

25 February 2021

DECISION

HARNESS RACING VICTORIA

and

ZAC STEENHUIS

and

RYAN DUFFY

and

GABRIEL STEENHUIS

and

MICHAEL STEENHUIS

and

KEVIN TRICKEY

Dates of hearings:

28 July 2020
13 October 2020
14 October 2020
6 November 2020
13 November 2020

Panel:

Judge John Bowman (Chairperson), Magistrate John Doherty (Deputy Chairperson) and Mr Des Gleeson.

Appearances:

Ms Amy Wood, instructed by Mr Andrew Cusumano, appeared on behalf of the Stewards.

Mr Zac Steenhuis represented himself.

Mr Damian Sheales appeared on behalf of Mr Ryan Duffy.

Mr Michael Steenhuis appeared on behalf of Mr Gabriel Steenhuis.

Mr Michael Steenhuis represented himself.

Mr Zac Steenhuis appeared on behalf of Mr Kevin Trickey.

Charges:

Australian Harness Racing Rule (“AHRR”) 193(1) states a person shall not attempt to stomach tube or stomach tube a horse nominated for a race of event within 48 hours of the commencement of the race or event.

AHRR 196B(1) states a person shall not without the permission of the Stewards within one (1) clear day of the commencement of a race administer, attempt to administer or cause to be administered an injection to a horse nominated for that race.

AHRR 187(2) states a person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.

AHRR 245 states a person shall not direct, persuade, encourage or assist anyone to breach these rules or otherwise engage in an improper practice.

AHRR 194 states a person who administers, sells, supplies, distributes or attempts to administer, sell, supply or distribute any substance or preparation that has not been registered, labelled, prescribed or obtained in compliance with relevant State and Commonwealth Legislation is guilty of an offence.

AHRR 230 states except with the consent of the Controlling Body a person shall not associate or communicate for purposes relating to the harness racing industry with a disqualified person or a person whose name appears in the current list of disqualifications published or adopted by a recognised harness racing authority.

AHRR 187(6) states a person shall not frustrate or endeavour to frustrate an inquiry or investigation.

AHRR 193(7) states a person shall not allow or permit another person to attempt to perform or perform any of the actions prohibited by sub-rules (1), (2) or (3).

AHRR 190(6) states where a trainer intends to leave another person in charge of a horse in the trainer’s absence, then prior

to doing so, the trainer must notify the Chairman of Stewards, and the notification must be in the manner, within the time, and containing the information determined by the Controlling Body or the Chairman of Stewards.

AHRR 187(5) states a person shall not abuse, intimidate or be deliberately obstructive of the Stewards.

Particulars of charge: Zac Steenhuis

Charge 1

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were a licensed Grade B Trainer and Grade A Driver with full care and control of 'Bonnie Kash';
3. On 13 April 2019, at approximately 4:33pm, HRV Stewards observed you and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point;
4. You stomach tubed the horse 'Bonnie Kash', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 2

1. On 13 April 2019. The horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were a licensed Grade B Trainer and Grade A Driver with full care and control of 'Bonnie Kash';
3. On 13 April 2019, HRV Stewards observed two used syringes in close proximity to the horse 'Bonnie Kash';
4. You gave evidence that you had administered those two syringes to 'Bonnie Kash', which were 'Bleeder Shots';
5. You administered two (2) injections to the horse 'Bonnie Kash', a horse nominated for a race within one (1) clear day of the commencement of that race.

Charge 3

1. On 13 April 2019, you were the registered trainer of the horse 'Countdown'; which was engaged to compete in Race 5 at the Mildura harness racing meeting that night;
2. On 13 April 2019 when HRV Stewards attended the Mildura Racing Club, Racecourse Road, Nichols Point; they observed the horse 'Countdown' in a tie-up stall adjacent to a room where you were in possession of the equipment required to stomach tube a horse, inclusive of four (4) made up drench mixes containing bicarbonate and 'Restore';
3. You gave evidence that you had prepared those drench mixes, which were capable of being administered by stomach tube;
4. You attempted to stomach tube the horse 'Countdown', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 4

1. On 13 April 2019, you were the registered trainer of the horse 'Our Summer Bay'; which was engaged to compete in Race 6 at the Mildura harness racing meeting that night;
2. On 13 April 2019 when HRV Stewards attended the Mildura Racing Club, Racecourse Road, Nichols Point; they observed the horse 'Our Summer Bay' in a tie-up stall adjacent to a room where you were in possession of the equipment required to stomach tube a horse, inclusive of four (4) made up drench mixes containing bicarbonate and 'Restore';
3. You gave evidence that you had prepared those drench mixes, which were capable of being administered by stomach tube;
4. You attempted to stomach tube the horse 'Our Summer Bay', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 5

1. On 13 April 2019, you were the registered trainer of the horse 'Braeview Bomber'; which was engaged to compete in Race 7 at the Mildura harness racing meeting that night;
2. On 13 April 2019 when HRV Stewards attended the Mildura Racing Club, Racecourse Road, Nichols Point; they observed the horse 'Braeview Bomber' in a tie-up stall adjacent to a room where you were in possession of the equipment required to stomach tube a horse, inclusive of four (4) made up drench mixes containing bicarbonate and 'Restore';
3. You gave evidence that you had prepared those drench mixes, which were capable of being administered by stomach tube;
4. You attempted to stomach tube the horse 'Braeview Bomber', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 6

1. On 13 April 2019, you were the registered trainer of the horse 'Waterboy'; which was engaged to compete in Race 10 at the Mildura harness racing meeting that night;
2. On 13 April 2019 when HRV Stewards attended the Mildura Racing Club, Racecourse Road, Nichols Point; they observed the horse 'Waterboy' in a tie-up stall adjacent to a room where you were in possession of the equipment required to stomach tube a horse, inclusive of four (4) made up drench mixes containing bicarbonate and 'Restore';
3. You gave evidence that you had prepared those drench mixes, which were capable of being administered by stomach tube;
4. You attempted to stomach tube the horse 'Waterboy', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 7

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;

2. At the relevant time you were a licensed Grade B Trainer and Grade A Driver with full care and control of 'Bonnie Kash';
3. On 13 April 2019 during a raceday stable inspection, HRV Stewards observed and confiscated a bottle of 'Super-C Intravenous High Potency L-Carnitine Injection', which was in your possession;
4. On 14 August 2019, you gave evidence you had administered 25ml of 'Super-C Intravenous High Potency L-Carnitine Injection' to 'Bonnie Kash' on 12 April 2019;
5. You administered an injection to the horse 'Bonnie Kash', a horse nominated for a race, within one (1) clear day of the commencement of that race.

Charge 8

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were a licensed Grade B Trainer and Grade A Driver with full care and control of 'Bonnie Kash';
3. On 13 April 2019 during a raceday stable inspection, HRV Stewards observed and confiscated a bottle of 'Super-C Intravenous High Potency L-Carnitine Injection', which was in your possession;
4. On 14 August 2019, you gave evidence you had administered 25ml of 'Super-C Intravenous High Potency L-Carnitine Injection' to 'Bonnie Kash' on 13 April 2019;
5. You administered an injection to the horse 'Bonnie Kash', a horse nominated for a race, within one (1) clear day of the commencement of that race.

Charge 9

1. On 13 April 2019, you were the registered trainer of the horse 'Countdown'; which was engaged to compete in Race 5 at the Mildura harness racing meeting that night;
2. On 13 April 2019 when HRV Stewards attended the Mildura Racing Club, Racecourse Road, Nichols Point; they observed the horse 'Countdown' in a tie-up stall adjacent to a room

- where you were in possession of seven (7) unused syringes which had been prepared to be administered to horses;
3. You gave evidence that you had prepared those syringes, which were capable of being administered by injection;
 4. You attempted to administer an injection to the horse 'Countdown', a horse nominated for a race, within one (1) clear day of the commencement of that race.

Charge 10

1. On 13 April 2019, you were the registered trainer of the horse 'Our Summer Bay'; which was engaged to compete in Race 6 at the Mildura harness racing meeting that night;
2. On 13 April 2019 when HRV Stewards attended the Mildura Racing Club, Racecourse Road, Nichols Point; they observed the horse 'Our Summer Bay' in a tie-up stall adjacent to a room where you were in possession of seven (7) unused syringes which had been prepared to be administered to horses;
3. You gave evidence that you had prepared those syringes, which were capable of being administered by injection;
4. You attempted to administer an injection to the horse 'Our Summer Bay', a horse nominated for a race, within one (1) clear day of the commencement of that race.

Charge 11

1. On 13 April 2019, you were the registered trainer of the horse 'Braeview Bomber'; which was engaged to compete in Race 7 at the Mildura harness racing meeting that night;
2. On 13 April 2019 when HRV Stewards attended the Mildura Racing Club, Racecourse Road, Nichols Point; they observed the horse 'Braeview Bomber' in a tie-up stall adjacent to a room where you were in possession of seven (7) unused syringes which had been prepared to be administered to horses;
3. You gave evidence that you had prepared those syringes, which were capable of being administered by injection;
4. You attempted to administer an injection to the horse 'Braeview Bomber', a horse nominated for a race, within one (1) clear day of the commencement of that race.

Charge 12

1. On 13 April 2019, you were the registered trainer of the horse 'Waterboy'; which was engaged to compete in Race 10 at the Mildura harness racing meeting that night;
2. On 13 April 2019 when HRV Stewards attended the Mildura Racing Club, Racecourse Road, Nichols Point; they observed the horse 'Waterboy' in a tie-up stall adjacent to a room where you were in possession of seven (7) unused syringes which had been prepared to be administered to horses;
3. You gave evidence that you had prepared those syringes, which were capable of being administered by injection;
4. You attempted to administer an injection to the horse 'Waterboy', a horse nominated for a race, within one (1) clear day of the commencement of that race.

Charge 13

1. At all relevant times you were a licensed Grade B Trainer and Grade A Driver;
2. On 13 April 2019, after HRV Stewards observed you and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point; Ryan Duffy ran away;
3. You gave evidence that it was registered owner Michael Steenhuis who ran away;
4. You gave this evidence knowing it to be false, in that you knew it was Ryan Duffy who ran away.

Charge 14

1. At all relevant times you were a licensed Grade B Trainer and Grade A Driver;
2. On 13 April 2019, after HRV Stewards observed you and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point; Ryan Duffy ran away;
3. On 18 April 2019, you gave evidence that you directed and encouraged registered owner Michael Steenhuis, who subsequently attended the scene, to give evidence that he ran away;

4. You directed and encouraged Michael Steenhuis to breach these rules, in that he gave false evidence to HRV Stewards.

Charge 15

1. At all relevant times you were a licensed Grade B Trainer and Grade A Driver;
2. On 13 April 2019 at the Mildura Racing Club, Racecourse Road, Nichols Point; you had in your possession the unregistered substance 'Super-C Intravenous High Potency L-Carnitine Injection';
3. On 14 August 2019, you gave evidence that you administered 25ml of 'Super-C Intravenous High Potency L-Carnitine Injection' to 'Bonnie Kash' on 12 April 2019 and 25ml on 13 April 2019;
4. You administered a substance to 'Bonnie Kash' which is not registered in compliance with relevant State and Commonwealth Legislation.

Charge 16

1. On 8 July 2016, you were the driver of the horse 'All Aussie Star' which ran fifth in Race 1 at the Ballarat harness racing meeting on that date;
2. On 13 April 2019 after HRV Stewards observed you and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point; your mobile phone was confiscated and the contents were subsequently forensically examined;
3. On 8 July 2016, at approximately 2:10pm, you sent a text message to registered owner Michael Steenhuis which states, "Il [sic] come there at 4:15 and give it a drench and we will chuck him on the float";
4. On 14 August 2019, you gave evidence confirming that 'All Aussie Star' was stomach tubed by you on 8 July 2016;
5. You have stomach tubed the horse 'All Aussie Star', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 17

1. On 7 February 2017, you were registered trainer of the horse 'Palanquin' which ran first in Race 3 at the Echuca harness racing meeting on that date;
2. On 13 April 2019 after HRV Stewards observed you and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point; your mobile phone was confiscated and the contents were subsequently forensically examined;
3. On 7 February 2017, at approximately 5:57pm, you sent a text message to licensed stablehand Donna Steenhuis which states, "Nah get there at 6:22 and already drenched the horse";
4. On 14 August 2019, you gave evidence confirming that 'Palanquin' was stomach tubed by you on 7 February 2017;
5. You have stomach tubed the horse 'Palanquin', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 18

1. At all relevant times you were a licensed Grade B Trainer and Grade A Driver;
2. On 13 April 2019, after HRV Stewards observed you and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point; your mobile phone was confiscated and the contents were subsequently forensically examined;
3. Shannon Wonson, a former licensed NSW Grade A Trainer, served a period of disqualification from 8 March 2017 until 31 July 2018;
4. Examination of your mobile phone revealed text message communications between yourself and mobile number 0438 240 952, listed in your phone as 'Chrissy Wonson', between 24 October 2017 and 27 July 2018 for purposes relating to the harness racing industry;
5. On 14 August 2019, you gave evidence that it was Shannon Wonson you were communicating with in those text messages;

6. Between 24 October 2017 and 31 July 2018, you associated and communicated with a disqualified person, which were for purposes relating to the harness racing industry.

Charge 19

1. At all relevant times you were a licensed Grade B Trainer and Grade A Driver with Harness Racing Victoria;
2. On 13 April 2019, after HRV Stewards observed you and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road Nichols Point; your mobile phone was confiscated and the contents were subsequently forensically examined;
3. Nathan Ford, a former licensed Tasmanian Grade A Trainer-Driver, is currently serving a period of disqualification from 11 January 2016 until 12 November 2022;
4. Examination of your mobile phone revealed communication via 'Messenger' between yourself and Mr Ford on 18 March 2019 for purposes relating to the harness racing industry;
5. On 14 August 2019, you gave evidence that you had spoken to Mr Ford about horses which were racing on or about the relevant time;
6. You associated and communicated with a disqualified person, which were for purposes relating to the harness racing industry.

Pleas:

Guilty to charges 1, 2, 7, 8, 13, 14, 15, 18 and 19

Not guilty to charges 3, 4, 5, 6, 9, 10, 11, 12, 16 and 17

Ryan Duffy

Charge 1

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were a licensed Grade A Driver;
3. On 13 April 2019, at approximately 4:33pm, HRV Stewards observed you and licensed Grade B Trainer and Grade A Driver Zac Steenhuis stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point;

4. You stomach tubed the horse 'Bonnie Kash', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 2

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were a licensed Grade A Driver;
3. On 13 April 2019, at approximately 4:33pm, HRV Stewards observed you and licensed Grade B Trainer and Grade A Driver Zac Steenhuis stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point;
4. HRV Stewards also observed two used syringes in close proximity to the horse 'Bonnie Kash'; and Zac Steenhuis later gave evidence that those two syringes, which were 'Bleeder Shots', had been administered to 'Bonnie Kash';
5. You administered two (2) injections to the horse 'Bonnie Kash', a horse nominated for a race, within one (1) clear day of the commencement of that race.

Charge 3

1. At all relevant times you were a licensed Grade A Driver;
2. On 13 April 2019, at approximately 4:33pm, HRV Stewards observed you and licensed Grade B Trainer and Grade A Driver Zac Steenhuis stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point;
3. You subsequently ran away, and continued to run away after HRV Steward Russell Anderson gave you an instruction to stop;
4. You frustrated an investigation by running away and not assisting HRV Stewards with their inquiries into the stomach tubing of 'Bonnie Kash'.

Charge 4

1. At all relevant times you were a licensed Grade A Driver;
2. On 13 April 2019, after HRV Stewards observed you and licensed Grade B Trainer and Grade A Driver Zac Steenhuis

stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point; you exited the vet room and ran away;

3. Michael Steenhuis subsequently attended the scene and gave evidence that he assisted Zac Steenhuis in the stomach tubing of 'Bonnie Kash' and that it was him who exited the vet room and ran away;
4. On 18 April 2019, you gave evidence that you did not discuss the matter with Michael Steenhuis at the Mildura harness racing meeting later on 13 April 2019;
5. On 8 January 2020, Michael Steenhuis gave evidence that he did discuss the matter with you at the Mildura harness racing meeting later on 13 April 2019;
6. You gave this evidence knowing it to be false, in that you did discuss the matter with Michael Steenhuis at the Mildura harness racing meeting on 13 April 2019.

Charge 5 (Alternative to Charge 1)

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were a licensed Grade A Driver;
3. On 13 April 2019, at approximately 4:33pm, HRV Stewards observed you with licensed Grade B Trainer and Grade A Driver Zac Steenhuis at the Mildura Racing Club, Racecourse Road, Nichols Point; where Zac Steenhuis stomach tubed the horse 'Bonnie Kash' in your presence;
4. You assisted Zac Steenhuis to breach these rules, in that you were present with Zac Steenhuis when the horse 'Bonnie Kash' was stomach tubed, a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 6 (Alternative to Charge 2)

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were a licensed Grade A Driver;

3. On 13 April 2019, at approximately 4:33pm, HRV Stewards observed you with licensed Grade B Trainer and Grade A Driver Zac Steenhuis at the Mildura Racing Club, Racecourse Road, Nichols Point;
4. HRV Stewards also observed two used syringes in close proximity to the horse 'Bonnie Kash'; and Zac Steenhuis later gave evidence that those two syringes, which were 'Bleeder Shots', had been administered to 'Bonnie Kash' in your presence;
5. You assisted Zac Steenhuis to breach these rules, in that you were present with Zac Steenhuis when two (2) injections were administered to the horse 'Bonnie Kash', a horse nominated for a race, within one (1) clear day of the commencement of that race.

Pleas:

Not guilty to charges 1, 2, 4, 5 and 6
Guilty to charge 3

Gabriel Steenhuis

Charge 1

1. On 13 April 2019, the horse 'Bonnie Kash', was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were the registered trainer of 'Bonnie Kash';
3. On 13 April 2019, at approximately 4:33pm, HRV Stewards observed licensed Grade B Trainer and Grade A Driver Zac Steenhuis and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point;
4. You did allow Zac Steenhuis and Ryan Duffy to stomach tube the horse 'Bonnie Kash', a horse nominated for a race, within 48 hours of the commencement of that race.

Charge 2

1. On 8 April 2019, you transported the horse 'Bonnie Kash' to the stables of licensed Grade B Trainer and Grade A Driver Zac Steenhuis at 330 Longs Hill Road, Pootilla; for the purposes of Zac Steenhuis being in charge of 'Bonnie Kash' whilst in Mildura during the week leading up to 13 April 2019;
2. At the relevant time you were the registered trainer of 'Bonnie Kash';
3. You did not provide any notification that 'Bonnie Kash' would be in the care and control of Zac Steenhuis;
4. As the absent trainer of 'Bonnie Kash', you did not notify the Controlling Body or the Chairman of Stewards that you were intending to leave 'Bonnie Kash' in the care of Zac Steenhuis.

Pleas:

Not guilty to charge 1.

Guilty to charge 2.

Michael Steenhuis

Charge 1

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were one of the lessees of 'Bonnie Kash';
3. On 13 April 2019, after HRV Stewards observed licensed Grade B Trainer and Grade A Driver Zac Steenhuis and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point; Ryan Duffy ran away;
4. You subsequently attended the scene and gave evidence that you assisted Zac Steenhuis in the stomach tubing of 'Bonnie Kash' and that it was you who ran away;

5. You gave this evidence knowing it to be false, in that you were not present at the Mildura Racing Club, Racecourse Road, Nichols Point; at that time.

Charge 2

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. At the relevant time you were one of the lessees of 'Bonnie Kash';
3. On 13 April 2019, after HRV Stewards observed licensed Grade B Trainer and Grade A Driver Zac Steenhuis and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point; HRV Stewards observed of treatments inclusive of made up drench mixes, injectables, a bottle of 'Super-C Intravenous High Potency L-Carnitine Injection' and bandages in close proximity to the horse 'Bonnie Kash';
4. You subsequently attended the scene, and gave evidence that you had brought that box of treatments to Mildura;
5. You gave this evidence knowing it to be false, in that you did not bring the box of treatments to Mildura; and that it was Zac Steenhuis who brought the box of treatments to Mildura.

Plea: Guilty to Charges 1 & 2

Kevin Trickey

1. On 13 April 2019, the horse 'Bonnie Kash' was engaged to compete in Race 11 at the Mildura harness racing meeting that night;
2. On 13 April 2019, at approximately 4:33pm, HRV Stewards observed licensed Grade B Trainer and Grade A Driver Zac Steenhuis and licensed Grade A Driver Ryan Duffy stomach tube the horse 'Bonnie Kash' at the Mildura Racing Club, Racecourse Road, Nichols Point;

3. Shortly after 4:40pm, additional HRV Stewards attended the Mildura Racing Club but were prevented from entering due to the main gate being padlocked;
4. Around that time, you were observed in a parked vehicle outside the Mildura Racing Club on Racecourse Road, Nichols Point; and stated that you had not locked that main gate and would not cooperate any further with HRV Stewards;
5. You later gave evidence that Zac Steenhuis advised you to leave the Mildura Racing Club around that time and lock the gate after you left the racecourse;
6. You were deliberately obstructive of the Stewards in that you padlocked the main gate to the Mildura Racing Club, preventing Stewards entry.

Plea: Not guilty

DECISIONS

With the exception of four of the nineteen charges against Mr Zac Steenhuis, all other charges against these three persons occurred against the same background of events on 13 April 2019. Mr Ryan Duffy and Mr Zac Steenhuis are licensed persons. Mr Kevin Trickey is not. The cases against Mr Michael Steenhuis and Mr Gabriel Steenhuis have already been completed.

RYAN DUFFY

Mr Ryan Duffy, you have been charged with six offences (two are alternatives) arising out of events that occurred at Mildura on 13 April 2019. You had been engaged to drive “Bonnie Kash” in Race 11 at the harness racing meeting that night. The events giving rise to these charges essentially arose at the Mildura Racing Club (thoroughbred) on that afternoon. That location shall be referred to as the “MRC”.

Bonnie Kash and four other harness racing horses were stabled, with appropriate permission, at the MRC on the afternoon of 13 April. They were all to race that night. These horses were in the care of Mr Zac Steenhuis, a licensed person and a friend of yours at that time. You, along with Mr Zac Steenhuis and Mr Michael Steenhuis, attended at those premises on that afternoon. The charges are related to what is alleged to have occurred there.

Those charges could be summarised as follows:-

Charge 1: a breach of Australian Harness Racing Rule (“AHRR”) 193(1). You stomach tubed Bonnie Kash within 48 hours of the commencement of the race.

Charge 2: a breach of AHRR 196B (1). You administered two injections to Bonnie Kash within one clear day of the race.

Charge 3: a breach of AHRR 187(6). You frustrated an investigation by running away and not assisting Stewards.

Charge 4: a breach of AHRR 187(2). You gave false evidence to Stewards to the effect that you did not discuss the matter with Mr Michael Steenhuis at the harness racing meeting that night.

Charge 5 (alternative to Charge 1): you assisted a breach of the Rules, being present when Mr Zac Steenhuis stomach tubed Bonnie Kash.

Charge 6 (alternative to Charge 2): you assisted a breach of the Rules by being present when injections were administered to Bonnie Kash.

You have pleaded “not guilty” to charges 1, 2, 4, 5 and 6. You have pleaded “guilty” to charge 3.

We shall deal with the contested charges in turn.

CHARGE 1

The factual context is as follows.

On the afternoon of 13 April 2019 you attended with Mr Zac Steenhuis at the MRC where the horses were stabled. As stated, all five horses were entered at the harness racing meeting that night. The harness racing track does not adjoin the MRC track and is some considerable distance from it. In the opinion of Mr Zac Steenhuis, Bonnie Kash was the only horse of the five that had a realistic chance of winning. You were to drive it.

That Bonnie Kash was stomach tubed is not in dispute. Mr Zac Steenhuis is pleading guilty to the charge. The key question in relation to Charge 1 could be summarised as follows:- Did you assist him?

Applying the test to be found in *Briginshaw v Briginshaw* (1938) 60 CLR 336, we are comfortably satisfied on the balance of probabilities that you did.

The stomach tubing equipment was set up in the swabbing stall in a portion of the MRC stables. This was where Bonnie Kash was located when Stewards Mr Russell Anderson and Ms Lucy Lingard-Smith suddenly arrived.

We accept that, when the Stewards arrived unexpectedly, the stomach tubing was actually taking place. The tube was in the horse's nose. We also accept that you were standing at the horse's head with Mr Zac Steenhuis, who was performing the actual tubing. We do not accept your version of what occurred, namely that you were at the other end of the horse near its tail and taking no part in the stomach tubing. Mr Anderson effectively entered the swabbing stall nearer to the horse's tail than to its head.

There is no argument but that you fled. Indeed, you are pleading guilty to so doing. That, in the confines of the swabbing stall with a horse in it, you could run from behind the horse's tail to the other end of the horse and out of the stall through a doorway beyond the horse's head and thence away, all this in almost a split second after Mr Anderson called out and entered closer to the horse's tail, is a proposition that we simply do not accept. In our opinion, it verges on the impossible.

We are comfortably satisfied that you were standing near the horse's head, either holding it or otherwise assisting Mr Zac Steenhuis, and when Mr Anderson effectively and unexpectedly announced the arrival of the Stewards, you bolted through the door near the horse's head.

Your fleeing the scene is also a possible indicator of guilt. You effectively argue you were an innocent bystander wishing to avoid what could be described as a possible finding of "guilt by association", and hence fled. However, your running from the swabbing stall and stables is also consistent with someone attempting to avoid detection.

Mr Zac Steenhuis now says that you were assisting him with the stomach tubing of Bonnie Kash and were in the vicinity of the horse's head. He gave evidence accordingly. We appreciate that there has been a falling out between you. Nevertheless, his description of what occurred and your role in it makes sense.

In short, we are comfortably satisfied that Charge 1 has been proven. That being so, Charge 5, which is an alternative to Charge 1, drops away.

CHARGE 2

We are not comfortably satisfied that this charge, administering injections, has been proven. There is no evidence of any substance that you actively participated in or assisted the injecting of Bonnie Kash. It seems to us that the highest the case against you can be put is that, arguably, you may have been present when injections were administered. We shall discuss that when considering the alternative charge.

It is clear that you were present when the stomach tubing took place. You have been adamant that you did not see the injections administered. You say that you walked into the swabbing stall and, at least initially, went to the rear end of the horse. You took no part in whatever Mr Zac Steenhuis was doing and did not see it. The injecting preceded the stomach tubing, when, as we have found, you were in the vicinity of the horse's head. However, that does not mean that you were so located when the injecting took place. It seems to us quite feasible that you were unaware of the injections.

Accordingly, Charge 2 is dismissed.

CHARGE 6

Charge 6 shall be dealt with now, as it is an alternative to Charge 2 and becomes operative with the dismissal of that charge.

This is an unusual charge. Essentially, all that is required is that a licensed person be present when injections are being performed. Surely, however, some element of knowledge as to what is occurring is required. We do not accept the proposition that all that is required is presence, no matter how far away and regardless of whether the needling can be seen or was seen. What if the person present calls out "Don't do that!". We are not suggesting that this occurred in the present case, but it underlines the proposition that something in addition to mere presence is required.

In summary, we cannot be comfortably satisfied, on the balance of probabilities, that this charge has been made out. It is dismissed.

CHARGE 3

You have pleaded guilty to this charge. The plea in relation to penalty is yet to be heard.

CHARGE 4

This charge concerns the alleged giving of false evidence to the Stewards. The allegation is that falsely you had denied to the Stewards that, on the night of 13 April 2019 at the Mildura harness racing meeting, you discussed the relevant events of the day with Mr Michael Steenhuis.

We are also satisfied that this charge has been proven. Mr Michael Steenhuis subsequently informed the Stewards that there had been such a conversation. We accept and prefer that evidence and the evidence of the Stewards generally in this regard.

In short, we find Charge 4 proven.

CONCLUSION

We are comfortably satisfied on the balance of probabilities and in accordance with the test in *Briginshaw* that you are guilty in relation to charges 1 and 4. You have pleaded guilty to charge 3. We find you not guilty in relation to charges 2 and 6. Charge 5 drops away.

We shall hear the parties as to penalty at a convenient time.

ZAC STEENHUIS

Mr Zac Steenhuis, you have been charged with 19 offences. We shall not set them out in full. Charges 1, 2, 7, 8, 13, 14 and 15 relate to what could be described as the Bonnie Kash stomach tubing affair as described above. You are pleading guilty to all of them. Charge 18 concerns a communication with a disqualified person and Charge 19 is a similar charge, but involving a different disqualified person. You are pleading guilty to each such charge.

In relation to these nine charges, we shall deal with them on a future occasion when there will be a hearing on penalties. The factual background is set out in greater detail in our judgement concerning Mr Ryan Duffy

That brings us to the charges to which you are pleading not guilty. Charges 3, 4, 5 and 6 can be dealt with collectively. They concern the four horses which, in addition to Bonnie Kash, were stabled at the Mildura Racing Club on the afternoon of 13 April 2019. These were "Countdown", "Our Summer Bay", "Braeview Bomber" and "Waterboy". In each instance (charges 3-6), you are charged with attempted stomach tubing of the horse within the prohibited period – see AHRR 193(1). Charges 9, 10, 11 and 12 concern the same four horses on the same occasions and can also be dealt with collectively. They involve attempted injections of those horses – see AHRR 196B(1).

All five horses, including Bonnie Kash, were in the same stables at the MRC. The horses other than Bonnie Kash were in tie-up stalls adjacent to the room where the stomach tubing equipment, including four made up drench mixes, was found by the Stewards. Bonnie Kash had already been tubed. Seven prepared and unused syringes were also located in the same room as the stomach tubing equipment.

You have always denied that the stomach tubing equipment was to be used on the four horses in question prior to their racing. You have maintained that the syringes may have been used after the horses were brought back following the last race or on the next day if they pulled up badly. In any event, you have consistently denied that you had any intention of illegally drenching or injecting the other four horses prior to their racing.

Further, in relation to these four horses, the evidence against you could only be described, at its best, as circumstantial. You had not started to perform any actual prohibited activity involving them prior to the arrival of the Stewards. Does any of this constitute an attempt?

We have considerable doubts as to whether, for the purposes of the relevant Rules, it does. Does mere possession of the equipment and the filled syringes constitute an attempt and a breach of the Rules? Without delving into the criminal law concerning attempt, we would not have thought so. The possession itself is legal. Surely something more is required. If, when the Stewards burst in, you were holding the horse and had a raised syringe in your hand, the situation may be different. The same applies if you had one of the four horses positioned for stomach tubing. However, neither is the case.

We cannot be comfortably satisfied that these 8 charges have been proved and they are dismissed.

You have pleaded not guilty to a further two charges. These do not concern Bonnie Kash or the events at Mildura on 13 April 2019, but arise from information obtained from your mobile phone. It had been confiscated by the Stewards during the course of the Bonnie Kash enquiry.

Charge 16 concerns an alleged breach of AHRR 193(1) involving the stomach tubing of "All Aussie Star" on 8 July 2016. The horse ran at Ballarat. We cannot be comfortably satisfied that this charge has been made out. There is simply not enough evidence. The reference by Mr Zac Steenhuis to what "probably" happened seems to us to be inadequate in this regard. The text message sent to Mr Michael Steenhuis and upon which the Stewards rely refers to a proposed course of action in relation to drenching, rather than to something which has actually occurred. This charge is dismissed.

Charge 17 concerns an alleged breach of the same Rule and arises in the same circumstances, namely from information gathered from the mobile phone of Mr Zac Steenhuis. This charge involves the alleged stomach tubing of “Palanquin” on 7 February 2017. It ran at Echuca and in fact won the race in which it was competing. In this instance, we are comfortably satisfied that the charge has been proven. A text message sent by you to licensed stable hand, Ms Donna Steenhuis, prior to the race clearly states that the horse had already been drenched. We find that this charge has been proven.

In summary, you are pleading guilty to charges 1, 2, 7, 8, 13, 14, 15, 18 and 19. We find you guilty on charge 17.

We find you not guilty on charges 3, 4, 5, 6, 9, 10, 11, 12 and 16.

We shall hear submissions on penalty at a convenient time.

KEVIN TRICKEY

The case of Mr Kevin Trickey is unusual. He is not a licensed person. He is charged with a breach of AHRR 187(5) – “a person shall not abuse, intimidate or be deliberately obstructive of the Stewards”. The particulars are said to be that he deliberately obstructed the Stewards by padlocking an entrance gate of the MRC on 13 April 2019.

The factual background is that two Stewards had already arrived and gained admission. The gate was locked when the second pair of Stewards arrived. Mr Trickey did not unlock the gate for something in the order of ten to fifteen minutes, although that is not included in the particulars of the charge.

Mr Trickey certainly knew Mr Zac Steenhuis and Mr Michael Steenhuis. He was camping at the MRC, apparently with the permission of that Club, and had access to the key for the lock on the gate in question. His being in Mildura at the time deliberately coincided with the visit made there by Mr Zac Steenhuis and Mr Michael Steenhuis, but the purpose of it for Mr Trickey seems to have been a fishing trip. He is an older, widowed gentleman, who has previously had some excursions coinciding with trips such as this by members of the Steenhuis family.

Mr. Trickey did not give any evidence, written or oral, or appear before us. His interests were represented by Mr Zac Steenhuis, who entered a plea of not guilty on his behalf.

In accordance with S.50X of the *Racing Act 1958*, any questions of law will be dealt with by the Chairperson, but with invaluable assistance from Deputy Chairperson, Magistrate Doherty, and from Mr Gleeson.

In broad terms, the following questions arise. Mr Trickey, being an unlicensed person, does Rule 187(5) apply to him? Does this Tribunal have the power to impose any penalty upon him, and if it does, a penalty of what type? Does jurisdiction exist to deal with a matter such as this?

In my opinion, a question mark does hang over whether this Tribunal has jurisdiction over Mr Trickey in the particular circumstances of this case. At no relevant time was Mr Trickey a licensed person. At no relevant time was he on licensed premises. The fact that the gate in question opens onto a thoroughbred racecourse does not give it any added status. The fact that there were harness racing horses beyond the gate is not to the point. Arguably, the Stewards simply have and had no jurisdiction over an unlicensed person located at the gate of unlicensed premises. Arguably, for the purposes of jurisdiction, he might as well have been a doorman at a night club.

In the Dictionary placed at the beginning of the AHRR, there is a reference to non-licensed persons as follows:-

“Suspension...

(iii) in relation to a non-licensed person means the temporary or permanent withdrawal of a right to participate in a facet of the Harness Racing Industry”.

That may well be the sole reference to unlicensed persons in the Rules. The attention of the Tribunal was not directed to this or to any other reference. Further, the Dictionary reference viewed in isolation would not seem to answer the question as to in what circumstances such a defined suspension can be applied. Is it applicable to the present situation?

There is no reference to non-licensed persons in the Dictionary definition of “disqualified”. “Fine” is not defined. “Person” is defined as an individual, syndicate, corporation, body corporate and unincorporated association. That does not take matters any further.

When the second pair of Stewards arrived at the gate, they would not seem to have identified themselves. We would refer to the video taken by the belt camera of one Steward. However, we have little doubt that Mr Trickey knew that they were Stewards and then obstructed the entry of their car by not using the key which he had or to which he had access. It is not suggested that he prevented their possible entry on foot, which, from the video, would not appear to have been out of the question.

In any event, we accept that he did deliberately obstruct the Stewards entry. The question then is whether he, as an unlicensed person on unlicensed premises, has breached AHRR 187(5).

We cannot be comfortably satisfied that he has. Let us consider a couple of different scenarios. Let us suppose that Mr Duffy had fled on foot beyond the MRC boundaries and was pursued by the Stewards. After a certain amount of ducking and weaving, he reaches a shopping strip and runs into a milk bar owned by a friend, an unlicensed person. The friend, at Mr Duffy's request, locks the door and will not open it for the Stewards. Can the unlicensed milk bar owner on unlicensed premises be charged with a breach of a Harness Racing Rule?

Or let us assume that a licensed person flees from unlicensed premises in a car, pursued at a distance by Stewards in a car. After going, say, five or ten kilometres, the licensed person finds an unlicensed council worker friend, who is performing his work of repairing potholes in the road. He persuades the friend to close the road after he, the licensed person, has driven on. Can the unlicensed road repairer be charged with a breach of a Harness Racing Rule?

We have grave doubts as to whether the Rules would extend so far. We cannot see what contractual or statutory obligation would be owed to Harness Racing Victoria by the milk bar owner or the road repairer. Mr Trickey is in a similar situation, he being an unlicensed person on unlicensed property.

This Tribunal has dealt with a case having some similarities to that of Mr Trickey. That case was *Harness Racing Victoria v Daryl Douglas* (delivered 8 October 2020). Mr Douglas, a licensed person, was charged with a breach of AHRR 231(2) – “a person shall not misconduct himself in any way”. The charge arose out of a traffic incident which occurred at an intersection close to, but not within, the Echuca Raceway. The vehicle in which Mr Douglas was a passenger was towing a horse float. The Tribunal ruled that AHRR 231(2) applied only to events and behaviour that occurred within licensed premises. There are some parallels to the present situation and it is to be remembered that Mr Douglas was a licensed person.

We would also refer to the decision in *Racing Victoria v McDonald* (delivered 14 September 2020). The decision in *Clements v Racing Victoria* [2010] VCAT 1144 probably provoked some alterations or additions to Rules, including the relevant Rule in *McDonald*. However, in neither *McDonald* nor *Clements* was the situation one of an unlicensed person on unlicensed premises. The essential point in both cases was that each involved an unlicensed person on licensed premises and whether that situation should be permitted to continue.

We are not of the view that AHRR 187(5) applies to an unlicensed person on unlicensed premises. We are not comfortably satisfied that the charge has been made out. It is dismissed.

GABRIEL STEENHUIS

There is no direct evidence that Gabriel Steenhuis was complicit in the charge to which he has pleaded not guilty. Transcripts of evidence given by Zac Steenhuis is suggestive that Gabriel Steenhuis mutually agreed or would have known, or that it was in his mind that Bonnie Kash was to be treated. However, at the hearing, Zac Steenhuis was much less certain about Gabriel's involvement. Zac had been proceeding on the basis that he presumed Gabriel would have known that he was going to "treat" Bonnie Kash, but that he never asked him. There is no evidence of any direct conversation between Zac and Gabriel about treating Bonnie Kash or any phone calls, text messages or the like. There is no other satisfactory independent evidence to consolidate Gabriel Steenhuis' complicity in the allegation against him. Gabriel Steenhuis for his part has always maintained that he was not a party to the offence alleged and always denied the charge against him. On the whole of the evidence, this Tribunal could not be comfortably satisfied that the charge to which he has pleaded not guilty could be made out. That charge is dismissed.

As to charge 2 which Gabriel Steenhuis has pleaded guilty, that is that he did not, as a trainer inform HRV that Bonnie Kash was to be left in the care of Zac Steenhuis. In our opinion, the appropriate penalty of a \$1,000 fine cannot be equated to a charge of lying to Stewards and suffer the same penalty. Gabriel Steenhuis has now surrendered his training licence and is no longer a participant in Harness Racing. He is 75 years of age and enjoying his retirement on the pension. In our opinion, he should be asked to pay a fine of \$500.

MICHAEL STEENHUIS

Mr Michael Steenhuis has pleaded guilty to two charges brought by Stewards against him.

On 13 April 2019, he lied to HRV Stewards about his involvement in stomach tubing Bonnie Kash and giving false evidence about bringing a box of treatments to Mildura. On 8 January 2020, he admitted giving misleading evidence to Stewards.

It is now a matter of evidence that it was Zac Steenhuis who was in possession of the box of treatments and that it was Ryan Duffy, not Michael Steenhuis, who was the person inside the Vet Room with Zac Steenhuis and Bonnie Kash.

The charges against Michael Steenhuis were filed in February 2020 and on 16 March 2020 he indicated an intention to plead guilty to the two charges. The charges are regarded as serious. Mr Steenhuis' decision to play along with the fraud instigated by Zac Steenhuis, frustrated and hampered a very important inquiry so that Stewards valuable time was lost and wasted. General deterrence in our opinion is a very important factor in deciding penalty

and we agree that a message must be sent to the industry that lying to the Stewards will be regarded as serious behaviour with serious consequences before the Tribunal.

Mr Steenhuis is not a licensed person who does not have an active role within the Harness Racing Industry. He has pleaded guilty at the earliest opportunity and has no relevant prior matters. He is a builder currently working in Ballarat with bright prospects regarding work availability. The suggestion by Ms Wood on behalf of HRV is that he fined as a penalty. We agree. On each charge he is fined \$1,000 (total \$2,000).

Mark Howard
Registrar, Victorian Racing Tribunal