

**[J-23-2006]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 40 EAP 2005
	:	
Appellant	:	Appeal from the Judgment of the Superior
	:	Court entered September 20, 2004 at No.
	:	3424 EDA 2003 vacating the Judgment of
v.	:	Sentence entered October 30, 2003 in the
	:	Court of Common Pleas of Philadelphia
	:	County at No. 9903-1100 1/1.
RAHEEM WHITMORE,	:	
	:	
Appellee	:	
	:	SUBMITTED: January 19, 2006
	:	
	:	
	:	

**CONCURRING OPINION**

**MR. CHIEF JUSTICE CAPPY**

**DECIDED: December 29, 2006**

I join with the decision of the majority. I write separately as I find it remarkable that we would afford the judge in this case the opportunity to further develop the record concerning the request for recusal when we refused to extend that same courtesy to Judge Hughes in Commonwealth v. White, \_\_\_ A.2d \_\_\_ (Pa. 2006) (Cappy, C.J., dissenting). I recognize that the case before us today is distinct, in that here the trial judge was given no opportunity, even orally, to respond to the allegations of bias. But I find it incongruous that the majority states that one of its reasons to remand today is to allow the judge to develop a written record when we declined to do so in White.