

TASMANIAN RACING APPEAL BOARD

Appeal No 25 of 2016/17 – Grant Hodges

Appeal No 26 of 2016/17 – Rohan Hillier

Appeal No 27 of 2016/17 – Troy Hillier

Appeal No 28 of 2016/17 – Nathan Ford

Panel:	Tom Cox (Chair) Rod Lester Wendy Kennedy	Appellant:	(1) Grant Hodges (2) Rohan Hillier (3) Troy Hillier (4) Nathan Ford
Appearances:	Mr Paul Turner & Ms Louise Brookes on behalf of Office of Racing Integrity Mr Greg Richardson on behalf of Mr Grant Hodges, Mr Rohan Hillier & Mr Troy Hillier Mr Adrian Crowther on behalf of the Stewards	Rules:	**
Heard at:	Launceston	Penalty:	**
Date:	7 & 8 December 2017	Result:	**

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(1) Grant Hodges

Rule/Penalty:

AHRR187(1) & AHRR187(7) – 12 months disqualification

AHRR231(4) – 2-year disqualification

Result:

Appeal against Conviction Dismissed

Appeal against Penalty Varied to:

AHRR187(1) & (7) – Reprimand

AHRR231(4) – 6 months disqualification

(2) Rohan Hillier

Rule/Penalty: AHRR243 - \$2000 Fine (\$1000 suspended two years)

Result:

Appeal against Conviction Dismissed

Appeal against Penalty Varied to Fine of \$1000

(3) Troy Hillier

Rule/Penalty: AHRR243 - \$1000 Fine

Result: Appeal Dismissed

(4) Nathan Ford

Rule/Penalty:

AHRR243 (2 charges) – 12 months disqualification per charge

AHRR187(1)&(7) – 12 months disqualification

AHRR187(2) – 12 months disqualification

Result:

Appeal against Conviction Dismissed

Appeal against Penalty Varied to:

AHRR243 (2 charges) – 12 months disqualification (in total)

AHRR187(1), (2) & (7) – 6 months disqualification (in total)

Penalties to be served cumulatively.

REASONS FOR DECISION

1. Around midnight on 18 October 2015 in the wake of the annual Harness Racing Awards dinner at Wrest Point Casino, Tyler Ford, a club official, assaulted Rohan Hillier by punching him to the head on the dance floor of the Onyx Bar.
2. The assault was unprovoked. The exact reasons for it remain unknown. Immediately after Rohan Hillier was struck, Grant Hodges, a friend and colleague of Mr Rohan Hillier, intervened and struck Tyler Ford to the head with a right clenched fist. A melee ensued with many other persons involved. Notably, Nathan Ford intervened by running into the melee only to be restrained by a Parish who grappled with Nathan Ford, placed him in a headlock, and, ultimately, wrestled him away from the scene.
3. Security from Wrest Point also intervened by restraining Tyler Ford and Nathan Ford and ejecting them and two other persons from the Casino. Shortly afterwards, Rohan Hillier and his brother Troy Hillier (who made his way down from his room at the Casino after being telephoned by one of his brother's colleagues) and another two men assembled themselves in the Casino before going in search of the Fords in the car parks of the Casino.
4. The two groups of men found each other at the bottom car park of the Casino near the back of the Caltex Service Station on Sandy Bay Road. By this time, around 1.00am, the Police had been called and arrived to observe two groups of males on Drysdale Place outside the Casino. Security guards from Wrest Point were also on hand.
5. An independent account by Constable Morris recorded what happened next:
“At approximately 1.10 on Sunday 18th October 2015 I responded to a report of a large group of males fighting at Wrest Point Casino. I was in company with Constable Callan Thomas and Constable Martin Dougan. We arrived approximately 5 minutes later and observed two groups of males, one group was by some trees near the rear of the Caltex Service Station and the other walking down Drysdale Place. I also observed a group of what I identified as security staff on the left hand side pavement. As we parked up both groups of males then ran towards each other in an aggressive manner, shouting and swearing. Police and security stood in between the groups of males trying to prevent the breach of the peace from occurring. I attempted to separate two males who were pushing each other before they both went to the ground, wrestling and punching with one another. With the help of Thomas the two

males were separated, I informed one of them they were under arrest for disturbing the peace by fighting before placing them in handcuffs. ... (one of the persons) identified himself as being Rohan Lee Hillier The other male persos was ... arrested by Const. Thomas.”

6. Another account of the incident was accurately recorded by Constable Dougan. He observed:

“As we approached the Casino driving along Drysdale Place we slowed to speak with Wrest Point Security staff. As we were ... a group of males ran from our left coming from the area of the service station on Sandy Bay Road towards another group of males who were in Drysdale Place. The first male of the group coming from the area of the service station was wearing a pink shirt. He ran towards a male in a white t-shirt and attempted to kick him but did not connect. The two groups began fighting and myself and the other three Constables quickly intervened. I took the male with the pink shirt away from the fight and placed him under arrest. I took hold of his arm and he complied with my instructions to come with me. ... the man wearing the pink shirt identified himself as Nathan Brian Ford. ... I cautioned Ford and held him until transport was available to take him to Hobart Police Station. ... I conducted a notebook interview with Ford. Ford made admissions to ‘we were waiting outside when people from up North, one of them abused my partner, the one in the white top, I saw red kicked and moved away, Police then took me.’ ... Ford ... signed my notebook as a true record of the interview.”

7. For completeness, we also set out the evidence of Constable Parkinson as follows:

“One of the males approaching from the Casino was about 5’10” tall ... I know this male to be Troy Andrew Hillier the defendant. Two groups of men began running towards each other, I saw a male in a pink shirt launch himself into the air and kick Hillier in the leg. Hillier in turn tried to punch the pink shirt male but missed, I heard Hillier yell ‘come on you weak cunt’ at the male. I placed him under arrest and handcuffed him with the assistance of Constable Thomas.”

8. From these accounts, it can be deduced that Nathan Ford was the person who ran towards Troy Hillier and attempted to kick¹ Troy Hillier; that Troy Hillier responded by attempting to punch Nathan Ford, but missed; that Rohan Hillier and another person, who need not be identified, were the males “*who were pushing each before they both went to the ground, wrestling and punching with one another*”.
9. The appellants appeal against the findings by the Stewards that, effectively, they each engaged in conduct that was prejudicial to the industry and, further, that the penalties imposed for their conduct and related matters in connection with the inquiry were manifestly excessive.

THE STEWARDS’ INQUIRY

10. The Stewards’ inquiry was protracted. This was so because the inquiry stalled while Tasmania Police pursued charges against Nathan Ford, Rohan Hillier and Troy Hillier in connection with the incident that occurred in the car park of Wrest Point Casino around 1.00am. Evidence before the Board from Tasmania Police confirms

¹ One account states that the kick landed. Another states it did not. All things being equal we are not satisfied that the kick landed.

that those gentlemen were all charged with disturbing the peace contrary to s.13(1)(b) of the *Police Offences Act 1935*. That evidence also confirms that two other gentlemen, Dylan Ford and William North were also charged with disorderly conducted contrary to s.13(1)(c) of the same Act. As far as the appellants are concerned, Nathan Ford's charge was subsequently amended to disorderly conduct and all three of those appellants pleaded guilty to the respective charges. No convictions were recorded against them. However, each was released on their own undertaking to be of good behaviour for a designated period. In Rohan Hillier and Troy Hillier's cases, the period of good behaviour was 12 months. For Nathan Ford, the period was 9 months. It appears that those charges were resolved by September 2016.

11. There were also difficulties in convening the inquiry for the purposes of obtaining evidence from Grant Hodges and Nathan Ford. However, it must be noted that the day after the incident the Stewards conducted recorded interviews with Grant Hodges, Rohan Hillier and Troy Hillier. The transcript of those interviews was only produced to this Board on the day of the appeal hearing. We were told that those transcripts were not relied upon by the Stewards in making their findings and coming to the conclusions they reached concerning penalty, at least insofar as those appellants were concerned. Why the Stewards would take such an approach is a mystery to this Board. The material contained in those interviews was clearly relevant and ought to have been taken into account, especially in circumstances where there was a subsequent complaint that Grant Hodges had not complied with a direction by the Stewards to attend one of the inquiry dates, being Monday 27 March 2017.
12. We will return to that complaint by the Stewards in due course and also related complaints concerning Nathan Ford's attendance at the inquiry. For the moment, it is necessary to set out all of the charges and penalties the Stewards found and determined respectively.

Mr Grant Hodges

13. The Stewards found that Grant Hodges had assaulted Tyler Ford contrary to AHR231(1)(e). The particulars of the charge were that he assaulted a racing official, namely Tyler Ford in the Onyx Bar following the awards function.
14. A further charge was levied and found proven; that Grant Hodges failed to comply with a direction by the Stewards to attend an inquiry contrary to AHRR187(1). The particulars of that charge were that he failed to attend an inquiry when directed to do so on Monday 27 March 2017.
15. With Grant Hodges not attending the inquiry on 27 March 2017 the Stewards, in that appellant's absence, proceeded to disqualify him for a period of 2 years, commencing 16 May 2017 and expiring midnight 15 May 2019 for the first charge. For the second charge, the Stewards proceeded to impose a disqualification of 12 months to be served cumulatively on the first disqualification. The effect of that order was that Grant Hodges was disqualified for a period of 3 years, expiring on 15 May 2020.

Mr Nathan Ford

16. The Stewards found Nathan Ford in breach of four of the Rules of Racing. First, that in breach of AHRR243, Nathan Ford entered into a fight on the dance floor of the Onyx Bar and was physically removed from the venue by security which, in the

opinion of the Stewards, was behaviour prejudicial or detrimental to harness racing. Secondly, contrary to the same rule, Nathan Ford attempted to kick Troy Hillier and then engaged in a fight outside Wrest Point Casino resulting in his arrest by Police. Again, this conduct was considered prejudicial or detrimental to harness racing. Thirdly, contrary to AHRR187, that Nathan Ford failed to attend an inquiry when directed to do so by the Stewards on 8 March 2017. Fourthly, that Nathan Ford gave false information in connection with a direction to attend an inquiry contrary to AHRR187(2).

17. The Stewards proceeded to disqualify Nathan Ford for each offence for a period of 12 months, with each period of disqualification to be served cumulatively. That is, Nathan Ford was disqualified for a period of 4 years to commence on 11 November 2019, being the date upon which another unrelated period of disqualification would expire. The effect of this period of disqualification was that Nathan Ford's disqualification will expire on 11 November 2023.

Mr Rohan Hillier

18. The Stewards found that Rohan Hillier behaved in a way which was prejudicial or detrimental to the harness racing industry contrary to AHRR243. The particulars of that charge were that he, as a licensed trainer and driver, engaged in a fight outside the Wrest Point Casino in the early hours of 19 October 2015 following the harness awards dinner and as a consequence was arrested by Police.
19. The Stewards proceeded to fine Rohan Hillier the sum of \$2,000.00 of which \$1,000.00 was suspended for a period of 2 years on the condition that he not breach AHRR243 within that period.

Mr Troy Hillier

20. The Stewards found that Troy Hillier behaved in a way which was prejudicial or detrimental to the harness racing industry contrary to AHRR243. The particulars of the charge were that he, as a licensed trainer and driver, engaged in a fight outside the Wrest Point Casino in the early hours of 19 October 2015 following the harness awards dinner and as a consequence was arrested by Tasmania Police.
21. The Stewards proceeded to fine Troy Hillier the sum of \$1,000.00.

THE APPELLANT'S CONTENTIONS

Mr Grant Hodges

22. Grant Hodges' grounds of appeal are relatively straightforward. He contends that he acted in defence of Rohan Hillier when he punched Tyler Ford to the head with a clenched fist. He stated at his interview the day after the incident that he intervened because Tyler Ford and another person were "laying into him" and that he "jobbed him" because he was trying to assist Rohan Hillier.
23. In response the Stewards say that the act of punching Mr Tyler Ford was an assault because the force used was excessive in the circumstances.
24. There was a little further evidence about the incident before the Board. Grant Hodges stated through his counsel that at the time he delivered the blow, Tyler Ford and Rohan Hillier were still close to one another and this, with his other evidence, supported the proposition that the force used was warranted.

25. There was also CCTV footage of the incident. It clearly shows that Tyler Ford punched Rohan Hillier and shortly afterwards Grant Hodges did the same to Tyler Ford. Only a moment passed between the two acts. Grant Hodges' punch was delivered with significant force and, after it was, both he and Tyler Ford literally flew across the dancefloor.
26. Before we consider whether Grant Hodges was justified in using the force he did, it is necessary to direct ourselves as to that inquiry. This is not a criminal proceeding, nor is it a civil proceeding subject to the rules of evidence. However, in our view, we should direct ourselves as to this issue as if the proceeding were civil in nature. The Rules of Racing as they relate to Mr Hodges - AHRR231(1)(e) - merely reference "assault", and do not purport to be limited to acts that constitute a "criminal offence". Being contractual in nature the Rules should be construed so as to read the reference to "assault" as akin to an assault at common law. Accordingly, we direct ourselves in accordance with what was said in *Dale v Fox* [2012] TASSC 84 per Evans J at [33]:

In a criminal trial it is well-established that the prosecution bears the onus of disproving a lawful excuse for the application of force such as self-defence and defence of premises. The situation is otherwise on a civil trial for trespass to the person. On such a trial the plaintiff bears the onus of establishing the application of force and any consequential injury, but the onus on issues which in broad terms may be said to justify the force applied, lies on the defendant. See for example: McClelland v Symons [1951] VicLawRp 21; [1951] VLR 157, Sholl J at 162 and Pearce v Hallett [1969] SASR 423, Bray CJ at 428, the onus of establishing self-defence is on the defendant; Secretary, Department of Health and Community Services v JWB and SMB (Marion's Case) [1992] HCA 15; (1992) 175 CLR 218, McHugh J at 310 - 311, the onus of proving consent is on the defendant; McHale v Watson [1964] HCA 64; (1964) 111 CLR 384, Windeyer J at 388, and Venning v Chin (1974) 10 SASR 299, Bray CJ at 312, it is for the defendant to establish that the force was applied without intent and without negligence. However, in Platt v Nutt (1988) 12 NSWLR 231, Kirby P at 235 - 240, set out persuasive reasons for holding that on an action for trespass to the person, the plaintiff retained the onus of proving that the conduct that caused the injury was either intentional or negligent. His Honour's views in this regard were expressed to be preferred by the Court of Appeal in Armellin v Ljubic [2009] ACTCA 22, par[27]. Whatever the situation may be in relation to the onus as to issues of intent and negligence, the law remains clear that as to the issue of self-defence, and by extrapolation, the issue of defence of premises, the onus is on the defendant. See Howard v Wing [2000] TASSC 147, Crawford J (as he then was) par[38], Miller v Sotiropoulos [1997] NSWCA 204, Powell JA, agreed with by Mason P and Meagher JA, Underhill v Sherwell [1997] NSWCA 325, Beazley JA, agreed with by Meagher and Sheller JJA, and Devonport v Wilson [2009] SASC 336, Duggan J at pars[16] - [19]."

27. In our view, the force used by Grant Hodges was excessive in the circumstances. He was not personally under attack. Mr Rohan Hillier was, but, at the critical time after he was punched, Tyler Ford was not in the process of delivering another blow. Moreover, Grant Hodges could and should have acted in a more restrained manner, like Mr Parish, by stepping between the men, or grabbing Nathan Ford. By Mr Hodges' own admission, he perceived, shortly before the fight broke out, that "somethings up here" and by that he meant that the Fords had entered the dance floor and some hostility was brewing. With that in his mind his response, when it

transpired, should not have been to “job on.” Instead, he should have been mindful to diffuse the situation, rather than wait to see if anything happened, and when it did, enter the scene with all guns blazing. As noted above, the punch was delivered with considerable force. Considerable harm to Tyler Ford could have occurred. Notwithstanding that Tyler Ford started the fight and notwithstanding that his actions were unprovoked, we are not satisfied that Grant Hodges has justified that extent of force used.

28. As to penalty, we take into account these findings; the damage such incidents cause to the image of the industry, and Grant Hodges’ belief that he was acting in protection of a colleague that was assaulted without reason or warning. In our view, Grant Hodges’ penalty should be tempered by the fact that his conduct was retaliatory and, but for Tyler Ford’s conduct, would not have occurred. Having said that, the image of the harness racing industry was delivered a heavy blow as well that night. The scene was public. Security guards were required to intervene in the first event. No doubt other patrons, both within and outside the industry, were appalled and alarmed by the scale of the incident. Perhaps a more tempered approach from Grant Hodges may have curtailed the damage that was done. He will be disqualified for a period of six months.
29. As to the other charge of failing to attend an inquiry, we impose a reprimand for that breach of the rules. Grant Hodges gave a full account immediately after the inquiry. He attended on two subsequent occasions only to be told that the inquiry could not proceed for reasons beyond his control. He told the stewards he was willing and able to answer any question on the penultimate occasion he was asked to attend in August 2016. They did not accept his offer. He moved interstate between that time and the time he was finally directed to attend in March this year. He failed to do so because in his mind he had given his statement and had given the stewards ample opportunity to take a further statement.
30. The stewards imposed a period of 12 months’ disqualification for this breach of the rules. That, in our mind, was grossly out of proportion to what was required by way of penalty. We also observe that with the stewards in possession of the CCTV Footage and Grant Hodges’ statement there was little more that could have been needed from him concerning the first incident. As noted, a reprimand will be imposed for the second charge.

Mr Nathan Ford

31. Nathan Ford’s grounds of appeal concerning the first incident may also be stated briefly. He contends that he did not throw any punches; that he “never has” and that his conduct was peripheral to the altercation between Tyler Ford and Rohan Hillier.
32. It should be noted that he is not charged with assaulting any person. The complaint is that he “entered the fight” and was physically removed from the Casino by security staff.
33. Nathan Ford did not claim that he entered the altercation for any particular reason. He did not, for instance, say that he attempted to defend any person. The footage clearly depicts him running into the heart of the disturbance before being restrained by Mr Parish. Similarly, for the second incident, he did not offer any particular explanation for his conduct or contradict any of the observations made by the attending police officers.

34. In our view, Nathan Ford's conduct in entering the first altercation was not likely to diffuse the situation. On the contrary, his continued attempts required Mr Parish's continued restraint. In our view, Mr Ford entered the altercation for the purposes of violently engaging in it. Our view is reinforced by the conduct he engaged in during the second incident. That conduct was aggressive and confrontational and likely to lead to a breach of the peace in the car park of the Casino. Security were needed to remove him from the altercation in the Casino. Police were needed to restrain and ultimately arrest him after the second incident. We find that he was motivated in both incidents to engage in conduct that was disorderly, or at least amounted to a breach of the peace.
35. We also note his plea of guilty in the Magistrates Court to one complaint of engaging in disorderly conduct. We infer by that admission that he knew he was engaging in disorderly conduct during the second incident.
36. As to penalty, we consider that a period of disqualification of 12 months to be sufficient for Mr Ford's conduct during the first and second incidents. We regard the conduct during the second incident to be slightly more serious. Mr Parish's intervention may well have saved Mr Ford from himself during the first incident. The conduct in the Casino was disruptive and required his removal from the venue. As noted above, the image of the industry was dealt a blow as a result. We also rely on the matters noted above with respect to Grant Hodges' conduct and the impact that sort of conduct by both men has on the image of racing.
37. Clearly, Nathan Ford's conduct in running towards Troy Hillier and attempting to kick him during the second incident was also detrimental to racing. The conduct was done in the face of, and despite the presence of, many police officers. While the public may have been spared viewing this incident, the fact that it occurred as a continuation of the earlier incident does not reflect well on those involved.
38. As for the balance of the charges concerning Nathan Ford's non-attendance at the inquiry, we find those charges to be proved and consider a further period of disqualification of six months to be appropriate. We are satisfied that the charges are proved because we do not accept Mr Ford's submission that there was a misunderstanding about when he was required to appear. It is not necessary to go into the facts concerning these matters in great detail suffice to note that there was clear evidence that Nathan Ford has received notice of the March inquiry date as that notice was confirmed independently by an email dated 24 March 2017 from his counsel, Mr Barns. Once that is accepted, Mr Ford's subsequent correspondence with the stewards claiming that notice was not received may be seen for what it is. Having said that Mr Ford had a legitimate request to defer the inquiry until he returned from a family holiday and that request could have been accommodated.

Mr Troy Hillier and Mr Rohan Hillier

39. These matters may be dealt with together. Both appellants claim that they were acting in self-defence during the second incident and, accordingly, they were not disturbing the peace for the purposes of the police charges or engaging in conduct that was detrimental to the industry for the purposes of the alleged breaches of the Rules of Racing.
40. We do not accept that submission. The evidence of the police officers was that both groups of men ran at each other in an aggressive manner shouting obscenities at one another. That evidence was not contradicted and was consistent among the officers.

We accept it without reservation. Each person within each group was a willing participant in the altercation, despite the presence of security and police. Indeed, Troy Hillier had been called down from his room for the purpose of finding the other group of men and confronting them. That is exactly what occurred. The Hillier's with two other men went out from the Casino to look for and find the other group. They need not have left the Casino. They had not been ejected. They were clearly aggrieved by what had earlier occurred to Rohan Hillier on the dance floor and were seeking retribution.

41. We find that Rohan Hillier was wrestling and punching with another person and, as part of one group, swearing at the other group and acting in an aggressive manner. We find Troy Hillier acted in a like manner as part of the group and also attempted to punch Nathan Ford after he attempted to kick him. We do not find that his attempt to punch Ford was in self-defence. Both of those men were willing participants in that altercation.
42. Both men were fined rather than disqualified, presumably because of their far better record than Nathan Ford for breaches of the rules of racing. Curiously, Rohan Hillier was fined an additional \$1,000.00 to Troy Hillier, although that additional amount was suspended because he had a previous relevant breach of the rules which was quite dated.
43. In our view, both men should be fined the sum of \$1,000.00. There is no need to suspend any part of that amount. Both men were justifiably aggrieved by what had occurred earlier in the evening. However, both should have remained in the Casino or left altogether. To seek out the other group of men and engage in an affray in the street was unnecessary and unseemly. The result for this appeal is that Troy Hillier's appeal is dismissed and Rohan Hillier's appeal as to penalty is successful.
44. Accordingly, pursuant to s.34(2) of the Act the Board orders:
 - Grant Hodges – 25% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay 25% of the costs in preparation of the transcript.
 - Nathan Ford - 25% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay 25% of the costs in preparation of the transcript.
 - Rohan Hillier - 25% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay 25% of the costs in preparation of the transcript.
 - Troy Hillier - 50% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay 50% of the costs in preparation of the transcript.