

KING, ERNIE 10/13/89
murder

Man acquitted of felony assault in King beating

By JOHN ROBINSON
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SANTA CRUZ — A Summit-area man who beat Ernie King in a parking lot shortly before King's death was acquitted of felony assault charges Wednesday.

Gregory James Kern, however, was found guilty of misdemeanor battery by Judge William Kelsay in a non-jury trial. He was sentenced to six months in County Jail and ordered to pay a \$3,000 fine. It was the maximum sentence for battery.

Prosecutor Christine McGuire called the ruling "very disappointing."

"It was more than simple battery," McGuire said.

Kelsay ruled that although Kern did kick and punch King while he was on the ground, he had not intended to cause great bodily injury.

Kern's attorney, Peter Chang, said that Kelsay's decision was a "very courageous decision, to look just at the facts and the law and to make the correct ruling," Chang said. "What Kelsay did was courageous because there's been so much prejudicial publicity about this thing."

On June 24, 1988, the evening of his death, King approached a group of men at a Summit parking lot to ask for a ride to Santa Cruz. King, who was legally blind, was on his way home from classes at San Jose State University and often asked people for rides into town.

According to witnesses, Kern and his friend and co-worker, Robert Spedding, each beat King for fun. King later got into the back of a pickup with Spedding and a short time later, either jumped or fell to his death as the pickup drove along Summit Road. Kern was a passenger in the truck.

Spedding has been charged with murder in the death of King. Last month a jury deadlocked 11-1 to convict Spedding of murder and a mistrial was declared by Kelsay. Spedding will be retried in December.

To convict Kern of felonious assault it had to be proven that he intended to harm King during the parking lot beating.

"We felt from the very beginning that it was felony assault and we believe the witness testimony and evidence supports that," McGuire said.

According to McGuire, a witness said that Kern let out a war cry and tackled King who was just getting up after being knocked down by Spedding.

"King twice said 'I'm not going to fight, I'm not going to fight,'" McGuire said of the testimony. "Kern hit King twice in the chest and kicked him back to the ground. He then kicked and punched King several more times."

According to McGuire, King was dazed and walking in circles after the beating.

Chang admits that Kern beat King while he was on the ground.

"We never questioned that a battery took place," Chang said. "And it was never a question that it was only a battery."

McGuire said that the actions of Spedding and Kern which led to the death of King cannot be separated.

Chang disagreed.

"It was quite clear they were separate actions," Chang said of the beating and King's fall to death. "They were separate fights."

Kern was taken from the court and booked into County Jail. Chang said he will probably serve four months of his sentence before being released.

"He had no objection to going to jail," Chang said. "He just said, 'Thank God this is all over.'"