

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

State of New Hampshire

v.

Chad Evans

00-S-888-896-F AND 00-S-934-I

DEFENDANT'S OBJECTION TO STATE'S
MOTION IN LIMINE TO ADMIT STATEMENTS
OF AMANDA BORTNER AS A CO-CONSPIRATOR

NOW COMES Chad Evans and, by his attorneys, objects to the State's Motion to Admit Statements of Amanda Bortner as a co-conspirator under New Hampshire Rules of Evidence, Rule 801(d)(2)(E).

In support of this Objection, defendant states:

1. He is charged with second degree murder and eight felonies assault counts against Kassidy Bortner.

2. The State has created a scenerio whereby Amanda Bortner may not testify at trial because she has now been charged with two misdemeanors related to her care of her daughter, Kassidy.

3. These charges were filed almost a year after Kassidy's death, three weeks before trial and only after Ms. Bortner declined to provide information supporting the State's theory of prosecution against Chad Evans.

4. The State now seeks to introduce at trial certain statements of Amanda Bortner pursuant to New Hampshire Rules of Evidence, Rule 801(d)(2)(E).

5. The statements include, but may not be limited to, alleged comments of Amanda Bortner that she was not placing Kassidy in day care out of concern for her physical appearance.

6. This testimony is contradicted by the fact that Amanda Bortner has indicated that she had contacted a number of day care centers but learned that there were no current openings for a child

of Cassidy's age.

7. The consequence of admitting these one-sided statements without the possibility of further testimony from Amanda Bortner would mislead the jury and would leave the jury with testimony that is more prejudicial than probative of the issues involved in this case. New Hampshire Rules of Evidence, Rule 403.

8. Defendant would not have an opportunity to challenge these alleged statements through cross-examination of Ms. Bortner. Part 1, Article 15 of the New Hampshire Constitution; Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

9. Further, these alleged statements are not admissible because the State cannot demonstrate the existence of a conspiracy between Ms. Bortner and Chad Evans, nor can they demonstrate that these alleged conversations were made in connection with a conspiracy or in furtherance of a conspiracy.

WHEREFORE, defendant prays that the State's Motion to Admit Statements of Amanda Bortner pursuant to New Hampshire Rules of Evidence, Rule 801(d)(2)(E) be denied.

Respectfully submitted,
CHAD EVANS
By his attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DEFENDANT'S OBJECTION TO STATE'S MOTION IN LIMINE TO ADMIT STATEMENTS OF AMANDA BORTNER AS A CO-CONSPIRATOR has been forwarded to Senior Assistant Attorney General N. William Delker and Assistant Attorney General Simon R. Brown, this _____ day of November, 2001.

Alan J. Cronheim