

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

Docket #2006-0680

State of New Hampshire,  
Appellee,

v.

Chad Evans,  
Claimant-Appellant

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**REPLY BRIEF FOR THE CLAIMANT-APPELLANT**  
On appeal from the Rochester District Court

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Date: April 5, 2007

Chad Evans #32926  
New Hampshire State Prison  
P.O. Box 14  
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## **REPLY ARGUMENT**

### **I. THE DISTRICT COURT ERRED IN GRANTING FORFEITURE OF PROPERTY TO THE STATE BY DISBELIEVING THE APPELLANT'S ALLEGATIONS AND WITHOUT GIVING THE APPELLANT AN OPPORTUNITY TO PROVE THOSE ALLEGATIONS.**

The State has argued that the appellant was not entitled to an evidentiary hearing in the forfeiture proceeding. In fact, a forfeiture is not a MOTION so much as a lawsuit, and must culminate in the equivalent of a TRIAL. Evidentiary issues must be resolved at that trial. While offers of proof are a means of establishing the arguments, they are no substitute for witness testimony, which was offered by Appellant's counsel (Mr. Fisher), who asserted to the Court that Tristan Evans-Mellencamp was present and prepared to testify (Transcript at p5-6):

MR. FISHER: ... We filed this document with this Court. Mr. And Ms. -- the former Mrs. Evans has remarried and is now Tristan Mellencamp, and she asserts an ownership interest in the property.

THE COURT: Is she making an appearance in this case, sir?

MR. FISHER: She's right here. So -- (p6, line 3-4)

THE COURT: I don't see her -- she's not a party in this case.

MR. FISHER: Pardon Me?

THE COURT: She's not a party to this case, is she?

MR. FISHER: Well, she can become one if the Court so desires.

THE COURT: Well, go ahead (p6, line 12)

MR. FISHER: ... She -- that's why I told her to come to court to show the Court that there is no question here that they have a child. She needs the money ... (p6, line 16)

Ultimately, the District Court ruled (Notice of Appeal at pp. NOA 4-6):

“There is, however, no credible evidence put before the Court that the weapons in fact were/are marital property. Ms. Mellencamp did not give any testimony, present any legal documentation of ownership, or any marital documents.”

Thus, the Court erroneously issued a summary judgment based on credibility, without hearing **any** testimony from the witness who appeared and was identified to the Court (in the event the Court required more than an offer of proof). See e.g. Soper v. Purdy, 144 N.H. 685, 687-88 (1996) (standard); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (Court may only grant summary judgment if “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”)

## **REPLY ARGUMENT**

### **II. THE DISTRICT COURT ERRED BY GRANTING FORFEITURE OF PROPERTY WHERE IT WAS ASSERTED THAT THE APPELLANT'S FORMER WIFE HAD A CLAIM TO THE PROPERTY AS MARITAL ASSETS.**

The State places great weight upon the fact that the Appellant's father, Chet Evans, presented a bill-of-sale showing that the property had been transferred to him. The State's argument is: (1) that such a transfer indicates Appellant's intent to deceive the Court and (2) that Appellant had no ownership interest in the property, essential for a valid transfer.

The State's deception argument is misplaced, since the bill-of-sale was suggested by and produced by Appellant's counsel as a means of "simplifying" the legal issues, not deceiving the Court. See Statement of the Facts, Appellant's principal brief at p2, ¶2. Also Appendix at p3, ¶2-3. The Appellant is willing to waive attorney-client privilege should further clarification of the purpose of the bill-of-sale be necessary.

The State also identified the crux of the marital asset issue, but argued it under **New York law**. See State's Brief at p15. New York marital law ("Domestic Relations Law") differs from that of virtually every other state. It is the only state without "no-fault" divorce and, crucial to the state's argument, in New York, property brought into the marriage by one party is **not** "marital property" for the purposes of distribution in divorce. Thus, New York divorce courts must itemize non-marital property distributions.

Under New Hampshire law, **all** property brought into a marriage is "marital property." See e.g. Holliday v. Holliday, 139 N.H. 213, 215 (1994) (only assets acquired after separation may be considered exclusive to one party or the other).

According to the State's argument, the Appellant was disqualified from possessing the weapons upon his arrest. Since they were marital property and **never** used in an illegal act, by default they reverted to his wife at the time, Tristan Evans.

This argument is supported by four **uncontested** facts:

- (a) the Appellant was married to Tristan Evans-Mellencamp at the time the weapons were seized;
- (b) the weapons were **never** used in any illegal act;
- (c) the Appellant's felony arrest was unrelated to and came **after** the seizure ;
- (d) the Appellant's divorce came **after** his arrest.

While the State argued for forfeiture against the Appellant, it also argued that the Appellant had no ownership rights in the property. The State simply cannot have it both ways: Either the Appellant did not own the weapons (in which case the State brought the forfeiture suit against the wrong party), or he did own them (in which case he was able to sell them).

The State's brief also opened the door to an "innocent owner" argument. *Cf. United States v. 221 Dana Avenue, 261 F.3d 65 (1<sup>st</sup> Cir. 2001)*. While New Hampshire does not allow an "innocent owner" defense for property used illegally, here the State proposes forfeiture of "innocent" property (never used in an illegal act) against an innocent owner, Tristan Evans-Mellencamp (who never performed an illegal act).

Allowing the destruction of this property without bringing forfeiture proceedings against the "innocent owner" would violate due process (not allowing her an opportunity to contest the matter) and impinge upon her property rights, something that New Hampshire citizens would certainly find shocking and repugnant.

**CONCLUSION**

For the foregoing reasons, the Appellant respectfully requests this Honorable Court to find that the Court below erred and either remand for further proceedings or for return of the property to Tristan Evans-Mellencamp.

Respectfully submitted,



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Date: April 5, 2007



**CERTIFICATION OF SERVICE**

I hereby certify that two copies of this Reply Brief were sent to the Office of the N.H. Attorney General, 33 Capitol Street, Concord, NH 03301 on this date.

Date: April 6, 2007

  
Chad Evans