

Introduction

My name is Claude Francis Garrett. On February 24, 1992 in a small suburb of Nashville, Tennessee, an accidental house fire tragically claimed the life of my fiancée Lorie Lee Lance.

I was charged with deliberately starting the fire, and I was convicted of first-degree felony murder by a jury in 1993 and sentenced to life in prison. After my conviction was affirmed on direct appeal, my post-conviction petition was granted by the Tennessee Court of Appeals in 2001 based on the prosecution's withholding of exculpatory evidence.¹ I was retried in 2003, and again convicted of first-degree felony murder by a jury and sentenced to life in prison. After my conviction was affirmed on direct appeal, my post-conviction petition was denied by the Court of Appeals in 2012² in spite of new scientific evidence the testimony of the State's fire investigator was based on what is now known to be "junk science." In 2013 the Tennessee Supreme Court declined to review that ruling, and I filed a federal habeas corpus petition that is currently pending.

The Fire

The evening of February 23, 1992 Lorie and I went to a small bar called Daisy Mae's that was a couple miles from the rental house we lived in. While there we drank and played pool with Lorie's step-father Sammy Jones and his son Rodney Jones. We stayed there until closing time and went straight home.

We sat around with the television on and both of us dozed off. We got up and went to bed. I still do not know what it was that woke me, but I woke up and saw light flickering on the living room wall. Our bedroom is directly beside the living room. I got out of bed and went to the door and saw fire to the left side of the living room. I immediately yelled for Lorie to get up and she got up and came up behind me. I took her hand and started toward the front door which was straight down the hall from our bedroom door.

I turned around when I got through the door and started screaming for Lorie and jumping up and down waving my arms but she wouldn't come through the door. It looked like she was turning toward the rear of the house, so I ran around to the side of the house where our bedroom window is and picked up a lawn chair and broke the window and started screaming for her. I got no response so I ran to the next window which is to the spare bedroom, and I broke this window and screamed for her again, but I got no response. Around that time a neigh-

Convicted Of A Murder That Didn't Happened -- The Claude F. Garrett Story

By Claude Francis Garrett

bor from across the street and his son were on the scene following me around the house. I then went to the bathroom window. The window had been covered with plywood for about a year prior to the fire because it was broken when the house was rented. I picked up a nearby ax and started chopping on the plywood, which I gave to a neighbor kid when I took off toward the water faucet.

Around this time, I heard the fire trucks coming and I took off and jumped onto the running board of the first truck. I yelled at the fireman that my girlfriend was in the house.

After finding Lorie they carried her out and laid her on the front porch where the medics attempted to revive her. It wasn't long until they carried her to the ambulance in front of the house.

"Mr. Garrett has twice been wrongfully convicted through the application of what the National Research Council termed, "junk science."
Stuart W. Bayne, Fire Investigator

A neighbor saw that I was burned and offered me a ride to the hospital. After I arrived at the hospital emergency room, Dr. Robert Roth came into the waiting room and told Lorie's family and me that she didn't make it. It was later determined she died from smoke inhalation. Dr. Roth took me to a room for treatment. Dr. Roth removed a large portion of the burned skin from the back of my left hand, and it was wrapped heavily with bandages. While I was there a detective asked if I would provide a blood sample and I told him yes.

The Investigation

After being treated I went outside to the hospital parking lot where a detective came up to me and said I needed to go downtown to give my statement. I asked the detective if I was under arrest and he said no. While at the police station I gave a statement even though I told the detectives I had been drinking, smoking pot and had been given a pain pill in the emergency room. I gave the detectives the pants and shirt I had on. I also consented to a hand swab which wasn't done, yet Detective David Miller testified falsely

during both of my trials that I refused.

Lorie and I heated with a kerosene heater in the kitchen where we had a 5-gallon can of kerosene. When kerosene was smelled by the firemen they assumed it was used to start the fire. The fire marshal was called to investigate. He collected samples for testing. He even went under the house and collected a soil sample from directly under the living room. Every sample was tested by the Tennessee Bureau of Investigation Crime Lab, and they were all found to be negative for the presence of any accelerant.

The labs' tests of my clothes were negative for the presence of accelerant. My blood alcohol level was found to be .11, and Lorie's was .06, which supported my statement and that of other witnesses we had been drinking that night.

Twelve hours after the fire marshal had the living room cleaned out and the floor washed down with a booster hose, an ATF agent arrived at the house to help determine the cause and origin of the fire. The ATF agent was James F. Cooper.

After Cooper opined the fire was caused by arson, the police began a homicide investigation with me as the sole suspect.

Lorie and I had set May 7, 1992 as our wedding date, and everyone questioned who saw us on the day and evening before the fire told police investigators we were not arguing or fighting. Other than her fire related injuries Lorie had no marks or wounds on her.

My Prosecution

I was indicted by the Davidson County Grand Jury on May 19, 1992 for the first degree murder of Lorie during the perpetration of or attempt to perpetrate arson. The prosecution's theory during both trials without offering a motive of any kind, was that I somehow placed and locked Lorie inside the small utility room, poured kerosene around the living room, started the fire, and then left the house, with Lorie dying from smoke inhalation. My defense during both trial was the fire was accidental in origin.

Agent Cooper was the prosecution's star witness. He testified in both trials that he saw burn patterns on the living room floor which he considered could only occur from an accelerated fire, yet he testified he didn't take a single sample from the so-called pour pattern area for testing by the lab. Instead,

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he only collected one sample of burned debris from the scene -- which was a sample of the living room baseboard that he said tested positive for kerosene. During a hearing prior to my second trial concerning Cooper's qualifications to testify as an expert, he testified he did not consider himself an expert in the field of fire science, which he defined as "the study of fire behavior." The trial judge nevertheless ruled he was qualified to testify as an expert fire investigator.

The fireman who allegedly opened the utility room door and found Lorie testified in the first trial that he had to do something to get the door to open, which suggested it was locked. After my 1993 felony murder conviction was affirmed on direct appeal, I obtained an 11-page police report with this fireman's statement wherein he said the door was not locked. The Court of Appeals granted me a new trial based on the prosecution's failure to disclose that favorable evidence to my lawyer.

During my retrial in 2003 fire investigator Stuart W. Bayne was retained as a defense expert. Bayne has investigated more than 800 fires and has been expert prosecution or defense witness in more than 50 trials. Bayne testified the burns Lorie and I had could only have come from the same location in the house at the same time because they were in virtually the identical part of our bodies. Bayne testified it is not possible Lorie received her burns while inside the utility room because the fire did not reach inside that room. He also testified the fire

was accidentally started by a cigarette dropped in the love seat right under the double front living room windows.

The jury chose to believe Cooper's testimony the fire was caused by arson, so I was again convicted of felony murder.

State Post-conviction Petition

My direct appeal was denied, and in 2007 I filed a state *pro se* petition for post-conviction relief that among its claims asserted I was actually innocent based on new scientific evidence, and my lawyer provided ineffective assistance of counsel. In 2010 I was appointed counsel and an evidentiary hearing was held in August 2010.

During that hearing internationally known fire scientist John J. Lentini testified as a defense witness that he is a member of the National Fire and Protection Association ("NFPA") Technical Committee, which is responsible for the maintenance of NFPA 921, Guide for Fire and Explosion Investigations. Lentini testified NFPA 921 is based on the "scientific method" and it represents the standard for conducting a fire investigation. Based on his knowledge, experience and the guidelines set forth in NFPA 921 Lentini testified "it was pretty clear that the fire originated in the living room, [and] it was pretty clear that it went to flashover" Lentini explained:

"When fires achieve flashover, they light the floor on fire. A lot of time — in fact, early in my career that was considered to be a suspicious thing because fires burn up and the floor shouldn't burn, but it is now pretty well accepted that when a

Davidson County Assistant District Attorney John C. Zimmermann was publicly censured on May 28, 2002 by the Tennessee Board of Professional Responsibility for intentionally violating Claude Garrett's constitutional rights by concealing the 11-page police report containing evidence the laundry room door was not locked. The Board found the aggravating factors that Zimmermann was an experienced attorney and he had two prior disciplinary sanctions. Other ethical misconduct complaints have been filed against Zimmermann.

room becomes fully involved [in flames] one of the things that is going to burn is the floor and you, typically, get irregular burns on the floor."³

Lentini discussed "mythologies" of arson investigation that many arson investigators previously embraced but which have been discredited by the scientific community. When he was asked whether he had identified any "mythology" in my case Lentini responded:

"The only mythology is the belief on the part of the investigator that he can, by looking at the floor, determine the difference between charring done by radiation and charring caused by a flammable liquid."⁴

Consequently, Cooper's testimony that he could tell an accelerant had been used to start the fire solely by *looking* at the floor, was one of the "mythologies" of arson investigation that have been discredited by the scientific community.

Bayne testified that my trial lawyer failed to follow his recommendations on cross-examining Cooper -- including asking him about NFPA 921 and advancements in fire investigation techniques -- and to ask questions of Bayne and other witnesses with first-hand knowledge of issues that would lay the foundation necessary for Bayne to be questioned about those issues.

The judge effectively disregarded the substance of Lentini and Bayne's testimony in denying my petition. That enabled the judge to rule Lentini's new scientific testimony was not relevant specifically to my case, and my trial lawyer wasn't ineffective because Bayne provided some testimony about the defense's theory the fire was accidental, so the jury was

Affidavit of Fire Investigator Stuart W. Bayne

Bayne provided a six-page Affidavit concerning Claude Garrett's case that he summarized on page six:

10) The following is a summary of the above.

- I know that Mr. Garrett is innocent of the charges of Arson and Murder.
- I can prove that Mr. Garrett is innocent of the charges of Arson and Murder.
- I base this statement on the Scientific Method (a.k.a., a systematic approach) to the evaluation of the evidence.
- My conclusions are based on technically defensible expert opinions.
- Mr. Garrett has been wrongfully convicted through the application of what

the National Research Council termed, "junk science" in the publication, "Strengthening Forensic Science in the United States, A Path Forward" (National Academies Press, 2009). Mr. Garrett was convicted in 1993 by the application of "junk science" and by a prosecutor, who was found by the Court of Criminal Appeals of Tennessee at Nashville to have withheld exculpatory evidence [citation omitted] As a result, Mr. Garrett received a new trial in 2003 and was convicted a second time by the application of "junk science" and by a defense attorney who provided inadequate counsel (who stated so, under oath, on August 30, 2010).

Affidavit of Stuart W. Bayne, July 19, 2011 (Tennessee v. Garrett, No. 92-B-961 (Crim. Ct. Davidson Cty, Div. IV)

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Love Trumps Law As Italy's Supreme Court Annuls Sexual Abuse Conviction

Italy's Supreme Court [has annulled](#) the sexual abuse conviction of a 60-year-old man found in bed with an 11-year-old girl on the ground they had a "romantic relationship." The man was identified by his initials P.L.

The girl's family was poor and lived in the southern Italian town of Catanzaro. P.L. worked with the Social Services Department in Catanzaro, and he met the girl through his work with her family. Although P.L. was married, he began a relationship with the girl. When he was able to get away they would go to his seaside villa in Roccelletta, about nine miles south of Catanzaro.

The police received information about the relationship and began wiretapping his telephone. In 2010 they raided P.L.'s villa and found him in bed with the girl and both were

naked.

P.L. was charged with sexual abuse of a minor. In Italy the age of consent is 14, but it rises to 16 where one of the partners is in a position of authority or care over the younger party.

During P.L.'s trial it came out that the girl was the aggressor and he tried at length to dissuade her before they became intimate. The girl's mother encouraged her daughter's involvement with P.L., and [repeatedly told her](#) she couldn't tell anyone, "because this is a secret that we have to carry to the grave."

The girl testified she was in love with P.L., and the man reciprocated her feelings. He was convicted and sentenced to five years in prison.

P.L.'s conviction was affirmed by the appeals court. He then appealed to Italy's (Supreme Court)(Court of Cassation), which [annulled his conviction](#) and sentence in December 2013 on the basis the appeals court failed to consider the couple were in a



Court of Appeals building in Catanzaro, Italy.

"romantic relationship" and "loved" each other, which mitigated P.L.'s sexual relations with the girl. The Supreme Court remanded the case back to the Court of Appeal of Catanzaro for a new trial.

Note: The Italian web pages were translated with Google Translate.

Source:

[Judges see 'romance' in child sex case](#), *BBC News*, December 11, 2013

Sixty-year-old in bed with a 11-year old, [Supreme Court annuls conviction](#): it is love,

[www.tgcom24.mediaset.it](#), December 7, 2013



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aware of that in finding me guilty.

My appeal of the judge's ruling to the Court of Appeals was denied on September 5, 2012, and on February 25, 2013 the Tennessee Supreme Court declined to review that ruling.

Federal Habeas Corpus Petition

With my state court appeals exhausted, I filed my *pro se* federal *habeas corpus* petition on March 5, 2013 -- less than two weeks after the Tennessee Supreme Court's ruling. At the same time I made a motion for appointment of counsel, which was granted. On June 5, 2013 my appointed federal public defender filed an amended petition detailing seven grounds for relief, and which states in part:

"Mr. Garrett respectfully moves the Court to declare unconstitutional and invalid his conviction for first degree felony murder following a jury trial in Davidson County. Scientific evidence demonstrates that Mr. Garrett is actually innocent and has been wrongfully imprisoned for 20 years. ...

The State's "expert" witness told the jury that he could tell the difference between arson and accidental fire by identifying a "pour pattern." As a matter of scientific fact, however, nobody can tell that difference, and, accordingly, the testimony of ATF Agent James Cooper amounted to "junk science" that has

since been discredited.

Because of errors by the court, the state, and defense counsel, the jury heard a "battle of the experts." One expert used only intuition and junk science, the other used actual science. The jury believed the junk science and convicted an innocent man."

Claude F. Garrett v. Colson, No. 3:13-cv-00190 (USDC MD Tenn.) (Amended habeas petition filed 6-5-2013.)

On June 20, 2014 -- *more than a year after my amended petition was filed* -- Chief U.S. District Court Judge William J. Haynes, Jr. issued an Order for the filing of a response to its claims.

Conclusion

My case can be summarized as a zealous prosecutor who relied on the "junk science" testimony of an equally zealous so-called expert, and who was inadvertently aided by the ineffectiveness of my trial lawyer. I did not intentionally start the fire at our home causing Lorie's death, and there is no credible evidence I did. I have been imprisoned for 21 years for a crime that didn't even happen -- because Lorie's death was the tragic consequence of the fire that was accidental.

I can be written at:

Claude F. Garrett 225779
Riverbend Max. SI
7475 Cockrill Bend Blvd.
Nashville, TN 37209

Endnotes:

1. *Garrett v. State*, No. M1999-00786 CCA-R3-PC, 2001 WL 280145 (Tenn. Crim. App. March 22, 2001).
2. *Garrett v. State*, No. M2011-00333 CCA-R3-PC (Tenn. Crim. App., Sept. 5, 2012)
3. *Id.*
4. *Id.*

Justice Denied notes:

Claude Garrett's amended federal habeas petition can be read on Justice Denied's website at,

www.justicedenied.org/cases/claudegarrett/amendedpetition06052013.pdf

John Lentini's company is Scientific Fire Analysis, and his website is,

www.firescientist.com

Stuart W. Bayne's company is The Fire P.I., and his website is, www.thefirepi.com

The public censure of Davidson County Assistant District Attorney John C. Zimmermann on May 28, 2002 by the Tennessee Board of Professional Responsibility for intentionally violating Claude Garrett's constitutional rights by intentionally concealing exculpatory evidence can be read at,

www.tbpr.org/NewsAndPublications/Releases/Pdfs/009723-20020529.pdf

