

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002806-MR

DAVID HUSBAND

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 00-CI-00366

JAMES L. MORGAN, WARDEN; DOUG SAPP,
COMMISSIONER, DEPARTMENT OF CORRECTIONS;
AND LT. JULIE PHILLIPS, INSTITUTIONAL
ADJUSTMENT OFFICER

APPELLEES

OPINION
REVERSING AND REMANDING
** **

BEFORE: BARBER, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Appellant, David Husband, appeals pro se from an order of the Boyle Circuit Court dismissing his motion for declaratory judgment. As prison authorities failed to establish a proper chain of custody for appellant's urine sample, we reverse and remand.

On July 1, 2000 a urine sample was taken from appellant, an inmate at Northpoint Training Center. The sample was collected by Corrections Officer Robert Sheene, Jr., and witnessed by Corrections Officer John Dean. The sample was sent

to the testing agency, LabCorp, which reported that it tested positive for benzodiazepines. As a result, appellant was charged with unauthorized use of drugs or intoxicants. A hearing was held on July 17, 2000, at which appellant stated that he was previously on a drug that would cause a positive test result. The adjustment officer found appellant guilty of unauthorized use of drugs or intoxicants, and imposed a penalty of 60 days forfeiture of good time, 120 days restricted visitation, and 45 days disciplinary segregation, suspended for 150 days. Warden James L. Morgan concurred with the adjustment officer's decision following administrative appeal.

On August 31, 2000, appellant filed a motion for declaratory judgment in the Boyle Circuit Court, alleging that the chain of custody of the urine sample was defective. Appellant further claimed that he was denied the right to call witnesses during the adjustment proceedings, and that no investigation was conducted to determine the effect of medications on the test. Appellant contended that the aforementioned errors violated his rights to due process and equal protection. On November 17, 2000, the court entered an order dismissing the motion. This appeal followed.

The Correction Cabinet's Policy and Procedure 15.8(VI)(C), regulating chain of custody of a urine sample, states as follows:

C. Chain of Custody

1. A Chain of Custody form shall be properly filled out by the staff who collected the urine sample.

2. Each time the sample is released, the person releasing the sample shall legibly sign, not initial, the Chain of Custody indicating date and time of release.

3. Each time the sample is received, the person receiving the sample shall:

a. sign the Chain of Custody;

b. indicate date and time of receipt;
and

c. [sic] whether or not the seal is intact.

4. Each time the sample is received or released from an inanimate object including a locked security box, mail pouch or mail room, the form shall be signed on behalf of the object below the name of the object.

5. An institution that utilizes any outside delivery agent to deliver a urine sample to the laboratory shall ensure that the sample is released to the delivery agent by signature of staff packaging the sample.

6. The laboratory personnel conducting the testing shall sign and date the Chain of Custody certifying:

a. that the seal is intact; and

b. that the name and number on or in the specimen bottle matches the name and number on the Chain of Custody form.

7. The laboratory shall indicate on the Chain of Custody which substance the urine sample tested positive for, if any.

A review of the "Chain of Custody" form contained in the record indicates a failure to comply with the requirements of CPP 15.8(VI)(C) with regard to the release and receipt of the sample. Section 6 of the form, where release and receipt are to be recorded beginning with the donor and collector, indicates that on July 1, 2000, a urine specimen was collected from

appellant by Officer Sheene. The second entry in this section, also dated July 1, 2000, indicates that the specimen was released on that date by Officer Sheene, but does not indicate to whom. Rather, in the corresponding space for name and signature of recipient, is printed the word "Lab Corp", with the purpose of the change in custody listed as "sent to lab". The third, and last, entry in Section 6 is dated July 4, 2000, and indicates that someone received the specimen on that date. The recipient's name and signature are illegible, and no purpose for the change in custody is listed.

In a separate section, the chain of custody form was marked to indicate that the pouch and seals were intact upon receipt by the lab, however, there is no accompanying signature or date. CPP 15.8(VI)(C)(6) requires that the laboratory personnel conducting the testing sign and date the chain of custody certifying that the seal is intact. Appellee contends that "[t]he individual who received the specimen both signed the chain of custody form and indicated upon the form that the pouch and seal of the specimen were intact upon testing." However, contrary to appellee's assertion, the form does not indicate that the person who signed the illegible signature in Section 6 as having received the sample, was also the person who conducted the testing and marked the form to indicate that the seals were intact. Other than the illegible signature in Section 6, no other signatures of LabCorp personnel appear on the chain of custody form.

The record further contains the affidavit of Officer Dean, stating that after the urine sample was sealed in the pouch for transport, it was placed in a locking container, located at the entrance of the institution, to be picked up by a courier and delivered to the laboratory for testing. The chain of custody form does not indicate who received or released the sample from the lockbox at the prison entrance.

"Although a prison inmate facing administrative disciplinary proceedings does not have the same procedural safeguards as does a person facing criminal prosecution . . . , [citation omitted], fundamental fairness dictates that the evidence relied upon to punish him at least be reliable." Byerly v. Ashley, Ky. App., 825 S.W.2d 286, 288 (1991). We conclude that the aforementioned violations of CPP 15.8(VI)(C) resulted in a failure by prison authorities to establish a proper chain of custody of appellant's urine sample. Where the proof as to chain of custody does not establish with reasonable certainty that the specimen tested was the same as that taken from the inmate, any punishment imposed must be set aside. Id.

Having concluded that a proper chain of custody was not established, we need not address appellant's additional arguments.

For the aforementioned reasons, the order of the Boyle Circuit Court is reversed and this matter is remanded for entry of an amended judgment consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

David Husband, pro se
Burgin, Kentucky

BRIEF FOR APPELLEES:

Rebecca Baylous
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