

June 4, 2020

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

King County Courthouse
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Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20010423**

JENNIFER AND THOMAS CASTEEL
Animal Services Enforcement Appeal

Activity no.: A20001563

Appellants: **Jennifer and Thomas Casteel**

[REDACTED]
Kent, WA 98030

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by Shelby Russell
Regional Animal Services of King County
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Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) asserts that on February 18 Jennifer and Thomas Casteel's dogs, Buddy and Roscoe, were both running at large, that Roscoe was threatening a person, and that Buddy was not vaccinated and qualifies as vicious. The Casteels appeal. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violations, modify Buddy's compliance order to allow him to continue using off-leash dog parks, and reduce the monetary penalty.

Evidence

2. Diana Louie described the events of February 18. As she walked along the public street, she saw a German Shepherd-looking dog and a smaller, lighter-colored, tannish-yellowish dog. The dogs crossed the street and approached her. As the dogs circled her, she stayed still, trying to make as little movement as possible. She had never been afraid of dogs before February 18. She did not raise her hands or scream. Despite this, the larger dog bit her left hand.
3. The bite caused her excruciating pain, and she cried out to a passing motorist, who stopped to help. A neighbor, Carrie Morrison, also came out. While the motorist drove on to follow the dogs, Ms. Morrison (who happens to be a nurse) brought her inside, washed the blood off her hand, put on antibiotic, and suggested she go to the hospital. At the hospital, doctors determined the dog bite had fractured Ms. Louie's hand. Ex. 8 at 003, 005.
4. Linda Buetow explained that she was the passing motorist. As she drove up, about 5 feet to her right she saw a woman (Ms. Louie) with her hand in the air, blood streaming down her arm, asking for help. About 4 feet in front of her she saw two dogs crossing the road away from Ms. Louie. Ms. Louie pointed in the direction of the dogs as the ones that had hurt her. There were no other dogs around. She did not see the dogs actually bite Ms. Louie, but she arrived seconds later, and the dogs were only a few feet away from Ms. Louie when she arrived.
5. Ms. Buetow described other neighbors coming out to help Ms. Louie, including a nurse (Ms. Morrison). With help at hand, Ms. Buetow followed the dogs in her car to get a picture of them. She took and posted her pictures of the dogs. Exs. 14, 15 & 20. She did not personally observe the dogs do anything aggressive, nor had she seen those dogs before or since.
6. Neighbor Galina Onishcheko did not witness anything on February 18, but she talked to Ms. Louie later. Ms. Louie, who had her hand in a cast at the time, asked her if she had seen the black dog with a bandanna and a smaller dog. Ms. Onishcheko shared her experience with those dogs. Earlier in February, her daughter-in-law was walking her two-year-old toddler, when those two dogs ran to her porch, barking aggressively; her daughter-in-law was able to back into the house and close the door.
7. Another day, the dogs approached Ms. Onishcheko aggressively as she took her garbage to her can. She heard the two dogs barking and saw them run to her. She tried to duck behind the can, but the dogs pursued her. Her son came out with a stick, and the dog slowly backed away.
8. Ms. Onishcheko started investigating who the dogs belonged to. Once she learned the dogs were the Casteels, her neighbors, she decided not to cause any trouble. She looked at the pictures and recognized those as the dogs that had accosted her.
9. Mr. Casteel pointed to statements from veterinarians and others that their dogs are not aggressive. Ex. 4 at 004, Ex. A1-A2. He does not think the picture of Ms. Louie's hand

looks like a bite. His dogs have not displayed any aggression with their grandkids, nor in numerous trips to dog parks. There have been no incidents with the dogs. He does not dispute the running at large violation or that the dogs in question were his, but asserts there is no hard evidence that Buddy bit Ms. Louie or was doing anything more than protecting himself. He disputes that Buddy is vicious.

Procedural and Substantive Standards

10. 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. Four substantive questions follow.
11. Were Buddy and Roscoe “running at large,” on February 18 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”? KCC 11.04.020.W, .230.B. In Kent, “Under control means a dog who is either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner. Evidence that a bystander or other animal was approached by the dog, or evidence that the dog caused physical property damage, is prima facie evidence that the dog was not under control.” Kent City Code 8.03.030.G. Mr. Casteel does not dispute this.
12. As of February 18, was Buddy in violation of KCC 11.04.520, which requires that “[a]ll dogs and cats six months of age or older shall be vaccinated against rabies....”? The Casteels did not challenge this. Ex. 3 at 001. (The Casteels did vaccinate Buddy soon after. Ex. 3 at 004.)
13. Did Roscoe violate KCC 11.04.230.G, which covers “[a]ny domesticated animal that habitually snaps, growls, snarls, jumps upon or otherwise threatens persons lawfully using the public sidewalks, streets, alleys or other public ways”? The Casteels did challenge this.
14. Does Buddy qualify as “vicious,” defined as, “performing the act of... 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,” with “[a]ny 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” qualifying as a nuisance? KCC 11.04.020.BB; KCC 11.04.230.H. The Casteels most certainly challenged this.

Analysis

15. We found the witnesses credible.
16. *Sua sponte* we questioned Ms. Louie about why the investigating file reported that, upon looking at Animal Services photos, said she did not think those were the dogs involved. Ex. 5 at 005. She explained that she changed her mind when she later saw Ms. Buetow's photos. Compare Exs. 14 & 15 with Exs 16 & 17. In case there was any question, in both the photos Ms. Buetow took of the dogs in the street and the ones Animal Services took later in the Casteels' presence, the larger dog is wearing the identical red bandanna. In addition, Ms. Onishcheko also recognized Buddy and Roscoe as the dogs that had accosted her earlier. And Ms. Buetow observed dogs she then photographed standing only a few feet away from the bleeding Ms. Louie. Again, Mr. Casteel accepted that the dogs in question were his, but we are independently satisfied that identification is not an issue.
17. As to whether Ms. Louie was bit, we agree with Mr. Casteel that the pictures of her hand are not indisputable proof. However, we found Ms. Louie's testimony sound. And Ms. Buetow came upon the scene moments later, seeing the Casteel dogs a few feet away from Ms. Louie and Ms. Louie's hand streaming blood down her arm. We would have to concoct a truly outrageous factual scenario to create an alternative explanation. Under the more-probable-than-not-nonstandard that we employ, Buddy bit Ms. Louie.
18. As to whether Buddy was provoked to bite Ms. Louie, because "without provocation" is part of the definition itself, and because the Casteels raised this in their appeal, Animal Services bears the burden of proving the bite was without provocation. As our High Court instructs us, when analyzing "terms of art" we look to "well-established meanings" of words in their specific context. *State, Dept. of Ecology v. Theodoratus*, 135 Wn.2d 586, 589, 957 P.2d 1241 (1998). "Provocation" is a staple of animal jurisprudence, and numerous courts that have analyzed the term in depth have noted that although dictionary definitions of "provocation" can be quite broad, the term applies more narrowly in the dog bite context. Otherwise, animal control ordinances "could be interpreted to mean that provocation exists whenever any external stimulus has precipitated the attack or injury by an animal, *i.e.*, whenever the animal's actions are not completely spontaneous." *Robinson v. Meadows*, 203 Ill. App. 3d 706, 710, 561 N.E.2d 111 (1990).
19. We find Ms. Louie's version credible, and nowhere near the ballpark of what courts have deemed provocation. Even if she had shouted at or tried to shoo off unleashed, unattended dogs accosting her in the street, that likely would not have been provocation for the bite. Staying still like she did before the bite certainly was not remotely provocation.
20. That does not mean we question Mr. Casteel's veracity; we found him credible. We accept his statement that he has never observed his dogs behave aggressively, nor that others who submitted statements on his behalf have ever observed anything alarming. See Ex. 4 at 004, Ex. A1-A2. That, however, is similar to what we hear and read in the majority of vicious animal appeals. Sometime that is a product of owners in denial, but often it accurately reflects the owners' completely objective experience. We recall one horrific example where even the *victim* animals' owner—who came upon the appellants'

animals still engaged in a prolonged, gruesome attack—expressed surprise, because she had previously observed appellants’ animals playing so nicely with other animals.

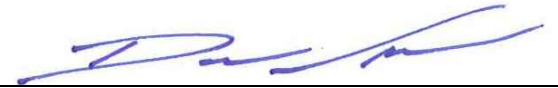
21. Mr. Casteel’s testimony, and the various written statements, does not tell us much about what happened when his dogs were not in a controlled environment. Ms. Onishcheko’s testimony about the dogs, not under supervision, approaching aggressively, is a little more apples-to-apples.
22. Even without Ms. Onishcheko’s testimony, and based purely on eyewitness testimony about February 18 and the documentary evidence, we would have found that Buddy bit Ms. Louie without provocation and constitutes a danger to the safety of persons off his premises. Ms. Onishcheko’s testimony simply adds to that finding.
23. Ms. Onishcheko’s testimony is critical to the issue of whether Roscoe has a habit of threatening persons lawfully using the public ways. Roscoe approaching and circling Ms. Louie on February 18 could not qualify as a habit; doing so on multiple occasions can. We sustain this violation as well, although we note that, unlike a viciousness designation (which carries a \$500 penalty and sets requirements for keeping the dog in King County), the code treats threatening as a basic \$50 nuisance, in the same ballpark as running at large. It comes with no compliance terms similar to an actual vicious dog designation.
24. There is no evidence that Buddy (or Roscoe) have ever behaved aggressively while on the Casteels’ watch. While the *result* of Buddy’s bite was bad—excruciating pain and breaking Ms. Louie’s hand—it was not a sustained, uncontrolled attack. What Ms. Louie and Ms. Onishcheko described does not translate into an obvious threat in the off-leash dog park scenario, so long as the Casteels are actively monitoring their dogs’ activities and providing control. We will modify Buddy’s compliance terms to allow the Casteels to continue taking him to off-leash parks. Ex. 2 at 001.
25. Finally, we address the \$700 penalty, \$500 of which is attributable to Buddy’s viciousness designation. Although Ms. Onishcheko testified to Buddy and Roscoe exhibiting aggression prior to February 18, there is nothing in the record showing that the Casteels’ had any knowledge of that—or had any the reason to be on notice of that potential in their dogs—prior to the investigation into the February 18 altercation. We halve the vicious-related penalty.

DECISION:

1. We DENY the appeal as to all violations.
2. We REDUCE the otherwise-applicable penalty to from \$700 to \$450.
3. We MODIFY Animal Services’ February 2020, compliance order. Subsections A. through C. below are substantively unchanged; D. is new. The Casteels have already microchipped Buddy and provided this to Animal Services, meeting the original term related to microchipping. Ex. 3 at 008.

- A. Secure Buddy in a fenced area suitable for his size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.
- B. Restrain Buddy using a leash no more than eight feet long, with a collar or harness, when taking Buddy off your property. A competent and capable person must handle Buddy at all times when attended outside.
- C. Keep Buddy current on his rabies vaccination.
- D. Buddy is allowed to run in sanctioned off-leash dog parks, provided Mr. or Ms. Casteel is present, and provided Buddy is leashed at all times when not in the car or in the fenced, off-leash area.

ORDERED June 4, 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 *July 6, 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 MAY 20, 2020, HEARING IN THE APPEAL OF JENNIFER
AND THOMAS CASTEEL, FILE NO. V20010423**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Diana Louie, Felix Louie, Linda Buetow, Galina Onishcheko, and Thomas Casteel. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record by the Department:

Exhibit no. 1	RASKC staff report to the Hearing Examiner
Exhibit no. 2	Notice of violation no. V20010423, issued A20001563
Exhibit no. 3	Appeal, received March 31, 2020
Exhibit no. 4	Letter from neighbor, received March 31, 2020
Exhibit no. 5	RASKC investigation report no. A20-001563-01
Exhibit no. 6	Complaint form of February 18, 2020 by Louie Diana
Exhibit no. 7	Written statement of February 18, 2020 incident by Louie Diana
Exhibit no. 8	Medical records, dated February 18, 2020
Exhibit no. 9	Email from Felix Louie to RASKC, dated February 20, 2020
Exhibit no. 10	Email from Felix Louie to RASKC, dated February 28, 2020
Exhibit no. 11	Photograph of injury
Exhibit no. 12	Photograph of injury
Exhibit no. 13	Email from Injbuetow@yahoo.com to Pets
Exhibit no. 14	Photograph of dogs
Exhibit no. 15	Photograph of a dog
Exhibit no. 16	Online complaint form of February 18, 2020 incident by Linda Buetow
Exhibit no. 17	Photograph of dogs
Exhibit no. 18	Photograph of dogs
Exhibit no. 19	Photograph of a fence and gate
Exhibit no. 20	Photograph of a lost dog poster
Exhibit no. 21	Map of subject area

The following exhibits were offered and entered into the record by the Appellant:

Exhibit no. A1	Emailed letter from Cody and Kristen Casteneda, sent May 11, 2020
Exhibit no. A2	Veterinary Records, sent May 11, 2020

DS/jf

June 4, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010423**

JENNIFER AND THOMAS CASTEEL
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 June 4, 2020.



Jessica Oscoy
Legislative Secretary

Buetow, Linda

Hardcopy

Casteel, Jennifer/Thomas

Hardcopy

Louie, Diana

Hardcopy

Louie, Felix

Hardcopy

Onishcheko, Galina

Hardcopy

Russell, Shelby

Regional Animal Services of King County