

NMDPS - CHILD ABUSE - KNOWING THE VICTIM

A person in Albuquerque, drunk and driving recklessly, plowed into the back of a vehicle. A child in the backseat of the other vehicle was killed. Instead of vehicular homicide, prosecutors chose the more serious charge of child abuse. NMSA 1978, Section 30-6-1 (D) (1).

Defendant's drinking and reckless driving was a threat to all people on the road. Child abuse, however, requires more: specific criminal negligent conduct directed towards children or a particular child. It involves a Defendant placing a child within a zone of danger and knowing the child is in a zone of danger.

Had the child been a passenger in Defendant's vehicle, child abuse would have been an appropriate charge. But the child wasn't her passenger and she wasn't even aware of the child in the other vehicle. Court of Appeals reversed the jury conviction of negligent child abuse. State v. Gonzales (2011).

After child abuse charges were dismissed, an attempt was made to charge the Defendant with vehicular homicide. In 2013, the Supreme Court held vehicular homicide should have been joined with child abuse and would not permit another trial. Defendant did not contest her convictions for aggravated DWI and leaving the scene of an accident.

- - - ADA Elliott Guttman, Law Enforcement Academy



How am I suppose to know the kid's back there, this ain't even my car!