

# 1989 Texas execution documented in *The Phantom*: The wrong man?

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24 March 2022

*Written and directed by Patrick Forbes*

Since 1973, at least 186 people in the US have been exonerated after being sentenced to death. According to the Death Penalty Information Center (DPIC), “The data now show that for every 8.3 people who have been put to death in the U.S. since executions resumed in the 1970s, one person who had been wrongfully convicted and sentenced to death has been exonerated.”

How many innocent people have actually been killed by the authorities? The DPIC points out that there is “no way to tell how many of the 1543 people executed since 1976 may also have been innocent. Courts do not generally entertain claims of innocence when the defendant is dead. Defense attorneys move on to other cases where clients’ lives can still be saved.”

The case at the top of the DPIC’s list of “Executed But Possibly Innocent” is that of Carlos DeLuna, a 27-year-old man, put to death by the state of Texas in 1989. *The Phantom*, written and directed by British filmmaker Patrick Forbes, documents DeLuna’s tragic fate. DeLuna ultimately became a victim of Texas’ assembly line of death after being charged with the 1983 murder of Wanda Lopez, a gas station employee in Corpus Christi.

The documentary offers a damning portrait of the US criminal legal system, whose countless victims are predominantly poor and disenfranchised.

On the night of February 4, 1983, Lopez, a 24-year-old employee at a Sigmor Shamrock gas station, was brutally killed. The film opens with Wanda’s chilling 911 call. From the moment of his arrest until the day of his death by lethal injection, DeLuna vehemently protested that he was innocent, even identifying the actual killer, a notoriously violent criminal named Carlos Hernandez.

At his trial, prosecutors dismissed DeLuna’s claim, insisting that Hernandez was a “phantom,” fabricated by the accused. After a trial for which DeLuna’s defense attorney had only two weeks to prepare, the jury

convicted DeLuna and sentenced him to death. Despite subsequent appeals, the courts upheld his conviction and death sentence, all the while asserting that Hernandez did not exist. DeLuna was convicted largely based on eyewitness evidence, “the worst evidence in the world,” according to *The Phantom*.

“All these poor people, they were all getting found guilty, they were all going to death row, and nobody represented them,” argues Rene Rodriguez, the attorney for Wanda Lopez’s family.

Drawing on interviews with the district attorney, defense attorneys and DeLuna’s siblings, the movie points to the callousness and murderous determination of the legal system to destroy the young man.

As DeLuna languished on death row, attorney Rodriguez recovered photographs of the crime scene that revealed extensive police contamination. He showed them to defense attorney James Lawrence and the appeal attorney for DeLuna, Richard Anderson. While the former kept quiet, the latter denies in the documentary ever knowing about their existence. DeLuna had no blood on his clothing when he was arrested shortly after the killing, one of the many facts that should have raised questions about his guilt, given the quantity of blood at the murder site.

After half a dozen years on death row, DeLuna died following a botched administering of a lethal injection. He was tortured in a gruesome, prolonged death. “DeLuna shouldn’t have been executed, as he was innocent, but he also certainly shouldn’t have died the way that he did,” says director Forbes in the movie’s production notes. “He died in agony. They messed up putting the poisons into his body. There was nothing right about his death from beginning to end.”

More than a dozen years after DeLuna’s execution, Columbia University law professor James Liebman’s students were looking into the cases of possibly innocent

people put to death in the US. After an exhaustive examination of DeLuna's case, lasting six years, the findings, arguing for the young man's innocence, were published in the May 2012 edition of the *Columbia Human Rights Law Review*.

In fact, the team quickly confirmed the existence of "the phantom" Carlos Hernandez to whom DeLuna had referred. Hernandez, who died from cirrhosis in a Texas prison in 1999, was a career criminal, with more than three dozen arrests, and had a history of assaulting women, robbing gas stations and carrying knives.

The Columbia report documented numerous cases in which Hernandez was arrested while in possession of a lock-blade knife, similar to the one used to slay Lopez. Liebman also revealed that Hernandez was a small-time police informant and did favors for the police. In return, the police allegedly did favors for him.

"Not only is Carlos Hernandez a *really* bad guy, but he's also well known to the police in Corpus Christi," states Forbes. "He lives only about 200 yards from the city's courthouse! When people were denying that he existed, he was in reality *just around the corner*."

Forbes further affirms: "If you are a country that has the death penalty, you are a country that has a potential problem. In essence, Texas shows the size of that problem, because it is a place where there have been egregious abuses of law, and awful prosecutions that should not have happened."

"And whereas," Forbes notes, "in another state or another country a person who had been wrongly convicted would be in jail and possibly could have the chance of being released. With the death penalty, there's no going back ... In the film, it's stated that, 'Texas likes to kill people to prove that killing people is wrong.' That makes no sense, and it has no place in a civilized society."

One of the documentary's most affecting interviewees is Karen Boudrie Greig, who was a cub reporter at the time of DeLuna's arrest. Many aspects of her relationship with the youth at the center of *The Phantom* are recounted in a moving 2012 article she wrote, headlined: "Last Call From Death Row—Seeking the truth during a final conversation."

She begins: "On a sweltering summer day in south Texas in 1983, Carlos DeLuna was convicted of capital murder even though there was no physical evidence linking him to the bloody crime scene, no fingerprints and no blood on his clothes...I watched in equal fascination and horror as the case unfolded. I couldn't believe that such shaky evidence could condemn a man to die. At the

time though, only police and prosecutors knew how shaky that evidence really was."

When she went to interview the young man in prison, "something about Carlos DeLuna got to me." Always proclaiming his innocence, he refused a plea deal that would have saved his life and told Karen that he had asked to take a lie detector test but was denied the opportunity.

After the visit, Carlos began to write to her: "He talked about being on Death Row ... only he called it Death 'Roll.' It seemed to me he never had much of a chance. He was poor, Hispanic and lacking in education and paternal love. He grew up in the projects, dropped out of high school and quickly succumbed to drugs and crime."

While on death row, DeLuna obtained a GED and began taking college courses. Karen noticed he was beginning to change: "It was a metamorphosis of sorts as DeLuna began to look at life with a clearer perspective. I began to see a real person."

When an execution date was set for December 7, 1989, Carlos wrote and asked if the reporter could be a witness to his death. Begging his forgiveness, she simply could not watch him die.

"I'm going to be executed," he said plainly [in an eventual phone call]. 'It's over. They denied my appeals.' The enormity of what was happening gripped me like a vice. I felt paralyzed; what do you say to a man who is about to die? 'Oh God,' was all I could manage to get out of my mouth ... 'They are executing an innocent man,' he said quietly. 'I am so sorry Carlos, I am so sorry,' I muttered sickly. 'It's OK,' he said. 'I'm going to take it, not fight ...'

"A day after his execution I received a letter from him; the next day, another.

"Dec. 4, 1989: Please remember me as a good person ... I close for now and if I have to die this way, I'll never forget you, I do believe in life after death, maybe we'll meet up there. Take care. Love in a Special Way, Carlos DeLuna."

Local officials have never admitted the wrong man was put to death.



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