

J'Accuse: the Trial for Luis Santos' Murder

Bad suburban boys break ranks, and Esteban Nunez and pal Ryan Jett are fingered

By Christine Pelisek

April 22, 2010

The first to flip was Rafael Garcia, son of a respected Sacramento judge, a slight young man said to have backed away in horror the night 22-year-old college student Luis Santos was stabbed in the heart during a drunken brawl near San Diego State University. The second to turn was Leshanor Thomas, not a product of private schools like the three friends he was with that night. He joined them on a lark, and probably never thought his pal Esteban Núñez was the type to use a knife.

The murder trial, set to begin on May 3, may well come down to the story told by these two young men who struck a deal with the San Diego County District Attorney's Office versus the story told by the two men prosecutors say are killers: 21-year-old Núñez, the privileged son of Fabian Núñez, former California Assembly speaker and candidate for state treasurer in 2014, and Esteban Núñez's Sacramento friend Ryan Jett, a 24-year-old felon.

Both are charged with plunging the knife into fun-loving and most likely unarmed college kid Santos, and during the chaos also slashing and injuring Santos' three friends. The two men's defense will almost certainly be that they do not remember who plunged a knife into Santos' chest, that they were lashing out in self-defense during a fistfight that is little more than a blur.

The case has riveted the state's political class, with top Democratic leaders like L.A. Mayor Antonio Villaraigosa having written support letters for the accused — and been slammed for doing so. The question remains whether Núñez's father, Fabian, the former Golden Boy of Latino and California Democratic politics, has a political future if his child is found to be a murderer.

"Self-defense is a very real issue in the case," says Garcia's attorney, Paul Pflingst, who negotiated the plea deal for Garcia. "I suspect it will be a significant issue at the trial."

Days ago, at an evidentiary pretrial hearing in San Diego, the two accused killers faced the victim's father in a somber courtroom setting. Sitting with his public defender Terry Zimmerman, Jett openly gnawed at his fingers as Núñez silently sat with his expensive defense attorney C. Bradley Patton, his head down. Núñez's father, sitting in a rumpled and mismatched suit, showed no reaction.

Deputy District Attorney Jill DiCarlo argued that a rap song written by Núñez after the murder displayed anger toward Leshanor Thomas, who was involved in the bloody brawl, and who later talked to the cops. DiCarlo said some of Núñez's writings clearly showed that he was "telling [the

eyewitness] to keep his mouth shut."

Judge Robert O'Neill ruled against letting the jury see the rap lyrics and some MySpace and text messages written by Núñez. However, the jury will be allowed to see a troubling text message Núñez sent to Rafael Garcia shortly after the killing, which read: "Gangsta rap made us do it. LOL." The response back from Garcia was: "That is a good song, man. Where you at?"

Lu Santos died on October 4, 2008, on the sidewalk in front of the university's Peterson Gym in the arms of his friend Jason Fiori. "Jason was the first one who found him and held him when the ambulance was on the way," says Santos' best friend, Navid Sabahi. "What he went through in some ways could be looked at as the worst."

The only visual reminder of that night, now, is a silhouette-like sketch of Santos painted by a friend on the sidewalk where he fell to the ground.

Santos, an incorrigible optimist, his friends say, was anything but a fighter, which makes his death all the more disquieting. Charles Dillard says his 147-pound friend had been in just one fight in his life, jumped outside a popular Tijuana club. Remembers Dillard, "They were kicking him while he was on the ground."

As hard as it is to consider, Santos may have sealed his doom in San Diego, when he was overheard drunkenly bragging that he was carrying a "piece" — the nervous swagger of a small, and nonaggressive, young man. And, a lie, authorities say. When a coroner's aide searched the clothing taken from Santos' stilled body, he found he had only a lighter, two memory cards, keys and his Samsung phone.

But prosecutors theorize that the four young guys from Sacramento, most of them products of private schools, overheard Santos bragging — and that two of them decided to answer with knives.

Now, Santos' parents are taking unpaid leaves from their jobs and moving to San Diego from the Bay Area to attend Jett's and Núñez's murder trial. Fred, a computer consultant, and Kathy, a college administrator, live nearly 500 miles away in Concord, where Lu is buried. They have attended almost every hearing. Santos' grandmother, who was especially close to Luis, won't join them for what is expected to be an eight-week trial. She is staying with family in Taipei because "she is too sad to stay around and wait for the results," Fred says.

He adds: "We will be there representing our son, and try to seek justice for him. We will be there for our son for as long as it takes. We are ready for anything. And if they are found guilty, they will probably appeal. And we will be there, also."

Meanwhile, Fabian Núñez's friends, including Villaraigosa and Los Angeles County Federation of Labor chief Maria Elena Durazo, have rallied around the accused, drawing sharp rebukes from the victim's family — and the public.

"In my heart, I know Esteban Núñez as a young man of good and upright character," wrote Villaraigosa, in a successful campaign to convince the judge to reduce Núñez's bail from \$2 million to \$1 million. California state Assemblyman Kevin de León, in his letter, described

Esteban as "considerate, gentle and well-mannered."

With help from their economically comfortable families, Núñez and Garcia got out of jail after just eight days, unlike their friend Thomas, whose father, a retired Army sergeant, lacked similar resources on which to draw. Thomas, an affable young black man, homecoming king and football star, is an illustration of the inequities in this case of suburban boys gone bad. He spent five months in jail solely because his dad could not raise the \$2 million bail or even the reduced \$1 million — yet Thomas did not carry a knife the night of the killing.

"I talked to him after he was released on bail," says Thomas' childhood friend Mikeesa Pace. "When things like this happen, people abandon you. They forget that they know you and your character." But Thomas is so admired, that "all of his friends are still standing by him."

The four friends, Núñez, Jett, Garcia and Thomas, were thrust into an uneasy alliance after the knifing, destroying evidence and cooking up a story, prosecutors say. They made no attempt to find out if the people they had attacked had been seriously injured. And mere hours later, back in Sacramento, Núñez calmly packed up boxes in his apartment, part of a planned move to his father's house.

When they got word that Santos had died, prosecutors say, Núñez, Jett, Garcia and another Sacramento friend, John Murray, skulked to the Sacramento River. Núñez and Jett then allegedly tossed the murder knife into its depths and huddled on a bank, burning bloodied clothing.

Then the friendship cracked, like any brittle thing that comes under too much pressure.

It started with Garcia, who attended private schools with Jett and Núñez and who lives in a prestigious Sacramento neighborhood with his parents, Daniel Garcia Sr., an administrative law judge at the California Unemployment Insurance Appeals Board, and Olga, an accountant with Caltrans.

All four defense attorneys sought to have their clients tried separately. From the start, Garcia's attorney, Paul Pfungst, argued that Garcia didn't belong with the others. "If his case was looked at independently, he would be acquitted," Pfungst says.

Shortly before the first anniversary of Santos' death, marked by a prayer vigil on the school campus, Garcia pleaded guilty on September 17, 2009, to felony conspiracy to destroy evidence.

Pfungst, a former San Diego County district attorney, says of his client, "He weighs 120 pounds. Getting into a fight with a group of people is not something he is likely to do — and he didn't."

In exchange for Garcia's testimony against Jett and Núñez, who together with Garcia styled themselves as a nonexistent gang they called "The Hazard Crew," the San Diego District Attorney's Office dropped Garcia's murder charge.

In February, Thomas, who goes by the nickname LT, pleaded guilty to two felony counts of assault for punching Santos' roommate Brandon Scheerer so hard that Scheerer required eye surgery. And Thomas also agreed to testify for the prosecution.

"LT under my watch was, and is, a great kid," says Jim Stephens, his basketball coach at Laguna

Creek High School near Sacramento. "When you hear that Leshanor Thomas was arrested — my jaw dropped and my daughter's jaw dropped. We felt there was a disconnect somewhere."

At an April 2009 preliminary hearing before Judge Cynthia Bashant, testimony quickly suggested that only Núñez and Jett had knives that night, although Garcia was carrying one. Thomas' bail was quickly reduced to \$250,000 and his family sprang him from jail, while Jett spent 14 months in jail before being released on \$350,000 bail last January 28.

Watching the four suspects turn against one another, Navid Sabahi says he has learned something valuable from the loss of his best friend: "Luis saw his future go down the drain right then and there. Your future is never a promise for you."

What really happened the night of October 4, 2008? In a few weeks, a jury will decide. But police and prosecutors say one fact underlies all the rest: The victims were unarmed. The attackers weren't.

On that day, Luis Santos, taking real estate courses at Mesa College in San Diego, watched TV with Navid Sabahi at his friend's dorm, got into a spirited discussion on the phone with his father over the firing of Oakland Raiders coach Lane Kiffin, then headed to San Diego State University student Dina Decaro's apartment with his roommate Brandon Scheerer to watch basketball.

They discussed their mutual excitement about the upcoming November presidential elections and how different the world would be if Barack Obama won. "[Santos] was really excited that Obama had gone so far," Decaro remembers.

At about 10:30 p.m., roommates Santos and Scheerer stopped by Sabahi's apartment to coax him into joining them for a night of party-hopping. Sabahi didn't go. He had two tests on Monday. "That was the last time I talked to him," Sabahi says.

Santos and Scheerer eventually met up with roommates Keith Robertson, Jason Fiori and Evan Henderson, and soon this group of five would collide with four attractive young men from Sacramento, three of whom were carrying concealed knives.

Rafael Garcia and his friend John Murray had decided to go to San Diego to visit Garcia's brother Felipe, an engineering student, and Murray's friend Kristin Margullis. Núñez and Jett joined them for the trip, and Núñez called his old Cal State L.A. dorm buddy Leshanor Thomas, who happily joined the bunch. Thomas had dropped out of college and was going to move back in with his dad so he could work to save enough to attend Santa Monica College.

"My roommates, both girlfriends who attend UCLA, absolutely love him," wrote Thomas' friend Salima Koroma to a judge in the successful effort to have Thomas' \$2 million bail reduced. "He helped all of us move into our new apartment, and was there for all of us when we needed rides to the grocery store or rides home from school."

Thomas joined the other young men on the trip to San Diego as a last-minute thing. "He was hanging out with us girls too much. So when Esteban called him randomly one night to go to a party, he jumped at the chance to hang with someone he thought was an old friend."

Most of the group arrived at Garcia's brother's house in San Diego around 2 p.m., smoked pot,

drank a lot of beer and rum, and 20 minutes before midnight headed out. Murray stayed behind while the others went to a Greek fraternity party — or tried to. Instead they were asked if they were "Greek" members — then told to leave.

Around midnight, Briana Perez and her roommate got a call from her cousin, Garcia. Garcia, Jett, Núñez and Thomas were down the street at a McDonald's, so she invited them to her dorm on Montezuma Road, just three blocks from what would become a murder scene. Perez later told detectives that the men were angry about being denied entry to the frat party and threatened to burn the house of the "faggot frat guys."

Perez tried to call Garcia on his cell later that night because, she told police, she was worried he was "looking for drama." She didn't reach him. Soon after, at 2:16 a.m., police got a 911 call about a fight near Peterson Gym. Expecting another drunken college-boy fistfight, they instead found carnage: A handsome young man lay in a pool of blood as another young man pressed desperately on his chest. Two others had knife wounds, and another had taken a bad punch to the eye — but no knives were found at the scene.

Scheerer, interviewed by cops in an ER near dawn as he awaited plastic surgery on his right eye, said he and Santos had just split up from friends Robertson, Fiori and Henderson near Cox Arena. But as they walked past Peterson Gym, Scheerer and Santos were repeatedly harassed by four young guys they didn't know.

When one of the strangers threw a punch, Scheerer and Santos started to run, but suddenly their friend Robertson appeared from down the street, and wildly charged into the group of four strangers. He later told the cops he swung a "sloppy punch" at Leshanor Thomas, but instead Thomas got him with "a good one."

Before he could understand what was happening, Scheerer says, Santos had collapsed — and Fiori was down on the ground applying pressure to Luis' chest.

In a mark of how reliant college students are upon cell phones, Robertson, who had shoulder surgery for his knife wound, told police that just before the killing, he got a frantic call from Santos, saying that he and Scheerer were about to be jumped by four or five guys, and needed help, quick. When Robertson, Fiori and Henderson ran over in response, the brawl broke out.

Fiori told detectives Santos warned them: "They have knives!" He also remembered Santos saying, "Dude, we got ourselves into something ... we are by ourselves. They have numbers — we need help!"

Henderson, who required emergency surgery to stop bleeding from knife slashes to his stomach and back, recalled asking one assailant in astonishment, "Why do you have a knife? If you're going to fight, let's square up like a man."

Only Scheerer could identify anyone. He told police he was "80 percent sure" Ryan Jett was one of the attackers. Not only were the attackers all drunk, but all the victims admitted to being intoxicated; a pathology report found Santos' blood alcohol level at .22, far above the .08 limit used to determine drunk driving.

Unlike so many homicide cases, where witnesses melt away as quickly as suspects, detectives caught a break right away. San Diego homicide detective Amalia Sidhu was at the crime scene hours later when student Kristin Margullis walked over and disclosed that she had received two text messages from her friend John Murray that morning, saying that Murray's buddies may have stabbed a guy, then fled San Diego.

In the first message, Murray texted, "Yea just got home sorry I left like that some shit went down with my friends so we had to leave sd ... I need you to check on that for me tho ... and I can't believe u ditched me the one night I was there asshole lol."

The second read: "my buddies got in a fight one stabbed a guy and one got stabbed so we had to get him outta there."

A day later, on October 5, Briana Perez came forward, telling detectives about her cousin and his Sacramento friends who had drunkenly raged on about having been barred from attending a Greek frat party. She told police: "The more they drank the angrier they became."

When Murray was interrogated on October 7 at the Elk Grove Police Station near Sacramento, the Sacramento City College student told detectives he had been awakened the night of the killing at 2:45 a.m. by his Sacramento pals and "told to pack up my belongings" to head to Sacramento. He saw Ryan Jett "half-naked, with clothes in the sink."

Murray told police that Jett and Núñez admitted "at the house and on the ride home" that they had stabbed people. According to Murray, Núñez said, "I got one in the shoulder."

Leshanor Thomas, who had been "friendly" and smiling just hours before the murder, lost his smile on the drive home, Murray remembered, and was "very quiet — just like Rafael Garcia."

"Jett didn't want to field any questions," Murray added. "Questions were kept at a minimum."

Even so, Murray blurted out: "It was the worst idea to go to San Diego!" He said Jett replied, "Damn right. I can't deal with this. I already have two felonies. I don't need to take the fall for this."

But Murray saw a bag of recently washed, wet clothing in the front seat, and Jett was nursing what police now speculate was a "friendly-fire" stab wound to his leg. (In court papers, Jett told his girlfriend someone stabbed him, so he stabbed the attacker in the shoulder.)

Records show that, from the moment they drew knives, the suspects thought only of themselves. They did not call an ambulance to help the young man bleeding on the sidewalk and never tried to learn if anyone had been gravely hurt. Once in Sacramento, Murray went to Núñez's apartment — to help him pack boxes to move back in with his powerful father, now a partner of Mercury Public Affairs, a highly influential lobbying firm in Sacramento, and his mother, Maria, who was celebrating her birthday. Jett, too, showed up with his girlfriend. Thomas did not join them.

Gathered at Núñez's apartment, Murray unloaded a bomb: He'd received a text from his friend Margullis, who'd heard that a friend of a friend had died of a stab wound in San Diego hours earlier. One question the shocked young men asked Murray was "if there were any suspects — or

suspect drawings."

Núñez, who was later described by Thomas as a "fixer" of problems, blithely finished packing his boxes, the friends rolled a "blunt" to smoke, and they drove to the Sacramento River, police say, to get rid of the evidence. As Murray recounted, Núñez dumped the clothes and Jett lit them on fire.

But the code of silence was unraveling. Garcia, the judge's son, told Murray that he wasn't going to take the blame because Núñez and Jett had escalated the fight, and "for something he didn't do."

On October 5, San Diego detectives asked Garcia if he'd been in a fight. Garcia responded: "No." The detective asked, "Are you sure?" "Yeah." Then Garcia laughed nervously.

San Diego detectives searched the homes of Fabian Núñez and Jett's and Garcia's parents, and then three days later, on October 9, as police were conducting surveillance on Jett's house, Thomas showed up — and was taken to Elk Grove Police Station, where he was handed a search warrant for his DNA and clothes. He told police, "just me being pulled in is putting my safety at risk. So, I might as well just be honest and tell you everything I know."

When the detectives suggested his friends might try to hang him out to dry, Thomas replied, "Knowing who the parents are, why would they want to go down for this?"

Thomas began to talk. He told cops that he, Jett, Núñez and Garcia were sitting on a low wall near Cox Arena the night of the murder, when five drunk guys passed by, and two of them stopped (believed to be Santos and Scheerer) stared them down, crossed the street and started talking "a mess."

When one of the Sacramento men issued a macho challenge, Santos or Scheerer tried to deflect it. But then, Thomas said, Santos called his friends on his cell phone for backup. "He told his friends, 'Yeah these four dudes tried to jump us. These little bitches out here ... these niggas out here.'"

Jett couldn't let that go. He shouted at Santos, whom Thomas described as "the little dude." Santos ran as Jett, Núñez and the others demanded that Scheerer explain why his friend called them "bitches" and "homeboys." Jett allegedly threw a punch at Scheerer and missed, and Scheerer allegedly threw his drink — then ran.

According to Thomas, Santos reappeared with four or five guys, and the two sides began throwing punches. Yet almost immediately, Thomas said, Núñez began urging, "Let's go, let's go, let's go!" and one of Santos' friends yelled, "I think I got stabbed!" Núñez responded: "Yeah, I got one of them!"

The cover-up began immediately. Back at the apartment in San Diego, Garcia's brother Felipe allegedly washed the knives while Jett and Núñez washed Jett's bloody clothes. Thomas asked Jett about the stab wound on his leg, and Jett allegedly responded: "I wouldn't cut myself. How stupid would that be?"

Later in Sacramento, Núñez allegedly told Thomas and the others that "whatever happens, he

would take the rap for it." Jett said that they had to "stick together." But the greater hope was voiced by Núñez, who, according to Thomas, said his father Fabian would take care of the matter — and get them off on self-defense.

A few weeks later, a crucial, independent eyewitness came forward, student Connor Henderson. He told detectives that minutes before Santos was killed, Henderson and his friend Spencer Sellers spoke to Santos near Cox Arena. Sellers had just been in a fight with some thugs who'd said "inappropriate things" to his girlfriend.

Santos and his friends, drinking from a vodka bottle, weighed in by telling Henderson his own war story about being "jumped" once in Tijuana — and claimed he subsequently always carried a "piece" and "wasn't afraid of anyone." But, according to Henderson, four strangers sitting on a low wall nearby, close enough to hear all their talk, began throwing insults at Santos and Scheerer.

Henderson said he heard one guy, a "white male," say to Santos, "Well, you got your piece, I've got mine." To Henderson, it appeared that the four guys had heard Santos boasting about carrying a piece and decided to take him on.

In an ill-fated moment, Santos replied, he "had his thang" with him. "Use it then, pussy," somebody said back. "Let's see it.?... We all got weapons."

If the jury returns a guilty verdict, Núñez and Jett will almost certainly both go down, because there is no way to determine who plunged his knife into Lu Santos' heart — and under California law, it wouldn't matter anyway.

Last year, Núñez's attorney, Patton, floated the theory that a group of "six or seven" African-American kids brawling near Peterson Gym that night could be to blame. That claim fell apart after Garcia and Thomas spoke up.

Now, the defense is expected to claim that the victims were the aggressors and were carrying weapons — based upon the almost certainly untrue boast by Santos to the stranger Connor Henderson that was overheard by the bunch from Sacramento. The defense also may claim that at least one of Santos' friends had to have been carrying a knife, since Jett sustained a leg injury.

The defense may have one strong argument in its favor: video purportedly showing that Santos and Scheerer never ran from the scene in fear before Santos called for help from his friends. A second video taken from a different angle, however, shows Scheerer running away — from Jett and one or two other pursuers.

Attorney Eric Hintz, a family friend who years ago represented Jett on felony weapons charges but is no longer representing him, now asks, What if? "Had they stayed at the scene, had someone called the police ... who knows how it might have played out?"

Navid Sabahi says of Núñez and Jett: "They felt the need to bring a knife to this fight, and crossed a line they shouldn't have crossed." He says he thinks of Santos' slaying "every single day. Life is not the same. I try to do things to keep myself busy. Obviously it is tough with the trial coming up. It makes things a little harder. It is still very important that justice is served and

to show that there is a lot of support, and people haven't forgotten."

Fred Santos, whose wife prefers not to talk about their loss, says he does not believe time can heal their wounds. "We will always wonder what it would be like if he had a wedding," he says of their only son, "and what his children would look like. We will never find out those kinds of things. When we see people having their wedding, or young parents with their children, it reminds us of our son — and what could have been."

Yet, the parents of Lu Santos do not relish what comes next, if justice is served, as they hope. For them, that's an especially empty kind of hope. "How will we feel if they are found not guilty, or guilty of a lesser charge, or guilty of murder?" Fred Santos asks. "To me, there is no good outcome — no matter what."