

Kassidy's accused killer remains free, despite parole violations

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ROCHESTER — An accused child killer remains a free man because the New Hampshire attorney general's office fears jeopardizing the murder case against him.

Chad E. Evans of Rochester, indicted in the November murder of 21-month-old Kassidy Bortner, was released on bail a week after his arrest, despite several violations of the probation imposed on him after a previous domestic assault.

In light of the pending murder and assault charges against Evans, 29, a probation violation hearing would normally require him to serve his one-year domestic abuse sentence in jail. However, the proceeding has twice been postponed at the request of defense counsel with no objection from the prosecution. After three months, it has been rescheduled for Wednesday at Rochester District Court.

It is unknown whether the probation hearing will go on this time because the attorney general's office has indicated it does not want to risk the disclosure of information that may taint the murder trial.

Kim Firth, project coordinator of the Strafford County Domestic Violence Project, said she had never heard of a probation hearing being delayed four or five months.

After consulting with Evans' probation officer, Kevin Callaghan, Firth said it is exactly the overlap between the probation violation case and the pending murder trial that is contributing to the delay. Although she could not speak in detail, Firth said the state must be cautious about the probation violation trial in order to protect the integrity of the November murder trial. Of example, a defense attorney could request information or ask questions at the probation violation hearing that would bring to light details related to the murder investigation and trial.

Firth said probation violation hearings are usually handled by probation officers at the district court level. Before Evans' case, Firth could not recall a time the New Hampshire attorney general's office was involved in a probation violation hearing.

"I guess in my experience what I've found is that (district) court is really responsive to the requests of probation officers," Firth said when asked if such a delay in a probation violation trial was common. Normally, if someone on probation is arrested, the probation issue is dealt with swiftly and the accused often ends up behind bars.

The fact that Evans stands accused of murder is the very thing that may be keeping him on the streets. New Hampshire Special Senior Assistant Attorney General Christopher Carter said he could not comment on whether it was common for a probation violation trial to be repeatedly postponed as it has been in Evans' case. He said such issues are rarely handled by the attorney general's office.

"Our main focus is prosecuting the charge of second-degree murder and the other charges pending against Chad Evans," Carter said when asked why the state had not objected to the defense motions to postpone the hearing. "The probation violation is not key to our case," Carter said. (What is)

Carter said the Department of Probation is committed to seeing that Evans complies with the terms of his domestic violence sentence and probation. While the attorney general's office supports the department's effort, Carter said its involvement in the probation issue is strictly the prosecution of the murder case. Evans was indicted by a grand jury in December on one count of second-degree murder and multiple counts of felony and misdemeanor assault against the 21-month-old girl. An indictment is not an indication of guilt; rather, it means a grand jury has found sufficient cause to warrant a trial.

Kassidy and her mother, 19-year-old Amanda Bortner, resided with Evans at 191 Milton Road in Rochester for about two months before the toddler's death. Kassidy was pronounced dead at York Hospital in York, Maine, on Nov. 9 after receiving what officials have described as a blunt force injury to her head. Evans, meanwhile, has been free on \$100,000 corporate surety bail.

In the midst of the felony murder and assault charges raised against him, Evans was also detained on a probation violation stemming from his March 2000 guilty plea for domestic assault against his former wife, Tristan Evans of Dover. In that plea agreement, Evans' one-year jail sentence was suspended and he was free on probation with a number of conditions, including not being arrested for any crime.

In the probation agreement Evans signed at the time his sentence was set last year, he agreed to "be of good conduct, obey all laws, and be arrest free."

In addition, he agreed to "not receive, possess, control or transport any weapon, explosive or firearm or simulated weapon, explosive or firearm."

When police searched Evans' Milton Road residence after Cassidy's death, live rounds of ammunition were found on the premises. When the probation violation was discussed at Evans' initial arraignment in Rochester District Court, the prosecution contended that live ammunition is considered an explosive. The defense argued that point and stated an arrest is not equal to a conviction and should not require that Evans' probation be revoked.

Almost five months later, the issue has not been settled.

Despite Evans' bail conditions, the probation agreement indicates his arrest on any charge is reason enough to revoke probation.

And while the state must protect the integrity of the upcoming murder trial, Firth indicated there is reason to be concerned when an individual on probation for domestic abuse stands accused in a case of this magnitude.

"In terms of public safety issues, we believe the conditions of the defendant's bail are sufficient to ensure he appears in court and provide for the public's safety," Carter said. "We've received no information to date that he's not complying with the terms of his bail. If we were to receive such information, we would pursue it aggressively."

Evans' bail conditions include no restriction on his contact with children — even though the state alleges Cassidy's death came only after Evans repeatedly abused her by hitting her, grabbing her face and throwing her into walls.

Evans has a 3-year-old son from his marriage to Tristan Evans, the former wife he abused in 2000. The day before Evans was charged in connection with Cassidy's death, Tristan Evans made a request for a no-contact order between Evans and his son.

The motion came at the request of the Division of Children, Youth and Families and would have stopped Evans' visitation until the criminal and civil investigations into Cassidy's death were completed. Instead, it was modified by Judge Peter H. Fauver to allow supervised visitation at the discretion of the petitioner, Tristan Evans.

And while the probation violation issue remains unresolved, Evans has not been charged with breaking the federal law that bars anyone convicted of the crime of misdemeanor domestic violence from possessing firearms or ammunition. By possessing ammunition, **an individual previously convicted of domestic violence is subject to federal criminal penalties up to 10 years in prison and a \$250,000 fine.**

According to Title 18, U.S. Code, Section 922(g)(9), "a misdemeanor crime of domestic violence is defined as any offense — whether or not explicitly described in a statute as a crime of domestic violence — which has, as its factual basis, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by the victim's current or former domestic partner, parent, or guardian. This includes convictions in any state or at the federal level."

Evans' guilty plea to the charge of simple assault against Tristan Evans is equal to a conviction, according to the federal law. Carter said no federal charges against Evans are being contemplated at this time.

Dover City Attorney George Wattendorf, an expert on domestic violence issues, said enforcement of the federal law can be problematic because New Hampshire state law only makes it illegal for convicted felons to possess firearms. To Wattendorf's knowledge, the federal law is rarely invoked in domestic violence cases.

Evans was charged at the district court level with manslaughter on Nov. 16 and then indicted with murder by a Strafford County Superior Court grand jury about one month later.

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