

THE STATE OF ARIZONA
Plaintiff

vs.

MARK GOUDEAU
Defendant

CAUSE NO. CR8911700

HONORABLE RUFUS C. COULTER

CRIMINAL DIVISION 13

SUPERIOR COURT

PRESENTENCE INVESTIGATION

PRESENT OFFENSE:

The following information is taken from Phoenix Police Departmental Report #89-113773:

On August 6, 1990, at approximately 4:13 a.m., Phoenix Police responded to 2802 East Osborn in reference to call of a Black male beating a woman in the parking lot. Upon arrival, Officer Gardner found the victim, Darlene Fernandez, lying on the pavement in a semiconscious state, naked from the waste down. It was initially thought that the victim had received a gunshot wound to the head, due to the amount of blood she was lying in. The victim was lying next to a turquoise Datsun 280Z which was later identified to belong to the defendant. Witnesses at the scene observed the defendant beating the victim with a club-like object which was later discovered to be a shotgun. Witnesses Robert Flanagan and William Roberts observed a Black male standing near the Datsun 280Z. The defendant saw both witnesses and chased them with a shotgun in his left hand and silver stainless steel revolver in his right hand. The victim was transported to the Good Samaritan Hospital and Dr. Charles Allen determined her injuries resulted from being struck by a blunt object. Her condition was listed as serious, but not life-threatening. The victim had a fractured skull and seven lacerations three to four inches long in length needing stitches. Her eyes were red and swollen and she had bruises all over her body. Black and purple bruises covered almost all of her neck. There were no visible signs of trauma to her external genitalia.

Approximately three days after the incident, the victim was contacted at Good Samaritan Hospital by Detective Joe Conteras. Ms. Fernandez indicated that the defendant hit her over the head with a shotgun and attempted to force cocaine in her nose. She also stated that the defendant had sexual intercourse with her without her consent. The defendant beat the victim's head against a barbell and later threw her in the bathtub, turned on the water and tried to drown her. Ms. Fernandez indicates that the defendant was the only person in the apartment that beat her and that no one else was in the apartment.

The defendant was interviewed after the incident took place at 620 West Washington, Phoenix, Arizona. He stated the victim wanted

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some cocaine and he drove her to Twenty-fourth Street and Tamarisk and purchased \$50.00 worth of cocaine. The defendant then changed his story, indicating that before they bought the cocaine, they were at his apartment and had sexual intercourse. The defendant claims that he and the victim were going to take a bath when there was a knock at the door. Thinking it was his friend Mike, the defendant opened the door. He stated to the police that a Mexican male came in and beat up the victim. The defendant could not do anything as a White male with an Uzi weapon was standing over him. Once these men left, the defendant agreed to take the victim to her grandmother's house. Upon reaching his car in the parking lot, the men who beat up the victim returned again. At this time, the defendant went up to his apartment where he remained until these men left.

RELATED OFFENSES/STIPULATIONS:

On November 14, 1989, the defendant was charged with count I, sexual assault, a class 2 felony; count II, kidnapping, a class 2 felony, counts III through VII, aggravated assault, class 3 felonies, count VIII, attempted second degree murder, a class 2 felony.

On July 24, 1990, the defendant plead no contest to counts III, VI, and VII, aggravated assault, class 3 felonies. There are no agreements as to sentencing in the plea agreement. It does stipulate the defendant will pay restitution in an amount not to exceed \$20,000.00. The plea also stipulates that counts I, II, IV, V, and VIII as discussed in the present offense, will be dismissed at the time of sentencing. The allegation of dangerousness will also be dismissed at the time of sentencing and no further charges will be filed against the defendant for events related in Phoenix Police Departmental Report #89-113773.

DEFENDANT'S STATEMENT:

The defendant indicates that on the night of the instant offense, he was in his apartment with the victim, Darlene Fernandez, who he met at Vinnie's Night Club. His friend Mike Anderson was coming by the apartment to be with Darlene as he was interested in her. The defendant stated she was very aggressive and "wanted to be with him." A knock came to the door and thinking it was Mike, he opened it. At the door were two men who knew the victim and one held the gun on the defendant while the other one beat the victim. After they beat her, they left. The defendant had Darlene clean herself up and told her that he would take her to her grandmother's house. He states that when they went outside, the victim was wearing her clothes. When they got to his car, a car drove up carrying the men that had just beat Darlene. The defendant states he got scared and ran back to his apartment. The defendant denies punching the defendant but does admit to slapping her in order to calm her down once these men left his apartment. The defendant also

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denies having sex with Darlene but stated that she performed oral sex on him. The defendant indicated to this officer that he tries to avoid women like Darlene but because his friend Mike wanted to be with her, he was trying to help them get together. The defendant also denies buying cocaine and indicates that although they were in his car, he sat in his car the whole time while she went inside to buy the drugs. The defendant also denies using any cocaine on the night of the instant offense.

The defendant's plans for the future include continuing working for Budget Car Sales where he is currently employed. He currently runs the detail department and supervises two other employees. The defendant requests that the Court place him on probation. He feels this would be an appropriate recommendation as he has no criminal record and has a stable job. He feels this is also appropriate because he is well liked by his employers and has an opportunity to advance at his job. He would like to be placed on probation in order to prove to the Court that he is not a criminal and that he did not commit any crime.

STATEMENT OF VICTIMS:

Darlene Fernandez states that when the incident was taking place, she felt that she was in a room with the devil. Because of the beating that she received, two months after it happened, she still had trouble walking, the left side of her brain was bruised, and the whole left side of her body was numb. She has scars on her forehead as well as scars on the back of her head. The index finger on her right hand was broken to the point where she cannot close her fist all the way. She now has to wear glasses because she has double vision and her peripheral vision is not very good either. Because of this, they suggest that she does not drive. Since the incident occurred, Ms. Fernandez indicates that she is always nervous, cries a lot, and becomes depressed a lot. She also is overly sensitive and has bad dreams. She is unable to concentrate and so when she tried to go back to school, she had to drop out. She also has not been working since the incident occurred. Although she went to counseling for a few sessions, she quit because she felt she could deal with this on her own. She now realizes that she can not and in order to get her life back together, she is going to proceed with counseling at CASA. Prior to the instant offense occurring, the defendant had received a job with the State of Arizona in the Vital Statistic Department. But, because she was so upset by what happened, she was unable to keep this job. Ms. Fernandez has attended Glendale Community College for two and one-half years, as well as Arizona State University for one and one-half years. Ms. Fernandez indicated to this officer that the defendant was the one who beat her and was the only one in the apartment at the time the instant offense occurred. She feels that the defendant knew exactly what he was doing and for this reasons, recommends that the defendant get the maximum amount of time in prison on each count, and that each count run consecutive with the others.

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This officer tried to contact Robert Flanagan through the mail, as well as with the telephone, but was unable to contact him. If he should contact this officer prior to sentencing with any information, this officer will supply a supplemental report to the Court.

This officer tried to contact Williams Roberts through the mail, as well as with the telephone, but was unable to contact him. If Mr. Roberts should contact this officer prior to sentencing with any information, this officer will supply the Court with a supplemental report.

STATEMENT OF INTERESTED PARTIES:

Detective Joe Conteras of the Phoenix Police Department, recommends that the defendant be sentenced to the Department of Corrections for the maximum term. He requests that each count run consecutive with the other and not concurrent.

Robert Ellig, Deputy Public Defender, was unavailable for comment at the time of this dictation.

Michael Baker, Deputy County Attorney, recommends the defendant receive the presumptive term on counts VI and VII, and that these terms run concurrent. He then recommends that the defendant receive the aggravated term on count III and that this term run consecutive with counts VI and VII. Mr. Baker feels that the defendant has violent tendencies which is evident in two prior incidents that occurred involving trespassing and a rape charge. He does not feel that the defendant is being honest about his use of drugs. He feels that prison is appropriate because the defendant could have shot someone. Instead, he beat the defendant and there was a lot of anger behind it. The defendant went into a rage and beat the victim for a reason, but unfortunately because he is denying his involvement, this reason will not be found.

ARREST HISTORY:

JUVENILE:

The defendant denies ever being arrested as a juvenile and this officer received no information to the contrary.

ADULT:

The following information was obtained from records provided by Maricopa County Sheriff's Office, Phoenix Police Department, Arizona Department of Public Safety, and the F.B.I.:

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<u>ARREST DATE</u>	<u>PLACE OF ARREST</u>	<u>CRIME/DISPOSITION</u>
12-13-87	Phoenix, AZ	Trespassing/This charge involves PHPD DR #87-158633. On this date, the defendant was told to leave Malarkey's Bar in Phoenix, AZ by the bouncers. He was told that if he returned the police would be called. The defendant returned and tried to gain entry into the club and was told he was not welcomed and asked to leave. He refused. The defendant raised his voice and began making threats against the bouncers and was placed under citizen's arrest. Once the police arrived, the defendant kept indicating that he is "going to beat their asses the next time he saw them at the gym." He also stated "I'm going to kill them."
09-21-88	Phoenix, AZ	D.W.I./The defendant indicates that he went to school for this D.W.I. and received a fine of \$60.00.
08-08-89	Phoenix, AZ	Three counts of aggravated assault/Instant offense.
09-11-89	Phoenix, AZ	Aggravated assault/Rebooking on instant offense.
11-29-89	Phoenix, AZ	Sexual assault, kidnapping, 5 counts aggravated assault, attempted murder/ Rebooking on instant offense.
08-10-90	Phoenix, AZ	Armed robbery/Justice Court on 08-21-90.

This officer was provided with the Phoenix Police Departmental Report #82-117458. This DR involved the defendant making a phone call to Donna Sink on November 7, 1982. Upon her arrival to the defendant's house, they had sexual relations. While they were redressing, the defendant's brother Michael jumped on top of the victim. Ms. Sink refused and started to kick Michael and scratch him. The defendant then turned off the lights, helped Michael to take off his pants, while Michael was still on top of the victim. After Michael had sexual relations with Ms. Sink, both he and the defendant attacked her orally and anally. The victim did not want to prosecute, so no formal charges were brought against the defendant.

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SOCIAL HISTORY: Unless otherwise noted, the following information was provided by the defendant:

Family: The defendant was born on September 6, 1964, in Phoenix, Arizona, to Willie and Alberta Goudeau. The defendant has five sisters and five brothers and is the second to the last of these children. The defendant's mother died eleven years ago due to a stroke at which time the defendant was eleven years old. It was hard for him to get over but he became close to his father as a result. His father never remarried and the defendant describes his childhood as being good.

Education: The defendant attended Corona del Sol High School in Phoenix, Arizona. He did not graduate from high school because at the time of graduation, he was short one and one-half credits. The defendant decided not to go to summer school and found employment instead. The defendant attended South Mountain Community College for approximately two months where he was taking courses to prepare for the general equivalency diploma test. The defendant has not taken this test and plans on attending Mesa Community College in order to get his G.E.D.

A Word Recognition Aptitude Test administered to the defendant indicates a reading ability below the sixth grade level.

Employment:

<u>EMPLOYER</u>	<u>CITY/STATE</u>	<u>KIND OF WORK</u>	<u>DATES FROM/TO</u>
Budget Car Sales	Scottsdale, AZ	Detailer	03-90/Present
Trade Wind	Phoenix, AZ	Assembly	12-89/01-90
Apollo Water	Phoenix, AZ	Route Driver	04-87/07-89

Substance Use: The defendant first consumed alcohol when he was twenty-four years old at which time he drank beer. On the night of the instant offense, the defendant indicated he had between a six-pack and a twelve-pack of beer. Since the instant offense occurred, the defendant has not consumed any type of alcoholic beverages. Prior to his arrest for the instant offenses, the defendant was drinking once a week and would split a six-pack or twelve-pack of beer with a friend. The defendant has never attended counseling for a drinking problem and does not feel that he needs counseling.

The defendant denies the use of any type of illegal substance. The defendant is also denying the use of cocaine on the night of the instant offense.

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Marital: The defendant is currently in a relationship with Wendy Carr. They have been dating for approximately two years and are engaged. Due to the instant offense, their marriage has been postponed.

FINANCIAL STATUS AND EVALUATION:

Per the plea agreement, the defendant is to pay restitution not to exceed \$20,000.00. According to the victim, Darlene Fernandez, her medical bills were paid by AHCCCS. This officer has a phone call in to Jan Clark of AHCCCS Administration in regards to the total amount of restitution that they are requesting for medical expenses. At the time of this dictation, this officer has not received this information, but if it should become available prior to sentencing a supplemental report will be submitted to the Court. Otherwise, this officer requests a restitution hearing to be scheduled thirty days after sentencing.

The probation officer has considered the following factors in determining the manner of payment:

1. Defendant's age: twenty-five.
2. Defendant's income: \$1,000.00.
3. Defendant's expenses: \$700.00.
4. Defendant's assets: \$2,500.00.
5. Defendant's education: some high school.
6. Defendant's obligation to support dependents: none.
7. Defendant's employment history: good.
8. Defendant's prospects for employment: good.
9. Others: none.

Based on the above, it is recommended the defendant pay restitution through the Clerk of the Court per the attached restitution ledger sheet.

DISCUSSION AND EVALUATION:

The defendant's violent behavior has resulted in his involvement in the instant offense. The defendant has pled no contest to the charges of aggravated assault, and has denied his involvement. Because of his denial, the question of "why" will never be answered.

The defendant lacks any substantial arrest history. Although he was named in a rape charge in 1982, no charges were filed and the defendant denies his involvement in this case also. In regards to a trespassing charge that occurred in 1987, the defendant indicates that this incident did occur but he never threatened or yelled obscenities at the bouncers

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Because of the defendant's violent behavior, he has permanently scarred Ms. Fernandez. Not only are these scars physical, but they are emotional and mental. Her trust in mankind will never be the same. Through the help of counseling, hopefully she can put her life back together in order to pursue her college career or to obtain employment.

Only the defendant knows why this incident happened and because he is denying his involvement, he will never succeed at counseling. Therefore, he is making himself a risk to the community, because of his chances of reoffending appear to be great. Numerous witnesses saw the defendant beat Ms. Fernandez in the parking lot and still he denies his involvement. His stories to the various police officers have contradictions in them as well as with his version he retold to this officer. According to what the defendant told this officer, he did not have sex with the victim, did not use cocaine, and did not beat the victim.

These factors were considered in making the sentencing recommendation:

1. The defendant's young age.
2. The defendant's inexplorable violent behavior.
3. The nature of the instant offense and that the defendant severely beat a woman he had just met with a shotgun.
4. The fact that someone could have been shot.
5. The statements and recommendations of the victim.
6. The statements and recommendations of the interested parties.

RECOMMENDATION:

As to count III, it is respectfully recommended that the defendant be committed to the Department of Corrections for a term greater than the presumptive, pay a felony penalty assessment of \$100.00, and pay an \$8.00 time payment fee per A.R.S. 12-116, unless all penalties, fines, and sanctions are paid in full on this sentencing date.

As to counts VI and VII, it is respectfully recommended that the defendant be committed to the Department of Corrections for the presumptive term, pay a felony penalty assessment of \$200.00.

It is respectfully recommended that count III run consecutive to counts VI and VII, but that counts VI and VII run concurrent.

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The defendant has served five days of presentence
incarceration.

Respectfully submitted,

I have reviewed and considered
the probation officer's report.

By: Paula J. Martinez
Paula J. Martinez
Deputy Adult Probation Officer
262-3953

Judge: [Signature]

Date: 8/15/90

PJM:lb:lq:5124u
August 15, 1990

REC 9/19/90
REC 10/12/90