

9 May 2024

## DECISION

**GREYHOUND RACING VICTORIA**

and

**FREDRICK MALLOY**

**Date of hearing:** 2 May 2024

**Date of decision:** 2 May 2024

**Panel:** Judge John Bowman (Chairperson), Dr Andrew Gould and Ms Maree Payne.

**Appearances:** Mr Timothy Brook appeared on behalf of the Stewards.  
Ms Jacinda Malloy represented Mr Fredrick Malloy.

**Charges and particulars:** Charge No. 1 of 5

Greyhounds Australasia Rule **29 (1) (a)** reads as follows:

***29 Control of a greyhound in a public place***

***(1) A registered person must ensure that a greyhound in the person's care, custody, or control is not in or on a public place unless the greyhound:***

***(a) has an appropriate, properly fitted and securely fixed muzzle***

**Particulars of the Charge being:**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 10631) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 16 December 2023 you were walking three (3) greyhounds in a public place being Outhwaite Road, Heidelberg Heights 3081.

3. The greyhounds were not wearing appropriate, properly fitted and securely fixed muzzles.

**Charge No. 2 of 5**

Greyhounds Australasia Rule **29 (1) (b)** reads as follows:

***29 Control of a greyhound in a public place***

***(1) A registered person must ensure that a greyhound in the person's care, custody, or control is not in or on a public place unless the greyhound:***

***(b) is under the effective control of a competent person by use of a lead which is in a condition able to effectively restrain a greyhound, and which is securely fastened to the collar worn by the greyhound.***

**Particulars of the Charge being:**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 10631) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 16 December 2023 you were walking three (3) greyhounds in or on a public place being Outhwaite Road, Heidelberg Heights 3081.
3. You did not have effective control of these greyhounds in or on a public place.

**Charge No. 3 of 5.**

Greyhounds Australasia Rule **159 (1) (c)** reads as follows:

**159 (1) A person who, in the opinion of a Controlling Body or the Stewards:**

***(c) causes, procures, permits or allows a greyhound to pursue or attack any live animal; must be disqualified for life, and, if applicable, in addition fined a sum of money not exceeding the amount specified in a relevant Act or the Rules.***

**Particulars of the Charge being:**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 10631) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 16 December 2023 you were walking three (3) greyhounds in a public place being Outhwaite Road, Heidelberg Heights 3081.
3. In the opinion of the Stewards, you have caused, procured, permitted or allowed these three greyhounds to pursue and attack a live animal, that being a domestic cat named 'Tilly'.

**Charge No. 4 of 5.**

Greyhounds Australasia Rule **159 (1) (d)** reads as follows:

**159 (1) A person who, in the opinion of a Controlling Body or the Stewards:**

***(d) fails to use all reasonable endeavours to prevent a greyhound pursuing or attacking any live animal; must be disqualified for life, and, if applicable, in addition fined a sum of money not exceeding the amount specified in a relevant Act or the Rules.***

**Particulars of the Charge being:**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 10631) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 16 December 2023 you were walking three (3) greyhounds in a public place being Outhwaite Road, Heidelberg Heights 3081.
3. In the opinion of the Stewards, you have failed to use all reasonable endeavours to prevent these greyhounds from pursuing or attacking a live animal, that being a domestic cat named 'Tilly'.

**Charge No. 5 of 5**

Greyhounds Australasia Rule **165(a)**, reads as follows:

***165 An offence is committed if a person (including an official):***

***(a) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing;***

**Particulars of the Charge being:**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 10631) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. You have engaged in conduct which is detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing, in that;
  - a. On 16 December 2023 you were walking three (3) greyhounds in a public place being Outhwaite Road, Heidelberg Heights 3081.
  - b. You have caused, procured, permitted or allowed these three greyhounds to pursue and attack a live animal, that being a domestic cat named 'Tilly'.
  - c. 'Tilly' died from the injuries sustained in the attack from these three greyhounds.
  - d. Upon publication of Incidents of this nature there is a significant negative impact on the greyhound racing industry.

**Plea:** Guilty to all charges.

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**DECISION**

Mr Frederick Malloy, you have pleaded not guilty to five charges. There is a considerable amount of overlapping of the factual bases and the essential details of them. The five charges all arise from an occurrence in the early hours of the morning, at approximately 4.20 am, on Saturday, 16 December 2023.

You are a registered greyhound trainer of many years' standing, although the number of dogs that you have at any given time is very small. It would appear that, at this time, you had only one racing, but you also had a younger dog and an older greyhound that had retired from racing that you had kept, presumably as a pet.

It has been your habit for more than 20 years to walk your dogs in the vicinity of your address in Heidelberg Heights in the early morning hours. You follow the same route on each occasion.

On 16 December 2023 an incident occurred in Outhwaite Road, Heidelberg Heights, and that incident is at the heart of the five charges laid against you. Those charges are pursuant to GAR 29(1)(a), GAR 29(1)(b), GAR 159(1)(c), GAR 159(1)(d) and GAR 165(a). The offences pursuant to GAR 159(1)(a) and (b) carry with them severe penalties.

Returning to the factual background, on 16 December 2023, you were walking the three dogs with the leads in your left hand. I should add that the incident which ensued was to some extent captured by a domestic security camera. We have viewed it many times. The key features are very brief and the footage is not entirely clear. What can be seen is that you appear to be walking on the extreme right-hand side of the road, with the three dogs on their leads. You used a torch very briefly. You approached a parked car and moved a little further to your right. It is apparent that two or three cats were in the vicinity of the parked car and on the footpath side of it. It is also apparent that the dogs lunged forward, catching you off guard, and you stumbled for a couple of strides, but kept the leads in your hand. You turned back with them as the dogs returned to an area at the end of the parked car. You appeared to be forcefully pulling on the leads.

What then happened is not entirely clear. The bottom line is that the muzzle of the oldest dog must have become displaced and the dog was able to bite or seize, with its teeth, one cat. Another cat appeared to be attempting to fight with one of the other dogs. You were able to restrain your old dog and have the cat released, but the damage had been done. This cat died shortly afterwards. It was a cat called Tilly, owned by a person in a block of apartments near the parked car.

You took your dogs home and left the deceased cat in the gutter near the parked car. You were greatly upset by what had happened and returned to the site later on the same morning, in the hope of identifying the owner of the cat. You were unable to do this at the time, as there are a large number of apartments in the vicinity. The body of the cat had gone.

We accept this version of events, which largely coincides with the brief video footage. We also accept that the muzzle broke or fell apart in the manner described by you and indeed it was subsequently shown to the Stewards and is on the video of their interview with you.

Given our acceptance of this version of events, it seems to us that the charges fall away. They have not been proven to our comfortable satisfaction. Applying the *Briginshaw* test, they have not been made out.

Turning to the individual charges, the dog in question was fitted securely with an appropriate, properly fixed muzzle. The muzzle broke or fell apart. In the general confusion, why that occurred is not clear. We are far from satisfied that it has been established that it was your fault or carelessness that caused it so to do. Thus, the charge pursuant to GAR 29(1)(a) fails.

The same can be said of the alleged breach of GAR 29(1)(b). The dog was secured by a lead and under the effective control of a competent person. The unexpected appearance of the domestic cats on or near the road at 4.20 am was the immediate cause of the incident. The dogs remained on their leads at all times.

Charge 3 is based upon GAR 159(1)(c). We are not of the view that you caused, procured, permitted or allowed the dog to attack a live animal, namely, the cat. It is apparent that you did your best to keep the dog in question, and indeed the three dogs under control. Certainly, in no way encouraged or permitted the incident generally or the attack specifically.

In relation to Charge 4 and GAR 159(1)(d), this also is not applicable. We are comfortably satisfied that you did use all reasonable endeavours in this particularly fast incident to prevent the pursuit or attack on a live animal. How the dog escaped the muzzle is far from clear, but the muzzle would appear to have come adrift in the incident. No fault on your part has been established to our comfortable satisfaction.

Charge 5 is a more sweeping provision, being pursuant to GAR 165(a). We are not comfortably satisfied that you engaged in conduct detrimental or prejudicial to the interests and the like of greyhound racing. The logic and reasoning which apply to Charges 1 to 4 is again applicable.

In summary, all five charges are dismissed.

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Mark Howard  
Registrar, Victorian Racing Tribunal