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The secret that wasn't

Violent felon bragged that he was real killer. Last of three parts.

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CORPUS CHRISTI, Texas

It was a secret they all shared. Some kept it out of fear. Some because no one ever asked. Whatever their reasons, it was a secret that might have saved Carlos De Luna from the execution chamber.

Twenty-three years after Wanda Lopez was murdered in the gas station where she worked, family members and acquaintances of another man, Carlos Hernandez, have broken their silence to support what De Luna had long asserted: Hernandez, a violent felon, killed Lopez in 1983.

[A Tribune investigation](#) has identified five people who say Hernandez told them that he stabbed Lopez and that De Luna, whom he called his "stupid tocoyo," or namesake, went to Death Row in his place.

They also say he admitted killing another woman, in 1979, a crime for which he was indicted but never tried.

Although some aspects of De Luna's actions on the night of Lopez's killing remain suspicious, the Tribune uncovered substantial evidence that undermines his conviction. Among the findings:

The only witness who came face to face with the killer at the station after Lopez was stabbed now says he was not positive of his identification of De Luna. He identified De Luna, he said, after police told him they had arrested De Luna hiding under a truck near the scene of the attack--information that eased his uncertainty.

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The Tribune's analysis of financial records from the Sigmor gas station also undercuts the state's assertion that the killing took place during a robbery, an aggravating circumstance that elevated the murder to a death penalty case. Newly examined inventory documents suggest no money was taken at all.

The prosecution argued that Hernandez was a "phantom," even though one of the prosecutors knew well of Hernandez but failed to inform De Luna's attorneys--a possible legal error that could have been a reason to overturn his conviction.

And one of Corpus Christi's senior detectives at the time of the crime now says he believes De Luna was wrongly executed. The former detective, Eddie Garza, said tipsters told him that Hernandez killed Lopez, the mother of a 6-year-old girl. Yet it appears those tips were not pursued.

Garza knew both men and said Lopez's slaying was the kind of crime Hernandez would commit, not De Luna.

"I don't think [De Luna] had it in him to do something like this and stab somebody to death," Garza said.

But Hernandez, he added, "was a ruthless criminal. He had a bad heart. I believe he was a killer."

A SECRET NO MORE

After Hernandez died in prison in 1999, word reached Corpus Christi, and people began to talk.

Janie Adrian remembered how Hernandez bragged about stabbing Lopez, how he said Carlos De Luna, the man who shared his first name, was innocent.

"He said, 'My stupid tocayo took the blame for it,'" she recalled recently.

Adrian, a neighbor of Hernandez's mother, Fidela, said she always thought someone would ask what she knew. Nobody ever did, so she never told.

"I kept it to myself," she said in her Corpus Christi home. "Maybe I could have said something then."

Dina Ybanez waited because she was afraid. She met Hernandez in 1985, and after he befriended her and her husband, he confided that he killed Lopez.

"He said he was the one that did it, but that they got somebody else--his stupid tocayo--for that one," Ybanez said in an interview. "Carlos would just laugh about it because he got away with it."

Like a number of people in Corpus Christi who knew Hernandez, Ybanez said he also admitted committing the 1979 murder of Dahlia Saucedo, a local woman who was strangled and had an "X" carved into her back. Hernandez was questioned in the murder in 1979, then indicted for it in 1986, although prosecutors never took him to trial.

Ybanez said she so feared Hernandez that she never contacted police about his admissions, not even after he cut her from her navel to her sternum during a quarrel. "He said he was going to kill me like he did her," she said.

Beatrice Tapia and Priscilla Jaramillo never spoke about what they knew because they wanted to forget.

Although they had not seen each other in years, they independently recalled the same chilling details from the day they heard Hernandez say he killed Lopez.

Jaramillo is Hernandez's niece, and during the 1980s she lived at his mother's home, where, she said, she was sexually abused by Hernandez.

Not long after Lopez was slain, Jaramillo, then 11, and Tapia, 16, a neighborhood friend, were sitting on the front steps, mostly talking but also listening to Hernandez and his brother Javier, who were on the porch drinking beer.

Carlos told his brother that he had killed the woman at the gas station.

"He was saying he did something wrong and said Wanda's name. He said he killed her," recalled Tapia, who still lives in Corpus Christi. "He said he felt sorry about it."

Jaramillo's recollection is similar. "My Uncle Carlos said that he had hurt somebody--that he had stabbed somebody," said Jaramillo, who now lives elsewhere in Texas. "Javier didn't believe it.

"Carlos said, 'I did.' And he named her, and Javier knew her," Jaramillo said. "He said the name was Wanda."

In addition to the four women who recounted Hernandez's admissions, the Tribune interviewed a Corpus Christi man who told a similar story. Miguel Ortiz, who has a criminal record, said the two were drinking in a park when Hernandez talked about a clerk he had "wasted" at a gas station.

"I just let that go," Ortiz said.

TIPS ON HERNANDEZ

While some in Corpus Christi kept silent about Hernandez, others apparently did not.

Garza, a detective at the time, recalled getting tips just days after De Luna was arrested that someone else was talking about how he had stabbed the gas station clerk.

"We were getting information that Carlos Hernandez was the one that had done the case," said Garza, who now is a private investigator. "Several people were telling us that."

Garza says he passed along the information to the detective leading the investigation, Olivia Escobedo.

Escobedo, now a real estate agent and police consultant in Florida, said she remembers no such tips. "I don't recall anything about a Carlos Hernandez," she said in a recent interview.

"I always followed every lead," added Escobedo, who primarily had investigated sex crimes and handled the De Luna case alone. "I went down rabbit trails when I didn't have to. I followed everything I could think of."

Garza's partner at the time, Paul Rivera, now a captain in the county sheriff's department, also said he doesn't remember the tips.

Garza did not testify at the trial but did at De Luna's sentencing, asserting that the defendant had a "bad" reputation in town. Garza says that by then he assumed the tips had been checked out and determined to be false. Now he believes the tips were ignored.

His recent examination of the case's police reports, at the Tribune's request, renewed his skepticism about De Luna's guilt. Garza concluded the initial crime scene investigation was sloppy and brief.

He noted that none of the blood spattered on the floor of the station was collected for testing, so there was no way to determine whether the attacker's blood was present. The only items sent for blood testing were the knife, De Luna's clothing and a \$5 bill.

One police photo shows Escobedo standing in the middle of the spattered blood behind the station counter. The station reopened a few hours after the crime.

"This case wasn't put together right," Garza said.

Noting that investigators found no physical evidence that could be used to identify the attacker, he said, "It probably was there to be found. It was just overlooked."

WITNESS' DOUBTS

With no forensic evidence linking De Luna to the crime, prosecutors relied heavily on two eyewitnesses who said they saw him at the station--one before and one after the murder.

Arrested less than an hour after the attack, De Luna was handcuffed and placed in a patrol car, then driven to the gas station, where an officer shone a light on his face.

Of those witnesses, only Kevan Baker came eye to eye with the killer after Lopez had been stabbed. Now living near Jonesville, Mich., Baker recalls that night vividly.

He had stopped to buy gas and saw Lopez and a man struggling inside the station. When he approached the door to help, the assailant emerged, they locked eyes and the attacker fled.

De Luna and Hernandez were about the same height and looked alike in police mug shot profiles.

Baker identified De Luna but now says he was uncertain. "I wasn't all that sure, but him being Hispanic and all . . . I said, 'Yeah, I think it is him,'" Baker recalled recently. "The cops told me they found him hiding under a truck. That led me to believe this is probably the guy."

This form of identification--called a show-up, in which a witness views only one suspect instead of attempting to pick a suspect out of a lineup--can be accurate, but it also can give eyewitnesses a false sense of certainty, according to experts. They say shackling a suspect exacerbates the potential for a mistaken identification.

"Law enforcement figures 'we got our guy,' so their whole demeanor, their language, the way they handle the guy suggests to the witness that this is the person," said Gary Wells, a research psychologist at Iowa State University and a leading expert on eyewitness identification issues. "That's a lot of pressure to put on a witness."

The other witness who identified De Luna as he sat in the police car, George Aguirre, declined to be interviewed for this article. At a pretrial hearing, Aguirre was unable to point out De Luna in the courtroom. At trial a month later, though, he did.

Two additional witnesses at the trial, John and Julie Arsuaga, said they caught a glimpse of De Luna's face as he ran slowly through a parking lot east of the station a few minutes after Lopez was attacked.

De Luna told authorities that when he saw Hernandez struggling with Lopez, he fled from the area because he was on parole and didn't want to be spotted by police.

Julie Arsuaga could not be reached for comment. In a recent interview, her former husband said he still believes De Luna was the man he saw down the street.

But he acknowledged he never saw De Luna at the gas station: "I didn't see the man commit a crime."

NOT A ROBBERY?

The discovery of \$149 in De Luna's pocket when he was arrested was important to the prosecution's case because it was one more way to tie him to the crime.

But a review of the station's business records show that's a shaky assumption.

De Luna's defense lawyers established that he had cashed a paycheck for \$135 the day of the murder and \$71 a week earlier. Further, they noted that the \$149 was in a neat roll--unlikely if the money had just been snatched from a cash register--and that none of the bills tested positive for blood. Money found scattered in the Sigmor station was bloodstained.

At trial, a district manager for the chain of stations told the jury that an inventory performed the night of the crime showed a shortage of \$166. He couldn't say how much of that was merchandise and how much, if any, was cash.

But another Sigmor employee at the time, Robert Stange, never believed any money was taken.

Stange, who said he was never interviewed by police, prosecutors or defense lawyers, worked the day shift at the station before Lopez. In a recent interview, he said he was called back that night after the murder to clean up the blood and conduct the inventory.

He said he found \$55 in cash receipts as well as \$200 kept at the station to make change for customers.

Lopez, he said, always made sure that when she accumulated \$100 in receipts, she immediately put it in the safe and noted the time and the amount of the cash drop in the station's daily log.

A copy of the log shows that Lopez last made a drop of \$100 at 7:31 p.m., 38 minutes before she was attacked.

For De Luna's \$149 to have been robbery proceeds, Stange explained, Lopez would have had to take in at least that much in the half-hour before the crime occurred, without putting any of it in the safe. Lopez, he said, "would have never kept that kind of money in the drawer without making a drop. She didn't want that kind of money on hand. Nobody did."

At the request of the Tribune, Kevin Stevens, a DePaul University accounting professor, examined the inventory report prosecutors used at trial. Stevens, who coincidentally worked at a gas station while in college, concluded that the Sigmor's bookkeeping system was too haphazard to be accurate.

"They can't know how much cash was missing," Stevens said, "because they can't know how much cash was there."

STILL CONFIDENT

After the Tribune began its investigation, the lead prosecutor in De Luna's trial, Steve Schiwetz, decided to examine the case file.

Troubled by some of the questions being raised, he spent hours at the Nueces County district attorney's office with a reporter poring over the trial exhibits, police reports and other documents in the case, as well as studying documents the Tribune provided.

Now a lawyer in private practice, Schiwetz acknowledged that the case relied heavily on eyewitness testimony. "Sometimes it's reliable. Sometimes it isn't reliable," he said in an interview. "And sometimes, in cases like this, you're not entirely sure how reliable it is."

Schiwetz labeled Hernandez a "phantom" at trial, but said he would not have done so if he'd been informed by a fellow prosecutor that Hernandez had been a suspect in the murder of another woman. Schiwetz also said that if he had been told of reports that Carlos Hernandez was claiming to be Lopez's killer, he would have investigated them.

"Anytime somebody's going around saying they killed somebody, I think it's worth looking at," he said. "But I've heard a lot of people make claims for stuff they did or didn't do that weren't true."

Ultimately, Schiwetz points to several elements of the case that still persuade him the jury convicted the right man. De Luna, he said, lied when he claimed to have talked to two women at a skating rink on the night of the crime and lied when he apparently said he first met Hernandez in jail. De Luna had lost all credibility, Schiwetz said.

"He's lying about the most important story he's ever going to tell in his entire life," he said.

In addition, while De Luna said he lost his shirt while scaling a fence, he gave no explanation for how he lost his shoes, Schiwetz noted. Though the crime lab found no blood or other evidence on them, Schiwetz told the jury that De Luna could have stabbed Lopez without getting blood on his shirt and that any blood on his shoes washed off when he ran through wet grass.

As for Hernandez's history of knife crimes, he said, "Every man in this town has carried a knife. And most of us still do. I carry a knife. I did not kill Wanda Lopez or anybody else."

Schiwetz's co-prosecutor on the De Luna case, Ken Botary, also remains confident the verdict was correct.

"I'm not ready to concede Carlos De Luna was innocent," Botary said.

ANGER AND REGRETS

Wanda Lopez's murder still haunts those who were touched by it.

Her brother, Louis Vargas, no longer is filled with the rage that so consumed him that he imagined sneaking into the prison and killing De Luna himself.

Now, when he thinks about his sister's death, he mainly is filled with horror at how she died. He cannot forget her screams on the 911 tape.

"This is like opening a can of worms," he said. "All this time, we were told it was this one guy. Now do we have to think it was somebody else?"

His parents adopted Wanda's young daughter. Now a mother of four, she is raising a family of her own and still lives in Corpus Christi.

De Luna's sister, Rose Rhoton, has long believed in her brother's innocence. She blames his lawyers

for not mounting a more aggressive defense and authorities for not pursuing Hernandez as a suspect.

She has regrets of her own as well.

"If God ever gave me a second chance," Rhoton said, sitting in her Dallas home and beginning to cry, "I would fight harder for Carlos."

When Rhoton departed the death house in Huntsville, having seen her brother for the last time, she left him in the care of a minister, Carroll Pickett.

The death house chaplain, Pickett prayed with De Luna and, as he did with all inmates facing execution, gave De Luna an opportunity to confess and make his peace. De Luna, he said, insisted he was innocent.

De Luna was the 33rd Death Row inmate to whom Pickett ministered, and in the years that followed he would minister to 62 more. But this one stayed with him always: how De Luna claimed he was innocent, how he took longer to die than most inmates, how he tried to raise his head from the gurney and speak to Pickett before the lethal injection left him lifeless.

"When I saw him die," Pickett said, "part of me died too."

The experience forced him to ask a question he says he still can't answer: Do the innocent die differently than the guilty?

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