

IN THE IOWA DISTRICT COURT FOR LEE (SOUTH) COUNTY

<p>STATE OF IOWA,  Plaintiff,  vs.  BENJAMIN G. TRANE,  Defendant.</p>	<p>CAUSE NO. FECR 009152  ORDER MODIFYING CONDITIONS OF RELEASE</p>
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**I. INTRODUCTION**

In this criminal prosecution, the Defendant is confined in the Lee County Correctional Facility on a \$500,000 cash-only bond charged with two felonies and an aggravated misdemeanor. He seeks a Court order modifying the conditions of release. Arguing that a half million dollar cash only bond is excessive, the Defendant asks for a substantial reduction in bond and/or an order authorizing his release under pretrial release supervision. The State requests that bond remain as now set.

For the reasons explained below, the Court **concludes** that the State of Iowa failed to prove that a \$500,000 cash-only bond is reasonably necessary to secure the appearance of the Defendant and to protect the safety of others. Indeed, the State offered little evidence in support of its argument that a cash-only bond of \$500,000 is necessary to serve the twin purposes of bond. The evidence presented demonstrates that defendant has no prior criminal record, no history of flight or failure to appear, and no documented prior history of violence, assault, or sexual abuse. Likewise, the State offered no evidence that the defendant suffers from a mental health condition or from an addiction to alcohol or other drug. In large measure, the State's advocacy for a cash

only bond blindly overlooks this Court's statutory duty to consider **all** of the statutory factors set out in section 811.2 and to balance those factors and then make an **individualized** determination of what conditions of release are necessary to reasonably assure the appearance of the defendant and to protect the community. (emphasis added).

After carefully considering the required statutory factors listed in Iowa Code Section 811.2, the Court fixes bond in the amount of \$50,000 cash or surety only. Bond of this amount is reasonable and appropriate considering the defendant's lack of ties to the community and the seriousness of the offenses charged. One of the offenses is a forcible felony. Defendant may not be eligible to receive probation on the other felony.

If Defendant posts this bond, he shall also be subject to pretrial release supervision under the terms and conditions set out in an attached order. The terms and conditions may include high risk unit monitoring and GPS monitoring, if his pretrial release officer deems those conditions necessary.

## **II. DISCUSSION AND ANALYSIS**

At the outset, the Court notes that bond has **two and only two** purposes: To reasonably assure the appearance for the Defendant and to protect the safety of others. Bond can **never** be used as a form of pretrial punishment. Punishment is appropriate only after conviction. This principle is explained nicely in State v. Letscher, 873 N.W.2d 775 (Iowa Ct. App. 2015):

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. The right to pretrial release is protected by the Federal Constitution, the Iowa Constitution, and statute . . . .” (citations omitted).

When determining conditions of release, two sources guide the Court. First, Chapter 811 provides the following guidance: (1) **All** defendants are bailable before conviction, see Section 811.1; and (2) When fixing bond, the Court must impose **only** those conditions of release necessary to reasonably assure the appearance of the person for trial and the safety of others. Financial conditions of release should be considered only after the Court concludes that non-monetary conditions are not adequate to serve the twin purposes of bail. See section 811.2(1)(a)(1)-(5).

Iowa Code Section 811.2(2) requires the Court to consider the following factors when determining which conditions of release will reasonably assure the Defendant's appearance and the safety of other persons;

- (1) The nature and circumstances of the offenses charged;
- (2) The defendant's family ties;
- (3) The defendant's employment;
- (4) The financial resources of the defendant;
- (5) The character and mental condition of the defendant;
- (6) The length of the defendant's residence in the community;
- (7) The defendant's record of convictions, including the defendant's failure to pay any fine, surcharge, or court costs; and
- (8) The defendant's record of appearance at court proceedings or record of flight to avoid prosecution or failure to appear.

This Court considered all of these factors in this case. The factors are discussed in greater detail below.

The second source of guidance for setting conditions for release is the Iowa Constitution. Article 1, Section 12 of the Constitution provides that “all persons shall, before conviction, be bailable by sufficient sureties . . . .” Similarly, Article 1, Section 17 of the Iowa Constitution provides: “Excessive bail shall not be required.”

Significantly, the law places the burden on the State of Iowa to marshal the evidence and prove the need for bail. Here, the State of Iowa did not call any witnesses to testify in support of its claim that a \$500,000 cash-only bond was reasonably necessary to assure the appearance of the Defendant or protect the safety of others. Rather, the State of Iowa argued that the nature and circumstances of the offenses charged, as reflected in the Trial Information and Minutes of Evidence, as well as the Defendant’s lack of ties to the State of Iowa and his lack of gainful employment justify a \$500,000 cash-only bond. For the reasons expressed below, the Court respectfully disagrees with this analysis.

With this backdrop, the Court now discusses the guiding factors set out in Iowa Code Section 811.2(2). Defendant is 39 years old, college educated, married, and has several children. His wife is employed. Apparently, she is the primary source of household income. From approximately late 2002 until approximately March 2016, the Defendant and his family lived in the Keokuk, Iowa area. The defendant operated the Midwest Academy. When the Midwest Academy closed in 2016, defendant moved to the Ammon, Idaho, area to live with his parents. Defendant, a native of Utah, reported on his application for court-appointed counsel that he resided at 3017 BrettonWood Drive, Idaho Falls, ID at the time he voluntarily submitted to arrest in September 2017.

Defendant testified that while vacationing with his family in the Lake Powell area located on the Arizona-Utah border, he learned that Iowa law enforcement authorities had issued a warrant for his arrest. Alarmed by the outstanding warrant, defendant testified that he immediately drove 21 hours from Lake Powell to Lee County, Iowa, where he submitted himself to the custody of law enforcement authorities. The State did not dispute this testimony or sequence of events.

Upon submission to Lee County law enforcement authorities, Defendant was arrested and placed in the Lee County Correctional Facility under a \$500,000 cash-only bond originally set by District Associate Judge Noneman. Notably, the record does not disclose what specific facts and circumstances Judge Noneman relied upon to fix bond in the amount of \$500,000 cash only. The lack of a record is unfortunate but a function of the ever increasing demands on the resources of an already understaffed judiciary.

Defendant made an initial appearance on September 8, 2017, before District Associate Judge Rogers. Judge Rogers reaffirmed, without explanation, the \$500,000 cash-only bond. Importantly, Judge Rogers also ordered that if Defendant posted bond, he should also participate in pretrial release supervision and remain in the State of Iowa during the pendency of the proceedings.

Defendant has been unable to post bond. He testified he does not have the financial resources available to him to post a \$500,000 cash-only bond. The State did not offer contrary evidence. Defendant testified that he has no prior criminal record. The Department of Correctional Services confirmed that Defendant has no prior criminal record. The Department filed a pretrial release recommendation report on September

28, 2017. The Court takes judicial notice of the report. The Department of Correctional Services recommends against pretrial release without bond.

In its report, the Department of Correctional Services also advised that the agency found no evidence that Defendant had ever failed to appear or fled to avoid prosecution. Further, according to the DCS, Defendant “does not appear to have any past due financial obligations to the Court.” There is no evidence in the record that the defendant has a prior history of violence, assault, sexual abuse, or improper sexual contact with others.

Defendant testified that he started a “data basing system” business after Midwest Academy closed. As the business is in its infancy and its start-up was interrupted by Defendant’s arrest, the business has not yet turned a profit. Yet, Defendant stated he is determined to make the business a success. He also testified that he can work on the business remotely. Importantly, Defendant testified consistent with the order of Judge Rogers, that he is willing to remain in Iowa pending trial and will reside in Lee County, Iowa, if released from custody. Defendant testified that he made arrangements to rent an apartment at 2783 251<sup>st</sup> Street, Keokuk, Lee County, Iowa.

When asked by the Court, the prosecuting authority for the State of Iowa confirmed that none of the victims of the offenses allegedly committed by the Defendant resides in Keokuk, Iowa. However, the prosecuting attorney indicated that some of the witnesses the State intends to call at trial do reside in Lee County, Iowa. The defendant shall be prohibited from having any contact with any of the alleged victims.

The charges lodged against the Defendant are serious. In Count I, the State of Iowa charges the Defendant with Sexual Abuse in the Third Degree in violation of

Sections 709.1 and 709.4(1)(a) (Sex act committed by force or against the will of the other person). This offense is a forcible felony under Iowa Code Sections 702.11(1). If convicted of this offense, the Defendant cannot receive probation. Rather, the Defendant will be sentenced to a term of confinement not to exceed 10 years. The Defendant will also be required to serve a “special life sentence” under Iowa Code Section 903B.1

In Count II, the State charges the Defendant with Sexual Exploitation by a Counselor in violation of Section 709.15(1), 709.15(2)(a)(1), and Section 709.15(4)(a). This offense is not a forcible felony. However, if Defendant is convicted of this offense, and the State establishes beyond a reasonable doubt that at the time of the offense, the Defendant was a mandatory reporter of child abuse under Section 232.69 and that his victim was under age 18, Defendant is not eligible for probation. See Iowa Code Section 907.3. Notably, the State alleges that the Defendant committed this offense over an extended period of time and with “emotionally dependent **patients** or **clients**” (emphasis added).

In Count III, the State of Iowa charges the Defendant with the aggravated misdemeanor offense of child endangerment. The maximum penalty for this offense is two years in a penal institution. If convicted of all charges, the Defendant faces prison sentences totaling 17 years plus a lifetime special sentence under Section 903B.1. Defendant would also be required to register as a sex offender.

During final summations, both attorneys referred to the uniform bond schedule, but for different reasons. Because of these references, the Court briefly discusses the uniform bond schedule. The Iowa Judicial Council established a uniform bond schedule

years ago. The schedule is “applicable only when both of the following conditions are met”: (1) The person was arrested for a non-forcible felony; and (2) the Court is not in session. Under the schedule, bond for any non-forcible class C felony is \$10,000. Bond for any non-forcible class D felony is \$5,000, and bond for any aggravated misdemeanor is \$2,000.

Because Count I is a forcible felony, this Court gives little weight to the bond schedule. Also, the Court believes the bond schedule gives very little guidance for fixing bond on Count II, since the Defendant may not be eligible for probation under Count II. The uniform schedule emphasizes that the trial judge is not bound by the uniform schedule but should apply **all** of the factors set out in Iowa Code Section 811.2 when determining bond. The Court followed this mandate.

The discussion and analysis set out above demonstrates that some of the statutory factors under section 811.1 favor a substantial reduction in the defendant’s bond while other statutory factors warrant requiring a substantial bond. Because the defendant has no family living in Iowa, has minimal ties to Iowa, lacks gainful employment, lacks financial resources, lacks ownership of real estate in Iowa, and because of the seriousness of the offenses charged, a substantial bond is warranted. On the other hand, the Defendant has no prior criminal record. He has no history of flight to avoid prosecution or failure to appear. Indeed, he testified without contradiction that upon learning that a warrant existed for his arrest, he immediately left his vacation with his family and drove 21 hours straight and turned himself in to Lee County law enforcement authorities. The State did not show that defendant suffers or is likely to suffer from a mental health or substance abuse problem. Finally, the Defendant is



presumed innocent of all charges at this time. Notably, empirical studies indicate that the severity of the charged offenses does not predict whether a defendant will flee or reoffend if released pending trial. See Curtis Karnow, *Setting Bail for Public Safety*, 13 Berkeley J. Crim. L. 1, 14-16 (2008).

### **III. CONCLUSION**

Based upon a careful analysis of the statutory factors listed in Iowa Code Section 811.1(2), the Court concludes that bond should be substantially reduced. Bond is fixed in the amount of \$50,000 cash or surety. If the Defendant posts this bond, he shall also be required to participate in pretrial release supervision. The terms of the pretrial release supervision are set out in the attached pretrial release order. They include a curfew, restrictions on defendant's travel, and his association with minors. Defendant shall be required to participate in high risk unit monitoring and GPS monitoring if requested by his supervising officer.

IT IS SO ORDERED.

Dated and signed this 4th day of October, 2017.

Copies to Prosecuting Attorney Denise Timmins  
Lisa Schaefer  
Department of Correctional Services

EIGHTH JUDICIAL DISTRICT DEPARTMENT OF CORRECTIONAL SERVICES

PRE-TRIAL RELEASE AGREEMENT AND ORDER

DEFENDANT: **STATE OF IOWA VS. BENJAMIN G. TRANE** COUNTY/CAUSE: **SOUTH LEE** CAUSE NUMBER **FECR009152**

Based upon the record made today with the State recommending AGAINST pretrial release, the Court **orders** pretrial release supervision as set out below. DEFENDANT MUST SIGN THIS DOCUMENT BEFORE HE IS RELEASED FROM CUSTODY.

The above defendant is placed under the supervision of the Department of Correctional Services, pending trial, subject to the following conditions of release.

1. I will appear personally in Court in this case for all proceedings at which my personal appearance is required by law, or ordered by the Court. Notice to my attorney by the Court of County Attorney of time and place for all such Court appearances shall constitute notice to me.
2. I will not violate any City, State or Federal laws.
3. I will report in person to the Eighth Judicial District Department of Correctional Services as often as that Department may require.
4. I will be restricted to my county of residence unless approved by my Supervising Officer or unless duly authorized by the Court.
5. I will maintain suitable residence and employment through the period of supervision and shall not change either residence or employment without prior approval from my Supervising Officer.
6. I will report to the Court Services office immediately upon my release from jail, or the next business day, if it is closed upon my release.

**SPECIAL CONDITIONS:**

- I shall remain in the State of Iowa during pendency of proceedings.
- I shall not purchase, possess, or otherwise have under my control any firearm or other dangerous weapon.
- I will maintain contact with my Supervising Officer as directed and shall not lie to, mislead or misinform my Supervising Officer either by statements or omissions of information. I will submit a written report form as directed by my Supervising Officer.
- I will contact my Supervising Officer within 72 hours after receiving a summons, being arrested, or contacted by a law enforcement officer.
- I will submit my person, property, place of residence, vehicle, personal effects to search at any time, with or without a search  
warrant, warrant of arrest or reasonable cause by any parole officer or law enforcement officer.
- I will treat all persons with respect and courtesy and refrain from assaultive, intimidating, or threatening verbal and/or physical abuse.
- I will not contact or attempt to contact the victim(s), or their family, either in person, in writing, or by phone, or through a third party, unless my Supervising Officer approves otherwise.
- I shall be at my place of residence from 10:00 p.m. to 6:00 a.m. unless my Supervising Officer approves otherwise.

I will avoid association with those individuals whom my Supervising Officer deems to be detrimental to me.

I shall not associate with any persons known to have a criminal record, or known to engage in criminal activity, unless approved by my Supervising Officer.

I will not purchase, possess, use and/or consume any alcoholic beverage and/or controlled substance.

I will submit to urinalysis or breathalyzer testing upon the request of a Supervising Officer or official designee.

I shall not enter taverns, liquor stores or other establishments where the primary activity is the sale of alcoholic beverages.

I will not enter or be in an establishment with a Class C or D liquor license without the permission of the Department of Correctional Services.

I shall completely abstain from all controlled substances.

I shall comply with any evaluation and or treatment as recommended by my Supervising Officer.

I will enter into, cooperate with, and successfully complete such programs for the evaluation and/or treatment of persons with substance abuse problems, as the Court and/or the Department of Correctional Services shall require.

I shall not operate a motor vehicle on public roadways without first providing proof of insurance to my Supervising Officer

**I will reside only at a location authorized by my supervising officer. I MUST REPORT TO MY PTR OFFICER WITHIN ONE HOUR OF MY RELEASE FROM CUSTODY.**

**Other: I SHALL HAVE NO CONTACT OF ANY TYPE WITH ANY ALLEGED VICTIM OF THE OFFENSES CHARGED IN THE TRIAL INFORMATION. DEFENDANT SHALL HAVE NO UNSUPERVISED CONTACT WITH MINORS WHO ARE NOT RELATED TO HIM IN A PRIVATE PLACE INCLUDING HIS HOME, EXCEPT WITH THE CONSENT OF HIS SUPERVISING OFFICER**

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Any violations of the conditions of release may be reported to the Court and could result in revocation of release in the custody

of the Department of Correctional Services. Entering into any informant-type activity with any law enforcement agency will not

excuse liability for any violation of my pre-trial release.

I understand if I fail to appear as required by law or ordered by the Court, regardless of the outcome of my case, I may be found guilty of a Class D Felony if the offense I am charged with is a felony and if it is a misdemeanor, I may be found guilty of a Serious Misdemeanor as per Chapter 811.2 of the Iowa Code.

I understand that I may file a formal grievance through the established Department Grievance Procedure against actions of the Department.

I have read (or have had read to me) these conditions of my release and understand the conditions are in effect while I am in the custody of the Department of Correctional Services. I further acknowledge that I have received a copy of these conditions.

Signed and witnessed this 4th day of OCTOBER, 2017.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Judge, 8<sup>th</sup> Judicial District

Distribution:

**NOTE, THE DEFENDANT MUST SIGN THIS  
BEFORE HE IS RELEASED.**

County Attorney  
**OF THIS ORDER**

**THE SHERIFF OR DCS SHALL RETURN A SIGNED COPY**

**Defendant AND COUNSEL**

**TO THE CLERK.**

SHERIFF

DCS



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number**      **Case Title**  
FECR009152      STATE VS TRANE, BENJAMIN

So Ordered

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Michael J. Schilling, District Court Judge,  
Eighth Judicial District of Iowa