

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

State of New Hampshire

v.

Chad Evans

00-S-889-896-F

ORDER REGARDING TESTIMONY OF AMANDA BORTNER

After a Richards hearing at which Amanda Bortner asserted her Fifth Amendment right against self-incrimination with respect to matters occurring between August, 2000, and November, 2000, the State provided her use immunity, thereby agreeing not to use her trial testimony in a future prosecution against her. The State requests an order requiring Amanda Bortner to testify at the defendant's trial. The defendant and Amanda Bortner object, asserting the possible unconstitutionality of RSA 516:34.

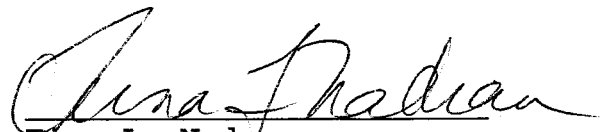
RSA 516:34 provides for so-called "use immunity," vesting the State with the power to request that a witness, who has asserted her privilege against self-incrimination, be ordered to testify in exchange for a grant of use immunity, where the testimony is necessary to the public interest. See RSA 516:34; see also State v. Roy, 140 N.H. 478 (1995). The United States Supreme Court upheld a similar federal statute in Kastigar v. United States, 406 U.S. 441 (1972). Specifically, the court held that the immunity granted by the statute "is coextensive with the scope of the privilege against self-incrimination, and therefore

is sufficient to compel testimony over a claim of the privilege." Id. at 453. In a subsequent prosecution, the State has the burden of proving affirmatively that evidence proposed to be used is derived from a legitimate source wholly independent of the compelled testimony. Id. at 460.

In this case, the court finds Amanda Bortner's testimony is necessary to the public interest because, according to the State's evidence, she was the only person to view the defendant's alleged abuse of Cassidy Bortner. Accordingly, the court orders Amanda Bortner to testify at the defendant's trial and answer all questions posed on both direct and cross-examination.

So ORDERED.

Date: 11/27/01


Tina L. Nadeau
Presiding Justice