

# Walsham: The key questions that remain unanswered

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By Bret Christian

The Phillip Walsham murder case hit the national television airwaves again this week, with accusations that the full story had not been presented.

POST editor Bret Christian covered the whole 10-week trial. To see his reports, click on the link at the top of the website [postnewspapers.com.au](http://postnewspapers.com.au).

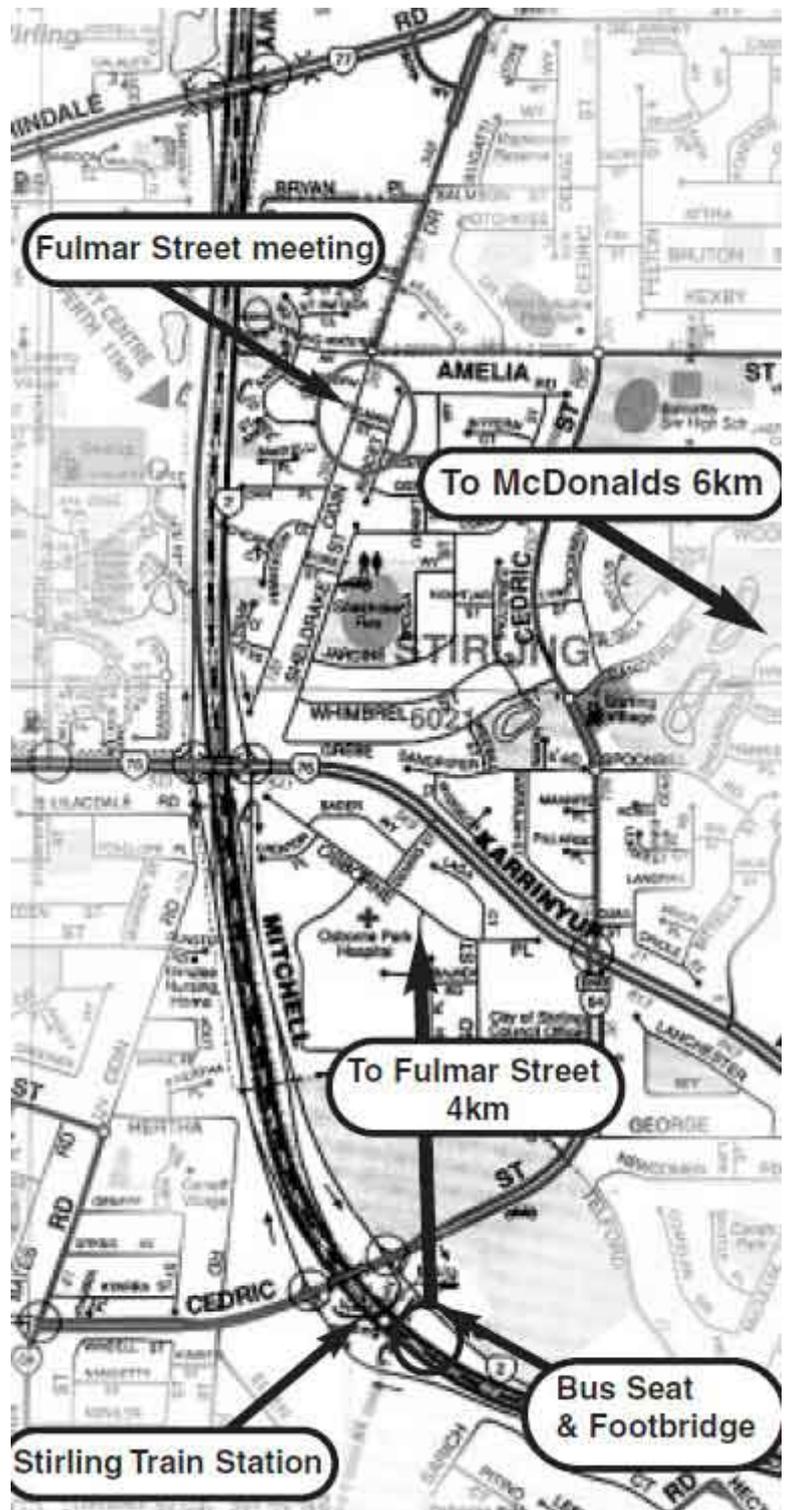
He agrees with the men's supporters that there are still many worrying questions about the investigation and the trial.

Three men are in jail for life for murdering Phillip Walsham by throwing him off a footbridge on to the road below. A lot of people say they should not be in jail.

These people do not argue that the jury made a wrong decision; instead, they argue that the jury was not given all the evidence.

Senior police say the jury was presented with all the relevant evidence and that many media reports have been advocacy rather than journalism.

Below are the key points in dispute.



## Catastrophe

*Where it all happened on the night of February 28, 1998.  
Distances shown are approximate because there are no  
"crow flies" road routes between vital points.*

1. Police say two of the men kicked Mr Walsham; all left immediately in a car but returned 15 minutes later to hit him with a tyre lever and throw him 3.7m clear of a footbridge to plunge 7m on to the road, killing him.

Defence say: Not true. The men were at least 4km away at the crucial time, and did not return.

They admit kicking Mr Walsham but say something else catastrophic happened to him 15 minutes after they had left. They say the surviving evidence points to the likelihood that Mr Walsham wandered on to the road and was struck by a hit-and-run car.

## Witness

2. Police rely heavily on the evidence of a witness who said she saw a group of people on the bridge, and a man fall from the bridge.

Defence says: Her mother and sister sitting with her in a car at traffic lights 92 metres away do not say they saw anything like that. They do not corroborate her evidence. They say she said there was a man on the road. They do not say she said the man had come off the bridge.

She has changed aspects of her evidence several times.

She also says she had been drinking vodka and it was night-time.



*In happier times ... Sam Fazzari, left, his girlfriend Mirella Scaramella, Carlos Pereiras and Jose Martinez. The men are now in jail serving life sentences.*

### **Bleeding**

3. Police say this witness describes a group of men walking together up the stairs to the bridge just before he left the bridge. She saw no physical interaction between the men.

Defence say that even if this happened, the witness saw nothing that identified any of the convicted men on the bridge. There was no DNA from the men or Mr Walsham on the bridge, and none of the men's DNA on Mr Walsham or his on them, although he was bleeding.

### **Tyre lever**

4. Police say pathology evidence is that injuries indicate Mr Walsham was hit once on the back with a tyre lever.

Defence say the injury has no particular shape and does not match a tyre lever. Mr Walsham worked in a heavy metal factory and may have been injured at work that day. The police (State) pathologist says the injury was 6-24 hours old at the time of his death - too old to have been inflicted by the convicted men.

Mr Walsham was wearing a new T-shirt, which bore no weapon mark, even when magnified 50 times.

### **Bounce**

5. Police say Mr Walsham's injuries show he fell from the bridge and "bounced" as described by the witness in the car.

Defence says: Human bodies do not bounce when falling vertically. They say bodies bounce after being hit by cars.

### **Bus seat**

6. Police say one of the men kicked Mr Walsham in the face and left him sitting on the bus seat. They left the station to meet friends on a street corner 4km away, then returned and threw him off the bridge.

Defence agree the men did kick him, and left the scene but say they did not return. They say police could not

produce anybody who saw a return journey; saw them present at the footbridge or saw them leaving.

## **Fulmar Street**

7. Police say that the time available to attend the meeting at Fulmar Street and return was tight, but just enough for the men to return and throw Mr Walsham off the bridge.

Defence says the time that elapsed in travelling to and from the meeting and the length of the meeting was too great. In the time available - 15 minutes - there was no opportunity for them to travel and commit a murder.

## **Friends**

8. Police say the witnesses who gave evidence about the length of the meeting at Fulmar Street were friends of the accused and were lying.

Defence accept the witnesses' evidence that they would not lie to conceal something as serious as a murder, nor would they risk perjury charges that would end their own substantial careers.

## **Grudge**

9. Police say one of the men confessed to the crime several years later.

Defence says the witness who gave this information had a grudge against the accused man. Other people present do not corroborate the story of this witness.

## **Lies**

10. Police say two of the men lied about the assault when first interviewed, and this indicates guilty consciences for murder.

Defence say that eight years ago one of the men initially denied involvement in the assault but, unprompted, confessed later the same day.

The other initially claimed he kicked Mr Walsham after being provoked by him, but quickly admitted he was not provoked. Defence say that lies about the assault are not proof of consciousness of guilt about Mr Walsham's death, which occurred after a 15-minute interval.

## **Nightclub**

**11.** Police say the men lied about their visit to McDonald's Tuart Hill, giving this as a false alibi. They say the men were at McDonald's at 1.30am, not around 2.38am when Mr Walsham met his death 6km away.

Defence say phone records and nightclub security tapes would show they were still at Northbridge after 2am and could not have reached McDonalds until at least an hour after the time police say they were there. These records are missing.

The three men also say that a man they met and identified at McDonald's could validate their alibi, but he was not interviewed by police until six months later when he had forgotten details.

Video records show this man at the McDonald's drive-through at 1.30am but he stated he often stayed there for well over an hour.

## **Lie detector**

**12.** Police say two of the men failed lie detector tests. The tests were not produced in court because courts take no notice of them.

Defence say the tests have no validity because they were conducted in high-stress conditions after hours of police interviews, contrary to rules for such tests.

## **Moved body**

**13.** Witnesses say Mr Walsham was seen lying on the road north of the bridge and that he was found dead south of the bridge a very short time later.

Defence say he was seen in two different places on the road, most likely because he was hit by a speeding car which knocked him along the road.

## **Impact**

**14.** Police pathologist says the injuries to Mr Walsham are most likely to have been caused by a fall, least likely a car impact.

Defence say a medical homicide investigator consulted during and after the trial says the injuries were caused by a car impact, not a fall from seven metres.

### **Time lapse**

**15.** Police and defence agree the men were initially convicted of assault but cleared of murder in 1998.

Police say the men were charged with wilful murder six years later because new evidence had become available.

Defence say no new evidence pointing to their guilt was extant when they were charged with murder in 2004. Defence says his time-lapse caused injustice, because the opportunity to preserve vital evidence that would prove their innocence had by then vanished.

### **Missing evidence**

**16.** Defence say important evidence was not given to the jury. This includes:

1. Videotapes from surveillance cameras at the station. Police say the cameras did not work that night.
2. Photographs from a camera used by a policeman at the scene. Police say there was no film in the camera.
3. Blood spatter photographs from the scene that would distinguish between a fall and a car impact. The lack of film stopped these pictures being taken, say police.
4. Fingernail cuttings and scrapings from Mr Walsham's body which could possibly show DNA from anybody who had attacked him. These have been located and tested since the men were convicted.
5. X-rays of his injuries. Police say they were not lost, but are the property of the Health Department. The Health Department says it cannot find them.
6. Notes from police time-trials of the journey between the station, the street corner meeting and McDonald's. Current senior police say these trials did not happen in the year of Mr Walsham's death, 1998. But during the 2005 court hearing two detectives spoke about time-trials they conducted in 1998.
7. A man with the convicted men said he visited the toilet at McDonald's. The camera that would have shown the time of this visit is either faulty or the tape missing.
8. Videotapes from Redheads nightclub that would have put beyond doubt the time of the McDonald's visit were either not seized by police or are missing.
9. Police did not consider that a car might have hit Mr Walsham until the fourth day after his death. By then the scene had been contaminated by passing traffic. No search was made for a damaged hit-run car.