

RUGBY FOOTBALL UNION

DISCIPLINARY APPEAL HEARING.

At: Mercure White Hart Hotel, Salisbury.

On: Wednesday, 29th September 2010.

JUDGMENT.

Player: Michael Amor.

Match: Kingsclere v Verwood.

Venue: Basingstoke RFC.

Date of Match: 7th November 2009.

Panel: Robert Horner (Chairman), LeRoy Angel and Michael Curling.

Secretary: Liam McTiernan.

Attending:

On behalf of Kingsclere RFC: The Player, Tony Wyatt (TW) (Counsel), Sam Richardson (SR) and Colin Harvey (CH).

On behalf of Verwood RUFC: Alan Rex (AR), Darren Kendall (DK), James Chisholm (JC), Charlie Cockram (CC), David Coy (DC), and James McGuffie (JM).

On behalf of Hampshire RFU Disciplinary Committee: David Creal

Preliminary Matters.

1. The Panel was convened to consider an appeal by the Player, supported by Kingsclere RFC, under Disciplinary Regulation (DR) 11¹ against his conviction by Hampshire RFU's Disciplinary Committee, following a citing by Verwood RUFC, for striking with the knee under Law 10(4)(a) for which his sanction was a period of eighteen weeks suspension from playing, against which sanction the Player also appealed.

2. There was not any objection to the composition of the Panel.

3. The Chairman explained the process to be employed for the hearing of the appeal. In particular he explained why, with reference to DR 11.1.3, the Panel considered a de novo hearing was appropriate. There had been criticism following the Hampshire hearing that members of that Committee were aware of possible police investigations into the alleged offence, but this information had

¹ This appeal commenced on 10th March 2010, when it was adjourned, and related to a match played on 7th November 2009, adjudicated upon by Hampshire RFU on 26th January 2010. Accordingly, the Regulations applying to Season 2009/10 have been applied to this appeal throughout.

been kept from the Player and members of Kingsclere RFC. As both parties were aware, the appeal had been listed for hearing on 10th March 2010 but had been adjourned then on the application of counsel for the Player pending the completion of the police investigations. These had been completed and the Player had applied for the hearing of the appeal to be reinstated. It was now for Verwood RUFC to establish, on the balance of probabilities, that the offence as cited had been committed.

4. The Panel has considered:

4.1: All the documents (1 to 38) in the pack provided by the RFU Disciplinary Manager.

4.2: The Police report of A. Wright dated 18th May 2010.

4.2: The oral evidence of: AR, JC, DC, CC, DK, JM, The Player, SR, and CH.

4.3: The closing oral submissions of: AR and TW.

The Citing.

1. The relevant part of the citing submitted by the Chairman of Verwood RUFC to the Disciplinary Secretary of Hampshire RFU on 21st November 2009 read:

"The match kicked off and was played in good weather and on a reasonably firm pitch with no standing water or apparent muddy patches.

Attached are several statements from those attending that had a clear line of sight. Unfortunately, the sequence of events was such that as the whistle had already blown several others that were well placed had already turned away as had the referee. The statements clearly show that the Kingsclere No 5 had ample time to stop, veer away or jump over the prone Darren Kendall but chose instead to drop on his knees without apparent reduction in pace landing on Darren's abdomen.....Darren has suffered serious injuries inflicted by a conscious and deliberate act after play should have stopped. The resulting damage to his person, family and business is considerable."

2. After the appropriate investigations had been made by Hampshire RFU, the Player appeared before its Disciplinary Committee to face a charge of Striking with the knee contrary to Law 10.4.a, the particulars of the offence being that Mr Amor dropped on his knees without apparent reduction in pace landing on the prone Verwood player's abdomen. Hampshire RFU found the Player guilty and imposed a sentence of suspension from playing of 18 weeks from 26th January 2010 until 31st May 2010.

The case for Verwood RUFC.

1. Alan Rex: AR confirmed his written statement. He had been a spectator, standing on the Kingsclere 22. Some 20 minutes into the match, after the Verwood pack had made good progress up their left and the ball had been recycled, DK, captain playing as hooker, received the ball, dummied a pass to his

winger, and fainted inside the Kingsclere winger. He was now at full stretch and some 10 yards inside the 22. He handed off one Kingsclere player, stepped inside their No.5, and a couple of strides later dived over for a try. The referee blew his whistle and signified the try. DK released the ball and was in the process of turning over onto his back when the Kingsclere No.5 dropped on his knees onto DK's abdomen. DK was clearly seriously injured as a result, took no further part in the game and was taken by ambulance to hospital.

Under cross examination, AR agreed that he was more than 22 yards away from the incident. The Player had been running on a diagonal from the left hand side of the field, and thus had been half facing him. He strongly denied the suggestion that the Player had stumbled or been tripped; if one stumbled, one did not fall on the knees as he did. The Player did not slow down, but ran directly, without taking avoiding action, and landed with his knees on DK's abdomen. He did not really believe that there was a history of bad blood between the two clubs, although he accepted that in Kingsclere's history, only two matches had been abandoned, both against Verwood.

In reply to questions from the Panel, he stated that although there had been a string of players across the field, he had not seen anyone close enough to have tripped the Player. He identified MA as the Player. He was so concerned about the injury to DK that he had not considered greatly the number which the Player was wearing, but thought it was No.5.

2. James Chisholm: JC, who had come from Cardiff to give evidence although no longer a member of Verwood RUFC, confirmed his statement. He had been playing for Verwood as a flanker and had followed DK's run as a supporting player. DK stepped inside from his received pass and ran diagonally towards the posts. A further step in the opposite direction ensured that he broke through two defenders, after which he dived for the try line with little immediate defence in his vicinity. The whistle went and the try was awarded. The Player, instead of slowing, went on in, and dropped with his knees onto DK's abdomen. He was some 10 metres away. He recognised MA as the Player. His recollection of him was of a large chap playing in the second row. The Player was certainly not his opposite number in the back row which he would have been if he had been playing as No.7.

Under cross examination, JC stated that he had not paid particular attention to the Kingsclere player playing at No.8., and he did not recall the Player as No.8. He had been supporting DK, to whom the Player had been closer as part of the pursuing pack. The Player continued running after the whistle to award the try. He denied that the Player went down on DK "very shortly after" the whistle. At that time, he must have been some 6+ metres away. He did not see a trip or stumble; the Player was in his line of vision and he would have noticed if he had been tripped or had stumbled. Immediately after the incident, he went to help DK. He did not approach the referee but suspected that others might have. He denied that he thought it was an accident at the time. He had not previously played against Kingsclere. In the weeks following the match, he had telephoned one or two teammates, but only to enquire about DK.

In re-examination, JC stated that immediately after the match, he had returned to Cardiff, without discussing the incident with members of his team. In reply to questions from the Panel, he advised that he had written his statement on his

own in Cardiff. It contained his own words and recollection; he had not discussed it with anyone else. He confirmed that the referee had seen the try and blown his whistle for it. DK's scream followed the Player's knees striking his abdomen.

3. David Coy: DC, who had been playing on the Verwood right wing, confirmed his statement, in which he described the scoring of the try in similar terms to previous witnesses. From what he could remember, DK scored the try rolled over and the opposition player, the large No.5., dropped himself onto DK's chest, knees first. The only other player in the vicinity was one who was on the floor after missing a tackle on DK; he was out of the frame. He positively identified MA as the Player, and considered that he had been wearing No.5.

Under cross examination, DC confirmed that DK and the Player were approaching each other on opposing diagonals. He himself was not up with the ball, being just inside the 22. Some Kingsclere players were closer. He had quite good vision. The Kingsclere No.5 was far too late to make a tackle, and did not apparently stumble. He fell on DK a few seconds after the score. The referee was on his way back upfield. He believed that it was No.5 who fell on DK but he might have got the number wrong. He recognised MA as the Player.

In response to questions from the Panel, he confirmed that he did not see the Player stumble or attempt to correct one. The pitch took a stud, but was not slippery. His report was his own work, not written in conjunction with any others.

4. Charlie Cockram: CC verified his statement, in which he had described the events leading up to and the scoring of the try by DK in similar terms to the previous witnesses. He referred to the Kingsclere No.5 dropping savagely to his knees onto DK's chest/side. At the time of the score, he had been close to DK on the right hand side. He had asked the referee whether he had seen the offence; the reply was "no". Throughout the game, the Verwood discipline had been immaculate, whereas Kingsclere had regularly conceded penalties.

In reply to cross examination, CC stated that he thought that the Kingsclere No.5 was the last player DK beat before scoring; they were probably quite close together. When asked in re-examination whether any other Kingsclere player had been close enough to the Player to have tripped him, he could not remember. In response to the Panel, he confirmed that he read intent into what the Player had done when he fell. He also identified MA as the Player.

5. Darren Kendall: DK verified his statement in which he described, consistently with other witnesses, how he had scored the try. As he was turning to get up, he was aware of a large player running at him at full tilt. To his horror, that player jumped into the air and landed on his chest, knees first. It was no accident.

Under cross examination, DK stated that he had played the game for 22 years. He was still suffering from internal soft tissue damage and was advised that he could either have an operation on it now or in nine months time. He was opting for the latter in the hope that it would not be necessary. He confirmed that he

had reported the assault to the police. It was then put to him that the police report had concluded that he had lied as to the extent of his injuries and that his evidence could not be relied upon; this he denied as he had simply reported what the paramedics had told him. If they had got it wrong, that was no fault of his. He had no further comment on the police report; he had not met the officer who compiled it. He also had a doctor's report which confirmed the fracture to a rib. Returning to the incident, his experience convinced him that the Player's fall upon him was so late that it could not be an accident. He was sure the Player could have missed him. The incident had not been blown out of proportion by him. In reply to the Panel, DK stated that the Player had come in from the direction of his feet; only the knees of the Player had made contact.

6. James McGuffie: JM was the Verwood coach and had been running the line for the club on the day of the match, watching the play very closely. After DK had scored the try, diving onto the ground with the ball in an appropriate manner, the Player had come in late and fallen on the try scorer. He could not recall other player in the vicinity of the Player. He had a clear line of vision to the score. The Player had come to a stop near the posts; he then started up again and ran onto DK; this was not consistent with an attempt to stop a score. He felt that the referee had done well in difficult circumstances. Some, but only a minority, of the Kingsclere players had not approached the game in the best spirit.

Under cross examination, JM estimated that he was 30 yards away from the score, but had a good, unobstructed view of it. He had described events as he recalled them. He thought that the time between the score and the impact was some 4 to 5 seconds. He thought that the Player was wearing No.5, and could not explain a universal error regarding his number. He had not discussed the details of the incident with anyone else before writing his report and had reported the facts accurately as he recalled them. He definitely saw the Player impact on DK; if he had been tripped, he would not have impacted as he did. When re-examined, JM stated that he had been involved in the game for 56 years and in coaching for in excess of 40 years. In reply to the Panel, he identified the Player as the one who had impacted upon DK.

The case for the Player.

1. The Player: The Player verified his statement. He remembered the match. He had been playing No. 8, his customary position, but was wearing No.7. He was 6ft 4ins in height. He and DK had been approaching each other at an angle. As DK, scored, he was on the 5m line and slowing. His heels were clipped from behind; he stumbled and went over. When, shortly before, he had been going at full tilt, he thought that he might stop DK; however, as the score was made, he was some 5m away. He would have missed DK but for the trip. His heels were clipped by the Kingsclere No.15, Matthew Evans who had confirmed this to the Player, but was unable to attend that evening and had also been unable to write a statement. He, the Player did not do as DK had said; his hands went over the top of DK to break his fall. He did not recall making contact with DK. The whole thing was an accident; there was no intent on his part to land on DK.

Under cross examination, the Player confirmed that he had slowed down; he reckoned that it then took him 2 seconds to travel the 4 to 5 metres to the Player. If he had not been tripped he would not have fallen onto DK. He also explained why there had not been a statement from Matthew Evans.

In reply to the Panel, the Player explained that he broke his fall with his hands beyond DK's body and had then rolled over. He confirmed that the shirt numbers on the Kingsclere players were all very clear.

2. Sam Richardson: SR verified his statement. He assisted with the coaching at Kingsclere and had been standing behind the dead ball area at the end at which the try had been scored. He confirmed the clean break by DK. He expected his players to keep chasing and expected the Player to come back in an attempt to tackle. As the Player approached the goal line, he stumbled and fell over the player on the ground; he was falling before he crossed the line. He did not know whether the Player had been tripped, but he fell over and broke his fall with his arm. He did not believe that the Player had jumped upon the try-scorer. No fracas had ensued, although he was aware that DK was injured.

Under cross examination SR said that he was not aware of the Player being accosted by Verwood players as the Player had recorded in his statement. He believed that DK was greeted by his players. He had not been asked for a statement before he wrote it on 15th February 2010. His recollection was that the try-scorer had been lying on his front.

3. Colin Harvey: CH, Vice-Chairman and coach of Kingsclere, verified his statement. He remembered the match clearly. He had been standing on the half-way line when the Verwood player broke through to score. The Player had come at a right angle in front of the posts to try and prevent the score. As the try was score he saw the Player stumble or trip. He was not sure if it was a stumble or a trip. He reached the scorer within seconds of the try being scored. He estimated that the Player was some 2 to 4 yards away when the try was scored. He did not see a trip – he was too far away. He did not see any animosity between the players, something which happens every week following an incident of foul play. The Player was not targeted by the opposition when the game continued. He considered that there was bad blood between the clubs as a result of events in the match the previous season.

Under cross examination, CH confirmed that he was standing on the half way line, some 60 metres away. There was certainly a player behind the Player, but he was not certain from which side. In his experience, there was normally a fracas after an incident of foul play. He saw the incident, but did not observe players haranguing one another. In reply to the Panel, CH confirmed that MA stumbled, put his hands out and rolled over. His recollection was that at the moment of impact DK was lying face down, on the verge of turning to his left.

4. TW stated that Kingsclere also relied upon the written statements of Robin Whitman, the Kingsclere team medic who did not remember the initial tackle but had gone in to see if he could assist the injured player, and Kristian Wells, who confirmed that after the match, the Player had approached the Verwood coach to ask after the injured player.

Final Submissions.

1. Alan Rex: AR pointed out that three of the Verwood witnesses were no longer at the Club, but thought it right to come to record their recollection of what they considered to be a serious incident of foul play. There was not any dispute that there had been a collision between the two players; it was the nature of the impact which was in dispute. The Panel had to determine whether the impact could have been avoided. He referred the Panel to the statements in the pack from the referee and his assessor. The citing had not been made through flippancy or out of revenge; the Verwood player red carded the previous year had been thrown out of the club. DK was still in trouble from the injuries he received and was no longer able to work a full working week. As he was self-employed, running his own business, this had unfortunate consequences for him.

2. Tony Wyatt: The Panel had heard from representatives from both clubs, and received markedly different views of the incident, which it had to resolve. The Player had been doing what he had been coached to do. His evidence, supported, was that he had been tripped. This deprived him of control over his future actions. The Verwood evidence was coloured; the unanimous reference to the Player wearing No.5, when in fact he was wearing 7, supported this view. The reality was that the impact was an accident, when the Player, as a result of the trip, could not avoid falling over DK.

Determination.

That the Player fell over DK was not in dispute; indeed, it was to the Player's credit that he had from the outset, at the Hampshire hearing, admitted that he was the player who fell across DK when he was injured, although he had throughout maintained that any contact was accidental. It accordingly was the duty of the Panel to determine whose evidence it preferred.

The Panel found the oral evidence given on behalf of Verwood to be coherent and believable. There was a consistency, without complete conformity, in the evidence which was persuasive. The Panel considered JC, who, although no longer a member of Verwood, had travelled from Cardiff to give evidence, to be a particularly credible witness. In their different ways, DC and CC were also unemotional, positive and convincing in their recollection that the Player had not stumbled or been tripped, but had unnecessarily, and in a dangerous manner, fallen upon DK. DK, the victim and an experienced player, who had clearly suffered considerably since the match, and who had seen the Player falling, knees first, was positive that the impact from the Player was not accidental. He also dealt acceptably with the criticisms made of him in the police report. AR and JM confirmed the unnecessary nature of the Player's fall onto JK which they did not consider to be the result of an involuntary stumble.

For Kingsclere, the Player was the only witness to refer to his being tripped. He named his No.15, Matthew Evans, as the teammate who had tripped him and gave an acceptable reason for his non-attendance in person at the hearing. His explanation why the No.15 had not provided a written statement prior to the Hampshire hearing or the lodging of appeal may have had substance, but it was

clear that he could have provided a statement for this hearing. There was also no apparent reason why arrangements could not have been made for him to give evidence over the telephone, given the potential importance of his alleged corroborative evidence. SR and CH both referred to a stumble, the one from behind the dead ball line, the other from 60 metres away.

There remained the conundrum over the number on the jersey which the Player was wearing. All the Verwood witnesses referred to it as being No.5, and were unshakeably insistent that they had not consulted, or conspired with, one another when writing their statements to agree that No.5 should be stated. The Player attested that he was wearing jersey No.7 although playing No.8. Neither SR nor CH mentioned the Player's number. However, a section of the written report of the Referee is helpful: After the awarding of the try and turning to face up the pitch "Whilst in the motion of turning, I was aware, within my peripheral vision, of a Kingsclere player (2nd Row forward) falling over the try-scorer in what appeared at a glimpse, to be a clumsy challenge. I didn't have a clear picture of where any connection was made with the Verwood player's body. I turned back to face where the collision incident took place and had a word with the Kingsclere player about being more careful. I made a mental note of his number and recall him playing 2nd Row in the Ventnor v Kingsclere match from the previous season." Unfortunately, the referee did not record in his statement the number of which he made a mental note, nor was he able to attend the hearing. However, it is reasonable for the Panel to infer from his initial reference to the Kingsclere player being a 2nd Row forward that he was wearing a 2nd Row number (4 or 5). Had he been wearing a back row number, the referee, given his recollection from the previous season, would surely have referred to him as such. Accordingly, the Panel does not accept the contention of the Player's counsel that the Verwood witnesses had combined in writing their statements and together picked the wrong number.

In the light of its assessment of the evidence, the Panel was satisfied that the offence as cited had been committed and that the impact could and should have been avoided. In the opinion of the Panel, this was a classic case of a frustrated defender, following the scoring of a try, seeing fit to indulge in the dangerous and unlawful practice of falling on the try-scorer. Sadly this was the occasion, oft predicted from neutrals on a touch line, where a serious injury resulted. Accordingly the appeal was not allowed.

Sanction.

After inviting TW for his comments in mitigation, the Panel considered the various factors set out in DR 8.2.5, and determined that the offence fell within the top end of the scale of seriousness. It was satisfied that the Player fell deliberately on the prone, defenceless player, and although he doubtless did not intend the serious injury which resulted, he must have been aware of the possibility of serious injury. The Panel accepted that the impact was made by the Player with his knee, without there having been any provocation. The effect of the Player's action on the victim was serious. The medical evidence in the papers and the police report as to the full extent of consequential injuries was confused; accordingly, the Panel agreed with the parties that for this purpose the

injuries were such that the victim could take no further part in the match and spent the following night in hospital. There was no recorded adverse effect on the game as a result of the Player's action, but the game was moved to an adjoining pitch as a result of the time required to treat DK at the scene.

The penalty for striking with the knee in a top end offence is suspension from playing for a period of between 12 and 52 weeks. After considering the advice of the Disciplinary Officer contained in Schedule 9 to the DRs, the Panel resolved that the appropriate entry point was a period of suspension of 22 weeks. The Panel was satisfied that there was not any need to increase the entry point pursuant to DR 8.2.7, but decided that the Player was entitled to a reduction of four weeks under DR 8.2.8 b), d) and e).

The Panel therefore suspended the Player from playing for 18 weeks. Coincidentally, this is the period imposed by Hampshire, who did not indicate how their period of suspension had been calculated, and was served by the Player from 26th January 2010 to 31st May 2010.

Costs.

The Panel made an order for costs against the Player/Kingsclere RFC in the sum of £125.

Robert Horner.

Robert Horner.
Chairman.
2nd October 2010.