

February 6, 2023

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

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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V22013474-A22004513**

ALLYSON BYRNE

Animal Services Enforcement Appeal

Activity no.: A22004513

Appellant: Allyson Byrne
represented by **Preston Foskey**
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FINDINGS AND CONCLUSIONS:

Overview

1. Allyson Byrne appeals a notice and order involving her dogs, Bear and Freddie. After hearing witness testimony and observing demeanor, studying the exhibits admitted into the record, and considering the parties' arguments and the relevant law, we sustain both running at large violations, sustain Bear's viciousness designation, overturn Freddie's viciousness designation, clarify compliance terms, and reduce the monetary penalty.

Background

2. On August 26, 2022, Regional Animal Services of King County (Animal Services) issued Allyson Byrne a violation notice for her dogs, Bear and Freddie, running at large, qualifying as vicious, and needing to be confined, and assessing \$1,100 in penalties. Ex. D2. Ms. Byrne timely appealed on September 13. Ex. D16.
3. We held a pre-hearing conference on October 24 and set a December 8 hearing. Due to a witness being sick, we rescheduled the hearing to January 23, 2023.

Hearing Testimony

Brad Harvey Presentation

4. Neighbor Brad Harvey joined the beginning of our hearing, simply to provide two videos from his door camera. Exs. A4, A5.
5. Mr. Harvey did not provide any testimony, beyond confirming that his August 22 videos were authentic and not in any way altered. We appreciate his assistance.

Testimony of Christina Bass

6. Christina Bass testified that she was on a walk with her dog, Kona, around 7 PM on August 22, 2022. She was walking a leashed Kona on the sidewalk on the opposite side of the street from the Byrne house. Ms. Bass saw a white and black dog [Bear] run past Ms. Byrne. Ms. Byrne screamed at Bear as he ran across the street towards Ms. Bass. Bear turned around to head back to his house momentarily, but then circled back towards Ms. Bass. Ms. Bass then picked up Kona. Ex. D7. She thinks the video shows Ms. Bass pick up Kona and also shows Bear jump on Ms. Bass. Ex. D14.
7. Ms. Bass kicked at Bear. Bear went behind Ms. Bass. She felt Bear hitting the back of her shoulder as he jumped up on her. She felt Freddie jumping on her lower backside. Due to Freddie's size, she does not think he could have reached her shoulder blade. Ms. Bass is pretty short, and she believes Freddy bit her butt. Kona's head was on Ms. Bass's left side, and she does not believe Kona could have reached her right side to bite her. The bites were on her backside, so she could not see the dogs biting her. Throughout this, Kona let Ms. Bass hold her; Kona was not trying to get away. Ms. Bass did not recall seeing a third Byrne dog; she only remembered one dog on a leash. Ms. Bass never interacted or lunged at Ms. Byrne.
8. The paramedics took photos of the bites. They also took Ms. Bass's blood pressure, which was high. The paramedics said not much needed to be done for the bite on the butt, because it just broke through the skin. Ex. D13. The bite on the shoulder went under the skin. Ex. D10, D11, D12. They cleaned it and told Ms. Bass to monitor it to make sure it did not become infected.

9. A year or two prior to this incident, Ms. Bass saw Bear get out of his yard a couple times, barking and trying to get into her fenced yard. However, this stopped, and no more incidents have occurred.

Testimony of Kevin Carver

10. Kevin Carver testified that he lives on the opposite side of the community from Ms. Byrne. Mr. Carver has two pugs [Matilda and Pebbles] who have gone through twelve weeks of AKC (American Kennel Club) training and good citizen training. He can walk his dogs off leash, and they do not leave his side.
11. Around a year ago, Matilda was in Mr. Carver's front yard close to the sidewalk, and Pebbles was on the porch with Mr. Carver. As Ms. Byrne walked a leashed Bear on the sidewalk past Mr. Carver's property, Bear stepped onto Mr. Carver's property and bit Matilda on the neck. Bear started shaking Matilda and dragged Matilda onto the sidewalk. Mr. Carver ran out and punched Bear in the head to get him to release Matilda. Mr. Carver believes the whole incident was less than ten seconds. On rebuttal, he agreed that he did tell Ms. Byrne that his dog is friendly.
12. Mr. Carver did not report the incident because at the time, he thought this was a one-off. Matilda had a small puncture wound on her neck which broke the skin. Mr. Carver did not receive veterinary treatment for Matilda. Since this incident, Matilda has been a little aggressive to and scared of bigger dogs.
13. In the past, Mr. Carver used to walk his dogs by the front of Ms. Byrne's home. Bear would jump at the window when Mr. Carver and his dogs passed. Based on this and the previous incident, Mr. Carver now walks his dogs on the trail behind Ms. Byrne's house. Ms. Byrne's fence looks old, and Mr. Carver is worried about Ms. Byrne's dogs breaking through the fence. Mr. Carver now carries a permitted firearm while he walks his dogs specifically because of these interactions with Ms. Byrne's dogs.

Testimony of Allyson Byrne

14. Allyson Byrne testified that she has three dogs. Freddie, a 40-pound mut, is brown, with white under his chin, on his chest and underbelly. Khaleesi is a 25-pound black pug. And Bear is a 60-pound mut (husky/German shepherd/beagle/hound) who is black and stark white underneath. When Bear stands on his back legs, he comes to Ms. Byrne's chest (Ms. Byrne is 5'8").
15. On the date of the incident, Ms. Byrne just finished walking Freddie and Khaleesi, who were on a connector leash. Ex. A4. She returned to her house to let Freddie and Khaleesi in so she could then walk Bear. Ms. Byrne opened her front door and Bear ran out and across the street. Ex. D14. Ms. Byrne screamed for Bear to come back. Bear turned around and came back. While viewing the video at hearing, Ms. Byrne agreed Bear could have run back to Ms. Bass. Ms. Byrne's son pinned Bear to the ground and put him back in the house. Ex. A1. Ms. Byrne does not think Bear reached Ms. Bass.

16. Ms. Byrne had dropped Freddie and Khaleesi's leash, who both came up to Ms. Bass. Ms. Byrne did not see any dog bite Ms. Bass. She saw that Ms. Bass was holding her dog up, with Kona around her neck. Her neighbor, Brad Harvey, took Freddie and Khaleesi's leash and put them inside.
17. When Ms. Byrne approached Ms. Bass, Ms. Byrne felt that Ms. Bass lunged at her. Ms. Byrne cannot say with certainty or not whether her dogs bit Ms. Bass. Ms. Byrne also cannot say that her eyes never left Bear. Ms. Byrne feels bad for what happened and wishes she had paid more attention when she opened the door. When Ms. Byrne spoke with the police that night and wrote her statement a few days later; her version is what she believed happened.
18. When they first got Bear, Bear did get out and run to Ms. Bass's a couple times. There were no altercations.
19. Ms. Byrne recalled the incident with Mr. Carver from either 2020 or 2021. She was walking Bear and Khaleesi on leashes in the middle of the cul-de-sac, in the street. A pug ran into the street, and Mr. Carver followed it saying, "My dog is friendly." Ms. Byrne replied with, "My dog is not." She froze. Ms. Byrne does not recall Mr. Carver punching Bear or Bear having the pug in his mouth. She did not observe any injuries on Mr. Carver's dog. Ms. Byrne left.
20. Ms. Byrne discussed an even earlier incident right after they got Bear from a rescue. Her son wanted to show his friends Bear. Bear's snaggle tooth apparently cut the friend's cheek while he was licking her face. Ms. Byrne did not witness this, but this is what the child told Ms. Byrne. Ms. Byrne brought the child to the multi-care, and she got a few stitches. Ms. Byrne paid for the medical treatment. There is a legal action for paying for future cosmetic surgery for the child.
21. Ms. Byrne has worked with a trainer for Bear one-on-one. He has been in obedience training. Training happened in end of 2019 and middle of 2020. Bear also has an electronic collar. Now she is constantly working with Bear to make sure he does not run out the front door; he has not escaped since this incident.
22. In the summer of 2020, Ms. Byrne replaced boards in her fence. She also has added reinforcements, and placed posts in cement blocks in the ground. She is not concerned with the security of the fence in its current state.

Legal Standards

23. Did Bear and/or Freddie run at large on August 22, 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" 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.W, .AA; .230.B?

24. Do Bear and/or Freddie qualify as vicious, defined as “[h]aving 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 “[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,” KCC 11.04.020.BB; .230.H?
25. 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

Introduction

26. Oftentimes, these appeals come down to the credibility of eyewitness complainants and appellants. Here, thankfully, we have video of the August 22 incident.¹ Ex. D14.
27. Ms. Bass’s written statement the day after, and statement to the officer the day after that, is relatively consistent with what we see on the video, at least as it relates to Bear: a larger dog [Bear] bolted out of the door directly to her and Kona. A smaller dog [Freddie] joined in. Bear came back and wound up behind her, attacking her back. Exs. D3, D4 at 004, n.6. We discuss Freddie below, but Ms. Bass’s account matches the video for Bear.
28. In contrast, Ms. Byrne’s recollection was wildly off the mark:
- She initially denied that Bear had gotten close enough to Ms. Bass to bite her, when the video appears to show Bear right at Ms. Bass during his first charge (though that is at the edge of the camera coverage), and definitely shows Bear jumping at Ms. Bass’s back when he charged her a second time
 - As to Freddie, Ms. Byrne told Animal Services and the police that Freddie only went at Ms. Bass *after* Ms. Bass aggressively approached Ms. Byrne. Exs. D4 at 005, n.7; Ex. D5 at 005. The video shows Ms. Bass on the opposite side of the sidewalk, with Ms. Byrne nowhere in the picture when the smaller dogs bolt across at Ms. Bass and Kona. Ms. Bass only moves defensively into the street to retreat from Bear the second time Bear attacks, as Bear lunges at her from behind.

¹ There are written statements from witnesses other than Ms. Byrne and Ms. Bass. Ex. D6. Statements offered for the truth of what they assert, other than those statements given in a hearing and under oath and subject to cross-examination, are what are known as “hearsay.” Examiners do not have the broad exclusionary rule courts do against admitting hearsay statements, but we typically do not put much weight on them.

29. That does not mean Ms. Byrne was lying. She is far from the first witness to say, “I remembered it as XYZ, but now looking at the video I see it was ABC.” At least for Bear, Ms. Bass’ version is significantly more accurate.

Bear’s Viciousness

30. The video shows Ms. Bass and Kona ambling on the sidewalk on the opposite side of the street. Then the white-bellied Bear barrels headlong at them. There is zero hesitation, and not a hint of anything like an exploratory approach. Bear initially responds to Ms. Byrne’s plea and starts to return, but then circles and comes at Ms. Bass and Kona again, this time from behind, as they retreat from him into the street.
31. Although it is theoretically possible that Kona bit Ms. Bass’s upper back, we find, more likely than not, that Bear bit Ms. Bass, at least on the upper back (if not also on her butt). Ms. Bass and Kona did nothing even approaching legal provocation.² Bear performed an act endangering the safety of a person, including biting a human being without provocation, meeting the definition of “vicious” in KCC 11.04.020.BB.
32. However, the violation itself is framed as an “animal that has exhibited [which Bear did on August 22] 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 11.04.230.H. While an unprovoked bite is typically enough to satisfy .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 select appeals we have found extenuating circumstances such that we have overturned a viciousness designation, even after a split-second, unprovoked bite.³
33. That is not our scenario here. We have not one, but two sets of endangering acts—Bear charging at Ms. Bass and Kona, then momentarily retreating to a safe distance but then coming back full-force and going after them again and leaping at Ms. Bass’s back. So, the bite was not a split-second (over)reaction.
34. In addition, August 22 was not a one-off for a dog with no antisocial tendencies who does something totally out of character on a particular day. We have no eyewitness testimony about the interaction between Bear and the child that resulted in stitches for the child. So, we do not make any findings about an event no eyewitness has testified to. But we do note that there was no discussion in today’s hearing that, for example, the child provoked Bear and Bear only injured the child’s face in self-defense.

² A “provocation” inquiry in the animal context “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 (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 be relatively 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.

³ Suppose it is the evening of July 4. A dog with no history of aggression has been exposed all day to loud firework explosions and is freaked out. A visitor slowly approaches the cowering dog to provide comfort. She gently extends her hand as she speaks soothingly to the dog. The dog, however, lashes out and bites her extended hand. Her actions would not qualify as legal provocation, yet give the totality of the circumstances, we would likely find that the dog does not constitute a danger and overturn the viciousness designation.

35. Moreover, we have Mr. Carver’s testimony about Bear’s altercation with his dog. We do not have any video of that incident, but Mr. Carver seemed credible. And given how inaccurate Ms. Byrne’s recollection was of August 22, we find that the basic contours of the event as he described it—that Bear bit Matilda’s neck, shaking Matilda and dragging her until Mr. Carver physically intervened—is the most probable version of events. We are less clear where the altercation started, but even assuming Ms. Byrne is accurately remembering that Matilda crossed over the property line first, that was in no sense provocation for Bear to grab Matilda by the neck and shake and drag her.
36. Animal Services easily meets its burden of proving that Bear qualifies as vicious.

Freddie’s Viciousness

37. The case against Freddie is thinner on several levels.
38. While it is easy to track the bright white-belly of Bear on the video (at least zoomed in), it is difficult to see Freddie. While Ms. Bass has been clear that Bear bit her upper back—and the evidence supports that—she was less clear whether it was Bear or Freddie who bit her butt. Ms. Bass only recalled one dog in addition to Bear, while Ms. Byrne testified that Freddie and Khaleesi were on a joined leash, and the video seems to show a small black dog (Khaleesi) loose. So, we are far from sure that Freddie, and not Bear, bit Ms. Bass’s butt.
39. Even if Freddie bit, that is not the end of the analysis. Can we really say that Freddie “constitutes a danger”?
40. As to August 22 itself, if Bear had not first attacked, would Freddie have charged across the street? That seems unlikely, since video shows Freddie calmly walking within a few feet of the neighbors only minutes (maybe even only seconds) before Bear busted loose and charged. Ex. A4. Thus, if Bear is contained in the future—as the order of confinement for Bear we uphold today requires—would an unrestrained Freddie pose a danger by himself? Doubtful. And Freddie’s viciousness designation would remain even if, say, Ms. Byrne re-homed Bear. We do not lightly sustain a viciousness designation.
41. In looking beyond August 22, we have one altercation where Bear wound up sending one kid to the hospital, and another altercation where Bear grabbed a little dog by the neck and shook and dragged her. In contrast, beyond testimony about Freddie barking aggressively—but from *his own backyard*—the record is silent about anything even concerning that Freddie did other than on August 22.
42. Animal Services has not met its burden of proving that Freddie qualifies as vicious. We overturn that violation.

Bear and Freddie Running-at-Large.

43. The appeal statement denied that Bear or Freddie were running loose. Ex. D16 at 002. However, from the video and the undisputed portions of the testimonies, it is clear that

both Bear and Freddie left the Byrne property and were not under competent enough control so as to be restrained from approaching Ms. Bass and Kona.

44. Likely Khaleesi was also running at large, though it is not clear she actually approached Ms. Bass or Kona or was simply dragged along by Freddie. In any event Khaleesi was not cited, so that is that. We sustain Bear's and Freddie's running at large violations.


Remedies

45. There seemed to be some confusion at hearing. Under the State system, a dog must do something extreme to be deemed "dangerous," namely inflict on a person a "severe injury" (one resulting in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery) or kill a domestic animal, or aggressively bite, attack, or endanger people after being previously declared potentially dangerous. RCW 16.08.070.2.–3. Once declared dangerous, the dog can only be kept if the owner installs warning signs (including a sign with a warning symbol) to inform visitors of a dangerous dog on the property, installs a proper enclosure, muzzles the dog anytime it is outside that proper enclosure, obtains a \$250,000 surety bond, and keeps a \$250,000 liability insurance policy. RCW 16.08.080(6), -.090(1).
46. The relatively mild bite (or even bites) Bear inflicted on Ms. Bass would be nowhere close to sufficient to qualify Bear as "dangerous." More importantly, the County does not currently employ the State's potentially dangerous/dangerous system anyway. The County currently uses "vicious," and the requirements for keeping a *vicious* (not dangerous) animal are set forth in Animal Services' notice and order—the four bullet points related to keeping Bear on the property, leashed when off it, microchipped, and vaccinated. Ex. D2. There are no additional compliance requirements.
47. And that leaves the monetary penalty. In past cases where an owner showed that the animal did something despite (not due to a lack of) the owner's responsible behavior and/or where the owner took responsible steps afterward, we have often reduced the applicable viciousness penalty.
48. August 22 did not start because Ms. Byrne was doing anything irresponsible or failing to do anything responsible. Yes, the family knew Bear was not friendly and had some history, but Bear was secured in the house while Ms. Byrne walked her two smaller dogs on a leash. In attempting to swap in Freddie and Khaleesi and leash Bear up for his own walk, Bear busted past her and charged at Kona and Ms. Bass.
49. We often hear complainants upset because, in their view, the owner's did nothing during an altercation and just stood around. Ms. Byrne did the opposite here; on the video she starts screaming at the top of her lungs at Bear the *moment* he squeaks by her, and well before he even reaches (at a dead sprint) Ms. Bass and Kona. The family reacts quickly and ends the altercation within 15 seconds of the time it started.
50. We find a penalty reduction is in order for the viciousness designation.

DECISION:

1. We sustain Bear's and Freddie's running at large violations, sustain Bear's viciousness violation, and overturn Freddie's viciousness violation.
2. We sustain the \$100 in penalties related to running at large and reduce the \$500 viciousness penalty for Bear to \$250. The total penalty due is \$350.

ORDERED February 6, 2023.



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 8, 2023*. 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 JANUARY 23, 2023, HEARING IN THE APPEAL OF ALLYSON BYRNE, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013474-A22004513

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mari Isaacson, Preston Foskey, Brad Harvey, Christina Bass, Kevin Carver, Allyson Byrne. 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. V22013474-A22004513, issued August 26, 2022
Exhibit no. D3	Online Complaint form of August 22, 2022, incident by Christina Bass, dated August 23, 2022
Exhibit no. D4	RASKC investigation report no. A22004513
Exhibit no. D5	Covington Police Department report
Exhibit no. D6	Other witness statements
Exhibit no. D7	Photograph
Exhibit no. D8	Photograph
Exhibit no. D9	Photograph
Exhibit no. D10	Photograph

Exhibit no. D11	Photograph
Exhibit no. D12	Photograph
Exhibit no. D13	Photograph
Exhibit no. D14	Video
Exhibit no. D15	Medical record, dated August 24, 2022
Exhibit no. D16	Appeal, received September 13, 2022

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

Exhibit no. A1	Declaration of Dayton Byrne
Exhibit no. A2	Declaration of Eric Pardey
Exhibit no. A3	Declaration of Russell Byrne
Exhibit no. A4	Video
Exhibit no. A5	Video

February 6, 2023

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013474-A22004513**

ALLYSON BYRNE

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 6, 2023.



Lauren Olson
Legislative Secretary

Bass, Christina

Hardcopy

Byrne, Allyson

Hardcopy

Carver, Kevin

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Foskey, Preston

Foskey Law

Hardcopy

Harvey, Brad

Hardcopy

Isaacson, Mari

Prosecuting Attorney's Office

Oren, Jonathan

Hardcopy