

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Docket #2006-0680

State of New Hampshire,
Appellee,

v.

Chad Evans,
Claimant-Appellant

CLAIMANT-APPELLANT'S APPENDIX TO BRIEF

Date: February 5, 2007

Chad Evans #32926
New Hampshire State Prison
P.O. Box 14
Concord, NH 03302-0014

THE STATE OF NEW HAMPSHIRE

Strafford, SS

ROCHESTER DISTRICT COURT

The State of New Hampshire

v.

No. 05-CV-00177

Chad Evans

MOTION TO EXPAND THE RECORD

NOW COMES the defendant, Chad Evans, filing pro se and requesting this Honorable Court expand the record; in support of this he states:

1. This Court held a hearing on 5/19/2006 during which it declined to hear testimony from the defendant's ex-wife, Tristan Evans-Mellencamp, who would have verified her marriage to, and divorce from, the defendant, with testimony and the Divorce Decree.


2. The State and this Court took issue with the defendant's presentation of a bill-of-sale transferring the weapons to the defendant's father when, in fact, said bill of sale was prepared by counsel and presented to the defendant as a means of "simplifying" the legal issues in this case.

3. Attached hereto is the defendant's affidavit attesting to these facts, a copy of the Divorce Decree, and Tristan Evans-Mellencamp's affidavit attesting to facts to which she was prepared to testify on 5/19/2006.

WHEREFORE, the defendant requests this Honorable Court:

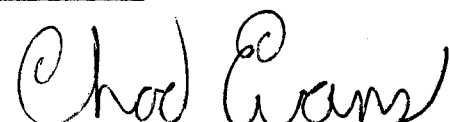
- a. EXPAND the record with the attached documentation; and
- b. GRANT such other and further relief as it deems fair and equitable.

Respectfully submitted,


Chad Evans, pro se

CERTIFICATION OF SERVICE:

I, Chad Evans, hereby certify that a copy of the foregoing MOTION plus exhibits was sent to Daniel J. Licata, Esq, Office of the Strafford County Attorney, P.O. Box 799, Dover, NH 03821 on this 31st day of AUGUST, 2006.


Chad Evans

A F F I D A V I T

I, Tristan Evans-Mellencamp, being duly sworn, upon oath state as follows:

1. In 1999, when I filed the original Domestic Violence Complaint against Chad Evans (my former husband), the police officer who took my statement informed me that he would be temporarily removing all firearms from our house for safekeeping. I now know that was a lie.

2. Since Chad's incarceration, he has not been able to give me any monetary support to help in raising our son, Kyle Evans. Chad has insisted I receive the value from the sale of the guns to help support our son. Despite the State making Chad out to be a monster, it is his character to have this noble goal. But, the State would rather see the guns destroyed.

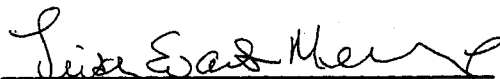
3. I was aware of the civil case from the beginning, and got Chad's father (Chester Evans) involved with the intention that he receive the guns and get them properly sold without them being in my house with the children. I have a very close relationship with Chad's family and we all work to do what is in the best interests of Kyle. The State is currently working against that objective.

4. In hindsight, I can see that I should have been a party to the civil action from the start, but fear of the publicity and some bad legal advice left me on the sidelines. I intend to remedy that mistake.

5. I have no intention of holding the firearms for Chad Evans, as the State implied at the 5/19/2006 hearing. As a practical matter the State's claim is absurd, since Chad is serving a 43-year-to-life sentence. Further, I find the State's assertion that I am "under his thumb" insulting, given that I filed the Domestic Violence Complaint against him, left him, and filed for divorce against him. I am not the weakling the State makes me out to be.

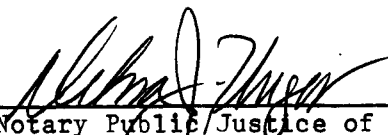
6. As a divorced mother, I have proudly worked hard to never use any public assistance. As such, I find it offensive that the prosecutor, who worked so diligently on my behalf in prosecuting my former husband in 1999, now seeks to harm me financially, effectively taking food from my son's mouth.

I hereby swear upon oath that the statements made in the foregoing affidavit are true and accurate to the best of my knowledge, recollection and belief.


Tristan Evans-Mellencamp

August

Subscribed and sworn before me this 23 day of May, 2006.


Notary Public/Justice of the Peace

DEBRA J. UNGER, Notary Public
My Commission Expires February 6, 2007

AFFIDAVIT

I, Chad Evans, being duly sworn, upon oath state as follows:

1. In early 2005, my attorney, Robert Fisher, contacted the Rochester Police Department about the return of weapons seized during my misdemeanor arrest on 3/28/1999. On 4/11/2005, Detective Gary Boudreau sent a response to Mr. Fisher confirming what weapons were involved and suggesting a motion to the court as a means of acquiring their return.

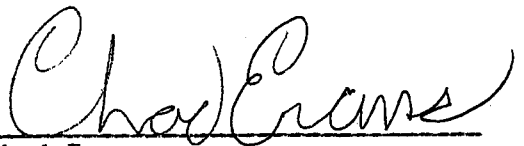
2. I have always intended for the weapons to ultimately be sold and for the proceeds to go to my former wife (Tristan Evans-Mellencamp) to help in the cost of raising our son. She was concerned, however, about having the returned weapons stored in her home before they could be sold.

3. Mr. Fisher advised me that it would "simplify" the legal issues for me to sign the weapons over to my father so that he could arrange for their sale. Mr. Fisher generated a bill-of-sale and mailed it to me at the prison. I signed it on 5/31/2005.


4. In a 10/12/2005 hearing in front of Judge Roberts, the Court stated that the State Police had already done a background check on my father (Chad Evans) and that they had NO PROBLEM with his receiving the weapons. The Court was also satisfied with the bill-of-sale at that time and was prepared to release the weapons to my father.

5. If our divorce stipulations were not sufficiently specific, and should she choose to do so, I assent to any amendment to our divorce stipulations that my former wife proposes that would award the weapons to her exclusively.

I hereby swear upon oath and under the pains and penalties of perjury that the statements made in the foregoing affidavit are true and accurate to the best of my knowledge, recollection and belief.


Chad Evans

Subscribed and sworn before me this 25th day of August, 2006.


Notary Public/Justice of the Peace

BECKY A HARDING, NOTARY PUBLIC
My Commission Expires
12/21/2010

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

ROCHESTER DISTRICT COURT

STATE OF NEW HAMPSHIRE

v.

CHAD EVANS

Docket No. 05-CV-000177

MOTION TO RECONSIDER

NOW COMES the State of New Hampshire, by and through the Office of the Strafford County Attorney, Janice K. Rundles, and moves this Honorable Court to reconsider its Order granting the release of Chad Evans' firearms to his father Chet Evans and in support thereof states as follows:

1. On September 15, 2005, the Defendant, who is a convicted felon and an individual convicted of domestic violence misdemeanors, petitioned the Court to release his firearms to his father; said firearms were seized back in 2000 in relation to the Defendant's misdemeanor DV offenses.
2. The State, through the Rochester police prosecutor, Diane Dubay, objected. In the State's objection, the State asserted that the release of the weapons to Chet Evans was precluded, as a matter of law, by State of New Hampshire v. Gero, NH Sup. Ct. (Slip. Op. June 23, 2005), and by the circumstances surround the request for release.
3. Undersigned counsel was set to argue the State's written objection at the hearing scheduled for today, October 12, 2005. Unfortunately, through a miscommunication between undersigned counsel and the Deputy County Attorney, who was also in Rochester District Court this morning, undersigned counsel believed the hearing would be held this afternoon, not this morning.
4. The Deputy County Attorney informed the Court that undersigned counsel was there to argue on why the Defendant's petition should be denied based on the Gero case and other relevant State and Federal laws, but undersigned counsel could not be located. The Court granted the Defendant's Petition and ordered Chad Evans firearms released to Chet Evans.
5. The State respectfully requests that the Court reconsider its Order in this matter. The granting of a motion to reconsider is appropriate where the Court has made an error of law or mistake of fact. See State v. Woods, 139 N.H. 399 (1995).

6. The State's objection in this matter expressly references the Gero case as the legal justification for denial of the motion. The Gero case states, *inter alia*, that a Defendant has *no* legal ability to sell firearms to another while they are being held by the police pursuant to RSA 595-A:6.

7. Accordingly, the State believes that the order releasing such weapons based on a bill of sale is in error as a matter of law.

8. The State requests an opportunity to argue this matter before the Court, but in any event, requests the immediate rescission of today's Order releasing the aforementioned firearms to Chet Evans.

9. The State also requests that should the Court decide to reconsider its decision, with or without hearing, that it immediately notify the County Attorney's Office and/or the Rochester PD, so that said weapons will not be released to Mr. Chet Evans.

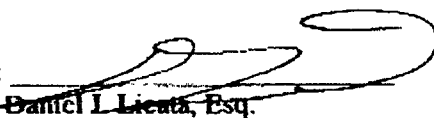
WHEREFORE, the State respectfully requests that this Court:

- A. Reconsider the Order it issued today releasing firearms to Chet Evans;
- B. Schedule a hearing on this matter should the Court deem one necessary;
- C. Notify the State and Rochester Police Department as soon as this Motion is ruled on;
- D. Grant such other relief as the Court deems fair and appropriate.

Respectfully submitted this 12th day of Oct., 2005,

THE STATE OF NEW HAMPSHIRE

By:



~~Daniel J. Licata, Esq.~~
Assistant County Attorney
Strafford County Attorney's Office
PO Box 799
Dover, NH 03821
(603) 742-2706

*Order of 10/12/05
is stayed;
hearing to be
scheduled.*

*SHR - RA
10/12/05
STEPHEN H. Roberts*

THE STATE OF NEW HAMPSHIRE

Strafford, ss

Rochester District Court

Docket # 05-CV-177

STATE OF NEW HAMPSHIRE

VS

CHAD EVANS

ORDER ON MOTION TO RECONSIDER

Chad Evans had his weapons taken away as a result of a Domestic Violence Order pursuant to RSA 173-B:5, I, (a), (6). The duration of that Order has long since expired. However, defendant has since been convicted of a serious felony, which effectively prohibits him from possessing any firearms or weapons for the rest of his life. He is also serving a lengthy prison sentence. Defendant alleges he has sold all his weapons to his father, Chester (Chet) Evans, although no date is alleged in his petition nor is there a date on the so-called bill of sale, except the calendar year "two thousand and five".

The State essentially objects to the "Motion for Return of Weapons" alleging defendant had no authority to transfer the seized weapons, presumably, because of his status of a convicted felon. State cites the case of State v. Gero, N.H. Supreme Court, decided on June 23, 2005. In its Motion to Reconsider, the State argues that Gero states that defendant had no legal ability" to make the sale of firearms.

Pursuant to RSA 595-A:6, Rochester Police rightfully seized the weapons and has held them by authority of RSA 173-B:5 since March 28, 1999.

Under these circumstances the weapons in issue "shall be disposed of as the Court or Justice orders, which may include forfeiture and either sale or destruction as the public interest requires". State v. Gero, citing RSA 595-A:6. Clearly the transfer of ownership occurred, if at all, in the year 2005 and during a time when defendant had no right to said weapons. However, Gero specifically deals with the issue of whether the defendant could simply transfer his ownership of defendant's weapon to a third person or persons. In Gero, court ordered some of the weapons returned to defendant's relatives because trial court specifically found that these weapons were in fact owned by said relatives when seized by police. Other items or weapons, which were defendant's


property, were not permitted to be transferred. As to those items court looked to and cite RSA 595-A:6 to give trial court authority

to destroy or sell based on State's Motion for Forfeiture, to which defendant would have right to object and to have a hearing thereon.

Court therefore gives leave for State to file a Motion for Forfeiture, so that this court, after hearing, may decide what the public interest requires, pursuant to RAS 595-A:6.

So Ordered.

Dated: November 28, 2005



Daniel M. Cappiello, Justice

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

ROCHESTER DISTRICT COURT

STATE OF NEW HAMPSHIRE

v.

CHAD EVANS

Docket No. 05-CV-177

MOTION FOR FORFEITURE AND DESTRUCTION OF PROPERTY
PURSUANT TO RSA 595-A:6

NOW COMES the State of New Hampshire, by and through the Office of the Strafford County Attorney, Janice K. Rundles, and moves this Honorable Court to order the Defendant's firearms and ammunition seized by the Rochester Police Department forfeited and destroyed and in support thereof states as follows:

1. On March 28, 1999, the Defendant had his weapons and ammunition taken away from him by the Rochester Police as a result of Domestic Violence Protection ("DVP") Order, see RSA 173-B:5, I(a)(6). The DVP Order has expired, but the Defendant has since been convicted of domestic violence-related simple assault (2000), second degree murder (2002), and second degree assault (2002), the latter two being felonies.

2. As a result the Defendant's convictions mentioned above, he is prohibited by both State law, RSA 159:3, and Federal law, 18 U.S.C. § 922(g)(9), from possessing firearms.

3. On September 15, 2005, the Defendant's father, Chet Evan filed a "Motion and Affidavit for Return of Firearms," seeking the release of his son's, Chad Evans, firearms and ammunition in the possession of the Rochester Police Department. Apparently, Chad Evans had executed a bill of sale from State Prison transferring the aforementioned firearms and ammunition to his father. Although the bill of sale allegedly transferring the property does not specify the exact date it was executed, it does state that alleged transfer occurred in 2005.

4. The State objected to Mr. Chet Evans's Motion on the ground that the Defendant had no legal authority to possess or own the firearms and therefore could not legally transfer them to any another party, including his father. The State relied on the New Hampshire Supreme Court's decision in State v. Gero, 152 N.H. 379 (2005) in support of its argument.

5. After two hearings on the issue, including one following the State's Motion to Reconsider, the Court (*Cappiello, J.*) ruled, on November 28, 2005, that the Defendant had "no right" to the weapons and ammunition at the time he allegedly transferred them to his father and thereby abrogated the transfer. The Court further stated that

As to [the weapons owned by the Defendant] the [Gero] [C]ourt looked to and cite[d] RSA 595-A:6 to give the trial court authority to destroy or sell based on [the] State's Motion for Forfeiture, to which the Defendant would have a right to object and to have a hearing thereon. The Court therefore gives leave for the State to file a Motion for Forfeiture, so that this court, after hearing, may decide what the public interest requires, pursuant RSA 595-A:6.

6. In accordance with the Court's order the State is now filing this Motion. However, it should be noted that the firearms and ammunition in question are already *de facto* forfeited. Indeed, this conclusion is consistent with the Court ruling in the Gero decision which states, "before a court orders that property be sold or destroyed pursuant to RSA 595-A:6, it must first *divest an individual of his or her ownership in the property* by ordering forfeiture."

7. The Defendant has already been divested, as a matter of law, of his ownership of guns and ammunition in question because he can never again legally possess and/or own firearms and ammunition by virtue of his previous convictions. Moreover, as has already been decided by the Court, the Defendant cannot transfer them to any other person. As a result, the property has essentially been forfeited or abandoned by the Defendant. All that left to be done for the Court to formally confirm, *via* an order, this *de jure* forfeiture.

8. Furthermore, it should be noted that the two-pronged analysis in the Gero case for whether property should be forfeited (i.e. connection to the crime or shock to the public conscience), see Gero, 152 N.H. at 386-87, is inapplicable in the instance case because that test presumes that a defendant requesting a certain disposition of property still has a viable ownership interest in the property subject to forfeiture. As already stated, that is not case with the Defendant.

9. Finally, the public interest compels destruction of the property in this case, as opposed to some other disposition. The Defendant has expressed the desire to have the weapons and ammunition in question released to one of his close family members. Given the extremely violent nature of the Defendant's convictions and the fact he may eventually be released from State Prison, releasing and leaving the firearms and ammunition in question to anyone related to the Defendant is an unconscionable option.

10. Accordingly, the State requests that the firearms and ammunition in question held by the Rochester Police Department be ordered forfeited and destroyed.

WHEREFORE, the State respectfully requests that this Court:

A. Order the firearms and ammunition formerly owned by the Defendant and currently being held by the Rochester Police Department forfeited;

B. Order the Rochester Police Department or other qualified law enforcement agency to destroy said firearms and ammunition; and

B. Grant such relief as the Court may deem fair and equitable.

Respectfully submitted this 24th day of March, 2006.

THE STATE OF NEW HAMPSHIRE

By: 

Daniel J. Licata, Esq.
Assistant County Attorney
Strafford County Attorney's Office
PO Box 799
Dover, NH 03821
(603) 742-2706

Certificate of Service

I hereby certify that a copy of the foregoing State's Motion was mailed this day, postage prepaid, to Robert E. Fisher, Esquire, counsel for the Defendant.


Daniel J. Licata

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS:

ROCHESTER DISTRICT COURT

State of New Hampshire

v.

Chad Evans

Docket No.: 05-CV-00177

OBJECTION TO MOTION FOR FORFEITURE

NOW COMES Robert E. Fisher, Esquire, counsel for the Defendant, Chad Evans, in the above-referenced matter, who says:

1. The allegations contained in Paragraph 1 are denied.
2. The allegations contained in Paragraph 2 are denied.
3. The allegations contained in Paragraph 3 are admitted.
4. The allegations contained in Paragraph 4 are denied.
5. The allegations contained in Paragraph 5 are admitted.
6. The allegations contained in Paragraph 6 are denied.
7. The allegations contained in Paragraph 7 are denied.
8. The allegations contained in Paragraph 8 are denied.
9. The allegations contained in Paragraph 9 are denied.
10. The allegations contained in Paragraph 10 are denied.

and says by way of further answer:

1. The weapons were seized as the result of a domestic violence petition.

2. At the time of seizure, the weapons were jointly owned by Chad Evans and his former wife Tristen Melloncamp.
3. Tristen Melloncamp has retained an ownership interest in the weapons and is entitled to possession of them.
4. To the extent necessary Chad Evans abandons any ownership interest he may have to the said weapons.

WHEREFORE, he prays:

- A. That the weapons be ordered returned to Tristen Melloncamp;
- B. **AND** for such other and further relief as this Honorable Court deems right and just.

Respectfully submitted,
ROBERT E. FISHER

Date: _____

By: _____

Robert E. Fisher
LAW OFFICE OF ROBERT E. FISHER
600 Central Avenue, PO Box 70
Dover, NH 03821-0070
1-603-742-6131

STATE OF NEW HAMPSHIRE
STRAFFORD, SS:

CERTIFICATE OF SERVICE

I, Robert E. Fisher, hereby certify that I have this date forwarded a copy of the within Objection to Motion for Forfeiture to Daniel J. Licata, Esquire and Chad Evans.

Robert E. Fisher

Appendix Page 15

ROBERT E. FISHER
ATTORNEY-AT-LAW

600 CENTRAL AVENUE
DOVER, NEW HAMPSHIRE

MAILING ADDRESS:
P.O. BOX 70
DOVER, NEW HAMPSHIRE
03821-0070
603-742-6131

LEWIS J. FISHER
1937-1977

HAROLD D. MORAN
1949-1986

FAX NO.
603-749-0542

ROBERT E. FISHER

April 25, 2006

Daniel Licata, Esquire, Assistant County Attorney
Strafford County Attorney's Office
PO Box 799
Dover, NH 03821-0799

Re: State of New Hampshire v. Chad Evans

Dear Mr. Licata:

Enclosed is a document signed by Chad Evans and his former wife Tristen Mellencamp. This constitutes proof that the weapons belong to Ms. Mellencamp.

In light of this, would you be agreeable to waive your Motion for Forfeiture and allow Ms. Mellencamp to receive possession of the weapons.

Kindly advise.

Very truly yours,

ROBERT E. FISHER

REF/cg

Enclosure

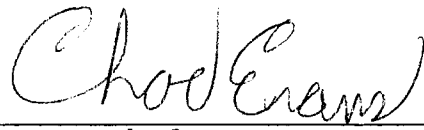
Cc: Chad Evans
Tristen Mellencamp
Chet Evans

April 12, 2006

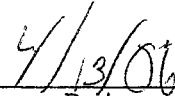
Dear Attorney Fisher,

We both request that you represent us in regard to the property in question, and we both waive any conflict of interest. I, Tristan, claim the property as marital property. I, Chad, waive any claim that I may have. Thank you for your assistance.

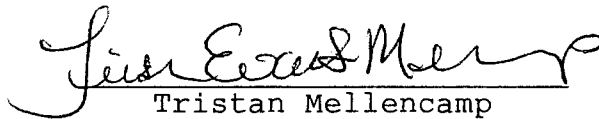
Sincerely,



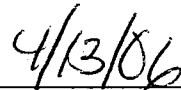
Chad Evans



Date



Tristan Mellencamp



Date

THE STATE OF NEW HAMPSHIRE

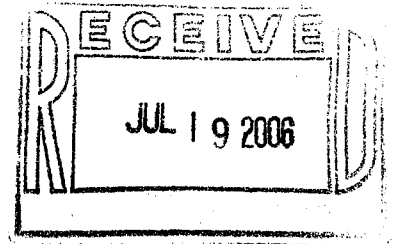
STRAFFORD, SS:

ROCHESTER DISTRICT COURT

State of New Hampshire

v.

Chad Evans



Docket No.: 05-CV-00177

MOTION FOR RECONSIDERATION

NOW COMES the Defendant, Chad Evans, in the above-referenced matter, by and through his attorney, Robert E. Fisher, who says:

1. The Court's ruling states that there is "no credible evidence put before the Court" to prove Ms. Mellencamp has an ownership interest in the weapons.
2. The defendant offered proof by way of an offer of proof of the following facts:
 - A. Ms. Mellencamp was married to Mr. Evans at the time of the seizure.
 - B. The weapons were a marital asset.
 - C. The parties were subsequently divorced.
3. The divorce decree did not mention the weapons.
4. The reason why Ms. Mellencamp and the defendant were present and could have testified that Ms. Mellencamp was entitled to ownership of the weapons.
5. The state did not object to the defendant's offer of proof and if it had the defendant and Ms. Mellencamp were both present in court and prepared to testify.
6. Justice requires that this Honorable Court reconsider its decision.

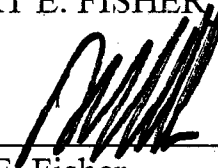
WHEREFORE, he prays:

- A. The decision of July 12, 2006 be reconsidered;
- B. An evidentiary hearing be scheduled;
- C. **AND** for such other and further relief as this Honorable Court deems right and just.

Respectfully submitted,
CHAD EVANS

By and through his attorney,
ROBERT E. FISHER


Date: 7.17.06

By: 
 Robert E. Fisher
LAW OFFICE OF ROBERT E. FISHER
 600 Central Avenue, PO Box 70
 Dover, NH 03821-0070
 1-603-742-6131

**STATE OF NEW HAMPSHIRE
 STRAFFORD, SS:**

CERTIFICATE OF SERVICE


I, Robert E. Fisher, hereby certify that I have this date forwarded a copy of the within Motion for Reconsideration to Daniel J. Licata, Esquire.


 Robert E. Fisher

8/3/06

For reasons set forth in objection & review of court order,

Motion is Reversed

*
 SHARON N. D'ORLANS*

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

ROCHESTER DISTRICT COURT

STATE OF NEW HAMPSHIRE

v.

CHAD EVANS

Docket No. 05-CV-00177

OBJECTION TO MOTION TO RECONSIDER

NOW COMES the State of New Hampshire, by and through the Office of the Strafford County Attorney, Janice K. Rundles, and moves this Honorable Court to deny the Defendant's Motion for Reconsideration and in support thereof states as follows:

1. On June 30, 2006, the Court (*Cappiello, J.*) issued an order granting the State's "Motion for Forfeiture and Destruction of Property Pursuant to RSA 595-A:6." The relevant factual and procedural history pre-dating the Order is noted in the State's "Motion for Forfeiture," and the State incorporates the same herein by reference.
2. The Defendant now moves for reconsideration of the Court's June 30, 2006 Order.
3. The State objects.
4. In order to prevail on a Motion to Reconsider the Defendant must show that the Court misapprehended some material fact or made an error of law thereby affecting the disposition of the issue in question. See State v. Woods, 139 N.H. 399 (1995).
5. The Defendant's Motion for Reconsideration does not allege the Court made any error of law.
6. The Motion *appears* to allege, through a restatement of the offers of proof made by Defense counsel at the hearing, that the Court misapprehended the facts in this case.
7. The Court did not misapprehend any facts in this case. To the contrary, the Court clearly saw through the subterfuge attempted by the Defendant with respect to who owned the firearms and ammunition in question. As the Court astutely noted in its Order, the Defendant proffered a dateless bill of sale for the weapons to the Court, which was executed solely by the Defendant. Then when the Court rejected the bill of sale as void given the Defendant status, *inter alia*, as a convicted felon, the Defendant suddenly

alleged that the weapons were marital property that he shared with his ex-wife, Tristan Mellencamp. If the Defendant were to be believed with respect to the weapons being marital property, then it made no sense that the proffered bail of sale was executed solely by the Defendant.

8. The Court also accurately recounted the fact that the Defendant offered no *credible* evidence in support of the defense counsel's offer of proof that the weapons were marital in nature, or even if they were that they were awarded to Ms. Mellencamp in the disposition of marital property.

9. Finally, as a result of the Defendant's clearly inconsistent allegations as to ownership, he now comes to the Court in this matter with "unclean hands." Accordingly, justice requires the denial of his Motion.

WHEREFORE, the State respectfully requests that this Court:

- A. Deny the Defendant's Motion for Reconsideration; and
- B. Grant such relief as the Court may deem fair and equitable.

Respectfully submitted this _____ day of _____, 2006.

THE STATE OF NEW HAMPSHIRE

By: _____
Daniel J. Licata, Esq.
Assistant County Attorney
Strafford County Attorney's Office
PO Box 799
Dover, NH 03821
(603) 742-2706

Certificate of Service

I hereby certify that a copy of the State's Objection was mailed this day, postage prepaid, to Robert E. Fisher, Esquire, counsel for the Defendant.

Daniel J. Licata

THE STATE OF NEW HAMPSHIRE

Strafford, SS

ROCHESTER DISTRICT COURT

RECEIVED

The State of New Hampshire

AUG - 3 2006

No. 05-CV-00177

v.

Chad Evans

ROCHESTER DISTRICT COURT

MOTION TO PRESERVE PROPERTY

NOW COMES the defendant, Chad Evans, filing pro se and requesting this Honorable Court to ORDER the property in question in this matter be preserved until final disposition of the legal issues; in support of this he states:

1. This Court has ordered destruction of property based upon a finding, at p.2 of this Court's ORDER, that the defendant presented "no credible evidence" that the property was marital property.

2. Defendant respectfully submits that this Court has made a substantial error of law by making a credibility determination without letting the defendant present sworn and cross-examined testimony and documentation. See for example, Mountain Springs Water Co. v. Mountain Lakes Village Dist., 126 N.H. 199 (1985) (in ruling on a dispositive motion, Court must presume non-movant's evidence to be credible, lacking evidence to the contrary).

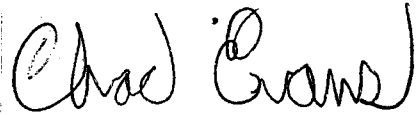
3. Thus, the defendant has a significant appeal issue, should this Court decline the pending MOTION TO RECONSIDER.

4. Any appeal would be rendered moot if the property in question is destroyed before reconsideration by this Court or, if necessary, consideration by the New Hampshire Supreme Court.

WHEREFORE, the defendant requests this Honorable Court:

- a. ORDER the Police Department to preserve the property until it is returned or until the outcome of an appeal orders otherwise; and
- b. GRANT such other and further relief as it deems just and proper.

Respectfully submitted,



Chad Evans, pro se

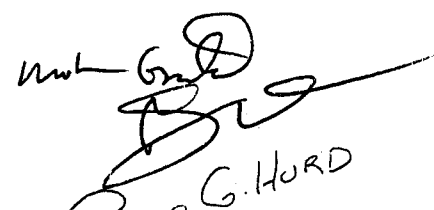
CERTIFICATION OF SERVICE:

I, Chad Evans, hereby certify that a copy of the foregoing MOTION was sent to: Daniel J. Licata, Esq, Strafford County Attorney's Office, P.O. Box 799, Dover, NH 03821, and to the Chief of Police, Rochester Police Department, 32 Wakefield Street, Rochester, NH 03867-1933 on this 1st day of AUGUST, 2006.



Chad Evans

STY/06



PETER G. HURD