

November 22, 2022

**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. **V22013478-A22004539**

**ROBERT KENNEDY**

Animal Services Enforcement Appeal

Activity no.: A22004539

Appellant: **Robert Kennedy**

[REDACTED]  
Shoreline, WA 98155

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King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
Regional Animal Services of King County  
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FINDINGS AND CONCLUSIONS:

Overview

1. Robert Kennedy appeals a notice and order declaring his dog vicious. 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 find that although his dog jumped up on, and either bit or scratched, the back of a pedestrian who

was just minding her own business, the dog does not meet all the criteria for a viciousness designation. We thus grant Mr. Kennedy's appeal.

### Background

2. On August 27, 2022, Regional Animal Services of King County (Animal Services) issued a violation notice to Mr. Kennedy for his dog, Ricochet, qualifying as vicious and needing to be confined. Ex. D6. On September 20, Mr. Kennedy filed an appeal. Ex. D8. We held a hearing on November 8.

### Hearing Testimony

#### *Testimony of Zenaida Gabat*

3. Zenaida Gabat testified that on August 23, around 1:30 p.m., she was waiting for the bus and looking for her bus pass in her bag. She heard a dog [Ricochet] bark on her right side. As she was turning towards the sound, Ricochet jumped on her back, pushing her a little.
4. Ms. Gabat then saw Ricochet's owner [Mr. Kennedy] with a little girl right next to him. Mr. Kennedy was about six feet away from her. Ricochet was very close to her. He was holding Ricochet's leash, which was about six feet long.
5. Mr. Kennedy walked about three feet away from her and asked if she was okay. Ms. Gabat said she was not okay because Ricochet bit her. Mr. Kennedy denied Ricochet had done anything. Ms. Gabat asked for Mr. Kennedy's name, and he would not tell her. Mr. Kennedy, the little girl, and the dog then ran away, so Ms. Gabat followed them. She went to the backyard of the Kennedy house, and then she went around to the front. Mr. Kennedy came outside and said his dog did not do anything and then asked Ms. Gabat to get off his property. He did not ask to see her injury.
6. Ms. Gabat called 911, and the fire department arrived shortly after. They told her that there were scratches on her back, possibly from a dog's paw. They took the picture of Ms. Gabat's back. Ex. D4. They advised Ms. Gabat to go to urgent care. She took a bus and a Lyft to urgent care. The urgent care told her they did not have the rabies vaccine and they advised her to go to the hospital. The hospital was not helpful either, not even washing her scratches.
7. Ms. Gabat used antibiotic on the injury and had her husband wash it twice a day. This incident was emotionally disturbing for her because she was concerned about getting rabies from Ricochet. Ms. Gabat takes the bus every day to go to work or to go watch her niece. She normally does not see people walking past her at the bus stop.

#### *Testimony of Robert Kennedy*

8. Robert Kennedy testified that the morning of the incident he brought his dog and his four-year-old stepdaughter on a walk. She jumped off the sidewalk and into the road. He immediately yelled and turned to his right, took a step, and grabbed her. He shifted his

focus to his stepdaughter for only a moment. In doing this, because he was holding Ricochet’s leash in his right hand, he yanked Ricochet. Ricochet barked in response.

9. Ms. Gabat screamed. Mr. Kennedy and Ricochet were not close enough to Ms. Gabat for Ricochet to reach her, especially with Mr. Kennedy pulling Ricochet in the opposite direction. He apologized because he thought he startled Ms. Gabat. Ms. Gabat was holding her chest, which Mr. Kennedy assumed was because Ricochet’s loud bark scared her. He asked if Ms. Gabat was okay.
10. Ms. Gabat started screaming at him. His stepdaughter then started crying because Ms. Gabat was screaming. Ms. Gabat told Mr. Kennedy that Ricochet bit her. He told her that was not possible. Mr. Kennedy decided to walk his stepdaughter and dog home because Ms. Gabat was screaming at them. Ms. Gabat followed him. After he got his stepdaughter and Ricochet inside his house, he went outside to talk with Ms. Gabat. He asked to see the bite mark, and she refused to show him. At that point, Mr. Kennedy told Ms. Gabat to leave his property.
11. Mr. Kennedy waited an hour to see if someone from 911 would show up in case Ms. Gabat called them, but no one showed up. When an Animal Services officer came to his house three days later, he gave a very brief statement because he was on his way out the door to go to work that morning. Mr. Kennedy does not understand how Ricochet could have reached Ms. Gabat.
12. Until he received the order, Mr. Kennedy had been bringing Ricochet to the dog park two to three times a week, with no issues. He has had guests over with no issue. Ricochet is loud but not vicious. Mr. Kennedy has kept Ricochet confined, which is not easy to do since he is a large, energetic dog. Not allowing Ricochet to go to off-leash dog parks would be a large detriment to Ricochet’s lifestyle. Also, his family lives paycheck to paycheck, so the fine would be difficult to pay.

#### Legal Standards

13. Animal Services has the burden of proving that Ricochet qualifies as “vicious,” which SMC 6.05.020.JJ defines 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. 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. Although Mr. Kennedy does not believe Ricochet touched Ms. Gabat, that is not what the weight of the evidence shows. While it is more difficult to say with certainty whether the slight indentations on Ms. Gabat’s back came from Ricochet’s mouth or nails—apparently the first responders thought it was a scratch, not a bite, and even Ms. Gabat referred to the abrasion as “scratches on my back”—it is far more likely than not that the marks depicted in the photo are from Ricochet and not from some other source. Exs. D3 at 002, D4.
16. That does not mean we think Mr. Kennedy is lying or even (as we often see in appellants) in a serious state of denial. He seems to honestly believe that Ricochet did not touch Ms. Gabat. We encounter that not uncommonly in incidents involving only a split-second altercation. Often, even when the visual evidence of a bite is unmistakable and uncontested, a witness will acknowledge that they were standing right there and yet did not see any contact. Sometimes even the *complainant* will walk away unaware, only to later roll up a pant leg and see the wound. And, by Mr. Kennedy’s own admission, his focus in that moment was on saving his stepdaughter, not on Ms. Gabat.
17. When Ricochet jumped up on Ms. Gabat and either pushed her with his nails or nipped her with his teeth, he performed an act endangering her safety. And, standing at a bus stop, with her back turned to them, she did nothing to provoke Ricochet. Ricochet meets the SMC 6.05.020.JJ’s definition of “vicious.”
18. However, to sustain a viciousness designation, Animal Services must prove not only that Ricochet “exhibited vicious propensities” (which he did on August 23) but also that he constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.” SMC 6.30.010.A.7.
19. Normally a finding on the first (having exhibited vicious behavior) leads to a finding on the second (constitutes a danger). But not always. Here two factors counsel against that second finding.
  - While Ms. Gabat did nothing to agitate Ricochet, in the moment before Ricochet jumped on her, Mr. Kennedy yelled and yanked him. The average dog would react in some manner to that seeming threat, and Ms. Gabat was standing right there next to him and was potentially (to Ricochet) the threat Mr. Kennedy was yelling and yanking him about.
  - Such incitement would not have mattered much if Ricochet had delivered a real bite to Ms. Gabat. But even if the slight indentations on her back are from Ricochet’s teeth and not his nails, it was at most a slight nip.

Under those facts, we do not find that Animal Services has shown that Ricochet constitutes a danger. We reverse Ricochet’s viciousness designation.

20. Our conclusion says nothing about whether Mr. Kennedy is liable for any costs Ms. Gabat incurred in responding to Ricochet’s bite/scratch. An examiner has no jurisdiction over such matters.

DECISION:

We GRANT Mr. Kennedy’s appeal.

ORDERED November 22, 2022.




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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 22, 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 NOVEMBER 8, 2022, HEARING IN THE APPEAL OF  
ROBERT KENNEDY, REGIONAL ANIMAL SERVICES OF KING COUNTY  
FILE NO. V22013478-A22004539**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Zenaida Gabat, and Robert Kennedy. 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	RASKC investigation report no. A22004539
Exhibit no. D3	Online Complaint form of August 23, 2022, incident by Zenaida Gabat, dated August 25, 2022
Exhibit no. D4	Photograph of injury
Exhibit no. D5	Medical record, dated August 23, 2022
Exhibit no. D6	Notice of violation no. V22013478-A22004539, issued August 27, 2022
Exhibit no. D7	NVOC mailing/tracking history
Exhibit no. D8	Appeal, received September 20, 2022
Exhibit no. D9	Map of subject area

DS/lo

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V22013478-A22004539**

**ROBERT KENNEDY**

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 November 22, 2022.



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Lauren Olson  
Legislative Secretary

**Eykel, Chelsea**

Regional Animal Services of King County

**Gabat, Zenaída**

Hardcopy

**Kennedy, Robert**

Hardcopy