

November 1, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19009454**

DARRELL JACOBSON AND KIMBERLY WALLS
Animal Services Enforcement Appeal

Activity no.: A19001066

Appellant: **Darrell Jacobson and Kimberly Walls**

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King County: Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. In one of (if not the) most horrific dog/human interactions we have reviewed in our 200-plus vicious dog appeals, the aptly-named Brutus attacked an invited visitor, biting her and shaking her violently, breaking her wrist in six places. She underwent major reconstructive surgery and is unlikely to ever regain full use of that hand. Today we

decide an appeal of two Regional Animal Services of King County (Animal Services) orders, one declaring Brutus vicious and the other ordering Brutus removed from the County.

2. One of the reasons we are so behind on this decision—the latest we have ever been on any decision in our seven years as the examiner—is that it has been such a difficult one to write. We take appeals of removal orders very, very seriously. We have overturned more removal orders than we have sustained. And where we have ordered removal, the owners have typically been irresponsible and blown through several stop signs, eventually reaping what they sowed.
3. That is not at all our scenario today. There is no “bad guy” here. Still, after hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, we sustain the viciousness determination and the removal order, although we reduce the applicable penalty and provide an extended period for Appellants to rehome Brutus outside of King County.

Background

4. The basic facts here are not in dispute and we found all the witnesses credible. Kimberly Walls owns Brutus, an approximately 106-pound Bernese Mountain Dog who is often cared for by Kimberly’s¹ brother, Darrell Jacobson. Darrell noted that Brutus is especially protective of women in the house and of the grandkids. Knowing Brutus’ protective nature and reticence toward strangers, Darrell takes steps to prevent just what happened on March 7. He explained that when visitors arrive at the house, he has an agreement with the house owners to ensure Brutus is secured in a room or in the backyard.
5. On March 6, Tammy, another resident of the house, asked Carl Mitcheson and Cora Amick to take her to a medical appointment the following day. Carl and Cora dutifully arrived at the house the next day to pick Tammy up. Per Darrell, Brutus knew and felt comfortable around Carl, but not around Cora. The home owner’s son, Michael Harley, echoed this, observing that Brutus knew Carl and would not have caused a problem, but that Brutus did not know Cora and could be expected to be protective.
6. Darrell normally gets the heads up when visitors are coming, so he is able to secure Brutus well before any altercation could occur. Carl noted that on previous visits, someone had contained Brutus and there had been no problems. But on March 7, Darrell had no knowledge that visitors were coming until it was too late. And Kimberly explained that she normally would have taken Brutus with her to the grandkids’ house to babysit. However, due to her recent surgery, she did not do that on March 7, leaving Brutus in Darrell’s care.

¹ We normally use last names, but given the variety of people in play, the witnesses all referring to each other by first names, and the multiple Jacobsons, we follow that approach.

7. When Carl and Cora arrived at the house that day, they saw Michael on the porch. Michael thought Brutus was not in the house, so he told them it was fine to go in. Stacy Beutler met Carl and Cora just inside the door, and Stacy too did not know where Brutus was. Cora and Carl started walking up the stairs.
8. Cora testified that as she and Carl walked up the stairs, Brutus came up and attacked her. Carl was candid, before he even started recounting events inside the home, that his memory was a little different than Cora's in one respect: he remembered Brutus coming up from behind, sniffing them, but then passing them without immediately attacking. It was only as they approached the landing (with Brutus thus *above* them) that Brutus doubled back and attacked. Whether Brutus attacked from below on his first pass or from above afterwards is not material, either to our characterization of the attack or to our assessment of Cora's and Carl's credibility. As Michael accurately observed, "it all happened so fast."
9. Brutus did not just bite Cora. Instead, he bit her and then shook her violently. Cora described Brutus as trying to take her to the ground or rip her arm off. Brutus would not let go, so Carl had to punch Brutus to get him off. Stacy confirmed this—she came when she heard screaming and she saw Carl trying to get Cora's hand out of Brutus' mouth, having to hit Brutus to eventually get Cora free. Cora described looking down and seeing "no wrist there." Carl described it as Cora's arm just falling down. Everyone described a huge amount of blood.
10. Darrell testified that he started out in his bedroom, with the door closed, and unaware that Carl and Cora had entered the house. He heard Brutus yelp, followed by Cora's scream. By the time he got his door open and looked down the stairs, Carl had gotten Brutus off Cora. Brutus ran into Darrell's room, and Darrell closed the door behind him. He threw Carl a freshly-laundered towel. He yelled for someone to call 911.
11. Cora was transported to the hospital. Brutus had broken Cora's arm in six places. She was in surgery for five hours to reconstruct her arm and put in plates and screws. She had multiple visits to the orthopedic surgeon. She has flashbacks. She is still in physical therapy and does not have full use of that hand, her dominant hand up until now. Her doctors have told her not to expect to ever regain full use of that hand.
12. Darrell's testimony that he heard Brutus yelp *before* he heard Cora scream raises the specter that perhaps Carl or Cora initiated contact with Brutus and provoked Brutus. Carl was adamant that he did not touch or try to touch Brutus and neither did Cora. Carl said he had been over a few times, knew Brutus was "a little scary," and knew not to pet Brutus.
13. Cora was even more forceful. She knew Brutus was "dangerous" and she knew to "stay the hell away from that dog." She explained that she knew Brutus was violent because people at the house had told her that Brutus had been violent. That is contrary to Michael's testimony that Brutus will bark and warn people, and that Michael had previously put Brutus out back for safety reasons, but that Michael had never known Brutus to actually go after anyone. Darrell testified that nothing like this had ever

happened. Cora’s belief that Brutus had a history of actual violence was not based on her own, pre-March 7, observation and was not supported by any of the many witnesses who testified at our hearing.

14. Obviously, Brutus has significant aggression issues with strangers, which is why, when unfamiliar visitors came over, folks in the house were dutiful to lock Brutus away or to personally escort those visitors through the house. But there is a difference between Brutus being “a real asshole” and “not nice”—as others in the house described him—versus Brutus actually having bitten anyone before March 7.² We do not find that Brutus had a prior violent history.
15. However, what is important about Cora’s testimony on this point is that when Cora walked into the house on March 7, *she believed* Brutus was violent. That makes it highly unlikely that she would have initiated any contact with Brutus that might have provoked Brutus. We find that neither she nor Carl touched Brutus prior to Brutus’ attack.

Analysis

16. Unless directed to by law—and no special directive applies to today’s case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement, Animal Services bears “the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed.” KCC 20.22.080.G; .210.

17. KCC 11.04.020.BB defines as:

Having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.

KCC 11.04.230.H declares as a nuisance, “Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.”

18. Thus, attacking or biting a human only qualifies as vicious if it is “without provocation.” “Provocation” in the dog context requires the dog’s reaction to be *proportional* to the victim’s act. *Bradacs v. Jacobone*, 244 Mich. App. 263, 273–75, 625 N.W.2d 108 (2001); *Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000); *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995). Thus, where a child inadvertently stepped on a dog’s tail, and the dog reacted with a single scratch (albeit a serious one to the child’s eye), the court found “provocation” and not a vicious attack out of all proportion to the incitement. *Nelson v. Lewis*, 36 Ill. App. 3d 130, 134, 344 N.E.2d 268 (1976).

² Ex. 2 at 004 n.1 & 005 n.2.

19. We found above that neither Carl nor Cora touched Brutus before he attacked. But—and we are speculating here—even if, say, either Carl or Cora accidentally stepped on Brutus’ tail or something, that would be relevant if Brutus had responded with a “back off” nip. A nip in such a scenario could conceivably have been a proportionate response. Again, we do not find provocation for Brutus to do *anything* aggressive to Carl or Cora, but even if there was some incitement, Brutus’ actual response was night and day different from a nip. Brutus tore into Cora in a truly gruesome way, grossly disproportionate to anything Cora or Carl might have done to incite him. Ex. 10. Brutus bit and attacked a human being without provocation and constitutes a danger to the safety of persons lawfully on the animal’s premises. We sustain Brutus’ viciousness designation.
20. Removal is a more involved analysis. In deciding whether a vicious animal must be removed from the County or instead allowed to remain in the County under certain conditions, we must consider:
- a. the breed of the animal and its characteristics;
 - b. the physical size of the animal;
 - c. the number of animals in the owner's home;
 - d. the zoning involved; size of the lot where the animal resides and the number and proximity of neighbors;
 - e. the existing control factors, including, but not limited to, fencing, caging, runs and staking locations; and
 - f. the nature of the behavior giving rise to the manager's determination that the animal is vicious, including:
 - (1) extent of injury or injuries;
 - (2) circumstance, such as time of day, if it was on or off the property and provocation instinct; and
 - (3) circumstances surrounding the result and complaint, such as neighborhood disputes, identification, credibility of complainants and witnesses.

KCC 11.04.290.A.1.

21. Brutus is large, approximately 106 pounds. Ex. 2 at 004, n.1. He was violent enough not just to bite and release Cora, but to bite and repeatedly shake her, only letting go after Carl continued hitting him. He caused Cora ghastly, permanent injuries, both emotionally and physically. Ex. 10.
22. One could imagine a scenario where, for example, a dog did something extremely violent but totally out of character with its normally docile attitude toward strangers, something the caretakers had no way to predict or prepare for and, gosh, now that they know it, they can do X, Y, Z to guarantee it never happens again. That is not our scenario here. Brutus’s caretakers *already* knew Brutus had troubling tendencies, and they did everything they could to ensure that Brutus was put away when visitors came over or that visitors were personally escorted through the house. And that was not enough to prevent what

happened on March 7, nor is there any foolproof guarantee to ensure nothing like this ever happens to anyone again, in a house with so many residents and so many visitors.

23. Certainty would not be so necessary if the results of a single slip up were not so dire. So, for example, in one recent case, we affirmed a viciousness designation against an 8-pound dog who bloodied a neighbor's calf, but we granted that owner's request to modify Animal Services' compliance order to allow her to install and rely on an electric fence, instead of the traditional fence (padlocked to prevent accidental release) normally required for a vicious dog. While recognizing that electric fencing is nowhere near foolproof—batteries can fail, collars may not quite be adjusted properly, or a particularly motivated dog can push through the pain and bust out—we explained that the more damage the animal has a history and capability of inflicting, the more airtight the containment must be going forward. We reasoned that if at some point in the future the electric containment system failed, the results of a single failure would not likely be catastrophic. An 8-pound dog can only do so much damage.
24. The 100-plus pound Brutus is on the distant, opposite end of the spectrum. The carnage he was able to inflict in a few seconds was impressive, in the most graphic and terrible way. As much as it pains us to require Appellants to give up a dog they love so much, we have to uphold Animal Services' removal order. One could envision suitable new home candidates—perhaps someone with a large, fenced area who entertains very few visitors. But if Appellants cannot locate and arrange for a suitable home for Brutus outside of King County, they will need to turn him over to Animal Services.
25. We will, however, give Appellants an extended period to try to set Brutus up outside King County. Animal Services' order stating that Brutus must be removed within 48 hours is not realistic. Ex. 7 at 003. How is anyone supposed to find a suitable new home, outside King County, for a vicious dog, and actually get the dog microchipped and out of King County, all within two days? Six weeks seems more reasonable.
26. So by **December 13, 2019**, Appellants must either (a) microchip Brutus, find and disclose to a potential new owner that Brutus was ordered removed from King County as a threat to public safety, have that person agree to take Brutus on, actually get Brutus out of King County, and provide Animal Services proof that this new owner lives outside of King County, or (b) surrender Brutus to Animal Services. As long as they timely and successfully follow one of those two courses by December 13, the \$1,000 penalty applicable to a removal order will not come due. If they do not, or if they are later complicit in Brutus being brought back into King County, they will owe the entire \$1,000 amount.
27. As to the \$500 penalty applicable to the viciousness violation, we find some reduction in order. This was not a scenario where Appellants were willfully oblivious to the danger Brutus posed, or lackadaisical in their approach to avoiding what happened on March 7. They had a system in place to try to contain Brutus when guests arrived—locking him up or personally escorting visitors through the house. Those efforts were in vain, but

Appellants were trying their best. As we wrote in the beginning, there are no “bad guys” in this scenario.³ We halve the \$500 penalty.

DECISION:

1. We deny Appellants’ challenge to Brutus’ viciousness designation, but we reduce the penalty to \$250, due by **December 13, 2019**.
2. By **December 13, 2019**, Appellants must either:
 - A. Microchip Brutus, find a potential new owner outside of King County, disclose to that person Brutus was ordered removed from King County as a threat to public safety, have that person agree to take Brutus on, actually get Brutus out of King County, and provide Animal Services proof that this new owner lives outside of King County, or
 - B. Surrender Brutus to Animal Services.
3. As long as Appellants timely and successfully follow (a) or (b) by December 13 and thereafter are not complicit in Brutus later being brought back into King County, the \$1,000 penalty attached to the removal order is waived. If not, Animal Services may collect the entire amount.

ORDERED November 1, 2019.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *December 2, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

³ That might not be entirely true. Per the field notes, Scott Jacobson apparently tried one of the more offensive victim-blamings we have encountered—pointing the finger at *Carl and Cora* for coming into the house, despite Michael acknowledging that he had (regrettably) invited them in. Ex. 2 at 005 n.2. If the notes are an accurate recounting of Scott’s statements, that is reprehensible. However, Scott did not testify at our hearing, and it is possible that the Animal Services officer misunderstood him. That is one reason we typically put little weight on hearsay statements.

**MINUTES OF THE SEPTEMBER 4, 2019, HEARING IN THE APPEAL OF
DARRELL JACOBSON AND KIMBERLY WALLS, REGIONAL ANIMAL
SERVICES OF KING COUNTY FILE NO. V19009454**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Cora Amick, Stacy Beutler, Michael Harley, Darrell Jacobson, Carl Mitcheson, and Kimberly Walls. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record:

Exhibit no. 1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. 2	RASKC investigation report no. A19001066
Exhibit no. 3	Statement, from Cora Amick, dated March 26, 2019
Exhibit no. 4	Medical Reports, from Cora Amick, received March 28, 2019
Exhibit no. 5	Notice of violation no. V19009355, issued April 27, 2019
Exhibit no. 6	NVOC mailing/tracking history
Exhibit no. 7	Notice and order for removal no. V19009454, issued June 12, 2019
Exhibit no. 8	Proof of Service
Exhibit no. 9	Appeal, received July 6, 2019
Exhibit no. 10	Photographs of injuries, sent by Chelsea Eykel
Exhibit no. 11	Photographs and letters submitted by Appellants

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November 1, 2019

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19009454**

DARRELL JACOBSON AND KIMBERLY WALLS
Animal Services Enforcement Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED November 1, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Beutler, Stacy

Carl Mitcheson, Cora Amick

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Harley, Michael

Jacobson, Darrell

Hardcopy

Walls, Kimberly

Hardcopy