

DISCIPLINARY HEARING
Before
THE JAMAICA ANTI-DOPING DISCIPLINARY PANEL
Between
JAMAICA ANTI-DOPING COMMISSION **Complainant**
and
ASAFA POWELL **Respondent**

Complainant: **Mr. Lackston Robinson, Carey Brown and Miss Marsha Williams**
Respondent: **Mr. Kwame Gordon and Daniel Chai**

BACKGROUND

1. The summary of this case is based on the parties' witness statements, written submissions and evidence adduced at the hearing.
2. Mr. Powell began his track and field career in high school. He first represented Jamaica at the 2002 Commonwealth Games.
3. Mr. Powell soon rose to prominence as a world class professional sprinter representing Jamaica at the World Championships and the Olympics.
4. Asafa Powell participated at the JAAA National Senior Championships at the National Stadium on June 21, 2013.
5. Mr. Powell participated in the 100m event and was selected for doping control.
6. A urine sample was properly collected from Mr. Powell and the proper chain of custody observed. This urine sample was sent to the WADA accredited laboratory in Canada.
7. Mr. Powell's urine sample was analyzed on July 11, 2013 and a certificate was issued by Professor Christiane Ayotte, Director of the Doping Control Laboratory.

8. This certificate revealed an adverse analytical finding for the sample and specified the presence of "OXILOFRINE."
9. Oxilofrine is listed as a "specified stimulant" which is prohibited in competition on the WADA Prohibited List 2013.
10. Mr. Powell was notified by Jamaica Anti-Doping Commission (JADCO) by letter dated July 12, 2013 of the adverse analytical finding.
11. JADCO requested from Mr. Powell an explanation for the adverse analytical finding.
12. Mr. Powell did not respond to the request for an explanation of the adverse analytical finding.
13. As requested by Mr. Powell his "B" sample was analyzed on August 1, 2013 and a certificate issued by Professor Ayotte of the WADA accredited laboratory confirmed the presence of oxilofrine in his urine sample.
14. Mr. Powell was notified of the adverse analytical finding in respect of his "B" sample on August 5, 2013.
15. On August 14, 2013 Mr. Powell's Attorneys-at-Law Samuda & Johnson wrote to JADCO indicating that Mr. Powell was admitting to the Anti-Doping Rule violation and that he accepted the provisional suspension.
16. JADCO then referred the matter to the Jamaica Anti-Doping Disciplinary Panel.
17. Mr. Powell called several witnesses during the course of the hearing with a view to mitigate the applicable sanction under Article 10 of the JADCO Anti-Doping Rules.
18. Mr. Powell relied on his own written statement and *viva voce* evidence. He also relied on the written statements and *viva voce* evidence of Sherone Simpson, Gregory Plummer, Paul Doyle and Professor Wayne McLaughlin. While Cathy Rattray-Samuel and Dr. Paul Wright were made available by JADCO for cross examination.

ASAFA POWELL'S EVIDENCE

19. Mr. Powell's evidence revealed *inter alia*, that at the material time he was a member of the MVP track club coached by Steven Francis and managed by Mr. Paul Doyle.

20. It was revealed that on June 21, 2013 when he gave his urine sample he had failed to disclose the use of the supplement Epiphany D1 which he took the very morning of the competition.
21. Mr. Powell stated that he started out taking two (2) tablets of Epiphany D1 once per day; however, on the morning of the National Trials he increased the dosage to four for that day.
22. Mr. Powell stated that in May, 2013 he had a recurring hamstring injury.
23. Chris Xuereb was hired by his Manager Paul Doyle as a physical therapist to work on his injury.
24. Chris Xuereb started working with the Respondent on the May 8, 2013.
25. Chris Xuereb recommended several supplements including Epiphany D1.
26. That before Chris Xuereb, Mr. Powell took Cel Tech, Nitro Tech, Mega-man Sport and Vitamin C which were recommended by coach, Steven Francis.
27. Mr. Xuereb left Jamaica for Canada on June 5, 2013 and returned on June 6, 2013 with these supplements.
28. Mr. Powell asserted that he spent six (6) hours per day for two (2) days checking the ingredients of all the supplements on Google.
29. He further checked those ingredients against the WADA Prohibited List.
30. Mr. Powell said that he was satisfied that the Supplements were all clean.
31. Chris Xuereb sent the lists of the supplements to Paul Doyle who confirmed that they were clean.
32. Mr. Powell also stated that Chris Xuereb gave him Vitamin B-12, actovegin and anti-inflammatory injections.
33. That on June 13, 2013 he was informed that he tested positive for the banned substance oxilofrine.
34. Mr. Powell stated that he was not aware that supplements may be contaminated or mislabeled.

35. That he had never received any anti-doping education from JADCO.
36. He learned on the same day that Sherone Simpson also tested positive for the same substance.
37. Mr. Powell stated that he suspected that his adverse analytical finding came about from something Chris Xuereb gave him especially since Sherone Simpson, who was also treated by Mr. Xuereb, was tested positive for the same substance.
38. Mr. Powell stated that he caused his agent Paul Doyle to call WADA Chief Investigative Officer Jack Robertson and notified him that he suspected that the adverse analytical finding was caused by something that Mr. Xuereb gave him.
39. Jack Robertson in turn notified the Italian authorities who later carried out a search of his hotel room as well as the room of Mr. Xuereb.
40. That a bottle of Epiphany D1 was sent to a laboratory in Miami by Adrian Laidlaw and coach, Steven Francis, then they reported to Mr. Powell that it returned a positive finding for Oxilofrine.
41. HFL Sport Science Laboratory in Kentucky, United States of America tested two (2) separate batches of Epiphany D1 and the results showed that one batch from Mr. Powell's camp was positive for Oxilofrine and the other batch received directly from the company was not.

WITNESSES

Sherone Simpson

42. Miss Simpson stated that she knew Asafa Powell for over ten (10) years and that he would never knowingly ingest a banned substance.

Gregory Plummer

43. Mr. Plummer stated that he is an old friend of Mr. Powell and he was present when Mr. Powell did the Google search of the ingredients of Epiphany D1 and checked them against the WADA Prohibited List.

Paul Doyle

44. Mr. Doyle stated that he wanted a full time physical trainer to work on Asafa Powell injuries.
45. That Dr. Carmine Stillo recommended Chris Xuereb to him.
46. Chris Xuereb was hired initially for a one-week trial period after which he was hired on a full time basis.
47. Chris Xuereb treated Asafa with soft tissue massage and recommended nutritional supplements.
48. Mr. Xuereb also treated Miss Simpson.
49. Mr. Doyle admitted that Mr. Xuereb was not a chiropractor, doctor or a physiotherapist and that he never tried to find out whether or not he had any certifications.
50. Mr. Doyle could only confirm that Mr. Xuereb had practical experience.
51. Mr. Doyle told Mr. Xuereb to send the invoices for all the supplements to him, this was done but Epiphany D1 was not on the invoice sent by Mr. Xuereb.
52. Mr. Xuereb administered injections to Mr. Powell.
53. Mr. Doyle said he could not speak to Mr. Xuereb's competence in administering injections.

Professor Wayne McLaughlin

54. Wayne McLaughlin stated that he was a Professor of Molecular Biology at the University of the West Indies Caritox Laboratory.
55. That he tested Epiphany D1 capsules which were in a bottle provided by Mr. Powell's Attorneys-at-Law.
56. Two (2) techniques were used in analyzing the capsules: the LC/MS/MS and GC/MS.
57. Oxilofrine was not in the library of either the LC/MS/MS or the GC/MS but its synonyms were.

58. The certificate for the analysis by LC/MS/MS showed a positive finding for Methyl Synephrine (oxilofrine).
59. The certificate for the analysis by GC/MS showed a positive finding for Methyl Synephrine (oxilofrine) - Benzene Methanol was the chemical identified.

Dr. Paul Wright

60. Dr. Paul Wright gave evidence to the effect that he was the lead Doping Control Officer for the Jamaica Anti-Doping Commission (JADCO) since its inception.
61. It is his view that the athletes need not take supplements.
62. That he hands out a Prohibited List Booklet to athletes after a doping test but cannot recall ever giving one to Asafa Powell.
63. He stated that he had conducted several seminars on anti-doping across the island using PowerPoint presentation.
64. He stated that during these presentations, athletes, coaches, parents and athlete's support personnel were warned about the dangers of supplements.
65. That JADCO is not the only source of education on anti-doping.

Cathy Rattray-Samuel

66. Mrs. Rattray-Samuel gave evidence to the effect that she was the acting Executive Director for JADCO from May to August 2013.
67. That she worked hard in trying to get a website up and running for JADCO as she thought it important that JADCO had their own website.
68. That JADCO conducted seminars, workshops and issued pamphlets in their own bid to educate athletes.

APPLICABLE LAW

69. Mr. Powell having admitted to the anti-doping rule violation, the Panel must impose a sanction in accordance with the applicable rules.
70. Article 10.2 provides that on a first violation the standard sanction is two (2) years ineligibility.
71. In the case of **Doping Authority Netherlands v N CAS 2009/A/2012**, it was established that the two-year sanction for a first time offence was mandatory unless there were exceptional circumstances or the conditions under Article 10.4 were met.
72. Pursuant to Article 10.4, the two-year sanction may be eliminated or reduced if the prohibited substance is a specified substance, if the athlete establishes that he or she bears no fault or negligence, if the athlete proves that he or she bears no significant fault or negligence and if it is established that the substance was not intended to enhance sport performance.
73. Article 10.4 of the JADCO Rules provide that “where an athlete or other person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified substance was not intended to enhance the athlete’s sport performance or mask the use of a performance-enhancing substance, the period of ineligibility found in Article 10.2 shall be replaced with the following:

“First violation: At a minimum, a reprimand and no period of ineligibility from future events, and at a maximum, two (2) years’ Ineligibility”.
74. This Panel accepts that oxilofrine is a Specified Substance based on the WADA Prohibited List 2013.
75. By the process of elimination, Mr. Powell stated that the source of his adverse analytical finding was most likely caused from the supplement Mr. Xuereb gave him especially since Sherone Simpson who was also treated by Mr. Xuereb and was tested positive for the same substance.
76. Moreover, the HFL Sports Science Laboratory in United States of America and Caritox in Jamaica support the fact that oxilofrine had been found in the batches of Epiphany D1 which were supplied by the Powell camp.
77. In addition United States Anti-Doping Agency (USADA) Dietary Supplement High Risk List added Epiphany D1 as a source of oxilofrine since early September, 2013.

78. Furthermore, there was no evidence that any other supplements which Mr. Powell was taking contained oxilofrine.
79. Based on the totality of the evidence the Panel accepts the Respondent's assertions on a balance of probability that oxilofrine entered his body as a result of the ingestion of Epiphany D1.
80. The athlete must now establish to the comfortable satisfaction of the Hearing Panel that the presence or possession of the offending substance was not intended to enhance sport performance.
81. The athlete must also adduce evidence from another source which supports his evidence and shows that he had no intention to enhance sport performance.
82. The explanatory notes and Comments to Article 10.4 of the WADA Code states that this Article applies only in those cases where the Hearing Panel is comfortably satisfied by the objective circumstances of the case that the athlete in taking or possessing a prohibited substance did intend to enhance his/her sport performance.
83. The Respondent in this case maintained that he did not know that there was any prohibited substance in Epiphany D1.
84. That he did extensive research and specifically made Google checks of all the ingredients listed on the Epiphany D1 bottle and no banned substances were revealed.
85. That the Respondent started taking the product weeks prior to the National Trials and that there was nothing on the Epiphany D1 bottle or on the official website to indicate that it can improve performance.
86. This Panel agrees with the argument in the case of **FINA v Cielo** CAS 2011/A/2495. The failure by Mr. Powell to disclose Epiphany D1 or any of the several new supplements given to him by Chris Xuereb on the Doping Control Form per se is not sufficient to conclude that there was an intention to enhance sport performance.
87. Sherone Simpson testified to corroborate the fact that she knew Mr. Powell for a long time and that he did not know that Epiphany D1 contained the Specified Substance oxilofrine.
88. In **Oliveira v USADA** CAS 2010/1/2107 the panel argued that "although an athlete assumes the risk that a nutritional supplement may be mislabeled or contaminated and is strictly liable for ingesting any banned substance, Article 10.4 of the World Anti-

Doping Code (WADC) distinguishes between Specified and Prohibited Substance for the purposes of determining an athlete's period of ineligibility. Article 10.4 provides a broader range of flexibility (i.e zero to two years' ineligibility) in determining the appropriate sanction for an athlete's use of Specified Substance because "***there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible non-doping explanation***".

89. Mr Powell's evidence which was corroborated by that of Miss Simpson establishes to the comfortable satisfaction of the Panel that he did not intend to enhance his sport performance by unknowingly ingesting oxilofrine.
90. It was held by the Panel in **Oliveira v USADA** case, that Miss Oliveira's "degree of fault" was only relevant in determining whether her period of ineligibility should be reduced. Whether Oliveira was wilfully ignorant to the composition of a supplement [Hyperdrive 3.0+] she took, is only relevant to her "degree of fault" not her intent to enhance Sports performance.
91. Having accepted that the requirements of Article 10.4 have been met, the Panel must now determine the athlete's degree of fault.
92. Article 10.4 states that the athlete or other person's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility.
93. The Commentary to Article 10.4 provides that in assessing the athletes or other persons degree of fault the circumstances considered must be specific and relevant to explain the Athletes or other person's departure from the expected standard of behaviour.
94. Mr. Powell asserted that based on the totality of the circumstances to determine whether Epiphany D1 contained any banned substances, he was not wilfully ignorant, that he bore no significant fault and as such he was entitled to a reduction in the presumptive two (2) years period of ineligibility.
95. He did some six (6) hours per day for two (2) days researching Epiphany D1 before taking it and none of the listed ingredients showed up any banned substances.
96. JADCO on the other hand argued that as an elite athlete he was significantly negligent and as such was not entitled to any reduction in the two (2) years period of ineligibility.
97. It must be highlighted that athletes who take nutritional supplements do so at their own peril as it is well known that supplements are sometimes mislabeled or contaminated.

98. In **WADA v Hardy & USADA** CAS 2009/A/18709 (page 50), the Court of Arbitration for Sport (CAS) stated that “much information has been given and stringent warnings have been issued in this respect. As a result this Panel finds that the level of diligence due by an athlete rose over the years, and the athlete’s behaviour should be considered with care, when assessing the measure of the sanction he or she should receive”.
99. Article 2.1 of the JADCO rules states categorically that *“it is each athlete’s personal duty to ensure that no Prohibited Substances enter his or her body. Athletes are responsible for any Prohibited Substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the athletes’ part be demonstrated in order to establish an anti-doping rule violation”*.
100. Mr. Powell relied on the manufacturer’s listing of ingredients and took the risk of consuming the supplement Epiphany D1.
101. Mr. Powell did no scientific test nor sought any professional advice on these supplements before consuming them.
102. Moreover, he did no research on the background or qualifications of Mr. Xuereb.
103. Mr. Powell did not seek to verify the exact source of these supplements he received from Mr. Xuereb.
104. Mr. Powell did not question the reason why Mr. Xuereb had to go personally to Canada to obtain the supplements.
105. Mr. Powell allowed a virtual stranger whom he did not know to be a nutritionist or a medical practitioner to provide unknown supplements to him and to administer injections.
106. Mr. Powell failed to exercise the standard of care required for no fault or negligence; namely, utmost caution.
107. Mr. Powell is no doubt an experienced world class sprinter who is aware of the issue of doping and who has access to information which is in the public domain.
108. It is true that Mr. Powell did take some steps to ensure that Epiphany D1 did not contain any banned substances.

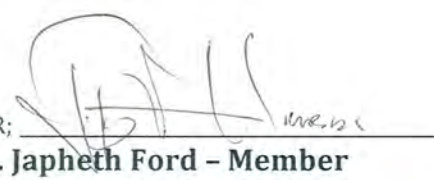
109. However, his research was really confined to Google which we believe was woefully inadequate.
110. There is no doubt that Mr. Powell in all the circumstances acted with fault and negligence, which was more than just ordinary fault or negligence.
111. Notwithstanding, the Panel is of the view that Mr. Powell's degree of fault was not sufficiently high to deny him a reduction in the applicable two (2) years period of ineligibility.
112. This Panel therefore is of the view that the period of ineligibility in the totality of the circumstances of this case is eighteen (18) months.
113. This period of ineligibility we believe is consistent with decisions in the cases of **Oliveira v USADA** CAS 2010/1/2107 and **Knauss v FIS** CAS 2005/A/847 where the degree of fault and negligence were arguably similar.
114. This panel took no extraneous matters into consideration in determining this sanction.
115. According to the case of **Knauss v FIS 2005/A/847**, "the athlete's age, the question of whether taking the prohibited substance had a performance-enhancing effect or the peculiarities of the particular type of sport are not according to the WADC – matters to be weighed when determining the period of ineligibility".
116. This Panel does not believe that Mr. Powell could benefit from the provisions of Article 10.5.3, which allow for the suspension of sanctions where an athlete provides substantial assistance in uncovering instances of doping.
117. Mr. Powell contended that he contacted USADA and WADA upon hearing of his adverse analytical finding.
118. He stated that as a result of the calls made by his agent, the Italian police raided his room as well as that of Chris Xuereb and confiscated all their supplements.
119. He also contended that oxilofrine was subsequently placed on USADA's High Risk List on September 12, 2013.
120. However it was well after September 12, 2013 that Mr. Powell or his Agent caused any laboratory tests to be done on Epiphany D1 which would confirm that oxilofrine was present in some batches.
121. Based on the definition of "Substantial assistance" in the JADCO Rules several conditions must be met.

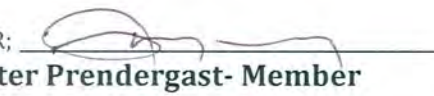
122. According to Article 10.5.3 of the JADCO Rules, the information provided by the athlete shall result in an anti-Doping Organization, Criminal Authority or Professional Disciplinary body discovering or establishing an anti-doping rule violation, a criminal offence or the breach of professional rules by another person.
123. This "assistance" provided by Mr. Powell and his Agent is quite commendable but we do not believe that it is tantamount to the type of assistance contemplated in Article 10.5.3 of the JADCO Rules.
124. It is clear that none of the prerequisites under Article 10.5.3 has been met in this case to warrant any reduction of the sanction.
125. In any event this Panel has taken into account this limited assistance provided as part of the overall circumstances on which our decision is based.
126. Pursuant to Article 10.9 of the Rules and having carefully considered all aspects of the case, the Panel is of the view that the period of ineligibility should commence from the date of the sample collection that being the June 21, 2013.
127. This period of ineligibility will therefore come to an end on December 20, 2014.

May 1st, 2014

By THE JAMAICA ANTI-DOPING DISCIPLINARY PANEL

PER; 
Lennox A. Gayle - Chairman

PER; 
Dr. Japheth Ford - Member

PER; 
Peter Prendergast- Member