



Meaghan Vass - the aftermath interview - published 26Mar2021 in Wrongful Convictions Report

BACKGROUND: 26Jan2009

When Bob Chappell disappeared from his and Sue Neill-Fraser's yacht the *Four Winds* at Sandy Bay overnight./on the evening of Australia Day 2009, it was not long before suspicion fell on Neill-Fraser who had been with him on the yacht that day. Yet there had been found on a walkway on the yacht a 'deposit' containing DNA which at the time couldn't be identified. In spite of the unidentified DNA, and not on the basis of direct evidence, Sue was arrested and charged with Bob's murder on 20Aug2009.

2010...

The following year, on 15Mar2010, the DNA was identified as belonging to a 'homeless girl', Meaghan Vass. Vass adamantly denied to police that she'd ever been on a yacht, Neill-Fraser remained in prison and eventually Neill-Fraser's trial took place. Vass had maintained the 'never

been on a yacht' account at the trial. It would prove to be Tasmania's first conviction based on circumstantial evidence. There were no witnesses to the crime. No direct evidence tied Neill-Fraser to Bob's disappearance. No body was ever found. No weapon was ever discovered and no credible motive was advanced in the case. Despite that and the DNA, Neill-Fraser was found guilty and returned to Risdon, where, at the time of writing, she is currently in the twelfth year of a 23 year prison sentence. An appeal to the Supreme Court failed and an application to appeal to the High Court was rejected.

2015

An amendment to the Criminal Code Act (1924) came into effect [[Criminal Code Amendment \(Second or Subsequent Appeal for Fresh and Compelling Evidence\) Act 2015](#)] on 2Nov2015 and before the end of that year, Neill-Fraser had filed an application seeking leave to make a **second** appeal. [At the time of writing (May2021), the 2nd Appeal has taken place and the Court has reserved its decision.]

2017

On 27Apr2017, Vass signed a statutory declaration to the effect that she had been on the yacht.

Later, as the first witness in a series of 'leave to appeal' application hearings (Nov2017-Feb2019), Vass, in court (30Oct2017), denied the truth of that declaration, saying that she had been threatened with being put in a car-boot (i.e. she would be killed?) if she didn't sign that stat. dec. [It is suggested by some that her repudiation of the stat. dec. came because of pressures from some whose interests lay in the conviction of Neill-Fraser being maintained.]

2019

Vass later reversed her leave-application-hearing evidence with an affidavit [25Feb2019] and an associated interview [screened 10Mar2019] on the 60 Minutes TV program in which she again said that she was on the yacht.

The affidavit was sufficient for Justice Brett to grant the application for a second Neill-Fraser appeal to take place, based on 'fresh and compelling evidence'. The potentially 'fresh and compelling evidence' seems to be what was contained in the affidavit, in which Vass had named two people who were on the boat with her. There was no doubt in Justice Brett's view that the evidence was 'fresh', and that it would be 'open' to an appeal court to find that it was compelling. From memory, Mr Coates indicated that an issue to be decided at appeal would be the **reliability** of the evidence of the witness, Meaghan Vass. Brett J. took that issue into account and in granting the application (leave for Neill-Fraser to make a 2nd appeal) left it to the Appeal Court to decide on the reliability of Vass's evidence.

2021

The second appeal of Sue Neill-Fraser took place in the Supreme Court, Hobart, over three days in March 2021: Mon 1/3/21 , Tue 2/3/21 and Wed 3/3/21.

The 2nd Appeal - a 'Who's Who'...

Bob Chappell: disappeared from his yacht moored in Sandy Bay, Hobart, on 26-27Jan2009. Presumed dead, his body has never been found.

Susan Neill-Fraser: found guilty (15Oct2010) of murdering her partner Bob Chappell on their yacht *Four Winds* on 26Jan2009. Has been in prison since being arrested on 20Aug2009.

Robert Richter QC: (pro bono) who replaced (pro bono) Mr Tom Percy QC as Senior Counsel for the appellant, Susan Neill-Fraser.

Chris Carr SC: presented the closing address on behalf of Neill-Fraser at the 2nd appeal.

Paul Smallwood: lawyer, part of Neill-Fraser's 2nd Appeal team

Paul Galbally: instructing solicitor for Neill-Fraser's 2nd appeal lawyers.

Daryl Coates DPP: Senior Counsel for the respondent, the Crown.

Jack Shapiro: Crown Prosecutor, for the respondent, the Crown.

Helen Wood, Justice: hearing the appeal, assisted by Estcourt J and Pearce AJ.

Meaghan Vass: her DNA was found on the deck of the *Four Winds* by forensics at 1:30am 30Jan2009 - it was not identified till 15Mar2010.

Stuart Wright: lawyer, advising and appearing in 2nd Appeal court for Meaghan Vass, the witness.

Fabiano Cangelosi: lawyer, appeared for Meaghan Vass on instructions from Mr Wright (with regard to maintaining the suppression order. It was lifted. It had read: "*Date Made: 2 March 2021 THE COURT ORDERS that until further order, no person is to publish any information concerning the evidence of Ms Vass regarding people who were present with her on the vessel, "Four Winds", on 26 January 2009.*").

Paul Wroe: Lived off his inheritance from his mother, on a yacht, *Southern Wright*, which at times was moored in Sandy Bay. He had a (mainland) criminal record for violence - had come to Tasmania and bought his yacht in 2007. Alcoholic. His presence in the area, and on a yacht moored in the vicinity of the *Four Winds*, was unknown to police till after the failures of the 1st Appeal and the Leave Application to the High Court. At that stage, a number of Neill-Fraser's supporters had been involved in trying to find answers to Bob's disappearance and to exonerate and thus, free Sue. They had found out that Wroe had been in the area on 26Jan2009.

Stephen Gleeson: Unemployed, homeless alcoholic, was living in his yellow car on the rowing club 'spit' of land at Short Beach, Sandy Bay, close to where the *Four Winds* dinghy would come to shore. Was a drinking friend of Paul Wroe's.

Samuel Devine: 15 years old in 2009, claimed by Vass (in an affidavit [25Feb2019] made in association with a 60 Minutes interview) to have been with her on the *Four Winds* on 26Jan2009 and to have attacked Bob Chappell.

Andrea Brown: Friend of Meaghan Vass, sat with, then close to Meaghan Vass on the first and second day of the appeal, to give her support. Following information provided by Mr Coates to the Court, Brown was deemed as a person not suitable for providing support. Brown remained present and closeby on the second day.

Cassandra Dowling: employed by Victims of Crime Service, Justice Department of Tasmania. Sat with Meaghan Vass on the second day of the Appeal to provide 'Independent Support', after Andrea Brown had been deemed an unsuitable support person for Vass.

Liam Bartlett: *60 Minutes* interviewer who conducted the televised interview [screened 10Mar2019] with Vass.

1Mar2021 - FIRST DAY - 2ND APPEAL

LEGAL MATTERS:

On the 1st of March, on the first day of Sue Neill-Fraser's 2021 2nd Appeal, and before Meaghan Vass gave evidence, Mr Richter sought an order from the court [an application under s8 of the Evidence (Children and Special Witnesses) Act 2001 for the evidence of Meaghan Vass to be given by the remote witness facility on audio and video]: s8 of that Act provides for a judge to make an order that a person is a "special witness" if there exist (prescribed) reasons such that the person is likely --

(i) *to suffer severe emotional trauma; or*

(ii) *to be so intimidated or distressed as to be unable to give evidence or to give evidence satisfactorily.*

Mr Richter supported his application by referring to "*what happened at the leave application and the kind of traumatic events that occurred whilst that was happening*" [A2 3 18] (see news media reports for 30Oct2017, e.g. <https://www.youtube.com/watch?v=UGcBa9SU0FE>)

Richter also sought an order that Vass should not have anyone in the witness room with her - except for "*a solicitor sitting in with her, if that gives her comfort*". Justice Wood [A2 4 43] accepted the proposed course, while providing for a court officer also being present to allow the handing over of documents. Mr Richter also flagged use of s38 of the Evidence Act 2001 ... [38. Unfavourable witness ... the ability of Counsel to cross-examine their own witness on three grounds, including that of having made a prior inconsistent statement]

Meaghan Vass gave evidence at the (2021) 2nd Appeal on the 1st of March and the 2nd of March. It appears that Vass believed that the evidence that she would be called on to give would simply require her affirming verbally what was contained in her 25Feb2019 affidavit [Mr Richter QC made an unsuccessful application to the Appeal Court to that effect (A2: 15 44 - 18 5)]. Her affidavit reflected what she had told Liam Bartlett in an interview screened on 60 Minutes, 10Mar2019).

The affidavit had been received by Justice Brett at the 'eleventh hour'. It was received while Brett had already reserved his decision on whether to grant Neill-Fraser's application for leave to make a 2nd appeal.

Justice Brett's decision [21Mar2019] had been to allow the application for leave to appeal. In his decision, Brett mentioned that in her affidavit Vass had named two people who were with her on the boat. Though leave to make a 2nd appeal had been granted, it would yet take almost two years before legal inertia and Covid were sufficiently overcome to enable the appeal to actually take place.

VASS - RELUCTANCE

In the final days before the appeal, it also seems that Vass wanted to give evidence from a 'remote' location, by video. She didn't at all want to be at court to give her evidence. This suggestion was rejected and instead, by way of concession perhaps, it was arranged that she could give her evidence - by video - from an undisclosed location *within* the Supreme Court building.

During the first morning of the appeal, Mr Richter made an application for Vass simply to be asked whether she had read her affidavit, whether she had signed it and whether its contents were true and correct. After the three judges adjourned for a short discussion, they returned and rejected the application - the court deciding that the evidence should be led in the usual way...

VASS SUPPORT PERSON:

As well as wanting to simply attend the Supreme Court building and tell the judges that what was in the affidavit was true, Vass appears to have believed that she could have her friend Andy with her, so she wouldn't be alone and unsupported as she gave her evidence.

When the video link from the court to the room in which Vass was present was switched on, Justice Wood noticed that Vass had someone with her. This was Andrea Brown - Vass's friend. Brown was sitting close to Vass - Brown had her right arm thorough Vass's left arm ... they were arm in arm. There was some discussion between the Bench and both Counsel. Surprisingly, Mr Richter spoke against Brown being present to support Vass. Firstly, he argued for an 'independent' support person, objecting [A2 20 1...] thus...

"Because from what I can see the bodily contact and the like is not – not really what we want."

Richter developed this point, saying that Brown

"has been supportive through a lengthy period of time, as I understand it, she is aware of a number of things undoubtedly in relation to her interactions with the witness"

It seemed to me - as I heard Mr Richter speak - that he was perhaps concerned that Brown would attempt to influence or prompt Vass ... perhaps through touching ... a squeeze of the arm or a nudge in the ribs. But this is only my speculation - I don't actually know what was behind Mr Richter's remarks. Richter then informed the court that solicitor instructions were that Vass would not give evidence unless Brown was there!

There followed a second 'short' adjournment to allow Mr Wright (who was appearing for Vass) to confer with her. Once reconvened, Brown was seen to be still in the witness room with Vass. Mr Richter now accepted her presence [possibly having decided that having Brown in the room with Vass was better than having Vass refuse to give evidence at all!]. Now it was Mr Coates' turn to object to Brown's presence. Coates did so on the basis that Brown's name might come up in cross-examination. He was asked if there was any legal basis for precluding...

"...a person who may be a witness from being a support person in the proceedings." [A2 24 30...]

MR COATES SC: *Yes, your Honour; there's s8(3): "A judge may only approve a person for the purpose of subsection (2)(b)(i) if that person is not or is not likely to be a witness in or a party to the proceedings".*

WOOD, J: *And would it be unlikely, I would have thought for Ms Brown to be a witness in these [proceedings] –*

MR COATES SC: *It's prob – it's probably unlikely, your Honour..*

...so Andrea Brown was allowed to be with Vass as a support person, Justice Wood telling her she could not communicate with Vass while Vass was giving evidence, Brown could support her only by her presence.

VASS AND THE FIRST QUESTION:

Q Mr Richter asked Vass if she had been on the *Four Winds* on the night of 26Jan2009 ... to which question

A Vass answered "Yes".

Justice Wood intervened, asking Richter whether that was the moment (as previously discussed with Richter and Coates) when she (Woods J) should give Vass a warning under s128 of the [Evidence](#)

Act 2001 - (Privilege in respect of self incrimination in other proceedings). Vass was offered the opportunity to take advice from her lawyer, Mr Wright, and did so while the court adjourned again briefly. Upon return, Mr Wright asked on Vass's behalf that a certificate of indemnity be issued so that anything she told the court could not be used against her in any other proceedings.

The court was willing to do so and explained to Vass how the indemnity would work and how it wouldn't protect her if she gave false evidence in the Appeal proceeding. Vass sought more advice from her lawyer ... so there was another adjournment. When the court reconvened, Mr Coates showed the Bench some information he'd just received during the break ... "*I don't want to say it aloud*", he said ... a document containing three different texts relating - it seems - to Andrea Brown and dated 15Mar2019, 15Mar2019 and 28Mar2019 [A2 31 23: Justice Wood mentioned those dates aloud in court to Mr Richter]. [Brown made two online posts on 15 March which were critical of TasPol; I haven't located any record dated 28Mar2019.

What was contained in Coates' document and passed to the bench is not publicly known. However it had an immediate effect: Mr Richter spoke for an 'independent' support person to be with Vass as she gave evidence and for Brown to be outside the room. The court was now 'of the view' that Brown was not a suitable person or it wasn't appropriate for her to be in the witness room with Vass. They adjourned again for lunch, and to give Vass time to talk again with her lawyer, Mr Wright. Her choice this time was whether to choose to give her evidence alone (with Brown sent out of the room) or whether she would accept an 'independent' support person to be with her (also with Brown sent out of the room)... a 'heads I win, tails you lose' situation.

VASS WITHOUT SUPPORT:

After lunch, Mr Wright told the three judges that Vass was prepared to give evidence without a support person being present. She was alone in her witness room. Justice Wood reminded her that if she wished to have an independent support person with her, that could be organised.

FAILURE - SUPPRESSION ORDER NOT APPLIED FOR.

At this stage it must be pointed out the Meaghan Vass believed that she could name the persons that she would state were on the *Four Winds* with her on the night of 26Jan2009 and that publication of these names would be suppressed by the court. Andrew Urban (*Wrongful Convictions Report* <https://wrongfulconvictionsreport.org/2021/03/26/meaghan-vass-the-aftermath-interview-2/>) subsequently published a Q&A interview in which Vass wrote that:

"I'd say it was wrong of the lawyer (Stuart Wright) not to suppress my information from the affidavit from 2019 as promised. I'm not crazy and I'm not a liar. I'm telling the truth and no one is listening."

and

"I'd like to see the appeal seen for what it was by the judges. Surely they can. I want the lawyer who promised me suppression be reprimanded as he is the only reason things turned (out) the way they did on the Tuesday."

APPEAL: DAY 1 - AFTER THE LUNCH BREAK

Meaghan Vass is sitting in her witness room alone. She is clearly not happy and is scowling. Mr Richter resumes his examination. Vass tells Richter and then Coates that:

*She was not alone when she went to the boat, she was with **Sam Devine**, who was 'sort of a partner at the time'. Two others were with her: **Stephen Gleeson** and **Paul Wroe**. Meaghan Vass said they rowed out to the *Four Winds* in a dinghy. They had found the dinghy down on Sandy Bay beach.*

There were oars in it. It was late afternoon. No one else was on the beach. It was a bit before tea time (dinner time), roundabout 5 or 6 o'clock. The dinghy was on the beach. The others may have pushed it out into ankle deep water and then they all got in that way. They got on the first boat they came to. It was fairly close to shore, Vass said it would have been about 20 metres offshore. They jumped on board to do the yacht over. They stepped onto the deck of the yacht. Bob Chappell was below, working on something. Then Devine saw Bob Chappell. Chappell 'arched up' and told Devine to get off the boat. Devine got angry and lashed out. The two of them got into a scuffle below deck. Vass was still up on the deck. There was yelling and ... they heard Devine start flipping out and Wroe and Gleeson followed Devine below deck. The 'altercation' went on for probably about 30 minutes. She couldn't see anything because she was still up on deck ... all she could hear was [indistinct] She panicked and vomited on the deck of the boat. She may have vomited a little below decks. Neill-Fraser was not on the boat.

[...A2 56 18 (see also ABC News at: <https://www.youtube.com/watch?v=UYvulevPYIU>)].

XXN of VASS

When Mr Coates commenced asking Vass questions about the dinghy, she asked a number of times when she would be finished giving her evidence. Offered a break by Justice Wood, she said she didn't want one, that she just wanted to know when she would be finished. She said she would like to go. She was very tired. When Mr Coates told Justice Wood that he didn't think that he would be finished his cross-examination that day, Vass seemed surprised and desperate: "*Oh pardon*", she exclaims, then as it sinks in, "*What?*" and "*No, I – no, I don't want to take a break.*" and "*What's he mean I won't be finished today?*" and "*Oh my God!*" She then asked when she would be able to leave to go home. During Coates' XXN, Vass was getting agitated, taking drinks from a water bottle. She began twitching - her chest was heaving. Now, with Coates' 'not finishing today' statement, she has her head in her hands. Coates after a couple of more questions ... Vass is quite desperate, telling the Judge again and again that she wants to go. She doesn't want a break - she wants to go. The Judge calls a break in spite of her wanting to continue so she could get home. After the break, Vass's lawyer, Mr Wright, says Vass due to her distress, wants an adjournment till the next day. Vass is asked to confirm this but tells Justice Wood, "*No, no-*" and "*No*". She has her head in her hands. Now she is rubbing her stomach. Justice Wood gets her to agree to the adjournment and adjourns the court till 9:30am the following day.

/...

2May2021 - SECOND DAY - 2ND APPEAL CLOSING GATE AFTER HORSE BOLTED



The Mercury newspaper's next-day front page features Robert Richter QC in a collage image with Sue's daughter, Sarah.

The headline is 'SAM DID IT'.

Meaghan Vass is named on that front page as the witness who has claimed Sam Devine attacked Bob Chappell on the *Four Winds* on the night of 26Jan2009.

Meaghan has been well and truly 'outed'.

The Mercury newspaper's next-day front page features Robert Richter QC in a collage image with Sue's daughter, Sarah. The headline is 'SAM DID IT'. Meaghan Vass is named on that front page as the witness who has claimed Sam Devine attacked Bob Chappell on the *Four Winds* on the night of 26Jan2009. Meaghan has been well and truly 'outed'.

She's late for court ... Andy's car is playing up. They get a taxi. The court gets the message via Mr Wright. As she arrives in the taxi, she is photographed looking out the rear window, as if in horror, her mouth agast and in trepidation.



Meaghan Vass arrives at Court Of Appeal in a taxi. (ABC News: Luke Bowden)

Inside the court, Mr Wright on the behalf of Vass who is not yet present, makes an application for Vass to have an 'independent' support person with her in the witness room. He then makes a second application:

"The second application is I would seek, your Honour, it's caused Ms Vass distress in terms of having some media reporting of the persons who she named that were present with her on the boat yesterday, and I've been instructed to seek a suppression order in relation to further publications of the people who were present with her on the vessel, and my submission is, it would certainly assist her in giving her evidence today if she had that comfort from the Court."

Justice Wood is apparently unaware of *The Mercury* front page, that the media has already published the names of the three persons said by Vass to have been with her on the boat. When appraised of this, Wood's position is to agree to a temporary order suppressing any further publishing of the details of those persons who were on board the vessel with Vass on 26Jan2009. Mr Coates mentions the significant interest in the case, points out that they've already been named (i.e. 'the damage has already been done') and remarks that it mightn't go down all that well with the press, "*Generally you would hear from the media in relation to it.*"

Justice Wood [A2 63 8-22] ordered that for the time being:

-there be no further publishing of details of persons with Meaghan Vass on board the vessel and that

-the special witness, Meaghan Vass have near her Cassandra Dowling who might provide her with support during her evidence (under s8(2)(b)(1) of the Evidence (Children and Special Witnesses) Act, 2001).

A member of the Court staff on his way back from the northern courtrooms where the media are located, is heard to report "*Media not happy about the suppression order*"

SUPPRESSION ORDER IN PLACE ... XXN of VASS RESUMED

Vass entered the special witness room. She is dressed in black. Coates immediately took Vass back to her evidence of the day before, asking her to confirm that Devine, Gleeson and Wroe were on the boat with her. She confirmed Devine and Gleeson, but denied having said Wroe had been on the boat, saying that she'd only said that he'd associated, that they'd hung around:

COATES *And, Mr Rowe was on the yacht, is that the case?.....*

VASS *Yeah - well - yeah -but - ah no I said that they associated with Paul I didn't say he was on the yacht. It was only - it was Sam and Gleason that was on the yacht not Paul.*

When Coates tried to remind her of what she'd said the day before, Vass exploded:

"I'm not going to be - sitting here - I'm not going to do this, I'm not feeling well. I've had no sleep, I'm not going to sit here and be (indistinct words) like that. No, I can't do that. What the hell. He was - Stuart [Wright] was meant to do my affidavit yesterday that was everything that was true and correct, that's all I have to say. I don't want to do that. I don't want to do it anymore, simple. [...] I made a mistake, I'm scared as shit."

Vass is in tears. She wobbles and holds her stomach. For a moment Vass seems about to rise from her seat. Ms Dowling, her support person - also in black - grabs hold briefly of Vass's left arm. It seems to be an instinctive gesture of restraint, as if she (Dowling) had thought Vass was about to stand up/leave.

Judge Pearce told Coates they had the transcript from the day before. Coates referred to page 41 of that, line 7. Again he attempts to put to her that the day before she has told the court that Wroe was with her on the boat. She interrupts, saying she doesn't want to speak anymore, says that she wants Stuart [Wright] to show them the affidavit [A2 65 32]. [Here she returns to the hope that all she will have to do by appearing in court is to say that what is in the affidavit is true]. She is in tears and sobbing. She pulls her cardigan over her face. Wood J offers her a break, to speak to Wright. She accepts.

WROE? - VASS: 'I MADE A MISTAKE...'

There was a short adjournment so that Vass could speak to Wright. Upon the court resuming (10:26 am), the link is switched back on. Vass is seen to be crying in her witness room. Coates returned to

the matter of her having said that Wroe was on the boat. Vass said that she had made a mistake, she explains that's why she wanted a break - to speak to Stuart Wright about it. She says that Stuart (Wright) told her [A2 70 18] to speak to Coates and correct it. Coates asks her a series of questions, trying to get into the detail of the evidence that she had given which put Wroe on the yacht that night. To each question she replied, saying simply that she'd made a mistake...

- her recent memory of Wroe being on the boat, was a mistake;
- her saying she remembered that 'Wroe memory' recently while at her house, was a mistake;
- saying she was alone when she remembered about Wroe, was a mistake;
- saying Wroe and Gleeson followed Sam down from the deck, was a mistake;

When Coates asked her: "*So you said this person was ... present when Mr Chappell got killed and [now you say] that was just a mistake*", Vass interjected "*Oh for fuck's sakes*". Vass stood by her saying on *60 Minutes* that Devine and Gleeson had been on the boat [A2 71 8] but that Wroe wasn't there, that she'd made a mistake. But Coates was not going to let go...

Mr Coates has the transcript of the 60 Minutes interview taken to Vass. Independent support person, Cassandra Dowling touches Vass, twice, comfortingly. Coates reads from the fourth page and suggests Vass was prompted by Liam Bartlett, the 60 Minutes interviewer to include Gleeson... [A2 72 4-22] Vass shields her face with her arm and then her hands. She turns sideways in her seat [away from Coates?]. Dowling places her hand on Vass's shoulder.

THE ESCAPE BUTTON:

At this point Vass then began to agree with every proposition Coates put to her... by saying Yes, No in response to his questions, **agreeing that:**

- though she had told 60 Minutes there may have been one other; she didn't then have a memory of Gleeson being on the boat.*
 - it was only after further prompting [from Bartlett] that she had suggested there was a third person on the boat.*
 - During the 60 Minutes interview, her memory was just that she and Devine were on the boat.*
- [Vass is showing extreme signs of distress. Justice Wood appeals to Wright, Dowling and Vass to make known any concerns they may have about Vass's welfare. Vass says "*That's it ... I'm not (inaudible) ... and I want to go*". Dowling tries to soothe her, saying "*You're doing good, you're doing really good.*"]

Coates resumes with his propositions to which she continues to agree that...

- it was only her and Devine on the boat*
- she had no memory of Gleeson being on the boat*
- she had no memory of Wroe being on the boat*
- she mentioned those names because she was told to*
- Rosie O'Donnell and Karen Keefe told her to say Gleeson and Wroe were on the boat*
- Colin McLaren (author investigator working for Eve Ash) told her to say it as well*
- she had no memory of being on the boat at all*
- over the years, she has been hounded by Keefe, O'Donnell, McLaren and others to say she was on the boat*

Vass has agreed with all of those two groups of propositions with single word answers: *Yeah, No, Yes, Yes, Yes, No, Yes, No, No, Yes, Yes, Yes, Yes, Yeah, Yes, Yes, No, Yes*. Clearly she had 'abandoned ship'. Richter addresses Wood: "*Your Honour, I don't – don't think the witness is listening to the question by the look of it at this stage.*" In the subsequent Q and A interview published by Andrew

Urban (*Wrongful Convictions Report* <https://wrongfulconvictionsreport.org/2021/03/26/meaghan-vass-the-aftermath-interview-2/>), Q1 and its answer confirm what went on:

Q *You were terribly upset in court; what upset you most? Why did you agree to the propositions he put to, contradicting what you had said earlier?*

A *The entire subject makes me upset. I was upset because I was hounded and had words put in my mouth....he (Mr Coates) was trying to confuse me and butt in with what he thought and cutting me off. I didn't want the names out in public. I panicked and was so scared. It was all I could think of to do.*

(Meaghan later added:) *I didn't f....ing murder anybody, why are they treating me like this...so I just wanted to shut it all down and get out of there.*

It went on again ... Mr Coates putting more propositions to which Vass agreed and agreed... She was **agreeing that...**

-she remembered giving evidence at the trial

-she had given evidence saying she had not been on the yacht, didn't know where she was or what she did that night, and was in no way involved in the death of Mr Chappell

-that evidence was the truth

MS DOWLING: *Just keep breathing. You keep looking at the ground. (indistinct words) you'll be going home today. We're rockin' through this.*

WITNESS: *I'm*

MS DOWLING: *I know you are. Have another drink of water*

WITNESS: *I haven't had something to eat at*

MS DOWLING: *I know. Have a little drink of water for me sweetie.*

WITNESS: *I haven't eat much today either.*

MS DOWLING: *I know. Just drink. Don't get yourself worked up just drink.*

WITNESS: *No. I just not fuckin feeling good at-*

MS DOWLING: *I know you're feeling shit.*

WOOD, J: *Just – just to repeat what we've said before, that we can take a break at any point.*

WITNESS: *Am I allowed to have a cigarette? Can I ask that?*

MS DOWLING: *You can ask that.*

WITNESS: *Is there – I wouldn't mind taking a brief one.*

WOOD, J: *Yes, certainly. No – no problem at all.*

[A2 74 28 - 75 12]

- *Andy says:*

March 21, 2021 at 12:40 am

And if u had taken notice on the second day she tried saying no less than twenty times to be cut off that she got it wrong and he only came along later....

She made a mistake..... and how many times did she say everything in the sixty mins

*affadavit from 2019 is true.... no one listened. **ANd her support person cassandra told her to stare at the floor and give no eye contact... then told me off for saying to meg what the hell are u doing... just tell the truth.** I dont know sue and i love meaghan yet the truth is all ive ever wanted and asked of meaghan*

[Andrea Brown, in comments: <https://wrongfulconvictionsreport.org/2021/03/15/witness-unprotection/#comment-24769>]

They take a cigarette break. Wood J has apparently asked a court officer to find somewhere where Vass can have a smoke. Then it's back to more of Mr Coates' propositions and the 'Yes' / 'No' answers ... winding down the clock till she can go. At 11:15 am the video screen is switched back on. Vass is asked by Coates to look at a document. She is still head down, sobbing a bit.

HER STAT. DEC. 23MAR2012

Mr Coates resumes by asking Vass about her 23Mar2012 stat. dec. to police... she answers 'Yes' and 'No' to everything he puts to her, **agreeing that...**

-she made a statutory declaration to the police in 2012

-it was the 23rd March 2012

-she had a copy of it [before her]

-she had told the police the truth in it

-she had told them [in it] that she'd never met Bob Chappell or Sue Neill-Fraser

-that was true

-telling them she'd never been on a yacht before (except her step-father's) was true

-she had told the police she had no idea how her DNA had come to be on the boat [the Four Winds]

-that (having no idea) was the truth

-she had told the police she didn't know Stephen Gleeson, Adam Yaxley or an Adam Little

-it was true that she didn't know them

-she didn't know anything about a yellow car

-telling them she didn't hang out with older people was true

-she had told them that she'd never done anything illegal in relation to the boat [referred to]

-the boat [referred to] was the Four Winds

HER A2A EVIDENCE (30 OCT 2017) (A2A = Leave Application for a 2nd Appeal)

Mr Coates continues by asking Vass about her 30Oct2017 evidence given to the A2A, heard before Justice Brett... she answers 'Yes' and 'No' to everything he puts to her, **agreeing that...**

-she had told the court that she was not there [on the boat] on Australia Day 2009, couldn't remember those people, did not know any of them, and did not know what had happened.

-telling that to the court was the truth

-she had been asked if she knew Paul Wroe

-she had been asked did she know anyone who'd lived on a yacht

-it was true that she hadn't known anyone who'd lived on a yacht

-she could remember giving evidence about never being on yachts

-it was the truth that she'd never been on a yacht

-she had been asked whether she knew anything about yachts

-saying she didn't know anything about yachts was the truth

-she had said 'No' when asked if she knew how to sink a boat

-it was true that she didn't know how to sink a boat

-she was also asked how often she would see Sam Devine in 2009

-she could remember saying she didn't see Devine very often

-she remembered giving that evidence

-it was fair to say that in 2009 Devine would have lots of different girlfriends

- she certainly did not go and commit any burglaries with Sam Devine
- she had been asked (A2A 2017) if she knew Stephen and had said she didn't
- she had given evidence that she didn't know Paul Wroe
- it was true that she didn't know Paul Wroe

KEEFE, O'DONNELL & McLAREN [A2A Qs cont.]

Mr Coates continues his series of propositions and Vass continues with her 'Yes/No' answers, **agreeing that...**

- she gave evidence (A2A 2017) that she had been threatened
- it was true that she had been threatened
- she had given evidence that she had been threatened by Karen Keefe and that evidence was true

[asked who Keefe was, Vass abandons her single-word 'Yes/No' answers and mentions how she met her through a group of friends, how she thought Keefe wanted to befriend her and what her view of Keefe came to be. The form of the question ('Who's Karen Keefe?') does not allow for a yes/no answer]

KEEFE, O'DONNELL & McLAREN [A2A Qs cont.]

Mr Coates continues his series of propositions and Vass continues with her 'Yes/No' answers, **agreeing that...**

- she met Keefe through Sharkie McKenzie
- between about 2016 and 2021 she had been harassed by people like Ms Keefe, Rosie O'Donnell and Colin McLaren
- she had been harassed to give evidence
- they had continually said to her that Neill-Fraser was in prison, needed to go home to live, and so she can die with her family
- they had said to her repeatedly that she had been on the boat because of her DNA
- they had repeatedly said to her all she would have to say was that she was on the boat, that Devine went amuck with Mr Chappell, that she had nothing to do with it and that she had a blackout
- they had put to her that she should ask for an indemnity
- she believed that Karen Keefe was in prison with Sue Neill-Fraser
- Keefe had become friends with Sue Neill-Fraser
- when Keefe got out of prison she started harassing her to give that ['I was on the boat'] account
- Keefe hoped to make money out of it
- that was what Keefe had told her that
- she believed that Keefe did receive money
- Keefe threatened to put her in a boot a number of times...
- ...unless she came out and said she had been on the boat with Sam Devine
- at some stage they suggested to her that Paul Wroe was on the boat
- at some stage they suggested to her that Mr Gleeson was the person on the boat
- the day before in court she just couldn't remember what she was supposed to say

[asked who Rosie O'Donnell was, Vass again abandons her single-word 'Yes/No' answers and replies O'Donnell used to be what she (Vass) thought was a friend. She had met O'Donnell in the same way as she had met Karen Keefe. The form of the question ('Who's Rosie O'Donnell?') does not allow for a yes/no answer]

O'DONNELL & McLAREN [A2A Qs cont.]

Mr Coates continues his series of propositions and Vass continues with her 'Yes/No' answers, **agreeing that...**

- she had met O'Donnell by [through] Mr McKenzie [Sharkie]
- Ms O'Donnell had harassed her to say that she had been on the boat
- she believed that O'Donnell got paid as well
- she had met with a Colin McLaren
- it was the case that McLaren had told her words to the effect that he was a private investigator working for Sue Neill-Fraser
- she had met him at Rosie O'Donnell's house, the first time
- that had been on 17Mar2017
- there had been a long interview
- it had been secretly taped
- she hadn't known it was being taped
- she had told McLaren the truth during that interview

At various times while giving her evidence, Justice Wood had asked if Vass had wanted/needed a break. Vass had replied on most occasions that she didn't want a break, that she wanted to finish her evidence [and go]. Mr Richter observed the following to Justice Wood:

MR RICHTER QC: *Your Honour, in my respectful submission the way this is proceeding to have her say she doesn't want a break, indicates nothing more than she wants the thing to be over very quickly. I can understand that. But, I don't know that the sort of answers that are being given and the way that they're being given, that they have any particular weight. And, that's the problem.*

WOOD, J: *Well, look we are – we are alert to the need for breaks as well. And, we'll exercise our discretion in that [other?] regard as well, thank you Mr Richter.*

GLEESON, McLAREN & DEVINE [A2A Qs cont.]

Mr Coates resumed his series of propositions and Vass continued with her 'Yes/No' answers, **agreeing that...**

- she had told McLaren that she'd like to be able to say that Paul and Sam wanted to get on the yacht, that they didn't expect anyone to be home, that the old guy arced up... but that she didn't have any recollection of that
- she told him she didn't know Mr Gleeson
- McLaren had said to her "The old guy's dead and you've seen all the blood [...] and that shock [...] pushed all this in the back of your head, back into your mind?"
- she told McLaren she didn't remember going anywhere with Sam [Devine]
- she told McLaren "I have not been on the yachts with Sam knocking shit off."

At this point Coates sought to play the recording of the meeting/interview between McLaren and Vass. Vass uttered her last words at the appeal [A2 87 21]:

"Oh mate."

THE VIDEO LINK TO VASS IS CUT:

Justice Wood paused the proceedings, telling Vass [the connection to her room would be cut...] that they would come back to her shortly.

Then followed a discussion between Wood, Coates and Richter about the recording of the McLaren-Vass interview and the transcript of it. Justice Wood was concerned about the time that that would take to play the recording (1 hour and 44 minutes) given that Vass had been regularly asking how much longer Coates would take, saying how she just wanted to finish and get home: she had been in distress for the whole time of giving her evidence and Justice Wood was definitely not keen to extend Vass's time in the witness box - particularly to play over 100 minutes of recording about which she had already been questioned. Wood asked what the point of asking those questions [of Vass] had been if Coates was now going to establish them by playing the recording ... duplicating what had gone before. Mr Richter suggested that playing of the recording could perhaps be truncated if he was provided with a transcript. Wood called an **adjournment** so that Coates and Richter could discuss the issue and see if 'by consent' they could find an agreed path to tender the recording.

A BIG SURPRISE : ABANDON SHIP

UPON RESUMPTION: MR RICHTER QC: *Your Honours, I'm sorry that we had this break, but we had some serious matters to consider, and it is clear to us as a team, and we have discussed it with our client in order to obtain her approval and instructions as to the future proceeding of this appeal.*

We are in a situation in which we concede that the evidence of Vass cannot support the notion of fresh and compelling evidence leading to the miscarriage of justice.

We do not abandon the notion of the DNA evidence being capable of – the evidence necessary for this court to say that there had been a miscarriage of justice.

And that leaves us in this situation; that Ms Vass can be excused from further evidence it seemed to us, and I suspect it seemed to the court, that there is no much point in any of it. [A2 90 6...]

Mr Richter (for the appellant Susan Neill-Fraser) told the court:

-there was agreement between counsel [A2 5 22] that of all the fingerprints taken from the Four Winds during 28th, 29th and 30th of January 2009, **no fingerprints** belonging to Devine, Gleeson or Vass were identified. [A2 90 22]

-he conceded that "*there is no evidence of vomit as such being found*". [A2 90 24]

-he maintained that the presence of the Vass DNA could still serve the court as evidence of a miscarriage of justice. [A2 90 12...]

-Richter told the court that to establish that Meaghan Vass had been on the boat, he would no longer rely on the evidence given by Vass at the appeal [A2 91 16]

Richter asked

-that the calling of Mr Holloway by Mr Coates (to give evidence about the DNA) be put off to the following day.

-that Meaghan Vass be excused from [giving] further evidence.

Justice Wood obliged and told Mr Wright who was now back in the court-room that he could advise Vass that the court had formally relieved her - she was not required. [A2]

WHAT WERE THE ORIGINAL TERMS OF THE 2ND APPEAL?

It should be noted that the terms of the 2nd Appeal as originally stated were:

The Appellant appeals pursuant to 2402A of the Criminal Code on the ground that:

Ground 1:

Fresh and compelling evidence establishes that there has been a substantial miscarriage of justice.

Particulars:

There is fresh and compelling evidence that:

1.1: Meaghan Vass had boarded the Four Winds, and the deceased was attacked while she was on board.

1.2: Evidence led by the prosecution at trial in relation to:

1.2.1: the results of, and inferences that could be drawn from, DNA testing;

1.2.2: the results of, and inferences that could be drawn from, Luminol testing;

1.2.3: a winching reconstruction of the Four Winds was misleading.

1.3: The dinghy seen near the Four Winds around the time the deceased was attacked was not the Four Winds' tender.

At the beginning of the 2nd Appeal [A2 8 4], Mr Richter had advised Justice Wood that he was abandoning pursuing :

1.2.2 [that part of 1.2.2 which pertained to the luminol testing of the *Four Winds* dinghy]

1.2.3 [the winching reconstruction]

1.3 [the dinghy seen by Mr Conde]

This left the following as the basis for the appeal:

1.1 [Vass was on the boat and Bob Chappell was attacked while she was aboard]

1.2.1 [The (Jones) DNA evidence points to a primary deposit - i.e. Vass deposited it directly]

1.2.2 [That part of the luminol testing that had been done on the yacht establishing where Vass's DNA was found]

Richter further told the court that the evidence of Colin McLaren [to do with Vass's 27Apr2017 stat. dec.] and that of Mark Reynolds (in relation to the winching exercise) would not be pursued. Also, he said the failed leave application to the High Court (regarding the non-recall at trial of Vass to the stand) would not form part of the appeal case.

COMMENT ON STATE OF APPELLANT'S CASE:

With Richter having conceded that the evidence given directly by Vass at the 2nd Appeal could not support the notion of 'fresh and compelling evidence leading to a miscarriage of justice', this would seem to have robbed the 60 Minutes interview transcript and the 25Feb2019 affidavit of any

standing before the judges. Vass's job as witness was to come into court and to stand by what she'd said in that interview and the affidavit.

She (in distress and wanting to get out of the witness box by agreeing to everything Coates put to her after 'the Wroe mistake') had pressed *'the escape button'*. As proposed above, in the 'Escape Button' section, Vass told Urban that she had begun agreeing to all Coates' propositions because she was upset at being 'hounded', having words put in her mouth, the attempts to confuse her, Coates butting in with his own thoughts and cutting her off. She hadn't wanted the names out in public ... but that had happened ... she was panicked and was extremely scared ... all she could think of doing ... was just shut it all down and get out of there.

In doing so, she may well have taken with her the chance of Neill-Fraser winning her appeal. Richter, earlier when asked if he could bring on other evidence (to save time while they tried to overcome the problem of finding an independent support person for Vass), had answered, "*No there isn't - there isn't [other evidence]. She's our case.*" [my formatting - gfs] The sighting of a dark grey dinghy by the *Four Winds* on the afternoon was abandoned, the two men and a girl who'd come out of nowhere on a dinghy that afternoon and had gone to Pargiter's place next to the Bowling club was not part of the appeal argument; nor was there mention of the report showing that there was no blood in the *Four Winds* dinghy, similarly no mention of the long haired chap in a dinghy rowing over to offer help to Brettingham-Moore in his motor cruiser when a bystander thought they'd seen a woman on that dark night in a dinghy; nor mention of the weather-beaten man in the dinghy earlier... these and other matters had all been put to the side: the appeal counsel had staked its case on Vass's evidence and Vass's DNA being on the yacht. With her evidence gone, the appeal was left with the bare fact of her DNA having been detected on the *Four Winds* on 30Jan2009 - some three days after Bob Chappell had disappeared. Can the three appeal judges find Maxwell Jones' evidence about that DNA fresh and compelling?

VASS: CERTIFICATE (OF INDEMNITY) & SUPPRESSION OF NAMES

Following Richter's request that Vass be excused from giving further evidence, the Court turned its attention to some housekeeping matters.

"Further, there is the issue of the certificate and in relation to that, the court directs that a certificate be prepared in the following terms. That evidence given in these proceedings by Meaghan Elizabeth Vass on 1st of March 2021 and today's date with respect to her being on the yacht, known as the Four Winds, on the 26th of January 2009 and her evidence regarding what happened on the yacht and then a record obviously would be attached to the certificate be prepared for signature and that the certificate thereafter be given to the witness." [A2 93 1]

A temporary suppression order had been put in place that Tuesday 2Mar2021 morning at the request of Mr Wright, as instructed by Meaghan Vass [A2 63 8]. It prevented (till further order) the further publication of names of people who were with Vass on the *Four Winds* on 26Jan2009.

Justice Wood told Vass (once the link had been established) that [A2 64 17]:

"Mr Wright, made an application to the court that the names that – of people present according to your evidence on the yacht, not be published at this stage and the court made that order. That may or may not have been communicated to you. So, at this stage those names are not to be published."

That's what had been done:

- before Vass gave her evidence on that second morning,
- before Coates challenged her on having the day before said that Wroe was on the boat with both her and the other two,

- before she hit the 'escape button'
- before Richter told the court that her evidence could not - via the path of 'fresh and compelling' evidence - establish a miscarriage of justice and
- before Richter asked the Court to excuse Vass from giving further evidence.

Now with Vass having been 'relieved' and having 'withdrawn' from the court/witness room, Justice Wood stated that the appeal itself would be adjourned till the next (Wed 3Mar2021) morning. The court itself had a short adjournment so that Mr Wright could discuss with Vass the proposed lifting of that morning's suppression order. The members of the public left the courtrooms, gathering in the foyer and outside the court. It is probable that they thought that the proceedings were finished for that day. But some minutes later Mr Cangelosi appeared before the court, on instructions from Mr Wright [A2 95 5]. He told Justice Wood that they wanted the suppression order to stay in place:

CANGELOSI "... *the fact remains that for Ms Vass she is to return to the community where the people she has named live, where their friends are. We say that the suppression order should remain ...*"

CANGELOSI "... *the way it would work in practice is that Ms Vass mentioned names on the 1st March in the course of her evidence, those names are now the subject of a suppression order ...*"

JUSTICE WOOD "... *just to clarify, a suppression order doesn't cover the proceedings yesterday.*"

CANGELOSI "... *I understood that it related – the suppression order made today as I understood it related to names mentioned by Ms Vass yesterday...*"

ESTCOURT J [interpolation] "...*Going forward.*" [...] "*You can't suppress that which has already escaped.*" and then went on to state the view that because the names mentioned by Vass had been published the day before, it would prevent those people who were named from being 'exonerated' if the suppression of the 'Day 2' mention of their names wasn't lifted. [i.e. that: People would not know that Vass had finally told the court that they weren't on the *Four Winds* while the previous day's 'they were on the boat' naming would persist.

CANGELOSI At that stage, Cangelosi took further instructions, and then told the court: "*I would concede that the suppression order could be lifted.*"

JUSTICE WOOD "*Yes, well the order is made. We lift the suppression order with respect to these proceedings effective from the commencement of proceedings this morning when the suppression order was made.*"

COMMENT: It is clear that Mr Cangelosi understood that the suppression order applied to the naming evidence given by Vass on Day 1. It seems fair to state that Vass also must have understood the same - particularly as Justice Wood had addressed her directly, having told her [A2 64 16]:

"*Mr Wright, made an application to the court that the names that – of people present according to your evidence on the yacht, not be published at this stage and the court made that order. That may or may not have been communicated to you. So, at this stage those names are not to be published.*"

I wrote earlier how Vass had been left exposed by Mr Wright's apparent failure to seek the suppression order on Day 1 of the 2nd Appeal. And now I suggest it can be seen that on Day 2 she was given misleading comfort by a suppression order that did not include the evidence she'd given on Day 1. Can the Appeal Court itself wash from its hands responsibility for what looks like a 'Claytons suppression': 'the suppression you have when you don't have a suppression'. [see: [Claytons - Wikipedia](#)]

Also, Estcourt J's "*You can't suppress that which has already escaped.*" is specious. In this day of digital information, it is quite common for offending posts/publications to be pulled by their authors/publishers. Not to put too fine a point on it, Tasmanian libraries have recently removed a number of Dr Seuss books from circulation, one of which was first published in 1937.

And who can forget how former DPP Tim Ellis was able to have Good Weekend pull its cover story "*Waters of Doubt : Sue Neill-Fraser and the murder that divided Tasmania*" (published in the Sydney Morning Herald and the Age on 7May2016. Written by Greg Callaghan the story was about the trial in Tasmania in 2010 in which Neill-Fraser was found guilty of murdering her partner, Bob Chappell, on board the couple's yacht on Hobart's River Derwent. The story has been covered by multiple outlets as it has been labelled a miscarriage of justice on the scale of a Lindy Chamberlain. But the Callaghan story completely disappeared from the website shortly after it was published. [<https://www.theguardian.com/media/2016/may/13/-readers-complain-the-age-sacking-arts-writer-the-weekly-beast>]

3May2021 - THIRD & LAST DAY OF 2ND APPEAL

FINAL SUBMISSIONS:

Mr Carr made submissions on behalf of Susan Neill-Fraser, the appellant. His first task was to bring up the fact that the two reports [4Apr2014 & 11Jul2014] of Mr Jones (the Victorian DNA forensic scientist) had been omitted from the appeal book. A bit embarrassing when - with Vass's evidence now abandoned - Jones's reports were the fall-back position for the appellant.

Mr Carr and DPP Coates both made remarks in closing. These remarks were by and large to do with the DNA: the Jones' reports and his evidence at the leave application. However, Mr Coates [A2 136 7 - 33] spoke to the court as if the defence/appellant had suggested that Vass herself had been alone on the *Four Winds*: that the defence/appellant case had been that it was Vass who had taken out a dinghy (the *Four Winds* dinghy) to the *Four Winds* which was some 450 metres offshore, had cut the pipe and opened the seacock and had used the winch to remove the body.

[As I heard Mr Coates make these remarks, I felt that his address was bizarre. Surely he was misrepresenting Neill-Fraser's case, which was that Vass had accompanied Devine (and perhaps Gleeson) to the yacht and that Devine had killed Bob Chappell. In all that I've seen to do with the Neill-Fraser case I've never seen any serious suggestion made that Vass did it herself. The Neill-Fraser case has been that Vass had simply tagged along with Devine and perhaps another with the purpose of robbing the yacht - that Devine was the agent in what took place. It is not my intention here to argue that Vass and Devine and perhaps Gleeson were on the *Four Winds*, but simply to point out that Mr Coates has misrepresented the Neill-Fraser appeal case.]

Mr Coates went on to say that Mr Jones evidence contained "nothing new." [the sole criterion for a 2nd/further appeal is that there be 'fresh and compelling' evidence.] Coates was saying that Jones's evidence was not 'fresh' within the prescribed legal definition. Further, Coates was saying that Gunson, being an experienced lawyer, "...*certainly could have got this evidence* [at the time of the trial]". Hence, he argued, Jones's evidence was 'not fresh'.

MR COATES: FLIPPED HIS WIG or A BIG TYPO?

MR COATES [A2 143 34-37]: "*Fourthly, her Honour Wood, J said this morning that while it wasn't fleshed out about being a lot of DNA. Well clearly Mr Gunson in his closing address certainly made the point there was a lot of DNA and therefore it was unlikely she was on the boat.*" [Certainly, Mr Gunson had said no such thing in his closing address. [CT pp1428 - 1461] Mr Gunson's closing remarks ran to 33 pages of the Trial Transcript. In that closing address, Gunson made one single reference to the amount of DNA that had been deposited. I quote it now]:

GUNSON ON DNA IN CLOSING [CT 1449 23...]: "*It is obvious from the scientific evidence that there was a significant amount of DNA. It was enough to show up in the luminol test, and to be extracted from the deck for the purpose of DNA testing. [...] But Meaghan Vass left DNA on that deck. We say to you that the efforts by the DPP to try and suggest that her DNA got there by transference is not credible That was a desperation ploy, absolute desperation...*"

[What did Justice Wood say about there "*being a lot of DNA*"?

WOOD, J [A2 127 16] (questioning Coates during his closing address): "*There's two propositions, isn't there? There's the rarity of it* ['transference, e.g. by someone's shoe'] *generally and the second one is, the volume of DNA in this case and what sort of scenario that might speak of. Does he go to that as well and [...] and deal with that?*" Coates answered the question by quoting Karl Grosser who said at trial [CT 694...34-44...] that he couldn't say that either the transfer scenario or the direct deposit scenario was more likely than the other. Grosser was willing to say two things, however:

1. if she's testified and has some particular proof that there's no way she could've been there then I would have to say that it's more likely that there's transfer onto the boat.

v

2. If she had no way to say that she hasn't been anywhere near it and no proof that she hasn't been anywhere near it then I would say potentially that that may be a more likely scenario.

[**GUNSON**: "*I'll put this another way. The suggestion that it was accidentally transported there is less likely than the obvious answer, which is she was there?*"

GROSSER: "*I don't know that I can realistically assess those two likelihoods, I – you know, if she's testified and has some particular proof that there's no way she could've been there then I would have to say that it's more likely that there's transfer onto the boat. If she had no way to say that she hasn't been anywhere near it and no proof that she hasn't been anywhere near it then I would say potentially that that may be a more likely scenario. But without any indication as to how likely it was, that she could have had access to the boat, I can't say.*" (CT 694...34-44...)]

COMMENT ON GROSSER: Look at 1. and 2. above: In 2., Grosser appears to say that without being able to say or prove that she hadn't been near the boat, then he would say that potentially that may be a more likely scenario [i.e. primary transfer as the alternative in the context of what Grosser had just said in 1.]

WOOD, J [A2 133 31-33]: "*the point - the appellant's point is that it's really neither here nor there. What was helpful to the jury was the specifics of this case and the scenario which could spring from the volume of the DNA.*" [it was about the possibility of transference (due to the deposit being on a walkway) v direct deposit from Vass herself]

COATES [A2 133 45]: "Mr Gunson, in his closing address said, there's a lot of DNA here and it would be ludicrous to suggest that it got there any other way than by her being on the boat."

GUNSON ON DNA IN CLOSING [CT 1442 42...]: "*You'd have Meaghan Vass's DNA being found on the deck of the Four Winds with no rational explanation as to how it got there. We would say to you this, the only reasonable hypothesis is that at some stage Meaghan Vass was on the Four Winds.*"

2nd APPEAL - COUNSELS' CLOSING POSITIONS...

Mr Carr in closing, addressed the sole criterion for a second or further appeal to succeed: that the court be satisfied that there be fresh and compelling evidence, which when taken into account, satisfies the court that there has been a substantial miscarriage of justice. He told the court [A2 102 9] he would use Jones's two reports and oral evidence to demonstrate that at the trial, the prosecution's treatment of the defence's reasonable 'primary transfer' hypothesis was untenable and that Jones's reports and oral evidence would establish that, thus meeting the statutory requirements for a [successful] second/further appeal.

It should be noted that Mr Carr sought **not the acquittal of SN-F** but a re-trial:

"[...] - to put it in the positive terms, if we satisfy (a) and (b), inevitably, in the circumstances of this case, the Court would, in our submission, make the order, and the order that we seek is set out in subs (8)(b) and we don't advance the proposition that (8)(a) or that the circumstances that would lead to an order under s8 - subs (8)(a), are satisfied here." [A2 105 26-31]

Criminal Code Act 1924

402A (8) If the Court upholds the second or subsequent appeal of a convicted person, the Court may quash the conviction and either –

- (a) direct that a judgement and verdict of acquittal be entered; or
- (b) under section 404 , order that a new trial be held.

Criminal Code Act 1924

402A. Second or subsequent appeal by convicted person on fresh and compelling evidence

(6) The Court may uphold the second or subsequent appeal of a convicted person if satisfied that –

- (a) there is fresh and compelling evidence; and
- (b) after taking into account the fresh and compelling evidence, there has been a substantial miscarriage of justice.

(8) If the Court upholds the second or subsequent appeal of a convicted person, the Court may quash the conviction and either –

- (a) direct that a judgement and verdict of acquittal be entered; or
- (b) under section 404 , order that a new trial be held.

(10) Evidence relating to the serious crime of which a convicted person was convicted –

- (a) is fresh evidence if –
 - (i) it was not adduced at the trial of the convicted person; and

(ii) it could not, even with the exercise of reasonable diligence, have been adduced at that trial; and

(b) is compelling evidence if –

(i) it is reliable; and

(ii) it is substantial; and

(iii) in the context of the issues in dispute at the trial of the convicted person, it is highly probative of the case for the convicted person.

NOTES ON Criminal Code Act 1924 402A (6), (8), (10):

Fresh evidence is evidence which has not been adduced at the convicted person's trial and which, even with reasonable diligence, could not have been adduced to the trial.

Reasonable diligence is a degree of diligence that is comparable to the diligence a reasonable person would employ in searching for information regarding an important matter in the person's own life. [<https://www.lawinsider.com/dictionary/reasonable-diligence/>]

A fair, proper, and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity. [<https://thelawdictionary.org/reasonable-diligence/>]

Compelling evidence is evidence which is reliable, substantial and highly probative of the case for the convicted person.

Reliable evidence is that which is credible and provides a trustworthy basis for fact finding.

Substantial evidence is that which is of real significance or importance with respect to the matter which it is tendered to prove.

Highly probative evidence affords strong proof of an issue in dispute. To be highly probative the evidence must be directly, and not merely peripherally, relevant to that issue. It must also significantly affect the probability or improbability of the occurrence of the contested fact of which it is probative.

Substantial miscarriage of justice The kinds of miscarriage include, but are not limited to, three kinds of case.

-First, there is the case to which s 276(1)(a) [Vic. *Criminal Procedure Act 2009* - gfs] is directed: where the jury have arrived at a result that cannot be supported.

-Second, there is the case where there has been an error or an irregularity in, or in relation to, the trial and the Court of Appeal cannot be satisfied that the error or irregularity did not make a difference to the outcome of the trial.

-Third, there is the case where there has been a serious departure from the prescribed processes for trial.

-This is not an exhaustive list. [e.g. fresh and compelling evidence? -gfs]

[see: <https://eresources.hcourt.gov.au/downloadPdf/2017/HCA/48> and <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SASCFC/2016/71.html> South Aust. case. <http://www.austlii.edu.au/cgi-bin/download.cgi/au/cases/sa/SASCFC/2015/82> South Aust. case.]

MR CARR'S SUBMISSION:

FRESH:

1. Mr Carr, for Neill-Fraser, sought to show that the evidence of Mr Jones was **fresh**. He did this by submitting that the evidence of Mr Grosser, led by then DPP Tim Ellis at trial and in regard to the '**transference** of Vass's DNA on a shoe theory' had not been 'proofed'. (i.e. had not been **disclosed** to the defence prior to the trial.) He submitted that the requirement of '**reasonable diligence**' could not have been expected to uncover what Grosser would say ... before Grosser was actually asked about secondary transfer. The prosecution had given no indication (according to Mr Carr) that they would advance the idea that the DNA had been brought onto the *Four Winds* on the shoe of a police officer or other person. By the time the defence knew of that suggestion - according to Mr Carr - the trial was well advanced and it was too late to go a seek a report in response to the suggestion:

"MR ELLIS: *Oh – now, we've heard from Ms Vass today in this trial -Okay. - and she's been shown a picture of this boat, Four Winds, from which the swab was taken, which apparently matches her DNA, and she said that she's never been onboard it and she can't recall being near it was –*

MR GUNSON SC: *I object to the question in this form, your Honour, it's not the subject of any proof at all.*

HIS HONOUR: *Well if this hasn't been proofed the – that doesn't make it inadmissible. If you need time to – to plan your cross examination of the witness you can ask for it later. But I will allow the question to continue.*

MR ELLIS SC: *Thank you, your Honour. "*

COMPELLING:

1. Apart from freshness, Carr sought to submit that Jones' evidence was **reliable** (in that it satisfied the test of credibility and relevance). Of Maxwell Jones' standing (as an expert witness), Mr Carr said that "*his credentials are impeccable, his experience is extensive, and the evidence he gives is well within his area of expertise.*" [A2 110 37]

2. Mr Carr sought to show that the evidence of Mr Jones was **substantial**, i.e., that it had 'real significance' and 'importance':

-Mr Carr cited the evidence of Jones's report (pg 2) in which Jones had said that there was no evidence for the 'transference' hypothesis.

-Jones, said Carr, didn't rule out the 'transference theory' (which then DPP Ellis had put at the trial) Jones could not say it was impossible. He had said "*I can't exclude a very rare occurrence occurring.*" [A2A, but quoted in A2 112 27] Carr's point seemed to be that while not being able to rule out that 'very rare occurrence', Jones had been unable to nominate a way in which it had happened [A2 112 38].

-Jones, said Carr, had distinguished between the 'plausibility' of the transference theory as presented at the trial and the kind of circumstances that would actually be required for that possibility to have occurred ("*a specific chain of events*" and "*a specific and remarkable number of coincidences*" [A2 114 42]).

-Carr said that the evidence of Vass at trial that she hadn't been to Goodwood, made such a specific set of those sorts of circumstances [...] "*not plausible in the context of the case*" [A2 115 12].

3. Carr submitted [A2 115 17] that having shown that Jones' evidence was substantial, it followed - almost necessarily - that his evidence was **highly probative** of the case for the [appellant].

Thus, it seems, that Mr Carr closing submission was that the statutory requirements for a [successful] second/further appeal had been met.

MR COATES SUBMISSION:

(A2 119 5-10): *It's the Crown submissions or the respondents submissions that Mr Jones evidence is not substantial. It's the -- there's not a mis -- it couldn't have led to significant possibility that the accused would have been acquitted and - or the appellant would have been acquitted, and thirdly, it's not fresh.*

(A2 143 43 - 144 2): *In respect to - so, as I said, it's out case that it's not substantial. I won't go through again why we say it's not fresh, but finally it's my submission that the court could not be satisfied that there's a significant possibility that she was acquitted.*

(A2 144 4-10.): *In coming to that conclusion I suggest your Honour should take into account the minor differences between Mr Jones' evidence and Mr Grosser's. Secondly, now Mr Jones thinks the DNA, although he doesn't rule it out of course, one or two days, and thirdly, you've got to look at all the other evidence and consider one, as I said this morning, the sheer unlikelihood of Miss Vass being involved at the same time when there's overwhelming evidence that the appellant was.*

COMMENT ON COATES' SUBMISSION: I gave more attention to the essence of Mr Carr's closing submission than that of Mr Coates because Carr's closing submission was harder [for me - gfs] to grasp than that of Mr Coates. Also, Carr referred to cases from the South Australian Appeal Court and also the High court of Australia which necessitated my constructing a sketch of the second appeal statutory requirements/concepts: 'fresh evidence', 'compelling evidence', 'substantial miscarriage of justice', 'reasonable diligence', 'reliable', 'substantial' and 'highly probative'.