

Many ways for Walsham to die, says QC

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By Bret Christian

The proved facts about the death of Phillip Walsham are so broad that they can be made to fit just about any theory, defence lawyer Malcolm McCusker QC told the Supreme Court jury.

There was a total lack of evidence linking the three convicted killers to Mr Walsham at the time he was fatally injured, Mr McCusker said.

There was not a scrap of evidence they were in the area at the time.

No witness had placed the men at the scene. No one saw the three men arrive, leave or travel to and from the death scene.

No one identified figures on the bridge as the convicted men, and there was no blood or DNA from Mr Walsham on the convicted men's clothes, even though Mr Walsham was bleeding.

There was no evidence of a struggle on the bridge.

There was strong evidence that the three would not have had time to return to the scene 15 minutes after two of them each kicked Mr Walsham once.

Police had focussed on the three men because of this assault, which was inexcusable but for which they had already admitted guilt and been dealt with by the courts eight years ago.

Having left the scene, they had no motive to return to throw Mr Walsham off the bridge.

There were many other possibilities that fitted the known facts, Mr McCusker said.

Mr Walsham could have been thrown off the bridge by someone else, committed suicide, fallen off the bridge accidentally, or been hit by a car while crossing the freeway on-ramp, Mr McCusker told the jury.

"Police had evidence of random acts of violence in the vicinity of Stirling station," Mr McCusker said.

"It can be a pretty risky place, even at 2.30 in the morning.

"There is a real possibility Mr Walsham was picked on by a group of thugs who asked him for a cigarette, and when he didn't respond...they threw him off the bridge.

"It's a rational inference - more rational than that these three guys, who had all cooled down, returned to make an unprovoked attack."

The second possibility was the evidence of a man with a psychiatric illness who said he might have killed Mr Walsham, Mr McCusker said.

He drove a white Commodore car and was in the area that night.

His illness does not exclude him from an involvement in the death.

Complex court rules prevented the jury being shown a video of the man confessing to the murder (POST, May 13).

The third possibility was suicide, Mr McCusker said.

The court heard evidence from Mr Walsham's father that Mr Walsham some years earlier had threatened to commit suicide because his parents had refused him more money for the Royal Show.

He had ridden his bicycle to Warwick station, climbed a scaffold, tied a hose around his neck and threatened to jump.

Taken to hospital, he was assessed as a high suicide risk, a doctor at Sir Charles Gairdiner Hospital told the court.

On the night he died, Mr Walsham had an extremely high blood alcohol reading.

"He was very drunk, and people do strange things when they are at that level of intoxication," Mr McCusker said.

Mr Walsham's blood alcohol level before death was calculated at 0.25.

He also had 20 times the normal level of Lithium in his blood, a drug used to treat manic depression.

"He's been left by his two friends, his head in his hands. He might feel rejected, certainly abandoned.

"Clare Pigliardo (a passing motorist) doesn't describe anyone lifting, grabbing or fighting him."

Mr McCusker said a bread delivery driver, Joseph Lione, who saw Mr Walsham lying on the road some time before his bleeding body was found, stopped at the body and blew his car horn.

Mr Lione told the court he had looked up at the overpass through his car windscreen to see if anyone was on the bridge.

This meant that the man on the road was north of the footbridge, not four metres south where Mr Walsham's body was eventually found, bleeding and fatally injured.

"Maybe he was lying on the road, staggered to his feet, staggered up the footbridge and suffered an accidental fall.

"Drunk people think they can climb things, and they fall off."

A motor vehicle accident was also a rational inference that could be drawn from the facts, Mr McCusker said.

He said the police did not examine what appeared to be blood spots photographed on the part of the road Mr Lione described to see whether the spots were Mr Walsham's blood.

Mr Lione's evidence locating the body north of the footbridge was supported by police photographs of tyre

marks on the kerb and on the verge.

Mr McCusker said Clare Pigliardo, who said she saw a man backflip off the footbridge, may have witnessed a hit-run accident, making an honest mistake in her observation.

Mr Walsham, seen on the road by Mr Lione, got up when Mr Lione tooted his horn, then staggered along to where he was seen by a taxi driver.

"At 2.38 he was hit by a car, the body flies in the air and Miss Pigliardo sees it and assumes it's a body falling off the bridge.

"It's a rational hypothesis."

The three men were found not guilty of wilful murder but guilty of murder after the jury deliberated from Thursday morning to Sunday morning.

Wilful murder means that the culprits have formed an intention to kill.

Murder means an intention to cause grievous bodily harm, then the victim dies as a result of their actions.