

# Juror talks about trial

## Jury foreman says evidence pointed to Small's conviction

By Cary Rosenbaum  
*The Chronicle*

OKANOGAN — Having the responsibility to hand over an envelope with a man's fate sealed inside is no easy task.

But for jury foreman Rusty Post of Twisp, there wasn't much difficulty considering the evidence presented in the Kelly Eugene Small trial, which resulted in three guilty verdicts for the 14-year cold-case murder and rape of an Omak woman.

A week after the Okanogan County Superior Court trial that sent the 51-year-old Small away with a conviction for the 1998 first-degree aggravated murder of Sandy Bauer of Omak, Post spoke Tuesday, Oct. 2, about the 13-hour jury deliberation.

Small could face a life sentence without parole for the

Sept. 26 conviction.

"Just from the testimony and the evidence we had, which interestingly did not include medical reports, police reports; many of the things that were discussed during testimony were not part of the evidence we had to consider in deliberation," Post said.

"We did not have copies of coroner's or police reports, or many other items during testimony," he said. "People referred to notes, we did not have copies of those (other things). They were not admitted as evidence, therefore we did not have copies. We also did not have a transcript of testimonies.

"It's hard to know (if having those documents would have changed the trial's outcome). I can't conjecture on that."

The evidence was gruesome at times, Post said, as some pictures were very graphic and difficult to view.

Those graphic images included viewing the area of Bauer's neck that was split open during the autopsy to show dark



Dannie Oliveaux/The Chronicle

**Rusty Post talks with Frank Trotter Sept. 26 after the jury found Kelly Small guilty of the 1998 murder of Sandy Bauer.**

spots from strangulation, he said.

"And there were additional photos in the exhibits that were not displayed in the courtroom that were even more graphic," Post said. "And perhaps for me, personally, were even more challenging to look at."

Besides murder, Small was convicted of first-degree rape

and first-degree burglary after entering her Okoma Drive apartment using a key he was given while work on the apartment.

Post said the DNA link from two pubic hairs found at the scene was "probably the strongest indicator of (Small's)

See **Trial 2**

## Trial from 1

guilt.

"The letter, or letters, he wrote were also very strong."

Small, whose DNA was swabbed by Omak Police Department detective Jeff Koplin in January 2010, took off on an 11-day trip that led toward the border of Mexico, and back up to Las Vegas without telling his family.

In Vegas, Small left behind a bag with several items in it, including a notebook that prosecutors had handwriting

experts use imprint technology to determine the content of the letters.

In those letters, Small was alleged to have written about Bauer's death, and indicated that he would go to prison for life for what he had done.

Post said it was no easy task to leave the trial at the courthouse, after sometimes more than eight hours of testimony in a day.

"It was extremely challenging to put it out of your head," he said. "I had lots of other things to do, and that helped. And there were times

that I couldn't help but replaying or thinking about testimony evidence, questions that I had."

When he finally could begin to move on from the case, after the guilty verdict, Post said he was relieved, as he later found out Small was recently convicted on similar charges in a different case, he said.

"There was for me, personally, some relief in that I felt that our decision was confirmed," Post said.

Interview extras will be available later Sunday online at [www.omakchronicle.com](http://www.omakchronicle.com).

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## **Presiding juror talks about Small trial, Part II**

By Cary Rosenbaum

The Chronicle

Editor's Note: This is the second part of a story that ran in the Oct. 7 Chronicle, involving the trial of the State v. Kelly Small, a 14-year cold case that determined the man responsible for the murder of Sandy Bauer. The juror referenced in this article is Rusty Post.

Q: Had you ever been on a jury before?

Post: I have not been on a jury before. Individually, as a juror, that was certainly a tremendous responsibility, and part of what jury duty is about. I helped facilitate this discussion, and work our way through our agenda for reviewing the case. But my individual views or responsibilities were really no more than any other juror.

It was very important that no one would hold sway over the group of any other juror, and all the jurors took their roles very seriously, and were very respectful towards each other during the process, and considered all the evidence and testimony put before us.

Q: What was the biggest challenge in determining Kelly Small's guilt?

Post: I think for me, is likely the case for most other jurors, it's important to make the right decision. If you believe you are making the right decision based on the facts that are presented. And only the testimony and the evidence that's presented. All of us as jurors, considered all of the evidence in its entirety. Certainly there were some testimonies and evidence that were stronger than others. There were certain points that we felt either did not have a bearing on the decision or the case after we considered them.

Q: What did the form look like that the jury had to decide on during deliberations?

Post: Well, there were three options on each of the three charges. For example, the murder was murder in the first, murder in the second, or not guilty. And after weighing all the evidence, we felt he was guilty in the first degree. And the same was true in the other charges.

We had to review the jury instructions very closely and follow them precisely. And make the determination based on our review of the evidence, whether there were additional circumstances aggravation or sexual intent, and we found that those were also true.

Q: At which point were you able to determine the sexual intent, or the aggravation?

Post: It's very specifically defined in the jury instructions. And we followed the jury instructions through the letter. And according to the instructions, we found that those other circumstances and intent also existed, and that they were true.

Q: How has your life changed since the trial?

Post: Well, I had always wondered what it would be like to be on a jury trial.

I was very impressed with my fellow jurors. And their ability to consider all of the evidence.

And to be very supportive of their fellow jurors. They did an excellent job of listening to each other and working together as a group through some very difficult information, difficult circumstances. It's very challenging to be on a jury on a case that's that long.

I thought (Superior Court) Judge (Jack) Burchard was exceptional throughout the entire process, both with selection and how he treated everybody in the court room, from witnesses to attorneys to the jury, he had an excellent sense of dealing with a very serious subject matter, but had a great ability to be light-hearted in moments. And the fact that he thanked us constantly, and recognized how significant it is to take three weeks out of your life, and spend it on a jury. I was impressed by that.