

ASADA v Van Tienen

ASADA alleged an anti-doping violation against the athlete on the basis of “admissions” made by her in interviews with ASADA’s investigating officers (the athlete denied that she had “admitted” the offence in the interviews, she argued that ASADA was interpreting her answers correctly), plus a positive test result for BZP (albeit that there was no B-sample). The positive test was based on a re-analysis of the original A-sample. The original test result was negative, it had not been tested for BZP. The B-sample had therefore been destroyed. CAS found the anti-doping violation established. The “admissions” (albeit disputed by the athlete as to their meaning) were sufficient, in this case, to overcome the absence of the B sample.

This case raises the potential for future athletes to refuse to be interviewed by investigating officers, particularly in light of the *Kabeava* and *Beaton and Scholes* decisions (dealing with the absence of a B-sample), and the *Landaluce* and *Tasha Jenkins* decisions (where laboratory failures to accord with Test protocols invalidated the anti-doping result).

Marinov v ASADA

A coach was charged with “possession” (in fact, the charge was “trafficking by possession”) on the basis of a small amount of drugs, found by police during a raid, in a wardrobe, in a bedroom that he had been using, in a house owned by a friend. The coach was overseas at the time of the raid. The owner of the house later pleaded guilty to criminal charges relating to possession of a large amount of drugs. A CAS Appeals Tribunal overturned an earlier CAS finding upholding the charge, concluding that “possession” was not sufficiently established by the coach’s mere “occupation” of the room. In the absence of evidence that the drugs belonged to the coach, or that the coach put the drugs in the wardrobe, the charge was not established.

USADA v Tyler Hamilton

Tyler Hamilton, the elite cyclist (Winner of many races, including the 2004 Athens Olympics Time Trial Gold Medal) was charged with an anti-doping violation, in September 2004. He was said, by USADA, to have “blood doped”, a charge based on a newly developed testing method.

A strong panel of CAS upheld the charge.

Christopher L. Campbell’s dissenting opinion (this seems to be the first ever such dissent in CAS) is very strong. he concluded that method did not meet the prevailing standards of the scientific community, the method applied subjective evaluation and had not been properly validated, and, further, questioned whether athletes would believe that they would get a fair hearing.

Campbell referred to public comments by IOC President Jacques Rogge:

The Olympic movement is a small community. The arbitrators who sit on panels in doping disputes may in fact do legal work for the IOC, the International Federations, the National Olympic Committees, and the National Federations. Indeed the IOC and WADA from time to time may select individuals as arbitrators in certain cases. There is nothing improper about these relationships. However, if it is at all desirable for athletes to believe that they will obtain a fair hearing, it is imperative that high-ranking officials within the Olympic community refrain from making statements demonstrating bias against an athlete before that athlete has a hearing. athletes should not have to worry that high-ranking officials are sending clear messages to the arbitrators to find the athlete guilty regardless of the facts of the case. The IOC and WADA should consider making rules prohibiting such conduct to comply with a very important fundamental principle of the Olympic movement, fairness.

USADA v Landis

Floyd Landis, the elite cyclist (the since-disqualified winner of the 2005 Tour de France) was charged with an anti-doping violation, having a high amount of testosterone in his system. Christopher Campbell again (he wrote a dissenting opinion in the *Tyler Hamilton* case) referred to serious errors in the laboratory's processes:

As this case demonstrates, even when an athlete proves there are serious errors in a laboratory's document package that refute an Adverse Analytical Finding, it will be extremely difficult for an athlete to prevail in these types of proceedings. Therefore, it is imperative that WADA Accredited Laboratories abide by the highest scientific standards.

These doping adjudications can cause substantial harm to a human being financially, physically and emotionally. It can destroy families. If, from time to time, WADA's mission obligates it to inflict such harm, it should be obligated to get it right-all of it. As athletes have strict liability rules, the laboratories should be held strictly liable for their failure to abide by the rules and sound scientific practice.

Because everyone assumes an athlete who is alleged to have tested positive is guilty, it is not fashionable to argue that laboratories should comply with strict rules. However, if you are going to hold athlete strictly liable with virtually no possibility of overcoming a reported alleged positive test even in the face of substantial and numerous laboratory errors, fairness and human decency dictates that strict rules be applied to laboratories as well. To do otherwise does not "safeguard the interest of athletes".

WADA should be writing rules that mandate the highest scientific standards rather than writing rules for a race to the bottom of scientific reliability so convictions can be easily obtained, as this case demonstrates. Given the plethora of laboratory errors in this case, there was certainly no reliable scientific evidence introduced to find that Mr. Landis committed a doping offence.