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State Supreme Court says child porn charge must be dismissed

by Dee Riggs | [May 19, 2016, 11:37 a.m.](#)

Public Safety

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OLYMPIA — A case of possession of child pornography against an Ephrata man will remain dismissed following a ruling Thursday by the state Supreme Court.

The Supreme Court upheld an earlier ruling by the Court of Appeals, which ordered Grant County to throw out the conviction of Michael Allen Budd, 38. Both courts ruled that police did not properly advise Budd of his rights before entering his home without a warrant.

The Supreme Court ruling was close: Five justices ruled that Budd's rights were violated. Four dissented.

In the majority opinion, Justice Charles K. Wiggins wrote that "officers did not give Michael Budd the Ferrier warnings before making a warrantless, consent-based entry into Budd's home to seize his computer."

Ferrier refers to *State v. Ferrier*, a case in which justices found that suspects in a warrantless home search may decline consent, limit the scope of a search, and withdraw their consent at any time.

A Ferrier warning was not given in Budd's case. The question before the Court was whether it was required.

In 2009, Lakewood Police Detective Kim Holmes was assigned to investigate Budd through The Washington State Patrol Missing and Exploited Children Task Force. She visited Budd's Ephrata home in March of that year, in part because an original tip raised fears for the safety of his child.

Holmes and two State Patrol troopers performed a "knock and talk" — a home visit carried out by police when criminal activity is suspected but there are no grounds for a search warrant. Holmes wrote in her report that she told Budd outside the house that "he could give us consent to (preview) his computer or I could and would obtain a search warrant."

Budd admitted the officers to his home and signed a consent form. A State Patrol search of his computer found "many images of child pornography," according to a written opinion by Appellate Judge George Fearing.

Writing for the dissenting minority, Justice Mary Yu wrote that Ferrier does not apply in this case.

"By broadening the application of Ferrier beyond what common sense and our cases allow, the majority's opinion leads to an 'extraordinary' and troubling result: the suppression of physical evidence obtained from a cooperative defendant who freely offered a confession and gave voluntary and informed consent to enter his home for the limited purpose of seizing thy physical evidence," Yu wrote.

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