

Daughter Awarded \$315,000 For Deceased Father's Wrongful Murder Conviction

By JD Staff

Sixteen-year-old Thai-American Sherry Ann Duncan was found murdered in scrubland outside Bangkok, Thailand in August 1986.

Four construction workers and their employer were soon arrested on suspicion of being involved in the schoolgirl's murder. The employer, Winai Chaipanit, was soon bailed out by his girlfriend, socialite Suwimon Pongpat.

Physical brutality by the police during interrogations resulted in a confession by all four workers. The police also intimidated other people to provide witness statements implicating the men in the abduction and murder of Duncan, who had an American father and a Thai mother.

During their trial all four defendants retracted their confessions, claiming they were false and had only been provided to stop the police's brutal interrogation tactics. They also claimed the prosecution's witnesses weren't

being truthful about seeing them with Duncan.

After the Criminal Court rejected the men's defense and found them guilty, they were all sentenced to death.

As the men languished on death row while their appeals were considered, defense lawyer Pennapa Thamrunroj encountered police opposition and intimidation as she doggedly pursued leads to prove that the prosecution's witnesses hadn't been truthful, and that other people were responsible for Duncan's murder. After high police officials intervened and assigned a new officer to head a reinvestigation of Duncan's murder, new evidence surfaced that other men had committed the crime.

Relying on the fresh evidence of the four condemned men's innocence, in 1993 Thailand's Supreme Court overturned their convictions and ordered their immediate release.

The seven years in Thailand's worst maximum-security prison while awaiting execution were not kind to the men's well being. One died in prison before his exoneration, another died shortly after his release, another was permanently



Sherry Ann Duncan

disabled from a beating by guards, and the fourth, Thawat Kitprayoon, died of cancer in 1999.

The new evidence discovered during the reinvestigation of Duncan's murder resulted in the 1995 prosecution of Suviboon Patpongpanich as the mastermind of the crime. She was subsequently convicted of hiring two hit men to murder Duncan for dating her two-timing boyfriend. In 1999 Thailand's Supreme Court overturned Suviboon's conviction on the ground of insufficient evidence.

It was eventually revealed that Duncan had also been a two-timer. She had been dating both Suviboon's boyfriend and Chaipanit, the 42-year-old businessman who had been arrested in 1986 on suspicion of being involved in her murder.

After the men's exoneration, a suit for compensation was filed in the Civil Court naming the Royal Thai Police Office as the primary defendant. In October 2003 \$1 million (26 million baht, Thailand's currency) was awarded to the lone survivor and the relatives of the three deceased wrongly convicted men.

The case then took a new twist when Thawat's former employer Chaipanit, filed a claim for Thawat's share of the \$1 million civil award. In support of his claim he produced Thawat's will that named Chaipanit as sole beneficiary of any award to Thawat from the civil suit. Thawat's daughter, Ratchanee Kitprayoon, responded by filing a complaint with Thailand's Crime Suppression Division alleging Chaipanit falsified the will, and her legal challenge to his claim blocked any payment to him pending resolution of the dispute.

The Civil Court decided in favor of Thawat's daughter when it ruled that the purported will was invalid because it didn't bear the required authenticating signatures of witnesses. Chaipanit appealed, and on July 28, 2006, Thailand's Supreme Court upheld the lower court's ruling. It also ordered the payment of \$315,000 (11.9 million baht) by the Royal Thai Police as compensation to Thawat's daughter. She said that she had spent \$16,000 opposing Chaipanit's false claim (which is three to four years wages for a typical Thai).

As of the fall of 2006 Sherry Ann Duncan's 1986 murder re-

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Kremlin backed candidate to step down after he had won a rigged election.

Russia's central government recognized they needed to quickly deal with the furor caused by the Shcherbinsky case and the attention it focused on the trafficking in *migalka* privileges. They promptly announced a *migalka* would only be available to emergency services (police and ambulances), senior government officials, judges and members of Russia's parliament.

Another development after Shcherbinsky's conviction was one of Russia's most prominent lawyers, Anatoly Kucherena, agreed to handle his appeal at no charge. Also, petitions signed by tens of thousands

of people across Russia were delivered to the Altai Regional Court that was considering Shcherbinsky's appeal.

Expedited consideration was given to Shcherbinsky's appeal, and less than six weeks after the nationwide protests, his conviction was set aside on March 23, 2006. The court ruled Shcherbinsky had acted lawfully while the governor's driver had "grossly violated" several traffic laws. He was released later that day after seven months in custody.



Oleg Shcherbinsky with his daughter after his release

He left the jail in a car that had one of the protest stickers that cars all over Russia displayed — "All of us are Shcherbinsky." His wife was overjoyed that he wouldn't be spending years at hard labor in prison, "We had faith from the very beginning to the end."⁸

It was speculated in the Russian media that Shcherbinsky benefited from a combination of excellent legal representation on appeal and the nationwide outrage over the unfairness of his conviction.

Endnotes:

- 1 *Death By Government*, by R.J. Rummel, Transaction Publishers, New Brunswick, N.J., 1994. Chapter 4: 61,911,000 Murdered: The Soviet Gulag State.
- 2 In 2003, 36,000 Russian deaths and 250,000 injuries were related to traffic "accidents." Road traffic injuries in the Russian Federation. See, Facts and figures, World Health Organization, www.euro.who.int/violenceinjury/injuries/20060425_2.htm
- 3 Russian drivers to jam streets in protest, *NewKerala.com*, February 10, 2006.
- 4 Angry motorists protest russian VIP traffic rules, *Australian Broadcasting Corp.*, February 12, 2006, www.abc.net.au/news/newsitems/200602/s1568037.htm
- 5 *Id.*
- 6 *Id.*
- 7 Police Pull Over Cars During Drivers' Protest, by Carl Schreck, *Moscow Times*, February 13, 2006, p. 3.
- 8 Siberian Court Overturns Ruling, Frees Driver, by Judith Ingram (AP), *St. Petersburg Times* (St. Petersburg, Russia), March 24, 2006.

State of Connecticut v. Judith Scruggs

No. SC 17587 (Conn. 09/05/2006);
2006.CT.0000448 < http://www.versuslaw.com >

The Connecticut Supreme Court ordered the acquittal of Judith Scruggs from her conviction of contributing to the suicide of her 12-year-old son by keeping a “messy” home. The following are excerpts from the September 2006 opinion.



[12] ... In late 2001, Judith Scruggs was a single parent living in a three bedroom apartment with her two children, Kara Morris (Kara) and Daniel. Kara was seventeen and Daniel was twelve. The defendant worked approximately sixty hours a week at two jobs—one as a full-time employee of the school that Daniel attended, the other as a part-time employee at Wal-Mart. Daniel was bullied relentlessly at school and, from September through December, 2001, was absent on many days. He frequently exhibited poor hygiene and occasionally defecated in his pants. At home, he slept in his bedroom closet, where he kept knives and a homemade spear to protect himself. The state department of children and families (department) was aware of Daniel’s problems, and had been working with the defendant to have him placed in a different school. At some point in

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mains an unsolved crime. A 2001 movie about the case, *Sherry Ann*, received excellent reviews for its production values, acting and faithfulness to the facts.

Duncan’s murder was one of the most publicized crimes in Thailand’s history, and the unprofessional conduct of the police during the initial investigation of the case, including the brutal interrogations that caused all four defendants to falsely confess, resulted in changes to the country’s criminal code.

Note: As of December 2006, the DVD of *Sherry Ann* has only been released in REGION 0 PAL FORMAT, which is incompatible with the DVD players sold in the United States.

Sources:

Our Man in Asia Pacific, by Mike Thomason, July 17, 2005.

Daughter of wrongfully convicted man gets b11.9m, *Bangkok Post*, July 29, 2006

Outcome in Sherry Ann Case, *Thai News*, Issue 59, October 2003, p. 2

Kin win case for compensation, *The Nation*, Bangkok, Thailand, July 29, 2006



late 2001, the department conducted an inspection of the defendant’s apartment in connection with its investigation of Daniel’s situation. On December 27, 2001, the department closed its file on Daniel. In the early morning hours of January 2, 2002, Daniel hanged himself in his bedroom closet. During the investigation into Daniel’s death, Officer Michael Boo-

throyd and Detective Gary Brandl of the Meriden police department, Pamela Kudla, a crisis intervention specialist called in by the police to assist Daniel’s family, and Ronald Chase, an investigator for the state medical examiner’s office, entered the defendant’s apartment. They observed that it was extremely cluttered and that it had an unpleasant odor.

[14] Thereafter, the state filed a four count information [charging Scruggs with child neglect or endangerment violations.]

[16] The jury found the defendant guilty under the first count ... only [“willfully or unlawfully causing or permitting a child under the age of sixteen years to be placed in such a situation that the health of such child was likely to be injured ... [by] providing a home living environment that was unhealthy and unsafe” in violation of § 53-21 (a) (1).]

[22] The trial court rejected the defendant’s claim that expert testimony was required to establish that the conditions in the apartment likely would result in injury to the mental health of a child.

[27] On appeal, the defendant claims that: (1) § 53-21 (a) (1) is unconstitutionally vague as applied to her conduct because the statute provides no notice that poor housekeeping may be a criminal offense; and (2) the evidence was insufficient to support the defendant’s conviction for risk of injury to a child under § 53-21(a) (1) because, without expert testimony, the jury had no basis upon which to conclude that the conditions in her apartment were likely to cause a mental health injury to a child.

[28] The defendant argues that § 53-21 (a) (1) is unconstitutionally vague as applied to her conduct because it does not require the state to prove that she had the intent to injure Daniel. She further argues that, even if the statute includes a knowledge requirement, the statute is vague because she could not have known that her conduct violated the statute.

[29] “A statute ... [that] forbids or requires conduct in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates

the first essential of due process. . . . Laws must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly.” ... [T]he void for vagueness doctrine embodies two central precepts: the right to fair warning of the effect of a governing statute ... and the guarantee against standardless law enforcement.

[33] We agree with the defendant that the intent requirement of § 53-21 (a) (1), which, on its face, requires the state to prove only that the defendant had the general intent to commit an act that was likely to injure the health of a child, would be unconstitutionally vague as applied to otherwise lawful conduct that no reasonable person could have known to have posed such a threat. [W]e conclude that the statute is unconstitutionally vague as applied to the defendant’s conduct. The state has pointed to no statutes, published or unpublished court opinions in this state or from other jurisdictions, newspaper reports, television programs or other public information that would support a conclusion that the defendant should have known that the conditions in her apartment posed an unlawful risk to the mental health of a child. Rather, the state implicitly relies on an “I know it when I see it” standard. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (stating that, although it is difficult to define obscenity, “I know it when I see it”). We recognize that there may be generally accepted housekeeping norms and that it may be common knowledge that, all things being equal, a clean and orderly home is preferable to a dirty and cluttered home. The same could be said of any number of conditions and actions that affect a child’s well-being. It may be common knowledge, for example, that drinking milk is healthier than a constant diet of soft drinks, reading books is preferable to constant exposure to television programs, large cars are safer than small cars, playing computer games is safer than riding a bicycle, and so on. All of these comparisons, however, involve virtually infinite gradations of conduct, making it extremely difficult, if not impossible, for an ordinary person to know where the line between potentially harmful but lawful conduct and unlawful conduct lies or, indeed, whether that line exists at all. Not all conduct that poses a risk to the mental or physical health of a child is unlawful. Rather, there is an acceptable range of risk.

[45] Moreover, ... the evidence showed that employees of the department had inspected the defendant’s apartment during late 2001, and had closed its file on the family only days before Daniel’s suicide, ... the only experts in child safety who had knowledge of the conditions in the defendant’s home during the relevant period apparently had concluded that

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