

**IMPORTANT INFO UPON JSL'S BRIEF PERUSAL OF RECENTLY
OBTAINED NUECES COUNTY DISTRICT COURT RECORDS IN
CDL'S 2/4/83 MURDER CASE**

7/27/04

*= WITNESSES WE SHOULD ATTEMPT TO LOCATE AND INTERVIEW
+= DOCUMENTS WE SHOULD ATTEMPT TO OBTAIN

1. ***Lucinda Garcia**, 3630 Fairchild, CC, TX 882-7318: subpoenaed by state
2. Subpoenaed by Schiwetz on 6/16/83, ***Dorothy Gomez**, RN., Memorial Medical Center subpoenaed by State "re: treatment of Wanda Lopez on 2-4-83"
3. **On June 17, 1983, CDL pro se in handwriting, asked for a continuance because "one of the Defendant's witness [sic] is not in the hospital" and "the Defendant cannot go safely to trial and have this said witness not appear in his trial for his defense." [WHY? WHO?] Motion denied.**
4. On June 23, 1983, DA Schiwetz subpoenaed Chris Jones from Madison County District Clerk's Office in this case, the +**"records on cause #7583" for Richard Castillo, Joe R. Dominguez, Rosendo Lopez, Leroy Ramos, Antonio Rios, Pedro Tijerina**; return filed on 6/28/83
5. On 7-6-83, Schiwetz subpoenaed ***Carlos Hernandez, 3025 David, CC, TX**; served on 7/7/83 at Nueces Courthouse and also on July 9 ...;
6. Before trial, Capt. Jones of CCPD was subpoenaed to bring in +**"Transcripts of all incoming calls and outgoing broadcasts made concerning the reports and whereabouts of any suspect of suspicious persons reported via the CCPD arising out of the robbery of a Sigmor Shamrock Station, 2602 SPID, CC TX on Feb 4, 1983."**
7. On 7/19/83, defense subpoenaed:
 - a. Mr. and Mrs. Blas Avalos;
 - b. * Edward and Janie Moreno (2041 Rockford --- near neighbor of CDL's parents);**
 - c. Mr. and Teresa Barrera (4949 Easter)
 - d. Danny Fino (c/o Triarch),
 - e. Mary Ann Perales (started to write "Linda" but crossed it out) — explaining why state never went to Linda, only to Mary Ann;
 - f. *Alfredo Hernandez, Jr. at 1446 West Point (Cliff Maus Apts, where Mary Ann was living at time of trial)**

g. George Arguirre

8. On July 22, 1983, right after the trial, Botary requested and Judge Vernon Harville granted, motion of ADA “to withdraw all of the Exhibits admitted into evidence during the trial of the above indictment.”
9. On Sept. 27, 1983, presiding Judge Walter Dunham, Jr., recommended that County Judge Robert Barnes pay a \$1642 bill from investigator ***Horacio Ortiz**, which was about \$1142 over the \$500 max, given that: “Mr. Lawrence has assured me that 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. Record was amended after trial to reflect that jury twice reported itself hung on Question 2 at sentence, only to have judge send them back, after which they reached a death verdict.
11. First state habeas petition filed on 10/7/86 by ***Richard A. Anderson** raised all of three claims:
 - a. Misuse of prosecutorial discretion to decide who gets charged capitally, given that “petitioner is an Hispanic male. The Victim of the offense as listed by the autopsy records is white female.”
 - b. IAC:
 - i. Lead counsel only talked to CDL twice bef. Trial
 - ii. “failed to follow up information and investigate thoroughly Petitioner’s lengthy history of substance abuse to determine if there was sufficient organicity as a result of substance abuse to mitigate punishment.”
 - iii. **“failed to thoroughly investigate an alternative hypothesis concerning an assailant other than Petr even when provided with a name and location of the assailant and information concerning similarities between Petitioner’s appearance and the alternative assailant.”**
 - iv. **“failed to adequately investigate an alternative assailant and to use technology such as spectrographic voice identification techniques on a tape recording of the actual assault and offense to determine whether or not the voice on the tape was that of the Petitioner or another assailant.”**

- v. “although being advised of numerous witnesses that this 21 year old Petr had to present in mitigation of punishment, failed to put on a single witness”
 - vi. **“failed to preserve the testimony of Pet’s most important witness [WHO???] although they had been advised that the witness was hospitalized, was near death, and that the testimony of the witness was absolutely critical to the defensive hypothesis of an alternative assailant.”**
 - vii. “Trial counsel instructed Petr not to cooperate with court-appointed psychologist and psychiatrists for fear that the evidence would be used against Petr. Petr. Would show in this respect that Petitioner’s lengthy history of substance abuse, if made known to the psychiatrist and psychologist would have produced evidence in mitigation of punishment.”
12. We do not have the second of the two psych evaluations, this one by ***Dr. James R. Plaisted**, PhD (later sentenced to 40 years in prison for child abuse!!!). According to a filing by the state and by the opinion of the trial court (11/22/89) denying relief on a successor habeas petition, however, “Dr. Plaisted determined that Applicant’s intellectual capacity was **at least borderline** and was probably grossly understated by the testing due to the Applicant’s lack of cooperation.” This affidavit was supposedly “Appendix B to Application for Writ of Habeas Corpus,” but it is not in the record.
13. **I will ask Laura to review the post-trial pleadings; make a list of them; list the claim raised in each; and cite all references to (i) innocence; (ii) an alternative suspect; (iii) the hospitalized witness (who is it --- CDL’s mom? What did she know about Carlos Hernandez?); (iv) substance abuse; (v) reduced mental functioning/retardation; (vi) other stuff of interest.**