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## DONALD GAINER

### Other Arson Cases

During the night of February 5, 1984, the Arcade Theater on the South Side of Pittsburgh, Pennsylvania erupted in flames. The building, which was closed to customers and employees at the time, was destroyed and the damage was estimated to be more than \$1 million.

The cause of the fire was not immediately determined. Theodore Belejac, a fire department lieutenant and one of the first firefighters to arrive at the scene, reported that he smelled natural gas and ordered the natural gas line to the building be shut down. He did not report seeing anyone inside the theater.

At the time of the blaze, police and fire investigators were under pressure for failing to solve a rash of arsons that plagued Pittsburgh's South Side beginning in the fall of 1983. Ultimately, while the Arcade fire remained unsolved, a man named David Benedict would confess to setting 13 of those fires. Benedict denied setting the Arcade fire, and there was no evidence connecting him to it.

In June 1984, Walter Sparks Jr. was in the Allegheny County Jail awaiting trial on charges of burglary, receiving stolen property, conspiracy and gun charges. Sparks, who already had a lengthy criminal record, told detectives that he knew that the fire at the Arcade was arson and he would tell them who set it if they would get him out of jail.

Sparks said that in the fall of 1983, 31-year-old Donald Gainer tried to enlist him to help Gainer burn down the theater. Sparks said that Gainer said in one conversation that they would be paid \$10,000 and in another conversation said that they would be paid \$20,000. Sparks said he backed out of the deal and didn't see Gainer again until the summer of 1984 when they were both in the County Jail on unrelated charges. Sparks told detectives that Gainer admitted he set the fire and that a man named Donald Finnegan had helped.

Police interviewed Finnegan, another career criminal who had been in jail in the past with both Sparks and Gainer. Finnegan denied any involvement and took a polygraph examination. The examiner said there were no indicators of deception when Finnegan denied involvement.

Finnegan was released, but was arrested 10 days later for drunken driving and then was charged with escape for attempting to flee from court. Because he had outstanding warrants for parole violations, Finnegan was suddenly facing as much as 17 years in prison. He asked to speak to the detectives investigating the theater fire and told them a different story.

<b>State:</b>	Pennsylvania
<b>County:</b>	Allegheny
<b>Most Serious Crime:</b>	Arson
<b>Additional Convictions:</b>	Other Violent Felony
<b>Reported Crime Date:</b>	1984
<b>Convicted:</b>	1985
<b>Exonerated:</b>	1992
<b>Sentence:</b>	22 to 45 years
<b>Race:</b>	Caucasian
<b>Sex:</b>	Male
<b>Age:</b>	31
<b>Contributing Factors:</b>	Perjury or False Accusation, Official Misconduct
<b>Did DNA evidence contribute to the exoneration?:</b>	No

Finnegan said he had driven Gainer and two others, including Theresa Williams, a former girlfriend of Gainer's, to the theater and dropped them off. He said before he drove away, he saw the three pouring gasoline in the theater.

Detectives prepared a photographic lineup for Fire Lt. Belejac, even though no trace of gasoline or any other accelerant had been found. Belejac had not filed a report at the time of the fire saying he saw anyone inside, however, he now told police that he saw Gainer and a white woman in the theater that night. Belejac identified Gainer in the photo lineup and described the woman as 5 feet, 8 inches tall with dark hair. Williams, however, was 5 feet tall.

Police also interviewed Barbara Sokolowski, who claimed she was a waitress at the Little Bavaria Restaurant, located across the street from the theater. Sokolowski said she saw Gainer having lunch with the theater owners on two occasions several months prior to the fire. Sokolowski, who had such poor eyesight that the license plate on her vehicle was "Magoo," after the nearly blind cartoon character, was unable to identify Gainer in a photographic lineup.

In July 1984, Gainer and two others were arrested and charged with arson and risking a catastrophe by setting a fire. Charges against the others were soon dismissed though, and only Gainer went on trial in Allegheny County Circuit Court in February 1985. Belejac testified that he saw Gainer in the lobby of the theater when he arrived to fight the fire. Sparks testified that Gainer tried to enlist him to burn down the building and later admitted having set the fire when they were in jail at the same time.

Finnegan never testified. Prior to the trial, he recanted his statement about driving Gainer and the others to the fire and said it was false. Prosecutors later prosecuted him for perjury and he served more than two years in prison.

Gainer's then-girlfriend, Sandra Christiansen, testified for the defense and said that on the night of the fire she and Gainer walked from her apartment to a bar, bought drugs and returned to her apartment after midnight on February 5. She said she became sick after taking the drugs and went outside with Gainer to get fresh air. She said when they got outside, they saw flames shooting out of the theater.

Larry Frey, Sparks's former brother-in-law, was in the hall outside the courtroom, waiting to testify that Sparks had admitted to him that he falsely implicated Gainer. Frey was going to testify that Sparks, in fact, had tried to persuade him to say he was with Sparks when Gainer first proposed burning down the theater. However, Frey abruptly left the courthouse and did not testify. He later reported that the detectives came up to him in the hall and threatened to arrest him if he testified for Gainer.

On March 1, 1985, Gainer was convicted of arson and risking a catastrophe. He was sentenced to 22 to 45 years in prison.

Soon after, Sparks signed a sworn affidavit recanting his testimony as false. However, months later, Sparks signed another affidavit, recanting his recantation and claiming that he only recanted because he feared he would be harmed by other inmates if they learned he had testified against Gainer.

Meanwhile the theater owners filed a federal lawsuit against

their insurance company which had refused to pay their damage claim on the basis that the owners had hired Gainer to burn the building because they were financially strapped. The owners took and passed polygraph examinations indicating they had no knowledge of how the fire started.

The lawsuit went to trial in 1988 and during this civil trial, Belejac testified for the first time that he smelled gasoline—not natural gas—when he arrived. Sokolowski testified for the first time. She said that prior to the fire, she was working as a waitress at Little Bavaria Restaurant when she saw Gainer have lunch on two occasions with the theater owners. Although the theater owners denied they were having financial problems and denied ever meeting with Gainer or hiring anyone to burn the theater, the federal jury found in favor of the insurance company.

In November 1988, Bill Moushey, a reporter at the Pittsburgh Post-Gazette, published a lengthy article that revealed that Sokolowski had never worked at the Little Bavaria Restaurant, but had worked at a different restaurant some distance away.

The article disclosed the Finnegan had sent a post card to Gainer after Gainer was convicted saying that his statement to police implicating Gainer was a lie. The article also highlighted the difference in Belejac's testimony—his first report was that he smelled natural gas and later he changed his account to say he smelled gasoline. The article also noted that Sparks gave differing accounts in the criminal and civil trials and had testified that he first met Gainer when they were both in the State Correctional Institution in Pittsburgh in 1974, although records showed Gainer was living between Michigan and Florida in 1974 and was not incarcerated.

Spurred by the newspaper disclosures, Gainer obtained a new attorney who examined the transcript of Gainer's trial and filed a motion for a new trial arguing that Gainer's attorney had failed to request a jury instruction relating to an alibi witness, even though Gainer's defense primarily was based on the alibi testimony of his girlfriend. The motion was denied by the trial court, but in 1990, the Pennsylvania Supreme Court reversed the conviction and ordered a new trial. The court held that Gainer's trial attorney had provided an inadequate legal defense by failing to request the instruction.

Gainer went on trial a second time in September 1992. Sokolowski was dead and Gainer's alibi witness, Sandra Christenson, could not be located. The defense cross-examined Belejac about his inconsistent accounts of natural gas versus gasoline and Sparks's testimony was undercut by his inconsistent and false statements as well as his recantation.

The defense called Mike Ries, a Pittsburgh brick mason, who told the jury that he was in a bar with a fire official who was involved in the Arcade fire investigation prior to Gainer's first trial. Ries testified that Gainer's photograph was shown on a television news account of his arrest and the fire official remarked, "They don't even know if he did it." The fire official also was called as a witness and conceded he had made the remark.

On October 2, 1992, the jury acquitted Gainer and he was released.

– *Maurice Possley*

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