

1 IN THE SUPREME COURT OF THE STATE OF NEVADA
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3 MATTHEW LEON MOULTRIE,
4

5 Appellant,
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7 vs.
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9 STATE OF NEVADA,
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11 Respondent.
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Case No.: 65390

Electronically Filed
Aug 22 2014 11:44 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

13 **APPELLANT MATTHEW LEON MOULTRIE'S MOTION TO**
14 **STRIKE ASSERTIONS IN FAST TRACK RESPONSE**
15 **NOT SUPPORTED BY CITATION TO THE RECORD**

16 COMES NOW Appellant above named, by and through his attorney CHRIS
17 ARABIA, Esq., who moves this Court to strike from the respondent State of
18 Nevada's fast track response certain assertions not citing to the record.

19 This motion is based upon the attached points and authorities and the
20 attached declaration of counsel.
21

22 DATED this 22nd day of August, 2014.
23

24 [/s/]

25 CHRIS ARABIA, Esq.

26 Nevada Bar #9749

27 Law Offices of Chris Arabia, PC

601 S. 10th St., Suite 107

(702) 701-4391

28 Attorney for Appellant Moultrie

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF RELEVANT FACTS**

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5 On the last 4 lines of page 4 and the first 12 lines of page 5 of the state's fast
6 track response (the state did not use line numbers), the state asserts that Moultrie
7 has alleged 3 different ways in which Moultrie was prejudiced because of the
8 state's failure to adhere to the rule requiring an information to be filed within 15
9 days of the preliminary hearing.
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12 However, the state provides no citations to the record in support of its
13 contentions. The entire 16-line paragraph is an unsupported series of assertions.
14 Therefore, the last 4 lines of page 4 and the first 12 lines of page 5 should be
15 stricken.
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18 The last paragraph of page 6 of the state's fast track response begins with the
19 following sentence (the fast track response does not have line numbers): "The
20 District Court held that the Justice Court's decision to uphold a hearsay objection
21 raised by the Defendant to the co-defendant driver's consent to search was wrong,
22 and was egregious error." The paragraph encompassing the 7th line through the
23 13th line on page 7 of the fast track response contains assertions about a purported
24 Justice Court decision and 2 allusions to a purported statement of consent by
25 Moultrie. The sentence that begins on the 14th line of page 7 provides as follows:
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1 “A plainly erroneous ruling on the rules of evidence which prevented the Justice of
2 the Peace from binding the case over was held by the District Court as egregious
3 error.”
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5 However, the state provides no citations to the record supporting the
6 assertions, described in detail in the preceding paragraph, on pages 6 and 7 of the
7 fast track response. The assertions are all merely presented, without citation.
8 There is one citation (an Id. on the 12th line of page 7) but that citation is actually
9 to a North Carolina appellate case cited earlier in the response by the state and does
10 not support the assertions described in the preceding paragraph.
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14 On the 6th through the 19th lines of page 8 of the state’s fast track response
15 (the response is bereft of line numbers), the state makes a series of assertions
16 regarding a purported motion that it made at preliminary hearing, a purported
17 response of the Justice Court, a purported subsequent District Court decision, and
18 the purported sufficiency of the state’s evidence at the preliminary hearing.
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21 However, the state provides no citations to the record in support of its
22 assertions. The entire 14-line paragraph is an unsupported series of assertions.
23 Therefore, the 6th through the 19th lines of page 8 of the state’s fast track response
24 should be stricken.
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1 **UNSWORN DECLARATION OF CHRIS ARABIA, ESQ. IN LIEU OF**
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3 **AFFIDAVIT AS CONTEMPLATED BY NRS 53.045**

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5 I, CHRIS ARABIA, declare under penalty of perjury and pursuant to NRS
6 53.045 that the following is true and correct to the best of my knowledge.
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8 Declarant hereby incorporates the entirety of the instant motion into this
9 declaration as if fully set forth herein.
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11 Declarant is the appointed attorney representing Moultrie. Moultrie has
12 reviewed the state's fast track response and determined that the assertions on the
13 last 4 lines of page 4 through the first 12 lines of page 5, the first sentence in the
14 last paragraph of page 6 of the response, the 7th through 13th lines of page 7 of the
15 response, the sentence that begins on the 14th line of page 7 of the response, the 6th
16 through the 19th lines of page 8 are not supported by citations to the record.
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19 FURTHER DECLARANT SAYETH NAUGHT.
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21 EXECUTED on this 22nd day of August, 2014.
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23 [/s/]
24 CHRIS ARABIA
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ARGUMENT

NRAP 28(e) requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. In Carson Ready Mix, Inc. v. First National Bank of Nevada, 97 Nev. 474, 476, 635 P.2d 276 (1981), this Court stated, “[w]e cannot consider matters not properly appearing in the record on appeal. As this Court stated long ago in Alderson v. Gilmore, 13 Nev. 84, 85 (1878), ‘[w]e have no power to look outside the record of a case.’ We have consistently recognized this limitation.”

In the state’s fast track response (and as also further described in the instant motion’s preceding statement of facts), the state provided no supporting citations to the record for the assertions contained in the following parts of the fast track response (please note that the state’s response did not include line numbers): the last 4 lines of page 4 through the first 12 lines of page 5, the first sentence in the last paragraph of page 6, the 7th through 13th lines of page 7, the sentence that begins on the 14th line of page 7, and the 6th through the 19th lines of page 8.

Because the state simply makes the assertions without supporting citations, all of the assertions specified in the instant motion clearly violate NRAP 28(e) and/or there is no support for the assertions in the record. Thus, this Court should strike all of the assertions.

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DATED this 22nd day of August, 2014.

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DATED this 22nd day of August, 2014.

IN THE SUPREME COURT OF THE STATE OF NEVADA
A F F I R M A T I O N – NRS 239B.030

DATED this 22nd day of August, 2014

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Robert Glennen, District Attorney, Esmeralda County

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[/s/]
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