

December 27, 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. V23014704-A23005615

JOHNATHAN GIBSON
Animal Services Enforcement Appeal

Activity no.: A23005615

Appellant: **Johnathan Gibson**

[REDACTED]
Kent, WA 98032

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King County: Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Jonathan Gibson appeals a violation order declaring his dog, Koda, potentially dangerous and unlicensed, and ordering that Koda be contained. 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 uphold the violations, but we provide an avenue for Mr. Gibson to resume taking a muzzled Koda to dog parks and to get the licensing penalty reduced.

Background

2. On September 18 Regional Animal Services of King County (Animal Services) issued a violation order to Jonathan Gibson for his dog, Koda, being unlicensed unaltered, and qualifying as potentially dangerous. Ex. D7.
3. Mr. Gibson timely appealed. Ex. D8. We held a hearing on December 13.

Hearing Testimony

Mike Reyes Testimony

4. Mike Reyes testified that while at the dog park, he heard some dogs aggressively barking. He saw the husky [Koda] and the golden doodle [Winston] both going at each other. There were two other doodles, but it appeared they were not attacking. Mr. Reyes headed over to the fight. He saw Mr. Hall go to the ground on top of Winston. He did not see what happened to Mr. Hall on the ground because there was either chicken wire or an orange construction fence obstructing his view. He heard Mr. Hall scream. Mr. Gibson was talking with some people and was around 20 yards away from the incident.
5. Mr. Reyes came around the corner. Mr. Hall had already been injured by the time he got to the action. Mr. Reyes pulled one doodle away and pushed Koda. Blood was gushing from Mr. Hall's head. Mr. Gibson then arrived. Mr. Reyes checked to make sure his dog was away from the situation. Mr. Reyes said he was going to call 911. Mr. Gibson said, "Don't call now, let's see how bad it is." Mr. Gibson did not say he had medical training. Mr. Reyes walked the responders to Mr. Hall. He noticed Winston and Koda were barking at each other. Koda continued to play.
6. Mr. Gibson was talking with other people at the dog park and was downplaying what happened.
7. Mr. Gibson has two other huskies who are good. However, Koda is dominant and plays aggressively. Mr. Reyes did not see Koda limping that day.

Ruth Hall Testimony

8. Ruth Hall testified that she was talking with someone at the park. Her back was turned to her husband, who was behind her throwing the ball for their dogs. She heard dogs fighting and Mr. Hall say, "Winston, stop!" She turned around and saw Mr. Hall use the remote for Winston's e-collar. Koda was on top of Winston's head. Mr. Hall tried to separate the dogs. That did not work. Mr. Hall used his right shoulder to try to wedge the dogs apart. He then laid over Winston. Koda briefly retreated and then came back and bit Mr. Hall's head. Koda lunged and bit again. Mr. Hall used his hand to shove Koda away.
9. Mr. Reyes then arrived and grabbed Koda. The Hall's two female dogs were barking and nipping at Koda. Mr. Reyes handed Winston to Ms. Hall. Mr. Gibson then arrived. Mr. Reyes said they should call 911. Mr. Gibson said they should see how bad it was first.

They walked Mr. Hall to a bench and waited for the medics. Koda came over, circled around and lunged at Winston, who was standing between Ms. Hall's friend's legs. Ms. Hall grabbed Koda's collar and walked him to Mr. Gibson. Mr. Gibson said Koda does not like to be grabbed from behind. Two minutes later, he let Koda run around again.

Dave Hall Testimony

10. Dave Hall testified that he was playing fetch with his dogs. Koda came in and was biting Winston's neck. Both dogs were fighting; it was mutual. Mr. Hall used the e-collar remote to try to get Winston to stop; that did not work. He tried to separate the dogs but was unsuccessful. Mr. Hall covered Winston with his body to protect him. He was kneeling over Winston; Winston's head was below Mr. Hall's chest. There was a pause of a few seconds in the fight. Koda then bit Mr. Hall's head in two quick successions. Mr. Hall looked up and pushed Koda away. Mr. Reyes arrived, then Mr. Gibson.
11. Mr. Reyes called 911. The 911 responders called Animal Services. When Mr. Hall got to the parking lot, Animal Services asked him to fill out paperwork.

Jonathan Gibson Testimony

12. Jonathan Gibson testified that he agreed with the positioning Ms. Hall testified to. He was talking with an individual when he heard barking. There was a tree and chicken wire somewhat blocking his view. He saw dogs jumping up and down. He walked over and saw three dogs attacking Koda. Mr. Reyes arrived first, and then Mr. Gibson arrived. While Mr. Gibson went to grab Koda, Mr. Hall went down to the ground and got on top of Winston. Mr. Gibson grabbed Koda. On his second recount of the incident, Mr. Gibson said he had already grabbed Koda right before the biting, before Mr. Hall went down, when he started kneeling to the ground. The third time Mr. Gibson recalled the incident, he said he had already grabbed Koda and Mr. Hall was already on the ground protecting Winston. Mr. Hall's head began bleeding from the laceration.
13. The time between him grabbing Koda and Mr. Hall being bit in the head is blurry in his memory. Mr. Gibson did not say they should not call 911. He said he wanted to check the wound first to see the severity. Mr. Hall asked Mr. Gibson for his phone number multiple times. Mr. Gibson gave him his number. Ms. Hall went out of her way to grab Koda and she said Koda was trying to attack again. Mr. Gibson and Koda walked away, and he noticed Koda was bleeding.
14. Koda had bite marks on the back of his legs. Mr. Gibson cleaned out the wounds. Koda was limping for three days.
15. Mr. Gibson has trauma casualty care training. He always carries a first aid kit. He runs a dog training business.
16. Mr. Gibson has been going to the same dog park for the past three and a half years. He does groundskeeper work there. Koda really enjoys playing with other dominant dogs.

Legal Standards

17. Does Koda meet the definition of “potentially dangerous animal”? KCC 11.04.230.F. Per KCC 11.01.320:

A. “Potentially dangerous animal” means any animal that when unprovoked:

1. Bites or inflicts injury on a human or domesticated animal;
2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack;
3. Has a known propensity, tendency, or disposition to attack, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or
4. Jointly engages, with one or more animals in conduct meeting subsections A.1., A.2., or A.3., of this section, in which case all animals are deemed potentially dangerous, absent an affirmative demonstration that a specific animal was not responsible for a qualifying act.

B. Regardless of provocation, an animal is a “potentially dangerous animal” if it enters onto private property without the consent of the owner or occupant and bites a human or animal or chases or approaches a person in a menacing fashion or apparent attitude of attack.

C. An animal shall not be declared a “potentially dangerous animal” if the threat, injury, or bite alleged to have been committed by the animal was sustained by a person who was at the time committing a willful trespass upon the premises occupied by the owner of the animal, or who was abusing or assaulting the animal, or who was committing, or attempting to commit a crime. This exclusion does not apply to actions taken in defense of oneself, other humans, animals, or property.

18. 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

19. There was at least one additional eyewitness to September 17 identified by name—Taylor Goff. We accepted into the record Mr. Gibson’s submittal of Mr. Goff’s hearsay statements.¹ We tried hard to avoid the scenario of later being asked to rely on such hearsay statements; we explained in our November 15 hearing notice that:

¹ Ex. D8 at 010-11. A hearsay statement is essentially an *out-of-court* statement, offered for the truth of what it asserts. We typically admit hearsay statements. Exam. R. XII.B.1. However, admissibility is not the same thing as weight.

Testimonials about how sweet and non-aggressive Koda generally is are just fine in letter form. But for anyone who actually *witnessed* the September 17 altercation, it is critical to get that testimony in a hearing, under oath, and subject to cross-examination. Witnesses typically will agree to testify voluntarily; however, if a party is getting pushback from a potential witness and needs us to provide a subpoena the party can serve on that witness to compel[] that witness's testimony, request that from our office ASAP. Note, if an eyewitness is amenable to testifying, but cannot be available during our hearing time, let our office know that ASAP as well, so we can arrange for a different time.

20. That did not happen, so we had no ability to probe Mr. Goff on exactly what he recalled about items like the sequence—such as whether Mr. Hall dived on top of Winston while Mr. Gibson was already pulling Koda away (as Mr. Gibson at one point testified to) and then got bit, or Mr. Hall dived on top of Winston and got bit before Mr. Reyes and Mr. Gibson started trying to pull apart the dogs (as Mr. Reyes, Mr. Hall, and Ms. Hall testified to)—vantage point(s), location, etc., and no ability to assess his overall credibility. Stacked up against the actual testimony, we do not give Mr. Goff's hearsay statements much weight.
21. Turning to the actual testimony, all four witnesses agreed that Mr. Reyes got to the fracas slightly *before* Mr. Gibson. And Mr. Reyes was clear that by the time he got there Mr. Hall had already been bitten and cried out. In fact, the bite and Mr. Hall's reaction to the bite occurred long enough before Mr. Reyes got to the fracas that Mr. Reyes was still in a spot where some sort of fencing (either chicken wire or orange construction mesh) was partially obscuring his vantage point that he could not tell which dog bit Mr. Hall. And Mr. Gibson's version changed a little each time he told it.
22. Weighing all the testimony and exhibits, we find the most likely scenario is as follows. As Koda and Winston went at it, Mr. Hall tried the electronic clicker to recall Winston. When that did not work, he tried to separate the dogs by pulling Koda off. When that failed, he momentarily wedged Koda away and got on top of Winston. Koda backed off initially but came back in and bit Mr. Hall's head twice. Ex. D4 at 002. Then Mr. Reyes and Mr. Gibson arrived and pulled Winston and Koda apart.
23. While Koda bit Mr. Hall, an animal that “[b]ites or inflicts injury on a human” only qualifies the animal as “potentially dangerous” when the bite or infliction of injury was “unprovoked.” KCC 11.01.320. Our code defines provocation as “to torment, agitate, or harass an animal immediately before the attack, chase, or menacing behavior, [and] does not include actions taken to defend oneself, other humans, animals, or property.” KCC 11.01.350. Mr. Hall jumping on Winston to protect Winston does not qualify as legal provocation. More generally, a key touchstone of courts' analyses is that “provocation” requires the dog's reaction to be roughly proportional to the victim's act.² If Mr. Hall had jumped on *Koda* instead of Winston, Koda biting Mr. Hall (at least the first bite), might

² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

have been roughly proportional. Yet Koda coming back to go after a weighed-down Winston and biting Mr. Hall's head was not. There was no legal provocation to bite Mr. Hall.

24. The dispute about how engaged the other two Hall dogs were in the altercation does not change our analysis. Mr. Reyes testified that the other two Hall dogs were behind Koda and did not seem much involved in the fight between Winston and Koda. Ms. Hall testified that her other doodles were nipping at Koda. Mr. Gibson testified that the other dogs were actually biting at Koda's hindquarters. Assuming that Mr. Gibson's recollection is correct, provocation might have been a close call if, after Mr. Reyes smothered Winston, Koda had turned around to bite one of the *other* Hall dogs that was actively biting at him but Koda accidentally bit *Ms.* Hall in the process.
25. Yet Mr. Gibson's assessment of what the other dogs were doing makes the bite to *Mr.* Hall if anything *less* provoked. Under Mr. Gibson's version, two of the Hall dogs were an ongoing threat to Koda, biting his hind legs. Yet the one Hall dog who was no longer a threat was Winston, whom Mr. Hall had smothered. Yet Koda chose to ignore the other dogs who were allegedly actively going after Koda's back legs and instead launched again at Winston.
26. Mr. Gibson's closing statement provided a good analogy, though ultimately not one helpful to his position. He stated that if one person is being attacked by three assailants, just because the person knocks one assailant down does not mean the altercation is over, since the person still needs to deal with the other two assailants. Using that analogy, yes, if the person turned and lashed out at one of the remaining two active assailants (here, ostensibly the other two Hall dogs), that violence might well be considered "provoked." However, if that person ignored those two active assailants and instead kept going after the one assailant who was already knocked down and lying on the ground, that would not qualify as "provoked."
27. The character references Mr. Gibson submitted about how good a dog Koda normally is do not change the fact that on September 17 Koda bit a human being without legal provocation, thus qualifying him as potentially dangerous. *See* Ex. D8 at 004-11. However, those references do play into the terms of compliance, namely whether Koda can ever be off-leash again in public under any circumstances.
28. First, while there was some testimony about Koda behaving dominantly, there is no indication that Koda ever bit another person or dog before September 17. Mr. Gibson submitted numerous positive character references from who have frequently interacted with Koda at the dog park and found Koda to be unfailingly friendly. Ex. D8 at 004, 005, 007, 008, 010. As to September 17, Mr. Hall volunteered that the altercation was not a completely one-sided affair but a "mutual" fight between Koda and Winston; Mr. Reyes saw Koda and Winston both going at each other. That is relevant to the threat level Koda poses going forward. September 17 was not like the one-side attacks we see in many appeals where one dog is only trying to disengage.

29. Second, the normal requirement for a potentially dangerous dog is that, when off the owner’s premises, the dog must “be securely leashed.” KCC 11.04.275.C.3. That essentially acts as a lifetime ban on a dog ever using a dog park. Yet the muzzle that Koda is now required to wear whenever it is off his premises and not restrained in a carrier, crate, or vehicle likely would have prevented Koda from fighting with Winston and almost certainly would have prevented Koda from biting Mr. Hall. And while we are often concerned with human error from owners not knowing how to properly secure a muzzle, Mr. Gibson is a professional dog trainer.
30. Third, a lifetime ban on using dog parks means that, unless a dog’s owner happens to be wealthy enough to afford a fenced-in yard, it will be difficult for that dog to run and tire themselves out. That is not a particularly healthy result for the dog or for anyone who encounters the dog.
31. Fourth and finally, we find it relevant that Mr. Gibson actively volunteers his time to help maintain the dog park. It would be a loss to the public if Mr. Gibson had to curtail his dog park presence because he could no longer bring one of his dogs.
32. On September 17, Mr. Gibson was well away from Koda and engaged in conversation. He was not able to interrupt Koda until not only Mr. Hall had to intervene but even Mr. Reyes, who started a good deal away from the altercation, had to get himself to the fracas and start to break it up. But if in the future Mr. Gibson always actively attends to Koda and ensures that Koda’s muzzle is securely attached, the risk to the public seems significantly minimized. Weighing all the factors, we find it appropriate to modify the compliance order to allow Mr. Gibson to return with a muzzled Koda to officially-sanctioned dog parks.
33. As to licensing, we wrote in our November 15 notice that, “Mr. Gibson does not dispute that Koda was unlicensed as of September 17. If he can license him before our hearing, we may reduce the penalty.” Mr. Gibson did *not* license Koda. He explained at hearing that he was waiting to license Koda until the hearing played out. That is not what we wrote, but we will give Mr. Gibson a break and another chance. If he can license Koda by the appeal deadline below, we will reduce the penalty; if not, the entire licensing penalty will come due.

DECISION:

1. We uphold Koda’s potentially dangerous animal designation, compliance order, and penalty, except that Mr. Gibson may return Koda to a sanctioned off-leash dog park, provided that at all times Mr. Gibson is actively engaged with Koda and Koda is securely muzzled.
2. If Mr. Gibson obtains Koda’s annual pet license by January 26, 2024, the licensing penalty is reduced to \$125. If not, then the entire \$250 penalty will come due. (Note a pet license is separate from a potentially dangerous animal registration.)

ORDERED December 27, 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 *January 26, 2024*. 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 DECEMBER 13, 2023, HEARING IN THE APPEAL OF JOHNATHAN GIBSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V23014704-A23005615

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mike Reyes, Ruth Hall, Dave Hall, and Jonathan Gibson. 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
Exhibit no. D2	RASKC investigation report no. A23005615
Exhibit no. D3	Online Complaint form of September 17, 2023, incident by David Hall, dated September 20, 2023
Exhibit no. D4	Photograph of Mr. Hall's injuries
Exhibit no. D5	Photograph of Winston's injuries
Exhibit no. D6	Witness Statement of Ruth Hall
Exhibit no. D7	Notice of violation no. V23014704-A23005615, issued September 18, 2023
Exhibit no. D8	Appeal, received October 6, 2023
Exhibit no. D9	Map of subject area

December 27, 2023

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014704-A23005615**

JOHNATHAN GIBSON
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, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED December 27, 2023.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Gibson, Johnathan

Hardcopy

Hall, David/Ruth

Hardcopy

Reyes, Mike