

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 MATTHEW LEON MOULTRIE,)
4)
5 Appellant,)
6)
7 v.)
8 THE STATE OF NEVADA,)
9)
10 Respondent.)
_____)

No. 65390

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Tracie K. Lindeman
Clerk of Supreme Court

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12 **APPELLANT MOULTRIE’S STATEMENT OF WHY**
13 **THIS CASE SHOULD REMAIN IN THE SUPREME**
14 **COURT BASED ON NRAP 17(a)13 AND NRAP 17(a)14**

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16 NRAP 17(a)(13) provides for the Supreme Court to retain matters involving
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18 Constitutional or common law issues of first impression. NRAP 17(a)(14)
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20 provides for the Supreme Court to retain matters involving issues of statewide
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22 public importance.

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24 The instant matter should be retained because it involves two issues of
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26 apparent first impression in Nevada that are also of statewide public importance
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28 and a third issue that is of statewide public importance.

1 First, whether the District Court erred by granting the motion for leave to
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3 file information by affidavit where the state charged second offense possession of
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5 controlled substance with intent to sell, the state offered no evidence or even
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7 assertion of a prior offense at the preliminary hearing, and the Justice Court
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9 discharged Appellant Matthew Moultrie (“Moultrie”) at the preliminary hearing;
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11 the issue is whether the District Court erred in general and also whether the District
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13 Court erred in granting the motion based on “egregious error.” (p. 10 ln. 6 to p. 13
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15 ln. 3 of the Fast Track Statement).

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17 At the risk of belaboring the Constitutionally obvious, the state should have
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19 to offer evidence to substantiate its charges; furthermore, District Courts should
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21 not be permitted to abuse the “egregious error” rule by resorting to it in the absence
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23 of egregious error or (as in the instant case) any error at all. Moultrie did not find
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25 any prior cases squarely on point. **See** NRAP 17(a)(13) and NRAP 17(a)(14).

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27 Second, whether the District Court erred in granting the motion for leave to
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file information by affidavit in and of itself and/or based on “egregious error”
when the Justice Court discharged Moultrie where the police obtained third-party

1 consent to search a vehicle but the police searched Moultrie's backpack although
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3 Moultrie never consented and the third-party had no authority (p. 13 ln. 5 to p. 15
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5 ln. 25 of the Fast Track Statement).

6 Based on those facts, the Justice of the Peace clearly did not err in
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8 discharging and even if the District Court did not agree with her decision, the
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10 Justice of the Peace's committed no egregious error and any finding of egregious
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12 error was improper and an abuse of the rule. **See** NRAP 17(a)(14).

13 Third, whether the District Court erred by granting the state's motion for
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15 leave to file information by affidavit when the motion was filed 63 days after the
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17 preliminary hearing without cause for the delay (p. 8 ln 1 to p. 10 ln. 4 of Fast
18 Track Statement).

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1 For all intents and purposes, the District Court eliminated any timeliness
2 requirement in violation of the Constitutional right to a speedy trial and Nevada
3 statute; appellant Moultrie did not find any cases squarely on point. See NRAP
4 17(a)(13) and NRAP 17(a)(14).
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7 DATED THIS 5th day of January, 2015.

8 [s/]
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