

October 27, 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. **V20011071-A20013354**

ANKIT JAIN AND Kuhu GUPTA
Animal Services Enforcement Appeal

Activity no.: A20013354

Appellants: **Ankit Jain and Kuhu Gupta**

[REDACTED]
Redmond, WA 98052

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Shelby Russell**
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served a violation notice and compliance order, asserting that Ankit Jain and Kuhu Gupta's dog, Poppins, was running at large, qualifies as vicious, and needs to be contained. Mr. Jain and Ms. Gupta

(Appellants) timely filed a challenge. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we sustain the violations, modify the compliance order to allow Poppins to resume using off-leash dog parks, and reduce the penalty.

Testimony and Evidence

2. On August 14, Pradyumna Narayana testified that he was taking his leashed, 3.5-pound puppy, Oreo, on a walk. As soon as they entered the fenced common area, an unleashed dog (later identified as the Appellants' close to 70-pound Poppins) came running at Oreo from about 30 to 40 feet away. Poppins climbed over Oreo. Mr. Narayana is not sure if Poppins bit Oreo in that initial moment, but Oreo cried, so he grabbed up Oreo in his arms.
3. That was not, unfortunately, the end of the matter. Poppins kept trying to climb Mr. Narayana and bite Oreo, getting his mouth on Oreo once as Mr. Narayana stood there. Mr. Narayana then retreated up the stairs and out the gate towards the street, but Poppins came through the gate and followed, biting at Oreo a few times near the street and connecting with Oreo on one of those.
4. Mr. Narayana recalled that in the process of trying to bite Oreo, Poppins bit his thumb. He explained that he did not think Poppins was trying to bite him, only Oreo, and that the thumb bite was unintentional. Oreo was in pain, so Mr. Narayana put Oreo down. Oreo promptly ran under a car. After Mr. Jain secured Poppins, Ms. Gupta tried to help with Oreo, holding him and checking him over. Eventually, Mr. Narayana's wife retrieved Oreo and they took him back home.
5. Once back home, Mr. Narayana explained that Oreo was in a lot of pain. Oreo allowed them to touch his face and paws, but he would not allow them to touch his abdomen, crying out when they tried. His wife spotted some blood on Oreo.
6. Mr. Narayana took Oreo in for treatment that day, but there was a long wait, so the care provider suggested bringing Oreo back the following day. He did. Oreo had a puncture wound on one side, and on the other side a deeper, long cut that required sutures. Ex. D6. As Poppins was up on his rabies vaccine, Mr. Narayana only needed a tetanus shot.
7. Ms. Gupta testified that she and Mr. Jain had Poppins off-leash in the common, courtyard area. Poppins is friendly and ran at Oreo, wanting to play. Poppins plays rough, but has never been aggressive. Poppins scared Oreo, who tried to hide behind Mr. Narayana. Mr. Narayana picked up Oreo and both Mr. Narayana and Oreo were screaming. Mr. Gupta thinks Poppins was confused and followed them out.
8. Ms. Gupta disputes that Poppins bit Mr. Narayana. Instead, Oreo got scared, and she saw Oreo bite Mr. Narayana's thumb as Mr. Narayana held him. That was when Mr. Narayana let go of Oreo and Oreo ran under the car. She offered medical attention to Mr. Narayana, but he declined.

9. As to Oreo, Ms. Gupta saw Poppins jump at Oreo, but she did not see Poppins actually bite Oreo. She thinks Oreo's wounds were not from Poppins, because she checked Oreo right after and saw no bleeding or injuries.
10. Mr. Jain testified that Poppins is very athletic. They take him to dog parks and doggy daycare centers regularly. Poppins plays with dogs of all sizes. He has never injured another dog or shown aggression, but he is a "forward player" (meaning he initiates interactions). On the day of the incident, they were trying to train him to go off-leash. Mr. Jain heard a person screaming, so he ran out. When he arrived, Ms. Gupta was holding Poppins, Mr. Narayana's left thumb was bleeding, and Oreo was under the car.
11. Mr. Jain explained that he took Poppins, allowing Ms. Gupta to go to Oreo. Ms. Gupta ran her fingers through Oreo's hair. While Mr. Jain saw that Mr. Narayana's hand was bleeding, he saw no blood on Oreo. He thinks Oreo may have cut himself under the car.
12. Appellants submitted a picture of Poppin's large teeth. Ex. A1. They also submitted an email from a witness who stated that he only caught the very end of the interaction and its aftermath. He saw Mr. Narayana holding Oreo in his arms while Poppins was jumping on him. He did not see Poppins bite either of them. Ex. A2.

Legal Standard

13. Animal Services asserts that Poppins was "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.¹
14. More seriously, Animal Services asserts that Poppins qualifies as "vicious," defined 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," 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.
15. In answering those, we do 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.

Analysis

16. Poppins was off Appellants' private property on August 14, running in a common area and not under their control. While Appellants may have been trying to train him (which

¹ Redmond has adopted all the County codes in play today. RMC 7.04.005.

is a good thing), Poppins was decidedly not restrained from approaching Mr. Narayana or Oreo that day. We sustain the running at large violation.

17. As to whether Poppins bit Mr. Narayana's thumb, it is tough to draw too much definitive from a single tooth indentation. Ex. D6 at 001. Even when all testimony completely agrees, the bite mark(s) in a photograph do not always look like we would have expected after reviewing photographs in hundreds of other (alleged) bite cases. Here, both Mr. Narayana's testimony that Poppins bit him and Ms. Gupta's testimony that she saw Oreo bite Mr. Narayana were plausible and not inconsistent with the physical evidence. The puncture wound on Mr. Narayana's hand seems *slightly* more consistent with a small puppy tooth than with a large Poppins tooth. Ex. D6 at 001. It also contrasts with the large puncture wound on Oreo's side we conclude (below) that Poppins inflicted. We do not find that Poppins bit Mr. Narayana.
18. As to whether Poppins bit and injured Oreo, Ms. Gupta stated that she checked Oreo and saw no blood. Mr. Narayana noted that Oreo has a lot of fur, so unless he was bleeding profusely, a wound would not be easily noticeable. And even Ms. Narayana, who held Oreo at the scene and took him home, only spotted blood afterward, in the apartment. The lack of initial blood evidence is relevant, but not dispositive, to whether Poppins bit Oreo.
19. Mr. Jain's theory that Oreo hurt himself on the underside of the car might have been plausible if, say, Poppins had a gash along his back. Instead, the puncture wound on Oreo's one side and the gash on the other were on Oreo's abdomen. Ex. D6 at 002-04. Moreover, this was not a scenario where Ms. Gupta checked Oreo after the altercation with Poppins, saw no blood, and *then* Oreo ran under the car. Instead, she observed Oreo after he was cajoled out from under the car. We find, by a preponderance of the evidence, that Poppins inflicted Oreo's injuries.
20. Ours is also not a scenario where Poppins ran up to Oreo, there was some split-second interaction, and then Poppins backed off, where maybe one could argue the injury was accidental. There is no dispute that, after Mr. Narayana picked up Oreo, Poppins continued leaping to get at Oreo. Even after Mr. Narayana retreated out the gate, Poppins followed and kept trying to get at Oreo.
21. Poppins endangering the safety of Oreo and Mr. Narayana, biting and attacking Oreo without provocation and constituting a danger to Mr. Narayana and his Oreo, both of whom were lawfully in the common area at the time. We uphold Poppin's viciousness designation.
22. Appellants challenge the Animal Services confinement term requiring Poppins to always be on a leash when off his property. Ex. D2 at 001. This would prevent Poppins from ever being taken to an off-leash dog park again. Where an appellant challenges a remedy, Animal Services must prove the appropriateness of that remedy. KCC 20.22.210.
23. In prescribing requirements for maintaining a vicious dog in King County, we take into consideration, among other factors, the nature of the behavior giving rise to the viciousness determination, including the extent of the injuries and the circumstances

surrounding the incident. KCC 11.04.290.A.1.f. We consistently apply a gas-and-clutch analysis to assessing remedies: the more damage the animal has a history and capability of inflicting, the more airtight the containment must be going forward.

24. Here Oreó's wounds were not insignificant—a gash requiring sutures, to go along with a puncture wound—but this was also not a scenario where, for example, Poppins grabbed Oreó and shook him or inflicted a devastating bite. If the almost 70-pound Poppins was trying to hurt the 3.5-pound Oreó, Poppins would likely have inflicted much more damage. Oreó was in pain and needed stitches but—perhaps because we are jaded from having reviewed so many graphic injuries—Oreó's injuries are (at least slightly) towards the milder end of the dog-on-dog viciousness appeals we have denied. That cuts in Appellant's favor.
25. Another factor we examine is whether the dog exhibited behavior that could be repeated if left to run free in a dog park. So, for example, a dog biting a pizza delivery person setting foot inside the dog's house does not seem to shed too translatable to the dog park scenario. Here, however, Poppins running across a large common area to get at and bite Oreó seems a much closer match and thus is more troubling. This factor cuts against Appellants.
26. Conversely, the number of times Appellants have taken Poppins to a dog park, all without incident, cuts in Appellants' favor.
27. We also look at the owners—how in denial they are about the threat their dog poses and whether they have a history of not being able to control their dog. While Appellants seem somewhat in denial about Poppins injuring Oreó, they were in the act of trying to train Poppins at the time, and they seem generally responsible owners. Also, there is no indication Poppins has attacked another dog in the past.
28. This dog park issue is a close call. The other restrictions—not leaving the animal unattended outside, fencing, locking gates, employing a collar or harness and a standard-length leash, microchipping, and vaccination—create burdens on the *owner*, but they do not dramatically alter the *animal's* quality of life. For example, off the owner's property and outside a sanctioned dog park area, dogs (vicious or not) are not permitted to run loose. Conversely, permanently prohibiting a dog from running free in a dog park presents a greater, life-altering restriction for the remainder of the dog's life.² Given the similarity of the dog park scenario to the one where Poppins injured Oreó, this one gives us heartburn. But in the end, we do not quite think Animal Services has met its burden related.

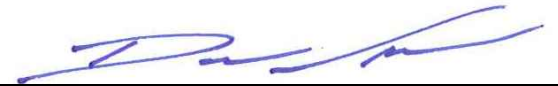
DECISION:

1. We DENY the appeal as to the running at large and viciousness violations.

² That would not necessarily be true for owners of larger plots who can construct a sizeable fenced area for their dog to work off energy; that is not Poppin's living situation.

2. We MODIFY Animal Services' August 21, 2020, compliance order as follows (A. through D. being substantively unchanged, and E. being new):
- A. Secure Poppins 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 Poppins using a leash no more than eight feet long, with a collar or harness, when taking Poppins off your property. A competent and capable person must handle Poppins at all times when attended outside.
 - C. If not already completed, microchip Poppins and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **November 10, 2020**.
 - D. Keep Poppins current on his rabies vaccination.
 - E. Poppins is allowed to run in sanctioned off-leash dog parks, provided Mr. Jain or Ms. Gupta are present, and provided Poppins is leashed at all times when not in the car or in the fenced-in, off-leash area.

ORDERED October 27, 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 *November 26, 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 OCTOBER 13, 2020, HEARING IN THE APPEAL OF ANKIT JAIN AND KUHU GUPTA, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V20011071-A20013354**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Pradyumna Narayana, Kuhu Gupta, and Ankit Jain. 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 Animal Services:

- | | |
|----------------|---|
| Exhibit no. D1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. D2 | Notice of violation no. V20011071-A20013354, issued August 21, 2020 |
| Exhibit no. D3 | Appeal, received August 29, 2020 |
| Exhibit no. D4 | RASKC investigation report no. A20013354 |
| Exhibit no. D5 | Online Complaint form of date August 14, 2020 incident by Pradyumna Narayana, dated August 15, 2020 |
| Exhibit no. D6 | Photograph of dog and medical invoice |
| Exhibit no. D7 | Statement from Kuhu Gupta |
| Exhibit no. D8 | Map of subject area |

DS/lo

October 27, 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

CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011071-A20013354**

ANKIT JAIN AND KUHU GUPTA
Animal Services Enforcement Appeal

I, Lauren Olson, 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 27, 2020.



Lauren Olson
Legislative Secretary

Kuhu Gupta, Ankit Jain
Hardcopy

Narayana, Pradyumna
Hardcopy

Russell, Shelby
Regional Animal Services of King County