

November 9, 2021

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KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file nos. **V21012034, V21012483 & V21012495**

**ROBERT CALVERT AND GARY/SUSAN GROUELL**

Animal Services Enforcement Appeal

Activity no.: A21001771

Appellants: Gary and Susan Grouell (V21012034)  
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King County: Regional Animal Services of King County  
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## FINDINGS AND CONCLUSIONS:

Overview

1. Animal Services of King County (Animal Services) declared Gary Grouell's and Robert Calvert's dogs vicious and ordered Mr. Calvert to remove his dog from King County. Both Mr. Grouell and Mr. Calvert appealed. After hearing witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we overturn Charlie's viciousness designation, uphold Buddy's viciousness designation but reduce the associated fine, and overturn Buddy's removal order.

Background

2. On April 18, 2021, Scott Hughes took his daughter's dog, Bodhi, to Ellenson Park, an off-leash dog park in Enumclaw. Precisely what happened, in what order, is hotly disputed. However, there is no question that while Mr. Hughes and Bodhi were still in the small, fenced holding area, and before they could even enter the actual off-leash area, Gary Grouell's dog (Charlie) and Robert Calvert's dog (Buddy) entered the holding area; an altercation ensued, ending with Bodhi gashed and Buddy having to be forcibly removed from Mr. Hughes's thigh.
3. Animal Services issued a violation notice to Mr. Grouell declaring Charlie vicious. Ex. D2. It issued a violation notice to Mr. Calvert declaring Buddy vicious. Ex. D3 at 002-03. And it ordered Mr. Calvert to remove Buddy from King County. Ex. D3 at 007-010. Those were all timely appealed. Exs. D11-D12. We held a prehearing conference on September 2 and went to hearing on October 26.

Evidence*Testimony of Stacia Herrling*

4. Ms. Herrling lives across Ellenson Park. From her home she could hear a woman berating a man [Mr. Hughes] along the lines of, "If you're afraid of dogs, why have a dog?" Ms. Herrling looked up to see Mr. Hughes leave the park holding his arm, with blood on his pants, get into his car and drive off. The rest of the people stood inside the fenced area. She took multiple pictures depicting this. Ex. D13.
5. During the hearing, in response to some questions about the dog park rules, Ms. Herrling walked across the street and snapped a photo of the rules. Ex. D15.

*Testimony of Scott Hughes*

Mr. Hughes testified that on April 18 he took his daughter's 40-50 pound, two-year-old goldendoodle, Bodhi, to Ellenson Park. He had taken her there many times before. As he was walking towards the enclosed dog park, he passed by Ms. [Gabriela] Hankerson. He recalled perhaps greeting her, but he denied having a conversation with her or anyone else prior to reaching the fenced area.

6. Mr. Hughes opened the gate to enter the holding area, an approximately 8-by-10 enclosure. Once inside that holding area, he noticed, on his left, inside the main fenced area, an older

woman on crutches with an unleashed pit bull [Buddy] next to her and then, on his right, a younger woman with an unleashed Rottweiler [Charlie] next to her. Before entering the main fenced area, he asked them if their dogs were nice; the owners said yes.

7. As he opened the gate, the Rottweiler [Charlie] got inside the holding area and latched onto Bodhi's right side almost immediately. Mr. Hughes began yelling, "Get your dog." In the process of attempting to separate Bodhi from Charlie's mouth and push Charlie away, Charlie bit his fingers. Mr. Hughes' back was facing the main fenced area, so he was unable to see the dog owners, but he did hear a man yell out, in a gravelly voice, "Don't you f----- hit my dog."
8. At that point, Mr. Hughes felt like he was on his own in trying to save Bodhi from being killed right in front of him. He next recalls being on the floor, with Buddy latched onto his thigh. A younger man [Mr. Calvert] had his knees on Buddy, trying to get him to release Mr. Hughes' thigh. Mr. Hughes just lay on his back with his legs up in defense, still holding Bodhi on leash. Finally, both Charlie and Buddy were taken back inside the main fenced area.
9. Mr. Hughes noticed blood on himself, so he immediately left the scene. As he was walking away, he heard someone yell, "You shouldn't be hitting dogs." So, Mr. Hughes did not think it was a good idea to talk to the owners, who seemed like would not take responsibility. Mr. Hughes has never had any issues at the dog park. He did not hit Charlie or Buddy or have any interaction with them prior to their attack.
10. Mr. Hughes got into this vehicle and called 911. Exs. D9-D10. He went to the hospital, where he received ten stitches on the top part of the bite area of his thigh. Ex. D6. He submitted photographs of the injury to his leg and his fingers. Ex. D5. Later, Mr. Hughes developed blood clots and required medication to dissolve them. Mr. Hughes still does not have feeling on the end of his fingers that were bit, and his thigh still feels tender and tingly. Bodhi was seen by the vet and did not receive any stitches or surgery for the wound. Ex D7.
11. Mr. Hughes filed a complaint with Animal Services. Ex. D1. Mr. Hughes could not recall if he filled out the complaint form or his wife did; he agreed the complaint contained no mention of the Rottweiler biting his hand. Ex. D1.

*Testimony of Ofc. Steve Nickelson*

12. Ofc. Nickelson investigated the incident for Animal Services. He had Mr. Hughes recreate the scene. Ex. D8. After reviewing the police report and walking through the incident with Mr. Hughes, he went to the Grouells' home. He had made up his mind to issue a violation notice before speaking with them. Mr. Grouell got very upset upon being informed he was getting a violation notice and went back inside.
13. Ms. Grouell came out with Ofc. Nickelson and told him that she recognized "he messed up." He interpreted that "he" as meaning Buddy, because at the time they were talking about Buddy and not Mr. Grouell.
14. Ofc. Nickelson explained that he had forgotten about the "he messed up comment" until going over the case with Animal Services' representative the morning of the hearing. He also stated that he had been unaware, until listening to Mr. Hughes testify during the hearing, that Charlie had bit Mr. Hughes' hand.

*Testimony of Gabriela Hankerson*

15. The Hankersons were leaving the park with their husky, Riley, on leash. They passed Mr. Hughes as he was walking towards the dog park. As they passed, Mr. Hughes stepped off the path and pulled Bodhi closer to him and away from Riley. Mr. Hughes mentioned to them that Bodhi was not good around other dogs.
16. The Hankersons were almost to their vehicle when they heard screaming. Ms. Hankerson looked towards the dog park and saw the dogs together inside the holding area, with Mr. Hughes pulling on Bodhi's leash trying to get them apart. She noticed that Mr. Hughes was pulling Bodhi's leash up higher, but she did not remember seeing Bodhi actually off the ground. She does not know if Mr. Hughes was kicking or hitting the dogs, and they were too far away to see any bites. Mr. Hankerson had immediately tried to run back to help, but by the time he got to the holding area the incident was over. They did not know any of the participants.

*Testimony of Brian Hankerson*

17. Mr. Hankerson described walking away from the dog park. They did not have a substantial conversation with Mr. Hughes, but Mr. Hughes pulled his dog [Bodhi] to the side and said something to the effect of Bodhi not being great around dogs. He heard Mr. Hughes ask something about whether the other dogs were nice. Ms. Hankerson turned to Mr. Hankerson and remarked that it was weird that someone would come to the dog park and ask that.
18. Mr. Hankerson was maybe 100-150 feet away when he heard the commotion. He could see Mr. Hughes trying to lift his dog off the ground, with Bodhi's head above the fence line. He did not see any dogs biting or see the dogs engaged. He handed Riley to Ms. Hankerson and ran back, but by the time he got there, the incident had ended. They stayed at the scene to be interviewed by Enumclaw police, and later they were interviewed by Animal Services.

*Testimony of Susan Grouell*

19. Ms. Grouell testified that while Mr. Hughes was still outside the holding area, she heard Mr. Hughes yell out that his dog was afraid of other dogs. The owners of the dogs inside the fenced area all yelled back to him to wait for them to introduce their dogs. Mr. Hughes ignored them and entered the holding area. The Grouells and Mr. Calvert yelled to him not to do that and to wait (until they could grab their dogs). Mr. Hughes did not wait, and he opened the second gate to enter the main fenced area.
20. Ms. Grouell stated that Mr. Hughes' back was never towards them, but instead his back was towards the small dog park side of the fence. Ms. Grouell saw Mr. Hughes pull Bodhi on leash about two feet off the floor, strangling Bodhi, causing Bodhi to scream. Bodhi was biting at Mr. Hughes, trying to get away. Buddy and Charlie entered the holding area to investigate why Bodhi was in pain, and Mr. Hughes punched Buddy in the nose. Mr. Calvert yelled, "Stop hitting my dog."
21. Ms. Grouell described Ofc. Nickelson as interrogating Mr. Grouell. She denied that she ever stated to Ofc. Nickelson that Charlie had messed up.

*Testimony of Gary Grouell*

22. Mr. Grouell testified that he heard yelling, so he walked towards the holding area as he curiously watched Charlie and the other dogs moving towards that direction. Mr. Hughes had his back pressed on the gate, holding Bodhi's leash up high, choking Bodhi. Bodhi was biting Mr. Hughes' forearm, trying to loosen the chokehold. Mr. Grouell saw Buddy biting Mr. Hughes's thigh. Mr. Grouell asked someone to call 911. Charlie was in the corner inside the holding area.
23. When Ofc. Nickelson interrogated Mr. Grouell, he did not ask for his side of the story, instead telling him that he had a vicious dog. Mr. Grouell told Ofc. Nickelson that Charlie did not bite anyone.

*Testimony of Robert Calvert*

24. Mr. Calvert was with his partner, Megan Phelps, standing next to the Grouells and having a conversation with them. Mr. Calvert heard Mr. Hughes yell out that his dog was not good with other dogs. Mr. Calvert noticed Mr. Hughes pulling Bodhi's leash high up, with Bodhi dangling and choking. Mr. Hughes started hitting Buddy, which was when everything "broke loose."

*Testimony of Megan Phelps*

25. Ms. Phelps also witnessed Mr. Hughes holding Bodhi up high on her leash, choking Bodhi, and Mr. Hughes hitting Buddy on the face. Mr. Calvert went inside the holding area to detach Buddy. Mr. Calvert's hands were bleeding from that, so they left to get him medical attention.

Issues

26. For V21012034 (Charlie) and V21012483 (Buddy), does either dog 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.
27. For V21012495, if Buddy qualifies as vicious, were the events of April 18 such that Buddy should be removed from King County? (In determining requirements for a vicious dog, Animal Services must consider, among other items, the extent of injuries, and ordering an animal removed from King County is an option. KCC 11.04.290.A.1.f & .2.e.)
28. 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.B.

Witness Assessment*Ms. Herrling*

29. Ms. Herrling was credible, and she helpfully provided pictures of the aftermath of the April 18 incident. She went above and beyond to, during the hearing, walk across the street and snap pictures of the rules. However, by her own admission she did not observe anything until after the action was over.

*Hankersons*

30. The Hankersons, like Ms. Herrling, had no vested stake in the matter, and they dutifully stayed around to give a statement to police on a matter that did not involve them. However, they started out facing the opposite direction from the holding area, 100-150 feet away and too far, in Ms. Hankerson's estimation, to see any bites and or know if Mr. Hughes was kicking or hitting the dogs even after they did turn around. Mr. Hankerson testified that he did not see the dogs engaged, though he apparently saw Mr. Hughes kicking and hitting. (Mr. Hankerson did not testify to that, but it was included in their declaration. Ex. G1.)
31. While their declaration opines that Mr. Hughes instigated the altercation by being nervous and overreacting violently, they actually did not *see* what if anything happened before Mr. Hughes reacted. And they reached that conclusion only after staying around and talking with the Grouells, which easily could have influenced their opinion. The Hankersons' testimony thus tells us almost nothing about whether, when the Hankersons' backs were turned, Mr. Hughes engaged because Charlie bit Bodhi immediately upon entering the holding area or, conversely, because Mr. Hughes overreacted to Charlie and Buddy just being curious.
32. Mr. Hankerson's testimony that he saw Mr. Hughes pull back on Bodhi's leash, lifting Bodhi's head up in the air, might sound important on first blush. But it is actually not a disputed fact; in his initial statement Ofc. Nickelson, Mr. Hughes explained that he attempted to rear Bohdi back from the attacking Rottweiler. Ex. D4 at 006. The question is not whether Mr. Hughes yanked Bodhi back, but whether he did so in *response* to an actual attack, or whether Mr. Hughes overreacted and created the altercation. The only substantive finding we make from their testimony is that Mr. Hughes told them, before entering the off-leash area, that Bodhi did not do well with other dogs.

*Mr. Hughes*

33. Mr. Hughes's statement that Bodhi did not do well with other dogs is not, standing by itself, critical. No one blamed *Bodhi* for instigating anything. And of course, there is no question that Bodhi did not even make it out of the holding pen, with Charlie and Buddy coming at him, not the other way around. So, there is no inkling that Bodhi provoked anything.
34. However, his statement to the Hankersons undercuts Mr. Hughes' credibility. First, he was adamant that he exchanged nothing more than maybe a hello with the Hankersons; we find that not to be the case. Second, Mr. Hughes' statement goes to his mindset immediately before entering the holding pen. It increases the likelihood that Mr. Hughes mis-read the scene and overreacted to Charlie's and Buddy's entrance.

35. Beyond that, the day of the altercation Mr. Hughes told the investigating Enumclaw police officer that the pit bull [Buddy] bit him; however, he did not tell the officer that the Rottweiler [Charlie] bit him. Ex. G2 at 004. Four days later, he did not mention anything about Charlie biting him in his complaint. Ex. D1. And three weeks later, when Ofc. Nickelson interviewed him, he did not say that Charlie had bitten him. Ex. D4 at 006, nn.12-13. To the contrary, Ofc. Nickelson testified that he only learned of the Charlie-bite-Hughes angle when he heard Mr. Hughes testify earlier in the hearing.
36. The day of the incident, Mr. Hughes told the investigating police officer that he began hitting *both* dogs to get them away from Bodhi, and that the pit bull was also attacking Bodhi and only bit him after releasing from Bodhi. Ex. G2 at 004. In his complaint a few days later, he mentioned only Charlie, not Buddy, attacking Bodhi; he opined that Buddy charged in only when a person came in to help, with Buddy then latching onto his leg. Ex. D1. In his hearing testimony he did not mention Buddy attacking Bodhi, only biting him.
37. There are other reasons to question the objective accuracy of Mr. Hughes' perception. Assuming for purposes of this paragraph that Charlie bit Bodhi, Bodhi left the altercation with a small gash requiring antibiotics but nothing more. Yet Mr. Hughes described feeling like he was watching Bodhi being "killed" in front of his eyes, and that his efforts were to save Bodhi's life.

*Ofc. Nickelson*

38. Given the thousands of complaints Animal Services receives annually, officers have to act on a more wholesale level. Our office, which typically receives around 160 Animal Services appeals a year, can act on a more retail level to ensure due process. However, Ofc. Nickelson's approach fell short here in comparison to what we typically see in the investigatory notes.
39. Usually, when an officer issues a violation notice without first getting the putative appellant's perspective, the notes show that the officer unsuccessfully tried contact, leaving a message or a doorhanger. Yet Ofc. Nickelson had made up his mind to issue violation notices *before* he spoke to either the Grouells, Mr. Calvert, or Ms. Phillips, to get their versions. Ofc. Nickelson defended this, saying that he had already read the police report. However, the police officer had, after interviewing Mr. Hughes and other witnesses, noted concerns with whether Mr. Hughes had instigated the violence, something a different Animal Services officer had also noted. Ex. G2 at 004; Ex. D4 at 005, n.5. And this was not something like a \$50 animal trespass ticket, but a viciousness designation, which carries lifetime implications. His approach is troubling.
40. None of that would be terribly critical because we give no deference to agencies or their personnel. Our role, after reviewing all the evidence, is to find what *we* think happened and the legal import of those facts, not to consider whether the *officer* assessed things correctly. We are typically not concerned with why a non-eyewitness officer thought something. As we explained at hearing, we can only recall one case, in our 863 animal appeals to date, where a non-eyewitness officer's opinion or reasoning about a critical fact swayed us.
41. However, the one piece from Ofc. Nickelson's testimony that could have bearing is if Ms. Grouell essentially admitted that Charlie messed up. The problem with that is that nowhere in his thorough notes on his interviews does he mention that critical admission. Ex. D4 at 007 at

n.17. Such an admission is something we would expect to see, and normally do see, in an investigating officer's notes. Yet Ofc. Nickelson said he only recalled the statement five months later, the morning of our hearing. Given Ofc. Nickelson's overall approach here and the timing of his sudden recollection, we have concerns with whether Ms. Grouell did in fact admit to anything back in May.

### *The Grouells*

42. The Grouells were even less credible than Mr. Hughes. Ms. Grouell testified that Charlie and Buddy entered the holding area *because* Bodhi was screaming, investigating why Bodhi was in pain. That makes zero sense: under that version, Mr. Hughes started choking Bodhi when Charlie and Buddy were *still safely on the other side of the fence* from the holding area.
43. Mr. Grouell started well away from the altercation and had to find a fence to support himself to make his way towards the holding pen. And blaming Mr. Hughes for having Bodhi leashed up in the playground was undercut by the picture Ms. Herrling submitted, showing that leashes are to be removed "once securely inside the dog park." Ex. D15. Bodhi never actually made it into the playground, getting no further than the holding area before Charlie and then Buddy barged in.
44. We find improbable the Grouells' account that Mr. Hughes' finger injury was from *Bodhi* biting his own owner.

### *Mr. Calvert*

45. Mr. Calvert's theory that a loose bolt caused Bodhi's gash was implausible, and had more than a hint of desperation. And his theory that Charlie got involved out of "concern" for seeing Bodhi in distress seems quite the reach.

## Analysis

### *Stage-Setting*

46. There is no question that Mr. Hughes exerted physical force against Charlie and Buddy. The question is whether the victim started the altercation or whether the dog attacked first, that is, whether the victim's actions under the circumstances were justified. *Giandalone v. Zepieri*, 86 Misc. 2d 79, 80, 381 N.Y.S.2d 621 (1976). So, where a dog was *already* in attack mode, a victim intervening to protect a pet and getting bitten did not make the dog bites "provoked"; the victim's response to violent behavior could not be considered "provocation" for a subsequent bite. *Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745 N.W.2d 824 (2008). Similarly, a mom hitting a dog after the dog bit her child was not legal provocation for dog then biting the mom; instead, it was the mom's "natural and inevitable reaction" to seeing the dog biting her child. *McBride v. XYZ Ins.*, 935 So. 2d 326, 332 (La. Ct. App. 2d Cir. 2006).
47. We do not have a tremendously clear picture of exactly how the altercation started. We reject Ms. Grouell's and Mr. Calvert's assertion that the dogs entered only *because* Mr. Hughes was already overreacting and choking up on Bodhi's leash. We have little doubt that Charlie and Buddy improvidently entered the small, enclosed area and *then* Mr. Hughes went into overdrive. The issue, however, is whether Mr. Hughes responded to violence (i.e., Charlie



started things off by biting Bohdi as soon as Charlie entered the holding area) or whether Mr. Hughes misread the situation and overreacted, thus setting things in motion.

*Charlie's Viciousness Designation (V21012034)*

48. We find Mr. Hughes' version (that Bodhi's tear came from Charlie's unprovoked bite, and that Mr. Hughes' finger injuries came from Charlie biting Mr. Hughes' hand as Mr. Hughes tried to dislodge Charlie from Bodhi) more likely than the other versions offered at hearing (that Charlie was provoked to bite Bohdi, that Bohdi suffered a tear from a loose bolt or from Charlie biting Bodhi, that Bodhi bit his owner's hand, or that Charlie bit Mr. Hughes' hand). However, to put it in voting terms, that only makes it a *plurality*, meaning we are more confident in Mr. Hughes' explanation than in any other single explanation. It does not necessarily make it a *majority*, meaning that we are at least 51% confident that Mr. Hughes' version is actually what happened. Mr. Hughes entered the holding pen having just exclaimed that Bodhi did not get along with other dogs, and then he perceived what was at most a single, relatively superficial bite to Bodhi as the dogs trying to "kill" Bodhi. That gives a serious pause.
49. Applying the viciousness code criteria to Charlie, Charlie's bite to Bohdi was a relatively minor bite, not necessarily an "attack." Accepting Mr. Hughes' testimony that, in attempting to dislodge Charlie's mouth from Bohdi, Charlie bit his fingers, that is not what we would deem "biting a human being." It is not unusual in our cases that, as someone tries to dislodge a dog's teeth from another dog, their fingers get torn up. We need to look no further than Mr. Calvert, whose fingers got bloodied up later in the altercation trying to get his *own* dog to release Mr. Hughes' thigh; we would not say that Buddy "bit" Mr. Calvert either.
50. It is not strictly necessary for Animal Services to show an unprovoked attack on another animal or unprovoked bite of human being to show a vicious act. A vicious act is one "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 11.04.020.BB. However, without that it is difficult for Animal Services to show, in addition to having performed a vicious act, that Charlie "constitutes a danger" to the safety of persons or their animals. KCC 11.04.230.H. On facts is murky as ours, we cannot conclude that Charlie constitutes a danger. We overturn his viciousness designation.

*Buddy's Viciousness Designation (V21012483)*

51. Buddy's situation is different. While Charlie may have delivered a slight tear to Bodhi and injured Mr. Hughes' fingers, Buddy actually took Mr. Hughes down, and then would not let go of his thigh. Finally, his own owner had to pry his jaws loose to get him to release.
52. We find it more likely than not that Charlie started the actions off by biting at Bodhi, and that Mr. Hughes did not just create a mountain out of a mole hill by completely misinterpreting the gentle advance into the holding area of a dog(s) just trying to investigate. But even if we accept that Mr. Hughes overreacted, that still does not mean that Buddy was "provoked" to take down Mr. Hughes and continue biting him.
53. 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 somewhat 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.

54. This is not a setting where Mr. Hughes and Bodhi came into the main off leash area and an altercation started. Instead, Charlie and Buddy entered the small holding pen. Even assuming that Mr. Hughes excessively responded, this was not a scenario where Buddy bit Mr. Hughes' hand or delivered some sort of "back off" bite. Buddy took down Mr. Hughes and seriously gashed his thigh. Ex. D5. And then Buddy kept it up, not letting go or releasing Mr. Hughes, even as Mr. Calvert attempted to get him off. In fact, Mr. Calvert bloodied his own hands trying to dislodge Buddy's jaws.
55. Buddy's reaction went far beyond the average dog's response and was grossly disproportionate, causing significant injury in the process. We find that Buddy both performed a vicious act and constitutes a danger. We uphold his viciousness designation.
56. However, this is not a scenario where Mr. Calvert was doing anything irresponsible. His dog was unleashed, but *in a dog park*. Mr. Calvert had no discernible reason to expect that the events might play out the way they did. And he got into the holding pen as soon as he could to try to dislodge Buddy's jaws from Mr. Hughes' thigh. A significant penalty reduction is warranted.

#### *Buddy's Removal Order (V21012495)*


57. There are several grounds for removing an animal from King County. The others are written with mandatory "shall" language, and involve multiple events. KCC 11.04.290.A.3, -.B.1, -.B.2. Conversely, the ground which Animal Services seeks removal here is for a single event, and uses discretionary "may" language. KCC 11.04.290.A.1.f & .2.e.)
58. We are the most exacting of Animal Services on removal orders, given what is at stake. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest impacted is factor in determining how much process is due); Exam. R. XII.B.4 (in proceeding involving divestiture of legally cognizable rights, examiner may require adherence to court rules to "assure that due process of law is afforded"); *Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring) (analyzing court decisions recognizing "the bond between animal and human and the intrinsic and an estimable value a companion animal").
59. Animal Services' premise appears to be that because Buddy caused Mr. Hughes severe injury, removal is warranted. Ex. D3 at 010. That confuses two concepts—dangerous and removal. "Inflict[ing] severe injury on a human being without [legal] provocation," with "severe injury" itself being one resulting in "disfiguring lacerations requiring multiple sutures or cosmetic surgery," warrants a "dangerous" designation in jurisdictions that employ the two-pronged, potentially dangerous/dangerous dog designation system. RCW 16.08.070.2.–.3. King County has not adopted that two-tier system, having only a single "vicious" designation. But even in jurisdictions using the state system, a "dangerous" dog designation does *not* typically result in removal; instead, it requires bonding and special insurance and extra precautions. *See* RCW 16.08.080(6) (requiring owners of dangerous dogs to keep dogs in a proper enclosure and obtain a surety bond and liability insurance policy) & RCW 16.08.090(1) (dangerous dog must be muzzled anytime outside a proper enclosure).

60. We can only recall one or two scenarios where we have upheld a removal order for a first-time incident. And those involved facts far more egregious than today's. Thus, even if events went down exactly as Mr. Hughes testified they did—a far from certain proposition—we would not find that Animal Services met its burden of proving removal is warranted here. We overturn Buddy's removal order.

DECISION:

1. We grant Mr. Grouell's appeal as to Charlie's viciousness designation (V21012034).
2. We deny Mr. Calvert's appeal as to Buddy's viciousness designation, but we reduce the penalty to \$150 (V21012483).
3. We grant Mr. Calvert's appeal of Buddy's removal from King County (V21012495).

ORDERED November 9, 2021.



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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 *December 9, 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 OCTOBER 26, 2021, HEARING IN THE APPEALS OF GARY AND SUSAN GROUELL AND ROBERT CALVERT, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V21012034, V21012483 and V21012495 - A21001771**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Gary and Susan Grouell, Brian and Gabriela Hankerson, Scott Hughes, Mari Isaacson, Adam Karp, Megan Phelps, and Robert Calvert. 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	Online Complaint form of April 18, 2021 incident by Scott Hughes, dated April 22, 2021
Exhibit no. D2	Gary Grouell Notice of violation no. V21012034-A21001771, issued May 12, 2021
Exhibit no. D3	Robert Calvert Notice of violation no. V21012483-A21001771, issued September 2, 2021
Exhibit no. D4	RASKC investigation report no. A21001771
Exhibit no. D5	Photograph of Scott Hughes injuries
Exhibit no. D6	Scott Hughes medical records
Exhibit no. D7	Bodhi vet records and photo
Exhibit no. D8	Photographs of dog park and Scott Hughes
Exhibit no. D9	Enumclaw CAD report
Exhibit no. D10	911 call made by Scott Hughes
Exhibit no. D11	Mr. Grouell's appeal
Exhibit no. D12	Mr. Calvert's appeal
Exhibit no. D13	Photographs taken by Stacia Herrling shortly after the incident
Exhibit no. D14	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D15	Photograph of dog park sign, submitted October 26, 2021

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

Exhibit no. G1	Declaration of Gabriela and Brian Hankerson
Exhibit no. G2	Enumclaw Police Department

November 9, 2021

**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](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file nos. **V21012034, V21012483 & V21012495**

**ROBERT CALVERT AND GARY/SUSAN GROUELL**

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 November 9, 2021.



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Jessica Oscoy  
Office Manager

**Calvert, Robert**

Hardcopy

**Coats, Jeffrey**

Hardcopy

**Grouell, Gary/Susan**

Hardcopy

**Hankerson, Brian/Gabriela**

Hardcopy

**Herrling, Stacia**

**Hughes, Scott**

Hardcopy

**Isaacson, Mari**

Prosecuting Attorney's Office

**Karp, Adam**

Animal Law Offices of Adam Karp

Hardcopy

**Nickelson, Steve**

Regional Animal Services of King County

**Phelps, Megan**

Hardcopy

**Vance, E**

Hardcopy