

SENIOR CONSTABLE UPSTON

Q1 This is an electronic record of interview between Senior Constable David Upston of the New South Wales Water Police and Malcolm Francis on Saturday, the 31st of the 7th, '99 at the Adelaide CIB. The time on my watch is now 5.40pm. And also present and seated directly to my left is Detective Senior Constable Rob Beatie from the Adelaide CIB. Jasper, for the purpose of the interview, would you like to, correction, Malcolm, for the purpose of the interview, would you like to state your full name?

A Malcolm John Francis.

Q2 And your date of birth?

A 30th of the 6th, '66.

Q3 And your address?

A 15 Tiller Drive, Seaford.

Q4 And your occupation?

A I'm the manager of a recruitment company.

Q5 And Malcolm, as I explained to you prior to the interview, would you please read that statement that I've just given you there?

A "This statement made by me accurately sets out the evidence which I will be prepared if necessary to give in court as a witness. This 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 to be true. I am

33 years of age".

Q6 O.K. And you agree with that?

A Yeah.

Q7 All right, Malcolm. Detective Beatie and I are here today, as I explained to you prior to the interview, to talk to you about the 1998 Sydney to Hobart Yacht Race. And as I explained to you, we are making inquiries and talking to people, either directly or indirectly, that have been involved in the race. And I understand that you sailed in the race on the yacht Renegade. Is that correct?

A Yeah.

Q8 And who owns Renegade?

A My dad, Bob Francis.

Q9 Right. And what position did you play in, as part of the crew on the vessel?

A I was in charge of the second watch.

Q10 The second watch?

A M'mm.

Q11 O.K. And what sort of sailing experience do you have?

A Been sailing since I was about 8 years old. Sailed cadet dinghies for approximately 10 years, then started sailing with dad and been sailing his boats ever since then.

Q12 O.K.

A So, that's from about the ages of 17 up till now.

Q13 And was this the first Sydney to Hobart Yacht Race that you've entered?

A No, that would have been my fifth.

Q14 O.K. So, you're quite experienced as far as that race is concerned?

A Yeah. I suppose you could call it that, yeah.

Q15 O.K. Now, can you just give me a brief outline on the style of the boat, Renegade?

A It's a 40, built in 1980, it's been extended a little bit, 42 foot now. Yeah, it was originally built as an IOR boat, racing yacht with a little bit of comfort in it, involved in it too. And, yeah, it's got a masthead rig and, yeah, she's a good tub.

Q16 A very strong boat?

A Too strong actually. The old man over-engineered it when he built it, put too big a mast in, you know, stronger deck than he was meant to and extra, you know, whatever we could put in extra to strengthen it, he threw it in.

Q17 Is that a good thing?

A Well, yeah, I think so, yeah, yeah. I've always been, you know, impressed with it's, you know, safety.

Q18 M'mm. All right. Now, you entered the Sydney to Hobart in an IMS division, is that correct?

A Yeah.

Q19 Can you recall what the stability index of the vessel is?

A No. I would not know. I'd leave that entirely up to the old man.

Q20 O.K. Now, what I'd like to do Malcolm, is take you to

a particular time after leaving Sydney Harbour and travelling down the coast and encountering a storm, as what we've discussed earlier. And also then your vessel was involved in a 360 degree roll over. Is that correct?

A Yeah.

Q21 O.K. What can you tell me about that roll over and what caused that?

A Well, I was below deck, so most of my information is, you know, second hand, although I could feel what was happening. Yeah, we went up a large wave, kind of got knocked on our side, which does tend to happen from time to time out there. Usually you sit straight back up after that and on this occasion we just kept bouncing down the face of this wave. And, yeah, after a while the, you know, the white water of the wave enveloped the boat and yeah, tossed us underneath.

Q22 So, the boat was upside down and you were in the cabin, is that correct?

A Yeah.

Q23 O.K. What happened to you whilst you were in the cabin?

A Well, I was probably the luckiest out of the lot. I was in one of the positions where you could brace yourself in quite well, I was on the windward side of the boat, hang on, was I? No, I was on the leeward side of the boat. So, I was at the bottom of everything when it all come and there wasn't really

much gear on top of me, so I missed all that. The blokes who were further forward in the main part of the cabin, they were the ones where, you know, they got thrown around the boat a little bit. And, yeah, gear just went flying everywhere, all over them. You know, so relatively speaking, I was, you know, in the best spot out of that. Once the boat was completely upside down, you know, we've tried to sort ourselves out, to find out what the hell was happening and realised that we were upside down. Yeah, and after that, I suppose, we were just, you know, you know, all the guys were starting to panic a bit then, you know, you know, I told them that, you know, the boat's self righting, so just hang on, you know, something's gunna happen soon enough. I suppose after a couple of minutes, yeah, the boat righted, you know, and out everyone popped and surprisingly enough somehow the old man was on the helm again already. And Jasper was hanging over the edge and Wayne, the other guy who was on the outside, who was climbing up the back of the boat. And, you know, everyone piled out, tried to lift Jasper out of the water and I couldn't do it. Then Wayne come and helped there, there was probably about three or four of us in the end, hauled him back over, got him onto the deck, you know, gave him a pump on the guts and on the chest and all the foam and spew come out and shortly after that he started breathing again, started turning from the colour of your shirt, blue, back into normal pink

kind of colour. And, yeah, we hustled him off down below.

Q24 O.K. Do you remember what time that was and what day that actually happened?

A It was Sunday, it would have been, I reckon when we got rolled over would have been around 4.30.

Q25 O.K. So, that would have been the 27th?

A Yeah.

Q26 Sunday, the 27th?

A Yeah.

Q27 At about 4.30pm?

A M'mm.

Q28 O.K. Now, just going back a little bit. You were in, you were in the cabin - - -

A M'mm.

Q28 - - - of the boat as it rolled over. Do you, prior to going out back on deck, and I understand that when the boat righted itself you were all called back onto deck to give assistance, is that right?

A No, not really called. We just - - -

Q29 You just rushed out?

A We just went out to see what was going on. Me dad was out there, so obviously I was frightened for him.

Q30 Yeah.

A You know, and the other guys were obviously also. But, yeah, you know, once we, you know, I was the first one to stick my head up and yeah, you know, the scene I was greeted with was blue Jasper hanging over the edge.

Q31 Blue Jasper?

A Yeah.

Q32 O.K. Now - - -

A Looked like a Smurf. You'll see what I mean when you see his beard.

Q33 Right, yes, I met him today.

A Have you? All right. Yeah.

Q34 Now, whilst, whilst you were in the cabin and you were upside down, was there anything you did or the rest of the crew did to try and assist with the righting of the boat?

A At that time no, no, not really. We were starting to think of things that we could do to try and help it, but, you know, 'cause we didn't know how the boat was aligned compared to the sea or the wind, we just weren't sure which way it was gunna turn up. And more or less as we were trying to think of things, you know, what we could do, she started coming good.

Q35 O.K. So, how long do you think that the boat was over on it's roof for?

A Two minutes, I reckon it would be.

Q36 About two minutes?

A Yeah.

Q37 No longer than that, you'd think?

A I wouldn't think, no.

Q38 Yeah. So, did you, and I'll just jump ahead now a minute, did you all get together at one particular stage and sort of think about timing and all that sort

of thing, as far as the time that the boat may have been over?

A Later on in the piece?

Q39 Yes.

A Yeah. There was a discussion, I suppose, and you know, everyone kind of threw in their piece, and I suppose we put it down the middle and drew the average of what everyone that was that, that time.

Q40 All right. Well, some have told me between two and three minutes, two to four minutes.

A Yeah. Well, you know, it was definitely two.

Q41 O.K. Yeah.

A No worries. It would have been more than two.

Q42 So, at the time you were over, you had time to think about what you were doing down below and, and you sort of gauged, how did you gauge that time?

A Pretty hard to gauge it actually. Couldn't tell you what I was gauging against, you know, just your normal body clock, I suppose, you know.

Q43 So, it could have been more or it could have been less than two minutes?

A It could have been more, yeah. It wouldn't have been less than two minutes though, I don't think.

Q44 O.K. All right. Now, let's come back up on deck, and you saw Jasper, blue Jasper as you put it.

A M'mm.

Q45 He was over the side?

A Yeah.

Q46 And you hauled him back on deck?

A M'mm.

Q47 Now, who attended to him first of all? After you, after you all pulled him back up, I'm talking about medically, as far as doing some sort of medical attention to him.

A I think that would have been Trevor McHugh, I think, was the first one who actually pumped his stomach and chest.

Q48 All right. So, can you recall what Trevor did? Did you, did, I know it may have been all very rushed, but can you recall what Trevor did?

A Yeah. You know, when we first got Jasper, you know, up on deck, he was lying flat on his back. Gave him a bit of a pump then and that's when he started spewing all the gear up.

Q49 When you say, "a bit of a pump", what do you, what did you do, or what happened, what did somebody do?

A The guys, you know, gave him a punch, not a punch, you know, a push on the stomach, you know, to try and pump the water out of him, and, you know, gave him a bit of a, you know, probably around the solar plexus area. Once all the fluid started coming out of him, you know, he was rolled on his side so he could get it all out comfortably, and, yeah, that was basically all that really happened.

Q50 Did anyone at all give him mouth to mouth resuscitation?

A No. There was, it was just about to happen, you know, that was, you know, and that happened within, I suppose he spewed all the gear out within 20 seconds of, of someone starting to, you know, to think what are we gunna do next to him.

Q51 Right. And I understand he had a cut on his forehead?

A Yeah. Yeah. He was bleeding from his head there.

Q52 All right. O.K. So, then, then - - -

A No-one was too concerned about that at that time.

Q53 No-one was too concerned about that - - -

A Not at that time, no.

Q54 Yeah. That's O.K. So, once that, somebody pressed on his stomach and round his solar plexus a few times, and he'd vomited a lot of sea water and the contents of his stomach.

A M'mm.

Q55 And then from what I understand, it wasn't necessary to give him mouth to mouth, but you were discussing that, is that right?

A Yes, it was mentioned, yeah. Someone did yell that out, yeah.

Q56 O.K. Well, then what happened to Jasper?

A Once he was breathing again and you know, he was, you know, not a well man, he was groaning and moaning and not fully awake, but he was breathing, so we were happy at that stage. Our first move was to get him down below. Went and threw him in the most comfortable bunk we thought was around, and, yeah, young Adrian there

comforted him for the rest of the trip.

Q57 M'mm. Could you see physically that he wasn't breathing, apart from the obvious colour?

A No. He had that much wet weather gear on, you couldn't really tell what was happening underneath.

Q58 But he was very blue?

A Yeah.

Q59 O.K. So, then you went back, you put him down below, and you what, you attended to normal duties as far as the boat was concerned?

A No, well, yeah, that was when we started concentrating, you know, we set Adrian aside to, you know, to keep talking to him and to keep him alive kind of thing, you know, alert us if there was any other problems. From there we started bailing the boat out, you know, tried starting the motor. That wouldn't go, you know, the boat was probably half full of water, you know, round, just below your hips kind of thing. Hit the bilge pumps, they weren't working because, well, they did work but they ceased to work because all the paper and plastic that was inside the boat just went straight in 'em and clogged 'em up. No time to try and fix things like that, so we bailed it out with buckets.

Q60 O.K. And then, after you've bailed it out, what did, what happened then?

A Well, that took - - -

Q61 Some time.

A - - - four or five hours to get it back to, you know,

a sailable kind of state, to how you'd, you know, be used to sailing. Yeah, we just soldiered on - - -

Q62 O.K.

A - - - back to Eden.

Q63 All right. Now, I've got a survey here that was sent to your father, I believe.

A M'mm.

Q64 And this survey's being conducted by the CYCA in regards to the 1998 Sydney to Hobart Yacht Race. And there were a number of things in the survey that I bring to your attention, that you, the Young Endeavour - - -

A Yeah.

Q64 - - - was seen about a mile and a half off the starboard beam.

A I was wondering when you'd get to that, yeah.

Q65 And you fired some red flares or some, it says here, "Fired one red flare, no response within 30 seconds, so fired one more red flare". And then it continues and says, "No response from Endeavour, which continued in a southerly direction". What are your thoughts on that?

A That's what I was a little confused over. I suppose in their defence, they had no way of contacting us, we had no radio. I've heard since that they were saying things over the radio, whether or not that's true I do not know.

Q66 Who did you hear that from?

A Who did I hear that from? One of the guys off Helsal, I think it was. They, yeah, well, yeah, they just kept cruising on by.

Q67 M'mm.

A Yeah. We were a little bit confused, you know, 'cause you know, you kind of expect, you know, help from others, but you know, prior to our problems, we did hear on the radio that, you know, other guys, their boats were falling to bits and rah, rah, rah. So, you know, we kind of thought that, you know, they were obviously off on something that they knew they had to attend to.

Q68 Could you see the Young Endeavour clearly?

A Clear enough, yeah.

Q69 Could you see people on deck?

A Very vaguely, I think we could, yeah.

Q70 And how long did you have the Young Endeavour in view for?

A 15, 20 minutes.

Q71 So, it was there for a considerable time?

A Yeah. Yeah. Yeah. No-one moves around too fast in those kind of conditions.

Q72 Yeah. O.K. Now, were they to the leeward side or were they to the windward side?

A They were to the windward side of us.

Q73 So, you had to look up into the wind and the rain and the spume and all that sort of stuff?

A Yeah.

Q74 And you could still see it quite clearly?

A Yeah. She's a big boat.

Q75 O.K. Now, after she sailed on by - - -

A M'mm.

Q75 - - - which obviously would have been rather distressing for you - - -

A Yeah. You know, we did have plans of trying to get Jasper the hell out of there and off to, you know, true medical attention, rather than just, you know, us guys.

Q76 Yeah. You then continued on, you sailed into Eden?

A M'mm. Yeah.

Q77 O.K. And then you called for assistance, I'm led to believe?

A Yeah.

Q78 By telephone?

A Yeah.

Q79 And some time after that the police came and, and took Jasper and a number of others off?

A Yeah. Jasper and dad.

Q80 All right. And they were, sought medical attention?

A M'mm.

Q81 And later on the boat was then trucked - - -

A Trucked back to Adelaide.

Q81 - - - to Adelaide?

A M'mm.

Q82 And that was about it.

A Yeah.

Q83 Now, have you ever heard from the CYC at all since that

race, or since starting the race?

A Besides this survey, which - - -

Q84 Yes.

A - - - you know, I was involved in that also, when that was filled out.

Q85 Right. You, so you assisted with the filling out of the survey?

A Yeah.

Q86 Yeah.

A No, I've had no contact whatsoever.

Q87 How do you feel about that?

A Fine, yeah, got no problems with that.

Q88 O.K.

A Wasn't really expecting to hear anything from them.

Q89 Right, O.K.

A Nor from you.

Q90 Right. Have you suffered any ill effects as a result of the roll over and perhaps the trauma that you went through at that particular time?

A No, no, nothing considerable anyway, you know. Obviously I think about it from time to time, of the things that transpired that day.

Q91 Yeah.

A But, yeah, no, nothing that's gunna be, you know, affecting me.

Q92 Right. That's good. Ron?

DETECTIVE SENIOR CONSTABLE BEATIE

No,

SENIOR CONSTABLE UPSTON

Q93 All right, then, Malcolm. Is there anything that you would like to add that you feel that would assist us further in, in any of our inquiries, that you feel as far as safety issues, the clubs concerns, your concerns?

A I just think that we should have fully encapsulated radios that are completely waterproof. That's all I really think that's one major thing that I felt that would have been nice if we could have still maintained radio contact no matter what.

Q94 O.K. Did you attend the weather briefing at the CYC prior to the race?

A Yeah.

Q95 What are your thoughts on that?

A I think they done as best as they could do. I actually went out and got all the same weather faxes 'cause I love the weather, I surf also here, so everything revolves around the weather for me.

Q96 Yeah.

A I actually said to the old man, "I reckon we're gunna get a good blow in on, you know, on the Sunday night". But, yeah, we weren't expecting anything along that nature though, you know, 40, 50 knots, you know, we've seen that out there before and, you know, that's, you know, not great, but you know, it's still livable.

Q97 Yeah. Right. So, you were quite happy with what you received from the, from the weather briefing and fully

expected basically what happened? Or was it, do you feel it was a little bit worse than what you expected?

A I don't think anyone could expect what happened.

Q98 Yeah.

A You know, there was a chain of events that, you know, just it all fell into the wrong place, I suppose, into place but not really into place, you know, I think that the set was one of the major contributors to the size of the waves there that day.

Q99 O.K. Now, just one more quick thing. The batteries that you had on board, were they dry cell or are they -?

A No, no, they're wet cell.

Q100 Wet cell batteries.

A M'mm.

Q101 Did you have a problem with the batteries at all?

A Well, in the end they actually started the engine, so, you know, really they, they held up and done the things that we had to do.

Q102 All right.

A 'Cause we actually got the engine started back in Eden, 'cause, have you spoken to Trevor yet?

Q103 No.

A No. You'll speak to him soon. He's a mechanic and yeah, he managed to, you know, play around with it for a few hours and get it up and going again.

Q104 Right.

A It didn't run nice, but it ran.

Q105 Mm. Did the batteries leak at all, as far as you're aware?

A Yes. That's what actually made me crook in the end, was the smell of the acid coming out and mixing with the sea water.

Q106 Right.

A Pulled the engine bay out and - (DEMONSTRATES AUDIBLY) - big dose of the fumes there and - - -

Q107 Yeah.

A - - - didn't feel too flash after that.

Q108 Yeah. Were you, did you suffer any seasickness at all?

A Yeah. Yeah. I do suffer from seasickness.

Q109 All right. Did you feel that that impaired any of your judgement?

A No, no. I only got seasick, you know, after the roll over, when the boat was about, I don't know, I suppose half, half bailed out. That's when I copped the dose of the fumes and yeah, after that I just did not feel that great, you know, I was sick a few times, but yeah, no more than I have been in the past anyway.

Q110 O.K. All right. All right. Well, is there, there's nothing else now you want to add? I think that just about covers everything that I need to ask.

A No, I'm happy. Yeah.

Q111 Just one more thing. Is anybody on board your boat an employee to go in the race? Are they paid to go in the race, like, for their expertise or anything like that?

A No.

Q112 No. O.K. All right. Thanks very much for that,
 Malcolm. The time on my watch is now 6.02pm. This
 interview is now concluded.

INTERVIEW CONCLUDED