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VERMONT

# High court hears infant murder case

## Defendant asks for release on bail

By **MARK DAVIS**  
The Valley News

Lawyers for the man who say he was wrongly accused of killing a 1-year-old infant took their case to the Vermont Supreme Court yesterday, asking justices to order a lower court judge to consider releasing their client on bail while he awaits his trial.

Defense attorneys argue that Superior Court Judge Harold Eaton erred when he ruled that he lacks the authority to revise an order holding Alex Stolte, 21, in prison without bail. The judge, they argue, should have considered recently released DNA evidence that they claim shows Stolte is innocent and the real killer of Kyleigh McDaniel is still at large.

Public defender Kelly Green told the high court that

the new evidence - including a hair found on Kyleigh that does not belong to Stolte - demonstrated that the state's case is "circumstantial," and not strong enough to justify keeping Stolte, a onetime Merrimack Valley High School lacrosse star, incarcerated until his trial.

"What we have is a circumstantial case and the evidence gives context to those circumstances," Green said yesterday.

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# STOLTE

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day. "The circumstances have changed."

But Orange County State's Attorney Will Porter told justices he had plenty of evidence to warrant keeping Stolte in prison: Even Stolte has told the police that he was alone in the house when Kyleigh died, and experts ruled that she would not have survived her injuries for long.

"There is a lot of evidence out there," Porter said. "This is a murder case, this is not a sexual assault case. The defense has tried hard to turn this into a sexual assault case because the facts under murder are strong."

The appeal was heard by three of the Vermont Supreme Court's five justices – the high court convenes smaller panels to hear bail review cases. Justices usually issue their written decision within several weeks of oral arguments.

If defense attorneys are successful, Eaton will hold a hearing in Orange Superior Court, and perhaps set bail and open the door for Stolte to leave prison.

But regardless of how the Supreme Court rules, the recent legal maneuverings are merely a prelude to a larger clash – a second-degree murder trial that will begin no later than June.

Porter has insisted he will go forward with the case despite the DNA evidence, while lead defense attorney Dan Sedon, in impassioned tones, has proclaimed that he is representing a man wrongfully accused.

Kyleigh's mother, MacKenzie Wright (formerly MacKenzie McDaniel), attended the hearing and declined to comment as she

left the chamber.

Stolte, who is being held in Northern State Correctional Facility in Newport, Vt., was not present.

Police affidavits and other court documents give the following account:

On March 17, 2010, Stolte was baby-sitting Kyleigh while McDaniel worked in Lebanon. Stolte was McDaniel's boyfriend at the time, but he was not Kyleigh's father.

About 11:30 p.m., Stolte went to the basement, found that Kyleigh was not breathing and called 911, he later told the police. Doctors at Gifford Medical Center in Randolph pronounced her dead upon arrival.

Vermont Chief Medical Examiner Steven Shapiro ruled that Kyleigh died of trauma to the head and had suffered skull fractures, a broken leg and broken ribs, injuries that showed signs of healing. She also had bruising that suggested a sexual assault, including a hair inside her vagina that was found by investigators.

Stolte was arrested,

though he maintained his innocence.

In March 2010, during Stolte's initial court appearance, Judge Thomas Devine ordered him held without bail.

In October, more than one year later, Sedon requested a bail hearing, saying newly analyzed DNA evidence undercut the prosecution's case. When Eaton denied the plea, defense attorneys appealed to the state's high court.

However, the Vermont Supreme Court will not be weighing evidence that will ultimately be for a jury to decide.

Rather, justices will grapple with legal technicalities surrounding whether Eaton should have considered the new evidence, and how much evidence is necessary to hold a defendant without bail before a trial.

Vermont laws and legal precedent generally hold that defendants charged with murder can be held without bail if the evidence of guilt is great.

Green, the public defender, yesterday argued that the

standard was too narrow, and did not allow judges to consider evidence favorable to defendants.

After listening to Green's arguments, Justice Marilyn Skoglund suggested that the court should perhaps change its standard.

"I know we have been applying that language, but should we be doing that?" Skoglund said. "Why is that subject to the same sort of evaluation? I'm having a hard time figuring out why that's the standard."

But Porter argued that a lesser standard would inevitably lead to judges conducting detailed examinations of evidence, a role that the legal system generally prefers to leave to juries.

"The court can't get into the position of trying to determine the validity of modifying evidence because that's what a jury is going to be there for," Porter said. "We get into dangerous territory if you open that up and turn bail review into mini-trials. It's going to be asking (judges) to resolve jury issues."

