

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

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S.C. Supreme Court

CLAUDE DUNAGIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001007

APPENDIX

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Claude Dunagin - Cross-examination
by Solicitor Bulsa

1 Q And do you remember when the police came out to talk to
2 you the next morning?

3 A Yes, sir.

4 Q You ordered them out of the house, didn't you?

5 A No, sir.

6 Q In fact, you closed the door in their face?

7 A No, sir, when he walked outside I asked him if his, if
8 the detectives was looking around. I told them not to be
9 you know.

10 Q Why not?

11 A After the mistakes they made on my daddy's case I
12 didn't want them around.

13 Q What are you talking about mistakes about your daddy's
14 case?

15 A Well, the mistakes they made on my daddy's case, they
16 never took fingerprints. They never took shoe prints.

17 Q Was that man convicted, sir?

18 A Yeah, but his accomplice was set free, sir.

19 Q Was he convicted of murder, sir?

20 A Yeah, but his accomplice was set free for nothing. The
21 solicitor promised us she would get 15 years, no matter what
22 and---

23 Q In fact---

24 A ---she told a lie, sir, and the whole family was upset
25 about that.

Claude Dunagin - Cross-examination
by Solicitor Balsa

1 Q Okay.

2 A And we didn't trust the police force, sir.

3 Q Exactly.

4 A Exactly. We didn't trust the police---

5 Q You didn't trust the police.

6 A ---to do the right job, that is correct. And that's

7 why I told them, without a warrant, don't be looking around

8 and that's my---

9 Q Why not?

10 A That's my God given right to be a citizen of the United
11 States of America.

12 Q You didn't like the police. You didn't want them
13 around cause you just done something yourself.

14 A No, sir, I'm not a criminal, sir.

15 Q You're just an arsonist, aren't you?

16 A No, sir.

17 MR. BRANNON: Objection. Argumentative. Move to
18 strike.

19 THE COURT: Sustained.

20 Q You were mad that this development was going in?

21 A No, sir.

22 Q You thought you were cheated on the monies cause they
23 were gonna make a lot more money selling that property,
24 isn't that right?

25 A No, sir.

Claude Dunagin - Cross-examination
by Solicitor Bulsa

1 Q They were dividing it up and selling it to doctors and
2 you were upset about it?

3 A No, sir.

4 Q Did your daddy have feuds with the Floyds?

5 A I don't remember, sir.

6 Q Ever a property dispute with the Floyds?

7 A I don't remember. Don't recall.

8 Q What do you mean I don't remember?

9 A I don't recall, sir.

10 Q That's what your daddy was proud of you, wasn't he?

11 A No, sir.

12 Q Cause you avenged him.

13 Nothing further, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BRANNON:

16 Q Mr. Dunagin, I want to go back to the day that you met
17 with that nice lady from Duke Power about the easement.

18 A Yes, sir.

19 Q You signed the easement, correct?

20 A Oh, yes, sir.

21 Q But they were going to have to remove some trees,
22 correct?

23 A Yes, sir.

24 Q And did those trees have a value that they were going
25 to cut down?

Claude Dunagin - Redirect examination
by Mr. Brannon

1 A Yes, sir.

2 Q And was the money paid by the Floyds the money that was
3 representative of the cost of those trees?

4 A Yes, sir.

5 Q All right. Now, you talked to that lady about horses,
6 right?

7 A Yes, sir.

8 Q And you also talked to her about your father's death,
9 didn't you?

10 A I did, yes, sir.

11 Q When your father was killed, was he also robbed?

12 A He was robbed and he was beaten, yes, sir.

13 Q So, you talked to this woman at Duke Power about your
14 father being robbed, correct?

15 A Yes, sir.

16 Q All right. Now, you sold property three separate times
17 to the Floyds, correct?

18 A That is correct.

19 Q But never met with Mr. Floyd?

20 A That is correct.

21 Q When was the last time you sold property to the Floyds?

22 A December of 2009.

23 Q When did you get arrested?

24 SOLICITOR BULSA: Objection, Your Honor. This is
25 irrelevant.

Claude Dunagin - Redirect examination
by Mr. Brannon

1 MR. BRANNON: It goes right to his question.

2 SOLICITOR BULSA: It does not.

3 THE COURT: Let me see you just a minute.

4 (Whereupon, a bench conference was held out of the
5 hearing of the jury at this time.)

6 THE COURT: Sustained.

7 Q The last parcel sold was in 2009, correct?

8 A 2009, that's correct.

9 Q And -- all right. And then Mr. Bulsa asked you about
10 the day that you had the chat with the guy in the grinder.
11 Remember that?

12 A That is correct.

13 Q How long had the riding ring been on that property?

14 A I don't know, sir.

15 Q Did the Floyds put that there?

16 A I guess, yes.

17 Q Okay. And you sold that to them in 2007, right?

18 A That is correct, sir.

19 Q And the person who bought the property or the company
20 that bought the property from you built the riding ring,
21 correct?

22 A I suppose, sir.

23 Q And that's the first I guess development within the
24 development, correct?

25 SOLICITOR BULSA: Objection to leading, Your Honor.

Claude Dunagin - Redirect examination
by Mr. Brannon

1 THE COURT: Overruled.

2 Go ahead.

3 A That, that is the first thing built on the property
4 that I sold him, correct.

5 Q All right. Seeing that grinder wasn't what let you
6 know that the development was going to happen, was it?

7 SOLICITOR BULSA: That's a leading question.

8 A No, sir, it's when I sold the property.

9 Q Okay. What, what made you know that the development
10 was going to take place?

11 A When I sold the property in 2007. When I signed my
12 name on the deed that somebody else could have the land,
13 they can do what they want to with it.

14 Q All right.

15 A It's out of my hands.

16 Q Did you ever tell anybody that you burnt this property,
17 this house?

18 A No, sir.

19 Q Thank you. Nothing further.

20 RE CROSS EXAMINATION

21 BY SOLICITOR BULSA:

22 Q Why in the world were you upset about being robbed of
23 the price of the value, the property then?

24 A I wasn't. I never said that, sir.

25 Q You didn't tell the Duke Power lady that?

Claude Dunagin - Recross examination
by Solicitor Bulsa

1 A As far as I can recall, no, sir, I did not.

2 Q Okay.

3 THE COURT: Okay. You may step down.

4 MR. BRANNON: Defense rests.

5 THE COURT: Any reply?

6 SOLICITOR BULSA: Yes, briefly, Your Honor.

7 State calls Micah Horton.

8 THE COURT: Mr. Horton, you've previously been placed
9 under oath. You're still under oath for the purpose of this
10 testimony.

11 WITNESS: Yes, sir.

12 MICAH HORTON, having been
13 previously sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR BULSA:

16 Q Investigator Horton, did you have an occasion to go out
17 to take some measurements at the Dunagin, I mean at the,
18 where JoAnn Wyatt had been staying?

19 A I did, sir.

20 Q Were you able to get in to measure the exact distance
21 from where the split level home was to the block house?

22 A Yes, sir, I measured where the footprint of the house
23 was. The house had been torn down, but there's still an
24 outline in the ground to where the house was at. I measured
25 from that corner to the end of the driveway on Police Club

Micah Horton - Direct examination
by Solicitor Bulsa

1 Road.

2 Q But you did not actually measure from the location of
3 the home to the block house?

4 A No, sir, I'm not permitted to go on the property of the
5 block house. So, I just went on the property I had
6 permission to be on.

7 Q Okay. And that's because of the Floyds have the right
8 of way here?

9 A Yes, sir.

10 Q Actually own that property along the road?

11 A Yes, sir, that's correct.

12 Q So, you measured -- did you measure from Police Club
13 Road down to this location and then over?

14 A That's correct, sir, I did.

15 Q What was your measurement?

16 A In feet, it was 512 feet, which converts roughly
17 170 yards---

18 Q Okay.

19 A ---from Police Club Road to in front of the house.

20 Q And looking at this photograph, this, this distance you
21 measured is more than the distance---

22 A No.

23 Q ---between the homes?

24 A No, sir, not, not in my opinion because, from the
25 corner of where this house was located to the block house,

Micah Horton - Direct examination
by Solicitor Bulsa

1 is a straight, is a straight line as opposed to the point of
2 the driveway where you turn and go up the driveway, which is
3 the side of the house.

4 Q So, there's no way this distance is 350 yards?

5 A No, sir.

6 Q And did you stand where the house was in, the tri-level
7 house had been and look back from the block house?

8 A I did.

9 Q Was it in the winter time?

10 A It was today, yes, sir.

11 Q Okay. And was there foliage on the trees?

12 A No, sir, you can see.

13 Q Did you have any difficulty seeing the house?

14 A No, sir, you can see it perfectly through the, from
15 where I stood at the imprint of the house to where the house
16 was, the block house. You can see it.

17 Q Okay. Thank you. That's all I have.

18 CROSS-EXAMINATION

19 BY MR. BRANNON:

20 Q Investigator, how much work have the Floyds done on
21 that roadway and that right of way since purchasing the
22 property where the split level house was?

23 A I don't know if they've done any. I don't know. I
24 couldn't answer that.

25 Q You don't know, do you?

Micah Horton - Cross-examination
by Mr. Brannon

1 A No, sir.

2 Q Thank you.

3 A But I do know that the distance wouldn't change no
4 matter what kind of work they do.

5 Q I understand the distance wouldn't change. Thank you.

6 THE COURT: You can step down.

7 SOLICITOR BULSA: Nothing else, Your Honor.

8 THE COURT: All right. That is all the testimony and
9 evidence to be offered in the trial of case. What remains
10 to be done are the lawyer's final summations after which
11 I'll provide you legal instruction, and then you can begin
12 with your deliberations. I've got a couple of matters I'll
13 need to address first. So, I'll ask you to please go to
14 your jury room. Do not yet begin discussions of the case.
15 I'll bring you back in just a few minutes to begin again
16 with the lawyers summation, the instructions, and then your
17 deliberations.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. Motions anyone?

21 MR. BRANNON: No, Your Honor. I would, again, request
22 a charge on arson third.

23 THE COURT: All right. What's the State's position?

24 SOLICITOR BULSA: Your Honor, we clearly believe the
25 jury can find that this was a structure designed for human

1 occupancy based on the arson second statute, and we feel
2 that the State has, if somebody gets confused over that
3 definition---

4 THE COURT: well, do you---

5 SOLICITOR BULSA: ---or a third---

6 THE COURT: Do you consent or object?

7 SOLICITOR BULSA: I don't -- I'll consent.

8 THE COURT: All right. I'll charge it.

9 MR. BRANNON: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MR. BRANNON: will you also charge the definition of
12 dwelling house as cited in the case that I've given to the
13 Court.

14 THE COURT: No reason to. Nobody's claiming this is a
15 dwelling house. The State does not contend in this case
16 that the structure that was burned was a dwelling house.
17 Now, you can talk to them about it if you want to. I'm
18 precluding you from discussing that with the jury. But the
19 statute defines what a dwelling house is. This house was
20 not a dwelling house by definition and the State does not
21 contend that it was.

22 MR. BRANNON: Right.

23 THE COURT: They contend that it is a structure
24 designed for human occupancy.

25 MR. BRANNON: Thank you, Your Honor, you've answered my

1 question.

2 THE COURT: Okay. All right. Can we take a brief
3 recess?

4 THE COURT: Yeah, we're gonna take ten minutes.

5 SOLICITOR BULSA: All right.

6 MR. BRANNON: Approach for just a second?

7 THE COURT: Yes.

8 (Whereupon, a bench conference was held at this time.)

9 THE COURT: All right. We'll take ten minutes.

10 (Whereupon, a short recess was taken at this time.)

11 THE COURT: All right. We ready for the jury?

12 MR. BRANNON: Yes, Your Honor.

13 THE COURT: Bring them in.

14 (Whereupon, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. We're gonna hear from the
17 lawyers and then I'll provide you the instruction and you
18 can begin with your deliberations. So, please give the
19 lawyers your attention now.

20 Mr. Brannon.

21 MR. BRANNON: Ladies and gentlemen of the jury, I first
22 want to take this opportunity, on behalf of myself and my
23 client, Mr. Dunagin, to thank you for your time and your
24 attention as we've taken nearly three days of your time
25 providing testimony and making statements before you, and I

1 just want to take the next few minutes and go back over what
2 you've heard.

3 Please keep in mind that, as you deliberate and as you
4 close this trial, that the state does have the burden to
5 prove, beyond a reasonable doubt, that my client is guilty
6 of the crime. And, again, that reasonable doubt is the kind
7 of doubt that would make a reasonable person hesitate to
8 act. And when you go back into your room to deliberate,
9 you're gonna have all of this evidence, all of these
10 documents, photos, all that stuff. You can look at it. You
11 can pick it up. You can read it. You can touch it. You
12 can have all that with you.

13 But I want to ask you to keep something else in your
14 mind, and that is some things that you don't have. And with
15 that in mind, I'm gonna go back over the witnesses.

16 You can clearly divide the witnesses in this case into
17 two categories. The witnesses in this case can be divided
18 into law enforcement or real estate developers and then the
19 wyatts and Barbara Cash. Two groups.

20 Remember we had the police chief, excuse me, the fire
21 chief, Chief Petras. Chief Petras is a trained fire
22 fighter. He's got some arson investigation training. He's
23 got all of that, and he created a report. And remember that
24 he testified in his report that there were no human factors
25 involved with this fire, and that the cause of fire, he

1 affixed, to construction or other deficiencies. Chief
2 Petras.

3 You had Deputy Easler who testified. He was the first
4 investigator involved in this case. He also generated a
5 report, and the last two lines of his report are the key.
6 He said there are no suspects and the cause of the fire is
7 undetermined.

8 We had the nice gentleman that works for or with
9 Mr. Floyd, the real estate developer. He's the one that was
10 caught on the deer camera. He told you that he had been
11 involved in the purchase of properties. He told you that he
12 knew about the Floyd house under construction, but, quite
13 frankly, he wasn't all that interested in the Floyd house.
14 So, he really quit going by there. He told you that he
15 didn't know how the fire started. He didn't know who
16 started the fire.

17 We have the son-in-law. Nice gentleman. He testified
18 that he went out there the night before to check his deer
19 camera, but, but that gentleman did have some interesting
20 information, whether you knew it at the time, it was
21 interesting. Keep in mind that he said he left his house
22 around six o'clock and it took him four minutes to get to
23 the Floyd property, and that he first went beyond the
24 construction site all the way out to that camera, and he
25 checked his camera. And he told you that his car lights

1 weren't on.

2 But if you remember, Mr. Hice's testimony, he checked
3 sunset on January 23rd, 2008, and the sun set
4 approximately seventeen to eighteen minutes before the
5 Floyd's son-in-law would of gotten to the property. That
6 becomes important because the very first witness was the
7 gentleman who called 9-1-1 and what he said was he had seen
8 some headlights near the riding rink just after dark. I
9 don't know if that means anything, but if you drive on to
10 the property after six o'clock, on January the 23rd,
11 either your headlights are on or you're driving in the dark.

12 we've had several real estate people or two real estate
13 people talk. Both of them told you that there were no
14 restrictions put upon the land sold by Mr. Dunagin to
15 Mr. Floyd or Gordon Farms or whomever purchased the
16 property, but it was all property going to be encompassed in
17 the development. Mr. Dunagin didn't put any restrictions on
18 it. In fact, the only promises made were promises made by
19 Mr. Floyd or his company to Mr. Dunagin, and that was only
20 that this property is going to be used as a buffer. That
21 was that last purchase down that, that line by the split
22 level home. Mr. Dunagin never said don't build on this
23 land. Never said it to anyone.

24 He had the young fellow that was operating the piece of
25 equipment. He told you that not only did Mr. Dunagin ask

1 questions about his equipment, but he said every time I
2 operate this piece of equipment I draw a crowd. It's loud.
3 People want to know what it is. They've never seen it
4 before, and wherever I'm at people come and talk to me.

5 There was some testimony both by law enforcement and
6 the other group about a reward. Never heard anything more
7 about the reward other than it was posted. You did hear,
8 however, that it was increased. As time went by, the amount
9 of the reward went up.

10 I want to go back to the son-in-law for a minute. He
11 talked about his camera, and remember he was asked to draw a
12 little red mark on that picture, and you're gonna have the
13 picture back there. He said my camera will go about 20 or
14 30 feet in the open area. That became important later on
15 because then the State called the group of wyatts. Amanda
16 wyatt, JoAnn wyatt, and then Chasen. Now, there was also
17 Chelsea, but she's kind of in both sides.

18 But JoAnn wyatt testified that Claude Dunagin told her
19 he burnt the house down, that Barbara cash told her, told
20 her the same thing. See, JoAnn wyatt doesn't know anything
21 of her own person. She didn't see anything. And if nobody
22 told her anything or she didn't make it up, she wouldn't
23 know anything to tell you.

24 But what she did say was that she had a camera, and
25 that using that camera after midnight on the 23rd or the,

1 yeah, I guess it was the 23rd, that she was able to see,
2 and even using Investigator Horton's measurements, 500 feet
3 through the trees on her camera, Claude Dunagin in his
4 backyard. But yet the son-in-law of the Floyds told you
5 that his camera would go about 30 feet, and then earlier I
6 told you I would ask you to consider things you don't have
7 because they called Chasen to the witness stand to say that
8 he got a phone call the night of the 23rd or that evening
9 and it was from Danny Dunagin and Danny Dunagin was stuck in
10 the mud and wanted him to go help him out.

11 well, ladies and gentlemen, one thing that you don't
12 have, that you could very easily have, are phone records.
13 If the state wanted you to believe, beyond reasonable doubt,
14 that Danny Dunagin was stuck in the mud that night, they
15 could of got cell phone records for Chasen. They could of
16 got cell phone records for Danny Dunagin. But you don't
17 have them and the reason you don't have them is because the
18 phone call from Danny Dunagin to Chasen didn't happen until
19 the next day when Danny Dunagin needed help pulling the
20 Wyatt gentleman out of the woods. You see they have to
21 prove beyond a reasonable doubt and they couldn't do it.
22 So, they didn't produce the evidence. They only produced
23 the young boy to say it.

24 Now, keep in mind, that's the same young boy that
25 admitted, the first time he talked to the police, he lied to

1 protect his family. I submit to you that if the state
2 wanted to verify and add voracity to that testimony, all
3 they had to do was subpoena a cell phone record and they
4 didn't do it.

5 So, the way I'm going, the direction I'm heading in
6 here you see is anybody that knows anything about the real
7 estate transactions or about the investigation of the fire
8 can't tell you how this fire started or if anyone started
9 it. They can't tell you that. But the people that want to
10 tell you that Mr. Dunagin allegedly had something to do with
11 this fire are the people that he let live in his house for
12 free, that he admittedly lent money to in a time of health
13 need for Amanda, and I don't guess we can dispute that Bryan
14 Wyatt agreed to pay him money because even his own wife said
15 Bryan was gonna pay him out of the disability settlement
16 when he got it. I mean everybody agrees I guess that Bryan
17 was gonna pay him \$15,000. That's undisputed.

18 The only thing disputed is about how much money Danny
19 Dunagin lent Amanda Wyatt was, was it 1,800 or 3,200. She
20 agreed that he lent her money, and she also admitted that
21 she didn't pay him all of it back.

22 The first time JoAnn Wyatt was asked to leave or asked
23 about moving out of the split level home was in March of
24 2008. That was two and a half to three months before she
25 first went to the police. He had talked to her in March and

1 she said give me a month or two and I'll be out.

2 well, he went back the next month because there was
3 progress towards her moving out and she was still there. He
4 asked her again. The pressure's building. I got to get
5 out. The pressure's building. He goes back in April,
6 excuse me, he goes back in May. Still no progress towards
7 the move. I've got to get out. Two things are happening.
8 I got to get out. The reward monies going up, and I can't
9 pay the man any money.

10 Everybody that testified against my client has two
11 things in common. They don't know anything about this fire
12 personally. Nothing. Amanda says what she knows came from
13 Barbara and Danny Dunagin. JoAnn says what she knows came
14 from Barbara and Danny Dunagin. Even his granddaughter,
15 Chelsea, I don't know what happened to this house. I was
16 asleep and Barbara Cash, she doesn't know anything about the
17 fire. She only knows or says she knows what my client told
18 her.

19 what we do know is she was asked by the police did
20 Danny Dunagin tell you he burnt this house down and she said
21 no. And we also know that she was asked did you help him
22 and she said no. And we know that that was true.

23 There's two counts. There's testimony and evidence
24 about a fire that nobody knows who started it and nobody
25 knows how it, how it burned or what caused it to burn, and

1 there are those people that, for some reason or another,
2 were mad at Danny Dunagin.

3 Ladies and gentlemen, the law says not only that they
4 have, the state has the burden of proof beyond a reasonable
5 doubt, but they also say that, to be guilty of arson, one
6 has to burn a dwelling house or a structure designed for
7 human habitation. Something to -- something -- the judge
8 will tell you exactly what the wording is.

9 Ladies and gentlemen, one thing that I can tell you is
10 that it's undisputed nobody ever lived in this house. It's
11 undisputed that the house wasn't ready for anybody to live
12 in it. Didn't have power, didn't have water, didn't have
13 heat. Really it didn't have walls. The State has to prove
14 not only that Danny Dunagin did this beyond a reasonable
15 doubt and it has to be based on the things that you heard
16 from the witness stand that have, that have been admitted
17 into evidence and that you will take back with you. They
18 have to prove that he did it beyond a reasonable doubt, and
19 that it meets the statutory requirements. That's what they
20 have to prove beyond a reasonable doubt.

21 So, what I please ask you to do, during your
22 deliberations, is think about the testimony of JoAnn Wyatt.
23 Think about the testimony of Amanda Wyatt. I mean Amanda
24 Wyatt couldn't have been any more clear. She is mad at
25 Danny Dunagin because she believes he set her brother up

1 somehow. She's mad at Danny Dunagin and I'm gonna get him
2 and what she's gonna get is reward money. JoAnn Wyatt was
3 mad at Danny Dunagin cause he was putting her out of the
4 house.

5 Let's talk a little bit more about that house cause you
6 heard the State's witness, the gentleman, the real estate
7 developer that works with Mr. Floyd, and he said he hadn't
8 seen a house in that bad condition for its age based in his
9 experience. That house was a shack. But you heard Mr.
10 Dunagin's daughter, Lori, testify that when she was in that
11 house, she lived in that house it was nice. You see JoAnn
12 Wyatt not only wasn't paying rent, wouldn't leave when she
13 was asked, her and her family destroyed the house.

14 And then there's the puzzle, and the puzzle is Barbara
15 Cash. I mean she's sitting there. She's, she's on my side
16 of the room. She's living with my client. You know, as a
17 defense attorney, I've got to look at the case. I've known
18 about her statement since the day I got hired. I don't know
19 why she said the things she said. I have no clue. She got
20 on the witness stand and she said I was mad at Danny. She
21 thought Danny was running around on him, on her. Excuse me.
22 And, and maybe this other girl wasn't so nice. I don't, I
23 don't know. She certainly described her explicitly. But I
24 don't know the woman.

25 And, and please understand that I, I can't explain to

1 you Barbara Cash's statement. I can't. What I can tell you
2 is that Danny Dunagin didn't tell her he burnt his shoes.
3 Barbara Cash accused him and he said okay, maybe I did, but
4 here they are. He only owned two pairs of shoes at the
5 time. You've got, you've got one pair in the bag and you've
6 got a picture of the other. They're dressed -- they're like
7 church shoes.

8 But the best way that I can help you or get you to
9 understand Barbara Cash's statement is we know that she was
10 asked by the police, in a very controlled setting, did Danny
11 Dunagin tell you he burnt this house down. Her answer was
12 no and that was true. She was asked again in the same
13 setting, did you help him burn this house down. She said
14 no, and that too was true.

15 Please consider all of the evidence. Please consider
16 what you don't have in evidence and please, if you would,
17 divide the witnesses, those that are experts in either real
18 estate development or fire investigation, and those people
19 don't know what happened to this house. Then there's the
20 other group of witnesses that know or knew Danny Dunagin and
21 anyone in that group that know or knew Danny Dunagin that
22 implicated him had a reason, at the time, to tell something
23 false about Danny Dunagin. Each of those people that did
24 could benefit.

25 The State must prove beyond a reasonable doubt. Ladies

1 and gentlemen, I submit to you, when you go over the
2 evidence, you will see that they have not met their burden,
3 and that the true, just, and fair verdict in this case is
4 not guilty.

5 Thank you.

6 SOLICITOR BULSA: Ladies and gentlemen, this case
7 hasn't been about two groups of people. It's been about two
8 phases, was this an arson and who did it. We began the
9 trial by introducing the crime to you, the burned house, and
10 I'm gonna project some of these back up on the screen to
11 help remind you of what occurred. From then we went into
12 the phase of who did it. We brought up the witnesses that
13 corroborate each other that it was Mr. Dunagin.

14 Mr. Carey Pruitt called in the fire. He was awoken.
15 Something was going on. It was a big fire cause a lot of
16 people were awoke. But I think JoAnn was. Lori was. Mr.
17 Pruitt was. Mr. Dunagin said he wasn't. He was sleeping in
18 the other room.

19 But we have a very large house under construction, a
20 dream home.

21 What happened to it?

22 We know the night of January 23rd, morning of
23 January 24th, it was destroyed by fire. It was completely
24 and totally destroyed. We brought in the fire chief, an
25 arson investigator with the Sheriff's Office. They

1 discussed the possible causes. I think it was the fire
2 chief that said there are three ways, three causes,
3 accidental, act of God, or incendiary.

4 clearly was not an act of God. There's no storms in
5 the area that evening.

6 Was it accidental?

7 We know there were no workers working inside. We
8 brought in the workers. We brought in the contractor.
9 There was a lot of discussion about the straw around the
10 edge of the structure. The straw was put there to keep the
11 mud out. The ground was wet. The straw being walked on in
12 the area where there was work being done, logic tells you it
13 would of been wet as well. The foundation was three foot
14 high.

15 Could a cigarette land in the straw and create a flame
16 of three feet?

17 Not likely.

18 Both the fire chief and the arson investigator agreed
19 that the fire started somewhere inside. They might not of
20 agreed exactly where inside. But the evidence suggests,
21 based on their experience and observations, this fire was
22 set inside that building. Based on their knowledge of what
23 happened and their discussions with the workers, no one was
24 inside. This was not an accident. The workers were on the
25 side checking for gas leaks in, in the tubing, the piping.

1 They were using water. No fire. The rock masons were
2 cutting rock a good distance away from the house. Mr.
3 Brannon went into the sparks.

4 There was no accidental fire on their part. No warming
5 fires in the area. John Dobson comes in. He's checking the
6 area for his father-in-law. The gate is locked. I come in,
7 check, don't see anything, things look good, and I leave.
8 And the next call everybody gets is that it's been burnt
9 because the police got or the firemen got there and there
10 was nothing left. Nothing left.

11 So, ladies and gentlemen, I submit to you the State has
12 proven that it's not an act of God. It was not
13 accidentally. Therefore, it was incendiary and the fire
14 chief told you that that means somebody intentionally set
15 the fire.

16 So, then we shifted to the phase of who did it, and
17 when we shifted to that phase we began with Barbara Cash,
18 the puzzle, as Mr. Brannon wants to call her. She was the
19 lady closest to him at the time living in the same house as
20 him, staying with him. She wrote her statement in her own
21 hand. The police went and found her after they had talked
22 to Amanda Wyatt. Amanda's the one that called Crime
23 Stoppers. The police talked to Amanda. Amanda tells them
24 about Barbara. They go to Barbara and ask her what she
25 knows. She meets with them. She gives them a statement in

1 her own hand. We went through it with her testimony.

2 She testified, as she had written in her statement, but
3 she tried to qualify it and I suggest to you she started
4 trying to qualify it because she's now back with Mr.
5 Dunagin. That's not a puzzle. That's an explanation of
6 her, her testimony.

7 He left around 8:30 to 9:00. Came back around 12:00 to
8 ten after 12:00. That's three to three and a half hours.

9 Mr. Dunagin said he was only gone for what, an hour and
10 a half, maybe two hours?

11 She described that he was wearing jeans, a pair of Hush
12 Puppy shoes, and she wasn't sure of the type of shirt. She
13 came back. She heard him, while he was in the bathroom, say
14 pop you'd be proud of me.

15 what in the world is that about?

16 But that's important because he tried to explain it
17 away.

18 She told you that he was wearing different shoes and
19 she asked him why, and he told her that he burned them. Low
20 and behold, evidence reveals in the burn pile, kind of eerie
21 isn't it, a house, a burn pile behind the defendant's
22 residence, containing a portion of burned shoes, which you
23 can look at it, and it looks to be a Hush Puppy type shoe.

24 MR. BRANNON: Objection.

25 SOLICITOR BULSA: That fits.

1 THE COURT: Overruled.

2 SOLICITOR BULSA: The statement that Barbara Cash gave
3 to the police about Danny Dunagin. She asked him what he
4 did. She said he said you'll see. She checks under the
5 sink for the camp fuel. It's gone. They hear the fire
6 engines. They watch it on the video and then they get into
7 an argument and she leaves.

8 I bring in Chelsea because she was in that house.
9 sounds like she had to be ordered to come back to make their
10 supper, and then she went into her room and went to bed.
11 she was there when the police came the next morning. She
12 told you how the defendant acted, how he ordered them out of
13 the house, and how she said that he told her, on one
14 occasion a couple weeks later, that Mr. Dunagin told her
15 that he could come up with evidence to say it was someone
16 else who did this. Meaning Barbara.

17 How that's for irony?

18 Amanda Wyatt comes in and testifies she learned some
19 information from Barbara. She learned about the burning
20 with the shoes, the explanation of pop you'd be glad, you'd
21 be proud of me, and she knows, because of her relationship
22 with her brothers, that the defendant has bragged and
23 threatened that he would burn or destroy the first house
24 that went up, and he, in fact, told her that he did so as
25 did JoAnn.

1 JoAnn was in the house. The defense wants you to
2 believe that she's now testifying she was, gave her
3 statement because she was being evicted. But the eviction
4 notice came, ironically, after she talked to the police.
5 She was watching. She heard the hollering. She knew about
6 Chase getting the call.

7 The defense brings in an investigator to refute JoAnn
8 Wyatt. She couldn't have seen what she said she saw. Well,
9 they bring you pictures of leaves on the trees. They give
10 you a distance that is clearly wrong making attempts to
11 discredit her.

12 Ladies and gentlemen, your primary function as the
13 judge of the facts, and then -- and how you judge the facts
14 is you judge the testimony. The testimony is evidence as
15 well as the pictures and the physical evidence.

16 How did these people appear to you?

17 How did they appear to you?

18 I submit to you they all appeared credible.

19 Think about on how they testified, and think back on
20 how he testified. This is not a set up. This defendant, he
21 says he talked to his dad, went in the house. I'm not
22 making light of that, but it's not an excuse. Something was
23 going on in the past. Something was going on with Mr.
24 Dunagin.

25 We brought in a couple of witnesses that didn't have

1 much to say. But what they said suggest, suggests to you,
2 speaks volumes. The boy that grinded the path. I don't
3 think it's ironic that he went past the Dunagin house the
4 day this fire occurred, and Ms. DeGeer, the engineer, there
5 to establish the right of way, the easement, the lady with
6 nothing in this fight, struck her as odd that the defendant
7 was not happy about the easement that he was being paid for
8 just to run some power lines across the property. He was
9 being paid for it.

10 why would you not be happy about that?

11 But, furthermore, he felt he was robbed by the Floyds.
12 That is wholly consistent with the Wyatt's testimony that he
13 said he would, first house to go up would be the first house
14 to come down. He made a pretty profit, but he still wasn't
15 happy, and he acted on that anger.

16 You heard about the truck being stuck in the power
17 lines. It was not the only other access by the vehicle into
18 the property because of the gates that had been put up. The
19 defense brings in a witness, Mr. Johnson, who doesn't know
20 anything. He's being told everything by Mr. Dunagin about
21 when and how that happened. He's not credible.

22 I tell you -- I suggest to you, ladies and gentlemen,
23 the most damaging part of this whole case is the defendant's
24 own handwriting. He writes his daughter, Lori, a letter to
25 get the shoes. Not get the shoes and take them to the

1 police to show that he wasn't guilty. Get the shoes. I
2 made a comment about shoes meaning to Barbara. She told the
3 detectives about the shoes. So, she knew about that. I
4 still have them. She's so wrong for that. I lied to her
5 acting big. She took bait and lied to me and the
6 detectives.

7 She told the truth. The police found the shoes. He
8 was caught. He had motive, he had opportunity, he had
9 access, and we have his admissions. And I told you in the
10 opening, family and friends, and I hope you're not confused
11 by all the parties. So, I did a little summary.

12 Mr. Dunagin, Barbara Cash, they lived at [REDACTED]
13 [REDACTED], the block house. His daughter, Lori Townsend, lived
14 next door. Chelsea's her daughter. She was living with the
15 Dunagin, Mr. Dunagin at his house. And we got Mr. Wyatt,
16 Police Club Road, the split. And her children, Chasen, and
17 we got the relationships between Bryan and Brent and Amanda.
18 Amanda was living with Barbara. Barbara was mad and went
19 back and told Amanda. But we have the motive, the
20 opportunity, the admissions, the independent witness of Ms.
21 DeGeer and the shoe.

22 Ladies and gentlemen, the defendant, I submit to you,
23 is guilty of arson in the second degree. He burned this
24 structure designed for human occupancy. It was not
25 complete. We don't dispute that. But certainly most of the

1 way there. Home, destroyed houses.

2 I ask you to do your duty. Seek justice. Issue a
3 verdict of guilty.

4 Thank you.

5 THE COURT: Madam Forelady, and ladies and gentlemen of
6 the jury, you, of course, have heard and seen all of the
7 evidence and now the final summations of the lawyers. It,
8 therefore, now becomes my duty and obligation to instruct
9 you on the law that's applicable in this case, and then
10 you'll be asked to go back and begin with your
11 deliberations, and through that process, you will examine
12 the evidence, decide the facts, apply the law, and arrive at
13 a fair and just decision in the case.

14 Now, it is your exclusive duty to determine what the
15 facts are, and you do that through your own common sense
16 examination and evaluation of all of the testimony and other
17 evidence received during the trial of this case. And you 12
18 jurors alone will decide what weight, value, and effect to
19 give any particular testimony or other evidence in the case.
20 Your sole objective is to simply reach the truth in the
21 matter, and by doing that you will have fulfilled your
22 obligation as jurors, and that is to simply give both the
23 State and the defendant a fair and impartial trial.

24 Now, as you know, in this case, the State, through the
25 prosecutor, has accused the defendant of having committed

1 the crime of arson in the second degree, and the State
2 alleges, by way of the indictment, which I explained to you
3 earlier is the charging paper, it's the means by which any
4 person is brought into this Court and is formally put on
5 notice of an accusation of them having committed some type
6 of criminal offense. The indictment, however, is not proof
7 of anything. It does not establish anything.

8 It will be in the jury room because it is on the back
9 of this indictment, Madam Forelady, that you're gonna be
10 asked to indicate the jury's unanimous decision, whatever
11 that decision is.

12 But other than serving as the verdict form, the
13 indictment serves no purpose so far as you 12 jurors are
14 concerned. But the State, by way of the indictment, has
15 charged the defendant with the crime of arson in the second
16 degree. The State alleging that on or about January the
17 23rd of 2008, the defendant, Claude Daniel Dunagin, did,
18 willfully and maliciously, cause an explosion, set fire to,
19 burn, or cause to be burned, a dwelling house or a structure
20 designed for human occupancy.

21 Now, as you know, as to those allegations, and as to
22 that charge, the defendant has entered a plea of not guilty,
23 and that plea of not guilty has, therefore, placed upon the
24 State the burden of proving the allegations they have set
25 forth in that indictment, the burden of proving each of the

1 essential elements that makes up the crime of arson in the
2 second degree, which I'll explain to you shortly, and,
3 therefore, the burden is upon the state to establish the
4 defendant's guilt to the satisfaction of you 12 jurors
5 beyond a reasonable doubt before any verdict of guilty could
6 be returned.

7 The burden is never upon a defendant or a person
8 accused of a crime to prove that they are not guilty or to
9 prove that they are innocent because, in many cases, that
10 might not be possible. The burden is always upon the state
11 because they have brought this charge or this accusation
12 against the defendant. The burden is upon them to establish
13 his guilt, to your satisfaction, beyond a reasonable doubt.

14 You are further instructed that it is a vital,
15 important, and cardinal rule of law that every defendant in
16 a criminal trial, and it doesn't matter how serious the
17 offense might be for which that person stands charged, a
18 defendant is always presumed innocent of any charge. That
19 presumption of innocence remains with any defendant, as it
20 does with this defendant, from the time he is placed under
21 arrest and throughout the course of the criminal process and
22 even throughout the actual course of the trial. As I
23 believe I've told you, that presumption of innocence will be
24 with the defendant even as you go back to begin with your
25 deliberations in this case, and that presumption of

1 innocence will be with him in that jury room and it will be
2 with him forever unless you 12 jurors determine that he's no
3 longer entitled to that presumption of innocence.

4 That is after you've carefully considered all the
5 evidence in the case, from that evidence you've decided what
6 you believe to be the true facts, and upon deciding those
7 facts, you apply the law that I will have provided you. If
8 you 12 jurors unanimously determine that his guilt has been
9 proven beyond a reasonable doubt, then he would no longer be
10 entitled to the presumption of innocence. But it's only if,
11 unless, and until you are satisfied of his guilt beyond a
12 reasonable doubt that the presumption of innocence would no
13 longer be applicable.

14 Now, while the State does have the burden of proving
15 the defendant's guilt to your satisfaction beyond a
16 reasonable doubt, now that doesn't mean that the State has
17 to prove his guilt beyond all doubt or beyond any possible
18 doubt. But it does require the State to prove his guilt to
19 your satisfaction beyond a reasonable doubt, and the term
20 reasonable doubt should be given its plain and ordinary
21 meaning.

22 A reasonable doubt is the kind of doubt that would
23 cause a reasonable person to hesitate to act upon the
24 information provided, and a defendant, in a criminal trial,
25 is entitled to any reasonable doubt that arises from the

1 evidence or lack of evidence in a case. And if, upon any
2 factual issue essential to a finding of a verdict of guilty,
3 you have some reasonable doubt as to how that issue should
4 be resolved, it would be your duty to resolve that
5 reasonable doubt in favor of the defendant, and, therefore,
6 if, upon your consideration of the whole case, you have a
7 reasonable doubt as to his guilt, you must resolve that
8 doubt in his favor and return a verdict of not guilty.

9 At the same time, after you have carefully considered
10 all the evidence, you've decided the facts and you've
11 applied the law that I've provided you, if you 12 jurors
12 unanimously determine that his guilt has been proven beyond
13 a reasonable doubt, then it would be your corresponding duty
14 to convict the defendant of any crime that has been proven
15 to your satisfaction beyond a reasonable doubt.

16 Now, the same law that provides that you are the judges
17 of the facts also provides that I am the judge of the law,
18 and that simply means that nobody is going to tell you how
19 to arrive at your determination of fact in the case. You do
20 that, as I've already stated, through the exercise of good
21 judgment and common sense conscientiously applied to the
22 testimony and evidence in the case.

23 You must, however, under your oath as a juror, accept
24 the law as I provided it to you as being the law that you
25 are to apply in this case. In other words, you're never to

1 concern yourself with what you thought the law was before
2 you came to serve as a juror this week or what you think the
3 law ought to be. Under your oath, you must accept the law
4 as I provide it to you as being the law that is applicable
5 in this particular case. You then simply take that law and
6 you apply it to the facts as you 12 jurors determine those
7 facts to be based upon your common sense evaluation and
8 examination of all of the evidence received during the
9 trial.

10 Now, because you are the judges of the facts, you are,
11 therefore, necessarily the sole judges of the credibility
12 and the believability of any witness that has testified
13 during the course of the trial, and, therefore, there are a
14 number of factors which you should consider in arriving at
15 your assessment as to a particular witness' credibility and
16 I'm going to list those factors for you.

17 You should consider the demeanor of the witness as the
18 witness testified from that witness stand. Was the witness
19 straightforward in responding to questions or was the
20 witness hesitant or evasive in responding to questions that
21 were asked of that witness. Simply put, did the witness
22 appear to you to be telling the truth and to have knowledge
23 of the facts to which that witness has testified.

24 You should also consider whether or not the testimony
25 of a witness is consistent or is it inconsistent with that

1 witness' own testimony, whether it be testimony provided in
2 court or statements or other testimony provided outside of
3 court, and you should consider whether or not the testimony
4 of a witness is consistent or is it inconsistent with other
5 witness' testimony or other evidence received during the
6 trial of the case.

7 You should also consider how the witness came to know
8 the facts to which a witness has testified. In other words,
9 what was a particular witness' opportunity and ability to
10 perceive the existence of some fact by using their senses,
11 and then what is that witness' ability to be able to come
12 into court and to accurately recollect to you as to what the
13 witnesses previously perceived.

14 You should also consider any bias, prejudice, or
15 interest that a witness might have in the case. In other
16 words, do you find some reason that a particular witness
17 would testify one way or another to help or to hurt one side
18 or the other, and you may consider any interest that a
19 witness might have in the outcome, if you determine that a
20 witness does have such an interest, and you find that that
21 interest would bear upon that particular witness'
22 credibility. And you should also consider whether or not
23 the testimony of a witness is strengthened or is it weakened
24 by other testimony or other evidence received during the
25 trial of a case.

1 Now, because you are the judges of the facts in this
2 case, and because you are the judges of the credibility of
3 each witness that has testified, you are permitted to
4 believe as much or as little of what a witness has testified
5 to as you deem is appropriate, and, therefore, you may
6 believe everything that a witness testified to. You may
7 choose to believe none of it. You may believe some portion
8 of a witness' testimony and reject some other portion of
9 that same witness' testimony. You may believe one witness
10 as opposed to many or many as opposed to one.

11 But whatever your good judgment and common sense tells
12 you is the most credible and believable testimony is the
13 testimony you should accept, and you should reject any
14 testimony or other evidence that you find not to be credible
15 or believable. Again, your sole objective is to simply
16 reach the truth in the matter, and by doing that you will
17 have fulfilled your obligations as jurors in this case.

18 Now, as you know, the defendant in the case is charged
19 with arson in the second degree. Arson in the second degree
20 is a statutory offense. There are three degrees of arson.
21 Arson in the first degree, arson in the second degree, arson
22 in the third degree.

23 Under the evidence in this case, arson in the first
24 degree is not an applicable charge, and that's why it's not
25 been brought. That's why you're not gonna be considering

1 that.

2 You will, however, be permitted to consider the charge
3 of arson in the second degree as well as the lesser included
4 offense of arson in the third degree, and I'm going to, to
5 distinguish those for you and I'll define for you what
6 constitutes arson in the second degree as well as what
7 constitutes arson in the third degree. And as you consider
8 the evidence in the case, and decide the facts, as I've told
9 you, any reasonable doubt has to be resolved in favor of a
10 defendant, and, therefore, if, in your consideration, the
11 State has failed to prove, beyond a reasonable doubt, the
12 greater offense, then you have to resolve that doubt in the
13 defendant's favor. Then you could only consider the lesser
14 offense. If the State has proven the defendant's guilt of
15 the lesser offense beyond a reasonable doubt, you may find
16 him guilty of that offense, and if the State has failed to
17 prove the defendant guilty of either arson in the second
18 degree or arson in the third degree, then your verdict must
19 be not guilty.

20 Now, as I told you, arson in the second degree is a
21 statutory offense. That just means that the Legislature
22 that meets every year between January and June, they pass a
23 number of laws and rules and regulations that govern our
24 conduct in a variety of ways. Some of those statutes are
25 criminal statutes and that just means that the Legislature

1 defines conduct that is prohibited, that is it can not be
2 engaged in; and if a citizen is found to have engaged in
3 conduct in violation of a statute, then it subjects that
4 person to some form of punishment or penalty for having
5 violated the statute.

6 Please keep in mind, however, that you are never to be
7 concerned with punishment. You will not determine any
8 punishment to be imposed in any case. Your sole obligation
9 and duty is to determine whether or not a person's guilt has
10 been proven beyond a reasonable doubt, and you must make
11 that determination without any consequence to that decision
12 being taken into consideration.

13 The statutory offense of arson in the second degree is
14 defined in Section 16-11-110 under Subsection B of the South
15 Carolina Code of Laws, and that section of laws provides
16 that a person who willfully and maliciously causes an
17 explosion, sets fire to, burns, or causes to be burned, or
18 aids, counsels, or procures a burning that results in damage
19 to a dwelling house, a church, or place of worship, a public
20 or private school facility, a manufacturing plant or
21 warehouse, a building where business is conducted, an
22 institutional facility, or any structure designed for human
23 occupancy, to include local and municipal buildings, whether
24 the property of himself or of another is guilty of the crime
25 of arson in the second degree.

1 Now, in this case the State is alleging that the
2 defendant did willfully and maliciously set fire to or
3 otherwise cause to be burned a structure designed for human
4 occupancy, and, therefore, in order for the defendant to be
5 found guilty of the crime of arson in the second degree in
6 this particular case, it would be necessary that the State
7 has proven to your satisfaction, beyond a reasonable doubt,
8 the four following essential elements:

9 Number one, the State has to prove that the defendant,
10 Claude Daniel Dunagin, did act willfully and maliciously.
11 Willfully is defined as an act which is done knowingly and
12 intentionally and not by accident, mistake, or inadvertence.
13 The term maliciously means to do a wrongful act
14 intentionally and without just cause or legal excuse. So,
15 it first must be shown that the defendant did act willfully
16 and maliciously.

17 And secondly, that the defendant did set fire to, burn,
18 or cause to be burned.

19 Thirdly, any structure designed for human occupancy.

20 Fourth, which resulted in damage to the structure.

21 Now, as previously stated, in this case, the State is
22 alleging that the defendant did willfully and maliciously
23 set fire to or cause to be burned a structure designed for
24 human occupancy. If the State is failed to prove, beyond a
25 reasonable doubt, that any structure proven to have been

1 burned was a structure designed for human occupancy, then
2 you may consider the lesser included offense of arson in the
3 third degree. The difference between arson in the second
4 degree and arson in the third degree is the third element.
5 The other three elements are identical. But the third
6 element is what distinguishes arson in the second degree
7 from arson in the third degree, and the third element that
8 distinguishes those two is that which relates to the type of
9 structure or property which has been damaged by a willful
10 and malicious burning. As I say, the other three elements
11 are identical.

12 Arson in the third degree is also a statutory offense.
13 In fact, it's contained in the same statutory reference
14 previously indicated. It's in a simple, a separate
15 paragraph and that's Paragraph C. And that particular
16 paragraph provides that any person who willfully and
17 maliciously causes an explosion, sets fire to, burns, or
18 causes a burning which results in damage to a building or
19 structure other than those which were described previously,
20 which is in Subsection B that I described for arson in the
21 second degree, is guilty of arson in the third degree.

22 So, in order for the defendant to be found guilty of
23 the lesser included offense of arson in the third degree, it
24 would be necessary that the State has proven, beyond a
25 reasonable doubt, the following four essential elements:

1 Number one, that the defendant, Claude Daniel Dunagin,
2 did act willfully and maliciously. Same first element as in
3 arson in the second degree. Willful and malicious defined
4 the same as previously described.

5 The second element, element is that he did set fire to,
6 burn, or cause to be burned.

7 Thirdly, which is the element relating to what type of
8 structure or property is the subject of the burning. It
9 provides that it must be a building or structure other than
10 those described in Subsection B, and, again, Subsection B,
11 as I told you, would be a structure designed for human
12 occupancy. And then, of course, the fourth element, as I
13 say, is the same and the fourth element is that there was
14 damage resulting to that structure.

15 Now, ladies and gentlemen, I am not, in any way,
16 concerned with what your verdict is, but you are instructed,
17 as I've told you, the verdict has to be unanimous. All 12
18 of you must be in agreement before any decision may be
19 returned.

20 So, Madam Forelady, after you and your fellow jurors
21 have sufficiently deliberated the case, once you've decided
22 the facts as you believe the true facts to be, and once
23 you've applied the law as I will have provided it to you, as
24 I have provided it to you, I want you to simply indicate
25 that unanimous, unanimous decision on the back of the

1 indictment, and you'll see on the back of the indictment, in
2 the lower left-hand corner, you'll see the word verdict.
3 It's beneath that word that you'll indicate the decision.

4 Now, in this case, you're gonna have three potential
5 decisions. Those three potential decisions are guilty,
6 guilt of burglary in the third, excuse me, guilty of arson
7 in the third degree, and not guilty. So, whatever that
8 decision is, indicate it in the space provided.

9 If the jury finds that the State has proven, beyond a
10 reasonable doubt, that the defendant has committed the crime
11 of arson in the second degree, then the verdict form will be
12 one word, guilty. Guilty means guilty of the charge in the
13 indictment, which is arson in the second degree. If the
14 jury finds that the State has failed to prove any one or
15 more of the essential elements of arson in the second
16 degree, but the State has proven the crime of arson in the
17 third degree, beyond a reasonable doubt, then, under those
18 circumstances, the verdict form would be guilty of arson in
19 the third degree. You have to write that out. And if the
20 state has failed to prove either of those crimes, beyond a
21 reasonable doubt, then the verdict form is not guilty.

22 So, once you decided the case, Madam Forelady, indicate
23 the verdict form on the space provided. Sign your name as
24 the foreperson. You're the only juror that needs to sign
25 the verdict form. Sign your name as the foreperson, and

1 place the applicable date in the space provided.

2 Now, during your deliberations, there may come a
3 time -- well, first of all, are there any smokers on the
4 jury?

5 (Jurors nod negatively.)

6 THE COURT: well, if you want to smoke you have to go
7 outside. So, if anybody wants to smoke, let the bailiff
8 know and he'll take you outside. You are instructed,
9 however, that the deliberations have to stop. They may only
10 resume when all 12 jurors are present so that all 12 jurors
11 may participate.

12 If, at any time, you have a question about the evidence
13 in this case or the facts of the case, I am never permitted
14 to answer questions that relate to issues of fact. You
15 simply have to decide the facts based upon your evaluation
16 and review of all the evidence.

17 If you wonder if there's something else that you can
18 have that you think that will help you resolve the case, if
19 it's not been introduced, it can not be introduced now. So,
20 even if something else existed that you think might help
21 you, don't ask for it. You can't have it. All the evidence
22 that you're gonna receive has been introduced and now that
23 the case is closed no additional evidence can be received.

24 If you have a question about the testimony of a
25 witness, I do not have transcripts of each witness'

1 testimony. But, if you have a question about the facts and
2 you think that that question can be answered by having
3 testimony replayed, in whole or in part, I can bring you
4 back into the courtroom to have a witness' testimony
5 replayed for your benefit, and we can play the entirety of
6 it or we can play only a portion of it. I'll leave that to
7 you to let me know in the event that should become
8 necessary.

9 If, at anytime during your deliberations, you have a
10 question about the law that is applicable, I am permitted to
11 answer those questions. So, if you need for me to give you
12 an additional explanation or clarification of any law that I
13 have instructed you as to -- I am permitted to give those
14 additional instructions or make those clarifications. So, I
15 can't answer questions of fact. I can answer questions of
16 law. If you need testimony replayed, let us know, we'll
17 bring you back into the courtroom to accomplish that
18 purpose.

19 I think that covers it. If not, I'll know shortly.
20 With the exception of Mr. Ezell, I'll ask the 12 primary
21 jurors to please retire to your jury room. But do not yet
22 begin deliberations. I've got some matters I'll need to
23 address with the lawyers. If I don't need to bring you
24 back, I'll send word by way of the bailiff that you can
25 begin with your deliberations. In that event he'll bring to

1 the jury room all of the exhibits which have been
2 introduced.

3 And to you, Madam Forelady, he'll also bring the
4 indictment, which will serve as the verdict form.

5 So, please retire, but do not begin deliberations until
6 I send word for you to do so.

7 (Whereupon, the following takes place outside the
8 presence of the jury and the alternate juror was dismissed
9 at this time.)

10 THE COURT: Are there any exceptions taken to the
11 instruction or request for additional instruction by the
12 State?

13 SOLICITOR BULSA: No, Your Honor.

14 THE COURT: By the defendant?

15 MR. BRANNON: None, Your Honor.

16 THE COURT: Let me ask y'all to verify the exhibits
17 please.

18 MR. BRANNON: Your Honor, there is one evidentiary
19 issue. I had one exhibit that was marked but never actually
20 moved in. I believe, without objection, I would move
21 Defendant's 2 in.

22 THE COURT: What is it?

23 MR. BRANNON: It's the, it's the Court record of the
24 eviction.

25 SOLICITOR BULSA: No objection.

1 THE COURT: Okay. Admitted without objection.

2 (Whereupon, Defendant's Exhibit No. 2 was received into
3 evidence at this time.)

4 THE COURT: All of the exhibits are accounted for?

5 MR. BRANNON: Yes, Your Honor.

6 SOLICITOR BULSA: Yes, sir.

7 THE COURT: All right. Send them back. Tell the jury
8 to begin deliberations and notify us when they have
9 concluded.

10 we'll be at ease while they're deliberating.

11 (Whereupon, the jury began deliberations at 4:36 and
12 returned with a verdict at 5:40.)

13 THE COURT: I'm told the jury has reached a decision.
14 Are we ready to receive it?

15 SOLICITOR BULSA: Yes, sir.

16 MR. BRANNON: Yes, Your Honor.

17 THE COURT: All right. Bring them in.

18 (Whereupon, the following takes place within the
19 presence of the jury.)

20 THE COURT: Madam Forelady, have you and your fellow
21 jurors reached a unanimous decision?

22 FORELADY: Yes, we have.

23 THE COURT: And have you indicated that decision on the
24 back of the indictment as requested?

25 FOREMAN: Yes, I have.

1 THE COURT: Did you sign your name as the foreperson
2 and date it?

3 FORELADY: Yes, I did.

4 THE COURT: If you'll please hand that up by way of the
5 bailiff.

6 (Forelady complies.)

7 THE COURT: All right. You may publish the verdict.

8 CLERK: State of South Carolina, County of Spartanburg,
9 State versus Claude Daniel Dunagin, Indictment Number
10 2008-GS-42-6184, indictment for arson second degree, we, the
11 jury, find the defendant guilty.

12 Signed Donna Stauffer, this date, 3/10/2010.

13 Ladies and gentlemen of the jury, is this your verdict
14 and still your verdict, if so, please raise your right-hand.

15 (Whereupon, all jurors raise their hands at this time.)

16 CLERK: So say you-all.

17 THE COURT: Are there any other matters to be addressed
18 with the jury present?

19 SOLICITOR BULSA: None from the State, Your Honor.

20 MR. BRANNON: No, Your Honor.

21 THE COURT: Does the defense wish to have the jury
22 polled?

23 MR. BRANNON: Yes, Your Honor.

24 THE COURT: All right. Poll the jury please, ma'am.
25 (Whereupon, the jury panel was polled and all jurors

1 answered in the affirmative that this was and is still their
2 verdict.)

3 THE COURT: All right. Any other matters to address
4 with the jury present?

5 SOLICITOR BULSA: No, sir.

6 MR. BRANNON: No, Your Honor.

7 THE COURT: All right.

8 (Whereupon, the jury was dismissed at this time.)

9 THE COURT: All right. Anything further before I
10 impose the sentence?

11 MR. BRANNON: No, Your Honor.

12 SOLICITOR BULSA: Your Honor, there's a matter of
13 restitution.

14 THE COURT: Okay.

15 MR. BRANNON: I've seen the documents and shown them to
16 my client, Your Honor.

17 SOLICITOR BULSA: I thought it was 749, but it's 742.
18 89573, those are the monies paid out to the Floyds for the
19 damage by CNA Insurance Company.

20 Would you like to see them?

21 THE COURT: Well, let me make it an exhibit.

22 Mr. Brannon, you've seen these documents?

23 MR. BRANNON: Yes, Your Honor, and showed them to Mr.
24 Dunagin.

25 THE COURT: And you're in agreement and satisfied that

1 that is the proper amount of restitution in the case?

2 MR. BRANNON: Your Honor, I did not see if there was a
3 copy of the check.

4 Is that there?

5 THE COURT: I don't see a check.

6 MR. BRANNON: I would ask that the State be required to
7 provide a copy of the check as well as, as well as an
8 affidavit from the insurance company that those were the
9 funds paid. Other than that I would have no objection.

10 SOLICITOR BULSA: Mr. Floyd tells me he actually
11 suffered some loss. Insurance did not pay everything. I'd
12 like to get those figures.

13 THE COURT: All right. Let's do this. If you'll
14 provide Mr. Brannon with the total---

15 SOLICITOR BULSA: Yes, sir.

16 THE COURT: ---restitution---

17 SOLICITOR BULSA: Yes, sir.

18 THE COURT: ---or loss as a result of this act.

19 And then, Mr. Brannon, if you need or require a
20 hearing, we can schedule a hearing for that purpose. He's
21 entitled to a restitution hearing. I think it can be
22 resolved through just proof being provided. But for some
23 reason it can't, y'all let me know.

24 MR. BRANNON: Yes, Your Honor.

25 SOLICITOR BULSA: Yes, sir.

1 THE COURT: All right. Anything else on the---

2 MR. BRANNON: No, Your Honor.

3 SOLICITOR BULSA: Anybody wish to speak?

4 (No response.)

5 SOLICITOR BULSA: All right. No, sir.

6 THE COURT: Okay. All right. Mr. Brannon.

7 SOLICITOR BULSA: He does have some -- as far as his
8 criminal history, Your Honor, he has some pending charges,
9 but he has a convection for assault and battery from 1979,
10 and no other convictions.

11 THE COURT: Okay. Mr. Brannon.

12 MR. BRANNON: Your Honor, you've heard the testimony in
13 this matter. You've seen the family support that my client
14 has. He's got his sisters and their husband or husbands and
15 many other family members with him.

16 Your Honor, he's 52 years of age, very limited criminal
17 history, assault and battery from 20 years ago. I would ask
18 the Court to be as lenient as you possibly can.

19 THE COURT: All right. Mr. Dunagin, anything you want
20 to add to what your lawyer told me?

21 DEFENDANT: No, sir, except I did not commit the crime.
22 But that's neither here or there.

23 THE COURT: Sir?

24 DEFENDANT: Nothing I can do about it now, sir. But I
25 didn't do it.

1 THE COURT: Okay.

2 MR. BRANNON: I would add, Your Honor, my client did
3 serve 85 days in the Spartanburg County Detention Center on
4 this charge.

5 THE COURT: All right. On Indictment 2008-184, excuse
6 me, 2008-6184, an Indictment for arson in the second degree
7 wherein you've been found guilty by the jury of that
8 offense, the Sentence of the Court is that you, Claude
9 Daniel Dunagin, be confined to the South Carolina Department
10 of Corrections for a period of 25 years. That sentence is
11 suspended upon the service of 16 years, placed on probation
12 for five years, and condition of that probation, you're to
13 make restitution to the victims for the loss incurred as a
14 result of these acts. That amount will be determined by
15 evidence provided to your lawyer. And if not satisfied, by
16 a restitution hearing held by this Court. You're also to
17 have no contact, directly nor indirectly, with any member of
18 the Floyd family.

19 Now, Mr. Dunagin, you have a right to appeal the
20 verdict of the jury and the Sentence of the Court. You must
21 file any notice of your intention to appeal those decisions
22 within ten days of today's date.

23 All right. Court's in recess until 9:30 in the
24 morning.

25 SOLICITOR BULSA: Thank you, Your Honor.

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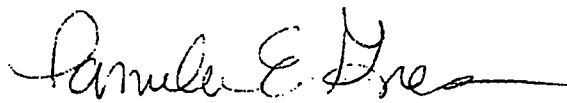
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th through 10th day of March, 2010

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 26th, 2010



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLAUDE DUNAGIN,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in refusing to grant a directed verdict to second degree arson because the dwelling house that was burned was still under construction and no one lived there.

STATEMENT OF THE CASE

Appellant was convicted of second degree arson after a jury trial held before the Honorable J. Derham Cole on March 8-10, 2010, in Spartanburg County. Appellant was sentenced to twenty-five (25) years suspended upon service of sixteen (16) years with five (5) years probation thereafter and restitution.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to second degree arson because the dwelling house that was burned was still under construction and no one lived there.

Appellant was tried for burning down a house that was under construction and in which no one was living. At the conclusion of the State's case, defense counsel moved for a directed verdict to the charge of second degree arson because the property burnt did not meet the definition of a dwelling as the house was under construction and no one was living there. The trial court denied the motion. (ROA p. 390, line 17 – p. 397, line 6). That ruling was in error.

S.C. Code §16-11-110 provides the following definition for arson in the second degree:

A person who willfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures the burning that results in damage to a dwelling house, church or place of worship, a public or private school facility, a manufacturing plant or warehouse, a building where business is conducted, an institutional facility, or any structure designed for human occupancy to include local and municipal buildings, whether the property of himself or another, is guilty of arson in the second degree and, upon conviction, must be imprisoned not less than five nor more than twenty-five years.

S.C. Code §16-11-10 defines a "dwelling house" for purposes of arson as follows:

With respect to the crimes of burglary and arson and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer, or person who lodges there with a view to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house all houses,

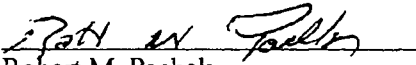
outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it or to the same establishment of which it is appurtenance shall be deemed parcels.

As can be seen from the above statutes the property appellant was accused of burning was a house under construction with no one living in it. Therefore, it was not a "dwelling house."

CONCLUSION

A directed verdict should be granted to the charge of second degree arson.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of November, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLAUDE DUNAGIN,

APPELLANT

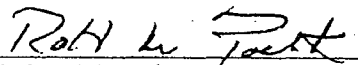
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Claude Dunagin states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on March 8-10, 2010, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Claude Dunagin.

Respectfully submitted,


 Robert M. Pachak
 Appellate Defender

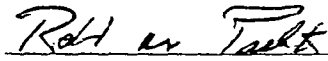
ATTORNEY FOR APPELLANT

This 15th day of November, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 15th, 2010



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

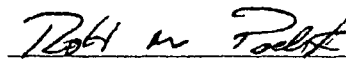
V.

CLAUDE DUNAGIN,

APPELLANT

CERTIFICATE OF SERVICE

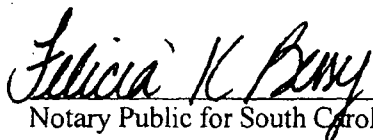
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Claude Dunagin, #339745 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899; this 15th day of November, 2010.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of November, 2010.



(L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020

2008 - 6184

State of South Carolina
in the Court of Appeals

Appeal from Spartanburg County
J. Durham Cole Circuit Court Judge

The State

V.

Claude Daniel DUNAGIN
pro-se brief of appellant

Claude D. DUNAGIN
pro-se Appellant

McCormick

McCormick

HOPE BRADLEY

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FILED
CLERK OF COURT
SPARTANBURG COUNTY

3

For the purpose for which it was prepared
 A person who violates the provision of this section
 is guilty of a misdemeanor and upon
 conviction must be fined in the discretion
 of the court or imprisoned not more than
 three years, or both." In Porcha v. State
Election Commission 454 S.E. 2d 890 "where
 terms of statutes are clear court must apply
 those terms according to their literal mean
In Gilstrap v. S.C. Budget and Control Board
 423 S.E. 2d 101 "words used in statute must
 be given their plain and ordinary meaning
 without resorting to subtle or forced construct
 to limit or expand statutes operation." In
Virginia National Bank v. Harris 257 S.E.
 2d 867 "when one statute speaks to a subje
 in a general way and another deals with par
 of same subject in a more specific manner, the
 should be harmonized, if possible and whe
 they conflict the latter prevails." In Hodges
v. Rainey 533 S.E. 2d 578 "The more general
 and specific legislation controls if there is a
 conflict between two statutes. In Inter
 court was clearly in error since appellant
 should have been charged under S.C. code
16-11-560 since the record clearly sh
 the structure was not a dwelling.

Proof of Service

I Claude Daniel Dunagin # 339745
 declare - under the penalty of 28
U.S.C.A. § 1746 (Perjury) - that
 on below - said date, I did deposit a
 pro-se Appeal in the custody of the
 McCormick C.I. mail Room Clerk, to be
 immediately forward by sufficient U.S.
 postage to:

M. Hope Blackley
 Spartanburg County Clerk of Cou
 P.O. Box 3483
 Spartanburg S.C. 29304-3488

Claude D. Dunagin # 339745
 McCormick C.I. F # 339745
 386 Redemption # 339745
 McCormick S.C. # 339745

Date 12-28-2010

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 JAN 4 2011
 9:12:32
 M. HOPE BLACKLEY

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Claude Dunagin, Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2011-UP-546
Submitted December 1, 2011 – Filed December 6, 2011

APPEAL DISMISSED

Appellate Defender Robert M.
Pachak, of Columbia, for
Appellant.

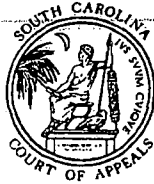
Attorney General Alan Wilson,
Chief Deputy Attorney General
John McIntosh, and Assistant
Deputy Attorney General Salley W.
Elliott, all of Columbia; and
Solicitor Barry Barnette, of
Spartanburg, for Respondent.

PER CURIAM: Claude Dunagin appeals his conviction for second-degree arson, arguing the trial court erred in failing to grant his motion for a directed verdict. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss[1] the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.



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DEC 22 2011

ATTORNEY GENERALS
The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 22, 2011

REMITTITUR

The Honorable M. Hope Blackey
Post Office Box 3483
Spartanburg, SC 29304

Re: The State v. Dunagin, Claude
2008-GS-42-06184

Dear Ms. Blackey:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Renee S. Johnson
Case Specialist II

TAG/tj

cc: Chief Appellate Defender Robert Dudek
Claude Dunagin, #339745
N. Douglas Brannon, Esquire
Assistant Deputy Attorney General Salley W. Elliott
Derrick Balsa, Esquire

SC Attorney General
RECEIVED

DEC 23 2011

Referred to

Answered

573
JW

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Spartanburg

CLAUDE DUNAGIN 339745

2012-CP-42-1873

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention MCCORMICK CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence SIXTH CIRCUIT COURT
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2008GS4206184
- (b) NA
- (c) NA

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 3-10-10
- (b) 25 YEARS Susp. TO 16 YEARS WITH 5 YEARS PROBATION
IMPOSED FINANCIAL RESTITUTION

Revised 3/2003

2012 MAR -2 PM 2:21
HOPE BLACKLEY



2012-CP-42-1873

- (c) NA
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty NA
- (b) after a plea of not guilty AFTER A PLEA OF NOT GUILTY & TRIAL
- (c) after a plea of nolo contendere NA
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. NA
- iii. NA
- (b) the result in each such Court to which you appealed:
- i. APPEAL WAS DISMISSED
- ii. NA
- iii. NA
- (c) the date of each such result:
- i. DISMISSAL OPINION FILED ON 12-6-2011
- ii. NA
- iii. NA
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NOTED AND INCLUDED WITH SUPPLEMENT
- ii. NA
- iii. NA
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
- (b) NA
- (c) NA
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2012 MAY -2 PM 2:22
M. HOPE BLACKLEY

- (a) SUBJECT MATTER OF JURISDICTION
 (b) INEFFECTIVE ASSISTANCE OF COUNSEL
 (c) NA

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) ALL FACTS SUPPORTING GROUNDS ARE SET
 (b) FORW IN SUPPLEMENT.
 (c) NA

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO-NA
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO-NA
 (d) any other petitions, motions or applications in this or any other Court? DIRECT APP

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. DIRECT APPEAL
 ii. NA
 iii. NA
 iv. NA

(b) the name and location of the Court in which each was filed:

- i. SOUTH CAROLINA COURT OF APPEALS
 ii. NA
 iii. NA
 iv. NA

(c) the disposition thereof:

- i. CASE DISMISSED
 ii. NA
 iii. NA

2012 MAY 28 PM 2:22
 M. HOPE BLACKLEY

2012-CP-42-1873

- iv. NA
- (d) the date of each such disposition:
- i. DECEMBER 6, 2011
- ii. NA
- iii. NA
- iv. NA
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NONE - NA
- ii. NA
- iii. NA
- iv. NA
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO - NA
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. NA
- ii. NA
- iii. NA
- (b) the proceedings in which each ground was raised:
- i. NA
- ii. NA
- iii. NA
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) INEFFECTIVE ASS STANCE - FIRST OPPORTUNITY TO ADDRESS
- (b) SUBJECT MATTER JURISDICTION - ATTORNEY FAILED TO ADDRESS (SEE ATT)
- (c) NA
17. Were you represented by an attorney at any time during the course of:

2012 MAY - 2 PM 2:20
M. HOPE BRADLEY

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. DOUG BRANNON P.O. Box 1904 SPARTANBURG SC 29304
- ii. ROBERT M. PACHAK P.O. Box 11589 Columbia SC 29211-1589
- iii. NA

- (b) the proceedings at which each such attorney represented you:

- i. ORIGINAL TRIAL & SENTENCING
- ii. APPEALS COURT
- iii. NA

19. State clearly the relief you seek in filing this application:

SEE ATTACHED ADDENDUM

20. Are you now under sentence from any other court that you have not challenged?

NO-NA

2012 MAY -2 PM 2:22
J. HOPE BLACKLEY

2012-CP-42-1873

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Spartanburg)

Claude Duragin
 I, Claude Duragin, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Claude Duragin 4-23-12

SWORN to and subscribed before me this 23
 day of April, 2012.

JC Franklin (L.S.)
 Notary Public

My Commission Expires: 12-16-2019

2012 MAY -2 PM 2:22
 M. HOPE BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

CLAUDE DUNAGIN
I, CLAUDE DUNAGIN, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true.

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Claude Dunagin 4-23-12
Applicant

SWORN or affirmed to and subscribed before me this
23 day of April, 2012.

JCF Rankin
Notary Public

My Commission Expires: 12-16-2019

2012 MAY -2 PM 2:22
M. HOPE BLACKLEY

2012-CP-42-1873

- 1) South Carolina Dept of Corrections
McCormick CI 386 Redemption Way
McCormick S.C. 29899
- 2) SEVENTH CIRCUIT GENERAL SESSIONS
SPARTANBURG County.
180 Magnolia Street
SPARTANBURG S.C. 29306
- 3) NONE / NA
- 4) 2008 GS 4206184
- 5) SENTENCE IMPOSED ON: 3-10-10
TERMS OF SENTENCE: 25 YEARS, SUSPENDED TO 16
AND 5 YRS PROBATION WITH IMPOSED FINANCIAL
RESTITUTION IN AMOUNT OF PROPERTY DAMAGE
& COURT COSTS.
- 6) A) NA
B) AFTER A PLEA OF NOT GUILTY & TRIAL WAS IMPOSED.
- 7) YES
- 8) SOUTH CAROLINA COURT OF APPEALS
- 8b) APPEAL WAS DISMISSED WITHOUT MERIT.
- 8c) DISMISSAL OPINION FILED 12-6-2011
- 8d) "AFTER A THOROUGH REVIEW OF THE
RECORD AND ALL BRIEFS PURSUANT TO
ANDERS V. CALIFORNIA 386 U.S. 738 (1967)
AND STATE V. WILLIAMS 305 S.C. 116, 406 SE.2D 357
WE DISMISS THE APPEAL AND GRANT
COUNSEL'S MOTION TO BE RELIEVED.

MIDDE BLACKLEY

2012 MAY -2 2 PM 2:22

CLERK OF COURT

2012-CP-42-1873

11A) Counsel did not Preserve Subject Matter of Jurisdiction prior to Jury Selection per Statute. STATE v FOWESCA (Sc. App 2009) 383 S.C. 640, 681 SE 2d 1.

"An objection to the sufficiency of an indictment must be made before the jury is sworn. An objection to the sufficiency after jury selection is untimely!!

11B) Attorney failed to object to Courts Authority in hearing matter presented before it.

11C) Attorney failed his Representa in Courts REFUSAL of Direct Verdict

11D) Attorney failed to properly & clearly Establish property AS UNINHABITABLE. THEREFORE NOT A DWELLING HOUSE OR HOME!!

11E) Failed to present ORAL EVIDENCE by person with FAVORABLE knowledge to the court.

11F) Failed to Question Supposed witness with Exhonorating testimony.

2012 MAY - JUNE
M. HOFFER
CLERK OF COURT
BY 2:01 PM

2012-CP-42-1873

11BXX) Subpoena Served but Not Enforced upon witness with Pertinent Information Pertaining to the Defendants Innocence of Charge Tendered.

11BXX) Failed To properly Interview Jurors. to Discover Connections with Law Enforcement and involved Fire Response Agencies.

11BXX) Allowed Jury without objection to include Family, Friends and Close Associates of Police & Fire Officials.

11BXX) Did Not object to Jury Selection of Members with Close tie of Friendship and Family involved Emergency Response teams including Police & Fire Rescue.

11BXX) Attorney Stated to Defendant that Prosecution Never Established "Cause" of Fire, Much Less "Arson".

2002 MAY -2 PM 2:22

HOAE BACKLIT

CLARK OF COURT

2012-CP-42-1873

11B ~~XIV~~) Attorney Failed To properly establish property as "unfinished" and or "uninhabitable".

11B ~~XV~~) Failed To establish definition proper for Design for Human Occupancy as applicable to statute's charge levied in particular.

Since property was uninhabited & uninhabitable under the law or permitted by code at time of crime offense charged should have been lesser allowable under law.

I.E. S.C. CODE 16-11-560.

11B ~~XVI~~) Failed To establish to court that definition of property was unoccupied and or unfinished and therefore ~~not~~ a dwelling house or a structure suitable for human occupancy.

"WHERE STATUTE CONTAINS TERMS WHICH ARE CLEAR AND UNAMBIGUOUS, COURT MUST APPLY THOSE TERMS ACCORDING TO THEIR LITERAL MEANING"!!

ADKINS V VARN S.C. 439 SE 2d 822 (1993)

2012-CP-42-1873

12A) YES

12B) NO - NA

C) NO - NA

D) DIRECT APPEAL

13) DIRECT APPEAL

B. S.C. COURT OF APPEALS

C. CASE DISMISSED

D. DECEMBER 6, 2011

E. NONE - NA

16A) INEFFECTIVE ASSISTANCE OF COUNSEL

16A1) FIRST OPPORTUNITY TO ADDRESS
ISSUE BEFORE APPROPRIATE COURT.

16B) SUBJECT MATTER OF JURISDICTION

16B1) ATTORNEY FAILED TO ADDRESS TRIAL
MATTER BY DIRECT APPEAL. ALSO

FAILED IN TIMELINESS AT ORIGINAL

TRIAL. THEREBY SUPPORTING CLAIM

OF INEFFECTIVENESS OF COUNSEL.

17A) YES

B) YES

C) YES

D) YES

E) YES

2012 MAY 8 PM 2:22
CLERK OF COURT
JENNIFER C. KELLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1873

Claude Dunagin, #339745,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 2, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted by the Spartanburg County Grand Jury at the November 2008 term for second degree arson (08-GS-42-6184). He was represented by N. Douglas Brannon, Esquire. On March 8, 2010, the Applicant proceeded to trial after which a jury convicted him of the charge as indicted. He was sentenced on March 10, 2010, by the Honorable J. Derham Cole, to confinement for twenty-five (25) years, suspended upon service of sixteen (16) years to five (5) years probation thereafter and restitution.

A timely Notice of Appeal and an Anders brief were filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Dunagin, Op. No. 2011-UP-546 (S.C. Ct. App. filed December 6, 2011). The Remittitur was submitted on December 23, 2011.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that:
 - a. Counsel failed to move, prior to jury selection, for dismissal based on lack of subject matter jurisdiction under S.C. Code Ann. § 17-19-90;
 - b. Counsel failed to present evidence or testimony setting forth possible defense that structure was unfinished and thus did not constitute a dwelling house within the meaning of S.C. Code Ann. § 16-11-110(b);
 - i. Counsel failed to object to indicted felony charge and argue that Applicant should have been charged under S.C. Code Ann. § 16-11-560, a misdemeanor.
 - c. Counsel failed to adequately argue his motion for a directed verdict;
 - d. Counsel failed to present exonerating evidence and testimony at trial;
 - i. Counsel failed to subpoena and examine Applicant's requested witnesses whom he alleges would have proffered potentially exonerating testimony;
 - ii. Counsel failed to move to compel appearance of witness with potentially exonerating testimony.
 - e. Counsel, "admitted to [Applicant] that his representation was tantamount to ineffective assistance of counsel";
 - i. Admitted that he "had made mistakes and should have done a better job" and opined that the prosecution failed to satisfy its burden of proving every element of the charge.
 - f. Counsel failed to properly interview jurors during selection to uncover possible bias because of "close ties of friendship and family" between several jurors and police and fire rescue personnel, and failed to object to selection of such members.
 - g. Counsel failed to object to jury instructions.
2. The court erred in failing to grant directed verdict.
3. The court lacked subject matter jurisdiction to hear the case.

III.

The Respondent interprets each of the Applicant's allegations not specifically addressed below to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors,

the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant additionally claims that the court did not have subject matter jurisdiction to try his case. Respondent submits that this allegation is without merit. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); State v. James, 321 S.C. 75, 472 S.E.2d 38 (Ct. App. 1996). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. The respondent submits that this Court should dismiss this allegation as a matter of law.

V.

Applicant also asserts that the trial court erred in denying Applicant's motion for a directed verdict. Respondent submits that this allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

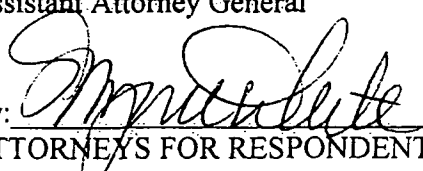
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 25, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH CIRCUIT

2012-CP-42-1873

Claude Dunagin # 339745

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

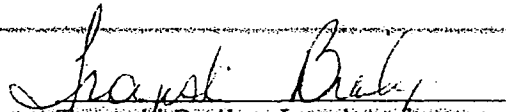
STATE OF SOUTH CAROLINA,

Respondent

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Shawn M. Campbell, Esquire
104 N. Daniel Morgan Ave. Ste. 201
Spartanburg, SC 29306

DATED this 25th day of February, 2013


Troyesh Brailey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 CLAUDE DUNAGIN,)
5 APPLICANT,)
6 vs.)
7 STATE OF SOUTH CAROLINA,)
8 RESPONDENT.)
9
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TRANSCRIPT
OF
RECORD
2013-CP-42-1873

September 18th, 2014
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

A P P E A R A N C E S:

SHAWN M. CAMPBELL
ESQ.
Attorney for the Applicant

SUZANNE H. WHITE
ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

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P R O C E E D I N G S

THE COURT: All right. State may call the next case.

MS. WHITE: Thank you, Your Honor.

This is the case of Claude Dunagin versus the State.
It's Case Number 2012-CP-42-1873.

Mr. Dunagin was indicted in November of 2008 for charges of arson second degree. He proceeded to trial where he was represented by Mr. Doug Brannon. He was convicted on March 10th, 2010, before the Honorable Judge Cole, received a sentence of 25 years suspended to 16 years and five years of probation.

There was an appeal filed and an Anders brief was filed on his behalf. They affirmed the sentence and conviction, and he is raised this application -- filed this application raging -- raising claims of ineffective assistance of counsel and they're noted in the return, Your Honor. It's about seven allegations, and then he also raised that the -- several errors of Court error and subject matter jurisdiction. So the State, in its return, had moved to summarily dismiss those as direct appeal issues or lacking merit.

But at this time I would turn it over to his attorney, Mr. Shawn Campbell.

THE COURT: Mr. Campbell.

Claude Dunagin - Direct examination
by Mr. Campbell

1 MR. CAMPBELL: Yes, Your Honor. We're prepared to go
2 forward. I have discussed this matter with Ms. White and
3 the issues and I would be ready to call Mr. Dunagin.

4 THE COURT: All right. Come forward, Mr. Dunagin.
5 Just step over here to the witness stand to my left.

6 (Witness complies.)

7 THE COURT: If you would, place your left-hand on the
8 Bible, raise your right to the best of your ability.

9 CLAUDE DUNAGIN, being first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat please.

12 (Witness complies.)

13 THE COURT: State your name, sir.

14 THE WITNESS: Claude Daniel Dunagin.

15 THE COURT: Mr. Campbell, your witness.

16 MR. CAMPBELL: Thank you. Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. CAMPBELL:

20 Q Mr. Dunagin, you were arrested and charged with arson
21 in the second degree, is that correct?

22 A That is correct.

23 Q Essentially, on or about in January of 2008, there was
24 a piece of property behind where you lived, correct?

25 A Yes, sir.

Claude Dunagin - Direct examination
by Mr. Campbell

1 Q And on that piece of property there was a house being
2 built, is that correct?

3 A Yes, sir.

4 Q And as of January 2008, it was maybe 50, 60 percent
5 completed?

6 A I don't have any -- (witness shrugs shoulders.)

7 Q Okay.

8 A No knowledge, sir.

9 Q You just know that there was a house being built on
10 that property, is that correct?

11 A Yes, sir.

12 Q Sometime in January that house burned down, is that
13 correct?

14 A That is correct, sir.

15 Q In June of that same year, of 2008, you were arrested
16 at that point for arson in the second degree, is that
17 correct?

18 A That's correct.

19 Q Okay. Some several months after the incident?

20 A Yes, sir.

21 Q Okay. At which point did you hire Mr. Brannon to be
22 your attorney?

23 A I believe it was some time in August or September.

24 Q Okay. Soon after you were arrested?

25 A No, October or November. October.

Claude Dunagin - Direct examination
by Mr. Campbell

1 Q Of, two---

2 A October.

3 Q of 2008, is that correct?

4 A of 2008, that's correct, sir.

5 Q Okay. At that point were you out on bond or were you
6 still in jail?

7 A I was out on bond, sir.

8 Q Okay. And were you on home, home detention, home
9 monitoring?

10 A Yes, sir, I was the, the highest home detention, which
11 is \$94.50 a week.

12 Q Okay. Thank you.

13 And did Mr. Brannon have an opportunity to go over your
14 charges with you?

15 A Yes, sir, he did that the Sunday before the trial --

16 Q Okay.

17 A -- which was on Monday.

18 Q I understand.

19 But I mean you hired him in October of 2008 and you
20 went to trial in March 2010, is that correct?

21 A That is correct.

22 Q During that time period though you'd met with Mr.
23 Brannon?

24 A Just the once to hire him.

25 Q Just the once.

Claude Dunagin - Direct examination
by Mr. Campbell

1 You never met with him again after that?

2 A We, we was going to a, a hearing. I'm trying to
3 remember. It's, it's when the Grand Jury and we was suppose
4 to go on like the second week in November or something.

5 Anyway it was done a week before and, for some reason, Mr.
6 Brannon had the wrong information when we was suppose to go
7 to the Grand Jury for them to true bill the, the indictment.

8 Q Indictment.

9 A Indictment. That's correct. That's correct.

10 Q Okay. At some point though Mr. Brannon got discovery
11 in your case, is that correct?

12 A Yes, sir.

13 Q Did he ever go over that discovery with you?

14 A Just on Sunday before the trial.

15 Q Okay. Now, in addition, did he go over -- once again,
16 did he go over the elements of the offense, arson in the
17 second degree with you?

18 A No, sir, not that I can remember, no, sir.

19 Q Okay. At this time are you aware of what, you know,
20 they had to prove to find you guilty?

21 A No, sir.

22 Q Okay. Well, you went to trial on this matter, didn't
23 you?

24 A Yes, sir.

25 Q Okay. And after, you know, as such, they issued an

Claude Dunagin - Direct examination
by Mr. Campbell

1 indictment against you, is that correct?

2 A Yes, sir.

3 Q And on the back of that indictment it lays out the
4 charges and the elements of that charge, is that correct?

5 A Yes, sir.

6 Q Okay. And at any point did Doug go over the indictment
7 with you?

8 A As best I can recollect, no, sir, he did not.

9 Q Okay. Did he ever explain to you that, that the state
10 had to prove not only it was you who burned this building
11 down, but, in addition, that it had to be a dwelling house
12 or a place of, you know, designed for human occupancy?

13 A No, sir, not, not, not till the trial started did that
14 come up, sir.

15 Q Not till the trial started.

16 At any point prior to March 8th of 2010 were any
17 motions made to dismiss these charges based on the lack of
18 subject matter jurisdiction?

19 A No, sir.

20 Q Okay. And do you feel like a, a motion to dismiss
21 should of been made?

22 A Yes, sir.

23 Q And why is that?

24 A Well, the, the law states -- the law of 17-19-90 states
25 that your counsel has -- let me get this correct if I can.

Claude Dunagin - Direct examination
by Mr. Campbell

1 Your counsel is inefficient if he does not argue
2 subject matter, matter jurisdiction before the jury is
3 seated, and he didn't do this until the defense rested --

4 Q Okay.

5 A -- and, and, and he didn't argue it correctly, sir.

6 Q Okay. So your -- and you -- I believe you said
7 inefficient, but you mean ineffective, is that correct?

8 A Yes, sir. Yes, sir.

9 Q This case went to trial approximately three days, is
10 that correct?

11 A That is correct, sir.

12 Q And throughout this trial one of the main focuses of
13 the trial was this building that was burned down, is that
14 correct?

15 A That's correct.

16 Q Okay. And multiple witnesses testified as to the fact
17 that it was only 60 or 70 percent completed, is that
18 correct?

19 A As I can -- yes, sir, what I understood, the only
20 inspection that the house ever went through was a foundation
21 inspection for the foundation to be done, and then the roof
22 to be put on and nothing else. There were no any other
23 inspections ever done. So you, of course, you couldn't
24 occupy it or, or call it a structure yet, sir.

25 Q Okay. Why do you feel like arson in the second --

Claude Dunagin - Direct examination
by Mr. Campbell

1 arson second was improper for this Court to hear?

2 A Well, it's a misdemeanor. It should of been in
3 misdemeanor court.

4 Q Okay. You're saying because the, the building that was
5 burned down was not in a house or a place of dwelling should
6 of rendered this as an arson third, is that correct?

7 A That is correct, sir.

8 Q Okay. And, therefore, should of been in Magistrate
9 Court, is that correct?

10 A That is correct. I mean everything that the contractor
11 and all the other subcontractors said, you know, the house
12 was -- there's no way you could live in it cause it never
13 been inspected.

14 Q Okay.

15 A It wasn't finished. Just had studded walls and a roof.

16 Q Okay. Now, Mr. Dunagin, in preparation for your trial
17 on March 8th, 2010, did you give Mr. Brannon a list of
18 witnesses to contact?

19 A Yes, sir.

20 Q Who were those witnesses?

21 A I give him Mike Johnson, Robert Brent Wyatt, a Kevin
22 Foster, myself, and I believe my brother, David Dunagin, and
23 he subpoenaed the witnesses, but, for some reason, two of
24 them, he, he didn't get them on the stand.

25 Q And who were those two witnesses?

Claude Dunagin - Direct examination
by Mr. Campbell

1 A Robert Brent Wyatt and Kevin Foster.

2 Q Okay. Now, what was important about Robert Brent
3 Wyatt's testimony?

4 A Well, Robert Brent Wyatt, he was the brother of the
5 State's supposedly star witness and he would -- his
6 testimony would have proven that what they were saying was
7 not so, that where I was at a certain date and time was
8 totally false to what they said.

9 Q Okay.

10 A Mr. Foster's testimony would of been the same. But
11 also Mr. Wyatt would have, even if you read his statement,
12 which he give two statements to Mikah Horton, Detective
13 Mikah Horton, was stated exactly who did set the fire.

14 Q Okay. I want to backtrack a little bit.

15 You said the brother of the State's star witness.
16 Would that be Ms. Amanda Wyatt?

17 A Yes, sir, that's correct.

18 Q Okay. And do you know if -- the State called several
19 witnesses who were connected to you, is that correct?

20 A That is correct.

21 Q They called Ms. Barbara Cash?

22 A That is correct.

23 Q Who, at the time, was or at the time of this incident
24 was your girlfriend, is that correct?

25 A Yes, I was staying with her at the time.

Claude Dunagin - Direct examination
by Mr. Campbell

1 Q Okay. And in addition, called Amanda Wyatt, is that
2 correct?

3 A That's correct.

4 Q And Ms. Joann Wyatt, is that correct?

5 A Yes, that's the sister-in-law to Brent.

6 Q And they called your granddaughter?

7 A Chelsea Wyatt.

8 Q Chelsea Wyatt.

9 Several witnesses were called to the stand in this
10 incident, is that correct?

11 A That is correct, sir.

12 Q Many of these witnesses had a vendetta against you
13 would you say?

14 A Yes, sir.

15 Q Okay. Can you explain to the Court those issues that
16 they had with you?

17 A Well, most of it was money. They owed me quite a
18 quantity of money. I, I lent it to them for obvious
19 reasons and they lied, and when I started telling them I
20 needed my money back, well, they said they wasn't gonna pay
21 it. So I started to evict Joann Wyatt from the residence,
22 and, at that time, Mr. Brent Wyatt, he got some charges.
23 See I've always got Mr. Brent Wyatt out of jail cause he was
24 my son-in-law and---

25 Q Okay.

Claude Dunagin - Direct examination
by Mr. Campbell

1 A ---they had this crazy idea that I sent the police up
2 to his location to -- cause he was in the process of cooking
3 methamphetamines and I got him busted, and they had this
4 crazy idea that I did that, and next thing I know here I was
5 in jail.

6 Q Police knocking on your door?

7 A Yes.

8 Q Now, would Brent Wyatt have contradicted the testimony
9 of these witnesses?

10 A Yes, sir, Joann and Amanda and the other boy, Chase,
11 Chase Teal.

12 Q And part of the, the issue was whether or not you had
13 gone and gotten a truck unsuck out of the mud, is that
14 correct?

15 A That is correct.

16 Q And whose truck was that?

17 A It was -- Mr. Brent Wyatt was driving the truck, but it
18 wasn't his.

19 Q Okay. And I believe several witnesses testified that
20 you had gone and tried to get him unstuck, is that correct?

21 A Just two.

22 Q Just two.

23 A It should, it should of been four.

24 Q Okay. And would Mr. Wyatt have been one of those?

25 A Yes.

Claude Dunagin - Direct examination
by Mr. Campbell

1 Q What about Mr. Foster, what would he have testified to?

2 A He would of testified that Mr. Wyatt called him and
3 Mr. Mike Johnson to come get him out of the mud. They was
4 unsuccessful at that and then Mr. Wyatt called me and I came
5 over with a pickup truck and -- it was a Blazer at the time,
6 but -- and I pulled him out of the mud.

7 Q Okay. And do you know if Mr. Brannon ever talked to
8 Mr. Foster?

9 A Not that I know of.

10 Q Do you know if Mr. Brannon or an investigator of his
11 had ever talked to Mr. Wyatt?

12 A As far as my reckon -- knowledge, I don't know, sir.

13 Q So Mr. Brannon never told you that his investigator
14 interviewed Mr. Wyatt?

15 A I don't recollect. I can't, I can't remember that,
16 sir.

17 Q Okay. Now, at some point in the middle of this trial
18 you were offered a plea deal, is that correct?

19 A That is correct, sir.

20 Q And you were offered a plea to -- tell the Court what
21 you were offered.

22 A Three years, no contest I believe that's what it's
23 called.

24 Q To the arson second?

25 You were offered three---

Claude Dunagin - Direct examination
by Mr. Campbell

1 A Yes. Yes.

2 Q Okay.

3 A To arson second, yes, sir.

4 Q Okay. Three years, is that correct?

5 A That is correct.

6 Q And reluctantly you had agreed to accept this plea
7 offer, is that correct?

8 A Yes, sir, I did.

9 Q Okay. When Mr. Brannon came and talked to you about
10 this plea offer in the middle of trial, did he come with you
11 with a sentencing sheet?

12 A No, sir, he did not.

13 Q So when he talked to you -- describe your conversation,
14 to the Court, your conversation with Mr. Brannon about this
15 plea deal.

16 A Well, I, I asked him what did it mean. He, he, he came
17 to me right, right after the first two witnesses I think or
18 three witnesses, and their -- they testified -- what they
19 testified to was they didn't know what happened either way,
20 which, or form. So I didn't take the plea, and he said it
21 was up to me to take it, you know. He didn't really advise
22 me or tell me what would happen. If I didn't, that the
23 three years no contest was, you know, was a, was a good
24 thing.

25 Q Okay.

Claude Dunagin - Direct examination
by Mr. Campbell

1 A See I didn't understand that.

2 Q Okay.

3 A And then later on I asked Mr. Brannon, yes, I'll take
4 the plea and it never happened.

5 Q Okay. And is that because, after you had accepted the
6 plea offer, they had pulled the offer, is that correct?

7 A That's what he come back and told me.

8 Q Okay. Now, I believe a directed verdict was made by
9 Mr. Brannon in this case, is that correct?

10 A That is correct.

11 Q And, at which point, he argued the fact that the, the
12 structure that was burned was not a dwelling house?

13 A Yes, he, he and the Solicitor Bulsa and the judge all
14 agreed with it's not a dwelling house.

15 Q Okay.

16 A But then the judge took up the argument again with Mr.
17 Brannon about structure designed for human occupancy.
18 Mr. Bulsa never said anything after that.

19 Q Okay. Do you know -- did, did Mr. Brannon -- do you
20 know if he had presented any case law or anything to that
21 effect regarding that issue or in -- regarding the
22 definition of a design for human occupancy?

23 A He, he had a case law, but I, I don't remember which
24 one it was, sir.

25 Q Okay. Now, in addition, do you feel like Mr. Brannon

Claude Dunagin - Direct examination
by Mr. Campbell

1 was ineffective in failing to establish that this structure
2 was a -- you know, designed for human occupancy, is that
3 correct?

4 A Yes, he failed that because it, it -- it's no way you
5 could occupy it because it wasn't through with the -- any
6 building stage to occupy the house.

7 Q Okay.

8 A And it wasn't a structure yet under, under the laws of
9 Black Dictionary. It doesn't fit. Any of that doesn't fit.

10 Q You would agree with me though that several witnesses
11 testified to this issue though?

12 A Oh, yes, sir.

13 Q Okay. How was Mr. Brannon ineffective then in
14 establishing that issue?

15 A He didn't have the, I guess, enough case laws or enough
16 information to let the judge understand and, and---

17 Q But it was clear, from all witnesses, that there was no
18 way anybody could live---

19 A Oh---

20 Q ---in that facility?

21 A Oh, yes, sir.

22 Q Okay. After your case went to the jury, you were
23 sentenced to 25 years suspended upon the service of 16 and
24 five years probation, is that correct?

25 A Yes, sir.

Claude Dunagin - Direct examination
by Mr. Campbell

1 Q Was there anybody hurt or were there any injuries as
2 result of this fire?

3 A No, sir.

4 Q None whatsoever was there?

5 A No, sir, not that anybody testified to.

6 Q Do you know -- did Mr. Brannon ever file a motion for
7 reconsideration in regards to the length and harshness of
8 your sentence?

9 A No, sir.

10 Q Did you ask -- so he never brought up the issue of
11 filing a motion to have the judge reconsider the sentence in
12 your case?

13 A No, sir.

14 Q Do you feel like Doug was ineffective for failing to do
15 so?

16 A Yes, sir.

17 Q Do you feel like that, if a motion had been filed, that
18 the judge may have been able to reconsider the sentence,
19 look at the fact that nobody had been hurt, the fact it was
20 just a property, and your sentence may have -- you may have
21 come better off in your sentence, is that right?

22 A Oh, yes, sir. Most definitely.

23 MR. CAMPBELL: Okay. I beg the Court's indulgence,
24 Your Honor.

25 THE COURT: Yes.

Claude Dunagin - Direct examination
by Mr. Campbell

1 (Pause.)

2 Q After the trial, did you have a chance to talk to Mr.
3 Brannon?

4 A Yes, sir.

5 Q Okay. And how did that conversation go?

6 A Well, we introduced ourself. He -- it was, it was the
7 March the 11th, the day after the trial, and he, he shook my
8 hand and said, he said, Mr. Dunagin, he said you show were
9 railroaded. Said there's no way anybody could ever live in
10 that house under the circumstances. They never proved
11 arson. Nobody ever seen you at the house.

12 These, these footprints they tried to say they have,
13 said nobody even come up with any footprints or nothing.
14 They just had a, a piece of a shoe. That could of been
15 anybody's shoe, you know, and I said yes, sir, none of it
16 made sense, and I didn't, I didn't understand how they could
17 come back with a conviction when nobody ever could prove
18 arson, where it started. The fire department said it one
19 place, the police investigation said another place, and
20 nobody ever knew how it started. So --.

21 Q Did Mr. Brannon ever admit to you that he messed up?

22 A Yes, sir, he said he could of -- he should of done a
23 better job. He should of been better prepared.

24 Q So Mr. Brannon admitted to you, the day after, that he
25 was ineffective as to your counsel?

Claude Dunagin - Direct examination
by Mr. Campbell

1 A Yes, sir.

2 Q And you feel like if he had of been effective you would
3 not have been convicted, is that correct?

4 A That is correct. Not, not convicted at all.

5 MR. CAMPBELL: No further questions for this witness,
6 Your Honor.

7 THE COURT: Ms. White.

8 MS. WHITE: Thank you, Your Honor.

9 THE COURT: Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MS. WHITE:

12 Q Mr. Dunagin, I know you're testifying that Mr. Brannon
13 failed to properly argue that this structure or home that
14 was, was burned down did not qualify as a dwelling, but he
15 did make that motion and argue that before the Court on his
16 motion for directed verdict, did he not?

17 A That's after the trial had started.

18 Q Right.

19 And that's where he made a motion that it should be
20 denied -- that directed verdict should be granted and the
21 charges dismissed because this was not even a dwelling, this
22 didn't qualify under the statute, is that right?

23 A That is correct.

24 Q Okay. And he went through that a pretty good bit.

25 He renewed that motion at the end of the trial, didn't

Claude Dunagin - Cross-examination
by Ms. White

1 he?

2 A I, I -- yes, ma'am, I believe he did.

3 Q And wasn't that -- are you aware of that being the
4 subject of the appeal on your behalf, the direct appeal?

5 A Yes, ma'am, but under, under the statute of law of
6 17-19-90 you have to do this before the trial starts or you,
7 or you're -- the lawyer is ineffective, inefficient.

8 Q And you're saying attacking the indictment?

9 A Yes. Yes.

10 Q Okay. In regards to the testimony about the bias that
11 the State witnesses had against you, Mr. Brannon
12 cross-examined them about that, did he not?

13 A He, he, he tried to.

14 Q Okay. And he, he also -- Your Honor, I'll point to
15 Page 520.

16 In his closing, raised the issue, number one, is that
17 this was not a home that anyone could live in. Had no
18 power. Had no water. Really didn't have any walls.

19 So he asked the, the jury to find that they didn't meet
20 their burden of proof because this wasn't a dwelling, is
21 that right?

22 A Yes.

23 Q Okay. He also, on that same page, or in closing 520,
24 521, said I want you to consider Joann Wyatt and Amanda
25 wyatt, they think -- Amanda thinks he set her brother up.

Claude Dunagin - Cross-examination
by Ms. White

1 She's mad and she's gonna get reward money. Joann's mad
2 cause he's putting her out of the house.

3 The, the defense you had that they had bias was
4 presented and then argued on closing, wasn't it?

5 A It was, but he could of called the other witness that
6 could disqualify or, or make their statements non-void if
7 he'd of called just the other two witnesses --

8 Q Okay.

9 A -- or even read one of them statements, ma'am.

10 Q And it would of been an issue of credibility as to who
11 the jury believed?

12 A Oh, yes.

13 Q Right?

14 Now, you testified, didn't you?

15 A Yes, ma'am.

16 Q And, in fact, there were -- your brother testified and
17 some others on your behalf?

18 A Yes.

19 Q So your story was presented to the Court and to the
20 jury, right?

21 A Yes.

22 Q And ultimately, in fact, you had an arson third degree
23 jury charge, the lesser included charge, given to the jury
24 as an option?

25 A After I read the trial transcript it didn't, it didn't,

Claude Dunagin - Cross-examination
by Ms. White

1 it didn't definize (phonetic) -- it didn't distinguish
2 between the two. It just said one was a little less than
3 the other if, if I recollect what I read properly.

4 Q Okay.

5 A And, and the -- that, that would be unleading to the
6 jury cause I mean if you don't specify that one is a house
7 that nobody lived in and couldn't live in it to a house
8 that's, you know, not even a house yet. It's just a timber.

9 Q Okay. Do you recall the, the Court informing the jury
10 that, if you decide that the State failed to prove that the
11 structure was designed for human occupancy, then you can
12 consider finding him, finding -- consider the lesser
13 included offense of arson in the third degree, and that the
14 difference between those were the third element that
15 distinguishes between those two, which relates to the type
16 of structure of a property?

17 A Yes, sir. Yes, ma'am, I mean---

18 Q That's fine.

19 A I remember him saying that, but he -- the way I
20 understood it and most of my family members, he didn't
21 dis -- he didn't define it enough for the jury to
22 understand.

23 Q So you acknowledge that he did give them the option of
24 arson third degree, but you don't think it was clear enough
25 to them---

Claude Dunagin - Cross-examination
by Ms. White

1 A I'm, I'm sure---

2 Q ---what the difference was?

3 A Yes, ma'am, I'm sure it wasn't.

4 MS. WHITE: Okay. Hold on one second, Your Honor.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 Q Mr. Dunagin, you testified that you hired Mr. Brannon
8 in October of '08, but did not meet with him from that point
9 until March 2010?

10 A I, I met with him one -- just one other time. That was
11 to do the Grand Jury and we went there, and they already had
12 the Grand Jury a week before---

13 Q So---

14 A ---or true billed.

15 Q But you're testifying that you didn't discuss anything
16 related to your case, review any discovery, or discuss any
17 defense having to do with this not being a dwelling?

18 A I don't recall that.

19 Q Okay. When did you provide him the witness names if
20 you had provided those to him prior to trial?

21 A I don't recollect -- I don't remember when I did that,
22 ma'am.

23 Q So did you meet with him to provide him the names of
24 witnesses and contact information?

25 A I don't remember, ma'am.

Claude Dunagin - Cross-examination
by Ms. White

1 Q But you can remember that you did provide those to him,
2 but you don't know how you got that information---

3 A I don't.

4 Q ---to him?

5 A I think it was over the telephone if I --.

6 Q Okay. Did you ever meet with an investigator and not
7 Mr. Brannon?

8 A No.

9 MS. WHITE: Okay. Your Honor, I think that's all I
10 have at this time.

11 THE COURT: All right. Redirect, Mr. Campbell.

12 MR. CAMPBELL: Briefly, Your Honor.

13 THE COURT: Yes, sir.

14 MR. CAMPBELL: I need to jump back to one, one last
15 issue and I apologize.

16 REDIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q We addressed this earlier.

19 You were on home detention, is that correct?

20 A That is correct, sir.

21 Q On, on the ankle monitor.

22 Did Mr. Brannon ever request that you get credit for
23 that time served for your sentencing?

24 A I think -- I think he, I think he asked for it, but for
25 some reason I never got it. But --.

Claude Dunagin - Redirect examination
by Mr. Campbell

1 Q You didn't get credit for that time served?

2 A No.

3 Q Did you?

4 A Never got credit for it.

5 MR. CAMPBELL: Thank you, Your Honor.

6 THE COURT: Any follow-up?

7 MS. WHITE: Nothing further, Your Honor.

8 THE COURT: Sir, you may step down.

9 THE WITNESS: Thank you.

10 THE COURT: The Applicant may call its next witness.

11 MR. CAMPBELL: That's the Applicant's case at this
12 time, Your Honor.

13 THE COURT: All right. I'll hear from the State.

14 You wish to call witnesses?

15 MS. WHITE: Yes, Your Honor.

16 We'd call Doug Brannon to the stand.

17 THE COURT: Come forward please.

18 (Witness complies.)

19 THE COURT: Place your left-hand on the Bible and raise
20 your right.

21 DOUG BRANNON, being first duly
22 sworn, testified as follows:

23 THE COURT: State your name please.

24 THE WITNESS: Norman Douglas Brannon.

25 THE COURT: Thank you.

Doug Brannon - Direct examination
by Ms. White

1 Your witness.

2 MS. WHITE: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. WHITE:

5 Q Mr. Brannon, do you recall representing Mr. Dunagin on
6 these charges?

7 A I do.

8 Q And is accurate that, his testimony, that you were
9 hired in approximately October of 2008?

10 A I believe that's correct.

11 Q And your recollection about your representation of him,
12 in the time period between October 2008 and March 2010, did
13 you meet with him?

14 A Multiple occasions. I wish that I could give you the
15 dates because I have them. However, my entire file was sent
16 to appellate counsel and I didn't get it back.

17 Q And, in your experience -- how long have you been
18 practicing law if you don't mind my asking?

19 A Fifteen years.

20 Q Okay. And is the majority of that been in criminal
21 defense?

22 A A good bit of it, yes.

23 Q Okay. In your normal practice, do you file a discovery
24 motion?

25 A I -- and I did in this case.

Doug Brannon - Direct examination
by Ms. White

1 Q And, in fact, did you receive discovery from them?

2 A I sure did.

3 Q What did the discovery contain?

4 A Written statements, drawings, the fire investigation
5 reports, the law enforcement investigation reports as to the
6 fire, photographs. It, it was -- there was -- it was -- the
7 discovery was voluminous.

8 Q Did you have a chance to review that with Mr. Dunagin?

9 A At -- yes, and the discovery, you know, you didn't get
10 it all at one time. So we would go over some of it. We
11 would go over it as it came in.

12 Q And did you have a chance to talk with him about a
13 strategy for defense cause obviously he said he wanted to,
14 to go to trial on this initially?

15 Did you start talking with him about the strategy?

16 Did he have that initially already prepared?

17 A Yeah, I mean I became very aware of his family members
18 and the acquaintances. I mean I, I met his daughter. I met
19 his girlfriend. She came into the office, the, the older
20 woman. I met with his brother. I mean almost every time
21 that I saw Claude I saw, I saw his brother. They were very
22 cooperative and, and, and I thought we had a really good
23 relationship.

24 Q In regards to the issue of the witnesses, this was
25 obviously, I don't know if -- intricate is the word, would

Doug Brannon - Direct examination
by Ms. White

1 be relationships between all the parties?

2 Is that accurate?

3 A Yes.

4 Q And, in fact, a lot of these folks were related by
5 either marriage or blood in some way?

6 A Yeah, or, or dating relationships, yes.

7 Q Okay. And in discussing with Mr. Dunagin, did he talk
8 with you about the bias that these folks may have against
9 him?

10 A Absolutely. I was -- Mr. Dunagin, I'm not gonna
11 suggest to you that he was a wealthy man, but he, he had
12 means and, and owned property and, in fact, at one point
13 owned the property upon which this house was being built.
14 Actually I think his dad owned the, the property that the
15 house was being built, and, and it seemed that Mr. Dunagin
16 was kind of a magnet to people -- a magnet for people who,
17 who had needs.

18 Okay?

19 Q And, in fact, this involved -- there was a lot of
20 testimony about real estate and, and prior real estate deals
21 and, and how the land was purchased or who had it, who owned
22 the land?

23 A Right. Right. And, and -- but as far as the defense
24 goes, it was more into rental agreements and tenants of a
25 house and stuff like that.

Doug Brannon - Direct examination
by Ms. White

1 Q And is that, when you're mentioning that, is that the
2 house that he owned that was -- he was gonna evict some
3 people from?

4 A Correct.

5 Q And is that accurate that he believed that that was the
6 bias that some of the folks had against him?

7 A Well, he believed it and I believed it.

8 Q Yeah.

9 A Yeah.

10 Q And that was, in fact, what you cross-examined a lot of
11 them on and presented in closing?

12 A Absolutely, yeah.

13 Q In regards to the issue of the statutory dwelling, did
14 you ever think -- talk with him about whether or not you
15 could file a motion pretrial to dismiss the indictment or
16 whether you were gonna proceed with the directed verdict
17 motion?

18 A I, I -- we certainly had conversations about whether it
19 was a dwelling according to the statute or not. I don't
20 specifically remember talking about a pretrial motion, but I
21 do know that we talked about that as part of the trial
22 strategy.

23 Q And, in that point, you made a motion for directed
24 verdict and, and argued that -- Mr. Dunagin testified that
25 Derrick Bulsa agreed that it was not a dwelling at the

Doug Brannon - Direct examination
by Ms. White

1 argument.

2 Is that your recollection?

3 A Well, I think what Derrick agreed to was that it, that
4 nobody had ever lived in it and it was -- and I mean the
5 testimony had come out that there was never a certificate of
6 occupancy granted for this house. So nobody could of lived
7 in it and I think that's what Derrick agreed to.

8 Q And that it was being built?

9 It was not completed?

10 A That's right.

11 Q There was no water on?

12 A That's right.

13 Q Okay. Do you recall the witnesses that Mr. Dunagin
14 mentioned?

15 A I---

16 Q Robert Brent Wyatt and Kevin Foster?

17 A I do.

18 Q And did you have a chance to interview or have anyone
19 interview them on your behalf?

20 A Yes, I have a private investigator that has worked for
21 me for a number of years and his name is Pete Heist. Pete
22 interviewed every witness that Claude or his brother gave me
23 the name of.

24 Q And were those witnesses subpoenaed for the trial?

25 Do you recall?

Doug Brannon - Direct examination
by Ms. White

1 A I, I believe they were.

2 Q And if they didn't testify, do you recall why you
3 decided not to call them?

4 A Cause they weren't gonna help us.

5 Q If you thought that they were gonna be able to help the
6 defense, would you have made the decision to call them?

7 A Certainly. The, the, the story was that Claude had
8 gotten a phone call to come and somebody had gotten stuck in
9 a, in a I believe it was a white pickup truck out in the
10 woods kind of between Claude's house and where this house
11 burned and I may be wrong about in-between, but somebody got
12 stuck.

13 At that point Claude had a four wheel drive Chevy
14 Blazer or something like that, and I believe it was either
15 one of those two witnesses that I didn't call and, and I may
16 be wrong, and, and Claude went and pulled them out and there
17 was a neighbor that testified that he saw Claude's vehicle
18 coming out of the woods or something like that.

19 The problem was either one or both of those two
20 witnesses were gonna say yeah, he came and pulled me out,
21 but it wasn't the night of the fire. So their testimony
22 wasn't going to be helpful.

23 Q Did you have a chance to talk with him about the fact
24 that there were some witnesses that you might not present
25 based on whether or not they were gonna help or hurt the

Doug Brannon - Direct examination
by Ms. White

1 case?

2 A Well, yeah, but I will tell you that the decision not
3 to call those two witnesses was, was made during the trial.

4 Q And was that based on how all the State's case was
5 being presented or---

6 A To a certain extent, but Mr. Heist was here as well
7 because he was helping me get the witnesses into the
8 courthouse at the appropriate time, and, and Pete grabbed me
9 and said look, these guys aren't gonna help you.

10 Q And so that was a strategic kind of---

11 A Absolutely.

12 Q ---game time decision?

13 A Yes.

14 Q You also were aware of and argued that some of these
15 folks believed that Mr. Dunagin had set someone up,
16 Mr. Wyatt for cooking meth, is that right?

17 A Well, I mean that -- we'd certainly heard that story,
18 yes.

19 Q And you attempted to present that and argue that to the
20 jury as bias?

21 A That was one of the bias. There were, there were three
22 separate biases that we were trying to show. His long time
23 girlfriend was very angry because he had started seeing
24 someone else who was significantly younger. There was the
25 group of people that lived in the house down the road that

Doug Brannon - Direct examination
by Ms. White

1 he was evicting or about to evict that -- and they were
2 upset, and then there was the set up of somebody who'd --
3 for cooking meth or something like that.

4 Q And, in fact, wasn't his long time girlfriend the one
5 that said he had actually confessed---

6 A Yeah.

7 Q ---to burning down the house---

8 A Well, I don't---

9 Q ---or was that---

10 A Her testimony was that Claude came home. She said what
11 did you do and he said you'll see. She -- he -- according
12 to her he said you'll see.

13 Q So not a, not a direct confession, but she intimated
14 that it was---

15 A Correct.

16 Q ---that's what it was.

17 And so that's where you were trying to call into
18 question her credibility --

19 A Right.

20 Q -- because of that?

21 A And, and she did testify that she said that or made
22 that statement because she was mad at Danny and Danny is
23 Claude.

24 Q Okay.

25 A Okay.

Doug Brannon - Direct examination
by Ms. White

1 Q And, in fact, he was referenced throughout the trial as
2 Danny Dunagin --

3 A That's right.

4 Q -- I think?

5 A Yeah.

6 Q In regards to the plea offer, do you recall that as
7 well?

8 A Absolutely.

9 Q And is it accurate that it was an offer made originally
10 after maybe a first couple witnesses and then initially he
11 turned it down?

12 A I'm -- I can't say that I disagree with that. I
13 don't -- but my recollection of the guilty plea is more
14 specific and it was definitely later into the trial. We
15 actually went into -- you know, the trial was across the
16 hall. We went into that little conference room over there
17 and it was, it was Mr. Dunagin and his brother and there was
18 a female in there, but I don't remember who that was, and we
19 talked at length about a three year guilty plea.

20 He agreed to take it. I remember my client becoming
21 upset. He was, he was crying. He hugged the female
22 whomever that was. I left the conference room leaving the
23 three of them in there, went in to tell Mr. Bulsa that we
24 would accept the plea, and, at that point, I was told that
25 the children of the victim talked the victim out of agreeing

Doug Brannon - Direct examination
by Ms. White

1 with the plea and it was withdrawn.

2 Q Okay. And when you say victim, that's the owner of the
3 home there was no physical injury to?

4 A Right, the owner of the home, that's correct.

5 Q Okay. So you don't recall necessarily if he had
6 originally been offered the plea and turned it down and then
7 that's partially why it was withdrawn as well?

8 A I don't have any recollection of that. He could --
9 he's probably right, but my recollection was of the, the
10 very distinct and in-depth discussions of the guilty plea.

11 Q Okay. And you recall -- you said that was later on the
12 trial.

13 Was that before the State rested or do you recall?

14 A I, I don't, I don't know. I don't know when in, in the
15 trial it was.

16 Q Okay. Did you feel like you were able to properly
17 argue or try to present case law and statutory law to
18 support your case on the dwelling issue?

19 A Absolutely.

20 Q Did you -- were you able to do any research or have
21 anyone prepare research for you on that issue?

22 A I did the research.

23 Q Okay. In regards to a motion for reconsideration, is
24 that something that is standard when there's no additional
25 evidence or nothing new to present to a judge?

Doug Brannon - Direct examination
by Ms. White

1 A I got to tell you that if I had it to do it over again
2 I would of filed that motion.

3 Q Okay.

4 A Okay.

5 Q And was that because of the harshness of the sentencing
6 you felt or the guilt -- I mean the, the guilt conviction or
7 the --?

8 A All of the above. I, I mean, as an attorney, you never
9 get anywhere disagreeing with a judge, but I don't believe
10 Judge Cole was right on the -- on, on his finding that it
11 was a dwelling. He hung his hat on the language designed to
12 be a dwelling.

13 Okay. I mean that's, that's why he, he denied my
14 motion.

15 Okay. But other than Mr. Dunagin's family members and
16 alleged friends, there was no evidence that he did this. I
17 mean it could of been not guilty just as easy as it was
18 guilty.

19 Q And that was put before the jury?

20 A Absolutely.

21 Q And unfortunately the jury believed all the other folks
22 --

23 A Yeah.

24 Q -- over that?

25 Now, do you -- had you had a chance to review the

Doug Brannon - Direct examination
by Ms. White

1 appellate opinion---

2 A No.

3 Q ---and look at the argument?

4 A No, I will tell you that I think it should not of been
5 an Anders brief. I think there was some meat on the bone
6 that could of been argued.

7 Q Okay. But it was an issue that was presented having to
8 do with the issue of whether or not it was a dwelling?

9 A Yeah. Yeah.

10 Q Okay. And that was dismissed, was it not?

11 A It was.

12 Q Okay. In regards to a conversation with him
13 afterwards, obviously you were concerned about, about the
14 conviction and the evidence.

15 Do you -- did you recall telling him that you were
16 ineffective, that you should of done a better job and ---

17 A No, I think I told him to file a PCR, but I -- I'm
18 pretty confident I didn't tell him that I would say I was
19 ineffective. I, I do agree with much of what he said about
20 the conversation. I mean we talked about how I disagreed
21 with Judge Cole's finding that it was designed to be a
22 dwelling, and, and I remember telling him, brother, if your
23 friends were friends they wouldn't of done what they did to
24 you, and I'm -- I probably did tell him to file a PCR.

25 Q Uh-huh. (Affirmative).

Doug Brannon - Direct examination
by Ms. White

1 And that was because you were -- you felt bad about the
2 sentencing he got---

3 A Absolutely.

4 Q ---and the fact that he was even convicted?

5 A Absolutely.

6 Q Okay. Did you feel like there was anything else that
7 you needed more time to investigate or needed any additional
8 information to help present the defense?

9 A Not, not to be prepared for trial, no.

10 MS. WHITE: Thank you, Your Honor. That's all I have
11 at this time.

12 THE COURT: You may cross-examine.

13 MR. CAMPBELL: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. CAMPBELL:

17 Q Doug, I'd like to jump into the dwelling house
18 situation if you don't mind.

19 A lot of the argument and research, would you agree
20 with, went into the fact that this was not a dwelling house,
21 correct?

22 A Certainly.

23 Q Okay. However, that was not the argument Judge Cole
24 hung his hat on, correct?

25 A No, it wasn't.

Doug Brannon - Cross-examination
by Mr. Campbell

1 Q Okay. It was designed -- it was a structure designed
2 for human occupancy?

3 A That's correct.

4 Q Correct?

5 A That's correct.

6 Q Did you do any research on that specific issue, whether
7 or not a building that had not been completed was a --
8 considered a -- designed for human occupancy that would
9 qualify under this statute?

10 A Shawn, to answer your question specifically, I had
11 several cases that I researched and, and presented to the
12 Court. But if your question is did I then research the
13 Judge's hanging his hat on that, no, I didn't because,
14 again, it happened during the trial, he made a ruling, and
15 then we moved on.

16 So I, I didn't have the opportunity to say let me go
17 get LexusNexis and look that up, but my case law, I
18 believed, was pretty clear that this building didn't meet
19 the statute.

20 Q And obviously -- I believe all the case law and
21 everything focused on whether or not it was a dwelling
22 house?

23 A Correct.

24 Q Now, I know you mentioned that you were in the middle
25 of trial.

Doug Brannon - Cross-examination
by Mr. Campbell

1 After you made your motion at the directed verdict,
2 that's when Judge Cole determined that this was, you know, a
3 design for human occupancy, correct?

4 A Correct.

5 Q Did you give any consideration at all to -- into making
6 a pretrial motion in regards to this case?

7 A Shawn, we -- and I will, I will tell you specifically
8 that there was conversation ahead of the case, ahead of the
9 trial that I didn't want to disclose trial strategy. I mean
10 I would, I would have foreclosed one possibility for the
11 jury's consideration because the State would of then been
12 aware of that -- I had, I had this isn't a dwelling and I
13 had he didn't do it, these people are lying because of the
14 bias.

15 If I had made a pretrial motion, I would of tipped my
16 hat to Derrick Bulsa and to Trey, I guess was the solicitor
17 at the time, and, and I explained that to my client and I
18 didn't, I didn't say do you want me to file the motion
19 because trial strategy is, is in my purview. But, you know,
20 there was a discussion in advance.

21 Q Were -- you, you would agree to meet -- with me though
22 that if you had of made that motion you would of known ahead
23 of time whether or not -- what the judge would of considered
24 important in regards to whether or not it was a dwelling or
25 a design for human occupancy?

Doug Brannon - Cross-examination
by Mr. Campbell

1 MS. WHITE: Your Honor, I would just object to
2 speculation, whether or not the judge would of made the same
3 argument with him pretrial or whether that would of even
4 come up.

5 THE COURT: I'll give it the weight I think it
6 deserves.

7 MS. WHITE: Thank you, Your Honor.

8 A I'm sorry, Shawn.

9 would you ask it again?

10 Q Yeah, I'm sorry.

11 would you agree with me if you would of made that
12 motion at pretrial, you would of known ahead of time the
13 importance of whether or not it was a house of dwelling or a
14 designed for human occupancy?

15 A well, I would of known it, but the State would of known
16 that that was my argument as well.

17 Q And if you were correct and charges had been dismissed,
18 it wouldn't of mattered if the State had known it or not?

19 A well, you're, you're right.

20 Q Okay. And I believe you stated, you know, in the
21 middle of the trial, that's when the judge made the
22 decision.

23 At any point, you know, in the last day or overnight,
24 did you do any research or -- in regards to the designed
25 occupancy of a house?

Doug Brannon - Cross-examination
by Mr. Campbell

1 A I know that I did additional research. I don't know
2 that I was successful in finding anything, and I have to
3 tell you that I don't know that that was what I was
4 researching. I -- but I do know that I spent some time on
5 LexisNexis the, that evening.

6 Okay?

7 Q Okay. And as you know, and, and -- let me jump back
8 real quick.

9 Around also this time period was the plea offer had
10 been made, is that correct?

11 A Yes.

12 Q And through the discussions, Mr. Dunagin had agreed to
13 accept that offer, is that correct?

14 A He sure did.

15 Q At any point did you have, and I'm assuming you did not
16 have -- present a sentencing sheet to Mr. Dunagin?

17 A Major mistake on my part. I did not request -- the
18 offer was made by Derrick Bulsa. He -- in the courtroom he
19 made the offer. I asked for permission to take my client
20 out of the courtroom and into a conference room and ask for
21 permission to have additional family members present. Judge
22 Cole granted both, granted both of those requests.

23 I should have asked for a sentencing sheet right there
24 because after my client accepted the plea is when I found
25 out that it was withdrawn. If it had -- if I had had a

Doug Brannon - Cross-examination
by Mr. Campbell

1 sentencing sheet that was signed by Derrick and in that room
2 I had signed it and my client had signed it, I believe that
3 it would of then been an enforceable agreement.

4 Q And, and you made my point for me.

5 If you'd of had the sentencing sheet, as soon as
6 Derrick made the offer to you, if you would of told him go
7 get me a sentencing sheet, and took that in there, had your
8 client sign it, it would of been an enforceable plea deal?

9 A Absolutely. Absolutely.

10 Q Has that changed the way you practice?

11 A Well, I, I certainly have that in my mind, but, Shawn,
12 I've never had that situation arise again in a trial. So I
13 haven't said get me a sentencing sheet. But I can tell you
14 this, if it does happen again, I will do that. I will
15 demand a sentencing sheet before I even begin discussing
16 with my client.

17 Q And you agree you should of done that in this case?

18 A Knowing now what I know -- if I knew then what I know
19 now, absolutely.

20 Q Okay. And obviously if you'd of done that the outcome
21 would of been different because he would of been sentenced
22 to three years, is that correct?

23 A That is correct. But -- and, and I do think that
24 Claude was wrong about something. I think it was three --
25 no, it was, it was three years to arson second. He was

Doug Brannon - Cross-examination
by Mr. Campbell

1 right. It was arson second because arson third doesn't
2 carry three years. He was right. He was right.

3 Q All right. So the offer was arson second, three years?

4 A Right.

5 Q Is that correct?

6 A And restitution.

7 Q And restitution.

8 THE COURT: Was it a negotiated sentence or a
9 recommendation?

10 THE WITNESS: Your Honor, I don't know that we ever got
11 that far because, like I say, there was never a sentencing
12 sheet. Derrick Bulsa stepped across the aisle, said we'll
13 offer three years, restitution, and, and then I started
14 asking the judge for the opportunity to speak to my client
15 and have family members present. So I mean it was a firm
16 offer of three years. It wasn't like up to or a cap of, but
17 it was three years.

18 THE COURT: Well, again, would -- did he -- but you
19 don't know whether it was offered as a negotiated sentence
20 or a recommendation?

21 He -- did he say either way?

22 THE WITNESS: Neither.

23 THE COURT: Okay.

24 Q In, in your experience, if you'd of had the sentencing
25 sheet, would you have followed up on whether or not it was a

Doug Brannon - Cross-examination
by Mr. Campbell

1 negotiated or recommendation?

2 A Yeah, because you got those boxes and one of them would
3 of had to have been checked, and, and so I would of, I would
4 of asked which box to check or have Derrick check one, yes.

5 Q But, in the discussions between you and Derrick, you
6 were firm -- it was a firm three years, correct?

7 A It -- he stepped across the aisle and said three years.
8 I mean that -- and my client understood because we even
9 talked about how much time he would have to serve on the
10 three years.

11 Q So it was known between both you and Derrick at the
12 time?

13 MS. WHITE: Your Honor, I would -- I think this is---

14 THE COURT: Well, I think we're -- I think I've -- I'll
15 let him keep asking questions, but I think I know where we
16 are. Apparently Derrick said three years and didn't say
17 whether it was -- I asked the question whether it was
18 negotiated or, or recommendation. He said he didn't hear
19 either way. I'm not sure solicitors can offer firm three
20 years. That's an interesting concept.

21 Q Did---

22 THE COURT: Go ahead.

23 Q Did you ask Derrick whether it was a recommendation,
24 recommendation or a negotiation?

25 THE COURT: I already asked the question. He answered

Doug Brannon - Cross-examination
by Mr. Campbell

1 it no.

2 MR. CAMPBELL: Okay.

3 THE COURT: He didn't hear that.

4 Q Okay. After the conviction you stated that -- and, and
5 you agree you did not file a motion for reconsideration?

6 A I, I didn't and, again, my file is with appellate
7 counsel. So this morning I went and looked on my computer
8 to see if I did because I, I didn't remember, and there is
9 no motion to reconsider under the name Dunagin. So I, I
10 have to tell you that I didn't do it.

11 Q Okay. If you would of filed a motion for
12 reconsideration in this matter, that would of also provided
13 you a time period to do more research in regards to, to
14 designed for human occupancy?

15 You would agree with me on that, correct?

16 A Well, I don't know that Judge Cole would of let me
17 argue that. But, yeah, I mean it, it would of given me more
18 time, but I don't know that Judge Cole would of let me argue
19 something that wasn't in the record.

20 Q I understand.

21 And you filed the appeal on Mr. Dunagin's behalf?

22 A I filed the notice of appeal.

23 Q Notice of appeal.

24 A Yes, sir.

25 Q And then you forwarded it on, correct?

Doug Brannon - Cross-examination
by Mr. Campbell

1 A Yeah, I, I believe appellate counsel picked it up.

2 Q And I believe even you, you testified too that more
3 should of been done rather than just an Anders brief, is
4 that correct?

5 A Well, in my opinion, but I'm not an appellate attorney.

6 Q I understand.

7 Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (Pause.)

10 MR. CAMPBELL: No further questions for the witness,
11 Your Honor.

12 THE COURT: All right. Yes, ma'am.

13 MS. WHITE: Just briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. WHITE:

16 Q Two different questions.

17 In regards to the motion for reconsideration, in your
18 experience, does Judge Cole entertain those a lot when
19 there's no additional information that was not presented at
20 trial to --?

21 A Well, your word -- the word entertain, he may entertain
22 them. The question is does he grant them and I mean there's
23 lawyers that have been here a lot longer than I, but I've
24 never known him to grant one.

25 Q Okay. And you were here earlier.

Doug Brannon - Redirect examination
by Ms. White

1 Did -- you did hear Mr. Dunagin testify that, when he
2 was originally offered the three year plea, that he turned
3 it down?

4 A I did hear that testimony, yes.

5 Q Okay. And that you had to come back and talk to him
6 about it and, at that point, it had been withdrawn?

7 A Well, no, you're missing a step.

8 Q Okay.

9 A It was apparently offered earlier in the trial and, and
10 Mr. Dunagin refused it. It was then made again and that's
11 when we had the lengthy conversation and he accepted it.

12 Q Okay. So that's where you're saying it wasn't the same
13 plea offer that you tried that was the first plea offer.
14 You tried to come back and, and get it back. It was
15 actually made a second time.

16 A That's right. Mr. Bulsa made the same offer again.

17 Q But do you recall the first offer?

18 A I -- if I'm not mistaken that might of been like a
19 pretrial offer.

20 Q Okay. And so what he's recalling in, after several
21 witnesses, might be the offer you're discussing?

22 A Yeah.

23 Q Okay. And, at that point, is it possible that it was
24 withdrawn because you had already begun trial and started
25 presenting witnesses and the State had already done a lot of

Doug Brannon - Redirect examination
by Ms. White

1 their case?

2 A Ms. White, I can't -- I don't know the answer to that
3 question because the, the initial three years may of been
4 made like Claude said it was and I don't recall it. I know
5 that the same offer was made twice. I didn't step across it
6 and ask if the offer's still on the table. They came to me.

7 Q Okay.

8 A I -- and I do know why the offer was made again. It
9 was after the Sheriff's Office fire investigator testified
10 and he couldn't -- he said -- I'm, I'm summarizing, but he
11 said the fire investigator had the, the start -- the
12 location for the start of fire the wrong, and it was based
13 on the competing experts, if you will, that the second offer
14 was made.

15 Q So, in your impression, they, they felt like they might
16 lose and that this was a chance?

17 A Well, at least that they might not get arson second,
18 yeah.

19 MS. WHITE: Okay. Thank you, Your Honor. That's all I
20 have.

21 THE COURT: Anything further?

22 MR. CAMPBELL: Nothing, Your Honor.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: All right. Any other witnesses?

1 MS. WHITE: No other witnesses from the State, Your
2 Honor.

3 THE COURT: You wish to offer any testimony in reply?

4 MR. CAMPBELL: None, Your Honor.

5 THE COURT: All right. I'll be happy to hear from you,
6 Mr. Campbell.

7 MR. CAMPBELL: Your Honor, I think --.

8 THE COURT: Let me ask one question --

9 MR. CAMPBELL: Okay.

10 THE COURT: Because I'm, I'm -- my understanding is
11 there was an appeal filed; there was an Anders brief filed
12 in which, and I haven't had a chance to read that, the
13 question of this dwelling house issue was at least
14 mentioned.

15 MR. CAMPBELL: It was barely mentioned, Your Honor. It
16 was in a small paragraph.

17 THE COURT: Well, it's mentioned.

18 MR. CAMPBELL: Maybe two sentences.

19 THE COURT: It's mentioned.

20 MR. CAMPBELL: Yes.

21 THE COURT: And---

22 MR. CAMPBELL: But it was not explored at all.

23 THE COURT: Well, I -- the Court, by signing an Anders
24 order, says they reviewed the entire record is my
25 understanding --

1 MR. CAMPBELL: I understand.

2 THE COURT: -- and the issue that are raised in that
3 record.

4 MS. WHITE: And, Your Honor, the State would note
5 there's been no allegation of ineffective assistance of
6 appellate counsel, but it was an Anders brief. So the Court
7 did, did review all preserved issues.

8 THE COURT: Yeah, they're suppose to review all
9 preserved issues before they grant one of those things.

10 MR. CAMPBELL: Yes, Your Honor.

11 THE COURT: That's my understanding, but anyway, it was
12 mentioned in the, in the Anders brief --

13 MR. CAMPBELL: That is correct, Your Honor.

14 THE COURT: -- as a, as a preserved issue.

15 MR. CAMPBELL: That is correct. It was.

16 THE COURT: Okay. So it's something then that the
17 Court, under the rules, the Appellate Court is bound to at
18 least give a review. Not necessarily a hearing.

19 MR. CAMPBELL: That's correct.

20 THE COURT: Okay. Excuse me.

21 Go ahead.

22 MR. CAMPBELL: Your Honor, we believe that Mr. Brannon
23 was ineffective in this case and Mr. Dunagin should be
24 afforded a new trial. We've heard the testimony here today
25 that Mr. Dunagin was offered a plea agreement from the State

1 at which point he accepted it. By the time he accepted it,
2 all of a sudden it was withdrawn, Your Honor.

3 Mr. Brannon has indicated that if he had requested the
4 sentencing sheet and Mr. Dunagin would of signed it, it
5 would of been an enforceable plea agreement. Mr. Brannon
6 even testified to the Court that he is gonna be changing the
7 way he does practice in regards to this situation if it ever
8 comes up again, Your Honor.

9 Mr. Dunagin was sentenced to---

10 THE COURT: I didn't see -- you know, that -- the, the
11 reason I asked my question about whether it was a, a
12 negotiated sentence -- and even a negotiated sentence, the
13 judge is not required to accept it. So, you know, the --
14 I'm just trying to -- I wanted to pin down exactly what the
15 offer was and I'm not sure that -- there may have been a
16 material term that had not been yet agreed upon it sounds
17 like.

18 MR. CAMPBELL: I, I understand.

19 THE COURT: So that's what it's sounding like to me,
20 but I could be wrong. I mean I'm gonna look into it.

21 Do you have a case on that where some -- where an,
22 where an offer gets withdrawn after a, a conference and then
23 an acceptance?

24 MR. CAMPBELL: I don't have a case with me, Your Honor.
25 If you would give me sometime --

1 THE COURT: Oh, certainly.

2 MR. CAMPBELL: -- I'd be happy to research that and
3 provide that to you.

4 THE COURT: I'll be happy to, to get any help I can get
5 on that point because, as Mr. Brannon says, that's an
6 unusual circumstance. I haven't seen that happen myself.
7 Tried a lot of cases and never seen that happen before.

8 MR. CAMPBELL: Yes, sir, and even Your Honor knows that
9 even though it is a recommendation or a negotiation, then
10 Your Honor does not have to follow it. Most often the time
11 the sentencing would be in the range of that recommendation
12 or negotiation, Your Honor.

13 The sentence in this matter---

14 THE COURT: Well, if it's a negotiation, the judge
15 either rejects or accepts it.

16 MR. CAMPBELL: That's correct.

17 THE COURT: And so that's -- that's the reason
18 that's -- that is a very material question when you're
19 looking at, at what the ultimate result might have been.

20 MR. CAMPBELL: And as you---

21 THE COURT: We don't, we don't know how that offer
22 really was made in that regard.

23 MR. CAMPBELL: And as Your Honor knows, these offers
24 are often made through discussion over a period of time --

25 THE COURT: Yes, sir.

1 MR. CAMPBELL: -- whereas this three years I'm sure was
2 just not thrown you, you know, or pulled out of midair, hey,
3 how about three years, Your Honor.

4 THE COURT: Yes, sir.

5 MR. CAMPBELL: I'm sure that's---

6 THE COURT: I'd agree.

7 MR. CAMPBELL: You know -- so a lot of time and thought
8 went into that. You know, as you know, Mr. Dunagin was
9 sentenced to 16 years and that is a significant difference
10 between the three that he was looking at in regards to the
11 plea, Your Honor.

12 THE COURT: Well, and it -- but it might indicate that
13 the judge, the same judge would of been doing the
14 sentencing, it might indicate that he wouldn't of accepted
15 the deal.

16 MR. CAMPBELL: Well---

17 THE COURT: I don't know, but anyway.

18 I'll hear from the State.

19 MS. WHITE: Thank you, Your Honor.

20 Specifically as to the plea agreement, I think -- and
21 we would certainly appreciate the opportunity to also look
22 up some case law, but I think it's been shown generally that
23 there has to be some kind of detrimental reliance on the
24 behalf -- on the part of the defendant and counting on that
25 plea or some, some kind of consideration has to have been

1 offered for it to be enforceable and I would argue to you
2 that there's nothing in this situation. He admitted that he
3 turned it down initially, the case proceeded to trial, and
4 just because Mr. Brannon did not get a sentencing sheet
5 signed does not necessarily mean that that would of been an
6 enforceable agreement or that that sentence would have been
7 accepted.

8 THE COURT: Well, it seems that if Mr. Bulsa -- what I
9 got from the testimony was that Mr. Bulsa said will you take
10 three. He wanted to go talk to his client. Apparently.
11 Bulsa may not have really had the authority to do that.
12 So -- cause when he went and talked to his victims, I heard
13 the testimony was they didn't agree to it. So he withdrew
14 it.

15 So I'm not sure he was in a position to make the offer
16 at the time he made the offer or he really had a firm offer.

17 MS. WHITE: And that---

18 THE COURT: Maybe he was just saying will you take
19 three, we'll see what we can do. I've watched these
20 negotiations over the -- from up high here on many occasions
21 and I realize that sometimes they're fluid and usually
22 become definite when everybody's in front of the Court.

23 MS. WHITE: And I think that's -- the fact here is,
24 Your Honor, it's gonna require a lot of speculation as to
25 what would of happened, what would the judge have accepted,

1 would have been enforceable, would it have been negotiated
2 or a recommendation, and because of the sentence received,
3 would the recommendation have even been accepted and, and
4 abided by I guess.

5 THE COURT: Mr. Brannon's standing. You may want to
6 see if there's something he wants to share with you.

7 MS. WHITE: Thank you.

8 MR. BRANNON: It won't be anything she wants to share
9 with you, Your Honor. I can explain the negotiation if you
10 want.

11 THE COURT: Well, I don't -- I think the testimony's
12 in.

13 MS. WHITE: I think---

14 THE COURT: I don't know that I can reopen it at this
15 point in time. Thank you.

16 MS. WHITE: Your Honor, also, in regards to
17 effectiveness of counsel, I do believe that it's clear that
18 Mr. Brannon, credibility wise, was able to point out the
19 investigation, that he did a great deal of research,
20 discussion with clients as well as his, his family members.
21 Presented all the defenses, cross-examined witnesses, and
22 presented that to the jury, in addition to getting a jury
23 charge for arson in the third degree.

24 So we would argue there's no evidence of any deficiency
25 and obviously no evidence of prejudice as a result of the

1 conditions there.

2 THE COURT: What was the statute that defined dwelling
3 house?

4 MS. WHITE: It is---

5 THE COURT: Cause I'm looking at one and I don't find
6 that.

7 MS. WHITE: Sixteen -- I think it's 16 -- well, let's
8 see. 16-11-110, Your Honor.

9 MR. CAMPBELL: That's correct.

10 THE COURT: All right. Just one second and let me look
11 at it.

12 MS. WHITE: 16-11---

13 THE COURT: I'm looking at 10. That's what I was
14 looking at. Let me just read it one more time.

15 MR. CAMPBELL: 110(b).

16 THE COURT: Has that been amended since this case?

17 MR. BRANNON: May I speak?

18 THE COURT: Yes.

19 MR. BRANNON: No, I presented case law on that statute.
20 Judge Cole found alternative case law that had the language
21 designed for personal habitation or something, something
22 like that.

23 THE COURT: Cause that language is not in the statute.

24 MR. BRANNON: And, and, and I agree with you and that's
25 why I said I didn't agree with his, with his finding.

1 THE COURT: Okay. I was just looking at the statute
2 and I couldn't find that language in it is the reason I was
3 questioning that while we were talking about that, but now I
4 know.

5 MS. WHITE: And, Your Honor, just so you'll know, the
6 argument in the transcript starts at Page 392 --

7 THE COURT: Okay.

8 MS. WHITE: -- and goes to Page 397 I believe.

9 THE COURT: Let me mark that so I can look at it.

10 MS. WHITE: 392 to 397, and that's the directed verdict
11 motion.

12 MR. CAMPBELL: And Your Honor?

13 THE COURT: Yes, sir, Mr. Campbell.

14 MR. CAMPBELL: May we approach briefly?

15 THE COURT: Certainly.

16 (WHEREUPON, a bench conference was held at this time.)

17 THE COURT: All right. I'll take it under advisement.
18 Thank you very much.

19 MS. WHITE: Thank you, Your Honor.

20 MR. CAMPBELL: Thank you, Your Honor.

21

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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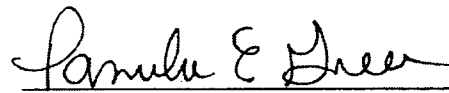
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 18th day of September, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 10th, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1873

Claude Dunagin, #339745,

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief

filed May 2, 2012. The Respondent made its Return on or about February 28, 2013. An evidentiary hearing into the matter was convened on September 18, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Shawn M. Campbell, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. N. Douglas Brannon, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted by the Spartanburg County Grand Jury at the November 2008 term for second degree arson (08-GS-42-6184). He was represented by N. Douglas Brannon, Esquire. On March

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8, 2010, the Applicant proceeded to trial after which a jury convicted him of the charge as indicted. He was sentenced on March 10, 2010, by the Honorable J. Derham Cole, to confinement for twenty-five (25) years, suspended upon service of sixteen (16) years to five (5) years of probation thereafter and restitution.

A timely Notice of Appeal and an Anders brief were filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Dunagin, Op. No. 2011-UP-546 (S.C. Ct. App. filed December 6, 2011). The Remittitur was submitted on December 23, 2011.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to move, prior to jury selection, for dismissal based on lack of subject matter jurisdiction under S.C. Code Ann. § 17-19-90;
 - b. Counsel failed to present evidence or testimony setting forth possible defense that structure was unfinished and thus did not constitute a dwelling house within the meaning of S.C. Code Ann. § 16-11-110(b);
 - i. Counsel failed to object to indicted felony charge and argue that Applicant should have been charged under S.C. Code Ann. § 16-11-560, a misdemeanor.
 - c. Counsel failed to adequately argue his motion for a directed verdict;
 - d. Counsel failed to present exonerating evidence and testimony at trial;
 - i. Counsel failed to subpoena and examine Applicant's requested witnesses whom he alleges would have proffered potentially exonerating testimony;
 - ii. Counsel failed to move to compel appearance of witness with potentially exonerating testimony.
 - e. Counsel, "admitted to [Applicant] that his representation was tantamount to ineffective assistance of counsel";

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- i. Admitted that he "had made mistakes and should have done a better job" and opined that the prosecution failed to satisfy its burden of proving every element of the charge.
- f. Counsel failed to properly interview jurors during selection to uncover possible bias because of "close ties of friendship and family" between several jurors and police and fire rescue personnel, and failed to object to selection of such members.
- g. Counsel failed to object to jury instructions.
- 2. The court erred in failing to grant directed verdict.
- 3. The court lacked subject matter jurisdiction to hear the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised in the application and at the hearing.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he was arrested for arson after a home behind Applicant property, which was partially completed, burned and was destroyed. Applicant testified that he retained Counsel in October 2008, and the trial was held in March 2010. Applicant testified that he met with Counsel only the one time to hire Counsel, although Applicant stated that he was on home detention while the charges were pending. Applicant also testified that he never met with Counsel's investigator, although he was aware that Counsel had an investigator working on his case.

Applicant testified that he only reviewed the discovery materials with Counsel and discussed the charges on the Sunday prior to trial. Applicant testified that he did not understand at the time of trial what the elements of the crime were or what the State needed to prove.

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Applicant testified that Counsel did not explain that the charge required the structure to be a dwelling house until immediately prior to trial. Applicant testified that he believes he should have only been charged with a magistrate level offense because the building that burned down was not an inhabitable home at the time. Applicant stated that the house had not been inspected, so no one could live in the home at the time. Applicant acknowledged during cross-examination that the jury was provided with an option to find him guilty of the lesser-included offense of arson – 3rd degree, but still found him guilty of arson – 2nd degree.

Applicant testified that he provided names of various witnesses to Counsel, including Johnson, Foster, Wyatt, and Applicant's brother David. Applicant stated that he provided those witness names to Counsel via telephone call. Applicant acknowledged that Counsel subpoenaed each witness, but only called two as witnesses during trial. Applicant alleged that if Wyatt had testified, he would have been able to contradict other testimony in regards to whom actually set the fire at the home. Applicant also acknowledged that several witnesses testified against Applicant during the trial, including his former girlfriend, granddaughter and other family members. However, Applicant alleged that these witnesses all held a vendetta against Applicant because they each owed Applicant money and he was beginning the eviction process. Applicant acknowledged that Counsel did cross-examine each witness as to their bias and motivation for testifying.

Applicant stated that after the first couple of witnesses for the State, the State made an offer to allow Applicant to plead to arson – 3rd degree for three years. Applicant stated that he chose to not accept the plea at that time; however, Applicant attempted to plead guilty to the same offer later during trial, but the offer had been withdrawn by that time.

Applicant testified that Counsel did argue a motion for directed verdict, specifically

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arguing that the structure was not a dwelling house because it was not able to be occupied at the time. However, Applicant stated that Counsel did not effectively make that argument. Applicant did acknowledge that Counsel also renewed the directed verdict motion at the end of trial.

~~Applicant testified that Counsel never filed a motion for reconsideration and later explained to Applicant that Counsel was unprepared and ineffective.~~

Counsel testified that at the time of trial, he had practiced law for approximately fifteen years, with a substantial amount of his practice spent practicing criminal law. Counsel testified that he began representing the Applicant in October 2008. Counsel testified that he met with Applicant several times and reviewed the voluminous discovery materials with Applicant. Counsel testified that he became close with the Applicant's family and associates throughout the representation.

During their meetings, Counsel testified that he and the Applicant discussed Applicant's family's motives for testifying against Applicant, content of witness statements, and relationships of Applicant and various witnesses. Counsel testified that he and Applicant discussed the Applicant's connection to the property, as well as those he rented property to and the status of those rentals. Counsel testified that issues of a new girlfriend, possible evictions, allegations of manufacturing methamphetamine, and other issues were possible motives for the witnesses to testify against the Applicant. Counsel testified that he attempted to attack the ex-girlfriend's credibility because she testified that Applicant had confessed to burning down the house to her.

Counsel testified that he hired an investigator, Pete Heist, who interviewed all potential witnesses. Counsel acknowledged that he had subpoenaed the witnesses named by Applicant, but did not call them as witnesses because Counsel did not believe they would help the defense.

However, Counsel testified that he would have most certainly called them as witnesses if he believed their testimony would be helpful.

Counsel testified that he researched case law regarding the definition of a dwelling and prepared to argue that during his directed verdict motion. Counsel testified that the trial court ruled that because the structure was "intended for dwelling," that it qualified under the arson -

2nd degree charge.

Counsel testified that he did not need any additional time to prepare for trial. Counsel testified that he may have advised the Applicant to file a post-conviction relief application because Counsel felt the sentence was too harsh, but was confident that he did not tell Applicant that he was ineffective. Counsel testified that he could have filed a motion for reconsideration based upon the fact that Counsel felt the sentencing was too harsh. However, Counsel acknowledged that he has never known Judge Cole to grant a motion for reconsideration and there would have been a very small likelihood that a motion for reconsideration would have been granted.

Counsel testified that he did talk with Applicant extensively about the three year plea offer; however, by the time the Applicant was ready to accept the offer, the Solicitor stated that they had revoked the offer. At that time, the offer had been made to the Applicant twice and rejected by Applicant. Counsel testified that the discussions with the State had never progressed to discussing whether or not the three year offer was for a negotiated sentence or recommended sentence.

This Court finds that the Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation or prepare enough for trial are without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle,

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609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). This Court finds Counsel's testimony regarding the meetings with Applicant, discussions regarding the case, review of discovery materials, and preparation and research for trial to be most credible. Counsel properly researched the statutes and case law pertaining to the charge that Applicant faced in preparation for trial and for the directed verdict motion.

The Applicant failed to point to any specific matters Counsel failed to discover, and defenses that could have been pursued had Counsel been more fully prepared or had additional time prior to the case being called to trial. This Court notes that Counsel has years of experience representing clients on similar charges and remains updated on case law through research.

Further, although the Applicant alleges that Counsel was ineffective for failing to challenge the subject matter jurisdiction of the court prior to the jury selection, this Court notes that Applicant has a misapprehension of the law regarding indictments and subject matter jurisdiction. Although it is true that a challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by § 17-19-90, the indictment itself is simply

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a notice document. State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005). If an objection is timely made, the circuit court judges the sufficiency of the indictment by determining whether "(1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged." Id.

A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). The Applicant failed to meet his burden of proof of establishing that Counsel was deficient for either objecting to the sufficiency of the indictment or objecting to the trial court's lack of subject matter jurisdiction. This Court finds no deficiency on the face of the indictment and finds that it was sufficient to provide notice to the Applicant of the charge he faced. Counsel argued on Applicant's behalf during the directed verdict motion that the structure that burned was not inhabitable at the time and the verdict should be directed in Applicant's favor. Counsel presented case law and arguments to the court, but the motion was denied. The Applicant failed to show any other argument Counsel could have presented to have been successful. Applicant also failed to demonstrate any prejudice that may have resulted from Counsel's alleged inadequate preparation or lack of investigation. Accordingly, this allegation is dismissed.

This Court also finds the Applicant failed to meet his burden of proof regarding the allegation that Counsel was ineffective for failing to call particular witnesses for the defense. Again, Counsel's testimony as to this matter was most credible. Prejudice from trial counsel's

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failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Not only did Counsel testify that he had an investigator independently interview each of the potential witnesses, but he did subpoena witnesses for the trial. However, as Counsel testified, he made a strategic decision to not call certain witnesses based upon the fact that their testimony would not be helpful for the defense. The Applicant failed to present any witness or testimony that could have been presented at trial to establish the requisite prejudice. Therefore, this claim is denied and dismissed.

In regards to the Applicant's allegation that Counsel was deficient in his cross-examination of the State's witnesses, this Court finds that the Applicant has failed to meet his burden of proof. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different.

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This Court finds that Counsel effectively cross-examined the State's witnesses, in particular, those that might have a bias or motive for testifying against the Applicant. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. Therefore, this claim is dismissed.

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."

Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984).

There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. This Court finds that the Applicant has failed to meet his burden of proof as to the claims that Counsel was ineffective. He offered no testimony or evidence to support his claim that Counsel's decision to not make an opening or closing statement was anything less than sound trial strategy.

Furthermore, Applicant failed to demonstrate that had Counsel made an opening or closing statement, the outcome of Applicant's trial would have been any different. Therefore, this claim is denied and dismissed.

Although raised in the application, Applicant did not address the allegation that Counsel failed to properly interview jurors during selection to uncover possible bias and failed to object to selection of such members at his hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this claim.

Trial Court Error

This Court finds that any claim of trial court error raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

Lack of Subject Matter Jurisdiction

This Court finds that the allegation of a lack of subject matter jurisdiction lacks merit and should be denied. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, the Applicant was indicted by the Spartanburg County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). The Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, Counsel's testimony was more credible than the testimony of the Applicant. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the

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denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26th day of March 2015, ~~2014~~ *lee*


 ROGER L. COUCH
 Presiding Judge.

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WITNESSES

ANCE MADE
Spartanburg County Sheriff's Office
REPORT ENDED

Computer

1. CARD PULLED

2. INDEXED

3. CHECKED WARRANT

4. CHECKED SEARCHING

5. ASSESSMENT FILE

6. FILE CARD MADE

Computer

TRAFFIC VIOLATIONS

ARREST WARRANT NUMBER

M180416

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: 10-29-08

VERDICT

[Signature]

Foreperson of Petit Jury

[Signature]

Date: 3/10/2010

666
556

DOCKET NO.

08-08-42-6184

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

VS.

Claude Daniel Dunagin

Indictment for

ARSON - 2ND DEGREE

SC Code: 16-11-110(B)

CDR Code: 2551

Class FEL-B

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

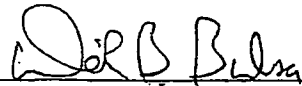
INDICTMENT

At a Court of General Sessions, convened on _____, the Grand
Jurors of Spartanburg County present upon their oath:

ARSON - SECOND DEGREE

That Claude Daniel Dunagin did in Spartanburg County on or about January 23,
2008, willfully and maliciously cause an explosion, set fire to, burn, cause to be burned,
or aided, counseled or procured the burning that resulted in damage to a dwelling house
or structure designed for human occupancy, to wit: the dwelling of John Floyd located at
[REDACTED] [REDACTED], South Carolina, all in violation of §16-11-110 (B), *CODE OF LAWS OF
SOUTH CAROLINA*, (1976 as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


DEPUTY SOLICITOR

668

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS

Claude Daniel Dunagin

AKA:

Race: W Sex: M Age: 52

DOB: SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

Arrested

in violation of § 16-1-116(B) of the S.C. Code of Laws, bearing CDR Code #

2551

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BULSA, DERRICK

SC Bar# 15264

Claude D. Dunagin

Attorney for Defendant

SC Bar# 68798

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of 16 days/months/years and/or payment

of \$, plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

\$

§ 14-1-206 (Assessments 107.5%)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$ 25.00

§ 47.12 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$100

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

§ 90.7 (SCCJA Surcharge)

\$5

\$ 5.00

3% to County (if paid in installments)

\$

\$ 3.90

TOTAL

\$ 133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4206184

A/W#: M180416

Date of Offense: 1/23/2008

S.C. Code § 16-11-0110(B)

CDR Code #: 2551

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

KG McKinney

Prism Green

2053