

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000626-MR

BRIAN LINK

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 04-CI-00009

DALE M. WATSON, WARDEN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; JOHNSON AND MINTON, JUDGES.

COMBS, CHIEF JUDGE: Brian Link, an inmate housed at Western Kentucky Correctional Complex, appeals from an order of the Lyon Circuit Court that dismissed his petition for review of a disciplinary decision of the prison's warden. Having reviewed the record, the arguments of the parties, and the applicable law, we affirm.

On November 24, 2003, Corrections Officer Scott Bynum collected a urine specimen from Link in accordance with prison

regulations mandating random drug tests. On a custody and control form, Link certified that the urine specimen was unadulterated, that the specimen bottle used to collect the sample was sealed with a tamper-evident seal in his presence, and that the information provided on the label affixed to the specimen bottle was accurate. Corrections officer Marin Scherringa witnessed the procedure and signed the custody and control form in that capacity. Bynum certified that he had collected, labeled, sealed, and released the specimen to a courier (Federal Express) for shipment to a private testing facility in accordance with applicable requirements.

The custody and control form indicated that the specimen was received at the lab, Advanced Toxicology Network of Memphis Tennessee, on November 26, 2003, sealed and intact. Attached to the form was a document prepared by lab personnel that recorded a complete chain of custody. Each technician who encountered the specimen described the purpose for handling it and then signed and dated the document.

The document indicated that the sample provided by Link had twice tested positive for marijuana. After the test results were received at the prison, Link was charged with unauthorized use of a controlled substance in violation of Department of Corrections regulations.

Following a disciplinary hearing, Link was found guilty of the charge. He was assigned to disciplinary segregation for forty-five days. He also forfeited sixty days of good-time credit, and his visitation privileges were restricted for six months. Link appealed the decision to the warden, who denied the appeal on December 24, 2003. He then petitioned the Lyon Circuit Court for relief.

On March 10, 2004, the Lyon Circuit Court granted the warden's motion to dismiss. The trial court concluded that the chain-of-custody documentation was complete, that the reliability of the positive test results was properly established, and that the imposition of disciplinary sanctions was justified. This appeal followed.

The guarantee of fundamental fairness implicit in the due process clauses of the state and federal constitutions dictates that an inmate face disciplinary sanctions only where there is some reliable evidence that he has committed an infraction justifying the sanction. Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997); Lucas v. Voirol, Ky. App., 136 S.W.3d 477 (2004). In Byerly v. Ashley, Ky. App., 825 S.W.2d 286 (1991), this court held that drug tests satisfy the "some evidence" standard where proof of chain of custody establishes the likelihood that the correct sample was routinely tested and that it was not adulterated.

Citing Byerly v. Ashley, supra, Link argues that the test results returned by Advanced Toxicology Network are not sufficiently reliable since the chain-of-custody proof is inadequate. Consequently, he contends that the disciplinary action taken against him cannot be upheld. We disagree.

The chain of custody maintained and documented by Advanced Toxicology Network was sufficient. Comprehensive documentation indicates that Link's sample arrived intact at the lab. Each instance on which the specimen was handled by technicians during testing was duly noted and recorded. Nonetheless, Link claims that the lab's documentation was suspicious for two reasons: first, the lab's chain-of-custody forms were identical for several inmates; second, his form contained the notation "N/A."

The alleged flaws identified by Link do not undermine the reliability of the testing. Close inspection of the documentation indicates that testing at Advanced Toxicology Network is undertaken in batches. Therefore, identical documentation regarding specimens submitted at the same time can be expected. The short-hand notation "N/A" entered by lab technicians indicates only that some available procedures were not undertaken with respect to the specimen. The chain of custody maintained and documented by the lab established the

likelihood that the correct sample was duly tested and that it was unadulterated.

We are not persuaded that Link sufficiently preserved his arguments regarding the chain of custody maintained and documented by prison officials. We have, however, addressed his concerns despite the preservation problem. We note that this court recently upheld the routine procedure by which correction officers place collected samples into locked storage boxes until couriers retrieve them for delivery to the lab. In Lucas v. Voirol, Ky. App., 136 S.W.3d 477, 479 (2004), we held as follows:

Who removed the sample from storage does not appear on the form, although the Department [of Corrections] suggests it was the courier. 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 reasonable time after collection, clearly identified, and with its seal intact.

Corrections officers certified that Link's urine sample had been collected, labeled, and sealed correctly. Lab personnel certified that the specimen identified as Link's arrived sealed and intact two days after it was collected. Pursuant to Voirol, supra, we find no grounds to attack the chain of custody maintained by prison officials.

We agree with the trial court that the drug test results were sufficiently reliable and that they provided ample evidence of Link's infraction to justify the sanctions imposed against him. We find no error.

The order of the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Rebecca Baylous  
Justice and Public Safety  
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