

IN THE IOWA DISTRICT COURT IN AND FOR LEE SOUTH – KEOKUK COUNTY

STATE OF IOWA,

Plaintiff,

vs.

BENJAMIN G. TRANE,

Defendant.

CRIMINAL NO.: FECR009152

**MOTION TO MODIFY THE TERMS
AND CONDITIONS OF PRETRIAL
RELEASE**

COMES NOW, the Defendant, and for his Motion to Modify the Terms and Conditions of Pretrial Release, states to the court as follows:

1. On September 18, 2017, The State charged Mr. Trane with Sexual Abuse in the Third Degree, a Class C Felony, in violation of Iowa Code §§ 709.1, 709.4(1)(a), and 903B.1 (Count I); Sexual Exploitation by a Counselor, a Class D Felony, in violation of Iowa Code §§ 709.15(1), 709.15(2)(a)(1), 709.15(4)(a), and 903B.2 (Count II); and, Child Endangerment, an Aggravated Misdemeanor, in violation of Iowa Code §§ 726.6(1)(a) and 726.6(7) based on actions alleged to have occurred between September 18, 2014, and January 31, 2016.

2. On December 22, 2017, the jury returned a verdict finding Mr. Trane guilty of lesser offenses than originally charged which included the following: Assault with Intent to Commit Sexual Abuse, an Aggravated Misdemeanor, on Count I; Pattern, Practice, or Scheme to Engage in Sexual Exploitation by Counselor of Therapist, a Class D Felony, on Count II; and, Child Endangerment, an Aggravated Misdemeanor, on Count III.

3. Mr. Trane is 39-years old and has five minor children. Their ages are 12, 10, 9, 7 and 5. They have a very close-knit family. In addition, Mr. Trane's father is a retired business man and lives in Idaho Falls. His mother is a retired school teacher living

in Idaho Falls. He has five siblings who are all married and have children. They are in close communications with each other and each of them will know where Mr. Trane is at all times. All family members live within a 10-mile radius of each other. (See Affidavits Exhibits A-E filed under seal).

4. After Midwest Academy was closed, Mr. Trane earned a degree in Computer Information Systems from BYU in Rexburg, Idaho.

5. If allowed to return to Idaho pending sentencing, Mr. Trane's children will attend Tiebreaker Elementary School in Ammon, Idaho. The school is approximately one mile from the residence where the family will reside. School will start at 8:00 a.m. and end at 2:25 p.m. On Wednesdays, the children will be out of school at 1:00 p.m. The youngest child will be in kindergarten and it will end at 10:50 a.m. during the week and on Wednesdays at 10:00 a.m.

6. Mr. Trane's father has a small farm. His health is not the best and Mr. Trane plans to assist him with some of the physical chores.

7. Mr. Trane voluntarily appeared from Idaho and turned himself in when he was notified charges were pending in the State of Iowa. As the court is aware, Mr. Trane voluntarily answered questions from law enforcement who were investigating his business. While Mr. Trane works on his motion for new trial and sentencing he will maintain his residence in the State of Idaho and stay in full compliance with each and every term and condition the court imposes.

8. During the course of his pretrial release and during his trial and after the completion of the trial, Mr. Trane has been in compliance with each and every condition imposed by the pretrial release officer and the court. He will maintain this compliance.

9. There is a GPS system that Mr. Trane is required to wear at this time. The GPS system can operate in Idaho. A landline could be established allowing Mr. Trane to stay in contact with his probation officer at various times of the day if the mobile phone is not sufficient. Mr. Trane believes, if necessary, he could establish his employment within his home in Idaho. Mr. Trane would ask the court to consider removing the GPS system because he has demonstrated he will not violate the pretrial terms and conditions.

10. Mr. Trane would also be willing to agree to a third-party custodian. His father would agree to serve as a third-party custodian and so would his mother. (See the affidavits filed under seal a-e)). Each of his siblings would also agree to serve as a third party-custodian, if the court wanted one in place to assure his compliance with the terms and conditions of pretrial release.

11. Remaining in Iowa while he seeks a new trial from this court imposes a substantial financial and emotional hardship on Mr. Trane. Mr. Trane is unable to assist with the care of his five children. Since the school closing, most of the family savings and income has been used to pay off various debts at the school. The family has exhausted their financial resources and have had to seek help from family to be able to have sufficient income. In allowing Mr. Trane to travel and live in Idaho , he can work on establishing his in-home business and have sufficient income to support his family and assist with payment of his legal bills.

12. Mr. Trane's home address in Idaho would be 3017 Brettonwood Drive, Ammon, Idaho, 83406. (see attached Google map). He would start working for a family business. Mr. Trane had started this business prior to his arrest and he has tried to keep the business going from Iowa. It has proven extremely difficult to do. He has the

necessary equipment in Idaho to assist him with updating his service and other computers. He will continue to abide by the terms and conditions that have been established in Iowa once he returns to Idaho.

13. The court is fully aware that the original charges against Mr. Trane have now been reduced by the verdict in the original trial. There are meritorious grounds for a new trial. Mr. Trane plans to file a motion for new trial in a timely manner and requests this court to review all the evidence presented during the trial in addition to new evidence that would be relevant to his motion for a new trial. The issues that are readily apparent in his motion for new trial are as follows:

- a. The state did not timely produce evidence;
- b. His trial counsel did not timely file notice to the opposing counsel and court regarding Iowa Rule 412 evidence;
- c. Counsel for the state of Iowa did not timely produce exculpatory evidence;
- d. A motion for severance should have been filed separating the sexual abuse charge from an unrelated child endangerment charge;
- e. Witnesses were called by the State of Iowa disclosing exculpatory evidence to the prosecution during their interviews and the state failed to disclose the exculpatory evidence to the defendant or to his counsel;
- f. Certain jurors may have remained on the jury who were biased against Mr. Trane;

- g. Experts were called as witnesses who were not qualified to offer testimony and consequently improperly prejudiced Mr. Trane's jury trial;
- h. There was insufficient evidence to convict Mr. Trane of child endangerment in that a policy was at issue and not an alleged victim as required by the statute;
- i. Flawed jury instructions were presented to the jury and were not properly objected to by the Mr. Trane's counsel;
- j. Mr. Trane's counsel did not properly object to a state's motion in limine that prevented him from offering testimony calling the testimony of the alleged victim into question.
- k. Mr. Trane's counsel did not file a timely motion to dismiss the charges nor file a request for sanctions against the state after the state conducted an investigation for several months prior to filing charges and did not produce the evidence timely allowing Mr. Trane to adequately prepare for trial; and,
- l. Trial counsel did not properly file a motion to dismiss certain charges prior to presenting them to jury even though it appears the state's charges did not comply with the statutes.

14. A transcript has been ordered and after the transcript is properly reviewed, Mr. Trane will file his motion for new trial and will request a hearing. Counsel expects to clarify the current issues and perhaps have additional issues to present to the court that would require the court to grant him a new trial. The court is aware that the State

Denise Timmins
Attorney General's Office
Hoover State Office Building
1305 East Walnut Street, Floor 2
Des Moines, Iowa 50319
515-281-5536
515-281-8894 (Fax)
denise.timmins@iowa.gov
ATTORNEY FOR PLAINTIFF

Benjamin Trane
DEFENDANT

Search Results for "3017 Brenttonwood Drive, Ammon, Idaho"



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