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## HOUSTON CHRONICLE ARCHIVES

**Paper:** HOUSTON CHRONICLE

**Date:** WED 12/06/89

**Section:** A

**Page:** 28

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# Condemned man appeals case to Supreme Court

Staff

HUNTSVILLE - A convicted killer scheduled to die before dawn Thursday turned to the U.S. Supreme Court late Tuesday, hoping to put off his execution a second time.

*Carlos DeLuna*, 27, is scheduled to die by lethal injection for the 1983 robbery and murder of Wanda Jean Lopez, 25, a clerk at a Shamrock service station in Corpus Christi.

*DeLuna*'s Dallas attorneys, Chris Weaver and Richard Anderson, took the case to the nation's highest court after the 5th U.S. Circuit Court of Appeals rejected the condemned man's appeal Tuesday afternoon.

*DeLuna* raised three issues in his appeal: that jurors were not instructed on how to consider mitigating evidence, an issue that has become known as the Penry claim; that the term "deliberate" was not defined for jurors and that his right to represent himself on appeal was denied. The three-judge panel rejected all three claims.

The justices ruled *DeLuna* had not presented any mitigating evidence on which jurors could have been instructed and that his trial attorneys had opted not to introduce such evidence because it would have allowed the state to introduce evidence of *DeLuna*'s prior criminal record.

*DeLuna* had served time in the state prison previously for unauthorized use of a motor vehicle and attempted rape. Authorities said the victim of the attempted rape was his best friend's mother and that the assault occurred after *DeLuna* and his friend celebrated their paroles from prison.

The three-judge panel said *DeLuna* presented no evidence of abuse as a child or mental retardation - mitigating evidence that convicted killer Johnny Paul Penry presented in his trial for the October 1979 rape-slaying of Pamela Moseley Carpenter, 22, of Livingston.

*DeLuna*'s claims of drug and alcohol abuse and youth do not fit within the Penry rule, the 5th Circuit said.

The 5th Circuit also said *DeLuna* is procedurally barred from raising the issue of self-representation because he had failed to raise that issue in earlier appeals.

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## HOUSTON CHRONICLE ARCHIVES

**Paper:** HOUSTON CHRONICLE**Date:** THU 12/07/89**Section:** A**Page:** 33**Edition:** 3 STAR**Murderer *DeLuna* is put to death**

By KATHY FAIR  
Staff

HUNTSVILLE - A self-described black sheep who believed his *death* sentence was part of some pre-ordained blueprint today became the fourth person executed in Texas this year.

*Carlos DeLuna*, 27, one of nine children, died of lethal injection at 12:24 a.m. for the February 1983 robbery and murder of Wanda Jean Lopez, a Corpus Christi convenience store clerk.

Lopez, 24, mother of a 6-year-old daughter, was stabbed to *death* as she frantically called police and described her assailant.

"I hold no grudges," said *DeLuna* in his final words. "I hate nobody. I want to let my family know I love them, and I want to tell everyone on *death* row to keep the faith up. Everything will be all right and to keep it going."

As the lethal injection was administered, prison chaplain Carroll Pickett held onto *DeLuna*'s right leg.

*DeLuna*'s fate was sealed about 4:15 p.m. Wednesday, when the U.S. Supreme Court, with only Justices Thurgood Marshall and William J. Brennan Jr. dissenting, refused to grant the former electrician a stay. *DeLuna*'s attorney then turned to Gov. Bill Clements, who rejected the plea for a reprieve.

News of the high court's decision appeared to upset *DeLuna*, said prison system spokesman Charles Brown. Prison officials did not elaborate on *DeLuna*'s reaction. A week ago, he had said he feared facing his executioner. "I'm human. Of course I'm afraid to die," he said.

"My daughter was afraid, too," said Lopez's mother, "because she knew he was going to kill her."

*DeLuna*'s bouts with the law began in 1978, when he was 16 and arrested for public intoxication. He was arrested six times that year, on charges that included burglary, paint sniffing, auto theft and running away.

By his 18th birthday, he had been arrested six more times, mostly on public intoxication charges. He

...murderer DeLuna is put to death

served his first prison sentence in 1980 for unauthorized use of a motor vehicle and attempted rape of a Dallas woman.

*DeLuna* was on parole just two days when the parole was revoked after he attempted to rape the mother of a prison pal. He had been on parole about six weeks when arrested for Lopez's *death*.

"I just ran with the wrong crowd," *DeLuna* said of his troubles with the law.

*DeLuna*, the 33rd person, all murderers, executed since Texas resumed the *death* penalty in 1982, spent his final day talking with relatives and a friend. He refused lunch and supper.

"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 added, would "make me feel a little better. You can rest when you know justice has been done."

The attorney who prosecuted *DeLuna* described him as sullen and a liar.

"His is more of a surreptitious violence," said Steve Schiwetz, a Corpus Christi 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."

Although he testified at his trial that someone else robbed and murdered Lopez, *DeLuna* refused to elaborate on the crime after his conviction. One witness at his trial identified him as the knife-wielding man seen outside the store, and another witness saw him struggling with the victim inside the store.

*DeLuna* was found hiding beneath a parked vehicle about a quarter of a mile from the store, barefoot and without a shirt. His bloody shirt and shoes were found in a yard the next day.

He had been convicted of attempting to rape a woman he had stalked across a Dallas YMCA parking lot and then later, while celebrating his parole, attempting to rape the mother of one of his prison buddies, Schiwetz added. The second assault occurred after the 57-year-old woman had what Schiwetz termed a "Welcome Home from the Joint Party" for *DeLuna* and her son.

*DeLuna*'s attorney, Chris Weaver of Dallas, said he was frustrated with the lower courts' refusal to grant a stay based on claims that jurors were not instructed on consideration of mitigating evidence, a matter previously argued successfully before the U.S. Supreme Court.

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**FOR EDUCATIONAL USE ONLY**

Court of Criminal Appeals of Texas,

En Banc.

Carlos DeLUNA, Appellant,

v.

The STATE of Texas, Appellee.

No. 69,245.

June 4, 1986.

Defendant was convicted by jury in the 28th Judicial District Court, Nueces County, Wallace C. Moore, Special Judge, of capital murder in connection with robbery. On appeal, the Court of Criminal Appeals, Clinton, J., held that: (1) photograph could be admitted without predicate as to who took it; (2) defendant was not entitled to charge on circumstantial evidence; (3) report of unadjudicated, extraneous offense offered by defendant at sentencing was hearsay; (4) trial court could allow jury to continue deliberations; and (5) juror who previously had knife pulled on her during shoplifting incident was not disabled.

Affirmed.

Teague, J., concurred and filed opinion.

\*45 James R. Lawrence, Corpus Christi, for appellant.

Grant Jones, Dist. Atty. and Mary F. Klapperich, Asst. Dist. Atty., Corpus Christi, Robert Huttash, State's Atty., Austin, for the State.

Before the court en banc.

OPINION

CLINTON, Judge.

Appellant was convicted of capital murder. The jury answered both special issues in the affirmative and death was assessed as punishment. Article 37.071, V.A.C.C.P. Appellant raises seven grounds of error. We will affirm. The evidence showed that during a robbery in Corpus Christi appellant fatally stabbed the clerk of a gas station. He was seen and identified by witnesses before, during, and after the offense. Police conducted a search of the neighborhood into which the robber had reportedly fled and two officers found appellant hiding under a truck parked at a curb. Appellant does not challenge the sufficiency of the evidence.

Only appellant's sixth ground of error pertains to presentation of evidence at the guilt-innocence phase of trial. Appellant contends a photograph of him taken at police headquarters the night of his arrest was improperly admitted into evidence. Defense counsel objected at trial that "the proper predicate hasn't been laid as to who actually took the picture, what time the picture was taken or anything of this nature, \*46 if, in fact, it was taken on February the 4th, 1983 ..."

The photograph was admitted during the testimony of Officer Schauer, who had arrested appellant the night of the robbery and murder. Officer Schauer described appellant as having a glassy, "animal-like stare" at the time of his arrest, a description defense counsel contested on cross-examination on the basis that the officer had not included those words in his offense report. On redirect examination Officer Schauer was shown the photograph of appellant and asked if he recognized it:

"A: Yes, sir.