

June 28, 2021

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file nos. **V21011993 & V21011994**

**SPENCER & JOSEPH WHITE**  
Animal Services Enforcement Appeal

Activity no.: A21002031

Appellant: **Spencer & Joseph White**

[REDACTED]  
Duvall, WA 98019

Telephone: [REDACTED]

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

1. After the Whites' dog, Duke, busted loose and went after a leashed dog, biting and bruising that dog's neck, Regional Animal Services of King County (Animal Services) cited the Whites for Duke running at large and being vicious, and required that Duke be contained. The Whites timely appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal as to the running at large, but grant it as to the viciousness designation.

## Background

2. The relevant facts here are fairly minimal and not in dispute. On April 30, 13-year-old Jacob Mueller was walking his poodle mix, Cooper, on a leash, on a public street. On the opposite side of the street, 18-year-old Joseph White was walking his shepherd-retriever mix, Duke, also on a leash. As Joseph would explain at hearing, he did not notice at the time that Duke's harness had been incorrectly hooked up that day.
3. When the dogs saw each other, there was some barking, so Jacob got Cooper to sit down. This worked to calm Cooper down, but then Jacob saw that [Duke] had gotten loose and was coming at Cooper. As Jacob described it, when Duke arrived, the dogs started scratching and attacking each other, with Cooper mainly jumping up and down and flailing his paws, with the other dog scratching Cooper. Then Joseph (in his own words) "tackled" his Duke to quickly stop the altercation.
4. After Jacob got Cooper home, his father, Josh Mueller, looked at Cooper and did not think anything was really wrong with Cooper, although Jacob was visibly upset. However, an hour later, Mr. Mueller saw Cooper bleeding from his neck. They took Cooper to the veterinarian to do a cleanup, a visit which showed one puncture wound and severe bruising. Ex. D3. Unfortunately, the bruising got worse later, and some infection set, in so they had to take Cooper back to the veterinarian. After a week or two, Cooper was back to normal.
5. Animal Services asserted a violation for running at large, declared Duke vicious, and required that Duke be contained. Ex. D5. The Whites timely appealed, countering that the maximum fine for a running at large violation is \$25, that Duke was provoked, and that one event is insufficient to sustain a viciousness designation. Ex. D6. Our hearing was June 16.<sup>1</sup>

## Legal Standard

6. "Running at large," means "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.
7. "Vicious" is defined as:  

[h]aving 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,

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<sup>1</sup> After the hearing, Mr. White raised several procedural concerns related to the hearing and requested that we reopen it. Because we rule in his favor on the only issue that is not a pure legal issue (the penalty amount for a running at large violation), we do not address procedural concerns.

and the nuisance violation is framed as, “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.” KCC 11.04.020.BB, .230.H.

8. 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.B.

### Analysis

9. The Whites did not challenge the running at large violation itself. Indeed, there is no question, from both Jacob and Joseph’s testimony, that on April 30 Duke was off his premises and not controlled enough to be restrained from approaching Jacob and Cooper. However, the White’s assert that the code sets that fine at \$25. We understand why they would think that, as KCC 11.04.035.C.3.a sets a leash law violation penalty of \$25. However, Animal Services asserted a violation not of the leash law code (which in Duvall would be DMC 6.14.070 and for most of the County KCC chapter 11.08), but of KCC 11.04.230.B, which carries a \$50 penalty. KCC 11.04.035.C.3.a.
10. Next, the Whites assert that Duke was provoked on April 30. The “provocation” inquiry in animal jurisprudence “focuses ‘on how an average dog, neither unusually aggressive nor unusually docile, would react to an alleged act of provocation.’” *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be proportional to the victim’s act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792. Duke breaking free and charging across the street to get at a leashed Cooper was grossly disproportionate to Cooper barking. And Cooper’s reasonable defensive reaction to a charging dog was not itself provocation. See *Giandalone v. Zepieri*, 86 Misc. 2d 79, 80, 381 N.Y.S.2d 621 (1976). Duke was in no sense legally provoked to bite Cooper.
11. Finally, the Whites assert that, as a matter of law, one event (presumably, no matter how violent) is insufficient to result in a viciousness designation. That is incorrect on two levels.
12. The code offers two potential avenues by which Animal Services can show a dog meets the “vicious” definition, namely an animal “[h]aving performed the act of, or having the propensity to do any act, endangering the safety of any person, animal....” In theory, that could mean that a dog that never actually did anything to endanger a person’s or animal’s safety could nonetheless qualify as vicious, through somehow divining that the dog has an as-yet-unacted-upon inclination to do something. We have always based our decisions on actual animal conduct, an animal *actually* endangering a person or animal without legal provocation. Conversely, there is not some multiple-incident requirement.
13. In addition, the Whites reading would create an absurd result. Even under the far more serious designation of a “dangerous” (as opposed to “vicious”) dog under jurisdictions

that track the State’s two-tier approach (“potentially dangerous” and “dangerous”) instead of the County’s single-tier (“vicious”), there is no multiple-incident requirement. And a dangerous dog designation requires an owner to obtain a \$250,000 surety bond, a \$250,000 liability insurance policy, and to muzzle the dog anytime it is outside a proper enclosure, far worse sanctions than follow a County viciousness designation. RCW 16.08.070(2); .080(6); 090(1). To require multiple acts to sustain a viciousness designation would be absurd, and we avoid absurd readings of codes. *See Tingey v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007) (avoiding a reading producing absurd results, because we do not presume a legislature intended absurd results).

14. To be sure, Animal Services has sometimes seemed to treat a single vicious act as *automatically* resulting in a viciousness designation. That is incorrect, for the designation requires not only a finding that the animal “exhibited” something meeting the “vicious” definition but also that the animal “constitutes” a danger. Committing an unprovoked vicious act is strong evidence that the animal constitutes a danger, and has often been enough to sustain a viciousness designation, but not always, as today’s case demonstrates.
15. Turning to the facts here, Duke charged across the street and, unprovoked, bit Cooper on the neck, causing a puncture wound and significant bruising. Were we operating under the state’s two-tier system, that would be sufficient to sustain a “potentially dangerous” designation for Duke, because inflicting a bite on domesticated animal without provocation qualifies a dog as potentially dangerous, without any further requirement or inquiry. RCW 16.08.070(1). However, the County does not operate under the state system.
16. Often, a single, unprovoked, dog-on-dog bite is sufficient to sustain a viciousness designation, such as when a larger dog picks up a smaller dog and shakes it, or a dog attacks another dog from behind and inflicts real injury. But that is not what happened here. As Jacob described it, as Duke ran up, the dogs started scratching and attacking each other. Again, Cooper had every right to defend himself from a charging dog, and during that initial fracas Duke did deliver a significant bite to Cooper. But then, thanks to Joseph’s quick reaction, he was able to tackle Duke away before it went any further.
17. That fact scenario is thus different from a viciousness designation we upheld last week. There, according to appellant’s version of events, his unleashed dog charged at the complainant’s leashed dog, but before appellant’s dog started biting, the complainant’s dog snarled and lunged. A short scuffle then followed, with the dogs facing each other. That likely would *not* have been enough, standing alone, to sustain a viciousness designation. Unfortunately, that was not the end of that incident. The appellant there did not react nearly as quickly as Joseph did here, and that altercation continued. As the complainant pulled back his leashed dog, his leashed dog ended up between his legs, with his dog’s mouth pointed away from the appellant’s dog. Appellant’s dog then jumped on the complainant’s dog’s exposed back, delivering a nasty gash. We sustained that viciousness determination.<sup>2</sup>

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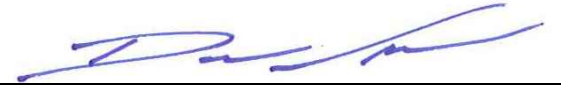
<sup>2</sup> See [https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Jun%2028%202021/V21011738\\_Kono.ashx?la=en](https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Jun%2028%202021/V21011738_Kono.ashx?la=en)

18. There is some reason to think that, had Joseph not responded so quickly to take Duke out of the equation, Duke might have continued, and our fact scenario would have devolved into something sufficient to sustain a viciousness designation. That Duke busted out of his harness to get at Cooper, and that Joseph had to actually tackle Duke away to prevent him from doing more harm, are troubling. But on our facts we cannot find it more likely than not that Duke constitutes a danger.<sup>3</sup> We thus overturn his viciousness violation.

DECISION:

1. We sustain the running at large violation and the corresponding \$50 penalty.
2. We overturn the viciousness violation, penalty, and confinement order.

ORDERED June 28, 2021.



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 28, 2021*. 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 JUNE 16, 2021, HEARING IN THE APPEAL OF SPENCER &  
JOSEPH WHITE, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE  
NOS. V21011993 & V21011994**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Josh Mueller, Jacob Mueller, Spencer White, and Joseph White. 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

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<sup>3</sup> There was some dispute about whether there had been other altercations with Duke. Those were all hearsay; neither the Muellers nor Animal Services had any first hand knowledge of any supposed events.

Exhibit no. D2	Online Complaint form of April 30, 2021 incident by Joshua Mueller, dated May 3, 2021
Exhibit no. D3	Photograph of Coopers Injury
Exhibit no. D4	RASKC investigation report no. A21002031
Exhibit no. D5	Notice of violation no. V21011993-A21002031, issued May 3, 2021
Exhibit no. D6	Appeal, received May 7, 2021
Exhibit no. D7	Map of subject area

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

Exhibit no. A1	Letter from Sarah Hart
Exhibit no. A2	Letter from Allyson Fields
Exhibit no. A3	Letter from Eloise Hart
Exhibit no. A4	Email from Spencer White

DS/lo

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file nos. **V21011993 & V21011994**

**SPENCER & JOSEPH WHITE**  
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 June 28, 2021.



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Lauren Olson  
Legislative Secretary

**Eykel, Chelsea**

Regional Animal Services of King County

**Mueller, Joshua & Jacob**

Hardcopy

**White, Spencer & Joseph**

Hardcopy