15 December 2023

**DECISION**

**RACING VICTORIA**

**and**

**RUBY McINTYRE**

**Dates of hearings:** 13 November 2023 – Day 1

 27 November 2023 – Day 2

**Panel:** Judge John Bowman (Chairperson), Mr Des Gleeson and Ms Maree Payne.

**Appearances:** Mr Russell Hammill instructed by Mr Patrick Considine appeared on behalf of the Stewards – Day 1.

 Mr Damian Hannan instructed by Mr Patrick Considine appeared on behalf of the Stewards – Day 2.

 Mr Ruby McIntyre represented herself.

 Ms Jamie Kah appeared as a witness.

Ms Ruby McIntyre appeared as a witness.

**Charge:** Australian Rule of Racing (“AR”) 228(a) states:

AR 228 Conduct detrimental to the interests of racing

A person must not engage in:

(a) conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere;

**Particulars of charge:** 1. You were, at all relevant times, a “relevant person” (as defined by LR 2) and bound by the Rules of Racing.

2. Between 17 and 18 June 2023, you attended a gathering at the residential premises of licensed jockey, Jamie Kah, with two other persons (the Gathering), where you recorded Ms Kah using an identification card in her hand to arrange a white powder substance into three lines (the Recordings).

3. You shared the Recordings with a person/s not in attendance at the Gathering.

4. The Recordings have been widely reported both in the media and on social media, with the perception amongst persons commenting on the posts being that those in attendance at the Gathering used an illicit substance, being cocaine.

5. Your conduct, as outlined in particulars two and three, is prejudicial to the image, interests, integrity and/or welfare of racing.

**Plea:** Not Guilty

**DECISION**

Ms Ruby McIntyre, you are pleading “Not Guilty” to a breach of AR 228 (a).

That Rule reads as follows:-

“A person must not engage in:

1. conduct prejudicial to the image, interests, integrity, or welfare of racing whether or not that conduct takes place within a racecourse or elsewhere”.

We would suggest at the outset that this decision be read in conjunction with the judgment in *Kah,* which involves the same factual basis, and in which that factual background is set out at some length. We would also refer to what was said concerning questions of law.

Whilst you have pleaded “Not Guilty” and gave some evidence, basically you did not contest any of the essential ingredients of the charge against you. Your evidence was more in the nature of an explanation and an apology.

We accept that Ms Kah took the “selfie” of the three of you, using your mobile phone. We also find that you used that phone to take the very brief video of her arranging the lines of white powder with your card. We accept her evidence and your evidence that such video, including the still shot extracted from it, was taken without her knowledge.

We further accept that subsequently you sent on to another person the group photo and the still shot of the lines of powder and Ms Kah’s arm.

We find that you added messages to the photos that you sent. Originally there was some dispute about this, but we are quite satisfied that they were your messages. They referred to the fact that it was something to add to the list of things that you never thought that you would be doing, namely coke with Ms Kah and another friend at her house until 3.00am and staying the night. We do not find that Ms Kah was present until that hour, and ultimately that was also your evidence. There is no dispute but that she provided the white powder, but we have not found that she used it. We would refer to our decision in her case.

There are significant differences between the factual basis to the case against Ms Kah and the case against you. In each instance, the presence of a white powder produced by Ms Kah plays a part. However, it is also to be remembered that in each instance we are dealing with an alleged breach of a Rule, the primary concern of which is the image and the like of racing.

Those significant differences are threefold.

Firstly, you deliberately took a short video of the powder and what Ms Kah was doing with it without telling her and in a surreptitious fashion.

Secondly, and very importantly, you sent both the group photo and the white powder photo on to another person.

Thirdly, you put an incriminating and identifying caption on the message containing the photos.

In our opinion, that behaviour by a licensed person is sufficient to constitute a breach of AR 228(a). Sending to another person the video of the white powder incident, along with the earlier photo, created the real possibility that the material would find its way into the media. That seems to be exactly what occurred.

Further, all involved seem to have been what could be described as racing people. This was not a casual video taken at a large party of racing and non-racing persons. It was a video specifically and intentionally taken of the activity of a very high profiled member of the racing community in the company of other members of that community. That is so before any caption was added. The caption, which we are satisfied was added before the photographs were sent, removes any doubt, however small, that may have existed.

In our opinion, these factors make this case substantially different from the case against Ms Kah.

We are comfortably satisfied that the charge has been proven. The possibility of damage to the image and the like of the racing industry was a very real one, as the resultant publicity has demonstrated.

We would add that there is absolutely no finding of any intent on your part to damage the image of Ms Kah or the image of the racing industry. There was no malice. What we find is that there was recklessness of a significantly high degree to make out the Charge.

We shall hear from the parties on the question of penalty at a time convenient for all concerned.

Mark Howard

Registrar, Victorian Racing Tribunal