

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-001585-MR

PATTI WEBB, WARDEN, AND  
LIGGETT MORRIS

APPELLANTS

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 04-CI-00200

JAMES MALLORY

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: COMBS, CHIEF JUDGE; DYCHE AND HENRY, JUDGES.

DYCHE, JUDGE: Warden Patti Webb and "adjustment officer" Liggett Morris of the Green River Correctional Complex appeal from an order of the Muhlenberg Circuit Court which found that the disciplinary action against appellee, James Mallory, for possession of dangerous contraband was not based on reliable evidence. The evidence in question is the result of a Duquenois-Levine Reagent test which showed a substance found in Mallory's possession to be marijuana.

Mallory has filed no brief before this court. We therefore "regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case." Ky. R. Civ. Pro. 76.12(8)(c)(iii).

We note that this is a continuing issue within the correctional facilities in the Commonwealth. Corrections officials would be well served to properly put the matter of the test's reliability before a circuit court and seek, once and for all, a determination of its reliability and whether its use in prison discipline matters is proper.

The judgment of the Muhlenberg Circuit Court is reversed, and this matter is remanded for reinstatement of the discipline imposed against Mallory.

ALL CONCUR.

BRIEF FOR APPELLANTS:

NO BRIEF FOR APPELLEE

Emily Dennis  
Justice and Public Safety  
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