

Testimony will stand

Motion to dismiss account by Evans' former cellmate denied by judge

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DOVER — Prosecutors in the Chad E. Evans murder trial received good news Tuesday afternoon when a Strafford County Superior Court judge ruled not to dismiss testimony from his former cellmate.

The ruling came after Cory Merrill's testimony under cross-examination by defense attorney Mark Sisti on Monday included statements related to his guilty plea last April on sexual assault charges.

Merrill denied committing the crime in court Monday, although under oath in April he pleaded guilty in the same courtroom. He is currently incarcerated at New Hampshire State Prison in Concord.

Merrill's testimony had been suspended after he made that statement



Craig Osborne/Staff photographer

CORY MERRILL, a former cellmate of Chad Evans, confers with his court-appointed counsel while being questioned by defense attorney Mark Sisti during the Evans murder trial at Strafford County Superior Court on Tuesday.

as Judge Tina L. Nadeau, Assistant Attorneys General N. William Delker and Simon Brown and defense attorneys Alan Cronheim and Sisti explored the legal issues outside of the jury's view.

Evans, 30, of 191 Milton Road in Rochester, faces one count of second-

degree murder and eight counts of felony assault for allegedly beating 21-month-old Cassidy Bortner and inflicting the injuries that caused her death on Nov. 9, 2000.

New Hampshire Attorney General Philip T. McLaughlin was in the courtroom Tuesday morning when the testi-

mony of Evans' former wife Tristan Evans resumed.

During a hearing on the matter in the afternoon, Sisti cited an immunity agreement signed by McLaughlin and dated Sept. 10, releasing Merrill from criminal penalties on statements he made during the Evans trial.

However, under the advice of his court-appointed counsel, Merrill refused to answer Sisti's questions related to his guilty plea on the felonious sexual assault charges.

Sisti contended that credibility of witnesses is key to Evans' defense and that Merrill's unwillingness to answer questions about his plea after being granted immunity "cuts us off at the knees."

Sisti blamed the state for putting the court in the "uncomfortable" position of dealing with Merrill's unique circumstances.

"The state knows he's a liar and he's still on the witness stand ... I've never seen immunity for a perjurer," Sisti told Nadeau, asserting "the state wants the jury to believe that Chad Evans

☆ **Evans**

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said those things."

During his testimony on Monday, Merrill alleged Evans told him about his role in Cassidy's death when he was first incarcerated at Strafford County House of Corrections in November 2000.

At the time, Merrill was awaiting trial on the sexual assault charges. Evans, meanwhile, spent six days in jail before being bailed on \$100,000 corporate surety.

Merrill alleged that during that time, Evans described spanking Cassidy with his hands and with a belt after Merrill asked why he was so nervous if he didn't have anything to do with the child's death.

Merrill also testified that Evans said if his bail was not secured by his parents' home, he would run.

"As much as the state wants the jury to believe those things, I don't," Sisti said.

He asked Nadeau to strike Merrill's testimony from the record and instruct the jury that the state had offered Merrill immunity and he still refused to answer the defense's questions. If Merrill's testimony was admissible, Sisti asked that he be instructed to answer all questions posed by the defense.

"We are in effect placed in handcuffs and prevented from defending Mr. Evans," he said.

Delker countered that past case law supports admitting Merrill's statements as evidence with general instructions to the jury.

"Allow the defense to argue any implications during closing," Delker said.

Following the hearing,

Nadeau retired to her chambers and returned some time later with her decision.

Nadeau said Merrill's Fifth Amendment concerns were valid as his immunity applied only to one specific issue. Based on the case law, she said Merrill's prior testimony is admissible and the defense did have opportunity to explore Merrill's credibility without asking questions about his prior plea agreement and would be able to ask Merrill additional questions about his exchanges with Evans today.

Merrill is expected to take the stand this morning and the state is in the process of verifying reports that a correctional officer overheard the November 2000 conversation between Merrill and Evans about Cassidy's death.