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Judge says Evans' past to be excluded from trial

By JENNIFER L. SAUNDERS

Democrat Staff Writer

DOVER — A Strafford County Superior Court judge decided Wednesday that most aspects of Chad E. Evans' personal life and past behavior are inadmissible at his trial.

Evans, 30, faces a charge of second-degree murder and multiple counts of assault in connection with the November 2000 death of Cassidy Caitlyn Bortner. Jury selection for the trial began Tuesday.

The 21-month-old child was the daughter of Evans' girlfriend, Amanda Bortner, and the three shared Evans' home on Milton Road in Rochester for about two months prior to Cassidy's death.

Judge Tina L. Nadeau released her decision Wednesday afternoon on nine motions submitted by the state and defense in preparation for the trial — including several related to Evans' character and that of witnesses expected to testify.

Nadeau granted a motion filed by defense attorneys Mark Sisti and Alan Cronheim on behalf of Evans to "exclude certain evidence as inadmissible character evidence" — including his relationship with his former wife, Tristan Evans; his prior criminal record and probation; and his alleged drug use.

In granting a request within the motion not to allow certain information related to Evans' sexual interests to be presented as evidence, Nadeau wrote of a "high likelihood that the jury will draw unfavorable inferences about the defendant's character once they hear he is a customer of an adult bookstore."

The state could potentially present related information during the trial if "the defendant opens the door to such evidence."

Nadeau granted a motion filed by N. William Delker and Simon Brown of the New Hampshire attorney general's office to admit as evidence contact between Bortner and Evans after he was charged with murder in connection with Cassidy's death.

Evans' \$100,000 corporate surety bail was revoked in August after a Strafford County Superior Court judge ruled he and Bortner had been seeing each other in direct violation of a court order.

In her ruling, Nadeau stated that shortly after Evans' release on bail in December, "the defendant lived with Bortner and bought her groceries and other personal items ... the defendant's contact, especially in light of the court's order, is relevant to prove the defendant's consciousness of guilt and to demonstrate Bortner's bias."

The state's position is that Evans was willing to violate the court order to influence Bortner's testimony in his favor.

"Such evidence is highly relevant and is not substantially outweighed by the danger of unfair prejudice," Nadeau wrote in her order.

The state's motion to admit statements Bortner made as a "co-conspirator" to endanger Cassidy's welfare was denied. Bortner told numerous friends and family members about her efforts to hide Cassidy's bruises and injuries, according to Nadeau's order.

If a conspiracy did exist between Bortner and Evans, however, Nadeau said the court "cannot find that Bortner's proffered statements were made in furtherance of the conspiracy," adding most of Bortner's statements offered excuses for her behavior or that of Evans.

In total, Nadeau granted four of the state's motions, denied one and reserved making a decision on a motion to admit "excited utterances" made by Bortner. Nadeau will rule after an evidentiary hearing can be held during the trial.

The hearing will be held without the jury present, according to Nadeau's order. After Cassidy's death, Bortner is cited in affidavits as telling police she knew Evans was abusing her daughter and agreed to cover up the abuse and withhold attention from the child.

On the day Cassidy died, Bortner drove the child from Evans' Rochester home to the Kittery, Maine, residence of Jennifer Conley and F. Jefferey Marshall and went to work. Cassidy died a few hours later.

Nadeau ruled in favor of the state's request to exclude any evidence related to Evans' "good character and/or allegedly good treatment of children other than the victim."

In her order, Nadeau wrote that Evans would be allowed to introduce evidence showing how he was able to assess Cassidy's overall well-being as well as evidence of others' observations of his treatment of the girl.

However, she wrote, Evans will not be able to introduce any testimony about his parenting of any other child. Evans has a

son from his previous marriage.

"Whether or not the defendant abused or did not abuse other children is not relevant to the issues of the defendant's guilt regarding the treatment of Cassidy Bortner," Nadeau wrote.

She also granted the state's motion to preclude from the trial evidence related to Marshall's past. The order states that a 1998 criminal threatening conviction against Marshall, who was with Cassidy at the time of her death and will testify for the prosecution, does not meet admissibility requirements for the trial.

The seventh motion filed by the state, which sought to exclude evidence Cassidy may have ingested window cleaner prior to her death, had been withdrawn prior to Nadeau's ruling.

Nadeau granted the defense's request to strike specific about Cassidy's age from the assault charges against Evans. In making her decision, Nadeau said the indictment already includes the undisputed allegation that Cassidy was under the age of 13 at the time of the alleged assaults.

Nadeau ruled affirmatively on the state's request to consolidate the nine charges pending against Evans related to Cassidy with one simple assault count alleging he placed his hands on Amanda Bortner's neck during an argument.

In addition to the sole count of second-degree murder, Evans faces two counts of first-degree assault and six counts of second-degree assault involving Cassidy in addition to the simple assault charge involving Bortner.

In granting the state's motion, Nadeau cited case law that indicates "consolidation is proper when the evidence in support of each charge is brief, simple, unlikely to confuse the jury and easily referable to each crime."

In her order, Nadeau wrote that Evans conceded "the facts surrounding the defendant's alleged simple assault are inextricably connected to the underlying facts of the assault and murder charges" but had opposed the consolidation, claiming he would "suffer prejudice" if the jury were to hear information alleging a misdemeanor assault against Bortner.

In ruling in the state's favor, Nadeau said the jury will be instructed that charges by themselves are not evidence.

"The court must presume that the jury will follow its instructions and return verdicts not based on the existence of charges, but consistent with the evidence presented," she wrote.

Jury selection will resume at 9 a.m. Monday. The evidentiary portion of the trial is scheduled to begin either Tuesday or Wednesday and is expected to last two weeks.