

People v. Brock Allen Turner

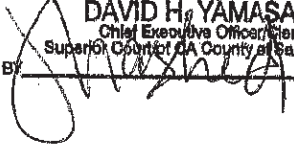
Case # B1577162

Probation Report

FILED

JUN 02 2016

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
THE PEOPLE OF THE STATE OF CALIFORNIA,

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY  DEPUTY

)	
)	
PLAINTIFF,)	REPORT OF
)	PROBATION OFFICER
vs.)	No.: B1577162
)	June 2, 2016
BROCK ALLEN TURNER,)	A. Kianerci, D.A.
)	M. Armstrong, Atty.
DEFENDANT,)	
)	
)	

COURT DATA

SENTENCING COURT: Honorable Aaron M. Persky

CHARGE: Count One, Section 220(a)(1) of the Penal Code (Assault with Intent to Commit Felony, Rape of an Intoxicated or Unconscious Person)

Count Two, Section 289(e) of the Penal Code (Sexual Penetration when the Victim was Intoxicated)

Count Three, Section 289(d) of the Penal Code (Sexual Penetration where the Victim was Unconscious of the Nature of the Act)

PRIORS: None

PROBATION ELIGIBILITY: Limited pursuant to Section 1203.065(b) of the Penal Code

DATE OF OFFENSE: January 18, 2015

DATE OF ARREST: January 18, 2015

CONVICTION: Found Guilty by Jury Trial on March 30, 2016

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CONDITIONS: None

REMAINING CHARGES: None

DAYS IN CUSTODY: 1 actual day, 0 days - 4019 PC, 1 total day;
1/18/15 bail.

AGE & DATE OF BIRTH: 20; August 1, 1995; Kettering, Ohio

SUPPLEMENTAL INFORMATION:

The defendant is not eligible for sentencing pursuant to Section 1170(h) of the Penal Code.

Based on the defendant's age, the circumstances of arrest under docket B1576943, and level of intoxication on the date of the instant offense (.13%), chemical testing and an order prohibiting use of alcohol has been included.

The defendant is also appearing today for Plea under docket B1576943, for a violation of Section 25662(a) of the Business and Professions Code, a misdemeanor (offense date: 11/15/14). In light of the instant matter, it is suggested probation be denied on this case. He has one actual day credit for time served.

SUMMARY OF OFFENSE:

The following is a summary based solely on the police report. A request for all trial information was made.

According to Stanford University Department of Public Safety report #15-018-0019U, on January 18, 2015, at approximately 1:00 a.m., deputies responded to a 911 call regarding a female who was unconscious, but breathing. As deputies approached the student residential area of fraternity houses, they found the 22 year old victim lying on the ground, behind a dumpster. The victim's dress was pulled up to her waist, exposing her vagina and buttocks and she was not wearing underwear. Her bra was pushed up above her left breast. The victim's hair and clothing were covered in pine needles from the surrounding area. Her underwear was located on the ground approximately six inches from the victim's stomach.

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As deputies checked on the victim, an unknown male approached them, stating they had "him pinned down over there." The male pointed approximately 50 yards from the victim. He stated the male subject he was referring to was "...the guy who did that," and pointed to the victim.

The victim was treated by paramedics and was transported to Valley Medical Center. At the time of transport, she was still unresponsive. At approximately 4:15 a.m., the victim regained consciousness. A SART exam was conducted on the victim and she provided deputies with a statement. She stated she went to Stanford University campus earlier in the evening with her sister and a friend. They went to one party and then later, went to a party at Kappa Alpha fraternity house. While at the party, she drank beer and at one point, had to use the bathroom. There were no available restrooms in the house, so she walked outside with her sister and friend and found an isolated area to urinate before returning to the party. She did not remember being alone with any males the entire night and did not remember any sexual interaction.

When the victim was interviewed again later, she admitted having consumed several shots of whiskey and vodka prior to and/or during the party.

The victim's sister reported attending the party at Kappa Alpha fraternity house. At one point, she and the victim and the victim's friend, were outside the house, talking to a group of males. One of the males, later determined to be the defendant, was very aggressive, trying to kiss various females at the party. When he approached the victim's sister and started kissing her, she pushed him away. Later, he attempted to kiss her again, and again, she pushed him away. The victim's sister left the party to help a friend who drank too much alcohol. When she returned to the party, the police were in the area. She looked for her sister for one to one and half hours, but was unsuccessful.

The victim's friend stated she attended a party at Kappa Alpha fraternity house, but she did not have any pertinent information to report.

Officers responded to the area where the defendant was being detained by two other males. The defendant emitted a strong odor of alcohol and appeared to have an erect penis. The defendant asked the deputies what they were doing and attempted to get up, but was restrained and placed in handcuffs.

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Witnesses Jonsson and Arndt stated they were riding their bicycles when movement behind a dumpster caught Jonsson's eye. He and Arndt saw the defendant on top of the female victim, who was lying on her back. It looked like they were having sexual intercourse, as he saw the defendant's hips thrust several times. Initially, Jonsson and Arndt thought it was a mutual interaction, but then noticed the victim was not moving, so they decided to make sure she was alright.

As they approached the defendant and victim, they yelled, "hey" to get the defendant's attention. He looked at them, got off the victim, and ran away. Jonsson chased the defendant while Arndt checked on the victim. Jonsson tripped the defendant and tackled him to the ground when he attempted to get away. Arndt joined him after seeing the victim was unconscious but breathing. Both witnesses held the defendant down until the police arrived.

Two other witnesses, Sinclair and Barnett, reported walking in the area when they heard a commotion and saw what appeared to be three males fighting on the ground. As they approached the group, they saw Jonsson and Arndt trying to detain the defendant.

Two other witnesses, Bolton and Robbins, reported seeing the victim lying on the ground near a dumpster. Bolton walked to the victim and saw a male standing above her, shining a light from his cellular phone on her body. Bolton checked the victim's pulse, and when he looked up, the male was gone.

At 2:25 a.m., the defendant submitted a blood sample, which yielded a blood alcohol content of .13%. At approximately 4:15 a.m., a SART exam was conducted on the defendant.

The defendant, a Stanford University student, told deputies at approximately 11:00 p.m. he attended a party at Kappa Alpha fraternity. Throughout the night, he kissed a few girls. Later in the evening, he went to the back of the fraternity house and met the victim, who was drinking beer with another female. They kissed for a while and then walked away from the house. They ended up on the ground, where he removed the victim's underwear. He digitally penetrated the victim and kissed her for approximately five minutes. He denied taking his pants off and said his penis was never exposed. At some point, he started feeling nauseous and stood up to leave when he was tackled by a group of males.

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The defendant admitted consuming seven beers and a "couple swigs" of fireball whiskey before meeting the victim. He stated he had a good time with the victim and stated she seemed to enjoy his company.

On January 21, 2015, the victim's sister and friend McCann, identified the defendant through a photo line-up.

On January 18, 2015, the defendant was arrested and was booked into the main jail.

VICTIM'S STATEMENT:

Correspondence has been sent to the victim(s) in this case advising of the date, time, and place of sentencing, the right to be present and to be heard pursuant to Section 1191.1 and 1191.2 of the Penal Code, as well as requesting information regarding any losses suffered.

On May 3, 2016, this officer spoke with Jane Doe. She will be present in Court today and would like to address the Court regarding the impact of the crime.

The victim submitted a Victim Witness Claim for counseling services and an ambulance ride on the date of the instant offense. According to Elizabeth Sanchez of the District Attorney Restitution Services, the victim and her sister have active restitution claim accounts, but have yet to submit actual bills for their losses. Once bills are submitted, their claims will be paid and restitution will be requested by the Victim Compensation and Government Claims Board.

Regarding sentencing, the victim stated, "I still feel a lot of anger because of what he put me through at trial. I want him to be sorry and express remorse. He attacked my personal life in whatever way possible and in the end, it didn't work. I don't experience joy from this. I don't feel like I won anything. It was just the anger of hearing what he said in Court. It was devastating. I want him to know it hurt me, but I don't want his life to be over. I want him to be punished, but as a human, I just want him to get better. I don't want him to feel like his life is over and I don't want him to rot away in jail; he doesn't need to be behind bars."

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The victim further stated she would like the defendant to be ordered to participate in counseling to ensure something like this never happens again. She also stated he makes her nervous and she was hopeful he would not reside in the Bay Area.

DEFENDANT'S STATEMENT: (Attached)

On May 9, 2016, this officer interviewed the defendant at the Palo Alto probation office. He was provided with a Defendant Statement of Assets form and was instructed to bring the completed form to Court.

Regarding the instant offenses, the defendant stated he was at a fraternity party with his friends and had consumed several beers and whiskey shots. He explained, "I was very drunk. I met some people and eventually I got close with [the victim] at the party. We danced and kissed. Then I asked her if she wanted to go back to my room with me. She agreed and we were walking back to my room and she slipped on a slope behind a wooden shed and I got down to the ground with her and we started kissing. I thought we were in the heat of the moment and I asked her if she wanted me to 'finger' her and she said yes. I just thought I would take off her underwear and I 'fingered' her for a minute and we were kissing and her arms were on my back. Then we were just kissing and 'dry humping.' Then I got nauseous and I told her I needed to throw up and I got up and started to walk away. Some guy said something to me, but I couldn't really understand what he was saying. I was disoriented and focused on throwing up. He was talking to another guy in a foreign language, and then they grabbed me and I ran away, but he tackled me."

When asked about the victim's wellbeing during the instant offenses, the defendant stated, "At no time did I see that she was not responding. If at any time I thought she was not responding, I would have stopped immediately."

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Regarding the impact of his conduct, the defendant stated, "Having imposed suffering on someone else and causing someone else pain-I mean, I can barely live with myself. I can't even get out of bed in the morning. I think about it every second of every day. Her [the victim] having to go through the justice system because of my actions just...it's unforgivable. If I really wanted to get to know her, I should have asked for her number, rather than asking her to go back to my room. Being drunk I just couldn't make the best decisions and neither could she. I stupidly thought it was okay for me to do what everyone around was doing, which was drinking. I was wrong."

The defendant further stated he was sorry for what he put the victim and her family through during the trial. He explained, "During the trial I didn't want to victimize her at all. That was just my attorney and his way of approaching the case. I didn't want to degrade her in any way. I regret that. I never meant to treat her like anything else than an exceptional person. I'm sorry for her having to go through this entire process and having to even think about this for a second, all because of my actions that night. I wish I could just take it back. I didn't even deserve to talk with her, to interact with her. I can't believe I imposed such suffering on her and I'm so sorry."

Although he was uncertain of an appropriate sentence, the defendant stated he was prepared to accept the decision of the Court and would comply with any Court orders. If granted probation, he would comply with the terms and conditions, including participation in a sexual offender program and sex registration.

The defendant's plans for the future include earning a degree in electrical engineering. He recently met with an Ohio judge and is in the process of establishing a program for high school and college students in which he speaks about his experience and "speaks out against the college campus drinking culture and the sexual promiscuity that goes along with that. I want to show people that one night of drinking can ruin a life. I don't want anyone to experience any part of this situation. I want to be an example so young people realize how much of an issue this is."

Regarding drug and alcohol use, the defendant admitted drinking alcohol in college. His first night at Stanford University, the sophomore swim team had a party for the incoming freshman swim team. There was alcohol at the party and at every party thereafter and he drank beer most weekends. The defendant denied ever using any illicit substances and stated he has not consumed alcohol since the date of the instant offense.

Since the instant offense, the defendant has suffered from depression. He is currently in weekly therapy and is prescribed Lexapro for depression.

The defendant was born and raised in Ohio. In September 2014, he moved to Stanford University on a partial swimming scholarship. Following the instant offenses, he withdrew his scholarship and moved back to his parents' home in Ohio. He is currently working as a team member for a company that organizes triathlons and other races. He has an older brother and sister, both of whom reside nearby.

INTERESTED PARTIES:

In the course of preparing this report, the undersigned contacted the assigned Deputy District Attorney, as Court transcripts were not a part of the information provided to probation. She stated the defendant was untruthful in his testimony regarding the victim being unconscious during the instant offenses.

The undersigned met with the defendant's attorney prior to the presentence interview; he did wish to provide additional information.

Please see attached numerous letters of reference.

RESULTS OF ASSESSMENT:

Current law requires that the risk assessment score on the Static-99R be completed by the Probation Department for every eligible person (Sections 290.04(a)(1) and 290.06 of the Penal Code). The defendant was scored on the Static-99R, an actuarial measure of risk for sexual offense recidivism, which is attached.

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This instrument has been shown to be a moderate predictor of sexual re-offense potential. The defendant received a total score of 3, which places him in the Low-Moderate Risk Category for being charged or convicted of another sexual offense. His risk on release from a prison sentence cannot be calculated until his age on release on parole is known, so the risk score stated herein is predictive of risk at release on probation, based on his age at the date of this report. If the defendant has a prior conviction for a registrable sex offense, his risk score was calculated based on his age at release on the most recent registrable sex offense.

Pursuant to Section 1202.8 of the Penal Code, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person.

The defendant received a score of 3 on the Static-99R, dated May 9, 2016, which is attached. This score is in the Low-Moderate range of risk relative to other adult male sex offenders.

- RISK AND NEEDS ASSESSMENT (CAIS)

Assessment provides objective and empirically validated evaluations of an offender's risk and needs. Addressing the offender's risk and needs and matching the offender to the identified level of services are linked to changing offender behavior, appropriate use of resources and public protection.

The defendant was assessed for risk and need factors using the Corrections Assessment Intervention System (CAIS). CAIS is a standardized, validated assessment and case management system developed by the National Council on Crime and Delinquency (NCCD). The CAIS assesses a defendant's criminogenic needs and risk to re-offend. Criminogenic needs refer to those dynamic risk factors that directly contribute to criminal behavior and are most predictive of recidivism. When these criminogenic risk factors are addressed or changed they can reduce the likelihood of recidivism.

The result of the CAIS assessment has identified the defendant's criminogenic needs/risk factors also referred to as Principal Service Needs. Should the defendant receive probation, it is imperative that the supervision process begin addressing the identified needs which include the following:

Strength: Family History

It should be noted that family therapy is often a useful intervention. Staff should provide considerable support to the family, who may be under severe stress and confused by the onset of misconduct, and who may lack the skills needed to deal with associated behavior.

Need: Isolated/Situational/Temporary Circumstances as Highly Significant

This is a typical indicator for offenders in this strategy group. Problems in this area require resolving an internal problem or learning new coping skills.

Need: Alcohol and/or Drug Abuse as Highly Significant

This may be an issue for SI-T offenders and may contribute to deviation from positive behavior in other areas. The onset of their addictions may be recent and may be a means for dealing with a significant mental health issue. Treatment for alcohol and/or abuse issues should be the focus of the plan prior to addressing other concerns. Because they cannot legally access alcohol or substances in the institutional setting, monitor them for physical problems related to withdrawal and for attempts to illegally access alcohol or substances.

JUDICIAL COUNCIL RULES 4.414, 4.421 and 4.423: (Attached)

CASE EVALUATION:

The 20 year old defendant is appearing before the Court after having been found guilty by jury of Assault with Intent to Commit Rape, Sexual Penetration when the Victim was Intoxicated, and Sexual Penetration where the Victim was Unconscious of the Nature of the Act.

During the instant offense, passersby found the 22 year old female victim, unconscious and lying near a dumpster on the Stanford University campus. They reported initially thinking the defendant and victim were having consensual sexual intercourse, but then noticed the victim was not moving, so they approached. When they caught the defendant's attention, he slowly got off of the victim and backed away. The witnesses chased the defendant and detained him until police arrival. The defendant admitted having consensual sexual relations with the victim and believed she "seemed to enjoy" it.

The defendant does not have a criminal history.

During the presentence interview, the defendant expressed sincere remorse and empathy for the victim. He stated, "Having imposed suffering on someone else and causing someone else pain-I mean, I can barely live with myself. I can't even get out of bed in the morning. I think about it every second of every day. Her [the victim] having to go through the justice system because of my actions just...it's unforgivable."

The victim in this matter will forever be impacted by the defendant's conduct. When the undersigned interviewed her, she provided a clear illustration of the hurt and devastation caused by the instant offenses and the ordeal of the trial. This officer was struck by the victim's ability to objectively digest the gravity and ramifications of the defendant's behavior and while she was understandably traumatized by the experience, her focus and concern was treatment, rather than incarceration.

There do not appear to be aggravating circumstances, other than the victim was particularly vulnerable in that she was heavily intoxicated; however, the victim being intoxicated and/or unconscious of the nature of the act is an element of the crime and therefore cannot be used as an aggravating circumstance. The sole mitigating circumstance is the defendant's lack of prior convictions.

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In determining an appropriate recommendation, this officer considered myriad factors, including the impact of the crime on the victim and the safety of the community. Other factors included the defendant's lack of a criminal history, his youthful age, and his expressed remorse and empathy toward the victim. During the presentence interview, the defendant demonstrated a comprehension that the victim, in her state, was unable to make an informed decision and in that moment, he had a moral responsibility to act in her best interest, which he failed to do.

Thus, although the defendant's eligibility for probation is limited, this officer believes there are circumstances which support the granting of probation, the first being the circumstance giving rise to the probation limitation in this case appears to be less serious than circumstances typically present in others involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence.

This case, when compared to other crimes of similar nature, may be considered less serious due to the defendant's level of intoxication. Secondly, with respect to his limited culpability, the defendant is youthful and has no prior convictions.

Furthermore, pursuant to the General Objectives in Sentencing (Judicial CR 4.410), which include punishing the defendant, encouraging him to lead a law abiding life, and deterring him from future criminality, this officer weighed the fact that this 20 year old offender is now a lifetime sex registrant, his future prospects will likely be highly impacted as a result of his convictions, and he surrendered a hard earned swimming scholarship. Perhaps, just as importantly, but sometimes overlooked, are the victim's wishes as to the potential outcome.

Based on the aforementioned information, a moderate county jail sentence, formal probation, and sexual offender treatment is respectfully recommended. The defendant informed this officer he intended on remaining in Ohio and did not plan on returning to California. In an effort to expedite an interstate compact transfer request, this officer suggests the defendant be remanded today.

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RECOMMENDATION:

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1. Imposition of sentence be suspended. Formal Probation be granted for three years.
2. The defendant is ordered to go to the Probation Department within two (2) business days of release and thereafter as directed by the Probation Department. If during your term of probation you are deported, you must notify the Probation Department of your deportation within 5 days. While out of the country you must notify the Probation Department by whatever means of communication are available to you of your location or residence. If you return to the United States, you must report your re-entry to this country to the Probation Department within 5 days of your return, and report in person to the Probation Department as directed.
3. The defendant is ordered to report to the Department of Revenue within 30 days for the completion of a payment plan for fines and fees.
4. A County Jail sentence be imposed. The defendant be granted credits.
5. Restitution as determined by the Court.
6. Pursuant to Section 1203.067(b)(2) of the Penal Code, as a condition of release from Formal Probation, the defendant shall enter, participate in and complete an approved sex offender management program, following the standards developed pursuant to Section 9003 of the Penal Code, for a period of not less than one year, up to the entire term of probation, as determined by the certified sex offender management professional in consultation with the Probation Officer and as approved by the Court.
7. The defendant shall waive any privilege against self-incrimination and participate in polygraph examinations, which shall be part of the sex offender management program, pursuant to Section 1203.067(b)(3) of the Penal Code.

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8. The defendant shall waive any psychotherapist-patient privilege to enable communication between the sex offender management professional and the Probation Officer, pursuant to Section 1203.067(b)(4) and Section 290.09 of the Penal Code.
9. The defendant shall pay all certified sex offender management program participation fees as determined by the Court, pursuant to Section 1203.067(c) of the Penal Code.
10. The defendant shall submit to chemical tests as directed by the Probation Officer.
11. The defendant shall not knowingly possess or knowingly consume alcohol or go to places where he/she knows alcohol is the primary item of sale.
12. The defendant shall submit his/her person, place of residence, vehicle and any property under his/her control to search at any time without a warrant by any Peace Officer.
13. The defendant shall seek and maintain gainful employment and/or maintain academic and/or vocational training as directed by the Probation Officer.
14. The defendant shall not own, knowingly possess, or have within his/her custody or control any firearm or ammunition for the rest of his/her life pursuant to Section 29800 and Section 30305 of the Penal Code.
15. A Restitution Fine of between \$300 and \$10,000 and a 10% Administrative Fee be imposed pursuant to Section 1202.4 of the Penal Code.
16. An additional Probation Revocation Restitution Fine equal to that imposed under Penal Code Section 1202.4 be imposed and suspended pursuant to Section 1202.44 of the Penal Code.
17. The defendant be ordered to register pursuant to Section 290 of the Penal Code and to comply with Section 290.85 of the Penal Code.
18. A fine of \$300.00 plus penalty assessment be imposed pursuant to Section 290.3 of the Penal Code.

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19. The defendant shall submit to a blood test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS), pursuant to Section 1202.1 of the Penal Code.
20. The defendant be ordered to supply buccal swab samples, prints, blood specimens, and/or other biological samples pursuant to Section 296 of the Penal Code.

In addition to the above orders of probation, the Court hereby orders the following fees, which are not conditions of probation, however, are separately due to the Department of Revenue during the period of probation. The failure to pay such fees will result in civil collection and potential loss of the California Driver's License.

21. A Court Security Fee of \$120.00 be imposed pursuant to Section 1465.8 of the Penal Code.
22. A Criminal Conviction Assessment of \$90.00 be imposed pursuant to Section 70373 of the Government Code.
23. A \$129.75 Criminal Justice Administration fee to the city of Stanford be imposed pursuant to Government Code 29550, 29550.1 and 29550.2.
24. A Presentence Investigation Fee not to exceed \$450.00 be imposed pursuant to Section 1203.1b of the Penal Code.
25. A Probation Supervision Fee not to exceed \$110.00 per month be imposed pursuant to Section 1203.1b of the Penal Code.

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(B1576943)

1. Probation be denied.
2. The defendant is ordered to report to the Department of Revenue within 30 days for the completion of a payment plan for fines and fees.
3. A County Jail sentence be imposed. The defendant be granted credits.
4. A Restitution Fine of between \$150 and \$1,000 and a 10% Administrative Fee be imposed pursuant to Section 1202.4 of the Penal Code.
5. A Court Security Fee of \$40.00 be imposed pursuant to Section 1465.8 of the Penal Code.

(continued)

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6. A Criminal Conviction Assessment Fee of \$30.00 be imposed pursuant to Section 70373 of the Government Code.

NOTE: Attorney fees if appropriate.

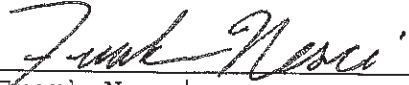
Respectfully submitted,

Laura Garnette
Chief Probation Officer



Monica Lassetre
Deputy Probation Officer
650-324-6506

ML/ml
Attachments

Reviewed by:


Frank Nesci
Supervising Probation Officer
650-324-6515

The above report has been read and considered by the Court.


AARON M. PERSKY
Judge of the Superior Court
Santa Clara County, California