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THE STATE OF NEW HAMPSHIRE

STRAFFORD, S.S.

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STATE OF NEW HAMPSHIRE

COPY

v.

CHAD EVANS

DOCKET NO. 05-CV-177; SUPREME COURT NO. 2006-0680

RECEIVED
DEC - 8 2006
ROCHESTER DISTRICT COURT

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HEARING

TRANSCRIPT OF HEARING ELECTRONICALLY RECORDED AT THE ROCHESTER

DISTRICT COURT, ROCHESTER, NEW HAMPSHIRE, ON MAY 19, 2006,

BEFORE THE HONORABLE DANIEL M. CAPPIELLO,

PRESIDING JUSTICE

Appearances:

For the State:	Daniel Licata, Esq.
For the Defendant:	Robert E. Fisher, Esq.
Transcriber:	Glusker Reporting Service
	69 Sewall Street
	Augusta, ME 04330
	(207) 626-2761

1 THE CLERK: State vs. Chad Evans.

2 THE COURT: Mr. Licata, this is just coming to me as
3 a Motion for Forfeiture?

4 MR. LICATA: That's correct, Your Honor.

5 THE COURT: Defense is represented by Robert Fisher
6 who objects to Motion for Forfeiture. You ready to begin?

7 MR. LICATA: We can, Your Honor, at this point.
8 Your Honor, the State's position is fairly laid out in its
9 motion at this point in time. When the Court entertained and
10 granted, essentially granted the State's Motion to Reconsider
11 on the issue of the transfer of the weapons to Chet Evans
12 [sic], the father of Chad Evans, what the Court essentially
13 stated in its order was that he did not, in fact, under the
14 Garrow [sic] case have entitlement to the property such that
15 he could transfer the property. At that point in time, the
16 Court indicated that it would entertain a Motion for
17 Forfeiture and destruction of the property. In essence, Your
18 Honor, in looking over the case law and looking over the law
19 on this particular issue, it's clear that the property has
20 already been forfeited. And the basis of that, Your Honor, is
21 that, in fact, the defendant, while the property was being
22 held by the police and why he, by the very pleadings of the
23 defendants filed by his attorney, admit that he is the owner
24 of the property, essentially come to the point where when he's
25 convicted of a domestic-violence crime in 2000 and then

1 forfeits the property. He no longer has any entitlement to
2 that property at all. It's essentially abandoned property for
3 all intents and purposes, which is owned by no one at this
4 point in time, and, therefore, there's no -- it can't go to
5 anybody. It can't be transferred. It's in limbo. There's no
6 public interest to keep this property around anymore, and that
7 forms the basis for the State's request. I would like to just
8 address, Your Honor, I under -- Attorney Fisher did send to me
9 one document in a letter dated April 25th. He said, enclosed
10 is a document signed by Chad Evans and his former wife Tristan
11 Mellencamp. This constitutes proof that the weapons belong to
12 Ms. Mellencamp.

13 THE COURT: Do I have that?

14 MR. LICATA: I don't believe you do, Your Honor. I
15 don't believe it was sent to the Court. I believe it was sent
16 to me. If I may approach?

17 MR. FISHER: Yeah. Give him the original.

18 MR. LICATA: This is the original, Your Honor. Your
19 Honor, the State's position is that this in no way constitutes
20 proof that, in fact, Tristan Mellencamp had an ownership
21 interest in the property. For one, Your Honor -- I'll let the
22 Court finish reading.

23 THE COURT: It didn't take that long to read it.

24 MR. LICATA: Your Honor, if she, in fact, had a
25 viable ownership interest in the property while she was

1 was executed by the defendant and solely by the defendant was
2 her name not mentioned if that was to be an accurate bill of
3 sale? At the very least, the defendant comes to this
4 proceeding with unclean hands and his pleadings to the Court
5 where he submits the bill of sale, he says, I'm the sole
6 owner; I want to transfer it. And now we have a situation
7 where, you know, for lack of a better word, we're talking
8 about subterfuge here. She suddenly becomes an owner by
9 virtue of the marital property. Furthermore, Your Honor,
10 what's extremely troubling to the State is upon information
11 and belief --

12 THE COURT: Excuse me, sir. We have a prior
13 transfer attempt to his father? Is that what it is?

14 MR. LICATA: To his father. And the prior transfer,
15 if the Court will look at the bill of sale and examine the
16 bill of sale, it just says, I, Chad Evans, alone and nobody
17 else involved.

18 THE COURT: I remember seeing that, yes.

19 MR. LICATA: Transfer --

20 THE COURT: I've seen it more than once, actually.

21 MR. LICATA: What's even more concerning, Your
22 Honor, from the State's perspective, too, is that Tristan
23 Mellencamp, upon information and belief, is, in fact, a victim
24 of the domestic-violence crime from back in 2000 when she was
25 married. She was Tristan Evans [sic] at that particular point

1 at this point in time, Your Honor, is -- just shocks the
2 conscience at this point in time. But the State believes, at
3 the very least, Your Honor, this is abandoned property; no
4 longer serves any useful public purpose. It's owned by now a
5 convicted second-degree murderer and somebody who's been
6 convicted of domestic-violence assaults, and the State
7 believes it's in the public's interest to have this property
8 destroyed.

9 THE COURT: Thank you. Mr. Fisher, you want to
10 respond to that, please?

11 MR. FISHER: Those are pretty strong words, Your
12 Honor, and just because the man has been convicted of a
13 serious crime does not mean that he loses his rights to be a
14 human being. Now, what we did in this case prior to that, was
15 the owner -- whatever ownership interest Chad had, he
16 transferred to his father. However, what the State fails to
17 mention, they briefly touched upon it, is that at the time of
18 the domestic violence, these parties were married. And
19 subsequent to the seizure of the guns, these parties were
20 divorced, and the divorce decree provides that the property
21 and the possession of the respective party becomes theirs.
22 Now, at the time of the divorce, the property is not in the
23 possession of either party. The property is in the possession
24 of the City of Rochester. We filed this document with this
25 Court. Mr. and Ms. -- the former Mrs. Evans has remarried and

1 is now Tristan Mellencamp, and she asserts an ownership
2 interest in the property.

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

5 MR. FISHER: She's right here. So --

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

8 MR. FISHER: Pardon me?

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

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

12 THE COURT: Well, go ahead.

13 MR. FISHER: I mean I can go back to the divorce
14 court, too, and get a decree out of the divorce court that the
15 property is hers, but I mean I'm not trying to make a mountain
16 out of a molehill. She -- that's why I told her to come to
17 court to show to the Court that there is no question here that
18 they have a child. She needs the money. He's in jail. She
19 needs the money. She's not getting much in the way of child
20 support, and every dime counts. So what they argue -- and
21 there is also case -- that I can give you a case -- I didn't --
22 I've got the case in my file and I can submit it. But under
23 federal law, where the property was jointly owned and the
24 seizure would constitute a seizure from, what the federal
25 courts call an innocent victim. So she would be an innocent

1 there's only one reason or one motive here to deny a return of
2 the property to Tristan Mellencamp, and that is to punish Chad
3 Evans. I don't think that's legitimate. I think Tristan
4 Mellencamp is entitled to the property.

5 THE COURT: Did you read State vs. Garrow, Mr.
6 Fisher?

7 MR. FISHER: I read it. And I don't --

8 THE COURT: Do you want to respond to that?

9 MR. FISHER: Sure. First off, Garrow only applies
10 if the property belongs to Chad Evans. Now, under Garrow,
11 they have a standard that -- for forfeiture, and the standard
12 for forfeiture is, number one, the property involved directly
13 relates to the acts underlining the committed crime. There's
14 no crime here, and the guns have no relationship to the
15 domestic-violence petition. If the Court wants to go back and
16 look at the domestic-violence petition, there's no allegation
17 that he used weapons in the commission of the domestic
18 violence. So the guns --

19 THE COURT: Aren't guns and weapons confiscated when
20 a domestic-violence order is made final as a matter of law?

21 MR. FISHER: I don't think they were. I think they
22 were confiscated at the initiation of the case, and I don't
23 think there's any confiscation order at the time it becomes
24 final. They took the guns at the beginning of the case for
25 safekeeping, and I don't think there's any confiscation order

1 at that file, but I don't believe there was any confiscation
2 order. So that was factor number one. Factor number two,
3 returning the property to the defendant would be so offensive
4 to basic concepts of decency. Well, we don't want it returned
5 to the defendant. That factor doesn't apply. We want it go
6 to the wife who can use the money. Factor number -- not the
7 wife, the ex-wife. And then finally, they talk about public
8 interest, and I think the public interest is that an innocent
9 victim, as Tristan Mellencamp would be, should be entitled to
10 possession of these weapons just as in a federal forfeiture
11 case involving a house. The wife not being involved in the
12 crime was found to be an innocent victim and entitled return
13 of the property. So that's why I think that Garrow does not
14 prevent us from getting that property back to the ex-wife.

15 THE COURT: All right. Thank you. I'll take it
16 under advisement, unless there's anything further.

17 MR. LICATA: Your Honor.

18 THE COURT: Anything further?

19 MR. LICATA: Just briefly on further -- we're not at
20 all -- think we're at the point where we're into the Garrow
21 stats, as the Court understands I'm sure, because this is, in
22 fact, not a forfeiture proceeding in that they've already been
23 forfeited. Moreover, if the Court's to take the
24 representation of the defendant at this point that in fact,
25 his ex-wife somehow has an interest in these guns, then what

1 something in evidence to the Court, which was a lie, and at
2 the very least, equity, unclean hands, Your Honor, demands
3 that the defendant not be granted the relief he's requesting.

4 THE COURT: Thank you. You want to respond to that,
5 Mr. Fisher?

6 MR. FISHER: We haven't made any lies. What we were
7 trying to do with the bill of sale was convey whatever rights
8 he had in the bill of sale. If he had no rights, then the
9 bill of sale is annulable. And under our divorce statute,
10 the definition of property, it definitely constitutes marital
11 property. I think the statute is 458:16-a says that any
12 property, whether owned by him, owned by her, whether acquired
13 before or during the marriage, constitutes marital property.
14 So this is marital property clearly subject to the
15 jurisdiction of the divorce, and it wasn't mentioned in the
16 divorce, and there is no forfeiture order on file. The only
17 time the question of forfeiture is even mentioned is by the
18 Court in its previous ruling. So, for my brother to say,
19 well, there's a forfeiture order because there's a domestic
20 violence petition, I think is a subterfuge on his part.

21 MR. LICATA: Your Honor, that's not the allegation.
22 The forfeiture is a de jure forfeiture by the fact the
23 defendant's been committed of certain types of offenses.
24 Moreover, my brother submits no evidence in today's court in
25 terms of the marital disposition of the property. He's had

1 how -- what happened with this property. Moreover, at the
2 time the police seized the guns as assets of the defendant
3 when he was arrested, Tristan Mellencamp didn't say, hey, hang
4 on a second. Those are my guns, too. You can't take them.
5 And, in fact, they took them from the defendant, Your Honor.

6 THE COURT: Thank you.

7 MR. FISHER: He's got the burden of proof, not me;
8 he's got the burden of proof, not me. And, number two, I
9 don't know of anything that justifies his statement that it's
10 a de jure order because the taking by the police for safe --
11 the guns for safekeeping at the commencement of the domestic-
12 violence petition does not give the de jure right to keep the
13 guns.

14 THE COURT: Thank you. I'll take it under
15 advisement. I'll make a decision. You'll get an order --

16 MR. LICATA: Thank you.

17 THE COURT: -- an order from the Court.

18 THE COURT: Thank you.

19 (CONCLUDED)

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1 ATTEST:

2 I certify that the foregoing is a true and accurate transcript
3 reduced to print from an electronic recording.

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6  _____

7 Jodi Palmer, Transcriptionist

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