

## High court tosses charge against gun owner in Armin Jahr case

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OLYMPIA — Kitsap County jurors won't hear a felony assault case against a man whose gun, left loaded and out in the open, was taken by a 9-year-old boy and then accidentally discharged in 2012 at a Bremerton elementary school, seriously wounding a girl.

The state Supreme Court ruled Thursday in a 6-3 opinion that the third-degree assault case against Douglas Bauer could not move forward, reversing an earlier Court of Appeals decision.

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," Justice Sheryl Gordon McCloud wrote.

Bauer's appellate lawyer, Wayne Fricke, argued earlier this year that the Legislature had not drafted a law specifically addressing the issue, a situation the minority called "novel."

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 boy told investigators he had taken the gun off a dresser at Bauer's home two days before the shooting out of fear that other children were planning to assault him, according to court documents.

The court wrote that Bauer did not know the handgun was missing until the shooting. Other unsecured, loaded firearms were found in the Allyn house where Bauer lived. The boy is the son of his then girlfriend. The boy did not live in the house but visited, along with other children.

The gun accidentally went off February 2012 at Armin Jahr Elementary School, critically injuring fellow student Amina Kocer-Bowman, then 8. She survived after undergoing several surgeries.

Prosecuting Attorney Russ Hauge said he was disappointed in the ruling, and attorneys were considering whether to bring another charge against Bauer.

If convicted of third-degree assault, a felony, Bauer would be prohibited from possessing firearms.

“It was the closest ... to describing what he did,” Hauge said.

The court’s decision hung on how “cause” is legally defined. Hauge said the decision, because it has the force of law, could lead to confusion in other cases around the state. The court ruled Bauer might have been negligent, but it did not provide a legal test or guidance, so Hauge said the job of clarifying the law would have to be taken up by the Legislature.

“With this decision, the only person directly responsible is a 9-year-old boy,” Hauge said. “I still think that is just not right.”

Prosecution of the boy for reckless endangerment was deferred if he met conditions that included attending 48 hours of counseling, keeping up with school, staying away from weapons and being supervised by the county’s juvenile probation department, according to court documents. He completed the conditions.

Hauge, lobbyist for the state prosecutor’s association, said that although discussion about changing the law had been ongoing — because of the Division II Court of Appeals decision had allowed the criminal case to go forward — he thought a new law was not needed.

He said the issue would be discussed at a Thursday meeting. However, Hauge said a proposed law should not specifically target guns but instead address the issue of “cause.”

In his dissent, Justice Steven Gonzalez said the majority “tacitly shifts the ultimate responsibility for the victim’s injury to a 9-year-old child.”

“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,” Gonzalez wrote.

Bauer has filed a motion in Kitsap County Superior Court for dismissal of a civil suit filed by the Bowman family against him, other members of the boy’s family and the Bremerton School District. A hearing is set for Aug. 1.

The parties have had some negotiations on a possible settlement, said Bauer’s civil attorney, Greg Wall, who also is a member of the South Kitsap School Board.

Wall said he was “not surprised” by the high court’s ruling, saying the charges against Bauer “didn’t have merit.”



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