

DECISION OF THE JAMAICA ANTI-DOPING (JAD) DISCIPLINARY PANEL INTO THE ADVERSE ANALYTICAL FINDING WITH RESPECT TO AN "A" SAMPLE TAKEN ON THE 24TH DAY OF JUNE 2011 FROM STEVE MULLINGS AT AN IN-COMPETITION TESTING AND HEARD ON THE 9TH, 10TH, 16TH, 17TH AND 21ST DAY OF NOVEMBER, 2011 AT THE JAMAICA CONFERENCE CENTRE.

JADCO v Steve Mullings.

Representations:

Mr. Lackston Robinson - JADCO

Mr. Alando Terrelonge - Steve Mullings

Introduction

We have been asked to determine whether there was any violation of the Jamaica Anti-Doping Commission (JADCO) rules as it relates to an adverse analytical finding in respect of an "A" sample taken on the 24th day of June, 2011 at an in-competition testing from Steve Mullings where the prohibited substance Furosemide was found in his urine sample.

Dr. Christiane Ayotte from the Laboratoire de contrôle du dopage in Quebec Canada, an accredited Laboratory of the World Anti-Doping Agency (WADA) conducted a test on the "A" sample of Steve Mullings and

found the presence of Furosemide a prohibited substance on the WADA Prohibited List 2011.

The "B" sample of Steve Mullings was likewise tested by Dr. Christiane Ayotte of the Laboratoire de contrôle du dopage in Quebec Canada, an accredited Laboratory of the World Anti-Doping Agency and confirmed the presence of furosemide a prohibited substance on the WADA Prohibited List 2011.

On the 5th day of October, 2011 JADCO filed Particulars of its case and its list of witnesses while on the 28th day of October, 2011 Steve Mullings filed his Particulars and outlined the witnesses to be relied on. JADCO called three witnesses namely Dr. Paul Wright, Dorrell Savage and Cara-Anne Bennett to support its case. Mr. Steve Mullings did not attend the hearing and did not call any witnesses.

Essential Facts of the Case

Dr. Paul Wright is a medical doctor and the lead Doping Control Officer for Jamaica. He has over Twenty (25) years of experience in Doping Control. That between the 24th to 25th of June 2011 he was Doping Control Officer for the National Senior Championships held at the National Stadium. Steve Mullings along with Steve McGuire his witness and representative were brought to Dr. Wright on the 24th June 2011 by Dorrell Savage his chaperone.

According to Dr. Wright he pointed Steve Mullings to the table with the sample containers and watched him select one and watched him go to the bathroom and returned with more than 90 mills of urine. The doctor stated that it was Steve Mullings who removed the plastic wrapper, removed the cover, removed the seal and placed urine in both bottles on his instructions. The bottles were then sealed by Steve Mullings and then placed in a plastic bag and then a Styrofoam container which Mullings also sealed.

Dr. Wright was then showed a document which later became Exhibit 1, the Doping Control Form which he indicated was completed by both himself and Steve Mullings. According to the Doctor, Mr. Mullings wrote the number that he saw on the Styrofoam kit that he had selected in section 3 of the Doping Control Form. According to the Doctor the number that was written in that section was 2381773 and the Doctor noted that this was the same number that was on the sample kit that was selected by Mr. Mullings. The Doctor went further to say that at the bottom of section 2 of the same Doping Control Form that Mr. Mullings wrote the word "**none**" indicating he had nothing to declare. The Doctor said that

the form was then signed by Mr. Mullings and it was also signed by Mr. Steve McGuire, Mr. Mullings' representative and it was also signed by Mr. Dorrel Savage and by Dr. Wright himself.

According to Dr. Wright when the process was completed the Doping Control Form was dated and the time was written in. Dr. Wright indicated further that he made an error on the form as it relates to the time and indicated that where he had 20:51 that it should have been 22:51 and that the time Mr. Mullings came into the Doping station was in fact 22:31 instead of 20:31. The Doctor explained that his watch was somewhat sensitive and that if you touch the surface of the watch the time changes. Dr. Wright also noted that he took Mr. Mullings' sample first to his car and later to a vault at a secured location where he watched the vault being closed. The Doctor said that on Monday the 27th of June, 2011 he went back to the vault, removed the said sample and took it to the courier. At FedEx the sample was placed in a box and the box sealed in his presence.

The next document was the Chain of Custody Form which is (Exhibit 2). The Doctor explained that this form indicated when he left the Stadium with the sample, which was 12:15 a.m. on the 25th and then at 12:35 that same morning he arrived at the secured location where the vault was. On the 27th June, 2011, the Doctor went to the vault about 9:17 a.m. and he got to FedEx by 9:25 a.m. The FedEx officer signed the form as well as himself. The Doctor pointed out also that he obtained an Airway Bill with a tracking number from the FedEx officer.

The Doctor was cross-examined at length by Mr. Terrelonge and he indicated that Mr. Mullings was tested only once that weekend. The Doctor agreed that on the 24th of June after 10:00 p.m. Mr. Mullings was the only athlete in the doping control area along with his chaperone and his representative. The Doctor indicated also that he never physically saw Mr. Mullings passing urine but his chaperone was present. The Doctor agreed that there was a refrigerator in the doping control area which had one key but noted that two persons had access to this key. The Doctor stressed that Mr. Mullings sample was by his side at all times and that the doping control area is a strictly policed area and no unauthorized persons were allowed. Dr. Wright stated that the Site Coordinator was the only other person who had access to the key to the refrigerator.

The Doctor indicated that he did not know the combination to the vault, but when he went back to the vault there was one other person there. The Doctor noted that the samples were sent to the laboratory in Canada and that he was not there in Canada when they were being examined.

Under re-examination by Mr. Robinson, the Doctor noted that drinks were provided but drinks were not offered to the athletes. The Doctor went further and stated that the athletes were free to take whatever they wanted and that nothing was offered to Mr. Mullings.

The next witness for JADCO Mr. Dorrell Savage was sworn, he stated that he was appointed a chaperone for the National Senior Championships which was held at the National stadium on the 24th of June, 2011. He indicated that he was given a

clipboard with a doping form by the Lead Chaperone and was instructed to select the person who finished third in the one hundred metres male race. Mr. Savage said that he proceeded to the finished line at the National stadium for the one hundred metres male race. He indicated that it was a photo-finish so he had to wait to determine who finished in what position.

According to Mr. Savage the placing, eventually came up on the big screen and it confirmed that Steve Mullings was placed third. He said he then indicated to Mr. Mullings that he was selected for testing. Mr. Savage said that he made a note of the time he notified Mr. Mullings on the doping form and that Mr. Mullings and his representative both went to the doping station.

The Exit and Entry log (Exhibit 6) was shown to the witness and Mr. Savage pointed out that the time 10:31 on the form represented the time he, Mr. Mullings and Mr. Mullings' representative arrived at the doping station. Mr. Savage indicated that he accompanied Mr. Mullings to the bathroom stall of his choice where he watched him passed urine in a container that Mullings had selected. Mr. Savage indicated that Mr. Mullings did not pass enough urine initially so he redressed himself, sealed and kept the container. Mr. Savage noted that he and Mr. Mullings went back to the waiting area. He said Mr. Mullings made a second attempt to pass the urine and that on the second

occasion the required amount of urine was passed. Mr. Savage noted that Mr. Mullings and his representative then went to Dr. Wright to complete the process.

Mr. Savage was then shown the Doping Control Notification Form (Exhibit 7). According to Mr. Savage the time of notification as indicated on this form was 21:30 or 9:30 p.m. indicative of the time Mr. Mullings was notified by him for the doping control test.

Mr. Savage was cross-examined by Mr. Terrelonge. Mr. Savage stated that he was almost 100% sure that Mr. Mullings had his own container from which he drank that day. Mr. Savage agreed that drinks were provided for the athletes.

The final witness for JADCO was Cara-Anne Bennett. She was sworn and stated that she was employed to JADCO for the past three-and-a-half (3 1/2) years as the Doping Control Results Coordinator. She said that she was the Coordinator for the National Championships held in June, 2011 at the National Stadium. She noted that as the Site Coordinator, she had to ensure that the doping control station was set up in accordance with international standards and that the facility was properly secured from the outside, from unauthorized individuals. She noted that there were two police officers who helped to secure the area along with barriers which were used to barricade the doping control station. Miss Bennett said that it was the Executive Director at the time who gave orders as to which race and events would be chosen for doping control.

First she was shown the FedEx detailed results which are the tracking forms and then there is also a letter from FedEx which confirms that the laboratory in

Canada received the package from FedEx and those were later tendered as (Exhibits 8A and 8B). Miss Bennett indicated that the tracking forms (Exhibits 8A and 8B) would be the tracking form and proof of delivery, while the Sample Receipt Acknowledgement Certificate (Exhibit 9) received from the Laboratory was acknowledging receipt of all the samples collected at the National Senior Championships and which were sent to the laboratory by Dr. Paul Wright.

Miss Bennett pointed out that sample number 2381773 which appears on the certificate, coincided with the number for which an Adverse Analytical Finding was received. Importantly, Miss Bennett indicated that all the samples had numbers.

According to Miss Bennett the Certificate of Analysis (Exhibits 10A and 10B) was received by JADCO from the WADA accredited laboratory which stated that an adverse Analytical Finding was reported for the following: Sample code: 2381773 Lab code: 1109688A Sex: Male and; Furosemide.

Whereas the Amended Certificate of Analysis stated that "An Adverse Analytical Finding is reported for the following samples Sample code: 2381773 Lab code: 1109688A Sex: Male and; Furosemide. Miss Bennett noted that the second certificate was a confirmation of the first. According to Miss Bennett (Exhibit 11A) Notification of the Adverse Analytical Finding is the document which was

sent to Mr. Steve Mullings notifying him of the Adverse Analytical Finding in his A sample.

Miss Cara-Anne Bennett explained that the FedEx documents were generated from the FedEx website and that JADCO had a user name and password for an account that JADCO has with FedEx. Miss Bennett noted that this password allowed JADCO and herself to view the tracking of the shipments that are sent from FedEx to the WADA accredited laboratory in Canada. Miss Bennett maintained that the letters from the laboratory in Canada were received by secured emails. The Initial Review regarding an Adverse Analytical Finding Report (Exhibit 12) served the purpose of reviewing all the doping control documents to see if there were any discrepancies with the process or in the documents. Importantly she stated that having reviewed the documents there were no discrepancies.

Miss Bennett then made reference to a letter to Mr. Kent Gammon from JADCO advising him as Chairman of the Disciplinary Panel of the Adverse Analytical Finding with respect to Steve Mullings as is required by the Rules. Then there were similar letters to Mr. Howard Aris, notifying the National Federation of the Jamaica Amateur Athletics Association, the International Association of Athletics Federation and Mr. David Howman of the World Anti-doping Agency.

Miss Bennett made reference to another important document (exhibit 14A) which was a letter to the laboratory indicating that Mr. Mullings had agreed to August 16th as the date for the Analysis of the B sample and naming Mr. Paul Scott as his

representative to be present for the identification, opening and analysis of the sample. In addition the laboratory report (Exhibit 20) indicated that there was no evidence of tampering and this was signed and witnessed by Paul Scott, Mr. Steve Mullings' representative.

Miss Bennett was cross-examined at great length by Mr. Terrelonge and she indicated that she was not the most senior person at JADCO at the time but that she helped to prepare some of these letters. She agreed that she never went to the laboratory in Canada. With permission Mr. Robinson was allowed to ask the witness a further question to which Miss Bennett indicated that the substance named on exhibit 10A and 10B was furosemide and that it was listed on page 10 of WADA Prohibited List 2011. That was the end of the case for JADCO. Neither Steve Mullings nor his witnesses were present and as such we heard no evidence on his behalf. His Attorney however sought to tender an Affidavit but the panel exercised its discretion and did not allow this Affidavit to form part of Mr. Mullings' case.

ESSENTIAL FINDINGS OF PANEL

The Article 1.2.1 of the JADCO Anti-Doping Rules states that these rules apply to all persons who:

- 1.2.1.1. are members of a National Sports Federation of Jamaica, regardless of where they reside or are situated;**
- 1.2.1.2 are members of a National Sports Federation's affiliated members, clubs, teams, associations or leagues;**
- 1.2.1.3 participate in any capacity in any activity organized, held, convened or authorized by a National Sports Federation of Jamaica or its affiliated members, clubs, teams, associations or leagues; and**
- 1.2.1.4 participate in any capacity in any activity organized, held, convened or authorized by a National Event organization, or a national league not affiliated with a National Sports Federation.**

The Panel has unchallenged evidence before it that Steve Mullings did participate at the Jamaica National Championships held at the National Stadium on June 24, 2011 by competing in the one hundred metres mens race. On this basis we are comfortably satisfied that Mr. Mullings falls within the jurisdiction of the Jamaica Anti-Doping Commission Anti-Doping Rules.

Section 10 sub-section (1) of the Anti-Doping in Sport Act 2008 states that;

Except in any case where an athlete holds a Therapeutic Use Exemption Certificate and is in compliance with the terms of such Therapeutic Use Exemption Certificate, the athlete is liable for the presence of any prohibited substance or its metabolites or markers found in his body.

The Panel is comfortably satisfied based on the evidence of Miss Cara-Anne Bennett that Furosemide is a Prohibited substance named on the WADA Prohibited List 2011. We are also comfortably satisfied on the evidence before us Mr. Mullings had no Therapeutic Use Exemption Certificate.

Article 2.1.1 of the JADCO Anti-Doping Rules states that:

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 Makers 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 rule violation under Article 2.1.

Article 2.1.2 further provides that sufficient proof of an Anti-Doping Rule violation under Article 2.1 is established by either of the following: **Presence of a Prohibited Substance or its Metabolites or Makers in the Athlete's A Sample**

where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample.

In the case of Mr. Mullings both his A and B Samples returned Adverse Analytical Findings. The Panel is therefore comfortably satisfied that there is sufficient proof of an Anti-Doping Rule violation.

The Panel accepts the witnesses for JADCO as credible witnesses based on their demeanour and the cogency of their evidence. We are also comfortably satisfied that there was no breach in the chain of custody and/or in the integrity of the urine sample of Mr. Mullings. Dr. Paul Wright admitted that he made a mistake as to the time he wrote on the Doping Control Form (Exhibit 1) as to the time Mr. Mullings arrived at the Doping Station. This Panel in assessing this discrepancy as to the arrival time looked to the evidence of the other witnesses and in particular that of Mr. Dorrel Savage, Mr. Mullings' Chaperone. Based on the evidence of Mr. Savage it is clear that Mr. Mullings was not at the Doping Station at 20:31 as is indicated on the Doping Control Form (Exhibit 1). This is further confirmed by (Exhibit 6) which is the Entry and Exit log which states that Mr. Mullings time in at the Doping Station was 10:31. Of much significance is the fact that this Entry Log was signed by Mr. Mullings and witnessed by his representative.

In addition (Exhibit 7) which is the Doping Control Notification Form states that

Mr. Mullings was notified by his chaperone Mr. Savage at 21:30 which would be 9:30. The evidence of Mr. Savage is quite consistent as to the time Mr. Mullings was notified and subsequently arrived at the Doping Station. As such the Panel is comfortably satisfied that the mistake in the arrival time on the Doping Control Form Exhibit 1 was clarified by the other witnesses and therefore was not detrimental to the reliability of the process. Neither do we believe that such a mistake in any way vitiates the credibility of Dr. Paul Wright. We therefore accept the evidence of Dr. Wright that Steve Mullings selected sample kit bearing the number 2381773 pass urine in the presence of Mr. Savage his chaperone and sealed the said kit in the presence of Dr. Wright and Mr. Savage.

We also accept the evidence of Miss Cara-Anne Bennett that she received by secured email the laboratory report from Canada which is Exhibit 20 in respect of the B Sample opening. It states thus:

“On the 16th of August 2011, the undersigned witnessed the opening of the “B” sample coded, B2381773 at the INRS- Institut Armand-Frappier Laboratory in Laval, Quebec. The “B” Berlinger bottle was examined by all parties. The identification code corresponded to one written on the Doping Control Form, the cap was securely closed and there was no evidence whatsoever of tampering.

Based on the examination, the undersigned agree there is no evidence of tampering and that sample code B2381773 be provided to the INRS- Institut Armand-Frappier personnel to undertake the confirmation analysis procedures.

Dated at Laval, 16th August, 2011 and signed by: Christine Ayotte INRS- Institut Armand-Frappier representative and; Paul Scott, athlete's representative.

Importantly Mr. Paul Scott was appointed by Mr. Mullings to so represent him.

Article 3.2.1 of the JADCO's Anti-Doping Rules states that:

WADA- accredited Laboratories 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 occurred which could have reasonably caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard occurred which could have reasonably caused the Adverse analytical Finding, then JADCO shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

In this case Mr. Mullings has not provided this Panel with any evidence to rebut this presumption. No evidence was adduced before us to suggest that the INRS Institut Armand- Frappier departed in this instance from the International

Standards for Laboratories. In the absence of any evidence of irregularity or compromise in the process the Laboratory Analysis is deemed to be correct.

Mr. Steve Mullings did not attend the hearing neither did he call any witnesses. In short he did not put forward a Defence. On the very day the hearing commenced

Mr. Mullings through his Attorney-at-Law sought to tender an Affidavit. This Panel exercised its discretion and refused to admit this Affidavit as part of the evidence in this case. This Panel was initially convened on August 22, 2011. At this sitting the Panel made certain Case management Orders. The first order was that JADCO was to file and serve the Particulars of its case and list of witnesses with The JADCO's Disciplinary Panel Secretariat and on the Attorneys for Mr. Mullings Messers. Bailey, Terrelonge and Allen. This was to be done by the 12th September 2011. Secondly M. Mullings was to file the Particulars of his case and list of witnesses with the Secretariat and serve JADCO by the 3rd of October, 2011. Thirdly JADCO was to file a reply if any and the hearing date was agreed for October 19th and 20th 2011.

On the 19th October, 2011 the hearing was further adjourned and Mr. Mullings given more time to file his Particulars since JADCO was late in filing theirs. Mr. Mullings filed the Particulars of his case on the 28th October 2011. Mr. Mullings on that date also filed the list of witnesses who were as follows;

1. Steve Mullings
2. Paul Scott
3. Steve Dudley
4. Dr. Paul Wright

There was absolutely no indication whatsoever in Steve Mullings' Particulars that he was unable to attend the Hearing. It is a fact that on each and every occasion Mr. Mullings was advised by the JADCO's Disciplinary Panel Secretariat of the date for the hearing and that he should attend in person. Prior to the 9th November

2011 there was no application by Mr. Mullings to adduce his evidence by way of an Affidavit .Likewise there was no application whatsoever by Mr. Mullings to give his evidence via a video link.

Based on the seriousness of the allegations against Mr. Mullings and in keeping with the agreed Case Management Orders the panel expected Mr. Mullings to have presented himself for cross-examination in the same way that the witnesses for JADCO had to endure the rigors of cross-examination. If the Panel had allowed Mr. Mullings Affidavit to have been admitted then it would have become sworn unchallenged evidence which we would have had to accept. In other words there would be no way of testing the veracity of the contents of such an Affidavit. Moreover the fact that Mr. Mullings' other witnesses listed in his Particulars failed to turn up also raised serious questions.


CONCLUSION

The Jamaica Anti-Doping Disciplinary Panel based on the totality of the evidence is comfortably satisfied that Mr. Steve Mullings is in violation of the JADCO Anti-Doping Rules **Article 2.1.1** and it is our unanimous verdict that he is liable for the presence of the prohibited substance Furosemide in both his "A" and "B" Samples.

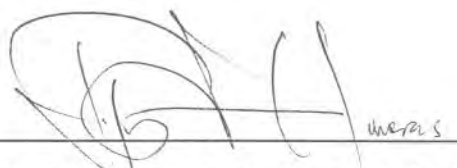
This Panel has confirmation by way of letter from the Jamaica Amateur Administrative Association (JAAA) that Steve Mullings was tested positive for the prohibited substance Methyl Testosterone Metabolite in 2004 and was sanctioned under the International Association of Athletics Federations (IAAF) **Rule 32.2**.

Therefore In determining what the current sanction should be, this Panel relied on **Article 10.7** of the JADCO Anti-Doping Rules which deals with multiple violations. Based on the facts of Steve Mullings case and pursuant to **Article 10.7** he would fall in the category of a standard sanction. So by virtue of **Article 10.7** of the JADCO Anti-Doping Rules for Steve Mullings' second Anti-Doping violation the unanimous sanction of this Panel is that he be ineligible from Sports for life.

DATED THIS 21ST November 2011

PER; 
LENNOX GAYLE – CHAIRMAN OF THE JAD DISCIPLINARY PANEL

PER; 
PETER PRENDERGAST – MEMBER OF THE JAD DISCIPLINARY PANEL

PER; 
DR. JAPHETH FORD – MEMBER OF THE JAD DISCIPLINARY PANEL