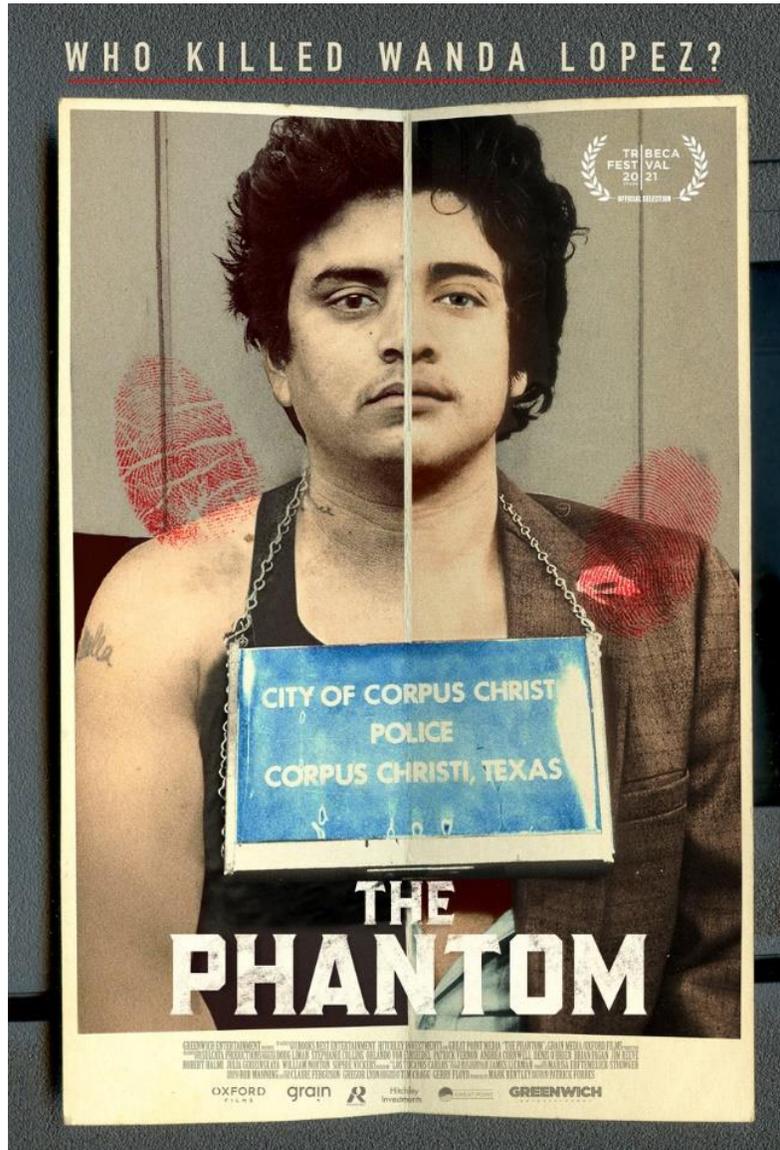


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ENTERTAINMENT
Presents

THE PHANTOM



Produced by **MARK BENTLEY**
Written and Directed by **PATRICK FORBES**

In February 1983, Carlos DeLuna was arrested for the murder of Wanda Lopez, a young woman working at a gas station in Corpus Christi, Texas. DeLuna said he wasn't the killer; it had been *another* man named Carlos. There was no blood on DeLuna's clothes, and his history suggested nothing like what he was accused of. But witnesses identified him, and in July 1983 DeLuna was sentenced to death as the court system and public opinion decided "the other Carlos" never existed. Up to the moment he was executed in 1989 — in a botched lethal-injection procedure — DeLuna proclaimed his innocence.

Flash-forward to 2012, when a Columbia University law professor has a team of students study the case and publish a report that DeLuna, in fact, *was* innocent. The real killer, as stated in the *Columbia Human Rights Law Review*, was indeed Carlos Hernandez, who killed Wanda Lopez and then disappeared...like a phantom. Or so the justice system thought.

BAFTA-winning documentarian PATRICK FORBES journeys to Texas to speak to the people involved in this notorious case that represents everything wrong with the criminal justice system and, especially, with the death penalty. THE PHANTOM examines the story from every angle, speaking to police, prosecutors, defense attorneys, family members, witnesses, journalists who covered the trial, the TV reporter who interviewed DeLuna during his six years on death row, and, dramatically, one witness whose testimony could have made a difference — if only the court system wasn't tilted toward tragedy, sloppy about evidence, and designed to see truth as something that's as impossible to grasp as THE PHANTOM.

THE PHANTOM - Written and Directed by Patrick Forbes. Produced by Mark Bentley. Directors of Photography, Tim Cragg, Gerry Floyd. Film Editors, Claire Ferguson, Gregor Lyon. Original Music, Rob Manning. Based on "Los Tocayos Carlos" by a team of Columbia Law School researchers led by Professor James Liebman. Line Producer, Marisa Erftemeijer-Strowger. Executive Producers for Rooks Nest, Julia Godzinskaya, William Norton, Sophie Vickers. Executive Producer for Oxford Films, Stephanie Collins. Executive Producers for Grain Media, Orlando Von Einsiedel, Andrea Cornwell, Patrick Vernon. Executive Producers for Hitchley Investments, Denis O'Brien, Brian Fagan. Executive Producers, Doug Liman, Jim Reeve, Robert Halmi.

INTRODUCTION

Carlos DeLuna was in the wrong place at the wrong time.

Late on the night of February 4, 1983, Wanda Lopez, a 26-year-old attendant at a gas station minimart in Corpus Christi, Texas, was stabbed twice during a robbery gone wrong. Her frightened call to local police — in which she identified a Hispanic man in a white shirt as the perpetrator — recorded the violence as it occurred. After the suspect ran into the night, police found DeLuna, a 20-year-old Corpus Christi native, hiding under a parked truck. Eyewitnesses identified DeLuna as the man they saw running from the scene.

DeLuna had several minor offenses that resulted in arrests for drunken disorderliness, and a series of family issues with his brother and mother involving money. But he claimed he wasn't the man who killed Lopez. The only evidence in the case was provided by those eyewitnesses.

After a trial during which DeLuna's defense attorney had only two weeks to prepare, DeLuna was found guilty of Lopez's murder on July 20, 1983, and, after he and his defense attorney declined to accept life in prison without parole, was sentenced to death. After 6 years on death row, DeLuna died following a botched administering of lethal injection during his execution — turning his state-sanctioned death into a harrowing, prolonged torture.

Throughout his trial and time on death row, DeLuna insisted on his innocence — and said that another man named Carlos Hernandez was in fact the real killer. But everyone involved with the case dismissed DeLuna's claims, thinking this "other Carlos" defense was a diversionary tactic, a mirage...in essence, a phantom, the outlandish claims of a person caught.

Yet as filmmaker Patrick Forbes reveals in his powerful, propulsive, and illuminating true-crime documentary *THE PHANTOM*, Carlos Hernandez — "the other Carlos," as he became known throughout the case — was *very* real, *very* violent, and *very* feared. The truth is nothing at all what the machinery of justice, the community, and even DeLuna's own attorney thought it was. With an urgent, you-are-there filmic narrative that makes the events of the DeLuna case come alive, Forbes makes clear in the starkest possible terms the damning inhumanity, dangerous inefficiency, and terrifying recklessness of capital punishment in the United States.

In a state that executes more people than any other, Carlos DeLuna was an innocent man put to death for a crime he did not commit ... and who has still never received a formal posthumous pardon.

“At no stage of this process did the right thing happen — the wrong thing happened at *every* turn,” says Forbes. “I want THE PHANTOM to provoke a reaction, to spur real anger and real action.”

“I took the film’s interviewees to the places where the events happened, so viewers themselves would feel like they’re *in* the moment, and that they are reliving these experiences,” Forbes continues. “I wanted the film to propel forward at a speed at which things unfolded.”

Forbes is a native of Liverpool whose career at the UK’s *New Statesman* newspaper included breaking the news about a British spy satellite whose existence was unknown to Parliament — a story that got Forbes and his cohorts arrested. He later worked in television, where he won BAFTA TV awards for his documentaries. Moving into features, Forbes’ films have examined the inner workings of the Internet and a wired-to-fail medical system (*True Stories: Wikileaks — Secrets and Lies; The Widowmaker*) as well as incisive looks at political power (*Brexit: A Very British Coup; Putin: The New Tsar; Tories at War*).

“I wanted to highlight the uncertainties of Carlos DeLuna case, the ups and downs, and all of the emotion that was in this story from the beginning. I wanted to prove that an after-the-fact documentary could be as thrilling and as vital as a narrative film, and as exciting as it should be.”

The film’s ethical underpinnings and message about the fictions, fallacies, and failings of the death penalty, however, are as serious as anything in either fact or fiction.

“If you are a country that has the death penalty, you are a country that has a potential problem,” says Forbes. “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 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,’” says Forbes. “That makes no sense, and it has no place in a civilized society.”

THE CASE

Carlos DeLuna's arrest and trial for Wanda Lopez's murder gripped the Corpus Christi community in 1983, both for the intensity of the violence and the way the proceedings were being played out, from the moment DeLuna was found hiding under a nearby truck with \$149 in bills wadded up in his pocket — close to what was robbed from the gas station — to his almost surreal insistence that another man was guilty of the crime.

“DeLuna's initial defense — ‘Another guy who just happens to have my first name, a guy I knew in jail, did it’ — sounds like something he made up in the moment,” says Forbes.

For the authorities, however, it all seemed classically by-the-book, as Forbes points out.

“An underlying theme of *THE PHANTOM* is, what is truth?” says Forbes. “Anyone who's ever been on a jury knows that the truth is a really tricky thing to work out. Imagine you're a cop on a cold night in Corpus Christi, the rain is coming down, a woman has been killed in a horrific way, people are running all around the neighborhood, and suddenly you find a guy under a truck. You're going to think, ‘This is the guy.’ And then in the courtroom, the same guy tells a series of terrible lies. He has a record of petty offenses. If you're on the jury, you'd think he's guilty. Plus, DeLuna had a lawyer who only had 10 days to prepare his case and was up against a bruising prosecution.”

After DeLuna — who was born poor in the Corpus Christi barrio on March 15, 1962 and dropped out of school in the eighth grade — was found guilty of capital murder and sentenced to death, he was visited in prison by Karen Boudrie, a young news reporter for Corpus Christi's KZTV. Seeking a juicy story of the man on death row who proclaims his innocence, Boudrie interviewed DeLuna several times and began to receive letters from him — and she found that across his six years on death row, DeLuna never changed his story about the other man named Carlos who killed Lopez and then disappeared into the shadows.

DeLuna also revealed during the interviews with Boudrie that the District Attorney never gave him a lie detector test, even though DeLuna said he would take one.

As DeLuna languished on Death Row, Rene Rodriguez, the attorney for victim's family discovered a cache of photos from the murder scene that had never been shown at court. They showed that the police

that night in 1982 damaged the crime scene, and that DeLuna's clothes that night weren't stained with blood the night of the murder, as they would have been given the amount of blood at the scene in the gas station. Rodriguez showed the photos to DeLuna's defense team in his first trial – but they did nothing.

“In 1983, there wasn't a requirement for the prosecution to hand over all the materials they had in their possession to the defense, so DeLuna's attorney only got half the crime scene photos,” says Forbes. “Only when another lawyer on a different case stumbles across all of the photos from the night of the murder did it become clear that there is no way he's the right guy. He would have been covered in blood the night of the murder, and yet there wasn't a speck of blood on him. Thirty years later, when I showed those photos to DeLuna's appeals lawyer, he said, ‘If I'd had these, I could have done something.’”

When he was executed at midnight on Dec. 7, 1989, DeLuna (who, in letters to Boudrie, indicated he didn't even know he was on death row for much of his time in prison) suffered a final atrocity: As THE PHANTOM documents, the lethal injection administered to DeLuna at the Texas State Penitentiary at Huntsville, Texas, was botched. He died a gruesome and inhumane 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 Forbes. “He died in agony. They messed up putting the poisons into his body. There was nothing right about his death from beginning to end.”

REOPENING THE CASE

Twenty-three years after DeLuna's execution, in New York City, Columbia University law professor James Liebman had students in his class study the cases of innocent people put to death in the United States. They spent six years examining DeLuna's case, publishing their findings in the May 2012 edition of the *Columbia Human Rights Law Review*, which came to the attention of Forbes' researcher.

“My researcher kept saying, ‘This class at Columbia has done an extraordinary piece of work, you should have a look at what they found,’” says Forbes. “So I did, and it had an immediate impact on me. An innocent person had been executed and it can be definably proven. So I called Prof. Liebman at Columbia and got started.”

Four weeks later, Liebman, whose team had discovered a record on Carlos Hernandez, was on board to helping Forbes make a vital documentary about the case.

But in 2016, when Forbes headed down to the southwestern part of Texas — a land of longtime conflict between groups near the port of the Gulf of Mexico and the Rio Grande, and notorious for crime and destitution — the filmmaker had no idea what revelations lay ahead.

“I went to Corpus Christi, and it was almost like that moment in classic detective fiction when the door creaks open and a flood of secrets come out,” says Forbes. “This case was the town’s unspoken secret; everybody hated that it happened and *really* wanted to state their case about it and sort it out, whatever their perspective on it.”

“I asked the prosecuting attorney why he was doing this interview, and he said, ‘I don’t want to be defined by this case, I want to say my peace.’ *Everyone* wanted to talk and have the truth finally come out.”

“All of the principal players were still alive when we started filming the documentary, and everyone was still there, amazingly; one cop briefly moved to San Antonio and another cop moved briefly to Florida. But everybody stayed within the community,” says Forbes. “One of the things that bothered me about the original research on the case to prosecute DeLuna is it only spoke to one set of people — the Feds and family. They didn’t talk to the cops or the prosecution, and their view was just as fascinating.”

Getting all sides of the case was crucial during the making of THE PHANTOM and led to one extraordinary, life-is-stranger-than-fiction type of reveal.

“As we were filming one of the police officers reenacting the moment of the original arrest, talking us through it, someone came up and tapped one of my crew on the shoulder and said, ‘I was there that night!’ It turns out that man, Raymond Nunez, saw *two* guys running from the scene that night. We were stunned at what he was saying, because the whole case hinged on there not being *one* person there but *two*. There had *never* been a witness who could prove here were two guys. And by pure accident, this guy came up and cracked the case right in front of us!”

“For all the words and effort and money that had gone into talking about this iconic case for 30 years, it turns on one guy who sees someone reliving a moment from three decades earlier, taps someone on the shoulder and says, ‘I saw that,’” says Forbes. “I interviewed Raymond Nunez three times, and every time he recalled events *exactly* the same way. He even said he was watching the film *Jaws* on television when the murder happened — we researched it, and, sure enough, *Jaws* was on local TV in Corpus Christi that night in 1983. That was just a starting point for how detailed Baker’s memory was.”

“Baker said to us, ‘I’ve been waiting years to talk about this.’ Which was the reaction I was getting all around Corpus Christi,” says Forbes.

Among the interviews Forbes and his team conduct for THE PHANTOM include Assistant District Attorney Steve Schiwetz; Defense Attorney James Lawrence; Medical Examiner Dr. Joseph Rupp; KZTV reporter Karen Boudrie; former *Corpus Christie Caller* newspaper reporter Linda Carrico; officer Tom Mylett and officer Mark Schauer, who were at the crime scene in 1983; the eyewitnesses, and many others. But several truly stick with him.

“The bravery of the women who had suffered at Carlos Hernandez’s hand really haunt me,” says Forbes. “When you’re filming someone and without warning they show you an appalling scar where a man took a knife to them, it is so visceral. That’s a moment I’ll carry with me the rest of my life.”

THE OTHER CARLOS

The most astounding and disturbing aspect of the DeLuna story —the one that provides THE PHANTOM with its memorable title — comes to terrifying life in the documentary, providing both tragic closure for the DeLuna case and a glimpse into a dark force that lurked in the shadows of Corpus Christi for decades.

“There *was*, in fact, another Carlos, just as Carlos DeLuna had asserted since the beginning — and that other Carlos, named Carlos Hernandez, was a terrible human being,” says Forbes. “He had a long record of terrible assaults with a knife on several women, the same knife that is the murder weapon in the Wanda Lopez case. So as we rewind the story, as it were, this whole horrendous fairground ride unspools.”

“Not only is Carlos Hernandez a *really* bad guy, but he’s also well known to the police in Corpus Christi,” adds 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.*”

However, authorities at the time who tried to find Hernandez based on DeLuna’s information only found dead ends. No one claimed they knew him or had heard of him.

Interviews in THE PHANTOM with ex-girlfriends of Hernandez — including intense recollections by Dina Ybanez and Margie Tapia — illuminate the stories of how they withstood years of terrible abuse and violence by him.

“Those discussions we had with them were extraordinary, because without exception, as the women talked to us, they started to relive what it was like living with Hernandez, being terrified by him and being completely unable to do anything about it,” says Forbes. “If THE PHANTOM is about not only how wrong it is to kill an innocent man, it is also about what a murderous psychopath is like.”

“Dina Ybanez and Margie Tapia’s interviews also help explain why this secret of Carlos Hernandez stayed a secret for so long,” Forbes adds. “People were just terrified of him. He would stick a knife in people at the slightest provocation. Those women wanted their testimony out in the world.”

“The details about Hernandez also give an insight as to what it’s like to be part of a community where, in essence, the forces of law enforcement weren’t going to do much about these problems,” says Forbes. “To the system, the Latino community was looked at as disposable. The one exception, interestingly, was the lead prosecuting attorney, who had only been in town a couple of months at the time of Wanda Lopez’s murder. Tragically, I suspect the fact that he was new to the area was also why he wouldn’t have known anything about Carlos Hernandez.”

THE WRONG PLACE AT THE WRONG TIME

Ultimately, the Carlos DeLuna case wraps several layers of tragedy within the story of one innocent man caught up in a nightmarishly flawed system geared toward cruelty and misguided retribution. But it is also about a time and place where the issues of the day ran deep in the community — and which continue to reverberate into the present day, and how one person can get caught up in a combine of injustice.

Making *THE PHANTOM*, Patrick Forbes brought a vibrant cinematic drama to the story, a visceral element of you-are-there urgency, and a knowledge of the history of the land that puts *THE PHANTOM* not only in the company of seminal documentaries like *The Thin Blue Line*, *The Farm: Angola, USA*, and *Murder on a Sunday Morning*, but also classic narrative films that revolve around culture, community, and crime such as Roman Polanski's *Chinatown* and John Sayles' *Lone Star*.

“This is a land that has been fought over by both the Mexican community and the influx of the white community,” says Forbes. “DeLuna really was at the wrong place at the wrong time. And its not just wrong place, wrong time, but also, crucially, the wrong skin color in terms of the system and who gets punished. That is an underlying key to this film as well.”

In the last decade, over 60 percent of people executed in Texas were people in color, mirroring many national statistics.

Forbes says that a crucial part of making *THE PHANTOM* was recognizing the realities of what the police work entailed, what that meant in 1983, and what it continues to mean to innocent people caught up in a maelstrom of wrong turns.

“Carlos DeLuna’s story is in fact an indictment of an entire justice system, but it’s also a story of quite a lot of people who didn’t think they were doing the wrong thing at all,” says Forbes. “They were police officers trying to solve a crime, or they were DA’s trying to prosecute a case as they saw fit. They just didn’t have all the information that they should have had — which is, in essence, the point of the film.”

“I really hope *THE PHANTOM* inspires change, because change *is* possible,” says Forbes. “The United States government *can* do something about the death penalty and about innocent people being executed, and this is the best evidence for the rightness of that move. The window of opportunity is now;

moratoriums on executions can be overturned. The time is now to do something decisive and brave. Hopefully, THE PHANTOM shows that it should happen.”

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