

The first vile of blood is usually used by the State to test at the Michigan State Police Lab. The Second vile is kept for the purposes of independent testing should the accuse so desire.

The predicament that the State finds itself in is that one of 2 vials of blood has been sent to the Michigan State Police Lab, and thus that vials is no longer available to test. I understand your email is to inform me of the States intention is to utilize the second vial of blood, (the one that is specifically drawn from the accused for the purpose of providing a sample for independent testing by the accused) and request that the MSP utilize the second vial, to test the blood a second time.

I also understand from your email that you are letting me know this, because the use of the second vial will destroy any of the remaining blood samples. Or said another way, after the second vial is tested again by the MSP or retested, my clients statutory rights, and due process rights will be violated.

If you are asking me permission to go forward in this manner, please understand, and on behalf of my client, I do not consent, or give permission.

At this moment, and in particular because the first vial was used and destroyed by the MSP, it would follow that there is no reason for my client to request an independent blood test. There is no evidence that exists at the moment of any blood tests, or results of THC in the blood.

Respectfully, and at this moment, asking my client if he wants to use the second vial to independently test, is a question that should not be asked now, because there exist no other viable blood test result that would cause the need for an independent blood test.

If a viable blood test concluding that there is in fact THC in my clients blood, from a qualified laboratory, that has been vetted by independent agency, and establishes that the methods used in the blood testing conform with the Daubert requirements for admissibility of laboratory evidence, laboratory reports and or expert testimony regarding those reports, I can assure you, that I will want an independent test.

The law on this topic is unequivocal, and does in fact put the State in a dire predicament.

Unfortunately, I can't help you, and will not waive or consent or assist the State in anyway, in its prosecution of my client.

The right to an independent breath, blood, or urine test after submitting to the police breath test is well established. [MCL 257.625a\(6\)\(b\)](#).

The obvious purpose of the statute for independent blood testing is that it provides a theoretically unbiased safeguard for the accused to test the same sample independent of the States Laboratory testing. Or said another way, the purpose of the statute is to prevent the state from being the only party to have control over the evidence of guilt or innocence.

██████████ – Email to APA 1/6/23

People v Green, [260 Mich App 392](#), 407, 677 NW2d 363 (2004); *see also People v Dicks*, [190 Mich App 694](#), 699, 476 NW2d 500 (1991).

In addition to the statutory right articulated above, the jurisprudence surrounding this issue, also identifies violations of due process to the accused when he/she is deprived of the opportunity to independently test the sample.

Also, if I understand your email, it is the States intent to retest the blood via the same MSP (Toxicology Discipline) that in August of 2022, declared that they have been falsely reporting THC in the blood for the last 20 years.

This of course was after testifying for 20 years that their Lab had never had a false positive test result. Even if that same agency has a new machine and a new protocol, I don't believe they can substantiate the necessary methods, protocols and procedures to overcome the requirements at a Daubert Hearing.

I hope this email addresses your questions. I will plan to be on the Zoom Court early, so we can discuss this further at tomorrows pretrial.

Thank you for your attention in this matter, please let me know if you have any questions or comments.

Thanks MK

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"As long as the world shall last there will be wrongs, and if no man objected and no man rebelled, those wrongs would last forever." - Clarence Darrow