

DISCIPLINARY HEARING

Before

THE JAMAICA ANTI-DOPING DISCIPLINARY PANEL

Between

JAMAICA ANTI-DOPING COMMISSION Complainant

And

TRAVES SMIKLE

Respondent

For the Complainant: Mr. Lackston Robinson.

For the Respondent: Dr. Lloyd Barnett, Mr. William Panton and Mr. Courtney Williams.

BACKGROUND

1. The Respondent, Traves Smikle, is an international-level athlete who has represented Jamaica at the World Youth Championships.
2. The JAAA National Senior Championships were held at the National Stadium, Kingston, Jamaica from June 21, 2013 to June 23, 2013 and the Respondent participated in the discus event on June 22, 2013.
3. The Respondent was selected for doping control and voluntarily provided a urine sample.
4. The urine sample was forwarded to INRS-Institut Armand-Frappier, Laval, Canada, a WADA accredited laboratory where it was analysed on July 11, 2013 and a Certificate issued by Professor Christiane Ayotte, Director of the Doping Control Laboratory.
5. The Certificate revealed an adverse analytical finding for the urine sample and that the substance was Hydrochlorothiazide ("HCTZ").
6. The substance Hydrochlorothiazide is classified in the category of "diuretics and other masking agents" on the WADA list of prohibited substances.

7. The Respondent was subsequently notified of the adverse analytical finding by letter on July 12, 2013 and advised as to his rights.
8. The Respondent by letter dated July 17, 2013 acknowledged receipt of the said notice and requested that his "B" sample be analysed.
9. The "B" sample was analysed at the aforesaid laboratory and on July 31, 2013 a certificate was issued by Professor Christiane Ayotte, Director of the said laboratory confirming the presence of Hydrochlorothiaze in the Respondent's urine sample.
10. The Respondent was notified accordingly on August 5, 2013.
11. The Respondent was requested by the then Chairman of the Jamaica Anti-Doping Commission (JADCO) on July 12, 2013 for an explanation for the adverse analytical finding.
12. By letter dated July 17, 2013, the Respondent explained that the adverse finding could only be as a result of contamination of one or more of the medication or supplements.
13. The Jamaica Anti-Doping Commission (JADCO) referred the anti-doping rule violation in respect of the Respondent to the Jamaica Anti-Doping Disciplinary Panel.

HEARING BEFORE THE PANEL

14. Before the Panel no issue was taken in relation to the analysis of the sample, however, the collection process was challenged.
15. The main issue was whether the failure to follow the WADA International Standard for Testing (IST) resulted in an automatic rejection of an adverse analytical finding in the Respondent's urine sample.
16. It is important to examine the evidence as to how the Respondent's urine sample was collected.
17. The Complainant in that regard relied on the evidence of Mr. Dorrel Savage, Dr. Clyde Morrison and Mr. Dondre Webster.
18. Mr. Savage's evidence disclosed, inter alia:
 - (a) That he was a chaperone contracted by JADCO to work at the National Senior Championships from June 21 to June 23, 2013.
 - (b) That the Respondent Traves Smikle was escorted to the waiting area of the doping control area by his chaperone.

- (c) That the Respondent selected a sample collection vessel, washed his hands with water, and was informed that when he was ready to pass the urine sample he was to notify Mr. Dondre Webster, the chaperone in the waiting area.
- (d) That he took the Respondent to the sample collection area on each occasion that he attempted to pass the urine.
- (e) That on the first occasion the Respondent was unable to obtain the minimum of 90 mls and was asked to secure the sample kit by covering it with the lid provided in the sample kit.
- (f) That the Respondent was told that he could wash his hands and wrap the sample kit with a piece of tissue or hand towel.
- (g) That the Respondent was escorted back to the waiting area.
- (h) That the Respondent returned to the sample collection area with the covered sample collection container wrapped also in tissue.
- (i) That the Respondent was told to wash his hands again and was told to remove his underwear and training gear before opening the sample container.
- (j) That the Respondent was unable to pass sufficient urine on his second attempt.
- (k) That the Respondent was asked to cover the sample container before dressing himself.
- (l) That the Respondent was informed that he could wash his hands again which he did and wrapped the sample container in a fresh tissue or paper towel.
- (m) That the Respondent was escorted to the sample collection area for a third time and was asked to wash his hands with water and remove his underwear and training gear before opening the sample container and he did as instructed.
- (n) That the Respondent unwrapped the covered sample container, opened it and was able to pass the required amount of urine.
- (o) That the Respondent secured the sample as instructed, then dressed himself and proceeded to go in the queue for persons with a completed sample to the Doping Control Officer(DCO).
- (p) That the Respondent had the sample in his possession covered and also wrapped in tissue.

- (q) That the Respondent's chaperone was present with him in the doping control station.
 - (r) That the Respondent or his chaperone did not make any complaints as to the collection process.
 - (s) That the Respondent was informed of his responsibility not to leave the sample anywhere.
 - (t) That the spout of the container is covered with adhesive tape and in his twelve (12) years of experience he has never seen an athlete spill his or her sample.
 - (u) That he has seen athletes trying to pour the sample into the "A" and "B" bottles and it cannot be poured because they have not removed the adhesive tape from the spout.
19. Dr. Clyde Morrison's evidence disclosed:
- (a) That he was a Doping Control Officer (DCO) at JADCO.
 - (b) That Dr. Paul Wright the lead DCO advised him that JADCO did not have any partial container sample kits and he has never used any.
 - (c) That on 22nd June, 2013, he was a DCO at the National Stadium, Kingston, Jamaica at the National Senior Athletics Championships.
 - (d) That the Respondent was selected for doping control testing and was escorted to the Doping Control Station where he was duly registered.
 - (e) That the Respondent was escorted to the athletes' waiting room.
 - (f) That when the Respondent indicated that he was ready to pass his urine he was escorted into the Doping Control Room by his assigned chaperone, Mr. Dorrel Savage.
 - (g) That after the Respondent produced an adequate sample, he was taken to the table in the Doping Control Room, where he selected his Doping Control kit.
 - (h) That the Respondent was then escorted into his presence by Mr. Savage accompanied by his representative, Mr. Julian Robinson.
 - (i) That he was given the Doping Control Form by Mr. Savage.

- (j) That he instructed the Respondent to place the selected Doping Control kit and his urine collection vessel on his desk.
- (k) That the urine collection vessel was covered with its press on lid, which bore a hole for pouring, which was covered by a plastic adhesive.
- (l) That he noted that the volume of the Respondent's sample was 150 ml.
- (m) That the Respondent was instructed to, and opened the kit himself and removed the "A" and "B" bottles, and the numbers on the bottles were duly noted.
- (n) That the Respondent was instructed and he removed the plastic adhesive on the lid of the collection vessel and poured the urine into the "A" and "B" bottles.
- (o) That the Respondent sealed the "A" and "B" bottles and returned them in the sealed plastic bags to the Styrofoam kit and sealed the kit with the attached tape.
- (p) That he tested the urine sample and recorded it to have a specific gravity Of 1.025.
- (q) That he inquired of the Respondent as to what medication or supplement he had taken over the past three (3) months, and recorded his responses on the Doping Control Form.
- (r) That the Respondent was invited to record in the comments section any complaints or objections, and he said he had no complaints or objections.
- (s) That the Respondent reviewed the Doping Control Form, signed it and it was also signed by his representative, Mr. Julian Robinson and by Mr. Savage.
- (t) That Dr. Morrison signed the Doping Control Form and thereafter handed over the Respondent's Doping Control kit to Dr. Paul Wright, the lead DCO of JADCO.
- (u) That he did not give any instructions which would conform with F4.6 of the WADA International Standard for Testing (IST) which relates to additional samples. (Exhibit 29)
- (v) That Dr. Morrison did not give any instructions in accordance with F4.2 and F4.8 of the WADA IST as it relates to partial sample collection.
- (w) That Dr. Morrison explained by his answer to Panel member Mrs. Flynn the importance of the use of a partial sample kit, as he said:

"It reduces the risk of interference either by the person being tested or anybody else of the urine that has already been passed. By securing it, it reduces the risk of altering any

contamination of it between the time it's passed and when they passed any further amount of urine". (See Transcript of 17th December, 2013 pages 41-42).

20. Mr. Dondre Webster's evidence is to the effect:
- (a) That he is a chaperone contracted to JADCO and that he was at the Doping Control Room when the Respondent entered with his throwing coach, Julian Robinson.
 - (b) That the Respondent sat at the back of the room and drank from his "personal bottle" and retrieved rehydration beverages from his igloo.
 - (c) That when the Respondent was ready to pass his urine he left the waiting area in the company of Mr. Savage.
 - (d) That the Respondent did not produce the 90 ml of urine needed for him to the DCO.
 - (e) That the Respondent returned to the waiting area with the vessel containing the urine sample wrapped in paper napkin, which he kept in his hand.
 - (f) That he kept the Respondent under observations and handed him over to Mr. Savage again to attempt to complete his sample.
 - (g) That the Respondent returned to the room with Mr. Savage and remained under observations by himself and other chaperones who were in the waiting area at the time, and that the Respondent had the urine sample in his hand.
 - (h) That he remembered the Respondent leaving the waiting area in the company of Mr. Savage.
 - (i) That there were other athletes in the waiting area at the time and they all had their samples in their hands and they all had their samples covered.
 - (j) That he did not see anyone placing their sample on the floor.
 - (k) That if anyone had placed their sample on the floor they would have been asked immediately to take it up.
 - (l) That he has never seen any athlete enter the waiting area with the sample containing urine uncovered.

- (m) That the Respondent never made any complaints to him about his sample.
21. The Respondent gave evidence as to the collection of the sample.
22. The Respondent's evidence disclosed:
- (a) That he was selected for an anti-doping test after competing in the men's discus event at the National Athletics Championships.
 - (b) That he went to the Doping Control Room where he declared all the medication and supplements he had taken, except for Animal Pak which he had not taken for several weeks leading up to the Championships.
 - (c) That sometime later he was sent to the testing area, where he waited his turn to pass urine.
 - (d) That he was not able to pass a large quantity on his first attempt.
 - (e) That he was directed to return to the general waiting area with the small amount of urine.
 - (f) That he placed the sample on the floor and was instructed by the JADCO representative to keep the sample in his hand.
 - (g) That the sample was covered with hand towel so as to prevent leakage or being spilled.
 - (h) That he tried to pass urine a second time using the same container he had with him, but again he was unable to produce enough urine for the test, and returned to the general waiting area.
 - (i) That after he waited for a period of time, he was asked a third time to produce urine for the sample.
 - (j) That on that occasion he was able to produce enough urine using the same container to bring the sample up to the required amount.
 - (k) That he was thereafter processed and eventually left the testing area at around 9:20 p.m.
 - (l) That he was later advised of the adverse analytical finding and asked for the "B" sample to be tested which also confirmed the presence of the banned substance.
 - (m) That by the time he was notified of the adverse analytical finding, he had used

up the batch of supplements, so he was unable to have the supplements tested to determine whether they had been contaminated or there had been any mislabelling of those supplements.

23. Mr. Julian Robinson the Respondent's coach gave evidence as to the sample collection.
24. Mr. Robinson said:
 - (a) That he had never introduced the Respondent to dietary supplements because he did not think he needed it.
 - (b) That he did not have the resources to check the supplements.
 - (c) That he believed that an athlete is able to get all the nutrients needed from the foods that he/she consumes.
 - (d) That the Respondent did not pass enough urine and came back to the waiting area with the sample.
25. Although Mr. Robinson's evidence generally supported the Respondent, he did not mention that the Respondent had placed the sample on the floor. The Panel finds that the sample was not placed on the floor.
26. Professor Wayne McLaughlin in his evidence opined that the measurements as to the specific gravity were not consistent with the use of a diuretic.
27. He said that he did not examine the Respondent and so was not able to say why the specific gravity measurements were what they were at the particular time.
28. Professor McLaughlin agreed that his report would be more accurate if it had taken into consideration other instances. The Panel finds that Professor McLaughlin's evidence did not take that part of the case to a conclusive end.
29. The WADA International Standard for Testing in Annex F4 requires that where the sample collected is of insufficient volume, the athlete should be instructed to select partial sample collection equipment.
30. Article 3.2.2 of the WADA Code provides:

"Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the athlete or other person establishes that a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused the

Adverse Analytical Finding or other anti-doping rule violation occurred, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping violation”.

31. The JADCO Anti-Doping Rules in Article 3.2.2 have similar provisions to the WADA Code in that regard.
32. It is clear from the WADA Code and the JADCO Rules that a departure from the IST does not automatically invalidate the results.
33. The circumstances should be examined and the burden and standard of proof determined.
34. The Respondent relied on CAS 2014/A3487 Veronica Campbell-Brown v JAAA and IAAF and other cases cited therein.
35. The facts of that case are completely different from the case of the Respondent.
36. In paragraph 30 of the Campbell-Brown case, it was stated that “during the time between the collection of the first partial sample and the second sample the collection vessel was not sealed”, and that in those circumstances the DCO said she could not definitively prove that the sample had not been tampered with.
37. The first partial sample in the Campbell-Brown case was left exposed to the elements, at times unsupervised, for over an hour (See paragraph 90 of the case).
38. In the present case there is evidence that the Respondent had his sample sealed and in his possession at all times.
39. In paragraph 149 of the Campbell-Brown case, the Panel noted CAS jurisprudence that recognises the existence of certain international standards which are considered to be so fundamental to the fairness of the doping control regime and so central to ensuring the integrity of the sample collection and testing process that any departure from them will result in the automatic invalidation of the outcome of the testing procedure.
40. The case of Tachina v International Gymnastics Federation, CAS 2002/A/385, referred to in paragraph 149, demonstrates that the failure to invite an athlete to attend the opening of the “B” sample is fundamental.
41. The CAS Panel observed that the athlete’s right to verify the integrity of the seal on the sample bottle, and to inspect the sample for any apparent violations or irregularities is completely taken away from the athlete.

42. In *Wen Tong v International Judo Federation*, CAS 2019/A/2161, the Panel stated that the athlete's right to attend the opening of her "B" sample result must be disregarded.
43. At paragraph 155 of the *Campbell-Brown* case, the Panel stated that the applicable rule requires a shift in the burden of proof whenever the athlete establishes that it would be reasonable to conclude that the IST departure could have caused the Adverse Analytical Findings.
44. The CAS Panel said that the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the IST departure and the presence of a prohibited substance in the athlete's sample.
45. The Panel explained "that for these purposes the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible.
46. The Respondent has not provided any facts from which the Panel could rationally infer a possible causative link.
47. The Respondent has merely provided evidence as to the failure to use a partial sample collection equipment.
48. The fact that the Respondent's sample was covered and kept in his at all times would not cause the Panel to reasonably conclude that the departure could have caused the Adverse Analytical Finding.
49. The Complainant by the evidence presented has discharged the burden which was cast on it.
50. The Panel in the instant case considered CAS jurisprudence as to circumstances of departure from international standards and the effect of such departure.
51. In *WADA v Wium*, CAS 2005/A/908, which was considered at paragraph 159 of the *Campbell-Brown* case, a DCO accidentally left an athlete's urine sample at the athlete's premises at the conclusion of the collection procedure.
52. The sample was left unattended for 45 minutes in a sealed and tamper proof 'Berlinger test kit'.
53. The CAS held that the "departures from IST did not cast any doubt on the reliability of the test results" since the Panel "cannot imagine any hypothesis under the given circumstances that any person, whether identified or not, might have used the period during which the samples were unattended, for any act of sabotage with a possible impact on the result of the laboratory analysis.
54. In the present case the Respondent's sample was sealed and not left unattended at all.

55. At paragraph 160 of the Campbell-Brown case, the case of IAAF v DaSilva, CAS 2012/A/2779 was considered by the CAS Panel.
56. The athlete in that case provided a partial urine sample after a post-race anti-doping test. The anti-doping officials who conducted the test allowed the athlete to leave the doping control station carrying her unsealed sample bottle.
57. The athlete then took part in a media interview during which she placed the sample on the floor and covered it with a cloth.
58. She then returned to the doping control station and provided the remaining portion of her sample.
59. It is interesting that the sole arbitrator did not find that any departure from the IST had occurred.
60. The sole arbitrator held that, even if a departure had occurred “it is doubtful whether such departure led or would reasonably have led to the adverse analytical finding”.
61. In paragraph 160 it is suggested that this was because:
 - (i) The athlete was always in control of the sample bottle during the media interview;
 - (ii) She had signed the Doping Control Form indicating her satisfaction in the manner in which the sample had been collected;
 - (iii) She did not summon any expert to rebut Professor Christiane Ayotte’s expert evidence which explained that even if the sample had been spiked with recombinant EPO, it would be strikingly obvious at the time of the analysis because the analytical image would have been overloaded with recombinant EPO; and
 - (iv) The athlete has not summoned or adduced expert evidence proving that the unsealed Sample Bottle could still have been contaminated despite the fact that it was covered with a white cloth.
62. The CAS Panel in the Campbell-Brown case said that the facts in DaSilva are significantly different in that a significant departure from the IST occurred.
63. The Panel there said the athlete had adduced expert evidence disagreeing with Professor Ayotte’s analysis regarding the possible origins of the prohibited substance, and also evidence explaining how the sample could have been contaminated in the doping control area (See paragraph 161).
64. In the present case the Respondent did not have an unsealed sample, and he did not leave it anywhere but had it in his possession at all times.

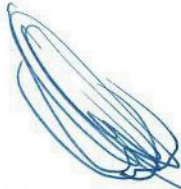
65. Further, the Respondent has not provided any expert evidence as to the possible origins of the prohibited substance or any expert evidence explaining how the sample could have been contaminated in the doping control area.
66. The Panel also considered CAS/A/2277 where the sample was collected in violation of the IST relating to the collection of partial samples, since the athlete had not been asked to check that his partial samples had been properly sealed before attending a medal ceremony, and had not been accompanied by a chaperone to the ceremony.
67. While the CAS did not find that there was a departure from the IST, the CAS said that even if there had been a departure from the IST, the Appellant was unable to prove that the alleged departure could reasonably have caused the adverse analytical finding.
68. The Respondent has also failed to provide any evidence that the alleged departure from the IST could have caused the Adverse Analytical Finding.
69. The CAS Panel said that unlike in CAS 2010/A/2277 they had not rejected the athlete's account about the circumstances in which the sample was collected, and the expert evidence (See paragraph 163).
70. The CAS Panel explained that that was therefore not a case of mere speculation without any supporting facts.
71. That also distinguishes the Respondent's case as there are no supporting facts.
72. The case of Wilson v UK Anti-Doping (NAPD Appeal Tribunal decision dated 19 January, 2012) was also considered. It was contended that there was a failure to comply with the IAAF rules regarding the collection of partial samples.
73. The alleged departure included instructing the Appellant to remove the strip sealing the partial sample container and leaving an unsealed partial sample in a shower room.
74. The Appeal Tribunal found that UKAD had established that none of the alleged departures had occurred.
75. The CAS Panel said that there was also no evidence adduced regarding the possibility of inadvertent environmental contamination.
76. In the Campbell-Brown case, the CAS Panel said:

"The salient question in the present case, therefore, is whether it would be reasonable for the Panel to conclude that the JAAA's admitted departure from the partial collection procedure could be the cause of the HCT

presence in the athlete's urine sample. Answering this question requires careful consideration of the evidence adduced by the parties concerning the precise circumstances of the doping test and any possible mechanism through which the sample could have been contaminated." (See paragraph 165).

77. It is clear that the CAS Panel was not suggesting that the JAAA's admitted departure from using partial sample collection procedure would automatically overturn the positive test result.
78. The CAS Panel wanted the evidence of the parties to be considered as to the doping test and any possible way in which the sample could have been contaminated.
79. In the present case, the Panel finds that no such evidence was adduced, which suggested that, and the departure could not have caused the Adverse Analytical Finding.
80. In all the circumstances, the Respondent has not satisfied the Panel to its comfortable satisfaction as to how the prohibited substance entered his body, and so he would not fall under Article 10.4, Article 10.5.1 or Article 10.5.2 of the JADCO Anti-Doping Rules.
81. The Panel finds that the applicable sanction is therefore under Article 10.2 of the JADCO Anti-Doping Rules.
82. The Panel imposes sanction of two (2) years ineligibility to commence on June 22, 2013.

By THE JAMAICA ANTI-DOPING DISCIPLINARY PANEL
18th day of August, 2014

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Prof. Kent S. Pantry CD, QC – Chairman

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Prof. Ivor Crandon - Member

A black ink handwritten signature, appearing to be 'Juliet Cuthbert-Flynn', written over a horizontal line.

Juliet Cuthbert-Flynn – Member

