

Key:

Carlos Hernandez entries = Red

Carlos DeLuna entries = Blue

Entries that apply to both of them = Purple

Wanda Lopez entries = Green

Information about day of crime (that could apply to both) = Black

[I put date of info entry in brackets where previous key indicated it.]

CH background:

1995 Address on Memorial Medical Center records: 1817 Shely, CC, TX 78404

1994 Address, drivers license, DPS and as of 9/14/94: 1817 Shely, CC, TX 78404; as of

4/28/94, at 1100 Leopard #47 (hard to read number)

1993 Address (11/26/93): 822 Hancock #1

1991 Address, drivers license/DPS: 822 Hancock #1, CC, TX 78404

1989 Address (4/15/89): 826 Hancock and 714 7th St.

1987 Address (1/21/87): 1010 Buford and 1201 South Alameda #2; as of 5/5/87 and 7/16/87 at 826 Hancock # C.

1986 Address: (3/26/86): 1010 Buford, CC; as of 7-24-86, at 1201 South Alameda #2

1985 Address: (5/9/85 and other): 1010 Buford, #C, CC

11/1983 address: 1008 Buford, CC; also (Sheriffs Dep't Records) 1201 South Alameda [Added 10/13/04, 11/2/04]

1983 Address (4/8/83, and 11/83, with Rosa Anzaldua): 107 Sam Rankin, CC

1982 Address (10-10-82, with Rosa Anzaldua): 107 Sam Rankin, CC

1981 Address (10/26/81): 217 S. Carrizo

1980 (1/10/80; 2/16/80; 5/4/80; 5/6/80) Address: 217 Carrizo St.; 217 S. Carrizo, CC, TX 78401, 883-4127 (from DPS drivers license; also added Added 10/13/04, 11/2/04]

1979 Address (2/12/79): 217 Carrizo St CC

1978 (7/29, 8/19 and 10/19) Address: 217 South Carrizo St. [Added 10/13/04, 11/2/04]

1972 Address: 2302 Lonsolving Courts, CC ++ 4/5/72 Sheriffs Dep't record has him at 2302 Kinsolving Courts, 888-5220; mother was living on Elgin St. as of 2/4/72; and sister Pauline was living on 11th St.); [Added 10/13/04, 11/2/04]mother living on 1011½ Kinney as of 10-3-72 [Info added 1/30/05 and 2-1-05]

Completed 9th grade at Wynn Seale Jr. High School on 1707 Ayers from 1967-1970; then attended Irvington High School in Fremont, CA from 1970-71, completing 10th grade. [Info added 1/30/05 and 2-1-05]

Mother: Fidela Gonzales Hernandez, DOB 4-24-26 (CC); c/l marriage 1951 to 1960 (launderer); 2302 Kingsolving in CC

Father: Carlos Hernandez, Sr., DOB 9-16-19, 458-22-7436 (Mex.); imprisoned in 1960 on rape charge. Then went to Dallas upon release. Died there in March 1984.

*1/2 Sister: Margaret Garcia, DOB 6-3-46 (CC); hwife as of '71, living in CC

Sister: Pauline Hernandez, DOB 3-7-53 (CC), home as of 71

* Brother: Gerardo Hernandez, DOB 9-7-55 (CC); Seale Jr. High 9th grade

Brother: Javier Hernandez, DOB 9-8-56 (CC), Seale Jr. High 8th grade at least; deceased; set on fire with gasoline (1980s or 1990s)

Brother Efrain (Frank), DOB 11-16-57 (CC), Allen Elem., at least 6th; deceased ca. 1978 (In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), CH says Ephrain died in 1979) [Info added 1/30/05 and 2-1-05]

Wife is reported in 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch) as Rosa (Lada – probably Lara) Hernandez; divorce is reported as occurring in 1981 [Info added 1/30/05 and 2-1-05]

Son: Jesus Hernandez, b. 1981 to Carlos Hernandez and Rosa Lad[r]a Hernandez (from 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch)) [Info added 1/30/05 and 2-1-05]

Daughter (illegitimate): Renee Gomez (dob unk.) born to Carlos Hernandez and Esparinza Gomez of Robstown, TX (from 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch)) [Info added 1/30/05 and 2-1-05]

CH employment based on police records (incomplete list):

1/31/72: unemployed
2/29/72: unemployed
4/3/72: none
7/29/78: laborer, Tennessee Pipe Line
8/18/79: same
2/12/79: refused to say
2/10/80: laborer, Tennessee Pipe Line
2/16/80: same
5/4/80: janitor MMC (Memorial Medical Center, I believe)
10/26/81: insulator, Gilman I??.
10/10/82: Laborer, TE??'s Tree Service
4/3/83: ??? with Coast Com.
5/9/85: Maintenance man; Mike Shaffer
3/27/86: Cosntruction laborer
7/24/86: unemployed laborer
1/21/87: unemployed
5/5/87 and 7/16/87: plumber's helper, Parkdale Plumbing
4/15/89: unemployed
11/26/93: none
4/28/94: none

CDL Background:

No addresses listed yet for CDL
(7/26/80: 301 E. Miller in Garland)

Mother: **Maria Martinez**, DOB: 8-1-22; DOD: 1983 (6/27/78 Pre-Disposition Investigation report by Juvenile Probation Department reports she was uneducated and

illiterate in Spanish and English).

First Husband: **Francisco Conejo** (note on juvy records says she “does not know whether she married first husband) (from ??? to 1951)

Second Husband and CDL’s Father: **Jose DeLuna** of Beeville (C/L marriage from 1960 to 1963) (as of 6/27/78 Pre-Disposition Investigation report by Juvenile Probation Department, JDL “has had very little or no contact” with family; last known employer was junk yard in Beeville).

Third Husband and CDL;s step-father: **Blas Avalos**: married 1969; still living

½ Siblings:

Vicente Conejo (US Army as of 1978)
Antonia (Toni) Conejo Pena
Daniel Conejo
Victoria Conejo
Maria Conejo Arredondo (DOB 1946)
Rebecca Conejo (DOB 2-2-51)

Siblings:

Manuel DeLuna (DOB 1-16-61)
Rosa DeLuna Rhoton (DOB 1963)

Common law wife??: Irma Garza, 2837 Niagra St., CC is listed as CDL’s common law wife, on a 2/8/04 Nueces County Sheriffs Dept Bur. Of Identification form

COMBINED TIMELINE

1951: Common law relationship begins between Fidela Gonzales and Carlos Hernandez, Jr. in CC

3-7-53: sister Pauline Hernandez born in CC.

7/14/54: Carlos Hernandez born in CC.

9-7-55: brother Gerardo Hernandez born in CC.

9-8-56: brother Javier Hernandez born in CC.

11-16-57: brother Efrain (Frank) born in CC.

9/1960: father, who had been in home until then went to prison for rape. According to the 2/11/71 report discussed below, “Carlos and his brother were placed at a local institution for youths for approximately a year” after dad left b/c mom couldn’t afford to take care of everyone, causing “negative effect” and “lack of self-identity” and “bad relationship” with mom. After father left the penitentiary he did not return home and

instead went to Dallas.

Approx 9/1961 CH returned to living with mother.

3/15/62: Carlos De Luna is born in Corpus Christi

9/1967 – 1970: Attends Wynn Seale Jr. High School, 1707 Ayers in CC, completing 9th grade.

Self-reported Juvenile record: In a 11/6/72 and a 3/15/90 TDOC Admission Summary, (in DPS records, 1/30/05 batch), CH self-reported his juvenile record as “7 arrests,” 5 of which are described: negligent homicide (“involved in an accident in which a juvenile was killed” (SIC), indeterminate juvenile probated sentence); drunk (7 days in jail); traffic violations (7 days); disturbing the peace (5 days in jail); and sniffing lacquer (7 days in jail) [Info added 1/30/05 and 2-1-05]

6/6/69: First juvenile Criminal Index Record is filed on CH; then living at 1206 S. Alameda St.. CH was Age 14. Charge: “Runaway” – Closed 6/11/69). Juvenile court record.

9/xx/69. According to records of Irvington H.S. in Fremont, Calif for 1969-72 period, which reflect some of CH’s record at Moody HS in CC, CH’s grades during the Fall semester of the 69-70 School year were 3 F’s (E.L. Science. English, Math) and 3 Ds (PE, GMK TR and GMK TR --- could this be track?). [Added by JSL approx 2/14/05.]

10/17/69. Charge: Runaway. Closed 11/27/69. Juvenile court record.

1/xx/70. According to records of Irvington H.S. in Fremont, Calif for 1969-72 period, which reflect some of CH’s record at Moody HS in CC, “Carlos Hernandez was not in school second semester of 69/70. [Added by JSL approx 2/14/05.]

4/8/70: Charge “Truancy”. Disposition is “Rel. w/w.” Juvenile court record.

9/xx/70. According to records of Irvington H.S. in Fremont, Calif for 1969-72 period, which reflect some of CH’s record at Moody HS in CC, “Carlos Hernandez was not in school first semester of 1970/71. [Added by JSL approx 2/14/05.]

12/30/70: Negligent Homicide, Driving Under the Influence; Excessive Speed

Juvenile records and attached accident report (Accident Rep. # 70-7905) show that CH, age 16, was driving his sister’s fiancé’s car at 11:23 p.m., at “100+ mph” after he had been drinking in the 2000 block of Morgan Avenue near the Crosstown Access Road, when he slammed on the brakes, skidded 487’ straight into the oncoming lane, turned the car sideways, skidded 38’ more, and struck another vehicle. His sister’s fiancé, **Louis V. Sissamis**, age 19 and in the service died on 1-7-71 at Memorial Medical Center (address

was Cabinass Field, TX, suggesting airforce). Also in the car were **Guadalupe Pena** (age 18) of 1235 15th CC and **Pauline Hernandez** (age 17), CH's sister, who was badly enough injured to have been out to school and in hospital for some time. Oncoming vehicle had driver and passenger who were injured, by injuries are not reported ("severity A"). CH was taken to hospital, too. (Scuttlebutt is that this occurred the night before the wedding was supposed to be held.). At time, CH and family were living at 2301 Kingsolving, CC. Other car was driven by **Nicanor L. Zamora**, age 18 of 2905 Sokos St., CC, with passenger **Jimmy Muq/guera**, 321 Cheyenne, CC, age 19.

From interviews of Anna Sissamis, aunt of the victim Louis Sissimis, and Francis Sissimis, step-mother of the victim, on 8/19/04: On the night of the accident, there was a party on the boat of the victim's father (also Louis) which the victim and his girlfriend/fiancée, Paula Hernandez, attended. Carlos Hernandez arrived uninvited, which annoyed the victim's father. Francis seems to remember that part of the irritation was that Carlos arrived drunk, although the victim didn't drink at all. When the father returned home, the call came about the fatal car accident. In 1972 the immediate family moved back to Greece for 18 years. The family had not heard anything of Carlos Hernandez since the accident.

This from step-brother Elia Sissamis, who didn't know Louis very well:

Elias says that Louis was thought of in the family as a "nice, kindhearted and sweet person just like his mother."

He said the family really doesn't know what happened. Louie was in the service and came home (he doesn't know if he served in Viet Nam) on leave and met up with Carlos Hernandez' sister and started dating her. All the family knows is that one day Louie asked his father for the keys to the boat and the next thing they know, the hospital calls and he is brain dead and on life support. Elias' remembers the impact of this accident on his father:

"My father was never the same. This happened right around New Year's and every year around New Year's, my dad would get upset. He wouldn't say anything, but his whole demeanor changed and we all knew why. But, that's all I know about the loss of my brother. It's not that he was just forgotten, its that no one who is now alive really knew him well enough to say what kind of person he was. My father is dead and my family has closed the book on this episode."
[Added 8/30/04, LN]

01/01/1971: *Corpus Christi Times* article, "Wrecks Kill Six in South Texas."

This article covers several separate accidents. CH's accident occurred on 12/30/1970 at 11:20 p.m. (2320). CH's vehicle skidded 487 feet into oncoming traffic at the 200 block of Morgan and collided broadside with Nicanor L. Zamora's vehicle. [Added 9/4/04, LN]

Carlos Hernandez, 16 yo, 2302 Kingsolving.

Pauline Hernandez, in CH's car, injured, 2302 Kingsolving.
Guadalupe Pena, in CH's car, injured, 18 yo, 1234 15th Street.
[No mention of Sissimis, who was killed!!] [Added 9/4/04, LN]

Nicanor L Zamora, 19 yo, from Sokol, Tx.
Jimmy Muguera, 19 yo, in Zamora's car, injured, 321 Cheyenne. [Added 9/04, LN]

1/17/71: Louis Sissamis dies of injuries from accident.

1/21/71: Case no. 9566; CH referred to juvenile authorities on charge of negligent homicide.

1/22/71: Juvenile call sheet shows that CH was detained on this date for "Neg. Homicide" Also see Juvenile Arrest # B20706.

1/27/71: Case no. 3640, In the matter of Carlos Hernandez, Jr., a delinquent child is filed, charging him with the negligent homicide of Louis. V. Sissamis, operating vehicle at excessive speed and in the wrong lane. Charging paper doesn't mention intoxication.

2/11/71: Upon recommendation of juvenile probation dep't, CH s was declared delinquent and placed on indefinite probation by Judge Paul A. Martineau. On this date, CH agrees to follow probation plan; mother who had previously said "that she and the boy could not get along" expressed gratitude at probation and said she could handle him. CH was represented by "Stonewall Van Wie III". The Case History provided by the probation officials says

- a. mother "tended to minimize the situation";
- b. CH "appeared to be suffering some guilt reaction towards this accident" and "because of the death of the fiancé of his sister", and "did admit that he had been drinking at the time of the accident but stated that he was not aware (!) that he was speeding. "Carlos has been sobered quite a bit by the effects of the recent accident. He does realize the seriousness"
- c. "The most serious trouble" in the family "has been with Carlos [who] . . . dropped out of school several months ago." "He is a school drop-out and has had difficulty for the last several years maintaining good school relations. He was about two years behind when he dropped out of school and ... was unable to relate effectively to his classmates and the school work...." "He has evidenced some character disorder behavior in the last several months"; "does not have any well-defined goals for his future." Around this time "Carlos began to be something of a problem to his mother by staying out late and so forth."
- d. But: "about average in maturity emotionally"; "generally a stable individual"; "a fairly well." As to social interactions, "[t]here do not seem to be any serious problems here."
- e. Attributes "negative effect" and "lack of self-identity" and bad relationship with mom to father's leaving and resulting placement of CH in state home along with one of his brothers for a year; "the relationship" with his mother "has

been strained to a large part because Mrs. Hernandez has tended to take out her frustrations on the children and particularly on Carlos.” Mother was “bitter and hostile towards her ex-husband and takes her feelings out on her children.”

- f. Welfare Dep’t was involved with family for “several years” before this.

3/21/71: Juvenile case # 9699: CH, age 16, has a “juvenile Call Sheet” showing he was arrested at 10:35 p.m. for “paint sniffing and “fighting incorrigible”: “This boy was fighting with his brothers, and also giving his mother a bad time. He had been under influence of some sort of intoxicant (sic). Glue or paint. He had to be restrained and at Mother’s request, placed in jail for safe keeping,” then transferred the next day to a shelter.

Police report , arrest No. B22380; offense # N-2722 shows him as 5’7”, 120 lbs, says that they observe him fight with his older brother at his residence; mother “wanted subject placed in custody” and “stated subject had been sniffing paint and couldn’t control subject.” “Transferred to J.H.”

Offense Report says the fighting was with “Fist and feet”; police arrived and CH had to be restrained on couch by his brother “Juan [sic] Hernandez. “Subject was cursing and fighting everyone including his mother”. “mother insisted that we take her son to jail for their [family’s] protection.”

+++4/12/71. According to records of Irvington H.S. in Fremont, Calif for 1969-72 period, which also reflect some of CH’s record at Moody HS in CC, CH was in school in Calif. from this “entry day: to the end of the spring semester of the 1970-71 school year. Class of 1973; his transcript shows F for Basic Math; D in W. History; A and B for 2 units of Softball; A for Verbal Dev. Guardian is Mr. Romeo Solis, living at 4563 Carol Ave., Fremont, CA, 657-9695. Reverse side of record shows that he had 1 excused absence and 0 unexcused absences during his 10th grade year.

4/29/71: Probation officer **Orlando Torres** arranges to have Carlos move to Fremont, California to live with his uncle ***Soliz (NFN), 4503 Carol Ave., Fremont, CA**, because CH had left school [his record indicates that he dropped out of Cunningham Jr. High in the 9th grade]. Bad home situation because mother “was constantly on Carlos’ back about anything he did”; suggestions she held against the children her husband’s rape imprisonment. Uncle Soliz agrees on condition that mother have no control over the boy. Welfare Dep’t recommended psychiatric help, but Dr. Goodnow said none was needed, after a visit. Friends of victim Sissamis threatened to kill him.

6/xx/71: According to reverse side of records of Irvington H.S. in Fremont, Calif for 1969-72 period, which also reflect some of CH’s record at Moody HS in CC, CH was in a “SUM ‘71” summer program at Irvington HS for which he earned a B grade: described as YWAS WORK EXPER and received 5 units of credit. [Added by JSL, approx. 2/14/05.]

6/4/71, 8/27/71: JPO Torres notes that he hasn’t heard from Carlos, as he was supposed

to, but hears from grandmother Soliz that she hears CH is doing well and is in school in CA.

9/xx/71. According to records of Irvington H.S. in Fremont, Calif for 1969-72 period, which also reflect some of CH's record at Moody HS in CC, CH was in school in Calif. for some time during the fall semester of the 1971-72 school year (shows he withdrew as of 1/3/72); his transcript shows A for REM READING; Bs for sections of PE; D for BASIC PHYS SCI; D- for US HISTORY; NG for WELDING. [Added by JSL, approx. 2/14/05.]

9/11/71, 9/23/71: Carlos returned to CC; wants to go back to CA. Torres writes: "He is not going to make it with his mother – or his friends in CC. California seems the best bet. Case to be closed." Uncle says he doesn't want the boy anymore "because he wants to be on his own." Dep't considers him, @ 17 y.o., to be an adult, closes case, and tells CH he can make up his own mind about where to live: "This department will not try to keep Carlos with the mother, since there is some hostility on part of the dead boy's parents as well as his friends. This hostility along with the mother's inability to provide proper supervision indicates he will be better off in another environment."

9/23/71: Despite what his parole officer is saying and recommending, in fact the Juvenile Court of Nueces County, Judge Paul A. Martineau, decrees (Case No. 3640) "that this Court's former judgment of delinquency and commitment or parole is hereby revoked and vacated" and CH is "restored to the custody of his parents [sic], Fidela Hernandez."

10/23/71: Case is closed "since Carlos will be returning to California.... This worker gives Carlos a favorable recommendation if he desires to enter the military service."

1/3/72. According to records of Irvington H.S. in Fremont, Calif for 1969-72 period, which also reflect some of CH's record at Moody HS in CC, CH was in school in Calif. for some time during the fall semester of the 1971-72 school year but withdrew as of this date. [Added by JSL, approx. 2/14/05.]

01/31/1972: Vehicle Theft

Case No. 14948 charges Hernandez with, on this day, "fraudulently tak[ing] a 1961 Chevrolet . . . of the value of over \$50.00, the same being the corporeal property of Janie Cacino, from the possession of Janie Cancino"

Arrested by CCPD; Arrest no. 74204 [date of arrest is unclear].

Cause #14948. Docket entry – book: 40, page: 260. Date of conviction 09/28/1972

The indictment refers to the fraudulent taking of a 1961 Chevrolet, four door, from Janie Cancino on or about 01/31/1972. Sentenced to 10 years for felony theft on 09/28/1972. Ordered that sentence begin to run from 04/05/1972 – the date of arrest? Also in this file is a handwritten letter from Hernandez to the Judge asking for copies of the case files.

In the letter Hernandez says 'I was sentenced in your court on or about September 28, 1972, to twenty years ...' This may be the sentence for cause #s 14986, 14987, 14988 as Hernandez was convicted of all four offenses on 09/28/1972. Files 14986, 14987 and 14988 were not available for inspection on 8/13/04.

DPS (1/5/05 batch) document numbered 00182, in DPS case # 1,771,823 records dates on which DPS received fingerprint data on CH; this day shows CCPD #74204; charge auto theft and 2 traffic violations and shows disposition of "\$80 fine on Traffic violation"; a separate DPS document from the FBI shows the FBI rec'd fingerprints taken this day, as well; DPS Identification and Criminal Records Division form dated 4-5-72 indicates that the 1-31-72 arrest was for "auto theft, No D.L.; Driving w/o lights"; fingerprint card and reverse side for this day has that same offense info; Kingsolving Cts address; Fedela Hernandez as nearest relative; unemployed as occupation. [Info added 1/30/05 and 2-1-05—jsl]

An 11/6/72 DPS file (rec'd 1/30/05) contains TDOC Admission Summary for CH which gives self-description of this offense: "Subject states that on or about Jan. 10, 1972 [sic] he stole a 1961 model Chevrolet car which was parked in the parking lot of the Memorial Hospital located in CC. Subject contends that the keys were left inside the car, and he took it and drove it off ... [and] that he was arrested 2 hours later by CC city police officers and placed in the CC Jail (city) ... [and] that the car was given back unharmed.... [A]s a result of his arrest he was placed in the city jail where he posted a \$1000 bond after 8 days incarceration ... [and] he was arrested on bond for Robbery by Firearms." Family letter states: "He has always been well disciplined. I never had any real trouble with him. I could always control him." [Info added 1/30/05 and 2-1-05—jsl]

02/03/1972: Vehicle Theft [almost certainly same crime as above; this just being the transfer of CH to county jail from city jail]

Arrested by NCSO; Arrest No. 50682

Sheriffs Dep't records show arrest this day for "Auto Theft" at 9:05 by CCPD; age 17; height 5'6", wt. 130 lbs, medium build, father listed as Carlos Hernandez, Sr., deceased; he gives Longsolving Ct. address and lists Elgin St. address for Fidela and 11th St. for sister Pauline. Finger prints taken by Joe Cardiel. Tattoo on "Right arm (forearm): Cobra/Leopard" and on "Left Arm (Forearm) woman". File sent to DA. Arresting officer is Alvarado CCPD. Ident. No. 50682; Arrest No. 56354 FPC [Info added 10/13/04, 11/2/04]

2/4/72: NCSO fingerprint card taken; Arrest # 50682; "None" for scars and marks"; Longsolving address; 5'6", 130 lbs.; [Info added 10/21/04] ditto DPS (1/5/05 batch) fingerprint form 1-771-823 [Info added 1/30/05 and 2-1-05—jsl]

2/4/72: DPS records contain fingerprints of CH taken this day, "No. 50692; show CH as of this day as 5/6" and 130 lbs, age 17 (TDS 11/04 materials); [Info added 10/13/04, 11/2/04]

DPS (1/5/05 batch) document numbered 00182, in DPS case # 1,771,823 records dates on which DPS received fingerprint data on CH; this day shows NCSO #50682; charge auto theft; a separate DPS document from the FBI shows the FBI rec'd fingerprints taken this day, as well; a separate DPS document from the FBI shows the FBI rec'd fingerprints taken this day, as well. [Info added 1/30/05 and 2-1-05—jsl]

2/5/72: Released on \$1000 Bond, with Victor Moreno (2824 Ruth. St.; 884-8792) and R.C. Lozano (1122 Margurite St, 888-5940) serving as sureties. Hernandez address is 2302 Kinsolving; 888-5220.

2/29/1972 – CH rap sheet in CDL file from DAs office shows arrest this date for “sniffing. “ Offense No. 20229123.

4/03/1972: Robbery, Vehicle Theft

CH arrested in Corpus Christi; arrest no. 74204; 3 counts of robbery by firearms, case ## 14986 to 14988); later sentenced to 20 years; theft (case # 14948), later sentenced to 10 years.

Carlos Hernandez, along with Timoteo H. Clark, Jr. were indicted on 04/03/1972 for assaulting Ronnie James, 4750 Leopard, Rear, CC, TX, exhibiting a firearm and robbing him at Hudson Oil on Leopard at 6:00 p.m. DA was William B. Mobley Jr. Two latin men walked into the service station, one asked to use the restroom, the other acted like he was going to buy cigarettes from the machine and instead pulled a gun on James. An unidentified witness told police she saw the vehicle leave the scene and provided the license plate and description [see below]. This witness signed a statement on 04/05/1972 – Idalia Aguiniga (358 Baker St, CC, 30 yo). Partial latent prints were lifted from the air dryer in the restroom. [Info added 08/30, LN]

[JSL NOTE: Timoteo H. = Timoteo Hernandez Clark, Jr. I suspect that this is the cousin we have heard about who is in the Texas Syndicate Gang.]

Also, on 04/03/1972, Clark and Hernandez robbed the Circle K at 6326 McArdle at 3:20 p.m.. Dick Rainey (523 Artesian, CC, 884-5878) and Clara Carson (8201 Argonne, CC, 891-7120) were working in the store. CH distracted the clerks by repeatedly asking to use the restroom while Clark got behind them. Clark held a gun to Rainey's back and he put money in a paper bag. Then, Clark and Hernandez ran out of the store. Frank Benavides (427 Fairview, CC) witnessed Hernandez and Clark getting into a maroon 4-door car with two latin women in the car. In addition to Hernandez and Clark, police arrested suspects Alfonso Orea III (dob 03/16/1955, 906 South Alameda) and Danny Castenado (dob 09/11/1956, 210 Clemer), who were in the car (not women). All four provided written statements confessing to the robberies of the Hudson Oil Co. on 4750 Leopard (offense 20403-175) and the Circle Ks at 1501 S. Brownlee (offense 20403-152) and 6326 McArdle (offense 20403-150). **The get away car in these robberies was a 1956 Olds, JGS343, SN: 636T01763. The car was registered to Cynthia Cantu of Alice, Tx.** Cash and clothes were found at Clark's house by police. Ronnie James ID'd

Clark as the man with the gun and Hernandez as the accomplice in a lineup of the four men. [Info added 08/30, LN]

Also, on 04/03/1972, Clark and Hernandez robbed the Circle K at 1501 So. Brownlee. R.R. Sexton (1608 Craig) was working in the store. [Info added 08/30, LN]

DPS (1/5/05 batch) document numbered 00182, in DPS case # 1,771,823 records dates on which DPS received fingerprint data on CH; this day shows CCPD #74204; charge armed robb, auto theft; disposition says "208" [Info added 1/30/05 and 2-1-05—jsl]

An 11/6/72 DPS file (rec'd 1/30/05) contains TDOC Admission Summary for CH which gives self-description of these offenses: "Subject states that on or about April 3, 1972 at approximately 3 p.m., he and co-defendants, Tim Clark and Alfonzo Orega, robbed a 50 year old white male cashier at a Circle K grocery store that he entered the store and pulled a .38 caliber pistol and told the victim to hand him the cash. Subject states that he took approximately \$150 from the cash register that he escaped in Clark's car and left. Subject states also, that on April 3, 1972 at approximately 4 p.m., he and [same co-De] robbed another Circle K grocery store located on Brownley St. in CC that he went into the store and pulled a .38 caliber pistol on a 45 year old white male cashier. ... that he took approximately \$150 from the cash register. ... that he escaped in Clark's car. Subject also states that on or about April 3, 1972, at approximately 5 p.m., he and [same codefendants] robbed a 24 year old white male service station attendant at an Humble station located at Leopard St. in CC. ... that he pulled a .38 caliber pistol and told the man to give him the cash. ... that he took approximately \$150 from the cash register. ... that he escaped in Clark's car, and was arrested for all 3 robbery cases at approximately 6 p.m. on april 3,1972 ... while driving down Morgan St. ... he was placed in the Nueces County jail where he was unable to post a \$5000 bond on each case. Rat. Of P.O. No Sound or Logical Rationalization." [Info added 1/30/05 and 2-1-05—jsl]

Redescribed in 3/15/90 TDOC Admission Summary in DPS file (1/30/05 batch) as having "no physical harm involved". [Info added 1/30/05 and 2-1-05—jsl]

From *Corpus Christi Times*, 04/05/1972, "4 May Be Charged In More Robberies": Four men were arrested for the armed robbery of a local service station, Hudson Service Station at 4750 Leopard; also robbed that day were the Circle Ks at 1501 Brownlee and 6326 McArdle. The Hudson robber was armed with a pistol and alone (Timoteo Clark Jr). The Circle Ks were robbed by two men (Clark and Carlos Hernandez?). OK Loan Co at 515 Lawrence was robbed the day before. [Info added 08/30]

CH rap sheet in CDL file from DAs office shows arrest this date for "armed robbery, auto theft." Offense No. 20403175. Confinement, TDC.

4/4/72: DPS records contain fingerprints of CH taken this day, "No. 74204; show CH as of this day as 5/6" and 125 lbs, age 17 (TDS 11/04 materials) [Info added 10/13/04, 11/2/04]

04/05/1972: Transferred to county jail. At some point after this he was convicted of 3 counts of robbery by firearms, larceny. Transported to Byrd Unit at TDC, No. 227443. Began serving sentence 10/03/1972.

Sheriff's Department Re-Arrest Report, notes charges as Armed Robbery and Auto Theft; Age 17; 5'6", 125 lbs; arrested by Lt. Graham and Burch; Tattoos are "panther on inner forearm"; "Mary Jane" on left outer forearm; "Vicki" on Left Inner Arm; Belia on Rt. Shoulder. Arrest # 57349. [Info added 10/13/04, 11/2/04]

DPS records contain fingerprints of CH taken this day, "No. 50682; show CH as of this day as 5/6" and 125 lbs (TDS 11/04 materials) [Info added 10/13/04, 11/2/04]

DPS document (1/5/05 batch) numbered 00182, in DPS case # 1,771,823 records dates on which DPS received fingerprint data on CH; this day shows NCSO #50682; charge armed robb & auto theft; DPS Identification and Criminal Records Division form dated 4-5-72 indicates that the 1-31-72 arrest was for "auto theft, No D.L.; Driving w/o lights" [Info added 1/30/05 and 2-1-05—jsl]

4/27/72: Indictment issued in No. 14948. Hernandez represented by attorney Leo. N. Duran.

05/25/1972: Indictment 14988 issued for Carlos Hernandez and Timoteo Clark Jr. for robbery by firearm of Circle K at Brownlee. Witnesses R.R. Sexton (1608 Craig) and Rita Albert (1137 Kaler). [Info added 08/30]

05/28/1972: Indictment 14987 issued for Carlos Hernandez and Timoteo Clark Jr for April 3, 1972 Circle K robbery at McArdle. Witnesses were Dick Rainey, 523 Artesian, CC; Frank Benavides, 427 Fairview, CC; Clara Carson, 8201 Argonne, CC. Robbery by firearm. Dick Rainey was the individual robbed. CH represented by Leo Duran. Clark's attorney was Amador Garcia. [Info added 08/30]

06/09/1972: CH pled guilty to April 1972 robbery.

7/14/1972: Sometime before this date, given the "17 y.o." age noted on the form, DPS records contain fingerprints of CH taken this day, "No. 74204; show CH as of this day as 5/8" and 130 lbs (TDS 11/04 materials) [Info added 10/13/04, 11/2/04]

8/4/72: Having been released on bond, Hernandez is arrested on No. 14948 (for not paying his surety)

09/28/1972: Based on guilty pleas, Hernandez is convicted of felony theft (#14948) and robbery by firearms (Nos. xxxx.), and sentenced to 2-10 years for felony theft (#14948) and xxxxxxxx (## xxxxx), all of the convictions (14948, 14986, 14987, 14988) to run concurrently from April 5, 1972. (Judge V. Harville, 105th Court) Court-appointed attorney was Leo N Duran. DA was James R Thompson.

10/03/1972: Received in TDCJ; served in Ferguson Unit.

DPS document numbered(1/5/05 batch) 00182, in DPS case # 1,771,823 records dates on which DPS received fingerprint data on CH; this day shows TDCJ #227443; charge Robb by Firearm (“20 years each ct. concurrent); auto theft (10 year concurrent); with disposition recorded as 20 yrs from Nueces Co. 4-5-72; “par [parole?] to Nueces Co. 12-7-77” ; looks like DPS file has the fingerprint card itself from this --- very smudged. [Info added 1/30/05 and 2-1-05—jsl]

DPS file (1/5/05 batch) (“Identification and Criminal Records Div.) has doc showing CH rec’d this day: “Rob by F/A (3) Theft (1) (3-5 to 20’s Conc[current], 2 to 10 Con);” extensive list of tattoos and scars; occupation janitor; notify Fidela Hernandez at 1011½ Kinney, CC [Info added 1/30/05 and 2-1-05—jsl]

10/13/72: According to reverse side of records of Irvington H.S. in Fremont, Calif for 1969-72 period, which also reflect some of CH’s record at Moody HS in CC, Texas DOC – Huntsville, TX, requested a transcript of CH’s school record on this day; after that, the next one to request the transcript is William Belford on 2-9-05. [Added by JSL, approx 2/14/05.]

11/6/72: DPS file (rec’d 1/30/05) contains 3/15/90 TDOC Admission Summary for CH; **IO reported as 85;** offenses are Rob by Firearm and Theft; Sentence is 20 years to begin 4/5/72; sentenced 9/28/72 and rec’d on 10/3/72; minimum sentence expiration date is 6/17/84 and maximum expiration date is 4/5/92; **religion is Catholic;** Co-Ds are Tim Clark and Alfonso Orega; job classification as janitor and cook; single; **“subject is weak and may easily be taken advantage of by older and/or more aggressive inmates”.** [Info added 1/30/05 and 2-1-05—jsl]

11/8/72: In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), states that CH was assigned to Ferguson unit this day. [Info added 1/30/05 and 2-1-05—jsl]

1973 - 1984: Yolanda and Dario Ortiz leased and ran Club Casino from 1973-1984. Hours of operation: Wed-Sun 2000-0200. (*Interview of Yolanda Ortiz by Bruce Whitman, 10 and 11/04, LN.*)

6/3/73: In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), reports that CH had disciplinary infraction for “tattooing and possession of tattooing paraphernalia and was demoted to Line Class 3 and forfeited 100 days of ‘overtime’. (See entry above below for 10/9/73). [Info added 1/30/05 and 2-1-05—jsl]

7/25/73: Board of Pardon and Paroles Minutes say “reviewed for date of offense”

10/9/73: In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), reports that CH was promoted back to Line Class 1 and restored to the last 100 days of ‘overtime’ for the tattooing violation. (See entry above for 6/3/73). [Info added 1/30/05 and 2-1-05—jsl]

11/??/73 (estimated date: CDL is age 11, 8 months): CCPS Student Referral for Special Services form, Sanders Elementary, Grade 6, teacher/counselor Ryan/Duncan, requests psychological/education evaluation: “Carlos is a discipline problem in class. If the teacher turns his back for a minute, Carlos has gotten up and moved. He interferes with his classmates’ learning. He can read but can’t comprehend. He is lost on abstract concepts such as fractions. He does pretty well one-to-one but can’t function in even a small group. His attention span is extremely short. SIT 95; SDCT 67%, SORT rdg level 6.0, PERC 5 misses”

12/73: Tests reported in 4/9/74 report, below, as having been given in 12/73:

Slosson Intelligence Test: “verbal skills in the average range”

Slosson Drawing Coordination Test: “his visual skills were below average.”

Slosson Oral Reading Test: “sight vocabulary was equivalent to the 6th grade level. (Notes indicate the scores validity is questionable.)

12/17/73: In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), reports that CH’s classification is improved (“promoted”) to SAT Class 3 effective 11/23/73 [Info added 1/30/05 and 2-1-05—jsl]

4/9/74: Psychological Report based on testing on 3/28/74 by Alan T. Fisher, PhD, coordinator of Diagnostic Serv. And George B. Helton, PhD, Dir. Of Development Services (missing page 1); place for signature of following is blank --- Judy Braselton, M.Ed. Educational Diagnostician. At the time CDL is in 6th grade at Sanders Elem:

Referred because “Carlos is a discipline problem in class and cannot function in even small groups. Reportedly, he is lost on abstract concept, and has difficulty with comprehension, and has a short attention span.

Administered Wechsler Intelligence Test for Children, Peabody Picture Vocabulary Test, Illinois Test of Psycholinguistic Abilities, Bender-Gestalt Test of Visual Motor Skills, Benton’s Visual Retention Test, Wide Range Achieve Test, Wepman Auditory Discrimination Test

“He appeared more confident while working with non-verbal tasks.” “It appears he has mixed dominance.”

“Carlos’s overall intellectual skills appear to be on the level of a **10 year old** [2 years behind]. His ability to do non-verbal skills seems to be somewhat **better** than his ability to do verbal tasks with his **non-verbal** skills being in the **low average range**. [Doesn’t this suggest that overall he is borderline, and verbal is below that??] Although his receptive vocabulary skills seem to be in the average range, his expressive vocabulary is more like that of an **eight year old**. However, it seems likely that his receptive vocabulary might be **below average** when phrases and sentences are involved rather than just single words.”

Motor skills and learning: visual > auditory motor skills – he learns by seeing, not by hearing.

Memory: Contrariwise: he remembers what he hears better than what he sees, at least for numbers. For words, “he may be able to repeat something [he heard] but may not understand it.”

Two things above appear to interact to “prevent him from using his ... skills”

“difficulty with coordination. **On pencil and paper tasks he seems to perform more like a student between 7½ and 8½ years old.**”

“Carlos’ math skills appear to be on a **high third grade level.**”

“His reading skills appear to be on a **fourth grade level.** He tries to attack words phonetically but has some difficulty with medial sounds.

“In summary, Carlos is performing overall **more like a ten year old. . . . At present he appears to be achieving two years below grade level.**”

Recommends time in resource room (1-2 hours/day) and behavior counseling.

3-8-74: according to 1-19-76 CCISD record, CDL tested on this date and found to have “language-learning disorder LLD”

2/26/75: Board of Pardon and Paroles Minutes say “Fidela Hernandez/Corpus/mother” [Huh?]

1-19-76: CCISD Medical Assessment Record reports “Reason for Referral (School Related Problems): Carlos was tested on 3-8-74 and he appears to have language-learning disorder LLD and would benefit from the [unreadable] in the resource room”

1/30/76: Board of Pardon and Paroles Minutes say “participation in character development program, if available, would increase parole prospects. AA Comm Education”

2-26-76: CCISD Medical Assessment Record of examination by a physician (name unreadable) reports “fine-motor difficulty” but says it is “minimal and will not impair performance”; finds “possibly” has “neurological difficulties and/or minimal cerebral dysfunction”; but checks “no” for mental retardation. Finds CDL has “specific learning deficits”

4-9-76: CCISD Special Education Report for Tom Browne School, 7th Grade, says “Handicapping “Condition: MRD”; “Low average IQ. Has been discipline problem. Has weaknesses in abstract reasoning & visual memory. Strengths in visual reception,

[unreadable], and auditory memory.” Recommends resource room time.

7/5/76: In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), reports that CH enrolled in an auto mechanic’s course. [Info added 1/30/05 and 2-1-05—jsl]

1/10/77: In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), reports that CH completed auto mechanic’s course. [Info added 1/30/05 and 2-1-05—jsl]

03/30/1977 – Truant. (See police report for paint sniffing case of July 19, 1978. There was no detail to this offense. It was on a simple list of “contacts” with the police, like a rap sheet for juveniles.) *These records were submitted as an appendix to D’s Habeas Petition.*

Spring 1977: CDL drops out of Tom Browne Jr. High School during or after 8th grade.

06/20/1977 – Runaway. (See police report for paint sniffing case of July 19, 1978. There was no detail to this offense. It was on a simple list of “contacts” with the police, like a rap sheet for juveniles.) *These records were submitted as an appendix to D’s Habeas Petition.*

7/19/1977 – Runaway (See police report for paint sniffing case of July 19, 1978. There was no detail to this offense. It was on a simple list of “contacts” with the police, like a rap sheet for juveniles.) *These records were submitted as an appendix to D’s Habeas Petition.*

9/23/77: 6/27/78 Pre-Disposition Investigation report by Juvenile Probation Department report says this is 1st referral to Juvenile Department. Carlos refused to cooperate with case worker.

Juvenile Field Interrogation Form: 5’8” 130 lbs. “He eventually returned after being in Dallas a week with his older brother. Presently he is not attending school.” Disposition says “Ref. to Martineau on Paper.”

10/11/77: Board of Pardon and Paroles Minutes say “parole –subject to release plan”

11/2/77: In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), reports that CH “maintained clear conduct record and transferred to Jester #1 Pre-Release Unit. [Info added 1/30/05 and 2-1-05—jsl]

12/2/77: Board of Pardon and Paroles Minutes say “Parole Plan of 11-28-77 approved; issue Parole Certification no. 77-8506”

12/07/1977: Paroled to Nueces Co. until 05/15/1987; Certif of Parole # 77-8506 [this doc also in DPS 1/30/05 batch. Info added 1/30/05 and 2-1-05—jsl.]

1/2/1978: In a 3/15/90 TDOC Admission Summary (in DPS file, 1/30/05 batch), reports

that CH paroled on this date to Nueces County at request of BPP. [Info added 1/30/05 and 2-1-05—jsl]

1/4/78: Board of Pardon and Paroles Certificate makes parole effective on this day [this doc also in DPS 1/30/05 batch. Info added 1/30/05 and 2-1-05—jsl]

02/14/1978 – Attempted burglary; drunk.

Arrest No. C05286; Offense No. 80214008; was drunk and released to parents. (See police report for paint sniffing case of July 19, 1978. There was no detail to this offense. It was on a simple list of “contacts” with the police, like a rap sheet for juveniles.) Another record indicated that DeLuna was intoxicated at the time the police stopped him. *These records were submitted as an appendix to D’s Habeas Petition.*

6/27/78 Pre-Disposition Investigation report by Juvenile Probation Department or says ADA Rick Rogers found insufficient evidence to proceed with case to court; dismissed.

03/08/1978 – Burglary, municipal court warrant.

Arrest date 03/28/1978; Arrest No. C06774; Offense No. 80308048, 80328050, respectively; released with no charges filed, transferred to Martineau Juvenile Hall, respectively. (See police report for paint sniffing case of July 19, 1978. There was no detail to this offense. It was on a simple list of “contacts” with the police, like a rap sheet for juveniles.) Another record indicates that no charges were ever filed in this case. *These records were submitted as an appendix to D’s Habeas Petition.*

3-28-78 – Burglary

6/27/78 Pre-Disposition Investigation report by Juvenile Probation Department states that “Carlos and another suspect had broken into Villarreal’s Motor Company at 1114 South Port Ave.” ADA Rick Rogers “stated that he had made a mistake and that it turned out to be a Class C misdemeanor and therefore could not be set up for court.”

Juvenile Field Interrogation Form: 5’9” 145 lbs; “referred”

04/17/1978 – Auto theft, burglary, runaway.

Arrest date 05/31/1978; Arrest No. C08973; Offense No. 80531087; transferred to Martineau Juvenile Hall. (See police report for paint sniffing case of July 19, 1978. There was no detail to this offense. It was on a simple list of “contacts” with the police, like a rap sheet for juveniles.) *These records were submitted as an appendix to D’s Habeas Petition.*

6/27/78 Pre-Disposition Investigation report by Juvenile Probation Department reports this offense as 6-1-78: “Carlos DeLuna had run away to Garland, Texas, and that there he had stolen a car. He had also broken into his mother’s house and stolen a TV set and other items. However, his mother refused to press charges ... and the Garland Police

Department has never sent the auto theft report”

5/31/ or 6/1/78: Detained on this date for the above offense. Disposition says “referred to Martineau”

Juvenile Field Interrogation form: 5’8”, 15[0] lbs.; “referred to Martineau”

5/31/78: Arrest for above offense; arrested at Club Casino by R.Garcia and L. Hoyt (is this the Garcia he had mouths at his Jan. 1983 arrest). At time of arrest has \$35.02 on him in cash; no KNIFE or other weapon. Released that same evening.

06/19/1978 - Theft, paint sniffing.

DeLuna arrested for stealing the purse of Bonnie Laningham after entering her home to use the phone. He took the money (\$10) and food stamps (worth \$30) out of her wallet and threw the wallet in the shrubbery. He was arrested at his home, along with Ida Sosa. [According to Juvenile Field Interrogation form, “Subject was hiding under the bed at 504-1/2 Flood when officers arrived.] They had also been sniffing paint. They had paint on their mouths, hands; and, the paint was found under the bed in a coke can. Food stamps were found hidden beneath the washstand in the bathroom. They were given to Sgt. J.O. Johnson (CCPD 133). The cash was not recovered. Referred to Martineau Juvenile Hall

Bonnie Laningham, Victim
522 Flood, Corpus Christi, TX
____/884-4795
DOB: 03/25/190__

Arturo Sosa, Reporting Witness
504 1/2 Flood, Corpus Christi, TX
Rt. 3, Box 56, Corpus Christi, TX

Carlos DeLuna, Suspect
504 1/2 Flood, Corpus Christi, TX
DOB: 02/15/1962, 03/15/1962
Had 6 arrests at this time.

Ida Sosa, Suspect (female)
504 1/2 Flood, Corpus Christi, TX
DOB: 09/21/1961
Had 7 arrests at this time.

Reporting/Arresting Officers:
Sgt. Bible (CCPD 347)
I. Loa (CCPD 466)

[DeLuna arrested for taking a ten dollar bill and thirty dollars worth of foods stamps from a friend/neighbor. Was arrested with Ada Sosa, another kid. When DeLuna was arrested, he was found hiding under a bed sniffing paint. Both Sosa and DeLuna were referred to juvenile court. (See Police Report for 6/19/78) *These records were submitted as an appendix to D's Habeas Petition.*]

6/19 and 20/78: One of booking records for this crime, in the DA batch JSL picked up personally in 2/05, has a list of property taken from CDL at arrest. It shows he had 1 key, but NO KNIFE or other weapon.

6/27/78 Pre-Disposition Investigation report by juvenile parole authorities says this is 5th referral to juvenile authorities.

Juvenile Field Investigation form: 5'7"; 160 lbs; "referred to Martineau"

Between 6/19 and 6/27/78: Auto Theft

6/27/78 Pre-Disposition Investigation report by Juvenile Probation Department reports that "Carlos was arrested in Abilene, Texas in a stolen vehicle along with other suspects"; car was stolen in Garland Texas and belonged to the uncle of one of the other suspects; uncle refused to press charges and case was dropped.

6/27/78:

Pre-Disposition Investigation report for 6-19-78 offense by R. Reyna says:

"Carlos Appears to be of normal physical appearance and of average intelligence" but is "hostile and belligerent and seems to resent any type of authority or discipline." "One moment he is admitting that he is at fault and the next moment he wants to sue everyone connected with his case"; "very little conscience"; "doubtful whether Carlos ... will cooperate."

"Carlos's home environment is very unstable and has been for several years. Mrs. Avalos seems to be afraid of her son and has provided very little discipline and supervision for several years . . . and [CDL] has gone about his business with very little restraint." CDL dropped out of school in 1977, at which time "he had much difficulty in school disciplinewise and ... was failing almost all subjects." Delinquent behavior "has deteriorated to a dangerous point."

"Carlos has been involved in several felony cases which had to be dismissed due to insufficient evidence. This has provided Carlos more reinforcement in his antisocial behavior because he feels that he can get away with almost anything."

Department had CDL examined by Dr. Roland Brauer "who indicates ... that Carlos does not have any major emotional or mental problems but is very immature and very impulsive" and "is very belligerent towards any type of

authority or discipline and will continue so unless he is provided with a very strict and structured environment” and “that Carlos is a great manipulator of people and is very ready to deny that he has any problems or that he has done anything wrong.”

Recommends committing CDL to the Texas Youth Council because “Carlos is currently completely out of control” and “needs to be watched very closely and needs a very stable environment”; “It is obvious that probation would not work and there is every indication it would continue to promote his antisocial and delinquent behavior.”

Psychological Report by Roland J. Brauer, Ph.D., 2464 Morgan, CC TX.

“Almost from the first time he began to be tested, Carlos appeared to be attempting to ‘con’ the examiner” by saying “he had some eye problems that caused him headaches and eye pain, and needed medical attention.” He “attempted to ‘fake good’ on personality tests.”

He “stated that were he to be released ... he would live with [his parents] and promised to stay out of trouble” and “his general behavior appeared to be quite manipulative.” “However his manipulations tend to be very transparent.” On WISC-R: “presently functioning within the dull-normal range on the verbal portion and within the average range on the non-verbal or performance portion (Verbal I.Q. 80, Performance 96, Full Scale 87). “his lowest scores were on tasks measuring long-term memory, information that is gained through reading and involvement in school related areas, and on verbal analogies.” “He exhibits dull thinking”

“immature and impulsive,” “non-anxious”; “massive denial as far as any serious problems are concerned”

diagnosis is 308.4 (unsocialized aggressive reaction) and 301.9 (unspecified personality disorder); “could benefit from a more unstructured environment and, without it, there will be “more delinquent behavior.”

7/7/78: DPS “Criminal History Inquiry Log” (1/30/05 DPS batch) shows Inquiring Agency seeking criminal history of CH as “CAs” and shows “TDC Release B Korczinsko” -- unclear who was inquiring about what. [Info added 1/30/05 and 2-1-05—jsl]

07/19/1978 – Paint sniffing.

Officer Lara responded to Sam Houston Elementary School on a call about suspicious subjects. He observed a person (DeLuna) running behind the buildings in the rear of the school as he pulled up. DeLuna was apprehended with a half can of spray paint on him and a coke can with paint in it. There was paint on his mouth, hands. The other two

suspects (Sosa, Cruz) were apprehended, had paint on their hands, mouths and possessed coke cans with paint in them. All three were referred to Martineau Juvenile Hall.

Ida Sosa, Suspect
2046 Rockford, Corpus Christi, TX
DOB: 09/21/1961

Carlos DeLuna, Suspect
2046 Rockford, Corpus Christi, TX
DOB: 03/15/1962

Ernest Cruz, Suspect
2630 Soledad, Corpus Christi, TX
DOB: 07/27/1963

Reporting/Arresting Officers:

R.S. Lara (CCPD 146)
Sgt. Featherston (CCPD 127)
Lt. Alvarez (CCPD 150)
J.R. Salinas (CCPD 134)

[DeLuna arrested again for paint sniffing. Police were called to Sam Houston Elementary School and found DeLuna with a half can of Kaylon silver spray paint and a coke can with paint in it. DeLuna was arrested with Ernest Cruz, and Ida Sosa. (See police report 7/19/78) *These records were submitted as an appendix to D's Habeas Petition.*]

Juvenile Field Interrogation form says 5'9", 130 lbs: disposition says "Ref. to M.J.Hall"

7/19/78: One of booking records for this crime, in the DA batch JSL picked up personally in 2/05, has a list of property taken from CDL at arrest. It shows he had 1 comb and 1 pr tweezers, and 1 watch, but NO KNIFE or other weapon. Also shows that he was released "to Shelter" at 3:00 p.m. the same afternoon.

07/29/1978 – CH rap sheet in CDL file from DAs office shows arrest this date for "drunk." Offense No. 80729105. Fined.

8/19/78: Sheriffs Re-Arrest Report show arrest for "Assault"; arrest 08176; living at Carrizo St.; 150 lbs, 5'7". Officers Parente/Redkin. [Info added 10/13/04, 11/2/04]

– CH rap sheet in CDL file from DAs office shows arrest this date for "assault". Offense No. 80819020. Transferred to county.

8/28/78: Board of Pardon and Paroles Minutes say "Continue on parole with a letter & Reprimand from the Region III Supervisor for violation of parole rules # 4a (possessing alcohol), 5 (carrying a weapon) and 7 (violation of crim law)

Late 1970s-1980s: Manuel DeLuna told JSL he frequented Club Casino. That club was weird and wild. Said he partied at Casino Club with Pete Olivarez [suggesting around

1976], Jesse Garza, and Henry Vela. (*Interview of Manuel DeLuna by JSL, 08/2004.*)

1978: (Approx 9/78) Margie Tapia, while pregnant with her son Eric, lived at Fidela Hernandez's house for about 8 months. Eric was born 01/03/1979, while Margie was living with Fidela. (*Interview of Margie Tapia by SS, 10/2004.*) She lived with Fidela until 05/1979 when she left under police protection. Margie also went to Club Casino in late 1979 through 01/1980. She often saw CDL there and sometimes CH. She also saw sisters Mary Ann, Diana, and Linda Perales, Juan(unk), Beto Vela, and Henry Vela at Casino Club. Margie also saw CDL and CH at parties at the Zamoras in 1980. She also knew that CH and WL were friends. (*Interview of Margie Tapia by BW, 09/2004.*)

(Presumably at Job Corps in OK sometime after 7/19 until 9/1/78)

9-1-78: Runaway from Job Corps Center:

Detained on 9-8-78 by Juvenile Department after being arrested on Sept. 3 [?] in Garland, Texas for running away from Job Corps Center in Indianola, OK. To appear in front of Judge Utter who ordered him to the Indianola Center.

9/20/78: Board of Pardon and Paroles Minutes say “continue on parole pending adjudication of charges”

10/18/1978: Evading Arrest

Arrested by NCSO; Arrest No. 50682.

Sheriffs Dep't Re-Arrest Report: arrest #09459 – officers Sgt. Turner/Cpl. Cornet; 5'7", 155 lbs; evading arrest. [Info added 10/13/04, 11/2/04]

DPS record in 1/30/05 batch reports this same “Re-Arrest” for same reason; signed by E.Richardson, Deputy and dated 10-19-78; fingerprints. [Info added 1/30/05 and 2-1-05—jsl]

Arrest Date 01/12-15/1979 – Unauthorized Use of Motor Vehicle, Escape.

Arrest No. C16196; Offense No. 81230044, 90112081, respectively; transferred to Martineau Juvenile Hall.

Booking form for this arrest in DA file from JSL personal visit 2/05: CDL released on 1/15/79. NO KNIFE; \$12.25 in cash. Released to Crocker State School as authorized by his parents.

1/15/79: Board of Pardon and Paroles Minutes say “continue on parole pending adjudication of charges”

1/15/79: Board of Pardon and Paroles Minutes say “continue on parole with letter of reprimand from the Region III Sup. Regarding violation of parole rules # 4(a) (alcohol)

and 7 (violation of crim laws)”

02/12/1979 – CH rap sheet in CDL file from DAs office shows arrest this date for “disorderly conduct.” Offense No. 90212121. Fined.

11/20/1979: Murder of Dahlia Saucedá

[Sauceda’s body was found in the back of her van, naked, with her 2 year old baby sleeping nearby. The van was found in the morning by kids on their way to school; it is thought that the killing occurred early that morning, ca 4 or 5 a.m. Saucedá had an “X” cut into her back, and her little toe was mutilated. Semen was in her vagina. A pair of Penneys male undershorts (red plaid) was found in the van; a fingerprint was lifted off of a Schlitz cup. Police soon arrested Jesse Garza, who had spent much of the proceeding 24-30 hours riding around Corpus and environs with Dahlia, Pete Olivarez, a mysterious mustachioed man [Carlos Hernandez], Johnny Longoria, her 2-year-old daughter, and others. Garza was arrested based on a statement wrung out of Pete Olivarez. Based on information provided to Garza’s defense attorney Alfred Pena, police determined that the undershorts matched ones worn by, and found at the home of, Carlos Hernandez. The fingerprint on the Schlitz cup also matched him. The van was found abandoned within “falling distance” of where Carlos Hernandez was living at the time. He admitted to police that he had sexual relations with Dahlia around midnight on the night she was killed but that he went home after that. Although he failed or partially failed two polygraph tests, the state decided to proceed on its original, Garza theory. Garza’s defense at trial was that “Carlos Hernandez did it.” Garza was acquitted. See police reports and trial] [From on-site interview with investigators, 10, 11/2004, LN.]

11/20-21/79: DPS polygraph examiner Edwin DeSha Jr. administers polygraphs tests at the request of “Sid Smith and Nowell” to Jerry Edward Condon (1 prior felony) (NONDECEPTIVE); Fernando Munguia Schilling (several arrests) (NONDECEPTIVE); Apolinar Sanchez Saucedá (NONDECEPTIVE) [DPS 2-1-05 batch]. [Info added 1/30/05 and 2-1-05—jsl]

SEE ALSO:

APPENDIX A: SUMMARY OF 1970 CCPD RECORDS ON DAHLIA SAUCEDA 11/20/79 HOMICIDE, 11/20/79 – 12/14/79

APPENDIX B: SUMMARY OF NUECES COUNTY DISTRICT COURT CLERK RECORDS RE: DAHLIA SAUCEDA 11-20-79 HOMICIDE

APPENDIX C: “JESSE GARZA TRIAL SUMMARY.”

11/28/79: DPS polygraph examiner Edwin DeSha Jr. administers polygraphs tests at the request of “Sid Smith, Escobedo, Riviera and Ray Delagarza” to:

Jesus Zaragosa Garza, Sr. (1 prior felony): result DECEPTIVE – “Evaluation of this subject’s polygrams did reveal to this examiner significant criteria which would indicate

deception at questions pertaining to knowledge of and/or participation in this offense.”

John B. Longoria (2 prior felonies): NONDECEPTIVE

Fogelio Sosa Fuentes, Jr.: DECEPTIVE [DPS 2-1-05 batch, Info added 1/30/05 and 2-1-05—jsl]

11/29/79: Jesse Garza arrested for this murder. *State of Texas v. Jesse Garza*, 94th Judicial District, Nueces Co., No. 79-CR-881-C. Judge, **Hon. George Hamilton**. State, **Kenneth Botary**, Office of the District Attorney, Nueces Co. Courthouse, Corpus Christi, TX 78401. Defense, **Albert Pena**, 3301 Ayers St, Corpus Christi, TX 78415.

DPS polygraph examiner Edwin DeSha Jr. administers polygraphs tests at the request of “Sid Smith, Escobedo and Paul Rivera” to: **Pedro Olivarez, Jr.:** result DECEPTIVE – “significant criteria which would indicate deception at questions pertaining to knowledge of and/or participation in this offense.” [DPS 2-1-05 batch] [Info added 1/30/05 and 2-1-05—jsl]

11/30/79: James Waller DPS lab supervisor writes Olivia Escobedo as lead investigator on Saucedo case to report on tests of a hair found on the leg of a “pair of Levi blue jeans in the looped area is similar to the hair” from DS and on whether there was any blood on an “Old Hickory’ brand knife with 8½” blade and 4¾” wooden handle” found in DS’s van had blood in it. The hair from the jeans is “similar to the head hair of DS” and “No blood was detected” on the knife [which supports theory that CH took his knife with him, which was seized when he was arrested by Rivera and Garza]. Escobedo submitted the hairs and knife on 11/26/79. Another doc reveals that “Returned knife to Escobedo ... 11-29-79.... Returned victim’s hair to Escobedo ... 1-4-80.” Another document shows that jeans were returned to Texas Ranger Poynter on 1/10/80 – Pointer asked for the same examinations. (DPS 2/1/05 batch) [Info added 1/30/05 and 2-1-05—jsl]

11/30 to 12-1/1979 – Drunk at Wreck Scene.

Police responded to the scene of an accident where a Toyota compact car had crashed into the chain-link fence of the U-Haul business, 600 block of Osage, Corpus Christi. Officer Flora (CCPD 427) witnessed DeLuna attempting to back the vehicle out of the fence and ordered DeLuna to get out of the car. Officer Benardes (CCPD 058) contacted DeLuna and smelled strong alcohol on his breath. DeLuna could not recite the ABCs and swayed as he stood. DeLuna was arrested and the vehicle impounded. At arrest, DeLuna had \$67.73 on him; 1 comb, 1 billfold; 2 keys; “2 tickets”, NO KNIFE or other weapon. Released on 12/1/79

Carlos DeLuna, Suspect
2046 Rockford, Corpus Christi, TX
Employer: What-a-Burger, manager
DOB: 03/15/1962
SSN: 475-29-93____

No driver's license
5'8", 158 lbs.

Toni Peña, Sister, Next of Kin
2837 Niagara, Corpus Christi, TX
Gonzalez Bonding, Person to Call
___/854-3071

A-Action Bonding, Person to Call
___/992-1192

Arresting Officers:
Bernandes (CCPD 058)
Whitman (CCPD 300)

[DeLuna in car accident. Officers on scene reported that DeLuna appeared intoxicated. Taken to jail, car impounded. (See police incident report 11/30/79. This record is VERY hard to read.) *These records were submitted as an appendix to D's Habeas Petition.*]

12/10-11/79: Carlos Hernandez arrested on suspicion of having committed this murder; given 2 polygraphs, failing first and partially the second.

Gives statement to Rivera saying he went to 7-11 at Staples and Mary at 10pm to talk "to the lady who works there" and bought 6-pack Schlitz Beer. Coming out of store, he sees Dalia Saucedo in her van with baby. They chat; she offers him a ride home; they pull into driveway next to Old Apache Bar on Tanacahua St. and have sex for 15-20 minutes; he has all his clothes off and gets dressed but leaves his undershorts there; she takes him home; he finishes his beer; then goes back to 7-11 at 11:40 for 2d 6 pack, and runs into Dahlia again with her baby girl and she takes him home again at midnight and that's the last time he saw her. [Info added 1/30/05 and 2-1-05—jsl]

Re: first test on 12/10/79: DPS polygraph examiner Edwin DeSha Jr. administers polygraphs tests at the request of "Paul Rivera and Ray Delagarza" to: **Carlos Hernandez**: result INCONCLUSIVE – "Evaluation of this subject's polygrams were professionally impossible due to the inconsistency of the responses that were noted. It was suggested by this examiner that the subject be returned to this office at a later date for re-examination." [DPS 2-1-05 batch] The underlying notes for this reports the following:

- a. 217 S. Carrizo is address
- b. 5/7" 170 lbs
- c. common law wife named "Maria" [12/11/79 says "separated"]; lives with Mother, 1 bro & sister and **2 nieces**
- d. laborer with Tennessee Pipeline
- e. "Post Test – 4 joints since 9:00 am" (test was "afternoon" and later 2:29 p.m.). Also says "I" (in circle --- inconclusive?) And "stoned"

- f. PRIOR “ARREST RECORD” reported by CH: “Neg Homicide MYA”; “20 yrs for robbery”; arrested “many times – fighting, drunk, vagrancy, assault, resisting arrest” P.O. is Gayle Anderson
- g. Looks like questions that showed some possible deception on 1st go round were: “DYK who killed Dahlia”: “with Yolanda Rodriguez that nite like you said;” did you kill Dahlia”; “were you with Dahlia the nite she died”1 “is that your finger print found in Dahlia’s van”; C-P.O. wouldn’t want P.O to no [know]”.

Re: second test on 12/11/79: DPS polygraph examiner Edwin DeSha Jr. administers polygraphs tests at the request of “Paul Rivera” to: **Carlos Hernandez**: result INCONCLUSIVE – “Evaluation of this subject’s polygrams were professionally impossible due to the inconsistency of the responses that were noted. It was suggested by this examiner that the subject be returned to this office at a later date for re-examination.” Looks like deceptive answers were re: DYK who killed Dahlia; DYK the person that killed Dahlia; did you Dahia that nite; were you with the person that killed Dahlia; DYK Jesse Garza; Did you kill Dahlia.” [DPS 2-1-05 batch] [Info added 1/30/05 and 2-1-05—jsl]

12/11/79: Carlos Hernandez released.

12/22-23/79: Arrested at 10:50 pm for violation of parole out of TYC, verified by Lieutenant Jones on 12/21/79. “Subject refused to give any information.” Arrested at 1001 S. Port, which is the Casino club. Arrested by Garcia (“194 --- I wonder if this is the Garcia he later bath mouths) and Ordner (268). List his mom as next of kin. He was released on 12/23/79 at 4: 50. Booking records for this crime, in the DA batch JSL picked up personally in 2/05, has a list of property taken from CDL at arrest. It shows he had billfold, comb, papers, keys, bracelet, but NO KNIFE or other weapon.

Late 1970s: Gloria Longoria (Licea, Gutierrez, Sanchez) dated CH for 6 to 8 months during the late 1970s. They did not date exclusively. Gloria’s brother, Johnny, was very upset she was dating CH. She lived with Paula Hernandez in 1979. Paula received several calls from CH after the Saucedo murder, with CH telling her he didn’t mean to do it. Gloria contacted Paul Rivera and gave him a taped statement about the matter. (*Interview of Gloria Sanchez by Peso Chavez.*)

~1979: From 1979-1984 the Club Casino stayed open until 0400 on Saturdays and Sundays. Many people walked to the Club. The dance floor was large with a big projector screen on the wall next to it where **pictures of patrons were shown while they were dancing**. Off duty cops provided security. The Club was a rough place. Many men carried knives and the employees and the police frequently took them away. Yolanda will sort the Casino Club slides by year so they will be available at [Bruce’s] next visit. **Yolanda links CDL [his first Casino Club arrest was 02/1980] with Beto Vela, Vela with Paula Hernandez and Linda Perales. Mary and Linda Perales were regulars at the club.** (*Interview of Yolanda Ortiz by BW.*)

Eddie Garza thinks CDL and CH hung out together at a bar at Marguerite and Mary near

Staples, by South Bluffs Park, next to Sunnyland Furniture. [Club Casino was between Mary and Marguerite on Port.] (*Interview of Eddie Garza by BW and JSL.*)

1/2/80: Ken Botary issues subpoena for Carlos Hernandez on 217 Carrizo street (among others) to appear on January 28, 1980. [Info added 9/04, LN]

1/3/80: Garza's lawyer Albert Pena subpoenas Carlos Hernandez (217 Carrizo), among others, to testify at a January 11, 1980 pretrial hearing. Subsequently, Pena also subpoenas CH, among others, to testify at January 28, 1980 trial. [Info added 9/04, LN]

1/?/80: Carlos Hernandez (and his mother? And possibly Shirley Currie) questioned by DA Botary about this murder [Info added 9/04, LN]

01/10/1980 – CH rap sheet in CDL file from DAs office shows arrest this date for “traffic arrest”. Offense No. 00110150. Released on bond.

1/31/80: Pretrial Hearing in State v. Garza

1/31/1980 – 2/11/1980: Jesse Garza tried for and acquitted on this murder based on defense that it was committed by Carlos Hernandez

HIGHLIGHTS OF 1980 TRIAL: *For the complete summary, APPENDIX C: “Jesse Garza Trial Summary.”*

State of Texas v. Jesse Garza, 94th Judicial District, Nueces Co., No. 79-CR-881-C.

Judge, **Hon. George Hamilton**. State, **Kenneth Botary**, Office of the District Attorney, Nueces Co. Courthouse, Corpus Christi, TX 78401. Defense, **Albert Pena**, 3301 Ayers St, Corpus Christi, TX 78415.

KEY PHYSICAL EVIDENCE:

- There are a lot of questions about the **van keys**. Did you see them in the ignition? Did you see _____ with them? The police reports mention that Mr. Saucedo had to have a locksmith make new ones before he could claim the van. They are unaccounted for. Paul Rivera testifies they were never found.
- There were no fingerprints or blood found on the **knife** from the van.
- Escobedo listed the **boxer shorts** in the non-tested category during her trial testimony. She begins to say they later found out something about them, but cuts her sentence off. (These were tied to CH; he told Diane Gomez he used them to clean the van and Saucedo's fingernails.) They could have both sets of DNA on them. Also, Botary asks Escobedo at trial if virtually every other piece of evidence was tested, but never asks about the boxers. Escobedo testifies under cross that she did not have the undershorts tested. The underwear is not in evidence, best I can tell;

the only shorts in evidence are identical ones removed from CH's home during the investigation.

- There was a **pubic hair** on the buttocks of the victim. Escobedo did not retain it and does not know if anyone else did. Could be CH's. Rupp testified they did not remove a pubic hair from the buttocks. Apparently, it was lost. Paul Rivera obtained a pubic hair from CH for comparison, then threw it away because there was nothing to compare it to.
- **Latent print from Schlitz can** was matched to CH. Print is State's Exhibit 53; **known CH prints** – I think including palms, Defense Exhibit 3. Ed Wilson compared the following individuals' prints to this latent: Freddy Schilling, Tony Lerma, Johnny Longoria, Carlos Hernandez, Jesse Garza, Dalia Saucedo, Roger Fuentes and Martin Fuentes, Pete Olivarez, Ramon Ricardo, Elias Garcia.
- **Hair removed from jeans.** Don Thain testified that only one hair matched the autopsy standard. The 4 hairs removed from the jeans are State's Exhibit 54. The standards were Exhibit 51. Everyone was in that van; but, one of the other three could match CH. Saucedo's hair had been dyed twice. Two of the other 3 hairs, most likely head hairs, were lighter in color than Saucedo's and the third did not have the dye lines.
- The **vaginal swab** was negative for sperm, but positive for acid phosphatase. Could be tested for DNA.
- Defendant's Exhibits 4 and 6 – **CH's underwear and knife** [*It's the wrong knife. CH's knife was lost.*], respectively. Taken from him during police questioning. There is also a tape recorded conversation in Spanish between CH and his mother which took place at the same time. To my knowledge, no testing took place on the underwear or knife.

KEY CH CONTACTS:

Best bets: Gloria Licea (and her oldest daughter); Johnny Longoria/Georgia Rand (BOTH DECEASED); David and Mario Martinez; Shirley Curry and her 2 younger daughters; Abbie Cisneros.

- There was a **man with long hair and a moustache** that no one identified by name. He was in the van with Elias Garcia, Pete Olivarez, Jesse Garza and the two girls (Margie Naranjo and Pat Garcia (♀)). **Longoria saw him in the van on Sunday before they went to Casino.** I think this may be Saucedo's old boyfriend, Richard Ramon. Margie Naranjo testifies that the man mustachioed man was drunk and messed up, eyeing Saucedo hostilely and that Saucedo didn't want to drive him out of town alone.
- **Johnny Longoria** testified that he knew CH. Connected with Longoria are: Abby Cisneros, Georgia Rand (Bluejean), Rose Gonzales, Ray Benavides, Tony Lerma, Rupert Lerma and Richard Lerma, Gloria Longoria Licea.
- **David and Mario Martinez** lives across the street from CH on Carrizo.

- Mario is afraid of David
- **Gloria Licea** is a girlfriend of CH; she is Johnny Longoria's sister. A week before the murder, Longoria, seemingly at Saucedo's request, slapped Licea around to get her to quit calling Saucedo in the middle of the night and harassing her – the implication is that the harassment was tied to Saucedo dating Schilling. Georgia Rand was also there. Longoria testifies, "Dalia kept telling me they were bothering – calling her up in the nighttime." [*Is the other half of "they" CH?*] Licea had 3 daughters at home - Nancy, Sandra and Vicky. One was 8 yo and might remember CH.
 - **Freddy Schilling** was married to Paula (CH's sister) and dating Saucedo. Connected to Schilling are: Paula Hernandez Schilling, Dalia Saucedo, Carlos and Javier Hernandez, David and Mario Martinez, Gloria Longoria Licea, Jesse Cano, Abbie Cisneros, Rose Gonzales.
 - **Shirley Curry** was a confidant of CH in 1978-79. She's a red head. Connected with Curry are Mario and David Martinez, Javier Hernandez, Johnny Longoria, Freddy Schilling and Dalia Saucedo. Also, maybe Tony Lerma. Mario lived with his mother across the street from Fidel Hernandez. David went into the Army in 01/1980. Curry gave CH several rides home from Hank's Lounge on Chaparral. Other 7-11 store employees who knew Hernandez: Mary, Elodia, Cindy [*Curry's daughter*]. Curry also had two high school aged daughters living at home, Alice and Leslie. Curry's testimony links Longoria and Lerma with Mario Martinez.
 - **Virginia Guerrero's daughters, Rosie and Cynthia**, probably witnessed some of the Freddy Schilling shenanigans with Saucedo. They may know something about CH – long shot.
 - CH rode to work with **Frank Ruiz**, who lives on Shawnee.
 - CH's girlfriend at trial is **Rosa**.
 - CH's parole officer is **George Saenz**.
 - **Abbie Cisneros** has lived with Georgia Rand and met Saucedo through Freddy Schilling. She probably knows some dirt on CH.
 - Between **Abbie Cisneros** and **Rose Gonzalez**, it sounds like CH killed Saucedo behind Apache, then moved the van. This is what Albert Pena believes. Gonzalez passed the van on Carancahua, pulled along side it, saw Saucedo in the same seat with a man (who was driving), honked at Saucedo, WHO DID NOT TURN. Cisneros then went outside her apartment and walked to the van, which was parked in the darkness behind Apache Lounge. It pulled out before she got to it. CH testified that he heard footsteps on the gravel and hurriedly got dressed. He says Saucedo heard them too/got dressed; but I think it more likely, she was dead.

[JSL Notes from Jesse Garza Transcript excerpts (Johnny Longoria, Fernando Schilling, Paula Hernandez Schilling, Irma Ramirez); 8/14/04:

1. Gloria Licea is featured (pp. 524-31, 890-92):

- a. Dating Carlos (524-25, 890-92)
 - b. Made harassing calls to Dahlia and was slapped around by Johnny because of it: (527-31)
2. Paula did not rat out her brother; said very little and had to be led; wouldn't say anything bad about CH (884-93)
 3. Key people in CH's orbit: Georgia Rand, Ray Benevides, Abby Cisneros, Richard Lerma, Tony Lerma, Rose Gonzales, David Martinez (especially), Mario Martinez, "Mary Jane, Carlos's girlfriend"
 4. Powerful stuff about Carlos Hernandez being violent and scary when drunk; people afraid of him (869-72, 875-76, 879, 886-888)

Carlos always had a knife: (880)]

After Saucedo Murder: Freddie Schilling told Peso Chavez that CH told him he killed Saucedo. When CH was drunk and we would have a fight he would tell me "I'm going to kill you just like I killed that fuckin' bitch Dahlia". The next day it was like it never happened—he was a different guy. My wife Paula told me that Carlos came to her and told her that he had killed Dahlia because he wanted to get her out of the way because he didn't want to see Paula suffer. *[Interview of Freddie Schilling by PC, 08/2004.]* Rita Hull told Sita Sovin that CH had told Paula (who in turn told Rita) that he killed Dahlia for Paula – cut her throat and sliced an "X" in her back. *(Interview of Rita Hull by SS, 08/2004.)* Ronnie Zamora told Beatriz Castro, his mother and Fidela Hernandez's rear yard neighbor, that CH told him he killed Dahlia. *(Interview of Beatriz Castro by SS, 10/2004. 10 and 11/04, LN.)*

02/06/1980 – Drunk and Disorderly.

DeLuna was involved in an argument with his parents, using loud, profane language. Upon arrest, DeLuna had breath smelling strongly of alcohol, blood shot eyes and was unsteady on his feet. DeLuna was unruly and verbal with police. He had no cash on him at arrest; billfold and comb but NO KNIFE or any other weapon.

Carlos DeLuna, Suspect
2046 Rockford, Corpus Christi, TX
Employer: Andy's Restaurant, Bus Boy
DOB: 03/15/1962
SSN: 462-29-9302
5'8", 145 lbs

Margente Avelos, Next of Kin
Dan Sanchez, Person to Call

___/992-1192

Arresting Officers:

D. J. Oliverez (CCPD 340)

Z. G. Perez (CCPD 236)

[DeLuna arrested for being “drunk and disorderly.” Was arrested at 1:20 AM on a public roadway, 2000 Rockford. Report: “subject became unruly and verbal. Subject found to be intoxicated by evidence of the strong odor of alcoholic beverages, blood shot eyes and unsteady on his feet. Subject involved in an argument with his parents, using loud and profane language.” (See Police Report 2/6/80) *These records were submitted as an appendix to D’s Habeas Petition.*]

02/07/1980 – Minor consuming alcoholic beverages.

DeLuna was at Club Casino, 1001 S. Port, Corpus Christi, and was told to leave because the officer (Garcia) knew he was a minor. DeLuna left, but was later in the bar, drinking beer. The arrest sheet states DeLuna had 6 cents on him at arrest; also comb and billfold. BUT NO KNIFE or other weapon.

Carlos DeLuna, Suspect

2046 Rockford, Corpus Christi, TX

101 Cleo, Corpus Christi, TX

Employer: Sam Kane, laborer

DOB: 03/15/1962

SSN: 462-29-9302

5’8”, 160 lbs

Tonie Peña, Sister, Next of Kin

3027 Niagara, Corpus Christi, TX

Rangel Boned (handwriting is unclear), Person to Call

___/854-7198

Arresting Officers:

Garcia (CCPD 194)

A. Leal [or Leah] (CCPD 101)

[Arrested for “Minor Consuming Alcoholic Beverages.” Arrested at the Club Casino at 1:55 AM. Report” “Subject was at the above location and was told to leave because

officer knew he was a minor. Subject left and later returned and somehow entered the club and was drinking a beer. It is unknown who bought the beer for him.” **Arresting officer is E. Garcia. (note: this is the officer that is later shot.)** (See Police Report 2/7/80) *These records were submitted as an appendix to D’s Habeas Petition.*]

02/16/1980 – CH rap sheet in CDL file from DAs office shows arrest this date for “drunk.” Offense No. 00216138. Municipal bond forfeit.

03/05/1980 – Trespassing (Lounge).

DeLuna was intent on entering Club Casino, 1001 S. Port, Corpus Christi, when the owner and police had both told him not to enter, he is too young to buy beer. The arrest sheet does not say whether or not DeLuna had cash on him at arrest. Arrested with billfold, comb, lighter. NO KNIFE or other weapon.

Carlos DeLuna, Suspect
2837 Niagara Street, Corpus Christi, TX
Employer: Sam Kane, laborer
DOB: 03/15/1962
SSN: 462-29-9302
5’7”, 161 lbs.

Maria Avalos, Mother, Next of Kin
Also person to call
2046 Rockford, Corpus Christi, TX
___/___57-0895

Arresting Officer:
Sgt. Garcia (CCPD 194)

[DeLuna arrested for trespassing at the Club Casino. Arrested at 10:15 PM.
Report: “Subject insists on entering the Club Casino when the own as well as the police have repeatedly told him not to enter the place because he has anybody buy beer for him and he is only seventeen years old.” Arresting officer was E. Garcia. (note: this is the officer that is later shot.) (See police report 3/5/80) *These records were submitted as an appendix to D’s Habeas Petition.*]

3/23/80: Board of Pardon and Paroles Minutes say “continue on parole with reprimand from the Exec. Dir. regarding violation of Rules 1C (lying to PO) and 1D (withholding info from PO)”

03/28 to 4/3/1980 – Drunk.

DeLuna was arrested for being involved in a disturbance at 2046 Rockford, Corpus

Christi, TX. Was found in the middle of the street with blood shot eyes, slurred speech and breath smelling of alcohol. Arrested and transported to city jail. Arrest sheet shows DeLuna had 2 cents on him. Also had comb and billfold but NO KNIFE or any other weapon. Was released on 4-3-80

Carlos DeLuna, Suspect
2046 Rockford, Corpus Christi, TX
Employer: What-a-Burger, Manager
DOB: 03/15/1960
SSN: 462-29-9300
5'7", 160 lbs.

Toni Peña, Sister, Next of Kin
Maria Avalos, Person to be called
___/___52-0598

Arresting Officers:
D. Hernandez (CCPD 269)
D. Martinez (CCPD 221)

[DeLuna arrested for “being drunk on a public street” at 3:30 AM. Report: “Upon arrival, subject was in the middle of the street.” He had blood shot eyes, slurred speech and his breath smelled of some sort of alcoholic beverage. (See police report 3/28/80) *These records were submitted as an appendix to D’s Habeas Petition.*]

4/23/80: Board of Pardon and Paroles Minutes say “Issue Pre-Revocation Warrant” authorizing arrest of CH (reason unknown)

4/28/80: Pre-revocation warrant issued out of Corpus Christi Office

05/04/1980 – CH rap sheet in CDL file from DAs office shows arrest this date for ... [paper is cut off, so can’t read it]. Offense No. 00504019. Released on bond.

5/6/80: Sheriff’s Dep’t Re-Arrest Report, arrest # 30682 (Sgt. Grace) for Violation of State Parole (“4-28-227443), no bond. 5’7”, 166 lbs. [Info added 10/13/04, 11/2/04]

5/21/80: Board of Pardon and Paroles Minutes say “Schedule Parole Violation Hearing for 6-11-80”

5/23/80: Board of Pardon and Paroles Order and Notice of Withdrawal of Pre-Revocation Arrest Warrant and CH is ordered released [But when was he released?]

05/23-24/1980 – Public Intoxication.

DeLuna staggered up to Officer A. S. Leah (CCPD 101) at Club Casino, 1001 S. Port, Corpus Christi, TX (a lounge) and told him that Leah had arrested him about a month ago, and that he would like to see the officers to it again. DeLuna’s breath smelled strongly of an intoxicant, his eyes were bloodshot and speech slurred. At arrest, DeLuna had no cash on him.. He was arrested at 11:45 p.m. and released on 5/24-80 at 7:45 a.m. At time of arrest he had a billfold, comb, and papers, no cash, NO KNIFE or other weapon.

Carlos DeLuna, Suspect
2046 Rockford, Corpus Christi, TX
Employer: Sam Kane, meat packer
DOB: 03/1/1962
SSN: 462-29-9302
5’7”, 158 lbs

Erma (or Edma) DeLuna, Wife, Next of Kin
2046 Rockford, Corpus Christi, TX
Maria Avalos, Person to be Called
____/852-0598

Arresting Officer:
A. S. Leah [or Leal] (CCPD 101)

[DeLuna arrested for public intoxication. Arrest was at 1001 S. Port and location was listed as a “lounge.” (Based on other records, it appears that this is the Club Casino Bar and Lounge) Report: “Above subject staggered up to officer and told officer that he had arrested him about a month ago and that he would like to see offers so it again...” (See police report 5/23/80) *These records were submitted as an appendix to D’s Habeas Petition.*]

5/27/80: Board of Pardon and Paroles Minutes say “Withdraw Pre-Revocation Warrant, impose”; issued in Corpus Christi office

06/19/1980 – Attempted Rape:

Arrest No. 80-41302 (or 41362)
Docket F80-8598Q
Service No. 270088-L

Arrest at 10:50 pm (I think) or maybe 11:15 p.m. (different info on different reports)
Arrested at 4627 Munger St.
Time of Offense given as 10:50 but that doesn’t seem right.
Officers: Howard G. Cunningham (#4233), R. McCollum (#4333); J.E. Johnston #1752
Weather: clear, hot

Victim, Martha Aguirre, was waitress at the Hyatt Regency; looks like she was 17 y.o.
Her brother’s name is Pedro
Her address was 4619 Ross Ave., Apt. #36
Other witnesses are Alvina Hernandez (16 y.o., 4606 Monarch #103; 824-7179); Maria Ramirez, 19 y.o., same address but #107, 824-7179)

This is the attempted rape from Dallas Co. The ADA was **Don Land**; the defense attorney was **Frank Pearce** (Court-Appointed), 3352 Broadway, Garland, TX 75043. The attempted rape was case no. F80-8598MQ in the 204th District Court, Dallas County. Disposed of on 09/25/1980, 3 years. [I’m unclear if this is 3 years for each offense or 3 years total for this and unauth use of veh.] It looks like CDL got 3 years for each offense – at rape and UUMV. Sentencing for both took place on 09/25/1980. Plead no contest on both counts.

CDL stipulated that the oral testimony of **Martha Aguirre** (Attempted Rape Victim) was true and correct.

Carlos DeLuna, 301 E. Miller, Garland, TX; **Ht. 160 lbs; WT. 5’ 8”**; black hair; brown eyes.

Ht. 160 lbs; WT. 5’ 8”: hair style “messy”; **mustache: Yes**
Defendant’s “condition:” **“Drunk.”**

07/04/1980 – Bond Posted.

Bond was posted by Cotton Belt Insurance Co., 111 So. Lamar at Commerce, Dallas, TX 75202, 214/742-9196 - Home Office, Ste 304m 10001 Lake Forest Blvd, New Orleans, LA 70127 (Corporate Seal from Tennessee) - on 07/04/1980 by Mike Derden, TX 860-550, \$6K.

07/26-28/1980 – Unauthorized Use of Vehicle.

The ADA was **Don Land**; the defense attorney was **Frank Pearce** (Court-Appointed), 3352 Broadway, Garland, TX 75043. The unauthorized use of a vehicle was case no. F80-10406MQ. It looks like CDL got 3 years for each offense – att rape and UUMV. Sentencing for both took place on 09/25/1980. Plead no contest on both counts.

Owner of vehicle, a van, was **John William Jones**. CDL was living at 301 E. Miller in Garland (same address for att rape). CDL stipulated that the oral testimony of Jones and **T.K. Elliott** was true and correct.

Looks like he got arrested for this on 7/28/80 at 400 S. Beckley in Garland; arrested with Rudolfo Molina. [DA records received by JSL personally on 2/05]

09/25/1980 – CDL Plead Nolo Contendere to Att Rape and Unauth Use of Vehicle. No less than 2 years nor more than 3 years. Represented by Frank Pearce. Nolo Contendre. 3 years for each offense., with time served starting on July 28, 1980 Cause nos. F80-8598-MQ and F80-10406-MQ. [Exhibit 41 at trial].

9/25/80: Board of Pardon and Paroles Minutes say “Continue on parole with a letter of reprimand from Exec. Dir regarding violation of rules 5 (barring possession of weapons) and 7 (violation of criminal laws)

9/30/80: Certified judgment issues in above case.

10/9/80: CDL received into TDC for attempted rape and unauth use of vehicle; shows sentence beginning on 7/19/80. [DA records received by JSL personally on 2/05]

6/04/81: TDCJ “Transfer History Screen” dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Anthony Davis in Corpus Christi.

10/26/81: CCPD take major case prints from Carlos Hernandez this day. All we have are the prints; we do not have any accompanying documentation. [Info added 9/04, LN]

Marsha in ID and Kathy Lancaster in records at CCPD have informed William Belford orally that on 10/26/81 prints Hernandez’s major case prints were taken after he was picked up for **making threats and resisting arrest**. There is no information on who the complainant was, as the offense reports have been destroyed. But there should be handwritten notations in some log book. [Info added 9/04, LN]

From 7/17/04 email from William Belford:

“Regarding officers involved in handling Carlos Hernandez around 10/26/81 and 04/04/83 I was told the following by Marsha in CCPD ID section: **10/26/81** Hernandez had his prints taken by Officer Hoffer from the ID section (Marsha believed he was a sergeant and now deceased). [Info added 9/04, LN]

William made new PRA request in July 05.

11/18/81: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was “Currently a Parolee” and had a “Parole Review” this date.

1980-1981: Janie Adrian told Sita that she remembers Wanda Lopez as an alcoholic drug addict who hung out with many men at the ramp/bridge leading to Laredo Street. WL had a nickname in the neighborhood, but Adrian did not remember what it was. *(Interview of Janie Adrian by SS, 11/2004.)*

12/12/81: Letter from CDL to sister Vicky thank her for a card she sent him, and noting “I am gld you Finaly Answer. It took about a year. But so what. Aleast you answer.” “I am sure this time it will be the Last time, I ever come to prison.”

12/15/81: CDL writes Vicky again and asking her to come visit and saying he got a job in the kitchen and likes it.

4/01/82: TDCJ “Transfer History Screen” dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was “terminated” --- give later entries seems to mean that something other than parole itself was terminated; maybe his assignment to PO Davis was terminated.

5/5/1982: Carlos Hernandez marries Rosenda Anzaldua Hernandez.

[from divorce petition in 83-5525-H]

05/13/1982 – CDL Paroled

See TT penalty phase p. 9

Picked up on additional charges on 05/15/1982 (see below). Absconded from parole around 05/18/1982. *(Gilbert Garcia’s testimony, punishment phase; Template, p. 34.)*

05/15/1982, 0130 – Class A Assault of Juanita Garcia:

Charges of Class A Assault were filed in the Corpus Christi magistrate court. Original offense investigated by CCPD was aggravated rape, but no rape took place. The responding officer was **R.C. Lee** (CCPD 447). The case was assigned to **Sgt. G. Garrett**

(CCPD 063). [Exhibit 42 at CDL's trial]

Victim – Juanita Garcia

3630 Fairchild, Corpus Christi

____/882-5256

DOB 05/23/1929 (42 at crime)

- Mrs. Garcia was lying in her bed. CDL jumped on top of her, began choking her, put a pillow over her face, struck her face 2 times. He told her to just lay there. Mrs. Garcia's **daughter** told CCPD that she had gone to pick up her **brother** from TDC and they both gave CDL a ride back to Corpus Christi. The daughter said CDL was released from TDC on 05/13/1982. Mrs. Garcia filed a restraining order on CDL. She had bruising on her face – doesn't say which side. [Exhibit 42 at CDL's trial]

Witness – Concepcion Campos

3634 Fairchild, Corpus Christi

____/887-6212

- Ms. Campos told CCPD that CDL walked up to her house and asked her to use the phone, that **someone had stolen his car**. Then, she watched him walk to Garcia's house, to the rear of the house then back to the front. CDL entered through the front door, stayed a short time and then left the house running. Going in, his shirt was buttoned; leaving, it was unbuttoned. [Exhibit 42 at CDL's trial]
- Last page of the exhibit reads: "Upon investigating this complaint it was determined that there was no rape or attempted rape that was prosecutable in this case, however, there was a class A assault that could be prosecuted. Upon discussing this with the victim a copy of the report was furnished for victim to file a restraint order on the individual being Carlos De Luna and also I took the complaint to the Municipal Court where charges of assault were filed on this same individual in connection with this complaint. Case Closed: Filed Municipal Court. [by Sgt. Garrett. Exhibit 42 at CDL's trial]"

Suspect – Carlos DeLuna

Hispanic male, 5'6", 140 lbs.

Blue shirt, black pants

2046 Rockford, Corpus Christi

Garcia testified at punishment phase of DeLuna's trial re murder of Wanda Lopez: After the welcome home party for her son Marcos [just got home from penitentiary; knew DeLuna] on 05/14/1982, Juanita went to bed around 12:30 a.m. Carlos DeLuna came into her bedroom and attempted to rape her. He removed her underwear, threatened her and hit her in the ribs, breaking 3 of them. He suddenly left. Juanita did not see DeLuna, but recognized his voice. She was treated at Memorial Hospital. (*Juanita Garcia's testimony - Punishment Phase; Templates, p. 35*)

6/22/82: CDL received back into TDC: "P/V [parole violation] ret'd from Smith Co. No

new charges". Says he is a laborer from Dallas. Fingerprinted [DA records received by JSL personally on 2/05]

Week of 01/02/1983 or 01/09/1983 [THIS DATE IS PROBABLY WRONG; SEE 1/13 and 1/21/83 ENTRY BELOW]:

(Inaccurate) testimony of Thomas Mylett. 3 or 4 weeks prior to the crime, Officer Mylett (CCPD 649) was approached by DeLuna at Club Casino, telling Mylett's partner that DeLuna was in prison when Sgt. Enrique Garcia was shot, but he thought Garcia should have died. DeLuna was bragging that he had been recently released from the state penitentiary. Regulars at Club Casino thought DeLuna was stupid or crazy. DeLuna was arrested for disorderly conduct. (*Mylett's 02/08/1983 report; Bates 21-22¹.*) [Mylett's trial testimony (*Template, p. 18*) implies he may have been working as a private security guard that night.]

01/13/1983 – Paroled (*P.O. Gilbert Garcia's testimony, punishment phase; p. 34.*)

Thursday, 01/13/1983:

Carlos DeLuna released from prison on parole. (*Bates 33*) This is day stated on Olivia Escobedo supplemental re (in DAs file from Feb. 2005) on 2/4/83 re her conversation with CDL's parole officer

01/21/1983 – Public Intoxication.

DeLuna approached police at the Club Casino, 1001 S. Port, Corpus Christi, and informed them that he knew Officer Garcia, who was shot the prior year, and thought Garcia should have died. DeLuna then asked if the officer wanted to fight. The officer smelled a strong odor of alcohol on DeLuna's breath and DeLuna swayed as he stood. DeLuna was escorted outside and arrested for drunk and disorderly conduct. The arrest sheet notes DeLuna had no cash on him at arrest. Booking form shows that CDL's property at time of arrest was drivers license and billfold; NO KNIFE or other weapon. O cash.

Carlos DeLuna, Suspect
2046 Rockford, Corpus Christi, TX
Employer: Tyra__e Construction, Laborer
DOB: 03/15/1962
SSN: 462-29-9302
TXDL 10038462
5'9", 170 lbs.
Maria Avalos, Mother, Next of Kin
Also Person to be called
___/852-8266

¹ Bates numbers are written in blue ink on the bottom right corner of the CCPD reports.

Arresting Officers:

M. Lloyd (CCPD 538)

T. Mylett (CCPD 649)

January 21, 1983:

DeLuna arrested by Officer M. Lloyd [AND MYLETT?] at the Club Casino. Report: “While working off duty, the above subject asked me if he could talk to me. He then said if I knew Enrique Garcia, the police officer that was shot last yet. He then says that he was glad the officer was shot and that officer Garcia should have been killed... [illegible] ...notice that his breath had a strong odor of an alcoholic beverage, he swayed from side to side and his speech was very slurred. Subject asked if I wanted to fight about the conversation he just had with me. I then had the subject step outside the night club and arrested him for public intoxication and for disorderly conduct.” (See police report 1/21/83) *These records were submitted as an appendix to D’s Habeas Petition.*

Beatriz Tapia told Bruce Whitman that at times Beatriz saw Manual Deluna, Carlos Deluna, Carlos Hernandez and his brother Xavier sitting on the porch at Fidela Hernandez’s Hancock apt visiting and drinking beer together. Beatriz gave no details but remembers Carlos Hernandez, “hung” out at the Shamrock station located near SPID at the time Wanda Lopez was working there. Within “a few months” of the Lopez killing, Priscilla asked CH where he was going in Bea’s presence. CH said he was going to the Diamond Shamrock station next to Wolfy’s to hang out. Many times Carlos said he was going to the Diamond Shamrock to visit with Wanda and a couple of times Carlos said he was going to the Diamond Shamrock station to hang out and to visit Wanda Lopez. *(Interview of Beatriz Tapia by BW, 09/2004.)*

Mid-1980s: Cindy Maxwell told Sita that Lester (Magoo, Red) Marshall and Old Margaret (died in mid 1990s) owned a house on 7th Street, two houses from Buford, with a garage [personal or business?] that CH and “lots of people hung out...regularly,” including Sylvia and Javier Hernandez, Marcella Brown, Eddie Schilling (?). Cindy emphatically insisted she did not know any Wanda, no Wanda hung out at the garage. Sita found her reaction suspicious. *(Interview of Cindy Maxwell by SS.)*

Ester Evans’ daughter, Jane Vela, says that CDL, Evelyn _____, Blonde (male), Henry Vela all hung out at Club Casino prior to 1983. *(Interview of Ester Evans and Jane Vela by SS.)*

Early 1983: Hector DePena (CDL’s ▲ atty) filed bankruptcy.

Friday 01/28/1983:

DeLuna paid on this date for 21.5 hours of work. *(Bates 45)* Wayne Waychoff testified at trial that DeLuna’s take-home pay on this date was \$71.03. *(Wayne Waychoff’s trial testimony; Template, p. 28.)*

Tuesday, 02/01/1983:

Weekly inventory of Shamrock/Sigmor gas station performed. The station generally has a \$25-50 discrepancy. *(Pete Gonzalez’s trial testimony; Template, p. 18.)*

Friday, 02/04/1983:

0700-0730: DeLuna and his stepfather, Blas Avalos, left home at 0700 and arrived at work at Triarch Corp at 0730. (*Blas Avalos' trial testimony; Template, p. 29.*) DeLuna got to work at 0700. (*Carlos DeLuna's trial testimony; Template, p. 29.*)

DeLuna paid on this date for 42.5 hours of work. (*Bates 45*) Wayne Waychoff testified at trial that DeLuna's take-home pay on this date was \$135.49. (*Wayne Waychoff's trial testimony; Template, p. 28.*)

1130-1500: Daniel Fino testified at trial that he, DeLuna and "Ramiro" got off work early on 02/04/1989 because of rain. They traveled in Ramiro's car and cashed their paychecks at HEB on Baldwin. Then they went to Shamrock on Greenwood and Horne Road. DeLuna bought a 12-pack of beer and they each had one. Then they took DeLuna to his house and they all had another beer. They left DeLuna at his house at around 1500. (*Daniel Fino's trial testimony; Template, pp. 28-29.*) DeLuna testified at trial that he worked until 1130 on this date, and then got off early because of rain. He worked that day at a store called Holidays at South Padre Island Drive ("SPID") and Flour Bluff. DeLuna returned to the office at 1230 with Danny Fino and Ramiro to pick up his check. They then went to cash their checks at HEB on Morgan and Baldwin. Then, they went to the Shamrock on Horne and Greenwood and bought a 12-pack of beer. They all had a beer, and then they took DeLuna to his house (2046 Rockford). They all had another beer. DeLuna went inside around 1430 or 1500. (*Carlos DeLuna's trial testimony; Template, p. 29.*)

1330: DeLuna called his parole officer, Gilbert Garcia. DeLuna told Garcia that he was working late and probably could not report to Garcia before 1700. Garcia told DeLuna he would wait until 1730 for him to report. (*Gilbert Garcia's trial testimony; Template, p. 33.*)

After 1500-1630: Carlos DeLuna testified at trial that he went across the street to his neighbor's house and asked if he knew someone who could fix watches. The neighbor said no, and took him to find someone. They were not able to find anyone. They ate at WhatABurger around 1600. DeLuna returned home and took a shower. He went to Kroger with his mother and stepfather. DeLuna returned home around 1630.

1700 – 2200: Mary Ann Perales testified at trial that she attended her baby shower during these hours. She produced a photograph of the shower, taken by her mother. Perales testified that she did not meet DeLuna on 02/04/1983. Perales' sister [Linda Perales] did not attend the shower. Perales assumed she was with her husband. (*Mary Ann Perales' trial testimony; Template, pp. 32-33.*)

1730: Gilbert Garcia waited until 1730, but DeLuna did not report. (*Gilbert Garcia's*

trial testimony; Template, p. 33.)

1900-2020: Blas Avalos and his wife gave DeLuna a ride to Gulf Skating Rink. (*Blas Avalos' trial testimony; Template, p. 29.*) DeLuna testified at trial that his stepfather and mother drove him to Gulf Skating rink and he arrived between 1900 and 1915. DeLuna went inside the rink to see if the girl he was meeting, Yvonne Gonzalez, was there. She was not, so he returned outside to wait. He went to talk with 2 girls he knew in a yellow pinto, Mary Ann and Linda Perales. DeLuna had not seen Mary Ann Perales since 1979, but her hair was the same length and she was the same height – she was just the same. Another man, Carlos Hernandez, approached them. Hernandez was between 5'8" and 5'10" and wearing blue jeans. DeLuna did not remember what shirt or shoes Hernandez wore. DeLuna and Hernandez talked and realized they had met in 1978 or 1979. Hernandez told DeLuna he knew where Ronnie Gonzalez lived. He asked the Perales sisters to take them to Gonzalez's house and they agreed. They stopped at Circle K on Kostoryz and bought some Cokes. DeLuna called home from the Circle K and asked for a ride home in case Ronnie was not there. They did not find Ronnie's house. This was around 2000. (*Carlos DeLuna's trial testimony; Template, pp. 29-31.*)

Janie Adrian told SS that she saw CH and CDL driving around together in a gold car that afternoon or night. (*Interview of Janie Adrian by SS, 11/2004.*)

2000 or 2015: DeLuna called home to get a ride at 2000 or 2015. Avalos told his wife to tell DeLuna to take a taxi, that Avalos was drunk. (*Blas Avalos' trial testimony; Template, p. 29.*) The Perales sisters left and Hernandez and DeLuna waited around for 10-15 minutes, then went to Wolfy's on foot. [Address? Implied it's across the street from the gas station.] Hernandez told DeLuna he had to go into the Shamrock to buy something, so DeLuna went inside Wolfy's and bought a beer. DeLuna waited about 10 minutes and then went outside. He noticed Hernandez in the Shamrock and that Hernandez went toward the counter, and then started struggling with a woman. DeLuna walked off quickly because he was scared. DeLuna heard sirens and started running. He slipped on bushes and grass several times, then jumped over a fence that caught his shirt and tore it off. He heard people yelling, dove under a truck and was arrested. (*Carlos DeLuna's trial testimony; Template, pp. 29-30.*)

2000: George Aguirre related the following to Officer Mejia at the scene, below: At 2000, while Aguirre was pumping gas at Shamrock/Sigmor (2606 SPID), he was approached by a Hispanic male, 5'7" to 5'9", wearing a white long-sleeved shirt and dark pants. The man had pulled out a knife, unfolded it, and stuck it in his pants. The man asked for a ride to the Casino from Aguirre. Aguirre declined and the man walked away. Aguirre went inside the store and told the clerk that there was a man standing outside the store with a knife. The man walked into the store as Aguirre left. [Report ends here...] (*Mejia's 02/04/1983 Report; Bates 05.*) [As reported here, Aguirre makes no mention of the suspect drinking beer;

but, Mejia later informs Fowler to look for beer cans because of a witness saw the suspect drinking beer before the incident, as stated in Fowler's report.] Aguirre was gassing up his van when approached by a man who asked if Aguirre would give him a ride to Club Casino. Aguirre saw the man put a knife, possibly a locking blade type knife, in his pocket. He saw the man holding a beer can in his hand. He saw the man walk back toward the ice machine. Aguirre went inside the store to pay and told Victim about the man with a knife outside the store. He told her to call the police. As he left the area, he saw the man with the knife walk into the store. Aguirre drove west under the overpass and then east on the freeway. As he passed, from the freeway, Aguirre saw the clerk and the armed man struggling inside the store. Police had arrived by the time he got back to the store. (*Aguirre's statement, related in Escobedo's 02/05/1983 report; Bates 15.*) Aguirre was putting gas in his van when a man he later identified as DeLuna approached him and asked for a ride to Club Casino, offering "money, beer or dope" in exchange. Aguirre refused. Aguirre observed the man pull out a lock-blade knife, open it and place it in his pocket. The man returned to the ice machine at the front of the station. As he was paying for gas, he told Victim there was a man outside with a knife and that he was going to call the police. Victim told Aguirre that she, also, would call police. Aguirre left the station to go for help, traveled westbound on frontage road, went around the freeway and traveled eastbound on State Highway 358. As he passed the service station, Aguirre saw a struggle going on inside the store – the man who had approached him for a ride was assaulting Victim. Aguirre got off the highway and went to the Gulf Bowl where the private security guard only offered to call the police. Aguirre got back into his van and returned to the station. Police had already arrived. (*Escobedo's summary of the crime; Bates 36, 37.*) Aguirre stopped at Shamrock station a little after 2000. He was putting gas into the van when he noticed a person by the ice machine drinking a beer. Saw the person put a knife into his left pocket with the blade open. Aguirre watched the man for about 10 minutes. The man was wearing black or blue pants, a white shirt with sleeves rolled up to the elbows. The shirt was a button-up dress shirt. He was 5'10", 160 or 170 lbs., with 2-3 days of facial hair. His hair was short; Aguirre could see his ears. Aguirre did not notice the man's shoes. The man asked Aguirre for a ride to the Casino Club on Port, offering money, drugs, beer or whatever in return. The man had his wallet in his hand; there were between one and four \$1 bills in the wallet. Aguirre declined, because the man had a knife. The man walked back to the ice machine. Aguirre went inside to pay and warned the attendant, saying he would call the police down the road. The attendant went on and called them. There were 2 other people in the store, a man and a woman, but Aguirre was unsure. Aguirre doesn't remember seeing their car; they were buying beer and cigarettes and were at the cashier's counter. Aguirre started back to his van and saw the man go inside the store when Aguirre was half-way to the van. From the freeway, Aguirre saw the two struggling and got off the freeway. He stopped at a bowling alley or skating rink, asking the security guard to radio the police (the guard could not) and returned to the store. Aguirre told the police what he had seen. (*Aguirre's trial testimony; Template, pp. 19-20.*)

2009: Dispatcher Jesus Escochea (CCPD 080) answered a call from Victim, who told him she was at the Shamrock station, that there was a man in the store armed with a knife. Escochea tried to get a description of the man, but Victim could not give it because the man was close by. Escochea hears Victim scream and a commotion and told Dispatcher Cheryl Roberts to send a unit on an emergency run to the station for an armed robbery in progress. (*Escochea's statement, related in Escobeda's 02/05/1983 report; Bates 16.*) From transcribed police call between Escochea and Victim: Victim said "He's a Mexican." She quotes the price 85 cents [pack of Winstons?]. Victim is heard to say to someone: "You want it I'll give it to you, I'll give it to you, I'm not gonna do nothing to you. Please!!! (A lot of commotion is overheard in the background, followed by screams, you can hear the phone dropping, victim moaning.)" (*Transcription of call; Bates 27-29.*) Victim called the police emergency number and spoke to Jesus Escochea (Dispatcher) and requested a police unit be sent to her location, that there was a man with a knife in the store. While talking to Escochea, Victim was robbed and stabbed. The struggle, assault is heard over the phone and is recorded in the dispatcher's office. (*Escobedo's summary of the crime; Bates 36.*)

Becky Nesmith sat in on part of the DeLuna trial and heard the 911 tape. She said there was a male voice on the tape asking for Marlboro cigarettes. (*Interview of Becky Nesmith by BW, 09/2004.*)

2009: Armed robbery alert went out for the Shamrock Station, 2602 South Padre Island Drive. (*Mejia's 02/04/1983 Report; Bates 04.*)

Approx. 2015: Kevan Baker told Officer Mejia at the scene that he was preparing to pump gas into his car and saw the clerk, inside the store, struggling with a Hispanic male, 5'7" to 5'9", wearing a light-colored shirt and dark pants. Baker saw the suspect try to carry the clerk to the back room of the store and Baker walked into the store to help the clerk. The suspect released the clerk as Baker approached the store. The suspect walked out, telling Baker, "I got a gun, get back." (*Mejia's 02/04/1983 Report; Bates 04-05.*) Kevan Baker pulled into the Shamrock Station and heard a bang on the glass from inside the store. He saw a Hispanic man and Victim struggling and the man was pulling and trying to shove her into the back room of the station. As he approached the store, the man came out and met Baker face-to-face. The man told Baker not to mess with him, he had a gun. The man fled off behind the station. Another man drove up and Baker asked him to call the police. Victim came out of the store, asking for help. She had blood all over her. (*Baker's statement, related in Escobedo's 02/05/1983 report; Bates 15.*) Kevan Baker pulled up to pump gas when his attention was drawn by a loud thump on the glass window. He saw a man he later identified as DeLuna and Victim struggling, saw that the man was trying to shove Victim into the utility room. Baker walked toward the store and the man came out. The man threatened Baker's life if Baker tried to stop him. The man then fled on foot. (*Escobedo's summary of the crime; Bates 37.*) Baker tried the pump shortly after 2000, but got no gas. He heard a thump on the glass of the store. He looked up

and saw a man and woman fighting. The man was trying to pull her through the door to the rear of the store. Baker walked toward the store and the man threw her down and walked out. They met at the door, where the man told Baker, "Don't mess with me; I've got a gun." The man then ran off to the east. They met 3 feet apart. The man looked like a transient, unshaven, hungry, clothes unclean and rumpled. Baker is nearsighted, and was wearing glasses. Baker first says had no idea what clothes the man was wearing. He was a little taller than Baker, who is 5'6". Baker walked toward a man pulling into the station and told him to call the police. He went into the store to get paper towel to try to stop Lopez's bleeding. The officers segregated him within 3 to 5 minutes. They asked him for a description after he was in a group. Baker described the man's shirt as something flannel with red in it. When Baker was discussing what happened with the officer, the witnesses were all in the same general area. *(Kevan Baker's trial testimony; Template, pp. 22-23.)*

[From 11/29/04 email sent out by JSL:

As you all probably remember, Kevan Baker is the key (the only actual) eyewitness to the assault on Wanda Lopez. He drove up to get gas after Lopez was stabbed but while she and the perp were still "wrestling", and he came face to face with the man near the door.

Baker lives in southern Michigan, not too far from where IEP investigator Mort Smith lives. Mort had a matter in Detroit and offered to give us a break on travel costs to interview Baker.

Mort conducted a 45-minute interview with Baker on Tuesday evening, November 22. I received the CD over the weekend and have reviewed it. I am sending CDs to everyone on this email except Sam and Ruth.

KB held to what he said at trial for the most part, most of which is more or less helpful.

He added one major set of things to what we know.

And he clarified one thing that is important.

The new addition is that KB says he was only ('only' is my word) 70% sure of the identification all along, especially because the man he saw coming out of the station was Hispanic and KB is a white farmer from Michigan (he volunteered the interracial thing himself), and because he was so scared (the man said "I've got a gun") that he kept his eyes focused on the perp's eyes as a way of keeping the man at bay and keeping him in his sights. But, KB now has acknowledged (he didn't testify to this at trial), that before the show-up identification, the police officer told him that they had picked up Carlos DeLuna "hiding under a car with his shirt off". KB has a very clear recollection of that statement by the officer; KB said he didn't know whether this was said to steer him or not, but that it did have that

effect: Without that statement, he said, he would only have been "50-50" on the identification.

What I refer to above as KB's clarification helps explain a discrepancy in his pretrial statement and trial testimony. In his statement to the police on the night of the killing, Baker said he saw the man run "behind" the gas station, which is "north" and would distinguish that man from the man the Arsuagas saw running from the station, to the EAST of the station. At trial, KB first said the man ran "east," then on cross he said he has no reason to disagree with his witness statement that the man ran "behind" the station --- saying he watched the man til he was "out of sight" then turned back to the victim. In the tape, KB is clear that he watched the man run east a short while, probably PAST the gas station itself AND THEN saw him "turn" (meaning north) "out of sight" into they alley that goes behind (north of) the gas station and the other buildings. He says that he watched the man until he turned, for the purpose of making sure he (KB) was safe and that it was only then, because of the turn and disappearance of the man, that he felt safe enough to look back to the victim.

Baker was also clear on tape (as at trial) that AFTER he turned back to the victim, a number of things happened BEFORE the police arrived. He asked a person driving into the station to call the police; he made Lopez sit down (she kept trying to get up); she asked him to help her and he comforted her; he went inside to get paper towels to staunch the bleeding, he pulled up her sweater to find the wound; it was only then, about 30 seconds AFTER he started looking at the wound, that the police arrived. This is very important because Arsuaga is very clear that when he turned into the Phase III parking lot to the east, he ALREADY had seen the police cars, sirens blaring, lights flashing, pulling into the gas station, and that it was only AFTER he saw those cars going into the station, that he saw a man running slowly ("like jogging") east towards him; he first saw the man when he was in front of the second storefront to the east of the gas station. Because both witnesses clearly peg everything to the time the police arrived, they suggest that the man Baker saw (going at a "sprint" or "fast run") had turned north and gone "out of sight" north or behind the station, at least a half a minute and probably a few minutes, BEFORE the police arrived and before Arsuaga saw a man (evidently a different man) slowly running or jogging towards him from the direction of, and close to, the gas station.

Baker doesn't remember clothing at this point or facial characteristics but does remember a "moustache".

Baker remembers the man as late 20s or even early 30s [CH was 28; CDL was 20].

[Need to add ex-officer Fowler statement to Bruce re: his partner chasing the fleeing assailant; does it establish that the assailant fled north?]

As police units began arriving, John Arsuaga and his wife pulled into the parking lot of Phase III, also in the 2600 block of SPID. They both observed a Hispanic male running across the vacant lot adjacent to Phase III. Arsuaga went to the station and told police about the man and the direction he was running. Arsuaga gave a description of the man. [Not included in statement.] While giving his statement to Sgt. Escobeda at the station, Arsuaga identified DeLuna from a photographic lineup as the man he had seen running from the area. (*Arsuaga's statement, related in Escobeda's 02/05/1983 report; Bates 16.*) John and Julie Arsuaga drove into the parking lot of Phase III, which is two buildings to the east of the gas station. They both observed a Hispanic male subject running away from the area, and, by his actions, realized something was wrong. They saw police arriving at the station, and John Arsuaga went and reported to the police that they had seen a man fleeing the area. (*Escobedo's summary of the crime; Bates 37.*) Arsuaga was driving west on SPID access from Kostoryz toward Sigmor [gas station]. Going west, Sigmor is next to Ziebart, then Brownes Harley Davidson, Phase III, then Lebowitz Furniture. There is an empty lot between Phase III and Lebowitz. As he pulled into Phase III, Arsuaga saw 2 patrol cars pull into the gas station and saw a man running eastbound away from the station. He was running slowly, like a jog. He came within 10 feet of Arsuaga's truck, and ran in front of it while the lights were on. Arsuaga had him in view for about 16 seconds. Arsuaga turned his bright lights on and the man stumbled, hesitated and then turned and looked directly at the witness. He had uniform-type slacks and a light-colored, long-sleeved shirt. He ran at 45 degrees through the empty lot, toward the back of Lebowitz. Arsuaga drove directly through the parking lot to the gas station and told the officer what he had seen. Arsuaga's police statement says: Hispanic male, 5'8", 170, wavy medium length hair, light shirt, dark slacks. Running across field beside Phase III. Witness saw man as he was pulling into the parking lot. [We don't have this statement.] Arsuaga says he has recalled a lot since giving the statement. (*John Arsuaga's trial testimony; Template, pp. 21-22.*) On the way to Phase III, John pointed out a man running to Julie. She first saw him just as he was entering the empty lot/field. He was wearing either black or dark blue pants, a white shirt with the sleeves rolled up, untucked. She only saw his face from the side. He looked straight at Julie, quickly, just for a second. He was running back toward the building. John Arsuaga then drove toward the police pulling into the Sigmor station. She is prescribed glasses, a small correction, but rarely wears them. When Julie saw DeLuna turn in profile in the courtroom to speak to someone next to him, she recognized his eyes and the shape of his face from the side. (*Julie Arsuaga's trial testimony; Template, pp. 25-26.*)

Between 2010 and 2015: LEOs arrived. First Sgt. Fowler (CCPD 149), then Officer Mejia (CCPD 681), then Officer McCoy (CCPD 940), then AID Ambulance. Fowler was the first to arrive, followed shortly by Mejia. Fowler attempted to stop Victim's bleeding. Mejia "secured" the witnesses, took their statements, and placed the BOLO ("Be on the lookout...") for the suspect. Officer McCoy arrived next and secured the front of the store. The AID Ambulance arrived next.

Fowler and Mejia then searched the back of the store and found two beer cans mentioned by the witnesses. ID Officer Infante photographed the beer cans, the scene and took prints from the door and inside of the store. (*Fowler's 02/04/1983 Report; Bates 02-03.*) The area was well lit. Nobody went into the store. [Was Baker back outside?] Escobedo and the CID officer [Infante] were the first in the store. (*Fowler's trial testimony; Template, p. 15.*) Infante processed the inside of the store with black powder. He dusted the inside area of the door, top of counter, telephone behind counter, pack of cigarettes, and the beer and found outside. Could not lift any prints from the phone. Could not lift prints from the formica counter. Dusted pack of cigarettes on counter. Aluminum bar handle on door gave no prints. Did retrieve prints from the glass of the door. Print cards were turned over to fingerprint examiner Sgt. Wilson. Could not lift prints from the knife at the scene. Infante remembers the blade was covered with blood; could not get prints from the rest of the knife. (*Infante's trial testimony; Template, p. 19.*)

The BOLO was: Hispanic male, 5'10", wearing black pants, weren't sure between white shirt and grayish pullover, black hair, running to rear of store. (*Jesus Escochea's trial testimony; Template, p. 15.*)

Four witnesses came forward at the scene; others left. The witnesses provided several descriptions of the suspect's shirt: gray type shirt, possibly sweatshirt (possibly from Aguirre or police officer??); flannel type shirt, light colored (from Baker); white long-sleeved shirt, untucked (Arsuagas). One of the four witnesses described the suspect as clean-shaven; the others did not mention facial hair. Mejia looked for evidence and, based on Mr. Aguirre's statement, found 2 beer cans on the east side of the store, near the rear of the store, with condensation on them. (*Mejia's trial testimony; Template, p. 16.*) Officer Mejia first spoke with Kevan Baker. Officer Mejia next spoke with George Aguirre, who told him the facts related at 2000 hours, above. (*Mejia's 02/04/1983 Report; Bates 04-05.*) [I assume Mejia spoke with the Arsuagas next, but his report is cut off.]

2015: Pete Gonzalez, manager of the gas station, was called by the answering service for Diamond Shamrock Corp. because the alarm had been triggered by the push button by the cash box. Gonzalez arrived after police. The discrepancy in the cash accounting that night was \$166.86. (*Gonzalez's trial testimony; Template, p. 18.*)

2010-2035: Ruben Rivera (Constable 114) went to assist other law enforcement officers with the armed robbery. He went directly into the neighborhood area (north of) behind the gas station, via 358 and Kostoryz (highway exit) because the suspect had reportedly fled to that area. Another broadcast of the police monitor indicated a subject had been seen running east along the 2900 block of Nemec and Rivera immediately parked his vehicle and began a foot search in the area of Franklin and Nemec streets. (*Rivera's 02/08/1983 report; Bates 42.*) Rivera drove down Dodd from the access road into the neighborhood. Went up McArdle

and circled around, 10-15 minutes. Calls were coming in from the neighborhood about seeing the suspect running (2-3 calls at most). Report that suspect had been seen in nursing home area (Retama Nursing Home) next to ballpark way up toward Kostoryz – about 8 [more than 8!] blocks from gas station. A call came in that suspect was under a truck at Franklin and Nemeac. (*Rivera's trial testimony; Template, pp. 16-17.*)

2015: Sgt. Escobedo (CCPD 388) and Lt. McConley (CCPD 262), then ID Officer Infante (CCPD 239) arrive at scene. Escobedo and McConley arrived shortly after the ambulance. Escobedo searched the inside of the store and evidence was turned over to her, including the knife (weapon). (*Fowler's 02/04/1983 Report; Bates 02-03.*) Escobedo (CCPD 388) describes scene consistent with bleeding Victim falling against the store glass and sliding to the ground, and with people attempting to render aid and tracking blood around the immediate area of Victim. Sgt. Infante (CCPD 239) processed the scene for fingerprints after Victim had been removed and took photos of the scene, from the outside, before Infante and Escobedo entered. Escobedo observed a trail of blood, with footprints in it, leading from behind the counter, heading toward the door. She says the victim was barefooted when she arrived at the scene. Victim's "slaps" [shoes] were found behind the counter, one with a bloodied sole. Also found behind the counter were bloodied paper towels, a calendar with blood on the upper left-hand corner, a cigarette butt, a plastic bag with blood on it, several [soft] drinks, a maroon button on the red floor mat, an empty penny wrapper and a penny on the floor under the cash register tray and a stainless steel lock blade knife. On top of the counter were a writing pen, a penny, a calculator, and a package of Winston cigarettes. The cigarettes and knife were processed for prints by Sgt. Infante. A 5-dollar bill, found under the cash register tray and with blood on it was checked into evidence. Also, the telephone behind the counter was properly hung up. [Victim had been on the phone with police when attacked. Phone must've been hung up before Escobedo and others arrived (probably by Baker).] The keys were still in the safe and Victim's purse was still underneath the counter. (*Escobedo's 02/05/1983 Report; Bates 09-11.*)

Sita adds: Bates No. 000013 - A "maroon colored button – possibly a men's button – found on the red floor mat behind the counter." [NOTE: The struggle depicted in the photos supports the notion that Wanda pulled at her assailant's shirt. Maroon button might go with flannel shirt].

“Shortly after the robbery and aggravated assault numerous patrol units were in the area searching the area for the suspect. The dispatcher's office kept receiving different reports of different locations were (sic – where) the suspect, DeLuna was observed.” (*Escobedo's summary of the crime; Bates 38.*)

Around 2030-2040: Escochea (CCPD ___) testified at trial that he listened to a call from a private citizen to another dispatcher. The call came from Franklin Street 15-20 minutes after the initial dispatch. Led to the apprehension of DeLuna.

Police had 15-20 units searching the area at the time. (*Jesus Escochea's trial testimony; Template, p. 15.*)

Around 2030: Teresa Barrera (4949 Easter), saw a police cars going up and down her street, without their lights on, as she walked down Easter, toward McArdle, to her father's house. She stayed there about 10 minutes, then walked back down Easter (toward Nemece) to her house. She told her husband, inside the house, about the police cars. She came back outside of her house and saw a man, 5'4"-5'6" wearing light-colored pants, and white tennis shoes lying underneath her truck parked on the street. She was not certain of the pants color and thought he was wearing a white t-shirt. She yelled to her husband that there was a man under her truck, but by the time her husband came outside, he was gone. The truck was parked near the corner of Easter and Nemece. Armando Garcia's house was across the street from where her truck was parked. [East or west from truck? Franklin is east of Easter.] (*Teresa Barrera's trial testimony; Template, p. 32.*)

[My suspicions about Mylett's reports, which contradict Schauer's and Rivera's reports and testimony, are noted in the summary. Note that he does not testify to any of this at trial.] Officer Mylett (CCPD 649) arrived at the scene and immediately began searching the area north of the Shamrock station. After 20 minutes of searching, all units converged on Nemece and Franklin, because it was broadcast that the suspect was hiding under a truck on Easter near Nemece [Barrera's truck] and was last seen running east on Nemece toward Franklin. After 5 minutes in the area, Mylett heard someone shouting "He's here!" Mylett and Officer Schauer (CCPD 684) triangulated the area. The suspect (DeLuna) was lying on his stomach in muddy water [on Franklin]. Suspect began reaching in his waistband, tugging at something. Mylett told the suspect to freeze. Mylett laid prone in the street and began crawling under the truck at the rear, weapon drawn. Disregarding Mylett's orders to freeze, suspect drew something from his pants and tossed it into the water. Mylett advised suspect not to move, that he was under arrest for aggravated robbery and aggravated assault. Mylett told suspect to roll out toward Officer Schauer, and suspect complied. After suspect was taken into custody by officer Schauer, Mylett and Officer V. Tovar (CCPD 165) searched all areas where the suspect was reported to have been. No evidence of any type was found. [No mention of DeLuna being without shirt or shoes.] (*Mylett's undated report; Bates 17-18.*) At the request of Sgt. Escobedo (CCPD 388), Mylett wrote a second report dealing specifically with DeLuna's conduct at the time of arrest. Mylett told DeLuna to freeze twice. The first time, DeLuna turned and looked at Mylett. Mylett believes he saw that Mylett had drawn his gun. DeLuna then moved his right hand to the front of his waistband. The second time, DeLuna continued to move his right hand, and threw his wallet into the water. [Wallet was found in CDL's back pocket by Schauer and Rivera.] Mylett took hold of DeLuna's right foot and told him to roll out from under the truck. After a brief hesitation, DeLuna complied. DeLuna was wearing only white socks on his feet and no shirt. After they were in the yard, Mylett recognized DeLuna from Club Casino a few weeks prior. DeLuna showed no

evidence of intoxication. (*Mylett's 02/08/1983 Report; Bates 20-22.*)

2040: Officer Schauer (CCPD 684) received the BOLO while on patrol in his car – an armed robbery and shooting occurred, suspect was a Hispanic male, mid- or early-20s, around 5'9" with dark pants and a flannel shirt, dark wavy ear-length hair. Schauer parked his car on the 2900 block of Nemec and began walking north on Franklin. He saw 2 constable deputies (from Johnnie Alaniz's office) kneeling beside an old pickup parked on the west side of Franklin about 40 feet north of Nemec. The constable [Rivera] and Schauer pulled DeLuna from underneath the truck and handcuffed him. Schauer described DeLuna as 5'9" with wavy hair, no shirt, black pants. Schauer found no weapon, but a wad of paper money in his right, front pocket and a wallet. (*Schauer's undated report; Bates 06-08.*) At trial, DeLuna testified that he always kept his money in his front pocket. (*Carlos DeLuna's trial testimony; Template, p. 31.*) At the request of Sgt. Escobedo (CCPD 388), Schauer wrote a second report dealing specifically with DeLuna's conduct at the time of arrest. Deputy Constable C. Vargas was kneeling on the pavement on the pickup's west side, ordering the suspect from under the truck. Deputy Constable Rivera was on the east side doing the same. Schauer knelt next to Rivera and they both pulled DeLuna out from under the truck onto the grassy area immediately adjacent to the truck. [This means the truck was parked on the west side of the street.] DeLuna was wearing only black, loose fitting pants, no short (sic - shirt), no shoes. His face and chest were dirty. He had superficial scratches on his chest and right arm. Schauer found the paper money in DeLuna's right pants pocket, the wallet in his right back pocket. Schauer set the wallet on the ground and later tagged it as evidence. DeLuna was breathing hard and staring. Officer Mylett walked up and recognized DeLuna by name. [No mention of Mylett under the truck or pulling his gun.] Officer Schauer and Deputy Constable Rivera walked DeLuna several blocks to Schauer's car. DeLuna interrupted Schauer several times while receiving his Miranda warning. He repeatedly asked the same questions, event after receiving an answer from Schauer. DeLuna told Schauer "I didn't do it, but I know who did it," and "I'll help you if you help me." (*Schauer's 02/08/1983 Report; Bates 23-25.*) Upon arrival, sent to rear of store by McConley and Glorfield to look for suspect. Went north on Dodd from the station. One officer had called out that he had seen something all the way over on McArdle and Kostoryz. Schauer had been patrolling for about 20 minutes before coming across Rivera. Dispatch reported suspect running from west of Franklin toward Franklin; people were calling out he was lying under trucks. Suspect was lying under the truck, head toward McArdle, feet toward Nemec. Rivera and Schauer pulled him out under the arms. He was wearing no shirt, black colored pants and no shoes. [On cross, Schauer says DeLuna wasn't wearing socks.] Later that evening, Schauer noticed the suspect had scratches on his right side. [DPS lab report says that swabs of DeLuna were negative for blood.] Another officer at the scene [Mylett] knew the DeLuna immediately. Describes money found in the right front pocket. Retrieved wallet out of back pocket. No ID. [DeLuna's driver's license is in the wallet at trial.] Schauer did not smell alcohol on DeLuna's breath. (*Schauer's*

trial testimony; Template, p. 17.) On the way back to the gas station, DeLuna told Schauer that he knew who did it. *(DeLuna's trial testimony; Template, p. 30.)*

Sita adds: Bates No. 000007 - Schauer states that when he searched DeLuna he found, "a wad of paper currency **rolled up** in his right hand pants pocket." [NOTE: "Rolled up" suggests that it was not just shoved which is more likely to be the case if he just got it from the cash drawer. Also, there were bills left behind at the scene, indicating that the money was not taken neatly from the drawer.]

2040-2050: (Constable Rivera 1114) yelled at DeLuna to come out from underneath a parked pickup truck from 20 feet away. DeLuna yelled, "Don't shoot me, I give up." Rivera approached the truck from the curb side and, with the assistance of Officer Schauer (CCPD 684), pulled DeLuna from underneath the truck. Once handcuffed, Schauer and Rivera stood DeLuna up and walked him to a city patrol unit. DeLuna smelled strongly of some type of alcoholic beverage and seemed unsteady while walking. DeLuna had no shirt, was wet and seemed exhausted and nervous. [No mention of cuts.] *(Rivera's 02/04/1983 report; Bates 41.)* Rivera and Carolyn Vargas (Constable ___) approached a pickup on Franklin street, 40-50 feet north of Nemecc. They saw movement under the truck. Rivera shined his flashlight and saw DeLuna lying under the truck, shirtless, in a pool of water. Rivera asked Vargas to call for additional help. Rivera and Schauer pulled DeLuna from underneath the truck and handcuffed him. Wet paper currency and a wallet were found in his possession. [This is second report demanded by Escobedo. It omits the alcohol and unsteadiness.] *(Rivera's 02/08/1983 report; Bates 43.)* There were 10-12 police units in the area; Rivera saw 6-8 units. Rivera made the arrest on Franklin Street. Suspect was hiding under a pickup in front of the 2d or 3d residence on Franklin. No shirt, soaking wet with socks; smelled of alcohol. Rivera headed to Franklin/Nemecc from the Retama nursing home (Kostoryz). There was a group of 5-6 Hispanic men at the truck, pointing that the suspect was under the truck. Rivera and another officer pulled him from under the truck. He had scratch marks on his shoulder. 15-20 minutes elapsed between the [initial] call and taking DeLuna into custody. *(Rivera's trial testimony; Template, pp. 16-17.)*

after 2049: Officer Schauer arrived with DeLuna, who was positively identified and then transported to the City Jail. *(Fowler's 02/04/1983 Report; Bates 02-03.)* Schauer transported DeLuna back to the scene, where Capt. Glorfield and Lt. McConley escorted 2 witnesses, separately, to the car to ID DeLuna. Lt. McConley then told Schauer to book DeLuna at the City Jail. *(Schauer's undated report; Bates 07.)* Kevin Baker identified DeLuna 20 or 30 minutes after he gave his description at the scene. DeLuna had scratches on his face and no shirt, but was the man from the store. Baker ID'd DeLuna in the courtroom saying he was clean shaven [implied, he was not clean shaven on 02/04/1983]. Baker gave a statement at the police station that night. In the statement, Baker said the man ran behind the store. *(Kevin Baker's trial testimony; Template, pp. 22-23.)* When

asked to view the suspect in the patrol unit, Baker said it was the same man he had seen struggling with Victim and had confronted him leaving the store. (*Baker's statement, related in Escobedo's 02/05/1983 report; Bates 15.*) Aguirre waited at the gas station 30 to 40 minutes before DeLuna was brought to the station. Police asked DeLuna to stand up while they shined flashlights on him. Aguirre identified him as the man he had seen entering the store earlier. Aguirre noticed DeLuna did not have his shirt on. Aguirre was positive it was the same man. (*Aguirre's trial testimony; Template, p. 20.*)

2105: DeLuna was booked at the City Jail on arrest # C81177 by Officer Schauer (CCPD 684). Originally charged with aggravated robbery, later changed to capital murder upon Victim's death. Marcia Parker (CCPD 656) processed the suspect's upper body for blood stains and photographed him at the booking desk. DeLuna was nervous and kept asking "did she die?" Schauer says he did not tell DeLuna the victim was female. (*Schauer's undated report; Bates 08.*) [That DeLuna knew the victim was female is unremarkable, given his claim to have seen Hernandez attacking her through the store window.] The witnesses were transported to the station and statements were taken from them. (*Escobedo's 02/05/1983 Report; Bates 11.*) Mylett next encountered DeLuna at the booking desk. DeLuna did not seem upset and asked if, when he got out of jail that night, he would be allowed back at Casino Bar. [This portion of Mylett's report, like others, doesn't jibe with other reports.] DeLuna seemed more intent on revenge for his capture than for any charges he faced. (*Mylett's 02/08/1983 Report; Bates 21.*) At booking, Schauer asked DeLuna how much money was in the wad of paper currency from his pocket. DeLuna said "about 110, 115." The money from the pocket was wet, the wallet dry. DeLuna told Schauer that he was buying beer from the Kmart on Ayers and police chased him for no reason. During transport, DeLuna told Schauer he had two beers. Schauer did not smell alcohol on his breath. (*Schauer's 02/08/1983 report; Bates 25.*) Schauer tried to smell DeLuna's breath at booking, but did not smell anything [alcoholic]. An ID officer [Marcia Parker (CCPD 656)] scraped some samples off DeLuna's body – stains of some sort, maybe dirt [tested negative for blood]: DeLuna had a few days growth and a light moustache. (*Schauer's trial testimony; Template, pp. 17-18.*)

Sita adds: **Bates No. 000026** - Schauer reports on his questioning of DeLuna: "I had the wad of bills **rolled up** and lying on the table where the suspect could see them. I pointed to them and asked, 'how much money did you have there?' He looked hard at the wad and I observed that he appeared to be counting them to himself (the twenties were observable at the bottom of the roll). He then replied 'About 110, 115.' I later counted the money and determined there was \$149." This supports the fact that the money was rolled in DeLuna's pocket, with at least the twenties organized together --- possibly organized from highest to lowest amount.]

Escobedo knew the physical characteristics of the suspect when she showed the

photo lineup to Arsuaga at the police station. Hispanic male, 5'8" – 5'9", black hair. Escobedo went to the booking desk and took a photo of the defendant. She then located pictures similar in facial characteristics. There is a height chart in the background of each photo. Heights were: 6'4", 6'1", 5'3", 5'6", 5'10" (DeLuna), 5'10". Escobedo believes witnesses go mostly by the face when choosing from a photo lineup. DeLuna was wearing a blue shirt issued by CCPD in the photo. (*Olivia Escobedo's trial testimony; Template, p. 24.*) John Arsuaga did not ID DeLuna at the gas station because he was scared. He stayed at the gas station for 3-3.5 hours and then went to the police station. Escobedo showed him photographs, 2 across and 3 down, of male Hispanics with facial hair. Arsuaga picked DeLuna's photo. He said DeLuna looked different in the photo than he did that night – shorter hair, no facial hair. It was not the first time Arsuaga had seen defendant. [I'm unsure whether this refers to seeing him in the parking lot was not the first time, or seeing him at trial was not the first time.] (*John Arsuaga's trial testimony; Template, pp. 21-22.*) Julie Arsuaga did not view DeLuna at the scene because her husband told her it might be dangerous. She did not identify DeLuna in the photo lineup because she was not completely certain; she had only seen him in profile. The evening of the photo lineup, she thought she knew which one was the suspect, and later asked if that was "the right one." She was told it was. (*Julie Arsuaga's trial testimony; Template, p. 26.*)

Officer Garrett (CCPD 063) took detailed statements from witnesses Kevan Baker and George Aguirre at the police station. (*Garrett's 03/08/1983 report; Bates 44.*) [Why is the date of the report a month later?]

2152: Victim pronounced dead by Dr. Arringdale at Memorial Medical Center. (*Fowler's 02/04/1983 Report; Bates 03.*)

Janie Adrian told SS that CH came by her house that night, looking for Margie. He was in jeans and a clean t-shirt. He looked nervous. (*Interview of Janie Adrian by SS, 11/2004.*)

02/04/1983: Murder of Wanda Lopez [Carlos DeLuna convicted, executed]

Shortly after Wanda's death, in the afternoon, Beatriz and Pricilla, and Beatriz's younger sister Cindy were sitting on the front porch steps of the Hernandez residence. The girls were sitting 2-3 steps from the top of the porch. Carlos Hernandez and his brother Javier were on the porch talking just above the girls. Beatriz overheard Carlos Hernandez tell Javier he, "hurt someone". Javier asked Carlos who? Carlos said "Wanda". (*Interview of Beatriz Tapia by BW, 09/2004.*)

Sunday, 02/06/1983:

1100: Armardo Garcia found a white shirt and track shoes in his yard while cleaning the yard. The shirt was near his back fence, the shoes between his residence and 4950 Easter. Sgt. Shedd (CCPD 468) tagged them into evidence. Mr. Garcia had

been told by officers searching the area on 02/04/1983 that he should call the police if he found a shirt or knife. (*Shedd's 02/06/1983 report; Bates 19.*) Garcia's house is the second house from the corner of Nemece. He spoke with police on Sunday after he found shoes in the corner of his yard and a shirt in the rear, spread out near a fence. (*Garcia's trial testimony; Template, p. 18.*)

Monday, 02/07/1983:

Jack Hunter (Assistant District Attorney) advised Escobedo (CCPD 388) that a complaint of murder would be filed against DeLuna. Hunter would seek an indictment against DeLuna at the 02/16/1983 convening of the Grand Jury. (*Bates 39*)

Hector DePena appointed to represent CDL (*pretrial hrg trans 14*) He visits with CDL twice "during the initial period of my appointment" "right after you were appointed" but not at all between 3/1/83 and 6/10/83 (*pretrial hrg trans 15*). At this time and for some time afterward **Jack Hunter** was the DA assigned to the case. [Later Steven Schiwetz and Ken Botary took part and Hunter dropped out.]

Tuesday, 02/08/1983:

Gilbert Garcia, DeLuna's parole officer, interviewed DeLuna at the jail. (*Bates 33*)

Nueces County Sheriffs Dept Bur. Of I.D. form filled out on CDL (Wm. Belford 2/25/05 batch), showing his "Common Law" wife as Irma Garza of 2837 Niagara St., and mentioning mother Maria Margarita Avalos, Blas Avalos and Sister Maria Arredando and brother Danny Conejo, latter in Garland Texas; Tattoos of Peacock on right forearm and "Carlos" on right shoulder, 5'8", 150 lbs

Nueces County Sheriff's Dept jail card, shows CDL was brought to county jail at 11:30 a.m.; shows he has asthma and "allergic penc"; shows that by this point he'd been appointed lawyer, Hector DePena; originally bond was set at \$150,000, then "no bond - Hold for TDC"; also shows 7-21-83 sentence of "sentence to DEATH by Lethal Injection". Offense is "MURDER" and "PAROLE VIOLATOR". Arresting officers are Schauer and Mylett; transporting officer Rivera (#86) and Murca (257). (NCSO records, William's 2/25/05 batch). Second page shows that his only possession was a "metal crucifix"; "no money". 3rd page is fingerprints; says "tattoos/rgt shldr: 'Carlos', RGT FREARM: PEACOCK

Wednesday, 02/09/1983:

1030: Sgt. Escabedo (CCPD 388) removed several items of evidence from the property room for examination by Don Thain (DPS Lab) and Dr. Rupp. Escabedo also

went to Victim's family and obtained the clothing that had been turned over to them at the hospital. (*Bates 31, 32*)

Unknown: Police submit the following items to Department of Public Safety to be tested: \$5 bill [from gas station], pair of men's black pants [probably from CDL], one pair of white tennis shoes [probably shoes found in yard near arrest], and one long sleeve men's shirt [probably shoes found elsewhere in yard]. Samples of the V's blood are also submitted. (See letters from Tx Dept of Safety to Corpus Christi Police.)

TRIAL: *Texas v. DeLuna*, 28th Judicial District Court, Nueces Co., TX, Cause No. 83-CR-194-A, Judge Walter Dunham, Judge Wallace C. Moore (Retired, Houston).

02/16/83: **Letter from Texas Department of Public Safety to Corpus Christi.** Swabs taken from D are tested and the same day, the Dept of Public Safety determines that the swabs do not contain blood on them.

02/17/1983: **Grand Jury Indictment.** Bond set at \$150K. 3 counts. Served on CDL on 02/22/1983. (*JL has copy of this*) **Pauper's Affidavit** by CDL, appointing Hector De Pena Jr. **Letters from Texas Dept. of Public Safety to Corpus Christi Police.** Letters are attached to lab reports that depict the testing of the forensic evidence. Lab results revealed that the victim had type O blood; unidentifiable blood was found on \$5 bill; and swab samples taken from D, but substance was not blood.

02/23/1983: **Announcement** – State of Texas ready for trial.

2/23/83: Board of Pardon and Paroles Minutes say "Issue a letter of reprimand from executive director for violation of rules 1C (lying to parole officer), 2B (failure to get permission before changing residence or job)".

02/25/1983: Δ's **Motion for Discovery and Inspection of Evidence, signed by CDL.** Hand-written notation at the bottom: "Defense states they are satisfied on this motion. Defendant in person so stated." Two sets of requests filed on the same date for material in the exclusive control of the State. Δ's **Motion to Produce Exculpatory and Mitigating Evidence, signed by CDL.** [Does CDL not know his atty is working on his behalf?]

2/28/83: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was "Currently a Parolee" and had a "Parole Review" this date.

02/28/1983: **Letter** from Jack Hunter to Hector De Pena Jr. Confirms in-person discussion of CDL's case and conveys indictment and autopsy report. Will compile and forward a witness list. **Letter** from Walter Dunham, Jr. (Judge) to Hector De Pena Jr. Setting the following: Arraignment 03/18/1983; Pretrial 03/18/1983; Trial 03/28/1983.

03/04/1983: **Letter** from Jack Hunter to Hector De Pena Jr. Conveys medical records,

evidence from scene, fingerprints, arrest sheet, rap sheet, photo lineup. Pen packets are ordered. Acknowledges receipt of CDL's Motion for Discovery, etc. Requests to discuss these motions w/ De Pena. Will provide tape recording for in-person inspection.

03/08/1983: Application for Subpoena by State: *LEOs* Fowler, McCoy, Mejia, Schauer, Mylett, Shedd, Escobedo. Application for Subpoena by State: *LEOs* Garrett, Infante, Wilson, Rivera, Vargas, Dr. Rupp, Jesus Escochea. Application for Subpoena by State: *Witnesses* Aguirre, Baker, Garcia, Barrera.

03/09/1983: Application for Subpoena by State: *LEOs* Knox, Glorfield, *EMTs* Wagner, Magro, Vanecok, *Witnesses* John and Julie Arsuaga.

03/10/1983: Application for Subpoena by State: *LEOs* Alvarado, Torres. Application for Subpoena by State: *Witnesses* Pete Gonzalez. Subpoena Ducas Tecum by State for Dr. Aringdale and his records re Wanda Lopez's treatment on 02/04/1983.

03/16/1983: Letter from Jack Hunter to Hector De Pena Jr. Confirms in-person inspection of files on: George Aguirre, Jesus Escochea, John Arsuaga, Kevan Baker, Teresa Barrera, offense reports, sketch of gas station. Provided copies of CDL statements, evidence submitted to DPS lab. Will provide copies of files. Conveying copy of Barrera's statement, pen packet to be used at punishment stage. Will provide evidence in evidence vault for in-person inspection.

03/28/1983: Letter from CDL to Oscar Soliz. Requests copy of case.

4/??/83: At some point in April, James Lawrence is appointed as co-counsel the case. **Check 6/10/83 pleading, described below, to see if it gives an exact date.** [Info added 10/04, LN.]

4/4/83: Marsha in ID and Kathy Lancaster in records at CCPD have informed William Belford orally that on 10/26/81 Carlos Hernandez's major case prints were taken after he was picked up for making threats and resisting arrest. There is no information on who the complainant was, as the offense reports have been destroyed. There was also a second date of 04/04/83 written on this print card showing that "Inf" inspected the prints on that date. The 04/04/83 booking date relates to an outstanding warrant from municipal court Kathy Lancaster thought.

From 7/17/04 email from William Belford: "Regarding officers involved in handling Carlos Hernandez around 10/26/81 and 04/04/83 I was told the following by Marsha in CCPD ID section: **10/26/81** Hernandez had his prints taken by Officer Hoffer from the ID section (Marsha believed he was a sergeant and now deceased). **04/04/83** - the ID officer who just the date on the print card, was Officer Infante. [Officer J. Infante #239 from ID was the person who processed the De Luna capital murder scene.] [Info added 10/04, LN.]

Police report rec'd 7/05 after 3rd PRA request shows arrest this date by Officer Serna at 11:50 p.m. 4/2/83

04/06/1983: Δ's Motion for Court Appointed Co-Counsel. Needs help in proper defense due to seriousness and complexity of case in addition to the need *for full and proper investigation*. Granted 04/15/1983.

Δ's Motion for Court Appointed Psychiatrist:

- Indigent
- Atty believes Δ is afflicted w/ mental disorder
 - destroyed ability to perceive the wrongfulness of his conduct or his capacity to conform his conduct to the requirements of the law
 - unable to adequately assist his counsel in preparation of effective defense.
- Atty not qualified to estimate the extent of the mental disorder and requires the specialized assistance of a psychiatrist.
- Atty has been advised by Δ's friends that he has had symptoms of severe disorder or mental defect for many years.

4/14/83: Nueces County Sheriff's Dept jail card (dated 2/8/83 when first filled out) says on this day "Do not mix with Inmate Marcos Garcia for any Reason" (NCSO records, William's 2/25/05 batch)

04/15/1983: Order for Continuance [*Don't have document*]

Jim Lawrence is appointed to represent CDL (*pretrial hearing trans 4*) but did nothing on case until "the middle of May" after another trial finished. At that point he filed motions, and obtained discovery before going to talk to CDL for first time. (*pretrial hearing trans 4-10*)

05/16/1983: Order for (Psychiatric) Examination granting Δ's motion and ordering psychiatric exam by Joel Kutnick, MD, 3030 So. Alameda, Ste 1, CC, TX for 05/19/1983 at 2:00 p.m. Orders that Kutnick familiarize himself with the meaning of incompetency to stand trial and elements of the defense of insanity and sets them out. Report to be filed w/in 30 days to include likelihood of: mental illness, mental retardation requiring commitment, insanity. A separate report including findings on whether he is presently mentally ill or is mentally retarded. (*JL has copy of the Docket sheet for the case and this order is listed on that sheet.*)

05/26/1983: Subpoena Duces Tecum by the State for TDC records re CDL's behavior and conduct. Order of Assignment assigning case to Wallace C. Moore, **retired** judge of the 184th Dist Ct for two weeks beginning 06/19/1983. Letter from Walter Dunham Jr. (by Ct Coordinator Gwen Jones) setting Pretrial Conference for 06/10/1983.

06/01/1983: Application for Subpoena by the State for witness Juanita Garcia, 3630 Fairchild, CC, TX. Δ's Motion for Hearing on Voluntariness of any Admission or Confession Whether Written or Oral requesting that the Court rule on all confessions or admissions before presented to the jury.

Defendant's Motion to Quash Indictment or alternatively to exclude the punishment of death as a possible sentence. (**Denied.**)

- Fatally defective – fails to allege the death penalty provisions of capital murder (Art. 37.071(b)(1)(2)(3) V.A.C.C.P.):
 - Failed to appraise Δ it would present evidence re:
 - Conduct of Δ causing death of victim was committed deliberately and with the reasonable expectation that death would result.
 - There is a probability that Δ would commit future acts of violence, constitute a continuing threat to society.
 - Δ's conduct was unreasonable in response to any provocation from the victim.
 - The omission expressly violates Art. 21.03 V.A.C.C.P. – “Everything should be stated in an indictment which is necessary to be proved.”
- In the alternative, because the death penalty cannot be imposed absent the above-stated issues, the only possible punishment is life imprisonment. Mandatory punishment is arbitrary, capricious and eliminates individual consideration of sentences. Violates Art 1, Sec. 10 & 19 of TX Const. and 14th Amend to US Const.
- Failure of the indictment to plead the above-stated issues is a violation of TX and US Consts and Art. 1.05 V.A.C.C.P.

Defendant's Request that State Elect requesting the court order the state to elect and inform Δ of which charge in the indictment it intends to prosecute. (**Denied.**)

Δ's **Motion for Jury List** requesting a copy of perspective (sic.) jurors summoned at least 2 days prior to trial. (**Granted.**) (Return of service to CDL personally, in the courtroom, on 06/10/1983.)

Δ's **Demand for Individual Voir Dire**. (**Granted.**)

6/4/1983: “two or three days” earlier was first time when Jim Lawrence met with CDL; at that time he told CDL the state's case. He then came back on this day (a Saturday) and for the first time asked CDL for his “side of what happened” (*pretrial hearing trans 10*)

06/08/1983: Δ's **Motion to Suppress Identification** – Arsuaga's photo lineup ID. Procedure was impermissibly suggestive giving rise to a substantial likelihood of misidentification at trial. (**Denied 6/20.**) Δ's **Motion for Identification Hearing**, anticipating that Aguirre and Baker will be called to ID Δ at trial, and believing that the witnesses have ID'd Δ on a previous occasion, asserts the right to examine witnesses outside the presence of a jury. (**Granted 6/20.**) **Order of Assignment** assigning case to Wallace C. Moore, **retired** judge of the 184th Dist Ct for two weeks beginning 06/19/1983.

6/08/83: TDCJ “Transfer History Screen” dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Tomas Sanchez in Corpus Christi.

06/09/1983:

Application for Subpoena by the State for Lucinda Garcia, 3630 Fairchild, CC, TX, 88207318. **Affidavit on the Defendant's Comprehension of the English Language.**

Horacio Ortiz begins working for CDL on the case (*pretrial hearing trans 5*)

06/10/1983: Δ's **Motion for Discovery and Inspection of Evidence**, granted on the 10th with hand-written notations of which requests granted. Includes requests for medical and psychiatric reports submitted to any doctor, psychiatrist or psychologist at the request of the State examining Δ, and all evidence re incompetency of Δ - both granted. Δ's **Motion for Evidence Favorable to the Defendant**, granted on the 10th. Requesting exculpatory evidence and court review of file in camera for exculpatory evidence and that the non-exculpatory part of the file be sealed for possible review by the appellate court. Δ's **Motion for Investigative and Expert Assistance Fee in Indigent Case** (Undated) requesting \$500 fund for investigator – services are essential to the proper representation of Δ. **Defendant's First Motion for Continuance (Denied.)** Originally set for trial 06/20. Lawrence has had insufficient time to prepare: appointed in late April, co-counsel De Pena has been engaged in trial of Texas v. Robert DeLa Rosa, has not visited CDL since 03/01 and has not filed any motions on his behalf. (Struck out request to have another atty appointed.) Application for voir dire granted. Court overrules motion to quash indictment on count one. (*JL has copy of docket sheet that has handwritten notations of these motions.*)

We have pretrial hearing transcript of hearing held this day on motion for continuance. The Motion at first asked to dump Hector DePena claiming that he had not visited CDL since 3/1/83 and had not filed any motions on CDL's behalf. Lawrence and DePena for Defendant; Schiwetz, only, for state.

6/15/83 **Dr. James Plaisted conducts psychology evaluation of D & writes report. Main points from Dr. Plaisted:** (*JL has copy of this report.*)

- Plaisted performed seven tests on DeLuna: WAIS R; PPVT-R; DAP; Bender Visual Motor Gestaly Test; Rorschach Inkblot Technique; MMPI; WRAT.
- Plaisted also reviewed DeLuna's criminal case file.
- The evaluation took over three hours.
- Thinks DeLuna is faking memory loss. At the beginning of the interview, DeLuna could not remember events from childhood, or teenage years. Said he could not remember anything about the crime for which he had been accused. Then said, "I think I am accused of murder" Plaisted seemed to view this as "he was trying to claim total amnesia." Later in the interview, DeLuna told Plaisted that he did remember that he had gone to school, but had not finished. Also recalled seeing Dr. Kutnick. At the end of the interview, DeLuna asked to listen to the radio, told Plaisted the frequency of his favorite channel and then sang along to the song. Based on this, and other impressions from the interview, Plaisted concluded that "Mr. DeLuna was attempting to

deceive, and his memory laps was selective.”

- Results of tests:

WAIS-R Score: 72. Within borderline range and Plaisted thinks this was underestimating DeLuna’s abilities. There was considerable evidence of faking on the test. Because he suspected DeLuna was faking memory loss, Plaisted did the questions out of order, giving the harder questions first. DeLuna, thinking he was getting the easy questions first, answered them correctly. When DeLuna got to the questions that he thought were supposed to be the hard questions, but were in fact the simpler questions, DeLuna missed very easy questions. Based on this, Plaisted thought that DeLuna was “attempting to portray himself as functioning poorly cognitively.”

No other scores are provided, but Plaisted’s discussion of the other tests all emphasized that he thought DeLuna was not cooperating and was trying to ‘fake’ answers.

On the Rorschach Inkblot Technique, Plaisted found that although DeLuna “attempted a number of times to make his precepts appear to be “crazy sounding” (e.g., “a bug head, it’s scary, I don’t want to look at it.”), the actual precepts were almost all normal. “When scored against published norms tables, DeLuna’s responses were well within the normal range.”

- Conclusions of Evaluation:

Axis I: V65.20 Malingering. Borderline or higher intellectual functioning.

Axis II: V71.09 No Diagnosis.

Comments: Found that DeLuna “was making a major effort to deceive me into thinking that he was suffering from a psychiatric process. In fact, there is no evidence in the psychometric data to support that he is suffering from anything other than perhaps a personality disorder.” Plaisted concluded that DeLuna was fully competent to stand trial.

[JSL Note: Dr. Plaisted was charged in 1986, 1992, and 1995 of multiple counts of sexual assault of male and female child patients beginning in 1984 and continuing through 1993. He was acquitted of the 1986 charges and pled guilty on December 7, 1995 to the first count of each of 4 indictments for sexual assault of young girls; he also has a federal conviction for causing a girl to cross state lines for purposes of having sex with her. He is currently serving a 40-year sentence in the Beeville unit of the TDCJ. JSL has prepared a summary of these charges and convictions and has the court file in all of the state cases.]

06/16/1983: Application for Subpoena by the State for Dorothy Gomez, RN, Memorial Medical Center.

06/17/1983: Δ’s Motion for Continuance *signed by CDL*. Requested because Δ’s witness is now in the hospital and cannot appear at trial for defense. Does not name

witness. (**Denied**; case reset to 07/05 at request of defense.) [Must refer to CDL's mom, Margarite Avalos.] **Ineffective Counsel signed by CDL**. Cites conflict of interest and bad relationship between atty and CDL.

6/19/83: Dr. Kutnick examines D. Writes letter to judge. (JL has letter) Main points:

- Dr. read police reports and much of report is re-statement of the State's case.
 - Police reports indicate that D's breath smelled of alcohol.
 - One officer recognized D from previous incident at Casino Club.
- At examination with Dr., D stated he did not know his legal situation, doesn't know what Miranda rights are, did not know what he was charged with. Kutnick believes D is lying because in a prior conversation, D did know what he was charged with. D expresses that he has memory problems. Could not remember if he had ever been married, for example. He did not know who the judge was or what role the judge played in court.
- Kutnick spoke to D's probation officer, Gilbert Garcia, who stated that D came across as normal and did not have any memory problems and that D was not retarded.
- Kutnick's conclusions about D's Mental Status:
 - D was not cooperative, kept saying he could not remember. "It was obvious that he remembered more than he was willing to admit...He seemed to understand the questions when he chose to answer them." Seems oriented to place and time and did not seem to have hallucinations, delusions, etc. Thinks D can cooperate with lawyer and understand legal situation. Can hold rational conversation.
 - Impressions:
 - Axis I: Malingering
 - Axis II: No known Personality Disorder
 - Axis III: No known Physical Disorder.

06/20/1983: Δ's **Election for Punishment** electing to have jury assess punishment. **Subpoena Duces Tecum** of Chris Jones (Madison Co. Dist Ct Clerk) for records on cause # 7583 for Δs **Richard Castillo, Joe R. Dominquez, Rosendo Lopez, Leroy Ramos, Antonio Rios, Pedro Tijerina**. (Stand by.) Δ's **Request for Court to Consider Probated Sentence** – CDL not convicted of a felony in TX or any other state. Motion for continuance denies. **Court's Finding of Facts and Conclusions of Law of Defendant's Motion to Suppress**, from 06/20/1983 hearing. Found:

- George Aguirre's in-court ID of CDL was in no way a product of his observation of CDL at the scene after his arrest.
- Kevan Baker's in-court ID of CDL was in no way a product of his observation of CDL at the scene after his arrest.
- The photo ID spread consisted of "six photos of Latin American males; all were approximately the same age, size and weight of the defendant and with varying degrees of head and facial hair." [?!?] The display was conducted properly and was not suggestive.
- John Arsuaga's in court ID of CDL was in no way by observing the photographic display.

- Any objection to Julie Arsuaga's testimony would go to the weight being given it rather than its admissibility.

(JL has docket sheet that has handwritten notations of these motions.)

06/27/1983: Order of Assignment assigning case to Wallace C. Moore, **retired** judge of the 184th Dist Ct. Cover letter dated 06/27. Sent to: Hon. Wallace C. Moore, District Judge, **Retired**, 13114 Boheme, Houston, TX 77024.

6/28/83: **Certified copy of jury list served to D in jail.** *(JL has docket sheet that has handwritten notations of this.)*

7/5/83-7/13/83 **Voir Dire.** *(JL has docket sheet that has handwritten notations of these motions.)*

07/06/1983: Application for Subpoena by the State for **Carlos Hernandez**, 3025 David, CC, TX; signed by Schiwetz. Hernandez to appear in court at 9 a.m. on 7/11/83 [Info added 10, 11/ 04, LN.]

7/10 and 7/17 and 7/22/03: respectively, Mary Arredondo, Tony Pena and Mary Arredondo deposit \$20, \$15, and \$200 to account for use by CDL (Vicky Gutierrez records).

07/12/1983: Summons for Wayne Waychoff, to bring CDL's work records and cancelled payroll checks. Summons, as a witness for Δ, for Capt. Jones, CCPD, to bring "transcripts of all incoming calls and outgoing broadcasts made concerning the reports and whereabouts of any suspect or suspicious persons reported via the [CCPD] arising out of the robbery...on 02/04/1983." Summons for Citizen's State Bank, 2402 Leopard, CC for all records pertaining to CDL's checking and savings accounts.

Application for Subpoena by Δ for: Mr. Blas Avalos, Mrs. Blas Avalos, Edward and Janie Moreno [*siblings – return of service for both says "left with mother"*], 2041 Rockford, **Mr. Barrera, Cliff Maus Apts, 1458 West Point**, Danny Fino c/o Triarch, ("Linda" crossed out), Mary Ann Perales, 1002 19th St, Alfredo Hernandez, 1446 West Point, Teresa Barrera, George Aguirre.

7/??/83: At some hearing prior to trial, CDL writes a letter to Mary Arredondo which his lawyer hands to her with the instructions, "Don't Read it until you Leave the Court Room. It asks for \$200 to buy a fan and radio, in case he gets convicted; says "Mary, please don't think I've given-up hope. I havn't." "What's meant to happen is meant to happen. Your or I or anybody cannot change a persons destiny." "Mary, I'm tired of all the bull that has gone along with this thing. All the hide-and-see games" "Mary, tell all the others if it is possible to come to my trial so I can see all of them in case I should get the death penalty. That way I can see them all one last time I mean my family; Daniel, Manuel, Rosemary, Vicky, Tony, Becky, Vincent and of course you."

07/14/1983: Subpoena Duces Tecum by the State for NC Jail's Commissary records of CDL.

[SEE APPENDIX A FOR SUMMARY OF TRIAL TRANSCRIPT](#)

[SEE APPENDIX B FOR LAURA NOGGLE'S SUMMARY OF CLOSING ARGUMENTS](#)

[SEE APPENDIX C FOR INTERESTING THINGS L. NOGGLE FOUND IN TRANSCRIPT](#)

Time of Trial: Mary Ann did not know Carlos Hernandez, but she had received a phone call from someone in jail who called himself Carlos Hernandez. It was around the time of the DeLuna trial, and it frightened her. She'd been asleep and the call awakened her. *[Interview of Mary Ann Perales by SM, 07/2004.]* Mary Ann told Sita that she received a collect call from a Carlos Hernandez. She hung up the phone and never spoke to the caller. Additionally, Mary Ann was told by police investigators that CDL was lying and using her as an alibi, that she needed to testify and shouldn't worry about it. *(Interview of Mary Ann Perales by SS, 09/2004.)*

7/15/83 D is arraigned before Judge Moore. D pleads not guilty. Trial begins. *(JL has docket sheet that has handwritten notations of this.)*

7/18/83 Court overrules Ds motion for a directed verdict. *(JL has docket sheet that has handwritten notations of these motions.)*

7/19/93 D begins presentation of evidence and testimony and rests on same day. Witness attachment issues for Teresa Barrea, witness appears and attachment is canceled. *(JL has docket sheet that has handwritten notations of these motions.)*

07/20/1983, 5:30 p.m. CDL found guilty. Various **Charges** and **Objections** filed with the Court. *[They are discussed below in the motions for a new trial and HC petitions.]*

Article by Linda Carrico published in Corpus Christi Times, p.1: "DeLuna guilt, could be given death sentence:

"After deliberating 4½ hours yesterday afternoon, a Nueces County jury found DeLuna guilty Only after the seven-man, give-woman jury was dismissed for the night did DeLuna display any emotion over the jury's decision. Tears welled in his eyes after several sobbing family members ran to him — embracing him and comforting him."

Reports that "The prosecutor attacked the existence of what he called 'the phantom' Carlos Hernandez, who DeLuna claimed killed Ms. Lopez."

NOTE: in regard to whether Botary knew of Carlos Hernandez as of the July 1983 trial of Carlos DeLuna, note the following items from Consolidated Carlos Hernandez:

1/2/80: Ken Botary issues subpoena for Carlos Hernandez on 217 Carrizo street (among others) to appear on January 28, 1980.

1/3/80: Garza's lawyer Albert DePena subpoenas Carlos Hernandez (217 Carrizo), among others, to testify at a January 11, 1980 pretrial hearing. Subsequently, DePena also subpoenas CH, among others, to testify at January 28, 1980 trial.

1/?/80: Carlos Hernandez (and his mother? And possibly Shirley Currie) questioned by DA Botary about this murder

07/21/1983, 8:52 p.m.: CDL sentenced to death.

07/22/1983: Motion to Withdraw Exhibits by state. (Granted 07/22.)

Corpus Christi Caller article by Linda Carrico, "Judge sentences DeLuna to die:"

Describes jury's six hours of deliberations and its failure to reach a verdict, before being sent back to deliberate again by the judge.

Reports that "testifying in his own defense, DeLuna claimed his innocence and said a man named Carlos Hernandez killed Ms. Lopez."

"At first undisturbed by the jury's decision, DeLuna became agitated when Nueces County sheriff's deputies attempted to escort him back to jail before he could say good-bye to his sister. 'Let me hold my sister, man!' a sobbing DeLuna screamed."

AP article: "Parolee given death penalty for murder". Says that jury deliberated for 4½ hours. Focuses mainly on the 911 tape and on the attempted rapes in Dallas and Corpus. The Corpus "attempted rape occurred in May 1982, two days after DeLuna's parole, said prosecutors, who told jurors that DeLuna had the 'mind of a convict.' After DeLuna's parole, he had to make the decision of keeping the slate clean or going back to his old habits, the prosecutor said."

07/23/1983: Judgment and Sentence. (JL has copy of this)

07/26/1983: Application for Payment of Statutory Fee – James Lawrence paid \$5K. CDL received in TDC: 5'8", 185 lbs; light complexion; occupation electrician.[??].

Nueces County Sheriff's Dept jail card (dated 2/8/83 when first filled out) says on this day CDL was released to TDC; looks like transporting officer might be Officer Mundy (#166).

07/27/1983:

Judgment Nunc Pro Tunc correcting date typo in original Judgment and Sentence. (*JL has copy of this*)

Nueces County Sheriff's Office business card in Vicky Gutierrez's records for her brother gives date of 7-2-83 and some phone numbers and is filled out by Quiqui Rodriguez in the Sheriffs Office. Is this the day they transported CDL to death row?

Letter from CDL to Vicky Gutierrez postmarked this day reports that CDL arrived on death row this day. "Don't worry about me. I am fine. But if you could come visit me some time let me know when. Bring our brothers and sisters...."

Post-Trial:

Ex Parte DeLuna, 28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A

DeLuna v. Texas, Court of Criminal Appeals, Texas, No. 69,245

DeLuna v. O.L. McCotter, S.D.Tx., No. C-86-234

DeLuna v. Lynaugh, 5th Cir. Ct. of App., USDC No. CA-C-86-234

DeLuna v. Lynaugh, U.S. Supreme Ct., No. 89-5442

08/08/1983: **Motion for New Trial** (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) – Trial court erred in refusing to accept a verdict by the jury when it told the court it could not answer the second question on the punishment phase of the trial.
[That's it!!]

8/9/83: CDL letter to Vicky Gutierrez post-marked this day: "send my Regards to Every body. Tell Manuel I as still Alive they haven't killed me yet? Ha Ha. tell Him to write Atleast until I am still Alive its going to be to Late once I am DeaD." More requests for visits. "Don't you'll worry About me What Ever happen. ... Rember I told you one I am not scare to go. I Don't want to Die but IF I have to Die will that's All I can say is bye Right."

8/24/83: Board of Pardon and Paroles Minutes say "continue on parole with case conference between POII, DPO, parolee".

8/28/83: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was "Currently a Parolee" and had a "Parole Review" this date.

~1983-1989: While CDL was on death row, he was interviewed by Linda Carrico. Carrico told JSL: He told me it was strictly a case of mistaken identity. He said: "He looked like me, same height and weight." At trial he was overweight. Looked like a

mess. Not in good shape. He looked puffy. I was surprised on death row, when this Adonis appeared for the interview. It was the same face, but there was a big transformation in his body; much thinner. [Indicates the physical transformation of CDL and may explain why the resemblance at the time of trial didn't carry on over time. –LN] (*Interview of Linda Carrico by JSL.*)

08/24/1983: Application for Payment of Statutory Fee – Hector De Pena paid \$4.5K.

08/25/1983: Scheduling Order (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) – Hearing on Motion for New Trial set for 09/12/1983. Application for Bench Warrant and Bench Warrant NCSO to present CDL in court on 09/08/1983.

08/30/1983: Motion for Presentation of Records and Application for Possession of Transcript or Record Usage signed by CDL “pro per” [typed]. Requests an order permitting him to obtain a transcript of the trial and proceedings gratis. First Amended Motion for New Trial signed by CDL “pro per” [typed] (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A).

- 06/20/1983 Motion for Continuance denied by the court – filed to allow a witness in the hospital time to recover and testify in court. The court denied the motion, knowing the material character of the witness.
- Reiterates claim about making the jury continue deliberations.
- Attorney of record, Hector De Pena, failed to file all necessary motions for CDL.

9/6/83: CDL NCSO Re-arrest report; brought back to CC by NCSO officers Cox (#118) and Rodriguez (#249); Booking officer was Santana (#495) and Shift Commander Sgt. Oelschlegel (William batch NCSO records 2/25/05)

Early 1980s: Sgt. Elmer Cox, Sheriffs Dep't IAD told Paul Rivera and Bruce Whitman that he was driving Carlos DeLuna (CDL) from prison to Corpus one day and Cox said CDL confessed to him. Confessed to another deputy (Petrusaitis) and him: he said he'd been stabbed many times and survived but V was stabbed only once and died.

09/09/1983: Application for Subpoena by Δ, for Estella Flores Jimenez (*See Motion for New Trial, below*), 1625 15th St, CC, TX. (Subpoena served 09/12 at: 1105 Woodlawn, CC, TX.)

Amended Motion for New Trial (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) (**Overruled in its entirety, 09/12.**)

- On two occasions the trial court refused to accept a verdict by the jury when it could not answer the second question on the punishment phase of the trial. The instructions in the charge indicate that a verdict is rendered if in fact an issue cannot be answered.
- Juror Estella Flores Jimenez was attacked at knife point on 07/17/1983. The attack occurred between the time the jury was seated and the commencement of the trial. Because of the attack, she could not act as a fair and impartial juror.

09/12/1983: Δ's Motion to Disqualify Counsels and For Appellant to Proceed by Himself as Counsel, *hand written and signed by CDL* (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A). CDL cites ongoing malicious conduct of counsel, counsel's misconduct prejudicial to his client. Does not present any examples, only quotes out of cases. Pauper's Affidavit, appointing James Lawrence.

9/16/83: NCSO jail card showing; CDL returned to TDC by NCSO officer Sgt. Oelschlegel (William batch NCSO records 2/25/05)

9/17/83: letter post-marked this day from CDL to Vicky Gutierrez. "I want to know why you didn't tell me mom DieD? Also IF you would have SAID something I could have gone to the Funeral. Say hello to All your Family For me." Asks for her to ask siblings to write to him and to pick up some of his stuff at the jail. Then: "I went to Corpus to go to Court. I got a New trial. But They haven't set A Date yet ok. I will let you know as Soon As they Do." P.S. "I hope you can come visit me Real soon. Because I really have to tell your something Important. I am REALLY SeRious About this Matter Vicky."

09/23/1983: Notice of Appeal filed by Lawrence (Criminal Court of Appeals).

09/27/1983: Letter from Walter Dunham Jr. to Hon. Robert Barnes requesting \$1641.71 invoice from **Investigator Horacio Ortiz** be paid. States that, according to Lawrence: "...the investigation performed by Mr. Ortiz was necessary even though much of the information developed was not used or, as a matter of fact, was not usable."

10/6/83: CDL letter to Vicky Gutierrez with this date: He is answering her letter. In the mids of family greetings, comes: "Well I can tell my Lawyer The Things I am planing In Doing. Also I need to tell you'll About It. Not him. And I Need to tell you'll In person. I can't seem to understand why you Didn't under Stand what I was trying to say on my Last letter you got. Read The Last letter I sent you over again." Then more family stuff, including longing for her pork chops. He refers to a woman we've heard something about, "Irma": "I use to Live with IRMA. I use to tell her I am going to Eat at Vicky's house Because you can't cook."

11/1/83: Letter from CDL to Vicky Gutierrez. Tells her to stop fighting with Danny (her brother?). Send pictures of him. Family stuff. "Well I've been a little sick. But I feel a little Better know. I think it was some kind of kidney problem. But they gave me some kind of Medicien that helps." Repeatedly begs her to write.

11/6/83: Assault, Causing Bodily Injury

Case No. 85806-2, County Court, Nueces County says that on this day Carlos Hernandez assaulted Rosenda Anzaldua (his wife) with an axe handle to the chest. In committing this offense Hernandez broke a window with a metal bar causing glass to fall on a child of Rosenda Anzaldua sleeping in a bed by the window. Carlos Hernandez threatened to kill Rosenda Anzaldua and her three children, ages 8, 6, and 2 (in 1983).

Addresses: 1201 Alameda (file cover) and 1008 Buford (arrest).

[state announces ready on 11/17; trial notice and subpoenas on 11/23 and 11/29; commitment and judgment issued 2/8/84; CIC to Parol Officer on 2-9-84]

Prosecution subpoenas the following witnesses in the case prior to trial: (1) Eleazar Salinas, 113 Sam Rankin St., Corpus Christi, 512-882-7709 (all as of 1983); Raul Peres, 1402 Mussett, Corpus, 512-883-8947 (also as of 1983). Officer at scene: Sgt. De la Garza #240, CCPD.

Board of Pardons and Parole form reporting reading of rights to CH; looks like he may be in custody, but not clear.

Board of Pardons and Parole Notice of Alleged Violations of Release says: “Rule #7: Violation of State Law – Assault (class A Misdemeanor by allegedly using an axe [sic] handle to apply force against the chest of Rosenda Anzaldua, **Parolee’s Wife**. This occurred on or about 11-6-83 at approximately 10 pm.” CH says he: “deny Rule #7”

11/7/83: Petition for Divorce (Case # 83-5525 H, 347th Dist. Ct., Nueces County) filed by Rosa Anzaldua (aka Ansualdua) Hernandez, represented by Jose Longoria, against Carlos Hernandez.

Carlos was living at 1201 Alameda. Rosa was living at 107 Sam Rankin.

Allegations: “marriage has become insupportable because of discord or conflict of personalities” [boilerplate allegation for divorce]; in support of extraordinary relief of temporary restraining order and injunction against destroying property, communicating with Rosa and hurting or physically injuring her, attached affidavit states that Carlos “is capricious and irresponsible in the use of money and property” and “has a violent and ungovernable temper and is unpredictable” leaving Rosa “in fear of Respondent.”

Judge Jorge G. Rangel issues a temporary restraining order barring Hernandez from going to Rosa’s Sam Rankin house and from harming her or her property, **but allowing Carlos to continue to use a 1975 2-door hard top Mercury Automobile, ser. No. 5H07H510875, lic. # FKQ 445.**

11/9, 10/83: Information filed for “Causing Bodily Injury”; warrant for arrest issued.

11/10/83: Board of Pardon and Paroles Minutes say “Issue Emergency Warrant. Notified Governor’s Office. Notified DPS”; warrant issued was 11-10-227443 (pre-revocation warrant); we have the warrant; issued in Corpus Christi

11/10/83: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was issued an arrest warrant this day. (recommended and approved)

11/11/83: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had “Revocation Hearing” recommended and approved

11/14/1983: Notice of Completion of the Record sent to Hector De Pena, James Lawrence, Grant Jones.

11/15/1983: Arrest for Assault, Causing Bodily Injury, Parole Violation

Carlos Hernandez arrested in Corpus Christi. Arrested by NCSO. Arrest no. 50682. Case No. 85806-2.

Cause #85806-2, causing bodily injury: Confirmed DOB: 07/14/1954 for Hernandez from file. Assaulted Rosenda Anzaldua (probably his wife) with an axe handle to the chest. In committing this offense Hernandez broke a window with a metal bar causing glass to fall on a child of Rosenda Anzaldua sleeping in a bed by the window. Carlos Hernandez threatened to kill Rosenda Anzaldua and her three children, ages 8, 6, and 2 (in 1983).

Sheriffs Dep't Re-Arrest Report, Arrest # 62017 show arrest by Officers Meza and Lanier on charge of Causing Bodily Injury (85806-2) and Violation of State Parole (11-10-227-443). Bond set at \$500. 5'7" 180 lbs. Living on South Alameda. [Info added 10/13/04, 11/2/04]

11/17/1983: Letter from CDL to Judge Dunham requesting the appointment of a second attorney. He has retained Lawrence, but filed a motion to remove De Pena who was not working on the case. Also, CDL requests an update on the copy of the lower proceedings which he had requested. [This may be what he wanted to talk to Vicky about in person.]

11/19/04: Letter from CDL to Vicky postmarked this day asking her for money so he can buy a typewriter to take typing classes.

11/22/83: On this day, Crime Records Division of DPS received a "Rearrest Report" on CH (DPS 11/04 records). All info on it is blacked out except for the fingerprints. [Info added 10/13/04, 11/2/04] [this doc also in DPS 1/30/05 batch]

11/26/83: CDL writes letter to Vicky thanking her for a letter. Family stuff, including about her son Noel wanting to play for the Dallas Cowboys. Family, weather.

11/30/83: Board of Pardon and Paroles Minutes say "continue emergency warrant in effect as pre-revocation warrant"

12/2/83: CDL writes letter to Vicky thanking her for a card. Discusses family, a lot about Christmas.

12/7/83: Criminal trial date; case called; Carlos Hernandez did not appear. [Was he out on bond?]

12/8/83: On this date, a letter written by Carlos Hernandez to court, rec'd 29/83, says

that court “raised my bond to \$1,000” because “I had a state parole hold on me.” Letter says that he was **incarcerated in Austin, TX**, suggesting that is where he was held by the parole officials, after he was arrested in Corpus on 11/15. Judge was Hector de Pena [father of CDL’s trial attorney!!].

12/12/1983: Δ’s **Objection to the Appellate Record** (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) and **Order** setting Hearing for 12/22/1983.

12/13/83: Following a hearing on 11/17/83, the 11/7/83 TRO in the divorce case is translated into a temporary injunction, except that Carlos is ordered to immediately return the 1975 2-door Mercury to Rosa.

12/15/83: CDL writes Vicky a letter thanking her for hers. Christmas, family, asking her to contact his other siblings for him. “I wish I could be out there but I can’t. I guess I will just have to wait. But one day from now I’ll be out there again...I just hope that everything turns out alright for me. Because I can’t take this anymore. Being in her its real hard. I just hope its all over soon. Well take care god bless.”

12/21/1983: **Bench Warrant**, ordering NCSO to bring CDL to court on 12/22/1983.

12/22/83: CDL NCSO Re-arrest report; brought back to CC by NCSO officers Meza and Garcia (William batch NCSO records 2/25/05)

12/22/1983: **Hearing re Δ’s Objection to the Appellate Record** (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A)

01/03/1984: **Order** (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) granting Δ’s Objection to the Appellate Record: “that the record on the punishment phase of the case should reflect that an objection was made by defendant’s attorney to the Court, but in the absence of the court reporter, as to any further deliberations by the jury on the grounds that the jury had reached a verdict when the jury announced that it could not answer the second question in the verdict form and which objection was overruled by the Court.”

1/3/84: Board of Pardon and Paroles Minutes say “withdraw pre-revocation warrant: cont. supv pending adjudication. Impose spec cond – HWH & not to re-enter Nueces Co. w/o written permission of P.O. and only for court action on pending misdemeanor assault charge. Reaffirm CATP – a/total alcohol.” It thus was on this day or next that CH is released.

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was subject to a no. of actions this day that conform to above.

1/4/84: Board of Pardon and Parole issues order and notice of withdrawal of pre-revocation warrant of arrest; signed by M. Warner/DPO/Corpus Christi

After first requesting a hearing on 12/6/83, Waiver of Administrative Release Revocation Hearing is signed this day

01/06/1984: Approval of Record on Appeal after Hearing. Notice of Approval of the Record, sent to Grant Jones, James Lawrence. (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A)

1/21/84: CDL writes Vicky this day. "Oh, Vicky I almost forgot to tell you. I bet you can't guess what. well I got put into population. That's Right I am no longer in Death ROW. Well what I mean I am still sentence to Die. But I am no longer Lock up All the time. I now have a Job in I can Also have visits on Saturdays In Sunday. Do now There's no Excuse you'll can't Come. But I have to be good to say out here. I hope that I don't get in trouble. Because I Don't want to go back to Death Row. I hope you'll come soon to visit me.... Tell Mary I said that I am no longer in DEATH Row. I am very happy I got moved Away From There. Oh when I went to court it was Because They Forgot to put something in the motions we Filed." [This upon moving to new cell block in Ellis.]

01/26/1984: Continuation, *DeLuna v. Texas*, Court of Criminal Appeals, Texas, No. 69,245. Giving an extension to file appellant's brief until 03/06/1984.

02/08/1984: Based on plea of nolo contendere, Carlos Hernandez was convicted of assault causing bodily injury, confined for 30 days, with credit for time served; fined \$208. Carlos Hernandez represented by Christian Jenkins.

DPS Final Disposition Report (1/30/05 batch) shows disposition of "c cost" and "30 days" for offense no. 85806-2, crime of "C.B.I." (causing bodily injury) for Hernandez for offense committed 11-15-83; document was rec'd on 2/24/84

02/09/1984: Transcript of Hearing on Motion for New Trial filed with Court of Criminal Appeals. (JL has copy of this transcript. It's attached to the Petitioner's Objections to Trial Court's Findings of Fact and Conclusions of Law filed in CCA on Nov. 17, 1989.) Main points:

- Judge urges D to take Lawrence as appointed counsel. Goes through admonition on D representing himself.
- Judge asks D questions about employment and mental health. D states he has never been treated for mental illness.
- D expressed concern with DePena. Concerned that DePena has not filed enough motions in the case. Is satisfied with Lawrence.

2/14/84: TDCJ "Transfer History Screen" dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO James Robertson in **San Antonio**.

2/28/84: Board of Pardon and Paroles Minutes say "Letter of Reprimand from Executive Director for Violation of Rule 7," which is rule forbidding violations of criminal law.

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was “Currently a Parolee” and had a “Parole Review” this date.

03/02/1984: Appellant’s Brief to Court of Criminal Appeals, No. 69,245. [17 pages long; around 12 of text.]

- Grounds of Error:
 - Trial court overruled Appellant’s motion for new trial based on newly discovered evidence.
Referring to testimony of Estella Jiminez.
 - Trial court overruled Appellant’s motion for new trial based on newly discovered evidence as such evidence could and should have resulted in a mistrial.
Referring to testimony of Estella Jiminez.
 - Erred in not accepting the jury’s inability to reach a verdict on two occasions – should have automatically assessed a life sentence.
 - Erred in admitting SX-42 into evidence and not allowing jury to read, examine same.
Unadjudicated offense – assault of Juanita Garcia. [Police reports stated there was no rape or attempted rape.] Assuming it was hearsay, it was up to Appellant to object to its inadmissibility.
 - Overruled objection to Court’s charge on punishment.
Re no definition of “deliberately” and “probability.”
 - Erred in admitting into evidence [Animal Stare Photo] without having State lay the proper predicate. [Wastes 3 pages reproducing testimony instead of just attaching it!]
 - Failed to respond to Appellant’s timely special requested charge and instruction to the jury on the law of circumstantial evidence.

03/08/1984: Released on or before this date. [Was he in custody between November and this day??]

3/9/84: Board of Pardon and Paroles Minutes say “Do not allow parolee to travel to Nueces County, Texas as per request.”

3-11-84: Prison records show a TDC offense #46, level 2: CDL failed to turn out for work; instead remained in his cell and had to be rousted out.

3-13-84: CDL received a 15-day cell restriction for above.

3/20/84: CDL letter to Vicky. Happy to have heard from her. “as for me I am ok I guess. Not much happens around here. They executed Somebody last week. I felt Sorry for him. But what can we do, I just hope it never happens to me. But If it does I am prepare.... I got move to C-8 a Trusty Block.... Tell fred [her husband] I am trying to Stay out of Troblule. I have to admit I do work a whole lot. But this is the only way I could Stay in population. Sell when are you’ll gone be able to come See me?”

3/26/84: In Vicky's materials is a Certificate of Recognition to CDL from Clifford Emerson, director of studies for Church of Christ Bible Correspondence Course completion.

4-3-84: TDC Classification Review Form indicates that CDL is in the "Death Row work program --- Housed in General Population"; no gang affiliation; during his two prior incarcerations in TDC, "No infractions recorded."

5-11-84: TDC form says: "use of intoxicating inhalants, possession of intoxicating inhalants, no forfeiture."

Disciplinary Report C-41789 says CDL was found in the "pipe chase" with another inmate, David Allen Gardner (#000679) sniffing glue. "Upon shaking down, we found one bottle of glue and one bottle of paint thinner." [But see below]

5-16-84: Received "15 days in solitary" for above.

5-24-84: CDL letter to Vicky: "as for me I am ok I guess got into a little trouble I try to Stay out of trouble But am only human. Well how is fred doing tell him I Sent my Regards. in Tell him not to get mad am trying to Stay out of Trouble. ... well why haven't you written to me I wrote once But you never answer. So what happen? [This is CDL's last letter to Vicky that we have (and evidently that was written) until May 1988.]

6-8-84: TDC records show CDL injured his ankle playing volleyball in unit gym.

8/8/84: Board of Pardon and Paroles Minutes say "case conference between releasee, DPO and unit supervisor regarding rules 7 (don't violate criminal law and 8B (requirement to obey special reqts – don't know which)

8/21/84: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was "Currently a Parolee" but was made an "inmate" this day: evidently, he was arrested.

9/24/84: Board of Pardon and Paroles Minutes say "Issue pre-revocation warrant"

10/12/84: Parole Revocation Warrant issued to detain CH for violation of the rules; Warrant # 10-12-227443 issues by J. Robinson/DPO/**San Antonio**

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had Revocation Hearing both recommended and approved this day, but the action taken is indicated as "not found."

[NO MORE PAROLE RECORDS UNTIL 1987 OR 1990; ALSO LOSE TRACK OF CH IN OTHER WAYS for rest of 84, 85, beginning of 86; This may be must be IS THIS WHEN HE HAD ACCIDENT AND FELL OFF OF TRUCK?? LOOKS LIKE HE MAY HAVE BEEN IN SAN ANTONIO FOR PART OF THIS]

1984: Yolanda and Dario Ortiz leased and ran Club Casino from 1973-1984. (*Memo from Bruce Whitman.*)

May to August /1985: Period when Diane Gomez says she was living with Carlos Hernandez in CC.

07/08/1985: **Carlos Hernandez Jr. divorced from Karen Lynn (Ramirez) Hernandez.** [*May or may not be our CH – age is close. I didn't put this stuff on the player's chart. -LN*] [Info added 9/04, LN]

Nueces Co. no. 8502609001-H, divorce filed 05/13/1985, married 02/14/1985, decreed 07/08/1985. [Info added 9/04, LN]

Karen Hernandez, 21 yo, 861 Van Cura, CC and 4945 Nell St., CC.
Carlos Hernandez, Jr., 29 yo, 861 Van Cura, CC. [Info added 9/04, LN]

7/29 to 31/85: in TCD Hospital.

11/21/85: **Rosa Anzauldua** divorce from Carlos Hernandez becomes final: divorce # 83-5525-H, 107 Sam Rankin, CC; also associated with 1201 Alameda CC, and 124 Norton CC; 30 years old on 11/21/85; married 5/5/82; divorced 11/21/85.

3-13-86: TDC “Additional Information form” reports CDL stating during a “sociological interview” that he would like not to be housed with 4 named Hispanic inmates because “while confined [them] on the Ferguson unit in 1980, they murdered a fellow inmate” and “he claims he appeared in court as a State witness against these inmates in Sept. of 1981 and was instrumental in their being convicted.” Eddie Muertano, Richard Lopes (# 332918), Joe Domingues (# 329332), Robert Lopez.

04/06/1986: **Brief for the State filed in Court of Criminal Appeals.** (*JL has copy of this*) Main points:

1. Contests that juror was improperly impaneled. Juror had worked as clerk and robbed at knife point.
2. Contests that jury was unable to reach decision on “special issue number two.” The court properly did not proceed under Article 37.071 (e). Trial court's actions cannot be viewed as abuse of discretion & no error shown.
3. re: State Exhibit 42 (offense reports relating to unajudicated offense of sexual assault offered at penalty phase). State argues exhibit properly admitted.
4. Court need not provide special definition of the terms “deliberately” and “probability.”
5. Photos of D were properly entered into evidence.
6. Court was proper in refusing to charge the jury on the law of circumstantial evidence.

04/17/1986: Diane Gomez signs statement to CCPD a signed saying she was living with Carlos Hernandez in CC from May – August, 1985. During that time, Hernandez told Gomez that he murdered Dahlia Saucedo because she was dating **Freddy Schilling**, who was then married to **Hernandez's sister**. [see description of statement below]

06/04/1986: Opinion, DeLuna v. Texas, Court of Criminal Appeals, Texas, No. 69,245. Filed in Nueces Co. on 06/10/1986. [711 S.W.2d 44 (Tex.Crim.App. 1986)] Affirming judgment of trial court en banc. (*JL has copy of both opinion and concurrence.*)

GUILT OR INNOCENCE PHASE

- Sixth Ground of Error (Overruled) – Booking photo improperly admitted into evidence. Was admitted as an example of Officer Schauer's animal stare description of CDL's facial expression. The photo was relevant as an accurate representation of CDL at the time.
- Seventh Ground of Error (Overruled) – Trial court's refusal to give charge re circumstantial evidence. Jury was charged re presumption of innocence, burden of proof and requirement of acquittal upon a reasonable doubt of guilt. Charge on circumstantial evidence not required.

PUNISHMENT PHASE

- Fourth Ground of Error (Overruled) – Offense reports from the unadjudicated, extraneous offense (assault of Juanita Garcia).
 - Evidence of unadjudicated offenses is allowable in the absence of a showing that defendant was unfairly surprised by such evidence. The pages of reports describing the offense were offered as an exhibit – the first page had been initialed and dated by defense counsel several months before trial. (*See 03/16/1983 Letter, above.*)
 - Defense counsel objected to the reports being admitted for all purposes. The trial court overruled the objection [*I think they mean sustained*] on the basis that it was the clearest kind of hearsay, inadmissible even by agreement. Now, Appellant contents exclusion of the reports was erroneous because they showed that no rape or attempted rape occurred. It's still hearsay and was properly excluded by the court.
- Fifth Ground of Error (Overruled) – Trial court's overruling objection to the charge on punishment – it did not contain the words “deliberately” and “a probability.” This court has previously held that these words need not be defined in the court's charge to the jury.
- Third Ground of Error (Overruled) – Trial court erred in sending the jury back for further deliberations when it first returned with a “no” answer to special issue no. 2. Appellant contends the trial court should have assessed a penalty of life imprisonment at that time. Court implies that not much time had passed in deliberations. When polled, only one juror expressed that a verdict might not be reached given more time. The length of jury deliberation rests with the sound discretion of the trial court. No error in the absence of abuse of discretion.
- First and Second Grounds of Error (Overruled) – Alleges trial court erred in overruling motion for a new trial. Juror Estella Jiminez testified at the hearing that she worked as a convenience store clerk and that, during the trial, she was a

victim of a crime similar to the one for which CDL stood accused.

- Jiminez's Crime – A 14 or 15 year old kid brandished a knife at Jiminez and another clerk when they cornered him for shoplifting. Jiminez testified this was a common shoplifting thing and that it had no bearing on her deliberations at trial. She stated unequivocally that she had not been scared by the incident.
- Appellant claims the juror was "disabled" under *Griffin v. State*, 486 S.W.2d 948, 951 (Tx.Cr.App. 1972). This definition of disabled, however, does not refer to bias or prejudice.
- **Concurrence:** Seventh Ground of Error: The majority implies a defendant will get an instruction re circumstantial evidence in some cases. Until *Hankins v. State*, 646 S.W.2d 191, 100 (Tex.Cr.App. 1983), is expressly overruled, a Texas defendant will never, as a matter of law, be entitled to receive an instruction on circumstantial evidence. (*JL has copy of this*)

06/20/1986: Mandate (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) signed on this date and filed 06/24/1986. (*JL has copy of this*)

6-23-86: TDC Inter-office memorandum says that the disciplinary case is "expunged." Handwritten note says: "expunge discip. Report of #222008 per unit Admin Recommendation. Delete from [unreadable] & computer. AH ask IOC to report on file Advise visit, inmate, BPP."

06/24/1986: Opinion filed on this date. (*JL has copy of this*)

07/15/1986, amended 07/24/1986:

Cause No. 86001032-B; CH was indicted for the 1979 murder of Dahlia Saucedo. **[William's 05/07/2004 Notes indicate that this the same CH.]**

Cause No. 86001032-B. Dismissed for speedy trial limitation and availability of witnesses (12/31/1986); Re-indicted (07/30/1986).

Suspect – **Carlos G. Hernandez**

- **ADA Bill May** presented the case to the Nueces Grand Jury on 07/23/1986 and got an indictment – 86-CR1032-B.
- Told police he was with another girl on 11/19 whose name he did not remember. He arrived home around 0430 or 0500 on 11/20. There is a signed statement, 07/24/1986, 1235.

07/21/1986: Application for Bench Warrant and Bench Warrant, requesting TDC present CDL in court on 07/23/1986.

7/22/86: CDL booked into Nueces County Sheriff's Dept 5'7", 160 lbs (from NCSO William 2-5-05 batch); arresting officer is Grace #326; gives Rose DeLuna as his net of kin.

07/23/1986: Sentence After Mandate and Warrant for Execution, setting execution date for 10/15/1986 at Huntsville. (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A)

07/24/1986: Receipt of Death Warrant by NCSO.

07/24/1986: CH arrested for Dahlia Saucedo crime. Arrested by CCPD; arrest no. 74204.

From “Reindictment No. 86-CR-1032-B, 117th Judicial District, Nueces Co. Tx” and attached documents:

Indicted 07/15/1986; dismissed on 07/23/1986 and refiled; arrested 07/24/1986; dismissed 12/31/1986 - Murder of **Dahlia Saucedo** by inflicting trauma to her neck, chest and abdomen with his hands. **Jesse Garza** was also tried for this offense (01/31/1980; 79-CR-881-C).

Evidence: Evidence/testimony from Garza trial; taped conversation between Hernandez and his mother made by CCPD in December 1979; transcript of conversation/interview between ADA Kenneth Botary and Hernandez made 01/04/1980.

Hernandez: Laid off from Tennessee Pipeline. Has children the same age as Shirley Curry’s kids. Lived on Carrizo, 5 or 6 blocks from the 7-11 at 521 South Staples, 3 houses down from Carrizo and Kinney.

List of Witnesses whose contemporaneous location was requested by defense counsel (I’m assuming this info is from the 1980 Garza trial):

Pedro Olivarez, 1314 Whitaker, Corpus Christi

Roger Fuentes, 2522 Dunbar, Corpus Christi

Irma Gaytan, 2830 Martin Luther King Blvd., Apt. 3, Corpus Christi [hand-written notation: Fresno, Ca.]

Fernando Rodriguez, 4714 Cobblestone, Corpus Christi; Employer: Corpus Christi Independent School District – Coach, King High School. [**George Aguirre**, witness in the **Lopez murder**, was a graduate of King H.S. –LN]

Willie Odoms, 2009 Blue Angel, Corpus Christi; Employer: Corpus Christi Independent School District – Coach, King High School.

Shirley Curry, Employer (02/1980): Texas Star Oil, 2728 Agnes, Corpus Christi.

[THESE 1986 DOCUMENTS INCLUDED THE TRANSCRIPT OF 1980 TESTIMONY OF SHIRLEY CURRY AND IRMA GAYTAN THAT IS SET OUT ABOVE IN RE THE 1979 INDICTMENT]

Diane Gomez gave CCPD a signed statement on **04/17/1986**, 7 years after the murder. She was living with Carlos Hernandez from May – August, 1985. During that time, Hernandez told Gomez that he murdered Dahlia Saucedo because she was dating **Freddy Schilling**, who was then married to **Hernandez’s sister**.

From the statement: Hernandez told Gomez that Saucedo picked him up in her van and **Saucedo's little girl** was in the back asleep. Saucedo wanted to have sex and Hernandez choked Saucedo to death in the back of her van. She pulled out some of his hair. He carved the "X" in her back with a knife and carved an "F" where the crosses met. He also cut off Saucedo's little toe to give to Schilling. Hernandez asked Gomez if she wanted to see the toe. [Since this is 6 years after the murder, I'm assuming he didn't give the toe to Freddy.] Hernandez drove the van to some bushes near CC Egg Company close to Mexico Street. He left Saucedo in the van and the girl asleep in it. Hernandez wiped his prints from the van using his shorts and also cleaned Saucedo's fingernails with the shorts.

From the accompanying police report: **Paul Rivera** (CCPD 306) took the report dated 07/16/1986. Rivera links Hernandez to the crime because only police and the NCME (Dr. Rupp) knew about the toe being cut off [unclear from autopsy report – just says deep laceration]. **Hernandez's fingerprint** was also found on a Schlitz cup inside the van. The shorts [underwear] matched shorts in Hernandez's house in size and brand. [There's also a vaginal swab that tested positive for acid phosphatase – DNA?] **Pete Olivarez** later admitted to making up the statement about the knife that implicated **Jesse Garza**. Olivarez made up the statement because of fear during a polygraph exam. Olivarez was unable to take police to the crime scene after giving the incriminating statement and he did not show up to testify at the Garza trial.

DPS has fingerprint record of CH for this day, No. 74 204; shows CH as 5'7", 140 lbs, 32 y.o. [Info added 10/13/04, 11/2/04]

7/25/86: Nueces S.O.'s Re-arrest sheet (booking # 89947) reports CH as 5'7", 140 lbs; laborer; unemployed; charged with murder. [Info added 10/21/04]

09/08/1986: Letter conveying Death Warrant and Sentence to TX Board of Pardons and Paroles by Nueces Co. Dist Ct.

08/01/1986: Request from TX Board of Pardons and Paroles for a statement from Hon. Walter Dunham. The Board only has the execution date, no other information.

10/?/86: Cert. denied.

10/07/1986: Cover Letter from Richard Anderson to Hon. Walter Dunham conveying Application for Stay of Execution pending final disposition of the present proceeding for a writ of H.C. and Application for Writ of H.C. and Brief Application for a Stay of Mandate in *Ex Parte DeLuna* (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A).

Recitation of procedural posture includes that: Petitioner's court-appointed attorney on appeal did not file a Motion for Rehearing in the Court of Criminal Appeals of TX, nor seek an Application for Writ of Certiorari to the US Supreme Ct. A Motion for Stay of Execution has been filed, addressed to Justice Byron White, Assoc. Justice, US Supreme Ct, with no decision yet rendered.

- Statement of Claims:

- Racial bias in the exercise of prosecutorial discretion in determining cases in which to seek the death penalty based on the race of the victim in Nueces Co.
- Petitioner was denied effective assistance of counsel at trial:
 - Lead counsel at trial only saw and talked to Petitioner twice prior to trial.
 - Trial counsel failed to follow up information and thoroughly investigate Petitioner's **lengthy history of substance abuse** to determine if there was sufficient organicity to mitigate punishment.
 - Counsel at trial failed to thoroughly investigate an alternative hypothesis concerning **an assailant other than Petitioner**, even when supplied with a name and location and information concerning the similarity in their appearances.
 - Trial counsel failed to adequately investigate **an alternative assailant** and to use technology (spectroscopic voice identification) on a tape recording of the actual assault.
 - Trial counsel, being advised of numerous mitigation witnesses, failed to put on a single witness at the punishment phase of the trial in mitigation of punishment.
 - Trial counsel failed to preserve the testimony of Petitioner's most important witness although they had been advised that he witness was hospitalized, near death, and the **testimony of the witness was absolutely critical to the defensive hypothesis of an alternative assailant**.
 - Trial counsel **instructed Petitioner not to cooperate with court-appointed psychologists and psychiatrists** for fear the evidence would be used against Petitioner. If docs knew of Petitioner's lengthy history of **substance abuse**, would have produced mitigating evidence.
- Petitioner was denied effective assistance of counsel on appeal:
 - Counsel's brief on appeal, only 17 pages long, was wholly inadequate and insufficient to effectively present to the Court of Criminal Appeals of Texas all the issues that were present at Petitioner's trial.
- A hearing will be required to provide additional testimony and evidence for the Court's consideration that was not developed at the trial of this cause.

10/09/1986: State's Answer to Application for Post Conviction Writ of H.C. (*JL has copy of this*) Petitioner has stated no facts which if true would entitle him to H.C. relief. No need for an evidentiary hearing. Asks that hearing be denied. **Order** denying Defendant's Application for Stay of Execution. **Order** stating that Petitioner's Writ of H.C. does not present any controverted or previously unresolved material to the legality of confinement. Orders immediate transmission to Court of Criminal Appeals in Austin. (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) **Letter** from Nueces Co. Clerk to Court of Criminal Appeals conveying the transcript on the Post conviction Wirt

of Habeas Corpus filed by CDL.

Motion for Stay of Execution, Court of Criminal Appeals, State of Texas, Austin. *On appeal from Denial of Writ of Habeas Corpus from 28th Judicial Dist Ct, Nueces Co, Tx.*

- Asking for stay of execution scheduled for 10/15/1986 pending a hearing on Application for Writ of HC filed 10/08/1986 in 28th Judicial District Ct of Nueces Co, TX. Denied 10/08/1986 w/o hearing.
- 06/04/1986 – Ct of Criminal Appeals of TX affirmed the conviction and sentence, Cause No. 69,245, En Banc. [711 S.W.2d 44 (Tex.Crim.App. 1986)]
 - Petitioner’s court appointed atty did not file a Motion for Rehearing in the Court of Criminal Appeals of TX.
 - Atty did not seek an Application for Writ of Certiorari to US Supreme Ct.
- An Application for Stay of Execution addressed to US Supreme Ct pending the filing of a Writ of Certiorari was filed on 10/08/1986. Ct will meet on 10/10 to determine the issue; but denial is expected because the issues to be presented have not been litigated in State Court.
- 10/09/1986 denial covered: opportunity for an evidentiary hearing on issues raised in the Writ, the Application for Writ of HC and Stay of Execution. The issues include:
 - Racial bias in the exercise of prosecutorial discretion in determining cases in which to seek the death penalty based on the race of the victim in Nueces Co.
 - Petitioner was denied effective assistance of counsel at trial:
 - Lead counsel at trial only saw and talked to Petitioner twice prior to trial.
 - Trial counsel failed to follow up information and thoroughly investigate Petitioner’s **lengthy history of substance abuse** to determine if there was sufficient organicity to mitigate punishment.
 - Counsel at trial failed to thoroughly investigate an alternative hypothesis concerning **an assailant other than Petitioner**, even when supplied with a name and location and information concerning the similarity in their appearances.
 - Trial counsel failed to adequately investigate **an alternative assailant** and to use technology (spectroscopic voice identification) on a tape recording of the actual assault.
 - Trial counsel, being advised of numerous mitigation witnesses, failed to put on a single witness at the punishment phase of the trial in mitigation of punishment.
 - Trial counsel failed to preserve the testimony of Petitioner’s most important witness although they had been advised that he witness was hospitalized, near death, and the **testimony of the witness was absolutely critical to the defensive hypothesis of an alternative assailant**.
 - Trial counsel **instructed Petitioner not to cooperate with court-appointed psychologists and psychiatrists** for fear the evidence would be used against Petitioner. If docs knew of Petitioner’s

lengthy history of **substance abuse**, would have produced mitigating evidence.

- Petitioner was denied effective assistance of counsel on appeal: Counsel's brief on appeal, only 17 pages long, was wholly inadequate and insufficient to effectively present to the Court of Criminal Appeals of Texas all the issues that were present at Petitioner's trial.

10/10/1986: Motion for leave to file an out-of-time petition for writ of certiorari, denied. Motion for stay of execution (S.D.Tx. Corpus Christi Div.), granted 10/14, and **Petition for writ of habeas corpus.** (*JL has copy of Application for Writ of H.C. and Application for Stay*)

10/10/86:

USSCT denies stay; UPI article in TDC records ("Full court denies state of execution: DeLuna scheduled to die") says (based on interview): "DeLuna denies that he killed the woman saying another man wielded the knife. But investigators have been unable to find the man DeLuna says was responsible. 'I'm at peace with myself and whatever happens happens,' said DeLuna. 'I do hope I get a stay, though.'"

Dallas Morning News Article on Tuesday Oct. 14, 1986 ("John Gonzalez, Texans await execution ruling: Supreme Court to hear racial challenge to death penalty") says TCCA denied stay on Monday, Oct. 13, three days after U.S.S. Ct. "refused to grant [DeLuna] a stay on the basis of arguments similar to those of McCleskey."

10/13/1986: Letter from Richard Banks, Ct of Criminal Appeals, to Hon. Walter Dunham. Conveying Order entered by court on Writ No. 16,436-01. **Order on Petitioner's Motion for Stay of Execution and Application for Writ of H.C., Ex Parte DeLuna**, Court of Criminal Appeals, State of Texas, No. 16,436-01 (**Denied, per curiam.**) (*JL has copy of Order*)

- Hon. Walter Dunham, Jr., 10/09/1986, entered an order on the application for writ of H.C. finding no controverted, previously unresolved facts material to this cause, and recommending that all relief be denied.
- D files Application for Stay in 5th Cir & U.S. Sup. Ct. (JL has copies of both.)

Application and Brief in Support of Stay of Execution (5th Cir.) [No appeal number or filing stamp.] CDL has been denied required evidentiary hearings by the state. Prosecutorial discretion in assigning death penalty based on race of victim. Denied effective assistance of counsel both in mitigation and appeal. No evidentiary hearing has been held to determine whether the omissions by trial and appellate counsel affected the result of the trial. [Info added 09/04.]

10/14/86:

Houston Chron Article by Frank Klimko ("State appeals court refuses to block Texan's

execution”) in TDC file reports denial of stay: “I’m tired of this, and I would like to know something,’ DeLuna said during a death row interview last week. ‘They have never executed anyone on their first date before, but I would hate for them to try to make an example out of me.’” “DeLuna claims another person killed Lopez and that he was not at the service station at the time of the crime.”

Dallas Morning News Article on Tuesday Oct. 14, 1986 (“John Gonzalez, Texans await execution ruling: Supreme Court to hear racial challenge to death penalty”) says TCCA denied stay on Monday, Oct. 13, three days after U.S.S.Ct. “refused to grant [DeLuna] a stay on the basis of arguments similar to those of McCleskey. DeLuna’s attorneys said they would file an appeal on similar grounds Tuesday with the federal court in Corpus Christi.”

Linda Carrico article, “DeLuna is scheduled to be executed tomorrow: “Death Row inmate contends he will die for a crime he did not commit if he is executed for the 1983 fatal shooting of a Corpus Christi service station clerk. **But the prosecutor who successfully sought and won the death penalty for DeLuna said his claims that another man was responsible for the clerk’s death are outright lies. “Everything he passed onto us was checked out. The bottom line is he lied to us, said former Assistant district Attorney Steve Schiwetz, now in private practice.”** “DeLuna, now 24, maintains he is innocent even though a jury found him guilty of Ms. Lopez’s death and two appeals courts upheld that conviction and death sentence. In a *Caller* interview, **DeLuna said he was arrested because he was in the area and authorities needed a suspect.** DeLuna claimed he was across the street and saw the killing, but walked away without report what he saw. **“I knew since I had been convicted before in Dallas County they would pin this one on me,” DeLuna said.** ...**DeLuna claims he is a victim of mistaken identity. He said a friend, Carlos Hernandez killed the clerk but authorities refuse to believe him. ‘That’s a lie,’ Schiwetz said. ‘He lied throughout the trial, and he’s lying now.’”** It was on the first day of the trial, Schiwetz said that DeLuna told his court-appointed attorney, Jim Lawrence, about Hernandez whom he said he met while both were in the Nueces County Jail. **‘We got pictures of all the Carlos Hernandezes who had been in the jail the last 10 years and gave them to him to pick the guy out. He couldn’t,’ Schiwetz said. [IF THEY GOT THIS INFO THE DAY OF TRIAL, THEN WHAT WAS OLIVIA ESCOBEDO DOING WITH PRINTOUTS OF THE CRIM RECORDS OF CARLOS HERNANDEZ’S MUCH EARLIER; AND WHY WAS CH FINGERPRINTED IN APRIL 1983???**] **‘Further checks showed that DeLuna had never been in jail the same time as a Carlos Hernandez,’ the former prosecutor added.” [THIS LOOKS WRONG, TOO. OUR RECORDS SUGGEST THE TWO CARLOSES MAY HAVE BOTH BEEN IN JAIL ON 5/23/80 OR THEREABOUTS. ALSO MAYBE 7/19-29/78. Also maybe 12/10 and 11/79]** Discusses Mary Ann-Perales (has her 9 months pregnant that night). “DeLuna was arrested a block away from the murder scene after he was found hiding under a car. In his pants pocket was a wad of money – the same amount that had been taken from the service station’s cash register, Schiwetz said.”

Judge Hayden W. Head, Jr., U.S.D.Ct. SDNY issues stay of execution. [Stay order can be found in TDC records]

Judge Head gives respondent 20 days to answer the h.c. petition.

10/15/86:

Second article (also in TDC record) reports that Judge Head of the US Dist Ct. grants a stay “13 hours before he was to be strapped to a gurney and put to death. ‘Thank goodness!’” DeLuna, 24, responded when given the news about 12:30 p.m. Tuesday”

Third article (“Inmate gains stay 12 hours before set execution” (AP). Describes his talking with a friend, two sisters, a half sister, and half brother and a sister in law.

AP article (“Inmate given reprieve hours before execution”): “A federal judge granted convicted killer Carlos DeLuna a stay of execution Tuesday, just 12 hours before he was to die by injection for the 1983 robbery-slaying of a Corpus Christi convenience store clerk. . . . The state AG’s office did not oppose the stay, said Marianne Bolus, a deputy clerk for Head. Upon hearing of the stay, DeLuna only said, ‘thank you,’ according to Charles Brown, Texas Dep’t of Corrections spokesman. DeLuna, 24, appeared calm Tuesday while waiting for word of his last-minute appeals, Brown said. He talked with other inmates and visited with a friend and relatives. The convict took heart medication early Tuesday, but prison officials said they did not know his ailment.

Linda Carrico’s Caller Times article: “Death row inmate Carlos DeLuna missed his appointment with death yesterday, when a Corpus Christi federal judge granted him a stay just 12 hours before his scheduled execution. . . . Steve Schiwetz, the former prosecutor who successfully sought the death penalty for DeLuna, said he was not surprised by the stay. ‘I expected it. These things take time. You just have to be patient,’ he said. But Mary Vargas, Ms. Lopez’s mother, said yesterday she was disappointed to hear of DeLuna’s stay of execution. ‘It’s the only way I feel that justice will be done because she didn’t deserve to die,’ an upset Mrs. Vargas told the *Caller*. ‘I want him to pay for what he did to her. She offered him everything, yet he still killed her,’ Mrs. Vargas said. ‘I have asked over and over again, “Why her.”’” Yesterday, DeLuna remained calm while awaiting transfer from death row to the Walls Unit where the death chamber is located. He received word of his stay while visiting with family members, prison officials said. DeLuna continues to maintain his innocence. Since his trial, DeLuna has claimed he saw another man kill the store clerk.”

11/12/1986: **Respondent’s Motion for Summary Judgment** (S.D.Tx) Summarizes CDL’s allegations (fleshed out in Response, 01/23/1987, below). These issues were already raised in the state court and denied. Does make the argument that CDL doesn’t have standing to claim the death penalty is disproportionately applied in crimes with white victims because Wanda Lopez had an Hispanic surname and no evidence has been offered to call her race into question. Also, failure to call witnesses in mitigation or in support of the theory of an alternate assailant, and the advice not to cooperate with

psychologists, were trial strategy. [Info added 10/04, LN]

11/14/1986: CH's initial attorney, Pedro P. Garcia, withdrew at Hernandez's request. Hernandez also filed a motion asking for a new attorney because Garcia had not filed for a reduction in bond or the appointment of an investigator. However, the investigator was appointed by the court on 10/23/1986, and this request was made one month after Garcia made a motion for a mental examination of Hernandez. Jon Kelly was appointed on 11/13/1986. **Pedro P. Garcia**, 4466 South Staples, Corpus Christi, 512/992-8061, SBN: 07641000. Investigator, **Horacio Ortiz**, Independent Security Consultants, 4455 SPID, Ste 45, Corpus Christi, 512/855-8001, TX license no. C-1973.

12/09/1986: CH's attorney, **Jon Kelly** (also represented CH in 1989 aggravated assault of Ybanez) convinced the judge to order the DA to provide the 12/1979 tape of CH's conversation with his mother and the 01/1980 interview between CH and **Botary** described in the Saucedo case.

12/22/1986: Kelly moves to dismiss the murder charge of the CH discussed above on the grounds of speedy trial concerns and given the exculpatory nature of the testimony at the earlier trial as it applies to CH.

12/31/1986: Trial judge dismisses the indictment on speedy trial grounds. Same CH as discussed above. (**Judge Jack N. Blackmun**)

1/1/87: *Corpus Christi Caller-Times* article, "**Judge Frees Man Charged in Murder**"

Article is about Hernandez murder dismissal, by staff writer Sandra Forero. First assistant district attorney Bill May defends prosecution's preparation saying Hernandez was indicted because a witness came forward with new evidence. Defense attorney Jon Kelly felt that no new evidence was presented that was available at the 1980 trial. Police Commander Robert Sullivan stated that the case was re-opened after they were presented with new evidence and notes that investigators seven years ago "overlooked some important information that was available at the time". District Judge Blackmun explained that he felt the lack of witnesses and evidence combined with the lapse of time meant he had to dismiss the case. The article mentions that during the 1980 trial, Hernandez, whose underwear and fingerprints were found in the van, admitted to having sex with Mrs Saucedo the night she was murdered, but said he didn't kill her". [Info added 9/04, LN]

01/23/1987: **Petitioner's Response to Respondent's MSJ** (S.D.Tx)

- Argument that prosecutorial discretion about whom to charge with the death penalty is based upon victim's race.
 - Court appointed attorneys on appeal failed to seek an application for cert to the Supreme Court and abandoned the case after the direct appeal to the Court of Criminal Appeals in Tx.
 - Collection of race-based data from Nueces County is complicated by the

large Hispanic population, who in some court documents are noted as Hispanic and in some as Caucasian.

- Denial of effective assistance of counsel in violation of 6th Amendment.
 - Hector DePena and James Lawrence barely met with CDL prior to trial. CDL had no contact with counsel during his mother's illness – his mother was his “main witness.”
 - No investigation of CDL's history of substance abuse.
 - Failed to investigate alternate hypothesis (CH).

On July 25, 1983, shortly after CDL's conviction, CH was arrested on another charge. [Quotes newspaper article about CH's arrest for Saucedo murder in 1986; EVIDENTLY MISTAKEN IN SAYING THIS ARREST OCCURRED SHORTLY AFTER CDL'S CONVICTION IN 1983; IT HAPPENED IN 1986, which is the date on the article that Anderson appended to the motion; FED DIST JUDGE REPEATS THIS MISTAKE.]
 - Failed to investigate whether there was another voice present on the 911 tape.
 - Put forward no mitigation witnesses. Witnesses who were available to testify:
 - Maria Arrendondo, sister
 - Rose Earley, sister
 - Daniel and Maria Conejo, brother and sister-in-law
 - Mr. Perez, English teacher at Tom Brown JHS
 - Blas Avalos, stepfather
 - Belinda and Diana Pena, nieces
 - Alicia Caballara, girlfriend**
 - **Failed to preserve mother's testimony**

Advised trial counsel at the time of trial that he “observed the assailant while he was on the phone talking to his mother....[H]e 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.” (p. 12 of Response)
 - Trial counsel advised CDL not to cooperate with court-appointed psychologists.
- Denied effective assistance of counsel on appeal.

[Info added 10/04, LN]

4/15/87 or could be 1989 --- probably latter, Dina Ybanez episode: DPS has fingerprints taken from CH this day, showing him to be 5'7", 140 lbs, 33 y.o., No. 074204 (DPS records rec'd 11/04)

05/15/1987: End of Parole to Nueces Co. (beginning date unknown)

07/16/1987: Public Intoxication

1845: Arrested for public intoxication (alcohol) at 400 S. Shoreline, Corpus Christi. Offense No.: 870716-121. County Court Case: 87105147-5. Disposition: Dismissed. At the concession stand near Vogel Beach – bloodshot eyes, droopy face, slurred speech, staggering; strong odor of alcohol.

Residence: 826 Hancock, Corpus Christi
Employer: Plumber, Parkdale Plumbing
Description: Hispanic Male, 5'7", 180 lbs.

07/29/1987: Public drunkenness charges filed (Cause No. 87-105147-5)

10-14-87: TDC Disciplinary Report 536972: Threatening an Officer: convicted and given 15 days confinement to cell.

12/22/87: Jon Kelly files application for Protective Order on behalf of Fidela Heranandez and against Javier Hernandez for family violence. This results in a temporary ex parte protective order being issued on 11/23/87 and a permanent protective order on January 27, 1988 barring Javier from “committing family violence wither threaterning of physically striking Fidela or communicating with her in a threatening or harassing way or going to her place of business.

1988: July 1995 Memorial Medical Center Records, Multidisciplinary Assessment (1-page), says CH “fell off pickup truck – sustained head injury in 1988”. Supposedly this happened at the beach; it was Freddy Schilling’s truck; CH had surgery and had portion of brain removed or some such.

02/03/1988: Respondent’s Motion to Expedite (S.D.Tx) Requests court to expedite proceedings. CDL had requested time to compile statistical evidence of 14th Amendment due process violation. In light of *McCleskey v. Kemp*, the Supreme Court invalidated statistical evidence and this extra time is no longer necessary. [Info added 10/04, LN]

04/06/1988: Public drunkenness charges dismissed [was he in jail all this time?]

5/27/88: Letter from CDL to Vicky. “Hello my sister. I hope every one is well and fine do give every body my love and Regards. I don’t know why you don’t write anymore I hope you haven’t forgotten about me or your mad at me in any way But what ever the case is I would like to get a letter at least one the last time you wrote to me was 1984 I think just one letter Vicky. I know you ain’t got nothing to say but at-least, right in say hi I would be very happy with that. I got a degree in college. I graduated from a Business course 2 ½ years of college. I hope I get to use all my knowledge I pick up her one day soon.” Sends her a box he made; asks for stamps to sent the box and a photo. “well you take care and I hope to at least get a hi letter from you.... Hey If not I will understand and that’s ok. I well always love all of you’ll no matter hat ever happens to me. I still haven’t heard any thing from the federal court in corpus ChristiI heard Blas is sick. I hope

he gets well soon. I feel sorry my heart goes out to him. I rember he did a whole lot for Manuel, me and Rose. I just never'ed pay much attention when I was around cause I was very stupid and hard headed..... Bye now. Love Brother Carlos.”

06/13/1988: Judgment Dismissing Writ of Habeas Corpus, *DeLuna v. OL McCotter*, US Dist Ct, S.D.Tx., Corpus Christi Div., C.A. No. C-86-234. Rendering final judgment in favor of Respondent, denying Petitioner relief sought by application for writ of H.C. Lifting stay of execution. (Not filed in Nueces Co until 10/27/1989.) (*JL has copy of the Order dismissing H.C.*) Main points:

- D failed to show facts specific to his case that race played role in jury selection.
- D;s allegations for ineffective assistance of counsel fail. Attorneys were aware of Ds mother’s testimony and her diminishing health and made decision to not preserve testimony. Moreover, mother’s testimony would not have made sense as it would have contradicted D’s own testimony. Decision to not use mother’s testimony was not unreasonable.
- Counsel made calculated decision regarding which witnesses to call or not call in punishment phase.
- Only evidence of Ds mental status is his own assertions. Psychiatrist found D competent to stand trial. Counsel made calculated decision to not put on witnesses about Ds mental health.
- Record shows counsel “made effort to locate Carlos Hernandez” and D cannot allege any acts which his lawyers failed to perform in investigating his case.:

“Petitioner has not alleged any additional specific information which he gave to his attorneys at the pretrial stage which would have aided them in finding Carlos Hernandez. . . . Petitioner does allege that a man named Carlos Hernandez was arrested for an unrelated murder after the conclusion of Petitioner’s trial, and that Petitioner brought this to the attention of his attorneys. Petitioner claims that his attorneys made no investigation of the arrested suspect to determine if there could be grounds for a new trial. Even if this Court assumes that Petitioner’s attorneys reasonably should have follow up on the Carlos Hernandez arrest, Petitioner can show no prejudice as a result of their failure to do so. . . It is not reasonable to believe that the location of Petitioner’s ‘Carlos Hernandez’ would undermine the confidence in the outcome of the trial. Petitioner’s testimony would obviously carry little weight. Two eyewitnesses identified Petitioner as the murderer, one of which had a face-to-face encounter with Petitioner only moments after the crime. Two more witnesses saw Petitioner fleeing from the scene moments after the murder, and Police found Petitioner a short time later hiding under a car in the neighborhood behind the gas station. In view of the cumulative eyewitness testimony and other circumstantial evidence, it is not reasonable to believe that the location of ‘Carlos Hernandez’ would have affected the outcome of the trial. **Given the fact that Petitioner lied about his other alibi witness, Mary Ann Perales, there is substantial doubt that Carlos Hernandez even**

existed.” (pp. 7-8)

- Better analysis of WL’s conversation with police dispatcher would have had little effect given the overwhelming eyewitness identification of D. It was also reasonable for counsel to not cooperate with court appointed psychiatrist.

6/29/88: First Amended Application for Writ of H.C. (S.D.Tx) (*JL has copy of this application.*) Focus is now on ineffective assistance of counsel as there was no mitigation investigation. Counsel should have presented evidence about Ds age at time of crime. Meets Strickland standard.

- Abandoning statistical claim pursuant to *McCleskey v. Kemp*. [*Spelled “McLeskey” in brief.*]
- Denied affective assistance of counsel under *Strickland* standard. During mitigation, “no testimony was put on to show that Petitioner even had a caring relative to testify and beg for his life.” This was failure to present evidence, not a strategic decision.
- Includes portion of trial transcript with jury being polled about further deliberations. Jurors: Morales, Gonzales, Rasmusson, Dahlman, Vicers, Perez, Botelho, Gavlik, Jimenez, Kurtz, Bradley, Abernathy.

Applicant’s Motion for Relief from Order, Motion for Certificate of Probable Cause, and Notice of Appeal (S.D.Tx). Appealing to 5th Cir. on claims of ineffective assistance of counsel. [Info added 10/04, LN]

6/30/88: CDL letter to Vicky. Sends love. “I am sure you heard the federal court in corpus Christi rule against me on my appeal that means I well be going back so they can set another date of execution. I have a good chance of being put to death this time around because its getting to a point where the courts just don’t want to hear our appeals any more on Death row.” Clear that VG didn’t write to him since his May letter and he asks again for postage to send her things and for a little “to buy me something to eat and drink because the food here is very, very bad. I wish there was a way you could sent me a tray from home. Do you rember how you would always make pork chops for me. I can still rember that.” Passage here about “how stupid I was when I was young” and failed to take advice from Fred and from his mom. Talks about getting older. **“I sometimes sit here at nights and I cry to myself and I wonder how could I have ever let some stupid thing like this happen because of a friend who did it and I kept my mouth shut about it all. But I don’t blame any one but my self and I accept that, that is why I well accept If the state of Texas decides to execute me.** I want you to rember that no matter what happen I will never forget All of you’ll and I will always love all of you’ll. They might be able to kill me but they can’t kill love or memories. always keep that In mind.....”

07/12/1988: Applicant’s Motion to Attach Affidavits and Evidentiary Matters to Previously Filed Pleadings (S.D.Tx.) Applicant seeks leave to attach affidavits and other evidentiary material to Amended Petition. **Affidavits signed by Ds family members, later submitted with the Habeas Petition.** These affidavits are in support of

the ineffective assistance of counsel claim. **Affidavits from:**

- **Maria Conejo**
 - CDL's sister-in-law. Employed at Young Fashion Jewelry. Home address is 220 East Miller, Garland, Tx, 214/278-8545.
 - Never contacted by attorneys to testify. CDL lived with them for quite a while. Would take the kids to the park and run household errands. **One time he brought home a girl to live with them who had two babies because he loved her.**
- **Manuel Conejo**
 - *[Don't have document.]*
- **Mary Arredondo**
 - CDL's sister. Employed by Texas Instruments. Home address is 301 East Miller, Garland, Tx, 214/278-7881.
 - Was never contacted by attorneys to testify. She attended his trial until the end.
 - Related CDL's devotion to his family and his generosity.
- **Max Arredondo**
 - CDL's nephew. Student at Richland College and employed by UPS. Home address is 301 East Miller, Garland, Tx, 214/278-7881.
 - Was never contacted by attorneys to testify. Close to his uncle.
- **Robert Arredondo**
 - CDL's nephew. Employed by Brad Rhoton & Assoc. Home address is 301 East Miller, Garland, Tx, 214/278-7881.
 - Was never contacted by attorneys to testify. Very close to his uncle.
- **Michael Arredondo**
 - CDL's nephew. Student at South Garland HS. Home address is 301 East Miller, Garland, Tx, 214/278-7881.
 - Never contacted by attorneys to testify. Was very close to his uncle. **Says CDL has now lost about 60 lbs.**
- **Salvador Marquez**
 - CDL's brother-in-law. Employed at American Iron and Metal. Home address is 6600 Ethel Drive, Dallas, Tx, 214/388-7967.
 - Never contacted by attorneys to testify. CDL stayed with them and took care of the kids while his wife worked.
- **Rebecca Marquez**
 - CDL's sister. Employed at Dallas Tailor Laundry Supply. Home address is 6600 Ethel Drive, Dallas, Tx, 214/388-7967.
 - Never contacted by attorneys to testify. CDL stayed with her in Dallas, helped with expenses and babysat the kids.
- **Joe Anthony Conejo**
 - CDL's nephew. Employed at Kroger. Home address is 6600 Ethel Drive, Dallas, Tx.
 - Never contacted by attorneys to testify.
- **Daniel Conejo**
 - CDL's brother. Employed as a carpenter. Home address is 220 East Miller, Garland, Tx, 214/278-8545.

- Never contacted by attorneys to testify. CDL is a better person because of his incarceration. He has matured.
 - **Freddy Gutierrez**
 - CDL's nephew. Employed at Kraft. Home address is 201 East Ridgewood, Garland, Tx, 214/271-8461.
 - Never contacted by attorneys to testify. Gutierrez was bullied and CDL went to all the bullies' houses and talked to their parents.
 - **Alfredo Gutierrez**
 - CDL's brother-in-law. Employed by Kraft. Home address is 201 East Ridgewood, Garland, Tx, 214/271-8461.
 - Never contacted by attorneys to testify.
 - **Rosemary Deluna-Earley**
 - CDL's sister. Employed at Brad Rhoton & Assoc. Home address is 5050 Quorum Drive, Dallas, Tx, 214/991-1580.
 - Never contacted by attorneys to testify. The siblings were never close to their parents. CDL and Rosemary were very close. He lived with her and took care of the baby after she was first married. He helped with the household bills.
 - **Milda Callahan**
 - Friend of CDL. Retired. Home address is 216 East Miller, Garland, Tx, 214/840-1895.
 - Never contacted by attorneys to testify. Knew CDL when he lived next door at the Conejos' house. 63 yo at time of affidavit.
 - **Victoria Gutierrez**
 - *[Don't have document.]*
 - **Brad R. Rhoton**
 - *[Don't have document.]*
 - **Rosarion M. Esquivel**
 - *[Don't have document.]*
 - Also attached are juvenile record, police reports relating his youth substance abuse and the food stamps incident.
- [Info added 10/04, LN]

07/19/1988: Dist. Ct. entered **Order** denying relief from judgment. *[From S.Ct. Application]* [Info added 10/04, LN]

7/20/88?: Undated Caller Times Article by David Teece, Judge Lifts Stay of Execution for DeLuna discussing d. ct. order of 7/19. Mostly describes d. ct. order. Anderson declines comment. Says "DeLuna has continued to maintain that he is innocent in Lopez's murder, claiming the assailant was actually a friend of his named Carlos Hernandez. At the trial, DeLuna testified that he was across the street and saw the killing, but walked away without reporting it because he was s convicted felon and did not want to jeopardize his parole. Police found DeLuna several blocks from the scene of the killing hiding under a car with a wad of money in his pants pocket, according to prosecutors." Discusses phone call tape. "Four witnesses at the trial testified that they saw DeLuna inside the service station and fleeing the scene on foot."

07/28/1988: Petitioner's Notice of Appeal to 5th Cir. from 07/19/1988 Order. [*From S.Ct. Application*] [Info added 10/04, LN]

10/24/88: Appellant's Brief (5th Cir.) Appeal No. 88-2613. Includes request for oral argument. Points of error:

1. Dist. Ct erred in failing to have evidentiary hearing in IAC claim with respect to mitigation.
2. Dist. Ct abused discretion in denying Writ of H.C.
3. Texas death row appeals procedures deny D effective assistance of counsel.

[Info added 10/04, LN]

11/10/88: CDL's last letter we have, to his nephew Noel, son of Vicki. Thanks him for letter and picture Noel sent. "all we have to do is believe in god and everything well be alright you well see what I am saying Ok?... I hope you are getting passing grades and I hope you do well in school rember school is Very important, so always try to do your best ok?...Hey when every you ant to you write and I well write Back to you. Do take care and you be carefull, and pay attention to your mom & Day the usually are always right ok?"

11/29/88: Brief of Respondent/Appellee (State) (5th Cir.) (undated, no filing stamp) Appeal 88-2613. (*JL has copy.*) Rebutts D's arguments but adds no new facts of interest. Statement of facts is chronological from the viewpoint of law enforcement, beginning with George Aguirre. Highlights CDL's testimony about Mary Ann Perales and that law enforcement testified that CDL was a troublemaker in the area.

[Info added 10/04, LN]

04/15/1989: Aggravated Assault of Bernadina ("Dina") Ybanez

4/15/89 or could be 1987: DPS has fingerprints taken from CH this day, showing him to be 5'7", 140 lbs, 33 y.o., No. 074204 (DPS records rec'd 11/04)

4/19/89: TDC Inter-Office Communication from Admin Assistant to Classification Committee says: "Your central records have been reviewed with regard to your affiliation as a disruptive group member. There is sufficient evidence to warrant your confirmation." [No mention of basis; discusses process of "appealing ... alleged gang affiliations"]

04/21/1989: Cause No. 89-00957-H; charges for Ybanez assault.

4/26/89: Fifth Circuit denies relief. [*From S.Ct. Application*]

5/10/89 Request to 5th Cir. asking for Re-hearing En Banc. (*JL has copy.*) Main points: (1) Procedure of having counsel appointed in habeas proceedings has been wrongly interpreted by Tx. Cts. and violates Ds right to effective assistance of counsel. (2) IAC claim for not presenting issue of Ds age at penalty phase. Penry issue.

05/26/1989: Suggestion for Re-Hearing to 5th Cir. denied. [*From S.Ct. Application*]

[Info added 10/04, LN]

06/05/1989: Letter from 5th Cir. To U.S. Dist Ct, Corpus Christi, conveying 5th Cir. Judgment in *DeLuna v. Lynaugh*, 5th Cir. Ct. of App., USDC No. CA-C-86-234, the Opinion, the original record on appeal and one box of other original papers.

06/29/1989: Applicant's Motion for Relief from Order, denied 07/19, and Amended Petition for Writ of Habeas Corpus [*Don't have documents; unclear which court.*]

07/19/1989: Order, *DeLuna v. Lynaugh*, 5th Cir., No. 88-2613, **denying** Appellant's motion to recall the mandate and stay the setting of an execution date pending the filing and disposition of a petition for writ of certiorari. **[873 F.2d 757 (5th Cir.), cert. denied, ___ U.S. ___, 110 S.Ct. 259 (1989)]**

7/20/89: Admitted to TDC hospital for some medical problem.

08/24/1989: Cert Petition to 5th Cir. [*From S.Ct. Application*]
[Info added 10/04, LN]

10/9? Or 23?/1989: Hernandez pled guilty to aggravated assault. Received 10 years in TX Dept of Corrections; given 8 days credit. Presiding **Judge Vernon D. Harville**. Prosecutor: **Mark Skurka**; Def Atty: **Jon Kelly**.

From "Judicial Confession" and attached documents:

0035: Arrested for aggravated assault at 3rd and Buford, Corpus Christi. Involved at a "Sig. 33" at the 1000 block of 7th. Offense No. 89017017.

Residence: 826 Hancock, Corpus Christi [Hernandez's mother's address?]
1014 7th Street, Corpus Christi

Next of Kin: **Fidela Hernandez**

Description: 5'7", 140 lbs.

DL 08475310 (TX, Exp. 1989)

Victim: **Bernardina ("Dina") Ybanez** (1014 7th Street, Corpus Christi; DOB: 07/12/1958; mother – **Margarita Samarego** (sp?))

Hernandez's Statement: Says his address is the same as Ybanez's, phone ___/882-6549. Says he stabbed her with his little buck knife. [Implied, he has a bigger one.] He was fighting with another man who had threatened him and Dina got in the way, trying to stop the fight.

Ybanez's Statement: Gives residence and phone, DOB. Employer: Rosita's Mexican Restaurant, 2319 Morgan, Corpus Christi. Hernandez was staying at her house for about 3 months, would babysit her kids. Hernandez usually stayed in the garage. On 04/14/

1989, Ybanez got a ride home with a co-worker, **Lydia. Cindy Maxwell**, same address, Hernandez's "common law" told Ybanez that Hernandez was drunk and had left in Ybanez's car. They got in an argument about the car when Hernandez returned around 0030. He pushed her around and pulled a knife out of his back pocket, already open. [Implied, it closes.] He stabbed her once in the stomach, using his right hand. Hernandez was jealous about Ybanez dating someone. Sons: **Johnny** (14) and **Andy** (12) were there – Andy hit Hernandez in the head with a stick to stop him. Andy called the police.

Hernandez fled the scene on foot. Initial call 0025; booking time 0125. Distance between scene and place of arrest 1/4 mile.

Evidence: Knife (see below), blood on jeans, confession, photos of Hernandez, Ybanez's wounds and knife are included.

Weapon: "Buck knife" (property tag no. 23195); knife was in Hernandez's back pocket at arrest. Copied photo shows knife is between 6" & 8" long, folding, handle w/ metal tip.

BOLO: 34 year old Hispanic male w/ moustache wearing brown t-shirt and blue jean jacket.

LEOs: Officer Martin DeLeon (CCPD 007) – also arresting officer

Sgt. Hartig (CCPD 710) – also arresting officer

Officer E. Kearney (CCPD 014)

Sgt. Wyrd (CCPD ____)

Sgt. T. Mart__ (CCPD 137)

Sgt. R. Mayorga (CCPD 434)

CCPD take major case prints from Carlos Hernandez this day. [Info added 9/04, LN]

Cindy Maxwell told Bruce Whitman that CH stabbed Dina Ybanez because he found out she was seeing 4 men at once, including CH. *[Interview of Cindy Maxwell by BW, 08/2004.]*

Undated Nueces County Sheriff's Dept form (hand-written # 702549) shows 4/15/89 arrest at 3rd and Buford by Deleon and Hartis of CCPD, shift commander - Sgt. Boedeker, and charge of Agg Assault, for which bond was set at \$5,000 ("Longoria"). 5'7", 140 lbs; lists Carlos Hernandez, Sr., Father, as next of kin; shows "N" for all noted diseases. Lists "Gen Maintenance" as occupation. Offense no. 89017017. [Info added 10/21/04]

4/17 and 22/89: NC SO form used upon release of jail prisoner, with fingerprints on one hand, says "4-17-89 Longoria [bail bondsman, I think]" \$5,000 Att J-J Kelly 4-22-89 Time 15:38". Looks like bondsman got involved on 4/17 but maybe Kelly actually took charge of him on release on 4/22?? [Info added 10/21/04]

Dina Ybanez told JSL that her boys beat CH off of her with a stick. They hit him in the head. She said that CH wanted sex when he pulled her out of the car and put the knife to her neck. The knife was big and it was folding type, a buck knife. *[Interview of Dina Ybanez by JSL, 07/2004.]*

Andy Ybanez told Peso Chavez that he thought CH had a crush on his mom at the time of the stabbing. CH always carried a knife and never told him about any killings – Andy was too young. [Interview of Andy Ybanez by PC, 08/2004.]

In a TDOC 3/15/90 Admission Summary (in DPS file, 1/30/05 batch), CH self-describes this crime as follows: “In the early morning hours, on 4/15/89 at approximately 12:23 a.m., the subject was at the home of a girlfriend located at 1014 7th st. in CC The subject claims his 27 year old Hispanic female girlfriend, Bernadina YBANEZ, was with another man when he came in from a nightclub. The subject claims he began arguing with the other Hispanic male and they started fighting. The subject claims that he pulled a knife on the Hispanic male to protect himself and his girlfriend walked in between them at which time she was stabbed in the back [LIE] by the subject. The subject claims she grabbed for the knife and cut her fingers and he fled the scene on foot ... was arrested approximately 15 minutes later and placed in custody in the Nueces County Jail where he posted a \$5,000 bond 1 week later.” Info added 1/30/05 and 2-1-05—jsl]

10/09/1989: Plead guilty for Ybanez assault; judgment of conviction issued, Jon Kelly Attorney: Aggravated Assault 3rd Degree on 4/15/89; “findings on use of deadly weapon: NONE”; 10-years confinement TDOC, sentence to begin 10/1/89 [Date added 10/21/04]

Undated Nueces County Sheriff’s Dept form (hand-written # 708372) shows 10/5/89 arrest Nueces County jail by Garcia of CCPD, shift commander – Lt Barrerra upon sentence of “10 yrs TDC”; original charge was Agg Assault, but much of that is crossed out and says “C/D LH”; 5’7”, 140 lbs; lists Carlos Hernandez, Sr., Father, as next of kin; shows “N” for all noted diseases. Lists “Gen Maintenance” as occupation. Offense no. 89017017. [Info added 10/21/04.]

10/10/1989: Denial of Cert. *DeLuna v. Lynaugh*, U.S. Supreme Ct., No. 89-5442. [__ U.S. __, 110 S.Ct. 259 (1989)]

10/25/1989: Application for Bench Warrant states NCSO to present CDL in court on 10/27/1989.

10/26 and 27/89: CDL picked up at Ellis Unit and booked into Nueces County Sheriff’s Dept evidently for court hearing; indicates he has a heart condition; he gives 301 East Miller, Garland as his address, 5’7”, 160 lbs (Transported by NCSO officers Phillips and Vanco, Booked by Tejada; Supervisor is R. Avalos) (from NCSO William 2-5-05 batch; 2 sep. records)

11/02/1989: (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) Death Sentence After Mandate, Court of Criminal Appeals has confirmed the conviction in its Mandate dated 06/20/1986. Execution set for 12/07/1989. Warrant of Execution for 12/07/1989 at Huntsville. CDL’s Application for Stay of Execution and Memorandum of Law on Application for Stay of Execution, requesting stay of execution until the following can be addressed:

- Issue presented in the petition concerning the jury being fundamentally misled about the meaning of “deliberate” in Special Issue One.
- Texas courts need time to apply *Penry v. Lynaugh* (U.S. Supreme Ct., decided June 26, 1989). It is impossible for the court to carefully consider *Penry*’s implications before the set execution of CDL – there is yet no guidance from the Criminal Court of Appeals or the US Supreme Court.
- CDL’s case presents a clear violation of *Penry*. Only a full hearing and an opportunity to present evidence, as well as a full and reasonable briefing schedule to permit proper development of arguments will adequately protect CDL’s constitutional rights.
- The case presents factual and legal issues identical to *Ex Parte Harvey Earvin*, No. 15,021-03, for which the Court of Criminal Appeals has granted a stay and has set the case for submission of briefs and oral argument.
- The same issues were raised in *Selvege v. Lynaugh*, No. 87-6700, where the US Supreme Ct has granted a stay and petitioner’s Application for a Writ of Cert.
- Other states, Florida is the example, have granted stays regardless of previously raised legal claims while the implications of Supreme Court decisions are evaluated.

Application for Writ of Habeas Corpus filed. Appendixes included multiple affidavits from family members, Ds juvenile criminal records, (these were the same that were filed in the earlier H.C. application), as well as psychological evaluations by Dr. Plaisted and Dr. Kutnick.

CDL’s Memorandum of Law on Application for Writ of Habeas Corpus, (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) [*Our copy of this document is missing p. 2. Also, the Objections to Proposed Findings of Fact (11/xx/1989, below) imply this pleading has attachments; I don’t have them.*]

PENRY

- The implication of *Penry* is that Art. 37.071, TX Code of Criminal Procedure, is unconstitutional as applied. Without special instructions, and under the definition of “deliberately” provided by the court, a juror who thought *Penry*’s retardation and background diminished his moral culpability would not be able to act on a “reasoned moral response.” CDL’s jury had no vehicle outside the special issues to consider and give effect to mitigating evidence by imposing a life sentence.
- Prior to *Penry*, the Supreme Court implied that the special issue of future dangerousness was where jurors could take mitigating evidence into account (*Jurek v. Tx*, 428 U.S.262 (1976)). Settled Texas law was that, regardless of the nature or type of mitigating evidence, no instruction on mitigation would be given to a jury.
 - Without instructions on mitigation, a jury will likely interpret mitigating evidence (mental retardation, drug abuse, abusive childhood) as making a defendant more likely to pose a future danger to society.
- *Penry* found Texas’ special issues only allow for jury consideration of mitigating factors (in this case, mental retardation and childhood abuse) as aggravating, not

mitigating, factors.

- The first special issue, acting deliberately, does not call for consideration of Penry's mental retardation and childhood abuse.
- The second special issue, likelihood of posing a future danger, does call for a consideration of this evidence, but only as an aggravating factor.
- The third special issue, whether homicide is an unreasonable response to provocation by the victim, does not call for consideration of the evidence.
- The failure to request a mitigation instruction or present mitigating evidence at trial does not waive the right to these claims where such a substantial amount of caselaw has been overturned by the Supreme Court's decision. This court must hold that *Penry* claims raised for the first time on direct appeal receive plenary merits review. Discusses other instances of the Tx Criminal Court of Appeals ignoring prior failures to raise objections in light of substantial changes to the law.
 - Additionally, Florida and Maryland have forgiven the failure of defense counsel to develop mitigating evidence where subsequently overturned caselaw discouraged its investigation.

DEFINITION OF DELIBERATELY

- Petitioner sought to have a definition of "deliberately" submitted to the jury that gave effect to mitigating evidence offered. The Tx Court of Criminal Appeals has defined "deliberately" to include a degree of consideration not found in "intentionally."
- The prior rulings of the Tx Court of Criminal Appeals that a definition of "deliberately" need not be submitted to the jury must be reevaluated in light of *Penry*. The failure of the trial court to define "deliberately" in a manner allowing the jury to give full effect to mitigating evidence is a violation of 8th Amendment rights.

SELF-REPRESENTATION

- The trial judge denied CDL's request for self-representation on appeal on the apparent ground that one does not have any right to represent oneself after a conviction. There is no authority for this distinction. This ruling was a violation of CDL's 6th & 14th Amendment rights, and Art. I, Sec. 10 Tx Constitution rights.

11/07/89: CDL NCSO form showing CDL returned to TDC by NCSO officers Brown and Thomas L. Grace (?) (#170) (William batch NCSO records 2/25/05)

11/15/1989: **Respondent's Proposed Findings of Fact** (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A)

- Applicant filed 3 written objections to punishment charge – two objecting to the failure to include definitions of the terms "deliberately" and "probability" because they do not have commonly understood meanings. The third objected to the failure to instruct the jury to consider mitigating evidence.
- Applicant expressly waived his objection that the charge did not contain an instruction on consideration of mitigating evidence. Applicant's objections to the charges are not the same as those raised in this application.
- No evidence was presented at trial concerning an alleged history of drug and

alcohol abuse, troubled youth or limited mental capacity. Neither psychologist presented evidence that CDL suffered from any form of mental impairment arising from substance abuse or disability.

- Applicant's juvenile arrest records for paint sniffing do not show any impairment of mental capacity that would have reduced his personal moral culpability. Mental testing performed prior to trial failed to detect any such impairment. There is no evidence that Applicant was under the influence of intoxicants at the time of the murder that would have reduced his culpability for his crime.
- Affidavits from friends and family do not depict the "troubled youth" – they reflect generally happy childhood and teenage years.
- Evidence from the mental exams and affidavits attached to the application indicate CDL has at least average, and probably much better, mental ability.
- Counsel reasonably refrained from calling friends and relatives to testify at the punishment phase about CDL's good character. Such testimony is wholly at odds with all other testimony about CDL and ignores facts of his previous convictions. Cross examination of these witnesses would have allowed the prosecutions to re-emphasize the brutal facts of the crime and prior convictions.

Respondent's Original Answer to Application for Writ of H.C. (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A) (*JL has copy of this.*)

- Responses to grounds for relief:
 - (*1 – Texas law as applied did not allow for effective consideration of mitigating evidence.*) This claim is not properly preserved for review; counsel did not object at time of trial. Counsel filed written objections prior to the time the charge was read; but, withdrew the objection when making it on the record. Alternatively, *Penry* is predicated on presentation of evidence (mental retardation and childhood abuse). No such evidence was presented at either the guilt-innocence or punishment phase of CDL's trial. There is no support in the record that this was a calculated move on the part of CDL's counsel.
 - (*2 – The jury was fundamentally misled about the meaning of "deliberately."*) The claim has not been properly preserved – Applicant's objection did not contain a definition of "deliberately." The objection does not comport with the claim he is now raising. Even if properly raised, there is no relief – there was no mitigating evidence submitted for the jury to misconstrue.
 - (*3 – Trial court's denial of CDL's request to proceed pro se on appeal.*) Applicant stated under questioning by the court that he was merely dissatisfied with his atty's representation. Waiver must be knowing, intelligent and voluntary. Defendant must understand the dangers and disadvantages of self-representation. The motion to represent himself was prepared by someone other than himself. He erroneously asked that another inmate be allowed to represent him – a mistake bourn from copying the motion. He clearly withdrew his application once he understood the dangers of self-representation.
- There is no need for a hearing – issues can be resolved by Criminal Court of

Appeals by review of the record.

11/17/1989: Appellant's Objections to State's Proposed Findings of Fact and Conclusions of Law. (28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A)

OBJECTIONS TO FINDINGS OF FACT (*JL has copy of this.*)

- Consistently discusses the distinction between mitigation and defense regarding the psychological examinations. Both exams stated CDL had a low IQ and both opined he was malingering. The malingering was a question of fact for the jury. The jury could not consider this question of fact due to the absence of a charge. The low IQ and history of drug and alcohol abuse could have acted as mitigating factors, not a defense, but for the state of the law in Texas in 1983. The implications of *Penry* on mitigating evidence call for a new sentencing hearing where the jury can fully evaluate mitigating evidence.
- The record does not support the contention that there were no mitigating witnesses for the defense to put forward – only that the defense, interviewed some witnesses and did not put them on the stand. There are several affidavits of potential mitigating witnesses who say they were never contacted by defense counsel.
- The judge, in 1983, misrepresented the law to CDL in an attempt to coerce him into keeping representation. He told CDL that CDL could keep Lawrence's representation and still file his own pro se brief in his defense with Lawrence's assistance. This is untrue and a misrepresentation of the law removes the court's ability to say CDL made the decision to retain counsel intelligently.
- The presence or absence of mitigating evidence, as well as what CDL reasonably expected to do in his own pro se defense given the judge's representation of the law, are controverted issues of fact which need a hearing to resolve.

OBJECTIONS TO CONCLUSIONS OF LAW

- Repeatedly alleges mischaracterizations and misunderstandings of the law; misapplication and direct conflict with *Penry*; assumptions of issues presented in the Writ without analysis of argument.

BODY OF ARGUMENT

- State ignores and misrepresents the attachments to the Petitioner's Application for Writ of H.C. (*See 11/03/1989, above.*)
- State ignores the erroneous assurances of the judge in coercing CDL to retain his counsel.
- State completely fails to address how *Penry* will be applied to cases tried before the Supreme Ct determined the TX death penalty scheme was unconstitutional where there was mitigation evidence. The App for Writ of HC adequately addresses this issue and any proposed findings of fact and conclusions of law should track that memorandum or explain why the authority cited will not apply.
- There are unresolved, contested issues of fact:
 - Whether there was mitigation evidence available at trial but not presented;
 - Why mitigation evidence was not presented at trial;
 - Whether Petitioner desired to represent himself pro se on appeal;
 - Whether he waived the demand to represent himself pro se;
 - Whether the waiver was a result of the judge's misrepresentations about

- the appellate process;
- What expectations Petitioner had re being provided a copy of the appellate record and file a pro se brief.
- Requests most current pleadings (11/02/1989, etc.) be sent to TX Court of Criminal Appeals along with the rest of the record, including this document.
- *Appendix is portion of Hearing on Motion for New Trial from 09/1983 regarding Judge Moore convincing CDL to retain his defense counsel.*

11/22/1989: Order denying Application for Stay of Execution and Findings of Fact and Order, *Ex Parte DeLuna*, 28th Judicial District of Nueces Co., Tx, No. 83-CR-194-A.

- At the hearing on the motion for a new trial, Applicant requested that his attys be dismissed and that he be allowed to represent himself at the hearing and on appeal. (*See 09/12/1983, above.*) The court determined CDL was simply dissatisfied with De Pena, but fully satisfied with the representation by Lawrence; and, the Applicant “had little, if any, understanding of the dangers and disadvantages of representing himself.”
- No hearing is needed inasmuch as Applicant raises only legal issues that can be resolved from the record.
- Orders record be sent to Applicant’s atty: R.K. Weaver, 404 Expressway Tower, LB 35, 6115 N. Central Expressway, Dallas, TX 75206.

11/29/1989: Order denying the application for writ of habeas corpus. *Ex Parte DeLuna*, Criminal Court of Appeals, Writ No. 16,436-02, En banc (Unpublished).

11/30/1989: (note that either this date or the date of the order is wrong.) D’s Application for Stay of Execution [IS THIS IN S.D. TX??]. (*JL has this motion.*)

Main points:

1. Asks court for time to consider ramifications of Penry.
2. D was denied right to represent himself pro se.
3. Penry requires Tx courts conduct a new analytical inquiry in each death case. The Court can no longer be confident in the assumption that all mitigating evidence is appropriately considered and given effect through the special instructions.
4. D can still raise Lockett claims in light of Penry.
5. Definition of “deliberately” should have been read to jury.

State’s Motion to Dismiss for Abuse of Writ. S.D. Tx. (*JL has this motion.*) Main points:

1. Because both the factual and legal bases for Ds Penry claims existed at the time of the prior writ, his failure to earlier present the claims constitutes an impermissible abuse of the writ.
2. No mitigation presented, so not required to present mitigation instruction, so D cannot raise Penry issue now.
3. The Penry objections had to have been made to be preserved for appeal.
4. There was no real mitigation evidence that D could have presented. Juvenile

records do not show alcohol and drug problems. D could not have shown low intelligence based on the psychiatric evaluations conducted by Plasid and Kutnick.

5. Was not error for jury to not be instructed on age being a disability. Jury can draw on common experiences.
6. D was not unconstitutionally denied his right to self representation.

Houston Chronicle Article by Kathy Fair, "Each tick of clock increase terror of condemned killer":

"I'll be honest," said Deluna, who came within 12 hours of being executed in October 1986. "I'm really scared that I'm going to have to go through this and I hope I don't, but if it does happen I have peace within myself. . ."

xx/xx/89 District Court denies request for stay and habeas application

12/02/89 D's Motion for relief from Order, filed in S.D. Tx. Main points: -- same as Stay ---. Order denying Writ. (JL has both these docs.)

12/04/89 Order allowing D to appeal Writ of HC to 5th Cir. (JL has copy of order.) D's Appeal to 5th Cir for Stay of Execution. (JL has copy.) Same arguments as in earlier pleadings. State's Motion to Oppose Stay (JL has copy.) Same arguments as in earlier pleadings. Application for Stay of Execution and Application for Stay of Mandate of the 5th Cir. Pending Cert (S.Ct.) Penry arguments. Denied rights to represent himself pro se on appeal, the right to hybrid representation – CDL not allowed to review the record on appeal. [Info added 10/04, LN]

12/05/89 Order [BY CA5???] denying D's Application for H.C.

12/06/1989: CDL wrote a letter to a family member asking forgiveness. [Interview of Rev. Pickett by JSL, 07/2004.] Regarding the letter, Rose told Peso Chavez that she received it two weeks after the execution. As I recall in that letter Carlos did not say that he did not commit the crime nor did he state that he did. He did say that he was very sorry. Now the feeling that I got from the Chaplin was that Carlos had committed the crime." The letter was destroyed in a flood.

[Interview of Rose Rhoton by PC, telephone, 04/2004.] Rose told JSL she received the letter after the execution. Mary was storing it, but it was destroyed in a flood. All the "lawyer's stuff" was destroyed as well. [Interview of Rose Rhoton by JSL, 07/2004.]

12/7/89:

Supreme Court denies cert.

Reverend Pickett says the following family members visited CDL on the execution date, but did not witness the execution: [Interview of Rev. Pickett by JSL, 07/2004.]

1. Rosemary & Brad, 1000-1200

2. Daniel Conejo & Maria Conejo, 1200-1400
3. Maria Arendando & Vickey Gutierrez, 1400-1500
4. Rosemary & Brad
5. CDL called his family 2037-2050 at hospitality house. Toni Pena – wanted to make a call to her. He did call her 2104-2126.
6. Karen Boutard in Cincinnati, OH. Called her last.

Final Statement:

“I want to say I hold no grudges. I hate no one. I love my family. Tell everyone on death row to keep the faith and don’t give up.”

EXECUTION. Jim Maddox attended; reportedly said, “This guy never should have been here.” CDL’s family did not attend. *[Interview of Rev. Pickett by JSL, 07/2004.]*

Certificate stating the body was released on this date to Huntsville Funeral Home.

12-7-89: News Article in Sheriff's Office records that William retrieved on 2/25/05, may be Caller-Times; written by Cindy Tumiel, “Staff Writer”: Says “prison officials administered lethal injection at 12:14 a.m. to DeLuna 27 and was pronounced dead at 12:24 a.m. [IS 10 MINUTES A LONG TIME?] Gives different account of the final statement: “I want to say I hold no grudges. I hate nobody. I want my family to know I love them. I want to tell everyone on death row to keep the faith up --- to keep going. Everything will be all right.” “When the injection was given, DeLuna took three deep breaths, then there was no further movement.” On 12-6 S. Ct. and 5th Cir. Denied stays. **“DeLuna continued to maintain his innocence, claiming that the murder was committed by a friend named Carlos Hernandez.”** Quotes Mary Vargas, v’s mom, in angry statement, including “He’ll be lying until he dies... He’ll like like he’s been lying. Now he has to pay for what he did to my daughter.” [Says that the Vargases refused interviews.] Quotes Jesse Escochea, who spent 13 years as a dispatcher, and at the time of the article was a dispatcher for L.A.P.D., saying he “recalls the event as one of the most memorable in his 13 years as a dispatcher. Lopez had called police to report that a man with a knife was inside the store. ‘It seemed like a routine call up until the time she started screaming. That’s when I knew something had gone wrong.’” [SEEMS TO SHOW HE DIDN’T DIPATCH ANYONE TIL AFTER SHE SCREAMED.] Says that “it wasn’t until a police unit arrived [that they knew Lopez was] wounded.” “‘That’s when we found out she was injured,’ he said. ‘That’s when our adrenalin got pumping. We had every unit in the city looking for him (DeLuna).’” “Steve Schiwetz, who prosecuted the case as an assistant district attorney, said DeLuna was a repeat offender who deserved the death sentence imposed by the jury.... ‘He killed this person for no reason whatsoever,’ said Schiwetz, who has since been in private practice since 1984. ‘She was pleading with him, “Don’t hurt me; here’s the money [WRONG, THE PHONE],” and he stabbed her.’”

12/7/89: Houston Chronicle article by Kathy Fair, “Murderer DeLuna is put to death”:

“News of the high court’s decision [denying a stay] appeared to upset DeLuna, said prison system spokesman Charles Brown. A week ago, he said he feared

facing his executioner. 'I'm human. Of course I'm afraid to die,' he said."

Quotes victim's mother, Mary Vargas, as saying "'My daughter was afraid, too, because she knew he was going to kill her'" and saying: "'I want him to pay for what he did to my daughter,' said Mary Vargas, the victim's mother. But she said DeLuna's death would not erase all of her pain of the past six years. 'You feel an emptiness, in yourself,' Vargas said. 'Something is missing.' DeLuna's death, she adds would 'make me feel a little better. You can rest when you know justice has been done.'"

"'His is more of a surreptitious violence,' said Steve Schiewetz, a Corpus Christ attorney who had been with the Nueces County district attorney's office when DeLuna was tried. 'His primary victims were autos and women. I can't remember any instance of him trying to pick on a male.'"

12/8/89: Houston Chronicle article by Kathy Fair: "Executed murderer asked forgiveness, chaplain says.":

"One of Carlos DeLuna's last acts before being executed was to ask a prison chaplain to mail a letter to one of his victims seeking forgiveness." Later in the article it says that "Pickett acknowledged that DeLuna had asked him to mail a letter to someone the convict believed had not forgiven him. It was not Ms. Lopez's parents, Pickett said, but he declined to specify to whom the letter was addressed, except that it was not sent to anyone involved in the case for which he was executed." [Pickett told us it was to a family member. Rose Rhoton, CDL's sister, says the letter was to her.]

"'He was very much afraid,' Pickett said. 'He was not afraid of dying; he was afraid of the unknown.' DeLuna raised his head off the gurney twice to look at Pickett before giving his final statements in the death chamber"

"His execution could have been avoided, though, had DeLuna accepted prosecutor Steve Schiwetz's offer of a life sentence in exchange for a guilty plea. Schiwetz, who now is in private practice in Corpus Christi, said he did not recall until Thursday that he had offered the then 21-year-old a plea bargain."

03/07/1990: Received in TDCJ – Parole Violation from Nueces Co. Began serving 10 years. Byrd Unit, TDC no. 00539060.

NCSO form filled out at time of release from jail with fingerprints on one hand says "Rel to TDC 3/7/90 @ 0530." [Info added 10/21/04]

In a TDOC 3/15/90 Admission Summary (in DPS file, 1/30/05 batch), reports that CH "returned to TDC as a PAROLE VIOLATOR from Nueces County ... with a new conviction and present number, remainder of sentence as #227443 [1972 convictions] is concurrent." [Info added 1/30/05 and 2-1-05—jsl]

3/9/90: TDCJ “Transfer History Screen” dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Syl. Seprano in **San Antonio**.

3/12/90: DPS (1/30/05 batch) receives fingerprints on CH from TDCJ Institutional Division; crime is “Agg Aslt”; sentence 10 years; also looks Parole Violation sentence running concurrent [Info added 1/30/05 and 2-1-05—jsl]

3/15/90: DPS file (rec’d 1/30/05) contains 3/15/90 TDOC Admission Summary for CH; **IO reported as 84**; offense is Agg Aslt (1); Sentence is 10 years to begin 10/1/89; sentenced 10/9/89 and admitted on 3/7/90 by guilty plea; minimum sentence expiration date (none); maximum expiration date is 10/1/99; **religion is Catholic**; marital status is divorced, job classification as maintenance man and laborer. “RAT of P.O. ‘I WAS FIGHTING WITH SOMEONE ELSE, SHE GOT IN THE WAY’”; claims contact with mother, 2 sibs, and 1 half sib”; claims “no contact with 2 children, 1 sib and 1 half sib”; “claims father an 1 sib deceased; claims 1 child thru illicit relationship” and “1 marital failure with 1 child” leading to divorce; says he got thru 11th grade; “admits use of MARIJUANA beginning at age 27; he self reports that he stabbed Dina “in the back and also cut[] her hand during a family disturbance” [LIES]; “good jail report from Nueces County Jail Authorities” [seems to do very well in prison --- see above, ca. 1977 and 1978. [Info added 1/30/05 and 2-1-05—jsl]

3/21/90: Board of Pardon and Paroles Minutes say “Waived Hearing Revoke; Revocation Grounds Do Include a New Conviction, #2 agg. Aslt.; Board Authorized Administrative Processing.”

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was subject to “Revocation” this day: “Revoke New Conviction to TCDJ”

3/22/90: Board of Pardon and Paroles Proclamation of Revocation of Parole for violation of Rule #7, Agg. Assault; says “Revocation Grounds do include new conviction”; shows that what is revoked here is the 1977 parole granted by certificate 77-8506; looks like it is issue out of Corpus Christi. Says “Days Confined Prev. PRWs (pre-revocation warrants): 88.

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was “Currently an Inmate” as “Parole Violator” issued “new TDC number.”

Board of Pardon and Paroles Minutes say “returned P/V Mandatory Supervision” (I assume that means parole violation).

3/26/90: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had a “Board Vote” this day and a Review Process”

6/20/90: Board of Pardon and Paroles Minutes say “CRO 11/91 2, 3, 6,7, 10, 21, 22, 24.”

7/16/90: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was “Currently an Inmate” and had a “Parole Review” this date. Action taken was “CRD”

4/1/91: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had a Review Process this day, including a “Monthly Case Pull” and Board Vote, with action being NTO.

5/3/91: Board of Pardon and Paroles Minutes say Administrative Review took place.

5/20/91: Board of Pardon and Paroles Minutes say 4-29 parole plan approved; this day Certificate of Parole issued; instructed to report to PO (unreadable, but probably Nueces County) by 5/24/91; special condition L is that he have highest level of supervision

TDCJ “Transfer History Screen” dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO James Smith in Corpus Christi.

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had a “Review Process” this day with Action being “PROC” and “INSTATE”

TBPP Inmate Release Report (in DPS file, 1/30/05 batch) shows this as CH release date with expiration date being 10/1/99 [Info added 1/30/05 and 2-1-05—jsl]

05/23/1991: Paroled to Nueces Co. until 10/01/1999.

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was “Currently a Parolee”; action was “PARL” and type of action was “Instate.”

4/5/92: According to TDOC doc in DPS file (1/30/05 batch) when CH’s parole supervision for his 1972 armed robberies would have terminated --- although, by this point he was again under supervision for his 1989 assault of Dina Ybanez, extending to Oct. 1999. [Info added 1/30/05 and 2-1-05—jsl]

7/03/92: TDCJ “Transfer History Screen” dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Anthony Pequeno in Corpus Christi.

3/15/93: TDCJ “Transfer History Screen” dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Richard Pena in Corpus Christi.

03/18/1993: Arrest - Forfeiture for dealing cocaine or marijuana; J.R. Mills, 321 John Sartain, CC is arresting cop; CH's address was 5802 Everhart, Apt 13-F; dismissed 09/15/1995 for want of prosecution. *[May not be our CH.]*

3/24/93: TDCJ "Transfer History Screen" dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Sand. Estrada in Corpus Christi.

10/30/1993: Car Accident; CH injured Maria Luisa Tanguma, paid \$20K to settle damages on 04/17/1994. *[Probably not our CH.]*

11/01 and 05/93: TDCJ "Transfer History Screen" dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Victim Grohman in Corpus Christi.

2/2/94: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was "Currently a Parolee"

03/15/1994: Wayman report states that Corpus Christi Police Department handled Carlos **Hernandez** for Felony Possession of a Controlled Substance, Agency Case Number 94075719, Agency Arrest Number 07424 on 03/15/94.

On 03/15/1994 Hernandez was arrested on a possession of a controlled substance charge (heroin and pills) with Mary Luisa ELLIS, Hispanic female, at 411 N. Shoreline Blvd (motel), Apt 107. Ellis' DOB: 10/17/59, address 1317 16th St, CC, brown hair, brown eyes, 5'04", 160lbs, freckled complexion, DL# 10915229, SSN: 458-31-6119. (CHS from William). Case 94-015719.

CCPD (Cervantes #781; Lt. J. Moseley #382; Sgt. J Mills #570; Sgts. R. Luzania #592) execute search warrant at Harbor Inn Bayfront Motel, 411 N. Shoreline Blvd, Apt. 107, CC and find Ellis in bed. (Mary Luisa Ellis, 1317 16th St., CC; DOB 10/17/59; Hispanic; 5'4" 160 lbs, CII # 2292386; FBI #700944LA6; wavy hair, freckles; Alias: Tomboy. This is motel room. 28.46 grams of heroin (some in her pants, some on night stand), 5 valium pills, and "large sum of money" (\$1,862.00 – split up between two pockets of Ellis's jeans) are found at the scene on her. In middle of search, Carlos Hernandez shows up in car; he sees cops peaking out of the window and motions to them. They come to him, realize the car Ellis has been driving (a different car) is also registered to Hernandez, and search him, binding 24.36 grams of heroin on him. Both have pagers. The heroin is wrapped up in a bunch of small bags to be sold. Both are arrested. CH is living at 822 Hancock at the time; 5'8" and only 135 lbs; khaki pants and blue l/s shirt; "slim". Heroin both of them had was wrapped in same complicated manner (brown tape, brown paper, glove fingers and baggies). Valium were also wrapped up and were in a room dresser. CH refused to sign a Miranda waiver.

Two cars registered to CH: 1980 Chrysler Cordoba, white/silver; VIN sp22gar173223,

license 515UXY; 1977 Buick black 2DR.

CCPD take major case prints from Carlos Hernandez this day. [Info added 9/04, LN]

Sheriffs Dep't records took CH's picture this day (we have photocopy) and report his as of this point as 5-8" and 140 pounds; mustache, slender build, tattoo on right arm; as for "gangs," it says "no". Body scar on stomach. "SMT" on hand and back. [Info added 10/13/04, 11/2/04]

Official Receipt of Nueces County shows CH arrest this day for "Poss. Cont. Subst. C/M/F:F", arrest by CCPD officer Mills. At time, CHA has "2 wht earrings, watch, chain w/ cross, wallet, shirt, pants, shoes and \$13.62. [Info added 10/13/04, 11/2/04]

6:45 p.m.; Nueces County Sheriff's Dep't Field Arrest Report for offense # 94-015719, shows CH's arrest for "Possession Cont. Subst – Heroin, 2nd degree"; "Above subject arrested at the scene of execution of search warrant. Subject had a quantity of controlled substance on his person. Subject currently on parole". Arrested at 411 N. Shoreline # 77, driving 77 Buick, LMM-48C, impounded; listed as 5'8", 135 pounds; DL # 02470460. Arresting officers are J. Mills CCPD 570; J. Cervantes, CCPD 781. [Info added 10/21/04]

Undated NCSO jail form for offense no. 94015719 shows arrest for Poss. Contr. SUBst. on 3/15/94, at 411 N. Shoreline #107 at 18:45 by CCPD Mills, J.; bond set at \$3000 ("J/Rojas") . CH had "2 ylw earring, watch, chain, w/cross, wallet, shirt, pant, shoes, and \$13.62. 5'8", 135 lbs; lists F.G. Hernandez, mother, as 2302 Longsolving Cts as kin. Medical conditions all are N; occupation is "gen maintance" [Info added 10/21/04]

NCSO fingerprint form (prints on one hand) of sort that is completed upon release of jail prisoners, signed by Sgt. G. Davis, Jr.. with remark: "3-15-94 Rel @ 2243 3,000 S/Lovis auth J/Rojas" [THIS SHOWS THAT CH WAS RELEASED THE SAME DAY AS HE WAS ARRESTED] [Info added 10/21/04]

DPS has fingerprints taken from CH this day, showing him to be 5'8", ??? lbs, offense is unreadable (DPS records rec'd 11/04)

DPS records (1/30/05 batch) have several pages of reports and prints on this arrest for "Poss. Cont. Sub. Heroin", showing him as 5'8" and 135 lbs. [Info added 08/30, LN]

3/16/94: TDCJ "Transfer History Screen" dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Arnold Medina in Corpus Christi.

4/22 and 25/94: Case 94-015719; "Case closed; filed at District Attorney's office"

4/26/94: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was "Currently a Parolee"

4/28/94:

0050 a.m: Nueces County Sheriff's Department Field Arrest Report: Arrested this day for "MC Warrant": "The Suspect was contacted reference a traffic stop. On contact I ran a check of the suspect's name and DOB via info channel. I discovered a 355.00 warrant reference a public intoxication charge for the suspect. The suspect was arrested and taken to jail." CH shows up as 5'7", 160 lbs; driving '77 Buick, LMM 48C, which was impounded. Warrant #099671. Arrest # 94-025431. Arresting officer is D.O. Perez, 0031, ccpd; arrested at 1100 Leopard. [Info added 10/21/04]

Undated NCSO form, Offense no. 94025431 shows that CH arrested at 1100 Leopard at 0:50 by CCPD Perez for "Intoxication/Other; \$355.00 bond. Re disposition, says: "Ext 70 PH4 EIUTH J/CAV, 4/28/94". Occupation is "GEN MAINTANCE", 5'7", 160 lbs, lists Fidela at Longsolving address as kin [Info added 10/21/04]

Different undated NCSO form shows similar information; notes that when CH was brought to the jail he had "wallet, comb, 1 condom, 2 wht earrings, shirt, pants, tennis shoes"; \$3.34. [Info added 10/21/04]

NCSO form with fingerprints of sort that are usually taken at the time of release (1 hand only) taken this day, with note "CH to pay w/cash" – evidently referring to bond. Signed "MAG 4/28/94" [Info added 10/21/04]

Official Receipt of Nueces County (Booking # 940428015309) for "MC Warrant C/M/ F:C" shows CH had on his possession, a wallet, comb, 1 condom, 1 wht. Neckless w/ cross, 2 wht earrings, shirt, pants, tennis shoes, \$3.34."

[NOTE: CH HAS 4 SEPARATE BOOKING NOs FOR THIS YEAR: 940428015309 (for "MC Warrant"); 940914164028 (charge is "PI" – parole infraction?); 940914164958 (charge is unkown); and 940315194... ("Poss. Cont. Subst.")]

9/14/94:

Nueces County Jail Receipt shows release back to CH of property confiscated under booking number 940914164958: Shirt, Jeans, a bank check of some sort, etc. In the space for prisoner's signature is the word "unable". A second version of this for different booking number (940914164028) is signed by CH and makes clear that when arrested he was wearing: "Brn Boots, Jeans, White Shirt, White Necklace, White Earrings, and had a bank check." [NOTE: LOOKS LIKE HE REMAINED IN JAIL FROM APRIL TO SEPTEMBER 1994, THEN WAS RELEASED]. A third version indicates "brn boots, jeans, white shirt, white necklace, white eaRring, \$3.75" in money (also 940914164028). [Info added 10/13/04, 11/2/04]

4:05 p.m. Nueces County Sheriff's Dep't Field Arrest Report shows CH arrested this day for Public Intoxication (Alcohol): "Contacted the above subject staggering in the parking

lot at Staples and Mary. On speaking with the subject, I detected a strong odor of alcohol about the subject's breath and person. The subject was severely intoxicated and a danger to himself left alone with his vehicle in his intoxicated condition. Arrested, booked NCSO jail. Vehicle impounded." Arresting officers D.S. Revelle, CCPD 895; E. Kearney CCPD; driving a 1977 Buick, # LMM-48L, 2 door. 5'8", 180 lbs; no employment. [NOTE: DOES THIS MEAN HE GOT OUT OF JAIL, GOT DRUNK THAT SAME DAY AND WAS IMMEDIATELY RE-ARRESTED??] [Info added 10/21/04]

7/4/95: TDCJ "Transfer History Screen" dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Arle Jimenez in Corpus Christi.

7/24-7/28/95: CH admitted to Memorial Medical Center in CC. Says he dropped a fire extinguisher on his left foot 2 weeks earlier, causing "celluitis," which was treated in house for these days before he was released. He was also diagnosed with Diabete Mellitus, which had never before been treated (CH said this was the first he knew he had DM), and also "cirrhosis". Indications that CH was interested in learning how to treat his Diabetes. Says he has a 10th grade education, is unemployed, single, self-pay (no insurance) and lists as his imergency contact Cynthia Maxwell, whos relationship to him is "PR". His height/weight is 5'7" and 150 lbs. He has "liver disease - 'I'm a drinker'" and says he "drinks 12 pack and a half of beer each day". Also indicates "seizure disorder". Says he is Catholic. Referred for alcohol rehab and diabetes training. His physician is listed as Mike Everett, M.D.

01/11/96: Hernandez was arrested for assault at 1817 Shely, the home he shared with Cynthia Maxwell (and Maxwell's current address) [Added 8/30/04, LN]. At that time a female friend of Maxwell was staying with her children at 1817 Shely St. In the narrative the friend is recorded as Winfield [*IS THIS MICHELLE GARZA, PETE GARZA'S EX-WIFE? -LN*]. Winfield's husband, referred to in the narrative as Little John, arrived at this address as Hernandez had told Winfield he wanted her and her children to leave the house. Hernandez was drunk and showed a razor knife to Little John. Hernandez retreated into the house and produced a 9'-10' fillet knife - both were taken into evidence by CCPD. Case # 96-002681. Crime listed as assault, although two weapons were found: a razor knife that CH was said to have brandished at CH and a 9'-10' filet knife that he had in "his back pants waist band." "Hernandez was obviously intoxicated." "We felt Hernandez was a danger. He was arrested. We took the knives as evidence." Case was closed and sent to the DA on 3/15/96.

Cynthia Maxwell told police Hernandez had, at one time, threatened to cut her and had 'accidentally' cut her adult son. She was 5'6" tall, 200 lbs, worked at Greenwood Library.

In the list of witnesses the names of Winfield and Little John are recorded differently.

Winfield (the female) is LELAURIN Michelle, DOB: 05/30/59, white female, address: 4917 Waltham Drive, phone 512 992 9295, brown hair, brown eyes, 5'03", 125 lbs, slim

build. Business name: Department of Human Services, CC. Phone: 512 857 0878.

The white male witness (Little John) is listed as WINFIELD Littlejohn, DOB: 07/05/62, address 7201 Owen Court, CC, phone 512 988 1067, white, brown hair, blue eyes, 5'07", 160lbs, medium build. POB: ID#09329402. Business given as S&S Construction, phone 512 937 1851.

CH at time was 5/7" and 175 lbs; medium build, thick short hair and **mustache; blue work pants and grey sweat shirt**

Unknown: Michelle Garza (Pete Garza's ex-wife) told Peso Chavez, during the period Carlos was in and out of prison, "I don't recall why he was in prison but I do recall one day he told me and Cindy that he had killed a lady in a van. I had always thought he was just making it up until Cindy told me he had stabbed some other lady". She suggested PC contact her ex-common law husband Little John Phillip Winfield. She says she, Little John, CH and CM used to eat barbeque together. *[Interview of Michelle Garza by PC, 08/2004.]*

01/12/1996: Assault causing Bodily Injury

Arrested by CCPD; arrest no. 074204; case no. 96002681.

01/21/1996: Case disposed of by prosecutor action; rejected without pretrial divers. [probably parole violation]

Board of Pardon and Parole 8/15/96 Waiver of Pre-Revocation Hearing Form shows this day as the day of two of CH's three parole violations: Rule #2 Assault at 1817 Shely, CC, TX of Victim: Little John Winfield, Rule #5 Possession of Prohibited or Illegal Weapon, at 700 Hancock (mistake?), i.e., a 9-10" concealed knife

Board of Pardon and Parole 9/20/96 Waiver Processing Sheet says "Assault was declined [prosecution was declined] by the Nueces County Attorney's Office"

2030 p.m., Nueces County Sheriff's Dep't Field Arrest Report shows CH arrest for "Assault": "We were dispatched to the above location [1817 Shely] in reference to a disturbance with a knife. Upon arrival we contacted the suspect who had been threatening other residents of the above location **and was carrying a concealed knife in the back of his pants**. The knife was taken off the subject by officers. He was taken into custody without incident and transported to N.C.J." Arresting officer O. Fulton, CCPD 481 and T. Saubar, CCPD 275. Offense # 96-002681; 5'7" 175 lbs. [Info added 10/21/04]

2 different NC SO forms show CH arrested by Fulton CCPD at 20:30 for "assault threaten bod", \$500.00 bond; arrived at jail with "shoes, pants, shirt, 1 wallet w/cont., \$2.00, no other prop." Lists Fidela at Longsolving as Kin. 5'7" 160 pounds; says he has "hypertensn"; occupation is "GEN Maintance" Second form shows \$500.00 bond. [Info added 10/21/04]

DPS has fingerprints for CH this day but form is otherwise unreadable (DPS materials rec'd 11/04)

DPS records (1/30/05 batch) re: arrest for "assault threaten bod injury (also dated 1/16/96) [Info added 1/30/05 and 2-1-05—jsl]

1/13/96:

Sheriffs Records show arraignment of CH for "assault" (sib # 10052183) before Judge Caroline L. Bertuzzi, with bond set at \$500. [Info added 10/13/04, 11/2/04]

Nueces County Jail Receipt this day and Official Receipt of Nueces County from the evening before indicates only shoes, pants, shirt, wallet and contents, including \$2. (Booking # 960112223719). [Info added 10/13/04, 11/2/04]

NCSO form with fingerprints on one hand, with note "Rel to Rapid Release 01-13-96 Time 21:32". Notation "MAG 1/13/96 CLB" Fingerprints of sort taken upon release from the jail. [Info added 10/21/04]

2/22/96: Board of Pardon and Paroles Minutes say pre-revocation warrant ordered. We have the warrant as well

5/25/96:

Officer R. H. Vergara (CCPD #166) arrests Hernandez for public intoxication at 1:30 p.m. at 700 Hancock (indicating CH's address as 1817 Shely) and his height as 5'7". He lists his sister Pauline Hernandez Schilling as next of kin. Report in full:

"This subject was standing on the middle of the street daring two men, that were across the street, to fight. He was in danger of getting hit by cars. He smelled very strong of some type of alcoholic beverage, his speech was stuttered & slurred, and he could barely stand up. He was definitely a danger to himself."

Board of Pardon and Paroles Minutes say "Warrant Confirmed". 9/20/96 proclamation of revocation of parole shows this date as the date CH was "in custody"; CH shown to have been arrested on this day, see 9/20/97 Waiver Processing Sheet; issued Corpus Christi

Sheriff's Dep't Official Receipt of Nueces County this date shows booking (960525134514) for "public intoxication C/M/F: C" by Vergara; intake officer Thurmond shows that CH had on his possession "Keys with Knife," wearing yellow earrings and yellow chain; all of this released back to CH on 10/14/96. (Booking # 960525134514.) [Info added 10/13/04, 11/2/04]

1:30 p.m. Nueces County Sheriff's Department Field Arrest Report shows CH arrested at 700 Hancock for "Public Intoxication, Vio Parole (HIT)": "This subject was standing

on the middle of the street daring two men, that were across the street, to fight. He was in danger of getting hit by cars. He smelled very strong of some type of alcoholic beverage, his speech was stuttered & slurred, and he could barely stand up. He was definitely a danger to himself.” Arresting officer, RH Vergara, CCPD 166. 5’7”, no weight; lists Pauline Hernandez Shilling as next of kind. [Info added 10/21/04]

undated NCSO report (offense no. 96-035392) shows this arrest by Vergara, with charge being public intoxication and violation of parole. Bond was originally set at 200.00 but appears to be crossed out when they identified the parole violation; lists Fidela at Longovling as kin; 5’7”, 160 lbs; says he has “hypertensn” [Info added 10/21/04]

Board of Pardon and Paroles 8/15/96 Waiver of Pre-Revocation Hearing Form shows this day as the day of one of CH’s three parole violations: Rule #2: Public Intoxication at 700 Hancock, CC,TX; Board of Pardon and Parole.

Board of Pardon and Parole 9/20/96 Waiver Processing Sheet says says CH was “given credit for time served for Public Intoxication,” suggesting he was convicted for this

7/14/96: CH had a DPS or TDC I.D. card with a picture on it that expired on this day (TDS 11/04 materials)

8/15/96: CH signs form for waiving pre-revocation hearing

TDCJ “Transfer History Screen” dated 8/11/04 and obtained by Bruce Whitman from Board of Pardon and Parole in CC shows that CH was transferred to supervision of PO Omar Sanchez in Corpus Christi.

8/23/96: Board of Pardon and Paroles Minutes say “P.T.R.H.” (pre-termination revocation hearing??); signed by Sanchez, Rodriguez, Huffman

8/26/96: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had Parole Revocation Hearing Approved”

9/6/96: Waiver Processing Sheet date 9/20/96 says that CH waived parole revocation hearing this day

9/20/96: Board of Pardon and Paroles Minutes say “REVOKE” ; signed by Sanchez, Rodriguez, M. Smith

Board of Pardon and Parole proclamation revoking parole and ordering CH’s arrest: violation of Rule #2 (because of “aslt”) and Rule # 5 (pub. Intox):“Revocation Grounds do include new conviction”; issued Corpus Christi

Board of Pardons and Parole Waiver Processing Sheet dated this day shows revocation because of violation of Rule #2 (Nueces County Assault); Rule #2 (municipal Public Intoxication), and Rule #5 (Possession of a Weapon)

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had "Revocation Proc": "Revoke Technical Misdemeanor"

9/25/96: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had Revocation approved: "Revoke Misdemeanor Conviction"

9/26/96: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was "Currently an Inmate" as a "Parole Violator"

10/14/96: Nueces County Jail Property Release Receipt indicate that this day the property checked in on 5/25/96 (see above) was returned to CH (but there is no signature from him indicating receipt) (Booking # 960525134514) [Info added 10/13/04, 11/2/04]

NCSO fingerprint form (one hand) signed by "W Spren" with note "14 Oct. 96. 0815 Rel on T/N in jail ?/Bertuzzi to Chasefield. [Info added 10/21/04]

10/22/96: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had a "Review Process" to "Calculate Status"

10/23/96: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had a "Review Process" and Board Vote, with Action being "NTO"

5/1/97: Board of Pardon and Paroles Minutes say "NR" and give date 5/98. I think this means "next review"

5/12/97: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was "Currently an Inmate" with action being "NR"

5/13/97: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was "Currently an Inmate" with action being "STLTR" and type of action being "TP Date Status Ltr"

11/4/97: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had Review Process, Monthly Case Pull

11/5/97: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had Review Process, Board Vote, with Actn being "NTO"

2/12/98: Board of Pardon and Paroles Minutes say "NR" and give date 5/99. I think this means "next review"

TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 says same thing

2/13/98: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was “Currently an Inmate” with action being “STLTR” and type of action being “TP Date Status Ltr”

11/3/98: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had Review Process, Monthly Case Pull

11/5/98: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez had Review Process, Board Vote, with Actn being “NTO”

3/29/99: Board of Pardon and Paroles Minutes say “NR” and give date 5/2000. I think this means “next review”

3/30/99: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 says same thing as 3/29 entry above

3/31/99: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 states that Carlos Hernandez was “Currently an Inmate” with action being “STLTR” and type of action being “TP Date Status Ltr”

05/06/1999: Died.

5/9/99: TDCJ Clemency and Parole System Minutes Browse screen dated 8/13/04 says “DISCH”; “Death of Inmate.”

10/1/99: Date shown on 3/15/90 TDOC form in DPS records (1/30/05 batch) when CH’s maximum sentence for his 1989 assault and thus his parole supervision would have ended; because he was in prison on a parole violation, HE DIED 5 MONTHS BEFORE HE WOULD HAVE BEEN RETURNED TO THE STREETS, FREE OF ANY PAROLE SUPERVISION FOR THE FIRST TIME SINCE 1972. See also TBPP Inmate Release Report (in DPS file, 1/30/05 batch) showing CH parole expiration date as 10/1/99. [Info added 1/30/05 and 2-1-05-- jsl]