

SENIOR CONSTABLE UPSTON

Q1 This is an electronic record of interview between Senior Constable David Upston and Rob Kothe on Wednesday, the 3rd of the 11th, 1999 at the Sydney Water Police. The time on my watch is now 11.15am and also present, seated directly opposite me, is Detective Senior Constable Stuart Gray from Bega Detectives. Rob, for the purpose of the interview, would you like to state your name, please?

A My name is Robert Maxwell Kothe.

Q2 And your date of birth?

A 16th of the 3rd, 1946.

Q3 And your address?

A 44 Sloane Street, Summer Hill.

Q4 And your occupation, please?

A Pharmacist.

Q5 O.K. Rob, do you agree that we have spoken on no less than three other occasions and interviewed you in regards to the 1998 Sydney to Hobart Yacht Race and your involvement in that race?

A Yes. That's correct.

Q6 O.K. Rob, for the purpose today, we've got you along to speak to you about a conversation that you had with a Mr Richard Purcell in regards to a matter. You are aware of that conversation?

A Yes, yes.

Q7 And you are aware of what we want to speak to you about, that conversation?

A Yes, I am, yes.

Q8 Would you like to give us a background and also explain that conversation to us?

A O.K. Yes. I had a conversation with Richard Purcell on the phone and I will detail that, but I would like to go back to the beginning. What I haven't previously sort of gone through in any detail was some incidents, some matters that relate to Margaret Rintoul II and who passed us when we were dismasted during the Sydney to Hobart race. By the time we got to Hobart, which was some 3 or 4 days after the race, we were down there for the memorial service, by that time people had got back to Sydney, talked to their families, gone through the whole thing and discussed it and by then it had started to sink in to everybody that there was a serious possibility after Glenn Charles had gone overboard that the rest of us could have died because of the fact that the boat was breaking up. It wasn't something we talked about a lot while it was happening because we were too damn busy, but by the time you discuss it with your family and go through it and they say, My God, you could have died. So the result of that was that people were in some degree of shock and they'd got to the stage of being quite angry, whether it is reasonable or unreasonable, about the fact that, you know, Margaret Rintoul had gone past. We had ourselves reached the conclusion during the race they hadn't seen us, you know, it was the only possible explanation, that they

hadn't seen us and conditions were pretty horrible. So we were all, you know, O.K. about that but there was a lot of, My God, weren't we lucky that, you know, the boat didn't break up a bit earlier than the helicopters got to us, etc. etc. And I was not aware at that stage that there was some previous, what's the right word for it, previous history between one of my, the members of my crew, Carl Watson, and Richard Purcell, an incident that goes back some years which I don't really know the details of. I have said to them both, Sort it, I don't really want to know about it, but plainly there was some bad blood. The night after the memorial service I was approached by, or some hours after the memorial service I was approached by Hugo Von Kretsumar who asked me to talk to Richard Purcell because some of my crew had, you know, there'd been some, you know, discussions, there'd been some yelling, some slanging matches between the people in our two crews. Richard Purcell's brother had told some of my crew in the pub that they hadn't seen us and then later that evening they changed their tune, they had seen us. And so it was all a bit confusing, there was certainly some angst and some anger and it got to the point that I actually, on crutches, broke up some fisticuffs, it's not something I would normally do but I figured on crutches they weren't going to have a go at me and I actually recall whacking one of my own guys and Richard

Purcell's brother on the legs to stop them, you know, punching each other and I separated them.

Q9 Was there actually blows taken between the two?

A Yes. Although it was more sort of, they weren't far enough, they were against each other so they were more scuffling and they couldn't get a clear swing at each other but they were, you know, if I'd let them step back a half a pace where they could swing, they could have swung.

Q10 So there was physical contact - - -

A Oh, there was physical contact.

Q10 - - - between the two - - -

A Yes.

Q10 - - - Carl Watson and Richard Purcell.

A I think it was Richard Purcell's brother, they look very similar.

Q11 Oh, O.K.

A I'll take, I'm not sure whether it was Richard Purcell or Richard Purcell's brother - - -

Q12 O.K.

A - - - but certainly there was, and what it was about was obviously there was previous history between them and there were certainly coming from the Margaret Rintoul people conflicting conversations about whether they'd seen us or hadn't seen us. And when they said, one of them said that they had seen us, then obviously that was very upsetting to my crew and I, you know, whacked them both on the legs and separated them and we

dragged Carl Watson away and, you know, just, you know, I decided it wasn't an appropriate time to have a long and meaningful conversation with Richard Purcell about the whole incident. So that wasn't a good start to the whole exercise. In the questionnaire that we filled in for the C.Y.C. I made absolutely no reference to the Margaret Rintoul incident because I was answering questions yet there was a question which was related to the fact, Had your pyrotechnics, you know, Had you had any problem with your pyrotechnics? And we, my written answer was that two of the pyrotechnics had failed. So when we got to the interview with Peter Bush, going down our questionnaire question by question, he got to the one where two pyrotechnics had failed. O.K. So he said, Tell us about it, which was a fair question. So we proceeded to say, A boat went past, we fired, I think we fired two or three, I don't know the exact number now, it's in the records. We fired two or three when we first rolled and when we had Glenn Charles in the water hoping someone would see us, come to our aid. And then when another boat went past that didn't see us, and these were my words, we fired flares to try and get their attention. And at that point Peter Bush proceeded to say, Well, actually, he had been speaking to the Water Police and that there had been an interview with Richard Purcell and it was some hours into discussions before Richard Purcell had finally, and this is allegation on this, had finally agreed that

he had seen us. You know, there was certainly, we had been, we had experienced, I had experienced conversations with Graham Purcell where he said he didn't see us and yet other members of the crew were saying they had seen us and what it turned out that they actually meant is that they were below decks so they didn't see us. But it was certainly, it wasn't an open discussion, so there was certainly a degree of angst there and, what the hell's going on, and why are they behaving like this and why are they talking like this. And, as I say, that was compounded by the fact that I was not aware of the fact that there was some previous history between some of the people. So I've since discovered that numbers of my crew had spoken, not on my behalf, but spoken independently to directors of the C.Y.C, I think at least four of them, complaining and saying something ought to be done about the whole situation. And they spoke variously to Hans Sommer and other directors and I - - -

Q13 Can you recall who those people were?

A That had spoken to - - -

Q14 Who had spoken to the C.Y.C.A?

A Certainly, well, spoken to directors of C.Y.C.A.

Q15 Yes.

A One of my crew, Adam Brown, has sailed a lot with Hans Sommer, he'd certainly, you know, had conversation. Carl Watson had also sailed with, they're the two people I directly know of. It was intimated to me that

other people had spoken to other directors but I have no knowledge of it. They certainly didn't do it with my approval, knowledge or encouragement but, you know, I recently discovered they'd in fact said, somebody ought to do something about this, you know, it was awful. They were certainly complaining about the fact that there was a variation in the stories that was confusing and why the hell had they done it. And so that was the history behind this thing. So when we got to the, we'd been asked about the pyrotechnics and I'd explained that a boat had gone past that hadn't seen us because at that stage that's what I believed, that they hadn't seen us, Peter Bush leaned across the table and said, Well, he told the story about it had taken quite some time for Richard Purcell's crew to admit that they had in fact seen us and I later, or quite recently, retold this conversation or this part of the conversation to Richard Purcell in a phone call, he rang me about something. And I, you know, I said, Look, the whole thing's disturbing and I'm just not sure what's going on. And I told him about that part of the conversation which is that - - -

Q16 Can you explain or can you recall the exact words that Peter Bush used to you in that conversation?

A It was along the lines and, it was along the lines, I can't remember the exact words, no, it wasn't something that, you know, I wasn't taking notes and I don't recall the exact words. It was something along the

lines of, and you know, We are determined to nail him on it. And that's the bit that I retold to Richard Purcell. I have recently since then, since the conversation with you, I thought, I'd just better make sure that this it not just my own reality and I'd better, and so I checked with Carl Watson and Darren Senobles and they said, and I now have a vague recollection of it and, you know, I can't be sure, but they say that he qualified it, which was, you know, if the inquiry finds that, you know, finds adversely then they will nail him. So there was a qualifying thing that made it proper.

Q17 Mmm.

A Now I had not recalled that, whether it was deliberate or otherwise, I didn't recall that and so in the conversation with Richard Purcell I plainly didn't put the qualification and the qualification makes a hell of a difference to it, you know, in the scheme of things. So I haven't yet explained that to Richard, but I will do because he's obviously in some degree of distress, you know. I am still not entirely comfortable with the whole thing. Certainly the C.Y.C. later, subsequent to that, had I understand been getting legal advice on whether they should or should not name Margaret Rintoul in their inquiry and quite late in the piece Hans Sommer rang me and said, Hugo Von Kretsumar would like to talk to me and would hope that I could reach an accommodation with Richard Purcell. And so I spoke to



my lawyers who spoke to the insuring company and the insurance company says, You can't say, and so does my lawyer, You can't say it was great, what they did on the other boat was what they should have done because you don't know the circumstances, you can't say things like that and you certainly can't say things which may not be factual, which may jeopardise our position, this is the insurance company position, down the track of there is an inquiry. If you say that what you think was great, what they did was great, if down the track you're found to be, you know, what you did was negligent in any way we may want to reserve the right to have a countersuit on Richard Purcell. Now this was all very unlikely. However, they said the general principle, and certainly my own lawyer said, the general principle is you can't say things that you don't know about, you'll get into trouble with the Coroner, you'll get into trouble with everybody, you can only say what you know. And I made that and I reported that conversation - - -

Q18 Sorry to interject, Rob, but we'll return to this conversation in one moment. I'll just temporarily suspend the interview. The time on my watch is now 11.27am.

INTERVIEW SUSPENDED

INTERVIEW RESUMED

SENIOR CONSTABLE UPSTON

Q19 The interview between Upston and Kothe is now resumed. The time on my watch is now 11.30am. I apologise for the short break, Rob. Can you please go ahead with what we were discussing?

A Yes. So the circumstances, the background to the whole Margaret Rintoul thing was confusing and it was a fairly emotional thing. And I certainly made no official complaint to the C.Y.C. and no request that they take any action, I discovered that they had in fact been discussing with their lawyers their legal position in terms of naming or sending it to a committee. They were trying to find out what they should do, but I was certainly asked could I make a statement which would make the whole thing go away. And I, you know, Dave, you suggested also that it was not a nice thing and you'd like it not to be happening too. And I had spoken to Richard, that's why the dialogue with Richard started, I haven't actually stopped and had a beer with him, all these things have been on the phone but the advice I had from my lawyers is I couldn't make a statement about what happened on the other boat. Now when I did finally make a statement in July to the press, which I'll give you a copy of, it was a heavily qualified statement which is, I have been advised that certain things happened and if that is in fact the case then I thank Richard Purcell and his crew for what they did do. I was advised by

Richard Purcell they'd in fact told the rescue authorities of our situation and therefore that's why they came. I have no idea whether that's true or not so my statement is qualified because it effectively says, I've been advised, I don't know. And I only made that statement because I thought that Richard Purcell was certainly being given a hard time by the press and I had no knowledge of whether it was true or not. But that statement, although it was heavily qualified, had the effect of defusing the situation. But I hadn't even been able to make that statement earlier because, you know, it was only by really putting pressure on the insurance company and the lawyers that I had to say something and so it was agreed that I'd make a statement which was factual, which was that I didn't really know anything but I'd been advised certain things. So that's the circumstance. But certainly as the matter of the discussion or the interview which Peter Bush had with me and my crew, he certainly did say that, you know, Richard Purcell would be nailed but having checked with the other guys present, they say that he put a qualification which made it reasonable and proper and I have to agree with that.

Q20 O.K. When you were asked by Mr Von Kretsumar to speak to Mr Purcell - - -

A Yeah.

Q20 - - - what was the result of that?

A I did speak to him.

Q21           Yeah.

A             And there was the to'ing and fro'ing about whether they'd seen us or hadn't seen us - - -

Q22           Yeah.

A             - - - which was confusing and I felt was less than straightforward in so far as a lot of the people on the boat were saying they hadn't seen us and they were below and it wasn't presented that, Well, we didn't see you, but the guys on deck did, it was just, We didn't see you. And I asked could I possibly understand the sequence of them using the radio because I didn't understand. You know, they told me they couldn't get through for half an hour and I said, Just, I'll be, you know, I could calm my crew down if you can give me some explanation of what happened and the circumstances so that everyone will calm down and understand you guys did your best if you can explain to me that you couldn't get through on one frequency and you tried on another frequency, just tell me the seamanlike things that you might have done. I said, you know, I mean, we sail along with our VHF radio working so that if we see another yacht that's, you know, dismasted we assume that they won't have an HF but they'll get an emergency VHF. So we look at another boat that's dismasted, because it's happened to us, we would say, O.K. we'll try and get through on VHF. Just tell me things that will enable me to reduce the heat and the angst among the crew because it's not good for anybody and he

wasn't able to, the reality was. So all I could do was I reported this to my lawyers and they said, you can't say anything which you don't know. And I reported exactly the same thing to Hugo Von Kretsumar and he at time, this is a meeting that was held with Hans Sommer, and they agreed that under the circumstances they could understand why I couldn't make any statement which would take the heat off the club or take the heat off Margaret Rintoul. And I said, Look, you'll just have to do what you know is the right thing to do but there's nothing I can do, I can't make any statements that are going to make it easier for anyone because my lawyers say I'm not allowed to say anything which I don't know anything about. So that's where that was left.

Q23 O.K. So you reported back to Mr Von Kretsumar?

A Yes. I had a second meeting, yeah.

Q24 And what was the result of that, leave it alone?

A Yes, leave it alone, there's nothing you can do, thank you for telling us.

Q25 O.K. Now is there anything further you'd like to say about that particular - - -

A No, I think that's covered it.

Q26 Now there's something we'd just like to ask you about the sequence of events so far as the winds that you broadcast - - -

A Yeah.

Q26 - - - off Gabo?

A            Yeah.

Q27          Or - - -

A            No, we were further south than that.

Q28          Further south than Gabo?

A            Yeah.

Q29          Would you be able to take us through that sequence as far as Doctel Rager is concerned?

A            Yes. O.K. Some of it is hearsay.

Q30          Yes.

A            I was at around 12.30, the sched was an hour and a half away - - -

Q31          That would be the 27th?

A            That was on the Sunday, yes.

Q32          All right.

A            About 12.30 I decided that I didn't believe the forecast, just looking at the sky and looking at the wind and the water, I didn't believe the forecast. So I got on to Eden Coast Guard and got them to read me the weather forecast again, I thought maybe they would have changed it, updated it, and then I asked for all the ground station reports and they read all that, including Wilson's Promontory, you know, at sort of 80 knots or whatever. So I had probably spent 20 minutes on the phone and they gave, reception was clear, we were well into Bass Strait and they gave me quite a good report. So I wasn't listening on my VHF because I was on, I wasn't on channel 16, I was on the Coast Guard channel, I've forgotten what it was but the local

Coast Guard channel and was talking to them on VHF. I subsequently discovered that at around 12.30, or I have been told, that at around 12.30 Doctel Rager, who was at that time, you know, we calculated position based on where the sched was, was about 12 miles ahead of us, it's a bigger, faster boat. It allegedly reported on HF to the radio relay vessel that they, sorry, did I say HF, on VHF to the radio relay vessel that they were experiencing winds of 80 knots. Certainly, had we heard that, that would have had a major impact on what we did. Come the 2 o'clock sched, I was waiting to hear a revised report or some local conditions and all we got was the same weather forecast, which was plainly not what we were experiencing. I was sitting there looking at my, listening to the radio writing numbers down the sched with my computer in front of me which has got on it a graph, it's recording in real time the wind speeds, and so it's recording the wind speeds. So by the time it got about halfway through the alphabet it was plain that there were boats missing that didn't report in. Brindabella didn't report in, Ausmaid didn't report in and they were boats ahead of us so that bothered us. You know, Doctel Rager reported in but didn't say anything about the winds, obviously, it had done but I had not been aware of that at the time. So it got down the alphabet, no one was saying anything, the winds were getting up and so when it got to the letter S I did something which is, you're not

supposed to do under race rules because it could be considered outside assistance to other boats, which was I said, This is our position, and then I made the statement about the winds that we were experiencing. At that point in time Lou Carter, the operator, at the end took the opportunity to rebroadcast that information to the entire fleet and then reminded people of their responsibilities. I'm given to understand by a lot of other skippers at that point they decided to pull the pin and go home ..... But there was certainly no report from the radio relay vessel to the fleet which told of Doctel Rager's report of 80 knot winds. The fleet was absolutely not told about that. That's all I know.

Q33 So why did you take it upon yourself to spread that news?

A Because, well, I was concerned about, we were in potential trouble but the little boats at the back of the fleet were obviously going to get, had they kept going into those conditions there would have been many more boats, I believe, and certainly the skippers have told me, I believe there would have been many more boats in serious trouble and it would have, it obviously stretched the rescue people to the limit as it was. But imagine if there had been another 20 boats in trouble. So I just, I decided that they could wipe me out, I could have been, at that point in time I could have been disqualified from the race. I thought



it would be a pretty brave call on their part had the organising authorities chosen to do that, but they could have, in the race rules I could have been disqualified but I decided that there were some things more important than racing, which was people's lives, so that's why I made the statement.

Q34 Are you aware how long after you relayed that message to the radio relay vessel, when Lou Carter broadcast it?

A He broadcast it immediately, he stopped the sched.

Q35 Yeah.

A So he just stopped the sched and broadcast it immediately.

Q36 O.K.

A And when we turned around, which was some half hour later, he actually rebroadcast that to the fleet. We broadcast it to him, but he told the whole fleet again.

Q37 Right.

A Probably because we'd been prominent in the first piece of information and he was actually, in my belief he was using, he was using us as, he didn't know what protocol that he should follow and so he was using us a way to broadcast information to the fleet.

Q38 Mmm.

A And so when we turned around it wasn't something that you normally do with boats that are retiring, you don't tell the whole fleet again, but he told the whole fleet again that Sword of Orion was pulling out of the race

and going back to Eden because of the conditions it was in.

Q39 And how long after that did he warn the boats about their responsibilities?

A Well, he'd done it twice. He did it the first time - -  
-

Q40 Yeah.

A - - - when we told him of the wind conditions.

Q41 So immediately he did that basically?

A He did it immediately straight after that, he told the entire fleet of the wind conditions and warned, and told everybody about responsibilities.

Q42 Yeah.

A And when we advised him that we were turning back, because in the interim we'd just been talking to him constantly about Team Jaguar and Ausmaid 'cause we'd heard Ausmaid relay that message, we'd heard Team Jaguar and we'd done all the relays about the phones and the whole thing. We'd spent quite a long time involved in that. So when we turned back he then told the fleet again that we were turning back and he reminded everybody again about their responsibilities and between the two incidents it was a pretty powerful message to people and certainly a lot of skippers have since said, I've read it in books, you know, have said that as a result that was the timing that they turned around. A lot of people seemed to time what happened

in the race late that afternoon based on, you know, the sched and our report that the conditions were terrible.

Q43 O.K. Just another couple of quick questions now, Rob. Do you recall the time and the location that Glenn Charles went overboard?

A We've got it, I think we worked it out, maybe I've got it in an earlier, maybe the statement to the C.Y.C. We had a lat and long, we worked out a lat and long and we worked out a time, no, I don't have it in my head.

Q44 O.K.

A But obviously we gave it to the, we gave it to, the first people we gave it to actually was the civilian rescue aircraft out of Merimbula and we haven't spoken to them. We knew it was out of Merimbula because they offered to lay life rafts on us in Lou Grewsman's, was it pads or something?

A Yes.

Q45 Yeah, remember that? And because I come from the South Coast, I thought, aha, they're out of Merimbula.

Q46 Mmm.

A And so we told the aircraft, you know, the position.

Q47 Would you still have some of that documentation in regards to that?

A I should be able to find it, yes.

Q48 All right.

A Yeah. O.K. Righto. I'll undertake to provide that to you.

Q49 All right. And also the time that the Margaret Rintoul sailed past you after Glenn Charles went over, was it, do you recall how long that was?

A It's interesting, what we did after, you know, we got back to Sydney, this is sort of now a week after the race, it was apparent that we all had different recollections because I'd written stuff on the chart but my chart was long gone. And so we got together as a group to try and figure out a timeline because everybody, people were involved in different things, people on deck related to various things. So we tried to, you know, get an understanding of it because people, the reason we realised that there was varying explanations is because when we were filling in our questionnaire about pyrotechnics and how many had failed, people had wildly different ideas.

Q50 Mmm.

A So we tried to list it out and we decided that we couldn't be sure absolutely, but we were positive that we were aware of the time from when we turned back, we were pretty sure of the time after that and we felt that the time we turned back would be recorded on the radio relay vessel and therefore we could do all our timing from that.

Q51 Mmm.

A Now did they record the time that we turned back?

Q52 Well, that's just something we are trying to establish now.

A Yeah.

Q53 So whether that was recorded, at this stage I'm unsure of.

A Yeah.

Q54 But certainly if you can recollect that - - -

A Yeah. We've got a timeline which is in our questionnaire and I can certainly give you a copy of that. But what we were aware of is that we couldn't be positive of the exact time, but we just took it, we just said, well, it was X time after - - -

Q55 Mmm.

A - - - after we turned back.

Q56 Mmm.

A And we assumed that they would have recorded that.

Q57 Right. O.K.

A So I can't tell you.

Q58 But we can find that out.

A Yes, we can find out, yeah.

DETECTIVE SENIOR CONSTABLE GRAY

Q59 Yeah. I thought you provided the timeline to us at one stage.

SENIOR CONSTABLE UPSTON

Q60 Yes.

A I thought I had time too.

Q61 Yes. No.

A I've certainly got a copy of it and I can provide it again.

Q62 O.K.

A Yeah.

Q63 All right. Rob, is there anything now that you'd like to add?

A No. I think that's - - -

Q64 Anything further?

A No, I thing that's - - -

Q65 Stuart?

DETECTIVE SENIOR CONSTABLE GRAY

No.

SENIOR CONSTABLE UPSTON

Q O.K. The time on my watch is now 11.46am. This interview is now concluded.

INTERVIEW CONCLUDED