

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	28TH JUDICIAL DISTRICT
CARLOS DE LUNA	X	NUECES COUNTY, TEXAS

AMENDED MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Carlos De Luna, defendant in the above-entitled and numbered cause, and files this Amended Motion for New Trial, and in support of such motion shows:

I.

That the trial court has committed an error material to the defense and injurious to the rights of the defenant, to wit: on two separate occasions the trial court refused to accept a verdict by the jury when in fact said jury told the court that they 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.

II.

Defendant, Carlos De Luna should be granted a new trial because after the commencement of the trial of defendant, Estella Flores Jiminez a duly qualified, selected and seated juror was assaulted and/or threatened at knife-point during the course of a theft at her place of employment on the 17th day of July, 1983. Said incident took place at approximately 2:00 p.m. at her place of employment, 1926 Horne Road, Corpus Christi, Nueces County, Texas. Because of said incident and experience defendant alleges that said juror could no longer qualify as a fair and impartial juror as she had been qualified prior to the commencement of trial and therefore was unqualified after said incident in continuing to serve on said jury which convicted the defendant of the crime of capital murder and also sentenced said defendant to punishment at death.

FILED

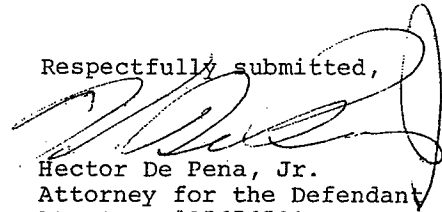
SEP 9 1983

M I C R O F I L M E D

OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By *[Signature]* Deputy

WHEREFORE, the defendant prays the court grant this motion and order that a new trial be conducted in the above-entitled and numbered cause.

Respectfully submitted,



Hector De Pena, Jr.
Attorney for the Defendant
BAR CARD #05656500

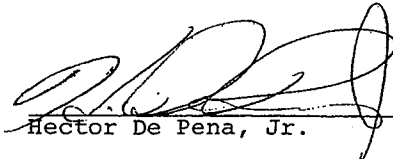
2933 Norton, Suite 207
Corpus Christi, Texas 78415
(512) 855-9261

THE STATE OF TEXAS X

COUNTY OF NUECES X

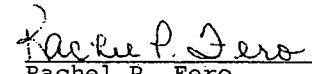
BEFORE ME, the undersigned authority, on this day personally appeared Hector De Pena, Jr., attorney for the defendant, who after being duly sworn stated:

"I am the attorney for the defendant in the above-entitled and numbered cause. I have read the foregoing Amended Motion for New Trial and swear that all of the allegations of fact contained therein are true and correct.



Hector De Pena, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME on the 9th day of September, 1983.



Rachel P. Fero
Notary Public State of Texas

My commission expires:
December 19, 1985

12 September 1983

The motion is overruled in its entirety -



M I C R O F I L M E D