

**B.**  
**POLYGRAPH-UNFAVORABLE<sup>1</sup>**

A general rule of evidence is that witnesses can testify only as to facts known by them. This rule ordinarily does not permit the opinion of a witness to be received as evidence. However, an exception to this rule exists in the case of an expert witness who may give (his/her) opinion as to any matter in which (he/she) is versed which is material to the case. In legal terminology, an "expert witness" is a witness who has some special knowledge, skill, experience, or training that is not possessed by the ordinary juror, and who thus may be able to provide assistance to the jury in its fact-finding duties.

In this case, \_\_\_\_\_ of \_\_\_\_\_ was called as an expert in the administration and evaluation of polygraph or lie-detector tests. Particularly in regard to a polygraph test (he/she) administered to the defendant, \_\_\_\_\_ on \_\_\_\_\_.

Neither the State nor the defendant may offer in evidence the results of a polygraph test administered to the defendant. The results of such test are not considered as conclusive under the law.

However, where the State and the defendant agree before trial to the administering of a polygraph test to the defendant, and also agree that either party may offer in evidence at the trial the results of that test, whether favorable or unfavorable, then the opinion of the expert who administered the test as to the results of that test are admissible in evidence. In this case, both sides have so agreed and the results have been presented in evidence to you.

I instruct you that the expert's opinion testimony as to the results of his examination does not by itself prove any element of the crime charged under the indictment, but merely indicates that at the time he questioned the defendant, in his expert opinion, the defendant was not answering truthfully the relevant questions asked.<sup>2</sup>

However, you are not bound by this expert opinion. You should consider this opinion, but it is for you to determine what weight to give to this evidence, whether that be great or slight,

---

<sup>1</sup> Includes Model Charge on "EXPERT TESTIMONY".

<sup>2</sup> State v Jones, 224 N.J. Super 527 (App. Div. 1988); State v. Baskerville, 73 N.J. 230 (1977); State v. McDavitt, 62 N.J. 36, 47 (1972); State v. Valdez, 91 Ariz. 274, 371 P.2d 894, 901 (Sup. Ct. 1962).

**POLYGRAPH-UNFAVORABLE**

or you may reject it. In examining this opinion, you may consider the reasons given for it, if any, and you may also consider the expert's qualifications and credibility.

It is always within the special function of the jury to decide whether the facts on which the answer of an expert is based actually exist, and the value or weight of the opinion of the expert is dependent upon and no stronger than the facts on which it is predicated.

Depending upon your decision as to the credibility and weight to give the evidence, after considering the polygraph evidence along with all of the other evidence, if you are convinced that the State has proven all of the elements of the crime charged beyond a reasonable doubt, then you must find the defendant guilty. If, on the other hand, the State has failed to prove any element beyond a reasonable doubt, you must find the defendant not guilty. (You should consider each charge or count of the indictment separately.)