

CHAD EVANS WRONGLY CONVICTED COMMITTEE rev. 9/22/11

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Why Chad Evans should be granted a new trial:

- o Medical records showing Kassidy had two doctor appointments during period of Child Endangerment and Assault charges not provided to defense.
- o Autopsy report, in Discovery, stating that appointment with Dr. James Timoney was in September 1999, was false. That appointment was on Sept. 11, 2000, which was 41 days into period of charges against Chad Evans. Defense and defense expert were misled by incorrect date.
- o Prosecutors knew, or should have known, that prosecution witness, (Amanda), testimony that she last took Kassidy to a doctor for pigeon-toe exam “in July” was false. (See above.)
- o The assault case of the night of Nov. 8, 2000, on Amanda, should not have been joined with the murder and assault cases on Kassidy, per NH vs. Ramos 2003, NH Sup. Court.
- o Prosecutors knew, or should have known, that prosecution witness, (Medical Examiner), testimony regarding lack of open wounds was doubtful, given blood under ten fingernails, and blood coming from Kassidy Bortner’s nose, according to Officer Creamer.
- o Police and prosecutors should have disclosed presence of reddish brown stain, possibly blood, on Kassidy’s pink jacket, which she wore on morning of her death. Stains should have been tested for DNA.
- o After inmate informant’s testimony was excluded, before cross-examination was conducted on the merits, mistrial should have been declared, as jury heard incriminating allegations without defense response. Informant should not have been permitted to testify.
- o Prosecutors should have disclosed an interview at the Strafford County Jail with Adam Tuttle in November, 2000. He was a cellmate of Chad after Chad returned from his arraignment on Friday, November 10. The prosecutors did provide copies of the interviews of John LaCroix, Eric Cook and Corey Merrill, as all three sought provide the police information in return for a benefit. Adam Tuttle met with two investigators and told them that he believed Chad Evans was innocent, and he told them what Chad had said

in his presence and the presence of his fellow cellmates, Cook and Merrill. Tuttle knew Chad from before his arrest. No report of that interview was provided to the defense.

- o Records of the Portsmouth District Court disposition, one month prior to death of Kassidy Bortner, of charges against the babysitter in Chad's case, of assault and criminal threatening against a third person, was not provided to the defense.
- o The police should have interviewed additional people whom they knew had seen and/or known Kassidy during the period of the indictment, including:
 - Jessica Edmands – close friend of Amanda, and closest friend in Rochester.
 - Chet and Pam Evans – parents of Chad, who saw Kassidy several times, most recently at their home in Keene over the weekend of August 20-21, 2000.
 - Gerri and Steve Harvey - saw Chad and Kassidy on Sunday, November 5, 2000.
 - Jeff Porter - was with Amanda and Kassidy at Portland District Court, Oct. 2, 2000.
 - Bruce and Michele Truel - friends of Chad and Amanda.
- o The police interviewed Chad's high school girlfriend, Barbara Brooks Hamel, with whom Chad had a troubled, off-and-on, immature relationship. The police did not interview Mary Paquette with whom Chad lived in Rochester for three and one-half years. She was later interviewed for the Pre-Sentence Report, where she said that her relationship with Chad was mutually respectful and non-violent.
- o The jury heard New Hampshire State Police Sergeant William Magee testify that one item found in the kitchen trash basket was a package for "Mice Cube" which he believed to be a mouse poison. This was prejudicial, and may have led the jury to believe that Chad Evans and Amanda Bortner were careless about the presence of poisons around their children. In fact, "Mice Cube" is a New Hampshire-manufactured non-toxic, humane trap for mice, which can then be released outdoors.
- o Ineffective assistance of counsel:
 - o Photographs of bruise-free Kassidy during period of charges were not sought nor presented at trial. Approximately 20 such photographs existed at time of arraignment, including one taken 20 days before Kassidy's death.
 - o No video records were sought. The Bortner/Conley family had at least one video of Kassidy, walking.
 - o No medical records for Kassidy were sought or presented at trial.
 - o No medical records, including optometrists, were sought for Amanda Bortner. Her vision was 20/800. The dates of such appointments would have helped establish a timeline. Also, they would have been occasions when Amanda likely took Kassidy to public places.
 - o Failure to obtain the records for Amanda and Kassidy Bortner as clients of the Maine Dept. of Human Services, and, in particular, its ASPIRE program. Amanda stated in

- her “My Life Story” that she brought Kassidy with her during frequent visits/ appointments to DHHS in Sanford during October, 2000, and perhaps into November.
- o Discovery documents had information about blood underneath Kassidy’s fingernails and DNA tests of that blood, and blood coming from Kassidy’s nose, but the defense did not present or discuss or argue at trial.
 - o Jury was not told Chad brought Kassidy to a family event in Belmont four days before she died, November 5, 2000, where she was observed, socially, by an elementary school nurse & five others. On the way to that event, Chad brought Kassidy into the Dunkin Donuts in Alton and the sales person was especially attentive to Kassidy. That salesperson could have been a witness, and a stronger witness if she had been interviewed in 2000 or early 2001.
 - o No timeline presented to jury to show important events of Kassidy’s life with Chad. Without such a timeline, the defense against the chronologically sequential assault charges was severely hampered. (The only Second Degree Assault charge with a Not Guilty verdict was for the during a period between October 1-8, 2000 which included the period of the only photograph in the case, a prosecution exhibit dated October 1, 2000, of a healthy Kassidy.)
 - o Only one witness testified for defense, Dr. Michael Baden, a forensic pathologist.
 - o Chad’s Financial planner not called to testify re: Chad conversation about IRA for Kassidy. Chad’s sister discussed such plans in her police interview, November 9, 2000.
 - o Daycare/school director not called to testify re: Chad conversation, a few days before Kassidy’s death, about enrolling Kassidy in her school.
 - o The only defense alternative theory was that Jeff committed murder, and Jeff was directly accused of such murder in the courtroom. Instead, the defense should have presented the facts about Jeff and his care of Kassidy to show the jury how the evidence against him was just as strong as it was against Chad, and that evidence was weak. Without directly accusing Jeff of murder, the defense could have presented the jury with the less provocative choice of whether the evidence against Chad was so much stronger than against Jeff as to warrant a finding of guilty beyond reasonable doubt.
 - o Defense presented no discussion of “easy bruising” as Kassidy’s medical condition.
 - o Insufficient attention given to type of ball (Tee-ball) hitting Kassidy on November 8, 2000.
 - o Defense failed to fully explore the brain injury effects of known accidents, including a fall from babysitter’s truck which caused two large bumps on top of Kassidy’s head 14 days before death, and including the hit from a Tee-ball the night before her death.
 - o There no mention of other possible causes of death, such as disease, chronic condition or toxins.
 - o Despite single alternative theory of babysitter culpability and babysitter’s assertive testimony, and despite showing to jury of videotape of Chad's interrogation, and despite decision not to call other defense witnesses, Chad was advised not to testify.

- o No witnesses, discussion, or argument that Chad's holding Kassidy's face was in *loco parentis*, and permitted by Amanda, and was privileged. It was not discipline, *per se*.
- o Cross-examination of babysitter omitted several instances of accidents and other conduct which showed babysitter's shortcomings.
- o Cross-examination omitted evidence that Chad had told babysitter around October 23, 2000 that his landscaping contracts with Chad's McDonalds' restaurants would not be renewed, giving babysitter a motive for revenge.
- o Failure to question whereabouts of Kassidy's red pajama tops (if used), Sippy cup, and diaper bag, which were worn by Kassidy or taken to babysitter on morning of her death.
- o Failure to establish for the jury exactly what Kassidy was wearing on November 9 and how and when those clothes were removed by Jeff.
- o Failure to respond to excessive and highly prejudicial pretrial publicity, including newspaper editorial.
- o Failure to request a change in venue, given the prejudicial pretrial publicity.
- o Failure to recall any of the prosecution witnesses, especially Amanda Bortner, as defense witnesses, to obtain their responses to subsequent testimony. The story of Amanda, Kassidy and Chad was told by witnesses scheduled by the prosecutors.
- o Failure to verify with the Maine Poison Control hotline the specifics of the call by Jeff and/or Jennifer when Kassidy swallowed Windex during the period October 26-28.
- o Character evidence not presented to jury.
- o Failure to present to the jury the facts that Chad recommended to Amanda that she take Kassidy to doctor for toe-in problem and on other occasions, to remove a wart from her right index finger. He was not blocking medical attention for Kassidy.
- o Defense did not sufficiently argue, and present expert witnesses, that Amanda's testimony was in the nature of "false confession." Her recantation was more truthful.
- o Defense did not ask about plans made by Amanda and her mother, Jacqueline, for Kassidy to be babysat by Jacqueline over the weekend of November, 11-12, 2000, when Chad and Amanda were in Maine for a business meeting. Chad and Amanda were not hiding Kassidy at that time.
- o Failure to obtain and utilize the records of Chad's counseling sessions with Gray Fitzgerald, which ended in the Spring of 2000.

Why the Chad Evans Case must be reinvestigated :

- o **ALL OF THE ABOVE statements**, plus the following which might not be admissible reasons for a new trial, but which warrant consideration, and fair prosecutorial discretion, by the New Hampshire Attorney General.....
- o Chad Evans loved Kassidy Bortner. He was planning to marry Amanda and raise Kassidy to adulthood.

- o Chad had a biological son and a stepson and was and is an excellent father. The jury was precluded from hearing evidence of his parenting skills.
- o Chad Evans never hit, nor even spanked Kassidy Bortner. He didn't spank his own son or stepson either. He did not believe in spanking as a method of discipline.
- o The police established their theory of the case within about seven hours of Kassidy's death and then gathered evidence to prove theory, rather than evidence to find causes of death. During that seven hours, they told Chad and others that he was the primary suspect.
- o Chad Evans passed a voice-stress analysis lie detector test in July, 2010. The babysitter was scheduled for a lie detector test for November 14, 2000, but he declined. Chad is the only person in the case to have taken a lie detector test.
- o SCAN (Scientific Content Analysis) of a statement in the case supports Chad's innocence.
- o The case against Chad began and should have ended with his holding Kassidy's face in order to obtain eye contact, which sometimes caused bruises.
- o Chad was elected to the Keene Board of Education in 1991, a year after graduating from high school. He loved children and helping them grow.
- o In 1997 Chad received a "hero" award by the Union Leader and Governor Shaheen for his 1996 lifesaving rescue of three men.
- o Chad was a successful manager of several McDonald's restaurants and coached many young people into becoming better employees and citizens.

prepared by Morrison Bonpasse, June 4, 2011.