

Was Corpus man wrongly executed?

By **RICK CASEY**

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As the San Antonio District Attorney's Office continues to investigate the possibility that Texas wrongfully executed a man there in the wake of dogged investigative work by my colleague Lise Olsen, here comes the Chicago Tribune with a compelling case that the same thing may have happened in Corpus Christi.

In February 1983, convenience-store clerk Wanda Lopez, 24, was stabbed to death. A young parolee, Carlos De Luna, was nabbed nearby about 40 minutes later, hiding under a pick up truck, shoeless and shirtless.

Police took him immediately back to the station, where an eyewitness who was walking into the store as the killer left identified De Luna as the man who told him, "Don't mess with me. I've got a gun."

The 'phantom' who wasn't

Another eyewitness, who saw the killer from farther away, would also identify De Luna.

De Luna told the police that night that he didn't kill the woman, but he knew who did. He would later name that man as Carlos Hernandez.

At trial, lead prosecutor Steve Schiwetz would ridicule De Luna's claim, describing Hernandez as a "phantom" in his closing argument.

The jury convicted De Luna and sentenced him to death. He was executed in 1989.

After interviewing dozens of people and examining thousands of pages of documents, the Tribune in the past two weeks published a series of articles that strongly suggest De Luna was telling the truth.

An 'X' on her back

Here are some of the facts the Tribune established:

- Hernandez was not a "phantom." What's more, the prosecutor sitting next to Schiwetz knew not only that Hernandez existed but that he was a suspect in an earlier killing involving a knife. That prosecutor, Ken Botary, did not inform Schiwetz, allowing him to mislead the jury.

Botary told the Tribune, "I knew Carlos Hernandez was a dangerous man" and admitted he should have told Schiwetz. He said he may not have made the connection. Schiwetz said if he had known, he would have alerted the defense (as the law requires) and would not have called Hernandez a "phantom."

Botary had been the prosecutor three years earlier in the slaying of a woman who had been strangled, with an "X" carved on her back.

Botary lost that case when the defense attorneys for another man convinced the jury that Hernandez may have committed the crime. (Hernandez would be later indicted in the killing, but the charges were dropped because the police had lost key evidence.)

- Hernandez and De Luna hung out together some. Hernandez had a very violent past and had a special fondness for knives.
- Although the crime scene was very bloody, none of De Luna's clothes, including his shirt and shoes found by police, tested positive for blood. What's more, the witness who passed the killer said he was wearing a gray or flannel shirt. De Luna's was a white shirt.
- The Tribune interviewed five people separately, relatives, friends and acquaintances of Hernandez, who said he bragged about killing the clerk. Two described him as saying, "My stupid *tocayo* took the blame for it." (*Tocayo* is Spanish for "namesake," a reference to sharing the name Carlos.)

One said he also bragged of killing the woman whose back was carved with an "X."

Some said they were afraid to come forward, others that they were waiting to be asked or wanted to forget the matter.

- A police detective at the time, Eddie Garza, said he received tips after the crime that Hernandez had done it. He said he passed the information on to detectives working the case. They told the Tribune they never received the tips. Garza said he knew both men and that he didn't think De Luna "had it in him to do" that crime, but Hernandez "was a ruthless criminal. He had a bad heart. I believe he was a killer."

- De Luna's court-appointed lawyer, handling his first capital defense, told prosecutors about Hernandez but didn't investigate the matter himself.
- The key eyewitness, a car salesman named Kevan Baker, told the Tribune he was uncertain of the identification.
"I wasn't all that sure, but him being Hispanic and all. ... I said, 'Yeah, I think it is him.' The cops told me they found him hiding under a truck. That led me to believe this is probably the guy."

- Hernandez and De Luna could easily be mistaken for each other.
- Hernandez would commit other crimes involving knives. He was sentenced to 10 years for slicing a friend from her navel to her sternum. He was paroled after two years. He was imprisoned again in 1996 after assaulting a man. He was carrying two knives at the time.
He died in prison in 1999 of cirrhosis.

The men who prosecuted De Luna dispute none of the above facts. They still think they convicted the right man.

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