

SENIOR CONSTABLE UPSTON

Q1 This is an electronically recorded interview between Senior Constable David Upston of the Sydney Water Police and Robert Matthews on Tuesday, the 16th of March, 1999 at Launceston CIB. The time on my watch is now 9.23. And also present in the room is Detective Senior Constable Gray from Bega Detectives. Mr Matthews, just prior to the commencement of the interview, do you agree that we discussed certain things in relation to the matter and why you're here today?

A Yes.

Q2 O.K. For the purpose also of the interview, would you like to please state your full name?

A Robert Clive Matthews.

Q3 Your date of birth?

A 24th of the 8th, 1952.

Q4 And your address?

A 27 Ecclestone Road, Riverside, Launceston.

Q5 And your occupation?

A I'm a public servant with the housing department, state housing department.

Q6 O.K. And do you also agree that you spoke with Detective Senior Constable Gray last at Eden on the 27th of December, 1998?

A 28th.

Q7 Correction, the 28th. O.K. With the Sydney to Hobart Yacht Race there's certain requirements that the, the

yacht owner, prior to commencement of the race, must supply documents and that's in relation to different categories. Are you aware of what the categories are?

A The race categories, the safety categories?

Q8 Yes.

A Yes.

Q9 O.K. Could you just explain those to me?

A In the new blue book I think that there's, I can't remember how many categories, but the Sydney, Hobart sailed under category 1 safety regulations.

Q10 O.K, and category one, what would that indicate to you?

A That indicates to me that it's a, a race sailed a long way offshore and you've got to be capable of pretty well looking after yourself.

Q11 O.K. There's also a, a stability rating for that category 1 race and I'll show you a document here, Offshore Racing Council international measuring system, IMS regulations, 1998 and I'll draw your attention to page 3, and part 2, limits and exclusions and do you agree that on page 3 of this document it shows the minimum stability indexes for ORC races, which is offshore racing council races, for 0, 1 and 2 categories?

A Yes.

Q12 And under category 1 the minimum stability index is 115 degrees, is that correct?

A Yes, that's correct.

Q13 O.K, so would it be fair to say that the CYC have set

certain limitations for vessels under category 1 races and which is 115 degrees with a minimum stability rating?

A Yeah, it's, the way that reads, yes.

Q14 O.K. I'll show you a document here, notice of race 1998, Telstra Sydney to Hobart Yacht Race, Telstra Cup, Cruising Yacht Club of Australia, and I draw your attention to section 6.2.2 for IMS categories, and I will draw your attention now to section B of that section, comply with minimum stability index for ORC racing category for events IMS regulation 201 refers.

A Yes.

Q15 Which is the document I previously showed you.

A Right.

Q16 O.K. So, what is that, that's saying, is it fair to say that under IMS categories that the race of the Sydney to Hobart Yacht Race for IMS categories, that in fact the stability index - - -

A Should have been 115 - - -

Q17 Should have been 115 degrees?

A Yes.

Q18 O.K. There are other categories that we'll go into a bit later on. I'll show you a document now which ..... IMS rating certificate number 71150 also mentioning that it's not valid after the 30th of the 6th, '99.

A Yes.

Q19 So this certificate is still valid, is that correct?

A That's correct.

Q20 O.K, and the certificate is for the vessel, Naiad, is that correct?

A It is.

Q21 O.K, I'll draw your attention to a section where it says limits of, limits and regulations and the stability index of the vessel, Naiad, is 102.8, is that correct?

A That's correct.

Q22 O.K, and I'll also draw your attention to calculated limit of positive stability and it mentions the figures 104.7, is that correct?

A Yes, yes.

Q23 O.K. Would it be fair to say that these two figures, or ranges, are under 110, under 115 degrees?

A Yes. Yes.

Q24 And I draw, I'm led to believe that his is the certificate that, in fact, was produced by Mr Bruce Guy for his entry into the Sydney to Hobart Yacht Race, 1998.

A I believe it is, yes.

Q25 O.K. And I'm led to believe also that under this certificate that the yacht was accepted.

A It was, yes.

Q26 What have you got to say to that?

A Well, to me it, the stability is below the requirement and it probably shouldn't have been accepted as an entry.

Q27 O.K. Were you aware of this stability certificate and

its figures prior to commencement of the race?

A No, I wasn't. I found out after the race that, that, this is only heresy, but I was told that Bruce believed the figure had been lowered to 103.

Q28 O.K, I'll draw your attention now to a section for PHS category in the notice of race, 1998, section 6.2.3 under section B, "These yachts must have a stability index of a limit of positive stability, whichever is greater, of not less than 103 degrees", is that correct?

A Yes, that's correct.

Q29 And would it be fair to say that that statement is saying that a stability index will not be created if it has a stability index of not greater than 103 degrees?

A Yes, I'd agree with that.

Q30 O.K. You have a fairly extensive knowledge of the race rules? You've been a sailor for some time, how long have you been sailing?

A About 30 years.

Q31 O.K. And in a racing ability?

A Yes.

Q32 O.K. And are you aware, correction, I'll rephrase that. How long have you been sailing on the Business Post Naiad?

A Two seasons.

Q33 O.K, and how did you come to sail on that?

A I've known Bruce for around about, probably the whole 30 years that I've been sailing.

Q34            Yeah.

A             He started off with our club in dinghies in the same time as I did, slightly bigger dinghies, we just progressed up through the bigger boats.

Q35           Right. And you've sailed with Bruce on a number of occasions well before the Business Post Naiad?

A             Yes, yes, he sailed with me before on boats that I've had.

Q36           O.K. Were you present at the time when Bruce purchased his boat, correction, I'll rephrase that. Were you sailing on the boat shortly after Bruce purchased it at all?

A             No. No.

Q37           O.K. So you've sort of been in, would it be fair to say that you've been sailing for about two years on the boat and the boat is, how old, approximately?

A             I think it was about 1986, somewhere around there it was built.

Q38           O.K.

A             '84.

Q39           All right. Since sailing on the Business Post Naiad and various races, are you aware of any alterations have been made to the boat?

A             Since the Sydney Hobart I was told that Bruce had apparently removed some lead from the bilge of the boat to optimise it to the IMS.

Q40           O.K. So removal of lead from the vessel, what would that, in fact, do?

-

A Reduce the stability.

Q41 All right. And do you know who told you about that?

A No, I can't recall.

Q42 O.K. All right. Do you know where that lead might be?

A No, I don't.

Q43 O.K.

A I would assume it would be at Bruce's place.

Q44 O.K.

DETECTIVE SENIOR CONSTABLE GRAY

Q45 Rob, did Bruce ever discuss the removal of lead to you,  
I mean, had you - - -

A No, he didn't.

Q46 How would you have become aware of that?

A Somebody, probably one of the crew, it may have been  
Steve, mentioned it after, it may have even been while  
we were at Eden.

Q47 Right.

A He made a few comments, that perhaps the boat would've  
been more stable if that lead hadn't been removed, but  
we were all still on the assumption that provided it  
passed the stability factor for the IMS, that we  
complied and we were racing a safe boat.

Q48 Does that surprise you, that IMS stability rating?  
..... in hindsight now?

A Well, not being a mathematician, I don't know exactly  
what that stability index means, all I know is that  
there's a figure that designers and everybody works to  
to get the boat down to the absolute maximum so it will

go fastest for its size, so that you can win under IMS, and that's what it's all about. If I'd looked at that prior to Christmas and seen it at 102 I would've probably commented and said I thought that the stability factor, stability index was 115, to which I probably would've been told no, it's been dropped to 103, but I didn't ask that question prior to Christmas.

Q49 So do you think there's been, there's been a possible misinterpretation of that PHS that David just showed you in that ..... so far as 103 is concerned?

A Well - - -

Q50 I mean this document you've shown us here - - -

A - - - reading, reading that, Bruce's boat has still got to comply with the PHS division. If they had knocked him back for the IMS division, he would've complied with the PHS because it's above 103.

Q51 No, that, the way that that's interpreted, as I said to you before, basically that a certificate should not be issued less than 103, O.K?

A Mm.

Q52 But the rules still apply so far as 115 and 110, and if you look at this book here, the offshore racing council book, here - - -

A Yes.

Q52 - - - there is nothing which is near 103.

A No, no, there's not.

Q53 So I think it's a possibility that Bruce has



misinterpreted that as being a minimum.

A Yes.

Q54 And when you look at that in hindsight, when you look at that now and read it, that may sort of make sense to you.

A Especially when it's in, in the notice of race for the Sydney Hobart that it says not less than 103 degrees for a PHS.

Q55 Yeah. So that's badly written, part B.

A Mm.

Q56 If you look at it here, where you've got it in this particular document here, "A yacht shall not be issued".

A Yes.

Q57 See it doesn't say that there, it says these yachts must have a stability index or limit. Dave will just show you - - -

A That means that they, that, to me, would mean that they will accept boats - - -

Q58 103.

A - - - at 103 for PHS, so if they'd knocked him back for IMS, they still would've accepted, would've been able to accept him for PHS, that's the way I read that.

SENIOR CONSTABLE UPSTON

Q59 Let me show you, and it should have been fairer to show this to you earlier.

A Mm.

Q60 You understand the terminology of grandfathering?

A Roughly, yes.

Q61 O.K. What's your understanding of that?

A If they changed a rule, for instance today, they wouldn't necessarily knock out the boats that were built five years ago, they would grandfather them in so that, within say five years or whatever time limit they put on it, they would have to comply.

Q62 O.K. That's right. It means, that's exactly right, but it means that a vessel without a valid IMS stability rating or under the old IOR certificates, under the old, under the older classifications, that didn't perform or didn't have a stability index of 115 degrees, they can, in fact, be looked at if they've been a proven racer..

A Yes.

Q63 Over those and brought into that category. Now let me, let me draw your attention now to the notice of race 1998, section 6.1.7, grandfathering, and I'll read this paragraph to you, and "Grandfathering is what yachts which have been accepted for entry into previous Sydney to Hobart races, which do not comply with the stability index of 6.1.4, section C" - - -

A Mm.

Q63 - - - which relates back to the - - -

A 201.

Q63 - - - to 201.

A Yes.

Q64 O.K. "for IMS yachts of 6.1.5C for PHS yachts but have

-  
a stability index greater than 110 degrees", right, "may be eligible for entry provided no structural or ballast alterations have been made that would reduce the yacht stability", O.K, then it goes on and says, "The race committee will be the sole judge as to the eligibility of a yacht subject to this notice", O.K, so that's saying there is that under the, under section 201, that category 2 yachts have a stability index of not less than 110 degrees. Do you agree with that?

A Yes.

Q65 So they've accepted this under grandfathering, that there's 110 degrees.

A Mm.

Q66 And yachts under 110 degrees, under PHS category, will not be allowed.

A Right.

Q67 So, clearly, would it be fair to say that the Business Post Naiad, under the stability rating that's been issued, the stability form that's been issued, is still under 110 degrees?

A It's still under 110 degrees, yes.

Q68 And what have you got to say about that?

A I can say that there's a bit of confusion in the, in the notice of race. I'd say that, that - - -

Q69 Who had the confusion, that, maybe Bruce has had the confusion?

A Well - - -

Q70 And he's -?

A Not having been involved in the, in the measurement process with Bruce, I, I really don't know.

Q71 O.K.

A It looks to me like he's, he's read certain documents where it said 103 and he's optimised the boat down to 103.

Q72 Yeah.

A And clearly it shouldn't have been accepted.

Q73 Yeah. O.K.

A But they have accepted it.

Q74 Yes, O.K.

DETECTIVE SENIOR CONSTABLE GRAY

Q75 Just one thing, Rob, prior to the race, I don't recall whether David asked this, but prior to the race, were you aware of the stability rating of that vessel?

A No. No, I wasn't aware that it was 103, I, I was still under the assumption that it was 115, the last boat that I did a Hobart on was Mirrabooka and that was 115 because I can remember talking about it, it might have even been higher than that and they wanted to get it down to 115 to optimise it.

Q76 Is it the case that you're aware of, that the owner or skipper regularly talks about the, the stability index of the vessels before a race?

A No, it's not something that's talked about.

Q77 Yeah.

A You, you'd assume that, well I assume, which is a bad choice of word I know, that the, the yacht's designer

would jump up and down if he knew that the IMS regulations would allow one of his yachts that had been designed to be a lot stiffer, could probably be modified to come down to that, that stability, and perhaps he should be saying I don't think that it's safe to race in a, in a Far 40 with a stability factor below 115, 110, but the designer is probably not aware that it's down to 103.

SENIOR CONSTABLE UPSTON

Q78 If you'll bear with me for one moment I'll show you another document.

A This was my copy of the IMS certificate too, I don't know whether it's exactly the same.

Q79 Yeah.

A There were two - - -

Q80 Yes.

A - - - that were close to another ..... pulled the mast out. I know that Bruce was very meticulous about the way he wanted to optimise the boat so, he was so very careful about everything.

Q81 Just bear with me for one moment, I wish to show you a document where the stability index, would you agree that the previous name for the vessel was Swuzzle Bubble - - -

A Swuzzle Bubble VI, or Swuzzle Bubble IX. Swuzzle Bubble VI, yes.

Q82 Now, O.K, and that Swuzzle Bubble is spelt S-W-U-Z-Z-L-E, B-U-B-B-L-E?

A Yes.

Q83 And would you be aware that the previous stability index of that vessel was in excess of 120 degrees?

A No. No, I wouldn't. I would've assumed it had been optimised down to the 115 by a previous owner. They all try and get down to these minimum factors to get the, the rating down.

Q84 O.K.

DETECTIVE SENIOR CONSTABLE GRAY

Q85 Had you have known that the category 1 minimum requirement for Sydney to Hobart or stability index was 115, if you had been aware that the actual IMS rating stability rating ..... was 102.8, would you have gone in that race?

A I - - -

Q86 On that boat?

A No. The short answer is no, but, yeah, yeah, I rely on mathematicians and things like that, like the rest of the crew obviously did and we assumed that even 103 would've been safe, it certainly sounded a big drop from 115 down to 103 to me, but -

Q87 I, I'll draw your attention to the document I've just found, after going through.

A Yes.

Q88 On the certificate issued, which is not valid after 1996 for the Business Post, for the vessel Naiad, also known as Business Post Naiad, with a stability index of 143 and a calculated limit of positive stability of 146

decimal 4 degrees.

A It's amazing. The, the only thing I'd say to that is I, again, I've been told this secondhand is that the, the rule has been rejigged, is what I've been told and that to bring it in at the same level they change the stability index requirements, but that was only heresy, I'd never seen anything written or Bruce hadn't told me or Richard Fisher hadn't told me, nobody told me. I just assumed that what I was being told was reasonably true but it may not have been the case, yeah, in hindsight I'd say that no I wouldn't have done the race, I don't like, I don't break the rules to start with, so, no I would've said to Bruce, we're below the stability factor, I'm surprised someone didn't bring it to our attention.

SENIOR CONSTABLE UPSTON

Q89 O.K. Rob, is there anything else you'd like to say or add to the interview prior to conclusion? Feel free to say anything you like about the race, the way it was conducted, perhaps, any safety issues you'd like to raise.

A All the safety issues I'm bringing up with the Cruising Yacht Club but certainly I might bring this up with them too.

Q90 O.K. The time on my watch is now 9.47. This interview is now concluded.

INTERVIEW CONCLUDED