

# Was it a hit and run?

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By Bret Christian

A bread delivery driver, who said he saw a man's body lying on the road, has opened up the possibility that a hit and run driver killed 21-year-old Phillip Walsham eight years ago.

Lawyers for three men being re-tried in the Supreme Court for the wilful murder of Mr Walsham have suggested Mr Walsham may have been hit by a vehicle.

The prosecution alleges that two of the men kicked Mr Walsham, and all three left the scene but returned later to throw him off the seven-metre-high footbridge to the road below.

He was found 3.7 metres south of the footbridge.

The delivery driver, Joseph Lione (52), told the jury he saw a man on the road north of the footbridge.

At 2.30am he was on his way to work at East Perth, driving slowly because he was looking out for his wife's car returning home.

He turned off Cedric Street to the on-ramp for south-bound traffic entering the Mitchell Freeway.

Just north of the footbridge he saw a man in the left lane, lying face down, parallel to the centre line.

He said he stopped his car and looked up to the top of the footbridge, but saw nothing.

Worried that it was a "set-up" – a trap where he might be attacked – he locked his car doors, blew his car horn to see if he could provoke some movement, and drove around the man.

He drove under the bridge, stopped again and looked back. The man was not moving.

The man was "a bit before the footbridge", he said.

Taxi driver Ian Taylor Donaldson (52) said he had also seen a man lying on the kerb near the footbridge, but he could not recall whether it was before or after the footbridge.

The man's head was on the kerb and his body on the verge.

Mr Walsham was found bleeding and critically injured by a second taxi driver, John Charles Bailey, soon after Mr Lione's encounter.

Mr Bailey found Mr Walsham lying at right angles to the kerb with his feet towards the centre of the road.

Mr Bailey called an ambulance and administered first-aid. The ambulance call was timed at 2.41am.

Mr Walsham died in hospital several hours later, on February 28, 1998.

On trial in the Supreme Court are Jose Felix Martinez, Salvatore Fazzari and Carlos Pereiras, who were teenagers at the time (POST, 18/3).

They have pleaded not guilty to the wilful murder of Mr Walsham.

They say they never returned to the scene and had an alibi for the critical period.

Lawyers for the three questioned witnesses about a broken car indicator light found at the scene, tyre marks and drops they suggested could be blood on the road north of the footbridge.

A government senior forensic biologist, Aleksander Bagdonavicius, told the court these stains had not been tested to see whether they were blood.

The indicator lens had not been tested to see whether it had been in contact with a pedestrian.

The lawyers suggested Mr Walsham may have been walking, standing or crouching on the road north of the footbridge, struck by a vehicle and projected to the position he was found by Mr Bailey south of the bridge.

They said there was no forensic or witness evidence that either Mr Walsham or the accused men had been on the footbridge.

Dr Karin Margolius, a forensic pathologist at QE11 Medical Centre, was asked by Mr Fazzari's lawyer, Malcolm McCusker QC, whether the severe injuries to Mr Walsham could have been the result of a traffic crash.

"I am so uncomfortable with that scenario," she said.

In her opinion the internal injuries were from a secondary impact.

"I did not see a primary impact site," she said.

Mr McCusker asked: "Have there been occasions when you have found something that surprises you?"

"Of course," Dr Margolius replied. "Yes, if you find something that doesn't match.

"What would make me more comfortable (about a vehicle impact) is if somebody witnessed it – what vehicle, what speed, what was the presenting point of the anatomy. I would re-look at the case."

Mr McCusker: "We don't have that."

Dr Margolius: "We did consider at the scene that it could have been a car crash."

She said she did not walk back to the road on the northern side of the footbridge, or consider what Mr McCusker said appeared to be blood droplets there.

If so, she said she would have to confirm that it was blood, and that it was Mr Walsham's blood.

She said that if Mr Walsham had been projected under the footbridge by a vehicle, she would have expected to see bruising and lacerations to the body and extensive "brush-type" abrasions to the skin. She did not.

Later she said: "Some things are always possible.

"I am not completely excluding it but I am putting it at the bottom of the scale.

She said she was "very comfortable" with the scenario that Mr Walsham had fallen from the bridge on to the road.

"It's right at the top," she said.

Earlier, a University of WA physics lecturer, Ralph Nicholas James, a specialist in biophysics, said he was asked by Inspector Scott Higgins to investigate the circumstances of Mr Walsham's death.

"It was inferred by Scott Higgins that there was a witness who saw a body lift up and go over backwards," he said. "I took everything into account."

He had studied different scenarios, including a person running backwards and tipping over the railing, sitting on the rail and falling, jumping backwards from the path of the footbridge or being pushed or propelled off the bridge by one, two and three people.

He wanted to see the likelihood of a body reaching 3.7 metres from the edge of the bridge.

Recently he had been asked to make calculations for another scenario – a person standing on the narrow ledge outside the railing and jumping backwards off the bridge.

He had not calculated what would happen if a man standing on the ledge had pushed himself backwards with his hands.

He said there were a large number of variables, so he had developed a computer program that ran hundreds of thousands of calculations.

A small proportion of the results showed that a body could reach five metres or more.

"No clear conclusions can be drawn," he said. "I was unable to exclude any scenario on any known grounds."

The prosecution case, which started on March 1, finished on Wednesday.

On Thursday, police blocked traffic to the on-ramp and pedestrian traffic to the overpass so that the jury, the judge, lawyers and members of the public could inspect the scene.

The case is scheduled to last until well beyond Easter.