

THE STATE OF NEW HAMPSHIRE

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STRAFFORD, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V. .

CHAD EVANS

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00-S-888-
00-S-896,
et al.

DEFENDANT'S OPENING STATEMENT

Excerpt of proceedings in the above-entitled matter,
which came on for Jury Trial at the Strafford County
Superior Court, Strafford County Justice and
Administration Building, County Farm Road, Dover,
New Hampshire, on Tuesday, December 4, 2001, before
the Honorable Tina L. Nadeau, Presiding Justice.

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APPEARANCES:

**For the State
Of New Hampshire:**

OFFICE OF THE ATTORNEY
GENERAL

By: N. William Delker, Esq.
and Simon R. Brown, Esq.
Assistant Attorneys General
33 Capitol Street
Concord, NH 03301-6397

**For the Defendant,
Chad Evans:**

TWOMEY & SISTI
By: Mark L. Sisti, Esq.
and Alan J. Cronheim, Esq.
78 Fleet Street
Portsmouth, NH 03801

TUESDAY, DECEMBER 4, 2001

(2:54 p.m.)

(Whereupon, the following took place in open court,
in the presence of the jury)

THE COURT: Mr. Sisti, whenever you're ready.

MR. SISTI: Thank you, your Honor.

I'm gonna set up here a little bit. I've got quite a bit to say to you, as well. And we know this is not going to be your typical case, nor is it gonna be something that you watched on Court TV or that you read in a book. Folks, this is real, and this is the true test of the criminal justice system; this is the true test of what a juror is all about. This is the real deal.

Now, Chad is not guilty. And Alan and I will try this case as fairly and as ethically as humanly possible, but we're not going to sit back and listen to garbage being thrown against the wall and see what sticks. We are here to seek justice. We are here to hear real witnesses testify under oath from that stand as to who killed Cassidy Bortner. And, folks, I'm gonna tell you something: It is five minutes to three. It is November—it is December 4th, 2001. Chad Evans did not kill Cassidy Bortner.

There were many choices that were made in this case. Some of them were made within just a couple of hours of Cassidy's death, not with due deliberation, not with judgment, not with investigation, not with the help of medical experts, not with an autopsy report, not with

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HAMPTON, NEW HAMPSHIRE 03842-4030
(603) 926-6131**

1 the barest of police investigation. Oh, there were many choices that
2 were made, and if you want to point a finger, folks, if you really
3 want to know what went on in this case, law enforcement made a
4 choice early in this case, before they knew anything about their little
5 star witness, Jeffrey Marshall, and they picked Chad, because he was
6 convenient, because he was easy.

7 Let me just get over a couple of other things before we start.
8 Two photographs were shown to you. That is Kassidy, November
9 9th, 2000. That's Kassidy. You're going to be seeing a lot of
10 photographs like this, and you're going to be hearing a lot of medical
11 testimony like this. Do not, I'm begging you, do not allow the
12 graphic nature of the photographs or the testimony cause you to lose
13 track of what is going on in this courtroom.

14 The prosecution made their choice. You know what, we do
15 agree on something. That's a beautiful child, beyond a reasonable
16 doubt. That's Kassidy Bortner, and that's six weeks—six weeks—
17 that's from the prosecutor—six weeks before her death. In this
18 photograph, folks, Kassidy Bortner had already lived almost three
19 months with Chad Evans. And you will find out that only four weeks
20 before her death, she was—she began to go to Jeff Marshall's for
21 babysitting duty. Four to five weeks before her death. Folks, that's
22 just not a coincidence.

23 Folks, you are gonna have one of those rare opportunities, you
24 are going to see the killer of Kassidy Bortner, and you're going to

1 see Jeff Marshall, over six feet tall, over 200 pounds, walk through
2 that door and walk up to that stand, and you're gonna see Jeff
3 Marshall raise his right hand and swear to tell the truth beyond a
4 reasonable doubt. And by the time this case is over, you're gonna sit
5 back and you're gonna deliberate and you're gonna say, Hey, Jeff,
6 was that the hand you used to beat Kassidy Bortner so badly through
7 her diaper that she was black-and-blue from her buttocks down to
8 her knees? Was that the same hand that you used to inflict the last
9 injury, the most fatal injury, on Kassidy Bortner? Is that what you
10 used? Is that the hand you used to start the decline of Kassidy
11 Bortner? Is that the hand you claimed that you caught Kassidy
12 Bortner falling from the back of your truck to the ground? Is that
13 your claim? And when he walks to the stand, at the end of the case,
14 you're gonna say, Were those the legs you used to step on Kassidy
15 Bortner? Because, folks, if you want to hear about lame excuses,
16 you're gonna hear 'em from none other than the star witness for the
17 state of New Hampshire, Jeffrey Marshall, 51 Rogers Road, Kittery,
18 Maine. He's not the most perfect babysitter. Well, not only is he not
19 the most perfect babysitter, he is a killer.

20 Folks, on November 8th, 2000, Amanda had arranged for
21 Kassidy to be with Jeffrey Marshall. Not Jeffrey and Jennifer,
22 Jeffrey Marshall. He was by himself. He was by himself with
23 Kassidy. He was at his home, by himself, with Kassidy. And on that
24 particular day, this individual, who's got nothing else to do, who's

1 not the most perfect babysitter, inflicted a very serious injury, very
2 serious injury, to Cassidy.

3 Now, Chad did pick her up. And you're gonna hear that he
4 picked her up and started on his way to pick up his son Kyle at the
5 child-care facility where the bus drove by and you looked out to your
6 right. Very shortly—very shortly—after he went on his way, when
7 he was driving from Maine to that destination, while on the
8 Spaulding Turnpike, you will hear that it was somewhere between
9 around where the Portsmouth Traffic Circle is and the Pease
10 development area, he made a phone call. He made a phone call to the
11 babysitter, and he said, What the hell did you do to this kid? At the
12 time, she was slumped over in the back of the car—this is minutes,
13 folks—minutes—after leaving Jeff Marshall's house—minutes.
14 Slumped over and drooling in the back of the car.

15 The state may ask, Wow, what a wonderful interesting
16 situation that is, that he would call minutes after leaving Jeff
17 Marshall's, the beginning of an elaborate setup because he could
18 contemplate the death of Cassidy Bortner. No, no. No, no. Chad
19 made a phone call. And there were others to be made. Chad knew
20 about Jeff already beating the child, not once. He almost went over
21 there to beat Jeff to a pulp after he saw what he did to her buttocks.
22 And, by the way, this isn't some story that's made up by Chad. This
23 isn't some story. There's an admission, folks, from Jeff Marshall that
24 he manhandled that child, that he hit her—hit her—he assaulted her.

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Of course, we don't want to pick Jeff Marshall.

Others saw what happened to her buttocks, through the diaper, down to her knees. Jeremy Hinton saw it. He couldn't believe what she saw. It was horrendous. Amanda saw it. It was horrendous. She tried to keep it from Chad because she didn't want Chad to go off and kill Jeff Marshall. So when he says he gave Cassidy a little love pat over the diaper, be suspect of Jeff Marshall.

And when he uses a lame excuse when he backed up and accidentally stepped on her leg and that's why she was limping, be suspect. And this is days before her death. And when he gives you an excuse, with one of his best friends and neighbors vouching for him, that he caught Cassidy Bortner as she fell from the back of his pickup truck to the ground, be suspect.

And be suspect because there are medical injuries that indicate that she suffered from a subdural hematoma, a very serious injury, and that it wasn't recent, that it could have happened, that it was medically consistent with the time frame in which she was in the care and custody of Jeff Marshall. Be suspect.

Be suspect, when just two days before Halloween in the year 2000, Jeff Marshall, out of the goodness of his heart, tells Amanda Bortner, Oh, I'll keep the baby overnight. You don't have to come and get the baby. I'll keep the baby overnight. And it just so happens that would have been the date of the injury.

Be suspect when Cassidy Bortner returns to her home and is

1 described, two days after being in the care and custody of Jeff
2 Marshall, is described as an animal, hungry, dehydrated to the point
3 that a bowl of cereal is placed in front of her, and her entire face
4 dove into it to eat it, and that her mother was so concerned she went
5 to the store and bought Pedialyte and gave it to her, over and over,
6 and she drank it and drank it and drank it.

7 Be suspect of their star witness. Be suspect of Jennifer Conley,
8 the person that will testify to the truthfulness and credibility of their
9 star witness. Be suspect of the Jennifer Conley that lives with Jeff
10 Marshall. Be suspect.

11 In a way, the prosecution has hit it perfectly. Jeff Marshall is
12 the kind of guy that would not report the beating or the injury of a
13 child to the authorities. Because he beat her, that's why. He is that
14 kind of a guy. We know he's that kind of a guy.

15 So when you are being told that certain things are medically
16 impossible, be suspect, too. They have a very fine forensic
17 pathologist coming in from Maine to testify about this case and
18 certain aspects of the case. There will be another forensic pathologist
19 that comes in and testifies about this case, as well. His name is
20 Michael Baden, and he will come in here and he will testify about his
21 observations concerning the injuries and the cause of death regarding
22 Cassidy Bortner. Michael Baden has 40 years of experience as a
23 forensic pathologist. He will explain to you the various positions and
24 research and so forth that he's been involved in—and I'm not going

1 to burden you with that just now. Be attentive. Be attentive that we
2 just can't brush it aside that certain things are impossible.

3 You're going to hear, folks, that Jeffrey Marshall has not been
4 as cooperative with law enforcement as they want you to believe.
5 You're going to hear, folks, that they have ignored Jeffrey Marshall
6 because it's not convenient for them to pursue Jeffrey Marshall.

7 Now, a lot of things in this case Chad's not proud of. And
8 we're not gonna sit up here and make believe that he's Father of the
9 Year. But let me tell you something, okay? Bringing up the fact that
10 he's in violation of a bail order must mean that they don't have much
11 evidence on the cases that they've brought. If the question is did he
12 affect the outcome of somebody's testimony, have them ask people
13 that. We're gonna. Let's not cast around innuendo. Is the claim—is it
14 the claim, folks, that he caused Amanda Bortner to lie on the stand?
15 Is that what it's going to be at the end of this case? Well, then,
16 explore it, because we're not crazy. Is the claim that the witnesses
17 that they've already talked to, that just don't fit in with Chad Evans
18 killing anybody, were manipulated by Chad? Is that the claim? Well,
19 there's the stand. There's plenty of lawyers around here to ask
20 questions. If that's the claim, prove it. Prove it. This is a proving
21 room, now. You're behind this bar, you're officers of this court. No
22 longer can you be affected by what one potential juror described as
23 perfect—perfect—as newspaper talk. It's time to put 'em up, it's
24 time to ask 'em questions.

1 And, you know, once you swim through all the innuendo,
2 once you swim through all the wonderful theories, you're gonna be
3 left with something here in this case. You're gonna be left in many,
4 many ways with one of the only things the prosecution, Alan, Chad
5 and I would agree on: that Jeffrey Marshall was an animal. That's
6 what you're gonna be left with. And you're gonna sit back in
7 deliberation, and you're gonna say, This—this—is proof beyond a
8 reasonable doubt.

9 Every fracture, bone bruise was within the time period that
10 Jeffrey Marshall had taken care of her. One bone bruise, in fact, may
11 have even predated Chad Evans even knowing Amanda Bortner.
12 You want to seek justice in this case, then let's do it. But don't be
13 swayed—do not be swayed or be offended--do not be swayed by
14 graphic photographs. Do not be swayed by irrelevant comments
15 about bail orders. If they're saying that this man tampered with
16 witnesses, let's go. We're in a courtroom, let's go. If they're saying
17 that he, in some way, shape or form, has forced somebody to commit
18 perjury, let's go. We're in a courtroom. Let's have it out. Because,
19 folks, Chad has waited now over one year—one year—to get here.
20 And it's a very strange feeling for somebody that is falsely accused
21 to have to wait one year to come into a courtroom and clear his
22 name. He wants his trial.. He wants this trial more than anything. It's
23 time for the newspaper talk to hit the road. And it's time for
24 witnesses to take the stand.

1 What I'm gonna ask you to do here is nothing special,
2 because, truly, you're supposed to do it in every criminal case. Now,
3 this one's magnified, it's bigger. But the rules are the same. If these
4 guys can't prove their case over the next two weeks, by the time they
5 get to you, ask 'em for a verdict. If they can't prove it, then the judge
6 already told you what you've got to do. And let me tell you, you're
7 just as much an American when you say "not guilty" and you follow
8 the rules, as you are when you say "guilty" and follow the rules. I'm
9 just asking you to follow the rules, that's it. Don't do them a favor.
10 Just follow the rules. And if you do follow the rules and if we do
11 seek justice up here, if we just don't throw this thing at one side, if
12 we're fair—we're fair—about telling you about each one of these
13 people instead of casting innuendo and doubts over them before
14 they've even hit the stand, then you'll come back with a not guilty.

15 And let me tell you something else—this is an aside--one of
16 the last things that was said by the prosecution, one of the last, as
17 they were battering Amanda Bortner—they were--was that, Oh, we
18 don't know what she's gonna say. We don't know what she's gonna
19 say when she takes the stand, because she may be looking out for her
20 own self-interest, because she's been charged. Well, they made that
21 decision. Okay? They put her in that position. Okay? The reality is
22 they charged her only two weeks ago. Two weeks ago. Two weeks
23 before trial. I'm gonna ask you to be fair, okay? 'Cause you're
24 sitting there right now. She was charged two weeks before trial

1 because she didn't give the prosecutors what they wanted to hear.
2 They know what she's gonna say. And they also know she's gonna
3 testify.

4 And let me tell you something else, she's gonna testify
5 because the attorney general for the state of New Hampshire has
6 granted her immunity—now, you didn't know that—you weren't
7 told that—she was granted immunity. She can take that stand—she
8 has been ordered by the attorney general, by the court, to take that
9 stand, and she is protected for anything she says on that stand, as
10 long as she tells the truth. But you didn't hear that from the
11 prosecutor. She's got something to lose if she lies. That's all. All
12 she's got to do is tell the truth. Folks, we are begging her to tell the
13 truth.

14 So when you look at this case, I want you to look at fairness, I
15 want you to look at how police officers jump to conclusions in two
16 offers and Amanda Bortner becomes a defendant two weeks before
17 trial. That's what I want you to look at. And between that frame,
18 we're going to start looking at witnesses. We're going to start asking
19 Jeff Marshall questions that haven't been asked before. We're gonna
20 ask doctors whether or not Jeff Marshall [*sic*] could have been in the
21 care and custody of Kassidy Bortner when she was injured. And you
22 know something? Their answer is gonna be "yes."

23 This is going to be a long case. But, uh, just as this afternoon,
24 don't go to—jump to conclusions. Witnesses are made of two things:

1 direct and cross-examination. And then they're made of
2 deliberation by an entire jury at the end of the case. Wait until it's all
3 in before you conclude. You are not the Maine State Police, you are
4 not the New Hampshire State Police, you are not the attorney
5 general's office. You are Chad Evans' peers. All we're expecting
6 you to do is follow the rules.

7 (End defendant's opening statement)

8 (3:21 p.m.)

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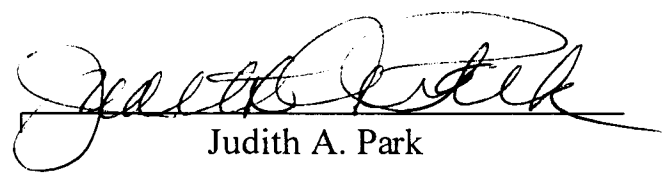
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CERTIFICATE

I, Judith A. Park, a transcriptionist approved by the Supreme Court of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript, to the best of my knowledge and belief, of the proceedings in the matter of STATE OF NEW HAMPSHIRE V. CHAD EVANS, held at the place and on the date hereinbefore set forth, and as digitally recorded on one compact disk by the Strafford County Superior Court (Brenda Turgeon).

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this hearing was held; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

Dated at Hampton, New Hampshire, this 11th day of October 2002.


Judith A. Park