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## 'I didn't do it. But I know who did'

**New evidence suggests a 1989 execution in Texas was a case of mistaken identity. First of three parts.**

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CORPUS CHRISTI, Texas

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For many years, few questioned whether Carlos De Luna deserved to die.

His execution closed the book on the fatal stabbing of Wanda Lopez, a single mother and gas station clerk whose final, desperate screams were captured on a 911 tape. Arrested just blocks from the bloody crime scene, De Luna was swiftly convicted and sentenced to death—even though the parolee proclaimed his innocence and identified another man as the killer.

But 16 years after De Luna died by lethal injection, the Tribune has uncovered evidence strongly suggesting that the acquaintance he named, Carlos Hernandez, was the one who killed Lopez in 1983.

Ending years of silence, Hernandez's relatives and friends recounted how the violent felon repeatedly bragged that De Luna went to Death Row for a murder Hernandez committed.

The newspaper investigation, involving interviews with dozens of people and a review of thousands of pages of court records, shows the case was compromised by shaky eyewitness identification, sloppy police work and a failure to thoroughly pursue Hernandez as a possible suspect.

These revelations, which cast significant doubt over De Luna's conviction, were never heard by the jury.

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His case represents one of the most compelling examples yet of the discovery of possible innocence after a prisoner's execution.

Presented with the results of the newspaper's inquiry, De Luna's prosecutors still believe they convicted the right man. But the lead prosecutor acknowledged he is troubled by some of the new information. And a former police detective told the Tribune that he got tips about Hernandez shortly after the crime and now believes the wrong man was executed.

Missing from this case is DNA or some other kind of evidence that could provide conclusive proof of De Luna's guilt or innocence. The store wasn't equipped with a security camera that could have captured images of the killer.

The newspaper learned of De Luna from a Columbia University law professor who had begun to dig up evidence that pointed to Hernandez, who died in 1999.

The possibility of De Luna's innocence played no role in his final appeal, which focused on his lawyers' failure to present any mitigating evidence at his sentencing.

When that failed, and when Texas' governor declined to grant him clemency, De Luna, 27, quietly accepted his fate a few minutes after midnight on Dec. 7, 1989. He thanked the warden for being treated well by the guards and prayed on his knees with the death-house chaplain.

Strapped onto the gurney, chemicals flowing into his veins, De Luna didn't close his eyes. After 15 seconds, he jerked his head up and apparently tried to speak.

Ten more seconds passed. De Luna raised his head again and stared into the chaplain's eyes. De Luna tried again to speak but failed and soon lost consciousness.

The moment was seared into the chaplain's memory. What, he still wonders, was De Luna trying to say?

## SCREAMS FOR HELP

On a cool Friday in February 1983 just after 8 p.m., George Aguirre pulled his van into a Sigmor gas station on South Padre Island Drive, a four-lane thoroughfare flanked by strip malls and fast-food restaurants that leads from downtown Corpus Christi to the Gulf of Mexico.

While he was pumping gas, Aguirre would later testify, a man standing outside the station with a beer can in his hand slid a knife, the blade exposed, into his pocket and approached.

The man asked for a ride to a nightclub.

When Aguirre refused, the man walked back to the side of the station, and Aguirre went inside to warn Lopez, 24, the clerk.

She said she would call the police, and Aguirre, the only customer in the station, left. When Lopez did call, a dispatcher said officers could do nothing unless the man came inside.

Minutes later, when he did, Lopez redialed police, and dispatcher Jesse Escochea took the call.

"Can you have an officer come to 2602 South Padre Island Drive?" she asked, according to a tape of the call. "I have a suspect with a knife inside the store."

"Has he threatened you in any way?" Escochea asked.

"Not yet," Lopez said, her voice rising in alarm. Then, apparently speaking to the man at the counter, she asked, "Can you give me just a minute?"

"What does he look like?" Escochea asked.

"He's a Mexican," Lopez said, dropping her voice. "Standing right here at the counter."

"Huh?" Escochea said.

"Can't talk," she said in a near-whisper. To the man, she said, "Thank you."

"Don't hang up, okay?" Escochea said.

"Okay," Lopez said. Then, to the man: "Eighty-five cents."

"Where is he now?" Escochea asked.

"Right here," Lopez replied.

"Is he a white male?"

"No."

"Black?"

"No."

"Hispanic?"

"Yes," she said.

"Tall? Short?" Escochea asked.

"Uh-huh," said Lopez, her voice straining to remain calm.

"Tall?"

"Tall."

"Thank you," she said to the man at the counter.

Escochea continued: "Does he have the knife pulled out?"

"Not yet!" Lopez said.

"Is it in his pocket?"

"Uh-huh," she said.

"All right," Escochea said. "We'll get someone over there."

Suddenly, Lopez shouted in a panic, "You want it? I'll give it, I'll give it to you! I'm not gonna do nothing to you! Please!"

As the telephone banged to the floor, Escochea issued an urgent call: "Got an armed robbery in progress going down!"

In the background, Lopez was screaming.

About the same time, Kevan Baker, a car salesman, pulled into the station to buy gas for his 1967 Mercury Cougar. As he grabbed a gas nozzle, he heard a bang on the station window.

When he looked toward the station, Baker was startled to see a man struggling with a woman.

Lopez was bent over at the waist, and the man was yanking on her shoulder-length hair, dragging her toward a storeroom behind the counter.

"As I turned and saw them and started walking toward the door, he threw her down and proceeded to meet me at the door," Baker later testified.

"Don't mess with me. I've got a gun," the man told Baker.

The two locked eyes for a couple of seconds, Baker said, then the man took off.

As the attacker fled on foot, Lopez staggered out the door.

"Help me," she moaned, sliding to the pavement. "Help me."

Baker ran into the station and grabbed paper towels to try to stop the bleeding from the stab wound in her left side. As he came out of the station, the first police car arrived.

Officer Steve Fowler rushed to Lopez.

"I bent over and asked her what had happened. But when I saw her condition, I just--that was it," Fowler later testified. "I just didn't bother asking anything else. . . . She was dead."

## BLOODY CRIME SCENE

About 40 minutes after the attack, police converged on a truck parked on a side street a few hundred yards from the station.

"Don't shoot! You got me!" De Luna shouted.

He was lying shirtless and shoeless in a puddle of water under the pickup when the officers pulled him onto the lawn of a nearby house. He had \$149 in his pocket.

They handcuffed him, put him in the rear of a squad car and drove him to the Sigmor. Aguirre and Baker separately were led to the car, where an officer shone a flashlight into De Luna's face.

Both men identified him as the person they had seen at the station.

As police drove De Luna to jail, he grew agitated. "I'll help you, if you help me," he repeatedly told the officers, according to a police report.

They ignored him, and finally he blurted out: "I didn't do it. But I know who did."

After Lopez was taken to the hospital, evidence technician Joel Infante and Detective Olivia Escobedo began processing the crime scene, a task that was completed in about an hour.

The station, particularly the area behind the counter, was a bloody mess, with spatters on the machine used to activate the gas pumps as well as large smears and pools on the floor.

Lopez's bloodstained flip-flops were behind the counter, where they apparently had come off during the struggle.

Crime scene photographs show a folding knife, its blade exposed, on the floor near the station's safe. Three \$5 bills were scattered behind the counter. A pack of cigarettes sat on top of it.

In a recent interview, Infante, now retired, said his job was to follow Escobedo's directions, taking photographs as well as dusting for fingerprints.

Infante said he found three fingerprints inside the station--two on the front door and one on the telephone. But all were of such poor quality that they were worthless.

He was unable to get fingerprints from the knife found on the floor or from the pack of cigarettes on the counter. Infante took no samples of the blood inside the station.

The day after the murder, a man who lived near where De Luna was arrested found a white shirt and shoes that apparently belonged to De Luna.

The clothes and shoes--as well as swabs from his face--were sent to the state crime lab for testing. No blood was found.

## HISTORY OF TROUBLE

By the time of his first arrest at 15, Carlos De Luna was a 7th-grade dropout who liked to sniff paint and glue.

His rap sheet eventually would include nearly two dozen crimes, mostly offenses such as public drunkenness, disorderly conduct, auto theft and burglary. He was in and out of juvenile detention, but it wasn't until a 1980 arrest that he faced time in an adult prison.

He was then living with relatives in Dallas and working at a Whataburger franchise. Charged with attempted aggravated rape and driving a stolen vehicle, he pleaded no contest and was sentenced to 2 to 3 years.

Paroled in May 1982, De Luna returned to Corpus Christi. Not long after, he attended a party for a former cellmate and was accused of attacking the cellmate's 53-year-old mother. She told police that De Luna broke three of her ribs with one punch, removed her underwear, pulled down his pants, then suddenly left.

He was never prosecuted for the attack, but authorities sent him back to prison on a parole violation. Released again in December of that year, he came back to Corpus Christi and got a job as a concrete worker.

Almost immediately, he was arrested for public intoxication. During the arrest, De Luna allegedly laughed about the wounding of a police officer months earlier and said the officer should have been killed.

Two weeks after that arrest, Lopez was murdered.

After authorities charged De Luna with the slaying, the court appointed Corpus Christi attorney Hector De Pena Jr. to defend him. Because this was De Pena's first capital case, James Lawrence, an attorney with death penalty defense experience, was assigned to the case.

It wasn't until five weeks before trial that Lawrence met with De Luna to hear his account of what happened. Lawrence then requested that the court pay \$500 for a private investigator.

De Luna told Lawrence that on the day of the crime, he cashed his \$135.49 paycheck from his construction job and drank beer with friends. That night, he said, he was at a skating rink talking with two women and left to walk toward a nightclub to find someone to give him a ride home.

He said he was at the nightclub, across from the Sigmor station, when he heard sirens. Because he had been paroled from prison only weeks earlier, he panicked and ran.

"I remember our client said, 'I didn't do it. I had to run because I saw what was happening, and no one was going to believe me,'" Lawrence recalled.

While fleeing, he lost his shirt as he scaled a fence, De Luna said. He also lost his shoes, though he never explained in court how or why.

As the trial approached, Nueces County prosecutor Steve Schiwetz offered De Luna the same deal he said he offered other capital murder defendants: plead guilty in exchange for a life sentence.

"I would always be inclined to try to let a person try to save his life," Schiwetz recalled.

But De Luna turned down the deal, insisting he was innocent.

The defense strategy was to challenge the state's eyewitness identification of De Luna. They noted that on the night Lopez was killed, the first descriptions broadcast over the police radio mentioned a Hispanic male in a gray sweatshirt or flannel shirt, not the white dress shirt police said De Luna was wearing that night.

They also intended to emphasize crime lab tests that failed to turn up a single drop of blood on the white

shirt and shoes -- surprising given the bloody crime scene and Baker's account of the struggle between Lopez and her attacker.

On the eve of trial, De Luna suddenly expanded on his claim of innocence by saying he left the skating rink with an acquaintance that night.

De Luna told his lawyers that on their way to the club the man went to the station to buy a pack of cigarettes, which sold for 85 cents--the same amount Lopez is heard saying on the 911 tape shortly before she was stabbed.

This man, De Luna said, was the real killer, and his name was Carlos Hernandez.

De Luna's attorneys passed on Hernandez's name to the prosecution. But Lawrence and De Pena can't recall whether they or their investigator pursued the possibility that Hernandez killed Lopez--apparently leaving it to the state to check out their own client's alibi.

While De Luna would later testify that he had first met Hernandez when they were teenagers, the exact nature of their relationship--whether they were good friends or just acquaintances--is difficult to sort out.

What the lead prosecutor, Schiwetz, recalls is that De Luna's lawyers told him their client had met Hernandez in jail. Nueces County records were pulled and sent to lead detective Escobedo.

When they showed that the men were never in jail at the same time, Schiwetz didn't pursue De Luna's claim further.

Convinced that De Luna was a liar, Schiwetz had reason to be confident going to trial in July 1983. He effectively destroyed the part of De Luna's alibi that on the night of the crime he was at the roller rink talking to two women. Under Schiwetz's questioning, one of the women testified that she was not at the rink but at her baby shower. And she had photos to prove it.

As for De Luna's claim that Hernandez committed the murder, Schiwetz in his closing argument ridiculed that as well. Hernandez, he told the jury, was a "phantom."

Yet Hernandez was well-known to authorities, especially to the co-prosecutor at Schiwetz's side.

Fearing for his violent temper, Hernandez had another distinguishing characteristic: He was particularly fond of knives.

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