

ISSA Proceedings 2014 - “I Did Not Do It, Because I Would Not Do It”: Defending Oneself Against An Accusation

Abstract: When hard proof is absent, someone who faces an accusation can seek assistance in arguments making it plausible that (s)he ‘did not do it’. This paper deals with an argument saying that the accused would never do the alleged act because of the harmful consequences it would yield. An analysis and evaluation of this kind of argumentative strategy is demonstrated with examples of two professional cyclists defending themselves against doping accusations.

Keywords: accusation, character, convincingness, denial, counterfactual, critical questions, hypothetical, plausibility, risk weighing, soundness

1. Introduction

In August 2012, the head of the USADA (United States Anti-Doping Agency), Travis Tygart, reported that its investigation had revealed manifold doping practices by Lance Armstrong. The accusation was based on detailed allegations of ex-teammates. Armstrong responded in a statement published on his website. He called the investigation a ‘witch hunt’ and a ‘one-sided’ trial that was only set up to punish him at all costs. As he had done before in defending himself against doping accusations, he based his denial of guilt on the hundreds of controls he had undergone during his career without a single positive result:

There is zero physical evidence to support his [Tygart’s] outlandish and heinous claims. The only physical evidence here is the hundreds of controls I have passed with flying colors. I made myself available around the clock and around the world. In competition. Out of competition. Blood. Urine. Whatever they asked for I provided. What is the point of all this testing if, in the end, USADA will not stand by it? (King, 2005)

The problem with so many negative test results is, however, that the tests used for controls always lag behind developments in the doping circuit. Professional cyclists, their doctors and other attendants are very inventive in finding new ways

to mislead inspectors and tests, for example by using new substances that cannot yet be detected. Negative test results may therefore free an accused person at a *formal* level, but with regard to the *facts*, one may still have doubts. And doubts there certainly were in Armstrong's case, ever since 2005 when the French newspaper *L'Equipe* reported that a lab had retested urine samples taken from Armstrong in 1999. This lab used new tests that were able to detect EPO - tests that were not yet available in 1999. Six out of seventeen samples tested positive. **[i]**

L'Equipe, not very fond of the American seven-times Tour winner, published the news of the retesting with bold headlines on its front page (*L'Equipe*, 2005). But in spite of the big fuss the newspaper made about it, no sanctions followed; neither from UCI (Union Cycliste Internationale: the international cycling union) nor from any other cycling institution. The reason was that no formal evidence could be gained from the retesting, because the samples had been used up. This meant that no confirmation tests could be carried out - a formal requirement in the testing procedure. In addition, Armstrong questioned the new test's credibility, arguing that there was no guarantee that the samples had been properly stored, and even if they had been properly stored, there was still no guarantee that the substances would remain the same after so many years. **[ii]** As a result, the case was dismissed. Nevertheless, the speculations continued, and were discussed by Armstrong fans and Armstrong haters alike, as well as by Armstrong himself. **[iii]** It was only when Armstrong made his confession to Oprah Winfrey in January 2013 that the truth finally came out.

This case shows that there are situations in which formal evidence does not correspond to what seems convincing to a general audience. According to the standards of a formal legal setting, Lance Armstrong had to be considered innocent, but there was nevertheless reason for the general public to question his innocence. In order to remove this kind of doubt, a defendant who wants to defend himself publicly has to use other argumentative strategies: arguments that do not provide conclusive proof, but nevertheless make guilt seem unlikely. This paper analyses one such argumentative strategy, which was used by Armstrong to argue his innocence in the public speculations about his alleged doping. Furthermore, the same kind of strategy was also used by the Tour winner Bradley Wiggins when confronted with suspicions about his outstanding Tour performance in 2012. I will refer to this strategy as the 'I would not do it'

argument. Although the examples I use are taken from cycling, similar arguments can be and are used in other contexts, and are especially applicable in situations where (f)actual evidence is not available or not conclusive.

2. *The 'i would not do it' argument*

The 'I would not do it' strategy was used by Lance Armstrong in a 2005 interview with Larry King. Armstrong was King's guest after *L'Equipe* divulged the retesting of Armstrong's 1999 urine samples. The argument was put forward in response to the question of whether he could unequivocally say that he had never used any illegal substance ever. Armstrong replied as follows:

Listen, I've said it for seven years. I've said it for longer than seven years. I have never doped. I can say it again. But I've said it for seven years. It doesn't help. But the fact of the matter is I haven't. And if you consider my situation: A guy who comes back from arguably, you know, a death sentence, why would I then enter into a sport and dope myself up and risk my life again? That's crazy. I would never do that. No. No way. (King, 2005)

With this answer, Armstrong appeals to the idea that someone who has survived cancer would not dope. In the British newspaper *The Telegraph* a journalist referred to this idea as: 'an implicit understanding that someone who had almost lost his life would not take drugs' (Moore, 2012).**[iv]** The argument seems to have been rather persuasive to all journalists and fans during the years that Armstrong was a Tour winner. At least, he was never questioned about it in a critical way, whereas he certainly could have been, as will be shown below.

Bradley Wiggins used the same kind of strategy in an open letter to *The Guardian*. Wiggins begins by saying that the relevant question is not why he would *not* dope but rather why he would? His answer to this question lists all the potential negative consequences of doping:

If I doped I would potentially stand to lose everything. It's a long list. My reputation, my livelihood, my marriage, my family, my house. Everything I have achieved, my Olympic medals, my world titles, the CBE [Commander of the Order of the British Empire, HJ] I was given. I would have to take my children to the school gates in a small Lancashire village with everyone looking at me, knowing I had cheated (...). (Wiggins, 2012)

Wiggins proceeds with this line of argument by saying that his entire life and

source of income is built around cycling. This includes not only his job in Team Sky, but also the fact that he and his wife organise cycling events, and many of his friends and family work in the cycling business. Wiggins states that he would not jeopardise his living, nor would he betray all the people who are involved in these activities:

If all that was built on sand, if I was deceiving all those people, I would have to live with the knowledge it could all disappear just like that. (...) I would not want to end up sitting in a room with all that hanging on me, thinking: 'Shit, I don't want anyone to find out.' (...) If I felt I had to take drugs, I would rather stop tomorrow, go and ride club 10-mile time trials, ride to the cafe on Sundays, and work in Tesco stacking shelves. (Ibidem)

Just like Armstrong's argument, Wiggins's argument for not doping is also based on what he might lose if he did. Armstrong speaks of literally losing his life, while Wiggins refers to figuratively losing his, i.e. losing everything that is important to him. And just like Armstrong's argument, Wiggins's argument also mentions weighing the risks:

Doping would simply not be worth it. This is only sport we are talking about. Sport does not mean more to me than all those other things I have. Winning the Tour de France at any cost is not worth the possibility of losing all that. I am not willing to risk all those things I've got in my life. (Ibidem)

3. Analysis

What kind of argument is expressed in these statements by Armstrong and Wiggins? Let's have a closer look and see how it can be reconstructed. Firstly, note that both Armstrong's and Wiggins's arguments are formulated hypothetically:

'(...) why would I then enter into a sport and dope myself up and risk my life again?' (Armstrong)

and

'If I doped I would potentially stand to lose everything' (Wiggins)

Wiggins's argument is clearly a conditional, in which 'If I doped' is the antecedent and 'I would potentially stand to lose everything' the consequent. Armstrong's

argument can be reconstructed as a conditional by adding the antecedent 'If I doped'. The rhetorical question stands for the consequent connected to this antecedent. The whole conditional then reads: 'If I doped, I - a guy who comes back from arguably, you know, a death sentence - would risk my life again'.

Both conditional statements make up an argument in which the standpoint is a denial of the act one is accused of: 'I did not dope'. In the antecedent of the conditional premise - 'If I doped....' - this negation is left out because the argument is built on temporarily assuming the truth of the accusation. This hypothetical antecedent is suggested to imply a hypothetical consequent in which a detrimental consequence is formulated - in both examples risking one's life (either literally or figuratively). And finally, there is an implicit premise that denies the consequence of the conditional premise, namely 'I would not do that' ('I would not risk my life'). This adds up to the following reconstructed argument (according to the pragma-dialectical model):

1. I did not dope, because
 - 1.1 If I doped, I would risk my life again, and
 - 1.1' I would not risk my life

In my view, however, this does not account for the whole argument. There is more to this kind of argument than is shown in this reconstruction. The power of the unexpressed premise (1.1') lies in the implicit understanding referred to in the *Telegraph's* comment on Armstrong's credibility: '(...) someone who had almost lost his life would not take drugs' (Moore, 2012). So, not only would the *protagonist* not risk his life, but no rational person would do such a thing. The argument appeals to generally shared ideas about how people behave in certain circumstances. What makes this an appealing strategy is that hearers can connect it to their own desires and fears, knowing that they would go through a similar weighing and balancing of risks. **[v]** This allows for an extended version of the above argument, in which the reference to what normal people would (or would not) do supports the unexpressed premise:

1. I did not dope, because
 - 1.1 If I doped, I would risk my life again, and
 - 1.1' I would not risk my life, because
 - 1.1'.1 Nobody would risk his life

But the argument is even more elaborate than this. That the arguer 'would not do such a thing' may not only be reasonable to accept because - according to generally shared expectations - *nobody* would do such a thing; we may also accept it because of a normative aspect that backs up these expectations. Both Armstrong's and Wiggins's arguments appeal to the undesirable consequences that would normally make up an 'argument from consequences' - the type of argument that also goes under the name 'pragmatic argument'. An 'argument from consequences' also contains an explicit *If...then* statement, but it takes a different kind of standpoint. In an 'I would not do it' argument the standpoint is descriptive - i.e. it describes a situation in the past. The standpoint of an argument from consequences is incentive: it *announces* that the speaker will (or will not) do something or advises the hearer to do (or refrain from doing) something. An example of such an argument would be: I will not dope, because if I do, I will lose my life. Now the unexpressed premise - 1.1' - reads 'losing my life is undesirable':

1. I will not dope, because
- 1.1 If I dope, I will risk my life again, and
- 1.1' That is an undesirable consequence

In Armstrong's argumentation this normative aspect is explicitly present, namely in the phrase 'That's crazy'. This phrase can be reconstructed as the support for the 'nobody would do it' premise:

1. I did not dope, because
- 1.1 If I doped, I would risk my life, and
- 1.1' I would not risk my life, because
- 1.1'.1 Nobody would risk his life, because
- 1.1'.1.1 It is crazy [undesirable] to risk your life

Below I will argue that the last - more elaborate - reconstruction can explain why an 'I would not do it' argument would be *convincing*. But when it comes to the soundness of such an argument, it does not matter in the least whether anybody would do it, or whether it would be crazy to do so.

4. *Evaluation*

In my view, 'I would not do it' arguments can be evaluated by asking some critical questions derived from the basic reconstruction of the argument - the main

argument. The first question that can be asked concerns the weighing of risks and whether the outcome would really be the one suggested by the argument. Risk weighing is affected by the chance that the alleged undesirable consequence will in fact occur. But a proper evaluation of an 'I would not do it' argument can only take place once the weighing of risks is viewed in relation to the character of the arguer. It should not be viewed from the perspective of what people in general would or would not do. An appeal to what everyone else would do can indeed make the argument *convincing*, but that is not the same as making it *sound*. After all, a particular arguer may turn out to be the kind of person who would not act according to general standards or expectations in a specific situation. This means that with regard to 'I would not do it' arguments, the second critical question concerns the arguer's personality and how it relates to the alleged risks.

Let us first apply these considerations to Armstrong's argument. The first question then reads: is it true that taking dope will cause death? The answer depends on how one takes it, how much of it one takes and whether it is taken in combination with other drugs. As a result of his cancer treatment, Armstrong was familiar with taking EPO, and this would seem to provide an argument for - rather than against - him taking this kind of drug. But even if the risk were as high as implied, is this really reason enough for not taking it? Many people smoke, drink and eat bad food and continue to do so because the harmful consequences only become apparent in the long run; most people are not deterred by potential long-term effects. Therefore, asking the first critical question already leads us to cast some doubt on Armstrong's argument. Risk weighing may indeed point in favour of doping because the advantages of winning are so high that one may even accept that one might die a few years earlier, especially since the chance of this happening may not be very high. And this is particularly true because Armstrong was an extremely fanatical racer who had only one aim: to be the best.**[vi]** Of course, it is easy to say this in retrospect, knowing that Armstrong did indeed make a risk calculation that was different from what his argument suggested.

A critical examination of Wiggins's weighing of risks amounts to balancing the chance of losing the life he has led so far against what would happen were it all to come out. Granted that losing one's means of income, family and public status is a rather disagreeable situation, the convincingness of Wiggins's argument depends on the chance of him being caught and therefore on the adequacy of drug tests. How big is that chance? As revealed in Tyler Hamilton's book *The Secret Race*

(2012), in the first decade of this century, not getting caught was all about ingenuity and access to the best doctors. For example, Hamilton, a former teammate of Armstrong's, writes that Armstrong's French gardener would follow the team on a motorbike during the Tour de France (and was therefore called 'Motoman'), taking the illegal substances with him, so that inspectors would not find them on the bus. Furthermore, the right doctors know what doses can safely be used without risking detection, and they know about ideal time spans between different blood transfusions. **[vii]**

On the other hand: some people say that those days were another era and things may have changed since then (e.g. Stephenson, 2012; Muench, 2013; although the ex-cyclist Bassons expresses his doubts in an interview: Cary, 2014). A biological passport programme has been introduced, and they say that the ethics of the big teams have changed. This may plead in favour of Wiggins's argument for not wanting to take the risk. However, whether his argument holds depends very much on his personality, i.e. whether he is likely to find the risk worth taking. This consideration is addressed in the second critical question. With respect to this consideration, it is relevant that Wiggins calls himself a 'shy bloke', who does not think of sport as the most important thing in his life:

I am not willing to risk all those things I've got in my life. I do it because I love it. I don't do it for a power trip: at the end of the day, I'm a shy bloke looking forward to taking my son to summer rugby camp after the Tour, where he could maybe bump into his hero, Sam Tomkins. That's what's keeping me going here. What I love is doing my best and working hard. (Wiggins, 2012)

The way Wiggins presents himself in the media does indeed seem to suggest that he is a different type of person than Armstrong, with a lot less self-confidence. Nonetheless, we can never be sure of his real mindset. **[viii]** The evaluation of an 'I would not do it' argument is therefore always speculative.

5. Conclusion

My conclusion is that an 'I would not do it' argument is weak because the answers to the critical questions are always speculative. This holds especially for the answer to the second question, i.e. whether the arguer has the kind of personality that is likely to be deterred by the undesirable consequences sketched in his argument and is therefore unlikely to take the risk. On the other hand, an 'I would not do it' argument may give some plausibility to a denial of guilt. In this respect,

we have to take into account that when an accused person is really innocent, there is not much he can say apart from referring to his character and what this character would or would not do.

The 'Nobody would do it' element - brought to light in the extended version of the reconstructed argument - does not play a role in the argument's evaluation. This element seems to be important because it makes the argument more *convincing*. This may - at least partly - be due to the fact that this element can block a critical examination. Suppose that a critic were to respond: 'Would you really not take that risk?' The accused can reply: 'Of course not. Nobody would. Would you?' What should the critic answer now? In theory he might respond: 'No, I would not do it, but I think you are the kind of person who would.' However, in real life critics are unlikely to react in this way. Such a response is just too face-threatening because it implies that the accused is not normal and a liar. **[ix]** This may have been one of the reasons why no journalist ever dared to raise doubts concerning Armstrong's use of his 'I would not do it' argument. **[x]**

NOTES

i. According to the New York Times (Abt, 2005): 'The lab confirmed that it had conducted the tests, but said it could not confirm that the samples were Armstrong's because the labels were identified only by six-digit numbers. L'Équipe said it had decoded the labels by matching each sample with forms filed with the French Cycling Federation during the Tour. Those forms, filled out each time a sample was taken in a drug test, identified the donor by name as well as the six digits on his urine sample.'

ii. He also made a big deal of questioning the credibility of the test itself and discrediting everyone who had made or believed an accusation aimed at him.

iii. Armstrong was generally given a high degree of credibility by his fans and most journalists, no doubt partly because of his foundation's work in helping cancer patients (see also note 7). Only one Irish journalist, David Walsh, dared to ask critical questions after Armstrong's comeback. When the USADA report was published, Walsh wrote about his queries that began as early as 1999: 'Everybody would say, "what evidence have you got?". I would say, "well I don't have enough evidence to ever prove to anyone that he's guilty...I just feel that I have huge responsibility, a huge need, to go and ask a lot of questions".'

iv. See also Wassink (2012): 'His past as a cancer patient made every question about doping superfluous, even immoral. Why would anybody having faced death

take such risks with his health and reputation?' [My translation of: 'Zijn verleden als kankerpatiënt maakte iedere vraag naar dopinggebruik overbodig, ja zelfs immoreel. Want waarom zou iemand die de dood in de ogen had gekeken nog zulke risico's nemen met zijn gezondheid en reputatie?']

v. Therefore, such an argument pre-eminently satisfies the description of the classical eikos argument as given in the classical handbook *Rhetoric to Alexander* (1428a25ff.). An eikos argument is an argument from plausibility – plausibility in the sense that the arguer should adhere to ideas or to representations of events that correspond with an audience's expectations. In *Rhetoric to Alexander* it is stated that such an argument should depict a course of events in such a way that the audience agrees that this is the most likely way for things to have occurred. See Kraus (2007, p. 7; 2010, p. 365), Hoffman (2008, p. 22), Kennedy (1994, p. 24).

vi. According to Muench (2013), Armstrong 'was obsessed with winning, with fame, with power'.

vii. See also Seaton (2012), who mentions that Lance Armstrong spent more than one million dollars on doctor Ferrari and concludes the article with the rhetorical question: 'Who would you prefer to see winning the Tour de France: the greatest cyclist in the world or the dope-cheat with the biggest budget?'

viii. According to Kimmage (2012), Wiggins's defence statements are harmed by the fact that Team Sky has been working with the Dutchman Geert Leinders, a doctor who was associated with doping.

ix. The accuser can also put forward a less face-threatening argument, namely: 'If I were you, yes, I would take the risk, considering all the advantages'. But even if this line of discussion is followed, at some point the accuser will have to use a face-threatening move. I.e. in that line of discussion the accused will reply that the accuser does not know what he is talking about, that the risk really is too high. If the accuser wants to pursue the critical examination at this point, he can only do so by attacking the argument's content – 'The risk is not as high as you suggest' – thus still implying that the accused is lying.

x. Such doubts would be particularly face-threatening in view of Armstrong's cancer history. As Walsh said, cited in an article by Andrew Pugh (2012): 'It felt like the cancer was a big factor from day one. A lot of people didn't think it was appropriate to ask what were very necessary questions. I think part of the reason they didn't want to ask those questions was because the guy had come back from cancer.' The good works done by Armstrong's cancer foundation were another reason: '(...) the Armstrong story was deemed to be so good, so remarkable, an

inspiration to countless millions, who wants to rain on that parade?’

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