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## Court overturns decision in Bremerton school shooting case

By Rachel La Corte, Associated Press

OLYMPIA — Prosecutors can't pursue a criminal case against a man accused of providing access to a gun to his then-girlfriend's 9-year-old son, who then brought the weapon to school, where it accidentally went off and injured a fellow student, the state Supreme Court ruled Thursday.

In a 6-3 ruling, the high court reversed a Court of Appeals decision that had said the third-degree assault case against Douglas Bauer could commence. The majority, led by Justice Sheryl Gordon McCloud ruled that while Bauer may have been negligent in leaving loaded guns out in the house, his negligence did not make him culpable under state statutes for the assault charge.

State law says someone whose criminal negligence "causes bodily harm to another person by means of a weapon or other instrument" is guilty of third-degree assault.

"This court has found no Washington case upholding such liability, either, where the accused did not actively participate in the immediate physical impetus of harm," Gordon McCloud wrote. She was joined by Chief Justice Barbara Madsen, Justices Charles Johnson, Susan Owens, Charles Wiggins and Justice Pro Tem. James Johnson.

Bauer's attorney, Wayne Fricke, said he and his client felt vindicated by the ruling.

"There should have never been a criminal charge in this case in the first place," Fricke said.

The gun accidentally went off at a Bremerton elementary school in February 2012 as the boy reached into the backpack, critically injuring fellow student Amina Kocer-Bowman. She survived.

The boy told investigators he had taken the gun off a dresser at Bauer's home. The court noted that there were other unsecured firearms in the house.

In his dissent, Justice Steven Gonzalez said that the case should move forward to allow a jury to decide whether Bauer's negligence was to blame for Amina Kocer-Bowman Kocer-Bowman's injury.

"It is neither unreasonable nor unwise to allow a jury to decide if it was the firearm owner's criminal negligence that caused the handgun to be brought to school, to be accidentally discharged, and to seriously injure the young victim," wrote Gonzalez, who was joined by Justices Mary Fair Hurst and Debra Stephens.

Kitsap County Prosecuting Attorney Russ Hague said Thursday that he has not made a final decision on whether to seek a different charge against Bauer.

He expressed concerns about what effect the ruling could have on future similar cases, citing an example

of a drunk driver who doesn't kill anyone but causes another driver to swerve and cause a fatal accident.

“Up until this decision, it was pretty clear we could charge that person with a crime just as estate could sue for his death,” he said. “However, we now have no guidance on whether we can do that anymore.”

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