

**[J-99-2005]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 5 WAP 2005
	:	
Appellee,	:	Appeal from the Order of the Superior
	:	Court entered July 8, 2004 at No.
	:	178WDA2002, reversing the Order of the
	:	Court of Common Pleas of Jefferson
v.	:	County entered November 14, 2001 at No.
	:	573-1999Cr.
	:	
SPEER RUEY,	:	
	:	
Appellant.	:	ARGUED: September 14, 2005

**CONCURRING OPINION**

**MR. JUSTICE CASTILLE**

**DECIDED: March 6, 2006**

I join Mr. Justice Saylor’s Concurring Opinion.<sup>1</sup> I write separately only to address the Lead Opinion’s apparent approval of the notion that warrant affidavits must include specific averments indicating the basis for crediting information provided by third party sources, such as the emergency medical technicians at the scene in the case *sub judice*, before the information from those sources can be considered in the assessment of probable cause. The Lead Opinion notes that the supposed defect in the first warrant affidavit consisted in

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<sup>1</sup> I believe the question of whether the averments made to the district justice (either written in the affidavit or through oral representations) were sufficient to establish a belief, be it through common sense or otherwise, that evidence of a crime would likely be found at UPMC is extremely close. Ultimately, and particularly given the Commonwealth’s concession of this point, I am persuaded by Mr. Justice Saylor’s view; it appears there was a “missing link” in the affidavit on this point.

the fact that Trooper Bryan failed to include any information proving the reliability or credibility of the E.M.S. personnel who responded to the accident scene and described to the Trooper what they had seen. See Opinion Announcing the Judgement of the Court (OAJC) slip op. at 4, 10, 12. At one point, the Lead Opinion suggests that such information “arguably” is required under Pennsylvania law and/or under the Rules of Criminal Procedure. Id. at 13-15. I do not believe that such averments are required where, as here, identified citizens are the source of the challenged information.

The E.M.S. personnel who responded to the scene of the accident in this case were all identified by name in the warrant affidavit, and the factual information each provided to police was individually and specifically set forth. This fact, in my view, clearly removes this case from any residual Aguilar/Spinelli<sup>2</sup> need to offer independent proof of reliability and/or credibility. I have written in the past that, when considering the sufficiency of a warrant affidavit, it is important to distinguish between citizen witnesses who provide information to police on one hand, and confidential informants or anonymous sources on the other hand. I noted that the reasons to question the reliability of the latter sources do not apply in the case of citizen witnesses:

At the other end of the reliability continuum, this Court has acknowledged that the citizen witness who reports a crime is *presumptively* trustworthy. Commonwealth v. Weidenmoyer, 518 Pa. 2, 9-10, 539 A.2d 1291, 1295 (1988). This is so because a citizen informer:

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<sup>2</sup> Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969). The Aguilar/Spinelli approach required that a warrant “pass two specific tests, under which the issuing authority had to be able to see, on the face of the affidavit of probable cause, both the informant’s basis for his knowledge and independent facts showing the reliability of the informant.” Commonwealth v. Gray, 503 A.2d 921, 924 (Pa. 1985). The United States Supreme Court replaced the Aguilar/Spinelli test with a totality of the circumstances test in Illinois v. Gates, 462 U.S. 213 (1983). This Court adopted the Gates test for probable cause as a matter of state constitutional law in Gray.

[A]cts with an intent to aid the police in law enforcement because of his concern for society or for his own personal safety. He does not expect any gain or concession in exchange for his information. An informer of this type usually would not have more than one opportunity to supply information to the police, thereby precluding proof of his reliability by pointing to previous accurate information which he has supplied.

Id. at 10, 539 A.2d at 1295 (citations omitted). Thus, "when an average citizen tenders information to the police, the police should be permitted to assume that they are dealing with a credible person in the absence of special circumstances suggesting that such might not be the case." Commonwealth v. Sudler, 496 Pa. 295, 305, 436 A.2d 1376, 1381 (1981) (*quoting* W. LaFave, Search and Seizure § 3.4(a) at 592 (1978)).

Commonwealth v. Torres, 764 A.2d 532,546-47(Pa. 2001) (Castille, J., concurring and dissenting) (emphasis original). Thus, in my view, the issuing authority in this case, who was charged with viewing the affidavit in a common sense fashion, could properly assume the reliability of the information provided by the E.M.S. personnel. To the extent the Lead Opinion suggests that more is required, either by Article I § 8 of the Pennsylvania Constitution or by Pa.R.Crim.P. 206, I respectfully disagree.<sup>3</sup>

Messrs. Justice Saylor and Eakin join this opinion.

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<sup>3</sup> I also respectfully distance myself from the Lead Opinion's *dicta* concerning Commonwealth v. Edmunds, 586 A.2d 887 (Pa. 1991). OAJC slip op. at 15-16. There is no issue presented concerning the Edmunds Court's rejection of the good faith exception.