

# Bail: Alleged crime is just one factor in amount set

## Evans case prompts examination of criteria

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ROCHESTER — A local man charged with beating 21-month-old Cassidy Bortner to death was free on bail less than a week after his arrest despite the fact that being arrested constituted a violation of his probation for a prior domestic assault conviction.

Facing a second-degree murder charge and multiple counts of felony assault in connection with the child's death, bail for Chad E. Evans, 29, with a last-known address of Milton Road in Rochester, was set at \$100,000 cash or surety just days after his arrest. He was able to meet the surety requirement two days later and remains free pending his trial in November.

Two months after Evans' arrest, Theodore Hedberg, 49, of Fords Landing in Dover was charged in that city with two felony charges of reckless conduct and one misdemeanor count of resisting arrest.

The charges came after Hedberg allegedly tried to run down two police officers — a crime that resulted in no injury. Hedberg's bail was also set at \$100,000.

On the surface, murder and assault charges pending against Evans and the reckless conduct charges against Hedberg would seem to warrant different bail amounts.

But, according to George Wattendorf, a prosecutor for the city of Dover, the severity of the crime committed is only

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one piece of the bail puzzle. Comparing the bail set in each case is, essentially, like comparing apples to oranges.

In each case, judges are expected to consider a suspect's unique circumstances and always presume the innocence of the accused. The severity of a crime is not necessarily the deciding factor for the judge setting bail, but rather one factor in the decision.

"Bail is really established for two reasons. First, it ensures an individual will appear in court and second to protect the community if you've got a potentially dangerous individual," Wattendorf said when asked to explain how bail amounts are established in New Hampshire.

Speaking generally, Wattendorf said judges have certain criteria to consider while deciding whether to grant bail and what amount to set.

"And there is the presumption of innocence until the person is convicted," Wattendorf stressed. An indictment is not an indication of guilt; rather, it means a grand jury has found sufficient evidence to warrant a trial.

When it comes to a murder charge in New Hampshire and how bail is determined, Wattendorf explained there is a significant difference between the first- and second-degree offenses.

"In all other degrees, a person has a constitutional right to be eligible for bail with the exception of first-degree," Wattendorf said.

He said judges look at an accused individual's prior history and such factors as ties to the community, employment, property and family can lower a bail amount. Such factors, Wattendorf said, would make it unusual for an individual to flee and risk losing such strong ties.

In Evans' case, at the time he was charged he was placed on leave from his long-term position as a district manager for McDonald's Corp. Evans has reportedly owned his Milton Road residence for several years, and has lived in Rochester since the 1990s. In addition, his ex-wife, Tristan Evans, resides in Dover with at least one child who court documents state is Evans' son.

After looking at the likelihood an individual will show up for court proceedings, Wattendorf said, the judge will consider the individual's history of violence to determine whether the accused is prone to violence.

For example, Damian W. Toomey, 18, of 14 Moors Court in Rochester was charged with attempted second-degree murder in Dover last month and his bail was set at \$100,000 cash or surety. Toomey allegedly

slashed a 24-year-old man's throat, but the victim was listed in stable condition just hours after the attack.

The case against Evans involves the beating death of a toddler, a second-degree murder charge, multiple assault charges and a past history of domestic violence convictions. However, Evans also had his bail set at \$100,000 cash or surety.

Toomey was on probation for a felony burglary charge at the time of the stabbing. At the time of Cassidy's death, Evans was also on probation after pleading guilty in March to two counts of simple assault against Tristan Evans.

While anyone but an individual charge with first-degree murder is eligible for bail, according to state law, Wattendorf explained that bail set in the range of \$100,000 can be selected to keep a person behind bars.

"Often times, a high bond like that keeps someone in jail — most people don't have those resources," Wattendorf said.

When Evans was first arraigned on a manslaughter charge in connection with Cassidy's death and with a probation violation on Nov. 17, a Rochester District Court judge set his bail at \$50,000 on the manslaughter charge and \$50,000 on the probation violation.

In December, a Strafford County grand jury indicted Evans on a second-degree murder charge and a lengthy list of assault charges involving Cassidy. At that time, a Strafford County Superior Court judge kept the total sum of Evans' bail at \$100,000 — but attached the sum to the indicted charges, rather than the manslaughter and probation violation. In so doing, Evans was allowed to remain out of jail on the bond posted previously at Rochester District Court.

Evans' bail agreement includes no specific restrictions regarding his contact with children.

"A prosecutor can recommend conditions to the court," Wattendorf said, noting judges "have pretty broad power when setting the conditions of someone's bail."

When Evans was granted bail, the conditions imposed included no contact with Cassidy's mother, 19-year-old Amanda Bortner. Bortner was Evans' live-in girlfriend for the two months preceding Cassidy's death. Bail conditions also specified Evans could not have contact with other state witnesses in the case.

Special Senior Assistant Attorney General N. William Delker confirmed in an interview with Foster's Daily Democrat that there are no con-

ditions prohibiting Evans to have contact with children as part of his bail agreement.

"I really can't comment on that," Delker said when asked why the state had not requested that be a condition of Evans' release from jail.

Delker also said Amanda Bortner has not been charged with a crime, but could not comment on whether future charges might be brought against her based on her statements to police that she knew of the abuse her child endured in the weeks leading up to her death.

Bail for Evans was posted through Denis Bail Bonds of Raymond on Nov. 22 after Evans spent six days in the Strafford County House of Corrections.

Although the bail company is not permitted to release the name of the individual who posted Evans' bond, agents for the company have been able to explain the difference between cash, surety and personal recognizance bail.

Sharon Denis, who owns and runs the company with her husband Brian Denis, was the first licensed female bondsman in New Hampshire.

Personal recognizance bail allows a defendant to be released without posting bail, Denis explained, with an understanding that the court is

entrusting the individual to return as required.

If cash alone is requested, she explained, "Cash bail is exactly what the court wants."

In a case such as Evans', in which a bail amount is set and cash or surety is required, the individual can either post the full amount in cash or approach a bail bond company for assistance.

"Should the defendant not appear for court, we will be responsible for bringing him to justice or paying the bond," she said.

When bail is set at \$100,000 cash or surety, for example, the defendant or his agent must come up with a \$10,000 fee for the bail bond service.

"You're buying a \$100,000 bail bond, \$10,000 is just the fee — collateral is on the whole sum," she explained, noting her company accepts only cash or titled and deeded real estate as collateral for the bond.

Since Denis Bail Bonds posted the \$100,000 bond for Evans' release, he was in effect released after paying a \$10,000 fee and supplying collateral totaling \$100,000.

When asked whether Evans' bail seemed low considering the severity of the crime he is accused of committing, Delker again said he could not comment.