[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
v.	:	Court of Common Pleas of Jefferson
	:	County entered November 14, 2001 at No.
	:	573-1999Cr.
SPEER RUEY,	:	
	:	854 A.2d 560 (Pa. Super. Ct. 2004)
Appellant	:	
	:	ARGUED: September 14, 2005
	:	

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY **DECIDED: MARCH 6, 2006**

I must respectfully dissent. The Lead Opinion affirms the order of the Superior Court. Yet, it does not do so on the basis put forward by the Commonwealth, namely, that "the second warrant application, which Trooper Allen prepared, saves Appellant's BAC test results from suppression" as Trooper Allen's affidavit constitutes an "independent source". See Majority at 8. Rather, the Lead Opinion affirms the order of the Superior Court on the basis that the original warrant was constitutionally sound. I am baffled by this reasoning. As noted by the Lead Opinion, the Commonwealth expressly conceded that the first warrant, which was obtained pursuant to Trooper Bryan's affidavit, was faulty. See Lead Opinion at 10. The Commonwealth has not raised the issue before this court that the first warrant was valid, and did not do so before the Superior Court. As I believe it is

jurisprudentially unsound to turn the resolution of this case on an issue which has been expressly waived by the Commonwealth, I am constrained to dissent.

Additionally, I feel compelled to respond to the concurring opinion authored by my learned colleague Mr. Justice Saylor. In that concurring opinion, Mr. Justice Saylor suggests adopting a new test which would save the evidence in question from suppression. He believes this test to be a "facet of our independent source doctrine[,]" id. at 4, even though his test has no requirement that there be, in fact, an independent source. Furthermore, while the good faith of the police figures prominently in this new test, my colleague confidently states that this test does not "conflict with this Court's decisions eschewing a generalized good faith exception to the exclusionary rule." Commonwealth v. Ruey, J-99-2005, Saylor C.O. at 4 n. 3 (citing Commonwealth v. Edmunds, 586 A.2d 887, 905-06 (Pa. 1991)).

This new test sanitizes improperly seized evidence via an "independent source" exception even though there is no independent source; it grants a pass (or "do over") to the Commonwealth where the Commonwealth concededly violates the rights of an accused and yet did so in good faith. Both of these concepts are squarely at odds with our case law. See Commonwealth v. Melendez, 676 A.2d 226, 231 (Pa. 1996) (citation and italics omitted) (requiring that the independent source doctrine may be applied only in those instances where the allegedly independent source is "truly independent from both the tainted evidence and the police or investigative team which engaged in the misconduct by which the tainted evidence was discovered"); Edmunds, 586 A.2d at 905-06 (our Commonwealth's constitution does not recognize a good faith exception to the exclusionary rule). The concurrence's protestations that its test is consistent with our existing case law ring hollow.