

# Judge: Murder jury had to speculate

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By Bret Christian

Evidence central to the convictions of three men jailed for murdering Phillip Walsham relied on speculation by the jury, according to the president of the Court of Criminal Appeal, Justice Christopher Steytler.

The Chief Justice, Wayne Martin, who also sat on the appeal, said he agreed with Justice Steytler.

The three appeal court judges, including Justice Geoffrey Miller, are at present considering their verdict in an appeal against the convictions.

The appeal was heard in the Supreme Court earlier this month.

Three young men were jailed last year for murdering Mr Walsham (21) by throwing him off a footbridge across the freeway at Stirling railway station in 1998.



*Salvatore Fazzari*

They are Salvatore Fazzari (28), Jose Martinez (29) and Carlos Pereiras (27).

They are serving life sentences.

Mr Walsham was found injured on the road at 2.40am on February 28. He died in Sir Charles Gairdner Hospital several hours later.

The three friends came under suspicion for his murder because two of them had kicked Mr Walsham as he sat on a bus-stop seat 15 minutes before he was found dying on the road.

The three men told police that after this assault, they had left the scene by car for a meeting with friends at

the corner of Odin Road and Fulmar Street, Stirling, and never returned to the station.

Nobody saw them return, nobody at the meeting said they returned, and there was no forensic evidence to connect them to Mr Walsham's death.

The circumstantial case against them was accepted by the jury after a 10-week trial last year.

The men are now appealing against the verdict, using a section of the law that says a jury verdict can be challenged on the grounds that jurors were not entitled to reach their guilty verdict on the evidence presented to them.

At the appeal hearing, the basis of the original case appeared to be thrown into doubt by at least two of the three appeal judges.

Towards the end of the appeal, the lawyer who prosecuted the case, Bruno Fiannaca, was challenged by Justice Steytler when he outlined some alleged motives of the convicted men, starting his sentence with the word "If".



*Carlos Pereiras*

Justice Steytler interrupted him: "But again this seems to me to highlight the speculative nature of it all," he said.

"What you are really saying is that the jury was in a position to speculate that they (the three men) had enough time to get back in time to throw Mr Walsham off the bridge.

"That means that they (the jury) had to speculate about the speed which the men were travelling at to get to Odin and Fulmar, and the speed at which they were travelling to come back (to the station).

"The jury had to speculate about the amount of time that they (the three men) spent there.

"In the course of doing that they would have to decide whose evidence they accepted when they seemingly found none of them credible.

"Then they have to speculate again about the amount of time that it would take to come back and about the reason why they (the men) came back.

"Then they have got to speculate that they (the three men) formed a common purpose to do something unlawful, which would have to be, in this context, an assault.

"They have got to speculate about why they (the men) would want to do that.

"Then they have got to speculate that all of them shared the common intention of doing that assault.

"Then they have got to speculate that the assault was of such a kind that a probable consequence was the death of Mr Walsham.

"And all of this in circumstances in which there is absolutely no direct evidence."

Malcolm McCusker QC, for Fazzari, earlier told the court that the case against the three men had been based on prejudice, conjecture and speculation (POST, 9/6).

He said a major problem with the trial had been the way the prosecution had linked the assault with the later death of Mr Walsham "on the flimsiest circumstantial evidence".

He said that the judge should have given the jury a very strong direction not to use "forbidden reasoning" based on prejudice.



*Jose Martinez*

Mr McCusker said the jury had got the trial verdict wrong.

He said the men had been punished by the court in 1998 for the assault, and had already spent two years in jail for the murder conviction.

No date has been given for a decision by the Court of Criminal Appeal.