

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: MR KIRSTEN HEYNS

RESPONDENT REPRESENTATIVE: MR JOHAN PRINSLOO (SWD EAGLES)

DATE: 23 OCTOBER 2012

SPORTS FEDERATION: SOUTH AFRICAN RUGBY UNION

PLACE OF HEARING: HEARING TOOK PLACE VIA SKYPE LINK/VIDEOCONFERENCE BETWEEN THE PANEL AT SAIDS OFFICE CAPE TOWN AND THE ATHLETE BASED IN GEORGE.

DISCIPLINARY PANEL ("PANEL"): MR MARIUS HURTER (CHAIRMAN)
DR NASIR JAFFER (MEDICAL REPRESENTATIVE)
MR HASNODIEN ISMAIL (SPORT ADMINISTRATOR)

PROSECUTOR: MR RAHIDIEN CULLIS

SCRIBE: MS RAYANAH REZANT

ANTI-DOPING RULE VIOLATION: ANTI DOPING RULE VIOLATION IN TERMS OF ARTICLE 2.1 OF THE 2009 SAIDS ANTI-DOPING RULES

APPLICABLE LAW

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the World Anti-Doping Code ("WADC") adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South African Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping Rules ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

PROCEDURAL MATTERS

The Athlete was in attendance assisted by the CEO of South Western Districts Eagles, Mr Johan Prinsloo.

The rights of the Athlete were explained to him, and he acknowledged that he understood his rights, understood the process and was ready to proceed. The process to be followed was explained in detail to the Athlete.

SUMMARY OF EVIDENCE AND ARGUMENT

The Athlete was informed through written correspondence addressed to the Athlete on 11 September 2012 informing the Athlete of an Adverse Analytical Finding, also informing the Athlete of his rights and the process including the Athlete's right to have a B sample analysed. It was assumed that the Athlete waived his right to have the B sample analysed, as no written response was received by SAIDS informing SAIDS that the Athlete would like to have his B sample tested. The charge against the Athlete was set out in written correspondence addressed to the Athlete on 02 October 2012. The charge against the Athlete read as follows:

You have been charged with an anti-doping rule violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS).

On the 25 August 2012, you provided a urine sample (2723080) during an in-competition test. Upon analysis, the South African Doping Control Laboratory at the University of Free State reported the presence of prohibited substances in your urine sample. The substance identified was 11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid, a metabolite of Cannabis. Cannabis is Specified Stimulant categorised under Class S8 "Cannabinoids" on the World Anti-Doping Code 2012 Prohibited List International Standard.

The Athlete advised that he understood the charge. The Athlete had not requested that his B sample be tested. The Athlete admitted that he was Guilty of the charge as set out, and acknowledged that he understood the implications of such an admission. The Athlete stated that the source of the substance was smoking an OKA pipe which was prepared or loaded with cannabis.

Evidence presented before the hearing was that the Athlete is a young nineteen year old promising rugby player at South Western Districts Eagles Rugby Union based in George. It was confirmed by Mr Johan Prinsloo (CEO of SWD Eagles) that the player does not have a contract yet, but they are definitely interested in offering the Athlete a contract. The Athlete is currently remunerated on match-to-match bases and mainly plays in the position of centre. The Athlete was tested at an U/19 away game between Western Province and SWD Eagles. The Athlete testified that he normally hangs out with his 'friends' during the week and they occasionally smoke an OKA pipe. One can smoke various flavours/substance with this pipe. Normally, he would arrive at his friends' place and they would prepare the pipe together. On this particular Thursday night of 23 August 2012, the Athlete arrived noting that the pipe was already made. The Athlete then smoked the pipe and was informed on the Friday morning by his friends that there was Cannabis in the pipe and that they (his friends) tricked him by spiking the pipe with Cannabis. On asking why would his friends want to spike the pipe, the Athlete answered that his friends knew he had a goal and wanted to be a good rugby player and therefore wanted to drag him down (an act of jealousy). He is no more friends with them.

The Athlete further gave evidence that he did not have comprehensive knowledge of doping matters and no one ever addressed nor informed him regarding the use, risk and consequences of Prohibited Substances. He testified that he never used drugs before and that it wasn't his intention to enhance his performance on the field of play as he wasn't aware that he was tricked into smoking a Cannabis pipe. The Athlete said he also didn't mention it to the doping control officer as he was too scared and uncertain. He has been tested once previously.

The Athlete's mother and father were also in attendance observing. The Athlete in closing acknowledged his guilt, taking full responsibility for his negligence and is remorseful regarding his

positive test. He realises that he brought the game into disrepute, and that his parents are as ashamed of his actions and so is he. He undertook to do more to create awareness for drug free sport.

FINDING OF THE CHARGE

The presence of the substances identified as *11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid, a metabolite of Cannabis* was proven. The Panel has therefore determined that the Athlete is Guilty of the offence as set out, and is in violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Article 2.1.1 of the Rules reads as follows:

It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. Ignorance of the anti-doping provisions and/or prohibited list cannot be accepted as an excuse. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established.

The Athlete has been found guilty of a doping offence in respect of the substance identified as *was 11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid, a metabolite of Cannabis. Cannabis is Specified Stimulant categorised under Class S8 "Cannabinoids" on the World Anti-Doping Code 2012 Prohibited List International Standard.* As such, it is for the Panel to determine whether there are grounds for a reduction in the period of ineligibility in terms of Article 10.4 of the rule.

Article 10.4 read as follows:

10.4 Elimination or Reduction of the Period of *Ineligibility* for *Specified Substances* under *Specific Circumstances*.

Where an *Athlete* or other *Person* can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the *Athlete's* sport performance or mask the use of a performance-enhancing substance, the period of *Ineligibility* found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, two (2) years' *Ineligibility*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which establishes the comfortable satisfaction of the hearing Committee the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criteria considered in assessing any reduction of the period of *Ineligibility*.

Article 10.4 sets out specific conditions for the reduction of the Ineligibility period to be applied on an athlete following a finding of guilty for the anti-doping violation as set out above:

1. The *Athlete* must produce corroborating evidence in addition to his or her word which establishes the comfortable satisfaction of the hearing Committee the **absence of an intent to enhance sport performance** or mask the use of a performance enhancing substance; and
2. The *Athlete's* **degree of fault** shall be the criteria considered in assessing any reduction of the period of *Ineligibility*.


Reviewing the evidence presented by the Athlete, there are a number of important issues to consider in making this finding:

- He wasn't aware that he was smoking Cannabis on the night as the pipe was already prepared and his friends didn't tell him what was loaded in the pipe. Therefore, it wasn't his intention to enhance his performance on game day;
- He has been tested previously;
- This was his first offence;
- He waived his right to have his B sample tested;
- He was remorseful and indicated that he would definitely engage and in anti-doping rules and regulations and engage in creating awareness.

In light of the above, the sanction on the finding of Guilty is as follows:

1. The Panel is satisfied that it was not the intention of the athlete to enhance his performance and established a low degree of fault as he was maliciously tricked in taking the prohibited substance;
2. The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Article 10.10 of the Rules, for a period of 3 (three) months;
3. The period of three months will be effective as of 11 September 2012, being the date on the written communication addressed to the Athlete, informing him of the adverse analytical finding, to terminate on 11 December 2012.

This done and signed at Stellenbosch, November 2012

A handwritten signature in black ink, appearing to read 'Marius Hurter', is written over a horizontal dashed line.

Marius Hurter (Chair)

For and on behalf of the Tribunal Panel

Dr Nasir Jaffer, Mr Hasnodien Ismail