

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JILL ELIZABETH JUNG,

Defendant-Appellee.

UNPUBLISHED
November 8, 1996

No. 186196
LC No. 95-030917-AR

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted an order of the circuit court affirming an order of the district court that suppresses defendant's Breathalyzer test results. We reverse.

Based on the stipulated facts, we hold that defendant's Breathalyzer test was conducted within a reasonable time of defendant's arrest. See *People v Jacobsen*, 205 Mich App 302, 305; 517 NW2d 323 (1994), reversed on other grounds 448 Mich 639; 532 NW2d 838 (1995); *People v Schwab*, 173 Mich App 101; 433 NW2d 824 (1988). The sixty-five minute disparity between defendant's arrest and her Breathalyzer examination was significantly less than the 2¼ hour disparity that existed in *Schwab, supra*. Moreover, the delay between defendant's arrest (where a preliminary breath test revealed a blood alcohol content of .17%), and the final Breathalyzer test (where defendant evidenced a blood alcohol content of .13%) did not negatively affect defendant's rights. On the contrary, the delay actually worked to defendant's benefit. See *People v Sloan*, 450 Mich 160, 196-197, n 11; 538 NW2d 380 (1995) (Boyle, J., dissenting). Accordingly, the district court abused its discretion in suppressing the test results and the circuit court erred in affirming.

Reversed.

/s/ Roman S. Gribbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin