Life in Legal Purgatory

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By Katie Vloet

LIFE IN LEGAL PURGATORY

VICTOR CAMINATA WAS CONVICTED OF ARSON.

The Michigan Innocence Clinic and its experts say he didn’t commit arson—in fact, that the fire in question wasn’t arson at all, and that Caminata was convicted based on junk science. The Clinic’s attorneys won him a new trial, so now, he awaits his fate once more.
Long Road Back

When Victor Caminata attends his son’s football practices, he keeps to himself, avoiding interaction with the other parents. Still, he loves to be there, to watch his 9-year-old son learn to navigate the gridiron and develop a camaraderie with other boys his age.

Caminata, after more than five years in prison, is happy to be free to spend time with his kids, but the specter of incarceration weighs heavily on him—especially as he awaits a retrial for a crime he says he didn’t commit and the experts with the Michigan Innocence Clinic say wasn’t even a crime.

“I don’t like to be around crowds now,” says Caminata, 39. “Prison—it’s just a terrible place. Nobody should have to see the things I’ve seen. I grew up in the country, and I’m a family man. But after being in prison, it’s a long road to get back to the way things used to be.”

Caminata was sent to prison in 2008 after the house he shared with his then-girlfriend was severely damaged in a fire. After investigators initially said the fire was accidental and had begun in the chimney that connected to a wood stove, police received an anonymous tip that led the investigators to re-examine the wreckage. They then said they found signs that the fire had been set intentionally, and Caminata was their only suspect.

Faculty, staff attorneys, and student attorneys from the Michigan Innocence Clinic worked on the case for more than two years. The Clinic’s fire investigation experts said the investigation into the fire was “unscientific,” “erroneous,” and resulted in “unreliable and illogical conclusions.”

In July, at the beginning of what was scheduled to be three days of evidentiary hearings, the prosecution announced that its experts no longer stood by the arson determination that had sent Caminata to prison to serve nine to 40 years. The judge vacated the conviction and ordered Caminata released on a personal recognizance bond. Yet the prosecution announced later in the summer that it would try him again.

So, as he waits for a new trial date, Caminata is in legal purgatory, out of prison but awaiting retrial—straddling the worlds of freedom and captivity.
At 6:30 a.m. on March 2, 2008, Caminata loaded wood in the basement woodstove at the home where he and his kids lived with his girlfriend and her kids. He loaded it again at 9 or 10 a.m. on the cold, snowy, late-winter day in Boon, Michigan, near Cadillac in the northwestern part of the state.

Late in the morning, Caminata was sitting in the recliner, until he was awakened by the smell and sight of smoke coming out of the living room wall. He told his girlfriend’s 13-year-old son to get the pets and the other kids out of the house. The boy came back inside, where he found Caminata in the basement, spraying the woodstove with a fire extinguisher. Caminata also climbed up onto the roof in order to put a “chem stick” down the chimney to try to extinguish or slow the progress of the fire. Caminata, who happened to be a volunteer firefighter, helped unroll the hoses when the fire truck arrived.

The insurance investigator determined it was a chimney fire, which occurs when creosote lodged in the chimney pipe combusted. The investigator concluded the fire escaped the chimney through an open mortar joint and small “thimble” hole. A few days after the initial investigation, however, an anonymous tip came in to police that said Caminata had discussed how to burn a house down without getting caught and that he would know how to make a fire look accidental. (The conversation was never substantiated, and the tip was not discussed at trial.) Caminata’s girlfriend also said during
the course of the investigation that she “had a feeling” he may be at fault, because they’d had a fight the night before the fire during which she’d asked him to move out (Caminata said there was no such fight).

Investigators from the insurance company and from state police later claimed that char marks and “unconnected” areas of burning pointed to arson. They said no puffed or expanded creosote—a telltale sign of a chimney fire—was found in the chimney. They theorized that Caminata used a torch or fire stick to start the fire just outside of the chimney itself. And they said the fire could not have originated in the chimney and escaped through the thimble hole in the chimney because the wood they believed had been near the hole was intact and not consumed by fire.

After consulting with new experts who reinvestigated the fire, the Innocence Clinic filed its motion for a new trial in early 2012. In the motion, the Clinic maintained that the state’s fire experts had committed fundamental errors in violation of National Fire Protection Association (NFPA) 921, which sets the bar for scientific-based investigation and analysis of fire and explosion incidents, and that the state’s experts did not have adequate training to be considered experts in the trial. The Clinic’s attorneys and experts also said that the supposed signs of arson were spurious, and that the original determination that an accidental chimney fire had burned the house was, in fact, correct.

“There were many very big problems with this investigation: They never identified the point of origin, their own photos show that the other side of the beam had burned—destroying their theory about a blowtorch or other fire-starter, and the worst problem, that they never looked in the chimney with a camera to search for puffed creosote,” says David Moran, ’91, clinical professor at Michigan Law and director of the Michigan Innocence Clinic. “That’s the single most surprising thing: They never actually looked into the chimney, which is the most basic step a fire investigator is required to take before deciding whether a fire potentially involving a chimney is or is not a chimney fire.”

Joseph Filas, a certified fire and explosion investigator and one of the Innocence Clinic’s experts, found many defects in the structural integrity of the chimney and surrounding areas, in particular that the thimble hole had been improperly sealed so hot gases from the chimney could escape and ignite the wood framing of the house itself.

Filas said his review of the evidence showed that, contrary to the state investigators’ conclusion, the first material that ignited outside of the chimney was a wood board in direct contact with the thimble hole. Filas concluded the fire spread because hot gases leaked out of the chimney at the thimble hole. He also concluded that the state’s investigators had improperly reconstructed the position of the wood boards covering the thimble hole.

“It is also my opinion that, in general, the state’s investigators conducted an unscientific and erroneous investigation of this fire, reaching unreliable and illogical conclusions,” Filas wrote in his affidavit. “The conclusion that there were multiple areas of origin, which formed a basis for their opinion that the fire was arson, was invalid and did not follow accepted fire investigation science.”

Thomas R. May, an Innocence Clinic expert and a consultant with Fire Litigation Strategies LLC, also criticized the state’s investigation: “The failure to properly examine the chimney by use of an interior video inspection camera was an egregious investigative mishap that typifies the haphazard investigative practices that were employed here,” he wrote in an affidavit.

Investigators initially said the 2008 house fire was a chimney fire. They later said the fire could not have started at the chimney and theorized that Victor Caminata started the fire—basing their theory on an investigation that Innocence Clinic fire investigation experts say was “unscientific and erroneous” and “did not follow accepted fire investigation science.”
Junk Science

The Clinic raised issues about other elements of the case as well: the son of Caminata’s then-girlfriend was home the entire morning and saw Caminata the whole time; the then-girlfriend previously admitted filing a false police report about another ex-boyfriend and, therefore, shouldn’t be trusted in her statements about Caminata; and that the state’s investigators relied on negative corpus—that is, they ruled out other theories rather than finding evidence to actually support their arson theory, a methodology that is widely rejected by the fire-science community.

But the core of the Innocence Clinic’s case, in many ways, is the faulty science at the heart of numerous arson cases, says Imran Syed, ’11, staff attorney for the Clinic.

“Junk science” in arson cases is being challenged by the Innocence Project and other organizations, and was the focus of a PBS Frontline documentary, “Death by Fire.” The Michigan Innocence Clinic is working on three arson cases right now, and previously exonerated a client, David Gavitt, who served 27 years for a fire that killed his wife and two young children. The first thing he wanted to do once leaving prison was visit their graves—something he’d never had the chance to do because of the junk science that led to his wrongful conviction, Syed said.

“Fire science has improved dramatically since the 1990s when the NFPA first published its guidelines on how to scientifically investigate a suspicious fire,” Moran said. “But, unfortunately, some fire examiners continued to employ the old and discredited methods well into the 21st century. We know there are more innocent people in prison who were sent there, like David Gavitt and Victor Caminata, by junk fire science, and we hope to identify and exonerate as many of them as we can.”
Victor Caminata was freed on July 2, two days before the rest of the country celebrated its independence. He ate lunch at Ruby Tuesday in Cadillac with many of the members of his Innocence Clinic team. He also called his ex-wife and told her he would surprise the kids.

He pulled up to their house, and his two youngest children, ages 12 and 9, ran to him. “It was awesome,” Caminata recalls. “Just to be able to hug and kiss them was unbelievable.” He had last seen them a year before at his mother’s funeral.

Caminata is working for a pool installation company and spending as much of his free time as possible with his three children. He takes one daughter to 4-H, his son to football, and all of the kids boating and tubing near Traverse City with his good friends Fred and Kathy Moomey. (Without those friends, as well as sister Mary and brother-in-law Todd Holmes, “I don’t know what I would have done; they’ve been there for me the whole way,” Caminata says.)

He also is in regular contact with his attorneys from the Innocence Clinic, as well as James Samuels of Big Rapids, Michigan, and Mike McKenzie of Atlanta, Georgia, who will defend him at the retrial. He credits the Clinic with finding evidence and experts that he never could have found on his own, for believing in his innocence, and for standing by him as his case moves forward—quickly, he hopes, though he is not optimistic about the speed of the judicial system.

That is his life now: working, bonding with the children he’s missed raising for more than five years, and waiting—waiting for word of a retrial date, or an announcement that the prosecution won’t retry the case. Whatever the prosecutor decides, he feels confident of one thing, even during this time of deep uncertainty:

“I know I didn’t do this, my attorneys know I didn’t do this, the evidence shows I didn’t do this,” he says. “There’s no way they can win.”