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Evans files appeal of murder trial

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DOVER — Convicted murderer Chad E. Evans is appealing to the state Supreme Court to "evaluate and correct" rulings of the trial court that he alleges led to his conviction.

Alan J. Cronheim and Mark L. Sisti have represented Evans from the time of his arrest for the November 2000 beating death of 21-month-old Kassidy Caitlyn Bortner through his trial and sentencing.

"Mr. Evans contends that he was convicted of second-degree murder and the other charges due to several errors by the trial court," Cronheim's appeal states.

Evans, 30, and Kassidy's mother, 19-year-old Amanda Bortner, lived together at his 191 Milton Road residence in Rochester for several months before the toddler's death.

Kassidy died on November 9, 2000, after Bortner drove her from Rochester to the Kittery, Maine, home of her aunt Jennifer Bortner-Conley and her boyfriend, F. Jefferey Marshall. Maine Chief Medical Examiner Margaret Greenwald determined Kassidy's death was caused by blunt force injury to the head and abdomen.

In December 2001, a Strafford County Superior Court jury found Evans guilty of second-degree murder, five counts of second-degree assault, simple assault and endangering the welfare of a child in connection with Kassidy's death. Evans was sentenced to a minimum of 28 years in New Hampshire State Prison on April 16.

Following the sentencing, Sisti stated the defense expected to appeal Evans' conviction, but did not specify on what grounds. Under state law, Cronheim and Sisti had until today to file that appeal.

A copy of Cronheim's notice of appeal, dated May 14, was received at Strafford County Superior Court Wednesday afternoon.

The appeal lists several decisions by Judge Tina L. Nadeau during the course of the trial as erroneous and asks the Supreme Court to review "the pleadings, motion hearings and the trial" as the basis "to evaluate and correct the rulings of the trial court."

Specifically, the appeal cites five instances the defense contends are grounds for an appeal.

made to her mother, Tracy Foley, on the evening Evans was arrested in connection with Cassidy's death.

The defense has maintained those statements were hearsay, while the state argued they were admissible as "excited utterances."

In legal terms, an excited utterance is defined as a "statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition."

In Bortner's case, the state argued, the comments to Foley were excited utterances "as they were a spontaneous verbal reaction made in response to a most startling event, the arrest of Bortner's live-in boyfriend Chad Evans for the homicide of her only daughter, 21-month-old Cassidy. That the defendant's arrest was a sufficiently startling event under the rule is supported by the Supreme Court's holding in *State v. Bonalumi*."

In that case, the state noted in its motion, a police officer was allowed to testify about the statements a woman made to him after her husband was arrested for drunk driving. Under appeal, the Supreme Court upheld the admission of those statements.

The state's motion cited extensive case law in which such statements were allowed into evidence.

The defense's motion contended the conversation between Bortner and Foley "occurred a week after Cassidy's death. It was not the product of Mr. Evans' arrest and instead was a response to her difficult circumstances."

In granting the state's request for Foley's testimony to be allowed, Nadeau cited Bortner's admission under oath that she "loves Mr. Evans, she misses him... She's connected with him."

Based on Foley's testimony during the evidentiary hearing as well as the short lapse of time between Evans' arrest and Bortner's arrival at Foley's house, Nadeau ruled Bortner "was acting under the stress of the startling event."

The notice of appeal first requests the Supreme Court to answer "whether the trial court erred... in admitting certain statements of Amanda Bortner as excited utterances."

Secondly, the appeal questions whether the court "improperly focused the jury on defendant's statements and improperly commented on the evidence by instructing the jury in regard to defendant's statements — and not Jeffrey (sic) Marshall's statements — that if they found the defendant had made false statements they could consider whether those statements showed consciousness of guilt."

Throughout the trial, the defense contended it was Marshall and not Evans who inflicted the injuries that caused Cassidy's death.

The appeal also asks the Supreme Court to consider whether the trial court was wrong to deny the defendant's motion to dismiss all charges due to the "absence of testimony as to whether Cassidy Bortner received her injuries in Maine or New Hampshire" and "in light of testimony" that suggested Cassidy died at Marshall's home, that her fatal injuries could have been inflicted while she was in his care, that he caused prior injuries to the toddler and covered up those injuries.

In addition to appealing the murder and assault convictions, Cronhelm's

for both he and Sister to withdraw as counsel from Evans' case so that an attorney with the Appellate Defender Program can represent Evans in the Supreme Court. A financial affidavit included with the request lists Evans as indigent.

The motion also requests the state pay the estimated \$10,400 in transcript costs associated with the appeal.

New Hampshire Senior Assistant Attorneys General N. William Delker and Simon Brown, who have represented the state throughout Evans' case, confirmed their office received the notice of appeal on Wednesday.

Both indicated they had not yet reviewed the points raised in the appeal and could not speak specifically to the content.

In general terms, however, Brown and Delker said they were not surprised an appeal had been filed.

"It's routine, really," Brown said.

"It certainly was not unexpected," Delker said.

Delker said that in his experience, appeals of homicide cases are most often accepted for review by the Supreme Court.

The court will then evaluate the issues raised in the appeal, Delker said, and determine whether a three panel of three or a panel of five Supreme Court justices will review the appeal.

Delker and Brown have appealed Evans' 28 years to life sentence under a new law that went into effect in January. They had requested Evans receive 60 years to life in prison.

"Typically, sentence review does not take place until after the regular appeal is done," Delker explained. Although there have been exceptions in his experience, Delker said he would not be surprised if the conviction appeal were to be handled before the issue of the prison term is addressed.

Bortner, meanwhile, is facing two misdemeanor charges of endangering the welfare of a child for allegedly failing to protect Cassidy from Evans' abuse. She is scheduled to stand trial in Strafford County Superior Court next month.

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