

November 10, 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
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21012430-A21004086**

BRIAN JOHNSON

Animal Services Enforcement Appeal

Activity no.: A21004086

Appellant: **Brian Johnson**

[REDACTED]
Sammamish, WA 98074

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
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Brian Johnson appeals a Regional Animal Services of King County (Animal Services) notice declaring his dog vicious and needing to be contained. After hearing the witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal. However, we reduce the monetary penalty and offer an avenue for Bentley to return to dog parks.

Background

2. On August 16, 2021, Animal Services issued a notice to Brian Johnson for his dog qualifying as vicious and needing to be contained. Ex. D5. Mr. Johnson filed a timely appeal on September 7. Ex. D7. We went to hearing on October 27.

Hearing Testimony

Testimony of Cameron Loewen

3. Cameron Loewen testified that on August 13 he was walking his dog, Hagrid, towards the corner of 8th and 209th. As he approached, he saw a dog [Bentley] rounding the corner from the other direction. It was dark out. Bentley came towards them and was picking up speed. He then realized that Bentley was off-leash. He initially thought Bentley was friendly and just wanted to visit.
4. Still, Hagrid is a rescue dog and does not have much experience with other animals. And as a St. Bernard, any altercation between him and a smaller dog could potentially be disastrous. So, as Bentley approached, Mr. Loewen brought Hagrid behind him, using his body as a barrier to keep the dogs from being able to meet each other.
5. When Bentley reached him and Hagrid, it started barking and rapidly moving to try to get to Hagrid. Hagrid also started to bark and struggling to reach Bentley. Mr. Loewen felt a sting on his leg, and he assumed he had been scratched. He continued to keep the dogs separated. He was hollering and cussing in an attempt to get Bentley off. Both dogs were close to him but he does not think that they ever reached each other.
6. After a few moments, Bentley's owner arrived and recovered it. Mr. Loewen took stock and realized that he was bleeding. He brought Hagrid home to check for injuries, and then he and his wife drove to urgent care. They passed the location of the incident and saw a woman walking. They stopped and asked if she was the person walking the dog that got lose. She said that the leash had broken. Mr. Loewen told her that the dog had bitten him and showed her the wound. He then continued to urgent care.
7. When he reviewed the wound, it looked like a little chunk got bitten off. He believes that the other dog bit him, because if it was Hagrid, the injury would have been more significant. It was on the outside of his left leg, which was his leading leg toward the approaching dog. Ex. D3.

Testimony of Brian Johnson

8. Brian Johnson testified that it was an unfortunate event. He walks Bentley every night. On the day of the incident, he and Bentley rounded the corner about two blocks from their house. Simultaneously, Bentley and Hagrid saw each other and started barking. Bentley's leash broke and he ran towards Hagrid and Mr. Loewen. It was dark out, so he did not see the scuffle or where Mr. Loewen was in comparison to the dogs. He immediately trotted over, got a hold of Bentley, and walked home.

9. Mr. Johnson testified that he believes Bentley's behavior has been affected by the pandemic. Bentley is used to going to the dog park to play ball, which is his main form of exercise. While there, he does not play with the other dogs. The pandemic has curtailed their trips to the dog park, and Bentley has pent up emotions. Mr. Johnson brings Bentley to the dog park about three times a week.

Testimony of Isis Caney

10. Isis Caney testified that she had met Bentley once before the incident, while working with the Johnsons' other dog. Bentley barked once and then sniffed at her; there were no issues. The Johnsons called her as soon as the incident happened. The Johnsons have had Bentley for eight years, and he has never had an incident with a dog or person before. Bentley spends a lot of time out on his porch. She recommended a certain type of leash and a coupler on his collar. She talked to Mr. Loewen to get his perspective.
11. Ms. Caney explained to Mr. Johnson that Bentley was in a drive. The bite was not intended for a human. When a dog is in a drive, which is similar to when a person is pumped up on adrenaline, the dog has such a strong focus on one thing that they may not notice that they are biting something.
12. Ms. Caney testified that sometimes when there is an incident between two dogs, there can be issues between them later. She plans to train Bentley and, when she thinks they are ready, she can have Bentley and Hagrid pass by each other. Bentley and Hagrid had never met, but they have exchanged a bark or two from the porch. Mr. Loewen said he would be willing to have Hagrid involved in future Bentley training. Ms. Caney wants to work with the dogs on thirty-foot leads, so she can still control them while allowing them some freedom.
13. Ms. Caney has not seen Bentley at the dog park, but it sounds like Bentley does not have issues with resource guarding over his ball. Ms. Caney requested if Bentley passed the Canine Good Citizenship (CGC) training, there be sway in his confinement terms. The CGC test includes dogs passing on a leash, being left without the owner, basic leash work without a correction collar or harness, and ignoring distractions. Ms. Caney believes that if Bentley passes the CGC test, it will show that Bentley is ready for dog parks again. It would be a negative for Bentley if he could not go to the dog park, and she does not want Bentley to deteriorate.
14. Ms. Caney testified that she has had success with using an ultrasonic device on Bentley. These devices can help bring a dog out of an elevated state. It is a directional device one can point at any dog.

Testimony of Sgt. Chelsea Eykel

15. Sgt. Eykel testified that the shelter deals with a lot of displacement bites. When the dog wants something and is unable to get it, they become frustrated, and there is an intent to bite. The behavior needs to be disrupted by a handler who has the dog on a leash. In regard to devices, no device is foolproof.

Legal Standards

16. Animal Services asserts that Bentley qualifies as “vicious,” defined as, “performing 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.
17. 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

18. Mr. Johnson questions whether Bentley bit Mr. Loewen, or whether it might have been Hagrid. We find it far more likely than not that it was Bentley. First, it would not be unprecedented, but would be unusual, for a dog to bite its owner. Second, Mr. Loewen had Hagrid on his right side, with his left thigh towards Bentley, and the bite was on the outside of Mr. Loewen’s left thigh. And third, we have viewed hundreds of dog bite photos, and the bite marks look way too narrowly-spaced to be a St. Bernard’s. Bentley bit Mr. Loewen. And Mr. Loewen standing between his dog and a charging Bentley is in no sense legal provocation for Bentley to bite him.
19. While an unprovoked bite is typically enough to satisfy KCC 11.04.230.H—after all, what is better evidence that a dog constitutes a danger than evidence that, given some set of circumstances not arising to “provocation,” a dog will bite a person—in some appeals we have found extenuating circumstances such that we have overturned a viciousness designation, even after violence.
20. This is not one of those cases. While we do not discount Mr. Johnson’s testimony that it was dark and Bentley may have felt surprised, there was nothing extraordinary about the surrounding circumstances here. Yes it was dark, but Mr. Loewen was walking Hagrid on a leash, a good distance away, and Bentley was so amped up to start something that he busted out of Mr. Johnson’s leash grip, charged towards Hagrid and Mr. Johnson, and bit Mr. Johnson as he tried to create a barrier between the two dogs. And this was no “back-off” nip like we sometimes see, with just a bruising or faint pinpricks. Instead, Bentley bit with enough force to remove a chunk of Mr. Loewen’s thigh. Ex. D3. We find that Bentley constitutes a danger, and we uphold the violation.
21. One default compliance term is the requirement that a dog only be off its property on an eight-foot or shorter leash. Ex. D5. That effectively means permanent exclusion from off-leash dog parks. The bar makes sense at present. Unlike a scenario where, say, Bentley bit a pizza delivery guy who opened the Johnson’s front door, and one could argue that the home-protective scenario bears little resemblance to what one encounters

in dog parks, here the see-another-dog-and-go-ballistic fact pattern has obvious implications for dog parks.

22. However, as Ms. Caney observed, being barred for life from running freely in off-leash parks has serious negative consequences and can cause a dog to deteriorate. She was confident that, if Bentley passes the rigorous canine good citizenship course, Bentley's issues would not repeat themselves. We will modify the compliance order accordingly.
23. Finally, as to the penalty amount, where a violation happened despite (not because of) the care level an appellant was exercising, or an appellant takes steps to avoid a recurrence, we typically reduce the penalty. Here, those are both strongly on display. Mr. Johnson was walking Bentley on a leash, just as a responsible owner would, when Bentley unexpectedly busted loose. And Mr. Johnson has taken swift and thorough action to hire a trainer and even to work with Mr. Loewen to try to work through Bentley's reactiveness and prevent any future incidents. We think a significant penalty reduction is in order

DECISION:

1. We DENY the appeal as to the viciousness violations.
2. We REDUCE the penalty to \$150.
3. We MODIFY Animal Services' August 16, 2021, compliance order as follows (A. through D. being substantively unchanged, and E. being new):
 - A. Secure Bentley 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 Bentley using a leash no more than eight feet long, with a collar or harness, when taking Bentley off your property. A competent and capable person must handle Bentley at all times when attended outside.
 - C. If not already completed, microchip Bentley and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **December 31, 2021**.
 - D. Keep Bentley current on his rabies vaccination.
 - E. If Bentley earns his Canine Good Citizenship (CGC) training certificate, Bentley may return to sanctioned off-leash dog parks, provided Mr. Johnson or another adult family member is present, and provided Bentley is leashed at all times when not in the car or in the fenced, off-leash area.

ORDERED November 10, 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 *December 10, 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 27, 2021, HEARING IN THE APPEAL OF BRIAN JOHNSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012430-A21004086

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Cameron Loewen, Brian Johnson, and Isis Caney. 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 Online Complaint form of August 13, 2021 incident by Cameron Loewen, dated August 16, 2021
- Exhibit no. D3 Photograph of Mr. Loewen’s injury
- Exhibit no. D4 RASKC investigation report no. A21004086
- Exhibit no. D5 Notice of violation no. V21012430-A21004086, issued August 16, 2021
- Exhibit no. D6 Bite Quarantine Notice
- Exhibit no. D7 Appeal, received September 7, 2021
- Exhibit no. D8 Map of subject area

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012430-A21004086**

BRIAN JOHNSON
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 November 10, 2021.



Lauren Olson
Legislative Secretary

Caney, Isis

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Johnson, Brian

Hardcopy

Loewen, Cameron

Hardcopy