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Hector de Peña Interview Transcript

11:56:48

11:56:52

JSL: It's Wednesday, the 23rd of February, 2005, it's about 4:30 p.m. in Corpus Christi, and we have Judge Hector de Peña with us. So if you would, first off, just start and tell me your name and give me some professional background about your work and job description

11:57:15

HDP: I'm Judge Hector de Peña. I attended schools locally here in Corpus Christi, having graduated from high school here. Spent a couple years at our junior college here at Del Mar and ultimately finished up at Saint Mary's University in San Antonio. I basically did my law school career in two stints. I started under a collination [?] program which allowed you to enter law school at that time with 90 hours. And then ultimately, dropped out, went back, and finished my undergraduate degree, went to work for a few years and then came back and finished my law school degree at Saint Mary's University, having graduated in 1972.

11:58:02

HDP: After I left law school, I worked for a private attorney for about a year, pending taking the bar exam and passing it. And ultimately got licensed in December of 1972. And continued

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working with Mr. John Pitchinson, who was a local attorney here, until I was hired by the D.A.'s office. I worked as an assistant felony prosecutor for about a year, little over a year and a half. And then from there, took a job as an assistant city attorney and worked for the city for about a year. And then, in an effort to get out into private practice, I took a position as an assistant county attorney serving as the juvenile prosecutor, because it allowed me to still private practice and, at the same time, handle the juvenile cases that were pending in our county.

11:59:06

HDP: And then, ultimately, after about a year, went into practice with an attorney by the name of Mr. Nelly Garza. And basically, private practice for about 14 years, as a general practitioner, both in state court and federal court. And I ran for a judicial seat once before, in about nineteen- I want to say, seventy, can't recall offhand. But anyway, I lost that one and then I ran again in 1986, and I took the bench in January of '87. Remained on the bench for 16 years as Presiding Judge of County Court Two. And currently serving as an assigned judge for the state of Texas.

12:00:00

JSL: Ok. When, do you remember approximately the years you were with the D.A.'s office and the city attorney's office and then the juvenile prosecutor?

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12:00:10

HDP: These were usually, about the first three or four years after I graduated from law school. I think I began with the District Attorney's office in about February or March of 1973, and I stayed there until about April of '74, somewhere in there. Then I worked for the city for about a year after that, and then after that went to work for the county.

12:00:41

JSL: We, you and I, met for the first and only time at this some hotel back in early December, is that correct?

HDP: That's correct.

JSL: And at that time you offered to provide me with some background about the Carlos DeLuna murder case, and I wonder if you would just do that again. Just tell me about the case.

12:01:03

HDP: I was appointed by the Honorable Jack Blackman, who was then the Presiding Judge of the District Court where this case was tried, as co-counsel with an attorney by the name of James Lawrence. And this young man had been accused of robbing a local Shamrock station here. And the . . . being appointed to it, we proceeded with the general case preparation, in terms of interviewing our client, trying to figure out what our defense was going to be.

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12:01:48

HDP: And to that extent, it received a little press simply because of the manner in which it was handled by the police initially, right after the crime, or during the time that the crime was occurring. And when we first discussed this with our client he had indicated that he was not anywhere near the premises, that he had been at a bowling alley with a girl. And, eventually, we were able to convince the district judge to allow us to hire an investigator, which was like pulling teeth at the time. But we were able to hire an investigator who ultimately tried to follow up on the information that our client had given us concerning his whereabouts. It was later determined that he was not at the bowling alley, but in fact the girl he contended he was visiting with was, in fact, at the time that the crime occurred, having a birthday shower, I mean a baby shower. She was expecting or getting ready to have a child.

12:03:00

HDP: And throughout the investigation, basically, we had a hard time getting our client to be truthful with us in terms where he was. We must have had a number of pre-trials prior to the time we actually went to trial. And it would be fair to say that, every time we had a pre-trial, my client kept being placed closer, kept placing himself closer to the scene of the crime. And ultimately,

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I think by the time we got to trial, he put himself in a vehicle that was across the street from the Shamrock, saying that he was waiting on the person -- what would have been the co-defendant in this case -- who had gone to the gas station to buy cigarettes or something like that.

12:03:53

JSL: And the-

HDP: Some of the things that had proceeded prior to this: there was no real eye-witness to the murder. There had been a concerned customer who had seen someone kind of hanging around the gas station, who apparently warned the young lady that he thought he had seen a knife or something in the person's pocket. Ultimately, being concerned, he left, but not without trying to keep an eye on the gas station, as he left, getting on the expressway. And if the records are correct, he may have even, in fact, called the police from a cell phone or something at that time.

12:04:44

HDP: The young lady, having been warned of somebody being out, you know, standing around watching, apparently tried to contact the police. And it was during the course of this, that she kept calling, telling them to send someone out, they kept trying to get the girl to give a description, prior to the time of the arrival of any kind of police unit. And she kept saying, well, "he's

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closer," or, "he's here," and finally she said, "He's inside," or something along those lines.

12:05:10

HDP: Ultimately, you know, we don't know what actually transpired, but the audio of this was part of the trial, in which she was heard apparently talking to someone. There's noise or scuffle, and then ultimately you hear her saying, "please don't, no, no," and then she screams and that's the end of it. And of course, when the officers finally arrived there, she had been stabbed, and they began looking for suspects. They apparently put an all-points out. They scoured the neighborhood around the gas station, and ultimately found my client hiding under a vehicle without his shirt off, you know. Apparently, I guess, in his efforts to avoid, he was, he might have been wearing a brightly colored shirt, I don't know, or what kind of description they might have had. But he was caught hiding underneath a car, and so he was arrested and charged with the offense, possibly, I'm going to assume, basically because of where he was and the time and so forth involved. But . . .

12:06:28

JSL: You stated that Mr. DeLuna did not immediately give you a name of the person he was with that evening, but eventually he did.

12:06:40

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HDP: We tried, with a great deal of diligence, to try and get that information from him, because we felt it was important in terms of his defense as to whether or not he was actually involved or not involved. As I said, there was no eye-witness to the offense. The only eye-witness, of course, had been killed. The only other hopes that we had in terms of trying to get some additional detail would have been from the co-defendant. But he would never reveal it, basically indicating to us, ultimately, that if he did reveal it he wouldn't be safe either outside the penitentiary or in the penitentiary. Basically, whatever influence or whatever he knew about this individual, apparently he felt this individual had enough ability to see that he was silenced either outside prison or within prison if he talked or revealed his name.

12:07:55

HDP: We ultimately did get a name, and it was researched. We were of the belief this particular individual had been involved with the murder of another young lady some years back, in which the mother was killed but the child, apparently, was under the mother and remained, managed to survive the mother's death. But to the best of my knowledge, the correct individual was never found.

12:08:26

JSL: And that, do you remember that individual's name, the man who was actually-

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HDP: I want to say it's Hernandez, but-

JSL: Carlos Hernandez, is that the name?

HDP: Yeah, I believe so.

12:08:40

JSL: And would you tell me how your client, Carlos DeLuna, described this man, or how he felt towards him? What was his emotion towards him? What led him not to-

12:08:54

HDP: I think he was, in all honesty, I believe he was truthfully afraid of this individual, or of whatever ability he felt this individual may have had in influencing his future, so to speak.

JSL: Did Carlos DeLuna ever indicate to you that he was inside that store, had anything to do with the killing of that woman?

12:10:13

HDP: No, the closest he put himself was that he was in the car at one of these nude dancing places, not nude dancing, but one of these topless bars places waiting for Carlos to go across the street to the Shamrock and buy some cigarettes or something.

12:10:36

JSL: So, as far as he told you, he had nothing to do with any part of any criminal event?

HDP: Correct.

12:11:14

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JSL: Did Carlos DeLuna have it in his power at any point along the way to avoid being executed and instead spend time in prison?

12:11:28

HDP: To the best of my recollection, as I try and remember things, I recall that one of the prosecutors -- because there was two prosecutors that were involved, that represented the state, there was a gentleman by the name of Kim Botary and a young man by the name of Steve Schiwetz, both of them at that time being . . . I think Mr. Schiwetz was probably, he wasn't lead counsel for the state, but he, apparently, did, prior to the time that we actually went to trial -- and I believe, even before the jury came back -- made an offer that if Carlos went ahead and pled, that he would recommend only a life sentence.

JSL: And what did Carlos DeLuna tell you about-

12:12:18

HDP: He was adamant that he was not guilty and he wanted his day in court. And, in fact, if I recall correctly, although I don't know whether it would still be available, I know we actually had him sign an affidavit indicating that we had been offered a plea agreement of life in prison in return for his plea of guilty, and that he had refused it.

12:12:41

JSL: And that was because he told you "I'm innocent"?

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12:12:44

HDP: He was adamant that he was not involved in the girl's killing. Basically, he ultimately put himself across the street, but that was the closest he would actually put himself.

12:14:43

JSL: When we spoke last time, you told me, as I got it down in my notes, and let's see if I got it correct, "To this day, I can't tell you if he, Carlos DeLuna, killed the victim. My opinion is that his friend killed her." Is that a fair-

12:15:05

HDP: That is a fair statement.

JSL: Ok. And, I also took down these notes on something we just went over, you said, at least as I got it, "Carlos DeLuna was very definitely scared of Carlos Hernandez. He said, 'I'm dead whether I'm out or in if I identify him,'" meaning-

HDP: Carlos Hernandez.

JSL: Carlos Hernandez. "I pleaded with Carlos DeLuna to give me something to go on. He said he knew but he wouldn't give us the name. I prevailed upon him to give us the name but nothing else." Is that, did I get that correct?

HDP: Yes, that's correct.

JSL: Start that over. Too many Carlos's here.

12:16:53

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HDP: I was always of the opinion that I did not believe that Carlos DeLuna actually murdered this lady. That was the reason I felt very much of an advocate on his behalf when we tried the case. But I, based on my piecing of the evidence together, that's why I felt that this Carlos Hernandez was the one that ultimately killed the girl. And, in working with this young man, for the period of time that we worked with him, I just didn't feel like he was . . . You know, he may have been capable of doing stuff like stealing cars -- and possibly, you know, scaring old women, as it turned out in the trial -- but I just didn't think he was, I didn't feel he was capable of killing someone. That's my subjective feeling, not necessarily an objective finding.

12:18:00

JSL: Did you try to . . . Tell me about the efforts that were made to find a, or the, Carlos Hernandez. Your efforts, the efforts of the authorities.

12:18:14

HDP: I worked with a fellow by the name of Ray Flores, who was then the I.D. technician, identification person for the Nueces County Sheriff's Department. And we culled through the records trying to find all of the Carlos Hernandez's that had at any time been booked in an attempt in an effort to try and locate our Carlos Hernandez. In fact, we got pictures. If I'm not mistaken,

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I think I even managed to put together a photo lineup of some of the Carlos Hernandez's that had been through the system and took it to Mr. DeLuna to see if he would identify the correct Carlos. But it was at that time that he said, "I gave you the name," and that was as far as he was going to go.

12:19:07

JSL: And, again, would you tell me why you felt that he took that position?

12:19:12

HDP: Basically, because he felt that he was dead, in or out, if he put the bite on Mr. Hernandez.

12:19:26

JSL: What assistance did you get from the authorities? In other words, Carlos Hernandez's name came up at trial, and the prosecutors, in the closing argument, for example, and in some testimony, said that they had cooperated in your search, everybody's search for a Carlos Hernandez, and ended up saying in the closing argument, if you remember, and it ended up in the newspapers, that Carlos Hernandez was a "phantom." Do you remember that phrase in the closing argument?

12:19:57

HDP: No.

JSL: Ok. What assistance did the prosecutors give you?

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12:20:04

HDP: I don't know what assistance. As far as I know, the prosecutors didn't give me a whole lot of assistance. It was mainly through the Sheriff's Department that I got most of my help in trying to see if we could narrow down the individual that Mr. DeLuna was talking about.

12:20:20

JSL: This case was actually investigated by the Corpus Christi police department, because it was in the city, is that right?

HDP: Correct.

JSL: So it was actually your effort to go to another law enforcement agency which had control over the jail and had booking and other information, but it wasn't . . . What I'm trying to get at is how much cooperation you got from the prosecuting team here, which was the Corpus Christi Police Department and the Nueces County District Attorneys in locating a Carlos Hernandez.

12:20:50

HDP: We didn't get anything from them in that regard. There was just, basically, the fact that I was able to get a court order, and an agreed court order, to allow me to talk to Mr. Flores. Although I think Ray would have helped me regardless of whether he had a court order or not, in an effort to try and locate this individual.

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12:21:09

JSL: Did any of the detectives for the Corpus Christi Police Department or any of the people in the District Attorney's office indicate that they knew, at that time knew of a Carlos Hernandez who might be capable of using a knife in this way.

12:21:23

HDP: No. Didn't really.

12:22:49

JSL: As of the time of trial, did you know for certain whether this Carlos Hernandez or a Carlos Hernandez even existed?

12:23:05

HDP: I believed that he existed, I just felt like Carlos DeLuna was not going to assist me in actually pinpointing who the real Carlos Hernandez was.

12:23:22

JSL: So at that point you couldn't have said, "he's this old, and looks like"-

HDP: No.

JSL: You had no idea who-

12:23:29

HDP: I had no idea. Like I said, the only thing he ever cooperated on, the only thing, and this was . . . we're down to the closing moments of this thing before we went to trial that I

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was able to persuade him to at least give me a name.

JSL: But it-

HDP: And I think that's the reason the state took it as being a phantom, that I was just trying to throw a red herring out there in an effort to cast blame, possibly, on somebody else.

12:34:56

JSL: So the state's view all along was that there was no such person.

12:24:00

HDP: Correct.

12:24:05

JSL: Ok. Now, you described to me, the last time we were talking, about what you called a "coffee shop conversation" that you had with Mr. Schiwetz. And that you actually told me your wife was unhappy with the information that had come out at that point. I wonder if you could just relate that anecdote. I can read you my notes on that if you-

12:24:30

HDP: Well, it was just basically, she had a difficult time, basically, sitting, because she decided to watch the trial.

JSL: If you could start over and tell us who "she" is.

12:24:50

HDP: Ok. I had the occasion at the time we tried this case to

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have my wife in the audience while this case was being tried. And she had a real difficult time understanding that, as lawyers, when one is an advocate for your client, you know, you're an advocate wholeheartedly. And during the course of the trial there was a lot of . . . trying to make the other side look bad, so to speak, in the trial of the case. And at one point, as this matter was reaching a conclusion -- I don't know if it was after the jury was out -- Steve made an offer to have a cup of coffee or something, and my wife didn't understand how the relationship in court could suddenly change once you walked out the door. And, explaining to her, I said, "You're advocates for your client, but once you walk out of there you can still talk to each other and have a cup of coffee."

12:26:05

HDP: I have to admittedly say, I mean if we're talking just kind of off the record, Mr. Schiwetz, I think, throughout this thing, because of Carlos's age and despite his record, really tried real hard to get my client to accept a life sentence rather than the possibility of the death penalty. And that's why I say, I think, if I recall correctly, he offered it prior to trial and I believe he even offered it during the course of the trial, while the jury was still out, that if my client agreed to plea he would recommend life rather than the death penalty.

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12:26:49

JSL: When we spoke last time you talked about, well, I'll read you my notes: "In the aftermath of the case, Mr. de Peña was discussing the case with Steve Schiwetz. Schiwetz recollected a woman found in a van with the child still alive under her. Some indication that Carlos Hernandez committed that crime; they were never able to tie him to it. Mr. de Peña remembers this occurring within the first year following the trial. It never really came up until afterwards in coffee shop conversation. The killing of the woman was several years prior to the Shamrock killing." Is this consistent with you-

HDP: Correct.

JSL: Would you describe that conversation that you had with him?

12:27:40

HDP: It seemed, and the time frame is not clear because so much time has passed since then. But in my earlier conversation, it seemed to me that, later on, while having coffee at the courthouse, I'd had a conversation with Mr. Schiwetz relating to this matter. Apparently, at some point in time, the name Carlos Hernandez came up, that might have been involved in the killing of a young mother that happened some years prior to the Shamrock killing. But they were never able to tie Carlos Hernandez to that killing, and the fact that it might have been the same Carlos

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Hernandez who had been involved in the Shamrock incident.

12:29:00

JSL: Sometime after Carlos DeLuna was tried and convicted, the family of the victim, Wanda Lopez, Wanda Vargas Lopez with the Vargas family, filed a civil suit against the Shamrock corporation. Do you remember who handled that suit?

12:29:25

HDP: It was a gentleman, an attorney, by the name of Renee Rodriguez.

12:29:28

JSL: And you also mentioned . . . would you describe what you learned... That civil suit was filed after the criminal trial?

HDP: Correct.

12:29:40

JSL: And would you describe what you learned about the events occurring at the Shamrock station that night.

12:29:45

HDP: Well, because the events occurred in the early hours of the morning -- it would have been some time between 12 midnight somewhere and -- the cause of action seemed to arise from the fact that Shamrock's policy at the time didn't provide for at least 2 employees to cover their gas stations, which at that time were open 24 hours. Just, because of the propensity of certain areas

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to be hit by robberies, and this lawsuit was filed. Ultimately, Shamrock started following through either by two employees or their newer units had their night clerks actually operating out of bulletproof booths, to take care of paying for gas and stuff.

12:31:00

JSL: At the trial, the police played a tape of Miss Lopez calling the police about a man inside the store with a knife. But did you subsequently learn that there were additional efforts that Miss Lopez made to contact . . . actually, not to contact the police but to have the police-

12:31:20

HDP: Apparently, my understanding was, that more than one phone call was made to the dispatcher asking that a police officer be called to the spot. And the Corpus Christi Police Department was made a party to the civil suit.

JSL: And what was the problem, what were they complaining about towards the city?

12:31:40

HDP: They just kept contending they wanted the girl to give them a description rather than send someone out. I don't know, I ultimately don't know if it was whether or not somebody was available, but generally there was always officers patrolling that part of Padre Island Drive. In fact, my understand is, from the

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record that once they heard her screaming or whatever, you know, a police officer arrived within 4 or 5 minutes or less to the gas station. And I think that's why the argument was, ultimately, had the officer arrived when she first contacted them, conceivably this would have been prevented.

12:32:27

JSL: Ok. I'm going to read another one of these that we were talking about: "Mr. De Peña remembers that there were two phone calls from Lopez to the police. The first one was when the customer outside by the pump came in and warned Ms. Lopez. The second was when the perpetrator came in. He remembers that this information came out from the civil suit. At trial they did not know about the first call, only the second call. We didn't hear about the first call until the civil suit was litigated. Renee Rodriguez handled that suit." Is that accurate?

12:33:05

HDP: To the best of my recollection, that's accurate. We did not learn about the first phone call until, you know, after the criminal trial had been held.

JSL: Ok, so if I could get you to just describe what you and Mr. Lawrence learned after . . . Well, let me ask you this question-

12:33:24

HDP: I believe . . . Basically, I think I learned it through the

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publication that came out in the press as the [civil] case was being, as the case proceeded in the course of its trial. I think it was a result of the newspaper reporting what was transpiring in the courtroom and what the testimony was. And it was, I believe, through the newspapers' description of some of the testimony that I learned that apparently not just one phone call had been made, which was the copy of the recording we had, but there had been an earlier phone call asking for assistance from the police department.

12:34:13

JSL: What was your reaction when you heard that?

12:34:19

HDP: I guess . . . I don't know what my reaction was, in all honesty, other than just concern that we didn't have access to it at the time. That I don't know if it would have revealed anything else conceivably.

12:34:37

JSL: Now the witness, there was a witness named George Aguirre, and he was the man who had been outside, seen somebody, and went in and warned Ms. Lopez. And then he said that he got out and went back and drove up on the freeway there, on South Padre Island Drive, which is the freeway, and could look back into that store. Could you describe your impression of the veracity of that

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particular recollection.

12:35:06

HDP: I do believe that he saw someone out there as he drove by, as he was just concerned citizen, that he could see someone out there. But the big problem we had was, there was no way for him to be able to give a more definitive description of what the individual looked like or who he was. I mean, he was the closest thing to an eyewitness, of someone's being out there, but we don't know whether it was my client, Carlos DeLuna, or whether it was the other guy, Carlos Hernandez.

12:36:00

JSL: Do you have any idea what the time lapse was between the two calls?

HDP: No, I wouldn't. If I did, I may have had back then, but to tell you that I could give a guesstimate at that point, it's been too long.

12:36:25

JSL: You mentioned the bowling alley and the skating ring. Could you describe where those were located?

12:36:31

HDP: The bowling and the skating rink were located on Ayers Street, which would have been roughly, let me put this in perspective . . . At that time it was on the corner of Ayers and

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Tarlton. And that would have been roughly, I'd say at least five, at least five miles from the location of where the Shamrock station was located.

12:37:18

JSL: And how about at the corner of Kostoryz and S.P.I.D.? Was there, was there . . . 'Cause one . . . There's a lot of talk at the trial about this, but there's never a physical location given for the Gulf, I guess it was called the Gulf skating rink and the Gulf bowling.

12:37:33

HDP: Ok, then I'm thinking of the wrong one if it was Gulfway. Like I said, I can't remember. Gulfway would have been less than, less than a quarter mile from the gas station. Because Kostoryz and Ayers run parallel to each other, and this particular Shamrock gas station was on an access road between the two streets.

12:38:00

JSL: And the Gulfway, Gulf skating rink and bowling alley were at the corner of Kostoryz and South Padre Island Drive-

HDP: and South Padre Island. They were on the access road.

JSL: Were they on the same side or the opposite side?

HDP: The opposite side.

JSL: So it would be-

HDP: So if you were going towards Padre Island, in other words, if

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you're going in that direction (*points forward*), Shamrock station would be on this side (*points to his left*) and the skating rink was over on that side (*points to his right*).

JSL: Ok. And on which side of Kostoryz was-

12:38:30

Camera operator: Ok, I'm rolling.

JSL: So tell me where the Gulf skating rink and bowling alley are.

12:38:35

HDP: The Gulf skating rink basically-

Camera operator: Let's do it with a clean start, we got his voice there.

HDP: -lies about on the South or Southwest side of Padre Island Drive, and the Shamrock gas station is on the North or Northeast side, Northwest side of Padre Island Drive. And the distance, the rough distance as the crow flies or as you would drive a car is probably less than a quarter of a mile.

12:39:00

JSL: You mentioned it was like pulling teeth to get an investigator. Can you tell us what kind of resources you got for that investigator, or how much money you got for an investigator?

12:39:15

HDP: We were able to persuade the court to allow us an allowance of 500 dollars for the investigation.

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12:39:31

JSL: Who did most of the investigating in this case?

12:39:35

HDP: You know, I'm trying to think of who the investigator was, but offhand I can't remember the name of the guy. I want to say it was Gus maybe, but I can't even remember Gus's last name.

12:39:58

JSL: You described that the young woman who Carlos DeLuna said he was with at the bowling alley or the skating rink that evening had said that she was instead at a baby shower.

12:40:16

HDP: It turned out that the night that this crime had occurred, she was actually having a baby shower for herself somewhere else.

12:40:27

JSL: Where did you learn that information? Was that part of your investigation?

12:40:30

HDP: That was part of, some of the facts that our investigator came up with as we were trying to, as we were investigating the facts that our client gave us.

12:41:46

JSL: You stated that there were two prosecutors. Would you describe their roles and just compare them to each other?

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HDP: Basically there was two prosecutors. There was Ken Botary, who was more or less sort of the the older, lead prosecutor, and then Mr. Schiwetz, who was his second chair. My opinion was that Mr. Botary was basically trying to make a name for himself, and Mr. Schiwetz was trying to see that justice was done.

12:42:16

JSL: Did Mr. Botary ever tell you that he knew who Carlos Hernandez was or knew the Carlos Hernandez?

HDP: No.

JSL: And can you tell me how you got into the case, how Mr. Lawrence got into the case, how you divided the work? Tell us about the defense approach.

12:42:40

HDP: The system as we had here, basically Judge Blackman appointed Mr. Lawrence, and because it was a capital case, he basically had a policy of appointing two lawyers, and he appointed me to handle the case as second chair. Jim and I probably equally tried to work together in terms of putting a defense together. As I said, it was a very difficult case to put a defense together simply because our client never would come across with a full disclosure when we first started out. I think, of course, a lot of it had to do with his fear of Carlos Hernandez in the case. And I don't

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know whether he had a predisposition to believe that they wouldn't find him guilty, that there wouldn't be enough facts to find him guilty in the case. And I think that was one of the reasons he was adamant about having a trial rather than pleading guilty. And in terms of preparing the case, we pretty much prepared it together. We took turns, in that we took turns in the cross-examination of the witnesses, and we even split up the final arguments.

12:44:16

HDP: All I can say is, I had a real tough time with my co-counsel's final closing argument in the case, but I don't know if I want to be going in to that. He basically . . . part of the problem that I had with it was that he got into admonishing the jury that, you know, they shouldn't even consider the death penalty, you know, because they weren't God. I had a tough time with it, because we spent so much time trying to qualify a jury as to whether or not they could consider the full range of punishment. These were people who would go from zero to death, and then to say, well, you know, "You're not God and you can't give this guy the death penalty." But I couldn't control that part of it, I didn't know just how he was going to present his final argument.

12:45:14

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JSL: We're going to actually talk to Albert Peña later, who had a piece of the other part of this case, the older part of the case. You told me a little anecdote about an interesting-

HDP: Oh, yeah, he was sitting next to my-

JSL: Start over if you would and just use the name.

12:45:32

HDP: Ok. There was another attorney there watching the trial, and he happened to be a friend of mine and was, took time to sit next to my wife. As we got into the final arguments of this case, in the penalty phase, Mr. Lawrence apparently started harrying the jury about the fact that they shouldn't play God in this situation and give the defendant the death penalty, and my wife says at that point that Mr. Peña sort of chuckled and looked at her and sort of made the notation like he hammering down the top of a coffin.

12:46:50

JSL: You said that the gas station was near a strip joint. Can you just describe the layout there and give me a graphic description of what that strip joint, how it advertised itself?

12:46:05

HDP: Yeah, at the time, it was a topless bar, and it had this Amazon-looking woman at the entrance to the bar which stood tall enough that you could almost see it almost eye-to-eye as you drove by on the expressway, which is elevated, standing there in this

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Amazon-looking, you know, very scanty little outfit. And it was directly across the street, the street that runs, that would intersect Padre Island Drive. The strip was, the bar is on this side and then Dodd Street runs this way, and then the Shamrock station was across the way, kind of side-by-side, being divided by Dodd Street, which ran into the access road there.

RP: This is, I guess . . . We're going from the presumption that your client was innocent. If you could go point by point, then, if you client was innocent, how did he end up being executed, and how could that have happened?

12:48:51

HDP: I believe part of the problem just stemmed, part of it stemmed from facts that we didn't discover prior to the punishment phase. And that had been, as the story goes, Carlos had gone to the pen, before he was, like, he wasn't even 21 yet and he had already been to the pen twice. Once for unauthorized use of a motor vehicle, and I'm not sure what the second, what the second felony was that put him in the pen. But he had been recently released -- this is prior to the murder -- and he apparently was able to hitch a ride with a co-inmate back to Corpus. And upon his arrival back to Corpus he had been invited to this inmate's home. And when they got there, the family, the inmate's family, had made arrangements for a "welcome home" party for him. And

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Carlos was sort of invited to this. And it seems that during the festivities, this inmate who had befriended him, who had befriended Carlos, my client, decided that they were going to go out and hit the bars, or whatever. But he, the inmate, didn't have any transportation, so Carlos agreed that he would borrow his dad's car and they would go bar-hopping or whatever.

12:50:42

HDP: During the course of this, apparently the inmate found a companion for the evening or whatever and just took it upon himself to take off with Carlos's dad's car without letting Carlos know. And Carlos apparently got all upset because it was his dad's car and, of course, he didn't want to get in trouble either. Anyway, it seems that at some point he came back to the inmate's house, home, looking for where the car was. As we understood it, the police were eventually called out because he was banging on the door -- this was in the middle of the night -- and apparently some lady recognized him who was a next-door neighbor of the inmate and she called the police. And apparently, we understood he was arrested for a simple assault. I don't know if he Ultimately, in the course of the trial, this lady was called as a witness, and she ultimately testified that he apparently had not only come into the house, presumably trying to find her or trying to find her son. I'm not sure if it was a grandson or it was a

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son. But to make a long story short, her testimony was -- and this is what surprised us -- he apparently, in this same effort to locate where his car was or where his friend was or whatever, she apparently accused him of attempting to try and rape her that same evening when he broke into the house. She screamed or whatever, and as he ran out, it was then that the lady next door saw him run out and recognized him as being the kid that had been at the party earlier that day or something.

12:52:39

HDP: But from the records that we got from the state, there was never any indication that . . . there had been nothing more than a possible criminal trespass. And it was at that point that . . . I had been accused the whole time we were trial of speaking too quietly, and the court reporter said she had trouble hearing me. And I think I turned to Jim at that point and said something like "Oh, shit." She [the court reporter] later informed me she had heard that and she was going to have to put it in the transcript. To this day I don't know if it's in the transcript or not.

12:53:11

RP: So you're saying that you think that he was-

HDP: I think that some of the things, such as this. This old lady couldn't have been more than 60 years old, but, I mean, she had

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eyeglasses that were this thick. She came into the courtroom with an oxygen machine. And I think that they just looked at this man, if the accusation was correct, as somebody that was capable of trying to rape this old . . . she wasn't really an old woman, she was just in very, very poor health. I think that kind of lent to whether or not he had the propensity to commit other heinous crimes.

12:54:00

JSL: The jury actually came back and said, "We're unable to reach a conclusion, an agreement, at this penalty." And the judge-

HDP: Did an "Allen Charge."

JSL: Something like that, sent them back out, and they came back in. But you got that close.

HDP: Yeah. *(laughs)*

12:54:20

JSL: Let me just present you with some information that we have obtained and see what your reaction is. First of all, just to set some . . .

HDP: Parameters?

JSL: Well, just to set some, just basics here, you The investigating detective on this case, do you remember her name?

12:54:48

HDP: No I don't.

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JSL: Does Olivia Escobedo ring a bell with you as the prosecuting, I mean as the investigating, the Corpus Christi Police department homicide investigator in this case?

HDP: No.

JSL: And Joel Infante, do you remember him as the I.D. tech for the Corpus Christi Police Department.

HDP: He would have been the I.D. tech for the city, as I recall correctly.

12:55:23

JSL: At the time, Carlos DeLuna . . . I'm sorry, I'll start over. Carlos Hernandez was suspected of the murder of Dahlia Saucedo in 1979. And that was the case that later got into the press that you had the conversation with Steve Schiwetz about.

HDP: Correct.

12:55:41

JSL: But that was later, when . . . At the time, 1979, early 1980, there were two suspects for that killing, one was Jesse Garza, who was represented by Albert Peña and acquitted for that crime. The other was Carlos Hernandez. Carlos Hernandez's semen was found in the victim, his shorts, his undershorts were found with her, his fingerprint was found in her van. The prosecutor who made the decision as between Jesse Garza and Carlos Hernandez, as to who to prosecute was Ken Botary. The lead detective on the case was

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Olivia Escobedo and the I.D. tech on the case was Joel Infante. In essence, the same team, minus Steve Schiwetz, who was not in the prosecutor's office at that time. So when the argument was made at Carlos DeLuna's trial that Carlos Hernandez is a phantom, "we don't know anybody who could do something like this with a knife by that name," there was a whole prosecution team there who knew exactly who Carlos Hernandez was and where he was. And I'm just curious what your reaction is to that information.

12:57:05

HDP: I wish I had known at that point, but I didn't. I certainly think I could have made for a better case if I could have proved that he wasn't a phantom, that there was in fact a Carlos Hernandez that existed.

12:57:20

JSL: One of the things that we have also learned is that Carlos Hernandez was also a maestro with a knife. He prided himself on the use of a knife. He always carried a knife. It was a lock blade, eight-inch lock blade knife, that he threatened people, scared people with that knife. And it was with that knife that he was actually arrested with by two other detectives, Paul Rivera and Eddie . . .

HDP: Garza.

JSL: -Garza back in 1979. The victim in that case, the 1979 case,

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had an "X" carved in her back, and the little toe was essentially cut off with that knife. Would that have been relevant to you in trying to decide whether perhaps that was the right Carlos Hernandez? The right-

12:58:15

HDP: Yeah, I think it would have been real important. Because, as you'll recall, the testimony from the concerned citizen was the fact that he could see this knife that apparently this guy kept kind of fondling in his pocket. And, obviously, if it was just a tiny little pocket knife or something I don't think that it would have drawn too much attention. But obviously this was big enough for him to have caught his attention, that he had, appeared to have a knife in his pocket, or was fondling this knife.

12:58:51

JSL: Let me go another step: we have been told by a gentleman who was another Corpus Christi homicide, Corpus Christi police department homicide detective in 1983, not assigned to the Shamrock killing, that he was informed by informants in the Hispanic community here in Corpus Christi, that a man by the name of Carlos DeLu . . . Carlos Hernandez, Carlos Hernandez, was stating in the community at that time that he had been the one who killed Wanda Lopez. And that he, this had been reported to the homicide detective, who then reported it to Olivia Escobedo in

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case she wanted to use it in her investigation of this case. Were you ever informed about that?

12:59:43

HDP: No. Neither I nor Jim. I mean, that obviously would have been a quantum leap in the defense had we gotten this information.

JSL: What's your reaction to hearing that?

12:59:57

HDP: I'm just really sorry we didn't have it. I think it would have probably had a tremendous difference in the outcome of Carlos's trial. Because to sit there and perpetuate the idea that this was just a phantom, that this was just a nonexistent person, by the state, when, in fact, they had information which would have indicated that there really was a Carlos DeLuna out there. Leaves a pretty bad taste in my mouth, even now.

JSL: You just said Carlos DeLuna.

13:00:29

HDP: I mean Carlos Hernandez. I'm sorry.

13:00:34

JSL: Would it, how would it, . . . what is your reaction to an additional piece of information that we have uncovered, that Carlos Hernandez was arrested on a parole violation on, at the beginning of April, well, I should say, in April of 1983. That is, mid-way through the process of getting from the arrest on

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February 4th to the trial in July, 1983, and, indeed, Joel Infante took his fingerprint -- for some reason, took major case prints of Carlos Hernandez at that point. Did you hear anything about that?

13:01:19

HDP: No. As I said, most of the investigation that I did is that I got a vein and I went at it the best way I knew, and that was to go through people I knew at the I.D. department and the Sheriff's Department. See, at that time, the city operated a jail, and the county operated a jail, and all the city prisoners initially were taken to the city, and then they were I.D.'d and ultimately taken to the county, once charges were filed. So any information that the city that I . . . I never got any information from the city. Then information I got was based on my own investigation through the records that the Nueces County Sheriff's Department had.

JSL: And when you say "city" you mean the city police department of Corpus Christi.

HDP: City police department, correct.

13:02:08

HDP: And see, then, it was several years later on that they combined the operation of the city and the county, and so they shared facilities, both I.D. as well as jail facilities and so forth. And it wasn't until this past year, now, that they're split up again.

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13:02:33

JSL: I guess I'll just offer you the final-

13:02:35

HDP: I think, quite frankly, had any of these other sources of information come to us concerning Carlos Hernandez, I think, as I sit here, even today, I think would have made a tremendous difference in the outcome of the case. Had we known that, in fact, there was a Carlos Hernandez who had the propensity [sic] and the tendencies that we know now, in terms of being able to wield a knife and so forth, I think it would have made a great deal of difference in the outcome of the case.

13:08:04

HDP: I think it was just because of the heinous manner in which this occurred. I think that when Carlos was arrested, basically, they were just, they were out to find their goat.

13:08:27

JSL: What is your impression about how lengthy or comprehensive an investigation was conducted in this case by the police? In view of what you just said, they found Carlos DeLuna under a truck, and then what happened?

13:08:47

HDP: I think that just because of his proximity to the scene, considering the time frame. You know, people have seen someone

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running, and as they're . . . as the police normally do, make an effort to box in or close off . . . You know, this one person kept jumping fences and going through yards, and people were calling that somebody's running through their yard. And ultimately, you know, they found him about a block and a half, hiding underneath the car, and so I think that, just . . . In light of those flight facts that they assumed that this was the guy they were looking for.

13:09:37

JSL: One of the things you or Mr. Lawrence brought out at trial -- I remember it in the transcript -- was some cross-examination of the police. There was an officer, I think it's Sergeant Mejia, who had been one of the earliest ones on the scene and took some of the early witness statements. And all of the information they had was that a man had been seen fleeing north, immediately behind the station, up Dodd, and towards, into that neighborhood.

HDP: The residential area, yeah.

13:10:10

JSL: And there was a description given of a man who looked like he was a derelict or homeless. Gray sweatshirt, running in that northerly direction. And there were other sightings of somebody. And then the Arsuagas come in from that Phase Two nightclub that was a little bit further east from the station, a couple blocks

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east from the station. And they gave a definition of somebody in a white, button-down dress shirt and black slacks or dark slacks. At that point, attention switched from the person with a gray sweatshirt-

HDP: The homeless-looking guy to the guy with the white shirt.

13:11:30

HDP: No, I'd have to say, even to this day, I do not recall any efforts on the part of the state to provide any assistance in that. I think just the argument by the state that, you know, that this individual that we were trying to throw in, or this name that we threw in, was just something that we had made up in an effort to throw in a red herring, that it was a phantom when, in fact, they apparently had evidence otherwise, is very disappointing. I mean, you know, that they would have concealed something like that if they had that information.

13:12:14

HDP: We only had, during the course of the . . . part of the evidence that we had was the one tape where she ultimately was stabbed in the process of still trying to talk to the dispatcher. But we were not aware of any other taped conversation. And I know we had a hard time, when we originally tried to get those tapes, or a tape, we were hard pressed to do it because they kept telling us, by the time we were trying to find evidence and subpoena

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evidence, they kept trying to say the police only keep this log tape for 30 days, then it's erased and they start all over again.

13:13:10

JSL: So would you please just describe the process you went through, the cooperation you got in obtaining the one tape that was played at trial.

13:13:25

HDP: One of the hardest pieces of evidence that we acquired during the course of the trial was a tape recording of the master tape that was kept by the police dispatcher. And in the beginning when we were trying to get a copy of the taped conversations with the dispatcher, we were being told that, by the time we got to it, it had already been erased, the explanation being that the master tape was only kept for 30 days and then it was erased and reused. But ultimately we discovered that that part of their conversation was, in fact, still on the master tape and we were able to get a duplicate cassette of the recording that took place.

13:14:15

JSL: And then subsequently, as a result of the civil suit, you learned that there was even an earlier phone call that had also been preserved and was available at that point.

HDP: Correct.

13:14:25

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RP: Tell us . . . I don't think that's clear to who may be seeing it. So what did you learn, even after the criminal case, regarding the tape?

13:14:37

HDP: The only thing we learned that there was apparently more than one phone call that was made to the dispatcher, and my recollection being that I learned this through the publication of the civil trial that came out in the papers.

13:16:06

JSL: Do you think there was any possibility the police were concerned about their own image, given that she called earlier and asked for a car to be dispatched.

13:16:15

HDP: In all honesty, I'm sure there probably was. In all candor, I believe, I'm sure that the police department was trying to, as we say, C.Y.A.

JSL: Would it change your view of how you would have tried the case and how you would have thought about the case if you came to find out that Carlos Hernandez knew, or that Wanda Lopez knew Carlos Hernandez and that they had had some kind of relationship?

13:19:38

HDP: Very definitely. Surprise, surprise, yes. I think it would have made a pretty big difference.

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