

Crucial 15 minutes will decide trio's fate

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By Bret Christian

After nine years, an inquest, two trials and a full-scale appeal hearing, one of WA's most controversial and harrowing murder cases may well run on the rocks over timing.

The Court of Criminal Appeal wrestled this week over the comings and goings of people and cars in a crucial 15-minute period in the early hours of Saturday, March 1, 1998.

The three judges must now decide whether in that time three men had time to drive away from Stirling Station, smoke cigarettes, return to the station, walk Mr Walsham up the footbridge and throw him off.

If they didn't have time, that's the end of the case.

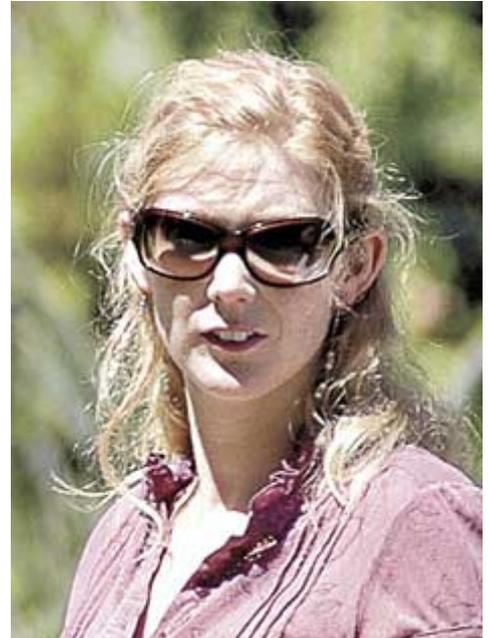
Two complex trials lasting a total of 16 weeks, and two years in jail for the three men will come to a sudden end in that event.

Even on the best timing put forward by the prosecution case, there would be no time for the men to return, Malcolm McCusker QC, lawyer for one of the men, told the appeal court.

"They couldn't have got there on time - the evidence is just totally against it," he said.

Justice Geoffrey Miller said that if the time differences were split seconds, there would be reasonable doubt that the men could have committed the crime and they would have to be acquitted.

Mr McCusker said there was no motive for the men to murder Mr Walsham and no opportunity, because they could not have returned to the scene after attending a rendezvous with other young people on a street corner in Odin Road about four minutes' drive away.



Star witness for the prosecution, Claire Pigliardo.

There were independent witnesses to that gathering, who said the men were there for nine or 10 minutes - adding a few more minutes to the prosecution's shortest possible elapsed time.

"If that is accurate, it's all over," said Mr McCusker.

"They can't possibly have got back."

Mr McCusker said the prosecution's shortest interval did not take into account another time of more than a minute.

The times were calculated using ambulance, taxi calls and mobile phone calls.

If the judges decide that the men had the time to get back, they then must decide whether they would have made the trip out of continuing hostility towards Mr Walsham.

If they were not hostile, as lawyers for the three men say is proved by the evidence, then "that would be the end of it".

One of the appeal judges, Justice Geoffrey Miller, agreed.

"Even if they did have the opportunity, that is the prime ground and all the other things fall away," he said.

Central to the prosecution case against the three men was their "animus" or hostility towards Mr Walsham.

They had been involved in a chase with tyre levers after two of Mr Walsham's friends, who had left him sitting, very drunk, on a bus stop seat at the end of the Stirling Station footbridge over the freeway.



State prosecutor Bruno Fiannaca.

The friends escaped. Two of the convicted men had returned and in anger, each kicked Mr Walsham once in the head.

The three then left in a car. There was no evidence they had returned to the station.

Mr McCusker said all the evidence pointed to the fact that the men had calmed down and were contrite and apologising to their friends about the attack on Mr Walsham at an Odin Road rendezvous with other friends.

Mr Walsham was found dying on the freeway on-ramp 15 minutes after the men had left.

The prosecutor said that they had maintained "animus" towards Mr Walsham and had returned and murdered him by throwing him off the footbridge.

A year ago, after a 10-week re-trial, the jury agreed.

The convicted men's lawyers say the jury may have been influenced by emotive language by the trial judge, who suggested to the jury, without any evidence, that the accused men still regarded Mr Walsham as a "worthless junkie" and a "punching bag".

The men were sentenced to life imprisonment with a 10-year minimum.