

A Dying Erin Walsh Acquitted Of Murder 33 Years After Wrongful Conviction



Erin Walsh after his acquittal

By Sean MacDonald

Erin Walsh's dying wish was granted on March 14, 2008 when he was acquitted of the second-degree murder of Melvin Peters, more than three decades after his conviction of the crime.

Walsh, who is in the final stages of terminal colon cancer, tearfully hugged his emotionally overwrought wife, Angela, and then struggled to rise from his wheelchair and address the court. "On behalf of my family and myself, it is just a tremendous relief for me and I just want to thank you for your fairness, your astuteness, in coming to this decision."

"I'm a free man," an ecstatic and emotional Walsh said outside the courtroom. "I mean, freedom now means something to me. It is not just a word. It is something that I'm going to wear every day of my life like I wore my captivity."

That captivity began on Friday, October 17, 1975, when a jury convicted Walsh of second-degree murder. It took jurors an hour to reach the verdict, during which time they also stopped to eat lunch. To them it was an open and shut case. It wasn't quite so simple for Walsh. He spent the next 20 years in jail for that crime, and a total of more than 32 years trying to undo that 60-minute decision.

Overwhelming odds

The criminal process had finished: Walsh's trial was over and his appeal was denied. He was a convicted murderer, one voice in a sea of inmates screaming for attention. His credibility was non-existent and the courts had spoken. He had no money, no lawyer and no real access to the outside world. He was alone.

In spite of the overwhelming odds, Walsh continued to pursue justice with the few resources he had at his disposal. He wrote to whoever he thought would listen, seeking information wherever he could find it. He continued even when it was to his detriment – even when the parole board would hold it against him in considering his release.

At Walsh's trial, the prosecution alleged that he bought a sawed-off shotgun from an asso-

ciate of Donald McMillan, and that he used it the next day to murder Peters in his Cadillac near Saint John. (Saint John is on Canada's east coast about 400 driving miles northeast of Boston.)

Walsh claimed that McMillan, David Walton and Peters attempted to twice rob him of money and drugs that he had on him. Walsh testified that after their first attempt, he managed to escape, and ran to some nearby Canadian National Railway workers. He begged them to call the police, which they did. When he tried to make his way back to his car to escape, the would-be robbers found him. They forced him into his car at gunpoint. Walsh testified that he then began a life and death struggle for possession of the shotgun. He claimed the weapon ultimately ended up in the hands of McMillan, where it discharged and killed Peters.

But at the time, there wasn't any independent evidence to support Walsh's testimony. McMillan and Walton testified as prosecution witnesses, which led to Walsh's conviction and life sentence with no parole before serving a minimum of ten years.

New evidence uncovered

In 2003, after 28 years of proclaiming his innocence, Walsh wrote to the New Brunswick Provincial Archives and received the prosecution's complete file of his case. In it he found a treasure trove of exculpatory evidence never disclosed to him or presented in court. Most significantly he discovered:

- Less than an hour after the shooting a Saint John police officer overheard Walton – the prosecution's star witness and the only eyewitness to the shooting – ask McMillan why he shot Peters;
- A police report never disclosed to Walsh or his lawyers supported his version of events;
- Saint John police recorded a statement from a local hardware store proprietor who said the gun shells used in the crime were purchased one day before McMillan said they were, when Walsh was in Ontario, hundreds of miles from Saint John; and,
- Seven signed statements by witnesses that supported his claim that he ran away from the three men after they attempted to rob him, and that he asked for the police to be called just 10 minutes before Peters was killed.

Armed with the new exculpatory evidence, Walsh contacted the Toronto based Association in Defence of the Wrongly Convicted for legal help. The AIDWYC agreed to represent Walsh in a new appeal.

On February 22, 2008, Canada's Federal Justice Minister issued a Ministerial Remedy acknowledging that based on the new evidence, a miscarriage of justice likely occurred. Walsh's case was referred to the New Brunswick Court of Appeal. New Brunswick's Attorney General took the position that not only was a miscarriage "likely," but that it in fact occurred.

Walsh told reporters, "I have never claimed to be an angel. What I have claimed is that I am a wrongfully convicted man. All I am asking is that I get justice." One of Walsh's AIDWYC lawyers told reporters, "In 1975 a jury convicted Erin in one hour ... With the power of his case today, as we now know it, there is not a jury in this country that would not acquit him in half that time."

The Court of Appeal expedited hearing Walsh's case because of his grave medical condition, and it unanimously quashed his conviction on March 14, 2008. It was a landmark ruling because it was the first time in the New Brunswick justice system's 200-year history that a wrongful conviction has been recognized.

James Lockyer, founding director of AIDWYC, told reporters, "the acquittal is a great ending to a difficult story."

Walsh experienced immediate repercussions from his exoneration. As a convicted murderer Correctional Services Canada had been funding his homeopathic cancer treatments. After his acquittal it cut-off paying for his treatments.

William McCarroll was Walsh's prosecutor, and he is now a New Brunswick provincial judge in Saint John. McCarroll continues to defend his handling of the case.

Now 59, Walsh is also seeking justice in the civil courts. Last year he filed a lawsuit against former prosecutor McCarroll, the City of Saint John, all Saint John police chiefs in power since 1975, the province of New Brunswick, and the RCMP for their deliberate attempts to suppress evidence: the very evidence that led to his acquittal.

Reprinted with permission. Originally published in *The AIDWYC Journal*, Spring 2008, Volume 9. About the author. Sean MacDonald is a Toronto attorney who was a member of the AIDWYC's team of lawyers that worked to exonerate Erin Walsh.

Additional source: Dying Ontario man gets last-wish acquittal on 33-year-old murder conviction, *The Canadian Press*, March 14, 2008.

