

SAN DIEGO COUNTY PROBATION DEPARTMENT
ADULT SERVICES
PROBATION OFFICER'S REPORT

THE PEOPLE OF THE STATE OF CALIFORNIA

V.

RN: HARRIS, SHAWN MICHAEL

CN: HARRIS, SHAWN MICHAEL

AKA: HARRIS, SHAWN

ADDRESS: [REDACTED] [REDACTED]				COURT NO.: SCN243682		DEPT. & JUDGE: North County Division Superior Court 20 WEBER, J									
				DA FILE NO.: OBC50001		ATTORNEY: WESTON, HERBERT Retained									
				HEARING DATE/TIME: 11/05/2010 08:45 AM		PROB. CASE NO.: 21238574									
				PROBATION OFFICER: HART, STEVEN		PO TELEPHONE: [REDACTED]									
				TELEPHONE NO.: [REDACTED]		BIRTHPLACE/CITIZENSHIP: OCEANSIDE, CALIFORNIA U.S. CITIZEN									
BIRTH DATE: 11/14/1970		AGE: 39		RACE: WHITE		SEX: M		HT: 510		WT: 230		EYES: BLUE		HAIR: BLONDE	
DRIVER'S LIC. NO.: [REDACTED] CALIFORNIA				INS NO.: [REDACTED]				OTHER ID DATA:							
DATE OFFENSE COMMITTED: 04/01/2008				DATE CONVICTED: 09/13/2010				HOW: Jury Trial				CUSTODY STATUS: In Custody Vista Detention Facility			
INVESTIGATING ARRESTING AGENCY: Carlsbad PD								DATE INFO/COMPLAINT FILED: 04/04/2008				SDSO NO: 98182 172702			
CII NO.: [REDACTED]				FBI NO.: [REDACTED]				ARREST REPORT NO.: 08-2657				BOOKING NO.: 10770321A			

CONVICTED OF:

COUNT 3: PC288a(c)(2) FORCIBLE ORAL COPULATION

PRE PLEA AGREEMENT:

A Jury of his peers convicted the defendant.

RECOMMENDATION: State Prison

JESSICA'S LAW NOTIFICATION:

This defendant will/may be required to comply with PC 3003.5 (Jessica's Law). The defendant was notified of the residency restrictions on .

PC296 STATUS:

A DNA sample has been collected by the Sheriff's Department and will be submitted to DOJ for inclusion in their database.

THE OFFENSE:

SOURCES OF INFORMATION FOR THIS SECTION

District Attorney File; Carlsbad Police Department Report 08-2657; Preliminary Examination Dated July 8, 2009

Background:

The defendant, Shawn Harris, and victim, Crystal Harris have been married for twelve years. They have two minor children together.

In 1998, the victim filed for divorce following a domestic violence incident with the defendant. The defendant reacted positively to this action, resulting in a good marriage for a long period of time.

The victim said the defendant began to change in 2005, following the death of his father. The victim filed for divorce on August of 2007, after the defendant pushed her head to the ground and threw water on her. The defendant threatened to kill the victim if she left the marriage. The victim remained in the marriage because she believed the defendant would kill her if she left. She did not call the police because the defendant told her, "You'll be dead before the police get here." The defendant also told her she would be dead before anyone got there if she tried to go to her family for help.

December of 2007, the victim told the defendant she had an affair, even though it was not true. The defendant threatened to kill the victim if she left. The marriage counselor the defendant and victim had been going to advised the victim to leave and go to a shelter. The victim did not leave as the marriage counselor suggested.

In March 22, 2008, the defendant, victim, and their children attended a church function. As they were leaving, the defendant became upset with other motorists that were also leaving the function. The victim "chided" the defendant for making hand gestures at the other motorists who were leaving the church function. The defendant became angry, slapping a snow cone she had been eating out of her hand and mouth. When the victim protested his actions, he pushed his finger into an area below her Adams apple. This prompted the victim to purchase a gun since the defendant had told her that restraining orders were "no good."

Count 3:

On March 28, 2008, the victim returned home from work between 3:00 and 3:30 p.m. She went to the bedroom to take a nap. The defendant came into the room a few minutes later and requested sex. The victim declined because she was tired.

The defendant began questioning the victim about her lying to him. The defendant became upset with the victim. The victim was able to turn on a mini-tape recorder to capture the defendant's behavior. The defendant told the victim she needed to be punished for lying. The victim expressed concern that their children were upstairs. The defendant told the victim she had to be punished. She pleaded with the defendant to stop. The defendant grabbed the victim's head, forcing her to orally copulate him. The victim cried, telling him, "no." The defendant became very angry and threatened to get a knife if the victim did not "shut up." The defendant choked the victim a couple of times when the victim cried too much or protested too much. The victim did not report this incident to the police because she was afraid she would not be protected.

On April 1, 2008, police officers arrested the defendant during another domestic violence incident between the defendant and the victim.

VICTIMS:

RESTITUTION: Undetermined

VICTIM NOTIFIED OF P&S HEARING: ☒ Yes _ No: INTENDS TO APPEAR: ☒ Yes _ No

SOURCES OF INFORMATION FOR THIS SECTION

Victim letter mailed on October 6, 2010.
Phone contact with the victim on October 19, 2010.

The probation officer mailed a standard victim letter to the victim, explaining victim rights and providing notice of today's hearing. The letter requests the victim contact the undersigned to establish restitution.

On October 19, 2010, the undersigned spoke to Crystal Harris. She will attend the sentencing hearing. She is not requesting any restitution at this point. She would like to Court to retain jurisdiction over restitution because she is "unclear" as to what she should request. She also feels restitution is "sort of vague" right now.

Ms. Harris said her life, as well as the lives of her children, have been "turned upside down and inside out." She also described the Instant Offense and its aftermath as "beyond a train wreck." In one night she went from being married to being a single mother struggling to raise her two young sons.

Ms. Harris said she is struggling to try and understand/accept the magnitude of the "betrayal" she suffered at the hands of her husband. She said no one knew of the earlier acts of domestic violence. Her "hopes and dreams" were "ripped to shreds" by the man she loved and hoped to spend the rest of her life with. She said the defendant "enjoyed" causing her pain. She cannot believe he turned "into such a criminal."

She said the Instant Offense consisted of two separate acts. She also said that the "escalation" of the violence during the Instant Offense was "horrible." She said the defendant first forced her to orally copulate him. He then sodomized her. She "thought she was going to die" during this attack. She stated she had a paradigm shift during the Instant Offense. She used to believe the defendant would kill her if she called the police. She came to realize she would die if she remained in the house.

She said he threatened to "kill me." Ms. Harris believes this threat. She believes the defendant will carry out this threat once he is released. She believes the defendant represents a danger to the "whole State." Ms. Harris said the longer the defendant is in prison will mean a longer time of peace she will experience. Ms. Harris believes the defendant should be sentenced to state prison for the term of eight years.

DEFENDANT'S STATEMENT:

SOURCES OF INFORMATION FOR THIS SECTION

Interview with the defendant at the Vista Detention Facility on October 19, 2010.

The defendant did not submit a written statement. Throughout the probation interview, the defendant was polite and respectful. He said the following:

The defendant declined to discuss the Instant Offense based on the advice from his attorney. The defendant said he has studied the code section for which he was found guilty. He believes this code section mandates a state prison commit. However, he said his attorney assured him probation was a possibility.

He is hopeful that the Court will grant him probation. He said he would be successful on probation. As proof, he noted that after posting bail on September 30, 2009, he obtained gainful employment, working as a taxi driver. The company he worked for is willing to re-hire him upon his release from custody. While on bail he had no contact with Ms. Harris. He did initiate proceedings through the Family Court to be able to obtain visitations rights with his sons.

CRIMINAL HISTORY:

SOURCES OF INFORMATION FOR THIS SECTION

CII/FBI; Local Law Enforcement Records

<u>DATE</u>	<u>AGENCY</u>	<u>CHARGE</u>	<u>DISPOSITION</u>
06/17/98	Unknown	1.PC273.5(a) Injury to Spouse/Roommate 2.PC243(e) Battery Of A Current/Former Spouse/Significant Other 3.PC242 Battery	CN083540 09/01/98: PG- M to count 3, dismiss balance; 3 years summary probation, 2 days jail, \$200 fine, complete 52 week domestic violence program.
04/01/08	Carlsbad Police Department	3.PC288a(c)(2) Forcible Oral Copulation	SCN243682 INSTANT OFFENSE

Additional Information: The following police report information, which did not result in a conviction, is being offered for the court's information pursuant to California Rules of Court 4.411.5(a)(3):

On November 30, 2003 at 12:31 a.m., Shawn Harris and Crystal Harris became involved in an argument over the fact he does not work. Mr. Harris became verbally abusive toward her. Ms. Harris said the defendant said, "Let's go," which she believed meant he wanted a fight. The defendant also picked up a "cat condo," which Mr. Harris believed the defendant was going to throw at her. Police officers arrived on the scene. Mr. Harris denied threatening Ms. Harris and he denied picking up the "cat condo." The District Attorney did not file a complaint in this matter. (Carlsbad Police Department Report 03-8760)

On April 20, 2004 at 12:39 a.m., Mr. Harris poured water over the bed. Ms. Harris decided to sleep on a couch in the family room. Mr. Harris came into the family room and turned on the television. Ms. Harris turned the television off and asked the defendant to watch television in another room. Mr. Harris grabbed Ms. Harris from behind by the back of the neck and forced her to the floor whereupon she struck her left eyebrow on a baby toy that was on the floor. The District Attorney did not file a complaint in this matter. (Carlsbad Police Department Report 04-3044)

On August 7, 2007 at 10:00 p.m., Shawn Harris and Crystal Harris got into an argument. Ms. Harris hid Mr. Harris' keys so he could not leave. Ms. Harris said Mr. Harris grabbed her by the back of the neck and took her room to room looking for the keys. Ms. Harris decided to retrieve the keys. As she was taking the keys out of a diaper bag, Mr. Harris threw water on her. Mr. Harris denied touching Ms. Harris. The District Attorney did not file a complaint in this matter. (Carlsbad Police Department Report 07-6992)

PERSONAL DATA:

The following information was offered by the defendant. Unless noted otherwise it has not been verified.

Birth Place and Areas of Residence:

The defendant was born in Oceanside. He is a lifelong San Diego County resident.

Current Living Situation:

Upon his release from custody, he will reside with his mother and his two adult brothers in Oceanside.

Family Relationships:

The defendant's father died in 2004. In addition to his brothers, he has a twenty six-year-old sister. His family is very supportive of him.

Marital Status and Dependents:

The defendant and the victim were married in 1996. They have two children from this union, ages five and seven.

Family Criminal History:

The defendant said one of his brothers threw a rock at a car as a juvenile.

Acquaintances:

The defendant said he associates with professional people such as computer technicians and salesmen. He also associates with people who share his love of running. He does not associate with any one on probation or parole.

Pro-Social Activities:

The defendant is not engaged in any organized pro-social activities.

Education:

The defendant graduated from El Camino High School in 1988. He obtained an A.S. degree in Mathematics from Miracosta Community College in 1991. He earned a B.S. degree in Information Technology from Phoenix University in 1996.

Military Service:

The defendant has never served in the military.

Employment History:

Prior to his arrest for the Instant Offense, the defendant had been a "stay at home" father for five years. After posting bond in this matter, he obtained a job as a taxi driver. The defendant can return to his position as a taxi driver upon his release from custody.

Financial Information:

The defendant indicated his financial situation was good prior to his arrest for the Instant Offense. His taxi driving job paid his bills while he lived with his mother after posting bond in the Instant Offense.

Psychological and Medical Problems:

The defendant denied suffering from any psychological or medical problems.

Substance Abuse and Treatment History:

The defendant tried several joints between 1986 and 1988. He also tried alcohol several times. He said marijuana did nothing for him and alcohol just dehydrated him. The defendant also said he has always been involved in sports, having run in eight marathons. Drugs and alcohol would only hinder his sports performance.

Gang Affiliation:

The defendant said he is not affiliated with any gangs.

Immigration Status:

The defendant is a United States citizen.

Sexual History:

On the advice of his attorney, the defendant declined to discuss this issue.

Future Plans:

The defendant wants to be released from custody and return to work. He wants to go into Family Court in order to gain visitation rights with his children.

COLLATERAL INFORMATION:

The undersigned left messages for the Deputy District Attorney and for the defendant's Attorney, Herbert Weston, asking them to contact the undersigned with any additional information they deemed important. Any information received will be forwarded to the Court.

*** Spousal Assault Risk Assessment (SARA)**

Penal Code Section 1203.097 directs the probation officer to conduct an assessment of batterers to evaluate a number of personal and social factors, including the future probability that the defendant will commit murder. Pursuant to this section, the undersigned conducted the Spousal Assault Risk Assessment (SARA) on this domestic violence case. This validated risk assessment instrument is used to help predict future occurrences of family violence and the score on this assessment was therefore considered when evaluating risk of violence or lethality.

On October 21, 2010, the probation officer scored the defendant on the SARA and the following items were found to be risk predictors for Mr. HARRIS: Severe and/or sexual assault; recent relationship problems; past physical assault.

*** This defendant scored in a high-risk category, and that factor, along with the specific risk factors, has been considered in the recommendation section of this report.**

STATIC-99 (SARATSO) RISK ASSESSMENT:

Scored:

Mr. HARRIS received a score of 0 on the Static-99, which is an actuarial measure of risk for sexual offense recidivism. This instrument has been shown to be a moderate predictor of sexual re-offense potential. Mr. HARRIS received a total score of 0, which places him in the Low Category for being charged or convicted of another sexual offense, if he is released on probation. His risk on release from a prison sentence cannot be calculated until his age on release on parole is known. If Mr. HARRIS has a prior conviction for a registerable sex offense, his risk score was calculated based on his age at release on the most recent registerable sex offense.

SENTENCING DATA:

Possible Circumstances in Mitigation:

Rule 4.423(b)(1): The defendant has an insignificant record of criminal conduct, considering the recency and frequency of prior crimes. Although convicted for PC242, this offense occurred in 1998.

Possible Circumstances in Aggravation:

Rule 4.421(a)(11): The defendant took advantage of a position of trust to commit the offense.

Rule 4.421(b)(1): The defendant has engaged in violent conduct that indicates a serious danger to society.

Rule 4.408(a): The defendant's children present in the house when he committed the Instant Offense

Prison Term Analysis:

The prison terms available to the Court for PC288a(c)(2) are 3 years, 6 years, or 8 years. Substantial weight was given to the fact the defendant's sole criminal conviction occurred in 1998. However, this is counterbalanced by the fact the defendant took advantage of a position of trust to commit the Instant Offense, which occurred while their children were present in the house. Therefore, the middle term is recommended.

Suggested Prison Term:

EVALUATION:

Probation Eligibility:

The defendant is ineligible for a grant of probation pursuant to PC1203.065(a)

Since the defendant is ineligible for a grant of probation, the reasons to grant or deny probation will not be discussed.

Discussion:

Appearing before the Court for a Probation Hearing and Sentencing is the thirty nine-year-old defendant who pled guilty to Forcible Oral Copulation. During an argument, the defendant grabbed his wife's head and made her orally copulate him.

The defendant's despicable actions have had a devastating effect on the victim's life. He committed a "horrible" act of violence upon her. She now lives in fear of the defendant. She believes he will follow through with his threat to harm her once he is released from custody. She is also devastated by the magnitude of the betrayal she suffered at his hands. She now faces the prospect of raising her children as a single mother.

The fact the defendant committed the Instant Offense while the children were present in the house indicates he did not care how his actions may have influenced them. It also indicates that his anger had consumed him to the point that nothing mattered except "punishing" the victim.

The defendant is ineligible for a grant of probation. Therefore, it is recommended that he be committed to the Department of Corrections and Rehabilitation.

CUSTODY DATA:

<u>Date Confined</u>	<u>Date Released</u>	<u>Place</u>	<u>Custody Days</u>
04/01/2008	09/30/2009	CJ	548
09/10/2010	11/05/2010	CJ	57
	(In custody)		
		Actual	605
		PC 2933.1 credits	<u>90</u>
		TOTAL CTS	695

RECOMMENDATION:

That probation be denied and the defendant be committed to the California Department of Corrections and Rehabilitation for the term of 6 years, with credit for time served of 605 actual days and 90 days PC2933.1, a total of 695 days credit.

That the defendant shall pay the following:

- A restitution fine pursuant to PC1202.4(b) in the amount of \$1,200.00, plus penalty assessment.
- An additional restitution fine pursuant to PC1202.45 in the amount of \$1,200.00 to be stayed and remain so unless defendant's parole is revoked.
- Court Security fee pursuant to PC1465.8 in the amount of \$30.00
- Immediate Critical Needs Account (ICNA) fee pursuant to GC70373 in the amount of \$30.00
- Criminal Justice Administration Fee pursuant to GC29550.1 in the amount of \$154.00
- Sex Offender Registrant Fee pursuant to PC290.3 in the amount of \$300.00.
- Register pursuant to PC290.
- That the defendant pay restitution per PC1202.4(f) to the following victim(s) in an amount to be determined by the Court, to be paid as provided in PC2085.5

All fines and fees shall be paid forthwith or as provided in PC2085.5.

Submit to DNA testing pursuant to PC296

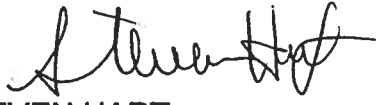
Term Recommendation Breakdown by Count is as Follows:

<u>Crime</u>	<u>Suggested Base Term</u>	<u>Recommended Term</u>	<u>Recommended Stay</u>
PC288(c)(2)	Middle- 6 years	6 years	0

11/05/2010

Respectfully submitted,

MACK JENKINS
CHIEF PROBATION OFFICER

By: 
STEVEN HART
SENIOR PROBATION OFFICER
760-806-2371

Approved: 
CHRISTOPHER H. BLAIR
SUPERVISOR

I have read and considered the foregoing report.

JUDGE OF THE SUPERIOR COURT

SRH:10/20/10

DELIVERED

OCT 28 2010

 PROBATION DEPT