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**IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

-vs-

MARK FRANKLIN,

Defendants.

**MOTION TO ADMIT POLYGRAPH
RESULTS OF MARK FRANKLIN AND
MOTION FOR RIMMASCH HEARING**

Case Number: 171700040

Judge: Lyle R. Anderson

Polygraph examinations are used every day throughout this country. They are used to foil terrorist plots just as they are used to screen candidates for federal employment. They are used to solve cold case homicides and catch cheating spouses. And they are used to exonerate those guilty of no transgressions legal or otherwise. In this case, the defendants jointly move this Court to admit the results of the polygraph examination conducted by Vern Peterson, one of the most experienced polygraphers in Utah. More specifically, the defendants seek to admit Peterson's conclusion that Mark Franklin was truthful when responding that he did not know that cattle could not reach water when he shut the gate to Zane Odell's corral. Admission of the

¹ This daytime business address is provided for identification and correspondence only and is not intended to imply institutional endorsement by the University of Utah for this private representation.

exculpatory polygraph results is necessary to ensure the defendants' rights to a complete defense and due process under the United States and Utah Constitutions. Should this Court be concerned about the reliability of the proposed expert testimony, the defendants specifically request an evidentiary hearing to satisfy the requirements of *Rimmasch*.²

BACKGROUND

The County surmises that Mark Franklin shut the gate to Zane Odell's corral in order to keep cattle from getting to water outside the corral. Because there was another opening to the corral through which cattle could, and in fact did, pass through, the State relies on its supposition that Franklin did not see the opening when he closed the gate. The State does not dispute that no cattle were harmed and likewise does not seem to dispute that cattle could freely enter and exit the corral. Instead, it believes that Franklin closed the gate unaware of the other opening and therefore intend to harm the livestock. The State is mistaken. As he told law enforcement and the ranchers on April 3rd, Franklin saw cattle passing through the opening and never intended to cause any harm. And a lie detector test administered by an experienced polygrapher—a former law enforcement officer who has conducted thousands of polygraph examinations—corroborated what Franklin said that day, namely that he never intended to keep cattle from water or cause any harm.

Peterson's polygraph interview contained the following specific questions and answers:³

Question 39: Regarding if you knew by closing that gate it would cause problems, do you intend to answer truthfully each question about that? ANSWER: YES

Question 33: Did you know that by shutting that green gate at the corral that the cows could not get to water? ANSWER: NO

² *State v. Rimmasch*, 775 P.2d 388 (Utah 1989).

³ A copy of Peterson's report, CV, and polygraph charts are attached.

Question 35: Did you know the cows could not get to water when you closed the gate at that corral? ANSWER: NO

Based on the answers and the testing administered on Franklin, the aggregate score for the polygraph was +6. Because a score of +6 or greater is a truthful polygraph result, Peterson concluded that Franklin was truthful when answering questions about the reported incident.

I. ADMISSION OF EXCULPATORY POLYGRAPH EVIDENCE IS NECESSARY TO ENSURE THE DEFENDANTS' RIGHT TO A COMPLETE DEFENSE AND FAIR TRIAL.

- a. The Utah Supreme Court's Decision in *Brown* Does Not Categorically Bar the Admission of Polygraph Results.

In its reply to the defendants' expert witness notifications, the County argues that the Utah Supreme Court has "held that polygraph evidence is not admissible without a stipulation for its admission from both parties." *State's Notice of Objection to Defendants' Expert Witness Notices, Request for Time Extension* at 5. In support of its position, the County cites *State v. Brown*, 948 P.2d 337 (Utah 1997). The County's decision to cite the *Brown* case is striking for two reasons. First, the County has overstated the holding in *Brown*, as the decision does not erect the categorical bar the County contends. Instead, the Supreme Court merely held that:

In the absence of a sufficient foundational showing of inherent reliability and satisfaction of the remaining two prongs of *Rimmasch*, a stipulation between the parties is the only way polygraph evidence may be admitted.

Id. at 341 (emphasis added). The polygraph evidence in *Brown* was excluded because the defendant only proffered testimony and "no evidentiary hearing was held." *Id.* But the Utah Supreme Court in *Brown* never imposed a flat ban on polygraph evidence, nor did it disavow its prior holding in *State v. Tillman*, 750 P.2d 546, 557 (Utah 1987), which noted that developments

in the area of polygraph examinations may progress to the point where polygraph tests should be held admissible regardless of any stipulation.⁴

Second, the dangers highlighted by excluding potentially exculpatory evidence are made manifest by the decision in *Brown*. The Utah Supreme Court initially excluded the favorable polygraph evidence offered by Brown, and it affirmed Brown's conviction for aggravated murder. After Brown spent nearly two decades in prison, however, something remarkable happened. The Utah Supreme Court again issued an opinion in the case, but this time it affirmed the district court. The Court in *Brown v. State*, 308 P.3d 486 (Utah 2013) "affirm[ed] the post-conviction court's ultimate determination that Ms. Brown is factually innocent." Thus, nearly twenty years after affirming the exclusion of exculpatory polygraph evidence, the Utah Supreme Court affirmed the finding that Brown was in fact innocent of aggravated murder.

b. The Sixth Amendment Right to Present a Defense Warrants Introduction of Exculpatory Polygraph Evidence⁵

The Sixth Amendment provides that "the accused shall enjoy the right ... to have compulsory process for obtaining witnesses in his favor." Because this right "is an essential attribute of the adversary system itself," the United States Supreme Court has repeatedly stated the few rights "are more fundamental than that of an accused person to present witnesses in his own defense." *Taylor v. Illinois*, 484 U.S. 400, 408-09 (1988). The right was included in the

⁴ To the extent that *State v. Eldredge*, 773 P.2d 29 (Utah 1989) could be read to bar polygraph evidence absent a stipulation, the decision was premised on the fact that polygraph evidence had, at that time nearly 30 years ago, not been shown to be sufficiently reliable. In addition, neither *Eldredge* nor *Brown* addressed the right to present polygraph evidence under the Utah Constitution.

⁵ The right to present a complete defense is also protected by the Due Process Clause of the Fourteenth Amendment. See, e.g., *Chambers v. Mississippi*, 410 U.S. 284 (1973). The defendants contend that admission of exculpatory polygraph evidence is required under both amendments and their state counterparts.

Bill of Rights in reaction to a common-law rule categorically excluding defense evidence in certain cases. *Washington v. Texas*, 388 U.S. 14, 19-20 (1967). In *Washington*, the Supreme Court held that the right to present witnesses “is in plain terms the right to present a defense” and that it “is a fundamental element of due process of law.” *Id.* at 19. As such, the Court held that a state rule of evidence that excluded “whole categories” of testimony on the basis of a presumption of unreliability was unconstitutional. *Id.* at 22. In addition, a state’s “legitimate interest in barring unreliable evidence does not extend to *per se* exclusions that may be reliable in an individual case.” *Rock v. Arkansas*, 483 U.S. 44, 61 (1987).

In this case, the defendants seek to introduce exculpatory polygraph evidence to further their defense that neither defendant intended to cause injury to livestock. Not only should the polygraph evidence be admitted as substantive proof of the defendants’ innocence, but it should also be admitted to corroborate Franklin’s testimony should the County attempt to impeach his testimony at trial. Although the Supreme Court in *United States v. Scheffler*, 523 U.S. 303 (1998) held that a *per se* rule against admission of polygraph evidence in court martial proceedings did not violate a defendant’s right to present a defense, it did not hold that courts could not admit such evidence.⁶ Indeed, the majority of federal courts allow defendants to admit polygraph results. See *Lee v. Martinez*, 136 N.M. 166, 186 (2004) (“Most federal appellate courts leave admission of polygraph evidence to the discretion of the trial courts”).

⁶ See Edward J. Imwinkelreid, *A Defense of the Right to Present Defense Expert Testimony: The Flaws in the Plurality Opinion in United States v. Scheffer*, 69 Tenn.L.Rev. 539, 544 (2002) (“The upshot is that a five-justice majority appeared willing to entertain an accused’s argument that a *per se* statutory or common law restriction on the admissibility of exculpatory expert testimony is unconstitutional as applied.”).

Although some courts have excluded polygraphs by invoking concerns about the reliability of polygraph testing, such concerns polygraphs are often overstated. In a 2001 report commissioned by the Department of Defense, researchers evaluated 198 published studies to compare the accuracy of the polygraph with several common medical diagnostic tools.⁷ The polygraph compared favorably with other diagnostic evidence commonly presented in court. Indeed, “it is far more reliable than other forms of expert testimony, such as psychiatric and psychological opinions of sanity, diminished capacity, dangerousness, and many forms of post-traumatic stress/recovered memory syndromes.”⁸ In *Scheffler*, Justice Stevens specifically remarked on the reliability of polygraphs:

There are a host of studies that place the reliability of polygraph tests at 85% to 90%. While critics of the polygraph argue that accuracy is much lower, even the studies cited by the critics place polygraph accuracy at 70%. Moreover, to the extent that the polygraph errs, studies have repeatedly shown that the polygraph is more likely to find innocent people guilty than vice versa. Thus, exculpatory polygraphs—like the one in this case—are likely to be more reliable than inculpatory ones.

Scheffler, 523 U.S. at 333 (Stevens, J., dissenting).

To the extent that this Court is concerned that the polygraph administered in this case is unreliable, the proper approach is not to categorically bar its admission because of a lack of stipulation. Instead, such concerns “are properly addressed in adversary proceedings; they fall short of justifying a blanket exclusion of this type of expert testimony.” *Id.*

⁷ Philip E. Crewson, *A Comparative Analysis of Polygraph With Other Screening and Diagnostic Tools*.

⁸ See Declaration of Dr. David Raskin, Doc. 95-1 at 11 (Dec. 16, 2014) in *United States v. Jesus Angulo-Mosquera*, Case No. 8:14-cr-00379 (M.D. Fla.); See also *Scheffler*, 523 U.S. at 334 (Stevens, J., dissenting) (noting that “[s]tudies indicate that handwriting analysis, and even fingerprint indentifications, may be less trustworthy than polygraph evidence in certain cases.”).

c. The Utah Constitution Should Permit Introduction of Exculpatory Polygraph Evidence.

A state may interpret its own constitution in a manner different (and more expansively) than the United States Supreme Court's interpretation of a similar federal provision,⁹ so long as it does not reach a result providing its citizens with fewer rights than those guaranteed by the Constitution of the United States. Malan v. Lewis, 693 P.2d 661 (Utah 1984). On several occasions the Utah Supreme Court has shown a willingness to make substantive law based solely on the Utah Constitution.¹⁰

Utah's courts have the authority to interpret Utah's constitutional provisions differently than the corresponding federal provisions, and the Utah Supreme Court has developed Utah constitutional law that sometimes diverges from federal law. In this context, the defendant believes that it is proper for a trial court to consider an interpretation that is more expansive than federal interpretations. As Oregon Justice Hans Linde has stated,

A lawyer today representing someone who claims some constitutional protection and who does not argue that the state constitution provides that protection is skating on the edge of malpractice.

⁹ Fox Film Corp. v. Muller, 296 U.S. 207 (1935); Herb v. Pitcairn, 324 U.S. 117 (1945); Jankovich v. Indiana Toll Road Comm., 379 U.S. 487 (1965).

¹⁰ See, e.g., American Fork City v. Cosgrove, 701 P.2d 1069 (Utah 1985) (scope of privilege against self-incrimination); Malan v. Lewis, 693 P.2d 661 (Utah 1984) (automobile guest statute); State v. Ball, 685 P.2d 515 (Utah 1984) (questioning a juror about drinking alcohol); Gray v. Employment Security, 681 P.2d 807 (Utah 1984) (Durham, J., concurring and dissenting, due process regarding unemployment benefits); State v. Larocco, 794 P.2d 460 (Utah 1990) (automobile exception to warrant requirement); State v. Thompson, 810 P.2d 415 (Utah 1991) (exception of privacy in bank records); Zissi v. State Tax Comm'n of Utah, 842 P.2d 848 (Utah 1992) (Utah Constitutional exclusionary rule prevents admission of illegally seized evidence at Commission hearing).

Welsh & Collins, Taking State Constitutions Seriously, 14 The Center Mag. 6, 12 (Sept./Oct. 1981). The Utah Supreme Court has frequently recognized its obligation to evaluate the Utah constitutional protections, recently remarking that:

This court, not the United States Supreme Court, has the authority and obligation to interpret Utah's constitutional guarantees... and we owe federal law no more deference in that regard than we do sister state interpretation of identical state language."

State v. Tiedemann, 162 P.3d 1106 (Utah 2007). Justice Stevens likewise recognized the power of Utah courts to endow its citizens with more protections under the Utah constitution than its federal counterpart. As he noted in Brigham City v. Stuart, 126 S.Ct 1943, 1950 (2006)

(Stevens, J., concurring):

Our holding today addresses only the limitation placed by the Federal Constitution on the search at issue; we have no authority to decide whether the police in this case violated the Utah Constitution. The Utah Supreme Court, however, has made clear that the Utah Constitution provides greater protection to the privacy of the home than does the Fourth Amendment.

Given the greater protections afforded under the state constitution, the defendant submits that the Utah Constitution requires admission of exculpatory polygraph results. While prior skepticism regarding polygraphs previously barred their admission, such skepticism is no longer warranted. Federal courts across the country permit the introduction of polygraph results. New Mexico routinely allows polygraphs,¹¹ and admissibility in Alaska and South Carolina is similar to most federal courts.¹² A large number of states, including Utah, permit introduction of polygraph evidence upon stipulation.¹³

¹¹ *Lee v. Martinez*, 96 P.3d 291 (N.M. 2004).

¹² *State v. Alexander*, 364 P.3d 458 (Alaska App. 2015) (reversing 50-year ban on polygraphs); *Lorenzen v. State*, 657 S.E.2d 771, 778 (S.C. 2008).

Further, federal and state law enforcement officials routinely rely on polygraphs in jurisdictions where they are not admissible.¹⁴ Indeed, polygraphs are used to make important determinations of probable cause and whether to prosecute.¹⁵ They have also been used to make sentencing decisions.¹⁶ Indeed, most jurisdictions condone the use of polygraphs as a condition of probation.¹⁷ There is no principled basis to allow polygraph results to arrest and punish defendants but not to exonerate them. This Court should recognize, as many other courts and commentators have done, that polygraph evidence is more reliable than much of the scientific evidence presented every day in courts across the country. And it should leave to the jury—the ultimate bulwark against encroachment on an accused’s liberty—to decide what weight such evidence is entitled.¹⁸

¹³ Presumably, judges in these states must still exercise the gatekeeping function under the state counterparts to Rule 702.

¹⁴ And yet “[o]ften the same government officials who vigorously oppose the admission of exculpatory polygraphs of the accused find polygraph testing to be reliable enough to use in their own decision-making.” *Lee*, 136 N.M. at 181.

¹⁵ See *Johnson v. Schneiderheinze*, 102 F.3d 340, 342 (8th Cir. 1996) (holding that a police officer reasonably relied on polygraph results in deciding to arrest); *Bennett v. City of Grand Prairie*, 883 F.2d 400, 405-06 (5th Cir. 1989) (magistrate judge may consider polygraph results in determining whether probable cause exists for arrest warrant).

¹⁶ See *United States v. Chaney*, 1996 WL 187515, *1 (10th Cir.) (holding that district court may use a defendant’s polygraph examination to determine the amount of restitution).

¹⁷ See Anne M. Payne, Annotation, *Propriety of Conditioning Probation on Defendant’s Submission to Polygraph or Other Lie Detector Testing*, 86 A.L.R.4th 709 (1991).

¹⁸ See *Scheffer*, 523 U.S. at 319-20 (Kennedy, J., concurring) (argument that jury’s role would be diminished by polygraph evidence “demeans and mistakes the role and competence of jurors in deciding the factual question of guilt or innocence.”).

CONCLUSION

When the liberty of individuals is at stake, “[s]tate evidentiary rules may so seriously impede the discovery of truth, as well as the doing of justice, that they preclude the meaningful opportunity to present a complete defense that is guaranteed by the Constitution.”¹⁹ Any interpretation of the Utah Rules of Evidence that categorically bars admission of exculpatory evidence “preclude[s] the meaningful opportunity to present a complete defense” that is guaranteed by the United States and Utah Constitutions. Mark Franklin and Rose Chilcoat must be allowed to present evidence that Franklin passed a polygraph in this case to defend themselves in the manner the state and federal constitutions demand.

DATED this 26th day of April, 2018.

/s/ Jon D. Williams

Jon D. Williams

Attorney for Mark Franklin

/s/ Paul G. Cassell

Paul G. Cassell

Attorney for Mark Franklin

¹⁹ *United States v. Scheffer*, 523 U.S. 303, 329 (Stevens, J., dissenting) (citations and internal quotations omitted).

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April 2018, a true and correct copy of the foregoing *Motion to Admit Polygraph Results and Motion for Rimmasch Hearing* was electronically filed with the Court using the e-filing system, which sent notification of such filing to the following:

San Juan County Attorney

/s/ Jon D. Williams

REPORT OF POLYGRAPH EXAMINATION

To: Jon Williams
Re: Polygraph Examination of Mark Franklin given 12/04/2017
Report # 17-093
From: Vern Peterson
Date: December 7, 2017

On 12/04/2017, a polygraph examination was given to Mark Franklin, the purpose of the examination was to determine if the subject was involved, had knowledge of, or knew who did commit the offense in the reports that you furnished for the examination (17-093).

Prior to conducting the polygraph examination, the polygraph instrument and procedure was explained to the subject. Mark Franklin indicated an understanding of the procedure and cooperated with the examiner. The technique used in this procedure is referred to as a zone of comparison test, utilizing control questions and relevant issue questions.

The following relevant issue questions were used on the polygraph examination:

- Question 39: Regarding if you knew by closing that gate it would cause problems, do you intend to answer truthfully each question about that? ANSWER: YES
- Question 33: Did you know that by shutting that green gate at the corral that the cows could not get to water? ANSWER: NO
- Question 35: Did you know the cows could not get to water when you closed the gate at that corral? ANSWER: NO

A numerical system is used in evaluating polygraph charts, an aggregate score of -5 to +5 is deemed an inconclusive test and no opinion of truth or deception is given by the examiner. A score of +6 or greater is a truthful polygraph result. A score of -6 or greater is a deceptive polygraph result.

The aggregate score of the polygraph test for Mark Franklin is +6 or greater indicating Truthful.

It is the final opinion of Vern Peterson, that Mark Franklin is Truthful when Mark Franklin answers the questions about the reported incident.

Vern Peterson
Vern Peterson

VERNON J. PETERSON

OBJECTIVE

To provide true and accurate polygraph results without prejudice

SUMMARY OF QUALIFICATIONS

Accredited member in good standing with:

APA: American Polygraph Association

APPA: American Police Polygraph Association

NAPA: National American Polygraph Association

Certified PCSOT: Post Conviction Sex Offender Tester since 1995

Licensed examiner in Utah since 1990 / License Number 307956-6402

EXPERIENCE

1977-2004 West Jordan Police Department, West Jordan, Utah

Sergeant for 25 years

Sergeant of investigations - 13 years

Sergeant of crime scene techs and evidence - 3 years

Sergeant of patrol - 9 years

1990-2004 Polygraph examiner in law enforcement

Over 1,000 polygraphs conducted since 1990

EDUCATION

1990 Baxter School of Lie Detection San Diego, California

Keeping license current requires 32 hours of yearly extended polygraph training

CURRENT POSITION

Private Polygraph Examiner since 1994

Provided polygraphs for various police departments and State agencies including Sandy Police Department, South Jordan Police and Fire Department, Department of Professional Licensing (DOPL), Woods Cross Police Department, West Jordan Police Department, and Midvale Police Department. Polygraph tests have been administered in both investigations and pre-employment screenings.

REFERENCES

Virgil Johnson, Polygraph Examiner 801-560-5824

Mark K. Franklin 17-093 12-4-17 Jon Williams Series 1 Chart 1

Subject: Mark Franklin

Examiner:

Date: 12/4/2017 View Size: 100%

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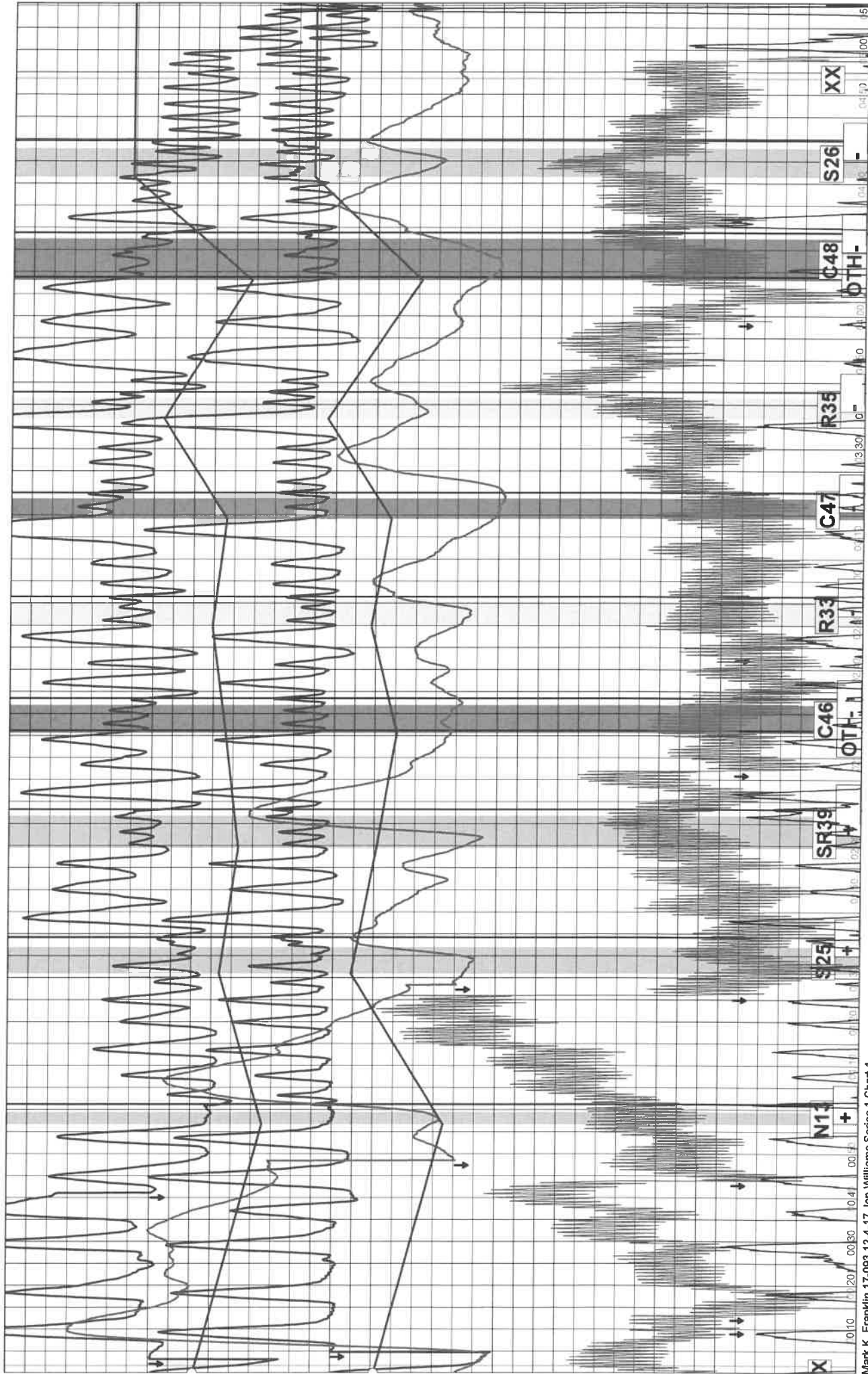
Cuff Pressure Start: 70 End: 77

Mark Franklin (Zone)

Gain Settings:	P2	P1	EM	CA	AU	A1	R2	R1
Recorded: Start	1.5	3.0	2.5	3.0	—	5.0	1.0	1.0
Recorded: End	1.5	3.0	2.5	3.0	—	5.0	1.0	1.0
Printed: Start	1.5	3.0	2.5	3.0	—	5.0	1.0	1.0
Printed: End	1.5	3.0	2.5	3.0	—	5.0	1.0	1.0

Recorded Electrodermal: Manual (0% downward excursion removed)

Printed Electrodermal: Manual (0% downward excursion removed)



ID	ER	Text	Series Type: Zone
N13	Y	Do some of your friends call you Mark?	
S25	Y	Do you believe me when I promise you I will not ask a question we have not gone over word for word?	
SR39	Y	Regarding if you knew by closing that gate it would cause problems ,do you intend to answer truthfully each question about that?	
C46	N	OT-In the last 5 years have you lied to someone who loved and trusted you ? wife, mother	
R33	N	Did you know that by shutting that green gate at the corral that the cows could not get to water?	
C47	N	In the last 10 years have you lied to someone in authority over you?	
R35	N	Did you know the cows could not get to water when you closed the gate at that corral?	
C48	N	OT-In the first 40 years of your life did you ever think about damaging another persons property?key locks officers	
S26	N	Even though I promised you I would not. are you afraid I'll ask a question we have not gone over word for word?	

Mark K. Franklin 17-093 12-4-17 Jon Williams Series 1 Chart 2

Subject: Mark Franklin

Examiner:

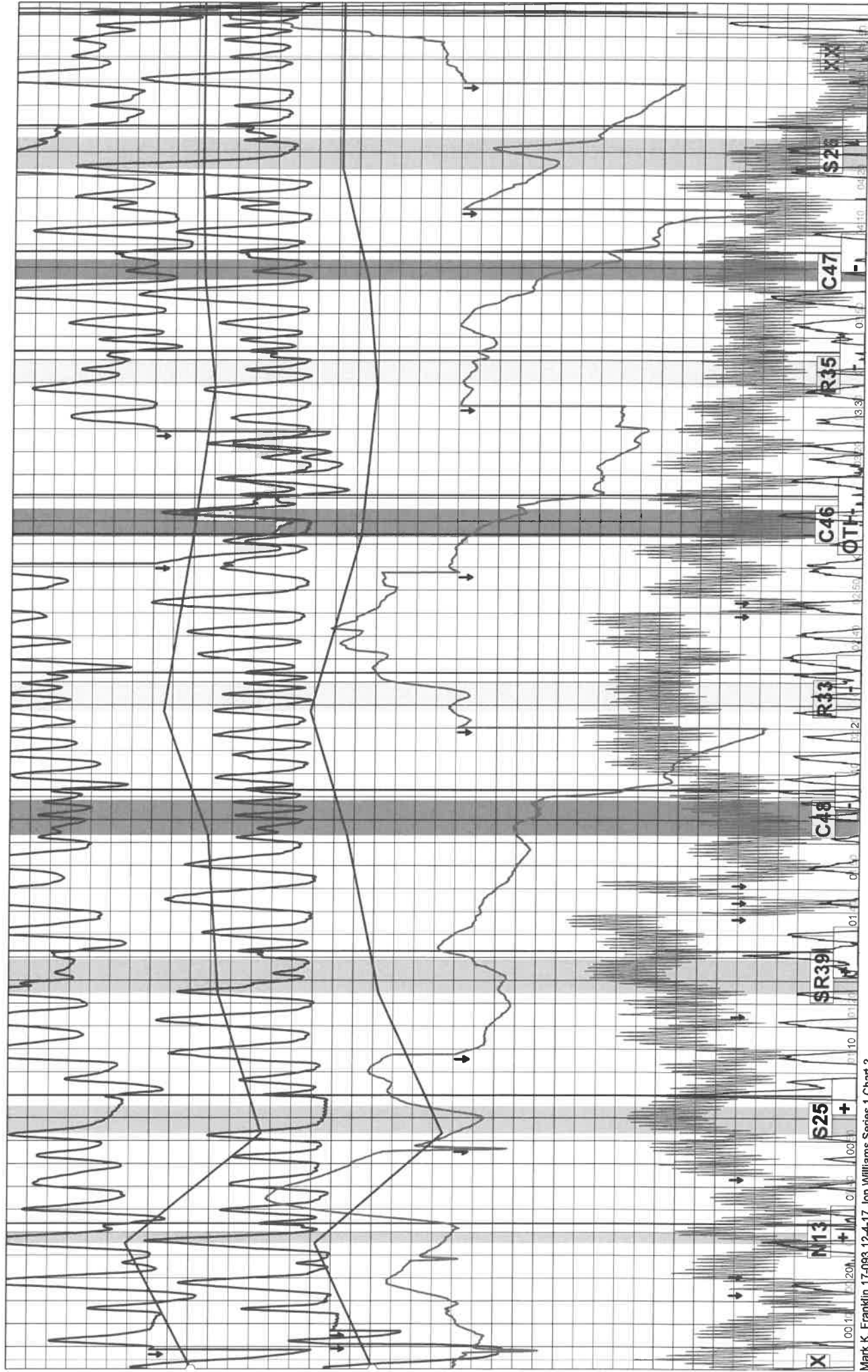
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Cuff Pressure Start: 66 End: 65

Mark Franklin (Zone)

Gain Settings:	P2	P1	EM	CA	AU	A1	R2	R1
Recorded: Start	1.5	3.0	2.5	3.5	—	5.0	1.0	1.0
Recorded: End	1.5	3.0	2.5	3.5	—	5.0	1.0	1.0
Printed: Start	1.5	3.0	2.5	3.5	—	5.0	1.0	1.0
Printed: End	1.5	3.0	2.5	3.5	—	5.0	1.0	1.0
Recorded Electrodermal: Manual (0% downward excursion removed)								
Printed Electrodermal: Manual (0% downward excursion removed)								



ID	ER	Text	Series Type: Zone
N13	Y	Do some of your friends call you Mark?	
S25	Y	Do you believe me when I promise you I will not ask a question we have not gone over word for word?	
SR39	Y	Regarding if you knew by closing that gate it would cause problems ,do you intend to answer truthfully each question about that?	
C48	N	OT-In the first 40 years of your life did you ever think about damaging another persons property?key locks officers	
R33	N	Did you know that by shutting that green gate at the corral that the cows could not get to water?	
C46	N	OT-In the last 5 years have you lied to someone who loved and trusted you ? wife, mother	
R35	N	Did you know the cows could not get to water when you closed the gate at that corral?	
C47	N	In the last 10 years have you lied to someone in authority over you?	
S26	N	Even though I promised you I would not, are you afraid I'll ask a question we have not gone over word for word?	

Mark K. Franklin 17-093 12-4-17 Jon Williams Series 1 Chart 3

Subject: Mark Franklin

Examiner:

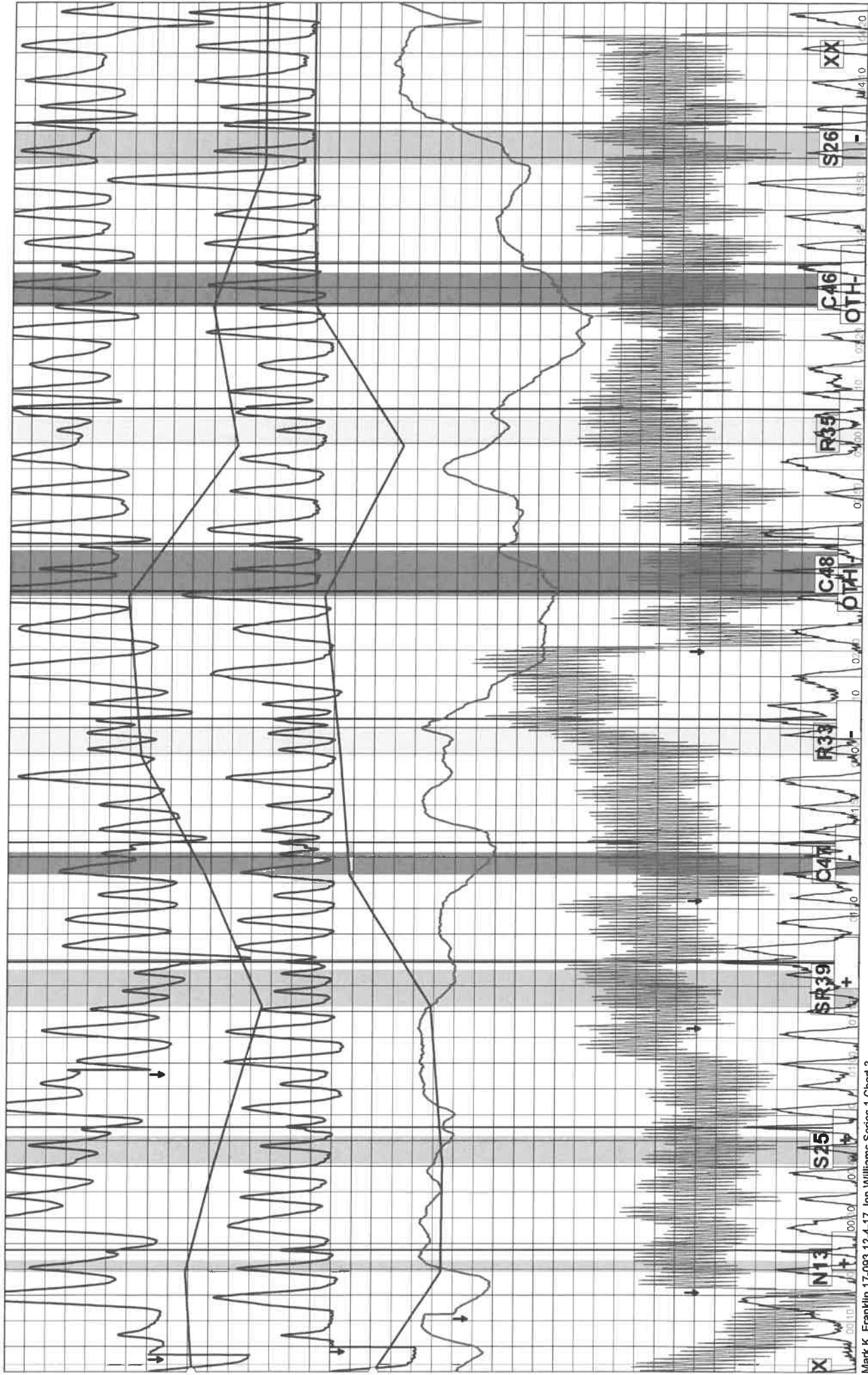
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Cuff Pressure Start: 73 End: 74

Mark Franklin (Zone)

Gain Settings:	P2	P1	EM	CA	AU	A1	R2	R1
Recorded: Start	1.5	3.0	2.5	3.5	—	5.0	1.0	1.0
Recorded: End	1.5	3.0	2.5	3.5	—	5.0	1.0	1.0
Printed: Start	1.5	3.0	2.5	3.5	—	5.0	1.0	1.0
Printed: End	1.5	3.0	2.5	3.5	—	5.0	1.0	1.0
Recorded Electrodermal: Manual (0% downward excursion removed)								
Printed Electrodermal: Manual (0% downward excursion removed)								



ID	ER	Text	Series Type: Zone
N13	Y	Do some of your friends call you Mark?	
S25	Y	Do you believe me when I promise you I will not ask a question we have not gone over word for word?	
SR39	Y	Regarding if you knew by closing that gate it would cause problems ,do you intend to answer truthfully each question about that?	
C47	N	In the last 10 years have you lied to someone in authority over you?	
R33	N	Did you know that by shutting that green gate at the corral that the cows could not get to water?	
C48	N	OT-In the first 40 years of your life did you ever think about damaging another persons property?key locks officers	
R35	N	Did you know the cows could not get to water when you closed the gate at that corral?	
C46	N	OT-In the last 5 years have you lied to someone who loved and trusted you ? wife, mother	
S26	N	Even though I promised you I would not, are you afraid I'll ask a question we have not gone over word for word?	