

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 797 MAL 2006
	:	
Petitioner	:	
	:	
v.	:	Petition for Allowance of Appeal from the
	:	Memorandum and Order of the Superior
	:	Court entered August 22, 2006 at No. 89
	:	EDA 2005, affirming the Order of the
	:	Court of Common Pleas of Delaware
MICHAEL FITHIAN,	:	County entered December 6, 2004 at No.
	:	4110 of 2003.
Respondent	:	

ORDER

PER CURIAM:

DECIDED: May 2, 2007

The Petition for Allowance of Appeal is **GRANTED**. The case is **REMANDED** to the Superior Court. The Superior Court is to consider Commonwealth v. Nolan, 855 A.2d 834, 839 n.7 (Pa. 2004). Jurisdiction relinquished.

Mr. Justice Saylor files a Dissenting Statement.