

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>: No. 99-10,612</b>
	<b>:</b>
	<b>:</b>
<b>vs.</b>	<b>: CRIMINAL</b>
	<b>:</b>
<b>MICHAEL LYONS,</b>	<b>: Motion for Extraordinary</b>
<b>Defendant</b>	<b>: Relief</b>

**ORDER**

**AND NOW**, this     day of May, 2000, the Court DENIES the defendant's Pre-Sentence Motion for Extraordinary Relief. The Court does not believe that presenting expert testimony in a DUI case automatically negates or rebuts the Commonwealth's prima facie case based on a blood alcohol content (BAC) of .10 or greater and requires the Commonwealth to present expert testimony or suffer a judgment of acquittal. If that were the case, the decisions of the appellate courts would state that the Commonwealth shall or must present expert testimony in response to the defendant's expert instead of using words such as may or permitted. See Commonwealth v. Yarger, 538 Pa. 329, 648 A.2d 529, 531 (1994); Commonwealth v. Zugay, 745 A.2d 639, 650 (Pa.Super. 2000). The Court finds that a defendant's introduction of expert testimony either: (1) creates a credibility question for the jury to decide whether to accept the expert testimony; or (2) can be rebutted by evidence other than expert testimony such as evidence that contradicts the facts which form the basis of the expert's opinion. In this case, there were several reasons the jury could have rejected the testimony of the defendant's expert including, but not limited to, inconsistencies in the expert's testimony and inconsistencies between the defendant's statements to the police and his testimony at trial regarding the amount he

drank on the date in question. Therefore, under the facts and circumstances of this case, the Court does not believe it was erroneous to give the jury a prima facie instruction.

By The Court,

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Kenneth D. Brown, J.

cc: District Attorney  
William Miele, Esquire (PD)  
Work file