

Delivery alert until NaN

Ferguson dodged cops again before Jeremiah died

By Edmundo Carrillo / Journal Staff Writer

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Lapel camera video from SFPD Officer Heinz De Luca shows Thomas Ferguson talking to him and Officer Jacob Martinez last Nov. 24. Ferguson, who was wanted at the time, allegedly took part in the killing of 13-year-old Jeremiah Valencia two days later. (SOURCE: SFPD Lapel Video)

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Thomas Ferguson made a habit of dodging law enforcement and the criminal justice system.

He was even able to slip away just days before he allegedly had a role in the killing of 13-year-old Jeremiah Valencia last November, even though he was a wanted man at the time and had an in-person encounter with officers.

Santa Fe police officers let Ferguson drive away, even after he was found to have an expired driver's license, police video shows.

Thomas Ferguson speaks to SFPD on 11-24-2017



And officers couldn't find any other reason to hold Ferguson, because, according to a state Corrections Department spokesman, a months-old arrest order for Ferguson on a probation violation had never been entered into a nationwide crime database. A court-approved arrest warrant also existed at that point, but may not have found its way into the SFPD records system in time.

During the same incident, an SFPD officer wrote incorrect information in his police report about Tracy Ann Pena, Jeremiah's mother and Ferguson's girlfriend at the time. Pena, a frequent flyer at the local jail, was being arrested in a Walmart parking lot for failing to make a required court appearance.

The November police report says Pena had no children to care for at home, even though she can be heard on lapel video from the arrest mentioning her daughter and asking Ferguson to tell the girl she's sorry.

SFPD policy requires officers to ask arrestees about children and whether they will be at home without an adult caretaker. If children are placed with anyone other than another parent of the children, officers are supposed to check with the state Children, Youth and Families Department for any record of child abuse. Ferguson had been charged with child abuse, but not convicted.

Two days after Pena was arrested and Ferguson was allowed to leave, young Jeremiah was killed at the family group's Nambé home, where he had been routinely tortured with implements, such as a homemade spear and a hammer, and was kept in a dog kennel while wearing diapers, according to investigators. Court documents say Jeremiah was beaten senseless and stuck in the kennel before he died.

Tracy Ann Pena arrest 11-24-2017



Ferguson, who was 42, faced several charges in the boy's death before committing suicide in the Santa Fe County jail in April.



Tracy Ann Pena, center, sits in court with Jordan Nunez, right, during a detention hearing on Sept. 5. Both are being held on charges related to the death of Pena's 13-year old son, Jeremiah Valencia. (Eddie Moore/Albuquerque Journal)

Pena, 36, and Ferguson's 20-year-old son, Jordan Nunez, also face several charges, including child abuse resulting in death, conspiracy and tampering with evidence, in Jeremiah's killing.

On Nov. 24, 2017, Pena was arrested at the Walmart on Herrera Drive. SFPD Officer Jacob J. Martinez spotted her in the parking lot and knew that she had a Santa Fe Municipal Court warrant for failure to appear, according to Martinez's lapel video from the arrest.

When Pena got out of jail and returned to the Nambé home on Nov. 26, she later told Santa Fe County deputies that she went into Jeremiah's room and found him lifeless on his bed. She said Ferguson forced her and Nunez to stuff the body into a plastic storage container and bury it in a shallow grave off N.M. 503 near Nambé. Deputies learned about Jeremiah's death in late January after Pena told another inmate about it in the Santa Fe County jail, where she was being held again on other charges.

Investigators initially pegged Ferguson as the murderer, but new court documents accuse Nunez of delivering the fatal blow to Jeremiah as the boy was locked in the dog crate.

Ferguson's probation

Ferguson was on probation after pleading guilty to charges stemming from a 2014 case in which he was accused of keeping a woman in his home for several days while beating and sexually assaulting her. But he stopped reporting to his probation officer in Las Vegas, N.M., in June 2017.

Probation and Parole filed an arrest order – a measure that constitutes notice to law enforcement that someone is a probation absconder – for Ferguson in July last year.

The state Probation and Parole division also filed probation violation reports in Santa Fe District Court, first in August 2017 and again in November. The Santa Fe District Attorney's Office filed a belated motion to revoke Ferguson's probation on Nov. 20.

Judge T. Glenn Ellington signed off on an arrest warrant the following day. On Nov. 24, Ferguson met with police when they stopped his girlfriend Pena at the Walmart.

Ferguson may have gotten a break, because the arrest warrant was issued during a holiday week. Nov. 24 was Black Friday, the day after Thanksgiving, and the court-approved warrant from Nov. 20 may not gotten into the SFPD system because of holiday closures.

But even without the arrest warrant, officers who came into contact with Ferguson should have been able to determine he was wanted under the Probation and Parole order from July 2017. The order is supposed to go into National Crime Information Center database for law enforcement. But, as Corrections Department spokesman S.U. Mahesh explained, the order never got into the database. Mahesh maintains that's not Corrections' fault.

"We did issue an arrest order on Ferguson in July, however at the time, SF Dispatch's policy was not to enter our arrest orders in NCIC," Mahesh said in an email. "Our division has worked with SF County Dispatch and they agreed to start entering our arrest orders into NCIC."

Santa Fe County Regional Emergency Communications Center Director Ken Martinez could not be reached for comment earlier this week.

Discussion with officers

When city Officer Martinez arrested Pena on Nov. 24, he and Officer Heinz De Luca met with Ferguson in the Walmart parking lot to give him Pena's personal items.

"You're saying you're Thomas Ferguson?" Martinez asks.

"Yes, sir," Ferguson replied.

Martinez then gets Ferguson's expired driver's license, returns to his patrol car and runs a warrant check on him, but the person on the other end of the radio doesn't find a warrant for Ferguson.

“All right, it’s just expired,” Martinez says before handing Ferguson his license back.

Ferguson then asks if he can drive away in his white Ford Ranger with an expired license.

“Am I OK to drive it, sir? I’m just going right up here,” Ferguson said, pointing north.

“It’s expired, but it’s not suspended or anything,” Martinez responded. “Just get there and that’s it, OK? Get that taken care of.”

“Yes, sir,” Ferguson said. “Thank you, officer.” Ferguson then reaches out and shakes Martinez’s hand.

Before officers talked to Ferguson, Pena asked to speak with Ferguson and mentions her daughter.

“Can I talk to him, please, because my daughter’s going to freak out,” Pena says to Officer Martinez as he leads her to his patrol car.

“I’m going to put you in my car first, OK?” Martinez says.

Just before Martinez drives away with Pena, Pena tells Ferguson to give a message to the daughter.

“Tell Bug I’m sorry,” Pena says. “Bug” is what the family group called the girl, according to court documents.

“I will,” Ferguson replies. “I’ll take care of her, don’t worry.” They then kiss through the bars in the back window of Martinez’s car.

There is no mention in the video of Jeremiah, believed to have been alive at that point. Neither child was enrolled in school at that time.

Even though Pena does mention her daughter twice in the lapel video, Martinez wrote in his report that “Ms. Pena was not caring for any children or dependants (sic) at the time of the arrest.”

According to the SFPD policy on making arrests, the officer “shall inquire about the presence of children or other vulnerable individuals for whom the arrested adult has responsibility. The inquiry could be phrased, ‘Is there anyone in your home who depends on you for their care?’

“If children are present at the arrest, or if the arrested parent indicates the children are or will be at home without an adult caretaker, the officer shall determine whether or not the other parent is available to care for the children. If not, the officer shall attempt to locate an adult relative or adult fictive kin (a person not related by birth or marriage who has an emotionally significant relationship with a child) who is willing to take responsibility for the children.”

The policy says a criminal background check of an alternative caregiver should be conducted. “Any history of sexual crimes or violence against children shall make the adult ineligible to assume custodial care,” the policy says. Ferguson was previously charged with both child abuse and criminal sexual penetration in separate incidents, but was never convicted of those crimes.

The SFPD policy also says that prior to placing any child with an adult other than the person who is being arrested, an officer is supposed to check with the state Children, Youth and Families Department “for information on any child abuse or neglect history of the potential caregiver.”

SFPD spokesman Greg Gurule said the department became aware of the lapel video’s content after it was recently requested by the Journal and is now investigating whether any policies were violated. Martinez and De Luca will remain on regular duty as the investigation is carried out, Gurule said.

“The officers will not be placed on leave or alternate duty at this time,” Gurule said in an email. “With the initiation of an administrative investigation, this becomes a personnel matter and no additional information can be provided at this time.”

The criminal justice system had missed other chances to jail Ferguson well before Jeremiah's death.

While out on probation from his 2014 domestic violence case, he was arrested in Rio Rancho in February 2016 for battering a woman he was living with. He later pleaded guilty to battery on a household member – an obvious probation violation. But lawyers in the Santa Fe District Attorney's Office told Judge Ellington that Sandoval County prosecutors weren't pursuing the Rio Rancho case, and Ferguson went back on probation.

In July 2017, Probation and Parole officers went to the Nambé house in an attempt to arrest Ferguson for absconding. Officer Mary Ann Sarmiento testified in court earlier this year that they didn't go past the front gate or leave notice that they were there because there were several large pit bulls in the yard. Officers never went back.

January arrest

It was Officer Martinez who arrested Ferguson and Pena together on Jan. 17 after he saw them in a car and confirmed that they both had warrants for their arrests. This time, he did report that Pena had a child, but he left her in the care of Nunez, Ferguson's adult son who is now also charged in Jeremiah's death.

"Ms. Pena was caring for her 13 year old daughter who was with her 19 year old brother who took possession of Ms. Pena's daughter and the vehicle they were traveling in," Martinez's report states. Pena's jail stay after this arrest was when she talked about Jeremiah's death with another prisoner, leading to discovery of the boy's buried body.

With Ferguson and Pena both in jail, Nunez and Pena's daughter moved from hotel to hotel – using aliases, according to court documents – until Nunez was arrested after Jeremiah's death was discovered.

The girl is expected to testify at a pretrial detention hearing next week, where a judge will determine if Pena and Nunez will be held in jail until trial.

Contact the writer.

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