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A promise unbroken but still unkept

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SCHENECTADY - Alone in the hospital emergency room, Neidys Rivera made a solemn promise to the 4-year-old girl who lay in unspeakable pain, her eyes burned, her bones broken and her body covered with bruises.

"I told Xctasy (Garcia) that I was going to be her new best friend," Rivera said. "I was going to buy her pretty dresses and take her to church."

County officials have made it impossible for Rivera to keep her promise. Even though Rivera heroically brought Xctasy's plight to light - in a horrific child abuse case that has shocked the conscience of the Capital Region - Rivera can't get anyone to talk to her at the Schenectady County Department of Social Services.

It may seem to be a little thing. Simple words of comfort offered by a mother to the hurting child of another.

But for Rivera, it's a question of honesty and honor and keeping faith with children.

Rivera, a licensed child day care operator, said she has begged social services officials to let her see Xctasy, who has been in protective custody at a county foster home since mid-June, but DSS officials won't return her phone calls, and that reduces her to tears.

Last week, for the first time, Rivera and her husband, Juan Rivera, shared their story of that day, June 11 - seeing Hernandez and her daughter in church, insisting they go to the hospital, then watching the other children until county Child Protective Services officials finally took them into protective custody.

"All I have is this ugly picture in my head," Rivera said, her eyes welling with tears. "I promised her something in that room. I want to see what she really looks like."

Rivera, her husband and another churchgoer noticed Xctasy, her head covered with a jacket during Sunday services at Iglesia de Dios. Rivera's father is pastor at the small church, across the street from the Twins Motor Inn in Schenectady, which houses homeless families for the Department of Social Services.

Delia Hernandez, Xctasy's mother, and her boyfriend, Jose Munoz, both 26, have since been indicted for allegedly trying to drown and sell Xctasy, and for breaking her arm and shoulder, burning her with cigarettes and rubbing bleach into her eyes. They have pleaded not guilty.

But a reunion of child and rescuer is not likely to occur any time soon.

A psychologist involved in the case has recommended that those responsible for Xctasy's care "minimize her contact with strangers," said Kevin Burk, the assistant county attorney who is handling her case in family court.

"Where the child is at right now, it is not expected," Burk said, although he was quick to commend Rivera and others for saving Xctasy and he understands their interest in her.

"We certainly recognize the great deed that these women did," he said.

The county, however, was not as quick as Rivera to respond to warnings that the child was being abused.

Last week, a joint Times Union-NewsChannel 13 investigative report described failures by adults that allowed abuse of Hernandez's children - Xctasy Garcia and her brothers, Hennessy Hernandez, 8, and Damien Munoz, 7 - to occur unchecked.

Neighbors heard and saw abuse, but didn't call authorities. Massachusetts had a prior finding of child neglect, but New York welfare officials didn't know. Police in Massachusetts never transmitted a felony warrant for Munoz, so police here didn't hold the heroin addict after a local shoplifting arrest.

And, twice, the manager at the motel emergency shelter housing Xctasy and her family phoned Schenectady DSS to warn of danger in Hernandez's home - yet DSS didn't act.

Neidys Rivera and her husband detailed Hernandez's reactions to the questions of church-goers, nurses and, eventually, police. Neidys, who has a toddler daughter herself, said she stayed silent for weeks because she couldn't bear to talk about that day.

She changed her mind, she said, because there is perhaps a larger reason, maybe a higher power, behind her family's church being chosen as the place a little girl in trouble found a safe haven.

The Riveras first met Xctasy Garcia when her mother took her to the church and said she needed the congregation's prayers for her ill daughter. Neidys didn't want to intrude, but something, she said, spurred her to uncharacteristically intervene.

Hernandez told her that Xctasy had fallen down stairs playing with another little girl. She said Xctasy's eyes had started to swell during a bath the previous night, a condition that worsened as the child slept. Later, Hernandez told Neidys the burns came from bleach on a towel used to wipe Xctasy's eyes.

Hernandez had bruises, too, but she denied being beaten, Neidys said. Neidys persuaded Hernandez to go to St. Clare's Hospital. But first, Hernandez insisted on dashing back to the motel to leave a note.

In the car's back seat, Juan asked the boys what happened. They repeated Hernandez's story. Damien started dry heaving, like he was suffering a panic attack, Neidys said.

"I asked (Xctasy) if she was in pain. She nodded her head yes," Neidys said. The girl tried to speak. "It was so low, like she didn't have the strength to talk."

At the hospital, Juan watched the boys in the waiting room and bought them M&Ms.

"They were real quiet," he said. "I just kept telling them that everything was going to be all right."

Neidys asked Hernandez if she wanted some company in the examination room.

"Yeah, it feels good to have somebody," Hernandez told her.

The hospital nurses were immediately suspicious, Neidys said. Hernandez told a nurse she was new in town and didn't know anyone.

"You don't need to know anyone to dial 911," a nurse told her.

The doctor tried to open the girl's eyes. She shuddered like it hurt, Neidys said, and the doctor told Hernandez, "I'm going to have to report this child abuse."

"The doctor stepped out and Delia cried," Neidys said. "They're going to take her away from me," Hernandez told Neidys, as she sobbed and hugged her daughter, possibly for the last time.

Said Juan: "To me, it was like she needed someone to make the decisions for her."

"She was scared because she knew what would happen," Neidys said.

The couple said Hernandez left Xctasy to go see her boys in the waiting room.

"I didn't abuse my baby," she told Juan. "I'm not stupid," she said to him. "They're going to take them away."

Schenectady police arrived and Hernandez was arrested. The Riveras stayed at the hospital for hours, answering detectives' questions and watching the boys until Child Protective Services representatives arrived.

After delivering Xctasy to the hospital, the Riveras took relatives to visit New York City. All day she cried, Neidys said.

"There was no peace for me," she said.

She prayed. "God, you know you have allowed this little girl to come to our church. Please don't let this little girl be blind."

Today Xctasy's bones are healing. And she can see.

Schenectady County District Attorney Robert Carney recalled Neidys Rivera asking to see Xctasy when she was still recovering in the hospital.

Carney said he passed her request to the local Department of Social Services.

"I don't have a problem with it," the district attorney said, but he added he hasn't talked to Neidys Rivera since.