

October 9, 2019

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19009681**

DAVID HARJA

Animal Services Enforcement Appeal

Activity no.: A19004733

Appellant: **David Harja**

[REDACTED]
Snoqualmie, WA 98065

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by Chelsea Eykel
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

1. On August 4, 2019, Regional Animal Services of King County (Animal Services), issued a Notice of Violation and Order to Comply (NVOC) to David Harja (Appellant), asserting a violation of KCC 11.04.230.H and levying a \$500 penalty. The NVOC states that on July 28, 2019, Appellant's dog Dillon attacked and bit another dog causing multiple wounds. Exhibit (Ex.) 2.

2. Appellant timely appealed the NVOC. The appeal is a combination of statements by David Harja (Ex. 6) and Heather Harja¹ (Ex. 18). Both accounts describe an interaction with a dog, Taz, and her owners Cameron and Kirk Pasbrig (Complainants), following one of Dillon’s and Izzy’s (the Harjas’ other dog) regularly-occurring, off-leash swims in the Snoqualmie River. The appeal arguments are that that they did not see Dillon bite Taz and that Dillon was provoked by the Complainants. The relief requested was reversing the vicious nuisance charge, KCC 11.04.230.H, or modifying it to a dog running at large nuisance, KCC 11.04.230.B.
3. We convened a hearing on September 25. Having evaluated the testimony, studied the exhibits, considered the parties’ arguments, and analyzed the relevant law, we deny the appeal.
4. Deciding this appeal requires analyzing the differing accounts of the July 28 encounter, making findings of fact based on that analysis, and drawing legal conclusions based on those facts.
5. There are two controlling codes here. The definition of vicious, KCC 11.04.020.BB:

Vicious means 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.

And the elements of a vicious nuisance violation, KCC 11.04.230.H:

Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.

6. First, we must resolve the two primary factual disputes of the case: (1) whether Dillon attacked Taz and, if so, (2) whether Dillon was provoked to do so.
7. Our analysis benefits by breaking down KCC 11.04.020.BB into its component parts:

$$\text{Vicious} = \text{A (1 or 2)} + \text{B} + \text{C (1 or 2 or 3)} + \text{D (1 or 2 or 3)} + \text{E}$$

A	1	having performed the act of
	2	having the propensity to do any act

B	endangering the safety of
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C	1	any person
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¹ Though signed by David Harja, the statement was written from Heather Harja’s perspective. There are a number of cues as to the writer: “On this day, we had walked up to Lot 4...so we could inspect the water tower as my husband is a Commissioner for the Snoqualmie Pass Utility District as part of his job.” Later on, “By this time, my husband and daughter had arrived. He was trying to calm the woman....” And, “My husband at that point offered to help pay for any veterinary bills should their dog be injured....” Ex. 18.

	2	animal
	3	property of another

D	1	biting a human being
	2	attacking a human being
	3	attacking a domesticated animal

E	without provocation	
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8. Second, we need to determine whether the elements of KCC 11.04.230.H are present:

Vicious nuisance = A + B + C (1 or 2)

A	any animal that has exhibited vicious propensities	
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B	constitutes a danger to the safety of	
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C	1	persons
	2	property

9. First, we tackle whether the altercation between Dillon and Taz constituted an attack on a domesticated animal.
10. Ms. Harja did not attend the hearing and therefore her account was hearsay. While hearsay statements are usually admissible, they are typically accorded significantly less weight than under-oath, cross-examinable testimony. We give little weight to Ms. Harja's written account of what she observed of the interaction, as Ms. Harja was not under oath or subject to cross-examination and there is better evidence available (i.e., testimony from Mr. Harja and the Pasbrigs on the sequence of events).
11. In her oral testimony, Cameron Pasbrig described her recollection of the July 28 incident:

We were walking up to go hiking. The dog was walking between us. We weren't thinking much of anything...sunny day. Out of nowhere all I saw was two dogs running towards me. A larger dog fast...he just started growling and just went full charge at us. There was a smaller one that came up to me...I was shooing off the smaller dog and turned around and saw the bigger dog's teeth in my dog's leg.

Testimony of Cameron Pasbrig.

12. In his direct testimony, Kirk Pasbrig stated that when he first saw Dillon, he was 20 to 30 yards away. He continued:

...two dogs, as soon as we noticed them, the one dog...took off on a dead run towards us. Actually, both of them did, the other one was a little bit behind. It came around to my right and hit our dog in the rear full

speed with its mouth trying to bite...The other went around the other side of my wife. At that point we had to try to shoo the dog off by whatever means. We were kicking, screaming...Immediately after our dog was hit, she started yelping, screaming...

Testimony of Kirk Pasbrig.

13. David Harja's written submittal reads:

Dillon approached the couple and dog in an inquiring manner...In attempting to smell the couple's dog's butt, the woman began shouting and kicking Dillon, followed by the man shouting and kicking Dillon connecting with Dillon's sides in the rib area. In the commotion, it is reasonable to assume that their dog got bit while defending himself from their physical assault, which then would be he was provoked. Neither dog was actually engaged in a dog fight during the entire encounter. We did not actually see Dillon bit [sic] the dog, nor did the other dog yelp, bark or cry out in pain.

Ex. 6.

14. In his oral testimony, Mr. Harja stated that Ms. Harja and Dillon and Izzy reached the crest of the embankment first, followed by Heather Harja and Jessica Harja (the Harja's daughter) with Mr. Harja coming up last. Later, during questioning, he stated the following:

When I crested the hill they were already halfway to the Pasbrigs...100 to 150 feet away...Took them 10 to 15 seconds to travel the remaining distance...Dillon approached first...They were screaming and then as he approached them and got close to them, they started kicking at him. He was just trying to greet them but they were kicking him so at that point he was starting to get afraid because he was being kicked at and they were yelling at him so then that's when he actually started going after their dog because at that point he's feeling threatened...I observed a basic dog fight. You know, barking, yelping, both of them going for each other, whether they're nipping each other. Most dogs like to tend to nip each other in the hindquarters...My daughter was behind my wife and in front of me. The entire interaction lasted around three maybe four minutes.

Testimony of David Harja.

15. There is significant evidence in the record documenting the injuries Taz sustained.
- A. Exhibit 13 is a photograph of Taz's right thigh, which shows a large swollen lump consistent with the Pasbrigs' description of where Dillon bit Taz.

- B. Debra Wulff, DVM, on July 31, wrote, “Taz was attacked by 2 boxers on Sunday and sustained injuries to both pelvic limbs, with the right leg more extensively affected than the left.” Ex. 8.
 - C. Later, on August 19, Christina Crouthers, DVM, wrote, “I strongly suspect a traumatic progressive hernia secondary to dog fight, but more diagnostics are needed to confirm....” Ex. 10.
16. We find that the significant inconsistencies between David Harja’s written statement and testimony, especially as it relates to witnessing a dog fight, compromise his credibility.
 17. We find the Pasbrigs’ description of Dillon’s approach and his behavior towards Taz more credible than Mr. Harja’s. And the veterinary records are sufficient proof of Taz’s physical injuries.
 18. Dillon attacked and compromised the physical safety of Taz.
 19. Next, we address the question of provocation.
 20. Ms. Pasbrig described the behavior of Dillon and Izzy as they approached:

They were growling...that dog just came and just did not stop. It showed no signs of wanting to be friendly...The way those dogs approached us, they put their ears down and were growling and ran at my dog...When I turned around, I saw the bigger dog’s teeth in my dog. And, yeah, we were screaming and trying to kick the dogs off.

Testimony of Cameron Pasbrig.

21. David Harja’s testimony that Heather and Jessica were in front of him when the confrontation began leads us to find that his view was partially obstructed during the beginning of the interaction.
22. Though the exact distance is not certain, what is clear from all of the testimony is that the Harjas were somewhere between 20 to 150 yards away from Dillon, the Pasbrigs, and Taz for most of the interaction between the dogs, most critically, at the beginning.
23. The Pasbrigs, being the closest to the two dogs, gave convincing and consistent testimony that Dillon’s approach was rapid, that he quickly went after Taz, bit Taz, and that they were yelling and kicking at him in order to protect their dog from further harm.
24. Dillon was not legally provoked. Dillon’s actions on July 28, 2019, meet the definition of vicious.
25. Next, we need to determine whether Dillon meets the code’s definition of a vicious nuisance.

26. While KCC 11.04.020.BB is backward looking, KCC 11.04.230.H is both backward-and forward-looking. It describes a vicious nuisance as one where an animal has both displayed vicious behavior and “constitutes a danger.”
27. From the written statements and testimony of the Harjas, it sounds like the July 28 incident was Dillon’s first attack. There are dogs that never bite other dogs. There are dogs who only ever bite another dog once. There are dogs that react with fear-aggression to every dog they see. There are dogs that react with aggression to every dog they see. There are dogs that only display aggression when protecting what they perceive as their property, e.g. their food bowl, their bed, etc.
28. We are not required to know with 100% certainty that Dillon will attempt another attack in order to conclude that he is a danger to others, only that there is a real possibility that he will, based on his behavior here. And, considering the injuries Taz sustained, Dillon is clearly capable of inflicting significant physical harm. Dillon is a danger to the safety of persons and property.
29. We are unable to read Dillon’s mind to figure out whether there was one specific aspect of the subject situation that triggered his attack response, or whether it was a combination of circumstances. We do have this interaction as a data point, which strongly suggests that Snoqualmie River swims present an elevated risk for Dillon to attack. The Harjas admit that after this incident, they allowed and plan to continue Dillon’s off-leash swims. This increases the likelihood of future incidents.
30. We think Animal Services erred in not ordering confinement here. We would have ordered that Dillon always be leashed when off his property. So, the Harjas caught a break here. If they persist in allowing Dillon to swim off-leash, the Harjas should seriously consider tying a long lead between themselves and their dog while he does so. Though it is certainly less freedom than Dillon currently enjoys engaging in this activity, and not without some risk to the person on the other end of the lead, it ensures that the consequences of the choice to continue to place him in this triggering scenario are borne by the Harjas and their dog—and not by unaware and unsuspecting visitors to this recreational area.

DECISION:

1. Animal Services proved by a preponderance of the evidence a violation of KCC 11.04.230.H.
2. We DENY the appeal.

ORDERED October 9, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *November 8, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

MINUTES OF THE SEPTEMBER 25, 2019, HEARING IN THE APPEAL OF DAVID HARJA, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009681

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sgt. Chelsea Eykel, David Harja, and Cameron and Kirk Pasbrig. 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	Notice of violation no. V19009681, issued August 4, 2019
Exhibit no. 3	NVOC mailing/tracking history
Exhibit no. 4	RASKC investigation report no. A19004733
Exhibit no. 5	Complaint form of July 28, 2019 incident by Cameron Pasbrig, dated August 2, 2019
Exhibit no. 6	Appeal, received August 13, 2019
Exhibit no. 7	Summit Vet bill, dated July 29, 2019
Exhibit no. 8	Summit Vet record, dated July 31, 2019
Exhibit no. 9	Summit Vet bill, dated July 31, 2019
Exhibit no. 10	Sacajawea Vet record, dated August 19, 2019
Exhibit no. 11	Northwest Veterinary Imaging report, dated August 19, 2019
Exhibit no. 12	Email from Cameron Pasbrig, sent August 28, 2019
Exhibit no. 13	Photograph of wound
Exhibit no. 14	Photograph of wounds/bruising
Exhibit no. 15	Photograph of wounds/bruising
Exhibit no. 16	Photograph of wounds/bruising
Exhibit no. 17	Map of subject area
Exhibit no. 18	Appellant Statement, dated August 5, 2019

VM/jo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19009681**

DAVID HARJA

Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 October 9, 2019.



Jessica Oscoy
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Harja, David

Hardcopy

Pasbrig, Cameron

Hardcopy