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### **Slipping through the cracks**

Xctasy Garcia, 4, was a victim of abuse so severe that seasoned officials were horrified, yet friends, family and the system all failed to prevent her suffering.

By Anne Miller and Mike Goodwin

Staff writers

SCHENECTADY - The little girl screamed and screamed, like she was dying. Her cries penetrated the walls of Reggie Belton's room at the Twins Motor Inn.

It was the last week in May, and Belton just wanted to watch the NBA playoffs on TV. But the cries made it hard to hear. He heard a man in Room 16 yell "Get in the corner!" Belton drifted off to sleep, but more screams woke him at about 2 a.m.

Finally, he couldn't take it any longer. He pounded on the door of Room 16. He thought he heard someone muzzle the child.

The next day, Belton told the motel's manager, who called county authorities. They said he should tell Belton to phone New York's child abuse hot line. Belton never did. Two weeks later, the couple in Room 16 - Delia Hernandez, 26, and her boyfriend, Jose Munoz, also 26 - were charged with the attempted sale, torture and attempted murder of Hernandez's 4-year-old daughter, Xctasy Garcia.

Xctasy's eyes were burned with bleach, her arm and shoulder fractured and her delicate body marred by cigarette burns and covered with bruises. Law enforcement officials believe Munoz targeted Xctasy because she was the child of his girlfriend's former lover.

Belton and others at the Twins Motor Inn, a State Street motel that serves as a county emergency shelter for the homeless, weren't the only people who let down Xctasy.

A monthlong Times Union-NewsChannel 13 investigation has found that government officials, police, family and friends repeatedly missed the chance to save Xctasy from her torturers. At least 10 people, some of them afraid or unwilling to speak publicly, either witnessed the abuse or saw or heard warnings. Nobody stopped it. Nobody helped the helpless child.

What else went wrong here? Just about everything, the Times Union and NewsChannel 13 learned.

Twice, Schenectady's Department of Social Services was phoned with reports of trouble in Xctasy's home - with one call clearly describing abuse. The agency did not act.

Twice, police missed a chance to lock up Munoz, a convicted felon and fugitive.

Once before, Hernandez and her children had been listed in the Massachusetts child abuse registry, but no one in Schenectady County, where the family joined local welfare rolls in May, knew about it until it was too late.

It may take months for authorities to sort out the blame, and even longer to figure out how to prevent another Xctasy. So gruesome was the sight of the child when she was rushed to a hospital by churchgoers who finally noticed her suffering that Xctasy's rescuers still cannot recall those moments without sobbing.

Hernandez and Munoz deny they abused their daughter.

Schenectady District Attorney Robert Carney describes it as the worst case of child abuse he's ever seen.

"I had a lot of things that went through my mind about the nature of a person that could do something like that to a baby like that," Carney said. "I'm a parent and, you know, it's very difficult not to be touched by this."

"Obviously, we all wish it didn't happen," Schenectady County Department of Social Services Commissioner Dennis J. Packard said in an interview this week. "I wish this man had not abused these children and I wish this mother had not let it happen."

"If there are things we can learn from this process," Packard said, "we will take them away and we will act accordingly."

### **Two calls**

Packard's agency may have the most to learn. For weeks the county's Department of Social Services, where most records are secret, has offered an official account of its involvement in Xctasy's abuse that began only with the arrest of the mother and her boyfriend on June 11. But after repeated questions by the Times Union and NewsChannel 13, Packard acknowledged that two phone calls concerning Hernandez and Munoz came to his agency as early as two weeks before their arrest for child abuse.

Packard said the manager of the Twins Motor Inn, Ben Desai, tried to call Hernandez's welfare examiner May 25 or May 26, but got another examiner. Desai told that worker a motel resident had heard loud noises coming from Room 16, where Hernandez was staying, and believed, according to Packard, that "a man might be harming a child."

The county employee, Packard said, urged Desai to have the witness report the abuse to the state's centralized child abuse hot line and to police.

Packard refused to identify the employee, but insisted the case was handled appropriately. State law does not require county social services workers to relay a child abuse complaint directly to the state hot line or to investigate child abuse until the state registers the tip through its hot line, Packard said.

The county worker, he said, did her job.

"In accordance with what our regulations are, we gave the information out," he said. "They followed what the procedure is."

A second call from Desai to the county placed around the same time went directly to the voice mail of the welfare examiner assigned Hernandez's case.

That message detailed Desai's desire to "talk about the Hernandez family," Packard said, but "there wasn't anything alarming in that statement." The message was erased soon after it arrived.

An internal review of how the agency handled the two calls is under way.

"We're now looking into the sequence of events and reviewing what happened," he said.

At the Twins Motor Inn, Desai refused to comment.

### **Two warrants**

Even before Packard's employees received phone calls, law enforcement officials could have prevented Xctasy's abuse.

The first public evidence of Munoz's arrival in Schenectady County is an April 30 arrest after he was caught on video stealing \$210 worth of perfume and cologne, then fleeing from the Marshalls department store on Balltown Road in Niskayuna.

Town police said they checked the FBI's National Crime Information Center, an interstate computer database, to see whether Munoz was wanted by any other agencies. No warrant was found. Munoz pleaded not guilty and was released without bail.

In fact, a district judge in Gardner, Mass., had issued a warrant for Munoz's arrest on April 10 arising from Munoz's conviction for passing counterfeit \$20 bills at several Gardner stores in January. Munoz had pleaded guilty but failed to appear for a probation hearing, and the judge signed the warrant.

Massachusetts authorities entered the felony warrant into their statewide database but not the federal system.

Bay State officials won't say why. The police chief in Gardner refused to comment. Other officers said decisions to share warrants through the FBI lie with Worcester County District Attorney John J. Conte. Conte did not return several calls and messages left by the Times Union and NewsChannel 13. When the news organizations paid a visit, the district attorney was unavailable.

"If that warrant was in the system at that time, then (Niskayuna police) would have been obligated to hold him at least to hear from Massachusetts," Carney, Schenectady's district attorney, said.

If the roles of each state had been reversed, Carney said, New York officials would have traveled to Massachusetts to seek Munoz's extradition. Carney said he suspects Massachusetts officials would have wanted New York to do the same.

"In that case, he would have been held for that and then taken back to Massachusetts," Carney said.

Had Munoz fought extradition, Carney said, he could have been kept behind bars in Schenectady County for up to two months while Massachusetts authorities applied for a governor's warrant for his return. That would have kept Munoz in jail at least through June.

Munoz not only dodged Massachusetts, but by early June he was a fugitive from Niskayuna police. He failed to appear in town court for his shoplifting charge and on June 2, a town judge signed a warrant for his arrest.

At his April arrest, Munoz had given police a Schenectady address where he had stayed with friends. Niskayuna police won't say whether they tried to find him there. His friends still lived there, just blocks from the Twins Motor Inn, where Xctasy allegedly suffered at his hands.

### **Abuse history**

Munoz, a wanted man and admitted heroin addict, began staying with Hernandez. For her children, Xctasy; Hennessy Hernandez, 8; and Damien Munoz, 7, Schenectady had become a dangerous environment. Hernandez had neglected her children before. Her network of friends and family, and Xctasy's father, resided far away in small communities strung along the highway north of Worcester, Mass.

In February 2003, social services workers in Massachusetts investigated Hernandez, according to Denise Monteiro, a spokeswoman for the state Department of Social Services. It resulted in a "founded" record of child neglect. Hernandez suffered from

severe depression, but she participated in counseling programs and caseworkers believed she had turned a corner, Monteiro said.

The case was closed in June 2005 but remains in the Massachusetts child abuse registry.

"We were sad when we found out she left the state, because we felt she had all her safety nets here," Monteiro said.

Schenectady County officials were ignorant of Hernandez's past when she applied for emergency housing here. No national computer system exists for an interstate background check on child abuse or neglect.

"The county couldn't know that someone was involved with the child welfare system of another state," Packard said.

In Massachusetts, court records and interviews with people who know Hernandez, Munoz and their children describe off-and-on relationships, jealous fights and domestic violence.

Xctasy's father, Avin Garcia, 22, first dated "Dely" Hernandez when they were teenagers. Several years ago, Garcia and two friends attacked Munoz because they believed he had struck Hernandez.

They sent him packing to Puerto Rico, Garcia said.

"I went to Dely's house and told him to pack up all his stuff. I told her he wasn't going to do it again," Garcia recalled.

He said he raised money to buy Munoz a one-way ticket to the island. Munoz disappeared, and Garcia said he and Hernandez dated for several years.

But Garcia also has a stormy history with Hernandez. In the summer of 2001, police intervened when Garcia allegedly pushed Hernandez at their home on Water Street in Leominster. Garcia's mother, Nancy Mestre, told police Hernandez tried to break up with Garcia, but "he wouldn't take no for an answer," according to court records.

Officers subdued him with a stun gun.

Hernandez declined to press charges, but the responding officer arrested Garcia for assault and disorderly conduct. He pleaded guilty.

n February of last year, Hernandez rented a basement apartment in Gardner from her friend Nilsa Hernandez. The women are not related.

In December, Munoz joined Delia and the children after serving a jail sentence in Puerto Rico on domestic violence charges. Trouble soon followed.

Hayat Canela, who knows the couple from Leominster, recalled an afternoon earlier this year as she relaxed in a Massachusetts living room with Xctasy and Munoz. As the little girl talked with her mother's boyfriend, she poked him in the arms and stomach.

Suddenly, Canela said, Munoz grabbed the girl's head and tossed her onto the couch. The child called for her mother. "Oh, come on, Xctasy," Delia said, according to her friend. "He was just playing with you. Go over there and stop being such a baby."

"I was like, 'Oh my God, how can he just grab her like that?' " Canela said. "She's just a little girl. Compare his strength to her little body. You know what I'm saying?"

Nilsa Hernandez said Munoz played his music loud and disrupted the otherwise quiet street. Munoz yelled at Hernandez and the children, keeping them isolated in the apartment, she said.

Nilsa Hernandez said she worried for the safety of Delia and her children. "It was like she was my daughter," she said. "I wanted to mother her. I wanted her to do right."

But Delia assured her: "Before anything happens, ma, I'll leave."

In January, investigators came looking for Munoz to question him about the phony money he was passing in Gardner.

Nilsa Hernandez told Delia Hernandez: "I don't want that kind of atmosphere around here." The couple left.

### **Xctasy's tears**

In late March, Hernandez, Munoz and the children moved to Puerto Rico. Garcia said Munoz called him from the island.

Said Garcia: "The day he got there he said, 'I got Dely and your daughter.' He told me, 'Payback is going to be a bitch.'"

"I didn't think he was going to do something to my daughter. I thought he was bragging about taking my girlfriend," he said.

Then, in May, Hernandez and the children moved to Schenectady. They stayed at the Days Inn on Nott Terrace before moving into the Twins Motor Inn on May 18, as arranged by county welfare officials.

One Twins tenant, David Secor, 63, watched Munoz play a game with Xctasy and her two brothers on a rooftop patio above the motel's reception office. Xctasy, he said, sat cross-legged on the patio while her brothers tried to jump over her.

"They'd fall on her, crack her head into the floor or crack her shoulder into the floor," Secor said. Munoz, he said, would egg them on.

"I told the landlord about it and he told them to quit playing there," Secor said. He considered calling police.

"In this neighborhood, you don't like to get involved too much. There's too many guns," he said.

A Schenectady mother who asked that her name not be published for fear of repercussions said she met Hernandez once at a friend's house - an address that police would later give as one where Munoz tried to sell Xctasy.

The woman recalled that the girl didn't play like other 4-year-olds, and just sat quietly on the stoop, looking down. She asked about a red handprint on Xctasy's cheek, but was told that her brother had hit her.

Two women eventually were offered a chance to buy Xctasy, according to police, but neither called authorities until after the child's abuse made news.

One of the women, whose identity the Times Union has learned, declined to speak to reporters.

Reggie Belton, 47, the next-door neighbor at Twins Motor Inn, replays in his head the night in May when he heard a child's wails.

"She was just screaming like he was killing this girl," Belton said.

When he finally stormed out of his room and banged on the door at Room 16, "it got real quiet," Belton said.

Belton intended to call the state child abuse hot line, he said, but before he could get around to it, he was admitted to a drug treatment program and left the motel.

"I wish I would have called the cops that night," Belton said. "They probably would have found burns on her. I'm so mad I didn't call the cops that night."

In the end, only Xctasy's tears - at church - saved her.

Shortly after moving into the Twins Motor Inn, Hernandez started taking Xctasy across the street to Iglesia De Dios, or Church of God. In an area of the city known for drug-dealing and prostitution, the church served as a haven for those trying to escape theirs and the neighborhood's problems.

Neidys Rivera, the minister's daughter, described Hernandez as a quiet woman who came one Sunday to ask the congregation to pray for her. They did, and she left without saying much.

Hernandez returned to the church June 11. Xctasy was with her, her face covered with a child's coat.

Rivera's husband, Juan, a church drummer, spied the girl's beaten and burned face and began to cry. He and his wife forced Hernandez to go with them as they drove Xctasy to the St. Clare's Hospital emergency room, along with Hernandez's two sons.

There, Neidys Rivera held Xctasy's hand. Juan Rivera watched the boys in the waiting room.

Neidys Rivera runs a day care center in her home and is mandated by state law to report signs of child abuse to authorities, she said, but she wasn't thinking of that when she saw Xctasy that Sunday morning.

"I have a 21-month-old baby," she said, beginning to cry, "and I couldn't imagine my baby like that, ever."

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NewsChannel 13 co-anchor Jim Kambrich contributed to this report.

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### **Chronology of miscues**

One mother, three children, three fathers, two arrest warrants, two phone calls, five or more witnesses -- and a little girl suffers.

Oct. 14, 1997 -- Delia Esther Hernandez' first child, Hennessy, is born. Father is Luis M. Velasquez, 22. Hernandez is 17.

Oct. 16, 1998 -- Hernandez' second child, Damien, is born. Father is Jose J. Munoz, 17.

May 30, 2001 -- Hernandez sues Velasquez for custody and to establish paternity to get child support for Hennessy.

March 10, 2002 -- Hernandez's third child, Xctasy Aaliyah, is born. Father is Avin Garcia, 18.

March 7, 2004 -- Munoz is arrested in Puerto Rico for domestic violence against woman named Lourdes.

March 23, 2005 -- Munoz is arrested in Puerto Rico for domestic violence against Hernandez and sentenced to 18 months in jail.

Jan. 5, 2006 -- Munoz charged with passing counterfeit \$20 bills in Gardner, Mass. He is convicted of six felonies and sentenced to probation.

April 10, 2006 -- Worcester County, Mass., judge issues warrant for Munoz's arrest for violating his probation on counterfeiting conviction, but police fail to transmit warrant outside state.

April 30, 2006 -- Munoz is arrested for shoplifting in Niskayuna. Gives home address of woman named Lourdes.

May 18, 2006 -- County welfare workers arrange for Hernandez and three children to move to Twins Motor Inn, an emergency shelter.

May 19, 2006 -- Twins manager confronts Munoz to warn that county rules prohibit him from visiting Hernandez.

May 25-26, 2006 -- Twins tenant hears sounds of beating and screams from Xctasy through adjoining wall. Tenant informs manager.

May 26, 2006 -- Twins manager calls county Department of Social Services to report tenant's concerns. DSS tells manager to have tenant phone state child abuse hot line.

May 29, 2006 -- Munoz offers to sell Xctasy to woman in Twins neighborhood, but the woman doesn't call police.

May 30, 2006 (approx.) -- Twins tenant sees Munoz coach son and son's half brother to jump on Xctasy during play, knocking her head against concrete balcony. Tenant informs manager.

June 2, 2006 -- Niskayuna town judge issues warrant for Munoz's arrest for failing to appear in court on shoplifting charge, but police don't search for Munoz.

June 6, 2006 (approx.) -- Twins manager calls DSS a second time to report Munoz refuses to leave Hernandez's room, leaving voice mail message for welfare caseworker.

June 7, 2006 -- Munoz offers to sell Xctasy to second woman in Twins neighborhood, but the woman doesn't call police.

June 9, 2006 -- Severe beating of Xctasy allegedly begins.

June 10, 2006 -- Abuse of Xctasy allegedly continues.

June 11, 2006 -- Churchgoers see child crying and demand she be taken to hospital. Hernandez and Munoz arrested for alleged child abuse. Children placed in protective custody.

June 16, 2006 -- Unaware Hernandez moved to Schenectady, Worcester County, Mass., officials sue Garcia, Xctasy's father, for child support on her behalf.

June 23, 2006 -- Schenectady grand jury indicts Hernandez and Munoz for attempted murder and child abuse charges.

**A combined effort:** To uncover the full story about the abuse of Xctasy Garcia, the Times Union teamed up with WNYT NewsChannel 13, the NBC affiliate in Albany, to produce an unusual joint investigative report. Newspaper reporters Mike Goodwin and Anne Miller, who initiated the reporting, worked with NewsChannel 13 co-anchor Jim Kambrich to hunt down and speak to dozens of people who knew of Xctasy or had

some role in her case. Times Union librarians Kathy Fry and Margaret Williams contributed research. Under the supervision of Times Union Senior Editor Bob Port and producer Kathy Barrans of NewsChannel 13, the two organizations shared sources, with their permission, as well as documents, stories, scripts, photographs and video.