

18 February 2022

## **DECISION**

**HARNESS RACING VICTORIA**

**and**

**DAVID MORAN**

**Date of hearing:** 7 February 2022

**Panel:** Judge John Bowman (Chairperson), Magistrate John Doherty and Mr Robert Abrahams.

**Appearances:** Ms Amy Wood, instructed by Mr Andrew Cusumano, appeared on behalf of the Stewards.  
Mr Damian Sheales represented Mr David Moran.

**Charges and particulars:**

**Charge No. 1.**

Rule 231(1)(f) which reads as follows:

*231. (1) A person shall not:-*

*(f) otherwise interfere improperly with*

*anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.*

**The particulars of the charge being:**

1. On 14 November 2019, you attended the registered training establishment of licensed trainer Laura Crossland at the Shepparton Harness Racing Club training complex.
2. You approached Ms Crossland, who was seated in a sulky driving a horse, whilst also leading another two horses;

3. Following an exchange of words, you took hold of the sulky and raised it, causing Ms Crossland to fall from the sulky onto the ground and lose control of the horses;
4. By your actions, you have interfered improperly with Ms Crossland, a person participating in the harness racing industry.

**Charge No. 2.**

Rule 231(2) which reads as follows:

*231. (2) A person shall not misconduct himself in any way.*

**The particulars of the charge being:**

1. On 14 November 2019, you attended the Shepparton harness racing trial meeting whilst intoxicated;
2. You then approached trainer-driver Damien Wilson in the parade ring, who was seated in his sulky driving 'Rocking With Memphis', where you yelled at him, took hold of him and also struck him on the helmet.
3. By you actions you have misconducted yourself at the Shepparton harness trial meeting.

**Charge No. 3.**

Rule 209 which reads as follows:

*A person employed, engaged or participating in the harness racing industry shall not knowingly or recklessly furnish false information to the Controlling Body, the Stewards or anyone else.*

**The particulars of the charge being:**

1. On 12 December 2019, you rang the HRV Integrity Hotline and provided the following information. *'I was on my way to Echuca tonight and I witnessed what I thought was Damien Wilson with a bucket and funnel stomach-tubing a horse, possibly one of the horses that would be engaged to race today. Okay Thank you';*

2. This information was received by HRV Stewards and resulted in Stewards at the Echuca harness racing meeting investigating this information;
3. On 9 January 2020, when interviewed by HRV Stewards you gave evidence that the information you provided to the HRV Integrity Hotline on 12 December 2019 was false, in that you had not witnessed Mr Wilson prior to attending the Echuca harness racing meeting that evening;
4. As a person who participates in the harness racing industry you have knowingly furnished false information to the Controlling Body and Stewards.

**Charge No. 4.**

Rule 173 (1) which reads as follows:

*A driver shall not bet in a race in which the driver participates.*

**The particulars of the charge being:**

1. On 12 December 2019, you drove 'Scotlynn Beach NZ' in Race 7 at the Echuca harness racing meeting, the 'Caledonian Hotel Social Club Pace';
2. On 12 December 2019, at approximately 7pm, you placed a multibet on your TAB account, which included a win bet on the horse 'Ellmers Hoofing It NZ', which competed in Race 7 at the Echuca harness racing meeting;
3. As the driver of 'Scotlynn Beach NZ' in Race 7 at the Echuca harness racing meeting on 12 December 2019, you did bet in a race in which you participated in.

**Pleas:** Guilty to all charges

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**DECISION**

Mr David Moran, the Stewards have charged you with four offences, which could be described as falling into two categories.

Three of them arose in the context of your behaviour arising out of a break up with your then partner, Ms Laura Crossland, and her involvement with fellow driver, Mr Damien Wilson. These could be described collectively as "The Behaviour Charges". The other concerns your

betting on a horse in a race in which you were participating. This can be described as “The Betting Charge”.

We shall deal with them separately.

(i) The Behaviour Charges.

You have pleaded guilty to each of the three charges.

The first is a breach of Rule 231 (1) (f) – improper interference with a person engaged in the industry. It concerns your attending at the Shepparton training complex on 14 November 2019. We accept that you were intoxicated. Ms Crossland was seated in a sulky behind a horse and leading two other horses. After an exchange of words, you grabbed and raised the sulky, causing her to fall to the ground. She lost control of the horses as a result.

The second charge is a breach of Rule 231 (2) – misconduct. It occurred at much the same time and at the same location. You approached Mr Wilson, who was seated in a sulky behind a horse, yelled at him, took hold of him and struck him on the helmet. As with Charge 1, we accept that this occurred in the context of your finding Ms Crossland and Mr Wilson together on the previous night.

The third charge is a breach of Rule 209 – knowingly providing false information to the Stewards. Although this took place on 12 December 2019, we accept that it also occurred against the same factual background. The false information given to the Stewards could be summarised as being that, on your way to the Echuca meeting that night, you had seen Mr Wilson stomach tubing a horse possibly engaged at such meeting. On 9 January 2020, you admitted to the Stewards that this information was false.

Thus, we accept, and it was not challenged, that the three offences effectively arose out of the same set of facts. In essence, you arrived home comparatively late at night expecting to find your partner there and looking after the children. She was not there. You located her at Mr Wilson’s establishment, in what could be described as compromising circumstances. You departed and subsequently consumed a large amount of alcohol. The events at the Shepparton trials then took place that day and whilst you were still intoxicated. The giving of the false information occurred a few weeks later, but against the same background.

(ii) The Betting Charge.

Ultimately, you also pleaded guilty to this charge, which involves a breach of Rule 173 (1)

Although the betting charge involves a horse driven by Mr Wilson and arose in relation to Race 7 at the Echuca meeting on 12 December 2019 (the same meeting as that involved in the false

information charge), there is no other obvious link between this charge and the other charges. A possible exception to this is your state of mind.

We accept that, a couple of hours or more before the relevant race, you placed a multibet, which included a win bet on “Ellmers Hoofing It”, driven by Mr Wilson. We also accept that, at the time of placing the bet, you had forgotten that you had a drive in that race. Subsequently, you realised your mistake. We gather that, because of the nature or timing of the bet, it could not be cancelled. Whether or not what had occurred was affected by your state of mind, and whether or not the bet could have been cancelled, you should at least have informed the Stewards. You did not do so.

That concludes our summary of the charges.

We turn now to such matters as your background and situation, and to your character generally.

You are aged 34 years. You have two young children and have a new partner. You are a particularly successful trainer and driver, engaged in the harness racing industry on a full time basis. Your services as a driver are sought both here and interstate. Amongst many other good horses, you have trained (and driven) the outstanding pacer, Lochinvar Art. Lochinvar Art is widely acknowledged as the best pacer in Australasia. He has won 28 races, accumulated in excess of \$1,300,000 in prizemoney and is an extremely popular horse. We mention this as an indication of the heights to which you have risen in the industry.

Those heights are also reflected in the collection of powerful references which you have put before us. They have come from people ranging from personal and family friends to Mr Adam Hamilton, Tabcorp Head of Media Communication & Sky Racing Chief Harness Racing Presenter and Mr Robert Auber, General Manager, Victorian Harness Racing Club.

Indeed, your former partner, Ms Crossland, has provided a letter stating that “the sooner all of this is put behind us, the better”. She has also stated, “I respectfully ask the Tribunal to be lenient in its penalty”.

We also note that you are an active fund raiser and supporter of charities helping cancer sufferers and of various causes to do with children’s welfare.

Further, we have had placed before us a report from Associate Professor Joseph Mathew, Clinical Psychologist, who has been treating you upon referral from your general practitioner, Dr Balamurukan. Associate Professor Mathew has described you as suffering from anxiety and depression. He diagnosed a Chronic Adjustment Disorder.

In arriving at appropriate penalties, we bear all of the above in mind.

Three very important matters to consider are your record; general deterrence; and specific deterrence.

Your record is very good, although you do have a prior conviction for a betting offence. This may not have involved an amount of any great substance, but nevertheless it means that you cannot be regarded as having an unblemished record.

Certainly, we consider general deterrence to be of importance.

Potentially dangerous behaviour such as causing a person to fall from a sulky, particularly at a track and in the vicinity of horses and people, is reprehensible behaviour and will be punished accordingly. Industry participants must be aware of this. Intoxication is no defence.

The offences of misconduct and giving false information to the Stewards may not attract interference with your licence in the present case, but appropriate fines shall be imposed. The Stewards are busy enough without having to waste time investigating behaviour of this nature.

We regard the betting offence as being of considerably greater gravity. It strikes at the image and reputation of the industry. As earlier stated, the least that you could have done was to inform the Stewards before the race as to what had occurred, even if the bet could not be cancelled.

In relation to specific deterrence, we are of the view that it is not of anywhere near the same relevance or importance. We accept that these events took place over a short period of time and when you were in a state of very considerable emotional turmoil and distress. The betting offence is of some concern, as you will now have two such offences on your record. However, we are confident that there will be no recurrence.

Finally, we come to the penalties which we impose.

On Charge 1, the improper interference by way of removing Ms Crossland from the sulky, you are suspended for a period of six months. Of that period, two months are in turn suspended for a period of 24 months on the basis that you do not breach the relevant Rule again during that period. If you do, the further two months penalty is activated.

On Charge 2, the misconduct in relation to Mr Wilson, you are fined the sum of \$1,750.

On Charge 3, the false information, you are fined the sum of \$1,250.

On the betting Charge, you are suspended for a period of six months. Of this period, three months are in turn suspended for a period of 24 months on the basis that you do not breach the relevant Rule again during that period. If you do, the further three months penalty is activated.

Further, the periods of immediate suspension, as opposed to suspended suspension, are cumulative.

The bottom line is that you are immediately suspended for a period of seven months. If you breach either of the relevant Rules again in the next 24 months, the further suspensions of two and/or three months will become operative. Also, you are fined a total of \$3,000.

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Mark Howard  
Registrar, Victorian Racing Tribunal