

33% Chance Of Guilt Not Enough Says Illinois Court Of Appeals

Allen Brown was sentenced to 100 years in prison in 2008 for the murder of his landlord in Peoria, Illinois. The September 2007 murder of Hung Tien was grisly since he was beaten to death with a ball-peen hammer and a pry bar.

There were no witnesses to the murder and there was no physical or forensic evidence tying anyone to the crime or the crime scene. When questioned Brown denied any involvement in his murder. Brown was charged because one of his shirts was found in a trash bin with some of Tien's blood on it, but there was no way to determine who put it there or when they did so. In addition, the DNA of unknown persons was recovered from both Brown's shirt and Tien's clothing.

During Brown's trial he presented testimony that he had discarded the shirt when he was preparing to move prior to Tien's murder. His lawyers were also able to bring out that at least two other tenants had the same means and opportunity to kill Tien, and they had motives at least equal to Brown who at

one time during a dispute with Tien was heard to have told him he was going 'to kick his ass.' Brown testified in his defense and denied any involvement in Tien's murder.

Brown appealed and the Illinois Court of Appeal overturned his conviction based on insufficiency of the evidence. The Court ruled on January 11, 2011, that a 33% chance that Brown was the murderer was insufficient to support his conviction:

Regardless of whether the evidence is direct or circumstantial, the evidence must establish more than the presence of defendant's shirt at the scene of a murder to prove that defendant committed the murder. The State failed to produce evidence of anything more than that. Instead, the State asked the jury to simply infer, from circumstantial evidence, that it was defendant who wore the shirt while the murder was being committed.

...
However, there is both direct and circumstantial evidence that defendant discarded the items in question before the murder.

...
A 33 percent possibility is not enough to survive reasonable doubt when two other tenants of the house shared the same motive for murder."

The Court held that:

"Where the State's DNA evidence failed to exclude potential suspects with same alleged motive as defendant as contributors of unknown DNA recovered from clothing associated with murder, evidence failed to prove defendant guilty beyond a reasonable doubt."

Illinois v Allen Brown, No. 08-CF-0124 (IL Ct of Appeals, 1-11-11)

In its public response to the Court's ruling, the State's Attorney's Office stated it was sufficient to prove Brown's guilt from the fact he was a dissatisfied tenant of Tien's, he had a criminal history, and the blood evidence. The State's Attorney's Office said they are going to appeal the ruling to the Illinois Supreme Court.

If the Supreme Court affirms the ruling overturning his conviction, Brown will be released and not retried, because the prosecution did not present sufficient evidence of his guilt during his trial.

Sources:

Illinois v Allen Brown, No. 08-CF-0124 (IL Ct of Appeals, 1-11-11)

"Appellate court throws out Peoria man's murder conviction," *Journal Star* (Peoria, IL), January 13, 2011.

Toshikazu Sugaya Compensated \$965,600 For 17 Years Wrongful Imprisonment



Toshikazu Sugaya in the courtroom after his acquittal on March 26, 2010.

Toshikazu Sugaya was convicted in December 1992 of the 1990 kidnapping and murder of a 4-year-old girl in Ashikaga, Japan, about 50 miles north of Tokyo. Sugaya became a suspect because he was a kindergarten bus driver.

Japanese police are allowed wide latitude in the techniques they use to question a suspect, which results in a very high percentage of confessions by suspects. That is reflected in Japan's 99% plus conviction rate for prosecutions.

Under the pressure of intense interrogations Toshikazu Sugaya confessed, withdrew his confession, then confessed again, and again withdrew it.

Although Sugaya insisted he only confessed because his police interrogators were kicking

him and pulling his hair, he was convicted based on his repeated admissions of guilt and a DNA test a prosecution expert witness said implicated him. Sugaya was sentenced to life in prison. His conviction and sentence were affirmed by Japan's High Court in 2000.

In December 2008 the Tokyo High Court ordered DNA tests comparing Sugaya's DNA with the assailant's bodily fluid found on the young girl's clothing.

On May 8, 2009 the High Court released the test results that excluded Sugaya as the girl's assailant. The prosecution agreed not to oppose Sugaya's retrial and he was released on bail on June 4, 2009, after 17-1/2 years of incarceration from the time of his arrest in 1991.

Sugaya was granted a retrial by the Tokyo High Court on June 23, 2009. During his retrial Sugaya's lawyers argued that during his 1992 trial his confessions were inadmissible because they were coerced and he had not been informed of his right to consult with an attorney and to remain silent, and the DNA tests were not conducted in a scientific manner so they were too unreliable to be admissible.

Sugaya, 63, was acquitted on March 26,

2010, with the presiding judge stating for the unanimous three-judge panel, "The DNA tests had no admissibility as evidence, Sugaya's confession was false, and it has become apparent to everyone that he is not the culprit." The judge also said, "I feel sorry as a judge that we did not listen to Mr Sugaya's truthful voice, and as a result, took away his freedom for 17 and a half years."

Sugaya was the first person exonerated in Japan with the assistance of new DNA evidence.

In September 2010 Sugaya filed a claim under Japan's Criminal Compensation Law as recompense for the mental distress he suffered during the 17-1/2 years he spent in prison.

On January 13, 2011, Sugaya was awarded 80 million yen by the Utsunomiya District Court. (\$965,600 converted to dollars on 1-13-2011) After being notified of the award, Sugaya told reporters, "I think the amount is appropriate. The 17-and-a-half years were long, but today marks a closure."

Sources:

Man wrongfully convicted of 1990 murder acquitted; more than 1,500 line up for 48 seats, *Japan Today*, March 26, 2010.

Man acquitted of 1990 murder to receive Y80 mil in compensation, *Japan Today*, January 13, 2011.