

[COA Opinion: Defendant Had Reasonable Opportunity to Have an Independent Chemical Test Performed on His Blood Sample When the State Police Crime Lab Retained the Sample for Nearly Six Months After Defendant Was Charged](#)

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After holding that a circuit court has jurisdiction to try a defendant on a misdemeanor charge when the accompanying felony charge is dismissed before the beginning of trial, the Michigan Supreme Court remanded *People v Reid* to the Court of Appeals. The Court of Appeals affirmed defendant's OWI conviction.

On remand, the Court of Appeals addressed five arguments raised by defendant. Defendant first argued that the trial court should have suppressed the results of his blood alcohol test because he was denied a reasonable opportunity to have an independent chemical test performed on the sample as required by MCL 257.625a(6). The Court of Appeals determined that defendant had more than ample opportunity to have his blood sample independently tested. Defendant's blood was drawn on November 13, 2005 and the sample was not destroyed until February 2008. Even though defendant was not charged until August 3, 2007, defendant still had six months before the blood sample was destroyed to have it independently tested.

Similarly, the Court was not persuaded by defendant's second argument that the two year delay in charging him violated his right to due process. For a defendant to be entitled to dismissal on this basis, he must show that the delay caused an "actual and substantial prejudice to the defendant's right to a fair trial and an intent by the prosecution to gain a tactical advantage." *People v Crear*, 242 Mich App 158, 166; 618 NW2d 91 (2000), overruled in part on other grounds *People v Miller*, 482 Mich 540; 759 NW2d 850 (2008). With regard to the first prong, defendant argued that he was prejudiced because he was unable to obtain an independent test of the blood sample. The Court rejected this argument based on its conclusion that defendant did indeed have a reasonable opportunity to have an independent chemical test performed. With regard to the second, defendant argued that the prosecution gained a tactical advantage because any videotapes of the traffic stop would have been reused after 60 days. However, defendant was unable to show that the prosecution deliberately waited to bring the charges so that the tapes would be lost. The Court opined that if the prosecutor's motivation in delaying the charges was to wait for any videotape to be reused, the charges would have been brought much sooner than was the case.

The Court briefly addressed defendant's last three arguments that the jury's verdict was against the great weight of the evidence, he was unfairly prejudiced when the court allowed the prosecution to amend the information, and the trial court erred when instructing the jury on intoxication. The Court concluded that there was substantial evidence to convict defendant, that there was no plain error in the prosecution's amendment of the information, and that defendant waived the argument that the trial court erred in instructing the jury since defense counsel expressly approved the instruction given.