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Santa Fe police in November encounter seemed unaware Ferguson was wanted

By Phaedra Haywood | phaywood@sfnewmexican.com Sep 14, 2018 Updated Sep 15, 2018



Thomas Wayne Ferguson was wanted for absconding from probation when he encountered police in a Santa Fe Walmart parking lot last year. They let him go, and authorities believe he might have beaten 13-year-old Jeremiah Valencia to death days later.

Thomas Wayne Ferguson was driving on an expired license, had absconded from probation and had an active warrant out for his arrest when he encountered police officers in the parking lot of a Santa Fe Walmart in late November, just two days before authorities say he might have beaten to death his girlfriend's 13-year-old son.

The officers' body camera videos show they let Ferguson leave the incident without even a ticket.

Meanwhile, his girlfriend, Tracy Ann Peña, was arrested in the parking lot on two Municipal Court warrants. And although she mentioned her daughter at least twice, an officer wrote in his report there were no children in her care.

That meant her daughter and son, Jeremiah Valencia, were left in Ferguson's care.

During the Nov. 24 incident, Peña, 36, didn't mention Jeremiah to police.

While she was in jail, prosecutors say, the boy was killed in the Nambé home where he had been living with his mother, his younger sister, Ferguson and Ferguson's adult son. Peña told Santa Fe County sheriff's investigators she discovered her son's death when she was released from jail. Ferguson was named as the lead suspect.

The police encounter at Walmart was one of many incidents in which Ferguson — who hanged himself in late April in the county jail, where he was held on a count of first-degree murder and other charges — eluded capture in the months leading up to Jeremiah's death, in part because of communication breakdowns between the agencies tasked with monitoring Ferguson.

He was serving probation after being convicted in a 2014 domestic violence case but had stopped checking in with his probation officer, authorities say.

Video from the encounter with police, about 25 minutes of footage, raises several questions about whether city officers followed department protocol.

Footage suggests Ferguson was waiting in the Walmart parking lot while Peña was walking

around looking for the store's propane tank exchange station.

Officers Jacob J. Martinez and Heinz De Luca also were in the parking lot, and Martinez recognized Peña — a regular at the county jail — as a person on a warrant list. The officers confronted her, handcuffed her and put her in a police vehicle, video shows. Then they drove her to where Ferguson was standing outside his truck so she could give him some of her belongings.

While police department policy requires officers to ask arrestees if they have any minor children in their care, Martinez and De Luca never questioned Peña about children, even though she is heard in the video saying, "My daughter is gonna freak out."

Peña also asked Ferguson to tell "Bug" — a pet name for her daughter — that she is sorry.

Ferguson said he would and added, "Don't worry, I'll take care of her."

Still, Martinez wrote in his report that Peña "was not caring for any children or dependants [sic] at the time of her arrest."

With Peña in their vehicle, the officers turned their attention to Ferguson, who was holding a puppy. He kissed the dog on the head as he spoke with the officers.

Ferguson told the officers the truck he was driving wasn't registered in his name because he had just bought it. When the officers asked for his identification, he produced an expired license.

One of the officers made a call about Ferguson's license but then returned it, saying it was "just expired" and "not suspended."

Martinez told Ferguson to "get it taken care of it, all right? You be careful."

The officers appeared to have no information about Ferguson's status as an absconder or the warrant for his arrest.

This could be because the warrant, charging Ferguson with failure to comply with the terms of his probation, might not have been entered into a national crime database by that time, the day after Thanksgiving. State District Judge T. Glenn Ellington had just signed the warrant Nov. 21, the Tuesday before the holiday.

But it wasn't the only call out for Ferguson's arrest.

S.U. Mahesh, a spokesman for the New Mexico Corrections Department, said the Adult Probation and Parole Division had issued an arrest order for Ferguson months earlier, in July 2017, after he failed to report to his probation officer in the 2014 domestic violence case, in which he had pleaded guilty to kidnapping and aggravated battery on a household member.

Mahesh said in an email Friday that the arrest order wasn't entered into the National Crime Information Center database because under the local dispatch center's policy, arrest orders weren't considered warrants.

"We don't have the authority to enter arrest orders/warrants into the NCIC but rely on dispatch centers to do this," Mahesh wrote in the email.

Santa Fe Regional Emergency Communications Center Director Ken Martinez had a different explanation.

The dispatch center has written agreements with the Santa Fe County Sheriff's Office and the Santa Fe Police Department to enter their warrants in the national database, he said Friday, but had no such agreement with the state Adult Probation and Parole Division until a few weeks ago.

"They came to us asking if we would be willing to take that on and enter an agreement to enter their arrest orders, and so that's what we've done," Martinez said.

So far, he added, the agreement is only a verbal one.

Still, Mahesh said, the NCIC database should have shown Ferguson was on probation

when Santa Fe police encountered him in November.

Mahesh did not respond to follow-up questions on whether it was the Ferguson case that prompted the division to request the dispatch center's help in recording arrest orders in the national database.

Greg Gurulé, a Santa Fe police spokesman, said Friday the department has launched an investigation into the Nov. 24 incident "to determine if established department directives were adhered to by the involved officers."

The incident highlights one of many ways in which the state's system of protection for vulnerable children failed Jeremiah, who hadn't been attending school for several months before he died and whose brutal abuse and death went unreported for weeks.

Sheriff's deputies say they learned of Jeremiah's death in January, after Peña, jailed again, told a fellow inmate Ferguson had killed her son.

Investigators say Peña told them Ferguson had forced her to help bury the boy's body along a roadside near their home in Nambé. She and Ferguson's son, 20-year-old Jordan Anthony Nuñez, were charged in the case and have been held in jail since late January.

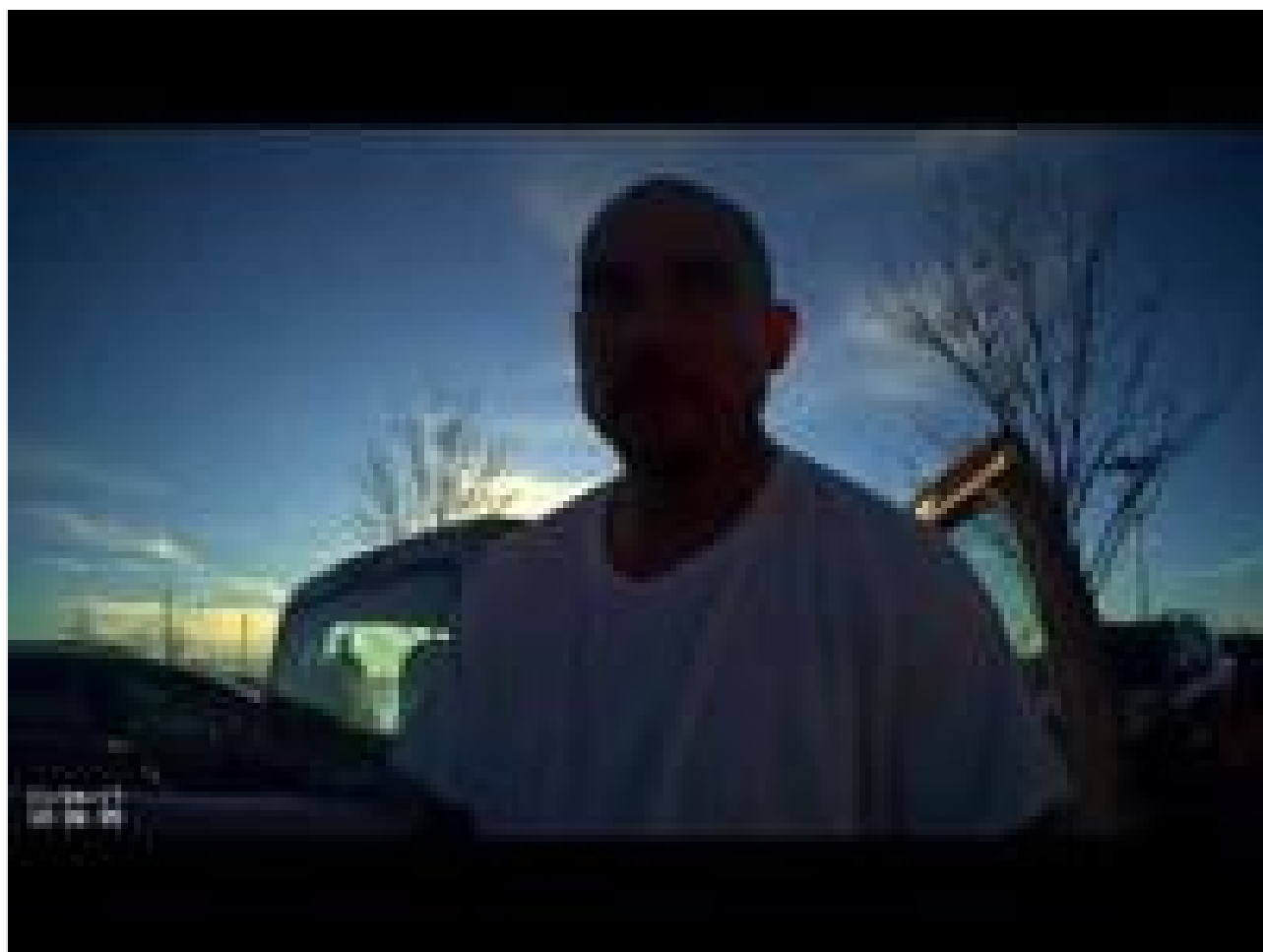
Authorities initially cited Ferguson as the killer, saying he inflicted the fatal injuries.

Following Ferguson's suicide, however, investigators have shifted their focus to the roles Peña and Nuñez played in Jeremiah's abuse and death, saying Nuñez might have dealt the blow that ended the boy's life.

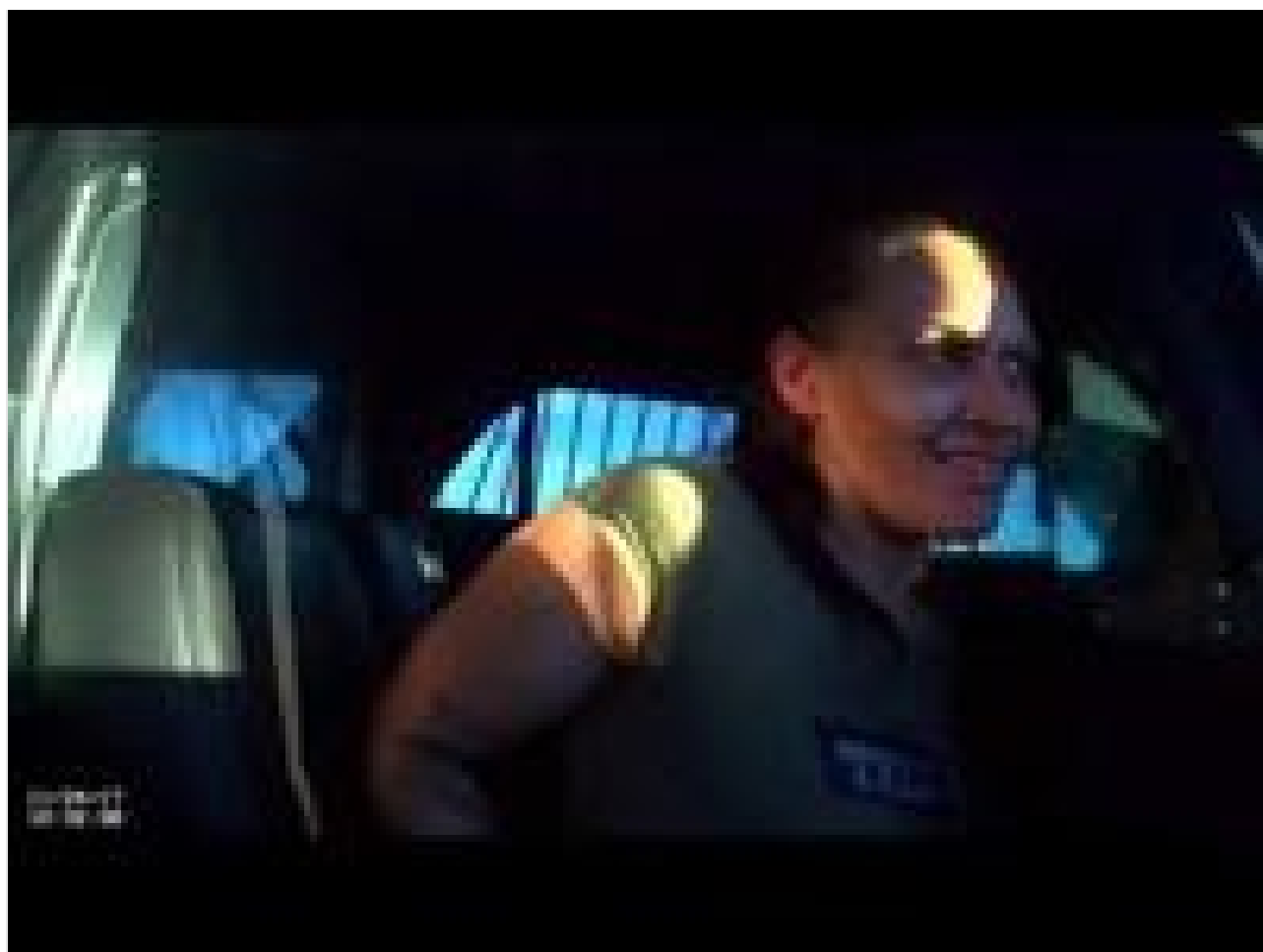
New evidence in the case, based in part on statements made by Jeremiah's 13-year-old sister, is being presented during a two-part hearing that began last week to determine whether Peña and Nuñez will be released from jail while awaiting trial.

The hearing is scheduled to continue Sept. 19 in the state District Court in Santa Fe.





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Updated Sep 15, 2018



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