From Innocent to Guiltyâ€"In the Blink of an Eye?

Contributed by John Browning
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The average length of the blink of an eye lasts no more than 300 to 400 milliseconds. The typical individual blinks around 10 times in a minute’s span, depending on external stimuli. Yet as fleeting an act as it may be, the blink of an eye may decide the fate of 33 year-old accused murderer Ricardo Woods.

Woods has been charged with fatally shooting 35 year-old David Chandler on October 28, 2010. Chandler was sitting in the passenger seat of a car at an intersection in Cincinnati, when he was shot in the head and neck. Despite two surgeries, Chandler was paralyzed; he lived for two more weeks before dying on November 12, 2010. Because of his injuries, he could only communicate by blinking. But that didn’t stop police from interviewing him the same day he was shot.

Police brought a priest, the Rev. Phillip Sehr, into Chandler’s hospital room to administer last rites. They also videotaped their in-hospital questioning of Chandler, asking him to blink three times for “yes,” and twice for “no” in response to each question. According to prosecutors, Chandler knew Ricardo Woods from having been involved in drug deals with him. Hooked up to a ventilator, Chandler allegedly was shown just one photo—a photo of Woods—and purportedly identified “O” (Woods’ street name) with a series of blinks. According to prosecutors, the videotaped session showing Chandler’s blinking identification should be admissible as evidence because, even though only one photo was shown to the victim instead of a whole lineup, Chandler was well-acquainted with Woods and the identification came soon after the shooting. In addition, having been administered the last rites, Chandler believed that his death was imminent; in that event, under the rules of evidence, the dead man’s “testimony” could be used during trial as what is known as a “dying declaration.”

But Woods’ criminal defense attorney, Kory Jackson, disputes the blinking “testimony” and maintains it shouldn’t be allowed as evidence. According to Jackson, the blinks are inconsistent, and there are flaws in the interpretation of these blinks. He says “In lots of responses, he isn’t answering correctly. He either doesn’t blink or blinks too many times.” In addition, Jackson believes that Chandler’s condition at the time and the medications that were used to treat him could have impacted the man’s ability to comprehend and respond to the officers’ questions.

However, Hamilton County Common Pleas Judge Beth Myers rejected Jackson’s arguments. After reviewing the video of the questioning, Judge Myers ruled that Chandler’s “pronounced, exaggerated” eye movements were reliable evidence. She found that “the identification is reliable and there is not a substantial likelihood of misidentification.” With that decision, Woods’ trial was set to go forward in mid-November 2011, but just as the trial was about to start, it was delayed for unknown reasons. The trial has not yet occurred.

When the trial does proceed, will it be fair for a jury to be swayed by the video of the deceased identifying his killer by blinking? Murderers have been convicted on the basis of “ear witness testimony” and even a victim’s bloody scrawl of his killer’s name. While this blinking “testimony” may give new meaning to the term “eyewitness,” perhaps there is something to defense lawyer Jackson’s protests. After all, the reflexes of blinking are controlled by multiple muscles in the upper and lower eyelid (muscles that are not only important to blinking, but to other functions as well, like squinting or winking). Could Chandler’s injuries and the medications he was on have affected his blinking, despite Judge Myers’ belief that the eye movements were “pronounced” enough to constitute a reliable identification? Jackson points out that the interpretations of the blinks were inconsistent, with Judge Myers disagreeing with how the detectives interpreted at least 2 of the blinks.

Jurors will eventually get to watch the videotaped interview, and they will decide for themselves what meaning to attribute to a dying man’s blinking eyes. And when they decide, Ricardo Woods may go from innocent to guilty—in the blink of an eye.