**SUPERIOR COURT**
**OF THE**
**STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: **Neel Dattanie v. State of Delaware**
**ID # 1110009544**

Submitted: December 17, 2013
Decided: January 8, 2014

On Appellant's Motion for Reargument.
**DENIED.**

Dear Counsel:

## I. INTRODUCTION

Pursuant to Superior Court Criminal Rule 57(d) and Superior Court Civil Rule 59(e), Neel Dattanie ("Appellant") moves for reargument of the Court's November 20, 2013 decision affirming his conviction in the Court of Common Pleas for Driving Under the Influence in violation of 21 Del. C. § 4177(a).[1]

[1] *Dattanie v. State*, 2013 WL 6225240 (Del. Super. Nov. 20, 2013).

## II. THE PARTIES' CONTENTIONS

Appellant's contentions in his Motion for Reargument are set forth below *in toto:*

> 1. On November 20, 2013, the Honorable Judge Richard R. Cooch issued an opinion affirming [Appellant's] Court of Common Pleas conviction for driving under the influence.
> 2. In his appeal and in oral argument, [Appellant] argued that the Trial Judge improperly advocated on behalf of the State throughout the entire course of the trial. It should be noted that a significant amount of time was spent discussing this point during oral argument on August 21, 2013.
> 3. The November 20th opinion did not mention this argument at all and it appears that the Court failed to consider [Appellant's] most significant argument in making its decision.
> 4. As a result, [Appellant] requests re-argument so that the Court may properly consider [Appellant's] position.[2]

The State ("Appellee") contends that the Motion should be denied because "[t]he only colorable issue raised by [Appellant] regarding improper advocacy by the trial judge involved the reference to the NHTSA manual," an issue that was "fully addressed by the Court."[3] "Excluding this argument, [Appellant's] claim that the trial judge improperly advocated on behalf of the State is completely unfounded. [Appellant] points to no specific instances, statements, or conduct in support of his contention [that does not relate to the NHTSA manual]."[4] Appellee further argues "[i]t should be noted that a trial judge is ***not*** improperly advocating on behalf of the State by simply questioning or disagreeing with arguments made by defense counsel at trial."[5]

## III. STANDARD OF REVIEW

A motion for reargument under Superior Court Civil Rule 59(e) (made applicable to criminal cases pursuant to Superior Court Criminal Rule 57(d)) will be denied unless the Court "overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as

[2] Appellant's Mot. for Reargument at 1.
[3] Appellee's Response at 2.
[4] *Id.* at 1.
[5] *Id.* at 2 (emphasis in original).

would affect the outcome of the decision."[6] Motions for reargument should not be used merely to rehash arguments already decided by the Court.[7] "Under Delaware law, parties cannot use Rule 59(e) to raise new arguments."[8] Rule 59(e) allows a party to file a motion for reargument following a Court opinion or decision and, "[t]he Court will determine from the motion and answer whether reargument will be granted."[9]

## IV. DISCUSSION

Appellant's Motion for Reargument, again, offers no appropriate detail to support his arguments. Appellant's Motion contains brief and conclusory statements that this Court in its decision ignored his "most significant argument," but without setting forth sufficient record evidence that supports such a sweeping argument.[10] Appellant's arguments continue to be unpersuasive.

Although Appellant complained in his Opening Brief about the trial judge's "continued advocacy on behalf of the State [during the suppression hearing and trial],"[11] Appellant never identified anything else with any sufficient specificity about the trial judge's conduct over and beyond the trial judge's reliance on the NHTSA manual. This issue was thoroughly discussed in the Court's opinion. Appellant had broadly claimed, with respect to other allegedly improper conduct on the part of the trial judge, that "on numerous occasions throughout the trial, without requiring a response, the [Trial] Judge made argument on behalf of the State."[12]

In his Reply Brief, slightly in excess of one page, Appellant did, for the first time, provide some citations to a few parts of the record that he purports prove

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[6] *Monsanto Co. v. Aetna Cas. & Sur. Co.*, 1994 WL 46726, at *2 (Del. Super. Jan. 14, 1994) (quoting *Wilshire Rest. Group, Inc. v. Ramada, Inc.*, 1990 WL 237093, at *1 (Del. Ch. Dec. 27, 1990)).
[7] *Lowman v. Wal-Mart Stores, Inc.,* 2006 WL 2382776, at *1 (Del. Super. Aug. 4, 2006).
[8] *Plummer v. Sherman*, 2004 WL 63414, at *2 (Del. Super. Jan. 14, 2004). *See also Bd. of Managers of the Del.Crim. Justice Info. Sys. v. Gannett Co.,* 2003 WL 1579170, at *1 (Del. Super. Jan. 17, 2003) (holding that a motion for reargument is not a device for raising new arguments or stringing out the length of time), *rev'd on other grounds, Gannett Co. v. Bd. of Managers of the Del.Crim. Justice Info. Sys.,* 840 A.2d 1232 (Del. 2003)).
[9] Super. Ct. Civ. R. 59(e).
[10] *See Kuo v. Genius Prods., Inc.*, 2009 WL 2913618, at *1 (Del. Ch. Aug. 26, 2009) (denying Motion for Reargument contending the court erroneously concluded a "causal connection" because defendants "failed to cite to *any* evidence in the record as factually demonstrating" a rebuttal to the presumption that a "causal connection" existed).
[11] Appellant's Opening Br. at 8.
[12] *Id.*

improper judicial advocacy on behalf of the State. However, these citations do not lend support to Appellant's claims. Also, a review of the entire suppression hearing and trial transcript indicates that in the majority of the objections the trial judge heard from both sides before making a decision.

During oral argument, Appellant's counsel asked this Court to consider "the biggest problem" of what he suggested to be a pattern of judicial advocacy by the trial judge in several of his cases.[13] However, and as Appellant's counsel acknowledged during oral argument, Appellant's briefs contained no references whatsoever to alleged judicial favoritism in the "three [other] cases" heard by the trial judge in the Court of Common Pleas, apparently also appealed to this Court. This broad assertion is completely unsupported by the record in this case or the briefing on the appeal and therefore will not be considered.

This Court finds that the focus of the original ruling, on the NHTSA manual and whether its use by the trial judge was "advocating for the State," thoroughly addressed the core of Appellant's arguments set forth in the original briefs. Appellant now seeks to rehash vague and brief statements that the trial judge made arguments for the State "on numerous occasions." These statements, briefly mentioned in the papers, do not provide enough substance to be addressed. Even after being directed by the Court to file a Reply Brief,[14] Appellant did not provide citations that anywhere near supported his claims. Statements or questions from a trial judge further to understand Appellant's position during the suppression hearing or trial, often during the course of repeated and numerous objections by Appellant's counsel, in this case cannot be construed as "advocating for the State." Appellant has not done the meticulous work required to substantiate his claim, and thus this generalized claim fails. The Court is not *sua sponte* going to search through the record of this case to find evidence that might substantiate Appellant's claims when such evidence has not been otherwise identified by Appellant.[15]

None of the arguments presented by Appellant in his Motion for Reargument, individually or collectively, warrant the decision of the Court of

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[13] "But, Your Honor, really the biggest problem --and I tell you this even though it's not in my brief, I've got three of theses cases on appeal right now….And the one issue that is very, very predominant in all three of these is the -- what I consider to be, and I think the Supreme Court considers to be, the inappropriate actions of the bench in that, quite frankly, there are times when the prosecutor seems relatively superfluous. I make an objection. Without even asking the State what its position is, the court takes a position. And I appreciate sometimes it's so obvious what the position is that maybe you can do that, but it repeatedly happens." *Dattanie v. State*, ID # 1110009544, at 5 (Del. Super. Aug. 21, 2013) (TRANSCRIPT) (emphasis added).

[14] Appellant's counsel originally notified the Prothonotary that he would not be filing a Reply Brief. The Court directed Appellant's counsel to file a Reply Brief in accordance with the letter and briefing schedule sent from the Prothonotary on January 18, 2013.

[15] *See Gonzalez v. Caraballo*, 2008 WL 4902686, at *3 (Del. Super. Nov. 12, 2008).

Common Pleas to be reversed because the trial court committed no legal error and did not otherwise abuse its discretion.

Therefore, for the reasons stated above, Appellant's Motion for Reargument is **DENIED**.

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Richard R. Cooch, R.J.

cc: Prothonotary
Clerk, Court of Common Pleas