

THE STATE OF TEXAS                    §                    IN THE 28th CRIMINAL  
VS.                                        §                    DISTRICT COURT IN AND  
CARLOS DELUNA                         §                    FOR NUECES COUNTY, TEXAS

FIRST AMENDED MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Defendant, Carlos Deluna, movant in proper in the above styled and numbered cause and respectfully request this court to enter an order for a new trial. In support of said motion the Defendant would show and allege:

I

That on June 20, 1983 a motion for continuance was requested on the ground that one of the Defendant's witnesses was in the hospital at that time. Said motion was filed in order that his witness could be present to testify for the defense. Said motion was denied by the Court.

II

That said witness was a material character witness and that the Defendant was not able to safely go to trial without this witness' testimony.

III

In that the Court denied the motion when it was aware that this was a material character witness and also aware that the Defendant was unable to safely go to trial without said witness; where under Article 29.06 Vernon's Ann. Texas C.C.P., that if a motion for continuance be overruled, and the Defendant convicted and it appears upon the trial that the evidence of the witness named in the motion was a material character witness and that the facts set forth in the motion were probably true, a new trial should be granted.

IV

That the jury was unable to answer one of the issues provided by Article 37.071 of Vernon's Ann. Texas C.C.P. yes. Whereupon the Court misdirected the jury as to the

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**M I C R O F I L M E D**

JOSCAR SOLIZ, CLERK  
DISTRICT COURT, NUECES COUNTY, TEXAS

law sending them back to answer said issue. Where then the Defendant was sentenced to death; Article 40.03 of Vernon's Ann. Texas C.C.P.

V

Where, by law if the jury returns a negative finding or is unable to answer any issue submitted under 37.071, the Court shall sentence the Defendant to life imprisonment. Nor may the Court, Attorney for the State, or Attorney for the Defendant inform the jury of the effect of its failure to agree on a submitted issue.

VI

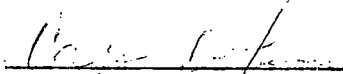
That the record will show that the Attorney of record for the Defendant is Mr. Hector D. Pena Jr.

VII

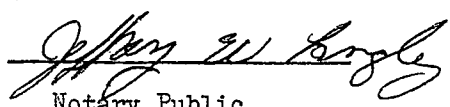
That the Attorney of record has failed to file all of the necessary motions for the Defendant. Conflict of interest and the Attorney Client privilege can not be reached. Therefore the Defendant could not have gone safely to trial and have said attorney prepare his defense.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that this honorable court grant this motion in all things, or in the alternative that this court set this motion for an evidentiary hearing.

Respectfully submitted,

  
Carlos Deluna  
Pro Per

Subscribed and sworn to on  
this the 30 day of aug, 1983.

  
Notary Public

Comer 10-25-86

M I C R O F I L M E D

ORDER

On this the \_\_\_\_\_ day of \_\_\_\_\_, 1983 came to be heard the foregoing Motion, and after due consideration it is the opinion of this Court that said Motion should be GRANTED/DENIED, to which denial, if any, Defendant excepts.

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Judge presiding

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