15 April 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**DARREN LANGLEY**

**Date of hearing:** 7 April 2021

**Panel:** Justice Shane Marshall (Deputy Chairperson), Ms Maree Payne and Dr Andrew Gould.

**Appearances:** Mr Damien Hannan, instructed by Mr Marwan El-Asmar, appeared on behalf of the Stewards.

Mr Lynton Hogan represented Mr Darren Langley.

Ms Debbie Parker appeared, via telephone, as a witness.

Mr Scott Elliott appeared as a witness.

Mr Darren Langley appeared as a witness.

Mr Dennis Langley appeared as a witness.

**Charge:** Local Racing Rule (“LR”) 42.18(b) states:

Subject to 42.19, but without derogating from LR 42.13 to LR 42.15, it is a Serious Offence for a person to:

(b) attempt to possess, or have possession of, or bring onto, any grounds, premises or within the boundaries of any property where greyhounds are trained, kept or raced, any animal, animal carcass or any part of an animal for the purpose of being, or which might reasonably be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it.

**Particulars of charge: Charge 1**

You, being a person registered with Greyhound Racing Victoria (GRV), did attempt to possess any animal for the purpose of being, or which might reasonably be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound or greyhounds to pursue it or them, in that:

1. You were, at all relevant times, a trainer registered with GRV (Member No. 26996) and a person bound by the GRV Rules of Racing, including the Greyhounds Australasia Rules and Local Racing Rules.
2. You were, at all relevant times, the registered trainer of four racing greyhounds at the kennelling address of 95 Camms Road, Cranbourne.
3. On or about 21 August 2019, you attempted to possess live rabbits, in that you posted an advertisement on the online platform Gumtree with the title ”Wanted wild rabbits alive” and the description “Looking for rabbits to buy any one catching wild rabbits”.
4. On or about 21 August 2019, you attempted to possess live rabbits for the purpose of being, or which might reasonably be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it, in that you:
5. posted an advertisement on the online platform Gumtree with the title “Wanted wild rabbits alive” and the description “Looking for rabbits to buy any one catching wild rabbits”.

**Charge 2**

You, being a person registered with Greyhound Racing Victoria (GRV), did have possession of, or bring onto any grounds, premises or within the boundaries of any property where greyhounds are trained or kept, any part of an animal which might reasonably be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it, in that:

1. You were, at all relevant times, a trainer registered with GRV (Member No. 26996) and a person bound by the GRV Rules of Racing, including the Greyhounds Australasia Rules and Local Racing Rules.
2. On 3 September 2019, GRV Investigative Stewards Lianne Salerno and Debbie Parker attended to the kennel address of registered trainer Mr Christopher Langley, namely 195 Harewood Mains Road, where greyhounds are trained or kept (the Kennel Address) and undertook an inspection (the Kennel Inspection).
3. During the Kennel Inspection at the property, the Investigative Stewards located a part of an animal, namely a lure partially made of natural animal fibres / hairs, in the toolbox on a greyhound trailer driven by you onto the Kennel Address (the Lure).
4. You did bring onto the grounds, premises or within the boundaries of the Kennel Address, the Lure, which might reasonable be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it.

**Plea:** Not guilty to all charges

**DECISION**

1. Mr Darren Langley is a registered greyhound trainer who is currently suspended pending the hearing and determination of two charges laid against him by Stewards of Greyhound Racing Victoria (“GRV”).
2. The first charge is that contrary to Local Racing Rule (“LR”) 42.18(b), Mr Langley attempted to possess an animal which might reasonably be capable of being used as bait, quarry or lure to excite or encourage a greyhound to pursue it.
3. The second charge is that also contrary to LR 42.18(b). Mr Langley possessed part of an animal for the purpose of being used as a lure to entice or excite or encourage a greyhound to pursue it.
4. Mr Langley has pleaded not guilty to both charges. The hearing of the charges has been delayed by the coronavirus epidemic and the desire of Mr Langley to have an in person hearing.
5. As the second charge presents the Tribunal with lesser difficulty, we will deal with that charge first.
6. On 3 September 2019, GRV Investigative Stewards conducted a kennel inspection at the registered kennel address of registered trainer, Mr Christopher Langley, at an address in Tooradin. Christopher Langley is a brother of Darren Langley. During the inspection, a greyhound trailer was found on the property. It was searched by Stewards. Inside a toolbox Stewards found a lure.
7. Stewards sent the lure to Dr Greta Frankham of the Australian Centre for Wildlife Genomics. Dr Frankham, in a microscopy laboratory, examined the lure. She referred to a “light grey” section of the lure and a “dark grey” area. Fibres and hairs natural in origin were found in the light grey section. The fibres on the dark grey section were synthetic in origin.
8. Mr Darren Langley gave evidence that the lure was sourced from a car seat cover which he purchased in or about 2001. At the time, he had recently returned from overseas and did not have much money to spend on a car seat cover. He bought the cover for $49. He saw sheepskin covers costing up to $300. He assumed the cover he purchased was made of synthetic material.
9. After Mr Langley sold his car, he kept the car seat cover and turned parts of it into lures. He was aware of changes to the LRs in 2017 which prohibited the use of lures made from animal product. Stewards, on a previous inspection not long after the Rule change, found a white, sheepskin lure in the toolbox, but only suggested that it be thrown out. No query was made about the lure in question in this matter. Further, Mr Dennis Langley, the father of Darren and Christopher, said that the trailer was usually housed on his property and had been seen by Stewards on several occasions on previous inspections without an issue being raised about this lure.
10. Counsel for GRV conceded that LR 42.18(b) is an offence of strict liability, not absolute liability. That means that the defence of honest and reasonable mistake is available to Mr Langley. So much is a proper concession having regard to the judgement of Zammit J in *GRV Stewards v Anderton* [2018] VSC 64.
11. Counsel for GRV contends that it was not reasonable for Mr Langley to assume that the lure contained no animal product. No question was raised about the honesty of Mr Langley’s belief.
12. Mr Langley gave evidence that he had not used the lure for about five years and would not have used it if he believed it contained animal product. However, counsel for GRV contended that for Mr Langley’s belief to be reasonable, he should have made enquiries to find out whether the lure was made of synthetic material. Taking that sort of action and seeking an opinion from a scientist may incur great effort and expense for an ordinary greyhound trainer. We consider his belief that the lure was made solely of synthetic material was reasonable. We do so having regard to the price of the original car seat cover and the fact that Stewards had seen the lure on previous inspections and raised no issues about its composition.
13. For the foregoing reasons, we consider that the defence of honest and reasonable mistake is made out and we dismiss charge two.
14. The critical issue in our determination on the first charge is whether the actions of Mr Langley constituted an attempt to possess an animal for the purposes of it being used as bait, quarry or lure to entice or excite a greyhound to pursue it. It is to those actions which we now turn.
15. On 21 August 2019, Mr Langley posted an advertisement on the online platform called “Gumtree”. The title of the advertisement was “Wanted wild rabbits”. The advertisement said “Looking for rabbits to buy any one catching wild rabbits”.
16. After posting that advertisement, Mr Langley did not agree to buy a live rabbit, nor did he agree to meet anyone for the purposes of buying a wild rabbit. Mr Langley said his purpose was to source a rabbit for cooking and he had also performed google searches at about the same time in order to find game meat including kangaroo and deer for cooking. He said he was interested in cooking and a follower of Jamie Oliver’s cooking recipes and shows. He said he did not intend to use a live rabbit as bait to encourage greyhounds. However, in his interviews with the Stewards in their preliminary investigation, Mr Langley was unable to explain why he wanted a live rabbit to cook as distinct from one that was already dead and could be easily sourced at a place like a butchers shop.
17. LR 42.18(a) makes it an offence to use any animal in connection with greyhound training as a bait, quarry or lure to entice, excite or encourage a greyhound to pursue it or otherwise. LR 42.18(b) seeks to punish an attempt to engage in such conduct and goes further than LR 42.18(a).
18. Counsel for Mr Langley submitted that his client did not attempt to possess an animal. He submitted that the Gumtree advertisement was mere preparation rather than a completed attempt. He referred the Tribunal to the judgement of the New South Wales Court of Criminal Appeal in *Inegbedion v R* [2013] NSW CCA 291. Rothman J (with whom Hoeben CJ at CL and McCallum J agreed) dealt with what constitutes an attempt in criminal law.
19. At [16], Rothman J said that: - “In order to prove the accused is guilty of an attempt to commit a particular offence, the Crown must first prove… that the accused intended to commit the crime, which the Crown alleges he attempted to commit. In other words the accused must have intended to commit all the physical acts which would constitute the crime attempted in circumstances which make those acts criminal”.
20. At [17] his honour said: -

“Over and above proof of an intention to commit the crime alleged, the Crown must prove… that the accused, with that intention, performed same act that went to the commission of the offence, which was more than merely preparatory of the crime and was immediately connected with the commission of that crime, having no reasonable purpose other than its commission”.

1. *Inegbedion* involved the interpretation of section 11.1 of the *Commonwealth Criminal Code,* which makes it a separate offence for someone who attempts to commit an offence. It was in that context that Rothman J made the above observations.
2. LR 42.18(b) makes it a separate offence to attempt to possess an animal for a purpose which might reasonably be capable of the animal being used as bait etc. The offence must be considered in the context of its elements. It is not an offence of attempting to do what is forbidden by LR 42.18(a). It is broader in reach.
3. So far as is material those elements are: -
4. an attempt in the sense of any effort to try to;
5. possess;
6. any animal
7. for the purpose or being or what might reasonably be capable of being used as bait etc.
8. The efforts of Mr Langley in advertising for live rabbits on Gumtree constituted an attempt to possess an animal for a purpose which might reasonably be capable of being used as bait, quarry or lure to entice a greyhound to pursue it.
9. It is notorious that rabbits have been used in the past by greyhound trainers for the purpose described above. The advertising of a desire by a greyhound trainer to purchase live rabbits carries with it a purpose which might reasonably be capable of the animal being used in the prohibited fashion described in the concluding words of LR 42.18(b).
10. Counsel for Mr Langley submitted that an essential element of LR 42.18(b) was missing on the current facts. He observed that there is no evidence that Mr Langley, who did not reside at his kennel address, intended to bring rabbits into the bounds of the property where his greyhounds were trained. This submission overlooks the disjunctive nature of LR 42.18(b). It proscribes different types of actions. The first is the action of attempting to possess an animal. The second is to have possession of an animal. The third is bringing an animal onto grounds, premises or within the boundaries of any property where greyhounds are trained, kept or raced. It is the first kind of conduct which, in this case, attracts the charge under LR 42.18. It is sufficient that the Defendant has attempted to possess an animal, despite lacking any intention to bring it into proscribed premises, for purposes which might reasonably be capable of being used as a lure to entice a greyhound to pursue it. An offence may be committed even if the Defendant never intended to take the animal to a property where greyhounds are kept, but to some other property not usually so used, or was indifferent as to where the animal would be taken.
11. The carveout in LR 42.20 for a person who keeps an animal as a domestic pet on relevant premises only applies in circumstances where the gravamen of the offence is the bringing of an animal into premises where greyhounds are trained, kept or raced.
12. In this case, Mr Langley attempted to possess a rabbit for a purpose which might reasonably be capable of being used as bait, quarry or lure to entice a greyhound to pursue it. The fact that the attempt to possess a rabbit might also have been for the purpose of eating it does not deny that, objectively considered, a greyhound trainer seeking to source a live rabbit might be viewed reasonably and objectively as being capable of being using it as bait.
13. For the foregoing reasons, we consider that charge one has been made out. We are comfortably satisfied that Mr Langley has breached LR 42.18(b) as particularised in respect of his Gumtree advertisement. We find that charge proven.
14. A Directions Hearing will be scheduled for 28 April 2021 at 11.30am for the programming of a hearing to deal with penalty submissions in respect of the guilty finding on charge one.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal