

BEFORE THE ANTI-DOPING APPEAL TRIBUNAL OF SOUTH AFRICA

HELD IN NEWLANDS

(Instituted in terms of section 17(2) (a) of Act No.14 of 1997, as amended by Act No.25 of 2006)

In the matter between:

Case No.: SAIDS/2016/06/A04

LAUREN LINCOLN

(APPELLANT)

versus

SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT (SAIDS)

(RESPONDENT)

DECISION

1. This is an Appeal against the findings of the Disciplinary Panel of SAIDS at a hearing which took place on the 5th July 2017.
2. The Appellant was found **GUILTY** of an anti-doping rule violation in terms of Article 2.1 of the 2016 SAIDS Anti-Doping Rules, in that, on the 28th June 2015 she provided a urine sample during an in-competition test and upon analysis, the Doping Control Laboratory in Cologne, Germany reported the presence of prohibited substances in her urine sample. The substances so identified was **Testosterone, 5alpha-androstane-3-alpha, 17beta-diol and 5beta-androstane-3alpha,17beta-diol** which is categorised under **Class S.1, Anabolic Agents**, and therefore regarded as a “Non-Specified” Prohibited Substances.

3. The Panel also found that she failed to show to their comfortable satisfaction that the use of the substance was not intentional and imposed a sanction of **Four (4) years' ineligibility.**
4. The Rules provide that where an athlete is found to have contravened Article 2.1, the sanction shall be a period of *Ineligibility* of 4 years where the violation does not involve a Specified Substance unless the Athlete can establish that the Anti-Doping Rule Violation was not intentional. If the Athlete does establish that the violation was not intentional then the period shall be 2 years ineligibility.
5. Article 10.2.3 defines "intentional" for the purposes of Article 10.2.1 as meaning "to identify those players who cheat". It goes on to explain the term as follows:

"The term, therefore, requires that the Player or other person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk".
6. The word "cheat" has many definitions depending on the context in which it is used. In the context of sport, it is generally used for the breaking of rules to gain an unfair advantage in a competitive situation (Wikipedia)
7. There are two parts to the definition of "intention", namely:
 - 7.1 Direct Intention to cheat: and
 - 7.2 Imputed Intention to cheat or *dolus eventualis*.
8. In order to establish either of these types of intention one must have regard to:
 - 8.1 the evidence of the athlete relating to her state of mind and;
 - 8.2 the relevant circumstantial evidence placed before us in order to establish whether she had the intention to cheat, or
 - 8.3 whether she knew there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk and in so doing developed an intention to cheat.

9. In terms of Article 3.1 of the Rules the standard of proof required by the Athlete to discharge the burden placed on her is on a balance of probabilities.

EVALUATION OF THE EVIDENCE

10. Subsequent to the noting of the appeal and prior to the hearing of the matter, SAIDS conceded that the Sanction imposed by the Panel was incorrect and submitted that a period of 2 years *Ineligibility* should be imposed. The Appellant accepted this.
11. As a result thereof no formal hearing took place and the matter was dealt with on the papers.
12. It seems to us that this is an extremely ill Athlete and one wonders if she is the right candidate to be pumped full of pills and injections to keep her going as an athlete.
13. Whilst the Athlete conceded that she took the medication to get well and to improve her performance she does make out a good enough case to prove on a balance of probabilities that she did not intend to cheat.
14. This is borne out by, amongst others, the following factors:
 - 14.1 She consulted a medical doctor who did not advise her that the substances were prohibited in sport;
 - 14.2 She had no anti-doping education;
 - 14.3 She was the only female in the race;
 - 14.4 She ended last out of 11 Athletes;
 - 14.5 She was rehabilitating herself and competing against herself;
 - 14.6 She is a recreational athlete;
 - 14.7 She listed the substances on the Doping Control form; and
 - 14.8 She played open cards with the Panel.
15. In our view, she did not, directly or indirectly, form or have an intention to cheat.

FINDING

16. The Appeal Tribunal, therefore:

16.1 Confirms the finding of **GUILTY** of violating Article 2.1 of the Rules;

16.2 Sets aside the sanction of 4 years *Ineligibility*;

16.3 Replaces the sanction with a period of **2 years Ineligibility**, which period ends on the **23rd February 2018**.

16.4 Makes no order as to costs.

Dated 21st November 2017



Alex Abercrombie
(Chairman)
Dr. Phatho Zondi
Rebaone Gaoraelwe