

September 28, 2023

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
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Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014308-A23003475**

HELEN FRENCH
Animal Services Enforcement Appeal

Activity no.: A23003475

Appellant: **Helen French**
[REDACTED]
Seattle, WA 98116
Telephone: [REDACTED]
Email: [REDACTED]

King County: Regional Animal Services of King County
represented by Chelsea Eykel
Regional Animal Services of King County
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Kent, WA 98032
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FINDINGS AND CONCLUSIONS:

Overview

1. Helen French appeals a determination that her dog, Felix, meets the code criteria for a vicious animal. 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 Felix delivered an unprovoked bite to another dog and meets the definition of "vicious," Felix does not meet all the criteria for the violation, as the code framed the violation at the time. We thus grant her appeal.

Background

2. On May 31, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V23014308-A23003475 to Helen French for her dog, Felix, qualifying as vicious and needing to be confined. Ex. D6. Ms. French timely appealed. Ex. D8. We went to hearing on September 8.

Hearing Testimony

Stephen Dockter Testimony

3. Stephen Dockter testified that on May 14 he was walking with his partner, Olga Erickson, and their leashed standard black poodle, Bobbi. As they walked on the road next to the French property, they reached approximately where the blue container is in exhibit D9-001. Mr. Dockter complimented Ms. French, who was standing behind the mailbox, on her flowers. Ms. French's grey dog [Felix], was behind her.
4. Felix came closer to the property line. Bobbi then extended her neck to smell. Bobbi quickly ran behind Mr. Dockter, and Felix suddenly and aggressively rushed out of the yard and chased Bobbi. Bobbi is a shy dog, so she ran away. Felix snapped at Bobbi two or three times, trying to jump up and bite Bobbi. Felix first chased Bobbi behind Mr. Dockter, and then the dogs ran in front of him. The dogs circled Mr. Dockter and Ms. Erickson a few times.
5. While Mr. Dockter cannot remember the specifics, he believes he chased Felix away. In any event, as they continued up the road Bobbi looked like she was limping. Mr. Dockter checked Bobbi's legs and did not find any bite marks. He did not check any higher up on Bobbi because Felix was a smaller dog, and Mr. Dockter did not expect Felix to have bitten higher up. Mr. Dockter, Ms. Erickson, and Bobbi drove home.
6. Once they got home, Bobbi laid down in the front yard and turned over. Ms. Erickson noticed a bloody area on Bobbi. Ex. D4. Mr. Dockter took a photo and immediately went back to the French property and showed Ms. French a photograph of Bobbi's injury. This occurred within an hour after the incident. Mr. Dockter was going to bring Bobbi to the vet, and there was an understanding that Ms. French would pay for the vet bill. Bobbi went to the vet and received stitches, which took around two weeks to heal. He also had to wear a cone.
7. Mr. Dockter sent Ms. French the vet bill. He received a lengthy email stating the injury was not from Felix. He told Ms. French he would inform neighbors and Animal Services about the incident.

Olga Erickson Testimony

8. Olga Erickson agreed with how Mr. Dockter described the incident. She testified that she was standing next to Mr. Dockter as they passed the French property. Mr. Dockter had a brief conversation with Ms. French. Felix was standing by Ms. French. Bobbi

moved to smell, and suddenly Felix started chasing Bobbi. The dogs ran around them. Felix went back to his property.

9. As Ms. Erickson and Mr. Dockter were walking back to their car, she noticed Bobbi was limping. They drove home, and Bobbi laid down in their yard. Ms. Erickson then saw Bobbi's injury. Mr. Dockter took a photo and returned to the French property. Ms. Erickson stayed home with Bobbi. Ms. Erickson cannot recall exactly how long it took, but Mr. Dockter immediately went to the French property after noticing Bobbi's injury.

Helen French Testimony

10. Helen French testified that Felix has been with them at their beach house for the past three years. He interacts with the dogs that come down to the beach with no issue. There have never been issues with Felix. Ms. French has frequently seen Mr. Dockter and Ms. Erickson walk the path by her house.
11. On the day of the incident Mr. Dockter, Ms. Erickson, and Bobbi were walking back from the beach. Mr. Dockter was video taping Ms. French's garden. Ms. French and Mr. Dockter exchanged some comments. Ms. French walked out to the street with Felix. Ms. French and Mr. Dockter spoke more about her garden. Both Bobbi and Felix started sniffing each other and circling. The dogs then barked to warn the other to not sniff. The dogs separated. Mr. Dockter, Ms. Erickson, and Bobbi walked up the street and checked Bobbi. They then continued walking. This all occurred around 10:30 to 11 AM.
12. Ms. French then went to her neighbors for brunch and returned home around 2 to 3 PM. Mr. Dockter arrived on her property after brunch, which was several hours after the incident. Mr. Dockter gave Ms. French the vet bill to pay. She refused to pay, so Mr. Dockter gave Ms. French three days to pay, or he would post on social media about the incident.
13. Ms. French has a video camera, but she did not think to check the camera until the footage was already erased.

Legal Standards

14. Title 11 was overhauled in July, but the code in place in May requires us to ask whether Felix qualifies 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 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"? Former KCC 11.04.020.BB; KCC 11.04.230.H.
15. 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

16. There is conflicting testimony on what triggered Bobbi and Felix’s encounter. Per Mr. Dockter and Ms. Erickson, Bobbi sniffed towards Felix, then Felix suddenly charged off his property, chasing and snapping multiple times at Bobbi. Per Ms. French, she and Felix were standing in the road when Bobbi and Felix started sniffing each other and circling. All witnesses agree there was some sniffing between the dogs prior to the altercation. The “provocation” inquiry in animal jurisprudence focuses on how an average dog, neither unusually aggressive nor unusually docile, would react to an inciting act.¹ And 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 Felix bit Bobbi, even under Ms. French’s version of events, it was nowhere close to a legally provoked bite.
17. Ms. French, however, denies that Felix bit Bobbi. We decide cases based on a more-probable-than-not-standard. All witnesses agree that the dogs interacted and there was chasing and sniffing. All witnesses agree that immediately after the incident, Bobbi was moving in a way that caused Mr. Dockter to stop in the street and check her. Mr. Dockter returned at some point that same day to tell Ms. French that Felix had injured Bobbi. It is not at all uncommon, in our 1000+ animal cases, for someone to discover a bite mark on their dog—and even occasionally on themselves—*after* they have left the scene, and here Mr. Dockter noticed Bobbi limping immediately. The next day the vet found a laceration to Bobbi’s hindquarters requiring stitches. Ms. French only offers a conspiracy theory for how Bobbi got gashed and yet it was not Felix. We find Mr. Dockter’s version far more plausible, and Mr. Dockter more credible than Ms. French.
18. We thus adopt Mr. Dockter’s version of the encounter as the closest to accurate: as Mr. Dockter, and Bobbi stood in the public road and he conversed with Ms. French, Felix came off the property, chased Bobbi, and delivered a legally unprovoked bite that required sutures to fix. We now analyze those facts under the controlling legal standard.
19. The focus of the “vicious” definition is whether the animal performed an act endangering the safety of a person or animal. Felix certainly endangered Bobbi on May 14, thus meeting the code’s definition of “vicious.” However, while the code provides an example of “vicious” behavior as “*biting* a human being” (implying that a nip of a person is sufficient) the next verb the code uses is “*attacking* a human being or domesticated animal,” implying that the standard may be higher when the victim is another dog. Former KCC 11.04.020.BB. And the violation itself requires not only that the animal exhibited vicious propensities (which Felix did on May 14), but also that he constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on his premises. Former KCC 11.04.230.H.

¹ *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)).

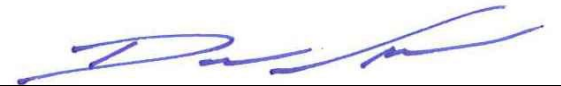
² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

20. On first blush, even without any evidence of any other violence or even aggression from Felix other than May 14, his gash of Bobbi requiring five sutures seems sufficient for Animal Services to show that Felix constitutes a danger to pets off his property. It normally takes a lot of force for a dog's bite to penetrate another dog's fur and skin deep enough to require sutures. However, digging down into the record, we see that Felix did not, for example, gash Bobbi's back, but instead happened to catch the exposed flap of skin stretching between Bobbi's leg and groin area. Exs. D5 at 005, D4. Thus, Bobbi's wound is entirely consistent with more of a back off nip and does not signify a forceful bite.
21. None of that would have mattered if Felix's unprovoked bite to Bobbi had occurred two months later. Under the code in place since July, Felix would meet the definition of a "potentially dangerous animal," defined as "any animal that when unprovoked [b]ites or inflicts injury on a human or domesticated animal," which Felix did on May 14. KCC 11.01.320.A.1; KCC 11.04.230.F. And he would need to be registered annually as a potentially dangerous animal and meet the muzzling requirements. But that violation did not exist at the time of the May event, and Animal Services has not shown that Felix met the code criteria in place at the time of the altercation.

DECISION:

We GRANT Ms. French's appeal.

ORDERED September 28, 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 *October 30, 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 SEPTEMBER 8, 2023, HEARING IN THE APPEAL OF
HELEN FRENCH, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE
NO. V23014308-A23003475**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Stephen Dockter, Olga Erickson, and Helen French. 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 May 14, 2023, incident by Stephen Dockter, dated May 24, 2023
Exhibit no. D3	RASKC investigation report no. A23003475
Exhibit no. D4	Photograph of Bobbi’s injury
Exhibit no. D5	Vet Report
Exhibit no. D6	Notice of violation no. V23014308-A23003475, issued May 31, 2023
Exhibit no. D7	NVOC mailing/tracking history
Exhibit no. D8	Appeal, received June 16, 2023
Exhibit no. D9	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014308-A23003475**

HELEN FRENCH

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, 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 September 28, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

French, Helen

Hardcopy

Stephen Dockter, Olga Erickson

Hardcopy