

Walsham jury's verdict was unreasonable

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By Bret Christian

National criticism of WA's legal system has followed the conclusion of one of our most controversial murder cases.

The Financial Review called last week's appeal decision "a deep embarrassment for the Department of Public Prosecutions".

The Australian called it "yet another blow to Western Australia's justice system".

Advocates for the three freed men say the rapid decision by the Court of Criminal Appeal is a refreshing signal that the Supreme Court is on the right track.

They say the judges had the courage to say the jurors had got their verdict wrong.

The successful appeal is unusual because it does not involve any fresh evidence - only the court's review of exactly the same evidence that the jury heard in 2006.

Over five weeks, the state's three most senior judges carefully picked apart the evidence the jury heard at last year's 10-week trial.

They concluded that the jury's verdict of guilty was "unreasonable and cannot be supported on the evidence".

In a statement that must raise the question of why the case went to trial in the first place, the appeal judges said it was a "circumstantial case beset with problems".

The appeal decision was critical of the prosecution and the jury's reasoning, as well as the trial judge's directions to the jury.

The judges ordered that the men, Salvatore Fazzari (28), Jose Martinez (29) and Carlos Pereiras (27) be released from jail the same day, last Friday.

They were serving life sentences for the murder of Phillip Walsham by throwing him off a footbridge at Stirling station in the early hours of February 28, 1998.

The judges criticised the logic of the jury in their detailed 130-page judgment.

To have found the three men guilty, the jury must have concluded that people described on the bridge by witness Clare Pigliardo were the three accused men, the judges said.

This raised a series of questions that left big holes in the prosecution case.

What caused Mr Walsham to leave the footbridge, if he did?

If he was pushed, what was the intention?

Was there a common intention to assault Mr Walsham?

Who were the three people on the footbridge?

"All of these questions remain unanswered," the three appeal judges wrote.

"They are critical questions, and had they been considered by the jury, we do not see how they could have reached any confident conclusions."

The judges also said that the three convicted men did not have time to return to the footbridge and murder Mr Walsham.

"The evidence of Pigliardo was central to the prosecution case, but it did not take it far enough," the judges wrote.

"Not only did it fail to identify who was on the footbridge, but it failed to establish any of the elements of criminal complicity."

They also noted: "The prosecution reasoning seems to have been because two of the three (men) had earlier attacked Walsham, and Pereiras was present at the scene with a tyre lever at one time, they were the persons who must have been on the footbridge.

"That reasoning cannot stand scrutiny," the judges wrote.

In a separate finding, the judges also concluded that at the trial in 2006, trial judge Justice Eric Heenan had misdirected the jury about lies allegedly told to police by the accused men.

This misdirection alone was enough to quash the convictions, the judges said.

The "lies" had been "unnecessarily highlighted and given a potential significance that they were incapable of bearing", the appeal judges wrote.

The full decision can be read on the Supreme Courts' website.