

Judge won't free suspect in rape without bail

By NANCY BARR
STAFF WRITER

A South African man charged with rape and assault will remain in the Santa Cruz County Jail until his case goes to court unless he can come up with \$50,000 bail.

Municipal Court Judge Richard Kessell rejected defendant David Tolofane's request to be released on his own recognizance this morning.

Tolofane, 34, is charged with choking, biting and raping a 26-year-old woman who he encountered on Empire Grade Road two weeks ago. Although the crime was initially reported as an attempted rape, further investigation led to the charge of rape being filed against Tolofane.

Tolofane's case drew a great deal of attention last week when Assistant Santa Cruz city Attorney Gerald Bowden volunteered to take Tolofane into his home so that he would not have to stay in jail. Bowden said his offer had nothing to do with his job, but with his position as president of the UC-Santa Cruz Friends of the Farm and Garden. Tolofane was in Santa Cruz for six months working at the university's Farm Project.

Bowden backed out of the offer over the weekend because he said publicity about his involvement in the case had harmed his law firm and his colleagues.

Tolofane was then returned to County Jail, and his bail was

reinstated at \$90,000.

At a hearing this morning to determine whether bail should be reduced, Tolofane's attorney, Paul Meltzer, tried to get the judge to release Tolofane to the custody of another local family. Meltzer did not name the family, saying they would like their privacy protected, but indicated the woman was the vice-president of the Friends of the Farm and Garden.

Because this couple is retired, Meltzer said, they could offer 24-hour-a-day supervision of the defendant.

"If anything, the situation has gotten better for his release," Meltzer said.

He argued that since Kessell had agreed to release Tolofane on his own recognizance to Bowden's home, Kessell should be just as willing to release Tolofane to another local family "of integrity."

But Kessell said the only reason he approved Tolofane's release last week was because it was Bowden who was involved.

"That was the main reason I released him," Kessell said. Bowden has a "well-deserved reputation as a hard-nosed

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prosecutor."

Kessell said he turned to the county's standard bail schedule to arrive at the \$50,000 bail figure for Tolofane. That's what the judges in the county have agreed is the proper bail for a person accused of rape, Kessell said, and he sees no reason to vary from that amount.

Kessell commented that he is now more reluctant to release Tolofane on his own recognizance because further evidence helped to identify him as the woman's attacker. McGuire said a preliminary report from a forensics lab show that Tolofane's bite matches the bite marks on the victim.

Assistant District Attorney Christine McGuire argued to keep Tolofane in jail at the higher bail because the victim feared for her safety. The victim was in court today with friends and supporters, but Kessell said he wanted to avoid having the victim testify.

McGuire said she fears Tolofane would leave town if he makes bail because he has no ties to the community.

Meltzer, on the other, said the fact that Tolofane didn't flee while he was staying at Bowden's home shows that he plans to stick around for his court appearance.

Meltzer asked that bail be reduced to \$5,000 or \$10,000.

Tolofane's preliminary hearing is scheduled for Oct. 9, but Meltzer said he will probably ask that the hearing be delayed to give him more time to prepare his case.