review of the record, we find by clear and convincing evidence that respondent has violated § 3-508.4(a) through (d) and his oath as an attorney, § 7-104, and that respondent should be and hereby is publicly reprimanded. Respondent is directed to pay costs and expenses in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2007) and Neb. Ct. R. §§ 3-310(P) and 3-323(B) within 60 days after an order imposing costs and expenses, if any, is entered by the court.

JUDGMENT OF PUBLIC REPRIMAND.

STATE OF NEBRASKA, APPELLEE, V. ARTHUR P. PERINA, APPELLANT.

804 N.W.2d 164

Filed October 7, 2011. No. S-09-1021.

1. **Constitutional Law: Statutes: Judgments: Appeal and Error.** The constitutionality and construction of a statute are questions of law, regarding which an appellate court is obligated to reach conclusions independent of those reached by the court below.
2. **Criminal Law: Statutes: Legislature: Intent.** When construing a criminal statute, the existence of a criminal intent is regarded as essential, even though the terms of the statute do not require it, unless it clearly appears that the Legislature intended to make the act criminal without regard to the intent with which it was done.
3. **Criminal Law: Statutes: Intent.** If a criminal statute omits mention of intent and where it seems to involve what is basically a matter of policy; where the standard imposed is, under the circumstances, reasonable and adherence thereto properly expected of a person; where the penalty is relatively small; where the conviction does not gravely besmirch; where the statutory crime is not taken over from the common law; and where legislative purpose is supporting, the statute can be construed as one not requiring criminal intent.
4. **Criminal Law: Due Process: Proof.** Due process protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged.
5. **Due Process: Intent.** Due process is not violated merely because mens rea is not a required element of a prescribed crime.
6. **Constitutional Law: Statutes.** A motion to quash is the proper method to challenge the constitutionality of a statute.
7. **Constitutional Law: Statutes: Pleas.** Challenges to the constitutionality of a statute as applied to a defendant are properly preserved by a plea of not guilty.
8. **Homicide: Motor Vehicles: Public Policy: Intent: Proof.** Misdemeanor motor vehicle homicide is a public welfare offense which does not require proof of mens rea.

Appeal from the District Court for Sarpy County, DAVID K. ARTERBURN, Judge, on appeal thereto from the County Court for Sarpy County, TODD J. HUTTON, Judge. Judgment of District Court affirmed.

Andrew J. Wilson, of Walentine, O'Toole, McQuillan & Gordon, for appellant.

Jon Bruning, Attorney General, and Nathan A. Liss for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ., and CASSEL, Judge.

GERRARD, J.

The Nebraska Criminal Code provides that "[a] person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide."[1] The appellant, Arthur P. Perina, challenges that provision on the ground that it criminalizes negligent acts.

BACKGROUND

Joshua Wayland was killed in a traffic accident caused when a dump truck driven by Perina ran a red light at the intersection of Highways 50 and 370 in Sarpy County, Nebraska. Perina was driving north on Highway 50, in heavy rain, and was unable to stop when the traffic light changed at the Highway 370 off ramp. Wayland was turning south onto Highway 50 from the off ramp, and Perina's truck struck Wayland's car on the driver's side. Wayland died as a result of the injuries he sustained in the accident. Perina's blood alcohol test was negative, and there is no indication that alcohol or drugs were a contributing factor to the accident.

Perina was charged with one count of motor vehicle homicide,[2] a Class I misdemeanor, and one count of violation of a

[1] Neb. Rev. Stat. § 28-306(1) (Reissue 2008).

[2] See *id.*

traffic control device,[3] a traffic infraction. Motor vehicle homicide is punishable by up to 1 year's imprisonment, a $1,000 fine, or both.[4] Perina filed a motion to quash the motor vehicle homicide charge, asserting that § 28-306 was unconstitutional because it violated his right to due process. At the hearing on the motion, the court asked Perina's counsel whether he was making a facial challenge to the statute. Counsel explained:

> The specific claim that we're making that [Perina's] due process right is being violated is that the statute, motor vehicle homicide statute, criminalizes mere negligence. It doesn't define what level of negligence is involved. It just simply makes it a criminal act when one violates a traffic offense and a death results from that, and that's the challenge. So it's on its face.

The county court rejected Perina's constitutional argument and overruled his motion to quash. Perina pled not guilty to both charges, and a bench trial was held on a stipulated record. Perina renewed his constitutional challenge, and it was again overruled. Perina was convicted of both charges and sentenced to 24 months' probation and fines totaling $1,025. Perina appealed, reasserting his constitutional claim in the district court. But the district court affirmed Perina's convictions and sentence. Perina appealed and filed a petition to bypass the Nebraska Court of Appeals, which we granted.

ASSIGNMENT OF ERROR

Perina assigns that the district court erred by affirming the county court's denial of his motion to quash based upon the unconstitutionality of § 28-306.

STANDARD OF REVIEW

[1] The constitutionality and construction of a statute are questions of law, regarding which we are obligated to reach conclusions independent of those reached by the court below.[5]

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[3] See Neb. Rev. Stat. § 60-6,119 (Reissue 2010).

[4] See Neb. Rev. Stat. § 28-106 (Reissue 2008).

[5] See, *State v. Garcia*, 281 Neb. 1, 792 N.W.2d 882 (2011); *State v. Prescott*, 280 Neb. 96, 784 N.W.2d 873 (2010).

ANALYSIS

We begin by noting a dispute between the parties about whether Perina is challenging § 28-306 facially or as applied. A challenge to a statute asserting that no valid application of the statute exists because it is unconstitutional on its face is a facial challenge.[6] But a plaintiff can only succeed in a facial challenge by establishing that no set of circumstances exists under which the act would be valid, i.e., that the law is unconstitutional in all of its applications.[7] The State argues that in this case, Perina's facial challenge clearly fails, because even if it is conceded that § 28-306 unconstitutionally criminalizes negligence, there would remain circumstances *not* involving simple negligence in which the statute could be constitutionally applied. And furthermore, the State argues, Perina has waived an "as-applied" challenge by not raising it below. We disagree with the State's contentions. But explaining why will require an examination of the theoretical underpinnings of Perina's argument.

Perina's constitutional argument is based on the principles articulated by the U.S. Supreme Court in *Morissette v. United States*.[8] In *Morissette*, the defendant was convicted of violating 18 U.S.C. § 641 (2006), which provided, then as now, that "[w]hoever embezzles, steals, purloins, or knowingly converts" U.S. government property is punishable by fine or imprisonment. The defendant had found spent bomb casings in a rural area of Michigan and salvaged them. He explained that he had no intention of stealing anything, but thought the property had been abandoned. Nonetheless, he was convicted, because the trial court determined that the statute required no element of criminal intent and that any necessary intent could be presumed from the defendant's act. The U.S. Supreme Court ultimately disagreed, explaining:

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[6] *State v. Liston*, 271 Neb. 468, 712 N.W.2d 264 (2006).

[7] See, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008); *United States v. Salerno*, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987).

[8] *Morissette v. United States*, 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952).

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. A relation between some mental element and punishment for a harmful act is almost as instinctive as the child's familiar exculpatory "But I didn't mean to," and has afforded the rational basis for a tardy and unfinished substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution.[9]

The Court reasoned that as the common law of crimes had been codified, even if the statute was silent regarding mens rea, courts had "assumed that the omission did not signify disapproval of the principle but merely recognized that intent was so inherent in the idea of the offense that it required no statutory affirmation."[10] However, the Court recognized the principle that some crimes, which became known as public welfare offenses, can involve no mental element, "but consist only of forbidden acts or omissions."[11] Indeed, the Court had already explained in *United States v. Balint*[12] that

> in the prohibition or punishment of particular acts, the State may in the maintenance of a public policy provide "that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance." Many instances of this are to be found in regulatory measures in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se*.

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[9] *Id.*, 342 U.S. at 250-51.

[10] *Id.*, 342 U.S. at 252.

[11] *Id.*, 342 U.S. at 253.

[12] *United States v. Balint*, 258 U.S. 250, 252, 42 S. Ct. 301, 66 L. Ed. 604 (1922).

But the *Morissette* Court clarified that such offenses did not arise from the common law, instead having been created because of changing social circumstances that required new duties and crimes that did not require any ingredient of intent. For instance, the Court noted:

> The industrial revolution multiplied the number of workmen exposed to injury from increasingly powerful and complex mechanisms, driven by freshly discovered sources of energy, requiring higher precautions by employers. Traffic of velocities, volumes and varieties unheard of came to subject the wayfarer to intolerable casualty risks if owners and drivers were not to observe new cares and uniformities of conduct. Congestion of cities and crowding of quarters called for health and welfare regulations undreamed of in simpler times. Wide distribution of goods became an instrument of wide distribution of harm when those who dispersed food, drink, drugs, and even securities, did not comply with reasonable standards of quality, integrity, disclosure and care. Such dangers have engendered increasingly numerous and detailed regulations which heighten the duties of those in control of particular industries, trades, properties or activities that affect public health, safety or welfare.[13]

Such offenses, the Court said, do not "fit neatly" into accepted classifications of common-law offenses, because they are not in the nature of the "positive aggressions or invasions" with which the common law dealt, but instead were "in the nature of neglect where the law requires care, or inaction where it imposes a duty."[14] One accused of such an offense, although not intending the violation, "usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities."[15] With such legislation, criminal penalties simply serve as an effective means of

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[13] *Morissette, supra* note 8, 342 U.S. at 253-54.

[14] *Id.*, 342 U.S. at 255.

[15] *Id.*, 342 U.S. at 256.

regulation, dispensing with the conventional mens rea requirement for criminal conduct.[16] "'In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger.'"[17] But, the Court found,

> we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute. And where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.[18]

And based on that reasoning, the Court found that § 641, which was essentially a theft offense codified from the common law, was properly construed to require proof of criminal intent.[19] So, the Court found that the trial court had erred in concluding that such intent could be presumed from the fact of the taking, explaining that such a presumption would be inconsistent with a defendant's overriding presumption of innocence.[20]

[2,3] *Morissette* has been read as establishing, "at least with regard to crimes having their origin in the common law, an interpretive presumption that *mens rea* is required."[21] The Court has explained that "[w]hile strict-liability offenses are not unknown to the criminal law and do not invariably offend constitutional requirements, . . . the limited circumstances in

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[16] *Morissette, supra* note 8.

[17] *Id.*, 342 U.S. at 260.

[18] *Id.*, 342 U.S. at 263.

[19] See *id.*

[20] *Morissette, supra* note 8.

[21] *United States v. United States Gypsum Co.*, 438 U.S. 422, 437, 98 S. Ct. 2864, 57 L. Ed. 2d 854 (1978).

which Congress has created and this Court has recognized such offenses . . . attest to their generally disfavored status."[22] As a result, the established rule is that when construing a criminal statute, "'[t]he existence of a criminal intent is regarded as essential even though the terms of the statute do not require it, unless it clearly appears that the legislature intended to make the act criminal without regard to the intent with which it was done.'"[23] But if the statute

> omits mention of intent and where it seems to involve what is basically a matter of policy, where the standard imposed is, under the circumstances, reasonable and adherence thereto properly expected of a person, where the penalty is relatively small, where conviction does not gravely besmirch, where the statutory crime is not taken over from the common law, and where congressional purpose is supporting, the statute can be construed as one not requiring criminal intent. The elimination of this element is then not violative of the due process clause.[24]

[4,5] But it is important to note that *Morissette* was concerned with the *construction* of a statute, not the *validity* of a statute. The *Morissette* Court did not decide whether legislative elimination of the requirement of intent from common-law crimes was constitutional.[25] Although the *Morissette* Court "enunciated various factors" for courts to consider when construing statutes that arguably do not require proof of mens rea, "the Court did not establish those factors as principles of constitutional law."[26] *Morissette* implicates the Due Process Clause insofar as due process protects an accused against

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[22] *Id.*, 438 U.S. at 437-38 (citations omitted).

[23] *State v. Pettit*, 233 Neb. 436, 447, 445 N.W.2d 890, 897 (1989), *overruled on other grounds, State v. Jones*, 245 Neb. 821, 515 N.W.2d 654 (1994).

[24] *Holdridge v. United States*, 282 F.2d 302, 310 (8th Cir. 1960). Accord *Pettit, supra* note 23.

[25] See, *Stepniewski v. Gagnon*, 732 F.2d 567 (7th Cir. 1984); *State v. Gabriel*, 192 Conn. 405, 473 A.2d 300 (1984); *State v. Foster*, 91 Wash. 2d 466, 589 P.2d 789 (1979); *State v. Smith*, 90 N.C. App. 161, 368 S.E.2d 33 (1988), *affirmed* 323 N.C. 703, 374 S.E.2d 866 (1989).

[26] *Stepniewski, supra* note 25, 732 F.2d at 570.

conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged,[27] but it is clear that the constitutional requirement of due process is not violated merely because mens rea is not a required element of a prescribed crime.[28] The Court "has never articulated a general constitutional doctrine of *mens rea*," which "has always been thought to be the province of the States."[29] Simply put, *Morissette* is a case of statutory construction[30] that, by its own terms, only establishes "criteria for distinguishing between crimes that require a mental element and crimes that do not."[31]

[6,7] With that understood, it is apparent that the State's attempt to characterize Perina's challenge as a facial challenge and its claim that Perina waived an "as-applied" challenge are without merit. To begin with, we do not read the record as narrowly as does the State. Perina's motion to quash was a facial challenge, because a motion to quash is the proper method to challenge the constitutionality of a statute,[32] but it is not used to question the constitutionality of a statute as applied.[33] Instead, challenges to the constitutionality of a statute as applied to a defendant are properly preserved by a plea of not guilty.[34] In

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[27] See, *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Hurbenca*, 266 Neb. 853, 669 N.W.2d 668 (2003); *Gabriel, supra* note 25.

[28] See, e.g., *United States Gypsum Co., supra* note 21; *United States v. Engler*, 806 F.2d 425 (3d Cir. 1986); *United States v. Ayo-Gonzalez*, 536 F.2d 652 (5th Cir. 1976).

[29] *Powell v. Texas*, 392 U.S. 514, 535-36, 88 S. Ct. 2145, 20 L. Ed. 2d 1254 (1968).

[30] See, *Stepniewski, supra* note 25; *Ayo-Gonzalez, supra* note 28; *Gabriel, supra* note 25; *Foster, supra* note 25; *Smith, supra* note 25.

[31] *Morissette, supra* note 8, 342 U.S. at 260. See, e.g., *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994); *Staples v. United States*, 511 U.S. 600, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994); *United States Gypsum Co., supra* note 21.

[32] See *State v. Kelley*, 249 Neb. 99, 541 N.W.2d 645 (1996).

[33] See *State v. Hynek*, 263 Neb. 310, 640 N.W.2d 1 (2002).

[34] *State v. Conklin*, 249 Neb. 727, 545 N.W.2d 101 (1996).

this case, the basis of Perina's constitutional claim was absolutely clear from the outset of the proceedings and reasserted by Perina at every juncture. And both the county court and the district court addressed the substance of Perina's claim.

But more fundamentally, the distinction between a facial and an "as-applied" challenge makes little sense in the context of a *Morissette* argument, because *Morissette* provides no basis for striking down a statute—just for construing it. *Morissette* is the basis for an interpretive principle explaining when mens rea should be read into a criminal offense and when it should not be. It would make little sense to hold that a statute has different elements "as applied" to a particular defendant.

So, we find no merit to the State's argument that Perina waived his *Morissette* argument by not preserving an "as-applied" challenge below. But we understand the State's confusion, because Perina's argument does seem to be that pursuant to *Morissette*, § 28-306 is unconstitutional. As explained above, this cannot be correct. In *Morissette*, for instance, the Court did not invalidate the statute at issue—it simply explained that proof of intent was required and that a jury question had been presented on that issue. Granted, the constitutional validity of a strict-liability criminal statute *may* be implicated under other circumstances: for instance, where an act is not *per se* blameworthy, such that the doer might not be alert to the consequences of the deed.[35] But such a statute is not presented here,[36] and under *Morissette*, a statute is not "unconstitutional"—it is simply construed incorrectly. Therefore, there is no merit to Perina's assignment of error.

Perina does argue, in the alternative, that § 28-306 could be construed to require proof of mens rea. It is questionable whether that argument is encompassed in Perina's assignment

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[35] See, *United States v. Freed*, 401 U.S. 601, 91 S. Ct. 1112, 28 L. Ed. 2d 356 (1971); *Powell, supra* note 29; *Lambert v. California*, 355 U.S. 225, 78 S. Ct. 240, 2 L. Ed. 2d 228 (1957); *Engler, supra* note 28. See, also, *Stanley v. Turner*, 6 F.3d 399 (6th Cir. 1993) (Ohio involuntary manslaughter statute based on obviously wrongful and blameworthy conduct of violating traffic safety laws did not deny due process).

[36] See *Stanley, supra* note 35.

of error or was clearly raised below. But even on the merits, we are not persuaded. We refused an effectively identical argument in *State v. Mattan*.[37] It is, in fact, long established that neither intent, nor even negligence, is an element of the crime of motor vehicle homicide; instead, "[n]egligence may be and usually is a basic element in unlawful operation and may be proved but the essential element of the crime as declared by the statute is the unlawful act."[38] And other courts, applying *Morissette*, have concluded that a defendant's ordinary negligence may form the basis for a conviction of motor vehicle homicide.[39] As the Idaho Court of Appeals has explained, "[r]egulation of motor vehicle operation is an area without roots in the common law. Traffic laws are enacted for the benefit of the traveling public and it is reasonable to expect compliance with these laws."[40] The court noted that Idaho's motor vehicle homicide statute, as a misdemeanor, carried a relatively minor penalty of a fine of not more than $2,000, or a term of imprisonment of not more than a year.[41] And, the court observed, such punishment "is directed not at evil conduct but at negligent acts or omissions tragically resulting in loss of life."[42] So, the court reasoned, "[a] conviction under this statute, although deeply regrettable, does not gravely besmirch the defendant's character."[43]

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[37] See *State v. Mattan*, 207 Neb. 679, 300 N.W.2d 810 (1981).

[38] *Pribyl v. State*, 165 Neb. 691, 703, 87 N.W.2d 201, 210 (1957). Cf., *Schluter v. State*, 153 Neb. 317, 44 N.W.2d 588 (1950); *Fielder v. State*, 150 Neb. 80, 33 N.W.2d 451 (1948); *Benton v. State*, 124 Neb. 485, 247 N.W. 21 (1933); *Schultz v. State*, 89 Neb. 34, 130 N.W. 972 (1911).

[39] See, *State of Oregon v. Wojahn*, 204 Or. 84, 282 P.2d 675 (1955); *Haxforth v. State*, 117 Idaho 189, 786 P.2d 580 (Idaho App. 1990); *Smith, supra* note 25; *People v. McKee*, 15 Mich. App. 382, 166 N.W.2d 688 (1968). See, also, *Commonwealth v. Berggren*, 398 Mass. 338, 496 N.E.2d 660 (1986); *State v. Miles*, 203 Kan. 707, 457 P.2d 166 (1969); *State v. Russo*, 38 Conn. Supp. 426, 450 A.2d 857 (Conn. Super. 1982).

[40] *Haxforth, supra* note 39, 117 Idaho at 191, 786 P.2d at 582.

[41] See Idaho Code Ann. § 18-4007(3)(c) (Cum. Supp. 2009).

[42] *Haxforth, supra* note 39, 117 Idaho at 191, 786 P.2d at 582.

[43] *Id.*

Therefore, while the court acknowledged that misdemeanor motor vehicle homicide has some relationship to the general felony of manslaughter at common law, the court concluded that it resembles more closely a public welfare offense and, as such, need not contain a criminal negligence requirement.[44] Similarly, the Oregon Supreme Court explained that it was "convinced that the negligent homicide statute is a police regulation, and that the legislature did not intend that any form of moral culpability should be an element of the offense," because "[t]he crime created by the act is not one that casts great stigma upon those convicted, nor is the penalty prescribed by the act so great that its imposition upon those who had no evil purposes tends to shock the sense of natural justice."[45]

In arguing to the contrary, Perina relies upon *Com. v. Heck*,[46] an opinion of the Superior Court of Pennsylvania in which the court concluded that Pennsylvania's motor vehicle homicide statute violated the Pennsylvania constitution. We do not find *Heck* persuasive, for several reasons. First, Perina neglects to mention that the Supreme Court of Pennsylvania granted review of the Superior Court's decision and, while affirming it on other grounds, expressly "reject[ed] the Superior Court's analysis of the due process issue in this case."[47] Second, the Superior Court's conclusion rested upon the Pennsylvania constitution; the court expressly disclaimed any reliance on the federal Constitution,[48] the Due Process Clause of which we have held to be coextensive with that of the Nebraska Constitution.[49] And finally, the Pennsylvania statute at issue in that case, unlike Nebraska's, permitted a term of imprisonment of up to 5 years. *Heck*, to the limited extent that it stands for

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[44] See *id.*

[45] *Wojahn, supra* note 39, 204 Or. at 139, 282 P.2d at 702.

[46] *Com. v. Heck*, 341 Pa. Super. 183, 491 A.2d 212 (1985).

[47] *Com. v. Heck*, 517 Pa. 192, 194, 535 A.2d 575, 576 (1987). See *Smith, supra* note 25.

[48] *Heck, supra* note 46.

[49] See, *Keller v. City of Fremont*, 280 Neb. 788, 790 N.W.2d 711 (2010); *State v. Thomas*, 268 Neb. 570, 685 N.W.2d 69 (2004).

the proposition urged by Perina, is plainly distinguishable from this case.

[8] As noted above, motor vehicle homicide in Nebraska is generally a Class I misdemeanor,[50] absent certain exceptions not relevant here, and as a Class I misdemeanor, it is punishable at the sentencing court's discretion by up to 1 year's imprisonment, a $1,000 fine, or both.[51] But it carries no minimum penalty.[52] Taken as a whole, the standard imposed by the statute is reasonable. While it bears some relationship to manslaughter, it is more directly related to the predicate traffic offenses upon which it is based, which are not taken from the common law and were expressly identified in *Morissette* as an example of a public welfare offense. A conviction does not gravely besmirch the character of the defendant, and the penalty, while it could potentially include a term of imprisonment, is relatively small for an offense which causes a person's death. We conclude that when *Morissette*'s interpretative principles are considered, misdemeanor motor vehicle homicide is a public welfare offense which does not require proof of mens rea. We find no merit to Perina's argument that § 28-306 should be construed differently.

CONCLUSION

The district court did not err in rejecting Perina's constitutional arguments or affirming the county court's decision to convict him of motor vehicle homicide without proof of mens rea. The district court's judgment is affirmed.

AFFIRMED.

WRIGHT, J., not participating.

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[50] See § 28-306(2).

[51] See §§ 28-106 and 28-306(2).

[52] See *id.*