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## Wrongly convicted O.C. man is free -- and out of state

He says he's been scared straight by the experience of 10 months in prison, and he's left town to start fresh.

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Three days into his trial for carjacking and armed robbery, James Ochoa weighed his options. He had turned down the prosecution's offer of a guilty plea in exchange for two years in state prison because he knew he was innocent.

But Orange County Superior Court Judge Robert F. Fitzgerald had threatened him with a life sentence if convicted. Unwilling to risk life in prison, the 20-year-old ended his trial and pleaded guilty in December 2005.

Ten months later, Ochoa walked out of Centinela State Prison an innocent man, cleared by the same DNA evidence Orange County prosecutors had brushed aside. The DNA at the crime scene was linked to Jaymes T. McCollum, a 20-year-old inmate locked up in a Los Angeles County jail on carjacking charges, said Ochoa attorney Scott A. Borthwick.

Susan Kang Schroeder, spokeswoman for Dist. Atty. Tony Rackauckas, said her office "feels terrible" about Ochoa's wrongful conviction. "As soon as we found out the guilty plea was no longer reliable, we did everything we could to get him out of custody," she said.

In most cases where DNA is used to free someone wrongly convicted, the evidence is uncovered after trial. In Ochoa's case the Orange County district attorney's office knew beforehand that DNA in the case did not come from Ochoa but went ahead anyway.

Ochoa's case was first reported last year by the OC Weekly, which called it a miscarriage of justice. Prosecutors and police harshly criticized the paper for taking up the case.

Ochoa was accused of robbing two men with a pellet gun May 23, 2005, in Buena Park and stealing one of their cars. The Volkswagen was found around the corner from his Buena Park home. The gunman had left a black baseball cap and long-sleeved gray shirt in the car. The gun, hidden in the rear bumper, fell out when the car was towed.

At the time, Ochoa was on parole and had been out of prison two weeks after serving six months for possession of methamphetamine.

One victim identified his mugshot. The other two photos were of young-looking teenagers. He then picked out Ochoa from the back seat of a police car that drove by while Ochoa stood outside his home, handcuffed, barefoot and wearing only boxer shorts. The other victim also identified Ochoa, but he was less certain, Borthwick said.

Tests done by the sheriff's forensic lab about a month later found no link between Ochoa and the DNA recovered from the cap and shirt. A print lifted from the Volkswagen's gear knob did not match Ochoa's either. Still, the Orange County district attorney's office took the case to trial, basing it largely on eyewitnesses.

On Oct. 13, the California Department of Justice lab linked McCollum's DNA to evidence left at the crime scene during a routine check. Six days later, Orange County prosecutors acknowledged that the wrong man had been convicted and asked Fitzgerald to sign an order freeing him.

In an interview last week at his lawyer's Santa Ana office, Ochoa, 21, talked about his frightening experience with a justice system that ignored evidence pointing to someone else along with his repeated claims of innocence.

Tall and muscular with a shaved head, Ochoa said he spent much of his time in prison working out. Several times during a three-hour interview he broke into a wide grin as he paused to remember details of his case, occasionally turning to his father, Ubaldo, for help.

Ochoa said he took the prosecution's deal against his attorney's advice because he was afraid of what would happen if the jury found him guilty. Borthwick was so convinced of his client's innocence that he offered to represent him for free if Ochoa would reject the offer.

"I don't want to go to prison for something I didn't do, especially for life," he said. "I'm thinking: How did it get this far? The DNA. The print. They weren't mine."

Judge Fitzgerald had made it clear before the trial what would happen if he was convicted, warning that he would show no mercy and impose a life sentence, Borthwick said.

The judge's remarks at sentencing, when he sent Ochoa to prison for two years, were no more reassuring.

"He looked down at [Ochoa] and said, 'All right. You're off to prison. See you later, kid,' " Borthwick recalled.

Fitzgerald declined to comment.

Borthwick said the prosecution went out of its way to ignore the DNA evidence. "The prosecutor had an ethical duty not to prosecute someone

who's innocent," he said.

The victims said the gunman appeared to be on drugs and was sweating heavily, Borthwick said. If Ochoa was the robber, his DNA "should have been all over the cap," he said.

Orange County Assistant Dist. Atty. Christian Kim, who tried the case, declined to comment, but his supervisor, Assistant Dist. Atty. Marc Rozenberg, defended the prosecution.

Ochoa could have worn the cap and shirt without leaving any trace of his DNA, he said.

Professor William C. Thompson, a DNA expert in UC Irvine's department of criminology, law and society, said it was conceivable but unlikely that Ochoa could have worn the clothing and not left DNA.

"We know particularly that a cap sweatband would have DNA, especially if it was worn a few times," he said.

Rozenberg acknowledged "there were issues with the case" but said the eyewitness testimony was compelling.

"We had two people who said he was the guy who robbed them and stole the car," Rozenberg said.

"If nobody had identified him, we wouldn't have prosecuted this case."

UCI psychology professor Elizabeth F. Loftus, an expert on memory, said eyewitnesses "are the major cause of wrongful convictions."

Human memory, she said, is often unreliable and remains a problem in the identification of people accused of crimes. Prosecutors commonly rely on eyewitnesses to rebut evidence that appears to exonerate someone, she said.

It was not just the Orange County district attorney's office that was convinced of Ochoa's guilt. A transcript of a police interrogation quotes Buena Park Det. Frank Nunez declaring Ochoa the gunman and ignoring his offer to take lie detector and drug tests. The transcript was provided by Ochoa's lawyer.

"We have two victims who positively identified you as a person that pointed a gun at them," Nunez said. The detective did not return calls seeking comment.

When Ochoa said his family would vouch that he was home when the crime occurred, Nunez said, "It doesn't matter what they say. I've met a lot of good baldfaced liars."

Ochoa proclaimed his innocence about 24 times during the interrogation.

"I didn't do nothing. Oh, my God," he said.

Ochoa volunteered DNA to prove his innocence.

"DNA is an exact science, and it never lies," Nunez said. "If your DNA is on that gun or on that car, gloves are off, man. Hey, whatever. Show you the big liar."

Borthwick said the DNA from the gun was unusable.

A shaken Ochoa said he has been scared straight by his false conviction. The two district attorney's investigators who picked him up from the Imperial County prison Oct. 20 and drove him to Orange County suggested he join the Army to turn his life around.

But after spending a few days with relatives in Anaheim, Ochoa said, he wanted to join his parents out of state. A week after gaining his freedom, Ochoa and his father hitched a ride with a truck driver and headed to Texas, where the elder Ochoa moved the family last year.

"I'm going to make a new life in Texas. My mom and dad and family moved there to get away from the gangsters who have been a bad influence on me.

"I never want to see jail again. I'm going to get a job instead," he said.

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