

**[J-115-2006]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

RONALD D'ALESSANDRO,	:	No. 131 MAP 2005
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court dated June 24,
v.	:	2005, at No. 2195 C.D. 2004, reversing
	:	the decision of the Administrative Law
	:	Judge of the Office of Attorney General
	:	dated September 16, 2004, at No.
PENNSYLVANIA STATE POLICE,	:	FAD00514.
	:	
Appellant	:	878 A.2d 133 (Pa. Cmwlth. 2005)
	:	
	:	ARGUED: September 13, 2006

**DISSENTING OPINION**

**MR. CHIEF JUSTICE CAPPY**

**DECIDED: November 21, 2007**

I respectfully dissent as I do not agree that the police officer's report indicating that Appellee had hit "his live-in girlfriend" was a "fact" within the public record exception to the hearsay rule provided by the Judicial Code, 42 Pa.C.S. § 6101 *et seq.* Additionally, as the majority notes, the Pennsylvania Rules of Evidence do not incorporate a "public records" exception to the hearsay rule.<sup>1</sup> Therefore, the only "public records" exception is that contained in Sections 6103 and 6104 of the Judicial Code.

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<sup>1</sup> For this reason, I also distance myself from the Majority's discussion of the applicability of the rules of evidence in the administrative agency setting. See Majority Opinion at 10-11. I agree with the Commonwealth Court's observation that in this case, the court is not confronted with a question involving the applicability of the rules of evidence, but a question of the applicability of a statute defining public records. D'Alessandro, 878 A.2d 133, 140 n. (continued...)

Section 6104(b) states that evidence shall be admissible when “a copy of a record authenticated as provided in section 6103 disclosing the existence or nonexistence of facts which have been recorded pursuant to an official duty or would have been so recorded had the facts existed shall be admissible as evidence of the existence or nonexistence of such facts, unless the sources of information or other circumstances indicate lack of trustworthiness.” The plain language of Section 6104(b) makes clear that the section applies only to the “existence of facts.” 42 Pa.C.S. § 6104(b). Indeed, the Comment to Pa.R.E. 803(8), which explains that Pennsylvania has not adopted the federal public records analog, states that the exception to the hearsay rule for public records is contained in Section 6104. It then states unequivocally that “[Section 6104] is limited to ‘facts.’ It does not include opinions or diagnosis.”

A “fact” is defined as a “thing that is known to have occurred, to exist, or to be true.” Oxford American Dictionary and Language Guide, 344 (ed. 1999). Therefore, in this case, the question is simply whether the reporting officer **knew** that the victim was Appellee’s “live-in girlfriend” at the time he made the report. I can only conclude that he did not.

The relevant portion of the police report states that “Actor met us at the door and stated that he had called the medics because he hit the victim, his live-in girlfriend, knocking her to the floor, and that she was unconscious.” See Record at Appendix I.

The officer may have **speculated** that the girlfriend was a “live-in” based upon the scene when he arrived. Furthermore, the officer may have even **inferred** this conclusion by the fact that the victim’s and Appellee’s addresses were the same. Nevertheless, speculation and inference do not amount to “fact.” Presumably, the police officer formed an opinion that the victim was Appellee’s “live-in girlfriend.” Opinion, however, also does not

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(...continued)

2 (Pa. Cmwlth. 2005). Accordingly, it is clear that Sections 6103 and 6104 apply to this case.

equal fact. See Comment to Pa.R.E. 803(8). Indeed, as noted by the court below the mere duplication of addresses does not justify a conclusion regarding any sexual relationship between the parties, much less one of cohabitation. See D'Alessandro, 878 A.2d at 141.

In my mind, this court should look no further than the conclusion of the Commonwealth Court,

Merely because a police report is admitted into evidence does not make admissible every statement contained therein. Rather, only those facts recorded pursuant to the official duty involved at that time and only those which indicate a trustworthy source of the facts recalled are admissible. Because it is not clear that it was an official duty of the police officer investigating the assault to make the factual determination of whether or not Petitioner and the victim cohabitated, we must conclude that the facts in the Police Report are not admissible under 42 Pa.C.S. § 6104(b) for the purpose of attempting to establish whether or not Petitioner and the victim cohabitated.

Id. at 141-142.

For these reasons, I respectfully dissent.

Madame Justice Baldwin joins this dissenting opinion.