

IN THE SUPREME COURT OF THE STATE OF NEVADA

CONNIE MARIE BOE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50423

FILED

MAR 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of two counts of child endangerment. Third Judicial District Court, Lyon County; Robert E. Estes, Judge. The district court sentenced appellant Connie Marie Boe to serve two concurrent jail terms of 12 months, ordered the sentence to be suspended, and placed Boe on probation for a period not to exceed 2 years.

Boe contends that the district court abused its discretion by denying her presentence motion to withdraw her guilty plea. Boe claims that she should have been permitted to withdraw her guilty plea because the two counts of child endangerment are redundant to her justice court conviction for driving under the influence (DUI) while transporting children less than 15 years of age.¹ Boe specifically argues that the gravamen of the offenses is the same and it is not evident that the Legislature intended multiple convictions.

¹See NRS 200.508 (defining child endangerment); NRS 484.3792(8) (requiring the court to consider the presence of a child under 15 years of age in the motor vehicle at the time of a DUI violation as an aggravating factor during sentencing).

“A district court may, in its discretion, grant a defendant’s [presentence] motion to withdraw a guilty plea for any ‘substantial reason’ if it is ‘fair and just.’”² A substantial reason for withdrawing a guilty plea may be to avoid redundant convictions. Convictions are redundant if “the material or significant part of each charge is the same even if the offenses are not the same. Thus, where a defendant is convicted of two offenses that, as charged, punish the exact same illegal act, the convictions are redundant.”³ “[T]his court ‘will reverse redundant convictions that do not comport with legislative intent.’”⁴

Here, the district court entered findings of fact, conclusions of law, and denied the motion to withdraw. The district court found five differences between the DUI conviction and the child endangerment charges: (1) the DUI conviction required that the defendant have a blood alcohol content of over 0.08 percent whereas the child endangerment charges only required the defendant to be under the influence of alcohol, (2) the enhancement for DUI required the children to be under 15 years of age whereas the child endangerment charges only required that children be involved, (3) the child endangerment charges had the rolling over of the motor vehicle as a material part of the charges whereas the DUI

²Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

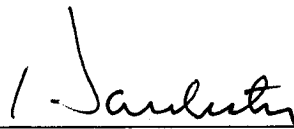
³State of Nevada v. Dist. Ct., 116 Nev. 127, 136, 994 P.2d 692, 698 (2000).


⁴State v. Koseck, 113 Nev. 477, 479, 936 P.2d 836, 837 (1997) (quoting Albrite v. State, 103 Nev. 281, 283, 738 P.2d 1307, 1309 (1987)).

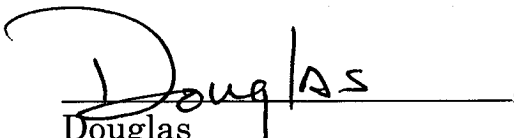
conviction only required that the defendant be in actual physical control of the motor vehicle, (4) the child endangerment charges had the lack of seatbelts for the children as a material part of the charges whereas the DUI enhancement did not require the children to be unbelted, and (5) the child endangerment charges required that two children be in the motor vehicle to justify two counts whereas the DUI enhancement did not depend on the number of children in the vehicle. The district court concluded that the material or significant parts of the DUI conviction and the child endangerment charges were not the same.

We note that the district court's findings are supported by the record on appeal. We observe that the district court properly determined that a conviction on the child endangerment charges and the conviction for driving under the influence did not punish the identical illegal act and therefore were not redundant. And we conclude that the district court did not abuse its discretion by denying Boe's motion to withdraw her guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Robert E. Estes, District Judge
Paul G. Yohey
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk