

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21012513-A21004595**

KYMBERLY GOOD

Animal Services Enforcement Appeal

Activity no.: A21004595

Appellant: **KyMBERly Good**

[REDACTED]
Lake Forest Park, WA 98155

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Animal Services issued KyMBERly Good a violation notice for her dog not being under control, being unlicensed, qualifying as vicious, and needing to be confined. After hearing witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we reverse the vicious designation and confinement order, because the facts the complainant described do not quite satisfy Animal Services' burden of proof.

Background

- Animal Services' violation notice asserted that Ms. Good's dog, Dash, jumped out of an open vehicle window, onto public property, and attacked a leashed dog. Ex. D5.¹ Ms. Good timely appealed. Ex. D6. She did not contest the licensing violation; however, she has since renewed Dash's license. Ex. A6. We went to hearing on November 10 on the on-public-property and viciousness violations. We closed the record on November 12.

Hearing Testimony

Testimony of Jeri Leasure

- Ms. Leasure is a dog walker on her spare time. On September 10, she took out Dave Harisiades's two dogs, Bailey and Molly, both on leashes. She was walking on a graveled part of the road since there were no sidewalks. When she got to the front of Ms. Good's driveway, she noticed people moving furniture out and a dog [Dash] ferociously barking inside a van in the driveway. Ms. Leasure and the dogs were about two to three feet away from the driveway. Dash jumped out of the window and came at them.
- Molly was up on her hind legs trying to defend Ms. Leasure as Dash ran at them, but Molly was not going after Dash. Dash got Molly around her neck area. Ms. Leasure pulled Bailey and Molly towards her, and Molly managed to squeeze out of her collar. Bailey was not doing much, and Ms. Leasure had a firm grip on her leash.
- A man [Trentyn Good, Ms. Good's son] quickly came and tackled Dash. A car was coming on the road, and Mr. Good had to stop the car from hitting Bailey and Molly. Ms. Good was inside the house and came to her screen door, yelling for Mr. Good to get Dash. Ms. Leasure walked around the corner to check Molly and noticed there was a bit of saliva under her belly; there was no bleeding or external wounds. A car then pulled next to them and took photographs from behind; she assumed they came from the Good's residence.
- Since Ms. Leasure was new to the neighborhood, she walked back the same way she came, but on the other side of the street. When she passed the Good's home, she noticed Dash was in the front yard, aggressively charging up the fence. Ms. Leasure got to Mr. Harisiades's home and put Bailey and Molly inside the house. She noticed that they both had saliva from Dash and were both fiercely salivating themselves. She then got in her car and called Mr. Harisiades and the dog walking service to report the incident. She also filed a complaint with Animal Services. Ex. D3. Ms. Leasure testified that there was a couch in front of Ms. Good's house for about a week. Ex. D8.

¹ The September 12 violation notice contained a misprint, listing the violation date as September 12 (i.e., a week *after* the notice itself was issued). The September 10 complaint clearly listed September 10 as the date of the incident. Ex. D2 at 005.

Testimony of David Harisiades

7. On September 10 Mr. Harisiades was in a meeting when he heard Ms. Leasure's voicemail about the incident. He drove home. They discussed the incident, and later that afternoon he filed a complaint with Animal Services. Ex. D2. Two days later, Mr. Harisiades noticed Molly developing symptoms of what he thought was kennel cough, yet Bailey did not. Two days after that, he took Molly to the vet, where she stayed overnight. The vet diagnosed swelling in the thoracic area, which Mr. Harisiades attributed to Dash's bite to Molly's neck. Molly recovered within a week.
8. Mr. Harisiades testified that this was not the first incident with Dash. About four years ago, Dash was loose in the neighborhood and Ms. Good came out admonishing not Dash, but *Mr. Harisiades*, for walking his dog at dusk. In another incident, he again saw Dash loose, so he called Ms. Good; she was at a wedding and advised him that someone was at her home to corral Dash back home.
9. Mr. Harisiades did not report the incidents because he wanted to be a good neighbor. Since he can see Ms. Good's house from his own, he notices people walking by her home end up turning back around. Now, Mr. Harisiades does not go past Ms. Good's house and instead takes walks a different way.

Testimony of Kymberly Good

10. When the incident occurred on September 10, Ms. Good and her son, Trentyn Good, were in the back of her truck in the driveway, loading wood. Ms. Good heard multiple dogs barking and saw Dash jump out of the vehicle window, jumping out not to attack but to play. Ms. Good saw Molly with her collar off and noticed that the leashes were tangled up. Mr. Good did not tackle Dash, but grabbed him by his collar and took him to the yard. Dash did not bite or drool on Bailey or Molly.
11. Since the incident, Ms. Good has purchased a vehicle seatbelt for Dash. The vet provided a statement, reporting that he has never seen a problematic temperament from Dash. Ex. A7.
12. Ms. Good does not recall an incident with Mr. Harisiades. If Dash is labeled vicious, Ms. Good is concerned that Dash will be unable to work with special needs kids, go to dog parks, or go into work with her. Ms. Good claims that she has not had a couch in her home for over two months because she was in the process of moving.²

Testimony of Trentyn Good

13. Mr. Good was in the driveway on the side of the truck when he heard Dash barking and then multiple dogs barking. Mr. Good was 100% positive that she was on top of the truck bed, not inside the house.

² Post-hearing, we re-opened the record to allow Mr. Harisiades to submit impeachment evidence, namely a time-stamped September 10 photo of the couch in front of the Good residence. Ex. D8.

14. He saw Dash run towards Bailey and Molly, who were at the top of the driveway. Dash was circling them. Mr. Good quickly stepped between the dogs and grabbed Dash by the collar. It was he who knocked off Molly's collar as he intervened.

Testimony of Kymbal Jack

15. Mr. Jack is a friend of Ms. Good. He has a 29-year-old autistic son whom Ms. Good has taken care of for over seven years. Mr. Jack trusts Dash around his son. He has never seen Dash exhibit vicious behavior. He was clear that he was not saying the September 10 altercation did not occur, only that when Dash has been around his son, Dash has been a sweet, gentle dog.

Testimony of Brendt Brandewie

16. Mr. Brandewie is a friend of Ms. Good. Dash and his dog have interacted together, and he has never seen Dash act aggressively towards his dog. Mr. Brandewie has witnessed Ms. Good's brother's French bulldogs and other smaller dogs corner Dash and Dash does not do anything.

Legal Standards

17. Animal Services asserts that Dash was unlicensed, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered. Ms. Good does not dispute this, but she has since licensed Dash.
18. Animal Services asserts that on September 19, Dash was "on any public property not under control by the owner or other competent person," with "under control" being defined as "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." KCC 11.04.020.AA, .230.M. Ms. Good challenges this.
19. Animal Services asserts that Dash qualifies 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. Ms. Good also challenges this.
20. 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

21. We hear hundreds of witnesses testify each year. Ms. Good was among the least persuasive. Throughout, she came across as cornered, trapped, and lashing out, which was consistent with her earlier statements, like attempting to deflect blame from her and Dash and onto to *Ms. Leisure* for walking home on the *other side* of the street from Ms. Good's home and for the state of Molly's collar (which was operating just fine up until Dash charged). Ex. A9.
22. There was nothing credible about Ms. Good's presentation. Her story that Dash jumped out of the car window to play was either fictional (because she did not actually see his initial charge), false (because she saw it and knew it was not friendly, yet felt compelled to spin it), or detached from reality (because she saw it and somehow misinterpreted a charge as a friendly gesture). She appears in serious denial; while Dash is apparently well-behaved in many settings, he shows aggression to strangers and their strange dogs crossing what he perceives as his turf (the street in front of his house).
23. Ms. Good's son came across as significantly more credible. Mr. Good did not dispute that Dash started the barking. Mr. Good did not pretend that Dash was just trying to play, instead describing Dash as circling the other dogs. Instead, Mr. Good immediately understood the situation for what it was—Dash going after another dog—and rapidly sprung into action, intervening before Dash could inflict much harm. And that speedy response, as we discuss below, turned out to be critical.
24. Dash charged at Molly and bit her neck. And Molly standing her ground and posturing was in no sense legal provocation. Thus, Dash performed a vicious act, endangering Molly's safety without provocation, meeting the definition of "vicious." KCC 11.04.020.BB. However, the KCC 11.04.230.H violation criteria contains both a past-tense, "exhibited" vicious behavior requirement (which Dash did on September 10), but also a present-tense, "constitutes a danger" requirement.
25. "Constitutes" is an odd inclusion. Under our state's two-tier system for hazardous dogs, there is a "potentially dangerous dog" category, one requiring less than the County's "vicious" threshold, with approaching a person in a "menacing fashion" (without even attempting to bite) being sufficient. RCW 16.08.070(1). Conversely, our state's "dangerous dog" category is reserved for behavior more serious than the County's "vicious" trigger. RCW 16.08.070(2). Yet neither of those state designations require, or even allow for, an additional inquiry about the danger level a dog poses going forward; qualifying action on a single day is always sufficient, all by itself, to earn the relevant designation.
26. Yet the drafters of the County legislation chose to include a "constitutes a danger" requirement. To be sure, an unprovoked bite is *typically* enough to show that danger. After all, what is better evidence that a dog constitutes a danger than proof that, given some set of circumstances not arising to legal provocation, a dog will actually bite or attack a person or pet? However, we interpret a statute so as not to render a term superfluous. *Chelan Basin Conservancy v. GBI Holding Co.*, 190 Wn.2d 249, 264, 413 P.3d


549 (2018). Therefore, there should be some subset of cases, however small, where an animal who actually exhibited vicious behavior will nonetheless *not* be adjudged to constitute a danger. Thus, in select appeals we have found extenuating circumstances such that we have overturned a viciousness designation despite the animal's vicious behavior.

27. Here, that extenuating circumstance was that Mr. Good swiftly removed Dash from the altercation. We strongly suspect that, had Mr. Good not responded so rapidly to take Dash out, Dash would have continued his attack, and the altercation would have quickly devolved into something sufficient to sustain a viciousness designation. That Dash jumped out of the safe space of a car to charge at Ms. Leasure and her leashed dogs, and that Mr. Good had to actually yank Dash away (instead of vocally recalling him) to prevent him from doing more harm, are both troubling. But on our facts we cannot find it more likely than not that Dash constitutes a danger. We thus overturn his viciousness violation.
28. As to the minor violations:
- Ms. Leasure was walking her dogs along the gravel shoulder of the public street, a place she had every right to be. Dash pursued them, being on public property not under control so as to be restrained from approaching any bystander or other animal. We sustain this violation.
 - Dash was not licensed on September 10. However, where a pet is unlicensed at the time of the violation but licensed prior to our hearing, we typically reduce the penalty. Ms. Good licensed Dash on September 27, well before our November 10 hearing. Ex. A6.

DECISION:

1. We grant Ms. Good's appeal as to the viciousness designation and confinement order.
2. We deny Ms. Good's appeal as to the public-property-not-under-control violation.
3. We reduce the licensing-related penalty from \$125 to \$70, making the total penalty due (along with the \$50 for the on-public-property-not-under-control violation) \$120.

ORDERED November 29, 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 29, 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 NOVEMBER 10, 2021, HEARING IN THE APPEAL OF KYMBERLY GOOD, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012513-A21004595

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Brendt Brandewie, Chelsea Eykel, Kymberly Good, Trentyn Good, David Harisiades, Kimball Jack, and Jeri Leasure. 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 September 10, 2021 incident by David Harisiades, dated September 11, 2021
Exhibit no. D3	Ms. Leasure’s email, dated September 11, 2021
Exhibit no. D4	RASKC investigation report no. A21004595
Exhibit no. D5	Notice of violation no. V21012513-A21004595, issued September 12, 2021
Exhibit no. D6	Appeal, received September 20, 2021
Exhibit no. D7	Map of subject area

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

Exhibit no. A1	Dash and a friend’s dog out hiking.
Exhibit no. A2	Dash interacting with dogs at local dog park.
Exhibit no. A3	Dash being walked by special needs person he works with several times a week.
Exhibit no. A4	Dash being walked by special needs person in Leavenworth, WA he works with on occasional weekends.
Exhibit no. A5	Proof of micro-chip
Exhibit no. A6	Receipt of proof of dog license
Exhibit no. A7	E-mail statement from Dr. Leah Ferguson on Dash’s demeanor during Vet visits.
Exhibit no. A8	Amended appeal, received October 22, 2021
Exhibit no. A9	Rebuttal exhibits

November 29, 2021

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012513-A21004595**

KYMBERLY GOOD

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 29, 2021.



Jessica Oscoy
Office Manager

Brandewie, Brendt

Eykel, Chelsea

Regional Animal Services of King County

Good, Kymberly

Hardcopy

Good, Trentyn

Harisiades, David

Hardcopy

Jack, Kimball

Leasure, Jeri