IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**No. 99-10,742**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
JAMES LETA,	:	
Defendant	:	**Motion in Limine**

O R D E R

AND NOW, this 3rd day of December, 1999, the Court DENIES the defendant's Motion in Limine. The Court finds that the Commonwealth is not required to present expert testimony since a blood alcohol content (BAC) of .10% or greater is sufficient to establish a prima facie case. 75 Pa.C.S.A. §3731(a.1); Commonwealth v. Yarger, 538 Pa. 329, 648 A.2d 529 (1994). The Court also rejects the defendant's argument that §3731(a.1) is unconstitutional. The Court believes this statutory provision merely codified the Pennsylvania Supreme Court's holding in Yarger that "once the Commonwealth has established that the driver's blood alcohol content reflects an amount above .10%, the Commonwealth has made a prima facie case under 75 Pa.C.S. §3731(a)(4)." 648 A.2d at 531. Although the Pennsylvania Supreme Court found §3731(1)(5) unconstitutional in Commonwealth v. Barud, the Court believes Barud is distinguishable. Under §3731(a)(5), a driver could only rebut his blood alcohol content by introducing evidence that he consumed alcohol after driving; he could not rebut it by in introducing other evidence, such an expert testimony that his blood alcohol content was below .10% while he was driving, as can be done under §3731(a.1).

By The Court,

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Kenneth D. Brown, J.

cc: District Attorney
Marc Lovecchio, Esquire
Work File