

July 1, 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. **V22013115-A22001993**

THOMAS AND ELIZABETH MARSHALL

Animal Services Enforcement Appeal

Activity no.: A22001993

Appellants: **Thomas and Elizabeth Marshall**

[REDACTED]
Shoreline, WA 98133

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. Thomas and Elizabeth Marshall appeal a violation notice for their dog, Jack, qualifying as vicious and needing to be confined. After hearing witnesses testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and relevant law, we uphold the violation and compliance order. However, we make two modifications, including an avenue to later lift Jack's viciousness designation.

Background

2. On April 21, Rebecca Binz filed a complaint asserting that the previous day Jack attacked her three-legged dog, Chopper, while they were walking in the neighborhood. Ex. D2. Animal Services issued the Marshalls a violation notice. Ex. D5. The Marshalls timely appealed. Ex. D7. We went to hearing on June 16.

Hearing Testimony

Rebecca Binz

3. Ms. Binz normally walks daily with Chopper to pick up her son from school. On April 20, Ms. Binz was quietly walking with Chopper to pick up her son. Ms. Marshall and Jack rounded a corner, on the opposite side of the street from Ms. Binz and Chopper. Suddenly, Ms. Marshall lost control of Jack.
4. Jack ran towards them with his fangs bared and jumped on top of Chopper. Ms. Binz continued holding on to Chopper's leash, but Jack began biting Chopper, so Ms. Binz let go. Ms. Binz yelled at Ms. Marshall to "Get your dog!" but Ms. Marshall did not react. At that point the dogs were on the sidewalk, but then moved to the middle of the street, with Jack continuously biting Chopper's back and left shoulder. As soon as Jack loosened his fangs from Chopper's shoulder, Ms. Binz quickly yanked Chopper's leash and pulled him away.
5. After the altercation, Ms. Marshall told Ms. Binz, "It was as much your dog's fault as it was mine." Ms. Binz and Chopper continued walking towards the school, shaking. Chopper's back and left shoulder were soaking wet and slimy. After they got home, Ms. Binz thoroughly checked Chopper and did not find any puncture wounds. Ms. Binz typically avoids Jack when she sees him from afar, but on April 20, she did not see him soon enough to turn around.
6. Prior to April 20, Ms. Binz has seen Jack escaping before, around the area where the April 20 altercation occurred. One time, Mr. Marshall was coming down a small trail with Jack, when Mr. Marshall lost control of the leash and Jack ran off, but not very far. Another time Ms. Marshall lost control of Jack's leash and Jack tried coming towards Chopper with his fangs bared, but Ms. Marshall was quickly able to regain control.
7. Ms. Binz avoids that route now. And even though Chopper was not physically injured, mentally and emotionally Chopper has dramatically changed, and for the worse. Ms. Binz has to continue working with Chopper to help him feel safe and at ease with other dogs.

Testimony of Bridgett Takenaga and Sue Anne Lemkin

8. On April 20, Ms. Takenaga was walking in the neighborhood when she heard barking and loud voices. As she rounded the corner she saw Ms. Binz, who told her that Chopper had just been attacked. Ms. Takenaga noticed that Chopper's eyes were dilated and he had a rigid body posture; both Chopper and Ms. Binz looked frazzled. Ms.

Takenaga has seen Ms. Marshall walking Jack twice before and when she tried to compliment Jack, Jack barked at her.

9. Ms. Lemkin also heard the altercation. As she passed Ms. Marshall, Jack barked and lunged at her dog. So, Ms. Lemkin kept on walking, as she did not want to engage with them.

Testimony of Elizabeth and Tom Marshall.

10. Ms. Marshall does not refute that Jack got on top of Chopper and tried biting and fighting him on April 20. Jack is a 100-pound, extra-large malamute dog that barks often, whether he is greeting or just excited. Ms. Marshall recalls that she tried avoiding Ms. Binz, but as soon as Jack saw Chopper, Jack took off. Typically, Ms. Marshall has the leash wrapped around her hands, but on that day she did not.
11. Regarding the other two times that Ms. Binz discussed Ms. Marshall losing control of Jack's leash, she recalls the first time, when she was able to quickly regain control of the leash, but the second time she did lose control. Ms. Binz senses that Chopper fears Jack, as he has barked at Jack before; the first time Chopper barked at Jack may have been that first time that Ms. Binz saw her lose control of Jack's leash.
12. Mr. Marshall testified that though he was not present on April 20, it is his understanding that Chopper may have been barking at Jack. Jack may have gone over to play with Chopper, as no puncture wounds or blood were found; the playing may have "gotten out of hand." Jack has been trained on several obedience techniques and regularly interacts with other dogs in off-leash areas. The Marshalls have purchased a harness and other equipment that Animal Services recommended.

Legal Standards

13. SMC 6.05.020.JJ defines "vicious" 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. And SMC 6.30.010.A.7 declares as a nuisance, "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."
14. 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

15. The Marshalls seem in a state of serious denial. Even if we could chalk up Mr. Marshall victim-blaming Ms. Binz and Chopper in the seconds after Jack attacked as the

unfortunate product of adrenalin, in their appeal statement filed several days later they asserted that Jack was merely “responding to” Chopper, who was “barking and acting aggressively.” That is not even true as a factual matter—Ms. Marshall did not controvert Ms. Binz’s testimony that Ms. Binz and Chopper were walking quietly when Jack went ballistic and busted loose. Moreover, even if Chopper had been barking while Jack was still on his leash, Chopper is a three-legged dog who was walking on the *opposite side of the street* when Jack broke free and charged across the street at him.

16. 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. An average dog would not respond even to a barking dog (let alone to a quiet dog) across the street by breaking loose from their handler and charging across the street. And jumping on and continually biting Chopper was grossly disproportionate to anything Chopper did. The Marshalls’ assessment that Jack went over to Chopper to “meet or play” is completely untethered from reality, and troubling.
17. Moreover, unlike some viciousness appeals, where the aggression in question may have been a one-off, Jack even barked and lunged at a different dog (Ms. Lemkin’s) later that same day. And on multiple other occasions, Jack was so agitated that he busted loose from the Marshalls and came towards Chopper and Ms. Binz.
18. On April 20, Jack endangered Ms. Binz’s, and especially Chopper’s, safety and constitutes a danger to the safety of at least some people and their dogs that pass in Jack’s vicinity. We uphold his viciousness designation and confinement order.
19. Normally, that is the end of the analysis. But this case is a little different in two respects.
20. First, it is possible that although Jack repeatedly bit Chopper’s back and shoulders, he did not actually puncture Chopper simply due to Ms. Binz pulling him away quickly or just from random chance. But Jack is a much larger, powerful dog; we have seen, in past cases, the physical damage Malamutes can inflict when that is their aim. And Jack had his mouth on Chopper’s back and shoulders long enough to cover those areas with slobber. The Marshalls’ argument that had Jack wanted to inflict actual physical injury he would have had some merit on our rather unique facts. Now, Chopper is still suffering psychological scars from the attack, damage that may last longer than a physical wound would; that is very serious. And we have seen numerous dog owners knocked down and injured when an aggressive dog comes charging. Yet the facts here are somewhat non-standard.
21. Second, our usual scenario giving rise to a viciousness designation (and commensurate requirement to keep a dog enclosed on their property or leashed when taken off their property) involve dogs escaping from a yard or allowed to run off-leash, who then inflict damage. But while Jack has proven to be a menace in the neighborhood, his aggression

starts while he is *on* a leash. There is nothing to counter the Marshalls' testimony that Jack does well with other dogs in the off-leash dog park context. Animal Services seems to agree that the main danger Jack poses comes from a combination of how dramatically leash-reactive Jack is, coupled by how powerful Jack is.¹ That is small solace to people like Ms. Binz or Ms. Lemkin who had the misfortune of being on a public street with their dogs when Jack was in the vicinity. Yet these facts too are somewhat non-standard.

22. So, we make two adjustments:

- The compliance term that a dog only be taken off its property while on a leash normally precludes the dog from returning to sanctioned off-leash dog parks. Ironically off-leash areas appear to be where Jack does *best*. We will adjust the confinement terms accordingly.
- A viciousness designation carries with the animal indefinitely. Yet, because of the rather unique factual scenario here, we will provide an avenue (item #2, below) by which, in the future, the Marshalls may petition Animal Services to lift Jack's viciousness designation.

DECISION:

1. We DENY the Marshalls' appeal, except that we MODIFY Animal Services' April 25, 2022, compliance order as follows (A. through D. being substantively unchanged, and E. being new):
 - A. Secure Jack 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 Jack using a leash no more than eight feet long, with a collar or harness, when taking Jack off his property. A competent and capable person must handle Jack at all times when attended outside.
 - C. If not already completed, microchip Jack and provide the microchip number to Animal Services by **July 22, 2022**.
 - D. Keep Jack current on his rabies vaccination.
 - E. Jack is allowed to run in sanctioned off-leash dog parks, provided Jack is leashed at all times when not in the car or in the fenced, off-leash area.
2. If Jack completes a rigorous training program with a professional who specifically deals with leash-reactive dogs, and if after completing that training the professional certifies that Jack is no longer leash-reactive and no longer poses a threat, the Marshalls may submit that certification to Animal Services and request that Animal Services remove Jack's viciousness designation. If Animal Services declines, the Marshalls will have 24 days from that declination to submit an appeal to Animal Services.

¹ It is safe to assume that, were Jack a much smaller dog, all the incidents testified to would have gone very differently.

ORDERED July 1, 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 *August 1, 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 JUNE 16, 2022, HEARING IN THE APPEAL OF THOMAS AND ELIZABETH MARSHALL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013115-A22001993

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Binz, Chelsea Eykel, Sue Anne Lemkin, and Elizabeth and Thomas Marshall. 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 April 20, 2022, incident by Rebecca Joy Binz, dated April 21, 2022 |
| Exhibit no. D3 | RASKC investigation report no. A22001993 |
| Exhibit no. D4 | Photograph of Chopper |
| Exhibit no. D5 | Notice of violation no. V22013115-A22001993, issued April 25, 2022 |
| Exhibit no. D6 | NVOC mailing/tracking history |
| Exhibit no. D7 | Appeal, received April 28, 2022 |
| Exhibit no. D8 | Maps of subject area |

July 1, 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

CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013115-A22001993**

THOMAS AND ELIZABETH MARSHALL

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 July 1, 2022.



Jessica Oscoy
Office Manager

Binz, Rebecca

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Lemkin, Sue Anne

Marshall, Thomas/Elizabet

Hardcopy

Takenaga, Bridgett