

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2004-CA-001392-MR

MARK DOWNEY

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 04-CI-00065

JAMES L. MORGAN, WARDEN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KNOPF, TAYLOR, AND VANMETER, JUDGES.

KNOPF, JUDGE: Mark Downey appeals, pro se, from an order of the Boyle Circuit Court, entered April 26, 2004, dismissing his petition for review of a disciplinary ruling by officials of the Northpoint Training Center in Burgin. The trial court ruled that Downey's punishment for using marijuana and cocaine in violation of prison regulations was justified by evidence of a positive drug test. Downey contends that prison officials

failed to establish a chain of custody for the drug-test evidence as required by Byerly v Ashley,<sup>1</sup> We affirm.

Pursuant to prison regulations mandating random drug tests, on December 25, 2003, correctional officer Vaught collected a urine sample from Downey. The officer sealed and labeled the sample, completed a Custody and Control form that identified both Downey and the sample, placed both the sample and the form into a courier pouch, and locked the pouch in a storage unit to await delivery to a courier for Airborne Express. On December 29, 2003, the sample and its accompanying paperwork were delivered to a testing laboratory in Memphis, Tennessee. Laboratory personnel noted that the sample arrived with its seal intact and with a proper identification number. The sample with that number was apparently screened four times, three times to confirm the initial positive results. All the tests were positive. Everyone at the lab who handled the sample was identified by printed name and by signature. The positive results provided the basis for disciplinary sanctions against Downey, including the loss of good time and restrictions on his visitation privileges.

In Byerly v. Ashley, this Court invalidated disciplinary sanctions based on drug test results where the testing lab had failed to confirm that the sample had arrived at

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<sup>1</sup> 825 S.W.2d 286 (Ky.App. 1991).

the lab with its seal intact and where no chain-of-custody indicated who at the lab had handled the sample. Absent chain-of-custody evidence, the Court explained, it was impossible to infer that the sample had not been tainted prior to arrival at the lab or that the correct sample had been tested. "We would have no problem in this case," the Court said,

if the laboratory had filled out its own form to at least indicate who received the sample, that the specimen seal was then intact, and who had handled the specimen through the time it was tested.<sup>2</sup>

Downey's contention that the chain-of-custody in this case failed to meet these Byerly requirements is without merit. Downey complains that the chain does not indicate which corrections officer gave the sample to the courier, only that the collecting officer placed the sample in a locked storage box awaiting delivery. We addressed this aspect of the process in Lucas v. Voirol:<sup>3</sup>

Who removed the sample from [courier] storage does not appear on the form, . . . . Nor does the form indicate when the sample was removed. Ideally, perhaps, these details would be reflected on the form. Their absence, however, does not undermine confidence in the test where lab personnel certify that the sample arrived within a

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<sup>2</sup> Byerly v. Ashley, 825 S.W.2d at 288.

<sup>3</sup> 136 S.W.3d 477, (Ky.App. 2004).

reasonable time after collection, clearly identified, and with its seal intact.<sup>4</sup>

Here the sample arrived at the lab within four days of its collection, and as noted above it was clearly identified and its seal was intact. The fact that the chain of custody does not indicate who gave the courier pouch to the courier does not entitle Downey to relief.

Nor is Downey entitled to relief because one of the signatures on the lab's chain of custody is illegible. The person's printed name appears on the form next to the signature. The illegible signature does not amount to a gap in the chain.

Finally, the Custody and Control form includes a blank for the specimen donor (Downey) to certify with his initials that the identification number on the form matches the number placed on the sample container. The collecting officer failed to obtain Downey's initials. Downey contends that without them it should not be presumed that his sample was the one tested. We agree with Downey that it would have been better practice to obtain his initials, but the officer's oversight does not entitle Downey to relief. At another place on the Custody and Control form, Downey certified with his signature that the specimen bottle had been sealed in his presence "and that the information provided on this form and on the label affixed to

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<sup>4</sup> Lucas v. Voirol, 136 S.W.3d at 479.

each specimen bottle is correct." The form adequately identifies Downey's sample, and the lab's chain of custody indicates that it was that sample that was tested.

In sum, the chain of custody in this case satisfies the requirements noted in Byerly v. Ashley. Accordingly, we affirm the April 26, 2004, order of the Boyle Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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