

## **POLYGRAPH**

### **Criminal Law--Motion for a mistrial--Mention of word "polygraph"**

*State V. Hutchings, 139 N.C. App. 184, 2000*

The trial court did not abuse its discretion in a first-degree sexual offense and taking indecent liberties with a minor case by denying defendant's motion for a mistrial when a police investigator mentioned the word "polygraph" during her testimony, because: 1) while the results of a polygraph test are inadmissible in North Carolina, not every reference to a polygraph test necessary results in prejudicial error; 2) the reference to the word "polygraph" in this case was neutral since the investigator did not mention the results of the test nor any information from which the jury could have inferred a result unfavorable to defendant; and 3) any possible prejudice was removed by the trial court's prompt and timely instruction to disregard the comment.

### **Evidence - Polygraph test - Inadmissibility**

*State v. Fleming, 350 N.C. 109 (1999)*

Evidence concerning defendant's polygraph test was irrelevant and not admissible to show his cooperation with law officers or to show a consciousness of innocence.

### **Criminal Law - Mistrial - Polygraph**

*State v. Gartlan, 132 N.C. App. 272 (1999)*

The trial court did not err in an attempted murder prosecution by denying defendant's motion for a mistrial where a detective testified that he had told defendant during interrogation that it was his opinion that defendant was lying and another detective testified that defendant was asked to take a polygraph. The request to take a polygraph was neutral on its face and the testimony regarding the fact that a detective told defendant that he was lying combined with the statement regarding the polygraph does not create an inference that defendant took a polygraph and failed on the issue of guilt. It is significant that this evidence came from two different witnesses; moreover, the court took the appropriate action by giving a corrective instruction.

### **Evidence and Witnesses §§ 1222, 1235 (NCI4th) defendant's statements during and after polygraph not an interrogation right to counsel not denied**

*State v. Coffey, 345 N.C. 389 (1997) \_ S.E.2d \_*

The trial court did not err in a noncapital first-degree murder prosecution by not suppressing statements made during and after a polygraph exam where defendant contended that the statements were obtained in violation of his Fifth and Sixth Amendment rights to counsel. Although there is no question that defendant was in custody at the time the statements were made, he was not being interrogated at that time. Since there was no interrogation, his rights to counsel were not violated. Even assuming that defendant was being interrogated, there is competent evidence in the record to support the trial court's finding of fact that defendant initiated the conversation with the SBI agent and the detective, and that finding is binding on appeal.

**1) Evidence and Witnesses 1789 (NCI4th) defendant's refusal to take polygraph exam evidence admissible**

*State v. Cannada, 119 N.C. App. 311 (1995) \_ S.E.2d \_*

Based on defendant's attorney's extensive questions pertaining to defendant's willingness to cooperate with authorities and the reference to the "Voluntary Consent to Identification Procedures" form which indicated defendant was willing to take a polygraph test, it was not error for the trial court to allow the prosecution to subsequently elicit testimony from the investigator that, although defendant initially agreed to submit to a polygraph test, he refused some days later.

**2) Evidence and Witnesses 1222 (NCI4th) statement resulting from polygraph examination voluntariness of statement**

*State v. Soles, 119 N.C. App. 375 (1995) \_ S.E.2d \_*

There was no merit to defendant's contention that the trial court committed reversible error in denying his motion to suppress a statement given by him as a result of a polygraph examination because the statement was obtained in a coercive and oppressive manner,

**3) Evidence and Witnesses 1785 (NCI4th) - Polygraph test - Questions and answers used to impeach defendant - Test not mentioned - Agent's opinion as to truthfulness - Not admissible**

*State v. Willis, 109 N.C. App. 184 (1993) 426 S.E.2d 471*