

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

NOVEMBER TERM, 2001

SUPERIOR COURT

No. 00-S-888 – 00-S-896

No. 00-S-934 – 00-S-935

The State of New Hampshire

v.

Chad Evans

STATE'S MOTION TO CONSOLIDATE CHARGES

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and in support of its Motion To Consolidate Charges, says as follows:

I. INTRODUCTION

On November 16, 2001, the defendant was arrested on a manslaughter charge for causing the death of 21-month-old Cassidy Bortner. On December 14, 2001, the Strafford County Grand Jury handed up several indictments against the defendant. The defendant was charged with Second Degree Murder, two counts of First Degree Assault, and six counts of Second Degree Assault. He was also charged by information with endangering the welfare of a child as a result of his abuse of Cassidy and simple assault for causing unprivileged physical contact with Amanda Bortner. All of the charges have been docketed together, scheduled for trial together, and handled together for all pretrial purposes. At a pretrial hearing on November 5, 2001, the defense conceded that the charges relating to the defendant's abuse of Cassidy should be consolidated. The defendant, however, indicated

that he would object to a consolidation of the misdemeanor simple assault charge alleging that the defendant assaulted Amanda Bortner with the remaining charges. The Court provided the parties with an opportunity to brief the issue. The State now requests that the Court formally consolidate the simple assault charge with the remaining charges for trial.

II. FACTUAL BACKGROUND

A. The Defendant's Abuse Of Kassidy Before Her Death

Amanda Bortner began dating Chad Evans in June 2000. They were introduced by Jefferey Marshall, who is the boyfriend of Amanda's sister, Jennifer Conley. Marshall and Jennifer Conley live together in an apartment in Kittery, Maine. Amanda and the defendant dated through the summer of 2000. During that time, Amanda and her daughter, Kassidy Bortner, continued to live with her mother and stepfather in Auburn, Maine. When Amanda visited the defendant in Rochester, or went on trips with him to Cape Cod and New York City, she left Kassidy with her mother in Auburn, Maine.

In August 2000, Amanda's mother and stepfather moved to a smaller home in Buckfield, Maine. Amanda did not want to live in Buckfield. At about that time, she and Kassidy began staying continuously with the defendant in Rochester.

The defendant began to abuse Kassidy after Amanda and Kassidy began living with him in Rochester. Soon after Amanda moved in with the defendant, prominent bruises began to appear on Kassidy's face. According to Amanda, the defendant caused the bruises by grabbing Kassidy by the face or jaw. Amanda explained that Kassidy was jealous of the defendant, and would cry or throw temper tantrums whenever the defendant hugged or kissed Amanda. When this happened, the defendant often lost his temper and grabbed Kassidy's face to keep her from crying. On several occasions, he picked Kassidy up by her face and

arm and propelled her into a corner, causing the child to strike her head against a wall or door. When the defendant would propel Cassidy into the corner of the room, he would grab her by the arm and jerk her arm. On at least one occasion, the defendant also grabbed Cassidy by the leg. The defendant often swore at Cassidy, calling her a “bitch” and other names, and during one episode shouted words to the effect of, “I wish she was never born” or “I wish she wasn’t here.”

According to Amanda, the grabbing and bruising by the defendant increased in the weeks before Cassidy’s death. Before Cassidy’s death, the defendant’ inflicted bruises on Cassidy more than once a week. Because of this abuse, Amanda had begun to consider leaving the defendant and finding an apartment of her own. Amanda advised that the abuse became so frequent that she had difficulty pinpointing particular incidents of abuse.

B. The Events Surrounding Cassidy’s Death

On Wednesday, November 8, 2000, Amanda did not report to Old Navy until 3:30 p.m. According to Amanda, Cassidy was not injured or seriously ill on Wednesday morning. Amanda recalled that for a few days Cassidy had appeared tired and was eating less than normal. Amanda said she was not alarmed, because Kyle was getting over a cold and exhibited some of those same symptoms. As far as bruising, Amanda said that Cassidy had some older, fading bruises on her face/jaw, where Evans had grabbed her. In addition, she had a small bruise beneath her right eye which allegedly was caused by falling against Evans’ glass coffee table. Furthermore, Amanda said that Cassidy had been walking funny. She said she had thought this might have been caused by Evans picking Cassidy up by her legs and swinging her around in fun.

Amanda dropped Cassidy off with Marshall in the late afternoon on Wednesday, November 8th, so that she could go to work. According to Marshall, nothing unusual happened while Cassidy was with him on Wednesday afternoon. Cassidy watched television in Marshall's bedroom, and he followed the results of the 2000 presidential election on another television in the living room. Marshall said that Cassidy had some older bruises on her face, and appeared to have difficulty walking. Marshall earlier heard from Amanda that the defendant had injured Cassidy's leg, and he attributed Cassidy's walking trouble to that injury.

At about 5:00 p.m., the defendant telephoned Marshall from his car and asked Marshall to bring Cassidy and meet him at the Moonlight Reader, an adult bookstore in Portsmouth. The defendant told Marshall that he had to make an exchange at the Moonlight Reader, and that he was in a hurry to pick up Kyle in Dover. Marshall told the defendant that he didn't want his company's truck to be seen in the Moonlight Reader parking lot, and gave him directions to his home.

The defendant finally appeared at about 5:30 p.m., and Marshall brought Cassidy outside. According to Marshall, Cassidy walked on her own through his door, and then slid on her bottom down the porch steps, which was normal for her. Marshall then carried Cassidy the rest of the way to the defendant car. Marshall said that it was normal for him to carry Cassidy, since it was dark and he had assorted clutter in the front yard. The defendant did not have a babyseat for Cassidy (he did have one for Kyle), so Marshall put her in the rear, passenger-side seat and strapped a seatbelt over her.

About 10-15 minutes after the defendant picked up Cassidy, he called Marshall from his car. The defendant said he was at the Dover, NH tolls, and that Cassidy was acting

“weird.” The defendant claimed that Kassidy was drooling and that her head was bobbing back.

About an hour later, at 6:40 p.m., Marshall received a second call from the defendant. He was calling from Rochester, and he told Marshall that Kassidy was still acting strange. The defendant claimed that when he arrived home, he took Kassidy out of his car, and left her standing alone on the driveway while he went to get Kyle out of his carseat. The defendant said that when he returned to Kassidy, he found her lying faced down on the driveway.

At approximately 7:45 p.m., Marshall received a third call from the defendant. This time, the defendant said that he had been playing whiffle ball with Kyle and Kassidy, and that Kyle had hit Kassidy in the eye with a ball.

At 7:55 p.m. (during the defendant’s third call with Marshall), Amanda called the defendant during her break at Old Navy. Amanda said that when the defendant answered the phone, he told her he was already on the line with Jeff Marshall. The defendant hung up and finished his call with Marshall. When the defendant called Amanda back, she asked him about Kassidy. The defendant told Amanda that Kyle had hit Kassidy in the face with a ball. He also gave Amanda the account of Kassidy falling face down when she got out of the car. The defendant told Amanda that she should take Kassidy to the doctor once her bruises went away. However, he also said that he was then giving Kassidy a bath, and that the child was fine. The defendant went on to say “Amanda, um, I’m worried about her. Everytime I’m with her it seems like she always hurts herself or falls down or something. . . . I don’t think I should have anything to do with her anymore.” He also told Amanda again that night that after the bruises go away she should take Kassidy to the doctor. When Amanda hung up the

phone, she was furious, and she told Jennifer that she was sick and tired of the defendant bruising Cassidy's face.

Finally, at about 8:10 p.m., the defendant called Marshall a fourth time. During this call, the defendant told Marshall that Cassidy had fallen back on the floor, and her eyes had rolled up in her head. Marshall recalls that the defendant at first sounded frantic, and kept calling out Cassidy's name. However, as the call progressed, he told Marshall that Cassidy seemed to have returned to normal.

Amanda finished work at 11 p.m., and she arrived home at about 12 midnight. Amanda immediately checked on Cassidy, who was already asleep in her upstairs bedroom. Amanda gave Cassidy a kiss on the cheek, but didn't awake her or turn on the light. Amanda said she only spent a "few seconds" in the room. Amanda said she noticed a circular bruise around Cassidy's left eye which appeared – to her – consistent with the defendant's claim that Kyle hit Cassidy with a ball.

After checking on Cassidy, Amanda went downstairs and saw the defendant, who was in his office doing paperwork. Amanda said that the defendant appeared in a bad mood, and they began arguing when Amanda suggested she worked harder than the defendant. During the argument, the defendant grabbed Amanda's neck and choked her. This action by the defendant provides the basis for the simple assault charge. Amanda went to bed between 1:30 and 2:00 am.

At about 6:15 am on Thursday morning, Amanda awoke when she heard Cassidy crying in her bedroom. Cassidy normally went directly into Amanda's bedroom in the morning. Amanda said that it was unusual for the child to cry when she first woke up.

Amanda went to check on Cassidy and noticed that she “seemed really tired” and was “struggling to stay awake,” which was unusual. Cassidy had a messy diaper, and when Amanda changed Cassidy on her bed she lay still, which also was unusual. Likewise, when Amanda dressed Cassidy, she lay still. Amanda then placed Cassidy on the couch in front of the television while she took a shower and got ready for work.

Amanda does not recall seeing Cassidy eat anything that morning. Nor does she recall seeing Cassidy walk at any time that morning. Furthermore, Amanda said that apart from crying when she first awoke, Cassidy was not making much noise. At about 7:30 am, Amanda left with Kyle and Cassidy. She first dropped Kyle off at his daycare in Dover, and then proceeded to Jeff Marshall’s home in Kittery. According to Amanda, Cassidy slept the entire time they were in the car.

Amanda arrived at Marshall’s home at about 8:00 am. While Amanda was still in Marshall’s bedroom, she pointed out Cassidy’s face and commented: “Her face looks like shit, doesn’t it?” Marshall and Jennifer Conley told police that when they looked at Cassidy, her face was more seriously bruised than on any other occasion.

After Amanda left, Marshall attempted to put Cassidy on the bedroom floor so that Jennifer could observe the trouble Cassidy was having walking. Marshall and Jennifer said that when Marshall tried to lift Cassidy, she let out a pained whimper. Marshall put Cassidy back down in the bed and turned on the television. Jennifer got dressed and left for work at Perfumania at approximately 9:00 a.m.

According to Marshall, once Jennifer left he remained in the living room and watched the election returns on television. Cassidy was still on his bed and had not moved. At approximately 9:45 am, Marshall received a phone call from the defendant. According to

Marshall, the defendant's first words were, "How's Cassidy?" Marshall said that prior to that Wednesday and Thursday, the defendant had never called to inquire into Cassidy's health. The defendant then told Marshall that he had just received a message from DCYF regarding allegations of child abuse. Marshall said that the defendant appeared upset by that message.

About an hour after Jennifer left, Marshall went into his bedroom to retrieve his cat. He glanced at Cassidy, who appeared to be sleeping. Shortly after 12:00 noon, the mail arrived, and Marshall returned to his bedroom to place a stack of letters on his bureau. He then noticed that Cassidy's eyes were rolled back in her head. Marshall said he concluded immediately that something was seriously wrong with Cassidy and he tried to call Jennifer at work.

Marshall called 911 and Cassidy was pronounced dead upon her arrival at York Hospital at approximately 1:30 p.m. The Emergency Room physician who examined Cassidy observed severe, extensive bruising on her forehead, cheek, eyes, chin, neck, and stomach. That physician also observed evidence of hemorrhaging in Cassidy's eyes.

C. Autopsy Results

Dr. Margaret Greenwald, the Maine Chief Medical Examiner, conducted an autopsy on November 10, 2000. Dr. Greenwald concluded that Cassidy died from multiple blunt force injuries to her body, in particular her head and abdomen. Dr. Greenwald also observed other "markers," such as retinal hemorrhage, that suggest either a shaking incident or a sudden impact with a hard surface.

Like the ER physician, Dr. Greenwald observed extensive and severe external bruising throughout Cassidy's head. Autopsy and ER photographs depict those bruises in

horrific detail. Bruises were identified on the back and top of Cassidy's head, as well as on her forehead, eye area, cheek, jaw and neck. Numerous contusions were found beneath Cassidy's scalp. Cassidy also had a large contusion on the inside of her lower lip, consistent with having been struck in that location. Cassidy also had severe bruising in her abdomen, consistent with having been punched or kicked.

In addition to bruising, Dr. Greenwald identified subdural bleeding, consistent with axonal injury to Cassidy's brain. Microscopic testing indicates that the fresh bruises to Cassidy's head and stomach area were inflicted approximately 12 hours before her death. This timeframe is consistent with the defendant's having injured Cassidy on Wednesday night.

After sustaining a fatal brain injury like Cassidy's, a child would appear listless and tired, would lose her appetite, and potentially could experience seizures. The child's condition would then deteriorate, although the rate of deterioration is difficult to predict. Dr. Greenwald said that it is highly unlikely that the child would display normal behavior after the head injury. In addition, there would not be periods of improvement in the child's condition after the injury occurred.

Dr. Greenwald identified various older bruises on Cassidy's body, including on her buttocks and on the back of her head. These bruises appear to be at least one week old. Finally, Dr. Greenwald also identified fractures to Cassidy's left and right funny bone, right hand, and left tibia. Examination of those injuries indicates that those fractures occurred within one to three weeks of Cassidy's death. These injuries are consistent with the defendant's abuse of Cassidy as described by Amanda. Dr. Greenwald will testify that

Kassidy suffered from “battered child syndrome” based on the conglomeration of new and old injuries and the lack of satisfactory accidental explanation for those injuries.

III. CONSOLIDATION OF ALL OF THE CHARGES IS APPROPRIATE

Consolidation of the simple assault charge should be permitted because the defendant’s assault on Amanda Bortner is part of the entire course of conduct relating to the defendant actions and intent on November 8, 2000. Evidence that the defendant was in a bad mood that erupted into violence rebuts an inference that the injury to Kassidy’s face was not caused accidentally by a baseball, as the defendant told Amanda, Jeff Marshall, and the police. Moreover, the evidence of the defendant’s assault on Amanda is relatively uncomplicated, the jury is unlikely to be confused, and the court can instruct the jury that it must consider each charge separately. The evidence is unlikely to confuse the jury or consume much time. There is only one witness to the simple assault – Amanda Bortner.

“Decisions regarding joinder of charges for trial rest within the sound discretion of the trial court.” State v. Cobb, 143 N.H. 638, 655 (1999). “Consolidation is likely appropriate when the charges are related or apparently part of a common scheme. In reviewing the trial court’s determination, [the Supreme Court] must ask whether the evidence in support of each offense was brief, simple and unlikely to confuse a jury, and easily referable to each crime. The critical inquiry is whether the defendant’s right to a fair trial was jeopardized by non-severance.” State v. Hennessey, 142 N.H. 149, 154-55 (1997) (citations and quotations omitted). The Court has held that “cases in which the charges are related or apparently part of a common scheme are simply instances where it would be apparent that consolidation of cases would be desirable.” State v. Bergmann, 135 N.H. 97, 102 (1991). Another factor in determining the appropriateness of consolidation is that evidence of each of

the other crimes would be admissible in trials on each of the charges. The Court has held that “[a] showing that evidence of each crime would be admissible in a trial of the other under Rule 404(b) is not essential, however, to a finding that consolidation was proper, but a showing of admissibility is supportive of consolidation.” Bergmann, 135 N.H at 102.

The scope of the trial court’s discretion to consolidate charges is illustrated by State v. Bergmann. In that case, the trial court consolidated two charges of felonious sexual assault. The defendant was charged with committing the assaults against two different victims approximately four years apart. Id. The New Hampshire Supreme Court upheld the trial court’s decision to consolidate the charges. Id. In reaching this conclusion, the Court noted several factors that would make consolidation appropriate. The Court recognized that it “would be desirable” to consolidate the charges where they form part of a common scheme. Id. Moreover, the Court observed that even though the crimes were committed against different victims four years apart, evidence of each crime would have been admissible in the other trial if the cases had been severed because intent and identity were at issue with respect to both charges. Id. at 102-03; see also State v. Fecteau, 133 N.H. 860, 870 (1991) (affirming lower court’s decision to consolidate AFSA, attempted AFSA, and burglary charges involving two separate victims); State v. Manna, 130 N.H. 306, 309-11 (1988) (upholding consolidation of three charges of driving after suspension, even though charges resulted from conduct occurring over a five-month period); State v. Cote, 129 N.H. 358, 367 (1987) (permitting consolidation of a felony and seven misdemeanor sexual assault charges for offenses occurring on two separate days in two different towns, involving multiple victims, where State called ten witnesses and defense called eleven witnesses, including the defendant).

Consolidation in this case is appropriate because evidence of the defendant's assaults against Cassidy Bortner that lead to her death and his assault on Amanda Bortner on the night before Cassidy's death are both intrinsically part of the events surrounding Cassidy's death. Moreover, all of this evidence would be admissible in a trial of each of the charges separately.

A. Admissibility of Defendant's Assault Against Amanda in Trial For His Abuse of Cassidy

Evidence of the defendant's assault on Amanda is admissible in the trial on the charges relating to his abuse of Cassidy because it is relevant to the defendant's state of mind during the time when he inflicted fatal blows on Cassidy and it is relevant on his consciousness of guilt.

1. To Prove The Defendant's State of Mind

Many courts have recognized that Rule 404(b) applies only to other acts of the defendant that are "extrinsic" to the charged conduct. Where other wrongful acts committed by the defendant are "intrinsic" to the charged crime, they are not excludable under the rule even though they may place the defendant in a bad light. The New Hampshire Supreme Court has recognized that Rule 404(b) does not apply to evidence that is "a material part of the entire course of conduct surrounding the commission of an offense." State v. Martin, 138 N.H. 508, 517-18 (1994). In other words, "[e]vidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive and set-up of the crime, is properly admitted if linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." United States v. McLean, 138 F.3d 1298, 1403 (11th Cir. 1998).

Such evidence is admissible “where it is so blended or connected with the one on trial as that proof of one incidentally involves the other; or explains the circumstances; or tends logically to prove any element of the crime charged.” United States v. LeCompte, 108 F.3d 948, 952 (8th Cir. 1997).

In the case at bar, evidence that the defendant was in a bad mood that erupted into violence on the night that Cassidy sustained the fatal injuries is directly relevant to his state of mind. Dr. Greenwald will testify that many of Cassidy’s injuries were inflicted approximately 12 hours, give or take a few hours, before her death. Cassidy Bortner died around 12:30 p.m. on November 9, 2000. Amanda Bortner got into a fight with the defendant that ended with the defendant choking Bortner between midnight and 12:30 a.m. on November 9, 2000 – approximately 12 hours before Cassidy’s death. Based on the medical examiner’s opinion regarding the timing of Cassidy’s injuries, the defendant’s fight with Amanda was directly within the window of time during which Cassidy sustained her fatal injuries. Evidence of the defendant’s assault on Amanda provides proof of his state of mind during the time Cassidy sustained her fatal injuries.¹ Thus, the assault on Amanda is part and parcel of the defendant’s assaults on Cassidy, and should not be treated as prior bad act evidence. Cf. State v. Lesnick, 141 N.H. 121, 129-30 (1996) (evidence of the defendant’s prior threats against murder victim not “prior bad acts” subject to Rule 404(b)); State v. Steed, 140 N.H. 153, 155-56 (1995) (evidence that defendant had a gun in his possession 17 hours after violating restraining order, and that he tried to conceal that fact was relevant to

¹ Dr. Greenwald’s conclusions indicate that Cassidy sustained a series of injuries that night that cumulatively lead to her death. Dr. Greenwald’s findings indicate that some of Cassidy’s injuries were between 8-12 hours old while others were more than 12 hours old. These findings put the defendant’s violent attack on Amanda directly within the window of time that Cassidy sustained her fatal injuries.

issue of whether he acted knowingly; Court did not address evidence as “prior bad act” evidence subject to Rule 404(b)); Martin, 138 N.H. at 517-18 (evidence that the defendant had previously threatened to kill victim’s pets and that she would suffer a similar fate was not “prior bad act” evidence in trial of charge that defendant coerced victim to have sex with him).

Even if this Court views evidence of the defendant’s assault on Amanda as evidence of “other crimes, wrongs or acts” within the meaning of Rule 404(b), such evidence is still admissible during the trial of the defendant’s murder of Kassidy. Rule 404(b) provides that evidence of other bad acts is admissible to prove “intent . . . or absence of mistake or accident.” On the night of Kassidy’s death, the defendant told the police that he picked Kassidy up from Jeff Marshall’s house and shortly afterward she was acting strange. The defendant claimed that when he arrived home, he took Kassidy out of the car and she fell face-first onto the ground. He then described to the police how he was playing “Mr. Mom” by making Kassidy’s dinner and giving her a bath. He told the police that at some point during the evening that he was playing ball with his son, Kyle, and Kassidy when Kyle hit the ball which struck Kassidy in the face, leaving a big red mark around her eye. The defendant also told Jeff Marshall, Amanda Bortner, and his roommate Travis Hunt that the injury around Kassidy’s eye was inflicted accidentally. He also told police that he read Kassidy a bed-time story and did her ABC’s with her during the evening.

Evidence of the defendant’s assault on Amanda is relevant to rebut the defendant’s version of the events of the evening and to show his state of mind. The fact that the defendant was in a foul, violent mood when Amanda arrived home from work directly rebuts his claim to the police that it was an ordinary evening during which he was playing “Mr.

Mom.” It also rebuts the defendant’s claim that Cassidy was accidentally injured with a ball and that she accidentally fell. Rather, the defendant’s violent mood makes it more likely that he inflicted the injuries on Cassidy in a fit of anger during the evening. See Lesnick, 141 N.H. at 126 (evidence of prior assaults against wife were relevant to show that the defendant had “strong feelings” toward the victim); State v. Shackford, 127 N.H. 695, 700 (1986) (evidence of the defendant’s attack on another person within minutes of his murder of the victim was probative on his intent).

The evidence of the defendant’s assault on Amanda is not unfairly prejudicial. See Lesnick, 141 N.H. at 127 (evidence of the defendant’s prior assault on his wife was not inflammatory). Given the nature and extent of the horrific injuries suffered by Cassidy, the jury will not be overwhelmed by the fact that the defendant choked his girlfriend on the night in question. Id.

2. Evidence That The Defendant Lied To The Police About Choking Amanda Is Relevant Of His Consciousness of Guilt

When the defendant was interviewed by the police on the night of Cassidy’s death, he adamantly denied that he ever assaulted Amanda or choked her. This was a bald-faced lie. The defendant choked Amanda less than twenty-four hours earlier. This evidence is relevant to prove that the defendant was attempting to avoid suspicion that he inflicted Cassidy’s fatal injuries. As mentioned above, evidence of the defendant’s violent mood is also relevant to rebut his claim to the police that he was playing “Mr. Mom,” that he was doing Cassidy’s ABC’s with her, and that he was “babying” her that evening.

Evidence that the defendant minimized and lied about his violent conduct is relevant to consciousness of guilt. New Hampshire has long recognized that “[a] falsehood uttered to

avoid suspicion is relevant to show consciousness of guilt.” State v. Thorp, 86 N.H. 501, 507 (1934); see also State v. Steed, 140 N.H. 153, 155-56 (1995) (evidence that the defendant hid a gun and lied to the police about having a weapon “manifested an effort to . . . avoid suspicion, hallmarks of a defendant’s consciousness of guilt.”); State v. Burley, 95 N.H. 77, 78-79 (1948) (evidence that the defendant lied to the police was admissible as consciousness of guilt).

In State v. Fischer, 143 N.H. 311 (1999), the Supreme Court recently addressed the issue of “false exculpatory statements.” In that case, the trial court admitted evidence that the defendant had instructed a witness to provide false evidence to exonerate the defendant. Id. at 318. The trial court instructed the jury that they could consider the defendant’s actions as consciousness of guilt. Id. The Supreme Court explained that “[a] ‘false exculpatory evidence’ instruction advises the jury that, if a defendant has intentionally made a statement tending to demonstrate his or her innocence, and that this statement is later discovered to be false, then the jury may properly consider whether this constitutes circumstantial evidence of a consciousness of guilt.” Id. at 319.

Fischer clearly held that evidence that the defendant lied to the police to exculpate himself is admissible to prove consciousness of guilt. In the case at bar, it is appropriate for the court to admit evidence that the defendant lied to the police by denying that he ever choked Amanda. The defendant made the false statements to the police to avoid suspicion by minimizing his violent behavior so that the police would not suspect that he was responsible for Cassidy’s death. See Fischer, 143 N.H. at 319. By lying about assaulting Amanda, the defendant “manifested an effort to . . . avoid suspicion, hallmarks of a defendant’s consciousness of guilt.” Steed, 140 N.H. at 155-56.

IV. CONCLUSION

Based on the foregoing, it is clear that consolidation of all of the charges is appropriate. The evidence of the defendant's assault on Amanda is part of a common scheme of abuse, making consolidation of the charges "desirable." Bergmann, 135 N.H. at 102. Moreover, the defendant would not suffer any unfair prejudice from the consolidation of the charges because evidence of all of the defendant's conduct would be admissible in each of the trials. Id.

WHEREFORE, the state of New Hampshire respectfully requests that this Honorable Court:

- (A) Grant the State's Motion To Consolidate Charges; and
- (B) Grant such further relief as may be just and proper.

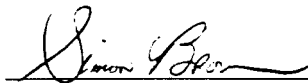
Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys
PHILIP T. MCLAUGHLIN
ATTORNEY GENERAL



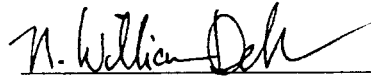
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November 15, 2001

I certify that a copy of the foregoing motion was delivered, in hand, this day to Alan Cronheim, Esq., and Mark Sisti, Esq., counsel of record for the defendant.

A handwritten signature in cursive script, appearing to read "N. William Delker", written over a horizontal line.

N. William Delker