

At the Headquarters of the Malta Sports Council,
Cottonera Sports Complex, Cospicua.

Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: NADDP 02/2017

Anti-Doping Commission (Malta)

-vs-

**Kevin Moore (Athlete member of the
Malta Amateur Athletic Association
(MAAA) - Passport No. 839589)**

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of lawyer Dr. Maria Azzopardi (lawyer) as Chairperson, and Dr. Abigail Gauci (lawyer) as member.

Before the commencement of this proceeding, Dr. Abigail Gauci declared to the Chairperson that she is not subject to any circumstance or conflict that could negatively affect her impartiality in the case under review. The same declaration was made by the Chairperson to the 'Panel'.

The athlete was assisted by Dr. Gianella De Marco and Dr Adrian Camilleri whilst the Anti-Doping Commission (ADC) was represented by Dr. Lucienne Attard and legally assisted by Dr. Christina Borg Debono.

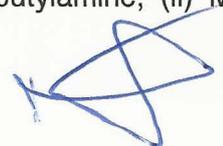
The Parties declared to the Panel that they had no objection that the Panel be composed of two members instead of three members, namely Dr. Abigail Gauci as member and Dr. Maria Azzopardi as Chairperson.

1. Preliminaries

The Parties agreed during the sitting that the transcriptions of the evidence brought before the ad-hoc committee set up by the MAAA should form part as evidence in this case. Dr. Borg Debono on behalf of the ADC requested to cross examine Mr. Neville Schembri and Mr. Kevin Moore and to call as witnesses Mr. Neville Schembri, Mr. Ignatius Zammit, and Dr. Lucienne Attard. The ADC declared that it had no objection to the production of the affidavit by Ms. Charlotte Wingfield but requested the opportunity to cross examine the witness.

The athlete's legal counsel is contesting the validity of the procedure adopted for the sample collection of Kevin Moore and are arguing that such irregular procedure resulted in erroneously attributing a urine sample collection to Kevin Moore which in reality does not belong to Kevin Moore and thus the end result of a positive test is invalid.

Considered the Request by the National Anti-Doping Commission (Ref. No. ITSTKEVMOO16/12 of the 15th July, 2016 to the Chairperson of the Panel to schedule a sitting for the hearing of a case dated 11th June, 2016 concerning the alleged breach by Kevin Moore of Article 3 (2) (a) and (b) the Anti-doping Regulations (Legal Notice 17 of 2015, Sports Act, Chapter 455, Laws of Malta) whereby Kevin Moore has been tested positive for (i) 1,3-Dimethylbutylamine, (ii) Methlhexa-



neamine and (iii) Tamoxifen metabolite. 1,3 - Dimethylbutylamine is regarded as a related substance (specified stimulant) under S6.b of the 2016 Prohibited List, 4 - Methl-2-hexaneamine is a specified stimulant under S6.b of the 2016 Pohibited List and Tamoxifen is a specified substance classed under S4.2 (Hormone and Matabolic Modulators).

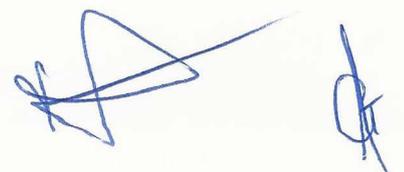
Took note and reviewed the following documents that were forwarded to the Panel and to the athlete at the initial stage by the Coordinator of the Anti-Doping Programme, namely a copy of the:

- (i) Authorisation Letter by NADO to DCO to carry out Doping Tests (Doc 1)
- (ii) Schedule of the competition (Doc 2);
- (iii) Entry - Exit Log on the date of the doping tests (Doc 31 & 3b);
- (iv) Doping Control Form dated 11th June, 2016 (Doc 4 & 5);
- (v) Chain of Custody Form dated 11th June, 2016 (Doc 6);
- (vi) Laboratory test and delivery notice (Doc 7 to 9a);
- (vii) Initial Reviews by the NADO regarding Adverse Analytical Finding (Doc 10);
- (viii) Report of Adverse Analytical Finding of the in-competition test (Doc 11b);
- (ix) Letter of Notification by NADO to Kevin Moore dated 7th July, 2016 of a possible violation of the Anti-Doping Rules (Doc 11a);
- (x) Request by NADO to the National Association/Federation dated the 7th July 2016 of the alleged breach by Kevin Moore (Doc 13a);
- (xi) Request of the 'B' Sample Analysis by Kevin Moore dated 11th July, 2016 (Doc 15)
- (xii) Confidential Test Report dated 14th July, 2016 on the 'B' Sample confirming the result of the 'A' Sample (Doc 20);
- (xiii) Confirmation of Adverse Analytical Finding - B-Sample addressed to Kevin Moore dated 15th July, 2016 (Doc 21a);
- (xiv) Notification of Temporary / Provisional Suspension by the MAAA dated 14th July 2016 (Doc 23);
- (xv) Request to the NADP from the NADC dated 15th July 2016 to schedule a hearing (Doc 24c);
- (xvi) Request for Provisional Hearing dated 18th July 2016 from Kevin Moore addressed to the MAAA (Doc 25b);
- (xvii) Test Report from the laboratory on the results of the doping test (Doc 27 to 29);
- (xviii) Transcript of the provisional hearing before the MAAA and the decision of the MAAA adhoc Committee confirming the provisional suspension (Doc 30 *et sequitur*).

Took note of the Notice issued by the Panel to Kevin Moore to appear before the Panel to answer to the accusation based on Article 3(2)(a) and (b) of L.N 17 of 2015 of the Laws of Malta (Doc 30). Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission, the MAAA and Sport Malta. Took note of the evidence brought before the Panel in the various sittings as well as the written and oral submissions of the Parties.

2. Factual Background:

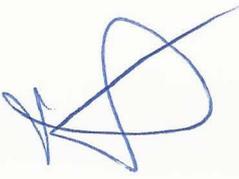
- 2.1. Heard and took note of the evidence produced during the sittings, the Panel referred to the salient parts of case and the more relevant parts of the evidence of the witnesses:
 - (a) Kevin Moore participated in three athletic events in the Small Nations Games held at Marsa on the 11th of June, 2016. The events were the 100m, 200m and the Swedish relay.
 - (b) In between the events of the 100m sprint and the 200m sprint, Kevin Moore had been notified by doping official Mr. Andre Bonello to perform a doping test and Mr. Moore was taken to the doping control station. According to the Entry-Exit Log he arrived at 14.57hrs. Kevin Moore followed Mr. Bonello to the waiting room next to the doping control station where he was chaperoned then by Mr. Ivan Brincat.



- (c) Kevin Moore did not produce a sample and, since he had to compete in the 200m sprint, he was given permission to leave the area with his chaperon Mr. Ivan Brincat in order to do his warming up. During his warm up Mr. Moore felt the need to pass urine. The Entry-Exit Log indicates that he left at 15.43hrs.
- (d) The witnesses confirmed that during the warm up, Kevin Moore felt the need to pass urine. According to the Doping Control Form he returned and completed the test at 16.20hrs. Notwithstanding that this time is not confirmed on the Entry-Exit Log, the Doping Control Form showed that Mr. Moore produced a sample of 120ml at 16.20hrs. The witnesses confirm that Mr. Moore was in his spike shoes because the sample collection took place just after the warm up and before the 200m sprint which was at 16.40hrs.
- (e) After producing his sample in the collection vessel, Mr Moore left for the 200m run which was scheduled at 16.40hrs. When he finished, Mr. Moore returned to the Doping Control Area to continue the doping control test, that is for the sample splitting process but was required to wait outside because there was an incident with the Georgian female athlete that had been present in the Doping Control room. It should be noted that there was no indication of the time because the Entry-Exit Log does not contain any information on Mr Moore's return to the Doping Control Area after the 200m sprint.
- (f) Mr Moore needed to leave again for the medal presentation ceremony but this was postponed for after 18.00hrs. Kevin Moore returned to the Doping Control Area with Mr. Ivan Brincat. The witnesses confirm that as from the time of notification Kevin Moore was chaperoned at all time.
- (g) Kevin Moore confirms that when he returned to the Doping Control Area, Mr. Neville Schembri was located at the doorway of the Doping Control Offices. According to the Entry-Exit Log this was at 17.00hrs. At that point Mr. Moore entered the Doping Control Room to finish his doping control test, that is for the sample splitting process which according to the Doping Control Form was completed at 17.25hrs. It had been registered in the Entry-Exit Log that he left at 17.32hrs.

2.2. Taking into considerations that there was a major divergence between the evidence of the witnesses in relation to the passage of events that occurred when Kevin Moore produced a urine sample of 120ml to the time when the collection vessel containing the 120ml urine sample was split into the 'A' Sample and 'B' Sample, the Panel will quote relevant parts of the evidence produced during the MAAA hearing and during the hearing before the Panel:

- (a) Dr. Lucienne Attard, Chairman of the NADO and oversaw the doping control procedure together with Mr. Ignatius Zammit and stated that those allowed to enter the Doping Control Station were the Athletes who were being notified by the relevant DCOs, Chaperones, Athletes' Representatives, the translator if need be, Mr. Ignatius Zammit and myself. Dr. Attard drew up a sketch of the Doping Control Area and the surroundings which were marked and filed as LA1. Dr Attard explained the normal procedure for a doping test. However, Dr. Attard could not confirm the chain of events in the case of Mr. Moore since she was not present all the time at the Doping Control Station but she had been coming and going. When making reference to the Doping Control Form, Dr Attard explained that the form was completed in front of the athlete when the athlete was notified and further explained that the yellow copy of the Doping Control Form was given to the athlete whilst the rest was kept by the officials. Dr. Attard explained the process when the athlete had provided a full sample but had no time to split the sample because he needed to leave the room for a good reason and states that:



"Ok let's put it this way. If there is a full sample it has to be processed. If for some reason the athlete has to leave and does so for a good reason and there is no time to process it, then the DCO has to make a decision. Does he detain the athlete and gets him to process the sample or does [he] let him compete in this case and control the sample and seal it. That was the decision the DCO had to face....There is a bag here. That is sealed by the way. If it is closed properly, it is sealed."

When questioned by the defence counsel *"But let's say I left my urine sample in this full container M469652 and I had to leave and I left it with you."* Dr. Attard replied *"That number goes down on your form so that it identifies that number with yourself."*, defence counsel again *"But that should be done in front of the athlete. Am I correct?"* and Dr. Attard replies *"yes and it is put in the plastic bag."*

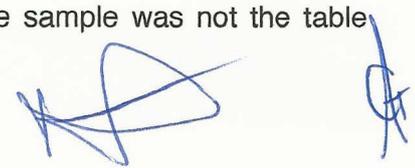
Furthermore, defence counsel *"But if he does not do that on the form, in front of the athlete and his chaperone, then that DCO is being highly irregularly. Am I Correct?"* and Dr. Attard replies *"it is not procedure.....So if the DCO takes the decision in favour of the athlete that he lets him race and decides to treat this as a partial sample, the number has to go down there. That is it."*

- (b) Kevin Moore confirmed his deposition dated 26th July, 2016 in front of the MAAA ad hoc Committee which decided on the provisional suspension. Mr. Moore explained that at the end of the 100m race he was approached by a person who informed him that he had to provide a urine sample testing for doping tests. He picked up his things and followed the person to the Doping Control Room. He waited in a room which was described as a waiting room, next to the changing room where the athletes carry out their tests. He explained that he was given a chaperone who identified himself as Mr. Andre Bonello. During his cross-examination before the Panel, Mr. Moore explained that *"I finished the 100m race and then immediately a young guy came and notified me that I had a doping control test. I am not sure at the time who he was. We then proceeded to get my water bottle and shoes etc. We went to the Doping Control Station which is where I was given my chaperon and formally made to sign papers. I believe that was Mr. Andre Bonello."*

Then at 14.57hrs he moved to the changing room and started drinking water but could not produce a urine sample. Mr. Moore explained that he spent around 45 minutes there but had to leave to prepare for the 200m race which was scheduled to take place at 16.40hrs. So he was authorised to leave for the warm up accompanied by a chaperone. During the warm up he felt the need to pass urine and the chaperone accompanied him back to the DCO room to produce his urine sample before starting the 200m race.

Mr. Moore explained that this was at 16.10hrs. At that point he confirmed that he chose the collection vessel sealed in the bag and completed a full sample. Mr. Moore stated that when he completed the sample which was in the container he was being called for the 200m sprint and thus could not finish the test, that is splitting the sample. At that point he was instructed by the DCO to leave it there in the DCO room and go for the race and then return to split the sample. Mr. Moore stated that the urine sample was in a white cup which had a lid but according to him the lid was not sealed as the A and B sample would be. He referenced the white cup as "the main container" being the collection vessel. He was accompanied to the race by the chaperone who took him back to the Doping Control Room after the race. When he got back to the room he could not enter due to another foreign athlete being present with her chaperone, a translator and team leader, and she was splitting her sample.

Moreover, Kevin Moore recalled that at 17.15hrs he had to leave again accompanied by the chaperone for the medal ceremony but since this was postponed they returned to the Doping Control Room. Now, the room was empty and the DCO Schembri was outside the room and when he entered the room, the room was empty and the sample was not the table



where he had left it. He stated before the adhoc Committee that "[w]hen I saw the sample there was no mark identifying it as being the sample that I had done and I took it on faith that it may have been the same sample because it was on the same spot where I had left it, namely on the table in the Doping Control Room." Then he chose another package in order to split the sample into 'A' and 'B' sample and sealed them and signed a paper. This was completed at 17.15hrs. Mr. Moore explained that the Doping Control Form was completed at that time. He confirmed that at that time he did not protest the procedure but had complained about this with the President of MAAA and Dr Attard before the positive doping tests were out. When asked before the Panel Mr. Moore explained that "[a]nd then we were able to get in and proceed with the samples and filling of the papers before warming up again for the race after that one."

Furthermore, before the Panel, Kevin Moore was given a collection vessel and he confirmed that his was similar to such container and when asked whether he did close the container he replied "**Look I can't say that, like now looking how you closed it the other day, I was not pushing down. I closed it, I don't remember exactly how I closed it in a rush, I left it on the table and left.**" When asked by the ADC legal counsel "**And you made sure that it was closed, as in it was not opening?**", Mr. Moore replied "**It was not opening but for me I just put the lid down and like I said it was rush[ed] and I went out.**" and again when asked "**As is this collection vessel, every collection vessel is marked. It is unique and with a number. Were you aware that there was a number on the collection vessel?**", Mr. Moore replied "**No, absolutely not.**" Furthermore, upon being questioned "**Do you confirm that your obligation as an athlete would have obliged you to write a comment if you were not happy with the procedure that was undertaken on the day?**", Mr. Moore replied "**I don't believe that it is an obligation of mine. I signed the papers and I continued to the next race.**"

The Panel made reference to questions asked to Mr. Moore about the collection vessel, that were:

Dr. De Marco: You were asked about the sample collection vessel if it had a number. Were you given this number before you left?

Moore: No

Dr. De Marco: Where was this number written? Was it written on your form in your presence or out of your presence?

Kevin Moore: Definitely not in my presence.

Dr. De Marco: You were told that if the cup was opening when you left it but you know if it was sealed?

Kevin Moore: No."

Another important passage in the transcription which the Panel felt relevant was when Mr. Moore replied to questions on his signature on the Doping Control Form

Dr. De Marco: "Now the signatures you were shown by Dr. Borg, at what stage of all this did you sign? Let's start with the first one "Athlete's Signature" the top one. Was this signed when the first part was filled?

Kevin Moore: Yes.

Dr. De Marco: Regarding the second and third signature, when were these signed?

Kevin Moore: The third one was for sure signed at the end. This one I am not 100% sure when it was signed.

Dr. De Marco: Was this signed when this was filled or when this was blank?

Kevin Moore: No there was no numbers.

Dr. De Marco: Basically you signed it when it was what?

Kevin Moore: Blank

Chairperson: Before you left was there anyone writing the control form?

Kevin Moore: No there was no time.

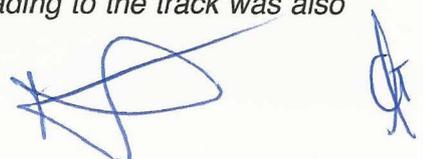
Chairperson: You just signed and left?

Kevin Moore: Yes. Cause Mr. Schembri was finishing one on one with Ian Grech and I believe he said in his testimony that he did not know whether he wrote the number with me or before me. I can tell you now that it was not with me."

- (c) Mr. Neville Schembri, the DCO in charge of the male tests on the day also gave *viva voce* evidence during the sittings before the Panel after the transcription before the MAAA adhoc Committee was read to him and he confirmed the contents of such deposition. The Panel will quote the salient parts relevant to the principal contestation between the parties. Mr Schembri confirmed that when the athlete provided the urine sample of 120ml, he was being called for another race and at that point in time he as the DCO in charge had to take a decision whether to ask the athlete to split the sample into A Sample and B Sample or whether to adopt the partial sample procedure and send the athlete to prepare for his race accompanied by his chaperone. The DCO adopted the second option and in this respect the Panel remarked that there was no breach of the procedure.

The DCO stated that: *"I remember Mr. Moore on the day of the test. I don't know how many times he did this but I recall that Mr. Moore came in and out of the station more than once....Though on the day, on the 11th of June, I think I witnessed all the passing of the samples. Looking at the Doping Control Form I filled in parts 3 and 4. I did not fill in Parts 1 and 2 nor did I fill in the declaration stating that he was taking Panadol and Codena. These were not written by me. I am being asked whether I witness[ed] Mr. Moore passing the sample on the day, I don't remember exactly but I think I did, but on the form it says that I was the sample witness and therefore on this basis I confirm that I was the one who witnessed the passing of sample.... I am examining the form and the words or letters M493756 with a squiggle at the end were written by me and also next to it there is "120" which was written by me and "16.20" is written by me. That part of the form is the form where one records information regarding a partial sample. "M" refers to a partial sample. The vessel has the number M on it. I can confirm that 120ml is more than is required so 120ml should not be a partial sample and the time this happened was "16.20" because that's what [was] written on the form. As I'm writing the vessel number on the form the athletes is following me and I also ask him to check with me. Now I'm being asked if, when the sample was brought into the Doping Control Room, there wasn't enough time for Mr. Moore to do the splitting because he was being called for another race and now I recall that this is exactly what happened and in fact that is why I recorded the time at 16.20 and the quantity as 120ml and the number is the number of the initial collection vessel. The number is written on the vessel itself. It's printed. The vessel itself has the letter M printed on it. All of them are marked like that. I am being asked if I wrote this number when Mr. Moore was there I would say that I don't recall exactly but usually I like the athlete to be present as I'm writing the form. When I wrote the time 16.20, at that point the sample was left in the Doping Control Room and Mr. Moore left to do his next race. He left it there because there was insufficient time for him to split it. The sample was left on the couch, somewhere in the room and there were also some other papers. The cup was closed and it was in a sealed plastic bag which is transparent."*

Moreover, Mr Schembri recalls that *"[w]hen earlier Mr. Moore left the room and left the samples behind we did not give him a paper indicating the number of the sample vessel. When he came back I got the specimen sample vessel and showed him the number of the form and he did the splitting. I'm sure I checked the number with him. In fact, now I'm recollecting that the sample was a full sample and not a partial and therefore since I had to write the information somewhere, I wrote it in that part of the form. I'm being referred to the A and B samples. The number 490808 are the numbers on the A and B bottles...Looking at the Doping Control Form I can state that the A and B samples were sealed at 17.25. The time of completion, when the form was closed, this was done at 17.30. After Mr. Moore left the sample at 16.20, I was not in the room continuously till 5.00pm when he returned and I was in and out of the room and in the intervening period other people went in and out of the room. Both athletes and officials. The door leading to the track was also*



open because some officials were outside this door watching the races. I am being asked if the number M493756 and the time the volume 120ml and the time 16.20 were written at the time when Mr. Moore was in the room, I can say that I'm not 100% sure whether he was in the room or not at that time. The time I believe is correct."

Neville Schembri in his deposition before the Panel also added that "[w]hen an athlete comes back either because initially the athlete would have given a partial sample or as in this present case because of the circumstances as stated, I have the athlete in front of me. I show him the form with the number on it and I show him the bag. I always do this so I am assuming that I also did it in the case of Mr. Moore. If the athlete has any concern I will stop there and make a report." and most importantly he said:

"Chairperson: But my question is: Mr. Moore's sample. Where was it? On the Couch?"

Neville Schembri: On the medical examination couch.

Chairperson: On the couch and not on the table?

Neville Schembri: No not on the table.

Chairperson: Was there anything else on the couch?

Neville Schembri: There were yes. There were some papers on the side.

Chairperson: And other samples?

Neville Schembri: At that point in time.....

Chairperson: When you were in the room.

Neville Schembri: I cannot recall exactly whether there was another sample at that time or not. I cannot recall exactly.

Dr. Abigail Sciberras: So on the couch there were the papers, Mr. Moore's sample and nothing else?

Neville Schembri: I am saying that I Don't recall.....

Dr. Borg Debono: As mentioned, once Mr. Moore provided the sample he did not have enough time to split the sample. So you proceeded with the Partial Sample Procedure. Was the collection vessel sealed when he passed this on?

Neville Schembri: Sealed of course.

Chairperson: Who sealed it?

Neville Schembri: He sealed it. I mean if you don't seal the urine will fall.

Dr. De Marco: Not Necessarily.

Neville Schembri: But if you have 120ml it will.

Dr. Borg Debono: Did you make sure that the collection vessel was sealed?

Neville Schembri: Yes definitely.....



Chairperson: When you left the room, who was in the room?

Neville Schembri: When I left the room various different people entered the room.

Chairperson: Mr. Moore was not in the room?

Neville Schembri: When I left the room no Mr. Moore was not in the room.

Chairperson: Who was in the room?

Neville Schembri: People from..

Chairperson: How many people?

Neville Schembri: I cannot tell you exactly how many. If you are asking me how much exactly I cannot tell you.

Dr. Sciberras: We are talking about the first time that Mr. Moore has given his sample.

Neville Schembri: When he did the sample yes.

Dr. Sciberras: And it was left in Room C.

Neville Schembri: Yes definitely.

Dr. Sciberras: So after it was left in Room C, what did you do?

Neville Schembri: What do you mean what did I do?

Dr. Sciberras: Did you stay in Room C because there were other athletes coming into the room or did you have to leave the room because there was a female athlete coming into the room? Or did you leave because someone replaced you? Or for no other reason?

Neville Schembri: Nobody replaced me. **While there was nothing nobody was in the room.** Yes there was a female athlete which had to go in and obviously I had to leave during that time.

Dr. Sciberras: So at that point any sample that was in the room was not under your supervision?

Neville Schembri: I was outside. I was not inside the room. If there is a female, I am not inside the room.

Dr. De Marco: I have further questions for you. You said that only authorized people, on the question of Dr. Borg Debono. You replied that only authorized people could enter the room. Authorised people would be officials hux hekk?

Neville Schembri: Yes.....

Dr. De Marco: You wrote it there. You did not right that in front of him.

Neville Schembri: That is what you are saying.

Dr. De Marco: You said that you could not remember. You said that.



Neville Schembri: What did I say? I said first that I cannot recall. I did not say that I did not.

Dr. De Marco: But we have others that recall. Are you in the habit..

Chairperson: Wait. Now you are saying that you wrote it in front of him?

Neville Schembri: Yes I wrote it in front of him."

- (d) The defence counsel produced as a witness Ms. Carrie Wingfield, an athlete who had also been tested during the games on the 11th of June 2016. During her written declaration and *viva voce* testimony during the sitting, Ms. Wingfield was asked about her testing and she stated that:

Chairperson: And this was during your first partial sample?

Charlotte Wingfield: Yes during my first partial sample.

Chairperson: So you just left the bottle and left?

Charlotte Wingfield: Yeah.

Dr. De Marco: And what happened with the second?

Charlotte Wingfield: I came in and it was not enough again so did it in a different pot.

Dr. Sciberras: So you chose a different one?

Charlotte Wingfield: Yeah I chose a different one and then I peed again and it was not enough. It was like a 30ml maybe. Then I gave it to the woman and I had to leave again because I had another race.

Chairperson: Do you recall if the vessel was sealed in a bag?

Charlotte Wingfield: No it was not sealed in a bag. I just left the pot. So when the pot came back and poured into one and then put that in there. I never saw all three pots at once. I was given the pots at the end.

Chairperson: And how were the pots? It was just the pot or was it in a bag sealed or something?

Charlotte Wingfield: It was just the pot.

Dr. Sciberras: So someone else touched your sample. That is what you are saying.

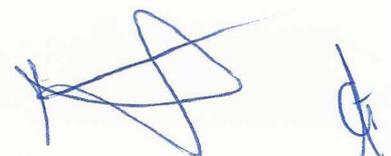
Charlotte Wingfield: I gave the chaperone the pot.

Chairperson: Did the chaperone or anyone else fill a form in front of you?

Charlotte Wingfield: Yes the Doping Control Form. I filled it out with them.

Chairperson: You?

Charlotte Wingfield: Yeah.



Chairperson: *And who wrote the details on it? You wrote them? So the number on the pot.*

Charlotte Wingfield: *I did not write it. She wrote it and I clarified that it was correct.*

Chairperson: *And this was before you were given the pot?*

Charlotte Wingfield: *I picked the pot and then she wrote the number of the pot on the Paper.*

Chairperson: *Ok so you passed the urine and you gave the pot to the Chaperone or to the lady.*

Charlotte Wingfield: *Yes.*

Chairperson: *And left.*

Charlotte Wingfield: *I said that I needed to go and see my family and then I left the pot with her and then I left.....*

Charlotte Wingfield: *.....I said "Kevin where is your pot? " and he said "Oh I just left it in there I am going to deal with it after".....*

Charlotte Wingfield: *So when he was warming up he said I need to pee. So he went to the doping room, had a pee and then they called him into the chorum. So just before he went to the chorum I said "Kevin did you pee?". He said "Yes but I left the pot there. They said I can get it afterwards". He then went to the chorum and raced and then when I came back after my race I saw him in there."*

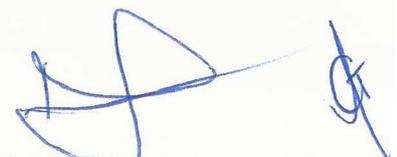
2.3. The Panel took note of all the evidence produced and the final written and oral submissions of the parties' legal representatives.

3. Considerations:

3.1. Taking into consideration the complexity of the case and the volume of evidence and testimony brought before the Panel, the presiding Panel requested the parties an extension of the 21 day period allowed to the NADP to deliver judgement as per Legal Notice 17 of 2015. The parties consented that the Panel is allowed an extension of 7 days over the timeframe established under the Legal Notice.

3.2. The bone of contention between the parties concerns the chain of events that occurred between the time when the athlete produced the required urine sample to when he returned from the 200m race. The two questions put forward are 'Did the athlete make sure that he closed the collection vessel and sealed it in front of the DCO before the athlete left the room?' and 'Did the DCO fill in the details relating to the collection vessel (the second part of the form) on the Doping Control Form in the presence of the athlete before the athlete left the room?'

3.3. From the evidence brought before the Panel it transpires that this case goes beyond the normal procedure of doping tests. During the test carried out on Kevin Moore, the athlete has produced a full sample but due to the circumstances the urine sample could not be split into the 'A' Sample and 'B' Sample immediately after the collection of the urine sample. The collection vessel containing the athlete's full sample had to be put aside so that the athlete could participate in the competition and the splitting had to be postponed at a later stage. The issue here is whether the defence counsel has proven to the satisfaction of the panel



that there were any irregularities in the doping test procedure that would bring doubts about the integrity of the sample collection.

- 3.4. The Panel deems it appropriate to delve into the issue of the Burden of Proof whereby the National Anti-Doping Organization is to establish "*to the comfortable satisfaction of the hearing body, bearing in mind the seriousness of the allegation which is made.*" (Article 3.1 of the WADC) an anti-doping rule violation. The comfortable satisfaction standard is always higher than the balance of probabilities but less than proof beyond a reasonable doubt and the degree of comfort may vary according to the seriousness of the allegations. Where these Anti-Doping Rules place the burden of proof upon the Athlete alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.
- 3.5. Moreover, when establishing facts and presumptions the Panel has to make reference to Article 4 (Proof of Doping) under of the Anti-Doping Regulations (Legal Notice 17 of 2015) which establish that:

- (2) (b) **WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted sample analysis and custodial procedures in accordance with the international standard for laboratories. The athlete or other person may rebut this presumption by establishing that a departure from the international standard for laboratories occurred which could reasonably have caused the adverse analytical finding. If the athlete or other person rebuts the preceding presumption by showing that a departure from the international standard for laboratories occurred which could reasonably have caused the adverse analytical finding, then the ADC shall have the burden to establish that such departure did not cause the adverse analytical finding;**
- (c) **departures from any other international standard or other anti-doping rule or policy set forth in the Code or in these regulations which did not cause an adverse analytical finding or other anti-doping rule violation shall not invalidate such evidence or results. If the athlete or other person establishes a departure from another international standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an adverse analytical finding or other anti-doping rule violation, then the ADC shall have the burden to establish that such departure did not cause the adverse analytical finding or the factual basis for the anti-doping rule violation;**

In this case the issue is whether the Panel is comfortably satisfied that the procedure adopted during the doping test was regular and correct so that it may conclude on the basis of a comfortable satisfaction that there is an adverse analytical finding. The Panel opines that proof of minor departures or deviances from the international standards such as inaccurate information in the Entry and Exit Form cannot be considered as sufficient proof to rebut to the adverse analytical finding. However, in this case the athlete also alleged that the collection vessel was not sealed and that the information relating to the urine sample was not written in his presence. Such allegation directly affect the requirements established under the WADC International Standards Testing and Investigations and could impinge on the adverse analytical finding.

- 3.6. Hence, the Panel deems it proper to refer to the procedure for the notification of athletes which is based on the WADC International Standards Testing and Investigations, in particular to Article 7 and Annex D and Annex F.



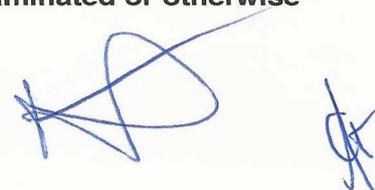
- 7.4.5** In conducting the Sample Collection Session, the following information shall be recorded as a minimum:
- a. Date, time and type of notification (no advance notice or advance notice);
 - b. Arrival time at Doping Control Station;
 - c. Date and time of sealing of each Sample collected and date and time of completion of entire Sample collection process (i.e., the time when the Athlete signs the declaration at the bottom of the Doping Control form);
 - d. The name of the Athlete;
 - e. The date of birth of the Athlete;
 - f. The gender of the Athlete;
 - g. The Athlete's home address, email address and telephone number;
 - h. The Athlete's sport and discipline;
 - i. The name of the Athlete's coach and doctor;
 - j. The Sample code number;
 - k. The type of the Sample (urine, blood, etc);
 - l. The type of test (In-Competition or Out-of-Competition);
 - m. The name and signature of the witnessing DCO/Chaperone;
 - n. The name and signature of the Blood Collection Officer (where applicable);
 - o. Partial Sample information, as per Article F.4.4;
 - p. Required laboratory information on the Sample (i.e., for a urine Sample, its volume and specific gravity measurement);
 - q. Medications and supplements taken within the previous seven days and (where the Sample collected is a blood Sample) blood transfusions within the previous three months, as declared by the Athlete;
 - r. Any irregularities in procedures;
 - s. Athlete comments or concerns regarding the conduct of the Sample Collection Session, as declared by the Athlete;
 - t. Athlete consent for the processing of Sample collection data;
 - u. Athlete consent or otherwise for the use of the Sample(s) for research purposes;
 - v. The name and signature of the Athlete's representative (if applicable), as per Article 7.4.6;
 - w. The name and signature of the Athlete;
 - x. The name and signature of the DCO;
 - y. The name of the Testing Authority;
 - z. The name of the Sample Collection Authority; and
 - aa. The name of the Results Management Authority.

[Comment to 7.4.5: All of the aforementioned information need not be consolidated in a single Doping Control Form but rather may be collected through the Doping Control and/or other official documentation such as a separate Notification form and/or Supplementary report. In addition to this information, additional requirements for the collection of Blood Samples for the ABP can be found in Annex K of this Standard.]

- 7.4.6** At the conclusion of the Sample Collection Session the Athlete and DCO shall sign appropriate documentation to indicate their satisfaction that the documentation accurately reflects the details of the Athlete's Sample Collection Session, including any concerns expressed by the Athlete.

Annex D-Collection of Urine Samples provides that:

- D.1** Objective: To collect an Athlete's urine Sample in a manner that ensures:
- (a) the Sample has not been manipulated, substituted, contaminated or otherwise tampered with in any way;
 - (b) the Sample is clearly and accurately identified; and



(c) the Sample is securely sealed in a tamper-evident kit.

D.3 Responsibility

D.3.1 The DCO has the responsibility for ensuring that each Sample is properly collected, identified and sealed.

D.4 Requirements

D.4.5 The Athlete shall retain control of the collection vessel and any Sample provided until the Sample (or partial Sample) is sealed, unless assistance is required by reason of an Athlete's impairment as provided for in Annex B – Modifications for Athletes with Impairments. Additional assistance may be provided in exceptional circumstances to any Athlete by the Athlete's representative or Sample Collection Personnel during the Sample Collection Session where authorised by the Athlete and agreed to by the DCO.

Due to the circumstances of the case once the splitting of the sample was not carried out immediately after the collection of the full sample and the collection vessel containing the full sample had to be put aside until the athlete returned to the Doping Control Room, the Panel deems it appropriate to refer to Annex F concerning partial collection of urine samples. The Panel opines that in such circumstances when the urine sample is not immediately split but it has to be put aside for some time and the athlete is to leave the Doping Control Room the collection vessel should be sealed and the code on such vessel should be recorded in the presence of the athlete on the Doping Control Form while it remains under the control of the DCO if the athlete is not present.

In this regard Annex F provides that:

F.4.3 The DCO shall then instruct the Athlete to open the relevant equipment, pour the insufficient Sample into the new container (unless the Sample Collection Authority's procedures permit retention of the insufficient Sample in the original collection vessel) and seal it as directed by the DCO. The DCO shall check, in full view of the Athlete, that the container (or original collection vessel, if applicable) has been properly sealed.

F.4.4 The DCO and the Athlete shall check that the equipment code number and the volume and identity of the insufficient Sample are recorded accurately by the DCO on the Doping Control form. Either the Athlete or the DCO shall retain control of the sealed partial Sample.

F.4.7 When the DCO is satisfied that the requirements for Suitable Volume of Urine for Analysis have been met, the DCO and Athlete shall check the integrity of the seal(s) on the container(s) containing the previously provided partial Sample(s). Any irregularity with the integrity of the seal(s) will be recorded by the DCO and investigated according to Annex A – Investigating a Possible Failure to Comply.

3.7. Having considered all the evidence produced, the Panel is of the opinion that the procedure conducted for the collection of the urine sample has been irregular. The Panel feels that the athlete has proved by a balance of probability that the violation of this IST could reasonably have caused his positive test result. This consideration is based primarily on the following determinant evidence:

Kevin Moore both before the adhoc Committee and before the Panel was consistent in his version of events whereby he confirms that the collection vessel was not sealed and that the Doping Control Form in particular the part relating to the details of the collection vessel was not written in front of him and when he signed the paper that part was blank. This has



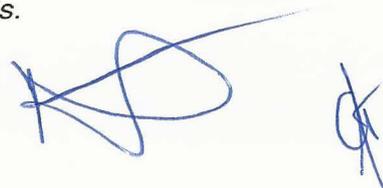
been corroborated by Ms. Charelotte Wingfield's testimony whereby it emerges that *a tempo vergine*, during the warming up for the 200m race, just after the collection of the urine sample Kevin Moore had told Ms. Wingfield that he had left the pot in the room and that he will be going to deal with it afterwards. Ms. Wingfield also confirms that during her testing she has submitted partial samples and such samples were never sealed but she has just closed the collection vessel and checked the information in the Doping Control Form but the vessels (which she calls pots) were never sealed.

On the other hand, the Panel is not satisfied with the testimony given by the DCO whereby during the MAAA Ad Hoc Committee which took place few weeks after the incident he stated that he was unsure whether Kevin Moore was in the room when he was writing down the details of the collection vessel whilst months after the incident the witness confirms that such information was written in the presence of Kevin Moore. It is strange how the DCO manages to remember this particular detail after more than 6 months but failed to confirm this few weeks after the incident.

The Panel here is not questioning the decision taken to notify Mr. Moore when there he had other competitions coming up and thus a short span of time to do the testing and the Panel is not even questioning the decision to send the athlete for the race and postpone the splitting of the full sample for later because such decisions are at the discretion of the DCO and are not in breach of any anti-doping regulation or standards. However, the Panel cannot discard the fact that the DCO does not comfortably convince the Panel that the athlete did seal the collection vessel and that the Doping Control Form was completed in front of the athlete before the athlete left the collection vessel in the room whilst the athlete has proven by a balance of probability that the testing regulations had not been observed and such departures from the standards and protocols established for testing were of major importance to establish an adverse analytical finding. The IST regulations were very clear in this regard and state that the procedure for the sample collection including the sealing was to be done by the athlete and that "*The DCO and the Athlete shall check that the equipment code number and the volume and identity of the insufficient Sample are recorded accurately by the DCO on the Doping Control form. Either the Athlete or the DCO shall retain control of the sealed partial Sample. Either the Athlete or the DCO shall retain control of the sealed partial Sample.*" (Annex F, Regulation F.4.4). According to the testimony of the parties involved this was not the case. Thus the athlete has proven by a balance of probability that the violation of this IST could reasonably have caused his positive test result and therefore the departure from the IST sample collection procedures did cause and invalidate the athlete's positive test.

The Panel recognises that the violations of some IST such as the DCO duties and obligations to verify with the athlete that the collection vessel is sealed and to complete the Doping Control Form in the presence of the athlete are serious violations which undermine the athlete's rights and such preclude the Panel from being comfortably satisfied that a doping violation has been committed. According to the Panel the athlete proved by a balance of probability that such breach to the IST had a significant impact on the testing result since the DCO during his testimony did not manage to comfortably satisfy the Panel that the collection vessel was sealed and the form was filled in the presence of the athlete.

- 3.8. On a final note, the Panel, fully embraces the opine of CAS in the case CAS 2015/A/3925 whereby it states at paragraph 111 of the judgement that "*The Panel agrees with the following admonition expressed by the panel in CAS 2009/A/1752 and 1753 as well as by the Sole Arbitrator in CAS 2014/A/3639 at para. 70: "Doping is an offence which requires the application of strict rules. If an athlete is to be sanctioned solely on the basis of the provable presence of a prohibited substance in his body, it is his or her fundamental right to know that the Respondent, as the Testing Authority, including the WADA-accredited laboratory working with it, has strictly observed the mandatory safeguards.*"



Strict application of the rules is the quid pro quo for the imposition of a regime of strict liability for doping offences... The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule appliers must begin by being strict with themselves".

4. Decision

Therefore, on the basis of the above considerations, the National Anti-Doping Disciplinary Panel rules that it is not finding Kevin Moore in breach of Anti-Doping Regulations, 2015 [Art. 3(2)(a) and (b)] and WADA Code (Art. 2.3) on the 11th June, 2016.

Consequently, the decision of the provisional suspension is being revoked and Kevin Moore is being acquitted from the charges brought against him.

A copy of this decision is to be forwarded to the Malta Amateur Athletic Association.



Dr. Maria Azzopardi
Chairperson



Dr. Abigail Gauci
Member

This 1st day of March, 2017.