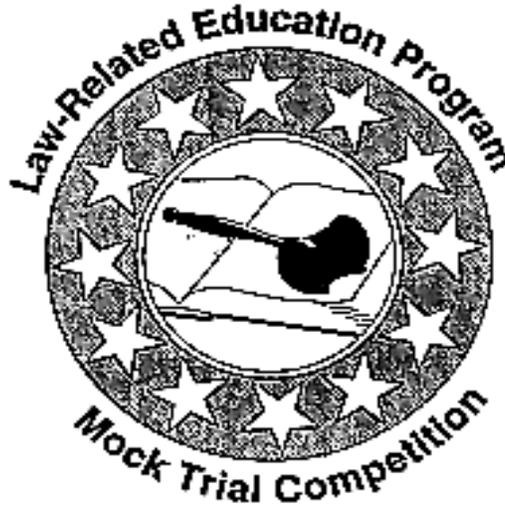


NEW HAMPSHIRE BAR ASSOCIATION

Mock Trial 2004



State v. Parsons

Case Materials Developed by:
Attorney Mark Larsen
with guidance from
The New Hampshire Bar Association
Mock Trial Committee
112 Pleasant Street
Concord, NH 03301
(603) 224-6942
www.nhbar.org

Stipulated Facts

Defendant Denise/Dennis Parsons is charged with speeding, DWI, possession of marijuana and cocaine and operating with an open container of alcohol in a motor vehicle.

The defendant was stopped on November 30, 2002, by a local police officer, Jo/Joe Lawrence, who was running stationary radar on Interstate 93. The defendant was clocked at 85 mph while driving a late model truck. Once Lawrence stopped Parsons she/he asked for Parsons' license and registration, which she/he produced. Lawrence returned to his/her cruiser, and while checking Parsons' driving record and for possible warrants, does a cobalt blue test on Parsons' license, which discloses the presence of the controlled drug, cocaine.

Lawrence returns to the truck, tells Parsons about his/her suspicions and asks Parsons to get out of the truck and brings Parsons to the back of the truck where the entire arrest can be better seen by the cruiser video camera. Parsons denies any knowledge of how cocaine could get on the license. There is a passenger in the truck, James/Jane Sawyer. Sawyer is not asked to get out of the truck during the initial stop. At the back of the truck, Lawrence questions Parsons about what is in the truck and conducts a search during which Parsons is asked to stand on one leg and show his/her shirt and pants pockets. That search results in nothing being found.

Lawrence asks Sawyer to get out of the car. Sawyer appears to be intoxicated. Lawrence, without asking for consent, searches the inside of the truck. All the while, Parsons and Sawyer are being videotaped. Inside the truck cab, Lawrence finds a Speedy McBurger cup with what appears to be rum and coke in it. Lawrence dumps the contents in front of the camera. He also finds a half full bottle of Captain Hook Rum.

Lawrence then begins to search the truck bed separating the defendant's bags from Sawyers. The search of the bags produces a small bag of marijuana. Nothing else is found in the truck. While Lawrence is searching the truck, Officer Smiley arrives at the scene to assist in the search and the arrest. While speaking with Sawyer, Smiley notices a matchbook on the road, picks it up and finds a folded piece of foil with a white powdery substance, which appears to be cocaine. Subsequent testing confirms his suspicion.

Parsons is arrested and taken to the Olde Town Police Station. Parsons refuses to take a breath test. No field sobriety tests are done at the station. The car is towed to the police station as evidence and is searched pursuant to the Olde Town inventory policy. The policy has previously survived a supreme court challenge. During that search additional cocaine is found under the passenger seat.

Witnesses

State:

Officer Jo/Joe Lawrence
Officer Smiley
Dr. Al Knoitall

Defense:

James/Jane Sawyer
Denise/Dennis Parsons
Dr. Lee Upstartd

Outline of Testimony

Parsons - Worked that day as a liquor sales person - had one drink at his last sales stop around 4-5 pm - goes home, has one beer while packing and leaves around 6:30 - picks up Sawyer - they have another drink at Sawyers and leave - believes that Sawyer put the rum bottle in the back of the truck when they left - around 7:30 they stop for a bite to eat at McBurger -- Sawyer has a tall Coke - they drive north and stop at the Hooksett rest stop - they buy some small bottles of wine and share at least one in the parking lot - Sawyer stays in the truck while Parsons uses the toilet - Sawyer still has the Coke - they head north and are stopped by the officer - there is no consent to search the truck - Parsons denies any knowledge of cocaine being in the truck.

Sawyer - known Parsons for ten years - confirms most of the story Parsons tells including that Parsons did not know the rum bottle was under the seat or in the Coke - Sawyer also denies any knowledge of the cocaine being in the car - In addition to the rum and coke, Sawyer admits to drinking three beers while waiting for Parsons, one or two beers once Parsons arrives, two of the bottles of wine while at the rest stop and most of the rum and coke - Sawyer is unable to drive the truck when Parsons is arrested.

Lawrence - is an officer with 15 years of experience - she/he has been trained in detecting drugs and drug users - always tests licenses when there is white on the license - knows that test is not conclusive, but believes that a positive test, by itself is sufficient to give probable cause to search the truck - when the stop is made, the video recorder is turned on - always tells the driver that the video is on - Parsons speech is okay, produces the license and registration, but does appear to have blood shoot eyes and a little slow - admits there are no field sobriety tests - searches truck cab and finds rum and McBurger glass, but no cocaine - marijuana is found in bag in back of truck.

Smiley - arrives as back up - observes Parsons as impaired base on speech and glassy eyes - officer has only six months experience - while speaking with Parsons and Sawyer finds the matchbook under the truck, picks it up and finds the foil wrapped cocaine - he takes the cocaine into evidence, but not the matchbook - recalls that the matchbook came from Middlesex Industries where Sawyer works - Smiley stays with Sawyer and truck till it can be towed to police station - there Smiley searches the truck and finds more cocaine under the front seat.

LEGAL INFORMATION TO BE USED IN PREPARING THIS MOCK TRIAL CASE

State law:

RSA 318-B:2. (Simplified) It shall be illegal to knowingly possess cannabis sativae in any form, cocaine and other similar substances.

265:60 Basic Rule and Maximum Limits. -

I. No person shall drive a vehicle on a way at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the way in compliance with legal requirements and the duty of all persons to use due care.

II. Where no hazard exists that requires lower speed for compliance with RSA 265:60, I, the speed of any vehicle not in excess of the limit specified in this section or established as hereinafter authorized shall be prima facie lawful, but any speed in excess of the limit specified in this section or established as hereinafter authorized shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(a) In a posted school zone, at a speed of 10 miles per hour below the usual posted limit from 45 minutes prior to each school opening until each school opening and from each school closing until 45 minutes after each school closing.

(b) 30 miles per hour in any business or urban residence district as defined in RSA 259:118;

(c) 35 miles per hour in any rural residence district as defined in RSA 259:93, and on any class V highway outside the compact part of any city or town as defined in RSA 229:5, IV;

(d) 55 miles per hour in other locations, except as provided in (e);

(e) 65 miles an hour on the interstate system, the central New Hampshire turnpike and the eastern New Hampshire turnpike in locations where said highways are 4-lane divided highways or other divided highways of 4 or more lanes.

265:80 Possession of Drugs. - Any person who drives on any way a vehicle while knowingly having in his possession or in any part of the vehicle a controlled drug or controlled drug analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his license shall be revoked or his right to drive denied for a period of 60 days and at the discretion of the court for a period not to exceed 2 years.

265:81 Transporting Alcoholic Beverages. -

I. The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 175:1.

II. Except as provided in paragraph V, no driver shall transport, carry, possess or have any liquor or beverage within the passenger area of any motor vehicle upon any way in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages shall be stored and transported in the trunk of the motor vehicle. If the motor vehicle does not have a trunk, such containers shall be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.

III. Except as provided in paragraph V, no passenger shall carry, possess or have any liquor or beverage within any passenger area of any motor vehicle upon any way or in an area principally used for public parking in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages may be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.

IV. A person who violates this section shall be guilty of a violation. In addition, a person who violates paragraph II of this section may have his driver's license, if a resident, or driving privilege, if a nonresident, suspended 60 days for a first offense and up to one year for a second or subsequent offense.

V. This section shall not apply to persons transporting, carrying, possessing or having any liquor or beverage in a chartered bus, in a taxi, or in a limousine for hire; provided, however, that the driver of any of said vehicles is prohibited from having any liquor or beverage in or about the driver's area.

VI. For the purposes of this section only:

(a) "Passenger area of any motor vehicle" shall not include any section of a motor vehicle which has been designed or modified for the overnight accommodation of persons or as living quarters.

(b) "Way" shall mean the entire width between the boundary lines of any public highway, street, avenue, road, alley, park, or parkway, or any private way laid out under authority of statute, or any such way provided and maintained by a public institution to which state funds are appropriated for public use or any such way which has been used for public travel for 20 years.

265:82 Driving Under Influence of Drugs or Liquor; Driving With Excess Alcohol Concentration. -

I. No person shall drive or attempt to drive a vehicle upon any way:

(a) While such person is under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drugs; or

(b) While such person has an alcohol concentration of 0.08 or more or in the case of a person under the age of 21, 0.02 or more.

594:3 Searching for Weapons. - a peace officer may search for a dangerous weapon any person whom he is questioning or about to question as provided in RSA 594:2 whenever he reasonably believes that he might be in danger if such person possessed a dangerous weapon. If the officer finds a weapon, he may take and keep it until the completion of the questioning, when he shall either return it or arrest the person.

594:10 Arrest Without a Warrant. -

I. An arrest by a peace officer without a warrant on a charge of a misdemeanor or a violation is lawful whenever:

(a) He has probable cause to believe that the person to be arrested has committed a misdemeanor or violation in his presence; or

(b) He has probable cause to believe that the person to be arrested has within the past 12 hours committed abuse as defined in RSA 173-B:1, I against a person eligible for protection from domestic violence as defined in RSA 173-B:1, has within the past 12 hours violated a temporary or permanent protective order issued under RSA 173-B or RSA 458:16 by committing assault, criminal trespass, criminal mischief or another criminal act, or has within the last 12 hours violated stalking provisions under RSA 633:3-a.

(c) He has probable cause to believe that the person to be arrested has committed a misdemeanor or violation, and, if not immediately arrested, such person will not be apprehended, will destroy or conceal evidence of the offense, or will cause further personal injury or damage to property.

II. An arrest by a peace officer without a warrant on a charge of felony is lawful whenever:

(a) a felony has actually been committed by the person arrested, regardless of the reasons which led the officer to make the arrest.

(b) The officer has reasonable ground to believe that the person arrested has committed a felony.

CONSTITUTION OF THE UNITED STATES

Part 1 Bill of Rights

Article 19. Searches and Seizures Regulated

Every subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. Therefore, all warrants to search suspected places, or arrest a person for examination or trial in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order, in a warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued; but in cases and with the formalities, prescribed by law.

The following case law concerns the issues raised in this Mock Trial Case.

The State of New Hampshire, v. Dorian Hight, 146 N.H. 746 (2002)

[A.2d 12]Philip T. McLaughlin, attorney general (Stephen D. Fuller, attorney, on the brief and orally), for the State.

Law Office of Joshua Gordon, of Concord (Joshua L. Gordon on the brief and orally), for the defendant.

NADEAU, J.

The defendant, Dorian Hight, appeals his conviction for possession of a controlled drug in violation of RSA 318-B:2 (1995) after a bench trial before the Keene District Court (Tenney, J.). The defendant challenges the trial court's denial of his motion to suppress evidence obtained during a consent search conducted following a motor vehicle traffic stop. We reverse and remand.

The following facts are undisputed. At 8:40 p.m. on the evening of May 9, 1999, the defendant, an African American male, was pulled over by an officer of the Chesterfield Police Department for going 47 MPH in a 35 MPH zone and for having a defective taillight. The defendant was accompanied in the vehicle by two Caucasian passengers.

Upon approaching the defendant's vehicle, the officer asked the defendant to state his place of origin and destination. He responded that he had just left Boston and was en route to Landmark College in Vermont. The officer asked the defendant to produce his driver's license and automobile registration, which he did. After determining that the defendant's license and registration were valid, the officer returned to the defendant and asked him step out of the vehicle to answer some [A.2d 13]questions. At this time, the officer still had possession of the defendant's license and registration.

The officer again asked the defendant to state his place of origin and his destination. The defendant again responded that he had come from Boston, where he and his passengers had been "hanging out," and that he was going to Vermont. The officer told the defendant that he thought it was a long way to drive just to "hang out." The defendant responded that they had also gone to a "frat party" while in Boston.

The officer, indicating that he was concerned the defendant had picked up drugs in Boston, asked him for permission to search the vehicle for drugs. The defendant consented to the search, which yielded no contraband. The officer then asked and was given permission to pat the defendant down for weapons and to search his person and his wallet for drugs. The officer found a container that held a small amount of marijuana in the defendant's back pocket. He also found a package of rolling papers in the defendant's wallet. The two passengers were not searched. Subsequently, the officer arrested the defendant for possession of a controlled drug and returned the defendant's license and registration. The defendant was later convicted and appealed.

On appeal, the defendant argues that the officer unlawfully detained him longer than necessary to write a traffic ticket, and, therefore, his subsequent consent to search was "tainted" by the unlawful detention. We address the defendant's claims first under the State Constitution. See *State v. Ball*, [124 N.H. 226](#), 231, 471 A.2d 347 (1983). With respect to the lawfulness of an investigative stop, the State Constitution is at least as protective as the Federal Constitution. See *State v. Wallace*, [146 N.H. 146](#), ----, 772 A.2d 892, 894 (2001). Therefore, we need not engage in a separate federal analysis and look to federal cases for guidance only. See *State v. Farrell*, [145 N.H. 733](#), ----, 766 A.2d 1057, 1063 (2001). When reviewing a trial court's ruling on a motion to suppress, we accept the trial court's factual findings unless they lack support in the record or are clearly erroneous. See *Wallace*, 146 N.H. at ----, 772 A.2d at 894. Our review of the trial court's legal conclusions, however, is de novo. See id.

"In order for a police officer to undertake an investigatory stop, the officer must have a reasonable suspicion--based on specific, articulable facts taken together with rational inferences from those facts--that the particular person stopped has been, is, or is about to be, engaged in criminal activity." Id. (quotation omitted); see also *Terry v. Ohio*, 392 U.S. 1, 20-21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). We have applied the Terry standard to motor vehicle stops. See *State v. Pellicci*, [133 N.H. 523](#), 528-29, 580 A.2d 710 (1990).

There is no dispute that the officer's stop of the defendant for speeding and a broken taillight was a lawful investigatory stop. We have previously held, however, that the scope of an investigative stop "must be carefully tailored to its underlying justification[,] must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *State v. Wong*, [138 N.H. 56](#), 63, 635 A.2d 470 (1993) (quotation and ellipsis omitted). "[A]ny expansion of the scope of [a motor vehicle] stop to include investigation of other suspected illegal activity is [constitutionally] permissible ... only if the officer has a reasonable and articulable suspicion that other criminal activity is afoot." Annotation, Permissibility Under Fourth Amendment of Detention of Motorist by [A.2d 14]Police, Following Lawful Stop for Traffic Offense, to Investigate Matters Not Related to Offense, 118 A.L.R. Fed 567, 573 (1994); see also 4 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* s 9.2(f), at 65 (3d ed.1996).

The State concedes that the officer did not have a reasonable and articulable suspicion of other criminal activity which would justify detaining the defendant beyond the time necessary to check the defendant's license and registration. The question before us is what effect, if any, did the defendant's continued and unlawful detention have on his subsequent consent to search his vehicle and his person.

We have not yet had occasion to consider this issue. The United States Supreme Court, however, has expressly held that when consent to search is the product of an unlawful detention, such consent is "tainted" by the illegality of the detention. See *Florida v. Royer*, 460 U.S. 491, 507-08, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). Although *Royer* did not involve a motor vehicle stop, we agree with Justice Stevens that when deciding the validity of consent that is the product of an unlawful detention during a motor vehicle stop, "[t]he proper disposition follows as an application of [the] well-settled law [articulated in

Royer]." *Ohio v. Robinette*, 519 U.S. 33, 51, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996) (Stevens, J., dissenting).

Rather than adopting a per se rule suppressing evidence obtained during a consent search that stems from an unlawful detention, however, we ask "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *State v. Cobb*, [143 N.H. 638](#), 650, 732 A.2d 425 (1999) (quotation omitted). "We require the government to demonstrate that any taint of an illegal search or seizure has been purged or attenuated not only because we are concerned that the illegal seizure may affect the voluntariness of the defendant's consent, but also to effectuate the purpose of the exclusionary rule." *United States v. Melendez-Garcia*, 28 F.3d 1046, 1054 (10th Cir.1994). "The [exclusionary] rule is calculated to prevent, not to repair. Its purpose is to deter to compel respect for the constitutional guaranty in the only effectively available way by removing the incentive to disregard it." *Id.* (quotation omitted).

When determining whether the State has purged the taint of an unlawful detention followed by a consent to search, we find instructive the following factors considered relevant by the United States Supreme Court: (1) "the temporal proximity between the police illegality and the consent to search"; (2) "the presence of intervening circumstances"; and (3) "the purpose and flagrancy of the official misconduct." *Id.* (citing *Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975)).

These factors should not be confused with the factors we consider to determine whether consent is voluntary. See, e.g., *State v. Sawyer*, [145 N.H. 704](#), ----, 764 A.2d 936, 938 (2001).

While there is a sufficient overlap of the voluntariness and [the tainted] fruits tests that often a proper result may be reached by using either one independently, it is extremely important to understand that (i) the two tests are not identical, and (ii) consequently the evidence obtained by the purported consent should be held admissible only if it is determined that the consent was both voluntary and not an exploitation of the prior illegality.

Melendez-Garcia, 28 F.3d at 1054-55.

We now turn to the three factors as applied to this case. First, there is absolute [A.2d 15].temporal proximity between the unlawful detention and the defendant's consent since the defendant gave consent while he was unlawfully detained.

Second, there were no intervening circumstances, such as the officer informing the defendant of his right to refuse consent, that would purge the taint of the unlawful detention and support a conclusion that the consent was an "act of free will." *State v. Pinder*, [126 N.H. 220](#), 225, 489 A.2d 653 (1985); see also *United States v. McGill*, 125 F.3d 642, 644 (8th Cir.1997) (concluding that the defendant's understanding of his right to refuse consent was intervening circumstance), cert. denied, 522 U.S. 1141, 118 S.Ct. 1108, 140 L.Ed.2d 161 (1998).

In fact, the circumstances in this case strongly suggest that the defendant's consent was not an act of free will independent of the unlawful detention. Given the seamless transition from the valid traffic stop to the unlawful detention and subsequent consent, there is a serious risk that the defendant felt some compulsion to consent because he believed he was still under the lawful authority of the officer at the time the officer requested his consent. The officer's continued possession of the defendant's license and registration also makes it less likely that the defendant's consent was an act of free will. Finally, the officer--a Caucasian--had just accused the defendant--an African American male in his twenties--of drug

trafficking and had not informed the defendant that he had a right to refuse to consent. Given these numerous factors which suggest the absence of free will, we find the lack of any intervening circumstances all the more compelling.

Regarding the third factor, we are troubled by the purpose and flagrancy of the official misconduct in this case. It is disconcerting that the officer sought consent to search not only the defendant's car, but his person, based upon such innocuous facts as he had driven to Boston with a purpose to "hang out," he had attended a "frat party" there and he was returning to college in Vermont.

Although consent searches have long been an acceptable method of law enforcement, we have previously admonished that it is good policy for police officers to advise persons that they have a right to refuse to consent to a warrantless search. See *State v. Osborne*, [119 N.H. 427](#), 433, 402 A.2d 493 (1979). The failure of this officer to inform the defendant that he could refuse to consent and the absence of any reasonable basis for the officer to suspect the defendant of criminal activity gives rise to the appearance, even if not the reality, that the officer's purpose was to engage in a "fishing expedition" for incriminating evidence by exploiting the defendant's ignorance of his constitutional rights. See *State v. Palamia*, [124 N.H. 333](#), 338, 470 A.2d 906 (1983). That the officer was Caucasian, the defendant was African American and the officer's suspicions did not extend to the defendant's two Caucasian passengers is also troublesome.

We conclude, therefore, that the State has failed to purge the taint of the defendant's unlawful detention and that the evidence procured through the defendant's consent should have been suppressed. Accordingly, we conclude that the trial court's denial of the defendant's motion to suppress was erroneous. We need not address the voluntariness of the defendant's consent.

Reversed and remanded.

BROCK, C.J., and BRODERICK, DALIANIS and DUGGAN, JJ., concurred.

Report of Officer Lawrence

On November 30, 2002, I was running stationary radar on the median of I-93 as I normally do. It was late Saturday night; the weather was clear, but cool. I was particularly on the look out for drunk drivers who are known to frequent this section of highway. At 10:30 p.m., I observed a truck with a Mass plate no. 345 987 driving at a high rate of speed. I activated my radar (tested and tuned earlier that day) and heard a high piercing sound that is typical of a vehicle being operated above the speed limit. The gun showed a speed of 85 mph, well above the posted speed of 65 mph. As the truck passed my location, I activated my emergency lights and entered into the passing lane.

I pursued the truck for less than 1/4 mile when it pulled into the breakdown lane coming to a jerky stop. I activated my video and exited my cruiser. I approached the driver's side of the vehicle. I observed there were two occupants in the truck. The passenger seemed to be reaching under the passenger seat. The operator of the vehicle had rolled down the window. I observed the odor of alcohol and the faint odor, which, based on my training and experience I thought to be marijuana. To comply with NH law, I told the operator that I was videotaping them. I asked the operator for his/her license and registration and she/he, with the assistance of the passenger, produced a Mass license and registration for:

Denise/Dennis Parsons
123 Main Street
Dennis, MA
DOB 9/12/70

I returned to my cruiser to run the license and registration. I observed that the rear of the truck contained numerous items of luggage.

As I checked the license, I noticed a white powdery substance on the edge of the license, which, from my training in drugs, I knew could be cocaine. I field-tested the license with cobalt blue, and it came back positive for cocaine. The license and registration appeared to be valid.

I returned to the truck and instructed Denise/Dennis Parsons to exit the vehicle. She/he complied, and I directed him/her to the rear of the vehicle where I could observe her/him doing field sobriety tests. She/he was wearing a blue over shirt, t-shirt and jeans. When we reached the back of the truck, I conducted a visual search of the operator for officer safety. She/he did not appear to have any weapons or contraband on him/her. I asked Parsons where she/he was headed and she/he told me that she/he was in a hurry to get to Vermont for some skiing. Parsons admitted to driving over the speed limit. I told him/her that I found cocaine on his/her license. Parsons denied any knowledge of cocaine. I told Parsons that I was going to search the vehicle for drugs. Parsons did not object.

I approached the passenger side and asked the passenger to exit the vehicle. She/he did so, and I again observed the odors of alcohol and faint marijuana. I searched under the seat, and I found a partially consumed bottle of rum and a soda cup with what appeared to me to be a mixture of soda and rum. I returned to the rear of the truck and confronted the operator with what I found. She/he continued to deny any knowledge of alcohol in the car. With the operator standing near the passenger, there was the obvious odor of alcohol. I told the operator and passenger to stand off to the side, so that I could search the bags in the back of the truck. That search revealed a baggie of marijuana in what I learned was a bag belonging to Denise/Dennis Parsons.

While I was searching the truck, Officer Smiley arrived to back me up. He is there when I search the truck and will confirm that no one ever objected to the search. While at the scene, Smiley observes a matchbook on the ground, opens it and finds a folded piece of foil that contains a white powdery substance, which appears to be cocaine. Denise/Dennis Parsons denies any knowledge of the matchbook, but it is obvious that it was not there before.

Smiley speaks with the passenger and identifies him/her as

Jane/James Sawyer
266 Elm St
Saugus, MA
DOB 5/13/70

Smiley confirms that Jane/James Sawyer is not fit to drive, and he places him/her in the back of his cruiser. I arrest Denise/Dennis Parsons for speeding, DUI, possession of marijuana and possession of cocaine. Parsons is handcuffed, which are checked for tightness and double locked, and placed in the back of my cruiser.

Denise/Dennis Parsons is taken to the station and booked. Smiley stayed at the location until the tow truck arrived. When he returned to the station with Jane/James Sawyer, he conducts an inventory search of the vehicle pursuant to our standard procedures. He finds what appears to be an 8-ball of cocaine. This charge is added to Denise/Dennis Parsons' charges.

Denise/Dennis Parsons is bailed and released with a court date of December 8.

Report of Officer Smiley

On November 30, 2002, around 10:35 p.m., I was on routine patrol when I heard a call from Officer Lawrence about a MV stop on the interstate. Knowing that these stops frequently turn into something more, I proceeded to the location in my fully marked cruiser.

When I arrived, I observed Officer Lawrence conversing with the person I later learned to be

Denise/Dennis Parsons
123 Main Street
Dennis, MA
DOB 9/12/70

I proceeded to the passenger side and asked the passenger to exit the vehicle. I observed the faint odor of alcohol coming from the passenger. She/he appeared unsteady on his/her feet, and I escorted him/her to the rear of the truck. As we approached the rear of the truck, I observed an object on the ground that appeared to be a matchbook. Based on my training at the academy, I knew that drugs are carried in matchbooks, among other objects. I retrieved the matchbook, opened it and found a folded piece of foil that contained a white powdery substance that appeared to be cocaine. I gave the item to Joe/Jo Lawrence and proceeded to speak with the passenger. She/he denied any knowledge of the matchbook. The matchbook was from Middlesex Sales. The cocaine was placed into evidence along with the marijuana and the bottle of rum.

I returned to the passenger compartment and conducted a wingspan search of the front compartment. This revealed a bottle of Captain Hook Rum. I gave this to Officer Lawrence. Lawrence was conducting a search, incident to arrest, of the baggage in the truck bed. This revealed the presence of marijuana in one of the bags. Both the operator and the passenger denied any knowledge of the marijuana or the cocaine.

Denise/Dennis Parsons was arrested by Lawrence and taken to the station. I stayed with the vehicle and the passenger until the tow truck arrived to take the vehicle to the station. I followed with the passenger to the station. At the station, I conducted an inventory search of the truck pursuant to our standard inventory practice. Behind the passenger seat, I found a clear plastic baggie containing a white powdery substance that appeared to be cocaine. This was placed into evidence.

Both at the scene and in the station Denise/Dennis Parsons appeared impaired. He/she smelled of alcohol, his/her eyes were glassy and bloodshot and he/she appeared unsteady on his/her feet.

Statement of Dennis/Denise Parsons

I am thirty-three years old. On November 30, 2002, I worked as a liquor salesperson for Middlesex Sales. I am regularly employed as such and have been employed there for five years. I was making calls on some of my more productive clients to make sure they were stocked for the day. I worked from 11 am to 4 pm. I had one drink (I am not sure what) at my last stop, the Deadeye Saloon in Hyannis. I had one or two beers at home as I packed for a late weekend in Vermont with my family. The word was that the snow cover was good enough for a hard day of skiing on Sunday. I planned to come home Monday.

I left home around 6:30 and went to pick-up my friend "J". I had another drink at Sawyers, possibly a mudslide and then we left. I believe "J" put a Captain Hook rum bottle in the back of the truck when we left which was around 7:30. We stop for a bite to eat at McBurgers. "J" has a tall cola. We drive north and stop at the Hooksett rest stop where we buy some small bottles of wine and share at least one in the parking lot. "J" stays in the truck while I use the facilities. When I return "J" still has his/her soda and seems to be a little giddy. We head north and are stopped by the officer. I knew that I was speeding, but it was late, there was hardly no traffic and I wasn't doing anything wrong otherwise. I told him that I was in a hurry because my family was expecting me.

I give the officer my license and registration. I later learn that he is taping me the whole time. He asks me some questions about drinking and I tell him that I am not drunk, but that I have had a few drinks. He ordered me out of the truck and made me go to the back of the truck. He has me show him my pockets and pull up my pant legs. He told me that he found cocaine on my license. I told him there was no way that I could have cocaine on my license since I don't do cocaine.

He leaves me behind the truck and then gets my friend out of the truck. We are both standing behind the truck while he rummaged around in the front seat. He comes back with the bottle of rum, which I thought was in the truck bed, and the cola cup. He says that it contains rum and pours it on the ground. He tells me I am a liar and that he is going to search the truck. I don't believe I had any chance to object, so I stand there and watch. The officer looks through all the bags and says he finds marijuana in one of the bags with my sister's name on it. I borrowed the bag from her and had planned to return it to her that weekend. I have no idea where the marijuana came from.

While we are standing there, another officer arrives. He says he found a matchbook on the ground with cocaine in it. I don't know where that came from. I don't do cocaine. I have seen what it can do, and it's bad. He says the matchbook was from my work, but I have never seen the matchbook. They arrest me and take me to the station where I am fingerprinted and bailed. They tell me that they found cocaine under the seat. I don't know about that either.

Statement of James/Jane Sawyer

I have known Denise/Dennis Parsons for ten years. We met at a community college and have stayed friends ever since. We like to party and ski together. She/he called me earlier in the week to see if I wanted to head to Vermont with him/her on the weekend. Because of his/her work, we could not leave until Saturday. She/he picked me up early in the evening. We had a drink or two at my place and then headed north. We stopped at some fast food place on the way. I got a burger and soda and dumped some rum in the soda without Denise/Dennis Parsons knowing because I did not want him/her to know. She/he is very strict about having open containers in the car. I hid the rum under the seat along with a present I had for his/her sister.

We stop at one of the NH liquor stores right there on the interstate. They are so convenient. We get a couple of small bottles to share. I think it was schnapps. We down those in the lot. I did not think Denise/Dennis Parsons had any trouble driving, and we were having a good time until we were stopped. We were a little behind schedule, and so I guess Denise/Dennis Parsons was going a little fast, and she/he admitted this to the officer. I could not hear any of what the officer said before he took Denise/Dennis Parsons out of the truck.

I sat there for a while and then they made me get out of the truck and searched it. They found my soda and the rum bottle. No one ever asked me anything about anything. I just watched as the police rummaged through our stuff. They said they found marijuana in the truck and arrested my friend. I was too drunk to drive, so I waited with one of the officers until a tow truck arrived. When the truck arrived, we left. They took me to the station and waited until we could call Denise/Dennis Parsons' mom for a ride to Vermont. No one talked to me at the station. Although I have used cocaine in the past, I did not know about any cocaine in the truck.

In addition to the rum and coke, I had three beers while waiting for Denise/Dennis Parsons, one or two beers once she/he arrived, and two of the small bottles of wine while at the rest stop. One more thing, while we were at the station, they let me go outside to smoke. Denise/Dennis Parsons hates smoking and would not let me smoke in the truck. I needed a smoke, and luckily I had the books of matches from Denise/Dennis Parsons' work that he/she gave me that day.

Statement of Dr. Al Knoitall

I am the chief forensic scientist for the State of NH and have been so for the past 10 years. I have a Ph.D. in toxicology from Harvard, a B.S. in chemistry from St. Olaf's College and teach at UNH, Dartmouth and the Massachusetts College of Pharmacy in Manchester. I have written numerous articles on toxicology and in testing for such substances.

The cobalt blue test used by Officer Lawrence is a recognized field test for the presence of cocaine.

I tested the white powdery substances found in the matchbook and under the seat of the passenger side of the truck. Both contained cocaine.

No other items were submitted for testing.

Statement of Dr. Lee Upstartd

I am the head of the department of forensic sciences at St. Anselm's College where I have worked for 5 years. I have a Ph.D. in pharmacology from Stanford, an MA in chemistry from UC Berkeley and a B.S. in chemistry from Occidental College. I did a one-year fellowship in pharmacology at Dartmouth Medical School where I studied the effects of cocaine on the CNS. As a side matter, I studied the methods used to field test cocaine. I believe that the test is not scientifically valid because acetone, alcohol, and certain soaps and detergents also gave a positive test. I have written several articles in this area.

The state would not allow me to test the substances they found.