

COPY

DANIEL M. HERRIGAN

2007 AUG 23 PM 2:14

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

SUMMIT COUNTY
THE STATE OF OHIO
CLERK OF COURTS

vs.

)
)
)
)
)
Case No. CR 06 09 3248


JOURNAL ENTRY

SAHIL SHARMA

THIS DAY, to-wit: The 20th day of August, A.D., 2007, now comes the Prosecuting Attorney on behalf of the State of Ohio, the Defendant, SAHIL SHARMA, having previously pled NOT GUILTY to the charges to the Indictment, on October 11, 2006; and having further pled NOT GUILTY to the charges to the Supplement to the Indictment, on July 10, 2007; being in Court with counsel, KIRK MIGDAL, for trial herein on Count 1 of the Indictment, and Count 2 and Count 3 of the Supplement One to Indictment; Count 4 of the Supplement One to Indictment having previously been dismissed by the Court on August 3, 2007. Heretofore, on August 7, 2007, the Defendant voluntarily waived in open Court by written waiver and relinquished his rights to a trial by Jury and elected to be tried by the Court.

Whereupon, after having heard the evidence adduced by both parties hereto and the arguments of counsel, the Court hereby returns its verdict finding that the Defendant, SAHIL SHARMA, is NOT GUILTY of the crime of SEXUAL BATTERY, as contained in Count 1 of the Indictment; NOT GUILTY of the crime of FALSIFICATION, as contained in Count 2 of the Supplement One to Indictment; and NOT GUILTY of the crime of FALSIFICATION, as contained in Count 3 of the Supplement One to Indictment, and there being no further charge against the said Defendant in Summit County, Ohio, the Court ordered that he be discharged from further custody herein.

APPROVED:
August 21, 2007
dcs


JUDY HUNTER, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Margaret Kanellis/Brad Gessner
Criminal Assignment
Attorney Kirk Migdal
Summit County Sheriff's Office

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

STATE OF OHIO,)	CASE NO. 06-09-3248
)	
Plaintiff,)	
)	
vs.)	TRANSCRIPT OF
)	PROCEEDINGS
SAHIL SHARMA,)	
)	
Defendant.)	VOLUME 1 (Of 1 Volume)

- - -

APPEARANCES:

BRAD GESSNER, Assistant County Prosecutor,
MARGARET KANELIS, Assistant County Prosecutor,
On behalf of the State of Ohio.

KIRK MIGDAL, Attorney at Law,
On behalf of the Defendant.

- - -

BE IT REMEMBERED that upon the hearing of
the above-entitled matter in the Court of Common
Pleas, Summit County, Ohio, before THE HONORABLE
JUDY HUNTER, Judge Presiding, commencing on
August 13, 2007, the following proceedings were
had, being a Transcript of Proceedings:

**(TESTIMONY OF LOUIS ROVER, Ph.D. - August 16,
2007.)**

TERRI G. SIMS, RMR
Official Court Reporter
Summit County Courthouse
209 South High Street
Akron, OH 44308

I N D E X

<u>DEFENDANT'S WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Louis Rovner, Ph.D.	3	39	62	66

1 *****Thursday, August 16, 2007

2 P R O C E E D I N G S

3 - - -

4 LOUIS ROVNER, Ph.D.

5 a witness herein, called on behalf of the
6 Defendant, having been first duly sworn as
7 provided by law, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MIGDAL:

11 Q. State your name and spell your last name.

12 A. Louis, L-o-u-i-s, Rovner, R-o-v-n-e-r.

13 Q. And, Dr. Rovner, how are you employed?

14 A. I'm self-employed as a polygraph examiner.

15 MR. MIGDAL: Judge, can the Court
16 simply make a finding that the Court is
17 aware or can we use -- does the Court want
18 me to go through everything again? I know
19 you've heard from him basically twice. If
20 the Court would make the finding that he's
21 an expert and go through his
22 qualifications.

23 MR. GESSNER: The Court can take
24 judicial notice on its previous rulings on
25 this.

1 THE COURT: I'll do that and so
2 find the doctor is an expert polygraph
3 examiner.

4 MR. MIGDAL: In addition, will the
5 Court take judicial notice of the fact
6 he's more than just a polygrapher; he has
7 a Ph.D. in psychology, he's taught
8 statistics so he's an expert in those
9 areas, too?

10 THE COURT: I'll take judicial
11 notice of the prior testimony that laid
12 the foundation when I made the previous
13 finding of his expertise. The Court's
14 aware of his additional credentials.

15 BY MR. MIGDAL:

16 Q. Dr. Rovner, you conducted a polygraph
17 examination of Sahil Sharma?

18 A. I did.

19 Q. And can you go -- can you explain how you
20 went about conducting the test, forming
21 the questions, the interview process?

22 A. Well, I went through a typical standard
23 procedure. As I understand it, the video
24 of that test was played in this room
25 yesterday.

1 That took roughly two and a half
2 hours, consisting of a pre-test interview
3 that lasted, roughly, an hour and 15
4 minutes, I don't remember exactly, and
5 then a series of six polygraph charts were
6 run; one is what we call an acquaintance
7 test or stimulation test. That's the one
8 where we ask a string of numbers to the
9 subject; and following that a series of
10 five polygraph charts, yes.

11 Q. Do you have a copy of the report you
12 prepared for Mr. Sharma's polygraph?

13 A. I do.

14 Q. Can you --

15 MR. MIGDAL: Judge, I know the
16 Court's previously admitted that report.
17 Can we admit the report you admitted at
18 the 702 hearing and simply admit that in
19 this case, or do you want me to go through
20 the foundation again?

21 THE COURT: Do the foundation
22 again, just briefly.

23 BY MR. MIGDAL:

24 Q. I'm going to show you what's marked as
25 Defendant's Exhibit A. Can you identify

1 that?

2 A. This is a copy of the report I prepared
3 about Mr. Sharma's polygraph test.

4 Q. And that's a copy. Where is the original?

5 A. I believe I sent the original to you or to
6 Mr. Sharma, I can't recall.

7 Q. And is that an accurate copy of the
8 original that you prepared in this
9 polygraph exam?

10 A. Yes, it is.

11 Q. Can you tell the Court -- you talked about
12 a pre-test interview and then the
13 examination.

14 Let's talk about the pre-test
15 interview, why you do a pre-test
16 interview, and how you conducted this one.
17 A. Okay. Well, there are numerous reasons to
18 do a thorough pre-test interview and
19 that's why it comprises at least half the
20 time of most polygraph tests, sometimes
21 more.

22 Almost always -- in my case always
23 -- I don't know the person I'm about to
24 test. I've never seen him or spoken to
25 him other than an occasional phone call to

1 schedule an appointment.

2 So there are very -- there are
3 numerous things that I have to do or any
4 good examiner has to do during that
5 pre-test interview.

6 One is to establish the mode and
7 level of this person's communication. Is
8 he educated to the point where he has
9 pretty sophisticated language and
10 vocabulary, and can I converse with him on
11 that level, or is he somewhere less than
12 that and so I have to watch my vocabulary
13 to make sure we're communicating properly.

14 Q. Any concern in this case about Mr.
15 Sharma's level of communication?

16 A. None at all, none at all. He seemed to be
17 an educated and very bright person, so I
18 didn't have to be careful about my use of
19 vocabulary or anything like that.

20 During the interview then, I need
21 to learn a little bit about the person and
22 get him used to being in this situation.
23 This is a situation where people, whether
24 they're innocent of the issue that they're
25 being tested for or guilty, everybody is

1 nervous and anxious when they come into a
2 polygraph testing office. It's really an
3 anxiety-provoking situation.

4 So that's why I take substantial
5 time to talk to the person about
6 non-polygraph things, where are you from,
7 what do you like, what do you do, what are
8 your hobbies, this and that, so the person
9 can take a few minutes to calm down, to
10 get used to this.

11 I will talk about the issue or the
12 crime that the person is there for and
13 give him what I understand the issues to
14 be from the information I've received from
15 him or his attorney, and we'll talk that
16 through.

17 Q. Let me stop you there. In this case --
18 and we have seen the DVD -- did you
19 receive discovery from me?

20 A. Yes, I did.

21 Q. And do you remember what that consisted
22 of?

23 A. Boy, I haven't looked at it in quite some
24 time. My recollection is that I got a
25 police report or something that looked

- 1 like a police report; actually, a few of
2 those, from the officers I think who
3 arrived at the scene and did the arresting
4 at the hotel, and one or two maybe from
5 officers who followed up some days later.
- 6 Q. Did you have a tape of the preliminary
7 hearing that was conducted?
- 8 A. Yes, I did. It was on a CD, I believe.
- 9 Q. Did you listen to that?
- 10 A. I did.
- 11 Q. And from that discovery that I sent you,
12 did you then talk to Mr. Sharma about what
13 you believed the case is about?
- 14 A. That's correct.
- 15 Q. Why do you do that?
- 16 A. I do that to make sure that after we go
17 through this expensive and time-consuming
18 and emotional procedure that I'm actually
19 testing the person on the relevant and
20 most salient issues.
- 21 Q. And do you then base your questions in the
22 examination upon those issues?
- 23 A. Certainly, yes.
- 24 Q. And you formed some questions in this
25 case?

1 A. Indeed I did.

2 Q. Okay. We'll get back to why you formed
3 the questions.

4 So you do this interview, and what
5 are you looking for in the interview and
6 why does it take so long? Can you explain
7 to the Court the importance of the
8 pre-test interview?

9 A. Much of this -- well, once again,
10 everything is important in this interview.
11 I have to make sure that I have a
12 comprehensive and accurate understanding
13 of the issues. That's an important part
14 of it.

15 I also have to take some time to
16 focus the person. Most of the people who
17 come to my office, or I suspect any
18 polygraph testing office anywhere, their
19 minds have been in a turmoil for some
20 time, guilty or innocent, they are facing
21 just penalties for whatever the charge or
22 accusation might be. It's affecting all
23 of their life.

24 And so I have to try to get them
25 focused to the point where I can converse

1 with them and get them centered on the
2 issue at hand.

3 I know that I'm not interested in a
4 lot of extraneous detail and all. I need
5 to get to the bottom issue here, did you
6 do this crime, or are you not guilty of
7 it, and I need all of their attention.

8 And so part of this whole procedure
9 is to get that attention from them, get
10 them focused and concentrated on the issue
11 at hand.

12 Q. Were you able to do that in Mr. Sharma's
13 evaluation?

14 A. Yes, I was.

15 Q. After you -- so you conduct the pre-test
16 interview which takes about an hour, hour
17 and 15 minutes?

18 A. Correct.

19 Q. And did you -- was the interview conducted
20 correctly, and did you receive all the
21 information you needed from that interview
22 prior to actually forming the questions
23 for the test?

24 A. Yes, I did.

25 Q. Now, you formed questions in this case.

1 Why did you form the particular questions,
2 the relevant questions -- well, let me
3 bump that up.

4 Can you explain to the Court how
5 you formed the test?

6 A. After reading all of the material that Mr.
7 -- that Kirk Migdal sent me, and after my
8 conversation about the issue with Mr.
9 Sharma, it seemed to me that the core
10 issue was whether or not Miss Sacia was
11 awake during this encounter. And so the
12 questions were pretty obvious.

13 Q. And that was based upon the discovery and
14 what Mr. Sharma told you the different
15 versions of what may have happened that
16 night?

17 A. That's correct. That was the issue to be
18 decided.

19 Q. Okay. Now, can you tell the Court how you
20 then with that issue formed the test?

21 A. Well, what I did was put together
22 something called the Utah Zone of
23 Caparison Test.

24 This is a technique that I'm
25 intimately acquainted with. I did

1 scientific research that's been published
2 and cited numerous times over the years
3 using this technique. And it has recently
4 been identified by the American Polygraph
5 Association as the most accurate
6 technique.

7 The test I gave Mr. Sharma was a
8 Utah Zone of Comparison technique
9 consisting of 11 questions.

10 Q. You talked -- what is the Utah Zone of
11 Caparison Test? You talked about its
12 accuracy and what it actually is.

13 A. Okay. There's been quite a few published
14 research studies in both peer-reviewed
15 scientific journals and professional
16 journals in the polygraph profession.

17 It typically shows accuracy rates
18 from the high 80s up to close to 100
19 percent, depending on various conditions
20 and so forth.

21 I published one of the major
22 studies in that area as part of my
23 doctoral dissertation research --

24 Q. Did -- go ahead.

25 A. And it was my own research in which I

1 conducted all of the polygraph tests. The
2 accuracy -- would you like me to describe
3 the study?

4 Q. Yes.

5 A. Oh, okay. This was done over a period of
6 about two years. And it was done at a
7 time, frankly, before the Internet.

8 This was conducted in the late
9 '70s, in which people were concerned --
10 people in the polygraph profession were
11 becoming concerned because books about
12 polygraph testing were starting to show up
13 in public libraries and they were becoming
14 more easily accessible to anyone who
15 wanted to read them.

16 And there were those in the
17 profession who felt that if a person who
18 is about to take a polygraph test was to
19 learn what were considered to be secrets,
20 secret techniques of the profession, then
21 our whole technique would be compromised
22 and that, frankly, anybody who took the
23 trouble to read and learn about what we
24 did would be able to hoodwink us.

25 We knew already with a naive

1 subject, a subject without knowledge of
2 polygraph testing, would not. And we had
3 extremely high accuracy rates with them.

4 So the purpose of this experiment
5 was to find out if people who did
6 understand polygraph testing, they
7 understood the theory of our tests, what
8 we call the control question test, which I
9 can tell you more about if you'd like.

10 Q. We will during the examination.

11 A. Okay, yeah. If that would -- if they knew
12 about what were called countermeasures,
13 things that you do allegedly to beat tests
14 that produce reactions that make you look
15 like you're telling the truth rather than
16 telling a lie, if you knew about all of
17 that stuff would you be more likely to
18 beat the test.

19 And by "beating the test," I think
20 what most people mean is, would you be
21 lying and producing a truthful outcome.

22 So we went to some extent over a
23 period of around two years to test this
24 hypothesis.

25 What we found, in a nutshell, is

1 that people's reading and knowledge of
2 these things has absolutely no effect on
3 our overall accuracy.

4 When people -- and one of our
5 conditions was totally naive; they had not
6 read any of the materials, and we assumed
7 they knew nothing.

8 We had an overall accuracy rate of
9 our decisions of 96 percent.

10 MR. GESSNER: Excuse me, Your
11 Honor. I'm going to object to the
12 relevance at this point. The Court has
13 already heard this testimony at the
14 previous hearing and it has ruled that
15 this is admissible and this is a qualified
16 expert.

17 I would think at this point going
18 back over the history and study of it is
19 something that the Court has already
20 addressed.

21 MR. MIGDAL: It's in relation to
22 this test, Judge.

23 MR. GESSNER: He's talking about
24 studies in New York, the test.

25 THE COURT: And I have heard this

1 testimony, so let's move through this
2 quickly. You're laying background here
3 for connecting up.

4 MR. MIGDAL: I understand.

5 BY MR. MIGDAL:

6 Q. Can you quickly finish up?

7 A. Yes. The 96 percent was -- the reason it
8 wasn't 100 percent was because I made one
9 mistake. That mistake is what we call a
10 false positive.

11 I -- a person who was telling the
12 truth I identified as someone who was
13 lying. It was my mistake. But in no case
14 did anyone who was lying beat the test.

15 The results were identical in the
16 group who was educated about all polygraph
17 techniques and countermeasures.

18 Q. So the fact Mr. Sharma had taken two
19 previous polygraphs, did that affect your
20 opinion whatsoever?

21 A. Not at all.

22 Q. Okay. Was this study peer-reviewed?

23 A. Was it peer-reviewed? It was done in our
24 laboratory in Utah by what was at the time
25 the most productive research group with

1 regard to polygraph. It was originally
2 published in abstract form in the *Journal*
3 *of Psychopsychology* which is a
4 peer-reviewed journal, although I'm not
5 certain that abstracts are peer-reviewed.

6 It was my personal decision to
7 publish the full-blown study in the
8 *Journal of Polygraph*, which is a
9 scientific journal of the American
10 Polygraph Association, which is not a
11 peer-reviewed journal, but I thought that
12 from my own personal and professional
13 point of view these were the people that
14 really needed to see the data we produced.
15 It would have more importance and meaning
16 to them than just the general scientific
17 community, so I made that decision, yes.

18 Q. You talked about countermeasures. Is that
19 something that you, as a polygrapher, look
20 for while conducting the examination?

21 A. Constantly.

22 Q. What are you looking for?

23 A. I'm looking for -- well, a countermeasure
24 is a technique that someone will employ in
25 order to produce responses that will fool

1 me, or fool a polygraph examiner.

2 Typically, they are poor attempts
3 at pulling the wool over the eyes of an
4 experienced person.

5 Q. Are there better attempts?

6 A. What do you mean?

7 Q. You said they're poor attempts. Is there
8 something more sophisticated somebody
9 could do?

10 A. I don't think so.

11 Q. Did you, during your examination in the
12 five exams of Mr. Sharma, identify or see
13 him attempting any countermeasures?

14 A. No. I watch people very closely. They
15 are only several feet away from me when
16 we're conducting the test, obviously, and
17 I'm constantly moving my eyes between the
18 person, himself, and the video monitor
19 which is on my desk, which is on him.

20 We also have other devices that
21 help us out in this regard, but the fact
22 is that when people are attempting
23 countermeasures, they produce responses
24 that look like countermeasures; they're
25 not typical, human responses,

1 physiological responses that we see in a
2 polygraph test.

3 Q. And let's now go ahead and talk about the
4 questions you put on the test. You talked
5 about relevant and control. Can you
6 explain to the Court relevant and control
7 questions and how you actually formed the
8 test that you conducted in the defendant's
9 case?

10 THE WITNESS: Your Honor, could I
11 take two minutes for a little history
12 here? It will make things a little more
13 understandable, please.

14 THE COURT: Briefly.

15 THE WITNESS: Briefly, yes.

16 In the early days of polygraph
17 tests, back up until the 1950s, for about
18 a 30, 40-year period people asked two
19 kinds of questions on a polygraph test.
20 One was a relevant question about the
21 crime.

22 You may have committed -- you may
23 have been accused of shooting someone with
24 a .45 caliber revolver, so the relevant
25 questions were all about them.

1 The other questions they asked were
2 neutral questions. Are you sitting down?
3 Is today Friday? Is your first name
4 Jerry? Things that had absolutely no
5 emotional impact.

6 And they would go through this
7 series of questions, and if the responses
8 -- if the person's physiological responses
9 were greater to the relevant questions
10 than to the irrelevant ones, they would
11 say the person is lying about that
12 relevant issue, that he, in fact, did
13 shoot John Doe.

14 What somebody said one day,
15 however, actually a fellow named John Reed
16 in the mid-'50s, he said everybody who
17 takes our tests is failing them, or almost
18 everybody, in the 90 percent range,
19 everybody is lying, so we're either
20 extremely good at arresting the right
21 person all the time or something is wrong
22 with the test.

23 John Reed then in the '50s came up
24 with a technique called the control
25 question.

1 He said psychologically, the
2 problem is when you're being tested on a
3 polygraph is that whether you're guilty or
4 innocent of the crime for which you've
5 been accused, you are in -- you're in
6 emotional turmoil. You know the
7 consequences of being convicted of this;
8 and, particularly, if you're innocent the
9 turmoil may even be greater. You may go
10 to prison. You may lose everything you
11 own. You may lose friends and family and
12 associates. And even if you're acquitted,
13 frankly, there are people who are never
14 going to believe that you're innocent.

15 So Mr. Reed, John Reed, said we
16 have to give the innocent person something
17 to concentrate all this emotional energy
18 on to give them a fighting chance here.
19 He came up with the concept or technique
20 called the control question.

21 Now, the control question is a
22 technique in which the person -- and
23 during my exams nowadays, I call them
24 character questions. We give this person
25 something to focus on who's innocent,

1 because we know he's -- and innocent
2 people still do have physiological
3 responses when they're asked relevant
4 questions. It's just a fact of life,
5 because of the emotional component.

6 So we give them questions that
7 really attack their character. Are you
8 the kind of a person who would have
9 committed this crime?

10 We used to think this was a ruse,
11 but a ruse that worked for innocent
12 people, and the idea was and is that a
13 person who responds more dramatically to
14 -- to a control question, or which are now
15 more and more becoming called comparison
16 questions, is probably telling the truth
17 when he denies the relevant questions.

18 This is not an opinion. We have
19 upwards of 40 years of high quality
20 scientific research that supports this
21 theory, and I think it goes beyond theory.

22 I think that if you take a close
23 look at the scientific literature, it's
24 really fact.

25

1 BY MR. MIGDAL:

2 Q. Now, back to the forming of the questions
3 and doing this particular test, tell the
4 Court how you formed those questions, both
5 the relevant and control or comparison
6 questions.

7 A. Certainly. I -- well, the relevant
8 questions were fairly simple to formulate.
9 I have them right here. I asked three.

10 And if you look at them you can see
11 that it's sort of the same question worded
12 differently three times, which is part of
13 the Utah Zone of Comparison technique.
14 Did Michelle Sacia talk to you in bed
15 before your sexual activity with her, to
16 which Mr. Sharma answered yes.

17 Was Michelle Sacia awake and
18 talking with you before your sexual
19 encounter? Once again, he answered yes to
20 that question.

21 And the third was, was Michelle
22 Sacia unconscious or sleeping when you
23 began your sexual activity? And Mr.
24 Sharma's answer was no.

25 Those are the three relevant

1 questions.

2 Q. You don't ask him something, did you
3 commit this crime? That's not an
4 appropriate question?

5 A. No. It has to be very specific, very
6 directed.

7 Q. And the reason you formed these three
8 questions is because, you know, Michelle
9 Sacia says, you know, "I'm asleep and I
10 wake up and this happens," and Mr. Sharma
11 gave you a different version, that she's
12 awake and they're discussing what's going
13 on?

14 A. That was my understanding, yes.

15 Q. And that's a factual difference that you
16 felt comfortable that you could test on?

17 A. Clearly.

18 Q. Okay. Again, go ahead and go through the
19 test as to the -- how you conducted it and
20 how you formed the other questions.

21 A. Certainly.

22 Q. Go ahead.

23 A. It's our practice to review all questions
24 with a person who's being tested. And all
25 11 of these questions were reviewed

1 thoroughly with Mr. Sharma.

2 I asked him four -- I'm sorry --
3 four neutral or irrelevant questions.
4 Those were: Is today Friday, which it
5 was.

6 Are we in California, which we were
7 because we were in my office.

8 Is this the month of March, to
9 which he answered yes, and it was.

10 And are you sitting down? And, of
11 course, he was, and he answered yes to
12 that.

13 I asked a question that is known as
14 a sacrifice relevant. It's not part of
15 our scoring procedure, but it's always at
16 the number two position in a test, and
17 this question was: Regarding Michelle
18 Sacia's accusations, do you intend to
19 answer truthfully each question about
20 that? This is more or less a standard
21 question in almost all polygraph tests.

22 And then there were three, what we
23 call, comparison questions, what used to
24 be called control -- comparison questions,
25 used to be called control questions, and

1 when I'm giving a test I prefer to refer
2 to them as character questions, but all
3 the same stuff.

4 Q. And you asked -- when we saw the DVD
5 yesterday, you go through with Mr. Sharma
6 about basically his past, are there any
7 lies that you're concerned about, anything
8 of a sexual nature, any crimes that you
9 committed in the past. Can you explain to
10 the Court why that's the appropriate way
11 to do that?

12 A. On these comparison questions? Well,
13 certainly. I -- we try to construct
14 comparison questions that are purposely
15 vague because we want people thinking
16 about these issues.

17 As you can recall from -- and I
18 haven't actually viewed this video for
19 some months, but I conduct these tests in
20 a standard procedure, so I think I'm not
21 misspeaking when I say I spend some time
22 establishing the importance of these
23 questions for the person who's about to be
24 tested.

25 The questions by nature are kind of

1 vague. And we know that if the person is
2 -- even if he makes one or two admissions
3 to these questions we kind of assume that
4 there are other things that he's thinking
5 about.

6 Q. What do you mean?

7 A. What people will say -- well, for example,
8 one of my sacrifice -- I'm sorry, one of
9 my control questions here was, before 2006
10 did you ever break a law, rule, or
11 regulation and get away with it?

12 Q. Go ahead.

13 A. Well, I think that -- we all could say
14 well, I probably did. I don't know. I
15 mean, every now and then I speed and don't
16 get caught for it in my car. I'm sure I'm
17 not an angel here. I've done things.

18 And I will say well, can you tell
19 me about any of those things? And the
20 person may tell me about one or two
21 things, but I'm fairly certain that in the
22 back of his mind he's thinking, "Boy, I
23 don't know. I probably did do some more
24 of these things. Am I that bad a guy?"

25 What we find as a result of

1 research when using this technique and
2 this theory is that innocent people,
3 people who are telling the truth about the
4 relevant issue, are so consumed with
5 self-doubt that they tend to produce
6 greater physiological responses to these
7 comparison questions.

8 People who are guilty of what
9 they're being tested for are probably
10 thinking to themselves, "Boy, I committed
11 this crime. I need to get away with it.
12 If I beat a couple speeding tickets or I
13 stole some stuff from a grocery store in
14 the past, that's not what I'm here for,"
15 and they respond more strongly to the
16 relevant questions.

17 Q. That's why you ask those character or
18 comparison questions?

19 A. That's correct.

20 Q. You also had him pick a number and then at
21 some point after going through the numbers
22 intentionally lie. Is that like a second
23 set of --

24 A. Well, that's the first -- that's the first
25 chart we run in a polygraph test. There

1 are a couple of reasons for doing that.

2 We like to get an idea of how
3 physiologically responsive this person is.
4 Physiologically, is he a guy that should
5 be tested? Does he produce responses? Do
6 his responses look normal?

7 Also for most people, most people
8 don't take more than one polygraph test in
9 their life; and, frankly, most people
10 don't take one.

11 But for that first one it's an
12 unusual situation. It's very stressful,
13 very anxiety-provoking, and it gives this
14 person a chance to sit there for a couple
15 of minutes answer -- hearing questions,
16 answering them, sitting for a period of 20
17 or 25 seconds between questions on a test
18 that, frankly, is meaningless. It gives
19 him a chance to adjust to the situation,
20 get accustomed to things, and know when I
21 say I'm going to do something, I actually
22 do it.

23 Q. Now, you -- can you tell the Court, you
24 went through five tests; is that correct?

25 A. After the acquaintance test, yes.

1 Q. Can you tell the Court -- can you explain
2 the test that you went through, and then
3 obviously I'll ask for your opinion. Can
4 you go through the test?

5 A. What do you mean by "go through the test"?

6 Q. You conducted five tests?

7 A. I did.

8 Q. Why do you do five tests?

9 A. Well, the standard procedure in running a
10 polygraph test in the Utah Zone of
11 Comparison is to do a minimum of three
12 charts, which is three times through the
13 question.

14 And what we'll do is ask the first
15 set of questions, which is chart one, and
16 I think -- in Mr. Sharma's case, I think
17 there was a period of discussion before we
18 run the second chart and so on and so
19 forth.

20 After three charts you stop or you
21 -- the examiner stops and does what we
22 call a field scoring, a field evaluation,
23 while they're sitting at my desk.

24 I made certain evaluations of his
25 polygraph tracings and arrived at a score.

1 That score was plus seven. It exceeded
2 the plus six we need to call somebody
3 truthful.

4 At that point I said to myself,
5 he's passed this test, to myself, not out
6 loud. Then I said to myself, Mr. Sharma
7 had flown cross country to be at my
8 office. He had flown from New York to LA,
9 and in the interests of thoroughness, I
10 said, I don't want to wake up tomorrow
11 morning and find I made some sort of silly
12 mistake sitting here. So just because I
13 want to be thorough, I'll run two more
14 charts on him, which is why I did.

15 The outcome was the same, which by
16 that I mean a passing polygraph test. We
17 didn't really have to run those two --

18 Q. Okay.

19 A. It's sort of like buying insurance on a
20 car accident and not having a car
21 accident.

22 Q. You would -- if he would have lived in Los
23 Angeles you would have been comfortable
24 simply with the three?

25 A. I would.

1 Q. Are you saying test four and five simply
2 confirmed the first three?

3 A. Yes.

4 Q. Now, when we watched the video yesterday,
5 and you said you reviewed it, you come
6 back after certain tests and say -- you go
7 back and ask him about some of the
8 character questions or control questions?

9 A. Yeah.

10 Q. Tell the Court why you did that.

11 A. This is part and parcel of the Utah Zone
12 of Comparison technique, and above and
13 beyond that, in 1999, the American
14 Polygraph Association published a fairly
15 wide-ranging study in which it was found
16 it's far better to do what I did than not
17 to do it, to review questions between
18 charts. It leads to higher accuracy rates
19 overall and fewer both false positives and
20 false negatives.

21 We review these questions between
22 charts; and, particularly, the comparison
23 ones because we know as a result of
24 scientific research and scrutiny, that
25 from one chart to the next, speaking in

1 terms of physiological response, relevant
2 questions tend to keep their strength from
3 one chart to the next, but comparison
4 questions, for whatever reason, tend to
5 lose strength in people.

6 If we were not to review comparison
7 questions between charts we would be
8 living in a world of false positives. We
9 would be calling lots of people who are
10 telling the truth liars, simply because of
11 a predictable physiological phenomenon.

12 Q. So when you told Mr. Sharma in that DVD,
13 "You're reacting to these character
14 questions," what were you doing?

15 A. I was doing what we call reinforcing
16 comparison questions between charts. We
17 do that regardless of what's actually on
18 the polygraph charts.

19 Q. It didn't matter whether he was actually
20 reacting to those, you were going to ask
21 those regardless?

22 A. Absolutely.

23 Q. You talked about the scoring. Can you
24 tell the Court how -- what his score was
25 and how you score a polygraph test?

1 A. Certainly. Well, Mr. Sharma's score after
2 three charts was plus seven, seven points,
3 and after five when -- and we never, ever
4 run any more than five -- it was plus six.

5 I could easily have stopped after
6 three charts and would have, as we said
7 before, if he had been a local person.

8 We developed the scoring system
9 actually at the University of Utah in
10 which we have ways of comparing
11 physiological responses to control
12 questions with physiological responses to
13 relevant questions in assigning numerical
14 values to those differences based on the
15 size and complexity of those responses.

16 We have known for many, many years
17 now that if a person scores six points in
18 a positive direction or more that he's
19 telling the truth to the relevant
20 questions.

21 If he scores a negative six points,
22 or a negative number greater than six, we
23 call him deceptive, that he's probably
24 lying when he answers those relevant
25 questions.

1 Scores between plus five and minus
2 five we consider to be inconclusive. We
3 can't make a decision because we don't
4 have enough information.

5 The numbers six and minus six,
6 those scoring criteria, the cut-offs are
7 anything but arbitrary.

8 In many experiments what we would
9 do is take a set of hundreds of polygraph
10 charts from an experiment, all had been
11 scored, and then we would do an analysis.

12 We would say, okay, what if our
13 cut-offs are one and minus one, what's our
14 accuracy then and what's our percentage of
15 inconclusive outcomes?

16 And we would take a look at the
17 same numbers and expand that zone to minus
18 two to plus two as our cut-offs, and three
19 up to minus three, all the way up to 12.

20 We found that the optimal cut-off
21 scores were plus six and minus six,
22 meaning that that's where we got our 96
23 percent accuracy rate in these studies,
24 and we found that a 16 is no different
25 than a six. Once you've exceeded the

1 criteria for truthfulness or deception,
2 minus six or greater, a bigger score means
3 no more than a six.

4 Q. You said first it was a plus seven and
5 then a plus six?

6 A. Yeah.

7 Q. A plus seven is not a more truthful person
8 than a plus six?

9 A. No.

10 Q. During your interview with Mr. Sharma, he
11 talked about the fact that he was drunk on
12 the day in question. Did that affect your
13 analysis?

14 A. No.

15 Q. Why not?

16 A. When someone tells me, "I was drunk,"
17 that's a pretty imprecise term for one
18 thing. I don't know exactly what that
19 means, and I have no way to objectively
20 assess what he means when he says that.

21 However, my own experience has been
22 that a situation which is as clear as was
23 the person I was with talking to me or
24 asleep, it's not going to affect -- having
25 had some drinks is not going to affect his

1 memory of that encounter.

2 Q. Even if you don't remember other things or
3 there's discrepancies in other things,
4 that fact -- do you know what I'm --

5 A. Yes, that's the most salient and important
6 thing here, and the fact he was drinking
7 some, I'll take that as a given, I don't
8 think compromised his test at all.

9 Q. Now, can you give an opinion, within a
10 reasonable degree of scientific certainty
11 regarding the relevant questions, whether
12 he was being truthful?

13 MR. GESSNER: We'll object for the
14 record.

15 THE COURT: We'll note that, Mr.
16 Gessner.

17 You may answer.

18 THE WITNESS: In my professional
19 opinion, he was being truthful, and I say
20 that with at least 96 percent certainty,
21 probably more.

22 MR. MIGDAL: I have no other
23 questions, Judge.

24 THE COURT: All right. Thank you.
25 We'll turn to cross-examination,

1 Mr. Gessner.

2 MR. GESSNER: Thank you, Your
3 Honor.

4 CROSS-EXAMINATION

5 BY MR. GESSNER:

6 Q. Good morning, Dr. Rovner. My name is Brad
7 Gessner. Other than meeting in the hall
8 yesterday and letting you know what time
9 we were coming back from lunch, you and I
10 have not spoken ever?

11 A. That's correct.

12 Q. Okay. Now, let me ask you a few
13 questions, and if there's anything I ask
14 that you don't understand, please let me
15 know and I'll repeat it or I'll rephrase
16 it.

17 You testified that most people only
18 take one polygraph in their life.

19 A. I think we can all agree to that.

20 Q. And can you tell us, do you know why this
21 defendant then took three?

22 MR. MIGDAL: Objection, Judge.

23 MR. GESSNER: If he knows.

24 THE COURT: He may answer.

25 THE WITNESS: I can tell you my

1 understanding of that. I was told that
2 Mr. Sharma took his first polygraph test,
3 I believe with a fellow named Bill Evans,
4 as a result of an understanding with the
5 Court that both he and Miss Sacia would
6 take tests.

7 When Miss Sacia decided not to take
8 her test, I was told that Mr. Sharma went
9 ahead and took his, anyway.

10 BY MR. GESSNER:

11 Q. Are you aware of when he took the test
12 from Bill Evans on August 23, 2006 that
13 the matter had not even come to court, the
14 preliminary hearing wasn't until
15 September? Are you aware of that?

16 MR. MIGDAL: Objection. Is there
17 relevance? Unless it goes to his opinion,
18 what's the relevance of that question?

19 THE COURT: Sustained. Sustained.
20 The Court understands the scenario here.

21 BY MR. GESSNER:

22 Q. When you were told by August 23rd when he
23 took that test there had already been an
24 understanding, that's what you were led to
25 believe?

- 1 A. I don't recall the date.
- 2 Q. Okay. Well, if Mr. Evans' test was August
3 23rd, if his test was August 23rd, that
4 would be the test you're saying was the
5 agreed test?
- 6 A. Well, I -- I'm really not --
- 7 MR. MIGDAL: Objection. Is there
8 relevance to him --
- 9 THE COURT: Sustained. Move on.
- 10 BY MR. GESSNER:
- 11 Q. Now, you were sent quite a bit of
12 information from the defense on this case
13 before you did your polygraph exam; is
14 that correct?
- 15 A. Yes.
- 16 Q. Okay. And, specifically, you also asked,
17 and you reviewed, the -- a copy of the
18 indictment; is that correct?
- 19 A. I think I did, yes.
- 20 Q. Okay. And what I'm holding in this file
21 is a copy that you were kind enough to
22 send us of what you had and what you
23 reviewed.
- 24 A. Oh, okay.
- 25 Q. All right. Now, you talk, I think, in the

1 DVD about the victim's name being
2 misspelled in the police reports. I think
3 there's -- at some point you talk about
4 that.

5 A. Okay.

6 Q. Were you aware that you weren't sent all
7 the police reports, some were dictations,
8 defense counsel made of the reports?

9 A. I'm sure I wasn't aware.

10 Q. Okay. Now, you were also sent a statement
11 of -- from the defendant with other
12 pertinent facts and his version of what
13 happened that night; is that correct?

14 A. I think so.

15 Q. I'm going to hand you what's been marked
16 for purposes of identification as State's
17 Exhibit No. 71. Do you recognize that
18 document?

19 A. I think I do, yes.

20 Q. Okay. I'd ask you to look. It's got a
21 couple more pages to it. The next page is
22 captioned at the top, statement to
23 attorney.

24 A. Okay.

25 Q. Date, October 10th of '06; is that

1 correct?

2 A. That's correct.

3 Q. Now, let's go back to the first page. In
4 your pre-test interview with the
5 defendant, you asked him if there was
6 anything of a sexual nature that might
7 bother him in preparation for your control
8 question about the sexual question; is
9 that correct?

10 A. To the best of my recollection, yes.

11 Q. And you asked him to relate anything, any
12 lies that there was, and he told you that
13 he had once slept with his best friend's
14 girlfriend and that was something that
15 affected him and bothered him, and that
16 was the only thing he had ever done that
17 one time; is that correct?

18 A. I'm sure you saw that on the video so it
19 must be correct.

20 Q. Well, do you recall it any differently?

21 A. No.

22 Q. Now, when we look at State's Exhibit 71,
23 which is what you were sent from the
24 defendant, he claims, "I have never had a
25 one night stand with anyone except

1 Michelle in my life," that would be
2 contrary to what he told you, wouldn't it?
3 A. That would.
4 Q. Okay.
5 A. But that is sort of irrelevant to the
6 polygraph.
7 Q. Absolutely. But it's relevant to the
8 statements of the defendant.
9 A. No.
10 Q. Okay.
11 A. Not in a polygraph situation, it's not
12 relevant at all.
13 Q. Okay. Now, I want you to turn to the
14 third page, please, of that document.
15 A. Okay.
16 Q. Counting the partial paragraph at the top
17 as one, go to the third paragraph there
18 and the third line, the defendant told you
19 with regard to him and Michelle, "We were
20 both drunk and mutually engaging in sexual
21 contact," isn't that correct?
22 A. It says that there, yes.
23 Q. Now, if you would read the rest of that
24 paragraph, can you tell the Court when
25 he's describing this mutual contact

1 between the two of them, at what point he
2 talks about how he undressed her?

3 A. I have to tell you that this kind of thing
4 is not something I pay attention to.

5 Q. Okay. No, sir, I'm just asking you --

6 A. You want me to read this?

7 Q. To yourself. This is a statement from the
8 defendant that you reviewed prior to your
9 test.

10 Just where in there does he talk
11 about undressing her? Because he talked
12 at length during your pre-test interview
13 about undressing her.

14 A. I don't see anything about undressing
15 someone in this paragraph.

16 Q. Okay. And, sir, would it be fair to say
17 nowhere in the entire document does he
18 talk about how he undressed her or they
19 undressed?

20 A. I haven't memorized the document. If
21 you'd like me to read these four pages now
22 I can probably answer that.

23 Q. If you can read it to yourself, yes.

24 A. Certainly. (Witness reading document.)

25 I don't see anything here about

1 somebody undressing somebody.

2 Q. Okay. All right. Thank you, sir.

3 Now, also in looking there, that
4 same third page now going to the bottom
5 paragraph, he set out in this statement
6 that was submitted to you what first
7 happened when the detectives came; is that
8 correct?

9 A. Yes.

10 Q. And in there he talks about his contact
11 with the detectives and how he told them
12 that there was some sexual contact, but he
13 didn't remember penetration or
14 ejaculation; is that correct?

15 A. Yes.

16 Q. In that paragraph when he talks to the
17 officers, does he tell you at any point
18 that he initially lied to them and said he
19 did nothing?

20 A. You know, I don't recall.

21 Q. Well, I mean, if you could just look on
22 there -- in that paragraph in the written
23 statement that he made that was submitted
24 to you.

25 A. "When I woke up there were detectives in

1 the room and they said they were
2 investigating a case."

3 Do you want me to continue?

4 Q. Well, I would -- I'm just asking you. If
5 you want to read it out loud, that's --

6 A. "First the detectives took a statement
7 from my cousin Samir. And after his
8 statement he left because he had to get
9 ready for the wedding. Then they took my
10 statement.

11 "When they started talking about
12 semen and if anyone had sex in the room, I
13 said that I remember some sexual contact
14 with Michelle, but I do not remember
15 penetration and ejaculating."

16 Q. Okay. Now, there's nothing in there of,
17 "I told the detectives I did nothing," or,
18 "I lied to the detectives," is there?

19 A. I don't see it.

20 Q. Okay. All right. And, again, that was a
21 document submitted to you by the defense
22 prior to the polygraph exam?

23 A. Yes, it is.

24 Q. Thank you.

25 Now, you talked about some of the

1 stress related to polygraphs comes from
2 the fact that someone is going to look at
3 this in the future and possibly judge
4 someone or base an opinion about it,
5 correct?

6 A. In the very near future.

7 Q. You are going to do that, but, more
8 importantly, the bigger picture, this
9 trial, that's something you would look at?

10 A. Well, that's a stress I would assume a
11 person has, certainly.

12 Q. And would you agree that there may be a
13 difference in the level of stress for
14 individuals if a polygraph is conducted
15 for a confidential nature versus a
16 polygraph that has been stipulated to and
17 acknowledged that it will, in fact, be
18 definitive?

19 A. No.

20 Q. No?

21 A. No.

22 Q. Well, let me show you what's been marked
23 for purposes of identification as State's
24 Exhibit 72.

25 Would you agree this is the

1 polygraph release you had Mr. Sharma sign
2 on March 9th in your office?

3 A. Yes.

4 Q. Underlined in the middle there is, "The
5 examiner and his company will make every
6 effort to keep the information that I have
7 volunteered confidential from all
8 unauthorized persons.

9 "I also understand if I am
10 represented by an attorney, all the
11 information I give to the examiner will be
12 treated as confidential and privileged by
13 law."

14 Is that in the document you had Mr.
15 Sharma sign on March 9th?

16 A. It certainly is.

17 Q. Okay. And had Mr. Sharma not passed your
18 polygraph, the State of Ohio would not
19 have a right to see that without the
20 defense giving you authorization to give
21 it to us; isn't that correct?

22 A. I can't speak for the State of Ohio or the
23 law here.

24 Q. Well, you're not permitted to give it to
25 us directly until Mr. Migdal says it's

1 okay?

2 A. And I probably wouldn't have.

3 Q. Right. So if someone takes more than one
4 polygraph, we don't know that unless they
5 -- if they're confidential ones, unless
6 they disclose them?

7 A. Okay.

8 Q. Isn't that correct?

9 A. It sounds correct.

10 Q. Okay. Now --

11 A. Can I expand on my answer on this
12 question?

13 Q. On redirect you may be able to.

14 A. Oh, okay.

15 Q. Now, you gave five charts to Mr. Sharma
16 relative to the questions -- you actually
17 did six charts. The first one, was that
18 number one?

19 A. Correct.

20 Q. So that's technically in your reports
21 listed as chart one?

22 A. Right.

23 Q. But the five that went to your scoring are
24 listed as charts two, three, four, five
25 and six?

- 1 A. That's correct.
- 2 Q. Okay. Now, I want to ask you a little bit
3 about these. If we look at exam one,
4 chart two, which is the first time you
5 asked him these questions --
- 6 A. Uh-huh.
- 7 Q. -- hooked up, you had already gone through
8 the questions earlier. There's a Y, I
9 would assume for yes; and an N, I would
10 assume for no to the questions?
- 11 A. That's right.
- 12 Q. Which that would be the answer Mr. Sharma
13 gave to you to that particular question;
14 is that correct?
- 15 A. Yes.
- 16 Q. Now, if we look to the body of the
17 computerized chart or graph, itself, and
18 we look to the bottom, the question one,
19 we see a plus. That plus is a positive or
20 a yes answer; is that correct?
- 21 A. Yeah, that's generated by the computer.
22 The Y -- if there's a Y there it
23 automatically puts a plus. If it's an N,
24 it automatically puts a minus.
- 25 Q. Can you tell Judge Hunter how the Y or N

1 gets there?

2 A. When I'm reviewing, and during the
3 pre-test interview when I'm reviewing the
4 questions with the subject, I asked him to
5 tell me if his answer is going to be yes
6 or no. And I then mark a Y or an N next
7 to that question, depending on what he
8 told me his answer was going to be.

9 It's probably part of the procedure
10 that I give the least attention to coming
11 in, assuming he's going to answer in a
12 certain way to the questions, which is why
13 I sometimes will leave a Y that was there
14 when I should have put an N, which is why
15 I videotape everything so we know exactly
16 how he answered the question if I made an
17 error.

18 Q. Because that way if we get to chart 5,
19 where you said don't give an answer, just
20 think it in your head, you still have
21 yeses and nos on the chart?

22 A. That's just generated automatically.

23 Q. Okay. But we don't know how he answered,
24 though, on those if they were silent, do
25 we?

1. A. That's correct.
- 2 Q. Okay.
- 3 A. But irrelevant here because he had already
- 4 passed the test in the first three charts.
- 5 Q. Now, you've talked about the scoring for
- 6 the Utah Zone scoring, and again, correct
- 7 me if I misstate anything, where we look
- 8 at -- and the pneumo is the upper and the
- 9 lower chest, correct?
- 10 A. There are two channels devoted to pneumo,
- 11 yes.
- 12 Q. GSR is what?
- 13 A. GSR is the contacts that are attached to a
- 14 person's fingers.
- 15 Q. That's the one to measure perspiration?
- 16 A. Correct.
- 17 Q. And the cardio is the blood pressure cuff
- 18 for the heart rate?
- 19 A. Yes.
- 20 Q. Okay. What numbers can you get on, like,
- 21 the pneumo, what is the range there that
- 22 as you're scoring what number could you
- 23 give someone?
- 24 A. On any one of the channels, so I'm
- 25 watching four channels or I'm evaluating

1 four channels at the end of the test, at
2 any choice point in comparing a relevant
3 question with a control question or
4 comparison question, I will look at each
5 of those channels, respiration, he can
6 score in respiration anywhere from a
7 positive three to a negative three,
8 anywhere from those boundaries and
9 anything in between.

10 Same with the GSR, same with the
11 cardio.

12 Q. Okay. So if --

13 THE COURT: Careful. That's always
14 difficult. I'll just warn you in advance.

15 MR. GESSNER: Thank you, Your
16 Honor.

17 BY MR. GESSNER:

18 Q. Dr. Rovner, then if in the -- in the
19 pneumo, let's just to clarify, even though
20 there are two indicators, the upper and
21 the lower, unlike some other polygraph
22 exams, other types, the Utah combines
23 those into one pneumo?

24 A. I'm unaware of any other technique that
25 gives more than one score on pneumo.

- 1 Q. Oh, okay.
- 2 A. Yeah.
- 3 Q. So the pneumo is the breathing?
- 4 A. Correct.
- 5 Q. Score can be zero three to plus three?
- 6 A. Well, minus three to plus three.
- 7 Q. I'm sorry, minus three to plus three?
- 8 A. The perspiration, the fingertip one?
- 9 Q. Uh-huh.
- 10 A. Minus three to plus three.
- 11 Q. And the heart --
- 12 A. Cardio.
- 13 Q. Minus three to plus three?
- 14 A. Correct.
- 15 Q. Okay. So in one chart where you ask three
- 16 different questions, he can have a minus
- 17 three to plus three in question one, in
- 18 question two, and in question three?
- 19 A. Uh-huh.
- 20 Q. Same thing with perspiration and same
- 21 thing with heart?
- 22 A. Right.
- 23 Q. So if we look at those three questions on
- 24 chart one, for each question in each area
- 25 the defendant could get anywhere from

- 1 minus nine to plus nine?
- 2 A. Okay.
- 3 Q. Okay. And you then did three sets of
- 4 questions, five different charts. So nine
- 5 times the three is 27, 27 times five is
- 6 135; is that correct?
- 7 A. I'll accept your math.
- 8 Q. Okay. So in scoring on the Utah zone,
- 9 someone could score anywhere from minus
- 10 135 to plus 135; is that correct?
- 11 A. (No response.)
- 12 Q. Is that correct as to the math?
- 13 A. If one had never conducted a polygraph
- 14 test and knew nothing of the reality of
- 15 polygraph testing, and looked only at
- 16 those numbers, the answer would have to be
- 17 yes.
- 18 Q. Okay. And that's what I'm asking you.
- 19 And your scoring, though, is if someone
- 20 gets minus six or lower they are
- 21 untruthful?
- 22 A. Correct.
- 23 Q. If someone has minus five to plus five, it
- 24 is inconclusive?
- 25 A. That's right.

- 1 Q. And if they have plus six to 135 they are
2 truthful?
- 3 A. That's right.
- 4 Q. Now, you were asked on direct a question
5 that -- let me make sure I have it right
6 -- a plus seven is not more truthful than
7 a plus six?
- 8 A. Correct.
- 9 Q. Okay. But you would then agree, though,
10 that a plus six is more truthful than a
11 plus five?
- 12 A. No.
- 13 Q. Okay.
- 14 A. A plus five --
- 15 Q. But your scoring says so, doesn't it,
16 Doctor?
- 17 A. No, it doesn't. A plus five means we have
18 insufficient information to make any sort
19 of a -- to draw any sort of a conclusion.
- 20 Q. And that's exactly what I'm saying. As to
21 your expert opinion, Doctor, as to your
22 expert opinion, a plus seven is not more
23 truthful than a plus six?
- 24 A. Correct.
- 25 Q. As to your expert opinion, a plus six is

1 more truthful than a plus five?

2 A. No.

3 Q. Then why did you tell the Court that this
4 is your scoring if it's not based on your
5 expert opinion?

6 MR. MIGDAL: Objection, Judge.
7 That's not what he said.

8 THE WITNESS: I think you're
9 misunderstanding what inconclusive means
10 in a polygraph test.

11 What inconclusive means is that we
12 simply don't have enough information to
13 say if a person is truthful or deceptive,
14 so we're not saying anything at all.
15 That's neither being truthful nor
16 untruthful, that's just throwing up our
17 hands and saying we don't know.

18 BY MR. GESSNER:

19 Q. Okay. Well, let me ask you this: If Mr.
20 Sharma had scored a plus five would you
21 have given the same opinion in here today
22 that you've already told us about?

23 A. I would have called him inconclusive.

24 Q. Thank you.

25 Now, sir, in going through your --

1 the writing of your questions, you would
2 agree that the drafting of your questions
3 you said is probably one of the most
4 critical things in a polygraph?
5 A. Yes.
6 Q. Okay. And it's important for those
7 questions to be specific?
8 A. The relevant questions.
9 Q. The relevant questions, yes. I apologize.
10 The relevant questions must be specific?
11 A. Correct.
12 Q. Concise?
13 A. Correct.
14 Q. What about compound questions?
15 A. We try to avoid compound questions. What
16 do you mean by "compound questions," by
17 the way?
18 Q. Well, when you say was someone this and
19 this, or was someone this and this, those
20 would be compounds.
21 A. It would be compounds if one had nothing
22 at all to do with the other.
23 Q. But you'll agree that two of your three
24 questions regarding to Mr. Sharma's test
25 were compound questions; isn't that

1 correct?

2 A. No, it's not.

3 Q. No?

4 A. No.

5 Q. Awake and talking is not compound, asleep
6 or unconscious is not compound?

7 A. These questions were --

8 Q. It's a --

9 A. No, no, I can't answer that question yes
10 or no. I'll have to tell you what the
11 real answer is.

12 We had been discussing -- as you
13 saw on this DVD yesterday -- for some time
14 the conditions and the situation. He
15 certainly occurred to me as a person --

16 Q. For the record, when you say, "we had been
17 discussing for some time" --

18 A. Mr. Sharma and I.

19 Q. Okay.

20 A. In my office.

21 Q. Okay.

22 A. I certainly know some people talk in their
23 sleep. My wife has told me that I do.

24 And so I made it clear to myself that when
25 I asked this question she wasn't simply

1 talking in her sleep, they were actually
2 conversing about something, that was a
3 continuation of a conversation that they
4 had earlier in a bar.

5 Q. When the two of you then were conversing
6 in your office, that's where he told you
7 this was a continuation of the
8 conversation from the bar and that's why
9 then your question you felt comfortable
10 with asking; is that correct?

11 A. Yes.

12 Q. Okay. Now, let me ask you, prior to
13 asking your questions about awake, about
14 sleeping, about unconscious, did you
15 review the definition of "substantially
16 impaired" with regard to the law in the
17 State of Ohio?

18 A. No.

19 Q. Did you at any time in any of your three
20 questions ask Mr. Sharma a question about
21 substantial impairment under the laws of
22 the State of Ohio?

23 A. No, I didn't.

24 Q. Okay. You cannot give us an opinion then
25 as to whether or not Mr. Sharma would have

1 passed, failed, or been inconclusive on a
2 test as to substantial impairment under
3 the law of Ohio, can you?

4 MR. MIGDAL: Objection, Judge.

5 THE COURT: Sustained.

6 MR. GESSNER: Nothing further,
7 Judge.

8 THE COURT: Mr. Migdal, do you wish
9 to redirect?

10 REDIRECT EXAMINATION

11 BY MR. MIGDAL:

12 Q. You were asked, Dr. Rovner, the fact that
13 the test was confidential, stipulated
14 versus unstipulated --

15 A. Yes.

16 Q. -- whether that affects your results or
17 not. What's the answer?

18 A. The answer is no. Back in the 1970s there
19 was a psychologist named Martin Orne who
20 wrote about just this alleged phenomenon
21 called the friendly polygrapher
22 hypothesis.

23 In Orne's view in just such a
24 situation as ours, if a friendly
25 polygrapher, one hired by his attorney,

1 one who would not turn the results over to
2 the authorities unless they were positive
3 with regard to his case, these people
4 would be more relaxed and more likely to
5 beat a polygraph test than others.

6 Well, Dr. Orne called this a
7 hypothesis. He never did what any
8 scientist would do, which is to test his
9 hypothesis, so in most people's
10 estimations it sunk to a random idea or a
11 hunch, fairly unscientific.

12 In subsequent studies of this, what
13 we find is the friendly, quote, friendly
14 situation has absolutely no bearing on
15 this.

16 There have been studies published
17 in which the rate of failing tests in the
18 same examiner's practice is actually
19 higher than the police testing rates of
20 people failing in the same jurisdiction.

21 A study was recently published by
22 Dr. Charles Honts in which he went -- he's
23 one of the most eminent polygraphers and
24 scientists in the world right now, he went
25 through his own files for the last number

1 of years and found that he compared tests
2 that were stipulated tests, tests that he
3 had the test person and give the results
4 to the Court against tests like these in
5 which nobody knew the person was being
6 tested except for the person and his
7 attorney.

8 And he said, how -- what were my
9 outcomes? The fact is that in the second
10 group of tests, the tests that were
11 confidential, he had a higher rate of
12 failing than the ones that were -- had to
13 be made public.

14 So this idea of the friendly
15 polygrapher simply doesn't hold up under
16 any sort of objective scrutiny.

17 Q. You were asked about -- you had asked
18 about his -- the question about a prior
19 sexual encounter, and he talked about the
20 girlfriend, and you said that is
21 irrelevant to the examination.

22 A. Yes.

23 Q. Okay. Why is that irrelevant, your
24 opinion about him being truthful on the
25 relevant questions?

1 A. When people come to my office, I don't see
2 myself as an interrogator, and I don't see
3 myself as an investigator. I see myself
4 there to determine whether he's telling me
5 the truth or not about an issue, a single
6 issue.

7 Frankly, I ask people at times to
8 give me as little information as possible,
9 only enough so I have a sufficient
10 understanding of what the case is about
11 and what -- and what the salient issues
12 should be.

13 Other than that, all of this other
14 stuff is irrelevant.

15 Q. Okay. And you were asked about the
16 scoring.

17 A. Yes.

18 Q. Am I correct, once you get past plus six
19 that allows you to say truthful?

20 A. That's correct.

21 Q. Does the fact, again, plus seven, plus
22 eight, are there degrees of truthful as
23 far as polygraphers are concerned in
24 giving forth results?

25 A. Not at all. A six is as good as a 26.

1 MR. MIGDAL: Nothing else, Judge.

2 THE COURT: Follow up on that?

3 MR. GESSNER: Yes. Very brief,

4 Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. GESSNER:

7 Q. Dr. Rovner, from those questions you were
8 just asked, your opinion is that at the
9 time the defendant made these statements
10 to you on March 9th you did not detect
11 deception in his statements?

12 A. I did not detect deception in his answers
13 to the relevant questions.

14 Q. Right. But you do not know what happened
15 in the hotel room in Cuyahoga Falls, do
16 you?

17 MR. MIGDAL: Objection, Judge.

18 THE COURT: Sustained.

19 MR. GESSNER: Nothing further.

20 THE COURT: And that then would
21 conclude your testimony, sir. Thank you.
22 You may step down. You're excused.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 - - -

C E R T I F I C A T E

I, Terri G. Sims, Official Shorthand Reporter, Court of Common Pleas, Summit County, Ohio, do hereby certify that I reported in Stenotypy the proceedings had and testimony taken in the foregoing-entitled matter, and I do further certify that the foregoing-entitled TRANSCRIPT OF PROCEEDINGS, consisting of 66 typewritten pages, is a complete, true, and accurate record of said matter and TRANSCRIPT OF PROCEEDINGS.



TERRI G. SIMS
Official Court Reporter

Dated: AKRON, OHIO
August 27, 2007

Terri G. Sims - Official Court Reporter