

September 6, 2023

**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. **V23014379-A23003865**

RALITSA POTTER

Animal Services Enforcement Appeal

Activity no.: A23003865

Appellant: **Ralitsa Potter and Burak Conker**

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Kent, WA 98042

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

Overview

1. Ralitsa Potter and Burak Conker appeal a notice and order asserting that their dog, Sunny, qualifies as vicious and needs to be confined. 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 Sunny bit the complainant, Regional Animal Services of King County (Animal Services) has not proven that Sunny meets the code criteria for viciousness.

Background

2. On June 14, Cindy Kraayeveld submitted an online complaint for a May 19 incident. Ex. D2. Animal Services issued violation notice V23014379-A23003865 on June 19, 2023. Ex. D6.
3. Ms. Potter did not challenge the running at large violation, but she did dispute the viciousness determination and compliance order. Ex. D8. We went to hearing on August 22.

Hearing Testimony

Cindy Kraayeveld Testimony

4. On May 19, Ms. Kraayeveld saw a loose dog [Sunny] in her front yard. Ms. Kraayeveld went outside so she could see Sunny's tag and bring her home. As Ms. Kraayeveld began to approach Sunny, she noticed Sunny was very stiff. Sunny barked at Ms. Kraayeveld; the bark was unfriendly, so Ms. Kraayeveld backed away. Sunny ran into a neighbor's yard.
5. Ms. Kraayeveld noticed a car drive up and park around 50 to 100 feet away from her. A woman [Ms. Potter] and man [Mr. Conker] got out. Ms. Kraayeveld asked Ms. Potter if she needed help getting her dog. Ms. Potter said something about how Sunny is protective.
6. As Ms. Potter was responding to Ms. Kraayeveld, Sunny ran towards Ms. Kraayeveld. Ms. Potter tried to shield Ms. Kraayeveld from Sunny. Sunny attempted to jump on Ms. Kraayeveld. Ms. Kraayeveld and Ms. Potter, who continued to shield her, turned in a half circle to get away from Sunny. Sunny tried to bite Ms. Kraayeveld around three times. Sunny was beside Ms. Kraayeveld until she circled around Ms. Kraayeveld and jumped on her back. Ms. Kraayeveld felt something like a sting. Ms. Potter asked if Sunny had gotten her. Ms. Kraayeveld said she believed it was only a scratch. Sunny may have seen Ms. Kraayeveld as a threat.
7. Mr. Conker and Ms. Potter got Sunny, put her in the car, and left. Ms. Kraayeveld went into her house and her husband looked at her back. Sunny had broken the skin and it appeared to be a bite. Ex. D5. It looked like a raspberry. Ms. Kraayeveld did not go to the doctor. It was only a little painful.
8. On May 24, Ms. Kraayeveld's grandchildren were outside her house playing. Sunny was running loose. At that time, Ms. Kraayeveld did not know who Sunny's owners were, so she contacted her HOA to identify the dog's owners. Ms. Kraayeveld saw Sunny running loose again on June 10, which prompted her to report the May 19 incident to Animal Services. She has not seen Sunny loose since June 10.

Ralitsa Potter Testimony

9. Ms. Potter testified that Sunny got out on May 19. Mr. Conker, Ms. Potter's fiancé, was running after Sunny as Ms. Potter followed in the car. Ms. Potter parked the car, got out, and Ms. Kraayeveld, who was in the middle of the road, approached her. Sunny started aggressively barking at Ms. Kraayeveld; Sunny is very protective and territorial. Ms. Potter tried to warn Ms. Kraayeveld to stay away. Ms. Kraayeveld was behind Ms. Potter, touching her shoulder, like she was hiding. At that moment, Sunny went behind Ms. Kraayeveld and pushed Ms. Kraayeveld's back with her paws. Mr. Conker was standing next to Ms. Kraayeveld, and he saw what happened. Ms. Potter shielded Ms. Kraayeveld after Sunny pushed her. Ms. Potter put her arms around Ms. Kraayeveld and told Sunny to stop jumping. Sunny calmed down, and they leashed her. Ms. Potter apologized to Ms. Kraayeveld. She lifted Ms. Kraayeveld's shirt and saw a birthmark or mole removal mark next to the injury.
10. Sunny does not endanger people because Sunny was provoked when Ms. Kraayeveld touched her back.
11. Sunny got loose on May 19 because her leash was too loose. After the incident, Ms. Potter tightened Sunny's collar. Sunny got out again after the incident, so Ms. Potter purchased a shock collar. If someone comes into the property, they use the shock collar to get Sunny to stop barking. They also use the shock collar even when Sunny is in the backyard. Ms. Potter and Mr. Conker also built a fence in the backyard. They took those steps because Ms. Potter takes children's safety especially seriously.
12. Ms. Potter objects to having Sunny microchipped. Microchips can travel through a dog's body. Her breed is especially prone to cancer, and a microchip might increase the risk of cancer. Sunny already has identification tags.

Burak Conker Testimony

13. On the day of the incident, Sunny ran away, however Sunny was by Mr. Conker's side the whole time. Sunny was in the backyard when she pulled her leash off and ran off. Still in his pajamas, Mr. Conker ran after Sunny. He asked Ms. Potter to follow in the car.
14. Mr. Conker saw Sunny run into another neighbor's yard; he did not see Sunny run into Ms. Kraayeveld's yard. At that point, Ms. Potter arrived and parked. Ms. Kraayeveld came over from her property and walked around 50 to 60 yards towards the car.
15. Mr. Conker attempted to get Sunny's collar and leash back on her. When Sunny saw Ms. Kraayeveld behind Ms. Potter, she started barking. Sunny pushed Ms. Kraayeveld with her paws. Mr. Conker understands that Ms. Kraayeveld was hurt, which is totally unacceptable, but he only saw Sunny push Ms. Kraayeveld. He saw a rip on Ms. Kraayeveld's shirt. He was surprised it made a wound. Mr. Conker and Ms. Potter offered to clean the wound, and Ms. Kraayeveld declined. He apologized to Ms. Kraayeveld, leashed Sunny, and left.

16. Unfortunately, Sunny got out two times after that incident. During those two incidents, Sunny only sniffed around and did not approach anyone. Since the incident, Mr. Conker fenced the yard. He and his fiancé now use a harness, leash, and shock collar with Sunny. Since they have taken these steps, Sunny has not gotten out. It is only when someone touches Mr. Conker or Ms. Potter that Sunny shows anger. At dog parks, Sunny does not have interest in other dog's toys.
17. Mr. Conker also requested the microchip requirement to be waived. Sunny is half Leonbarger, which are more likely to develop cancer. He is concerned the microchip would cause a tumor.

Legal Standards

18. Does Sunny qualify 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”? KCC 11.04.020.BB; KCC 11.04.230.H.
19. 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

20. Having reviewed hundreds of dog-created injuries in hundreds of animal cases, the wound to Ms. Kraayeveld’s back looks much more like a bite, albeit a relatively superficial bite (more on that below), than like a scratch. In any event, whether Sunny jumped on Ms. Kraayeveld’s back and injured her with teeth or nails, Sunny performed an act endangering the safety of a person. That is enough to meet KCC 11.04.020.B’s definition of “vicious,” unless that act was legally provoked.
21. 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 So the question is not whether, given Sunny’s DNA as a half Leonbarger, one would expect Sunny to react a certain way to a given stimulus, but how an *average* dog would react.² And a key touchstone of courts’ analyses is that “provocation” requires the dog’s

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 A breed-specific rule would lead to absurd arguments like, “Bernese mountain dogs are such renown non-biters that for her even to inflict a superficial backoff nip is well outside the norm” or “Pit bulls are so violent that to merely gash the victim and require only a few stitches showed real restraint.”

reaction to be roughly proportional to the victim’s act.³ We pin down our most likely factual scenario before analyzing those facts under our legal standard.

22. One discrepancy is whether Ms. Kraayeveld first encountered Sunny in the street or on her property. That is not necessarily key, because it cuts both ways. If Sunny barked aggressively at Ms. Kraayeveld on the Kraayeveld yard first, and Ms. Kraayeveld nonetheless followed an agitated Sunny into the street, that was a somewhat provocative act. However, that would also mean Sunny was *not* (as Ms. Potter asserted) solely triggered by a fear that Ms. Kraayeveld was trying to harm Ms. Potter, as Sunny was *already* behaving aggressively to Ms. Kraayeveld before Ms. Potter entered the picture. We find Ms. Kraayeveld’s version is likely the more accurate one, but it is a double-edged sword ultimately not adding much to our analysis.
23. The other discrepancy involves the sequence of when Sunny came at Ms. Kraayeveld. In Ms. Kraayeveld’s version, Sunny was already intent on attacking Ms. Kraayeveld, Ms. Potter stepped in front to protect Ms. Kraayeveld, and *then* Sunny began trying to run around Ms. Potter to get at Ms. Kraayeveld, eventually succeeding. Conversely, in Ms. Potter’s and Mr. Conker’s versions, the sequence in the street began with Sunny only barking at Ms. Kraayeveld but not lunging at her, with Ms. Kraayeveld responding by getting behind and right up behind Ms. Potter and touching Ms. Potter’s shoulder, and Sunny only *then* trying to run around Ms. Potter to get at Ms. Kraayeveld, sensing Ms. Kraayeveld was threatening Ms. Potter. We find Ms. Potter and Mr. Conker’s version slightly more likely to be correct.
24. Thus, we find the most probable scenario is that, in trying to be a good neighbor and help corral Sunny, Ms. Kraayeveld followed an agitated Sunny into the street and got near Ms. Potter. Sunny reacted by barking aggressively, which understandably caused Ms. Kraayeveld to retreat behind Ms. Potter and touch her shoulder for protection. Sunny reacted by running around Ms. Potter and biting Ms. Kraayeveld on the back.
25. That is not, in our reading of the caselaw, legal “provocation.” An average dog would not respond to a person approaching and touching its owner but darting around its owner and biting the interloper. Sunny’s reaction was not roughly proportional to Ms. Kraayeveld’s actions. Sunny committed a legally unprovoked act endangering Ms. Kraayeveld, thus meeting KCC 11.04.020.B’s definition of “vicious.”
26. That is not definitive, because in addition to the past tense “exhibited vicious propensities” (which Sunny did on May 10), Animal Services must show that Sunny “constitutes a danger” to people’s or their pets’ safety. KCC 11.04.230.H. 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 legal provocation, a dog will bite a person. However, in a select minority of appeals where, for instance, there is “provocation-ish” behavior, the endangering act is at the low end of the viciousness spectrum and represents an isolated incident, and a

³ *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

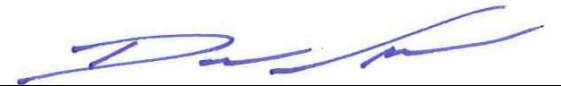
responsible owner has containment steps in place to prevent a repeat, we have overturned a viciousness designation even in the face of an unprovoked endangering act.

27. It is a close call here, but we think Sunny’s situation fits that scenario. While Ms. Kraayeveld was only trying to help, approaching Sunny and Ms. Potter likely triggered Sunny. Coming up behind and touching Ms. Potter, while understandable in light of Sunny’s aggressive posturing, ratcheted things up. None of that would have mattered if Sunny had really chomped down on Ms. Kraayeveld, but her bite was more of a “get away” nip than a full engagement. There are no other reports of Sunny threatening another person or pet. And Ms. Potter and Mr. Conker have taken admirable steps to keep Sunny from getting loose again and causing more mischief. Animal Services has not proven a KCC 11.04.230.H violation.

DECISION:

We GRANT the appeal as to the viciousness violation and confinement order, leaving only the unappealed \$50 penalty for running at large.

ORDERED September 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 *October 6, 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 AUGUST 22, 2023, HEARING IN THE APPEAL OF RALITSA
POTTER, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V23014379-A23003865**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Cindy Kraayeveld, Ralitsa Potter, and Burak Conker. 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 19, 2023, incident by Cindy Kraayeveld, dated June 14, 2022
Exhibit no. D3	RASKC investigation report no. A23003865
Exhibit no. D4	Photograph of Ms. Kraayeveld’s injuries
Exhibit no. D5	Photograph of current scar
Exhibit no. D6	Notice of violation no. V23014379-A23003865, issued June 19, 2023
Exhibit no. D7	NVOC mailing/tracking history
Exhibit no. D8	Appeal, received July 3, 2023
Exhibit no. D9	WSAVA article on Microchip Safety and Efficacy
Exhibit no. D10	Article discussing Leonberger Cancer risks
Exhibit no. D11	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014379-A23003865**

RALITSA POTTER

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 6, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Krymyeveld, Cindy

Hardcopy

Potter, Ralitsa

Hardcopy