

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

COMMONWEALTH OF PENNSYLVANIA,	:	No. 4 WAP 2006
	:	
Appellant	:	Appeal from the Order of the Court of
	:	Common Pleas of Erie County entered
v.	:	February 9, 2006 at No. CP-25-CR-
	:	0003458-2005.
	:	
	:	
JUSTIN C. BINNEY,	:	
	:	
Appellee	:	

**ORDER**

**PER CURIAM**

**AND NOW**, this 18th day of March, 2008, the order of the Erie County Court of Common Pleas is reversed insofar as it declared Section 3802 of the Vehicle Code, 75 Pa.C.S. §3802, unconstitutional, and the case is remanded for further proceedings. This Court upheld the constitutionality of Sections 3802(a)(2) and 3802(c) in Commonwealth v. Duda, 592 Pa. 164, 923 A.2d 1138 (2007), and Commonwealth v. Finchio, 592 Pa. 577, 926 A.2d 968 (2007), respectively. Although Appellee was charged under Section 3802(b), this Court explained in Finchio that “[t]he difference in the statutory BAC threshold is immaterial to the analysis employed in Duda.” Finchio, 592 Pa. at 581, 926 A.2d at 971. The Commonwealth’s application for relief is dismissed as moot.