

Scenes

THE FOURTH MAN

The unsolved mystery at the center of a historic gay rights case.

By Margot Sanger-Katz

TEXAS POLICE WERE RESPONDING TO A 911 CALL when they entered John Geddes Lawrence's apartment in an upscale gated complex just outside of Houston. The caller had reported that a black man was "going crazy in the apartment," and that he had a gun. The officers later reported that when they stepped inside the apartment on that September evening in 1998, they did not find a black man with a gun. They found Lawrence, a white man, engaging in "deviate sexual intercourse, namely anal sex," with his black partner, Tyrone Garner.

The story of Lawrence and Garner's arrests moved quickly through Houston's gay community. It pulled Ray Hill, the self-described "old man here of the queers," out of bed after midnight a few days later. "Ray, a friend of mine got arrested for 21.06," a local bartender told Hill by phone, referring to the Texas statute making homosexual sodomy a crime. "No one gets arrested for 21.06," replied Hill, who realized immediately that this was big news. Hill and other local gay rights activists had been waiting for years for a criminal case that would allow them to challenge the law.

Hill began working his contacts in the local justice system to find the perfect lawyer (Mitchell Katine, a gay local lawyer experienced in civil rights cases) and to make sure the case's hearing could be postponed until a legal strategy was developed. Then he had to get Lawrence and Garner on board. Those maneuvers gave rise to *Lawrence v. Texas*, the historic civil rights case that overturned the Texas sodomy law and broadened the right to privacy.

Justice Anthony Kennedy's 2003 Supreme Court opinion, like those of the Texas appellate courts that had previously reviewed the case, described the facts of the arrests in a few short sentences. The police had reason to be in the house, and they had witnessed consensual sex between two adult men. "It was a dream case," said Dale Carpenter, a law professor at the University of Minnesota. "It was *the* dream case."

Dreams are always a blend of fact and fiction, and the *Lawrence* dream was no exception. These basic facts—two men caught in the act and booked on the sodomy law—made for the perfect case to take to the Supreme Court. But the accepted narrative distorted and elided other facts that might have complicated the case. Lost in the official record are several mysteries, chief among them the fourth man in Lawrence's apartment.

Three men present that evening are well known. Robert Eubanks, an old friend of Lawrence, and Garner's boyfriend at the time, made the 911 call. The police reported meeting him, intoxicated and distraught, outside Lawrence's apartment, and they later interviewed him in Lawrence's living room. Lawrence and Garner made the case caption. But also in the apartment at the time of the arrests was a Hispanic man who identified himself to the police as Ramon Pelayo-Vélez.

According to the police report, the cops found Pelayo-Vélez talking on the phone in the kitchen, three feet from the open door to Lawrence's bedroom. The police claim that the front door of the apartment was ajar when they arrived, so it's possible that the fourth man let himself in, though he wasn't charged with breaking and entering. The cops announced their presence, searched and handcuffed Pelayo-Vélez, and then stormed in on Lawrence and Garner in the next room.

The police hustled all four men into the living room, where they sorted out what to do with each of them. Lawrence's living room was littered with pornography, including two framed caricatures of a naked James Dean on the wall. Lawrence, who, according to police, refused to put on any underwear, was livid and called the officers "Gestapo" and "storm troopers." Deputy Joseph Rich Quinn, the lead deputy who wrote the arrest report, called the district attorney to confirm the charges: Eubanks would be booked for making a false report, and Lawrence and Garner would be arrested on the "homosexual conduct" statute. Pelayo-Vélez was let go.

So who was Pelayo-Vélez? Everyone who has asked Lawrence and Garner has received the same answer: They didn't know him. That's what they told Mitchell Katine, as well as William Eskridge Jr., a Yale Law School professor, who interviewed them for a book he is writing on the rise and fall of sodomy laws. Garner even told Lane Lewis, the bartender who called Hill about the case, that there was no fourth man. "It's clear he was there, because the police had no reason to lie about that," said Eskridge, whose research has yielded little new information about the fourth man. "It makes this much more of a rainbow coalition. You've got this white guy, you've got a black guy. Eubanks was sort of a redneck. And then you've got this Latino of indeterminate age, orientation, occupation, and no known reason to be in the apartment."

HILL DESCRIBED LAWRENCE as "this wonderful, rent-an-apartment-beside-the-road-and-be-a-friend-to-mankind kind of person." Lawrence was apparently in the habit of taking friends in for shelter, and Hill

said that he wouldn't have been surprised if the fourth man had just let himself in that night. "There are some gay people who are so deeply closeted that John Lawrence was obliged to say, 'I don't know who he was.'"

Lewis, the bartender, has a different theory. He thinks that the fourth man was an invention of the police. "You don't dismiss a witness to a crime without getting detailed information in case you need to get in touch with him," he said. "This is strange police work." Lewis thinks the police made up Pelayo-Velez so that they'd have cover if their account were ever questioned. As Lewis put it, "The only thing that I could ever think of was that they invented this other guy, so that they could say, 'Oh yes they were having sex and this other guy can prove it. If you can find him.'"

Though they don't go so far as to say that Man No. 4 didn't exist, Hill and Carpenter agree that the police report strains credibility. In a recent article in the *Michigan Law Review*, Carpenter argues that the police probably never witnessed the men having sex at all. He interviewed three of the four police officers about the night of the arrests and concluded that their stories don't add up. Deputy Quinn told Carpenter that he had shouted "sheriff's deputies!" twice in the quiet apartment when he first walked in, and later warned the fourth man, who was three feet from Lawrence's door, to put up his hands. When Quinn entered the bedroom, he claimed that Lawrence and Garner continued having sex for more than a minute, even after the deputy had turned on the lights, pointed his gun, and repeatedly asked them to stop. Finally, according to Quinn's account, the officers separated the two men. "The police come in the door. They announce themselves loudly. They go into the bedroom. And these guys just go on screwing?" asked Hill. "I find this remarkable."

Lawrence and Garner seem to have thought the story remarkable too, at least at first. They told friends that they had not even been in the same room when the cops arrived. They also initially pled not guilty to the sodomy charges. Only after Katine came on board did they change their pleas to "no contest."

Katine, who realized that *Lawrence* could make it to the Supreme Court, made a crucial decision when he took the case. "From the beginning," he said recently, "we did not want to complicate the case by dealing with the facts. We said, whatever the police said, we will not challenge it." The strategy paid off nicely. The only difficulty was that the two \$100 fines the judge initially imposed were too low for the cases to be eligible for appeal. When Katine requested stiffer sentences, the judge was happy to oblige. As to the fourth man, Katine couldn't, or wouldn't, solve the mystery. "I just frankly found out about this after the Supreme Court opinion," he said....