

OCWEEKLY

Search
 ADVANCED SEARCH

- HOME
- NEWS
- COLUMNS
- MUSIC
- FILM
- CULTURE
- FOOD
- CLASSIFIEDS

NEWS

OOPS

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

BY R. SCOTT MOXLEY

THURSDAY, OCTOBER 26, 2006 - 3:01 PM



Free at last. Photo by Jennie Warren

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 drive back to Orange County.

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."](#)

rscottmoxley@ocweekly.com