

SENIOR CONSTABLE UPSTON

Q1 This is an electronic record of interview between Senior Constable David Upston and Mr Darren Senogles on Monday, the 26th of the 7th, '99 at the Sydney Water Police. The time on my watch is now 11.28am and Darren, for the purpose of the interview, would you like to please state your full name?

A Darren Paul Senogles.

Q2 And your date of birth?

A 19th of the 3rd, '73.

Q3 And your address?

A 20 Morgan Avenue, Tumbi Umbi.

Q4 And your occupation?

A Boat management and maintenance.

Q5 O.K. Darren, would you please like to read a statement prior to continuing on with this interview, please?

A This statement made by me accurately sets out the evidence which I would be prepared if necessary to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe is true.

Q6 And your age?

A I'm 26 years of age.

Q7 O.K. And do you agree with that?

A I agree.

Q8 O.K. And I'll show you two documents, interviews that we conducted with you previously, the first being on the 7th of January, 1998 - - -

A Yeah.

Q8 - - - and the second here on the 3rd of March, 1999.

A Yeah.

Q9 Do you agree that they are statements that we, we had with you and you agree with everything that you said in, in those statements?

A I do.

Q10 O.K.

A They're both mine, yeah.

Q11 O.K. Right. Darren, as I explained to you prior to the interview, I've got you back here to talk to you today about the Sword of Orion and the involvement again in the Sydney to Hobart Yacht Race.

A O.K.

Q12 And previously you agreed that you were a, a crew member on that yacht?

A That's correct.

Q13 And at the particular time you were on board during the race and Glyn Charles was lost over the side.

A That's correct.

Q14 O.K. And you were on deck with him at that particular time?

A That's correct.

Q15 O.K. Darren, I'd just like to talk to you about an incident which occurred just after the start or just

prior to the start, where the Sword of Orion had a collision with the vessel, Nokia.

A Yeah.

Q16 Is that correct?

A Yeah, it did.

Q17 Right. What can you tell me about that?

A Well, what do you need to know? I mean - - -

Q18 Well, you agree that there was a collision?

A There was a collision, yeah.

Q19 O.K. And there was some damage occasioned?

A There was some damage done to the starboard side of our boat, yes.

Q20 What can you tell me about that damage?

A Damage was done more in the way of bent stanchions, the bow rail was broken off. As the wire was pulled taut by the other boat, it lifted the front of the bow rail off. And the back starboard rail was actually punched through the deck, a hole was made in the deck where all that, where they ran into us.

Q21 So the whole bow rail was taken off?

A No, just the front leg was lifted off the deck - - -

Q22 Was - - -

A - - - and the two back legs were still fixed on.

Q23 Right. Was that repairable?

A It was, yes.

Q24 And did you effect those repairs?

A I did.

Q25 O.K. Now you said that the aft portside stanchion - -
-

A Starboard side.

Q25 - - - starboard side stanchions - - -

A Yeah.

Q25 - - - O.K. were damaged?

A Yeah.

Q26 And you effected those repairs?

A The stanchions were actually bent so it was a matter of trying to straighten them as best I could, which I could only do by hand, they didn't have a presser or a vice or anything like that. So they weren't perfect, but they were in working order and the back, the back rail that was actually punched through the deck, one of the legs was put, punctured through the deck, I cut a ply pad from a bunk top I had downstairs which sealed the deck and also made that strong again. And that effected that repair.

Q27 So it was a piece of ply that you put in where the, where the punch was?

A A piece of ply and also a piece of perspex just to give it some strength and, and, and get the right height.

Q28 O.K. Now whereabouts, you effected those repairs whilst you were, whilst the boat was proceeding?

A We actually after the damage was done continued to race down the harbour and out to the sea mark. Once we rounded the sea mark and set the spinnaker and things

settled down on the boat, I spent probably 3 or 4 hours of the first afternoon doing these repairs.

Q29 O.K. When you effected those repairs to the, to the starboard side - - -

A Mmm.

Q29 - - - where the rails was punctured through the hull, was there any other structural damage to the boat?

A There was a big scratch from the starboard quarter to about, about 3 metres along the side of the boat which was where the hull and the deck meet the gunnel. It appeared to be nothing structural, just a cosmetic paint scratch. and the only damage that was, the only structural damage was the one hole in the back of the boat where the rail went through and punched a hole in the deck which is, was glass with a, a layer of foam which is about 15 or 20 ml thick, underneath that's another layer of glass. Well, inside the boat that glass had actually delaminated because it didn't actually pierce, it was pushed away from the foam, so it didn't actually leave a hole, it was just pushed away from the foam which just delaminated, that was the only damage.

Q30 How far would that delamination occur in the area of the stanchion?

A I guess in a 3, oh, 4 to 5 inch diameter of the stanchion.

Q31 O.K.

A The hole that was in the deck was probably 2 and a half, 3 inch diameter.

Q32 Basically the size of the pad on the bottom of the stanchion?

A A little bigger, yeah.

Q33 A little bigger?

A Mmm.

Q34 O.K. Now you say that there was a large scratch down the starboard side - - -

A Mmm.

Q34 - - - where the deck met the hull.

A Mmm.

Q35 From the best of your recollection, it didn't appear that any delamination occurred there between the hull and the deck?

A That's correct. I didn't see any, I didn't, tapping it there didn't feel, hear to be any. Everything sounded solid, there was no hollowness to it.

Q36 Could that have been possible, that there was some sort of delamination there between the deck and the hull?

A In my opinion it was pretty unlikely.

Q37 O.K. And as far as that's concerned, you've been working on boats, just to clarify that, for, for a number of years?

A I've been working around boats, not full time and as nothing particular, pretty much all my life. My father's a shipwright, built boats with him, always been around boats so I know a bit about it, be it that

I'm not qualified as a boat builder or anything else like that.

Q38 O.K. So you effected those repairs and, and then continued racing?

A That's correct. Well, we'd never stopped racing, so yeah.

Q39 O.K. What can you tell me about a reported crease in the mast?

A O.K. On the portside of the mast about 1 and a half metres from the boom, which is about 2 and a half metres off the deck, there was a slight, ever so slight little bump on the side of the mast which hadn't been noticed before, and I do quite a lot of checking and maintenance of everything so I know everything's in good order. After the incident with the Nokia and checking, 'cause we, we thought our mast touched theirs, checking everything, it looked right except for that little bump on the side of the mast which, from my memory, wasn't there before. This bump was probably, gee, to, for someone to look at it, probably wouldn't have seen it but I, I noticed it and it wasn't huge.

Q40 Did you shimmy the mast to check it?

A Yeah.

Q41 And you went right up close to it - - -

A Yeah.

Q41 - - - and ran your hand over it?

A I was right beside it and I could feel the bump, yeah.

Q42 O.K. And what did you report then back to the master of the vessel who was Rob Kothe, I believe, Rob Kothe?

A He's the owner of the boat, yeah.

Q43 Yeah. What did you report to him?

A I said to him, There's a bump here that I didn't think was here before. So then he looked at it and I think Glyn looked at it too. A few of the boys looked at it just to, for the hell of looking at it and - - -

Q44 Yeah.

A - - - wondering what they thought the damage was.

Q45 Yeah.

A And they all assumed, we all imagined it was all right, which it was.

Q46 O.K. You wouldn't confuse it, the bump, as you call it - - -

A Mmm.

Q46 - - - as a normal wear mark on the, on the, on the, on the mast?

A No. No.

Q47 So it's quite a distinct bump - - -

A It was - - -

Q47 - - - in the mast?

A Yeah. Definitely. I mean it wasn't a scratch or a bump from something else. The only way it could get there, I mean it wasn't a bump in as if someone's hit it with a hammer and dented it, it was a bump out, which it's obviously been compressed and popped out somehow.

Q48 Do you believe that could have occurred as a result of the incident with Nokia?

A In, yeah, but the only thing I see against it is that there was no other damage to any of the rigging on the starboard side of the boat which was what touched, we thought touched their boat. So for that bump to have happened there, then I would have thought there would have been damage on the other side of the boat, which there wasn't.

Q49 Could that have occurred through strain on rigging causing that, do you think?

A Well, that, where it actually creased was nowhere near any rigging, it was sort of a standard section of the mast. There was nothing actually around it, just a blank part of the mast.

Q50 I think what I'm trying to say here is that, as a result of stress anywhere - - -

A Mmm.

Q50 - - - in the rigging, do you believe that that could have resulted from that, knowing that the mast was in good condition prior to starting the race?

A Yeah. It could have, yeah, definitely.

Q51 O.K. Was there any conversation between you and the, and the crew and the owner, Mr Kothe, about concerns for the structural integrity of the hull and also the rigging?

A There were talks about what damage had been done and there were talks about was it structurally sound, and

after assessing the damage and fixing the damage and, and going over it quite thoroughly, the decision was made that it was sound.

Q52 Do you recall Mr Kothe or have you any knowledge of Mr Kothe sending an e-mail to the C.Y.C.A. after the incident - - -

A Um - - -

Q52 - - - with the Nokia?

A The first afternoon of the race he sent an e-mail off, yeah.

Q53 Do you know the content of that e-mail?

A No, I don't.

Q54 O.K.

A Actually, I remember him saying something about, I think there was dolphins involved in it for some reason, he'd wrote something about dolphins, I don't know. Anyway - - -

Q55 Dolphins in the e-mail?

A Yeah. There were dolphins with us and we were cruisin' down the coast quite happily after what had happened, I think that was all I can remember from him telling me about it.

Q56 O.K. All right. Now I apologise for taking you back over this particular incident, because I believe, you know, like, it's, it's not something that you like to have reminded to you, but it, it's the incident where Glyn Charles was washed over the side and you were on

deck, and you were the only person on deck with him at the time.

A Yeah. That's right.

Q57 O.K. Now as a result of, I believe from Mr Kothe telling us that the boom vang had failed to work, was there a problem with the boom vang?

A Earlier in the day we pulled the mainsail down 'cause there was too much wind and the mainsail was lashed to the boom. Well, the mainsail full of water is quite heavy and I'm not sure how it happened, whether someone wound the mainsheet on too hard, but the boom vang actually, the strut, the alloy strut which holds it up off the deck, actually creased and, and folded and broke, which meant that the boom was then sitting on the deck.

Q58 O.K. And as a result of that you secured the, the tip of the boom to the deck?

A I lashed, not the tip of the boom, but I lashed the boom to a strong point on the deck.

Q59 Was that on the port or starboard side?

A Starboard side.

Q60 On the starboard side. The vessel then rolled with you both on deck. Now as a result of, as a result of the roll, the, the boom dislodged itself from the starboard side of the deck.

A Mmm.

Q61 Is that correct?

A That's right.

Q62 And it in fact came in contact with the wheel?

A That's correct.

Q63 To the best of your recollection, do you recall where Glyn Charles was at that particular time?

A He was sitting one leg either side of the wheel.

Q64 On the port side or starboard side?

A On the port side of the boat.

Q65 So it was opposite to the side where the, where the boom come away?

A Mmm.

Q66 O.K. And as a result of the boom striking the wheel, was that correct from remembering - - -

A Yeah.

Q66 - - - from what you told us before - - -

A Yeah.

Q66 - - - it damaged - - -

A It ripped, it broke the wheel - - -

Q67 Yeah.

A - - - like, it sheared the wheel off basically.

Q68 O.K. And you only noticed this, of course, after the vessel came upright again?

A That's correct.

Q69 O.K. And then Glyn Charles was missing?

A That's right.

Q70 Right. Darren, I, I want to ask you specifically did you see Glyn Charles get hit by the boom?

A No, I did not see him get hit by the boom. I assumed that's what happened.

Q71 O.K. All right then. All right. Well, that's, I won't ask you any more about that at this stage. After you coming back upright, where you lashed the boom to the starboard side of the deck, to a hard point on the deck, did you assess that there may have been some damage from where the boom came away from that starboard side of the deck that wasn't there before?

A Not actually in, in that one spot, because from the starboard quarter to the cabin the deck had all been torn off the hull on that side of the boat. So to see one little bit of damage, I didn't take particular notice of that, but all I can remember is that all of that side of the boat was severely damaged.

Q72 Where the boom was affixed to?

A It was fixed to part of that part, yeah.

Q73 Where you, you tied the boom to a, to that hard point -
- -

A Mmm.

Q73 - - - or to a strong point on the deck, was that part damaged?

A Yeah. It was all, yeah.

Q74 Right - - -

A I had tied it to the stanchion base, which was through bolted, and that's on the gunnel join. Well, that gunnel join had all been torn open.

Q75 O.K.

A From the quarter right through to the cabin.

Q76 O.K. Now in hindsight do you think, and knowing that you're, you're not a boat builder or, but you do have knowledge of - - -

A Mmm.

Q76 - - - of boat building, do you feel that the weakening, or there was a weakening, now in hindsight, of that part of the hull and where you think it may have allowed the deck to come undone, from the collision with the Nokia?

A I don't think so.

Q77 You don't think so?

A No. Because the bump that they actually gave us was not a, a, a forced hit, it was a, like a, a rub along the side of the boat.

Q78 Right.

A It was just like a graze along the side of the boat, it wasn't actually, it was like running the wheel of your car into the gutter, it's, you didn't actually drive into the gutter, you just rubbed, scraped it along the gutter.

Q79 Right.

A So there was not actually a force.

Q80 Do you know the weight of the, of the Sword of Orion?

A It was about 8 tonne.

Q81 8 tonne. Can you describe the Nokia to me?

A A boat of twice the size and in, I'd be guessing she would weigh about 20 tonne.

Q82 All right. And both boats were moving at the time?

A Yeah. The Nokia's ever so, well, a little quicker than what we were.

Q83 What speed do you think you were moving

A Probably 1 knot maybe, 1 and a half knots.

Q84 At the time of the collision?

A Yeah.

Q85 And the Nokia was travelling at what, do you estimate?

A Probably about 2 knots.

Q86 Right.

A Not even that.

Q87 So - - -

A It was a little faster.

Q88 So is it feasible that there could have been some structural damage without you knowing?

A Oh, more than likely, yeah.

Q89 Yeah. So then, getting back to that, there could have been a chance that the starboard side may have been damaged at that particular impact and then, when you tied the boom on it at the time of, at the time of the roll over - - -

A Before the roll over, yeah.

Q90 Or before the roll over - - -

A Mmm.

Q90 - - - that it really, there, there could have been damage there that you hadn't seen or you couldn't see?

A I don't believe there was damage there.

Q91 O.K. All right then. Now just changing to a, a different subject now, as far as that's concerned, you worked for Rob Kothe?

A At the time of the incident?

Q92 Well, were you an employee of Rob Kothe right up to the race?

A No.

Q93 Right. How, can you, can you, do you deem yourself to be an employee of Rob Kothe?

A No.

Q94 Right. What can you tell me about that?

A I work for him as a sub-, sub-contractor. I do work for him and then I give him an invoice each month.

Q95 O.K. What was that, what would be that monthly invoice for the amount of work and the hours that you would work?

A The amount of it or - - -

Q96 Yes.

A On average about 3 and a half, \$4,000.00 a month.

Q97 Right. And on that invoice then you were paid? You - - -

A I get paid through his firm, yeah.

Q98 Right. And how do you receive payment?

A He gives me a cheque or sometimes debits the money, puts the money straight into my account.

Q99 Is that a personal cheque from Rob Kothe or is it a business cheque?

A It's made to me, I don't have a company name or a, so it's made out to my name.

Q100 O.K. Can you recall whether the cheques that Mr Kothe give you are business cheques or personal cheques?

A They're business cheques from Tetra Industries or Tetra Australia, whatever, his firm name.

Q101 And when you issue a, when you issue your invoice do you, do you invoice that to Tetra or - - -

A I invoice that to Tetra Australia.

Q102 O.K. And which is a company Mr Kothe owns?

A That's correct.

Q103 Now how, prior to the race, how long had you been working for him?

A I started work for Rob, Rob, end of September.

Q104 Of last year?

A Of last year, sorry, yeah.

Q105 O.K. And what were your duties?

A My duties were to do maintenance on the boat, basically just do maintenance on the boat and keep it clean and tidy.

Q106 Right. Were you given duties to do anything else?

A No. Just make sure the boat was clean and tidy and, and everything was maintained and, and, and get it ready for the Hobart race, all but provisioning.

Q107 All right. Who, who do you believe was your immediate supervisor?

A Rob Kothe.

Q108 Right. And he did that on a regular basis?

A In respect of what?

Q109 To coming down and checking the work that you'd done and agreeing with what you'd been doing - - -

A Well - - -

Q109 - - - and giving you other instructions?

A Yeah, he did, yeah, yeah.

Q110 Now are you still an employee of Rob Kothe?

A No.

Q111 Do you still invoice - - -

A Yeah, I do.

Q111 - - - Mr Kothe?

A Yeah.

Q112 Right. When did, prior to the race you were invoicing Mr Kothe - - -

A Tetra Australia, yeah.

Q113 Tetra Australia.

A Yeah.

Q114 Was part of your duties to enter the race and race with Mr Kothe?

A No. No.

Q115 When did you stop invoicing Mr Kothe?

A I worked on his boat from Monday to Fridays. If I spent a full day, sometimes it would be 2 or 3 days a week. As far as going sailing, which was what I did for sport before I started work with Rob, we left it at that. So to do a weekend sailing or anything like that, or the Hobart race, I didn't get paid for that.

Q116 O.K. So when did you recommence invoicing Mr Kothe?

A After the Hobart or - - -

Q117 Well, you say you, you stopped invoicing Mr Kothe, what, what day did you stop invoicing Mr Kothe?

A Off the top of me head?

Q118 Off the top of your head, I - - -

A I guess - - -

Q119 I apologise I didn't give you - - -

A I guess the last working day before Christmas which was, I don't know, a Thursday or a Friday, whatever, I don't know.

Q120 O.K. And then when did you recommence invoicing Mr Kothe?

A I recommenced in January, we got back and started sorting out the insurance claim for the boat.

Q121 O.K. Prior to going to Hobart, did you make any arrangements with Mr Kothe, with Mr Kothe for your accommodation and/or airfares?

A I had no airfares 'cause I was delivering the boat back from the Hobart, and as far as accommodation goes, Rob had a room or two rooms booked in a hotel, I think, somewhere which the crew were going to stay in.

Q122 As part of entering the Sydney to Hobart Yacht Race this year, did you make an arrangement with Mr Kothe to supply you with any equipment to conduct the race?

A As what, as far as clothing or - - -

Q123 As personal - - -

A No.

Q123 - - - sailing gear?

A No, I didn't.

Q124 You had your own?

A I have my own.

Q125 Did you receive any sponsorship at all prior to the Sydney to Hobart Yacht Race?

A Me personally?

Q126 Yes.

A No.

Q127 Did the crew as a whole receive any sponsorship as far as the Sydney to Hobart Yacht Race?

A The only sponsorship I could think would be a, a hat or a shirt, that would be it.

Q128 You didn't receive any other clothing or anything like that as a result of - - -

A No.

Q128 - - - going in it?

A A shirt.

Q129 O.K. And you had to buy everything else yourself?

A (NO AUDIBLE REPLY)

Q130 All right. Darren, is there anything else now you can think of that you would, you can add to this that would assist us, that would assist me with the, with my inquiries? Have you anything further to say?

A In regards to what we've just talked about, no, and, and anything else, not really, no, no. That's it.

Q131 O.K. All right. The, the time on my watch is now 11.54am. This interview is now concluded.

INTERVIEW CONCLUDED