

04/03/02 "See News Release 028 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

NO. 2001-C-2466

JOHNNY M. EVANS, SR.

VS.

DERIDDER MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD

WEIMER, J., concurring.

I concur with the majority opinion, but note the well written and thorough opinion of Judge Woodard which found the polygraph test results inadmissible.

Evans v. DeRidder Municipal Fire & Police Civil Service Board, 01-0118

(La.App. 3 Cir. 6/27/01), 789 So.2d 752, writ granted, 01-2466 (La. 12/14/01), 803

So.2d 977. I am persuaded to concur because a law enforcement officer can be terminated from employment for failure to submit to a polygraph test. See

Creadeur v. Department of Public Safety, Division of State Police, 364 So.2d

155 (La.App. 1 Cir. 1978), and cases cited therein. It logically follows that the

appointing authority can consider termination based on the officer's failing the

polygraph test. It would be incongruous to then rule that one could not introduce

evidence used in helping make the determination to terminate the officer's

employment.

Nevertheless, the determination of who is telling the truth is a sacred determination. The polygraph test is merely a tool to assist the fact finder. Fact finders must be wary not to abdicate the responsibility for determining the truth to a machine or to the expert who operates the machine.

Further, I note that in **Creadeur**--a case cited by the majority--the appellate court held that as a general rule a police officer may be required to take a polygraph

or similar test where the request is reasonable and bears sound relationship to police work, lawful departmental policy or interdepartmental matters. However, in **Credeur**, the court cautioned that the general rule is not unqualified and is subject to the exception that one is not required to submit to an order to take a polygraph test which is unreasonable or when a legitimate reason exists for refusal to obey such an order. *Id.* at 157. See also, **Jackson v. Department of Health and Hospitals, Office for Citizens with Developmental Disabilities**, 98-2772, p. 8 (La.App. 1 Cir. 2/18/2000), 752 So.2d 357, 363.

Certainly, in the instant case, the reasonableness criteria noted in **Credeur** is satisfied.

I also note that Officer Evans testified and the fact finder had the opportunity to evaluate his credibility.