

January 15, 2020

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19010036**

CASEY LYON

Animal Services Enforcement Appeal

Activity no.: A19007849

Appellant: Casey Lyon

Maple Valley, WA 98038

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
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FINDINGS AND CONCLUSIONS:

Overview

1. On Halloween, two dogs escaped from Casey Lyon's yard and terrorized multiple neighbors. Regional Animal Services of King County (Animal Services) issued a violation notice and compliance order asserting that the dogs were running at large, unlicensed, and vicious. Ms. Lyon timely appealed. 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 violations and compliance terms, but significantly reduce the monetary penalties.

Testimony

2. Edward Hagstrom testified that he and his son, Elijah, were out trick-or-treating on Halloween. They visited a friend's house. No one was home, so they left. Back on the sidewalk, two dogs approached aggressively, growling and snapping. One would lunge, then back away, then the other would lunge, then back away. This happened for a minute or two.
3. A bystander shouted, and the dogs turned their attention to the bystander. The bystander tossed a rock, which diverted the dogs momentarily. As Elijah walked away in front of Mr. Hagstrom, the dogs passed Mr. Hagstrom and went after Elijah. Mr. Hagstrom yelled at Elijah to stop in his tracks. The dogs were jumping and lunging snapping at them. This went on for 3-5 minutes. It was the most terrifying incident Mr. Hagstrom has experienced, with Mr. Hagstrom worried the entire time that at any moment Elijah would be bitten.
4. Mr. Hagstrom explained that he has always had dogs, including pit bulls, Dobermans, boxers, and German Shepherds. He has taught his kids not to get in dog's faces, otherwise they may snap. He described a previous incident where a dog bit his daughter in the face. He did not complain about that, because he felt his daughter had provoked the dog. However, on Halloween neither he nor Elijah did anything to provoke the dogs, and the dogs continued their pursuit, even as other people tried to intervene.
5. Serena Clark testified that she was alerted to the altercation when a woman came to her door with a toddler, saying the dog had snapped at her toddler and asking whose dogs they were. Ms. Clark came out to see people screaming and running from the dogs. People could not get by in front of the house because those dogs were snapping at passersby, preventing them from passing. She called 911.
6. Ms. Clark added that the dogs were acting in a scary, aggressive manner and were very frightening. She does not fear large dogs. She has worked as a kennel manager and has always owned dogs, including large dogs. She opined that those two dogs were on the verge of really hurting someone that night. They were "packed up" and really protecting the house. If the police had not arrived, she thinks somebody would have gotten hurt. Ms. Clark emphasized that she had never seen the dogs out before or since—i.e. that the owners have been (and continue to be) responsible.
7. Jennifer Hagstrom was on the phone with her husband that night, first just going over logistics. She stayed on the phone as things went down. She heard her husband in the background speaking to their son and providing instructions. She also heard her husband speaking to another adult, and then the dogs coming back again. This altercation went on for long enough that she felt she needed to get in the car and go to them. It was long enough that she had time to have a conversation with her daughter, and both get their shoes on, make it outside, and start the car.
8. Ms. Lyon testified that the dogs—Flynn belonging to her, Duke to Nathan McPherson—were misidentified as pit bulls. On Halloween, she went to her parents house. They normally put the dogs in their kennels before they leave the house, but in

the Halloween excitement they forgot. Even without the kennels, the dogs have never gotten out of the yard before or since, but somebody must have unlatched the gate that night. (That make sense, given that it was a Halloween full of trick-or-treaters going up to front doors.)

9. The dogs were not licensed at the time, but they got them licensed within a few days. Other than Halloween, there has always been someone present when the dogs are out in the yard. The dogs have never hurt anyone, and neighbors are constantly in the house without any problems. Numerous people pet the dogs when they are being walked on leashes. She thinks the dogs got scared, because they got out on their own for the first time, and that it was a territorial thing.
10. Mr. McPherson testified that after they were alerted to the situation by a text, he took off for the house. By the time he got to the scene, the dogs were hiding under his truck. The cops were trying unsuccessfully to get them from under the truck. The dogs came out when Mr. McPherson called, went straight to the yard, and straight inside the house. He explained that the fence latch was undone, and that had never happened before. He opined that the trick-or-treaters' masks might have scared the dogs. His dog is chipped and neutered.

Analysis

11. 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. 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.
12. The first issue is whether the dogs were “running at large,” meaning “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control,” with “under control” itself including “restrained from approaching any bystander or other animal” when “off the premises of the owner.” KCC 11.04.020.W, AA; .230.B. This is uncontested.
13. There is also no dispute that, as of Halloween, the dogs were unlicensed, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered. Both dogs were licensed within a few days of the violation.
14. Third, and most significantly, Animal Services asserts that both dogs are “vicious,” which 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.”

15. We have not required an actual bite to sustain a viciousness designation, given the “including, but not limited to” language in the County definition. We have required something more than a dog invading personal space and barking aggressively. Our viciousness rulings have tracked RCW 9A.28.020, which includes in the definition of “criminal attempt” the requirement that the accused perform some “act which is a substantial step toward the commission of that crime”—here, some step towards actual contact, not just mere proximity. Here, the dogs lunged and snapped at multiple passersby.
16. Moreover, one thing the overwhelming majority of our 200+ viciousness designation appeals have had in common is some statement along the lines of, “It all happened so fast.” The action is usually over in a few seconds, sometimes in less than a second. In one recent case, there was video of appellant’s dog charging at a mother and her children, then turning and running away just as fast, and on a separate day repeating this with a child walking alone. We performed an almost frame-by-frame analysis of the split-second in which the dog encroached into the neighbors’ space before running off. We determined that, while the dog got aggressively close both times, the dog did not actually lunge or snap at anyone. Here, in contrast, not only did the dogs lunge and snap at multiple passersby, they did so over an extended period; this was no split-second miscommunication.
17. Both Flynn and Duke endangered the safety of people and constitute a danger to people’s safety. We sustain both viciousness designations and the confinement order.
18. That leaves the monetary penalties. There is no question that a \$1600 penalty does not reflect the relatively minor culpability level here. Ms. Lyon and Mr. McPherson had been responsible owners before Halloween and since Halloween. Yes, they forget to put the dogs in their kennel when they went out that night, but that likely would not have mattered on a different night, because the yard was fenced. (Absent a non-trick-or-treating situation, strangers do not normally unlatch gates after dark.) And although the dogs were not licensed, they licensed them within days of the incident.

DECISION:

1. We deny the appeal as to all the violations and as to the order requiring containment.
2. We partially grant the appeal as to the monetary amount. We reduce the penalty to \$200, due by **March 16, 2020**.

ORDERED January 15, 2020.



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 *February 14, 2020*. 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 JANUARY 8, 2020, HEARING IN THE APPEAL OF CASEY LYON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19010036

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Edward and Jennifer Hagstrom, Serena Clark, Nathan McPherson, and Casey Lyon. 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 | Online Complaint form of October 31, 2019 incident by Edward Hagstrom, dated November 1, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A1900784901 |
| Exhibit no. 4 | Maple Valley Police CAD Report |
| Exhibit no. 5 | Notice of violation no. V19010036, issued November 6, 2019 |
| Exhibit no. 6 | USPS Proof of Delivery |
| Exhibit no. 7 | Appeal, received November 21, 2019 |
| Exhibit no. 8 | Map of subject area |

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19010036**

CASEY LYON

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 January 15, 2020.



Jessica Oscoy
Legislative Secretary

Clark, Sirena

Eykel, Chelsea

Regional Animal Services of King County

Hagstrom, Edward/Jennifer

Hardcopy

Lyon, Casey

Hardcopy

McPhearson, Nathan

Hardcopy