

May 23, 2012 in **City**

## **New trial ordered in sexual predator case**

Appellate judges ordered a new trial Tuesday for a Spokane man convicted of being a sexually violent predator because the note he wrote detailing his desire to rape, kidnap and dismember a woman, did not meet the legal definition of a threat.

Convicted rapist Shawn D. Botner, who had argued that the note police found was simply part of his therapy, will continue to be held while prosecutors decide how to proceed, authorities said.

The reversal relies on a narrow interpretation of whether there was any threat made to follow through on the homicidal scenario described in the man's personal notes.

"Mr. Botner did not express an intention to anyone," Judge Laurel Siddoway, writing for the Division III Court of Appeals, said in the ruling issued Tuesday. "We do not suggest that his characterization of his handwritten entry as merely therapeutic must be accepted at face value. We recognize only that there was no evidence that his fantasy or plan – whatever it was – was ever intentionally communicated to anyone. We therefore reverse, but because the evidence was sufficient to establish an act, we remand for a new trial."

Among the requirements to be deemed a sexually violent predator, the state must show that Botner committed an "overt act" toward committing another sex crime. Because of the decision Tuesday, Botner is expected to face another trial to determine whether he will indefinitely remain in state custody.

"He asked, 'Why wasn't the case dismissed,'" said his attorney, Tim Trageser, who spoke with Botner Tuesday. "That's a good question. Why are they not releasing him? That bothers me."

Assistant Attorney General Malcolm Ross said state prosecutors will soon decide whether to appeal the decision to the Washington Supreme Court or prepare for a new trial.

"We also need to look ... to see if we have a recent overt act" while in custody in the Special Commitment Center in McNeil Island. "There are a few things we have to look at before we decide how to proceed."

Botner was convicted in 1988 of fondling a family member. In 1991, he was convicted of unlawful imprisonment after he followed a woman into a restroom at Riverfront Park and attacked her for several minutes before fleeing.

In February 1992, Botner followed a young woman into the restroom at Spokane Community College Adult Learning Center and choked her to unconsciousness with a phone cord.

Then in July 2006, a Gonzaga University security guard found a duffel bag, which Botner acknowledged was his, with a note detailing how he wanted to go to an adult book store dressed as a woman, abduct the female clerk, rape and dismember her.

Botner said he simply was writing out his fantasies. But three weeks later, he was stopped by Spokane Police wearing no shirt and a woman's bra and armed with a hammer while riding a bicycle. He also had a bag that contained rope, a French maid outfit and a blond wig.

Unsolicited, he told the officers: "You'd be surprised what could be traced back to you by forensic evidence."

During the 2009 confinement trial, Botner told the jury that there was a "50-50" chance he would commit a new sex crime.

Trageser said he wondered why prosecutors never connected the note to Botner's bizarre behavior on the bicycle, which occurred only about three blocks from an adult book store.

"They never argued in Botner's case that riding around that night was the overt act," Trageser said. "It never occurred to them that what he was doing was maybe consistent with what was in the note ... which blew my mind."