

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED

JAN 23 1987

CARLOS DELUNA,
Petitioner,

V.

O. L. MCCOTTER, DIRECTOR,
TEXAS DEPARTMENT OF
CORRECTIONS,

Respondent.

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JESSE E. CLARK, CLERK
BY DEPUTY: *A. Strick*

CIVIL ACTION NO. C-86-234

PETITIONER'S RESPONSE TO RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE HAYDEN HEAD, JR., JUDGE, UNITED STATES
DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, CORPUS CHRISTI
DIVISION:

Comes now CARLOS DELUNA, Petitioner, by and through
his attorney, Richard A. Anderson, and files this his
Response to Respondent's Motion For Summary Judgment, and in
support thereof would respectfully show the Court as
follows:

RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT - 1
#109/01/22/87/DELUNA-5

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I.

PROSECUTORIAL DISCRETION IN DETERMINING
WHICH CASES IN WHICH TO SEEK THE DEATH
PENALTY IS DISCRIMINATORY BASED UPON
THE RACE OF THE VICTIM

Respondent in his Motion for Summary Judgment correctly states to the Court that the mere incantation that there exists a statistical certainty that prosecutorial decisions to seek the death penalty is based upon the race of the victim is insufficient to state a cause for relief that would require an evidentiary hearing under the present decisions of the Fifth Circuit. Wicker v. McCotter, 798 F.2d 55 (5th Cir. 1986), cert. den. _____ U.S. _____, _____ S.Ct. _____, 55 U.S.L.W. 3175 (August 25, 1986). Respondent is likewise correct that the mere granting of a Petition for Writ of Certiorari in McClesky v. Kemp, 753 F.2d 877 (11th Cir. 1985), cert. granted, _____ U.S. _____, 106 S.Ct. 3331 (1986), which addresses the issue of whether if shown to a statistical certainty that there is a disproportion in application of the death penalty to individuals based upon the race of the victim is in fact a constitutionally prohibited discriminatory act, and the corresponding case of Hitchcock v. Wainwright, 777 F.2d 628

(11th Cir., 1985), _____ U.S. _____, 106 S.Ct. 2888 (1986), a case raising the issue of whether or not such discriminatory application can be raised for the first time on collateral attack of the conviction, both of which were argued October 15, 1986, is insufficient to make available to Petitioner Habeas Corpus relief in the form of an evidentiary hearing without the type of statistical background contemplated in McClesky being part of the record. Wicker v. McCotter, supra.

Petitioner's present counsel did not get involved in Petitioner's case until shortly before Petitioner's scheduled execution date of October 15, 1986, due to Petitioner's court-appointed attorneys on appeal failure to seek an Application for Writ of Certiorari to the Supreme Court of the United States on direct appeal and their abandonment of Petitioner's cause after the direct appeal to the Court of Criminal Appeals of the State of Texas had been affirmed. Since present Petitioner's attorney has entered into the case, an effort is being made to provide the Court with the type of statistical data contemplated in the original McClesky Opinion. Petitioner's attorney has undertaken a similar task in Dallas County, Texas, in a death penalty case on direct appeal entitled Chambers v. State, presenting pending before the Court of Criminal Appeals for

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the State of Texas in Cause No. 69,609. The statistical analysis in that case consisted of, first, a demographic analysis of racial background in Dallas County pursuant to figures compiled by the 1980 United States Census, a compilation of all those cases sought to be filed as capital murder charges pursuant to Section 19.03, Texas Penal Code, a compilation of figures on those cases indicted for capital murder by the Dallas County Grand Jury, a compilation of those statistics which included those cases which were actually tried for capital murder by the Dallas County District Attorney's Office, and the background in each of those cases as to the race of the victim. After extensive research, a breakdown in the Chambers case shows that in cases in which the police have recommended capital murder charges be filed since 1980 where the victim was a black person, the Dallas County District Attorney's Office had prosecuted none of the 56 cases that met those demographics. Evidence was put before the trial court on the Motion for New Trial that such was to a statistical certainty a discriminatory practice in Dallas County, Texas.

A similar task has been untaken in Nueces County, Texas since Petitioner's present counsel has entered into Petitioner's case. Such statistical compilation is a laborious task, and involves the cooperation of several

agencies because of the incompleteness of records that are kept in this area. Present Nueces County record keeping procedures, without further negotiations with the police department and the District Attorney's Office, only allowed Petitioner to determine which of those cases since the reenactment of the death penalty in the State of Texas in 1973 have been indicted as capital murder by a Nueces County Grand Jury. The Court records themselves do not show any type of breakdown of the victim by race. Public records such as autopsy reports which may be linked by the court records are presently being examined to determine if a statistical survey can be compiled. Petitioner's attorney will attempt further to negotiate with the Corpus Christi Police Department to see if records can be made available to Petitioner concerning those cases that were recommended to be filed as capital murder charges because they had demographics necessary under Section 19.03, Texas Penal Code, so that they may be compared with those cases actually indicted for capital murder by the Nueces County Grand Jury. Such records, if made available, are also helpful in that those records will indicate the race of the victim involved. While there are comparatively few capital murder cases that are actually tried for the death penalty in Nueces County, Petitioner's attorney is attempting to contact the attorneys

involved in each of those cases to verify facts concerning the race of the victim.

An additional problem in Nueces County that was not encountered in Dallas is that while U.S. Census standards in 1980 recognize a separate category for race in terms of Hispanic, not all record keeping agencies in Nueces County follow those guidelines. This provides an additional handicap to compiling the statistics necessary for a McClesky challenge in Nueces County.

Petitioner's case provides an excellent example of this situation in that Respondent in his Motion for Summary Judgment states that the victim in Petitioner's case, Wanda Lopez, was Hispanic, and because of the hispanic surname could not be categorized as a member of the white race. Attached to Petitioner's Response to Respondent's Motion for Summary Judgment is the autopsy protocol and death certificate involved in this case, both of which list the race of the victim, Wanda Lopez, as white. Such attachments are incorporated in the argument herein for all purposes.

It is respectfully requested that due to the complexity of compiling the statistical background necessary to meet the requirements of McClesky do to the particular

problems of compiling such statistics in Nueces County, that Petitioner's counsel be given a reasonable amount of time to compile such statistics, or, to determine that because of the record keeping processes of Nueces County that such statistical survey can never be accomplished using accepted statistical compilation procedures, or, until the Supreme Court's decision in either McClesky v. Kemp or Hitchcock v. Wainwright make such analysis moot. Petitioner's counsel will use all due diligence to determine if such survey can be completed and under what time limitations it can be completed so that the Writ of Habeas Corpus can be amended to include the statistical basis for the claim.

II.

PETITIONER CLAIMS OF BEING DENIED EFFECTIVE
ASSISTANCE OF COUNSEL AS GUARANTEED BY THE
SIXTH AMENDMENT

Respondent correctly states the two prong test to determine effective assistance of counsel as announced in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

Due to the short period of time from the time of Petitioner's present counsel's entry into the case and the

need to seek some relief regarding a stay of execution, a shorthand rendition of Petitioner's claims in his Original Petition for Writ of Habeas Corpus were set out and are summarized by Respondent. Petitioner's attorney is forwarding to Petitioner an Amended Writ of Habeas Corpus to flesh out the allegations in the following particulars:

(A) Petitioner was arrested in February, 1983. Lead counsel, Hector DePena, Jr., was appointed to represent Petitioner in March, 1983. Co-counsel, James R. Lawrence, was appointed at a later date and was the first to see Petitioner in the County Jail in May, 1983. Lead counsel, Hector DePena, Jr., first saw Petitioner in the County Jail one month prior to trial which started July 5, 1983. Lead counsel, Hector DePena, Jr., saw Petitioner one more time prior to his trial. Petitioner saw co-counsel, James R. Lawrence, approximately four times between the appointment and the time of trial. Petitioner's lack of contact with trial counsel was especially critical during the period of time that Petitioner's main witness, his mother, was critically ill, and he had no contact with counsel.

- (B) Trial counsel failed to follow up information and investigate thoroughly Petitioner's lengthy history of substance abuse to determine if there was sufficient organicity as to result in substance abuse to mitigate punishment. Petitioner had advised trial counsel of this history and had given trial counsel names of numerous family members to follow up this line of inquiry that would have produced evidence in use of mitigation of punishment.
- (C) Counsel at trial failed to thoroughly investigate an alternative hypothesis concerning an assailant other than Petitioner even when provided with a name and location of the assailant and information concerning the similarities between Petitioner's appearance and the alternative assailant. Petitioner had told his court-appointed attorneys that he was using the telephone at the convenience store when he observed the assault on the convenienceanother assailant. Fearing complicity because of his past criminal record, Petitioner ran from the scene, and was arrested a short distance from the

scene later than evening. During the investigation, the name Carlos Hernandez came up as an individual who had a prior criminal background and who had the same physical characteristics as Petitioner. On July 25, 1983, shortly after Petitioner was convicted of this offense, Carlos Hernandez was arrested on another charge. A copy of the newspaper article showing his arrest is attached as an exhibit and incorporated herein. Although confronted with this information, Petitioner's court-appointed attorneys did not follow up on the investigation through motion for new trial or other activity to determine and verify Petitioner's allegations so that they may be presented to a trier of fact.

- (D) Trial counsel failed to adequately investigate an alternative assailant and to use technology such as spectroscopic voice identification techniques on a tape recording of the actual assault and offense to determine whether or not the voice on the tape was that of the Petitioner or another assailant.

(E) Trial counsel, although being advised from numerous witnesses that this twenty-one year old Petitioner had to present mitigation of punishment, failed to put on a single witness at the punishment phase at the trial on mitigation of punishment. Although Petitioner was only twenty-one years old at the time of the offense, he was told by trial counsel that it was not necessary to put on the witnesses that he had requested to testify at the punishment stage of the trial, including Maria Arrendondo, his sister; Rose Earley, sister; Daniel Conejo, brother; Maria Conejo, sister-in-law; Mr. Perez, english teacher at Tom Brown Junior High School; Blas Olivados, stepfather; Belinda Pena, neice, Diana Pena, neice; Alicia Caballara, girl friend. Each of those witnesses would have provided testimony beyond just a plea to not impose the death penalty. Each of the witnesses had information concerning Petitioner's prior substance abuse and borderline intellectual capacity. The witnesses Arrendondo, Earley, and Olivados, also had information concerning

Petitioner's contact with his mother on the night of the offense and the proceedings that took place after that.

- (F) Trial counsel failed to preserve the testimony of Petitioner's most important witness although they had been advised that the witness was hospitalized, was near death, and the testimony of the witness was absolutely critical to the defense hypothesis of an alternative assailant. Petitioner had advised trial counsel that at the time of the assault he had observed the assailant while he was on the phone talking to his mother. Although there was lack of contact between Petitioner and trial counsel prior to trial, Petitioner repeatedly advised trial counsel of Petitioner's natural mother's poor health and the need to preserve her testimony as he described to her the assailant and the assault at the time that it was happening and advised her that he was leaving the scene because he was afraid of what might happen because of his prior criminal history. Although advised of these facts, Petitioner's

trial counsel failed to follow up and seek a deposition to preserve the testimony of Petitioner's natural mother, who died shortly before trial started at Memorial Hospital in Corpus Christi, Texas. The failure of trial counsel to preserve that testimony completely negated Petitioner's opportunity to corroborate the defense of an alternative assailant.

- (G) Trial counsel instructed Petitioner not to cooperate with court-appointed psychologist and psychiatrist for fear that the evidence would be used against Petitioner. Petitioner, on trial counsel's advice, refused to cooperate with the court-appointed experts and was diagnosed as malingering rather than giving information that would have resulted in a true diagnosis showing a lengthy history of substance abuse and organicity that would have produced evidence in mitigation of punishment.

Petitioner would show that the allegations contained herein go well beyond mere conclusions and summaries

which have been held to be insufficient in the past. Petitioner would show that these allegations are sufficiently specific and entitle Petitioner to relief on their face, and that an evidentiary hearing is critical to establishing the veracity of Petitioner's claims.

It is interesting to note that the bulk of the cases cited by Respondent were situations in which at least one evidentiary hearing had been granted to substantiate the Petitioner's claims. Mattheson v. King, 751 F.2d 1432 (5th Cir. 1985); Rutledge v. Wainwright, 625 F.2d 1200 (5th Cir. 1980); Lockhart v. McCotter, 782 F.2d 1275 (5th Cir. 1986); Schwander v. Blackburn, 750 F.2d 494 (5th Cir. 1985); Murray v. Maggio, 736 F.2d 279 (5th Cir. 1984); Avery v. Procnier, 750 F.2d 444 (5th Cir. 1985); United States v. Cockrell, 720 F.2d 1423 (5th Cir. 1983); and Knighton v. Maggio, 740 F.2d 1344 (5th Cir. 1984) cert. den. 105 S.Ct. 306 (1984). No evidentiary hearing at any stage has been held on Petitioner's allegations.

Of the cases cited by Respondent in which no evidentiary hearing was had, Taylor v. Maggio, 727 F.2d 341 (5th Cir. 1984) was a situation which only allegations of ineffective assistance of counsel concerning State procedural matters in areas not raised to the constitutional

dimension were alleged. While Petitioner concedes that the case of Celestine v. Blackburn, 750 F.2d 353 (5th Cir. 1984) provides some support for Respondent's argument against an evidentiary hearing on certain of the allegations of ineffective assistance of counsel raised by Petitioner, the compelling interests concerning the failure to preserve the testimony of Petitioner's mother and the failure of trial counsel to follow up on the alternative hypothesis of another assailant when given evidence and indication even of the assailants name and location, cannot be dismissed with the same reasoning cited in Celestine. Additionally, the fact that the jury's initial verdict on punishment indicated a hung jury which at the time under existing Texas law would have required a complete retrial is indicative that the jury was giving some indication to Petitioner's age and status at the time of their consideration of the punishment, even though they had been unaided by any testimony from Petitioner's family and friends.

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III.

PETITIONER DENIED EFFECTIVE ASSISTANCE
OF COUNSEL ON APPEAL

Petitioner would concede that under the present status of the record, the decision under Strickland v. Washington, supra; as expanded by Wicker v. McCotter, supra, and Schwander v. Blackburn, supra, control. See also Lockhart v. McCotter, 782 F.2d 1275 (1986).

However, Petitioner's counsel review of the record is not complete and Petitioner would ask a reasonable amount of time to determine whether or not any verifiable grounds of this allegation may be supported by an evidentiary hearing.

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully requests that Respondent's Motion for Summary Judgment be denied and this cause be set for an evidentiary hearing so that the facts may be developed in support of Petitioner's allegations, and that further, Petitioner's counsel be given a reasonable amount of time to develop a statistical basis in both Texas and Nueces County, Texas, to supplement and amend Petitioner's Original Writ of Habeas

Corpus to bring in conformance with the requirements of
McClesky.

Respectfully submitted,

LAW OFFICES OF
RICHARD A. ANDERSON



RICHARD A. ANDERSON
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214/559-4384
Bar No. 01207700

ATTORNEY FOR PETITIONER

RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT - 17
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Response to Respondent's Motion for Summary Judgment has been forwarded to William C. Zapalac, Assistant Attorney General of Texas, P.O. Box 12458 Capitol Station, Austin, Texas, 78711.

SIGNED this the 22nd day of JANUARY, 1987.


RICHARD A. ANDERSON

SIGNED AND ENTERED on this the _____ day of _____, 1987.

HAYDEN HEAD, JR., UNITED STATES
DISTRICT JUDGE, SOUTHERN
DISTRICT OF TEXAS, CORPUS
CHRISTI DIVISION

ORDER - 2
#109/01/22/87/DELUNA7

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ME #83-094
LOPEZ
PAGE 1.

AUTOPSY FINDINGS

Stab Wounds of Chest

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POSTMORTEM EXAMINATION UPON THE BODY OF
WANDA LOPEZ

On February 5, 1983, at approximately 8:45 A.M., an autopsy was performed by Dr. Joseph C. Rupp, Nueces County Medical Examiner, upon the body of Wanda Lopez in the autopsy room at Memorial Medical Center. The body is identified by a card type tag.

When first viewed in the Memorial Medical Center autopsy room, the body is clad in brown slacks and green panties which have been cut from the body.

The body is that of a well developed, well nourished, adult white female, measuring 63" in length, weighing an estimated 170 pounds, and appearing the recorded age of 24 years. Body hair is of normal distribution. The hair of the head is black. The eyes are brown. The pupils are round, regular and equal. The teeth are natural and in a fair state of hygiene. There are no needle tracks in the arms. There are no old wrist scars. There are no defense wounds of the hands.

There is an endotracheal tube and a plastic airway in place. There is an IV in the right wrist. There is an IV in the left ante cubital fossa. There is an IV in the left hand. There is a chest tube in the left side of the chest. There are EKG patches on the chest. There are resuscitator burns of the chest. There are abrasions in the center of the chest from resuscitatory efforts. There are stab wounds of the body. One of these stab wounds has a drainage tube protruding from it. The other has been sutured shut.

STAB WOUND #1: This wound is located 18" from the top of the head in the left anterior axillary line. It is oriented in the 11 to 5 o'clock direction and is ½" in length. The wound penetrates the 5th intercostal space into the left chest cavity and goes almost completely through the lower lobe of the left lung. This wound goes from front to back, from left to right, not deviating appreciably in an up or down direction.

STAB WOUND #2: This wound is located 19" from the top of the head in the left midaxillary line. The wound is oriented in the 8 to 2 o'clock direction, and is 1½" in length. The wound is just at the lower level of the breasts. The wound penetrates the 7th intercostal space into the left chest cavity, and passes almost completely through the lower lobe of the left lung. This wound goes from front to back, from left to right, in a slightly downward direction.

As a result of these two stab wounds, there is approximately 2 liters of blood in the left chest cavity.

Aside from the traumatic injuries just described, autopsy findings are as follows:

Upon opening the body cavities, there are no adhesions. There is a left hemothorax of approximately 2000 ccs of liquid and clotted blood. There is a small amount of blood in the pericardial sac as the result of resuscitatory efforts. There are no adhesions, and all of the viscera have their normal anatomic positions.

HEART: The heart weighs 320 grams. The coronary vessels have their normal origin and distribution and show no significant atherosclerotic change. The heart valves are competent. The myocardium is dark red, moderately firm and homogeneous, showing no evidence of fibrous scarring or recent infarct.

LUNGS: The lungs have a combined weight of 890 grams. The left lung is atelectatic when viewed in situ. The pulmonary vasculature is unremarkable. The respiratory tree contains bloody, mucoid material. The lung parenchyma shows a moderate amount of underlying anthracotic staining. The parenchyma of the lungs is moderately edematous. There is no significant natural pulmonary disease. There has been some aspiration of blood.

LIVER: The capsule of the liver is intact. The gallbladder and biliary tree are normal. There are a few small lymph nodes at the base of the liver. The parenchyma of the liver is dark red, moderately firm and homogeneous, showing no evidence of fatty change or fibrosis.

SPLEEN: The spleen weighs 130 grams. The capsule is intact, and not tense. The parenchyma of the spleen is dark red, soft and homogeneous.

PANCREAS: The pancreas weighs an estimated 70 grams. It has the usual tan, lobular parenchyma and is normal in its gross appearance.

ADRENAL GLANDS: The adrenal glands each weigh an estimated 6 grams. They have the usual yellow lobular cortex and thin pearly gray medullary zone.

KIDNEYS: The kidneys have a combined weight estimated at 325 grams. The capsules strip with ease revealing smooth, light reddish-brown, cortical surfaces. Upon section, the cortex has the usual thickness. There is a moderately prominent line of demarcation at the corticomedullary junction. The ureters are unobstructed. The urinary bladder is empty. The external genitalia and perineal region are unremarkable to inspection. The uterus is small, symmetrical and estimated not to weigh more than 100 grams. The endometrial cavity is lined by a moderately thick layer of tan tissue. The uterine tubes and ovaries are normal.

AORTA AND GREAT VESSELS: The aorta and great vessels have their normal origin and distribution and show no significant atherosclerotic change.

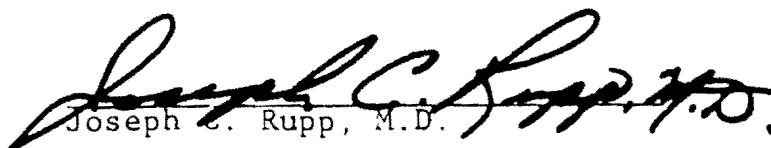
GASTROINTESTINAL TRACT: The gastrointestinal tract is normal to inspection and palpation. The appendix is present.

NECK ORGANS: The laryngeal structures are patent. The cornu of the thyroid cartilage and hyoid bone are intact. The trachea and larynx contain some aspirated vomitus. The thyroid gland is small, symmetrical and normal in its gross appearance.

SKELETAL SYSTEM: The axial and appendicular skeleton are intact to inspection and palpation.

HEAD: The scalp and skull are intact to inspection and palpation.

JCR/jf


Joseph E. Rupp, M.D.

STATE OF TEXAS

CERTIFICATE OF DEATH

STATE FILE NO

Texas Department of Health — BUREAU OF VITAL STATISTICS

1 NAME OF DECEASED (Type or print)			(a) First WANDA		(b) Middle JEAN		(c) Last LOPEZ		2 SEX FEMALE		3 DATE OF DEATH FEBRUARY 4, 1983		
4 RACE WHITE		5a WAS THE DECEDENT OF SPANISH ORIGIN? YES		5b IF YES SPECIFY MEXICAN, CUBAN, PUERTO RICAN, ETC. MEXICAN		6 DATE OF BIRTH 2-26-1958		7 AGE (In years last birthday) 24		IF UNDER 1 YEAR Months: Days: Hours: Minutes:		IF UNDER 24 HRS Hours: Minutes:	
5c PLACE OF DEATH — COUNTY NUECES				5d CITY OR TOWN (If outside city limits give street address) CORPUS CHRISTI				8 NAME OF (If not in hospital give street address) HOSPITAL OR INSTITUTION MEMORIAL MEDICAL CENTER				9 TIME OF DEATH YES	
3 MARRIED NEVER MARRIED WIDOWED DIVORCED (Specify) DIVORCED		10 BIRTHPLACE (State or foreign country) TEXAS		11 CITIZEN OF WHAT COUNTRY? USA		12 WAS DECEDENT EVER IN U.S. ARMED FORCES? NO		13 SURVIVING SPOUSE (If wife, give name and date of death) NOT					
14 SOCIAL SECURITY NO. 464-25-2236		15a USUAL OCCUPATION (Give kind of work done during most of working life, even if retired) CASHIER				15b KIND OF BUSINESS OR INDUSTRY RETAIL SALES							
16a RESIDENCE — STATE TEXAS		16b COUNTY NUECES		16c CITY OR TOWN (If outside city limits give street address) CORPUS CHRISTI		16d STREET ADDRESS (If rural give location) 2418 CLEO		16e INSURED? YES					
17 FATHER'S NAME LOUIS G. VARGAS, JR.				18 MOTHER'S MAIDEN NAME MARY GOMEZ				19 SIGNATURE OF INFORMANT <i>Louis G. Vargas, Jr.</i>					
20 PART I		IMMEDIATE CAUSE (Enter only one cause per line for (a), (b) or (c)) Stab Wounds of Chest											
1a		DUE TO, OR AS A CONSEQUENCE OF											
1b		DUE TO, OR AS A CONSEQUENCE OF											
1c		DUE TO, OR AS A CONSEQUENCE OF											
21 PART II		OTHER SIGNIFICANT CONDITIONS — CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO CAUSE GIVEN IN PART I (a) (b) or (c) YES											
22a ACC. SUICIDE HOM. UNDET. OR PENDING INVEST. (Specify) Homicide		22b DATE OF INJURY 2-4-83		22c HOUR OF INJURY 8:11 P.		22d DESCRIBE HOW INJURY OCCURRED Deceased stabbed by assailant							
22e INJURY AT WORK (Specify yes or no) yes		22f PLACE OF INJURY — At home, farm, street, factory, office building, etc. (Specify) service station				22g LOCATION — STREET OR R.F.D. NO. CITY OR TOWN STATE 2602 S.P.I.D., Corpus Christi, Tx.							
23a To the best of my knowledge, death occurred at the time, date, and place and due to the cause(s) stated (Signature and Title) <i>[Signature]</i>		24a On the basis of examination and/or investigation, in my opinion death occurred at the time, date, and place and due to the cause(s) stated (Signature and Title) <i>[Signature]</i> Nueces County Medical Examiner											
23b DATE SIGNED (Mo., Day, Yr.)		23c HOUR OF DEATH		24b DATE SIGNED (Mo., Day, Yr.)		24c HOUR OF DEATH							
				2-10-83		9:55 P.							
23d NAME OF ATTENDING PHYSICIAN (Type or print)		24d PRONOUNCED DEAD (Mo., Day, Yr.) ON 2-4-83											
		24e PRONOUNCED DEAD (Mo., Day, Yr.) AT 9:55 P.											
25a BURIAL CREMATION REMOVAL (Specify) BURIAL				25b DATE FEBRUARY 7, 1983				25c NAME OF CEMETERY OR CREMATORY MEMORY GARDENS CEMETERY					
25d LOCATION (City, town or county) CORPUS CHRISTI				25e STATE TEXAS				26 SIGNATURE OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH MAXWELL P. DUMME FUNERAL SERVICE, INC.					
27a REGISTRAR'S FILE NO.		27b DATE RECD BY LOCAL REGISTRAR		27c SIGNATURE OF LOCAL REGISTRAR									

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to help speed federal aid to the region and that several existing programs will be tailored to help farmers recover from economic losses. No major new spending programs were unveiled.

In addition, Lyng said, the Agriculture Department will set up a toll-free telephone hot line to answer questions about aid beginning

accused the White House of "playing politics with our disaster relief."

Hollings said he had arranged to have 30 tons of hay shipped from Massachusetts but that the White House refused to airlift it, even though it had carried similar airlifts for Republican members of South Carolina's congressional delegation.



ASSOCIATED PRESS
Piedmont, S.C., residents with dry wells collect city water.

City man is jailed in 7-year-old murder case

By Libby Avery
STAFF WRITER

Police yesterday arrested a Corpus Christi man in connection with the brutal slaying seven years ago of a 27-year-old woman who was found with an "X" carved in her back.

The man arrested yesterday was a key defense witness in a trial six years ago that cleared another man of the woman's murder.

Police said they arrested Carlos Hernandez, 32, of 1201 S. Alameda St., at a friend's home after a seven-hour search.

Hernandez was in City Jail last night in lieu of a \$25,000 bond set by District Judge Jack Blackmon. He is expected to be transferred to the Nueces County Jail at 9 a.m. today.

The search for Hernandez began after he was indicted by the Nueces County

The 27-year-old victim's body was found with an 'X' carved in her back. The woman's 2-year-old child was found asleep just feet away.

Grand Jury Wednesday afternoon in connection with the death of Dahlia Saucedo.

Police Lt. P. Gutierrez said Hernandez was arrested at 10:55 a.m. yesterday at a friend's home on Seventh Street, by Sgts. Paul Rivera and Eddie Garza, with the assistance of Sgt. Robert De La Garza.

Rivera said there have always been questions about Hernandez's possible involvement in the Saucedo death, but police didn't have enough evidence to arrest him. Police reopened the investigation several months ago after receiving

new evidence, which Gutierrez would not disclose.

The case began Nov. 20, 1979, when two school boys discovered Mrs. Saucedo's nude, beaten and blood-stained body in the back of her van parked in a lot near Mexico and Mussett streets.

An "X" had been carved in Mrs. Saucedo's back, and she had been strangled with a pair of jeans. The woman's 2-year-old daughter was found sleeping in the van near her mother's body.

In 1980, 19-year-old Jesse Z. Garza was indicted and tried for the murder,

but an eight-man, four-woman jury found him not guilty.

Albert Pena, Garza's attorney, told the *Call* yesterday he subpoenaed Hernandez during the trial to help prove his client's innocence.

At the trial, Hernandez admitted he had sex with Mrs. Saucedo on the night she was murdered, and the autopsy showed she had engaged in sexual activity within 12 hours of her death. Police discovered Hernandez's fingerprints and underwear in the van.

Pena said Hernandez's testimony was an important factor in the not-guilty verdict. Pena said he asked the jury during closing arguments at the trial to recommend that police re-examine what involvement Hernandez may have had in the murder.

Ken Botary, who prosecuted the case
Please see Arrest/18A

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CORPUS CHRISTI, TEXAS
18A/Fri., July 25, 1906

Arrest

FROM PAGE 1A

and now is an attorney in private practice, said statements from Pedro Olivarez, a friend of Garza's, had convinced him Garza killed Mrs. Saucedo. Olivarez had told police that he watched Garza rape and kill the woman.

But Olivarez was not eager to testify when the case came to trial, Botary said. At that time, Olivarez told the prosecutor Garza had not killed Mrs. Saucedo, Botary said.

Prosecutors decided to continue with the case, believing Olivarez was just reluctant to testify against his friend, but would still tell his story, Botary said.

"I was convinced Jesse was the culprit. We tried the case as best we could," Botary said. "Pedro just wasn't a strong witness."

In light of the new evidence uncovered by investigators, Botary said he no longer is convinced Garza killed Mrs. Saucedo.

After the trial, the jury's foreman said the panel concluded Olivarez's testimony left doubts about Garza's involvement in the murder. Jurors also thought police and the district attorney's office had done a poor job of investigating, he added.