

Is a mystery hit-run driver out there?

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By Bret Christian

The Phillip Walsham murder trial process is over, so we are free to contemplate the evidence that points to a nightmare.

It could rock our justice system as did the Mallard, Christie, Mickelberg, Button and Beamish cases.

The nightmare is this: three young men are rotting in jail, wrongly serving a life sentence for one of Perth's most horrifying crimes.

Jose Martinez, Sam Fazzari and Carlos Pereiras were jailed for life on Wednesday (see page 17).

The men stand convicted of murdering a defenceless 21-year-old by throwing him off a railway station footbridge to his death eight metres below.

But somewhere out there,
this scenario goes, is a car
driver who knows the truth.

His or her vehicle killed
Phillip Walsham and kept
going; a terrible hit-run that
an unknown driver has kept
a terrible secret.

During the 10-week trial that
finished in May, this theory,
while it was raised, did not
really gain any legs.

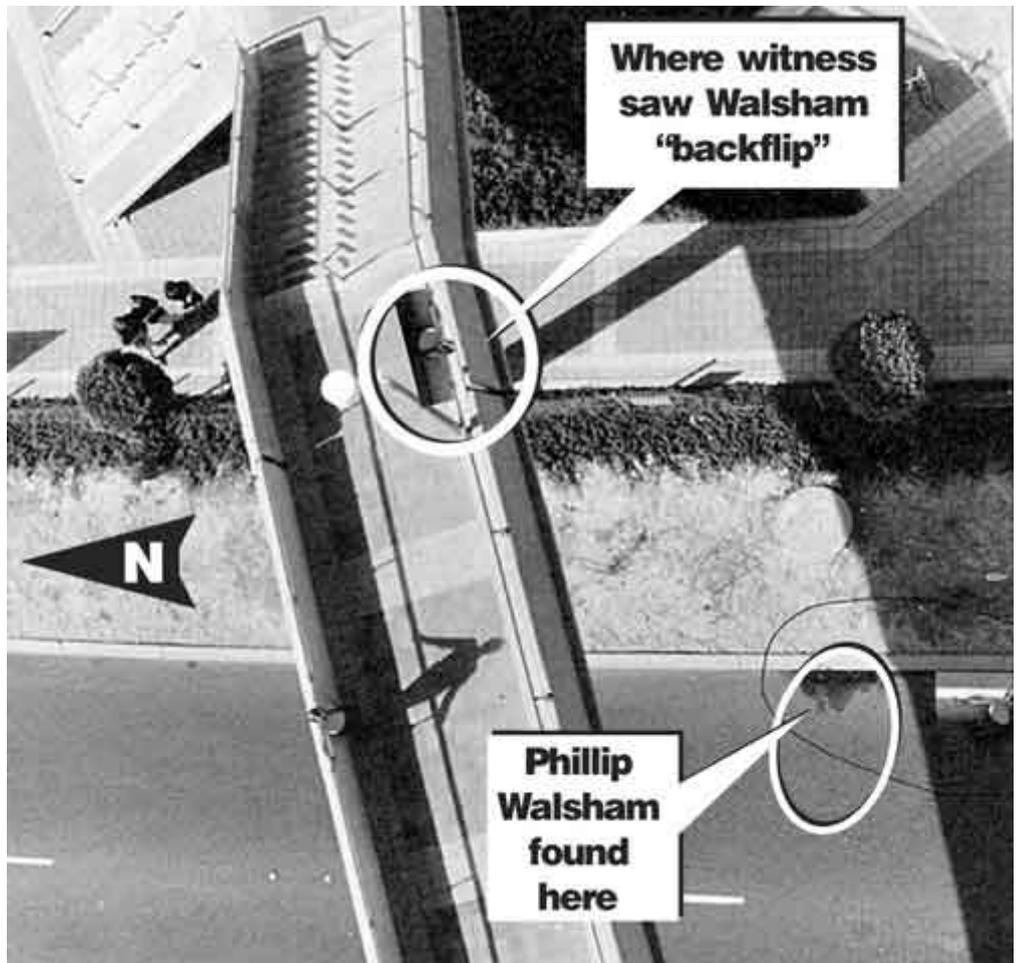
But this was a function of

how our police and legal system works, or doesn't work.

For instance, at the end of the trial, the judge suggested to the jury that the car-crash idea was unlikely.

He even invited the jury to find that a key witness with startling evidence for the hit-run theory, Joseph Lione, might have been mistaken.

The way the judge put his comments, any juror would have felt comfortable dismissing the entire vehicle crash scenario.



Justice Eric Heenan spoke to the jury of Mr Walsham "falling from the footbridge".

An aerial view of the scene at the Stirling Station overpass. The lateral distance from where the witness Clare Pigliardo saw men on the bridge to the blood site on the road is over five metres. The vertical distance from the railing to the ground is almost 8 metres.

He stated the bridge fall as a fact.

It was just one of a number of ways the lid was kept on the hit-run theory each time it threatened to pop out of the jack-in-the box.

Ten weeks earlier, at the beginning of the trial, Justice Heenan said something quite different to the court.

If a person was found dying by the kerbside on a busy road such as Stirling Highway, said the judge, it was a reasonable proposition to assume that the person had been hit by a car.

But the judge didn't say this to the jury.

Justice Heenan said it after he had sent the jury out of the courtroom while the DPP fought tooth and nail to exclude car-crash expert Robert Davey from giving evidence.

During the trial, the prosecution even phoned Mr Davey at home at 9pm to try to persuade him that he was wrong.

It is not hard to understand why.

There was massive public prejudice against the three accused men because two of them had each kicked Mr Walsham once, 15 minutes before he was found dying.

The accused men were placed in the hopeless position of trying to prove an alternative case with very little physical evidence.

They faced the prosecution's circular argument as to why the hit-run idea should be dismissed.

There was, said the DPP, simply no evidence of a hit-run.

And it was Mr Davey, a highly respected road crash investigator often used by the DPP, who could tell the court why this was so.

It was a botched job by the police, although Mr Davey did not use those words.

Any physical evidence had disappeared under the wheels of thousands of commuters' cars.

Police had not investigated the possibility of a car impact the night Phillip Walsham died.

Photographs they took of the body in situ did not come out.

"No film" was the notation on the police file note.

Experts from the police major crash unit were not called.

The road was not sectioned off so that a thorough search could be made for evidence of an impact further north from where Mr Walsham was found.

Broken plastic, tyre marks and blotches on the road that could be blood spots at the point of impact were photographed next day but not tested.

Mr Walsham was bleeding from the face and so drunk he could barely walk.

His blood alcohol at the time of his death could have been as high as 0.25%.

There have been many fatal accidents from drunks lying down on roads and railway lines.

Inquiries made by the POST show that there is a forensic test that can be carried out on flesh to prove whether or not it has suffered a car impact.

There was no evidence presented in court that showed this test was performed on Mr Walsham.

Bread delivery driver Joseph Lione (52) was quite specific in his evidence.

He was on his way to work, driving towards Perth on the Cedric Street on-ramp to the Mitchell Freeway.

He saw a person lying on the road north of the footbridge that crossed above the road at Stirling Station.

This was minutes before Mr Walsham was found lying bleeding by the kerb south of the footbridge.

Mr Lione said he stopped his car before the body and looked up through the windscreen to see if anyone was on the footbridge.

To have seen the top of the bridge through his windscreen, he must have been north of the bridge.

They suggested Mr Lione says he blew his horn to try to rouse the man. He then drove around him, drove under the footbridge, stopped and looked back, before driving on.

Lawyers for the accused said the man on the road was Mr Walsham.

They suggested Mr Lione's car horn had woken him, he had slowly stood up and been hit by a following car.

This car would have projected him to a point on the road 3.7 metres south of the bridge, where he was found fatally injured.

The time-line accepted in court would have easily accommodated this scenario.

But Mr Lione was not the only driver who reported seeing a body lying on the road north of the footbridge.

Taxi driver Ian Taylor Donaldson (52) drew a diagram for police which was not disclosed to the defence until shortly before the second trial started this year.

This diagram clearly shows the man on the road north of the footbridge.

Eight years later when called to court, Mr Donaldson's verbal evidence on this point was vague and inconclusive.

There is yet another problem with the position of the body that supports the car-crash scenario.

The prosecution's star witness, Clare Pigliardo, was returning home from her sister's 21st birthday party with her mother and sister.

From a distance of 92 metres, in the early hours of the morning, she described seeing a man backflip off the bridge. Other men were nearby at the time, she said.

But the position on the bridge where she swore she saw the men was a full five metres from where Mr Walsham was found.

To have been thrown off the bridge from this point and land on the road, Mr Walsham would had to have been thrown laterally and at an angle five metres - a superhuman feat.

And of all the places Mr Walsham could have landed, he was found in the exact spot he would have landed if hit by a car on the on-ramp.

Lawyers for the accused men suggested that what Ms Pigliardo saw was a body flung into the air on impact with a car then falling to the ground under the bridge - not tumbling off the bridge.

One person in authority, however, did contemplate the car impact scenario, mainly because of the position of the body, she said.

But it was all too late.

Dr Karin Margolius, forensic pathologist at QEII Medical Centre, visited the scene on the Tuesday following the Friday night fatality.

She said she did not walk north of the footbridge to examine the spots on the road shown in a police video.

She said from her examination of the body, it was possible that Mr Walsham was hit by a car.

But she would put this possibility at the bottom of the scale, while the bridge-fall scenario she put at the top.

She said she would feel more comfortable with a vehicle impact if someone had witnessed it.

The investigation and court process is a search for the truth.

There have now been an inquest and two long trials to find the truth of Mr Walsham's death.

Eight years have passed. Three men are in jail for life for a horrible crime.

If a witness of the kind Dr Margolius describes, a security videotape or a car driver who hit Mr Walsham, ever come forward, an earthquake will shake our criminal justice system.