

## **Polygraph evidence presented in Birkbeck retrial**

**Published 5/3/07 in *The Times-Herald***

**By ELIZABETH RICHARDSON**  
[erichardson@newnan.com](mailto:erichardson@newnan.com)

New evidence involving a polygraph test of the defendant was presented as the retrial of Benjamin Birkbeck, the East Point Police Officer accused of molesting a young woman, continued Wednesday in Coweta Superior Court.

Assistant Coweta Circuit District Attorney Kevin McMurry said Birkbeck voluntarily submitted to the polygraph test on April 12 with consent from both the prosecution and the defense.

The prosecution called Steve Duncan, an investigator and expert polygrapher with the Georgia State Patrol, to testify about the polygraph he administered.

"The results clearly indicated that he was deceptive with his answers to those [relevant] questions," said Duncan. "[The results were] not a close call at all."

Duncan explained the science of polygraphy. As a polygrapher, Duncan tests a subject's cardiovascular system, breathing and sweat production. Tests are not 100 percent accurate because of such variables as the technique of the person administering the test, the equipment and the phrasing of the questions.

"Maybe 2 to 3 percent [of polygraph tests] are ever deemed inconclusive," added Duncan.

The questions asked of Birkbeck were "designed" by both the defense council and prosecution using Duncan's methodology, according to his testimony.

On April 12, Birkbeck had a cold and was on three medications. Duncan advised it should not skew the results but gave Birkbeck the option of postponing. Birkbeck gave consent. Duncan discussed each question's exact wording with the defendant to ensure he understood everything being asked. In the test, the victim was referred to as "that girl" so as to avoid emotion, Duncan said.

Prior to the test, Birkbeck underwent a practice test, during which he lied about something irrelevant to allow the instrumentation to adjust to his physiology.

Despite Birkbeck's cold, Duncan "saw no problems as far as conducting the test" and described it as "textbook."

Birkbeck was asked 10 questions three times that addressed the sexual allegations as well as his overall honesty, according to Duncan.

Birkbeck was asked if he was seated; if he intended to answer truthfully; if he believed Duncan would only ask the agreed-upon questions; if prior to 2006 he had ever lied about work issues; if he had touched the girl in a particular manner; if prior to 2006 he had ever falsified an unofficial report; if he'd touched the girl at his home; if there were other things he was afraid Duncan would ask him about; if prior to 2006 he'd ever lied to someone in authority; and, finally, if he'd touched that girl in a sexual way.

In cross-examination, Birkbeck's attorney, John Frederick Nebl, questioned the validity of the test by further pushing the issue that Birkbeck had a cold at the time. He also said that Duncan's polygraph instrumentation adjusted to Birkbeck's physiology by assuming he'd lied to the control question, when he may not have. Physiological results indicated Birkbeck had truthfully never falsified documents, which was meant to be a control question that most people would lie to.

Duncan rebutted that the test was more likely to call a liar honest than to call an honest person a liar.

Also, according to Nebl, Birkbeck requested to take the test again when advised of the results, and Duncan denied his request.

Asked during redirect by McMurry whether he doubted the results in any way, Duncan said there was "no question in my mind."

Eight other witnesses testified Wednesday for the prosecution, beginning with a female who admitted to a two-year consensual sexual relationship with Birkbeck starting when she was 17. A former co-worker of the woman's took the stand to support those claims.

Coweta Sheriff's Sgt. John Kennedy took the stand to review his investigation. He testified that after interviewing the victim, he contacted the Department of Family and Children Services out of concern for the children living at Birkbeck's residence. They didn't remove them from the home, but did implement a safety plan.

Kennedy said he received no cooperation from the victim's mother or brother.

Kennedy executed a search warrant of Birkbeck's residence Nov. 1, 2006. Kennedy seized four home computers and turned them over to Vickie Adams, a forensic computer specialist with the Georgia Bureau of Investigation. Kennedy also located a bag with Birkbeck's personal items that contained two stories depicting incest.

Nebl questioned why Kennedy never searched Birkbeck's body if the victim bit him during one molestation incident. Kennedy responded that it would be an unjust violation of Birkbeck's privacy since the victim was unsure whether she'd left a scar.

Next, the state called a professor at the University of West Georgia who had convinced the victim, a student at the school, to visit a nearby rape crisis center. She also testified that the victim told her she could not go to the police because Birkbeck was a police officer.

The alleged victim's psychotherapist testified about their counseling sessions. Her accounts corroborated the victim's direct testimony.

Heather Lyda, the victim's high school interpreter (the victim is hearing impaired), stated she learned of two incidents of alleged abuse, at which time she contacted the victim's mother and scheduled mediation.

At the mediation held at Lyda's home, the victim's mother listened to the allegations against Birkbeck and inquired what she planned to do. According to Lyda, the victim's mother stated, "You have to do what's right for you." Lyda told the court it was her opinion that the victim's mother either didn't believe the allegations or did not want to believe them.

Lyda told the court that the victim had never reported any physical or sexual violence while in high school. She added that the victim had mentioned incidents where Birkbeck had made crude remarks.

The victim's aunt testified that she had seen Birkbeck verbally abuse the victim and her brother on several occasions. She confronted him, but nothing changed, according to her testimony.

Nebl pointed out during cross-examination that the victim's grandparents are scheduled to testify on behalf of Birkbeck, and asked the victim's aunt what she thought about that.

"I don't agree with their opinion, but they are entitled to it," she said.

Concerning the four computers seized at Birkbeck's residence, Adams explained that she searched the computers for references to "incest" or "literotica" — the Web site from which the incestual stories Kennedy seized came. On the computer seized from the kitchen, she got 2,600 hits — instances in which the word "incest" was used — and 8,000 hits for "literotica." She found no hits for child pornography.

Adams said she was able to determine that someone in Birkbeck's household viewed other incestual sites. She concluded someone used a search engine to seek out "literotica."

During cross-examination, Nebl said Adams never established the user of the computer.

---

Unless otherwise stated, all material on this page and all pages on this site ©2000 - 2007 *The Times-Herald*, Newnan, Georgia. Any reproduction of any part of this web site without written permission is strictly prohibited.

[Go Back](#)