



October 4, 2018

VIA FIRST-CLASS MAIL AND E-MAIL (statesattorney@cookcountyil.gov)

The Honorable Kimberly M. Foss
Cook County State's Attorney
69 W. Washington
Chicago, IL 60602

Dear Ms. Foss:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) to notify your office of an apparent act of cruelty to animals. On July 26, 2018, harness racing driver Kyle A. Husted whipped a horse at least three times well after she crossed the finish line of a race in second place, in apparent violation of 510 Ill. Comp. Stat. Ann. 70/3.01(a)'s prohibition against beating, cruelly treating, or otherwise abusing an animal. PETA respectfully requests an investigation into Husted's act and urges your office to pursue all appropriate charges. The Illinois Racing Board fined Mr. Husted for the act, which it found to be "excessive and abusive."

On July 26, 2018, at a harness racing meet at Hawthorne Race Course, located at 3501 S Laramie Avenue in Cicero, Illinois, Kyle Husted, the trainer and driver of horse Donna's Beach, a five-year-old Standardbred mare, struck the horse with a whip at least three times 18 seconds after she finished second in the third race, as shown in this [video](#), taken from Hawthorne Race Course's website. In the [video](#), the race starts at 00:15 and Husted can be seen whipping Donna's Beach at 2:28, approximately 18 seconds after the race has ended. Donna's Beach finished the race in second place in 1 minute and 56.4 seconds. She was passed near the wire by the eventual winner, Summer Party.

Veterinarian Dr. Ingrid Taylor¹ reviewed the video and opined that "whipping the horse after the race has completed is simply calculated abuse, designed to punish and cause pain, with no other purpose. I see from the video that the driver vigorously whipped Donna's Beach at least three times after race completion, an act that is painful, abusive, and damaging psychologically to a horse that had just run a hard race."

Illinois law provides, "No person ... may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal." *See* 510 Ill. Comp. Stat. Ann. 70/3.01(a). The statute applies to racehorses. *See* 510 Ill. Comp. Stat. Ann. 70/2.01. The statute does not attach any special meanings to "cruelly treat" and "otherwise abuse"; thus their "plain and ordinary" meanings are used. *See*

¹ Dr. Taylor received her Doctor of Veterinary Medicine from Washington State University in 2006 and has 8 years of experience in general clinical, emergency, and critical care practice. Dr. Taylor also served as a U.S. Air Force Public Health Officer, which included providing medical care to companion animals, military working canines, and Border Patrol canines.

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People v. Curtis, 407 Ill. App. 3d 1042, 1049 (2011). The definition of “cruel” includes “causing or conducive to injury, grief, or pain[.]” and “unrelieved by leniency[.]”² The word “abuse” includes “physical maltreatment[.]”³ Committing any of the listed acts constitutes animal abuse because the statute uses the disjunctive “or.” See *People v. Turner*, 2012 IL App (1st) 101213-U ¶ 15.

All the criteria for a conviction under this statute appear to be met. First, Husted whipped—beat—Donna’s Beach at least three times *after* she finished the race. Second, Husted appears to have treated the horse cruelly because whipping a horse “causes or is conducive to injury, grief or pain” and, especially in this instance, when evidently done as an emotional reaction after the loss of a race, is conduct “unrelieved by leniency.” Third, even if whipping did not constitute a beating or cruel treatment, it should fall within the “wide swath of distinctly actionable conduct” falling within “otherwise abuse,” because it constitutes physical maltreatment under the plain meaning of “abuse.” See *People v. Turner*, 2012 IL App (1st) 101213-U ¶ 13.

The race occurring on July 26, 2018, was Donna's Beach's 87th lifetime race; as of that date, she had 11 career wins. (Exhibit A.) As of September 6, 2018, Husted had driven in 384 races in 2018 alone.⁴ He would be “consciously aware” that the result of his whipping was “practically certain” to constitute a beating and “cruel treatment,” or other abuse. See 720 Ill. Comp. Stat. Ann. 5/4-5. Moreover, the force with which he whipped Donna’s Beach and the timing (18 seconds after she crossed the finish line) suggest that his intention was only to inflict pain, seemingly as punishment. His whipping of Donna's Beach well after the race had ended appears to be the moral and legal equivalent of whipping her in her stall or in the paddock; it was not in any way related to the race itself. But regardless of Mr. Husted's motive or mental state, whipping a horse well after the finish of a race could only inflict needless pain, suffering and potential injury, thus constituting cruel treatment.

Notably, not even the Illinois Racing Board (IRB)'s rules permit Mr. Husted’s act. The regulations state, “The following actions shall be considered as excessive and/or abusive: 1) Whipping a horse ... after the finish of a race, except when necessary to control the horse[.]” See Ill. Admin. Code tit. 11, § 1318.90(c). A particular act can be unlawful under both the racing regulations and the criminal code. See *Wilkey v. Ill. Racing Bd.*, 65 Ill.App.3d 534, 538 (1978). Husted's action was rightfully recognized by the Board as both “excessive and abusive,” not merely a technical violation of racing regulations, and he was fined \$200 (IRB ruling, attached as Exhibit B). Were the incident in question to occur during a race, the violence with which Husted can be seen in the video raising his whip and striking Donna's Beach may still have been called into question by the IRB.

Husted has had multiple infractions not only at racetracks in Illinois, but also in at least three other states—Minnesota, New Jersey, and Pennsylvania (sample of Mr. Husted's past violations, attached as Exhibit C). Since 2011, he has shown repeated disregard for regulations and the welfare of the horses he drives. He has been suspended at least four times and fined at least 30

² Cruel, Dictionary by Merriam-Webster, <https://www.merriam-webster.com/dictionary/cruel> (last visited Oct. 1, 2018).

³ Abuse, Dictionary by Merriam-Webster, <https://www.merriam-webster.com/dictionary/abuse> (last visited Oct. 1, 2018).

⁴ U.S. Trotting Ass’n, *Leading Hawthorne Race Course Drivers*, https://racing.ustrotting.com/reports/Haw_driverstats.pdf (last accessed Sept. 6, 2018).

times for reasons including excessive whipping,⁵ striking at and interfering with other horses, excessive use of Lasix, careless driving, improper conduct towards officials, violations of the Workers' Compensation Act, failure to cooperate with the board of stewards, failure to pay fines in a timely manner, and failure to abide by racing rules despite having been “warned repeatedly.”⁶ On July 22, 2018, a mere four days before the incident in question, Husted displayed yet another instance of misuse of his whip at Running Aces Racetrack in Columbus, Minnesota.⁷ He was eventually fined \$100 for “whipping other than by wrist action,” thus violating the Minnesota Racing Commission (MRC)'s whipping rule. Civil enforcement has not changed his behavior, but criminal sanctions might.

Viciously whipping a horse well after she crossed the finish line appears to plainly constitute a violation of Illinois's cruelty-to-animal statute. Given Husted's conduct—as evident in the race video—and the fact that even Illinois racing's administrative body found the act excessive and abusive, PETA urges a criminal investigation and the filing of all appropriate charges against Husted in accordance with Illinois state law. The small fine the IRB assessed against Husted—while important—does not erase Husted's apparent criminal culpability in indulging his temper after a loss of a race by repeatedly and forcefully striking the horse. Please contact me if you have any questions or if PETA can be of any assistance to your office in addressing this important matter. Thank you for your time, and I look forward to hearing from you.

Sincerely,



Kathy Guillermo
Senior Vice President

Enclosures

cc: Dan Babich
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⁵ See, e.g., *Steward Ruling*, Ill. Racing Bd. 9 (Aug. 6, 2017), <https://www2.illinois.gov/sites/irb/Documents/StandardbredRulings/2017%20AUG-SEP%20Standardbred%20Rulings.PDF>.

⁶ *Id.* at 10.

⁷ *Ruling R18057*, Minn. Racing Comm'n, <https://www.mrc.state.mn.us/wp-content/uploads/2018/08/R18057-Husted-Kyle.pdf>.