

# **RACING APPEALS TRIBUNAL**

RAT 8/17

**DATE:** TUESDAY 9 MAY 17

**TRIBUNAL:** **PRESIDENT:** MR T ANDERSON QC  
**MS LISA MICHALANNEY**, GRSA STEWARD,  
GREYHOUND RACING SA LTD APPEARS FOR  
STEWARDS

**APPELLANT:** MR T KELLY

**IN THE MATTER** of an Appeal by **TODD KELLY** against a decision of Greyhound Racing SA Ltd Stewards

**BREACH OF RULE:** GAR 83 (2) (a) which states:

*“The owner, trainer or person in charge of a greyhound –*

*(a) nominated to compete in an Event:  
shall present the greyhound free of any prohibited substance”.*

**PENALTY:** 15 months disqualification  
\$5,000 fine

## **DETERMINATION**

Mr Kelly is a trainer and breeder of greyhounds. He has been associated with the industry for about 30 years.

His dog, “Its No Myth” was urine tested after a race at Gawler on 6 October 2016 and the sample revealed the presence of amphetamine which is a prohibited substance. The reading was described as “average positive”.

He was not charged with administering the drug but with presenting a dog not free of a prohibited substance.

Mr Kelly defended the charge. Mr Zahra was called by the Stewards to give expert evidence. He was the analyst and qualified to speak about the sample.

Mr Zahra explained the potential for amphetamine to enhance performance. He spoke of the absence of metabolites in the sample. Dr Moore, a veterinary surgeon, also gave evidence that amphetamine has an effect like adrenaline.

Mr Kelly relied heavily on the absence of metabolites. Mr Zahra explained that the presence of metabolites confirmed the presence of amphetamine but the absence of metabolites did not provide the complete answer as Mr Kelly suggested. The absence might be due to a number of factors. The control sample showed no amphetamine present.

Mr Kelly also argued that the Stewards had not excluded the possibility of cross contamination in the four hours or so between arriving at the track and the time of the sampling. The dog, during that time, was in the care of Mr Kelly's agent and handler, Mr Price and his wife. Mr Price gave evidence at the Stewards' enquiry. He could not point to any time when anyone else had contact with the dog during the time between when he collected the dog from Mr Kelly's premises, taking it to the track, and kennelling it. Likewise, in taking it to the race and also post race until the swab was taken.

The Stewards found Mr Kelly guilty. They imposed a fine of \$5,000 and disqualified him for 15 months. He now argues both the conviction and penalty were wrong.

At his request, I granted Mr Kelly a stay of proceedings on 23 February 2017. However, as a result of Mr Kelly's conduct on 4 and 5 March 2017, the Stewards filed affidavits and sought a revocation of the stay.

The conduct related to Facebook rants by Mr Kelly on 4 March 2017 in which he used vile and accusatory language towards various officers of GRSA. He also attended a race meeting at Gawler on 5 March 2017 and stormed into the kennel house and generally disrupted proceedings. I will deal with this conduct later.

Based on the affidavits, I revoked the stay of proceedings on 7 March 2017. As a result of my revocation of the stay, Mr Kelly has been effectively disqualified from 7 March 2017.

He has now handed over his dogs to another trainer. He takes exception to the fact that the stay was revoked on the basis of the affidavit evidence filed by GRSA. In his own affidavit however, he admits his conduct on Facebook and says that he was affected by liquor. There is vision also of his attendance in the kennel house on that occasion.

Mr Kelly was initially represented by lawyers, including counsel, but then during the course of these proceedings he ceased to be represented by lawyers and continued to represent himself.

Whilst represented, it was agreed by lawyers for both Mr Kelly and the Stewards that I should take this conduct into account and deal with it at the same time as I deal with the charge regarding the prohibited substance, despite the fact that he has not been charged in relation to his conduct.

Mr Kelly reiterated when I questioned him that I should deal with it although he was agreeing to this under protest because he maintains that he was not given a hearing in relation to the incident at Gawler involving the revocation. As I have said, the

revocation was based on affidavit evidence including his own affidavit in which he admitted the Facebook rants.

In relation to his conviction, Mr Kelly seemed to argue two main points. First, that the Stewards had not eliminated the possibility of cross contamination and second that the absence of metabolites in the urine sample was fatal to the Stewards' case.

He argued that any of the staff of GRSA or members of the public may have touched the dog and contaminated it. He said this possibility had not been excluded. Mr Price in his evidence was not able to say that there was any incident in which he could recall any member of the public touching the dog. The dog was in his care and that of his wife throughout the evening. On that evidence, it seems a remote possibility.

The Stewards do not have to disprove the possibility of cross contamination. This is a strict liability offence. Mr Kelly's argument is based on speculation and relies on possibilities, some of them remote. On the evidence, as I have said, Mr Kelly is incorrect in his assumption as to the degree of proof required. The comment applies equally to Mr Kelly's suggestion that members of GRSA staff might have consumed drugs and then touched the dog and that could explain the reading of amphetamine.

On the balance of probabilities, having regard to the seriousness of the charge and the severity of the penalty, I cannot find cross contamination as an answer to the presence of amphetamine in the sample. That is the case with both members of the public and with members of the GRSA. It is not a case as Mr Kelly tended to argue as to proof being required beyond reasonable doubt.

On his other point as to metabolites, I refer to the evidence of Mr Zahra. The absence of metabolites does not prove positively that there is no amphetamine present.

Mr Zahra said it was not uncommon for there to be no metabolites in drug screens taken from dogs. The level of amphetamine also was consistent with a finding of no metabolites.

Again, as to the requisite degree of proof, I do not find this argument of Mr Kelly has succeeded.

Therefore I find that Mr Kelly was correctly convicted for presenting a dog not free of a prohibited substance and the appeal on conviction is dismissed.

Many of Mr Kelly's arguments throughout this protracted hearing related to penalty.

He was the subject of a program by Channel 9 exposing him as being guilty of presenting a dog with amphetamine present in his system. This has been at all times at the forefront of his submissions. He believes that he has been unfairly dealt with by Channel 9 and unfairly dealt with by GRSA because they took no action on his behalf to stop the Channel 9 program going to air.

I take into account the profound effect this matter has had on Mr Kelly because of the Channel 9 program and indeed how it has affected his whole family.

I heard evidence from both his parents supporting the effect which this whole series of events has had on Mr Kelly. I accept their evidence and I accept Mr Kelly's evidence on the effect which it has had on him. The program from Channel 9 was unfortunate but it is not relevant in what I can do other than to take it into account as part of the penalty already endured by Mr Kelly.

Mr Kelly pointed to his record in the industry. He has three previous convictions for prohibited substances under the same rule.

In 2003, the substance was theobromine and in 2014 it was androstane twice. The last two were regarded as concurrent and he was fined \$1,000 and disqualified for six months.

He has achieved a lot in the industry and has been the subject of awards for his achievements.

I find him to be an intense person and someone who has been badly affected by the finding of amphetamine in one of his dogs which presence remains unexplained.

I take into account the effects on his health and his enjoyment of his profession as a trainer and a breeder. He is a person of good character albeit with the three previous convictions as I have previously indicated.

Mr S Ward for the Stewards argued that any penalty must be significantly higher than the previous penalties. He submitted that 18 months was a "usual tariff". There is no tariff but previous decisions are of some assistance. Each case must be treated on its own facts.

Mr Ward submitted that the disqualification must be greater than six months because of the 2014 convictions. Whilst that does not necessarily have to be the case I agree in this case that it should be greater than six months. However, I consider that 15 months disqualification plus the \$5,000 fine is harsh. I will substitute a period of disqualification of 10 months.

I will leave the fine at \$5,000.

I will impose a separate penalty of three months disqualification for Mr Kelly's conduct in which he acted clearly to the detriment of the sport of greyhound racing by his injudicious and contemptuous remarks. It is a serious matter in itself. It warrants a period of disqualification. Mr Kelly has endured a lot of adverse publicity as a result of the Channel 9 program. It has affected him throughout these proceedings. I take the view that justice would be done in this matter if I make the three months concurrent with the ten months for the presentation offence.

The 10 months disqualification shall run from the 7th March 2017.

I order the refund of the applicable portion of the bond.