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No. 65390

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Jan 05 2015 12:23 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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

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

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

1 First, whether the District Court erred by granting the motion for leave to  
2  
3 file information by affidavit where the state charged second offense possession of  
4  
5 controlled substance with intent to sell, the state offered no evidence or even  
6  
7 assertion of a prior offense at the preliminary hearing, and the Justice Court  
8  
9 discharged Appellant Matthew Moultrie (“Moultrie”) at the preliminary hearing;  
10  
11 the issue is whether the District Court erred in general and also whether the District  
12  
13 Court erred in granting the motion based on “egregious error.” (p. 10 ln. 6 to p. 13  
14  
15 ln. 3 of the Fast Track Statement).

16  
17 At the risk of belaboring the Constitutionally obvious, the state should have  
18  
19 to offer evidence to substantiate its charges; furthermore, District Courts should  
20  
21 not be permitted to abuse the “egregious error” rule by resorting to it in the absence  
22  
23 of egregious error or (as in the instant case) any error at all. Moultrie did not find  
24  
25 any prior cases squarely on point. **See** NRAP 17(a)(13) and NRAP 17(a)(14).

26  
27 Second, whether the District Court erred in granting the motion for leave to  
28  
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  
2  
3 Moultrie never consented and the third-party had no authority (p. 13 ln. 5 to p. 15  
4  
5 ln. 25 of the Fast Track Statement).

6       Based on those facts, the Justice of the Peace clearly did not err in  
7  
8 discharging and even if the District Court did not agree with her decision, the  
9  
10 Justice of the Peace's committed no egregious error and any finding of egregious  
11  
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  
14  
15 leave to file information by affidavit when the motion was filed 63 days after the  
16  
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).  
5

6 DATED THIS 5<sup>th</sup> day of January, 2015.  
7

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Robert Glennen, Esmeralda County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, U.S. 1<sup>st</sup> class postage pre-paid, addressed to:

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