

**RACING APPEAL PANEL OF NEW SOUTH WALES
IN THE MATTER OF THE APPEAL OF BLAKE SHINN
Heard at Racing NSW Offices on Tuesday 5 June 2018**

APPEAL PANEL: Mr T Hale SC - Convenor

Mr J Murphy

Mr K Langby

Date of Hearing: 5 June 2018

Date of Decision: 5 June 2018

**Appearances: Appellant – Mr P O'Sullivan , Solicitor
Racing New South Wales – Mr Marc Van Gestel, Chairman
of Stewards**

REASONS FOR DECISION ON CONVICTION

Mr T Hale SC – Convenor, (Mr J Murphy, Mr K Langby agreeing)

Introduction

1. Blake Shinn, the Appellant, is a licensed jockey. On Saturday 26 May 2018 he rode the horse *I Thought So* in Race 8 at Royal Randwick. The race was over a distance of 1100m. *I Thought So* started as favourite at \$2.40 and came second by a nose. Later that day, there was a Stewards' inquiry into the running of the race and the Appellant was charged with and pleaded not guilty to a charge of careless riding under AR137(a). The Stewards found him guilty and suspended him from riding for six meetings, being a period from Sunday 3 June 2018 and ending on Thursday 14 June 2018.
2. The Appellant has appealed to this Panel from the decision of the Stewards, both on conviction and penalty. Pursuant to Section 42 of the *Thoroughbred Racing Act 1996* the appeal is by way of a new hearing.
3. At the hearing of this appeal, Mr Van Gestel appeared on behalf of the Stewards and Mr O'Sullivan, solicitor, appeared with leave for the Appellant.

4. AR137(a) provides that:

Any rider may be penalised if, in the opinion of the Stewards,
(a) He is guilty of careless, reckless, improper, incompetent or foul riding.

The particulars of the charge are:

At the Australian Turf Club meeting at Randwick Racecourse on 26 May in race number 8, that Blake Spriggs as the rider of *I Thought So*, leaving the 700 metres did permit his mount to shift out when not clear of *To Excess*, resulting in *To Excess* losing its rightful running and having to be checked when crowded between *Pecans* and *I Thought So*.

5. At the hearing before us the Appellant pleaded not guilty. At the hearing we received into evidence as Exhibit A, a bundle of documents which included, amongst other things, a transcript of the inquiry before the Stewards. We received as Exhibit B, film of the race taken from a number of angles. We also received oral evidence from Mr Shinn who was cross-examined.

Evidence and submissions

6. At about the 600m mark, *Dal Cielo*, ridden by Aaron Bullock, was on the inside of Mr Shinn who was riding *I Thought So*. On the outside of *I Thought So* was *To Excess* ridden by Jay Ford. On the outside of *To Excess* was *Pecans* ridden by Christian Reith. In front and to the outside of *Dal Cielo* was *Sweet Serendipity* ridden by Winona Costin. *Sweet Serendipity* came inside and in front of *Dal Cielo* and was approximately two lengths clear. Mr Shinn on *I Thought So* shifted out. At that time, he was not clear of *To Excess*, resulting in *To Excess* losing its rightful running. Jay Ford on *To Excess* had to take hold of his mount. This was because *To Excess* was checked when crowded between *I Thought So* and *Pecans*.

7. Mr Shinn accepted before the Stewards and before this Panel that he was unaware that Jay Ford on *To Excess* was outside him and he did not look to see if anyone was outside him before he himself moved outside.
8. On those facts alone, the charge of careless riding would be established. Mr Shinn, however, defends the charge on the basis that he shifted out in order to prevent a potential danger posed by *Dal Cielo*.
9. The defence of Mr Shinn was based upon the evidence he gave both before the Stewards and before this Panel. Mr O'Sullivan put the defence this way, which was, as I say, based upon the evidence of Mr Shinn. Mr Shinn heard the call "Blakey" from Aaron Bullock on *Dal Cielo*. Mr Shinn took this as a warning. *Dal Cielo* was next to him and slightly behind. Mr Shinn looked at the horse and its racing manners and observed that it was overracing. He said in his evidence before us that *Dal Cielo* had a wide open mouth, its head was in the air and from this he drew the conclusion that it was overracing. He then observed that *Sweet Serendipity* had come inside and in front of *Dal Cielo*. He was concerned that due to *Dal Cielo's* overracing there was a danger that *Dal Cielo* would have run into the heels of *Sweet Serendipity*. He felt that *Dal Cielo* was in difficulty and he said that he needed to ease the pressure on *Dal Cielo* and he therefore shifted outside to give *Dal Cielo* room to come outside. In taking that evasive action Mr Shinn caused *To Excess* to be checked.
10. In his sworn evidence before this Panel, Mr Shinn said that in shifting out he was concerned only with safety and that he was not seeking to obtain an advantage. That he held that view was not challenged in cross-examination. We therefore accept the truthfulness of his explanation.

11. Mr Van Gestel submitted on behalf of the Stewards what in essence was a submission that the actions of Mr Shinn amounted to an overreaction in the circumstances and that there was sufficient time to check outside before shifting out. He said that had Mr Shinn taken the opportunity to check outside and around him, he would have appreciated that the danger of shifting outside was greater in the circumstances than maintaining his line. He concentrated on the objective facts and whether Mr Shinn's actions amounted to careless riding, having regard to those objective facts. In particular, Mr Van Gestel referred to the fact that as an objective fact *Sweet Serendipity* did not pose any risk to *Dal Cielo*, as it was well clear. Secondly, he pointed to the fact that the incident unfolded over a number of strides and did not warrant the urgent evasive action that was taken. He pointed out that the incident began with the call of "Blakey".

Resolution

12. After much consideration, the Panel accepts that submission, recognising that this does involve questions of judgment by a very experienced jockey who had only a very short period of time to make his decision. However, someone of his experience should have looked and assessed the alternatives. He should have been aware of what was around him. This was an error of judgment. We say this having accepted his evidence of the reason he gave for taking the action he did. However, when the facts are looked at objectively, the evasive action he took was not warranted in the circumstances.

13. In coming to that decision, Mr Murphy and I are grateful for the great experience of Mr Langby in assisting us.

14. In the circumstances, therefore, the appeal on conviction will be dismissed but what will be apparent is that we have made findings that are clearly pertinent to submissions on penalty.

(The Panel heard submissions on penalty and adjourned to consider them)

REASONS FOR DECISION ON PENALTY

By majority: Mr T Hale SC – Convenor (disagreeing), Mr J Murphy, Mr K Langby.

15. We have given judgment on the issue of conviction, dismissed the appeal and confirmed the finding of the Stewards. We are now concerning ourselves with penalty. In this regard, the Panel will allow the appeal on severity, however, there is a difference within the Panel as to what the appropriate penalty should be.

16. Having regard to our findings that Mr Shinn's actions which gave rise to the finding of careless riding were motivated solely by reasons of safety, although they involved an error of judgment, I would in the circumstances allow the appeal on severity and reprimand Mr Shinn. In doing so, I take into account his less than satisfactory record on careless riding charges. However, I consider that the circumstances are so unusual and they are circumstances in which, amongst other things, the objectives of deterrence, which are of course so important, are of only limited application.

17. Mr Langby and Mr Murphy have approached the matter differently. Pursuant to AR196(4), this Panel may suspend the operation of a penalty. Mr Langby and Mr Murphy, who comprise the majority, would allow the appeal and impose a penalty of four meetings suspension to commence on Sunday 10 June and to end on Friday 15 June, on which day the Appellant may ride .

That is based upon him being suspended from the Hawkesbury meeting on 10 June, the Kensington meeting on 11 June, the Warwick Farm meeting on 13 June and the Gosford meeting on 14 June. That would allow Mr Shinn to ride on Saturday as well as Canterbury and Wyong this week.

18. Therefore, the decision of the Panel is that the appeal against conviction is dismissed and the decision of the Stewards is confirmed. The appeal on penalty is allowed, and in lieu of the penalty imposed, there will be a suspension of four meetings commencing on Sunday 10 June and ending Friday 15 June, on which day the Appellant may ride. Fifty percent of the appeal deposit is to be refunded.