

DEMONISING JUSTIN GATLIN

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I. INTRODUCTION

A. Background

"Good Conquers Evil: Usain Bolt Narrowly Outruns Justin Gatlin for 100M Title" was one [headline](#)¹. "BOLT VS GATLIN: A symbolic struggle of good vs evil, light vs dark" was [another](#)².

Sebastian Coe, now President of the International Association of Athletic Federations (the "IAAF") [announced](#) that he felt "queasy" at the idea of Justin Gatlin beating Usain Bolt³. Former world 400m hurdles champion, Dai Greene, [proclaimed](#) that he could not "stand the sight" of Gatlin⁴.

British journalists, in particular, fell over themselves in their attempts to write ever more withering and sanctimonious proses about the sprinter⁵.

Those who did not know anything about Justin Gatlin or his past, might have been forgiven for assuming that he had committed a particularly heinous crime. On any reasonable view, meeting the threshold for "evil" implies the commission of some truly depraved act.

In fact, the crime – according to just about every news outlet in the UK – is that Gatlin is a "two-time drug cheat"⁶. The tag is used so routinely and so casually that it has become part of who Justin Gatlin is.

The combined reach of the BBC and other UK news outlets extends into the millions. Whatever the exact number, the point is that those media outlets have the potential to influence a lot of people. A lot of people, therefore, now believe – unequivocally – that Justin Gatlin is a "two-time drug cheat". That may, in part, explain the depth of ill-feeling directed at Gatlin, particularly in the UK.

In reality, the tag is both inaccurate and, quite possibly, libellous.

B. What is a "cheat"?

According to the [Oxford Dictionary](#), a "cheat" is a "person who behaves dishonestly in order to gain an advantage" and the act of "cheating" amounts to "a fraud or deception".

A reasonable inference, therefore, is that a "two-time drugs cheat" is someone who dishonestly took drugs to gain an unfair advantage over others on at least two separate occasions.

With that in mind, we now turn to each of Gatlin's prior offences.

¹ See <http://bleacherreport.com/articles/2553662-good-conquers-evil-in-narrowest-victory-yet-as-usain-bolt-outruns-justin-gatlin>

² See http://www.jamaicaobserver.com/sport/BOLT-VS-GATLIN_19225235

³ See <http://edition.cnn.com/2015/08/13/sport/sebastian-coe-doping-iaaf/>

⁴ See <http://www.bbc.co.uk/sport/0/athletics/34051406>

⁵ See, for instance, <http://www.telegraph.co.uk/sport/othersports/athletics/11825556/Justin-Gatlin-is-a-bothersome-impediment-to-athletics-rehabilitation-in-the-eyes-of-a-jaded-public.html>

⁶ See, for instance, <http://www.independent.co.uk/sport/general/athletics/usain-bolt-beats-justin-gatlin-to-100m-title-at-world-championships-in-beijing-10467953.html>

II. THE OFFENCES

A. The 2001 Case

According to the Panel of the American Arbitration Association (the "AAA Panel") that decided Gatlin's first case, the following facts were [uncontested](#)⁷:

- (1) Gatlin was diagnosed with attention deficit disorder ("ADD") at the age of nine and had been taking prescribed medication for ADD ever since.
- (2) From the age of 14 onwards, Gatlin's condition was treated with Adderall. Adderall contains amphetamine which, in 2001, was permissible for out-of-competition use but prohibited in-competition.
- (3) Gatlin was open about his ADD and had disclosed his use of Adderall to his doctor at the University of Tennessee. Consistent with the advice then given by the United States Anti-Doping Agency ("USADA") and USA Track & Field ("USATF") to athletes with ADD, Gatlin would typically stop taking his medication a few days before his competitions.
- (4) Aged 19, Gatlin competed at the USATF Junior National Championships on 16 and 17 June 2001. As was his usual practice, Gatlin stopped taking his medication approximately 3 days before the start of the competition.
- (5) Gatlin underwent doping control tests on both days. Small amounts of amphetamine were detected in both samples. The sample collected on 17 June 2001 contained even less amphetamine than the sample collected on 16 June 2001. USADA and the AAA Panel both agreed that the small and decreasing amounts of amphetamine detected in his samples were consistent with Gatlin's assertion that he had stopped taking his medication while still out-of-competition.

The AAA Panel was emphatic in its ruling that Gatlin was "certainly not a doper" and that his violation was "at most, a technical or a paperwork" violation". The following passage of the decision is particularly noteworthy:

9. [This Panel is very concerned that Mr. Gatlin's reputation not be unnecessarily tarnished as a result of this decision.](#) Anti-Doping rules are like other sporting rules in that sometimes there are adverse consequences even when an athlete is not at fault. The Panel specifically notes that, in this case, [Mr Gatlin neither cheated nor did he intend to cheat.](#) He did not intend to enhance his performance nor, given his medical condition, did his medication in fact enhance his performance. At most, his mistake was in not raising his medical condition for a review with the appropriate authorities before the race, instead of after it. [The Panel requires that this fact be made clear in any public release describing or relating to this decision.](#)

(Emphasis added)

The then applicable IAAF rules mandated a minimum two-year ban for any violation involving amphetamine "regardless of any mitigating circumstances", which could only be reduced by the IAAF Council on the basis of "exceptional

⁷ See AAA Award No. 30 190 00546 01 Justin Gatlin v. United States Anti-Doping Agency, dated 1 May 2002.

circumstances”⁸. Though the AAA Panel expressed its discomfort at the prospect of having to impose a two-year ban on Gatlin, it did so with the following caveat:

5. [...] the Panel will conditionally impose the two-year minimum suspension set forth in the IAAF Rules. The Panel understands that this suspension will be considered in an application for early reinstatement which, the Panel is informed, Mr. Gatlin intends to file with the IAAF. This Panel hereby retains full jurisdiction over this case so that it may reconsider the two-year suspension which it has imposed by this order should the IAAF not take expeditious action in granting Mr. Gatlin early reinstatement to a term appropriate to his circumstances and satisfactory to Mr. Gatlin.

Two months later, on 3 July 2002, the IAAF Council [reinstated](#) Gatlin with immediate effect⁹:

Council has accepted a request for early reinstatement on behalf of the US sprinter Justin Gatlin. It was agreed that Gatlin had a genuine medical explanation for his positive test: prescription medicine for the condition "Attention Deficient Disorder" (ADD) which was first diagnosed when Gatlin was 9 years-old, had never challenged his suspension, and had not competed in USATF or IAAF events since learning of his test result on 12 July 2001.

(Emphasis added)

B. The 2006 Case

On 22 April 2006 at the Kansas Relays, Gatlin provided a urine sample that later revealed the presence of exogenous “testosterone or its precursors”, in violation of the then applicable IAAF Rules.

Gatlin [claimed](#) that the positive test had been caused by sabotage. In particular, he submitted that his physical therapist must have rubbed cream spiked with testosterone on his legs without his knowledge the night before and the day of the doping control test. In support of his claim, Gatlin emphasised as follows¹⁰:

- (1) At the time of the Kansas Relays, Gatlin was in the midst of a financial dispute with his physical therapist, as a result of which Gatlin’s management team had decided to terminate the therapist’s employment. The therapist had, apparently, become aware the fact.
- (2) The night before and on the day of the Kansas Relays, the therapist had allegedly applied a new product to Gatlin’s legs than that ordinarily used.
- (3) Gatlin had been tested on 34 other occasions – both before and after the Kansas Relays – and none of those tests had revealed the presence of testosterone. Gatlin claimed that the 22 April 2006 test result was, therefore, an aberration and must have been caused by sabotage.

Two of the three members of the AAA Panel (the “Majority”) that heard Gatlin’s 2006 Case concluded that Gatlin’s evidence was insufficient to establish how testosterone had entered his system:

⁸ See Rule 60.2(a)(i) of the IAAF Rules applicable in 2001.

⁹ See <http://www.iaaf.org/news/news/iaaf-council-news-grand-prix-final-to-be-rena>

¹⁰ See AAA Award No. 30 190 00170 07 United States Anti-Doping Agency v. Justin Gatlin, dated 31 December 2007.

8.9 [...] the evidence submitted by Mr. Gatlin did not eliminate the possibility of intentional use or the possibility that he was the unwitting victim of doping by members of his coaching staff [...]

8.10 Simply stated, this Panel does not know with any degree of confidence how the testosterone entered Mr. Gatlin's system; transdermally or by pill or injection. [...] If Mr. Gatlin cannot prove how the testosterone entered his system, and he did not, he cannot prove two significant facts. First, that it was the physical therapist that placed the testosterone in his system transdermally; and second, that he did not intentionally take testosterone [...]

8.11 Finally, while Mr. Gatlin seems like a complete gentlemen, and was genuinely and deeply upset during his testimony, the Panel cannot eliminate the possibility that Mr. Gatlin intentionally took testosterone, or accepted it from a coach, even though he testified to the contrary. Thus, by failing to prove how the testosterone entered his system, as required by 10.5.1 and 105.2, Mr. Gatlin has failed to sustain his burden of proof to show that he had either No Fault or Negligence or No Significant Fault or Negligence, and the Panel so finds.

The third member of the AAA Panel (the "Dissenter") was more [persuaded](#) by Gatlin's defence but recognised that it would be "more than likely impossible" for Gatlin – and any athlete who was a victim of sabotage – to prove sabotage¹¹:

Mr. Gatlin's accusation of sabotage was far from frivolous. He presented strong evidence that the trainer had a motive and an opportunity to sabotage him. However, after Mr. Gatlin's offer of proof, I concluded three scenarios were equally likely: (1) Mr. Gatlin very well could have been sabotaged by the trainer, (2) Mr. Gatlin could have been unwittingly administered testosterone by a coach, or (3) Mr. Gatlin could have intentionally taken testosterone.

Mr. Gatlin proved sabotage by 33 %, not the balance of probabilities (plus 50%) required by the World Anti-Doping Code ("WADA Code") Article 3.1. [I reach this conclusion realizing that if sabotage did occur, it would more than likely be impossible for Mr. Gatlin to prove.](#) An innocent athlete will be labelled a drug cheat.

(Emphasis added)

Having found that Gatlin was unable to prove how testosterone had entered his system to the requisite standard of proof, the Majority and the Dissenter agreed that Gatlin had to be sanctioned. The Majority and the Dissenter disagreed, however, as to what sanction should be imposed on Gatlin.

The Majority imposed a four-year ban (instead of the standard two-year ban applicable for first offences), while the Dissenter considered that any sanction in excess of two years would amount to "blatant discrimination in violation of the Americans with Disabilities Act":

The first violation was caused by the medication Mr. Gatlin was taking for his disability, Attention Deficit Disorder ("ADD"). Increasing Mr. Gatlin's sanction for his first violation because of his disability is blatant discrimination in violation of the Americans with Disabilities Act.

Gatlin appealed the decision of the Majority to the Court of Arbitration for Sport ("CAS"), but that appeal was [rejected](#)¹².

¹¹ See Dissent of Christopher L. Campbell in AAA Award No. 30 190 00170 07 United States Anti-Doping Agency v. Justin Gatlin, dated 31 December 2007.

¹² See Arbitration CAS 2008/A/1461 Justin Gatlin v. United States Anti-Doping Agency (USADA) & CAS 2008/A/1462 IAAF v. USA Track & Field (USATF) & Justin Gatlin

III. Discussion

It is difficult to remember a track and field athlete as singularly disparaged as Justin Gatlin was this summer. Though Gatlin has not always helped endear himself – his social media use being a particular source of ire – the fundamental basis upon which he has been vilified is the myth created and perpetuated by the media that he is a “two-time drugs cheat”.

In fact, that assertion – at least based on what we know to be fact - is inaccurate:

- (1) The AAA Panel in the 2001 Case expressly held that “Mr Gatlin neither cheated nor did he intend to cheat” and that he was “certainly not a dooper”.
- (2) As for the 2006 Case, neither the AAA nor the CAS made any finding that Gatlin had cheated or taken testosterone knowingly or deliberately. Instead, Gatlin was sanctioned on the basis that he was not able to prove how testosterone had entered his body.

Only Justin Gatlin knows whether or not he knowingly or deliberately took testosterone in April 2006. While that possibility cannot be excluded, no tribunal or court has ever determined that he did. The reason that Gatlin was sanctioned was that the mere presence of a prohibited substance in his sample was sufficient to establish an anti-doping rule violation¹³. The offence is one of strict liability. No mental element (whether of intent or fault or negligence) need be established.

Gatlin was thus presumed to have committed an offence and automatically lumbered with the legal burden of proving his innocence (thus turning the presumption of innocence on its head). As emphasised by Christopher L. Campbell in his Dissent, it is “more than likely impossible” to meet that burden in cases of sabotage.

The British press ought, therefore, to consider carefully its choice of words in describing Gatlin.

As an aside, Gatlin has also been criticised for his apparent lack of [contrition](#)¹⁴, although that view also appears to be inaccurate as Gatlin [reportedly](#)¹⁵ expressed remorse for the circumstances that led to his 2006 Case in a series of letters addressed to the IAAF in 2010¹⁶.

¹³ Rule 32.2(a) of the 2006 IAAF Rules provided as follows:

Doping is defined as the occurrence of one or more of the following anti-doping rule violations:

(a) the presence of a prohibited substance or its metabolites or markers in an athlete’s body tissues or fluids. [...]

(i) it is each athlete’s personal duty to ensure that no prohibited substance enters his body tissues or fluids. Athletes are warned that they are responsible for any prohibited substance found to be present in their bodies. **It is not necessary that intent, fault, negligence or knowing use on an athlete’s part be demonstrated in order to establish an anti-doping rule violation under Rule 32.2(a).**

(Emphasis added)

¹⁴ See <http://www.bbc.co.uk/sport/0/athletics/34075035>

¹⁵ See <http://www.theguardian.com/sport/2015/aug/30/justin-gatlin-2010-apology-iaaf-drugs-federal-authorities>

¹⁶ Though Gatlin expressed remorse for the circumstances that led to his 2006 Case, note that Gatlin did not admit to taking testosterone knowingly or deliberately.

Finally, Gatlin has also been [condemned](#) for not cooperating with anti-doping authorities. That claim is also mistaken. The AAA Panel in the 2006 Case noted:

8.22 [...] The Panel finds that Mr. Gatlin has provided substantial assistance to the United States Government in investigating doping in sport. He immediately cooperated with the IRS without hesitation. He made undercover calls. He wore a wire, putting himself at risk.... [T]he record reflects that USADA never sought to avail itself of Mr. Gatlin's assistance, and that is not within Mr. Gatlin's control. USADA did enjoy the fruits of the investigation and assisted the IRS with advice. The record reflects extended assistance to the United States Government, which goes far beyond the contemplated assistance to anti-doping sports authorities.

(Emphasis added)

The government agent who led the investigation into the Bay Area Laboratory Co-operative ("BALCO") - Jeff Novitsky - gave [evidence](#) to the AAA Panel that Gatlin was the only athlete to willingly provide undercover assistance to the US government during its five-year investigation into BALCO. That investigation [reportedly](#) led to five criminal convictions and more than a dozen bans for athletes. It is difficult to imagine what more Gatlin could have done to assist the authorities in their efforts to fight the use of performance enhancing substances in sport¹⁷.

IV. Concluding remarks

Justin Gatlin will never be a fan favourite. That, of course, is not the issue.

Irrespective of any personal opinion anyone may harbour about Gatlin, it cannot be unreasonable to expect members of the media to report news objectively and accurately. Target audiences will, more often than not, take what is reported as fact and form opinions based on those "facts".

Certainly, a measure of the acrimony that was directed at Gatlin this summer can be attributed to the misperceptions – propagated by the media – that Gatlin is a "two-time drugs cheat", that he has never shown any contrition, and that he did not assist anti-doping authorities in the aftermath of the 2006 Case. That Gatlin [considers](#) that he has been treated unfairly by the British media is, therefore, not entirely unfounded¹⁸.

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¹⁷ See <http://www.theguardian.com/sport/2007/aug/05/athletics.sport>

¹⁸ See <http://www.theguardian.com/sport/2015/aug/24/justin-gatlin-boycott-bbc-uk-media-biased-reports>