

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

State of New Hampshire

v.

Chad Evans

00-S-888-896-F AND 00-S-934-I

DEFENDANT'S OBJECTION TO STATE'S
MOTION TO CONSOLIDATE CHARGES

NOW COMES Chad Evans and, by his attorneys, objects to the State's request to consolidate the alleged misdemeanor simple assault against Amanda Bortner with the pending murder and felony assault charges involving Kassidy Bortner.

In support of this Objection, defendant states:

1. He is charged with second degree murder and eight felony counts related to Kassidy Bortner.
2. The State now seeks to consolidate with these charges a separate alleged misdemeanor simple assault against Amanda Bortner.
3. The State narrates in its motion a factual background regarding these cases that is inconsistent with the facts that will be adduced at trial, striking in its own omissions regarding conduct of the State's own witnesses and convenient in its failure to include the witness' inconsistencies included in the State's discovery material.
4. The State, by filing this misdemeanor charge, seems to be trying to taint the trial process to focus on character issues of Mr. Evans with the hope that it will assist the State in convicting Mr. Evans of the enormously serious but separate charges regarding Kassidy Bortner.
5. The pending felony charges against Mr. Evans potentially carry a life term of imprisonment plus more than 200 years of incarceration.

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6. It is curious that the State is so forceful in seeking to add this misdemeanor charge particularly when the facts of this charge, as narrated by Ms. Bortner, demonstrate that for whatever physical contact occurred, it took place after Ms. Bortner threw a mug at Mr. Evans.

7. Under these circumstances, the State is seeking to add a charge that is a non-criminal violation for the jury's consideration at a time when the jury's deliberations should be most focused on the contradictory evidence regarding Cassidy Bortner and the complicated medical evidence which will support Mr. Evans' assertion of innocence.

8. Defense counsel acknowledges the case law in the State's motion indicating that the trial court has discretion in choosing whether to consolidate charges.

9. In this instance, it is defendant's view that as a matter of discretion and law that consolidation should be denied.

10. Mr. Evans' right to a fair trial is jeopardized by consolidations of these distinct and separate charges. Part 1, Article 15 of the New Hampshire Constitution; Fifth and Fourteenth Amendments to the Constitution of the United States.

11. The State, in its motion, claims that all pending charges are part of a common scheme and therefore consolidation would be appropriate. The State even suggests that the alleged simple assault is relevant to Mr. Evans' consciousness of guilt.

12. These arguments demonstrate why it would be so dangerous to allow consolidation of the misdemeanor charge with the pending homicide and felony defenses.

13. Mr. Evans has always stated that Cassidy Bortner was injured on November 8, 2000 when he picked her up from the care of

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Jeffrey Marshall. In fact, evidence of Mr. Evans' concern for Kassidy during the evening of November 8, 2000 is uncontradicted by the State's own witnesses.

14. To now allow the State to claim that he was guilty in the death of Kassidy Bortner because he responded to a thrown mug is disingenuous at best and endangers Mr. Evans' desire for a fair trial in this matter.

WHEREFORE, defendant prays that the State's Motion to Consolidate the alleged simple assault charge with the pending homicide and felony charges be denied.

Respectfully submitted,
CHAD EVANS
By his attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DEFENDANT'S OBJECTION TO STATE'S MOTION TO CONSOLIDATE CHARGES has been forwarded to Senior Assistant Attorney General N. William Delker and Assistant Attorney General Simon R. Brown, this _____ day of November, 2001.

Alan J. Cronheim