

Evans asks to toss guilty plea in assault

Former Rochester man facing murder charges



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Democrat Staff Writer

ROCHESTER — Chad Evans' probation violation hearing was postponed again, and if his defense team gets its way the court will throw out the domestic assault guilty plea that put him on probation in the first place.

Evans, 29, of 191 Milton Road in Rochester and more recently of Keene, faces charges of second degree murder and felonious

assault in connection with the November death of 21-month-old Cassidy Bortner. Cassidy's mother, Amanda Bortner, was Evans' live-in girlfriend at the time of the child's death.

About eight months before Cassidy's death, Evans pleaded guilty to assaulting then-wife Tristan Evans.

Evans was in Rochester

☆ **Evans**

Please turn to Page 2

Craig Osborne/Staff photographer
CHAD EVANS, left, confers with his attorney, Alan Cronheim, during a probation violation hearing at Rochester District Court on Friday.

District Court Friday morning with his attorneys Alan Cronheim and Mark Sisti on two separate matters. First, Evans was scheduled to be sentenced on a charge he violated the terms of his March 2000 domestic assault probation by allegedly possessing live rounds of ammunition. The ammunition was found in November when his Milton Road home was searched as part of the investigation of Cassidy's death.

During the same proceedings, Cronheim and Sisti asked Judge Franklin Jones to vacate the underlying domestic assault conviction on which the probation is based. The attorneys cited case law indicating Evans should have been told in court at the time he agreed to his guilty plea that he would not be able to possess firearms or ammunition.

Assistant County Attorney Hope Flynn, who is representing the state in the ammunition violation matter, argued that the loss of the right to bear arms and the probation violation that followed from it are secondary consequences to the domestic assault plea. Whether such secondary ramifications are discussed in open court at the time of a plea hearing is "not a valid

ground for withdrawing the plea," she said.

The domestic violence charge Evans pleaded to was one of simple assault against Tristan, who is the mother of Evans' one biological child. Tristan was legally separated from Evans at the time Amanda and Cassidy began living with him in Rochester at the end of August. Their divorce became final in November.

Flynn stressed that Evans has not satisfied his "burden of proof" to convince the court he was unaware of the stipulations of his probation.

"The defendant never maintains he did not know... He had several weapons seized from him at the time," she added, noting Evans collected weapons at the time of his domestic assault conviction.

Jones gave the state five days to enter any additional information in the matter and the defense 10 days to respond. He will then take the matter under advisement.

Prior to hearing both sides' arguments on withdrawing Evans' guilty plea, Jones agreed to again postpone the probation violation hearing itself.

Cronheim told Jones that he had just received certain discovery information from the state one day prior to the hearing, and requested more time to review the information and contact potential witnesses. Cronheim added that Evans now lives in Keene, and spent the night before the court proceedings "with his son" and so he was unable to review the

information himself.

In pushing for another postponement of the probation hearing, Cronheim said he and Sisti "have a duty to Chad to review this material with him to ensure he has a fair trial."

Flynn told Jones that the Evans defense team had the recent information "in one form or another" since the April discovery material deadline.

"This is a sentencing hearing. It's a probation violation, not a criminal trial," Flynn said, asking Jones to allow the proceedings to move forward.

Jones asked Cronheim to give him a "date certain" when he could review the information and be prepared to move forward with the proceedings and set the new date as Sept. 7.

Flynn was joined in court by Evans' probation officer Kevin Callaghan.

Evans was escorted to and from the courtroom by his team of lawyers, and a small gathering of family and friends attended to show support for Evans. Following the proceedings, Evans looked pleased and was smiling as he stood with the three women and four men outside the courthouse.

According to court documents Evans, who has been free on bail since November, threw beat Cassidy for about four to six weeks prior to her death.

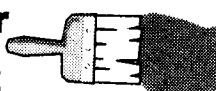
The state has also maintained Evans violated his probation by being arrested, as probation agreements state an individual must remain of good behavior and "arrest free." However, that portion of the probation issue has been postponed until after Evans stands trial for Cassidy's murder this winter.

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