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THERE ONCE WAS A JUDGE FROM NANTUCKET

Judge Robert Fitzgerald doesn't know the law, but he can rhyme 'hold' and 'paroled'

BY R. SCOTT MOXLEY

Wednesday, December 21, 2005 - 12:00 am



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This month, James Ochoa, a 20-year-old Buena Park man accused of a May 2005 robbery and carjacking, had the misfortune of landing in Superior Court Judge Robert Fitzgerald's courtroom.



Fitzgerald: disorder in the court

The *Weekly* has noted—and law-enforcement officers privately conceded—serious flaws in the case: a tainted police photo lineup, inconsistent statements by victims who amended their descriptions of the bandit after cops targeted Ochoa, dubious police reporting and discredited bloodhound evidence. Significantly, a sheriff's forensics lab report not only eliminated Ochoa as the source of DNA and a fingerprint left at the crime scene but pointed to someone else as the perpetrator. (See "The Case of the Dog That Couldn't Smell Straight," Nov. 5.)

Not that any of that would matter to Judge Fitzgerald.

It's not often you can call a judge a scoundrel, but in the case of Fitzgerald it's easy. A judge since 1981, he's cultivated a reputation as a maverick, which is fine. It's his sloppy, arrogant conduct that's, well, injudicious.

On Dec. 15, a court of appeal threw out an accused killer's conviction because Fitzgerald didn't bother to tell a jury about the presumption of innocence, a prosecutor's burden of proof or the meaning of reasonable doubt. The conservative panel declared that the judge hadn't run a fair trial.

Such controversy isn't new for the gruff Oklahoma native. In 2004, Fitzgerald significantly reduced the bail for a violent bank robber; released on bail, the man went on to shoot a Santa Ana police officer. In 2003, Fitzgerald refused to obey a voter-approved state proposition regarding punishment of nonviolent drug offenders. In 2002, the California Supreme Court determined Fitzgerald's rulings had wrongly sent a man to prison for life without the possibility of parole. In

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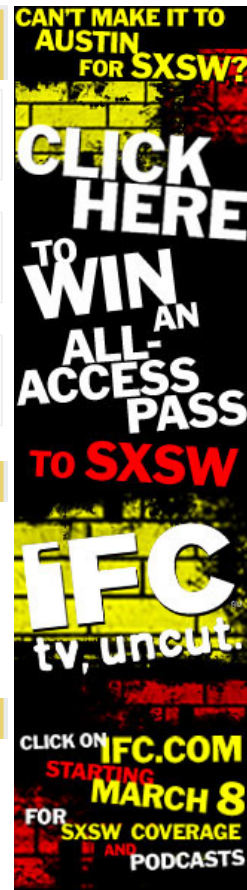
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2001, appellate judges overturned a murder conviction because Fitzgerald repeatedly made sarcastic and rude remarks to the defense in front of jurors. He grabbed national headlines in 1991 by writing a poem for a man he was sending to prison: "The sentence I've chosen/To you may seem cold/You'll pay and you'll pay/All the while you'll grow old/One day you will die/A funeral your warden will hold/For you will serve your entire natural life/And not be paroled."

Fitzgerald spared Ochoa a sassy rhyme but nonetheless acted capriciously. Before the trial, he became angry when the defendant refused to switch his plea to guilty. Ochoa told Fitzgerald he was innocent and wanted a jury to hear the evidence. The judge responded with a chilling threat: he promised to send Ochoa to prison for life if he was found guilty, described horrid prison conditions, noted that few people are ever acquitted in his court and said faith in a jury could be misplaced.

"Innocent people get convicted too," Fitzgerald reportedly told Ochoa.

Ochoa repeated his desire for a jury's decision. "It wasn't me," he said.

"From that point on, Judge Fitzgerald did everything in his power to sabotage my client's case," said defense attorney Scott Borthwick.

Though silent during Deputy District Attorney Christian Kim's opening statement, the judge repeatedly interrupted Borthwick's presentation; lectured him on petty, non-legal matters; attempted to edit his arguments; and then demanded that he cut short his remarks. In one slap, Fitzgerald reprimanded the defense attorney for stepping six inches away from the podium.

The judge made his presence known during the evidence phase of the trial too. During Borthwick's cross-examination of one of the victims, Fitzgerald told jurors that inconsistencies in the bandit's description were "irrelevant" and ordered him to abandon that line of questioning.

But perhaps most troubling was Judge Fitzgerald's decision to interpret—misinterpret, actually—evidence elicited by the defense. In a 911 call to police immediately after the crime, one of the victims said he didn't get a good look at the bandit because he was "just looking at his gun." In fact, the first description of the bandit was "half white, half Hispanic," which does not fit Ochoa.

But on the witness stand eight months after the crime, that same witness was now positive Ochoa was the gunman. Borthwick got the man to admit that he had been facing a wall and the bandit had been behind him throughout most of the ordeal. To the defense attorney's shock, Fitzgerald turned to the jury and concluded "the witness could see his face."

After the first day of trial, Fitzgerald's interference weighed on Ochoa. In his cell at Theo Lacy Jail, he thought about the judge's threat to send him away for life. He also anticipated that the prosecutor would introduce evidence that he is a member of the Eastside Buena Park Gang. He couldn't sleep. Should he risk such a severe punishment?

The following morning, Dec. 8, a fearful Ochoa discarded Borthwick's advice to continue the trial. To the judge's delight, he accepted a plea deal that will land him in state prison for 14 months. Jurors were informed that the case was over; several expressed surprise. They said they had doubts about the prosecution's case.

"That plea was the direct result of the inexcusable bullying tactics of Judge Fitzgerald," Borthwick told the *Weekly*. "Now an innocent 20-year-old is in state prison for a crime he did not commit. "It's outrageous."

See previous story, [The Case of the Dog That Couldn't Sniff Straight](#).
rscottmoxley@ocweekly.com

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