

DETECTIVE SENIOR CONSTABLE GRAY

..... tape out.

SENIOR CONSTABLE UPSTON

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DETECTIVE SENIOR CONSTABLE GRAY

Q1 Just bear with us, Rob.

A Yeah, sure.

Q2 This was working perfectly.

A You're right.

SENIOR CONSTABLE UPSTON

.....

DETECTIVE SENIOR CONSTABLE GRAY

Q3 It's not checking. O.K. Still checking, it's still, it'll tell you when it's ready. This is an electronically recorded interview between Detective Senior Constable Stuart Gray and Mr Robert Kothe at the Sydney Water Police Station, Pyrmont, on Wednesday, the 3rd of March, 1999. The time by my watch is now 11.50am. Also present, and seated to my left, is Senior Constable David Upston from the New South Wales Water Police. As I've already explained to you, Rob, Senior Constable Upston and myself are making inquiries in relation to the Sydney to Hobart Yacht Race, as you are well aware.

A Yeah.

Q4 And we have spoken to you on a previous occasion.

A Yes. You have.

Q5 If I could just get, for the record, your full details,

your full name?

A O.K. Robert Maxwell Kothe, I live at 44 Sloane Street, Summer Hill. My date of birth, the 16, 3rd, '46. Skipper and owner and the Sword of Orion, entered in the Sydney/Hobart, 1998.

Q6 O.K. Now, prior to the commencement of this interview we sat down and we spoke in relation to the issue of a harness lanyard - - -

A Yes.

Q6 - - - which was on board the Sword of Orion and which, in fact, was being worn by Glyn Charles - - -

A Yes.

Q6 - - - at the time that he was thrown overboard. Now, do you agree or do you recall that on the 2nd of January, 1999, we interviewed you at Hobart CIB?

A Yes. Yes.

Q7 And that was in relation to your involvement in the yacht race?

A Yes.

Q8 Of last year, and the experiences that you had - - -

A Yes.

Q8 - - - during that race.

A That's right.

Q9 Now, as a result of our inquiries the lanyard in question was supplied to us by Darren Senogles.

A Yes. The sailing master.

Q10 The sailing master.

A Yes.

Q11 And that was presented to us here when we interviewed him at the Water Police Station here.

A Yes.

Q12 And on that, I can tell you that on that lanyard as you recall then, it was an orange piece of seat belt type material.

A Yes.

Q13 And at both ends it was folded over - - -

A And stitched.

Q13 - - - and stitched.

A Correct.

Q14 And in fact it was stitched probably about an inch apart - - -

A Yes.

Q14 - - - for about 12 inches.

A That's correct.

Q15 I don't have the benefit of the lanyard here right now.

A Yeah. I understand.

Q16 And I don't know whether you're aware, but one part of the stitching at the end of the lanyard had come completely free?

A I didn't see that, but I've been told that.

Q17 O.K. Now, basically, I just want to ask you some questions today about your knowledge of the, of the lanyard.

A Yeah.

Q18 In particular where you purchased it from and all  
- - -

A Yeah.

Q18 - - - any sort of general pertinent information about it.

A Yeah. ....

Q19 So, firstly, if you could just tell me how many lanyards of that type, which is a Tuff brand were on board your vessel?

A To my knowledge there would have the number, the minimum number required for the crew on the boat, there should have been 12. I personally didn't use that brand, but we had a full compliment of, of that number. There may have been other individuals on the boat who didn't necessarily use that brand either, they had their own.

Q20 Yeah.

A But, there would have been the minimum numbers on the boat.

Q21 O.K.

A Right.

Q22 So, is it the case then that each person or crewman on your boat is allowed to provide their own lanyard?

A If they want to .....

Q23 And as a rule you have them there anyway?

A Well, you've got to have the full compliment.

Q24 O.K.

A Just in case they don't come or they - - -

Q25 Yeah.

A - - - don't bring it or whatever, otherwise you don't

sail.

Q26 O.K.

A So, we had a full quantity, and, yeah.

Q27 Now, do, you have the same brand on board?

A They were only - - -

Q28 Generally speaking, I mean, do you have the same Tuff brand?

A ..... they were, all came with the boat - - -

Q29 Right.

A - - - when I bought the boat, and I bought the boat in June ..... the previous year, middle of the previous year I bought the boat from David Gotts in Melbourne, they came supplied and they were all identical.

Q30 Right, O.K. So, we can say that, that the 12 on board were Tuff brand - - -

A Yes, they are.

Q30 - - - orange in colour?

A Yeah, that's right.

Q31 And I believe that on the lanyard itself it had Sword of Orion written on the .....

A Yes. That, that's the normal thing.

Q32 Right, O.K. Now, are you able to tell me how long they had been on the boat?

A No. I don't know, I only know that they'd certainly been on the boat from when I bought it.

Q33 Right.

A I imagine, I bought it not long after a Hobart - - -

Q34           Yeah.

A           - - - they ..... on the boat at the previous  
Hobart, which would have been the 1997 Hobart.

Q35           Right.

A           Because they were on the safety certificate - - -

Q36           Right.

A           - - - that we had and they were, 'cause every item on  
the, on the safety certificate has to be checked or,  
you know, recorded.

Q37           O.K.

A           There's, there, there is the, the counters there that  
the right number is there.

Q38           Yeah. O.K. Are you able to tell me the sort of, how  
you store those lanyards on board?

A           They were, from memory, they were wrapped up into each  
individual little lanyard was wrapped up very neatly,  
so it doesn't tangle, and so they can get them quickly,  
as were the harnesses. They were stored in a side  
locker, they were, you know, normal course of events  
they would be dry at all times, they are very  
unpleasant to put on if they're wet. They would get  
wet during use, they would be dried and it would be  
possible during a race for the storage area to get wet.

Q39           All right.

A           You know, it, in, in a race everything gets wet.

Q40           Yeah.

A           There'd be, you know, like, you certainly couldn't  
guarantee or suggest that they stayed dry at all times.

Q41 Right.

A But, they were certainly stored in an area that kept them dry in a normal environment and they would be dried out at the end of the race ..... typically take all the wet weather gear and, and dry it. Wet weather gear, person wet weather gear tends to get washed and laundered two or three times a year, that wouldn't happen with harnesses.

Q42 All right.

A Or tethers or lanyards, they'd just be dried .....

Q43 O.K.

A ..... the air dry them.

Q44 Now, are you able to tell me or do you recollect what was on the end of each lanyard, so far as .....

A No. I, I, I can't remember. I'm sure Darren will know  
- - -

Q45 O.K.

A - - - because he actually brought them to you.

Q46 Yeah.

A You know, from recollection that was just a, a standard, it certainly would have been an approved fitting - - -

Q47 Yes.

A - - - because they were tested, they were, not tested, they were checked some, the safety inspection, the category 1 safety inspection in which these things all have to laid out and inspected.

Q48 Yeah.

A            Occurred some, you know, three weeks before Hobart. And my recollection is that on the morning of the race, when we had a safety inspection, one of the things they asked to see was the lanyards, but you could confirm that with Darren, it, he was the person that was asked to do it. But, certainly they were, there was approved  
- - -

Q49          Yeah.

A            - - - standard acceptable for a category 1 safety.

Q50          O.K. Now, are you aware that on the actual lanyard itself is a little piece of plastic just sewn into the lanyard which gives the brand name - - -

A            .....

Q50          - - - and it also says Australian Safety Standards.

A            Yes. Yes.

Q51          Are you aware of that?

A            Yes. Yes.

Q52          And as far as you're aware that was on?

A            Yes. As far as I was aware, because one of the things we're made to make sure is that we don't fail a safety inspection.

Q53          Yeah.

A            It's bad for your reputation and it also wastes time  
- - -

Q54          Yeah.

A            - - - so, we, before the safety inspection you go along, I think we had probably two or three independent groups of our own crew go along and audit our safety,



our own safety gear. One was the sail maker, you know, one was a, you know, various people on the boat. Independently audit the boat to make sure that the, the fire extinguishers had the stamp on them, everything's up to standard according to the blue book, the, the AYF book.

Q55 Yeah.

A Which was there, what's it's called, the, the Australia and Federation Racing Rules ..... in which it details them - - -

Q56 All right.

A So, we ourselves self audit and so certainly everybody on the boat agreed that they were, that they were to, to safety standards.

Q57 O.K. Now, last week, Senior Constable Upston took that particular lanyard which was worn by Glyn Charles to the RTA Crash Unit, and a number of tests were conducted on that lanyard - - -

A On that one or a ..... - - -

Q58 On that one.

A O.K. Yeah.

Q59 And another one.

SENIOR CONSTABLE UPSTON

Q60 And a similar one.

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Q61 Yeah. And a similar lanyard Now, in relation to the lanyard in question, which was worn by Glyn Charles, a number of tests were done on that and there is a

minimum requirement to comply under Australian Safety Standards that the lanyard in question should meet the weight of, what's described as, 12 Newton metres.

A O.K.

Q62 O.K. In layman's terms.

A O.K.

Q63 Now, that was tested and in fact that lanyard failed at 6, approximately 6.8 Newton metres now and that is sort of significantly lower than the minimum requirement.

A ..... terrible - - -

Q64 Would you like to say anything about that, I mean that - - -

A .....

Q65 From your side of things?

A Well, from my side of things, that's awful, because you expect everything to exceed the safety standards not be inside it.

Q66 Mm.

A You know, was there anything about the cotton or the thread or the, was there any test done that would indicate that there was rotting or -?

Q67 No. At, at this stage we're still waiting for the final report, however, that will be available to us and we will make those findings known to the coroner.

A Mm. O.K. One thing I might say is that that my experience is that you're trying to keep those things, things like that away from diesel.

Q68 Yeah.

A And you're trying to keep them away from acid. Because they're the two things in layman terms - - -

Q69 Yeah.

A - - - that would be inimical to the, to the stitching. To my knowledge, and one of the things, if you get diesel on a, on a lanyard it's intolerably stinking, you can never get it out and no-one will ever wear, wear the lanyard - - -

Q70 Mm.

A Because it makes them sick. So, any lanyard that's ever had diesel on it, and it did happen some 18 months ago we had a lanyard that had diesel on it, we towed it behind the boat for 400 miles coming down the coast of New South Wales - - -

Q71 Yeah.

A - - - we couldn't get the smell out and it was thrown away 'cause no-one would possibly wear it. It belonged to an individual who was sailing on the boat, so I can say that it's highly unlikely that there had ever been any diesel on the lanyard.

Q72 Yeah.

A The acid would only come from batteries. We've not ever had a diesel, an acid spill on the boat. Interesting then when the boat rolled there was absolutely no acid spilled - - -

Q73 Mm.

A - - - whatsoever. So, to my knowledge the lanyards would never have had acid on them and certainly diesel

is such a stinking thing that, that you'd know if it had diesel on it.

Q74        Yeah.

A            And it, and it had neither of those things. Even now you'd be able to tell by the smell of it - - -

Q75        Yeah.

A            - - - if it had had diesel on it.

Q76        Yeah.

A            That would be very, it just doesn't go away.

Q77        Yeah. Well, from our initial observations of the, of the lanyard itself, there was nothing significant that we noticed.

A            Fair enough.

Q78        Obviously an examination ..... - - -

A            ..... obviously you can ask the sailing master the same questions, 'cause he was the one who, who physically wrapped them up and put them away.

Q79        That's right.

A            But we were all, it was probably as far as we were concerned it was a safety issue.

Q80        Yeah.

A            That you did, you looked after them all because someone's life was .....

Q81        That's right.

A            And it obviously means that, ..... you know, it's terrible.

Q82        Mm. Now, the approximate weight of Glyn, do you recall - - -

A The CY records would show it exactly, but my, he was slip of a guy I, approximately 72 kilo.

Q83 Right.

A 70, 72 kilo.

Q84 O.K. O.K. Is there anything else that you'd like to, since we've spoken to you last - - -

A Um -

Q84 - - - that you'd like to mention to us or -?

A No. No. Just, just that we are, I am getting you a, a record which the centre crew did of the time line of events. We're not sure about exact times because the way, the only way we could check is via Young Endeavour and you've got their records too and the CYC, but that's our best approximation at the time, as it's, it's, it's one of those things, I guess, maybe a policeman would be trained to write down the times that things happen - - -

Q85 Yeah.

A - - - but I, we were just not in that mode and so our times are not necessarily as accurate. If we've misled you with any of them, then I'd be inclined to use these presented time ..... times - - -

Q86 Right.

A - - - as being more accurate than anything else we ..... Obviously, it, it is difficult in those circumstances. But, that's all, I've got no, no, I think Darren can probably shed more light on that. Certainly what is of interest is that that the guy when

..... went off the boat, when he saw him in the water, he wasn't wearing the, the harness jacket.

Q87 All right.

A You know, the, the harness that he was wearing was built into his jacket, that's another way you do it, because that way you, you put on your jacket and you've got your harness all configured properly.

Q88 Mm.

A A lot of the standard ones that you have are not, which should be included in the boat ones - - -

Q89 Mm.

A - - - are not easy to put on. You can't figure out which way to put them on. So, that would lead me to believe that he wasn't wearing a boat, that's one of the standard boat harnesses.

Q90 Yeah.

A There's a boat lanyard and there's a boat harness, but I would be led to believe from, and certainly confirm with Darren, that he wasn't wearing a boat harness, but he, the one built into his own jacket.

Q91 Mm.

A Now, whether that was his actual ..... jacket or whether it was a loan jacket I have, I don't know.

Q92 Yeah.

A And Darren may not know either, but - - -

Q93 Mm.

A - - - ..... fail I guess it's not relevant.

Q94 Mm.

A Although, apparently he did, he didn't, you know, he came out of the water, well, in, in the water it come off.

Q95 Mm. You don't recall that brand or the type of, of, of jacket which incorporated the harness, do you?

A That he was wearing?

Q96 That he was wearing?

A No. Darren probably knows, I mean, it wouldn't be hard for us to find out.

Q97 Mm.

A And I can find that out for you. The, what would have happened is that with those harnesses you have one in, you have a strap around your waist and it all clips over your shoulders and over your waist, and you have an additional strap which goes between your legs, which I've certainly never clipped up in my life, and got, don't think I've ever seen anyone clip up, which is the one that stops it coming, stops it coming off your head.

Q98 .....

A You know, ..... just to stop the whole thing pulling over. What you tend to do is do 'em up pretty tight - - -

Q99 Mm.

A - - - and you believe that it is not going to come off, but there is a additional strap between your legs which you're supposed to put on.

Q100 Mm.

A Which doesn't take a lot of, it doesn't hold a lot of force - - -

Q101 Mm.

A - - - it's really quite a light, lightweight one. I can certainly obtain the information.

Q102 Just excuse the phone. Now, we're just having, separate to this issue, Robert, do you recall what limited positive stability your boat was, offhand?

A The certificate, from recollection, says about 100, 130.

Q103 Right.

A Degrees. It's way higher than the, the ILR-designed boats, like Business Post Naiad - - -

Q104 Yeah.

A - - - which could be 110 to 115.

Q105 Yeah.

A This, one of the reasons why I think when the boat did roll, it, it rolled so quickly - - -

Q106 Yeah.

A - - - is because, well, A, the mast, because it broke, there was, you know, sails and mast acting as a rudder to keep the boat stable upside down.

Q107 Right.

A But, basically it's very much ..... you know - - -

Q108 Yeah.

A - - - design such that it won't stay over. It was pretty amazing condition that knocked it down, but once



it was knocked down, it didn't want to stay knocked down.

Q109 Yeah. Is it routine or would it be routine for a skipper/owner to tell his crew, I just want you blokes to know for argument's sake, that the limited positive stability on the Sword of Orion is in excess of 130.

A In practice, no, but what would be known, almost everybody on a race boat is, looks at the certificate and they all know, certainly every member of my crew would know that a modern IMS boat is much much more stable than an old ILR boat.

Q110 All right.

A And I'm sure the boat, I'd be interested to hear what Darren says, but they will all know that they're much more stable, because the boats of the '80s, the ILR boats, like an old..... 40, like Business Post Naiad, ..... always scary as far as, as far as people were concerned at the time. That's one of the reasons why when they changed the rule, the IMS rules.

Q111 Mm.

A They changed that, you know, deliberately changed those  
- - -

Q112 Mm.

A - - - to make them safer going offshore.

Q113 Would it be the case that because the crew are aware that it's a modern boat - - -

A Yeah.

Q113 - - - it therefore goes hand in hand that it would be

..... positive stability would be in excess of the minimum requirement?

A ..... every boat, no, that's not true. My own understanding is that you, that a boat to, well, the race rules for Sydney to Hobart ..... I think are 115 - - -

Q114 Yeah.

A - - - and you, you have to meet that standard or you've got to get some document from a, a, another architect or something like that. But, to my knowledge that wasn't occurring ..... people did have to meet the minimum stability standard, and certainly in my boat, from the previous year, which survived Hobart and got there, which was ..... which was identical to Business Post Naiad, would have had identical stability .....Business Post Naiad. .... and they would have had the same number .....

Q115 Do you recall what that was?

A It would have been I believe about 115.

Q116 Right. So, is it the case that you would have shown or that all your crew as far as you're aware saw the IMS certificate ..... - - -

A They would have seen it or there would have been a discussion through the education-type discussion. We, we, well, the safety issues were addressed a lot.

Q117 Mm.

A You did exercises about a week before Hobart we'd be going down the harbour and I just threw a, the ring

over the back - - -

Q118 Yeah.

A - - - just with the aim, I think I had informed the driver, because I didn't want him trashing the, trashing the sails - - -

Q119 Mm.

A - - - and so I pre-warned him, but nobody else, and so you did those quite commonly - - -

Q120 Mm.

A - - - you know, we'd done off shore, we actually had men in the water off shore - - -

Q121 .....

A - - - with my previous boat, with Aurora, we had actually had a guy with a life jacket dive off the boat in about 25 knots as breeze - - -

Q122 Mm.

A - - - the previous year, so it was a normal sort of thing to do, yeah. They were, they were very, you know, safety conscious.

Q123 O.K. From your experience, which, could you just tell us again what your experience is at actual racing?

A No, I'm not, not a lot.

Q124 O.K.

A But I've done a lot of competition stuff.

Q125 .....

A But I, but I'm also, I guess my interest is that we make marine safety equipment.

Q126 Right.

A And so, I have, I do have some expertise in that area.  
Q127 O.K. In your experience and of the Australian Yachting Federation book, makes it a rule that a cat 1 is 115 degrees - - -

A Yeah.  
Q127 - - - so far as minimum positive stability, would you, how would you view or how would you feel about a limited positive stability of less than 105, so far as that goes?

A I would be surprised that the certificate, we, we've all got to put our certificates in - - -

Q128 .....

A - - - to the yachting, to the, to the CYC, I think it's a condition of entry that the, you have to meet a particular stability index.

Q129 O.K. Supposing a certificate of 100 and, or a certificate less than 105 was presented for entry, would you be surprised that that boat was allowed to sail?

A Yes.

Q130 On what - - -

A Well, I would be surprised because I would have thought it was against the rules. There is, I do understand there is a clause which says that you can get, if you've got an able architect or you, if there's some special circumstances. Maybe those special circumstances were, were met - - -

Q131 Yeah.

A - - - I'd certainly be very uncomfortable sailing in that boat.

Q132 What reason?

A I'd be fearing for my life.

Q133 All right.

A You know, yes, you wouldn't find me doing it.

Q134 O.K. That's fine.

A O.K.

Q135 ..... The Aurora - - -

A Yes.

Q135 - - - the similar vessel to the Business Post Naiad  
- - -

A Yes.

Q135 - - - which is a ..... 40 - - -

A Yes.

Q135 - - - who owns that vessel now?

A Doctor Jim Holly.

Q136 And did Doctor Jim Holly sail this in the - - -

A Yes.

Q136 - - - previous Sydney to Hobart - - -

A Yes.

Q136 - - - just gone?

A Yes. I can give you a copy of the ..... of that boat, which is the, I don't believe he did any changes. I sold it to him in, in the middle of, of last year.

Q137 All right.

A Yes, yes, yes. And when I, actually when I think about it, I bought, I took delivery of Sword of Orion in May

of 19, May of 1998, and so, you know, I didn't buy the, the harnesses or tethers - - -

Q138 Mm.

A - - - inside that time frame.

Q139 All right.

A But, you know.

Q140 O.K. And did Aurora, the previous vessel that you owned and is now owned By Jim Holly, Doctor Jim Holly, did that sail under that name, Aurora?

A ..... I sailed it as Witchcraft II - - -

Q141 Yes.

A It sailed as Aurora.

Q142 And how do you spell that?

A A, as in Aurora Borealis, A-U-R, A-U-R-O-R-A.

Q143 O.K.

A And you would have the certificates for that boat.

Q144 Yeah.

A Because you have got a copy of the certificate, so if you looked at that certificate it should be in terms of the, should have the same stability index as Business Post Naiad or any other ..... 40 of the same .....

Q145 O.K. O.K. Anything else you'd like to say?

A No.

Q146 O.K. The time is now 12.12pm, this interview is now concluded.

INTERVIEW CONCLUDED