



[FindArticles](#) > [Oakland Tribune](#) > [Jan 21, 2006](#) > [Article](#) > [Print friendly](#)

## **Victim may have provoked stabbing**

Ben Aguirre Jr., STAFF WRITER

FREMONT -- Two men arrested in connection with the stabbing death of a 30-year-old Fremont man were set free this week because the victim may have been the aggressor in the fight and because he has a criminal history, prosecutors have told the family.

Monte Ely Cunningham, also known as Monte Martin, was beaten up by two men Jan. 13 at Mojo's Lounge in Centerville and was stabbed in the abdomen after he continued to pester his attackers, Deputy District Attorney Lisa Faria told the victim's relatives Thursday as she explained why no charges were filed, they said.

She went on to tell the family that Cunningham's checkered criminal history -- which includes a 1995 conviction for assault with a firearm and a pending misdemeanor case -- would have made it difficult to obtain a conviction, said Cunningham's 43-year-old cousin John, a San Francisco resident who didn't want his last name published for safety reasons.

Faria, the prosecutor handling the case, would not confirm the statements or the victim's criminal record Friday, nor would she go into detail about her decision not to file charges.

"There is not enough evidence in my opinion for 12 people to agree on a guilty verdict on the charges," she said.

"I've reviewed the matter, I've discussed it with people who are my superiors, and I'm comfortable with my decision on it," she added, saying that it is her policy not to discuss cases with the media.

Fremont residents Oliver Ernest Lucero Jr., 29, and Vincent Andrew Perea, 31, were arrested on suspicion of murder in connection with Cunningham's death, but they were set free Tuesday when Faria decided not to prosecute. Neither of the men has been charged with any crimes related to Cunningham's death.

The decision not to file charges immediately enraged Cunningham's family, and continues to baffle them even after having the circumstances explained to them.

"I understand that it's not clear that they intended to kill him ... but they still took a life," said a 39-year-old cousin, one of two cousins to visit Faria on Thursday. "It just doesn't make sense how they aren't being charged with any crimes."

Cousin John also agreed but was a little more sympathetic about the decision.

"It's not fair, but that's our judicial system," he said, adding, "It's a shame the way it's going down."

According to police, Cunningham went to the bar about midnight Jan. 12 and confronted two men about a prior dispute.

One of the attackers then either choked Cunningham or placed him in a headlock as he sat on a bar stool, prompting bar management to order the men to take it outside. During the scuffle in the business, Cunningham threatened to kill one of his attackers, witnesses told police. Sources close to the investigation say that statement also led prosecutors to believe Lucero and Perea have a valid self-defense argument.

The trio then went outside shortly after midnight and continued to fight, leading to Cunningham's being defeated, his 39-year-old cousin said. But he continued to go after the men, one of whom then stabbed Cunningham in the abdomen and possibly slashed him twice across the face, she said.

"The knife was not necessary -- they could have just beaten him up," she said. "But in the end, someone's dead and someone should be charged (with a crime)."

During their meeting with Faria, the cousins asked the prosecutor about lesser charges, but "she never really directly answered the question," the 39-year-old cousin said.

Cousin John said he was under the impression that the case is still under investigation -- which is typical when prosecutors refuse to file charges -- but police say it's not that clear-cut.

"The case is suspended until additional information comes forward," said Detective Bill Veteran, spokesman for the police department.

In addition to the issue of self-defense, Cunningham's criminal history was also a crucial factor in not charging the case, the cousins said they were told.

According to state criminal records, Cunningham served seven years in prison for his part in an October 1994 shooting at NewPark Mall in Newark. The shot Cunningham fired didn't hit anyone.

And current court records show there was a misdemeanor case pending against Cunningham for suspicion of brandishing a knife at a security guard during an incident at Mojo's Lounge in August.

"We know Monte was no angel," his 39-year-old cousin said.

"I would just like to see someone charged. ... It's like no one is taking responsibility for his death."

Even though cousin John understands Faria's decision, he said Cunningham's past should not be a factor in filing charges.

"Every case should be prosecuted to the fullest extent of the law" regardless of someone's past, he said. "If (prosecutors) can't do that, that's not fair."

"A woman puts a finger into a bowl of chili and gets nine years, but these guys are going to walk," he said.

Staff writer Ben Aguirre Jr. covers police and the courts for The Argus. He can be reached at (510) 353-7011 or [baguirre@angnewspapers.com](mailto:baguirre@angnewspapers.com).

©2006 ANG Newspapers. Cannot be used or repurposed without prior written permission.

Provided by ProQuest Information and Learning Company. All rights Reserved.