

JAMES OCHOA CASE

People V. Ochoa, 05NF2933

May 22, 2005: James Ochoa, age 20, was arrested at gunpoint in his home by Buena Park Police Department and charged with felony car jacking and armed robbery for a crime that was committed in his neighborhood, hours earlier.

May 24, 2005: Attorney Scott Borthwick was contacted by James' parents, Ubaldo and Luz Ochoa, and was asked to represent their son.

May-December, 2005: Legal research performed, determining that the eyewitness identification was flawed due to unduly suggestive photo "lineup," creating witness bias. Bloodhound tracing dog handler, Larry Harris, was found to have a past record of incompetence and prosecution bias. In addition, DNA and fingerprint evidence found in the stolen car excluded James Ochoa. Despite all of the above, the Orange County District Attorney held Ochoa in Orange County Jail for over 6 months. During this incarceration he was repeatedly pressured to accept a plea bargain. He refused to plead guilty, and proclaimed his innocence throughout.

December, 2005: Immediately prior to the trial, Superior Court Judge Robert Fitzgerald threatened Ochoa with a sentence of life in prison if he didn't accept the plea bargain. With the support of his attorney, James again refused to plead guilty.

December 7, 2005: Jury trial begins. DA Christian Kim proclaimed in his opening statement that James' parents and family members (who were home with James at the time of the crime) were "basically completely lying" for maintaining that James was innocent. DA Kim also stated that the recovered DNA and fingerprints in the car, which excluded Ochoa, "meant nothing" in the case. In the afternoon, the victim/eyewitnesses wrongly identified James as the perpetrator in front of the jury.

December 8, 2005: After a sleepless night, James succumbed the next morning to the pressure of DA Kim and Judge Fitzgerald, and agreed to accept the plea bargain of a two-year prison sentence. He could not endure the prospect of spending the rest of his life in prison if the jury believed the prosecution's bogus case. Against the advice of attorney Borthwick and the pleas of his family members, James reluctantly plead guilty to a crime he did not commit, and received his sentence of two years in state prison.

October 2006: James T. McCollum, a Long Beach resident, was being held in jail for felony carjacking in an unrelated incident in L.A. County. A DNA check on McCollum produced a "cold hit" (100% match) of the DNA evidence found in the Ochoa case. Upon questioning, McCollum admitted that he had committed the crime for which James Ochoa was serving time in Centinela State Prison. On October 19, one year and five months from the date that James was arrested and continuously incarcerated, he was released from prison and subsequently declared factually innocent by the same Judge who had accepted his plea, Robert Fitzgerald.

April 22, 2008: California State Victims Compensation and Government Claims Board voted unanimously to recommend payment of \$100.00 per day for Ochoa's wrongful incarceration, ruling that James' confession was effectively "coerced".

April 23, 2008: City of Buena Park settles a Civil Rights case filed by James Ochoa, resulting from mishandling of the case by BPPD Officers and Dog Handler Larry Harris.

June, 2008: California State Senate votes on the \$31,700 payment to James Ochoa for wrongful incarceration, as recommended by the State Board that investigated the case. The payment fails to achieve the 2/3 majority (required by the State for monetary issues) by just one vote. Senator Tom McClintock was the only Republican who voted to approve Ochoa's payment.

August, 2008: Attorney Scott Borthwick contacts Orange County Republican Chairman Scott Baugh to ask his assistance on behalf of James. Mr. Baugh agrees to call Senator Dick Ackerman, (R – Fullerton), and asks him to reconsider his position. Under the sponsorship of Senator Tom Torlakson (D – Antioch), a second floor debate and vote was held on August 7. This time, Senator Ackerman changed his vote to affirmative and James Ochoa's payment measure passed by a one-vote margin.

September, 2008: Following the State Senate approval, and after extensive print media coverage of the case, the California State Assembly unanimously votes to support James Ochoa's payment for wrongful incarceration.

Epilogue: James Ochoa, his wife Miriam, and young son Fernando, move to Texas to join his parents and start a new life following this ordeal lasting over 3 years. They live outside of Dallas, and James is employed as a silkscreen printer. The Ochoas now have a second child, Jacob.

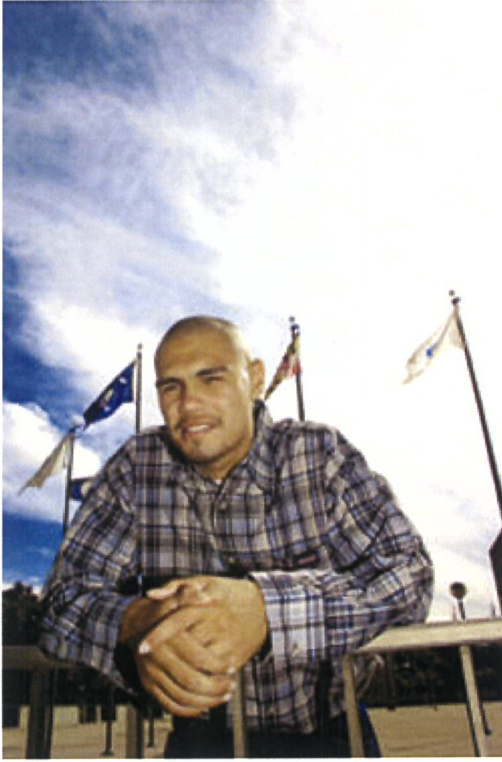


April, 2008 – Sacramento, CA.
James, Miriam, Ubaldo, and Fernando Ochoa
Victims Compensation Hearing

Oops

Judge, DA, cops quietly admit they sent an innocent 20-year-old man to prison for 16 months

By R. SCOTT MOXLEY Thursday, Oct 26 2006



Free at last. Photo by Jennie Warren

drive back to Orange County.

Last Friday night at Joe's Crab Shack in Garden Grove, James Ochoa sipped a Budweiser, nibbled on French fries and started to speak about the 16 months he spent in prison for a crime he didn't commit.

"Man . . ." His voice trailed off and he slowly shook his head, apparently unable to find words to describe his time in Centinela State Prison in Imperial County, home to nearly 5,000 male felons. He's got fresh scars to prove life there is dangerous. He was quiet a moment and then said simply, "Nobody wants to live [in a space the size of] a broom closet for 23 hours a day."

Ochoa's path to freedom began at 6:30 on the morning of Oct. 20, when a guard knocked on his cell door, showed him paperwork and said, "The court's kicking you out of here." Ochoa thought it was a bad joke.

"You've got the wrong guy," he told the guard. "But my [cellmate] said, 'Stop talking. You're leaving, man. Go before they change their minds.'"

Still wearing tan prison slippers and a paper-thin blue inmate's jumpsuit, Ochoa emerged from a Centinela cell fittingly called "The Hole," and climbed into a late model black Impala sent by one of the men who'd sent him to prison, Orange County District Attorney Tony Rackauckas. Two DA investigators told Ochoa, "Today's your lucky day." They drove him to a Wal-Mart, bought him jeans and a white T-shirt, took him to lunch and then began the long

Seeing scenery other than a prison wall was nice, but Ochoa's stomach knotted. He kept wondering if he was dreaming. Or if the investigators were performing an elaborate trick in hopes of pinning another crime on him.

"I couldn't believe they let me out," he said. "But they should have known I wasn't guilty a long time ago."

* * *

A year ago, in "The Case of the Dog That Couldn't Sniff Straight," I told Ochoa's story—how "sloppy police, callous prosecutors and indifferent judges" would send the innocent 20-year-old to prison for a May 2005 Buena Park robbery and carjacking committed by another man.

That conclusion prompted angry calls from Buena Park cops. A prosecutor told me to leave investigations to the professionals. Superior Court Judge Robert Fitzgerald dug deep into his wellspring of epithets and dismissed *OC Weekly* as "a rag"—and then threatened Ochoa with life in prison if he didn't accept a plea bargain before the case went to the jury.

Ochoa weighed his chances with an Orange County jury, and went off to Wasco State Prison and then to Centinela.

My harshest critic was police dog handler Larry Harris, whose work helped convict Ochoa. In a December 2005 letter to the *Weekly*, Harris gloated. "The final chapter has now been written regarding [Moxley's] article," he wrote. "Mr. Ochoa pleaded guilty and was given time served plus two years in state prison. Because of Moxley's apparent animus for authority, which includes District Attorney Rackauckas, law enforcement personnel and the bloodhound 'Trace,' he apparently relied on a very biased source with a strong agenda for his information. I believe a written apology is in order for bloodhound 'Trace' for the irreparable damage that has been done to her reputation. Unlike Mr. Moxley, she has no bias or agenda. Dogs don't lie, people do."

Of course, time has a way of undoing "final chapters," and Ochoa's most recent was written on Oct. 13. On that day, more than 60 weeks after Ochoa's arrest, the state's Department of Justice crime lab matched DNA evidence left at the crime scene to Jaymes T. McCollum, a 20-year-old man, a felon and current inmate. Confronted with the evidence, court records show, McCollum confessed to facts only the real bandit would have known.

On Oct. 19, the Buena Park Police Department, Orange County Sheriff's Department, the District Attorney's office and Judge Fitzgerald quietly conceded they'd arrested, convicted and imprisoned the wrong man.

"When we learned of the mistake, I made sure that we did everything to get Mr. Ochoa out of custody as soon as possible," DA Rackauckas told the *Weekly*. "I felt terrible about what happened."

* * *

Ochoa's arrest was no country club affair. At sunrise on a day in May 2005, a police SWAT team raided his home, pointed high-powered rifles in his face, interrogated his family and then arrested him. A detective said a police dog had followed a scent directly from the crime scene to Ochoa's front door; I would later discover the truth about that accusation and reveal that two victims, manipulated by other officers, altered their original descriptions of the bandit and later claimed they were "100 percent" certain Ochoa had robbed them at gunpoint.

It got worse. Veteran prosecutors sought a 50-year prison sentence, despite the substantial exculpatory evidence. Key to that evidence was this fact: before the trial began, the Sheriff's crime lab had already eliminated Ochoa as a possible source of any DNA or fingerprints found in the stolen car, on the baseball cap or shirt worn by the gloveless bandit, or on the gun he carried. Additionally, a fingerprint found on the stolen car's gearshift knob did not match Ochoa or the victims.



Ochoa praised the work of his lawyer, Scott Borthwick. Photo by Tenaya Hills

Judge Fitzgerald handed Ochoa the final insult. He mocked Ochoa, his defense lawyer Scott Borthwick, the alibi, and the exculpatory evidence, and gave him an ultimatum: plead guilty before the conclusion of the jury trial and take a two-year prison sentence, or face his wrath. The judge promised Ochoa he'd give him life in prison if a jury found him guilty.

"But it was not me [who did the crime]," Ochoa told Fitzgerald, who has been repeatedly reprimanded for bad conduct. (For example, a 2001 murder conviction was overturned because Fitzgerald couldn't stop himself from making sarcastic, rude remarks about the defense in front of jurors.)

"Innocent people go to prison," the judge said nonchalantly.

Ochoa ignored Borthwick's advice, took the deal and was hauled away in handcuffs.

* * *

Back at Joe's Crab Shack, still in his first hours of freedom, Ochoa praised Borthwick, who took the case for free because he believed he was witnessing a travesty. But he doesn't have kind words for Fitzgerald.

"Sure, I've got some anger inside," he says.

And he wonders how anyone else would react if faced with the dilemma Fitzgerald posed.

"What would you do?" Ochoa said. "These people who are framing me want me to take two years [in prison] or they're going to put me away for the rest of my life. No way. That's just crazy."

Borthwick has a long list of villains in this tale and Fitzgerald is at the top.

"Judge Fitzgerald made a snap decision that James was guilty before the trial, and he did everything he could to bully a guilty plea out of him," he said. "All we needed was an impartial referee to let the jury hear the evidence. Instead we got someone who has absolutely no business staining the Orange County bench with his foul presence."

For more on Judge Fitzgerald, see "There Once Was a Judge From Nantucket."

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OCWEEKLY



FRANK MICKADEIT

Here's why we need more info on judges

I went to bed around 10:30 the night before last, the 31st, and awoke about an hour later for no apparent reason. Or maybe because I was still steamed that reporter **Norberto Santana** had come up to me that afternoon and said my stuff this week on the Superior Court judge race was interesting but pointless.

There are adequate safeguards against bad judges, he argued, and the electorate being rather ill-informed as to the quality of judicial candidates doesn't really matter.

As I lay in bed contemplating what it would be like to waterboard Santana, I had the presence of mind to realize that if I went online at midnight I'd have a good shot at snagging a beachfront campsite at Doheny. On the first of each month, new sites are released for reservation.

So I shambled down the hall to my computer and while I was waiting for midnight to roll around I went to the Weekly site and got sucked into **Moxley's** scoop on the release from prison of a 20-year-old man wrongly convicted of a carjacking in Buena Park. Besides some police and D.A. issues, defense attorney **Scott Borthwick** ripped into Judge **Robert Fitzgerald**. Borthwick says the veteran jurist (who retired almost 10 years ago but still hears cases) had bullied the defendant, **James Ochoa**, into pleading guilty.

Yesterday morning, I started my own reporting and finally got a copy of the seven-page complaint Borthwick filed with state judicial officials. I also called Fitzgerald's courtroom but got a "no comment."

Despite tests that eliminated Ochoa as a contributor of the DNA found on the carjacker's hat and gun, Fitzgerald had urged Ochoa to take a plea bargain that would result in two years in prison. Fitzgerald, according to the complaint, "told Ochoa that he would be sentenced to life if convicted. He told Ochoa he could count the number of acquittals in his courtroom on one hand."

Ochoa still insisted his innocence, and "from this point forward," the complaint says, "Judge Fitzgerald did everything in his power to actively sabotage Ochoa's case." Borthwick detailed instances in which Fitzgerald closed off testimony or evidence that would have favored Ochoa. Finally, a few days later, in mid-trial, Ochoa caved and took the plea bargain. That was Dec. 8, 2005. Ochoa was sent to Centinela State Prison in Imperial.

Fast forward to last month. Investigators finally matched the DNA to another man, whom they interviewed. It became clear Ochoa was not involved. He was released from prison and driven back to O.C. by two of **T-Rack's** investigators after they bought him some clothes at Wal-Mart.

Borthwick had filed his complaint on Fitzgerald right after the trial last December. In February, the Judicial Council replied that it and O.C.'s presiding judge had reviewed the transcripts, did a "thorough investigation" and found "insufficient evidence of judicial misconduct ... that would warrant further action." Lawyers, help me out here, but that doesn't mean they didn't find *any* evidence, right? Borthwick told me yesterday that he now plans to refile the complaint even if all it amounts to now is "an I-told-you-so."

Presiding Judge **Nancy Wieben Stock** is out of town, but I left the following question for her with her spokeswoman: "In light of the fact it's now been proven Fitzgerald sent an innocent man to prison, do you still intend to assign him cases?"

I also want to ask her if she's concerned about Fitzgerald's track record of sarcastic comments from the bench and general judicial weirdness, including a poem he once wrote for a man he was sentencing to life in prison: "One day you will die/A funeral your warden will hold/For you will serve your entire natural life/And not be paroled." And just a week after he sent Ochoa off to prison, the conviction of a man he'd sentenced to 84 years to life for murder was overturned because Fitzgerald had failed to read the jury basic instructions about the presumption of innocence, the burden of proof and reasonable doubt.

If Stock will talk to me when she returns, I will print her thoughts in detail.

Anyway, after finishing Moxley's story the other night, I went to the state parks Web site and got my Doheny spot for next spring. Then I went to my email program and sent Santana the Moxley piece with this note: "This is why it matters."

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