

Pathologist got it wrong: US expert

20/12/2006

By Bret Christian

A US expert on pedestrian accident injuries has given a written opinion that the WA pathologist in the Phillip Walsham case got it wrong, a defence lawyer told the Court of Criminal Appeal on Monday.

"His report says these injuries are consistent with a motor vehicle accident and not consistent with a fall from a bridge," said Malcolm McCusker QC, counsel for Sam Fazzari.

"He has given a report to the effect that Dr Margolius is wrong," he said.

Dr Karin Margolius carried out the autopsy on Mr Walsham three days after he was found dying almost under a footbridge at Stirling Station in February 1998.

Three men are serving life sentences for murdering Mr Walsham by throwing him off the footbridge.

The other convicted men are Jose Martinez and Carlos Pereiras.

Dr Margolius gave evidence at the trial of the three men that began this March.

She said in court that she believed Mr Walsham's injuries were sustained when he fell from the footbridge.

She placed this scenario at the top of the scale.

She said she was not completely excluding a car crash but would place it at the bottom of the scale.

"What would make me more comfortable is if someone witnessed it," she told the jury.

Mr McCusker also said that the American, Assistant Professor Daniel Spitz, had ruled out another vital opinion by Dr Margolius.

"This (Dr Spitz's submission) is that the abrasion to his (Mr Walsham's) shoulder was not consistent with being struck by a tyre lever," Mr McCusker said.

But the convicted men have a hurdle to jump before the evidence of Dr Spitz can be heard in the WA Court of Criminal Appeal.

On Monday, Chief Justice Wayne Martin agreed with a prosecution application to exclude Dr Spitz's report.

A mistake in Dr Margolius's original autopsy report had affected the worth of Dr Spitz's report, Chief Justice Martin said.

The defence had been notified of the mistake, which said brush-burn-type abrasions, typical of pedestrians hit by motor vehicles, were behind the right ear, not the left ear, as stated in the original autopsy report.

This reduced the value of Dr Spitz's opinion, because he said injuries to different sides of Mr Walsham's body were explained by the car-crash scenario.

Mr Martin said the defence could have found an expert such as Dr Spitz during the trial.

During the trial, and after hearing Dr Margolius's evidence, an opinion was obtained from a visiting Dutch forensic medical examiner, but she lacked access to her files and other research material, which were in The Netherlands.

She was not called as a witness.

The DPP also opposed a second report by this medical examiner, Dr Selma Eikelenboom-Schieveld, and Mr Martin also excluded her report from the appeal on Monday.

Mr Martin said the defence was obtaining evidence after the trial had ended "in order to undermine the verdict of the jury".

He said the areas of expertise covered by the two witnesses were "fairly well traversed" and available to the defence in time to give evidence at the trial.

Prosecutor Bruno Fiannaca said that if the overseas experts were allowed to give evidence at the appeal, the prosecution would lead evidence in rebuttal from Dr Margolius and possibly obtain an opinion from another expert.

Mr Martin said that although he had ruled out the two reports, he would leave it open to the defence to re-apply to the three other judges of the Court of Criminal Appeal, who will hear the full appeal next June.