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**NEWS**

**THE CASE OF THE DOG THAT COULDN'T SNIFF STRAIGHT**

*Sloppy police work, callous prosecutors, indifferent judges doom dirt-poor Latino man*

**BY R. SCOTT MOXLEY**

SATURDAY, NOVEMBER 5, 2005 - 1:00 AM



**When confronted with fabricated evidence of his guilt, Ochoa, seen holding his little brother, dismissed it as "UFO stuff"**

Tony Rackauckas' personality swings wildly between wooden and stiff, but ask Orange County's top prosecutor about the case of the canine catastrophe, and Rackauckas comes alive.

It was 1996, and Rackauckas, then a superior court judge, presided over a trial involving the brutal murder of an Irvine woman during a burglary. He allowed the testimony of Larry Harris, a police dog handler who claimed his bloodhound fingered a 17-year-old high school student, Earl Henry Rhoney, as the killer.

Except for Harris and his scent-sniffing dog, Duchess, there was no physical evidence that tied Rhoney to the crime. After a guilty verdict, Rackauckas shocked the district attorney's office. He declared that Harris lacked credibility and overturned the jury's decision. Without Harris' claim, the DA's case collapsed. Rhoney was freed after spending 42 months in jail.

According to Rackauckas, it was "crystal clear" that Harris had dragged Duchess in Rhoney's direction during identification, that Harris had used a questionable homemade device to allegedly capture Rhoney's scent from the crime scene for the dog, and that the retired McDonnell Douglas engineer-turned-cop-aide was as "biased as any expert this court has ever seen."

After he became district attorney in 1999, Rackauckas described the case for the Weekly as "ridiculous."

The DA apparently has amnesia. On Nov. 7, Rackauckas' office is scheduled to prosecute James Ochoa, a 20-year-old Buena Park man, for an armed robbery/carjacking in May. Like the Rhoney case, there is no physical evidence that ties Ochoa to the crime -- except for the controversial work of Larry Harris and his newest bloodhound, Trace.

But the case against Ochoa, a dirt-poor Latino who has been locked in a maximum security cell at Theo Lacy Jail for more than five months, isn't just the result of work by the 75-year-old Harris. It's a catalog of sloppy police work, callous prosecutors, indifferent judges and a brazen contempt for exculpatory evidence. The story would be comical if the consequences weren't so dire. An armed robber likely walks free today while Rackauckas' deputies are determined to send Ochoa to prison for the next 50 years.

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At 12:30 a.m. on May 23, two men talked in a parking lot near the Ozz Supper Club in Buena Park. A bandit wearing a black baseball cap and gray flannel shirt approached, lifted his shirt to display a handgun and said, "Turn around. Don't look." An important fact: the man wore no gloves. He demanded their wallets and the key to a blue 2002 Volkswagen Jetta that belonged to one of the victims. After jumping in the car, the bandit pointed the gun at the terrified men, made a threat and drove away with \$600 in stolen cash.

In his haste, the bandit left the victims with their cell phone. They immediately called 911, and three

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Event or Venue

minutes later officer Kevin Gano arrived at the scene. The victims -- waiters who were 20 and 24 years old respectively -- described the bandit as a thin, twentysomething, 6-foot, 1-inch or 6-foot, 2-inch "half-Hispanic, half-white" male on drugs and suffering from facial acne. Asked to describe the color of the bandit's cap, one of the men said he didn't get a good look because "I was just looking at his gun." Neither victim volunteered any description of the bandit's hair, which was hidden underneath the baseball cap. Gano pressed on. Could the bandit's head have been shaved? "Yeah, maybe," they guessed.

This weak response led Gano and the Buena Park Police Department to a half-baked conclusion that the bandit was Ochoa, who stands 5 feet, 11 inches, shaves his head, lives a few blocks from the crime scene and had been released from prison a month earlier after serving time for a drug possession conviction. Eighty minutes before the robbery, Gano had found Ochoa sitting on his bicycle talking to two teenage friends. The officer frisked Ochoa, made an official report of the contact and ordered him home.

Ninety minutes later, Gano believed he'd quickly solved the robbery. Officers showed the victims three mug shots: two teenagers who didn't fit the suspect's description and Ochoa. The victims said Ochoa looked "like" the bandit but also noted it was not an identical match.

In the meantime, police activated the stolen car's LoJack anti-theft system. The Jetta had been abandoned two blocks away, just 50 yards from Ochoa's house and in the heart of an area dominated by the Eastside Buena Park gang, which police say answers to the Mexican Mafia. In the car, police discovered the bandit's baseball cap, shirt, the gun -- a BB pistol, it turned out -- and the stolen wallets minus the cash. Harris and his dog, Trace, were called to the scene in hopes of getting a scent for tracking.

Police would later report that Trace went "directly" to Ochoa's front door; that would turn out to be untrue. At 5:50 a.m., officers raided Ochoa's house, awoke his entire family, found the suspect barely clothed, placed him in handcuffs and stood him in his front yard. No evidence of the crime was found during a search. The victims were asked to identify the suspect again. This time -- almost six hours after the crime -- both were "positive" it was Ochoa who robbed them, according to police.

Police arrested Ochoa, and he underwent a high-pressure, two-hour interrogation by Detective Frank Nunes. Nunes tried to trick him repeatedly, but Ochoa adamantly proclaimed his innocence dozens of times. He even offered three times to take a polygraph test. After learning that the victims said the bandit had been on drugs, Ochoa volunteered to take a drug test. Nunes scoffed. He already had an airtight case, he said, and just wanted a confession. Ochoa asked why police were so certain.

"We have this amazing tool in police work called a bloodhound," Nunes said. "These dogs are 100 percent accurate . . . and the dog mapped a perfect track to your house without us saying a word."

"So you're gonna put me in jail because of a dog?" an incredulous Ochoa replied.

Nunes, who has recently been promoted to sergeant, then told Ochoa that his DNA and fingerprints eventually would be found in the stolen car and on the baseball cap and shirt the bandit left behind.

"I'm gonna be real mad [if DNA and fingerprints are found]," Ochoa told Nunes. "Because I know I was in no car and I know I didn't have no DNA in no car, and if I do, it's gonna be like some UFO kind of stuff, you know what I mean?"

"Ain't no UFOs in Buena Park, man," the detective replied.

\* \* \*

Police and prosecutors have difficult jobs routinely dealing with society's sociopaths, but they also have an ethical obligation to either make a solid case against a suspect or keep searching for the guilty person. Law enforcement officers privately acknowledge the case has "huge issues." These problems include:

-- Orange County Sheriff's Department forensic scientist Danielle G. Wieland "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.

-- Strongly suggesting another man was the bandit, tests linked DNA found on the baseball cap and the gun to the same unknown individual.

-- A fingerprint found on the stolen car's gearshift knob did not match Ochoa or the victims, who said nobody else drove the vehicle.

-- Police led the victims to originally identify Ochoa after showing them two photos of individuals who had no physical characteristics in common with the bandit.

-- Officers compounded the error with a second contaminated identification after they'd already shown the victims a picture of Ochoa.

-- Police now downplay the significance of the victim's first description of a "half-Hispanic, half-white" bandit, which does not match Ochoa's facial features.

-- Although the victims said they saw no tattoos on the bandit, Gano nevertheless filed a report claiming that they'd told him about three black dot tattoos on the man's left hand. The officer may have consulted police gang intelligence files that mistakenly indicate that Ochoa has such a tattoo.

-- Police disregarded the statements of three relatives who insist they were eating and watching television with Ochoa at the time of the 12:30 a.m. crime, instead deducing that Ochoa must be guilty because a younger brother gave conflicting statements about Ochoa's whereabouts at 8 p.m.

The weakness of the case is only underscored by Harris' pivotal role in the arrest. Though police claim that Harris' bloodhound, Trace, ran directly to Ochoa's front door, the real story is far less incriminating. In truth, Trace twice ran by Ochoa's residence without noticing. According to a police report obtained by the Weekly, it wasn't until Harris pointed the dog back toward Ochoa's house that she allegedly ended her hunt there.

"This was the only door she showed any interest in all evening," Harris wrote. "It was later confirmed that the subject that lived at that location was involved."

There are three problems with Harris' claims:

-- His description of the dog's scent tracking run of about 50 yards to Ochoa's residence doesn't explain why police logs show it took Trace 63 minutes to find the house.

-- Oddly, the cops -- satisfied that the dog allegedly tracked a scent to Ochoa's front door -- let Harris and Trace leave without identifying Ochoa.

-- Harris claims his dog's identification was solid but failed to note a breach of FBI guidance regarding sniffer dogs: instead of keeping the stolen-car crime scene clean, police swarmed it. Those same officers later surrounded Ochoa's home -- and were followed by Trace. It's conceivable, in other words, that Trace had done nothing more than follow the scents of officers she had first picked up around the stolen car.

Four days after I notified the DA's office that I was investigating the Ochoa case and would write about it, Deputy District Attorney Christian Kim declined to comment. But after an Oct. 31 internal DA meeting, Kim's boss, Assistant DA Marc Rozenberg, announced in a telephone interview with the Weekly that the government had decided not to call Harris as a witness during the trial.

Rozenberg said he believes in the case and dismissed questions about the lack of Ochoa's DNA on the clothing and in the stolen car: "In my mind that's not conclusive evidence one way or the other." Regarding crime lab evidence that a person other than Ochoa and the victims touched the stolen car's gearshift knob: "That doesn't necessarily mean anything either."

\* \* \*

Scott Borthwick reads the lack of evidence this way: his client is innocent. A former Modesto public defender, the 32-year-old defense attorney now works with the Law Offices of Meyer & Villalobos in Santa Ana and has taken the case pro bono.

"This case is all about an abuse of power," said Borthwick. "My client has been locked up in jail for five months for a crime I believe the DA's office should know he didn't commit."

But instead of dropping charges as exculpatory evidence was uncovered after the arrest, Rozenberg and Kim added gang enhancements against Ochoa during a preliminary hearing. If an Orange County jury finds him guilty, the enhancements add decades more behind bars.

On Aug. 24, Superior Court Judge John McOwen heard Buena Park gang cop Mike Riley's assertion that Ochoa is a member of a gang and that the May 24 robbery and carjacking was done for the gang. Riley's proof? The officer said Ochoa grew up in an area dominated by the gang, wears oversized clothes, plays with two teenage friends who are suspected gang members and allegedly "once" visited a gang hangout.

Borthwick asked Riley why he was certain the crime was gang-related.

"I know that people that I spoke to in the community that surrounds that area were aware that a member of the Eastside Buena Park [gang] had committed a carjacking in that area after the fact of that via the grapevine," testified Riley.

Pressed by Borthwick, the officer grew feisty but conceded his testimony was based on "eighth-hand information . . . and I have no way of tracking it back to its original source."

Judge McOwen was nonetheless impressed by the DA's presentation. At the conclusion of the Aug. 24 hearing, McOwen approved the prosecution's case and added the gang enhancements.

The trial begins Monday in Judge William Evans' court. Ochoa's mother, Luz, doesn't speak much English, but she has a question for Rozenberg, Kim, DA Rackauckas and Judge McOwen: "Why are you doing this to my boy?"

See subsequent story on this case, [There Once Was a Judge From Nantucket](#).

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