Back to Family From Life on Death Row
By DIRK JOHNSONSpecial to The New York Times
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After 5 Years of Despair, Man Is Freed When Killer Confesses

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HOMER, Ill. — In a scrapbook with Tweety Bird on the cover were the keepsakes of a 12-year-old girl: birthday wishes from a doting grandmother, a get-well card from a Sunday school teacher, a dazzling report card from the fifth grade, and letters from her father on death row.

For five years, the girl was able to see her father, Joe Burrows, only in the visiting room of an Illinois penitentiary. "Daddy, can you put me under your shirt and sneak me back there with you?" the girl, Carrie, asked tearfully at one visit.

Mr. Burrows was sentenced to death in 1989 for the farmhouse murder of an 88-year-old man, a crime he swore he did not commit. As the years dragged by, despair and resignation set in. Eventually he wrote in his journal that he would ask the court to proceed with his execution as soon as possible because it was "the only way I can see to end the pain."

Then came a remarkable turnabout. The prosecution's two chief witnesses recanted their testimony that they had seen Mr. Burrows commit the murder, and one of the two confessed to the killing. A judge in Kankakee County Court then ordered a new trial.

And, earlier this month, in one of the most dramatic courtroom scenes in Illinois history, the judge, John F. Michela, freed Mr. Burrows on his own recognizance, ordering guards to unfasten the shackles around his legs, waist and wrists.

As the irons came off, Mr. Burrows's wife, Sherri, ran sobbing to her husband, wrapping her arms tightly around him.

The prosecutor, Charles Zalar, said he had not decided whether to appeal the judge's ruling, press ahead for a new trial or move for dismissal, a determination to be announced at a hearing set for Oct. 5. But he acknowledged that the only evidence against Mr. Burrows was the witness accounts. Without them, he said, "We don't have much."

Mr. Zalar said he was exploring whether to file new charges against the witness who confessed, Gayle Potter, who is serving a 30-year sentence for her conviction as an accessory to the murder of the man, William Dulin. In her confession, Ms. Potter said she assumed that the Constitution's protection from double jeopardy would prevent prosecutors from filing new murder charges against her. But legal experts say such protection might not extend to a defendant who committed perjury in an earlier trial.

Mr. Burrows has rejoined his wife and three children in Homer, a tiny central Illinois town about 140 miles south of Chicago, where yellow ribbons were festooned around trees in celebration of his homecoming. Since 1970, about 50 people have been freed from death row after their convictions were reversed or thrown out. One recent night, the family huddled around the kitchen table to talk about the ordeal. Carrie was nestled against her father's shoulder while 10-year-old Misty and 9-year-old Joey sat beaming at their dad.

The only evidence vanishes when a witness recants.

"I felt like I was dead for five years," said Mr. Burrows, who is 40. "But now I am alive."

For the first two days after his release, he and his wife did not sleep. "We were afraid that we would wake up and find out it was all a dream," said Mrs. Burrows, who is 29.

Mr. Burrows has twice served time in prison for burglary convictions but was never before accused of a violent crime. He was first arrested when he was 9, and that was on theft charges. "I was a good burglar," Mr. Burrows said of his early years, adding that he had "quit crime a long time ago."

In his nearly six years on death row, he spent most of his time writing poems and crocheting gifts for his wife and children.

For his family, it was a torturous time. A schoolmate of one of the children had taunted, "So when are they going to fry your daddy?"

Mr. Burrows was a high school dropout who worked odd jobs intermittently. As a boy, one of 10 children, he moved frequently with his family throughout central Illinois. The experience, he said, convinced him that poor rural people, "like black people, don't get a fair shake with the system."

Mr. Burrows's lawyer, Kathleen Zellner, had visited Ms. Potter more than 20 times before the woman finally confessed. "I talked a lot about Joe's children," Ms. Zellner said. "And I told her that telling the truth was something she could feel good about."

The first trial of Mr. Burrows, in 1989 in Iroquois County, ended in a hung jury. His retrial later that year was in Kankakee County, where he was convicted.

In the motion for a new trial, Ms. Zellner had asked Judge Michela to issue a finding of misconduct against the original prosecutor for Iroquois County, Tony Brasel, noting that he had failed to turn over to the defense a letter from Ms. Potter asking a friend to lie about the presence of Mr. Burrows's pickup truck at the murder scene.

Mr. Brasel said that the letter had been placed in a file by an investigator and that he had never seen it. The judge rejected Ms. Zellner's request but said in his ruling that the failure to disclose the letter was "a violation of the discovery rules and is disturbing to the court."

Ms. Zellner, who said she was considering filing a civil rights suit against Iroquois County for wrongful arrest and malicious prosecution, also said that prosecutors and police investigators had pressured Ms. Potter and the other witness, Ralph Frye, into implicating Mr. Burrows. She described Mr. Frye, who is in prison, as having a "very limited intellectual capability."

Mr. Brasel and the Iroquois County police have denied that they acted improperly in any way.

Ms. Zellner contended that Mr. Burrows had been poorly served by his defense lawyer in both trials, Don Boyer, who was appointed by the court to represent the defendant, an indigent. Mr. Boyer was paid a total of about $30,000 for handling the case, about a quarter of the prevailing wage for a private lawyer.

In the first trial, Mr. Boyer presented witnesses who testified that he was at his brother's house, 60 miles away, on the night of the killing, but he did not call them in the second trial.

While acknowledging that "there are a lot of things I would do differently," Mr. Boyer said he had not called the alibi witnesses because he had not believed that they would be credible to the jurors.

Ms. Zellner said the evidence in the case pointed clearly toward Ms. Potter as the killer. She was arrested two days after the Nov. 6, 1988, killing after she tried to persuade a friend to cash a $4,000 check drawn on Mr. Dulin's account. She also had a gun that matched the murder weapon. And she bore bruises and lacerations on her head from a struggle with the victim, whose fingernails had been broken trying to ward off his attacker.

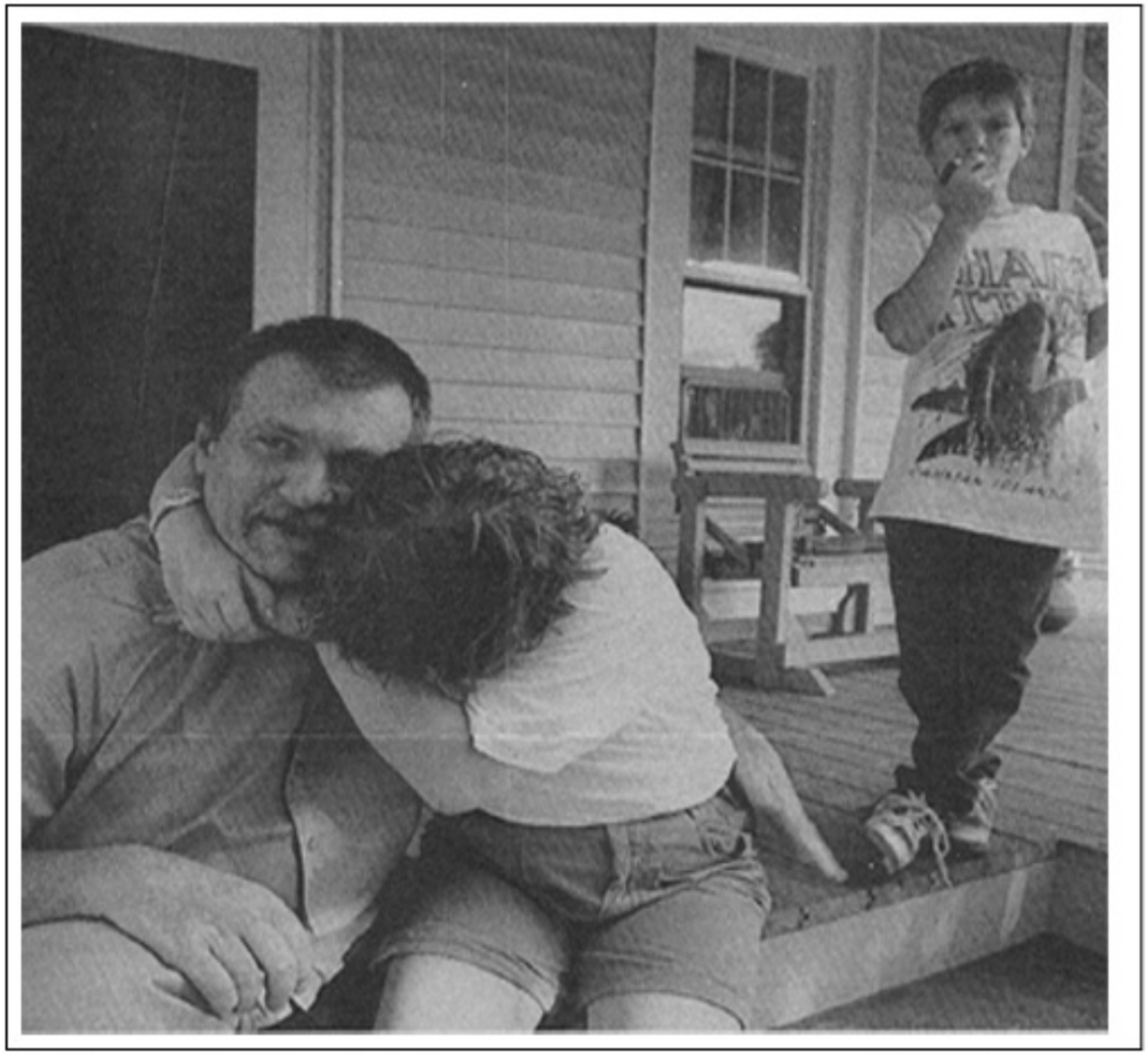
The evidence of a struggle, Ms. Zellner said, indicated strongly that the killer had been a small woman — Ms. Potter is 5 feet 2 inches tall — rather than a large man like Mr. Burrows, who is 6 feet tall and weighs about 200 pounds.

Ms. Potter testified in court in July that she had gone to the victim's farmhouse to ask for money to repay a drug debt. She said that her mother had previously worked as a housekeeper for Mr. Dulin and that she had borrowed money from him before. When he refused to make the loan, she testified, she pulled out a gun, and he tried to knock her down. In the struggle, she said, the gun went off. As Mr. Dulin lay dead, she stole his checkbook. She also corroborated statements that Mr. Frye had not been at the scene of the killing.

In the trials, Ms. Potter testified that her head wounds had resulted from a pistol-whipping by Mr. Burrows after the shooting. In her confession, Ms. Potter said that she had feared being put to death herself and that she had implicated Mr. Burrows because she believed, wrongly, that he had burglarized her trailer. They were acquainted through a mutual friend.

Relatives of the murder victim have expressed outrage over the release of Mr. Burrows. "I know that Joseph Burrows was there," said Lisa Dulin, the victim's great-granddaughter. "He might not have shot my great-grandfather, but I know he was there."

Mr. Burrows said he had no feelings of bitterness toward Mr. Dulin's family. "When you've hated somebody for six years," he said, "it's hard to let go of that."



Paul Markish for The New York Times

Joe Burrows, convicted of a murder he did not commit, is back with his family after five years on death row. A daughter, Misty, 10, is on his lap and his son, Joey, 9, is on the porch of the family's house in Homer, Ill.