys'
13 dog, Max?

14 A Yes.

15 CAPTAIN WARBURTON: Okay. No further
16 questions.

17 HEARING OFFICER: Fine, thank you.

18 MR. ABRAM: I have one -- no more
19 questions for you, ma'am, you can have a seat.

20 HEARING OFFICER: You may sit down,
21 thank you.

22 MR. AGUILAR: I have a question.

23 HEARING OFFICER: I'm sorry, my
24 mistake.

25

1 BY MR. AGUILAR:

2 Q Mrs. Smith --

3 A Oh, I'm sorry.

4 Q -- I just have one question. When you
5 observed, when Millie was starting to pull, I guess
6 you said you looked up and you saw --

7 A Yes.

8 Q -- from your testimony, two people?

9 A Yes.

10 Q Did you see anything else other than
11 the two people?

12 A No.

13 Q So you didn't notice that there was a
14 dog there?

15 A I assumed they were walking their dogs.

16 Q Okay. At what point in time did you
17 realize that Spike was there?

18 A I didn't know if it was Spike or Max.

19 Q My --- okay.

20 A I'm sorry.

21 Q I'll rephrase my question then. At
22 what point in time in this incident did you realize
23 that there was a second dog there with those two
24 people?

25 A I don't know if it was second dog.

1 Mrs. Moody was holding a dog.

2 Q Well, if your dog counts as one dog, at
3 what point in time did you realize there was a second
4 dog at that incident?

5 A Can you do that again? I'm sorry.

6 Q When you arrived, from your testimony,
7 when you arrived on scene --

8 A Yes.

9 Q -- with Mrs. Keck and Mr. Moody, at
10 what point in time did you realize that there was a
11 dog with them, other than Millie?

12 A She was -- Michelle was on the ground,
13 she was yelling Millie, Millie, Millie.

14 Q Okay.

15 A I'm assuming she had -- there was a dog
16 underneath. I didn't see a dog.

17 Q Okay. So she was yelling Millie,
18 Millie, Millie, which is your dog, okay, so you were
19 able to see your dog?

20 A Yes. I then went on top of my dog.

21 Q Okay.

22 A And Mrs. Moody had a dog in the
23 distance. I'm assuming Michelle's dog was there,
24 she's the one that was injured.

25 Q Okay. So at any point in time, did you

1 see your dog interacting with another dog?

2 A Michelle was on top of the dog.

3 Q Okay.

4 A I got there, then I went on top.

5 Q But from the very beginning of the
6 incident, you said you could see two people?

7 A Yes.

8 Q And then you started running towards
9 those two people --

10 A Yes.

11 Q -- because your dog was running in that
12 direction?

13 A That's correct.

14 Q But then you couldn't see another dog
15 until you got there, and at that time the only time
16 you saw a second dog was when a person was holding it
17 then?

18 A That's correct.

19 Q So at that point -- so there's no point
20 in time did you ever see your dog engaging with
21 another dog?

22 A No. I'm assuming it. I'm assuming
23 that that's what happened; I did not see that. She
24 was on top of the dog --

25 Q But you're very specific that when

1 you -- your dog started pulling away from you and you
2 looked in the direction that it was pulling, you could
3 see two people though?

4 A Two people.

5 Q Okay.

6 A I'm assuming they were walking two
7 dogs.

8 Q So is it good for me to assume that
9 while you were running towards them, that I guess you
10 were looking away at other things, and then when you
11 got there --

12 A No.

13 Q -- because you couldn't see your dog
14 interacting with another dog?

15 A No, I was looking straight at them.

16 Q Okay. So at no point in time you could
17 see your -- but before the whole -- before your dog
18 took off running, you could see two people, while you
19 were running towards them -- okay, let me ask you
20 this.

21 A I'm sorry.

22 Q I'm just trying to figure things out
23 here myself. Your dog's pulling, starts pulling. You
24 look in the direction that your dog is pulling?

25 A Yes.

1 Q You see two people?

2 A Yes.

3 Q You're watching your dog, you watch
4 your dog pull out of its leash --

5 A Yes.

6 Q -- take off running?

7 A Yes.

8 Q In which direction?

9 A Towards the two people, Michelle and --

10 Q Towards the two people, okay.

11 A -- her mother.

12 Q So then you started running towards?

13 A Them.

14 Q Okay.

15 A Yeah.

16 Q So tell me what happened, what did you
17 observe that whole time then?

18 A As I'm running, I'm holding the leash
19 and the collar.

20 Q Okay.

21 A I'm yelling, Michelle, Michelle. I
22 don't --

23 Q And, again, is it good for me to assume
24 that you were looking at them at the same time as
25 well --

1 A Yes, yes.

2 Q -- so you can see where you're running?

3 A In that direction.

4 Q Okay.

5 A No response.

6 Q Okay.

7 A Then I said -- well, I started to yell

8 help --

9 Q Okay.

10 A -- hoping that Mr. Moody would be home

11 to alert him to come and help, or that perhaps --

12 Q Help for what? What were you yelling

13 help for?

14 A Millie was going towards them.

15 Q Okay. And what was your concern? Why,

16 if Millie's running towards two people --

17 A That Millie might --

18 Q -- why would you yell help?

19 A That Millie might bite that dog.

20 Q What?

21 A That Millie might bite that dog.

22 Q What dog is that? Did you see a dog?

23 A No.

24 Q Okay.

25 A We were talking -- okay.

1 Q I'm sorry?

2 A I saw two people, I assumed they were
3 walking the dogs.

4 Q Okay.

5 A As they always do.

6 Q Okay. Okay, go ahead, continue. So --
7 I'm trying to figure out at what point in time --
8 because I need you to explain better to me that if you
9 could look in their direction and see two people --

10 A Their dogs are little dogs, I'm
11 assuming they were walking their dogs. Why would
12 Millie pull? Millie has no issue with people --

13 Q Okay.

14 A -- as we said before. Other people
15 walk, we have lots of neighbors in our neighborhood
16 who are here today who would attest to they walk three
17 times a day, and Millie greets them, they pet her,
18 she's lovely. They could attest to that.

19 MR. AGUILAR: All right, I have no
20 further questions.

21 HEARING OFFICER: All right, thank you,
22 is there anything else?

23 THE WITNESS: I'm sorry if I was
24 confusing.

25

1 BY MS. PETERSON:

2 Q I've got a quick question.

3 A Yes, ma'am.

4 Q You said that as soon as you arrived on
5 the scene, even though you didn't see another dog, you
6 just saw your dog, you still jumped on her?

7 A Well, I assumed that there was a dog
8 under there.

9 Q Okay.

10 A Why would she be screaming Millie,
11 Millie? I'm sorry.

12 Q That's okay. Did you get the dog away
13 from -- what happened after you jumped on the dog?

14 A I jumped on the dog, and then Michelle
15 moved away.

16 Q Okay, you didn't see a dog in her arms?

17 A I never saw the dog.

18 Q Okay.

19 A No.

20 Q Okay. And what did you do then?

21 A I just held onto Millie on the ground
22 until people started to move away. As I'm on the
23 ground, holding Millie, I looked up, I saw Mrs. Moody
24 in the distance with a dog, I do not know what dog.

25 Q Okay. And you tried to put the collar

1 and leash back on at that point?

2 A I waited until they moved away.

3 Q Okay.

4 A I had control of her there and I wanted
5 to not lose that.

6 MS. PETERSON: Okay, that was my
7 question. Thank you.

8 BY MR. AGUILAR:

9 Q Again, I still have another question.

10 A Sure.

11 Q So, okay, you go back to your house
12 with Millie?

13 A Well, there was another incident as
14 well.

15 Q That same day?

16 A With Mr. Moody.

17 Q At one point in time did you realize
18 that your dog had bitten Spike?

19 A Mr. Moody called her killer dog, killer
20 dog, killer dog.

21 Q That's not --

22 A That's when I realized.

23 Q At what point in time in that time
24 reference from when you finally put your leash back on
25 your dog and they moved away, I'm going to assume that

1 you started back towards your house?

2 A After Mr. Moody came back in his truck.

3 Q So you just stood out there on the
4 street after they moved away?

5 A And then Mr. Moody came back in his
6 truck and did not say very nice things. I was shaken.
7 He left, I don't know where he went, I'm assuming to
8 his daughter's home.

9 MR. AGUILAR: All right. No further
10 questions.

11 THE WITNESS: I'm sorry.

12 HEARING OFFICER: Any other questions?

13 MS. PETERSON: No.

14 HEARING OFFICER: Fine, thank you.

15 MR. ABRAM: I have one final witness,
16 if I may. I'd like to call Captain Warburton.

17 HEARING OFFICER: I do need you to sign
18 in.

19 WHEREUPON:

20 CAPTAIN SHERRI WARBURTON,
21 having first been duly sworn/affirmed by the court
22 reporter, thereupon testified upon his oath as
23 follows:

24 BY MR. ABRAM:

25 Q Captain Warburton, in your opening, you

1 made a lot of comments about it's not just the
2 statute, it's other reasons why you decide, what was
3 it, 4 out of approximately 1500 dogs would come to
4 this panel?

5 A Yes.

6 Q Okay. Is one of those reasons revenge?

7 A No, sir.

8 Q It's not? Did you give an interview
9 with the Cape Gazette?

10 A Yes, I did.

11 Q Okay. And did you tell the Cape
12 Gazette that, I quote, "I want to make sure I
13 represent the victims; they have gone through hell and
14 back with this." Did you tell them that?

15 A Yes, I did.

16 Q Okay. Now, is the victim going through
17 hell and back a factor when you decide to try to
18 muzzle a dog permanently or kill it?

19 A No, sir. What I do is I take the
20 victim statements and look at the statements, look at
21 the injuries of the dogs, speak with the victim. And
22 she had told me what they've been going through, and
23 that's why I said what I said.

24 Q So you're here representing the victims
25 to try to get the dog put down or muzzled permanently

1 today?

2 A I did not -- I did not -- in my
3 evaluation, I did not state that the dog should be
4 euthanized, just that it follows the conditions of
5 Title 9, Subchapter 2, Section 925.

6 Q Okay. But can you explain this
7 statement to me? Because I don't understand. If this
8 isn't a factor, why would you tell the newspaper that
9 this is one of the reasons you're doing this?

10 A Well, because dangerous dog law
11 represents the victims. When somebody is attacked,
12 there needs to be sanctions against the aggressor dog
13 or the person, the owner of the dog. If a dog attacks
14 another dog or a person, then society, I believe, has
15 a right to tell the person either you need to muzzle
16 your dog, keep it on a leash, follow the conditions of
17 dangerous dog law.

18 Q So you didn't up your recommendation or
19 do anything differently because of the victims?

20 A No. I looked at the attack, I looked
21 at how the dog pursued the victim dog and the owner,
22 and due to that pursuit, that's what gave me the
23 indication that probably we should look at Dangerous
24 Dog Panel.

25 Q Okay. Don't you have to have two

1 pursuits for it to fit under the regular Dangerous Dog
2 Panel, right, section?

3 A The element -- sure, the elements are
4 physical injury, serious physical injury or a human
5 being is killed, serious physical injury to an animal,
6 or if it chases or pursues a person twice in a year.

7 Q Okay. Now, are you the person who
8 makes the final decision?

9 A I consult with my execute director,
10 yes.

11 Q Okay.

12 A But yes, I do make the final decision.

13 Q Did you or any -- did you supervise the
14 investigation?

15 A Lieutenant Palacio supervises the
16 investigation. I'm in Dover, that's where my office
17 is, in Camden, Delaware. Lieutenant Palacio is the
18 division supervisor.

19 Q When you were making this decision, did
20 you ever have anybody attempt to contact Nancy Smith
21 to ask her what happened?

22 A Lieutenant Palacio did attempt, and
23 they were told to -- that he would not speak to them
24 without his attorney, and we did respect that.

25 Q Okay. Do you prepare the document

1 that's sent off when people are charged -- or when
2 people are advised that you're considering their dog
3 to be dangerous, is that correct?

4 A When we suspect a dog is dangerous,
5 yes.

6 Q Okay. Do you remember writing that one
7 of the charges against Millie, I guess, would be that
8 she injured a small dog or injured a dog?

9 A Yes. I wrote serious physical injury
10 or serious injury.

11 Q Did you just write injury?

12 A Did I write -- I'd have to look at it,
13 sir.

14 Q If you will look at number two there.
15 How did you --

16 A Yes, I wrote that killed or inflicted
17 physical injury or serious physical injury upon a
18 domestic animal. I need to update that because it is
19 just serious physical injury; this was off an older
20 code.

21 Q All right. So you would agree with me
22 this is a misstatement of the law?

23 A The physical injury, yes, it's only
24 serious physical injury to a smaller dog. But there
25 was physical injury to a human.

1 Q But I just asking about that one. So
2 how long has the law changed on that one?

3 A In 2014 I believe when they updated the
4 Delaware dog laws, there was some modifications, they
5 moved some things around.

6 Q Okay. So you've had about a year to
7 change it, and you haven't?

8 A Yes, and that's an oversight.

9 Q Okay.

10 MR. ABRAM: I have no further
11 questions.

12 HEARING OFFICER: Fine, thank you. You
13 want to move to closing statement right now?

14 CAPTAIN WARBURTON: Yes, sir. Any
15 Panel questions?

16 MR. AGUILAR: No questions.

17 MS. PETERSON: No questions.

18 MS. JANNUZZIO: Actually, just Exhibit
19 5?

20 HEARING OFFICER: Exhibit 5 is missing,
21 I know that, I'm going to have to get that from Miss
22 Warburton.

23 MS. JANNUZZIO: Okay.

24 CAPTAIN WARBURTON: In order to
25 establish a dangerous dog, the statute's pretty clear,

1 field away basically, that establishes deliberate
2 action, and seize him with her teeth, and with the
3 obvious intent to kill or wound, not just attacking
4 once but biting and injuring Mrs. Keck who interrupted
5 the attack in order to seize Spike again in her mouth
6 for a second time and shake him. Remember, eyewitness
7 testimony in both attacks show that Millie bit and
8 shook both dogs. The owner lost control and Spike was
9 pursued and attacked as defined by the legislature.

10 We ask the Panel to deem Millie a
11 dangerous dog and order the Smiths to follow the
12 conditions as set forth in Title 9, Chapter 2,
13 Subsection 925. Thank you.

14 HEARING OFFICER: Okay, thank you.
15 Mr. Abrams?

16 MR. ABRAM: Thank you.

17 Ladies and gentlemen, we do not believe
18 that Millie is a dangerous dog. Although this is an
19 informal hearing and hearsay is permitted, it's
20 important to note that under the Delaware Code,
21 hearsay cannot be the sole basis for any of your
22 findings; you have to have live testimony. So if you
23 look at the definition of serious physical injury, the
24 Animal Control officers have given you medical
25 records; medical records are hearsay. Those doctors

1 are not here today, they did not testify to you that
2 this was a substantial injury or that the dog was --
3 serious physical injury is an injury which causes
4 substantial risk of death, you have heard no testimony
5 of that whatsoever; serious or prolonged
6 disfigurement, you have heard no evidence of that;
7 prolonged impairment of health, you have heard that
8 the dog is just fine today; or prolonged loss or
9 impairment of any function or bodily organ, there's
10 been no testimony of that whatsoever. So as a matter
11 of law, I do not believe that this Board can find
12 serious physical injury even if the hearsay was
13 permitted because I've not heard that, but hearsay is
14 not permitted as the sole basis without a
15 veterinarian, there's no basis for that.

16 As far as the physical injury, to the
17 woman walking the dog, she does not recall being bit.
18 There were two dogs present; this was not a one-dog
19 thing where you have to believe the one dog did it,
20 because there were two dogs. In her words, it was a
21 blur, she does not recall. She was on a rocky -- she
22 said at first it was kind of a rocky drainage ditch
23 right by the street, she was a couple different
24 places, there was a lot going on, there's no
25 definitive evidence that this was a dog bite. She

1 give you the privilege?

2 MR. AGUILAR: Okay, you want me to read
3 the order, okay.

4 HEARING OFFICER: Well, why don't you
5 read the final order? It's where you sign off on it,
6 the outcome.

7 MR. AGUILAR: The final order?

8 HEARING OFFICER: Yes.

9 MR. AGUILAR: The final order of the
10 Dog Control Panel is that the dog will be declared
11 potentially dangerous. The owner shall comply with
12 the requirements set forth in Title 9, Delaware C
13 926(b), Sections one through three for keeping or
14 maintaining such a dog, and so signed.

15 HEARING OFFICER: Fine, thank you. I'm
16 going to close the hearing. Thank you all for
17 attending, appreciate it.

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C E R T I F I C A T E

STATE OF DELAWARE)
)
KENT COUNTY)

I, Pamela C. Herrmann, Registered Professional Reporter and Notary Public, do hereby certify the foregoing pages were taken before me at the time and place indicated herein; that said witnesses were by me duly sworn/affirmed; that the testimony was stenographically reported by me and thereafter reduced to typewriting under my personal supervision; that I am neither of counsel nor kin to parties in said action nor interested in the outcome thereof.

WITNESS my hand this ____day of _____, 2015.

Pamela C. Herrmann
Registered Professional Reporter
and Notary Public