

December 5, 2016

(505) 660-2216

Attorney General Balderas Announces AG's Office will Join Prosecution of Xavier Nelson

Albuquerque, NM – This morning, Xavier Nelson was arraigned in Bernalillo County District Court on three counts involving the death of 10-year-old Carmen Esmeralda Rivera in November 2016. Last week, the Second Judicial District Attorney's Office secured a grand jury indictment including charges of felony Homicide by Vehicle (Reckless Driving) and misdemeanors Possession of a Controlled Substance and Racing on Highways against Nelson. Attorney General Balderas announced today that the Office of the Attorney General will jointly prosecute this case with the Second Judicial District Attorney's Office.

"The Office of the Attorney General will pool our resources and expertise with the Second Judicial District Attorney's Office to jointly prosecute Mr. Nelson," **Attorney General Hector Balderas** said. "Our office will continue to work with DA's and local law enforcement across New Mexico to investigate and prosecute crimes against children, and I am grateful for District Attorney Brandenburg welcoming our partnership in this matter."

"Having the Attorney General's assistance is an invaluable resource in the prosecution of this case," said **District Attorney Kari Brandenburg**. "Attorney General Balderas was quick to offer the help of his team and we are very much appreciative. This collaboration is another positive step forward in quickly addressing these kinds of tragedies."

Please see attached for the grand jury indictment and a photo of Xavier Nelson.

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

FILED IN MY OFFICE THIS

NOV 29 2016

J. Cal
CLERK DISTRICT COURT

No. **D 0202 CR 2016 - 03852**
DA#: 2016-06945-1
STN: 001160280130

STATE OF NEW MEXICO,
Plaintiff,

vs.

XAVIER ARTHUR NELSON,
Defendant.

CRIMES CHARGED

HOMICIDE BY VEHICLE (RECKLESS DRIVING) (0017); POSSESSION OF A CONTROLLED SUBSTANCE (5801); RACING ON HIGHWAYS (1468)

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

↑ COUNT 1: HOMICIDE BY VEHICLE (RECKLESS DRIVING) (0017)

That on or about November 12, 2016, in Bernalillo County, New Mexico, the above-named defendant did cause the death of Carmen Rivera-Nevarez in the unlawful operation of a motor vehicle in a reckless manner, resulting in the death of a human being, contrary to Section 66-8-101, NMSA 1978.

↑ COUNT 2: POSSESSION OF A CONTROLLED SUBSTANCE (5801)

That on or about November 12th, 2016, in Bernalillo County, New Mexico, the above-named defendant did intentionally have in his possession Alprazolam, which is a controlled substance, knowing or believing it to be Alprazolam, or believing it to be some drug or other substance, the possession of which is regulated or prohibited by law, contrary to Section 30-31-23(A), NMSA 1978.

↑ COUNT 3: RACING ON HIGHWAYS (1468)

That on or about November 12th, 2016, in Bernalillo County, New Mexico, the above-named defendant did drive a vehicle on a highway in a race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration or for the purpose of making a speed record, contrary to Section 66-8-115, NMSA 1978.

The names of the witnesses upon whose testimony this Indictment is based are as follows:

M. Sandoval, A.P.D.

I hereby certify that the foregoing Indictment is a True Bill.

APPROVED:

Cynthia Winland
Foreman

[Signature] for
Guinevere Ice
Deputy District Attorney

11/28/2016
Date

CASE INFORMATION

DA FILE#: 2016-06945-1
MET.CT.#: T-4-FR-2016-006108
LEA/RPT#: Albuquerque Police Department / 16-0107130
DDA: Guinevere Ice
DOB: 12/02/1993
SS#: 536-29-1870
ADD: 324 Mimbres Dr, Los Almos, NM 87544/6800 Vista Del Norte Dr, NE # 222 87113

BOOKING/ARREST DATE: November 12, 2016
BOOKING/ARREST#: 130795644
STN: 001160280130
DEF.ATTY: PD

PHYSICAL DESCRIPTION OF DEFENDANT:

Height: 509"
Weight: 125 lbs
Race: White Male
Eye Color: Brown
Hair Color: Brown
Tattoos: DRAGON upper right arm/CROSS left forearm

[FW]

PENALTIES

COUNT 1: 3rd Degree Felony

COUNTS 2 & 3: Misdemeanors

4th Degree Felony: Basic sentence of 18 months imprisonment and not more than \$5,000 fine.

3rd Degree Felony: Basic sentence of 3 years imprisonment and not more than \$5,000 fine.

2nd Degree Felony: Basic sentence of 9 years imprisonment and not more than \$10,000 fine.

1st Degree Felony: Basic sentence of 18 years imprisonment and not more than \$15,000 fine.

USE OF FIREARM ALTERATION TO BASIC SENTENCE (FE): Basic sentence of imprisonment increased by 1 year for first offense in which a firearm is used and 3 years for subsequent offenses in which a firearm is used.

USE OF HATE CRIME ENHANCEMENT: Basic sentence of imprisonment is increased by one (1) year, unless second offense, then the basic sentence is increased by two (2) years.

Special Penalty: (Receiving or Transferring a Stolen Vehicle (Possession) only) Basic sentence of one year and/or \$5,000 fine.

Misdemeanor: Less than 1 year in the County Jail and/or not more than \$1,000 fine.

Petty Misdemeanor: Not more than 6 months in the County Jail and/or not more than \$500 fine.

Penalty for Driving While Under the Influence - Felony Offense:

(4th): Basic sentence of 18 months and not more than \$5,000 fine, including a mandatory imprisonment term of not less than 6 months;

(5th): Basic sentence of 24 months and not more than \$5,000 fine, including a mandatory imprisonment term of not less than 12 months;

(6th): Basic sentence of 30 months and not more than \$5,000 fine, including a mandatory imprisonment term of not less than 18 months;

(7th): Basic sentence of 36 months and not more than \$5,000 fine, including a mandatory imprisonment term of not less than 24 months;

(8th or Subsequent): Basic sentence of 12 years and not more than \$10,000 fine, including a mandatory imprisonment term of not less than 10 years

Penalty for Driving While Under the Influence - Misdemeanor: If 1st Offense, basic sentence is maximum 90 days jail and \$500 fine, and if aggravated an additional 48 hours jail time; if 2nd Offense, basic sentence is mandatory 72 hours in jail and \$500 fine to maximum of 364 days and \$1,000 fine, and if aggravated an additional 96 hours jail time; if 3rd Offense, basic sentence is a mandatory 30 days in jail and \$750 fine to maximum of 364 days and \$1,000 fine, and if aggravated an additional mandatory 60 days jail time.

Penalty for Driving While License Suspended or Revoked: Traffic Code Misdemeanor, Special Penalty: not less than 4 days nor more than 364 days and fine up to \$1,000 (non-DWI related suspension/revocation); or not less than 7 consecutive days imprisonment and mandatory fine not less than \$300 nor more than \$1,000 (DWI revocation).

Penalty for Reckless Driving: Upon first conviction, basic sentence of 5 days to 90 days imprisonment, and/or \$25 to \$100 fine. Upon a second or subsequent conviction, basic sentence of 10 days to 6 months imprisonment, and/or \$50 to \$1,000 fine.

Penalty for Traffic Code Misdemeanor: fine of not more than \$300 or imprisonment for not more than 90 days or both.

Penalty Assessment Misdemeanor: See Schedule in Traffic Code, Section 66-8-116.

1st Degree Felony for Child Abuse (Intentionally Caused) (Resulting in Death) (Child Under 12): Life imprisonment.

2nd Degree Felony Resulting in the Death of a Human Being: Basic sentence of 15 years but not less than 10 years nor more than 20 years imprisonment and not more than \$12,500 fine.

3rd Degree Felony Resulting in the Death of a Human Being: Basic sentence of 6 years but not less than 4 years nor more than 8 years imprisonment and not more than \$15,000 fine.

2nd Degree Felony, Sexual Offense Against A Child: Basic sentence of 15 years imprisonment and not more than \$12,500 fine.

3rd Degree Felony, Sexual Offense Against A Child: Basic sentence of 6 years imprisonment and not more than \$5,000 fine.

OPEN CHARGE OF MURDER

Penalty for FIRST DEGREE MURDER (Willful and Deliberate) or (Depraved Mind)

CAPITAL FELONY: Life Imprisonment

SECOND DEGREE MURDER: Basic sentence of 15 years imprisonment and not more than \$12,500 fine.

VOLUNTARY MANSLAUGHTER: Basic sentence of 6 years imprisonment and not more than \$15,000 fine.

INVOLUNTARY MANSLAUGHTER: 4th Degree Felony: Basic sentence of 18 months imprisonment and not more than \$5,000 fine.

Penalty for FIRST DEGREE MURDER (Felony Murder):

CAPITAL FELONY: Life Imprisonment