

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH BUONCUORE, JR.,	§
	§
Petitioner Below-	§ No. 483, 2003
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ C.A. No. 03M-05-035
	§
Respondent Below-	§
Appellee.	§

Submitted: October 17, 2003  
Decided: November 18, 2003

Before **VEASEY**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

**ORDER**

This 18<sup>th</sup> day of November 2003, upon consideration of the opening brief and the State’s motion to affirm, it appears to the Court that:

(1) The appellant, Joseph Buoncuore, Jr., filed this appeal from the Superior Court’s order, dated September 8, 2003, denying his motion for reargument. Buoncuore sought to reargue an earlier Superior Court order, dated June 23, 2003, which granted in part and denied in part Buoncuore’s petition for return of property. The Superior Court denied Buoncuore’s motion to reargue, in part, because it was not filed within the five-day period provided by Superior Court Civil Rule 59(e). The State of Delaware has filed a motion to affirm the Superior Court’s judgment on the ground that it

is manifest on the face of Buoncuore's opening brief that the appeal is without merit. We agree and affirm.

(2) Buoncuore was arrested on criminal charges in December 2001 and pled guilty to some of the charges in April 2003. The police seized several items during the course of the arrest, including a compound bow and six arrows. Buoncuore filed a petition for return of property. The Superior Court ordered all items to be returned to Buoncuore, except for the bow and arrows. On June 23, 2003, the Superior Court ordered the bow and arrows to be forfeited to the State of Delaware. Buoncuore filed a motion for reargument on July 20, 2003.

(3) The Superior Court denied the motion because it was not filed within the five-day reargument period set forth in Superior Court Civil Rule 59(e). Furthermore, the Superior Court reaffirmed its substantive holding that a bow and arrow is a deadly weapon that is subject to forfeiture. Buoncuore has appealed that decision. In his opening brief on appeal, Buoncuore does not address the untimeliness of his motion for reargument. Instead, his opening brief addresses only the merits of the Superior Court's decision denying his motion for return of property. The State of Delaware has moved to affirm the Superior Court's denial of the motion for

reargument on the ground that the motion clearly was not filed in a timely manner.

(4) The Court has considered the parties' respective positions very carefully. We find it manifest that the judgment of the Superior Court should be affirmed on the basis that Buoncuore's motion for reargument was not filed in a timely manner. A motion for reargument must be filed within five days of the order sought to be reviewed.<sup>1</sup> Buoncuore's motion clearly was not filed within the five-day reargument period. Because Buoncuore did not timely move for reargument, his attempt to argue the merits of the Superior Court's June 23, 2003 decision denying his petition for return of property is unavailing because his notice of appeal from that decision was not filed within the thirty-day appeal period.<sup>2</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice

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<sup>1</sup> See SUPER. CT. CIV. R. 59(e)

<sup>2</sup> Only a motion for reargument that is timely filed in the lower court will suspend the running of the thirty-day appeal period. See *Linda D.P. v. Robert J.P.*, 493 A.2d 968 (Del. 1985).