

Evans' bail questioned in baby death case

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ROCHESTER — A former Keene man charged with beating 21-month-old Cassidy Bortner to death was free on bail less than a week after his arrest, even though the arrest amounted to a violation of his probation for a prior domestic-assault conviction.

Bail for Chad E. Evans, 29, who was facing a second-degree murder charge and multiple counts of felony assault in connection with the child's death, 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, awaiting trial in November.

Two months after Evans' arrest, Theodore Hedberg, 49, of Dover was arrested in that city on 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 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 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 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 in Rochester for several years, and has lived in Rochester since the 1990s. In addition, his ex-wife, Tristan Evans, lives 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 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 history of domestic-violence convictions. However, Evans' bail was also 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; he had pleaded guilty in March to

two counts of simple assault against Tristan Evans.

While anyone but an individual charged 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.

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

When Evans was arraigned initially Nov. 17 on a manslaughter charge in connection with Cassidy's death and with a probation violation, 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 Superior Court grand jury indicted Evans on a second-degree murder charge and a lengthy list of assault charges involving Cassidy. At that time, a 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. When he did so, 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 prosecution witnesses in the case.

Special Senior Assistant Attorney General N. William Delker confirmed in an interview with Foster's Daily Democrat that Evans' bail agreement contains no conditions prohibiting contact with children.

Why not? "I really can't comment on that," Delker said.