

Before The American Arbitration Association
Case No. AAA 01-14-0000-6146

United States Anti-Doping Agency, Claimant

v

Jon Drummond, Respondent

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS ("Panel"), having been designated by the above-named parties, and having been duly sworn and having duly heard the allegations and proofs of the parties, and after a hearing on September 15 and 16, 2014, followed by the post-hearing submission of briefs by the parties which continued through November 17, 2014, do hereby render our full award.

BACKGROUND

In 2012, Jonathon Drummond was a personal coach for Tyson Gay and also the coach of the U.S. Olympic Relay team for the London Olympic Games. Drummond was a former world record holder, a former Olympian, and Chairman of the Advisory Council of USA Track & Field. Drummond was required under the Coaches Code of Conduct, to which he subscribed, "not to commit a doping violation." Drummond also was subject to the United States Olympic Committee's Coaching Ethics Code under which he agreed to "exercise careful judgment and take appropriate precautions to protect the welfare of those with whom" he worked; to "protect athletes and other participants from harm"; and to the principle that "Coaches do not tolerate the use of performance enhancing drugs." Drummond agreed that the Coach's Code of Conduct and Coaching Ethics Code defined his duties as a coach for the U.S. Olympic team. He also agreed that he was a "watchdog" for his athletes in terms of substances that they were taking.

In 2013, Tyson Gay tested positive for Dehydroepiandrosterone (DHEA), a banned substance. Upon investigation, the United States Anti-Doping Agency (USADA) concluded that facts existed on which to charge Drummond with violations of the World Anti-Doping Code and of the IAAF Anti-Doping Rules resulting from Drummond's conduct with respect to a chiropractor named Dr. Clayton Gibson who provided Gay with the DHEA that resulted in Gay's positive test. The broad issue in this proceeding is whether Drummond's conduct with respect to Dr. Gibson and Tyson Gay resulted in the rule violations that have been asserted here.

PROCEDURAL POSTURE

On May 2, 2014, USADA notified Drummond that USADA was opening a proceeding against him. On May 23, 2014, USADA advised Drummond that a Review Board had determined that there existed sufficient evidence of one or more anti-doping rule violations and thus recommended that the adjudication process as set forth in the USADA Protocol for Olympic and Paralympic Movement Testing (the Protocol) and in the International Association of Athletics Federation Anti-Doping Rules (IAAF ADR) proceed.

USADA contends that Drummond violated the following Rules:

1. Possession of DHEA in violation of Code Article 2.6 and IAAF ADR 32.2(f);
2. Trafficking of DHEA in violation of Code Article 2.7 and IAAF ADR 32.2(g);
3. Attempted Trafficking of DHEA, HGH, IGF-1 and/or testosterone in violation of Code 2.7 and IAAF ADR 32.2(g);
4. Administration and Attempted Administration to others of DHEA, HGH, IGF-1 and/or testosterone in violation of Code Article 2.8 and IAAF ADR 32.2(h);
5. Assisting, encouraging, aiding, abetting, covering up and other complicity

- involving one or more anti-doping rule violations and/or attempted anti-doping rule violations in violation of Code Article 2.8 and IAAF ADR 32.2(h); and
6. Aggravating circumstances justifying a period of ineligibility greater than the standard sanction pursuant to Code Article 10.6 and IAAF ADR 40.6.

On May 30, 2014, Mr. Drummond, by counsel, denied the charges and requested a hearing. On June 6, 2014, the American Arbitration Association acknowledged receipt of Drummond's June 4, 2014, Demand for Arbitration; these proceedings were initiated.

An evidentiary hearing was held in this matter on September 15 and 16, 2014, in Dallas TX. Following the hearing, the parties submitted post-hearing briefs in lieu of closing argument. The last post-hearing brief was filed on November 17, 2014, and the hearing was declared closed as of that date.

FACTS

Many of the alleged facts were in conflict throughout this proceeding. The Panel has weighed the evidence and has reached its own conclusions regarding the facts of this case. The facts set forth herein are those determined to the comfortable satisfaction of the Panel bearing in mind the seriousness of the allegations made by USADA against Drummond.

Drummond Learns of Dr. Gibson

In 2011, Coach Drummond was serving as a personal coach for Marshavet Hooker, with whom he had been working since 2007. In 2011 Drummond's colleague, Vicki Gates -- who began working with Hooker in 2009 -- was serving as Hooker's strength coach and advising Hooker about supplements and nutrition. In September 2011, Marshavet Hooker met Dr. Clayton Gibson who was working with Hooker's

then-boyfriend, a football player. Dr. Gibson expressed interest in working with Hooker but before making that decision, Hooker sought the advice of Jon Drummond and Vicki Gates. Hooker arranged a conference call in November 2011 with Dr. Gibson, Gates, Drummond, and herself. After consulting with Drummond and Gates, Hooker decided to work with Dr. Gibson. That conference call was Drummond's introduction to Dr. Gibson.

In November 2011, Gibson sent Hooker a shipment of vitamins and a detoxification kit. Hooker told Drummond and Gates what Gibson had sent her and that Gibson wanted her to undergo a detoxification procedure.

In February 2012, Hooker received another shipment from Gibson which contained crèmes with labels showing Human Growth Hormone and estrogen or estroven. Hooker called Dr. Gibson because she had not ordered the crèmes; Gibson told her that the crèmes were all natural and food based and to trust him and use everything that he had sent her.

Hooker ignored Gibson's advice to just trust him and took the crèmes to the Snap Fitness Gym in Arlington TX the next day to show Vicki Gates and Drummond. When Gates saw the crèmes, she said, "no, we're not going to do this." When Drummond saw the crèmes he too said, no "We don't do this kind of stuff." Both Gates and Drummond knew the crèmes had come from Dr. Gibson and they told Hooker not to use the crèmes.

Tyson Gay Starts Training with Drummond

Tyson Gay first met Jon Drummond in early 2007. By 2010 the two had developed a real close relationship. In 2011, Gay tore his hip labrum muscle, a painful injury which was surgically repaired on July 3, 2011. Gay started training again in

November 2011 but the pain returned, persisting into 2012. Gay kept feeling a nagging pain in the area below his groin.

In May 2012, Gay moved to Dallas TX to start training with Coach Drummond. Gay expected Drummond to coach him on the track and to advise him about supplements and nutrition. On arriving in Dallas, Gay met with Drummond to discuss supplements that Gay was using. Among the items that Gay brought with him was a bottle labeled "HGH" which someone had given to Gay. Drummond and Gay both agreed that they would not use the HGH because Gay did not want to go that route.

Drummond Recommends That Gay See Dr. Gibson

In June 2012, Gay was in Eugene, OR, for the U.S. Olympic trials. After Gay competed in the 100 meter sprint trials, he visited Drummond complaining about the continuing pain and saying that he wished he could run pain free. Drummond said this about that conversation:

He came to my hotel room. . . . He was talking about how he wants to run pain free. He just was tired. He want to, you know, be able to go out and compete, you know, firing on all cylinders. He wanted to run pain free. And we were just talking and I said, Well, the only thing we got left is Dr. Gibson. . . . I made a phone call to Dr. Gibson while Tyson sat right there. (Emphasis added.)

Gibson asked Drummond whether Gay could come to Atlanta. Drummond then said to Gay: "Well, all we got left is this, do you want to go or not?" Gay said, "that's fine, let's do it." (Emphasis added.)

At the hearing, Drummond at first asserted that Gay had wanted to see Dr. Gibson but in response to questions from the Panel he retreated:

CHAIRMAN THOMAS: You said Tyson wanted to go see Dr. Gibson?

THE WITNESS: Yes.

CHAIRMAN THOMAS: Did Tyson come to you and say, Coach, I want to go see Dr. Gibson?

THE WITNESS: No, he didn't say, Coach, I want to go see Dr. Gibson.

....

CHAIRMAN THOMAS: He wanted to go because you told him Dr. Gibson could do him some good?

THE WITNESS: Yes.

It was Drummond's idea to contact Gibson. He did so because he was looking for somebody to help Gay run pain free. Drummond told Gay that Gibson was a good doctor who was on the up and up and that Drummond had confidence in Gibson. Drummond gave these assurances though he had never seen Gibson and though he had talked to Gibson only once before. Drummond said that he recommended Gibson because Marshvet Hooker had worked with Gibson and had told Drummond that Gibson successfully treated her. But, Hooker told the Panel that Gibson had not in fact helped her to recover from an injury.

Kelly-Ann Baptiste met Gay in late 2009 early 2010 when she moved to Florida to train with one of Gay's coaches. She remembers Gay being on crutches in 2011 and that he had surgery that year. She recalls that sometime during the Olympic trials in 2012 Gay told her that he and Drummond had gone to Atlanta to see Dr. Gibson. Gay told Baptiste that Drummond had recommended that Gay see Gibson because Drummond said that Gibson was getting good results with Marshvet Hooker and that Gibson was good at what he did.

Art Huff, who was Tyson Gay's personal manager from the agency that represented Gay, took issue with Drummond's efforts to minimize his role in getting Gay to go to Atlanta to see Gibson:

- Q. So to what extent do you think that [Mr. Drummond's statement] "I did not send Tyson to Dr. Gibson" is an incorrect statement?
- A. J.D. requested for Tyson, who did not know Dr. Gibson, to get on a plane and go meet Dr. Gibson from Eugene to Atlanta. Tyson did not know Dr. Gibson at that time. Tyson didn't even know how to explain Dr. Gibson to me at that time.

Drummond and Gay Fly to Atlanta to See Dr. Gibson

Art Huff testified that in the midst of the 2012 Olympic trials, Gay asked Huff for plane tickets for Gay and Drummond to fly to Atlanta. Huff questioned the need for the trip and went to Drummond: "So then I went to Jon, and asked Jon about this trip all of a sudden. And Jon's response to me was, I know a doctor who is really good. He's going to take care of him."

Drummond and Gay left Eugene OR on June 26 for Atlanta. They arrived the morning of June 27 and went to Dr. Gibson's office. After Gibson examined Gay and ordered lab work, he talked to Drummond and Gay about supplements. He showed them crèmes, all of which were labeled West Coast Bio-Topical 100% Natural. One label said "Testosterone/DHEA" another said "HGH" and a third said "Progesterone Crème." Gibson said that all of his products were food based, high grade, 100% natural and that no one had ever tested positive using them. Gibson also said that he was familiar with the WADA and USADA ban lists. Gibson said that he wanted Gay to use these products because they would help the natural levels in Gay's body to rise including his testosterone; something that Drummond had advised Gay to do.

Drummond said that he told Gibson that the rules for track and field were different from those that applied to football players regarding substances. Gibson then told Drummond and Gay that the labels were merely for marketing to non-athletes and

that the labels did not really describe what was in the crèmes. Drummond agreed, at the hearing, that by making that statement Dr. Gibson "pretty much" admitted that he was engaged in misrepresentation. But when Drummond was asked why he had not immediately ended the discussion with Gibson, Drummond replied, "That was not my reaction."

Drummond admits knowing that HGH and testosterone are federally controlled substances which cannot be used without a prescription. Given that knowledge, he was asked how he could risk transporting drugs; Drummond said that he did not think he was transporting drugs. Yet he did not contact USADA, WADA, the U.S. Olympic Committee, or U.S.A. Track and Field to find out whether he was transporting drugs.

Gay testified that he was uncomfortable with the crèmes because he knew that LaShawn Merritt had tested positive for DHEA. Gibson asserted that Merritt must have been using something else because Gibson's "stuff" was all natural and could not cause a positive result. Gay testified that Drummond was silent when Gay expressed concerns. At the end of the meeting Gibson made arrangements to send to Eugene, OR, the products he had recommended to Gay. Drummond said nothing.

When Drummond's counsel asked him to explain why he had not objected Drummond said this:

I was concerned. I was uncomfortable. I expressed my discomfort. I even said to Dr. Gibson, you know, Hey, I stay above the board. You cannot give this athlete, Tyson Gay, Mr. Clean, a prohibited substance. We can't do this. And he assured me and continued, and he went on in his whole speech about he's a deacon of his church and all of this other kind of stuff, and you know I would never do that. (Emphasis added.)

The Panel asked Drummond whether while in Dr. Gibson's office Drummond was at all concerned that Gay might have just purchased prohibited substances.

Drummond said this:

In my mind, it wasn't registering like that. . . . I wasn't thinking I'm buying prohibited substances. You know, Dr. Gibson in the conversation -- Dr. Gibson, in the conversation was more or less explaining to us that, you know, this stuff is all natural. There's nothing in it. It's nothing to be worried about, you know. It's been tested. Athletes have used it, have not tested positive, the whole nine yards. He's giving us the whole song and dance. And so it's kind of like I'm listening and at the same time, my attitude is, we need to get back. (Emphasis added.)

Both before and after the Atlanta trip Drummond told Gay that Gibson was on the up and up. Gay relied on Drummond for such advice and Gay normally did what Drummond said.

On the flight back to Oregon, Drummond told Gay to trust Dr. Gibson. Drummond told Gay that he had prayed about everything and that he would not do anything to jeopardize Gay's career.

Dr. Gibson's Products Arrive in Oregon

When Dr. Gibson's supplements and crèmes arrived at Tyson's Gay's room at the hotel in Oregon, he took them, in a box, to Drummond's room. In the room, Gay saw Drummond and his wife Celia, as well as friends of the Drummonds and the children of both couples. Gay did not see or talk to Art Huff about the items sent by Dr. Gibson.

Gay and Drummond looked at each item in the box. Gay again expressed concerns about the crèmes whose labels indicated that they contained prohibited substances. Gay and Drummond agreed that Gay would not use the crèmes and that Drummond would hold on to them.

Drummond's friend, Korey Miller testified that when Gay brought the box, Miller his wife and children and the Drummonds and their children were all in the room. Miller made no mention of Art Huff being in the room. Miller said that he overheard Drummond and Gay discussing the contents of the box. Miller remembered that Drummond was adamant that Gay should not use the crèmes. Miller testified that Gay did not disagree with Drummond: "Mr. Gay was very quiet for the majority of the time. He didn't seem to react other than maybe a verbal nod or maybe a small "okay" or something like that." Nor did Miller recall any discussion about Drummond and Gay talking at a later date about what to do with the crèmes.

Celia Drummond, Jon Drummond's wife, testified that while Gay was in their room with the box of supplements and crèmes, Art Huff came to the room, participated in the discussion, and agreed that Gay should not use the crèmes. When Celia Drummond was asked why she had not mentioned the presence of Art Huff in her affidavit she said she did not know why.

Drummond testified that when Gay showed him the contents of the box from Dr. Gibson, Drummond told Gay to leave the crèmes alone but that Gay told Drummond that he did not think that they had enough time to go through the items in the box at that moment and suggested that they should wait until they got to Europe to figure it all out. Drummond testified that because Gay is strong willed, Drummond called Art Huff to get Art's opinion about how to handle Gay:

I call Artie, you know, come check this stuff out. You know, we got this shipment in or whatever, come check it out. And Artie came down. And when he came to the room, I think Tyson was gone. And like I said, we were all kind of shifting and ready to leave. And he came in the room, and he saw the stuff sitting out and he kind of looked over a few things. And he -- when he saw the crèmes, he says things like, oh, oh, oh, I don't know about these, J.D., I don't know about

these. And I was like, yeah, I'm a little uncomfortable about that. I said, I'm a little uncomfortable about it too.

Art Huff refuted the Drummonds' testimony. He was absolutely certain that he did not go to Drummond's room and did not see the supplements or the crèmes. Huff testified further that if he had known that Gay was using products labeled HGH, DHEA, or testosterone he would not have permitted it. Huff noted that Gay's positive test result cost him about \$5 million.

Drummond said he packed up the crèmes and took them to Europe because Gay told him to do so: "Tyson Gay pays me as his coach, Tyson Gay has the final say. Tyson says pack the stuff up. I pack the stuff up."

But, Kelly-Ann Baptiste, testified that Gay told her that when Gay expressed concern about the crèmes Drummond agreed that Gay need not use them.

Drummond Removes the Labels and Takes the Crèmes to Europe

While in Atlanta, Drummond asked Gibson why he had put misleading labels on the crèmes; Gibson said Drummond could remove them. At the hearing, Drummond admitted that he did not like the labels because they made it look like he was transporting drugs. When Drummond was asked why he would remove labels from crèmes that he, and Gay, and Art Huff had already agreed not to use; he said this:

Because I didn't know what -- first of all, I'm traveling with the stuff, okay. When we got there, we had a full discussion about what's good, what's not, whatever. Again, you're talking to me like my job is to tell Tyson Gay what to do. That's not my job, to tell Tyson Gay what to do in a sense of what he's taking or whatever.

Drummond testified that despite his own concerns about the crèmes, he took them to Europe because Tyson Gay said so. He cut off the front of the labels; he

marked the bottles with a T for testosterone and an H for HGH. He put the crèmes in his luggage and took them to Europe.

The Panel asked Drummond whether he would have taken testosterone to Europe if Gay had told him to do so; he said probably not. Drummond testified that he did not believe the crèmes contained banned substances: "I didn't believe it. I didn't know. And so I didn't process it to even like think about it. . . ."

Drummond also told the Panel that removing labels was routine in track and field to keep an opponent from learning what an athlete was using. Other witnesses knew of no such custom in track and field.

Drummond Gives the Crèmes to Gay in Monaco

Gay was in Monaco in mid-July 2012 to compete in the 4 x 100 relay. When Drummond arrived in Monaco he took the crèmes marked T and H to Gay's room. Gay recognized the crèmes as the same ones he had seen in Dr. Gibson's office and discussed in Oregon. Gay was surprised to see the crèmes again because they had agreed not to use them. Gay testified that when Drummond brought the crèmes to him, Drummond told him to use the crèmes and that they would not cause him any harm:

He told me everything was all good. You know, Drummond and I have regular conversations. Like you said, we're friends, so our conversations are regular as in two people would talk. So he approached me, he gave me the crèmes. He told me that they were labeled on the bottom and which they were. There was a "T" on the bottom and an "H" on the bottom so I could know one which one was which. He took the labels off. And he told me use them, let him know how I feel, everything is all good. (Emphasis added.)

Gay also testified that Drummond told him to "get to trust Dr. Gibson, get to know him at the end of the year and go from there."

Gay used the crèmes in July 2012. Gay continued to be concerned about using the crèmes. He told Kelly-Ann Baptiste about his concerns. She testified that while Gay was in Monaco he told her that Drummond had brought the crèmes to him and told him to try them. She said that Gay told her he tried the crèmes for a couple of days then threw them away.

Gay says that he threw the crèmes away in Germany because he was not comfortable using them. When Gay told Drummond that Gay had thrown away the crèmes, Drummond said "okay, cool, no big deal, you're already in the Olympics anyway." But then Drummond again urged Gay to get to know Dr. Gibson: "So he then said, just get to -- what you can do is get to know the doctor, get to trust him at the end of the season and then go from there." Baptiste testified that Gay had told her the same thing.

Drummond testified that he brought the crèmes to Monaco, took them to Gay's room, then told Gay not to use them. Drummond said that the crèmes were thrown away in Monaco; he did not say by whom. When questioned he said that he was the one who put the crèmes in the trash in Monaco. On further questioning Drummond's testimony about what happened to the crèmes was shown to be inconsistent:

- Q. Okay. You said in your affidavit that you instructed Tyson to throw away the crèmes. Do you remember me showing that to you yesterday?
- A. Yes. I did that several times.
- Q. You said in your deposition that you threw the crèmes away, you took a bag of products out of Tyson's room and you threw them away some place in the hotel. Do you recall that?
- A. Yes, I believe so.

- Q. And as Judge Thomas was questioning you today, you said, Well, you couldn't recall whether you threw them away or not, and then you stuck with your story that you threw them away, right?
- A. Yeah.
- Q. So it's fair to say you've had three different positions on the disposal of the crèmes?
- A. . . . I remember saying to Tyson, we're throwing these away, we're getting rid of these. I remembered saying it a couple of times, that we're not using these crèmes.

Lauryn Williams, a track star and friend of Gay's, who was also in Monaco, said Gay told her that Drummond had brought crèmes to Gay's room. Williams cautioned Gay that the crèmes didn't sound right to her. Gay told Williams that she should go to Drummond's room and "check out" the crèmes.

Williams went to Drummond's room to pick up her uniform but while leaving the room she tripped over Drummond's suitcase and saw something that made her think of her conversation with Gay. Williams then question Drummond about the crèmes:

I asked J.D., I said, So what is this about the guy, Dr. Gibson? What do you think about these crèmes? And J.D. responded by saying, I don't know, we're going to check them out, we're going to see what the deal is. And I was just like, There is no such thing as natural HGH. And J.D. just said, I'm going to check them out, I'm going to see.

Later, Williams contacted Dr. Gibson but decided that she did not want to work with him. She told Gay that Gibson rubbed her the wrong way. A few weeks later, Williams told Drummond the same thing but Drummond continued to say that he was going to see Gibson with Gay:

J.D. responded, Well, I'm going to go down there and see what the deal is. Me and Tyson are going down there later on, like I guess soon. Like I'll check it all out. . . .

- Q. Again this was in the fall of 2012?

A. Fall of 2012.

Drummond, at first denied having talked to Williams about the crèmes or about Dr. Gibson but under questioning he admitted that she had come to his room the day before the meet and said, "that Tyson told her to come to the room to talk about the crèmes."

At the Olympic Games in 2012, Gay failed to medal in the 100 meter sprints. Thereafter, Drummond put Gay on the 4 x100 relay team; at the time Drummond made that selection, Drummond knew that Gay had been using the crèmes provided by Dr. Gibson. The 4 x 100 team won the silver medal.

Drummond Continues to Help Gay See Dr. Gibson

After Gay returned to the U.S. following the Olympics, Drummond continued to facilitate Gay remaining in contact with Dr. Gibson, even though Drummond knew that Gibson had given Gay crèmes labeled as containing prohibited substances. Drummond admits that he was aware that Gay was going to go back to see Dr. Gibson in October 2012. And Drummond also admitted that he made no further inquiries about Gibson between their meeting in Atlanta in June 2012 and Gay's return to Gibson in October.

In October or November 2012, Drummond gave Gay a message that Gibson wanted to see Gay about Gay's lab reports. Drummond testified that, at Gay's request, he, Drummond, gave Gay Dr. Gibson's contact information

On October 13, 2012, Gay got a text message from Drummond in which Drummond said that he had just spoken to Dr. Gibson who was going to look at his calendar for a date on which he could see Gay. A text message from Drummond on October 25, asked Gay whether Gay could visit Dr. Gibson on a Tuesday; Gay said he

could. In a text message on November 1, 2012, Gay told Drummond that Gibson was sending him, Gay, a detox kit; Drummond replied that he knew what was going on.

When Gay saw Gibson, Gibson told Gay this:

I know you didn't use my crèmes last year but everything is okay. All my supplements are good and if you trust me, I can get you healthy and get you back on track and everything. (Emphasis added.)

Gay assumed that Gibson had gotten his information from Drummond.

Gibson told Gay that Gay's bloodwork showed improvement and suggested to Gay that the changes showed that Gibson knew what he was doing. Gibson then asked Gay, "Do you trust me now?" Gay said yes. Gibson said this:

Okay, from this point on we'll go forward with all of my supplements and everything and I'm going to get you right and get you healthy and help you stay afloat. And I said, Okay, cool. That's when he gave me my program and that's when he told me to take this crème.

Tyson Gay Tests Positive In 2013

On July 12, 2013, USADA notified Tyson Gay of positive tests stemming from multiple samples provided by Gay during the first half of 2013. Gay's samples were positive using carbon isotope ratio analysis which revealed the presence of a synthetic anabolic agent. These test results were consistent with the use of DHEA by Gay. Gay was given a one-year ban on competition that began June 23, the day his sample was collected at the U.S. championships. As part of the penalty, Gay also accepted loss of results dating to July 15, 2012, the date when he first used the crèmes that Drummond had delivered to him in Monaco. As a result, he returned the Silver Medal he received for the 4x100 relay at the London Olympic Games and, according to estimates, lost 5 to 6 million dollars in income.

After Gay tested positive he called Drummond to advise Drummond of what had happened:

So at that point in time I called Drummond. And when I called him, I told him, I said, you know, we have a problem. I said, I tested positive for a steroid. And he said, What do you mean? And I explained it to him. And he said, What are you taking? And I said, I was taking all of Dr. Gibson's supplements. And I was like, I took everything he gave me, his crèmes and everything. And Drummond said, His crèmes? I said, Yeah. And he said, We decided to throw those away last year. And then I proceeded to say, No, I threw them away.

Lauryn Williams spoke to Gay after his positive test and Gay told her that Drummond had assured him that everything was okay:

- Q. When you called Tyson Gay after his positive test, did he make any reference to Mr. Drummond during that call?
- A. He did. He said that, you know, J.D. told me everything was okay.

When Hooker learned that Gay had tested positive because he used the crèmes from Dr. Gibson, she was surprised because she remembered "how adamant . . . Jon and Vicki had been to me not to use them." Huff recalled that after he told Hooker about Gay's positive test from using Dr. Gibson's crèmes she, "just kept asking me why, why was he using those. There is ingredients in there that Vickie and I discussed. We had concerns with them, we called J.D., had a conversation about the ingredients, and told him I wasn't going to use these."

Content Of The Crèmes Provided By Dr. Gibson

Neither of the crèmes that Drummond took to Europe and gave to Tyson Gay in Monaco in July 2012 was available for testing. However, USADA tested multiple jars of these crèmes that were produced by the same manufacturer, some of which were

manufactured in 2012 and some were manufactured in 2013. The labels on all of these jars stated that DHEA was an ingredient. The results of those tests indicated DHEA concentrations that were generally consistent taking into account certain variations in laboratory procedures. In addition, the manufacturer of the crèmes verified that the content of the crèmes containing DHEA remained unchanged throughout the time they were sold.

ANALYSIS

The burden of proof rests with USADA to establish an anti-doping violation. USADA bears the burden of proving to the comfortable satisfaction of the Panel, and bearing in mind the seriousness of the allegations made, that an anti-doping rule violation has occurred. Code Article 3.1. Anti-doping violations can be established "by any reasonable means." Code Article 3.2.

Violation of Code Article 2.6, IAAF 32.2 (f), Possession of DHEA.

USADA contends that Possession means having a prohibited substance in one's custody and under one's control and that the facts demonstrate several places where Drummond was in possession of DHEA, a prohibited substance.

But Drummond argues that he cannot be liable for possession if he did not know what was in the crèmes. He said he does not recall a crème with DHEA in it. Further, Drummond contends he cannot be held responsible for possession actual or constructive because he took actions demonstrating that he never intended to have possession of a banned substance and he renounced possession by declaring to USADA in a November 2013 deposition. Drummond argues that he could only have "intended to have possession" of DHEA if he knew that the products at issue actually contained DHEA.

The Panel rejects Drummond's contention that actual possession requires his specific intent to have under his custody and control a particular banned substance whose characteristics were fully known to him. Moreover, in this case Drummond knew that Gibson had sent Hooker banned substances that he had told Hooker to get rid of and not to use. Drummond saw banned substances in Gibson's office. And, Drummond saw banned substances in his hotel room in Oregon.

It was in Oregon that Drummond said he would hold on to the crèmes and other products that Dr. Gibson sent and thus he took possession of those items there. The Panel concludes that the crèmes provided by D. Gibson contained DHEA. Drummond removed the labels from the crèmes, marked them in his own hand writing and put them in his luggage for the trip to Europe where he carried them to Tyson Gay's room.

Drummond did not take these items to USADA or WADA or USA Track and Field. He kept them under his control. The Panel is of opinion that Drummond violated the rules against possession of banned substances.

Violation of Code Article 2.7, IAAF 32.2 (g), Trafficking of DHEA.

USADA argues that Trafficking includes the transportation of a prohibited substance or the delivery of a prohibited substance.

Drummond argues that common sense shows that he could not traffick in prohibited substances unless he knew that the crèmes contained prohibited substances. He argues that trafficking is a specific intent offense and that such was not shown here. Drummond says there was no trafficking here because Gay was not a third party and thus Drummond was simply giving Gay something that already belonged to Gay not giving prohibited substances to third party. And finally Drummond says there was no trafficking because trafficking involves the commercial aspect of drug distribution and

there was no showing that Drummond had any commercial interest in the items that he took to Europe.

The Panel is of opinion that the evidence demonstrates that Drummond both transported and delivered to Tyson Gay a product that contained DHEA, a prohibited substance that was disclosed on the label of the product. As we have said before, he put the crèmes in his luggage and took them to Europe. He then took them to Tyson Gay and urged Gay to use them to see what happened. The Panel concludes that Drummond violated the rules against Trafficking.

Violation of Code Article 2.8, IAAF 32.2 (h), Administration or Attempted Administration.

Rules 2.8 and 32.2(h) are written in the disjunctive. The opening phrase concerns administration or attempted administration of a prohibited substance but the second phrase says, "or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving and anti-doping rule violation or an attempted anti-doping rule violation." Thus, under the broad heading Administration two concepts are brought together. In the claims asserted against Drummond, USADA brought a claim for Administration and a separate claim for Assisting, Aiding and Abetting etc. The focus of this case is on the second phrase in the Administration rule. So this case is not about whether Drummond put a prohibited substance in Gay's body, rather it is about whether Drummond aided, abetted, etc.

USADA argues that "Any act of encouragement of doping, any act which makes doping easier or shows any reduced tolerance for doping" violates rule 2.8. And USADA argues that the facts of this case show that the rule was violated because Drummond sent Gay to Gibson when Drummond already knew that Gibson had given Marshavet Hooker crèmes that Drummond had told Hooker not to use because of their

contend; because Drummond saw Gibson recommend that Gay use crèmes labeled with the names of prohibited substances and Drummond said nothing; because Drummond saw Gibson making arrangements to send the crèmes to Oregon and Drummond said nothing to stop it; because when the crèmes came Drummond told Gay not to use them but then Drummond brought those same crèmes to Europe with their labels removed and told Gay to try them and to see what happened; because Drummond kept telling Gay to trust Gibson; and because Drummond made it easier for Gay to be in touch with Gibson.

Drummond argues that the Code does not define administration but that its natural meaning is to dispense or apply, neither of which happened here. Drummond says that nothing he did reasonably amounts to administration. Drummond argues that the evidence here establishes that he did not know or intend to have any involvement with banned substances and thus the claim of Administration or attempted Administration must fail.

As explained above, the Panel concludes that the claim of administration is not so narrow as Drummond would have it. The second prong of the rule is concerned with conduct that makes it easier to dope. As USADA argues, such conduct on Drummond's part is demonstrated by the evidence in this case. Drummond learned of Dr. Gibson from Marshvet Hooker. He knew that Gibson sent Hooker crèmes containing prohibited substances yet he recommended that Tyson Gay see Dr. Gibson. Once in Gibson's office, Drummond saw Gibson recommend that Gay use crèmes whose very labels indicated that they contained prohibited substances. When Gay expressed concerns about the crèmes Drummond accepted Gibson's explanation that the crèmes' labels did not accurately state what the crèmes contained and that the crèmes could

not lead to a positive result because they were 100% natural food based. Drummond took no steps to find out for himself what was in the crèmes. Rather Drummond listened while arrangements were made to send the crèmes to Tyson Gay in Oregon.

When the crèmes arrived in Oregon, Drummond says that he told Gay not to use them. Drummond admitted in his post-hearing brief that Gay did not object to that recommendation and that, indeed, Gay assented to that recommendation. Yet, Drummond removed the labels from the crèmes, hand marked them with a T and with an H, put them in his luggage and took them to Europe.

Once in Europe Drummond took the crèmes to Tyson Gay's room and told him to use them and see what happened. But Drummond claimed that after going to all the trouble to bring the crèmes to Europe, he told Gay not to use the crèmes, that he told Gay to throw the crèmes away, that he, Drummond, himself threw the crèmes away.

There were so many steps along the way that Drummond could have said no, stop, stay away from Gibson, stay away from these products, but he did not. The Panel is persuaded that Drummond violated the rules against Administration of banned substances.

DECISION AND AWARD

Pursuant to Rule 10.2 a first time violation of the rule against possession shall result in 2 years ineligibility. Pursuant to Rule 10.3.2 a first time violation for trafficking or administration/assisting shall be "a minimum of 4 years up to lifetime." The Panel is of Opinion that Drummond failed to act in the manner expected of a coach of athletes in the Olympic movement. A coach cannot lead an athlete into the danger of using prohibited substances. A coach cannot simply take the word of a person who recommends crèmes whose labels identify prohibited substances but who says that

the labels don't mean what they say. A coach must be a watchdog when it comes to prohibited substances.

On the basis of the foregoing facts and legal principles, this Panel renders the following decision:

Jonathan Drummond violated Code Article 2.6 and IAAF ADR 32.2(f) by possession DHEA.

Jonathan Drummond violated Code Article 2.7 and IAAF ADR 32.2(g) by trafficking of DHEA.

Jonathan Drummond violated Code Article 2.8 and IAAF ADR 32.2(h) by the administration of DHEA and attempted administration of HGH and/or testosterone by assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations or attempted anti-doping rule violations.

Jonathan Drummond's sanction for the violations found in this case shall be an 8 year period of ineligibility commencing on the date of this Award.

The parties shall bear their own attorney's fees and costs associated with this arbitration.

The Administrative fees and expenses of the America Arbitration Association, and the compensation and expenses of the arbitrators and the Panel, shall be borne as incurred.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Dated: December 17, 2014.


Hon. John Charles Thomas

Hon. James Murphy


Mark Muedeking

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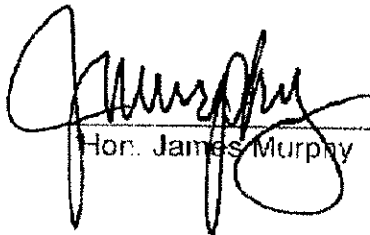
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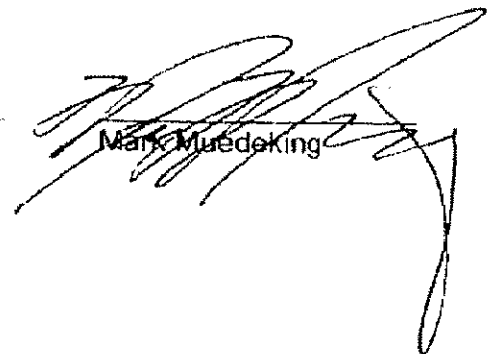
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