

## Supreme Court: Man who left gun loose for 9-year-old not responsible for accidental shooting

Bremerton man's 'decision to keep loaded weapons around the house is not, in itself, a crime in this



Amina Kocer-Bowman, pictured in a 2012 photo from KOMO/4. Amina was shot in the stomach by a 9-year-old classmate who'd taken a gun from his mother's boyfriend.

A Bremerton man previously convicted of assault after his stepson accidentally shot a classmate with his pistol has been cleared by the state Supreme Court.

In a [split decision](#), a majority of the high court found that Douglas Bauer shouldn't have been convicted of assault after his girlfriend's then-9-year-old son accidentally shot a classmate with his handgun.

Reversing the trial court's decision, the majority ruled that Bauer's conduct – leaving a loaded gun unsecured – didn't cause the non-fatal shooting at the Bremerton elementary school.

“Bauer’s act of gun ownership, in contrast, is not felonious or criminal,” Justice Sheryl Gordon McCloud wrote for the majority. “His decision to keep loaded weapons around the house is not, in itself, a crime in this state, either.”

Gordon McCloud went on to find that Bauer couldn’t be held criminally responsible for how the boy handled a gun taken from Bauer’s home.

The Feb. 22, 2012, shooting saw Amina Kocer-Bowman critically injured as she and her 3<sup>rd</sup> grade classmates at Armin Jahr Elementary School prepared to leave for the day. She was shot in the stomach, and was hospitalized for several weeks.

Investigators would later learn that a .45 cal. pistol accidentally fired inside a backpack belonging to Bauer’s girlfriend’s son.

The boy told police Bauer usually left guns strewn around his home. All were loaded and easily accessible.

According to court papers, the boy said he “swiped the gun” from Bauer two days before the shooting because he was afraid he was going to be beaten up at school. He ultimately pleaded guilty to reckless endangerment and sentenced to probation and counseling.

Bauer was charged with third-degree assault. Kitsap County prosecutors contended he caused the shooting through his negligence.

While a Kitsap County Superior Court judge and an appellate court previously agreed that prosecutors could charge Bauer with third-degree assault, the state Supreme Court ruled Thursday that Bauer didn’t “cause” the shooting within the word’s legal meaning.

In a 6-3 decision, the majority found Bauer’s decision to leave his guns loose in his home didn’t cause an assault.

An arsonist who causes a responding firefighter’s death commits an intentional criminal act capable of causing harm on its own, Gordon McCloud wrote for the majority. Bauer, in contrast, didn’t commit a crime to cause the shooting.

“Bauer asserts that the State has failed to make a . . . case that his conduct of leaving guns around his house loaded and accessible to . . . children ‘caused’ the bodily harm here,” Gordon McCloud said in the majority opinion. “We agree.”

Writing in dissent, Justice Steven Gonzalez said a jury deserves to decide whether Bauer’s negligence caused Amina to be shot.

Noting Bauer didn’t notice the gun was missing from his home until the shooting, Gonzalez said the Legislature has already answered the question now put to the Supreme Court.

Negligence that ends in with someone hurt by a weapon is assault under state law, Gonzalez said. Whether Bauer’s lack of care with his guns amounts to negligence, the justice said in the dissenting opinion, is a matter for a jury to decide.

“At its core, this case comes down to considerations of sound policy,” Gonzalez said in the dissent. “Bauer kept a loaded, unsecured handgun in a room that an unsupervised 9-year-old boy could access freely. ...

“Given that both science and common sense strongly suggest that Bauer was in the best position to prevent the injury to (the boy’s) classmate and that his conduct was its primary cause, I ... would allow a jury to resolve the matter.”

Gordon McCloud was joined in the majority by Justices Charles Johnson, Susan Owens and Charles Wiggins, as well as Chief Justice Barbara Madsen and James Johnson, who has since left the bench. Gonzalez was joined in dissent by Mary Fairhurst and Debra Stephens.

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