

The full Decision follows:

To: Simon Daubney, Société Nautique de Genève represented by Team Alinghi 'Alinghi'), Regatta Director, International Sailing Federation ('ISAF') and America's Cup Management ('ACM').

In the matter of the Anti-Doping Rules and Simon Daubney

Date of Anti-Doping Test: Saturday 23rd June 2007

Date of Hearing: Wednesday 26th September 2007 at 10h00 at the Royal Thames Yacht Club, London

The Hearing

[1] The hearing arose from a report received by the Jury Chairman on 13th July 2007 that Simon Daubney, a crew member of Competitor Team Alinghi had an Adverse Analytical Finding in relation to a doping control test revealing the presence of two metabolites of cocaine (Benzoilecgonina and Ecgonina Metilester) in violation of the Anti-Doping Rules of the 32nd America's Cup as amended and issued on 9th April 2006 ('Anti-Doping Rules').

[2] On 23rd June 2007 Simon Daubney along with 5 or 6 other members of his team was tested as a part of the regular testing programme that had been conducted during the course of the 32nd America's Cup in accordance with the International Standards adopted by the World Anti-Doping Agency ('WADA'). Members of the team had been tested on several occasions during the course of the Event.

[3] All crew members participating in the 32nd America's Cup were required to complete an acknowledgment and agreement as contained in Appendix 3 to the Anti-Doping Rules, whereby they agreed to be bound by all of the provisions of the International Sailing Federation ('ISAF') Anti-Doping Rules and the 32nd America's Cup Anti-Doping Rules. Simon Daubney signed such an acknowledgement and agreement on 2nd May 2006.

[4] A test of the 'A' sample of urine from Simon Daubney was completed on 9th July 2007 and, after a request by Simon Daubney, a test of the 'B' sample commenced on 8th August 2007.

[5] In response to questions asked by the Jury on 27th August 2007, Simon Daubney accepted that the tests carried out on his urine samples were conducted by a WADA accredited laboratory in Madrid and also that bottle number 906104 contained the urine sample of Simon Daubney.

[6] Simon Daubney did not accept that the metabolites of cocaine that had been found in his sample were in his body at the time of the test and he contended that the custodial procedures were not in accordance with the International Standard for Laboratories.

[7] On 26th September 2007 a hearing was held at the Royal Thames Yacht Club in London. Simon Daubney was represented by legal Counsel, Howard Jacobs. Team Alinghi elected not to attend the hearing and advised the Jury accordingly.

Witnesses called by Simon Daubney

[8] Laurie Daubney, Russell Coutts, Daniel Meyers, Bradley Butterworth and Curtis Blewitt all gave evidence (Coutts and Blewitt by telephone) during the hearing as to Simon Daubney's background and character.

being retained in Norway. She agreed that the chain of custody documentation needed to be accurate, which she believed was true in this case.

Kari Andreassen

[13] Kari Andreassen gave evidence by telephone that she was the Doping Control Officer on site in Valencia in charge of the sample taken from Simon Daubney.

She advised that she had been a Doping Control Officer since 1989 and was satisfied that the Doping Control Data Form had been correctly completed and that the samples had not been interfered with whilst in her custody.

It was her signature that appeared on the Doping Control Data Form as the person in charge of the control of the samples and also her signature certified that the samples had been stored in accordance with the applicable guidelines and as described therein and delivered to the courier with the assignment code.

[14] Kari Andreassen provided detailed evidence as to the security provided during the transport of the sample from Port America's Cup in Valencia to the control laboratory in Madrid.

She stated that as the samples were taken on the 23rd June 2007 which was a Saturday, the DHL office which was to courier the samples to Madrid was not open on the weekend and so she was therefore required to retain the samples until Monday 25th June.

[15] Kari Andreassen stated that she and another Doping Control Officer Mr Andreassen (unrelated to her), transported the samples from Port America's Cup in Valencia in an airconditioned rented car and travelled to La Zenia.

They were accompanied by Kari Andreassen's son – also a Doping control Officer, but not involved with this mission – and his girlfriend.

The samples were placed in a covered position in the car and were not visible to others. During the course of travelling in the car, the Doping Control team stopped for lunch. The vehicle was parked in the shade, locked and was observed by them over the period of approximately one and a half hours during which they had lunch.

Although the car was in the shade, the temperature outside was hot and the car was warm when they returned to it. They then travelled to their rented accommodation and the samples were placed in a refrigerator in the rented house.

That evening they went out for dinner for several hours and the samples were left in the refrigerator in the rented house. The refrigerator was not locked.

The house was locked and had a burglar alarm which was turned on. On returning to the house there was no evidence of a break-in.

Jesus Muñoz-Guerra Revilla

[16] Jesus Muñoz-Guerra Revilla gave evidence by telephone. He stated that he was the *Technical Manager responsible for the laboratory control of the samples delivered to the laboratory in Madrid*. He stated that he had a university degree in chemistry, that he was a qualified chemist and had 20 years experience in the area of testing for drugs.

[17] He stated that he was not present when the 'A' sample was opened for testing, but that he was present when the 'B' sample was opened. He knew from personal observation that the 'B' sample had not been tampered with prior to being opened.

This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Competitor's Crew Member or other Person alleged to have committed a Rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.'

[22] The Jury accepts the submission of Mr Jacobs that such burden of proof is a multistep process with a shifting burden of proof. The Jury considers that once the evidence on an Anti-Doping violation from the WADA accredited laboratory was introduced, a presumption existed that Simon Daubney had committed a Rule violation and that he was then entitled to rebut this presumption by a balance of probabilities.

[23] Article 3.2 of the Anti-Doping Rules provides for methods of establishing facts and presumptions. In the event that the presumption is able to be rebutted by showing a departure from the presumption that the WADA laboratory results, the Anti-Doping organization 'shall have the burden to establish that such departure did not cause or affect the Adverse Analytical Finding.'

General

[24] The 'chain of custody' aspects were less than perfect but the Jury is nevertheless satisfied that any shortcomings did not affect the Adverse Analytical Finding.

[25] The Jury is satisfied that an Anti-Doping Rule violation has occurred in that there was the presence of two metabolites of a prohibited substance in Simon Daubney's bodily specimen.

[26] The Jury is completely satisfied that Simon Daubney told the truth to the Hearing Body when he stated that he had not knowingly taken cocaine or any other banned substance.

[27] Having regard to the nature and circumstances of the case, the Jury is satisfied that Simon Daubney bears no fault or negligence with regard to the presence of the two metabolites in the bodily specimen.

[28] There were no claims, nor was there any evidence of organised doping at team level by Alinghi, Simon Daubney's team. The Jury was satisfied that the Alinghi Team provided comprehensive advice and facilities to its sailors regarding anti-doping matters.

[29] In the circumstances of this case, the Jury took into consideration what would be expected of a responsible professional sailor in taking reasonable precautions to ensure that he would not take banned substances without his knowledge in today's America's Cup environment.

The Jury considers that during the 32nd America's Cup, it was not reasonable to expect sailors to totally isolate themselves from public areas. In this context, the Jury is satisfied that the Adverse Analytical Finding was not caused by the negligence of Simon Daubney.

[30] The Jury has jurisdiction to assess whether Simon Daubney breached the Anti-Doping Rules and to decide if he committed any fault, but because the 32nd America's Cup has finished and there is no question of Team Alinghi being involved with organised doping, ISAF has the jurisdiction in respect of a penalty.

[31] The Jury notes that Simon Daubney voluntarily stopped competitive sailing from 13th July 2007.

[32] This decision will be delivered to: Simon Daubney, his lawyer Howard Jacobs,