IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	
	)	ID No 1211017937
ANDREW McVAUGH,	)	
	)	
Defendant.	)	

Submitted: July 10, 2013
Decided: July 30, 2013

On Defendant's Motion for Reargument
DENIED

ORDER

Periann Doko, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State

Joseph Hurley, Esquire, Wilmington, Delaware, Attorney for Defendant

JOHNSTON, J.

1. On June 21, 2013, the Court held a hearing on Defendant's Motion to Suppress Evidence. After considering the testimony, documentary evidence, and arguments of counsel, the Court ruled from the bench, denying the Motion.

2. Defendant has moved for reargument. Defendant asserts that in offering closing remarks, Defendant's counsel erroneously stated that Defendant had the burden of persuasion to prove that Defendant did not understand that he was signing a consent form permitting the State to seize his blood and use the testing results as evidence against him.

3. Defendant acknowledges that the "facts are not greatly disputed, if at all." Rather, Defendant objects to the Court's application of the law to the facts. Defendant cites the State's burden to prove an intentional relinquishment of a known right – in this case, the requirement that the State must obtain a warrant to draw blood. Because Defendant signed a consent form at the hospital, the primary issue in the Motion was the validity of Defendant's consent.

4. The purpose of moving for reargument is to seek reconsideration of findings of fact, conclusions of law, or judgment of law.[1] Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has

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[1] *Hessler, Inc. v. Farrell,* 260 A.2d 701, 702 (1969).

misapprehended the law or the facts in a manner affecting the outcome of the decision. "A motion for reargument should not be used merely to rehash the arguments already decided by the court."[2]

4. In rendering its decision at the conclusion of the suppression hearing, the Court applied the correct legal standard. In other words, regardless of Defendant's counsel's statements, the Court did not shift the burden to Defendant to prove that he did not understand that he was signing a consent form permitting a warrantless seizure of his blood. The Court is well aware of the applicable burden of proof.

5. The Court has reviewed and considered the submissions of Defendant and the State. There does not appear to the Court to be any basis for altering its decision denying the Motion to Suppress Evidence. Further, the Court did not overlook a controlling precedent or legal principle, or misapprehend the law or the facts in a manner affecting the outcome of the decision.

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[2] *Wilmington Trust Co. v. Nix,* Del. Super., 2002 WL 356371, Witham, J. (Feb. 21, 2002); *Whitsett v. Capital School District,* Del. Super., C.A. No. 97C-04-032 Vaughn, J. (Jan. 28, 1999); *Monsanto Co. v. Aetna Casualty & Surety Co.,* Del. Super., C.A. No. 88-JA-118, Ridgeley, P.J. (Jan. 14, 1994).

THEREFORE, Defendant's Motion for Reargument is hereby **DENIED.**

IT IS SO ORDERED.

The Honorable Mary M. Johnston