

DISCIPLINARY HEARING
Before
THE JAMAICA ANTI-DOPING DISCIPLINARY PANEL
Between
JAMAICA ANTI-DOPING COMMISSION **Complainant**
and
SHERONE SIMPSON **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. Miss Simpson has been an athlete from age nine (9). She began representing Jamaica at the CAC Junior Championships in 2002. She progressed to a professional athlete by 2004 where she represented Jamaica at the highest level namely the Commonwealth Games, the World Championships and the Olympics.
3. Sherone Simpson participated at the JAAA National Senior Championships at the National Stadium on June 21, 2013.
4. Miss Simpson participated in the 100m event and was selected for doping control.
5. A urine sample was properly collected from Miss Simpson and the proper chain of custody observed. This urine sample was sent to the WADA accredited laboratory in Canada.
6. Miss Simpson's urine sample was analyzed on July 11, 2013 and a certificate was issued by Professor Christiane Ayotte, Director of the Doping Control Laboratory.

7. This certificate revealed an adverse analytical finding for the sample and specified the presence of "OXILOFRINE."
8. Oxilofrine is listed as a "specified stimulant" which is prohibited In-competition on the WADA Prohibited List 2013.
9. Miss Simpson was notified by Jamaica Anti-Doping Commission (JADCO) by letter dated July 12, 2013 of the adverse analytical finding.
10. JADCO requested from Miss Simpson an explanation for the analytical finding.
11. Miss Simpson did not respond to the request for an explanation of the adverse analytical finding.
12. As requested by Miss Simpson, her "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 her urine sample.
13. Miss Simpson was notified of the adverse analytical finding in respect of her "B" sample on August 5, 2013.
14. On August 14, 2013 Miss Simpson's Attorneys-at-Law Samuda & Johnson wrote to JADCO indicating that Miss Simpson was admitting to the Anti-Doping Rule violation and that she accepted the provisional suspension.
15. JADCO then referred the matter to the Jamaica Anti-Doping Disciplinary Panel.
16. Miss Simpson 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.
17. Miss Simpson relied on her own written statement and *VIVA VOCE* evidence. She also relied on the written statements and *VIVA VOCE* evidence of Asafa Powell, Paul Doyle and Professor Wayne McLaughlin. While Cathy Rattray-Samuel and Dr. Paul Wright were made available by JADCO for cross examination.

SHERONE SIMPSON'S EVIDENCE

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

19. It was revealed that on June 21, 2013 when she gave her urine sample, she had failed to disclose the use of the supplement Epiphany D1 which she took the very morning of the competition.
20. That it was Chris Xuereb who recommended and sourced this new supplement.
21. Chris Xuereb was hired by her manager Mr. Paul Doyle as a physical trainer to work with teammate Asafa Powell around May, 2013.
22. That she saw Chris Xuereb for the first time on May 13, 2013 and spoke to him on May 16, 2013 about her hamstring injury.
23. Mr. Xuereb left Jamaica for Canada on June 5, 2013 and returned with a number of supplements including Epiphany D1 on June 6, 2013.
24. Miss Simpson stated that she spent fourteen (14) hours checking Google and WADA's Prohibited List. That she did a search on all the listed ingredients which were unfamiliar to her on the Epiphany D1 bottle.
25. She stated that she researched all the ingredients and found nothing illegal.
26. Miss Simpson also crossed-checked the ingredients on the product label with those listed on the product official website and still no "red flag" was raised.
27. She maintained that she did all she could have done to ensure that the supplements were clean before she ingested them.
28. Miss Simpson stated that she had been taking several supplements, which includes, nitro-tech, mega-woman, Vitamin B complex, Zinc, Calcium magnesium, L-Glutamine since 2003 and these were recommended by coach, Steven Francis and her doctors.
29. That the more recent supplements introduced by Chris Xuereb were not cleared with her coach nor her manager.
30. Miss Simpson stated that when she was notified of the adverse Analytical finding on July 13, 2013, only the supplements that Mr. Xuereb gave to her came to mind as the possible source.

31. That she brought all the supplements she was taking to coach Steven Francis who went through them and Epiphany D1 was the only one he was unfamiliar with so he said it may be the Epiphany D1 which resulted in the adverse analytical finding.
32. Miss Simpson stated that she caused her agent Paul Doyle to call WADA Chief Investigative Officer Jack Robertson and notified him that she suspected that the adverse analytical finding was caused by something in her physical trainer's regimen.
33. Jack Robertson in turn notified the Italian authorities who later carried out a search of her hotel room as well as the room of Mr. Xuereb.
34. That a bottle of Epiphany D1 was sent to a laboratory in Miami by Adrian Laidlaw and coach, Steven Francis, then they reported to Miss Simpson that it returned a positive finding for Oxilofrine.
35. 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 Miss Simpson's camp was positive for Oxilofrine and the other batch received directly from the company was not.

WITNESSES

Asafa Powell

36. Mr. Powell stated that both Miss Simpson and himself did extensive checks on the product Epiphany D1 before ingesting it and agreed that it contained no banned substances.
37. Mr. Powell asserted that Miss Simpson had no intention to enhance her sport performance by the use of Epiphany D1.

Paul Doyle

38. Mr. Doyle stated that he wanted a full time physical trainer to work on Asafa Powell's injuries.
39. That Dr. Carmine Stillo recommended Chris Xuereb to him.
40. Chris Xuereb was hired initially for a one-week trial period after which he was hired on a full time basis.

41. Chris Xuereb treated Asafa with soft tissue massage and recommended nutritional supplements.
42. That he eventually treated Miss Simpson as well.
43. 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.
44. Mr. Doyle could only confirm that Mr. Xuereb had practical experience.
45. Mr. Doyle told Mr. Xuereb to send all the invoices for the supplements to him, this was done but Epiphany D1 was not on the first Invoice sent by Mr. Xuereb but was later shown on another.
46. Mr. Xuereb administered injections to Miss Simpson.
47. Mr. Doyle said he could not speak to Mr. Xuereb's competence in administering injections

Professor Wayne Mclaughlin

48. Wayne McLaughlin stated that he was a Professor of Molecular Biology at the University of the West Indies Caritox Laboratory.
49. That he tested Epiphany D1 capsules which were in a bottle provided by Miss Simpson's Attorneys-at-Law.
50. Two (2) techniques were used in analyzing the capsules: the LC/MS/MS and GC/MS.
51. Oxilofrine was not in the library of either the LC/MS/MS or the GC/MS but its synonyms were.
52. The certificate for the analysis by LC/MS/MS showed a positive finding for Methyl Synephrine (oxilofrine)
53. 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

- 54. Dr. Paul Wright gave evidence to the effect that he was the lead Doping Control Officer for JADCO since its inception.
- 55. It is his view that the athletes need not take supplements.
- 56. That he hands out a Prohibited List Booklet to athletes after a doping test but cannot recall ever giving one to Sherone Simpson.
- 57. He stated that he has conducted several seminars on anti-doping across the island using PowerPoint presentation.
- 58. He stated that during these presentations, athletes, coaches, parents and athlete's support personnel were warned about the dangers of supplements.
- 59. That JADCO is not the only source of education on anti-doping.

Cathy Rattray-Samuel

- 60. Mrs. Rattray-Samuel gave evidence to the effect that she was the acting Executive Director for JADCO from May to August 2013.
- 61. 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.
- 62. That JADCO conducted seminars, workshops and issued pamphlets in their own bid to educate athletes.

APPLICABLE LAW

- 63. Miss Simpson having admitted to the anti-doping rule violation, the Panel must impose a sanction in accordance with the applicable rules.
- 64. Article 10.2 provides that on a first violation the standard sanction is two (2) years ineligibility.

65. 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 is mandatory unless there are exceptional circumstances or the conditions under Article 10.4 are met.
66. 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.
67. 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”.***
68. This Panel accepts that oxilofrine is a Specified Substance based on the WADA Prohibited List 2013.
69. By the process of elimination, Miss Simpson stated that the source of her adverse analytical finding was most likely caused from the supplement Mr. Xuereb gave to her and in particular Epiphany D1 since she was familiar with the others.
70. Moreover the HFL Sports Science Laboratory in United States of America and Caritox in Jamaica support the fact that oxilofrine had been found in some batches of Epiphany D1.
71. In addition USADA Dietary Supplement High Risk List added Epiphany D1 as a source of oxilofrine since early September, 2013.
72. Furthermore, there was no evidence that any other supplements which Miss Simpson was taking contained oxilofrine.
73. Based on the totality of the evidence, the Panel accepts the Respondent’s assertions on a balance of probability that oxilofrine entered her body as a result of the ingestion of Epiphany D1.

74. 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.
75. The athlete must also adduce evidence from another source which supports her evidence and shows that she had no intention to enhance sport performance.
76. 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.
77. 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.
78. That she did extensive research and specifically made Google checks of all the ingredients listed on the Epiphany D1 bottle and no banned substances were revealed.
79. 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.
80. This Panel agrees with the argument in the case of **FINA v Cielo** CAS 2011/A/2495. The failure by Miss Simpson to disclose Epiphany D1 or any of the several new supplements given to her by Chris Xuereb on the Doping Control Form per se is not sufficient to conclude that there was an intention to enhance sport performance.
81. Asafa Powell testified to corroborate the fact that Miss Simpson honestly and genuinely did not know that Epiphany D1 contained the Specified Substance oxilofrine.
82. 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"***.

83. Miss Simpson's evidence which was corroborated by that of Asafa Powell establishes to the comfortable satisfaction of the Panel that she did not intend to enhance her sport performance by unknowingly ingesting oxilofrine.
84. It was held by the Panel in **Oliveira v USADA** that Miss Oliveira "degree of fault" is 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.
85. Having accepted that the requirements of Article 10.4 have been met, the Panel must now determine the athlete's degree of fault.
86. Article 10.4 states that the athlete or other persons degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility.
87. 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 persons departure from the expected standard of behaviour.
88. Miss Simpson asserted that based on the totality of the circumstances to determine whether Epiphany D1 contained any banned substances, she was not wilfully ignorant that she bears no significant fault and as such she is entitled to a reduction in the presumptive two (2) years period of ineligibility.
89. She did extensive research on Epiphany D1 before taking it and none of the listed ingredients showed up any banned substances.
90. JADCO on the other hand argued that as an elite athlete she was significantly negligent and as such was not entitled to any reduction in two (2) years period of ineligibility.
91. 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.
92. In **WADA v Hardy & USADA CAS 2009/A/18709** (pg 50), the 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".

93. 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 athlete’s part be demonstrated in order to establish an anti-doping rule violation”.
94. Miss Simpson relied on the manufacturer’s listing of ingredients and took the risk of consuming the supplement Epiphany D1.
95. It is presumed that Miss Simpson knew or should have known of the risk of using nutritional supplements and unreasonably relied on the Epiphany D1 label as an accurate and complete listing of its ingredients.
96. Miss Simpson assumed this risk when she stated in cross-examination that it would be too “time consuming and expensive” to do anything else to ensure she did not consume any banned substances.
97. Miss Simpson did no scientific test nor sought any professional advice on these supplements before consuming them.
98. Moreover, she did no research on the background or qualifications of Mr. Xuereb.
99. Miss Simpson did not seek to verify the exact source of these supplements she received from Mr. Xuereb.
100. Miss Simpson allowed a virtual stranger whom she did not know to be a nutritionist or a medical practitioner to provide unknown supplements to her and to administer injections.
101. Miss Simpson failed to exercise the standard of care required for no fault or negligence; namely, utmost caution.
102. Miss Simpson did take some steps to ensure that Epiphany D1 did not contain any banned substances.
103. However, her research was really confined to Google which we believe was woefully inadequate.
104. Miss Simpson has been an athlete for a number of years and has been exposed to doping control. In fact she admitted to having done over one hundred (100) tests in her long career as an elite athlete.

105. There is no doubt that Miss Simpson in all the circumstances acted with fault and negligence, which was more than just ordinary fault or negligence.
106. Notwithstanding, the Panel is of the view that Miss Simpson's degree of fault was not sufficiently high to deny her a reduction in the applicable two (2) years period of ineligibility.
107. This Panel is therefore of the view that the period of ineligibility in the totality of the circumstances of this case is eighteen (18) months.
108. 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.
109. This panel took no extraneous matters into consideration in determining this sanction
110. 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".
111. This Panel does not believe that Miss Simpson 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.
112. Miss Simpson contended that she contacted USADA and WADA upon hearing of her adverse analytical finding.
113. She stated that as a result of the calls made by her agent, the Italian police raided her room as well as that of Chris Xuereb and confiscated all their supplements.
114. She also contended that oxilofrine was subsequently placed on USADA's High Risk List on September 12, 2013. However, it was well after September 12, 2013 that Miss Simpson or her Agent caused any laboratory tests to be done on Epiphany D1 which would confirm that oxilofrine was present in some batches.
115. Based on the definition of "substantial assistance" in the JADCO Rules several conditions must be met.

116. 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.
117. This "assistance" provided by Miss Simpson and her 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.
118. 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.
119. 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.
120. 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.
121. 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