



WAYNE E. BENNETT
SUPERINTENDENT

NEW YORK STATE POLICE
TROOP T HEADQUARTERS
P. O. BOX 189
ALBANY, N. Y. 12201-0189

August 3, 2004

LETTER OF CENSURE

Trooper James D. Leeder
New York State Police
Troop T
Tarrytown, New York

Dear Trooper Leeder:

On Friday, July 30, 2004, at 2:00 p.m., you met with me in my office to conduct an Informal Inquiry into the allegations that you failed to review case facts to adequately prepare for your court appearance, which resulted in inaccurate and contradictory testimony being given and the dismissal of felony drug charges.

As defined in the elements of Rule 3.2 of the New York State Police Manual, you were contacted and queried as to whether or not you desired to have this matter adjudicated at the Troop level. You indicated you were amenable to such a proceeding and submitted your memorandum wherein you waived any right to appeal from my final determination.

Prior to the imposition of any penalties, I requested you relate any details you felt were pertinent to the incident. You admitted you did not adequately prepare for the Suppression Hearing and did not file an Arrest Summary Report with the Westchester DA's office.

I advised you that your actions were in violation of Regulations 8A2 and 8A9(5) of the New York State Police Manual, and it was my determination that you would be penalized through this Letter of Censure. Upon your receipt of this letter, this matter will be considered closed.

Sincerely,

George P. Beach II

Major George P. Beach, II
Troop Commander, Troop T

copies to:

Deputy Superintendent Joseph F. Loszynski - Internal Affairs Bureau
Captain Evelyn P. Mallard, Zone Commander, Zone One

NEW YORK STATE POLICE

MEMORANDUM

Troop T Station HeadquartersDate July, 30, 2004

To: Major George P. Beach II, Troop Commander, Troop T

From: Trooper JAMES D. LEEDER, SP Tarrytown *JL*

Subject: PERSONNEL COMPLAINT - DCN: 2002-0109

I hereby consent to have the above captioned investigation adjudicated by the Troop Commander under the provisions of Article 3, Disciplinary Action of the New York State Police Manual.

I waive the following:

- (1) The right to have this matter disposed of by the Superintendent or by a formal hearing.
- (2) Any right to appeal from the Troop Commander's adjudication which may be a determination of unfounded or, upon a finding of guilty, the imposition of:
 - i. a letter of censure, and/or
 - ii. an intra-troop transfer with my consent, and/or
 - iii. a fine to be expressed in the loss of no more than five (5) vacation days to be worked by the Member with no additional compensation or overtime, and/or
 - iv. a period of probation not exceeding 90 days which probation must be for a definite period of time) and must include conditions of probation which, if violated, could subject me without the right of a further inquiry or a hearing, to the imposition of any one or more of the penalties that can be imposed by the Troop Commander, and/or an intra-troop transfer, without my consent.


NEW YORK STATE POLICE

NEW YORK STATE POLICE
INTERNAL AFFAIRS BUREAU
HEADQUARTERS

2004 AUG 17 P 8:09 MEMORANDUM

Troop T Station HeadquartersDate August 3, 2004

To: Deputy Superintendent Joseph F. Loszynski - Internal Affairs Bureau

From: Major George P. Beach, II Troop Commander, Troop T Subject: INFORMAL INQUIRY - DISCIPLINARY ACTION:
TROOPER JAMES D. LEEDER
EOD: OCTOBER 28, 1996
DIVISION COMPLAINT FILE NUMBER: 20030109

Reference is made to the Level Four personnel investigation conducted by Inspector ARTHUR J. HAWKER, which was initiated when then Investigator LEEDER and Trooper HAROLD M. EDWARDS arrested a complainant for felony cocaine possession. The case was then adopted by Investigator NOEL J. NELSON. The subsequent investigation revealed that the members failed to review the case facts or adequately prepare for their court appearances, which resulted in inaccurate and contradictory testimony being given. This resulted in the dismissal of felony drug charges against the defendants.

On July 30, 2004, at 2:00 p.m., I met with Trooper LEEDER in my office at Troop T Headquarters to conduct an Informal Inquiry. As defined in the elements of Rule 3.2 of the New York State Police Manual, Trooper LEEDER was contacted and asked whether or not he desired to have this matter adjudicated at the Troop level. He then submitted his memorandum (copy enclosed) stating his preference for an Informal Inquiry and waiving any right to appeal from my final determination.

Prior to the imposition of penalties, I requested Trooper LEEDER relate any details he felt were pertinent to the incident. He admitted he did not adequately prepare for the Suppression Hearing and did not file an Arrest Summary Report with the Westchester DA's office.

His actions were in violation of Regulations 8A2 and 8A9(5) of the New York State Police Manual, and it was my determination that he would be penalized through a Letter of Censure (copy enclosed). Upon his receipt of his letter, this matter will be considered closed.

Enclosures

EDWARDS, HAROLD M -
TROOPER

✓ LEEDER, JAMES D -
INVESTIGATOR

NELSON, NOEL N -
INVESTIGATOR

TYPE: Personnel

CASE# 20030109

FINDING: Founded

Complainant:
Lester Adler

Complaint of Personnel Investigation 20030109

Type: Personnel Sub Type Troop: T Status: C
Incident Date/Time 10/1/2002 Mode Rec. Fax
Report Due 3/26/2003 Level Inv. D 4 CTV: K6002 - C/WHITE PLAINS
Commissioned Officer Assigned Yes Report Location Personnel 8/28/2003

Synopsis:

Westchester County Court Judge Adler dismissed seizure of CPCS 1st evidence against defendants [REDACTED] and [REDACTED] who were arrested by Troopers Leeder and Edwards on 7/3/01. In his decision, the Judge characterized testimony given by Division members as "contradictory, incredible and unconvincing."

IAB South to investigate

Classification: INTERNAL ADMINISTRATIVE MATTERS Finding: F

Subjects:

Rank TROOPER DOE: 10/7/1991
Last Name EDWARDS First Name HAROLD MI M
Troop T Location NEW ROCHELLE
CCC 1: INCOM CCC 2: DISOD CCC 3: DICDV

Rank INVESTIGATOR DOE: 10/28/1996
Last Name LEEDER First Name JAMES MI D
Troop M Location DETF - NYC
CCC 1: INCOM CCC 2: DISOD CCC 3: DICDV

Rank INVESTIGATOR DOE: 10/1/1984
Last Name NELSON First Name NOEL MI N
Troop T Location TARRYTOWN
CCC 1: IMPEV CCC 2: INCOM CCC 3: DISOD

Complainants:

Last Name Adler First Name Lester MI TZS
Shield Rank SexM SP Employee ☐ DOE
Address Westchester Co Court City White Plains State NY Zip 10601
Home Phone Work Phone

Administrative Personnel:

ID RECEIVING MEMBER TZS H132
Last LOSZYNSKI First JOSEPH MI F Date/Time: 2/13/2003 9:00 AM

	<i>ID</i>	MEMBER AT TROOP NOTIFIED		<i>TZS</i>	T011	
<i>Last</i>	BEACH II	<i>First</i>	GEORGE	<i>MI</i>	P	<i>Date/Time:</i> 2/18/2003 10:00 AM

	<i>ID</i>	MEMBER WHO NOTIFIED TROOP		<i>TZS</i>	H132	
<i>Last</i>	HAWKER	<i>First</i>	ARTHUR	<i>MI</i>	J	<i>Date/Time:</i> 2/18/2003 10:00 AM

	<i>ID</i>	MEMBER AT DIV NOTIFIED		<i>TZS</i>	H132	
<i>Last</i>	HAWKER	<i>First</i>	ARTHUR	<i>MI</i>	J	<i>Date/Time:</i> 2/13/2003 9:00 AM

	<i>ID</i>	INVESTIGATOR		<i>TZS</i>	H132	
<i>Last</i>	HAWKER	<i>First</i>	ARTHUR	<i>MI</i>	J	<i>Date/Time:</i> 4/29/2003

	<i>ID</i>	REVIEWER		<i>TZS</i>	H132	
<i>Last</i>	HAWKER	<i>First</i>	ARTHUR	<i>MI</i>	J	<i>Date/Time:</i> 4/29/2003

NEW YORK STATE POLICE

MEMORANDUM

Troop__ Station__ HeadquartersDate April 29, 2003

To: Deputy Superintendent Harry J. Corbitt

From: Staff Inspector Arthur J. Hawker *AJH*

Subject: COMPLAINT AGAINST PERSONNEL - DCN 200~~2~~³-109
INVESTIGATOR NOEL N.J. NELSON, EOD 10/01/84
INVESTIGATOR JAMES D. LEEDER, EOD 10/28/96
TROOPER HAROLD M. EDWARDS, EOD 10/07/91

Reference is made to the attached Gen 30 investigation report of writer dated 4/29/03, concerning the above captioned matter.

On July 3, 2001, Trooper JAMES D. LEEDER assisted by Trooper HAROLD M. EDWARDS, both of Troop T, arrested [REDACTED] age 22 and [REDACTED] age 25 of Massachusetts for A-II felony cocaine possession (CPCS 2nd degree) following a traffic stop. The associated BCI case was thereafter adopted by Investigator NOEL N.J. NELSON. On 2/13/03, following a Suppression Hearing in which testimony was taken in Westchester County Court on five separate dates between October and December 2002, Judge LESTER B. ADLER ruled that the evidence in the case was improperly obtained, characterizing the testimony of the above members as "contradictory, incredible and unconvincing".

Investigation into this case has shown that the three members involved in this matter individually and collectively bear the responsibility for the dismissal of the charges against [REDACTED] and [REDACTED] [REDACTED]

[REDACTED] Further, the Judge's original contention that Trooper LEEDER never disclosed the odor of marijuana as the Probable Cause for the vehicle search prior to the Suppression Hearing was inaccurate. Also, his implied conspiracy between Troopers LEEDER and EDWARDS for not having their respective remote microphones on was not substantiated. The Judge's suspicion that the reason for the V&T stop, [REDACTED] failure to signal a lane change, was not video recorded was actually due to his misunderstanding of how the car video system operates.

The Westchester County District Attorney's office has also taken some of

the responsibility for the manner in which they attempted to prepare for Grand Jury and the Suppression hearing in this matter, [REDACTED] [REDACTED]. Those factors aside however, it has been found that the involved members initially failed to accurately document the facts surrounding the arrest and when court was scheduled, they failed to adequately review and prepare for their appearances which resulted in inaccurate and conflicting testimony. This lack of diligence permitted the defense attorneys to attack their credibility and led to the dismissal of the case. With respect to each individual member, the following is found:

Investigator NOEL N.J. NELSON

Reg 8A2 Failure to comply with Rules, Regulations and Instructions

Field Man 32Q2b(6) – record the details about how the offense or incident occurred; include sufficient, factual information to relate a complete sequence of events that in preparing the Gen 84 Investigation Report in this case on or about 7/03/01, Investigator NELSON failed to accurately record details of the seizure of evidence by reporting that T-1 [REDACTED] handed Trooper LEEDER marijuana and that it was Trooper LEEDER who found the cocaine in the headliner. He did not include in the report that both Troopers had based their actions in large part based upon an odor of unsmoked marijuana which they claim to have smelled in the car, that being the Probable Cause for the search, instead indicating that the drugs were found as the result of an impound/inventory search.

Field Manual 36B9b Suppression Hearings – the manner by which all of the evidence against the defendant was obtained is also important and this must be fully explained to the District Attorney – that between October and December 2002, Investigator NELSON as the case agent, failed to accurately report to the Westchester County DA the full facts of the basis for the search in this case, erroneously believing it to be an impound/inventory seizure versus a Probable Cause seizure as testified to by the Troopers. This resulted in contradictory testimony being given by Division members to the detriment of the case.

Field Manual 36C2e Grand Jury – shortly before appearing, review your notes, reports and records to ensure that the events are fresh in your mind – that in April 2002 Investigator NELSON testified at the Grand Jury. At that time he was in possession of the knowledge of Troopers LEEDER and EDWARDS' claims of having purportedly smelled a marijuana odor in the defendants' car but failed to convey that information to the assigned Assistant District Attorney.

Reg 8A9(5) A member may be determined to be incompetent and subject to disciplinary action in accord with the Rules of the Division if in the performance of official duties the Member exhibits failure to assume responsibility or to exercise diligence in the performance of official duties - that in preparing his investigative report in July 2001 Investigator NELSON prepared an inaccurate report (by omission and by citing incorrect

facts) which served as the basis of information to the District Attorney. While giving testimony in the October 2002 Suppression Hearing, Investigator NELSON gave testimony which was deemed not credible by the presiding Judge because he based that testimony on memory and his inaccurate report, primarily his being under the belief that the drugs were seized during an impound/inventory of the vehicle. As the case agent, he further failed to ensure that Trooper LEEDER had filed a DA's Arrest Summary which would have provided the DA with an accurate description of how the narcotics evidence in this matter was seized. His failure to exercise diligence and responsibility in reviewing this case and preparing for testimony was an integral part in the dismissal of A-II felony charges against the defendants.

Trooper JAMES D. LEEDER

Reg 8A2 Failure to comply with Rules, Regulations and Instructions

Field Manual 36B9b Suppression Hearings – the manner by which all of the evidence against the defendant was obtained is also important and this must be fully explained to the District Attorney – that in July 2001, as the arresting officer, Trooper LEEDER failed to file with the Westchester DA a DA's Arrest Summary Report which would have provided the DA with a clear account of how the narcotics evidence in this case was seized

Field Manual 36C2e Grand Jury – shortly before appearing, review your notes, reports and records to ensure that the events are fresh in your mind – that in April 2002, Trooper LEEDER inaccurately testified at the Westchester County Grand Jury that the defendant [REDACTED] had (voluntarily) handed him the marijuana in his possession when in fact Trooper LEEDER, as shown on video tape, actually reached into [REDACTED] pocket and pulled the marijuana out. Trooper LEEDER admittedly testified from memory on this occasion and did not review any notes, reports or associated video tapes.

Reg 8A9(5) A member may be determined to be incompetent and subject to disciplinary action in accord with the Rules of the Division if in the performance of official duties the Member exhibits failure to assume responsibility or to exercise diligence in the performance of official duties – that Trooper LEEDER's failure to complete a DA's Arrest Summary, his failure to adequately prepare for Grand Jury, and his failure to adequately prepare for the Suppression Hearing resulted in his giving inaccurate testimony as well as testimony which conflicted with other Division members. His failure to exercise diligence and responsibility in reviewing this case and preparing for testimony was an integral part in the dismissal of A-II felony charges against the defendants.

Trooper HAROLD M. EDWARDS

Reg 8A9(5) A member may be determined to be incompetent and subject to disciplinary action in accord with the Rules of the Division if in the performance of official duties the Member exhibits failure to assume responsibility or to exercise diligence in the performance of official duties – that in giving testimony at the Suppression Hearing

between October and December 2002, Trooper EDWARDS inaccurately testified that the two defendants were handcuffed only after a large quantity of glassine envelopes were found in the trunk of their rental car. This assertion was refuted by the video tape from his patrol car as well as that of Trooper LEEDER's which showed that the defendants were restrained before a search of the car was undertaken. His failure to exercise diligence and responsibility in reviewing this case and preparing for testimony was an integral part in the dismissal of A-II felony charges against the defendants.

Investigator NELSON, Troopers LEEDER & EDWARDS

Reg 8A8(2) A member shall not act in a manner tending to bring discredit upon the Division – by their failure to properly document accurate details from the inception of this case, by failure to fully apprise the District Attorney of the facts of the narcotics seizure, by failing to adequately review the case and detect the conflicts of fact and by failing to properly prepare for testimony in this case, the above members were responsible for the dismissal of the felony narcotics charges. [REDACTED]

[REDACTED]. His findings are a matter of public record and were reported in the Westchester – Rockland County Journal News, the account therein being an embarrassment to the Division.

Appropriate administrative action is recommended.

NEW YORK STATE POLICE

COVER PAGE

TITLE OF CASE Investigator Noel N.J. Nelson EOD 10/01/84, SP Tarrytown Investigator James D. Leeder EOD 10/28/96, SP NYC DETF Trooper Harold M. Edwards EOD 10/07/91, SP New Rochelle	REPORTING TROOP	MANAGING TROOP	DATE OF REPORT
	H	H	06/24/03
	DATE OCCURRED	TZS	CTV CODE
	7/03/01 to 12/16/02	T111	K6002
	INVESTIGATIVE PERIOD		TYPED BY
	02/18/03 to 06/24/03		ajh
	REPORT OF		SHIELD
	Insp. Arthur J. Hawker		3610
CHARACTER OF CASE - (CC CODE) COMPLAINT AGAINST PERSONNEL (PCT0100)	STATION		CASE#
	IAB South		2003-109
	STATUS OF CASE		
	<input type="checkbox"/> CA <input type="checkbox"/> C/EC <input checked="" type="checkbox"/> C/INV <input type="checkbox"/> C/UNF <input type="checkbox"/> OPEN		

REFERENCE: Report of Complaint Against Personnel DCN 2002-109, 2/18/03

ENCLOSURES: To Division Headquarters and Troop T

1. Memorandum of Inspector Arthur J. Hawker, dated 02/18/03
2. Gen 84 Report of Investigator Noel Nelson, dated 07/03/01
3. Decision & Order of Judge Lester Adler, dated 02/13/03
4. Related news article, Journal News, dated 02/14/03
5. Amended Decision & Order of Judge Adler, dated 02/13/03
6. Statement of Trooper Harold M. Edwards, dated 03/24/03
7. Patrol car video tape from Trooper Edwards' car, dated 07/03/01
8. Statement of Investigator Noel Nelson, dated 03/25/03
9. Statement of Investigator James D. Leeder, dated 03/26/03
10. Patrol car video tape from Trooper Leeder's car, dated 07/03/01
11. Statement of Investigator James D. Leeder, dated 06/04/03

DISTRIBUTION:	FOR TROOP/DIVISION HEADQUARTERS USE ONLY
(1) DHQ (1) TROOP () OTHER:	

APPROVED:	DESTROY IN 19	INITIALS
STATION:	PERMANENT RETENTION	
TROOP:	INITIALS	
DHQ		

Synopsis:

On July 3, 2001, Trooper JAMES D. LEEDER, EOD 10/28/96, assisted by Trooper HAROLD M. EDWARDS, EOD 10/07/91, both of SP New Rochelle, Troop T, arrested [REDACTED] age 22 and [REDACTED] age 25 of Massachusetts for A-II felony cocaine possession (CPCS 2nd degree) following a traffic stop. The associated BCI case was thereafter adopted by Investigator NOEL N.J. NELSON, EOD 10/01/84, SP Tarrytown. On 2/13/03, following a Suppression Hearing in which testimony was taken in Westchester County Court on five separate dates between October and December 2002, Judge LESTER B. ADLER ruled that the evidence in the case was improperly obtained, characterizing the collective testimony of the above members as "contradictory, incredible and unconvincing". Investigation has revealed that in first documenting the arrest and in subsequent testimony during this hearing as well as Grand Jury prior to that, the referenced members failed to review the case facts or adequately prepare for their court appearances which resulted in inaccurate and contradictory testimony being given, resulting in the dismissal of felony drug charges against the two defendants. The matter is Founded with administrative action recommended.

Details:**At Westchester County DA's Office, White Plains, New York**

1. On 2/18/03 writer met with Westchester County District Attorney's staff members THOMAS LUZIO, Chief of Narcotics Bureau, KENNETH C. CITARELLA, Deputy Bureau Chief, and FRANK LUIS, Assistant District Attorney regarding the 2/13/03 ruling of Judge LESTER ADLER, dismissing the narcotics evidence in the [REDACTED] case and his critical characterization of the testimony given by Troopers LEEDER and EDWARDS, as well as that of Investigator NELSON. After acknowledging that their office bore a certain degree of responsibility for the outcome of the case due to internal miscues which left insufficient preparation time, Chief LUZIO expressed his opinion that the Troop T members had done an inadequate job of preparing the associated case report as well as failing to review the facts and prepare for their respective court appearances. Member was assigned to investigate under the title of DCN 2003-109. A copy of a memorandum of writer prepared 02/18/03 outlining the meeting is attached as **Enclosure #1**

At IAB South, New Windsor, New York

2. On 2/19/03 reviewed the Gen. 84 Investigation Report, SP Hawthorne 01-354, filed by Investigator NOEL N.J. NELSON in association with the arrests of [REDACTED] and [REDACTED]. The report narrative states that [REDACTED] was stopped by Trooper LEEDER for failing to signal and initial inquiry by that member determined that the car was a rental vehicle; that neither [REDACTED] nor his passenger [REDACTED] were listed on the agreement as authorized drivers. Subsequent to the arrival of Trooper EDWARDS, the occupants were advised that the car was being impounded and [REDACTED] was asked by LEEDER if he possessed anything on his person that he shouldn't have, to which he replied affirmatively and gave the Trooper two

small boxes containing marijuana. After having [REDACTED] exit the car, according to the report, Trooper LEEDER conducted a search of the vehicle and found approximately 10,000 glassine bags of the type used to package narcotics in the trunk. Trooper EDWARDS, utilizing his Division K-9, then located a marijuana cigarette in the glovebox and a continued search by LEEDER disclosed approximately 3.4 oz cocaine in the vehicle's headliner. Lastly, the console of the auto yielded an additional 3 small boxes of marijuana. A copy of the Gen 84 and attachments is made **Enclosure #2**

3. On 2/19/03 a review of Judge ADLER's 2/13/03 ruling was made in which he cited the following reasons as the basis for suppressing the evidence:

Trooper LEEDER

- a. the Trooper provided testimony that upon stopping the car, he detected the odor of "fresh" marijuana, however there is no reference to this observation in his conversations with Trooper EDWARDS which were captured on the patrol car video/audio system
- a. the rental company was never called regarding the possession of the car by [REDACTED] and [REDACTED] even though their suspected unauthorized use was the reason for the impound
- a. the court questioned at which point Trooper LEEDER actually did call Trooper EDWARDS, implying that he had him "standing by" before the stop
- a. Trooper LEEDER gave "mistaken" testimony to the Grand Jury that [REDACTED] had removed the marijuana from a pocket and handed it to him when the patrol car video showed that LEEDER reached into the pocket and took the marijuana out. Judge ADLER further noted that LEEDER had the opportunity to correct this testimony by viewing the tape prior to the suppression hearing but did not do so
- a. Trooper LEEDER testified that the defendants were handcuffed to Trooper EDWARDS' patrol car after the glassine bags were found in the trunk of the rental car. The video from EDWARDS' car shows that they were already handcuffed before the trunk search was commenced
- a. Trooper LEEDER's remote microphone was not turned on nor was Trooper EDWARDS'

Trooper EDWARDS

- a. Trooper EDWARDS testified that after he approached the car and spoke to [REDACTED] he too smelled "fresh" marijuana. When he returned to LEEDER's car to discuss the answers that the occupants had provided to his questions, he only "signaled" Trooper LEEDER by touching his finger to his nose that he too had smelled the marijuana and did not verbalize this observation
- a. Trooper EDWARDS' K-9 alerted to the glove box where the marijuana cigarette was found but it was uncertain whether the dog detected that item or two pieces of pastry that were also within
- a. Trooper EDWARDS also testified as to when the defendants were handcuffed which was contradicted by the video tapes
- a. Trooper EDWARDS explained the absence of audio on his unit by stating that "unbeknownst to him", the microphone frequently breaks down

Investigator NELSON

- a. Investigator NELSON testified that he was unable to recall how he obtained the information which made up the narrative portion of his report
- a. Investigator NELSON gave testimony that he recalled Trooper LEEDER mentioning the marijuana odor to him back in 2001 and that his reading of the report had refreshed his memory on the subject even though there is no reference to the odor in his report
- a. Investigator NELSON testified that the absence in the report of any reference to the marijuana odor (which provided the Probable Cause for the search) was "moot and insignificant"

Judge ADLER's order indicates that he did not believe there was any lane change violation committed by AQUIAR and that Trooper LEEDER's stop of the vehicle was based "not on probable cause, but rather on the subjective intentions of the police officer". The Judge further summarized his opinion stating that "A review of all the evidence presented at the hearing reveals that the officers' testimony was either contradicted by other, more credible evidence, or was incredible of belief simply because it was untrue, physically impossible, contrary to experience or self-contradictory." A copy of Judge ADLER's Decision & Order dated 2/13/03 is attached as **Enclosure #3**. A copy of a related newspaper article from the Westchester - Rockland County area Journal News dated 2/14/03 is attached as **Enclosure #4**.

4. On 3/06/03, member received from the Westchester County DA's Office a copy of Judge ADLER's amended Order and Decision. The only amendment to this document was on page 5

where the second paragraph was now deleted in its entirety. The original Order and Decision had stated that Troopers LEEDER and Investigator NELSON had never mentioned the marijuana odor (from the [REDACTED] vehicle) during their Grand Jury testimony, however Trooper LEEDER had in fact testified to that observation. A copy of the amended Order and Decision is attached as **Enclosure #5**.

5. On 3/20/02 member contacted Zone Commander, Captain EVELYN MALLARD regarding malfunction/repair logs for Zone One's video equipment in July, 2001. Captain MALLARD advised that the records from that period had been purged.

6. On 3/24/03 interviewed Trooper HAROLD M. EDWARDS, EOD 10/07/91, SP Tarrytown, who is also the Zone 1 K-9 handler; he was represented by PBA Delegate Trooper KEITH FORTE. Trooper EDWARDS related that on 7/03/01 he was working a C-1 tour and responded to milepost 8 on I-95 northbound from the SP New Rochelle station in response to a call for assistance from Trooper JAMES LEEDER. He stated that upon his arrival within 2 or 3 minutes of being contacted, he was briefed by Trooper LEEDER that the occupants of the stopped car claimed they were coming from Brooklyn, that the rented car was overdue and by a gesture of finger to nose, Trooper LEEDER indicated that he had smelled "something" in the car. Trooper EDWARDS thereafter approached the car by himself and spoke with the occupants, detecting the odor of marijuana in the car which he characterized as "8 or 9" on a scale of 10, with ten being the strongest. He stated that he then returned to where Trooper LEEDER was and informed him that although he had been raised in Brooklyn, he had never heard of the neighborhood where the subjects ([REDACTED] & [REDACTED]) claimed they were coming from. He also stated that he told Trooper LEEDER that he smelled marijuana in the car, although he later in the statement said he did not verbalize his notice of the marijuana odor to LEEDER, he indicated his observation by touching his finger to his nose. Trooper EDWARDS, citing limited recollection of exactly what occurred next, did recall that the driver was out of the vehicle standing next to him at the rear of the rental car while Trooper LEEDER conducted a search of that vehicle. He stated that it was not until after the glassine bags were found in the trunk of the rental car that he handcuffed one or both defendants and secured them to the front of his Troop car. Trooper EDWARDS indicated that he had testified to this in court and still believed that to be the order of events. He then recounted how K-9 "Bernie" was used to search the car and detected the marijuana cigarette in the glovebox, stating that contrary to the court's question as to whether the dog had detected the marijuana or the sticky buns therein, that the dog's "hit" was on the drugs because it was not trained to react to food and had never been fed pastry. Trooper EDWARDS also stated that after the dog was used, he was summoned to the car's interior and asked to smell it by Trooper LEEDER. He stated that he did so and detected an odor he associated with cocaine which was a "4" on a scale of ten in intensity. He could not account for why the K-9 had not "hit" on the cocaine which was found in the headliner of the car except to say that he believed the dog was reacting to the stronger odor of the marijuana. Trooper EDWARDS stated that with respect to his patrol car video system, he had tested it at the beginning of his tour and believed the remote microphone was working properly at that time. He further stated that the unit had been giving him some problems at that time (2001) and he had told a Sergeant about it, but did not recall whom, adding that at that time, documenting of malfunctions was not yet required. Trooper EDWARDS stated that after the arrest, he and

Trooper LEEDER returned to SP Tarrytown with the prisoners and turned the matter over to Investigator NOEL NELSON. He acknowledged that Investigator NELSON did not interview him as to what he had done at the scene, nor did he direct him to make any written notes or documentation about how the arrest occurred. When asked as to the Probable Cause for the search of the vehicle in this case, whether it was the marijuana odor or an impound/inventory, Trooper EDWARDS stated that he didn't know. With respect to his preparation for court, Trooper EDWARDS stated that he had made no personal records, he never reviewed the Gen 84 prepared by Investigator NELSON and had only seen the video about two months prior to the Suppression Hearing. The statement taken from Trooper EDWARDS is attached as **Enclosure #6**, a copy of the video tape from Trooper EDWARDS' patrol car is attached as **Enclosure #7**.

7. On 3/25/03 interviewed Investigator NOEL N.J. NELSON, EOD 10/01/84, SP Tarrytown, who was represented by NYSPIA delegate Investigator JULES RENNA. Investigator NELSON related that on 7/03/01 he was at SP Tarrytown when he was advised by Trooper LEEDER of the felony drug arrest involving [REDACTED] and [REDACTED]. He stated that Troopers LEEDER and EDWARDS brought the defendants to the station along with the rental car and he obtained to story of the arrest from the them but made no written notes, nor did he require them to make any; that he eventually prepared the Gen 84 Investigation Report on or about 7/03/01 based on what had been related to him. Investigator NELSON acknowledged that all through the court proceedings and up until the time he read Judge ADLER's Order & Decision, he was under the belief that the basis for the search in which the drugs were found was an inventory search based on the rental car's being impounded because neither driver was an authorized operator. He stated that this is why, when he testified at the Suppression Hearing, he characterized the marijuana odor alluded to by the Troopers as "moot and insignificant", because in his mind the drugs were found as a result of the car inventory. With respect to his preparation for the Grand Jury and the Suppression Hearing, Investigator NELSON admitted that he never compared the video tapes against his report, nor was he given his Grand Jury testimony to review. [REDACTED]

[REDACTED]. Investigator NELSON did accept responsibility for the ultimate outcome of the case as he was the case agent assigned. The statement taken from Investigator NELSON is attached as **Enclosure #8**.

8. On 3/26/03 interviewed Investigator JAMES D. LEEDER, EOD 10/28/96, [REDACTED], who was represented by Troop NYC NYSPIA delegate Investigator JOHN O'KEEFE. Investigator LEEDER, who on 7/03/01 was a Trooper assigned to SP New Rochelle, related that on that date he observed a vehicle with Massachusetts registration fail to signal a lane change, also noting that the passenger did not appear to be wearing his seatbelt. Upon stopping the car he obtained identification from the driver [REDACTED] and the passenger [REDACTED] noting at that time that the car was a rental for which neither subject was listed as an authorized driver. He also discerned that [REDACTED] was in fact wearing his seatbelt, simultaneously detecting an odor of "fresh" (unsmoked) marijuana, the strength of which he placed at "3" on a scale of 10 (EDWARDS had placed the odor at "8 or 9" on the 10 scale). Investigator LEEDER stated that his car's video system was equipped with a remote microphone which he believes he had tested at the start of his shift less than an hour before the stop, but he couldn't be sure. He also

acknowledged that after initially speaking to [REDACTED] and [REDACTED] he returned to his patrol car and narrated to the in-car recorder that the passenger was wearing his restraint, but that he did not mention the purported marijuana smell because he wasn't certain of it. After summoning Trooper EDWARDS via radio, Investigator LEEDER states that he explained to that member the problem with the rental agreement and then gave him a non-verbal gesture that he smelled "something" in the vehicle by touching his finger to his nose. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Investigator LEEDER continued that Trooper EDWARDS then spoke with the car's occupants, returned back to him, and reported that the subjects claimed to be coming from an area in Brooklyn he'd never heard of. At the same time Trooper EDWARDS made a nodding gesture indicating that he too had smelled "something". Investigator LEEDER next related that he had [REDACTED] exit the vehicle and he asked him if he "had anything on him" to which [REDACTED] indicated he possessed marijuana, a small amount of which was secured. The passenger, [REDACTED] was then also briefly searched after he was asked to vacate the car and both he and the driver were handcuffed to Trooper EDWARDS' patrol car. Investigator LEEDER stated that he was unsure at which point the defendants were handcuffed and stated that [REDACTED] was not under arrest, but was being "detained for investigation". He was under the belief that the defendants were not handcuffed until after he found the box with drug packaging materials in the car's trunk (video tapes showed this to be inaccurate as the defendants were handcuffed by Trooper EDWARDS as Investigator LEEDER began his search of the car). Investigator LEEDER then recounted how the K-9 was used to search the car and "hit" on the marijuana cigarette in the glovebox but did not detect the 3 ½ ounces of cocaine in the headliner, although both he and Trooper EDWARDS were able afterward to discern that odor themselves. Investigator LEEDER continued that after the defendants and their vehicle were secured, they were taken to SP Tarrytown where the case was turned over to Investigator NOEL NELSON. He stated that he went over the facts of the case with Investigator NELSON, including his initial notice of the marijuana odor in the car. He stated that he related to the Investigator that the Probable Cause to search the car was going to be the marijuana odor, but that it changed when [REDACTED] admitted to possessing the marijuana that was on his person. He stated that it was about this time in reviewing the video tape with the Investigator that he realized his remote microphone had not been working during the car stop. Investigator LEEDER also stated that he made no notes or reports with respect to this case, nor was he asked to do so by Investigator NELSON. He further indicated that although it is the protocol in Westchester County for an arresting officer to complete a DA's Arrest Summary report which would include the probable cause for a search, none was done by him in this case due to an apparent oversight. Asked about the manner in which he prepared for his Grand Jury testimony in April 2002, Investigator LEEDER conceded that he had not read the associated Gen 84 or reviewed the video tape, that his preparation with the Assistant DA was done strictly from memory. He claims that it was not until after giving his testimony that he noted the Gen 84 contained no reference to his or Trooper EDWARDS' detecting the odor of marijuana in the car after it was stopped, and he brought this to the attention of the Assistant DA and later on Investigator NELSON. Investigator LEEDER further stated that upon reviewing the tape prior to

the Suppression Hearing but after Grand Jury, he realized that he had given inaccurate testimony to that body when he'd stated that [REDACTED] had produced marijuana from his pocket as the tape showed that he (LEEDER) had reached into the pocket and removed it. He also mistakenly testified in Grand Jury about a Felony Hearing in the case which never took place, that this was done out of confusion. Investigator LEEDER further acknowledged that in the Suppression Hearing he did testify that the defendants were handcuffed after he found the heroin bags in the trunk of their car, a fact he believed to be true (until after being shown the video tape).

[REDACTED]
[REDACTED] Investigator LEEDER's statement is attached as **Enclosure #9**, a copy of the video tape from Trooper LEEDER's patrol car is attached as **Enclosure #10**.

At City of White Plains, New York

9. On 4/25/03 while at the Westchester County District Attorney's office conducting a vulnerability assessment of narcotics arrests on I-95 by State Police members, IAB Lieutenant LISA D. GALBRAITH interviewed Narcotics Bureau Chief THOMAS LUZIO concerning their policy on rental car impounds. Chief LUZIO stated that their office policy was that if an authorized operator was not present in the vehicle, it was proper to impound the car and conduct an inventory search. It was further stated that any contraband found during the inventory was viable evidence against the vehicle's occupants.

At City of New Rochelle, New York

10. On 5/28/03 member traveled to the New York State Thruway toll plaza on I-95 within the City of New Rochelle. It was observed that the toll area, located at milepost 6.9, is for northbound traffic only. The toll barrier consists of 13 lanes, the four westernmost of which are dedicated EZ Pass only lanes and the easternmost of which is a wide load lane. A concrete jersey barrier divides northbound and southbound traffic, however there is an unsigned gap in that barrier approximately 500' north of the tolls on the west side of the highway which is where Investigator LEEDER states he was situated when he first observed the [REDACTED] vehicle (the next nearest U turn is several miles north of the tolls and there is no median in this area). With respect to pavement markings, it was noted that there are only two dash lines for vehicles which have passed through the tolls, followed by a wide unmarked area. At approximately milepost 7.1, the plaza constricts traffic and three lanes of traffic are formed on the highway proper, each separated by dash white lines. This would be about .2 mile north of the break in the jersey barrier where Investigator LEEDER had been monitoring traffic. The site of the stop of [REDACTED] and [REDACTED] was located on the right shoulder of I-95 at milepost 8.2 near the Weaver Street overpass, about 1.3 miles from where Investigator LEEDER first observed the car. These locations and distances are consistent with the statement given by Investigator LEEDER on 3/26/03.

At IAB South, New Windsor, New York

11. On 6/04/03 member contacted Investigator NOEL NELSON, SP Tarrytown, as to

whether he had retained a copy of the car rental agreement associated with this case. Investigator NELSON replied that he did not have a copy and to his knowledge the file had been sealed after the charges were dismissed.

12. On 6/04/03 member re-interviewed Investigator JAMES D. LEEDER in the presence of NYSPIA delegate Investigator JOHN O'KEEFE regarding his specific location and observations when he first noted the [REDACTED] vehicle. Investigator LEEDER stated that on 7/03/01 (at about 2:00 PM) he was stationary at the break in the jersey barrier just north of the New Rochelle tolls observing traffic. He observed the car later determined to be driven by [REDACTED] pass by him in the left (westernmost) lane so that it was 100 to 150 feet away from him. As the vehicle continued north in moderate traffic where the lanes were set apart by dash pavement markings, he observed [REDACTED] move from the left to the middle lane without signaling, so he pulled into traffic and began to follow it. At this point, he states, he observed that there were two occupants in the car, races unknown, and it appeared that the passenger was not wearing a seatbelt shoulder harness. Based on the failure to signal lane change and seatbelt violation, he decided to stop the car and did so, with [REDACTED] pulling to the right shoulder at about milepost 8.2.

With respect to the vehicle rental agreement, Investigator LEEDER stated that he did not recall the name of the company involved other than it was not one of the national chains such as Hertz or Avis (as per the Gen. 21 Impound form it was South Coastal Rental of Dartmouth, Mass.). He stated that the car had been rented to a female but he did not recall the name and never learned the relationship, if any, of that person to [REDACTED] or [REDACTED] further adding that he did not call that person or the rental company but believes that Investigator NOEL NELSON may have done the latter, but only to advise the company where their vehicle was.

Regarding the Westchester County DA's view of impounding rental cars in the absence of an authorized driver listed on the rental documents, Investigator LEEDER stated that although he had never specifically discussed the issue with anyone from the DA's office, he was not aware of any conflict which, in 2001, would have viewed such practice as an improper seizure. The statement taken from Investigator LEEDER is attached as **Enclosure #11**.

13. On 6/23/03 member contacted Captain EVELYN MALLARD in an effort to ascertain if the sealed case file contained a copy of the car rental agreement associated with this case. Captain MALLARD checked with Troop K and was advised that the file did not contain a copy of the rental document.

Conclusion:

Investigation into this case has shown that the three members involved in this matter individually and collectively bear the responsibility for the dismissal of the A-II felony of CPCS 2nd degree charges against [REDACTED] and [REDACTED]

[REDACTED] Further, the Judge's original contention that Trooper LEEDER never disclosed the odor of marijuana as the Probable Cause for the vehicle search prior

to the Suppression Hearing was inaccurate. Also, his implied conspiracy between Troopers LEEDER and EDWARDS for not having their respective remote microphones on was not substantiated. The Judge's suspicion that the reason for the V&T stop, [REDACTED] failure to signal a lane change, was not video recorded was actually due to his misunderstanding of how the car video system operates.

The Westchester County District Attorney's office has also taken some of the responsibility for the manner in which they attempted to prepare for Grand Jury and the Suppression Hearing in this matter, [REDACTED]. Those factors aside however, it has been found that the involved members initially failed to accurately document the facts surrounding the arrest and when court was scheduled, they failed to adequately review and prepare for their appearances which resulted in inaccurate and conflicting testimony. This lack of diligence permitted the defense attorneys to attack their credibility and led to the dismissal of the case. With respect to each individual member, the following is found:

Investigator NOEL N.J. NELSON

Reg 8A2 Failure to comply with Rules, Regulations and Instructions

Field Man 32Q2b(6) – record the details about how the offense or incident occurred; include sufficient, factual information to relate a complete sequence of events . . . that in preparing the Gen 84 Investigation Report in this case on or about 7/03/01, Investigator NELSON failed to accurately record details of the seizure of evidence by reporting that T-1 [REDACTED] handed Trooper LEEDER marijuana and that it was Trooper LEEDER who found the cocaine in the headliner. He did not include in the report that both Troopers had based their actions in large part based upon an odor of unsmoked marijuana which they claim to have smelled in the car, that being the Probable Cause for the search, instead indicating that the drugs were found as the result of an impound/inventory search.

Field Manual 36B9b Suppression Hearings – the manner by which all of the evidence against the defendant was obtained is also important and this must be fully explained to the District Attorney – that between October and December 2002, Investigator NELSON as the case agent, failed to accurately report to the Westchester County DA the full facts of the basis for the search in this case, erroneously believing it to be an impound/inventory seizure versus a Probable Cause seizure as testified to by the Troopers. This resulted in contradictory testimony being given by Division members to the detriment of the case.

Field Manual 36C2e Grand Jury – shortly before appearing, review your notes, reports and records to ensure that the events are fresh in your mind – that in April 2002 Investigator NELSON testified at the Grand Jury. At that time he was in possession of the knowledge of Troopers LEEDER and EDWARDS' claims of having purportedly smelled a marijuana odor in the defendants' car but failed to convey that information to the assigned Assistant District Attorney.

Reg 8A9(5) A member may be determined to be incompetent and subject to disciplinary action in

accord with the Rules of the Division if in the performance of official duties the Member exhibits failure to assume responsibility or to exercise diligence in the performance of official duties - that in preparing his investigative report in July 2001 Investigator NELSON prepared an inaccurate report (by omission and by citing incorrect facts) which served as the basis of information to the District Attorney. While giving testimony in the October - December 2002 Suppression Hearing, Investigator NELSON gave testimony which was deemed not credible by the presiding Judge because he based that testimony on memory and his inaccurate report, primarily his being under the belief that the drugs were seized during an impound/inventory of the vehicle. As the case agent, he further failed to ensure that Trooper LEEDER had filed a DA's Arrest Summary which would have provided the DA with an accurate description of how the narcotics evidence in this matter was seized. His failure to exercise diligence and responsibility in reviewing this case and preparing for testimony was an integral part in the dismissal of A-II felony charges against the defendants.

Trooper JAMES D. LEEDER

Reg 8A2 Failure to comply with Rules, Regulations and Instructions

Field Manual 36B9b Suppression Hearings – the manner by which all of the evidence against the defendant was obtained is also important and this must be fully explained to the District Attorney – that in July 2001, as the arresting officer, Trooper LEEDER failed to file with the Westchester DA a DA's Arrest Summary Report which would have provided the DA with a clear account of how the narcotics evidence in this case was seized

Field Manual 36C2e Grand Jury – shortly before appearing, review your notes, reports and records to ensure that the events are fresh in your mind – that in April 2002, Trooper LEEDER inaccurately testified at the Westchester County Grand Jury that the defendant [REDACTED] had (voluntarily) handed him the marijuana in his possession when in fact Trooper LEEDER, as shown on video tape, actually reached into [REDACTED] pocket and pulled the marijuana out. Trooper LEEDER admittedly testified from memory on this occasion and did not review any notes, reports or associated video tapes.

Reg 8A9(5) A member may be determined to be incompetent and subject to disciplinary action in accord with the Rules of the Division if in the performance of official duties the Member exhibits failure to assume responsibility or to exercise diligence in the performance of official duties – that Trooper LEEDER's failure to complete a DA's Arrest Summary, his failure to adequately prepare for Grand Jury, and his failure to adequately prepare for the Suppression Hearing resulted in his giving inaccurate testimony as well as testimony which conflicted with other Division members. His failure to exercise diligence and responsibility in reviewing this case and preparing for testimony was an integral part in the dismissal of A-II felony charges against the defendants.

Trooper HAROLD M. EDWARDS

Reg 8A9(5) A member may be determined to be incompetent and subject to disciplinary action in accord with the Rules of the Division if in the performance of official duties the Member exhibits failure to assume responsibility or to exercise diligence in the performance of official duties – that

in giving testimony at the Suppression Hearing between October and December 2002, Trooper EDWARDS inaccurately testified that the two defendants were handcuffed only after a large quantity of glassine envelopes were found in the trunk of their rental car. This assertion was refuted by the video tape from his patrol car as well as that of Trooper LEEDER's which showed that the defendants were restrained before a search of the car was undertaken. His failure to exercise diligence and responsibility in reviewing this case and preparing for testimony was an integral part in the dismissal of A-II felony charges against the defendants.

Investigator NELSON, Troopers LEEDER & EDWARDS

Reg 8A8(2) A member shall not act in a manner tending to bring discredit upon the Division – by their failure to properly document accurate details from the inception of this case, by failure to fully apprise the District Attorney of the facts of the narcotics seizure, by failing to adequately review the case and detect the conflicts of fact and by failing to properly prepare for testimony in this case, the above members were responsible for the dismissal of the felony narcotics charges. [REDACTED]

[REDACTED]. His findings are a matter of public record and were reported in the Westchester – Rockland County Journal News, the account therein being an embarrassment to the Division.

Appropriate administrative action is recommended.

NEW YORK STATE POLICE

MEMORANDUM

Troop Station Headquarters

Date February 18, 2003

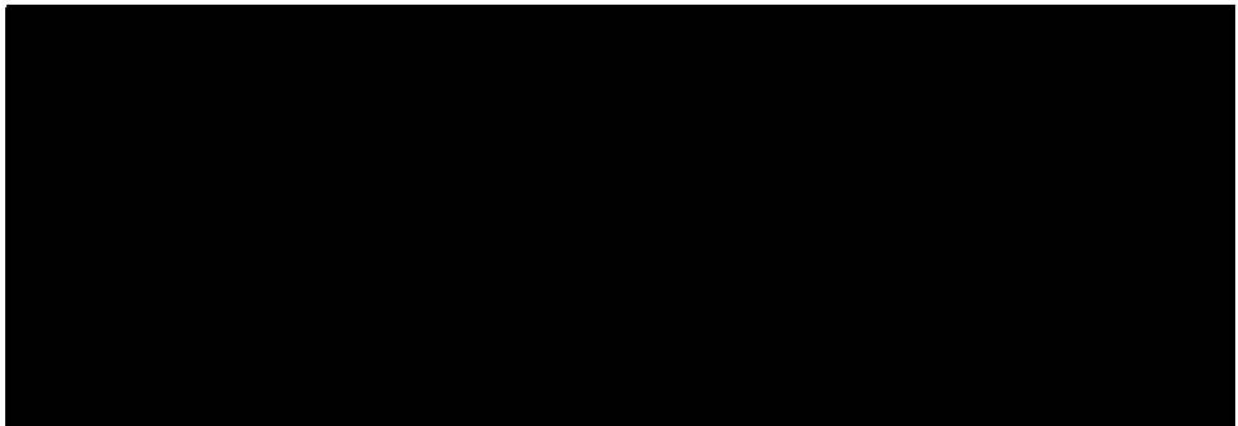
To: Deputy Superintendent Harry J. Corbitt

From: Staff Inspector Arthur J. Hawker

Subject: WESTCHESTER COUNTY COURT RULING
PEOPLE vs. [REDACTED] & [REDACTED]
TROOPER JAMES LEEDER, TROOP T
TROOPER HAROLD EDWARDS, TROOP T

Earlier this date writer met with Westchester County DA's (WCDA) staff members THOMAS G. LUZIO, Narcotics Bureau Chief, KENNETH C. CITARELLA, Deputy Bureau Chief and ADA FRANK LUIS regarding the above captioned matter.

Chief LUZIA stated that there would be no appeal of Judge ADLER's ruling because the judge had deemed the witnesses as not being credible and therefore there is, in essence, no grounds on which to base an appeal as there would have been if the ruling were based on a point of law which could be argued.



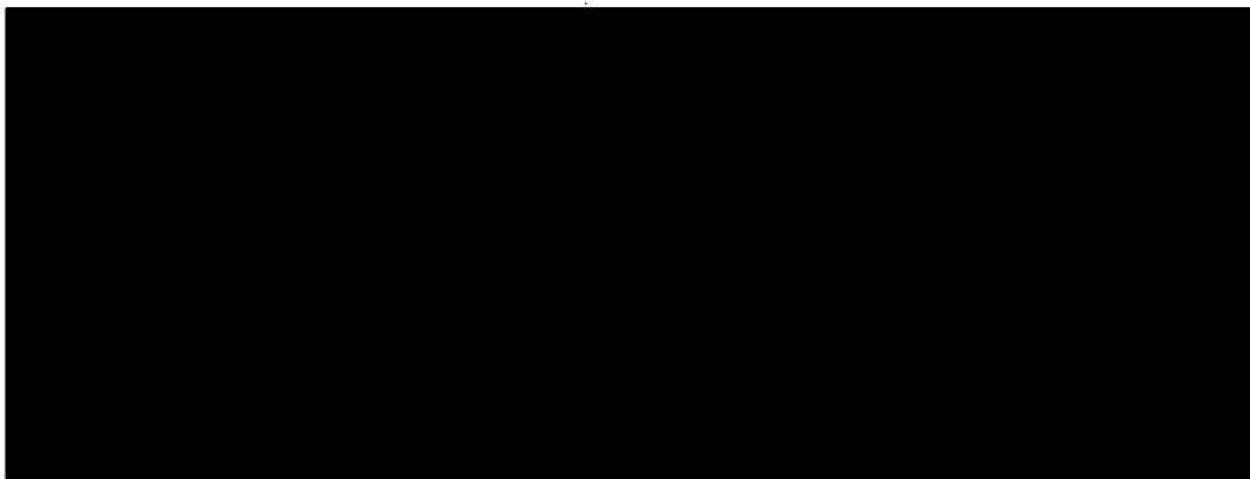
Chief LUZIO pointed out that despite the judge's ruling to the contrary, their office still contends there was a valid V&T stop made, and in hindsight all Trooper LEEDER had to do was impound the car over the issue of it being an overdue rental with

occupants not listed on the lease agreement. A subsequent inventory search would have yielded the drugs, but since the defense successfully argued that no VTL violation had occurred and the witnesses were not seen as credible due to instances cited by the court, in its ruling, the theory of "inevitable discovery" could not be applied. He also made the following points:

[REDACTED]

[REDACTED]

[REDACTED]



Submitted for your review and information.

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P.02/12

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 2-13 2003
WESTCHESTER
COUNTY CLERK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

and ROLANDO BARROS, Index No.: 01-01085-01
01-01085-02

Respondent.

ADLER, J.

In separate Decisions and Orders dated June 10, 2002 (Defendant [REDACTED]) and June 18, 2002 (Defendant [REDACTED]) pre-trial hearings were ordered on the issue of the legality of the stop of the motor vehicle in which the Defendants were driving, the admissibility of certain items of recovered tangible evidence, as well as a statement allegedly made to law enforcement by Defendant [REDACTED]. These hearings were commenced before this Court on October 29, 2002, continued on November 13, 2002, December 2, 2002, December 3, 2002 and concluded on December 16, 2002.

I. EXAMINATION OF PROSECUTION WITNESSES

The testimony presented by the People was that on July 3, 2001, Trooper James Leeder was on routine motor patrol. While in a stationary position near the toll plaza on Route 95 in the City of New Rochelle, New York, he observed a 1995 Camry occupied by two male Hispanics exit the toll barriers. This vehicle move from the far left toward the middle lane of the toll plaza without signaling. This movement was deemed by Leeder to be a violation of the Vehicle & Traffic Law. Leeder also testified that he

ENCLOSURE #3

FEB-13-2003 15:44

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P.03/12

believed" the passenger in the vehicle was not wearing a seat belt.¹ As a result of these two observations, Leeder activated his emergency lights and pulled the vehicle over to the shoulder.

Subsequent to the stop, Leeder approached the driver's side of the vehicle and requested that the driver, [REDACTED], produce a license and the vehicle registration. [REDACTED] complied and produced a Massachusetts license and a rental agreement for the vehicle. While speaking with Defendant [REDACTED] Leeder claims to have smelled an odor of "fresh" marijuana emanating from inside of the vehicle. An examination of the rental agreement indicated that the vehicle was due back the prior day and that neither of the Defendants were named authorized operators.

Leeder was subsequently joined at the scene by Trooper Edwards, who had responded pursuant to Leeder's request for backup. Leeder had contacted Edwards after he detected the odor of marijuana. Leeder assumed correctly that Edwards would have a canine traveling with him. While Leeder waited in his patrol vehicle for information from headquarters regarding a check for warrants, Edwards approached the passenger side of the Defendants' vehicle and had a brief conversation with Defendant Barros. Edwards then signaled to Leeder by a "finger-to-nose" gesture to indicate that he had smelled an odor of marijuana.

Based on the rental agreement and the odor of marijuana, the Defendants were ordered out of their vehicle. At this point Defendant [REDACTED] was advised that, due to the problems with the rental agreement, he would be detained. In response to questioning

¹Later in Leeder's testimony he admitted that he had been mistaken about the alleged seatbelt violation.

FEB-13-2003 15:44

E JOURNAL NEWS

914 694 3535

P.04/12

Leeder, Defendant [REDACTED] indicated that he had contraband in the pocket of his shorts. Leeder then reached in and retrieved two small boxes of marihuana.

Defendant [REDACTED] was also removed from the vehicle and searched, but no contraband was found on his person. The Troopers then began an extensive search of the vehicle. That lead to the discovery of approximately 10,000 empty glassine envelopes in the trunk of the vehicle, a marihuana ("blunt") cigarette and two sticky buns in the glove compartment², approximately four ounces of cocaine in the headliner, and three clear plastic boxes containing marihuana in the center console area.

Leeder also testified that he did not contact the rental company to confirm that the Defendants were not authorized to operate the vehicle until he returned to the barracks. However, had this information been learned at the scene, the vehicle would have been impounded and an inventory search would have been performed.

II. FINDINGS OF FACT

The hearings in this matter were conducted over a period of several days and included extensive cross-examination of the three Prosecution witnesses (Leeder, Edwards and Nelson) by defense counsel. The Defendants offered into evidence videotapes of the incident made by cameras that had been installed in both Troopers' (Leeder and Edwards) vehicles.³ The Court finds these videotapes to be the most credible evidence received at the hearing. Based on the entire evidence, it is the

²The "blunt cigarette" and the "sticky buns" were found using Edwards' canine "Bernie." While Edwards testified that the canine was certified in the tracking of various narcotic drugs, he also testified that the 17-month-old dog had approximately ten false positives in the past. Edwards was also unable to state whether the alert given by the dog with respect to the glove compartment was a result of the marihuana contained in the "blunt" cigarette or whether he was attracted to the "sticky buns."

³Defendants' Exhibit A.

FEB-13-2003 15:45

E JOURNAL NEWS

914 694 3535

P.05/12

finding of this Court that neither Defendant [REDACTED] nor Defendant [REDACTED] committed a traffic violation. The Court further finds that there was no odor of marihuana.

It was established at the hearing that the cameras installed in the patrol vehicles will begin to record either when a Trooper manually engages a button or automatically upon the activation of the emergency lights. In the present case, the videotaping (which includes an audio taping of any conversations that occurred inside of the patrol vehicle) was activated automatically rather than volitionally by the Troopers. Consequently, under the facts of this case, neither Leeder nor Edwards could have prevented the activation of the video cameras installed in their vehicles.

In striking contrast, the body microphones that both Leeder and Edwards were wearing on July 3, 2002 could only be activated manually. However, for reasons this Court finds to be unconvincing, neither microphone was operational at the time of this incident and, therefore, any conversations alleged to have taken place outside of the vehicle were not preserved.⁴

While both officers testified that they smelled an odor of marihuana emanating from inside the vehicle, the evidence presented at the hearing incontrovertibly reflects that there was no reference in the report prepared by Investigator Nelson⁵ in connection with this arrest regarding the alleged odor. When cross-examined regarding the absence of any such reference, Nelson testified that he could not recall the

⁴With respect to the malfunctioning microphones, Leeder testified that he was unaware of the fact that his microphone was not working until he viewed the videotape. Edwards testified that, for reasons unbeknownst to him, his body microphone frequently breaks down.

⁵This was the only police report prepared in connection with this arrest. Neither Leeder nor Edwards prepared a report.

FEB-13-2003 15:45

JOURNAL NEWS

914 694 3535

P.06/12

circumstances under which the information contained in the report was provided to him because it happened "a long time ago." Nonetheless, he insisted that he was still capable of remembering Leeder's mentioning of the marihuana odor. Nelson attempted to explain this significant omission in his report by stating that he deemed the information to be "moot" and "insignificant." It is inconceivable to the Court how an 18-year veteran of law enforcement, now an Investigator, would deem the alleged probable cause for the search of the vehicle as "moot" and "insignificant." Equally perplexing is the Investigator's ability to refresh his recollection with a document which lacks any reference whatsoever to this alleged odor.

It was also conceded during the People's case that neither Nelson nor Leeder ever mentioned the marihuana odor in their Grand Jury testimony. Indeed, neither one ever told the District Attorneys' Office about the supposed odor until a year after the incident.

In addition to the lack of any reference to the alleged odor in the report or the officer's Grand Jury testimony, there is absolutely no mention of an odor of marihuana during Leeder's radio transmission to headquarters. Nor is there any mention of an odor of marihuana during Leeder and Edwards' discussions that took place in Leeder's patrol vehicle which were captured on the audio segment of the videotape. Edwards unsuccessfully attempted to account for this glaring omission by testifying that Leeder had communicated this information to him, not verbally, but by touching his nose with his right index finger.

FEB-13-2003 15:45

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914 694 3535

P.07/12

Leeder also testified that he radioed Edwards for assistance after he smelled the odor of marihuana. However, this call for assistance also is not reflected on the audio segment of the videotape from Leeder's vehicle.⁶

Leeder testified, and the videotape reflects, that Leeder searched Defendant [REDACTED] and removed something from his front pocket (which Leeder testified were two clear plastic boxes containing marihuana). However, this was not always Leeder's version of the events. Leeder admitted on cross-examination that at the Grand Jury presentation he testified that Defendant [REDACTED] had removed the marihuana from his own pocket and handed it to Leeder. It was not until after reviewing the videotape, subsequent to his Grand Jury testimony, that his testimony conformed to what was depicted on the tape. Although Leeder testified that he advised the District Attorney's Office of this "mistake" during his preparation for the felony hearing, it was stipulated by the People on the record that no felony hearing had ever taken place in this case.

The testimony of the two officers that the Defendants were handcuffed to the front bumper of Edwards' vehicle only after Leeder discovered a box containing glassine envelopes in the trunk of the vehicle is directly contradicted by the videotape. The videotape reflects that less than a minute after the search of the vehicle commenced, while Leeder was still searching the passenger compartment and had not even reached the trunk of the vehicle, Edwards returned to the vehicle unaccompanied by the Defendants. Clearly, the Defendants were handcuffed to the bumper of Edwards

⁶This leaves the impression that the call for assistance was made prior to the activation of the emergency lights which initiated the videotaping. This would suggest that the call may have been made prior to the stop of the vehicle, and prior to the alleged detection of an odor of marihuana.

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P.08/12

vehicle (hardly a *de minimus* intrusion) prior to the discovery of the glassine envelopes, directly contradicting both Leeder and Edwards' testimony.

III. CONCLUSIONS OF LAW

It is well-settled in the State of New York that a stop of a motor vehicle is a seizure implicating constitutional limitations. [People v. Spencer, 84 N.Y.2d 749; People v. May, 81 N.Y.2d 725; People v. Ingle, 36 N.Y.2d 413]. Such a stop is legal "only pursuant to routine, nonpretextual traffic checks to enforce traffic regulations or when there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime. [People v. Spencer, 84 N.Y.2d 749; People v. Ingle, 36 N.Y.2d 413]. A stop based on probable cause that the driver of a vehicle has violated the Vehicle & Traffic Law is reasonable, and the primary motivation of the police officer for stopping the vehicle is not relevant to a Fourth Amendment analysis. [People v. Robinson, 97 N.Y.2d 341; People v. Moore, 277 A.D.2d 254; People v. Hammond, 737 N.Y.S.2d 733]. However, such probable cause must be supported by credible facts which establish reasonable cause to believe that a person has violated a law. [People v. Robinson, 97 N.Y.2d 341]. Clearly, the facts herein do not meet this standard.

The issue as to the credibility of a witness and the weight to be afforded the evidence presented is a question to be determined by the trier of fact. [People v. Prochilo, 41 N.Y.2d 759; People v. O'Keefe, 276 A.D.2d 647; People v. Campbell, 269 A.D.2d 461]. "In evaluating testimony we should not discard common sense and common knowledge The rule is that testimony which is incredible of belief because

FEB-13-2003 15:46

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P.09/12

is manifestly untrue, physically impossible, contrary to experience, or self-contradictory, is to be disregarded as being without evidentiary value, even though it is not contradicted by other testimony or evidence introduced in the case." (Loughlin v. City of New York, 186 A.D.2d 176 citing People v. Garafolo, 44 A.D.2d 85].

Insufficient reason was provided during the hearing to account for the simultaneous malfunctioning of both Troopers' microphones on the day in question. The Court is disturbed by the fact there was no "malfunctioning" of the video cameras that were activated automatically, but that the microphones, which could only be activated manually, were coincidentally inoperable that day.

In addition, no credible explanation was provided for the lack of any reference to an odor of marihuana in the police report or during the officers' Grand Jury testimony. The People contend that this odor of marihuana forms the basis for the legality of the search. Common sense dictates that all important and relevant information, especially the alleged probable cause for the search of the vehicle, would be contained in the sole report prepared in connection with the arrest. It is inconceivable that an 18-year veteran of law enforcement would deem the alleged basis for the search of the vehicle irrelevant and unworthy of note in his report. Equally unbelievable was Nelson's testimony that while the report made absolutely no reference to the odor of marihuana, by reading it he was able to refresh his memory that Leeder had told him about the odor.

There are numerous times when the videotape contradicts the testimony of either Leeder, Edwards, or both. The videotape is devoid of any mention of an odor of marihuana, and the Court is unconvinced by the officers' transparent attempts to

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account for this omission. The videotape also does not reflect the tacit "finger-to-nose" gesture of Edwards that Leeder testified occurred after Edwards spoke with Defendant

Also missing from the videotape is Leeder's call for assistance to Edwards, which leads the Court to the conclusion that the radio call may have been made prior to the stop and the alleged detection of the odor of marihuana. Both Leeder and Edwards' testimony that the Defendants' were not handcuffed to the bumper of Edwards' patrol vehicle until after Leeder found the glassine envelopes in the trunk of the Defendants' vehicle is also contradicted by the videotape.

There is also the troubling issue of the contradicting testimony given by Leeder at the Grand Jury proceeding and the suppression hearing concerning the sequence of events during the search of Defendant's pants pockets. Subsequent to giving sworn testimony to the Grand Jury, Leeder had the opportunity to review the videotape so that at the suppression hearing his testimony conformed to what was depicted on the tape as having actually transpired. No acceptable explanation was provided at the hearing to account for the alteration of Leeder's testimony on this issue.

As stated above, in evaluating testimony common sense and common knowledge should not be discarded. In making such a determination, testimony which has all appearances of having been patently tailored to nullify constitutional objections should not be credited. [People v. Garafolo, 44 A.D.2d 86]. A review of all the evidence presented at the hearing reveals that the officers' testimony was either contradicted by other, more credible evidence, or was incredible of belief because it was manifestly untrue, physically impossible, contrary to experience, or self-contradictory. [See People v. Stroman, 83 A.D.2d 370].

FEB-13-2003 15:46

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P.11/12

The Court finds Leeder's testimony that he observed an illegal lane change incredible, and instead finds that the primary and only reason for the stop of the vehicle was based not on probable cause, but rather on the subjective intentions of the police officer. In adopting the Supreme Court's holding in Whren v. United States, 517 U.S. 806 as of a matter of state law, the Court of Appeals stated in its decision that it has always been the position of the Court that the primary motivation of an officer is not a factor in determining the validity of a traffic stop which is based on a traffic violation. [People v. Robinson, 97 N.Y.2d 341]. However, nothing in the Robinson decision dispensed with the threshold requirement that a traffic infraction indeed be observed. The Court, as the trier of fact, has not been convinced that one occurred in this case.

At a suppression hearing, the People bear the initial burden of showing the legality of the police conduct in the first instance. [People v. Dodt, 61 N.Y.2d 408; People v. DeStefano, 38 N.Y.2d 640], and the People have failed to meet that burden in the present case. Since the Defendants' vehicle was stopped illegally, any evidence seized from it or from the Defendants' person, and any statements made to police following the stop, must be suppressed.

The People argue that, even assuming any impropriety surrounding the search, the evidence seized is admissible pursuant to the inevitable discovery doctrine.⁷ This exception to the exclusionary rule may be applied where the prosecution has met their burden in proving that the illegal act was not a "sine qua non" of the discovery of the

⁷In support of this argument the People cite to the Court of Appeals' decision in People v. Turriago, 90 N.Y.2d 77. However, the facts presented in that case are distinguishable from those in the case at bar. In Turriago, there was a valid stop of the vehicle, in contrast to the stop in the present case.

FEB-13-2003 15:46

JOURNAL NEWS

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P.12/12

otherwise tainted evidence." [People v. Fitzpatrick, 32 N.Y.2d 499]. It has been characterized as a "safety valve ... to be used when the constitutional violation is of a technical dimension." [People v. Sciacca, 45 N.Y.2d 122]. In the present case, the stop of the vehicle was an indispensable requisite to the search. Had it not been for the unlawful stop of the Defendants' vehicle, they would have proceeded through the toll plaza and would have continued their travel on Interstate 95. Therefore, the inevitable discovery doctrine is inapplicable in the present case.

As stated above, the Court holds that the initial stop of the vehicle was not supported by probable cause and, thus, all tangible and intangible evidence, including cocaine, marihuana, glassine envelopes and statements seized as a result thereof constitute the unattenuated byproduct of the illegal seizure and must be suppressed. [Wong Sun v. United States, 371 U.S. 471].

This constitutes the opinion, Decision and Order of this Court.

Dated: White Plains, New York
February 10, 2003



HON. LESTER B. ADLER
County Court Judge

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TheJournalNews.com

The online information source for Westchester, Rockland and Putnam

Judge tosses evidence in drug case

By JONATHAN BANDLER
THE JOURNAL NEWS

(Original publication: February 14, 2003)

Felony drug charges against two Massachusetts men arrested along Interstate 95 may be dropped now that a judge has ruled that drugs seized from their rental car cannot be used as evidence because state police had no basis for searching the car.

Westchester County Judge Lester Adler suppressed the evidence after hearing from the troopers and reviewing tapes of the July 3, 2001, traffic stop in New Rochelle. [REDACTED] and [REDACTED] were arrested after troopers found the drugs in the car — but Adler ruled yesterday that there was no evidence that the driver had committed a traffic violation, and he didn't believe the troopers' account that an odor of marijuana led to the search.

Adler adjourned the case until March 6 so the Westchester District Attorney's Office can decide whether to appeal his decision.

William Aronwald, [REDACTED] lawyer, said the defendants were the victims of racial profiling and the charges should be dismissed.

"This case was part of a systematic pattern in which New York State police routinely will pull over cars with out-of-state license plates driven by young Hispanic or black men," Aronwald said. "You can't justify a search based on what's found in the search. ... They had no basis to stop that vehicle."

A spokeswoman for the state police, Sgt. Neely Jennings, said she could not comment on the case because officials had not yet reviewed the judge's ruling.

Trooper James Leeder said he pulled over the 1995 Camry north of the New Rochelle toll plaza after observing [REDACTED] switch lanes without signaling. He said the rental agreement did not list either man as an authorized driver and that the car smelled of marijuana. When Trooper Harold Edwards arrived with a drug-sniffing dog, the car was searched and the troopers found 4 ounces of cocaine, three plastic boxes containing marijuana, a marijuana cigarette and 10,000 empty glassine envelopes commonly used for packaging drugs. Two other packages of marijuana were found in [REDACTED] pocket.

The only police report from the incident was filed by Investigator Noel Nelson and made no mention of an odor of marijuana. Nelson testified at the hearing late last year that he recalled Leeder mentioning the smell of marijuana, but that he might have left that detail out of his report. Neither Nelson nor Leeder mentioned the odor of marijuana when they testified before a grand jury.

"It is inconceivable to the Court how an 18-year veteran of law enforcement, now an Investigator, would deem the alleged probable cause for the search of the vehicle as 'moot' and 'insignificant'," Adler wrote in his decision.

Adler was able to view and hear most of the traffic stop thanks to the patrol car's surveillance tape that began when Leeder activated his emergency lights. The judge found that Leeder never mentioned the

ENCLOSURE #4

odor of marijuana when he radioed Edwards to respond to the scene, and that the two never discussed that issue when they sat in Leeder's car.

Aronwald and [REDACTED] lawyer, Lawrence Hochheiser, argued that everything stemming from the traffic stop should be suppressed because the driver had no obligation to signal in the toll plaza. Leeder testified that the car was further north, but his radio call before the stop indicated he observed no signaling as the car pulled out of the tollbooth.

"The Court finds Leeder's testimony that he observed an illegal lane change incredible, and instead finds that the primary and only reason for the stop of the vehicle was based not on probable cause, but rather on the subjective intentions of the police officer," Adler wrote.

Send e-mail to Jon

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 2-13-2003
WESTCHESTER
COUNTY CLERK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

**AMENDED
DECISION & ORDER**

_____ and _____
Respondent

Index No.: 01-01085-01
01-01085-02

ADLER, J.

In separate Decisions and Orders dated June 10, 2002 (Defendant _____) and June 18, 2002 (Defendant _____) pre-trial hearings were ordered on the issue of the legality of the stop of the motor vehicle in which the Defendants were driving, the admissibility of certain items of recovered tangible evidence, as well as a statement allegedly made to law enforcement by Defendant _____. These hearings were commenced before this Court on October 29, 2002, continued on November 13, 2002, December 2, 2002, December 3, 2002 and concluded on December 16, 2002.

I. EXAMINATION OF PROSECUTION WITNESSES

The testimony presented by the People was that on July 3, 2001, Trooper James Leeder was on routine motor patrol. While in a stationary position near the toll plaza on Route 95 in the City of New Rochelle, New York, he observed a 1995 Camry occupied by two male Hispanics exit the toll barriers. This vehicle move from the far left toward the middle lane of the toll plaza without signaling. This movement was deemed by Leeder to be a violation of the Vehicle & Traffic Law. Leeder also testified that he

ENCLOSURE #5

"believed" the passenger in the vehicle was not wearing a seat belt.¹ As a result of these two observations, Leeder activated his emergency lights and pulled the vehicle over to the shoulder.

Subsequent to the stop, Leeder approached the driver's side of the vehicle and requested that the driver, [REDACTED], produce a license and the vehicle registration. [REDACTED] complied and produced a Massachusetts license and a rental agreement for the vehicle. While speaking with Defendant [REDACTED] Leeder claims to have smelled an odor of "fresh" marijuana emanating from inside of the vehicle. An examination of the rental agreement indicated that the vehicle was due back the prior day and that neither of the Defendants were named authorized operators

Leeder was subsequently joined at the scene by Trooper Edwards, who had responded pursuant to Leeder's request for backup. Leeder had contacted Edwards after he detected the odor of marijuana. Leeder assumed correctly that Edwards would have a canine traveling with him. While Leeder waited in his patrol vehicle for information from headquarters regarding a check for warrants, Edwards approached the passenger side of the Defendants' vehicle and had a brief conversation with Defendant [REDACTED]. Edwards then signaled to Leeder by a "finger-to-nose" gesture to indicate that he had smelled an odor of marijuana.

Based on the rental agreement and the odor of marijuana, the Defendants were ordered out of their vehicle. At this point Defendant [REDACTED] was advised that, due to the problems with the rental agreement, he would be detained. In response to questioning

¹ Later in Leeder's testimony he admitted that he had been mistaken about the alleged seatbelt violation.

by Leeder, Defendant [REDACTED] indicated that he had contraband in the pocket of his shorts. Leeder then reached in and retrieved two small boxes of marihuana. Defendant [REDACTED] was also removed from the vehicle and searched, but no contraband was found on his person. The Troopers then began an extensive search of the vehicle. That lead to the discovery of approximately 10,000 empty glassine envelopes in the trunk of the vehicle, a marihuana ("blunt") cigarette and two sticky buns in the glove compartment², approximately four ounces of cocaine in the headliner, and three clear plastic boxes containing marihuana in the center console area.

Leeder also testified that he did not contact the rental company to confirm that the Defendants were not authorized to operate the vehicle until he returned to the barracks. However, had this information been learned at the scene, the vehicle would have been impounded and an inventory search would have been performed.

II. FINDINGS OF FACT

The hearings in this matter were conducted over a period of several days and included extensive cross-examination of the three Prosecution witnesses (Leeder, Edwards and Nelson) by defense counsel. The Defendants offered into evidence videotapes of the incident made by cameras that had been installed in both Troopers' (Leeder and Edwards) vehicles.³ The Court finds these videotapes to be the most credible evidence received at the hearing. Based on the entire evidence, it is the

²The "blunt cigarette" and the "sticky buns" were found using Edwards' canine "Bernie." While Edwards testified that the canine was certified in the tracking of various narcotic drugs, he also testified that the 17-month-old dog had approximately ten false positives in the past. Edwards was also unable to state whether the alert given by the dog with respect to the glove compartment was a result of the marihuana contained in the "blunt" cigarette or whether he was attracted to the "sticky buns."

³Defendants' Exhibit A.

finding of this Court that neither Defendant [REDACTED] nor Defendant [REDACTED] committed a traffic violation. The Court further finds that there was no odor of marihuana.

It was established at the hearing that the cameras installed in the patrol vehicles will begin to record either when a Trooper manually engages a button or automatically upon the activation of the emergency lights. In the present case, the videotaping (which includes an audio taping of any conversations that occurred inside of the patrol vehicle) was activated automatically rather than volitionally by the Troopers. Consequently, under the facts of this case, neither Leeder nor Edwards could have prevented the activation of the video cameras installed in their vehicles.

In striking contrast, the body microphones that both Leeder and Edwards were wearing on July 3, 2002 could only be activated manually. However, for reasons this Court finds to be unconvincing, neither microphone was operational at the time of this incident and, therefore, any conversations alleged to have taken place outside of the vehicle were not preserved.⁴

While both officers testified that they smelled an odor of marihuana emanating from inside the vehicle, the evidence presented at the hearing incontrovertibly reflects that there was no reference in the report prepared by Investigator Nelson⁵ in connection with this arrest regarding the alleged odor. When cross-examined regarding the absence of any such reference, Nelson testified that he could not recall the

⁴With respect to the malfunctioning microphones, Leeder testified that he was unaware of the fact that his microphone was not working until he viewed the videotape. Edwards testified that, for reasons unbeknownst to him, his body microphone frequently breaks down.

⁵This was the only police report prepared in connection with this arrest. Neither Leeder nor Edwards prepared a report.

circumstances under which the information contained in the report was provided to him because it happened "a long time ago." Nonetheless, he insisted that he was still capable of remembering Leeder's mentioning of the marihuana odor. Nelson attempted to explain this significant omission in his report by stating that he deemed the information to be "moot" and "insignificant." It is inconceivable to the Court how an 18-year veteran of law enforcement, now an Investigator, would deem the alleged probable cause for the search of the vehicle as "moot" and "insignificant." Equally perplexing is the Investigator's ability to refresh his recollection with a document which lacks any reference whatsoever to this alleged odor.

In addition to the lack of any reference to the alleged odor in the report, there is absolutely no mention of an odor of marihuana during Leeder's radio transmission to headquarters. Nor is there any mention of an odor of marihuana during Leeder and Edwards' discussions that took place in Leeder's patrol vehicle which were captured on the audio segment of the videotape. Edwards unsuccessfully attempted to account for this glaring omission by testifying that Leeder had communicated this information to him, not verbally, but by touching his nose with his right index finger.

Leeder also testified that he radioed Edwards for assistance after he smelled the odor of marihuana. However, this call for assistance also is not reflected on the audio segment of the videotape from Leeder's vehicle.⁶

⁶This leaves the impression that the call for assistance was made prior to the activation of the emergency lights which initiated the videotaping. This would suggest that the call may have been made prior to the stop of the vehicle, and prior to the alleged detection of an odor of marihuana.

Leeder testified, and the videotape reflects, that Leeder searched Defendant [REDACTED] and removed something from his front pocket (which Leeder testified were two clear plastic boxes containing marihuana). However, this was not always Leeder's version of the events. Leeder admitted on cross-examination that at the Grand Jury presentation he testified that Defendant [REDACTED] had removed the marihuana from his own pocket and handed it to Leeder. It was not until after reviewing the videotape, subsequent to his Grand Jury testimony, that his testimony conformed to what was depicted on the tape. Although Leeder testified that he advised the District Attorney's Office of this "mistake" during his preparation for the felony hearing, it was stipulated by the People on the record that no felony hearing had ever taken place in this case.

The testimony of the two officers that the Defendants were handcuffed to the front bumper of Edwards' vehicle only after Leeder discovered a box containing glassine envelopes in the trunk of the vehicle is directly contradicted by the videotape. The videotape reflects that less than a minute after the search of the vehicle commenced, while Leeder was still searching the passenger compartment and had not even reached the trunk of the vehicle, Edwards returned to the vehicle unaccompanied by the Defendants. Clearly, the Defendants were handcuffed to the bumper of Edwards vehicle (hardly a *de minimus* intrusion) prior to the discovery of the glassine envelopes, directly contradicting both Leeder and Edwards' testimony.

III. CONCLUSIONS OF LAW

It is well-settled in the State of New York that a stop of a motor vehicle is a seizure implicating constitutional limitations. [People v. Spencer, 84 N.Y.2d 749; People v. May, 81 N.Y.2d 725; People v. Ingle, 36 N.Y.2d 413]. Such a stop is legal

"only pursuant to routine, nonpretextual traffic checks to enforce traffic regulations or when there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime. [People v. Spencer, 84 N.Y.2d 749; People v. Ingle, 36 N.Y.2d 413]. A stop based on probable cause that the driver of a vehicle has violated the Vehicle & Traffic Law is reasonable, and the primary motivation of the police officer for stopping the vehicle is not relevant to a Fourth Amendment analysis. [People v. Robinson, 97 N.Y.2d 341; People v. Moore, 277 A.D.2d 254; People v. Hammond, 737 N.Y.S.2d 733]. However, such probable cause must be supported by credible facts which establish reasonable cause to believe that a person has violated a law. [People v. Robinson, 97 N.Y.2d 341]. Clearly, the facts herein do not meet this standard.

The issue as to the credibility of a witness and the weight to be afforded the evidence presented is a question to be determined by the trier of fact. [People v. Prochilo, 41 N.Y.2d 759; People v. O'Keefe, 276 A.D.2d 647; People v. Campbell, 269 A.D.2d 461]. "In evaluating testimony we should not discard common sense and common knowledge 'The rule is that testimony which is incredible of belief because it is manifestly untrue, physically impossible, contrary to experience, or self-contradictory, is to be disregarded as being without evidentiary value, even though it is not contradicted by other testimony or evidence introduced in the case.'" [Loughlin v. City of New York, 186 A.D.2d 176 citing People v. Garafolo, 44 A.D.2d 85].

Insufficient reason was provided during the hearing to account for the simultaneous malfunctioning of both Troopers' microphones on the day in question. The Court is disturbed by the fact there was no "malfunctioning" of the video cameras

that were activated automatically, but that the microphones, which could only be activated manually, were coincidentally inoperable that day.

In addition, no credible explanation was provided for the lack of any reference to an odor of marihuana in the police report. The People contend that this odor of marihuana forms the basis for the legality of the search. Common sense dictates that all important and relevant information, especially the alleged probable cause for the search of the vehicle, would be contained in the sole report prepared in connection with the arrest. It is inconceivable that an 18-year veteran of law enforcement would deem the alleged basis for the search of the vehicle irrelevant and unworthy of note in his report. Equally unbelievable was Nelson's testimony that while the report made absolutely no reference to the odor of marihuana, by reading it he was able to refresh his memory that Leeder had told him about the odor.

There are numerous times when the videotape contradicts the testimony of either Leeder, Edwards, or both. The videotape is devoid of any mention of an odor of marihuana, and the Court is unconvinced by the officers' transparent attempts to account for this omission. The videotape also does not reflect the tacit "finger-to-nose" gesture of Edwards that Leeder testified occurred after Edwards spoke with Defendant

Also missing from the videotape is Leeder's call for assistance to Edwards, which leads the Court to the conclusion that the radio call may have been made prior to the stop and the alleged detection of the odor of marihuana. Both Leeder and Edwards' testimony that the Defendants' were not handcuffed to the bumper of Edwards' patrol vehicle until after Leeder found the glassine envelopes in the trunk of the Defendants' vehicle is also contradicted by the videotape.

There is also the troubling issue of the contradicting testimony given by Leeder at the Grand Jury proceeding and the suppression hearing concerning the sequence of events during the search of Defendant Aquiar's pants pockets. Subsequent to giving sworn testimony to the Grand Jury, Leeder had the opportunity to review the videotape so that at the suppression hearing his testimony conformed to what was depicted on the tape as having actually transpired. No acceptable explanation was provided at the hearing to account for the alteration of Leeder's testimony on this issue.

As stated above, in evaluating testimony common sense and common knowledge should not be discarded. In making such a determination, testimony which has all appearances of having been patently tailored to nullify constitutional objections should not be credited. [People v. Garafolo, 44 A.D.2d 86]. A review of all the evidence presented at the hearing reveals that the officers' testimony was either contradicted by other, more credible evidence, or was incredible of belief because it was manifestly untrue, physically impossible, contrary to experience, or self-contradictory. [See People v. Stroman, 83 A.D.2d 370].

The Court finds Leeder's testimony that he observed an illegal lane change incredible, and instead finds that the primary and only reason for the stop of the vehicle was based not on probable cause, but rather on the subjective intentions of the police officer. In adopting the Supreme Court's holding in Whren v. United States, 517 U.S. 806 as of a matter of state law, the Court of Appeals stated in its decision that it has always been the position of the Court that the primary motivation of an officer is not a factor in determining the validity of a traffic stop which is based on a traffic violation. [People v. Robinson, 97 N.Y.2d 341]. However, nothing in the Robinson decision

dispensed with the threshold requirement that a traffic infraction indeed be observed.

The Court, as the trier of fact, has not been convinced that one occurred in this case.

At a suppression hearing, the People bear the initial burden of showing the legality of the police conduct in the first instance. [People v. Dodt, 61 N.Y.2d 408; People v. DeStefano, 38 N.Y.2d 640], and the People have failed to meet that burden in the present case. Since the Defendants' vehicle was stopped illegally, any evidence seized from it or from the Defendants' person, and any statements made to police following the stop, must be suppressed.

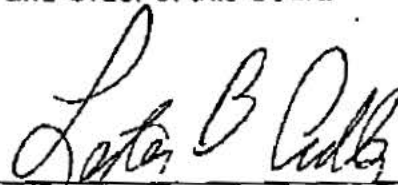
The People argue that, even assuming any impropriety surrounding the search, the evidence seized is admissible pursuant to the inevitable discovery doctrine.⁷ This exception to the exclusionary rule may be applied where the prosecution has met their burden in proving that the illegal act was not a "sine qua non of the discovery of the otherwise tainted evidence." [People v. Fitzpatrick, 32 N.Y.2d 499]. It has been characterized as a "safety valve ... to be used when the constitutional violation is of a technical dimension." [People v. Sciacca, 45 N.Y.2d 122]. In the present case, the stop of the vehicle was an indispensable requisite to the search. Had it not been for the unlawful stop of the Defendants' vehicle, they would have proceeded through the toll plaza and would have continued their travel on Interstate 95. Therefore, the inevitable discovery doctrine is inapplicable in the present case.

⁷In support of this argument the People cite to the Court of Appeals' decision in People v. Turriago, 90 N.Y.2d 77. However, the facts presented in that case are distinguishable from those in the case at bar. In Turriago, there was a valid stop of the vehicle, in contrast to the stop in the present case.

As stated above, the Court holds that the initial stop of the vehicle was not supported by probable cause and, thus, all tangible and intangible evidence, including cocaine, marihuana, glassine envelopes and statements seized as a result thereof constitute the unattenuated byproduct of the illegal seizure and must be suppressed. [Wong Sun v. United States, 371 U.S. 471].

This constitutes the opinion, Decision and Order of this Court.

Dated: White Plains, New York
February 13, 2003



HON. LESTER B. ADLER
County Court Judge

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1 STATE OF NEW YORK
2 COUNTY OF ORANGE
3 TOWN OF NEW WINDSOR
4

MARCH 24, 2003

5
6 Statement taken from Trooper HAROLD M. EDWARDS at the Internal Affairs Bureau South Region Office,
7 Stewart Airport, New Windsor, New York on March 24, 2003, by Staff Inspector ARTHUR J. HAWKER. We are
8 commencing at 10:18 a.m.
9

10 The letter "Q" denotes questions asked by Inspector HAWKER.
11 The letter "A" denotes answers provided by Trooper EDWARDS.
12

13 Q. For the record, please state your full name, rank, date of entry and your current assignment?
14

15 A. My name is HAROLD, middle "M" as in Melvin, last name EDWARDS, E-D-W-A-R-D-S, my date of
16 entry is October 7th of 1991, my current rank is Trooper and I'm assigned to Troop "T", SP New Rochelle.
17

18 Q. Trooper EDWARDS you were advised on March 14th of this year by myself through the Division E-mail
19 the matter being investigated and that I would be taking a statement at this time. You are not the target of
20 any known criminal investigation. The purpose of this investigation is to inquire into your activities as a
21 member of the State Police. Specifically it has been alleged that in connection with the July 3, 2001 arrest
22 of [REDACTED] and [REDACTED] that you gave testimony in subsequent
23 Westchester County Court hearings which was deemed as not credible by the presiding judge. This
24 interrogation is being conducted pursuant to Article 16 of the agreement between the State of New York
25 and your certified employee representative organization and the Regulations of the New York State Police
26 including Regulations 8A3 and 8A15. You have the right to contact and consult with an attorney and/or
27 union delegate before being interrogated and to have an attorney and/or delegate present during the
28 interrogation. This agreement and our Regulations require you cooperate and answer truthfully questions
29 relating to the investigation. A refusal to answer or failure to answer truthfully may result in disciplinary
30 action which could result in your separation from service. Are you represented at this time, and if so by
31 whom?
32

33 A. I am represented by Trooper KEITH FORTE of the New York State PBA.
34

35 Q. As stated, I am Inspector ARTHUR HAWKER and have been designated by the Superintendent to conduct
36 this interrogation. The record will reflect that present during the interrogation in the room at this time are
37 myself, Trooper EDWARDS and his delegate, Trooper KEITH FORTE. This interrogation is being
38 recorded mechanically by tape recorder. Do you understand this?
39

40 A. Yes I do.
41

42 Q. Having been advised of the above, are you now ready to proceed with this interrogation?
43

44 A. Yes.
45

46 Q. For the record also, I will make reference to court testimony, this pertains to your testimony in any of four
47 dates of the suppression hearings that were conducted in Westchester County Court between October 29th
48 and December 16th of 2002. I also make reference to JAMES LEEDER as Trooper LEEDER in that that
49 was his rank at the time this case was being adjudicated. Are you ready to proceed?
50

51 A. Yes.
52

53 Q. Trooper EDWARDS, you indicated your current assignment is in Zone 1 of Troop "T"?
54

55 A. That's correct.

ENCLOSURE #6

1
2 Q. And you are also a K-9 handler?

3
4 A. Yes.

5
6 Q. How long have you been a dog handler?

7
8 A. Since May 10th, 1999.

9
10 Q. And the current dog that you have now, how long have you had him for?

11
12 A. Since that date, May 10th, 1999.

13
14 Q. And specifically, what is the dog trained to detect?

15
16 A. Are you talking about the specific narcotics or?

17
18 Q. Yes.

19
20 A. Okay, marijuana, hashish, cocaine, crack-cocaine, heroine, ecstasy and crystal meth.

21
22 Q. In terms of your evaluation of this dog, is he considered an effective dog as far as his ability to detect
23 drugs?

24
25 A. Yes.

26
27 Q. In the operations of the K-9 Unit, is there a certain percentage, do you keep any track of how many times
28 he's failed to detect or how many times he's hit positive on drugs?

29
30 A. Yes we keep training records.

31
32 Q. Are you able to indicate that off the top off your head?

33
34 A. I couldn't tell you off the top of my head what his percentage is.

35
36 Q. But in terms of Division standards, he performs at an acceptable level?

37
38 A. Yes.

39
40 Q. On July 3rd, 2001, do you recall what your tour of duty was?

41
42 A. I believe I was working a C-1 Tour of Duty.

43
44 Q. And do you recall the vehicle you were operating?

45
46 A. Yes. It was plate 1 "T" as in Tom, 23.

47
48 Q. And the PRIN is?

49
50 A. 7724.

51
52 Q. Was that vehicle back in July of 2001, equipped with a video unit?

53
54 A. Yes it was.
55

1 Q. Did there come a time on that day when you assisted Trooper LEEDER with a car stop on I-95?
2
3 A. Yes.
4
5 Q. And would you describe how that came about, were you called on the phone, were you called on the radio,
6 were you with him, how did it start out?
7
8 A. He contacted me via the Thruway radio.
9
10 Q. And when he contacted you on the radio, do you recall specifically what he requested or told you?
11
12 A. I believe he asked me just to patrol to his location.
13
14 Q. Do you recall what the location was?
15
16 A. In the area of milepost 8 north on 95.
17
18 Q. He gave you no specifics at that point as to why he wanted assistance?
19
20 A. No.
21
22 Q. Did he know you were nearby?
23
24 A. Yes.
25
26 Q. How would he have known that?
27
28 A. Prior to him going on the road, I was at the station.
29
30 Q. So you saw him earlier that day?
31
32 A. Yes.
33
34 Q. Do you know what shift he was working?
35
36 A. I don't recall.
37
38 Q. So when he saw you at the station, was it hours before, minutes before, if you recall?
39
40 A. I don't remember.
41
42 Q. Where were you when he called you?
43
44 A. I was at the station.
45
46 Q. At?
47
48 A. SP New Rochelle.
49
50 Q. And in terms of mile markers from mile post 8, New Rochelle was located at?
51
52 A. 7.2.
53
54 Q. So you were less than a mile away?
55

1 A. Correct.

2

3 Q. When he called you on the radio, was there any mention of it being a drug stop or anything like that?

4

5 A. No.

6

7 Q. Were you able to respond immediately?

8

9 A. Yes.

10

11 Q. So it took you approximately how long to get there?

12

13 A. Two, three minutes tops.

14

15 Q. Do you recall what time of day this was?

16

17 A. Not off the top of my head, no.

18

19 Q. Was it relatively early in your shift, late in your shift?

20

21 A. Relatively early in the shift.

22

23 Q. And do you recall what the volume of traffic was on I-95 on that date?

24

25 A. The specific no I don't recall.

26

27 Q. When you got there, just if you would to your recollection, what occurred, you pulled up, what did you see?

28

29 A. As I pulled up, I saw Trooper LEEDER's vehicle and a vehicle in front of him pulled over. I then exited

30 my vehicle and walked to the passenger side of Trooper LEEDER's vehicle, and then it was at that time I

31 saw there was two occupants in the vehicle that he had stopped.

32

33 Q. Trooper LEEDER's vehicle, do you know what his, I guess on the Thruway, you go by the prin rather than

34 the plate number?

35

36 A. Yes.

37

38 Q. What is his designation, if you remember?

39

40 A. His radio number was 768.

41

42 Q. So you go up along 768 and you have a conversation with Trooper LEEDER?

43

44 A. Yes.

45

46 Q. Did you actually get in the car or you were just talking through window?

47

48 A. Just talking through the window.

49

50 Q. What did he tell you that he had at that point?

51

52 A. He was explaining that he had the vehicle stopped and the operator, neither one of the passengers were on

53 the rental agreement. As he's doing that, he touches his nose, which is an indication to me that, that there's

54 some sort of odor emanating from the vehicle. After that he goes on to say that the vehicle was also

55 overdue on the rental agreement and that the occupants said they were coming somewhere from Brooklyn.

1 After stating that, I walked up to the passenger side of the vehicle and had a brief conversation with the
2 occupants. They had said they were coming from Brooklyn but it wasn't a place in Brooklyn that I
3 recognized because I grew up in Brooklyn. After that, I returned to Trooper LEEDER's vehicle and
4 informed him that I had noticed the odor of marijuana.

5
6 Q. Going back to when you first speak to Trooper LEEDER, did he tell you what he had them stopped for to
7 begin with?

8
9 A. I don't remember if he did or didn't.

10
11 Q. So you spoke with both occupants?

12
13 A. I was just having just a general conversation with them, you know asking where they were coming from.

14
15 Q. And they give you a story they're coming from Brooklyn but you're not familiar with whatever
16 neighborhood in Brooklyn they said they were coming from?

17
18 A. That's correct.

19
20 Q. While you're speaking with them, do you recall which side of the vehicle you were on, were you talking
21 with the driver, the passenger?

22
23 A. I was on the passenger side, I was just making general conversation with both of them.

24
25 Q. And did you see any drugs at that point?

26
27 A. No I didn't.

28
29 Q. But you said you did smell drugs?

30
31 A. I smelled, yes, the odor of marijuana.

32
33 Q. Okay, describe what you smelled in terms of odor of marijuana?

34
35 A. Its ...

36
37 Q. Was it burned marijuana, was it plant marijuana, was it dried marijuana?

38
39 A. Both, well, burnt, I shouldn't say burnt, I should say fresh marijuana that hasn't been smoked yet.

40
41 Q. Okay but you had the opportunity in your training and your police experience to smell green marijuana
42 plants?

43
44 A. Yes.

45
46 Q. And you've also had the opportunity to smell the dried product?

47
48 A. Yes.

49
50 Q. Prior to it being smoked?

51
52 A. Yes.

53
54 Q. Just so I'm clear on what we're talking about when you say fresh marijuana.
55

1 A. The dried, ready to be smoked.
2
3 Q. Okay. We have a request for a time out here. 10:30 a.m.
4 We're returning, it's 10:31 a.m.
5
6 Q. In terms of intensity, if you had to put it on a scale of one to ten, this odor of the dried marijuana, what
7 would you say it was?
8
9 A. It was a strong odor, I would have to put it in the eight or nine category.
10
11 Q. So it was fairly significant to you?
12
13 A. Yes.
14
15 Q. After speaking with the occupants, what did you do?
16
17 A. I returned to Trooper LEEDER's vehicle and informed him that I did smell marijuana.
18
19 Q. And you told him that you smelled the marijuana?
20
21 A. Yes.
22
23 Q. So at that point, what occurred?
24
25 A. At that point, Trooper LEEDER exited his vehicle and asked the driver to step out the vehicle.
26
27 Q. Just before you got to that point where you get the driver out of the vehicle, was there discussion as to okay
28 what are we going to do here, what do we have, you know did you have like a, put a little game plan
29 together, anything like that?
30
31 A. I don't remember..
32
33 Q. Going back to LEEDER, when you first come up to the car, and he's telling you, you know that these guys
34 claim that they're coming from Brooklyn and what not, you say he gave you a signal that he smelled
35 something?
36
37 A. Yes.
38
39 Q. And specifically what was that signal?
40
41 A. He touched his nose.
42
43 Q. With?
44
45 A. His finger.
46
47 Q. And that signified to you that ...
48
49 A. That there was some sort of odor in the vehicle.
50
51 Q. Is there any reason he wouldn't verbalize, hey HAL, or whatever he would refer to you as, you know
52 smelled marijuana in the vehicle?
53
54 A. I couldn't tell you why he did it.
55

1 Q. But his touching his nose with his finger, that was a signal to you that there was marijuana in the vehicle, or
2 that he smelled it?

3
4 A. Not necessarily marijuana but he smelled something.

5
6 Q. Request for time out at 10:33 a.m.
7 We're back on the record at 10:35 a.m.

8
9 Q. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15
16 A. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20
21 Q. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] Okay, you're up to
25 the point where you indicated Trooper LEEDER approached the vehicle toward the driver?
26

27 A. Yes.

28
29 Q. Please indicate what occurred there.

30
31 A. Trooper LEEDER had asked the driver to exit the vehicle and I was standing off to the right. They had a
32 conversation that I wasn't in close proximity to so I don't know exactly what was said. And then during the
33 conversation Trooper LEEDER had gotten marijuana off the driver.
34

35 Q. Just to back up, Trooper LEEDER goes up to the driver side and has a conversation with the driver?
36

37 A. No, no. He has him exit the vehicle.

38
39 Q. Okay and where does he go?

40
41 A. They're at the rear of the vehicle.

42
43 Q. Rear of the?

44
45 A. Rear center.

46
47 Q. Rear of the defendant's vehicle?

48
49 A. Correct.

50
51 Q. And at that point, did you observe Trooper LEEDER secure evidence from the person of the defendant?
52

53 A. Yes.

54
55 Q. That would be [REDACTED] the driver?

1
2 A. Yes.
3
4 Q. How did that happen, if you recall.
5
6 A. Like I said earlier, I didn't, I wasn't privy to their conversation but I did see Trooper LEEDER take some
7 marijuana out of his pocket.
8
9 Q. Out of [REDACTED] pocket?
10
11 A. Yes.
12
13 Q. Do you recall which pocket?
14
15 A. I don't.
16
17 Q. LEEDER reached in and took the marijuana?
18
19 A. Yes.
20
21 Q. Do you recall was the marijuana packaged or loose?
22
23 A. I believe it was packaged.
24
25 Q. Do you recall how?
26
27 A. No.
28
29 Q. At any point prior to that, did he frisk him or pat him down or was it just, went right to the pocket?
30
31 A. I don't recall.
32
33 Q. Prior to this search, had Trooper LEEDER expressed to you any concern that he thought the driver or the
34 passenger was armed with a weapon?
35
36 A. I don't remember him saying that.
37
38 Q. Was there any suspicion that the driver or passenger were, either occupant was associated with a violent
39 crime?
40
41 A. No.
42
43 Q. And at this point the driver has had the marijuana taken from him, what happened with the passenger, did
44 you take the passenger out of the car?
45
46 A. No. When Trooper LEEDER was finished with the driver, he came and stood on the side near me, then
47 when Trooper LEEDER then approached the passenger side and asked the passenger to exit the vehicle.
48
49 Q. And did Trooper LEEDER search the passenger?
50
51 A. I don't remember.
52
53 Q. After the passenger is out of the car, what happened then?
54
55 A. They both stood in the area near me and then Trooper LEEDER began to search the vehicle.

1
2 Q. When you say they stood near you, where exactly were you located?
3
4 A. I was to the right of Trooper LEEDER's vehicle in between the defendant's vehicle and Trooper
5 LEEDER's vehicle and they were standing against the cement wall.
6
7 Q. Were they handcuffed at this point?
8
9 A. No not at this time.
10
11 Q. So you're just standing more or less like guarding these two people?
12
13 A. Correct.
14
15 Q. And what was Trooper LEEDER doing at that point?
16
17 A. He was searching their vehicle.
18
19 Q. Did there come a point when they were handcuffed?
20
21 A. Yes they did.
22
23 Q. And at what point was that, do you know?
24
25 A. After Trooper LEEDER located a box in the trunk that contained thousands of glassine envelopes, which
26 are commonly used to package various narcotics, that's when they were placed in cuffs.
27
28 Q. When they were placed in handcuffs, you did that yourself?
29
30 A. I believe I handcuffed one of them, I'm not sure if I handcuffed both of them.
31
32 Q. Okay, would you have cuffed them together or separately?
33
34 A. Separately.
35
36 Q. Was there a point where they were handcuffed to the front bumper of your vehicle?
37
38 A. Yes.
39
40 Q. Well they would have been handcuffed either by yourself or yourself and Trooper LEEDER, correct?
41
42 A. Correct.
43
44 Q. Do you recall ...
45
46 A. I don't remember.
47
48 Q. ...the mechanics of that?
49
50 A. No I don't.
51
52 Q. Okay but your recollection is that they were handcuffed to the bumper after these glassine bags were found?
53
54 A. Yes.
55

- 1 Q. After the bags are found, and these two defendants are handcuffed to the front bumper of your car, what did
2 you do?
3
- 4 A. It was at that point that Trooper LEEDER asked me to get "Bernie" to search the vehicle, because he
5 thought that at that point there might be some drugs hidden in the vehicle. I then took "Bernie" out of my
6 vehicle and began the search, the defendants' vehicle.
7
- 8 Q. If I could just stop you right there for a second. Prior to the dog conducting the search, was the car
9 searched by yourself and/or Trooper LEEDER?
10
- 11 A. I don't remember.
12
- 13 Q. Do you recall giving testimony in court that the defendants were not handcuffed to the troop car until after
14 the glassine envelopes were found?
15
- 16 A. Yes.
17
- 18 Q. Was that testimony accurate?
19
- 20 A. Yes.
21
- 22 Q. The reason I ask that question is apparently according to the court decision, it cited review of the video
23 tapes found that the defendants were handcuffed prior to the bags being found.
24
- 25 A. That's not what happened. If you review the tapes, you can see that Trooper LEEDER found the envelopes
26 and then they were handcuffed.
27
- 28 Q. Let me just put the tape on hold for a second. It's 10:46 a.m.
29 We're returning to the record at 10:51 a.m.
30
- 31 Q. Trooper EDWARDS, just so I understand your testimony here correctly, is your recollection that you were
32 guarding these two individuals alongside the road while Trooper LEEDER searches the vehicle?
33
- 34 A. Yes.
35
- 36 Q. And that in the search of the vehicle, he locates in the trunk a box of approximately thousands of glassine
37 envelopes and at that point you handcuffed, or you and/or LEEDER handcuffed the two guys to the front of
38 your vehicle?
39
- 40 A. That's correct.
41
- 42 Q. That's the way this thing happened?
43
- 44 A. Yes.
45
- 46 Q. And at that point the dog commenced its search?
47
- 48 Q. Tape pauses - We're back on the record at 10:55 a.m.
49
- 50 Q. Trooper EDWARDS let me just re-ask the last question which hasn't been answered yet. So it's your
51 recollection that at the point where the passenger and driver are out of the car, you're standing with them to
52 the rear of their car alongside Trooper LEEDER's vehicle while he's conducting a search of their car, is that
53 correct?
54
- 55 A. Yes.

1 Q. And at some point during his search of the car he locates glassine envelopes in the trunk in a box, correct?

2 A. Yes.

3 Q. And at that point they are handcuffed to the front of your vehicle?

4 A. Correct.

5 Q. Okay, up to that point have they been handcuffed yet?

6 A. No.

7 Q. So the actual mechanics of them being affixed to the front of your vehicle would have been done by yourself or yourself and Trooper LEEDER?

8 A. Yes.

9 Q. Do you recall specifically whether you handcuffed them both yourself or whether Trooper LEEDER came back and assisted you?

10 A. I don't recall.

11 Q. And the next step in this process was to have the dog search?

12 A. Yes.

13 Q. Prior to the dog being used, did you and Trooper LEEDER search the vehicle?

14 A. I'm not a hundred percent sure, I don't recall.

15 Q. Whose decision was it to use the dog, was that yours or did Trooper LEEDER request it?

16 A. I believe Trooper LEEDER requested it.

17 Q. In terms of the protocol that you use in using the dog to search a vehicle for narcotics, is it preferable to have the dog search the vehicle or sniff the vehicle before police do it?

18 A. It really doesn't, doesn't matter. And there's no set guidelines that the dog has to search first.

19 Q.

20 A.

21 Q. And just to get to the search of this vehicle, what was the basis for the search?

22 A. That Trooper LEEDER had recovered marijuana from the driver and just I guess he was trying to either confirm or negate that there was any more in the vehicle.

23 Q. So the basis of the search or the probable cause was the marijuana odor?

24 A. Yes.

1 Q. So at that point it wasn't primarily an inventory search because the vehicle was going to be impounded for
2 the rental problems?

3
4 A. It might have been, I don't remember if that was the case.

5
6 Q. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 A. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. So your K-9 "Bernie" does a search of the vehicle?

16
17 A. Correct.

18
19 Q. And did the dog find any drugs in the car?

20
21 A. Yes, he alerted to the glove box area and then I tried to have him search further but he kept going back to
22 the glove box because his main objective when he searches is to find his toy, or be rewarded for finding
23 something and he kept going back there, so I rewarded him by giving him his pouch and then I put him back
24 in the vehicle.

25
26 Q. The dog alerted on the glove box, was there anything in it?

27
28 A. Yes there was a rolled "blunt" marijuana cigarette.

29
30 Q. And did the dog find any other drugs in the vehicle?

31
32 A. No, he kept going back to the glove box area.

33
34 Q. So as far as you, as the dog's handler could tell, that was the only place he showed what you would call an
35 alert?

36
37 A. Yes.

38
39 Q. And when you opened the glove box, was it unlocked?

40
41 A. Yes it was.

42
43 Q. And this marijuana "blunt" was in there?

44
45 A. Yes.

46
47 Q. The court also mentioned that there was a couple of pastries in there that there was some, I don't want to
48 say confusion, but I know the defense raised an issue, possibly during the suppression hearing whether the
49 dog was smelling the pastries or the marijuana cigarette?

50
51 A. Yes that was brought up.

52
53 Q. Were you able to discern based on your experience as a K-9 handler, would those pastries have had any
54 effect on the dog sniffing for drugs?
55

- 1 A. Personally I can say it wouldn't because I don't feed him any human food or anything like that and I've
2 searched numerous cars where there is actually food in there and he doesn't, he doesn't bother it, but during
3 the trial I wasn't, I didn't get the opportunity to express the fact that I know he was alerting to the odor of
4 the marijuana not the pastries.
5
- 6 Q. During the dog's search of the car he was on the front seats as well as the back seat, correct?
7
- 8 A. Yes.
9
- 10 Q. And at some point, we'll get into it, but there was cocaine found in the head liner?
11
- 12 A. Yes.
13
- 14 Q. And how far from the cocaine was the dog when he was standing on the back seat, or from where the
15 cocaine was actually found?
16
- 17 A. About two and a half feet maybe.
18
- 19 Q. As the dog's handler, can you offer any like expert opinion as to why the dog didn't alert on the cocaine
20 being that close to it?
21
- 22 A. It wasn't introduced to him. The dog, he'll search where you want him to search but in this case I didn't
23 have him search up near the head liner and that could be one reason for the alert, and also that the marijuana
24 is much more of an overwhelming odor than cocaine and he's going to alert to that first.
25
- 26 Q. I notice in the tape when you walked around the vehicle, I couldn't see what occurred in the vehicle, but you
27 would like tap with your knuckles on different parts of the vehicle, is that telling the dog to cover these
28 areas?
29
- 30 A. Right, what you want to do is as you're searching you want to search low and high and as he's going in
31 between he'll hopefully bring his nose up and if there is something between the low and high, he'll alert to
32 that, but inside the vehicle it's a little bit harder because you've got the dog in there and you're trying to get
33 in there and point him in the right direction.
34
- 35 Q. So to put it kind of simply, if you had tapped on the head liner, would the dog have like covered that area
36 with his sniffing?
37
- 38 A. Yes.
39
- 40 Q. Other than the marijuana cigarette in the glove box, did you personally find any of the drugs?
41
- 42 A. I was the one who covered the cocaine that was in the head liner.
43
- 44 Q. And the cocaine in the head liner, was that, just describe where in the head liner it was in relation to the
45 vehicle interior.
46
- 47 A. This vehicle, it had a sunroof and if you would be sitting on the back seat, and pull the head liner down, it
48 was shoved up all the way forward towards the sunroof.
49
- 50 Q. So it would be toward the back part of the frame of the sunroof?
51
- 52 A. Correct.
53
- 54 Q. Did you, the cocaine that was recovered, it was what weight, do you remember?
55

1 A. I believe it was over three ounces.
2
3 Q. And do you recall how it was packaged?
4
5 A. In a clear plastic bag.
6
7 Q. Like a baggie?
8
9 A. Yes.
10
11 Q. When you were in the back seat there, how did you discover that cocaine?
12
13 A. After I had put "Bernie" back in my vehicle, Trooper LEEDER, he was still searching the vehicle and then
14 he called me back to the vehicle and he says, "HAROLD, what do you smell?" and I stuck my head in the
15 car and I said, "I smell marijuana", he goes "no, smell up here near the sunroof". At that point I took a deep
16 breath when I was up near the sunroof, I said "I smell something that I equate to cocaine" and that's when I
17 entered the rear of the vehicle and looked up underneath the head liner.
18
19 Q. And that's when you found the bags of, was it one bag or . . . ?
20
21 A. One bag.
22
23 Q. And again, you talk about the odor that you associate with cocaine, was it fairly significant odor?
24
25 A. The second time when I focused in a particular area, it wasn't an overwhelming smell, but it was a decent
26 smell, a decent odor I should say.
27
28 Q. Go back to our scale of one to ten, ten being the strongest ?
29
30 A. I would put it in a four category. It wasn't that overwhelming but when you concentrate it, you could pick
31 up the odor.
32
33 Q. But Trooper LEEDER had detected that first?
34
35 A. Yes.
36
37 Q. Now at this point, where are the two defendants while you are recovering the cocaine?
38
39 A. They're still attached to the bumper.
40
41 Q. And for how long did they remain attached to the bumper, do you recall?
42
43 A. I don't recall.
44
45 Q. Were they eventually removed from the front bumper of your vehicle?
46
47 A. Yes.
48
49 Q. And where did they go from there?
50
51 A. They went into the rear seat of Trooper LEEDER's vehicle.
52
53 Q. During the course of this stop, was your patrol car video system used?
54
55 A. Yes.

1
2 Q. Was your remote microphone turned on?

3
4 A. I believe it was, I, after reviewing the tape, I know it wasn't operational though.

5
6 Q. Prior to beginning your shift, had you tested your remote mic?

7
8 A. yes

9
10 Q. And how did you do that?

11
12 A. When you turn the system on, you turn the mic on and then there's a little red light that says "mic", its on
13 the screen of the video camera.

14
15 Q. And that's for the remote mic?

16
17 A. Correct.

18
19 Q. And that was working when you started?

20
21 A. Yes.

22
23 Q. Did you testify in court that the remote mic that you have frequently breaks down for reasons unknown to
24 you?

25
26 A. Yes.

27
28 Q. And prior to July 3rd of 2001, how long had that been occurring for?

29
30 A. That's an ongoing thing with the microphones that they, they have a tendency to break or not work
31 properly.

32
33 Q. Had you documented this particular microphone as being malfunctioning?

34
35 A. I'm sure I told one of the Sergeants, in terms of documenting in writing, I'm not sure.

36
37 Q. What is the procedure in Zone One if you have a microphone that's not working, are you required to do a
38 memo or make a blotter entry so that the Sergeant is aware of it, or is it just a verbal?

39
40 A. Now it requires a blotter entry.

41
42 Q. Okay, back in 2001?

43
44 A. I don't think it did require a blotter entry.

45
46 Q. Just to go back to the evidence in this case, do you recall what evidence was found and in what order, I
47 know you testified it started out with the marijuana that was on the driver, correct?

48
49 A. Correct.

50
51 Q. And if you would just take me through it, what was found and where was it found?

52
53 A. The next was the "blunt" marijuana cigarette that the dog found.

54
55 Q. Well, considering the glassine envelopes.

- 1
2 A. Okay the glassine envelopes, actually, the marijuana from the defendant, the driver, then the glassine
3 envelopes, the "blunt" marijuana cigarette, the cocaine in the head liner and then I believe Trooper
4 LEEDER found some more marijuana tucked in between the seats.
5
6 Q. In terms of weight, was the marijuana significant, to your recollection or would it have just been UPM type
7 weight?
8
9 A. I believe it would have been just UPM type weight.
10
11 Q. With respect to this case, when the defendants were transported back to the station, it was SP Hawthorne?
12
13 A. No they went to Tarrytown Barracks.
14
15 Q. Did you return to Tarrytown also?
16
17 A. Yes.
18
19 Q. Did you have any interaction with Investigator NOEL NELSON?
20
21 A. No, I processed the defendants.
22
23 Q. You didn't discuss the case with Investigator NELSON at all?
24
25 A. No.
26
27 Q. Did he ever ask you to make any written record of your actions or what you found, that sort of thing?
28
29 A. No.
30
31 Q. Did you ever make any written record like a deposition or a memo to him describing how you found the
32 cocaine or where you found it, anything like that?
33
34 A. No.
35
36 Q. And you weren't asked to do that?
37
38 A. No.
39
40 Q. Would you have completed any records, like a use of the K-9 form?
41
42 A. Yes, we have, it's an internal, I believe its an internal form, a General 85B that I faxed to Sergeant
43 TIMOTHY FISCHER.
44
45 Q. I'm just going to fast forward the tape here. It's 11:13 a.m. We'll switch to Side B.
46 We're returning to the record, it's 11:13 a.m. continuing on Side B.
47
48 Q. With respect to your contact with the Westchester County DA's office, Trooper EDWARDS, how much
49 preparation did you undergo with the DA prior to giving testimony in the suppression hearing?
50
51 A. From the time of the stop to the suppression hearing, there were several DA's involved in the case, it kept
52 getting pushed off to another one, pushed off to another one, then I believe it was in September of 2002 is
53 the first time that I actually met with ADA FRANK LUIS in regards to this case.
54
55 Q. You did not testify in Grand Jury on this case, correct?

1
2 A. That's correct.

3
4 Q. Do you recall how many times you testified at the suppression hearing that you know took that extended
5 period between October and December?

6
7 A. It was two days.

8
9 Q. [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 A. [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. Prior to your giving testimony, did you have an opportunity to review Investigator NELSON's report, the
16 General 84 report?

17
18 A. I didn't review it at all prior to the suppression hearing.

19
20 Q. Prior to testifying in the suppression hearing, did you have an opportunity to review the video from Trooper
21 LEEDER's car?

22
23 A. It was, yes, it was just a fast forwarded quite a bit, it wasn't the whole entire tape.

24
25 Q. And do you recall with respect to when you testified, how much time went between when you prepared with
26 the DA to the time you actually gave testimony?

27
28 A. I'm sorry, I didn't understand the question.

29
30 Q. Well, you met with ADA LUIS you believe in September of '02 ?

31
32 A. Correct.

33
34 Q. The first testimony given in the suppression hearing was October 29th of '02. Do you recall when you
35 would have reviewed the video tape, would it have been at that September meeting?

36
37 A. I believe it was prior to the start in October because I was the last one to testify at the suppression hearing.

38
39 Q. Okay, so again to go back to the question, can you recall in terms of time, days or weeks, how much time
40 went by from when you last saw the video to the time when you gave your actual testimony?

41
42 A. At least a month and a half, no, actually longer than that, closer to two months.

43
44 Q. Did Trooper LEEDER ever indicate to you that he had received information from one of the New York City
45 narcotic units to be on the lookout for [REDACTED] vehicle?

46
47 A. No.

48
49 Q. [REDACTED]
50 [REDACTED]

51 A. [REDACTED]
52 [REDACTED]

53 Q. [REDACTED]
54 [REDACTED]

55 A. [REDACTED]

1
2 Q. Do you know what the disposition of the charges were in the case?

3
4 A. Yes, it was a the evidence was suppressed.

5
6 Q. And did that result in the dismissal of the charges?

7
8 A. Yes.

9
10 Q. Did you ever read Judge ADLER's decision in this case?

11
12 A. Yes.

13
14 Q. [REDACTED]

15
16 A. [REDACTED]

17
18 Q. Do you know why the District Attorney wouldn't appeal this case?

19
20 A. No.

21
22 Q. I'm just going to pause the tape at this time, it's 11:18 a.m.
23 We're returning to the record at 11:26 a.m.

24
25 Q. For the record, Trooper EDWARDS has just reviewed the video tape from Trooper LEEDER's vehicle
26 from the point of 2:18 p.m. on July 3rd to 2:20 p.m. same date which depicts the search of the vehicle, or
27 part of the search of the vehicle by himself and Trooper LEEDER including the trunk area. Again, Trooper
28 EDWARDS, in court you had testified that the defendants, let me just pause here for a second 11:27 a.m.
29 We're back on at 11:28 a.m. Trooper EDWARDS, you had testified in court that the defendants were not
30 handcuffed to the troop car until after the glassine envelopes were found and that was your recollection
31 again here this morning. Is that correct?

32
33 A. Yes that's what I said.

34
35 Q. And having had the opportunity now to review the video tape, is that still your recollection?

36
37 A. After reviewing the tape, you can clearly see that they were handcuffed prior to the glassine envelopes being
38 found.

39
40 Q. Request for a time out at 11:28 a.m.
41 Back on the record, its 11:29 a.m.

42
43 Q. Trooper EDWARDS, so having reviewed the tape here this morning, does that change your recollection of
44 events?

45
46 A. Yes.

47
48 Q. Because clearly the defendants, they were handcuffed or they were certainly had nobody standing next to
49 them while you and Trooper EDWARDS, as depicted in the tape are searching the vehicle, correct?

50
51 A. That's correct.

52
53 Q. So its your recollection that they were either handcuffed standing along the road or they were handcuffed to
54 the vehicle?

1 A. Correct.

2

3 Q. So when I ask you if your testimony that you gave in court was accurate, what would your answer be now?

4

5 A. To the best . . . , (speaking to delegate) I've got a question.

6

7 Q. Request for a time out at 11:30 a.m.

8 We're back on at 11:32 a.m.

9

10 Q. Trooper EDWARDS, I'll repeat the last question. When you testified in court that the defendants were not

11 handcuffed to the troop car bumper until after the glassine envelopes were found was your testimony

12 accurate when you testified?

13

14 A. To the best of my knowledge, yes.

15

16 Q. But now having seen the tape, you realize it was not accurate?

17

18 A. Correct.

19

20 Q. Trooper EDWARDS I have no further questions, I'm just going to pause the tape at 11:32 a.m. I just want

21 to go over my notes and then we'll return. We are returning to the record at 11:42 a.m. I just have a few

22 more questions, Trooper EDWARDS.

23

24 Q. Ultimately as the result of these arrests, was any loose marijuana found in the vehicle? I mean loose in that

25 it was not packaged in some way.

26

27 A. I don't remember.

28

29 Q. Was the source of the odor of fresh marijuana which you indicated was fairly strong, was that ever

30 determined?

31

32 A. I don't understand the source?

33

34 Q. Right, the source of the odor, was that ever determined by yourself or any other member that you're aware

35 of?

36

37 A. No, the only thing I can say is there was marijuana recovered from the glove box as well as Trooper

38 LEEDER eventually finding some secreted between the seats.

39

40 Q. I don't know if we brought that out before, the marijuana that was between the seats, that was packaged in

41 some form, box, bag?

42

43 A. I believe so yes.

44

45 Q. Do you recall specifically?

46

47 A. No.

48

49 Q. And the marijuana that was taken from the pants of [REDACTED] the driver, was that also packaged in some

50 form?

51

52 A. I believe it was.

53

54 Q. Do you recall the type of packaging?

55

1 * A. No.

2
3 Q. One other question with respect to your preparation by the District Attorney, when you were prepped was it
4 one time or more than one time?

5
6 A. It was two or three times but they were very short, didn't really get into specifics as to what was going to be
7 asked, [REDACTED]
8 [REDACTED]
9

10 Q. When these preparations were undertaken, were you the only member of the State Police present, or were
11 Trooper LEEDER and/or Investigator NELSON also present?

12
13 A. When I went, Trooper LEEDER was there.

14
15 Q. So you both got prepped at the same time?

16
17 A. For the most part, yes.

18
19 Q. In the course of preparing, did the DA indicate he had any concerns about the search or the basis for the
20 search, anything of that nature?

21
22 A. No, actually he said he thought it was a good stop.

23
24 Q. Trooper EDWARDS, I have no further questions for you, is there anything you wish to add?

25
26 A. [REDACTED]
27 [REDACTED]
28 [REDACTED]
29

30 Q. I have no further questions, is there anything else you wish to add?

31
32 A. No.

33
34 Q. At this time, Trooper EDWARDS, I'm going to give you an order not to discuss your testimony that you
35 gave here today with Investigator NOEL NELSON or Investigator JAMES LEEDER until their statements
36 have been concluded on March 26th of this year, do you understand that order?

37
38 A. I do.

39
40 Q. I have no further questions, this statement will be concluded at 11:45 a.m. Thank you

41
42 A. You're welcome
43
44

1
2 I have read this statement consisting of 21 pages and it is true to the best of my knowledge. I have placed
3 my initials on the bottom of each page and next to each correction and I signed it below.
4

5 Signed before me this day of , 2003.
6
7

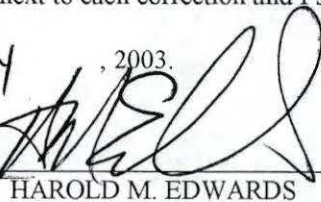
8
9 _____
10 WITNESS

_____ HAROLD M. EDWARDS
11

1
2 I have read this statement consisting of 21 pages and it is true to the best of my knowledge. I have placed
3 my initials on the bottom of each page and next to each correction and I signed it below.
4

5 Signed before me this 4 day of May, 2003.
6

7
8
9 
WITNESS


HAROLD M. EDWARDS

1 **STATE OF NEW YORK**
2 **COUNTY OF ORANGE**
3 **TOWN OF NEW WINDSOR**
4

MARCH 25, 2003

5
6 Statement taken from Investigator NOEL N.J. NELSON at the Internal Affairs Bureau South
7 Region Office, Stewart Airport, New Windsor, New York on March 25, 2003 by Inspector
8 ARTHUR J. HAWKER commencing at 10:22 a.m.
9

10 The letter "Q" denotes questions asked by Inspector HAWKER.
11 The letter "A" denotes answers provided by Investigator NELSON.
12

13 Q. For the record, Investigator, please state your name, date of entry and current assignment.
14

15 A. Investigator NOEL N.J. NELSON, date of entry 10/1/84. I'm an Investigator at SP
16 Tarrytown BCI.
17

18 Q. Do you know your date of rank off hand?
19

20 A. 12/20/90.
21

22 Q. Investigator NELSON, you were advised on March 13th of this year by myself through
23 the Division E-mail system of the matter being investigated and that I would be taking a
24 statement at this time. You are not the target of any known criminal investigation. The
25 purpose of this investigation is to inquire into your activities as a member of the State
26 Police. Specifically it has been alleged that in connection with the July 3, 2001 arrest of
27 [REDACTED] and [REDACTED] you gave testimony in
28 Westchester County Court hearings which was deemed as not credible by the presiding
29 judge.
30

31 This interrogation is being conducted pursuant to Article 16 of the agreement between the
32 State of New York and your certified representative organization and the Regulations of
33 the New York State Police including Regulations 8A3 and 8A15. You have the right to
34 contact and consult with an attorney and/or union delegate before being interrogated and
35 to have an attorney and/or delegate present during the interrogation. This agreement and
36 our Regulations require you cooperate and answer truthfully questions relating to the
37 investigation. A refusal to answer or failure to answer truthfully may result in
38 disciplinary action which could result in your separation from service. Are you
39 represented at this time and if so, by whom?
40

41 A. Yes I am, by my union rep, Investigator JULES RENNA.
42

43 Q. As you know I am Inspector ARTHUR HAWKER and I have been designated by the
44 Superintendent to conduct this interrogation. Present during this interrogation in addition
45 to Investigator NELSON is his delegate, Investigator RENNA, myself and Lieutenant
46 LISA GALBRAITH of the Internal Affairs Bureau. This interrogation is being recorded

1
ENCLOSURE #8

1 mechanically by tape recorder, do you understand this?

2
3 A. Yes I do.

4
5 Q. Having been advised of the above, are you now ready to proceed with this interrogation?

6
7 A. Yes I am.

8
9 Q. I'm just going to stop the tape at 10:25 a.m.
10 We'll be resuming at still 10:25 a.m.

11
12 Q. For the record, I'm going to be referring to court hearings and I will note that the hearings
13 that are going to be referred to on five separate dates between October 29th 2002 and
14 December 16th, 2002. I will also be referring to now Investigator JAMES LEEDER as
15 Trooper LEEDER in that during the time of the arrest that was his rank. Investigator
16 NELSON, other than Troop "T" have you had any other BCI assignments?

17
18 A. Ah, yes I have, I've been assigned to Troop "F" BCI, I've been assigned to Troop "F"
19 Narco and I believe that's the extent of it.

20
21 Q. In your current assignment, do you know what your average case load is?

22
23 A. Usually about 220 cases a year.

24
25 Q. And out of that 220, do you have any idea how many are felony controlled substance
26 cases?

27
28 A. I would say a significant amount is, its considered road arrests, yes, percentage wise I'd
29 say maybe, maybe 50 % at least.

30
31 Q. And these are all cases adopted from the uniform force?

32
33 A. Usually.

34
35 Q. With respect to the [REDACTED] and [REDACTED] arrest, how did you become involved in that?

36
37 A. As I recall, I was contacted by Investigator at the time Trooper LEEDER and advised that
38 he had made an arrest involving cocaine on I-95. I believe I might have instructed him to
39 respond in fact I did instruct him to respond to SP Tarrytown with the arrestees and the
40 evidence, which he did.

41
42 Q. Do you recall how he contacted you?

43
44 A. More than likely, the radio, Thruway radio.

45
46 Q. Were you at Tarrytown at the time?

1
2 A. I believe I was.

3
4 Q. Were you at the station when the defendants were brought in?

5
6 A. I believe I was.

7
8 Q. And did Trooper HAROLD EDWARDS also respond to the station, do you recall?

9
10 A. I think he did.

11
12 Q. If you would, just speak up a little bit please?

13
14 A. Sure, I believe he did also.

15
16 Q. And who actually briefed you as far as what had occurred out on the highway?

17
18 A. Trooper LEEDER provided most of the information and I might have had a conversation
19 with HAROLD briefly, I don't recall if I did specifically, but I know JIM LEEDER
20 provided most of the information.

21
22 Q. And did you speak personally to either defendant?

23
24 A. Yes I did.

25
26 Q. And what was . . . with respect to Defendant [REDACTED] do you recall what the sum and
27 substance of that?

28
29 A. I spoke to both defendants about their involvement with the cocaine and the marijuana
30 and I know one defendant had mentioned to me that, that would be ahh

31
32 Q. I'm just going to, for the record, Investigator NELSON has in front of him, identify the
33 document you're looking at ?

34
35 A. This is referring to my General 84 report, Mr. [REDACTED] had advised me that he wished to
36 you know invoke his constitutional rights and not make any statements. So he did not.
37 Mr. [REDACTED] I'm sorry did you ask me about ...

38
39 Q. That was my next question.

40
41 A. Okay. Mr. [REDACTED] I spoke with briefly also and basically stated to me all he knew
42 about was the marijuana found in the vehicle and that he had no knowledge of the cocaine
43 and that he wished to speak to his lawyer. At which time my questioning ceased of both
44 defendants.

45
46 Q. Did you physically process or weigh any of the evidence?

1
2 A. No I did not.

3
4 Q. Did you look at the evidence to see

5
6 A. I'm sorry, I did process, I processed the evidence in terms of sealing it in the evidence
7 bags and putting it away in the evidence locker, but I did not weigh it.

8
9 Q. Did you have either Trooper EDWARDS or Trooper LEEDER prepare a memorandum or
10 deposition or any written account of what had transpired?

11
12 A. No memorandum was prepared, but what the procedure normally is, is the Trooper will
13 go into the computer and reports and he will start the report and I will go in and finish it
14 basically.

15
16 Q. Is that what happened in this case?

17
18 A. I can't specifically remember if it is, but that is normally the procedure.

19
20 Q. So independent of the General 84 report, you didn't instruct them to make any written
21 record?

22
23 A. No I did not.

24
25 Q. When the Troopers briefed you, in particular Trooper LEEDER, did you make any
26 written notes?

27
28 A. No I did not.

29
30 Q. Did Trooper LEEDER ever tell you that he had received information from a New York
31 City drug unit or another police source to be on the lookout for [REDACTED] vehicle?

32
33 A. No he did not.

34
35 Q. With respect to the General 84 report, who actually wrote it?

36
37 A. I completed the report.

38
39 Q. Okay, with respect to paragraph one in the text, the record will reflect Investigator
40 NELSON's just reviewing that momentarily, did you write that in its entirety, paragraph
41 one?

42
43 A. Yes I did.

44
45 Q. Do you recall when you actually wrote the report?
46

1 A. Sometime shortly thereafter, the specific date would be probably sometime, I would say, I
2 would say sometime a couple days or the next day after the third of July, the day of the
3 arrest.

4
5 Q. And for the record, what is the report dated?
6

7 A. 7/3/01.
8

9 Q. Just to go back to what you described as the standard procedure, and this is a Zone
10 procedure, with the Troopers beginning the report?
11

12 A. That is correct, just so as to have things fresh in their minds, I try to have them do it the
13 same day as the arrest and put the facts of the case in the computer.
14

15 Q. Have you ever given any instruction to Troopers as to how to complete that; what I'm
16 asking is what information specifically you want in that?
17

18 A. I tell the Troopers on a regular basis that the report has to contain all the relevant facts of
19 the case.
20

21 Q. In cases where a search is involved, whether it's a vehicle or person, would the probable
22 cause for the search be a relevant fact?
23

24 A. Yes.
25

26 Q. In this particular case as the member in charge of the case, to you what was the lawful
27 basis of the probable cause of the search?
28

29 A. In this instance, the Trooper stopped a couple of individuals who did not possess or did
30 not have any possessory interest in the vehicle, specifically a rental vehicle that neither
31 occupant in this case, defendant, were entitled to and the vehicle was impounded based
32 on that and subsequent to that impound, drugs, specifically the cocaine and the marijuana
33 was discovered and statements were made to the Trooper relative to certain possession of
34 that illegal drug.
35

36 Q. So as we sit here today, your belief is that the vehicle was impounded and then the drugs
37 found?
38

39 A. That is correct.
40

41 Q. Did you ever see the car in this case?
42

43 A. Yes I did.
44

45 Q. Were you ever in the car in this case?
46

1 A. Yes I was.

2
3 Q. And when and where did that take place?

4
5 A. The car was towed to SP Tarrytown where it was secured.

6
7 Q. And this would have been on July 3rd of '01?

8
9 A. That is correct.

10
11 Q. And were you in the car on July 3rd of '01?

12
13 A. I went out to look at the car, correct.

14
15 Q. But did you physically sit in it or go through it?

16
17 A. I went in the car and I looked at the location that the drugs were found, which would, yes
18 I sat in it.

19
20 Q. Was there any discernable odors in the car on that date?

21
22 A. I can't recall.

23
24 Q. Nothing that was significant at any rate?

25
26 A. I've been in so many cars associated with so many different arrests, I couldn't say at this
27 particular point that this particular car smelled of marijuana or anything else, so you
28 know, I would be tossing together a couple of different thoughts there.

29
30 Q. Regarding this case, Investigator NELSON, did you review the video tape from Trooper
31 LEEDER's patrol car on July 3rd?

32
33 A. I looked at portions of the tape, correct.

34
35 Q. On the date of the arrest?

36
37 A. Yes I did.

38
39 Q. When you say you looked at portions of it explain

40
41 A. I recall the tape being rather lengthy, so I while I did not have an opportunity to view the
42 entire thing on the date of the arrest, I did see where when the drugs were found, I recall
43 seeing the dog put into the car and a few other instances.

44
45 Q. So in terms of time on July 3rd, 2001, would you have viewed the tape while the
46 defendants were still at the station or like a couple of hours later, do you remember?

1
2 A. I believe the defendants were still present at the station.

3
4 Q. So having had the opportunity to view that tape, do you believe the search of [REDACTED]
5 and the vehicle, they were lawful in your opinion?
6

7 A. I believe it was, yes.
8

9 Q. And that was based on what reason?
10

11 A. Well, based on the reason they had no possessory interest in the vehicle, they certainly
12 had no right, no standing to, I lost words, no standing to deny any access to the vehicle.
13

14 Q. And when you talk about possessory interest, is that based on the fact that neither
15 defendant was listed on the rental agreement?
16

17 A. That is correct.
18

19 Q. Was there also an issue about the car being overdue?
20

21 A. As I recall, I don't have a copy of the rental agreement but I think the vehicle might have
22 been overdue.
23

24 Q. Did Trooper LEEDER ever tell you prior to the preparation of your report that he smelled
25 the odor of marijuana, particularly fresh marijuana in the vehicle?
26

27 A. As I recall, and this is based on the uniqueness of the case and that I have never had a
28 case before where the drugs were found in the ceiling of a vehicle, a roof of the vehicle.
29 In speaking to JIM LEEDER about the case, and reviewing the circumstances thereof, I
30 do recall JIM mentioning something to me with respect to that.
31

32 Q. Does your General 84 report that you have in front of you there, which you wrote, does
33 that mention in anyway LEEDER's claim that he smelled marijuana in the vehicle?
34

35 A. No it does not.
36

37 Q. The report as its written states that Trooper LEEDER advised the occupants of the car
38 that it would be impounded because neither of them were authorized to possess or drive
39 it. He then had them exit the vehicle, or at least the driver at that point. Are you aware
40 that Trooper LEEDER testified that the car would have been impounded if he had been
41 able to determine at the scene that from the rental company that they were in violation of
42 the agreement?
43

44 A. No I'm not.
45

46 Q. Are you aware that Trooper LEEDER's testimony based the probable cause for the search

1 of the vehicle and the driver [REDACTED] solely on the odor of marijuana which he claims
2 he detected in the car?

3
4 A. I had heard that.

5
6 Q. When you heard it, at what point?

7
8 A. I heard that afterwards, after the testimony in this hearing, on the hearing we had in
9 county court.

10
11 Q. After the Judge's decision came out?

12
13 A. Correct.

14
15 Q. At what point would this case have been reported to the Westchester County D.A. and by
16 whom, if you would just for the record explain the procedure that exists down there in
17 your Zone?

18
19 Q. I'm just going to pause the tape here at 10:41 a.m.
20 We're returning at 10:41 a.m., would you like me to repeat the question ?

21
22 A. If you could please.

23
24 Q. At what point was this case reported to the Westchester County D.A. and by whom, if
25 you would explain the procedure that exists in that county?

26
27 A. The D.A.'s usually are made aware of an arrest upon arraignment or sometimes shortly
28 thereof, report is prepared shortly after that and forwarded to the District Attorney's
29 office.

30
31 Q. In terms of time, generally, I know cases may vary, but there's not an ADA at the
32 arraignment necessarily is there?

33
34 A. Not necessarily. Because we very rarely get a judge to come out at night, defendants
35 usually arraigned in the morning, and there usually is a District Attorney present at the
36 arraignment.

37
38 Q. In this particular case, did you attend the arraignment?

39
40 A. No, I did not.

41
42 Q. As far as the conveyance of the arrest report or any other documents to the D.A., how
43 does that occur?

44
45 A. The report, after its completion is forwarded by myself.
46

1 Q. And do you do that personally or send it through the mail, or relay?

2
3 A. Usually it's a combination of all of the above basically, it usually goes through the relay
4 or I deliver it personally.
5

6 Q. In this particular case, do you recall when the first contact was with the D.A.'s office with
7 regard to these arrests?
8

9 A. No, I don't.
10

11 Q. In this particular case, how was the District Attorney to know that the odor of marijuana
12 was the basis for the car search if it was not in your report?
13

14 A. D.A. crime summary is normally prepared by the Trooper. For whatever reason its
15 missing in this case.
16

17 Q. The crime summary report?
18

19 A. That is correct.
20

21 Q. Describe what that is, I'm not familiar.
22

23 A. Its basically a summary of all the events, the defendant's name, the evidence possessed
24 and a brief synopsis of what took place.
25

26 Q. Do you customarily get a copy of that?
27

28 A. Yes I do.
29

30 Q. But you didn't get a copy in this case?
31

32 A. I did not have a copy, I do not have a copy.
33

34 Q. Do you know if the District Attorney did?
35

36 A. According to him, he did not.
37

38 Q. And whose responsibility would that have been to.
39

40 A. That would be the Trooper's responsibility to provide the D.A.'s crime report and get it
41 over to the court, it usually goes with the accusatory.
42

43 Q. So, it's the Trooper's responsibility to fill that out?
44

45 A. That is correct.
46

1 Q. And would you say as the case agent its your responsibility to make sure that that was
2 done?

3
4 A. I advise the Troopers as I do in every arrest, "make sure you do a crime report", you
5 know, I had every reason to believe that it was done.

6
7 Q. Do the Troopers routinely give you a copy of what they've sent?

8
9 A. I ask for a copy, yes I do.

10
11 Q. At what point in this case did you realize that none had been prepared?

12
13 A. I believe after it went to the first hearing, which is the Grand Jury, I believe.

14
15 Q. When was Grand Jury held do you recall?

16
17 A. I don't recall.

18
19 Q. In proximity to the arrests ?

20
21 A. It varies greatly in Westchester, I don't recall when this one went to Grand Jury.

22
23 Q. You testified in Grand Jury?

24
25 A. I believe I did.

26
27 Q. Do you have any idea when you testified?

28
29 A. I have no, I don't remember, I have no recollection of when that was.

30
31 Q. Do you know at what point in this case that the District Attorney was advised that the
32 odor of marijuana was the probable cause for the search of the vehicle?

33
34 A. I do not know, it was, I would assume at some point, I'm not even going to assume, I
35 don't know.

36
37 Q. And in addition to Grand Jury testimony, you also gave testimony at a suppression
38 hearing in this case?

39
40 A. Yes I did.

41
42 Q. Did you testify on more than one occasion, given that it occurred over five separate days?

43
44 A. I believe I testified on two separate dates.

45
46 Q. Do you know what those dates were?



1
2 A. No, I don't recall.

3
4 Q. How much preparation for this testimony were you able to do with the District Attorney
5 that was assigned?

6
7 A. This was a very unusual case from the start. One, ADA MIKE BORELLI was assigned
8 to the case, I believe he was the first one and I believe there were about two or three
9 ADA's that prepped or were assigned to this case. I can recall MIKE BORELLI advising
10 me that this case was going to a suppression hearing and shortly thereafter I heard that he
11 was leaving the office, at which point the case was reassigned to someone else. ADA
12 BORELLI did not leave the office and I was contacted by, I believe, ADA FRANK LUIS
13 who eventually prosecuted the case or was the DA assigned to the suppression hearing
14 and he had mentioned to me that he would need some enhancement of the video done
15 which I had done for him with respect to the suppression hearing. I met with MIKE
16 BORELLI, I met with FRANK LUIS on different occasions; they advised me that its
17 coming up for a hearing but they were busy with other, you know, cases at the time so we
18 really never, we never really prepped in the traditional sense of this case and I met with
19 FRANK LUIS probably, I dropped the tapes off for him on a particular day and we talked
20 about the case briefly, and I mean briefly. He said to me that ~~DICK LAPONT~~ and I will
21 review the tapes, I really don't need you here and I was never given any minutes to be
22 reviewed, I you know, to say the least this was the most unusual situation you know, and
23 when the hearing actually happened, I really wasn't even expecting it to go to hearing on
24 that particular day but it happened and I wasn't expecting it to go because it had been put
25 off so much and [REDACTED]

26 [REDACTED]
27 [REDACTED] and
28 he never brought any issues up to me with respect to difference in testimony, with respect
29 to a difference in probable cause or anything, so I had no reason to believe there was any
30 issues between myself and JIM's testimony or with respect to the probable cause in this
31 situation. [REDACTED]
32 [REDACTED]
33 [REDACTED]
34 [REDACTED]

35
36 Q. With respect to - you mentioned they wanted the videos enhanced. What specifically did
37 they want enhanced on the videos?

38
39 A. There was some noise, background noise, supposedly there was some conversation in the
40 vehicle between the defendants and the background noise was kind of overshadowing
41 their conversation, so some enhancement was attempted in bringing out that conversation.

42
43 Q. To see if they were like admitting between themselves?

44
45 A. Right, so it still wasn't terribly clear after the enhancement, there was definitely some
46 conversation going on between the defendants.

at that
point?
(u)

(u)

1
2 Q. So to kind of recap what you related, you never reviewed the tape or the tapes with the
3 DA prior to giving the testimony?
4

5 A. No we never sat down together to review the tapes to point out anything that he might
6 have had an interest in, and I never reviewed any minutes from the Grand Jury testimony
7 at any particular point. I believe the Troopers were even prepped separately from myself,
8 if they were prepped, and basically we had no idea what page we were on because
9 everything was done separately.
10

11 Q. And you may have touched on this Investigator NELSON, but I'll ask, with respect to
12 any issues as far as the search itself, if the DA saw any problems with the search or any
13 conflicts, that was never brought to your attention?
14

15 A. That is correct, I never had a conversation with either ADA BORELLI or LUIS that there
16 was a conflict between my testimony and JIM's testimony [REDACTED]
17 [REDACTED]
18

19 Q. Did you do any preparation for testimony independent of the DA?
20

21 A. I read my report over, I went over whatever notes I had and I was under the impression
22 that this was how things were going to go. I was never provided with the minutes to the
23 case or you know, not with my minutes, not with JIM's minutes, so I had no idea there
24 was a difference in testimony.
25

26 Q. So given that you made no notes other than the report, basically all you had to refer to
27 was the report and the tapes?
28

29 A. That is correct.
30

31 Q. Did you ever, independent of the DA, did you ever sit and review, in particular, Trooper
32 LEEDER's videotape and compare it with the first paragraph in the report?
33

34 A. I believe the videotape had some pockets in the audio where there really was no audio
35 and so I rely basically on what I'm told by the Trooper as the ultimate, that we'll have to
36 articulate what occurred, so as I recall I spoke with JIM about you know, what happened
37 and that's what I went on.
38

39 Q. Did you in any way assist Trooper LEEDER and/or Trooper EDWARDS in preparing for
40 their testimony?
41

42 A. No, no, not at all.
43

44 Q. When you testified at the suppression hearing, did you testify that you could not recall
45 how you got the information that you used to write your report because it occurred so
46 long ago?

1
2 A. I believe I did and that's with respect to whether it was placed on the computer or
3 whether JIM gave me an independent note, I don't have any such notes, it could be that
4 he dictated and I typed . . . there is no set standard; it's you know, it's busy and we try to
5 get the reports done in the most efficient way while maintaining some degree of accuracy,
6 well, considerable degree of accuracy.

7
8 Q. Did you testify that your reading of the report prior to the hearing refreshed your memory
9 that LEEDER had told you about the marijuana odor?

10
11 A. No. What I testified to at the hearing was the fact that I spoke with JIM and due to the
12 circumstances, the different nuances of the case, I recall that I had some sort of
13 conversation with JIM with respect to the odor of marijuana and I never testified that
14 after reading my report, obviously its not in the report, I wouldn't have testified to that,
15 but basically after speaking with JIM and due to the difference, the nuances of the case,
16 specifically drugs found in the ceiling and there was some recollection on my part of JIM
17 mentioning marijuana too.

18
19 Q. I believe that's what the court kind of seized on was that there was testimony either
20 probably before or it might have been after you, that the basis for the search was
21 marijuana. There was no mention of the odor of marijuana in the report and therefore the
22 court questioned how you could refresh your memory by reading the report if there was
23 nothing there that contained it. So just so I understand it, are you like saying that the
24 court took your testimony out of context to an extent?

25
26 A. I think they totally took my testimony out of context. I clarified the point on the stand, I
27 remember clarifying the point on the stand [REDACTED]
28 [REDACTED]
29

30 Q. Did you testify that the absence in the report of any reference to the marijuana odor was
31 "moot and insignificant"?

32
33 A. I testified that that issue of the marijuana was moot and insignificant being that it was not
34 the basis for the arrest, or at that point, no, it was not the probable cause for getting into
35 the vehicle. The vehicle was gotten into by virtue of the inventory subsequent to these
36 gentlemen not having any possessory interest in the vehicle. I testified that I believed that
37 at point that the marijuana smell was moot and insignificant because we had, at that point,
38 one of the defendants saying "I had marijuana". Subsequent to the inventory they located
39 marijuana in the vehicle and I believe, or you know, on his person or in the vehicle and
40 they told me to clarify that point.

41
42 Q. Just so I can clarify it.

43
44 A. Right.

45
46 Q. When you testified that it was "moot and insignificant", is it accurate to say that your

1 frame of testimony was that you're operating that the basis for the search was an impound
2 versus what somebody else had testified to was the odor of the marijuana.

3
4 A. If I may clarify, the point came up and it was the very beginning of the hearing and I
5 thought that, obviously, not having any knowledge that JIM would testify that you know,
6 his probable cause was the marijuana, and I at that point, at the beginning of the hearing
7 saying "listen, I believe that the smell of the marijuana at that point was moot and
8 insignificant because evidence had already been found based on inventory, and it was not
9 the marijuana smell itself that got them into the vehicle", so I thought that was moot and
10 insignificant, not that the fact that the smell of the marijuana got them into the vehicle
11 and that was moot and insignificant. It was something else that was taken out of context,
12 you know. Am I making myself clear? I don't know.

13
14 Q. I believe I understand what you're trying to say or what you are saying, its just we have
15 this conflict and I just want to be clear that I understand it that you are under the belief
16 that this was an impound and inventory type search whereas Trooper LEEDER actually
17 testified that the basis for the search was the odor of marijuana.

18
19 A. Correct.

20
21 Q. And a review of the videotape from Trooper LEEDER's vehicle kind of clearly shows
22 that there was an actual search process before there was a type of an inventory process. Is
23 that your understanding, if you've reviewed the tape?

24
25 A. Well, in looking at the tape a search and an inventory, it's a thin line, a gray line if you
26 will. I mean the fact that he's searching the vehicle is in fact, or an inventorying vehicle
27 is in fact a search to determine what is in the vehicle. Whether it be personal valuable
28 property or additional contraband, so at that point he was searching the vehicle based on
29 the fact that these gentlemen were not on the rental agreement and the contraband was
30 located.

31
32 Q. I understand what you're saying, but that's in conflict with testimony that was given. He
33 never testified, his testimony was ...

34
35 A. And as I understood it, afterwards, that he testified something totally different.

36
37 Q. That's the point I'm trying to make is that you were testifying under this one frame of
38 mind ...

39
40 A. Absolutely, based on the rental agreement, inventory and he had testified that there was
41 you know, he testified what he testified to was located due to marijuana.

42
43 Q. Right, and so obviously not everybody was on the same page.

44
45 A. Exactly. Exactly.
46

1 Q. Approximately how many felony drug cases have you adopted from Trooper LEEDER
2 say in the last two years, if you're able to give an accurate estimate ?

3
4 A. Can we have a pause on that, Inspector ?

5
6 Q. Request for a pause here at 11:01 a.m.
7 We're returning to the record at 11:01 a.m. still.

8
9 Q. I'll re-ask that last question. With respect to the date of July 3rd of '01, up to that point,
10 can you approximate how many felony drug cases you may have adopted from Trooper
11 LEEDER?

12
13 A. I would say less than twenty.

14
15 Q. And to your recollection, were any of those cases dismissed because the evidence was
16 suppressed?

17
18 A. No.

19
20 Q. [REDACTED]
21 [REDACTED]

22
23 A. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

29
30 Q. What was the disposition of the criminal charges against [REDACTED] and [REDACTED] in this
31 case?

32
33 A. I believe the evidence was suppressed and I would imagine the case was dismissed.

34
35 Q. You have indicated I believe, you have read Judge ADLER's decision in this case?

36
37 A. I have read through it.

38
39 Q. Do you know why the DA won't appeal this case? Have you ever discussed it with him?

40
41 A. No, no I don't.

42
43 Q. Investigator NELSON, I have no further questions. I'm just going to pause the tape here
44 at 11:03 a.m. so I can confer with Lieutenant GALBRAITH and we'll return to the
45 record. We're returning to the record at 11:07 a.m. Investigator NELSON, I have no
46 further questions, is there anything you wish to add to this statement?

1
2 A.
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11
12
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17
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19
20
21
22

23 Q. All that being said, still how do we reconcile the fact that you as a case agent can write a
24 report and give testimony under the belief that the search that led to the seizure of the
25 crucial evidence in this case came about in one manner while the Trooper who was out,
26 made the car stop, is under the apparent belief and gave testimony based on that belief
27 that the search was based on an entirely different basis of law?
28

29 A. Well, what I consider to be the probable cause in the case was the rental agreement and
30 the fact that these gentleman had no possessory interest in the vehicle. And normally all
31 the circumstances, or most of the circumstances of the case, I try to put as much in the
32 report as possible, but all the circumstances are not necessarily put into a written report
33 with respect to everything that happened. It might have just been that I overlooked and
34 its obvious that I overlooked the conversation with respect to the odor of marijuana if its
35 not in the report, I think that's something that I would have put in the report, but I'll take
36 the blame for that, whether I overlooked it or I just did not consider it to be the focal
37 point . . . and I don't put everything in the report because a Trooper can articulate what
38 happened in court as far as all the circumstances are concerned. I think . . . I don't know
39 what JIM, I recall hearing that JIM didn't have the report at the time of the Grand Jury
40 testimony and he focused on one aspect of the case and did not mention this aspect of the
41 case, you know, that's as best as I can explain it. I just think it was just, you know,
42 miscommunication.
43

44 Q. Investigator NELSON, I have no further questions, is there anything you wish to add?
45

46 A. That's it. I really have nothing else.

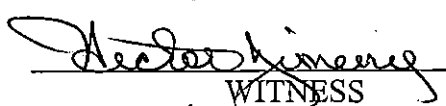
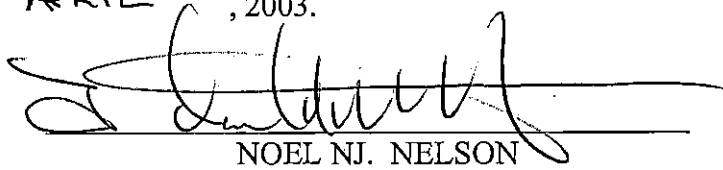
1
2 Q. At this time, I'm going to give you an order not to discuss your testimony in this case
3 with Trooper EDWARDS or Investigator LEEDER until after Investigator LEEDER's
4 statement is taken tomorrow, which is March 26th; after that time you are free to discuss
5 it. Do you have anything you wish to add?
6

7 A. No I don't.
8

9 Q. This statement will be concluded at 11:12 a.m. Thank you.
10

11 I have read this statement consisting of 17 pages and it is true to the best of my
12 knowledge. I have placed my initials on the bottom of each page and next to each correction and
13 I signed it below.
14

15 Signed before me this 25 day of APRIL, 2003.
16

17
18  
19 WITNESS NOEL N.J. NELSON
20 SR/Inv Hector JIMENEZ
21



1 STATE OF NEW YORK
2 COUNTY OF ORANGE
3 TOWN OF NEW WINDSOR

March 26, 2003

4
5 Statement taken from Investigator JAMES E. LEEDER at the Internal
6 Affairs Bureau South Regional Office, Stewart Airport, New Windsor, New York,
7 on March 26, 2003, by Inspector ARTHUR J. HAWKER commencing at 11:03
8 AM.

9
10 The letter "Q" denotes questions asked by Inspector HAWKER.

11
12 The letter "A" denotes answers provided by Investigator LEEDER.

13
14 Q. Please state your full name, rank, date of entry and current
15 assignment.

16
17 A. Investigator JAMES LEEDER, shield number is 334, I am an
18 Investigator currently assigned to the DETF in New York City, EOD is
19 10/28/96.

20
21 Q. Investigator LEEDER, you were advised by myself through the Division
22 e-mail system of the matter being investigated and that I would be
23 taking a statement at this time. You are not the target of any known
24 criminal investigation. The purpose of this investigation is to inquire
25 into the activities as a member of the State Police. Specifically, it has
26 been alleged that in connection with the July 3, 2001 arrest of
27 [REDACTED] and [REDACTED] that you gave
28 testimony in Westchester County Court that was deemed as not
29 credible by the presiding judge. This interrogation is being conducted
30 pursuant to Article 16 of the Agreement between the State of New York
31 and your certified employee representative organization and the
32 Regulations of the New York State Police including 8A3 and 8A15. You
33 have the right to contact and consult with an attorney and/or union
34 delegate before being interrogated and to have an attorney/or delegate
35 present during the interrogation. This Agreement and our Regulations
36 require you cooperate and answer truthfully questions relating to the
37 investigation. A refusal to answer or failure to truthfully may result in
38 disciplinary action which could result in your separation from service.
39 Are you represented at this time, and if so, by whom?

40
41 A. Investigator O'KEEFE is representing me. A delegate representative.

42
43 Q. As stated, I am Inspector ARTHUR HAWKER and have been
44 designated by the Superintendent to conduct this interrogation.
45 Present in the room besides myself are Investigator LEEDER, are
46 Delegate O'KEEFE and Lt. LISA D. GALBRAITH of the IAB South

1 Regional Office. This interrogation is being recorded mechanically by
2 tape recorder. Do you understand this?
3
4 A. Yes I do sir.
5
6 Q. Having been advised of all of the above, are you now ready to proceed
7 with this interrogation?
8
9 A. Yes I am.
10
11 Q. For the purpose of this statement, references to your testimony at the
12 Suppression Hearing that was involved, will include any and all of the
13 five dates testimony was given between October 29, 2002, and
14 December 16, 2002. Investigator LEEDER, what was your date of
15 rank in the BCI?
16
17 A. August 30, 2001.
18
19 Q. And on July 3, 2001, where were you assigned?
20
21 A. I was assigned out of the State Police Barracks, New Rochelle?
22
23 Q. And for how long had you been assigned up to that point at the New
24 Rochelle Barracks?
25
26 A. Five or six ah about five months approximately.
27
28 Q. And prior to that assignment?
29
30 A. I was in Tarrytown.
31
32 Q. In your uniform career, had you served any other places other than
33 Tarrytown or New Rochelle?
34
35 A. Ah yes, I started in SP Palisades in Troop F.
36
37 Q. With respect to July 3 of '01, what was your duty tour that day if you
38 recall?
39
40 A. I believe I was on a modified C-1.
41
42 Q. And on that date there came a time when you stopped a vehicle that
43 was operated by a [REDACTED] [REDACTED] of the State of
44 Massachusetts?
45
46 A. Yes.

1
2 Q. Do you recall the approximate time and location?
3
4 A. Ah probably was around two o'clock, I don't, approximately two o'clock,
5 it was right around mile marker 8.2, 8.3 Northbound.
6
7 Q. And if you would, describe what took place, that is where the car was
8 when you first saw it?
9
10 A. Okay I was parked north of the toll booths on I-95 in the center median
11 area. I observed this Toyota as it passed me so it was north of my
12 location. It was in the left-hand lane. I looked at the vehicle, it then
13 moved to the middle lane without signaling. At that point I exited the
14 median area and proceeded after the vehicle. As I approached behind
15 the rear of the vehicle I could see what looked like the passenger not
16 wearing his seat belt, because the driver seat belt you could see the
17 strap coming down from the door frame across his chest, but on the
18 passenger side you could not see a strap coming down. At that point I
19 activated the overhead lights and stopped the vehicle around mile
20 marker 8.2, 8.3 area.
21
22 Q. Once you had the car stopped do you recall what the volume of traffic
23 was you know characterizing it as light, moderate or heavy?
24
25 A. Moderate. For I-95 not bad, but moderate.
26
27 Q. Had you received any police intelligence to be on the lookout for that
28 particular vehicle?
29
30 A. No.
31
32 Q. As you indicated this was simply a stop based on the failed to signal
33 violation and what you believed to be the seat belt violation on the
34 passenger?
35
36 A. That's correct.
37
38 Q. What was your interaction with the driver, once you had the car
39 stopped?
40
41 A. I initially approached on the driver's side of the vehicle, requested
42 license and registration for the vehicle, while the driver was obtaining
43 those documents I could smell and odor of fresh marijuana coming
44 from the vehicle. So at that time I had him exit the vehicle, which he
45 handed me his documents first, at that time I noticed that it was a
46 rental agreement also and I had him exit the vehicle. At the rear of the

1 vehicle I started to look at the rental agreement and saw it was not in
2 his name, I believe it was in the name of the female, I don't recall the
3 name. I then asked who he was traveling with and I then approached
4 the passenger side of the vehicle to obtain, to see if he, I mean I knew
5 it as a male, but possibly men have female names so I needed to verify
6 if this could be him. As I'm speaking to him I request identification from
7 him. Again, I can smell that smell of fresh marijuana. Once I had his ID
8 I returned to the rear of the vehicle, told Mr. [REDACTED] he could go
9 ahead and have a seat back in the Toyota and I then returned to my
10 patrol vehicle.

11
12 Q. Okay at that point, was there a question about the vehicle being
13 overdue on the rental also in addition to the occupants not being
14 named on it?

15
16 A. Yes, I don't recall exactly if I noticed it while I was in the rear of the
17 vehicle or while I was sitting in my, but at some point I did notice the
18 fact that the car, the rental car was due back the day before. I believe it
19 was while I was in the rear of his vehicle I noticed that.

20
21 Q. While you were at the scene of the stop, did you take any action to
22 contact the rental company to see if it was, you know they wanted any
23 action taken, anything like that?

24
25 A. No, not at that time no.

26
27 Q. Your patrol car is video equipped on that day?

28
29 A. Yes it was.

30
31 Q. And, excuse me, on that day were you also equipped with a remote
32 microphone?

33
34 A. Yes, it was not operating, but there was one.

35
36 Q. Had you checked the mike for opera ability prior to going on patrol?

37
38 A. I believe so, but I don't recall one hundred percent, I believe I did
39 though.

40
41 Q. Was it your usual practice to check it?

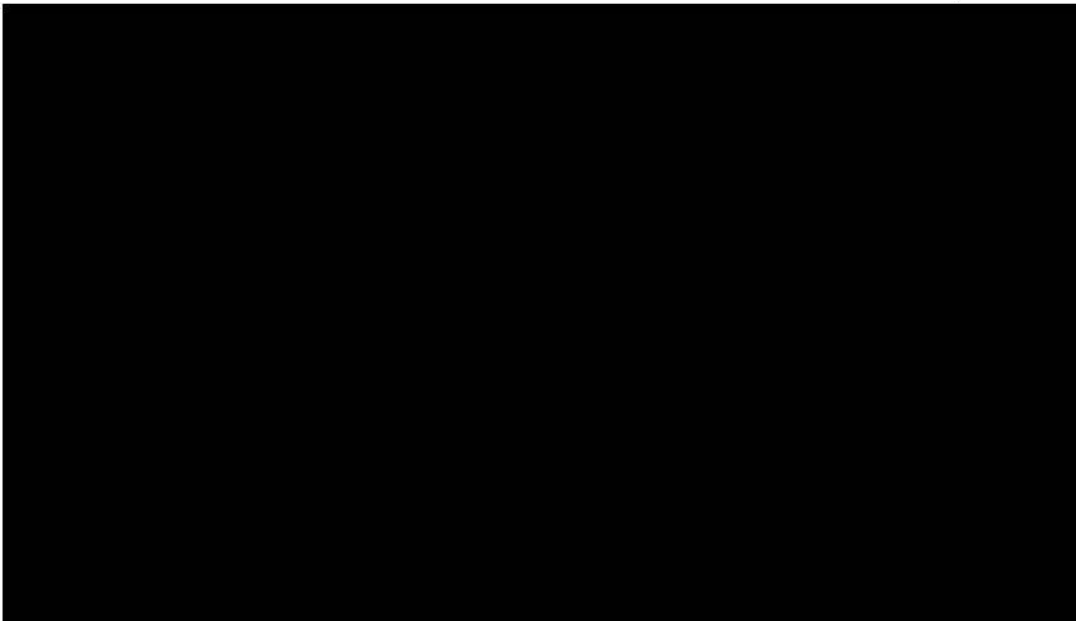
42
43 A. Yes, that's why I want to say that I really don't recall specifically doing
44 it, but it was my usual, so I believe I did.
45

1 Q. What would be your usual routine on the times when you would check
2 it for opera ability, the remote mike?
3
4 A. If you turn it on you will see the red light will indicate on the mike, also
5 a little m will appear in the display window letting you know that it is
6 working.
7
8 Q. And that red light would also indicate the battery strength?
9
10 A. That's correct.
11
12 Q. Same light?
13
14 A. On the pack itself the light is, yes.
15
16 Q. At what point did you, you mentioned it wasn't working that day, the
17 microphone?
18
19 A. Yes.
20
21 Q. At what point did you notice that?
22
23 A. I don't know if it was in the beginning of the shift, or at some point,
24 possibly I think it was when I went to give the tape to Investigator
25 NELSON. I think we just put it in, when we hit play real, like we didn't
26 sit and watch the whole thing, but I just wanted to make sure it
27 recorded. There was no sound, I believe that was point when I noticed
28 there was no sound.
29
30 Q. At some point after the stop, you contacted Trooper HAROLD
31 EDWARDS?
32
33 A. Correct.
34
35 Q. Did, and how did you do that?
36
37 A. After I had Mr. AQUJAR sit back in his vehicle, I then returned to the
38 patrol vehicle and I immediately contacted Trooper EDWARDS on the
39 radio.
40
41 Q. Did you know he was in the area?
42
43 A. Yes.
44
45 Q. And how would you know that?
46

1 A. Ah I think we had just finished lunch, eating together. So I knew he
2 was still at the station.
3
4 Q. How long did it take Trooper EDWARDS to arrive at your location,
5 approximately?
6
7 A. Maybe five minutes, maybe less. Around five minutes I'd say.
8
9 Q. Okay you indicated you smelled fresh marijuana in [REDACTED] car?
10
11 A. Yes sir.
12
13 Q. And you also testified to that in court?
14
15 A. Yes, Grand Jury and the Suppression too.
16
17 Q. When you say fresh marijuana are you talking about the green
18 marijuana plant smell or the dried products you know, but not smoked?
19
20 A. When I refer to fresh marijuana I mean not smoked yet, not burned.
21
22 Q. Okay, but dried versus green vegetation?
23
24 A. Not really a difference between the fresh that I can distinguish between
25 like a, I mean it's either burnt or fresh is the way I associate it.
26
27 Q. Say on a scale of one to ten, with ten being a strong, the strongest
28 smell, how would you describe the odor that you detected in the
29 vehicle?
30
31 A. Maybe like a three, it wasn't a real heavy, but it was just a faint fresh
32 smell there.
33
34 Q. Was any fresh marijuana found in that car that wasn't boxed or
35 bagged?
36
37 A. Yes, there was a marijuana cigarette, or if you want, they refer to it as
38 in the glove box in the area where [REDACTED] was seated.
39
40 Q. Any other, what might be termed, loose marijuana?
41
42 A. Just the three small containers were found, if you were sitting in the
43 passenger seat it would be stuffed between the side of the seat and
44 the center console. There was three small boxes there.
45

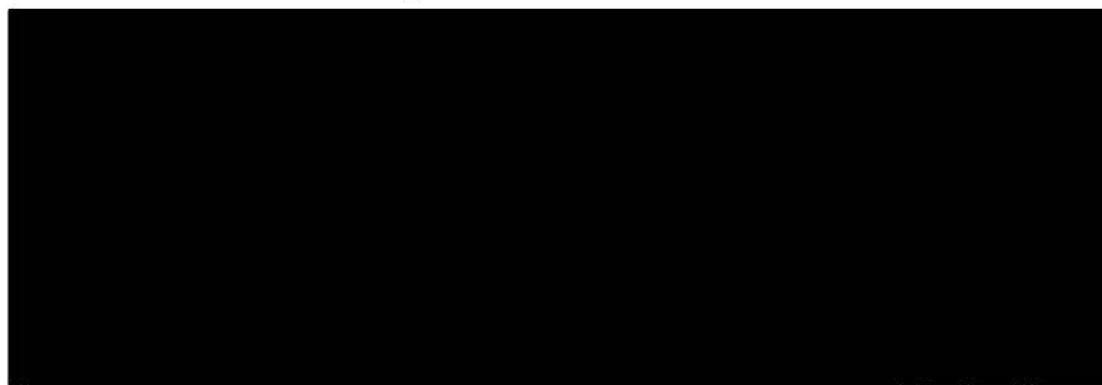
1 Q. I mean any loose unpackaged, unbagged, unboxed other than the
2 cigarette?
3
4 A. No.
5
6 Q. Prior to we'll just pause at 11:15, back on the record still 11:15. Prior to
7 calling Trooper EDWARDS in your estimation how much time did you
8 spend speaking to [REDACTED] while he was seated in the car?
9
10 A. While he was seated in the vehicle? Maybe 15 seconds, not long at all.
11 I'm sorry, actually upon, are you saying the approach and everything?
12 The entire time?
13
14 Q. Well actual time spent at the window when you initially encountered
15 him?
16
17 A. All right.
18
19 Q. You ask him for his stuff.
20
21 A. Right, I was thinking more after he had given it to me. Um maybe 30,
22 45 seconds, around a minute maybe a little less. Somewhere in that
23 area.
24
25 Q. And how about the passenger [REDACTED] How much time did you
26 spend speaking with him?
27
28 A. I'd say approximately 30 seconds or so.
29
30 Q. When you were speaking to the passenger [REDACTED] was the same
31 odor of marijuana discernable on his side of the car?
32
33 A. Yes sir.
34
35 Q. Was it any stronger or any weaker?
36
37 A. A little bit stronger because the driver's window was open, so he had to
38 open the door fully so he had a little bit more a breeze coming through
39 so you can a little bit more, a little stronger on the passenger side.
40
41 Q. So eventually you have them both back in the car correct?
42
43 A. Yes sir.
44
45 Q. Okay and then you call Trooper EDWARDS?
46

1 A. Yes, well actually on the initial, I never removed the passenger. I only
2 spoke to him. So at one point the driver is returned to the vehicle, yes
3 sir.
4
5 Q. And then you called in a license check?
6
7 A. After requesting Trooper EDWARDS to come to the scene, I then
8 conduct license checks.
9
10 Q. Do you recall doing any narration to your patrol car video after you got
11 back in the car with the documentation?
12
13 A. Yes, well I know there was, I don't recall if it was at that point, but I
14 know I had spoken to it, so I'm not sure exactly because I have a habit
15 of when I stop a car explain why I'm stopping it and upon returning I
16 think I did say something about the events, I may have done it at that
17 point yes.
18
19 Q. Do you recall that narration including a reference to passenger's seat
20 belt?
21
22 A. Oh yes I do sir, now I do, yes. I indicated at that point it appeared that
23 he was not wearing it, but it turned out that it was just an adjustable,
24 and it was just seated very low so in fact he was wearing his seat belt.
25
26 Q. In that narration, also did you make any mention to your recollection of
27 discerning this odor of marijuana in the vehicle?
28
29 A. No sir, I did not.
30
31 Q. Is there any reason why you wouldn't mention that?
32
33 A. It just wasn't a very strong odor. I wanted, when I'm certain one
34 hundred percent of something I will say it on the tape, but until I've
35 confirmed it, no I won't say that.
36
37 Q. When Trooper EDWARDS arrived what occurred at that point?
38
39 A. At that point I explained to Trooper EDWARDS about the rental
40 agreement that there was some problem with the documentation. I also
41 indicated to him, non-verbally that I detected an odor of marijuana in
42 the car.
43
44 Q. And how did you indicate this non-verbally?
45

1 A. From working with HAROLD, excuse me, Trooper EDWARDS over
2 the years, I would touch my nose because it became a habit like if
3 you're at the side of the car you don't want to say, "hey HAROLD I
4 smell weed in the car" and the next thing you know they're off and
5 running so we'd use nonverbal and in this case I just touched my nose
6 indicating I smelled something in the vehicle.
7
8 Q. In reviewing the video tape which has captured your conversation with
9 Trooper EDWARDS, was it your recollection, was he sitting in the car
10 with you?
11
12 A. No he was standing out, I think I just put the passenger window down
13 to my recollection.
14
15 Q. 
16
17
18
19
20
21
22
23
24
25
26
27 A.
28
29
30
31
32 Q. So you never at all made any verbalization to EDWARDS regarding
33 the marijuana odor?
34
35 A. At one point during the search of the vehicle I said, you know, I said to
36 Trooper EDWARDS, I said, I called him back, I said "what do you smell
37 in here ?", and this was when I was getting close to the cocaine, it's
38 like "oh I smell the weed", "no not that, I just want you to smell this" so
39 initially no, later on we.....
40
41 Q. Yes, well get to that, but I mean prior to Trooper EDWARDS first
42 approaching the stopped vehicle?
43
44 A. No I did not.
45

1 Q. And on that line, after you have this conversation with Trooper
2 EDWARDS what action did he take?
3
4 A. He went up and went to speak to them and confirm what I indicated I
5 smelled.
6
7 Q. So do you recall specifically who Trooper EDWARDS spoke with?
8
9 A. I believe he spoke to both of them but from the passenger side I
10 believe it was, but I think he engaged them both, but I'm not one
11 hundred percent sure. I know it was from the passenger side. I'm not
12 sure if he spoke to both of them or just one of them.
13
14 Q. And then what happens, he comes back to your car?
15
16 A. Comes back to my car, gives me a rundown, tells me that the driver,
17 that's right he did definitely speak to the driver, he said the driver
18 appeared very nervous. Trooper EDWARDS was also born and raised
19 in Brooklyn and he stated that these two individuals are claiming
20 they're coming from Brooklyn but an area he's never heard of and also
21 gave me you know gave me a nod indicating "I smell it too".
22
23 Q. All right, again did he verbalize to you anything about the odor of
24 marijuana?
25
26 A. No.
27
28 Q. So, how did you determine that he had made this observation?
29
30 A. Just from his gesture, from working, I know, I can read, I know what
31 he's saying.
32
33 Q. What gesture was it?
34
35 A. He just gave me the . . . (nods), and I said "ok".
36
37 Q. Just the?
38
39 A. A nod.
40
41 Q. Just a nod in the affirmative?
42
43 A. Yes.
44
45 Q. Okay so what was your game plan at that point?
46

1 A.



11 So in this
12 case we just verified what we were going to tell them initially, and then
13 approach the vehicle.

14
15 Q. So that's pretty much the plan, get them out on the issue of the rental?

16
17 A. Then when we have them in control we can further discuss what we're
18 the observations.

19
20 Q. Okay so what's your next step?

21
22 A. I go and approach Mr. [REDACTED] I ask him to exit the vehicle, as soon
23 as he's to the rear of the vehicle I ask him if he has anything on him.
24 He indicates, anything on him he shouldn't have. He indicates that he
25 did and he taps his pocket, his front right pocket and says that he has
26 marijuana, I don't know if he said marijuana, weed or what the term
27 was, but he indicating that there was marijuana in that pocket.

28
29 Q. And what happens to Mr. [REDACTED] at that point?

30
31 A. All right at that point, I felt the objects he was talking about, I removed
32 them, I secured them in my pocket. I continued a search of his
33 pockets, patted down him and I had him step to the rear with Trooper
34 EDWARDS.

35
36 Q. As it shows in the video tape from your car, AQUAIR is summoned to
37 the back of the vehicle. As soon as he gets there, you lift up his shirt
38 and began feeling his clothing with your hand and you reach in and
39 remove something from his right front pocket. Is that an accurate
40 recollection on your part?

41
42 A. Well before I did anything, I asked him if he had anything on him, and
43 he indicated yes.

44
45 Q. All right, unfortunately there is no video to go with that so, I'm just
46 relating what the video, I meant no audio to.....

1
2 A. Actually, turn it up very loud, you can actually hear me say it. You have
3 to have it very loud, but you can actually over the traffic, you can hear
4 it faintly.

5
6 Q. So the basis for the search of [REDACTED] at this point is what?

7
8 A. His oral admission of the possession of marijuana.

9
10 Q. Anything else?

11
12 A. Based on the smell of the marijuana and not on the rental agreement, I
13 have him out of the vehicle, and I say to him you know "is there
14 anything on you you shouldn't have?" and at that point he says "yes, I
15 have marijuana". [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20
21 Q. [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 A. [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 Q. [REDACTED]
28 [REDACTED]
29 [REDACTED]

30 A. [REDACTED]
31 [REDACTED]
32 [REDACTED]

33 Q. [REDACTED]
34 [REDACTED]
35 [REDACTED]
36 [REDACTED]
37 [REDACTED]

38 A. [REDACTED]
39 [REDACTED]

40 Q. And as indicated you removed something from [REDACTED] pockets. Do
41 you recall exactly what it was?

42
43 A. Yeah it was two small plastic boxes, like they're not, just you know,
44 closed lid, not like sealed containers or anything of marijuana.

45
46 Q. See through plastic?

1
2 A. Yes. Actually I believe the bottoms were red, but the tops were see
3 through. I'm not sure about the red but I know the tops were see
4 through.
5
6 Q. And just in terms of weight, what are we talking like, UPM?
7
8 A. Yes sir.
9
10 Q. And at that point [REDACTED] is moved to the rear?
11
12 A. I had him step off to the rear, or the side with Trooper EDWARDS.
13
14 Q. And what did you do next?
15
16 A. At that point I approached the passenger, asked him to, opened the
17 door, asked him to step outside and I asked him the same question,
18 "do you have anything on you you shouldn't have?". He indicated "no".
19 I still did a feel of all his pockets and checked his waistband, did not
20 reach into his pockets, I didn't feel anything that needed to be taken
21 out at that point and also had him then step to the rear with Trooper
22 EDWARDS.
23
24 Q. With respect to the passenger, you say you just patted him down?
25
26 A. Yes sir.
27
28 Q. [REDACTED]
29
30
31 A. [REDACTED]
32
33
34 Q. And what happens to [REDACTED] after you have this interaction with
35 him?
36
37 A. I had him also step to the rear with Trooper EDWARDS.
38
39 Q. And what's your next action?
40
41 A. At that point I begin doing a search of the vehicle. I started in the front
42 passenger area I believe. Went around the vehicle and located in the
43 trunk was a brown cardboard box, inside of that were several smaller
44 cardboard boxes, inside the smaller cardboard boxes there was the
45 glassine envelopes, there're referred to as, commonly used to wrap
46 heroin for decks of heroin for street.

1
2 Q. Before you began your search, you moved, so now [REDACTED] and
3 [REDACTED] are more or less being watched by Trooper EDWARDS?
4 There is somebody watching them?

5
6 A. Yes sir.

7
8 Q. Do they just remain standing there?

9
10 A. At some point they are handcuffed I believe to Trooper EDWARDS'
11 push bumper there, I don't recall exactly when, I know it happened
12 prior to the K-9 coming out, at some point, I don't know exactly when, I
13 believe it was after the envelopes had come, I'm not one hundred
14 percent sure on that.

15
16 Q. So they wind up handcuffed to EDWARDS' vehicle?

17
18 A. Yes.

19
20 Q. Trooper EDWARDS?

21
22 A. Yes sir.

23
24 Q. And is [REDACTED] under arrest at that point?

25
26 A. [REDACTED] No sir, he's just being, he's no, he's not under arrest at this
27 point.

28
29 Q. But he is handcuffed to the front of the Troop car?

30
31 A. Actually I believe no, at this point we had missed I'm sorry, the
32 packaging of narcotics.

33
34 Q. So you.....

35
36 A. At some point, he's definitely being detained for the investigation. At
37 some point, I don't know exactly when the cuffs were put on him, I
38 believe it was after I found the packaging for the heroin, so at that
39 point, that's a misdemeanor at that point, now the passenger is under
40 arrest at that point.

41
42 Q. So you believe he was handcuffed after you find these bags in the
43 trunk?

44
45 A. Yes sir.

1 Q. So you conduct a search of the car whether they're handcuffed or not?
2 You conducted your search.....
3
4 A. When I began my search they were not handcuffed. By the end of the
5 search, yes they were. At what point exactly, that I'm not sure.
6
7 Q. And what was the basis for the search of the car?
8
9 A. Initially the basis was going to be the fact of the smell of the marijuana
10 and also during the course of the investigation into the rental
11 agreement. Prior to any search being done I had marijuana recovered
12 from the driver and also I left out a statement by [REDACTED] earlier,
13 when I removed [REDACTED] I also asked him if there was anything else
14 in the vehicle, he indicated yes, there was more marijuana in the
15 vehicle, so the initial reason for the search was going to be based on
16 the smell of weed, but essentially the search, at the point, is based on
17 the marijuana recovered from the driver and also an oral admission
18 from the passenger that's there more marijuana in the vehicle.
19
20 Q. And [REDACTED] made that statement to you?
21
22 A. After having him removed from the vehicle. At some point at the end of
23 the tape you can hear me actually say to him, "now I found the
24 marijuana you were talking about", because I couldn't find it til the end
25 the ones he was talking about.
26
27 Q. So other than the marijuana that you initially took off the driver
28 [REDACTED] the next piece of evidence that's discovered is these plastic
29 bags or glassine bags in the trunk?
30
31 A. Yes sir, that's correct.
32
33 Q. As you indicated you searched the car, you searched, can you just
34 describe how you searched the vehicle?
35
36 A. I believe I started in the front passenger area, worked my way around
37 to the driver's side, to the rear seats and then the trunk. I believe, I'm
38 not one hundred percent on that order.
39
40 Q. Do you recall searching under the hood also?
41
42 A. Oh at some point, yes I did.
43
44 Q. Trooper EDWARDS is a dog handler, correct?
45
46 A. Yes he is.

1
2 Q. Did he have on, July 3, 2001, did he have his dog with him?
3
4 A. Yes Bernie was there.
5
6 Q. Was the dog used to search the car?
7
8 A. Yes he was.
9
10 Q. At what point?
11
12 A. After finding the glassine envelopes in the trunk of the vehicle I
13 continued my search without finding anything, which led me to believe
14 maybe there was a hidden compartment in this vehicle. So at that point
15 I asked Trooper EDWARDS to utilize his K-9 and conduct a search of
16 the vehicle.
17
18 Q. As you indicated there was a marijuana odor when you first stopped
19 the car that you discerned?
20
21 A. Yes.
22
23 Q. Is there any reason that the dog wasn't used before you began your
24 search?
25
26 A. No at that point, I, we both confirmed what we smelled at that point and
27 I'm fairly confident that I would find what I was looking for, I was until
28 the glassine envelopes threw me off as far as I was not expecting to
29 have heroin smelling marijuana, the next thing I have is a large amount
30 of heroin wrappers.
31
32 Q. So is it kind of accurate to say that you'd had expected to find the
33 drugs yourself without the aid of the dog?
34
35 A. Yes sir.
36
37 Q. And describe how the dog searched the car if you remember? You
38 know, just what course he took in it or around it.
39
40 A. I believe, I'm not real certain, but I can, I'm not one hundred percent
41 sure on his pattern, but I believe he did the outside first and then
42 moved to the, I believe the front passenger area, no it may have been
43 the rear and then he jumped over the, I'm really not sure on that sir.
44
45 Q. Did the dog find anything in his search of the car that you recall?
46

1 A. Yes sir he had found the marijuana cigarette in the glove box.
2
3 Q. Was there anything else in the glove box?
4
5 A. Ah anything at all or drug wise?
6
7 Q. Anything else?
8
9 A. Oh yeah there was the two of the sticky buns, I think they were called.
10
11 Q. Like pastries?
12
13 A. Yes some type of sweets.
14
15 Q. Now during the course of the dog's search do you recall him standing
16 on the front seats?
17
18 A. The, I'm sorry, the dog sir?
19
20 Q. Yeah
21
22 A. Yes sir.
23
24 Q. And was the dog standing on the back seat of the car also?
25
26 A. Yes sir.
27
28 Q. After the dog was done searching he never detected the cocaine that
29 was eventually found?
30
31 A. I, I couldn't testify, I don't know, I don't think a dog can distinguish a
32 smell of coke and marijuana, he just knows the odor, but I'm not a K-9
33 so I wouldn't be able to distinguish. He reacted in a positive manner
34 HAROLD or Trooper EDWARDS, informed me. To what he was
35 reacting, I don't know.
36
37 Q. From what you remember with your conversation with Trooper
38 EDWARDS, did the dog react in a positive manner towards the glove
39 box or another part of the car?
40
41 A. Yeah in that front passenger area, yes sir.
42
43 Q. But that's not where the coke was found, correct?
44
45 A. No it was in the ceiling above that area sir.
46

1 Q. Now after the dog has searched the car, he's put away?
2
3 A. Yes sir.
4
5 Q. And you go back and search the car again?
6
7 A. Yes sir.
8
9 Q. And at that point you testified in the Suppression Hearing that you
10 were able to detect an odor that you associated with cocaine?
11
12 A. That's correct.
13
14 Q. And if you would just describe this odor if you can?
15
16 A. It's ah, very acid, acidity smell like an acetone type.
17
18 Q. Chemical type smell?
19
20 A. Yeah it's a chemical acid, it's very hard, once you smell it you know
21 it's, very a chemical acid type smell I guess you could describe it as.
22
23 Q. And again to use a scale of one to ten, with ten being the strongest,
24 how would you describe the odor of the cocaine and or the acetone
25 smell?
26
27 A. Well what it was sir is, while I was searching the vehicle, I was thinking
28 hidden compartment just based on the large number of glassine
29 envelopes in his car so I started checking the vehicle, because initially
30 I didn't smell any odor of cocaine at all. I believe I was kneeling on the
31 front seat and I started hitting the ceiling to see if maybe there was a
32 false hidden area, false compartment in that area, and as I hit on the
33 sun roof, right around the sun roof area, the wind came out and that's
34 when I detected it. When I detected it was fairly strong I'd say maybe a
35 four or five.
36
37 Q. Did Trooper EDWARDS smell this cocaine odor also at some point?
38
39 A. At some point yeah. Initially I called him up, I'm like "what do you
40 smell.?" He's like "it smells like weed". I said, "no, no, not that". I said
41 "put your nose up here a little bit higher" and then I struck the ceiling
42 again causing the air to come out of that area and then he said "I smell
43 coke".
44
45 Q. All right so you more or less brought his attention to it versus him . . . ?
46

1 A. Correct. I had him, I didn't tell him what I smelled. I said, "what do you
2 smell?", and I said "what do you smell?" He said "marijuana" and I
3 said "not that". I said "put your nose a little higher up" and I struck the
4 ceiling again which would force the air to come out and that's when he
5 said "I smell coke" and I said "yeah so do I".
6
7 Q. In subsequent conversations with Trooper EDWARDS did you ever
8 discuss how or why the dog may have missed this cocaine?
9
10 A. Um yes I discussed it with him on a number of occasions. I know that
11 a K-9, if something is in the ceiling, I had an instance where it was a
12 different stop where I used Bernie and Trooper EDWARDS, where the
13 dog reacted to the area, it was on the floor, it was a big van, it was on
14 the floor area he was scratching so I looked very hard in this area,
15 there was still nothing. I continued my search and in the roof liner of
16 this van was I think two pounds of marijuana, right under the area
17 where he was indicating. That's when Trooper EDWARDS informed
18 me that sometimes if a K-9 smells something in the ceiling area
19 sometimes they will react to the area right underneath it. You know, the
20 wind blows around and also he explained to me that you know that's
21 one explanation. The other thing is you know Bernie is kind of a
22 younger dog, he's a puppy, he got a smell of marijuana because it is a
23 stronger smell and it's a game to him finding drugs, at that point he's
24 done what he's suppose to, he's found the stuff, he wants his reward
25 so that's also another explanation.
26
27 Q. And how much cocaine was recovered from this vehicle?
28
29 A. It was approximately three and half ounces of cocaine.
30
31 Q. And that ultimately resulted in a charge against [REDACTED] and
32 [REDACTED] of Possession Second?
33
34 A. Yes sir.
35
36 Q. Do you know off the top of your head, was that an A or a B Felony?
37
38 A. That's A-2 Felony sir.
39
40 Q. And in addition to this cocaine was any other evidence seized?
41
42 A. Yes sir. I had described it earlier there was these three small plastic
43 boxes. Again, not sealed, like air sealed or anything, right on the side
44 of the passenger seat. If you were seated here, it would be wedged
45 kind of between the center console and the side of the cushion.
46

1 Q. And who found that?
2
3 A. I believe I found those. The marijuana cigarette, after he found, after
4 Bernie had indicated and found it, Trooper EDWARDS left that in the
5 vehicle, I secured that later. But I believe I found those items and I then
6 secured those items.
7
8 Q. The tape shows that the defendants were eventually Mirandized about
9 20 minutes into the stop. Did either of them make any admissions as to
10 possession of the drugs or anything like that?
11
12 A. No sir. Not to me, no.
13
14 Q. And once the evidence had been extracted from the car, were the
15 prisoners transported somewhere?
16
17 A. Yes sir, eventually they were brought back to State Police Barracks in
18 Tarrytown.
19
20 Q. Did Trooper EDWARDS go to Tarrytown with you?
21
22 A. Yes he did.
23
24 Q. And did a BCI member eventually adopt a case?
25
26 A. Yes.
27
28 Q. Okay and who was that?
29
30 A. Investigator NOEL NELSON.
31
32 Q. Was Investigator at the station when you got there or did he have to be
33 called?
34
35 A. No he was already there handling a case for Trooper BOZIER I believe
36 it was.
37
38 Q. Did Investigator NELSON ask you how the arrest came about?
39
40 A. Yes, we went over the facts.
41
42 Q. And those facts would be pretty substantially what we just talked about
43 here ?
44
45 A. Yes sir, exactly.
46

1 Q. Did you ever tell Investigator NELSON about the odor of marijuana?
2
3 A. Yes sir.
4
5 Q. And that that was the basis of your search?
6
7 A. That was, yes sir, I indicated that was why I got them out, the initial
8 reason was going to be to search the car, but then I recovered the
9 items. Yes sir, that's how I explained it.
10
11 Q. Do you know if Trooper EDWARDS had any conversation with
12 Investigator NELSON about the arrest at least in your presence?
13
14 A. Not that I, not that I'm aware, not that I can recall.
15
16 Q. Well when you returned to the barracks, what was Trooper
17 EDWARDS' role as far as what he did?
18
19 A. I believe, the way we usually work, we've made a few arrests together,
20 is whoever's arrest it is will handle the paperwork end of it, the
21 assisting officer will go do the fingerprints, take the photos, just
22 basically process the prisoner, do the search of the prisoners. That's
23 what Trooper EDWARDS was doing.
24
25 Q. In this case, who weighed the evidence?
26
27 A. I believe I did.
28
29 Q. Did you also seal it?
30
31 A. No sir. I did a field test and weighed it and turned it over to Investigator
32 NOEL NELSON who I believe he sealed it.
33
34 Q. Were the prisoners interviewed by Investigator NELSON do you know?
35
36 A. Yes sir.
37
38 Q. Did either of them give a statement to him?
39
40 A. I believe Mr. [REDACTED] indicated that he knew about the marijuana, but
41 that was it, and I don't believe Mr. [REDACTED] gave any statement at all.
42
43 Q. Do you know if Investigator NELSON ever saw the rental car?
44
45 A. I would imagine, I would have to say, I'm trying to think how long it
46 stayed at Tarrytown before he had it removed, so I don't recall, I would

1 say yes, but I really don't recall for sure. Oh wait a minute, no I'm sorry
2 sir, he took photos of it, yes he did. Yes there was photos taken, that's
3 correct.
4
5 Q. This was the same day, July 3, 2001?
6
7 A. I don't know if it was the same day or the following day, that I don't
8 know sir.
9
10 Q. Do you know if the Investigator was ever in the car, inside the car?
11
12 A. No I don't, I don't know, I don't that I was there when the pictures were
13 taken. I believe it was him and Trooper EDWARDS had taken the
14 photos so I don't know if he was in the vehicle or not.
15
16 Q. With regard to the Genl. 84 Investigation Report that was prepared in
17 this case, did you write the report or any part of it?
18
19 A. No sir.
20
21 Q. Did you make any written notes or any form of documentation as to the
22 actions that you took that resulted in [REDACTED] and [REDACTED]
23
24 A. Just the informations for the court, sir.
25
26 Q. Did Investigator NELSON ask you to make any written notes or any
27 written accounts of, you know, more or less step-by-step what, how the
28 arrests came about?
29
30 A. No sir, not that I can recall.
31
32 Q. You worked in Westchester County as a Trooper for approximately
33 how long prior to this arrest?
34
35 A. Ah I'm trying to think. I got out there I believe it was February of '99 I
36 got out there I believe so that would be July 2001 so two and half, two
37 half and a years I guess that would be. Let me see if my math's right
38 here. So it would be February '99 I got out there to February of 2000,
39 yeah, approximately two and half years.
40
41 Q. Two and half years. So you were familiar with the practice as far as
42 interaction with the DA's Office by the time you made this arrest?
43
44 A. Yes sir.
45

1 Q. Is it the practice in Westchester County to complete a DA's arrest
2 report of some type or a case summary report?
3

4 A. Yes sir. A Westchester DA summary.
5

6 Q. All right and if you would just explain for the record what is on this
7 form? Not item by item necessarily, but what purpose it serves.
8

9 A. Basically the form will indicate pretty much the who, what, where,
10 when, why and how you know, who was arrested, by whom, what was
11 the reason for the arrest, the stop leading to the arrest if it was a V&T,
12 what was recovered, who was involved and a small narrative section at
13 the end.
14

15 Q. Does this report customarily also include probably cause as a reason
16 for a search, if it results in an arrest?
17

18 A. I don't know if there's an actual section itself for probable cause of if it's
19 something you include in the narrative, but I can't recall if there's an
20 actual section for probable cause, but it's something you would include
21 in the narrative.
22

23 Q. All right, so even if it doesn't have like a check off box, it would be the
24 standard practice if the search resulted in an arrest that you would
25 indicate....
26

27 A. Indicate, yes sir.
28

29 Q.indicate the probable cause?
30

31 A. Yes sir.
32

33 Q. And whose responsibility is it to complete this report?
34

35 A. The arresting officer sir.
36

37 Q. In this case did you complete a DA's report?
38

39 A. I thought I did, but there is none to be found so I would have to say no,
40 which is very strange because I was very, always, always did those.
41

42 Q. Do you have any specific recollection of doing one or . . . ?
43

44 A. No sir. It's been a long time, no sir.
45

1 Q. All right we're returning to the record on Side B of the tape, it had just
2 run out. The time is 11:50 AM. Investigator LEEDER, at any time after
3 the Genl. 84 Investigation Report was written by Investigator NELSON
4 did you have an opportunity to read it?
5
6 A. Yes sir. The first time I read it was actually after Grand Jury testimony
7 when I was presented that to read it.
8
9 Q. Do you recall when it was that you gave Grand Jury testimony in this
10 case?
11
12 A. If I can look, I can tell you exactly.
13
14 Q. If you would please.
15
16 A. Oh wait a minute, maybe I cannot. I thought it was on here. Nope, the
17 date is not on here. Usually they have the date on there.
18
19 Q. The record will reflect that Investigator LEEDER is looking at a
20 transcript of his Grand Jury testimony in this case.
21
22 A. It is not on there. If I had to I would say April 2002, around that, it's a
23 guess, but I believe it was around that time.
24
25 Q. Spring of 2002?
26
27 A. I believe so. I know it was a little ways after the arrest so.
28
29 Q. Now when you say you read the 84 after Grand Jury, do you mean
30 after you testified in the Grand Jury?
31
32 A. Yes sir.
33
34 Q. When you read the report did you notice that it contained no mention of
35 your detecting of the odor of marijuana?
36
37 A. Yes I did.
38
39 Q. And also absent from it was any mention of Trooper EDWARDS'
40 detecting of the marijuana odor?
41
42 A. Yes sir.
43
44 Q. And yet the odor of the marijuana in this case was the probable cause
45 for the search correct?
46

1 A. No sir, I would not agree with that. I would say it was something that
2 was part of the investigation being conducted but ultimately the
3 recovery of physical marijuana and an oral admission from the
4 passenger in the car led to the search. Was the smell of marijuana the
5 prime reason for the investigation, yes sir, I would agree with that.
6
7 Q. When you first get, or the second time you get [REDACTED] out of the car
8 and you search him, isn't the basis for the search, the lawful basis, the
9 smell of marijuana in the car which entitled you to search him in the
10 vehicle?
11
12 A. That was the reason I was going to, but he orally admitted, before I
13 had a chance to, he orally admitted to having it, so at that point, his
14 admission of having marijuana in his pocket which led to the search
15 and recovery of the marijuana in his pocket.
16
17 Q. Did you bring this lack of mention of odor to Investigator NELSON'S
18 attention, that it wasn't in the report?
19
20 A. Yes, that, actually that day I mentioned it to the ADA immediately when
21 I read it I said "there's something missing here". I mentioned that to the
22 ADA and the next time I spoke to the Investigator, I don't know if it was
23 that day or just when I ran into him and I had indicated to him at some
24 point that there was something missing in the report.
25
26 Q. And who was the ADA whose attention you brought that to?
27
28 A. I believe it was ADA KENNEDY I believe who is the one who put in to
29 the Grand Jury. I believed it, there's, they bounced around this case
30 with so many different ADA's I'm not sure who I told what to, but
31 whoever presented it to the Grand Jury is the one I told it to.
32
33 Q. When you testified in the Grand Jury is it correct that you testified that
34 [REDACTED] took the marijuana contained in those two plastic boxes from
35 his pocket and handed it to you?
36
37 A. Yes it is.
38
39 Q. . . . when you asked if he had anything?
40
41 A. Sorry sir. Yes that is correct. That's how I recalled it.
42
43 Q. Did you testify to the same set of facts at the Suppression Hearing?
44
45 A. No sir. After reviewing the tape, at Grand Jury I testified to the fact that
46 he indicated that he had marijuana in his front right pocket and then

1 gave it to me, but after reviewing the tape I then testified to what I saw
2 in the tape which was [REDACTED] indicating that he had marijuana in his
3 front right pocket, but I removed it.
4
5 Q. All right, when you say, so that the testimony in the Grand Jury was not
6 accurate?
7
8 A. Oh it was accurate to my recollection at that time sir, but later when
9 upon watching the tape I learned no it was not accurate to what had
10 happened.
11
12 Q. Did you, so your recollection here today is that when you testified at
13 the Suppression Hearing that you gave the same testimony that
14 [REDACTED] took the drugs from his pocket?
15
16 A. I'm sorry sir could you.....
17
18 Q. Yeah, let me repeat it. When you testified at the Suppression Hearing
19 was your testimony that [REDACTED] took the drugs from his pocket and
20 gave them to you or that you reached in and took them?
21
22 A. At the Suppression Hearing I removed, I testified to the fact that I
23 removed the drugs from his pocket.
24
25 Q. How much preparation did you do for the Grand Jury?
26
27 A. Not much at all sir. The ADA had me come up before it, we reviewed it,
28 just went over the case, I told him how I remembered it, and he said
29 "okay, we're ready" and we went in.
30
31 Q. At this time you were assigned to the BCI in Troop NYC?
32
33 A. Yes sir.
34
35 Q. Do you recall specifically what you did to prepare for it?
36
37 A. I just went up a little bit earlier than I was scheduled to go in Grand
38 Jury, sat down with the ADA who asked me some questions, and I
39 answered questions as to how I remembered the arrest happening.
40 The ADA was satisfied with that so "okay we're ready to go in".
41
42 Q. Prior to giving Grand Jury testimony did you read the 84?
43
44 A. No sir.
45
46 Q. Did you review the video tape from the patrol car?

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A. No sir.

Q. So you went pretty much by memory?

A. Yes sir. I prepped with the ADA from memory and he seemed to be satisfied with that and we proceeded in.

Q. With respect to the Suppression Hearing did you testify on more than one day?

A. Yes sir.

Q. Do you recall how many days out of the five days testimony was taken?

A. I don't recall if it was two or three, but it was definitely at least two sir.

Q. And with respect to that Suppression Hearing how much preparation were you able to do?

A. Quite a bit more sir.

Q. Did your preparation include review of the 84?

A. Yes sir.

Q. Did it include a review of the video tape?

A. Yes it did.

Q.

A.

Q. During the Suppression Hearing did you give testimony about apprising the District Attorney of an error in your Grand Jury testimony that you noticed while you were preparing for a Felony Hearing in the arrest?

A. Yes I did sir.

Q. Was that accurate testimony?

A. No it was not.

1
2 Q. If you would just explain what happened ?
3

4 A. Ah upon prepping with the ADA, I, being that the case had been so
5 long ago I could not recall if it was a Felony Hearing or the Grand Jury
6 I had, that I gave testimony to first and then afterwards read the 84 and
7 said "there are mistakes here". The ADA didn't indicate to me which it
8 was and we went into Grand Jury and I went with the fact that I thought
9 it was a Felony Hearing. Defense quickly pointed out that there was
10 none and that this must have happened at the Grand Jury. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16

17 Q. During the Suppression Hearing did you testify that [REDACTED] and
18 [REDACTED] were handcuffed to Trooper EDWARDS' patrol vehicle after
19 you found the box of what was referred to as glassine envelopes in
20 the trunk of the car?
21

22 A. Yes sir, I believe that's correct.
23

24 Q. Was that testimony accurate?
25

26 A. Yes sir, I think, yes sir.
27

28 Q. As we sit here today do you believe that was accurate?
29

30 A. Yes sir.
31

32 Q. Would it surprise you to learn, and I can show you the video tape to
33 clarify it, that that was not the case, that [REDACTED] and [REDACTED] were
34 handcuffed to Trooper EDWARDS' vehicle as soon as you began to
35 search the front of the car?
36

37 A. Yes that would surprise me sir.
38

39 Q. Well, I can show you at the conclusion of the statement.
40

41 A. I'm, I'm not arguing with you sir, it's just not how I remember it, yes it
42 would surprise me.
43

44 Q. What was the disposition of the charges against AQUIAR and
45 [REDACTED]
46

1 A. At this point sir?
2
3 Q. Yes.
4
5 A. Oh, they've been dropped sir.
6
7 Q. Do you know why they were dropped?
8
9 A. Yes, rather, yes I do sir.
10
11 Q. And what's your understanding as to why they were dropped?
12
13 A. The judge did not find myself or the other individuals in this credible in
14 the case.
15
16 Q. Have you read Judge ADLER's decision in this matter?
17
18 A. Yes I have sir.
19
20 Q. [REDACTED]
21 [REDACTED]
22
23 A. [REDACTED]
24
25 Q. Do you know why the District Attorney's Office will not appeal this
26 decision?
27
28 A. No I do not.
29
30 Q. At this point I am just going to pause the tape, it's 12:01, I just need to
31 refer to some notes. We're returning to the record at 12:04.
32 Investigator LEEDER, I have no further questions for you. Is there
33 anything you wish to add to this statement ?
34
35 A. Can I just have a second to talk to the delegate?
36
37 Q. Certainly, it's 12:04 and we'll pause the tape. We're returning to the
38 record, it's 12:08 PM. Investigator LEEDER, I have no further
39 questions is there anything you wish to add to this statement?
40
41 A. [REDACTED]
42 [REDACTED]
43 [REDACTED]
44 [REDACTED]
45 [REDACTED]
46 [REDACTED]

1 A.

2
3
4
5 Q. Okay I have no further questions.

6
7 A. Can I just have one minute ?

8
9 Q. Sure pausing at 12:16. We're returning to the record at 12:18 PM.
10 Investigator LEEDER, I have no further questions, is there anything
11 further you wish to add to this statement ?

12
13 A.

14
15
16
17
18 Q. Anything else?

19
20 A. No sir.

21
22 Q. I have no further questions. This statement will be concluded at 12:19
23 PM. Thank you.

24
25
26 I have read this statement consisting of 33 pages and it is true to the best
27 of my knowledge. I have placed my initials on the bottom of each page and next
28 to each correction and I signed it below.

29
30 Signed before me this 21ST day of April, 2003.

31
32
33
34 
35 JAMES E. LEEDER
36
37

38
39
40 WITNESS 

STATE OF NEW YORK
COUNTY OF ORANGE
TOWN OF NEW WINDSOR

NYSP INTERNAL AFFAIRS
SOUTH REGION OFFICE

2003 JUN 27 AM 11:47

JUNE 4, 2003

Statement taken from Investigator JAMES E. LEEDER at the Internal Affairs Bureau South Region Office, Stewart Airport New Windsor New York on June 4, 2003, by Inspector ARTHUR J. HAWKER, commencing at 11:49 a.m.

The letter "Q" denotes questions asked by Inspector HAWKER.
The letter "A" denotes answers provided by Investigator LEEDER.

Q. Please state for the record your full name, rank, date of entry and current assignment.

A. One correction, it's JAMES D. LEEDER, not "E" sir.

Q. Okay.

A. I'm an Investigator, [REDACTED], my date of entry is 10/28 of '96.

Q. Investigator LEEDER, you were advised by myself through Division E-mail system of the matter being investigated and that I would be taking a statement at this time. You are not the target of any known criminal investigation. The purpose of this investigation, in particular this supplemental statement, is to inquire into the activities of yourself as a member of the State Police. Specifically it has been alleged that in connection with the July 3, 2001 arrest of [REDACTED] and [REDACTED] that you gave testimony in Westchester County Court that was deemed as not credible by the presiding judge.

This interrogation is being conducted pursuant to Article 16 of the agreement between the State Of New York and your certified employee representative organization and the Regulations of the New York State Police including Regulations 8A3 and 8A15. You have the right to contact and consult with an attorney and/or union delegate before being interrogated and to have an attorney or delegate present during the interrogation. This agreement and our Regulations require you cooperate and answer truthfully questions relating to the investigation. A refusal to answer or failure to answer truthfully may result in disciplinary action which could result in your separation from service. Do you understand that?

A. Yes sir.

Q. Are you represented at this time, and if so, by whom?

A. By delegate representative JOHN O'KEEFE.

Q. As stated, I am Inspector ARTHUR J. HAWKER and have been designated by the Superintendent to conduct this interrogation. Present in the room besides myself are Investigator LEEDER and Investigator JOHN O'KEEFE, the NYSPIA delegate. This statement is being mechanically recorded by tape recorder, do you understand that?

A. Yes sir.

Q. Having been informed of all this, are you ready to proceed?

A. Yes sir.

Q. Investigator LEEDER, going back to your July 2001 arrest of [REDACTED] and ROLANDO

ENCLOSURE ¹ #11

- where were you situated when you first saw the defendant's vehicle?
- A. I was situated on I-95, there's a small center median area which is just north of the toll booths from the northbound side of I-95.
- Q. This would be the New Rochelle tolls?
- A. Yes sir.
- Q. And when you say just north of the toll booths, in terms of distance, approximately how far north?
- A. Approximately less than a tenth of a mile, I'm bad on judging distances, maybe a thousand feet, less than a tenth of a mile.
- Q. It's still within sight of the tolls?
- A. Definitely within sight, very, not far north at all.
- Q. Would you consider it still in the toll plaza itself?
- A. Its just after the toll plaza because where I was seated is actually where the lanes come all back together, so I would not consider it part of the toll booth plaza, but right at the end of the toll booth plaza area.
- Q. And is this, to your recollection, a grass median or a break in the jersey barrier, chained fence or how is it made up?
- A. It's a break in the jersey barrier, it opens up a wide area between the north and southbound lanes, concrete.
- Q. Where exactly was the defendant's car when you first observed it?
- A. I initially observed the defendant's car just as it was passing me in the northbound direction.
- Q. And do you recall what lane it was in when you first observed it?
- A. It was in the left hand lane.
- Q. The leftmost, how many lanes are there at this location where you saw the vehicle?
- A. The lanes are, I'm not real sure because the lanes are just coming from the various toll booth lanes, so they're coming back together but he was in the left, farmost, so exactly how many there are at that point, that I don't recall.
- Q. So in terms of the width of the road, he is closest to you?
- A. That's correct sir.
- Q. Okay, and again in terms of feet, how far would he have been from where you were parked?
- A. I would have to say maybe a hundred, hundred and fifty, approximately.
- Q. Coming out of the toll booths, to your recollection, are these lanes marked - let me re-phrase that, are the lanes set off by pavement markings each different lane?

A. When you initially come out of the toll booths, no, they are not, but where I was situated is where the lane markers come back. So where I was, yes, there are lane markings but as you initially come out of the toll booths, no.

Q. And what brought your attention to this vehicle as you're sitting there?

A. Traffic was moderate, there wasn't that many cars out there, nothing in particular, I was just observing different cars, looking for equipment violations, things of that nature. Nothing in particular drew my attention, I just happened to look at it.

Q. When it first went by you were you able to tell how many occupants were in it?

A. No, I don't believe so, I don't think that was until I was actually behind the vehicle, I don't recall that, no.

Q. Were you able to tell the race of the people?

A. No sir.

Q. And so you first observe it, but that just the fact it's going by didn't bring in any particular attention to you?

A. No sir, not at that time, no.

Q. At what point did you take an interest in the vehicle?

A. I was just, actually there was, like I said, the traffic was moderate to light, the vehicle went by, just watched the vehicle going by and as it was north of my location is when it moved from the left lane to middle and that's when it drew more attention.

Q. And how far north of you was it?

A. Approximately maybe five hundred feet, again I'm bad with distance, but still within sight, you know where you could tell what color the car was, close enough, maybe five hundred feet.

Q. And when the vehicle changed lanes, was there any violation observed?

A. Yes sir, he moved from the left lane to the middle and he did not signal when he did sir.

Q. And at the point where the lane change was made, are the lanes marked by pavement markings?

A. Yes sir, at that point they're actually back to, I believe it's three lanes and all three lanes are clearly marked.

Q. And from that point, once you observed that lane change without signal, what if anything did you do at that point?

A. At that point, I exited the median, I approached behind the vehicle, at that point I noticed there appeared to be two occupants in the vehicle and that it did not appear that the passenger had his seatbelt on. At that point I activated the overhead lights and the car pulled over to the right, then that's

Q. When you say pulled to the right ?

A. Pulled to the right shoulder and stopped.

- Q. Just from the point where you put on your emergency lighting to the point where the vehicle actually stopped, how much distance was covered?
- A. I'd say approximately two tenths of a mile maybe, a tenth mile. There was no real hesitation, but he didn't like almost cause an accident going over or anything, just responded in a normal manner.
- Q. What I would like to do at this point, I'm just going to pause the tape, it's 11:58 a.m. and have Investigator LEEDER sketch out, based on his recollection of the tolls, just where he was, where he saw the vehicle, etc. So we'll pause the tape at this time.
- Q. We're returning to the record at 12:02 p.m. Investigator LEEDER has made a sketch on a pad. Investigator, if you would indicate where your patrol vehicle was on that sketch and we'll start with the letter "A".
- A. Sure, in the center median here, this would be "A".
- Q. And where you first observed the defendant's vehicle, if you would label that location "B".
- A. This area.
- Q. Alright Investigator LEEDER is indicating that's in the left most northbound lane. When you observed it change lanes, if you would indicate on the sketch how far north that point was by letter "C".
- A. Somewhere around there.
- Q. And the vehicle moved just into the middle lane?
- A. Yes.
- Q. And is that where it remained until you got behind it?
- A. That's correct sir.
- Q. Okay, that should be sufficient. If you would, just put your initials and the date somewhere on that piece of paper. Thank you. The next set of questions I just want to ask you pertain to the rental agreement with the vehicle. In the original statement you gave it was established that the vehicle that [REDACTED] and [REDACTED] were occupying was rented. Is that correct?
- A. Yes sir.
- Q. And you indicated in that statement that neither of those individuals were listed on the rental agreement as a driver?
- A. That's correct sir.
- Q. Do you have a copy of that rental agreement?
- A. In my possession, no.
- Q. Do you recall if a copy was made back in 2001, when this, for case file purposes or any other reason?
- A. Yes sir. Actually I believe a copy was made and they may even have the original, but I know for sure there's a copy.

- Q. Do you know where that would be at this point?
- A. It would have to be in the case folder which probably would be in SP Hawthorne. I believe that is where they're stored.
- Q. With respect to that rental agreement, do you recall the name of the company that was involved?
- A. No, but it was not a, was not a well known like Avis or Hertz, it was more of a smaller local, but I don't recall the name of the company, no sir.
- Q. Do you recall the registration, the state of registration the vehicle had?
- A. Yes sir, it was Massachusetts.
- Q. I'm going to show you a copy of the General 21 Impound Report that was associated with that case and that indicates the vehicle owner's name to be South Coastal Rental Incorporated, 100 Faunce Corner Road, Dartmouth, Mass. Does that sound accurate?
- A. To be honest with you sir, I don't recall at all. I mean if I wrote it, I would like to say its accurate but I don't recall it at all, but if I wrote it I'm assuming its accurate but it doesn't ring a bell at all to me.
- Q. And did you complete this General 21?
- A. Yes sir.
- Q. So you would have either gotten that top part of the information from the rental agreement or you would have run the data on it, is that safe to assume?
- A. Yes sir.
- Q. Do you recall whose name the rental agreement was actually in?
- A. No it was a female though, I do not recall her name now.
- Q. Do you know what that person's relationship was to either [REDACTED] or [REDACTED]?
- A. No, I don't.
- Q. Or if there was a relationship?
- A. I don't believe there was, but I really don't recall. It wasn't anything, nothing was stated like "it's my sister, my mother", nothing like that. I don't even know if one was, they gave a relation, I don't know.
- Q. Did you ever have any contact with a person whose name appeared on the rental agreement, whomever it was?
- A. No sir.
- Q. Why was that?
- A. That would be more on the investigative end I would imagine but nothing was asked of me to do anything like that.
- Q. I'm just looking to differentiate whether that was something you felt Investigator NELSON would do on

his own or whether you tried and were unsuccessful.

A. I didn't even try, no sir.

Q. Did you have any reason to contact the rental company itself?

A. Just to let them know where the vehicle was going to be and how they could go about retrieving it.

Q. And when you made that contact, did you have any discussion with the rental company representative as to whether or not people, like in this case [REDACTED] who was driving the car, whether he was authorized to drive it even if he wasn't on the agreement?

A. Actually I don't believe I made the call myself. I want to say Investigator NOEL NELSON did, but I learned that they were not authorized to drive it, that was established but I did not make the call myself.

Q. Do you know from conversing with Investigator NELSON after this call, whether it would have been the wish of the rental company to have the car taken away from [REDACTED] had there been no criminal arrest?

A. Yes, yes that was their wish, is my understanding.

Q. And with respect to the Westchester D.A.'s office, their policy, if it's an actual policy or just a practice in 2001, do you know what their outlook was on individuals operating rental vehicles but not listed as authorized drivers?

A. I never really sat and discussed their policy or anything. Myself and other people have towed off and secured vehicles for people not on rental agreements before and there's been no complaint from the D.A.'s office saying "we don't want you to do that" or anything of that nature, so I've never actually sat with an ADA and gone over their policy, but when we've done it in the past, there's been no problem, no stated problem, so

Q. Well along that line, did you have any cases in your experience while working in Westchester County where the only reason that you impounded a vehicle was because the person operating was not an authorized driver?

A. Yes sir, I have secured vehicles for companies.

Q. And did you have any cases where you impounded the vehicle for that reason and as a result of the impound/inventory search, contraband was found for which you arrested somebody?

A. I don't believe so sir, not in Westchester. Years ago I had it in Rockland, but I don't believe in Westchester, I'm not sure without going over, reviewing.

Q. I'm just seeking to establish if the Westchester D.A. back in 2001, if that scenario was presented, whether they deemed that a valid search...

A. Ah, yes sir ...

Q. ...a valid seizure.

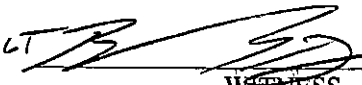
A. ...myself, I don't believe I have but I know of others who have and I don't believe there has been a problem with it.


Q. Investigator LEEDER, I have no further questions, is there anything you wish to add to this statement?

- A. I can just have a quick moment with my delegate?
- Q. Certainly, we'll pause the tape at 12:11 p.m.
We're returning to the record, it's 12:12 p.m.
- Q. Investigator LEEDER, I indicated I have no further questions, is there anything you wish to add to this statement?
- A. No sir.
- Q. That being the case, we'll conclude at 12:12 p.m.

I have read this statement consisting of 7 pages and it is true to the best of my knowledge. I have placed my initials on the bottom of each page and next to each correction and I signed it below.

Signed before me this 25 day of JUNE, 2003.


WITNESS


INV. James E. Leeder
JAMES E. LEEDER
D.