

SYNOPSIS OF THE CASE¹

2011 MT 269; DA 10-0260: STATE OF MONTANA, Plaintiff and Appellee, v. MILES CASSIDY KINGMAN, Defendant and Appellant.

The Montana Supreme Court has unanimously affirmed the aggravated assault conviction and sentence of Miles Kingman. Kingman was charged with brutally assaulting Paul Overby outside a Bozeman bar in September 2008. On appeal, Kingman claimed that his right to a fair trial was violated when the trial judge refused to move his trial from Gallatin County because of the pre-trial publicity. The Court disagreed and affirmed Kingman's conviction and his 20-year sentence.

The charge against Kingman arose out of an incident behind the Scoop Bar in the early morning hours of September 17, 2008. Kingman and his friend Ryan Dibert got into an altercation with Paul Overby regarding a motor scooter parked behind the bar. All three men had been drinking, and witnesses to the incident saw Kingman, Dibert, and Overby shouting, gesturing, and posturing. Kingman and Dibert began to walk away, but Overby shoved Kingman several times from behind and hit Kingman once. Kingman turned and punched Overby, knocking him to the ground. Kingman then got on top of Overby and punched him in the face 15 to 20 times, causing extensive fractures to the vast majority of the bones in Overby's face, as well as an open fracture to his brain. Overby nearly died from the incident. Shortly afterward, Kingman left a voicemail message for a friend in which Kingman bragged about beating Overby. The State charged Kingman with attempted deliberate homicide. At trial, Kingman argued that he had acted in self-defense. The jury acquitted him of the homicide charge but convicted him of aggravated assault, a lesser-included offense.

On appeal, Kingman claimed that the publicity surrounding the incident had prejudiced the Gallatin County community to such an extent that he could not get a fair trial by jurors drawn from that community. Kingman cited newspaper reports from the *Bozeman Daily Chronicle* and *The BoZone*, plus several broadcasts on television station

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

KBZK. The Supreme Court, agreeing with the District Court, concluded that Kingman had not shown a sufficient basis for presuming that the entire Gallatin County jury pool was corrupted by the pre-trial publicity.

As for his 20-year sentence, Kingman argued that the prosecutor had improperly characterized him at the sentencing hearing as an “animal” that “needed to be caged.” The Supreme Court agreed that the prosecutor’s remarks were inappropriate, but found no indication that the remarks had factored into the District Court’s decision to impose the maximum sentence for aggravated assault.