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Child porn conviction overturned

Court says police did not have cause to search apartment of a former Vincennes Academy coach

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By Bill Heltzel, Post-Gazette Staff Writer

A federal appeals court has overturned the conviction and prison sentence of a former Vincennes Academy coach who had pleaded guilty to possessing child pornography.

The U.S. Third Circuit Court of Appeals ruled the warrant used to search for pornography at David Scott Zimmerman's house in Brighton Heights was based on insufficient probable cause. Its ruling said McCandless police had no evidence Zimmerman had ever possessed child pornography or that child pornography would be found.

When police searched the house in March 1999, however, they found computer-generated images of boys engaged in explicit sexual acts, catalogs of videotapes depicting sexual activity between teen-age boys and young adults, and several hundred images of child erotica.

U.S. District Court Judge Gary L. Lancaster denied Zimmerman's motion to throw out the evidence. Zimmerman then pleaded guilty to possession of child pornography on the condition he could appeal Lancaster's ruling on the evidence.

Lancaster sentenced him to 18 months in prison and freed him on bail pending outcome of the appeal.

The Third Circuit Court reversed Lancaster's ruling by a two-to-one vote. Judge Maryanne Trump Barry wrote the decision and Judge Samuel Alito concurred. Senior Judge Max Rosenn dissented.

The case grew out of an investigation by McCandless police of rumors that Zimmerman had engaged in inappropriate sexual conduct with boys on the basketball and cross-country teams he coached.

On March 4, 1999, he was charged with two counts of simple assault and two counts of contributing to the delinquency of a minor on the basis of complaints from two of the student athletes.

Then police developed information that Zimmerman had allegedly shown video clips of adult pornography to teens at his home. They sought authorization to search for evidence of simple assault, harassment

and stalking, and sexual abuse of children.

Common Pleas Judge Lawrence O'Toole issued the search warrant.

The appeals court ruled police had no information that Zimmerman had ever purchased or possessed child pornography. While the police affidavit cited a video clip of adult pornography, the court ruled that information was old and that possession of the video was in all likelihood legal.

The court also maintained McCandless Police Sgt. Donald O'Connor had failed to confirm third-hand information that other teen-agers had viewed the adult pornography at Zimmerman's home.

"Sgt. O'Connor crafted the affidavit to portray Zimmerman in the worst possible light," describing in lurid and irrelevant detail "sexual misdeeds that Zimmerman allegedly committed against his students but which had nothing to do with whether there was pornography in his home."

Alito wrote in his dissent that the affidavit provided ample evidence supporting the corruption charges and of an "extended course of conduct" not too old to act upon.

"We're very disappointed by the court's ruling," said U.S. Attorney Mary Beth Buchanan, "and we're evaluating the opinion and will be making a decision on whether to appeal."

The U.S. Attorney's Office has 14 days to petition the entire court to review the ruling and 90 days to appeal to the U.S. Supreme Court.

"Unlawful entry into a home by numerous government agencies is not a technicality," defense attorney Robert Mielnicki said yesterday. "Many wise people have decided that the way to prevent government from engaging in illegal behaviors is to allow people charged with crimes to challenge the behaviors."

He said Zimmerman was ecstatic with the decision. The coach lost his job and has been working as a special events coordinator in Harrisburg. Zimmerman does not view the police as the bad guys, Mielnicki said. "We view the parents who fed police with what we contend are lies as the bad guys."

Two families have sued Zimmerman, Vincennes Academy and Duquesne University, which owns the school, on the basis of assault, battery, negligence and intentional infliction of emotional distress. The cases are pending.

Three of the original criminal charges were withdrawn and a year ago Zimmerman pleaded no contest to one corruption charge. He was sentenced to one month of probation.