

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2004

STATE OF FLORIDA,

\*\*

Petitioner,

\*\*

CASE NOS. 3D03-2971  
3D03-2972

\*\*

vs.

\*\*

NARVAL HARDWARE and  
JUAN FERREIRO,

\*\*

LOWER TRIBUNAL  
CASE NOS. 02-1068  
03-12974

Respondents.

\*\*

Opinion filed February 11, 2004.

A Writ of Certiorari to the Circuit Court for Miami-Dade  
County, Daryl E. Trawick, Judge.

Charles J. Crist, Jr., Attorney General and Linda S. Katz,  
Assistant Attorney General, for petitioner.

Bennett H. Brummer, Public Defender, and Marti Rothenberg,  
Assistant Public Defender, for respondents.

Before GERSTEN, FLETCHER, and SHEPHERD, JJ.

FLETCHER, Judge.

The state seeks certiorari review of two trial court orders

setting a Frye<sup>1</sup> evidentiary hearing to assist the trial court in determining the admissibility into evidence of polygraph ("lie detector") test results. We quash the two trial court orders.

In Davis v. State, 520 So. 2d 572, 573-74 (Fla. 1988) the supreme court stated:

"The courts of this state have repeatedly held that the factors contributing to the results of a polygraph test - the skill of the operator, the emotional state of the person tested, the fallibility of the machine, and the lack of a specific quantitative relationship between physiological and emotional states - are such that the polygraph cannot be recognized as a sufficiently reliable or valid instrument to warrant its use in judicial proceedings unless both sides agree to its use."

The Fourth District Court of Appeal was presented in State v. Santiago, 679 So. 2d 861 (Fla. 4<sup>th</sup> DCA 1996) with a trial court ruling that polygraph results favorable to the defendant would be admitted into evidence at trial. The Fourth District Court stated, at 862:

"We grant the state's petition for certiorari because our supreme court has held that polygraph tests are inadmissible as a matter of law."

Although the Fourth District Court certified the question,<sup>2</sup> the

---

<sup>1</sup>  
Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

<sup>2</sup>  
The question certified was: "Are the results of polygraph tests inadmissible in evidence as a matter of law?"

defendant did not attempt to carry the case any further.

Similarly to the Fourth District Court, we grant the state's petition for certiorari and quash the orders entered below. We also certify the following question:

ARE THE RESULTS OF POLYGRAPH TESTS  
INADMISSIBLE IN EVIDENCE AS A MATTER OF LAW OR  
ARE POLYGRAPH TESTS SUBJECT TO THE FRYE TEST?