

VERMONT

## DNA sample no match in murder case

Local man accused in child's death

By [Ben Leubsdorf](#) / [Monitor staff](#) 25 October 2011

A 1-year-old girl from Andover who was killed last year in Vermont had been sexually assaulted, and DNA evidence recovered from her body doesn't match the former Merrimack Valley High School student charged with her murder, according to a court motion filed yesterday by his defense attorney.

Alexander Stolte, 21, has been in prison since he was arrested March 18, 2010, after Kyleigh McDaniel was pronounced dead at a hospital near Stolte's mother's house in Chelsea, Vt. Stolte had been dating Kyleigh's mother and was babysitting the girl there when she died, but he told the police he was in another part of the house and didn't know how she was hurt. He has pleaded not guilty to second-degree murder, which carries a sentence of up to life in prison. Prosecutors said after Stolte's arrest that Kyleigh was likely killed by blows to the head, and that Stolte had told investigators he was the only one in the house at the time. Evidence of sexual assault wasn't mentioned in court documents or testimony at the time.

But Dan Sedon, Stolte's lawyer, filed a 17-page motion yesterday in Vermont Superior Court's Orange County criminal division asking for the order denying bail to Stolte to be reviewed. A hearing will be held tomorrow afternoon in Chelsea on the request.

Sedon wrote that during the autopsy, injuries suggesting a sexual assault was discovered, and a single hair was found inside Kyleigh's vagina. The hair was sent to an FBI lab for testing, and the results came back in June: It didn't match Stolte or Kyleigh, and Vermont State Police investigators don't know who the hair came from, Sedon wrote.

That, Sedon wrote, undermines the prosecution's case by showing someone else could have been in the house. He wrote that there is no other evidence linking Stolte to the crime, and he should be freed from prison to await trial.

"The state has no evidence that Alex Stolte murdered Kyleigh McDaniel," Sedon wrote in his motion. "When the decision was made to arrest Mr. Stolte, the state's case was based on the hope or even expectation that further interviews would elicit a confession and that forensic testing would conclusively prove that he had committed the crime. The subsequent course of the case, however, has made it alarmingly clear that there is no evidence against Alex Stolte at all, and that the state's case now is reduced to pure speculation based upon circumstances."

Orange County State's Attorney William Porter didn't return messages seeking comment.

Kyleigh's grandmother, Janine McDaniel, said the family "will continue to trust the justice system in Kyleigh Mae's death, and that justice will prevail against her murderer." She praised the investigators and prosecutors in the case.

McDaniel said she still believes Stolte killed her granddaughter.

"We will wait for justice, for all the evidence to be heard at trial," she said.

### Consistent statements

Stolte attended but didn't graduate from Merrimack Valley High School, where he was goaltender on the Pride's 2007 state-championship lacrosse team. Friends and others said he had a difficult childhood, spent time living in foster care and at friends' homes and eventually became homeless.

Toward the end of 2009, he started dating MacKenzie McDaniel, Kyleigh's mother, who was from Andover. He was living with his mother, Eileen Blaney, in Chelsea, where MacKenzie and Kyleigh also were staying.

A message was left yesterday for Blaney. Kyleigh's father, Nicholas Robinson, said he didn't want to talk to the news media.

Stolte was watching Kyleigh the night of March 17, 2010, and said he was upstairs drinking vodka, watching TV and surfing the internet after putting her down to bed after 9 p.m. in an unlocked basement room, Sedon wrote in his motion. He checked on her around 11:20 p.m. and called 911 because she was unresponsive, Sedon wrote.

In five interviews with the police over the next 24 hours, Sedon wrote, Stolte repeatedly said he believed he was alone in the house and that he couldn't explain Kyleigh's injuries. He gave the police his cell phone and Facebook password, offered to take a polygraph test and waived his Miranda rights after he was arrested for his final interrogation, Sedon wrote.

Sedon noted that Stolte was 19 at the time.

"He was a high school dropout, unsophisticated and had little experience with the criminal justice system. He called 911 completely hysterical and within 20 minutes of that call was speaking to the police at the hospital," Sedon wrote. "There was simply no time to compose some account of events designed to mislead investigators or obfuscate his own guilt, and certainly no time to commit it to memory."

Stolte's consistency under emotional distress and intense interrogation "is certainly as consistent with actual innocence as any other interpretation," Sedon wrote.

## **'Tangible evidence'**

At a hearing on March 30, 2010, Porter said Stolte by his own admission was the only one in the house that night.

"There's only one person who was in that home with Kyleigh when she sustained these injuries, and the evidence clearly establishes that it was Mr. Stolte," the prosecutor said.

Judge Thomas Devine ordered Stolte held for trial without bail. As of yesterday, Stolte was in the Northern State Correctional Facility in Newport, Vt., according to the Vermont Department of Corrections website.

"The evidence is circumstantial, but it is substantial nevertheless," Devine wrote in his March 31 bail opinion, which ran five pages.

He added that Kyleigh's injuries "occurred later in the evening, and during a period of time in which the child was in (Stolte's) exclusive care. There is strong evidence that (Stolte) was the only possible source of the injuries."

In his motion filed yesterday, Sedon said bruises and lacerations "consistent with sexual assault" were found during an autopsy; then officials found the hair. He argued that the hair, since it didn't match Kyleigh or Stolte, suggests someone else was there. The police have not yet found a match, he wrote.

In an interview, Sedon said the sexual assault likely took place at the same time as the murder because Kyleigh's mother had changed her diaper earlier in the day and didn't report the related injuries.

At the time of Stolte's arrest, the state police said in an affidavit she had a broken right leg and was killed by "blunt impacts to the head." She also had three broken ribs that were healing, the police said.

Sedon, at the March 2010 bail hearing, suggested in a line of questioning that someone else could have gained access to the house that night. In his motion, Sedon wrote that a state police detective

has since said "that law enforcement authorities never actively investigated or even considered any theory other than Alex causing Kyleigh's death."

Sedon also wrote that the police failed to check outside doorknobs and windows for fingerprints, look for a weapon or footprints outside or vacuum the unlocked basement for "possible trace evidence," according to his motion.

"The only piece of tangible evidence recovered implicates an unidentified person and is proof of Mr. Stolte's actual innocence," Sedon wrote.

A Vermont State Police spokeswoman declined to comment on the case, saying it would be inappropriate while the judicial process is under way.

Sedon said the defense found out about the DNA evidence in July, and he has since completed deposing witnesses in the case.

"We felt that we're at a point now to call out the state's case," he said.

After more than 19 months in a prison cell, Stolte should be released as soon as possible, Sedon said. But in his motion, he didn't request that the case be dismissed outright.

"It's most important right now to get this young man out of jail," Sedon said.

***(Ben Leubsdorf can be reached at 369-3307 or [bleubsdorf@cmonitor.com](mailto:bleubsdorf@cmonitor.com).)***