

## Appeal decision

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**Hearing Date:** 7 September 2015 & 18 January 2016

**Decision Date:** 29 March 2016

**Code of racing:** Greyhounds

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**Appeal panel:** Mr G Casey (Chair) and Mr D Kays

**Appearances:** Mr M Higgins QC instructed by Mr V Murphy Solicitor appeared on behalf of Mr John Thompson  
Mr J Murdoch QC instructed by Mr A Lonergan (in-house Counsel) for Racing Queensland (Respondent)

**Decision being appealed:** Warning off for Life

**Appeal result:** Appeal dismissed. Penalty varied to 10 years warning off

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John William Thompson (Appellant) was warned off for life by the decision of Queensland All Codes Racing Industry Board (Racing Queensland) made on 28 April 2015.

Racing Queensland had issued a Show Cause Notice (SCN) to him on 15 April 2015 giving him the opportunity of appearing before it on 28 April 2015 to respond to the allegations outlined in the SCN which purportedly constituted five breaches of the Greyhound Australasia Rules. He submitted a written reply dated 22 April 2015 effectively relying upon his professed 'right to silence', questioning the validity/lawfulness of the video evidence under-pinning the allegations, as well as requesting 'further and better particulars' regarding three of the alleged breaches.

The precursor to the issuing of the SCN was the information (or lack of it) garnered by RQ Greyhound stewards at an Inquiry conducted on 19 March 2015 with the Appellant. The stewards were essentially attempting to elicit from him evidence of his knowledge of "live baiting of greyhounds" at property situated at 9 Wotan Road, Churchable, Qld. That issue ("live baiting") was publicly broadcast on the ABC television program "4 Corners" on the evening of 16 February 2015 displaying images captured by covertly installed recording devices. The events which were of primary concern to the stewards were recorded on 22 August 2014 and depicted the practice of tying a live animal (piglet possum or rabbit) to the arm of the lure for the purpose of allowing the greyhound to pursue the lure and ultimately catch up with it whereupon the greyhound savaged the animal. The resultant bleeding of the animal is described as 'bleeding', and the process as "live baiting". The terms seem to have been used interchangeably by participants in the practice.

The Appellant vehemently denied ever 'bleeding' a greyhound.

At the Inquiry the Appellant, on legal advice, refused to assist the stewards despite having been informed that he may be committing an offence. He declined to watch a viewing of the scenes at 9 Wotan Road Churchable depicted by the cameras.

When Racing Queensland had before it recommendations regarding the suggested outcome for disposition of the charges contained within the SCN, it was initially concerned with five allegations (Board Paper – 28/04/2015); when RQ made its determination via Statement of Reasons (SOR) it relied upon four allegations only (SOR – 29.04.2015?). Allegations 1 and 5 were consolidated. The allegations that remained were:

1. *You refused to give evidence at an inquiry in breach of GAR, Rule 86(e) on 19 March 2015 at Racecourse Road, Deagon;*
2. *You used the live baiting of animals for a purpose connected with greyhound racing that was improper in breach of GAR, Rule 86(af), including on or about 20 August 2014 at 9 Wotan Road, Churchable;*
3. *You engaged in conduct which is detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing in breach of GAR, Rule 86(q) including on or about 20 August 2014 at 9 Wotan Road, Churchable;*
4. *You provided, in an interview with Racing Queensland in Deagon, Brisbane on 19 March 2015, evidence that was false and misleading in breach of GAR, Rule 86(d).*

RQ found that all breaches had been proven and relying upon Local Rule 3A warned him off all greyhound racecourses.

The Appellant has appealed against the finding of guilt by RQ and its warning off decision.

The Racing Disciplinary Board (RDB), relying upon its powers under S.149ZE of the Racing Act 2002 (Qld), had before it all documentary and electronically recorded evidence that was considered by RQ as well as additional verbal documentary and electronically recorded evidence (enhanced vision, excerpts taken from copies of the "4 Corners" DVD and from a recording provided by the RSPCA to the stewards).

Stewards determined after viewing the television programme "4 Corners" that a number of persons captured by the vision displayed were 'persons of interest' i.e. of interest to them in respect of possible breaches of Greyhound Australasia Rules. They were able to identify various persons in attendance at 9 Wotan Road Churchable by sight and/or by voice. The covertly installed cameras recorded various conversations between different individuals who had attended the property over a period of hours on 22 August 2014.

Mr Higgins argued that the evidence obtained by the covert cameras was inadmissible against his client on the basis of its illegality, and that his client was therefore entitled to exercise his right to claim privilege against self-incrimination and justification for his refusal to answer questioning by stewards.

It is of note that Mr Dart (Chief Steward for Greyhound Racing in Queensland) said in his evidence that he immediately identified the appellant from the vision of the “4 Corners” programme as he was well known to him as a participant in the Greyhound racing industry. He also stated that because the Appellant had both a distinctive voice and look that it was additional proof of his identity. The characteristics which enabled him to identify the Appellant were – age sex colour build (P79 L21 RDB Transcript);

The Appellant confirmed Mr Dart’s familiarity with him as he stated - *“And Mr Dart knows that, he’s seen me at the races. I race a lot....”* {P14 L46}.

Although the Appellant relied upon legal advice and did not answer substantive questioning by stewards he did however engage in conversation with them which could be described as general and non-incriminating.

Mr Murdoch urged the RDB to accept the Appellant’s unhelpful answers as a refusal to assist stewards and a breach of the relevant rule; he also referred to the general powers of the RDB to inform itself of any matter pursuant to GAR92(1). He emphasised that as the Appeal proceedings were domestic in character and because Licensees through their participation in the Greyhound industry are bound by the governing rules, he was not entitled to claim against self-incrimination.

In relation to the question whether the Appellant was entitled to rely upon a claim for privilege against self-incrimination there was in the opinion of the RDB “..... a ‘real and appreciable’ risk – as distinct from an ‘imaginary or unsubstantial’ risk – of prosecution or exposure to penalty...”. [Trade Practices Commission –v- Arnotts (1990) ALR 638. He was put on notice by the Chief Steward that serious allegations against him had been made due to his presence at 9 Wotan Road Churchable {Telephone call 22 February 2015 P8 L13 Transcript –Ex 2. Appendix 3}; He made it clear to stewards that he was aware of the probability of involvement of the RSPCA and subsequent court proceedings (P13 L28 RDB Transcript).

The majority of the High Court determined in *Pyneboard Pty Ltd –v- Trade Practices Commission* (1983) 152 CLR 328,341....”that the privilege against exposure to a penalty was capable of application in non-judicial proceedings..”.

Did the general terms and purpose of the Racing Act, Greyhound Australasia Rules or Local Rules at 29 April 2015 impliedly exclude the right to claim privilege against self-incrimination? In view of the potential serious ramifications following the answering of questions put to the Appellant by stewards, it is the RDB’s opinion that there should be clear abrogation of that claim within the pertinent legislation. Accordingly, with respect of charge/allegation 1 is dismissed. Appeal upheld.

Mr Higgins submitted to the RDB that the illegality of the evidence emanating from the showing of the footage captured by the covert cameras was reason to dismiss the remaining charges. That footage contained audible conversations between various individuals. The stewards allege that the Appellant can be identified by his appearance and from his

distinctive voice. He was alleged to have made comments which if accepted as being his, could subject him to jeopardy.

It is common knowledge that illegal practices took place at the property the subject of the stewards interest on 22 August 2014. That knowledge was founded on the covert cameras installed at the property by persons who were unconnected with the stewards. It is accepted that the stewards had no knowledge of the intended installation of the cameras.

Mr Higgins argued for the Appellant that because the cameras were illegally installed and captured private conversations, then the RDB should disallow any evidence provided by them. He submitted... "That the important point about that is if the footage is obtained as a consequence of a trespass and the stewards go to no effort to rebut that, all that follows is that the only conclusion of law that this Board can make is that it was obtained as consequence of a trespass. If it is obtained as a consequence of a trespass, it then comes down to a balancing exercise of the rights of the occupant and any affected by the breach of that right – licensed – sorry, people granted licence to enter the premises as opposed to public interest that the footage be used".

The RDB does not accept his position on the matter and supports the stewards right to use the captured images obtained by the cameras. The public interest right in this instance and the general powers to inquire given to the stewards (GAR 92(1)) override the perceived right of the Appellant to suppress the use of the evidence obtained.

In the appeal of Ronald Ball (RDB – 25 February 2016) it was held that....." although Section(43) of the Invasion Privacy Act 1971 renders inadmissible a 'private conversation' captured by the recording device associated with the 'button camera' it does not in turn render the associated visual images captured inadmissible for the purposes of this Board.....". It was also stated -..."The stewards had a duty to inquire once they personally became aware or were informed by another of the images displayed on a public television show within this jurisdiction...". Those statements are in the opinion of the RDB apposite to this Appellant's matter.

The RDB has concluded with respect to charges 2 3 and 4:-

- 1) The investigating stewards (Dart and Torpey) were able to accurately identify the Appellant present at 9 Wotan Road Churchable as depicted in the DVDs (Exhibits 4 5 & 11);
- 2) That steward Dart confidently and accurately identified the Appellant on the night of the 16 February 2015 by his viewing the "4 Corners" television programme at his private residence;
- 3) Although voice recognition has not been specifically used by this RDB it is satisfied that the Appellant was present as alleged, and was involved with other well-known Greyhound racing participants including the owner of the property (Mr Tom Noble);
- 4) That the compilation of DVDs tendered to the RDB depicted clear images of 'live baiting' of animals at the property on the date in question;

- 5) That the Appellant was present at the property for a substantial period of time estimated to have been from about 9.20 am to about 11.20 am;
- 6) The Appellant actively participated in events of the morning whereby a number of greyhound trainers trialled their dogs by :
  - a) leading greyhounds from the kennels block to the training track and returning them on the completion of trialling;
  - b) being present while an animal (possum) was tied to the arm of the lure used for trialling; and
  - c) being present while greyhounds pursued the lure with the animal secured to it during the trial.

Further and better particulars were sought initially by the Appellant in his formal response to the SCN dated 22 April 2016 and produced before the RDB on 18 January 2016 (Ex 12) in regards to charges/allegations 2 and 3.

Particulars of charge 2 changed from – *“You used the live baiting of animals for a purpose connected with greyhound racing that was improper in breach of GAR, Rule 86(af) including on or about 20 August 2014 at 9 Wotan Road, Churchable”.... to*

*“a) You assisted in affixing a live possum to the lure at 9 Wotan Road Churchable on 20 August 2014 by orally advising on how to dispose of the live baby possum from the pouch of the female possum which was being affixed to the lure;*

*b) When requested by Mr Tom Noble the proprietor of the training track at 9 Wotan Road Churchable on 20 August 2014 you fetched, by leading over from the kennels two greyhounds to be trialled with the lure to which a live possum was attached”.*

It is evident that paragraph (a) of Charge 2 cannot be proved to the required standard as it is founded on oral comments attributed to the Appellant, but paragraph (b) based on the Findings 1 to 6 above, can be found proven to the required standard. It is not fatal to that paragraph that an audible request had been made by the proprietor, as the Appellant is clearly identifiable leading the greyhounds as charged. A close examination of the DVD evidence referenced against time charts (Exs. 7 & 10) leaves no other conclusion then, that the Appellant must have been present and knew that there was ‘live baiting’ taking place; common-sense and life’s experience leaves no reasonable suspicion or inference that he was not involved with those participating in nefarious activities that day all of whom had been found guilty of involvement in ‘live baiting’.

Particulars of Charge 3 were initially worded – *“You engaged in conduct which is detrimental or prejudicial to the interest welfare image control or promotion of greyhound racing in breach of GAR Rule 86(q) including on or about 20 August 2014 at 9 Wotan Road Churchable”.... to*

*“Having witnessed live baiting at 9 Wotan Road Churchable on 20 August 2014 you, being a trainer licensed under the Rules of Greyhound Racing, failed to report the live baiting to*

*stewards and otherwise failed to take action to prevent further live baiting by greyhound racing participants at 9 Wotan Road Churchable”.*

The Appellant was given numerous opportunities to explain his presence at 9 Wotan Road Churchable on 20 August 2014 and made a conscious decision not to do so. The only sensible and reasonable inference to me made from his silence and the factors found to be proved ref. 1 to 6 above is that he is guilty of the charge. The persons in whose presence he then was on the relevant date, have mostly, if not all been charged with and found guilty of ‘live baiting’ of greyhounds. He never sought to distance himself from those other persons; he never reported the activities to the relevant authority as he stated that his principles prevented him from ‘dobbing in’ other persons.

The RDB has in adopting the principles espoused in Briginshaw –v- Briginshaw (1938) 60 CLR 336 found to its reasonable satisfaction that charges 2, 3 and 4 are substantiated; Appeal accordingly is dismissed.

#### PENALTY

The Appellant was one of a number of individuals who were found to be involved in illegal practices involving the ‘live bating’ of greyhounds using animals at 9 Wotan Road Churchable. The majority of those persons were warned off for life. On appeal that term was reduced in most instances to 10 years.

The Appellant has been involved in the Greyhound racing industry in excess of 30 years. One thing he seemingly wanted to stress to stewards who inquired in to the activities at the subject property was his affection for animals in general, and his distaste for anything associated with cruelty to animals. He particularly emphasised his dislike for “bleeding” dogs (P.14 Ls4 to 10).

The RDB said in the matter of the Appeal by Ronald Ball\* (RDB – Decision 25.2.2016) “The integrity of the sport of greyhound racing is very much the subject of public scrutiny and it is essential that the practice of live baiting be stamped out and there must be a precedent set to act as a deterrent in that respect. The sport in question does not need to be associated with persons who engage in such practices. The Board when making similar decisions has stressed the importance that the illegal behaviour of the type witnessed at Churchable be eliminated because of the damage to the public’s perception of the Industry as a whole (including the welfare of animals) and the incalculable damage to the confidence of those wagering on greyhound racing”.

In determining the appropriate penalty to be imposed again a statement taken from the decision of Ball seems apposite - “Of some assistance to this Board are the recent amendments to the Greyhounds Australasia Rules (GAR) made on 20 April 2015. Those amendments make it mandatory for a period of disqualification of not less than 10 years to be imposed to any person who is involved in the practice of live baiting or is convicted in any Court of an offence in respect to the use of any animal, carcass or part of an animal with greyhound training. That of course is legislation that postdates the commission of this



offence and does not take the matter very much further other than to identify that post the offence being committed the minimum penalty that shall be imposed by anybody shall be a minimum 10 years disqualification.

In this particular instance, the Board of Racing Queensland has identified that a period of life should be the appropriate penalty imposed. In the opinion of this Disciplinary Board, such a period of life is not likely to have any more of an effect by way of a deterrent nature on a participant than would a period of 10 years as suggested in the relevant legislation...”.

This Board therefore imposes a term of 10 years disqualification.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)

