

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

MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

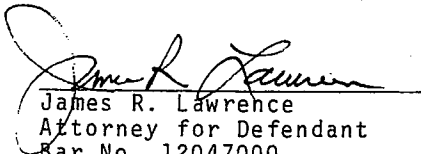
COMES NOW Carlos De Luna, defendant in the above-entitled and numbered cause, and files this Motion for New Trial, and in support of such motion shows:

I.

The trial court has committed an error material to the defense and injurious to the rights of the defendant, 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.


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,


James R. Lawrence
Attorney for Defendant
Bar No. 12047000
P.O. Box 8365
Corpus Christi, Tx 78412
(512) 884-5549

FILED

AUG - 9 1983

OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
 Deputy

M I C R O F I L M E D

AFFIDAVIT

STATE OF TEXAS }
COUNTY OF NUECES }

BEFORE ME, the undersigned authority, on this day personally appeared James R. Lawrence, attorney for defendant, who after being duly sworn stated;

"I am the attorney for defendant in the above-entitled and numbered cause. I have read the foregoing Motion for New Trial and swear that all of the allegations of fact contained therein are true and correct. I would further say that my client, Carlos De Luna is presently incarcerated in the Ellis Unit of the Texas Department of Corrections and cannot swear to the preceding motion as he is not in Nueces County, Texas, and time is of the essence."

James R. Lawrence
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on the 8th day of August, 1983.

Patricia A. Driscoll
Notary Public, State of Texas

Patricia A. Driscoll
(Notary's Printed Name)

My commission expires:

8-9-86

ORDER SETTING HEARING DATE


IT IS ORDERED that the hearing on the Motion for New Trial is hereby set for the _____ day of _____, 1983, at _____ o'clock, ____ .M., in the _____ District Court of Nueces County, Texas.

JUDGE PRESIDING

M I C R O F I L M E D

CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of August, 1983, a true and correct copy of the above and foregoing Motion For New Trial was personally served on the Assistant District Attorney of Nueces County, Texas.


James R. Lawrence
Attorney for Defendant

ORDER

On this the ____ day of _____, 1983, came to be heard defendant's Motion for New Trial, and it appears to the court that this motion should be GRANTED/DENIED.

IT IS THEREFORE ORDERED that a new trial be conducted in the above-entitled and numbered cause.

JUDGE PRESIDING

M I C R O F I L M E D