

February 4, 2022

**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. **V21012725-A21005800**

NESSA BARNES
Animal Services Enforcement Appeal

Activity no.: A21005800

Appellant: **Nessa Barnes**

[REDACTED]
Redmond, WA 98053

Telephone: [REDACTED]

Email: [REDACTED]

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

FINDINGS AND CONCLUSIONS:

Overview

1. Nessa Barnes appeals a Regional Animal Services of King County (Animal Services) violation notice related to her dog. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we sustain the running-at-large and threatening-persons violations but overturn the viciousness designation.

Background

2. In June 2021, Animal Services issued a violation notice to Nessa Barnes for her dog, Felix, running at large, running in packs, and threatening persons in public, and her other dog, Bruce, running at large, and threatening persons in public. Ex. D9. Ms. Barnes did not appeal.
3. In November 2021, Animal Services issued the current violation notice to Ms. Barnes for Felix running at large, threatening persons in public, qualifying as vicious, and needing to be confined. Ex. D2. Ms. Barnes filed an appeal (or, more accurately, submitted a letter from Brendaliz Cruz which we treated as sufficient to qualify as an actual appeal) in December. Ex. D7. We went to hearing on February 2, 2022.

Hearing Testimony

Testimony of Sathya Swaminathan

4. Sathya Swaminathan testified that on November 17 she was walking home after dropping her kids off at school. Ms. Swaminathan was across the street from the Barnes house. She saw the Barnes dog [Felix] come off the Barnes porch and chase a cat. Felix then shifted his focus to Ms. Swaminathan and started aggressively barking at her. Felix crossed the street and pounced on her; his face was at the same level as hers.
5. She thought that maybe Felix would bite her. Felix was sniffing and continuously barking. Ms. Swaminathan was very scared, so she closed her eyes and yelled for help. She knew that if she ran away the dog might become more aggressive. A person [Mr. Sharyes] walking behind her called 911. Felix ran back to the Barnes' side yard. Ms. Swaminathan checked herself over, and she was not bitten.
6. In the past, Ms. Swaminathan's neighbors had warned her about the Barnes dog. Ms. Swaminathan's children used to play in the alley behind the Barnes house. Once, her children were playing in the alley and Felix snatched her daughter's stuffed toy. No one was there to see how aggressive Felix was that day. Ms. Swaminathan's husband went to the Barnes house to retrieve the toy.
7. Ms. Swaminathan is not related to, and does not know, the complainant from the June incident [Thirunavukkaresu Swaminathan].¹

Testimony of Rebecca Smokoska

8. Sergeant Rebecca Smokoska testified that Animal Services did not call Mr. Sharyes, the person who called 911 during the November incident, as a witness for the hearing because he declined to testify and fill out a formal statement.

¹ We first assumed, given the same last name and that they both mentioned children, that the Swaminathans were members of the same household. Re-reading the complaints, we see they live a block away and on the opposite side of the street. Exs. D4 & D11.

Testimony of Nessa Barnes

9. Nessa Barnes testified that per her witness, Felix was not outside during the November incident. Ms. Barnes' witness, who was walking in front of Ms. Swaminathan, said there were no dogs out at that time. Her witness said that Felix was inside. Ms. Barnes' noted that Felix did not bite or leave scratches, and she also testified that it was not her dog.
10. Ms. Barnes stated that she has an electric fence for Felix. Felix knows that when he hears the beep he has gone too far and he comes right back. Felix would not chase her cat because they are best friends.
11. Felix does bark but he is not vicious. Felix has never bitten anyone before, and he is well trained to not jump. Felix is four years old, and he has never jumped on anyone.
12. When Ms. Barnes spoke with Officer Wheatley, she became angry and told him that if he does not have proof of the case or violation then she does not have any dogs because what he was doing was illegal. Ex. D4-004, n. 2.
13. Someone came to the Barnes home and spoke with her daughter regarding the November incident. Ms. Barnes does not appreciate people coming to her home and harassing her family.
14. For the June incident, the video, exhibit D13, shows Bruce coming from the Barnes driveway. Ms. Barnes rehomed Bruce because he had behaviors that were not great for their home. She also thought it might alleviate problems with her neighbors. Since these particular neighbors have moved in, she has gotten nothing but harassed from them. These families have let her know that they are afraid of dogs, and it is part of their culture. The back alleyway is not a safe place for kids to play.
15. Ms. Barnes noted that the other witness refused to make a report and he was not mentioned in Ms. Swaminathan's complaint form. She also noted Officer Wheatley's memo that the dog neither jumped or touched Ms. Swaminathan. Ex. D4-002, n. 2.

Legal Standards

16. Was Felix "running at large" on November 17, 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.;
17. Did Felix threaten, defined as "habitually snaps, growls, snarls, jumps upon or otherwise threatens persons lawfully using the public sidewalks, streets, alleys or other public ways"? KCC 11.04.230.G.
18. Does Felix qualify 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 the violation itself 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.

19. 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

20. We carefully scrutinize a complainant’s testimony for embellishment, either purposefully or simply that, in the heat of an altercation and with adrenaline flowing, witness accuracy drops significantly after a threat appears and the recipient’s focus dramatically narrows. Yet there was nothing about Ms. Swaminathan’s testimony that gave us real pause or seemed to lay it on at all thick.
21. Ms. Swaminathan did not overplay anything about the altercation. She did not say Felix was trying to bite her or snapping or baring his teeth, merely that he jumped on her and she *thought that maybe* he would bite her. We found her credible and her testimony likely accurate.
22. Conversely, there was nothing credible about Ms. Barnes’ presentation, both her angry, rambling pre-hearing submittals, exhibit A1, and her hearing performance. She came across as combative, defensive, trapped in corner, and feeling the need to lash out. She brought a lot of heat, but little light. We do not discount the possibility that Ms. Barnes’ story was accurate, and she just did not communicate that in a persuasive manner. But we decide fact questions on a more-probable-than-not standard. And we found Ms. Swaminathan’s testimony significantly more likely to be accurate than Ms. Barnes’.
23. What is really odd is that Ms. Barnes apparently had a witness, Brendaliz Cruz, who could testify to Felix’s whereabouts the morning of November 17 and counter Ms. Swaminathan’s version. That is why, in the prehearing notice we sent out four weeks before the hearing, we took the pains to explain:

The appeal is a little tough to decipher, but appears to assert there are eyewitnesses who can testify as to the November 17 events. Eyewitness testimony at a hearing about what happened on November 17 seems critical to determining whether Felix meets the above-quoted code criteria. Conversely, out-of-court statements not subject to crossexamination are usually not worth very much. It is up to each party—Animal Services and an appellant—to arrange for their own witnesses. Typically witnesses, will agree to testify voluntarily; however, if a party is getting pushback and needs a subpoena to compel a witness to testify, request that from our office ASAP. Note, if an eyewitness is

amenable to testifying, but cannot be available at the scheduled time, let our office know that ASAP as well.

24. And yet, despite all the effort Ms. Barnes put into directing anger at Animal Services, at both complainants, and even at a whole “culture” (excusing her dogs’ aggression because of the “culture” of those who experienced Felix’s behavior), she did not bother to produce the one witness who, as she explained, could place Felix inside his house at the time Ms. Swaminathan passed by. That was especially ironic, because Ms. Barnes complained that Animal Services had not brought an at-best tangential witness (and investigating officer that saw nothing only November 17 and had no involvement at all with the incident until November 20, exhibit D4 at 002, n.1) to the stand. Yet somehow Ms. Barnes read the above block quote and decided just to go with the original letter, instead of offering an actual witness. Ex. D7.
25. The letter is of course textbook hearsay, “a statement, other than one made by the declarant while testifying at the... hearing, offered in evidence to prove the truth of the matter asserted.” Evid. R. 801. While not necessarily inadmissible in an examiner hearing, such statements are, as we explained to Ms. Barnes several weeks ago, “usually not worth very much.” We can speculate that, had Ms. Cruz testified—under oath and subject to crossexamination—she might have tipped the balance, but we will never know. We decide the case based on the record in front of us.
26. On our record, more likely than not it was Felix who came off the Barnes property, ran at large and unrestrained from approaching Ms. Swaminathan, and then jumped on Ms. Swaminathan and threatened her on the public sidewalks. We sustain the running-at-large and threatening-persons violations.
27. The viciousness designation is different. Were we operating under the state’s two tier system, which could state definitely that Felix qualifies as a “potentially dangerous dog,” a criteria met by approaching a person upon a sidewalk in a menacing fashion, RCW 16.08.070(1), as Felix did on November 17. But “viciousness” is a more exacting standard, as described above. Felix meets KCC 11.04.020.BB, having performed an act endangering the safety of a person, when he ran at Ms. Swaminathan and jumped up on her; we have seen people injured by less. But can we say that Animal Services has met its burden under KCC 11.04.230.H of showing that Felix constitutes a danger, warranting a vicious designation that would stay with him for the rest of his life?
28. Ironically enough, one piece of evidence that cuts in Felix’s *favor* is an exhibit that Ms. Barnes kept carping on, the June video of Felix and Bruce accosting a child in the alley. Ex. D13. Both dogs behave aggressively and inappropriately, scaring a child in the process. But we get no inclination from that video that, even if the adult was not present, either dog actually would have actually hurt the child; it seemed more bluff and posture.
29. It is a close call, but in the final analysis we find that Animal Services has not met its burden to prove that Felix qualifies as vicious. And because Felix has now had two sustained violations since June 2021, a third in a one-year period would risk Felix being

ordered removed from King County. KCC 11.04.290.B.1. Thus we are confident Ms. Barnes will redouble her efforts to keep Felix from getting loose again.

DECISION:

1. We DENY the appeal as to the running at large and threatening violations.
2. We GRANT the appeal as to the viciousness designation.

ORDERED February 4, 2022.



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 *March 7, 2022*. 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 FEBRUARY 2, 2022, HEARING IN THE APPEAL OF NESSA
BARNES, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.**

V21012725-A21005800

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska, Sathya Swaminathan, and Nessa Barnes. 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. V21012725-A21005800, issued November 26, 2021
Exhibit no. D3	NVOC mailing/tracking history
Exhibit no. D4	RASKC investigation report no. A21005800
Exhibit no. D5	Online Complaint form of November 17, 2021 incident by Sathya Swaminathan, dated November 17, 2021
Exhibit no. D6	Map of subject area
Exhibit no. D7	Appeal, received December 21, 2021
Exhibit no. D8	RASKC investigation report no. A21002656
Exhibit no. D9	Notice of violation no. V21012183-A21002656, issued June 12, 2021
Exhibit no. D10	Photograph of Posting
Exhibit no. D11	Online Complaint form of June 10, 2021 incident by Thirunavukkaresu Swaminathan, dated June 10, 2021
Exhibit no. D12	Photograph of dogs sent by Aresu Swaminathan for A21002656
Exhibit no. D13	Video of dogs sent by Aresu Swaminathan for A21002656

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

Exhibit no. A1	Email chain "V21-012725 Barnes Staff Report", dated January 19-30, 2022
Exhibit no. A2	Email "Good faith witness" and letter from Ms. Barnes, dated January 30, 2022
Exhibit no. A3	Email "Letter for Nessa" from Ms. Barnes, dated January 30, 2022

DS/lo

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CERTIFICATE OF SERVICE

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NESSA BARNES
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 February 4, 2022.



Lauren Olson
Legislative Secretary

Barnes, Nessa
Hardcopy

Cruz, Brendaliz
Hardcopy

Smokoska, Rebecca
Regional Animal Services of King County

Swaminathan, Sathya
Hardcopy