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Driskell free at last



JULIE HUSSACK / WINNIPEG FREE PRESS

A throng of supporters and reporters greets a beaming Driskell outside the Law Courts Building: 'There's not much I can say about freedom, because I haven't had it for the last 14 years.'

Bail victory only half the battle, he declares

By Dan Lett and Leah Janzen

JAMES DRISKELL walked out of a Winnipeg courtroom yesterday, free for the first time in more than 13 years and more committed than ever to prove his innocence once and for all.

After a whirlwind week that saw a wave of new evidence questioning his guilt, a Winnipeg court ordered that Driskell be released on \$50,000 bail while the federal Justice Department reviews claims that he is innocent of the 1991 murder of his friend, Perry Dean Harder.

Driskell said he was overwhelmed by the decision — and the media attention — as he walked out of the Law Courts Building arm-in-arm with his mother, Florence, and into a wall of television cameras, microphones and tape recorders.

"The battle is only half done," Driskell said as the media throng enveloped him. "We still have a lot more work we have to do. And (the bail) is not going to take my focus away from anything."

Only once before in Canada has a convicted murderer been granted bail because of new evidence pointing to a wrongful conviction. In

July, Romeo Phillion was released on bail after three decades behind bars while the federal justice minister investigates whether he was wrongfully convicted in the murder of an Ottawa firefighter.

Florence Driskell, who seemed dwarfed by her barrel-chested son, called yesterday "Good Friday."

At a news conference later, the soft-spoken 45-year-old father of eight repeatedly claimed he did not know what to say about his startling release.

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JAMES DRISKELL MURDER CASE

Driskell

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"There's not much I can say about freedom, because I haven't had it for the last 14 years," Driskell said.

He will live with a friend in Ste. Pierre Jolys, south of Winnipeg, while on bail. He celebrated his release there last night with a quiet family gathering of about 20 people, including children and grandchildren.

That friend — a former convict who now works at Stony Mountain Institution, where Driskell did his time — put up his home as surety for the bail. Manitoba's most recent victim of wrongful conviction, Thomas Sophonow, contacted Driskell to pledge his support as well.

Sophonow, who received \$2.6 million for his wrongful conviction in the death of a Winnipeg waitress, offered to put up the \$50,000 in cash. "I can appreciate what he's going through, to put it mildly," Sophonow said from his home near Burnaby, B.C. "I wanted to make sure that no matter what amount they set it at, that it wouldn't be out of his reach."

Many of Driskell's supporters, including James Lockyer, a Toronto lawyer and director of the Association in Defence of the Wrongly Convicted, went on the attack after the bail decision.

Lockyer said he and Winnipeg lawyer Alan Libman will focus their efforts on convincing the federal justice minister to take action under Sec. 696 of the Criminal Code, which allows the minister to overturn a conviction or order a new trial.

However, Lockyer said he is confused and appalled by the decision of Manitoba Attorney General Gord Mackintosh and the prosecutions branch of his department to dismiss the new evidence and continue arguing that Driskell is guilty.

I can appreciate what he's going through, to put it mildly'

— Thomas Sophonow

of Queen's Bench, who took just one night to reach a decision to approve Driskell's bail. Scurfield rejected Crown arguments there was still an abundance of evidence tying Driskell to the mur-



PHIL HOBBACK / WINNIPEG FREE PRESS

Driskell: much to reflect upon

"I appeal directly, as do we all, to Manitoba Justice to finally take off the blinders to acknowledge that (Driskell) is a victim of a miscarriage of justice," Lockyer said.

James McCloskey, head of Centurion Ministries, the New Jersey-based organization that is investigating Driskell's case, said he is more convinced than ever that Driskell will be proven innocent. "There is no question in my mind that not only did (Driskell) not get a fair trial, but he's a completely, factually innocent man."

Driskell's cause was bolstered significantly by Justice John Scurfield of Court



KEN GOLLOTTI / WFOK

Driskell (third from right), mom Florence, Joyce Milgaard and other family and friends toast his new freed

der, and determined the new evidence might have overturned Driskell's conviction.

"Finally, I am satisfied that if all of the new evidence had been presented to the Court of Appeal following the original trial, the conviction would probably have been set aside and he would probably have been granted a new trial," Scurfield said.

Scurfield reviewed a large body of new evidence, including DNA tests that excluded three hairs used to convict Driskell, a recantation by a key witness that was suppressed by the police, and

secret cash payments and an immunity deal for witnesses that were never disclosed to Driskell's lawyers.

In order to be granted bail, Driskell had to prove the evidence that he had not received a fair trial was so compelling it would violate his right to liberty to keep him in prison while Ottawa investigates his case.

Scurfield said the DNA results alone were enough to meet the standard of evidence needed to grant Driskell bail.

Additional new facts, particularly the undisclosed witness payments and immunity deal, "could have constituted the straw that broke the jury's confidence in these witnesses," Scurfield said.

The tone and strength of Scurfield's comments raise significant problems for Mackintosh and Manitoba Justice, who one year ago dismissed the DNA results as unlikely to have affected the jury's verdict and have failed to act despite the emergence of other facts that weakened the original Crown case.

Mackintosh refused an invitation from Driskell's lawyers to take the evidence straight to the Manitoba Court of Appeal in December 2002, to let the province's highest court decide whether it warranted a new trial. Mackintosh called the evidence "unsettling," but turned down the request.

Mackintosh declined to comment on the bail release, indicating he is awaiting the federal review of the case. Premier Gary Doer issued much the same statement, saying Driskell's case is better left to the courts to decide.

"The bottom line is we respect the views of the judge. We always respect the separation of the government of the day from the judicial system, and the judge's decision we respect no matter what it would be," Doer said.

Lockyer, who refused comment on the bail application was ongoing was shocked at Mackintosh' decision to launch a judicial inquiry into allegations senior Crown officials had withheld evidence that prompted a new trial, yet to take that evidence direct to the appellate court for an opinion.

"We once again appeal to Justice to acknowledge that (Driskell) is the victim of a miscarriage of justice," Lockyer said. "I just don't know how to convince them. It is able to me that we are still a where yesterday they were in bail, and today they continue to our application to the justice in Ottawa."

There will also be a lot of questions for police Chief Jack who has been criticized for not releasing a review of the case, he helped write in 10 years ago.

Ewatski said he had no comment on Driskell's release from prison. Ewatski because of the court proceedings, a federal review of the conviction, it would be inappropriate to comment on the proceedings.

The police chief said he also reviewed the police investigation into the Driskell case and examined the report that Driskell had been wrongly convicted. The report was ordered to be reviewed on Monday.

'The bottom line is we respect the views of the judge'

— Premier Gary Doer

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— with files from Bruce Owen and

JAMES DRISKELL MURDER CASE



Reporter Lett interviews Driskell shortly after his release on bail yesterday. Driskell says he's trying to focus on re-establishing relationships with his eight children and 12 grandchildren.

'I figured it was over for me'

Driskell decided in prison to stifle hope for freedom

Free Press reporter Dan Lett has investigated Jim Driskell's case since 1999. Some of the revelations in that investigation have raised serious questions about police and prosecution tactics. This is the first print interview Driskell has granted since his release on bail.

It took Jim Driskell only a few seconds to realize that mysterious forces were at work.

It was Nov. 6, and Driskell had arrived at the Law Courts Building in downtown Winnipeg to hear his lawyers make an extraordinary application to release him on bail while Ottawa reviews his claim that he's innocent of first-degree murder.

When guards took him to a holding cell to await his court appearance, Driskell could barely believe what was happening. The cell was the same one he occupied 13 years earlier while awaiting the jury's verdict in his June 1991 trial.

And the coincidence didn't end there. "When they took me down the elevator to go to court, I looked at the sheriff who was escorting me, and it was the same sheriff who was monitoring me at my original trial," Driskell said as he relaxed in a downtown Winnipeg hotel room less than an hour after his release on bail.

"He says to me, 'I was at your first trial.' He said, 'It's funny how things come full circle like that, isn't it?'"

Driskell spits out a nervous, shaky laugh about the two startling coinci-

dences. But then, he can afford to laugh about it now that he is, for the time being, a free man once again.

Justice John Scurfield of Court of Queen's Bench accepted that enough new evidence had been uncovered in Driskell's case to warrant freeing him on bail. The decision paves the way for a full investigation by the federal Justice Department under Sec. 690 of the Criminal Code, which gives the justice minister the power to order a new trial or refer a case for review in an appellate court.

Driskell's future remains unclear. Manitoba Justice could continue to oppose his efforts to win a new trial, which would leave him in legal limbo for months, or even years, to come. For the time being, Driskell said he is trying to focus on re-establishing relationships with his eight children and 12 grandchildren, some of whom he has never met.

For now, he said he will try to recover from the haunting experience of the bail hearing, where Manitoba Crown attorneys once again painted him as a ruthless murderer who took the life of his friend, Perry Dean Harder, in October 1990.

Driskell said he felt the weight of new and compelling evidence would work in his favour and perhaps per-

'Sitting in the prisoner's box yesterday, when I heard them defend all these people who put me away, I don't think you can print what I would have said'

— Jim Driskell



Driskell (right), son Brian embrace in an emotional moment outside court.

suade the Crown to support his bid for freedom. Startling facts have been uncovered, including secret payments and immunity deals for key Crown witnesses, a suppressed recantation from another witness, and the elimination of three hairs used at trial, thanks to DNA testing.

"Sitting in the prisoner's box yesterday, when I heard them defend all these people who put me away, I don't think you can print what I would have said. These people, they got paid some big bucks, they got deals offered to them. It's unbelievable to see the Crown attorneys defend them."

Driskell was able to keep his sanity — and his mouth closed — thanks to a steely determination he developed during his time in prison. He learned to keep his expectations low and his hopes buried. Early on in his life sentence, Driskell said he decided to push aside all dreams of freedom and concentrate on survival.

"Back then, I figured it was pretty much over for me. I told myself, 'You're in this for the long haul, a long time,' and I was going to set my mind to doing the hard time. I never really lost hope; I just tried to maintain a little bit of hope that somebody, something will work out for me."

Small duffel bag

Even the night before he was released, Driskell said, he would not take for granted that he would get bail. He said he returned to Rockwood Institution, the minimum-security annex of Stony Mountain penitentiary, and packed a small duffel bag with a few necessities.

But then, on the way out of Rockwood, he was stopped by the warden, who told him that if the judge approved bail, he would have to come back the next week to collect his personal belongings. And if he did, prison officials would take great pleasure in

giving him a visitor's badge to re-enter the institution.

"I said, 'What? A visitor's badge? That's when it hit me — I'd no longer be an inmate.'"

One of the first things he will do, now that he is out of prison, is those children a hard lesson he never learned: Choose your path in life — your friends — very carefully.

Driskell lived a hard life in Winnipeg's north end and kept the company of hard characters for whom violence and crime were a way of life. It was many of these people who eventually drew him into a police net and made him the prime suspect in a murder.

Driskell's father, a bouncer at a rious downtown Winnipeg watering hole, was murdered when he was 44. Driskell said his life, if he can reclaim it at some future date, will be devoted to breaking the generative chains that run through his family often lead to tragedy.

"The chains that run through your life — from my parents to me, from my kids — I want to break those said. 'I grew up with bad stuff and never bothered me. My dad grew with it, and look what happened to I want to give my kids and their kids a different route in life.'"

Driskell said he sees some hope in the innocence of his youngest child and grandchildren, who are excited to get out of prison but not yet aware of the totality of his experience. The night before his release on bail, Driskell said, he talked to his 11-year-old granddaughter Riley about what the immediate future held.

"She said, 'Grampa, I see you on all the time now, and in the paper too,'" Driskell recalled, his eyes glistening with tears.

"She said, 'Good luck tomorrow, Grampa. I love you.' That's all I need to hear."

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