

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIDGET WHALEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42480

FILED

MAY 06 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of one count of child abuse, neglect, or endangerment. The district court sentenced appellant to a term of 12 months in the county jail. The district court further ordered the sentence suspended and placed appellant on probation of a period of 36 months.

Appellant was originally charged with involuntary manslaughter, based on a failure to use due care in the operation of a motor vehicle and failure to restrain the victim, a 4-year-old child. Appellant filed a pretrial petition for a writ of habeas corpus, arguing that a violation of NRS 484.474<sup>1</sup> cannot support a charge of involuntary manslaughter. The district court denied the petition and appellant subsequently pleaded guilty to gross misdemeanor child abuse, neglect or endangerment. Appellant's sole contention on appeal is that the district court erred by denying the pretrial petition.<sup>2</sup>

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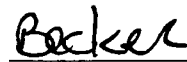
<sup>1</sup>NRS 484.474(1) prohibits transporting a child under the age of 5 and under 40 pounds without securing the child in a restraint device.

<sup>2</sup>Appellant reserved the right to appellate review of this issue as part of the written plea agreement. See NRS 174.035(3).


"[I]nvoluntary manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act . . . ."3 In this case, the State charged involuntary manslaughter based on appellant's violation of the due-care statute, specifically appellant's failure to stop in order to avoid hitting a car stopped in front of her. We conclude that violation of the due-care statute was a sufficient basis upon which to support a charge of involuntary manslaughter.4 It is therefore immaterial whether violation of NRS 484.474, the statute requiring the use of a child-restraint device, may be the basis for a charge of involuntary manslaughter.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

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<sup>3</sup>NRS 200.070.

<sup>4</sup>See e.g., Goldblatt v. Harris, 74 Nev. 74, 322 P.2d 902 (1958) (affirming district court's denial of pretrial habeas petition which challenged a charge of involuntary manslaughter based on the misdemeanor offense of failure to operate a vehicle in a careful or prudent manner).

cc: Hon. J. Michael Memeo, District Judge  
James Andre Boles  
Matthew J. Stermitz  
Attorney General Brian Sandoval/Carson City  
Elko County District Attorney  
Elko County Clerk