IN THE SUPREME COURT OF TASMANIA

BEFORE JUSTICE BLOW

STATE OF TASMANIA

v

SUSAN BLYTH NEILL-FRASER

TRANSCRIPT OF PROCEEDINGS
FOR 21ST SEPTEMBER and following

APPEARANCES:

MR ELLIS SC
MR SHAPIRO FOR THE CROWN

MR GUNSON SC
MISS BROOKS FOR THE ACCUSED

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HIS HONOUR: While I'm having papers marked I've received a – or my associate has received a list of the evidentiary issues from the solicitors for the accused, I'll ask that that list of evidentiary issues be marked for identification.

#MFI – A – LIST OF EVIDENTIARY ISSUES

HIS HONOUR: And also my associate's received a list of Crown witnesses that I'd like to have marked for identification.

#MFI – B – LIST OF CROWN WITNESSES

HIS HONOUR: Now the only other housekeeping matter that it occurs to me to mention before we get underway is that I've made arrangements to be at various places on the afternoon of Friday, the 8th October and it would certainly suit me if we didn't sit beyond eleven thirty on that day. There's a conference of judges and magistrates starting in Hobart that afternoon with over ninety of them coming from interstate and I'm involved in it, so if – unless the trial's at a stage where I really need to sit that full day I'd prefer not to sit after eleven thirty that day. I mention that at this stage in case it creates any difficulties. Now is there anything else we need to discuss before I invite argument as to the evidentiary matters.

MR GUNSON SC: Just one I suppose formal housekeeping matter –

HIS HONOUR: Yes.

MR GUNSON SC: Mr Ellis and I agree that there ought to be a view.

HIS HONOUR: Yes.

MR GUNSON SC: I have prepared and provided to the Crown the accused's list of places for the jury view. My friend has the list. The only question, I suppose, is when is it practical to do that?

HIS HONOUR: Is – is everything on this list able to be viewed from the land?

MR GUNSON SC: Yes, no one needs to go to sea, your Honour.

HIS HONOUR: Right. Well can I leave it to counsel to discuss when the view should take place?

MR ELLIS SC: We're thinking at nine thirty tomorrow would be a good time to start, and I would have thought the jury will be back by ten thirty, if that took place, it would be a convenient time; I imagine opening addresses, if we're talking in the plural, we'd be finished by then.

HIS HONOUR: Well that suits me if it suits counsel?

MR GUNSON SC: Absolutely, your Honour.

HIS HONOUR: All right. Well the accused's list of places for a jury view can be marked for identification.

#MFI-C – ACCUSED'S LIST OF PLACES FOR JURY VIEW – TAKEN IN

HIS HONOUR: All right. And are counsel agreed that I should determine all of the objections on this list at this point – at this stage?

MR ELLIS SC: Yes, your Honour.

MR GUNSON SC: Yes.

HIS HONOUR: Yes, all right, well I think I should deal with them – I'm inclined to deal with the – the seven matters one at a time. So Mr Gunson, I invite your submissions as to issue number one?

MR GUNSON SC: Yes, thank you, your Honour. Before I do that though, your Honour, I'm not sure whether any members of the press are still here, but given the nature of the material I have to address in the first statement, and your Honour, I don't need to go into it, but it would be highly undesirable if any of that material was to find its way into the press if your Honour was to exclude the material, and I just wanted your Honour to make a direction so that any members of the press who are here do not report anything about this process now.

HIS HONOUR: I don't know that a direction is appropriate, but the simple fact is that if evidence is discussed and I then decide not to admit it and there's publicity about it in the media, on the internet or anywhere, we might have to abort this trial, delay it and start again another time.

MR GUNSON SC: Well that's what my concern is about.

HIS HONOUR: So if any member of the press is thinking of reporting anything that's discussed in the absence of the jury it might be an excellent idea not to.

<SUBMISSION - MR GUNSON SC: That's a very good idea, your Honour. The first evidence that I wish to address with your Honour is the statement of Phillip Paul Thomas Triffett, which your Honour will find at – well page 21 through to page 38 of volume 1.

HIS HONOUR: Yes.

MR GUNSON SC: Has your Honour had the opportunity to read that -

HIS HONOUR: Yes.

MR GUNSON SC: It's unnecessary for me probably to take your Honour through it but merely submit it was detail but your Honour will appreciate from having read it that there are two distinct major issues arising from that evidence. The first is the evidence that would be sought to be led by the prosecution relating to an approach by the accused towards Mr Triffett to kill her brother Patrick, and in this regard I refer to paragraph 24 where she said this –

> *On an occasion after that Maria and I were at Sue's house at 7 Allison Street and Sue said she wanted to put Patrick overboard to get him out of the inheritance picture. Maria and I passed it off as a joke and Sue didn't go into any particular detail.*

Now immediately before that on the previous page you'll find a reference to the inheritance issue where Mr Triffett would want to say –

> *Some time after that Sue was having some sort of feud with her mother, Helen Fraser –*

Leaving aside for one moment that there is no evidentiary basis for that in the sense that he doesn't say, "She told me that", or "I learned it from another source", put that to one side –

> *She started talking to Maria and I about inheritance and her concerns over missing out on her share and her brother Patrick Fraser was going to inherit everything. She said that their mother was well off. I had met Patrick and Helen in the past but never had much to do with Helen. I recall Sue discussing with Maria some type of dealings with Helen where she wanted Helen to sign some property over to her.*

Now she then – he then goes on to advance this discussion about Patrick and says – said in paragraph – page 24:

> *The reason I mention that is that at some stage after that Sue and I went back down to the yacht at Electrona to put injectors into the engine. The yacht was on the mooring and I was working on the injectors. No one else was present. Sue then started talking about Patrick again and how she wanted to get rid of him. I realised then that she was actually serious about it. Sue told me she wanted me to go out onto the yacht with her and Patrick –*

I'm sorry –

> *- with Patrick out to deep water, as she called it. I was then to push Patrick overboard after weighing him down with a toolbox and things off the yacht and then sink the yacht closer to shore near the marina while Sue rode back to shore.*

The next paragraph he says:

> *I know she was serious because she actually showed me a pipe, a white hose type of thing, on the bilge pump that she said would sink the boat if I pulled the hose off and put another pipe on that, that I was to place over the side to suck water in.*

So first of all we have an allegation by this witness that the accused wanted to do away with her brother, as no doubt the Crown would say, in not dissimilar circumstances to which they allege occurred in respect of the present matter. We say to your Honour that the evidence is irrelevant, it relates to an entirely different person other than the accused. The events in question occurred at least eleven years ago, if not before that, and your Honour will say, 'Well how do I know that?' because in the committal proceedings – I'm sorry, the preliminary proceedings Mr Triffett gave evidence that the next event involving Mr Chappell occurred in – at Christmas 1996, and this event involving Patrick occurred some time before that.

Now I move on to the evidence about the previous alleged involvement of Mr Triffett to – or trying to secure Mr Triffett to assist in the demise of Mr Chappell - your Honour will find that at the bottom of page 24, and I read it:

> *Some time ago – some time later I went to the house at 7 Allison Street, Hobart to see if my partner, Maria, was there. At that time Sue's daughter was still living at home but Sue was the only person home. She said she hadn't seen Maria. Sue made me a cup of tea and we were talking in the living room. Sue started telling about how stingy Bob was and how she was worried about Bob's drinking while the girls were still living at home. She reckoned that Bob was waking up in the night and running around the house with knives looking for intruders. She said that Bob believed that someone had been coming in and out of the house during the night. She didn't really elaborate further on that. I remember clearly Sue said then said to me, "Bob's got to go".*

Which is open to any number of interpretations, I suppose, but then it's alleged she said:

> *What we talked about with Patrick is what's got to happen to Bob. She said she wanted Bob wrapped up in chicken wire. I was shocked and asked her what she meant and she said she wanted me to take Bob out on the yacht and wrap him up in chicken wire, weigh him down with a toolbox and push him overboard. The conversation ended because Bob returned home from work. I left not long after Bob got home.*

Now later on she says there was a confrontation sometime later where Bob learnt of that. During the course of the preliminary proceedings in the Magistrates' Court she said – sorry, he said that this event occurred at Christmas 1996. Now so first of all we have two allegations, first a so-called offer to murder Patrick, a request to assist in murdering Bob Chappell made eleven years before and insofar as Patrick's concerned sometime before that. There is no evidence that the Crown will lead, as best I understand it, to show that there was anything other than a normal relationship from 1996 onwards with the accused and Mr Chappell, that was the evidence on – well contrary to the evidence it appears to have been harmonious, and there is no evidence of a financial need such as that suggested by Mr Triffett. Now we say to your Honour that relevantly your Honour needs to resolve this question by reference to s135 and s137 of the Evidence Act. The section –

HIS HONOUR: Well if your primary submission is relevance I need to start with s55?

MR GUNSON SC: Exactly.

HIS HONOUR: Yes.

MR GUNSON SC: We would say it is irrelevant to a fact in issue here. Even if these things did occur, we would submit to your Honour that they are not relevant, given the length of time and nature of the allegations, to be proved – to prove that the accused in a circumstantial case was guilty of murder as alleged. Clearly the Crown seeks to lead the evidence for one purpose; and that purpose is to say to the jury, 'Look she did these things in the past, she said these things in the past, she invited Mr Triffett to be involved in committing these crimes" - it didn't happen, and all that this shows is a desire all those years ago, it's accepted, to do those things. And secondly, it shows bad character. And that's in itself a reason why it ought not to be allowed to be led. It is simply so prejudicial that it ought to be excluded.

Now, at 135, of course:

> *The Court may refuse to admit evidence if its probative value is substantially outweighed by the danger the evidence might be unfairly prejudicial to a party.*

And we only rely on that, and clearly it is. And then you have the mandatory requirement of s37, the exclusion of prejudicial evidence in criminal proceedings. And:

> *In a criminal proceeding the Court must refuse to admit evidence adduced by the prosecutor if its probative value is outweighed by the danger of unfair prejudice to the defendant.*

Now the meaning of this section was discussed in the Court of Criminal Appeal of New South Wales in the matter of Blick – would you pass that along to Mr Ellis, and a copy to your Honour – and the matter of Blick is reported in [2000] 111ACR@326, and the passage to which I wish to refer your Honour is to be found at the bottom of page 332, a decision of Justice of Appeal, Sheller J, where his Honour at paragraph 19 says –

When an application is made by a defendant pursuant to s137 to exclude evidence the first thing the judge must undertake is the balance of the process of its probative value against the danger of unfair prejudice to the defendant. It is probably correct to say that the product of that process is a judgment of the sort which in terms of appellate review is analogist to the exercise of a judicial discretion. (See cases referred to by Justice of Appeal Priestly in Moran v. McMahon and following particularly Leigh Transport v. Watson and Miller and Jennings).

In the second of those cases Dixon CJ and Kitto J in an appeal against damages awarded by the trial judge said of the sum awarded that it was reached by the very full and careful examination of the facts of the case and it represents an informed judgment upon a matter which must largely be one of opinion and must be governed to a not inconsiderable degree by the estimate formed by the witnesses and in particular the appellant.

His Honour continued –

Translated it to the task set by s137. A trial judge's estimate of how the probative value should be weighed against the danger of unfair prejudice will be one of opinion based on a variety of circumstances, the evidence, the particulars of the case and the judge's own trial experience. In that sense the result can be described an analogist to a discretionary judgment. (See Hayden v. Guy to the Evidence Act).

His Honour continued –

Even so in pure respect there seems to me to be a risk of error if a judge proceeds on the basis that he or she is being asked to exercise a discretion about whether or not admissible evidence should be rejected because of unfair prejudice to the defendant. The correct approach is to perform the weighing exercise mandated. If the probative value of the evidence adduced by the prosecutor is outweighed by the danger of unfair prejudice of a defendant, there is no residual discretion, the evidence must be rejected.

So to come back to the starting point, the prosecution to have this evidence admitted would have to show that it was relevant to a fact in issue and the fact in issue in this case is did this accused murder Mr Chappell as alleged. We would say for the factors that I have addressed to your Honour already that it is irrelevant, if your Honour finds it to be relevant then we say to your Honour that it ought not to be admitted for the reasons I've articulated.

HIS HONOUR: Thank you. Mr Ellis.

<SUBMISSIONS – MR ELLIS SC: Thank you. I've just asked my learned friend, Mr Shapiro, to rustle up a copy of Lynch, I think it's Lynch that the Court of Criminal Appeal in this State agreed or held that the exercise under s137 is indeed an exercise of judgement, not of discretion.

HIS HONOUR: I think I wrote the principal judgment and I think I drew heavily on what Sheller, J. said in the passage that Mr Gunson's just read.

MR ELLIS SC: Yes. So we – that item there, that doesn't necessarily help us. Now this evidence – let's leave aside just for the minute, if I could your Honour, the question of the identification of the brother of the first plot or plan to kill someone, when what is transferred that was relevant from that plan to the plan that the accused was inviting Mr Triffett to join in was this, that was a plan to kill her partner, Mr Chappell, on board a yacht or vessel in deep water, to sink the vessel, having disposed of the body, it being weighed down, while the accused rowed away from it. In this case the evidence will be that it is – or it's the Crown case that Robert Chappell was murdered on board the Four Winds sometime between the 26th and 27th January 19 – I'm going to have trouble with this, I can see, 1998.

HIS HONOUR: 2009.

MR ELLIS SC: 2009, you get these little mind buzzers – that his body was weighed down, probably with the fire extinguisher at least, a very heavy fire extinguisher, which has never been found again. That the vessel was sunk or attempted to be sunk, and that – our case is, Ms Neill-Fraser, not rowed, but went away from the scene in a dinghy.

Now that she would articulate such a plan in seriousness to a man eleven years ago, in my submission, must be relevant in the sense of s55 of the Evidence Act speaks of it; that is, if it were accepted it could rationally effect the assessment of the probability of the existence of a fact in issue in the proceeding, namely, whether she carried out such a plan, almost identical in broad terms, on the very same intended victim. It is also relevant, in my submission, that, confining it again to the plan in respect of Mr Chappell, that here we have in the person of the accused, if the evidence is accepted, a person who is capable of harbouring such animus towards her partner,

Mr Chappell, that she will articulate to another person a plan to kill him.

Now that is a person capable of bearing a very very strong animus towards her partner, and if she was capable of it then, it affects the likelihood, or the assessment of the probability of her being capable of it again in 2009.

The evidence, in my submission, is strikingly relevant. I mean my learned friend would hardly be objecting to it if he didn't know that it would lead to an assessment of the existence of the fact in issue; namely that Ms Neill-Fraser in fact carried out the plan articulated to Mr Triffett and killed the person that she told Mr Triffett she wanted to kill and wanted his aid in killing, by killing him on board a yacht, weighed him down and sinking the yacht and she rowed away.

Now the fact that the brother is identified is indeed a complication and I wouldn't say that that has any relevance of its own that she articulated such a plan to kill her brother per se, or that she articulated a plan to kill her brother, I don't put that there, but it's so bound up in what Triffett has to say about the very and highly relevant articulation of a plan to kill Robert Chappell that to exclude it would put the Crown case at a very big disadvantage. Triffett of course is a lay witness, not an experienced police witness, someone who can, you know, take a little bit out of the story here and splice it together in a way that doesn't involve perjury, he comes to the Court to tell the story as he claims it happened to him, and so to have him take out mention of the brother would really be an exercise doomed to failure or to adverse result in terms of admissible evidence in this trial and a very unfair exercise to him.

HIS HONOUR: Well you're not arguing then that it's relevant that the accused – if the evidence is accepted it's relevant that the accused articulated a similar plan twice, once in relation to the brother and once in relation to the partner?

MR ELLIS SC: Well it can have relevance but I would accept that it's more relevant – it's more easily - perhaps there is more easily seen a risk of unfair prejudice there, unfair prejudice, I'll come back to – but it does have relevance, especially since one of the circumstances that the Crown relies on here in this circumstantial case, and we'll come to it, it's objected to, is the size of the estate of Mr Chappell and the portion which the accused stood to inherit in the case of his death. It's a substantial estate and she was – she would inherit a substantial portion. It does have relevance that when she

thought that she would be thwarted from the inheritance of a portion of her mother's estate by her brother she conceived of a plan to kill him.

HIS HONOUR: Well aren't you getting into character evidence even if you exclude the brother. If you're relying on this evidence in relation to the conversation about Mr Chappell you say that the Crown says it's relevant that she maintained a degree of hostility sufficient to articulate a plan to kill her partner and that that tends to suggest that she was so hostile as to be capable of killing, or words to that effect, aren't you getting into impermissible reasoning there, into propensity reasoning?

MR ELLIS SC: I'd submit not because it's really simply to do with planning and design.

HIS HONOUR: Well planning is one aspect of it but if I do let this in I'm – the next question is what, if anything, do I tell the jury in order to minimise a risk of unfair prejudice.

MR ELLIS SC: Yes, yes.

HIS HONOUR: And I can certainly see some risk of unfair prejudice if – if the jury hear this they might well accept the evidence and think, 'Here is a terrible woman prepared to plan the murders of her brother and her partner', and they're likely to have an emotional response that might distract them from the task of carefully considering the evidence. Now – so there's certainly – it's as plain as day that there is a danger of unfair prejudice, the real question is – or the next question therefore is on what bases do – or basis or bases does the evidence have probative value and I'm a bit concerned about whether it can properly be relied on as evidence of what you've called 'very strong animus' –

MR ELLIS SC: Well when you say 'it' do you mean the plan to kill Mr Chappell?

HIS HONOUR: Yes, the 1990's plan to kill Mr Chappell.

MR ELLIS SC: Oh well it's clear that this is – that there, if Triffett's evidence is accepted, her feelings towards Chappell were such that she devised and articulated a plan to kill him and sought to enlist someone in it.

Now if Triffett had agreed of course we'd have a conspiracy and with nothing further to be done. If he'd said, "Yes, I'll be in it," we have a criminal conspiracy.

Now that's relevant – where I started with, your Honour, was to say, let's put the question of the brother to one side and look at what the evidence – the gravamen of the evidence is, and that is that she devised and articulated and sought to enlist Triffett in a plan to kill Robert Chappell by taking on the yacht, by killing him and weighing his body down, by sinking the yacht, and by going away in some other sort of vessel from the sinking yacht.

Now the relevance is this is exactly the sort of plan that the Crown case says – or exactly the sort of death that Robert Chappell met, and we say, therefore, it is likely – it increases the likelihood of it being met at the hands of the accused.

HIS HONOUR: Can I just ask you about one small point? I haven't yet got my head around every aspect of the Crown case. What is the evidence that tends to suggest – that the Crown says tends to suggest a weighing down with the fire extinguisher? Is it simply that the fire extinguisher has gone and Mr Chappell has gone, or is there more than that?

MR ELLIS SC: No, there's not – there's not more than that.

HIS HONOUR: All right. Thank you.

MR ELLIS SC: Now –

HIS HONOUR: Yes, go on.

MR ELLIS SC: Sorry, your Honour. So primarily I'm seeking to address you on the gravamen of the Triffett evidence, which is a plan in that detail.

Now that it takes in an earlier plan is a matter which perhaps we could address our minds to mechanically, but the – to the mechanics of getting around that, if your Honour is troubled about unfair prejudice arising from that. But could I say as to the articulation of the plan to Triffett, "We're going to do the same thing, I want you to do the same thing as I've talked about with Patrick", brings in those things and the articulation of that plan and the evidence of it in my submission carries no risk at all of unfair prejudice. Now your Honour has pioneered, I think, it that's not too strong a word, a

consideration of a working definition, I suppose, of unfair prejudice in W v R [2006] 16 Tasmanian Reports, para 1 at page 43. It's an articulation which has been adopted by Porter, J. in State of Tasmania v Roland – no, sorry, Howlett [2008] TASSC 38 at paragraph 52, and it's an articulation which you advanced in P v Tasmania [2009] TASSC 81, which enjoyed the agreement of the other two members of the Court of Criminal Appeal in which you were then sitting, and the articulation was from – is at paragraph 29 of that judgment, it's from report No. 26 of the Australian Law Reform Commission, volume 1 at page 644 in this way:

> *By risk of unfair prejudice is meant the danger that the fact finder may use the evidence to make a decision on an improper perhaps emotional basis, i.e. on a basis logically unconnected with the issues in the case. Thus evidence that appeals to the fact finder's sympathies, arouses a sense of horror, provokes an instinct to punish or triggers other mainsprings of human action may cause the fact finder to base his decision on something other than the established propositions in the case. Similarly on hearing the evidence a fact finder may be satisfied with a lower degree of probability than would otherwise be required.*

The substance, the gravamen of Mr Triffett's evidence carries with it in my submission no risk of unfair prejudice so defined. There is nothing unfair about a jury applying the commonsense view that if the accused articulated a plan so similar to that which appears to have befallen Mr Chappell in order to bring about his death and felt so strongly about it that she would seek to enlist someone and take the risk that runs of exposure, then that can rationally affect the assessment of the fact in issue that she was the one who caused the death of Mr Chappell in this way. It carries no risk of unfair prejudice. And my learned friend I should say has identified no risk of unfair prejudice. He seems to characterise prejudice as something which will tend to convict his client when in fact it's a test of relevance, a way – a way of looking at relevance.

Now he's mentioned the question of the timing of it, that it's eleven years old, as if that will affect in some way the situation. Now I don't know whether he claims that that goes to the probative program or claims to go to the unfairly prejudicial affect or how he mentions it but I'd ask your Honour to consider this. If you are considering the time of it, and it's eleven years ago is a factor in the judgment called upon, then it's appropriate to reflect how the law deals

generally with those matters and where it crystallises is in applications for stay of criminal proceedings which are based on events many years ago.

In very recent – very recently, I think it's the latest loose edition of the State Reports, 17 Tas Reports 357 – sorry, your Honour, I forgot to give you copies of – and Mr Gunson (indistinct words) which I hand up, and Tasmania and Ferguson, that's the citation to which I go.

HIS HONOUR: Thank you.

MR ELLIS SC: Now here's consideration by his Honour, Crawford, J. as he then was, of criminal proceedings against a man involving allegations of sexual misconduct over thirty years old. An application was made for a stay of those proceedings based on the delay. The – his Honour approached the basis – actually they were thirty – or it might have been over thirty years old – but at paragraph 69 his Honour referred to the well known case of *Jago v The District Court* and at paragraph 72 cited, not directly, but cited from the judgment of his Honour, Dean, J. at 60 and 61 of that he said that there were five main heads of relevant circumstances in consideration to which he thought should avert in deciding whether proceedings should be stayed on the ground that the effect of delay on the part of the prosecution is that any trial be an unfair one in all the circumstances. One, the length of the delay; two, reasons given by the prosecution to explain or justify the delay; three, the accused's responsibility for an past attitude to the delay; four, proven or likely prejudice to the accused; and five, public interest in the disposition of charges of serious offences in the conviction of those guilty of the crime. His Honour emphasised, as his Honour, Crawford, J. said that they are not a code, but are nevertheless convenient.

Now the length of the delay here would be in the order of eleven years compared to the evidence to be given in Ferguson's case. Not lengthy. The reasons given by the prosecution to explain or justify the delay don't need exploring because until this prosecution the evidence had no relevance and had not context, it could – it could not be brought in any other context, given that Mr Triffett had not agreed, it could not have been brought in any other context. But it is, of course, in my submission, apposite to consider what if Triffett had agreed? Would there – would there be any prospect of stay of those proceedings – proceedings for conspiracy against Triffett and the accused based on delay? Well in my submission there'd be no such prospect. The accused's responsibility for and past attitude to

the delay doesn't seem to be a factor in the present matter. Proven or likely prejudice to the accused, now if that's used in the sense of unfair prejudice again none has been identified, none has been identified, and the public interest in the disposition of charges of serious offences and the conviction of those guilty of crime, I hardly need to point out that this is the crime of murder, the most serious on the criminal calendar. So none of those factors in my submission could count against reception of this evidence on the ground of delay, if it is, and I submit it is, a fair comparison to make, a fair analogy to make between applications for stay of proceedings, which are only of course collections of evidence anyway, a stay of proceedings based on delay and then the question of delay itself in terms of this evidence. It's not really delay, it's – I suppose it's age of the evidence or something. In Mr Triffett's account there are plenty of – plenty of details, the fact that the daughters are still living at home, conversation on a yacht, was Mr Chappell running round, was he causing alarm, a trip to Murdunna is mentioned as setting a timing, the whole events are mentioned as leading to the break-down of what was previously a close and cordial relationship, are all details of course that he gives in this upon which he can of course be cross-examined and dispute can be taken, and there's been no suggestion of prejudice to the accused except the word's been said and it seems to have been said in no other way than to say, "This might help convict her". Well it might, that's why it's relevant in my submission.

So going back, in my submission it is relevant, there is no risk of unfair prejudice. If there is a risk of unfair prejudice it might lie in the suggestion – I'm sorry, the evidence of another plan to murder the brother and it should not be beyond the wit of the Court to make a ruling which would be fashioned to avoid that risk, or if it is unavoidable, to warn the jury of it.

They're my submissions.

HIS HONOUR: Thank you. Mr Gunson?

<IN REPLY - MR GUNSON SC: As your Honour is well aware this is a circumstantial case. The best evidence that the Crown has that the accused went onto the yacht on the night of the 26th of January, the best evidence, is a witness who will say that he saw a person going out in a rubber dinghy in the general direction of yachts moored off the Yacht Club at about midnight and he thought the person had the appearance of a woman – that's about as close as it gets.

Now it is important to remember there is a distinction between the so called 'Patrick plan' and the so called plan to – or the request to murder Mr Chappell back in 1996. the Patrick plan, my friend, I think in advertently, got the plans confused, involved the sinking of a yacht. It did not, so far as the second incident was concerned – at the top of page 25: she said:

> *She said - what we talked about with Patrick has got to happen to Bob. She said she wanted Bob wrapped up in chicken wire. I was shocked and asked her what she meant and she said she wanted me –*

That is Triffett.

> *- to take Bob out on the yacht and wrap him up in chicken wire and weight him down with a toolbox and push him overboard.*

So that incident did certainly – didn't involve her committing the offence, rather it involved Mr Triffett doing it, and certainly no sinking of the yacht.

Now what my learned friend put to your Honour, as I understood his submission, was this – and I stand to be corrected if my note is incorrect – if the accused articulated a plan so similar and would assist someone the jury can rationally effect the conclusion that she did it. So what the Crown is really saying is, because there is evidence that eleven years ago and beyond that there was a discussion of the sort Mr Triffett would give evidence about that therefore eleven years later that must be what happened. Now we say this is not a strong circumstantial case, we don't need to go into that debate as to whether it's strong or otherwise, but in a circumstantial case there is immense risk that there is prejudice to the accused of the sort that's referred to in the Act and in the cases and the evidence simply

ought not to be led. It doesn't matter, with the greatest of respect, how carefully your Honour models the direction to the jury that you're going to get an emotional response from a jury saying, 'Look, she said these things, we accept Triffett's evidence, she said these things all the years ago therefore it follows that she did it on this occasion', that's the approach the Crown want to put and that's the approach the jury will take. If it please, your Honour.

HIS HONOUR: All right, well I'll reserve my decision on that point and I invite your submissions on the second issue – Mr Gunson?

MR GUNSON SC: Could I ask for an indulgence for about five minutes, your Honour.

HIS HONOUR: Yes, I'll take a break for a few minutes.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: Mr Gunson?

<SUBMISSIONS – MR GUNSON SC: Yes, your Honour. Now I can't – and don't refer your Honour to any particular statements about this issue but the Crown want to be able to prove that the net financial value of Mr Chappell is in the order of, that is if he's deceased, of about one point three eight million dollars –

HIS HONOUR: Actually I should really take this together with item 3, Mr Kimber's evidence about the will, shouldn't I?

MR GUNSON SC: Yes, yes. Yes, they can be dealt with conveniently together.

HIS HONOUR: Yes.

MR GUNSON SC: Now the prosecution want to prove the net worth of Mr Chappell which I think primarily comes from – with a value of the home –

HIS HONOUR: Sorry, what figure was that?

MR GUNSON SC: One point three eight I think was the final figure.

HIS HONOUR: Yes.

MR GUNSON SC: Of that about nine hundred and – this is off the top of my head, about nine hundred and eighty thousand dollars would come from his superannuation entitlements. The balance basically from the value of his home in West Hobart gets us to that figure. That doesn't take into account of course any entitlement that the accused might have in what I'll call normal circumstances to a share of the house given the long relationship and so forth, put that to one side. The prosecution says, for reasons I fail to understand, that this evidence must be relevant to a fact in issue and would say, as I understand it, because his net worth was that figure therefore that is a factor that the jury could take into account in determining whether the accused is responsible for his disappearance and they say presumably death. Now there is no evidence to suggest, leaving aside Mr Triffett, that in 2008 there were any pressing financial circumstances of the accused, that she desperately needed money for any reason and this was a quick way to get it. There is no evidence that she was even aware of the value of his RBF entitlement. Well I

assume one would have a rough idea of the value of a home that a person was living in. So we simply say to your Honour again it invites the jury to embark on an impermissible process of reasoning that there was a reason to do away with Mr Chappell because he was worth one point three eight million dollars dead.

The same reasoning applies to the evidence proposed to be lead from Mr Kimber, and I identified the volume and the pages. There's nothing remarkable about the will. There's nothing at all remarkable about it, and again, there's no evidence to show that the accused was even aware of the contents. The estate was to be distributed quite fairly in various proportions, consequent upon various events, and again, we say the Crown would seek to prove the contents of that will through Mr Kimber and invite the jury to go on the same process of concluding that because she stood to inherit a certain amount, therefore, that was a reason for killing Mr Chappell. And we say that's simply not relevant to a fact in issue. I can't really put it any higher than that.

The fourth item relates to the items on a computer that was taken by the police on the 11th –

HIS HONOUR: Well that's very different from the – items two and three, isn't it – should I – should we leave item four or –

MR GUNSON SC: Oh, I'm sorry, your Honour, that's completely my error.

HIS HONOUR: Yes.

MR GUNSON SC: Yes, thank you. (indistinct words) –

HIS HONOUR: Yes.

MR GUNSON SC: Yes, thank you.

HIS HONOUR: All right, Mr Ellis, as to items two and three?

<SUBMISSIONS - MR ELLIS SC: Yes, thank you, your Honour. A circumstantial case; here is circumstance which is capable of effecting the jury's assessment of a fact in issue, namely whether Ms Neill-Fraser killed Mr Chappell; that is that she stood to gain financially. I don't know what the unfair prejudice about it is? It's a possible motive; it's a circumstance which makes its more – perhaps more likely that she may have carried out a plan to kill him, if it was a plan. It's just a circumstance for the jury to take into account.

Now on the other hand, on the other hand if the Crown were not able to give the jury this information, what would they make of it? There would be speculation. It may even be more unfavourable to Ms Neill-Fraser because the evidence doesn't contain any evidence – and I know of none in the papers – as to her wealth, or her assets and liabilities. I understand she had investment – some investments and so on, but a jury might think, impermissibly, that Mr Chappell's fortune was huge, more – you know, tens of millions or something, they might think anything. Why not give them the actual evidence about what it was and they can – and they can draw such conclusions as they think are proper to after a proper circumstantial direction.

HIS HONOUR: Is there evidence as to who stood to get the superannuation?

MR GUNSON SC: It went to the estate.

MR ELLIS SC: Only insofar as the estate had divisions. I –

HIS HONOUR: Right, so the super was to form part of the estate and guide the terms of the will?

MR ELLIS SC: On the assumption it certainly formed part of the estate, yes.

HIS HONOUR: Yes, I see.

MR ELLIS SC: There's no evidence of any different direction to the trustees, of course it's up to the trustees as to where the superannuation goes and one would probably rely on the inference that the trustees will generally distribute in accordance with the will.

Now if – if the Crown were not permitted to say there would be a gain or possible gain to Ms Neill-Fraser on the death of Mr Chappell that can operate very unfairly too, that can mean that the jury perhaps says that because she has nothing to gain it is less likely that she did it, and so taking away that – this is just the very sort of evidence that a jury in this sort of case would be expecting to have. What is the evidence of the estate, where is it going to? Then they can make of it what they will, it would be by no means improper for them to say that the possibility of gain to Ms Neill-Fraser makes it more likely that she committed the crime, but equally they might say, "That doesn't assist us at all", but it should be in their province to select as one of the circumstances because there is nothing unfairly prejudicial about it, nothing unfair at all. It's unfair if they're left to speculate, that's unfair perhaps to the accused, it's unfair certainly to the Crown in my submission.

HIS HONOUR: In reply, Mr Gunson?

MR GUNSON SC: No, your Honour.

<RULING - HIS HONOUR: Well I will admit the evidence. It's – it's circumstantial evidence. It's open to the jury to treat it as having – as carrying little weight or none. But it will also be open to the jury to treat it as evidence suggesting a motive or possible motive, namely, that Mr Chappell was killed for the sake of the financial benefits that would flow to the accused. Whether it tends to suggest that or not is a matter for them. The strength of any such suggestion is a matter for them. But it's – it's relevant. It's capable of rationally affecting the verdict of the jury, it ought to be admitted. There's nothing about the evidence of Mr Chappell's net worth, his assets or his will, that might result in unfair prejudice to the accused.

So that evidence will be admitted.

HIS HONOUR: Now item number four, Mr Gunson?

<SUBMISSIONS - MR GUNSON SC: Yes, item number four relates to evidence that the prosecutors would seek to lead as a result of material being found on the accused's computer that's identified in items one, two, three and four.

Now the first relates to a search on Google on the 30th of December 2008 to the Galapagos Islands and Panama Canal. The 31st of December it relates to US yachts and sales and the Marquises – the Marquises runs in the Pacific, I think north of Tahiti – and then some Google searches, as those described in three and four.

Now there's no relevance. People are entitled to look at their computers and do Google searches of anything they want to do. This was a cruising yacht that had been purchased by the accused and her partner, and on the evidence it was clear they intended to do long sails on it. I fail, with the greatest of respect, to see the basis on which it can be contended that this evidence is relevant to a matter in issue. So you look at the – some searches about the Galapagos, Panama Canal and the Quasar Islands and have said to, as it's the Crown case, to have in someway reinforced the Crown case that the accused was going to kill Mr Chappell, and you look at some yacht sail sites and the same conclusion it is said can be reached. Now with the greatest of respect it can't be relevant, it can't be relevant to a matter in issue. If it is relevant, which we submit it's not, again we rely on s135 and 137, because we simply say it invites the jury to speculate. And no doubt what my friend will say to your Honour, and I'm guessing at this, is, 'Oh, look she was looking at the Galapagos Island sites she was going to sail there alone without Mr Chappell', and that's the rationale I suspect of it, that's the basis upon which it will be put to the jury and we submit, we say, is simply wrong. It almost, as it were, forces the accused to have to explain it and she shouldn't have to do that, and I should add this, it was never put to her by the police or the interview.

HIS HONOUR: Mr Ellis?

<SUBMISSIONS - MR ELLIS SC: Thank you, your Honour. The question is relevant because it tends to bolster the – a possible source of friction, possibly fatal source of friction, between the accused and Mr Chappell. The key, I suppose, is in the proof of evidence of Kate Chappell at page 1112, Mr Chappell's daughter, volume 6, at the top of that page, it's only a couple of sentences I'll read to your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: -

> *The other –*

I think the word 'thing' or something like that –

> *- about that day was that Sue was speaking about how fantastic her sail down was and how she could just keep going and didn't want to stop. I was a little bit concerned how Sue would settle back in Allison Street with dad, it was more a sense that she'd being living a humdrum life and had this big adventure. I spoke to dad briefly and he told me he was continuing his work and work – stay for another year to complete the work.*

Now last evening I filed a supplementary proof of Timothy Chappell, which didn't make it to the volume of supplementary proofs, but it was – and the intention is to lead evidence from him that on the two occasions that he was out with the accused and his father on the yacht, the Four Winds, they sniped constantly at each other concerning the boat.

> *She wanted to go on long distance voyages and my father had far more modest plans for it. She had driven the process by which it was bought; my father was uncomfortable with its size.*

Now add to those impressions of the children of the deceased the fact that upon her return – upon her return here was the – and the jury will be asked to infer it was the accused, looking at yachts in exotic locations, Galapagos Islands, yachts for sale and so on. This is a circumstance by which the jury can say, "Yes, she wanted one thing, he wanted another, there was the friction".

Now my learned friend, Mr Gunson, says – has said in his earlier submission that the evidence will be that it was a harmonious relationship, the evidence is nothing of the kind. There will be evidence from the people in Queensland that the accused told them that the relationship with Mr Chappell was over, that she spoke of buying out his share of the boat, and so this is another circumstance in my submission which bolsters that. I mean I've – this is a fatality, it's claimed on the Crown case, between partners. I've prosecuted a case where a man murdered his wife because she wouldn't get off the phone when he'd cooked dinner. These seemingly small frictions can become fatal and this is a friction and there is some evidence supporting what the children had observed in what the jury can infer is Ms Neill-Fraser's search for exotica, for adventure, for big yachts on sunny islands rather than going down to Bruny Island and back again. If it please.

HIS HONOUR: In reply, Mr Gunson?

MR GUNSON SC: No, your Honour.

<RULING - HIS HONOUR: I think the evidence is relevant. It – I think it could rationally affect the assessment of the probability of the accused having murdered Mr Chappell. It's – it's a very tiny piece of evidence and one that might be regarded as carrying very little weight, but all the evidence relevant to the degree of tension between the two partners, in my view, is capable of affecting the assessment of the probability of the accused having committed the crime charged. I don't see any risk of unfair prejudice resulting as a result of the jury giving this evidence a false importance. It's – it may be regarded by the jury as irrelevant. If it is given any weight it – it's hardly likely to be much. But I don't see any basis for excluding it. I'll let that evidence in.

<SUBMISSIONS - MR GUNSON SC: The next item, your Honour, is item five. Now rather than take your Honour to the pages in the volumes, which are several hundred pages, that contain all of the telephone calls, I have extracted these entries because they appeared in a proposed list of agreed facts that the Crown put to me, and I should say this to your Honour so you're in no doubt about it; it probably would form an agreed fact if your Honour – or it almost certainly would form an agreed fact, if your Honour permitted the evidence to go into – for the jury. Now to put it in context Mr Stevenson is one of the people who was on the yacht 'Four Winds' when it sailed from Brisbane down the east coast of Australia, the mainland, to Tasmania, he was one of the two delivery men who sailed with Ms Neill-Fraser on that trip. And what's happened is the Crown want to put into evidence some telephone calls, or mobile text – phone call text messages that were sent to Mr Stevenson's mobile phone or received from his phone. I suppose the most sinister of those is the first one –

Mr Stevenson, Ms Neill-Fraser, Merry Christmas –

Surprisingly on the 25th December –

- to you all, hope you have a good day, Pete.

Followed by –

We are, thanks. Merry Christmas

Mr Stevenson –

And so they go on. But we simply say to your Honour there is absolutely nothing in them that warrants them going before the jury and it would invite the jury to speculate as to some relationship between Mr Stevenson and the accused when there was not on the evidence. Now it's not been explained how they are relevant and I simply invite your Honour to find they're not relevant but if they are then they suffer from the defects that I've addressed. If it please, your Honour.

HIS HONOUR: Mr Ellis?

<SUBMISSIONS - MR ELLIS SC: Your Honour, I'll be submitting to the jury that it's one of the features that they can be aware of, and I'll be opening on this, of Ms Neill-Fraser's performance in various – very lengthy interviews that she will change her story and change her views depending on what's presented to her. And in the case of Mr Stevenson that she will – when she finds that he is saying something that doesn't suit her will attack him via those interviews. Now at volume 3 page 384 she is speaking of the trip down. She'd engaged Mr Stevenson and another man as professional sailors to deliver the yacht and teach her how to use it – and at the top of page line 5 she's describing the trip:

> *So they decided we'd turn around and go back, and this is where professionals were excellent because they knew of a little spot we could tuck in, a little bay, and we did.*

So praise for Mr Stevenson there. But at page 528 something is put to her, it's comes from Stevenson, about the floor being taken up and Ms Neill-Fraser was asserting that a part of the floor was found by her in the bilge pump and police at 527 say that:

> *Stevenson said that the floor in that boat was taken out but it was never screwed back in and the screws are in a plastic container up in the cabin, and to us it's logical that Bob was probably in there, and he's the one that got the screwdriver.*

And it could be said that Ms Neill-Fraser turns nasty there, and at 528 she said:

> *Pete was not there, he happened to be very drunk at the time.*

The – she then develops in the next interview, in volume 4576, it's put at 4576, at the bottom of the page:

> *Peter Stevenson tells us on the trip you made down, on a number of occasions comments that your relationship with Bob was over and had been for a long time. He's more so specific about that that you were going to have borrow money from your mother to pay him out his share of the boat.*

Over the page:

> *I don't want to say too much about Pete, he discovered Bob's alcohol supply.*
>
> *You form your opinion about Peter Stevenson and have a look at his history –*

And down the page:

> *He has a drink problem, there's no doubt about that.*

So she attacks his character in response to matters being put which don't suit her. And yet, in these text messages she is not just chatty, but affectionate towards a man who you would think, if he really was such a terrible drunk and she'd phoned him but he was drunk virtually all the way down on the trip and hopeless, she wouldn't be sending him messages of that character with three Xs, saying – almost flirtatiously saying that she's in bed with the cat, in brackets, she would, you would think, be as angry as she displayed herself to be in the interviews, and that's the relevance of those, your Honour.

<RULING - HIS HONOUR: Well I can't see any basis at all for thinking that any of these text messages might rationally affect the decision that the jury has to make. Maybe I'm missing something. I wouldn't – if the Crown wants to have another go at persuading me later in the trial that there's something relevant here then the Crown should. But it seems to me that – that the text messages show that the accused and Mr Stephenson were in touch with one another with Christmas greetings in relation to – they were in touch in relation to a financial transaction. They were in touch with each other about the sending of photos from Tasmania to Queensland. There were Xs no doubt representing kisses included in messages to one another, and there were friendly – friendly comments such as "Looking forward to seeing you". People often do maintain a cordial relationship with acquaintances whom they think less of than they like to let on, and I can't see that there's anything in any of these text messages that could reasonably be relied on as having anything at all to do with the question of guilt or innocence and so I can't see any basis for concluding that they're relevant and I won't admit them. Now if the Crown want to say later in the trial that I've misunderstood something or that they – evidence has been given that makes their relevance clear I'm willing to revisit the question, but at this point I'm not persuaded that they're admissible.

MR ELLIS SC: I understand perfectly, your Honour. Could I take it from that though that nor would you think it in any way defined of your ruling should the Crown be cross-examining Ms Neill-Fraser that these are referred to.

HIS HONOUR: If you want to cross Ms Neill-Fraser about these I expect you'll face an objection and I'll determine it then.

MR ELLIS SC: Very well, if it please. Your Honour, my learned friend need not trouble about the evidence of Dr Herzeld and the negatively void particles, I won't lead that.

HIS HONOUR: Thank you. So finally there's item 7. Mr Gunson?

<SUBMISSIONS – MR GUNSON SC: I'm grateful to my friend. I've troubled myself all night about this, or at least an hour, and wondering what he was really saying. At the end of the night it became pretty clear that –

MR ELLIS SC: It can go in different places.

MR GUNSON SC: You can go and look at (indistinct word). Anyway it's gone, that's all that matters. Your Honour, the last bit of evidence relates to some photographs that the prosecution would wish to lead which were taken from a Commonwealth Bank of Australia ATM surveillance camera at the CBA Bank on Sandy Bay Road at the corner of King Street and Sandy Bay Road at 12:25 a.m. on the 27th January. Now – does his Honour have a copy of those photographs?

MR ELLIS SC: It's annexed to – the one shown to the daughters is annexed to the supplementary proof of –

MR GUNSON SC: Yes, of Constable Sice, I think it is. Your Honour –

HIS HONOUR: Just a minute, so it's in the supplementary papers?

MR ELLIS SC: Yes, your Honour - 68, your Honour. The evidence is that a photograph was shown to the daughters of the accused and that photograph is at 70 of the supplementary papers.

MR GUNSON SC: Yes, I'm conscious of that one I was thinking of the expanded one of which I – which is in the other photographs.

HIS HONOUR: Right. Where should I look for this, Mr Ellis?

MR ELLIS SC: Page 70 of the supplementary papers, your Honour.

HIS HONOUR: I've got that.

MR ELLIS SC: I think it's fair to say that the Crown were seeking my learned friend to agree a series of photographs –

HIS HONOUR: Well I've got them as photos 1 to 5 in tab 1 of a blue folder.

MR ELLIS SC: That's right. And as it seems I'm briefing that Detective – Sergeant Conroy showed only one of those of that series. It would in the end be simply that one that we would seek to prove through him. I think it is in – I think it is in colour though the one he signed but whether it is or not it's – it looks to be 2 – number 2 of that series, your Honour.

HIS HONOUR: Well page 70 matches photo 2 and it's probably the best of the five photos of the vehicle.

MR ELLIS SC: Yes.

HIS HONOUR: Yes, all right.

MR GUNSON SC: Just bear with me a moment. Now if your Honour goes to page 254 in volume 2 – yes, volume 2, you'll see there the proof of Detective Conroy, 254.

HIS HONOUR: Yes.

MR GUNSON SC: And if you go to the bottom of page 261 and you will see this entry, it relates to some discussions between Detective Conroy and the two daughters of the accused, who I should add, the Crown doesn't intend to call:

> *Further Emma and Sarah questioned the progress of the investigation, particularly CCTV footage from the area. They were advised that some footage existed from an ATM on Sandy Bay Road. I stated, it just raised more questions, and then showed them a picture of a motor vehicle observed on the road at 025 hours on 27 January 2009. The picture is inconclusive, but depicts a vehicle similar to a Ford station-wagon, as owned by the accused and Robert Chappell. Sarah responded with a comment that it was her mother's car and Emma stated that it looked like her mother's car.*

Now the officer says quite correctly that's inconclusive. The only evidence of any relationship between this vehicle and the accused appears at page 601, volume 4, where the accused was asked some questions in an interview about it, and it's all very inconclusive, starting at line 14:

The station-wagon that we've got that looks very much like your car –

Answer:

Right.

- and your daughter's look like your car –

Which is not very complimentary –

- I think it was 12:25am?

Answer;

I don't know.

Do you actually – do you think that might be your vehicle?.....I actually thought it was later than that.

So no response.

Later than 12:25?.....I think it might have been later.

Mm. What sort of time do you think it was?.....Oh for some reason – where – we were still on daylight saving then.

Yeah.....Right. Well I don't – well I definitely can't remember the time, I don't know, but I didn't change the clock.

Question:

There was another car that we saw on the footage and I think, again, it's testing my memory –

Said the interviewer:

- and I haven't got in front of me, but I think it was around about four in the morning, went straight up King Street, would that be your vehicle?.....No.

So they were the only questions put to the accused about that vehicle. The – one photograph was put to the two girls and the officer himself

says it's inconclusive and looking at the photograph it doesn't show very much. Now the Crown will want to put that through the officer no doubt to the jury and invite the jury to conclude, when the officer himself says it's inconclusive, that it's a vehicle driven by the accused.

HIS HONOUR: Well what did your client tell the police about her movements on the night in this interview?

MR GUNSON SC: Basically went down to the waterfront and drove home but wasn't sure of what time it was.

HIS HONOUR: And what did she say, if anything, about the route that she drove home?

MR GUNSON SC: It was along –

I remember along Sandy Bay Road.

But that doesn't – I mean Sandy Bay Road is a well covered road, I mean thousands of cars go up it day and night and any number of Ford Falcons would go up it day and night, it's not exactly some unique vehicle.

HIS HONOUR: What harm does it do your client if she went past the Commonwealth Bank at 12:25 rather than some other time?

MR GUNSON SC: Because her position is that she didn't go past at 12:25.

HIS HONOUR: What was her position in the interview?

MR GUNSON SC: Wasn't sure of times, as I read from 601 then, but the prosecution would be saying that proves it was her at that time, that's the issue. We know a car, a Falcon, went past at that time but the question is was it her car? And it's not for the jury on a photograph like that with the evidence of the officer who interviewed saying it's inconclusive, which it is inconclusive, one just has to look at the photograph to draw a conclusion.

HIS HONOUR: But if it was her car at 12:25 does that link in with anything else other than the observation of a person thought to be a woman at around 11:30?

MR GUNSON SC: Well if – I think we're getting into an area that –

HIS HONOUR: Maybe I should ask Mr Ellis what the Crown says.

MR GUNSON SC: I think that's the best answer, your Honour, yes.

HIS HONOUR: Mr Ellis?

<SUBMISSIONS - MR ELLIS QC: Yes, I'm being assiduously verbal here about what the Crown is saying about this. The Crown's point about this is, as I mentioned before, Ms Neill-Fraser in her interview showed a capacity to change her story depending what is confronting her.

Now on the 4th of March 2009, she took part in an interview, and it's at volume 3, page 478, in which she said, as to that night, the evening of the 26th – the 27th January, she didn't leave the house at all she stayed at home. Now – so that – that's her position then to police in a video recorded interview. Now the showing – I should also say that the Crown is going to call evidence from Mrs Sanchez, the deceased's sister; Mr Timothy Chappell, the son; who will say that there were numerous family discussions in which the accused participated and never once did she say that she had been down to Marieville Esplanade that evening. Her position was that she was at home and she got phone calls, end of story, next time she went there it was the morning because she'd been told the boat was sinking. Never in any story known to the Crown that she has told did she say that the – that she had been back to Marieville Esplanade that evening until these photographs were shown to her daughters on the 5th of March. So 4th of March interview, nuh, never went there. 5th of March, shown to the daughters, Ms Neill-Fraser is on bail, the jury can infer that she is in contact with her daughters, there will be other evidence that the daughters are around, for instance, when next –

HIS HONOUR: No, hang on, she was – she was on bail at that time?

MR ELLIS SC: Oh yes, well she – not on bail – sorry, she wasn't arrested.

HIS HONOUR: She was at large.

MR ELLIS SC: Yes.

HIS HONOUR: Hadn't been charged.

MR ELLIS SC: Yes, of course – of course.

HIS HONOUR: Yes.

MR ELLIS SC: So the evidence will be that on about – on about the 10th of March, it may have been the 8th, but on about the 10th of March, we'll say from Ms Sanchez in a telephone call the accused for the very first time to Ms Sanchez's knowledge said that she had been down there that night. On the 13th March she took part in an interview with Felicity Ogilvie of the ABC. There was – this is according to Ms Ogilvie's proof in the supplementary papers – there was a discussion before the recorder was turned on. In that discussion the accused said that she'd gone down there that night, this is the 13th March. Before she turned the recorder on Ms Ogilvie said, "Is there anything you don't want to mention", the accused said, "That thing about Claire, which was relating her version to why she went down that night, and so no mention was made, and then Ms Ogilvie told Detective Powell that the accused had mentioned that she'd been down that night and that was of course news to the police. It was news to everyone and it wasn't until her formal interview on the 5th May that she admitted to this investigation that she had in fact been down there that night. Now to go back, the point isn't necessarily that this is her car, the point is that this was thought to be her car by her daughters and immediately after them being shown that, which might be her car, or I'll tell the jury, might not, she changed her story in a very significant way and that which had been previously withheld and, if her later story is correct, lied about was then offered, but rather exclusively even then.

HIS HONOUR: So are you contending that in previous – by previously saying that she'd been at home that she told lies – one or more lies that can be used as evidence of guilt in accordance with Edwards' case?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: And I'm saying the turning point about that is the showing of the photographs.

HIS HONOUR: Yes.

MR ELLIS SC: Also of course, according to Alexander's case, [1981] 145 CLR 395 the evidence of identification of the car by the daughters is admissible as an act of identification. But I won't be saying to the jury, "This is the car, you must think this is her car, that she was definitely there", I'll be saying to the jury, "This is what caused her to change her tune".

HIS HONOUR: Yes - the – I happen to know that Sandy Bay Road has two lanes going in each direction past that bank. What I can't tell from the photos is whether a vehicle in the right lane would be photographed by that camera or whether this grey vehicle is in the right lane. It doesn't really – it's not really clear from the photos, is it?

MR ELLIS SC: No, no it's not, not advanced as proof positive.

HIS HONOUR: Sorry?

MR ELLIS SC: It's not advanced as proof positive; it's advanced as the trigger for changing the story primarily.

HIS HONOUR: Is –

MR ELLIS SC: The jury could take into account, could think that it could be her, they could think that it was her, given the other admissions she makes. But it's not going to be advanced simply on the basis, here's a picture of a car you can show just – you can say from that picture that that's the accused and there the evidence ends, it doesn't. It's a far wider significance than that in the proof of the accused being a person who has lied and the jury will be invited to find lied because she was – she knew the truth would convict her. And she changes her story – the analogy will be that she changes – she advanced an alibi of the afternoon that Mr Chappell may have disappeared, that she was in Bunnings for hours. On being confronted with proof eventually her story changed. She advanced to police that she didn't go out that evening. On it being made known to her that there was proof which suggested to the contrary, her story changed. These are relevant things, in my submission, and the Crown ought to be able to give them to the jury as the unfolding of the Crown case.

HIS HONOUR: Thank you. Mr Gunson?

<IN REPLY - MR GUNSON SC: The objection isn't the, what my friend called 'the trigger' that caused the change or alleged change in the story, but it's to the objection to the photograph going into evidence – and that's what I maintain my objection about. There's no evi – it can't be an objection to the officer saying 'I showed a photograph to X, and as a result of that I then spoke to the accused and got another story from her', that's perfectly admissible. My objection is to the photograph per se, because the jury, whichever way it's approached, would be invited to draw a conclusion that it was her car going past at that time and that's the critical issue, it's the photograph being linked to the time that we object to, not to the history as it were it's the photograph per se.

MR ELLIS SC: Your Honour, could I reply to that because this is a very different objection?

HIS HONOUR: Well I'll hear you, yes.

MR ELLIS SC: If, as it seems to be now conceded, the evidence of Mr Conroy of showing a photograph of what could have been the car, that's all he says, the daughters of the accused is not actually objected to, then the jury would think it's a peculiar thing indeed that they wouldn't be shown the photograph with appropriate warnings; that is that the Crown doesn't say that this is certainly her car. To have the evidence which now doesn't seem to be objected to so emasculated would just be a puzzle, it would just serve no purpose I'd submit.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I don't want to reply further.

<RULING - HIS HONOUR: Well I think that the photograph is admissible as part of the evidence as to what allegedly triggered a change in the accused's account of events it therefore becomes a question of whether I should exclude it because of some danger of unfair prejudice or give some sort of direction limiting its use. I don't think there is a danger of unfair prejudice. I think the – if the photograph weren't seen by the jury there'd be a risk that the jury might leap to the conclusion that it shows more than it does, more than it in fact does, and I don't see any need for a direction limiting its use now that I know that the Crown doesn't intend to say – or doesn't contend that this was definitely the accused's car. So it's relevant, there's no risk of unfair prejudice if it goes in, there's no reason to limit its use, I'll allow the photograph to be tendered on the basis that the Crown seek to tender it.

MR ELLIS SC: If it please.

HIS HONOUR: All right, well that – now there's nothing you wanted to argue that's not on the list, Mr Gunson?

MR GUNSON SC: No, your Honour.

HIS HONOUR: All right.

MR GUNSON SC: That's not to say that things mightn't arise during the trial.

<RULING - HIS HONOUR: Oh of course, of course. All right, well look where I am with the evidence of Mr Triffett is that I'll let it in and I'll let it in on the basis that it's relevant. I'll let in the evidence both in relation to the conversation about the brother and the conversation about Mr Chappell. In my view the undoubted relevance of it is that it is evidence of the accused having made a plan in the 1990s with striking similarities to the plan that the Crown contends that she implemented in 2009. The – Mr Ellis said that – submitted that the evidence in relation to the brother was that – sorry, that the evidence in relation to Mr Chappell was that the plan in the 1990s was:

1. A plan that he be killed.
2. A plan that he be killed on board a vessel.
3. A plan that the vessel be sunk.
4. A plan that the body be weighed down and disposed of.
5. A plan that the accused would travel away from the murder scene in a small boat

- and that those aspects are consistent with what the Crown says happened on the night in question.

Now the statement of Mr Triffett of course doesn't state that the accused said anything to him about sinking a boat after killing Mr Chappell, but the statement does say, and I quote:

> *She said what we talked about with Patrick is what's got to happen with Bob.*

And if evidence is given in those terms and accepted by the jury it'd be open to the jury to infer that what the accused meant included the sinking of a boat, even if there isn't evidence that she expressly discussed that at the time of the conversation about Bob Chappell. It's not evidence of a threat, it's not evidence – it's got the – it's not

a question of whether it's evidence of character; in my view it's admissible because it's evidence that she formed a plan with the characteristics that I've enumerated and that – that's evidence that certainly could rationally affect the jury in its determination of guilt or innocence. Now – or whether the – or whether guilt's been proven beyond reasonable doubt.

Now I do see a significant risk of unfair prejudice, of course all evidence is prejudicial, evidence that someone who committed a murder planned a similar murder, or a murder with strikingly similar characteristics twelve or more years previously, is prejudicial in the sense that it – that is evid – that it is evidence that is significant circumstantial evidence tending to prove guilt. There's a risk of unfair prejudice in that the jury might have an emotional reaction to hearing the evidence, and that the jury might not examine it dispassionately, or might be inclined not to examine it dispassionately.

However, in my view, the probative value of the evidence is such that it – its probative value outweighs the risk of unfair prejudice. Now I believe that to be so whether or not the – the evidence might also be able to be relied upon by the Crown as relevant because it displayed the attitude of the accused as at 1996 to Mr Chappell and the killing of him. Now I'm not persuaded that there is any proper basis upon which the Crown could rely upon that evidence as – otherwise than as evidence of the making of a similar plan, or of similar plans, in relation to her brother and her partner in or before 1996. The evidence isn't evidence of a tendency to do anything or a propensity to do anything, it's not relationship evidence of the sort that could properly be relied upon to put later evidence in context and enable a jury better to evaluate evidence of what happened later between two people. There's a risk that the jury might use the evidence to reason that the accused is shown by it to be a person of bad character and therefore a person whose nature is such that she might commit a crime of violence. I think it would be wrong to allow the Crown to rely upon the evidence on any basis associated with the attitude or character of the accused and that it will be necessary to give a direction not to reason on the basis that that evidence shows her to be a person of bad character and therefore a person more likely to have committed the crime charged.

So I'll let the evidence in, but only as evidence of the making of plans in the nineteen nineties involving the characteristics that have been enumerated.

MR ELLIS SC: If it please.

HIS HONOUR: Now is there anything else before we adjourn to two fifteen?

MR GUNSON SC: No, your Honour.

MR ELLIS SC: No, thank you, your Honour.

HIS HONOUR: All right, the Court will adjourn until then.

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

MR ELLIS SC: - would be content for her to be bailed, your Honour, until Thursday morning at 9:45 a.m.

HIS HONOUR: Mr Gunson, do you wish to be heard as to this?

MR GUNSON SC: No, your Honour.

HIS HONOUR: All right, the procedure under s12 of the Criminal Procedure Attendance of Witnesses Act 1996 is that I may require the intended witness to enter into a recognisance, so I require this witness, Barbara Zockling, isn't it? Is that correct? So I require that the witness, Barbara Zockling, enter into a recognisance in the sum of one thousand dollars to secure her attendance. What this means, Ms Zockling, is that you'll be free to go but you'll have to – but first you'll have to sign a recognisance, and that is a document that will have to be prepared while you wait. By that recognisance you'll promise that if you don't appear at this trial when you're required to appear then you will be liable to pay the Crown one thousand dollars, so that – so I excuse you from further attendance once you've signed that recognisance until 9:45 this Thursday morning and – but you'll have to be here then and at any other later time that you might be required otherwise you could be required to forfeit a thousand dollars. All right, thank you, take a seat. Ms White, there isn't a prescribed form. The Bail Regulations have something similar so if you could prepare that document while we continue. Is there anything else that we need to discuss before the jury is brought in for opening speeches?

MR ELLIS SC: Don't be alarmed, your Honour, if I seek to give the jury copies of some maps or, sorry, aerial photographs, one of which is marked with various locations – perhaps your Honour ought to see it? These, as I understand it, are agreed and can be tendered by consent, if necessary. It's the one with – no, it's not the one with the markings – there's a – there's one with just street marks and one with certain locations marked. So –

HIS HONOUR: Are you content with this, Mr Gunson?

MR GUNSON SC: Yes, your Honour.

HIS HONOUR: All right. Well these are copies for me, are they, Mr Ellis?

MR ELLIS SC: Yes, your Honour, yes.

HIS HONOUR: All right. And do you want to tender them or do you want to – well I suppose you should do that after the jury get here. You may tender them in your opening address or refer to them and then tender them.

MR ELLIS SC: Well perhaps I'll do that, your Honour, I've got bigger copies of – they'll be the ones I'd like to tender then and then hand out –

HIS HONOUR: Well I'll let you tender them during your opening.

MR ELLIS SC: Thank you.

HIS HONOUR: All right, bring the jury in – have they been – I forgot to tell them where the foreman sits – will you – you've done that – thank you.

<JURY RETURN

HIS HONOUR: I forgot to say something this morning about where the foreman or forewoman sits, but I take it, you've been elected as forewoman, madam, I'll ask you to keep that seat for the rest of the trial.

Now my role as the trial judge in these proceedings requires me to act as a sort of chairman of proceedings and to give you directions about the law but although I'm the judge of the law it's the jury who are the judges of the facts. It's up to the jury to decide what happened to Mr Chappell and what Ms Neill-Fraser did in relation to Mr Chappell and any sorts of questions of that nature, questions of fact. I'm the judge of the law the jury are the judges of the facts.

Now the starting point in any criminal trial in this country is that an accused person is presumed to be innocent. An accused person is presumed to be innocent unless and until a jury finds that person guilty. So the starting point in this trial is that Ms Neill-Fraser is presumed to be innocent of the crime of murder. Because that's the starting point the Crown bears the burden of trying to prove guilt. It's up to the Crown to produce evidence for the purpose of proving to you that Ms Neill-Fraser is guilty of the crime that she's charged with and the Crown bears the burden of proving that beyond reasonable doubt. The one question that each of you will have to consider at the end of this trial is, 'Am I satisfied beyond reasonable doubt that Ms Fraser has been proven guilty of the crime of murdering Mr Chappell'. If you are satisfied beyond reasonable doubt of that then your verdict has to be guilty no matter how hard you might find it to find another citizen guilty of a crime and guilty of that particular crime. If you're not satisfied beyond reasonable doubt of her guilt, of the crime she's charged with, then it's your duty to find her not guilty even if you suspect she might be guilty, even if you think it's pretty likely that she's guilty, that's not the question. If you're not satisfied of guilt beyond reasonable doubt then it's your duty to give her the benefit of any reasonable doubt and find her not guilty.

Now it happens that Ms Neill-Fraser is in custody. Apparently that was reported in a newspaper today. Well that's quite normal in murder cases in this State. It's almost unheard for somebody accused of murder not to be held in custody. And whether a person is held in custody or not is completely irrelevant to whether they're innocent or guilty of the crime that they're charged with. You, each of you swore an oath or made an affirmation this morning where you promised – you promised that your verdict would be a true verdict

that's in accordance with the evidence, and it's the evidence that is the – must be the basis for anything you decide about whether guilt has been proven beyond reasonable doubt. So don't, whatever you do, think that the fact that Ms Neill-Fraser happens to have been kept in custody is a bad sign or counts in any way as tending to prove her guilt. It sometimes happens that innocent people get charged with murder and are held in custody and then found not guilty. So, whether she's in custody or not is completely irrelevant.

Now the Crown in order to try to prove guilt will be calling a large number of witnesses – I gave you most of their names this morning – and they'll come here and they'll give evidence in the witness box and it's up to you to make some sort of assessment of their evidence and how reliable or unreliable it is, and what it establishes, and what conclusions or inferences, if any, you can draw from the established facts. One of the reasons that we have juries is so that twelve people, who have been chosen from the community, can make some sort of assessment of the evidence given by other members of the community and decide about questions of whether particulars pieces of evidence are truthful or untruthful – correct or incorrect, and whether particular witnesses might have things right or be wrong or vague or confused or partly right and partly wrong, those sorts of questions are all questions for the jury because the jury are the judges of the facts. The proceedings are going to be recorded, there will be a transcript, I don't have plans to give the transcript to the jury so some of you might like to make notes of important things that are said in case you need to refer to them later on. In a couple of minutes when I've finished talking I'm going to invite counsel for each side to make opening speeches to you and that will probably fill the day. Tomorrow there's a plan that you'll be taken to Sandy Bay and shown various places that are relevant to this case and then once that's been done tomorrow morning the witnesses will start giving evidence. At the conclusion of the trial when all the witnesses have given their evidence you'll hear closing speeches from both counsel and then finally you'll hear a summing up from me where I explain every aspect of the law that you might need to consider as well as making some comments about the facts and then at that stage that's when the jury goes to the jury room to consider its verdict. But as I say the central question in all of this is whether you're satisfied beyond reasonable doubt that Ms Neill-Fraser has been proven guilty of murder. Now that's probably enough from me at this stage I'll invite counsel to make their opening speeches beginning with the Director of Public Prosecutions, Mr Ellis.

<OPENING - MR ELLIS SC: Thank you, your Honour. Ladies and gentlemen, as you've heard I'm the Director of Public Prosecutions, the young man with me is Jack Shapiro, which is a – would be a top name I suppose, he's my junior counsel. He'll be asking questions of some witnesses as well and you'll hear from him.

Now at this stage I just need to give you an overview of what our case is about, the evidence you're going to hear. I'm not going to mention each and every witness, it's just impossible to remember all that, but just so you know when witnesses come and go, where they might generally fit in.

Now Robert Adrian Chappell was born on the 2nd December 1943, so as of Australia Day last year he was sixty five years old. Now this case concerns the events on Australia Day or 26th January 2009 here in Hobart down, the Crown case is, in the water of the Derwent off Marieville Esplanade. That's where, some of you might know, it's where the Royal Hobart Yacht Club is, there's a beach that used to be called Short Beach and is now apparently Errol Flynn Beach. You'll be seeing these places tomorrow if you're not familiar with them, but that's the location of some of the events that you'll hear about.

Now Mr Chappell was the Chief Physicist in Radiology at the Holman Clinic that's attached to the Royal Hobart Hospital, so he wasn't a doctor, he was a scientist, he dealt with the machines and devices that people with cancer are treated with.

The accused, Ms Susan Blyth Neill-Fraser, was his partner, that is they lived together, of about eighteen years and she as at Australia Day last year was aged fifty five. She wasn't working but she had investments apparently. Both of them had children from previous marriages, Mr Chappell had three children, Timothy, Kate and Claire, and Ms Neill-Fraser had two daughters, Emma and Sarah, and they were all adults, they had all left home and Mr Chappell and Ms Neill-Fraser lived together in Allison Street in West Hobart.

In September 2008 they bought a fifty three foot ketch called Four Winds in Queensland for two hundred and three thousand dollars. They'd been looking for a boat for some time it seems and you'll hear evidence that Timothy Chappell - and it seems that Ms Neill-Fraser was the one perhaps driving the purchase a little bit more than Mr Chappell himself. I'm not yachtsman, in fact I'm hopeless I'm – when I use terms like 'ketch' or something like that it's really a matter of luck whether I hit on the right expression; so those of you that know a bit about this, when I make a mistake just please forgive me. But fifty three – a fifty three foot ketch is a pretty big boat, it's

got cabins and beds and decks and so on, and you'll actually hopefully see it tomorrow because it's still moored – tied up or something, now as it was then.

So they bought that and there was some work done it, quite a bit of work done on it in the end by an electrician called Rowe and a man called Jim McKinnon, who you will hear from in this trial - that work was done in Queensland. And when it was finished and the boat was ready to go it set off to come to Tasmania on the 7th of December 2008.

Now two professional crewmen were hired to help Mr Chappell and Ms Neill-Fraser get to understand the yacht, how it sails and so on. Their names were Peter Stevenson and David Cassidy. Hopefully you will hear from them both, but it seems that Mr Cassidy is in hospital in Queensland, so he's a little bit doubtful, but we're hopeful that you'll hear from Mr Stevenson fairly – fairly soon in this trial. So they're the professional crew and they set off, and it was a pretty eventful trip; things went wrong. There was problems found in the water, electrical things went wrong. But unfortunately, one of the things that went wrong was that Mr Chappell himself, Robert Chappell, or some witnesses will call 'Bob', developed a really severe nosebleed and he had to be hospitalised up in Queensland while the boat sailed on - didn't have to but the boat sailed on, and so while he was in hospital Ms Neill-Fraser and the two professional crew continued on and they reached Hobart on the 23rd December 2008 and some more work was done on the boat in Hobart that you'll hear about.

On the 20th January last year Mr Chappell's sister Caroline Anne Sanchez came to Tasmania for a visit, an exotically named Mrs Sanchez I suppose, lives in Ecuador, married an man from Ecuador, but then I gather was living in Sydney, and she'd come quite often for a visit to her brother, Mr Sanchez wouldn't accompany her. She stayed at Allison Street so there were then three of them staying there, Ms Neill-Fraser, Mr Chappell and Ms Sanchez, and it was apparently a pleasant enough time. There were dinners with the children, call them children, adults. She will tell you that she didn't notice any particular tension between the two of them.

On the 25th January they went on a trip on the boat down to Bruny Island. And as I said the Four Winds had a mooring off the Royal Yacht Club and you got to that mooring by what's called a tender, it's just another boating phrase that I've learnt in this trial. A tender is, in this case, it's an inflatable dinghy, it's a fairly substantial one, you'll see that too, some people call them a Zodiac or a dinghy or a

tender, and the system was that the tender would live on a trailer that would live at Allison St and when they wanted to go on the yacht they'd go down and launch it from Short Beach and go out to the boat, tie it up to the boat, and then use it when they'd finished sailing to come back. And you'll hear that that's how they did it that day on the trip down to Bruny Island. This tender had a new motor. When it was at sea rather than being tied behind it would go up on a sort of frame that are called davits, so it would be across the – up the bow, the back of the boat – the stern of the boat, I think. So there was that trip. You'll hear from Mrs Sanchez that Mr Chappell operated the trailer and how it was towed – operated the tender actually out to the – the boat and back. Mr Chappell owned a grey Ford station-wagon, and it seems that this was the vehicle that was usually used to carry this tender and trailer around.

So Australia Day, there was the trip to Bruny Island the day before, reasonably pleasant, Mrs Sanchez was apparently given a fairly good go at steering the boat and up they go and back again. Australia Day was a Monday last year and Mrs Sanchez briefly saw her brother, Bob Chappell, at breakfast; they didn't talk much to each other, not morning people, and at about nine o'clock that morning Mr Chappell and Ms Neill-Fraser went out to the boat. Mrs Neill-Fraser said that she'd be back at about eleven to collect Mrs Sanchez for lunch, and the plan was to have lunch at the Royal Yacht Club – and that happened, she came back, picked up Mrs Sanchez, down they went to the yacht club, no lunch on, only pies apparently, so they had a pie and a drink, they took some photos – you'll hear from Mrs Sanchez that you couldn't actually see the yacht from the yacht club. Mr Chappell hadn't intended to join them for lunch, and as far as Mrs Sanchez knew he was onboard.

This very brief 'hello goodbye, how are you' at breakfast between Mrs Sanchez and her brother, Bob Chappell, is the last time that he was seen alive by anyone except Ms Neill-Fraser, that we know of at least – it's the last time he's been seen alive. So he's on the boat, he stays there, she comes off, grabs – gets Mrs Sanchez, have the pie, then she takes Mrs Sanchez back to Alison Street because Mrs Sanchez is going to be taken – picked up by other members of the family and taken to Bruny Island to stay at her niece's shack there and they get back there, she'll tell you, at the house at Allison Street at about one thirty and Ms Neill-Fraser left to go back to the yacht. Mrs Sanchez was in fact picked up at about three thirty. So that's about one thirty Mrs Neill-Fraser – Ms Neill-Fraser, I'm sorry, has left Allison Street, she's left Mrs Sanchez there, had lunch and gone, and she's gone back, she says, to go back on the yacht. At about two o'clock, you'll hear from a young man called Christopher Liaubon,

he's a student and he lives down in Battery Point and he sails and rows some unusual sort of canoe, and he went down there to launch that and go out that day on the river and when he was earlier down there, he went down at about twelve o'clock, he'd seen an inflatable dinghy, a Zodiac tender, tied up on some poles down at Short Beach. So he went out to his canoe and when he got back it was about two o'clock and there was a lady there having difficulty with that tender because the outboard motor was stuck in the sand and he helped get it out, get it going. He left, he went up the hill there and he could see the lady in the – then in the Zodiac – I keep changing the expressions, I'm sorry – in the tender heading out into the river into a fair headwind, making very slow progress.

Now it's our case that that was Ms Neill-Fraser on her way out to the Four Winds where Mr Chappell was. That seems to be agreed in the several interviews she had with police she recalled the young man helping her get the tender unstuck. So that all seems to be how things happened.

The next morning, 27th January, early in the morning as they have to, a Mr Timothy Farmer took his daughter for rowing training down at Sandy Bay Rowing Club at Marieville Esplanade. It's another place that you'll see tomorrow in this little tour of things down there. And they were the first ones to arrive down there at 5:40am and he saw a tender inflatable dinghy with an outboard motor attached to it bobbing against the rocks in front of the rowing shed so he went down and grabbed the rope that's attached to the tender and he noticed that all this rope, the rope that's used to tie it up, it's called a painter, there's another term, was all in the tender itself. So it wasn't that it was floating around with the rope dragging from somewhere where it had been it was all actually in the tender. So he got it up, got it out, tied it to the rocks and it was – he was another person who had seen it, this one, the previous day tied up to the poles down there, so it's all one and the same. Mr Liaubon had seen it, no doubt Mrs Neill-Fraser had tied it up there when she came back in order to pick up Mrs Sanchez and so it's all the one vessel. So there's Timothy Farmer, now the rowing coach arrived soon after that, his name is Daryl Balding, he was shown the dinghy, out went the rowers, Mr Farmer and Mr Balding following in a powered boat, as they were returning they came past the Four Winds, which is on its mooring, and the noticed it was very low in the water especially at the bow, the front of it, and they got in and police were arriving, someone else had called the police to alert them that this boat seemed to be sinking.

Now the police who got there, their names were Constable Stockdale and Etherington, and they were from Hobart Uniform Police, they're not marine police, they're you're blokes on the beat, and Mr Balding took them out to the yacht and they got on and they saw several drops of blood on some steps leading down into the cabin. Mr Balding went into the cabin and found that there was water down there up to his ankles. He could see the ignition key in the ignition and he turned it on hoping that that would make the bilge pumps, the pumps that are supposed to pump out water that gets into the boat, come on, and he turned on the ignition, which was in the off position. Turned it on but nothing happened. They saw a torch that appeared to have some blood on it and there was a carving knife on the wheelhouse floor, just there loose.

Pretty soon people with a bit more expertise in yachts from the Marine Police came and those marine officers were Constables Chris Lawler and Benjamin Cumming – sorry – Cunningham, they were in the marine division and they turned up; and Constable Lawler located a cut pipe that went into the toilet – I might be able to – this is a real – you'll get these pictures in due course, but there's a pipe, as you see it's been cut with something sharp. This – this pipe – I'll see if I can find a good one – not particularly - here's the toilet as you go into it from the door, and you can't see the pipe the pipe's actually on this side of it, and someone had cut that pipe and water was flowing out of that. And Constable Lawler found that next to it was a valve – in the cupboard here was a valve that was attached to that pipe that was cut, and so he closed it and the water substantially stopped. This is the sort of valve it is, it's just – you'll see a valve there and you just turn it like that – but apparently this one was very stiff, he had to get a tool to get it working, which – up to you, but you might think it means that it hadn't been opened and closed regularly – apparently it's good practice to do that on boats, but this one, perhaps, hadn't been. I'm sorry I'm a bit out of breath but it's been a fairly hard morning already for me, not you. So he got a multigrip and he closed that valve, but the water was still coming in, and under the floor near the toilet in a little hatch was another – what's called a seacock, it's the same sort of thing, and that is up and under a - very hard to discover and it seems that that was probably part of some plumbing or a toilet or something that had been discontinued and it let water straight in from outside. So rather than, when they re-did the plumbing, do up that hole and board it over, what seems to have happened was it was just put on with the seacock and a handle and a bit of pipe that went nowhere and that was also letting water in. Now you'll hear that these things are hard to find, that someone with an intimate knowledge of that boat perhaps would have known what to cut in order to make the water flow and

what to turn on underneath a panel on the floor in order to make it come in direct, but you would need perhaps that knowledge of yachts generally and that one in particular to know those things.

Now of Mr Chappell there was no sign. About 7.10 a.m. that morning Ms Neill-Fraser was contacted by telephone and told that the Four Winds was sinking and she said she'd come down, and she did, and she drove down. She spoke to Constable Etheringham and said that her husband, Robert Chappell, was on board and he'd been on it since she last saw him the previous day in the early afternoon and they had lunch together on the yacht. You'll recall she had a form of lunch with Mrs Sanchez, but be that as it – the tender, the dinghy that was tied up on the rocks by Mr Balding – not Mr Balding, the other – Mr Farmer, she identified that as the one belonging to the Four Winds, that is her tender. She talked to him about the history of the purchase of the yacht and so on pretty much as I've told you, you know, it was bought in Queensland and they sailed it down and so on. She said to him that her husband had become a bit jealous and resentful of her getting to know the yacht while she was sailing it down and he was doing some general maintenance on the yacht and trying to get a better understanding of it. She asked him to contact her daughter, Emma Mills, who came with her husband Jeremy, and Timothy Chappell, Mr Chappell's son, was also contacted and came. She said to the constable from the Hobart Uniform that three or four days earlier – three or four days earlier, make a note of it, someone had boarded the Four Winds and had tried to access some hidden panels and they'd done some damage which her husband was fixing. She said the same thing had happened in Queensland and she'd been told that people smuggled drugs on yachts similar to Four Winds and they sell the yacht and they retrieve the drugs later. So she wanted the police to search with dogs. She impressed on them this – this theory about, well, that people were using the yacht somehow to smuggle drugs and had got onto open it and look for them or get them back, or something like that.

She went off with her family members for a coffee and during that time a red yachting jacket was found on a fence at Margaret Street, which is just opposite from the yacht club. It might be about time I tender these maps, your Honour, I seek to tender, firstly the map with various streets and the Sandy Bay Rowing Club and the Royal Yacht Club marked – I understand this is agreed – it's not a map, I'm sorry, it's an aerial photograph.

EXHIBIT #P01 – AERIAL PHOTOGRAPH OF VARIOUS STREETS AND SANDY BAY ROWING CLUB AND ROYAL YACHT CLUB – TAKEN IN

MR ELLIS SC: And as P02, the same photograph, but with some more things marked on it.

EXHIBIT #P02 – SAME PHOTOGRAPH AS P01 BUT WITH MORE MARKINGS – TAKEN IN

MR ELLIS SC: Can I ask that copies be made available to the jury.

HIS HONOUR: Yes, we'll make the second one, P02.

MR ELLIS SC: Okay, that's the first – here's the first one. This other one that's marked not just with streets but with various descriptions, the first tender is a Zodiac, and there you see under the word 'Esplanade' I think that's what's called Short Beach or Errol Flynn Beach, that's where it was launched regularly, and just along from there there's a sea break, rocks and so on, that's (indistinct words) rowing club on the morning – early morning of the 27th January. Now out to the river you see the Chappell mooring, that's where the Four Winds was tied up, moored. Come back in there, you see the Royal Yacht Club and the Marina and so on. Now it's got a – it's got Zodiac left here on the afternoon/evening of the 20th January. As you will hear that's where Ms Neill-Fraser later asserted that she left it that evening or afternoon, that is the 26th, Australia Day. And over from there is where a jacket was found, Margaret Street, found on fence. Okay, well that's a little bit of a picture of it. So with that jacket, it was put in the boot of a police car and when they, the family, came back from their coffee they were shown - Emma Mills, Ms Neill-Fraser's daughter was shown it and said that there similar ones on the yacht, but when Ms Neill-Fraser was shown it she said it was not hers, she had never seen it before, very definite about that. As are the police very definite that at no time that morning in their presence was she allowed to touch it.

Police – the witnesses, you will hear from the police, saw that Ms Neill-Fraser's left wrist was strapped and she appeared to be holding it. You will see some photo when we get to tender them, she always seem to be sort of holding it and seemed to have some strapping up here. She had a band-aid on the thumb of the same hand and later one of the officers asked her to show, you know, what's under the band-aid and she showed a fresh cut under there and, a bit strangely, she said that – this is talking about – that she cut her thumb, she said her fingerprints might be on a torch on the boat, that's what she said. She – so the red jacket, never seen it before, wasn't hers, not a really good explanation of whatever injury that it was but you also see the photographs, at least one of them taken by Mrs Sanchez, Mr

Chappell's sister, the day before when they've had lunch down at the Royal Yacht Club, and you'll see – you can see her hands, she's got no band-aid on her thumb and no strapping on her wrist, so something that changed during that time and the next morning at least.

Now the Four Winds, the boat, was pumped out eventually and was towed to Constitution Dock. We're still on the 27th January and at 11:50 a statement was made by Ms Neill-Fraser to police. You'll have it in due course, the evidence, in it she says that she and Mr Chappell had a steady, healthy relationship with no major problems, that's the quote. She said she was not aware of any problems with the seacock, that's the one under the panel that had been opened, with the seacock or the bilge pump and she and Robert were always checking these areas for problems. She said the – that the previous day she and Robert Chappell had gone to the boat; she'd left in the dinghy at eleven o'clock while he stayed on, she returned, she said, to Alison Street, had a shower and some lunch. So there were a few places for lunch, I suppose, there's the lunch at the yacht club, there's the lunch that she said to the uniform officers she had onboard, and there's now the lunch at Allison Street – but maybe, neither here nor there. She said that she returned to lunch (sic) at one o'clock and Robert was working on the generator. Now I'll remind you that it's at two o'clock that Mr Liaubon assists the lady to get the Zodiac out of the sand – the motor out of the sand. She said she left the boat; that is she'd gone out in the tender and then she left the boat at two o'clock as Robert wanted to stay on the boat so he could work through the electrical systems on – by his own. She said she left the dinghy, left it next to the Royal Yacht Club tied up, she believed adequately tied up. She said that she was a good swimmer and she – and he – I'm sorry – she said that he was a good swimmer and he'd have no trouble getting to safety if he fell in. She said that thirteen days ago someone had been onboard and they found the chart table had been accessed and the freshwater pump cover open and the electrical switchboard was opened and the same thing had happened in Queensland she said in this State.

Now the next day, so we're on the 28th, the boat had been pumped free of water and she went onboard the Four Winds with police this time, including a Detective Sergeant Simon Conroy – sorry – Conway – and she went about and she noticed, apparently quite quickly and commented on various things – she noticed that ropes appeared to be cut, there's a winch on the boat and she said that the handle shouldn't be in the winch it should have been stored separately, but it was in there. She said the fuse board switches were in the on – were in the incorrect position. She pointed out that there was scuffing in the framework to a hatch entrance to the cabin, which had not been there

before, and she said that a heavy fire extinguisher was missing, a big heavy fire extinguisher, apparently a good looking object, and some flooring in the main saloon had been unscrewed, and she said, "This wouldn't have floated free it had to have mini screws taken out to lift it up". She pointed out some fresh marks on the deck near the mast and the epirb, that's the signalling device. I did know before I started what those exactly stood for, but it's one of these things that gives out a signal for emergency, that was missing from its bracket. She had been asked not to touch anything but she – she went to the main electrical switch panel and she changed some switches around and the bilge pumps started and an alarm sounded, quite a loud alarm, and she kept turning these on and off until eventually, because part of it was under water apparently, it overheated and smoke began to appear and that was the end of that demonstration. But the point is she went and switched the switchboard and upon turning on – her turning on those – they look like fuses like in your fuse box – the bilge pumps came on. She repeated the concern that drugs may have been on board and it was connected with break ins and she urged the police to follow that line of investigation.

Detective Sergeant Conroy on the 28th January went to the Allison Street home. He obtained some items for DNA identification matching Mr Chappell, like a toothbrush, you have to get the DNA to do matching and so on when you're doing a forensic examination, so a toothbrush is usually a pretty fair source of it, and he spoke further to Ms Neill-Fraser and he got from her a statutory declaration that time, that is a little bit more serious I suppose than just a statement, a statutory declaration, and that detailed her observations of what was out of place on the boat and she said that when she'd left it on the 26th she took the tender dinghy and she said that was her usual practice to do so. She said that Bob didn't like getting in and out of it unless absolutely necessary. She said that she'd thought further about her timings of the 28th (sic) January, that was her phrase, and she said that they went to the yacht at about nine o'clock in the morning, they had cake and tea at ten to ten thirty, she went home at eleven or eleven thirty a.m. to have a shower, she had then left, she said, her mobile phone with Bob. She and Ann, that's Ann Sanchez, went to the Royal Hobart Yacht Club for a drink, a drink and a pie, and she drove Ann around at about 1:00pm. I'll just read to you from that – a little further from that statutory declaration.

> *I then drove Ann home at around 1:00am I then returned to Marieville Esplanade, the wind was getting up and I thought I had to get to the boat and see if Bob wanted to leave the boat. When I got to the tender the outboard was buried and I needed help in getting it*

free. This was near the rowing club, a different position from the Royal where I later tied it. The wind was up and the chop got me very wet. I tied the tender up to the side of the boat, the leeway side which was the right hand side, I did not stay on the boat very long. Bob was a bit snappy. I was of the opinion Bob could have come off the boat due to the weather. Bob had checked the charts and said the wind would drop out and said he had decided to stay on the boat. In the end I left him the mobile, asked if I should pick him up in the morning for work. He said he may not even go to work so I left it at that and thought he'd ring if he wanted. I was sure he would change his mind later and call me to get him. Given the wind I decided not to take the tender to Marieville Esplanade I decided to take it to the Royal Yacht Club where it would be easily managed. From towing it up I went to Bunnings Hardware on the Brooker and then came home. Ann was not home by then as it was getting late, Ann had gone to Bruny Island for the night, she was being picked up after 4:00pm, I am sure when I got home it was starting to get dark. I stayed out at Bunnings for a long time, I did not buy anything but browsed. I drove our Ford Falcon wagon. I stayed alone at home that night. I made several phone calls and received a call from Richard King over some family members. It was 10:30pm when I got off the phone. The following morning I was notified that Four Winds was sinking by the police radio room I then went to Sandy Bay.

So there we are, statutory declaration, back on the boat about 1, back away about 2, to Bunnings, stayed there, it was getting dark, this is January so that would be pretty late that she stayed at Bunnings. So that's the 28th – the 28th of January 2009, the statutory declaration of Ms Neill-Fraser's recollections. Her partner of eighteen years being missing, the yacht being found sinking, signs – clear signs of sabotage on it, a serious matter, and they are her recollections on oath.

On the 5th of February Detectives Sinnitt – Sam – I think it's Shane Sinnitt and Detective Milazzo visited Ms Neill-Fraser at home. Robert Chappell was still missing and he is to this day, you'll hear in the form of some agreed facts and other evidence, investigations that have been done. That his bank book – bank accounts have not been accessed. His superannuation hasn't been accessed. His family haven't heard from him. No one has heard from him. He hasn't

been heard of – there has been no sign at all of him being alive from that day. Police in other jurisdictions have been contacted – nothing – no. One of the things of course fundamental to this case of murder is, you've got to be satisfied that he's dead, that he was killed by Ms Neill-Fraser; that he didn't stage his own disappearance. Well you'll hear from his children and you'll hear what Ms Neill-Fraser herself says, he wasn't suicidal. Here was the time, of course, when his sister was over. He had plans with his work, he was doing – he was going to stay on at least another year because he had a particular project he wanted to finish and there was no depression – nothing like that. There was no reason – and of course, why would he deliberately jump over, having made those signs of sabotage – that doesn't make sense. Why would he be washed away – where have the signs of sabotage come from then – that doesn't make sense.

Anyway, we're back to the 5th of February; so those two detectives visited and they got some further background material, they made notes, she's pretty much as before, she said that when she'd been onboard on the 26th she'd got in Bob's way and there was a row, that he was snappy and he wanted her to take off –

Now by this time some witnesses, Paul Conde, and Ann and Thomas Clarke, who you'll hear from, had told police that they'd seen Four Winds on its mooring at four o'clock in the afternoon on the 26th and an inflatable dinghy had been tied up alongside on the port side. As the water was choppy they noticed it, it was moving around a lot, and when these two detectives on the 5th February put these observations of witnesses to Ms Neill-Fraser her story shifted, and you'll hear this isn't the only time that her story shifts when other evidence inconsistent with it is put to her. She said – I mean obviously given that there was a dinghy alongside it she must have still been on board and that she'd stayed there longer than she thought, so her – what she said was that she tied the tender to a ladder at the Royal Hobart Yacht Club – or Royal Yacht Club of Tasmania, actually I think it is, and she left from down there in her car at about 4:20 p.m., so it's not two o'clock anymore, it's twenty past four. She said she then went to Bunnings and she gave a very detailed description of what she – how she'd driven there, at what speed, where she'd parked, what aisles she'd gone in, how she'd left there, that she went straight home then, she didn't go anywhere else. It was very detailed, she said the light was fading when she left Bunnings and when she was home she telephoned her daughter, Emma, and – at about eight thirty and before that she telephoned her mother.

Now Detectives obtained and viewed the closed circuit TV from Bunnings for the entirety of the afternoon of the 26th January. It

shut at six o'clock that day and they looked at all that footage from various places in aisles, checkout, the entrance, no sign of Ms Neill-Fraser, she's not to be seen on it.

On the 4th March she, Ms Neill-Fraser, agreed to a video recorded interview with police.. She read over her previous statements and she said that they were correct, although she may have stayed longer on the boat than she'd previously indicated. Now remember, police had told her that the dinghy had been seen at about four o'clock. She spoke of what she claimed to have been the break-in of the boat in Queensland and how Jim McKinnon, who was the man working on it, the mechanic, that we'll hear from in this case, was, in her words, frantic, and he was very nervous and he thought someone was watching him – so it's all pretty dramatic. Well you'll hear from Mr McKinnon that it wasn't in fact dramatic at all, that it seems that someone had taken the boat out, probably someone trying to sell it, that some electrical panels had been moved by an electrician and that he'd told Ms Neill-Fraser of that several times that it wasn't burglar that had done the panels it was the electrician. Anyway, to police she said that the break-in - also the same break-in in Hobart and she admitted that she hadn't discussed it with anyone – you'll see this is a break-in of a boat, there's no record with the police of any report of a break-in, and Ms Neill-Fraser says 'No, we didn't actually report that our boat had been broken into – we didn't tell our children about it. We didn't' it seems, 'tell anyone', and the reason that she advanced for that was that Bob was keen to impress his children about the boat and he didn't want it to get a bad reputation. She claimed that she'd contacted the Drug Squad to enquire about sniffer dogs but she couldn't say who she'd spoken to. She said she wasn't sure if she had left her mobile phone onboard the first time she left in the morning of the 26th at the yacht club, and she said that she'd looked across at the boat and Bob was on deck and said he hadn't got a phone and he could have waved to her if, you know, he wanted her. But, as you'll hear, you can't see that yacht from the yacht club – so that, perhaps, was not right. She said in this interview – this one's on video, you'll see her speak these words, that a young man helped her dig the motor out of the sand when she went back out, and she was asked about leaving Bob onboard without a means of escape and she claimed that he'd be at a greater risk getting in and out of the tender – getting in and out of the dinghy. Well you'll hear from Tim, his son, that (indistinct words), he was quite competent with it and didn't present a danger to himself. And then the police told her that she couldn't be seen on the closed circuit TV footage from Bunnings that day. So remember one bit of information, "Well you must have been there longer", so the story shifts but she's still gone to Bunnings. And the next piece of information is that she's not at

Bunnings, she's not on the closed circuit TV. They told her that it shut at 6:00pm that day and if she'd still been on the yacht at 4 it didn't leave very much time to be at Bunnings for hours that she claimed it had been. And she said, "Oh, in that case I wasn't there for hours", wasn't at Bunnings for hours in that case. She said she got a call from a Richard King at about 9.30 that night and she was asked by police –

Did you leave your house at all that night?

She said –

No.

They said –

You stayed home the whole night?

She said –

Yes.

The said –

Would anyone else have used your car?

She said –

I don't think so.

So this is – this is I suppose in short the version on the 4th March. Stayed on the yacht in the afternoon a lot longer. Didn't go to Bunnings, perhaps she's got confused, went there a few days previous, she didn't go that day. Got a phone call at 9:30. Didn't go out again. And this of course is an investigation into the disappearance of her partner of eighteen years. In this interview she's not given, what police call – refer to as the caution, she doesn't have to say anything if she doesn't want to because she wasn't a person in the position who needed to be cautioned, a suspect, she was making these statements voluntarily, your would think, in an effort to assist the police to find out – if not find Mr Chappell find out what had happened to him.

Now she spoke of this call that she said was about 9:30 that night from a Richard King. He was a person who wasn't previously known to her and it concerned Clare Chappell. Now Clare is one of the

children of Bob Chappell and she unfortunately suffers from - from time to time, most of the time, from mental health problems, and what Mr King, who was some – a friend of hers, not a formal carer, not a person with formal qualifications, but a friend, he wanted Tim Chappell's phone number because Clare has a general paranoia, things make her frightened, and she was frightened, among other things, in particular with her father, whom she hadn't seen for a year, and the boat, something which she thought there was some connection there and she wanted to know that he was safe, and she was having to deal with mental health problems.

Now let's not make too much of this, it's coincidental, but that's about it. There, you will hear, even from Ms Neill-Fraser, is no way that Clare herself could have got out there, even driven down there, could have been in anyway involved in this – this is just a coincidence, and a strange one, but there can be no responsible suggestion that it's anything more than that, I suggest.

Now we're still at this interview on the 4th of March and police came back to the question of how it is that she'd previously stated – not just once – that she'd spent hours at Bunnings, and they were asking her because she was one of the first (sic) persons to see Bob alive, she said:

> *I mean, I know that I must be a suspect; I mean I did not murder him and throw him overboard attached to the fire extinguisher.*

Well the fire extinguisher is a means of weighing a body down, it seems to have been suggested there for the first time by her – I'm not saying that it mightn't have been floated by others or whatever, but that's – that's what she said at that stage, "I did not murder him and throw him overboard attached to the fire extinguisher".

Now detectives said that Peter Stevenson, who had been one of the crew, one of the two people helping deliver the yacht, a professional yachtsman from Queensland, had told them that the floor panels in the saloon area, which she'd seen to be up, were removed on the way down, the panels are lifted and replaced but not the screws, so they were put in a container and the implication was that when the water came in the panel just floated up because it wasn't screwed down, and they said that the electrical panel was also removed on the trip and that these things were known, according to Mr Stevenson. She said Stevenson was wrong, it was screwed down but not with as many screws and she hadn't previously mentioned any work on that section.

She reiterated that her relationship with Mr Chappell was a committed and intimate one.

Now you'll hear from James McKinnon as I've said, the mechanic who worked on the boat, that a month previously, on about the 4th or 5th February 2009, he received a phone call from Sue Neill-Fraser and she told him of the murder investigation and she told him that a fire extinguisher had been used to weigh the body down and she said that she and Bob had broken up sometime before, but she hadn't told police and she wasn't going to.

And you'll also hear from Peter Stevenson, the crewman, and I hope David Casson, who's the man in hospital at the moment but we hope we can get him, that she told Stevenson that it was over between she and Bob, that it had been for a long time, and she talked to both of them about having to buy out Bob's share of the boat. So to the police it was a committed relationship but to these three men in Queensland quite a different story, it was over.

Now the next day, the 5th March, Detective Sergeant Conroy spoke to the accused's daughters, Emma and Sarah, different surnames, Emma Fraser-Mieke and Sarah Bowles, and those ladies naturally asked about the progress of the investigation, particularly closed circuit television, and he told them of some footage from an ATM, automatic teller machine, in Sandy Bay that has a bit of a view of Sandy Bay Road and he showed them a still from it and it's a vehicle similar to a Ford station wagon going along Sandy Bay Road at 12:25am on the 27th January, okay. So that's just after midnight, 27th January a car similar to the Ford station wagon was captured going around Sandy Bay Road and Mr Conroy, Detective Sergeant Conroy, showed the accused's daughters a still from this closed circuit TV. Now it's not our case, it's not our case, let me be clear, that you can say with a degree of confidence just on that photo that that was the accused driving although one of the daughters said that that was mum's car and the other one said it looks like – it looks like the car, so it's similar, it's similar. But the point about it – well the point about this evidence is that at this stage of course Ms Neill-Fraser wasn't arrested, wasn't in custody or anything like it, she was living at her home in Allison Street, her daughters, who no doubt you'll hear, were visiting her and were there with her at the time, a logical inference, a logical inference, that they would have said down at the police station, "Sergeant Conroy showed us a car that looked like yours at 12:25am on the 27th".

Well another change came over Susan Neill-Fraser's story from that point. A new version of events that she was telling people entered

the story. On about the 8th March or it may have been the 10th she spoke to Caroline Sanchez, Mr Chappell's sister who had being over staying, spoke to her by telephone. Now you'll hear from Mrs Sanchez that in the days following the disappearance of Robert Chappell there was family meetings and, you know, she often heard Sue Neill-Fraser saying what had happened, what she'd done that day, oh, it happened, you know, but never – never had she heard what she heard that night because what Sue Neill-Fraser said to Caroline Sanchez then was that after she'd received the call from Clare Chappell's friend, Richard King, about Clare's mental health problems, she felt uneasy about Bob and she decided to drive down Marieville Esplanade in her car. She said she got down there and the boat was in darkness so she drove back again.

On the 13th of March she gave an interview to Felicity Ogilvie from the ABC. They had a talk beforehand and in that talk she said that Richard King had said that Claire Chappell was suicidal – there's no – she said that Claire – Richard King had said that Claire Chappell was suicidal and talked about going onboard the yacht. She said that she was worried about this and she drove down to Marieville Esplanade – so this is a talk while the recorder is not on. And so Felicity Ogilvie said, "Okay, we'll do the interview now, I'm about to turn the recorder on, is there anything you don't want to talk about?" and she said, "Oh, I don't want to talk about Claire" you know don't want to – almost protective about Claire, so that part wasn't mentioned. The drugs onboard theory was given a run again, I think, in that interview, but you'll hear it anyway. Ms Ogilvie, the reporter, then spoke to Detective Inspector Peter Powell, who was the officer in overall charge of this investigation. And she mentioned to him, and saw nothing wrong with it, that Ms Neill-Fraser had been down there – had said that she'd been down there that night and apparently he's (indistinct word) at the floor – and he wanted a statement from her, from Ogilvie, and she as a courtesy said that she'd ring Ms Neill-Fraser. Upon ringing her she was told very adamantly and very seriously that that was off the record, that wasn't for the police to know – in other words.

I'll be another half an hour, your Honour, if you wanted to think of a break for anyone?

HIS HONOUR: Well, I'll ask the jury – would you like a break for ten minutes or would you like to keep going? All right, keep going.

MR ELLIS SC: Oh, it's only me that wants a break.

HIS HONOUR: Well do you need one, Mr Ellis?

MR ELLIS SC: No, I'm right, your Honour.

HIS HONOUR: Okay.

MR ELLIS SC: I'm a big strong boy. Now on the 9th of March, Inspector Powell put out a media release asking for a person who had called anonymously on the 29th of January, three days – well, yeah, three days after, to come forward and the next day a Mr John Hughes presented at police station and identified himself as that caller. He said that he had called anonymously from a phone, I think at the university. He – you'll hear from him, he's a fulltime carer for his mother, she's had a stroke and he has to look after her pretty much all the time. Pretty hard life, he gets about half a day off per week from this when his brother gives him some relief from it, and on this day, Australia Day, on that evening he'd been to the movies or the casino following some golf, he's not entirely sure which, but he went down to Marieville Esplanade where he sometimes does to look out over the water and get just a bit of peace and tranquillity, nothing amazing about it. So he went down there and he was there at about half past eleven, twelve o'clock, and he parked his car near the end of the sheds at the yacht club, so you know, round – well I'll let him show you, I'd better not try it – and there was no one else around, in particular there was no one standing around fires – you're puzzled by that mention but I'll come back to it. He heard an outboard motor and he saw an inflatable dinghy with a single person in it. His impression was that that person was female, the dinghy was heading at a slow speed towards the yachts moored out from the boat sheds where, ladies and gentlemen, the Four Winds was moored. He lost sight of it and he drove off shortly after and, not wishing to be involved, he says a complicated life, he anonymously told police about his observations. So there we have it, a man just on his own, no connection with this case, and he sees inflatable dinghy, an outboard motor, a single person in it at about half past eleven, twelve o'clock on Australia Day evening heading out to where the Four Winds was.

On the 23rd March Ms Neill-Fraser again spoke to Caroline Sanchez, Mr Chappell's sister, by telephone and she gave yet another version of events. She said that after this call from Richard King about Claire with the mental health problem she, Ms Neill-Fraser, drove down to Marieville Esplanade. She said that many parking spots were taken and she drove around looking for a park in the area. She said she decided to leave the car up there overnight and that she walked home to West Hobart on foot. She wanted to walk down next morning for exercise. Mrs Sanchez asked her specifically where

she'd parked the car and Ms Neill-Fraser said that – oh, well she was a bit vague about that. She drove around and she parked in the area because the spaces close to the beach were taken by people with Australia Day barbecue, she didn't say where she parked, so Mrs Sanchez knew again that here was yet another version. Here was a version of drive – a call from King, driving down but parking the car and walking back whereas in the previous version that she'd given her, the first version of actually going down that night, it was driving down, couldn't see, drove back home.

On the 5th May another interview took place, again recorded on video, you'll see it again, police this time they cautioned Ms Neill-Fraser that she didn't have to say anything, what she did would be recorded and maybe given in evidence. Notwithstanding that, yes, she was pleased to be interviewed again and in this version of events that she gave the – the trip to Bunnings was abandoned completely. In the various versions she had given it had gotten smaller and smaller and now it was given up entirely. No, she must have been confused, she'd been so shocked that she'd been to Bunnings a few days earlier, she said, she left Bob on the boat that day so it was the same circumstances. She said that if she went out to the boat she couldn't say what time it was she left but she tied it up at the Royal and walked back to Allison Street leaving the car there. She didn't know what time that was nor could she name where the car was nor be definite about whether it was daylight or dark, but the car was there at least until she went down at night. So she's gone out to the boat, this is all in the afternoon apparently, and she's left but she doesn't know when, doesn't know when she left now but she didn't go to Bunnings that was a mistake because she'd been a couple of other days ago and she walked back. Then she got the call from Richard King and it unnerved her terribly. She didn't mention this earlier because Tim Chappell was upset about any mention about Claire, and Mr King had said to her that she had a fantasy – that Claire had had a fantasy about him and her sailing away in the yacht, and so Ms Neill-Fraser said she didn't decide – she decided not to ring Bob because it was late, she didn't know the time but she would go and get the car back, which you'll remember in this version she'd left there in the afternoon, or the evening, not sure when, walked back home, just wanted the exercise in the morning. So she decided she'll get the car and then she'd be ready when Bob phoned, and she was also unnerved about the call. And so she walked down there to where the car was, not actually stating again where it was, but when she got to the car she got the keys out, had the wrong keys, she'd got the keys to her farm but not the keys to the car. So she walked back to Allison Street, got the keys, and then went back down again and got in the car and she drove along to the rowing sheds and she got out

of the car and she walked down to the back, there was a fire and there were homeless people around there, around the fires, standing around, and she couldn't see the boat but she felt better and so she drove off – drove home. Mr Hughes' observations of, you know, the man taking the – taking the breather, were put to her and she denied it was her in the dinghy going out there that evening and she said that she'd tied it up securely, so some other reason that it had become unstuck.

Another matter that was put to her was concerning the red jacket, which had been found on the fence in Margaret Street – remember the first day there she'd gone up for coffee – this is Australia – the day after Australia Day, and a red yachtsman's type jacket had been found and had been put in the boot of a police car and she'd been shown it and no, it wasn't hers, never seen it. Well, you'll hear that swabs were taken from the jacket, which on analysis were found to contain DNA, from at least three contributors, and the major DNA profile matched that of Susan Neill-Fraser, and the chance of a second person unrelated to her having the same DNA is less than one in one hundred million. So if that's not her DNA on that jacket that she'd never seen before and wasn't hers it's a remarkable long shot coincidence that there's someone with the same DNA profile. After that she was arrested and charged.

Now this is what is called a circumstantial case and that doesn't mean it's a second rate case or a second grade case or not a case to worry about at all, it just means that there's no direct evidence, no one's seen the person charged in the act or there's no confession – distinct confession from that person, and so other circumstances are added to it and among those circumstances I suggest, or will suggest to you, ladies and gentlemen, at the end of the day what you can take into account is that Sue Neill-Fraser told lies, bare faced lies to police concerning her movements on the afternoon of the 26th January 'til the early morning of the 26th January. The only time that she can be reliably accounted for in that time is by telephone records to her house which show that – I'd better get these right probably – a telephone call was made from the landline telephone at Allison Street, 7 Allison Street, to the landline of Mrs Neill-Fraser's daughter, Emma, at 9:17 p.m. on the 26th January, this is Australia Day, so this is the first call. She's called her daughter at 9:17, the call lasted for approximately fourteen minutes. It seems straightaway, because at 9:31 she telephoned the landline subscribed to her mother, Helen Neill-Fraser, at 9:31 and the call lasted for five minutes, then the records show that at 10:05 a call was sent to the land line of Allison Street from the one subscribed to by Richard King and that call lasted fro twenty nine minutes. And it's only over

that period, and one more that I'll mention in a minute, that we can reliably account for Ms Neill-Fraser's movements. There was one more call, which you might think is significant you might not, at 3:08am on the 27th of January there was a call made to star ten hatch, and star ten hatch is a call made to see if you've had any calls. So your last call there is a twenty nine minute one at 10:05 and then 3:08 - haven't been any calls. Stories about going to Bunnings, huge detail about the aisles that she'd gone up and down and how she drove in and out – not true. Denials about going back down to Marieville Esplanade – not true. Denial about seeing that jacket before and what you make of DNA evidence – not true.

They're some of the circumstances that you can take into account. Others are that you will be given evidence – make of it what you will – make of it what you will, but Mr Chappell's estate was worth about 1.38 million dollars net. That he'd made provision in his will, a generous provision, including for Ms Neill-Fraser. That's a circumstance you can take into account. You might think it takes you nowhere, you might think it does, it's there.

Another is that – I've just gone blank for the moment – of the will – yes, that's right – that Ms Neill-Fraser's computer was seized by police and analysed and it seems that upon her return back from the delivery of the yacht from Queensland she did a lot of searching on internet sites of yachts for sail in exotic places like Galapagos Islands and so on. And, you know, you think well where does that get us? Well it's this, it was Tim Chappell's observation and Clare Chappell, the daughter of Bob Chappell's observation, that when she came back from that trip that was a big adventure, that was really what she wanted to do, those sort of big trips, but their father not so keen. His idea of a good time on the yacht seems to be to go out on the dinghy have a wine come back maybe take it down to Bruny Island and back, he was not comfortable, they will say, with the size of that yacht and perhaps there was friction. Again it's a circumstance, perhaps there was friction. Perhaps something happened on board that was not related to any of those things. Like the legal profession say I've done – there's been a case here in Hobart got prosecuted for murder where a man got so infuriated that his wife wouldn't get off the phone after he'd cooked dinner that he killed her, these things do happen. But there were tensions, it would seem, there were some tensions about the yacht and they're all circumstances you can take into account.

I'll also be calling a man whose name is Phillip Triffett. He and his then partner Maria Hanson were friends of – first Maria Hanson was a friend of Sue Neill-Fraser and they came to know each other, all of

them as couples, friends, Mr Chappell, Ms Neill-Fraser, and they had quite a bit to do with each other. Mr Triffett was a younger man; this is in the 1990s, about the mid 1990s. Mr Triffett will tell you that in those days Ms Neill-Fraser owned a yacht that was moored down at Electrona and it wasn't as grand as the Four Winds but she had some – had some trouble with it and Mr Triffett's a handy sort of bloke apparently and she asked him to see if he could fix it so he had a look at the engine and so on, and a little time after that Ms Neill-Fraser was having some sort of a feud with her mother and she became concerned that her brother, Patrick, would receive all the inheritance – her mother's apparently reasonably well off according to Mr Triffett – was going to inherit the lot and she would inherit nothing and one day at the yacht at Electona Ms Neill-Fraser, the accused, said to Phillip Triffett that she wanted to get rid of Patrick, her brother, and she said it in a way that he knew that she was serious about it. She said that she wanted him to go out on the yacht with her and Patrick, out to deep water. He was to push Patrick overboard after weighing him down with a toolbox and things off the yacht and then sink the yacht closer to shore and she would row back to shore. He didn't want to be in that, he couldn't even swim, he said. She showed him a pipe, a white hose pipe on a bilge pump and she said, "That would enable you to sink the boat because you could hold that over the side and reverse", and send reverse polarities on it, "wire it backwards", in Mr Triffett's words, and it would bring water into the boat and sink it. Anyway things apparently smoothed over with her mother and that plan wasn't mentioned again except a little time later he will tell you that he was at Allison Street to see if his partner, Maria Hansen, was there and Sue Neill-Fraser started telling him about how stingy Bob was, that Bob was drinking too much, that he was waking up in the night and running around the house with knives looking for intruders and she said, "Bob's got to go", and she said, "What we talked about with Patrick has got to happen with Bob". She said that she wanted Bob wrapped up in chicken wire, she wanted him to take Bob out to the yacht, wrap him in chicken wire, weigh him down and push him over. So what we talked about with Patrick has got to happen to Bob. So that was a plan to murder someone by pushing them overboard, weighed down in some way, weighed down and sinking the boat and going to shore. It's – well the significance of it is for you. Mr Hanson – I'm sorry, Mr Hanson – Mr Triffett will say that soon after that they had a trip as a couple to Murdunna, and that seemed to be in early '97, and after that they were at dinner at – at Allison Street and Sue Neill-Fraser was praising up Bob Chappell, his cooking, and Triffett said, "This is hypocritical" or you know "why don't you tell him what you intend to do" and that – she showed him the door and that was the end of that relationship.

So that's another circumstance, of course, that sometime previously she had and articulated to a person a plan to kill Bob Chappell. A plan that involved getting him on a yacht; getting him overboard weighted down, and sinking the yacht.

You'll hear of extensive police diving searched under and around the yacht and in other areas that failed to find any sign, not only of Mr Chappell, but of the fire extinguisher and so on. The EPIRB it did wash up it washed up on the beach near the Casino and was found by someone who handed it into the police and it contains no forensic evidence of great note – his DNA, I think, or fingerprints of the man who found it, but otherwise nothing particularly there. The – some of the blood on the yacht was swabbed and found to be Mr Chappell's – that may or may not be useful, given that he'd had a nosebleed. But the tender itself was also subjected to a screening test for blood called luminol, and what happens with luminol is you put it – you put it on objects where there might have been blood and turn off the lights and it gets lum – it goes luminous in the presence of blood, and so that reacted quite strongly, the tender and the inside of the tender for the presence of blood, and swabs taken from the tender were found to match, with a high degree of probability, Mr Chappell's DNA. But on the other hand another screening agent for blood taken on that tender showed negative and one of the forensic scientists looked under the microscope to try and find some – what they look for is red/brown indications of blood and couldn't find any, so some indications of blood, his DNA, but others – others, no.

Now no doubt it will be said, "Well look, this is a case where you can't even say how he was killed or even why", that's true, that's true. This is a case where all the circumstances, it will be submitted, and I don't want to go into addresses at the moment, but it will be submitted at the end, add up to a case of murder beyond reasonable doubt against Sue Neill-Fraser.

I have to tell you all these things and I've tried to tell it to you in a narrative way, in a sort of a – in the way it happened, but when we get into the evidence that we want to present we can't do it that way. We've got witnesses in and out and it's – it can be all jumbled up, it's just unavoidable. For instance, I want to call the Chappell children pretty early in the piece because they want to see the case. Well that's a little bit out of order. The man in Queensland who's in hospital, who knows when or if we can get him. I won't be able to call Maria Hansen, Mr Phillip Triffett's then partner but I do expect to call a doctor who has examined her and pronounced her not fit to be able to attend court, and so that will be offered to you as an

explanation for not calling her. But other people – it's not like a play or a film where a character comes on and does their bit and then goes off and the action happens and then they come back on and so on, we've got to – we can hardly ever call a witness back again, so say Mrs Sanchez, Mr Chappell's sister, so as I've told it to you she comes in on the trip the day before Australia Day to Bruny Island, she comes in on the lunch at – or pie at the yacht club, the discussions afterwards where going back down has never been mentioned, then later she comes in on the first phone call where it's for the first time said that Sue Neill-Fraser did go down there that night, then there's the second phone call, you know, a fortnight later where it's a different story yet again. Well that'll all come out through the one witness just detailing her involvement, so it's – I know it's hard, it's going to be hard for you to keep them all in order, but they're the – that's the sweep of it - to buy the yacht, to have the work done on the yacht, to have – you'll hear about the – the so called break-in that wasn't in Queensland. Then there's the trip down and you'll hear about – well going back to the work on the yacht done by Mr McKinnon, and Mr McKinnon also receives a call at the time that Sue Neill-Fraser was saying 'we've got a good committed relationship', receives a call, 'It's all over with Bob I haven't told the police and I'm not going to'. So we have the trip down with Stevenson, again, this entry, then we have the boat's here in Hobart and some – you'll hear of some electrical work done it here, including, of course, removal of an electrical panel by electricians. Then the events of the 26th of January as seen by Mrs Sanchez and as you've heard, it's our case, there is no reliable account of Sue Neill-Fraser's movements from about two o'clock when Mr Liaubon sees her heading out to Four Winds until the next day when she turns up following the police at, I think, eleven past seven – I should I have told you too that at five past seven she rang her mobile number and – which was the mobile that she'd left on the Four Winds and got no reply – a matter for you whether that's a circumstance that you think, that if you've got a particularly suspicion mind you might think that that's – that that was left in a position and that if it didn't work then it would prove that it was under water. Or you might think that if, having been so alarmed the night before, she rang – she would ring the next morning and get no answer she would try again before, at least in the six minutes before the police called – but these are circumstances for you to take into account – make of them what you will.

And so we've got that – we've got those interviews, that statutory declaration, notes and so on, the constantly changing story as bits and pieces are offered. And of course, in the background, or when it comes – or the forensic evidence and the evidence of searches and so

on and so – it's a big hard case to keep on top of. A lot of the evidence fortunately will come on agreed facts but again they will probably come out in a rush and it's – you need to be able to maybe sit back and see where does this fit in in the story so I hope I've given you the linear part of the story that makes it easier to understand when we present the witnesses in a way that we can't make it so linear. Well that's a longer afternoon than I thought, thanks for your attention. If it please, your Honour.

HIS HONOUR: Thank you, Mr Ellis. Mr Gunson, should we leave your opening speech until tomorrow morning?

MR GUNSON SC: Not at all, your Honour.

HIS HONOUR: Well what would you like to say?

MR GUNSON SC: Very little.

HIS HONOUR: All right.

<OPENING – MR GUNSON SC: And I'm saying very little, members of the jury, because I'm very much constrained by the provisions of the Criminal Code as to what I can say in opening to you. I'd like to be able to open the accused's case in the great detail that my learned friend, the Director of Public Prosecutions, has opened his case and respond to all of those things that he has laid before you, the Criminal Code doesn't permit me to do that. I'm limited basically to telling you some very basic matters such as those things that are not in dispute or which the accused is prepared to admit. I won't do that now because tomorrow or the day after you'll get a list of things that are agreed in this case; so in other words we're saying to the Crown, 'You don't have to prove these things, these are all various formal matters', so that will happen in the fullness of time and the issues that the accused contents are important to the defence case. Well let me say this to you immediately, the accused emphatically denies that she has murdered Mr Chappell. She says to you through me that there was no reason whatsoever why she would want to do that and she emphatically denies the allegations involving Mr Triffett. She says that she no way is responsible for his death, if indeed he is dead.

As has been said to you by Mr Ellis this is a circumstantial case and there is no direct evidence of her involvement with the demise of Mr Chappell, if in fact he is dead, there is nothing that directly links her. You don't determine the case on the DPP's opening, that's not evidence it's merely an outline of this case, but bare in mind throughout there is an emphatic denial on her part of having committed the crime with which she is charged.

HIS HONOUR: Thank you, Mr Gunson. Well gentlemen, is it still proposed that the jury go to inspect various points at nine thirty tomorrow morning – is that still proposed?

MR GUNSON SC: Yes, your Honour.

HIS HONOUR: And is a bus or transport organised for them – has an officer of the Court attended to that?

MR ELLIS SC: Yes, apparently so, your Honour.

HIS HONOUR: All right. Well we need to discuss exactly what they're going to be shown after they've gone for the day. So ladies and gentlemen, I'll ask you to stand and make the affirmation that you made earlier where you promised not to talk to people other than each other and then I'll retire for a few minutes so that those who want to leave may leave, then I'll return to the bench and have a discussion with counsel about what you're going to be shown. You'll need to come back here at nine thirty in the morning and the Court will sit at that time and – just formally for a couple of minutes and then you'll be taken to transport to go and look at things at Sandy Bay. Yes, all right, administer the affirmation.

<JURY AFFIRMED OUT

HIS HONOUR: Yes, nine thirty tomorrow then, thank you, ladies and gentlemen.

<THEN FOLLOWED A SHORT ADJOURNMENT

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THE COURT RESUMED AT 9:30 A.M. ON WEDNESDAY, THE 22ND DAY OF SEPTEMBER 2010.

STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: - yesterday the plan for this morning is that you'll be taken to Sandy Bay and shown a number of things. Now there are some formalities that we need to go through in relation to that. First of all two of the court staff will be going with you as your keepers and it's their job to make sure that you don't talk to other people and other people don't talk to you, and each of them needs to make an oath or affirmation, so we'll do that now.

<KEEPERS WERE SWORN AND AFFIRMED

HIS HONOUR: Now each side is entitled to nominate a shewer to show things to the jury and Mr Ellis' clerk and Mr Gunson's junior counsel will be the shewers. They now need to be sworn in or affirmed. Do that, please.

<SHEWERS WERE SWORN

HIS HONOUR: Now gentlemen, I'm wondering when I should reconvene the Court. It might be convenient not to interrupt for a morning break after we resume but to give the jury an opportunity when they get back to have a cup of tea or coffee. When do you think, Mr Gunson, eleven o'clock?

MR GUNSON SC: I would've thought eleven o'clock would be sensible, your Honour, I think it'll take at least an hour from now to get down there and do the things and get back.

HIS HONOUR: All right. Thank you. You agree with that, Mr Shapiro?

MR SHAPIRO: Yes, thank you, your Honour.

HIS HONOUR: All right.

MR GUNSON SC: Your Honour –

HIS HONOUR: Yes.

MR GUNSON SC: - the Crown have kindly made a list for the jurors of each of the things they have to see – it conforms with the list we gave to your Honour, which is MFI-C.

HIS HONOUR: Yes.

MR GUNSON SC: It was thought by both sides that it would be best if the jury had a copy of the things to see.

HIS HONOUR: Yes.

MR GUNSON SC: Subject to your Honour's directions.

HIS HONOUR: Yes, they may, and I don't know whether it's proposed to show them the things in the list in the order in which they appear, but I think it would be far more efficient to – geographically to travel in a different order.

MR GUNSON SC: No, we take a different view, your Honour, we –

HIS HONOUR: Well if both sides agree, then –

MR GUNSON SC: Yes.

HIS HONOUR: - it will be as both sides have agreed.

MR GUNSON SC: Yes.

HIS HONOUR: All right. Well there's a logic to it to do with the sequence of events, is there?

MR GUNSON SC: There is indeed, your Honour.

HIS HONOUR: Yes. All right. Well because you're leaving the Courtroom, ladies and gentlemen, you'll each need to make your affirmation where you promise not to talk to other people about the case. So I'll ask you to stand and – Mr Gunson?

MR GUNSON SC: I'm sorry, it occurs to me, and I notice a couple of the jurors are conveniently folding them already, that might be useful for the jurors to take with them – they don't have to, of course, the aerial photographs, and it may give them some assistance when they are down there.

HIS HONOUR: Yes, I can recommend that at least some of you take the aerial photos, ladies and gentlemen. I did yesterday afternoon what you'll be doing today and it helped me. All right. Well I'll ask you to stand and make your affirmation and the Court will then adjourn until 11:00am.

<THE JURY WERE AFFIRMERD OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

<UPON RESUMPTION

<MELANIE MAY REDBURN CALLED AND SWORN:

<EXN – MR SHAPIRO:Would you please state your full name?....My full name is Melanie May Redburn, I'm a constable in Tasmania Police, currently attached to Forensic Services in Hobart.

And where were you attached to on 27th January 2009?....Forensic Services Hobart.

And what did you do on that day?...At about 10 am I was tasked to attend Marieville Esplanade in relation to a boat that was partially submerged at a mooring just off the Esplanade.

And once you got to Marieville Esplanade, what did you do?...I spoke to attending police who indicated the boat in question. Then I spoke to Marine Police and accompanied them out on a tender to the boat, which was called Four Winds. I took with me a camera and fingerprint kit to examine the boat.

And you took a number of photographs on the boat?....I did, yes.

Can the witness please be shown these photographs please....Yes, these are the photographs that I took.

If it please your Honour, I tender that bundle, and I may also tender a CD, an electronic copy of those photographs as previously mentioned.

EXHIBIT #P03 – BUNDLE OF PHOTOGRAPHS TAKEN BY REDBURN – TAKEN IN

EXHIBIT #P04 – CD, ELECTRONIC COPY OF PHOTOGRAPHS BY REDBURN – TAKEN IN

Thank you. May I ask Ms Oakes if she can bring those photographs up on the computer for the Constable. Great, now is that the first photograph that you took or one of - ……Yes. Yeah, of a series of photographs that I took from the marine boat as it was circling Four Winds.

Thank you. And if you can go to the next one……Certainly. This photograph just shows a view of the stern of the vessel.

Thank you……The next photograph here is obviously from the bow of the boat once on board. You can see the marine vessel there to the left, looking back towards the wheelhouse.

Thank you…….Would you like me to continue?

Yes, if you could go to the next one, thank you……Okay. From the – from a slightly different angle but looking towards the same view of the vessel, closer to the mast there, the centre mast, looking back towards the stern of the boat. This is a view from the stern looking towards the external wheel and the mast there towards the wheelhouse, which you can see just past the mast where there's an open space.

Thank you…….Okay. This is a view from the opposite direction, that open space that I mentioned in the previous photo, looking back towards the mast and a configuration of ropes tied to the mast. This one looking back towards the opening hatch of the wheelhouse and you can see a generator there on the deck in the centre of the photograph. This view is inside the wheelhouse, it's a two level, I guess, once you get inside the boat. This is from the actual – the wheelhouse area looking back outside of that hatch in the previous photograph.

Thank you…….Again looking at slightly closer to the hatch, looking at that view showing various areas to the left of the opening. This view here is a view from that hatch area looking down inside the wheelhouse at a number of areas inside the boat, you can see also the next level down. As I said, it was in two levels, the next level down is into the saloon, where you can see the foot there of one of the marine police further in the distance of the photograph.

And what happened to that knife that's on the floor there?……That knife I – during the course of my examination I collected that knife.

Have a look at this item please?…….Yes, that's the knife that I collected at – at that time.

Thank you. I tender that, thank you.

EXHIBIT #P05 – KNIFE – TAKEN IN

MR SHAPIRO: (Resuming): If you could just – perhaps if you just hold that up so the jury can see what it looks like? Thank you, constable.

HIS HONOUR: You'll have all of the exhibits in the jury room at the end of the trial, ladies and gentlemen, so you'll be able to have another look at that knife then.

MR SHAPIRO: (Resuming): Can you – can I ask you one more question; how – can you tell the jury how sharp knife is?.....The knife isn't blunt it's quite a sharp knife. I don't think I'd want to run my finger along the edge of the blade, that's for sure.

Thank you. .....Yeah, it's a carving style knife.

Thank you. Now -.....Continue?

- can I take you back to the photographs?.....Yes. Okay. This view is – is just slightly backwards from the previous view showing other items inside the wheelhouse and gives a bigger overview of that area.

Thank you. .....This next photograph is a closer view of a torch which can be seen in the previous photograph – would you like me to go back to the previous one to indicate where this torch is – sorry?

Yes, thank you, that would be great.....Okay. In that photograph there you can see that the torch – and I can point – there you go is there, and that was insitu and you can see the knife on the floor there. There are also some steps. These steps are portable three step wooden stairs that would have ordinarily been placed just inside the opening hatch to the wheelhouse, that's where I found them. Here's a closer view of the torch. On the back of the torch in this area I could see some reddish stains and in several other areas across the torch in a spatter type pattern.

And what happened to that torch?.....I collected the torch.

Thank you. And that's the torch you collected?.....And that's the torch that I collected.

Thank you, your Honour, tender that.

EXHIBIT #P06 – TORCH – TAKEN IN

WITNESS: Okay, here is a closer or – sorry, a view of the torch from another angle and the reddish stains can be seen there that I described earlier. Another closer view of the torch with the staining prior to collection. It's a closer view of the knife, as indicated earlier the knife that I held up, on the floor of the wheelhouse. This

is a view of the stairs that I mentioned in the previous photo that were just inside the wheelhouse that would have ordinarily been used to step down into the wheelhouse but were in situ as I found them when I entered the wheelhouse personally. This is a view of the bottom step, if we're counting obviously there are three steps, the bottom step I could see some further red staining and that's a view of that. I took a swab of that staining for a sample.

Thank you…….The next one is the second step or the middle step and again I took a further swab of that staining. This view here is of the wheel itself, you can see the key in the ignition off to the right of the wheel and the pair of men's spectacles there. This view here is from the wheelhouse beside the wheel looking down into the saloon and you can see several portions of carpet and flooring in a sort of a dishevelled appearance on the floor and several tools lying on the floor also. That door there is a door to the engine compartment, so it's a considerable step down again. Stairs here are similar to the stairs found in the wheelhouse that you would ordinarily step down to get into the saloon area. This view here is from the saloon or that step down looking back up towards the wheelhouse. This area here is a casing beside the wheelhouse, adjoining the wheelhouse and the saloon area. This cap here is a cover for a – just a compartment, an empty compartment, and you can see the wheel in the top there just poking out to get perspective. I detected some staining on this – further red staining in this area here and including the plastic cap. This view here shows – and you can see just some reddish staining in these areas indicating something that wasn't normally part of the varnish of the actual casing itself that was sitting on top of the surface. This is a closer view of that staining and it was spread out across the brown casing of the wheelhouse. This view here is another view of that staining in different areas, so just closer showing the size of the stains. You can see the scale off to the right. There is also a small stain on the – on that plastic cover. It's in the – this photographs is in the same orientation of what you saw the overview of the casing, so it's at the bottom of that plastic cover. And there's a closer view of that as well, showing the shape. Further staining, closer, you can see the wheel actually there – so again this is on the left hand side, showing further stains. This is a larger stain – the largest of all of the stains that were there, and it was in this vicinity. The next view is on the other side of that casing, is a control panel. I spoke to Constable Chris Lawler of Marine police, who obviously indicated that that was the panel that controlled functions of the boat, so I took some photographs of how it was in situ. Again, showing the position on the switches of that control panel. And further switches of the control panel. And the same again. This view here is in the saloon looking towards the bow of

the boat. You can see on the left hand side is a bench-type area with some cushioning. There are the steps and forward of that is a toilet area in this portion here and another room off there, and obviously the compartment or forward bedroom if you like, or – it was used as a storage area by the looks of it – at the bow of the boat. So that's right at the bow. This is a closer view of some black tape – hundred mile an hour tape, if you like – or plastic tape and a smoking tin, some serrated scissors and a smoking pipe. In later examinations of the vessel I collected these items, but at this stage I just took some photographs. This is a view of the – it would be the starboard side or the right side of the saloon, showing – there's the steps that were in the previous view. Off to the right is the galley or the kitchen of the boat. From the other side, so from the starboard looking to the portside is showing that lounge area and the scissors and the smoking pipe etcetera.

And you indicated before that there was a toilet -.....Yes, and the toilet door can be seen in this photograph just there, and it's closed there. Okay. Looking again at the starboard side and some other areas you can see in this photo also that there's a rope. That rope there is actually dangling from a – a hatch, an external hatch in the ceiling, of which there are several hatches in the ceiling, but that one was actually hanging through there. And there's – that's where the toilet door would be, and obviously the front of the boat there. Another view down that hallway, that section of the carpet and the hatch for it – are there on the floor, and a plunger type thing on the floor there. So the toilet door was to the left. That's showing what's on the other side opposite the toilet door was a bedroom type compartment and just looking through the door. Okay. This photograph is in that forward compartment, as I said, it appeared to be used as a sort of storage area, although it had bedding in it, with a portion of the floor removed. You can see that there is the bottom of the boat, if you like, and also that it was full of water. The toilet door is here. This is just showing that area higher up to show the contents of it, and you can see another hatch that leads to the external part of the boat, at the top of the boat. This is a view from outside of the – that bedroom door and the toilet door looking back towards the saloon and the wheelhouse that you can see further into the photograph. So just looking back from that view. This is a view of the outside of the toilet door in the forward part of the boat. Once opening the door this is a view of the toilet area and the adjoining bench and sink also. This is a view of the floor below the toilet. You can see a shower type bay there. Alongside the left hand side of the toilet I observed a pipe that had been cut, there was water still running from that pipe. This photo shows a view of the water continuously flowing from that pipe. The other section to the

right was still joined to the toilet area. Okay, as mentioned below the wheelhouse and that hatch that was open in the previous photo shows the engine compartment area. Two other areas of note in this photo are the galley and also to the right of that is a laundry area which had a lot of tools and other – just stuff in it. Okay, this is a view of the laundry area. As you can see it's quite jumbled. This is a view of the galley looking towards the stern or the rear of the boat and other compartments that were – were associated with it, bedrooms. Here is a cut away section of the wall which leads into the wheelhouse and in this photo you can see some latex gloves, etcetera, sitting on the stove – or the drainer of the sink I should say. This is a view of a compartment just past the galley, I'll just show you, in this photo here is that blue round ball, you can see a section of the floor removed, it's a closer view of it. This is a view of a bedroom off to the right past the galley towards the stern of the boat, there's some bedding there. This is probably the tidiest bedroom of them all and appeared to be more recently used, so – okay. That's a view further on towards the stern showing the bucket, that was the blue ball type thing that was in the photo before, bedroom off to there, further storage areas beyond that door. And this is a view beyond that door right at the stern of the boat. As you can see there it's sort of bed area. This is a view from Four Winds looking back towards Marieville Esplanade and the Sandy Bay Rowing Club from the boat on its mooring.

So after you were on the Four Winds -.....Yep.

- you then went back to the shore?.....Yes, I was then taken back to shore and it was indicated to me by attending police that this Quicksilver tender was – was related to Four Winds, that it was normally used to go out to the boat. I took a photograph of it as it was sitting on the rocks just near the car park area outside the Sandy Bay Rowing Club.

Thank you.....This is a further view of the boat looking back towards the shore, you can see that that's where the actual beach area is, the car park and the rowing club is off to that area there, to the left.

Now you attended the Four Winds again on the 3rd February, is that right?.....On the 3rd February, yes.

Yes, sorry, the 3rd February, and you took some more photos?.....I did, I attended with forensic scientist, Deb McHoul. She had conducted a previous examination that I hadn't been present for but

indicated to me areas that she wished to have photographed for a record of her examination.

Thank you. If you can explain those photos for us……..Okay. The photographs here are inside the saloon area of couch and cushion. This was – this bench here was where that smoking pipe, etcetera, was and just the – I guess throw cushions that were around, or seat cushions. This is a closer view of one of those seat cushions showing some texta marks and a scale that she had placed on there earlier. This is a view of storage compartment that adjoins the galley, is to the right, and obviously the couch area to the left of it, showing, again further texta marks and scales, and indicated by Deb McHoul.

Can you explain what the dust is that you can see in these photos?…….The dust is from fingerprint powder, and you can see it on the – on the walls and also the white powder on the – the wooden casing.

So how would that come to be there?…….Using a brushing powder applying it to the surface –

Police officers would have done that?…….That's correct, yes.

Thank you. …….This is a view of the top hatch from the previous photo showing a closer view of the circle texta areas and scale, and a further view of the bottom half of that – that storage compartment. This is a view of the adjoining couch area with the – the cushions obviously replaced. You can see the texta marks on the – the top or the backs of the cushions and some further down on the right there. This is a closer view of the left hand back cushion. And this is a view of – of that storage compartment in a previous photograph looking back towards the – the galley area. This view here is actually of the flooring between the galley and the saloon and texta marks as indicated. This is another view of the same. And just a view of the galley area with that powdery substance over it, obviously used to detect latent fingerprints. This is a view inside the galley wall just on the other side of that storage casing that was previously there, just showing the positioning of a – a gas handle in the off position. Just a view of the laundry area again. This is a view of the toilet as seen in previous photographs where the pipe was cut and the toilet has been coated in fingerprint powder and texta marks are in the centre, those lines across the centre, and also the scale that's been applied. This is a view of the pipe, as seen in previous photos, on the left hand side of the toilet with some latex gloves that had been – not by myself – that had been applied to the

actual pipe itself, as I found it on my attendance on the 3rd. This is a view of the bow of the boat, or the front of the boat, and that storage compartment that had bedding, etcetera, in it. Sorry, I'll go back to that photograph. You can see on the wooden rail, if you like, a scale and adjoining it a texta mark there. This is a closer view of that area.

That's the last one. Now you indicated that there was dust there from fingerprint lifts, did you take any fingerprints?……I did. On two occasions I took fingerprint lifts. My primary area of examination was the wheelhouse area, that's where I conducted the majority of my fingerprint examinations.

On what date was the first occasion?……Okay, on the first occasion was the 28th, the day after I first attended. I, using a brush and powder, applied powder to several surfaces inside the wheelhouse and took a series of fingerprints.

And when you say you took a series of fingerprints how do you physically do that?……Okay. Using like an adhesive sticker, if you like, once the latent fingerprint has been developed, the power adhering to the latent print or the moisture in the print, we apply sticky tape to it and simply lift off that impression. Once we do that we write identifying notes on the tabs of the fingerprint lifts and then record that in our notebooks.

Okay. And so do you have the lifts there that you took on the 28th?……I do. On the 28th I took one fingerprint lift where I actually lifted it, the other one was a photograph of fingerprints in the wheel house area, actually like I've – indicate the photograph – to indicate where I took those.

Thank you…..Firstly I took – I'll just move to the photograph so you can see it more clearly – okay, in this photograph here of the actual wheelhouse, the first fingerprints that I developed were in this area here – the fingers – the shape of the finger indicated that the movement came from a hand reaching over, fingers pointing down towards the floor – so in this type of position. The second print that I lifted on that day was from the two o'clock position on the actual wheel, where I was able to actually lift the fingerprint itself, using the adhesive, so –

Thank you and what do you then do with those lifts?…..The lifts are then submitted to our fingerprint experts or our fingerprint section at Hobart police Forensic Services.

And did you do that?....Yes.

Do you have the – did you create some sort of envelope for them to go in?.....Yes, identifying notes are put on the lifts, but also the lifts are – an envelope is generated from our data base describing what those lifts actually are.

And you put them in the envelope?...And we put them in the envelope and hand that to the experts at Forensic Services Fingerprint section.

I tender that one for the 28th.

EXHIBIT #P07 – FINGERPRINT LIFT FOR 28TH – TAKEN IN

HIS HONOUR: Sorry – that's the fingerprint lift?

WITNESS: Yes.

HIS HONOUR: Yes, thank you.

MR SHAPIRO: And you took some fingerprints also on 30th – is that right?....That's right. On 30th I did further examination of the wheelhouse. I took a series of eight fingerprint lifts from various items inside the wheelhouse. Would you like me to describe those areas?

Thank you, if you can with that photograph?...Yep. In this photo I took – dusted several areas. The first fingerprint lift I took – or the first three I took, actually, were inside window –I called it window three, numbering – there's actually four windows and it's difficult to see in this photo. There are actually four windows across the top. That window there I numbered as window 3, I took a series of three fingerprints lifts from the inside of that window. I also took a fingerprint lift from a bowel that I dusted, which was this one here, it was empty, also a coffee cup on the floor and also there was a grey casing, it's just like an empty box or a casing off something, sitting on the top there near the hat. And although you can't see the left hand window in this photograph there was another window – another series of two windows on the sides, either side of the boat, there was also a lift taken from in there. And above this is a radio – series of radios and instrument panel just above there. There was also a fingerprint I detected and lifted from that instrument panel above the top there.

And again you generated a - .....That's correct, yeah.

- an envelope and placed them in that envelope?……That's right. And those were handed to the fingerprint section.

Thank you, I tender those.

EXHIBIT #P08 – SERIES OF EIGHT FINGERPRINT LIFTS – TAKEN IN

And just in relation – you said earlier that you took two swabs from the stairs that you can see in that photograph what did you do with those swabs?……Okay, those swabs I – in order to take the swabs moistened the head of the swab with sterile water then I rubbed them on the surfaces respectively, I then aerated them and packaged them, labelled them, sealed them in a bag. I took these on the 27th kept them in my custody until the 28th and I took them to the Forensic Science Service Tasmania, our forensic analyst, for DNA analysis along with the knife and the torch. So I took them on the 28th to the laboratory.

Thank you…..Yeah.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Yes, thank you. You said in your evidence that there was a rope that was coming from one of the hatches down into the saloon of the yacht, is that correct?……That's correct.

I wonder if you could take us back through your series of photographs please and do we see the rope entering the hatch from the deck?…….Oh right, I'll just go back to the earlier photos –

It might be fairly - …….- of the –

Go back fairly on if you would please?…….Yes, yes.

It might assist you if you look at photo 7 or photo 8, at least as we have them?…….Ah right. As I don't have the photograph numbers on here –

Right. Well -…….Sorry, two, three –

That's it, just go back – go back?…….That one?

Yes, that one……..Just there?

Yes, now do you see the rope going into the hatchway – I wonder if the – it might assist you – the witness -…….No, I can't see it.

Have a look at this because -…….Certainly.

- this is a print of that photograph. First of all confirm, if you would please, that that is a copy of that photograph?…….That is a copy of the photograph, yeah.

Now is that somewhat clearer than what -…….Yes.

- we see on the screen and what you see on your computer screen?…….It is, yes.

Right. …….Yeah.

Now using that to assist you, do you see the rope going into the hatchway?…….It – it appears that the rope is entering that hatchway as well as a – another portion of the rope – the higher up –

Yes……..- reddish kind of coloured rope.

Now it might assist the jury if – do you have copies of those – if that photograph could be handed around to the jury at the moment so they can see it – it's somewhat difficult to see on the screen.....Yeah.

Not mine, rather the one the Court's got – thank you.....Sorry.

HIS HONOUR: All right. So it's photo 7, Mr Gunson?

MR GUNSON SC: Photo 7 in the numbered ones we have, your Honour.

HIS HONOUR: All right. And you're wanting the jury to look –

MR GUNSON SC: I want the jury –

HIS HONOUR: - to the hatch – at the hatch to the left of the photo, which seems to have two ropes going from the vicinity of the mast to the corner of the hatch?

MR GUNSON SC: Indeed, your Honour. Now if you look at that photograph again, Constable, we see that the upper right, if I call it, is –

HIS HONOUR: Hang on. Hang on a minute, has she got one, have you got a photo 7?

WITNESS: Yes.

MR GUNSON SC: Yes.

HIS HONOUR: All right, good.

MR GUNSON SC (Resuming): Got photo 7 there?.....I have, yes.

The rope appears to go up to a winch with a handle on it, doesn't it?.....That's correct, yes.

And the bottom rope, if I can call it, which is very hard to see against the white deck, -.....Yep.

- appears to go across to that coil on the bottom, is that right?.....That's what it appears, yes.

Thank you. And the rope that was hanging into the cabin, did you closely examine the end of that?.....No, I did not.

But it appeared to be somewhat frayed, did it not?……I honestly could not – could not tell you whether it was frayed –

Or cut?……- or cut because I didn't – didn't closely examine it because at the time there was no information provided to me that that was an area of interest.

Right……Yep.

Are you a yachting person?……No, I'm not.

All right, well you won't get the next question……..No.

I wonder if that photo could be handed back to me, please. Did you draw to anybody's attention the fact that a rope was coming from the winch on the mast into that hatch and hanging down into the saloon?……No.

Right. Did anybody point it out to you, say one of the marine police for instance?……No, not at this – no.

Right. Now – thank you. You said in respect to the torch - ……..Yes.

- that you looked at it and it had what you described as a spatter type pattern on the torch?……Yes.

Spatter has a specific meaning in forensic science, doesn't it?……It does.

And can you tell the jury what a spatter means when we are talking from a forensic science point of view?……A spatter pattern associated with a blood – either a bloodied object, being – providing movement and actually impacting a surface.

Mhm……Yep.

Would you agree with this as being the standard definition. It's a pattern which exhibits directionally -…….Yeah.

- comparing in force and are associated with a source of, say, blood - …….Yeah.

- being subjected to external forces in addition to gravity and friction?…….Yes, that sounds good.

That's the standard definition, isn't it?.....Yes.

Now I wonder if you would take up that exhibit please, the torch – could that be passed to the witness – and what you saw on there was some unusual substance -.....Yes.

- you thought it might be blood – is that a fair comment?.....Yes, that's correct.

And I wonder if you could tell his Honour and the jury just how many spots of this substance appear on that torch?.....As it stands now it's been examined –

Mm hm. .....- it's obviously been sampled.

Yes.....It doesn't actually show the red stains as I first detected it.

Right. .....So it's been examined by forensic scientists, I'm assuming.

And you would suggest, I suppose, they have muddied the waters somewhat for you?.....Well the samples have been removed, yes.

Right. Okay. Now could I just take you please back to the photograph of the torch?.....Certainly.

And I have these at least noted as 17, 18 and 19 in my photographs, but again, would you find it easier to look at the colour print rather than looking at the screen?.....I have the photos here in front of me, I have 17 –

18 and 19?.....18 and 19, yes.

Right. Now -.....But I can indicate those on the screen as well.

All right. Now there are some white-ish coloured marking on that torch, what's that – in the photographs?.....In the photographs, on the handle area are you –

Yeah.....- saying?

Yes.....Yes, it appears to be dried paint or something similar.

Right. And that was -.....Yeah.

- in the situation you found it on the boat?…….That's correct, yes.

All right. Did anybody specifically ask you to photograph that torch?…….Not specifically, no.

Thank you. Would you just look – using your photographs - …….Yes.

- try and tell me how many of these reddish coloured markings are on those – on that torch?…….On that torch?

Mm……..If you'd like me to indicate with the mouse for the – for the jury's –

Yes……..- benefit; there were markings here on the back, there –

Now just – if you just describe it please because there will be a transcript and it may be necessary in the fullness of time for other people to read this transcript……Okay, all right. I observed reddish stains which I believed to be blood on the rear of the torch just below the – on the rear of the handle in the centre, below that centre area there, also at the rear of the torch, I guess where the battery compartment would be, where it would sit, the heavier part, on this ledge type area there was the reddish stain sitting on that ledge also underneath and in a sort of a watery, if you like, pattern just below that and then at the base of the torch there were several other small spots of the reddish stain there.

Thank you. Would it be fair to say this? That this is not in forensic terms a true spatter distribution but rather isolated droplets?……There were several droplets on the – on the torch, they were distributed in – it appeared in this – these type of areas in the centre. It appeared that at some stage, because the boat was so damp and because it was watery, that the patterning, if you like, was somewhat diminished by – by it being watery. As far as directionality is concerned it doesn't necessarily need to show a tail of the direction because it depends on the angle of impact of the blood staining so there was in fact, I believe, a pattern because it was concentrated in a certain area –

But you're not going to go to the wall and say it was definitely a spatter pattern are you?……It is consistent with other spatter patterns that I have seen before. I did – I must add that I did take this torch to Forensic Science Service Tasmania and examine it more closely with Chris McKenzie, the forensic scientist out there. Obviously on board a boat you don't have a lot of time to really – I wasn't prepared

to handle the torch or disturb any patterning or any stains on the torch at the time so later on I looked at it.

Can I ask you this, when you saw the torch for the first time was it on this bench or had it been in water?……No, it was sitting on that bench.

Was it wet?……The boat was – had condensation because it had been wet and it was a hot day, so it wasn't wet – the bench wasn't wet and the torch wasn't wet, no.

You don't know whether it was sitting there and had been sitting there, for instance, overnight or whether one of the earlier visitors to the boat may have picked it up and put it there?……I can't say when it was put there.

You've no idea, have you? No……Well I can't say.

Yes, thank you for that. Just bear with me. You conducted the fingerprint search in the wheelhouse?……Yep.

Was it your decision to do that or somebody directed you to do that?……No, it was my decision to do that as further examination needed to be done.

And you didn't do any fingerprint examinations in the saloon or in any of the bedrooms or anywhere else on the boat?……No, I was accompanied by other police who conducted those examinations.

Thank you. So you confined yourself to the wheelhouse?……That's correct.

And only parts of the wheelhouse? If I put it to you this way, -……..No, I –

- you didn't do the entire – every surface of the wheelhouse, did you?……I did it sequentially and areas that I believe from past experience of being a crime scene examiner that were suitable for fingerprinting, so yes, I did, although these photographs don't necessarily show the end result of the fingerprinting because these were taken prior to the full examination which was conducted on the 30th.

Would it be fair -…….That was –

Go on…….There was a considerable amount of powder being used and examined areas of interest, yes.

You would normally look for an area that has a suitable surface for fingerprints?……That's right.

Correct?……Yes.

And there are areas that you know from experience that are unsuitable for fingerprints to remain?……Well that are unsuitable to be used using powder and a brush for, yes.

Yes, but there are other more advanced methods which you can use, -…….That's right.

- but not with doing what you were doing?……At the time, no.

Right. And the sort of areas you were looking for, I suggest, are the areas which people would logically touch or handle in the normal use of the boat, such as the steering wheel?……That's correct.

You said, for instance, a coffee cup – a logical choice to look for, isn't it?….Yes.

And similar items…Yes.

And glass, for instance, windows and areas like window ledges and -…Smooth – smooth flat surfaces are better –

Yes….And because I can't tell how the person has handled it, the entire area is examined.

All right. Thank you for that. Yes, I have no further questions of the witness, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<HEIDI LOUISE WOODHEAD CALLED AND AFFIRMED

<EXN – MR SHAPIRO:Would you please state your full name?....My full name is Heidi Louise Woodhead.

And did you have a previous name recently?.....Yes, as of March this year – or previous to March this year I was Heidi Louise Barnes.

Thankyou. And what's your rank?.....My rank is Constable, Tasmania police Service.

And where as you stationed?....I'm currently stationed at Forensic Services.

And as of 27th January 2009, where were you stationed?....Forensic Services.

Thank you. Now on that day, what did you do in the afternoon or the evening?....At approximately five fifty pm I attended the Four Winds yacht, which was on Constitution Dock, and I conducted a forensic examination of the boat.

Okay. And you took a series of photographs?.....Yes, I did.

Thank you. If you could be shown these photographs? I should have said, you also took some photographs on the 11th of February, is that right?.....Yes.

And you took some photographs on the 13th of February and all of the photographs that you – all of the photographs you have there are photographs that you've taken, is that right?.....Yes, that's correct.

HIS HONOUR: On those three days?

WITNESS: On those three days.

HIS HONOUR: Yes.

MR SHAPIRO: (Resuming): Thank you. I tender those, and I also tender the CD to go with them and I would ask that that be displayed on the computer, if it please?

EXHIBIT #P09 – PHOTOGRAPHS TAKEN BY CONSTABLE BARNES (NOW WOODWARD) – TAKEN IN

EXHIBIT #P10 – CD OF PHOTOGRAPHS TAKEN BY CONSTABLE BARNES (NOW WOODWARD) – TAKEN IN

MR SHAPIRO: Thank you. Now what's that photograph?.....Okay, this is a photograph taken on the Four Winds yacht looking – on the deck looking towards the front.

Thank you. And you did tell us where the yacht is but perhaps if you just tell us again?.....Yeah, it was located, I think it's Constitution Dock, and it's just in front of Muirs.

Thank you. And the next photo?.....The next photo is another view on the deck of the boat looking towards the back of it.

Thank you. And the next photograph, thank you.....Okay then, this photograph is a close up of some items on the deck towards the front of the boat and there's two cut ropes and a winch handle which is this side just here.

Thank you. And the next?.....Okay, that's a close up of one of the ends of one of the cut ropes on the deck. And this is a photograph of a close up of the cut end of the other rope that was on the deck. This photograph shows the cabin area looking at the wheelhouse of the yacht.

And the next one.....Okay, this photo, which isn't the right way up, that's a photograph of ropes and the rope housing was this part here, which is on top of the wheelhouse just next to the entrance down into the cabins.

Well perhaps if you go back - .....So if I go back to the previous one –

Yes.....- it's this area here, it's a close up of this area here. Okay. And this is another close up of that same area but this time taken from the entrance down into the wheelhouse and it's looking out over the housing for the rope.

And -.....Now particularly one of the reasons I took this photograph was to show the locations of a couple of marks on the wood; one was going across here and the other one was going across here, and the following photographs showed close ups of those areas. So this photograph is a close up of one of the marks that I just pointed out on the wood on top of the wheelhouse.

Thank you. .....And this is the mark here, that's the one I'm referring to. And this is a close up of the other mark, which was further along – whoops – hang on – oh well are we finished with that – yeah, so it's just a close up of the mark on the wood that I could see. Oh this is a photograph taken inside the wheelhouse and it's looking out to – oh that's the entrance up to the deck.

Thank you. .....Ah so this is a close up of the housing for an EPIRB – and I'll just go back to the previous photograph to show this is the housing of it here, okay, so it's just a close up – that's a close up of the housing for the EPIRB without the EPIRB in it. And this is a close up of a little piece of plastic, which I believe is from the EPIRB housing, and that's on the floor of the watch – the wheelhouse. This photograph shows just the main cabin area and living room type area, and that's looking – oh hang on, sorry – okay, so that's looking from – as you're coming down from the wheelhouse and then straight ahead, so it's looking towards the front of the boat. Okay this shows a close up of some of the floor in that area which – showing the area where the wood – wooden panels on the floor have been removed or are absent, and just here, that is a screw driver we've located underneath the flooring. This photograph shows a close-up of screws on the floor which has obviously been unscrewed and just lying on the top of the flooring.

Can you just – if you go back to the previous photograph, can you show us where that is?....Yep. Okay so that – this area down here – that's where the close-up – the next picture is the close-up of the screws that are on the floor – just there. This photograph is a close up of the screwdriver which was located underneath the floor that I pointed out earlier.

I think we're jumping ahead in time here....Yep

When was this photograph taken?.....Okay so this is one of the series of photographs I took on the 11th February and that was just at Forensic Services at Hobart in the office, so this is a photograph of a red jacket. It's just the front of the jacket. This next photograph shows the back of the jacket and this is upside down, but it is a close up of the tag inside the jacket. And that's another close up of the tag of the – one of the tags inside the jacket.

And when were these photos taken?....Okay, so this next set of photographs is the ones that I took on 13th February at the request of Detective Sinnitt and the purpose for taking these photographs was a reconstruction of rope from the housing on top of the wheelhouse going down into the cabin. So this photograph shows the top – from

the top of the wheelhouse and shows the rope wound around that winch and going into the wheelhouse.

Can you – there were some photographs before of some marks on some wood, can you see in that photograph where that is?……Yeah, the marks on the wood from the pre – the photograph that I took on the 27th, the piece of wood is this one along here, so – I don't know where exactly in this photograph, but the marks were along that piece there.

Thank you…….Okay, so this is just another photograph of that same area taken from a different perspective, so this is just looking straight down like a bird's eye view and it shows the rope wound around the winch, going across that piece of wood and down into the wheelhouse. Okay, and this is another photograph taken from a different perspective again, the same thing, rope around the winch, across the top of the wheelhouse and going down into the cabin. Okay, and this photograph shows the same thing and a closer view again looking down into the cabin, so that rope goes right down to the floor. And this is a view looking from inside the cabin back out, showing how far it went down.

Who's that person, just so we know?……That is Detective Conroy.

Thank you……..Okay, so this is another closer view looking from the cabin out, showing the rope going down through the wheelhouse and down into the cabin. All right, and this photograph shows the floor of that – the cabin with the flooring and carpet replaced and it's showing this area here which has absent squares of carpet, they couldn't be located.

Thank you, Constable. Yes, I submit the witness, thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Thank you. When you first went on the yacht at Constitution Dock on the 27th January you took some photographs that you've just discussed a moment ago with the marks on the woodwork.....Yes.

Did somebody direct you to take those photographs or did you do them of your own volition?.....I did them of – I think I did them of my own volition.

Right. What drew your attention to those marks?.....Um, well –

By all means go back to the photographs if you'd like to.....Yeah, okay, well I'm just looking –

Take your time.....Right, so this is the first close up. Well we were just examining the area, the boat and the area –

You say 'we' who's we?.....Oh, myself and there were detectives present as well.

Who was present?.....Detective Sinnitt and I can't – I'm not sure who else.

All right. You were examining it?.....Yes.

And - .....And noticed these marks on the wood and small fibres as well which I collected and photographed in close up.

Now where were the small fibres?.....Okay, I'll go to the next photo. The close ups – okay, so on this photograph here you can –

Which one are we looking at - .....Okay, this is number –

HIS HONOUR: Twelve.

MR GUNSON SC: (Resuming): Twelve?.....Yes, number – photograph number 12.

Yes.....So the mark is across the piece of wood just there –

Yes, a mark.....And there's some very faint green looking areas which were actually fibres of some sort.

Right. And you collected those did you?.....Yes, I did.

And what did you do with them?.....I packaged them, sealed them, and put them in the forensic exhibit store.

Yes.....With requests for further examination at the laboratory.

Right. And that wasn't part of your role, your role was merely to collect them and pass them on?.....Just to collect them and put them into the lab.

Right. And presumably you thought that the marks were caused by a rope rubbing over the wood, is that a fair comment?.....Yes.

It was certainly consistent with that, wasn't it?.....I thought it looked consistent with that, yeah.

Mm. And the marks appeared to you to be reasonably fresh?.....Well I would say so because of the weathered appearance of the wood, which you can see in this close up.

Mm.....And then the absence of those, you know, those weathered bits of wood –

To put it another way -.....- along there.

- the piece of wood didn't appear to have been well maintained for some time and showed clear signs of weathering?.....Yes.

And you formed the opinion that a rope or something similar had been dragged across the piece of wood creating the mark or marks that you saw?.....Yes.

And how many marks all together were there, there were two, weren't there?.....There were two.

Yes. Separated by what distance?.....I didn't measure it –

Roughly?.....- but it would have been roughly, I think it would have been roughly twenty to thirty centimetres apart.

And basically -.....So there's one here –

Yes.....- and I've put arrows on the actual photograph.

Yes, I've seen those.....Oh no – okay, so yeah.

(indistinct word) do you have a copy of the -.....Yeah, so there's one here, and there's – ooh I've lost the mouse – here. So that actually – on second thought, it's probably about twenty centimetres -

Right. Now -.....- between them roughly.

- I don't know how easy that is for the jury to see but I would like the jury to be given the photographs just so they can have a look at them and then they can be returned, your Honour?

HIS HONOUR: Which photos?

MR GUNSON SC: Eleven, your Honour.

HIS HONOUR: Eleven – yes.

WITNESS: And – well the close ups as well, twelve and thirteen.

MR GUNSON SC: (Resuming): Yes. No, I just – just want eleven at this stage.....Just eleven.

And presumably – just excuse me, would you? Does that have the arrows on it?

HIS HONOUR: Yes.

MR GUNSON SC: Yes, thank you very much, just pass that along, would you?

HIS HONOUR: Yes.

MR GUNSON SC (Resuming): Thank you. Now on the 13th February, I think it was, Detective Sinnitt requested you to go and make some – take some photographs of a reconstructed scene with ropes places in situ, is that right?.....Yes.

Were you given any information at all about how that – why that scene was being reconstructed, just tell me yes or no?.....No.

Right. Had it been reconstructed by the time you got there or was it reconstructed in your presence?.....I think it was already done.

Right. You think but you're not sure?.....I'm not entirely sure, but I certainly don't remember seeing it being set up.

Right. But there's quite an elaborate system of ropes going from the deck into the – through the wheelhouse and then down into the saloon of the yacht, isn't there?.....Oh I don't know.

Well perhaps 'elaborate' is an exaggeration but – a bit of a hyperbole, but in any event, we've got the ropes running from the winch down through the pilot house into the cabin – main cabin?.....Yes.

Right. And did you ask any questions about why it had been set up like that – just tell me 'yes' or 'no'?.....No, I didn't.

Thank you. You just did what you were told?.....Yes.

Yes, thank you. But you remember it was Detective Sinnitt who was responsible for it?.....He made the request.

Yes, thank you. And you've told us about the fibre, was there only one fibre found in one of the marks?.....No, there were fibres at both –

In both marks?.....Oh, yeah, I think so.

No, just please, if you'd check – take your time?.....Can I check – no – I could check my notebook.

Well that would be useful if you would – do you have it there?.....Yes, I do. Okay, so no, I only collected the fibres at that one – in photograph number 12, where they're visible on the photograph. The other – the other mark – well it's got very small fibres – actually – yeah – yeah, no it was definitely the ones from photograph number 12.

Right. And your notes - .....Because there was more there.

Right. Do your notes confirm that you only took one sample of fibres from that wood?.....Yes.

Thank you. Yes, I have no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: No, nothing – no re-examination, thank you.

HIS HONOUR: Yes, all right, thank you, constable, you're free to go.

WITNESS: Thank you.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<**TONY FOX CALLED AND SWORN**

<EXN – MR SHAPIRO: Please state your full name?……My full name is Tony Fox, I'm a constable in the Tasmania Police Force stationed at Forensic Services Hobart as a crime scene examiner and I've been there since 1997.

Thank you. Now if I can take you to the 29th January 2009 did you take some photos on that day?……I did, at Margaret Street and Marieville Esplanade area.

If you can have a look at these photos. Are those the photos that you took at those two locations?……That's right. That's the – the 29th was the one at Maning Reserve off Sandy Bay Road.

Okay……That's beginning from that photograph. And those photographs which were taken on a different date, the 18th of the 3rd, they were Margaret Street and Marieville Street area.

Thank you. I tender those –

HIS HONOUR: So you're tendering all the photos?

MR SHAPIRO: As one bundle, thank you, your Honour.

HIS HONOUR: Yes.

EXHIBIT #P11- BUNDLE OF PHOTOS TAKEN ON 29/1/09 AND 18/3/09 – TAKEN IN

MR SHAPIRO: And there's two CDs that contain together the photographs - if I can tender those two CDs.

HIS HONOUR: Mark them as one exhibit.

EXHIBIT #P12 – TWO CDs OF 29/1 AND 18/3/09 – TAKEN IN

MR SHAPIRO (Resuming): What's that a photo of?……It shows the shoreline looking north towards the Casino obviously, and that's Marieville Esplanade on the side, Sandy Bay Road is to the left and the cone indicates the position where a EPIRB was located by the finder.

Can you use the mouse to show the jury where the cone is, it's just – or you can use the mouse on the computer there perhaps……Oh sorry.

That's all right.

HIS HONOUR: Can we rotate that photograph anticlockwise rather than all looking at it on its side?

MR SHAPIRO (Resuming): That's it there, thank you.....That's it there, number 1.

And if you can go to the next photograph.....And that's the actual epirb that was shown to me on that day and as being found in the position as indicated by cone number 1.

Thank you. And the next photo?.....That's just a closer up view showing the actual numbering, serial numbers and such on the actual epirb itself.

Thank you, Constable. And if we can go to the next CD. Thank you. Now that's that photo of?.....It shows the front of 2 Margaret Street with Marieville Esplanade on the right hand side of the image.

And the next photo?.....It shows a continuation of a view, so the left hand side of the image here is a brickwork to number 2 then Margaret Street, Marieville Esplanade there, and the Derwent River in the background.

So the previous photo you took is just to the left of - .....It's a continuation.

Thank you. And the next photo, thanks?.....Again is a continuation of that image. It continues panning to the right along Marieville Esplanade again from Margaret Street and you can see the Derwent Sailing Squadron area behind the trees to the right hand side of the telegraph pole, and the entranceway to the Derwent Sailing Squadron is approximately there, in that vicinity there, the driveway.

Now the next, thank you.....This is a view from – towards the shoreline and looking back towards the Derwent Sailing Squadron area there and the crane area which was the area of interest indicated to me by Detective Sinnitt.

Thank you. A continuation of that view panning again to the right and Margaret Street would be behind this main building here off the street there.

And the next one?……And the next view is just showing the crane which has been seen in the previous photograph and then the Derwent River in the background.

Thank you, Constable, is that the last photo, I think it is……I believe it is, yes.

Thank you. Yes, I submit the witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT CROSS-EXAMINED

HIS HONOUR: Yes, thank you, constable, you're free to go.

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I call Timothy Chappell please, your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: Volume 6 page 11 at 101, your Honour.

HIS HONOUR: Thank you.

MR ELLIS SC: And supplementary – sorry, there was just a supplementary proof, which isn't in the volume

<TIMOTHY EDWARD CHAPPELL CALLED AND AFFIRMED

HIS HONOUR: Mr Ellis?

<EXN - MR ELLIS SC: Thank you. Mr Chappell, you are Timothy Edward Chappell?.....Yes.

You live in South Hobart?.....That's right.

You're a procedure engineer in the State Service?.....That's right.

And who was your father?.....Bob Chappell.

And his full name was Robert Adrian Chappell?.....That's correct.

Do you know his date of birth?.....I believe it's the 2nd of December '43, I think.

Thank you. Did he and your mother separate when you were small?.....Yes, I think it was the – yes.

About how old were you?.....I think about seven or eight years old – yeah.

Do you have siblings?.....Yeah, two sisters.

What are their names?.....Kate and Claire.

After your parents separated who did you live with at home?.....Yeah, we lived with our mother after that, but we had time with our father. Every second weekend was the regular arrangement.

And in your teenage years you lived with him rather than your mother, is that right?……That's correct, yeah, when I started high school I –

I don't mean rather than, but you lived with him?……Yeah, that's correct, yep.

And do you remember when you moved out of home?……It was I think, third year of university. Do you mean a year, are you asking for?

How old were you?……I was twenty two or twenty three.

Mhm. Had your father met someone else by then?……Yes, it was about the same time as he met Sue, or fairly soon after he met Sue.

That's Sue Neill-Fraser, the accused in this case?……That's correct.

And did she move into the home?……Yes, I mean coincidentally it was about the same time that I moved out.

But not as a result of you moving -……..No it wasn't, no.

Did you get on well with her?……Yes.

How would you describe your father's – your father's personality and temperament?……He was an introverted sort of person, he was fairly quiet. He could be grumpy and prickly quite often.

Yep…….But he was never an aggressive or outwardly sort of angry person, very quiet and introverted.

Have you ever known him to show any physical aggression?……Never.

And what was his work?……A medical physicist. He spent most – virtually his entire career at the Royal Hobart Hospital.

Do you understand what a medical physicist does?……Vaguely.

What's your vague understanding?……He was in charge there looking after the equipment, the radiation equipment for cancer treatment. I believe he was involved in some training of radiologists and those sorts of things, but primarily it was physics, radiation physics, and looking after the equipment.

Right. Towards the end of 2008, did you have discussion with him in which his plans for the future were mentioned?.....Sorry, end of 2008 -

Yes.....You said?

Or early 2009?.....Yeah, I mean that's – yes, we did have discussions.

Right. And what did you understand his plans to be around that time?.....Well he was – he was planning to retire at some stage but he wasn't quite sure exactly when that would be, it was – it was imminent for quite a few years.

Yes.....And it was very much a plan to retire and buy a boat with Sue.

Yeah. The plan was told you, obviously, was the style of boat told to you?.....Oh yes, we talked a lot about what they might buy.

Yeah. Do you sail yourself?.....No, I mean dad and sailed dinghies but never large boats.

And what was the – what was the talk about – what was the plan in terms of a boat?.....It started off, I think, very – very modest, I think, they – they were both looking for something initially quite small.

Yeah.....Initially I think the budget was well under a hundred thousand and they were looking at a – maybe a yacht of thirty to forty feet.

Did your father have in his plan the intention to become a high seas sailor, to go far -.....No, no never. He – dad was very much, I think, had a – I suppose a retirement dream of really just sailing around the channel here, Bruny Island, you know, possibly a bit further a field once – once he got his confidence up, but you know, the immediate plan was really for – it was very modest, not that ambitious.

Yes. Now your father disappeared on Australia Day 2009?.....Yes.

Have you had any sign at all that he is alive?.....No.

Do you believe him to be alive?.....No.

At the time of his disappearance can you tell us what his plans as told to you in respect to retirement?.....Yeah, he'd just revisited his plans, this was during the global financial crisis, and he was intending to work for another, I think for a couple of reasons; his superannuation had dropped significantly at that time but I think probably more pressing was his desire to finish his work. He'd just commissioned a major piece of equipment at the hospital –

Yes.....- and he hadn't written up the manuals for it and he felt he was the only person who could do that and that if it wasn't – if he didn't do it, you know, it would not be done properly and he had a – he felt an obligation to finish that work. He told me it would be another year.

And was he unhappy about that or in any way -.....No, actually surprisingly not, he actually seemed very comfortable with this, it was the last big thing of his career and I think he wanted to finish it.

Right. Now you mentioned – sorry, to hop you around, you mentioned that the plan as you understand it was to buy a yacht around thirty to forty feet. As you know, the yacht subsequently purchased was considerably larger. When did you find that out?.....Well after they purchased the yacht Dad and Sue both came back for a couple of months, but I think before they went up to make the final preparation for bringing the yacht back – I think when they arrived back after this trip up to Queensland they had photographs and the original advertisement from the paper and that was when they showed me it and the first thing I saw was fifty four foot, and I was surprised.

Right. Who seemed to be driving it of the two, if either of them?.....I think the original concept was – was mutual.

Yes.....I believe that Sue had more energy in the project and that – I believe that she had a desire for a – the motivation for probably a larger and better vessel.

Rather than your father?.....Yeah, I think dad's – dad's plans I think were probably more modest, like I said, along the original lines.

Yes. Well the boat arrived in Hobart just after Christmas, I think, after or before, do you recall?.....Almost immediately before, I think it was Christmas Eve, yep.

And did you go out on it with others?.....Yes.

Can you remember how many times you went out on it?……I was on the boat twice.

Right. Do you remember the occasions?……Yes.

What were they?……The first time was on, I think it was Boxing Day, but the boat was on the mooring off Marieville and we went out in the dinghy and we didn't go anywhere - we stayed on the mooring. We had a couple of glasses of wine and looked about the boat and that was it.

Who went out on that occasion do you remember?……Yeah, I think it was – it was just immediate family. It was myself and my wife and our children.

How many trips in the dinghy did it take?……Two or three.

Two or three…..Because there was also my sister, my mother in law, Emma and Sarah, Sue's daughters, I think their husbands and a child, there were a number of people.

Right. Who operated the dinghy?……My father, that day.

Have any difficulty in that?……No, no. I mean there was a source of some tension and there were a couple of issues with the outboard and things but dad was quite capable in a dinghy.

Right. What about boarding it and getting off the vessel into the dinghy?……He was quite capable of that.

Thank you. And the other occasion besides Boxing Day that was - …..Yeah, the other occasion was two or three weeks later. The boat had been brought across to the marina for some work, I can't remember what work, and so we simply walked down through the marina and found – located the boat, and again it was just a social occasion, a couple of drinks and the kids have a play on the boat and off we went.

Again out in the – out to it in the dinghy?……No.

How did you get – I'm sorry, I was looking for something else?……It was on – at the marina.

At the marina, thank you…..Yeah.

Now on those occasions did you detect – I'm sorry, not detect, what was the relationship as you saw it between Ms Neill-Fraser and your father?……What was the relationship?

Was anything being said about the boat in particular?……At the time?

Yeah…..There was quite a lot of tension between them I believe. I felt a bit uncomfortable on the boat because of the tension between them.

Right. And how was that intention expressed – or -…….A bit of – a few sort of snipey type words and – it wasn't an open argument or anything, it was just a little bit uncomfortable, there was obviously friction between them. You know, dad – dad goes about these sorts of things very much at his own pace, which is not quick, he likes to work things through gradually himself.

Yeah……..Things happened very slowly often, and Sue was much snappier wanting – wanting to get on this boat and sail it, you know, that's how I felt, and dad just really was quite happy to sit there and drink some nice wine for a few weeks and think about it.

Okay. And that –…….There was friction.

- as you understand it, was – was the source of the tension and different expectations -…….Very much,.

- of what the boat would put to?…….Yeah.

Is that right?…….Yes.

On the – oh what was your father's attitude to safety, particularly concerning boats?…….Yeah, he was – he was extremely safety conscious and – as was Sue, I mean they – they both bought a boat and they said many times that they wanted a safe boat to take the grandchildren on. Safety was number one.

Yeah……..I think, in what – and one of the justifications for a large boat – Sue told me that. Dad was very conscious of safety with the dinghy, you know, he made sure we all had lifejackets, all those sorts of things – he always had been. He took us out in dinghies a lot when we were children – safety was important.

On the 27th of January you heard that he was missing apparently from onboard the vessel, is that right – the 27th of January 2009?…….Yes.

And did you go to Marieville Esplanade as a result of a call from someone?.....Yes, yeah.

Do you remember who called you?.....The police phoned my wife's mobile from the Radio Room. I – I returned the call and was put through to an officer at Marieville Esplanade. I was walking to work at the time and I just – I detoured straight down to the – to Marieville, arriving there soon after nine o'clock, I think.

Right. Was Ms Neill-Fraser already there?.....Yes./

Did you speak to her?.....Yes.

And did you hear her speak to others that day?.....Yes.

Did she – did you hear her detail her movements or the movements of the day before?.....Yeah, I mean I can't honestly – there was a lot of confusion and we talked and I suppose gradually I heard her version of events, but it was amongst a lot of things going on.

Yes.....Yeah.

Did you learn in that version that your father had apparently been left on board but the dinghy not with it, not with him?.....Yes, that came out during that day, I can't remember exactly when, but the initial thing I heard was that dad had stayed on the – had stayed on the boat overnight.

Yes. Did it surprise you to learn that he'd apparently stayed on the boat without the dinghy?.....Yes.

Why was that?.....He was very safety conscious and he would've thought straightaway that if something happened on the boat while he was on it he would've needed a way to get off, I'm thinking an explosion or a fire.

Yes.....Or the boat sinking. I think he would've thought of that straightaway and wouldn't – and I don't believe in his normal frame of mind would've stayed there without the dinghy overnight.

Did – in the recounting of the events that day did Ms Neill-Fraser mention that she had been back down to the boat that evening or early morning?.....Sorry?

Did Sue Neill-Fraser mention in her recounting of things that she had been back down to the boat the immediate evening before?……The evening before, no. No.

Now you had had a phone call the evening before, hadn't you, from someone?……Yes, very late that evening, yeah.

Yes. And who was that?……A gentleman called Richard King.

Did you know him previously?……No, I'd never heard of him.

Did he make himself known to you and his business?……Yes, he –

What was his -…….He introduced himself and explained, yeah, what –

What did he explain to you?……He explained that he was – he was calling me as a – as a friend of my younger sister, Claire's.

Yes…….And he had some – just a few concerns, he wanted to introduce himself to me in a private sort of way.

Right. What were his concerns that he expressed to you?……Concerns about her health.

What in particular about her health?……She was going through a difficult time and struggling to cope in a number of ways, anxieties and things.

Yes. Did she suffer unfortunately from some mental health problems?……Yes.

And are they varying intensity, that is sometimes she'll be better than other times?……Yeah, that's correct, yeah, there are episodes that are worse than others but –

Right. Did Mr King tell you that he fears were centering on anything in particular at this time when he rang you?……No – well, no, I mean we talked about a number of her fears and anxieties at that time and he gave me some examples but, you know, it was mostly – mostly anxieties about family members.

Right…..Myself included, my father included, our mother, she was very – she has anxieties about the wellbeing of her family and immediate friends and she's very sensitive about these things, and that was the conversation.

Right. Did the boat – the purchase of the boat or the existence of the boat come in at all in what Mr King was telling you?……She'd heard about that and that was – one of her worries was about dad and this large boat she'd heard about, she'd hadn't seen it, that was one of her concerns amongst many others.

Yes. Did he tell you that she was suicidal or in danger herself of anything?……I suppose there – he was concerned that that may be a possibility and that was perhaps the reason for his phone call. He wasn't saying – he was concerned that she needed to be – we needed to be aware that she needed attention and family support. I don't think he thought she was imminently suicidal at all and neither did we but he felt that she needed support and he wanted – as he had been a friend of hers, unbeknown to me, he wanted just to make himself known to me in a personal sort of way.

Yes. And it was quite a long conversation?……It was, I think it was at least an hour.

Did you have any – sorry, would your sister have been able to get on the boat had she so wished in your view?

MR GUNSON SC: Oh, well –

MR ELLIS SC: To get herself on the boat I should have said.

MR GUNSON SC: I object to the question in that form. It poses or requires the witness to speculate as to means (indistinct words) this could have been achieved, pure speculation.

HIS HONOUR: Mr Ellis?

MR GUNSON SC: And if she'd gone out in the –

MR ELLIS SC: It can't be pure speculation it's concerning his knowledge of his sister's knowledge of means to get onto the boat, her capacity to do it, her capacity to drive, all things known to him. There's nothing pure about the speculation at all.

HIS HONOUR: Well, do you want to take those a bit at a time?

MR ELLIS SC: Okay.

HIS HONOUR: and we'll keep going until one-ish.

MR ELLIS SC: Thank you, your Honour. Where did your sister Claire live at this stage?....Lenah Valley.

And do you know if she knew where the boat was?...She knew vaguely from what I told her, I believe, that they had a mooring off Marieville.

Right. Do you know if she knew what the boat looked like?.....She would have known it was a ketch. I would have explained to her what that meant.

Yes. Do you know if she knew the name of it?.....No, I don't think – no, I don't think she did.

Do you know of any means that she had available, herself to get there, would she – was she – if she was so-minded?...Well l I mean – to get to the boat?

Yes....No. I mean, she wouldn't have known how to operate a dinghy, how – she would have had no- no, she couldn't have got to the boat herself.

Okay. Could she have got to Marieville Esplanade herself?....Oh, yes.

How would she do that?....Oh she – well, I don't think she was driving much at the time, but she could have got a taxi or a bus – I mean, she was capable of – she was quite capable of travelling about the city.

As far as you knew, she didn't know what the boat looked like, exactly where it was...No.

How to get to it at night time...No.

Anything of those things?.....No.

Thank you. Now, the – this was the evening of Australia Day, 26th January that you had the call from Mr King? 26th January 2009?.....Yes.

And the next day you heard your father was missing of the boat and you went down?....Yes.

And you went down to Marieville Esplanade, you got there at about 9 o'clock you've told us, Ms Neill-Fraser was already there. Did you

go somewhere after arriving at Marieville Esplanade?...Yes – well, we went to a café at one point, up in King Street, because we felt uncomfortable with the media coming in and that was with Sue and her daughters and their husbands, I think, and I went to – I made a phone call to my sister Kate who was on Bruny Island, but I couldn't get through – I left a message on her mobile and then I thought I should go and see Claire and tell her what had happened, which I did.

Did you learn before you went to see Claire that Mr King had also telephoned Ms Neill-Fraser?.....Yeah, he told me that the previous evening.

Right. .....He said he'd phoned my family home to get my phone number.

Yeah.....Mm.

So how – how long was it between the time that you first arrived at Marieville Esplanade and the time you left to see your sister, Claire?.....I think we went from Marieville Esplanade to the café to talk about things, and I think then we went – it may be out of order in my statement, I was – when I thought it through – I think after that I went up to see Claire. So it was probably two hours after arriving.

Right. Now I want you to – this is a description I want you to listen to please and comment on that Ms Neill-Fraser gave to police about your reactions that morning, that morning the 27th:

> *That morning I first went down the police rang me. Tim was very upset about Claire and he ran off to see whether, I mean, I told him about the phone call and he was very very upset. He was more upset than I've ever seen him, and he went off immediately to talk to Claire, came back and said that – I think what he said was 'There's no way Claire could be involved she broke down and she was very upset.*

Now is that accurate as to what happened and your reactions?.....No, no.

In what way?.....I wasn't upset in that sort of way at all. I was obviously stressed and confused, I was not upset.

And the phone from King was no news to you anyway that morning, I think you've said?.....Absolutely, no.

No.....No.

So to say that you were upset, let alone more upset than you had ever been seen by her, is not true?.....No, that's not – that's not right.

Thank you. Over the days that followed did you spend time in – in company with Ms Neill-Fraser?.....Yes.

And did you go over events as – with her?.....Yes.

And in those times did she say that she'd been to Bunnings the afternoon before?.....Yes, we talked about that, yeah.

And in those times did she say that she had been down to Marieville Esplanade on the evening before?.....Never, no.

Did she say – did she claim that the boat had been broken into on any other occasion?.....Yes, she said it had been broken into twice in Hobart on the mooring.

Right. Had she told you that ever before the 27th January 2009?.....No, never, I'd never heard anything about it and I was very surprised.

Thank you. Was - at the times you saw him immediately prior to the 27th January 2009 was your father in any way depressed?.....No, not at all, no.

In any way suicidal?.....No.

Was he the sort of person you believe would stage his own disappearance?.....Absolutely not, no.

If it please.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson, unless you're going to be very quick with this witness we'll stop for lunch.

MR GUNSON SC: If it please, your Honour.

HIS HONOUR: We'll stop for lunch then.

MR GUNSON SC: We will.

HIS HONOUR: Yes, all right. The jury can make their affirmation and the Court will adjourn 'til two fifteen.

<JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

<XXN - MR GUNSON SC: (Resuming) Had you had any contact with your father preceding the arrival of the boat in Hobart?……Not directly from my father, I'd had a couple of text messages from Sue.

Yes. Concentrate on your father first of all…….Yes.

You are aware that he came back to Tasmania on or around the 16th December, aren't you?……Yes.

And you are aware now that he had been admitted to hospital in Southport with a bad nose bleed and had been there for four or five days?……That's right.

Now did he contact you to tell you that he was in hospital in Southport?……No.

When he arrived back in Hobart on the 16th did he contact you?……I can't remember which date it was, I think it was after the 16th.

Right. Would it be fair to say this, that you didn't have significant regular contact with your father?……How do you define regular?

Right, well perhaps it's a fair question. Would you see him weekly?……No.

Would you phone him weekly?……No.

Would you phone him fortnightly?……Probably monthly I would say would be fair.

Okay, so you would contact him by phone about once a month?……Yes.

Presumably that would be the situation for some time leading up to his disappearance?……Yes.

Would it be fair to say this, that had probably been the situation for some years?……Yes.

Right. And would you go up to 7 Allison Street to go and see him very often?……Yeah. Again it was probably monthly, I think I went to see him rather than phone contact mostly.

So we can accept you would either telephone him or go and see him about once a month?……Well more often go and see him because –

He wouldn't send you text messages because -…….No.

- like some people he doesn't bother to adopt that means of communication?……That's right.

And he didn't have a mobile, did he?……No, not a personal mobile, no.

No. All right. Did you see him over the Christmas break?……Yes.

And did you see him, for instance, on Christmas Day?……Yes.

And where did you see him?……At Allison Street.

Did you go there for some Christmas function or a meal or something like that, or -…….Just a Christmas visit, yes.

Christmas visit, exchange presents, that sort of thing?……That's right.

Right. How long did you spend with him?……I think round about two hours.

And Sue was there?……Yes.

And I suggest everything seemed perfectly normal?……Yes.

And you went out to the boat, I think you said, twice for – well basically short visits, you went out on the boat when it was on the mooring one day, and on another occasion you went on the boat at the marina?…….That's right.

I'll come back to those in a moment. Do you remember having your father and Sue around for dinner several days before he disappeared?…….Yes.

Thank you. And they came to your house one evening and had a meal?…….Well it was the Saturday night before Australia Day.

Yeah, and spent several hours there?…….That's right.

And a very pleasant evening?…….Yeah, it was, it was just – well it was just a typical evening with –

I'm not sure what a typical evening in the Chappell household is, but let me approach it this way; it was a meal with your father and his partner, with you and your wife?…….And – and Caroline –

Yes……..- was there.

Thank you. And it was a very pleasant evening, I suggest?…….Yeah, it was a typical family dinner, yeah, yeah.

And there was obviously nothing untoward going on between your father and Sue?…….Well I mean the thing that wasn't typical about it was they had a new boat and there was a lot of – obviously conversation about that.

About that, but there was no obvious arguments between them?…….There – there weren't, no.

No, there was no harsh words between them?…….No.

And you'd, for instance when they left, certainly weren't thinking to yourself 'My God what's going in here,' were you?…….No.

No. And when you went out on the boat on the first occasion, it was, I suggest, a very pleasant family visit?…….Like I said before there were tensions and it was un – I was uncomfortable.

You were uncomfortable because the two of them were basically non-stop about the boat and things that had to be done to the boat?…….I was uncomfortable because it suddenly became apparent my father was very stressed about the boat and what they'd purchased and the potential problems with it.

Yes. And – go on. All right, he was stressed you thought about the boat, and I suggest he was telling you in general terms that it was going to cost a lot more than had been anticipated?…….He didn't tell me that, but – he was – he was stressed and – and there was obviously – like I – exactly like I said before there was obviously friction between the two of them, and it was a slightly uncomfortable situation.

But there were no harsh words, were there?…….Oh there were many harsh words, snappy – snappy words.

Snappy words?…….Yes.

But it was all about the work that had to be done on the boat?…….No, it was about a number of things – how the dinghy was operated; how the outboard motor tilted, how it was tied up, whether the boat was safe on the moorings, the boat should be different, there were many many things.

All boaty things?……Boaty things, yeah.

But I mean they weren't having a domestic for instance about - …..I wouldn't describe it as a domestic, no.

Pardon?……It wasn't a domestic as such, no.

No, it wasn't a domestic. And they weren't arguing about their personal interrelationship?……No.

No. And they weren't arguing about things about home or anything?……About home, no.

And they weren't arguing about finances or anything like that?……No.

The subject was about the boat, the tender and things that needed to be done to the boat?……Yes, details to do with the boat and what they – and what they were going to do.

And it would be fair to say this that Sue had some views on the way in which things should be done and she expressed those, fair enough?……Yes, absolutely.

And your dad had some views and they didn't agree?……Correct.

And you no doubt from time to time, I don't want to pry too much, have had disagreements about things, about home with your wife, she takes on view you take another, a fair comment?……It happens.

Yeah. Now you've known Sue for a long time haven't you?……I think it's nineteen years.

Yes. And your dad met her and they met through family friends didn't they. Correct?……Friends of – mutual friends, yeah.

And after a while a relationship developed and eventually Sue and her two daughters, Emma and Sarah, moved into 7 Allison Street?……That's right.

And they were then primary school age children?……That's right.

And that coincided by pure chance with you moving out of Allison Street because you were twenty two or twenty three and wanted to do whatever university students do at that age?……That's right.

And don't want to do it at home, all right. And you went off with a mate in a unit and you thought, to use your own words, that Sue was a good catch for your father?……Yes. Well I mean –

Just answer that, you thought that to be the case didn't you?……Yeah, it was – by that statement I meant we were slightly surprised by the relationship and – and she seemed to be a reasonable person.

Well she was younger?……She was younger, she was attractive and – yes.

And it was a relationship that obviously seemed to work?……It seemed to work, yes.

Yes. And Sue was always instrumental in making sure that your father kept in touch with you and your sisters?……That's right.

Yeah. Because your father was a bit, I suppose not so much recalcitrant, a bit slack in keeping in contact?……Yes.

But Sue instigated contact regularly, didn't she?……She did.

And she would – it would be she who would invite you and the others around for dinner?……That's right.

Dad never rang up and said, "Look, would you like to come round for dinner on Saturday night", or something, it was Sue, wasn't it?……He rarely – he rarely would've done that, occasionally.

And in fact even in those days when you were in your mid twenties you mightn't hear from your father for a month or so?……That's right.

But when you went to the house over the years and saw them together they appeared to be a couple who were getting on well together?……It seemed to work, yes.

And as far as you were concerned that was the situation right up until late January 2008?……Yes.

Now your father was a pretty easy going sort of fellow?……I wouldn't say easy going, no.

A bit introverted?……Introverted, yes.

Came across with some people as if he was difficult to get along with, a bit irritable?……He could appear irritable.

Yes. And wasn't an aggressive or violent person?……Never.

Right. And you never saw anything like that?……No.

And there was one particular clash with a medical practitioner at the Royal that occupied his time for a while?……Yes, much earlier than what we're talking about.

Mm, yep. That was the only occasion you saw him, for instance, get grumpy about a relationship?……Yes.

A work relationship?……That was a work type of thing.

All right. He discussed with you the fact that the global financial crisis had caused his superannuation to drop, along with a lot of other people, and he had to reconsider his retirement plans?……Yes.

Correct?……That's right.

When did he tell you that?……I think it was – it was either – it was late that December. It was probably the day we were on the boat, -

Yes…….- on Boxing Day.

All right…….It may have been a few days earlier, but it was end of that year.

Right. So there were two reasons he wanted to keep going, one was to write this manual for this new machine and secondly, because it was financially better to continue on?…….That's right.

All right. …….Mm.

Now for some time, quite considerable time, there'd been discussions in your presence between your father and Sue about the potential purchase of a yacht, hadn't there?…….Yes, I think for about two years –

Yes.....- before they bought it.

And you are aware that they had spent a lot of time researching yachts that were available for sale?.....Yes.

And you are aware that they'd been to the mainland looking for yachts?.....On at least two occasions.

Yes. And were away for some time on this -.....Yes.

- almost endless search for the perfect yacht?.....Yes.

And they went up and down the coast of Australia looking for the yacht they thought would be perfect for their purposes?.....That's right.

Yeah. And you anticipated they'd be looking for something around the forty foot mark?.....I hadn't just anticipated that I was told – we spoke about that, this is when they first starting looking – would – I was looking at some of the boats they were interested in.

Mm.....And they were of that size.

Now you said in a statement to the police, "I always anticipated that they would look about for something around the forty foot mark for under a hundred thousand"?.....That's what we spoke about, yeah.

And that was based on discussions between you and your dad and Sue?.....Absolutely.

Right. .....Yeah.

Now there were a lot of discussions about what they might do in retirement with the boat, weren't there?.....Yeah, the discussions about what they were going to do with it – I don't remember that – them as being significant at the time it was more about first getting the boat, I think.

And there were discussions about the fact that there would be a need to learn to operate a reasonably large yacht?.....Yeah, I think we all had assumed that.

Mm.....Yeah, mm.

Because Sue at one stage had in fact owned a Roberts 28, hadn't she?.....That's correct.

And have you ever been out on that with her?.....I think I did once.

Mm. That was quite some years ago?.....Yes.

And she'd got rid of that and there'd been this gap between getting a new yacht?.....That's right.

You regarded her as a reasonable competent sailor, didn't you?.....She was – she knew a little bit about boats. In terms of sailing with sails up I'm – I don't know that she'd done that much but she certainly knew how to manoeuvre a boat of that size, the twenty eight foot one.

Yeah.....And – and get onto the mooring and off in a – at an amateur level, but she could certainly do it.

But there were certainly never any intention expressed by either of them that they'd buy a large yacht, bring it to Hobart and then sail away and do the world or something the following week was there?.....No, there was no talk about that.

But there was talk about first learning how to operate the boat, correct?.....I think – I wouldn't say talk I think it was probably assumed.

And it became obvious to you when you first went out on the boat that it was in fact a reasonably large boat and perhaps larger than you'd anticipated they'd buy?.....Much larger.

Yeah. And it was indicated to you that that boat needed quite a lot of work done on it?.....Yes.

And you were left in no doubt about that by your father weren't you?.....Not directly.

But there were discussions on board the boat when you were there about the - .....I – yeah, there was tension on board, there were obviously a lot of things going wrong, a lot of things that needed work. I didn't talk with dad directly about what – how much work he thought might need to be done but I could see there was going to be a lot of things.

And you talked to Sue about the work that had to be done?……Incidentally, as various things came up we spoke about it but not in a single discussion.

And she most certainly didn't say to you that you – sorry, she and your father were going to depart off to, say, the South Pacific or something like that in a few weeks time or a few months time?……No. No, there were no immediate plans like that.

There were no immediately plans at all, full stop, that were expressed to you?……(indistinct answer).

Right, thank you. There was an issue about the length of the leg on the outboard that was on the boat at the time, do you remember that being discussed?……Yes.

And there was some issue about it simply being too long to comfortably get into Short Beach down at Marieville Esplanade……Yes.

Are you aware that there was a new outboard purchased not long before your father disappeared?……I think the police told me that. I wasn't aware at the time.

Your dad didn't discuss it with you?……No. No, we didn't talk about it.

All right, thank you. Now this telephone conversation you had with Richard King came completely out of the blue didn't it? You didn't know who Richard King was?……No.

Never heard of him?……No.

And yet he phoned you at home at about 10:30 on the night of the 26th January, correct?……That's right.

Correct. And did the conversation go for very long?……About an hour, I think.

Did the terms of the conversation trouble you at all, concern you?……Not particularly, it was nothing I didn't know. Not particularly, I was a little bit concerned that I didn't know this man who'd called me who obviously had been spending time with my sister and I was a little bit concerned he may have – or what his intentions were, in a protective sort of way.

Yes…….He sounded reasonable on the phone, he was articulate, he sounded like he knew what he was talking about and he sounded like he was just trying to be helpful.

How old was your sister at this stage?……She was early thirties.

And he described himself as an unofficial counsellor for Claire, didn't he?……Yeah, I think that might have been the words he used, a counsellor/friend, I think.

Yes, and he told you that he had called 7 Allison Street but your father wasn't home and Sue had given him your number?……Yes.

Thank you. But if he told you about his concerns as expressed by Claire about your father buying this new boat -…….We talked about that. Like I said before, Claire had a number of fears and anxieties centered on family members and that was one of them and it was obviously one that stuck in my mind, but –

And Richard King in fact said that it was her intention to steal the boat and sail away on it to save your father?……Well –

Just answer my question, that's what he told you, didn't he?……Yeah, amongst other things, yes.

Yes, certainly. I'm not asking you to comment on whether that was something she was capable of or whether she might have done it or would have done it, I'm just asking you to tell me that was what he said and that you agree with that?……Yes.

You may have regarded it as completely far fetched and ridiculous, but nonetheless it was said to you, correct?……Yep.

Thank you. And would it be fair to say this, that that sort of comment probably didn't surprise you?……Not at all.

Thank you. And her delusions, which they are, quite often involved family members and ideas about death of family members – correct?…….Her – her anxieties sometimes – I'd say – I just like to describe them as anxieties –

Thank you……..- and they sometimes involve – mostly involve family members and friends, yeah.

Now you have said, have you not, that you thought that your father was looking forward to the future involving retirement and travel on the new boat?…….He was looking forward to it, yeah.

Looking forward to travelling on it in his retirement?…….Yeah, well to using it.

Thank you. …….Yeah.

And he gave you an explanation for his profound nosebleed in Queensland, and that was that he'd been using regular doses of Aspro Clear -…….Yeah.

- which caused thinning of his blood -…….That's – that's –

- and thus, the nosebleed?…….That's exactly what he told me, yes.

Thank you. Now you also said that he was very safety conscious on the boat?…….Yes.

And when, for instance you went out on the boat, when it was on its mooring you went out in the rubber tender – correct?…….Yes.

And who went out with you on it?…….I mentioned these people before I think, it was myself –

Mm……..- and my wife, my sister Kate –

Yes……..- and – you mean – are you talking about the actual trip or out onto the boat?

No out – who went out in the dinghy with you?…….Oh dad made a number of – oh sorry – dad made a number of trips backwards and forwards that – that day.

Right. …….I think there were two or three.

And how many people would he have ferried out?…….Three or four at a time. If you're asking me who went on the first –

No, don't worry about that. Do you all wear lifejackets?…….We had lifejackets for the kids – I think – I can't remember.

You can't remember……..I think we did actually.

If I suggested probably the situation was that the kids were put in lifejackets and the adults not?.....I think that's – that's probably right but I can't remember.

I'd just like you to look at something if you wouldn't mind? Just look at – just look at these, don't make any comment about them, and when you've looked at them just return them to me please? Does that assist you in answering the question that I directed to you?.....Yes, obviously we – well that wasn't the day –

No, no -.....I hope you –

It would be this – fair to say –

No, no, no, it would have been fair to say that when you went out on the rubber tender with your family and your others that life jackets were provided to the children but not to the adults?.....That's right. I think there were life jackets on the yacht, a large number of them I recall, but not – we didn't use them in the tender.

Now when you looked at the yacht was it fairly obvious to you that it might have had a bit of a hard life and needed a lot of basic maintenance carried out?.....I wouldn't say it had a hard life at all it just looked like it hadn't been maintained well. It looked like perhaps that it hadn't been used that often.

Come back to the steps before the purchase of this yacht. There was a lot of research done by your father and Sue wasn't there?.....Yes.

And you were made aware of the nature of the research that they'd done looking into various types of yachts, the price range for these yachts and their capabilities?.....Yeah, in a general way.

Did they ever discuss with you the fact that if the yacht had to be taken on a long voyage that they'd need a crew to assist?.....No.

You went down to the waterfront at Marieville Esplanade on the morning of the 27th about what time did you get there?.....About 9 o'clock.

And you went down there with your wife?.....Yes.

And you saw the dinghy from the yacht bobbing around near the rocks nearing the rowing club?.....Yes.

And was it tied up at that stage or just floating loose?.....I think it was floating loose.

And did you notice that the rope, as Mr Ellis described yesterday correctly I think, the painter was inside the boat?.....Yeah, I think it was loose inside the boat not – certainly not put away neatly.

And did you go out to the yacht at all that day?.....No.

When you'd been out onto it both in the marina and when it was on the mooring did it appear on the deck to be neat and tidy, that is all of the ropes were looped up and tied up where they should be, or just round in piles and messy?.....Somewhere in between, I'd say.

Now your initial reaction or thoughts were that your father had slipped from the yacht while trying to get in the dinghy to come ashore, that's what your initial thought was, wasn't it?.....Yes.

And had sadly drowned?.....Mm.

When you went out onto the yacht how did you gain access to the yacht, by going over the side or up over the stern at that rack that's at the back?.....Yeah, over the stern from the landing.

Onto a platform?.....Correct.

Then into the dinghy and vice versa?.....Correct.

All right, thank you. There was initially a discussion with Sue about why the dinghy was loose and floating, wasn't there?.....Yes.

And she said that she probably hadn't tied it up properly and she wasn't good at knots that day, or something like that?.....Correct.

And that must be the answer?.....Yes.

All right. Sue, I suggest, seemed in a state of shock at that stage, seemed stunned?.....Yes.

Yep. And I suggest was very vague?.....Yes, she was vague, I think –

I mean you've got a situation, haven't you, with the dinghy floating there, the yacht's out six hundred metres or so and obviously in some sort of problem and -.....I think vague is not the right word, she

was obviously troubled, you know, as we all were, stressed and troubled.

Stressed, and I think you said to the police that she seemed pretty stunned by what was going on?……Yes.

And you all were?……As we all were.

Yeah, and – and while you were all still as a family group standing around down there the media started to arrive and you started to feel uncomfortable about their presence?……Right.

Understandably, you didn't want them prying into what was possibly a difficult family moment?……Mm.

And you all decided to decamp, didn't you?……Yes.

And you eventually ended up, I think, at the Dome Restaurant in King Street and had some coffee?……That's right.

And while you were there, again I suggest to you that Sue was pretty vague?…….Not more than usual – that doesn't sound so nice.

More than usual?…….But no, I mean –

And sometimes you found her to be vague, haven't you?…….Yeah, that's right, I mean we – we were talking about a number of things. We were trying to make some sense of what had happened. We weren't going through things in any logical order, it was –

Was it fair to say you were all probably pretty deeply shocked?…….Yeah, I think that was how it seemed.

And as a family you were obviously desperately worried?…….Yes.

And if I asked you, for instance, who said what and when and – you wouldn't have a clue now, would you?…….Absolutely.

Because, to a large extent, everything was just overwhelming you, wasn't it?…….Yes.

Yeah, and to say that Sue while you were at Dome was still in a stunned or stressed state would be correct?…….Mm.

And you probably were too?…….Yes.

Thank you. Now you were a bit surprised that your father had stayed on the boat overnight?.....Yeah, given some of the other details I was very surprised.

But did you express surprise that day that he'd stayed on the boat overnight?.....I did – I – I did ask a number of questions –

But -.....- and try – to try and understand what the circumstances might have been.

But it may well have been that he simply – no, I withdraw that. He was certainly safety conscious?.....Yes.

And you were made aware the mobile phone had been left on the boat?.....Sue said that she'd left a mobile phone on the boat.

And you were aware that the boat had radio communication?.....If it worked.

But you're aware it was there – correct?.....I don't – I'm not sure it was working – there were a number of – a lot of the systems on the boat weren't working – yeah, I was aware it had a radio.

Thank you. .....Yes.

Just come back to this discussion with Richard King, I think you said earlier that he, that is Richard, was worried about the idea of your sister committing suicide that night?.....No, that's not true.

Well I think he's – my note was he was concerned about a possibility of suicide – she was worried about a large boat?

MR ELLIS SC: Well I'd suggest we look at the transcript because –

HIS HONOUR: Can I have the transcript please –

MR ELLIS SC: -the recollection of the witness was quite clear that –

HIS HONOUR: Haven't got it yet?

MR GUNSON SC: I'll withdraw the question and we'll move on, your Honour, there's no need to.

HIS HONOUR: All right.

MR GUNSON SC (Resuming): Were you troubled at all about the nature of the discussion you had with Richard King?……Like I said, I was troubled about who he was and what his intentions might have been towards my sister, I didn't know if he was a sinister character or not. I wasn't particularly troubled about what he said because it was nothing new to me –

Yes……..- and that's – and –

Thank you. You subsequently went up to 7 Allison Street for a while on the 27th?……Yes.

Yes, you were there for some time. The police came and took a statement from Sue in your presence?……Yes.

And you subsequently went down to see the yacht at Constitution Dock?……Yes.

And are you able to tell me what time that was?……I think we got down to the yacht about four o'clock, it was late afternoon.

And when you got there it was tied up to the wharf?……Yes.

And were police officers on board doing whatever police officers do on boats in that situation?……When we arrived I'm not sure there was anybody on board.

Right…….Yeah.

Did you all go onto the boat?……Yes.

Do you recall whether any police were there at the time?……Yes, there were two, Detective Sergeant Conroy and his offsider, who was Melissa or – I'm sorry, I can't quite remember her name.

It was a female detective?……Female detective, yes.

All right. And in their presence I suggest Sue pointed out various things that she regarded as unusual about the yacht?……Yes.

And she was quite adamant about it, wasn't it – wasn't she?……Adamant, I suppose –

Well she pointed out things to the police and said -……She did, she did.

- "These aren't normal", correct?……Yes.

She tried a number of switches to see whether they were operating, correct?……Yes, she spent a lot of time playing with some switches, yeah.

And she pointed out that ropes had obviously been moved?……Yes.

And it appeared some ropes had been cut?……Yes.

Do you recall her pointing out anything else?……Oh a number of things, I think we looked at.

Well try and do the best you can to remember what she identified was wrong with the boat when she saw it at Constitution Dock?……I remember the first thing was the ropes, a number of ropes that she pointed out were rigged differently to how she said she left them.

Right. Right. When you say she pointed out the ropes where were these ropes situated?……Oh, there was one on the main mast which I think had been cut and positioned differently.

Did she point out a winch handle on the main mast, on the winches there?……We looked at the winches quite closely, there was talk about them being wrapped around the winches in a different direction or different manner to what they had being doing.

Yes, thank you. I wonder if the witness could be shown please the first lot of photographs from this morning which are P3 and I'd ask you please to look at these photographs, and for your Honour's information they are 7, 8, 11 and 12, just have a look at those if you would please. Now they weren't taken in Constitution Dock but out on the boat that morning. Are these the ropes – well put it another way, are the ropes shown in those photographs the ones to which you refer that Sue identified in the Dock?……Well look the first two photos are of the main mast and the ropes at the base of that –

Which numbers are on those photographs please?……Six and 7.

Thank you…..Sorry, 7 and 8. But that was the area we were looking. I can't remember if that's how the ropes were when I saw them but that's certainly part of the boat we're looking at. Photo 9 shows the the – the cockpit. Well you can see the mizzen mast there, that was later the subject of a lot of discussion because the ropes on that appeared to have been rigged to haul something out of the cabin.

Yes, they were coming out of the cabin?.....They were.

There were a couple of ropes -.....Well they had looked like they had been, that's the way they – I think they were laying loose on the floor of the cockpit, but they looked like that they had potentially been positioned that way.

Right. What made you think that?.....Well it's – when you looked at it it was fairly obvious they were – they were hooked up to the – to the winch on the mizzen mast in the direction that would pull something out of the cockpit rather than raise a sail.

For us people who don't sail, the mizzen mast is which one?.....The rear – small mast at the rear.

The rear mast at the back -.....Mm.

Thank you. All right. Thank you. And they appear to have been setup to a winch just like the ones at the front?.....No, the ones at the front it was diff – it was different to the front. It had – they – I think Sue thought they'd been cut and tampered with, but it wasn't quite sure – it wasn't easy to say what – for what purpose.

No. Nonetheless, she commented on it?.....She commented on it.

Yes.....Yes.

Did the police ask her to explain at all what she meant about the ropes being situated in this manner – did they ask her any questions that you remember?.....The police were fairly passive, I think they took on a listening role mostly that day, observations. They –

Mm, to answer my question, they certainly didn't ask her, the owner, or one of the owners of the yacht, about the state the ropes were in and why she was concerned about it?

MR ELLIS SC: Well if they did – or they didn't –

HIS HONOUR: Well no, let him – let him answer if he can. What do you remember?

WITNESS: I don't – I don't remember the questions they might have asked, no.

MR GUNSON SC: (Resuming): Would it be fair to say this; that they didn't obviously express any interest in the concerns she expressed about the state of that rope?.....No, that's not true at all –

MR ELLIS SC: Well –

WITNESS: No.

MR GUNSON SC: (Resuming): Well do you remember - .....I'd say they – they were very interested but they weren't trying to lead her or ask her specific questions.

Well that's what I was going to ask you.....Yeah.

Did they ask her any questions about the ropes and what she meant by that?.....Well when – yeah, yes, I mean we had – when Sue identified things that appeared to be different we would gather around and we would look at it and talk about it, and the police would ask 'Well how' – basic questions, 'How would you have – how was it left before?' –

All right. ..... 'How did –

Thank you. .....- what's different?' and we talked about it. They – they weren't asking strong searching questions of Sue at the time.

Thank you. Now let's go to the cockpit ropes, can you just describe where you saw them – the ropes that were coming from the mizzen mast.....Yes, my memory is there was an end trailing towards the cockpit which appeared to have been – and going up to the winch, in a manner that appeared to suggest that the winch had been used to haul an object or something out of the cockpit of the boat –

Right, I'd like you to look at some other photographs – those ones can go back please. And could the witness be shown P9 please, or perhaps to save a lot of time, if you give me P9 – thank you very much – and I am going to show the witness, for your Honour's information, 70 through to 75 of P9. Show those to him please. Just take your time please Mr Chappell if you would, and look at those photographs – just refresh your memory from them – ....Okay.

You've refreshed your memory from them. Were the ropes, as you saw them in Constitution Dock, rigged or set in the way they're shown in those five photographs?.....Essentially yes. I can't remember if the ends were actually trailing into the cabin like is shown here.

But you remember from -.....I'm not sure if that's a re-creation of what they thought might have happened.

If we look at photograph 7 we can see there –

HIS HONOUR: Sorry, what number?

MR GUNSON SC (Resuming): Sorry, 70.....70.

My mistake, photograph 70, we can see there a winch, can't we?.....Yes.

But you remember the rope being around that winch?.....Yeah, that's right, and it ends – I do remember an end trailing towards that hatch. Whether it actually – I can't remember whether the ropes actually extended down into the cabin or not when I saw them.

Right.....It was rigged something like that.

It was very obvious to you that those ropes had been rigged in a way to go down into the cabin?.....Yes.

Thank you. They can be returned, please. When you saw Sue on the 27th you spent quite some hours with her that day, didn't you?.....Yes.

You saw her in the morning down at the yacht, or down at the Marieville Esplanade, you later were with her at Dome Café and later at her home for some time and then down at Constitution Dock for quite some time, correct?.....Yes.

Was that the full extent of your contact with her that day?.....Yes.

All right. She was physically shocked?.....She appeared that way.

And remained so for most of the day, I suggest?.....Yes.

She certainly wasn't the normal Sue that you knew?.....I wouldn't say that, no, she was – she hadn't changed that significantly, she was clearly stressed and shocked.

Thank you.....But she was certainly –

And you weren't surprised at that given the events?.....No, I suppose I didn't consider it that closely that day, no.

And you didn't see any bandage on her hand that – on one of her thumbs or fingers that day?.....I – I didn't notice that.

No?.....No.

And you didn't see any bandage on her – one of her wrists?.....I don't recall.

And she didn't discuss any injury that she had with you?.....We didn't – we didn't talk about injury, no.

Thank you.....No.

Mr Ellis asked you a question about what Sue said to the police, and the words that he used were to this effect – and I'm sure I'll be forgiven if I get them wrong – "Tim was very upset about Claire and he went off immediately to see Claire", you were no doubt that day keen to ensure that Claire knew exactly what had happened and what the situation was?.....I felt I had a responsibility to tell her, yes.

And that was no doubt enhanced to some extent by the condition you knew she was in the night before?.....No – well irrespective of that really I mean I felt I, as a family member, I had to inform –

You had to tell her?.....- the family.

Absolutely.....Mm.

And the last thing you wanted was her to hear this from the press or somebody like that?.....Absolutely.

You didn't want them calling around at the house or – .....No.

- her hearing it on the radio?.....No.

But you were obviously upset at the time about the fact that your dad was missing?.....Yes.'

And you manifested, like any person would, I suspect, some obvious signs of being upset – you were worried, weren't you?.....I was worried.

And upset?.....Mm.

Correct?.....Yes, remember at this stage he was missing and we were hoping he'll turn up somewhere.

Mm – yes, but human emotion being what it is, you no doubt displayed the understandable emotions that we'd all feel in those circumstances?.....I think so.

Yeah. And it would be very easy to mistake your upset state with generally the need to tell Claire?.....Yeah.

Thank you.

MR ELLIS SC: Well easy for whom and – it's completely hypothetical, in my submission, and unhelpful.

HIS HONOUR: Well, Mr Gunson?

MR GUNSON SC: He's answered "yes" your Honour.

HIS HONOUR: Well yes, he's answered "yes", whether – what that answer is worth is a matter for comment later on.

MR GUNSON SC: Thank you.

HIS HONOUR: Yes.

MR GUNSON SC: (Resuming): You were asked some questions about whether to your knowledge Clare knew the boat's name to be Four Winds and I think your response was you didn't believe that she knew the name?.....No, I'm not even sure I knew the name at that stage so I'm not sure – I don't think she would have but I can't be sure.

She'd been out on it – this is a conversation on the night of -.....Yeah, I don't remember actually taking note of the name.

It's write large on the back isn't it?.....Yeah, but it's not a particularly memorable one. I'm not sure that Clare knew but I can't be a hundred percent.

You don't know. But the situation is you really don't know whether Clare knew one way or the other the name of the boat?.....No.

Thank you. There was some discussion with Sue on the day of the 27th and there was some theories advanced amongst you as to what

might have happened to cause your dad to go missing, correct?……Yes.

And theories ranged from him falling overboard, correct, and such basic things as perhaps night, urinating over the back and falling in?……Yes, none of this explained why the boat was sunk of course.

No, no, no, no, just please talk about theories, there were theories weren't there?……I wouldn't say that was one of the advanced them that was – my first reaction when I arrived at Marieville that maybe something like that had happened. Like explosion on the boat that had sunk it and he had fallen in while trying to get to – get to the dinghy but of course that didn't fit any –

Absolutely, but when these initial theories were floated around no one knew why the boat was sinking at that stage did they?……That's right.

Right. Now Sue did tell you that the boat had been tampered with both in Marieville – when it was off Marieville Esplanade and whilst it was in Queensland?……Yes.

And she said that nothing was particularly significant but some intruders had been on board the boat in Hobart?……She said that, yeah.

Yeah, thank you. And she also told you that she believed intruders had been on board the boat in Queensland?……Yes.

Thank you. Did you discuss with her at any stage why she believed intruders might be wanting to get on the boat?……We talked about a number of possibilities.

She made it quite clear nothing had been stolen?……She did.

And it was simply a case of intruders?……Yes.

MR ELLIS SC: Well –

MR GUNSON SC: Now –

HIS HONOUR: Just a minute, is there –

MR ELLIS SC: There is in my submission a limit to which these self serving suggestions can be put in a hearsay way to a witness and in my submission the limit has well and truly been reached. Now my

learned friend is using self serving statements to advance the particular theory that the accused has been advancing apparently from a long time ago, but that doesn't make it relevant or admissible in my submission.

MR GUNSON SC: Now what she said to this witness on that day about the events is admissible, it forms part of what was said that day. My friend has led part of the conversations, this is the balance of the conversations. They're quite relevant, your Honour, and not self serving.

HIS HONOUR: Well do you propose to ask any more questions about intruders boarding the boat?

MR GUNSON SC: No.

HIS HONOUR: Well we'll stop at that – well we'll leave that there and we'll – I'll ask you to continue, -

MR GUNSON SC: Absolutely.

HIS HONOUR: - continue your cross-examination.

MR GUNSON SC (Resuming): Thank you. Did you, when you were on the Four Winds, take any notice of the way in which the cockpit cabin was – or the pilot house was secured?……No, I didn't.

Thank you. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis, do you re-examine?

<REXN - MR ELLIS SC: Sorry, your Honour, it's – yes. Mr Chappell, you've been asked many times about whether Ms Neill-Fraser appeared shocked on the day of the 27th and I recall you were asked if she was vague and you commenced to answer but you were interrupted, can you tell us what your answer would've been, please?……Sorry, I misheard that.

You were asked was she vague -…….Vague –

- and you commenced to answer but you were interrupted; can you tell us what your answer was please?…….She was distracted, I would say, as far as I've known Sue she often was a little bit vague. I wouldn't say she was particularly more – more vague that day, no.

When – when she was onboard later in the afternoon she was pointing out many things none of which were particular major – well not all of which were major, would that be right?…….Right, she was noticing a lot of things and which were talking about.

And presumably, comparing those things in their present state to some other state, was she?…….Yes.

To the state when she last saw them?…….Yes.

The day before?…….Yes.

So she was very precise apparently about a number of things, not all of which were major in any way, is that right?…….Yes, yeah she was – yes.

Yes – thank you, I've nothing further, if it please.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: All right. Thank you, Mr Chappell, you're free to go.

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: Yes, Mr Ellis?

MR ELLIS SC: Yes, I call Peter Stevenson, if it please, your Honour. Page 75, your Honour.

HIS HONOUR: Thank you.

<PETER ANTHONY STEVENSON CALLED AND SWORN

HIS HONOUR: Take a seat. Yes?

<EXN - MR ELLIS SC: Thank you. Mr Stevenson, you're Peter Anthony Stevenson with a 'v'?.....That's correct.

You live in Scarborough in Queensland?.....I do.

Can you tell us where Scarborough is in relation to places we might know?.....Scarborough is on the Redcliffe Peninsula on the northern side of Brisbane, approximately 30 kilometres from the CBD.

Thank you. And your occupation?....I'm actually retired but I do boat deliveries now at various times.

What qualifies you to do that, anything?.....Sixty years of boating experience – I learnt to sail when I was five years of age.

And over recent years, is there someone with whom you've worked in that sort of calling or - ....Yes, I have – my nephew is involved with the marine industry. He owns a company called Reality Cruises and we have large live-aboard charter boats which I have been involved with him for the past 18 years.

And his name is?....James McVeigh.

Yes and do you know a man called David Casson?.....I do. David is a friend of mine who – he and I worked together and have done several deliveries together, in fact we both brought Four Winds down to Hobart from Brisbane.

And Four Winds is – or was – what?....Four Winds was a large ketch that was purchased by Bob and Sue in Brisbane and – steel construction, a very good sea boat and well-founded and – no, it was a nice ketch.

What is a ketch, for us who don't know?.....A ketch is two masted vessel, the main mast being for'ard of the mizzen mast, which is smaller at the rear.

Right....Does that give you – does that help?

I get two masts. Now you said Bob and Sue. Who are Bob and Sue?.....Bob Carroll and Sue –

Is it Chappell?.....Sorry – Bob Chappell and Sue –

Did you know her by a different name than Chappell?.....No I – I initially only really knew them as Bob and Sue Chappell.

Mm. When did you meet them?....I met Bob and Sue initially if I recall it, it was in October, early October. We were going to do a preliminary sea trial on Four Winds, however the day that we were going to do that, the conditions – weather conditions were such – that we couldn't proceed and it was agreed that at a later date we would be contacted and carry out that sea trial.

Okay. Did you see the boat that day or before or - .....I saw the boat that day and that's the day I met Bob and Sue.

Right. Did you enquire of them of their boating experience or yachting experience?.....Yes, I did, we spoke about it just in a general manner. Sue informed me that she'd owned a 28 foot yacht here in Hobart but they both had said that they hadn't had any – a great deal of experience particularly in ocean passage and they were looking forward to learning a lot about the boat and also travelling down to Hobart.

Right. Were you retained to help on that day or did that come later?.....Sorry?

Did they tee you up, did they retain you to help deliver the boat that day?.....Not formally, no. At that stage there was another gentleman by the name of Russell Crittenden who was involved and he was with me on that particular day but at the time that Sue and Bob did contact me he was not available to deliver the boat.

Right. Did they contact you then to ask you to help deliver the boat?.....Yes, through the yacht broker, Geoff Rowe, I received information that Sue and Bob wanted to talk to me and I met with them at Newport Marina on board Four Winds and we began discussions about the delivery of the boat to Hobart.

Okay. Can you tell us where Newport is?……Newport is – again on the Redcliffe Peninsular and it's – it's an adjacent suburb to Scarborough.

Right. All right, you met them there I think you said and -…..Sorry?

You met them there at Newport Marina…….I did.

Was anything happening with the boat?……There was, the boat was being – the engineering work was being carried out by Jim McEwen who was doing work on the motor and various other smaller jobs were being – I believe being done by an electrician, I don't know – particularly – I wasn't involved with that, but they were generally having the boat prepared for the trip to Hobart.

And did you assist in purchasing things and checking out the equipment on board?……I did, I spent a few days with Bob and Sue doing a safety – we did a safety audit and we required to purchase a new 406 EPIRB plus various first aid bits and pieces plus we did also purchase small chemical fire extinguishers to meet the requirements for the trip.

Right. And in the course of doing that you must have talked to Sue and Bob, as you know them?……I did.

Did you form any further view of their capacities and knowledge?……I did. They – certainly both Bob and Sue were very enthusiastic about looking forward to the trip and were certainly involved in making sure that the boat was going to be ready for the trip. I was aware – I made the – you know, I thought that probably we were going to experience some problems as far as their ability to be able to sail down because of their lack of experience, but they were certainly keen to learn and, you know, I was quite happy at that stage that they'd be able to undertake the journey.

Okay. Now how did you and Mr Casson divide up your duties between you?……David and I have done a lot of work together and deliveries and basically my responsibility has been for the passage plan and navigation and involved with the safety aspects of the boat and David is involved with the engineering and mechanical operations of the vessel.

Yep. Do you recall an occasion when David instructed Sue and Bob on the particular aspects of the boat?……I do.

And what aspects are they?……Bob and Sue were taken through the – what we call the skin fittings on the vessel, which are the – those parts of the vessel that extrude through the hull of the vessel, such things as seacocks and logs – and I know that David went through all of those with Sue and Bob just to make them familiar with where they were and what their purpose was on the boat.

Now did the boat have a bilge alarm system?…….It did, it had quite a sophisticated bilge alarm system, which was identified by a – a bilge alarm panel, which was in the saloon area adjacent to the electrical box, and it had both a manual and automatic process where you could either manually operate it or it would – or it would operate automatically.

Mm hm. …….It was identified by a series of lights that showed that – what position the bilge pump was on at a particular time.

Right. And what is the alarm supposed to do?…….Well the alarm is designed that if there is an intake of water in a partic – and the vessel, I've explained, was broken up into, I think six seven bulk heads, which each had a – an alarm bilge in that particular section, and if water was intake – if water was taken into a particular part of the vessel the alarm would be activated to indicate that that particular part of the vessel was taking water and the pump would then automatically takeover –

Yeah……..- and – but it would also give those onboard the information that that part of the vessel was taking water. And that's if – it had to be – the batteries had to be operable for that to happen.

Right. Is it the case that you left – left from Queensland, or tried to, on Sunday the 7th of December?…….That's correct.

And did something happen the following day?……..It did, we – that day we came via Cape Moreton and that evening running down the coast towards the Gold Coast it was fairly severe weather and Bob and Sue both felt uncomfortable about the situation. I didn't want to put them to a position that their first night was going to be an uncomfortable scenario, particularly that they hadn't sort of experienced the trip at that stage, so I put the boat about and we went back to a lee of Cape Moreton and had a quiet night there, left early in the morning to proceed down the coast and that's when I believe Bob's haemorrhaging from the nose started and he was basically haemorrhaging on that trip to the Gold Coast.

Right, did that concern you?……It did.

Was it – it was more than a bleeding nose?……Yeah, it was more than a bleeding nose, I mean it was quite a severe bleed and I – you know, I've had bleeding noses and it's sort of basically you put your head back and it's over, but this was certainly quite a severe bleed and Bob was required to bleed into a towel.

Yes, and about the time that befell him did other things befall the boat?……Sorry?

About the time that happened to him did other things happen to the boat?……It did, we decided that we'd go into Southport Marina and as we went to start the motor the motor wouldn't start. We immediately checked the motor at the engine room and found that the primary and secondary filters were clogged with what we call the black death, which is a fungus – oyster fungus that gets into diesel and it had clogged the filters, which meant that there wasn't any diesel that could get through to the motor.

Right…….So I radioed the coastguard and they came out and took us under tow and took us into the Southport Yacht Club.

Thank you. And in there did you call someone you knew?……Sorry?

Did you call someone you knew once you got to -…….I did, I rang a friend of mine, Dr Laurie Kelly, and spoke to him and he has – what did he have, after hours surgeries on the Gold Coast – one at Southport and arrangements were made for Sue to take Bob over to his surgery where – not Laurie – but another doctor I believe, attended to Bob.

Right. And what became of Bob?....Bob and Sue both returned later – I'm not quite sure how long they were away but they were away for quite some time and Bob had had the – his nose packed to stop the bleeding – I mean I could see at that stage that the bleeding was still bleeding because the packing had blood. Bob was lying down in the saloon area and on his back and we gave him some cold packs and he at that stage seemed quite comfortable and eventually I believe Bob went to sleep.

And I presume you did that night. Tell us about the next morning, what happened? …..Next morning, Bob was – had not stopped haemorrhaging and I personally rang Laurie Kelly and spoke to him and asked if he would see Bob personally, which he did and Sue took bob over to see Laurie – I believe it was 7.30 ish, 8 o'clock in the

morning and Bob, I believe, was referred by Laurie to a specialist who then placed him in the Alamander Private Hospital.

Did Sue return to the boat?....Sue returned to the boat, yes, she did.

Did she seem upset by what had happened to her partner?.....Well, I wouldn't say that –

MR GUNSON SC: I object to the question in that form, your Honour. It might be best if the jury are asked to retire and I'll address it with you.

HIS HONOUR: All right. Ladies and gentlemen, would you all go to the jury room please? This often happens in criminal trials, it's perhaps surprising that it hasn't happened yet today.

<THE JURY RETIRED

MR GUNSON SC: I'd ask that the witness be invited to go outside, your Honour.

HIS HONOUR: Yes. Mr Stevenson, would you go and wait in the foyer please?

<WITNESS RETIRED

HIS HONOUR: Now what was the question again Mr Gunson?

MR GUNSON SC: Did she seem upset that her partner was in hospital.

MR ELLIS SC: By what had happened to her partner were the exact words.

HIS HONOUR: And what's objectionable about that –

MR GUNSON SC: Because the event in question we're dealing with is an event that allegedly occurred on the night of the 26th January some number of weeks later. What we're being asked here is to – what the jury are going to be asked is no doubt to form some opinion that the accused is a harsh woman, uncaring, because this witness didn't see her showing any obvious emotion about her partner being in hospital. What does it go to prove is the question, how is it relevant, to go back to s55 and ask what is its relevance. And when you ask that question I submit it cannot be relevant to a matter in issue. So what if she didn't come back and board the boat howling or showing signs of being distressed, it's irrelevant.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Well firstly I thought we had a time before this trial started when objections would have been dealt with but leave that as it may be the – and this is clearly proofed, this is clearly in Mr Stevenson's proof –

HIS HONOUR: I can see it on page 77, "and didn't seem upset at all".

MR ELLIS SC: Yes.

HIS HONOUR: Yes.

MR ELLIS SC: And my learned friend knows full well that the evidence from Mr Stevenson and Mr Casson, if we're able to get him here, and other witnesses that – their observations of the couple were that they were not affectionate and that gave weight to what the accused said to them directly, that the relationship was over. Now two people can be in a relationship and one's left it in their mind and the other one hasn't and this is what seems to have happened in the case of Ms Neill-Fraser and Mr Chappell and the evidence is relevant to that, that for her part the relationship was over. The fact that the relationship was over makes it – is relevant because it makes it more likely that she committed murder. On the one hand Ms Neill-Fraser wishes – and has put on the record in ways that I have to lead them but I'm obliged to lead that she had a happy and intimate relationship with Mr Chappell. On the other hand her counsel objects, apparently, at the first sign of anything that undermines that story.

HIS HONOUR: Do you want to be heard in reply, Mr Gunson?

MR GUNSON SC: Yes, your Honour, I come back to what I said, and I don't wish to repeat myself, but it's not a question of undermining it's a question of relevance. Some people are very open in the way they express emotions about others or to each other, others are quite different. So the jury are being asked to take a quantum leap, and that is, 'Look she just put her partner in hospital, she gets back on a boat and has to travel to Hobart, and because she's not weeping or sobbing or moaning or groaning about the fact that he's in hospital, in some way that leads to the conclusion she murdered him' – nonsense we say, and it's irrelevant.

HIS HONOUR: I think it's relevant. I – what weight, if any, can be attached to it is a matter for the jury, but it's a circumstantial case, and any evidence of signs of hostility or disinterest or closeness are all very small pieces of evidence that logically – that rationally could affect the jury's conclusion as to whether this charge has been proven beyond reasonable doubt. I – it's not a matter of – and I don't think I need go into any question about any discussion of what's been said about undermining or having a chance to air objections yesterday – it's a very small piece of evidence. It's a matter for the jury what weight, if any, to give it, but it could rationally affect their determination of the critical question in this case, so I'll let the evidence in. I'm conscious that by doing that I might be lengthening the trial a great deal because there will no doubt be – this is no doubt a subject that – a very wide subject that could be opened up and a lot of people's observations over a lot of weeks might come in, but I think that's how it's got to be. So we'll get the jury back.

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HOBART 22.9.10 COUNSEL
JURY ABSENT

<JURY RETURN

HIS HONOUR: Yes, Mr Ellis.

MR ELLIS SC (Resuming): Thank you. Mr Stevenson, I asked you did Sue seem upset by what had happened to her partner and, to refresh your memory, that was in the context of she having returned to the boat, he having been hospitalised with haemorrhaging. Now was she upset by what had happened to her partner or did she appear to be?……I believe Sue was reasonably concerned about what was happening, but I would say that not overly concerned.

Thank you. Now did you stay there – this is in Southport, isn't it – for some days?……Correct, three days.

Right, and was that because he was in hospital or was it for some other reason?……It was because we had this – we had to have the fuel cleaned and it's done by a company called a fuel doctor, which means that it has to be cleaned so that all of the fungal which causes the problem is removed from the diesel.

Do you know how many times Sue visited Bob in those three days?……I believe only once.

Thank you. Was the fuel problem cleaned up?……Well it was. At that stage we believed that it had been satisfactorily cleaned up but later in the trip we found that it hadn't -

Okay…….- totally been cleaned up.

All right, but at that point you thought it was right to go?……Yes, we did.

So did you say something to Ms Neill-Fraser?……We did. I'd spoken to David and said that we'd proceed down the coast and I spoke to Sue and said that she could stay with Bob and we would proceed down the coast, and pick Sue up and Bob at a later stage.

Right. And what did she say to that?…….Bob – Sue said no that she was going to proceed with us when we left port.

Where was Bob?…….Bob was still in hospital at that stage.

Okay. So is that what happened?…….That's – that's what happened, Bob remained in hospital and we left Southport to continue towards Hobart.

Okay. Now you make a log, don't you?.....A ship's log, I do.

A ship's log – contemporaneously with events happening?.....Sorry?

With – contemporaneously as events happen -.....Yes.

- major events you enter it in the log. Would you look at this please? What have you got there, Mr Stevenson – well when you open it and you can see?.....Well this is the ship's log, which I wrote up during our trip down to Hobart.

Okay. I don't think you put that yellow sticky note in there -.....No, no.

- but you could remove it?.....I didn't do that.

No, if you could take that off then please - because I tender the log, your Honour?

EXHIBIT #P13 – SHIP'S LOG MADE BY MR STEVENSON – TAKEN IN

MR ELLIS SC: (Resuming): Now, I don't need you to read through it, but you – now you're aware that it's there if you need to refresh your memory -.....Thank you.

- from anything, I'm sure his Honour will permit it. Was your next stop – so you've headed off from Southport, Mr Chappell was in hospital, Ms Neill-Fraser is onboard, did you go – was your next port of call Yamba?.....That's correct, we – we –

HIS HONOUR: Now you're reading this from the log, are you, Mr –

WITNESS: No.

MR ELLIS SC: (Resuming): Ah well, just close up the log and we'll see how we'll just see how we go with the memory, if that's all right.....Yeah.

Thank you. Was it Yamba?.....It was Yamba.

Was that a scheduled stop or -.....No, not really, we experienced some problems with the autopilot which we wanted to see if we could rectify it in port.

And were you able to?……We managed to fix it, that it was serviceable at that stage, yes.

Any friction between you or Mr Casson and Sue Neill-Fraser manifested by then?……Any friction?

Yeah……No, at that stage of – at that stage of the passage everything seemed to be reasonably fine. There wasn't any real problem at that stage.

Okay. Now where's Yamba in relation to Brisbane and Sydney?……Yamba is north coast New South Wales – oh, I'm just trying to think of how many – but it's a 100 odd nautical miles south of the border.

Okay. And so you stopped in there and you had auto pilot problems did you get that working?……I got the – the auto pilot we did get working at that stage, yes.

Okay, set off again?……We set off again.

Did you get to Sydney without a problem?……No, our next stop was Port Macquarie but we actually had planned to have an overnight at Port Macquarie as a rest break.

Yeah. And did something happen, another problem on board?……Yes, we experience – that's again the motor seized up due to the filters being fouled by a fungal problem again and we had to get another short trip by the coastguard to take us over to the working platform at the Port Macquarie Marina.

Okay. And did something happen to your radio?……Yes, the radio had being playing up and we could not get a radio at that stage but – so we decided that we would proceed with – to Sydney and we'd buy a radio in Sydney.

Right. And is that what happened, you got to Sydney?……Yes, we got to Sydney and we had to refuel. We also – sorry, we also had to call into Port Macquarie for refuelling also. We got to Sydney and we over-nighted in harbour and the next day we re-fuelled and also purchased a VHF radio and some rope and also some vitalings done for the boat.

Now, was it – was something suggested about Bob re-joining the boat in Sydney?....There was. I had got upset with Sue – and it's clearly between Pt Macquarie and Sydney – we were having, experiencing

these difficulties with the boat and although Sue was very enthusiastic to help but she obviously – she was making comments that were not helping with the process and I got upset with it and so when we got to Sydney I sort of had to speak to Sue about – you know – letting us get on with the job and – which she got upset with and spoke – she got upset and spoke to David about my attitude, but anyway I was resolved and – what was the other part of the –

Oh, it was about whether Bob was out of hospital, to your knowledge…Oh, okay yeah – Bob was out of hospital and it was suggested that he could join the vessel to take the vessel to Hobart, and I had spoken to David and we both had agreed, and I certainly said that – you know, I wasn't prepared to take the responsibility after what Bob had been through in hospital to cross the Bass Straight in any condition that we wouldn't be able to get him to a point where he could be recovered quickly.

Yes. So did you leave Sydney?....We did leave Sydney and our next point of call was Eden – I'm sorry – can I refer to the log?

Yes – well, if –

HIS HONOUR: Well, are you sure about that or do you need to refer to the log?

WITNESS: I really – I'm just trying to recall whether we stopped between Sydney and Eden.

HIS HONOUR: Any objection to him referring to the log Mr Gunson?

MR GUNSON SC; No, your Honour.

HIS HONOUR: Yes, look at the log.

WITNESS: No, sorry, we – it was directly to Eden.

MR ELLIS SC (Resuming): Okay. Did you have any more problems with the boat before you got to Hobart?……We did. Different things were happening, we had a number of things happened which were mechanical things that needed to be sorted out, there was – the alternator was loose and it wasn't charging batteries. We had to fix that up and we also had a situation that when the alternator was fixed that it was pushing too much energy into the regulator and we had a fairly serious burning smell in the saloon area, which I located as

coming from the back of the electrical box, and opening that found that the regulator was extremely over heated.

Did that require taking any panels off?……It did, we had to remove – I personally removed the back panel of the electrical switchboard to get access to the regulator.

Right. During the – going back when you had the problem with the black death, is it, the fungus that gets into the diesel?……Sorry?

Going back to the time you had the problem with the black death, -……Yes.

- the fungus that gets into the diesel, did you open panels and look for problems there?……Not with the black death. What we had, we had a very severe smell in the boat –

Right…….- which was similar to a sewerage spill –

Yes……..- and whilst we were – this was actually while we were in Southport, we – David and I, and Sue was there, took up the floor panels in the saloon area and also in the pilot house to see if we could locate where – where there was any leakage. Bob and Sue together had spent some time going through various sections of the boat in the for'ard area where the head is, and that's the toilet.

Yeah……..And also the rear toilet, but that – that had been disconnected, so we did pro – we did lift those up and to try and find out the cause of the smell.

Right. What – what do you have to do to get them up?…….Well the floor panels were in panels an we had to unscrew them and then lift them up and inspect underneath them.

Okay. Well first, when you lifted them up and inspected underneath them were there any signs of contraband or drugs or guns or -…….No, certainly not.

What about at any time that you carried inspections or work on that boat, any such sign of those?…….No.

When you put – you put the boards down, did you?…….We did.

Did you use all the screws?…….No, we – we – we at that stage hadn't located where the smell was coming from and we'd just put – we put a temporary number of screws in to hold it.

Mm, so there were some screws in but not all of them – do you remember what happened to the rest of the screws?.....Well the others were put into a plastic container and placed into the – there's a washing room come tool room on the starboard side of the vessel –

Yeah.....- and it was put in there.

But you had – had a number of problems before you got to Hobart?.....Certainly did.

Did Sue Neill-Fraser tell you anything about telling Bob about these?.....No, Sue – Sue actually was – wasn't really wanting us to sort of refer anything to Bob at that stage. We didn't have any contact with Bob. But you know there was an indication that not to say too much about what was happening.

When you reached Hobart did you see Bob?.....I did, I went in – in the tender to pick up Bob from the shore –

Yeah.....- and bring him back to the boat when we arrived.

Okay. And did you – when he got on the boat did something happen?.....Well when I got to shore Bob sort of had – asked why, you know, things had taken so long and I just said well I believed that Sue had probably kept him up to date.

Yep.....And he sort of indicated that he didn't know, you know, the extent of what had been happening and I just said to Bob that I'd written up a ship's log but I also had written up a notice to owners that indicated things that needed to be attended to and that they were there and if he had any concerns to give me a ring and we could talk about it.

Right. And did you take him to the boat?.....I took Bob to the boat and he – he joined us there on the boat.

All right. I want to ask you, Sue was on the boat when you took him to the boat and what their reunion was?.....Well Bob got up on the boat in front of me and went to approach Sue and she really just stood back from him and ignored him, didn't sort of respond to his – to, you know, acknowledging that – how he was.

Right. Had you noticed any signs of affection between them at the time that they were together in your company on the boat?.....No.

Did Sue say anything to you on the trip about their relationship?……Sue had said to us in general conversation that, you know, basically their relationship was strained and it was over and, you know, it had been for some time.

Was there any question about the ownership of the boat, about her buying – well there'll be an objection maybe – did she mention anything about buying out the boat or was there any talk about that?……She had, she said to me at one stage during the trip that, you know, she'd like to borrow a hundred thousand dollars from her mother to buy Bob's share out of the boat, she had different ideas, I believe, on what she wanted to do with it.

In what way?……Well I – you know, generally I think Sue was keen to sail the boat and –

MR GUNSON SC: The witness can say what Sue said and he can tell us what she said, but he can't speculate and make it up, and I don't say that disparagingly, but he can't speculate as to the state of her mind.

HIS HONOUR: Yes. Can you tell us what she said to you or what she said in your hearing about her plans in relation to the boat?

WITNESS: That she just wanted to use the boat to do extended sailing when she got the experience.

MR ELLIS SC: (Resuming): Right. Now did you form an opinion on their capacities to handle that boat, either alone or together?……I did.

What was that opinion?……I felt – I felt with Sue initially that she didn't have the capacity to handle that large boat based on a physical point of view and from an experienced situation. It was a large boat, required somebody that could – required several people to operate it properly and to do it successfully you needed to have the strength and the experience to do that.

Did she have the strength to carry out the physical duties that were required of - …..No.

What about Bob?……No.

Did you form an opinion of their respective strength when you saw them together?……I don't believe – the boat was – the running gear, which we call the running gear, which is things like winches to

handle the sail areas were large and in fact Sue could not physically wind up the sail through the – through the winch on her own, it just – she just didn't have the strength to do it. In fact we found it very difficult, they were large winches and we required one to winch and one to tail and tail – and tail means pulling the rope while one winches and we even found that in – in a heavier bloke it was difficult.

Now I understand on a boat, and I know nothing, that you take turns in keeping watch?……We do.

And is that happened on this voyage?……Yes, we do. We took four hours on four hours off during a passage from port to port and that was usually undertaken by both David and I. Sue would assist but we weren't in a position to put Sue onto a watch because of the – you know our – we were just concerned about her ability to handle the yacht on her own.

Yeah. Well I think I asked you but I don't think you – you might have told me – did you form a view about the respective strengths of Sue and Bob; that is physical strengths, was she stronger than him or him than her?…….I did, Bob was, I thought Sue would have been more capable of handling it from – from a strength point of view than Bob.

Right. During the brief time he was on, I suppose before his nosebleed, did you notice him to be unsteady though as opposed to -…….No, Bob was actually quite good at getting around the boat.

Right. It's – I think you know this, but it's the case that Ms Neill-Fraser claimed to police that you wouldn't know various things that happened because you were drunk at certain times, is that right, on the trip?…….No, that's not correct and I find that offensive.

What were your drinking habits on the trip?…….We during the – what we call a 'late shift' or the 'late watch' which was when we came off – during late afternoon or the evening one, I'd have a glass – maybe two glasses of wine just before I went down to have a sleep, and David would have a light beer. We – Sue would join us for a – a drink at that stage, it was in the evening and – and it was usually when Sue made – made us a meal. But certainly we didn't drink to excess. We prob – when we were in port we enjoyed a meal and a couple of drinks, but we certainly weren't in a position to – at any stage be intoxicated.

Thank you. I think I've just one more question and that's about a large fire extinguisher that was onboard the boat may have been out of survey?.....It was.

Now there was a large fire extinguisher?.....There was.

When we say 'large' can you show us from the witness box?.....The fire extinguisher was a chemical fire extinguisher – it would have stood – let me stand up – from the desk to that high – that round cylinder and would have weighed, I would have thought, somewhere between 12 and 14 kilos full.

I don't suppose that was rolling round. How was secured?.....No, it was secured to the back of the saloon bench in the corner before you went into the laundry come tool room. It was actually right into the corner and secured by quick release catch.

Right. There was another question I wanted to ask you. Are you aware of a sea cock under a panel adjacent o the toilet at the front?....I was aware that there were sea cocks there, but I personally did not physically look at it.

Right. But was that panel covered – that is, the sea cocks are under it – you wouldn't see it?.....No.

And is it the case that – no, that's all right. I'll just leave that.....Yes.

Thank you. I have nothing further, thank you, your Honour.

HIS HONOUR: Mr Gunson?

MR ELLIS SC; Oh, I'm sorry, I do have something else.

HIS HONOUR: Yes, go on Mr Ellis.

MR ELLIS SC: Subsequent to you going back home, did you receive something from Ms Neill-Fraser?....I did, I received a – Sue had arranged to send me photos of the trip and she sent me a – what are they called – dvds or whatever – a dvd with photos of our trip down, but also photos - family photos, which she hadn't taken off.

Alright. I'll show you this please. ...Yes, that's –

Is that the CD?...Yes.

How do you recognise it?...I recognise it because the cover that it's in is a – an old navigation system of mine that I no longer used and I sent in that cover.

Right thank you. I ask that that be marked for identification because there is a CD I'd seek to tender which are the relevant photographs from the trip, the ones that aren't family – family photos.

#MFI – D- DISC RECEIVED BY MR STEVENSON FROM ACCUSED

MR ELLIS SC: But there are also other family photos of – like Mr Chappell on board, I think, in a family situation, so we've removed some of the photos, this is – I think you'll agree with my learned friend, and this is the CD and the photos that I'd seek to tender.

EXHIBIT #P14 – DISC WITH SELECTION OF PHOTOS RECEIVED BY MR STEVENSON FROM ACCUSED – TAKEN IN

MR GUNSON SC: Marked for identification or –

MR ELLIS SC: Sorry?

MR GUNSON SC: You asked for it to be marked for identification only, didn't you?

MR ELLIS SC: That's the CD with everything on it.

MR GUNSON SC: Yep.

MR ELLIS SC: If that suits your Honour.

MR GUNSON SC: That's okay.

HIS HONOUR: All right, so the CD – the disc received from the accused is MFI-D, the disc with a selection of the photos received by Mr Stevenson from the accused is P14, and you're tendering some hard copy photos with that disc?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: They'd better be marked separately.

EXHIBIT #P15 – HARD COPY PHOTOS FROM P14 – TAKEN IN

HIS HONOUR: Now what do you want to do about letting the jury see these photos?

MR ELLIS SC: We've nearly got all those photos tendered, I think. I seek that we try to publish at least the ones on the trip through the computer, I think that'll work.

HIS HONOUR: So these are in my blue folder at tab 8, is that right?

MR ELLIS SC: That's right, yes, your Honour, behind the green tab. It would've been more convenient to have tendered photographs as we go as it turns out, but we wanted to do them on the voire dire.

HIS HONOUR: All right, so – well do you want Mr Stevenson to do it or do you want Ms Oakes to display these on the screen?

MR ELLIS SC: I think Mr Stevenson can if he can just keep clicking, we hope they're in the same order as they appear in view.....Do you want me to speak to these?

Yes, please, if you can?.....This photo is on the sea trial we undertook out of Newport Marina before leaving on the trip.

Mm hm.....That's David Casson there and Sue.

Thank you. The next one?.....Similar, that's on the sea trial out of Newport, we were testing the gear, again on the sea trial. This is on the trip south; it was a photo of Sue on the pilot house. That's a copy of the –

Oh right, just go back to the one with Sue on the pilot house, if you could – okay. Now that's her at the pilot house on – somewhere on the trip from Queensland?.....Yes.

And next to her she has some documents?.....She does.

And is the next one a close up of those documents?.....That's correct, that's a close up of the documents.

Do you recognise what the one on the bottom is?.....It is, the one on the bottom is the plumbing diagrams of the plumbing and sullage tanks, black and grey water from the toilet and various other parts of the boat.

Okay. .....Proceed?

Thank you. .....That's a photo of Four Winds at Southport Yacht Club when we were getting the – before we got the work done.

Yeah.....That's relaxing at the Southport Yacht Club.

That's you?.....That's me.

You had a bit more weight on then?.....Well I didn't have cancer then.

Right. .....This is a photo of David at the wheel, I think that was when we were actually coming into (indistinct word) still a photo of still in Sydney Harbour. Ah that's David and I the day before we got to Hobart.

All right. Now look, we can see this tender at the back there?.....Yes.

Is that where it was through the trip?.....It was, the tender was securely held there and wasn't used at any stage during the trip.

When Bob had his nosebleed did he go in the tender?.....No.

Okay, thank you, could you - .....A photo of Sue on the trip close to Hobart.

Yeah.....There's another one of Sue on the trip close to Hobart. Another one of Sue close to Hobart.

And I think that's probably - .....And the rest of the family I believe.

Yes, thank you very much. One more thing for you, Mr Stevenson, I know I promised one last question. I'd like to show you this document please. Do you recognise the - .....I do.

What is it?.....The bottom one?

Yeah.....Is the photo that we saw in the – is the – a copy of the plumbing for the black - grey water for the boat.

Okay. And does it indicate that water from basically the sea goes through to the toilet in a pipe?.....It's got a sea inlet which is to the right of that, which is P6, and the outlet is P5 on the left hand side.

Thank you. And is there in the top I think left hand corner another picture of - a toilet diagram?.....Of the – of the valve?

Yeah.....Yes.

Okay. But that doesn't indicate does it, to you, that there were two toilets but rather that that's more – another thing to do with the same toilet?.....Yes.

Right. And the whole book itself can you tell us what that is?.....Well the book itself is written up by I believe – I think it was written up previously by the previous owners but it is a log of the ship's general engineering and – electrical and general engineering of the vessel.

Right. I'm just going to seek I think the particular page that I've asked Mr Stevenson to recognise and comment on.

HIS HONOUR: Well that's in a plastic sleeve isn't it?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: Yes, all right, well Ms Oakes, could you take out that page that says "Main Head". Now is there just the one page in there or is there something at the back of it? Just take out the page that says " Main Head" Now, let me see – is there anything on the back of that page? No okay – well that page, the plumbing diagram, is P16.

EXHIBIT #P16 – PLUMBING DIAGRAM – TAKEN IN

HIS HONOUR: Do you want the rest of the book marked for identification Mr Ellis?

MR ELLIS SC: Yes, that might help your Honour, thank you.

MFI – E - BOOK

MR ELLIS SC: If the post-it note could be put in where the page has been removed.

HIS HONOUR: So is that the evidence in chief of this witness?

MR ELLIS SC: Yes, your Honour, thank you.

HIS HONOUR: Well, you'll be more than a couple of minutes with him, won't you, Mr Gunson?

MR GUNSON SC: Absolutely, your Honour.

HIS HONOUR: Yes. All right. Would it inconvenience anybody if we extended the sitting hours and started at 9.30 as a matter of routine from here on?

MR ELLIS SC: It is difficult your Honour.

HIS HONOUR: Well tomorrow – what about tomorrow. Will we make it ten o'clock or nine thirty?

MR GUNSON SC: Ten o'clock.

MR ELLIS SC; Ten o'clock please, your Honour.

HIS HONOUR: All right. That suits me – I'm probably being a bit ambitious trying to put the foot on the accelerator. All right. The jury can make their affirmation and the Court will then adjourn until ten o'clock tomorrow, and you will have to come back then too, Mr Stevenson. Mr Gunson?

MR GUNSON SC; Before we do that, can I seek leave to look at that MFI document in that folder.

HIS HONOUR: Well, you don't need leave, you don't need my leave to inspect anything exhibited or marked for identification –If you want it overnight, that's different.

MR GUNSON SC: Well, I would like to take it away over night.

HIS HONOUR: Any objection Mr Ellis?

MR ELLIS SC: Well it is different, as you point out. No, I'm sorry, I wouldn't be giving accused's counsel exhibits to take home overnight even if they hadn't been tendered and I can't –

HIS HONOUR: If you want to obtain copies of them, you can certainly have a copy to take away overnight.

MR GUNSONS C: Thank you, your Honour. If somebody could make a copy of it for me, I'd be grateful.

HIS HONOUR: All right, well that can be arranged.

MR GUNSON SC: It's the book I want, not the exhibit.

HIS HONOUR: Oh yes, I understand that.

MR GUNSON SC: Yeah.

HIS HONOUR: You can have – you can have a copy of that – Ms Oakes, it will give her something to do. Yes, go on.

<JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00AM ON THURSDAY THE 23RD DAY OF SEPTEMBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

MR ELLIS SC: - minute with the jury in order to deal with –

HIS HONOUR: Yes.

MR ELLIS SC: - Mrs Zochling. We're not in a position to get to her today because there are witnesses booked – banked up who have got international bookings, by the feel of them, for next week, we won't be able to deal with her tomorrow either. So I wonder if she could be called and stood over until next week.

HIS HONOUR: Monday morning?

MR ELLIS SC: Yes, I think so, your Honour, yes.

HIS HONOUR: Yes, all right, call her – Barbara Zochling.

MR ELLIS SC: Just so we're not trying to get the order of witnesses confusing but they really do have some strange commitments – not strange but pressing commitments for next week, so –

HIS HONOUR: Yes.

<BARBARA ZOCHLING CALLED

HIS HONOUR: Ms Zochling, this trial is moving more slowly than was originally expected and other witnesses have all sorts of commitments, therefore, you're the – the Crown isn't going to call you until next week. You're free to go now but I order you to return at 9:45am next Monday – thank you, your free to go.

MS ZOCHLING: Your Honour, may I say something?

HIS HONOUR: Yes.

MS ZOCHLING: Yesterday – Monday – oh no, yesterday – I was unlawfully arrested and locked up –

HIS HONOUR: No you were lawfully arrested – I issued a warrant for your arrest –

MS ZOCHLING: But why you're Honour, because I'd written to the – to the prosecutor telling him why that I wouldn't be here and I never got an answer back, so I assumed that I didn't have to come, otherwise I would have been here.

HIS HONOUR: You should have assumed that you had to come and I issued a warrant because it was your legal duty to come and you didn't. Now I'm not going to dis –

MS ZOCHLING: I apologise for that but I didn't –

HIS HONOUR: I'm not going to discuss it any further I've got at trial to deal with –

MS ZOCHLING: Now is it –

HIS HONOUR: Please leave.

MS ZOCHLING: Yeah, well I'm not going to be locked up any more?

HIS HONOUR: Not if you come back on Monday morning and at every other time that you're ordered to come back.

MS ZOCHLING: Next Monday morning?

HIS HONOUR: Next Monday morning, 9:45am.

MS ZOCHLING: Okay.

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: A small matter, your Honour –

HIS HONOUR: Yes.

MR GUNSON SC: - I raised with your Honour's associate.

HIS HONOUR: Yes.

MR GUNSON SC: The accused suffers from Lymphedema, I think it's called, which is a swelling of the lower legs and she has that swelling. She's asked could she sit when necessary with her back to the Court – with her back towards the dock but with her leg elevated – I just mention it because I don't want her to seem to be, as it were, disrespectful to the Court by taking that particular –

HIS HONOUR: Well I'm – I've got no objection to that occurring – do you want me to mention it to the jury and tell them that if she –

T01/lk

MR GUNSON SC: - the Court by taking that particular –

HIS HONOUR: Well I'm – I've got no objection to that occurring. Do you want me to mention it to the jury and tell them that if she seems to be making herself remarkably comfortable it's because of a problem with her leg and not because of her attitude to the proceedings?

MR GUNSON SC: I think that would be very wise, your Honour.

HIS HONOUR: Yes, all right, I'll do that. Mr Ellis?

MR ELLIS SC: One more matter, your Honour, we've decided it would be of benefit for the jury to have hard copies of the photographs tendered so far and they've been arranged and set in folders at the moment, I wonder if they could be handed out. I should explain to your Honour that the tabs don't accord at present with the exhibit numbers and there is a – maybe if your Honour could look at them. Thank you. We're happy to take this out of course. They at present have an indication that there are five sets of photographs, in fact only three sets have been tendered so far.

HIS HONOUR: So the plan is that when more are tendered they'll be given copies to add to their collection?

MR ELLIS SC: Yes, your Honour, that's the plan and the exhibit numbers don't accord with 1, 2 and 3, so there are names of other

witnesses I suppose who are yet to be called, their photographs aren't included. That's satisfactory –

HIS HONOUR: Well I don't see a problem with that. You don't, Mr Gunson?

MR GUNSON SC: Not at all, your Honour.

HIS HONOUR: Yes, all right, thank you. Do you want to do that as soon as they come in?

MR ELLIS SC: Yes please, your Honour.

HIS HONOUR: All right. Any other housekeeping matters to discuss?

MR ELLIS SC: No thank you, your Honour.

HIS HONOUR: All right, bring the jury in.

<JURY RETURN

HIS HONOUR: Ladies and gentlemen, I need to explain a couple of things before we resume the evidence. The first thing is I'm told that Ms Neill-Fraser has a medical problem involving swelling of the legs and that she might need to elevate her legs during the proceedings so if you do see her making herself comfortable in the dock it's not an indication of her taking a casual attitude to the proceedings. The second this counsel have agreed that you should be given hard copies of the photos that have been tendered so far and that you'll be given them now so Mr Ellis –

MR ELLIS SC: Yes, thank you, your Honour, there should be enough for two people to share I think.

HIS HONOUR: There will be more photos to come to be added to what you've got there and you might see that there's a title page in those folders that names five photographers when so far we've only had photos from three so that's where there are five names not just the three. All right, so we're back to the evidence of Peter Stevenson, there's nothing more you want to ask him, Mr Ellis?

MR ELLIS SC: No, thank you, your Honour.

HIS HONOUR: All right, recall Peter Stevenson.

<**PETER STEVENSON ON OATH AS PREVIOUSLY SWORN**

HIS HONOUR: Yes, Mr Gunson?

<XXN – MR GUNSON SC: Thank you, your Honour. Mr Stevenson, could I ask that you refresh your memory please from the log of the Four Winds because I want to direct some questions to you about this trip. Could you just go to the first page of the log please and you'll note that on the 8th December you have put into the log the estimated time of arrival Seaway Tower, and that's presumably at Southport, was 1600 hours, correct?……That's correct.

Now that didn't eventuate because obviously there was the engine failure, correct?……That's correct.

And so you stayed somewhere overnight and you got the coastguard next day to take you into port, correct?……Yes, we – we stayed at Yellow Patch, which is recorded there.

Yes, I just asked you whether you stayed somewhere and you've told me you have?……Yes.

And you were towed into port the next day?……Correct.

And that was on the 9th. Now the log doesn't record the time of arrival at the Southport Yacht Club, but what's your memory of that?……It was in the afternoon, certainly daylight. It was in the afternoon, I'm not quite – I couldn't recall the exact time.

Thank you. And you then departed Southport at 1830 hours on the 12th?……That's correct.

So it's quite obvious you were there for the 9th, 10th, 11th and 12th?……That's correct.

And during this period of time Mr Chappell continued to have significant problems with his nosebleed, didn't he?……He did, it –

Just say yes or no, please……Yes.

Thank you. And if I suggested to you that he was admitted to the Elanda Private Hospital on the 11th December, in the afternoon of the 11th, would you accept that? It's not in the log, just think back, please. That is he went into hospital the day before you departed to

sail down to Sydney?……I believe it was the day after we arrived, which from my recollection would've been the 10th.

Thank you. I'd like you to have a look at this document and I don't want you to read it out, I want you to read it to yourself and –

MR ELLIS SC: Well your Honour, is this a document of this witness', and if not this is not an appropriate way to go about matters in my submission.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I won't pursue it that way. (Resuming): If I suggested to you that you are wrong and that it was in fact the 11th you would accept or reject that?……I'd accept it.

Thank you. Now – and would you accept that during that period from when he was admitted to hospital to the time that the yacht left there were telephone calls between him; that is from the hospital, to his wife – I'm sorry, his partner, Sue, on the boat?…….I can recall telephone calls but I do not recall who they were – who they were with.

Do you recall Sue at any stage saying 'Bob has just phoned from the hospital' or words to that effect?…….I don't recall that.

Now he was quite concerned that he wasn't going to be on the trip down to Sydney, wasn't he?…….I believe so.

Well you know that to be so, don't you – he was anxious to stay on the boat?…….He was.

Thank you. And he expressed great disappointment about having to leave the boat to go into hospital to be treated for this medical condition?…….He did.

And he expressed very strongly the view that he wanted to be kept informed about, as best as possible, about what was happening?…….He did.

Yes. And he made a number of telephone calls to Sue on the trip down to Sydney, didn't he?…….I'm unaware.

She certainly, I suggest, discussed with you a number of calls that Bob Chappell had made?…….No.

Now you've described the nosebleed that he had as a very very significant one as, quote, "It was more than a bleeding nose"?.....Yes.

And a lot blood was obviously discharged by him?.....It was.

And to put it bluntly, there was a bit of mess caused, wasn't there?.....Into the towers, yes.

Yes. But there was blood on parts of the boat as a result of the nosebleed?.....I don't believe so.

Well did you look for it?.....No.

Thank you. You were really only interested in sailing the yacht, weren't you?.....I was interested – interested in delivery the yacht to Hobart, yes.

Yes, and your main task was to deliver the yacht, and that's what you concentrated on and the private problem that Mr Chappell was experiencing whilst an irritation to the course of the trip wasn't a major matter that you worried about?.....I was concerned, certainly.

Sufficiently concerned that you need – you knew he needed to have some treatment?.....Yes.

Now could the witness be shown the plan that was put into evidence late yesterday afternoon which is P16. That's the document that was tendered yesterday is it not?.....It is.

Thank you. And that was extracted by you from a volume of material that basically dealt with the yacht Four Winds?.....Correct.

And it would be fair to say this that that volume contained a lot of similar information such as electrical plans and general plans of the boat?.....It did.

And it's the sort of thing that you would expect any prudent purchaser of a yacht of this size to acquire from the previous owner?.....That's correct.

There was nothing remarkable about that book was there?.....No.

And you in fact would have been surprised if it hadn't been on the boat?.....I would have, yes.

Because what's in that volume is material that tells the owner or the operator of the yacht about all of its working systems?……That's correct.

Thank you. And it was a volume I suggest that you encouraged Ms Neill-Fraser to read so that she could familiarise herself with the working parts of the yacht?……That's correct.

Thank you. And on the way down she studied it, correct?……She did, yes.

Yes. And asked you a significant number of questions about the various plans and diagrams in that volume?……She certainly asked me and – but her main direction was to David.

But nonetheless she asked you some questions……She did.

And you explained the various aspects to her?……I did.

And she also asked David and he took the time to explain issues to her?……That's correct.

And that was sensible wasn't it?……It was.

Yes. Now if we look at this particular diagram, P16, it shows the piping system, if I can call it that, that runs from the black water tank and the grey water tank for discharge purposes?……Correct.

And it shows the toilet or in yachting talk 'the head' – correct?…….Correct.

Merely shows a pipe coming into the toilet, is that correct?…….Correct.

For bringing in seawater for the purpose of flushing the toilet?…….Correct.

And when the toilet is flushed the contents go into the black water tank, is that right?…….Correct, that's correct.

And the black water tank is then pumped when it needs to be pumped in a port?…….That's correct.

Because it's not correct these days to pump it directly into the sea, is it?…….That's right.

Now there was nothing particular unique about this plumbing system that was installed for this toilet?.....No.

It was pretty stock standard, wasn't it?.....It was.

And it's the sort of thing that you'd expect to find on a yacht of this size?.....That's correct.

And the sort of valves that are referred to, you'd expect to find those on most yachts of that size under floorboards?.....You would.

Because they're kept out of sight, aren't they?.....Yes.

And anybody with any knowledge of yacht systems would know where to look for a valve?.....Generally, yes.

I mean when you went onboard this yacht if somebody had said to you, "Where are the relevant valves to operate the black tank, the grey tank, the toilet etcetera?" you would have said immediately, "Under the floorboards"?.....That's correct, yes.

Thank you. And it's not unusual and often for these boards over the valves not to be screwed down completely to aid ease of access?.....Not – no, I can't comment on that, they have various ways of securing floorboards.

Thank you. This yacht had been, to your knowledge, for sale for some time?.....It had been.

You were familiar with it before you were asked to sail it to Hobart?.....I was familiar with it for a period of a month.

Mm. You hadn't seen it, for instance, in a marina ready for sail before then?.....No.

Right. But you were aware it had been on the market for quite some time?.....I was.

What sort of condition generally was it in when you first went on board?.....When I first went on board it was in what I'd call good condition.

Yes.....The overall internal parts of the yacht were all in good condition, the running gear and the rigging gear all looked in good condition.

Right, and obviously from what you've told us yesterday and what's recorded in the log there were a significant number of problems encountered as you came down the coast?……That's correct.

And the engine stopped a number of times for the fuel problems that you've described?……That's correct.

Before the trip commenced the engine had a significant amount of work performed on it, didn't it?……It did.

And were you told that the cost was somewhere in the order of twenty thousand dollars?……It was.

Yes. Who carried out that work, do you know?……It was carried out by a gentleman by the name of Jim McKeown. Jim – I'm just trying to think of his surname, I believe it's McKeown.

And this was carried out at the marina before the vessel left on the delivery voyage?……That's correct.

Now other work was done as well, electrical work was done on board?……There was some electrical work done.

And would it be fair to say from your perception all of that work was vitally necessary to get it ready to go to sea on its delivery voyage?……Yes.

But obviously then there were the problems that you've described?……Yes.

All right. Now you were told by Mr Chappell and Ms Neill-Fraser they'd been searching for a yacht of this size and quality for many years?……That's correct.

It was made pretty clear to you that they intended to learn to sail it?……Yes.

And they intended to learn to sail it together?……Yes.

And a yacht of that size can be operated by two people, can't it?……Two competent people.

Yes, two competent people can operate it?……Yes.

But it is desirable and perhaps sensible if you're going on long voyages to have a crew, such as you two?……That's correct.

And that's commonsense, isn't it?……It is.

And insofar as particularly international sailing is concerned it is very common for owners to pick up crew members in various ports and take them onto the next port and use their abilities?……That's correct.

It's all part of yachting, isn't it?……Yes.

And there's a whole lot of people out there who spend their lives just moving from port to port crewing yachts such as this?……That's right.

And if you rig the sails correctly you can make it much easier to operate the yacht for instance with a second self furling sail?……Yes.

And a – do you know whether it was self furling?……Yes.

And that means you don't have to use as much effort?……That's correct.

And if the next sail, you'll have to tell me what that's called?……Mizzen.

The mizzen. That can be also self furled?……It can.

And it was discussed with you that they'd get the mizzen self furled in Hobart?……I can't recall that.

But that would be a sensible move wouldn't it?……It would be sensible.

Mmm, again because it reduces the amount of labour that's necessary?……That's correct.

And in fact Mr Casson has a yacht not dissimilar in size, is that right?……That's correct.

The same type, Roberts 53?……It's a Roberts 44.

But he and his wife who are competent sailors operate it quite easily?……They do.

And the ideal situation for people such as Mr Chappell and the accused would be, as reasonably novice using a yacht of this size, to practice short trips say on the Derwent, down to the D'Entrecasteaux Channel, round Bruny Island in those reasonably safe waters?.....Yes.

And it wouldn't have surprised you to learn that that was their plan?.....No.

And as they gained skills and competence and got to know the yacht better you would have expected that they'd gain the competence to move into longer trips?.....That's right.

And, as you've said, for really long trips be sensible, get extra crew?.....Yes.

Thank you. Now you made some comments yesterday that you didn't think the two of them were strong enough to operate the yacht.....No.

What made you form that opinion?.....The winching arrangements on Four Winds were an older type winching arrangement so it didn't have what we call self tailing apparatus and they were a very large winch and required a lot of physical power to – to wind them, and – and at some stage on our trip we – Sue had endeavoured to operate the winch, we were experiencing some breeze of probably fifteen to twenty knots and certainly found it difficult and was – required assistance to complete the task of winding in the winch.

In the brief period that Mr Chappell was on the yacht before he was hospitalised, did you observe him trying to -.....No.

And – so your opinion is merely based on what you saw of him physically rather than observing him actually doing something?.....Correct.

All right. You were quite impressed, I suggest, with the way in which Ms Neill-Fraser operated the yacht on the way to Hobart?.....She – Sue was extremely enthusiastic and was keen to learn all about the yacht.

Mm.....And did at various times take the wheel and operate the yacht.

Yes. And got a lot of experience coming down the coast?.....Yes.

Now you were aware that she'd had experience with a 28 foot yacht?.....I was.

Some years ago in Hobart?.....I did.

And it was obvious to you that she had the basic skills?.....Yes.

And it was obvious to you that she was a pretty fast learner?.....Yes, she did learn very quickly.

Yes, and you wouldn't have let her get behind the wheel of that yacht coming across Bass Strait, for instance, or down the East Coast of Tasmania, unless you were pretty confident she could do it?.....No, but it was under supervision.

Oh yes, but nonetheless, you were pretty confident that she could handle it?.....I was.

And she did a pretty good job?.....She did.

Right. And -.....I'd just comment that they were in short sessions.

Yes. You in fact described her as, insofar as her sailing efforts were concerned, and I quote, "A gusty hands-on lady"?.....Yes.

Mm. And you said that you and David felt that she will, quote, "Grab Four Winds and be the envy of Hobart" as the boat was, quote, "a real lady"?.....Yes.

And you said of the trip down, it was a steep effective learning curve for all of you?.....It was, it was a difficult trip.

Yes. Now you said that you thought that the accused had visited Mr Chappell in the hospital in Southport once, if I was to suggest to you that in fact she visited him more than once you're not in a position to disagree with that, are you?.....No, I can't recall.

Well you didn't keep a track of her movements when she was off the yacht, did you?.....No.

You didn't follow her around the streets of Southport?.....I did not.

No. So at the end of the day you really haven't the faintest idea how many times she went to the hospital?.....No, I'm only aware of the once.

You're aware of once because she mentioned one?……That's correct.

But if there were others you wouldn't have the faintest idea?……No.

Thank you. Only a minor matter, but you did mention that it was necessary to purchase a new radio in Sydney and you said it was a new VHF radio, it wasn't – that's not correct, it was just a handpiece you purchased, wasn't it? Have a look at the log. See the entry for the 17th December when the yacht was in Black Bottle Bay in Sydney?……Now that I recall it was just – yes, I'm sorry, it was the handpiece, it was –

Yes, so it wasn't a new radio, it was merely a new handpiece?……Handpiece.

Yes. There's quite a distinction between the two, isn't there?……Well one won't work without the other.

Yes, but there's a distinction between the two parts, isn't there?……There is.

Yes, and you had simply forgotten that, had you?……I had.

Mm. You and Sue had a bit of a clash on the way down the coast between Port Macquarie and Sydney, didn't you?……We did.

And you got upset with her and she got upset with you – that's correct?…….That's correct.

And that was about the way the yacht was being operated?…….I believe so.

Yes. She had one view and you had another?…….That's correct.

And you felt that as the transit crew your view should prevail?…….That's correct.

And that's not an unusual thing to happen on a delivery voyage, a bit of conflict between the owner and the crew?…….No.

You would have been surprised if it hadn't happened?…….That's correct.

Yes. And there was an occasion following this disagreement when she actually approached Mr Casson and spoke to him about what she perceived to be your bad –

MR ELLIS SC: Well unless Mr Stevenson was there –

MR GUNSON SC: I'll rephrase it. (Resuming): You are aware as a result of being –

MR ELLIS SC: Well where does this fit into it –

HIS HONOUR: No, no, just a minute.

MR GUNSON SC: I'll put it another way.

HIS HONOUR: Yes.

MR GUNSON SC: (Resuming): Were you present when there was this disagreement between – sorry – when there was this conversation between David Casson and Ms Neill-Fraser?.....Was I there?

Yes.....Yes, I was.

Thank you. And she spoke to him in your presence about your attitude?.....No.

Well you told us that yesterday, you said yesterday, "She spoke with David about my attitude"?.....Yes, she did but she was outside the yacht, she was standing on the marina berth in Sydney.

I see.....Which was in my line of sight.

Right. And what, Mr Casson reported this to you, did he?.....He did.

Thank you. Now it was not the accused's decision at all that Mr Chappell would cease to be on the yacht in Sydney?.....I'm sorry?

I put that very poorly to you and I'll start again. He got out of hospital on the 16th of December and there was a suggestion that he might travel on the yacht from Sydney to Hobart?.....There was.

And you were quite adamant, given his nosebleeds in Brisbane, or more correctly Queensland, that he wasn't going to travel across Bass Strait?.....That's correct.

Now Sue was anxious to have him back onboard if possible?.....I believe so.

Yes. And she made it very clear that she would – if you agreed, as the delivery crew, that Mr Chappell could be on the boat that he should be on the boat?.....Yes.

Yes. And you and Mr Casson had a discussion about it?.....We did.

Did you seek advice from any medical specialist as to whether it was a good idea or a bad idea to let him come across Bass Strait?.....No, I'd made the decision with discussions with David.

Yes, and both of you were very concerned that if there was a repetition of what had occurred in Queensland that you could do nothing about it?.....That's correct.

And you were worried that you couldn't have him medically evacuated from the boat out to sea?.....That's correct.

Mm. And Ms Neill-Fraser, I suggest, expressed disappointment, clear disappointment, that Mr Chappell couldn't come on the trip?.....I can't recall.

Well do you disagree with that?.....No, clear – she may have.

Yes, and she made it clear to you in Sydney and in fact coming down the coast that if it was possible she wanted him to come on the balance of the trip?.....She did.

Yes, and that was a subject that was raised more than once?.....It was.

From, I suggest, basically after they started going – you started going down the coast from Southport towards Sydney it was raised a number of times?.....It was raised several times.

Yes, and it was along the lines, "If Bob gets better can he continue on the trip"?.....Yes.

Mm. Now you've told us yesterday about the removal of a number of panels on the yacht on the way down to do work that needed to be performed as certain situations arose, would you take me through that again, please?.....In Southport Harbour we were trying to identify the bad smell in the saloon area and the floorboard panels were all removed to see if we could identify any leakage in those areas.

Yes.....We weren't able to at that stage locate any leakages underneath the floorboards in the saloon area, -

Yes…….- so they were replaced and screws were – just temporary screws were put in place for the voyage. The other occasion I had to remove a panel was when we experienced a bad burning smell in the back of the electrical box and I removed a back panel of the electrical box to inspect the area from where the burning smell was coming.

Yes. And that's the sole limit of the panels you removed?……The sole –

Yes, did you move any – remove any other panels on the trip?……The – no, we didn't remove any other panels on the trip.

Before the trip started was there a need for any panels in the yacht to be removed for the purpose of showing Mr Chappell and Ms Neill-Fraser how the boat basically worked?……We did remove a panel in the pilothouse just to identify what was underneath that panel which turned out to be the access to the engine room above –

Yes. What, from above - ……Yes.

- because the main access to the engine room is a steel door……That's correct.

- just below the pilothouse……Yes. This is if you need to take the motor out.

Yes. Right. Just on the subject of the pilothouse coming in from, is it the cockpit at the top?……The wheelhouse.

The wheelhouse. You come down a first set of stairs……Into the pilothouse.

Yes, and that's about what, only three steps, four steps?……Three or four steps if I recall.

Yes, and then to get down into the saloon - ……The saloon.

- there's another set of stairs?……Yes.

And how many stairs was that?……Four or five I believe if I recall.

And both sets of stairs were detachable so that you could get to storage compartments and things beyond?……Yes, that's correct.

And in the case of the stairs down into the saloon so you could get through the steel door into the engine area?……That's correct.

Thank you. And that's a pretty standard fitting isn't it?……It is.

Right, thank you. A safety audit was done on the boat before it left Southport – I'm sorry, before it left - …….Newport.

- Newport, and I think you said you spent a few days there?……I did.

How long did the safety audit take?……Well it was an ongoing audit because we – with Sue and Bob and David, we went through from the bow to the stern looking at various things that needed to be attended to and purchased various items that we required for the voyage.

Right. Well you purchased EPIRB which you heard about?……Yes.

And four small chemical fire extinguishers?……Yes.

And these presumably were distributed through the boat?……Yes. Actually Bob fitted those.

Yes. And did you take any real notice of the large fire extinguisher that was fitted?……We did.

Right. And that was near the entrance to the little laundry?…….Correct.

And it was a chemical extinguisher?…….Yes.

And you described it yesterday and its height and dimensions to us – did you actually take it off its brackets?…….I did at one stage, while – just to check the safety catch, yes.

Yes. Was it in test?…….It was.

All right. And you gave an estimate of its weight, I think, yesterday?…….I did.

And what weight did you -…….I estimated between 12 and 14 kilos.

Yes. Have you ever said on a previous occasion that it was your estimate that it weighed between three to four kilos?…….Yeah, that was incorrect, that's –

Yes……..That was from my statement and I –

Just wait. It is a fact that you had said on a previous occasion that it weighed about three to four kilograms – that's right, isn't it?.....No, I didn't say that.

You didn't?.....That was a verbal discussion with the police on the phone.

Right. Well I want you to have a look at this document and then just read it to yourself, please take your time – just have a look at that document please?

MR ELLIS SC: Well again, I ask, is this a document of the witness which he has –

MR GUNSON SC: It purports to be.

MR ELLIS SC: Well is it?

MR GUNSON SC: Well it purports to be. Bring it up please, will you? (Resuming): Did you make a statement to Tasmania Police on the 28th day of January 2009 at about eleven thirty in the morning?.....The 28th, yes.

Yes. You were interviewed by a police officer?.....On the phone.

The answer is either 'yes' or 'no' Mr Stevenson?.....Yes.

Who was that officer?.....The officer was Officer Puurand.

Right. And you were in Queensland, were you?.....I was.

And he purported to ring you from Hobart?.....That's correct.

And you told him that there was another large type chemical fire extinguisher onboard the boat which weighed about three or four kilograms?.....I –

That's what you told him, didn't you?.....If that's what it recorded I must have, yes.

Yes. And there's a significant difference between what you now say it weighed and what you told Detective Puurand on the 28th, isn't there?.....There is in that case.

Yes. And which of those two do you say is correct?……The 12 to 14 kilos.

You never weighed it, it's merely an estimate, isn't it?……Yes.

Mm. And you haven't bothered to check any similar type of fire extinguishers since to ascertain the correct weight?……I have, I use those size extinguishers often.

Have you weighed one?……I haven't physically weighed one.

Thank you. What brand was it?……I'm unaware of the brand.

The type you use often?……Sorry?

You just said you used the type often and you can't tell us the brand.

MR ELLIS SC: No, he said those size, now if the witness is going to be –

WITNESS: They're a –

HIS HONOUR: No, just a minute, just a minute, Mr Stevenson. Mr Ellis?

MR ELLIS SC: Yes. My learned friend just addressed a comment to the witness that he said he used those type, but in fact he said, 'I use those size", then my learned friend – well, I'm sorry, he was rebuked or corrected on the basis it wasn't accurate.

MR GUNSON SC: I'll clarify it.

HIS HONOUR: Mr Gunson.

MR GUNSON SC (Resuming): What brand was the fire extinguisher?……I don't – I'm not aware.

And it was a chemical one?……Yes.

No doubt about that?……No, not to my recollection.

Did you bother when you looked at it to read the instructions on it, for instance, to satisfy yourself as to what might be in it?……It was identified because of the particular colour.

Yes, and which colour was that?……It was red with black markings.

You don't know the brand?……No.

And did you actually take it off its brackets?……I actually removed it from its brackets to just check the safety catch and put it back prior to leaving.

And you've never weighed one of these to determine its correct weight?……No, I have not.

Thank you. When the boat arrived in Hobart on the night of the – I think the 24th it arrived about 11:00 p.m. or thereabouts?……I believe so we were that time.

A fairly wet and miserable night, I believe?……Yes.

And it really wasn't suitable for anybody to come out to the yacht that night…..No.

And probably would have been dangerous to do it?……Well it wasn't suitable.

Thank you. And next morning you went in and got Mr Chappell…..I did.

And Ms Neill-Fraser was on the deck when he arrived?……Yes.

And they spoke to each other?……They did.

And they were perfectly pleasant to each other?……They just greeted each other, yes.

They greeted each other……Yes.

But you seemed unduly concerned about the fact that they didn't apparently embrace or kiss or something, is that right?……No, I just noticed that Bob approached Sue and she stood back.

And they spoke?……They spoke, yes.

And it was perfectly civil?……Correct.

Didn't exchange a harsh word in your presence?……No.

And how much time did you spend with them aboard the boat that day?……We spent several hours before we – with both Bob and Sue before we departed to Brisbane.

Yes, and during that time whilst in your presence they were perfectly civil?……Yes.

Neither was sniping or snapping at each other?……No.

And they talked about the trip?……They did.

Sue gave him very great details about the trip?……Sue gave him details of the trip, yes.

And talked about some of the problems that have been experienced on the boat?……I believe so.

Yes. And they behaved in a perfectly proper way towards each other?……They did.

And did you leave them on the boat or did they go ashore with you?……No, Bob and Sue helped us with all of our gear to shore and then we went to Sue and Bob's home to shower before our return trip.

And who took you to the airport?……Bob and Sue both took us to the airport.

And in the time that you were in their presence in their home and on the way to the airport they behaved towards each other in a perfectly normal manner?……Yes.

They didn't exchange any unpleasantries?……No.

Neither was rude to the other?……No.

Neither sniped at each other?……No.

And she and Bob still talked about the trip?……Yes.

It was a highlight wasn't it?……Yes, it was for Sue.

And Bob wanted to know what had happened?……Yes.

Yeah, very interested. And you and David added your bits here and there too in those conversations didn't you?……Yes, we did.

And it was pretty obvious to you they were still as best as possible trying to pick your brains for all the information they needed to get this boat up and running?……Absolutely.

And they told you their plans were to move on with their sailing to try and develop their sailing skills and to learn how to operate the boat?…….Yes.

Mm, and that was a pretty constant theme, wasn't it?…….It was, they were keen.

Yes, very keen?…….Yes.

And there were some discussions about what might happen as they got better at their sailing and learnt more skills; that is they'd do long distance trips?…….Yes, that was mentioned.

Mm, and there were even suggestions of trips up to Barrier Reef?…….There may have been, I can't recall.

There were certainly mention of trips to the Pacific Islands?…….Yes, there was.

Mm. Do you remember any of them that were discussed – identified in particular?…….No.

But generally speaking for Australian yachtsmen the Pacific Islands, our near neighbours, are very much a mecca, aren't they?…….They are.

People like to go to Fiji and Tonga and Nui -…….That's correct.

- and all those other exotic places?…….They do.

Mm. And those sort of things were discussed?…….Yes, generally where they – they were interested in doing ocean voyages.

Mm. And Bob expressed interest in those sorts of trips?…….Yes.

Thank you. Now with some of the panels that were removed they weren't completely screwed back down, is that your position?…….That's right.

And some of them were – some of the screws were left in a tub or something, I think you said?…….A plastic container, as I recall.

Yes. Are you absolutely sure about that?.....To my recollection, yes, I believe it was a plastic container.

Right. How many water inlets were there on the boat – or to put it another way, how many points were there on the boat where water could get into the boat if inlets were opened?.....I'm not absolutely positive but David would be better answering that, but I know that we had a main water intake for the engine in the aft area and the water intake for the black water and grey water section was for'ard.

There'd be a water cooling inlet for the main motor?.....Yes.

Yes, and there was a water cooling inlet for the generator?.....I can't – I can't recall whether that was off the main inlet or it had a separate – had its own intake, I just can't recall.

If I was to suggest to you that it was – sorry, did have its own intake you wouldn't disagree with that?.....No.

All right. If you wanted to sink a boat like the Four Winds and you knew your way around yachts and had a working knowledge of them there would be much easier ways to sink it than simply cutting the pipe to the toilet?.....I imagine there would be, yes.

All right. If you were asked to sink the Four Winds and could do it with absolute impunity short of blowing a hole in its side what sort of valves would you open on the yacht to try and sink it?.....Well the main valve I would open would be the main engine inlet valve.

Because water would pour in through there?.....It certainly would.

And if there was a separate valve for the generator again that would be a prime target, wouldn't it?.....Correct.

And beyond that?.....There's another inlet which could be – which I've just thought about, would be the log, the ship's log which records the movement of the ship in the water.

That's right at the front, isn't it?.....Yes.

All right. And that would be -.....That can be removed.

Yes, and that's basically a tube or a hole, isn't it, that -.....It's a hole that goes into the fittings – skin fitting of the yacht and a small cylindrical ball rises and determines the speed of the yacht underway.

And there was also a large seacock in the aft passageway of the boat, wasn't there?……I can't recall that.

But if there was again a seacock being opened would flood -……Yes.

- the vessel?……It would.

Yeah. The EPIRB was fitted to a bracket on board the boat?…….Yes, Bob fitted the EPIRB.

Yes. And to detach the EPIRB you would have to pull it away from the bracket?…….Yes.

And how was it held on the bracket?…….It actually slips into the bracket.

Right. So you can pull it out of the bracket -…….Yes.

- and the bracket would stay?…….Yes.

But if violence was used to the EPIRB you could break the bracket -…….I –

- if you didn't know how to get it out, for instance, and pulling on it you'd snap the whole – wouldn't you?…….Certainly if it was an emergency you could, yes.

Yes, thank you. If I suggest to you that the screws that were in the salon in the – or saloon, that were in a plastic container weren't floor screws but were from the timber pieces holding the stair treads in place, would you agree or disagree with that?…….I'd agree – I mean they could be.

They could be – thank you. So they may not be the panel screws we talked about earlier but ones that I've just described?…….No, they could have been.

They could have been?…….We had a lot of screws.

Thank you. There was quite a significant discussion with Sue about re-rigging the boat?…….Yes, there was.

Mm, that was a major discussion, wasn't it?…….It was.

And that discussion started even before you left Moreton Bay?…….That's correct.

Mm. Because they made it very clear, as we've been through before, they were going to go long distance sailing in due course?.....Mm hm, that's correct.

And they were very serious about finding out how they could more sensibly rig the boat for two people?.....Yes.

And you provided a lot of advice about that, didn't you?.....I did.

And David did as well?.....Yes.

Can you tell me what advice you gave them about re-rigging the boat to make it more user friendly for a couple?.....The – the – all of the rigging gear for the main mast was at the – for the mainsail sorry –

Yes.....- was at the mast, which in our opinion, is undes – is not desirable.

Would it assist you to look at some photographs of that?.....Yes, certainly.

I think it might be the early ones yesterday – Could the witness be shown P3 please, the bundle, and if you'd just take a moment and just go through probably the first –

HIS HONOUR: That's the first collection of photos from Constable Redburn.

MR GUNSON SC: (Resuming): Probably the first half dozen will do and if you just examine those for a moment. Look at the first one, it shows the Four Winds sitting on its mooring with obviously a couple of police officers standing on the deck, do you have it?.....Yes.

Now the main mast is where the two police officers are standing?.....Correct.

To the very front we have the self furling genoa?.....Correct.

And to operate that it's simply a matter of freeing up ropes and it comes out very simply, it furls out instead of having to raise it up the mast?.....That's correct.

Now you spoke about the next one and you've suggested there could have been another self furling sail put on the vessel?……It could – yes, you can.

And where would that be?……The mizzen would be – well that would be self furling – you'd actually have to change the mizzen mast itself because they self furl into the mast.

Right. And that was something that was discussed?……It was.

What other recommendations did you make?……Well if you go to the one, the third one, you'll see that all of the – all of the halyards for the main mast are all winched on the mast itself.

Now when you say halyards for those who - …..I'm sorry, well they're the ropes that raise the – raise the mast – raise the sail.

Yes…..And secure the sail when it's up. And there's also a winch that you can see there. Well all of those – our recommendation was that you don't – that you take them all back to the cabin area to operate.

Right. So that there would be no need for a person at sea or getting ready to go to sea to be up there in front of the cabin?……That's correct.

And that would alleviate a lot of the problems?……It would.

All right. If you look at that photograph you've just spoken about you see a lot of ropes just lying on the deck, don't you?……You do.

Very unship-like, is that a fair comment?……It's very unship-like.

Yes. Do you see the rope that appears to be around a cleat on the front of the mast?……Yes.

That black cleat, is that the right word?……That's correct.

Where would they normally be on a yacht that was properly rigged and then looked after and shipshape?……Well normally they'd be wound into a – what's the best way – we would wind them into a group and make them tidy and attach them to the base of the mast.

Right. And what we see there is certainly not what you'd expect to see on a yacht -……..No.

- properly operated and run?……That's correct.

Pretty sloppy, isn't it?……It is.

And we see the same mess in the next picture, correct?……That's correct.

And again if we go to the next couple where we see ropes lying on the deck there, again that is somewhat unusual, isn't it?……It is.

All right. And if we look at photograph number 9, does it have a sticker on it?……Yes, it does.

All right. Do you see a winch there with a rope around it?……At the rear, yes.

Yes, the winch on the starboard side?……Yes.

That isn't the way you'd normally leave a yacht, is it?……No.

Those particular ropes would be curled up somewhere?……Yes.

Right. And if we look at photograph number 12 and number 11 we can see there that's the mizzen mast -…….Correct.

- with ropes obviously hanging neatly on cleats, is that the way they should be left?……Well there's – there's one that I can see hanging correctly, the others are not –

Perhaps look at the ones that are actually hanging, that's the correct way?……Yes, that's the correct way.

And what we see coming off the cleat at the front of the mizzen mast going down onto the deck is unusual?……It is.

And quite inappropriate?……It is.

Thank you. If that can be returned to the associate please? I just move to the trip coming down the coast; at sea for quite a long time?…….Sorry?

You were at sea for quite a long time coming down -…….We were.

- from Southport to Sydney, and then from Sydney down to Tasmania?……..Yes.

And I suppose, on the way down you all got to know each other pretty well?…….We did.

And you if you were in port you'd go out and have a meal at the local yacht club or something?…….We did.

And have a few drinks?…….We did.

And all of you discussed your relationships and so forth?…….Yes.

Yeah, pretty open and frank?…….Yes.

All right. And you had a partner called, I think, at that time called Judy?…….No.

No. I'm sorry, my mistake, that was David. There was a discussion about the fact that his partner was off on a crew somewhere?…….I can't recall.

You can't recall that? There were discussions between you and the accused about your partner, Bev?…….Yes.

And for instance, you told her things like, that there was a twenty eight year old daughter living at home and that caused problems?…….Yes.

Yes. And you were doing a bit of internet dating on your computer on the way down?…….I think that is right.

Yes. And you told the accused about that?…….I wasn't in a relationship with Bev.

No, no, but you told her about your internet dating?…….Yes, of course I did, yes.

Yes, yes, yes well I'm not criticising you. And she told you that in the early days of her relationship with Mr Chappell that there had been a few rocky times back eighteen, twenty odd years ago?…….I can't recall that.

She told you that she'd left him from time to time for a day here and a day there and went back to the farm?…….Oh she did say that, yes.

Yes. And – but on the way down the coast and on the East Coast of Tasmania particularly, there were lots of calls from Bob to her?…….No.

Right.....Not that I can recall.

And of course you couldn't get mobile calls in Bass Strait because there's no reception?.....No.

And in fact once you get down past Gabo Island the reception is pretty poor, isn't it?.....It is.

In fact even before Gabo?.....Yes, it is.

Mm. And when you get to the Tasmanian Coast you don't get reception until about St Helens or thereabouts?.....That's what I – yeah, St Helens.

Thank you. Now do you remember a function or a party, not quite the right word, on board the yacht in Eden?.....We did.

Mm, and the yacht had tied up in Eden?.....That's correct.

And you introduced Ms Neill-Fraser to a group of yachties that you knew in Eden?.....That's correct.

And you invited them on board the boat?.....Sue invited the people on the boat, as the owner.

I suggest that you basically approached her and said, "Is it okay if these guys I know come on board"?.....Yes, I did.

She said, "Okay"?.....Yes.

So the initial invitation was to you, you quite correctly referred it to the owner and there was a bit of a party?.....Yes.

And this was fairly late in the piece?.....In –

In the evening?.....In the afternoon and the evening.

Yes, and needless to say you'd all had a bit to drink?.....We had some drinks, yep.

Mm, and I suggest that you said to one of these friends of yours when they came on board, "This is Sue, her husband or partner isn't on the boat", and you said this, "She's looking for a younger man to sail the boat"?.....I don't recall.

You said that jokingly, didn't you?……I don't recall that.

You don't deny it?……No, I don't deny it, but I don't recall it.

No. And I suggest your friend or acquaintance responded with words to this effect, "What would you do if, you know, your husband or partner couldn't sail", and she said, "Well if that was the case I'd keep the boat and use it for my children and myself and I'd ask my partner whether he wanted to sell his half share in those circumstances"…….Can't recall that.

You don't deny it?……No, I don't.

Thank you. And there was discussion advanced along the lines of, "Well where would you get the money", and she said, "I'd borrow it from my mother". Again you don't deny that?……Not at that stage, no.

No. You quite often spoke to Ms Neill-Fraser on the way down the coast about what you perceived to be Mr Chappell's frailty, it was something that concerned you?……Yes.

Mm, and you raised that on more than one occasion?…….I may have.

Yes. And I want to suggest to you that at no stage did she tell you that the relationship with Mr Chappell was over?…….No, that's not right.

But you certainly did not see any signs of that, did you?…….I didn't personally.

No. And if that had been said her attitude to him in your presence was totally and absolutely inconsistent, wasn't it?…….Yes.

Yes. No further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. So did you see signs of physical affection coming from Ms Neill-Fraser to Mr Chappell?.....No.

And on that, when he boarded and approached her in Hobart after the voyage, you said he approached her and she turned away, in which way – what way did he approach, in a belligerent way or some other way?.....No, in a welcome approach.

And was that expressed in any particular body way?.....Just Sue stood back and Bob didn't – didn't touch her.

So he's moving forward she's moving backwards basically?.....Yes.

Thank you. Now you were asked about there being blood around from Bob's nosebleed early in the voyage; I wonder if you could look please in the first set of photographs at photograph 21, 22 and 23, which we've been told by the witness are views of the steps inside the wheelhouse – do you see those – are those steps familiar to you?.....Yes, they are.

And do you see in photograph 22 what appears to be blood?.....I do.

And was that – and 23, more blood.....Right.

Is that right?.....Yes.

And was that blood that was left on – on the stairs from Bob's nose bleed all the way down to Hobart?.....No, it was not.

What would have happened if there was blood on those stairs?.....We cleaned the boat when we actually got to Hobart so it wasn't there then.

Right, thank you. The discussions that you've been asked of about, you know, sailing on long trips and sailing to the Pacific who was the main, if there was a main, contributor between Bob and Sue, to those discussions in question?.....Sue was during the time.

Do you recall any such discussion being initiated by Bob?.....No.

You were asked that Sue Neill-Fraser was given the wheel on occasions on the way down was that alone, you'd just leave her to it

or - .....No, we did not, we were always within arms reach of the wheel.

Why was that?.....Because I wasn't confident that Sue could actually handle the steering of the boat.

Right. You said that she'd endeavoured to operate the winch and required assistance to wind it was that because the winch was generally tight or was it because of the load it was – she was seeking to winch?

MR GUNSON SC: That's leading your Honour.

MR ELLIS SC: Leading – okay. (Resuming): What was she trying to winch?.....Sue was winching in the main sail.

Is that a heavy load?.....It is a heavy load.

Right. Look at photograph number 8 please, is that the winch that we're talking about?.....No.

It's not?.....The winch that we're talking about is in the – in the wheelhouse area.

Right. Just looking at that one does that handle stay with the winch at all times?.....No.

Do we see – perhaps just take your time and see if we can get a picture of the winch that you're speaking of.....There is one there on number 9.

Right.....There's a winch on the for'ard port side of that – of that photo.

Thank you. I'd better make sure we're all seeing –

MR GUNSON SC: Well I can't see it.

WITNESS: No, I'm sorry that's the – I'm looking at – this is – we're looking from the stern, that's the starboard side.

MR ELLIS SC: (Resuming): Yeah.....The winch that's closest to us on the starboard side on the right hand side there.

Right. And does the handle of that stay on it?.....No.

That's – that's detachable too?.....That's correct.

Is it – you've been asked about good seamanship and good practice, is it good practice to take the handle off the winches when they're not in use?.....Yes.

And they're stored somewhere else?.....Yes.

For safety so they don't go around and knock people on the head?.....That's correct.

Okay. You were asked about speaking to Detective Puurand and the weight of the large fire extinguisher and you said, "If that's what he recorded I must have said it," is that what you – must have said three to four kilograms – was it ever your view that that was -.....No.

- the weight of that fire extinguisher?.....No.

No. Now you mentioned what you would do if you wished to sink the boat and you said that you would open the main valve and mentioned certain inlets – is that right?.....Yes.

And opening those inlets would effect a fairly fast sinking of the boat, would they?.....It would.

It would. And so if you wanted to get away from the boat and go somewhere else, dispose of a body, get to your home before the boat was noticed to be sinking, you mightn't necessarily take the fastest way to sink it – is that right?.....That's – I imagine that's the way to go.

Yeah. You mentioned the – the various inlets and they all seem to have a purpose, in your –.....Yes.

- your view, because the engine inlet has a purpose?.....Yes.

Were you aware that there was an inlet that didn't serve an apparent purpose on that boat?.....I wasn't at that stage, no.

No. And someone who is familiar with boats wouldn't necessarily know where the inlet was that didn't serve any apparent purpose, would they?.....No.

Thank you. Thank you, Mr Stevenson. I ask for Mr Stevenson's relief, your Honour.

HIS HONOUR: Yes, thank you, Mr Stevenson, you're free to go. We'll take the morning break before we start the next witness.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: Now if - don't get up just immediately. I think the jury should have the opportunity to go outside and get some fresh air if that's what they want to do so I'll have them make their affirmation, but I – or they can go into the jury room if that's what they'd prefer to do, but if you do go anywhere other than the jury room, ladies and gentlemen, it's very important that you don't chat to anybody who could conceivably have anything to do with this case, so please if you don't go to the jury room and go into the foyer or go outside please do not chat to anybody that's been in the court room or even anybody that hasn't been in the court room because we don't want to get into a situation where the trial has to be aborted and started again as a result of a juror having inappropriate contact with somebody. Now the jury can make their affirmation and the Court will then adjourn for fifteen minutes.

<JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

<KATHERINE JANE CHAPPELL CALLED AND AFFIRMED

HIS HONOUR: Take a seat. Yes?

<EXN - MR ELLIS SC: Thank you. Ms Chappell, you are Katherine Jane Chappell?.....Yes.

You go more regularly by the name of Kate rather than Katherine?.....That's right.

You live in South Hobart?.....Yes.

How old are you please?.....Thirty seven.

And you're the daughter of Robert Adrian Chappell from his first marriage to Yvonne Hardfeldt?.....That's right.

Thank you. You have a brother Tim and a sister Claire?.....Yes.

Is Claire younger or older than you?.....Claire's younger.

And Tim's older?.....Yes.

Last – I'm sorry – in 2008 did you speak to your father and Sue Neill-Fraser about their intended purchase of a boat?.....Yes, I did.

Thank you. Do you remember what was – what was said, or what the general tenor of what was said was?.....Just that they had found a boat to buy. They'd been looking for several years on and off for a yacht.

Yeah.....That it was a large boat and that they were going to travel back up to Queensland to collect the boat sometime after our conversation – the date hadn't been set.

Right. Was this a conversation you had face to face or on the telephone?.....Face to face.

Okay. Did someone volunteer whose idea it was to buy that boat?.....At that stage, no, I don't think it was clear to me whose idea it was.

Did it become clear to you in subsequent conversations?.....Later, yes, I got the impression that it was Sue who particularly wanted that boat.

There might be an objection to – okay, we'll –

MR GUNSON SC: There is an objection to it.

MR ELLIS SC: (Resuming): Okay, we'll just stick to what - .....Oh, sorry, yeah, sorry.

- you were told.

HIS HONOUR: All right. Just ignore that last answer, ladies and gentlemen.

MR ELLIS SC: (Resuming): You didn't have frequent contact with your father, is that right?.....That's right, yeah.

Did he telephone you very close to Christmas 2008?.....Yes.

What did he tell you?.....He told me that he was back in Hobart after having spent some in Queensland with Sue getting the boat. That they'd started sailing down and he'd had a severe nose bleed which resulted in him being in hospital and that Sue had continued with the other sailors on the boat and he had flown back and he was waiting for them to arrive.

Was that the first you knew of his hospitalisation in Queensland?.....Yes, yes.

Did you make arrangements to see the boat?.....Yes, we spoke about – about us catching up after the boat had arrived.

Okay. And did – when did you first see it?.....Boxing Day.

What was the arrangement then, who did you see it with?.....I arranged to go down late morning on Boxing Day to meet my father and Sue and my brother Tim with his wife and children and his mother in law at Marieville Esplanade and to go out to the boat for a –

Okay. Do you recall going out to the boat?.....Yes.

And do you recall any conversation of any kind between your father and Sue concerning going out to the boat?……You mean on the morning when we were there?

Yeah. Yes, concerning the way that you went out to the boat?……I'm sorry, I don't quite understand what you mean.

All right, okay. You went out to the boat in a dinghy did you?……Yes.

And who operated that?……My father did.

And do you recall any words between he and Sue concerning his operation of the dinghy?……Oh, yes, yeah. Sue was, I guess I'd have to say, criticising my father about the way he was driving the dinghy through the waves out towards the boat.

Did you see much interaction between the two of them that day other than that?……No, I don't think so. I think we were talking to them – there were quite a few of us out there and they were talking to different people during the time I was there.

Did you speak to Sue that day on the boat?……Yes, yeah.

And did you speak to her about the trip?……Yes.

And what was she telling you about it?……She was very excited about the trip she'd had down, I think it had been a wonderful experience and she was, yeah, quite enlightened by it and excited by the trip.

Okay. Did she mention any plans or how she felt about coming back?……She said that she would have liked to just keep on sailing, I got the impression that, yeah, she wasn't excited at all about coming back and she would love to continue sailing further and wider seas.

Right. Did you speak to your father about his plans for the year?……Yes.

What were they?……He said he was planning to go back to work for another year rather than retiring, which he had sometimes mentioned.

Yep……He wanted to finish writing up the work that he'd been doing for some years and leave everything very clear for whoever was going to take over from him.

Right. And did you go on the boat again – sorry, not – yes, did you go on the boat again after that day?……Yes, on January the 18th Sue invited myself and my family over for an afternoon tea on the boat at the marina where it was then being kept.

Yes, and was that a pleasant day?……Yes, look it wasn't a long visit but it was fine, yep.

And was there any interaction of note between Sue and your father that day?……I don't remember them interacting that day.

You were on Bruny Island, weren't you, when you were told that your father was missing on the 27th January?……Yes.

Have you had – 27th January 2009, have you had any sign from him or in any way that he is still alive from that day?……No.

Sometime previously had you had any conversation with Sue Neill-Fraser concerning your father's will?……Yes, I did.

And when was that?……I believe that it was in 2004.

Yes……..It could have been a year or two either side of that.

And where was it?……At Allison Street.

Can you tell us what it was?……Yes, Sue initiated a conversation about my father's will out of the blue really, and she said that my father had remade his will and that it was all quite fair and that he had quite a lot of superannuation and she named a figure that my siblings and I were likely to inherit, which surprised me, I guess – I had not discussed wills with my father, apart from –well, at all, ever.

Right. You thought the figure was that she nominated at that time?…..Yes, between – do you want me to say?

Yes……Between one hundred and two hundred thousand dollars.

Thank you.

HIS HONOUR: Well, I might ask. Did she specify whether that was that amount each –

WITNESS; Yes. Each

HIS HONOUR: Or that amount split between the three of you?

WITNESS: No. Each.

HIS HONOUR: Each.

MR ELLIS SC: Sorry, your Honour.

HIS HONOUR: Anything arising Mr Ellis?

MR ELLIS SC; No. It was only clear to me, obviously not to anyone else.

HIS HONOUR: Yes. Mr Gunson?

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON: Thank you, your Honour. And she told you that she had regarded the will as quite a fair one?...Yes.

Did she discuss what she anticipated receiving from the estate in the event that Mr Chappell might die?.....No, no.

And she obviously wasn't troubled about the terms of the will, was she?.....No.

She didn't express disappointment?....No.

And she in fact stressed to you that she regarded it as very fair?....Yes.

Thank you. Now when you saw them on the boat on the first occasion when you went out on to it, you all went out on the rubber dinghy.....That's right.

And would it be fair to say that it was a pretty choppy, rough day. Few waves?.....There were a few waves, I don't know if I'd consider it rough, no.

But there was a discussion to the effect that Sue thought your father was going just a bit fast in the rubber dinghy with the waves....It was something like that, or the direction he was going into the waves or something.

And basically said these words to him "Look, slow- you should slow down, the waves are a little bit high and you aren't taking them properly".....I don't remember her exact words.

But that was the thrust of it, wasn't it?...It was something to do with the way he was driving the boat into the waves, yes.

She wasn't vicious, was she – she didn't sort of shriek at him like some demented harpie?....No, she was critical.

Critical. Like you might be critical of somebody if you see them doing the wrong thing?.....I don't know if I'd say that.

Right. But in any event, your father was very proud of the boat, wasn't he?.....I don't know if I'd say that either, no.

Mm. He seemed very happy with it?.....I'm not sure.

All right. But he certainly had been working on the boat, he told you that?.....Yes, yes.

And it was pretty obvious to you that he'd been working on the boat?.....Yes.

Mm. And he showed you the sort of work he'd been doing?.....Work on the boat, no I don't recall him showing me work on the boat.

Right. And you didn't display any interest in asking him what he'd done?.....I don't remember talking to him about specific work that he'd done on the boat.

I mean, I don't wish to be critical and please don't think I am, but you had little contact with your father, didn't you?.....I had some contact with my father.

Not a great deal though?.....What would you call a great deal of contact?

I mean you didn't speak to him on the phone every week, did you?.....No.

And he didn't phone you regularly?.....No.

In fact it would be fair to say that if there was any contact you initiated the contact, because your father wasn't a person who would tend to phone up you or your brother?.....That's probably right, yes.

And you would go to their place from time to time for a meal?.....That's right, yeah.

Yeah. And when you went there for meals that contact was initiated by Sue, wasn't it?.....It often was, yes.

In fact I suggest to you, nearly on every occasion you were invited up there for a meal it would be Sue ringing up and extending the invitation?.....Or I would have called to catch up with them and –

And she'd say 'come up and have a meal'?.....That's right, yeah.

Yeah. It wasn't your dad, was it?.....Oh, I spoke to dad he would – he would often – often look forward to seeing us coming around as well – maybe not invite for a meal specifically.

No……..No – no, he would sometimes he would over the years, yeah.

Is it fair to say this, that after your dad became involved with Sue Neill-Fraser, to use your words, he got a new lease of life?…….Yes.

And he would spend a lot of time at her farm at Bagdad?…….Yes.

And he'd been fairly unhappy in the years before that, hadn't he?…….Yes, he'd been lonely.

Yeah. And he became quite a different person?…….No, still the same person –

He was – well -…….- but not lonely –

No, not lonely, a bit more outward?……Yes.

Mm, and you were quite delighted that your father had re-partnered?……Yes.

And you were quite delighted at his choice, weren't you?……Yeah. Yes, we were pleased.

You have said in the past, "I was delighted that Dad had a partner who seemed so friendly, social and dependent", correct?……Yes, fair enough.

And obviously he got on well with Sue's two daughters?……Yes.

And they would go off and do things together as a family unit?……I don't know. They certainly went on camping trips annually and things like that.

Yes, thank you…….Yes, I guess so.

All right. And your father and Sue Neill-Fraser had talked about buying a boat for some years, hadn't they?……Yes

It was a long term project?……Yes, over several years.

Yes, and you were aware that they had made a couple of trips to Queensland looking at boats?……Yes.

And had come back unsatisfied but eventually they found one?……That's right.

All right. And when you spoke to your father after his return to Hobart he told you he'd been hospitalised?……Yes.

It didn't strike you as particularly strange that he hadn't phoned you whilst he was in hospital to tell you that he was there?……I did wonder.

But it didn't strike you as particularly strange or unusual?……It hadn't happened before, so –

Mm, all right…….- it didn't have a chance to be unusual.

Thank you. How long were you on the boat on the first occasion?……I don't remember exactly but it would've been between one and two hours maybe, something like that.

And you had some lunch or something to eat out there?……Yeah, we had some food and drink.

A few glasses of wine?……Yep.

And you observed your father and Ms Neill-Fraser talking from time to time?……You asked me that already, I think.

No, I didn't. Mr Ellis might have asked you…….Oh I'm sorry, I don't remember them talking on the boat with each other, there quite a lot of us there and we were all in conversation in –

Everybody's just chatting with each other?……In different groups, yeah.

And both of them were showing people the boat and bits about it and talking about it?……Yes, I think so.

How big was the group?……There were about ten of us and my father and Sue.

And a couple of kids who needed to have – keep an eye on?……Yeah, I counted them, two kids – no, sorry, one child.

All right…..No, wait a second, there were – actually there were – no, there would have been three children, just remembering who's there.

Thank you. You said that Sue said she would have loved to have kept on sailing if possible……Yes.

That didn't unduly surprise you did it? It's the sort of comment anybody might make after a holiday. I'd love to be on holidays and not work –

MR ELLIS SC: What is made of this is not necessarily for the witness and her surprise or not it's a matter for the jury in my submission and relevance -

MR GUNSON SC: I'll address it – I'll address it –

HIS HONOUR: All right, we'll listen to the objection first. Mr Ellis?

MR ELLIS SC: And the relevance of whether this witness was surprised it's, in her view, the sort of comment anyone would make is not a relevant matter in this trial in my submission; she has reported it being said, that's it.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I won't persist with it. (Resuming): Did you ask her what she meant when she said she'd like to keep on sailing?……No, I didn't ask her.

You just let it ride over you?……I noted the comment.

Mmm, and you didn't - ……I didn't ride over me.

You didn't discuss it with her?……I didn't discuss it with her, no.

No, thank you. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you, your Honour. You were just asked did it ride over you and you said it didn't ride over you, what did you make of it?……Well I guess I was a little concerned at that comment and the way that I – the feelings I got from Sue about that issue. I just felt that – that Sue really would have liked to keep on sailing in a much bigger way than she and my father were planning to and I couldn't imagine her just settling back to doing little trips around the river.

Thank you. Nothing further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: Yes.

MR SHAPIRO: Your Honour, if it's convenient I'll deal some agreed facts.

HIS HONOUR: Yes. What's going to happen, ladies and gentlemen, is that instead of witnesses coming and giving evidence about facts that aren't disputed it often happens in criminal trials that counsel for both sides make a list of the facts that aren't disputed or some of the facts that aren't dispute and they're just read out. So you'll hear this list read out and you'll have the list in the jury room at the end of the trial. Mr Shapiro?

MR SHAPIRO: Thank you, your Honour. I tender, pursuant to s191 of the Evidence Act, agreed facts.

EXHIBIT #P17 – AGREED FACTS – TAKEN IN

HIS HONOUR: Now are there copies for the jury or are you just going to read them out?

MR SHAPIRO: I just plan on reading them out at this stage.

HIS HONOUR: Yes, all right, thank you.

MR SHAPIRO: Yes, thank you, your Honour.

> *The parties agree pursuant to s191 of the Evidence Act that the following facts are not in dispute for the purposes of the proceedings:*
>
> *1(a): An aerial photograph of Marieville Esplanade, including the Sandy Bay Rowing Club and the Royal Yacht Club of Tasmania, is exhibit P01. A copy of the aerial photograph was annotated with the location of various items and places and the distances between those items and places. A copy of that annotated photograph is exhibit P02. A CD containing electronic copies of the aerial photograph and the annotated photograph is tendered.*

I tender that please.

EXHIBIT #P18 – CD CONTAINING ELECTRONIC COPIES OF AERIAL PHOTOGRAPH AND ANNOTATED PHOTOGRAPH – TAKEN IN

HIS HONOUR: All right, well I'll write the number 18 in the space so that the document says is tendered as P18.

MR SHAPIRO: Thank you, your Honour. Your Honour, number 2:

> *On the 27th of January 2009, James Kerr was employed by the Mercury Newspaper as a photographer and took a series of photographs, five of which he initialled. These are produced as P –*

HIS HONOUR: P19 is James Kerr's photographs and I'll write in paragraph 2 of this document, 19.

EXHIBIT #P19 – JAMES KERR'S PHOTOGRAPHS – TAKEN IN

MR SHAPIRO: Thank you, your Honour.

HIS HONOUR: So it says, "These are produced as P19, A, B, C, D and E". Yes.

MR SHAPIRO: Yes, thank you, your Honour. Your Honour, a CD containing an electronic copy of the photographs is produced as –

ASSOCIATE: P20.

HIS HONOUR: I'll write that in.

EXHIBIT #P20 – CD CONTAINING ELECTONIC COPY OF PHOTOGRAPHS – TAKEN IN

MR SHAPIRO CONTINUES TO PUBLISH AGREED FACTS, P17.

MR SHAPIRO:

> *Commonwealth Bank at 185 Sandy Bay Road had an external security camera which captured footage of Sandy Bay Road on the 26th and 27th January 2009. From that footage police printed a still photograph from the time of 0025 hours on the 27th January 2009.*

Copy of that photograph is tendered as P21

HIS HONOUR: I'll write that in.

EXHIBIT #P21 – COPY OF FOOTAGE FROM COMMONWEALTH BANK SECURITY CAMERA – TAKEN IN

MR SHAPIRO: Thank you, your Honour. Your Honour,

> *On the 27th January 2009 at 8:08 a.m. Ms Jane Austin of Battery Point took a photograph of a yacht which appeared to her to be sinking. That –*

That photograph is tendered as P –

ASSOCIATE: 22.

HIS HONOUR: I'll write that in.

EXHIBIT #P22 – PHOTOGRAPH OF YACHT – TAKEN IN

MR SHAPIRO: Thank you, your Honour. And a CD containing an electronic copy of that photograph is tendered as P –

ASSOCIATE: 23

HIS HONOUR: I'll write that in.

EXHIBIT #P23 – CD CONTAINING COPY OF PHOTOGRAPH – TAKEN IN

MR SHAPIRO CONTINUES TO READ AGREED FACTS

MR SHAPIRO:

> *Tasmania Police called the landline at 7 Allison Street in West Hobart at 7:11am on the 27th of January 2009 and spoke with Ms Susan Blyth Neill-Fraser. A recording of that phone call is produced as P24.*

HIS HONOUR: I'll write that in.

EXHIBIT #P24 – RECORDING OF PHONE CALL FROM TAS POLICE TO 7 ALLISON STREET WEST HOBART AT 7:11AM ON 27TH OF JANUARY 2009 – TAKEN IN

MR SHAPIRO: And I'd ask if that be played if it please.

RECORDING OF P24, PHONE CALL PLAYED TO COURT

HIS HONOUR: Yes.

MR SHAPIRO: Thank you, your Honour.

MR SHAPIRO CONTINUES TO READ AGREED FACTS, EXHIBIT P17.

EXHIBIT #P25 - STATUTORY DECLARATION OF GEORGE PARTOS – TAKEN IN

MR SHAPIRO: I will read that statutory declaration.

HIS HONOUR: Yes.

MR SHAPIRO; Thank you.

The above details are true and correct. In 1996 I purchased a 53ft steel ketch called Four Winds. The boat belonged to Bob Tanner and was being sold by his liquidators as he had run into tax problems. The boat was for sale by tender and my tender was successful. When I bought the boat it was sitting on a hard stand in Iluka, New South Wales. It had been stripped down as I understand that Bob Tanner had been intending to restore it. I transferred the boat to a hard stand in Coffs Harbour. Over the next three to three and a half years I restored the boat. The boat was already stripped back to the bare hull. All of the floor boards were removed..

HIS HONOUR: Well, this has been changed. "All" has been crossed out, and it says " Most of the floor boards were removed." And that's been initialled.

MR SHAPIRO: Thank you, your Honour.

"Most of the floorboards were removed. I re-did the wheelhouse, the saloon and the laundry. Most of the panelling in the wheelhouse and saloon were removed and re-finished Work was also performed on the engine and all of the plumbing was stripped out and re-done. The aft master cabin, galley and fore'd cabin needed some work, but they were not stripped bare. The fore'd head was connected to a fibreglass sump or black water tank the aft head did not have a sump and it discharged straight into the sea. You could only use the aft head at sea. The yacht also had a fibreglass grey water tank

under the galley which held the wastewater for the shower and sinks. The yacht was fitted with two freshwater tanks. I inspected one of the tanks and this looked to be in good condition and recently painted. Because this was in good condition I assumed the other tank would be in the same condition and did not inspect it. During the restoration the grey and black water tank were removed and inspected. We also inspected and cleaned the diesel tanks, which were in the keel. We cut holes in the tanks through the keel, cleaning them and welding up the holes. I did not find any contraband hidden on the yacht or any secret compartments or hiding places. Had something been hidden on the yacht I would have found it during the rebuild. Because the hull was steel I inspected very nook and cranny looking for rust. During the rebuild I put new carpet tile squares on the floor throughout the boat. The carpet tiles were not glued down. I used to have a couple of spare tiles at home, but I don't think there were any onboard the yacht. I launched the yacht in the year 2000. My wife and I sailed it up to the Whitsundays and to Sydney. We had intended using the yacht offshore but never did. The yacht was a bit big for what we were using it for. I'm not aware of the boat being unlawfully entered during the time I owned it. I had a security alarm fitted on the wheelhouse. I can't recall the alarm every going off. I sold the yacht in 2004 to a man from Cairns who sold wildflowers, I can't recall his name. Late last year I received a couple of phone calls from a lady called Sue, who said she was looking at buying the yacht. I gave her a run down on the boat's history. In my opinion, Four Winds, was a great boat. It was fitted with seven bilge pumps and each of the pumps was alarmed. The only way it would sink is if the seacocks were opened.

Thank you, your Honour. On the 22nd of March 2009, Steven Snowden made a statement to Detective Simon Conroy. A copy of that statement is produced as P26.

HIS HONOUR: I'll write that in.

EXHIBIT #P26 – STATEMENT OF STEVEN SNOWDEN MADE T DETECTIVE CONROY ON 22ND MARCH 2009 – TAKEN IN

HIS HONOUR: Yes, would you like to read that?

MR SHAPIRO: Yes, thank you, your Honour.

STATEMENT OF STEPHEN SNOWDEN, EXHIBIT P26, READ TO THE COURT

MR SHAPIRO:

> *25. On the 21st March 2009 Klaas Ralph Reuter made a statement to Detective Simon Conroy. A copy of that statement is produced as P*

ASSOCIATE: 27

HIS HONOUR: I'll write that in.

EXHIBIT #P27 – STATEMENT OF KLAAS RALPH REUTER – TAKEN IN

MR SHAPIRO: Thank you.

HIS HONOUR: Yes, would you like to read that.

MR SHAPIRO: Thank you, your Honour.

EXHIBIT P27 READ TO THE COURT

HIS HONOUR: Well what it says is –

> *How the pumps were (brand/type ??? pumps) and would not let water run back through the system.*

Yes, go on.

EXHIBIT P27 CONTINUES.

This statement was written for me by Detective Sgt Conroy at Australia-wide Boatsales Office at Newport Marina."

MR SHAPIRO: Continues to read Agreed facts – number 26.

EXHIBIT #P28 – STATEMENT OF CHRISTOPHER PAUL GEDDES**Error! Bookmark not defined.** – TAKEN IN

MR SHAPIRO READS EXHIBIT P28:

MR SHAPIRO: And number 27, on the 31st of August 2009 Thomas Clarke declared a statutory declaration; a copy of that statutory declaration is produced as P29.

HIS HONOUR: I'll write that in.

MR SHAPIRO: Thank you very much.

HIS HONOUR: Yes.

EXHIBIT #P29 – STATUTORY DECLARATION OF THOMAS CLARKE DATED 31ST AUGUST 2009 – TAKEN IN

MR SHAPIRO READS P29 TO COURT

MR SHAPIRO: Number 28, your Honour – Anne Clark declared a statutory declaration, a copy of that declaration is produced as P30.

EXHIBIT #P30 – STATUTORY DECLARATION OF ANNE CLARK**Error! Bookmark not defined.** – TAKEN IN

MR SHAPIRO READS EXHIBIT P30.

MR SHAPIRO: Your Honour, number 29. On the 19th March 2009 Senior Constable Daniel Newbury declared a statutory declaration. A copy of that statutory declaration is produced as P

ASSOCIATE: 31

HIS HONOUR: I'm writing that in.

EXHIBIT #P31 – STATUTORY DECLARATION OF DANIEL JOHN NEWBURY – TAKEN IN.

EXHIBIT P31 READ TO THE COURT

MR SHAPIRO: Number 30. On the 23rd November 2009 Constable Peter Leggett declared a statutory declaration and a copy of that statutory declaration is produced as P

ASSOCIATE 32.

HIS HONOUR: I'm writing that in.

EXHIBIT #P32 – STATUTORY DECLARATION OF PETER LEGGETT – TAKEN IN.

HIS HONOUR: Thank you.

MR SHAPIRO READS EXHIBIT P32 TO COURT

MR SHAPIRO: Thank you, your Honour, number 30 –

HIS HONOUR: Number thirty one?

MR SHAPIRO: Sorry?

HIS HONOUR: Number thirty one?

MR SHAPIRO: Sorry, thank you. On the 30th of October 2009, Dr Jonathon Isles wrote to Detective Shane Sinnitt, a copy of his letter is produced as P33.

HIS HONOUR: I'll write that in.

EXHIBIT #P33 – LETTER FROM DR JONATHON ISLES TO DETECTIVE SINNITT DATED 30TH OCTOBER 2009 – TAKEN IN

MR SHAPIRO: Yes, thank you, your Honour.

HIS HONOUR: Yes.

MR SHAPIRO READS EXHIBIT P33 TO THE COURT

MR SHAPIRO: And number 32, your Honour, on the 16th December 2008 Dr Roger Wilson who is an ear nose and throat surgeon based in Southport, Queensland, sent a letter to Dr John Isles. A copy of that letter is produced as P –

ASSOCIATE: P34.

HIS HONOUR: I'll write that in.

EXHIBIT #P34 – COPY OF LETTER FROM DR WILSON TO DR ISLES – TAKEN IN

MR SHAPIRO READS EXHIBIT 34 TO THE COURT

MR SHAPIRO: Your Honour – 33. On 3rd February 2009 Dr Roger Wilson wrote a letter to Detective Shane Sinnitt, a copy of that letter is produced as P35.

EXHIBIT #P35 – LETTER OF DR R WILSON TO DET SINNITT – TAKEN IN

MR SHAPIRO READS EXHIBIT P35

MR SHAPIRO: And the last fact, your Honour, on the 25th of November 2009, a mature woman of sound mind declared a statutory declaration, a copy of that declaration is produced as P –

ASSOCIATE: 36.

HIS HONOUR: I'm writing that in. Yes.

EXHIBIT #P36 – ANONYMOUS STATEMENT DATED 25TH NOVEMBER 2009 – TAKEN IN

MR SHAPIRO: Thank you.

EXHIBIT P36 READ TO THE COURT

MR SHAPIRO: Perhaps if the jury can be shown the exhibit, your Honour, it's –

HIS HONOUR: Yes. Well, this is the exhibit. Just show the jury this, and they can see there's a diagram showing – it seems to show the Four Winds in the middle with the bow at the top of the page and the dinghy to the left- that is the port side near the stern and the course said to have been followed by the un-named woman's vessel across the front of it.

MR SHAPIRO: Thank you, your Honour.

HIS HONOUR: All right, well there were some photos at the beginning of all that that I don't know that the jury have seen. James Kerr's photos and the Commonwealth bank photo, and Jane Austin's photo. Now, are the jury to be shown them?

MR SHAPIRO: They are, your Honour. Perhaps if I can ask if we can provide copies for the jury after the lunch break. We do have copies for them, but not –

HIS HONOUR: All right, that's convenient. And there was mention of the Marquesas Islands and the Galapagos Islands – in case the jury don't know, they're in the Pacific a long way away, over on the eastern side – the Galapagos Islands are off Ecuador, and the Marquesas are between Tahiti and Hawaii. All right. Is there anything further before we stop for lunch?

MR SHAPIRO: No, thank you, your Honour.

HIS HONOUR: all right. The jury can make their affirmation and the Court will adjourn to 2.15

5 THE JURY WERE AFFIRMED

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Yes. Mr Ellis – Mr Shapiro?

MR SHAPIRO: Thank you, your Honour, I have some folders for the jury of the photographs that went in as part of the agreed facts and also the photographs that went in through Mr Stevenson yesterday.

HIS HONOUR: All right. Well they can be distributed. Now they'd better be told what's what – is this a folder that's going to be added to?

MR SHAPIRO: Yes, your Honour, so it's, in essence, the same as the previous folder, there's still some sets to be included and added to the folders, but the ones that are in there so far are the photographs that are already in evidence.

HIS HONOUR: So tab 1 is the photo from the security camera at the Commonwealth Bank in Sandy Bay Road?

MR SHAPIRO: Yes, thank you.

HIS HONOUR: And tab 3 is Mr Kerr's – have I got that right –

MR SHAPIRO: Yes.

HIS HONOUR: - tab 3 is what Mr Kerr took?

MR SHAPIRO: Yes. And tab 7 is Ms Austin's photograph, and tab 8 are the photographs that were tendered through Mr Stevenson.

HIS HONOUR: So tab 7 is Ms Austin's photo and – when did she say she took that?

MR SHAPIRO: I'll just refer to the facts, your Honour – agreed fact number 5, on the 27th of January 8:08am.

HIS HONOUR: And that's – yes, all right, so 8:08am – so what it shows is the position of the vessel in the water?

MR SHAPIRO: Yes.

HIS HONOUR: Yes. All right, thank you. All right, what happens now, do we have a witness?

MR SHAPIRO: Yes, your Honour, if I can call Constable John Williamson, if it please.

<**JOHN CRAIG WILLIAMSON CALLED AND SWORN**

<EXN – MR SHAPIRO: Now your full name is John Craig Williamson?……That's correct.

And you're a Constable with Tasmania Police?……Yes.

And where are you stationed?……The Fingerprint Section, Hobart.

Is that part of Forensic Services?……That's correct.

Thank you. Now if I can take you to the 29th January 2009, did you attend the vessel, the Four Winds on that day?……That's correct.

And where was it?……Out at Goodwood.

And what did you do in relation to that vessel on that day?……I conducted a fingerprint examination of the deck.

Okay, and how does – how do you conduct a fingerprint examination?……By applying powder using a brush.

Did you locate some fingerprints?……That's correct.

How many did you locate?……Sixteen.

And where were they?……The majority were on the handrail, which was a stainless steel structure, and there were some on the deck.

So they were all on the outside of the boat?……Yes, that's correct.

The top of the boat. Thank you, and when you locate a fingerprint what do you do?……What we did, I was with Senior Constable Wilson at the time, he photographed the fingerprints, then after they were photographed I used a fingerprint lifter, which is basically a clear piece of plastic with an adhesive side, you peel the cover off, place the adhesive side on top of the developed fingerprint, then you peel it back and seal it with the other side.

Thank you. And what did you do with the sixteen lifts that you took?……They were filed at the Fingerprint Section.

And is it the case that you create some sort of envelope for them to be - …..It's a case envelope.

And do you have that envelope?……Yes, I do.

With the lifts inside?……Yes, that's correct.

Thank you. I tender that if it please.

EXHIBIT #P37 – ENVELOPE WITH LIFTS INSIDE – TAKEN IN

And on the 30th January 2009 did you attend the marine compound in Hobart?……Yes, in Federal Street, that's correct.

Thank you. And you took some photos there?……Yes.

If the witness could - …..Of a inflatable dinghy.

Thank you. If the witness can be shown these photographs. Are they the photographs you took?……Yes, they are.

Thank you. I tender those photos and I also tender a CD with electronic copy of the photos.

EXHIBIT #P38 – PHOTOS OF INFLATABLE DINGHY – TAKEN IN

EXHIBIT #P39 – CD WITH ELECTRONIC COPY OF PHOTOS – TAKEN IN

Thank you. And I'd – yes, I'd ask the photos to be displayed on the laptop, thank you. Thank you. I also have some copies for the jury, can I ask – thank you.

HIS HONOUR: Now these should go in their big folders after the first two sets of photos, is that right?

MR SHAPIRO: Yes, thank you, your Honour. So number 3 on the index. (Resuming): Thank you, constable, can you explain what that first photograph is?…….The first photograph shows the inflatable dinghy.

Thank you. And if you can move to the next photo?…….It shows the same dinghy but just a closer view of the – the front of it.

Thank you……..And this is a photograph of the same dinghy but shows a closer view of the inside of it and showing the left hand side.

Thank you. Thanks……..This photograph shows a mark on the side of the dinghy, which you can see in the previous photograph, where the cursor is.

Yes, thank you for that. And the next photo?……This is basically the same photograph but with a label next to it. This is a closer view of that mark. Again this is a closer view without the bar label.

Thank you. Perhaps you can explain what the grey dust is on the outside of the dinghy there…….It's black fingerprint powder. Prior to photographing it I examined it for fingerprints using powder and brush. I didn't develop any fingerprints on the dinghy.

Thank you. And the last photograph?……The last photograph is taken after luminol had been applied t the dinghy and the camera is in the same relative position as the previous photographs, so that's under normal lighting, that's with the lights turned off and the luminol applied.

Do you think you can use the buttons there just to rotate it to the left? Thank you. Thank you, I submit the witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON SC: When you looked at the dinghy it was obviously in new condition, blue and white, and the colour we see now is because of the large amount of -.....The black powder that I applied.

Right, but it was blue and white before that, wasn't it?.....Yes.

Thank you. And you said you found no fingerprints or didn't develop any fingerprints from the dinghy?.....That's correct.

The dinghy isn't a particularly suitable surface for leaving fingerprints, is it?.....That's correct.

Yes, and what you're looking for when you're fingerprinting is some suitable surface such as glass or stainless steel or something that's going to hold the print?.....That's correct. A smooth nonporous surface like glass, as you said, it would be about the best surface.

Thank you for that. Could the witness be shown – I think it's P09, which is the bundle of photographs of the yacht – yes, they're the ones, thank you. Just take a moment, if you would please, and have a look at those – no sorry, probably the wrong – probably the – do you have that one number 2?.....Yes.

Does that assist you in pointing out where you dusted for fingerprints?.....Yes, the – the majority of the fingerprints were detected on the stainless steel handrail.

Right. Now perhaps you could point to the stainless steel handrail – you're talking about the one on the edge of the boat, the top rail of the boat?.....Yeah, the top rail, the second – do you want me to point so the jury can –

Yes certainly, hold that up, if you would – you show the one you like?.....The top rail, the second rail and the uprights –

Yes.....- all – all around the vessel, and at the rear of the vessel there's a wooden –

Try 11, does that help you?.....No, it's on top of the safety rail, there's a wooden cap –

Right. You can probably see that in, I think it's photograph number 2, look to the left of the photograph and you'll see the wooden cap on the rail that then runs around – do you see that?.....Yes.

And that's what you also fingerprinted?.....Yeah, got prints off.

All right. And you did that out at Goodwood, that would have been at the Cleanlift Marine Yard, was it?.....I'm not sure what it's called, but it's off Negara Crescent.

All right. But it was obviously a slip yard?.....Yes.

All right. Thank you for that. And you photographed these fingerprints you've told us about?.....No, I didn't photograph them, Senior Constable Wilson did.

I'm sorry he photographed them but you developed them?.....Yes.

Power – sorry – powder and brush – Now you – according to your proof you found some on the rail portside and you've got 'red', what does 'red' mean?.....Oh, regarding the – the colour. Is it red and green they have on the boats?

Yes. Yes, okay, so you were being very nautical were you?.....No, I'm not nautical that's why I had red and green.

Right. So left hand side of the boat you found some fingerprints. Are you able to say where though?.....Um –

Could the witness be shown I think the first lot of photographs that went in, P3 please, just take your time.....I would have to look at the notes on the fingerprints lifts to get a closer –

That's all right. I just want you to do your best if you would please and tell me where you found these fingerprints.....Okay, I've got one on top of the wheelhouse.

Right.....Top rail green side.

Whereabouts though?.....That's on the stainless steel.

Right....I did the front of the boat and Senior Constable Wilson did the rear of the boat so we virtually – when we went on the boat I went to the front and worked around the handrail and he went in the opposite direction.

Opposite direction. Thank you for that.....Another one top rail, top rail –

But you haven't recorded whereabouts on the top rail. For instance you haven't sort of said, 'one metre past the mast or one metre from the bow', or something like that?……No, no.

All right. Doing the best you can to remember these were they isolated or clustered?……Look I really can't answer that question. Maybe the photographs that Senior Constable Wilson took may throw some more light on it.

All right, well thank you for that. No further questions of the witness.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR SHAPIRO: Call Constable Lindsay Needham please.

<**LINDSAY CHARLES NEEDHAM CALLED AND SWORN**

<EXN – MR SHAPIRO: Your name's Lindsay Charles Needham?……That's correct.

Sorry, your name's Lindsay Charles Needham?……That is correct.

And what's your rank?……I'm a constable with Tasmania Police.

And where are you stationed?……Forensic Services in Hobart.

Thank you. Now if I can take you back to 2009, you took photos on a number of days for this matter, didn't you?……That's correct.

So you took photographs on the 30th January 2009 at Marieville Esplanade?……Yes.

Took some photos on the 25th September of the Derwent Lane Jetty?……That's correct.

And on the 28th September again at the Derwent Lane Jetty?……That's correct.

And on the 4th February you took some photos of the vessel, the Four Winds, is that right?……That's correct, yes.

Thank you. If you can have a look at these photographs, are those all photos that you took on those dates?……Yes, they are.

Thank you. I tender those photographs and I tender two CDs containing electronic copies of them as one exhibit, if it please.

EXHIBIT #P40 – PHOTOGRAPHS TAKEN BY CONSTABLE LINDSAY NEEDHAM – TAKEN IN

EXHIBIT #P41 – TWO CDs CONTAINING ELECTRONIC COPIES OF PHOTOGRAPHS – TAKEN IN

MR SHAPIRO: Oh yes, and I have some copies for the jury as well.

HIS HONOUR: Now these go in the back of their large folders – is this correct?

MR SHAPIRO: Yes, thank you, your Honour. Index number 5? (Resuming): All right. Can you tell us what that first photograph is of?.....This photograph was taken at the Marieville Esplanade showing the Sandy Bay Rowing Club and a number of poles in the water.

And just to be clear that's – what date did you take that one?.....That was on the 30th of January last year.

Thank you. And the next one?.....That's taken at the same location, this time with the poles in the foreground facing the Derwent River.

On the same day?.....On the same day, that's correct.

Thank you. The next photo?.....This was taken at the Derwent Lane Jetty and it shows the pier or the jetty in the foreground and a number of yachts on the water. One of those yachts – I'll just use the cursor – was identified to me as the Four Winds yacht.

And what date did you take that?.....That was on the 25th of September.

Thank you, constable. And the next photo?.....This photograph was taken on the same date at the same location, it just shows a closer view of the yacht. It was taken from the end of the jetty and I use my cursor just to point to the yacht towards the centre left of the photograph.

Thank you.....This was taken on the same date, the 25th September, at the Marieville Esplanade dog beach looking across the Derwent River and one of those yachts, which I'll just point out with the cursor, was identified to me as the Four Winds.

Thank you.....On Monday the 28th September I re-attended the Derwent Lane Jetty and I took the following three photographs. So this photograph shows the Derwent Lane Jetty and a number of boats on the water. One of those boats, if I just use the cursor, was identified to me as the Four Winds yacht. The second photograph was taken of the boat from the end of the jetty and the yacht, where the cursor is towards the centre right of the photograph, was identified to me as the Four Winds and it shows just a closer view of that yacht.

Thank you. And the – and if you can just, yeah, change the CDs, thank you. When did you take this photo?.....This photograph was

taken on the 4th February, last year, on the Four Winds yacht and that was tied to the Prince of Wales Bay up here in Derwent Park.

Where is that in the yacht?……This is showing the for'ead accommodation area, the floor of the yacht towards the front of the vessel.

And what's that a photo of there?……That's a photograph of the floor with part of the floor and carpet removed.

Do you know what the purpose of that object in the middle of the photo is?……I've since been made aware of it. I believe it's a bilge pump.

Thank you. Thank you, your Honour, I submit the witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

MR GUNSON SC: No questions, your Honour.

<THE WITNESS WAS NOT CROSS-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: Yes.

MR ELLIS SC: Call Caroline Sanchez, please, your Honour.

<CAROLINE ANN SANCHEZ CALLED AND AFFIRMED

<EXN – MR ELLIS SC: Yes, Ms Sanchez, you're Caroline Ann Sanchez?……Yes.

You're a teacher?……Yes.

You live in Ecuador?……Yes.

And you are the older sister of Robert Adrian Chappell?……Yes.

Thank you. In 2009 were you living in Sydney?……Yes.

And from Sydney did you visit your brother in Hobart?……Yes.

Had that been your habit for many years, to visit him?……Yes, I used to come down twice a year for perhaps eight or ten days, yes.

Yeah. And when you came down would you stay with Robert and his partner, Ms Neill-Fraser?…….Yes, for the last six years, mm.

Your husband doesn't – didn't come down with these – for these trips?…….Yes, he came down for – for two of the trips, mm.

Right. When you – do you recall exactly when you came in 2009 for your -…….Yes, I came down on Tuesday the 20th of January.

The 20th of January – thank you. How – how long had it been since you had seen your brother, Robert, then?…….That particular year I'd had commitments and I hadn't seen them for one year before that week.

Right……..Mm.

Did someone pick you up from the airport?…….Yes, Sue picked me up.

Did you get on well with her?…….Yes, we had a normal sister-in-law relationship.

I'm not sure what that is but you got on well?…….Well in this – well in this case it was no problem.

Right. .....Mm.

Okay. Do you remember what she picked you up, what she was driving?.....Yes, the – the Ford blue/grey station-wagon, yes, mm.

Now were you told, or did you know that they had recently bought a boat?.....Yes, I knew they'd been looking for two years. They'd passed through Sydney earlier on and they'd been calling in at cert – at bays all the way up the coast of Queensland and New South Wales looking for a boat.

Yeah.....So I knew that they – that was their idea.

Yes.....Mm.

And had you seen this boat?.....No, not until the – the 25th, mm.

The 25th – the 25th of January 2009 was when you first saw it?.....Yes.

In the days before – in the days between the 20th and the 25th, were you living with them at Allison Street or staying with them?.....Yes, yes, mm.

And was anyone else living there then?.....No.

Okay. Were there dinners with the family and generally -.....Yes.

- catching up with people?.....Yes, we had a dinner with Sue's two girls a couple of nights before and then we had gone to my nephew's home and all had dinner at his home I think the Friday before.

Right. And your nephew's Tim?.....Yes.

And on Sunday was the day that you saw – you saw the boat, do you remember the name of it?.....The Four Winds.

Okay. And about what time of day did you go to it?.....We left about 7:30 that morning.

Where did you go to?.....Went down to Sandy Bay.

Did you take anything with you – well in particular was anything being towed?.....Yes, the dinghy.

The dinghy. What sort of dinghy was that?……It was a solid rubber with – it was white with bluey grey stripes.

Did you get in the dinghy to go to the boat?……Yes.

Was it a long distance?……No, it took about – it wasn't very long.

Do you remember who operated the dinghy?……Yes, Sue was operating it if I remember rightly but Bob was – Bob had had experience. It was a new motor, Bob had had the experience and he was showing her how to use it.

Right…..I believe that was the trip over. It was certainly one of the trips going or coming back.

Did you go anywhere on the boat, on the Four Winds?……Yes, we went down to Adventure Bay.

And did you stay at Adventure Bay, get off the boat at Adventure Bay or - …..Well we were going to anchor there for lunch but it was very choppy so we decided to have lunch on the way back but at Adventure Bay because – I believe it was Bob's first day where he – that we were actually going somewhere and he wanted to practise on the boat, so he was going to put the anchor down, -

Yes……- but he was having trouble, the anchor chain was somehow folded back on itself so then the two of them had to wrestle with it –

Yes……- and then they realised that they would have to get – it wasn't working very well and they would have to get a spare part later on.

Right……But we didn't intend to stay anyway, so we had lunch on the way back, it was smooth again.

Did you go under sail or was it -…….No, no.

- motor all the way?……Motor all the way.

Do you remember what time you got back that day?……Yes, we reached Sandy Bay at 6:00 p.m. that evening.

Yes. And from Sandy Bay where did you go?……We came home, back to Allison Street.

Right. Did you go out again?……No.

And stayed home that night, just a normal night, is that right? Sorry, you'll have to yes for the transcript if you do agree……No, a quiet night, mm.

A quiet night. Was there a plan about the next day involving the boat or was there a discussion about it?……Yes, they were going to work on the boat the next day.

Yes……There was a little bit of problem with the engine and I think Bob wanted to do some electrical wiring, so that was the plan, that they would go down the next day.

And the next day was Australia Day, wasn't it?……That's right.

26th January…….Mm.

Did you see Bob that day?……Yes, I saw Bob that morning. I got up about seven to make a cup of coffee and he was in the kitchen, so just said good morning. I took my coffee, I went back to bed to relax. I was very – physically very tired after the day before, so –

Yes…….And I was on holiday so I was relaxing, I wasn't going with them.

No. Was there a discussion concerning what would happen with you later in the day?……A discussion about what?

All right, were you expecting to be at home all day on your own or were you expecting someone to come back for you?……No, no, Sue said she was going down to the boat with Bob and that she wanted to take me for lunch to the Yacht club, where I hadn't been before.

Yeah……..So she arranged to pick me up about eleven, eleven thirty, which she did.

Yes. And did you then go down with her?…….We went down to have lunch.

To the yacht – yes……..Yes.

And did you drive down?…….Yes.

And when you got to the yacht club what was on for lunch?…….We were disappointed it was meat pies and that was all. So we decided to have it anyway.

Fair enough – and sauce. …….Yes, mm.

Did you have that at the yacht club itself – the pie -…….I'm sorry?

Did you have the pie at the yacht club itself; that is did you – did you sit up on the deck of the yacht club or whatever you -…….Oh no, we sat in the dining room near the bar, yes.

The dining room – thank you. Could you see the Four Winds, the boat, from – from there?…….No, I – I couldn't, and I wasn't looking for it.

No……..I didn't – I didn't think it was close, no.

No. Okay. And after your frugal lunch, where – did you go somewhere?…….No, we took photos of each other outside near the marina.

Yes……..And then we came back home.

Okay. …….To Allison Street, mm.

Was there an arrangement made for you for the afternoon?…….Yes, I was going to Bruny Island –

Yes……..- my niece had a shack there and I was going to spend two days with my ex-sister-in-law, my niece's mother, and my niece's children.

Right. Do you recall what time you got back to Allison Street after the lunch at the yacht club, or the lunch that wasn't?…….Yeah, we got back between half past twelve and ten to one.

Right. And what time were you going to be picked up?…….At three thirty.

Okay. Did Sue stay with you until then or did she go?…….No, she changed – I – I know she changed but I was in my room sort of thinking about what I was going to pack and then she said goodbye and left about – I think about one thirty.

Okay, thank you. Now you mentioned you took pictures of each other, did you also take photographs on the yacht the day before, I mean on the yacht?……Yes, Bob took a photo of me and I took a photo of him.

Yes. And did you make those photographs, the photographs you've spoken of, at and on the yacht and at the yacht club the 26th, did you make them available to police?……To the police?

Yes…….Yes, yes.

Okay. I'll show you – if you could play this CD, please, and tell us if they are the photographs you took?....The first photograph I took as we were approaching –

Yes, we don't seem to have got it up on the screen yet. Oh, thank you……Yes.

Yes, thank you. Yes, getting closer?……Took two photographs approaching.

Approaching in the dinghy, the inflatable dinghy……I took that photo of Bob. Another photo –

Yeah, is that Bob?……Yes.

Yes……And he took one of me.

Yes……He didn't like that one so he took another one.

That's a close up…….That's the photo I took of Sue outside the Yacht Club.

Yes, and that's a close up of that photo. Could you just go back to the last one? So is that a closer view of the photograph before it rather than a new photograph. Thank you. Right, thank you, I have hard copies for the jury, your Honour, whenever it's convenient.

HIS HONOUR: Yes. Now these go in the blue folders behind tab 6.

MR ELLIS SC: Yes, please, your Honour, that's right. I tender the CD, your Honour, and the photographs.

EXHIBIT #P42 – CD OF MRS SANCHEZ'S PHOTOS – TAKEN IN

EXHIBIT #P43 – HARD COPY OF PHOTOS – TAKEN IN

MR ELLIS SC: - So to recap if we could, on the 26th of January, you saw Robert briefly in the morning, Sue picked you up at about eleven

thirty, you went to the yacht club, you went back again, Sue left you at about, I think you said one thirty?.....One thirty, yes.

About that – and you were picked up to go to Bruny Island at about three thirty?.....Three thirty, mm.

Thank you. Now you haven't seen your brother Robert since then, have you?.....No.

Or heard from him?.....No.

Thank you. The next day, the 27th of July did –

HIS HONOUR: January?

MR ELLIS SC: (Resuming): Oh thank you, January 2009, did your niece receive some news?.....Yes, we were on the beach in the morning and we didn't receive the news until about midday, or it could have been two o'clock, I'm not sure about that.

And as a result of that did you go in – back to Hobart when you could?.....Yes, we packed up quickly and went direct to the ferry and I think we – we just missed a ferry, but I think we took one around about five, and then we – the ferry – we took the – Yvonne – we all drove to Kate's home where Yvonne stayed with the children, so that Greg and Kate, my niece, and I could go down to the wharf.

Right. And, to cut it short, I suppose, these terrible events, that Robert was missing and the boat had tried to be sunk?.....Mm.

Okay. For the next few days did you stay in Tasmania staying at Allison Street still?.....Yes, I was due to go back in two days but I changed my flight back and stayed probably another week.

Right. And during – I'm sorry – during that time I expect there were many discussions about what may have happened and what had happened?.....Yes. Yes, of course, mm.

Ms Neill-Fraser of course was a participant in those discussions?.....Yes.

Now you went back to Sydney, do you recall the date that -.....Yes, I returned eventually to Sydney, yes.

Were you in – after you returned were you in telephone contact with Ms Neill-Fraser?.....Yes.

Was that quite frequent?……More frequent than normal because at that stage I was supporting her. Normally I would only be in touch perhaps every two or three weeks –

Yes…….- with them, but in this case quite frequent phone calls, yes, between us.

Do you recall a call, a telephone call with her on about the 8th or 10th March?……Yes, mm.

And what is it that you can recall of that call?……She told me that she had received a phone call from a Richard King, who was a friend of my niece, Claire's. That was on the evening of – it must have been the 26th.

The 26th was Australia Day, would it have been that? The 26th was the day Bob disappeared?……That's right, yes.

Was it the day before or the day, 26th?……I'm a bit confused now.

No, I've confused you, I'm sorry, you were right……It was the first night I was away, so that was the twenty – yes, it was Australia Day.

26th, yes…….The evening when I was in Bruny Island –

Yes…….- Sue was home on her own, -

Yes……- received a call from Richard King. Now she told me in the phone call that she had driven down – she couldn't sleep, that she was disturbed by the phone call, a bit anxious. She drove down to Sandy Bay and looked across at the boat but it was in darkness, so she drove back.

Right. Now had you heard that from her or heard that before, that she had driven down that evening to Sandy Bay?……No, I believe that was the first – I'm very sure that was the first I heard of it, mm.

Right. Did you have another telephone call from her – or with her, I'm sorry, not necessarily from her, with her on the 23rd of March?…….Yes, yes.

And what can you recall of that call?…….Oh, all I recall of that conversation was that she told me that she had not driven back that she had walked back, and I was –

Walked back from Sandy Bay?…….From Sandy Bay –

Following the call from King?…….- walked back to West Hobart.

Yeah, still following the call from Richard King?…….Sorry?

This is still the evening -…….Yes, yes.

- following the call from Richard King?…….Yes.

Yes……..I was surprised and – that she would walk back all that way at night –

Yes……..- around twelve or one or whenever it was.

Yes……..Mm.

Did she say why she'd walked back – did you ask her about it?…….Yes, I – I – because I was surprised and asked her why she said that she wanted the – the exercise.

Right. So this is – this is at (indistinct word) – just to be clear, I'm not sure we are clear, that she had driven down but walked back -…….Yes, and left the car.

Okay. …….Mm.

Right. Whereas before she had told you, when you didn't know that she had gone down at all, she'd told you she'd driven down looked and driven back?…….Yes.

Now she told you that she'd driven down and walked back and left -…….Yes.

- left the car down there?…….Yes.

Okay. And was that call in the morning – did that call take place in the morning?…….Yes, I think it was around ten thirty in the morning of the 23rd.

That's right, and you were in Sydney?…….Yes, mm.

And was it in the afternoon that you were visited by Tasmanian Detectives -…….Yes, yes.

- as it happened – thank you. If it please the Court.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN - MR GUNSON SC: Can I just come back to the conversation that you had with Ms Neill-Fraser on the 23rd of March and she told you she'd walked back to West Hobart, which means she must have left the car down at the waterfront – correct – it logically follows?.....Yes, mm.

Is it possible what she told was confused, in the sense you've reversed the sequence, that she walked down and drove back – think about it very carefully please?.....No, I don't remember, no.

You don't remember now. By that do I take it to mean you're not sure whether what you said to Mr Ellis a moment ago was the correct sequence or not?.....I'm very sure that was the correct sequence, yes.

Is it possible, and please think about this carefully, that you have got the sequence wrong?.....Well if I'd got it wrong she would have had to have walked down and back.

If she'd walked – left the car there earlier and walked down and got the car and gone back that would explain it wouldn't it? You see the car was there the next morning at their home.

MR ELLIS SC: Well I don't know whether Mr Gunson –

WITNESS: The car was there the next morning –

MR ELLIS SC: - was there –

MR GUNSON SC: If you –

HIS HONOUR: Just a minute, just a minute.

MR ELLIS SC: If he's arguing with the witness, putting a proposition to her, he's not a witness himself, in my submission he should be –

HIS HONOUR: Mr Gunson?

MR GUNSON SC: (Resuming): If – if the car was at Allison Street the next morning when Ms Neill-Fraser got the call from the police to tell her that the boat was sinking it had to obviously have been returned to the house, correct. Now - .....Yes, but she –

Go on.....- she definitely told me that she had walked back, that's very clear in my mind.

All right, thank you.....Because I was shocked that it was late at night.

And it sounded extraordinarily strange to you that she'd walked home?.....Well, yes, I thought it was dangerous at that time of night.

And it sounded – it must have been strange for you to think that she left the car down there?.....Yes.

Mmm.....Mmm.

All right, thank you. But in the earlier conversation, the one you told us about that preceded this one, it was either on the 8th or the 10th, explained that she got the call from Mr King late in the evening on the 26th.....Yes.

Said she couldn't sleep, was disturbed by the call and anxious and went down, that's correct?.....Drove down and drove back, yes.

Thank you. Now you've known Ms Neill-Fraser for how long?.....Since the time perhaps a few months after she met my brother.

Right. And is it fair to say this, that you would see her a couple of times a year every year?.....Yes.

And on most occasions you came to Tasmania you spent time with your brother and Ms Neill-Fraser?.....Yes.

And this was a pattern over some, what, eighteen odd years?.....No, it was certainly since 2001, because we lived in Ecuador from '96 to 2000.

All right, and you didn't travel from Ecuador to Tasmania in that time?.....No.

All right. So at least from 2001 onwards you had a -.....Yes.

- pattern of some seven years of visiting?.....Yes.

Twice a year for about a week or ten days at a time?.....Yes.

And you'd stay at Allison Street?.....Yes, mm.

And during that time you've had plenty of time to observe your brother with her and you've seen them together in all sorts of situations?……I couldn't say all sorts of situations because Robert was usually at work and Sue and I – she'd take me out to different places, we were out every day. We might go to her property and spend the day or we might just go out shopping or anywhere. I saw Robert in the evenings.

And when they were- and on weekends presumably?……Yes, yes.

And you have said in the past that Robert and Sue seemed very supportive – supportive of and devoted to each other?……Yes, that was my observation.

Yes. And you said, "As far a I know they've never had serious arguments, but would give their point of view and disagree on things"?……..Yes.

Quite a normal relationship?……Yes, that's how it appeared to me.

And when you were in Tasmania at the beginning of 2009 that was still your impression, wasn't it?……Yes.

And when you were out on the boat with them there appeared to you to be a good supportive relationship?……Yes, that was a happy day, they were – there were no arguments.

No. Sue, I think you said, helped your brother with the problems with the anchor chain that had developed?……Yes, because he couldn't pull it out himself, it needed two people to unravel. I was further back in the boat, I wasn't watching closely –

Yes……..- but it was very difficult and they realised they'd have to buy a spare part, mm.

You also have said that Robert was, in your opinion, was fit enough to manage the boat and was a fit man for his age?…….He was fit but he was not experienced.

Mm……..That was the first, as far as I'm concerned, that was the first day he'd been out and it was hands on for him.

Yeah. And Sue was giving him some instruction on the boat as they went along?…….Yes, yes.

Yes, thank you.....But – yes.

And I think you've also said that during the trip, either two or from Adventure Bay, that Robert was showing Sue how to use the navigator to find the position?.....The hand held navigator, yes.

Right. And that was sort of what, instruction by him to her on how to use this thing?.....Mm hm.

Correct?.....Yes.

All right. You use to work for Wormalds International, is that right?.....Yes, yes.

And that was the – the arm of Wormald that did work with fire extinguishers or another part of the company?.....Well I was secretary to the manager who – he was instrumental in bringing out the jaws of life and he – it was fire prevention really.

All right. And you were anxious to see whether there were adequate fire extinguishers onboard the Four Winds, weren't you?.....Yes, yes.

And you looked around for extinguishers?.....Yes – well I only really noticed one, it was a small one.

Yes. And it was near the stairs?.....Thinking if every I had to use it, I knew where it was.

All right. .....And it was right beside the stairs – that was the only one I really noticed.

Is it fair to say this, that you wanted to make sure that you were safe on the boat, because you asked about the radio and how to use that, didn't you?.....Yes, yes.

All right. Did you actually look around for any other extinguishers or just saw one and was satisfied?.....No, I didn't, after I'd seen that one I knew there was one there and it was in a central position and I didn't look any further.

All right. But you had a good look around the boat, and I think you've said in the past, that you looked at all the ropes and they seemed to be very neat and in order?.....Well it was just a casual glance, I'm – I'm –

But you were on the boat for some hours?.....I've never been on boats before, I'm not really that interested, so I – but nothing was amiss, there was nothing dangling.

Yes. There weren't piles of ropes lying on the deck?.....Definitely not, no.

No. And ropes seemed to be hanging on what they call cleats, sort of hooky things on the mast and things like that, right?.....Mmm.

Okay, that's right?.....They were all in order, yes.

Thank you. Is it correct that the – after this trip to Bruny Island you came back to Sandy Bay went ashore by the dinghy, correct?.....Yes.

And went home. The dinghy didn't go home did it? They left the dinghy - .....No, they left it there because they intended coming down the next morning.

Right. Where did they leave it?.....Well I was looking out to sea I wasn't really looking at what they were doing but there was some – there was a railing and some rocks there.

Yes, railings?.....I think there were some railings, some rocks, or stones, and then a railing. I'm not too clear on this.

Well did you come into the marina or did you come into the little beach?.....No, we came into the shore.

Could the witness be shown P40 please?

HIS HONOUR: So these are Constable Needham's photos at the back of the large folder?

MR GUNSON SC: Yes, your Honour. (Resuming): Have a look at the first photos that are there, Ms Sanchez will you. Does that appear to depict the area where the dinghy was left?.....Yes.

That's where you think it was left?.....I think it was left there.

You know where the yacht club is where you had dinner the following day - .....Yes.

- and there's a wharf along there - it wasn't left along there?.....It's possible. I'm sorry, I don't remember.

Are you sure it was left overnight or taken home?……Yeah, it was left overnight, yes.

You're in no doubt about that?……Sorry?

You're in no doubt about that?……Yes.

Didn't strike you as strange that it'd be left down on the beach, nice outboard, nice dinghy?……(No audible reply).

I want to suggest it went home on the back of the trailer?……No, I don't think so.

You've got some doubt now, haven't you?……Yes, I have.

Yes, so you're not as sure now, are you?……Not now, no.

No, thank you…….No.

All right, thank you. Now the next morning – I'm sorry, that night presumably the three of you had dinner at home?……Yes.

And there was nothing unusual about Bob and Sue that night?……No.

And next morning you saw Bob briefly?……Yes.

And he seemed well, there was obviously no problems?……No.

Nothing going on between he and Sue that you knew about?……Certainly not that I was aware of, I – there was no evidence of it.

And you spent a significant amount of time that day with Sue, she came and got you and took you down for lunch?……Yes. Yes, for lunch, yes.

Yes, and she'd gone off in the morning and said she was going to yacht?……Yes.

Came home?……Yes.

And you had lunch at the yacht club and she seemed well, correct?……Yes.

She seemed happy?……Yes.

And dropped you back home and departed about one thirty, I think?……Yes, yes.

And again she was quite happy?……Yes.

Right. Bob liked a drink?……Yes, he always liked a drink in the evening.

And I think you've said in the past, it was his habit to have a beer and about three quarters of a bottle of wine in the evenings when at home?…….Yes, he'd come home from work and have a glass of beer and then he would have, probably, I would say, average of three quarters of a bottle of wine.

Thank you. …….Mm.

Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson – Mr Ellis?

MR ELLIS SC: I don't re-examine, thank you, your Honour.

HIS HONOUR: Yes, all right, thank you, Mrs Sanchez, you're free to go.

WITNESS: Thank you.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: I call Craig Stockdale, your Honour – volume 2 page 198?

HIS HONOUR: Thank you.

<CRAIG STEPHEN STOCKDALE CALLED AND SWORN

HIS HONOUR: Take a seat. Yes?

<EXN - MR ELLIS SC: Thank you, your Honour. Your Craig Stephen Stockdale?.....Yes.

You're a Constable in Tasmania Police Service?.....Yes.

Stationed at Hobart Uniform Branch still?.....Yes.

And were you so stationed on the 27th of January last year?.....Yes.

And at 7:00am were you given a task to do?.....Yes.

What was that?.....To attend Marieville Esplanade in relation to a yacht sinking.

Were you working with another constable?.....Yes, Constable Shane Etherington.

Thank you. Did you go there?.....Yes.

Were you far away when you got the call to go there?.....Hobart Station.

So you were there in ten minutes later?.....Max, yeah.

What did you see when you got there?.....Looked out into the Derwent and – where the yachts are moored and there was a yacht sinking slightly.

Had you been called to a sinking yacht before?.....No.

Right. Did you speak to someone?.....Yes, spoke to Daryl Balding, who was involved in rowing down there, and asked him to take me out to the boat on his yacht.

And did he?.....Yeah, he did, yep.

Yeah, what did you go out in?……A little dinghy type thing with an outboard motor.

Did Constable Etherington go too?……No.

Okay, just the two of you?……Yes.

And when you got out to this boat about how far from shore was it?……Approximately three hundred metres.

Okay. We know the name of it was the Four Winds, did you take note of that?……Yes.

Okay. Did you go on board?……Yes.

With Mr Balding, what did you see?……Once I got on board, went to where the door is to the wheelhouse, had a look inside.

What did you see inside?……First thing I saw was a knife on the – on the floor –

Yeah……..- as you enter the wheelhouse there. On the three steps walking down there I observed some blood and then further up the boat there was – further up the yacht there was some water engulfing the yacht.

Right, so you could see it actually stepping into it yourself, is that right?……Yes, yes.

Could the witness be shown P3, please.

HIS HONOUR: That's the first set of photos in the thick folder.

MR ELLIS SC: Thank you, your Honour. So would you have a look at photo 21 there, please, constable? Do they appear to be the steps upon which you saw blood?…….Yes.

But are they in the same position as when you saw it?…….No, they've been moved.

Thank you. Now if you look at photograph 22 and 23, is that the blood as you saw it, or as – or do you believe there's been some change from you seeing it and the photograph being taken?…….Well when I first saw it there's been a slight alteration but not a lot.

No, what sort of -…….Yeah –

What seems to have happened?.....It seems like – well I know what's happened, there was water from the Marine Police, they've tried to step over it and there's – there was a couple of drops that got water into it, so it's spread.

So it's been diluted with water?.....Diluted, yeah.

When – when you saw it, it wasn't?.....No.

No. They were fresh – well I perhaps shouldn't say fresh – they were spots of blood?.....Yeah.

Okay. Now did – when you went onboard did you expect to find someone onboard or had you been told anything about the status of anyone being onboard?.....No one knew if there was anyone onboard, so I had no idea.

Now you've told us about the steps, I think I might have cut you off, what else did you see – anything?.....I saw a yellow torch.

Yeah.....Which was located on the right hand side as it – as you enter the – into the wheelhouse.

Yes.....And on – there was some blood located on the – on that torch.

Okay. Anything else?.....No.

No. No other object that you saw on the floor?.....No.

Okay. Photograph 17, while you've got them there in that set, is that the torch that you refer to?.....Yes.

And just go back to the photograph before, 16, there's the torch, was there anything else there?.....Talking about a knife?

Yeah.....Yeah.

Do you see that?.....Yeah.

You said that I'm not told, I was too busy finding photographs. So you saw the knife, you saw the torch, did you see any person?.....No.

Right. Did you call out?.....Yes, I went down and did – went as far as I could and I called out but no one answered.

Did the – did you see any footprints anywhere?……No.

What about on the deck, any there?……None on the deck at all.

Right. And you noticed a key somewhere?……In the ignition.

And did you notice a set of glasses?……Yes.

What did you do then, did you stay on board or - …..Stayed on board and I radioed for marine police to come and assist me.

Okay. Did marine police come and assist you?……Yes.

And do you remember what time it was that they turned up?……Not exactly, it would be in my notebook.

Okay, was it a long time, was it - …..Um, twenty to thirty minutes approximately.

Well you made a note reasonably contemporaneously did you?……Yes.

May he have leave to refresh his memory, your Honour.

HIS HONOUR: Any objection, Mr Gunson?

MR GUNSON SC: No, your Honour.

HIS HONOUR: Yes, look at your notes.

WITNESS: Ten minutes.

MR ELLIS SC: (Resuming): Sorry?……Ten minutes.

Ten minutes. So what time was it that they came?……7:25.

Thank you.

HIS HONOUR: You said you radioed did you use the vessel's radio or a different radio?

WITNESS: Radio, police radio.

HIS HONOUR: Yes, go on, Mr Ellis.

MR ELLIS SC: Thank you. (Resuming): So the marine police – do you know the name of the marine police who turned up?……Chris Lawler.

Yes. And did other people turn up as well to the scene?……Yes.

Where were they from, where were they from?……Can I check my note?

If you can't remember…….Yeah.

If his Honour gives leave.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: No objection.

HIS HONOUR: Yes, have a look.

WITNESS: In relation to the police officers that arrived with the forensics, with Constable Lawler, was Ben Cunningham and the skipper was Craig Jackman.

MR ELLIS SC: (Resuming): Were you present on board when Constable Lawler found something?…….No.

Or located – or did something to something onboard?…….Oh – not.

Okay. Now there was a lot of water there, did anything – was anything found in your presence that might have explained the presence of that water?…….I didn't see anything – explained.

All right. The – did the steps that you'd seen to have blood, you've said that they've been moved in the photograph, did you see them being moved?…….Yes.

Who by?…….That was by Chris – that was by Chris Lawler.

Okay. …….And it was at my request.

Right. All right. Now at 11:50am that morning did you go somewhere?…….Sorry – sorry?

11:50am -…….Yeah.

- did you go somewhere?…….Yes.

Where was that?.....7 Allison Street in West Hobart.

In order to see someone?.....Yes.

Who was that?.....The defendant.

Yeah, sure – the defendant, Sue Neill – Neill-Fraser?.....Yes.

Did you obtain from her a statement?.....Yes.

And I'll show you this document please? Is that it?.....That's it.

Now how was that statement obtained, did you – was it just dictated out in a – screed to you?.....Yeah, we sat down in the – in the loungeroom area, or kitchen/dining room area, and then she – she dictated it to me, yeah.

Okay. And were you – no, never mind – when was it finished?.....1:00pm.

Right. Was there any preliminary talk about what you wanted the statement to cover, what you were asking about?.....Yeah, I just – I just wanted to – to – to find out her relationship with – with Robert, and then details of the yacht, when she's last seen him –

Yes.....When was the last time she spoke to him, any contact at all just so we can ascertain, yeah.

Okay. Did you ask any general questions at the end, you know, is there anything more you can think of, or anything like that?.....Yes.

Okay, and I take it the answer was no by the time you're both happy with it?.....Yes.

And she signed it?.....She did, yes.

Having read it through?.....Yes, yes.

Yes, I tender that, your Honour.

EXHIBIT #P44 – STATEMENT BY SUSAN BLYTH NEILL-FRASER – TAKEN IN

MR ELLIS SC: I seek to read it, your Honour.

HIS HONOUR: Yes.

EXHIBIT P44 READ TO THE COURT

MR ELLIS SC: (Resuming): Now constable, did you ask how Ms Neill-Fraser knew that these – that the pump cover had been opened and an electrical thing had been opened – electrical cupboard had been opened?.....Yeah, we – we had a long discussion and she – she appeared to have an intimate knowledge of the boat.

Right. .....And so she knew where – where everything was on the boat.

But did she say that she had found it opened or had deduced from some other condition of it that it was opened?.....I don't recall.

You don't recall – okay. Thank you, I've nothing further.

HIS HONOUR: Mr Gunson?

MR ELLIS SC: Oh sorry, I think I have – oh of course, yes. (Resuming): Did you notice anything about Ms Neill-Fraser's left hand while you were with at Allison Street?.....She – she had a cut on her left thumb.

And when you say a cut?.....Well she had a bandaid on her left thumb.

Yeah.....I asked her to show it to me and she peeled off the bandaid and revealed a one to two centimetre cut –

Right. .....- on her left thumb. And she was also holding her arm slightly as well but –

Okay. Did she say anything in connection with the – with the cut, that you can recall?.....She said she'd done it recently but she – but I can't recall exactly how she did it.

Right. Did it appear recent to you?.....Yes, it did.

Thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN - MR GUNSON SC: You didn't ask her how the cut had been caused?……I may have, but I don't recall.

And you didn't ask her when she did it?……Yes, I did.

Did you get an answer?……Yes.

Did you say, "When did you do this"?……..Oh she just said, "Recently", but I didn't ask her the hour or the time.

Are you absolutely sure about that?……Yes.

I asked you that because it doesn't appear in your proof, does it?……No.

It doesn't, does it?……No.

No. You'd gone to the house on what you believed was a missing person matter, correct?……Yes.

You were cross-examined earlier this year by me in the Magistrates' Court about your recollections, weren't you?……Yes.

And you didn't volunteer down there, did you, that she had said she had done the injury to her hand or thumb recently?

MR ELLIS SC: Well that's not entirely fair, these are preliminary proceedings and for a witness to volunteer something is quite misleading.

HIS HONOUR: Well –

MR ELLIS SC: He was cross-examined by Mr Gunson and unless my learned friend can point to a question whereby he asked that question it's unfair to suggest to the witness that he's not volunteered it because he has no opportunity to volunteer things he's not asked.

HIS HONOUR: Well look, the jury understand that now. What's the answer, did you say anything about it at the Magistrates' Court, Constable?

MR GUNSON SC (Resuming): You didn't, did you?……About what?

About her saying that the injury had occurred recently?……No.

You didn't, and it doesn't appear in any of your statements?……Yes.

Correct?……Yes.

If I suggested to you that you have invented this you no doubt would deny it, would you?……Yes.

And it doesn't appear in any of the notes you made at the time does it?……No.

And in fact it wasn't until March 2009 that you even record seeing an alleged injury on her finger?……No.

Right. Well you made a statutory declaration on the 27th January setting out your observations of that day didn't you?……Yes.

And that doesn't have any information in it at all about a band-aid on her finger does it?……No.

And you'd agree it wasn't till the 20th March of 2009 that you made a further statement when you revealed this memory?……Yes.

Which has now increased?……Yes.

And you don't find that strange at all?……Well I was taking a missing person's statement.

No, you don't find it strange that your memory of what occurred on the 27th January at Allison Street appears to continue to improve with the passage of time?……I don't find it strange.

Right. Now – because I'm going to suggest to you that she did not say to you the word 'recently' because if she had it's something you would have noted down and thought was relevant wouldn't you?……Not necessarily, no.

You went on board the boat with the gentleman who you told us about, Mr Balding?……Yes.

And you said you saw a carving knife on the wheelhouse floor and you've also said in the past, "It appeared as though it didn't have any blood on it"?……Yes.

Right. And you also said that you – in the past, 'That you only saw blood on the second and third step leading to the middle of the vessel"?.....Yes.

Now is that the second set of stairs into the vessel or the first set? You come down the first step into the pilothouse.....Yeah.

You're in the pilothouse where the wheel is, the internal wheel is, and then you go down into the vessel which steps are you referring to?.....As you've just stated.

The ones down into the saloon?.....No, no.

The ones coming from the deck into the pilothouse?.....I don't have a knowledge of boats so – from the deck into the wheelhouse so the first set or steps.

Right. And you recognise that – or you recall that there was another set of steps that take you further down into the boat?.....The ones that we used in the photo a minute ago.

Let's me quite clear about this; you said when you arrived in the wheel – you looked into the wheelhouse and you observed the steps with blood?.....Can I –

Yes, do you see those in the photo?.....Yeah, those – those steps there, I'm talking about.

Well they're the internal steps?.....These steps are the ones that go from the – the deck down where the wheelhouse is.

Right. And they'd been moved down into the wheelhouse – downstairs – in that photograph they're not in their original place, are they?.....No.

No. All right. .....They hadn't been moved, no, they'd been moved sideways.

All right. Thank you. You said to Mr Ellis that you didn't see any footprints on the deck, were you looking for footprints specifically on the deck?.....Not specifically.

Right. So what you're really saying when you say that is, 'I didn't – I don't recall having seen any footsteps that were obvious but I wasn't looking for any'?.....I didn't see any footsteps.

Well you're not – you didn't go over the whole boat looking for them, on the deck, did you – you didn't walk the whole fifty three feet of the boat?.....No.

No. .....Well that's not true, sorry, I – I did walk all the way around the boat, I didn't see any footsteps.

Were you looking for footprints - footsteps?.....I was looking for anything.

Just concentrate on the questions – were you looking for footprints on the deck?.....I wouldn't say I was looking specifically for footprints, but I was looking for anything that's going to help me.

All right. Did you – did you notice any ropes on the boat lying on the deck at all?.....Not specifically just general yachts – ropes.

Are you a yachting type?.....No.

Right. So your knowledge of yachts is limited, is it?.....Yes.

Have you ever sailed on a yacht?.....Yes.

A yacht this size?.....Yes.

Right. And do you know that generally speaking, people who operate yachts properly keep the ropes neat and tidy so people don't fall over them?.....Yeah, I guess so.

Mm hm. Now thinking back, for instance, do you remember any ropes running from the top of the wheelhouse down inside the boat?.....I didn't note it, no.

Well if there'd been ropes when you got on board the boat going down into the wheelhouse you'd remember that?.....I don't know.

You don't know?.....Well I don't know.

I find it – have a look at photograph – could the witness be shown P9, photo 72 and 73, -

HIS HONOUR: So these are the –

MR GUNSON SC: - 74 -

HIS HONOUR: These are the second set of photos you've got, ladies and gentlemen, behind tab 2.

MR GUNSON SC: - and 75, and 70 and 71. (Resuming): Now you're going to be given two more Constable, and please just take your time for a minute, will you, just take your time and look through these photographs. You can probably orientate yourself by looking at photograph 72, and while you're looking at photograph 72 do you see there the hatchway to the yacht?……Yes.

And we see some stairs there, so there's no doubt about this, they are the stairs to which you were referring when you referred to the blood, is that right?……On 72?

Yep…….There's no stairs there.

You recognise the area, don't you?……Yes.

It's the way into the yacht, isn't it?……Yes.

To the left you can just see the door, can't you?……Yes.

The half hatch that's there?……Yes.

Now I'll come back to the stairs that I asked you about a moment ago. Where you saw the blood, was it on those stairs or the ones that go down into the body of the boat? Is my question causing you some difficulties?…….Yeah.

All right. …….Can I have a look at the other pictures?

Yes, certainly. …….So go ahead with the question again, please?

Sorry?…….Can you ask me the question again, please?

Certainly can; look at the bottom of photograph 72 please?…….Yes.

Do you see there the top of some stairs, as you look into the wheelhouse, or sometimes referred to as the pilothouse?…….That's – that's only stair – it's part of the boat, it's not the stairs.

Right. No, no, then you look further into the boat -…….Right.

- there's the saloon, isn't there, that's the larger area?…….Yeah.

MR ELLIS SC: Your Honour, I think my learned friend and I might need to take a minute of leave that – well when the evidence is looked as to when these photos are taken – they don't purport to be contemporaneous of the time that Constable Stockdale was on board. Now I hesitate to object but –

HIS HONOUR: Well that – that – well I'm aware of that. I expect Mr Gunson is aware of that.

MR GUNSON SC: Perfectly aware of it.

MR ELLIS SC: Oh, all right.

MR GUNSON SC: I'm just simply trying to establish which stairs he was referring to in his evidence – because I don't follow it. (Resuming): Now, look at photo 72 and look at the bottom, do you see the top of a stair there?.....Yes.

Right. Then you see a floor directly in front of that, do you see that?.....Yeah.

Then in front of that we can see an area of the cabin below?.....Right – yes.

To get to the cabin below there are more stairs – and I'm just trying to establish which stairs you saw the blood on – the top ones or did you go into the wheelhouse and look down and see blood on the stairs going down into the main cabin?.....The top ones but they're not there in the photo.

Thank you. I'm still lost – assuming somebody's put them back in the right place -.....Yeah.

- right, they're the ones you saw blood on?.....Well you're asking me if they're the stairs, well they're not the stairs because they're not there.

I'm completely lost. When you got on the boat were there stairs there?.....Yes.

Mm, and was there blood on them?.....Yes.

Thank you. Now you see in photograph 72 there – if you look at the bottom you'll see a rope going down over the stairs – if you look at the top of the photograph coming down over the wheelhouse into the

bottom cabin there's a rope and the first rope I refer to appears to trail across the deck or the floor, do you see that?……Yes, yes.

Were ropes like that when you got on that boat?……I don't believe so, no.

Thank you. And you can't explain why they're like that in the photographs?……I can't.

MR ELLIS SC: Well –

MR GUNSON SC: I take that back. (Resuming): Now have a look at – just before we do that have a look again please at photo 72, do you see that bundle of rope lying there to the right of the photograph underneath a blue - ……Yes.

Do you remember that bundle of rope being there when you got on the boat?……No.

Thank you. Could the witness be shown P3 please?

HIS HONOUR: So that's the first set of photos in your big folder, ladies and gentlemen.

MR GUNSON SC: (Resuming): Have a look at photo 9, now this was taken that morning out on the yacht……Yes.

Do you see the bundle of rope there on the deck to which I've referred which seems to go up to a winch?……Yes.

And did you remember seeing that bundle of rope like that on the winch?……Didn't really notice it, no.

All right. And if you look at photo number 3 please – I'm sorry, 7, have a look at – got photo 7 – ……7.

Have a look at the bottom of the main mast there, there's a great pile of rope there and a piece appears to be going into a hatch running along the top of the deck there and a piece appears to be coming from a winch on the main mast. Do you remember seeing that at the time?……Didn't notice it was out of ordinary.

No, so you didn't notice any of those things?……Well they're ropes on a boat, so –

And you didn't see anything unusual about them?……No.

I see. All right. You went and saw Ms Neill-Fraser at her home at 7 Allison Street in West Hobart, I think you said about eleven thirty, is that right?……Approximately.

Does your note book reveal the time you arrived?……It'd be on top of the statement.

Right. I asked you does your note book reveal the time that you arrived?……No.

The statement says it commenced at 11:50 and it doesn't give a concluding time, does your note book reveal the time that the statement concluded?……I believe the statement does.

Not on the copy I have. Perhaps the original can be handed to me, please. Well the copy I've got, Constable, certainly – this is the original, certainly doesn't show a time it concluded……I believe it does. I'll show you if you like.

Like to look at that and check?

MR ELLIS SC: Top right hand corner of the first page.

MR GUNSON SC: Mm?

MR ELLIS SC: Top right hand corner of the first page.

MR GUNSON SC: Top right hand corner of –

MR ELLIS SC: First page.

MR GUNSON SC: Oh thank you, thank you. (Resuming): 1:00 p.m., thank you. All right, so you finished it at 1:00 p.m. You're not suggesting that in an hour and ten minutes there was just a constant dictation by Ms Neill-Fraser to you, rather I suggest there would've been questions by you and she answered them and you put them into narrative form? Do you understand what I mean by narrative form, telling a story?……Yes. Yeah. What are you asking?

I'm asking you did she sit there and dictate, "I have been in a de facto relationship with Robert Adrian Chappell for seventeen to eighteen years", or did you say, for instance, "What is your relationship with Mr Chappell?" and she would have said, "I've been in a de facto relationship for eight – seventeen -…….Yes.

And you would write down, “I have been in a de facto relationship” – correct?…….Yes.

And similarly, for instance, when there was the question in the statement about knives or guns and things like that, presumably you said to her, something like, “Were there any knives or firearms on the boat”?…….Yes, correct.

And she said, “No they weren’t” and presumably you said, “Did you see any blood on the boat before you left?” and she said, “No”?…….Yes.

So it was really a question and answer put into narrative form?…….Yes.

Thank you. And she at that time, I suggest, was obviously upset?……..Not obviously, no.

But she appeared, I suggest to you, to be very concerned?…….No.

You just found her to be a normal person telling you all of this when she’s been told that her partner is missing – or you didn’t take any notice?

MR ELLIS SC: Well that’s a different question – he was first questioned about her appearance, he’s answered that, and now it’s an argument, in my submission.

HIS HONOUR: Well, Mr Gunson is entitled to put a different question.

MR ELLIS SC: If it please.

MR GUNSON SC: (Resuming): Did – I’ll put it another way – was she by herself?…….No.

Who was with her?…….Family members.

Who?…….I don’t know.

Didn’t ask?…….Well I asked at the time, but I didn’t note it down.

You didn’t put in your police notebook?…….No.

No – you were there as part of a missing person inquiry and treated it as such?.....Yes.

Right. Thank you. I have no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. It was put to you that you didn't recall being shown the cut until the 20th of March 2009 when you made a statutory declaration about it. On the evening of the 27th of January 2009, did you in fact telephone some person?.....Yeah, I telephoned Detective Sergeant Conroy to inform him that I didn't put the cut in my statement because it was concerning me.

Thank you. I've nothing further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: The jury can make their affirmation and the Court will then adjourn until 10 o'clock tomorrow morning.

JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00AM ON FRIDAY THE 24TH DAY OF SEPTEMBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: Counsel– my associate, I believe she's discussed this with you, she's received information from a juror that he's remembered that he went to school with Katherine Chappell and that Timothy Chappell was some years ahead of him at school.

Now that's about all I know. The question is what, if anything, should we do about – or should I do about that? Mr Ellis, do you have any submissions?

MR ELLIS SC: I submit you should acknowledge that the information has been passed on and if that's the extent of it, do nothing further.

HIS HONOUR: Well I should, I suppose, I don't know which juror it is – I suppose we should get the – oh, we do that information, do we – well, I could the – should I get the whole jury in and have that discussion that so that there's no mystery?

MR ELLIS SC: Yes, I think so, your Honour.

HIS HONOUR: Mr Gunson, any submissions?

MR GUNSON SC: I think that's desirable, your Honour. But my preliminary view is that we need to know more about merely going to school with Kate Chappell, it may be that they were in the same class and it may be that they were not. Whether they were friends at the time would be a relevant matter. I just express amazement that this has happened, given that your Honour read out the identities of witnesses and so forth, but there we be.

HIS HONOUR: Yes.

MR GUNSON SC: And we have the fallback position of having two other jurors.

HIS HONOUR: Yes.

MR GUNSON SC: I think we need more information, your Honour.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I don't intend to assume without singling out and cross-examining the juror that he's volunteered the information that is relevant. But –

HIS HONOUR: Well –

MR ELLIS SC: - if your Honour wanted to make doubly sure of that, the he – that she was a person he went to school with and that – that's the extent of the information and he thinks he might affect his being a juror, then there it is.

HIS HONOUR: Well – all right, well the name of the juror is Brian Holding. I think, I've at least got to ask whether he – whether he considers that he can still be impartial. But it's a bit more than that; if – if the – well the test is the same test as for the disqualification of a judge, it's a question of whether having regard to the nature of the contact between the individuals a hypothetical observer might reasonably apprehend a lack of impartiality.

MR ELLIS SC: Yes.

HIS HONOUR: So it's not just a question of what the juror thinks, it's a question of the objective circumstances, so I'm inclined to think I've got to ask a little more than, "Do you think you can be impartial".

MR ELLIS SC: Perhaps so, but on what's been offered now I can't imagine any judge disqualifying themselves.

HIS HONOUR: No. No. Well I suppose the question is how close has your friendship been since you left school, that's the problem.

MR ELLIS SC: Well that's something you've also got to bear in context, that Ms Chappell's evidence wasn't particularly partisan, she was quite generous in praise, when required, of the accused.

HIS HONOUR: Yes. Well I will ask the juror how close the – how close the friendship or acquaintanceship has been since leaving school and see where that leads. Mr Gunson?

MR GUNSON SC: It probably goes further than that and your Honour should ask how close the friendship was at school. I mean everybody has friends at school, some of them we maintain for life, some we don't, we see them every so often and exchange pleasantries. I suppose there's also another way of approach it and ask this rhetorical question and that is, had this been revealed by the juror at the beginning we would have then had the opportunity to consider the position and almost certainly would have challenged him.

HIS HONOUR: Well that opportunity – the opportunity for a pre-emptory challenge has gone, it's a question of whether he ought to be discharged, and –

MR GUNSON SC: That's a factor that your Honour should address in – or consider in making that decision as to whether he should be discharged, and that is had we known that what approach would we have taken and I suspect the answer is we would have challenged him and, quite frankly, he should have revealed it.

HIS HONOUR: Well sometimes names don't jog memories and faces do. All right, well look, I'll get the jury in and ask Mr Holding some questions.

JURY RETURNED

HIS HONOUR: Well, ladies and gentlemen, I'm sorry about this late start, I've received information that one of the jurors went to school with one of the witnesses, or two of the witnesses, and I've being discussing with counsel what I should do about that and I think I need to ask that juror some questions. It's Mr Brian Holding, whichever one – could you stand up please, Mr Holding. Now am I right about this, you've realised that you went to school with Katherine Chappell and Timothy Chappell was at the same school some years ahead of you, is that basically it?

JUROR: Yeah, correct.

HIS HONOUR: All right. I want to ask you a couple of questions. Do you believe that – now that you've remembered or realised these things do you believe that you will have any difficulty being impartial in this trial?

JUROR: No.

HIS HONOUR: Now I need to be a little more inquisitive can you tell me how close your friendship or acquaintanceship with Katherine Chappell has been since you left school?

JUROR: I haven't seen Katherine until today – yesterday in the witness box.

HIS HONOUR: Since you went to school?

JUROR: Since we went to school.

HIS HONOUR: And what about her brother?

JUROR: I couldn't tell you but it would be longer than that.

HIS HONOUR: All right. And when you were at school how close were you to Katherine Chappell?

JUROR: I just knew who she was.

HIS HONOUR: And her brother?

JUROR: Even less.

HIS HONOUR: All right. Well, I'm inclined not to discharge this juror. Gentlemen, is there anything further you want to discuss in the absence of the jury?

MR ELLIS SC: No thank you, your Honour.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: No thank you, your Honour.

HIS HONOUR: All right. Take a seat Mr Holding. Thank you for that, we have to be careful; we'll proceed. Mr Ellis?

MR ELLIS SC: Thank you. I call Marissa Milazzo please, your Honour.

<MARISSA MILAZZO CALLED AND SWORN

HIS HONOUR: Take a seat, constable.

WITNESS: Thank you.

HIS HONOUR: Yes?

<EXN - MR ELLIS SC: Thank you. Your full name is Marissa Milazzo?.....Yeah.

You're a detective constable in the Tasmanian Police Service?.....That's correct.

With the Hobart Criminal Investigation Branch?.....That's correct.

And you were so in January of 2009?.....That's correct.

So you went – when you went on the 27th of January to Constitution Dock?.....That's correct.

At what time of day was that?.....Approximately 2:50pm.

Who did you go with?.....Detective Sergeant Simon Conroy.

And when you got there did you meet anyone else?.....Yes, when I arrived I met with Detective Wilby and Constable Plunkett.

Right. And did you see something there?.....When I arrived I noticed a fifty plus foot yacht and it had the name 'Four Winds' written on it.

And did you and the others go on it?.....Yes, I did.

And how many went on at that stage, do you remember?.....At that stage I recall myself, Sergeant Conroy, Susan Neill-Fraser, the accused, and her two daughters, Emma Meeker-Fraser and Sarah Bowles.

Was that right at the early stage they were there or -.....At some stage Tim Chappell got on the boat but I can't be sure if it was at that stage or not.

Right. Did Ms Fraser point out anything?……Yes, she pointed out a number of things on the boat that had been disturbed.

Did she actually manipulate anything on board that you saw, or can recall?……Yeah, I recall her touching lots of different things on the boat.

Had she been asked not to?……Yes, she had.

And after that you left the boat presumably?……That's correct.

And did someone else come, or was someone else there in order to do something, I should say?……Yes, at some stage Chris Smith from Cleanlift attended the boat and he fitted a temporary bilge pump to prevent the boat from getting more water coming into it.

On – now jumping forward, if you could, on the Thursday the 5th February did you go somewhere?……I did, yes.

Where was that?……At approximately 11:50 a.m. that morning and in the company of Detective Senior Constable Sinnitt I attended 7 Allison Street, West Hobart, which is the address of the accused.

Thank you, was she there?……She was, yes.

Was anyone else there?……Yes, her two daughters were there, Emma and Sarah, and Robert Martin.

Right, and did you and Detective Sinnitt speak to her?……Yes, we had a conversation with the accused and I made notes of that conversation.

All right, and was Detective Sinnitt also making notes?……He was, yes.

And were the – sorry, have you done something to the notes that you made since then?……I've had them typed.

Did you check the typing that they were accurate to your original notes?……I have checked that they are accurate.

Do you have the typed copy here?……I do, yes.

I tender those, your Honour.

EXHIBIT #P45 – TYPED NOTES OF DETECTIVE MILAZZO'S ATTENDANCE AT 7 ALLISON STREET ON 5TH FEBRUARY – TAKEN IN

MR ELLIS SC: Thank you. (Resuming): I want you, if you could please, constable, to read them aloud to the jury and I might ask you to pause at some times -.....Read them all aloud?

- to see what you can remember – yes, please.....Sure.

Your Honour – I'm sorry, I should have said - they're in the papers at 289 –

HIS HONOUR: I've got them at page 289 – yeah.

MR ELLIS SC: But the one that's just been tendered has had a couple of typographical corrections, and that's the copy of what's just been tendered – my learned friend has this copy too.

HIS HONOUR: Thank you.

MR ELLIS SC: They (indistinct word) I don't think. If you start reading from the top please?.....Well –

> *Thursday 5.2.09 at 12:00 noon, 7 Allison Street, West Hobart. Dialled number –*

Do you remember what that refers to?.....To be honest, I can't.

No. Okay. .....

> *Steve and Mary.*

Do you remember who they were?.....Friends of Mr Robert Chappell.

Okay. .....

> *Bob, Robert Crawford Martin, known 1972 when came down from Tarraleah, '72 to '73. Wellington Ski Club, met through ski club. Lived here for thirty eight years. In 2005 left Tasmania. Phone number: 0438106659.*

Okay. And what is that shorthand for – the pieces you can recall?.....We were talking about friends of Mr Robert Chappell.

And next?…….

Depressed after marriage break-up.

Do you remember who that referred to?…….Referring to Mr Robert Chappell.

And next?…….

Anxious to finish project. Passion for cooking, relaxation after work.

Who were – who do those -…….Mr Chappell.

They refer to Mr Chappell?…….Yes.

Yeah……..

Bob was tense.

Again, Mr Chappell?…….Mr Chappell:

Diaries x 2 taken.

Right. And that referred to some transaction, did it?…….That's correct.

What was that?…….The accused handed to me two diaries, a black 2008 and black 2009 diary.

Yes. She volunteered those, did she?…….That's correct.

Thank you. Now what's next, between -…….

Between 3.01.09 and 10.01.09 boat accessed. Recorded in Sue's diary. Bob was petrified of boat getting a bad name and people wouldn't want to go out on it. Discovered on the 10.1.09. 14.1.09 Alex fixed hydraulics. Drinker, one to two stubbies then half bottle of white. He would drink two third of bottle, two cans of Pale Ale, a bottle of white (red) in cupboard where chips were.

I think we know who this refers to, the drinking habits, but what does the bottle of red white – I'm sorry, white red in cupboard refer to do you know?……They – according to the accused they would be on the

boat and were referring to the cupboard on the boat where the chips were.

Okay.....

Where nose bleed was a pool of blood in the cockpit. No financial concerns. Never used computer at home, used computer at work.

Who was this referring to me if you can remember?.....Mr Chappell.

Thank you.....

Looked up weather charts on home computer, that was about all.

And who was that?.....Mr Chappell.

Thank you.....

Said would retire last year and didn't. Intended to finish project. Quality Assurance manual occupied his mind, wouldn't retire till completed it.

Mr Chappell again?.....That's correct.

Were concerned, two rows wanted sniffer dogs in.

What can you recall of that, two rows?.....That, from my memory, was in relation to – after the boat was broken into the accused wanted the sniffer dogs in but Mr Chappell didn't and this would cause the two rows.

I see. And to the next line?.....

Worried about what other people would think.

And who did that refer to?.....Mr Chappell.

Is that still part of the same transaction about sniffer dogs?.....That's correct.

Right, next line please?.....

Gaffer hook fits description of one off Sue's boat. Boat hook in dinghy.

Thank you. And does that bring to mind anything to you?……That was in relation to a gaffer hook that Detective Sinnitt was dealing with that had been recovered so he would have more knowledge of that gaffer hook.

Yes…..

Was one hook on the deck of boat when we all inspected the boat, 27/1/09. Buoy was in dinghy when –

That's buoy?……Sorry?

I'm just – the jury's saying it's buoy?……Oh B- yeah:

BUOY was in dinghy when left the Zodiac. White with white floating rope attached, plain white rope and buoy polystyrene. Ten dollars from boat chandlery, bought recently. Outboard tank was very full, 3 HP.

Being three horsepower.

Other loose tank in dinghy. Four trips. Went out, came back and again.

Do you remember what that was referring to, or what the fuller explanation was?……That was in relation to the accused going to Four Winds on the dinghy and that she made the four trips, being going out to the yacht, coming back to shore and again.

Right. So it's not four return trips she's indicating, it's four – that is, like counting laps in swimming – up down, up down, is four?……That's correct.

Count back. All right, next sentence?……

Ladder closest to Marieville Beach end where Zodiac tied.

Remember what that referred to?……That the Zodiac was tied to that area when she left the Zodiac.

Okay…….

Zodiac on rowing club side, yacht protecting Zodiac.

What does that mean?……That when the Zodiac was tied up to the yacht –

Yep……..- it was on that particular side of the rowing club –

Right…….- and the yacht was protecting the Zodiac from weather.

Thank you…….

Went through and did chart table. May have had cup of tea.

Now is this Ms Neill-Fraser describing her activities on board?……That's correct.

Okay, and was that relating to the day before – not the day before, I'm sorry, the 26th January?……The 26th January.

Laundry, Bob in engine room in direct line with laundry. This started a row. Half mine I bought them in Queensland. Got out –

Do you know what 'them' refers to?……I believe that was about some tools.

Okay, yep……..

Got out fruit cake. Had a very good look at washing machine, goes straight through outlet. That was a worry as it could cause boat to sink. Bob snappy, wanted to take off electrical packaging, external regulator is better.

Do you remember what that refers to?…….That refers to Mr Chappell was working in the engine room and that accused was working on the washing machine, and Bob became snappy because she got in his way.

Mm hm. …….I'm not sure what the electrical packing was about.

All right. Or what the "external regulator is better" refers to now?…….I don't know what that is, yeah.

Okay. …….

Car was parked near toilet block on gravel.

Do you remember what car was referred – being referred to there?…….The vehicle belonging to the accused and Mr Chappell.

Okay. …….

Come in a lot faster than going out in those conditions.

What did that refer to?…….That refers to on the 26th of January that it was a lot quicker coming in to shore on the dinghy than it was to go out from shore to the Four Winds yacht.

Okay. …….

Looked for slip mats in Bunnings.

Who was that – do you remember -…….Pardon?

- when – when - the accused was referring to herself doing this?…….Yes, she was.

And when was she referring to having done it?…….When?

Yes……..At that stage I recall her being a bit confused as to when she'd actually done that.

All right. …….

Can't say when left yacht.

Okay, so you're asking about times that she left the yacht?…….That's correct.

Okay. So that's all tied up with Bunnings, is it?…….That's correct, it's tied up with her leaving the – the yacht –

Yes……..- and going to Bunnings.

Right. So there's confusion about the time or some confusion about the time, and then she said – then she – what's the next sentence?…….

Went straight out to Brooker.

Right. …….

Came back, took trailer off before took Anne to lunch.

Yeah.....

Bunnings, didn't have trailer on. Sue drives slowly.

Okay. So what's she saying there, that at Bunnings she didn't have a trailer on?.....That's correct, she's drove to Bunnings without the trailer on the vehicle.

Okay. Thank you. Then – what's next?.....

Bunnings, drive in, turn left, parked facing building. Light was fading when left Bunnings. Don't know how long I was there, didn't think it was that long.. 16:40 roughly arrived at Bunnings, main entrance near checkouts.

Okay, now is it the sense – sorry if this is not it, that she was saying that she went to Bunnings from leaving the yacht?.....That's correct.

She didn't know what time she left the yacht at first?.....That's correct.

But then there was a fairly accurate time given – well a purported accurate time given "16:40 arriving at Bunnings", can you recall if anything in the meantime had been said to her?.....There was a conversation between Detective Sinnitt and the accused to help determine a time she may have arrived at Bunnings.

Yes?....From my memory that time is something that Detective Sinnitt made a calculation, from the time of leaving the yacht to going to Bunnings.

Okay. Do you now recall whether Detective Sinnitt, and say if you don't, said anything about what other witnesses may have said?.....He did but I can't recall what that is now.

Thank you. So anyway, a time is arrived at, at arriving at Bunnings, and then what's next, "roughly arrived at Bunnings", what's next written?.....

Main entrance near checkouts.

And that refers to what?.....The way she entered Bunnings.

Always someone on door. Wearing hat beige shorts joggers sunglasses cream brimmed hat –

This is her is it?……That's correct.

Yeah……

Looking at timber, slip mats, turned right and looked at paint section.

Is this her at Bunnings?……Pardon?

This is Ms Neill-Fraser describing herself at Bunnings on - …..That's correct.

- on the 26th January?……That's correct.

Yeah……

Went up just about every aisle and did leave via same entrance. Exit same entrance. Called Emma about 8:30pm, called granny first or second.

Granny, do you remember what happened there?……Well at that stage I recall a conversation between the accused and her two daughters were also speaking and from my memory that was a comment that one of the daughters made about granny rang first or second.

Okay……

Called mum, 62237187,
That's mum's number"

Ate –

Being to eat food:

Ate. Richard rang at 9:30pm. Had a shower when I got home. No headlights on when leaving house.

When did that refer to?…….I'm not sure.

Okay. Would that have been referring to Bunnings?…….I can't be sure.

Okay. You can't recall a separate inquiry or conversation about leaving the house and headlights?.....I can't recall.

No – okay.....

Girl with dark hair. Think she just tied a dinghy up. She was walking. A guy on slipway walking across. People wandering around.

When was this?.....That was her response in between a conversation between her and Detective Sinnitt. From my memory, it was when she, the accused left the dinghy, but I can't be sure.

Okay. And was that last leaving the dinghy, the sinking time, with the confusion at first as to -.....Could you repeat that question please?

And was that when she last left the dinghy?.....That's correct.

Whenever it was, the time that she'd been unsure about?.....That's correct.

Okay. Do you recall – no, I won't ask that. Thank you, your Honour, nothing further.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: Thank you, your Honour. You went down to Constitution Dock to be with the other officers, who you've named; are you able to say when you arrived whether the accused and her family members were there or whether they came later?.....They came later.

Thank you. And in fact, a request was made for them to attend to help to determine if anything on the vessel was missing or had been disturbed?.....That's correct.

And who made that request?.....Detective Sergeant Conroy.

Right. Were you present when he telephone for family members to come?.....I cannot recall if he telephoned or if he asked someone else at the scene.

To do that?.....Yes.

All right. But in any event, they turned up?.....That's correct.

And did they turn up as a group or did Ms Neill-Fraser come alone?.....No, Ms Neill-Fraser came with family members.

All right, and your best memory was that it was the two daughters, I think you said, and Tim Chappell, is that correct?.....That's correct.

Thank you. And they went on board the yacht with you and other officers?.....Myself and Detective Sergeant Conroy.

Right. And they were allowed to walk through the yacht and to examine it?.....That's correct.

Were there difficulties getting inside the yacht?.....There was, because some steps had been moved.

Thank you. Which steps had been moved, the first steps into the pilothouse or the steps that go down into the body of the yacht?.....Both.

Thank you. Where were they?.....The first lot of steps going into what I call the wheelhouse –

Yes.....As you walk in they were on the far left wall.

Yes……And the steps going into what I call the main saloon were on the back wall.

Yes, and they'd been moved, so people presumably had to exercise some care in getting down into the yacht?……That's correct.

And is it correct that Ms Neill-Fraser went down into the saloon area?……She did.

Yes, and did you go down there with her?……I went down at some stage, yes.

The question I asked you was did you go down with her?……Yes.

Thank you. And did another police officer go down with her as well as yourself?……Detective Sergeant Conroy.

Thank you. And she had a good look around inside the yacht, didn't she?……She did.

And at this stage she pointed out to you and the other officer a number of problems that she had identified?……That's correct.

And you made a list of those, didn't you?……Sergeant Conroy did, yes.

And you've seen his list?……Yes, and I made some notes myself later that evening.

Right. Now she first of all pointed out that the switches, electrical switches were in the wrong position on the fuse board?……That's correct.

She pointed out that a heavy fire extinguisher was missing from the main saloon?……That's correct.

And she pointed to where it should have been?……That's correct.

In a little alcove just out from the laundry?……Yes.

She said that the wooden floor at the bottom of the steps in the main saloon had been unscrewed?……Yes.

She said that the EPIRB was missing?……Yes.

And she pointed out where the EPIRB should have been on a bracket on the wall in the main saloon?……That bit I can't recall.

Right. She said a torch located inside the cabin and a juice container were not from the vessel?……That's correct.

And she also said that the main mast ropes had been disturbed?……That's correct.

Do you remember any of those main mast ropes coming down inside the cabin through a hatch?……No.

You don't remember that?……No.

She said that the winch handle was in the winch and should not have been there?……That's right.

Is that a red coloured or brownie coloured winch handle on the main mast?……It was red.

On the main mast?……Yes.

Thank you. And she said that the main sheet, which is yacht talk for a rope, had been cut?……That's correct, yes.

Correct?……Yes.

And she pointed out some marks on the main deck?……Yes.

Do you remember what marks she pointed out?……They were like black scuff marks.

And where were they?……On the main deck near the main mast.

Right. We've got the main deck and then you've got the raised portion for the cabin was it on the raised portion or on the deck itself?……Sorry, I'm not very good with boats.

All right, well could we have – if the witness could be shown P3.

HIS HONOUR: That's the first set of photos in your large folders, ladies and gentlemen.

MR GUNSON SC: (Resuming): And I direct your attention please to photograph 7, photograph 8, photo 9, photo 10, 11, 12……Sorry, I don't have photograph 10 here.

You don't?.....No.

Don't worry about it just look at the rest. Now just take your time please and look at them and tell me whereabouts she identified these scuff marks?.....Photograph 7 and 8.

Thank you, just a moment. Now I have 7, perhaps you hold up 7 and show me where these scuffmarks were?.....Just there.

Thank you. Would you hold it up for the jury?

HIS HONOUR: Could you point it to – show it to me now, please?

WITNESS: Sorry.

HIS HONOUR: So just in front of the mainmast?

WITNESS: That's correct.

HIS HONOUR: Yes.

MR GUNSON SC: (Resuming): All right. And these were black scuffmarks?.....They're not black scuffmarks.

And were there many of them there?.....Not from my recollection.

While you've got those photographs, just have a look at photo 7 for me, do you see a pile of rope on the deck?.....Yes.

And just to the side of that air vent, and you see the red handle, that's the red winch handle to which you referred a little while ago?.....That's correct.

And do you see a rope running from the winch on the mast down appearing to go into that hatchway -.....Yes.

- and also, a rope running along the deck going down into the hatchway?.....Yes.

Were they in that position when you were onboard the boat?.....No, they weren't.

They weren't? All right. Could I also direct your attention please – if I just go back a second – you'd surely remember that if they were like that, wouldn't you?.....That's correct, I would.

Yes. Could I also direct your attention to photograph number 12? Now do you – and also photograph number 9 – look at photo 9 first of all? To the right of the entrance to the cabin, or the wheelhouse more correctly, we see a bundle of ropes there?.....That's correct.

Do you see a winch there with the ropes going up to the winch?.....Yes.

Right. Now if you then look at photograph number 12, you'll see the same ropes on that winch – just stay with me for a moment with those, please – do you remember whether those ropes were on that winch at the time you went onto the yacht that day with Ms Neill-Fraser?.....No, they weren't.

They weren't. Now could the witness be shown P9. You can recover those ones from her.

HIS HONOUR: So now she's being shown the second set of photos in your large folder, ladies and gentlemen.

MR GUNSON SC (Resuming): Now I want you, please, to look at photograph number 9 – just bear with me for one moment, your Honour – perhaps in the meantime I could just direct your attention to photograph 11, photograph 12 and photograph 13, were they the marks to which Ms Neill-Fraser directed your attention?.....Yes, they are.

Right. But would it be fair to say this; that if, when she was – sorry, if, when you were on the boat with Ms Neill-Fraser, there were ropes coming from that winch shown in photograph 9, which is in front of you, going down into the cabin, you'd remember that?.....That's correct.

Mm. Just bear with me, your Honour. All right. Thank you. Now you're absolutely adamant about that, there were no ropes running from the area of that winch I've shown you down into the cabin?.....Absolutely sure.

Right. Thank you for that. And Ms Neill-Fraser identified those marks on the hatchway that you've looked at in the photograph?.....That's correct.

And she said to you, "It appears to be a rope mark"?.....Yes.

She said, "It appears to be a rope burn mark"?.....Yes.

And you looked at it?.....That's correct.

Mm. And there were two of them there, but no obvious sign of how they'd been caused?.....No.

Thank you for that. She said that a green piece of rope had also been disturbed or moved?.....The green sheet –

Yes.....- being the green and white rope.

Yes.....That's correct.

Thank you. And where was that?.....As you see it in photograph 9.

That's the curled up one to the side of the wheelhouse?.....Yeah, just as you see it in that photo.

Thank you. Thank you very much. All right, they can go back please? Now you and Sergeant Conroy went to the Port Authority at Constitution Dock and sought information as to whether there was any closed circuit television cameras that may assist you?.....Yes, that's correct.

The purpose of that was to see whether there was any video footage of yachts moored in Sandy Bay, was it?.....That's correct.

That's right, from the Port Tower or something like that?.....Yes.

And you were told there weren't? Were you told there weren't – wasn't any CCTV?.....No, there was footage – oh cameras, I should say, set up in that area where the yacht was moored.

Right. And did you view the film?.....I didn't.

Well was the film taken by anybody?.....No, we're talking about cameras that were set up on the yacht to view the yacht overnight.

I'm sorry, this was – I misunderstood you. You were hoping to have CCTV cameras view the yacht for the night of the 27th?.....That's correct.

Presumably for security purposes?.....Exactly, yes, that's right.

Thank you. And you arranged for that to happen?.....Yes, Sergeant Conroy did, yes.

In your presence?……That's correct.

Thank you. And was that yacht to your knowledge under police surveillance, that is physical surveillance, on the night of the 27th?……Not to my knowledge.

Right, but it was clearly arranged that it would be covered by cameras?……That's correct.

Right. And when was the yacht, to your knowledge, towed to Cleanlift at Goodwood?……I have no knowledge of when that happened.

Right. Well did either you or Sergeant Conroy in your presence go back and view the CCTV for the night of the 27th?……I didn't, no.

Was that film attained by police?……I don't know.

All right, thank you. You also spoke at length with Richard Robert King at his home at Tea Tree, is that right?……That's correct.

And he told you about a conversation he'd had the night of the 26th with the accused about the condition of Mr Chappell's daughter, Claire?……That's correct.

He told you there'd been a long conversation with her about her condition?……I can't recall if it was a long conversation.

Right. Now you went to the home of the accused also on the 4th February, didn't you?……That's correct.

And that was to fill out some basic forms that were needed in a situation where there was a missing person?……Yes, that's correct.

All right. And then you went back on the 5th and you had the conversation that you've described today, is that right?……Yes, that's correct.

Right. Now how long were you there for?……Oh, I can't be sure.

Well do you have your police notebook with you where you no doubt recorded all of this?……I don't believe I recorded the time that I left –

Just answer the question, do you have your notebook with you?……Yes, I do.

Now would you have a look in your notebook and tell me whether you have recorded the time that you left the premises?……No, I haven't recorded the time I left the premises.

And we can assume that 12 noon is the time you arrived there or was 12 noon the time that you commenced to speak with the accused?……12 noon is the time I commenced to write notes.

Thank you. Now when you were there she had her two daughters with her?……That's correct.

And you hadn't her that you were coming?……I can't recall if I did.

The first entry you've got here is, "7 Allison Street, West Hobart, dialled number", what does that mean?……I can't recall.

No idea?……I can't remember, no.

What's the reference to Steve and Mary?……They were friends of Mr Chappell.

Right. Steve and Mary who?……I don't know.

You've then got "Bob" and then you've got "Robert Crawford Martin"?……Yes.

They're two different people Bob and - ……No.

Right…..No, it's the same person.

Right. And he's another friend, Mr Bob Martin?……Yes, that's –

Thank you…..No, he's another friend to Mr Chappell.

Right, thank you. And then you've set out basically how they got to know each other is that right?……That's correct.

"Lived here for thirty eighty years", refers to who, Mr Chappell or the accused?……Mr Martin.

Mr Bob Martin?……Yes.

Okay. And Mr Bob Martin 2005 left Tasmania, is that right?……Yes.

And the phone number I assume is Bob Martin's?……That's correct.

Right. And the comment, "depressed after marriage broke up", that's a reference to Mr Chappell's original marriage is it?……That's correct.

Thank you. Now you took two diaries, the 2008 and 2009, what conversation preceded the taking of these diaries?…….That was in relation to the break-in on Four Winds.

Right. And the accused told you about this break-in on Four Winds?…….That's correct.

Correct?…….That's correct.

But you've apparently taken the diaries, which you've recorded, before you've even recorded the conversation about the boat being accessed – a bit out of sequence, isn't it?…….The notes are, yes.

So if I was reading the notes in accordance with their sequence I should read:

> *Between 3/1/09 and 10/1/09 the boat was accessed, recorded in Sue's diary. Bob was petrified of boat getting a bad name and people wouldn't want to go out on it. Discovered on 9th –*

Sorry:

> *- discovered on 10/1/09 –*

That should appear before "diaries taken"?…….The diaries did come out before – at the same time of that conversation, but I did record it in that sequence.

But you – but you wouldn't have taken the diaries before she'd told you about the break-in?…….No, that's correct.

No – so, it's out of sequence?…….The notes are, yes.

Yes. Any others out of sequence in there?…….Not that I'm aware of.

Right. Did you look at the diary to see whether there was a note about the –

MR ELLIS SC: Your Honour, there's certain aspects of this questioning I'd like to raise with you in the absence of the jury?

HIS HONOUR: Yes, all right. Ladies and gentlemen, would you go to the jury room please.

<JURY RETIRE

HIS HONOUR: Mr Ellis?

MR ELLIS SC: My learned friend is now, it seems, he'll correct me if I'm wrong, moving to seek to establish that the diaries indeed contained purportedly contemporaneous entry, in the nature of diary, concerning this alleged break-in of the – of the yacht. Now in my submission, this is simply a self-serving statement in another form by the accused. There is no evidence that the entry was contemporaneous. There is no evidence that – and indeed, the fact that the accused volunteered these diaries by way of self corroboration, in my submission, underlines exactly the self-serving nature of them. We've made a considered decision not to seek to tender them, in the course of that concern, that there is no independently assessed contemporarity about them, and in my submission, they should not be allowed to be got in by the backdoor, as to – by the examination of the contents of documents not in evidence.

HIS HONOUR: Thank you. Mr Gunson?

MR GUNSON SC: Your Honour, the Crown approached the matter on the basis that the entry is an incorrect entry and that it's self-serving. There's no evidence to suggest that. What you've got is a diary with an entry recording a break-in of the vessel, or believed break-in of the vessel. The question I directed to the witness at this stage it was limited, it was to the effect, 'Did you look at that entry?' – now, there can be no objection to that. What I do after that is an entirely different matter.

MR ELLIS SC: Well the objection is relevant.

HIS HONOUR: Well isn't – doesn't it come back to hearsay; the assertion – the assertion in the diary is a representation as to a past fact and it's a piece of hearsay. The – yes, you can ask did the witness look at the diary, if you ask what did the diary say, you're asking – you're inviting the witness to provide some hearsay evidence.

MR GUNSON SC: That's not what I've done yet.

HIS HONOUR: No.

MR GUNSON SC: And with the greatest of respect, my friend's objection is somewhat premature –

HIS HONOUR: Well we –

MR ELLIS SC: Well, with respect, what could be the relevance of asking the witness if she looked at the dairy?

HIS HONOUR: Well look I don't know but what could be the harm. It's sometimes a very good idea to discuss anticipated objections in the absence of the jury so that the – so that inadmissible evidence doesn't all of a sudden come out so I'm not going to be critical of Mr Ellis for interrupting the evidence for this discussion but we've had the discussion and I think I – there's nothing for me to rule we'll get the jury back and see what happens next.

JURY RETURN

HIS HONOUR: Mr Gunson?

MR GUNSON SC: (Resuming): In the presence of the accused did you examine or look at the two diaries that you were given?……The accused may have shown them to me but I don't recall specifically.

Did you see where the diaries were taken?……No.

Did you ask the accused to direct your attention to any entries at all in the diaries?……Sorry, could you repeat that question?

Did you ask the accused to point out any particular entries in the diaries?……No, I didn't.

All right. She told you she had recorded in her diary though the fact that there had been a break in?……She did.

Thank you. Now you didn't look at that entry whilst you were at the house?……I don't recall, sorry.

Thank you. Did she tell you that the break-in had been on or about the 10th January 2009?……Yes, she did.

And did she tell you what had been discovered in the terms of the break-in?……No.

Well were you not interested in knowing about a possible break-in of the yacht given the circumstances that you were investigating?……Yes.

And you didn't seek to ask any questions about it?……There was mention of what she thought may have been on the boat, but I don't know what the break-in was about.

What did she say about what she thought might have been on the boat?……There was mention about drugs.

Yes…….That's all I can recall.

Well surely that interested you?……I can't recall.

Well you haven't noticed – haven't noted anything in your notes about a conversation about drugs, have you?……Only in relation to two sniffer dogs and the concern from Mr Chappell.

Do I see anywhere in this document the word 'drugs' appearing?……No.

No. Now were there other conversations that you had during this period that aren't in these notes?……Yes, the conversations between Detective Sinnitt and the accused that I didn't write.

So am I right in thinking this is just part of the conversations being forwarded?……That's correct.

And that there were other things discussed which don't appear in your notes?……That's correct.

Well can you recall any other things that were discussed that don't appear in your notes?……Not specifically.

Right. You've got no memory now?……I have some memory.

Well what memory do you have?……There was general conversation between Detective Sinnitt and the accused, as to the exact detail I can't remember, but it was in relation to time – times in relation to the 26th January 2009.

Now the reference:

14/1/09 Alex fixed hydraulics.

What was that about?……The accused stated that on that date Alex fixed the hydraulics to the yacht.

Alex who, you don't know?……I don't know.

Didn't ask?……I can't recall.

But if you'd asked and the name had been given to you you would have recorded it?……Probably.

Well certainly, surely?……I'm not sure.

The entry "no financial concerns" what does that mean?…….That Mr Chappell had no financial concerns.

Yes. Or did it mean that the two of them had no financial concerns?…….I recall it talking about Mr Chappell.

Right. Did you ask the accused how well off she was?.....No, I didn't.

So – but you asked about Mr Chappell's financial concerns?.....On that day we were talking about Mr Chappell.

Right. And what questions did you put to her about his financial situation?.....I didn't, it was Detective Sinnitt.

But you were present when Sinnitt asked the questions – tell me what questions he asked?.....I can't recall specifically.'

Do you recall any of the conversation about finances?.....Some of, just –

Well tell us what you heard?.....If there were any financial concerns – debt – that's what I recall.

Well did you ask, for instance, or did Sinnitt ask, for instance, did he have any money in the bank or did he have pressing creditors or was he likely to get a lot of money from superannuation or -.....I can't –

- any other money or what?.....I can't recall.

And "no financial concerns" is just a shorthand way of recording a conversation about general financial circumstances – is that right?.....That's how I recorded it, yes.

You're not suggesting she said, "No financial concerns" or something like that?.....No.

Thank you. Now about the computer at home, who raised that, you or Sinnitt?.....Detective Sinnitt.

And at the end of the day we go from "he never used the computer at home, as I understood it," .....That's right.

- "but he would then look up weather charts on the home computer"?.....That's correct.

So the first sentence is qualified by the second, is that right?.....Could you repeat that question?

The first sentence, "Never used computer at home used computer at work", is qualified by the second sentence?.....I'm not sure what you mean by that question – sorry.

It adds to it?.....That's correct.

Thank you. Now "were concerned – or we're concerned, two rows, wanted sniffer dogs brought in" – now as I understood your evidence about that, and you'll correct me if I'm wrong, there was disagreement between the accused and Mr Chappell about whether dogs should be employed to check the boat because of some issue about a belief about drugs being on it?.....That's correct.

She wanted it done, he didn't want it done?.....Yes, that's correct.

And he felt that it may affect the reputation of the boat or something like that?.....That's correct.

Thank you. And he was worried about what other people would think - .....Yes, he was.

- if the sniffer dogs got on board and did whatever they do?.....That's correct.

Thank you. Now there's a reference to what you've described as a 'gaffer hook' but which in fact should be a 'gaff hook', what was all that about?.....It was in relation to an exhibit that Detective Sinnitt was dealing with.

That's not particularly helpful, tell me about what was said?.....He had a gaffer hook that he'd looked at that had been recovered and he was trying to get a description of any gaff hook that was on the yacht.

Where was this gaff hook discovered?.....I don't know.

So Detective Sinnitt had found one, or somebody had given him one, and he wanted to see whether one like that was on the boat?.....That's correct.

Right, thank you. And she made it quite clear to you that the discussions or arguments or rows, whatever they might be, about sniffer dogs was after the boat was broken into - .....That's correct.

- as she said on or about the 10th January?.....That's correct.

Thank you. Now could I ask you please to go to the next page and there is an entry about six or seven lines down –

Ladder closest to Marieville Beach end where Zodiac tied.

Now in response to a question from Mr Ellis you said you believed that related to the boat being tied up at Marieville Beach?……Yes, the dinghy, yes.

To a ladder?……Yes.

And that was what she said, the boat had been tied up to a ladder?……Ladder closest to Marieville Beach.

Yes…..I'm not sure if that's exactly what she said, being a ladder.

Right, we'll come back to that. What I suggest this entry relates to is a discussion you had with her about where the dinghy was tied up when she left it on the 26th?……That's correct.

Right. Now what I suggest she said to you was, "It had been tied up at the wharf at the Royal Yacht Club, nearest a metal ladder that was on that wharf, and the ladder was at the end of the wharf closest to Marieville Beach"?…….I can't recall.

Well, did you ever go down to Marieville Esplanade?…….No, I didn't.

Right. Would you have a look at this photograph for me, P40, please, photo 1?

HIS HONOUR: This is the fifth set of photos - the final set of photos in the big folder, ladies and gentlemen.

MR GUNSON SC: (Resuming): Now I assume that you know where Marieville Esplanade is?…….Yes, I do.

And I assume you know where the beach at Marieville Esplanade is?…….Vaguely.

Right. And you can accept that there is evidence that this is a photograph of the end of Marieville Beach and it's obvious to you that there's no ladder there, isn't there?…….There's no ladder in that photo.

All right. Now if I suggest to you again, that it's more likely than not, that what she said to you was that she'd tied up the dinghy at the jetty or wharf at the Royal Yacht Club near a ladder that was closest

to the Marieville Beach end of the yacht club wharf, that's more likely than not?.....Possible, but I can't recall.

All right. The reference "Zodiac on rowing club side, yacht protecting Zodiac" is a reference in fact to the methodology used to tie up the yacht – I'm sorry – tie up the Zodiac, or rubber boat, when it was out at the yacht?.....That's correct.

And what she said was that she'd tied it up to get the advantage of getting out of the wind so that the wind was coming onto one side of the boat she'd go around the other side?.....That's correct.

Thank you. And the next entry – I won't bother to read it – is very much a shorthand form of what she told you happened when she was out on the boat that day for some hours?.....That's correct.

And if I suggested to you that she'd given you a far more detailed explanation than appears there and you just put the basics in you wouldn't argue with that?.....I wouldn't argue with that.

So we can accept there was much more told you, but you just put in what you thought as you got it down as quickly as you could?.....That's correct.

Because you were handwriting it, weren't you?.....That's correct.

Yes, and you couldn't take in every single word that was uttered?.....No, that's correct.

Thank you. And she gave you a very full description of how the day went, didn't she?.....I can't recall any more than what I've written down.

Right, but you wouldn't deny that more was said to you?.....I wouldn't deny it.

Thank you. Now you said in your evidence that she appeared very confused about the reference to Bunnings?

MR ELLIS SC: No.

MR GUNSON SC: No, we've got –

MR ELLIS SC: In my submission that was not said.

MR GUNSON SC: I have a note, 'Appeared very confused about that, Bunnings'.

HIS HONOUR: From memory I think she said something about being confused about the time.

MR ELLIS SC: She said confused and after further questioning it was confused about the time of going to Bunnings.

HIS HONOUR: I've got a note, 'A bit confused as to when'.

MR ELLIS SC: Yes, that's right, not about the going to, when.

MR GUNSON SC (Resuming): Let's clear this up. It's your evidence that she was clearly confused about an issue, what was the issue?……Sorry, can you repeat that question?

Back to the evidence you gave about her going to Bunnings?……Yes.

You said in your evidence, you've just heard his Honour read it, she appeared confused a bit?……About the times.

About the times, thank you. And the ultimate figure or time of 16:40 was calculated as a result of a conversation between her and Detective Sinnitt, was it?……That's correct.

Right. So it was a working back process along the lines of well you left the yacht club at this time, or you left X point at this time therefore you must have probably arrived about that time, is that right?……That's correct.

And she simply adopted that?……Yes.

Thank you. But it was through Detective Sinnitt's calculations that she ended up adopting?……That's correct.

Having been confused originally?……That's correct, yes.

Thank you. And she gave quite a fulsome description of what she was wearing that day?……She did, yes.

Right. Thank you. And just so there's no doubt about it Robin – Robert Martin who is the – referred to at the beginning of those notes was also present at Allison Street that day?……Yes, he was.

And he was present throughout the interview that you and Detective Sinnitt had with the accused?……He was present for the conversation we had, yes.

Yes, thank you. And there is a reference in your notes to, and I read it, "Can't say when left yacht", that was a reference to the time at which she actually left it?……That's correct.

And notwithstanding that then there was the suggestion – sorry, the calculations carried out by Detective Sinnitt to try and arrive at a time that she would have arrived at Bunnings?……Yes, that's correct.

Do you remember much of this conversation, trying to calculate the time?……I do remember some of it, yes.

Do you remember what Detective Sinnitt said?……He had received information that –

I just want you please to tell me what Detective Sinnitt said to the accused?……I can't quote what he said. I can't recall.

But you're in no doubt it was through his calculations, such as they might be, that she ended up adopting 16:40 as the time?……That's correct.

Thank you, I have no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. You were just asked what Detective Sinnitt said and you said that he had received information were you recounting the tenor of what you recall he said rather than the exact quote?……I was recalling –

Getting back to, yes, before you were stopped……Yeah, my version of that conversion.

All right. Could you proceed to give it please?…….I was already aware that at 2:00pm there was one witness that could inform –

MR GUNSON SC: Oh no, no, this is what I - really what I'm objecting to, your Honour, the question is –

HIS HONOUR: Yeah.

MR GUNSON SC: - what this witness said, or Detective Sinnitt said, in front of the accused – we can't have this happening.

HIS HONOUR: Yes, you can't tell us what information that Detective Sinnitt had received. But to the best of your recollection what, in substance, was said – that's – that's the question.

MR GUNSON SC: And with respect the witness said she couldn't remember, therefore it's not – it can't –

HIS HONOUR: Well no, she – what she – she – she was asked a specific question about what Detective Sinnitt said. She couldn't recall precisely what he said. The question is, what in substance did he say – that's – that's a proper question for re-examination.

MR GUNSON SC: What in substance – but she wants to go beyond that.

HIS HONOUR: Well I'm trying to confine her to what in substance he said – and that's Mr Ellis' question, isn't it, Mr Ellis?

MR ELLIS SC: That's right, your Honour, that's it.

HIS HONOUR: Yes. So what in substance did he say – never mind what he knew, what in substance did he say?

WITNESS: I'm just trying to think how I might be able to word this, your Honour. He had a time, and in substance, he was working out

from that time how long it would take to get to Bunnings from the yacht.

MR GUNSON SC: Your Honour, the witness is working out – it should – the answer to the question – she should be asked a direct her mind to is, what in the presence of the accused did Detective Sinnitt say.

WITNESS: I can't re-quote what he said.

HIS HONOUR: Well no, no, no, just – just a minute – just a minute – Mr Ellis?

MR ELLIS SC: No, in my submission, there's no rule that witnesses must be confined to direct speech.

HIS HONOUR: No. And she's – and she's got to be allowed to answer the question as best she can in her own way. But – all right, so the – are you saying that the nature of the conversation involved talking through how long it would take to get from one place to another?

WITNESS: That's correct, your Honour.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Thank you. (Resuming): And you said, as to the substance of it, that Detective Sinnitt had a time, from what did he say, if he did, he had that time?.....He got a time from information received.

Right. And did he say the source of the information?.....A witness.

A witness. So he had a time from a witness?.....Yes.

That he put to or suggested to Ms Neill-Fraser?.....That's correct.

And from that a calculation was made about the time she would arrive at Bunnings?.....That's correct.

Thank you. Now – thank you, your Honour, I've finished that. Now another thing you have put in – that was put to you in cross-examination and you agreed with was you wouldn't deny more was said?.....That's correct.

Now I want to put something to you and let's see if you do deny it was said, namely that Ms Neill-Fraser told you and Detective Sinnitt that she'd been down to the yacht later that evening of the 26th January, can you deny that that was said?……I can.

Thank you. Nothing further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

<THE WITNESS WAS RELIEVED AND WITHDREW

<JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: Mr Gunson?

MR GUNSON SC: The Director tells me that the next witness is to be Constable Kriss Lawler whose proof your Honour will find at page 299 volume 2 I think it is.

HIS HONOUR: Yes.

MR GUNSON SC: And your Honour will also need to have reference for the purpose of this submission to the supplementary volume of material page 73 and 74.

HIS HONOUR: Yes.

MR GUNSON SC: And if I could just paraphrase the Constable's evidence. It is proposed he give evidence about his arrival on the boat, the location on board the boat after it had bee pumped of the cut to the pipe going to the toilet and then he found later another valve or – that is described in page 74, and perhaps I could direct your Honour's attention to the bottom of page 74 where he says –

> *I was present when Constable Cunningham located another seacock which was opened allowing sea water to flow freely into the vessel. The valve was located under the floor in a compartment adjacent to the previously mentioned toilet door. The hatch to that compartment had been lifted most likely by water whilst the vessel was flooded. Attached to that valve was a short length of rubber hose which had been cut. The cut did not appear to have been freshly made. The valve and hose appeared to be no longer in use. I'm of the opinion it was likely part of an old plumbing system that's no longer required, possibly a toilet or similar.*

And then there's the next paragraph where he gives his opinion about the person having to have an intimate knowledge of the vessel Four Winds and it's my submission that whilst he can give evidence as to where it was, that it is was located under some floorboards which had obviously, according to him, risen with the water, it doesn't necessarily follow that a person who would seek to activate that valve would have to have an intimate knowledge of the vessel because of obviously any person with knowledge of a vessel, with – lifting the board, would find the sea cock. It's my submission that

his evidence should be confined to what he observed rather than the opinion he purports to want to give.

HIS HONOUR: Well, there – we;; you're objecting to the whole paragraph beginning " It is my opinion" –

MR GUNSON SC: Yes.

HIS HONOUR: Now, earlier than that, the – he says "the hatch to that compartment had been lifted" then he says "most likely by water whilst the vessel was flooded."

MR GUNSON SC: Yes.

HIS HONOUR: Is there an objection to that?

MR GUNSON SC: He can simply give evidence that it had been lifted.

HIS HONOUR: So you're objecting to him giving opinion evidence as to the cause of the hatch having been lifted?

MR GUNSON SC; Yes. Although I'm on weaker ground there, I suspect.

HIS HONOUR: Well, I just want to begin by noting precisely what you are and are not objecting to –

MR GUNSON SC; I will object – I will object to that because it's mere supposition on his part.

HIS HONOUR: all right. "Attached to that valve was a short length of rubber hose which had been cut". Now, "which had been cut"?

MR GUNSON SC: Which I suspect really should have "had a cut on it". He goes on to say "The cut did not appear to have been freshly made".

HIS HONOUR: Well, that's – well you don't have to be an expert to say that a rubber hose appeared to have been cut and appeared not to have been recently cut, do you?

MR GUNSON SC: No.

HIS HONOUR: So are you objecting to any of that?

MR GUNSON SC: No, your Honour.

HIS HONOUR: All right. "the valve and hose appeared to me to be no longer in use". Are you objecting to any of that?

MR GUNSON SC: Um – he would have to give a foundation or basis for it, which I must say I would assume would be given but he'd have to give that foundational basis before that could be led.

HIS HONOUR: " I am of the opinion that it was likely part of an old plumbing system that was no longer required, possibly a toilet or similar.

MR GUNSON SC: Well again, absent any evidence from him as to whether he traced it through to workout what it was, it shouldn't be given.

HIS HONOUR: All right. Now, is the basis of your objection that – that this is opinion evidence that could only be given by a properly qualified expert and the witness is lacking the necessary expertise or qualifications, is that it?

MR GUNSON SC: Yes, your Honour, because plumbing evidence is some – requires some expertise. If he says, in a proof we haven't yet received, of course, that he is intimate about the knowledge of how plumbing systems work on boats of this size, the situation would be different, but we don't have that sort of proof. So I'm assuming he has such knowledge as he might have as a policeman assigned to marine duties, whatever they might be. Whether they extend to this level of intimate knowledge of boats is an entirely different matter.

HIS HONOUR: All right. Nothing further you want to say?

MR GUNSON: No, your Honour.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Thank you, your Honour. Maybe it is a bit of an absence of proofing. Your Honour, I understand you have the photographs yet to be tendered of Mr Dobbyn, they're in the small folder, and the last set there, and number 17 provides the best view, it seems, of the seacock to which we're referring. Now I had proposed to actually tender that photo through Constable Lawler, who would say that it is an accurate view of the – of the seacock that he

found was – was open, depositing water. And when you look at it's – the seacock itself is of course the object with the blue handle, it has coming off it a green pipe, and then a piece of hose, and what mightn't be appreciated necessarily by just looking at the picture is that that hose ends pretty much where it's shown on the picture, that is cut off there and goes no further. So it's got a cut into the hose – that's just a little bit of hose that comes off the little bit of pipe that otherwise serves no other purpose, hence his assumption that it once did serve a purpose but was replaced. Also that justifies his evidence that unless you knew, because when you look at it you don't know if you open that it's going to let the sea in, so unless you had prior knowledge of that vessel that opening that seacock would let in the sea. Now of course it's a matter of his familiarity with marine vessels, he says he's had seven years with various different types and we've had from Mr Stevenson without objection a recounting of various seacocks and it emerged that almost always they serve a purpose, they come from the engine or something like that.

HIS HONOUR: Now hang on, you said something about seven years.

MR ELLIS SC: Yes.

HIS HONOUR: Oh yes, supplemental proof, yes.

MR ELLIS SC: That's right, your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: So in his recounting of the seacocks Mr Stevenson said before the jury that usually they serve some purpose and this one doesn't, this one doesn't, and so those things together are the basis of the opinion, namely that it was not clearly visible to be a pipe which would let in the sea – I'm sorry, a seacock which would let in the sea because it's only at certain angles when you're right down into it that you can see that in fact the hose is cut off and stops there. It's not obviously connected to anything and it's not serving a purpose so if you didn't have intimate knowledge of the boat you might be going around a very long time looking for seacocks and you'd go to the likely places, as I understand it. So that's the basis of it, your Honour, basically it's another way of saying that it is not immediately obvious and would not be immediately obvious to someone without prior knowledge of the boat.

Now as to the board probably floating off, again perhaps it's a lack of proof but there's a basis in that and that is that it wasn't screwed

down and therefore when water pressure – when water pressure equalises it's fairly notorious that wooden objects would float, that is the water came well over this and so the –

HIS HONOUR: Well it's – well what he can say is that – that it wasn't screwed down –

MR ELLIS SC: Yeah.

HIS HONOUR: - if – if it had been in position when the vessel was flooded there would have been nothing to –

MR ELLIS SC: That's right –

HIS HONOUR: - keep it in position.

MR ELLIS SC: And of course, if that expressed as "could of – could have floated away" I'm equally happy. I don't press the question of probabilities there, if that's – if that's a problem.

HIS HONOUR: Right. In reply, Mr Gunson?

MR GUNSON SC: I just adopt the provisions of the Evidence Act, your Honour, commencing at s76 onwards. That's about – on the basis upon which my submission is founded.

<RULING - HIS HONOUR: Yes, well generally speaking I'm against you, Mr Gunson. S79 is relevant. The starting point is s76(1):

> *Evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed.*

There's an exception for evidence as to an opinion where – under s79:

> *If a person has specialised knowledge, based on the person's training, study or experience the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.*

The witness says that – or apparently is going to say that he spent seven years as an officer within the Marine Division of Tasmania Police so it's a matter of experience rather than training or study. He, in seven years, one can infer, has received some specialised knowledge as a result of experience and in my view that would entitle him to say that if you didn't know the vessel you'd have extreme difficulty locating a seacock that was in a particular place and didn't serve a purpose and wasn't – wasn't connected to any functioning fitting of the boat, et cetera. So far as the freshness of the cut that's a different sort of opinion, that's an opinion that – well under s78(b) –

> *The opinion rule doesn't apply to evidence of an opinion expressed by a person if evidence of the opinion is necessary to obtain an adequate account or understanding of the person's perception of the matter or event.*

We'll hear there isn't an event but there's a matter, there's a length of hose, a very short length of hose, and what the witness apparently wants to say is that the hose appeared - looked like it had been cut to that length and not recently. Now that's a lay opinion but it's necessary for an opinion to be expressed in order to give a proper description of the hose and the un-connected or open end of the hose. Now, so far as the opinion that it seemed to be part of an old plumbing system no longer in use – that's something that someone with 7 years experience of boats would have the experience to say and so far as the hypothesis about the hatch floating off is concerned,

it's not necessary that an opinion be expressed but a thorough description of the hatch and the lack of anything to hold it on, if water came and up to it from underneath, is something that can be given without an opinion being expressed. So subject to that qualification about the hatch, I am of the view that the – all of the evidence intended to be led is properly admissible.

MR GUNSON SC: Your Honour, I don't seek to quibble with your ruling, indeed I don't, but it would seem with respect, that the prosecution is going to have to lead some evidence that accords with s7 (9) as to specialised knowledge, based on training, study or experience and at the present stage we haven't got any of that proofed to us, and I'm not going to object to it being given at this stage being given, orally, but it would seem before it could have any weight, it would have to be led.

HIS HONOUR: Well, it seems to me – well, if want to take any point about the witness's expertise, it seems to me that I should let the – I should get the jury back, we should have the evidence of expertise and at that point, if there is to – I should allow an opportunity – I should offer you the opportunity to cross-examine on the voire dire as to the expertise question if – I mean by determining anything on the papers I'm taking a shortcut, so –

MR GUNSON SC: Your Honour, it's my submission that the appropriate course would be to take the evidence of expertise on the voire dire, it'll be a few minutes I imagine. It may be that I cross-examine, it may be that I don't, we'll just have to wait and see what emerges.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Happy with that, your Honour.

HIS HONOUR: Yes, all right, well in that case the constable can be called.

<KRISS ELLISON LAWLER CALLED AND SWORN ON THE VOIRE DIRE

<EXN – MR ELLIS SC: Mr Lawler, you're Kriss Ellison Lawler?.....Yes.

And an officer – senior constable in the Marine Police?.....That's right.

How long have you been with the Marine Police?.....Seven years in total, the first two years of that were on – were when I was stationed on King Island and five years subsequent to that in Hobart.

Did you have any marine experience before joining them?.....Private experience, not –

Yes.....Not within Tasmania Police, yes.

No, never mind police.....Yes, yeah, I had grown up in – with my family having a small runabout. As I grew older I was fortunate to use – be able to use a friend's father's thirty foot motor sailer, so I was able to use that for four or five years prior to joining the Police Force and intermittently until I moved to the Water Police.

So you were able to sail that yourself as a young man, motor sailer?.....Yes.

Right. And did you become familiar with the workings of boats from that knowledge and other – other that you gained?.....Yes, there was procedures that we had to undertake every time we got on board the boat to get it up and going.

Okay. Now leaving that boat, with your experience with the police has there been any specialised training as to – as to your duties in the Marine Police?.....I hold an unlimited coxwain's certificate, which entitles me to master vessels up to twelve metres in length.

Right.....With that is a diesel endorsement, which entitles me to master diesel powered vessels.

Thank you. And in the course of your duties have you inspected and become familiar with the workings of various vessels?.....Yes, I have.

Okay. Do most vessels have seacocks?.....Certainly the vessels that – that remain in the water do, yes, not necessarily our trailer – trailer vessels have seacocks – well they have the seacock type valve but they're typically for fuels systems and those sorts of things. So no, those that remain in the water certainly all do.

And what's your experience with the seacocks, are they usually attached for some purpose or not?.....It is usual that they're – it's a valve to allow raw water, seawater into the vessel be it for, you know, onboard plumbing systems or engine cooling systems, those sorts of things.

Right. So they're connected to a purpose -.....Yes.

- they're not just there so you can open it and let the sea in?.....No.

Okay. And that's in your experience of many – well how many different vessels, can you estimate?.....Oh, well Tasmania Police own and operate four vessels that remain on the water permanently.

Yes.....Dauntless is a 10 metre catamaran style vessel which is used as our first response vessel in Hobart, and then there's three larger vessels, Vigilant, Fortescue and Van Dieman that are used for multi-day patrols and I've worked on all four of those.

You've worked on all four of them, and does that include maintenance and checking them – safety checking them and so on -.....It does, well none of those vessels are my – my personal responsibility to maintain but I have helped maintain each and all of those.

All right. That will be the evidence then, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson, do you wish to cross-examine?

<XXN - MR GUNSON SC: What specific experience do you have in the plumbing arrangements that operate onboard vessels, say, of the size of Four Winds?.....Oh well that would be the three larger class vessels, I guess, in the Tasmania Police fleet.

Yes.....And as I mentioned before there's procedures that need to be undertaken before you operate one of the vessels; there's seacocks to be opened to allow raw water in for engine cooling systems.

Right. .....And there's plumbing systems on each of those vessels that use raw water to operate.

And what you're saying, onboard the police vessels, those seacocks are closed while the vessels are not in operation?.....Typically, yes.

Typically. And is that typically the case on other vessels used by members of the public or are the boats used by the police different?.....No, boats used by the police would be the norm in my experience. It's my practice not to leave seacocks open when you're not operate – when you're not on board the vessel.

Yes. It's your practice, and presumably that's the practice adopted by Tasmania Police as part of routine procedures is it?.....Yes.

All right. And it doesn't follow logically that all people who own boats of that size do that?.....Well I can't say what all people do, no.

Thank you. But in terms of the actual plumbing systems within a boat do you have any expertise there or claim any expertise there?.....None except to say that they typically – those that allow raw water – sorry, seawater into the vessel are typically for – really only for engine cooling or for toilet plumbing.

Yes. Or for generators that need water?.....Engine cooling, yes.

Yes, thank you. But in respect of the Four Winds particularly with respect to this seacock that you found to be open you say that it was likely to be part of an old plumbing system, would it be fair to say that you didn't trace it through to see what it was?.....There was no tracing it through because the hose was severed.

But you couldn't by looking at the plans of the vessel for instance work out what it had been?……No, I had no access to the plans of the vessel.

You didn't do any of that?……No.

You just simply looked at it and said, "Oh, it's probably part of an old plumbing system"?……There would be no other purpose for it.

Well you believe that to be the case you can't think of any other possibility?……Other than a, like I said, a toilet or an engine cooling system, I can't think of any other purpose. Perhaps – I beg your pardon, perhaps a deck wash system, you know, perhaps a deck wash would be the only other system but again that's a plumbing system.

Yeah, but deck washes are very common through this sort of system aren't they?……Oh, absolutely.

All right. Yes, I have no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS ON THE VOIRE DIRE

<REXN – MR ELLIS SC: Only as to one thing. This wasn't connected to any system, deck wash, toilet, bridge and cooling?.....No. It wasn't connected to anything.

And in your experience, sea cocks are connected to some system?.....Yes.

Thank you. No further questions, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS;

HIS HONOUR: I take it Mr Gunson, you don't wish to call any evidence on the voire dire?

MR GUNSON SC: No, your Honour.

HIS HONOUR: Do you maintain – do you wish to submit that the witness lacks the experience or training necessary for him to be able to give expert opinion evidence?

MR GUNSON SC: No, your Honour

HIS HONOUR: all right. Than we will get the jury back. We will have the jury back in. I'll allow the expert evidence to be given.

THE JURY RETURNED

HIS HONOUR: I'm sorry I kept you waiting, ladies and gentlemen, but we had to discuss something that's now been fully discussed and we can proceed. Swear the next witness.

<KRISS ELLISON LAWLER CALLED AND SWORN

<EXN – MR ELLIS SC**:** Constable, you are Chris Ellison Lawler?....Yes.

You're a senior constable in the Tasmanian Police Service?....That's right.

Stationed with Marine and Rescue Services?.....In Hobart, yes.

In Hobart. And you were so stationed last year in January 2009....Yes, I was.

And in fact how long have you been with Marine and Rescue Services?.....Seven years in total, the first two years being on King Island, as part of my duties there and five years subsequent to that in Hobart.

Thank you. And most of your duties are carried out on boats therefore?.....There is a land based component to our duties certainly, but yes, waterborne activities are significant.

Do you hold any qualifications -.....Yes.

- in relation to boating?.....I hold an unlimited coxwain's certificate with a diesel endorsement.

Thank you. And before you joined the police did you have experience in any watercraft?.....Yes, I did. I grew up with my family owning a small runabout that I was allowed to use and as I got older through my mid to later teens I was fortunate enough that my friend's father allowed us to use a thirty foot motor sailer that belonged to him.

Right, and you two young blokes operated that, is that right?.....Yes.

And did you look at the safety aspects and the running of that boat and others since you've joined the Police Force?.....Yes.

Thank you. Now were you recalled to duty at about 7:00 a.m. on the 27th January?……Yes, I was.

And did you go somewhere?……Yes, we travelled from – in the company of Constable Craig Jackman we travelled from the Domain slipyard to Battery – to the moored vessels at Battery Point on board police vessel Observer.

Right. And did you go to – what did you notice as you – as you did that?……As we approached the moored yachts off Battery Point I could see a white yacht riding in a heavily bow down position on the – toward the outer – outer bounds of the moorings.

Was it attached to its mooring?……Yes, it was.

Okay. Did you note the name of the vessel?……It was Four Winds.

Did you go alongside it?……Yes, we did.

And what did you find?……When we came alongside there was another police officer there already I believe and another male and as we – when we came alongside I climbed on board the vessel.

And getting on what did you see?……From the cockpit area I was able to see inside through the – through the wheelhouse, if you like, the helm station. I could see that beyond the helm station the vessel was largely flooded.

Did you decide to do something?……Yes I did, I decided it was appropriate to have a look through the vessel to see if there was anybody on board, so I moved from the cockpit through the – down some stairs into the helm station –

Yeah……..- and then down a – down another step into, what I would describe as the 'saloon', and once I got into there the water was roughly waist deep, and I searched forward through the vessel there, the water got deeper obviously as I – as I moved forward through the vessel.

Right……..I could feel, as I sort of felt around there was – there appeared to be floor panels lifted and it wasn't all that – it wasn't all that easy to walk through.

Okay. Did the – it may not have, did the angle which the boat was at, being bow down, and you're getting into deeper water as you move along, indicate anything to you about the source of

water?.....Nothing about the source of water – I guess I assumed it was probably coming from – from the – it was coming in through the front somewhere, because you know, there was a – clearly a waterless space at the back, and as I – after I'd searched through the – the forward section I moved back through the – the galley toward the stern and just beyond the galley the water level had dissipated to near nothing by then.

I see. Did – were you joined by further police personnel?.....Later in the morning – well I say later, soon after, I guess, we'd called from – for some assistance from – from colleagues to help pump the vessel of water.

Yeah. Did you understand that you were looking for anyone onboard?.....I wasn't positive I was looking for anybody onboard, but it wasn't – when I climbed onboard it just wasn't a usual scenario – it's not common to find vessels sinking on their mooring, and you know, to compound the unusualness of it, I guess, was the fact that when we got onboard everything was unlocked and the boat just appeared sort of untidy. There was – there was just enough in my mind that made me think I – I should go through and have a look and see if there's anybody here.

Okay. You didn't find anyone, take it?.....No, I didn't.

And what, so far as you're aware of course, became the priority in respect of the vessel?.....After I'd discovered there was nobody onboard the priority was to – to save the vessel from sinking.

And was that achieved?.....It was, yes, we – we had some mechanical pumps brought to us by colleagues and – and some assistance provided by Tas Fire Service.

Yes.....And in addition, a local business from Battery Point came out and provided – provided a pump to us as well.

And how long was it before you could say you were winning?.....It took – it took a reasonable amount of time, I can't be certain how long it look. I would say it took us, you know, close on an hour, you know, to see a significant reduction in the water level in the vessel.

Okay. Eventually when most of the water was pumped out did you search for the source?.....Yeah, I did. As the water level got lower I began to hear the sound of trickling water and I was able to trace that to a toilet or to a pipe adjacent to a toilet on the – in a bathroom on the port for'ead quarter.

And what did you find there?……There was – next to the toilet there was a hose that appeared to have been – well didn't appear to be, that had been cut and water was flowing into the vessel freely through that hose.

And so presumably by then the water was below that hose?……Yes.

Would there have been a point in your experience on the vessel when it would have been above the hose?……Oh, definitely. When I first got on the vessel the water level was, you know, above that hose, absolutely.

All right, now if you could look at P3 please and photograph 64 –

HIS HONOUR: That's the –

MR ELLIS SC: Large volume, ladies and gentlemen, the first set of photos. (Resuming): As always I'm out of – one too late, perhaps 53 please, Constable Lawler. Does that seem familiar to you?……Yes, the door on the left of that photograph is the door into the bathroom/toilet.

Okay. And 54 is that the scene as you enter the toilet?……Yes, that's right.

And as you enter did you – could you see the source of the water?……I couldn't see the source of water, no. No, it's – the pipe I'm referring to is over behind that – behind that toilet, or beside the toilet I guess, between it and the cupboard.

Right. And is that show, not in 55 but – not in 56, 57?……Yes, that's the hose I'm talking about.

Okay. So that's a view of the far side of the toilet, a close up view of the far side of the toilet, I suppose?....Yes, if you were standing facing the toilet, that would be on the left of it.

And that pipe is not immediately apparent to you as you enter the toilet area?....No. No it's concealed by the toilet itself.

Thank you. And photograph 57 shows still some water coming out, and 58 a closeup of the pipe as you found it?....Yes.

Now, there's actually a water flow shown there – was it heavier than that when you saw it?....Oh, water was flowing as the diameter of the pipe when I saw it.

Right. Whooshing in?....Yeah, absolutely it was – it was as – you know, as fast as the flow could be.

Did you take some steps or were you able to take some step in relation to that?....Yes, I located a tap – a sea cock behind the – that cupboard face.

Yes, when you say "that cupboard face" is that the one shown in photograph 55?...Yes, as you look at that – as you look at those cupboards in photograph 55, if you were to open the door on the right and then you would find that sea cock further round to the right behind the cupboard face.

Okay. And by sea cock – what do you mean?...I mean a valve, a stop valve that would –

Sorry – you go - ....No – that would allow sea water to come into the vessel for whatever reason.

And no doubt there are different sizes but is this typical of the mechanism of it?....Yes, it is.

I'll show you that so you can show us how they work please?.....That is what typically would be referred to as a sea cock or a stop tap, maybe – it's a – the handle is simply a 90 degree turn to operate it and "Open" with these valves is always in line with the hose itself and naturally 'closes' is across it and they operate – it operates by spinning a ball, if you like, inside of the valve that has a hole drilled through it, so when it's in that position, it allows water to flow through, and as you close it off, it turns that ball 90 degrees and stops the water flowing in. Obviously that ball's got very small clearances inside to make it water-tight.

Yes. All right, I tender that, your Honour.

EXHIBIT #P46 – SEACOCK – TAKEN IN

MR ELLIS SC (Resuming): And in relation to the seacock that you found in the cupboard that was connected I presume to the hose which had been cut what did you do?.....I – I shut it down as best I could. It was – I was able to close it I would say two thirds of the way before it became quite stiff.

Right.....And it was stiff enough that I needed to get a – I used a multigrip style tool to get some leverage on it to try and close it off properly.

All right. What, in your experience, makes these things go stiff, they're brass?.....They can – if they're left open they can – small muscles or seaweed can grow inside the valves making them difficult to close.

And this was, as far as you could tell, raw seawater that was coming in?.....Yes.

Thank you. Okay. Before we leave that, those photographs showing a flow of water, was that what you could achieve, the best you could achieve?.....Yes, I couldn't get it – I couldn't get it completely closed but those – that was as best as I could – I could get it to close.

Yes.....So there was still, you know, there remained that small trickle coming into the vessel when I'd finished with it.

Now did you find any other source of water coming in?.....Yes, we – as the water level –

I should ask who 'we' was at this stage, who was looking, if anyone, with you?.....Yeah, on the vessel with me at that stage was also Constable Ben Cunningham -

Yes.....- among other police officers. As the water level in the vessel had, you know, almost been reduced to nothing through the pumping mechanisms we had in place we could hear more water trickling into the vessel and I was present when Constable Cunningham located another seacock in a floor compartment adjacent to that toilet.

Okay. Is it shown – you've got the photos there, is it shown in photograph 53, the compartment that you refer to which – of the seacock?.....I can't be sure if that's the compartment there of it's one slightly after that – slightly back toward the saloon.

I understand, yeah. .....It was – it's in that – if it's not that compartment there –

Yeah.....- there's another – there's another opened compartment slightly toward the stern of the vessel from there.

Okay. So it's that sort of compartment?.....Yes.

Perhaps if you could have a look at the photograph – well no, first I'll – I'll just show you another photograph, which isn't in evidence yet – does that appear to be a photograph of the – of the sea – of the compartment to which you refer?.....Yes, it is.

Thank you. I tender that, your Honour?

EXHIBIT #P47 – PHOTOGRAPH OF SEACOCK COMPARTMENT – TAKEN IN

MR ELLIS SC: (Resuming): And I ask you, just – just to – just keep that for a minute, Constable Lawler, after the exhibit number is put on it, and go back to photograph 50 of Constable Redman's photos that the ladies and gentlemen have been looking at in that series -.....You did say 50, is that right?

Yes.....Yeah – yes.

And does that help us?.....It's certainly not the – not the compartment right up in the – in the bow there, the triangular shaped compartment.

Yeah.....There is another compartment further – further back toward the – the stern from the compartment you can see at the bottom of photograph 50.

Okay. All right. .....No, I'm sorry, looking at 53, I'm confident it's – it's inside that compartment.

Yes, there are features in common, aren't there, with the photographs -.....Yes.

- that you have in your hand?.....Yes, it is.

So we can say that the one in 50, and the one in 53, which is closest, I think to the compartment, is the – is the one in question?.....Yes, that's right.

HIS HONOUR: So the – the floor compartments closer to the photographer in photos 50 and 53 are the ones –

WITNESS: Yes.

HIS HONOUR: - that you're talking about?

WITNESS: Yes.

MR ELLIS SC: (Resuming): Right. We haven't got to the stage where we can tender copies, I don't think, of the – yes, we've got some copies for the jury, your Honour, of photograph 17, the photograph that the Constable has identified, so perhaps they could be distributed, thank you.

HIS HONOUR: All right. What you're getting, ladies and gentlemen, should go to the back of the smaller blue folder of photographs, right at the back, and at this stage it's exhibit P47 but it's got the number 17 on it.

MR ELLIS SC: Thank you, your Honour. (Resuming): So is this the view as you saw it?……Yes.

Can you describe what we see there then?……The – there's a number of hoses in there clearly but the valve to which I'll refer is the one basically at the centre of the photograph with a blue handle.

All right……And the greenie coloured oxidisation on top of the valve.

Okay. And from the greenie oxidised brass or metal extends a hose?……Yes, that's right.

And how long does that hose extend?……At the point where you can see the small white piece of wire I think it is, just at the bottom or below it on the photograph, it ends about there.

It ends about there…….Yes.

So what purpose does it serve, if any?……In that form it would serve no purpose.

Right. And was this letting (indistinct words)?……It was, yes.

It had been opened?……Yes.

Okay. So in your experience do seacocks let in water usually serve a purpose on vessels?……Usually they do, yes.

What sort of purposes do they serve?……Typically they're for plumbing systems, like a toilet for argument sake that might use

seawater for flushing, for a deck wash system, for a hose that would pump seawater on to help clean the vessel or for engine cooling system.

Right. So this – and when they're used they're connected obviously to those systems?……Yes.

So the presence of this, not obviously connected to anything and not serving any obvious purpose, what did that indicate to you?……It – I thought that it had been at one time or another part of some form of plumbing system but it was – that system was clearly no longer in use.

Yeah, all right. Now we see the compartment apparently uncovered did you see any evidence of there having been a cover?……I don't recall having seen the specific cover for that hatch.

Right. Do you have any opinion as to what may have happened to the cover had there been one?……I think that it was – it was likely that it floated off when the vessel was full of water because as I walked through the vessel there were other floor panels that had lifted –

Yes……- that I assumed for the same reason, so I'm of the view that it floated off when the vessel was full of water.

All right. Is that not unusual that compartments would be covered simply by a cover that stays in place by gravity?……Absolutely, gravity holds those sort of – those hatches in place, they're typically not fastened in any fashion.

So access can be gained to them quickly, I presume?……Yes, they're usually covered by carpet, so it would be if you needed access it would be a matter of lifting some carpet and up would come the panel.

So is it the case that in your opinion this was an unusual feature, a seacock connected to nothing, is that right?……Yes.

And not an obvious thing either because it – well would it have been – to know it was there would that require any particular knowledge of the vessel in your opinion?……I would've thought to know that was there an intimate knowledge of that particular vessel would've been required.

Thank you.....Certainly looking at it from above it wasn't obvious that it was there in fact or that the pipe went to nowhere.

No, or that it would be a source of running water should you wish to introduce it to the vessel?.....Not at all, not at all.

Thank you. Oh that's – yes, my learned junior reminds me – this little pipe that we see coming off the seacock, it seems – you say it ends there, was that ending in a cut?.....Yes, it'd been cut at some time.

Did that appear to you to be a fresh cut?.....No, no, not at all.

As opposed to the one on the toilet, did that appear to you to be a fresh cut?.....No, no, there was very obvious differences between – between those two, this one had been cut some time ago.

Okay, and the one in the toilet fresh?.....Appeared very fresh.

Thank you. Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: Thank you, your Honour. Mr Lawler, if a yacht that had been built in the nineteen eighties was modified to change its plumbing system, for whatever reason, there are two things that you would do with a seacock such as that you've described. First of all, you would simply make sure it was in the off position and cover it up – correct?.....Yes.

Or alternatively, you could remove it, but that would mean that you're going to have to patch the hole in the hull?.....That's correct.

And the cheapest and more practical outcome would be simply to leave the seacock in situ not being used?.....That would be right.

And that wouldn't be terribly uncommon on older boats, particularly those that have modified?.....It's not something I've seen, but I can't – I wouldn't expect it would be uncommon, no.

Because the expense of removing it would far outweigh any other cost, wouldn't it?.....Maybe it would, yes.

You're going to have to patch the hull, aren't you?.....Yes.

And if the vessel was in survey, for instance, you'd probably have to have it resurveyed to satisfy all (indistinct words due to coughing)?.....I don't know whether you'd have to have it re-surveyed or not.

But in any event, that's a possibility. Now, of course, you've got no idea as to whether on the 26th of January 2009, or on the days previous, the hatches that were obviously used there, were open or not?.....No.

No. And you have no idea what works were carried out on the boat by the owner or anybody else in the preceding days?.....No.

Thank you. Now the way in which this particular toilet was fitted on the boat, and which is depicted in photographs 53 – sorry, 54 and 57, it's not particularly unusual, was it?.....I wouldn't think so, no.

No. In fact, the methodology by which the toilet has been fitted onto that boat is a very common methodology, you've got to get the water to the toilet -.....Yes.

- and the water has got to come through a hole in the hull?.....Yes.

Through a seacock into a hose and get into a position where it can then be flushed through the system?.....Yes.

Pretty stock standard stuff, isn't it?.....Yes.

Thank you. And the actual fittings that were used, the handle you've described is a stock standard fitting?....Yes.

Right. Seacocks on boats such as a cruising yacht are commonly concealed, aren't they?.....Yes.

They're concealed either behind cupboards or a – in the floors – correct?...Yes.

They're pretty ugly things, aren't they?.....Absolutely.

And whilst on commercial boats they may be out in the open, the common practice is to conceal them by one means or another on pleasure boats.....Yes.

And where sea cocks are coming in from the hull, it is important that the owner or the operator can have quick access to the seacocks in case of emergency?.....I would think so, yes.

And the last thing you would want to be doing in an emergency with water coming in, from say, a sea cock that's failed or become faulty in some way, is having to screw off a lot of panels to get to it?...Yes.

And you'd agree with the proposition that most of them are behind cupboards with quick access panels?....Yes.

Thank you. Now you arrived on the yacht when there was one uniformed constable onboard?...Yes.

And that was Constable Stockdale, wasn't it?...Yes.

So you're the second police officer to arrive....That's right.

And when you got on board, did you see any ropes coming from a winch on the starboard side of the vessel going down over the top of the cock pit....I don't recall seeing any, I didn't take any notice.

Can I show you – I'd ask the witness to have a look at P9 please. And if you would look at photograph 72, 73, 74 and 75 –

HIS HONOUR: This is the second set of photos in the large folder –

MR GUNSON SC: Just take your time please. Which one have you got in front of you?....74.

Please start with 72 would you?...I don't have 72. I go from 71 – 74. It's out of order.

Just take your time.....72, you asked, is that right?

Yes.....Yes.

Would you please look at 72 for me.....Yes.

Now that shows a view of the cockpit of the vessel leading down into the saloon, is that right? Or more correctly it's the beginning of the cockpit going down into the wheelhouse or pilothouse -.....Yes.

- then going down into the saloon?.....Beyond that into the saloon, yes.

Right. And presumably when you arrived there were steps as we see in the photograph at the bottom, they were still there?.....Yes.

And presumably when you went down into the saloon the steps were still there?.....I think the steps – I can't be positive but I'm fairly sure the steps weren't – weren't in place out of the – out of the wheelhouse into the saloon.

All right, so that would be the bottom set of steps?.....Yes.

All right. Now – I don't want you to speculate about these ropes and anything at all about them, but you see there's a rope running from a winch on the starboard side down into the – through the wheelhouse or pilothouse down into the saloon?.....Yes.

And you see at the bottom of the photograph there's a rope that appears to run from the cockpit down into the pilothouse and then continue on down into the saloon?.....Yes.

Have a look then, please, at photograph 73.....Yes.

And you get a closer view of that?.....Yes.

And have a look at photograph 74.....Yep.

And photograph 75……Yes.

I just want to ask you this question, were those ropes in that position when you went on board that boat? It'd be something you'd remember, wouldn't it?……I don't recall – I don't recall ropes getting in my way.

And those ropes are in a position where they would get in your way, wouldn't they?……One of them I'd have thought would have.

Yes. And there's no apparent reason for those ropes to be hanging down from a winch into the pilothouse and then into the saloon?……Sorry, looking back at photograph 73 – –

Yes, thank you……- to go back to those photographs, I wouldn't have had difficulty getting beyond that rope.

You wouldn't have had difficulty?……No.

But it's the sort of thing you'd remember wouldn't you?……Oh –

MR ELLIS SC: Your Honour, can I just have a quiet word to my learned friend?

HIS HONOUR: Yes.

MR GUNSON SC: (Resuming): But they weren't there in that position when you were there?……I can't be positive whether they were there or not.

And similarly, if you look please at photo – no, I don't need to go there. Just to come back to the position a disused seacock is likely to be perfectly safe in the position in which it's installed in the enclosed position – sorry, in the closed position unless there's some catastrophic failure of it?……Yes.

Thank you. No further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Mr Shapiro, your Honour.

HIS HONOUR: Mr Shapiro.

MR SHAPIRO: Thank you, your Honour, I call Mr Alan Goodfellow. That's at page 89 of the first volume, your Honour.

HIS HONOUR: Thank you.

<ALAN ALEXANDER GOODFELLOW CALLED AND SWORN

HIS HONOUR: Take a seat.

<EXN - MR SHAPIRO: Your full name is Alan Alexander Goodfellow, is that right?.....Yes.

And what's your occupation?.....I'm a shipwright, that's my trade, I'm a leading hand foreman at Taylor Brothers.

Thank you. And were you working for Taylor Brothers in late 2008 and early 2009?.....Yes, I was.

Thank you. And were you contacted by Ms Sue Neill-Fraser in relation to her yacht, the Four Winds?.....Yeah, she contacted me some time, I'm not sure when, before Christmas in 2008 to slip her boat and do some maintenance on it.

Okay. And did that occur?.....She – we spoke again in July – in June – yeah, sorry, early January the following year and made arrangements to do some work on her boat.

And that's 2009?.....2009.

Okay. And what were those arrangements?.....That we were to meet her at the Royal Yacht Club of Tasmania. We decided that we wouldn't slip the boat we'd do the maintenance on the motor first, because we needed to run it and warm it. So we arranged to meet her at the Royal Yacht Club on, I think it was the 14th of January.

Okay. And when you went to the Four Winds where was – where was the yacht?.....We went – we got a phone call saying that she was having (indistinct word) with the vessel and they weren't able to get it to the yacht club, so we met them, she and Bob, at our Battery Point slip yard and we went out to the vessel.

Okay. How did you get out there?.....We went out in a little rubber boat with an outboard on the back of it.

And who was driving that boat?.....I think Bob was.

Okay. And that's -.....Mr Chappell.

Thank you. And who else was in the dinghy?.....There was myself, Nathan Karakowiak from Taylor Brothers and Ms Neill-Fraser and Bob Chappell.

Thank you. And – so you went out to the Four Winds, and what did you do on the Four Winds?.....We bordered the Four Winds and, I think, Sue – Ms Neill-Fraser's daughter was there and we were introduced to her, and then we ascertained that there was issues with the steering, so we proceeded to work on the steering, bleeding the hydraulics.

Okay. All right. And after you had fixed the steering, what happened next?.....After we'd fixed the steering we just proceeded to take the boat to the Royal Yacht Club – it was – the breeze was quite fresh so I steered the boat and I took it to the Yacht Club.

Was there a reason that Ms Neill-Fraser or Mr Robert Chappell didn't take their boat to the Yacht Club?.....I think she just – she wasn't confident because it was quite windy.

So you drove the boat?.....So I took the boat – it was with Nathan and David Harris as well.

Thank you. And once the boat was at the Yacht Club was some more work done on it?.....We proceeded to do the maintenance to the engine I think that was required for the hundred hour service.

And when you say "we" who's we?.....Myself and Nathan Krakowiak and David Harris had joined us.

And did that require you to remove any panels?.....The only panel we removed was probably the top of one of the bunks so we could access the steering in an aft cabin that I recall.

Thank you. And did you speak with Ms Fraser – Ms Neill-Fraser, sorry, about maintenance of the yacht?.....Yeah, we chatted about general stuff, I don't recall the specifics.

And did you – well did you say anything to her in relation to that conversation?……I suppose in – well while David and Nathan were doing work on the boat I did remind her that her chatting to me was, you know, I was charging her an hourly rate.

Thank you. And what – was anything said about their views of the Four Winds?……I think they were probably a little bit disappointed.

Why do you say that?……I suppose they found – like most boats they found a few more problems with it than they originally anticipated.

Was there a discussion about money that they'd spent on the yacht?……Only in regards to the work that they'd done to the motor in Queensland.

And who was that discussion between, Ms Neill - ……Myself and Ms Neill-Fraser.

Thank you. Was she happy about that or -…….I think she was a bit disappointed with the amount of money that was spent and the time it took.

And did you get an impression about Mr Chappell's view of the yacht?……Oh he seemed quite happy with the whole deal, he was sitting in the cockpit chuffing on his cigar – on his pipe.

Thank you. Did you form a view about how confident he was around the boat?

MR GUNSON SC: Well it can only be based on what he observed or what was said to him.

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: Yes. (Resuming): Well did you observe anything in relation to Mr Chappell's confidence on the boat?……He probably wasn't over confident, but I didn't know whether – and again it's only my view – whether he was – because of his age, he just seemed a little fragile and, I don't know, he wasn't running around on the boat, but I don't know.

Thank you……It's a hard – hard – again it's an opinion.

And – thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Nothing further. Mr Gunson.

<XXN – MR GUNSON: Basically what he did was he left it to Ms Neill-Fraser to discuss with you what needed to be done on board the boat?……More or less, yes.

And he sat down, as you said, and he was pretty happy chuffing on his pipe in the cockpit?……Yep.

And there's nothing unusual about that from your point of view?……I didn't think so, I mean I – I'd only met the guy that day.

Thank you. And the last thing you'd want is two customers telling you what they wanted and perhaps disagreeing about it and you not knowing what your instructions were?……Probably not, but you deal with what you get given.

They told you that they'd paid a lot of money for the yacht and that they had found some problems with it that they hadn't anticipated when they bought it?……That would be correct.

And one of the first issues they had was they had to spend about twenty thousand dollars getting the motor serviced and into order in Queensland before the delivery voyage started?……Yes.

And that's a fair amount of money to spend on an engine for a boat that size isn't it?……I would think it is, yeah.

And you'd get a pretty good service for twenty grand wouldn't you?……I would think so.

Yes. And she told you also that there'd been problems on the boat coming down the coast from Queensland to Tasmania particularly with fuel problems?……Yes.

And she outlined a significant number of problems, none of them major, that had developed on the run?……Yeah, it was mainly the fuel was the big hiccup I think.

Yes. And she told you the boat had been for sale in Queensland for I think over two years and just lying not used?……She may have.

All right. You don't deny that?……Well I can't deny or agree.

Thank you. She told you in fact in a conversation at one stage that there had been some problems with the boat in Queensland –

MR ELLIS SC: Well are you going to – ask my learned friend not to go to the areas we've previously discussed that were hearsay.

HIS HONOUR: Mr Gunson.

MR GUNSON SC: (Resuming): Did she tell you any stage that she had seen any problems with the boat in Queensland, that is that she saw herself?……Not that I'm aware of.

Thank you. Specifically did she say to you she'd seen any problems with people doing anything to the boat in Queensland that was –

MR ELLIS SC: My learned friend is trying to go there another way. Your Honour has ruled about this and –

HIS HONOUR: Well do we need to discuss this in the absence of the jury?

MR ELLIS SC: Only if my learned friend is persisting with it, your Honour, yes.

MR GUNSON SC: I'm not going to persist with it. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS RELIEVED AND WITHDREW

JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Yes, Mr Shapiro.

MR SHAPIRO: Thank you, your Honour, I call Mr Nathan Krakowiak.

<**NATHAN FRANCIS KRAKOWIAK CALLED AND SWORN**

<EXN – MR SHAPIRO: Would you please state your full name?……Nathan Francis Krakowiak.

Thank you, and what's your occupation?……Mechanical fitter.

Who do you work for?……Taylor Bros Slipway & Engineering.

And did you work for them in 2009?……Yes, I did.

And in January 2009 did you do some work on a yacht called the Four Winds?……Yes, I did.

And how did that come about?……Well my boss just told – we got a phone call from – I'm not sure who originally rang my boss – and he told me to go down there and meet the people that owned the yacht.

Were you working with anybody that day?……Alex Goodfellow.

And who did you meet?……Bob and Sue.

And that's Robert Chappell and -…….Yeah, sorry, yeah.

That's all right, and Ms Neill-Fraser?……Yep.

And so down there, where did you meet them?……At Battery Point.

Thank you. And when you say 'down there' where did you meet them?…….At Battery Point.

Okay. And how did you get to the Four Winds?…….On the tender off the Four Winds.

Okay. What does that look like?…….A small inflatable.

Thank you. And who drove the tender?…….Robert.

And what was – what was the work that you went out to do on the Four Winds?.....Originally we had to go out and fix the steering gear, so we could bring it into the marina so we could service the engines on it.

Okay. And did you fix the steering gear?.....Yeah, yeah.

And then was the yacht taken to the marina?.....Yeah, we took it into the marina and tied it up at the berth and continued with our work.

And who – who drove it into the marina?.....Alex Goodfellow – or Alan Goodfellow.

And was there a reason that he drove rather than the owners?.....It was quite breezy at the time and Sue Neill-Fraser said she wasn't overly confident with driving it, so Alan did.

Okay. Thank you. And what was the work that you did on the vessel when it was the marina?.....We had to do a service on the main engine and check – check the tappet settings and things like that and a hundred hour service on the generator.

Okay. And how many days were you working on that vessel for?.....Oh, around three.

Okay. Thank you. And – and did you take some photographs?.....Yes, I did.

Why did you take those?.....Personal interest, my grandfather is building a boat and yes, a few ideas to go with his.

Thank you. If the witness can be shown these photos please? Can you just have a look at those photographs for me? Are they the photographs you took?.....Yes, they are.

Thank you. I tender those and I also tender the CD to go with them.

ASSOCIATE: P48 and P49.

EXHIBIT #P48 – PHOTOGRAPHS TAKEN BY NATHAN KRAKOWIAK – TAKEN IN

EXHIBIT #P49 – CD CONTAINING ELECTRONIC COPY OF PHOTOGRAPHS – TAKEN IN

MR SHAPIRO: Thank you. We have some copies for the jury also, thank you.

HIS HONOUR: Right, well, ladies and gentlemen, these should go in your small blue folders after the Commonwealth Bank photo. The Commonwealth Bank photo goes behind Tab 1 and these go behind Tab 2.

MR SHAPIRO: Thank you, your Honour. (Resuming): Do you remember what – what the date of the day that you took these photos was?……It's around the 15th.

Okay. And is that when the yacht was on the mooring or at the marina?……At the marina.

Okay, thank you. Now can you just tell us what that first photo is a photo of?……The main – the main living area on the vessel.

And you can see through that door there that it looks like there's some panelling off the floor?……Yeah.

Do you know - …..That's where the – where you go through to the for'ead cabins where the sewerage system is underneath – or the sewerage tanks underneath the deck plates.

Do you know who removed that or -…….No.

And was that like that the whole time you worked on that yacht?……I don't think so, no.

Can you just flick through to the next photograph, what's that a photo of?……That's the wheelhouse looking out towards the cockpit.

Thank you, and the next photograph, is that just a close-up from the previous photo?……Yes.

Do you want to just jump back to the previous photo so we can see where the – thank you. And the next one, is that a photo of the wheelhouse?……Yeah, the wheelhouse.

And the next photo?……That's the galley.

Thank you. And then the last photograph?……That's the photo from before – or looking from the main living area through to the for'ard cabins again where the deck plates are up.

Thank you. Will one of those buttons at the bottom there rotate the picture to the right?……Rotate it somehow.

Thank you. Now while you were working on the yacht was – well were the owners present?……Off and on they were.

And did you see Ms – what was Ms Neill-Fraser doing on the yacht when she was there?……Anything that a normal yacht owner would do, like going through bits and pieces, yeah, she was in amongst that at some stage.

When you say that what are you referring to?……Oh the – where the deck plates are up.

So where the floor is missing?……Yeah, where the flooring's missing, yep.

And did she – did she speak with you in relation to that area?……She asked – asked about it, but it wasn't – wasn't our job to – wasn't part of our contract to do that. Yeah, like I explained a few little bits and pieces, like gate valves, seacocks and things like that which are open to the outside of the vessel.

So she asked you about a seacock in relation to that area?……Yep.

Thank you. And what did you tell her about seacocks?……Just how they work and basically just a gate valve that opens up to the outside of the hull.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON SC: Both Mr Chappell and Ms Neill-Fraser indicated to you that there were problems with the electrics on the boat?...Yep.

And they didn't point out any specific issues though.....No. Nothing specific.

You've said that they were on the boat on and off or doing things you'd expect of owners – now that's my words - ...Yep.

Do you know the sort of things they were both doing?...Just cleaning up bits and pieces, things like that.

Was Mr Chappell doing any work on the boat as such?...Not that I recall, no.

Did they discuss with you the breakdowns they'd had coming down the coast from Queensland, across Bass Strait and into Tasmania?....No.

Did they discuss with you the nature of the work that was done on the vessel in Queensland?....Only the main engine work and a few things.

Now you said that you told her about the gate valves or as you called them, the sea cocks – the same – they're interchangeable words aren't they, or expressions?....Well, a seacock is what opens to the outside of the vessel and a gate valve is just a valve that can be used in any application.

All right. And you basically told her what the set up was – and how they generally worked....Yes.

And didn't discuss any specific ones with her?.....No.

Thank you. And you've said on a previous occasion, you didn't recall seeing fire extinguisher on the boat.....No. Excuse me. No, I didn't.

Mostly definitely didn't see a large one in the corner near the laundry?.....Not that I recall, no.

And given the nature of the work you do, you would look around for fire extinguishers to – in case there was a fire while you worked?....Yeah, we kind of keep an eye out for that kind of thing.

And it was clearly a fire extinguisher shown in one of the photographs we saw a moment ago under the stairs…Yep.

You didn't see that at the time, in the sense that you weren't – when you went looking for a fire extinguisher you hadn't noticed that one?.....No, I hadn't noticed that one. You tend to –

Thank you. Getting a yacht of that size into a marina such as the Royal Yacht Club does require a fair amount of experience, particularly when you're operating in a wind such as was blowing that day?.....Yeah.

Mm, thank you. I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: No, nothing in re-examination, thank you.

HIS HONOUR: All right. Thank you, Mr Karakowiak, you are free to go.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR SHAPIRO: Call Kim Eiszele, if it please? It's page 3 of volume 1.

<KIM EISZELE CALLED AND SWORN

HIS HONOUR: Have a seat. Yes?

<EXN - MR SHAPIRO: Thank you. Your name is Kim Eiszele?.....Yeah.

And you're a photographer?.....Yeah.

And you work for the Mercury?.....(no audible reply)

And you were working for the Mercury as a photographer on the 27th of January 2009?.....Yes.

And did you attend Marieville Esplanade on that day?.....Yes.

At what time were you down there?.....Oh, it might have been early in the morning –
But you -.....- earlier, yeah, mid – mid morning.

And did you take some photos?.....Yes.

Thank you. Can you have a look at these please? Are those the photos you took?.....Yes.

Thank you, I tender those and the CD.

EXHIBIT #P50 – PHOTOGRAPHS TAKEN BY MR EISZELE – TAKEN IN

EXHIBIT #P51 – CD OF PHOTOGRAPHS OF TAKEN BY MR EISZELE – TAKEN IN

MR SHAPIRO: (Resuming): Is that the first photo you took?.....Yeah.

And you didn't know who any of those people were particularly?.....No, not really.

Thank you. And if you can move to the next photo. That's another photo you took?.....(No audible answer).

Thank you. And the next one. Again you took that photo?.....Yes.

Thank you. And the next one that's a close up from the previous - .....Yeah.

And again the next photo is another close up?.....Yeah.

Thank you. And we do have some copies for the jury.

HIS HONOUR: All right, well these, ladies and gentlemen, these go in the blue folder behind Tab 5.

MR SHAPIRO: Thank you.

<**THAT CONCLUDED THE EXAMINATION OF THE WITNESS**

<THE WITNESS WAS NOT CROSS-EXAMINED, WAS RELIEVED AND WITHDREW

We call Miss Kim Cartwright, volume 1, page 46 – sorry, 146, thank you.

<KIM CARTWRIGHT CALLED AND SWORN

<EXN – MR SHAPIRO: Is your full name Kim Cartwright?……Yes.

Thank you. And what's your date of birth?……The 22nd June 1961.

Thank you. Now on Australia Day in 2009 you were at Short Beach, or sometimes called the dog beach at Marieville Esplanade?……Yes.

Did you take a couple of photos when you were there?……That's right.

Thank you. If the witness can be shown these, please. Are they your photographs?……They certainly are.

Thank you. Do you know what – approximately what time you took those photographs?……It was actually later in the day, late, very late afternoon, early evening, mm.

And just to be clear, which end of the beach was it you were taking them from?……This is from the north side of – the north end of the beach.

So the end closest to Battery Point?……Yes.

Thank you. I tender those and the CD.

ASSOCIATE: P52 and P53.

EXHIBIT #P52 – PHOTOGRAPHS TAKEN BY KIM CARTWRIGHT – TAKEN IN

EXHIBIT P53 – CD OF PHOTOGRAPHS TAKEN BY KIM CARTWRIGHT – TAKEN IN

HIS HONOUR: And these go behind Tab 4, ladies and gentlemen.

MR SHAPIRO: (Resuming): And is that first photo of yours just a photo from the beach looking out at the yachts?……Yes.

Thank you. And if you can eclipse the next photo. Is that a photo of your dogs in the foregrounds and the yacht's in the background?……Yes, that's right.

Thank you. And if we can go to the final photograph. And that's a zoomed in photograph from your second photograph, is that right?……Yes.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT CROSS-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: Yes Mr Ellis?

MR ELLIS SC: Call Timothy Farmer please, your Honour.

<TIMOTHY ROSS FARMER CALLED AND SWORN

HIS HONOUR: Take a seat. Yes, Mr Ellis?

<EXN - MR ELLIS SC: Thank you, your Honour. Mr Farmer, you're Timothy Ross Farmer?.....I am.

You live in Sandy Bay?.....Yes.

You work for Qantas?.....Yes.

And you're the father of at least one daughter who runs, or rowed last year, is that right?.....Yes.

What's the daughter's name?.....Lucy Farmer.

Yeah. And did you take Lucy to rowing training on the 27th of January last year?.....Yes, I did.

What time did you do that? .....I arrived at the rowing shed at about approximately 5:40 in the morning.

In the morning – is that usual?.....That's the normal start time, yeah.

Right. .....Or 5:45 is the start time.

Okay. Were you two the first there -.....Yes.

- for that club – what club does she row for?.....Lucy rows from the Sandy Bay Rowing Club.

Mm hm. And they have boatsheds there?.....We do – yes.

And that's where you went to, is it, the Sandy Bay Rowing Club - .....Yes, yes.

- boatsheds at Marieville Esplanade?.....Yes.

Yes. All right. What did you – did you see anything unusual that morning?.....When we arrived at the – in the parking spots, I looked

towards the water because we – we always check the water for the rowing.

Yeah.....And I noticed a inflatable dinghy nudged into the rocks in front of the – in front of the rowing shed.

Was it a large one?.....I'd say a small one.

Okay. .....Yeah.

And what did you – anything?.....Yes, I – as soon as I saw it there I – I walked down to the rocks and grabbed the painter from the front of it and – and tied it up to the rocks so it wouldn't drift – drift away.

Okay. And to those of us who never knew or forgot, what's the painter?.....A painter is the rope on the front of the boat that you would normally tie it up to a jetty or – or wherever you want it moored.

Okay. Where did you grab it from?.....From the boat itself.

So it was inside the boat, was it?.....Yes.

Would it be right to say that if a boat had simply come away from being tied then the painter won't be inside the boat it would be outside the boat?.....I believe that would be the case, yes.

Yes. All right. So you tied it up to the ropes – sorry, into the rocks, and do you remember whether it had an outboard motor – I think you said -.....Yeah, it had an outboard motor on the back, yes.

Do you remember whether that was raised or not?.....I believe it was in the raised position, so as if it wasn't being used.

Yes. Had you seen that dinghy before?.....Yes, I saw the dinghy the previous day.

Yeah.....Yeah, on Australia Day.

Where was it then?.....It was tied to one of the – one of the posts that stick out of the sand on Short Beach.

Right. Was that unusual?.....Yes, it is unusual because – well that area is used for – for launching and – and retrieving boats, but to have one actually moored there is unusual.

Yeah. Okay. I want to show you a couple of photos please, P03 please - which is the large folder, ladies and gentlemen – maybe 70 in 71, if you could have a look at that Mr Farmer? Do you see photograph 70 – it's a little bit -.....Yes.

- washed out, I suppose, 70 and 71. Do they appear to be of the dinghy you saw?.....Yes, I believe that's the dinghy I saw.

Okay. And does that appear to be in the position you tied it up?.....Yes, yes, it does. I think the stern of the boat may have drifted around more, I think the – it was more perpendicular to the rocks –

Yeah.....- when I grabbed it.

Okay. It – correct me if I'm wrong, in 71 it looks as though it might be a little bit up on the rocks, was that what happened?.....Yeah, slightly.

Yes. But when you first saw it was it up on the rocks or had it been nudged - .....No.

- it wasn't on the rocks?.....No, because it was bumping the rocks, it was physically moving in the water –

Floating free?.....Yep.

Of the rocks?.....Yep.

Okay. And if – have you got the big volume – the whole volume there? Thank you. The ones taken by Mr Needham at P40, if Mr Farmer could be shown those, please, it's in the back of that big volume, ladies and gentlemen. Do you see photographs 1 and 2?.....Yes.

Are they something that you've spoken about?.....Yes, they're the posts at Short Beach that the dinghy was tied to.

The day before?.....Yes.

That being Australia Day, is that right?.....That's correct.

Were there many people around at this – as you can recall?.....When I saw the boat that –

Yes.....Yes there was, we – we'd just returned from the Royal Hobart – sorry, the Sandy Bay Regatta –

Yep.....- and we were retrieving the club's rowing eight from the water to put it back in the shed.

And I'm not sure, you probably said so, but what time did you see it that day?.....That day, it would've been around about noon.

Thank you. All right, thank you, Mr Farmer, I think I've got you to the point where you tied the dinghy up -.....Correct, yep.

- on the 27th, what happened next?.....We proceeded to go rowing.

Okay. How do you do that?.....We – the girls rig the boats ready to go –

Yes.....- and they take the boats to the water, row out, the rowing coach and myself go out – went out in an aluminium tender to follow them out through the – through the boats.

A motorised one presumably?.....Yes, yep.

And who's the rowing coach?.....Daryl Balding.

Daryl Balding, okay. And how – do you know what time you went out on the water then?.....I'd say just before – just before six o'clock.

Yep, and did you come back?.....Yes.

When was that?.....Round about seven.

Did you see anything unusual?.....Yeah, as we were coming back through the moored boats we were coming back from the direction probably slightly – halfway between the casino and Battery Point, straight in, we saw the boat, the Four – down by bow, obviously taking in water.

Four something, was it?.....Yeah.

That's okay. And that was a boat moored off Marieville Beach?.....Yes.

Right, thank you. Did you see any people in uniform at about that time?……Yes, there were a number of police officers there at that stage.

Right. Yes, thank you, Mr Farmer.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Mr Farmer, when you went out at 6 o'clock in the dinghy following the rowing crew did you go past the yacht Four Winds then?……No.

Which direction did you take?……We headed along the shore of Battery Point towards the city.

So you stayed close to the shore and didn't go out - …..Correct.

- where the yacht moored but came back past it?……Yes.

Do you remember looking at it all as you went along close to the shore and then you could – obviously would have been able to see it from where you were?……I don't recall looking at it at all on the way out.

And I imagine – no, I withdraw that. Was the tide going in or out when you found this dinghy?……I don't recall to be honest.

Do you recall whether the tide was full or half full or what?……I believe it would have been quite high because I didn't have to go down the rocks very far to reach the dinghy.

Thank you. And was there a wind blowing at the time?……A very little breeze because otherwise it would be too hard for the girls to row otherwise we wouldn't have gone out.

Yes, all right. And when you first saw it the dinghy was basically bobbing free but touching the rocks?……Yes.

Thank you. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: Call Daryl Balding please, your Honour.

<**DARYL JOHN BALDING CALLED AND SWORN**

<EXN – MR ELLIS SC**:** Mr Balding, you are Daryl john Balding?.....Yes.

You live at Howrah, you're retired but you're also a rowing coach, is that right?.....Yes.

And last year were you the coach of the Sandy Bay Rowing Club?.....Yes.

Are you this year?....Yes.

Last year on 27th January, did you go to the club to take training?....Yes, I arrived about a quarter to six.

About a quarter to six. Is that usual?...Absolutely.

Did you meet anyone there?.....One of the parents was there and several of the rowers, of course, and off we went.

Was the parent Mr Farmer?....Yes.

Did he point out something to you?....Yes, he – when he'd arrived a little bit before me, he'd found an inflatable dinghy with an outboard motor floating just off the beach and he'd secured it to the rocks, adjacent to the rowing club.

Did you see it?.....Yes.

Did you go into training, hit the water, at about six o'clock?.....Yes.

And you're in the speed boat as I understand it....Yes.

And - ...Mr Farmer as well.

Mr Farmer's in with you. Which way did you go?....We went along the shoreline towards the wharf area, basically north.

And you came back at about what?...Getting on towards seven.

Did you notice anything on the way back?....Yeah, we came back wider and – outside the boats and noticed a boat that well – appeared to be sinking.

Right. What made it look like it was sinking?.....Yep.

What made it look like it was sinking?....It was well down at the bow.

Did you see anyone on board?....No.

Were there any other boats with it, or dinghys or anything?.....No.

No. All right, did you keep going into shore?....Yeah, we were sort of getting the mobile phone out to ring the police and let them know, but as we got a bit further, we noticed that there were police already on the shore, so we proceeded in.

Right. And did you speak to the police there – or at least a policeman there?...Yes, well there were two there and my wife had already offered to take them out to the boat, she was one of the rowers, she got in before us, and the policeman took up the offer and took him out to the boat.

Okay so you took him out?.....Yes.

In the same boat that you followed – done the training in?.....Yes.

And do you remember which side of the boat that you took him to?.....We pulled up on the starboard side.

Okay. And did you both get out and on the boat on that-.....No he –

- point?.....- went onboard.

He was onboard?.....Yeah.

Did you – did you notice anything about - when he went onboard, did you notice anything about the boat besides the sinking?.....Well obviously a lot – all the water inside.

Yeah. No, before you got on did you notice -.....Oh, sorry.

- did you notice anything about he got about the boat?.....Oh he got a good look around and then went down in the cabin area.

Okay. Did – did he – did he appear to open a day to the cabin or did it appear to be opened?.....I think it might have been opened.

All right. Did he come back out?.....He came back out and asked me to come onboard because there was a belief that there was a gentleman onboard and – because I had gumboots on –

Yeah.....- he asked if I'd sort of walk into the forward cabin area and have a look to see if the guy was there.

Okay. .....However, the water was a bit deep to do that –

Was it?.....- it would have gone well above the gumboots.

Yeah, all right, so you got onboard. What did you notice before you got into the cabin – or, you didn't go into the cabin, I don't think, did you?.....Went down into the cabin, yes, I did.

Okay. What did you notice before you got to the cabin?.....Well the police had already asked me – asked me (indistinct word) on the steps to avoid a couple of spots of blood on the steps.

Ah ha -.....Just to avoid walking on those.

Yeah.....And –

And you saw the blood on the steps?.....Yes.

Right. Did you see anything in the cabin, where the steering – the steering wheel was?.....Other – other than the water, I could – I looked – saw the ignition key there – I just turned the key on to see if there was any power and so on, because I couldn't hear the bilge pumps working or anything.

Yeah.....And there was an indicator light indicating there was power.

Yeah. .....I turned it back off again, obviously didn't go into the water, but then left with the policeman and on the way out noticed on the wall at the back the switches for the bilge pump –

Yes.....- it was switched to an automatic – automatically on position.

Right. So it was on the position for the bilge pump to work, and if there was any problem, being the ignition, you turned that on and they – they didn't work?.....Yeah.

Okay. .....Well logically the pump should have been on anyway with the key turned off.

Yes, yeah, yeah, but turning it on made no difference -.....No.

- to the bilge pumps?.....No.

Okay. Did you open any hatches?.....Yes, after – because we couldn't walk in the water we opened hatches, both the policeman and myself, to see if there was anyone on board and could see no one at all.

Right. Did you notice anything about a gateway at the stern?.....A gateway at the stern that goes down to a boarding grating, that was unlatched, which was fairly unusual, people tend to keep that latched up for security so no one fell overboard.

Okay. Is that a usual thing to have a boarding cradle on a boat like that?.....Yeah, fairly common, yeah.

What – for those of us who don't know, what does it consist of?.....Oh you bring your dinghy up to the stern of the boat and come in over the stern on a little boarding platform at the back of the boat.

Right, okay. And you get up on that and then there's a gate, is there, to get onto the boat proper?.....Basically a rail of the boat, yes.

Okay, and what was it about that gate, it was unlocked?.....It was like a little – a little latch or padbolt –

Yes.....- and that was – that was undone.

I see.....So the gate was – could move quite freely.

Yes. Right, I think that's all, thank you Mr Balding.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Just explain the last bits to his Honour and members of the jury, please, Mr Balding. Are you saying with respect to this gateway at the stern of the yacht that if somebody had leant against it it would have opened or are you saying that it wasn't locked to prevent people getting onto the boat?……No, there wouldn't be a look as such on it, it was just a little latch, a little sliding bolt. Actually those things open inwards.

Yes…….Probably if you – I didn't lean on it, but most of them if you lean on them it is secured, it won't swing out.

Yes, so what it means is if somebody had come to the boat at the boarding grate that they could easily get onto the boat by just pushing the gate open -…….Yep.

- without having to undo the latch?……Right.

There's no locking mechanism as such, is there?……No, no.

And a person leaning against it from inside the boat wouldn't be at risk of the gate popping open and them falling in the water?……Usually not. I don't know exactly – the circumstances with that particular gate, but most, no.

Most of them are as – most are as I've described?……Most, as I said, are not to swing out.

Yes, thank you, I have no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR SHAPIRO: I call Mr Norton Makepeace, it's at page 97.

<**NORTON JOHN MAKEPEACE CALLED AND SWORN**

<EXN – MR SHAPIRO: Is your full name Norton John Makepeace?……Yes.

And are you a self employed marine electrician?……Yes.

And in December – well the end of December 2008 were you contacted by Ms Neill-Fraser?……Yes.

And what was that about?……Um, she rang me to enquire about getting someone to have a look at some electrical problems they had on a boat called Four Winds, yeah.

Okay. And as a result of that - ……As a result of that conversation we made arrangements to meet up - for me to meet them at the jetty so that I could be taken out to the boat to have a look at that boat and that was arranged for the 6th January.

When you say 'them' who are they?……Oh, as in – she explained that she had a partner in the boat and they were going to organise to get me out to the boat.

And did that happen?……Yeah, Bob Chappell came and collected me in the rubber dinghy and took me out to the boat, yes.

All right. And what – sorry, what date did you say that was? I think you did say……The 6th January.

2009?……Yeah.

Yeah, thank you. And when you got out to the boat what did you do?……Got onto the boat, Susanne was there and she introduced herself and that, because I hadn't actually met her until we got onto the boat, and then they proceeded to explain to me what had happened on their way down, coming across Bass Strait –

And that's in relation to some problems they were having with the alternator?…….Yeah, the alternator had caught fire, started smoking, so they'd had to disconnect it and they needed some quoting and I had to do a fair bit of looking around to find out why the problem had occurred.

And when you say 'a fair bit of looking around' what did you physically have to do?.....Lift – had a look in the engine room by pulling the stairs out, so you could look in at the front of the engine. Having looked behind the switchboards and that sort of stuff to try and see what was going on, and because the boat had 240 volt electrics on it I said that I'd need to come back on the boat again with a qualified 240 volt electrician.

Okay. You're just a 12 volt electrician?.....Just a 12 – 24 volt, yes.

Okay. And how did you get access to these areas that you had to inspect – did you have to take panels off or -.....Not at that stage. We – I just had a quick look at what we could see just by lifting the floor up where it went into the engine room and the door to the engine room and just opened the switch panel up and we discussed what I thought needed doing and – and what had happened and then we made arrangements that I said that I would contact them and make arrangements to meet them again with someone else to give them an estimation on the job.

Okay. And did that occur that you had another look at the boat?.....Yes, I gave her a ring a couple of days after that and organised a time to meet them and they were going to bring the boat into the Royal Yacht Club Marina, so that Jamie and myself could have a look over the boat and workout a price for them –

Okay. .....- to do the job.

And so you saw the yacht there at the marina?.....Yeah, saw the yacht there on the marina, it was a Friday morning, eleven o'clock I think the time was we were supposed to meet them there, and we had a look over the boat and Jamie's dad, who is also an electrician, came down as well because it was such a big job that it was going take the three of us to do it.

Do you remember what date that was?.....Friday the 16th, I think it was, of January.

Thank you. .....Yeah.

And so on this second occasion, did you have to take panels off to inspect the wiring?.....Yes, we took a lot of panels off – off the boat. The panels hadn't been removed for a long time, like it took awhile to get some of these panels off because they'd been there for a long time.

Okay. Did you find anything you didn't expect when you looked under all these panels?.....No, nothing that you wouldn't expect in a boat like that.

And did you leave the panels off or did you put them back on or -.....When we put the panels back on – because we'd sort of talked and they were sort of keen to go ahead to get repaired, we sort of said " oh, we'll just put a couple of screws in these panels," rather than like, ten, that help them on normally because they were pretty hard to get off and on. We did that and we discussed the quote, and they gave me the go-ahead on it.

Okay and did you ever actually do the work?....No on the – that was on the Friday. On the Monday I received a phone call, and they'd had more problems with the boat apparently when they were leaving the marina and they decided to put on hold the electrical work because they were going to seek legal advice re the survey – they reckoned the survey wasn't up to scratch that was done when they purchased the boat.

So who told you that?....Susan. Susan.

And that was during a phone call you received?.....Yes.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT CROSS-EXAMINED, WAS RELIEVED AND WITHDREW

<RODNEY HOWARD CALLED AND SWORN

<EXN – MR SHAPIROYour name is Rodney Howard?...Yes.

And you're a water taxi operator?....Yes.

And you own that business, do you?....Yes.

And that business is operated here in Hobart?……Yes, correct.

All right. Now if I can take you back to the 26th January 2009 did you take some people to the Royal Yacht Club of Tasmania at Marieville Esplanade on that day?……Yes, I did.

And that was in your water taxi?……Yes.

What time did you do that?……It would have been around 11:15.

And did you notice anything as you – well did you notice a particular vessel as you went to the Royal Yacht Club?……Yeah, I noticed the Four Winds in particular with a tender hanging off the – tied off the stern.

Okay……Just a glance and – I knew it was that vessel because I'd admired it a lot in previous trips around. I go past it quite often.

Okay, thank you. And so where did you say the tender was?……Tied off – it was just lashed to the stern, just drifting on the stern of it.

Did you see anybody aboard the Four Winds?……No, I didn't see any people.

Thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Yes, what time was that you saw it?……It would have been around 11:15 according to my log book.

And can you describe the tender that you saw?……Well I didn't have a really close look at it, it was glancing – it – a white tender, 8, 10 feet long.

Yes. And it was drifting off the stern on a rope?……Yes, tied up to the stern.

And how far behind the boat might it have been?……I'd say 2 metres or so.

All right. On a previous occasion you said it was possibly a fibreglass one?……Yeah, I didn't – as I say I didn't go close enough to visualise what –

When interviewed by the police you certainly told them you thought it was possibly a fibreglass tender?……Possibly, yeah.

And you said you didn't think it had a motor on it?……No, I don't think it did.

No, you don't think it did. So you obviously know being a waterman the difference between a rubber boat, a rubber tender, and something of solid hull…..Yeah.

And it certainly wasn't – you're not describing a rubber tender are you?……No, I don't think so.

No…..No, it was a – yeah, a white tender, just looked like a normal blunt nose tender.

When you say a 'tender' you mean a solid hulled boat as opposed to a rubber boat, inflatable?……Yeah. Well at a distance they look similar, but I don't – you know, I didn't really get – I can't judge the – might have been, say, five hundred metres away from it, I was.

But the impression you were left with and the impression you told the police was that it was possibly fibreglass and you didn't think it had an outboard on it?……Yeah, that's right.

Thank you.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: Mr Ellis.

MR ELLIS SC: Yes, I call Christopher Liaubon, your Honour.

<CHRISTOPHER JAMES LIAUBON CALLED AND SWORN

<EXN – MR ELLIS SC: Mr Liaubon, you're Christopher James Liaubon?……Yep.

Are you a student?……Yes.

You live in Battery Point?……I do.

And were both those things the same last year?……They were.

On the 26th January, Australia Day, were you asked to go somewhere?……I got a phone call in the morning about eleven o'clock and it was a friend, he wanted me to go to Sorell market and I declined the offer because it was an absolutely beautiful day, I remember, and I wanted to go sailing in my canoe, so – I know it was eleven o'clock because I went back through my phone registry prior to giving the statement. Yeah, so basically I live in Battery Point, Kelly Street, it's five minutes from the beach –

Yep……- from Short Beach, and I drove down there – I must have got there between eleven thirty and twelve, I can't be certain because I don't have a watch, I don't wear a watch. But when I got there I remember seeing the white light grey Zodiac –

Yeah……..- on the sand, thinking it was unusual for something to be left unattended like that in that spot – and I've been – I've sailed down there before –

Yes……..- and I've never seen such a boat left there.

Right. What sort of boat?…….It was like a small inflatable Zodiac.

Mm hm. Did it have a motor, do you recall?…….I'm pretty sure it had a black outboard.

All right. …….Mm.

Now the area we're talking about – if you could be shown please, P40, photographs 1 and 2 – they're the ones in the back of the big folder, ladies and gentlemen -…….Yeah.

Do they show the area where you saw the inflatable -.....Yes, they are.

And was it tied to anything that we can see there?.....The tide when I got –

Was it – was it tied to – tied -.....Oh was it tied to them – yes, it was.

Okay. Now what about the tide?.....Well in these photographs they look like high tide to me.

Yes. ..... When I got there the tide was going out, it was almost three quarters of the way out.

Mm hm. .....And the water was below the last pole.

Right. And it was tied to one of the poles?.....Yeah, it was tied to somewhere – on – I can't be sure, I remember saying the seventh pole in my statement –

Yes.....- the ninth pole is the high tide mark.

Right. .....So you know it was tied around the high tide mark.

Yeah. Okay. Well why we're on the photographs, can Mr Liaubon please be shown photograph 70, I think it was, yeah 70 and 71 of P03 – the first set. Does that – does that look like the one – in a different position than you describe?.....That's interesting – I don't remember it saying Quicksilver.

Mhm. Is that the shape of it?.....That's the shape of the boat, yes.

Thank you. Did you go out in your canoe?.....I did.

Did you come back?.....I did come back.

What did you see?.....What I saw was the Zodiac in the same position as when I'd arrived and it was around – look, the wind started picking up that day and my sailing was cut short because of that and I wasn't out there very long, so I'm – you know, an hour, hour and a half, something like that.

Mhm.....So, yep, the boat was still in the same position.

Right, and did you seek to do something or try to do something concerning your canoe?……Yep, I loaded my – I reversed the van back down onto the beach, you know, ‘cause the canoe slides right inside it, and put the canoe in it.

Yes……And whilst I was fiddling around with something – oh that’s right, I remember I – I needed a rope because I pull the tailgate down and I tie it.

Right……And that rope had fallen out previously when I’d beached it once before.

Yes…….So I’d lost that rope and I thought, “Oh God, I need that rope to tie the tailgate down”, so I walked past the Zodiac along Short Beach looking for the rope in the water where before I’d upended my canoe.

Yes…….Couldn’t find the rope, so as I was walking back – yep, the boat was still there. Now this is a bit unclear, but whilst I was at the back of my van I remember seeing a woman walk across the grass diagonally –

Yes…….- from round about the Queen Street angle and she came up to the Zodiac and she was trying to lift it.

Yes. Why would she try to lift it?……Well the Zodiac – the outboard motor, the leg was in the operating position.

Uhuh…….And as such the leg protrudes below the level of the hull and she was trying to swivel it or lift it but the leg was caught in the sand and so she looked to me like she was struggling to lift it. I don’t know why, but I didn’t offer to help.

No, well that’s terrible but - ……Yeah, a bit incredible but I – yeah, I – yeah, I just thought it was a bit – odd behaviour that –

No, don’t tell us what you though…..Anyway, so, yeah, so I ignored – I ignored what I was observing and anyway she came to me and she said, “Can you help me?” I said, “Yes”, so I walked over, it was only a matter of metres, she lifted the – I remember it was the rear left, I lifted the leg and tilted the outboard and put the pin in so that it stayed at that upright position and then I returned to my van, put the canoe in, drove away.

Okay. Slowly, can you describe her at all?……From memory she had sort of a sunhat on which was a light colour, quite wide brimmed,

and she also large sunglasses on. She had shoulder length hair which was protruding down below the level of the hat, a chestnut colour.

And her age?……Oh, very difficult to say because of the hat and the glasses but, you know, she wasn't young so I'd estimate forty, fifties.

Okay. Now I think you said you got your canoe loaded up and did you go back up – back to Battery Point?……I did, yeah.

And on the way there did you notice anything?……Yes, I went home by way of King Street, Quayle Street and Napoleon Street and as you come around and you turn left up into Napoleon Street briefly you have a view across the grass towards the rowing sheds and it was at that point – and it would have been, you know, a couple of seconds, I saw – because I was interested, you know, what's become of the woman I've helped, is she on the water now, and she was. I saw, you know, the boat was floating and she was sitting in it but, you know, in that brief view it looked like she was stationary but the wind was an onshore wind so, you know, she was slowly making her way out.

Okay. So she was heading out away from the shore?……She was.

Thank you. When you got home, which would only be a few minutes later- ……Yeah.

- was there something that would help you tell the time?…….Yeah.

What was that?…….I've got a microwave oven, so as soon as I open the door I have view through to the kitchen –

Yeah……..- and the microwave oven, the clock on it is sort of LED green colour and it's pretty obvious, and I always look at the time.

Yeah……..So when I got home I noticed it was two thirty.

So how long would it have been since you left the beach, I take it you mucked around the canoe and got it out again or something, did you, or -…….Yeah, well it only takes five minutes to drive home.

Yeah……..And then it would probably take fifteen to twenty minutes to unload the canoe, wash it, wash all my wetsuit and booties and what not, have a shower and then – because the bathroom is outside, it's an outside bathroom, yeah.'

So that makes it, what, roughly the time you left the beach?.....Approximately, I would have left Short Beach at around two o'clock.

Okay. Thank you, Mr Liaubon.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: When you last saw this woman in the rubber boat she was heading along the edge of the reclaimed area where Sandy Bay Yacht Club is, is that right?.....Yes.

How far out from the edge of the reclaimed area would she have been?.....Difficult to say at that angle, but probably, two to three metres.

Two to three metres, and you're not able to say whether she was going out to the yachts or going along to the end and turning right to go to the yacht club, are you?.....No.

You've no idea?.....No.

Thank you, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Thank you, your Honour.

MR ELLIS SC: Nothing out of that, thank you, your Honour, I seek relief.

HIS HONOUR: Yes, thank you, you're free to go, Mr Liaubon.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: I'm embarrassed to say we're out of witnesses, your Honour, we thought eleven was optimistic for the day but it turned out not.

HIS HONOUR: All right, well there's nothing else for it, we'll have to adjourn until ten o'clock on Monday. The jury can make their affirmation and the Court will then adjourn.

MR ELLIS SC: Thank you.

<JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00AM ON MONDAY THE 27TH SETPEMBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)'

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Thank you, your Honour. Call John Norman Hughes, your Honour – page 150, fist – in the second volume. While he's being called, Mrs Mainsbridge reminds me I haven't yet sort the usual order as to witnesses expenses and so forth.

HIS HONOUR: I make the usual order under the 1996 Act.

MR ELLIS SC: Thank you, your Honour.

<JOHN NORMAN HUGHES CALLED AND AFFIRMED

HIS HONOUR: Take a seat.

<EXN - MR ELLIS SC: Are you John Norman Hughes?.....Yes.

Do you live at Mount Stuart?.....Yes.

And are you a full time carer for your mother?.....Yes.

And your mother has suffered a stroke, is that right?.....Yes.

When we say 'full time' how full time is – is this?.....I have some time off during the week, my brother looks after my mother to give me a break.

Okay. And usually when is that?.....Monday afternoon and sometimes Monday night overnight, sometimes.

Yeah. On Monday the 26th of January 2009 was Australia Day, was it also one of the days that you had off from your tasks?.....Yes.

And do you recall going somewhere late – later that evening of the 26th of January 2009?.....I played golf in the afternoon, probably until fairly late –

Yeah.....- and then I may have gone to the movies or to the Casino, but I can't remember exactly which.

Right. And after either of those – those two things, do you recall going somewhere else?.....No, other than to – I drove down to the Marieville Esplanade and to the rowing sheds.

Okay. Why did you go to the rowing sheds?.....To relax and to look out over the water.

Is that a place you go to sometimes?.....Occasionally, to relax.

Yep. Do you know what – or do you recall what time you went down there?.....It was between half past eleven and twelve o'clock.

How do you judge that time?.....Because I knew it was the time because I had a clock in the car.

Okay. Did you have something with you, did you – something to drink?.....Mm, I had a coffee, a Farmers Union iced coffee.

So you went down there in a car?.....Yes.

That's right. Did you park the car somewhere?.....Parked the car at the end of the rowing sheds.

End of the rowing sheds. Now we've got a map - the jury have got a map in front of them and if I give you Mr Shapiro's pen could make perhaps an 'X' on this copy of the map where you were parked.

Thank you.....It's only a small cross.

HIS HONOUR: Can I see it, please. Yes, it's just near the letter 'Y' of Sandy Bay Rowing Club as if it were in a position of a full stop after the 'Y'.

MR ELLIS SC: Tender that, your Honour.

EXHIBIT #P54 – DIAGRAM MARKED BY JOHN NORMAN HUGHES – TAKEN IN

MR ELLIS SC: Could it be held up to the jury perhaps.

HIS HONOUR: Yes. Yes.

MR ELLIS SC (Resuming): Thanks, Mr Hughes. Now that's where you parked, did you stay in the car, do you recall?……I may have got out of the car at some stage to stretch my legs.

Yep. Did you notice something when you were down there?……I noticed a dinghy.

And where was the dinghy?……About fifty metres off-shore.

And was it going in any particular direction?……North east towards the eastern shore.

Did there appear to be anyone in the dinghy?……There was one person in the dinghy.

Can you say anything about that person, how it appeared to you?……The person had the outline of a female, but I can't be definite.

Did you hear anything that was associated with seeing the dinghy?……There was an outboard on the back.

And did you hear the sound of the outboard?……It was reasonably quiet.

Right…….The boat was only going at a slow speed.

Where did the boat appear to have come from or what mode had it come from when you first saw it?……The boat came from towards the Royal Yacht Club.

Okay, came from the direction of the yacht club?……That's correct, but I couldn't see it because the rowing sheds were in the way until it got out in front of me.

Yeah…….And it was then that I noticed it, but that's the direction it came from.

All right. When you saw some newspaper reports in the next day or two did you do something?……I rang the police.

Did you give them your name at that stage?……No, I remained anonymous.

Do you recall what day you did that?……It was a couple of days later, I think, one or two days later, I can't exactly remember.

And where you rang from?……The University library.

Did you see anyone else down there that night?……No.

Anyone standing around fires?……No, I can't remember though.

No. Thank you, Mr Hughes. Oh, sorry. Oh I see. You described seeing a dinghy, can you describe what sort of dinghy it was?……It was rubber inflatable.

Thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: With respect to the dinghy, are you able to say what colour it was?.....No.

No idea whether it was a black one, a white one or a green one?.....No.

No. And you're not able to give an estimate of its length, are you?.....It was about three to four to five metres.

So it was between three to four to five metres?.....Yes.

It may have been shorter than three or longer than five?.....No.

But that's just a guess again, isn't it?.....It's an estimate.

It's a guess, I suggest.

MR ELLIS SC: It's been already answered, your Honour.

HIS HONOUR: Well no, he can put the question twice, if he wants to.

MR GUNSON SC: (Resuming): It's a guess, isn't it?.....It's an estimate.

And did you pay much attention to the dinghy?.....I saw a dinghy.

I asked you did you pay much attention to it?.....Not a great deal.

No. And you were there, you saw it, and it was not something particularly unusual as far as you were concerned at that time?.....No.

And the only reason you remembered it was because of what you read in the paper, a day or two later?.....Yes.

Thank you. When you say it was heading in a northeast direction, had it actually passed the end of the reclaimed land where the rowing sheds are built, when you first saw it?.....No.

All right. You've shown us in the photograph where your vehicle was parked; was the boat – the dinghy directly out in front of you when you first saw it or was it to your right or to your left?.....Slightly to my right.

And it was at least fifty metres out?.....Yes.

And perhaps it could have been further than that?.....Not to a great extent.

Pardon?.....Not to a great extent, no.

Right. Now did you see it pass between any yachts that were moored out there or motorboats that were moored out there?.....To my recollection it may have passed between a few yachts.

Right. If you'd look please at the photograph that's been tendered already and you've marked the end of the area where your car was parked – do you have that photograph in front of you?.....Yes.

Would you look at it carefully and tell me please if you can identify roughly the point where the dinghy was when you saw it – if you can't, please tell me?.....It was approximately in that area –

All right. .....- in those two yachts out in front.

All right. Perhaps you might mark that please?.....How do I mark it, with a cross or a circle?

I think perhaps a little circle will be sufficient. Thank you. Could I have a look at that please? Thank you. And pass that to his Honour and the jury, and I think Mr Ellis probably wants to look at it was well.

HIS HONOUR: Yes, show Mr Ellis and the jury.

MR GUNSON SC: Did this yacht – sorry, did this dinghy travel into the group of yachts or motorboats that are moored off Marieville Esplanade and disappear from view?.....Yes.

You probably only watched it for a few seconds, is that a fair comment?.....It wouldn't have been any more than a minute.

Yes, probably less than that?.....I can't remember.

Right. And did you notice where the person you saw in this dinghy was seated?.....They were seated.

Whereabouts?.....Towards the back.

Yes, on the side of the dinghy or seated in the dinghy?……In the dinghy.

So they weren't on the left hand side or on the right hand side, but rather sitting down on what you presume was either a seat or the floor?……Yes.

All right. Are you able to describe the clothing worn by this person?……No.

It was a very dark night, wasn't it?……It was dark.

Yes. There was no moon shining over the waters of Marieville Esplanade?……Not that I can remember, -

No…….- only the lights of Sandy Bay.

Yes. They didn't help you though, did they?……To a degree.

But at the end of the day you can't describe what that person was wearing even, can you?……No.

And you can't say whether the person was or was not, for instance, wearing a cap?……No.

Or a beanie or something like that?……No.

And you can't say whether they were wearing a waterproof jacket, for instance?……No.

And you just formed the impression that it was a woman?……It had the outline of a female.

But you can't be sure about that one hundred percent, can you?……I can't be definite.

No. So at the end of the day what it comes down to is you thought it was a woman but you can't be sure and you can't tell us what the person was wearing, you don't know the colour of the dinghy?……That's correct.

What about the colour of the outboard?……I can't remember.

Was the outboard a noisy one or a quiet one?……It was reasonably quiet.

Right. Now you were asked some questions by Mr Ellis a moment ago about whether any other persons or vehicles were in the area, is that correct, remember those questions?

MR ELLIS SC: I don't think I asked about vehicles in the area, your Honour.

MR GUNSON SC: All right, I'll take you there. (Resuming): Were there any other cars parked in the area of the rowing sheds that you can remember now?.....No.

You can't remember that or you don't know?.....No, there weren't any other cars parked there.

If I was to suggest to you there were other vehicles parked in the area of the rowing sheds would you deny that?.....I can't remember any vehicles parked there.

But you're not prepared to say emphatically that there weren't others there?.....Not one hundred percent.

Thank you. Am I right in understanding this, you got there at about 11:30 and you believe you left about midnight, is that right?.....That's correct.

But within this half hour gap you can't place the time when you saw that dinghy go out?.....No, I can't remember.

So it could be as early as shortly after 11:30 or as late as just before you left?.....Yes.

Thank you. Now there were other cars parked around the Marieville Esplanade area weren't there?.....That I can remember there were, yes.

Yes. You go down there quite reasonably – reasonably often to relax don't you?.....Occasionally.

And it's not unusual to find cars either parked around the boatsheds or on Marieville Esplanade?.....Usually on Marieville Esplanade.

And there's a car parking area there isn't there?.....Yes.

Thank you. Now did you get out of your car at all that night?.....I think I did.

Well you have on a previous occasion said - .....But I can't absolutely remember.

All right. And when you saw this dinghy were you inside your vehicle or outside your vehicle?.....I think I was outside but I can't be absolutely sure.

And were you standing near your car when you saw the dinghy?.....I would have being standing next to it.

Well you say you would have I'm really trying to ask you to recall what you actually remember. When you saw – take yourself back, when you saw the dinghy were you standing in front of the car, to the side of the car or had you moved away from it?.....I would have being standing next to the car because I would have got out of the car just to stretch my legs.

And how long would you have been out of the car for?.....Probably only a few minutes.

Could you have been there as little as twenty minutes; that is at Marieville Esplanade?.....I wasn't there for anymore than half an hour.

Could you have been there as little as twenty minutes?.....It's possible.

Yes, and in fact on a previous occasion you've said, "I wouldn't have been anymore than twenty minutes, half an hour"?.....That's correct.

So if you were there for twenty minutes, that slightly puts out your estimates of eleven thirty and midnight, doesn't it?.....I was there between half past eleven and twelve o'clock.

But within that half hour –.....With that time – within that timeframe?

Within that timeframe but you may -.....From twenty –

- have within that timeframe been as there – been there as short as twenty minutes?.....Yes.

Thank you. Can you help me by telling me how you fixed the timeframe?.....Because I look at the clock's car – the car's clock.

Yes. But do you remember when you talked to the police about seeing what you – or telling them what you saw, being able to think back and say 'Well I got there at eleven thirty because I remember looking at the clock in my car'?.....Mm, I'm always looking at the clock in my car.

You've previously said of the description, "I thought the person had an outline of a female. I had the feeling that this person was a female. I can't be definite, it was dark"?.....Yes.

Thank you. And that's still your position, isn't it?.....Yes.

Thank you. The dinghy was heading a fairly slow speed?.....Yes.

Do you recall how long you'd been there before the dinghy arrived on the scene?.....No, I can't remember.

Thank you. It is possible that whilst you were there that other persons were in the area of the sheds?.....No, I can't remember anybody else.

Well do you say that definitely nobody else was around those sheds or are you saying, "Now I can't remember any"?.....No, I'm almost one hundred percent definite.

Almost?.....Yes.

But there is room for doubt, isn't there?.....Very, very little.

People could have been behind you and you wouldn't necessarily have noticed them?.....Well that's possible, but unlikely.

Thank you. The dinghy was – more correctly the outboard of the dinghy was obviously making sufficient noise to draw your attention to it?.....I heard it, I heard an outboard.

Did you hear the outboard before you sighted the dinghy?.....I can't remember.

At fifty metres away from it you could clearly hear the engine as it – as the dinghy went along?.....Yes.

And it was reasonably loud to where you were?.....It wasn't a roaring noise but I could hear the outboard.

Thank you. I've no further questions of Mr Hughes.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: Call Barbara Zochling, your Honour. Page 100 in volume 1, your Honour.

HIS HONOUR: Thank you.

<**BARBARA HELEN ZOCHLING CALLED AND SWORN**

<EXN - MR ELLIS SC: Ms Zochling, you're Barbara Helen Zochling?……Yes.

You're retired and live in Sandy Bay is that right?……Yes.

In 2002 and again in 2004 did you have certain treatment for your shoulder?……Yes.

Did that involve radiation treatment?……Yes.

And was there a certain person who delivered that treatment on those occasions?……Yes.

Who was that?……Dr Chappell.

You knew him as Dr Chappell could he have been Mr Chappell?……I beg your pardon?

You knew him as Dr – you thought of him as Dr Chappell?……I – when I had the accident and went to the – after awhile was – I – they suggest I have radiation and so they took me down to this radiation and I was a bit worried about the treatment because, you know, radiation can do all sorts of things, and then this gentleman came into the room and had a talk with me and I later knew him as Dr Rob Chappell.

Robert, yeah, you knew him as Robert Chappell?……Robert Chappell, yeah, that's right.

Okay. And was the treatment given to you in the Holman Clinic?……I beg your pardon?

Was the treatment given to you – it's part of the Royal Hobart Hospital - ……At the Royal Hobart Hospital, yes.

And in the Holman Clinic was it, do you recall?……I think – I can't remember which – because we went through – but I thought it was more or less out on – it was in the radiation part anyway.

That's okay. On the 26th January last year, on Australia Day, were you near – or were you at Marieville Esplanade?……Yes, I was.

At about what time of day?……Well I can't say exactly but it was really quite early in the morning –

Yes……..Because I had decided to get up really – I was up very early that morning because it was a beaut – the start of a beautiful day –

Yeah……..- and so I decided to walk up to Sandy Bay and get some fresh bread, and so I walked up to Sandy Bay, and I went to Woolworths first and then down to the Sandy – over to the Sandy Bay Bakery, and I then turned into, I think I went to McDonalds, I can't remember, I had an ice-cream or something, and then I went down – oh what's the name of the street that goes down where the doctor's surgery is – Margaret Street, I think it is, and I got onto the – to the – it was a beautiful day and I sat on the seat and it was the middle seat, there's a seat right at the end –

Mm hm. …….- one in the middle and one on the end of the left hand side of Marie – which I now know to be Short Beach.

Right. It's a little beach where dogs can go, is that right?…….I beg your pardon?

Where you can take dogs, is that the beach?…….That's a doggy beach, yes, yeah.

Okay. So you're sitting there, and then did you go somewhere – towards somewhere else?…….I sat there for quite awhile.

Yeah……..And then I decided, 'well I'm going home to make some sandwiches and go to the beach'.

Okay. And which way did you go, back towards Sandy Bay?…….No, I – I went across towards the yacht club.

Right. …….Because there's a path that leads from the doggy beach right around past the yacht club and then out onto the – almost to Sandy Bay Road there.

I see. And there did you see someone you recognised?…….Yes, I did.

Who was that?…….Doctor Rob Chappell.

Ah huh. What was he doing?.....He was walking towards the doggy beach, they were coming towards me.

Yeah. When you say 'they' he was in company with someone?.....Yes, he was with a lady – a lady.

And did you hear them saying anything?.....They didn't say anything.

No.....Sorry – the question?

No I'm sorry, did you hear them – them speaking, were they speaking to each other, perhaps?.....Dr Chappell was in the front.

Yeah.....And the lady was a few – a little bit behind him and she was talking in a raised voice, but I was too far – I was about twenty – fifteen, twenty metres away and – but the reason I looked because I could hear the loud voice.

Mm hm. .....And then I thought 'gee I know that man, and it was Dr Chappell.

Right. Right, nothing further, thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Let me just follow this through with you so I can make sure in my own mind I have your sequence of events correct. You went up to the Sandy Bay Bakery?……Yes.

Which is in Sandy Bay Road just past the intersection with King Street?……Yes.

Thank you……..I think it's King Street, I'm – yes it is, yes.

Yes, and then you believe you walked down to McDonalds, which is further down Sandy Bay Road?……Yes.

And you purchased something there, is that right?……Yes.

And then you walked down past the doctor's surgery into Marieville Esplanade, is that right?……Yes, I think that's Margaret Street.

Yes. So what time did you leave home that morning?……Quite early actually.

That's not very helpful to me, tell me the time?……Oh goodness me, two years ago now, it was very early, round about seven – between seven thirty and eight o'clock.

So where do you live?……I live opposite the casino.

So in that big block of units opposite there?……Yes.

All right. And you got down to Marieville Esplanade at what time?……Oh goodness. Within about a half an hour of me coming from McDonalds.

Yes…….Or less than that, twenty minutes.

I don't know what time you left McDonalds, so what time did you leave McDonalds?……About five minutes later because I'd bought an ice-cream there and had an ice-cream.

So you walked from the block of units opposite the casino, up to the bakery near King Street?……Yes.

How long did that take you?……Oh about half an hour.

And how long were you at the bakery?……Oh not long, I purchased the bread and left.

Then back down to McDonalds?……Yes.

From McDonalds down to Marieville Esplanade. So what's your best estimate of the time it took you to get from the bakery down to Marieville Esplanade?……Well not long, it's only about ten minutes.

Yes, and how long did you then spend sitting at the doggy beach, as you called it before you left there?…….Oh, around about a half an hour maybe forty five minutes.

Right. Have you ever said that you sat on that seat for about twenty minutes?…….Have I ever said it?

Yes. …….I don't know I may have done it's a long time ago.

Did you tell the police "I sat on a seat on the grassed area in front of the beach looking out at the beach. I sat on the seat for about twenty minutes"?…….Yes, it's quite possible.

Did you tell the police that?…….Yes, I did.

Thank you. …….It's in my state –

So now you're tell us it's as long as forty five minutes, is that?…….Oh –

Ms Zochling, what's correct, what you told the police -…….Because it's nearly two –

- or what you tell us now?…….- years ago, sir, and I – you know it's a bit difficult to remember. All I know is I saw what I saw.

I'm asking you what's correct; were you there for twenty minutes or forty five minutes?…….Well it could have been a bit longer.

Than what?…….Pardon?

Longer than twenty minutes?…….It have been a bit longer than twenty minutes.

As long as forty five, as you've just -…….Yes.

- told us?…….It could have been, because it –

Right. …….- was a nice day and there was a lot of people around and dogs on the beach and I like to watch them.

Yeah. Well you've said you walked towards the yacht club - …….Yes.

- and did you go past the child's play area that's in that area?…….Yes, I did.

Mm. And -…….At that time it wasn't fenced off either.

I didn't ask you about that. I asked you did you go past it?…….Mm.

Now you say you saw a person you recognised – you called as Dr Chappell, but Mr Chappell, and there was a woman with him?…….Yes.

And she was behind him -…….Yes.

- by what distance?…….Oh not very far.

Well that doesn't help me, how far?…….I don't I just didn't – I – I can't know – she was walking behind him.

Yes. And could the witness be shown P01 please?…….I beg your pardon.

I wasn't speaking with you -…….Oh sorry.

- I was speaking to the attendant.

Now just take a moment and familiarise yourself with that aerial photograph; do you see Marieville Esplanade marked there?……Yes.

Do you see the Sandy Bay Rowing Club marked there?……Yes.

Do you see the Royal Yacht Club of Tasmania marked?……Yes.

And you can see Margaret Street and the junction of Marieville Esplanade, can't you?……Yes.

All right. Now using that are you able to tell me where you first saw Mr Chappell that morning?……This is Margaret here –

Take your time.....It must've been I think probably round about a metre or so past the Sandy Bay Rowing Club.

Right, and -.....But I was on the other side.

That's all right, we'll just take it step by step. Mr Ellis, do you have a spare copy? No, don't worry about it. We need to get that – a mark on that map, does that cause any problems, your Honour. It can be done, I suspect, to that marked one, I think.

MR SHAPIRO: I can get a spare copy, your Honour.

MR GUNSON SC (Resuming): In any event I don't propose – can you – can the witness be given a colour marker.

MR ELLIS SC: I'm not happy about marking the exhibit, we're getting some copies.

HIS HONOUR: Yes, if it's all right –

MR ELLIS SC: If it's something of vital importance, but –

HIS HONOUR: If it's all right with you, Mr Gunson, it might be a good idea to keep P1 clean –

MR GUNSON SC: Yes.

HIS HONOUR: - and Mr Shapiro apparently is on his way, here he comes, with a copy of it, or if you prefer there's the map that the previous witness put some markings on.

MR GUNSON SC: Yes, that's –

HIS HONOUR: P54.

MR GUNSON SC: Yes, I think we'll use that. Yes, I think your Honour's detected a certain jousting going on.

HIS HONOUR: Yes.

MR GUNSON SC (Resuming): Now what you're being shown now, Mrs Zochling, is a smaller version of what's already an exhibit, could you just marked where first of all you were when you say you first saw Mr Chappell, you have to put a Z there. Yes, just put a Z - .....About there, the seats are there.

All right, can I have a look at that please? Am I right in thinking that this mark here is what you intended?……Yeah.

All right, it's just a blue mark. And if you'd also put please where you say Mr Chappell was, and put a C there please…..It's approximate.

Thank you. Could that be shown to me please? Now you haven't put a C there but I'm – what you've done is you've put two ink marks on the paper and I want you please if you would to put a Z where you were and a C, that is the letter C, where Mr Chappell was, please do as you're asked…….A Z for me?

Yes. Now could I have another look please? All right, so you've shown your position on this map towards the end of Short Beach?…….Yes.

And Mr Chappell over near the car park of the Royal Yacht Club, is that right?…….Oh I don't know where the – the car park's on there.

All right. You put the "C" there -…….Yeah.

- I want you to be quite sure please -…….Have we got car park marked?

Well if you have a look you can see it's a car park?…….This is Sandy Bay Rowing Club –

You put your "C" for Chappell just to the right as we look of some sheds, but between the Sandy Bay Rowing Club and the Sandy Bay – sorry – sorry, the Royal Yacht Club?…….The Royal Yacht Club.

Yeah……..Yeah, but the Royal Yacht Club is over here.

The Royal Yacht Club is marked -…….Yes, I know.

- it's got there – right……..It's here.

Come right, you'll see some sheds?…….Pardon?

You can see some sheds when you look at that photograph?…….The sheds – the rowing sheds are here.

You can see them?…….Yeah.

Look, are you confident where you put the "C" that that's where Mr Chappell was?.....No, he was coming from the Royal Yacht Club around –

Right. .....- yeah.

Well do you see the words "Royal Yacht Club"?.....Yeah.

They are directly above the Royal Yacht Club surprisingly. Now do you see the walk in – well the jetty in front of the Royal Yacht Club, you're familiar with that, aren't you?.....Yes.

Right. Was he anywhere near there?.....No, I just – I'd got up there and it was about here, where I've got my "Z" before I actually crossed over the road there, because there's a path that goes from –

Yes.....- the Royal Yacht Club right around there, and I was there, and as I was about to cross the road I heard – and I saw – I heard first some loud talking –

No just, please, concentrate on the question.....Yeah.

Are you confident that where you put "C" -.....Yes, yes.

- is where Mr Chappell was?.....Yes.

Thank you. And the woman was some distance behind him, is that right, by a few metres?.....Yeah. You can't – because we were almost – I'm afraid I can't say whether it was fifteen metres, ten minutes or ten – or five feet, but she was walking behind him.

And do you say on your oath that you could recognise him from that distance?.....Yes, I do.

Did he pass you?.....Pardon?

Did he go past you or you go past him?.....No.

Right. First of all could you show that to his Honour, then Mr Ellis and then the jury, please.

HIS HONOUR: Thank you.

MR ELLIS SC: Thank you.

MR GUNSON SC: That can be returned to the exhibits please. Thank you. And perhaps we can take the other map as well. Mrs Zochling, you have in fact advised the Director of Public Prosecutions, Mr Ellis, recently that you'd seen a news report that showed a photograph of Mrs Neill-Fraser haven't you?……Yes.

And you said with respect to that, to Mr Ellis, that the woman that you saw in that news report is definitely not the same woman you saw walking behind Bob Chappell on the morning of Australia Day last year?……That's correct.

And that is your belief isn't it?……Yes, at the time it was.

And when you said that to Mr Ellis it was your belief?……Yes, yes.

Yes. And you have also said to Mr Ellis it's quite clear to you that the woman that you saw was more than likely going somewhere else or to another yacht and there were many people around at the time preparing their yachts for a day of sailing as it was becoming a very hot Australia Day, that's what you told Mr Ellis wasn't it?……Excuse me would you repeat that.

Yes. You said to Mr Ellis –

> *It's quite clear to me that the woman I was saw was more than likely going somewhere else or to another yacht.*

That's what you said didn't you?……Gosh, I can't remember that but –

Do you deny that?……Pardon?

Do you deny that…..I'm not sure what – because I – can I say what I saw?

No, you'll answer the questions…..I said the woman I saw was a –

HIS HONOUR: No, no, wait for the next question please.

WITNESS: Oh, sorry.

MR GUNSON SC: (Resuming): I want you to look at this document, I want you to read it to yourself, I do not want you to say anything about it whatsoever. When you have read the first page please tell

me. Now be careful about this, I don't want you to say a single word about it, do you understand that?……Yes.

Can you pass that back to me please? I want to ask you again, did you recently say to Mr Ellis, "It is now quite clear to me that the woman I saw was more than likely going somewhere else or to another yacht"?…….Yes.

Did you also say to Mr Ellis, "There were many people around at the time preparing their yachts for a day of sailing and it was coming to be a very hot Australia Day"?…….Yes.

Thank you. Now you told the police, did you can't recall what the woman was wearing -…….Yes.

That's correct, thank you, and that you didn't take much notice of the woman?……That's correct.

That's correct?……That's correct.

In what direction was Dr – sorry, Mr Chappell walking when you saw him?……When I saw who?

Pardon?……When I saw who?

Mr Chappell, when you first saw him what direction was he walking?……Towards the small – coming from the yacht club towards the small beach.

Thank you. And you were walking towards the yacht club?……I was about to, yes.

Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN – MR ELLIS SC: Thank you. Mr Gunson's – my learned friend, Mr Gunson's said that you've said various things to me, when did you say those various things, Mrs Zochling?.....I beg your pardon?

When did you say to me or write to me the various things that Mr Gunson has brought to your attention?.....When did I write it?

Yes.....Those things there?

Yes.....Last Sunday night.

That was because you didn't want to come to court?.....Pardon?

And was that because you didn't want to come to court?.....No, no, not at all, on the contrary. I spoke to my lawyer first, I saw him by accident on the Friday, and I thought perhaps I – I'd never given a thought to come and talk to you about it, to be quite honest, I just – it said that if you didn't want my form that I got, or the – to come to the court, it said that if I didn't want to come I could either write a letter or speak to you myself, but I thought it was a bit close and that you may not have got – I thought you may have answered my letter. I brought the letter in myself personally on the Monday morning –

Mhm.....- and the trial was to start on the Tuesday, so I thought rather than – you may have been occupied and reading the facts there could have –

Yes.....And I expected to get a phone call or something from you to say yes or no.

Well didn't you write, 'Therefore I wish to be excused from attending court'?.....I beg your pardon?

Did you write, 'Therefore I wish to be excused from attending court'?.....Yes, I did.

Right. You've said that it's more likely that the woman that you saw that you believe was speaking in a raised voice to Mr Chappell was going to another yacht, why is that more likely?.....Well because the woman I saw originally with Mr – Mr Chappell was – I thought was a blonde –a blondie ash hair, shoulder length hair, and when I –

Right. .....Yeah.

Sorry, I don't wish to -.....And when I saw the television –

Yes.....- sorry, when I came to the Court here and saw that the – the lady in the – in the box there had black hair –

Yeah.....- that's the reason I thought that I had the wrong person.

I see. I think we might have a picture of the lady you might have seen – sorry, your Honour, just bear with me –

HIS HONOUR: P50 – you might be thinking about P50, tab 5 in the blue folder?

MR ELLIS SC: Yes, thank you. (Resuming): Well maybe P50 number 1. Can you see the woman that you saw there?.....No the woman that – the woman – it – the one in the front here –

Mm, I'm just asking you if you see her there?.....It doesn't seem to be – oh sorry, would you ask me the question again?

Yes, without – without looking at the accused, do you see the woman there that you saw?.....Yeah, but that's – the woman –

In photograph 1.....- that I saw had blond hair.

Blond hair?.....Yeah, blond ashen hair.

Absolutely blond?.....Pardon?

Absolutely blond?.....No, no, no, no, ashen blond, sort of – I don't know – it just – I didn't really take much notice, but it certainly wasn't that colour.

Right. It was black?.....Well I – when I – well I don't know, black, whatever, I saw it on TV.

Yeah, what you saw on TV. All right, Ms Zochling, nothing further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: Yes, all right, thank you, Ms Zochling, you're free to go.

<THE WITNESS WAS RELIEVED AND WITHDREW

<CHRISTOPHER GUY DOBBYN CALLED AND SWORN:

<EXN – MR SHAPIRO: Is your full name Christopher Guy Dobbyn?....Yes.

And are you a marine surveyor?.....Yes.

And who do you work for?....Oh, I'm self-employed.

And what qualifications do you have to allow you to be a marine surveyor?....I've got a diploma in Marine Surveying.

And how long have you been a marine surveyor?....Three years now.

And prior to that, did you have some experience with yachts and boats?...Yeah, I've been a boat builder since I was 18, which is approximately 20 years.

Thank you. Now on 27th January 2009 you contacted and advised that the Four Winds had been sinking on its mooring?.....That's correct.

And the next day, did you see that vessel, on 28th?...Yes, I did.

Where was that?....It was at Constitution Dock, tied up.

Constitution Dock – thank you. And what did you do when you saw it on that day?.....Oh I moved the boat to the CleanLIFT Marine up at Derwent Park to have the boat slipped.

Okay. And it had to be towed up there did it?.....That's correct.

And you steered the – steered the yacht?.....That's correct. We tied the tender to the side of it. It needed some – because that's a heavier vessel it needed to be steered from that vessel.

Okay, thank you. And so once you had the vessel at CleanLIFT what did you do then?.....I did an assessment as to why the vessel had sunk.

Okay. And did you take a series of photographs?.....That's correct.

Thank you. If the witness can be shown these photos. Can you just have a look at those photos and confirm if they're the photos you took?.....Yes, they are.

Thank you. I tender those and I also tender the CD with them.

ASSOCIATE: P55 and P56.

EXHIBIT #P55 – PHOTOGRAPHS TAKEN CHRISTOPHER DOBBYN – TAKEN IN

EXHIBIT #P56 – CD ELECTRONIC PHOTOGRAPHS TAKEN BY CHRISTOPHER DOBBYN – TAKEN IN

MR SHAPIRO: Yes, and I have some copies for the jury – thank you. These are on the very back of the smaller folder. Okay, Mr Dobbyn, if you can just explain what that first photo is of?…….It's a photo of the vessel, just a general overview shot.

It's obviously at – where is that photo taken?…….That photo is taken at Constitution Dock.

If you can just flick to the next photograph please?…….That's another photo of it at Constitution Dock?…….Yes of the transom.

Thank you. And the next one – where was that photo taken?…….To my knowledge that in the – just inside the galley.

Thank you. And the next photo?…….That will be the electrical switchboard, either – either in the wheel – that's in the wheelhouse, I would imagine.

Thank you. And the next one?…….That is the saloon area in the – in the vessel.

And the next photograph?…….That's the aft – aft cabin in the vessel.

Thank you……That will be – it's in the front – front of the vessel I would presume because I haven't got any reference to – there's quite a lot of hatches in the vessel and I don't know where exactly it is, it's just showing a seacock into, I would presume, the freshwater tank or the fuel tank.

Okay…….Actually I think that's the grey water tank because the pump that's here is – looks like a macerator.

Okay, I understand that, thank you. And the next photo?……That's showing scraping on the underside of the hatch in the front of the boat.

So that's the forward hatch?……That's the forward hatch, yes, that's correct.

Perhaps you can use the mouse there to point out where you say there's this scraping?……I took this photo 'cause it's not very often that you get marks like this, obviously been something scrape up the – the front of this hatch here and it's taken all the varnish off that corner in that area -

Thank you……..- which showed bare timber.

And the next one?……That's the same – same mark that's just a bit of a closer up view, you can see where the varnish has been taken off here and it's exposed with the bare timber.

Thank you. If we go to the next photograph?……It's one of the seacocks into the boat and because I've got no references to where it is in the boat I couldn't exactly say which part it is.

HIS HONOUR: That's the photo that was tendered last week as exhibit P47.

MR SHAPIRO: Thank you, your Honour, thank you. (Resuming): And if you can go to the next, thank you…….It's just a photo of one of the bilges of the boat showing the tag for one of the bilge pumps – oh for one of the seacocks.

Thank you. And the next one?……That's up in the very – that would be the hatch in the very bow of the boat showing the bilge pump that's – that's just here, it's a Royal 7000.

Thank you……..That's the sea water pump – oh the hose coming from the seacock in the cupboard to the toilet. The white here is the actual toilet.

Oh yes, I see, thank you……That's showing the base of the toilet and the hose going off to the grey water tank in here.

Thank you…….That's the grey water tank, I believe, with a – yeah, that's the waste pump in here which pumps the – just the waste from the toilet into the grey water tank here.

Thank you, Mr Dobbyn, and the next photo?……Just another – another view of the tank and the valves into the grey water tank. The same, just through a different hatch in the floor at the other end

of it. These were on the – just on the bench inside the main saloon in the vessel.

Yes, thank you.....I presume that's the fresh water tank or the fuel tank in the vessel just inside the – down the companionway. Those floorboards were – had been lifted up or had either floated up when the vessel was sank or had been removed prior to that – to the vessel sinking.

Thank you.....Just showing the valves for the fresh water tank.

I think that's the last photograph. Now having inspected the vessel was there anything in particular that you noticed?.....My job was there - as an insurance assessor was just to try to discover why it had sunk in the first place and the extent of the damage to give the insurance company some idea as to the coverage.

Perhaps, your Honour, if I can ask for the screen to come down, thank you.

HIS HONOUR: Yes.

MR SHAPIRO: Well perhaps we can ask Mrs Oakes to close the laptop, thank you. (Resuming): Yes, sorry, so you were saying that – what you'd observed?.....I was – I was there just to do an general overview of – to try and determine the cause of the vessel sinking in its mooring and to the extent of the damage of the vessel.

And were there some particular aspects of the yacht that you took note of?.....I noticed that the boat – the boat was in very good condition. There were a couple of floorboards missing just as you entered the saloon down the companionway stairs. Now they had either floated up during the sinking, because they weren't screwed down, or they had been removed prior to – most of the other hatches in the boat were in place.

Did you notice anything in relation to the beds on the boat?.....I noticed that all the beds were made in the boat besides the aft cabin and there was no – I didn't notice any doona or doona cover on that bed.

But there were on the others?.....All the other beds were made up, yes.

Did you – well did you find where the water had being entering the yacht?……I was informed by the police officer that the hose had been cut next to the toilet.

And did you notice any other marks on the timber other than what you've –…….Yes there appeared to be – the scrape marks on the forward hatch with bare timber exposed and there was also a – it appeared to be a rope burn exposing bare timber on the aft, on the companionway entrance as well, which had been, in my opinion, not done very long ago.

Perhaps if the witness can be shown P09?

HIS HONOUR: So this is the second set of photos in the large folder, ladies and gentlemen.

MR SHAPIRO: (Resuming): And if I can take you to photograph 10 and 11, can you see where you saw these marks in those photographs?…….On photograph 10 it would have been on the – on the trim that you can see on the entrance to the companionway on the – the very left hand piece of timber you can see running vertically.

And is that shown in photo 11?…….Yes, it is, yes.

Perhaps you can -…….It's indicated with an arrow on my photo – is that the same?

Yes……..Yes.

Thank you. And so did – in terms of where this pipe was cut, did you look at where that was cut?…….Yes, I did.

Okay. And what did the location of that cut pipe lead you to believe about the – the knowledge of the person who must have cut it?…….Well they would have known exactly what that pipe was for because it was – it was basically hidden with a very small gap on the right hand side of the toilet and and if you had of cut the left hand one that's the one that goes off to the grey water tank, so that was the one more accessible to – to be cut and if that had been cut it wouldn't have done – done anything.

So in your opinion what level of knowledge would they have to have had of this particular –

MR GUNSON SC: I object to that, your Honour.

MR SHAPIRO: Your Honour, I don't press it, thank you.

HIS HONOUR: Yes, all right.

MR SHAPIRO (Resuming): Now in terms of those marks on the wood that we were speaking about a second ago what did that appear to have been made by?……In my opinion it was made – made by a sheet and a rope.

Okay. And – well how would that have been made by the rope?……By the rope being laid against the timber and being dragged against it.

Thank you. And later that day you spoke with Ms Neill-Fraser?……That's correct.

And you spoke with her about Mr Robert Chappell?……I made a brief comment to express my condolences as to how she was feeling at the time.

What tense did Ms Neill-Fraser use when speaking about Mr Chappell?……I can't remember exactly what she said, but at the time I formed the opinion that she had thought that he was – he was deceased.

Now did you observe anything on the steps in the yacht?……It was pointed out to me that there were stains on the steps and I did actually see them.

And did Ms Neill-Fraser say anything to you about those stains?……No.

Did you notice whether the boat was equipped with a depth sounder or something of that nature?…….I didn't pay particular attention to the electronics on the vessel but it would have – it would have been, yes.

MR GUNSON SC: Well I object to that, your Honour.

HIS HONOUR: Well Mr Shapiro?

MR SHAPIRO: Yes, well – I don't press that, your Honour.

HIS HONOUR: All right. Well ignore the witness' opinion; he didn't pay any attention to whether there was a depth sounder, ladies and gentlemen.

MR SHAPIRO: (Resuming): Do you still have – do you still have the photographs in front of you?.....Yes.

Thank you. Sorry, if I can – if he can be shown P03 please?

HIS HONOUR: That's the first set of photos in the big folder, ladies and gentlemen.

MR SHAPIRO: (Resuming): If I can take you to photograph number 24?.....Yes.

Can you tell us what that grey box with the screen is, sitting in the top of the photograph there?.....That's a Furuno radar.

Thank you. And what – what do you do with that?.....A radar is for picking up other vessels and land mass, so you can plot your course.

Thank you. Perhaps if I take you to photograph 16, is anything in the – well you can see the wheelhouse there in that photograph are any of the instruments you see there for determining depth?.....Without knowing what – that centre grey instrument would possibly be the depth sounder GPS, in the centre, but without knowing what it was – I can't actually just see a – most of those instruments are engine controls.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I'll be a little time with this witness does your Honour intend to take the morning break?

HIS HONOUR: Yes, in that case the jury can make their affirmation and the Court will adjourn for fifteen minutes.

JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC:Mr Dobbyn, you are a surveyor, you have been a surveyor now for three years?……That's correct.

Part of a surveyor's role is to see whether or not a boat that's either being built or is in existence has been – is ready to go to sea, it's got to be surveyed, particular standards set out by MAST, is that right?……If it's in commercial use, yes.

And your task also as a surveyor from time to time is try and determine why a vessel may have sunk?……Correct.

And you look for obvious signs of damage to seacocks failing and things like that, correct?……Correct.

In general terms the Four Winds had been well built, it was in good condition?……It appeared in good condition.

Right. How much time did you spend actually inspecting it for the purpose of providing advice to your insurer/client?……I would have been on the vessel for probably – oh, four to five hours.

Four to five hours. And a number of the seacocks, obviously from the photographs, were well marked, had tags on them?……They're not all seacocks.

No, but some of the seacocks were marked with the tags?……Yes, yes.

And other internal taps, if I can use a lay word, were well marked as to what their purpose was?……Yes, correct. Correct.

Now you observed damage, you said, to the pipe, the inlet pipe that comes in from the sea to the toilet?……That's correct.

The toilet was pretty much a stock standard fitting?……Yes.

And the sort of pipe system that brought the water in from the sea to the toilet was very much a stock standard arrangement wasn't it?……Yes.

Nothing unusual about it at all?……No.

And all the piping was exactly where you would expect to find it on a yacht with a toilet like that?……Yes.

Thank you. You met Ms Neill-Fraser some time after the 27th of January, didn't you?…….Yes.

How long – how much later than the 27th of January was it that you met her?…….I met her on the 28th.

If I was to suggest to you that it was later than that, would you agree with it or not?…….It might have been the 29th.

All right. But she arrived with a Mr Terry Leen, didn't she?…….No, she didn't.

Have you ever said "I met with Susan Neill-Fraser for the first time on the afternoon that Terry Leen arrived to inspect the vessel on her behalf"?…….She was not – he was not present with her at the time.

Have you ever said before, "I met with Susan Neill-Fraser for the first time on the afternoon that Terry Leen arrived to inspect the vessel on her behalf"?…….Yes, I have.

Yes. And that's what you've told the police when you provided them with a statement on the 9th of September 2009, isn't it?…….Yes.

Right. Now if I was to suggest that that was sometime after the 27th, 28th or 29th of January 2009, would you agree with that?…….No.

So what date did Mr Leen come onboard for the first time?…….I'm sure Mr Leen came onboard the day I did the assess – the day I did the assessment, or he might – because it was so long ago, I cannot actually recall whether I attended the vessel a few days after I'd moved to cleaning of –

Have you brought your records with you?…….- or whether it was the day.

Have you brought your file with you?…….No, I haven't.

You haven't brought any of your documents with you that you would have recorded the dates that you were there on the boat?…….No, I haven't – oh actually I have got my –

Well what have you got there?…….Well it's in my –

I asked you what you had not where it was?…….I have got my file.

Thank you. …….That I had in the boat.

Well why did you tell me you hadn't brought it with you?…….I wasn't sure whether I had.

Well you knew it, when I asked you that question, you knew full well you had it around in the witness waiting room, didn't you?…….No, I didn't.

Well your Honour, I will probably want to ask the witness some questions, can he be directed to recover that file please and bring it into the Court?

HIS HONOUR: Where is the file, Mr Dobbyn?

WITNESS: I'm pretty sure it's in my bag in the witness room, your Honour.

HIS HONOUR: And you'd like him to go and get it?

MR GUNSON SC: I would, your Honour.

HIS HONOUR: Yes, would you go and get it please, Mr Dobbyn, and bring it back while we wait.

WITNESS STEPS DOWN;

HIS HONOUR: Mr Gunson?

MR GUNSON SC (Resuming): Have you brought into the courtroom your file relating to the work you performed for the insurer of Four Winds?……Yes.

And when I asked you that question a moment ago about its existence and whereabouts you knew full well you had it out there, didn't you?……No, I didn't.

And it just suddenly came to mind that you had?……Well I wasn't sure what files I'd brought with me this morning, your Honour.

Any other files in your bag?……Yes, I have.

Relating to this case or other matters?……Other matters.

All right. Now to answer this question which I'm about to ask you, you may need to have reference to your file, so would you take it up please and open it up. Just give me a yes or no answer, does your file record the date upon which Mr Leen inspected the boat on behalf of Mrs Neill-Fraser? Do you need to look at your file to answer that question?.....Yes.

Well look at your file, please. Does your file record the date upon which Mr Leen arrived to inspect the Four Winds?.....No.

And does your file reveal how many dates you worked on the Four Winds?.....No.

Do you know how long the Four Winds was at the CleanLIFT Marine premises?.....Not exactly.

Well roughly?.....Probably two to three weeks.

Thank you. And if I was to suggest it wasn't until mid February that Mr Leen inspected the vessel would you agree with that?.....Yes.

Thank you. And as you said, in the past when you spoke to the police you said you met with Mrs Neill-Fraser for the first time on the afternoon that Mr Leen arrived to inspect the vessel on her behalf?.....Yes.

That's correct, isn't it?.....Yes.

Thank you. Now Mr Leen told you he'd been employed by Ms Neill-Fraser to report on damage to the vessel?.....Yes.

And to reduce the risk of loss on board the vessel?.....That's correct.

And to reduce the risk of loss required attention to a number of matters, didn't it?.....Yes.

For instance the engine would have to be protected and dealt with in some way because it would've been flooded with salt water?.....Correct.

And the same with some of the electronics?.....(No audible reply).

Yes. Now it was pointed out to you by Ms Neill-Fraser that the fire extinguisher was missing from the main saloon?.....Yes.

Thank you. Now are you experienced as a surveyor in determining the cause of loss on vessels?……Yes.

And to sink a boat one way you can do it is to open up a seacock, correct?……Not without doing something else.

What else would you have to do?……You'd have to disconnect the hose that the seacock's connected to.

Yes, and to get -……..Unless it wasn't connected –

- water to flow into the boat?……That's correct.

And depending on the amount of water that would flow into the boat the boat may or may not sink, depending on its construction?……Yes.

That's a fact, isn't it?……Yes.

And, for instance, if watertight bulkhead doors were closed preventing water from going into certain parts of the boat it may or may not sink, depending on the volume of water?……That's correct.

And of course you'd have to also, to sink a boat, ensure that you had an adequate flow of water coming in?……Adequate – not adequate, you'd have to have water flowing in, yes, it could take a certain amount of time.

Yes, and to sink a boat like the Four Winds you would need to have a lot of water coming into it……..Yes.

Mm. And would – would you – are you able to suggest the amount of water that it would take to come into Four Winds to sink a boat of its size on its mooring?…….Not without doing the calculations, sir.

And how would you do the calculations – is there some formula?…….It would be a volume mass.

A volume mass -…….Of the interior of the cabin –

What else?…….- to the water flow of the – that was coming in the vessel.

Would you accept this proposition from me; assume that you have the pipe cut where the toilet is, assume that another seacock was open with water coming into the vessel, it would be a very very long time until that yacht sank, wouldn't it?…….Not necessarily.

Well we're not talking about a process of a few hours, are we?.....No.

No. In fact would you accept this proposition; that to sink the Four Winds just by those two means would take a considerable period of time?.....No, I could not answer that.

Can't answer that – but you could answer it by working out volume flows, the volume of the vessel and so forth?.....Yes.

All right. But nonetheless to sink it would require a very large volume of water?.....Yes.

Thank you. Am I right in thinking that all of the floorboards onboard the yacht were not screwed down when you went down into the main saloon?.....Could you repeat the question please?

Yes. Were all the floorboard loose from their fittings when you went down into the main saloon?.....No.

And what about for'ard of the main saloon into the next compartments, they were all up, weren't they?.....No.

But they had not been screwed down, had they?.....I couldn't – can't – cannot recall that.

You can't recall now – thank you. Did you prepare a report for Tasmania Police concerning your observations or, did you prepare a report for your insurer client?.....I wrote a report for the insurance company, yes.

And you provided a copy of that to a Detective Sice, is that right?.....That's right.

Did you provide that to him on a CD or did you provide that in written form?....To my knowledge, I gave it to him on q CD.

Do you have a copy of your report there to the insurer as to the cause of sinking?.....Yes, I have.

Will you produce that for me please? Would you pass that to me please? Thank you. That can be returned to the witness please. It was fairly obvious to you over the couple of weeks that you were involved with this vessel that Ms Neill-Fraser was doing everything she could to look after the boat, to get it back into a condition that it

ought to be able to get back into?.....The cushions were removed, everything was – tried to be dried, yes.

She was pretty active about the boat in your presence wasn't she?.....Yes.

Drying it out, removing gear that could be salvaged?.....Correct.

Had the generator removed even I think at one stage?.....Yes.

Yes. A fairly major job?.....Yes.

What other work did you see her doing around the boat, anything else?.....No.

Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<JEFFREY RAYMOND ROWE CALLED AND SWORN

<EXN - MR ELLIS SC: Mr Rowe, you're Jeffrey Raymond Rowe?.....Yes.

You're a yacht broker?.....Yes.

And your business is at Newport Marina at Redcliffe in Queensland?.....Yes.

Did you negotiate the sale of the yacht, the Four Winds?.....Yes.

And to whom did you sell it?.....Susan Neill-Fraser and Bob Chappell.

Do you recall the date of sale?.....5/9/07.

Could it have been a year later?.....Sorry? Yes, it could've been, '08.

Okay. What was the yacht's history to that point as you knew it?.....Depends on how far back you want to go.

Just from when it was for sale.....Yes. It was – it was actually for sale originally through our Newport – Manly office and they moved it up to Scarborough Marina and I took over the – the listing and the sale of that boat from Scarborough Marina.

You don't mainly operate out of Scarborough Marina, is that right?.....I'm sorry?

You don't mainly operate out of Scarborough Marina, you operate out of Newport Marina, is that correct?.....Yeah, my office is based at Newport but there are three marinas in the area that I operate out of.

Okay. All right, you – did you meet Ms Neill-Fraser and Mr Chappell?.....Yes I did, but not – not originally, my wife did the initial presentation of the boat.

Yep. By September 2008 had you met them or -.....Yes, I had.

Right. How would you describe Mr Chappell?.....Initially quiet, a little slow to get to know but once I did get to know him I found him quite a nice person.

Was one of those two doing the main business, having most to do about the purchase?……Yes. Yes, Sue did most of the discussion and the negotiations.

Right. Do you recall that Mr Chappell – do you recall him getting round on boats?……You mean actively?

Yeah…….Yeah, no, he was good. I thought initially that he was a bit uncomfortable on boats but he seemed to be quite – quite capable.

Right. Steady on his feet?……Yeah, yes.

Did you give them some contacts after the sale?……Yes, I did.

Who where they – who where they to?……Oh in fact I gave them a number of contacts even prior to the sale. Jim McKinnon, the diesel mechanic, we needed to get him involved to get the engine started in order to conduct a sea trial.

Yeah……..Then I introduced them to a, initially a delivery skipper called Russell Crichtiton, who was assisted by Peter Stevenson, who then subsequently delivered the boat with Susan and others to Hobart.

Yes. Was – do you recall having any discussion while the boat was in Queensland with Ms Neill-Fraser about an electrical panel?…….With regard to what, the electronics or the work that was being done on the boat.

About a panel being opened?…….Yes.

What was that discussion?…….That discussion revolved around a situation that people thought the boat was being broken into.

Yeah……..At that time, and it was learned that one of the people that was involved working on the boat was an electrician who actually did admit to the fact that he'd been working on the boat at that time.

Okay. And he'd done something, had he?…….I'm sorry?

And he'd done something concerning electrical fittings?…….Yes, he had he'd been working on the switchboard, or had done some work on the switchboard.

Right. And did you inform Ms Neill-Fraser of that?…….Yes, I did.

The marina at which the boat was moored was changed, wasn't it?.....Yes, it was.

And do you recall the reason?.....There were two issues; the – the diesel mechanic, Jim McKinnon, was uncomfortable with the fact that he felt somebody was gaining entry to the boat.

Mm.....Out of – out of hours or when it was locked. There was also a bit of a disagreement or an unpleasant situation developed with another broker who operated out of Scarborough Marina and that affected Jim McKinnon and Sue Neill-Fraser.

Right. .....So we decided to move the boat.

Do you recall speaking to Sue Neill-Fraser by telephone early in January 2009?.....Yes.

Do you recall the date?.....The 8th of January was one occasion.

Right. And as to that occasion, can you recall what was said?.....Sue told me that she and Bob had separated.

Yeah.....At which I expressed disappointment. She also – no that was the main topic of the conversation –

Okay. Did she offer some reason for the separation or what might have been a reason?.....The comment I remember her making was that she was just tired of having to do everything.

How did she sound?...A bit disappointed, but she seemed to have herself together pretty well.

Did she mention any future plans?....Oh, yes – she was quite keen on taking the boat to Port Davey and participating in the Royal Tasmanian Yacht Club Bi-annual tour of Tasmania.

Did you discuss how she would go about doing that?....I'm just thinking whether it was that conversation I suggested a couple of people that might help her or assist her handle the boat –

Yeah?...On that trip, yes.

And was that in the context that Mr Chappell wouldn't be doing so? That she would be on her own with the boat?....I think when I suggested a couple of other people, that would have been later, after the boat had sunk.

I see, okay. After the boat had sunk, did you receive a call from her?....Yes, I did.

And did she say anything about ropes on the boat?.....Yes, she mentioned that a number of the ropes had been re – re-positioned on the boat, one in particular was the – were the Genoa sheets had been untied and they'd been re-located back down at the stern of the boat around the winches.

Yes....Um – and mentioned that it appeared as if the ropes had been located down there and positioned in order to lower a body, or words to that effect.

Were they her words?...Yes.

In two thousand – going back now, I'm sorry.....Yes.

In August 2070, did you take photographs of the interior of the boat for the purpose of surveying what was there?...Yes, I did, I took the photographs to list it for advertising.

Can I show you a copy – photocopy of a photograph.....Yep.

Is that one of the photographs you took?.....Yes.

Thank you. And in the bottom left hand corner what do we see?.....A fire extinguisher.

Thank you. Was that mounted in any particular way, do you recall?.....Was it mounted in any particular way?

Yeah.....Yeah, well as it was photographed I think.

Okay.....Yeah.

It wouldn't be loose on board it would be - .....No.

Okay. I tender that, your Honour.

ASSOCIATE: P57.

EXHIBIT #P57 – PHOTOGRAPH WITH FIRE EXTINGUISHER – TAKEN IN

MR ELLIS SC: (Resuming): Also connected with the inventory did you see that the boat had depth – depth sounding devices?……Yes.

And did it?……Yes, it did.

Thank you. And going forward again, I'm sorry, after the boat had sunk and you get a phone call to see Neill-Fraser did she mention anything about the dinghy and it being found on the day?……Yes, she mentioned that it had been washed up on the beach – washed up on the beach, I just remember making a comment to her about didn't she know – know how to tie a bowline knot, this surprised me that the boat should break away from where it was tied up at the club, and she said, no, she didn't know how to tie a bowline knot but her knots never slipped.

Thank you. Thank you, Mr Rowe.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Just hold this up to the jury will you and point out the fire extinguisher in the bottom left. Mr Gunson?

<XXN – MR GUNSON SC: You in fact described Ms Neill-Fraser as a very lovely and seemed a very genuine person when you spoke with the police didn't you?……Yes.

And you didn't express any concern at any stage about her plans and Mr Chappell's plans to sail the boat together?……No.

And you discussed with them, I suggest, the possibility of sailing in Queensland waters?…….I don't recall.

You wouldn't deny it?…….No.

No. And this – that boat was a boat that needed an absolute minimum of two people to operate properly, didn't it?…….It could be handled by two.

Yes. And for safety sake, if you were going offshore any particular distance it would be sensible to have additional crew?…….Not for the – not – not the safety of the boat but for – for basically night watches so people could sleep.

But in general terms, two people could operate it?…….Could handle it, yes.

In fact it was rigged for that purpose, wasn't it?…….Yes.

Mm, a self furling Genoa?…….Mm hm.

Thank you. When it was in the marina in Queensland at Scarborough, I think you said, you said Mr McKinnon felt that somebody was gaining entrance to the boat?…….Yes.

MR ELLIS SC: Well a bit of hearsay slips out in evidence in chief but it doesn't make it any less hearsay.

HIS HONOUR: Well I – I noticed that it was led without objection and that what it led up to was evidence of, I think, a conversation with the accused – am I right about that?

MR ELLIS SC: That's right, your Honour, that's right, it led up – it led up to that.

HIS HONOUR: Yes, well if – well we haven't heard the question yet, we'll listen to the question. Mr Gunson?

MR GUNSON SC: (Resuming): Do you recall when Mr McKinnon told you this that somebody was gaining entrance to the boat?.....It was after the – it was after the purchase of the boat when we'd –

Yes.....- settled it, and Jim McKinnon was actually doing some work on the boat that was commissioned by Sue and Bob.

Right. Now at that stage, whereabouts was the boat, was it on a mooring -.....Scarborough Marina.

- or in a marina?.....It was in a marina berth.

Right. And was it one of those secure marinas where you can't get onto the jetty or pier unless you have a key to a gate?.....Yes, it was.

And the other methodology of getting access to the boat would be to come in via the sea?.....Yes.

So whilst the gate is secure, you can always come onto a boat - .....You could.

- by other means? Well how many occasions did Mr McKinnon raise this problem with you?.....Maybe two or three times.

All right. And how long after the accused and Mr Chappell had taken possession of the boat did this occur?.....I – as soon as Jim McKinnon started working on the boat, I think it was the second day.

All right, and did he tell you why he had formed that opinion?

MR ELLIS SC: Well, as I say, your Honour, this is hearsay and –

HIS HONOUR: Well this could be hearsay. Mr Gunson, what do you say?

MR GUNSON SC: Well it flows on from the evidence my learned friend led in chief from this witness.

HIS HONOUR: Well it might flow on but is Mr McKinnon to be called on this trial, Mr Ellis?

MR ELLIS SC: We expect so, your Honour, yes.

HIS HONOUR: Well Mr Ellis, under s66(2) the – are we in a position where this witness can give evidence of anything that Mr McKinnon said when – about matters that were fresh in Mr McKinnon's mind?

MR ELLIS SC: I'm not sure about freshness in s66, your Honour. Oh yes, I see. Possibly so, your Honour, yes.

HIS HONOUR: Yes, go ahead, Mr Gunson.

MR GUNSON SC (Resuming): Thank you. Well how many times did Mr McKinnon tell you this, two or three times I think you said?……Yes, yep.

What did he tell you?……He basically said he was concerned, it felt creepy, there seemed to be someone gaining access to the boat or getting onto the boat.

All right, and did he tell you what he based that opinion on?……Things had been moved around and there were screws that had been undone or unscrewed on the electrical switchboard which he felt weren't like that when he left the boat.

All right, and what was his role on the boat?……He was the diesel mechanic.

Right, and what else did he tell you?……That was about it.

All right. But his – was it just his concern about possibly somebody else being on the boat that led to it being moved to another marina or was it also the concern expressed by the accused?……No, it was more his concern.

More his concern?……Mm, and –

And so -…….I'm sorry, I didn't mean to interrupt.

Go on, you're right…….And he was also concerned about the other broker on the marina was – was quite derogatory about his involvement on the boat, the nature of the purchase and what have you, so he just didn't want to be involved with that person.

So for two reasons…Yeah two reasons.

Now was that the last you saw of the Four Winds or did you keep contact?.....Oh no – no, I organised to re-locate it onto the Newport Marina.

Right, but did you keep visiting the vessel at the other marina?.....Yes, constantly, in fact I did on Sue's behalf – Sue and Bob's behalf a couple of times.

And at one stage though before the vessel left, they moved on to the boat for a couple of weeks, didn't they?....That was in Newport, yes.

Yes and they were living on the boat until the time it set sail...Yes.

From Newport to go down the coast...Yes.

And they were very happy with the purchase, weren't they?.....Yes.

And they obviously spent a large amount of time, I suggest, doing basic repairs around the boat?....Mm – for the period of time they were on the boat they did, yes.

Mr Chappell showed a lot of interest in the electrical side of the boat?....Yes, he did, yes.

And expressed some opinions about the quality of the work that had been done in the past?....There was one particular part that he was working on that he found a fault with, which he enjoyed rectifying.

And you didn't see any disharmony between the two of them, did you?....No.

They appeared to be working together as a team on the boat?....Yes.

Appeared to get on very well together?....Yes.

And you didn't witness any arguments or disputes?.....No.

And they made their plans pretty clear what they hoped the future would hold for them when he eventually retired?.....Yes.

Now, I want to suggest to you that you didn't have a conversation with the accused on or about 8th January, that in fact that they had separated? I suggest to you, you were quite wrong about that?....Well, that's my recollection that I did.

I appreciate your recollection, but I suggest to you again that any conversation you had was about the state of the boat and how things were going back in Hobart after the boat arrived down here……As I recall it, it was my first day back from Christmas holidays. I'd just opened the office, and it was on January 8th.

What you were told, I suggest, was that on the voyage down the coast they had separated because he had been admitted to hospital?…..No.

That I suggest is what you were told?……No, that's not the case.

Were you aware that he'd been admitted to hospital on the trip down the coast?……Yes.

And I suggest the conversation was about that?……Not that I recall, no.

No. Do you accept that it's a possibility you could be wrong about that and what I put to you is the correct version?……No.

And I want to suggest there was no discussion at any stage about her, that is the accused, going off on her own without Mr Chappell?……I agree with that.

Yes, thank you. At all times she made it very clear to you that she was sailing in the future with Mr Chappell?……When – yeah, when she was with Mr Chappell.

Yes, but in the conversations, I suggest, that took place after the boat got to Hobart it was still made clear that she'd be sailing with Mr Chappell?……No, when she phoned me on the 8th January it was, amongst other things, to tell me that she's separated with Bob.

No further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. And the question of future sailing was therefore not with Mr Chappell is that right?……Well from following that conversation?

Yeah……No.

Thank you, Mr Rowe.

<THE WITNESS WAS RELIEVED AND WITHDREW

MR ELLIS SC: Call Paul Conde.

<PAUL ANDREW CONDE CALLED AND SWORN

HIS HONOUR: Better turn that face down, please, Mr Conde, and take a seat. Yes.

<EXN – MR ELLIS SC: Thank you. Mr Conde, you're Paul Andrew Conde?……I am.

You live in Dynnyrne?……I do.

Work for the Australian Tax Office?……I do.

And you've got considerable recreational boating experience?……That is correct.

Can you de – briefly?……I've owned recreational boats for thirty something years, I think, used them continuously. I've crewed on racing yachts since 1990 and I've had some cruising experience around the bays and coasts of Tasmania.

Do you own a boat yourself?……I do.

And did you own that on the 26th January, Australia Day, last year?……I did.

And were you out on it that day?……I was.

And at about – well in the late – in the afternoon did you see something?……At 3:55 I was motoring back to the marina at the Royal Yacht Club, I saw vessel, the Four Winds, and rafted up alongside it there was a large dark grey rubber dinghy.

Right, and was that tied to it?……Yes, it was.

Were you with anyone on your boat?……My cousin, Anne Clarke and her husband, Tom Clarke, were with me on the day.

It's probably obvious to people who know something about this, but what side was the dinghy tied on?……The dinghy was tied on the port side of Four Winds about mid-ships.

Right. And is that the side closest to shore at the time you were looking at it?……The boat was actually facing in a south easterly direction – pardon me, the stern was facing the shore.

Right…….If that's of any help.

Did you see anyone on board?……No.

What was the water like, or conditions on the water?……There was a fairly stiff sea breeze, I'd say 15 to 20 knots, and there was about a 3 ft wind chop had been fetched up.

And you sound precise when you say 3:55, how can you be so precise?……My cousin and her partner had asked to be back at the Royal Yacht Club Marina at four o'clock and at three fifty five, the time when I saw Four Winds, I checked my watch and said something to the effect that 'we're making good time I should have you back at the marina when you want to get there'.

And you did?…….Yes.

Okay. Thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: You didn't see anybody on the deck of Four Winds?.....No.

Had you seen Four Winds earlier in the day or, if you had, did you notice it particularly?.....Not that I can recall, Mr Gunson.

All right. And was it a boat that you understood to be really reasonably new to the area?.....I did, yes.

You've taken some notice of it previously?.....No.

But you have seen it before?.....Not that I can recall.

All right. And you said there was a large dark grey inflatable dinghy tied next to it, really dark grey, very very dark?.....Battleship grey.

Battleship grey – all right, thank you. I suppose, when you say 'battleship grey' you mean the colour of a warship we might see at the wharf in Hobart?.....Yes, yes that sort of colour.

That sort of that – and perhaps a bit darker?.....Mm, possibly.

How large was it?.....I would estimate about twelve feet.

And did it appear to have an outboard attached?.....I didn't notice the outboard.

Right. Well do I understand from that you're not able to say whether there was or was not an outboard on the dinghy when you saw it?.....I can't say one way or another, Mr Gunson.

Thank you. But it was tied on the port side – how far along the port side?.....About halfway along.

Definitely not hanging off the back?.....No.

And – I'll withdraw that. The Four Winds, I think you described on a previous occasion, as 'pitching markedly in the slop'?.....That's correct.

And you also made the comment previously that with the dinghy alongside that appeared to be shipping a bit of water over its bow?.....That's true, yes.

Given your experience as a yachtsman was that the most sensible place for the dinghy to be in those sorts of conditions or should it have been tied off the back?……It would depend what you were doing with it.

Perhaps you could amplify that answer…….Yes. If you were – it rather depends also on the design of the boat. Some yachts have got a boarding step at the back –

Four Winds had one……I didn't see the stern of Four Winds.

Please accept from me that there is evidence that there was a boarding step at the back, a grate at the back…….Okay.

With a, I think it was described by somebody, as a gate, is that the right expression?……Um, I couldn't say.

But in any event accept that, now with that configuration would that be the most sensible place to have the dinghy, that is alongside taking water and the slop or would you have it hanging off the back?……I think under the conditions I would prefer to put the dinghy alongside because – because of the very fact that the vessel was pitching in the slop. If you can visualise it the stern of the vessel would have been rising and falling quite markedly it would have been difficult to jump from the dinghy, you'd have to coordinate your movements and actually jump from the dinghy onto the boarding step at the back. Alongside you'd just tie it hard up, providing you weren't too concerned about your paint, you'd tie it hard up alongside and the middle of the vessel is that part of the vessel that's pitching less so if there's some provision to go on board halfway along that would be the sensible way to do it under those conditions.

But you'd need to have that position halfway along to get on board wouldn't you - ……Oh, you'd need a –

- otherwise you're climbing up over wires - ……Over – over – of lifelines, yes.

- bales of wires?……Yes.

But to keep the dinghy in a sensible position whilst you're on board in those sorts of conditions would you continue to tie it to the side of the yacht such as you've described or would a more sensible yachtsman have it hanging off a rope at the back?……Oh –

If it's out of use.....Oh, you'd probably tie it off the back of the boat down aft if –

Thank you. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you, your Honour. You mentioned the dinghy, or were examined about its appearance, could the witness be shown P3 please.

HIS HONOUR: That's the –

MR ELLIS SC: (indistinct words) folder first set and photograph 70 and 71. Now you appreciate in case those photographs, Mr Conde appear to be quite washed out, but is that the shape of the dinghy that you saw?.....I thought the dinghy I saw was darker in colour than that.

No, I asked you about the shape.....Um – different.

Different?....Mhm. I believe different.

In what way?....This dinghy appears to be smaller than the one I saw.

Mm? How many do you think would go in that dinghy?....That looks like it's about an 8 or 9 footer.

Fit six people in it?....As it's an inflatable I think you could, yes.

All right. Now the exhibits in the blue folder please – the –

HIS HONOUR: P 15.

MR ELLIS SC: Have you got 16 and 17 Mr Conde? Never mind the colour, tell me the shape – is that the same?.....Different.

Mhm. In what way?...The dinghy I saw, a I said, Mr Ellis, was – I believe it was larger and I believe the dinghy I saw had a lee cloth across the bow.

Right. ...This one does not have a lee cloth. The bow – the bow also seems to be somewhat blunter.

Okay so at four o'clock you say it is a different dinghy from the one you see in the pictures?...the dinghy – the Quicksilver dinghy in the photographs is not the dinghy I saw at five to four on Australia Day last year.

Have you seen these pictures before?....No.

- today – no?.....No.

You haven't seen photographs of that dinghy for a year and coming on nearly two years?.....Well I don't recall seeing any photographs of any dinghy.

No – okay, thank you, Mr Conde.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: Yes, thank you, Mr Conde, you're free to go.

MR GUNSON SC: Your Honour, there's one matter with your Honour's leave I'd like to ask this witness – I just want to simply know what a lee cloth is?

HIS HONOUR: I'll let you ask that and let Mr Ellis re-examine about it – can you tell us what a lee cloth is?

MR GUNSON SC: Mr Conde you nearly got away but you've got to stay, I'm afraid.

WITNESS: A lee cloth is a piece of – well in this case, you'd use waterproof fabric, it's stretched across the bow of the dinghy and its purpose is to keep slop and spray and stuff from coming in – it's like a – it's like – it's a piece of fabric that forms a sort of deck if – as it were.

MR GUNSON SC: So your Honour, this is going to take us further could I ask one more question –

HIS HONOUR: Yes.

MR GUNSON SC: The question I want to ask is, how far along the dinghy that you saw did the lee cloth extend?

WITNESS: Oh maybe twelve, eighteen inches, something like that – not far.

MR GUNSON SC: And its colour?

WITNESS: Dark grey.

MR GUNSON SC: Thank you. Yes, I've no further questions, your Honour.

HIS HONOUR: Do want to re-examine as to anything arising out of Mr Ellis

MR ELLIS SC: No, thank you, your Honour.

HIS HONOUR: All right, this time you're free to go, Mr Conde.

<THE WITNESS WAS RELIEVED AND WITHDREW

<JANE FRANCES POWELL CALLED AND SWORN

<EXN – MR SHAPIRO: Your full name's Jane Frances Powell?……Yes.

And you're a child carer, is that right?……That's right.

And do you and your family own a yacht?……Yes.

What's that yacht called?……Spare Time.

And where do you moor that?……At the Derwent Sailing Squadron.

Marieville Esplanade?……Yep, in the marina.

Thank you. And did you go out on that yacht on Australia Day last year?……(No audible reply).

What time did you head out?……I think it was about a quarter to eleven, ten thirty, eleven on that day.

In the morning?……Yes.

And who did you go out on the yacht with?……My husband and my two girls.

And where did you go?……We headed under the bridge down to Geilston Bay and then over to Bellerive.

All right, and what time did you start heading back?……I think it was about half past one because it started to get a bit rough, so we decided to head back.

The wind picked up, did it?……Yes, yes.

And what – as you came back what did you observe?……We headed back from the eastern shore to the western shore near the Botanical Gardens heading back towards the yacht club and as we sort of got off Battery Point I noticed a dinghy headed out and I only sort of noticed it because it was so rough, we were sort of getting wet with the waves and things and I thought it was unusual for somebody to be heading out, so I just – yeah, I noticed a dinghy with a lady in it heading out.

When you say it was heading out what direction was it coming from in relation -……..From Battery Point, in the Battery Point area, out to – yeah, to the moorings.

And what sort of dinghy was it?……In – just an inflatable dinghy.

Did it have a motor on it?……Yes, an outboard motor on it.

Do you remember what colour the dinghy was?……A light grey with a black outboard motor on it.

Thank you. And how many people were in the dinghy?……Just the one.

And what did that person look like?……It was a lady with sort of light brown hair and she just had a white wet weather jacket on.

What age do you think she was?...I sort of thought she was in her late forties, early fifties.

Thank you. And did you - did you observe, or were you able to tell from where the dinghy was headed?....Just from the distance it was, it was headed out to a yacht that wasn't too far away from where we were.

And what did that yacht look like?....Oh, it was just a large white steel yacht.

And was it sort of by itself, or were there lots of yachts around?.....No, it was sort of the only one in the area – there was others sort of nearby by not real close.

And so when you say nearby – were the others closer to shore or further -…Um – probably further out.

And could you see anyone aboard that yacht?....No. Not that I saw, no.

All right, and what time do you think it was that you saw this person in the dinghy?....I thought it was probably about two o'clock only because when we got back to shore my daughter made a phone call, and I checked what time she made the call on her phone, and sort of gathered it was about half an hour from where we saw her to get back into shore.

Thank you. Yes, thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON SC: Can I take you back to the day – the wind was quite strong, wasn't it?.....Yes, it was, yes.

And are you an experienced yachtswoman?....Oh, not experienced, no. I've been out a few times but – yes.

And the seas were a bit rough?...Yes.

And in fact I think you were taking some water onto your boat?....Mm. we were.

That's correct. I think you've described the conditions as quite windy and choppy...Choppy, yes.

Thank you. You say you saw a small rubber dinghy with an outboard motor?.....Mhm.

That's right. And it was grey in colour?....Yes.

Definitely wasn't a white dinghy?....I couldn't say it definitely wasn't white.

You'd formed the impression it was grey....A light grey, yes.

You don't remember seeing any writing along the side of the dinghy?.....No.

Bit trade name like Quicksilver, or something like that?....No, nothing like that.

But then you were close enough to have seen that if it was on it, wouldn't you?.....Yes.

Thank you. And there was a female sitting in the rear controlling the outboard?.....Mm hm.

And you described her to the police as having dark blond or light brown shoulder length hair, didn't you?.....Mm hm.

Now that was your memory at the time?.....Yes.

And you were interviewed by the police on the 30th of January?.....Yes, that would be right.

And you were quite adamant at that time that what you saw was a woman with dark blond or light brown shoulder length hair?.....Mm hm.

And you hadn't seen neither her or the dinghy before?.....No.

Right. And you were concerned about a little dinghy like that being out in the rough conditions as you saw them?.....Yes.

Correct?.....Yes.

And the dinghy got as close as about a hundred and fifty metres from you?.....Mm hm.

Correct?.....Mm hm.

And you were keeping a pretty good eye on it?.....Oh yes.

You thought it was going – you thought it was going to go over, didn't you?.....Well I actually thought –

A bit of sport?.....Yeah, yes.

Yes, okay – good. And you just assumed that the lady that you saw in this grey dinghy with blond hair was heading towards the steel yacht?.....Yes.

That was an assumption on your part, wasn't it?.....Mm hm – yes.

And you didn't actually see the dinghy go to the yacht?.....No.

Thank you. And at no stage, do I understand you to get a look at the lady's face so that you could identify her?.....No.

The best you could tell the police was, it was dark blond or light brown shoulder length hair, average to small build – and of course you didn't see the person standing up, did you?.....No.

You formed that opinion about their build when you saw them seated in the dinghy?.....Yes.

What position did the person have in the dinghy, were they sitting on the side of it?.....No, at the back.

Right. .....With the – with the motor.

And sitting down in the dinghy or sitting on the, I suppose, the transom at the back?.....Yeah, I presume there was a seat or something –

You assumed there was a seat in there?.....Mm hm.

And they gave – and that person gave you the impression they were seated on a seat operating the outboard?.....Yes.

And that was the distinct impression you formed – correct?.....Yes.

You've got answer because it's all being recorded, you see - .....Sorry.

- and transcribed.....Mm hm.

All right. Can you give me a better description of the dinghy other than grey – you said it was smallish, what size would you put it at?.....Oh, gosh, I'm not very good with sizes, just the average – like an average rubber dinghy, yeah.

It doesn't help us.....No.

All right. Did it appear to be a big dinghy?.....No, I wouldn't have said it was a big dinghy.

A little – a little one?.....Medium sized.

Medium sized, all right. All right. Do you recall if it had a pointed bow on it or you didn't take that much notice?.....I didn't take that much notice but – oh –

But you noticed something else, you were about to tell us, what was that?.....No, I couldn't – it was nothing distinctive it was just –

A grey rubber dinghy with a woman in it?.....A grey – yes.

Thank you, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

<REXN – MR SHAPIRO: In relation to the outboard what do you say about the nature of the outboard?

MR GUNSON SC: I haven't asked any questions about the outboard, your Honour.

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: Questions about the dinghy and the –

HIS HONOUR: Well what – what precisely do you want to ask about the outboard?

MR SHAPIRO: Perhaps if I ask the question again. (Resuming): What impression did you get of the age of the outboard?

HIS HONOUR: Well, no, just a minute, that doesn't arise out of cross-examination, Mr Shapiro, does it?

MR SHAPIRO: Your Honour, well given that I'd seek leave to ask that one additional question.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I'm in your Honour's hands as to that.

HIS HONOUR: Yes, I'll let you do it. Go on.

<FUR – EXN – MR SHAPIRO: Thank you, your Honour. Yes, so what view did you form of the age of the outboard?.....It all looked new, the dinghy and the outboard looked new.

Thank you.

<THAT CONCLUDED THE FURTHER EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson, do you want to cross-examine further?

<FUR XXN – MR GUNSON SC: Yes, thank you. What particular impression did you form of the outboard to say that it was new?……Shiny.

It was shiny. And that's the best you can say?……Yes.

So a person who buys a brand new outboards and gets it out of the shop and puts it on their boat has a new outboard?……Mmm.

And the person who cleans it regularly and keeps it shiny in your book it looks like a new outboard, is that right? That's logically the case isn't it?……Yeah, yes, yes.

So all you can really say is what you saw was an outboard that appeared shiny and because it was shiny you formed that opinion?……Yes.

Thank you.

<THAT CONCLUDED THE FURTHER CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT FURTHER RE-EXAMINED; WAS RELIEVED AND WITHDREW

<**JOHN CAMERON McMILLAN CALLED AND SWORN**

<EXN – MR SHAPIRO: Is your name John Cameron McMillan?……That's correct.

And what's your occupation?……Commercial diver.

Okay, and do you work for Taylor Bros?……Beg your pardon?

Do you work for Taylor Bros?……No, I've got my own business. We work from Taylor Bros' workshop.

You work from there?……Yeah, one of their workshops.

Okay, where's that workshop?……44 Napoleon Street.

And so that's in Battery Point?……Battery Point, yep.

All right, now do you recall a day in January 2009 when there was a yacht that appeared to be sinking on its mooring at Marieville Esplanade?……Yep.

Okay. What were you doing at 7:00 a.m. that morning?……I was bringing one of our workboats from the Domain Slip around to the public jetty at Battery Point.

And did you run into someone you know?……Yeah, I was – Richard Herron was in one of the rowing club runabouts and he come up alongside the boat when I was off sort of Battery Point there.

Okay…….Yep.

And did he tell you that there was a yacht sinking, did he?……Yeah, he asked me if I was going down to it.

Okay. And what did you do when you found out that's what was happening?…….I think Richard asked me to ring the police but I didn't have a number so I called Port Control and I think they got in contact with them. They asked me to go down and see if there was anyone onboard the boat.

Okay. And so did you go to the yacht?…….Yeah, I went down – I was in a reasonably big boat so I just stayed off it, it looked like it was – wasn't far off sinking so – yeah, and I just yelled out to see if there was anyone onboard.

Do you remember what the yacht was called?.....No.

And did you get any response of anyone on the yacht?.....No.

And do you remember whether the door to the cabin was open or not?.....I think it was, I think it was but I'm not a hundred percent sure on that.

Okay. And was there a dinghy with the yacht?.....No.

Right. All right. So what did you do then?.....I went back in and tied – tied up at the public wharf and went around to the workshop, because the boat was fairly low in the water – we got – there was no one at the yacht at the time so we got some of our pumps out when my guys came into work and took a couple of pumps out to the boat and gave them a hand to get the pumps going to pump the water out.

All right. And when you got back to the yacht was – was there anyone else there?.....Yeah, the Marine Police were there, a couple of other guys onboard, I think.

Okay. And so what did you do with your pump?.....Sorry?

What did you do with the pump that you'd taken back out?.....Put it down the front hatch, put one of the pipe hoses down in the front hatch and started it up and got it going, got it pumping.

When you say "the front" is that right at the front of the -.....Oh up in the bow are there was a – a hatch in the bow area there, someone had already gone onboard and opened it up.

Okay. And did you place the hose from the pump down the hatch?.....Down the hatch, yeah.

And started pumping water, is that right?.....Yeah.

Did you enter the wheelhouse of the yacht at all?.....No.

And – well how did you get your pump back?.....Oh we – there was plenty of people out there so we left the boat after we got the pump going and we had work to go and do so we came back later on during the day, I can't recall the time, and picked up the pump off the boat after they'd got the water out – pumped it out.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Yes. Could the witness be shown P3, please, photographs 7 and 8, and also photographs 1 and 2, please. Sorry, just hold those for a second, if you would. Just have a look at 7 and 8 for me. You see in photograph 7 three hatches, there's two directly in front of the wheelhouse?.....Yep.

And one for'ard of that, for'ard of the mast?.....Yep.

Is it the one for'ard of the mast that you're talking about?.....Yep.

Thank you. Yes, I have no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Yes?

MR ELLIS SC: Your Honour, I call Richard King.

HIS HONOUR: Thank you.

<RICHARD JONATHON KING CALLED AND AFFIRMED

HIS HONOUR: Take a seat.

<EXN - MR ELLIS SC: Mr King, you are Richard Jonathon King?.....Yes.

You live at Tea Tree?.....Yes.

And for a number of years you've known Claire Chappell?.....Probably nine, ten.

Years?.....Yes.

Yes. And how did you come to know her?.....Oh through a mutual friend.

And in that time if – have you had a certain relationship with – with Claire Chappell?.....Yes.

What – what is the nature of that?.....Basically I've become the person she calls when she needs someone to talk to.

Okay. And is that often - or has that been often?.....Well sometimes it's been twice a day for a week and other times it hasn't been at all for six months.

Yes. Now Claire suffers, we've heard, from problems with mental illness?.....Yes.

Is that your experience with her?.....Yes.

And you're not qualified to diagnosis, but are you – but what do you understand those – what form does that illness take, as displayed to you?.....Oh well, mainly paranoia.

Yes. How do you use that term, what's – what's paranoia mean?.....Well she's looking for threats that might hurt her or the people around her.

Yes.....And they aren't necessarily real but she will see them anyhow.

Yes.....And it's basically a delusion.

Right. And does she convey these to you and you try to help her to deal with them, is that right?.....Yes, the main problem is that she doesn't know that they aren't real so she has to be reassured that they aren't going to hurt her because there is some way of stopping them and that's what I do.

Yes. On the 25th January last year how was her condition as perceived by you?.....Oh, it was – it had become very difficulty, it was taking a couple of hours a day.

And she was suffering delusions I take it?.....Yes.

And they were making her fearful because of the paranoia?.....Yes.

And do they take any particular form?.....Oh, she tendered to look for things that could be dangerous to people around her.

Yes.....During this – or that period of about a month she was becoming more concerned about the safety of yachts at sea and that her father was in very poor health.

Right. And was there a connection, as she saw it and expressed it to you, between yachts and her father at around that time?.....Yes.

What was that?.....She was deeply concerned that he was on a yacht and as such it threatened – if not handled properly it could have resulted in some untoward outcome.

Right. Did you receive a telephone call from her on the 26th January last year?.....Yes.

And in what stage was she?.....Basically she was so terrified she couldn't put one word together and get it out in one piece. It took several minutes before she could be calmed down to the point where she could take a Valium tablet.

Right. Later in the day did you have a further conversation with her or contact with her?……I think I spoke to her twice that day.

Yes……And one was after her brother had visited. I don't remember the exact detail of what was happening in each call.

No. Did she describe to you being fearful when her brother visited?……Yes, she was fearful of something connected to him, though I don't think she was fearful of him.

No. Did she actually speak to him, as you understood what she was saying?……No, she was hiding in her flat and he was knocking on the door.

Right…….She knew that he was there and he knew that she was there, -

Yes…….- but she couldn't open the door.

That evening did you attempt to do something in relation to the situation?……Yes, it was stressing clear to the point where it was becoming very difficult for me to control things, or to handle it, -

Yes…….- and it was also stressing Tim because Claire wouldn't answer when he thought she should.

Well he'd assume, I presume, that she hadn't spoken to him, is that right?……That's right, so I decided the best way would be to have a quick word with Tim to let him know that she's now okay and that if he's worried about her he should give me a call and I'll find out just how she is.

So just to recap then, you understood that Claire was suffering from delusions, as she had in the past, but that Tim had tried to see her that day but she'd – she didn't answer the door or she didn't answer him and so he wouldn't have known whether she was in or not?……That's right, but he suspected or knew she was in and she knew it was him because she'd heard him talking outside the door.

Yes. All right, so as I say you – or as I asked, you resolved to do something, what was that?……Well what I needed to do was have a quick word with Tim and to do that I needed to speak to him but I didn't have his phone number, I don't think it was in the book, so I planned to get it from Bob Chappell and I had his number as a contact for Claire from a previous time –

Yep.....- and so I dialled that number to speak to Bob to get the number so I could speak to Tim.

Right. Had you actually spoken to Bob before?.....Not in the last five years or so, I'd seen him only once.

Right. Okay, when you dialled that number who answered?.....Oh the first time I dialled it during the day there was no answer but I called back again that night after dark, I assumed they were out on the boat for the day.

Yeah. About what time did you dial during the day and got no answer?.....Oh it would've been in the early afternoon, I think.

Mhm. And evening, do you know the time that you rang?.....Oh, some time after nine thirty or close.

Did Mr Chappell answer?.....No.

Who did?....Sue.

Sue Neill-Fraser?....Yes.

Yes. And did you tell her the nature of your call?.....I explained that I needed a phone number for Tim and that I was a friend of Claire's.

And did you talk more?....Yes.

Did you indicate the situation to her?....Yes.

Did you indicate in that call that Claire was suicidal?....No.

Did you believe that she was suicidal?.....No, quite the opposite.

Did you indicate in that call that she was having fears for her father and in respect to the boat?.....Yes, she was fearful of the boat and of him being on the boat.

Did you indicate that she was likely to go wherever the boat was?...I didn't indicate it was likely, because it was a very vague possibility she might do.

Did she know where it was?....No, she didn't know where it was, she didn't know what it was called. I asked her those questions and she couldn't answer them and I didn't find out what it was called or where it was until the news the night after Bob was missing.

Right. Did she – so you spoke to Sue Neill-Fraser. Did you ask her in particular about one of Claire's concerns about Bob, that is, the state of his health?....Yes.

What was that that was said?.....I was trying to work out how much of what Claire was telling me was delusion and how much was reality because all I could do was reinforce reality and since Claire had been concerned over the last month for the chance that her father might suddenly die, I asked sue whether there was any truth in that and she denied it – well, over-enthusiastically.

Okay. Now was – did she appear to be stressed by the conversation?...No, throughout the first part of the conversation she was very friendly and helpful and once she'd realised that I wasn't someone else, I actually knew what I was talking about there. But once I asked her the question about Bob's health then I – I felt that she wasn't being honest with me.

MR GUNSON SC: I object to – well I object to that, your Honour.

MR ELLIS SC: All right -

HIS HONOUR: Yes, don't – yes, you can say what she said but you can't say what you thought she was thinking because you really don't know that. Mr Ellis?

MR GUNSON SC: And with the greatest of respect, I'd ask you to invite the jury to reject – not reject but to ignore that passage.

HIS HONOUR: Well I'm not sure precisely what the witness said at that point. Mr Ellis, do you remember?

MR ELLIS SC: Yes, I do.

HIS HONOUR: What did he say?

MR ELLIS SC: He felt that she wasn't being truthful.

HIS HONOUR: Well –

WITNESS: Not in exactly those words.

HIS HONOUR: Well just a minute – just a minute. Well –

MR ELLIS SC: I don't ask the jury to bear it in mind, I'll try to – it was objected to, I think the objection was sound.

HIS HONOUR: Yes, the jury – the jury shouldn't have regard to this witness' assessment of Ms Neill-Fraser's truthfulness or otherwise. But we can go on with whatever was said next.

MR ELLIS SC: Indeed – thank you. (Resuming): Did you notice a change of tone from Ms Neill-Fraser to you when the question of Bob's health arose?.....Yes.

Thank you. It changed from, you said earlier was "relaxed and pleasant" and what did it change to?.....How do I put it? It – it sounded like she was trying to get me to believe something that she didn't believe.

No – okay, no.

MR GUNSON SC: I object to that again.

MR ELLIS SC: I don't think that will pass muster.

HIS HONOUR: Yes.

WITNESS: I'm sorry, I –

MR ELLIS SC: (Resuming): Anyway, there was a change – can we leave it on the basis that there was a change -.....Yes.

- from relaxed and pleasant?.....Yes.

Okay. So can we say that it was no longer – she was no longer relaxed in tone?.....That's correct.

I might leave it there, I think, your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: Thank you. (Resuming): And following the conversation with her, did you then ring Tim Chappell?.....Yes.

And did it for a long time?.....Well twenty minutes to half an hour, I suspect.

Okay. Thank you, Mr King.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON SC: Mr King, the call was made I suggest at 10:05 that night……From Neill-Fraser?

No, to Mrs Neill-Fraser – yes, Ms Sue Neill-Fraser……Right.

Do you argue with that, do you debate it?……Well it's in the police records I think that's about right.

I've just asked you what you knew, was the call made at 5 minutes past 10 by you?……It would have been made at about five minutes past 10 by me.

Thank you. And it lasted for the better part of half an hour didn't it?……Yes.

Thank you. And when you were interviewed by the police about this you had this to say about the conversation. Please listen carefully –

> *Throughout our conversation Sue was pleasant and talked like a friend. She was relaxed, her voice had no stress or anything to suggest anything unusual was considered. Sue sounded like she had nothing to hide.*

MR ELLIS SC: No, well, your Honour, my learned friend has just objected to the very thing that he now seeks to lead.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I seek to clear up the mess left by my friend, your Honour, as a result of the way in which he questioned this witness.

HIS HONOUR: Well the objection is that you can put to the witness what he said about tone of voice, manner of talking, relaxation, lack of stress, etcetera, but what you can't go into is what he couldn't go into and that is whether she sounded truthful or untruthful or anything of that nature.

MR GUNSON SC: In fact, your Honour, could I ask the jury be invited to leave the witness box, go to the jury room and the witness – sorry, from the jury box and the witness be asked to wait outside.

HIS HONOUR: Yes. Ladies and gentlemen, would you go the jury room please.

WITNESS: Do you want me outside?

HIS HONOUR: Yes, please, if you could wait in the foyer.

WITNESS LEAVES THE WITNESS BOX

<THE JURY RETIRED

HIS HONOUR: Well it's your objection, Mr Ellis, do you want to say anything more about your objection?

MR ELLIS SC: I don't think so, your Honour, leading from a witness. It sounded like she had nothing to hide, in my submission it's clearly an inadmissible characterisation and deduction on the part of a witness of the state of mind of another.

HIS HONOUR: Thank you. Mr Gunson?

MR GUNSON SC: Characterisation by my friend is correct, but several times and despite what your Honour said and despite my friend's attempts to get the witness to stay on the straight and narrow he strayed and the jury have been left with an impression, despite whatever your Honour says to them, about what passed in this conversation and the conclusions he reached. Now there lies the problem.

HIS HONOUR: Well I'm not allowed to solve that problem by letting you ask a question that's not proper when it's been objected to, am I.

MR GUNSON SC: Your Honour, I can ask the question, I submit, on the basis that this is what she told – he told the police in the – and that's what it's about, not his impression.

HIS HONOUR: But how is it relevant that he told the police, "Sue sounded like she had nothing to hide"?

MR GUNSON SC: It's relevant to overcome the impression that the prosecution have left as a result of the questioning of this witness, and that's the only basis upon which we put it. Now it's before them, albeit objected to by me, but nonetheless it got out, not once but twice, that he changed – she'd changed – sorry, he noticed a change in her voice and it sounded like, etcetera. Now I wanted to put the whole passage to him because nowhere does he say that at all in his statement to the police. If it please your Honour.

HIS HONOUR: No, well I propose to tell the jury that this witness can't give evidence about whether the accused was being untruthful in his view or trying to hide something in his view, that they must ignore anything to that effect that was said during his evidence in chief and that the – another consequence of that is that you're not allowed to go into that area even if there were questions that you

could ask that might get you somewhere, I think that's what I'll tell them. So I'll get them back and we'll have the witness back too.

<JURY AND WITNESS RETURN

HIS HONOUR: Well, ladies and gentlemen, as you may be aware, there are rules of evidence – there are rules about witnesses may say or may not say, and about what questions may be asked and may not be asked. A witness can describe his or her observations of how a person sounded and a person's manner and how a person spoke, but what a witness – there's one thing a witness can't say and that is what somebody else was thinking, because of course, that's something that the witness doesn't really know and a witness can't give evidence ' "I thought this person had something to hide." "I thought this person had nothing to hide" "I thought this person was telling the truth" or "I thought this person wasn't telling the truth". Now, sometimes witnesses who aren't used to giving evidence in accordance with the rules of evidence, say things that shouldn't be said, and then it's the job of the trial judge to tell the jury to ignore that evidence. Now, this witness isn't able to say anything about whether Ms Neill-Fraser was telling the truth or not or whether she had anything to hide of not. He shouldn't be asked questions about that and you should ignore anything that he said about what she was thinking when he was giving – when he was answering Mr Ellis' questions and one aspect of this rule of evidence is that Mr Gunson isn't allowed to go into those areas, even if there are questions that he could otherwise ask that might do him some good. So we'll – you'll just have to ignore anything that this witness might start to say, or begin to say, or have said in the past about whether Ms Neill-Fraser was truthful or untruthful or had anything to hide or had nothing to hide. Back to you, Mr Gunson?

MR GUNSON SC: Thank you. (Resuming): What you said to the police when asked by them, to give your account, is this:

> *I asked Sue if Claire's statement that Bob was extremely unwell and could die at any time had any truth. She said it did not.*

That's correct, isn't it?.....That's right.

Yes. Then you added:

> *Throughout out conversation Sue was pleasant and talked like a friend, she was relaxed. Her voice had no stress or anything to suggest that anything unusual was considered.*

You told Mr Ellis though that you noticed a change in her voice at some stage – that's correct, isn't it?.....Yes.

You didn't say that to the police, did you?.....The way it's written in the statement –

Did you say that to the police or not?.....The statement I made is correct.

Did you say to the police, at any stage, that you noticed a change in the voice of Ms Neill-Fraser during the course of a thirty minute, or thereabout, conversation?.....No, I did not say it to the police.

Thank you. And when were you first asked about whether there was any change in her voice in the course of the conversation?.....I told the police –

When were you first asked whether there was any change in her voice in the course of the conversation?.....It was not asked of me by the police because I volunteered it to them, but it did not enter the statement.

To whom did you volunteer it?.....The policeman at the first interview.

Who was that?.....I don't have a record – Purdy or something like that.

And it didn't make a statement – into a statement, a statement that was supposed to record all of the events of that night – is that right?.....It – it did, in that the statement that was made –
–

Is it in the statement? Is it in the written document?.....The change of voice –

Is it in the written document?

HIS HONOUR: I think he's trying to answer your question, Mr Gunson. Is the change of voice in the written document?

WITNESS: I say she was pleasant at all points and I believe that is in the document. What she said to me when her voice changed is the way I've heard mothers tell children when they want to reassure them but it was very clearly a change of voice but it did not contradict what I said in the statement which is that she was pleasant.

MR GUNSON SC: (Resuming): Thank you……She was overly pleasant.

Yes, and talked like a friend?……Yes.

And appeared relaxed?……Yes.

And her voice had no stress?……Yes.

Thank you. Now in the course of this conversation which lasted thirty minutes obviously you had a lot to impart to Ms Neill-Fraser about Clare and her condition?……I had something to impart but what is a lot?

The two of you spoke for the better part of thirty minutes didn't you?……Yes, but I didn't speak for thirty minutes I spoke for maybe half that.

Well did Ms Neill-Fraser talk to you about other matters in this thirty minutes?……Yes, yes.

And what did she tell you?……Well I didn't keep a record of everything we spoke about.

Well did she tell you there'd been a trip on the yacht recently with her and Bob from Queensland down to Tasmania?……I knew that already.

I asked you did she tell you that?……I think we discussed it.

Well you either think it or you know it, what is it?……It must have been mentioned.

Thank you. Had you ever spoken to Ms Neill-Fraser before this occasion?……Not that I know of.

What's that mean, you have no memory of any earlier conversation?……Well that's right.

Thank you. And when you telephoned you basically outlined your assistant role with Clare's condition?……That's right.

Yes. And Ms Neill-Fraser made it very clear to you that she was aware of the difficulties that Claire encountered, didn't she?…….No.

Well, it didn't come as a shock or a surprise to her, did it?....No, she knew there were problems.

Yes. And she knew the general nature of the problems about the delusions from which Claire unfortunately suffered.....Well, I don't know that. I can't tell what she knew.

She told you – she told you that, didn't she?.....No. I told her that I believed Claire was delusional and paranoid. She didn't need to tell me.

And you told her that Claire had a fantasy about going out on to Bob's and her yacht and sailing away?....No, I did not.

Do you deny that?....Do I deny not saying no or –

Do you deny any discussion at all about Claire in her delusional state, saying words to the effect that she wanted to go out on to the yacht and sail away on it?....No, I did not say that she wanted to do that. What –

Go on - ....Claire was afraid of that yacht. The last thing she would have done is gone to it. What I told –

Go on - ....Ms Neill-Fraser was that if Claire asked for access to the yacht she should deny it. At the same time, I put myself in a position where if Claire decided to do something silly like that, that I could talk her out of it. There was no way she was going to get to get to that yacht.

It's not a question of whether she was going to go, the question is what information you imparted to Ms Neill-Fraser about what Claire said. Now, can you concentrate on that. What did you tell her that Claire had said about that yacht or any other yacht or her concerns about her father?...Have you got half an hour and a record of conversation? I can't remember it that accurately.

You do the best you can to tell me please. ...I said that if Claire was to contact her, trying to get access to the yacht, she should deny it. I also said that Claire was fearful of the yacht.

And Claire was fearful of the yacht because of what?.....She was paranoid.

And she was worried about her father being on the yacht and that he may in some unexplained way die?.....She was worried about her

father dying and she was worried about the yacht, they're actually separate things in her imagination.

These are the things that you imparted to Ms Neill-Fraser that night?……Did I impart Claire's fear for her father's health?

Yes…….Yes. Did I impart Claire's fear of the yacht and yachts in general sinking, yes.

And Claire had told you or led you to believe that Mr Chappell was extremely unwell?……She – Claire had not led me to believe that.

Well she at least told you that?……She led me to believe that she feared that.

Yes…….I believed it was a delusion.

Yes, and also in this delusional state she told you that she had a belief that her father could die at any time?……Yes.

And that is why you asked Sue Neill-Fraser whether Bob Chappell was extremely unwell?……I needed to verify whether it was a delusion or a reality.

And you wanted to be able to reassure Claire?……In a sense, yes.

And it's also the reason you asked Sue Neill-Fraser whether Mr Chappell could die at any time, again so you could reassure Claire?……No, so I knew where reality lay.

And also reassure Claire?……I don't think reassuring Claire if she has a delusion is possible.

But in any event you don't deny that that's a question you raised with Sue Neill-Fraser in this thirty minute or thereabout telephone call?……I asked the question as to whether Bob Chappell was very sick and could die at any time.

Yes. And you were told that he was in a good state of health?……That is the words she used, yes.

Yes. Now sadly these obsessions that Claire has with death go back to the time when her grandmother died?……Well basically that made her think more about death and so her paranoia –

The answer to my question is 'yes' isn't it?.....Well it goes back further than that.

All right, and how far back does it go in your unqualified belief?.....I believe a friend of hers died mountaineering in New Zealand, I'm not sure –

And you have previously said -.....- just when.

- that Claire's paranoia amplifies death as an outcome?.....Yes.

Thank you. .....That's the worse possible outcome, which is what a paranoid thinks of.

And can I just ask you something; are you – are you qualified in psychiatry or psychology?.....No.

You seem to contend to have a knowledge of it, where did you gain all this knowledge?.....Of if you've spent thirty years listening to people on the phone telling you how terrible is and –

You're a counsellor, are you?.....I'm not a trained counsellor, no, I'm just – they ring me and then they change their behaviour and they go off and they're successful.

Are they? Really? .....Why would they come back if they don't.

I don't think we need to go down that path. But on the 25th of January, you've previously said, "Claire was at the peak of her delusional activity" – correct?.....Yes.

And you've previously said, "She spoke to me about escaping from persecution she believed that she and the family were threatened with"?.....Well the persecution of everyone she holds dear.

Yes. And Claire asked you if you knew how to sail and you said, "Yes"?.....That is correct.

And Claire spoke about boats sinking if they weren't properly handled at sea?.....That is correct.

And all of this you imparted to Ms Neill-Fraser, didn't you?.....I believe so, yes.

Yes – thank you. And your telephone call to Ms Neill-Fraser was a result of these problems or Tim's inability to have contact with

Claire that day?…….The fact that she answered the phone and that I needed to persuade her to give me – or pass my number to Tim.

No, I think you misunderstand my question; the purpose that you telephone Ms Neill-Fraser was to -…….I didn't, I telephoned Bob's number she answered it.

Thank you. The reason you telephoned a house where Ms Neill-Fraser happened to be was to try and get Tim's telephone number is that right?……Correct.

Thank you. Ms Neill-Fraser in the conversation said –

> *Clare getting access to the boat was not likely to be an issue as it was on a mooring and Clare wouldn't be able to get out there.*

That's what she told you didn't she?……No, I think she said that Clare couldn't get to the boat because she didn't know where the tender was kept.

And she told you it was on a mooring, that is the boat was on a mooring?……Yes, I thought it would probably be on a mooring, it was a fairly large boat.

Thank you. And I suggest again to you she told you it was on a mooring?……I don't believe she needed to tell me that. The fact that you needed a tender to reach it effectively communicated that to me. When she said –

> *Clare can't get to the boat because she doesn't know where the tender is kept.*

- it struck me as a bit surprising that any tender couldn't be used to get to any yacht and why it should be that particular tender that must be used –

Thank you. Thank you. You said in evidence in chief that you regarded it as a vague possibility that Clare would go there or try and do something, they're my words?……Very vague.

Very vague, thank you. And you in fact said that to Sue Neill-Fraser that it was –

> *Look, the likelihood of anything happening, the likelihood of Clare going there is very remote.*

Or words to that affect?……Yes.

Thank you. Is it possible that in this long conversation that you inadvertently, without intending it to occur, left Ms Neill-Fraser with the impression that Clare's condition had peaked to a point where she was possibly suicidal, not that that was your intention to convey it, but you possibly left that impression?……Well what impression she gets is up to her. I can't control what she thinks or guess what she thinks.

No……I can't even give that as evidence.

No, but you could tell us whether so much was said that – or that evening in the course of the conversation that could leave her with that impression because you did discuss issues involving, I suggest, suicide as well. It was mentioned, wasn't it?……No. No, I don't believe it was.

I suggest to you it was mentioned, would you deny that?……That's correct, I deny it.

But you could have nonetheless left the impression inadvertently?……Well I could be delusional, Ms Neill-Fraser could be delusional.

Just answer my question. Could you have left the impression –

MR ELLIS SC: Your Honour, the witness really can't answer a question as to how – could you have left an impression without saying anything, is it possible, no one can answer that.

WITNESS: I have no evidence –

HIS HONOUR: Well no, no, just a minute. Mr Gunson?

MR GUNSON SC: I'm not going to press it.

HIS HONOUR: All right. Any further questions, Mr Gunson?

MR GUNSON SC: No, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: Call Shane Etherington.

<**SHANE STEPHEN ETHERINGTON CALLED AND SWORN**

HIS HONOUR: Take a seat. Yes?

<EXN - MR ELLIS SC: Constable, you're Shane Stephen Etherington?.....Correct, I am.

And you're a police officer, obviously?.....Yes, I am.

A constable in the Tasmanian Police Service?.....That's correct.

At Hobart Uniform?.....That's correct.

And that was your position on Australia Day that – I'm sorry, the day after Australia Day, the 27th of January 2009?.....Correct.

And that morning were you working Constable Stockdale?.....I was.

And were the two of you asked to go somewhere?.....We were, we were tasked to attend Marieville Esplanade in relation to a sinking yacht.

When you got there what did you see?.....A yacht that was submerged in the water, approximately, a hundred – two hundred metres offshore.

Okay. Did you go out to it?.....No, I didn't.

Did Constable Stockdale?.....He did.

How did he do that?.....I believe there was a – some sort of vessel on there, a rowing competition that morning, and we spoke to a gentleman and Constable Stockdale arranged to get a lift out there in his dinghy.

Okay. And as he was there, did you speak to someone who was on the shore by – there at that time?.....I did, Mrs Susan Fraser.

Okay. Is that Sue Neill-Fraser the accused in Court?.....Correct.

What did she tell you, if anything?.....She stated to me that her and her husband were the owner of the yacht that was sinking.

Did she say when she had seen him?.....Yeah, throughout the conversation she stated that she'd seen him earlier the previous day in the afternoon.

Yes.....Aboard the boat.

Right. And did she observe some – or seem to observe something?.....She observed the – the dinghy, which was just on the shore.

Right. What sort of dinghy was that?.....Just a – I believe it was a grey and blue dinghy, like a small skip.

Yeah.....That was just wading unattached.

All right. Did she say anything about that?.....She explained to me that that belonged to the boat Four Winds and it was part of her yacht.

Did she describe to you what Mr Chappell – and did she describe him as her husband?.....Yes.

Yes. Did she describe to you what her husband, Mr Chappell, had been wearing when she last saw him?.....Yes, she did. She gave me detail about his clothing. From memory I believe it was brown shoes, cream shorts, a shirt. She did state that he had a watch on.

Right. Did she say anything about his health?.....She just explained to me that he was in quite poor health, she later explained that he'd suffered from severe nosebleeds in the past and mainly when he was coming down from Queensland, brining the yacht from Queensland.

Right.....He had a massive nosebleed up there.

Yep. Did she attribute that to anything?.....An overdose – a massive overdose of Aspro.

Did she say what had happened to him as a result of the nosebleed?.....That he was hospitalised in Queensland, I believe.

Did she say anything about his attitude to her sailing on?.....That he was a little upset about her continuing on.

And did she say that she – anything about her abilities to operate the yacht?.....My – yeah, well she stated to me that she was quite an accomplished sailor.

Did she say what her husband was doing on board the yacht, or had been doing on board the yacht?……Making some repairs in relation to some panels that had apparently been loosed by unknown persons.

Right…….And making some repairs to electrical and the motor.

Did she ask you to contact other people?……She did.

Do you remember who that was?……I can't remember the exact order but I believe it was both her daughters –

Yes…….- and then sometime later Mr Chappell's son, Tim.

Right. And while they were coming did you continue to speak to her and ask questions?……I did.

What did she – I'm sorry, you mentioned a panel, was it – or panels, was it in that conversation?……That was previously she stated to me – actually she stated that the boat – she believed the boat may have been boarded –

Yes…….- in the days prior to Mr Chappell being on the boat.

Did she nominate a number of days prior?……From memory I believe it was three, two to three days.

Right……And she did state that Mr Chappell was on the boat attending to those loose panels as well.

Right. She expressed to you some – well some belief about what might have happened?……In relation to the panels?

Or in relation to the yacht……Yeah, she did state that she believed previously that – or she first explained that she believed that a yacht similar to that were used to smuggle drugs from other countries and brought to Australia and the drugs were stashed in these similar panels and that she believed that that's may be what had happened to her boat.

Right. So that morning, the 27th, at about 7 o'clock she's saying – well a little bit after 7 presumably, she's saying that's what she believed had happened?……It was probably a little bit after 7, it was probably – yeah, at around –

Yeah, right. Well the drug smugglers have come on board and retrieved the smuggled drugs and –

MR GUNSON SC: That's not what has been said. My friend should put it to the witness what he did say and not exaggerate it.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: (Resuming): She told you that she believed that people smuggled – had yachts and they got yachts like this and they smuggled drugs on them?……That's correct. And she further asked me to – or if we were as a department, Tasmania Police, could get our police dogs and have the digs sniff the boat.

Right. And was this – was this still at a time when Constable Stockdale was out on the water?……Correct.

So there was at that time no saying whether or not Mr Chappell himself was on board and in what condition, is that right?……That's correct, we were still trying to locate Mr Chappell at that stage.

Yes. Now did she then leave the area?……Yeah, she later left the area with her daughters and her son in law to have a coffee in Sandy Bay I believe.

And during that time did Constable Plunkett appear with something?……I believe Constable Plunkett was door knocking the area and located a red jacket that –

So did you see him with it?……Yes.

And did you see what he did with it?……He placed it in the – I believe it was the sergeant's – the boot to the sergeant's vehicle.

Yeah. And later, it being in the boot of the vehicle, did something else happen in respect of a jacket?…….The jacket was put – shown to the accused and asked if it belonged to her - and several other people.

Right. And upon her being asked if it belonged to her what did she say, if anything?…….The jacket didn't belong to her and she'd never seen it before.

Thank you. If the witness could be shown please, P09, I think, photo 66 in the second – the second lot of photos in the large folder? Does that appear to be the jacket?…….Yes, it looks very similar, yeah.

Right. Thank you. Now during the showing of this jacket, did recall if Ms Neill-Fraser actually touched it or grabbed it or held it?…….No, she did not she was a fair distance – well she was probably within a couple of metres from the car.

Thank you. Did you make some observation of her physically?…….I did I made notes in my police notebook about some strapping and a cut or a bandaid on her finger.

Okay. And do you recall now what it was about the strapping that you noticed?…….What sort of strapping?

No – well yeah, what sort of strapping, what you exactly noticed about the strapping?…….Oh look, it just appeared to me to be some sort of like crepe strapping wrapped around her wrist, which she continually held.

Yes……..And just a – a standard bandaid on – on her thumb.

Okay. And was that on the same side – the same ligament?…….From – yeah look, from memory, I can't – I can't actually recall which hand it was on.

Did you – do you recall any conversation concerning the need for the bandaid?…….Yes, she did state to me that she cut her thumb. I did ask for an explanation of how she cut it but I can't recall that. But she did state that her fingerprint may be on torch located on the boat in relation to the bandaid.

Right. And so that's part of the bandaid conversation that her - …….Yes.

- fingerprint might be on a torch on the boat?…….Correct.

Thank you. Thank you, Constable.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Just come back to this bandaid on the thumb, she gave you an explanation and you simply can't recall now what that explanation was?……That's correct.

That's what you said?……That's correct.

And you didn't put it into your police notebook, whatever the explanation was?……I made note of the bandaid but not the explanation.

You know what the question is, answer it, please……No, I didn't.

Thank you. Now when you first saw this red jacket was it open, that is in an unrolled position, or was it rolled up?……It was being carried by Constable Plunkett, so it was open.

Yes, and was it rolled up by – in Plunkett's hands or was it open as displayed in the photograph?……Well it was bunched up, he was carrying it so it was –

I'm sorry?……He was carrying the – it wasn't rolled up, no.

Wasn't rolled up, wasn't rolled up in a tight bundle?……No.

Thank you. And did he display it in the back of the car in the way in which is shown in the photograph or was it just left as a bundle?……It was opened.

As in the photograph?……It was similar, not exactly like it is in the photograph, but similar.

All right…….It was placed laying down like a jacket, open jacket.

Now you said a little while ago that she had said to you that she was an accomplished sailor, they were your words, weren't they? Correct?……Correct.

And what in fact she had said to you, I suggest, is this, that during the time she crewed on the yacht from Queensland to Hobart that she'd gained a very good knowledge of how to operate the yacht, correct?……And had become an accomplished sailor.

Well do you say that immediately followed what I just read out?……Beg your pardon?

Do you say that passage I read out to you is correct?……From my statutory declaration?

Yes…….Yes.

But the words about her saying she'd become an accomplished sailor don't appear anywhere in your statutory declaration, do they?……No, they don't.

No. And they don't appear anywhere in your notes either, do they?……No.

No. And when did you first remember this particular passage?……What – I don't get what you mean.

That she'd said to you that she was an accomplished sailor or had become an accomplished sailor……Again I don't – I recorded a lot of notes that day, not everything that I record – that I jotted down I don't – everything that Ms Fraser said I didn't write down word for word.

No, I can accept that and understand that but you did make notes in your notebook and the notes in your notebook I assume together with your recollection formed the basis of your statement, is that a fair comment?……Correct, basis.

Yes. And nowhere, either in your notes or in the statement, are the words, "I have become an accomplished sailor", or words to that affect appear do they?……That's correct.

Thank you. And the question I want to ask you is this. When did you first remember that those words had been said?……Look, I don't – I don't get what you mean, when did I just remember. I just made a statement and that's what I've – that's what I've explained on that day.

But the words "accomplished sailor" I want to suggest to you they were never said and that you have added those words in this courtroom today for the first time as part of your evidence?……Well I'd say it's incorrect.

MR ELLIS SC: There's two propositions there, your Honour, it's very difficult for the witness to answer –

MR GUNSON SC: Well I'll phrase it another way. (Resuming): You've never said this in a courtroom before have you?……Accomplished sailor?

Yes……I've never been asked the question, that's why.

Well you weren't asked the question you volunteered it in response to Mr Ellis –

MR ELLIS SC: Well (indistinct words) rather than a question.

MR GUNSON SC: (Resuming): Did you at any stage prior to giving that evidence tell Mr Ellis that she had volunteered to you the words that she was an accomplished sailor?……No, I did not.

So you didn't tell Mr Ellis that when he briefed you?……No.

Did he brief you?……He did, a while ago.

Yes, how long ago?……Before a preliminary hearing, may be a month ago.

Well the preliminary hearing was more than a month ago. Since the preliminary hearing and today have you been either briefed by Mr Ellis or his junior?……No, I have not.

So that before the preliminary proceedings before Magistrate Webster he did brief you?……Correct, he did.

And you told him – tell him then about he words "accomplished sailor"?…..No, I wasn't asked.

And before you came into court today did you think you should go and tell Mr Ellis that these extra words were said?…….I didn't believe it would be relevant.

You didn't think it was relevant. See I want to suggest, you see, those words were never used and you've simply made them up to gild the lily?…….That's your opinion, sir.

That's what I'm putting to you, do you deny that or do you accept it?…….I do deny that, as I've previously have already said.

Now you gave evidence in the preliminary proceedings, didn't you?…….That's correct.

And you never mentioned it down there?.....Well like I already said, I haven't – wasn't asked the question previously.

Thank you. Ms Neill-Fraser appeared, I suggest, reasonably distressed on the morning that you first saw down at Sandy Bay – you'd accept that?.....No, I wouldn't.

You wouldn't? She appeared very concerned about what was happening, that the yacht was apparently sinking, didn't she?.....I don't believe that she was overly concerned, no.

You don't think so – you saw her?.....Yeah.

And you seriously say that?.....Yes, I do.

Thank you. She was the one who pointed out to you that the dinghy came from the yacht Four Winds?.....Correct.

She raised it with you?.....Correct.

And the dinghy in fact is a blue and white dinghy, isn't it?.....Correct.

Thank you. With the words "Quicksilver" emblazoned along one side?.....Yeah, possibly, I can't a hundred percent ID the dinghy.

Well show the witness please – we can save a little time, just have a look at this photograph – just pass it to him please?.....Yeah, it's very similar to the one I saw.

Well you say "it's very similar" or it is the one you saw?.....Yes, yes it is the one I saw.

That's the one you saw, isn't it – thank you – blue and white – correct?.....Correct.

Now in your notebook, and indeed in your statement, you have recorded as – and indeed Mr Ellis led from you, that she told you that somebody had attempted to board – or somebody had boarded the Four Winds some days earlier?.....Correct.

Well did you ask any more about that, I mean didn't it seem to you that you've got a sinking yacht, the owner's on the shore and she says, "Well somebody tried to get into the yacht three or four days earlier", didn't you ask some more questions about it?.....Not at that stage.

Didn't think it was relevant?……Not at that stage because at that stage it was a missing persons.

Yes, it was at that stage a missing person, wasn't it, because you'd been told there was nobody on the boat?……That's correct.

And you told Ms Neill-Fraser there was nobody on the boat?……That's correct.

Yes, thank you. And she added that somebody had attempted to access some panels. Now did she tell you where the panels were or did you ask her where the panels were?……I don't believe I did, no.

Right. And she told you they'd caused some minor damage, that is the intruders had caused some minor damage?……Correct.

Thank you. Did she give you any idea as to the extent of that minor damage?……Just that there was panels damaged.

Panels damaged. Now again am I right in thinking you didn't ask any questions about that?……No, I didn't.

Didn't see it as your role?……Not at that stage, no.

No, and you didn't see it as your role at any stage, did you, because it was more a CIB matter, wasn't it?……Well like I just explained, at that stage it was just a missing person so I was recording notes in my notebook and –

But you didn't make the link between the two that maybe he's missing, damage on the boat, the boat's been entered some days before, that you couldn't see a link, a possible link between the two?……Yeah, obviously I did see a link.

Good, so using all of those police forensic skills didn't you think you ought to have asked some more questions?……Well at that stage I didn't need to ask any further questions.

What, because it wasn't part of your brief, as it were?……Well I later conveyed observations and my notes to CIB, who later attended.

Yes, and that really was as far as you saw your role, make some notes, tell CIB, let them sort it out, is that a fair comment?……Effectively, yes.

Yes. All right. You said the word 'husband' was used, but I suggest the word 'partner' was used rather than husband?……Possibly that's correct.

Yes, thank you. And most definitely in your notes you don't say husband, do you?……I don't believe so.

No, and you would accept that partner was the expression?……Yes, correct.

Thank you. And you didn't ask her what time she'd last seen him on the yacht the day before did you?……Actually she already previously explained that it was early afternoon.

Yes, but early afternoon can be from noon onwards can't it?……Well she stated to me that she'd had lunch with her partner.

But people have lunch at all times don't they?……Well I made it an assumption that it was early afternoon after – I'm talking around lunchtime.

Well what was your impression – using your criteria are we talking about half past twelve, half past one, 2 o'clock?……Maybe between 12 and 2.

Maybe between 12 and 2, but you didn't try and pin her down did you?……There was no need to.

I mean surely here you have a missing person and you have a person who says, "I last saw that person early afternoon yesterday", and you didn't ask the critical question like, "What time was that?"?……At that stage there was no –

You didn't ask that question did you?……No, I didn't.

Thank you. I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: I call Mark Wilby, your Honour.

<MARK BARRY WILBY CALLED AND SWORN

HIS HONOUR: Take a seat, detective.

WITNESS: Thank you, your Honour. Yes?

<EXN - MR SHAPIRO: Thank you, your Honour. Your full name is Mark Barry Wilby?.....Yes, it is.

And what's your rank?.....Detective Senior Constable.

Thank you. Where are you stationed?.....At Glenorchy.

Glenorchy CIB, is that -.....Oh yes.

Thank you. And where were you stationed on the 27th of January last year?.....At the same place, Glenorchy CIB.

And were you working at about 7:00am?.....Yes, I was, seven to five.

Okay. And – sorry, what happened at about ten to eight in the morning?.....Ah we got called, I was working Constable Plunkett and we were called to attend Marieville Esplanade in relation to a missing person and a half sunken yacht.

Thank you. And when you arrived there did you liaise with Sergeant Sulman from Hobart Uniform.

Was he in charge of the – the police there?.....Yes, he was.

And did you go out to the – to the vessel?.....I did. I went out on the marine boat out to the vessel and –

And what happened once you got out there?.....I spoke to Constable Stockdale when we first hopped onto the vessel and he handed me a mobile telephone, which was said to be the defendant's mobile phone, which was left there for Mr Chappell to use overnight.

What did you do with that?.....I held possession of that and that was later handed to Hobart CIB members late in the afternoon at Constitution Dock.

Thank you. And who else was on the – on the yacht when you got there?.....Marine officers, they were trying to take – get the water out of the vessel and stop it from sinking.

Okay. Do you know what their names were?.....Ah yeah, there was Constable Lawler, Constable Ben Cunningham and there was a third one and off hand I can't recall – Sergeant Pratt was out there as well in another vessel.

Thank you. And did you conduct a search of the yacht?.....I did. Initially we had to wait a short time due to the water and I couldn't access all areas of the yacht, but I searched the top part of the yacht and then went down into the cabin, I could search those areas, yes.

And did you notice anything in particular?.....Yes, on the stepladder there was blood spatter on the stepladder, the three steps, and each step had some blood spots on it. The stepladder had been moved aside by police officers who had to get aboard the yacht and that normally allows you to step down into the cabin.

Thank you. If the witness can be shown P3, please, which is the large bundle of photos at the start of the (indistinct word).....Thank you.

And if I can take you to photo 21 to start with.....21, yes.

Is that the stairs you were just describing?.....Yes, it is.

And if you flick to the next – if you flick to the next photo, number 22 and 23, are those photos of those blood marks that you observed?.....On the steps, yes.

All right. What else did you observe?.....I observed a black handled knife to be on the floor of the cabin. I observed a metal ashtray to be underneath the steering wheel and I observe a bracket for an EPIRB but the EPIRB was not present in that bracket, and I also observed a bracket of a fire extinguisher, the fire extinguisher was not in that bracket.

Where was the bracket for the fire extinguisher?.....That was inside the cabin itself.

All right, and did – and were you told that some hoses were cut on the yacht?.....Yes I was, by the marine officers, yes.

And then some forensics officers arrived, is that right?……Yeah, Constable Redburn arrived onto the vessel.

All right, and what – what further involvement did you have, what did you do then?……Basically once the forensic examination had taken place I moved across to the police vessel whilst that was done and after that had been completed we arranged for the dive squad to come out and search the water surrounding the vessel Four Winds. And following that we arranged for the vessel to be taken into Constitution Dock.

Okay. And so you remained with the vessel and assisted with the towing of it?……Yes, Constable Plunkett and I remained with it and then whilst we were at the dock for several hours in the afternoon.

Yes, thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: you noticed that the EPIRB wasn't on board the boat, that's right?……That's right – oh, it wasn't in the bracket.

It wasn't in the bracket. Are you familiar with EPIRBs?……Not very much at all, no.

Right. Did you examine the bracket to see whether it had been damaged in anyway at all?……No, I didn't. I didn't notice any – there was no obvious damage that I saw.

Yes. Could the witness be shown P3 please and if you'd look at photographs 14, 15 and 16 please – sorry, my mistake P9, have a look at 14, 15 and 16 please, Detective……Yes, number 14, yes.

You can see the EPIRB bracket in 14?……Yes, I can.

And a close up is 15?……Yes.

And then we see at the bottom a little piece with the word 'release' on it near what appears to be a blue handle of some sort when you go back to 14, do you see that? Do you see a blue object directly under the EPIRB bracket?……Not exactly, no – we're on 14?

Yeah……Oh, down on the bench there?

Yes…..Sorry, yeah, I've got you now.

That's all right. Now if you go back to 16 we seem to have a release bracket which I understand comes from the EPIRB bracket was that there when you saw it or - ……I can't recall seeing it.

You can't recall – thank you……..I didn't recall any damage to it that I could recall, no.

Thank you. You spoke with the accused onshore for about twenty minutes before you went out to the boat, is that right?…….That's right, yes.

And who was she with?…….Her daughter was there and at the time I spoke to her and stood with her, her daughter stood with her basically, and that – that was all, we were sort of just standing there having a general conversation.

Yes. And what time do you believe you arrived – about seven fifty?.....Ten to eight, yes.

Ten to eight – thank you.....Yes.

Were there any other uniform – or sorry, were there any uniformed officers in the area at the time?.....Yes, Sergeant Sulman was at the scene, and there were other uniform officers around the scene as well.

All right. .....On – on land I should say not at sea.

Yes. And whereabouts was Ms Neill-Fraser standing or waiting when you were talking to her?.....We were on the shore, we were probably five metres away from the water, towards the edge of the water, but – yeah, we were just – we weren't far away, there were other police officers within five metres of us, yeah.

Were you talking to her for twenty minutes?.....Yeah, we were talking on and off, it wasn't a full conversation for the whole twenty minutes, we did speak on and off during that time, yes.

What sort of questions did you direct to her, if any?.....I didn't direct questions to, no it was just general conversation about her husband, trying to get a bit of background.

Yes.....Yeah.

And what he was doing out on the boat?.....Yeah, that sort of thing, yes.

And how long he'd been on the boat?.....Yeah.

And she told you he'd been there overnight?.....Overnight, that's right.

And did she tell you why he'd stayed overnight?.....Not that I – no.

Didn't you ask?.....I did ask but I don't – I can't recall what she stated.

But she - .....Oh actually, yeah, I think he was working on the boat.

Working on the boat.....Going to do some work on the boat, yes.

Thank you. And she told you she'd left him with a mobile telephone so that contact could be made between the two of them?.....That's right.

And did she tell you that she'd telephoned him at about five past seven in the morning and couldn't get through?.....Yes.

Yes. And she gave you a bit of a potted history about the yacht, didn't she, where it had come from?.....Yeah, it – how it was sailed down, yes.

Yeah, and she told you that Mr Chappell had suffered a nosebleed on the way down?.....Yes.

And he'd been put ashore in Southport?.....I wasn't sure if – where it was, yes.

But in any event, he didn't make the balance of the journey, she told you that, didn't she?.....Yes.

All right. And she told you that within a couple of days prior they'd been off sailing the boat?.....I'm not sure of that, no.

Mm, but there was some discussion about a trip to Bruny Island, wasn't there?.....There was certainly talk about the boat having been brought down and that, yes.

There was also discussion about a trip within days beforehand down to Bruny Island?

MR ELLIS SC: Well my learned friend's now pressing –

WITNESS: I can't recall that, no.

MR ELLIS SC: - for what really is hearsay.

MR GUNSON SC: Thank you.

MR ELLIS SC: I thought there might have been some other point, but this collection of hearsay in my submission is not serving a point.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: It is relevant, your Honour, to attitude, demeanour and things like that which my friend has been stressing as best he can throughout the trial.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I don't think I heard my learned friend, I – certainly I didn't understand what he was saying in response except the phrase 'throughout the trial', I'm sorry.

HIS HONOUR: He said that it's relevant to matters such as attitude and demeanour that you've been stressing throughout the trial.

MR ELLIS SC: Oh well he didn't ask a question about attitude and demeanour, your Honour.

HIS HONOUR: Mr – well –

MR ELLIS SC: If he did I wouldn't be objecting to hearsay.

HIS HONOUR: Well is there any relevance at all, Mr Gunson, so the information coming from your client as to the vessel having gone to Bruny Island or –

MR GUNSON SC: I think that's about as far as I want to take it, your Honour.

HIS HONOUR: All right, well – well I won't give a ruling in that case if you're not persisting in the questioning. Go on.

MR GUNSON SC (Resuming): Did you tell Ms Neill-Fraser why you were going out to the yacht before you departed?……I did state to her, yes, that we had to treat it as a crime scene.

And do you recall any response from her when you told her that?……No, she was very – not very emotional, sort of matter of fact about it and didn't really show any emotion in relation to it, no.

Thank you. And by this stage there were police officers basically all over the boat, weren't there?……Yes, there was.

You've had the – some uniforms out there plus the marine police?……That's true.

Thank you. And police were continuing to arrive at Marieville Esplanade to perform one function or another?……That's right.

Thank you. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<**JAMES MILLAR CALLED AND AFFIRMED**

<EXN – MR SHAPIRO: Your name's James Millar?……Yeah.

You live in Sandy Bay?……Yes.

And you're retired?……Yeah.

If I can take you back to the 27th January last year at 10:30am, can you remember where you were?……Yes, I was down at Marieville Esplanade. I go there pretty well everyday weather permitting to exercise my dogs.

Okay. And when you were at the corner of Marieville Esplanade and Margaret Street what did you see?……I was returning – I take a circular route and I was returning from the thing and I noticed a sailing jacket over a fence, over a brick boundary fence.

Okay. And can you give a – say if you were standing at Marieville Esplanade and looking at Margaret Street is there water behind you?……Yeah.

Which house or which - …..It's the house on the right hand side, it's called 'Camarita'.

Thank you. And what did the jacket look?……It was red with gray trimming. I didn't touch it, I didn't think it advisable.

All right, so what did you do?……I went back to where the group of policemen and I told an officer I'd found it and led him to it. He then knocked on the door of the house and talked to some Asians who were inside and I continued on my way home.

Thank you. If the witness can be shown P9 please, which is the second bundle of photos in the bigger folder…….Yep.

Can you have a look at photographs 66 and 67……Yep.

Does that look like the jacket?……It looks very much like it, but it was sort of not folded, but it was just draped about this wide over the fence and I didn't look at it to see what brand it was or anything or whether it would fit me.

Thanks for that. If I can just have a second, your Honour, thank you. Yes, I have them now. If the witness can please be shown

P11, which is the fourth bundle in the bigger folder. Have you got those photos there?……Yep.

Now where you – can you see where you found the jacket in that first photograph?……No.

Can you show – can you hold up the photos…….That's the –

No, sorry…….That's the shoreline and that's an EPIRB.

HIS HONOUR: If you keep going you'll come to another photo also numbered 1.

MR SHAPIRO: Ah, thank you, your Honour.

WITNESS: Yes, yep, the jacket was on the portion of fence to the right hand side looking at the entrance gate.

MR SHAPIRO (Resuming): Thank you for that. Yes, thank you, I submit the witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON SC: Do I understand your evidence correctly that the jacket was not rolled up, rather it was draped over the fence?.....Yes, it was – about that wide just hanging the fence, which was about – oh about seven hundred mil high.

Right. Now when you put your hands to the side I can see what you did -.....Yeah.

- but I don't think his Honour or the jury could. So could you just demonstrate again how wide the jacket was?.....Oh, it was about that wide, so you couldn't see the –

So it had been folded over?.....No, not so much folded over – it was sort of draped over the fence – yeah.

But not very wide?.....No, not very wide.

All right. This was about ten thirty you said?.....Yes.

And a police officer came along – and before he went and knocked on the door, did you see him do anything with the jacket?.....Just picked it up.

He picked it up; and did he carry it to the door with him?.....Yes.

All right. And he spoke to some Asian people there you said?.....Yes.

One or two?.....I think there were two that came to the door.

And then he went off carrying the jacket, did he?.....No, I just continued home I don't know what he –

No, that's all right.....- did then.

But you didn't see the police officer leave?.....No.

All right. Where did you find these police officers?.....Oh, there were plenty of them around, they were just by the rowing sheds –

The one you spoke to – by the rowing sheds?.....Yeah.

Thank you. Yes, I've no further, questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro.

MR SHAPIRO: Nothing, your Honour.

HIS HONOUR: Yes, all right, thank you, Mr Millar, you're free to go.

WITNESS: Thank you.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<AU MING HONG CALLED AND SWORN

<EXN – MR SHAPIRO: Is your full name is Au Ming Hong?……Yes.

And you're a student?……Yes, I'm a student.

And you live in Sandy Bay?……Yes.

Thank you. And in January – January last year did you live in Margaret Street, Sandy Bay?……Yes.

Thank you. If the witness can please be shown the second photograph number 1 from P11. Is that where you lived?……Yes.

Thank you. Now on the morning of the 27th January 2009 did you speak to a police officer?……Yes.

And did he show you something?……He showed a jacket to me.

Okay. And had you seen that jacket before?……No, I didn't.

Okay. And if the witness can please be shown P9 –

HIS HONOUR: I think Ms Fletcher is showing photograph 66 and 67.

MR SHAPIRO: Thank you. (Resuming): Is that – can you just hold up the photo that you've got so I can see…..Yes.

Thank you. Is that the jacket that you were shown?……Yes, this one.

And what time did you come home to Margaret Street the previous day?……Around 6:00pm in Australia Day.

On Australia Day, okay. And did – when you came home did you see that jacket?……No, I didn't see.

You didn't see it. Thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: You got home at 6 o'clock and you didn't see the jacket on the fence then, that's right?……I came home at 6 o'clock.

6 o'clock?……Yeah, I didn't see any jacket.

And didn't see any jacket. When did you first see the jacket the next day, when the policeman came to the door or earlier?……Earlier.

Earlier. And what time did you first see it, approximately?……One, eleven o'clock in the morning.

At what time?……Eleven.

Eleven?……That one.

No, the policeman came to your house at about half past ten…….No, I've forgotten what time.

All right. How long before the policeman came to your house did you see the jacket?……Five minutes.

About five minutes, and you went and picked it up, didn't you?……Yeah, I did.

Yes, and when you first saw it how did it look to you, was it lying across the fence or was it rolled up or what?……Just rolled up.

Rolled up. Can you describe how it was rolled up?……Just not like – well up like a ball or something.

Looked like a ball?……Yeah.

And it was sitting on top of the fence?……Yeah.

All right, and you put it back on the fence?……Yes.

And you went back inside?……Yeah.

And sometime later the policeman came to the door and he was holding the jacket, is that right?……Yes.

Thank you. But you are quite sure when you first saw it it was rolled up?……Yes.

Thank you. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<**TODD PLUNKETT CALLED AND SWORN**

<EXN – MR SHAPIRO: Your name's Todd Plunkett?……Yes, it is.

And what's your rank?……I'm a Constable.

Where are you stationed?……Currently stationed at Claremont Station.

Thank you. And where were you stationed on 27th January last year?……I was attached to Glenorchy CIB, performing Crime Response Unit duties.

And where did you go at 8:00 in the morning on that day?……Marieville Esplanade in Sandy Bay.

And what did you observe when you got there?…….I observed a – a yacht, your Honour, approximately two hundred metres out from the shore at that location, and that yacht was partially submerged.

And did you see anything else?…….There was a small grey tender, your Honour, in front of the boat house there just tied to the rocks.

Thank you. And – and – all right, and approximately at 10:10am were you approached by someone?…….I was approached by Mr Jim Millar.

And what did he say to you?…….Your Honour, he informed me of a red jacket hanging over a fence in the corner of Margaret Street and Marieville Esplanade.

Thank you. And having been informed that there was a jacket what did you do?…….I went and spoke to the residents, or the resident at that location, and asked –

Well did – sorry- did you locate this jacket?…….Yes, I did, yes - sorry.

Okay. And if I can just take you to the photographs, P09, photograph 67, is that a photo of the jacket?…….Yes, it is, your Honour.

Thank you. And – and so what did you do once you'd located that jacket?…….I spoke to the resident there just to ensure that it wasn't his and to see if he – if he'd seen it before.

Do you know what his name was?.....I wouldn't be able to pronounce the first name, I think it was Mr Hong.

Okay. Thank you. And what did he have to tell you about the jacket?.....He said it wasn't there the previous night but he couldn't be sure of the time.

Okay. And what did you do with the jacket?.....I, using gloves, I searched that jacket for any identification but there was only a two dollar coin in one of the front pockets, and I took that jacket back to Sergeant Sulman's police car and placed it in the boot of that car –

And if the witness can be shown the jacket. All right, perhaps – sorry, I'll have that back, sorry about that. All right, so where did you place the jacket, I think you might have told me already?.....In the boot of that vehicle on a brown paper bag not unlike that one.

And did you see a Ms Neill-Fraser there?.....Yes, I did.

And did she look at the jacket?.....Yes.

And what did she have to say about it?.....That it wasn't her jacket.

Thank you. What happened to the jacket after that?.....That was locked in the boot of Sergeant Sulman's vehicle. I didn't see the jacket again until now.

Okay. And what – what further involvement did you have with this matter?.....I then guarded the vessel at the Hobart Waterfront until Sergeant Conroy arrived.

Thank you. Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Can we just deal with the question of you guarding the vessel. It was taken from Marieville Esplanade around to Constitution Dock and tied up there wasn't it?.....That's correct.

And because it was believed to be a possible crime scene it was important that people not associated with the investigation stay off the vessel?.....That's correct.

And that's very much standard police procedure, isn't it, whether it be a house or street scene or a boat?.....Yes, that's correct.

And I think you said on a previous occasion you stood guard on the vessel until about 5 o'clock?.....Correct.

And you were relieved of your guard duties about 5 o'clock by Detective Sergeant Conroy, is that right?.....That's correct.

He was then in charge of the investigation?.....Yes, he was.

And it was up to him from that point onwards to ensure the safety of the scene, is that correct?.....Correct.

Do you have any knowledge as to whether or not that vehicle was under police guard all night?.....I wouldn't know, your Honour.

It would be usual practice for it to stay under guard until it was returned to ownership of the owners?.....Yes, usually.

That would be usual. Thank you. Now you carried out a general door-knock along Marieville Esplanade didn't you?.....That's correct, yes.

Along with another – well along with a number of other police officers?.....Yes, that's right.

And had you door-knocked along that part of Marieville Esplanade where you picked up the jacket?.....I hadn't gone that far, no.

Right. Had that area been previously checked by police officers to your knowledge, that is door-knocked?.....Not to my knowledge, no.

Right. You said you saw a small grey inflatable tender tied to the rocks, have a look at these two photographs, number 70 and 71, is

that blue and white tender with an outboard engine on it with the words 'Quicksilver' on the side the tender to which you refer when you say a grey tender?……Yes, that's the one, your Honour.

Thank you. Now when you brought this jacket back to Sergeant Sulman's police vehicle and placed it in the rear was Ms Neill-Fraser nearby or was she standing at the vehicle or was she simply called across to have a look at it?……She wasn't there at that time, your Honour.

Right. Where was she then?……I believe she'd gone home for a cup of tea.

Right. And she came back?……Yes, that's correct.

And I think you said in your evidence – I withdraw that – you've previously said, "I was present when Fraser" as you've referred to her, "glanced at the jacket and said that it was not hers"?…….That's correct.

She certainly wasn't given the opportunity to pick it up and look at it closely and examine it, was she?…….No, she wasn't.

She was not given the opportunity to go through pockets or anything?…….No.

Just glanced at it?…….That's correct.

Thank you. I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: Nothing in re-examination, your Honour.

HIS HONOUR: Yes, all right, thank you, you're free to go.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<ANDREW KENNETH SULMAN CALLED AND SWORN

HIS HONOUR: Take a seat.

WITNESS: Thank you, sir.

HIS HONOUR: Yes?

<EXN - MR ELLIS SC: Mr Sulman, you're Andrew Kenneth Sulman?.....Yes.

You're now with the Hobart Criminal Investigation Branch?.....Bellerive.

Bellerive – sorry. In January last year were you with Hobart Uniform?.....Yes.

And what rank did you hold?.....Acting sergeant.

Thank you. On the 27th of January 2009 did you go somewhere?.....Yes, I went to the Sandy Bay Rowing Club car park.

Yes. And did Constable Plunkett bring you something?.....Constable Plunkett brought me a red jacket and placed it in the boot of my police car.

Right. I'll show you photograph 67 – or could you be shown photograph 67 please? Does that appear to be the jacket?.....Yes.

Thank you. So he – Constable Plunkett placed it in the rear of your car?.....Yes.

Was there anything else connected with this case in that – rear of that car?.....No.

Now when you say the rear you mean the boot?.....Boot.

Right. And was it shown to the accused, Susan Neill-Fraser?.....Yes.

And was her response invited to it or did she say something in response to being shown it?.....She indicated that that jacket did not come from the yacht, Four Winds.

Right. Did you retain the jacket?.....Yes.

Was it later given to Constable Elphinstone?……That's correct.

If it please, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Before you showed it to Ms Neill-Fraser you showed it to a number of members of the family, didn't you?……That's correct.

Trying to ascertain whether they recognised it at all?……Yes.

What time do you think this occurred?……This was during the morning.

What time?……I believe it was about eight or nine o'clock.

Eight or nine o'clock. Well we've had some evidence earlier that the jacket wasn't found 'til about half past ten, does that help you?……It was shown to the accused just after she came back from – she went away for about half an hour and she told me that she was going to get a cup of coffee and it was shown to her after that.

So your evidence about eight or nine o'clock is obviously wrong if there's evidence in this Court it was found at half past ten?……Yes.

Right. So what time do you think it was then, doing the best you can, that you showed it to her, or do you merely rely on the fact that it was after she came back from having a cup of tea or coffee or something?……That's exactly when it happened, after she'd been away with family and came back.

Thank you very much. And she said, according to you, in response it was not from the yacht, is that right?……Yes.

She didn't say, "It's not mine"?……..No.

Right, and it was not from the yacht. Is Constable Plunkett present at that time?……Yes.

He is. And basically she just glanced at it, didn't she?……Yes.

She wasn't given the opportunity to pick it up?……No.

Handle it, obviously, for forensic reasons?……Had she wanted to pick it up she probably – I wouldn't have stopped her at that point, she simply looked at it and said it's not from the yacht.

Glanced at it?……Yes.

Yes, thank you. Yes, I have no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: We've still got a couple of minutes, your Honour.

HIS HONOUR: Yes, yes, call another witness.

MR ELLIS SC: I don't think we've got any more witnesses, your Honour.

HIS HONOUR: Oh well you've done well, you've called fourteen today. All right, the jury can make their affirmation and the Court will adjourn until 10 o'clock tomorrow morning.

THE JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00AM ON TUESDAY THE 28TH DAY OF SEPTEMBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: Mr Gunson – Mr Ellis?

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: I do know who you are – yes?

MR ELLIS SC: (indistinct words) I call Peter Lorraine, your Honour.

<PETER DEREK LORRAINE CALLED AND SWORN

HIS HONOUR: Take a seat. Yes.

<EXN - MR ELLIS SC: Thank you, your Honour. Mr Lorraine, you're Peter Derek Lorraine?.....Yes, I am.

And you are a manager with the Health Department?.....That's correct.

The Department of Health. You live at – well it might be the top – it might be bottom, but 1 Collins Street, don't you?.....Use to live there, have moved since.

Ah right, and were you living there at Australia Day last year?.....I was.

And which end of Collins Street is that?.....It's the far end, the end nearest –

Furthest from us -.....- the – yeah.

- here today – okay. And when you lived there did you have a regular walking loop that you would take?.....I did.

How did that go?.....I use to walk out of 1 Collins Street, head down to the harbour, walk around the coast as much as I could to get around to the particular jetty around at Battery Point, and then I used to go on a loop back along some of the roads back to 1 Collins Street.

Right. And the jetty that you refer to do you know what is called or where the street or lane that it's off is called?.....I think it's Derwent Lane and it's a concrete jetty and there's a little park to the left of it.

Okay. And was it your habit to go to the end of the jetty?.....Not normally, no, normally it was just my turnaround point. On this particular day the weather was very turbulent so it was a place to sit and watch activity.

Okay. So you did take that walk on that day. Did you have some other business to attend to also that day?.....I did, I was looking at a rental unit in Salamanca –

Yes.....- and then I did some shopping on the way home.

Okay. Did you have a particular time for the appointment to look at the unit?.....I did, I think it was four thirty.

Right. And did that take long to look at that?.....Not that long, no, probably maybe fifteen, twenty minutes.

Okay, and that was in Salamanca Mews, wasn't it?.....That's correct.

So then you went and your next stop was Derwent Lane, was it?.....Correct.

Okay. And did you walk to the end of the jetty?.....I did.

Okay. And you were starting to tell us about the day, what sort of a day was it?.....Well it was the wildest day I'd seen in sort of the trips I'd made down there, so it was a very strong wind, the waves were – were – I don't know whether you'd describe them as big but they were short and very sharp, so –

Choppy?.....Very choppy, yes, and the wind was sufficiently strong to make it interesting out on the ocean in terms of whitecaps –

Mm.....- and things and boats were bouncing.

Okay. And was your attention drawn to a particular boat?.....It was.

What drew your attention to it?……It was just sort of an ocean going looking boat that I hadn't seen before in the area and what particularly struck my attention was there appeared to be an elderly man just on the back of it and so I was watching him as the boat bounced up and down and – and it was an interesting spectacle.

What made it so interesting?……Just – I suppose I've always had a love of the sea and I suppose it was just the spectacle of someone being on a boat in such turbulent water and then you wonder why someone would choose to be on a moored boat in such a turbulent sea and it would've been an unpleasant experience, I imagine, on the boat because it was literally lifting in and out of the water significantly.

Right. Now this man, you described him as elderly, what did you – what do you base that on?……Just he appeared elderly, reasonably tall, a little bit stopped, but as I say he was bending over and pottering around the back, moving around reasonably slowly. He just looked like an old seafarer.

And do you remember the clothes that the old seafarer was wearing?……They looked like those sort of I guess faded sort of what I'd call a shirt and it looked like he was in shorts but again it was very very windy, very blustery, and so it was hard to get an absolutely clear impression.

Yeah. Was it overcast as well, do you recall?……A little bit overcast, I'd say very – very strong winds so it appeared a bit overcast and a bit of cloud about.

Yeah. Now the boat itself do you remember if it had one or more masts?……Two masts is my recollection.

Thank you. And did it have anything apparently attached to it or tied to it?……Yes, the back of the boat it looked to me like there was a very small dinghy tied close up to the back of the boat.

Yeah. And how was that faring?……Well it looked terribly small and it looked as though it was secured very close to the back of the boat so it wasn't out on a long line. Difficult to make out the shape because the boat was really up and down in the water so it looked very small.

Yeah. Right. Was the back or the side or the front of the boat facing you?……So the big boat at the back of it was facing me and then the dinghy was at the back of it.

Right. All right. Now I wonder if Mr Lorraine could be shown P40 please, the second photos last in the big folder taken by Constable Needham. Now photo 11 please, Mr Lorraine, does that appear to be taken from Derwent Jetty?.....It certainly looks like it, yes.

Yeah. And I know there's an arrow put on there, I think it is, and you probably – does that arrow point to where the boat was that you observed with the man on it?.....Yes, it certainly does, as I say it looks very different on a still day –

Oh yeah.....- and this photo is just of a very calm placid ocean.

Okay. Yes. And number 12, it seems to be the same boat as – is that familiar?.....Yes.

Or is it like the boat? Yeah. 13 is a little bit of a different view but I think – I'm just going to check that – I think on 14 we're back to – back to Derwent Lane?.....Yes, I'm not sure about 13 but –

No.....- 14.

Yeah, is that right, back to Derwent -.....Yeah, that's it.

- Lane Jetty?.....Yeah, and the only difference in this picture was there was a very big silver commercial catamaran on that second – the thing – the other jetty, the wooden jetty.

Yeah, on the day you saw it?.....Yeah.

And then another view at 15? That's the sort of back on view, is it, that you would have had that day?.....Yes.

Mr Lorraine - thank you – you mentioned that you were thirty, it wasn't – it didn't take you very long, you went to there on your walk, about what time therefore was it that you were at Derwent Lane?.....Probably around five o'clock'ish.

Around five – thank you. And when you – when you left there, where did you go, do you remember?.....Yes, I headed back up the hill, which is reasonably steep, and then down – I don't know the name of the road but it's got like a public garden on it, or a garden that's looked after by people, it's a narrow street.

Yeah.....Down there until the end of that road and then cut back down to the water and then walked along the water's edge and around the CSRI building and then back into – into the shop at Salamanca.

Right. And when you mentioned a shop, did you go to the Salamanca Fruit Market?.....I did.

Did you buy something?.....I did.

Were you given a receipt?.....I was.

Did it show a time?.....It did.

What was that?.....I think it was about five thirty, I'm not absolutely sure.

Thank you, Mr Lorraine.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Mr Lorraine, you have previously said to the police, have you not, that you would have left the apartment in Salamanca Mews at around 4:30 p.m. and from there continued your walk?……That could be correct, yes. As I say, it's a long time ago so I'm doing this from memory.

I just want you to have a look at this document, please. Just read it to yourself, say nothing about it. You only need read the front page. When you're finished tell me you've finished and I'll ask you some further questions…….Yes.

Have you read that page?……Yep.

Could I have that back, please. Thank you. You've previously said to the police that you left the apartment as Salamanca Mews at about 4:30 p.m.?…….That's correct.

Yes, and from there you would've walked along Salamanca Place to Castray Esplanade, is that correct?……Along – I'm not sure what you call Castray Esplanade.

Well you tell me the route you took from Salamanca Mews - …….Yep, so across to the industrial sheds, down the side of the industrial shed and then around the –

What do you call the industrial shed?……It's where they have the Taste, the big –

All right, thank you. Princes Wharf?……Princes Wharf, yep.

Thank you, so you walked along parallel to Princes Wharf, correct?……Yes.

And you would've got then to CSIRP buildings, correct?……Yep, that's correct, and what I recall there is the University have put a thing at the end of the jetty there that made noises like a whale so that I recall going out on that little bit to have a look before continuing past the science building.

Yes, that was part of the festival in January, and then to get to Derwent Lane did you go round into Hampden Road and down Trumpeter Street past the Shipwright Arms Hotel or did you walk around through Clarke Avenue?……If you mean by Clarke Avenue, is this the one that has the very pretty sort of garden that's maintained,

it's a very narrow street, that's the one that I used to walk down – I don't know the name of the street.

That's the – with the garden in the middle?.....In the middle.

Yes, Marine Terrace?.....Yeah.

So you walked along Marine Terrace and then turned down into Derwent Lane?.....Correct.

I know understand the route you're talking about. All right. So from Salamanca Mews to there would be fifteen, twenty minutes?.....Yeah.

Particularly with the interludes you had looking at the instrument on the end of the wharf?.....Yeah.

That consisted of a series of flutes and things, didn't it?.....I'm not sure exactly what it was, but the noise was fascinating.

And wailing noise?.....Well that's what it sounded like, yeah.

Yes.....It was very loud because of the wind.

Because of the wind, yes.....And the waves.

All right. So you get – went down to Derwent Lane, you went right out onto the end of the jetty and stood in these reasonably inclement conditions and had a bit of a look around at the yachts and things – is that right?.....That's correct.

All right. And you saw this yacht you've described – it had two masts?.....Correct.

But it was bow onto you, so you were fairly limited in -.....Stern onto me.

Sorry, stern onto you?.....Yeah.

And it was – you were fairly limited in what you could see going onboard the yacht – you didn't ever see it in side – side profile, did you?.....No, it was stern on.

And from where you were standing looking at it, how far away was it, do you think?.....Well it's been estimated at eighty metres; as I say it was very turbulent so –

You say "it's been estimated" by whom was it estimated?.....A policeman took me back to the site and –

Right. .....- they did ask me when I originally did the – did the statement and I estimated it myself at eighty metres. But it was approximate because I had no way of measuring the distance. And obviously in – in the conditions it's very difficult to measure distance.

All right. It could have been further away than eighty metres, couldn't it?.....It could possibly have been, yes.

Yes.....I mean it would have been somewhere in that range but –

Right. Can the witness be shown P01 please? Now what we've got here is an aerial photograph that was taken apparently in December 2007, so I'm not asking you to look at a white thing and tell me with any particular boat, does the copy you have show Derwent Lane marked?.....It does.

And if you look at that we then – as we look at it to the right of where we see the words 'Derwent Lane' and we see the concrete jetty to which you've referred?.....Correct.

And you were right out on the end of that?.....That's correct.

Can you point to where you believe the yacht that you saw was moored?.....It's a bit to know the scale of this map but from where I was on the jetty –

The scale is on the bottom if you look.....Sort of it was almost – from my perspective it was just off – if you took a straight line from the jetty straight out then the stern of the boat was more or less facing me although on occasions because of the pitching and the tossing of the boat I could also see occasionally the bowline, so the front line of the boat.

Now can you put a mark please on that photograph where you say you saw a boat, put 'L' for Lorraine would you, and perhaps we might use another copy, a smaller version, same picture different size? Just take your time.....I put a little 'L'.

A little 'L' please. And if you could pass that to me please. If you would pass that to his Honour and then perhaps Mr Ellis and the jury.

HIS HONOUR: All right. Well the document that's being marked is exhibit P54 and the witness has put an 'L' sideways as one holds the map upright near to the Derwent Lane Jetty. That can be shown to Mr Ellis and the jury.

MR GUNSON SC (Resuming): So the position you put that boat in is in a direct line out from the public jetty at Derwent Lane?……That's correct.

Right, thank you. And what colour was the yacht?……It had – it looked as though it had a bit of wood and it was sort of a whitish colour.

A whitish colour. When you say it looked like it had a bit of wood in it, what do you mean wood, where was it?……Just, I suppose, from looking at the boat and by describing it as sort of an ocean going boat, as I say, very blustery conditions but it was sort of white in colour but it was – looked reasonably old, so the – I suppose from a (indistinct word) it looked as though it had some wood around bits of it and as well as some other metal and things.

Do you remember whether the masts were wood or metal?……Not specifically, no.

I just want to get you to concentrate on the wood, please. You said wood around it, whereabouts was the wood, was the wood in the hull or on the -……No, it would've been more on - sort of on the deck.

It appeared to be a wooden deck, did it?……Not necessarily, I couldn't see the deck.

No…….Like I suppose the – whether you call it the superstructure or from memory it looked as though it had some wood on the – sort of the cabin bit.

Well when you say "on the cabin bit" do you sort of mean a wood trim of some form?…….Could have been, yeah.

You're not suggesting that the cabin was made of wood, for instance?…….No.

Right. And do you remember the boat being all white?…….Pretty much, as I say, a lot time has passed since but my recollection is of a – an older sailing boat that didn't look spectacular it just looked interesting.

Right. And there was a tender of some form attached to the rear – that's right?…….That's what I saw.

Yes. And you said previously to the police, I suggest, "I'm unsure what type of tender it was, inflatable of solid construction." Now do you mean inflatable or solid construction?…….I think what I said was that I could see the – something on the back of the boat but I was unable to make out whether it was a – an inflatable dinghy or tender –

Yes……..- or a aluminium or wood dinghy. At the time I described it as – I grew up in the UK – as a like a cockle dinghy, which is like a small dinghy that sailing boats use to get to and from the shore.

Right. So you couldn't determine whether the dinghy you saw was inflatable or made of aluminium or whether it was made of wood?…….No. And the reason I couldn't was because the boat was pitching violently in the water at the front and at the back.

You mean the dinghy or the main boat?…….Boat.

The yacht?…….Yeah.

Yes……..And the yacht was pitching violently in the water and the dinghy appeared to be very closely secured to the back of the back so it wasn't like free sort of off the back of the boat.

That's all right. But in any event, the dinghy you saw or tender, whatever word we use interchangeably, was somewhat dark in colour?…….That's my recollection and – and very small.

Very small and very dark?…….I don't know about very dark. As I say hard to make out but it didn't stand out.

But it was dark?……It was, yeah.

Thank you. And would it be fair to say this that you really on that day didn't pay a great deal of attention to the dinghy?……No, more interested in the sailing boat and I suppose the gentleman that was on board.

Yes. And how long did you observe him pottering him around at the rear of the boat for?……Probably about ten minutes.

Right. And did you see what he was doing? Was he sort of doing things with ropes for instance or did he appear to be popping in and

out of the cabin or what?……Couldn't make it out. He was bending over in the – in the back of the boat, or the stern of the boat, but I couldn't really make out what he was doing.

Yes. And you didn't see an outboard on the back of this tender did you?……No, I couldn't see an outboard.

Right, thank you. And if there had been an outboard there that's the sort of thing that you would remember isn't it?……It is, yeah.

Yes. In fact you were interviewed by the police on the 31st January and you didn't tell them at that time there was any outboard on board?……That's correct.

Yes. And it is your best belief today that there was no outboard?……Well I guess the point I made is I couldn't see an outboard.

You couldn't see one?……No.

Yes, thank you. But – and the board was stern on to you and you had a reasonably good view of the dinghy at the back of the boat, is that right?……A reasonably good view of the bigger boat a poor view of the dinghy. As I say you have to imagine the water was as turbulent as I've ever seen it so the boat was pitching almost violently in the water so that as it slapped up and down there was spray and things so it was difficult to get an image, a clear image, of something that was small.

Thank you. You said the boat was on a mooring could you see the mooring buoy to which it was attached or are you merely assuming it was on a mooring and not at anchor?……No, I'm making that as an assumption. All I could see was the – a very tight and what looked like a short line off the front of the boat on occasion and it looked short which was why I guess the boat was pitching so – so dramatically.

All right. So at the end of the day the position is this. That the boat was either anchored or moored and you can't say which?……That's correct.

Thank you. And you saw this or watched this for about ten minutes before retracing your steps, is that right?……That's correct.

Thank you. On a previous occasion you were asked about the colour of this yacht, you said:

It sort of looked a woody -

And you stopped and moved onto slightly something else and you were asked
Also:

Did it appear to be painted or varnished?

And you said:

I think it may have been, like looking at it, because the wood would have been attractive, so from recollection it looked like there may have been some wood on the boat just making it look older, but I would've thought the hull was painted.

Now I'm sorry to come back to this wood again, but I just want to make quite sure in my own mind what you're talking about is some basic wooden trimmings on the boat, is that right?……Correct.

Yes, thank you. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN – MR ELLIS SC: Mr Lorraine, when you made your 'L' on the map as invited by Mr Gunson was it your intention to depict a different position of the boat than the one seen in the photographs or the same, the photographs that I showed you earlier?……Oh sorry, not this one. No, not necessarily, this is just – this is a different type of picture to the one we looked at earlier.

No, never mind that. Now I showed you photographs?……Yep.

Saw a boat there that, yeah, I understood you said it was in the same position as the boat you saw?……Yes.

And when you made your 'L' on the map was it your intention to describe a different position or the same position?……No, no, well it was my intention to describe the same position.

Thank you. As you saw in the photographs that I showed you?……Yes.

Thank you, Mr Lorraine. Nothing further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

<THE WITNESS WAS RELIEVED AND WITHDREW

<JAMES ATHOL McKINNON CALLED AND SWORN

HIS HONOUR: Take a seat. Yes?

<EXN - MR ELLIS SC: Thank you, your Honour. Mr McKinnon, you're James Athol McKinnon?.....Yes.

You live in Burpengary – am I pronouncing that right –.....Yes.

- in Queensland? And you're a marine mechanic?.....Yes.

In – well perhaps just tell us what – what your business involves as a marine mechanic, what sort of things you do?.....Oh we - we repair marine engines in boats.

Yeah.....And – yeah.

And all sorts of boats or -.....Yes.

- all sorts and sizes?.....Pretty much power boats and sailing vessels.

Mm hm. For the recreational boats?.....Recreational, yes.

And did you do an inspection of a vessel, Four Winds, in 2008?.....Yes, I did.

And you were commissioned to do that?.....Susan Neill-Fraser and Bob Chappell.

Do you remember which month you did it in?.....No, I don't, no.

No – was it late in the year?.....It was late, yeah, it was in the year, yes, but I don't exactly remember which month.

And you did an inspection and made a report, I presume, as a result of that?.....Yes, I did.

What was the general nature of the report, what did you tell them was the state of things?.....Oh just general wear and tear in service items.

Yeah.....And it just needed some repair work in order to bring it up to a safe standard.

Did you give an estimate of how much might be – might be done?……We did.

What was that?……Oh, that varied but it was at the time approximately about the eight thousand dollar mark.

Were you asked to commence that?……Yes, I was.

And did you?……Yes.

Where did you do that, that work – well to start with where did you do that work?……We proceeded the work at Scarborough Marina in a mooring tied up on the dock.

Is that where you usually do your work or you do them - …..We do them in most marinas on the north side of Brisbane.

Right. How long did that process take at Scarborough Marina?……Scarborough's approximately eight – eight to ten weeks.

And in that did you find more things that needed doing?……We did, yes.

Yeah……Just minor items.

Okay. Did you have cause one day to call Sue Neill-Fraser about what you thought was an entry to the boat?……Yes, I did.

And what caused you to call her?……I just had reason to believe that someone had being entering the vessel after I had finished my work everyday, or some days.

Yeah…..I wasn't entirely sure at that time it just – there were some minor things that were changed that were different to how I left them.

Right. And did you have any suspicion as to who it was?……No, I didn't, no. At the time I suspected it may have been the boat broker coming down to check the vessel everyday or – that was my initial reaction but we soon ruled that out.

Okay. And was there any particular matter that caused you to call her?……Oh, one day I actually noticed the electrical panel had been removed. I don't think I'd noticed it previously because later on we discovered that an electrician that worked on the vessel he'd removed it so –

Yeah, but on the day – on the day you found it had been removed did you think that that was something more than just someone's been on the - .....I did, I did at the time, yes.

Okay. And did you call Ms Neill-Fraser to say that it seems the electrical panel has been removed?.....I – yes, I did.

And you found out that that was – later that that was perfectly lawful, it was an electrician that she'd actually assigned to do work?.....I did, yes.

And his name was – do you remember his name?.....Chris Geddies.

Right. And did you relay that finding to Ms Neill-Fraser?.....I did, yes.

Okay. So there was – how many other times did you get the impression someone had been on board or in it – or in the boat?.....Probably – I classified it as several times, probably two to three times.

Okay. But nothing like panels removed or any obvious -.....No, there was nothing else, it was just minor things like my toolbox had been relocated.

Yep, and that's how you reported it to Ms Neill-Fraser, is it?.....Yes.

On the time you rang about the panel being – having apparently being removed I want to read you a description of how Ms Neill-Fraser described your call and find your reaction to it, 372:

> *He rang up and he sounded really rattled. He said, "Look, I think I get the feel" – well first off he said, "Are you getting someone to watch me", and he thought it was Jeff Rowe that I was asking him to watch him to see how many hours he worked and – because he said, "I'm absolutely certain somebody's watching me". To be absolutely honest with you I thought the heat had got to him because he sounded frantic and that morning he said he got on the boat and someone had been on there and I said, "Well has it been broken into", thinking of damage, and he said, "No, someone with a key and they've pulled off panels, they've undone the electrical circuits", and I thought well it's another tradesman, you know, and I told him and he said, "No, it's not, someone's been on here looking for something", and he*

said, "I've never worked on a boat that's made me feel so nervous", and he went on about the heat and heaviness.

Now is that an accurate description of your call, that you were rattled and frantic and -.....I was very concerned but not frantic, no.

Did you assert that electrical circuits had been undone?.....It was only the electrical panel was removed.

Did Ms Neill-Fraser say to you, "It's another tradesman", did she say, "It's someone – must be the electrician I've got to work on there"?.....I don't recall.

That was something you relayed to her later, having found it out, wasn't it?.....Yes, I – I did pass that on, yes.

Perhaps I'll continue – and then he said, "Penny was driving him made because she kept coming down and criticising the boat"?.....She did.

She did, who was Penny?.....Ah, Penny was the female boat broker –

Yeah.....- whose business resided in Scarborough Marina, which was very close to where the boat was moored.

I see. Apparently she hadn't got the business of selling that boat?.....Yeah, apparently.

And she made plain her – she had views of the boat?.....She was just concerned that yeah, she didn't get a fair chance at selling the vessel.

Right. And you understood that she had it for sale at some stage, do you?.....I didn't, no.

Right. Soon following that was something done in respect to the location of the boat?.....Yes, I – I asked Sue whether I could relocate the vessel to another marina.

Yeah.....Just to make things a bit clearer. We shifted the vessel to the Newport Marina and proceeded work on the boat there.

All right. And was there any – ever any other sign of anyone coming on or moving the ropes or anything?.....No, not after that, there was nothing more.

Tell me, is it – is it right that at Scarborough it was moored alongside someone who was actually living on the boat - .....Yes.

- on their boat next -.....Yes, it was.

- alongside? Can you recall a large fire extinguisher on the boat?.....Yes.

On Four Winds – where was that located?.....It was located in the saloon area when I seen it.

And I take it, it was secured?.....No, it wasn't secured at the time, it was just loose.

All right. And how much would it weigh?.....Approximately ten to fifteen kilograms.

Right. And did you put it somewhere before the boat sailed away?.....I – my belief was I'd placed it in the laundry area.

All right. When was your work and – and there were other subcontractors, I think, weren't there -.....There was.

- working – when was your work done?.....I don't understand the question, sorry.

No, okay. When was it finished, when was it ready to go?.....When it was finished, what month or –

Yeah.....Yeah, I'm not sure of the –

Okay. Was it close to Christmas?.....It was around Christmas time but I don't remember the date, no.

Now it seems like most of your communication was with Sue Neill-Fraser, is that right?.....Yes.

Not with the Bob Chappell?.....No.

In fact when did you meet him, if you did?.....I first met Bob when they come up to have a look at the vessel prior to its departure, they

came up twice I believe. The first time was to sort of meet everybody and see how work was progressing.

Yeah. And did you see them, Sue Neill-Fraser and Bob Chappell, together?……I have seen them together, yes.

How did they strike you as a couple?

MR GUNSON SC: I object to the question, your Honour.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: It's from an observation, your Honour.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Your Honour, can the jury be asked to go to the jury room and the witness to wait outside and I'll address your Honour as to the form of my objection.

HIS HONOUR: Yes, ladies and gentlemen, would you go the jury room please.

THE WITNESS LEFT THE WITNESS BOX

<THE JURY RETIRED

HIS HONOUR: Mr Gunson?

MR GUNSON SC: With due respect to my learned friend the question was inelegantly phrased, "How did they seem as a couple", and it invites an inelegant answer. The witness can say what he saw or observed or heard but to ask him to give an opinion as to brief contact with them, "How did they seem as a couple", isn't particularly helpful and invites the sort of answer it probably deserves which is not an admissible answer.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I expect he'll say that they seemed more like friends than an intimate couple and that observation will be one that can then be fleshed out as to what made it seem that in terms of I think – well I'm thinking of the opinion section in the Evidence Act with the exception, thirty – but yeah, 78B, your Honour, of the Act. The ground of objection seems to be elegance or lack thereof.

HIS HONOUR: Well Mr Gunson, the proof contains an assertion that they seemed like friends only and not a couple, he went on to say:

> *They had different names and did not appear an intimate couple. I would describe Sue as very dominant and never stops talking to listen and very friendly.*

So it seems to me that's the information that Mr – or the evidence that Mr Ellis wants to elicit, what do you say in reply?

MR GUNSON SC: I say that his reliance on s78 reinforces the submission that I've made to you because subparagraph (a) of s78 says:

> *The opinion must be based on what the person saw, heard or otherwise perceived about a matter or event and the evidence of the opinion is necessary to contain an adequate account or understanding of a person's perception of a matter.*

Now all we've got is him just saying, "I saw them", surprising, shock, horror, "they had different names", and I use that as part of my foundation or basis for the belief he's expressed, and that's absurd, with the greatest of respect in this day and age. I mean people don't necessarily walk around the street, who have been

together for a long time, arm in arm, people display different manners towards each other in public all the time.

HIS HONOUR: Well that's true, but this is a case where the way in which the – your client and Mr Chappell behaved towards one another has become relevant and a lot of pieces of evidence may be of little or no value, but the way in which they behaved towards one another is relevant. If there is anything wrong with the question it is that it – it's not expressly limited to what the – what the witness saw, heard or otherwise perceived.

MR GUNSON SC: That was the foundation of my objection in the form the question was asked.

HIS HONOUR: Yes. All right. Well – well technically you're right, the witness will have to – if the witness is to be asked how they seemed as a couple or how they struck him as a couple, the question will have to be limited to what he saw, heard or otherwise perceived.

MR ELLIS SC: So I'd ask; 'From what you saw, heard or otherwise perceived, how did they strike you as a couple?'

HIS HONOUR: Yes.

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: Yes, bring the jury back and bring the witness back.

<JURY RETURN

<WITNESS RETURNS

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Thank you, your Honour. (Resuming): I was asking about Ms Neill-Fraser and Mr Chappell, Mr McKinnon; so from what you saw, heard or perceived, how did they strike you as a couple?.....Yeah not – not intimate, just – just friends, I suppose.

And in terms of the apparent, and I only say apparent, dominance of one over the other, or dominance in interaction with, say, you?.....Yeah, Susan was definitely the dominant one of the two.

Now Mr Chappell, how would you describe his apparent health and how in particular he was – appeared to be on board? I know you weren't at sea when you saw him but how did he appear to be get around?.....He was very slow and very fragile, very frail, yeah.

What about steadiness on his feet?.....It wasn't – wasn't too bad but a little bit unsteady, yes.

Right. Now after the boat left and after it sank, or nearly sank, did you receive a call from Sue Neill-Fraser?.....Yes, I did.

And do you remember the date of that?.....No, I don't remember the date. I believe it's the 29th January is what I think I –

Yeah, you believe that that's – you believe that's when the boat -.....No, no, that's when I remember receiving the call.

Right. And did – what was the call, what did she say in that?.....Just a general call to let me know that the vessel – the vessel had sunk and Bob was missing. And I wasn't entirely sure what the phone call was about but she proceeded to let me know that Bob had disappeared and they suspect that the – there was sort of an investigation possibly towards murder at this stage and, yeah, that was pretty much that, yeah.

What else was said?.....Oh, she just explained to me that the – her belief was at the time that somebody had murdered him on board and they'd used the fire extinguisher to weigh his body down and pushed him over the side.

Right. Did she mention ropes?……She mentioned, yeah, they've used a rope in the boat to winch his body up from the saloon area and tie the fire extinguisher to his body.

How did she sound when she was saying this to you?……Just fairly normal, yeah. I don't believe that she was upset.

When she's saying this about they used ropes to tie the fire extinguisher and to get the body up from the saloon, did she say that "This is what the police are telling me," or did she say -…….Yes, she – she claimed that the – that's what the police had told her.

Right. Did she say anything about her relationship with Mr Chappell prior to these events in this call?…….She stated to me that they had broken up previously and weren't together anymore and she stated to me that she hadn't told police that.

All right. Did she say anything about her intentions of telling the police that?…….No.

Did she say why she hadn't told the police that?…….No.

Thank you, Mr McKinnon.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: Thank you, your Honour. This conversation you say, you thought took place on the 29th of January, are you sure about that?.....Ah that's what I – I remember.

And you previously said that you recall receiving a phone call from Sue on either the 4th or 5th of February 2009?.....I don't recall.

Have a look at this document please – just look at it, you need only to look at the first page and then look at the third page, read to yourself what's on the third page, say nothing about it, when you've finished reading it please tell me – but say nothing about it, will you?

MR ELLIS SC: I take it this is the witness' document, of course.

WITNESS: I don't understand what I'm reading – sorry, yeah.

MR GUNSON SC: (Resuming): Just the front page -.....Oh yeah – okay.

Are you looking now at the second page?.....Yes.

I want you to look at the third, it'll save a little time if you do, but if you feel you want to read the second please do it.....Yep.

Pass that back, please. Thank you. Mr McKinnon, you have in fact previously said that you received a phone call from Sue Neill-Fraser either – on either the 4th or 5th February 2009?.....That's correct.

So we can now accept that your memory, as you told us a little while ago about a conversation on the 29th January, is wrong?.....That's correct.

Thank you. So you accept this conversation at either the 4th or 5th February?.....That's what I stated at the time.

Thank you. Now what she – you've recounted what she told you, that she made it very clear to you when she was describing what she believed had happened, that that was what the police had told her their belief was?.....That's what I believe, yes.

Yes, thank you. Now you mentioned that she'd said that they'd broken up some time before, what I suggest to you is what she said to you is that there had been an occasion in the past long before where they had broken up for some time?.....That's not – not my belief.

You emerged from this conversation believing that it was a recent breaking up, is that right?……I did, yes.

Did she tell you when this break up had taken place?……No.

Did she tell you anything more about it?……No.

And you were left with no information at all about when the break up had occurred?……It wasn't any of my business at the time, no. I didn't -

No, but I'm interested about what said. I mean she didn't say to you for instance, "We broke up around Christmas time", did she?……No.

And she didn't say, "We broke up after we got back to Tasmania on the yacht"?……No.

She did say, "We broke up in the New Year"?……I don't recall any dates or times, no.

Right. And so all you were told was at some stage they had broken up?……Yes.

Thank you. And you didn't enquire beyond that?……No.

Thank you. Now do you recall the date upon which you first met Ms Neill-Fraser and Mr Chappell?……The date?

Yes……Approximately September.

September 2008……Yes.

And was that when they were looking to purchase the boat or had they by then actually purchased it and it needed work done on it?……I first them when they were purchasing the boat, doing the first –

So the contact hadn't been signed?……Oh, I don't know. I don't have any belief in that.

Right. And you were required to do a mechanical inspection?……Yes.

Did you write a report about that or just orally report?……I would have written a report about that.

And who did you send it to?……Would have sent either in the post or via email to Sue.

All right. And by this time they'd returned to Tasmania had they?……Yes, I believe –

I'm just trying to work out the ambit of what your instructions were. You met them when they were in the process of buying the boat?……Yes.

It was in the marina, correct?……Yes.

And they wanted you to do some sort of mechanical survey to see what mechanical problems the boat might have?……That's right.

Right. And did you locate any major problems with the boat?……Not major problems just service and repair items.

Sort of minor things?……Yeah, I'd classify them as minor, yes.

All right. And you were then asked to do some fairly significant repairs weren't you?……Yes.

And were those instructions given to you whilst Ms Neill-Fraser and Mr Chappell were in Queensland or did they give those instructions to you after they returned to Tasmania?……After they returned to Tasmania.

And after receipt of your report?……Yes.

So is it fair to say this, that the engine needed fairly major work done to it?……I don't classify it as major, I'd classify it as minor.

Well you've said in the past, have you not, the repair process took eight to ten weeks?……That's correct, that's not fulltime, that's part time, that's the duration of the repair.

On and off, is that right?……That's correct, yes.

All right. And you would go to the yacht, get the keys presumably from somebody, go on board, do your work and go home?……Yes.

But you've told Mr Ellis a little while ago you had cause to telephone Ms Neill-Fraser in relation to person or persons entering the boat?……Yes.

You were obviously concerned about it?……Yes.

And you first discussed that with Mr Rowe, did you not?……Yes, I went straight to Mr Rowe, yes.

Right, he was the broker?……He was the broker.

And he was sort of acting as some sort of agent for Ms Neill-Fraser and Mr Chappell, was he not?……No, I don't believe so, he was just keen to help them out during the sale of the vessel.

All right……Yep.

And you said, I think, in the past that you noticed that ropes had been tied differently to the way you tie them?……Yes.

Now what ropes and where were they situated on the boat?……The ropes were the small string ropes that are on the boom cover tied to the railings.

Right. Could the witness be shown P3, please. Just take your time, please, and have a look through photos 2, 5, 7, 8, 9, 11 and 12, if you would, Mr McKinnon. Now there are two booms on the Four Winds, aren't there?…….Yes.

One on the mainmast and one on the mizzenmast?…….Yes.

And you described some ropes in relation to the booms?…….The – no, boom cover.

Yeah, the boom cover is that blue thing we see?…….No, it's not.

Right. Well what's the boom cover then?…….The boom cover isn't in any of these photographs, it's an external cover you put on the vessel when the vessel is not being used for sailing.

Right. And what's it look like?…….It's just simply a tarpaulin type material. It covers the cockpit to give protection to the wheelhouse.

Right. So – and that would be, what, fitted across the mizzen boom, would it?…….The main boom.

Right. …….Not the mizzen boom.

Okay. So just describe it to us so we have an understanding of what you're talking about?.....It's jus simply a tarpaulin, a rectangle or a square tarpaulin, that covers the boom –

Yes.....- from side to side.

And sort of, what, runs down to the railings, does it?.....It's tied off on the railings on each side of the – of the gunnel.

Right. And provides sun protection?.....Just provides sun and rain protection for the cockpit.

Right. Thank you. And what had happened to this – what happened to the ropes, what was different about them that you looked at them and said, "Well this not my handiwork, it's somebody else's"?.....Just the – the knots that were tied were different to how I tie – tie them.

Yes. How many times did you find this had occurred?.....Approximately two to three times.

It wasn't any sort of damage to boat rather just -.....No.

- indicating that somebody had been on it?.....That's correct.

Did they need to undo those ropes to gain access to any part of the vessel?.....To gain access easily, yes, you have to undo it.

Right. So you have to undo those ropes and, what, move the cover away -.....Yeah.

- and then what, go down the hatchway?.....No, that just gives you access onto the deck of the boat.

Right. So the ropes you've described and the cover impeded access along the deck?.....Yeah, impeded access to the – to the deck from the pontoon allegedly, from the pontoon onto the deck.

Right. Thank you. And it was the ropes on the pontoon side in the marina that had been interfered with?.....That's correct.

All right. Now apart from that, did you find any other signs of a person or persons getting onto the boat?.....I'd only found that my tools had been moved -

Right. .....- from where I'd left them.

And this is at the same time as you found the problems with the ropes?.....Yes.

All right. Now you were working downstairs in the boat, in the saloon area?.....Yes, in the engine room.

In the engine room, which goes straight off from the saloon, there's a steel door you go through –.....Yes.

- to get into the engine room?.....Yes.

All right, and where would you leave your tools, in the engine room or -.....No, on the floor outside the door of the engine room.

Just lying loose or in a toolbox?.....No, they're in a toolbox and lying loose, but mainly in a toolbox, yep.

And you found that your tools that were lying loose were moved or the toolbox moved?.....No, the toolbox had been moved.

And where had it been moved to?.....Oh just moved aside just a short – about probably twelve to eighteen inches away, that's all.

Right, and your toolbox was sitting on the floor obviously of the saloon. Was the floor carpeted then or just wood?.....I don't recall.

And by moving the toolbox could you get access to the panels underneath the toolbox?.....I don't recall.

You don't recall. But you found this on a number of occasions?.....Oh only two to three times.

Right, and you reported that to Ms Neill-Fraser?.....No, not at the time, I reported that to the marina management and Jeff Rowe first.

All right, and over what period of time did this happen? You were there off and on for eight to ten weeks, did it happen just in, say, one week or over the eight to ten week period?.....Oh it mainly happened around a one to two week period early in the stage.

Early in the piece?.....Yep.

All right. You also said you noticed things changing on the boat?.....Yes.

Was that the reference to the tools?……That's the reference to the tools, yes.

All right, were there any other things you noticed that were moved?……No.

All right. You've previously said when you were asked about the movement of things on the boat – you were asked this question:

> *What signs were that that internal illegal entry had taken place?*

And you said:

> *Just my tools that I left behind had been moved for somebody to gain access to the – to engine room.*

……..Yes.

And that was the view that you took, that the tools had been moved so that the person could get into the engine room?……That's correct.

Because to get into the engine room, as we've said, you've got to go through that steel door?…….It's got a big large swing steel door, yes.

And your toolbox was right in front of the steel door?…….No, not in front of, it's – it was sort of back from there, but yeah, to – to open it fully you had to move the toolbox.

Right. So once your toolbox was moved you could get in and out of the engine room steel door?…….Yes.

Thank you. And of course, as we've heard, there was the problem with the electrical panel, but you chased that down to the electrician?…….Yes.

Did you tell Ms Neill-Fraser that you'd actually identified the electrician as the problem?…….Yes, later on I did actually explain to Neill – Sue that Chris Gettys had been the person who had removed the panel to work on the regulators.

Now you obviously reported to Ms Neill-Fraser your experience with your toolbox being moved and ropes being untied and retied?…….Yes.

And would it be fair to say that she was very concerned that the person – persons had gotten onboard the boat?

MR ELLIS SC: Well that's –

WITNESS: Yes.

HIS HONOUR: Just – just a minute? Mr Ellis?

MR ELLIS SC: The same objection my learned friend made about my questioning.

HIS HONOUR: How did she react when you told her about the – the tools having been moved?

WITNESS: Oh she was concerned that somebody had been entering the vessel.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: (Resuming): What did she say to you?.....I just recall her saying that it's – it's concerning that someone had entered the vessel and she hoped that it had not been involved in the drug trade.

Yes – thank you. And this was in person by telephone that you reported to her?.....By telephone.

Right. Now the sort of problems that you experienced with the boat ceased and you finished your work?.....Yes.

And Ms Neill-Fraser and Mr Chappell came up to Brisbane to basically take over the boat and sail back to Tasmania?.....Yes.

Now this is the second time you'd met them in person?.....Yes.

The first time was when you described a little while ago when they were still, in September or thereabouts, buying the boat?.....That's correct.

Over how many days did you see them on that occasion?.....On – is that the second occasion?

The first occasion?.....Oh the first occasion, I recall only one day.

Yes. And you probably only saw them for a reasonably brief period?.....Approximately four to five hours.

All right. On board the boat?.....Yes.

Right. And it wasn't unusual that one person within a couple purchasing a boat would take over the management of the necessary arrangements for the work would it?.....No, it's not.

No, not unusual at all is it?.....No.

No. And you weren't surprised that Ms Neill-Fraser took over, as it were, organising your work?.....I wasn't surprised, no.

No. And it's probably better you have one person giving instructions rather than two, no room for confusion is there?.....That's right.

Yeah. And – so you have said to Mr Ellis this morning that she seemed the dominant one of the two what you're really saying I suggest is that she took over the negotiations and ran the negotiations and instructions?.....Yeah, I classify it as being dominant, yeah, it was just my feeling.

Because it was a woman?.....It may be, not sure.

Yeah. And you thought it a bit unusual that a woman was being, shall we say, the one running the organisation rather than - .....It's not unusual, it does happen.

Right. But – now – and it would be fair to say that Mr Chappell basically was in the background and appeared perfectly happy to let her do what she was doing?.....Yes.

Yes. He certainly didn't at any stage say, "No, that's not what we want", or "That's not what we're going to do", or anything like that?.....I don't recall that.

No, thank you. Now you've said that they did not appear to be intimate in your presence what did you mean by that, that they weren't holding hands and cuddling or something?.....Oh, they – they just weren't, yeah, holding hands or they weren't –

Weren't embracing each other publicly?.....Oh, no, like some people, you know, are together and some people stay separate. Like I just felt as though they were friends was my feeling.

You've dealt with the couples in the – who have come to you for work on many occasions……Yeah.

Yeah, well some would no doubt, to use an expression, be all over each other like a rash and others aren't not……That's right.

Yeah, and they were at the other end of the spectrum or the extreme?……No, they – I just think – I think it's normal but they just – they weren't – they were just friends.

Yeah. They seemed to have a relationship which was not one where they were embracing each other or kissing each other publicly?……That's correct.

Thank you. Now when you first saw Mr Chappell in September was he, as you described to Mr Ellis, very slow and appeared very frail?……Yes.

And did there appear to be any change in his condition when you saw him before they left Brisbane?……No, he just appeared to be elderly and slow.

Right. Did they discuss with you their intentions for the yacht as to how they were going to use it?……No.

But nonetheless it was clear to you that he was proposing to sail with her and the delivery crew back to Hobart.

MR ELLIS SC: If they didn't discuss it how could it possibly be clear to him, in my submission?

MR GUNSON SC (Resuming): It was made clear to you as a result of –

MR ELLIS SC: I object to the question.

HIS HONOUR: Well what is the question, Mr Gunson?

MR GUNSON SC: Was it made clear to him as a result of what was said that Mr Chappell was going to go on the delivery voyage to Hobart?

HIS HONOUR: Any objection to that, Mr Ellis?

MR ELLIS SC: No, but it's a different question though, your Honour.

HIS HONOUR: All right, well we'll have it. What do you say to that, was it made clear that Mr Chappell was going to go with Ms Neill-Fraser on the delivery voyage to Hobart?

WITNESS: My belief was he was going to travel with them, yes.

HIS HONOUR: Mr Gunson.

MR GUNSON SC (Resuming): I just want to come back to these ropes that you found had been changed. I think in the past you've said three or four ropes had been changed -.....Yes.

- over a period of a couple of weeks?.....Yes.

Thank you. And did you report the – your belief that there had been illegal entry to the boat to the marine operators?.....I did.

Who were the operators?.....The owner of the marina, Mr John Paul Meera.

Right. And was the boat at some stage moved from that marina to another one at Newport?.....Yes.

And that was because of these issues?.....Yes.

Thank you.....And also with intimidation from the female boat broker.

She was intimidating you, was she, or trying to?.....Oh she just made it very uncomfortable for me, yes.

A very unpleasant lady?.....Yes.

Gave you a bit of abuse, did she?.....No, not abused me, she just wouldn't stop talking about the boat and how she never got to sell it.

Right. So you perceived that to be the cause of her antagonism, the fact that she missed out on a sale?.....Yes.

Mr Rowe, I think, got the sale?.....Yes.

Right. All right. Did Ms Neill-Fraser, on a number of occasions, raise with you issues relating to the operation of the motor on the

boat; that is, wanting to know how it operated, how it worked and so forth?.....Yes.

Thank you. And she took quite an interest in it?.....Yes, definitely, yeah.

All right. And you were happy to impart information to somebody who obviously wanted to learn about the vessel?.....Absolutely.

All right. You sent the Tasmanian Police, specifically Detective Sergeant Smith, a list of the mechanical problems that you found onboard the boat, is that right?.....Yes.

Do you have that list with you today?.....Yes.

Could I have it produced please – it may help? Your Honour, I note the time, is that a convenient time, and I can look at the list –

HIS HONOUR: If you're going to be some time, then –

MR GUNSON SC: Depending on what I read, your Honour – I've got a few more questions, but I just thought that –

HIS HONOUR: Well we'll – if you like, if that's how you want to do it, we can take the morning break. The list can be produced to Mr Gunson for inspection and the jury can make their affirmation and the Court will adjourn for fifteen minutes.

<JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Yes, some documents I called for can be returned to the witness please. (Resuming): Mr McKinnon, what was the total cost of the repairs that you carried out to Four Winds, roughly?……I don't – roughly, it would have been between eight and twelve thousand dollars.

Perhaps as high as seventeen to eighteen thousand?……It could be, yeah, I don't remember.

Thank you. Just to come back to this person or persons who were going onto the boat I understand that you were the person who suggested the boat should be relocated in an endeavour to stop access to it by unauthorised persons?……It was.

Yes. You raised that with whom?……Sorry?

Who did you raise that issue with?……I raised that with Sue to get her permission to move the vessel.

And she gave you permission to move the vessel?……Yes.

All right. You observed Mr Chappell on or around the boat?……Yes.

And did he appear to take a significant interest in the boat?……Yes, he did, yeah. Yep.

Right. Do you recall him asking you many questions about electrical issues and mechanical issues?……He did.

And appeared very interested also?……Yes.

Yes, thank you. I have no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis.

<REXN – MR ELLIS SC: Thank you, your Honour. The boom cover that you've been asked about, Mr McKinnon, you've described it as a tarpaulin, if that were not tied down would it flap perhaps in the wind if it were not tied down well?……Yes, it would.

And would that, do you think, cause annoyance to the person living next door?……Yes, it could.

So on two to three times the knots were different?……Yes.

And the only sign of entry was one time when – no, I'm sorry, two times – or it might be one and the same time – two times when your toolbox was moved and the electrical panel was opened?……Yeah, I think the panel was removed sometime ago and I just hadn't noticed it.

Right, and so that might have been at the same time that the toolbox was moved?……That's right.

Which was – which turned out to be at a time that Mr Geddies, who you'd contacted, had been on board?……That's correct.

Lawfully and with your permission?……Yes, with Sue's permission, yes.

Yes. And was he given the means to go on board, a key?……Oh he had ongoing work to do on the vessel so he could've been there at any time without my knowledge.

Yes. And the point about the panel is that it had slipped your mind that he'd been on board working on electrics?……Yes.

Okay. And were there electrics also in the engine room?……There is electrics in the engine room, yes.

And so may he have had access to the engine room at the time your toolbox was moved?……He was working on the alternator at some stage, so whether he had to go back to do some checks I'm not sure.

Okay, thank you. You've said that you told Ms Neill-Fraser about the panel being the work of Mr Geddies?……Yes.

Did you do that more than once?……I don't recall more than once, but definitely did, yes.

And the other matter that you were asked about was the conversation soon after the incident in which she said Bob – that Bob and her had broken up some time ago; did she say, "But we got back together again" or was that an ongoing situation at the time of the incident concerning the boat being sunk or attempting to be sunk?.....She didn't elaborate.

Right. Thank you, I have nothing further.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: Yes, all right, thank you, Mr McKinnon, you're free to go.

<THE WITNESS WAS RELIEVED AND WITHDREW

<**PHILLIP PAUL THOMAS TRIFFETT CALLED AND SWORN**

HIS HONOUR: Yes?

<EXN - MR ELLIS SC: Thank you. Mr Triffett, you're Phillip Paul Thomas Triffett?.....Yes, I am.

You live at Old Beach?.....Yes.

And you're a machine operator?.....That's right.

Thank you. Did you know Sue's partner Bob Chappell?.....Yes, I did.

How long have you known – have you know Ms Neil-Fraser?.....From about '91, '92, something like that.

How did you meet them?.....I met them through a friend of mine Maria Hanson.

And were you and Ms Hanson more than friends?.....Yes.

How did Ms Hanson know them?.....How did she know Sue?

Yeah.....She's known Sue for quite sometime before – before I'd actually met Maria she already knew Sue, I don't really know how they met.

And where was Ms Neill-Fraser living when you first met her?.....She was living at Moat House, Bagdad.

Was she then seeing Mr Chappell?.....Yes, she'd just commenced a relationship with Bob.

And were they living together at the time you first knew them?.....It was in the – like she was talking about moving in with Bob, like she wasn't actually living with him at that time.

Okay. And did she in the time that you knew her with in with Bob?.....Pardon?

Did she move – did they commence living together?.....Yes, they did later on, yes.

Yes. Where was that?.....Sorry?

Where was that?……Where was that at, 7 Allison Street.

Okay. And as a couple did you Ms Hanson do things with them as couples?……Yes.

What sort of things?……We would – well quite often go round to Sue and Bob's place for dinner and go out every so often and on a few occasions we went to a friend's property at Murdunna, a beachside block.

Right. Did you ever stay with them at their house overnight?……I had, yes.

Did you help with any odd jobs on the property?……Yes. Yes, I did, I just did odd jobs on Sue's property at Bagdad as well as some subdivision work that she was doing.

Yeah. When you knew them did Ms Neill-Fraser have a yacht?…….Yes, she did, yes.

Do you know where it was kept?…….Down at like either Electrona or – there was – there was a marina down Margate way, I'm not exactly sure where that was, I didn't take a lot of notice.

Okay. Did you ever go on it?…….Yes, I did.

And who did you go with?…….I went on a few different occasions; once with Sue and her daughters and Maria –

Yeah……..- and another time we went and there was just Sue and I.

Okay. How did you get out to the yacht?…….We went out on a small dinghy type thing.

Right. Was there ever a time that she wanted your assistance with the yacht?…….Yes.

What was – what was that about?…….She had problems with the engine and I had a look at it to see what I could see being wrong with it.

Ah ha. Did you make any suggestion about it?…….I did.

What was that?…….Well I told Sue that the – like it had a problem where it was smoking and everything else, and I suggested the injectors might be blocked.

Right. On an occasion that you were on the yacht with her looking at the fuel, did she mention something to you about her brother?.....Yes.

What was that?.....That she wanted to take Patrick out to sea and throw him overboard.

Did she say why?.....Because he was – well he was in her way with the property of her mother's and – and her, like Patrick was the odd party.

Right. Did she say anything to you about that you might have a role in this?.....Well she sort of thought that I'd assist her in some way.

HIS HONOUR: Well don't say what she thought, what did she say?

WITNESS: Well she asked for me to assist her to put Patrick overboard.

MR ELLIS SC: (Resuming): Okay. And how was he to be put overboard?.....Sorry?

How – was anything to be done to get him overboard?.....He was to be just weighted down, pretty much.

Was an object mentioned by which he could be weighted down?.....Yes, the toolbox.

Mhm. Was anything – this was on the yacht that you were -.....This was on the yacht that we'd looked at – actually the occasion that this happened was when we was actually putting the injectors back into the boat.

Right. And he having been thrown overboard was there anything to be done with the yacht?.....Well I was supposed to take the yacht into the marina, which I can't handle or anything, I don't know anything – I wouldn't be able to do that, that's just not something I could do.

Yes.....I was to take it closer to shore and sink it -

Right.....- for some reason.

And how was Ms Neill-Fraser to get to shore?.....She was going to take the dinghy and I was going to be on the boat.

Right. If you sank it where would that leave you?……Without a paddle, because I can't even swim.

Did she show you some object about – that related to sinking that boat?……Yes, there was a bilge pump on the boat. Yes, there was a bilge pump.

Do you recall what might have been done with the bilge pump and how that came into the plan?……Well we were supposed to – pulling off a – pulling off one side of the bilge pump and putting another extension line on it to pull seawater into it.

Right. Did you argue with her about that or -…….Well not really, 'cause I didn't really want to – I didn't – I thought she was just over reacting and just saying something to, you know, like everyone says they're going to do some things and like I was very unsure as to whether she was serious or not at that time, like at that time like I just didn't sort of take a lot of notice of it, like I just thought well –

Did she say anything to you that gave you the impression she was simply joking?……No, definitely not.

Right. Did she – did she speak to you about that particular plan again?…….With – with Patrick, no, but then – then things did change and she'd actually changed the – like she'd changed what she was saying and then – then the next point that that sort of thing was mentioned was about Bob Chappell.

Okay. Where were you when it was mentioned about Bob Chappell?…….I was at Sue's house.

Okay. Was that at Allison Street -…….Yes.

- West Hobart? And were there just the two of you there?…….Yes.

What did she say to you?…….Well it started out by Sue was saying about how mean Bob was with his money and everything like that, and she thought that Bob was dangerous around the kids because apparently he'd been drinking or something through the night and waking up and running around with a knife or something thinking that there was somebody else in the house. And Sue – Sue started suggesting that, you know, like Bob was dangerous and she more or less said 'he had to go'.

Right. Did she anything more?.....Yes, there was – she – she wanted – like it was a bit different to what Patrick's was but she wanted Bob – well pretty much the same sort of thing but like the difference that stood out to me is that she wanted Bob wrapped in chicken wire.

Okay. But was otherwise – did she mention the plan, what you'd discussed concerning Patrick, as happening to Bob?.....Yeah, well she just switched it around and she said that what we talked about with Patrick had to happen with Bob.

Did you ask her what she meant by that?.....Well not really, no, I – I sort of got cut short because like she was suggesting this but then – then we – we actually got interrupted because Bob actually returned home.

Okay. Can you – can you place that conversation in relation to something that you – that you did soon after, or somewhere where you went?.....Oh yes, yes well – yeah that – that was put to me and then not – not long after that we went to a trip to Murdunna –yeah like, what's the question?

Oh, just to put in time, you went to a trip to Murdunna.....Yes.

Who went on the trip to Murdunna?.....Sorry?

Who went on the trip to Murdunna?.....There was myself, Bob and Sue, Maria, and there were some other people, I can't quite remember who they were though.

No. And what did you do at Murdunna?.....Well we went down and I actually started talking to my partner about what had been said to me and everything else and I don't think we actually even stayed at Murdunna, like, because things were just really really odd.

Okay. Now soon after that was there a time that you – again that you were at Allison Street?.....Yes, I went back to - Maria and I went back to Bob and Sue's dinner and I'd already talked to Maria about – about what had been said and she –

MR GUNSON SC: Object to that.

MR ELLIS SC: Okay, it's objected to but –

HIS HONOUR: Well ignore the information that he took to Maria about what had been said, ladies and gentlemen. Go on Mr Ellis.

MR ELLIS SC: (Resuming): But prior to dinner did you speak to Sue?……Yes.

What did you say to her?……I said to Sue that she should tell Bob what she had said to me and I wanted to bring it out in the open as to what was said.

And did you take any steps to do that?……Yes, I just said to Sue that she had to tell Bob what was – what was going on with what was said.

Okay. And he wasn't there present?……Bob?

He wasn't in the same room as you two at that - …..Who, Bob?

Yeah……Yeah, Bob was there.

Right. So you said to Sue, "You've got to tell Bob what's being going on"?……Yes, yes.

And what did she say or do?……Well she – because Bob was there and like we were – we were – well I was trying to make the point to Bob that Sue had said these things and Sue automatically said, "Look you're lying", and she told me to leave.

And did you leave?……Yes.

Did you have anything to do with the couple after that?……No.

What – obviously you've contacted police about this what caused you to?……Well because of the similarities of everything that had been talked about.

Okay. Similarities with?……With Sue and Bob going missing is - it was just too much of a coincidence for me because – because it had been talked about, it was just too much of a coincidence, and that's why I did.

Yes. So did you see police soon after hearing the news about what had happened to Bob?……Yes, I – I was working – working up at Tunbridge and – I can't remember, I think – I think I went like pretty much – well not then long after to – as soon as I got a chance to say what had happened and pretty much like say what had happened.

Yep. And at that time were you and Ms Hanson still partners, were you still living together?……No, no.

But still friendly?……Yeah, still pretty much.

Okay. Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Mr Triffett, if I understand you correctly from what you've just told us have you got – sorry, you told Ms Neill-Fraser that she should tell Bob Chappell about what she'd said to you about getting rid of him, is that right?……Yes.

Right. And he was in the room at the time?……Yes, he was.

Right. And what exactly did you say to her?……Well I – I straight out said that she should tell Bob what she planned to do with him.

And this was in his presence?……Yes.

And did she tell him what she'd allegedly planned to do with him?……No, she never said anything.

No, and you decided then to go and tell Bob in her presence what she'd said to you?……Yeah, pretty much.

What did you tell him?……I told him that – or actually – I – I said that Sue was off her rocker and she wanted to get rid of him and that – that's pretty much what my words were.

So Sue was off her rocker, yes. Had you been drinking at this stage?……I don't think so, I've never drunk in my life, mate.

Haven't you?…….No.

So, Sue was 'off her rocker' and she wanted to get rid of him; did she explain in detail how she was going to get rid of him – what the plan was?…….No, Sue – Sue cut it short, I wasn't able to.

And she said to you that you were lying?…….That's right.

Yes. And made it very clear immediately that you were lying - …….Yes.

- and you were asked to leave, weren't you?…….That's right.

And you did and you never came back?……..That's right.

Right. These people had been – these people had been particularly kind to you, hadn't they?…….They had been, yes.

Yeah. They in fact took you in at one stage after you'd been hospitalised, hadn't they?.....That's right, yes.

And that was after somebody shot you in 1995 in dispute, isn't it?.....That's right, yes.

Yeah. You had a dispute with a gentleman on the Eastern Shore around your property, is that right?.....That's right, yes, yes.

Mm, when shots were fired by a fellow called Cochlan -.....That's right.

- and I think shots were fired by you and maybe your -.....Oh no, there was no shots –

- compatriots?.....There was no shots fired by us.

Right. In any event, a dispute of some form that escalated whereby you ended up getting shot?.....Well it didn't even escalate it just started and then it happened.

Well you ended up – you ended up getting shot -.....Yeah, but it didn't escalate.

- and going into hospital?.....It didn't escalate.

MR ELLIS SC: In my submission, your Honour, this is – this has lost its relevance if it ever had any.

MR GUNSON SC: (Resuming): In any event they took you in –

HIS HONOUR: Well hang on – hang on –

MR ELLIS SC: (indistinct word) I'm objecting on the basis of relevance to what seems to be the exploration of an incident in which Mr Triffett was not at fault.

HIS HONOUR: All right. Well do you propose to ask any more questions about the shooting incident of 1995, Mr Gunson?

MR GUNSON SC: No, I don't, your Honour.

HIS HONOUR: All right. Well move on then please?

MR GUNSON SC: (Resuming): But they took you in after you came out of hospital and looked after you at home?.....Yes.

In their home?.....Yes.

And they were very kind to you?.....Yes.

And Sue was very kind to you?.....Yes.

And you were there for some time, weren't you?.....Oh yeah, on and off, yes.

All right. See I want to suggest to you, that there was no offer to you at all or proposition put to you at all along the lines you suggest, that she wanted to get rid of Bob?.....Well that's – that's not right.

I mean you hadn't seen them on a regular basis, had you, you were an odd visitor, you'd come and go?.....Oh I wouldn't say that, we – we'd go there quite regularly actually.

Mm. And how often was regularly then?.....Probably once a week.

And we're talking around about late 1996/97 when we talk about the threat to Bob?.....Yeah, that was the end – the end of the relationship between Sue and myself.

Mm. Well it was – the end of the relationship was when you, as it were, spilled the beans in front of Bob?.....Exactly.

And that would've been a few weeks later, is that right?.....Yes.

All right. So we're talking about early '97?.....Yes.

All right. When then was the proposition put to you about Patrick?.....About Patrick?

Mm. How long before the Bob proposition?.....How long before?

Yeah.....Not all that long, but I – I couldn't exactly put a time on it 'cause I can't really put a time on it, I don't know.

And are we talking months, are we talking a couple of years?.....It may have been a few weeks or a few months, I can't really say, I lose track of time pretty quick.

Right. And could it have been as long as a year, or don't you know?.....No, I'd say weeks and months.

Weeks and months, and this took place down at – on Sue's yacht?……Yes.

But as I understand the proposition that you're advancing it was a pretty ridiculous one because -…….It was stupid.

- you would've been out in the sea by yourself?……Exactly.

Yeah. And did you treat it as a joke at the time?……Well I didn't really know what to think of it to be honest with you, I didn't know.

You didn't give it such weight as you might go and see the police and tell them that somebody had tried to recruit you to commit murder?……Oh well –

You didn't do that, did you?……I didn't, no.

No. And when the proposition, as you say, was put about Bob you didn't go to the police then and tell the police that somebody had offered you the opportunity to commit a murder, did you? You didn't, did you?……Well I didn't, no.

No. And you knew it was a crime or something wrong to go and try and recruit -……Yeah.

- somebody to commit a crime?……But I knew I wouldn't be doing it.

No, but you knew it was wrong to -……It was.

- put a proposition to somebody that they should be recruited to commit murder, didn't you?……Oh it was – of course it's wrong.

Yeah, but you didn't even think to go and see the police?……Well I think –

Not once, but twice…….- if everyone went to the police with something that they'd heard or seen and maybe could be it would waste a lot of people's time and –

You haven't answered the question. You didn't think to go to the police did you?……It had crossed my mind.

You didn't go, that's the end result isn't it?……Yes.

Yes. Let me be quite clear about this, you're a person with a few prior convictions aren't you?……Oh, minor things, yes.

Minor things. You've got a conviction for assaulting a Bill Dennis haven't you?

MR ELLIS SC: Well I think my learned friend might have applied for leave before this.

HIS HONOUR: I'm sorry?

MR ELLIS SC: I think leave is required, your Honour, under the Act. No, I might be wrong, I'm sorry, I withdraw that, your Honour.

HIS HONOUR: Yes. Go on Mr Gunson.

MR GUNSON SC: Thank you. (Resuming): Well you've got a prior conviction haven't you for assaulting a Mr Bill Dennis?……That's how it worked out that way, yeah.

Yeah. That was about 1995 you were convicted and put on a bond……Yes.

And you've got a string of traffic convictions haven't you?……Oh, a few.

A few. If I suggested to you you'd probably have somewhere in the order of fifteen to eighteen traffic convictions you wouldn't argue with that would you?……I'm on the road all the time so it's possible.

You wouldn't argue with it would you?……No, well I have no idea really. Like I said I'm on the road all the time so it is possible.

Any other convictions?……Um, well, yes. The other one would be I actually had in my possession – I handed firearms in and I didn't hand the bullets in because I didn't realise that they were an offence to have them and I held them and later on I was charged with the possession of ammunition, two rifles that I owned, that I bought, and didn't hand in. And that was something that even if I'd known I would have handed those in too, like I didn't need them.

Well you were convicted of, only this year I think, of having over a thousand rounds of 7.62 ammunition and a number of shotgun cartridges and other assorted rounds of ammunition, weren't you?…….Yeah, that's all back from the firearm registration time and like I said –

Yeah.....- I just had them in my possession, didn't have the firearms.

Do you have any other convictions?.....Oh I don't know, you tell me?

We might get to that, but in the meantime I'd like you to tell me what you believe your convictions are?.....Oh well, I don't know really.

You don't know?.....Yeah.

Well on the day that you were convicted of the firearm offences by way of example, were any other offences dealt with?.....Yes, there was a –

Yes – there was another one, wasn't there?

MR ELLIS SC: Well I'm sorry, I've got to draw my learned friend's attention to something, it might be that he's –

HIS HONOUR: You want to have a – well do you want to have a private word to him?

MR ELLIS SC: Well I – yes, I will have a private word to him, if you wouldn't mind, your Honour.

HIS HONOUR: Yes.

DISCUSSION BETWEEN MR ELLIS SC AND MR GUNSON SC

MR GUNSON SC: (Resuming): Yes, well I – did you appear in the Magistrate's Court on the 7th of September 2010, which was the same day as the firearms matter, and were you charged also with unlawful possession of property?.....Yes, that's right.

Yes, and the unlawful possession of property related to you being in possession of a Makita router -.....Yes.

- and a set of MDF timber stairs, reasonably believed by a police officer to have been stolen or unlawfully obtained?.....Well they couldn't actually prove that, but anyway.

But you appeared in the court on that charge and you pleaded guilty, didn't you?.....To having them, yes, yeah because I did have them.

Yes, yes – thank you. And it was adjourned without conviction for a period of two years upon you entering into a bond to be of good behaviour and to appear for sentence if called upon?.....Yeah.

Thank you. Now –

MR ELLIS SC: Sorry, is my learned – are you going to correct the other –

MR GUNSON SC: Sorry? (Resuming): And in respect to the firearms offences, a similar order was made?.....That's right.

Yes. So whilst not formally convicted by the court, nonetheless, you pleaded guilty to those offences?.....Well –

You pleaded guilty, didn't you?.....Well I had them, yeah, of course I did.

Yes, thank you. Now -.....There was nothing untowards me having them though.

- let me just take you back to the yacht owned by Sue Neill-Fraser, you've said there were some problems with the injectors?.....That's right.

Two injectors, you said injectors?.....It may – it may – well I can't exactly remember whether there was one or two.

Right, so if I was to suggest to you it was a single cylinder Perkins 10 engine you wouldn't argue with that, would you?.....No, probably not.

Which would logically only have one injector?.....That's right.

Thank you. Now I want to suggest to you with respect to this conversation about Patrick that there was never an occasion that you were on the boat alone with Sue Neill-Fraser?.....That's wrong.

And I want to suggest to you that on no occasion did you ever have a discussion with her along the lines you've told us about, about Patrick?.....No, well there was.

Have you ever claimed that Sue Neill-Fraser helped you to get off an assault charge at some stage?.....I did say that, yes.

And who were you alleged to have assaulted on that occasion?……It was supposed to have been to do with assault with Bill Dennis, the one that you mentioned before.

Right. So there was quite a bit to do with Bill Dennis between you and he, wasn't there?……Oh there was just a bit of a problem there for once.

Yeah, and you got put on a restraint order at some stage which required you to have no contact with him, didn't you?……And so was he, it was a –

Just listen to the question, were you put on a restraint order by the Magistrates' Court preventing you having any contact with Bill Dennis?……Yes.

Thank you. And you were restrained by the Court from assaulting, harassing, him, molesting him or annoying him?……That's right.

Yes, all right, and at some stage you say Sue helped you to get off an assault charge, what do you mean by that?……Well she just advised me what to say, she said that I should say that I restrained him and that's how the assault took place.

I see…….And that's what I said.

Now -…….Which was the case anyway, that was pretty much it, but I didn't word it like that, I – I – I made it sound something that it wasn't.

Just listen to me, will you. Did you blame Ms Neill-Fraser in any way at all for the break-up of the relationship between you and Maria Hanson?……No, I don't.

You say they're totally unconnected?……'Course they are.

But I want to suggest you did at some stage, blame Ms Neill-Fraser for breaking up that relationship?…….No, I never ever said that.

Right. Now you did break-up with Ms Hansen not long after the Murdunna trip?…….Pretty much, yeah, yeah – oh well actually it was – it was a bit longer than that, yeah, went on a few years after.

It was within a very short period, wasn't it?…….No, it wasn't – no, it wasn't.

Now I also want to suggest to you that you were never propositioned by the accused with respect to Bob Chappell; that is you be recruited, as it were, to do away with him?.....Well that was what was said.

I suggest to you, it did not happen and that what you've told to this Court is a complete an absolute fabrication?.....Well I can tell you now it's not.

You – did you see cooperation with the police in this matter as a means, perhaps, of getting you out of other problems which had developed as early as the 7th of January 2009 when the police -.....It was never never –

- searched your house?.....- never – it was never a part of it. It was – what's – what's that got to do with it?

You will agree that the charges that we've talked about to which you pleaded guilty arose out of police calling at your home on the 7th of January 2009?.....Sorry –

That's true, isn't it?.....What was that again, mate?

The police searched your house on the 7th of January 2009 and they found the ammunition and the router and the stairs?.....Yeah, well I wasn't worried about that.

No. And you say it's just a pure coincidence that just a month later you come up with this story?.....Well it's a month later that Bob was killed, and that's made – made me come forward.

Yes. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: You've been asked about some connection with – with those charges – the charges proceeded, didn't they?.....Sorry, mate?

The charges proceeded, the ones from the 7th of January?.....Yeah, yeah I had to go to court and put my bit to it.

Yeah, and did you ever try to make some deal with police that they'd go away -.....No, I just went in and said it as it was and how I acquired things and – and then the magistrate made his decision.

Sorry, in connection with the information you have given about Sue Neill-Fraser, did - .....Sorry, mate, what was that?

In connection with the information about Sue Neill-Fraser, did you ever link the two – two things?.....No, not at all, no.

Thank you. Nothing further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: Yes, all right, thank you, Mr Triffett, you're free to go.

<THE WITNESS WAS RELIEVED AND WITHDREW

<**SHANE ROBERT MORTON CALLED AND SWORN**

HIS HONOUR: Yes?

<EXN - MR SHAPIRO: Is your full name Shane Morton?……Shane Robert Morton.

Thank you. And you're a Constable with the Victoria Police?……Leading Senior Constable with the water police.

And – so you're with the water police are you with a particular team of the water police?……Yeah, underwater security team.

All right. What does that mean?……We deal with security in the port and also search for underwater exhibits.

Okay. And in terms of searching for underwater exhibits do you have some training in that?……Yeah, I've done several internal courses and external courses in relation to use of side scan sonar, remote operated vehicles, GPS, mapping systems.

How long have you been in that position?……Five years.

Okay, thank you. Now on Thursday the 16th April last year did you travel to Hobart?……Yes, that's right.

What was the purpose of your visit?……We were to meet up with detectives from Hobart CIB and conduct a search of the Derwent River for them in relation to the missing male.

Thank you. If I can just ask you to speak up a bit, I'm having -…….Sorry.

I can't quite hear you. So you were to search the Derwent for a missing male, so what happened when you got here to Tassie, what did you do?……We liaised with Detectives Sice and Sinnitt from the Hobart CIB, gathered some intelligence off them as to what they wanted us to do, the area they wanted us to search and so forth and we commenced that search on Saturday morning using side-scan sonar.

All right, and how does this side-scan sonar work?……Basically it's a large steel torpedo shaped object that's towed behind the boat at about 5 knots, it has a transducer on each side of it and it sends out sound waves at fifteen hundred metres per second. These sound waves bounce off objects on the seabed, come back to the sonar, that

information is then transmitted through a cable up to the boat and we view the image as a waterfall on a computer.

Is there some sort of sophisticated software that interprets that information?……Yeah.

And what do you get visually?……In layman's terms it's sort of like shining a torch on an angle across a flat surface and you get a return from an object and you'll see a shadow from that object, so it's like shining a torch from either side as you're going along.

Okay. And where did you – where did you do this sonar search?……In Sandy Bay between Battery Point, I think it is, and Wrest Point Casino.

I noticed you brought your laptop in with you, is it -…….Yeah, I've got an electronic version of the search area on my laptop that we covered, it was about a nautical mile by half a nautical mile wide.

If you're able to pull your laptop out perhaps we can plug that into the screens. Your Honour, perhaps I should mention that what I am going to ask the constable to show the jury won't – I don't have it in a form that I can tender easily at this stage – it can be reproduced so that we can tender it at a later stage, but my intention was simply to get him to, really as part of his evidence, show where – where the search was conducted through a use of the images from his laptop – if it please?

HIS HONOUR: Yes, well there seems to be no objection; this can be done this way. So ladies and gentlemen, you may only get to see this once.

MR SHAPIRO: Thank you.

HIS HONOUR: So it might be a good idea to pay attention. Yes.

WITNESS: I – I can burn a disc of it, your Honour, onto HTML, a web type page format.

HIS HONOUR: Well I'll leave you to talk counsel for the Crown about that.

WITNESS: Just bear with me, your Honour, while it loads up?

HIS HONOUR: Yes.

MR SHAPIRO: All right. Now what's that we're looking at?……What you're looking at there is – all those red lines are our survey lines that the vessel – gives the vessel operator a guide. The brown portion that's filling in there is the raw sonar data from the Towfish and you can see Sandy Bay outlined there, the bathymetric data.

So am I right in thinking that those brown lines that have been drawn on – as we're watching it are where the sonar device was actually towed by the boat?……Yes, that's right.

And I believe you can show us that with an overlay of an area – a photograph of Sandy Bay?……Yeah, I can bring that up for you.

Thank you…..It's only just a portion of Sandy Bay that we had geo-reference images for.

Oh, so it's just that little square that we can - …..Yeah.

Okay, all right. Well perhaps if the witness is shown P1, it should be clear, perhaps you can – you might need to stand up and just show the jury where that little square that we can see on the computer is on this map that's in evidence……Yeah, well you can see – clearly see the yacht moorings and the Royal Yacht Club here identical to on the screen. At the top left of the red arrows there is these pens.

Thank you. Thank you for that. So how big an area was searched with this sonar?……It was a nautical mile long so 1.852 kilometres and approximately half a nautical mile wide.

And – well were you – were you told about where a particular yacht was in relation to - ……Yes the – in relation to the investigation where the – where the white arrow is now was about the location of the deceased's yacht.

Thank you. And how far is that off – from the shore?…….I can measure that for you.

Thank you. …….If you're looking at that portion of shore there, it's approximately five hundred and forty metres, and our search area extended, well laterally out to about seven hundred and – eight hundred metres roughly, to the extreme edge was, as you can see, seventeen hundred metres.

Sorry, so how far was it from the yacht to the furthest point out that you searched?.....Seventeen hundred metres. That's the diagonal area there.

Okay. And the top corner?.....The top corner, roughly seven hundred and fifty metres, eight hundred metres.

Thank you. Okay. And how – do you know how deep it is in that -.....Yeah, it was shallower near the yacht. If I turn on the bathymetric data again, it went out to about twenty four metres, I think. Yeah out – it was sort of around twenty five metres out, and the extremity of the search closer to the boat it ranged from sort of ten to fifteen.

Okay. Now how many objects was in that area, were -.....We located ninety objects of interest, various interests – that's those displayed there. We concentrated our search more for larger type of shapes. We allocated some search areas on Monday to the divers and over the next two days we cleared about twenty five of those targets with the Tas Pol divers.

So when you say you cleared them, those items were dived on by a diver -.....Yep.

- and it was determined that they weren't items of interest?.....That's right, yeah. We located various things, old sunken dinghies, cages, moorings, blocks of concrete, wheelie bins, all sorts of stuff like that that was of no interest to the investigation.

You said earlier that it was like – I think you said shining a torch sideways on something, have you got an image of what you meant by that?.....Yeah. For instance that's – that was near the deceased's yacht and it's –

MR GUNSON SC: I object to the use of the word 'deceased'.

WITNESS: Sorry, the – I'll rephrase that.

HIS HONOUR: Near Mr Chappell's yacht.

WITNESS: Mr Chappell's yacht, that's sort of a metre by metre square steel type cage, it was on the bottom. This is the sort of view you get as you're scrolling – as you're towing the sonar along. The image here, that's a surface reflection of the underside of a yacht. The bottom's fairly flat there, a muddy sort of sandy bottom. This is another surface return from a yacht, that's a rope going to the

mooring of that yacht. This here is a school of fish, so it picks up small things and large things, it often depends on the reflectivity of the object as to what it picks up. Air, for example, air bubbles in a fish's bladder picked up really well, concrete sort of has a reflectivity coefficient of about forty percent.

MR SHAPIRO (Resuming): And so from using this you located about ninety items?……Yeah.

And you looked at twenty five of them?……That's right, and we left a target catalogue with the Taspol divers. If they chose they could dive on the rest of those objects.

Thank you, your Honour, I submit the witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Are there any reasons then, Senior Constable, why you didn't extend the search area beyond what you've shown us on the screen?……Oh that was purely time constraints.

Right. Your time or Tas Pol divers' time?…….It was more a, yeah, I think it was more of Tas Pol's discretion as to how long they had us for in the State.

So the reality is, I think you said that you conducted your search on the 19th of April, and you started at 9:00am and finished at about 4:00pm?…….We conducted the search on Saturday and Sunday the 18th and 19th, and the 20th and 21st was alongside the divers.

Right. Nobody suggested you should expand the search area?…….No, no.

Right. Who directed you, was there anybody actually directing you in where you'd operate?…….That was purely with Detectives Sinnitt and Sice from the Hobart CIB.

All right. And you seem to have started your search basically at the Four Winds and moved south, is that right?…….Yes.

The orientation point appears to be Four Winds, is that correct?…….Yeah, Four Winds was approximately where –

And you went directly south from Four Winds but didn't move north?…….Well north, we moved a little ways north but –

Not as far as you moved south?…….No.

Because I think you said you moved south about seventeen hundred metres?…….Yes.

And your search over the shown area, or designated area, was no doubt a thorough one?…….Yes.

Right. And you picked up, I think you said, some ninety objects of interest, some of which were dived in your presence others not?…….Yes, that's right.

Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: Nothing in re-examination, your Honour.

HIS HONOUR: Yes, all right, thank you, senior constable, you're free to go.

WITNESS: Thank you, your Honour.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: Things have gone quicker than I expected, your Honour, we don't have anymore witnesses ready this morning.

HIS HONOUR: All right, well would there be any purpose served in resuming at two o'clock rather than two fifteen, or should we leave it at two fifteen?

MR ELLIS SC: Yes, I'm checking that they are coming in – yes, we should be able to resume at two, your Honour.

HIS HONOUR: All right, is that inconvenient to anybody? All right, well the jury can make their affirmation and the Court will then adjourn until two o'clock.

<JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Yes, Mr Ellis.

MR ELLIS SC: Yes, your Honour, I understand that my learned friend on behalf of the accused will admit that the letter I will seek to tender and publish is a letter from Dr Hilary Bower. Would your Honour like to see it first?

HIS HONOUR: I'd better have a look.

MR ELLIS SC: Yep, s184 of the Evidence Act seems the most convenient method.

HIS HONOUR: Yes.

MR ELLIS SC: Thank you, I tender that then, your Honour.

EXHIBIT #P58 – LETTER FROM DR HILARY BOWER – TAKEN IN

HIS HONOUR: Yes.

MR ELLIS SC: Thank you.

Dr Hilary Bower,
15 Franklin Street,
Lindisfarne, Tasmania 7015.

There's an ABN, phone and fax numbers, surgery hours Monday to Friday 7:00 a.m. to 5:30 p.m.

14/9/2010
To whom it may concern

Maria Hanson is a patient who attends this clinic. She suffers from significant depression and severe trigeminal neuralgia with chronic pain. The medications required to treat her conditions cause significant drowsiness and altered mental cognition. Her daughter is currently extremely unwell with an enlarging tumour and pancreatitis.

I am extremely concerned about Maria's current mental state, she is not fit to attend for court proceedings and may well require hospitalisation.

Yours faithfully,
Dr Hilary Bower.

HIS HONOUR: Mr Gunson, you admit what, that that's an authentic letter?

MR GUNSON SC: Yes, your Honour.

HIS HONOUR: Yes, and the relevance of that, ladies and gentlemen, is that it explains the absence of the former partner of Mr Triffett, who gave evidence earlier today. Yes, thank you.

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: Mr Shapiro.

MR SHAPIRO: Thank you, your Honour, I call Brian Purcell, page 297 of volume 2.

<BRIAN DARYL PURCELL CALLED AND SWORN

HIS HONOUR: Take a seat, constable. Yes?

<EXN - MR SHAPIRO: Can you please state your full name?.....Brian Daryl Purcell.

And where are you stationed?.....I'm currently attached to the Dog Handler's Unit in Hobart.

And you're a constable?.....Yeah, constable.

Thank you. And were you attached to that same unit on the 29th of January last year?.....Yes, I was.

Okay. And you were working on that day?.....Yes, I was, I was rostered on seven til four.

Thank you. And did you attend the Cleanlift Marine complex in Goodwood to search a yacht there with your police dog?.....Yes, I did.

And that yacht was called the Four Winds?.....Yes, that's correct.

All right. So what did you do when you got there?.....When I arrived I met with Detective Constable Danny Jackson. We then went onto the yacht and had a look around prior to taking the dog on, and then we went back onto the yacht with the dog and conducted a search the best we could.

And you say "the best we could" what do you mean by that?.....Things had obviously been moved prior to us getting there, and there was still water on the floor of the yacht, which made it hard for us to get the dog in certain areas.

Why was that?.....The dogs like to be sure footed and a lot of the dogs don't like the water, so obviously manoeuvring the dog in and around there was quite difficult.

Okay. So how effective was your search with the dog?.....I wouldn't say it was effective at all.

Was anything located by the dog?.....No, there were nil detections given by the dog.

Thank you, your Honour, I submit the witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: You said your search wasn't effective at all, do I assume from that, that there were parts of the yacht you simply couldn't get to with the dog to enable the dog to do its work?.....That's correct.

And what parts of the yacht were they?.....I don't recall exactly, when we hop – when we do a search with the dog our main – main focus is to watch the dog, and our head is down a lot of the time and we watch the dog for indications so obviously all I see is what's coming ahead of the dog and as I said there was just areas where there were pools of water and things moved from certain areas of the yacht to other areas.

Am I right in thinking that anywhere there was a pool of water the dog didn't go?.....That's correct.

And there was quite a lot of water still on board the yacht as I understand your evidence?.....Yes, that's correct.

Extending from the bow right through into the saloon?.....I think the bow was worse from memory but as I say I don't really recall exactly where the water was.

But there was still lots of it there?.....Yes, there was.

Thank you, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR SHAPIRO: I call Constable Ben Cunningham, it's at page 303 of volume 2, and he also has a supplementary proof, page 75 of the supplementary volume.

<BENJAMIN CUNNINGHAM CALLED AND SWORN

HIS HONOUR: Yes?

<EXN – MR SHAPIRO: Yes, thank you, your Honour. Is your full name Benjamin Cunningham?……Yes, it is.

And what's your rank?……I'm a Constable in the Tasmania Police Service and I'm currently stationed at Marine and Rescue Services in Hobart.

Were you stationed there in January last year?……Yes, I was.

And were you on duty on the 27th January?……Yes, I was.

And where did you go at 8 o'clock in the morning?……I attended the Hobart Domain Slip in company with Constable Ashley Kent.

Okay. What did you do there?……We'd been called to attend there in relation to some information received and Constable Kent and I prepared a diesel powered pump for transport to Sandy Bay.

Why were you – why did you need the pump, what information - …….Oh, we'd received information that a yacht was sinking on its mooring at Sandy Bay.

Okay. And so what did you find when you – where did you go?…….Constable Jackman attended in the police vessel Observer, and we loaded that pump aboard the police vessel Observer, and shortly after that two members of the Tasmanian Fire Service attended with another pump and we all then went aboard the Observer to Sandy Bay, where I observed a approximately eighteen metre yacht on the mooring partially sunk – the yacht was called the Four Winds.

Thank you. And was there anyone aboard the yacht?…….At that stage there was Constable Lawler, who is a member of our office, and another constable I don't know his name.

And what did you do?…….I assisted with – with other members of our office and the Tasmania Fire Service in preparing the pumps and – and getting the pumps started in order to pump the – the vessel, or pump water from the vessel.

All right. And where were the hoses from the pump placed?.....I opened a hatch, I think from memory there were two hatches, I opened the middle hatch to the vessel from the outside it was unlocked, and we placed the suction hose from the pump in through that hatch into the water on the bottom of the vessel.

Okay. And – all right – and how long was – well, how long did it take to pump the majority of the water out?.....I would estimate about an hour.

Right. Okay. And when the water was almost all pumped out was anything found?.....Yes, I was with Constable Lawler when he located a – a pipe to a toilet that had been – or appeared to be cut, and a short time after that I located a – a ball valve seacock under the floor near the bow of the vessel that was open, and I – I shut that seacock off.

Was there something – some noise that led you – led you and Constable Lawler to locate this cut pipe?.....Yeah, there was the sound of running water, or trickling water.

Right. And if the witness can be shown P3, photo 58 please?....Yeah, that's the hose to the toilet aboard the Four Winds.

So that's where you – there was water coming from there?.....There was.

And so you said you located something else, what was that?.....Another – they're called skin fittings, which is a hole in the bottom of the vessel with a tap, for want of a better word, yeah, connected to it to stop the ingress of water. That was open, and that was allowing water to enter the boat as well and I shut that tap off.

And where was that in relation to the toilet with the pipe?.....Yeah, it was just forward of where the toilet door was, towards the bow of the boat, and it was under the – under the floor towards the bow of the boat.

Okay. Thank you. If the witness can please be shown P47 and in particular photograph number 17.

HIS HONOUR: The jury have got that in the small, the back collection. It was tendered separately but it's photo 17 from the back section of that folder.

MR SHAPIRO (Resuming): Now is that – what does that show?……That shows the ball valve that I located in the bilge of the Four Winds.

Perhaps if you can hold it up and point out for the jury where that is?……Yeah, if you look towards the middle of the photo there's a valve there with a blue handle.

And you can see there's a little – there's some pipe attached to that valve, did that go anywhere?……That was just a short – a short piece of pipe that wasn't connected to anything.

And so you turned that valve off?……Yes, I did.

And sometime later you were involved in moving the vessel to Constitution Dock, is that right?……Yes, I was.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Have you got photograph 47 in front of you still, is that right?……No, I've got 58 and 17.

HIS HONOUR: P47 is photo 7 – is a photo numbered 17.

MR GUNSON SC: P47. (Resuming): Have you got P47, the photos?……Yes.

It's like that…..Yeah.

Thank you. Now do you see a piece of blue cord there and the edge of a tag sitting – sticking out behind that white pipe, do you see that?……Yes. Yes, I do.

That was a tag indicating the purpose of that valve was it not?……I don't recall. I don't recall looking at that tag or seeing it.

No, but you can what appears to be V-A-L and that tag, do you see that?……Yeah, I do, yes.

Did you have a look at other valves on board the boat?……No, I didn't.

Have a look at this photograph. I'm showing the witness photograph 28 from P55. Do you see the tags there?……Yes, I do.

Is that familiar to you in the sense that you've seen tags like that on the valves on that boat?……No, I haven't.

Right.

HIS HONOUR: This is the rear photo in the blue folder, ladies and gentlemen.

MR GUNSON SC: (Resuming): In any even the valve – sorry, in any event the tag – the corner of the tag you're looking at seems to be very similar to the type of tag I've shown you in photo 28 doesn't it?……It does, yes.

Thank you. Now it's not unusual on board boats to – at least once they're properly maintained, to have tags indicating what the purpose of a valve might be?……That's correct.

And in fact it's very common isn't it?……It is common, yes.

And the purpose being that somebody can lift up the floorboards looking for a valve and know exactly what it is?……Yeah, that would be correct.

Right. And what you've seen there is an example I suppose of good boat maintenance?……Yes, it would be.

Thank you. Now the sort of valves that – or seacocks that are on that boat are very much stock standard aren't they?……Yeah, they're common to most vessels.

And particularly common to yachts of that size?……Oh, most vessels, yeah. All vessels have similar ball valves.

Yes. And you would expect on a yacht of some 53 feet for there to be a number of ball valves or seacocks on board?……That's correct.

And there are number of purposes why water needs to come into the boat, for engine cooling, for toilets and pumps to wash decks down with, or hoses to wash decks down?……Yeah, that's correct.

And there's any number of reasons?……Yes.

And most types of seacocks, such as the ones shown there, are generally underneath the floor or, wait for it, behind panels?……Yeah, not necessarily.

Commonly though under floorboards?……No, I wouldn't say commonly, no.

Right…….The most common type of ball valve is for raw water cooling of an engine and they're usually exposed.

Yes. It's not uncommon on yachts of this size to have them covered up for aesthetic purposes, people don't like seeing ball valves sticking out the side of their yacht or coming up through the floor?……Yeah, that would be correct, yeah.

So there's certainly nothing unusual about the system on board this boat, was there?……No, no.

And normally you would want to be able to get quick access to your valves if there was a problem?……Yeah, on the commercial vessels that I normally deal with valves are – valves are labelled somewhere

up high at eye height so you know that there'd be a valve under that floor.

This wasn't a commercial vessel, this was a pleasure boat?……No, but I've only had dealings mainly with commercial vessels.

Thank you. And in your time as a police officer presumably you've had to go on board the odd (indistinct word) or two to salvage it or save it from sinking?……Yes, that's correct.

And on those occasions have you had cause to look at the valve systems on board to make sure that -…….No, I haven't.

Right, thank you. Now the vessel was sitting low in the water when you came on board?……That's correct.

How low?……I would suggest that it was less than a foot from the water covering the decks mid-ships and towards the bow.

Right, so let's think about that in the terms of the saloon, you looked down into the saloon?……Yes.

And how high did the water come up in the saloon?……From memory about the second or third step from the cockpit.

Right, so you've got steps coming down from the cockpit into the saloon?……Yes.

And it was around about the second or third?……Yes. It was some time before I actually entered that part of the boat, I was on the for'ard part of the deck operating pumps and it wasn't until a considerable amount of water had been pumped out that I entered the vessel.

When you first looked into it your estimation was that the water was around the second or third step?…….Yeah, that's correct.

Right. And did that extend right through the vessel?…….Yes, it did.

Thank you. How long did it take to empty the vessel to a point where you could regard it as safe to go downstairs?…….I – I – my recollection would be that it was approximately an hour.

Right. That's what, with three pumps running?…….Three or four – we had four pumps there but I don't recall if we had actually the four running.

When you looked at the severed toilet pipe, was it flowing at a full rate or only partly?.....It had been shut off –

So you didn't see it in operation?.....No, I didn't.

Thank you. And I suppose that – the same answer with respect to the floor based seacock?.....No, I shut that one off.

You shut that off?.....Yeah.

And how far open was that – completely open?.....That was completely open.

Thank you. And – no, I won't proceed with that. Yes, I have no further questions of the officer.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

<REXN - MR SHAPIRO: Do you have photograph 17 there still?.....Yes, I do.

Yes. It's been put to you that you can see a tag in that photograph; can you actually see the – read the tag in that photograph?.....No, I can't.

Does it appear to be attached to the valve that you were talking about?.....No, it doesn't.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: Yes, thank you, constable, you're free to go.

WITNESS: Thank you, your Honour.

<THE WITNESS WAS RELIEVED AND WITHDREW

MR SHAPIRO: Your Honour, I call Craig Jackman at page 305.

<**CRAIG HOWARD JACKMAN CALLED AND SWORN**

HIS HONOUR: Yes.

<EXN – MR SHAPIRO: Your full name is Craig Howard Jackman?……Yes, it is.

And you're a constable?……I am.

Thank you. Where are you stationed?……I'm stationed at Marine and Rescue Services in Hobart.

And you were stationed there on the 27th January last year?……I was.

And where did you get called to at 7 in the morning?……I got called – I was actually on water police call and I received a call there was a vessel sinking off Battery Point so we proceeded down to the Hobart Slipway and boarded the police vessel Observer there and made our way to Battery Point.

And when you say 'we' who were you working with?……With Constable Kriss Lawler.

And what did you observe when you arrived at Battery Point?……We observed the yacht Four Winds, it was sinking – it was actually low in the water, bow down, and obviously filling with water.

Okay. And so what did you do?……I let Kriss Lawyer off the police vessel and he went on board the Four Winds. He gained access to the helm to make sure there was nobody on board, I stayed on the police vessel Observer.

Was there a reason you stayed on board the Observer?……In the event that the yacht did start to go down we'd have to make a quick getaway, we were actually tied onto the yacht at the time.

Thank you. And Constable Lawler didn't find anyone on his search?……No, he didn't.

And so what did you do after that?……We stayed for a short amount of time, Constable Lawler searched the yacht as much as he could, and then at around about 8:15 I went back to the Hobart Slip and picked up some fire service personnel and more personnel from Marine with diesel pumps and we proceeded back to Four Winds.

And when you got back to the Four Winds with those pumps what did you do?……We gained access to one of the bow hatches and then started the pumps as quickly as we could just to alleviate some of the water damage. And at that time there were also some personnel from Aqua Scuba arrived with their pumps as well so we had, I think, all up three pumps working at the same time.

And you assisted moving the Four Winds to Constitution Dock?……Yeah, later that day we took the Four Winds under tow, towed it back to King's Pier where it was made fast against the Constitution Dock wall.

Thank you, I submit the witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT CROSS-EXAMINED, WAS RELIEVED AND WITHDREW.

MR SHAPIRO: Your Honour, I call Ashley Kent, page 301.

<**ASHLEY JOHN KENT CALLED AND SWORN**

<EXN – MR SHAPIRO: Please state your full name?……Ashley John Kent.

And you're a Constable?……Yes.

Where are you stationed?……Currently stationed at Marine Services.

And you were also stationed there 27th January last year?……Yes.

All right. What happened at quarter to eight in the morning on that day?……I attended work that morning in North Hobart and was informed to attend to a vessel sinking in Sandy Bay with Constable Cunningham.

Okay, and where did you go with Constable Ben Cunningham?……We went to our berth down at the Domain Slip and prepared the vessel, Observer, and also prepared a pump, a fire fighting pump, and we also picked up two fire officers with another pump as well, and left directly to the vessel in Sandy Bay, Four Winds.

What did you find when you got to the Four Winds?…….When I arrived the vessel was – only had about twenty or thirty centimetres left of freeboard, it was well – well full of water.

What do you mean by "freeboard"?…….In other words, the amount of water to go before the – it breaches the hull and begins to completely fill the vessel.

Thank you. So what did you do as a result of seeing that?…….I assisted in preparing the pump to suction the water out and placed that pump onto the Four Winds with the assistance of Ben Cunningham, and placed the hose down into the for'ard – for'ard area of the vessel.

For'ard, you mean the front?…….Yes, through the for'ard hatch.

So that's a hatch in the front of the boat?…….Yes.

Thank you. And was there anybody else already there when you arrived?…….Yes, Constable Chris Lawler was in attendance and another uniform officer.

All right. And did you look inside the vessel with Constable Lawler?.....Yes, I did, yes.

And he showed you a cut pipe behind a toilet where some water was flowing?.....Yes, that's right.

And did you – were you involved with some diving that occurred later that day?.....Yes, it would have been short time later when the dive platform arrived, I transferred to that vessel and commenced dive operations.

All right. How – how did that work?.....I believe the – the dive platform turned up at about twenty past twelve, half past twelve, that day. We placed that dive platform close to the Four Winds. I then boarded that vessel, there was dive equipment already prepared for me, and we dived - myself and Constable Williams dived to the bottom of the mooring and commenced a circular arc search around the vicinity of the vessel.

When you say a circular arc search what was in the middle of the circle?.....Myself holding onto the mooring directly below the vessel.

Okay. How does the arc search work?.....It involves two divers, as it did on this day, as a minimum and myself acts as the pivot for the search and the other diver is paid out a short distance in relation to the visibility at that time and then that diver commences a circle acting – going around me being the pivot controlling the distance that that diver is travelling.

So you're – just to get this clear, you're on the bottom where the mooring is?.....Yes.

And there's someone else on a line closing a circle around you?.....That's correct, and I'm actually holding onto that line.

And how was the visibility?.....Visibility was good. I'd say four to five metres.

Did you find anything?.....No.

Thank you, your Honour, I submit the witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Just one question, Constable. What was the diameter of the hose that you observed that was broken behind the toilet?……It would be at least an inch, inch diameter, yeah.

Thank you.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR SHAPIRO: Sergeant John Pratt, page 307, your Honour.

<**JOHN WILLIAM PRATT CALLED AND SWORN**

<EXN – MR SHAPIRO: You are John William Pratt?……That's correct.

And you're a Sergeant in Tasmania Police?……That is correct.

Where are you – where are you attached to?……Police Marine & Rescue Services in Hobart.

How long have you been there for?……Approximately eight years.

And what did you do on the morning of the 27th January last year?……I commenced work at Marine & Rescue Services in Hobart. Shortly after starting at 8:00 a.m. I was made aware of a boat that had been reported to be sinking off Short Beach in Sandy Bay.

And did you go to that boat?……Yes, I did.

How did you get there?……I travelled on the police vessel, Freycinet, with Constable Round.

And what did you find when you got to the yacht?……When we got to the yacht, which was attached to a mooring, there was several people on board and two pumps were being used to pump water from with – inside that yacht.

And – all right, what did you and Constable Round then do?……After having a brief discussion with the police officers who were already on the yacht I was made aware that there was the possibility that a male person could be missing from the yacht. We then commenced a grid search from the flying bridge of the police vessel, Freycinet, in a southerly direction from where the yacht was actually moored.

Can you just explain what a grid search is?……As I said, we were on the flying bridge of the Freycinet, which provides a better view for us. We travelled in a southerly direction from the yacht towards Nutgrove Beach. We then moved to the east a distance and headed back north, parallel to the path we had just come, and then continued that working out in towards the middle of the river.

And you said you were on the flying bridge which provides a better view, why is it – how does it provide that better view?…….The flying bridge is basically the upper part of the – well it is the upper

part of the vessel, and because of the extra height you're afforded a better vision down onto the water.

If the witness can be shown P01 please? Are you able to indicate for the jury where you conducted this grid search?.....This was Four Winds, it was basically in this location here, and we travelled on our first path south down past the Casino towards Nutgrove Beach – obviously that's off this map. It's probably a little bit more evident on the smaller map.

The one in the bottom right of the map there?.....That's correct.

Yes. And – so you'd come down and then, I think you said you've moved slightly to the east?.....That's right, that's pretty well orientated how it was. So we'd gone down past the Royal Yacht Club, past the DSS, past the Casino and then on towards Nutgrove Beach, which would obviously be down here something, and then out to the east towards the centre of the river, and then on a parallel course back up to where we'd started, and then again out to the east, and the continued – and we probably did about four to five passes.

Using the map, are you able to estimate what sort of area you covered with your grid search?.....From here down to Nutgrove Beach, you'd be looking at approximately two nautical miles, and we would have probably covered about one and a half out to the east into the river.

Does that – would that be off the – off the map there?.....Yes, yes.

And does the smaller map help you indicate how far out that would have been?.....Towards the top area we probably would have been on about the red line, but because of the angle back from Nutgrove Beach we would've been outside the red line towards the bottom.

I understand that, thank you. And did you find anything?.....No, we saw nothing.

Thank you.....Out of the ordinary anyway.

All right, what did you do after you'd done that grid search?.....We then went back to where the yacht, Four Winds, was moored and I met a number of divers that had come out on another vessel.

And -……..But just prior to the divers coming I was also – I also spoke to Kriss Lawler, who was one of the first police officers on the scene. He briefly showed me aboard the vessel, the Four Winds.

All right. And in terms of the divers, what happened when they – or what was your involvement with the divers?……I am a dive supervisor – a diver and a dive supervisor, but I supervised the dive search underneath the area where the yacht, Four Winds, was moored.

Okay, so I assume you didn't have to get in the water to supervise that?……No I did not, I did that from the surface and deployed two divers to actually conduct the search.

Okay. Who were they?……Constable C Williams and Constable Russell.

And what area was the search – or how was that search conducted?……We used the mooring block that the Four Winds was moored to as a central point, two divers descent, one basically stays on the mooring block as a central reference point, he then provides the other diver with a rope and swims in circles around it. The diver who is on the central point then increases the length of the rope with each complete circle so that the diver who is doing the searching covers an increasing distance out from the mooring block.

And in terms of a radius of that circle how big an area was searched?……I kept them going because – because of the weather it was quite easy to see the area they were covering, but I made sure that that search encompassed an area that would've been covered by the scope of the Four Winds had that changed directions on the mooring due to tidal wind, I would say around 75 to 100 metres.

HIS HONOUR: Now 75 to 100 metres is the radius or –

WITNESS: No, that's the diameter from the mooring block.

HIS HONOUR: Diameter, thank you.

MR SHAPIRO: Thank you, your Honour. (Resuming): And you said you were able – because of the weather you were able to see where they were how were you able to do that?……Both were on scuba tanks and the exhaust from the Aga masks that they were using leaves a bubble trail on the surface.

So you were able to see on the surface of the water where they were from those bubbles?……That's correct.

Okay. All right. And you were involved in towing the Four Winds to the Elizabeth Street Pier, is that right?……That's correct. Once the water had been pumped out of it, I'm sure forensic people had done their initial inspection, it was requested by CIB that we move the boat so with the police vessel Freycinet we towed it to the Hobart Ports.

Okay. And then the next day you were involved with some diving is that right?……That's correct.

How did that happen?……Once again we went back to the mooring where the Four Winds had been moored. We used the same mooring block and another of – mooring blocks in the area as anchor – base points, reference points, and once again we used arc searches to cover the area well around where the boat had been moored.

Okay. When you say mooring blocks they're something on the bottom - at the end of the mooring line is that right?……That's correct, normally large train wheels.

Okay. And you said this time you did an arc search how is that different to the search you just described?……The first one was an expanding circle search so the diver that was actually doing the searching completes a full circle around the reference point. With an arc search it's the same procedure only the diver does an arc rather than a full circle around the reference point.

Okay. And in which direction from the – from the yacht, the Four Winds, was searched?……Pretty well all around again the mooring block of the Four Winds but then we concentrated on an area to the south of where the Four Winds was moored.

I wonder if you can show us on the map?…….If this was the Four Winds, using the mooring block there to the south of it, then across the next mooring block and then back up in that direction, and then south back up around in a – so you end up with a diver covering the same area a couple of times to ensure that it's thoroughly searched.

So the diver is doing a sort of sweeping an arc from one mooring and then they move to the next and have that as a central point and do another one, is that -…….That's correct, like you – you start in close to the mooring, the same procedure, and depending on the visibility of the water move out swimming an arch, move out swimming an arc, and that will normally go out for, oh, thirty five, forty metres,

depending on the clarity of the bottom. Then move to the next reference point, start again in close, out further, and keep going.

Thank you. Now, and I believe you did a, what's called 'a tow search'?.....Yeah, once we'd moved to the south we basically ran out of fixed reference points, so we tried to increase the area that we could search by tow searching from the police vessel.

And how does – how does a tow search work?.....A tow search is a procedure where is a rope is attached to the back of the police vessel to a towbar, it's just a length of steel, and two divers are towed along behind the police vessel on the bottom at a speed of about one and a half to two knots.

Okay. And what sort of area was covered when you did that tow search?.....The visibility had been good so it was pretty good. The only problem is because of the increasing depth of the water as we move south the time that the divers could spend on the bottom was decrease, so it effectively became rather ineffective to continue searching that way.

How deep did it get?.....We ended up in about twenty three metres.

And how deep is it at the Four Winds?.....About eleven.

Okay. And how far – well how far from the Four Winds is it that you get to twenty three metres?.....It wasn't all that far, it would be only about a hundred and fifty to two hundred metres to the southeast.

Thank you. Now as you said it was difficult when it got deeper, so what sort of search, or what method did you use to overcome that?.....I then set up a drag line search, which was conducted between two police boats. A line comes from each police boat down to a weight and then between the two weights is a line which is approximately fifty metres long and at intervals on that line there are treble hooks attached to it by shark clips. The police boats then travel perpendic – or, sorry, parallel to each other and the weights hold the hook line onto the bottom and it's dragged along the bottom.

What area did you search with that method?.....Once again we – because of that method of searching it's impossible to go inside the moorings because you'd be picking up mooring lines and mooring blocks, so we stated on the outside, ran south parallel to all the moorings to the casino, spin fifty metres with the outside boat remaining stationary and then run north again.

So is it fair to say it's essentially the same area you'd already done the other visual search previously or is it different?……Yes, pretty much the same, we didn't go as far down to Nutgrove with the drag line but of course the difference is visual is only on the surface and this concentrates on the seabed.

And with all of these searches that you did, did you find anything?……Not of any note, no.

And on the 6th – on the 6th February you were also involved with some divers checking the hull of the Four Winds at Goodwood, is that right?……That's correct, we were requested by Hobart CIB again and I travelled with two divers to Prince of Wales Bay and supervised two divers who conducted an underwater search of the hull of the Four Winds.

Anything found?……No, nothing.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: The Victorian police assisted you sometime later in doing an additional search using their side-scan process?……That's correct.

And they basically went back over the area that you'd already searched either with your divers on the bottom or through the tow method, is that right?……My understanding is yes, however I had nothing to do with the actual sonar process and subsequent searches.

Did you have anything to do with the planning, that is arranging for the Victorian divers to come?……No, I didn't.

All right. Is it fair to say this, that the river drops out to about twenty three metres not all that far from the mooring of the Four Winds?……That's correct.

I think you said probably a hundred to a hundred and fifty metres out?…….That's correct.

And then it's fairly consistent, about twenty three to twenty five metres across to the eastern shore?…….Yeah, the average depth through pretty much the entire river is twenty three to twenty five metres, yeah.

Thank you. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: No re-examination, thank you.

HIS HONOUR: Yes, all right, thank you, sergeant, you're free to go.

WITNESS: Thank you, your Honour.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR SHAPIRO: Call Sergeant Paul Steane, please?

<PAUL SAMUEL STEANE CALLED AND SWORN

HIS HONOUR: Take a seat, sergeant.

WITNESS: Thank you.

<EXN - MR SHAPIRO: Your full name is Paul Samuel Steane?.....That's correct.

And you're a sergeant with the Tasmanian Police?.....Yes.

And where are you stationed?.....I'm stationed at Search and Rescue Services, I'm the officer in charge of the Police Dive team.

How long have you been there for?.....In this particular life since 1994 and I had a previous life there also.

Do you mean by that you had a previous time -.....Yeah, I was stationed–

- when you were -.....- stationed there on a previous time too.

Yes. Okay. And if I can take you to the 17th of April last year, were you – did you meet some Victorian divers with some sonar equipment on that day?.....That's right, yes, I met up with Sergeant Greg Barrice and the Victorian Police Underwater Security Team, that was on the Friday, and we spent the next four or five days until Wednesday the 22nd, doing an underwater sonar search of an area at Sandy Bay.

And we've heard about how that worked this morning, with the sonar, but how many targets were located as a result of that?.....It was about ninety targets that were located over those days and they were put together -they put them together in a list or to catalogue and from that they were prioritised into the most likely targets that would be of interest to us.

All right. And what did you do in relation to those most likely targets?.....We – from Monday the 20th through to Wednesday 22nd we dived those targets and, yeah, nothing of interest was found.

Okay. And when you say you dived them how did – what does that mean exactly?.....We gauged the grid references, the GPS positions in the report, and we'd locate that using the GPS on the boat. We'd

put a – put what's known as a shot, which is just a rope with a heavy weight on it and a buoy, so you get that – get it right on the spot, and then the divers go down that shot and from there they do a jackstay search. You attach a rope near the weight and you do circles around and we located – at all the spots we located what we believed was the same target that the sonar had located and we were satisfied with the search.

How did you decide what the most likely items were or that – how did you determine which ones that you dived on and which ones that you didn't?……We were largely in the hands of the Victorians in respect to that. Using the equipment at their disposal and the computers they were able to measure the targets and look at the shape of them and decide which ones were the most likely – like some of the targets we located were things like wheelie bins and just larger pieces of rubbish, targets that didn't appear of interest at all, they might be too long, like they'd be things that were obvious anchor drags in the mud or tyres and things like that that were discounted.

And – all right. And so what area – how deep did it get, what was it – how deep did the area get that you were searching?……I think the deepest dives we were doing were around 24 to 26 metres.

Okay. And what's the visibility like at that depth?……The bottom's composed of fine silt and as you approach the bottom the visibility rapidly decreases to less than a metre. Once you stir the silt up the visibility goes to close enough to zero.

Okay. Now is it fair to say without knowing where these items were you wouldn't have been able to find them?……That's correct, to try to locate those items now without the benefit of that catalogue would be next to impossible.

And how many of the ninety items are you able to estimate how many were actually dived on?……About a dozen, a dozen to fifteen items were dived on in those days and subsequently in August, Tuesday the 11th August I think we dived on a further couple of items and they weren't of interest to us either.

Thank you. Now is there a reason that a more broad search wasn't conducted?……Yeah, as I stated previously, the visibility at the bottom of the river for searching is – it's very difficult, you can't see much, and a lot of the searching is by hand, you're literally feeling where you're going. On top – on top of that problem is the depth, the divers can only remain at depth for a short time and we're just

physically limited with resources, to search a large area would take a long, long time and we just don't have the resources.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Is that the reason why the side-scan sonar was just deployed in the area that we were shown this morning?……Sorry, which is the reason?

Is that the reason, that you didn't have the resources, to basically scan the whole river?……Yes, like we don't have the side-scan sonar abilities of the Victorians and we only had the Victorians for a short period of time and they did what they could in that time.

And so am I right in thinking that the reason they scanned the area that they did was because of the limit in their availability? You only had a certain time, didn't you?……Yes.

You had to put them somewhere?……Yes, we've got a certain time, we had to start somewhere and that's as far as we got to the job really, yeah.

And no one thought to use the side-scanner out in deeper water?……It was certainly thought but it's just a question of you start at the beginning of a job and you keep working and in – in this case we had them for that period of time and that's the area that we searched. If we had them for longer the search would have gone on for longer.

Thank you.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: No, re-examination, thank you, your Honour.

HIS HONOUR: Yes, all right, thank you, sergeant, you're free to go.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: Call Felicity Ogilvie please, your Honour.

<FELICITY KATE OGILVIE CALLED AND SWORN

HIS HONOUR: Take a seat. Yes.

<EXN - MR ELLIS SC: Ms Ogilvie, you're Felicity Kate Ogilvie?.....Yes.

You're a journalist with the ABC?.....Yes.

And in that capacity on the 13th of March 2009, did you interview the accused, Sue Neill-Fraser?.....Yes.

How did the interview come about?.....I called up to ask for an interview and I can't remember if it was Sue or her daughter, Sarah, but one of them called me back to say 'yes' and I went up to the house.

I see. Is that usual, that you would go to the subject's house rather than she come to the studio?.....Yes.

Good. What did you take with you?.....My notepad and my recorder.

And – so you went to her house, do you remember the address or not the precise address, do you remember the street?.....Oh it was in West Hobart in Allison Street.

And when you went there was Ms Neill-Fraser present?.....Yes.

And was anyone else present?.....Yes, her daughter, Sarah, and I think her – oh Sarah's husband was there at some stage as well.

Okay. And did you adjourn to a particular room or place of the house?.....Yes, we went out to the balcony.

What took place there?.....Oh we talked, Sue said she wanted to tell me everything, and before I pulled out my recorder to do a formal interview.

Okay. And did you make notes there?.....Yes.

At that stage, this is a pre-interview conversation really, is it?.....Yes.

Did she mention a phone call she'd received from Richard King on the 26th of January?.....Yes.

What did she say about that please?.....That he called saying that Claire, Mr Chappell's daughter, was suicidal and quite upset and was perhaps going to go down to the boat and Sue was worried about that, so she drove down to check that everything was okay that night.

Right. And did she say what she saw when she drove down that night?.....Homeless people with fires down at Sandy Bay. But she said she didn't see anything going on on the yacht so she drove home.

Okay. Then after the pre-interview conversation, did you start you – you were going to start your tape-recorder for the formal interview, and did you – did you say anything to Ms Neill-Fraser just before you did?....."Is there anything you don't want to say on tape".

And did she answer that?.....She didn't want to talk about Claire because she seemed really concerned about Claire and didn't want that – yeah, people to think badly of Claire, mm.

Right. Okay. Hopefully, I'll give you a tape of the interview and play it in a minute. But after – after the interview was concluded what did you do?.....Probably thanked her for the interview and went back to the office.

Okay, and did you speak to someone else?.....Yes, I spoke to Inspector Peter Powell because I interviewed him as part of my story as well.

In the course of that did you mention something that had been told to you?.....Yes, I – I – in the course of us talking about the investigation I asked him something about Sue – Sue going down the night –

Yes.....- and he was very surprised and he said, "Oh she told us that she didn't go down that night".

Yes, and as a result of that did he ask you to do something?.....He asked me to give a statement to the police and I went back to the office and called Sue to let her know and she was very adamant that our conversation about her going down that night was off the record. I thought it was on the record.

Yes.....She was adamant that it was off the record and because she was quite upset when I did go to interview her at her house and there

can be mis-communication between people I thought I'll give her the benefit of the doubt and say that it was off the record, so I told the police, "No, I won't give you a statement", -

Yes.....- and I didn't, and giving evidence today I was subpoenaed to give evidence.

Yes. All right, we have a CD which we trust is one of the interview, I wonder if this could be played just for a little way and you might identify the voices on it and see if it's your interview of Friday, the 13th March, isn't it.

INTERVIEW WITH FELICITY OGILVIE PLAYED TO COURT

MR ELLIS SC (Resuming): Okay, do you recognise the voices, Ms Ogilvie?.....Yes.

And?.....It's myself and Sue.

And the occasion of the interview we spoke of was the 13th March 2009?.....Yes.

Thank you. Resume please.

INTERVIEW WITH FELICITY OGILVIE AND ACCUSED CONTINUED

MR ELLIS SC: Thank you, your Honour, I've no further questions.

HIS HONOUR: Are you tendering that?

MR ELLIS SC: I'm sorry, it looks like I have – I thought I tendered that but Mr Shapiro says no.

EXHIBIT #P59 – DVD OF INTERVIEW BETWEEN FELICITY OGILVIE AND ACCUSED – TAKEN IN

MR ELLIS SC: Thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Yes, Mr Gunson?

<XXN - MR GUNSON SC: Thank you. Ms Ogilvie you initiated the interview rather than the other way around, correct?……Yes.

And to whom did you speak first, did you speak to Ms Neill-Fraser or her daughter?……I can't remember, it was one of them.

One of them, all right. And you have no discrete memory now at all?……Of which one I spoke to to organise the interview?

Yes……No.

Thank you. You said that in this preliminary discussion she said that she saw homeless people with fires, if I said to you that what she said was she had believed that she'd seen some people around with fires would you accept that as being a more accurate account?……I'm pretty sure that she saw – that she said that she saw, but it's very similar words.

You wouldn't dispute that what I put to you is a more accurate account?……I don't know which one is more accurate, sorry.

All right, thank you. You said you spoke to Detective Inspector Powell after you returned to your office and you mentioned that Ms Neill-Fraser had said she'd been down to the yacht that night, had you spoken with Detective Inspector Powell before you went to Ms Neill-Fraser's home?……Not sure.

Did you tell him you were going to go there?……I can't remember.

All right. And you were going to interview him, were you, as a part of this program that you were planning?……Yes.

Did what you just played ever go to air?……Parts of it. As a journalist you interview someone and then you take grabs to put to air.

And that was television or radio?……Radio.

Thank you. And was Detective Inspector Powell interviewed as well for that show?……Yes.

All right. Now in your interview you said this to Ms Neill-Fraser:

Now the police say that on the night that – that your partner spent on the boat they saw some – that a witness saw someone row out in a dinghy.

That's what you put to her as coming from the police, correct?……Yes.

Who told you that?……That was in a media release, either earlier that week or the week before.

In a media release from the police?……Yes. There were news stories about it, yes.

And did you have that media release with you at the time, just tell me yes or no?……No.

Thank you. I think you also said that she was upset when you first went to the house can you describe what you saw or what she said that gave you that impression?……She was trembling a lot and also when I asked her how she felt she said she felt terrible because she'd lost everything and she'd lost her yacht.

Yes. And her partner?……Yes.

And she appeared to you to be visibly distressed?……When I first came into the house, yes.

But you, no doubt with your journalistic skills, calmed her down a little bit so that you could have a decent interview with her?……No, she offered me a cup of tea.

Right. Did that appear – and did she share one with you?……Mmm.

And calmed down a bit?……Well she wasn't hysterical but she seemed upset.

I'm not suggesting she was but she manifested signs of being upset?……Yes.

Yes, thank you. I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. Now you've mentioned reports in the media can I show you two documents please. Are they extracts from the Mercury of the 10th and 11th March?.....Yes.

Could you read them and tell us if they are the reports in the media to which you're referred?

MR GUNSON SC: I think she said actually that what she had read was a media release from the police rather than what she read in the Mercury is my note.

MR ELLIS SC: And there were reports in the Mercury, your Honour.

HIS HONOUR: Well just a minute. She said that what she put to the accused was in a media release from the police, that's what she said in cross-examination, she hasn't said anything in relation to media reports but only a media release.

MR ELLIS SC: My recollection (indistinct words) –

MR GUNSON SC: Your Honour, I've checked my junior's note, they comply with yours and I even made a note at the time, and my note reads "In a media release from the police" –

MR ELLIS SC: Oh, there's undoubtedly a mention of a media release from the police, but she also said, "media reports" –

WITNESS: That's what I think I said.

HIS HONOUR: Well no, just a minute – just a minute.

MR ELLIS SC: I'm happy to wait for the transcript or play back the tape.

HIS HONOUR: All right. Well we'll send the jury to the jury room and play back the – play back the cross-examination.

MR ELLIS SC: Thank you.

HIS HONOUR: Yes, go to the jury please, ladies and gentlemen.

<**JURY RETIRED**

HIS HONOUR: Now it's about the middle of the cross-examination, but it wasn't long we may as well have all of it.

CROSS-EXAMINATION OF MS OGILVIE REPLAYED TO COURT

HIS HONOUR: Can you just stop there – yes. Yes, well I think, Mr Ellis is right and my note and the other note referred to weren't thorough so the witness can therefore be asked about news stories in the media. Would you submit otherwise, Mr Gunson?

MR GUNSON SC: No, your Honour.

HIS HONOUR: Yes, all right, get the jury back.

JURY RETURN

HIS HONOUR: Well, ladies and gentlemen, the witness in her – when being cross-examined referred not only to a police media release but also to news stories about a person going out in a dinghy and I'll therefore permit Mr Ellis to ask the questions that he was trying to ask. Mr Ellis?

MR ELLIS SC: Thank you. (Resuming): I think they're the extracts from the Mercury of the 10th and 11th March, Ms Ogilvie, have you had a chance to read them now?……Yes.

And do they mention rowing the dinghy or does it simply mention movements of a dinghy?……I don't see them talking about rowing, no.

So is it possible that that's something that you have filled in your mind, think dinghy think rowing?……Yes.

Okay, thank you. I tender those, your Honour.

EXHIBIT #P60 – EXTRACTS FROM THE MERCURY – TAKEN IN

I've nothing further, thank you, your Honour.

<**THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS**

HIS HONOUR: Now should these Mercury stories be read aloud to the jury or should they just have the opportunity to read them when they're in the jury room at the end of the trial?

MR ELLIS SC: Well they're really tendered as to an absence of a word rather than –

HIS HONOUR: Right. The point of – the reason you're relying on them is that they don't mention rowing?

MR ELLIS SC: That's right, your Honour.

HIS HONOUR: They mention a dinghy but not its means of propulsion?

MR ELLIS SC: Indeed.

HIS HONOUR: All right.

MR GUNSON SC: Before the witness goes could I have a look at those please, your Honour.

HIS HONOUR: Yes, show those to Mr Gunson.

MR GUNSON SC: Thank you, your Honour.

HIS HONOUR: Are you content for the witness to leave?

MR GUNSON SC: Yes, your Honour.

HIS HONOUR: Yes, thank you, Ms Ogilvie, you're now free to go.

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: Yes.

MR ELLIS SC: Thank you, your Honour, I have no more witnesses ready, my learned friend's disappointed me about diving.

HIS HONOUR: Yes, all right. Well in that case the jury can make their affirmation and the Court will adjourn until ten o'clock tomorrow morning.

MR ELLIS SC: There are just a couple of logistical matters.

HIS HONOUR: All right, well the jury can make their affirmation and I'll then retire for a couple of minutes and anybody who wants to leave may leave at that point.

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: Back at ten tomorrow, ladies and gentlemen.

<JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Right, what do we need to discuss, Mr Ellis?

MR ELLIS SC: Well one – one problem is subject to, I think, to an order from your Honour, that is the witness, David Casson, who is the last of the Queensland ones has been in hospital and just about to be or just has been discharged, and my learned friend will, in the circumstances, agree to an order his evidence be taken on video link, if your Honour, can make that –

HIS HONOUR: Now, just – he travelled on the voyage with Peter Stevenson, didn't he?

MR ELLIS SC: That's right, your Honour, yeah.

HIS HONOUR: And to what extent is credibility likely to be in issue?

MR ELLIS SC: About the same extent as Stevenson's, as I understand it, he will give evidence – perhaps not as strong as Stevenson's, to the effect that Ms Neill-Fraser indicated that the relationship with Mr Chappell and that she would be thinking of buying his share.

HIS HONOUR: All right. Well you're – you're asking for an order permitting his evidence to be taken by video link from Queensland because the – he's unwell and has just come out of hospital, and that's not opposed, Mr Gunson?

MR GUNSON SC: Not opposed, your Honour.

HIS HONOUR: All right. Well I – I order that the evidence of David Casson may be taken by video link.

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: When do you have in mind doing that?

MR ELLIS SC: We thought Thursday morning.

HIS HONOUR: All right. Well if you speak to my associate we'll see what can be done about a video link on Thursday morning.

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: All right. Now, what else do we need to discuss?

MR ELLIS SC: Well we're going through very quickly, as you might have noticed –

HIS HONOUR: Yes.

MR ELLIS SC: So quickly to the extent that I was going to ask for a half day's lay day in order to organise the forensic evidence, because I'm very hopeful that – now my learned friend's kindly indicated that continuity isn't an issue and we might be able to get an agreed document, pretty much along the lines of the forensic biology report that – with additional material as to where the samples were taken and maybe something in short form about their continuity to the forensic lab.

HIS HONOUR: Yes. When did you want the half day off?

MR ELLIS SC: Well I think we've got a little bit of time; maybe I could have a start at it today.

HIS HONOUR: Oh, I see.

MR ELLIS SC: No, I might – I'm really signalling it at the moment as a possibility, your Honour.

HIS HONOUR: Well if you're going to be playing – you've got two interviews of more than three hours each with the accused, haven't you?

MR ELLIS SC: Yes. Oh that's right, I know I can –

MR GUNSON SC: Close to four hours, your Honour.

MR ELLIS SC: That's right, your Honour. There is though mention of forensic matters which wouldn't be in evidence, I suppose, usual assertions from police about what tests have revealed.

HIS HONOUR: So the forensic matters really should come before the interviews, is that it?

MR ELLIS SC: That's really so, yes.

HIS HONOUR: The scientific matters, yes. All right, so – well you're not – can I just do a bit of a roll call. Are you going to call Detective Puurand?

MR ELLIS SC: No, I don't think so, your Honour.

HIS HONOUR: And are you going to call Detective Sinnitt?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: And Detective Sice?

MR ELLIS SC: Probably not. Only if something unexpected happens to, say, the credibility of others.

HIS HONOUR: Yes. Constable Jackson?

MR ELLIS SC: I don't believe so, I don't think he rings a bell.

MR SHAPIRO: He's the exhibits officer.

MR ELLIS SC: Oh he's the exhibits officer, so we hope we don't have to come to him.

HIS HONOUR: All right, Mr Kimber?

MR ELLIS SC: Yes, but he should be very brief.

HIS HONOUR: Detective Sergeant Conroy?

MR ELLIS SC: Yes.

HIS HONOUR: And Inspector Powell?

MR ELLIS SC: Probably.

HIS HONOUR: Fred Barrett, Naval Architect?

MR ELLIS SC: Yes.

HIS HONOUR: Dr Herzeld you're not calling?

MR ELLIS SC: No.

HIS HONOUR: What about Meaghan Vass?

MR ELLIS SC: Well that's one of the problems I wanted to mention to you.

HIS HONOUR: Yes.

MR ELLIS SC: At the moment there is an order that she – and she was bound over to appear on Monday.

HIS HONOUR: Or sent away rather than bound over, yes.

MR ELLIS SC: Oh I see, yes, that's right. And so if it looks like we will have finished the evidence, and it may not be the case, I wish to raise with your Honour if we could serve another final notice on her for perhaps earlier than that return, that it wouldn't be cutting across anything that your Honour's ordered or directed.

HIS HONOUR: Well I don't think I've got anything in my papers at all that tells me –

MR ELLIS SC: You may have it in the supplementary volume, your Honour, I think. There's certainly nothing from her. On maybe it got into the main volume – what happened, your Honour, was that there was a piece of DNA or a swab from DNA – DNA was found on the deck of - I think it's the deck of the Four Winds –

HIS HONOUR: Mm.

MR ELLIS SC: - analysis didn't match it with anyone, but then Ms Vass fell foul of the law and when her DNA was taken it did match that. And so we have this piece of DNA that seems to belong to her on the deck of the Four Winds and no one quite knows how it has got there. She has been uncooperative, and to be fair, I think she suffers from some form of Aspergers or something like that, but she hasn't been cooperative with us or police in – truly cooperative in furnishing a proof of her whereabouts and movements. So the point about – oh my learned Mr Shapiro points out that – that she's mentioned at 1049, the DNA profiling of her.

HIS HONOUR: Right. Okay. I – I sent her – I excused her until Monday of next week, did I?

MR ELLIS SC: That's right, that's right, your Honour.

HIS HONOUR: And you think the Crown case now might close sooner than that, even with a half day off?

MR ELLIS SC: Perhaps not with a half day off, but I'm not sure that I need the half day off, I see how I battle Manthey this afternoon.

HIS HONOUR: Yes. Well how long are the – but the –

MR ELLIS SC: The interviews are about eight hours in total.

HIS HONOUR: Well there's – there's two days. If you call everybody else tomorrow and then play the interviews that's the week.

MR ELLIS SC: Oh pretty much then, yes, yes your Honour, it could be.

HIS HONOUR: Well I suppose – well what –

MR ELLIS SC: It's okay, I just raised it, your Honour, that if it was appropriate to seek – to make a final –

HIS HONOUR: A second final notice.

MR ELLIS SC: - a second final notice –

HIS HONOUR: Well I happen to have the 1996 Act here so I'll have a look at it. Well if I've excused her until next Monday I must have the right to get her back, it's a question of –

MR ELLIS SC: Well I think I've got the right to get her back under the Act but I wouldn't like to do it and then your Honour decide that I'm in contempt or something close to it but (indistinct words) your order.

HIS HONOUR: Well when would you like her back, Friday?

MR ELLIS SC: If it emerges – yes, if it emerges in the next couple of days that we might finish the evidence then I might want her back Friday or we might be cutting it so fine that it makes no difference, that's all.

HIS HONOUR: Well, Mr Gunson, do you want to be heard as to this?

MR GUNSON SC: Did she actually turn up on Monday?

MR ELLIS SC: Oh, yeah.

MR GUNSON SC: She was here?

HIS HONOUR: She – can I have the transcript please.

MR GUNSON SC: Well my only concern about – I'm not troubled about when she comes, your Honour, I'm only troubled about am I going to get a proof and my friend may well say, "Yes, you will depending on whether she cooperates on the day or not".

HIS HONOUR: - I haven't found it in the transcript but my note is that I ordered her to return at 9:40am – 9:45am on Monday the 4th of October.

MR ELLIS SC: Yes, that's my recollection.

HIS HONOUR: Yes, well – well Mr Gunson, there would be nothing wrong – nothing unlawful or impolite about Mr Ellis serving her with a final notice requiring her to attend sometime this week, if he felt he needed to, would there?

MR GUNSON SC: Not at all, your Honour, I don't seek –

HIS HONOUR: Right.

MR GUNSON SC: - to dissuade him or you.

HIS HONOUR: No, well I've – all right, well I certainly don't think that it would be unlawful or impolite if she's served with a final notice requiring her to attend one day later this week rather than the 4th of October. Obviously, it would be polite to tell her that – that the trial has moved more quickly than the Crown and I anticipated. But Mr Gunson, you want a proof of what she's going to say?

MR GUNSON SC: I'd like that.

HIS HONOUR: And Mr Ellis, do you know what she's going to say?

MR ELLIS SC: No, no I –

HIS HONOUR: Well –

MR ELLIS SC: - all I know is I asked Mr Gunson if this is an issue and he said it was, and so there she'll be, he can make the issue with her.

HIS HONOUR: Well if anybody wants a Basha inquiry they can ask me.

MR GUNSON SC: That's what I was going to suggest, if that's the appropriate course to go when we get her here and see what happens.

HIS HONOUR: Yeah. And it may be next Monday or may be sooner.

MR GUNSON SC: Yes. Yes, I think a Basha inquiry is the only way. Well it's quite clear from the papers that your Honour's got in the last volume, at 1049 or thereabouts, that she simply hasn't cooperated with the police. Her DNA is on the boat, it's been found there. There may be any number of answers as to how it got it but she's not providing them.

MR ELLIS SC: Of course, she mightn't be able to also. There's no reason to think she's able to provide an explanation, frankly, you know, she could have spat on the Constitution Dock, someone walked on it and it came off their shoes – it's – but I asked my learned friend before the trial, "Is this in issue?" and he told me it was, therefore I have sought to make her available.

MR GUNSON SC: Well that's not an explanation.

HIS HONOUR: All right, well we'll leave that in mid air. So the Crown case looks like finishing Friday or Monday.

MR ELLIS SC: I think so, your Honour. Now one more difficulty, -

HIS HONOUR: Yes.

MR ELLIS SC: - and that is – I don't think it's a problem to raise it at the moment. In the interviews there's a lot of – quite a deal of mention of Mr Triffett, which is fine, and Ms Hanson who is not a witness.

HIS HONOUR: Yes.

MR ELLIS SC: In one part it's asserted by police, perhaps unwisely, that Ms Hanson confirms this and in other parts there's lengthy excursions on the part of the accused into the character of Ms Hanson and Mr Triffett in a way that wasn't put to the latter here today. Now my learned friend and I – I'll simply raise it with him as to whether he will want those parts excised in whole or in part and it could be that if he wants the favourable mentions of Ms Hanson excised I'd want the unfavourable ones excised of course, but it's also a matter for your Honour in the end too because you might take the view that it's simply inadmissible and shouldn't be there.

HIS HONOUR: I'll give a ruling if I need to give a ruling, but I'd first like you to try to agree on what should stay and what should go.

MR ELLIS SC: Yes, your Honour, but if things are to go then our timings will be off because they're such lengthy things that to edit them will be difficult, will take time.

HIS HONOUR: Well we – you mean they're – well if I need to give a ruling then there'll have to be a delay while the DVDs are edited, is that it?

MR ELLIS SC: That's right, your Honour.

HIS HONOUR: Well you might get that half day that you were timid about asking for. If that has to happen the trial just has to go on hold and that's something we've got to live with, but I would think that while the first interview is being played the second can be being edited it's a – it's a question of –

MR ELLIS SC: They both suffer the same vice, your Honour.

HIS HONOUR: Oh, sure, but as I understand it you can have – well we'll cross the bridge when we come to it but once I've given my ruling in relation to the first interview someone can start getting an edited version of that ready and then I can give a ruling in – any rulings I need to give in relation to the second interview. I'll be surprised if more time is needed to get the second interview ready. Once the first one is ready it can be being played while the second one is being edited.

MR ELLIS SC: Certainly, your Honour. I only raised it, and I don't say this in anyway disrespectfully, that because some judges will take different views of their obligations to exclude – hunt and exclude all forms of inadmissible evidence wherever it's found.

HIS HONOUR: Well I won't –

MR ELLIS SC: I'm just stating the view that –

HIS HONOUR: I won't indicate a –

MR ELLIS SC: (indistinct comment)

HIS HONOUR: Well I don't propose to search for anything that hasn't been objected to that ought to go but if counsel want me to – if I'm going to be asked to give rulings as to what stays and what goes then the sooner counsel can narrow the scope of any dispute the better.

MR ELLIS SC: Yes, your Honour, thank you.

HIS HONOUR: Now is there anything else we need to discuss?

MR ELLIS SC: Not from my point of view, thank you, your Honour.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: No, your Honour.

HIS HONOUR: No, all right, well the Court will adjourn till 10 o'clock tomorrow.

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00AM ON WEDNESDAY THE 29TH DAY OF SEPTEMBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: Yes, take a seat. Mr Ellis?

MR ELLIS SC: Thank you, your Honour. I call Phillip Kimber.

<PHILLIP ANTHONY KIMBER CALLED AND SWORN

HIS HONOUR: Take a seat.

WITNESS: Thank you.

HIS HONOUR: Yes?

<EXN - MR ELLIS SC: Thank you, your Honour. Mr Kimber, you're Phillip Kimber?.....Yes, sir.

Is that your full name?.....Phillip Anthony Kimber.

And you're a legal practitioner?.....Yes.

And a partner of the august firm of Butler McIntyre & Butler?.....Indeed.

At 20 Murray Street, Hobart?.....Yes.

In that capacity did you act for Mr Robert Chappell?.....Yes.

And in 2002, early 2002, did you prepare a will for him?.....Yes.

And was that will superseded in 2004 on his instructions?.....Yes.

Thank you. And that is, by superseded, you made a new will?.....Yes, the old one was revoked and a new one was written up and signed.

Thank you. And he executed that will that you prepared?.....Yes.

Are you able to tell us the terms of the will in general terms?.....Yes. I think it was dated about 20th October 2004, it revoked all previous wills, which is a standard clause in wills, to make sure it was the last one. It appointed one of my partners, Gary Ronald Grant, and myself as his executors and trustees. It then stated that if Susan Neill-Fraser survived him by thirty days his material possessions, including his house, car and other things of that nature would go to her absolutely, the balance of the estate, again if Susan Neill-Fraser survived him by thirty days, was to go to meet all expenses, debts and to be divided fifty percent to Susan Neill-Fraser, forty percent to his three children and ten percent to his sister, Caroline.

That's forty percent between the children, so they'd each receive a third of forty percent should they survive, is that right?.....Yes, correct. And then there were further provisions that if Susan Neill-Fraser didn't survive him by thirty days it was to go, I think, ninety percent between five children, that is his three children and Susan Neill-Fraser's two children, equally.

Yes.....Which I worked out I think is about seventeen percent each or so, and ten percent was to go to his sister, Caroline.

Thank you. So the primary gift to Ms Neill-Fraser was of material possessions, including the house, car and furniture, what other things would be in the estate?.....Other than material possessions?

Yes.....He had unpaid employment entitlements of which I discovered later were in the order of about twenty six to thirty thousand dollars, he had superannuation – a superannuation account or two accounts, which totalled approximately eight hundred thousand dollars and although I'm not certain about where that would go he had previously signed authorities to the superannuation trustees directing that his superannuation be dealt with as if it's part of the estate and in the will it said that the superannuation was to be treated as part of the residue so it would have gone in accordance with the proposition I said before.

Yes. Was there any special provision to be made for any mortgage over his house?.....Any debts including mortgage debts over his

house were to be paid out of the residue before distribution of the residue.

Thank you. Am I right to understand that the superannuation can't be a hundred percent certain to be dealt with in accordance with the will, that there is some discretion in trustees usually?……I haven't enquired of the superannuation and the trustees so I don't know what the position – and it varies. I think if the express written authorities which he'd given, and I know he did do something in the year 2000, if he'd done some more recently than that they would probably be binding on the superannuation trustees and they would have to pay it to his estate. If not then they may have a discretion but they'd be strongly persuaded to deal with it in the way he'd expressed in his will.

Yes. So he did everything he could by way of will and other declaration to your knowledge to have the superannuation dealt with in accordance with the will?……Yes.

Thank you. And was there any further will after that?……No.

Did you see him after that?……I don't believe so.

Okay…..And I might say I've seen him over the last twenty or so years I would have expected if he wanted to change his will he would have come here and I'm not aware of anyone suggesting another will.

No, that's right. And is it practice between lawyers that if another will is drawn that they'll notify those who hold the previous will?……They would.

Thank you…….Thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Mr Kimber, how long did you spend with Ms Neill-Fraser when she came to see you on the 12th February?……Forty five minutes to an hour and a quarter, I'm guessing.

You're guessing – don't lawyers normally make notes about how much time they spend seeing somebody?…….Yes, sir.

And that's for the purpose being able, no doubt, to charge somebody in due course for that professional time?…….One of the reasons.

That's one of the reasons, isn't it? Now do you recall how long you actually spent with you – you've got basically a half hour gap in what in what you've told us – forty five minutes to an hour and a quarter?…….No better than that.

Did you bring your file with you today?…….Yes, sir.

Well would you check your file and see whether you've made a file note of how long you spent with her on the 12th of February 2009?…….I don't have the file with me it's in the witness room.

Can the witness go and get it, your Honour?

HIS HONOUR: Yes, could you go and get it please, Mr Kimber we'll wait.

WITNESS: Thank you.

HIS HONOUR: Mr Kimber –

WITNESS: The clerk's getting it, sir.

HIS HONOUR: Oh, I see, thank you.

WITNESS: 10:00am to 12:00 noon.

MR GUNSON SC: (Resuming): So you spent two hours with her – and what you told us a minute ago was just a guess, wasn't it?…….Yes – oh well, a reasoned guess.

A reasoned guess from a man who is on his oath – all right, two hours you spent with her and you had a long conversation with her about matters pertaining to the boat, didn't you?…….Yes.

And you were given the history of the boat?.....Yes.

MR ELLIS SC: Your Honour, it seems to be simply an attempt to lead hearsay.

HIS HONOUR: Well I don't know where it's leading yet but if – as a general rule any information imparted by the accused to Mr Kimber would be hearsay, for it to be admissible it needs to fall within an exception to the hearsay rule. Please go on, Mr Gunson.

MR GUNSON SC: Thank you, your Honour. (Resuming): There was a long discussion with her about a whole lot of issues pertaining to the boat, just say yes or no?.....Yes.

Thank you. And there was a long discussion with her about her relationship with Mr Chappell?.....No.

There was at least some discussion about her relationship with Mr Chappell, Mr Kimber?.....Yes.

Thank you. You were, I suspect, more interested in finding out what the assets of Mr Chappell's estate might be if he in fact is deceased so you could move towards applying for probate, is that correct, in due course?.....Yes.

One of the things you have to do is to find out what the assets are?.....Yes.

Now you wrote to Ms Neill-Fraser I think on the 6th February following a telephone call from her and basically invited her to contact you so you could discuss issues with her pertaining to the supposed estate?.....Yes, sir.

What you did was quite normal and quite usual?.....Yes, sir.

You'd identified her as one of the significant beneficiaries under the will, correct?.....Correct.

Now when she came to see you did you provide her with a copy of the will or had one been provided at an earlier date to her?.....I reflected on that when I gave a statement to the police and I couldn't recall whether I gave her a copy or not and I believe I did not.

Right, but you explained to her in significant detail what the will contained?.....Yes.

Did she at any stage tell you that she'd already seen a copy, that is that Bob Chappell had shown her a copy of this particular will?……I don't believe she did.

You didn't ask her?……I don't recall expressly asking her.

Thank you. But in any event, you went through it and explained it to her?…….I believe so.

Well you say you believe so, do you have a memory of doing it?…….Why I say that is, I met her again with somebody – with a financial advisor and she seemed to be uncertain about the terms of the will in April.

That was in April – just concentrate please on -…….Mm hm.

- the meeting of the 6th of February. Have a look at your file and see whether there's a note there as to whether you discussed with her the issue as to whether she had a copy of the will or had seen a copy of the will at an earlier date?…….No, there's no note about discussing the terms of the will, nor providing a copy of it.

Thank you. Do you make quite lengthy notes of your conversation with Ms Neill-Fraser on the 2nd – sorry – the 6th of February?…….The 12th of February?

Sorry, yes, thank you, the 12th of February?…….Yes.

And did you have them typed up?…….Yes.

And did you send them to her?…….Yes, I did.

And with a covering letter?…….Yes.

Did you ask her to review your notes?…….Yes, sir.

To make any changes or additions?……Yes, sir.

And did she ask you to make any changes or additions?……No.

Were the notes returned to you signed or anything like that?……No.

Thank you. You have previously said that during the meeting on the 12th February that you, "Don't recall Susan asking for a copy of

Bob's will or of me providing one", does that assist you in your recollection?……That's my recollection.

Thank you. And subsequently in April you had a meeting with Ms Neill-Fraser and a financial adviser at your office, is that right?……Yes, sir.

Thank you. And at that stage there were some discussions about the procedures that would have to be invoked before probate could be granted?……Yes, sir.

Yes, thank you. I've no further questions of Mr Kimber.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. You've been asked about a letter you wrote on the 6th February, Mr Kimber, and it was asked, "Did you invite her to contact you", by that letter?……Yes, I did.

Was that a letter that you wrote to her without any previous contact or had you in fact had contact with her?……She had telephoned me on the 29th January and mentioned that Bob was missing and there was concern about that, fear for his life, and that's why I wrote to her and advised her.

Thank you. So the 6th February wasn't a contact initiated by you it was a follow up to one initiated by her, is that right?……Yes, sir.

Thank you. And in that letter did you make a presumption, or assumption, about her having a copy of the will?……Having?

A copy of the will……Um, no. I suppose if – no, I didn't make an assumption.

Do you have the letter with you, a file copy?……Yeah, which is a letter of what date?

The 6th February 2009……"I presume you have a copy of Robert's will", I said in the letter.

I'm sorry, you're reading from that and you said in it, "I presume you have a copy of Robert's will"?…….Yes.

Thank you. And in your subsequent dealings with her it seems that she didn't correct that presumption, is that right?……Except until April when, as I say, she didn't seem to understand the terms of the will.

All right…….But no, she didn't ring up and ask for a copy of it or say, "No, I don't have one".

Yes. And your meeting with her proceeded without that presumption being displaced?……Correct.

And was the meeting of the 12th – sorry, 21st April more to explain the terms of the will rather than supply a copy?……It was to deal with financial issues and assets associated with the estate and to work to preserve the assets and make sure they're protected.

Yep…….It wasn't immediately about the terms of the will, it came up but it wasn't – wasn't the sole cause or sole discussion.

So it's the case, is it, that from the 6th February you let Ms Neill-Fraser know that you presumed she had a copy and you have no note or recollection of her asking for a copy of the will?……Yes.

Thank you…….Thank you.

Nothing further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

<THE WITNESS WAS RELIEVED AND WITHDREW

<FREDERICK CHARLES BARRETT CALLED AND SWORN

HIS HONOUR: Take a seat, and could you leave those papers face down unless you're asked to look at them please? Yes?

<EXN - MR ELLIS SC: Thank you. Mr Barrett, you're Frederick Charles Barrett?.....Yes.

You are the principal of Fred Barrett Yacht Design and Naval Architecture Pty Ltd?.....Yes.

You're – you possess a – sorry, you attained a Bachelor of Engineering Degree in Naval Architecture?.....That's correct.

And do you work as a naval architect?.....I do.

And how long have you done so?.....About fifteen years.

Are you a member of the Institute of Engineers of Australia?.....Yes.

Thank you. In 2009, did you complete a task at the request of Tasmania Police?.....I did.

What was that?.....To investigate the sinkage rate or timeframe for the yacht, Four Winds.

And just in general terms, what – what did you?.....Basically we deduced a volume of flood or volume between the static waterline of the vessel and how it sort of was found, I guess, and worked out the volume. Worked out a sinkage time, based on two openings that were found onboard, which were two pipes, and deduced the timeframe, I guess.

Okay. Did you take measurements of two openings onboard?.....Yes, we did, yes.

Thank you. Can I show you – this is P03, your Honour – photograph 58 – is that one of the openings that you've referred to?.....It is.

And did you measure the diameter of that pipe?.....Yeah, the ID was an inch and a half, thirty eight point one mil.

HIS HONOUR: ID meaning, internal diameter?

WITNESS: That's correct.

HIS HONOUR: Yes.

MR ELLIS SC: (Resuming): Thank you. And do you recall where that pipe was located?.....Oh that was in the head, in the toilet location on board the yacht.

Why do yachtsmen call it 'the head' - I probably shouldn't ask?.....Mean the head – no, probably shouldn't ask.

All right. And if you could also now be shown, I'm sorry, P –

HIS HONOUR: P47 perhaps.

MR ELLIS SC: Yes – 55, your Honour, please. P55 is the last set in the other volume and it's photograph 17. Oh no, wasn't that tendered separately? It was tendered separately. I'm sorry, your Honour's no doubt right, it was a bit taken out.

HIS HONOUR: I think we might have it twice, do we? Do we have it again as P55, photo 17.

MR ELLIS SC: Thank you.

HIS HONOUR: No, it's P47, it's photo 17 from that series.

MR ELLIS SC: That's right, thank you, your Honour. (Resuming): Oh you have it, can you hold it up, please, Mr Barrett, so we're all on the same page of this. That's the photograph you have in front of you, does that show the other -.....It does, yeah, it's a three quarter inch ID –

Three quarter inch internal diameter?.....That's correct.

Right, and when you say that what do you refer to, do you see it on the photograph that you're referring to? I see you're pointing to a hose that comes out of the green -.....Yeah, it comes out of a seacock and it's not connected to anything.

No, in fact it's a very short stub of a hose, isn't it?.....Yeah, that's right.

Thank you. All right, so armed with those measurements what other information did you collect?.....I guess we determined an approximate flotation of the yacht when it was found at rest, so in its

sinking state, so we could deduce a floodable volume let's say of 11.58 cubic metres, I think from memory, and –

Yes. Just speak up a little bit.....Oh so we determined a volume, we know what the slowest flow rate coming in through these two hoses would be for a given head of pressure, we also know what the fastest flow in rate would be for another given head of pressure in a sinking form so from that we can approximate a timeframe slow and fast knowing that we've got a yacht of thirty thousand kilos, thirty five tonne of weight, that's wanting to sink pretty rapidly, so it'll tend to be the fastest of those two timeframes in terms of flow rate, so we came up with a rate between X and Y and that was that.

Okay. And what else is factored in before we get to the rate?.....Well the permeability of everything inside the vessel was taken into account. We've got a floodable volume in a real sense plus we've got furniture and accommodation, things like that, that take up a little bit of that volume, so that was allowed for.

And did you have a photograph of how low the yacht was at some particular time?.....Yes, we were provided with a photo from Tasmania Police which, for us, gave us a fairly good indication of the final floatation at a given time plus we took some measurements internally also and modelled the yacht's hull to get a fairly good approximate figure.

Right. P22, if the witness if he could be shown that, it's a single photograph in the smaller volume. Would you hold that up for us again, Mr Barrett. Is that the photograph you were given?.....That's correct.

Thank you.

HIS HONOUR: That's Tab 7 of the blue volume.

MR ELLIS SC: (Resuming): And did you also have some estimate given to you by police who'd been - .....Yeah, that's correct. They indicated the internal flood levels within the yacht and that sort of allowed us to cross check a bit of our outside volume information also.

Right. And then you applied various calculations, which I don't think you need to go into, and determine a timeframe to reach the position we see on the photograph?.....Yes, an approximate timeframe for an approximate flooded level.

Given that water was coming in through the two inlets you've identified?……That is correct.

And what was that timeframe?……Between I think nine and twelve hours.

Okay. And do I understand you to say that because of the weight of the vessel you think it's more likely to pass the time - ……Yes, generally speaking. There will be a little bit of momentum as it's wanting to sink, the flow rate will increase as it wants to sink, there will be some equilibrium and there's a few other factors, it's quite a complicated thing to determine so hence we approximate those timeframes.

Yes, okay. And when you – when you're calculating the volume I presume that's some sort of an approximation given the material you had to work with?……Yes. Yes, that's right, based on the evidence that we see on the outside that shows us a particular floodable plane and based on the evidence that we received by Tasmania Police, again, we understand a floodable plane internally, so we'd have to cross-reference those and make sure they sort of make sense, which they did.

Yeah……..And away we go.

So did you estimate, and it is an estimate that -…….Yes.

- approximately eleven forty five eight cubic metres -…….That's right.

- of water had entered?…….Yes.

But if – would it be the case that if you were a cubic metre out either way that alter by about an hour the – the sinking time?…….Yeah, between forty five minutes and an hour –

Yeah……..- depending on the flow rate.

Okay. And is it possible that – is that margin for error in your calculation?…….Absolutely.

Absolutely. Okay. Thank you, Mr Barrett.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN - MR GUNSON SC: If I could just follow up on what Mr Ellis has asked you; forty five minutes to one hour per cubic metre alters the flow rate accordingly – so one hour's water coming more water or less water, you're going to get a cubic rate difference?.....Yeah, that's right.

All right. And that in turn, the amount of water in obviously affects your calculations as to the time it takes -.....Yeah, the –

- from when the seacock was first opened – and of course, one of the impossible things for you to know is whether the two entry points, and I'll use that term loosely, were opened at the same time?.....That's correct.

So if, for instance, the seacock was opened just by way of example, at 10:00pm and the vessel started to take water, and then at a later time, to encourage the sinking the other hose was cut in the toilet, that would throw your calculations out completely, wouldn't it?.....Yes.

And make them quite meaningless?.....Not necessarily.

No, but it would throw them out dramatically, wouldn't it?.....Without modelling it, I can't give you a definitive answer.

But logically, you're going to have a slower process, aren't you?.....Yes.

And the slower the process – I'll withdraw that – if you have a slower process, the time will be extended?.....That's correct.

Right. So at the end of the day your model is based on both entry points being opened at the same time - correct?.....Yes.

You have to answer because this is all being recorded and will be transcribed. So both entry points being opened together, that's the basic hypothesis behind your model, isn't it?.....That's correct.

And you have also hypothesised a particular flow coming through?.....That's correct.

Yes. So on your scenario as you model it you say you believe that the yacht had been taking water for about between nine to twelve hours?.....Correct.

But it could be in between, say, seven hours to fourteen hours?……Possible.

Possibly. So at the end of the day, despite all your calculations, it's still an inaccurate science that you're applying?……It's an approximation.

It's only an approximation, and your calculations were based on discussions with Tasmania Police as to what certain officers saw as to water levels?……Correct.

Did anybody actually take you on board and mark, for instance, on the wall of the yacht and the side of the – inside where the water had come to?……Yes.

They did, thank you……Did they mark it exactly, no, they pointed it out.

They pointed it out to you, and again that affects your calculations, I mean a few inches either up or down makes a big difference when you look at the total volume, doesn't it?……Yes.

Correct?……Yes.

Mm, it'd make a substantial difference?……Not necessarily substantial.

Ideally what you needed, I suppose, was to see the boat at the very point it was discovered with the water sitting inside and somebody conveniently goes down through the water, turns off the seacock so you've got a constant volume, correct?……Ideally, yes.

That's the ideal situation and your figures if prepared would be more accurate on the scenario that I've just pointed out?……That's correct.

Right, so you wouldn't say to the jury on any stretch of the imagination that your figures of nine to twelve hours are accurate, what you say is it's an approximation and it could be less than that, it could be greater than that, but you just don't know?……Correct.

Thank you. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: Mr Ellis.

MR ELLIS SC: I have some agreed facts, your Honour – some agreed facts I can show your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: I seek to read those, but in fact the witnesses to whom these refer, I propose to call after another witness. Further agreed facts:

<FURTHER AGREED FACTS P61 READ TO COURT

MR ELLIS SC: Your Honour, I'll next seek to call –

HIS HONOUR: Well just a minute? The memorandum headed "Further Agreed Facts" will be marked as an exhibit.

MR ELLIS SC: Thank you, your Honour.

EXHIBIT #P61 – FURTHER AGREED FACTS – TAKEN IN

HIS HONOUR: Now there's about fifty pages of material annexed to that, Mr Ellis –

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: - is that going to be referred to by witnesses that you're going to call?

MR ELLIS SC: Yes, your Honour, and hopefully explained.

HIS HONOUR: And I don't think the jury's yet heard of Meghan Vass, but the – and I think I can tell the plan is that she's a witness who will be called at some stage in the next few days.

MR ELLIS SC: Yes, perhaps – perhaps today, but –

HIS HONOUR: All right.

MR ELLIS SC: - while we're speaking of her, could I caution the press that identification of her might breach the Children and Young Persons and Their Families Act.

HIS HONOUR: All right, well I'm sure they've heard that. Now – so the position is that there's a fifty page exhibit and rather than

getting you to read it out, the plan is that it will be referred to and will be available in the jury room at the end of the trial?

MR ELLIS SC: I will have copies for the jury when the witnesses go through which will be Mr McKenzie and Mr Grosser. First I wish to call Ms McHoul.

HIS HONOUR: Yes.

MR ELLIS SC: As I indicated to your last night we may need a little time and I think I will need please about a quarter of an hour with Ms McHoul just to finish briefing her which I wasn't able to do this morning.

HIS HONOUR: So do you want that now or –

MR ELLIS SC: Yes, please, your Honour.

HIS HONOUR: All right. Well look we might take the morning break and adjourn until 11 o'clock, would that be convenient, Mr Ellis?

MR ELLIS SC: Yes, thank you, your Honour.

HIS HONOUR: Yes, all right. Well the jury can make their affirmation, we'll take the break early, and the Court will then adjourn until 11 o'clock.

JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: All right, well Mr Gunson you'd like to proceed with a Basha enquiry and to do that now?

MR GUNSON SC: Yes, your Honour.

HIS HONOUR: All right, well that's how we'll proceed. Meaghan Vass can be called.

<**MEAGHAN ELIZABETH VASS CALLED AND AFFIRMED**

HIS HONOUR: Ms Vass, as you're probably aware we thought we'd not need you till next week but that changed so thank you for coming in today and for technical reasons what we're going to do is get you to give some evidence without the jury being here to hear it and then probably you'll be asked to give evidence again with the jury here to hear it, okay, so that's what's happening. Yes, Mr Shapiro?

<EXN – MR SHAPIRO: Thank you, your Honour. Is your full name Meaghan Elizabeth Vass?……Yes.

And is your date of birth the 14th October 1993?……Yes.

Thank you. If the witness can be shown P3 photo 2 please, it's the first one in that bundle. Have you ever been aboard the yacht that's depicted in that photograph?……No.

Thank you. In January and February – January and February 2009 do you remember if you went to the wharf area here in Hobart?……No.

Constitution Dock area?……No.

So is it the case that you don't remember if you went there or you remember that you didn't go there or - ……I don't remember.

Okay.

HIS HONOUR: Were you living in Hobart early last year?

WITNESS: Yes.

HIS HONOUR: Yes, go on Mr Shapiro.

MR SHAPIRO: Thank you. (Resuming): And there's an area of Goodwood near Negara Crescent where there's some – an industrial estate and some yachts do you remember if you went there in January?……No.

Sorry?……I don't remember, no.

You don't remember.

MR SHAPIRO: - if you went there in January – sorry?…….I don't remember, no.

You don't remember. Okay. Thank you. Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: Where were you living in January 2009, Ms Vass?.....I'm pretty sure I was living at Annie Kenney Women's Shelter in Montrose.

Pretty sure?.....Yes, I can't really remember, I'm sorry.

And what was your occupation then?.....I wasn't doing anything at all.

But you were getting some sort of benefit, were you?.....Yes, I was special benefit – Centrelink.

All right. And you say you have never been on board the yacht depicted in that photograph known as the Four Winds?.....No.

And you have no memory of being in the wharf area around Constitution Dock and seeing that yacht there?.....No.

And was the wharf area, an area that you would go to, in late January 2009?.....No.

Right. If I was to suggest to you that it was highly unlikely that you were down around Constitution Dock on about the 27th or 28th of January 2009, would you accept that?.....Yes.

And I think you said a moment ago you have no memory of going to a slip-yard in Goodwood in Negara Crescent called Cleanlift Marine?.....No.

You've never been there in your life?.....No.

Is that right -.....Yes.

- you've never been there in your life?.....Yes.

Thank you. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED

HIS HONOUR: You don't happen to have a twin sister, do you?

WITNESS: No.

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: Nothing in re-examination, thank you, your Honour.

HIS HONOUR: All right. Well now, what's the plan – do we get the jury in and proceed with this witness' evidence – is that what you'd like to do?

MR GUNSON SC: Yes.

MR SHAPIRO: Thank you, your Honour.

HIS HONOUR: Yes, all right, bring the jury in.

<JURY RETURN

HIS HONOUR: Affirm again.

HIS HONOUR: Right, ladies and gentlemen, the witness in the box is Meaghan Elizabeth Vass. Yes, administer that affirmation again.

<MEAGHAN ELIZABETH VASS AFFIRMED

<EXN – MR SHAPIRO: Your full name is Meaghan Elizabeth Vass?……Yes.

And your date of birth is the 14th October 1993?……Yes.

And you have a photograph there in front of you, do you?……Yes.

Can you hold that up so the jury can see what photograph you've got?

HIS HONOUR: It's the first photo from P3 in your large folders, ladies and gentlemen. Yes.

MR SHAPIRO (Resuming): Thank you. Have you ever been aboard that yacht?……No.

And at the end of January 2009 or the very beginning of February 2009 do you remember if you went to Constitution Dock area in Hobart?……I do not remember, no.

You don't remember being there?……No.

And at that same time do you remember going to an area in Goodwood, Negara Crescent, where there's some yachts on slips and an industrial estate there?……No, I do not remember.

So you don't remember if you went there either?……No.

Thank you, your Honour, I submit he witness.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON SC: You don't have a twin sister?……No.

Right. And you say on your oath that you've never been on board the yacht, Four Winds?……No.

The police tried to interview you sometime ago, didn't they?……Yes.

And you refused to be interviewed about anything to do with this case, didn't you?……Yes.

Yes. You told the police that you wouldn't be interviewed?……Yes.

Was there a reason why you refused to be interviewed?……Only because of the fact that this just intimidates me, I've never had to do or go through anything like this before and that was the only reason.

Well you felt intimidated by the police, did you?……Yes, I've – I've just never dealt with something this large before and I was shown pictures of the yacht and the same as what went on today and that is –

You simply refused to be interviewed, didn't you?……Yes.

You said you'd tell them nothing?……Yes.

And it would've been easy to say to the police, "I've never been on board that yacht, wouldn't it?……Yes.

But you didn't say that, you took the view, "I'm not saying a word to you police officers"?…….Yes.

Yes. Now I'll ask you again, are you quite sure you've never been on board this boat?……I'm quite sure I've never been on that boat.

Right. You had DNA taken from you by forensic or police personnel following an arrest, is that right?……Yes.

And that was in relation to a stealing matter?……Yes.

Thank you. How old are you?……Sixteen.

Sixteen, and where were you living on the 26th January 2009?……Probably – I'm pretty sure it was Stainforth Court in Lenah Valley.

Stainforth Court in Lenah Valley. Where's Stainforth Court in Lenah Valley?……It's as you're coming down the Brooker there's a big block of white – a white complex.

Didn't you say a little while ago in this court that you were living in the Annie Kenny -…….Annie Kenny Montrose, yes.

Montrose…….I can't really remember, sorry.

Well in a matter of minutes you've changed your story, haven't you?……Well I –

You were asked a question a minute ago, "Where did you live on the 26th January 2009", and you said, "The Annie Kenny Women's Shelter at Montrose"……Yes. I've been homeless since I was thirteen.

Just listen to the question. In this court a matter of minutes ago were you not asked the question, "Where did you live on the 26th January 2009"?……Yes.

And your answer was, "The Annie Kenny Shelter at Montrose"?……Yes.

I asked you the same question a moment ago and you said you were then living at Stainforth Court. They're not the two same places, are they?……No.

So I'll ask you again, where did you live on the 26th January 2009?……Annie Kenny Women's Shelter in Montrose.

So why did you tell us a minute ago you lived at Stainforth Court?……Because I'm getting very confused and I have been homeless since I was thirteen, so it's very hard for me.

It's not difficult, is it, you were asked the question in this court a few minutes ago?……Yes, I'm sorry.

Right. Now in late January 2009, around the 27th January 2009, do you have any memory at all of going to Constitution Dock?……No.

Do you know where Constitution Dock is?……It's the one in town where Mures is, isn't it?

Yes…….Yes. No, I do not remember.

And would it be fair to say this, you would say that you didn't go there during that period?……Yes.

Thank you. And it would be fair to say that you've never been to the industrial premises, that were described a moment ago, called CleanLIFT Marine at Negara Crescent at Goodwood?……Yes.

Never been there in your life?……No.

And most definitely weren't there in late January early February 2009?……No.

Thank you. I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: Yes.

MR ELLIS SC: Yes, thank you, your Honour. The briefing I've been able to do has revealed that there is an error in the further agreed facts that I presented to you this morning.

HIS HONOUR: Can I see that. Yes?

MR ELLIS SC: In that some of the items, and my learned friend has the numbers, were examined also by Debra McHoul as well as Christopher McKenzie and Carl Grosser and so I'd seek leave to simply add that in in writing and initial it.

HIS HONOUR: So that in paragraph 1 where it says –

> *Where they were examined by Christopher McKenzie and Carl Grosser –*

You're going to add – you want to add the name "Debra McHoul"?

MR ELLIS SC: Yes.

HIS HONOUR: Mr Gunson, are you content with that?

MR GUNSON SC: I am, your Honour.

HIS HONOUR: All right. Well I'll pass the exhibit P61 back to Mr Ellis, you can make that change and perhaps both counsel should initial it. Yes, Mr Ellis?

MR ELLIS SC: Thank you, your Honour, I call Deborah McHoul – volume 6, I think – 106A, your Honour.

HIS HONOUR: Thank you.

<DEBRA MARGARET McHOUL CALLED AND SWORN

HIS HONOUR: Take a seat. Yes.

<EXN - MR ELLIS SC: Ms McHoul, you're Debra Margaret McHoul?.....That's correct.

And you're a forensic scientist?.....Yes, that's right.

What are you qualifications?.....I have a Bachelor of Science Degree with Honours from Luton College of Higher Education and I have a Master of Science Degree in Forensic Science from Kings College University of Lindum, and I've been employed as a forensic scientist since April 1991.

Thank you. And you're currently employed as such at Forensic Science Service Tasmania?.....Yes, that's correct.

And in that capacity, did you go somewhere in late January early February 2009?.....Yes, I did.

Where did you go?.....I attended Negara Crescent to examine a vessel that was moored there.

And did you go on board the vessel?.....Yes, I did.

Do you recall the name of it?.....The Four Winds.

Thank you. And just generally at this stage, what did you do onboard?.....Generally I was there to have a look at the vessel to see if I could see any blood staining and generally just to have a bit of a look and see if there were signs of disturbance or any other biological material that might be of use forensically.

And did you collect anything from there?.....Yes, I collected several samples over a period of time from there.

In the main, how do you do that – or how did you do that?.....If we see stains, so specific stains or areas of interest that we want to sample, we take a swab. Now a swab basically looks like a really

long cotton bud that you might all of seen, it comes in a case which is sealed, and it's a sterile swab inside the case. So we break the seal, take the swab out, add some sterile water to the tip and then wearing gloves and masks and appropriate protective material we'll rub the swab on the area of interest and we're hoping that we're going to transfer some of the material from that area onto the swab head. The swab then gets replaced back into the case and the case is labelled, usually with the case and item number and where the sample has been collected from, and then would go into usually a brown paper bag which again is sealed and has a continuity label on the outside of it.

Thank you. On the 30th January did you do something?……Yes, I attended the Four Winds.

The 30th January did you see something at Police Marine Services building?……Sorry, yes I did.

What was that?……I attended the Police Services Building to examine a dinghy, a partly inflatable dinghy, with a rigid base, which again I did the same thing I examined for the presence of biological material.

Thank you. As well as taking swabs did you use a particular substance or other tests on these?……Yes, if we're looking for – in this case, for example, if we're looking for blood we use – well there are two classes of tests that we can use. We can use a test called a screening test or a confirmatory test. So in this case I used a screening test. A screening test is a test that's very very sensitive for the substance that you're looking for but it's not necessary specific. So in this case I used a chemical called liminol which is a screening test for blood. It's a chemical, it's a liquid, so basically what you have to do is you have to turn all the lights out you then spray this chemical around and you look to see if any areas are glowing and if that's the case then we circle those areas turn the lights back on and then we'd have a closer look at them and maybe sample them if we were interested in them.

Thank you. While we're speaking of this generally – could the witness be shown P38, the third set with the green band in the large folder. Does the photograph marked 13 show the dinghy that you examined?……Yes, that's correct.

As we go through it and could you come perhaps to photograph 21, and what does that show?……This is a photograph that was taken to show the areas that glowed with the luminol screening test for blood. It's – what happens is the chemical glows quite – the glow isn't very

strong. To take a photograph you need a very long exposure so that's why it looks a bit blurry, because of the long exposure, but yes, you can see quite clearly there are some positive areas there with the chemical.

Yes. And when you look at those do you – are there particular strengths of the reaction that you can take note of?……Yes, what we – well we take note of several things when we spray luminol. We take note of the strength of the reaction and how long lived it is, the actual colour of the glow that you see and just the manner of the reaction itself, so whether it's a constant glow, whether it might be sparkling or you get a bright flash which then dies down, because with experience you can distinguish sometimes between false positive reactions with luminol and true positive reactions with luminol and how it reacts, the colour, the longevity is all an indication of that.

Thank you. Right, now after you – well during your examinations you took notes, I take it?……That's correct.

And did you later prepare a report based on your recollection and your notes?……That's correct.

And was that report dated the 12th June 2009?……Yes, that's correct.

I'll show you this document please……..Thank you.

Is that the report you prepared?……Yes, it is.

Are its contents true?……Yes, they are.

I tender that, your Honour.

EXHIBIT #P62 – REPORT OF DEBRA McHOUL DATED 12TH JUNE 2009 – TAKEN IN

MR ELLIS SC: I ask that copies be made available to the jury. Thank you. And I'll take you through that, Ms McHoul. So that it sets out that you attended Four Winds at Negara Crescent, Goodwood?…….That's correct.

And you found in the cockpit a latex type glove?…….That's correct.

And it's all correct; a small blue towel/face washer was present. You said that the wheelhouse was relatively undisturbed, except the small silver coloured dish of tobacco, what appeared to be tobacco was there, and you said that red/brown apparent transfer staining was

apparent on the steps. Could you explain that to us please?.....Yes, certainly, when you're talking about red/brown staining or staining that you suspect to be blood, it can broken down into two broader categories; and the two broader categories are transfer type staining and drop type staining. So transfer staining is really exactly what it says. So what that means is that an object that's been wet with blood at the time has come into contact with another surface or another object and has transferred some of the staining to that.

Okay. Thank you. Now your report notes that the EPIRB bracket was empty and the saloon was in disarray with cushions upturned on both sides of the room?.....That's correct.

So the floor appeared to be unscrewed and some of the carpet squares appeared to be - - and the saloon steps were not in place and were leaning against seating at the right of the saloon. You say that numerous red/brown drops, some less than one millimetre in diameter, were present on a wooden panel to the right of the wheel – the wheel controls housing and this panel formed the port side of the entrance way to the saloon. Could you please be shown P03 – the first set of photographs – that's right, and perhaps we could use – we might – yes, it might be convenient too, your Honour, to use the CD, P4. Thank you. If you can see the numbers and get us, if you can, to number 31. Perhaps it might help to locate also to look at 30 and even 29. Just start at 29 perhaps.....I think that's a good idea.

That's a good what?.....That's a really good idea.

So what do we see there?.....We see a view back if you were standing in the saloon, or what I've called the saloon.

Mm.....If you're facing back towards the entrance into the wheelhouse of the boat that's the view that you see.

Yes.....On the right hand side you can see there's a wooden panel with a white circular object in it, which I think is a vent, and this is the panel that I'm talking about when I say I saw several red/brown stains.

Right. In fact this is the panel which you speak of in the report where you say:

> *Numerous red/brown drops, some less than one millimetre in diameter, were present on a wooden panel to the right of the wheel – part of the wheel controls*

housing and this panel formed the port side of the entrance way to the saloon.

…….That's correct.

You – and you say that:

Some of these drops appeared to exhibit directionality, including some that appeared to have struck the panel at approximately ninety degrees.

First, what do you mean by 'directionality'?…….Well when you're talking about – as I said, there are two broad groups of talking about blood stains, this is the second group that we're talking about now. So we're talking about drop type staining. When we're talking about directionality with drops it's all based on the shape of the drop itself. So those that I say appear to have hit the panel at approximately ninety degrees are approximately circular in – in their shape. When I say they exhibit other type of directionality that means that they're elongated. So that means that they're longer than they are wide. And if we drew a line through the longest part of the stain then that would give you the axis along which they've travelled. And sometimes you can tell, again by the shape of the stain, in which direction along the access – axis that they might have travelled.

Okay. Your report continues that:

Some apparent perimeter stains were also present.

What does that mean?…….A perimeter stain is a stain that has dried to some degree and has then somehow been wiped or disturbed in some way, so that the majority of the stain has gone but it leaves a visible outline or a visible edge as to where the original stain was.

Right. Now if you could through 30 to 31 and tells us what we might see there, and 32?…….Okay, so 30 is really just trying to get a more ninety degree angle photograph of the panel that you saw in the previous photograph. And again, I think – I think that photograph is trying to show some of the staining. So if I zoom in –

Okay. …….- I can see quite clearly here, I don't know if it's very clear on the large screen, that there are several stains that I'm outlining with the mouse.

Yes…..You can see the individual stains within there. You can see that some of them, if I go in a little closer, you can see that they are

slightly elongated, so they are slightly longer than they are wide, showing that there is some indication that they've travelled along an axis. If you think about going from the saloon upwards at a diagonal towards the back of the wheelhouse maybe, in whichever direction, but that kind of an axis. And you can see, for example, that one there – sorry, the one in approximately the middle of the screen and to the left of that are again approximately circular so appear to have hit at about ninety degrees so – so straight on to the panel.

And as we go through 31, 32, 33, perhaps you could - .....Okay. There is more staining towards the bottom that I've just come down to, so there's more staining on the bottom, towards the bottom of that panel. Again all of the dark stains that you can see there ought to be the same but they weren't all tested, but they appear all to be the same and I have assumed that they are. Okay, so that's a closer up view with more light of the staining that was in the approximate middle of the panel.

What number are you on there please?.....32.

Okay. These are very small drops are they?.....Yeah, several of them – well they're all smaller – sorry, let me start that again. If you bleed from a wound and the blood falls to the ground just by the act of – falling under the act of gravity for example you get quite large stains, quite large drops, and they're called passive drops. Now if that falling under the effect of gravity alone has been affected in anyway by a force, what happens is that the drops are broken up so that they become smaller and what you see here, in my opinion, are smaller drops so you've had blood that's been acted upon by some force. And the smaller the drop the greater the force that's been applied to it to produce it.

Thank you.

HIS HONOUR: Could I just ask, that appears to be a scale on that label, are you able to say what the dimensions of the squares are on that label?

WITNESS: That's a police scale, your Honour, so I'm not completely sure.

HIS HONOUR: All right, well I won't ask you to guess, thank you. Mr Ellis.

MR ELLIS SC (Resuming): Thank you. I think we're on 32 at the moment, Ms McHoul?.....Yes.

33, we're sort of working around that vent a bit, are we, that's the photographer?……Yes, that's correct. Yes, so you can see the vent there. You can see on the bottom of the vent there's an obviously directional stain.

Mhm, but caution should apply to that, should it not?……That's correct.

Why is that?……When I looked at the vent you can actually twist it, so you can turn the vent around, so I actually disregarded that stain as far as any kind of directionality was concerned because I don't know what position the vent was in and when the blood was deposited on it. So yes, it's a nice directional stain but I can't tell what position the vent was in when it was deposited.

Yep, and 34 is a closer up of that stain?……Yes, that's correct.

Thank you. Do you recognise what's shown in photos 35 and 36? We're still on the same panel generally?……Yes, that's on the same panel and that's further over, so – sorry, it's quite difficult to explain.

That's okay……..So that's the edge closest to where the wheel would be situated, so where the controls would be situated.

Yes…….So the other – so if you have – sorry, if you have a panel with the vent in the middle and the staining I've been talking about, if you're looking straight on to the panel, is approximately to the right and below the vent, this staining is actually more towards the left.

Thank you. 36, does that – I'll wait 'til you get it – still appear to be a staining of the same substance, but was some of it a different type?……Yes, the stain at the top is the stain that I called an apparent transfer stain, so that's the type of staining I've said might occur if a – if two – if surface wet with glue has contacted another surface or vice versa – and the stain below that that you can see there, that's what I've called a perimeter stain, so you can see that there is quite heavy staining around the outside and then no staining in the middle. And as I said, that's an indication that – that the stain – I'm assuming this is blood, that the bloodstain has partially dried and then something has wiped through it, or contacted through it, which has taken the centre part of the stain away. And they're - both of those stains are towards the bottom of that panel.

Thank you. And 37 and 38?.....So that – I think that's just a far view that the police officers have taken just to demonstrate exactly where the panel is.

Thank you. 38 shows something, does it, of reference to your report but not the actual – well your report says:

> *Two red/brown drops were present on the starboard panel in the saloon adjacent to the entry way –*

This is on the second page of it:

> *- adjacent to the entrance way and a single red/brown drop was seen on a toilet roll and in the saloon on the port side of the entrance way.*

.....Yes, that's correct, you can't – unfortunately you can't see on this photograph, but it's a good photograph just to demonstrate exactly where I'm talking about. This is if you're standing in the saloon, again facing back towards the wheelhouse, and this alleyway or corridor, whatever you would call it, here, the panel that I've just been showing you is – is – is on the right there, so the right edge of that. So if you were standing facing the wheelhouse this is the control panel that you would see, and this is what I've called the 'twelve volt panel' and towards the bottom of this panel there was a single red/brown stain.

Thank you. Now you took swabs from these – some of these drops?.....That's correct.

And did you give them numbers?.....Yes, I did.

Perhaps if you can take – if I can take you to the third page of your report and at the bottom you say you collected the following items from the vessel and the items are listed and they're given a number?.....That's correct.

All right. Now what's the purpose of that number?.....That number is to identify them so that – each case at the laboratory is given a case number and then each item within that case is given a unique number as well. So when samples are collected at the crime scene, or at a scene, they are given an individual number to identify them and that's what those numbers are there.

Yes. So when you turn the page is it the case that the numbers, 53, 54 and 55, relate to swabs taken from the stain that we've being looking at just now?……Yes, that's correct.

And within the Forensic Science Service laboratory those numbers are kept aren't they and if there are later analyses done by different scientists they relate to the numbers that you gave it?……Yes, that's correct, they maintain their numbering right throughout all of the analysis so that any subsequent result can be then tied back to what the sample was and where it was taken from.

Can I take you back then to the second page your report you noted that there was a bracket possibly for a fire extinguisher which was empty?……That's correct.

I'm sorry, I don't mean to – just the sentence above that when we're talking about a drop on the 12 volt panel you say –

> *It seems unlikely that this stain could have been deposited at the same time as those on the panels and the wheelhouse.*

Why is that?……Well you saw the staining on the panel at the side of – what I called the panel at the side of the wheelhouse, which is where all of those red/brown stains were, and you could see that in some of the axis of their directionality was on the angle as I told you, so from the saloon into the wheelhouse, where they've hit that wall, or that panel, this stain then is on the front face of the 12 volt panel, and although I'm not saying it's impossible I can't see how that could easily have been deposited in that direction and the rest of the staining in that direction at the same time.

Your report then refers to:

> *The seat back vertical cushion for the starboard saloon had several brownish stains, two of which were tested and positive with the HS screening test for blood.*

What's the HS screening test for blood, please?……This is a different screening test, so we have two major screening tests that we use for blood at the laboratory. One of them is luminol and that's for looking for very trace amounts of blood, the HS, HS stands for Hemastix, so the Hemastix is again a screening test for blood, so again it's sensitive but not necessarily specific, and what that is, it looks like – well what it is in fact is a plastic strip with some chemicals impregnated on the end of it and if you've ever been to

your doctor and you've given a urine sample and he's dipped something into it and then had a look it's very similar to that. It's exactly the same test that a doctor would use to test for blood in urine, for example, and we use it by taking the test strip out and just rubbing it on the stain slightly to get a little bit of transfer and adding a drop of water and then looking for a colour change and if we see a colour change to a green colour, from yellow to green, then that gives us an indication that our screening test is positive.

Right. Now you referred to the seat back vertical cushion, could you look at photograph 78, please, of that set. Is that the cushion to which you've referred?……Yes, that's right, those big black circles that I've drawn on there, they actually correspond to luminol positive areas, but then what happens is that with luminol when you get a positive result you turn the lights on and you have a really close look at the areas that are positive and within some of those areas I saw some very small brownish stains that were positive with that screening test. So to enable a better analysis or certainly a closer look we packaged that up and actually sent it off to the lab for analysis.

Okay. Is it the case that you collected a sample or a swab there and gave it the number 78 – no, I don't think it is the case – perhaps 65?…….Yes, it wasn't a swab though, it was the actual whole seat cushion that we collected and took away.

Okay. Yes, I see, so that's a seat cushion, and commonly when it goes to the laboratory, samples or swabs are taken from such an item – …….Yes.

- and they'll be subdivided as to numbers, 65(1), (2), (3) and so on?…….That's correct, if we – so this seat cushion, for example, is item 65. The scientist then who examined it, if they found areas of interest, they would either swab them, or in this instance, maybe cut them out because it's a – a cloth cover, and they then go on for subsequent testing. They're given what are called 'sample numbers'. So you'd have the case number and then a dividing slash, the item number which is 65, and then in brackets following it you'll have the sample, which is (1), (2), (3), (4), (5) or whatever.

So perhaps, because there's no magic, you're not writing on the report, it might help the ladies and gentlemen of the jury to – to note that at the page we're looking at, numbers 53, 54 and 55 refer to the – generally, to the drops referred to in the second – in the first and second paragraphs?…….That's correct.

And those preceding it, I think. And item 65 refers to the – the vertical cushion?.....Yes, that's correct.

Thank you. Now above that cushion you referred to the bulkhead, I don't know whether we all know what we're talking about, what's – what's the bulkhead?.....Well it was just, as you can see, the area of panelling and cupboards and – I just called it 'bulkhead' –

Yeah.....Yeah.

And that had similar brown stains through – which were tested?.....That's correct.

And you say very smallish –

> *Very small brownish stains positive of HS screening test for blood were present on the paintwork –*

.....That's correct.

> - *behind the seat cushion in the corner adjacent.*

.....Yes, that's right, so if you take the seat cover away there was some paintwork behind it and that's where there was some additional staining.

Now your report then goes on to relate the luminal positive areas as being, "On both outside walkways as possible drops and general stains", what do those terms mean?.....Well luminol, as I said, is very sensitive so what – after looking for luminol is to get some pattern information. Now I didn't really get any pattern information in this case so all that means really is that some of the stains I saw looked like a drop so looked, you know, as you would expect a drop to look and some of them were just large amorphous positive areas with no determining pattern information within them so that's what that meant.

Thank you. And there are detail where there was some luminol positive areas around, "And a strong luminol positive area associated with a visible stain was present towards the stern end of the starboard seat area adjacent to the winch"?.....Yes, that's correct.

Yes. So that's the exterior then you recorded – deals with luminol of the interior and you found luminol positive, "Elongated possible drops were present on the inside of the cockpit entry behind where the stairs would have stood".....Yes, that correct.

Okay. Now you were told that – well, I'm sorry, when you saw it the stairs were not in situ, where you'd expect stairs to be?……No, the stairs were to the left leaning against what appeared to be a seat in the wheelhouse.

Yeah. Does photograph 21 show those stairs?……Yes.

And if you imagine the stairs to be in situ then there was some luminol positive areas behind them?……Yes, that's correct, so it was fairly obvious where the stairs should sit. There were hooks and eyes where they would be fastened as you walked down into the wheelhouse, so there was staining, as I've already discussed, apparent transfer staining on the steps and behind where the steps would have been, had they been in situ, there were some luminol positive areas.

Okay. You say:

> *The shelf to the right of the wheel, possibly a chart shelf, found a generally positive reaction -*

This is to luminol still of course?……That's correct, yes.

> *- on a piece of wood with writing on it in the wheelhouse. In the saloon the table gave a strong reaction.*

And so on. Maybe this needs a little explanation:

> *The panel below the barometer and the clock –*

Can you recall where they were?……Yes, if you're – if you're in the saloon and you're looking forward you have the seating that we've been discussing, I think – I think it's the panel facing me if you're standing and looking forward, I think.

Okay. Does 42 show that?……Yes, that's correct.

And you say:

> *- gave a generalised positive reaction, that is to luminol, but appeared to have been replaced and was of a different material to the surrounding panels.*

What does that comment mean?……What that means is that - in fact you can even see it on the photograph I think, that there is a panel below that looks different.

Mhm…….When we spray luminol what we'd expect, for example, is that if a wall was all made of the same substance and was for some reason reacting with luminol we'd see the whole wall react, -

Yep……..- if that makes sense. In this instance the whole wall didn't react, just that panel below the – where the barometer and the clock is, but as I said, it looked different and it seemed to have been replaced, so my – my belief is that that was – that that particular piece of panel is giving a false positive to the luminol chemical.

A little further down you say:

> *The galley itself was generally positive, possibly due to the many metal surfaces.*

How does that happen?……One of the things that luminol will react with as a potential false positive is some metal objects, but also the chemical itself does glow slightly and if you then put that onto a shiny metal surface that will tend to enhance that glow, so again it's my belief – with experience you can often tell when this is the case, and it's my belief that – that the luminal was just reacting with the metal surfaces.

All right. Thank you. There then follows the numbers and the descriptions of where things were taken, or what – what things were taken?…….Yes, that's correct.

Thank you. Okay. And then we come to the examination that you made of the dinghy; now perhaps if you could be given the hardcopy photos as before, which were P38 – Constable Williamson's – and I believe we have a CD for that – P39, your Honour, if that could be loaded? Maybe start with photograph 13, please, Ms McHoul? You'll see if that's handy - …….Pardon?

You'll see if that's handy for you to explain various aspects? So we've got an inflatable Quicksilver brand dinghy, an orange rope attached to the bow, a small brownish stain on the top of the port side towards the stern was positive to the HS screening?…….That's correct.

Whereas, a brownish (indistinct word) stains are also positive – was that at the same area on the port side?.....On the top of the port side towards the stern – is that – sorry, is that where you are?

Yes, is it – is that where it refers to?.....Sorry, I think I – I think I've missed something, sorry. Sorry, small brown stains on the port side towards the stern – I can't point – point you to it in the photograph. I can have a look at my notes whether I have a clearer indication of where it is.

Okay. Perhaps if you could go through the remaining photographs and see – just acquaint yourself with them?.....Okay, so this are just generalised overview shots of the – of the dinghy after it's been fingerprinted. So this is the – the right side towards the front.

Mm hm. .....Any – unfortunately because I – what happened is, I gave – I gave an examination by eye and made some notes and then the dinghy was fingerprinted, so the specific stains that I might have mentioned as being brownish you probably can't see beneath the fingerprint powder, unfortunately. The stains that I've described as drop and run type stains were on the very front on the inner aspect of the inflatable area at the front. But again, you can't really see them beneath the fingerprint powder. This is towards the back, obviously, showing the left hand side or the port side. This is subsequent to the luminal examination, so the area outlined in black there is an area that was positive with the luminal screening test for blood.

Yeah.....That's a closer view of that.

All right. And does that seem to show the staining?.....Yes, it shows that there was something there that reacted, certainly. That's around the same – I think that's the same stain, and closer again. And that's just a shot of the overall dinghy and then that's the shot showing the luminol positive areas.

Right, thank you. Now as to the luminol positive areas what can you say about those, the strength of the reaction or whatever?.....Okay. The strength of the reaction in the front on the inside was very long lived and strong as was the area of staining towards the back on the port side. Unfortunately you can't really see the staining on the trim– well you can a little I think on the trim at the front, that also was strong and long lived. The area in the middle and towards the back was slightly less, gave a slightly less strong glowing reaction but was again long lived. This run down here that you can see is just the chemical itself running down towards the back. Because the glow is very pale to some extent, even though I'm calling it strong

and weak, overall even when it's strong it's not particularly bright so the exposure we spray multiple times to enable it to come out in a photograph so that's why there has been some overspray of the chemical which has then run down towards the back and pooled at the back.

Just staying with that and then looking at your report you might be able to help us. Item number 46, swab of the luminol positive area right side of the floor, could you show us where that was taken?……Yes, so that's the strong area up at the front on the right hand side that you can see in the photograph.

Yes. And, sorry, go back 43, described as –

> *Luminol positive rope and trim bow – under right side of bow.*

…….Yes, that's the rope and trim that you can see glowing in photograph here. The rope and trim is continuous from about – well it wasn't quite halfway down the right hand side, it was more towards the front than there, -

Yep…….- but there was a rope and trim that went all the way around the front to the left hand side as well and the left hand side was almost completely negative with the luminol reaction and the right hand side was positive, as you see it there.

Okay. And is 167 the number for the rope and trim front left side of dinghy?……Yes. Yes, that's correct.

Right. While we're on that page, 169 and 170 are described as 'swab control for FST item 45 and 46'?……..That's correct.

What does that mean, please?……What that means is that when we take – when we take a sample, sometimes but not always, we take a control sample or what we call a control sample, and what that means is that we're taking a sample in this case of a luminol positive reaction and because it's a fairly confined space if we get a positive reaction we want – we want to have some indication maybe that the reaction is actually coming from the luminol positive area rather than just we could've swabbed anywhere in that particular boat and got a reaction. So that's why I've taken control samples and what that means is that I've taken a swab in this instance from the luminol positive area at the right and then what I've done is I've taken an area that's not necessarily exactly adjacent to it but certainly in the same kind of area, as in being at the front on the floor of the boat.

That wasn't positive with luminol and I've taken that as a control so that the two results can be compared.

Thank you.....However the control samples weren't taken on the same night as the luminol samples were taken.

And a little time later some microscopic examination was attempted on the dinghy, is that right?.....Yes, that's correct, so because I got such strong positive reactions in the – in the dinghy I wanted to have a look at it with good light and with magnification so I asked that the boat – that the dinghy be brought to the laboratory, which happened, and I did that exam with an operating microscope and some good light but I didn't find any obvious red/brown staining in the boat.

In the – sorry?.....I didn't find any obvious red/brown staining that would correspond with my luminol positive reactions.

Thank you. Just bear with me for a minute, please, Ms McHoul. Well, I'll just ask you about – about this; a forensic biology report was compiled -.....That's correct.

- and – well in fact two were, and as I understand it, that's done under – by your – by examination of scientists or under their supervision, and this one was the 1st of July, was done partly by Mr McKenzie and partly by you, is that right?.....Yes, that's correct, it's actually been written and signed by Mr McKenzie, but some of the items within that report were done by or under the direction of me.

Okay. And were the ones that you did numbered 113 onwards?.....Yes – can I have a look at my notes?

HIS HONOUR: Is there any objection to that?

MR GUNSON SC: No, your Honour.

HIS HONOUR: Yes, have a look at your note.

WITNESS: Yes, that certainly seems to be the case.

MR ELLIS SC: (Resuming): And were they mainly samples and items taken from – from a motor vehicle, registered DOO402?.....Without sitting here and going through them all –

No.....- I don't think I can tell you that.

Well perhaps I can show you and tell you – do the jury have copies of the agreed facts now, your Honour?

HIS HONOUR: Yes.

WITNESS: Thank you.

MR ELLIS SC: Oh, can Ms McHoul have a copy too please?.....Right, thank you.

You've got one –

HIS HONOUR: No, can I – actually can I have that spare one please?

MR ELLIS SC (Resuming): And, ladies and gentlemen, the first page of the agreed facts we've inserted in your presence they were examined by Christopher McKenzie, Debra McHoul and Carl Grosser. So this relates, does it, to your examination of – well as it's described. If we look at 113 there's the set out of this report.....Sorry, Mr Ellis, I didn't hear you.

113, Forensic Biology Report of the 1st July 2009.

HIS HONOUR: So it's item 113 on page 1026 of the document.

MR ELLIS SC (Resuming): Are you there?.....Yes.

The set out of this report, perhaps you can take us through it. Number refers to the exhibit number that we've previously discussed?.....That's correct.

And then there's a description of the exhibit?.....That's correct.

And source, is that right?.....That's correct.

Where do these – where does the source usually come from to go into the report?.....Well if it's an item that's been collected by one of us at a scene then it's whatever we've written on the continuity label.

Yes.....If it's an item that's come into us from the police then again it's whatever they've written on the continuity label, we just assume that that's correct.

Yep. Okay, then to the next column, the number is 113 1234, and does that indicate that swabs have been taken?……Yes, swabs and samples, yes, that's correct.

Taken from that jacket, and they – and then the description is that they were shown to be luminol positive?……That's correct.

Okay. That's a blue jacket from a registered number DO 0402 and many of the subsequent ones, are they not, are from that same source or that same motor vehicle?……Yes, that's correct.

Okay. And is it the case that the DNA profiling that we see there is the work of Mr Grosser, the DNA profiler?……Yes, that's correct.

And that just matches up through there?……Yes, that's right.

Okay. Well we'll come to explain that in more detail this afternoon probably. Just taking you, if you could, to 159 – these are items from the dinghy, are they not?…….Yes, that's correct.

And its motor?…….Yes, that's correct.

Then we go on at 165 to a vacuum cleaner and the dinghy?…….That's correct.

And I think that's – that's all we need to go to, thank you. That's the evidence in chief, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: Go back to some basics for a moment; DNA, such as you were looking for on board this boat and on board the dinghy, can be extracted from a number of bodily substances – correct?.....Yes, that's correct.

The most common used by forensic scientists, if they have it available, is blood?.....Yes.

And that's one of the most easier samples to take, or to extract DNA from?.....Well there are several other bodily fluids that would give good results as well.

Saliva another good example?.....Yes, that's right.

Urine, to a lesser extent?.....Yes, not so good, but yes.

But blood and saliva are perhaps the basic ones with skin samples as well?.....Yes, and semen in there as well.

And semen, of course, well we're not talking about that – leave that to one side. So when you look at a dinghy such as that being used by Mr Chappell, it doesn't come as a surprise to you that DNA of Mr Chappell was found on the dinghy?.....Not necessarily, no.

No. I mean you would expect that if somebody was handling a dinghy to leave some of their DNA on it?.....It's certainly possible, yes. Yes.

Yes. More likely than not isn't it? I mean for instance if you were pulling hard on a rope, such as the rope around the side of the boat, to pull into the water or out of the water, the likelihood is that you would leave some of your DNA on that rope?.....Yes, certainly a rope's a good example because it's a rough surface so, yes.

It's a good surface, it's a rough surface, it takes a little bit of minute skin off and hence you can get DNA from it?.....Yes. I mean contact samples like you're describing tend not to be – I mean this – to be fair this isn't really my area, this is Dr Grosser's, but –

But it's within your range of knowledge isn't it?.....Yes, that's correct.

All right, thank you for that.....The – the type of contact samples that you've describing often don't give good DNA results because

skin cells are not a very rich source of DNA if that's where in fact the DNA profile is coming from but samples – sorry, something such as a rope like you're talking about that's a rough sample. If it had a lot of contact, if someone was pulling hard, as you say, then, yes, it's certainly possible that they would leave their DNA behind.

And go back a step for one moment. On board this boat, the yacht, you found what you believed to be blood samples?……That's correct.

There were no other samples from which DNA were extracted on board the boat apart from blood, is that right?……To be honest I don't know, you'd have to ask Dr Grosser – Mr Grosser, sorry.

Well from the point of view of your work, which I think was item 113 onwards, you basically didn't find anything other than blood, is that right?……Can I just have a quick look?

Yes, just go through it. Or I'll put it another way, did you do or did you test any of the samples that came off the Four Winds?……Without actually going through my notes I can't tell. I don't – I don't think I did, no.

Well we just might leave that for a moment and get back to it after lunch. You've spoken about obvious red/brown staining in the dinghy and you said a little while ago that -

> *Following the microscopic examination of the dinghy which was taken to the labs I didn't find any obvious red/brown staining in the dinghy that would correspond with my luminol positive result.*

…….That's correct.

So when you looked at your luminol positive result, you followed it through by looking for red/brown stain, which in another way – is another way of putting blood – correct?…….Yes, that's correct, yes.

And you said:

> *Therefore it was likely to be a false positive result.*

…….No, I don't think I did.

All right. Well was it likely therefore to be a false positive result?…….I – there were several areas of staining in the dinghy that, based on experience and having seen lots of reactions, I would say

probably are not false positive reactions. Now, part of the problem with luminol is that it's so sensitive it will react with dilutions of blood down to around one in a hundred thousand. So part of the problem is that you won't then necessarily see any obvious red/brown staining and you won't be able to do subsequent tests to actually confirm that what you've seen is or isn't blood in fact.

So it is common to get a false positive result using luminol?.....There are certainly other substances that will react with luminol to give false positive results. Now we've talked about metals, there are some plant substances that will also react, some cleaning products that will react, and also animal blood will react.

Yeah.....They're the main ones.

But this – you're not able to say that what you saw was not a false positive result?.....No, I'm not able to say definitively that, no, I can just tell you that based on my experience I don't believe it was.

But you can't rule it out, can you?.....No.

No. And it is a strong possible – it is a possibility that what you saw was a false positive result and you cannot exclude that?.....No, I can't, certainly not.

Thank you. Is that a suitable time, your Honour?

HIS HONOUR: Yes. The jury can make their affirmation and the Court will adjourn until two fifteen.

<JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Yes, Mr Gunson?

MR GUNSON SC: (Resuming): Thank you, your Honour. You have said in your report at page 5 of the report:

> *A small brownish stain on the top of the port side towards the stern was positive with the HS screening test for blood.*

…….That's correct.

Can you, by reference to the photographs, point out for me again, please, whereabouts on the top of the port side towards the stern that was?…….Yes, I – I couldn't see it in the photographs.

Yeah……..If I can have a look at my notes I might be able to tell you approximately where it was?

Thank you, if you would please? But better start with the basic proposition; it can't be observed in the photographs?…….It doesn't seem to be, no.

Thank you. Now if you'd go to your notes and if you could please try and find in your notes a reference to this item?…….I'm afraid I don't have any specific information about it. All my notes say, "Oh, that there were a few positive areas on the top of the left side. A positive area on the inner aspect of the left side" –

And are we talking about some very very minute sample?……If I said a small drop then, yes, it would have been a small drop.

Right. Am I right in thinking that it was not possible to extract any DNA from these samples?……With the one where I've – where I've called it a small drop I don't think, looking at my notes, that I've actually sampled that particular spot.

Right…..The area that I've said, inner aspect of the left side, that was sampled because that was hemastix positive and luminol positive and that went forward for DNA profiling so Mr Grosser would be able to tell you if we got a result from that.

Could you just, by looking at the report, tell me where Mr Grosser's identified that particular sample?……Yes, sure.

Yes, just to be quite sure we know what we're talking about.....So it's item 44.

Item 44?.....Yes, that's correct.

Right. And so we have one tiny little drop is that right?.....This was actually a slightly larger area but -

Sorry?.....This is a slightly larger area but it was the area that was also luminol positive when I sample.

All right, thank you. And it's shown here as, "Luminol positive area, weakly positive with HS screening", what does weakly positive with HS screening of blood mean?.....Well as I said the hemastix test is that little dip stick test that I was telling you about and what we're looking for is a colour change from yellow to green. Now on the side of the bottle is actually a gauge of the colour changes you would get with different concentrations of blood so it depends on the degree of the colour change as to whether we would say weakly positive or positive or not positive.

Now am I right in thinking that by using DNA processes you cannot tell the age of a sample of blood?.....That's my understanding but Mr Grosser will be able to help you further.

Mmm, I just want to know from you as a forensic scientist that is your understanding isn't it?.....It's my understanding that if you get a result you can't say how old the sample was.

In fact it is impossible to say how old it is, unless it's obviously wet and still dripping, as it were?.....From the DNA result alone, yes, I think that's true.

Thank you. Now with respect to this sample you took it?.....That's correct.

And where was it exactly?.....It was the inner aspect of the left side, in fact it's where that luminol positive reaction on the left side of the thing is.

Thank you. And how big was the stain, if we can call it that, using lay words? Do you have a description of it?.....I don't know. No, I haven't actually got measurements in here but the photographs that were taken with the scale will give you an indication of how big it was.

Thank you. Do you have the photographs with the scale?……I don't know. Yes, I think I do. I think photograph 17.

Now if we look at photograph 17 we have a scale there with centimetres on it?……That's correct.

And is it the dark areas you're referring to?……I'm sorry, I don't know what you mean.

Sorry, this area here, is that what you're referring to?……Oh no.

What are you referring to?……The area that I've actually outlined in black is – it's larger than the area that was positive because I always take a wide margin when I'm circling it to ensure that I've got all of the edges, so within that area there, and it's probably where you can actually see some –

It might be easier -…….Sorry, yes.

- if you could put that – is it possible to put that photograph up on the screen?……Yes, sure.

And then perhaps you can indicate to the jury what you're talking about -……Yeah, sorry, it's not very clear.

- because otherwise you and I are having a conversation……Yes, I'm sorry.

That's all right…….Okay, so these are the photographs there. Now when I – if you remember when I said we spray with luminol and we look for glowing areas, if we see a glowing area then I – then we circle it in some way or – or in some way identify it.

Thank you. …….And that's what I've done here with the black texta mark around the outside that you can see there.

Thank you. …….Now within this area, and I can't tell you exactly how much of it, but within this area is the area that was positive with luminol, and it doesn't correspond, as you were saying, to the area of discolouration there, that just seems to be some wear and tear on the dinghy surface itself.

Right. …….It's actually within this area here. Now there is some staining here.

Yes……..That you can see in the photograph. And –

You're not referring to that, are you?.....Well it's – it's all of that area there within that circle, yes.

Thank you. And again, patently obvious, I suppose, if it is blood you've no idea how old it is?.....I can't say – well no, if it's blood I can't tell you how old it is, except that being an object that's normally in the water, I would assume it hasn't been there for very long.

That's an assumption on your part, isn't it?.....Yes, of course, yes.

Mm, and it's an object that's on the water rather than in water, isn't it, the dinghy?.....Oh yes –

Up on the water?.....- I – I just have this mental picture of water being around and therefore it would have been washed away or diluted and whatever.

That would need the dinghy to have been the subject of water crashing in from the sea or somebody hosing it down or something, wouldn't it -.....Yes, or –

- and you would know -.....- being tipped over or whatever – yes, that's right.

None of which you know happened?.....No, of course, no.

No – thank you. Now whilst we're on the subject of the dinghy, and we'll come back please to the subject of false positives; is petrol or outboard motor fuel, which consists of a mixture of petrol and oil, a substance that would return a false positive when using luminol?.....It certainly shouldn't, no, there is no chemical basis for that to react with luminol.

Right. But as you've already said, some detergents and chemical – cleaning chemicals will result in a false positive being returned?.....Yes, cleaning chemicals, not detergents but cleaning chemicals that are based around bleach or substances similar to bleach will often give a false positive reaction with luminol.

Thank you for that. Now would you just explain one thing to me and no doubt it will benefit the jury. I appreciate that you didn't actually do the DNA test but could I take you to item 20. We've got there an item that says:

Swab luminol positive area 11 possible drops negative with HS screening test for blood.

……..Yes, that's correct.

Now what you've got is it's luminol positive, so the first conclusion you reach, unless there's some evidence to the contrary, I suppose is that you could take that to be blood?……Well no, I certainly don't assume that it is, it's certainly a possibility.

It is a possibility because of the problem with false positives, yeah…….That's correct.

Now we then get a figure at the bottom, person E, who we now know as Meaghan Vass, one in a hundred million, how do you – does that – as I understand it correctly that means the chance of it being anybody other than Meaghan Vass is a hundred million to one, is that right?……You really need to talk to Dr Grosser about the statistics.

Right. You're not familiar with the statistical side of things?……Not particularly, no.

But you have a rudimentary understanding, don't you?……Yes.

And what your rudimentary understanding is, and that is that what I put to you correct?

MR ELLIS SC: Well it's depending now whether my learned friend's properly leading opinion evidence. A rudimentary understanding I might have too, but I don't put myself up as a DNA expert.

HIS HONOUR: Well Ms McHoul, is your understanding based on your study, training or experience in connection with the field of science in which you practise?

WITNESS: Well, your Honour, I guess my understanding –

HIS HONOUR: Well don't say you guess.

WITNESS: No, sorry, sir. My understanding is based on what I've heard being discussed by the other scientists in the laboratory.

HIS HONOUR: Based on your experience working with forensic scientists as a forensic scientist?

WITNESS: Yes, but I'm certainly not an expert in the statistical interpretation of DNA profiling.

HIS HONOUR: Yes, well Mr Ellis, do you want to take this any further?

MR ELLIS SC: I maintain the object, I mean given that we're having Dr Grosser along soon the asking of - giving evidence outside the area of expertise of someone who says she's not an expert in it in my submission can only serve to mislead.

HIS HONOUR: Well it's not a question of whether she calls herself an expert it's a question of whether she qualifies as one for the purposes of the Evidence Act. If I need to give a ruling I'll give a ruling. I'll ask the jury to go to the jury room please.

<THE JURY RETIRED

HIS HONOUR: So what precisely is the question, Mr Gunson?

MR GUNSON SC: I want to know whether she's able to translate effectively in lay terms what the – appears in brackets one in a hundred million and I put to her that what – it's my understanding I put to her was that it means the chances of it being anyone else would be one hundred million to one.

HIS HONOUR: All right, well – now, Mr Ellis, do you want to say anything in relation – well first of all do you – should – is there anything that you want to ask the witness on the voire dire?

MR ELLIS SC: Yes, if I could.

HIS HONOUR: All right, swear the witness on the voire dire, the same oath.

MR ELLIS SC: Oh, actually, your Honour, no, I'm happy to leave the evidence as it stands.

HIS HONOUR: All right. Mr Gunson, are you happy to leave the evidence as it stands?

MR GUNSON SC: Yes, your Honour.

HIS HONOUR: All right, well what's your submission, Mr Ellis?

MR ELLIS SC: The witness has said that he has a rudimentary knowledge of the statistical interpretation gained by hearing people with such expertise speak about it in the laboratory in which she works. The cleaner might get that, with all respect to Ms McHoul, the cleaner there might develop the same degree of expertise. And to underline the danger of the question, as I understand it, my learned friend is putting it in terms of what's often referred to as 'the prosecutor's fallacy'; that is odds of a hundred million to one, whereas, the - well I won't – I won't say it in the presence of this witness in case you allow the question, but he's introducing the prosecutor's fallacy, so called, through a witness whose expertise goes – is claimed to come from no more than hearing other people with expertise talk about it.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I don't think I need to make any further submissions, your Honour, I submit the question is allowable on the

basis that it's being put with the expertise this witness has. She is, after all, a forensic scientist of quite some years experience.

HIS HONOUR: All right, well the position is that the – the witness is a forensic scientist, she's worked as one for nineteen years. She's got a Bachelor of Science Degree with Honours and a Master of Science Degree in Forensic Science. She's made it clear that the – that the significance of DNA probability statistics is not her field but that she has heard people that she works with and has worked with who one would – who work in the area discussing such statistics. s79 of the Evidence Act makes evidence of somebody's opinion admissible if that person has specialised knowledge based on the person's training, study or experience. The witness' understanding of the statistics would appear, from what she said, to have been based more on experience than on training or study, but she's a forensic scientist who has specialised knowledge in relation to DNA and if she has an opinion as to the significance of a particular statistic then in my view she's entitled to express that opinion, it falls within the scope of what's made admissible by s79. So I'll permit the question, we'll have the jury back.

<JURY RETURN

HIS HONOUR: Mr Gunson.

MR GUNSON SC (Resuming): Thank you, your Honour. What is your understanding of what the expression 'one in one hundred million' means in item 20, which relates to Meaghan Vass?……My understanding, as not a DNA scientist, just as someone who has worked in the forensic biology field, is that the figure means that the chance of finding someone unrelated in the population that would also match is around one in a hundred million.

And if a person has a twin we could normally get a match from the twin, in fact we would always get a match from the twin, don't we?….I believe so, yes.

All right. Thank you for that. Are you familiar with how the data base at Forensic Services is updated?….No, I'm not.

All right. When I say the data base I mean the DNA data base….Yes. No, I'm not, I'm afraid.

Thank you for that. Now, generally speaking, attempts to remove blood stains by ordinary domestic household cleaning methodology will not remove all blood residue for the purpose of a Luminol test. In other words, if a blood stain has been cleaned up, you can still, generally speaking, use Luminol to find it?….In many instances that's true yes.

And depending on the quality of the cleaning, the chances of finding blood increase or decrease accordingly…Yes, the quality of the cleaning, the amount of cleaning product or the amount of water that's gone over the item in question, there are a whole of variables, but yes, it's certainly possible for someone to attempt to clean blood up and for us to detect it with Luminol.

It doesn't necessarily follow just because someone cleans up what they believe is a blood stain that it will not be able to be detected using Luminol?…..No that's correct.

Thank you. And that's one of the beauties of Luminol from the point of view of forensic scientists, they can come into a place that's been ostensibly cleaned up after an offence where blood's been spilt and still find the blood stains……That's certainly why we use it. Sometimes it's successful and sometimes it isn't but yes – that's often why we use it.

If I can ask you please if you look at item 162 for me. Have you got that in front of you?.....I have the part of the report potentially.

Part of the report – thank you. That relates to the outboard motor, the Mercury 3.3 motor?.....That's correct.

Now I note that there's an entry there:

No red/brown staining was seen.

.....That's correct.

Then we move across to the description of the sample and it's a swab from the rubber handgrip on the tiller control?.....That's correct.

Then appears this entry:

Weakly positive with HS screening for blood.

Then the next entry:

No attempt to confirm presence of blood.

.....That's correct.

Was there a reason for that?.....Yes, when we take a swab of an item, even if we haven't seen any red/brown staining, often we will place it onto Hemastix just to see if there might have been something that we didn't see.

Right. .....So in this case, that's what's happened and we've got a weakly positive result. Now if we have a swab where there's no obvious red/brown staining on it from a sample, even though it's weakly positive with our screening test, we'll often not then go on to try and confirm the presence of blood simply because we don't think there would be enough there, even if there was any there, to get a result.

Right. And this is a classic example of this, isn't it, this idea that there's been no blood detected and the mixed DNA profile has been found by something other than blood?.....I certainly can't say that there was any blood present or not, because I haven't made any attempt to confirm it, but I do have a positive screening test.

So if we're looking at this item, 162 -.....That's correct.

- we can assume that no blood was found during testing?.....No – no red/brown staining was seen.

Yes.....I have a weak positive screening test.

Yes.....And I haven't attempted to confirm the presence of blood, so I don't know whether there was any blood present or not.

And when we see that expression "no attempt to confirm presence of blood" in other items the same proposition applies?.....That's correct.

Thank you for that. Would it be fair to say this, that you tested the entirety of the inside of the rubber dinghy and the surrounds – the surrounds of the dinghy?.....Tested with?

Looking for blood stains.....Yes, I certainly looked by eye that night, or that day, at the police services building and I used luminol, as I've explained to you, and then I did have the dinghy brought back to the laboratory so that I could examine it with magnification and in good lighting conditions and I didn't find any red/brown staining with the microscope.

Thank you very much. You took item 20 from the deck of the Four Winds is that right?.....Yes, I did.

And it was on the starboard walkway – now at that stage Four Winds was at 6 Negara Crescent, Goodwood, which is where CleanLIFT Marina is?.....That's correct, yes.

And that's a secured type compound area where boats are kept?.....Yes. I don't know how secure it is but it's certainly a compound where boats are kept.

It's a gated area?.....Yes, I think so, yes.

You drive in through big gates to get in there?.....Yes, I think you do, yes.

Right. And Four Winds at this stage was it still tied up to the jetty or had it gone onto hard standing?.....No, it was at the jetty.

All right. Now whereabouts did you take this swab from?.....Can I refer to my notes?

Yes, of course……Sorry, yes, area 11. It was about 9.45 metres from the for'ard end and –

The for'ard being the pointy end, the bow?……That's the – yes, that's right, yes.

Thank you. Right. 9.4 metres back from the bow?……That's correct. It was on the starboard walkway. It was about 250 millimetres from the starboard rail, so whatever that is, about 250 – 25 centimetres, and the area was approximately 210 by 260 millimetres in size.

Right, we'll come back to that in a moment. Could I invite your attention please to P3 photograph 7 and 8 and you might also look at photo 4, please.

HIS HONOUR: There is no P3, photo 4.

MR GUNSON SC: No, no, sorry, it's the way in which the number's on the little white dot, or my bad eyes, it's photo 2. (Resuming): Now using photo 7 or 8 does that assist you as to where you found this area that you've described?……No, to be honest it doesn't, no. I – there were some photographs taken with the luminol positive areas circled but I – I'm not sure that they were taken by the police Forensic Services officers, they might have been taken by people from the laboratory.

Mhm……So no, it's not marked on that photograph, I'm afraid.

You didn't draw a plan or anything at the time?……No, I didn't, I relied on the photographs that we took.

All right. Now -……..So except to say 9.45 metres from the bow, I'm afraid no, I can't help you.

9.45 metres from the bow on the deck, on the walkway of the deck, what -……..On the right hand side, yes.

Yes, the starboard side?……Yes.

And what you're talking about is that area below what's obviously the accommodation I'm showing you here with my finger in photo 2, is it?……Yes.

If you looked at photograph number 2 -……Yes.

Do you have it in front of you?……Yes, I do.

That's the port side of the vessel, the left hand side?……Yes.

So we – to find where you found this particular stain we come along the side 9. – what was it, 45 metres?……Approximately, yes.

Right, and whereabouts do you think approximately that was on the boat?……Oh –

Just looking at the photo……I'm very bad at estimating distances, I'm afraid.

No, that's all right, just do the best you can, I'm trying to find out where you found it…….Yes, I would think it would be on the walkway somewhere adjacent to, as you say, that accommodation or the saloon or whatever we call it.

Mhm…….On the right hand side.

Can you point – can you point to roughly where you think it was?…….I'd have thought approximately there.

HIS HONOUR: On the other side of the boat?

WITNESS: On the other side of the boat, your Honour, yes.

MR GUNSON SC: (Resuming): Can I have a look at that please?…….Oh sorry, yeah, but I am very bad – notoriously bad for estimating distances, I'm afraid.

All right. But it was somewhere in that area on the other side. If you look at photograph 8 and photograph 7, you'll see that there appears to be an entry point on the starboard side onto the deck where there's a boat next to the Four Winds – do you see that?…….I do.

And if you look across to the other side as well, you'll see there's another entry point on the other side of the deck. Was the swab taken from anywhere around that entry point – in that rough area?…….Based purely on memory alone –

Yes……..- my – my memory is that it would be forward of the gate.

Right. How far forward, do you think?…….Look I don't – I don't – I really don't think I can answer that.

Mm hm. …….If – if you know how long the boat is then you'd be able to give an estimation –

I can tell you that, it's fifty three feet……..Oh great –

Yeah, I know, you have to convert it into metres now?…….Fantastic. Okay.

Can you can that, can't you?…….Well if I assume six feet is about two metres – that's about right, isn't it?

That's right. I wanted Mr Ellis to help us here, your Honour, he's shrugging his shoulders. …….Okay, forty two, forty eight, fifty three – so it's about nine or ten metres, is that correct – no, nowhere near –

You're the scientist……..Oh – '

Just take your time?

HIS HONOUR: Well it's about seventeen metres, isn't it, a foot's –

WITNESS: Yes, that's about right, yes.

HIS HONOUR: A foot's point three o four eight – am I right about this – twenty five point five four multiplied by twelve, you get point three o four eight metres and multiply that by fifty three, you get about seventeen.

MR GUNSON SC: (Resuming): So it was slightly over halfway along the boat?…….Yes.

On his Honour's figures?…….That's correct.

Thank you. And if I was to say to you, the likelihood that it is reasonably close to that gateway, you wouldn't quarrel with that?…..No.

Thank you. Now give me the size of the area that tested positive….Yes, well approximately 210 by 260 was the size of the area that I drew, so the actual area that was posited would be slightly smaller than that.

This is mils…..Millimetres, yes, correct.

And you've got here " Possible drops" What caused you to write that?.....It's very difficult with Luminol – we do use Luminol for pattern information, but where you get drops it's very difficult to tell whether you really have got a stain that was in the form of a drop or whether you've got a drop having just come off the bottle that you're spraying with, so just to prevent any possible confusion at a later date, I made the note that there were possible drops there.

Right. And does that mean possible drops from your spray or they were possible drops of something on the deck?.....That's correct, either of those things.

Either of those. But in - ....But with Luminol also sorry – it's very difficult. If you see a stain that's round or elongated, because you've got no visual cues apart from the Luminol, you really can't tell whether that is a drop-like stain, or whether that's a stain that's got there from transfer for example, that just happens to look like a drop. So it's not like you're looking at a red/brown stain and being able to tell with any level of definity.

Did you take any photographs of this particular stain?....The Luminol positive?

Yes?....No, not whilst it was glowing, no.

Not whilst it was glowing. And it was a strong glow. Read your entry, will you?....My entry just says literally what I told you. It says " Area 11, approximately 9.45 metres from forward end, approximately 250 millimetres from starboard rail and approximately 210 by 260 millimetres on the starboard walkway.

Right.....So it was a reaction that I felt I should circle and then sample because that's what we do.

So it was negative of HS screening test for blood?.....That's correct.

Correct. Are there any other screening tests that you could have, or should have applied to determine what the substance was on the deck that had returned the Luminol positive result?.....There are certainly further tests that could be done however as a standard practice, I guess you'd say, if we have a luminol positive stain then really the only tests that we apply are those tests that might help us to determine that it's blue because luminol is the test that we use for blood. Now because luminol is so sensitive it's possible that there was a very tiny amount of blood mixed in with some of the body fluid which I think might be what you're asking me.

Yes.....So saliva or something like that. And, no, we don't apply tests for that, to those kind of samples.

So it is a reasonable hypothesis that there was a tiny amount of blood mixed in with whatever the sample on the deck was that returned the luminol positive result?.....It's certainly possible, yes. Or it's possible that the luminol positive result had nothing to do with what then gave that DNA result and they just happened to be adjacent to or on top of each other.

So saliva might be an answer, somebody who spat on the deck for instance might have just a weeny amount of blood in their saliva which would turn the luminol positive result?.....Yes, I think saliva is a possibility, certainly.

And possibly an abrasion from skin by say kneeling on the deck or having your hand on the deck and running it along, could that do the same thing?.....Yes, it's certainly possible.

What about human sweat?.....I would think it was very unlikely that sweat would give a luminol positive reaction.

It's a possibility though?.....I don't think straight sweat, no, and I can't think of a scenario where you'd have a lot of sweat with a little bit of blood mixed in.

Right. And I think you've said that urine isn't a particular substance that would produce a luminol result unless there was some blood within the urine?.....Yes. Again, if there was urine with a small amount of blood then, yes, you would get the luminol reaction because the luminol is reacting with the blood rather than what else is there.

So is it your belief that it is more likely than not that whatever was on the deck contained a tiny amount of blood which was responsible for the luminol positive result?.....If the luminol positive result is a true result and not a false positive, as we were discussing earlier, then there has to be some blood there for it to be a true result, however I've no way of knowing whether that's the case or whether it is a false positive.

Now the DNA testing is described as a full DNA profile. Now that DNA profiling of course doesn't attempt to determine what the substance is that's being tested for the DNA, it merely returns the DNA result, doesn't it?.....Yes, that's my understanding, that you

get exactly the same DNA profile irrespective of which body fluid or contact sample or whatever you're going to – if you get a result from a contact sample they'll all look the same.

Thank you for that. Just bear with me, your Honour. When you saw the dinghy was the outboard motor still attached to it or had it been removed?……Sorry, I've lost my notes. I don't have any notes to say so, but my recollection is that the outboard was removed from the dinghy during that day.

Yes……..And then I came back later in the day to examine it.

Thank you. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I don't wish to re-examine, thank you, your Honour.

HIS HONOUR: Yes, all right, thank you, Ms McHoul, you're free to go.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: I call Christopher McKenzie, your Honour.

<CHRISTOPHER GUY McKENZIE CALLED AND SWORN

HIS HONOUR: Take a seat. Yes?

<EXN - MR ELLIS SC: Thank you. Mr McKenzie, your Christopher McKenzie?.....Yes.

Is that your full name?.....Christopher Guy McKenzie.

Thank you. You're retired?.....I am.

And apart from excursions like this from what you retired from?.....Yes.

Which was as a forensic scientist?.....That's correct.

And your qualifications?.....I hold a Degree of Bachelor of Medical Science from the University of Tasmania and I was a forensic biologist. I started in 1981 until earlier this year.

Thank you. And most of that service in the – what's become the Forensic Science Service of Tasmania, is that right?.....Yes.

Thank you. In that capacity you received and examined items relating to this investigation?.....Yes.

Thank you. And you, in conjunction with others, prepared a report on the 1st July 2009 which is before the Court?.....Yes.

And a further one on the 14th December 2009?.....Yes.

Thank you. Is the situation that exhibits come to the Forensic Service laboratory and are not always personally received by you but come to you for examination or overview of examination?.....That's correct.

Thank you. And when they come are they usually or were they in this case in particular bags and in particular shape?.....They're sealed and they come usually in brown paper bags which are sealed with some sort of seal, usually adhesive tape, with a signature or date across them.

Okay. Would you look at this item, please. Before you get to work on the scissors -.....Yes.

The bag itself, does that show what's called a continuity label?……Yes, the continuity label is the label on the front, yep.

Yep, and that's the persons between whom the bag and its contents have been transferred?……That's what it is supposed to record, yes.

Yes, and does it have a Forensic Service exhibit number?……Yes.

What number is that, please?……It's got a case number and a –

Case number first, yeah, the exhibit?……0900608.

Yep……..And then the item number is 109.

Right. And all being well, if we looked in your report for 109 we'd find it's a jacket?……Yes.

A red padded jacket. Would you open the bag, please, to – thank you, Mr McKenzie, that's an item that you examined in connection with this matter?……Yes.

Yes, I tender the bag and the item, your Honour.

EXHIBIT #P63 – BAG AND JACKET – TAKEN IN

And with the assistance of your report could you tell us what you did with that item?……All right, I examined it to see if I could see any blood on it.

Yes, did you see any?……Describe what it was and there was a five cent piece in a pocket and described that. Said that I couldn't see any blood, which I was looking for in this case, and then tested it with a – the luminol screening test for blood. This was positive in a few areas.

Right. Including a button - ……One button, yes.

Yes. And was that a front button that you would do up once the jacket was on, were you wearing it?……It's the second bottom button.

Yeah. And on another area you found – you found a weak positive on a different test is that right?……With the – well I've tested it with luminol and then I've done a second screening test called the hemastix test, both are screening, so with the button it was negative

with the second test. There was an area on a zip flat which with the second test was weakly positive and there was an area on the left shoulder which was again negative with the second screening test.

Right. Now your report would indicate that you – from that exhibit 109 you took several swabs?……That's correct.

Right. How many in total did you take?……Five in total.

Right. And the one that you labelled one was from the inner surface of the collar and cuffs, is that right?…….Yes, that's correct.

Right. Was there any particular reason you chose those areas?…….It's the area on a garment that we think is most likely to have had significant skin contact from a person wearing the garment –

Yes……..- and so, we sample there to try and obtain the DNA of the person who may have been wearing it.

Right. Thank you. Now to return to your report -…….Yes.

- the jury have become a little familiar already with the form of it. I want you to look at the very first item, the Dolphin torch, and we've tendered in this case, it's P06 – if the witness can be shown that please?…….Yes.

Now your report mentions – or actually says that you found some scattered red/brown stain – or this is the one you examined, is it?…….Yes, this is the torch.

Scattered red/brown stains, largely on the right side, rear and up the front, including drops, transfer stains and some apparently diluted stains……..Yes.

Can I just take you through those a little more carefully?…….Yes.

Can you show us where the stain – the scattered stains were?…….What I've – I've outlined them in red, so where I saw what appeared to be blood stains, red/brown stains, I've outlined them in red. You can see them on the yellow fairly easily but they're also on the black.

Yeah. And these are – these are very small blood – blood drops, are they?…….Yes, the ones that appeared to be drops were very small, yes.

So you took swabs and tested and many of them proved to be human blood, is that right?.....That's correct.

And the report says:

> *In my opinion, the presence of many small blood drops on an item indicates that the item was close to wet blood that was subject to some force.*

.....Yes.

And is this such an item -.....Yes.

- that this item was close to wet blood subject to some force?.....Yes.

Right. And when we say "close to red (sic) blood" does that include close to red blood that breaks out of the skin as it's being hit with an object?.....That's possible.

Thank you. Did I say 'red' or 'wet' I meant wet blood?

HIS HONOUR: You said and you meant wet.

MR ELLIS SC (Resuming): No, I meant – I meant wet, wet blood, is that how you understood the -.....Yes, I was answering the meant one.

Thank you. All right, now item 5 was a toothbrush used as a reference sample?.....Yes.

As was another item, a pipe, is that right?.....Yes.

What does 'used as a reference sample' mean?.....These were items collected, not by me, with a view to having been used by the – an individual and hopefully not by other individuals in order to be able to take the DNA from those items where the DNA from the individual is not available in order to match it to other DNA results from other samples.

Thank you. I think the ladies and gentlemen are now familiar with what luminol testing and HS screening means. I'm sure we'll hear about item 20 again. Where – you've mentioned individuals in the report, other individuals are David Casson, Robert Chappell, Timothy Edward Chappell, Susan Blyth Neill-Fraser, Robert McElwee-Page

and Peter Stevenson, did you have reference samples from them?……Look, I can't answer that question.

That's all right. If we find in the report that there has been a matching done in their DNA does that indicate that there'd been a reference sample?……Probably.

Probably……You'll have to ask Dr Grosser about that.

I have nothing further at the moment, thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON: You're the co-author of this report, are you?……Yes.

Right. When you say the co-author, adopting my words of course, are you the person who wrote it all or do we understand that Mr Grosser wrote it all and you just filled in your parts?……No, in fact –

Just so we can understand……..- if you look at the report there's a – a column heading "Biological Examination" –

Yes……..- and a series of column headings "DNA Profiling" –

Mm hm. …….- I wrote or was responsible for the biological examination section. He wrote or was responsible for –

He wrote -…….- the DNA profiling section.

The DNA profiling?…….Yes.

So basically your task, and I don't wish to seem to be belittling it, was to go around and find the samples which were ultimately tested by him for DNA?…….The DNA parts, yes.

Yes, yes indeed. All right. Well thank you for that. Yes, I don't have any further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

MR ELLIS SC: There is one aspect, it's perhaps something I should have done in chief – could I seek leave –

HIS HONOUR: Well I'll let you do it and then I'll give Mr Gunson an opportunity to cross-examine further.

<FUR EXN - MR ELLIS SC: Thank you. Mr McKenzie, could you look at item 65 please? And that's the examination of a cushion?.....Yes.

And you took, I think, eight – eight swabs – nine swabs from that, is that right?.....That's correct, yes.

When we look at the type column some of those swabs you've identified as human blood -.....Yes.

Is that because they have satisfied the screening – both screening tests?.....No, that's because there is a – a step past the screening test, the definitive test –

Right. .....- and in this case the one most usually use is, as far as we know, only positive for human and ferret blood. So in the absence of ferrets –

Yes.....- we will call it human blood.

Okay. .....I'm sorry, with human, I mean high primate, so ape, monkeys, ferrets, humans.

All right. We can leave out apes, monkeys and ferrets and come down to humans – okay, thank you. I think it was – and where otherwise you've divided that into positive tests for the HI (sic) screening and so on?.....Yes.

Yeah. Where – so we look at sample 65(5), we've got "positive with HS screening test for blood, no attempt to confirm presence of blood"?.....Yes.

Does that mean that you didn't subject it to the definitive test?.....That's correct.

Thank you. Thank you, your Honour.

<THAT CONCLUDED THE FURTHER EXAMINATION OF THE WITNESS

HIS HONOUR: Any further cross-examination, Mr Gunson?

MR GUNSON SC: Not on that but could I come back to one matter I should have put to this witness with your Honour's leave?

HIS HONOUR: Yes.

<FUR XXN – MR GUNSON SC: False positive results from the luminol they're not uncommon are they?……No.

And in fact they can be quite common?……Yes.

Can you just tell us from your understanding and experience what can create a false positive result using luminol?……I can't give you an exhaustive list because I don't know but many –

A common one…..- many plant materials will give you false positives, many metals –

Many farm materials did you say?……Plant.

Plant materials……Plant materials. Many metals, bleach in some circumstances.

Yes…..They'd be the main ones. Paint, some paints.

Some paints. Any rubber compounds?……Not that I'm aware of.

All right. Any petroleum products such as oil, petrol, grease, anything like that?……Again not that I'm aware of.

All right, thank you for that. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE FURTHER CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

<CARL GROSSER CALLED AND AFFIRMED

HIS HONOUR: Take a seat.

WITNESS: Thank you.

HIS HONOUR: Yes?

<EXN - MR ELLIS SC: Thank you. Dr Grosser, could you tell us your full name please?.....My name is Carl Grosser, and I'm not a doctor.

Sorry, my mistake. My mistake, but you've got qualifications, what are they?.....I do have qualifications. I have two Under Graduate Degrees; one of which is in Forest Science and another one in Science with a Major in Genetics.

Thank you. And are you employed as a forensic scientist by Forensic Science Service Tasmania?.....Yes, I am.

And how long have you been so employed?.....I've been employed there since July 2002.

Thank you. And had you worked in that field before then or is it your -.....Not in forensic science but I have actually been working in population genetics since I graduated, which was in, I think about 1999.

Thank you. Is a large part of your work performing DNA profiling?.....Yes.

Can you tell us in general terms what that involves please?.....DNA profiling involves taking samples from living material and trying to isolate the DNA or deoxyribonucleic acid that's actually found within that material and then in the forensic context we actually take a number of markers and look at those markers to see whether we can make any inferences about possible origin of those DNA samples.

Thank you. When it comes to matching samples, how do you do that?.....When we obtain a DNA profile we look at ten different regions on the DNA molecule itself, and they're regions that have been identified by the scientific community as being highly variable between people and that's why they're useful for determining differences. With those regions – sorry, I just lost the question.

Right. Have you – I think it was, how you do matching?…….Oh that's right. With those regions we put them through a – a process in the laboratory to extract the DNA and then analyse that DNA, and what that does is convert those ten regions that we look at into a series of letters and numbers and we can then just compare a series of letters and numbers that are obtained from one sample against the series that are obtained through another sample and see if they're the same or not.

And how – how are matches expressed?…….I'm not quite sure I follow that?

Are they expressed in terms of a probability?...Yes, they are With the DNA matches that we make, because we're not looking at the entire DNA molecule itself, we're actually looking at a number of regions, there's a chance that different individuals may have similar or the same DNA profiles, just because we're looking at a small targeted set of regions and because of that fact, we have to make an estimate of the probability of somebody else also having those regions in common, so when we do make a match, we give some statistical estimate of the likelihood of somebody else also matching those profiles.

Thank you. Now we have before us two reports to which you have contributed, dated 1st July and 14th December 2009. Now can I take you to that please. Generally is it true – or not generally – is it true that your contribution to the compilation of this report is in the darkly hatched side to the right "DNA Profiling"…….That's correct, yes.

Thank you. Now, the very first entry is your DNA profiling is it, from a swab taken from an Eveready Dolphin torch which had been given exhibit number 1…..That's right, yes.

And in the last column, the match is "Robert Chappell, one in one hundred million." What does that mean?...In this particular instance in the two columns that are under the darkly hatched area I've got two pieces of information there. The first piece indicates the DNA profile type, so in this instance it was what we call a full DNA profile, that means DNA profile that appears to come from a single individual and from that DNA profile, one of the regions we look at is a gender identifying region so we can tell whether a full DNA profile is from a male or a female, and in this particular instance it was from a male, and then in the adjacent column I've got a match to Robert Chappell and it says " One in a hundred million". That means that the chance of a second person that's unrelated to Robert

Chappell, also matching this DNA profile is less than one in one hundred million.

Thank you. And the very next entry, does that basically go the same, the chance of an related person matching – a person unrelated to Robert Chappell is less that one in two hundred and forty match?……That's right.

There's no order of exclusion, is that right?……That's right, yes. And in this instance the first column there of my results indicate that this was a partial profile. So whereas the other one was a full profile from a single individual this one was missing a number of characteristics and that in turn increases the chance of somebody else potentially matching those characteristics that we've seen.

Thank you. I'm turning the page now and looking at item 1(10), it probably explains itself but we've got a mixed DNA profile. Male DNA presence so that's a positive finding?……That's right.

Inconclusive with regards to female DNA?……Yeah. With DNA profiling what we expect to see at any particular location, when we're looking at one of these DNA locations, is two characteristics from a single individual and if we see more than two characteristics at anyone of those locations that's an indication that there's DNA from more than one person present. So in this particular profile I've said it's an apparent mixed DNA profile and that means that there was a suggestion that there could be more than two people but I never saw more than two indicative results at any location so this is an inconclusive, I guess, as to whether it's a mixture or not. And also with the gender identifying location we're looking at two chromosomes which are part of the DNA structure that determine the gender and we look for an X and a Y chromosome. People probably have heard males and females referred to as XX and XY, males being XY females being XX, and the problem is when you get the presence of male DNA you have an X present it then becomes complicated to say whether or not there is actually female DNA there. So in this particular instance I couldn't say the female was there but there was male DNA present.

Okay. The very next entry as to – exhibit number 2, brings in mixed profile as you've explained and a major profile and a minor profile, what do they mean please?……When we do get mixed DNA profiles what we sometimes see is a relative difference in – the contributions of the characteristics that we're looking at, so sometimes what we can see is what appears to be a single DNA profile from what we would assume to be one person being a lot stronger than the other

characteristics that we're seeing in that DNA profile and that then allows us to separate out potential contributors. In this particular instance I was able to separate out a major profile that was from a single person and that matched Robert Chappell with the statistics of a second person unrelated to him matching being less than one in a hundred million and the minor profile, because it was at such a low level compared to the major profile, I couldn't make any clear inferences about who may have actually contributed that DNA, all I could say was that there was an additional person – at least one additional person present.

Okay. And the presence and the inability to detect the DNA on the minor profile doesn't detract from the opinion expressed as to the probability of a major profile, is that right?……No it doesn't, that's correct.

Thank you. Now number 5 is – you've used a profile as a reference sample together with one from a pipe which was item 62, can you explain what that means, please, what a reference sample is?……Okay, in terms of the samples that we deal with in the laboratory we deal with two types of samples typically and we refer to these as either "crime scene" or reference samples. The crime scene samples are those that relate to potentially investigating an offence and a reference sample is a sample that we know came from a particular individual, so we use that as an indication of what that individual's DNA profile would be and in this particular instance, in the absence of being able to take a sample directly from Robert Chappell, what was done was some personal effects were collected and the DNA profiles from those personal effects were determined. The sample from the pipe and the toothbrush were the same, the DNA profiles that were obtained were the same, and we assumed that was the DNA profile that belonged to Robert Chappell.

Right. We seem to be – number 7 is a hair found on – found apparently near a hatch near the deck, a female's hair. It didn't match anyone that is on the Tasmanian DNA database, what's the Tasmanian DNA database, please?……The Tasmanian DNA database is an investigative tool that's available to the police to use. It's where we place DNA profiles from crimes and potentially from individuals as well, and we use that as a matching tool to provide information about what may and may not match between different samples. In this particular instance, I obtained a female DNA profile, and there were no matching profiles available to us.

Thank you. Now item 20 is a swab from the starboard walkway, Four Winds, and when you examined it didn't match any individual,

it was a female who didn't match any individual. Now later, was a reference sample from Meaghan Vass put on the database?.....That's right, yes, it – after this report was originally prepared a sample from Meaghan Vass was tested in the laboratory and found to match the profile from sample 20.

And that's a positive match, it's a certain match – I shouldn't say certain, it's a one in a hundred million?.....That's correct, the profiles were the same that we obtained, and again, the chance of another person matching is less than one in a hundred million -

We - . .....- if that person was unrelated, obviously.

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.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Thank you, your Honour. (Resuming): How – I'm sorry, is it possible that a person who hasn't been on that surface from which the surface – from which the swab has been taken, is it possible that she hasn't been there, notwithstanding that a swab has revealed her DNA?.....It is entirely possible. One of the things about DNA – it's fairly common in bodily fluids and those sorts of things, blood saliva and once that's outside of a person's body, or off a person's body, there is a potential for that to be transferred in some way, so if for example I was to bleed onto a tissue, somebody could pick that tissue up and spot it against a wall and then there would be a blood stain on a wall that I'd never seen that potentially carried my DNA.

The presence on the surface of a walkway, would that indicate anything to you about a possible transfer?.....It's a possibility. Logically on a walkway you're going to get a lot of people passing over that particular area and potentially the mechanism for that sort of transfer to occur could be on the bottom of someone's shoe or something like that – you could step in something and transfer DNA that way. That's sort of logically what goes through my head, but again it's speculation. I can't say categorically that's what's happening in this case.

Yes, it's a reasonable possibility based on logic, is that right?.....It's a possibility, yes, that's correct.

Thank you. And that could have come, of course, from Ms Vass's – her bodily secretions by spit or menstrual blood or a cut – something like that – that gets on someone's shoe…yes.

Who walks on the deck….Potentially anything that would be carrying a lot of DNA from that individual could have been transferred onto that.

Thank you. Embarrassingly number 35 – well, it may not be embarrassing I suppose – it's been disclosed so there's no embarrassment to it….No, no.

You found the DNA profile of an FSST staff member on one of the items. Does this happen occasionally?.....This does happen occasionally. It was actually not necessarily on the item but on the sample that was submitted for DNA so what happens when we're taking a sample from an item is we'll look at something – in this particular case I believe it was a swab that was taken at the scene, and then in the laboratory we'll do some handling of that swab and sampling of that and placing that in a tube and what can potentially happen is that somebody working in the laboratory may actually inadvertently leave some DNA behind on that sample or have contaminated the tubeware and plasticware that we're using the laboratory. We take a number of precautions to try and avoid this so it is reasonably rare but it does happen from time to time.

Thank you. I think you've probably now explained all the terms the jury would need. Perhaps if I could take you to item 109 though, please. 109(1) and 109(1) repeat, can you follow what's happened there?……Okay. Sample 109 was a swab of the inner surface of collar and cuffs. Typically when we're looking at a garment or a top of some sort looking for the DNA of somebody who's possibly worn that top we'll swab areas that are going to come in contact with the

skin and potentially have some sort of friction applied to them and typically the collar is a really good place to take a sample from. What happened in this instance is we took one sample, which was 109(1) and we obtained a mixed DNA profile with at least three contributors and female DNA present and there was a weak indication that Susan Blyth Neill-Fraser may have actually contributed to that DNA profile that was obtained but the chance of a randomly chosen person not being excluded as being a contributor as well was less than one in 31, so there'd be possibly two or three people in this room that I would expect, just by chance, may not also be excluded from that profile. So as a result of that because there was some weak indication that DNA matching Susan Blyth Neill-Fraser may be present on that item I suggested to Chris McKenzie that we go back and re-sample that area and try and see whether we can confirm whether that was a true indication or whether it was somehow misleading, so we went ahead and took a second sample, which we called 109 repeat. Again we obtained a mixed DNA profile, this time we could identify that male and female – or DNA was present. Again there was at least three contributors still present but this time I was able to separate out a major and minor female DNA – sorry, a major and minor DNA profile of which the major DNA profile was female and that major DNA profile – or the component of it appeared to come from a single individual, matched the DNA profile of Susan Blyth Neill-Fraser and then we applied a statistic to that. We suggest that the chance of a second person unrelated to Susan Blyth Neill-Fraser matching the component of the male DNA that appeared to come – sorry, component of the major DNA profile that appeared to come from a single individual was less than one in a hundred million. And then with that profile we also looked at the entire mixed DNA profile, so looked at the major and minor DNA profiles together as a whole to see whether any other people could be excluded and in this particular instance it appeared that Timothy Edward Chappell and Robert Chappell were not excluded as potential contributors to that DNA profile but the chance of a randomly chosen person not being excluded is one in two. So if I were to take samples from people in this room again I'd expect there would be many people that would potentially also not be excluded.

Okay. Thank you, and I think the rest main explain itself. Now the – yes, 59, we've got – if you wouldn't mind looking please, we've got – maybe it's the acronym we need to explain as much as anything?……The DNA result from item 59 was a mixed DNA profile and again we could separate that out into major and minor. In terms of the major DNA profile we identified a DPEM staff member, which is the Department of Police and Emergency Management. On the DNA database we have profiles from police officers as well as other

departmental staff members that may attend crime scenes and come in contact with items at crime scenes and in this particular instance this major DNA profile matched one of those staff.

Thank you. The second report of the 14th December 2009, it commences at page 1045 of those (indistinct words) are marked, ladies and gentlemen – Concerned item number 97 a box of gloves sourced from the stove top in the galley of Four Winds....That's correct.

It was at 6 Negara Crescent. And why is that on a separate report. Can you explain it to us please?.....Initially this item – I can't recall exactly – but whether it was that the police suggested that the item wasn't of interest to the initial set of testing that we did, so we didn't test it, or whether it was submitted subsequently – I can check my notes if that's an issue, but what's basically happened is the police have identified an additional item after we'd prepared the result for the first batch of testing, so we did a second batch of testing on another item that they were interested in, in getting examined, and that's why that report appears on a separate –

The allocation of a number 2 of 97 indicates it was received reasonably sequentially with other exhibits, is that right?....It would suggest that yes, it's correct.

And the- it matches the profile it says of Susan Blythe Neill-Fraser one in three ninety. Now, that's not odds of course – what does it mean in proper terms?...In rough terms it means that I obtained a partial profile that again matched Susan Blythe Neill-Fraser and it means that roughly one in three hundred and ninety people – so if I was to go down to the Mall at lunch time and just randomly sample people I'd expect that on average about every three hundred and ninety people I tested I'd find somebody that was not excluded just based on chance along, having potentially not been in contact with that item.

Thank you. I have nothing further, thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON SC: Now just come back first of all to this question about Ms Meaghan Vass's DNA turning up on the deck of the Four Winds. You are aware it was on the deck of the Four Winds aren't you?....I'm aware of the approximately location, yes.

Yes, about nine and a half metres I think from the bow on the starboard side.....I believe that's correct.

All right. Now you gave us some examples of how bodily fluids can be transported, we were given the example of a tissue with blood being moved and I think you said it's possible on a walkway where a lot of people could transfer DNA. Now what we've got here in the evidence is a complete denial by Ms Vass that she was on the boat but we have her DNA on the deck. Now she said she's never been – she wasn't at Constitution Dock during the period when the boat was there, and she said she didn't go to Negara Crescent at Goodwood where the boat was moored subsequently -.....Okay.

- and was tested. So we don't have her out at Goodwood spitting on the ground or leaving any other DNA on the ground, and we don't have her at Constitution Dock spitting and being picked up on somebody's foot and deposited on the yacht. Now would you not say in those circumstances that your suggestion that it's equally possible by this methodology her DNA was left on the yacht is simply likely to be impossible – she's nowhere near the thing?.....There – there's two points that I guess I need to clarify. The first one is that the DNA profile that I obtained matched that of Meaghan Vass, and while it's highly unlikely that there's a second person that would also match that DNA profile, it is possible. There's also the possibility of an identical twin, identical twins –

Well she's ruled that out.....- will actually DNA profiles –

She isn't a twin.....Okay, she hasn't got a twin.

She's told us she's not a twin.....Okay. And beyond that I guess another issue is that we can't actually time a DNA profile or put a specific time on when DNA was deposited on an item, we can only detect its presence and then analyse that. So potentially that DNA profile may have actually been on the boat for some time. It may not have been as any result of this investigation at all. I –

The boat came down from Queensland in – it got to Hobart on the 24th of December and been sitting on a mooring ever since.

MR ELLIS SC: Well that really is argumentative and misleading, in my submission. My learned friend knows perfectly well that many people have been out to the boat – the Chappells, Timothy Chappell has given evidence, Susan Chappell, they've all been there via Marieville Esplanade, via various other things. Now to put this as a proposition, in my submission, is quite misleading.

HIS HONOUR: Well what's your question, Mr Gunson?

MR GUNSON SC: I'll put it another way. (Resuming): Assume for the purpose of this question that the boat has been on its mooring off Sandy Bay since the 24th December and taken out on a couple of pleasure cruises, brought into a marina once during that period and there's no evidence of Miss Vass being anywhere near the yacht at any stage I suggest to you the likelihood of her DNA being accidentally transferred onto the yacht is near impossible?……I – I can't make any assessment about the possibility of transfer without having some knowledge of where it may have come from, what kind of scenario we're talking about, so this feels a little bit speculative to me in that we've detected this DNA profile and all we can say is that it was present in the sample that we tested and that's the result that we got. I really can't say with any degree of certainty that given a certain scenario it's impossible that it could have got there any other way than by her being present on the boat, so I'm not really sure –

The strongest likelihood, I suggest, is that it's got onto the boat by her presence on the boat, that's more likely than not, isn't it, the rest are just fantasies?……No, I can't agree. I think basically what we've got is some suggestion that there's possibly a large amount of DNA that may have originated from Miss Vass present on the boat and as to how that got there I really can't say that any one particular scenario is vastly more likely than another scenario.

I say it's more likely than not – 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?……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.

It's a question of access to the boat; it's a question she says, "I didn't go on the boat". She hasn't said where she was on those days when the – before the DNA was found she simply says, "I didn't go on it". Now you don't need to trouble yourself about how she might have got there, that's an entirely different matter, but the likelihood of it accidentally being deposited is far less than it being deposited through her presence?……I really can't answer that because it does depend on whether her presence is possible or not. If we knew for instance that she was overseas skiing in Canada at the time then we would know that there was no way she could have had access to that boat and then transfer is by far the most likely scenario. If, however, we know that she was in Hobart and potentially around the area then each of those scenarios seems like a likely possibility to me and I can't give you any indication of the relative strengths of those possibilities.

How many occasions have you dealt with transfer of DNA in the sort of circumstances we're talking about, how many times have you come across it in your career?……Transfer is one of those things that's potentially quite difficult to identify so I could have inadvertently come across transfer of DNA evidence numerous times without knowing it it's not until you see –

Confine yourself to the question which was on how many occasions have you come across transfer of DNA –

MR ELLIS SC: Well, your Honour, the witness shouldn't have been interrupted, in my respectful submission, he was trying to explain, he might have come across it many times without knowing it but he's just been interrupted and cut off and now allowed to answer.

MR GUNSON SC: I asked him a very simple question. How many times has he identified transfer -

MR ELLIS SC: Well I have an objection –

HIS HONOUR: Well now just a minute. I think he – Mr Gunson, I think he was trying to answer in his own way. What he'd got out was that he could have inadvertently come across transference in the past. What he – look, I'll ask a couple of questions – it might cut through this.

WITNESS: Okay, your Honour.

HIS HONOUR: Have you ever knowingly come across transference in the course of your work where someone's DNA has been transferred to a place where that person hasn't been?

WITNESS: I'm – I'm not certain that I could categorically say that I haven't, but I'd say that if I have it would be very rare.

HIS HONOUR: All right. Back to you, Mr Gunson?

MR GUNSON SC: (Resuming): Thank you. Now no example springs to mind – you can't say, for instance, in court case X I was satisfied after being cross-examined that my view about the DNA being there was wrong and that it had been transferred by somebody's footprint or something like that – there's no case like that you've been involved in, is there?.....Again, without going through the detailed background of my cases, I believe that I haven't identified transfer. But the problem with having or being able to identify transfer is that it requires additional knowledge, like I was suggesting before about being on holidays in Canada, but typically when we're doing our DNA profiling we're not privy to any of this additional information and we're just basing our information off the samples that we receive at the laboratory and the results that we get. Typically it might come out later in the case that transfer is the most likely explanation for the results that I've obtained. But I don't tend to follow the cases through to see what actually the outcome was in the courtroom.

You've never been involved in a case where it's been suggested to you that DNA at point X, wherever that might be, was as result of transfer, have you?.....In fact, that has been suggested a number of times, quite frequently in casework defence lawyers will lead suppositions to – to myself to suggest that the DNA profile that I'm observing on a particular item somehow might have been transferred onto that item without the person whose DNA profile I'm detecting having ever come in contact with that item or seen that item. So it is actually presented quite frequently as an explanation for how a DNA profile I've observed came into being.

But normally you're in a position where you say that couldn't occur?.....Normally I'm in a position where I say that I can't make any inference either way as to how that could have occurred. I'd agree that both possibilities are possibilities.

And transfer of DNA by being picked up off the ground through, I submit, some expectorant or something like that, haven't come across that, have you?.....I don't believe I've come across DNA that I've

known categorically has been carried from one place to another through spittle or something on the ground that's been walked.

On a shoe perhaps?……On a shoe, yeah, I don't believe I've seen any of that.

Thank you. Now can you help me, please, about a terminology I perhaps should have asked Mr McKenzie, but I'll ask you and forgive me if my pronunciation's wrong. Ouchterlony, do you know what that is?……It's actually pronounced ouchterlony.

Thank you, I did apologise…….That's all right. Yeah, no, and you're interested to know what that is?

Yes…….Again this is something that maybe Chris or Debra McHoul could clarify further, but it's one of the tests that we can use in the laboratory to possibly speciate a particular sample.

But when I read that using this particular process it's negative with that process test for human haemoglobin what does that convey to you?……To me, and again I'm not authorised in the laboratory to actually interpret these results, but to me that suggests that the presence of human blood couldn't be detected through that test.

All right, thank you. Now let's come back to Miss Vass for one moment. When you first prepared your report on DNA she wasn't in the database?……That's correct.

And your computer database basically can locate for you and identify DNA that's been left by somebody in the past?……It – the database simply makes matches between profiles that we have on it.

So sometime after you compiled your report Miss Vass committed a crime or an offence, she had DNA taken, it goes into the database and your system is such that it immediately identified her as person E in item 20?……To a certain extent that's correct, it identified that there was a match between the profile of Miss Vass and the profile of sample 20.

Now let us think about how DNA from Miss Vass could be on the boat if she had been on the boat, what sort of substances might have been on the deck that -…….If –

- DNA could be extracted from?…….If we took the assumption that she had been on the boat there could be any number of substances that could have originated from within her body. So you'd be

talking about potentially blood, saliva, sometimes even contact, you can have DNA in your sweat and if you touch something you could leave DNA behind that way.

So a person who was touching the deck with a sweaty hand could leave DNA behind?.....Quite – quite possibly, yes.

Somebody had spat on the deck may – would leave DNA behind?.....Quite – I believe so, yes.

Yes. If we – a person just rubbed their hand across the deck, it's possible to leave a skin – a piece of skin behind, minute particles of skin from which DNA could be extracted?.....That's also possible, yes.

Yeah. And the obvious one, of course, is blood, and we know it wasn't that, so it's more likely than not it's one of those others we've mentioned?.....We – we don't know categorically that it's not blood. We know that we've done some testing and – and that we haven't been able to prove that there is blood there, but it doesn't actually automatically mean that there isn't blood there.

And I think Ms McHoul, it's possible there could have been a minute sample or portion of blood inside whatever it was to make it luminol positive, but the blood couldn't be extracted?.....Okay, Debbie's the expert in that area, so I'd have to defer to her opinion on that.

All right. But when you do your DNA tests, you don't, unless it's glaringly obvious it's blood or something like that, you don't actually identify the substance from which the DNA is being extracted?.....That's right, no.

Mm. And – I don't – no, I won't ask you any further about that. Did you have DNA samples from persons who were known to be on the yacht in the days or weeks leading up to the 26th of December (sic) 2009 to use for exclusion purposes?.....There were DNA profiles from some people that were believed to have been on the boat, but I'm – I couldn't categorically say that all people that we know had been on the boat had DNA profiles provided.

Right. Do you know the names of any of the people whose DNA you had – DNA profiles you had for exclusion purposes?.....Yes, I do.

Right. Do you have a list there?.....Yes, I do.

Would you please produce it and tell me the names on that list?……They're actually on the front cover of my report.

Right…..Down towards the bottom there there's a number of dot points –

Right, we'll go back to that…..Sorry.

Now you have them there as persons of interest have been identified. I must say I didn't read that as being what you now say it is. So I can read that portion –

> *Persons of interest for this case have been identified as David Casson, Robert Chappell, Tim Chappell, Susan Blyth Neill-Fraser, Robert Page and Peter Stevenson.*

As people whose DNA you had for exclusion purposes?……That's correct, yes.

Right, thank you. And that's the full list?……Beyond staff members from FFST and the Police Department who –

Right. And they're on a separate database aren't they so if their DNA, like item 35, pops up you can refer it and you know who they are?……We can find those matches, that's right.

Right, thank you, all right. Now we have all those names there and it's probably a fair comment to say that quite often through this report we find items where you identified DNA as coming from a male but there's no DNA identification information, perhaps an example is item 25 if you look at that…..Okay, yes, 25(2).

And item 25 is described as a 'winch handle red plastic Ronstan', right?……That's right.

And it's found on the deck Four Winds wharf near Muirs and -……That's correct.

And item 25(1) says, 'swab handle part', so a swab has been taken from that handle, delivered to you?……That's right.

And you have found a mixed DNA profile, or at least two contributors, a male and a female DNA was present. The major profile was Susan Blyth Neill-Fraser and then due to the low level of DNA detected no reliable conclusions regarding possible contributors

can be made. So we don't know who the male is, is that right?……In this particular instance that's right.

Right, thank you. And for instance we look then at item 26, latex glove on the top stove galley, is that the same one you were referring to in 97 where there was a box of gloves, or a separate item?……It was a separate item to the box of gloves in 97 –

Right…….- but I couldn't make any inference as to whether that glove might have come from that box.

Right. It's probably fair to say – we don't need to go through all of these – there are lots of items where you've been able to extract male DNA from various items on the yacht -……That's right.

- and you simply didn't get enough DNA to identify the male who it came from if it was a known person and if it's an unknown person who's not in the database it doesn't really matter, does it, I mean it doesn't matter how strong the DNA sample might be if they're not in the database you can't identify the person?……That's right. However with the report where I have got a strong result of a possible single person profile I have identified them as unknown person type profiles, which are identified as person I, H, those sorts of things. And, sorry, the other point to your question?

I think you've covered it……Okay.

Go to 28, which is the EPIRB. We've seen that three swabs were taken, one from the antenna, one from the upper part of the body of the EPIRB and one from the lower part. Again we get a pattern of – a mixed DNA profile, at least two contributors, male and female DNA present. Now you were able to exclude Mr Page, who was the man who found it, because you had his DNA?……In terms of making the match to that major profile that's right, yes.

So he was the major profile there, wasn't he?……With the DNA testing that we do we can't categorically ever state that somebody's DNA was a particular profile, all we can say is there was a match and draw an inference about the likelihood of somebody else matching, so in this case –

In this case it's one in sixteen million?……That's right.

Pretty good match, isn't it?……It's – it's a reasonable match.

But you did find other male DNA present? I mean you've got a note on the swab:

> *Upper part of body. Mixed DNA profile, at least three contributors, male DNA present, inconclusive – female DNA?.....*

.That's right.

Yes. .....So with the – the male DNA in that particular instance could have been accounted for by the major DNA profile. So with the minor DNA profile where we can't make any inferences about who that possibly may have matched, that minor DNA profile could in fact have been from a female or a male, I just can't say either way.

Well if you go to the third item, 28(3) -.....Sorry, which 28(3) –

- it's the swab of the lower – the next page – lower part of the body; now this is on the EPIRB -.....That's right.

- and there's a mixed DNA profile, at least three contributors, male DNA present, inconclusive with regards to female DNA -.....That's right.

- but you then proceed to exclude Susan Blyth Neill-Fraser, Robert Chappell and Timothy Chappell as contributors?.....That's correct, yes.

So we're left up in the air, it's not a criticism of you, as to who the DNA came from, but you excluded those three?.....I could exclude those three. As for some of the other persons of interest that were mentioned on the front page, including Mr Page, who I mentioned a match to in the previous sample, it was inconclusive for me to say either way whether he may or may not have been a contributor. So all I could say in relation to that profile was those three individuals were excluded as being possible contributors.

But there were three definite contributors?.....There were definitely three contributors present, that's right.

Thank you. .....Sorry, I'll just correct myself there – there were at least three contributors, there may have actually been more.

Thank you. You were able to identify three positively -.....As a – as minimum.

Mm, thank you.....Yes.

Just in general terms, as we go about our day to day life we leave behind DNA don't we?.....Yes, I'd say that happens.

I mean if we got somebody to check where your sitting today we would find, in all likelihood, your DNA and the DNA of other witnesses if they have touched the wooden surface in front of you, if they've touched that particular computer in front of you?.....Potentially we could find DNA that may have originated from – from various people that have been in contact with items, but there are a vast number of variables that go into who may or may not be detected. So if, for example, I jumped on this computer now for a second, tapped away for a brief period, I may leave only a very small amount of DNA and if somebody was sitting here prior to me working extensively on this computer they may have had a more prolonged contact and thus lead to potentially leaving more DNA behind, so you may detect them and not me, so –

It depends on the level of contact really, doesn't it, and what's left as a result of that level of contact?.....That's right, the level of contact and the material that is providing the contact. So if I was prone to licking my fingers and typing away, even though I've typed only very briefly, I'd probably leave more DNA than somebody who didn't lick their fingers and had used the keyboard.

Just bear with me, your Honour. I was just given a note which I want to look at. You prepared a report of the 5th July 2010 as well, didn't you?.....Yes, I did.

And does that amplify the DNA profiling report in respect of item 170?.....If by amplify you mean does it cover the fact that there wasn't a result for 170 in the first report, yes.

Yes.....Yes, that's correct.

Thank you. And what should appear there?.....What should appear for 170?

Yes.....It should appear similar to the paragraph here which states that:

> *The DNA profile from two swabs of the inner left floor of the dinghy.*

So that would have been information on the left hand side of the table suggesting what the sample was. This was a mixed DNA profile, it contained male DNA. I couldn't conclusively say whether female DNA was present or not, however due to the low levels of DNA that I detected I couldn't make any reliable conclusions about the result relating to item 170.

Thank you. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: We'll stop for the day, the jury can make their affirmation and the Court will adjourn till 10 tomorrow.

JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00AM ON THURSDAY THE 30TH DAY OF SEPTEMBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: Yes, take a seat. Well ladies and gentlemen, the first witness today will give evidence by video link from Queensland. Mr Ellis?

MR ELLIS SC: Mr Casson, can you hear me okay – hello, Mr Casson, can you hear me – I don't think so.

HIS HONOUR: Can you hear us Mr Casson?

MR CASSON: I can now, yes.

HIS HONOUR: All right. Thank you.

MR ELLIS SC: Need the affirmation – sorry, I don't think the affirmation has been done.

<DAVID MAXWELL CASSON CALLED AND AFFIRMED

HIS HONOUR: Mr Ellis?

<EXN - MR ELLIS SC: Thank you, your Honour. Mr Casson, are you David Maxwell Casson?.....Yes.

And you live Bongaree, is that right?.....That's correct.

And you're retired?.....I am.

And on the – in early December 2008, did you meet a couple who you knew as Bob and Sue Chappell?.....Yes.

Thank you. What was your connection or what was the cause of your meeting?.....One of the yacht brokers in Scarborough approached us

about doing a delivery, that's delivering a yacht to Hobart, and he introduced us to Sue and Bob.

Right, and who's us?……Peter Stevenson is my partner.

In business?……In business.

Yes. And so you actually met them in Queensland, is that right?……I met them in Newport Marina –

Yep…….- in Brisbane.

Okay. And did you agree to do the delivery for them?……Yes.

Okay. And was that on a ketch, the Four Winds?……That's correct.

Did you familiarise yourself with the vessel before you left?……Yes, we took it out for a sea trial, etcetera.

Did you leave in about the middle of December 2008?……Yes.

And who was on board when you left?……There was Sue, Bob, myself and Peter Stevenson.

Do you recall if the first day went well?……No, it didn't particularly go well, it –

What happened?……Well after – we had to go round the top end of Morton Island, which is and can be a bit of a rough passage, and Sue and Bob weren't handling it real well and we decided after we'd probably done about ten miles in our – towards our destination that we'd have to go and anchor behind the island in flatter water –

Yep…….- so that they could recover from feeling ill and seasickness.

Right, and did something happen with Bob physically as well as seasickness?……Yes, Bob had a nosebleed.

Now after going somewhere quieter did you resume the voyage?……Yes, we continued on towards the Gold Coast which is about 80 nautical miles and eventually got down the God Coast where we had to go in because Bob was having another nose bleed.

Okay. Do you remember how you got into the Gold Coast?……We had to get the Air Sea Rescue to come out and pick us up and take us

onto a berth at a yacht club there because the engines had failed due to a fuel blockage.

Now was – you just mentioned the Gold Coast was that Southport that you went to?……That's Southport.

Yes. And do you remember how long you were there?……As I recall it was about three – three to four days.

And when you set off again was the party the same as before, you two Bob and Sue?……No, there was Sue, myself and Peter Stevenson.

Right. What had happened to Bob?……Bob was in hospital.

And was that a result of the nose bleeds?……That's correct.

Okay. Now had he bled so that his blood was throughout the boat or not?……There was – it was mainly in the cockpit area and also there was a small amount in the engine room but, your know, it was mostly cleaned up as we seen it.

Okay, yes. What's your attitude to blood on board?……Oh, well, you know, like I'm not real keen about blood anywhere, you know, like in this day and age you don't know what's, you know, what's in blood.

Okay. So you were keen to clean it up where you saw it?……Yes.

Thank you. Did you have any more problems?……Yeah, we had ongoing problems with Four Winds, mainly with the fuel system. Although we'd had it corrected in – supposedly corrected on the Gold Coast it was still failing periodically and I think it was Port Macquarie where we had trouble there as well.

Yeah……..And we also had to be – Air Sea Rescue had to pull us alongside a wharf there so that we could deal with the problem.

Right. Did you get to Sydney?…….Yes, we – we eventually got to Sydney. By then the fuel problem had been mostly sorted out.

Okay. Was there any talk of Bob rejoining the cruise – not the cruise, the voyage in Sydney?…….Bob was supposed to fly to Sydney and join us for the trip to Eden and then across the Tasman to Tasmania.

Right. And did he?…….No, he didn't.

And was that as a result of a decision taken by someone?.....Well I'm not sure who actually made the decision but I'm – at the time that he – he spent quite a few days in hospital and I'm not sure whether it was Sue or Bob had made the decision, but I – I assumed it was Bob had made the decision not to join the trip.

Okay. And having set off from Sydney did you strike further trouble?.....Yeah, there was – there was all sorts of things going on, you know, electrical problems and alarm systems going off, there was a bad odour in the boat at one part of it.

Yeah.....That we had a lot of trouble trying to – to locate and isolate. Yeah, it was just numerous things going wrong, which is quite common for a boat that's been sitting around for a long time.

Yeah. Now the – just going back to the time that Bob Chappell was onboard and having nosebleeds; where was the tender of the boat at that time?.....The tender was on davits at the rear end of the yacht.

Okay. .....Suspended.

Was it used at the time he was having nosebleeds?.....No –

Was he in it at such a time?.....Sorry?

He wasn't in it at the time when he was having nosebleeds?.....No. No, it was in an awkward spot and especially at sea it is – it was in a location where you wouldn't go near it unless you had to.

Yep. All right, now on the way down did you and Peter show Sue various aspects of the boat?.....Yes, we were explaining how the systems worked. There were diagrams that came with the yacht and I was showing both Sue and Bob how it operated and so on.

Yep.....Sue seemed to be reasonably familiar with the plumbing side of things.

Okay. Do you recall any time that you traced the grey water tank system and that involved the toilet?.....Yes.

And was Sue present with you when that was done?.....Yes, Sue was present, yes.

That, as I understand it, had a valve behind a cupboard or in a cupboard in the toilet?.....Yes.

Did you show her the location of that valve?……Well I'm not sure whether Sue showed me or I showed Sue, but it was in an awkward spot –

Yeah…….- and we couldn't ascertain what it was actually for, but it had been – it had been isolated and the nylon hose cut.

Right. So it went nowhere in other words, is that right?……It did. I opened the valve to – which is a seacock.

Right…….I opened the valve to show – to show Sue that water could not enter the boat and that it wasn't a safety issue.

Okay. Is that one – I mentioned behind a cupboard near the toilet, was this a different seacock that we're talking about, or a different valve?……No, that's the same one.

Okay. Now do you recall a fire extinguisher on board, a large – a large fire extinguisher?……Yes, I do.

Mm hm. And where was that?…….As I recall it was near the laundry area.

Right. …….In the – in the saloon.

In the saloon?…….Yes.

Right. During the trip did you have occasion to take up any of the floorboards in the saloon?…….Yes.

And how was that done?…….Well it – the floorboards are screwed down, so to access you know any pipes or wires running through there or water tanks etcetera –

Yeah……..- you had to lift this whole section out. So yes, we – we unscrewed that whole area.

Right. And what did you do – did you replace it after you presumably lifted it out, did you replace it back?…….Yeah, we replaced it but we didn't screw it.

Right. …….We didn't screw it back down again.

What became of the screws, do you remember?…….Well as I recall they went into a jar or a – some sort of a dish –

Yeah.....- so that we would have known what they were and at some future date, you know like after the problems had sorted, we could have screwed it back up, but –

Okay. Was it more than one area of floor that you – that you did this to?.....Well during the course of the trip we probably would have pulled sections off everywhere, tracing wires, pipe work etcetera.

Yeah, and concerning not screwing them back down so you can get it up later, if need be, did you make Sue aware of that?.....I don't really remember intentionally telling Sue about it, but she would have been aware.

Okay. Do you remember any comments she made about it?.....No, I don't – I can't remember any comment.

No, that's fine. In the course of this voyage – well correct me if I'm wrong, it doesn't sound a very pleasant one, is that right?.....No, it was just a lot of things going wrong and – and it made it a bit unpleasant, yes.

Did you have occasion to pull off and inspect behind panels on the – on the boat?.....Yes, there was a – there was a lot of heat being generated behind a panel, so – and we were chasing the lead, and yes, so we took a panel off the back of an instrument panel in the saloon area.

Yes. And with all this raising of floorboards and taking off panels did you find anything untoward, any drugs, guns?.....No.

Would it be fair to say – no, would it be fair to say just about every section – every part of the boat at some stage had pieces removed and worked on?.....Well, yeah, pretty much because, you know, there was that just that many things that were going wrong and the nature of correcting it is that you have to trace every wire to its source and to try and find where the power is being lost from so, you know, it's part of the process.

Yeah. Did Sue make any comment to you about these problems and their cost?.....Their costs?

Well, yes, or - .....Ah –

Did she make any - .....I think there was – I think there was something said about, you know, like may be she might have to pay it or something along those lines but I don't recall.

Okay. Did she make comment to you that you can recall about telling Bob about the problems, about whether you should tell Bob about the problems?.....Yes, at one stage did she say just to keep it quiet, she would deal with it herself.

Okay. Now did she ever make a comment about Bob's share of the boat; that is the money side of the boat?.....Not that I specifically recall.

Right. Did she ever indicate that she might have to buy out his share?

MR GUNSON SC: Don't lead him. My friend's leading, your Honour.

HIS HONOUR: Yes.

MR GUNSON SC: It's blatant leading.

MR ELLIS SC: Well it's not actually, your Honour. The definition of a leading question in the Evidence Act is, as I recall it, an answer that – a question that – a non leading question is one that can be answered yes or no.

HIS HONOUR: Well it's –

MR GUNSON SC: With respect I (indistinct words) own answer.

HIS HONOUR: My understanding of a leading question is that it's a question that suggests an answer to the witness.

MR ELLIS SC: Yes.

HIS HONOUR: Now he said he doesn't recall any comment about Bob's share of the boat.

MR ELLIS SC: That's right, and then I asked him something more specific, which was did he recall any comment about buying out Bob's share of the boat, and definition of leading question:

> *- is a question asked of the witness that directly or indirectly suggests a particular answer to the question.*

That suggests no particular answer to the question in my submission.

HIS HONOUR: Mr Gusnon, do you want to be heard?

MR GUNSON SC: My friend should also read s37D – sorry, s37 of the Act, which says:

> *A leading question must not be put to a witness in examination in chief unless the Court gives leave at the starting point –*

HIS HONOUR: Well no, the starting point is whether - the question is whether it is a leading question, that's what is being debated. I think Mr Ellis says there's nothing wrong with his question because it's not a leading question. Now what do you want to say about that?

MR GUNSON SC: My submission to your Honour is it is a leading question. It directly or indirectly suggests a particular answer to the question or assumes the existence of a fact, the existence of which is in dispute in the proceedings and the existence of which the witness (indistinct word) given evidence before the question is asked. So it falls right within the definition and it's leading, clearly suggests an answer, a bit like saying, "Was the car that you saw driving down the street red", you can ask, "What colour was the car", or "Do you have a memory of the colour of the car", but you can't ask, "Was it a red car". This is exactly what's being done.

HIS HONOUR: Well it's more like a question, "Are you able to remember whether you saw a car coming down the street or not", and minds might differ as to whether that suggests an answer or not. The – no, I'm with Mr Ellis, he – it's technically right, the question is one that – that doesn't suggest a 'yes' or 'no' answer, so I'll allow the question.

MR ELLIS SC: If it please. (Resuming): Do you need the question again, Mr Casson – do you recall -.....Yes, please.

Do you recall Sue making a comment about buying out Bob's share of the yacht?.....As I recall there was something said, but I can't remember after this length of time, exactly in what context it was.

No.....But it was along those lines.

And it was the substance of what was said, was it -.....Yes.

- something about buying out his share of the yacht?.....Yes.

Okay. Thank you. Did you have a conversation with her about you bringing back a yacht from America?.....Yes, I would have men – during the course of the trip I would have mentioned to Sue about that – that was my long term plan, and also at that time we had quoted on taking a – a yacht from Brisbane to California.

Right. So there was discussion about taking a yacht to America and your sale of a yacht, is that right?.....Sorry, could you repeat that?

A conversation about you selling your yacht and taking a yacht to America?.....Yes.

Okay. And any conversation about buying one in America or bringing one back from America?.....Well there would have been a conversation about it because that was my long term plan.

Okay. Thank you.

MR GUNSON SC: What the witness is doing, is clearly, reconstructing, he is saying – his preface to most of his answer is "I would have – I would have" when he's asked a direction question, "Do you remember?" –

HIS HONOUR: Well that might be very true, but that – that's a matter for comment at a later stage, it doesn't make his evidence inadmissible. Mr Ellis?

MR ELLIS SC: Thank you, your Honour, I've no further questions, if it please?

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: Mr Casson, I want to ask you some questions about Mr Chappell's nosebleed. It started when the – that first day of the voyage, didn't it?.....Sorry, I couldn't hear that.

His nose bleed, that is Mr Chappell's nose bleed, start on the first day of the voyage?.....Yes, that's correct.

And the voyage started on the 7th December didn't it?.....Um, yes.

And you didn't put into Southport until late in the afternoon of the 9th December, that's correct isn't it?.....Yes.

And so you had him on board with a bleeding nose for the 7th, 8th and 9th didn't you?.....The 7th, 8th and 9th, yeah, that sounds about right.

And he bled not only in the cockpit area but also in the pilothouse area?.....At some stage there would have been drops of blood there, yes.

Yes. And he bled, I think you said, in the engine room, a fairly compact area or tight compartment?.....Yes.

So am I right in thinking that notwithstanding his bleeding nose he was still doing things such as working in the engine compartment?.....I think working in the engine room compartment was the first time that he noticed it.

Right.....And it's gradually got worse over the, you know, like over the trip to Southport.

Right. And he also bled in the saloon area as well, correct?.....I can't specifically remember it being in the saloon area but there would have been drops of blood there.

Thank you. And he – his nose bled very badly didn't it?.....At several times it did, yes.

Yes. Now he was taken from the boat to a hospital in Southport and you then remained in Southport for a few more days, is that right?.....That's right.

Thank you. And continued off down the coast. Now before you went down the coast from Southport there was a discussion about Bob Chappell joining the boat in Sydney, correct?.....Yes.

And Sue made it very clear that she wanted him to rejoin the boat in Sydney?……Yes, as I recall, yes.

Mm. And that was the plan, wasn't it?……Yes, it – yes.

And you and Peter Stevenson had a discussion to the effect that you didn't think it would be sensible to have Bob Chappell on the trip from Sydney to Hobart because of his risk of further nosebleeds?……That's correct.

Yes, and you conveyed that information to Sue, didn't you?……Yes.

And you said basically, "Look, it's just too dangerous because if we're out in the middle of Bass Strait we can't get urgent medical help if his nosebleed becomes very profound"?……Yes.

Thank you. Sue though was quite keen for him to continue if possible and you basically hosed her down, didn't you?……Are we talking about the trip from the Gold Coast or from Sydney on?

No, we're talking – we're talking about when you were in Sydney or in fact shortly before you got to Sydney you and Peter had made the decision that Bob wouldn't rejoin?……Yes.

Correct?……We had made the decision it'd be best that he didn't join, yes.

Yes, and you told Sue that?……Yes.

Yes, and she, notwithstanding what you said, still said she wanted Bob on board if possible?……Yes.

Right. And the two of you basically said, "Look, it's not going to happen", in a nice way?……Well we would – well we didn't actually say that, we would've suggested that it'd be best if he didn't join us.

Right, thank you. Now during the course of this voyage, as you've already said, basically all of the floorboards in the Four Winds were taken up for one reason or another, is that right?……Yeah, correct.

And they weren't screwed back down, they were simply left in that position so that during the course of the voyage you could have easy access to them if other problems developed?…….Yes.

Thank you. Now I just want to be quite clear in my mind, whereabouts was this cut pipe that you described a little while ago?…….It was in one of the toilets, the forward toilet.

Yes. Which is on the port side?…….Yes.

Thank you. So what are you saying about this pipe, that it was a disused pipe in that cupboard?…….It – it appeared to me as if it was a disused pipe.

Right. And what colour was it, do you remember?…….Well you couldn't really see it.

No……..But you could – you could put your hand into a hatch and you could feel the profile of it and – and so on.

So let me just understand this; do you remember the setup in that small toilet/shower area – there was a shower there as well, wasn't there?…….Oh I really can't recall one hundred percent, but I should imagine there would be.

Right. And that would be quit a usual setup on a yacht like that, wouldn't it?…….Yes.

Normally you have, because of space requirements, you have the shower and toilet together?…….Yes.

Right. Now assume you're standing looking at the toilet, we have a cupboard to our left, do we, on the – to the side of the toilet?…….Yeah, that's correct.

Right. And did that cupboard have doors on it?…….Yes, as I recall, yes.

Right. And by opening the doors of that cupboard you could feel a pipe in there but you couldn't see it, is that right?…….No, the – the – where the pipe that I'm referring to was lower down –

Yes……..- almost at floor level.

Right. So how did you get access to the pipe?…….Well you had to kneel down in front of the toilet and extend your arm almost to its limit into this hatch area and follow the lay of the pipe.

When you call it – so when you call it a hatch area what do you mean?……Well it's a cut out area.

Right. Was it circular or square or what?……I really can't – at this stage can't remember exactly what it was but I vaguely remember it being sort of oval.

Right. Directly below the toilet?……No, off on the port wall.

Right. And - …..At about floor level.

Right…..Sorry, just above floor level.

Right. So an oval hatch, was it opened or closed?……No, it was open.

Right. But by getting down on the floor you could get your hand into that area and feel a pipe could you?……Yes, and a seacock.

Right. And you could feel the cut end of that pipe could you?……Yes.

And there was a seacock right in there behind that panel that was concealed was there?……Yes.

All right. And the impression you got of it was that it was a discarded system of putting water into or out of the boat that had been discarded sometime ago?……Yes, the boat had an obsolete fire fighting system and there was all sorts of strange setups like that all over the boat so I assumed it was part of that system.

Right. All right, thank you for that. Now you told Sue Neill-Fraser about your find – about this obscure hidden piece of pipe did you?……Well I'm not sure whether Sue told me about it or that we found it on a spermatic diagram.

Oh, right……You know, because you wouldn't have just noticed it there.

This one you're talking about was hidden away completely and very difficult to get at?……Yes.

Right. Did you try and open that seacock at all?……Yes, I did open the seacock.

And nothing happened?……And nothing happened.

So no water came in?……That's correct.

And you assumed, if I'm correct, there was some sort of plug in there, is that right?……That's correct.

And did you try and identify where the plug was in that particular pipe?……Yes, I tried to insert my finger in but the angle was – you know, like it was too great and I couldn't actually feel the plug, but –

And was it easy to open that particular seacock?……It was easy enough, yes.

All right. But you regarded that as a completely redundant system?……I did.

Thank you. Now do you remember at any stage showing Sue Neill-Fraser any other discard piping system on board the boat?……There were a couple of strange pipes running in the engine room that we couldn't work out what they were.

Right…….And we assumed that they were a part of the fire fighting system.

Which was redundant?……Which was redundant.

Right. And they're the only ones that you showed her that were redundant?……That I can specifically remember, yes.

You certainly don't remember showing her any redundant pipe under the floor just in front of the first bulkhead, do you?……Under the floor in front of the first bulkhead, not that I can specifically remember now.

Thank you. Is it fair to say that all of the current working seacocks as best you can remember had tags on them indicating their purpose?……There were quite a few had no tags because that's where the problem lay, that we had to follow lines everywhere.

Yes……There were – you know, it was about fifty/fifty, I'd say.

Right, thank you. And if I could just go back to this one you found under the cover, your opinion was it was blocked off some where right up the far end of the pipe?…….Well I assumed it was blocked off somewhere because from opening the seacock –

Nothing happened?…….- if it was below the water level, water would have come onboard.

Mm, or the entrance point on the outside of the hull had been sealed over – that's an option, isn't it?.....Corr – yes.

That's another more reasonable option, I suggest, because that's a permanent fix and you don't have a problem with a pluck up a pipe that can come loose - correct?.....Well that – that may – that may be the case, yeah.

Thank you. Now on the way down the coast from Sydney to Eden, there was a bit of a deterioration in the relationship between Sue Neill-Fraser and Peter Stevenson, wasn't there?.....Yeah, yes.

Yes. And she came to you and discussed the deterioration in the relationship?.....Yes.

And she expressed concern about his drinking, didn't she?.....Well it wasn't specifically about the drinking, it was – it was more to do with – they just weren't getting on.

Right. But his drinking was an issue she raised with you, didn't she?.....At – I think it was in Sydney that she raised the issue.

Yes, and it was also raised again at Eden, wasn't it?.....I don't recall anything in Eden.

But you – you do recall a decision – sorry – a discussion in Sydney where the relationship and its deterioration came to the fore and - .....Yes.

- his drinking was mentioned?.....Yes.

She saw that as a problem, didn't she?

MR ELLIS SC: Well he can't answer that?

WITNESS: Well –

MR GUNSON SC: (Resuming): Well I'll put it this way – I'll put it another way. She expressed to you that she saw his drinking as a problem onboard – you may not have shared that but she expressed that view to you?.....Yes.

Thank you. Now you formed the opinion that Sue was a reasonably competent sailor?.....I wouldn't say a competent sailor, but she was

aware of the workings and she obviously had had some sailing experience, yes.

Yes, and when you first met her and Bob Chappell they talked about their ambitions with the boat?……Yes.

They told you that they intended to learn how to operate it?……Yes.

And that they eventually, having learnt how to operate it, wanted to do reasonably long trips together?……Yes.

And there was a discussion about them sailing up to the Whitsundays after some time, that's correct?……I can't specifically remember that conversation, but I suppose that would've been a part of it, yes.

Thank you. But there were discussions about long distance sailing trips that they planned to do in the future?……Yes.

And the Pacific Islands were particularly mentioned, weren't they?……As I recall it was more destinations around Hobart.

Yes. Initially they said what they would do is do trips around southern Tasmania until they got their skills up –

MR ELLIS SC: Well if this is led, as it only can be, as to a stated intention on the part of someone in my submission it needs to be attributed to someone. Now 'they' is being used all the time, but in my submission are we going to come to the situation where we don't know who's making this expression unless my learned friend makes the question more specific as to whose intention we're talking about.

MR GUNSON SC: I'll do that. (Resuming): Before you left Brisbane to travel down to the Gold Coast you had some shake-down sails on the boat, didn't you?……Yes.

And were Sue and Bob there?……Yes.

How many shake-down cruises or sails did you have?……There was only one that I was involved in.

Right……But I think prior to that there was another one.

Right. And in the period of travel from Brisbane down to Southport were there discussions with Sue Neill-Fraser about - at least her ambitions to use the boat?……Yes.

And did you have discussions with Bob as well, either with him present with Sue or individually with Bob?……I don't recall individually with Bob but probably with Sue and Bob, yes.

Right. And the initial discussions I suggest with Sue were to the effect that they would learn to use the boat and do short trips in southern Tasmania of a few days?……Yes.

And they would get their skills up and then would look to do – be doing longer trips perhaps into the Pacific, out to the various islands?……Yes.

Thank you. Now on the way down the coast from Sydney – well first of all from Southport to Sydney you had more problems with the boat didn't you?……Yes.

More problems with fuel blockages?……Yes.

And when you got to Sydney bits and pieces of equipment had to be purchased?……Yes.

And you had further problems coming down from Sydney to Eden?……Yes.

And you still continued to have problems coming down across Bass Strait and down the Tasmanian east coast didn't you?……Yes.

Right. And did it become pretty clear to you that the boat was going to need reasonably expensive repairs?……Well it most certainly needed repairs but they maybe wouldn't have been all that expensive but, you know, like they were just things that had to be done to the boat, yeah, for sure.

What sort of things do you remember now? Perhaps start with electrical problems that you experienced, there were quite a few of those weren't there?……Yes, there was alternator problems. There were alarm problems, bilge pump problems and just on and on.

What was the nature of the bilge pump problems?…….Well there was alarms with the bilge pumps –

Yes……..- and they would go off spasmodically for no reason.

When there was no problem?…….When there was – yeah, well they're designed to only go off when there's water in – in the system enough to trip them, whereas, they'd go off for no reason.

And that would cause you to go and look for water naturally?.....Look for water and to try and chase the electrical system to see whether there's a short.

Right. Now how did you overcome the problem with the alarm going off and there being no water activating the alarm – did you turn off the system?.....Well at – it had a backup system.

Yes.....So we isolated which one was causing the problem and we isolated that one.

Right. And by the time you got to Hobart what was the condition of the bilge pump alarm, was it operative or inoperative?.....It would have been operative.

Right. You fixed it?.....We couldn't – no, we didn't fix the one that – are you referring to the one that we'd isolated?

Yes.....No, we didn't fix it.

Right. .....We didn't have the facilities or the – the – like basically to fix it would have been a new pump.

Right. Thank you. Now that was just one bilge pump or a number of bilge pumps you're talking about?.....As – as I recall, there was – in the engine room there were two bilge pumps and one was a backup.

Right. And which was the one that was causing the problems?.....After this amount of time I can't really recall.

Thank you. There were other problems generally speaking with the electrical system onboard the boat which needed repairs?.....Yes.

Thank you. And Sue, you said, at one stage, "Just look, keep it quiet about the cost of repairs or likely cost of repairs, I'll deal with it with Bob"?.....Yes.

She basically said to you guys, "Don't you go telling him about it, I'll tell him about the problems when we get to Hobart" – is that a fair assessment?.....I only recall Sue saying that to me, I'm not sure if Peter Stevenson was present.

Right. She said it to you only once, didn't she, "Look, I'll deal with it when we get to Hobart"?.....Yes, I'd say that's correct, yeah.

Right. Now your memory of any discussion about the shares in the boat is very vague, is that right?……That's correct.

Right. And you don't remember how the conversation arose?……No, I really don't, you know, like it was – it was just background, you know, like sitting there for hours on end.

What she told you, I suggest, was simply this and only this, that she and Bob had jointly financed the purchase the yacht, they got their money out of their own accounts and each paid for half?……Well I – I had assumed that that was the case but I can't specifically remember a conversation about it.

Well do you deny that at some stage there was a discussion, just a general discussion, about how the yacht had been financed and she told you that she and Bob had purchased the boat jointly and each owned half of it?……I can't specifically remember her telling me that, but I had assumed that that was the case.

Well why did you assume it?……Well – well just the way they discussed things, you know, like a – you know, like it appeared to me as if it was, you know, like a joint effort.

Right. So you heard she and Bob discussing issues about the share in the boat and the purchase of the boat and the costs of the boat?……I can remember some discussions about the cost of some things, like washing of the fuel in Southport.

Yes…….But other than that I can't specifically recall anything, you know, like specific.

All right, and you don't recall any discussion about her buying out Bob's share?……I – I think at one stage there was something, whether I overheard her say that or – I'm pretty sure she didn't actually tell me that.

So she didn't – she didn't tell you that. Thank you, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. She didn't tell you directly as far as you can recall but it is your position that you heard her say it?……Could you repeat that please.

Although she may not have told you directly is it your position that you heard her say it, about buying out Bob's share?……Well I can't specifically remember her saying it but –

Well - …..Or, you know, like – or I overheard her saying it.

Right…..You know, saying it to Peter or –

You have a recollection of her saying something to the – the substance of which concerned buying out Bob's share, is that right?……That's right.

Okay, thank you. Now you were asked about the seacocks and you referred to one located under a – sorry, through a hatch in the toilet – in the toilet rather than – well, I'm sorry, in the room that is the toilet and shower, is that right?……That's right.

Outside the toilet door in the passageway do you recall a hatch in the floor which contained another seacock?……Yes.

Thank you. And do you recall showing Ms Neill-Fraser that seacock at any stage?……Yes, we spent quite a lot of time in that area and there were quite a few seacocks there.

Right, thank you. Now it's put that there was a concern about Mr Steve – expressed to you - at the time they'd fallen out somewhat, a concern expressed to you about Mr Stevenson's drinking by Ms Neill-Fraser, is that right?……Yes.

And was that one of many complaints that she made to you?……No, not – not many complaints but there were several.

Okay, several. And what was his drinking?……The drinking?

Yeah, what – how much would he drink?……Well in – in a situation like that you can't drink too much.

And what -…….He – sure, there were a few drinks had while we were at anchor or in a marina situation.

Yeah.....But you know, like, that's got nothing to do with safety or navigation.

No.....So Peter's intake of – of alcohol while we were at sea would probably be, I don't know, three, maybe three glasses of wine.

Mm hm. .....Because we were doing four hours shifts.

Okay. All three of you doing the shifts?.....Sorry?

Were all three of you doing those shifts?.....Well, basically there had to be – basically Peter or myself on one of the watches, yeah.

Okay. .....We weren't doing three – you know like, three shifts.

HIS HONOUR: I'm not sure –

WITNESS: But Sue would – Sue would be there for some of the shifts as well.

MR GUNSON SC: Your Honour, I rise to object because none of this was the subject of cross-examination about shifts and who would be doing what on shifts – I don't know where it's leading to but it hasn't arisen under cross-examination.

HIS HONOUR: Well it's – it's the witness – well what do you say, Mr Ellis, that's the first thing?

MR ELLIS SC: It's – it's part of the witness' answer as to the allegation of Mr Stevenson drinking to excess.

HIS HONOUR: Yes. Mr Gunson, do you – it arises in that way, doesn't it?

MR GUNSON SC: It arises in that way, but I think my friend was about to go on and ask some more questions – that was my objection - premature.

HIS HONOUR: Well I don't know what he's going to ask next, but the – the witness has spoken of Mr Stevenson drinking three glasses of wine, and I'm not sure as to what time period that – that consumption refers.

MR ELLIS SC: Yes, your Honour, I –

HIS HONOUR: Yes, go on Mr Ellis.

MR ELLIS SC: - was aware that that's still to be dealt with. (Resuming): But we're talking about the shifts, and it was – .....Mm hm.

- these are shifts at sea, is that right?.....Shifts at sea.

Thank you. .....Yes.

And there were four hour shifts?.....Yes.

Which you and Mr Stevenson shared?.....Yes.

But which Ms Neill-Fraser didn't share?.....Well she would sit – she would sit on – sit in on shifts.

Yeah.....But there was always either Peter or myself on watch.

Okay. Now, as you've heard his Honour say, the question of Mr Stevenson having three or four glasses of wine, when would he have three or four glasses of wine?

HIS HONOUR: No, he didn't say three or four, he said three.

MR ELLIS SC (Resuming): Three, thank you.....Well he would – he would have them after he'd gone off shift.

Right.....And before he went for a sleep.

Okay. And was there an occasion concerning drinking at Eden, was there a – do you recall anything specific about Eden? No.....As regards drinking, you mean?

Yes, yes.....There were maybe half a dozen yachts sheltering in the bay there away from bad weather –

Yes.....- and so some of the other yachts that were in there, they came across onto Four Winds for an impromptu barbecue and there was quite a bit of wine drunk there and so on, yeah.

Okay. And was it that occasion that Ms Neill-Fraser was complaining about?.....As I recall, no.

Okay. Now you said that she told you that they had – well she told you that she had a plan to learn to sail the boat and go to the Whitsundays and the Pacific Islands, is that right?.....Well once

again I can't specifically, you know, recall a conversation about it, but yes, that was – but as I recall there was more spoken about, you know, destinations around Tasmania than, say, the Pacific Islands.

Right. Do you say that Mr Chappell himself said anything concerning his intentions to sail the Pacific Islands and the Whitsundays?……It was more Sue.

Okay……..I can't specifically say that I can remember anything that Bob said about going cruising.

Thank you. Yes, I have nothing further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

<**THE WITNESS WAS RELIEVED AND WITHDREW**

HIS HONOUR: Yes, Mr Ellis?

MR ELLIS SC: Yes, your Honour, just let me have a minute to find the right name –

HIS HONOUR: Well would it be a good time for the morning break?

MR ELLIS SC: Oh, if it suits your Honour but I was just making sure I had the name, a particular name, I'm in your Honour's hands as to –

HIS HONOUR: Well is the next witness going to be a fast one or a slow one?

MR ELLIS SC: Oh, I think a slow one.

HIS HONOUR: All right, well we'll take the break. The jury can make their affirmation and the Court will adjourn for fifteen minutes.

JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: I've started without the jury because there are some queries that came from the jury that I want to discuss. My attendant was asked yesterday if she could tell them when this case will end, whether their verdict has to be unanimous and whether they'll be locked up overnight. She didn't tell them anything but as they're inquisitive it occurs to me that I should ask counsel what they think I should say. As to when the case might end my inclination is to give them an answer and to tell them that it will either be late – it looks like being late next week or early the following week. As to whether they'll be locked up overnight I think the answer is that all depends. It may be that they go out one morning and reach a verdict before the end of the day or at some stage in the early evening but that it's unheard of for a deliberating murder jury in this state to be allowed to go home overnight if it hasn't reached its verdict; I think I'm right about that. As to majority verdicts I wonder whether I should tell them anything at this stage but the problem about telling them nothing is that they might make their own enquiries and they might get wrong answers. Mr Ellis, do you have any submissions as to these three things?

MR ELLIS SC: The first thing it looks likely that the Crown case will finish early in the week, very early in the week and whether that's the end of the evidence, of course, I don't know. My learned friend might be able to assist –

HIS HONOUR: Well it puts the end of the trial at either late next week or early the following week and –

MR ELLIS SC: And there might be a hundred witnesses for the defence – I have no idea.

HIS HONOUR: Well – all right, well if that's all you want to say about that topic, we'll leave that one there.

MR ELLIS SC: Yes. The lockup issue; in my – I don't know of a murder jury being otherwise than kept together until a verdict.

HIS HONOUR: Mm.

MR ELLIS SC: And I agree with your Honour's preliminary thoughts that it's best to tell them what the situation is in accordance with the provisions than leave them in the dark, since I've raised it.

HIS HONOUR: And –

MR ELLIS SC: I suppose that might well be coupled with ammunition not to start taking straw polls at this stage – they haven't heard all the evidence, they haven't heard directions as to the law, they haven't heard addresses.

HIS HONOUR: Yes. Thank you. Mr Gunson?

MR GUNSON SC: As to when the case will end, I agree with what Mr Ellis says, but is it not the case that next Friday is the day that your Honour won't be able to sit?

HIS HONOUR: That's right, I don't want to sit on Friday of next week or at least not after eleven thirty. So – and it may be if – it may be a very good idea to put them out on a Monday morning rather than on a Friday, if it comes to that.

MR GUNSON: If it comes to that, yes. Well that's – I think we can probably just at the moment park that for a minute, as to whether or not your Honour would want to, in fact we're still sitting then hearing evidence, want to sit for an hour and a half on the Friday morning, whether that would be convenient or inconvenient as far as the jury is concerned, I don't know.

HIS HONOUR: Well it depends on whether there's a lot to finish off or not much to finish off.

MR GUNSON SC: That's right.

HIS HONOUR: Yes.

MR GUNSON SC: All right, well look, I agree with what my friend says, it's unheard of not to.

HIS HONOUR: Mm hm.

MR GUNSON SC: And they ought to know that.

HIS HONOUR: Yes.

MR GUNSON SC: And unanimous or majority, well your Honour will direct them, I imagine, well you will of course direct them at the trial, but I think it's sensible to tell them now that – what the two options, at least under s43 of the Act, are –

HIS HONOUR: Well my recollection is that a verdict of guilty must be unanimous, a verdict of not guilty must be unanimous within the first six hours, thereafter a verdict agreed on by ten or eleven may be accepted.

MR GUNSON SC: For not guilty, yes.

HIS HONOUR: For not guilty.

MR GUNSON SC: Yes.

HIS HONOUR: And of course that raises the question of – there's no basis for any alternative verdict in this case of course.

MR GUNSON SC: No.

HIS HONOUR: And there's – one of the things that's been exercising my mind is whether I need to tell the jury any – give the jury any directions at all about any type of murder other than an intentional killing and about any aspect of the law concerning principal offenders and accessories or aiders, abettors, instigators and so forth, but it – my preliminary view, and I'll hear submissions one day if either counsel – or any counsel wants to submit otherwise, my preliminary view is that there's nothing in this case that warrants exploring the law in relation to types of murder other than an intentional killing, nor of hypotheses involving two or more people that are criminally responsible. Should we go there now or leave that for another day?

MR ELLIS SC: Well I, with respect, don't agree with your Honour's view as to that. It's – there are hypotheses which were consistent with manslaughter.

HIS HONOUR: All right, so – well if you – that's something we'll have to discuss one day.

MR ELLIS SC: Yes.

HIS HONOUR: And I'm absolutely open to persuasion, I'm only advancing tentative thoughts, I don't think I should complicate things at this stage by telling them about – if I'm going to tell the jury about majority verdicts I don't think I should tell them anything yet about alternative verdicts.

MR ELLIS SC: No, I agree with that, your Honour.

HIS HONOUR: Mr Gunson, do you agree with that?

MR GUNSON SC: Absolutely, your Honour.

HIS HONOUR: Yes, all right. Well, I think we've probably said enough. We'll get the jury back and we'll address their three questions.

<THE JURY RETURNED

HIS HONOUR: Ladies and gentlemen, my attendant was asked by a juror yesterday and possibly on behalf of behalf of the whole jury, I don't know, a number of questions. When is this case likely to end? Might we be locked up overnight? And does our verdict have to be unanimous? I can tell you a few things. First of all, the earliest that this case could possibly end seems to be late next week. But it seems quite likely that it will go beyond the end of next week. I can't say – I can't predict what the longest possible course it could take will be, but when will it end, late next week at the earliest, more likely the following week it seems to me. But I can't be definite about that. The second question, might you be locked up over night? The answer is maybe. If – once the evidence is finished and counsel have summed up and – counsel have made their closing speeches and I've summed up then you commence your deliberations and if – if you get to the end of the day, say 7 or 8 or 9 at night and you've had enough for the day, then you can expect that you would be taken to a hotel and required to stay there overnight. In murder trials in this state it's unheard for a jury to be allowed to go their separate ways at that stage of the trial and come back the next morning. I've known – in my experience I've had juries – I've had one jury that had to stay in a hotel for two nights but it all depends. You might go out at the beginning of a day and reach a verdict by the end of the day or in the early evening and not be required to be kept together overnight, it may be quicker than that, so all that I can tell you is that if we get to that stage in the trial there's no reason to think that you might be allowed to go home or go your separate ways before reaching a verdict. Does your verdict have to be unanimous, well that depends. In Tasmania no one can be found guilty of the crime of murder other than by unanimous verdict so a guilty verdict needs to be unanimous. However, a verdict of not guilty of murder can be less than unanimous. If the jury has being deliberating for six hours or more, that is after the speeches and summing up have finished, if the jury's being discussing its verdict for six hours or more and if ten or eleven jurors agree that the verdict should be or must be not guilty, then I can accept a verdict that is agreed upon by ten or eleven jurors – it doesn't have to be unanimous. Now, I wouldn't normally tell you that at this stage – I wouldn't normally tell you that until the six hours are up. But I have been asked, and I think it's preferable that you be given an answer rather than go trying to find out for yourself and maybe asking somebody who gives you the wrong answer. It's very important, though not to go jumping to conclusions or discussing at this stage what you think your verdict might be. You haven't heard all the evidence yet. It's a bit early to be thinking – or it's absolutely too early to be thinking about which way you're headed. You shouldn't reach even a tentative conclusion as to what your verdict should be until you've heard all the evidence and the

closing speeches of both counsel and my summing up. So – well, I think I've said enough. It's very important that Ms Neill-Fraser receives a fair trial and that means keeping an open mind until you've heard everything that's going to be said to you.

All right. Is there anything else counsel wanted me to say or thinks I should say or correct in relation to what I've just said?

MR ELLIS SC: No, thank you your Honour.

MR GUNSON SC: No thank you, your Honour.

HIS HONOUR: all right. Back to you Mr Ellis.

MR ELLIS SC: Thank you, your Honour, I call Shane Sinnitt

<**SHANE ANTHONY SINNITT CALLED AND SWORN**

<EXN - MR ELLIS SC: Mr Sinnitt, are you Shane Anthony Sinnitt?……I am.

Are you a Detective Senior Constable in Tasmania Police Service?……That's correct.

Stationed with Hobart Criminal Investigation Branch?……That's correct.

And was that your station last year on the 27th January?……Yes, it was.

And on that day were you called to take part in an investigation?……Yes.

At that point what was the nature of the investigation?……I was on afternoon shift, I contacted Detective Sergeant Conroy about a missing man off a yacht at Sandy Bay.

On the 29th January did you and Detective Sergeant Conroy go somewhere?……Yes, we did.

Where was that?……We went to the Royal Yacht Club of Tasmania to the Derwent Sailing Squadron and spoke with and canvassed members of both clubs that were there for a sailing event, -

Yes……..- just seeking any information whatsoever about the area and the boat and the incident.

On the 5th February at 11:50 a.m. did you and Detective Constable Milazzo go somewhere?……yes, we did.

Where was that?……To the accused's residence at 7 Allison Street, West Hobart.

And who was present there?……The accused, Robert Martin, the accused's daughter, Sarah Bowles, and the accused's other daughter, Emma Meeker-Fraser.

Thank you. And did you have a conversation with the accused and others?……Yes, I did.

Did you make notes?……Yes, I did.

And have you since had those notes typed?……Yes.

Are they legible?……Yes.

And do you have a typed copy of the notes with you?……Yes, I do.

Thank you. Do you produce a typed copy of the notes?……Yes.

Thank you, I tender those, your Honour.

EXHIBIT #P64 – TYPED COPY OF NOTES TAKEN BY SHANE ANTHONY SINNITT – TAKEN IN

MR ELLIS SC (Resuming): Can you read them, please, as they appear and I may ask you some questions to clarify something as you go?……Yes.

1200 Thursday –

Or "Thurs" – sorry:

5209, 7 Allison Street, West Hobart. Sinnitt/Milazzo. Sue Neill-Fraser. Bob Martin. Emma? Daughter. Sarah? Daughter.

Heading:

Robert (Bob) History

Best mates, Steve and Mary, Bob Martin, Fiona and John Peet.

Yeah……..

Associates (work) –

Or abbreviated to work:

Maryann Pergus, Narelle Jones, Caroline Knight. Hobbies/Interests: smoking, cooking, workshop/tools. Behaviour recently: tense over break-in on yacht 10/1. No changes in behaviour. Health concerns/issues: drinker, one or two stubbies plus half a bottle of wine.

Did that relate to any particular when – one and a half stubbies or – and a half a bottle of wine would be drunk?…….Oh, I don't recall, I haven't noted it, no.

Okay. …….I don't recall.

Sorry……..

Onboard 2 X cans Pale Ale and bottle of red in starboard ship cupboard. Financial concerns: none. Home email websites: nil, only used computer at home to check weather charts. Diary/notebook: handed to us. List maker. Work concerns: no real concerns, planned to retire and return on contract. Completing QA manual, big project, intended to finish that first. First family/marriage: depressed at first marriage break-up but a long time ago. Nil recent, no recent signs of any depression. Avid reader. Provided recent library list, reads Age and Australian (weekends). Concerns – yacht dud? No. Everyone gets black death – handed pamphlet re black death and typed history of yacht purchase.

Yeah, "black death" what did that relate to?…….The accused handed me a small pamphlet, which I didn't read at the time but I've since read, and it relates to a condition with the fuel, the diesel fuel in the boat clogging – and this – and I don't have a great knowledge of it, but clogging the filters on the boat and it's a condition relevant to boats.

Right….

Worried about break in, 10th January, on mooring between 3/1 and 10/1. Rows over the boat/drugs/sniffer dogs and the boat's reputation. Bob equals paranoid. Family gathering on yacht on 18/1 nice. Dinghy, gaff hook might be off boat, fits description of recently purchased one (PJ receipt provided).

Right. Did you – well you made enquires about a gaff hoof that had - …..Yes, I was.

- come to your attention…..Sorry.

Did further enquiries lead you to the blue – that gaff hook was connected to this matter?……No.

Right, you got to buoy, B-U-O-Y…….

Buoy missing from dinghy. 300 millimetre plain white – plain white floating rope attached. Bob bought it not long ago Bay Chandlery. Extra tank, fuel N/K –

Meaning fuel not known?……Yes.

Top tank full, overflowed when Sue checked it. Last location left (on yacht), starboard side, rowing club side not the back equals washboard catches on dinghy.

Can you fill that out a little more as to what was – what was said that you noted?……I just asked her where – the last point she left the – accused left, sorry, the dinghy when she was last on the yacht and she provided that description, that it was starboard side, the rowing club side, not tied to the back because the washboard caught on it.

Right…..

Tied to pole at ladder RYCT near club boats near big circular concrete thing.

I've got a sketch on the next page.

Yeah. So she gave – is this Ms Neill-Fraser giving you a description where she last left the dinghy?……Yes, that's right.

You were aware that the dinghy had been found bobbing around near Short Beach, is that right?……Yes, that's correct.

Can Constable Sinnitt be shown map P – marked map P2 please. Does that map show the location of what you understood Ms Neill-Fraser to then be describing to you as to where she'd last left the dinghy?…….Yes, it does.

And how would you describe that location – not you, I'm sorry – were you familiar with the location when she talked to you about it?…….Yes.

And was a particular ladder mentioned?…….Yes.

Right. Thank you, I'm done with that. I wonder if you could be shown P11 please? That's the second last one in the large folder taken by Mr Fox. Would you have a look at those please, and see if you can identify what you understood was being told to you as the last point that the dinghy had been tied up – and did this relate to the 26th of January?.....Yes, it did. In photograph number 2 – first I should point out the first three photographs relate to EPIRB.

Yes.....That's now where the dinghy was tied. Photo number 1, a shot of house, a red brick house –

Yeah.....- is on Margaret Street across from where the dinghy was tied.

Right. .....Photograph number 2, a shot from the front of that particular house towards where the dinghy was tied.

Yes.....Towards where the dinghy was located. Number 3 is a shot from that same location towards where the dinghy was tied.

Yes.....Photo number 4 is a shot of the ladder where the accused described the dinghy being tied.

Okay. Can you point that out to us please?.....To the far right hand side of the photograph is circular stand with a crane on it –

HIS HONOUR: No, hang on – right side or left side?

WITNESS: Right side, your Honour.

MR ELLIS SC: Right side as we look at it –

HIS HONOUR: Oh photo 4, yes.

WITNESS: Photo 4, yep. Far right side there's a – what I call a crane on a circular stand. There's a ladder almost directly in front of that near a pole painted white.

MR ELLIS SC (Resuming): Yes.....That's the ladder, as I understand it.

Thank you. That's the ladder she described to you as having tied the dinghy up when she last left it on the 26th January -.....Yes.

2009.....The next photo, number 5, is a picture of the same area, same ladder, but the ladder is to the far left hand side. And photo

number 6 is a photo shot from the point of the ladder towards the mooring of the – where the Four Winds was moored.

Thank you. Thank you, yes, you can pass that to me. Now could you also be shown, please, P43, which are Mrs Sanchez's photos from the small folder, index number 6. If you can go, please, in that set to photographs 10, 11 and 12. Is that also in the area in which the – looking at 10 – area described to you as where the dinghy was tied?……Yes.

Thank you. 11 is a closer up of 10, and photograph 12, the same?……Yes.

Thank you. And looking at that photo where did you understand the dinghy was tied, can you see it or -…….No, to the far left.

Far left of the photo?……Far left past the dinghy you can see – of the yacht you can see with Lewis Marine on it, it's further past that.

Thank you. Again to return to your notes and you've annexed the sketch from the original notes, is that right?……That's correct.

Thank you. Next entry?……

Sue's movements (after last on yacht0 our timeline.

Mm, what does that mean?……..I was constructing an investigation time line and that's the heading for – I was about to ask the accused questions in relation to her movements on the afternoon of Australia Day.

Thank you…..Clothing, same as photo – question mark. 2 pm to 3.55 pm. Must have been on yacht Stayed longer than I first thought.

Can you explain that to us please…..the times – the relevance of 2 pm was up until that point of the investigation the accused had maintained that that was approximately the last time that she saw Mr Chappell alive and on board Four Winds on the mooring.

Yes……I asked her if she could recall her movements after that time and she said she'd become aware of the observations of a witness relating to a dinghy being at the yacht later that afternoon.

Mhm….I then informed her that that witness was confident that that timing was 3.55 pm.

Yes….And her response was “It must have been me on the yacht.”

Right. ..She then said: “ Stayed longer than I first thought” and then gave an account of her movements or actions on board the yacht.

Which you’ve noted as?.....Bon was going to look at the regulator as I left, made a cup of tea, Bob working in the engine room and on electrical panel, had row, me in Bob’s way. I was working on the washing machine which was in the way of the tools – my tools as well.”

Now, that’s in quotation marks – “my tools as well”….Yes.

What was said - ….That’s what the accused has said.

Okay, that they were her tools as well.....She – I’ve recorded that - what she said – “My tools as well”.

Yes. Next?.....”Left Bob on board, going to stay, dinghy to ladder at RYCT – tied up, walked to, walked to wagon near public toilet block (five minutes) ladder 16.15 hours, car 16.20 hours.”

What does “ladder 16.15 hours and car 16.20 hours” -.....After the accused had given that account and said that she’d returned from the yacht and tied the ladder up and walked to her car, I asked if she recalled what time she’d left the yacht, and she said she didn’t – she didn’t – she did not know. I pointed out to her that if it was her on board at 3.55 pm, the earliest possible time she could have left was around 4 pm

Yes, did she agree with that?.....Yes. From that I asked her how long it would have taken her to get from the yacht to the point of tying the dinghy up at the RYCT.

Yes.....She said, “About fifteen minutes” – I’ve recorded “1615” being 4:15pm.

Yes.....I then asked her how long it would take her to walk to her car, and she said, “Five minutes,” and I’ve recorded “1620” being 4:20pm.

Yeah. The next is?.....

*The route to Bunnings Moonah via Brooker, along Marieville to Sandy Bay Road asterix *no trailer on at Bunnings, took it off earlier, lunch.*

Okay, are you able to tell us what that means or what was conveyed to you from your notes?…….The accused said she'd – once she'd got to her car she drove to Bunnings at Moonah.

Mm hm. …….And I asked her the route that she took to get there and that's her account of the route. I asked her if – I was aware that she had a trailer on earlier in the day, I asked her if she still had trailer on and she said that she'd taken it off earlier at lunch.

Right. Next is?…….

> *Slow driver. Bunnings at about 1635 to 1640. Parked Brooker side car park forward facing building. In via main entrance passed checkouts.*

Again, could you flesh out what was said there from your note?…….Yeah, I asked the accused the route she took initially. I asked her how long it would take her to get from the position of where her car was parked to Bunnings. She estimated fifteen to twenty minutes. She indicated to me that she was a slow driver and that's why it would take her that long and that's why I recorded those times as being 1635 which is 4:35, and 1640 being 4:40. I asked her where she parked when she arrived at Bunnings and she gave that description. I asked her where she entered Bunnings and she said, "In via the main entrance passed the checkouts".

Right. And the next line is?…….

> *Wearing beige cargos, white joggers. Maybe large sunhat – cream, folded back – large brim. Turned R passed checkouts towards paint. Went up and down aisles. (L) into timber section – slip mats – passed paints. Should be on footage.*
>
> .

And that's a description of her movements in Bunnings?……That's correct.

On the 26th January?……Yes, that's correct.

Thank you. Out then……

> *Out via entrance same way. About 8:30pm called Emma.*

I have recorded in the notes here, your Honour, private telephone numbers provided by the accused.

Yes, there's no need to read that I'm sure.....Don't need that?

No.....

Talked one hour. Phoned mum before Emma.

There's a number there but there's no need to read it out.....

Home quite awhile before phoning Emma. No headlights to drive Bunnings to home. Didn't stop anywhere (shops, etcetera), on way to or from Bunnings. When tying dinghy girl dark hair was there. Fire extinguisher 05/06 last checked, Jim remembered it, ? –

Do you remember who Jim referred to?.....Jim McKinnon.

Thank you.

MR GUNSON SC: Well, sorry, the typed note I'm reading from says 'girl' so it's Jim is it?

MR ELLIS SC: "Girl dark hair was there".

MR GUNSON SC: The next one.

MR ELLIS SC: Oh, sorry, I think you're reading the typed note are you?

MR GUNSON SC: I'm reading the typed one.

MR ELLIS SC: I've got a little bit of a problem, have you got another copy of the typed notes that we've tendered for my learned friend Mr Gunson?

WITNESS: Yeah, I've got several copies.

MR GUNSON SC: Thank you.

MR ELLIS SC: Last page. (Resuming): "Jim remembered it, Jim Stevenson", next line is?.....

Handed over diaries, notes, wants phone and 2009 diary back. Concluded, initial SAS 2092 and MM 2322.

And they're the initials of you and Constable Milazzo and your rank – your police numbers?.....Police numbers, that's correct.

Thank you. Following that did you, on the 9th February, view something?.....Yes, I did.

What was that?.....It was surveillance footage or security footage from Bunnings Moonah for 26th January 2009.

Had you previously viewed that?.....I had.

And on either occasion did you see anything of the accused, Ms Neill-Fraser?.....No.

Thank you. Did you see Ms Neill-Fraser again on the 11th February to return something to her?.....Yes, I did.

And what did you return?.....Her mobile telephone and a photocopy of entries from her 2009 diary.

Now up to that point, 11th February, and on that day did you or any other police officer in your presence give to her a theory that Mr Chappell's body had been hauled out through a hatch by ropes and winched on board from below?.....No.

With a fire extinguisher attached?.....No.

Thank you. Now on the 12th February at 2:00 p.m. did you go somewhere?.....Yes, I did.

And where was that?.....To Clean Lift Marine at Negara Crescent, Goodwood.

Who did you go with?.....With Detective Sergeant Conroy, Detective Sice and Detective Puurand.

What did you do on board? I take it you went on board.....We went on board the vessel, Four Winds, which was docked there. On board others – other detectives present replaced carpet squares in the saloon area.

And how was that gone about, replacing carpet squares, were they loose around?……They – yeah, they were everywhere through the saloon.

Right. And when the carpet squares had been replaced such as were in the saloon what did you find?……That there were some missing.

And were they all missing from a particular area?……Yes, in front of the engine room.

In front of the engine room?……Yes.

Could the witness please be shown P9, which are at tab 2 in the large volume and photograph – the very last one please, Mr Sinnitt, number 70 – numbered 76? Is that the result of putting the carpet squares back?…….Yes, it is

And the back section was missing?…….That's correct.

And was this like a jigsaw puzzle, they were all odd shapes and sizes and -…….That's correct, yes.

Okay. So everything else was fitted in the saloon leaving that distinct patch?…….Yes.

Thank you. All right. And was something else done onboard that day?…….Yes, I stood in the area – area of the missing carpet squares and placed a rope around my waist, which was leading off the rear winch –

Yeah, and is that the winch shown in photograph 70?…….No, no that's not it.

No, it's another winch – that was my mistake – is that the winch shown in photograph 1, that's without the handle on it?…….No, that's – no.

Hang on we need to be – I need to be a bit clearer – we've got a rope -…….Yes.

- the winch that you're referring to, is that shown in the photographs?…….I'll have to go through. Photograph 14.

Yeah……..That's the rear winch that I was referring to.

Okay. And what was done?.....A rope leading off that was handed to me when I was down in the saloon standing on the area of the missing carpets.

Yeah.....And I wrapped the rope around my waist and Detective Puurand was at the winch.

Yeah.....And began to wind the winch. I resisted by placing my hands either side of the exit, if you like, of the saloon and I couldn't stop him pulling me out, so I told him to stop.

So he pulled you up off your feet?.....No. He would've if I didn't tell him to stop, he was pulling me forward and as much as I could resist I couldn't stop him.

How much did you weigh then?.....Ninety eight kilograms.

Thank you.....Approximately.

Did you go back there on the 13th February?.....Yes, I did.

And did you collect – collect some items, exhibits?.....13th, yes.

Okay. On the 16th February did you again go to Four Winds and was it then at Goodwood?.....Yes.

And did you meet anyone there?.....Yes, we met with the accused, Sarah Bowles and Robert Martin.

Mhm. And what was the accused doing, if anything?.....The accused was showing Robert Martin where ropes had been shortened on board the yacht.

Yes. And did she say anything to you?.....Detective Puurand asked the accused what she thought had happened to Mr Chappell.

Yep.....And she stated that she believed his disappearance was related to break-ins on the yacht, both in Queensland and on the mooring at Sandy Bay.

Thank you. Now on the 3rd March did you go to Clean Lift, Goodwood?.....Yes, I did.

And who were you with?.....Detective Sergeant Conroy.

Was anyone there?.....Yes, the accused and Robert Martin.

And were they on board Four Winds?……The accused was.

Did she say anything to you?……The – yes, she did.

What was that?……She stated that the tanks on board the vessel hadn't been properly searched by police.

Mm…….She also stated that she'd located a piece of timber step footing located in a bilge pump.

Did she say where that bilge pump was?….She said forward – forward bilge pump.

Yes. Did you gain some understanding of what sort of wood she was talking about – or piece of timber?….I was aware of the small timber feet, yes.

What were they used for?….Holding the steps that led from the saloon to the wheelhouse. They were placed around the bottom of the timber legs, of the stairs if you like, or steps, screwed into place to hold it in place.

Yes. And had there been similar pieces of wood found in the saloon itself?….Yes.

Right. Would you look please at P3, large folder, first one, photograph 50. Do you see what appears to be two objects floating there?…..Yes.

And what do they appear to be to you?…..The feet that I was referring to – the timber feet.

Two of. And how many feet – sorry – is this a forward bilge?…..My understanding of it is is, yes.

And if you could be shown please P9, index 2, photograph 18, which is held up, I think, this way – do you see photograph 18?….Yes.

Do you see any similar pieces of wood?….Yes, I can see two there.

You can see two there. And is 19 a closer up of those two?….That's correct.

So how many do you understand there were?….Four.

And so that accounts for the four?.....Yes.

Thank you. On the 28th April did you receive a phone call from the accused?.....Yes, I did.

And what was said there?.....The accused phoned me and questioned me in relation to the river search conducted by the Victorian Water Police.

When had that taken place?.....The river search?

Yeah.....Between – onwards from the 17th April.

Right. And did she ask about anything else?.....She asked if the fire extinguisher off the vessel had been located. She also asked if anything else – we'd found anything else.

Yeah. On the 20th August did you go to 7 Allison Street with Inspector Powell and other police?.....Yes, I did.

Did something take place there?.....Yes.

What was that?.....We arrived at the – I arrived at the address with Detective Rowe and the accused arrived shortly after and as did Inspector Powell and other detectives.

Yeah....And Detective Inspector Powell advised the accused that she was under arrest for the murder of Robert Chappell and cautioned her.

And at 1- and there where did she go?.....She then accompanied me, Detective Rowe and Detective Puurand to the police vehicle that I had to be taken back to the Hobart Police Station.

And at 1:03 did you inform her of something?.....Yes, I informed the accused of her right to communicate with a friend, legal representative or relative, sorry.

Thank you. Now you've done various checks as to the whereabouts of – of Mr Chappell?.....That's correct.

I think we have some of them as agreed facts. Perhaps the witness could be shown that set of agreed facts please?

HIS HONOUR: P17, I think.

MR ELLIS SC: Thank you, your Honour. (Resuming): I'm sorry – in addition to whatever is done there, did you Metro Bus Services?.....Sorry, can you repeat that?

Did you make a check with Metro Bus Services?.....I had one done on my behalf, yes.

Yeah. And what was that for?.....Just to see if there was any related pickups from the area during the relevant time, between the 26th and 27th of January '09.

Yeah. And taxi companies?.....Yes – the same.

The same – any result?.....No.

Telephone call records for the – from a pay phone on Marieville Esplanade?.....Yes, I had records checked for calls made from that telephone box.

Yeah.....For the 26th and 27th of January and I followed up the four calls that were made.

Yes.....And none were linked to this investigation.

Did you deal with something concerning a rooftop webcam on Wrest Point Casino?.....Yes, I did.

Any result?.....No.

Did you ask police officers about reports of break-ins or searches in Marieville – searches of vessels in the area?.....Yes.

Any result?.....No.

You made Australia Post checks?.....Yes.

No result?.....No.

TT Line checks?.....Yes.

No result?.....No, there was a result that Mr Chappell last was shown as using that service returning from Melbourne to Devonport with the accused in 2008, I believe – late 2008.

Okay, and their Ford Station wagon, DO 0402?.....That's correct.

Thank you. Airline check?.....Yes.

No result?.....No relevant result since his disappearance, no.

A credit check?.....Yes.

No result?.....No, there was – no.

Centrelink checks?....Yes.

Any result?.....No.

All State and Australian Federal Police checks for activities concerning Mr Chappell ....Had that conducted and there was no record of Mr Chappell.

Transport checks throughout Australia?.....Yes, that's correct.

Any result?....Yes only in Tasmania. His – checks revealed that his driver's licence – his Tasmanian driver's licence expired in March of 2009. He hadn't renewed it, and the only motor vehicle registered in his name was the Ford Station Wagon, DO 0402 and also a box trailer registered in his name.

Did you do an all Australian States marine search for licence and registration records?...Yes, I did.

And did only obtain results from Tasmania concerning Mr Chappell.....That was the only State with any record of Mr Chappell, yes.

Did that reveal his boat licence expired on 3rd June 2009 and hadn't been renewed.....Expired, yes.

And the only vessel registration was in respect to the Four Winds?....that's right, a joint registration with the accused.

Did you check the Department of Immigration and Citizenship?....Yes.

Did that show Mr Chappell as having left Australia since 2006?.....It showed that he hadn't left.

Hadn't left since - ...Hadn't left Australia since 2006.

Okay. And similarly a Customs check. Did you perform that?....Yes.

And any record of him having left Australia there since 2006?....Not since 2006.

Australian Tax Office check.....Yes, I did that check.

Any tax return since 2008?.....No, none.

Medicare check?.....Yes.

Up to the time of the check in November '09, any activity with Medicare from 26th January?.....no.

Pharmaceutical Benefits check? Any activity?.....The same, no activity.

Births, Deaths and Marriages check?....No record since he went missing.

And the State Library?.....Yeah, I conducted – had a check conducted there and Mr Chappell ordered a number of library books on the 20th January 2009 and hadn't collected them.

Okay. Did you find in all this or have you found since any evidence that Mr Chappell was alive since the 26th January 2009?.....No, none. No.

In March 2010 did you become aware of an apparent DNA match on the deck of the Four Winds made to Meaghan Vass?.....Yes, I did.

Did you conduct enquiries in relation to her and any possible connection with Mr Chappell or Four Winds?.....Yes, I did.

And did you find any information that would establish such a connection?.....No, none.

Did that include telephone checks, police intelligence systems, fingerprint checks?.....Yes, it did.

Checking any surveillance footage of Four Winds at Constitution Dock?.....Yes.

Did you – we've heard evidence that the DNA match found could've been put there at any time, but in relation to the period between the

vessel having been found sinking and the time you conducted the enquiries in 2010 did you check to see – try to ascertain how many people had been on board Four Winds?.....Yes, I enquired myself into how many people had been on Four Winds from the point that it was first discovered sinking on the mooring –

Yep.....- on the morning of the 27th January 2009 to the time when the – when I was informed that the DNA sample was taken from the deck of Four Winds, which was, I was told, 1:40 a.m. on the 30th January 2009.

Yes.....I conducted that enquiry.

And how many people could you establish had been on board?.....At least twenty one people, not including FFST personnel.

Right. Thank you.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: Detective, if we can stay with the subject we've just been addressing, which is Meaghan Vass; you found out on the 15th of March that a DNA match from the deck of Four Winds had been made to a person called Meaghan Elizabeth Vass?.....That's correct.

Who told you that?.....Carl Grosser.

Right. From Forensic Services?.....That's correct.

And he telephoned you or he wrote to you or emailed you?.....Telephoned me, I think.

Right. And you then made inquiries about Ms Vass – when did you commence making inquiries?.....Immediately.

On that very day?.....Yes.

Thank you. And you have said you made inquiries of her whereabouts at the time of Robert Chappell's murder; what inquiries did you make specifically?.....Oh I went through the police – well integrated police intelligent systems –

Yes.....- and information systems, which identified that around the time she was residing at women's shelter.

Yes.....I made inquiries with that women's shelter.

Right. And the name of that women's shelter?.....Mara House.

Mara House – where's that?.....I believe it's Forster Street in New Town – it's in New Town.

So she, at around about that time, that is the 26th, 27th, 28th of January she wasn't living Stanford Court according to what information you received?.....I don't know if she was living there.

But you just said she was at a women's shelter, at Mara House?.....Well that's what our systems indicated, there was intelligence stating that she'd been there.

So she was in your system for some reason, was she?.....That's correct.

And for what reason was she in your police system?.....My recollection of it was that police had attended Mara House at some stage earlier than that date, and I can't recall the date, and put an intelligence report in relating to a number of persons, including Elizabeth – Meaghan Vass.

An intelligence report about what sort of issues?.....It was, from my recollection, it was behavioural issues at the actual shelter.

All right. So a police intelligence report was made, so do I understand how the system works, police officers go to a scene where there is an incident of some sort, if charges don't come out of it nonetheless a report goes in to your system for "intelligence purposes", is that right?.....Or information purposes.

Right. So are you able to tell me when it was that she was living at Mara House?.....I can't recall the exact dates, I was –

Do you have your notes here?.....I have notes outside the court.

Well would you, with your Honour's permission, go and get those notes, please.

HIS HONOUR: Yes, would you go and get them, please, we'll wait.

WITNESS LEAVES COURTROOM TO GET NOTES

MR GUNSON SC (Resuming): Now what have you brought into court?.....Pardon?

What have you brought into court?.....I've brought a folder containing enquiries relating to Meaghan Vass.

Thank you. Now I want you to tell me, please, and if necessary refresh your memory, what information you gleaned about her whereabouts at the time of Mr Chappell's disappearance?.....My enquiries with Mara House revealed that she was listed as a resident, or supposed to be staying there on the evening of the 26th January 2009. That she hadn't stayed there after – they explained the process but she'd requested to be elsewhere for the night.

Right. So just go back a second. She requested not to stay there the night of the 26th is that what you determined?.....That's my recollection of it or I need to refer to my notes.

Right. Was there – did you understand that there was some process if you lived at Mara House you had to check out for the night, was that your understanding?……I don't know how formal the process was but they – the carers, or I don't know what the correct term is, were required to be notified if you were going to be absent, yes.

Right. And you established that Mara House had a notation or a record of her asking not to stay there that night?……That's my recollection of it.

Thank you. Well if that confirmed by you refreshing your memory from your notes?……No, I –

HIS HONOUR: No, look, has – I think the question is have you refreshed your memory from your notes prior to giving that answer?

WITNESS: No, I haven't, your Honour.

MR GUNSON SC: (Resuming): Would you refresh your memory from your notes, just read them to yourself and say nothing about them, just refresh your memory please of what it is that you were told by staff at Mara House. Right, now having refreshed your memory tell me what it was that you were told by the staff at Mara House?....That on 26th January Meaghan had requested to have a sleep over at another residence and that she left the – Mara House at 3.50 pm and was to later phone with the phone number of the person she was staying with, and didn't.

And she didn't?.....No.

And before she left, as a result of your enquiries, did Mara House personnel know where she would be spending the night – had she told them?.....Yes.

And where did she – what did she tell the Mara staff – the Mara House staff?.....That she was –

MR ELLIS SC: We're going right into hearsay. We've been there for a long time.

HIS HONOUR: No, we're in business records, Mr Ellis.

MR ELLIS SC: Oh! If it please. If my learned friend is tendering business records that's –

HIS HONOUR: No, business records don't need to be tendered – evidence of their contents can be given without tendering them.

MR ELLIS SC; Oh right your Honour. I thought we were refreshing memory; but if we're giving evidence of the contents of the document – thank you.

MR GUNSON SC: I want you to refresh your memory please, as to what the staff at Mara House told you about what she said about where she was staying. Just refresh your memory, having refreshed it, please tell us what the answer is.....The staff informed me that Meaghan Vass had requested a sleep over the night of 26th January, and that she exited Mara House at 3.50pm and was to phone them and let them know the phone number of the person she was staying with, and that she didn't phone them.

The question I asked you was did your enquiries result in the staff at Mara House telling you where it was that she was intending to be that night – where she was going for this sleep over...Yes, it did.

Right. What is the answer?...At a unit at Onslow Place, Mt Nelson.

A unit in Onslow Place, Mt Nelson. Was an address given?...Yes, it was.

What was the address?.....Unit 8, number 7 Onslow Place, Mt Nelson.

And was the name of the occupant of that address given to you as well?....The Christian name only.

Her Christian – right. I am going to call for the production of this document for me to inspect your Honour it's obviously not something that we've seen before – I would like the opportunity to look at it? I don't know big it is or how detailed it is but –

HIS HONOUR: Well the witness is carrying a lever arch file with "Vass" written on the spine. Now what is it – are you asking for – to inspect the –

MR GUNSON SC: I want –

HIS HONOUR: The page relating to Mara House information or what?

MR GUNSON SC: I suspect that if I go through this process I'll be wanting to look at the whole of the file, and it might be convenient if

it's produced for inspection, I'll do that over the lunchtime if that's convenient to the Court.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Could I draw your Honour's attention though, in connection with the objection I made, to s69(3)(b)?

HIS HONOUR: Ah – something I hadn't thought about.

MR ELLIS SC: And I've made a hearsay objection.

HIS HONOUR: What I'm inclined to do is to send the jury away until two o'clock.

MR ELLIS SC: Yes.

HIS HONOUR: We can discuss this and see where we get to.

MR ELLIS SC: If it please.

HIS HONOUR: Mr Gunson, we're going to be a little while, aren't we?

MR GUNSON SC: Yes.

HIS HONOUR: Yes, ladies and gentlemen, there is going to have to be legal argument, rather than keep you waiting, you can have an early lunch and return at two o'clock. So I'll ask you to make your affirmation, get whatever you need to get from the jury room, and leave. I won't leave the bench.

<JURY AFFIRMED OUT

HIS HONOUR: Well it seems to me there are two separate questions, one is whether the cross-examination as to information provided by staff at Mara House should be permitted to go any further, and the second is whether Mr Gunson should be permitted to inspect any or all of the contents of the folder. Now Mr Ellis, what's your position as to both of those things?

MR ELLIS SC: As to both, with respect, I submit that it's not about going further, it's about how far it's gone already in that I made an objection to hearsay, –

HIS HONOUR: Yes.

MR ELLIS SC: - it was allowed to be continued on the basis it was in effect giving evidence of the contents of business records and I respectfully submit that that shouldn't have been allowed.

HIS HONOUR: All right. Well if you're right about that then the consequences are either that I tell the jury to ignore the information or abort the trial. Now what are you asking me to do?

MR ELLIS SC: To tell the jury to ignore the information.

HIS HONOUR: Yes.

MR ELLIS SC: As to the second question if it is relevant to a matter in issue I agree my learned friend should have entitlement to inspect, it's part of my and police's disclosure obligation however I haven't had the chance to discuss whether there are any public interest objections which might be made –

HIS HONOUR: You need to know what's in – you need to know what's in the folder or even the note?

MR ELLIS SC: That's right.

HIS HONOUR: Yes, all right. Well it seems to me that in relation to – I haven't heard Mr Gunson yet but is it your position that you should be allowed to inspect that folder and over the break make available to Mr Gunson whatever you see fit to make available from it or –

MR ELLIS SC: See fit is a little pejorative with respect, your Honour.

HIS HONOUR: Well think appropriate.

MR ELLIS SC: Thank you. Yes, but I would also seek permission to discuss that with Constable Sinnitt even though he's under cross-examination because he may well be aware of matters to which any proper public interest objection to inspection might be made.

HIS HONOUR: Yes, all right, I'll note what you say. Mr Gunson, what do you say?

MR GUNSON SC: What I say, your Honour, is the second issue I have no problem with that. As to the first issue I'd like the opportunity to have a look at the section over lunchtime and see what's been written on it. It seems to be a fairly extensive discussion of it, in Odgers text, Uniform Evidence Law 9th Edition, para 1.3.2880 and I want the opportunity to address your Honour properly on it.

HIS HONOUR: All right. So –

MR GUNSON SC: I should say I would like to have the opportunity.

HIS HONOUR: Well it occurs – well my thinking is we can come back to the objection after lunch possibly earlier than two o'clock. The – you've no objection to Mr Ellis discussing the contents of the Vass file with the witness?

MR GUNSON SC: No.

HIS HONOUR: All right, well what I propose to do is to adjourn until 1:45. During that time there can – well I propose to adjourn 'til 1:45 and resume these discussions then. Is there anything that either counsel or either senior counsel want to say before I adjourn 'til 1:45?

MR GUNSON SC: No, no, your Honour.

MR ELLIS SC: No, your Honour.

HIS HONOUR: All right, the Court will adjourn 'til 1:45.

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Well, Mr Gunson, where are we now?

MR GUNSON SC: Two things; we have the submission from my friend, which your Honour will need now to hear in detail under s69, and after that I'll be asking your Honour for an adjournment to enable me to fully read the file that's been obtained from Detective Sinnitt. My friend gave it to me during the luncheon adjournment. I've been able to read part of it. I need to read more of it.

HIS HONOUR: How long do you think you need?

MR GUNSON SC: I'll probably need about half an hour, your Honour, to go through it completely.

HIS HONOUR: Right. All right. Well look, let me talk through you what – what I've been thinking about s69. The starting is that if we're – if we're concerned proving the contents of the records of Mara House, the starting point is that the representations made in those records are – would seem to me to be admissible, prima facie admissible, under s69, if the contents of the records are proved in an appropriate way. Now what s69 does is to make the records admissible as the proof of their contents. The records are documents. Mr Ellis drew my attention to s69(3)(b), well we need to go back a bit; s69(2) makes a document admissible if it's – sorry, s69(2) makes the hearsay rule inapplicable to a document that contains – that's part of a business record. s69(3)(b) makes an exception when the representation in the document was made in connection with a criminal investigation. Now unless somebody wrote something that had some connection with a criminal investigation in the records of Mara House then s69(3)(b) doesn't make any of the Mara House records inadmissible. So where we get to is that if the information in the Mara House records is relevant then those documentary records are admissible, so then we have to go to the section that deals with proof of the contents of a document, which is s48.

MR GUNSON SC: Yes.

HIS HONOUR: Now there are all sorts of ways of proving the contents of a document these days because the best evidence rule has been abrogated in a lot of ways – the best evidence rule has been abrogated in a lot of ways, so, for example, under s48(1)(e)(ii)

somebody can tender a document that purports to be an extract or summary of the document.

MR GUNSON SC: Yes.

HIS HONOUR: But the only way that the contents of a document can be proved by oral evidence, apart from evidence of an admission, is under s48(4)(b). s48(4)(b) says:

> *A party may adduce evidence of the contents of a document in question that is not available to the party or the existence and contents of which are not in issue in the proceeding by (b) adducing oral evidence of the contents of the document in question.*

MR GUNSON SC: Yes.

HIS HONOUR: Now the words 'not available' have a technical meaning –

MR GUNSON SC: They do.

HIS HONOUR: - and that's dealt with in s3(c) –

MR GUNSON SC: Yes.

HIS HONOUR: - and basically if it – if the documents are at Mara House and can be produced as a result of serving the equivalent of a subpoena, then it seems to me they're available. So 48(4)(b) can only apply if the existence and contents of the Mara House records are not in issue.

Now let's assume for the moment that the existence and contents of the Mara House records are not in issue, not disputed in anyway; what 48(4)(b) allows is for a party to adduce oral evidence of the contents of the document. Now normally that would be done by someone saying 'I've seen that document and it says the following' –

MR GUNSON SC: Mm hm.

HIS HONOUR: - that's not what we've got here. We've got Detective Sinnitt saying 'I spoke to a person who said that the records say the following' – and that's –

MR GUNSON SC: No –

HIS HONOUR: - that's hearsay.

MR GUNSON SC: No, this is where the beauty of having looked at the file, and I only got a little way into it so far, is that Detective Sinnitt wrote to Mara House by email on the 15th of March 2010 posing a number of questions, and Mara House responded setting out a whole series of answers. So it is a document prepared by Mara House and sent to Detective Sinnitt. Perhaps I can make my position clear –

HIS HONOUR: Well it's a summary, that – you're saying that what you've got is a summary that comes in under 48(1)(e)(ii), are you?

MR GUNSON SC: Well what I'm saying to your Honour is that first, I suspect it would be useful to your Honour to have a look at the two documents in question, which I'm just going to tag –

HIS HONOUR: Well maybe – may be we're going to get to a point where I don't need to revisit Mr Ellis' objection, I don't know, but where I had got to was that after Mr Ellis had objected I allowed Detective Sinnitt to give oral evidence of what the records – or what he had been told was in the records as to an address in Mt Nelson and as to the provision of a name. Now unless 48(4)(b) is wide enough to allow hearsay evidence as to the contents of the document I shouldn't have allowed that evidence to be given in that manner.

MR GUNSON SC: That's right, but you based that ruling on facts as you believed them to be at the time in relation to either oral contact between Detective Sinnitt and Mara House whereas in fact what he has is correspondence from Mara House which then forms part of the police records. Perhaps I can hand the folder to your Honour if your Honour would just look first at all - the document that is furthest back you'll see the form of request from the detective and then the response from Mara House. What your Honour has right in front of you now is the response and I invite your Honour's attention to the first document.

HIS HONOUR: Yes. Yes, well it begins – the email to Detective Sinnitt begins –

> *Hi Sam, Mara House documentation re Meaghan Vann 26/1 to 30/1 2009.*

So it's a – as I see it it looks to me at this point as if it's a summary of the contents of the records of Mara House.

MR GUNSON SC: Yes, presumably in the course of business of Mara House.

HIS HONOUR: I'll just pass that back. Well look, it seems to me that the best use of the available time probably calls for – I'll ask Mr Ellis, what do you say about adjourning the matter to give Mr Gunson an opportunity to finish doing his reading and both counsel an opportunity to consider their positions.

MR ELLIS SC: I don't oppose it, your Honour.

HIS HONOUR: Righto, how long do – when do I tell the jury to come back? Three o'clock?

MR GUNSON SC: That would be convenient, your Honour.

HIS HONOUR: Three o'clock or tomorrow really, that's really the choice, isn't it? Mr Ellis, what do you say?

MR ELLIS SC: Well –

HIS HONOUR: Don't let me confine you to three o'clock or tomorrow.

MR ELLIS SC: I don't need the extra time, your Honour, it's not my application.

HIS HONOUR: All right.

MR ELLIS SC: I'm just considering that my learned friend says he needs another half an hour –

HIS HONOUR: Yes, and then we might have an argument.

MR ELLIS SC: And then if he wants to address further argument to you, -

HIS HONOUR: Yes. Three o'clock?

MR ELLIS SC: I'm happy with that, your Honour.

HIS HONOUR: Yes, all right. Well rather than get the jury back in and swear them back out I'll – they can be told that they're not required 'til three o'clock and when counsel are ready to make further submissions to me let the staff know and I'll come back on the bench.

MR GUNSON SC: I was thinking about the timings. I spoke before you came in with my friend, who indicates he has no objection to a copy of this file being made for me and proposed that Ms Brookes will make it for me. I think, looking at the size of it, that's going to take a minimum of ten, maybe fifteen minutes and then I'm going to have to start reading it, so I think probably we are a little optimistic as I stand here and think about it.

MR ELLIS SC: Your Honour, whatever my learned friend reads, could I suggest, his argument won't improve. What he has led and seeks to continue to lead is hearsay upon hearsay of the contents of records and has done it from the contents of a record prepared for a police investigation. Now all that is – there is no way around it, it won't improve by him reading it, in my submission, it won't improve by him reading it. In my submission, it won't improve by him saying or asserting that the email somehow is the business record of Mara House, it plainly isn't. It's not in the business of answering police inquiries in a murder investigation, unless he seriously suggests that.

And so, the position won't improve, in my submission, and it requires, with respect, a ruling.

HIS HONOUR: Well look, there may be faster ways to make a photocopier – make a photocopy. I direct that the jury be informed that they're not required until three o'clock but they're to be back here then. I'll retire and I'd like to resume as soon as reasonably possible.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: Well, Mr Gunson, what's your position now?

MR GUNSON SC: Well our position is that we have copied all of the material, I've still got some to go but I'm not going to ask for a further adjournment and I think I can deal with it. It did take longer than anticipated to copy the material and I think we can proceed on with the evidentiary argument.

HIS HONOUR: All right.

MR GUNSON SC: I'm going to indicate to you now that before the end of today I would like to make two applications to your Honour. One is to recall Meaghan Vass and the other will be to recall Mr Carl Grosser but we can deal with those at your Honour's convenience.

HIS HONOUR: Well – all right, well the application or the matter that's before me is a submission by Mr Ellis to the effect that I should have allowed his objection that he made prior to evidence being given of the address provided to the Mara House staff and the fact that a Christian name was provided to the Mara House staff and that I should instruct the jury to ignore at least that much evidence. Now is there anything more you want to say as to that?

MR GUNSON SC: It's not worth the limitations your Honour has placed on it in the sense that it only relates to an address and name.

HIS HONOUR: Well I'll come back to Mr Ellis. Mr Ellis, do you submit that I should tell the jury to ignore anymore than that, to ignore material – evidence that was given before you objected?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: How much should I – how much do you say I should tell them to ignore?

MR ELLIS SC: All of it which was –

HIS HONOUR: All the information provided from Mara House?

MR ELLIS SC: That's right.

HIS HONOUR: On the basis that it was hearsay?

MR ELLIS SC: Hearsay, yes. And was purported to be refreshing the memory was actually giving the contents of the document.

HIS HONOUR: Yes. Well as to that, Mr Gunson, what do you say?

MR GUNSON SC: Well that's a different proposition because once that document, to which I referred earlier, the letter from Mara House, is in the hands of Tasmania Police it forms part of their records and is a business record, and then we got, as your Honour previously indicated, to part 2, s47 onwards of the Evidence Act, and we are entitled to adduce evidence of the contents of a document in question – well it wasn't available at the time to the party, we didn't have it at the time, and therefore, can adduce oral evidence of its contents. So at that stage, when the questions were asked, clearly s48(4)(b) apply, we could adduce oral evidence of the contents of the document, which the officer looked at – it wasn't available to us, we didn't have it, and at that time the questioning was quite proper and was permissible under s48(4)(b), and of course it was without any objection.

HIS HONOUR: But before you get there, if you're talking about the – if you're wanting to elicit evidence of the business records of Tasmania Police, surely the representations that are made in their records are representations made in connection with an investigation relating to a criminal proceeding.

MR GUNSON SC: Well that – that's where it becomes a moot point, with respect. If I could just say this to your Honour; it would seem on the face of it that it wasn't prepared for the purpose of, in terms of s69 – just bear with me – (3)(b) in connection with an investigation relating to or leading to a criminal proceeding, because the criminal proceeding was in place already, the accused had been well and truly charged before that, so it wasn't leading to a criminal proceeding, and it was made in connection, it would seem, for the purpose of determining how Meaghan Vass' DNA was found on Four Winds rather than the proceedings per se. Now –

HIS HONOUR: But someone from Mara House sent Detective Sinnitt an email –

MR GUNSON SC: Yes.

HIS HONOUR: - saying, 'Our records say A, B and C', isn't the representation, 'Our records say A, B and C', a representation made in connection with an investigation relating to a criminal proceeding?

MR GUNSON SC: Well there's the problem, it's a question of what he was investigating at the time. He was investigating the presence of this woman's – this girl's DNA on the boat, he wasn't investigating, it would seem, the disappearance of Dr Chappell because the accused had already been charged with that offence. Now he was obviously, I suppose, tying up a loose end and I have to accept that, a loose end that had popped up. I don't think I can take it any further than that, your Honour.

HIS HONOUR: I don't think you can and I'm against you.

MR GUNSON SC: Mm.

HIS HONOUR: So far as evidence of the business records of Tasmania Police are concerned s69(3)(b) makes an exception to an exception, it prevents evidence of the business records of Tasmania Police being adduced insofar as those records contain representations made in connection with an investigation relating to a criminal proceeding. There was a criminal proceeding before Meaghan Vass' name was linked to the DNA of the person called person E, the criminal proceeding was the murder proceeding that has led to this trial. When Detective Sinnitt received information about the DNA matching that of Meaghan Vass he conducted an investigation relating to Meaghan Vass and that was an investigation relating to the murder proceeding so s69(3)(b) makes s69(2) inapplicable in relation to representations contained in the business records of Tasmania Police.

So far as the business records of Mara House are concerned as I outlined about an hour ago the only way that – the only way oral evidence can be permitted to prove the contents of the business records of Mara House is for that oral evidence to be given under s48(4) paragraph (b). Now that section – that provision, when it applies, allows non hearsay evidence to be given by – sorry, allows first-hand hearsay evidence to be given but not second-hand hearsay evidence; that is to say s69 would permit the records of Mara House to be proved in accordance with s48 but what s48(4)(b) doesn't permit is the giving of evidence by a witness as to a representation made by a person who's seen the records as to what the records contain. There are two representations in the chain of representations that – or representations at two stages in the evidence that – that's in question. First, the representations made by one or more individuals making entries in the records of Mara House; and second, a representation by someone from Mara House community

what are said to be the contents of the Mara House records to Detective Sinnitt. There's nothing in the Evidence Act that permits hearsay evidence to be given as to what the records contain; that is to say, a witness may give evidence – a witness who has seen the records may give oral evidence under s48(4)(b) of what he or she has seen in the records. But a witness who has been – a witness who has been told what an intermediary has read in the records may not give hearsay evidence as to what the intermediary said he or she has read in the records.

So I was wrong to allow the evidence of what Detective Sinnitt – I was wrong to permit Detective Sinnitt to give evidence as to what he'd been told about the contents of the records; both before and after Mr Ellis' objection. I shouldn't have let that evidence in. I should have upheld the objection and stopped more of that evidence from going in. Mr Ellis is right. I'll have to give the jury a direction to ignore the information that Detective Sinnitt – ignore the evidence that Detective Sinnitt has given as to what he was told on the basis of information apparently contained in the Mara House records.

I wonder how relevant any of it is anyway? I – it's – it all sounds very intriguing but I don't see a great deal of relevance at this point if it were established that Meaghan Vass was at a particular place in the metropolitan area on the night in question or that she was not at a particular place in the metropolitan area on the night in question, but I'll tell the jury that they're to ignore that body of evidence.

HIS HONOUR: Now it's three o'clock, the jury should be back. Should we proceed, gentlemen, with the cross-examination of Detective Sinnitt before I entertain any application from Mr Gunson as to recalling witnesses? Mr Gunson.

MR GUNSON SC: I'd like to deal with the recall application, your Honour, and get that out of the way.

HIS HONOUR: Mr Ellis, should we do that?

MR ELLIS SC: I'm happy to now, your Honour, yes.

HIS HONOUR: All right, well I'll listen to the recall application. Yes.

<SUBMISSIONS - MR GUNSON SC: Your Honour, I want to have Meaghan Vass recalled on a number of grounds. Your Honour will first recall that Meaghan Vass was not a person listed in the Crown papers as to be a witness, we had no proof from her and she gave evidence yesterday morning which was extremely limited and the substance of the evidence was, in a nutshell, she didn't go on board the yacht, Four Winds, on the night of the 26th January 2009, and she gave evidence that she believed – and this is page 634 – she was living at Stainforth Court and there was a debate about whether she'd earlier in the Basha enquiry told the Court she was Annie Kenny House and there were some questions about that, and she really couldn't answer why she couldn't remember where she lived, and she said she'd never been to Constitution Dock at the relevant time or Clean Lift Marine at Negara Crescent. Now during the course of evidence Mr Grosser the Crown advanced, that's the best word, the transfer of DNA theory, suggesting through Mr Grosser that DNA had got onto the deck as a result of being taken there on the feet, as I understood it, of people who may have gone on the yacht at either on its moorings or in Constitution Dock. Now whilst I asked her about Constitution Dock, had she been there, she said she hadn't. I didn't ask her anything about whether she'd been at Marieville Esplanade but that theory had never been advanced at that stage and of course we now know, and we didn't know this at the time and I couldn't put anything to her obviously, that she wasn't living at Stainforth Court or Montrose and – as she had claimed in her evidence and that she was in fact at Mara House. We didn't know at that time that she wasn't home on that night and we don't know where she was and it means that I'm in a situation where I need to put a whole series of questions to her that was not - material was not available to me

beforehand and I submit it's in the interest of justice that this be allowed to be done. I also -

HIS HONOUR: Just a minute. I didn't ask you, Mr Ellis, do you oppose these applications?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: All right, yes. Go on Mr Gunson.

MR GUNSON SC: I'd assumed that, your Honour.

MR ELLIS SC: Well I was waiting to hear what the basis of them was actually, your Honour –

HIS HONOUR: All right, well –

MR ELLIS SC: - because it has been foreshadowed before my learned friend told you.

HIS HONOUR: Yes, all right. Back to Mr Gunson.

MR GUNSON SC: So in a nutshell we had no material to put to this witness. Now it is a matter for the jury of course as to the question of her DNA on the deck. I'm going to be submitting to the jury that they can draw the inference that given the level of DNA on the deck that that girl was on that boat at some stage. Now it's up to them to determine when that was and it's a jury question, I mean given – bearing in mind that this is a circumstantial case, they have to look at the hypothesis consistent with innocence, et cetera. Now we need to be able to put that to her and see what she says about it. Now I also want to recall Mr Grosser particularly in light of what I've since found looking at the file the detective produced. I find on there emails between Mr Sinnitt and Mr Grosser where Mr Sinnitt raised some issues about –

MR ELLIS SC: Can I have that file back please so we can both look at that, thank you.

MR GUNSON SC: Now Mr Sinnitt on the 23rd of March wrote to Mr Grosser saying this:

Morning Carl

Sorry to keep bothering you about Meaghan Vass' DNA, and this is probably a classic of how long is a piece of string question, but I have numerous photographs depicting area 11, the site of the DNA with people in that area, as it is the location of the gate to board the yacht and an area that's been the subject to a lot of foot traffic from the initial police attendance, to the towing of it by the insurance company, and the removal of items on it prior to FFST exam. My million dollar question is, given the strength of the DNA sample, is any of this evidence that it was unlikely the sample has been in the area from the time the vessel was initially bordered by police at 0700 on 27/1/09, sample taken on 30/1/09.

And then he goes on and says:

I know I'm a pest but this girl is adamant she hasn't been on the yacht, so I'm just trying to work it all out, or possibilities, that is. I am reluctant to believe her but I do think that she - was in some involved etcetera she would at least tried to account for how the DNA got there, but she's adamant she hasn't been on any vessels at all and nothing to do with boats.

Now Mr Grosser responds by saying this:

MR ELLIS SC: Can you tell me which tab that's behind please?

MR GUNSON SC: It's behind tab 2 – I'm sorry, I put that to you poorly – it was the other way around. Grosser wrote on the 18th of March:

There was an area, the black outline in the photos, of positive luminol which suggests the presence of blood. However, our testing of the swab taken from the area was negative for the blood screening test, suggesting that we cannot confirm the presence of blood. Given the strong DNA profile that we obtained from this swab, I'd suggest that this is indicative of the presence of a relatively large amount of DNA which is more likely to come from bodily fluids, blood, saliva, than a simple contact touching event. So basically we cannot say of any certainty where the DNA may have come from. The positive luminol result suggests that the source may

have been blood, and the fact that this was an external surface means there may have been washing or weathering events that have prevented us from being able to definitively identify the presence of blood. More complex scenarios such the luminol result, coming from an older event, e.g. an old stain which has been overlaid by more recent events, which is where the DNA came from, e.g. spitting on the deck cannot also be ruled out. I hope this makes sense.

Now I would want to put that particular piece of correspondence to Mr Grosser. As I say, we didn't have this before, and I'm not going to criticise my friend for not making it available, but nonetheless it's a document that we've only just got hold of today. I would've put it to Grosser if I'd know about its existence. They are my two applications, your Honour.

HIS HONOUR: Mr Ellis?

<SUBMISSIONS - MR ELLIS SC: Yes, your Honour. Both applications seem bound up in my learned friend's particularly, with respect, narrow view of possibilities and probabilities and the role that he thinks that evidence from witnesses can play in illuminating those possibilities. Now we have from Meaghan Vass already evidence that she has not been on board that boat, that will not be changed in the least by her being taxed about her whereabouts on certain days, nor will it alter the fact that the possibility is that the DNA found on the deck came in some way from a transfer. That possibility in turn will not be affected by where she was at any particular time when it is understood that someone may have contacted her DNA even enlarge prospects on getting into a car, driven down to, say, Constitution Dock, hopped out of the car and got straight on board. It will not be affected by the fact that someone may have equally contacted on their footsteps or in some other way her DNA and gone to Marieville Esplanade and got on a dinghy and alighted on the Four Winds at any time – at any time it was moored in Hobart, because there doesn't seem to be any real prospect that it may have got there a year ago so they're all possibilities of which we already had, with respect to my learned friend, a long and ultimately pointless cross-examination of Mr Grosser of matters that are best left and only should be left to address, namely matters of possibility. As your Honour has pointed out where Meaghan Vass on a particular night was will not – where she was in Hobart on a particular night will not illuminate the question of how it might be that her DNA was found in one patch only, one patch only, of a vessel which was sunk using, it seems, sophisticated intimate knowledge of a vessel and its workings, so these are all matters of possibility. Now my learned friend can address on them but they are not the realm of the witnesses to be badgered into concessions and then produce to the jury as if, "Ah ha, there's the definitive answer on possibilities", because it's simply not.

Now the same will be with Mr Grosser. My learned friend has had evidence from him and others that it was a relatively large patch of stain which contained a strong reaction to DNA which suggests the presence in someway of blood somewhere in that stain, that's all that can be said, and he was badgered up hill and down dale about that all with a view to having him talk about the possibilities and probabilities – well possibilities really of how it got there. Those possibilities are limited by the witness' imagination, that's all. And so if Mr Grosser is not a particularly imaginative or a person – or a person who can think in the logical step such as the one that didn't occur to him, such as that someone steps in something from Ms Vass,

gets in the car and virtually immediately goes on board – goes on board the Four Winds that would explain it, there may be others - other people better than me at teasing out these possibilities, and so none of these things are witness questions, in my submission, and to get young Ms Vass back in for a bit more nasty badgering about where she was on what night would not only be pointless but totally unfair, a girl who's had no fixed address, been paraded back in to be badgered about this when – if it's my learned friend's case that she committed this crime, well let him put it to her. But he hasn't done so in the opportunity that he to do so and there's no reason he should be given another opportunity to badger her about matters which do not affect the possibilities concerning the presence of her DNA in one patch on a crime scene, in my submission.

HIS HONOUR: Your reply, Mr Gunson?

<IN REPLY – MR GUNSON SC: Yes, my friend well knows that I cannot put to that witness the proposition that she committed the crime of murder on board that boat without there being some evidence to support it. What I might put to her tomorrow or any other day if I'm given leave to have her recalled, might be different thing depending on the nature and quality of the answers I get to the further questions that I submit should be asked of her. Nobody could properly have put that suggestion yesterday to her based on the limited amount of information that was available at that time – and I make the point yet again. This person was called as a witness without there being any prior statement, we had to deal with it as it fell – that's all we had at the time. We now have, as a result of what's been found in the file from Mr Sinnitt much more information, much more significant information and had I not called for that file to be produced we would never have known about it. It it please your Honour.

<RULING – HIS HONOUR: Well, I think the application to recall Mr Grosser, it has less merit than the application to recall Ms Vass. Mr Grosser could have been – well there was ample opportunity to cross-examine Mr Grosser yesterday, and in my view, what he has said to have written in his email of 18th March is unsurprising and doesn't raise any sufficiently new or different or surprising matters that would warrant his recall, in my view.

So far as Ms Vass is concerned, now that there is information that on the 26th of January was staying at Mara House and told the – told someone there that she was going to spend the night at a particular address with a particular friend, then it may be that if it were put to her that there was a night when she had such a plan, that her memory might be jogged in some respect. The question is whether, if her memory were – as to where she went that night were jogged in some respect, that the possibility of her giving new evidence of any relevance would warrant the – her being recalled and the time and inconvenience taken to get her back and have those matters put to her.

I'm very conscious of the fact that this is a murder trial and you can't have a more serious charge. But the question of just where Meaghan Vass was and what she did on the night of the 26th of January seems to be peripheral when her version of events is unshakeably, or apparently unshakeably, that she did not go onto the Four Winds, that she didn't go to the slip yard at Goodwood and that she didn't go to Constitution Dock at or about the time that the boat was there. In my view the prospect of Meaghan Vass giving significant evidence if we called is so slight as not to warrant the time taken to recall her. Having regard to how significant her evidence might be and how likely it is that she might say something of any relevance at all I think we'd be wasting time and that there's no realistic prospect of it making any significant difference if she were recalled. So I won't ask the prosecutor to recall her and I won't take steps to order her recall, and the same goes for Mr Grosser.

MR ELLIS SC: Thank you. Your Honour, while the jury's out, I expect the re-examination of Mr Sinnitt to be relatively brief to conclude –

HIS HONOUR: But I don't know how long the cross-examination will continue.

MR ELLIS SC: Cross-examination, I'm sorry. Cross-examination and re-examination, I just want to mention something to you while the jury's out.

HIS HONOUR: Yes.

MR ELLIS SC: Now the next witness that we had planned would be Sergeant Conroy who, given that most of the interviews come through him, would be a very, very long witness. Now something has arisen which I think does oblige me to recall a certain witness and I have made arrangements for that witness to be here tomorrow morning for the event of that recall, so I wonder if after Mr Sinnitt we not start on Sergeant Conroy, or if we do we might interpose him early in the morning.

HIS HONOUR: I'd rather use the time and interpose somebody. What do you say, Mr Gunson?

MR GUNSON SC: Yes. Can I just approach my friend?

HIS HONOUR: Yes.

MR GUNSON SC: - Yes, that would seem to be no problem, your Honour, my friend needs to give me some documentation, but it doesn't seem to be voluminous.

HIS HONOUR: All right.

MR GUNSON SC: So I would – I would - I may finish this afternoon I may not, but there's no problem with interposing that witness tomorrow morning.

HIS HONOUR: All right. Well if – I'm quite happy to sit after four o'clock in order to finish Detective Sinnitt, if that's the situation we get to.

MR GUNSON SC: No, because I want to see what my friend's got, you see, it's –

HIS HONOUR: Well –

MR GUNSON SC: - the question I raised – the question – something – some information came my way, I passed it on to my friend this morning, he's very kindly looked into it, and has said to me that he will make available to me material –

HIS HONOUR: All right.

MR GUNSON SC: - I want to be able to look at it and we'll deal with that witness tomorrow.

HIS HONOUR: All right.

MR GUNSON SC: I would like the opportunity to be looking at it this afternoon.

HIS HONOUR: All right. Well we'll get the jury and the witness back please? So some are in the jury room and some are outside – all right, well we'll get them from wherever they are – I'll wait here.

<THE JURY RETURN

<WITNESS RETURNS AND WAS REMINDED OF HIS OATH

HIS HONOUR: Ladies and gentlemen, before lunch you will recall a question arose as to whether Detective Sinnitt should be allowed to give evidence of information that he was provided from –that apparently came – provided with, that apparently came from the records of a place where Meaghan Vass had been staying. After he'd been giving – recounting what he'd been told for some time, Mr Ellis objected and I dealt with that objection very quickly and Mr Ellis sat down, and a bit more information came out – I should have allowed that objection, and I should have stopped the witness from giving the evidence as to what he was told when he began to give that. Now, what I have to do therefore, is to tell you to ignore the information that this Detective said he received from the place where he was told Meaghan Vass had been staying, so if you've got notes as to that information and as to an address and when she went out and things like that, would you please cross it out and ignore it. If any such information is to be presented at this trial, there is a proper way of doing it, and I shouldn't have allowed the information to be provided in the way it was. Back to you, Mr Gunson.

MR GUNSON (Resuming) Now Mr Sinnitt, you established through police records that Meaghan Vass lived at Mara House?.....She was staying at Mara House.

Where is Mara House?.....19 Forster Street, New Town.

And you made – don't tell me what your answers are, but you made enquiries of Mara House to try and establish whether she'd been there on the night of the 26th January of 2009, is that right, just tell me yes or no?.....Yes.

Thank you. Were you able by any means to establish where she had spent the night of the 26th January 2009?.....No.

And apart from Mara House where else did you go for the purpose of making enquiries as to where she might have spent the night?.....A number of places.

Yes, well please tell me, I asked you, where did you go?.....I checked the address – well first of all –

Just tell me, where did you go?.....I went to the address that Mara House had as recorded where she said she was staying.

I did my best, your Honour.

HIS HONOUR: Yes. Look, don't tell us what Mara House people told you, but for example, if you went to an address in Sandy Bay tell us the address in Sandy Bay. So can you tell us where you went?

MR GUNSON SC (Resuming): Just tell me, where did you physically go to?.....I went to Mt Nelson.

Yes. What address at Mt Nelson?.....The address that I was given, the information I had. The address didn't exist.

Right. So you went to a nonexistent address. What was there when you got there, was it a vacant block or what?.....A number of units, I couldn't find the address.

And presumably, being a detective, you spent a little time trying to find the address?.....That's correct.

And did you make any enquiries in that area as to whether anybody knew Meaghan Vass, just tell me yes or no?.....Yes.

Yes, and were you, as a result of those enquiries, able to go anywhere else to try and find where she might have spent the night of the 26th January?……No.

Right. Okay, so you ended up at a nonexistent address, where did you go after that? What other addresses did you go to?……I went to Stainforth Court.

Right. Just before you move on, what address did you try and go to at Mt Nelson which you found didn't exist, what was it?……I can't recall exactly, I think it was unit 7, number 8 Onslow Place, Mt Nelson.

So unit 7, -……It may have been Unit 8 number 7 Onslow Place, I don't –

Would it assist you to have your own records in front of you so you can refresh your memory?……Of the exact address?

Yes……Yes.

It's not a memory test, would it assist you to have that folder?……Yes.

Thank you. And I ask the witness be permitted to refresh his memory, your Honour, as to the address he attempted to go to. Right, what was it?……Unit 8 of 7 Onslow Place, Mt Nelson.

And what was at 7 Onslow Place?……My recollection is it's units, a series - of several units.

Try and speak up so the jury can hear you please……My recollection is that there are several units in that area.

Right, but there wasn't a unit 8?……Not that I could find, no.

Thank you. And I'm sure you would have been able to find unit 8 if it existed?……I couldn't find unit 8.

Thank you very much. You then went to where?……Stainforth Court.

Right. A block of – blocks of units or flats on the Brooker Highway near Risdon Road is that right?……That's correct.

All right. And did you find Meaghan Vass living there?……I found her there, yes.

Right. Did you ask her any questions on that occasion?……Yes.

And was she prepared to be interviewed by you on that occasion?……Yes.

And did you interview her?……No.

Why not?……She was a child and didn't have an adult that could accompany her.

Right. So because of the legal requirements you needed an adult present?……Yes.

Did you make arrangements to go back and see Meaghan Vass at – on – sorry, at Stainforth Court or did you make arrangements for her to come to the police headquarters?……I made arrangements for her to come to police headquarters.

Right. And did she turn up at any interviews?……No.

Right. How many arrangements did you make for her to attend?……Two that I can recall.

And there were two occasions she didn't attend?……Yes.

And on each of those occasions she didn't attend?…….Yes.

And on each of those occasions you'd made arrangements for somebody to be present?…….On one of the occasions, yes.

Right. And who did you make arrangements to be present?…….With Meaghan's mother.

Right. And Meaghan didn't turn up?…….That's correct.

Can you tell me the dates that you made arrangements for her to be interviewed and she didn't turn up?…….I can't recall the exact dates.

Would they be in your file?…….Yes, they should be in this file.

Would you like to refresh your memory?…….Yes, your Honour, if it's okay?

HIS HONOUR: Yes, go – have a look.

WITNESS: The first appointment was made for Monday – the Monday after I spoke to her, so that Thursday the 18th, so that makes it Monday the –

MR GUNSON SC: (Resuming): I'm sorry, 18th of March?.....Yes, sorry, 2010, and made an appointment for 10:00am on the Monday.

Yes.....The date being the 22nd, on my calculations, of March.

Yeah. Didn't turn up?.....That's correct.

Right. .....The next date appears from the record in the folder, I received an email from – advising me that Meaghan's mother had called –

Yes.....- and that they would come in on the following Thursday for an interview. That email was received by me on the 30th of the 3rd, and I'm not sure what the date of the Thursday is after that.

All right. And eventually did you get to speak to Meaghan in the presence of anybody?.....No.

Did she not tell you at some stage she refused to be interviewed about the Four Winds -.....Yes.

- and the presence of her DNA?.....Yes.

What date was that?.....I'm not sure of that.

Do you need to refresh your memory?.....I do, I'm not sure it's recorded in here – it was a telephone conversation.

Just bear with me.

HIS HONOUR: The next Thursday after the 30th March was Monday, the 1st – was Thursday, the 1st April.

MR GUNSON SC (Resuming): But in a nutshell, after failing to keep a couple of appointments you were able to ascertain that she refused to be interviewed?.....That's correct.

Right, and you wanted to interview her, didn't you?.....Yes.

And in fact you actually prepared quite detailed pro forma interview notes?……That's correct.

Which you would have questioned her about?……Yes.

And one of the questions you obviously wanted to ask her –

MR ELLIS SC: Well is this going to be relevant, what the detective wanted to ask someone who didn't turn up, as is her perfect right?

MR GUNSON SC: I won't follow that through. (Resuming): In any event you wanted to have a formal interview with her?……Yes.

Thank you. And did you find any link between Ms Vass and the area in Constitution Dock around which the Four Winds was berthed on the 27th January 2009?……No.

And in fact you checked Port Control video, didn't you?……That's correct.

And you could see no sign of her around that boat that night?……There are – on the footage there appears a group of people sitting near the Four Winds on the dock, if you like.

Yep……You can't – I couldn't identify who those people were.

Right. And you certainly didn't see any of them go onto the Four Winds?……No, that's correct.

Thank you. And what distance away were they?……Approximately five metres.

Five metres, thank you. And when you looked at that video you were looking to see whether or not you could locate Ms Vass anywhere near the boat?……I was looking at the video to see if anyone went on the boat.

But more particular her, weren't you?……That was the reason I viewed it, yes.

And you couldn't see her?……I could see a group of people who I couldn't identify.

In any event they were some five metres away and no one went on the boat?……That's correct.

Thank you. Now you were aware which portion of the yacht the DNA came from, weren't you?……Yes.

And is it fair to say we know it's in area 11, but area 11 is right near the starboard or right hand entrance side of the boat, where there's an entry?…….A gate, yes.

Thank you. And it was – the DNA was on the deck right near the entrance?…….In that area, yes.

Thank you. Now are you familiar with the area known as Cleanlift Marine out at Goodwood, Negara Crescent?…….Yes.

And it's basically a large industrial area where boats can come in and either be worked on at the wharfs there – wharves there, or slipped and put onto hard standing – correct?…….It's an industrial area, I wouldn't call it a large industrial area, but the rest of that's correct, yes.

Nonetheless, it's an industrial area……..Yes.

And it's fenced -…….Yes.

- and gated?…….Yes.

Yeah, although approach from the sea is possible?…….That's correct.

Yes. But you know it to be a place that is fenced and gated and locked at night?…….I don't know if it's locked at night –

All right. Thank you. …….- but it's fenced and gated.

Now you could make no connection between Meaghan Vass and the area around Marieville Esplanade on the morning of the 27th of January 2009?…….No.

Or the previous day, the 26th?…….No.

And you were looking for all of those links, weren't you?…….Yes.

Yes – thank you. So in a nutshell, you've never been successful in finding out where Meaghan Vass spent the night of the 26th?…….That's correct.

Thank you. Did you try and look for her associates, any known associates, just tell me 'yes' or 'no'?…….No.

You didn't question any associates of hers known to you?.....No.

All right. Did you check police records to see whether she had what's colloquially known as 'associates'?.....Yes.

And you couldn't find anything?.....No.

All right. And you spent some time corresponding with Mr Carl Grosser from Forensic Services about this DNA, didn't you?.....When I was advised of it, yes.

Mm. And you sought his further advice?.....That's correct.

You did – sorry, more correctly, did you write to Mr Grosser on the 23rd March 2010 by email?.....I can't recall the date I send him emails.

Would you like the opportunity to check your file and refresh your memory?.....If that's okay, your Honour?

HIS HONOUR: Yes.

WITNESS: Yes, I found an email dated –

MR GUNSON SC: (Resuming): No, just – just refresh - please, please, please. I asked you whether you wrote to Mr Grosser on the 23rd March, you weren't sure, having refreshed your memory can you say whether or not you wrote to him?.....Yes, I did.

Have you ever said on any occasion to anybody of Meaghan Vass that you were reluctant to believe her?.....I can't recall.

All right. Have you ever said that you're reluctant to believe her but, "I do think that if she was any way involved she would have at least tried to account for how the DNA got there", have you ever said that?.....I may have. I don't recall the exact conversation.

If it was to suggest to you that you in fact said that to Mr Grosser would you accept that?.....I'd have to refresh my memory from –

No, just would you –

MR ELLIS SC: Well –

MR GUNSON SC: Do you want to refresh –

MR ELLIS SC: (indistinct words), a backdoor method to comment on the credibility of someone else.

HIS HONOUR: Yes. What's this relevant to, Mr Gunson, if this – what, you know, this witness might be a very suspicious individual or he might not where –

MR GUNSON SC: Well – sorry, I didn't mean to cut across your Honour –

HIS HONOUR: No, no, that's all right, what do you say?

MR GUNSON SC: I'll answer your question. I want to see whether having expressed that view he made any further enquiries or pursued the matter further because of the suspicion he held.

HIS HONOUR: Well never mind – well that's a separate question. I can't see how any expression of reluctance to believe Miss Vass on the part of this witness is relevant. The jury have the role of deciding how credible an individual Miss Vass is, but what this witness thought about that isn't relevant, is it?

MR GUNSON SC: I must accept your Honour's ruling and I won't pursue it. (Resuming): Is that the extent effectively of your enquiries about Miss Vass' involvement or possible involvement, that there was an exchange of correspondence between you and Carl Grosser and that was the end of the matter?……No.

What other enquiries did you make?……I made – I had Meaghan Vass' fingerprints –

Yes…….- checked against all the fingerprints linked to this case, -

Yes……- which included fingerprints from the vessel, -

Right…….- vehicle, dinghy and exhibits.

So nobody was able to pick up any fingerprints from the boat or the dinghy or the vehicle, and you mean – what vehicle are you referring to, the accused's?……The accused's vehicle.

Right. All right, and – but – well do you know how many fingerprints –

MR ELLIS SC: Well the question is – the question is whether the witness had finished his answer, your Honour.

HIS HONOUR: Well –

MR ELLIS SC: He was cut across with a different question.

HIS HONOUR: All right, so you were asked what other enquiries you made and you said you had her fingerprints checked against all fingerprints linked to the case.

WITNESS: That's right, your Honour.

HIS HONOUR: Were there other enquiries that you made in relation to Meaghan Vass?

WITNESS: A number of enquiries, your Honour.

HIS HONOUR: Back to you, Mr Gunson.

MR GUNSON SC (Resuming): No, stay with the fingerprints, please. How many fingerprints to your knowledge were – that is clear, discernible fingerprints, were taken from the Four Winds?……Oh I don't know.

Well no idea?……No.

None whatsoever?……The only advice I received there was a large quantity –

I'm sorry, I can't hear you……The only advice I received from Fingerprint Section there was a large quantity of fingerprints lifted.

Yes…….And the other advice was that Meaghan Vass matched none of them.

Thank you. Now what other enquiries did you make?……I made enquiries in relation to – I made phone record checks, checking her phone activity at the time, on the night of the 26th, and none of those inquiries linked back – linked Meaghan Vass to this investigation. I made inquiries –

Well can I just stop you there? What you mean is, you made inquiries of what the – either Telstra or one of the telecommunication companies she had a mobile phone with?…….That's correct.

And which company was that?…….I don't recall.

Does your file help you, can you refresh your memory from there?…….Yes, I can.

Right. And just to save a little bit of time; were you able to establish whether on the night of the 26th she made any telephone calls at all?…….No.

She couldn't – she didn't make any call?…….She didn't make any.

Didn't make any – thank you for that. All right, let's move along. What else did you do?…….I checked with Mr Grosser to ensure that was – well to ask if that was the only DNA match in the entire case to Meaghan Vass, he said that it was.

Mm hm……..I checked with Mr Grosser to see if there were any other crime scene matches throughout Tasmania to Meaghan Vass –

Yeah……..- DNA wise, and he said there was not. I made – I went through the file, the intelligence holdings that we had in relation to this case, checked for any link to any person linked to the investigation and found no link between Meaghan Vass and any person linked to the investigation. I checked any link between Meaghan Vass and the vessel Four Winds. The only link to that vessel I could find was the actual DNA sample.

Mm……..I checked links between Meaghan Vass and the areas of Marieville Esplanade, Constitution Dock and Negara Crescent –

Found nothing?…….Found no link to any of those places.

Mr Grosser had told you it was a strong DNA profile, didn't he?…….Yes.

Yeah. And that still troubled you, didn't it, the fact it was a strong DNA profile – it was troubling you to think 'how on earth did it get there'?…….No, it didn't trouble me.

MR ELLIS SC: Is this going to go –

HIS HONOUR: Well – well how does it – how is it relevant if it troubled him, Mr Gunson?

MR GUNSON SC: Well, your Honour's quite correct, I'll move along. (Resuming): Is that the extent of your inquiries?…….I made

inquiries, as we've stated earlier, to ascertain where – if I could ascertain her whereabouts on the night, and I could not.

Right. And that's the length – extent of it?.....Yes –

Thank you. .....- that I can recall.

All right. You clearly turned your mind to the fact there had been a large number of people – not a large number but a significant number of people who went on board Four Winds on the 26th and 27th?.....Yes.

I think you told us earlier today I think, and you'll correct me if I'm wrong, there's some eighteen people you could –

HIS HONOUR: Twenty one was the number.

MR GUNSON SC: Sorry?

HIS HONOUR: Twenty one was the number.

MR GUNSON SC: Thank you, your Honour. (Resuming): And amongst those people who went on board Four Winds were marine police?.....Yes.

There were ordinary beat police?.....Yes.

There were the people from Aqua Scuba who went on board with a pump?.....No, I don't think they – I don't recall them boarding the vessel. They weren't included in the numbers that I –

Right. And there were police forensic service officers?.....Yes.

And I think there was some evidence the fire brigade delivered a pump or two as well?.....Yeah, two firemen went on board.

All right. Did you make any enquiries to see whether Meaghan Vass had been anywhere near where those people would have come from; that is police headquarters, Aqua Scuba, fire brigade and so forth?.....No.

No enquiries at all?.....No.

Okay, thank you, all right. Now if I could take you back please to your evidence about this visit to Ms Neill-Fraser, it might be of assistance, you can put volume away, the visit to Ms Neill-Fraser's

house on the 5th February 2009. You got there with Detective Milazzo at about 12 noon?……Yes.

Right. Do you have your notes in front of you?……Yes.

Well you may need to refer to them so please open them up if you wish to and you start by saying that – there's a list of associates and I presume these are the associates of Mr Chappell?……Yes.

Right. And then you have –

Behaviour recently tense over break in on yacht 10/1.

What were you told about him being tense over a break in on the yacht?……Just what I've recorded there.

Nothing more?……Not that I can recall, and I didn't record it in the notes.

It wasn't amplified in any way at all?……Not that I recall, no.

Were you interested about a suggestion there'd been a break-in on the yacht and did you want to ask any further questions about it?……At that point I was already aware of –

Right, you'd been told that earlier?……Yes.

From where did you get that information?……From Detective Sergeant Conroy.

Right, and when had he imparted that to you, that day or earlier?……No, early – I'm not exactly sure, but I believe it was earlier than that day.

All right, thank you. I'm sorry, I need to ask you to help me with one item at the bottom of the page I have, it says:

Diary notebook handed to us.

This is the 2008 or 2009 diary, or both?……No, at that point of the notes this was – I was speaking with the accused and others present in relation to the history and profile, if you like, of Mr Chappell, Robert Chappell -

Right, so what diary -…….- and that was –

What diary are we referring to?……It was – the question – I asked whether he kept a diary or notebook –

Mhm……..- and the accused handed us three notebooks that he –

Now these were Mr Chappell's notebooks?……That's correct.

Thank you. And what do the words 'list maker' mean?……Oh I've recorded that because I was told at the time he was a list maker.

What do you understand by that, a man who made lists of things to do?……I don't know what of, but made lists, yes.

All right. At some stage though the police requested Ms Neill-Fraser's personal diaries, is that correct?……I didn't request any diaries.

You didn't ever see them?……I saw – depends what years you're referring to.

Well are you aware that the police were given by Ms Neill-Fraser a number of her personal diaries?……Yes.

Yes, and were you one of the officers who was tasked to read those diaries?……Yes, yes.

And would you accept that you were given diaries for about – probably about eight years?……Yes, possibly longer.

Possibly longer, and you read many of them?……I read all of them.

Lucky you…….From a certain point.

And what was the object in reading all of her personal diaries for the better part of, I suggest, ten years or so?……Sorry, I've made a mistake, I didn't read all of the diaries, I think we had diaries dating back to the seventies, that's my recollection, or at least the eighties. I was looking at – I was attempting to corroborate or validate or negate, if you like, the information from witnesses –

Right. …….- and that's why I checked the diaries.

Right. And is it fair to say that you had the 2009 diary – it wouldn't have had much in it obviously – you had that?…….We had that, yes.

And 2008?…….Yes.

And if I suggest that you had, say, from about 2000 right through to 2008, you'd accept that?.....Yes, I'm not sure if any years were missing but we had – we had a lot of diaries –

All right. .....- from that period.

And would it be fair to say that you were also looking for any evidence in those diaries of disharmony between the accused and Mr Chappell that might have been recorded?.....At the time I read the diaries we were looking any – any evidence at all that might lead us to what happened to Mr Chappell.

Mm, would it be fair to say this, that you specifically were looking for evidence of disharmony of a woman having recorded maybe a lack of love or a lack of feeling or whatever it might have been recorded in the diaries?.....No, it wouldn't be fair to say that.

Well what were you looking for?.....As I stated, I was looking for any corroboration of witnesses –

Or -.....- any corroboration of the accused's versions of events.

Mm hm. .....Any corroboration in relation to information that the accused had given us and any corroboration of any information we received from anyone throughout the investigation at that stage.

And would it be fair to say this, if you'd found evidence of strong feelings or emotions being expressed of a dislike for Mr Chappell, or recording, maybe disharmony, that's something that you would have noted?.....Would have noticed, yes.

And would have noted it?.....Yes.

I mean, for instance, "I hate Bob I don't love him any more" or something like that may have been important in the investigation, mightn't it?.....Depending on the – on the timing of that entry, yes.

Mm. And it's fair to say you found nothing like that?.....I can't recall every – as I said, I was – I've read a number –

No.....- of diaries –

Yeah.....- I can't recall every entry.

Well whilst it mightn't have been the greatest literary works you've had to read, nonetheless, if you'd found entries like that, I suggest to you, that commonsense dictates that you would have recorded them somewhere?.....Yes, I would have photocopied it.

Yeah, you would have photocopied them?.....Yes.

And the fact you did none of these things would tend to suggest that you could find nothing in there recording any disharmony?.....Well I made a number of photocopies from the diaries –

Mm.....- and I can't recall what's on every photocopy. Those –

But -.....And I've retained those photocopies from it.

Thank you. But nothing springs to mind along the line I've suggested to you?.....Nothing that I can recall, no.

Thank you. Just try keeping your voice up please. It was made quite clear to you that there were no financial concerns facing Ms Neill-Fraser or Mr Chappell at the beginning of 2009?.....The – are you referring to the notes?

No, just listen to me carefully. It was made quite clear to you that there were no financial problems confronting the couple?.....I don't know if at any stage it was made clear to me but I didn't discover any financial problems in what I read.

You couldn't find any pressing debts or need for money?.....No, no.

You were told that Mr Chappell intended to retire probably within a year when he finished his particular job at work that he wanted to bring to an end?.....I was told that and read it on his work email.

Thank you. And you were told that they'd spent a lot of money purchasing the yacht Four Winds?.....I don't specifically remember being told that by anyone either.

All right. Now you were asked a whole lot of questions about the yacht and you were asked some questions about the break ins and you've got an entry, about halfway down the second page, at least on the one I'm reading –

Worry about break ins 10th January on mooring.

And then I've got 'L7 3/1-10 1', what does that mean?……That's a typed version that's got mistakes – this is a different version, I've retyped it since then with the corrections.

Right, just bear with me then……The –

What's the correction?……I couldn't – I couldn't actually type it, it's meant to be 'between'.

Ah, between……In my written notes, if you like, I think it's a between –

Right. So I'll read that now. The break in was between 7 – sorry, between 3rd January and the 10th January?……That's correct.

Thank you. And she told you also that there was some dispute between her and Bob Chappell. She wanted the drug sniffer dogs to check the boat, he didn't, correct?……There were some rows over that.

Thank you. The gaff hook is completely irrelevant, is that right?……Yes.

Somebody had found a gaff hook and thought it might be relevant…….Yes.

And we can forget about that can we?……Yes.

Thank you. What about the buoy, you were told that was missing from the dinghy?……Yes, and it's never been located that I'm aware of.

And there'd been – there was 300 millimetre plain white rope attached to the buoy?……That's the information I've recorded here, yes.

Now you were told it had been bought from Bay Chandlery, presumably you checked that out to see if it was correct?……I didn't, but that enquiry was done.

All right, and found to be correct?……I didn't do the enquiry but I believe so, yes.

Thank you. We then come down the page and there's:

Extra tank fuel lever NK

What does all that mean?……That should say 'Extra tank fuel level and NK is not known'.

Right. And you're referring here to the outboard motor on the dinghy?……Yes, that's still in – in my written notes.

Yes……..Dinghy – the way I – my recollection is dinghy is an underlined heading and this – this section is in relation to the dinghy.

Ah thank you. All right, then there's a reference:

Top tank four overflowed when Sue checked it.

Did you try and establish when that had happened, when this tank had overflowed into the dinghy?……My recollection is she said when she last used it she checked it.

Which was the 26th?……Yes.

Thank you. All right, and the locations of the yacht were simply references to where she'd moored the – or tied up the dinghy to the yacht?……When she was last at the yacht on Australia Day was when I asked her.

And the washboard is a reference to the wooden step at the back of the yacht which folds up and down, is that right?……I'm not sure if it folds, but it was a wooden step at the rear of the yacht.

Right, thank you very much. Now she told you that the boat – sorry, the rubber dinghy had been tied up at the Royal Yacht Club near "that big circular concrete thing', and that's what the crane is?……I call it a crane, they're the accused's words, yes.

But nonetheless that's where she told you it was and you pointed out to us?……Yes.

Thank you. Now these timings that are here:

2:00 p.m., 3:55, must have stayed on yacht. Stayed longer than I first thought.

Is it fair to say that you tried to assist her in reconstructing the times by suggesting various times to her and saying words to the effect, helpfully, "Well if you did this therefore it must be that this

would've taken so long, it would've been about this time"?.....No, I wasn't trying to assist her reconstruct times.

You didn't help her?.....No.

You didn't help her at all -.....No, I –

- in trying to reconstruct times?.....No, I did say what you just mentioned, that – after I asked her what time she left the yacht on Australia Day and she said she didn't know –

Yes.....I asked her if she agreed that the late – the earliest she could leave, sorry, was at around 4:00pm and the accused agreed with that.

Did you try and reconstruct times with her about when she went to – as she told you, to Bunnings?.....I didn't – I tried to reconstruct times – your question was; did I try and assist the accused with reconstructing times.

Yes.....I was trying to get my own timeline of events and arrival at locations, because I was preparing an investigation timeline.

Yes.....And I was doing it for my benefit with the view of finding the accused on footage – security footage and tracing her backwards to the yacht because she didn't know what time she left the yacht.

Right. She did – she told you she didn't know what time she left the yacht?.....Yes.

Right. And you, by working out other events that day, came up with an answer as to what the time might have been?.....No.

Right. Do you say that that day you didn't attempt to reconstruct times with her at all?.....No, I – no.

No attempt -.....Not for the accused, for myself, yes.

Right. Well your partner, who was there that day, Constable Milazzo, has told the Court that's what you did?.....That's not what I did.

Page 286, Mr Ellis said this to Constable Milazzo:

> *But then there was a fairly accurate time given – well a purported accurate time given, 1640, arrived at*

Bunnings, can you recall if anything in the meantime had been said to her?

Answer:

There was a conversation between Detective Sinnitt and the accused to help determine a time she may have arrived at Bunnings.

Mr Ellis:

Yes.

She:

From my memory, that time is something that Detective Sinnitt made a calculation, from the time of leaving the yacht to going to Bunnings.

And later on – bear with me – it might be a convenient time, your Honour, rather than waste the jury – I'll find the passage and direct it to the witness in the morning.

HIS HONOUR: Yes, all right. The jury can make their affirmation and the Court will adjourn until ten o'clock tomorrow.

<JURY AFFIRMED OUT

<THE COURT ADJOURNED

T90KK

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THE COURT RESUMED AT 10:00AM ON FRIDAY, THE 1ST DAY OF OCTOBER 2010.

THE STATE OF TASMANIA

v.

SUSAN BLYTH NEILL-FRASER
(Part Heard)

<SHANE ANTHONY SINNITT CALLED AND RESWORN

HIS HONOUR: Yes, Mr Gunson.

<XXN – MR GUNSON (Resuming): Mr Sinnitt, before the Court adjourned yesterday I'd been asking you whether or not you'd assisted the accused reconstruct timings for the afternoon of the 26th January 2009, do you remember that?……Yes.

And I read to you a passage of evidence given by Constable Milazzo, didn't I?……Yes.

Remember me reading that to you?……I remember you reading it, yes.

Do you remember the contents of it?……Not exactly, no.

Let me read it to you again. 286, your Honour. This is what Constable Milazzo said:

> *But then there was a fairly accurate given – well a purported accurate time given, 16:40, arriving at Bunnings. Can you recall if anything in the meantime had been said to her?*

This was Mr Ellis. Then she said:

> *There was a conversation between Detective Sinnitt and the accused to help determine a time she may have arrived at Bunnings.*

And this is your partner, right?……Yes.

Mr Ellis said:

> *Yes.*

She continued:

> *From my memory that time is something that Detective Sinnitt made a calculation from the time of leaving the yacht to going to Bunnings.*

Now that was her evidence, and in cross-examination, 307 your Honour, I said this to the witness:

> *You said in your evidence, you've just heard his Honour read it, she appeared a bit confused a bit about the times – about the times, thank you, and the ultimate figure of 1640 was calculated as a result of a conversation between her and Detective Sinnitt, was it?……That's correct.*
>
> *She simply adopted that?……Yes.*
>
> *But it was through Detective Sinnitt's calculations that she ended up adopting it?……That's correct.*
>
> *Having been confused originally?……That's correct.*

Now that was the evidence of your partner?……Yes.

Who was present with you at that time?……Yes.

Are you saying that her evidence is wrong?……No, that evidence is correct.

Thank you. So there was a period when you assisted her with reconstruction of timings?……No.

You can't have it both ways, she's either right or you're wrong……Yeah.

That's logical isn't it?……Yeah, can I explain the times?

What are you looking at there in front of you?……My notes with the time – the notes where we were yesterday.

Just turn your notes over please. Close them up, you know better than that. Now is what Detective Milazzo said in her evidence in chief and in cross-examination right or wrong?……Right.

It is right?……Yes.

Thank you. Now you said also yesterday about timings, I'm looking at 738, your Honour, Mr Ellis asked you this question at line 40 – I'll go back a bit, Mr Ellis asked you –

> *Can you explain that to us please?……The times, the relevance of 2:00pm was up until the point of the investigation the accused had maintained that it was approximately the last time that she saw Mr Chappell alive was on board Four Winds at the mooring.*

Mr Ellis said –

> *Yes…….I asked her –*

And you – sorry, Mr Ellis said, "Yes", and you said –

> *I asked her if she could recall her movements after that time and she said she'd become aware of the observations of a witness relating to a dinghy being at the yacht later that afternoon.*

And you then said –

> *I then informed her that that witness was confident that that timing was 3:55.*

Mr Ellis said, "Yes", and you said –

> *And her response was 'it was must have been me on the yacht'.*

Mr Ellis said "Right".

> *She then said 'stayed longer than I first thought' and then gave an account of her movements or actions on board the yacht.*

Now that was your evidence yesterday wasn't it?……Yes.

Who was the witness you were referring to who was "confident that the timing was 3:55"?……Paul Conde.

Paul Conde?……Yes.

Thank you. Now Mr Conde made a statement to police on the 29th of January 2009, didn't he?…….Yes.

And did you interview Mr Conde?…….No.

But you had his statement?…….I had read his statement.

You've read his statement. Now, does Mr Conde, to your recollection, in his statement at any time say that he saw Ms Neill-Fraser on the Four Winds at 3:55?…….No.

But you put it to this – to the accused that a witness, who we now know is Mr Conde, effectively saw her on the yacht at 3:55?…….No, I didn't put that to her.

You informed her that a witness was confident that the timing was 3:55?…….That's correct.

So what did you put to her?…….I asked her her movements after 2:00pm.

Yes……..The accused informed that she'd become aware that a dinghy had been seen at the boat later that day?…….Yes.

I informed her that that time was three – well the witness was confident that that time was 3:55pm.

Yes. And she said, "It must have been me on the yacht"?…….Yes.

Right. What colour was the dinghy from the Four Winds?…….Light grey/white.

Come on, it was white with blue trim, wasn't it?…….Yeah, I've seen photos of it.

It was white with blue trim, wasn't it?…….In the photos that I've seen, yes.

It was white with blue brim in the photographs, wasn't it -

MR ELLIS SC: Well –

MR GUNSON SC: - constable?

MR ELLIS SC: - if it is continued to be put as a fact, it is the fact that there is also a grey trim, your Honour, if my learned friend was to put that completely.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Well – if we have to go through this, we'll go through it. (Resuming): Show the witness P03, photo 70 and 71 please? You've seen those photographs before, haven't you?.....That's correct.

What are they photographs of?.....A dinghy belonging to Four Winds.

And its colour is white with blue trim, isn't it?.....It's very white in those photographs, yes.

Beg your pardon?.....It's very white in those photographs, yes.

Very white in those photographs with a bit of blue trim on it, isn't it?.....Yes.

Can you see any grey trim on it? Can you see any grey trim on it?.....Yes, above the blue trim.

That's grey to you, is it?.....It's grey to me, yes.

Did you get that clue from Mr Ellis a minute ago?.....No, I'm looking at the photos.

But it's a white dinghy, isn't it?.....It's white, yes.

And what did Mr Conde describe?.....A grey dinghy.

A grey inflatable dinghy. There's a difference between grey and white, isn't there?.....That's correct.

Did you tell the accused at any stage that a grey inflatable dinghy had been seen tied up to the Four Winds at 3:55?……No.

No. Did you assume when you said that to her that it must have been the white dinghy from Four Winds?……No.

Right. So you didn't assume that Mr Conde had seen a dinghy?……I knew from the statement that Mr Conde had seen a dinghy.

Yes, and you knew Mr Conde had seen a grey dinghy?……Yes.

And you knew other witnesses had seen a grey dinghy, didn't you?……That's correct.

Yes. You are aware that a number of witnesses had seen a grey dinghy behind the Four Winds late in the afternoon of the 26th January?……Yes.

Did you at any stage say to the accused when you were speaking to her at her home, "There are other witnesses who saw a grey dinghy behind the Four Winds at other times that day"?…….No.

Why not?……Because the accused had previously told us that she'd left Mr Chappell on board the yacht at around 2:00 p.m. Mr Conde's evidence presented a dinghy at the yacht later than that.

A grey dinghy?……A grey dinghy.

Yes…..Several witnesses had provided evidence about the colour of the dinghy from the Four Winds and several had stated that it was grey or they called it a light colour or a grey –

Well you tell me which witnesses called it 'a light colour'?……I believe – I'm relying on memory, I believe Christopher Dobbyn described it as a light coloured dinghy.

But he didn't see it at the yacht did he?……That's the – you asked me who described it as a light dinghy and he did it.

I - so we confine ourselves to the question. What witnesses, if any, described the dinghy seen in the afternoon of the 26th January at the yacht as a light coloured dinghy?……None that I can recall.

None at all, that's the answer isn't it?……None that I can recall, yes.

You know full well that we're 'none', Constable, don't you?……None that I can recall.

Yes. And you know that a witness, and I'll show you that witness' statement in a moment because the witness' name is blanked out for reasons I won't bore you with, says that at about 5:00pm she saw a large mid grey dinghy, and she didn't notice an outboard motor on it, floating a short distance behind the Four Winds. Now so I don't confuse you I'll show this witness' statement, it's P36, your Honour, and I've written for your information at the top of the page, and I don't want you to read it out, the name of the witness……Yes.

Now have a look at that statement and refresh your memory from it please - well, have you refreshed your memory from that statement?…….Yes.

And that witness makes it quite clear that there was a large mid grey dinghy upon which he didn't notice an outboard behind the boat at five o'clock?…….At about five o'clock, yes.

Yes?…….Yes.

Thank you. Now you didn't raise that witness' evidence with the accused?…….That statement was taken in November 2009.

Thank you. And I withdraw that question -…….I didn't have that witness at the time.

Now what about Mr – I withdraw that. I'll just ask you this question; bearing in mind that Mr Conde's statement was taken on the 29th of January, didn't you think it somewhat unfair to leave the accused with the impression that her dinghy; that is the Four Winds dinghy, had been seen behind the Four Winds at around 3:55 when you knew a grey dinghy was there?…….Well I didn't leave her with any impression.

Why didn't you say to her 'Look, that witness describes a grey dinghy being behind the Four Winds'?…….She informed – the accused informed me that she was already aware –

No, just a minute. Did you inform her at any stage on this day that a grey dinghy had been seen behind the Four Winds at 3:55?…….No.

No. And you were content to let her think that it was a white dinghy from Four Winds?.....I didn't know what she would think I was after her version of events from that day.

But you didn't say to her at any stage, 'Look, it couldn't have been your dinghy, because yours is white with blue trim and this one's grey'?.....No, I didn't say that.

No, but you left her with the impression that it must have been her dinghy, didn't you?.....I wasn't intending to leave her with any impression.

But clearly, you did that, didn't you?.....I don't know.

Did you correct it?.....Correct what?

I'll put it another way; you've made it clear you didn't tell her it was a grey dinghy?.....That's correct.

Right. And you would accept that that might have just happened to leave her with an impression, a wrong impression that you were talking about the Four Winds dinghy?.....No.

Patently obvious, isn't it?.....No, I told her the timing because I expected her to say, "Well it couldn't have been me, I left at two o'clock or around two o'clock, it must be someone else".

And her response was, "Oh then it must have been me"?.....That's correct.

And you didn't say to her, "No, it doesn't necessarily follow because that dinghy was a grey one"?.....No, I didn't say that.

No, why not?.....Because I was there to get the accused's version of her movements that afternoon.

And you knew at that point that she mistakenly thought you were referring to her dinghy?.....I didn't know that.

Let me ask you something. You got a statement from this other witness in November 2009 about a grey dinghy behind the Four Winds, you had Mr Conde's account of the grey inflatable dinghy, you had Mr Lorraine's account of a grey dinghy, what enquiries did you make to try and ascertain who might have owned the grey

dinghy?……I wasn't aware that Mr Lorraine said there was a grey dinghy.

Weren't you. Well stay with Mr Conde, what enquiries did you make to try and determine who might have been the owner of the grey inflatable dinghy?……The enquiry I made was to ask the accused what time she left the yacht to establish if it was her dinghy.

Don't prevaricate with me, you know what the question is. What enquires did you make to find out or to try and find out who was the owner or the operator of the grey dinghy seen behind Four Winds at 3:55?……I spoke to the accused.

You made no other enquiries?……I spoke –

Is that right?……- to the accused, I went through the file evidence and as information came in I just recorded the information, any information relating to dinghies was recorded, and statements.

Now when did you become aware of the statement made by the witness which is P36 that I asked you to read a moment ago?…I obtained that statement on –

You took that - …..the day – on that day.

Right. ….That's when I became aware of it.

Right. Now that witness described a grey dinghy without an outboard. Did you make any enquiries to try and find out who might have been the owner of that dinghy?….No.

None at all?….No.

Didn't go down to any of the yacht clubs at Marieville Esplanade and ask any of the staff down there who operated grey rubber dinghies?….No.

None at all?….No.

Just left it up in the air?…..No. I was – I believed –

Did you make any enquiries…No.

Yes, no?…..No.

No. Just like Mr Conde. No enquiries apart from speaking to the accused and misleading her.....I didn't mislead the accused.

You set out to mislead the accused Mr Sinnitt.....No.

Didn't you?.....No.

But the plain fact is as at today you've made no enquiries to try and find out who operated that grey dinghy that was seen by Mr Conde at 3.55 and you've made no enquiries to try and find out who operated the dinghy seen by the un named witness at about five o'clock.....The accused told me it must have been her at the yacht.

Just listen to the question and stop repeating yourself. Is it a fact that in respect of those two dinghies that you've made no enquiries whatsoever?...That's not correct.

Apart from speaking to the accused about Mr Conde, what enquiries did you make? And when did you make them?....I made enquiries by viewing the Bunnings footage after speaking with the accused.

The boat wasn't out at Bunnings, was it? We're talking about the boat Mr Sinnitt – the dinghy.....The accused, when we had the conversation about her movements on the afternoon said it must have been her on the yacht. I accepted that. Based on that –

The answer to my question is this: in respect to Mr Conde's statement you made no attempt to identify the operator of that dinghy.....Yes, I did.

I'll put it to you again so that you understand. Apart from speaking with the accused and misleading her, did you make any independent inquiries –

MR ELLIS SC: Well this is going to contain two propositions before my learned friend even finishes?

HIS HONOUR: Yes, did you set out to mislead her, detective?

WITNESS: No, your Honour.

HIS HONOUR: Do you – all right, well I'll leave it to Mr Gunson to ask the rest of the question.

MR GUNSON SC: (Resuming): Do you accept that you may have misled her by not telling her it was a grey dinghy?.....No.

You don't. Right. Now, having established that Mr Conde had seen a grey dinghy, and leaving aside any questions you may have asked the accused, what independent or other inquiries did you make to see who might have operated the grey dinghy at 3:55 and had it alongside the Four Winds?.....The accused told me that she believed it was her on the yacht, so I made no more inquiries other than to try and trace her movements from there.

So your answer is 'none'. When you got the statement from the unnamed witness, is it a fact that you made no further inquiries to try and identify who it might have been at the Four Winds with a grey rubber dinghy?.....In November 2009, that's correct.

And you haven't made any inquiries since?.....That's correct.

And it would have been, had you been – had you bothered to think about it, the sort of the inquiries that you might make are of members of the Royal Yacht Club – correct?.....Yes.

To see who operated a grey dinghy; inquiries of the Derwent Sailing Squadron, jus along from the Royal Yacht Club for the – .....That's correct.

- same purpose?.....That's correct.

You might have gone and talked to the permanent staff of the yacht clubs, who I think the are called the bosons?.....Correct.

But you made no inquires of them?.....Because the accused –

No, no just answer the question; you made no inquiries of them?.....After November 2009, no.

No. Now did you at any stage question Mr Conde about his statement or you never spoke with him?.....I spoke with him on the phone initially but not after his statement, I don't – not that I recall anyway.

Right. Did you question him carefully about what he had seen?.....When I first spoke to him?

Yes.....I believe I would have, yes.

Do you have your notes of your conversation with Mr Conde present?.....No.

Where are they?.....I – if there are any notes of that conversation at all they'd be at the Hobart Station but my recollection is it was a task to allocate to another member to attend to Mr Conde and take a statement of him about his information.

I'm more interested in what you said to Mr Conde when you spoke with him. Now did he telephone the police and say, "I may have some information that may be of some assistance"?.....I believe he did, yes.

Thank you. And you telephone him?.....I can't recall whether that call was put through to me or I phoned him back.

Well it doesn't really matter at the end of the day you had a conversation with him?.....A brief one, yes.

You had a conversation with him?.....Yes.

And following that conversation you tasked, or somebody tasked, another officer to interview him?.....That's correct.

Right. Now Mr Conde spoke with you did you ask him for a description of the dinghy?.....I can't recall.

Wouldn't it have been sensible - .....It's likely that I did but –

Yes. At that stage you knew the Four Winds dinghy was a white one with blue trim?.....That's correct.

Did you not say to him something like this, "Did you see a white dinghy with blue trim at the Four Winds"?.....The phone conversation is twenty one months ago I can't recall what –

I asked you a question, did you or did you not say to Mr Conde, "Was a dinghy white with blue trim with the word 'Quicksilver' along the side"?.....He's a potential witness I wouldn't have suggested any colour to him I would have asked him. If that was the case I would have asked him what colour the dinghy was that he saw.

Right. And do you recall what he said?.....I don't recall even asking him to be honest. As I said the phone conversation was –

Don't you think that might have been the most sensible thing to do?……Well I may have done it but the phone conversation is twenty one months ago and I can't recall the exact wording of the conversation. I can recall –

Don't you think it would have been a sensible thing to do to have asked him about the colour of that dinghy when you spoke with him?……No, I don't think it would be sensible.

If it was bright red one for instance – if he said it was a bright red one you wouldn't be the slightest bit interested would you?……I wouldn't suggest a colour to him because I don't want to affect his evidence or what he'd seen and he was a potential witness.

But at the end of the day a statement was produced, correct?……Yes.

Who took it?……I'm not sure to be honest.

Well can I call for the production please of the original of Mr Conde's statement. Thank you. Would you have a look at this document and tell me whether you can identify that handwriting, that's what I ask you to do. Just say yes or no, whether you can or cannot identify it?……No.

Thank you. Pass it back. Do you have any memory at all of who the officer was who interviewed Mr Conde?……No.

Right. Is it the usual practice – I'll just ask you this question, do you know who badge number 2030 is?……Yes.

Who's that?……Detective Andrew Bovil.

Detective Andrew?……Bovil.

Thank you. Pass that back. Is it your memory that Detective Bovil was tasked with interviewing Mr Conde?……No, but that's his badge number.

Thank you. Now do you remember who it was that was tasked to go and see Mr Conde?……No.

Now when did you become aware of the statement by this person whose statement is P36?……Is that the statement taken in November?

Yes.....I obtained that statement the day – the date on there is the day that the lady attended the station and I took the statement straight away.

Thank you. Could I just have that other document back for a minute, please. I'm sorry to do this to you. Thank you. By this stage the accused had been charged because she was charged in August, wasn't she?.....Yes.

Now is it fair to say that you didn't go down to the yacht club after you became aware of this statement and made any further enquiries?.....Yes.

Just did nothing about it at all?.....About that statement?

Yes.....I attached it to the file and just closed it.

Didn't it raise in your mind the possibility at 5:00 p.m. as a result of large mid-grey dinghy being at the Four Winds that somebody had been on board Four Winds at about that time other than Mr Chappell?.....Yes.

It raised that possibility in your mind?.....Other than Mr Chappell, you said?

Yes.....Yes.

But you made no inquiries?.....No, because I was of the opinion that the person onboard was the accused.

No, no – oh, at five o'clock?.....We had information from the accused –

No just listen; at five o'clock you formed the – you formed the opinion that she had been onboard at five o'clock as a result of large mid grey dinghy being there?.....As a result of the information she provided us, yes.

Well when did she tell you she was there at five o'clock?.....She never specifically said five o'clock.

No, she never told you she was there at five o'clock, did she?.....She told us –

Did she ever tell you she was there at five o'clock?.....She told us she didn't know what time she left.

Did she tell you that she was there at five o'clock?.....That exact time, no.

Thank you. Did she tell you that she was there ten to five or ten past five?.....She didn't give us any exact time.

Thank you. Did she ever tell you she'd been there in a large mid grey dinghy?.....No.

No. And is it a fair comment to say that you just thought 'Oh that has to be the accused I won't make any further inquiries'?.....No, that's not fair.

Well did you suggest to anybody that further inquiries should be made?.....No.

Did you appreciate that perhaps somebody seeing a dinghy there at five o'clock, a large mid grey one, may be a little inconsistent with what your previous belief was?.....No.

You didn't see that at all?.....No.

But you knew the dinghy from Four Winds was white with blue trim, didn't you?.....I knew the accused told she stayed a lot longer onboard than what she initially thought.

Do you want to answer the question now, rather than prevaricate?.....I knew the dinghy was a light coloured dinghy, yes.

You knew it was white -.....Yes.

- with a blue trim, didn't you?.....Yes.

Neither Mr Conde or this witness described that dinghy being at the boat, did they?.....They didn't describe a white dinghy, no.

No, and you, as a detective investigating a murder, didn't think that it was necessary to try and make just one inquiry to try and find out who might have been on that boat and whose grey rubber dingy it was?.....I made more than one enquiry.

Apart from speaking to the accused?……And checking the Bunnings footage, checking surveillance footage.

Control yourself and think about the boat, we're talking about the boat, you made not one single enquiry, that's correct isn't it?……About which boat?

I'm very tempted to give you a sarcastic answer and I'll control myself, the grey one?……I'm – the grey boat, no.

Thank you. Did you discuss the unnamed witness' statement with any of your senior officers, Detective?……Yes.

Who did you discuss it with?……With Detective Inspector Powell.

Yes. When did you do that?……Oh, I don't recall the exact date but I generally updated him on any information that came in so –

Yes…..- around that date if not on the day.

Right. And did Detective Inspector Powell give you any instructions about what you should do with respect to that statement, just tell me yes or no?……No.

Did you say to Detective Inspector Powell words to the effect –

> *Look, we now have a grey inflatable boat out there, a large mid grey one, that the witness didn't observe an outboard on which is nothing like the dinghy from Four Winds doesn't this raise a problem for us?*

……No, I didn't say that.

Didn't say that?……No.

What did you say to him?……I said to him that a witness had come forward and provided evidence about a dinghy being at the – a grey dinghy being at the boat.

Did you give him a copy of the statement?……No.

Oh, sorry, just run that past me again, Detective Inspector Powell was in charge of the investigation?……That's correct.

Right. And you didn't think to give the officer in charge of the investigation a copy of this witness' statement?……I briefed him on the contents of the statement.

You didn't think to give the officer in charge a copy of the statement, Detective, is that right?……I didn't give him a copy I briefed him on the contents.

You briefed him. An oral briefing?……That's correct.

And did you sit there or stand there in front of the inspector and read the contents to him or just give him a potted version?……I gave him a briefing on the statement that I'd obtained.

Which was just a potted version?……I wouldn't have read the whole statement to him.

No. You just seem, if I'm right, to have totally ignored the possibility that because of this large mid-grey dinghy that somebody else might have been on board that boat?……Yes.

Just totally and absolutely ignored it?……Based on all the file evidence, yes.

Right. It was a little bit embarrassing, I suppose, somebody coming forward at this late stage after the accused had been charged to give you this information, wasn't it?……No.

And you really just ignored it, didn't you?……No.

But made no enquiries?……No.

Didn't it occur to you that, "Hey, look, this is a little bit consistent with what Mr Conde said, we've now got two people saying there's a grey boat there, shouldn't I look into this more"?……..No.

Right. Just didn't even think about it?……I thought about it a lot.

But did nothing, absolutely nothing?……I attached it to the file as I believed it was relevant evidence.

Oh apart from attaching it to the file, which was no doubt your bureaucratic requirement, you did nothing else, did you?……No.

You didn't go to your senior officer and say, "Look, this raises all sorts of prospects, maybe we need to investigate this aspect a bit more fully"?.....No.

Didn't get Mr Conde back in for a further interview?.....No.

Didn't get that witness, unnamed witness back in for a further interview to get more information?.....No.

Right. I see. And perhaps if you'd got Mr Conde back in he may have given you a more fulsome description, mightn't he?.....I don't know.

You don't know. Of course you know that in this court he's given a very detailed more fulsome description, don't you?.....No, I don't.

No one's told you about it?.....No, I'm aware he's given evidence and described the dinghy.

Right, thank you. Now let's return then to this visit. You've recorded in your notes, 2:00 p.m. to 3:55 p.m. and she said 'Must have been me on the yacht', and that was after you told her about the Conde statement, without identifying Mr Conde?.....I told her of the timing, yes.

And she said, "Must have been me, I must have stayed longer than I first thought"?.....That's correct.

Right. Effectively adopting what you'd told her the position was?.....That's what she said and I recorded that in my notes.

All right. Thank you. Now she had told you quite clearly where she'd tied up the dinghy at the Royal Yacht Club?.....Yes.

And I imagine at some stage you went down there to have a look at the point where she told you she'd been?.....Yes.

And you saw that crane on the concrete plinth?.....Yes.

And no doubt you looked at the wharf and found the metal ladder that she described?.....Yes.

Yes – thank you. And she gave you details about going to Bunnings?.....Yes.

And she gave you a very detailed account of what she was wearing?.....She said what she was wearing, yes -

Yeah -.....- I wouldn't call it detail.

But you asked her to tell you what she'd been wearing?.....Asked if she – yes, if she could recall what she was wearing at the time.

Yes, and she said, she'd been wearing beige cargos, white joggers, maybe a large sunhat, which was cream, and a folded back – and there's another word I can't work out here, something type brim – what's that?.....I think it's wide or large brim, from memory.

Right. And you told her that you would check the footage at Bunnings?.....No.

But she said, "It should be on footage"?.....She did say that, yes.

Yeah. So it was obvious to you that she knew that there should be footage of her arrival at Bunnings?.....Yes.

Made it very clear?.....She said that, that she should be on the footage, yes.

Yeah. And she gave you a detailed description of where she'd been to right past the checkout towards paint, went up and down aisles, left into timber, told you she was looking for slip mats?.....Yes.

For the boat?.....She was looking for slip mats, as I recorded in the notes.

Yeah. Now this, of course is on the 5th of February, she was in the presence of other people at the time you've told us about?.....Yes.

All right. Thank you. Was this the first time you can remember that she'd raised the issue of Bunnings with you?.....With me personally?

Yes, that was the first time you'd met her?.....I'd met her only very briefly the day before to sign a form at the house, stayed only a minute.

They were just normal forms about missing persons and things, nothing -.....No, I can explain the form if you like, it was simply a medical release form to allow us to get Mr Chappell's records.

Get the doctor's records?……Yes.

Thank you. She said that when she was tying up the dinghy a girl with dark hair was there, did you ask for any description of this girl, did you ask her whether she knew the girl or anything like that?……All the accused could remember was that there was a girl with dark hair there.

Right. Did the police at any stage to your knowledge ask for a public follow-up on that sort of information, to ask for anybody who was at the Royal Yacht Club at about two o'clock, three o'clock or four o'clock, doesn't really matter, on that afternoon to come forward?……There'd been several media releases requesting anyone with information and anyone who had been in the area to come forward or contact police.

And no one came forward about being on that wharf, but specifically was the question asked, anybody on the wharf at the Royal Yacht Club come forward?……I don't recall that being specifically asked.

And if I said – if I said to you that such a request was not made you'd accept that, wouldn't you?……Yes.

So you had limited information about who that person was?……Yes.

Who might have, if tracked down, been able to confirm the accused's account?……Yes.

And the police made no attempt to specifically find that person by asking for that person to come forward through a media release?……Well that's not correct.

For that person on the wharf?……A media release for specifically that person. We'd – we'd done several releases for any person –

No, no, no, stop, concentrate……I hadn't finished.

Concentrate on the question. Was there any specific request made for that person to come forward?……No.

Thank you. I think you said you made a whole lot of other enquiries and one of those enquiries was to Wrest Point about their rooftop webcam, is that right?……Yes.

And that was negative because the webcam was not pointing in that direction, is that right?……My recollection of it was is the webcam doesn't record.

Right. …….What we did was, we got all of the IP addresses for everyone that was on – or accessed that webcam during the 26th and 27th –

Yes……..- and other officers, I didn't contact anyone, but other officers were tasked to contact every person that had been logged on to that webcam –

Right. …….- to ascertain if they'd seen anything or recorded any of the footage themselves –

And they were all negative?…….- which apparently is – that's correct.

Thank you. What other investigations did you make in this matter apart from interviewing the accused on the 5th of February – was this one of your full time assignments?…….I didn't hear – sorry, can you repeat the question?

Yes, you went and saw the accused on the 5th of February - …….Correct.

- at her home?…….Yes.

After that what was your involvement in this investigation?…….My involvement – I – a number of inquiries including – my main involvement I was tasked with right from the – virtually the beginning of the investigation was to locate Mr Chappell.

Yes. But -…….I was tasked –

Was this a full time job you were on?…….Yes.

And how long was it full time for?…….I was full time on it until – I can't recall the exact – the exact date, but it was early May, I believe, or June –

Right. …….- in 2009.

Thank you. Now on Thursday the 29th of January you went to an event at the Derwent Sailing Squadron with Detective Sergeant Conroy – is that right?.....That's correct.

What event was it?.....It was a combined sailing event of some description between the Royal Yacht Club and the Derwent Sailing Squadron.

Right. And you went to the premises of the DSS in Marieville Esplanade?.....Yes.

And did you address the group of yachtsmen as a whole?.....Sergeant Conroy did, yes.

Right. And what did Sergeant Conroy say to this group of yachtsmen?.....I can't recall the exact wording of what he said, but we were seeking – he was seeking, we were seeking information, any information that anyone had at all in relation to the area, to activity in the area, persons in the area over that period of where Mr Chappell went missing.

Right. And how many people did he address?.....I'm not sure exactly.

Well you were there give us a rough - .....May be eighty to a hundred people.

Eighty to a hundred people?.....Yeah.

What time was this?.....I'm not sure exactly, it was evening after their – they'd had their sailing event and come in for the presentations afterwards.

Well roughly what time was it?.....I guess around 8:00pm but it's just a guess.

Thank you. And nothing was raised about Mr Conde's description of a grey inflatable dinghy with this group of yachtsmen?.....I'm not – no, it wasn't, I'm not aware we had the statement at that time.

Mr Conde had given his statement at 10:00am on the 29th January, the same day and Detective Sergeant Conroy most certainly didn't say to them, "Look, we've got some information about a grey dinghy hands up those who have got a grey dinghy or hands up those who may have seen a grey dinghy"?.....No, there was no specific information sought.

Right. You moved some carpet tiles into position on board the boat didn't you?……I didn't.

You were present?……I was present when – yeah, present when others did.

Present, right. And very conveniently they ended up with a pattern that shows some missing tiles in the position we see in the photograph?……Correct.

But those sort of tiles could be moved in anyway couldn't they, they're all square?……I didn't piece them back together. My understanding was that several were cut to fit around the edges.

Yes, around the edges……Yes.

But some of the major ones, the square ones, could have been - literally come from any part of the yacht couldn't they?……I'm not sure, I didn't reconstruct that.

You didn't do that?……No.

All right. Now with this winching that you described, just let me follow this through, you stood in the saloon, is that right?……Yes.

Whereabouts, on that bare board area?……Correct.

And you put a rope around yourself?……Around my waist, yes.

Around your waist. And that led to the rear winch?……Yes.

Directly to the rear winch?……Well it was handed to me as I was in the saloon. When I wrapped it around me I could see it was leading to the winch, yes.

It went straight to the winch….Yep – yes, sorry.

Directly. …Yes.

And he sort of – so there's a direct line from you to the winch on the rear mast?….That's my recollection of it, yes.

And your other officer cranked away on the handle, did he?…..He turned the handle, yes.

And you couldn't resist it? In other words, the power being exerted would have dragged you forward....Power of the winch, yes.

Mhm. The rope that the – sorry – the winch that he used is the one shown in this photograph, have a look please – photograph 74 from P9. Is that right?....Yes.

Now there's a direct line coming from that winch....Yes.

We clearly see in the photograph, down to you standing in the saloon?.....Yes.

And there was only one rope.....That's right.

Thank you. And most certainly the rope didn't drag over any of the wood work to the side of the cabin....That's correct –

It just came in a direct line to you....That's right, yes.

Thank you, that can be returned please. .Nothing particularly remarkable about all that, was there. That's what winches do, don't they?.....I'm not very experienced with winches but that's what it did.

Thank you. Was that the only experiment that was conducted in your presence about how it might be possible to move something from the inside of the yacht?....There were –

Just answer me yes or no.....No.

No, right. What other experiments haven't we heard about?.....I wouldn't call it an experiment but Sgt Conroy, as can be seen in the photo, placed a rope off another winch over burn mark – or marks on timber edging and led that down into that same area where I was standing – where I had been standing.

Did he try and winch you out by that methodology?....No.

Right. Did Sgt Conroy or any other officer put ropes through the forehead hatches?.....Not that I – not in my presence,

Not in your presence? But no attempt was made to winch you out using that other methodology?.....No.

Thank you. On the 3rd of March, when you went to Cleanlift at Goodwood, the yacht was on a slip?.....Yes.

Out of the water?.....Yes.

And you had a conversation then with the accused when she quite emphatically stated to you that she thought the tanks on the yacht had not been properly searched by police officers?.....She said that to –

Yes.....- Sergeant Conroy, yes.

And we've heard the evidence about the piece of timber, step footing that she found?.....That she said she found, yes.

Yeah. And she was obviously concerned about that, wasn't she?.....Yes.

Right. On the 28th of April there was the discussion about whether or not the fire extinguisher from the yacht had been found?.....Yes.

No there was nothing particularly remarkable about that, was there, I mean it was well known, as a result of publicity in the newspapers, literally from day one, that the fire extinguisher was missing?.....That's the way it was reported, yes.

Yeah, and the police in fact asked people if they found the fire extinguisher to come forward?.....That would have been the case, I don't recall specifically.

Well you're not going to deny it, are you?.....I don't recall that.

There was a public appeal for two items, if located, to be drawn to the police attention; namely the fire extinguisher and the EPIRB?.....Yeah, that could have been the case, I don't recall it exactly.

Well you don't deny it, do you?.....I'm not saying it didn't happen I just can't recall that happening.

Thank you. Listening devices were placed in the accused's home, weren't they?.....Yes.

Without her knowledge?.....Yes.

And there was some ninety six discs produced?.....That's correct.

Did you listen to those?.....Yes.

How many hours did that take?.....I don't know the exact hours to be honest –

Well roughly.....They were eight hour discs.

Eight hour discs. And you didn't rush them in anyway, you didn't – so you had to sit there and listen to eight hours by ninety six, is that right?.....That's correct.

Right. Thank you. When were the listening devices put into the house?.....I can't recall the exact date.

If I suggest to you that it was the 3rd of March, would you agree or disagree with that?.....It could have been around that time, I don't recall the exact date.

All right. Have a look at this document I'm going to show you, please – just to save a little time, all you need do is read the last paragraph, read it to yourself, say nothing about it, but when you've finished reading it hand it back to me please?

MR ELLIS SC: Is that the witness' document – excuse me?

MR GUNSON SC: Yeah.

MR ELLIS SC: It is?

MR GUNSON SC: Yeah.

MR ELLIS SC: Thank you.

WITNESS: The last paragraph?

MR GUNSON SC: (Resuming): Just read the last paragraph to yourself? Thank you. Would you accept that the devices were installed on the 3rd of March?.....Yes.

Thank you. Yes, I've no further questions of the witness, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. The – you've been examined for a long time about a dinghy, Constable Sinnitt; did you see the dinghy yourself on the wharf?.....The dinghy from Four Winds?

Yeah.....No.

No. Did you see it in the bright light – very bright light in the over exposed photograph you were shown?

MR GUNSON SC: Well with the greatest of respect, that involves a number of suppositions on the part of my friend; one of them giving evidence from the bar table.

MR ELLIS SC: Good point. (Resuming): Can the witness be shown please, P09 – I'm sorry – yes, I'm right – it's P9. No, it's my mistake, my mistake. I started assisting and it was wrong. P38, I'm sorry, those photographs, and photograph 14, please, that's under the green tab. Does that appear to be a photograph of the same dinghy that you were shown by Mr Gunson?.....Yes.

And does it on that photograph – ignore the fingerprint dust – appear to have grey trim?.....Yes.

And you were shown a witness statement already in evidence of the unnamed person who said she observed it on a grey overcast day, is that right?.....Well exactly what she said, she observed – but I obtained that statement.

Yes. Have you observed the River Derwent and its colours?.....I've seen the River Derwent, I haven't taken specific notice.

Probably better for address, we'll leave that, thank you. Now Constable Sinnitt, you were asked in cross-examination if you were familiar with the area of – this is in respect – sorry. Are you familiar with the area known as Clean Lift Marine out at Goodwood, Negara Crescent, and you were asked is it fenced and gated, do you recall that?.....Yes.

Did your enquiries reveal that it was a secure place and was never broken into?.....No, it didn't.

Was it in fact broken into on several occasions round this time?.....Several occasions, yes.

And immediately after that, this is 783, you said – this is in the admissible part of the questioning about Meaghan Vass, you could make no connection between Meaghan Vass and the area around Marieville Esplanade on the 27th January 2009?……That's correct.

Now did you make any connection between – your enquiries cause you to make any connection Meaghan Vass and the Goodwood area?……When I spoke with her at Stainforth Court, I believe it was the 18th March, I obtained notes from her and in those notes she – at that time she indicated to me that she believed she may have being hanging around the Goodwood area at the time of Mr Chappell's disappearance.

Thank you. And again in the admissible part of your enquiries you said that your enquiries didn't enable you to locate her whereabouts on the evening of the 26th January 2009 was that indeed the case – was that a unique day in Ms Vass's location and Ms Vass' whereabouts?……Unique in that she didn't know where she was?

That you couldn't locate her that day but you could locate her any other day you care to name?……My enquiries revealed that it was common for her to be – for her whereabouts to be unknown.

Right. And did she indeed have several addresses or had been at several addresses in the – in the relevant periods?……She appeared to be moving from several addresses, yes – between several addresses, sorry.

Yes, she was a homeless young person?……Yes.

Thank you. You were asked about Ms Neill-Fraser's diaries which she produced and whether they contained entries like, "I hate Bob"?.....Yes, I was.

Now were these locked diaries?……Locked, sorry, I –

Oh, some diaries have a little lock and key on them and they're private and secret and so the – say the Bob in question can't look in them?……None were locked diaries.

Right. Were they the type which contained deep personal confessions?……No.

Were they more of the type of a list of things done and to do?……That's correct.

Sorry, they're a bit out of order. No, I don't have anything further, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: All right, thank you, Detective Sinnitt, you're free to go.

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: We'll take the morning break – sorry?

MR ELLIS SC: Could we take a slightly longer than usual break –

HIS HONOUR: How long – how long do you ask for Mr Ellis?

MR ELLIS SC: Half an hour please, your Honour.

HIS HONOUR: No problem with that, Mr Gunson?

MR GUNSON SC: No, no, we've discussed it, your Honour, he – Mr Ellis has to give me some material that –

HIS HONOUR: All right. The jury can make their affirmation and the Court will then adjourn for half an hour.

MR GUNSON SC: Before that's done, your Honour, if we need – it turns out that we need longer, can we send a message through your Honour's associate?

HIS HONOUR: As you did yesterday, yes, that's – that's fine.

MR GUNSON SC: Thank you.

<JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Mr Ellis.

MR ELLIS SC: Thank you, your Honour, I apply to recall Phillip Triffett, your Honour.

HIS HONOUR: You're content with that, Mr Gunson?

MR GUNSON SC: I am, your Honour.

HIS HONOUR: Yes, he can be recalled.

<PHILLIP PAUL THOMAS TRIFFETT RECALLED AND RESWORN

HIS HONOUR: Take a seat. Mr Ellis.

<EXN – MR ELLIS SC: Thank you. Mr Triffett, you're Phillip Paul Thomas Triffett?……Yes.

You live at Old Beach?……Yes.

And you've already given evidence in this case?……Yes.

No Mr Triffett, on the 7th January 2009 did police conduct a search of your property under a warrant?……Yes, they did.

And did they take away a large number of items of machinery and tools and things like that?……Yes, they did.

And later that day were you interviewed by police in respect of all those items of property?……Yes.

And at the end of that were you charged with unlawful possession of ammunition and being in possession of a Makita router and a –

MR GUNSON SC: I object to that, your Honour.

MR ELLIS SC (Resuming): Were you charged in respect of possession of two items of property?……Yes, that's right.

What were those two items?……It was a Makita router and a set of MDF stairs.

And also in respect of ammunition?.....That's right, yes.

Thank you. Did you sign a bail document on that day?.....Yes, I did, yes.

I'll show you this, and tell us if it's a copy of it, please? Is that a copy of the document you signed?.....That is it, yes.

Thank you. I tender that, your Honour.

EXHIBIT #P65 – COPY OF BAIL DOCUMENT SIGNED BY MR TRIFFETT – TAKEN IN

HIS HONOUR: Now would you like this read out to the jury or would you like some particular about its contents made to the jury?

MR ELLIS SC: There's no other point except for – except the brief description of the charges and the date, your Honour.

HIS HONOUR: Yes, well you'll have this in the jury room, it shows he was bailed at 2:50pm on the 7th of January 2009 on charges described as "unlawful possession and possess ammunition when not the holder of the appropriate firearm licence – to appear in court on the 10th of February".

MR ELLIS SC: Thank you, your Honour. (Resuming): Was one of the police officers involved in the – in the search, a Detective Senior Constable Mikulski?.....Yes.

And did you know him to talk to before?.....Before the –

Before that – that search?.....No, no, I didn't.

Okay. On the 29th – or sorry, the 28th of January 2009, at about 4:00pm did you telephone someone?.....Sorry, mate, I never heard that?

You're right. On the 28th of January – the 28th of January 2009 - .....Yes.

- did you telephone someone?.....Yes, John Mikulski.

John Mikulski. And can you remember what you said to him?.....I told him that I had seen the report of Bob Chappell going missing and I wanted to talk to him – because I didn't know, like who I was going

to talk to, and he'd been out so that was the logical thing for me, I had his number and I rang him.

Okay. And did he ask you to do something – did he ask you to see him?.....Sorry?

Did he ask you to see him?.....Yes, yes.

And did you do that in the next few days?.....Yes, I did.

And did you outline there, in general terms, what you knew of – what information you had about -.....Yes.

- Bob Chappell's disappearance?.....Yes, I did, yes.

And that involved Ms Sue Neill-Fraser?.....Yes.

And at the end of that conversation did you say something to him?.....I may have.

Mmm. Did you – okay, we'll just go back a bit then. At the time you rang him did you say – did you make it any condition or did you even relate it to the charges that - ....No, I did not, no.

Thank you. At the time you saw him the next few days did you mention the charges at all?.....No.

Did you ask him anything about the charges at that time?.....With the ammunition and whatever?

Yeah, yeah.....I may have mentioned like with some assistance or something. I can't really – I can't really remember.

All right. When you spoke to him in person you say you may have mentioned the charges?.....With?

The charges about the ammunition and the - .....Yes, yes. Oh, hang on, I can't remember.

Okay. No, that's all right. Did you make any condition of speaking further to the police - .....No.

- that anything would happen to the charges?.....No, God no. No, I didn't.

Were you given to understand that anything would happen to those charges?……No, no. No, that's right.

Did you later – did he arrange for you to meet Detective Sinnitt?……Yes.

And what following that did you make a statement?……Yes, I did.

Thank you. Was it your expectation by coming forward something would happen to the charges?……No. No, it wasn't. No, definitely not, I had no intention of anything like that. I came forward because – because I'd heard and I suspected that that was – that I knew something about Bob's disappearance, that's why I came forward.

Is it possible that in the face to face meeting with Detective Mikulski, following your telephone call on the 28th January, you said something like at the end of the conversation, "Will this help me with the charges"?…….I may have said that.

Okay. And from then on did anyone indicate to you that your statement – or any policeman, your statement or your evidence, would have any affect on those charges?……No, John said that that's irrelevant, it makes no difference and – and I wasn't worried about it. Like I thought about, you know, the – I thought about it, like it irrelevant, I didn't – I didn't need any assistance or anything like that.

Was the other property that was taken from you, apart from the router and the ammunition and the stairs, returned to you by police?……Yes it was, yes.

And when you left the police station on the 7th January did you expect that that would be returned to you?……Yes.

Because you'd been interviewed about all that property too?……That's right.

And gave explanations of where that -…….I did.

And we're heard that the charges did proceed in the Court of Petty Sessions?……They did, I had to go to the Magistrates' Court on – it was like the 9th – I can't remember – quite remember the date.

Mhm…….But yeah, like it went in and I pleaded guilty to having – having those couple and then just took it as it came.

Yep. And I think we've heard when it was corrected that as a (indistinct word) it was discharged without conviction, is that right?……That's right, yes.

Thank you. Nothing further, thank you, Mr Triffett.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Mr Triffett, there is no doubt about it, is there, what you said to Constable Mikulski is – about the charges when you saw him, "Will this help me with those charges", and he said, "I don't think so, but it's not up to me"?.....He did say that and I –

He said it -.....Yes.

He said it because you said, "Will this help me with those charges"?.....Yes, but like he – he

Yes, look, just establish it, that's what you said, didn't you, "Will this help me with those charges"?.....I may have done.

No, there's no may have done about it, you did in fact say it?.....Yes.

Thank you. Now you were interviewed by the police following them coming to your premises on the 7th January and seizing about forty five or thereabouts items of power tools and power equipment?.....Yes.

And amongst all of the items there were some seven chainsaws, grinders, planers, sanders, battery chargers, generators, routers, circular saws, right?.....Yes.

And you were interviewed by Constable Mikulski and another officer at the police station?.....Yes.

And they asked you how you came to be – in possession of all of those items?.....Yes.

And they in fact, I suggest, told you that a full report would be made about the matter?.....Yes.

And you'd get a summons in due course setting out the charges against you?.....That's right and that's what happened.

Exactly. But when you left the police station you didn't know how many charges were to be laid against you, did you?.....Well I didn't think there was going to be any because I thought everything was fine.

No, but when you left the police station you weren't told by Constable Mikulski, 'Look we're only going to charge you with one count of possession and some charges involving ammunition' they didn't say that, did they?.....You know I can't remember if they told me there and then or not. I gave – I gave a statement and everything else and I expected that everything was going to be fine anyway, because I had no knowledge of anything.

You had no knowledge of anything in there?.....No, everything –

Not a sausage – not a single thing?.....Not a sausage, mate.

Right. But in the end you pleaded guilty?.....Yes, because they – they –

No, no, just listen, you pleaded guilty to being in possession - .....Well I did have them.

Yes, without -.....So I had it in my possession. I didn't steal it, I didn't –

No.....- knowingly – I had it, yeah so I had to say I was guilty of that.

Well what you were charged with -.....Two items.

- was being in possession of property reasonably believed by a police officer that had been stolen or unlawfully obtained?.....Yeah, they believed it was, but they couldn't even say if it was or it wasn't.

But you pleaded guilty?.....Well what else was I going to do? I represented myself.

When you went to the Magistrate's Court, do you remember the prosecutor reading out what are known as 'facts for the prosecutor'?.....Yes, yes, I remember that.

He read out a statement?.....Yes.

And the – you remember it was quite a long document, he set out how the police had been to the house -.....Yes.

- and how they'd searched it and they seized an amount of property and ammunition?.....Yes.

And the prosecutor said this:

During the interview, the defendant –

And that's you.

- stated about the property, about the MDF stairs –

…….Yes.

- got them from his nephew, Brian Triffett.

…….That's right, yes.

Received the stairs from Brian Triffett to a pay back of three hundred dollars that you owed him?…….That's right – he owed me.

Stated that he'd only had them for six months.

…….Yes.

And stated he didn't ask any questions and he didn't want to know the answer –

……No, I didn't say that like that. I – if I'd have known anything was sinister or –

Ah, that's what the prosecutor read out at court, didn't the prosecutor?……I can't remember exactly, mate.

It was only a few weeks ago wasn't it?……Yes.

Yeah. And on the Makita Router he said that you'd said in the interview –

That he'd bought it at Sorell Market twelve to twenty four months ago from a bloke who sells toils.

You couldn't provide the identity, couldn't remember how much you paid for it, didn't get a receipt - ……That was ages ago though.

- and didn't ask the seller that had some – the fact that it had someone else's name and licence number on it and you agree that having someone's name and licence on the tool would indicate it belonged to them……Well that was –

That's what the prosecutor read out didn't he?……Yes.

And you didn't dispute those facts at the hearing did you?……Well being that that was on there I thought that –

Did you dispute those facts at the hearing?……Well being that it was on there it made me believe –

Your Honour, I invite you to direct the witness to answer the question.

HIS HONOUR: Mr Triffett, the idea is Mr Gunson asks you questions and you answer his questions you don't –

WITNESS: Yes.

HIS HONOUR: - you're not meant to make other points that will help you win an argument with him.

WITNESS: Yes.

HIS HONOUR: So the question is did you dispute anything that the prosecutor read out when you were in front of the magistrate?

WITNESS: No, I didn't.

MR GUNSON SC: Thank you.

HIS HONOUR: Back to you, Mr Gunson.

MR GUNSON SC: Thank you, your Honour. (Resuming): Now when you left the police station on the 7th January 2009 you knew you had to appear in court on the 10th February……Yes.

And it wasn't until shortly before the 10th February that you received a document called a 'complaint' that set out the charges against you……Yeah, I think I'd received something before that though. I can't remember, I don't know.

Well before you went to court you got a document?……Yes.

Have a look at this document, say nothing about it, and please read it to yourself. Just say nothing about it. When you finish reading it

you tell me. Now, Mr Triffett, you only glanced at the document did you read it right through?……Oh, no, I didn't actually.

Well I want you to read it right through please.

HIS HONOUR: Do you need any help to read it?

WITNESS: No, no, that's all right, mate.

MR GUNSON SC (Resuming): Now did you read it right through?……Yes.

Have you read it from top to bottom?……Yes.

And do you know what date the summons against you or the complaint against you was issued by the police?……Was it on there, the 7th?

Do you know what date the complaint was issued against you by the police?……7th January, wasn't it?

That's when you had your bail document given to you.

MR ELLIS SC: Your Honour, this is unfair, this is a lay witness, no legal familiarity.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Yes, your Honour, but your Honour understands the difficulties I have and the reason why I'm being cautious about the way I do it and your Honour appreciates that.

HIS HONOUR: Well some people when they read a document don't take in all the details in one go. If it's – if all that you're trying to establish is the date of the complaint you can probably do it without it too much of a memory test.

MR GUNSON SC: Well I wasn't trying to do that.

MR ELLIS SC: Well I'm happy to tender it.

MR GUNSON SC: You tender it, thank you.

MR ELLIS SC: It's admissible under s157B –

MR GUNSON SC: Thank you for that.

MR ELLIS SC: - and it's a copy of a complaint taken out on the 27th January.

EXHIBIT P66 – COMPLAINT ISSUED AGAINST PHILLIP TRIFFETT – TAKEN IN

MR ELLIS SC: Whether the complaint means anything to Mr Triffett, I maintain the –

HIS HONOUR: He might know it as a bluey.

WITNESS: Sorry?

MR ELLIS SC: Well whatever, but –

HIS HONOUR: Yes.

MR ELLIS SC: - it certainly doesn't help to ask a lay witness about the complaint.

HIS HONOUR: All right, well now is there any – I could tell the jury the date of this document, do you want – is there any reason why I shouldn't, Mr Gunson?

MR GUNSON SC: No, not at all. There are two dates that I invite your Honour to direct the jury's attention to, -

HIS HONOUR: Yes.

MR GUNSON SC: - the first is the date that it was made by – on oath by a police officer.

HIS HONOUR: Yes.

MR GUNSON SC: It was the 27th January, and the date of its filing in the Court.

HIS HONOUR: Yes, well this complaint was signed by a police officer on the 27th January 2009 and it bears a stamp indicating that it was filed in the Magistrate's Court on the 29th of January 2009, and it's the complaint with the – the charges that we – containing the charges that we've heard about against Mr Triffett.

MR GUNSON SC: (Resuming): Now, Mr Triffett, when you left the police station on the 7th of January, you were simply told you had to appear in court and you were charged with the offence of unlawful possession and possessing some ammunition illegally?.....Yes.

The police didn't tell you how many items that intended to charge you with, with respect to the possession charges, did they?.....I don't know if they told me or not, mate, I don't know.

But it was pretty clear when you got the court summons, wasn't it, because it only referred -.....Yeah.

- it only referred -.....Two – two items.

That's – okay, and no doubt that was a great sense of relief to you?.....Well it wasn't a relief because I – I didn't think there would be anything on it.

The police hadn't returned all the other items to you by then, had they?.....No, I – I can't remember, I don't know the –

No.....- dates, I don't know.

Well they hadn't returned them to you, I suggest, at that stage. So when you got this summons, that was the first you knew -.....Do you know the date that it was returned?

When you got this complaint, this was the first you knew about the precise charges; that is the exact charges that were being brought against you – that's right, isn't it?.....Oh I can't quite understand it, mate, I really can't.

Right. But in any event, we know that you spoke to Constable Mikulski and asked, effectively, if he could do anything about the charges?.....No.

MR ELLIS SC: No –

MR GUNSON SC: No, I should - (Resuming): - will this help me with these charges?

MR ELLIS SC: Thank you.

WITNESS: I did say that.

MR GUNSON SC: (Resuming): Yes, thank you. And that was your hope, wasn't it?.....No, it wasn't, no, it wasn't. I – I don't even know why I said that to John, but it came up.

Why you said it was because you would hope – you were hoping that by helping the police with this matter, that they'd drop the other charges against you -.....No, no –

- following the raid -.....- that's – that's not right.

- following the raid on the 7th of January?.....That's not right at all, because there was no – there was no indication that that would assist or do anything and I was told quite the opposite that it would not, and then I still cooperated and gave every detailed statement that I could pertaining to it.

What Constable Mikulski said, and you acknowledged earlier, was, "I didn't think so but that's not up to me"?.....Who said this?

Mikulski.....Yeah, he may have said that.

Yeah. He didn't reject your offer outright or your comment outright did he?.....No, I don't think so.

No. Thank you, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS'

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: Yes?

MR ELLIS SC: Call Simon Conroy, your Honour.

<**SIMON MATTHEW CONROY CALLED AND SWORN**

<EXN - MR ELLIS SC: Detective Sergeant you're Simon Matthew Conroy?……That's correct.

You're a Detective Sergeant in the Department of Police and Emergency Management?……Yes.

On the 27th January you were a Detective Sergeant with the Hobart Criminal Investigation Branch?……That's correct.

Approximately midday that day were you advised of circumstances concerning a yacht having sunk or almost sunk on the Derwent?……I was advised that a yacht had, yes, and that someone was missing at that stage.

Yes. And about 2 o'clock were you requested by Inspector Powell to go somewhere?……Yes, I was requested to go to Constitution Dock to look further into the circumstances of that vessel having sunk.

Thank you. Did you go with someone?……Yes, I went with Detective Constable Marissa Milazzo.

And you got there soon after being asked to I suppose?……I beg your pardon?

I suppose soon after being asked to you got there……Yes. I recall I hadn't, I'd been on other duties that day and I hadn't – didn't have equipment so I had to equipment and it took awhile to get that.

So the – the vessel in question was at Constitution Dock -…….That's correct.

- when you first saw it – is that right?…….Yes.

And other officers were present -…….Yes, they were.

- including Constable Wilby, who we've heard from, and Constable Stockdale?…….It wasn't Constable Stockdale there, it was –

Oh Plunkett, I'm sorry?…….Plunkett that was there.

Yes. And did Constable Stockdale show you or tell you the contents of a statement obtained by Susan Neill-Fraser?.....Yes, previous to that he had, yes.

Thank you. Did you ask that something happened – that someone be contacted?.....At that point in time –

Yeah.....- I spoke firstly with Detective Wilby about the circumstances there and eventually yes, I asked that the family of the owners of the yacht come to the dock.

Thank you. Why did you want them to come to the yacht?.....The yacht had been brought in from out on its mooring and it was apparent to me that no one from the family had actually looked at the yacht to point out to us anything that might have been out of the ordinary.

I see. And did you go onboard?.....Yes, I did.

And what did you see when you went -.....Firstly I went onboard with Detective Wilby.

Yes.....He directed me down into the – into the boat itself. He pointed out in there; firstly there was some stairs on the left as you entered the – what I'd refer to as the 'wheelhouse'.

Yeah.....There was some stairs there with some blood on the steps.

Were they insitu then, the stairs?.....They weren't in the spot where you would – no, you had to step down, they'd been taken away and put to the left hand side –

Yes.....- as you entered.

Thank you. .....We then went down into the – forward into the vessel with the – it was in general disarray as it had been submerged in water.

Mm hm. .....There was still water pretty much to the floor level under the boards and in various spots we could see it.

Yeah.....We went forward to the front – to the toilet in the front of the vessel and he pointed out to me in there that there was a pipe

beside the toilet valve which had been cut through and it was leaking water.

Yes.....He then pointed out a spot in the corridor under the floor where he stated that it had – he stated the valve had been interfered with.

Thank you. And were you then provided with the statement made by Susan Blyth Neill-Fraser?.....Yes, I was given documents at that stage at the door.

Now about four thirty did other people arrive at the docks?.....Yes.

Who was that?.....The family of the person who was believed to be missing off the yacht.

Mhm.....That included the accused. It also included her two daughters, -

Yes.....- the son of the missing person at that point, being Tim Chappell.

And did Ms Neill-Fraser volunteer something to you about her condition?.....Upon getting onto the vessel it was stated to me – by her daughters that she'd been medicated during the day.

Okay. When you spoke to her that day did she appear heavily medicated?.....Not heavily medicated, no.

Right. Did you explain to them what you – what the point was or what you wanted them to do?.....Prior to getting onto the vessel, yes, I pointed out that there were things I wished – I just wished them to have a look across it basically and point out anything that they saw that might have been unusual.

Yes.....And then we entered onto the vessel. They were requested not to touch anything if they could avoid it.

Right, was that made clearly to Ms Neill-Fraser -.....Yes, it was.

- and the others?.....Yes.

And having got on board could you describe what happened, please?.....Upon getting onto the rear of the vessel, the rear cabin area, the accused pointed out on the right hand side or the starboard

side a green rope that was – she stated it was in disarray and out of place.

Mhm……..She then moved down the starboard side of the vessel towards the forward mast. She pointed out at that point that there was a winch handle in a winch that shouldn't have been there -

Right…….- and removed that from the winch.

Did she actually put her hand on it and remove it?……Put her hand on it and pulled it out of the winch.

All right. Did you remind her at that point of anything?……I said, "Please don't touch anything", and asked her to put it on the deck, put it down.

Right…..She then – wrapped around that winch was a rope or I refer to it as a sheet in the sailing term, white with red fleck through it.

Yes…….She unwound that at the same time, again I just said, "Put it down on the deck, please", and then she pointed out that the end of it was cut, as was another rope which was in a pile on the deck of the vessel as well. She pointed that that was cut as well.

Okay. Now it might sound like these things were done in rapid succession, would that be fair?……They were done in fairly – yes, fairly direct point to point to point.

Right. Now shows she saw those things and then did you go into the vessel?……Yes, we moved from the cabin back around to the – back to the outer cabin, straight from the top around to the outer cabin to enter the vessel down through the hatch. We had to obviously step down through there. I pointed out the steps to the side which had blood on them and then we moved down into the area which was in disarray, the main saloon area, entering into there. The accused pointed out that a fire extinguisher was missing from a bracket on the left. I sought to show her the front by the toilet where the pipe had been cut, she viewed that, and pointed out the spot where the valve which had been moved was opened.

Right. At that point where the valve had been moved, been discovered by the police, was the cover off it or - …..Oh, the cover was off, yes.

Okay. And you moved on I take it?.....Yes, we moved back to the main saloon area and in that area the accused checked the switchboards, the fuses, the main circuit breakers, etcetera, for the main electrical –

Right. Are they the row of fuses up and down - .....Yes.

- in the box, fuses – like a fuse box?.....Yes. Yes, backs to the wheelhouse.

Yeah. Did she make any comment about them?.....The switches were out of order and then she proceeded to touch the switches.

Right. And what happened when she touched the switches?.....It shorted out. I didn't see what she did initially but the bilge just started but there was a circuit breaker which stopped the switches from – stopped everything from working, there was a brief siren.

Okay. So the bilges start up, did you hear anything else?.....There was a siren at the same time overriding the system, it was quite loud. You could hear that the bilges had activated and the siren had stopped, you could hear water was flowing out of the boat at some point, out the sides.

And so this was activated by Ms Neill-Fraser by - .....Yes, this was.

- loading the fuses and switches?.....Yes.

And did she turn it straight off or did it seem to turn itself off?.....She continued to do the – it turned itself off when it tripped then she held the switch, held – the brake on so that she could flick the other switch, did that a few times, the bilge just fired, the alarms went off, they were quite loud, but eventually they – an electrical device down lower started to emit smoke, so she stopped.

Mm, blew it up almost, is it?.....Yes, I would suggest so.

Okay. Okay, so there's the – there's the switch – switches to operate the bilges were turned on by her.....Yes.

What next was seen or what next happened?.....Some point – at that point she's also pointed out that the EPIRB was missing from a bracket mounted in the back of the wheelhouse.

Yeah.....And we stayed in there for awhile, I couldn't exactly recall how long it was.

Yes.....There was a leak, that was fixed by Mr Tim Chappell.

Were a couple of items seen by her and said not to belong to the vessel?.....There were items, yes, that were in – being a larger torch –

Mm hm. .....- with a handle on it.

Could you describe that torch?.....It's a black and yellow torch, which I believe was a marine – a police marine issue torch.

Marine torch. Can the witness be shown – I've forgotten the exhibit number, but we'll have it here – the Eveready? Was it that torch or another torch?.....No, it's not that torch it's larg – much larger than that torch.

Okay. And did you find out that that had been left by someone?.....Yes, that had been left by the Marine Police who initially attended.

Okay. Sorry – did you – did you go to the cabin entrance?.....Yes, we exited the vessel from inside out onto the back cabin, and we gathered in that area for a short while. General discussion, there was a mark on the inner panel of the cabin which seemed to be unexplainable at the time.

Mm hm. .....We've later discovered that that was the exhaust from the generator that was placed there too close to the edge.

Okay. .....But –

If that might be shown, I think, P07 photograph number 3? Oh I'm sorry, my mistake as usual with exhibits – photograph 7 of exhibit number 3. All right, can we see the scuff mark or the area of the scuff mark?.....This isn't the area I was just referring to, I was referring to the back of the vessel, the cabin.

No, I don't know how we've made the notation – just look through those until you can find it then, Mr Conroy.....Thank you. If you look at photograph 12 –

Yeah.....- it's actually how I discovered it, but it's – the generator's in that picture there.

Okay. .....You can see where the exhaust vented onto the side of the vessel.

Okay. Thank you. .....Yes.

Very good. Was – was something pointed out there by Ms Neill-Fraser?.....Yes, they're wooden – wooden surrounds for the hatch as you enter down into the vessel, she pointed out that there was a – some marking to the wooden – in the varnish to the wooden edge in the varnish, just where the lid slides closed on the hatch.

Yeah.....There was closer – when I closer – had a closer look at those there was some fibres in the – in the framework.

Mm hm. .....And they'd – at first glance appeared to be consistent with the rope which was sitting inside that area.

Right. And Ms Neill-Fraser spotted this and pointed this out?.....Yes, she noticed that.

Mm.....For sure.

Was it – P09 please? Would you look at photo 11 please of P09, detective sergeant?.....Eleven.

Yes.....Yes.

What do we see there?.....Oh that's the area I just referred to, and you can see to the left of the photograph on the running board, if you like –

Yeah.....- it slopes down and across, you can see a mark running diagonally across the top of the timber work.

Mm hm. .....And further along, it's difficult to tell the distance from a picture, but there's some rubbing – rubbing as well in the –

Thank you. .....- in the board there.

And photograph 12, is that a close up of some of the rubbing?.....Yes, that's it, that's the first of the marks.

And right down the bottom of where the rubbing is, that – are they a couple of fibres, such as you've described?.....Yes, all through that – through the rubbing at the edge of it is full of fibres in the varnish.

And how – how long were you in that area before she pointed those out?.....Oh, I couldn't give an exact time – we'd sat there for a little while having general discussion; I'd made a phone call, so I'm not sure exactly whether it was before or after I made a phone call from that point.

Okay. Were other things mentioned by Ms Neill-Fraser to you?.....At that point?

Yeah.....No, that was generally what was pointed out to me.

Thank you. When you were in the main saloon did you note anything about the floor?.....Yes.

Or did she note anything about the floor?.....She did. The floor was – like only – the floor wasn't screwed – wasn't down to the ground it was opened it, there were holes – boards had been lifted up and she stated that they should have been screwed down and that her partner, Mr Chappell, wouldn't have done that, wouldn't have unscrewed them.

Wouldn't have unscrewed them?.....No.

Okay. Did she comment on anything missing from the galley?.....She – oh, initially there were some – she thought may be some knives were missing, two knives, I think they've since been accounted for.

Right. Did someone talk about drugs being on board or a possibility of it?.....Yes. It was mentioned to me in my initial briefing that the vessel had possibly been entered on two occasions, at least two occasions previously. Whilst down in the saloon the accused made mention of the break-ins and possible relationship to it. It was apparent to her that something heavy may have been lifted out.

Okay. Now - .....And that she believed it was drug smugglers and that Mr Chappell may have been on board when they came back to the boat.

Right. You mightn't be able to recall, was break-ins, two previous break-ins, her term or did she use some other terms?……I believe that was her term.

Thank you. How long were the family including Ms Neill-Fraser on board?……It's difficult to estimate on board, it would have been no more than half an hour to forty minutes in total.

Okay. At half past five did you request something?……I call for a forensics officer to return to the vessel. I had hoped that it would be the one that had been there earlier in the day but she'd concluded duty.

Were you there when they returned?……Yes.

Not retuned the forensic officer's attendance, sorry……Yes, when the new – the forensic officer, she's now married Woodhead, arrived, yes and I directed her to the points that had been shown to me.

Okay. The was there some decision made about the location of the yacht?……Yes, marine officers who I spoke with – there was actually a marine officer present briefly when I arrived in a vehicle, he stated they didn't have the capacity to store that vessel at the Police Marine area.

Yes……The decision was made to leave the vessel in situ at Constitution Dock overnight.

Yep…….Through contact with the accused's insurance company – we had to ask them to come to assist with hooking up the pump inside the vessel so that the water that was coming in wouldn't further damage it, if you like, or sink it again –

Yep…….- and that they would be able to tow it out to an area at Goodwood the following day, which is a company called Clean Lift.

Did you request something happen concerning CCTV and the vessel?……Yes, I'm familiar with the security camera systems in the area and I visited the Port Tower and asked the operator to put his cameras onto the vessel and observed him do that.

At 9:30 that evening did someone ring you on a mobile phone?……Yes, I was on my way home and I was contacted by Constable Stockdale. He wished to point out something that he

didn't know whether to call me about it or not, but he just asked if I'd noticed any injuries to the accused's hand, -

Right…….- you know, a cut or a wrist injury.

Did he indicate that he had?……Yes, he said he'd seen a cut.

Thank you. All right, did you knock off then?……I was on my way home at that stage so it was roughly nine thirty, may have been a bit later.

And the next morning what happened?……I started early, attempted to contact the Clean Lift operator –

Yes…….- I think it's Chris Dobbyn. He'd already started to tow the vessel. I just asked that when he got to his location that he just tie it up and leave it, said we were most likely going to have to do some further examination of the vessel. We had a briefing at the station. I typed up my running sheet from the night before and then we sought some direction with the inspector

Right……..to develop an investigating team to follow a few things through.

Okay, and you were appointed in charge of the investigating team?……Yes, that's correct.

Maybe the label is not important, but what sort of investigation was it at that point?....It was – I wouldn't have said at that point that this was a murder investigation. The team – we made a decision it was going to be followed up, it was a missing person investigation but there were some very odd and suspicious circumstances about what had happened that needed to be followed.

Okay. At eleven o'clock the next day, we're talking about – it's been so long – it's the 28th I think - …..27th was the day the vessel was located, 28th was the next day.

Yes. Yes, so we're talking about the 28th…Yes.

You were in charge of the investigation, it's a 'missing persons with overtones' investigation really…..Yes.

Did you go somewhere at eleven o'clock?....Yes, I had previously arranged the night before that I would go to the accused's residence

in order to make – obtain a further statement from her regarding what we'd discussed on that night and I arrived there at around 11 am.

Right. And there, did you obtain a couple of items?....Yes. In relation to Mr Chappell, I asked for any items that may assist us in obtaining a DNA sample for him and I obtained a hairbrush and a tooth brush which are common items in that regard, this sort of investigation. I also obtained a DNA sample from the accused for elimination purposes, from what had been gleaned from the boat already.

Did you obtain a statutory declaration from Ms Neill-Fraser?....Yes, I did.

Can I show you this please. Is that it?....This is the statutory declaration that I obtained at that time, yes. That is my signature on the bottom.

I tender that, your Honour.

EXHIBIT #P67 – STAT DEC OF S.B. NEILL-FRASER TAKEN BY DET CONROY– TAKEN IN

In the course of this did she outline to you – can I just stay with the taking of this your Honour before you publish it?

HIS HONOUR: Yes.

MR ELLIS SC: Did she outline to you any matters that you hadn't been told the previous evening?.....Yes. I sought to take this statement with regards to; firstly, I would talk about things off the top of the vessel, and then we talked about what was in the saloon. I simply asked her, "Can we start from the back of the boat and work forward and we'll talk about the issues that we discovered." She pointed out to me at that point that the gate had been lifted off its hinges and that ropes had been changed on the rear mast, which she referred to as the 'mizzen'.

Mm hm. .....She didn't mention those items to me the night before.

No. You were in the area of the rear – of the rear marks (indistinct word)- .....Yes, we were, that night we were, yes.

Mm. Did she mention anything about something else – I'm sorry – did you make some inquiries later about the gate being off the

hinge?.....Yes, I reviewed the photographs that had been taken when the vessel was on the mooring –

Yeah.....- and I couldn't see that the gate was off the hinge. But when I was at the vessel on another occasion I noticed that the gate was off the hinge and had to make the assumption that it was police officer that – or someone recovering the vessel that did that.

Yeah. Throughout did she speak of Mr Chappell in a certain way?.....Yes, she referred to him throughout that time as – oh in the past tense, and at one point apologised for that but stated that her and her family had to the realisation that they'd lost Bob.

Right. Now I seek to read the statutory declaration, your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: (Resuming): Headed "Oaths Act 2001" Statutory Declaration Date: 28/1/09 Time: 12:10pm.

> *I Susan Blyth Neill-Fraser, date of birth 3/3/54 of 7 Allison Street, West Hobart (indistinct word) occupation: self-employed, do solemnly and sincerely declare that:*
>
> *My full name is Susan Blyth Neill-Fraser. This is the second statement I have made regarding the disappearance of my partner, Robert Adrian Chappell. This statement is regarding my observations from viewing my vessel, the Four Winds, last evening. At the request of police I attended the vessel, which was moored at Constitution Dock 27/1/09. I noticed a number of things which were not as I knew them to have been left or that were in my opinion highly unusual. These are –*
>
> *At the back of the boat it appeared to be the gate had been lifted off and pulled back quickly with the bottom latch out of its seat. Having been on the boat in heavy weather and the gate not moving this had to have been purposely moved in my opinion –*
>
> *At the entrance to the wheelhouse there was new damage to the running board which supports the sliding hatch or the framework around the hatch. The damage*

appeared to be from a rope being under load and running over the timber work. The green self pearling sheet (rope) should have been tied up in storage at the back of the boat instead it was tied around the winch on the rear mast and had been cut. Secondly, the green main mast boom sheet (rope) should have been in a rope bag to the right of the cabin entrance instead it was on the deck and appeared to have been threaded off the winch. From the damage to the timber work it appeared that this was the cause –

The next points noticed were at the main mast. A black sheet (rope) was out of place. It should have been in a locker at the back left of the boat which was attached to a cleat at the mast, the rope had been freshly cut and a substantial length of it is missing. Secondly, at this point there is a red sheet slightly thinner than the black it had also been cut. It was attached to the smaller winch at the front of the mast; in place was a winch handle. This winch handle should have been stored either in a basket on the rear wall of the wheelhouse or in the locker at the rear of the vessel.

Observations from within the vessel are as follows –

As you enter the wheelhouse on the right we had mounted a new EPIRB, it is a 406 and registered to our vessel, the EPIRB was mounted by Bob. He knew how to properly remove it from its bracket. The release tab was broken from the bracket. To do this the EPIRB must have been forcefully pulled away from the bracket –

Next moving into the saloon I immediately noticed that the flooring was missing. This would not have floated free when the vessel flooded, it had to have many screws taken out to lift it up. Bob knew that this was a difficult job and had no reason to remove the floor. I'm sure he would not have removed the flooring. In the hole left were two screwdrivers, these were from our toolkit. The floor is covered by carpeted pieces. There were around eight square pieces of carpet which were square pieces. The spare pieces were possibly stored in the laundry. Just before the laundry door was a mounted fire extinguisher. This fire extinguisher

was an older style, it was bracketed in place and I think out of commission. Rather than worry about it we simply purchased newer and lighter extinguishers for the vessel. This particular extinguisher was very heavy. It was secured in place and again had survived rough seas on our journey from Queensland so I knew it – so I know it hasn't come loose in the flood – there was obvious damage to the pipe leading from the seacock to the toilet. This pipe had been cut through – from the galley I cannot locate two knives, a Wiltshire knife is missing, this would have had a round with a six to seven inch blade. It was originally mine, have had it a long time. Another similar knife is also missing. I remember when I went to the boat on Monday we ate some fruit cake. I used one of these knives to cut the cake. I can't exactly recall if I passed the knife through to the wheelhouse from the galley and cut the cake there or if I sliced the cake in the galley. I will recognize this knife again, they came with the boat – I believe a fire extinguisher may be missing, I'm sure there were three on board but I only think I saw two when I was looking last night – regarding the electrical circuitry we were paranoid about the boat being damaged or sinking, we always checked the circuit boards to make sure that the switches were correctly positioned. The circuit breakers for the bilge pumps were always to be positioned in the on position and bilges on automatic. If the circuit breakers were off the bilges would not work. Bob would absolutely not turn off the circuit breakers for the bilges off. I cannot think of any circumstance where he would turn them off. When I left Bob on the vessel I took the tender dinghy, this was usual practice. Bob did not like to have to get in and out of the dinghy unless totally necessary. It was usual practice for me to take the dinghy. It was simply Bob's preference that this is the way it was done. Bob was not terribly nimble about the boat or the tender dinghy, it was actually safer for me to take the dinghy than for him to operate it by himself and try to get aboard the bigger boat. The actual location I tied the tender to was outside the Royal Hobart Yacht Club. It was near a steel ladder from the dock in the area where the Royal have their small club yachts on moorings. I am now sure I secured the dinghy properly with three knots.

Bob and my financial arrangements were largely separate. We often transferred money between bank accounts. As Bob was the primary income earner he would transfer five hundred dollars per fortnight to me for our living expenses. Costs for the boat we split fifty fifty. Sometimes one paid in full and the other reimbursed. The EPIRB on the boat came with the boat, it was new and still in the box when we picked it up. Bob mounted it. I registered it last week with AMSA via the internet.

Further thought has been given to my timings on the 26/1/09. We firstly went to the yacht in the morning about 9:00am. We had a cup of tea and cake for morning tea. This was around 10:00am to 10:30am. I returned home at about 11:00am to 11:30 and had a shower. Time from then on is difficult as my mobile phone is the only source of time and I left it with Bob. Anne, Bob's sister and I went to the Royal Hobart Yacht Club for lunch. Lunch was not being served so we had a drink and a pie there. We then took photos on the dock. I then drove Anne home at around 1:00am. I then returned to Marieville Esplanade. The wind was getting up and I thought I'd better get to the boat and see if Bob wanted to leave the boat. When I got to the tender the outboard was buried and I needed help getting it free. This was near the rowing club, a different position from the Royal where I later tied it. The wind was up and the chop got me very wet. I tied the tender up to the side of the boat, the leeward side, which was the right hand side. I did not stay onboard very long. Bob was a bit snappy. I was of the opinion Bob could have come off the boat due to the weather. Bob had checked the chart and said the wind would drop out and said he had decided to stay on the boat. In the end I left him the mobile. I asked if I should pick him in the morning for work. He said he may not even go to work. So I left it at that and thought he would ring me if he wanted. I was sure he would change his mind later and call me to get him.

Given the wind, I decided not to take the tender to Marieville Esplanade, I decided to take it to the Royal Yacht Club where it would be easily managed. From

tying it up I went to Bunnings Hardware on the Brooker then came home. Anne was not home by then, as it was getting late. Anne had gone to Bruny Island for the night. She was being picked up after 4 pm I am sure when I got home it was starting to get dark. I stayed out at Bunnings for a long time. I did not buy anything but browsed. I drove our Ford Falcon Station wagon – For, Falcon wagon. I stayed alone at home that night. I made several phone calls and received a call from Richard King over some family matters. It was ten thirty pm when I got off the phone. The following morning I was notified that the Four Winds was sinking by the police radio room. I then went to Sandy Bay.

Just a couple of things arising. The statement I think in the second paragraph I think mentions the damage and being a rope under load running over timber work.....Yes.

The green self-furling rope should have been tied up in storage at the back of the boat, instead it was tied around the winch on the rear mast and had been cut and the green mast-furling sheet should have been in a rope bag to the right of the cabin entrance, instead it was on deck."

Were these things pointed out to you, the day before?....The green mast sheet which – in the cabin which should have been in the bag was pointed out to me, which was the second – what was the other?

What about the green self-furling rope?.....The term – the green self-furling rope was where? I'd have to read –

I see.

Should have been tied up in storage at the back of the boat, instead it was tied around the winch on the rear mast and had been cut.

.....That hadn't been pointed out to me the last night – the night before.

This wasn't straight out dictated to you, or wasn't?....Not straight out dictated – that's how I'd preferably do it, but you go – you go through it with the – when you take a statement you go through it and if there's difficulties you try and say - well, we'll work back – we'll work backwards, so you might go through the whole set of

circumstances a couple of times before you get to the final comment, but they're – they are the accused's words, as they were spoken to me.

Thank you. I should have mentioned that there was one part that was crossed out and initialled at the side?....In the statement, yes,. Yes.

Yes. Are you familiar how that occurred?.....It was –seek to make a change or it was an error – I can't recall what it was, but I can't recall what it was, but I crossed it out and initialled it as it wasn't relevant, yes. That's on page 3 where I've put a blue line through it –

Yes.....- and we both have initialed to the side of that – that spot.

All right. Is it the case that that was crossed out by Ms Neill-Fraser or noticed by her and crossed out and initialed by the two of you?.....Initialed by both of us, I actually wouldn't recall whether I crossed it out or she crossed it out when she read the statement back to herself.

She read it carefully and it was -.....Yes.

- made under the Oaths Act?.....Yes, and read back and signed.

Thank you. On the 29th January did you meet with Sergeant Maxwell?.....Yes, we had a meeting that morning with Sergeant Maxwell.

And was that concerning further forensic examination of Four Winds?.....Yes, he was put as to be the person to coordinate the forensic side of examination of the vessel.

Yep. Did you contact Sergeant Richardson?.....Yes, Sergeant Richardson works for the State Security Unit, he's the officer responsible – or in charge of the dog handling unit. We requested that the sniffer dogs be put through the vessel.

Yep.....When appropriate.

Okay. Were you told the EPIRB had turned up?.....Yes, received the call at some stage during that day that the EPIRB had been handed in at the Glenorchy Station.

Mhm. Were you made aware of the media following a certain story?……Yes, the media were – I was informed by Inspector Powell I believe that the media were chasing a story with regards to the drug smuggling aspect of this investigation.

Right. Now as officer in charge of the investigation had you authorised the release and were you aware of the release of any such information coming from police?……No, not from police, definitely not.

At 8:00 p.m. that night you and Detective Sinnitt went somewhere, we've heard the Derwent Sailing Squadron?……Yes, that's correct. They have twilight racing Thursday night, I've participated in that myself many times. I knew there'd be a large number of people gathered there from both the Royal Hobart Yacht Club and from the Derwent Sailing Squadron.

Yes……It was my decision to seek approval from whoever was coordinating the presentations to address that group of people.

I'm sure you'll be asked why you didn't demand who was the owner of a grey dinghy at that point. Did you have any – what information, if any, did you have about a grey dinghy?……I didn't have any information at that stage about a grey dinghy.

Just, Detective, what's your experience with descriptions and colours and things given by people –

MR GUNSON SC: I object to that question, your Honour.

WITNESS: I firstly –

HIS HONOUR: No, no, just wait a minute please. Mr Gunson?

MR GUNSON SC: Well the jury should be invited to retire, your Honour, and the witness to go outside.

WITNESS LEAVES THE WITNESS BOX

<THE JURY RETIRED

HIS HONOUR: What's the question, Mr Ellis?

MR ELLIS SC: What's your experience of how witnesses can give various accounts especially in description.

MR GUNSON SC: Colours –

MR ELLIS SC: Colours I think I mentioned, yes.

MR GUNSON SC: Colours you mentioned.

MR ELLIS SC: Sure.

HIS HONOUR: Experience as to description of colours by witnesses, that's the topic?

MR ELLIS SC: Colours and other items of identification.

HIS HONOUR: Yes, right, what do you say, Mr Gunson?

MR GUNSON SC: Well the question for the jury to ultimately consider is whether that boat, that dinghy, was grey as described by witnesses which is not the subject of any contradiction. Now Mr Ellis very carefully in re-examination and very pointedly in re-examination led evidence from Mr Conde about the colour of the boat and what he saw. Mr Conde said –

> *It bears absolutely no resemblance whatsoever to the blue and white dinghy with Quicksilver on the side.*

Now we have other witnesses who have said that the dinghy was grey, no one has suggested to anybody that it was anything other than grey, and on the one occasion Mr Ellis tried he failed dismally. Now what he's seeking to do is to in someway have this witness say, as it were, "Well my experience is that some people don't know the difference between black and white", now how does that help the jury one iota in the state of the evidence. This is the critical issue, what is the state of the evidence? Conde grey, battleship grey if not darker. Mrs – the lady whose name escapes me at the moment, saw a grey dinghy as well, we know that the unnamed witness, P36, also saw a grey dinghy. So it really doesn't matter one iota what his experience talking to unknown people of what education, what skills, what eyesight levels or capabilities might be – it's quite irrelevant.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Well far from being irrelevant, it's actually part of the usual direction that a judge gives to the jury about fact finding of how honest witnesses can differ as to their perception of events. It's also provided in the Evidence Act that warning should be given in identification cases. So there's nothing remarkable about asking an experienced detective whether people's perceptions of events, in his experience, may differ on points of identification.

HIS HONOUR: Well all right, I may very well give the jury a direction that people have inaccurate memories as to what they've seen and that people give evidence very confidently about what they've seen and – and are sometimes wrong in their recollections. But is it a proper matter for a – is it a proper matter for a witness to give evidence as to – as to his experience of inaccuracies in description – that's really what we come back to.

MR ELLIS SC: Oh well, I submit, it's not an improper matter. Now never mind who painstakingly re-examines certain witnesses or not, a red herring has emerged, my learned friend seized on it, I'm following the kick up the ground.

MR GUNSON SC: Grey herring.

MR ELLIS SC: Grey herring. But it's something within his experience, your Honour. It mightn't be the greatest matter of opinion in the world, but it's within his experience, I would have thought. I didn't know, of course, when I asked the question what your Honour proposed to – to give the jury by way of direction.

HIS HONOUR: I haven't said I would I said –

MR ELLIS SC: No.

HIS HONOUR: - I may very well give such a direction.

MR ELLIS SC: And I still don't know.

HIS HONOUR: All right. You – you're not aware of any care going one way or the other about whether such a question is a proper one?.

MR ELLIS SC; No, your Honour.

HIS HONOUR: Anything to say in reply Mr Gunson?

MR GUNSON SC; I repeat myself your Honour.

<RULING - HIS HONOUR: I think it's a proper question. It's – of course it's a matter of every day experience that people do make mistakes about what they've seen. What an experienced detective may be able to say may – about his experience may pass the test of relevance and the words of s55 are what's critical. The detective's evidence, if it's accepted, could rationally effect directly or indirectly the assessment of the probability of the existence of a fact in issue in the proceeding. If there's an issue as to whether it was the Four Winds' dinghy or some other dinghy seen at various times at various places, then what this witness can say as to his experience as to the accuracy of people's observations could rationally effect that conclusion, and so I'll allow the question.

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: We'll have the witness back, and the jury back..

<THE JURY RETURNED

<THE WITNESS RETURNED

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Thank you, your Honour. (Resuming): Sergeant Conroy, in your experience as a detective, when a number of people see or purport to relate seeing a similar event or a similar object, do their accounts sometimes differ?.....Yes, they did.

And is that also in matters of colour?.....Yes, that is in colour.

Thank you. Now I think I diverted you, I suppose, from – we were talking about your time at the Derwent Sailing Squadron?.....Yes.

And you talked to people there and canvassed them, I suppose?.....Yes, well I asked to speak to the – at the end of the presentation, they announced that we were there and we spoke to the group as a – formally using the microphone.

Thank you. And was – obviously you mentioned the vessel that you were interested in and why you were there, I suppose?.....Yes, I mentioned that – that an incident had – that most likely they would have been aware, an incident had occurred over Australia Day long weekend –

Mm.....- particularly Australia Day through to the next morning. I sought information from them – people who had been out on the water that day, anyone that may have seen any activity. I also sought information from them – asked that they come forward if they'd had their vessels broken into or tampered with in anyway, including vessels on the marina or vessels on the – out on the mooring, and if they had had noticed that sort of thing, if they could come forward if they hadn't reported it to police in the past.

Yeah. Was some solar scanning from a local company attempted on the 30th of January?.....Yes, I contacted a fellow at Imbros, it was a company at Cambridge, they were willing to supply us with equipment to be attached to a police vessel to conduct sonar scanning of the river.

Okay. The 31st – was that a success or - .....No, it wasn't very successful.

Sorry, got distracted. Right, on the 30th – 31st January 2009 did you go door knocking?.....Yes, I conducted some door knocks, that was a

weekend I believe, and we conducted door knocks down in the Marieville Esplanade area swinging around into Battery Point.

Yeah....Basically where I just tried to identify houses that overlooked the water to see if we could find people home to talk to about the matter.

Yeah. At 12:05 on the 1st February did you speak to Ms Neill-Fraser by phone?.....Yes, I did speak with her by phone on that occasion.

Okay. And did you inform her of anything to do with the progress of the investigation and anything to do with it that you can recall?.....Not that I can recall at the moment. We had conversations at various times, the specific of that conversation escape me at the moment.

Right. And for hours of time you were watching some video footage?.....Yes. At that point in time we had thought to get video footage from Bunnings Hardware and we started to look at that to find the time of arrival of the accused at the store. We hoped to establish a timeline in relation to when – establish a period of time when Mr Chappell could have gone missing from. It's very important to try and establish an exact time or a very close approximate time as to when he was last seen alive on board that vessel when that vessel was in proper condition.

Yeah. Just skipping a couple of days, on the 6th February did you get a fire extinguisher from Tas Fire Service?.....Yes, I did.

What for?.....I had a photo of a fire extinguisher from – well the fire extinguisher that was missing from the vessel, it had been forwarded to me by Mr Rowe, the fellow who sold the boat in Queensland, I took that photo to Tasmania Fire Equipment and showed them. The chap there, Fallon Wahl, was able to immediately identify what sort of extinguisher that was and later on I picked one up from there that he was able to get. It was – he said it was disused, out of service, they don't use them any more but they had some out the back, wherever they store old fire extinguishers. It's a 9 – it's a 9 kilogram powder extinguisher and we actually weighed it, it's around 14 kilograms in weight.

Okay. I'd better ask you, what's the difference between a 9 kilogram – why is a 9 kilogram fire extinguisher weighing 14 kilograms?.....The 9 kilograms is in reference to its capacity.

Thank you. And 14 kilograms is its weight?……That's correct, yes.

Okay. Now on 13th February did you speak again to the accused, Ms Neill-Fraser, by phone?……Yes, on the 13th February I spoke to her by phone.

Yes, was that a returned call on her part?……Yes, she'd contacted the office and I returned the call later in the day.

Okay. Can you recall anything she said that day?……Exact conversations and the dates are just escaping me at the moment, I'd need to refer to my notes.

Did she request access to the boat?……Oh yes, she was keen to get back onto the boat.

Did she mention break-ins?……The break-ins on the vessel, we spoke of the break-ins.

Yeah, break-ins on other boats in that area?……Yes, she mentioned to me her belief that vessels down in Sandy Bay area had been broken into.

That would be something you would be looking into?……Yes, we were seeking from the Crime Management Unit information on break-ins.

Yes. Had there been break-ins reported?……Initially I asked for the three months prior and there had been no break-ins reported.

Yep. On the 19th February did you speak to her again on the telephone?……Yes, on the 19th February we spoke.

Anything about drug smuggling mentioned that day by her?……On 19th February I believe was the conversation we had in relation to drug smuggling and that she referred me to the registration details of the vessel.

Mm……PV, being the prefix.

Yes…….She mentioned that she had some information that PV stood for Port Vila.

Yes?...She mentioned that drug smugglers from Europe go to Port Vila and that was a line of enquiry that I should perhaps follow through with.

Okay. What did you find out about PV and Port Vila and drug smuggling?....um, initially I made some enquiries with Mast as to registration details, as to find out what PV actually stood for – I couldn't get any specific information, as that's to do with the registration of the boat – it also ends with a "Q". I did some internet enquiries just off – of my own to try and find any information I could – I couldn't find anything. I let it go after a few days when I was again contacted by her and she felt that the drug smuggling enquiry may not actually be what it was and it may have been something closer and more random.

Well, you're now referring to that call from – well, speaking to the accused on 26th February?.....Yes.

What was said then?.....On 26th February she stated that she had now thought about it more and that the – that the drug smuggling theory was less likely - that it was more likely a random event or something that happened down there. She also made mention on 26th February that she had located a piece of timber in the bilge system.

In the bilge system.....Of the vessel, at the front.

Yes?.....that appeared to have been sucked into the bilge pipe.

Did she describe what the wooden item was?....Yes, it was one of the feet from the stairs, which led down into the saloon.

Right. And had got into the pipe?....Yes.

And she was relating that to the disappearance of Mr Chappell? Is that right?....Yes, yes.

Right. The – are you familiar with those foots – feet from the stairs?...Yes, I am.

Exhibit 9, photograph 18, if the witness could be shown please. ....thank you.

Are they two such – that you understand to be the stairs from the – I'm sorry, the feet from the stairs?.....There's two feet there which are from the – yes.

HIS HONOUR: That's on the right near the pliers, is it?

WITNESS: Yes, near the pliers on the carpet there are two pieces of timber which are two of the feet for the stairs.

MR ELLIS SC (Resuming): Right, and if you can see, please, photograph 50 in set P3 first. What do you see there?……In the – beneath the floor in the forward area, which is triangular shaped, there's what appears – well there's one of the feet on the left –

Yep……- and you can just see a second piece of timber on the right, which is in my opinion the other foot.

Right……Or another foot.

And would that account for all four?……Yes.

And if that was one there on the right it's not in the bilge pipe, is it?……No, it's floating in the water.

Yep. Was any location of the bilge pipe in which the wooden foot was said to be found by Ms Neill-Fraser mentioned to you?……That – can you repeat that, sorry.

Oh right. Did Ms Neill-Fraser identify the location of where the wooden pipe – wooden foot, I'm sorry, from the stairs?……Yes, we visited her in days following the 3rd March and she pointed out to me on that day where the – on the vessel where the foot had been located by her in a pipe.

Okay, and was that in the forward bilge?……In that – in the forward compartment.

Bunkhouse area?……Yes, we referred to the triangular area.

Which is the same compartment I've just shown you in the picture, is that right?……Yes.

All right. In the same call on the 26th February 2009 did she raise again the drug smuggling matter?……Yes, that's when she stated that it was less likely than her – she'd thought about it.

On the 3rd March did you go to Clean Lift?……Yes, that's the day we –

With Detective Sinnitt?……That's the day I went there with Detective Sinnitt and we – and I was shown the bil – where the piece of timber had come from.

Yeah……..Inside the vessel.

The piece of timber being the piece of wood from the foot of the stairs -…….Yes.

- that she said was found in the bilge pump?…….Yes.

This obviously had some connection with like the search that the police had conducted or what?…….Yes, she'd stated that she felt the front – or the vessel hadn't been searched completely.

Yeah……..In regards to that area, I made a phone call to Lindsay Needham at the time, on the boat, a forensics officer, just to inquire that they had searched in these areas.

Yeah……..He stated that they had, they'd had been photographed so –

Thank you. Right. Now on the 4th of March 2009, did you conduct an interview with the accused -…….Yeah.

- which was recorded on video disc?…….Yes, I did.

Very long?…….It went for quite some time, yes.

It was not what's called "under caution" is that right?…….No, it was more just verbally – a statement recorded on video.

Another way of getting a witness statement, is it?…….Yes, it is.

Rather than the interview -…….Yes.

- a formal interview of someone suspected of -…….Rather than –

You've got reason to suspect a crime?…….Rather – rather than, did you say?

Okay. …….It's just another way of obtaining statement, yes.

Okay. I'll show you three discs please, and see if you can identify those? Thank you. .....Thank you. These discs are discs from that interview and they are signed by myself, three discs.

Okay. I seek to publish those, your Honour.

HIS HONOUR: Now these – are these the unedited version of the interview?

MR ELLIS SC: There's been no editing, yeah.

HIS HONOUR: And these – are these to played to the jury unedited?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: Yes, all right, they can marked.

EXHIBIT #P68 – THREE DISCS OF INTERVIEW BETWEEN SERGEANT CONROY AND ACCUSED – TAKEN IN

HIS HONOUR: And you'd like us to being playing the interview?

MR ELLIS SC: Yes, your Honour. When this happens, and they are hours long, I'd ask that Detective Conroy be able to leave the witness box, it's nothing but a distraction to have him perched up there while they are looking at something else.

HIS HONOUR: Mr Gunson, are you content with that?

MR GUNSON SC: Yes, your Honour.

HIS HONOUR: Yes, all right. Well, Detective Sgt. You're free to go for the time being. We will need you back on Monday when we've finished playing this interview.

MR ELLIS SC: Oh, he might wait in the court, your Honour. It's just the visual aspect – but thank you.

HIS HONOUR: All right, well please feel free to take a sear behind Mr Ellis. All right, well ladies and gentlemen, this is a long interview. We'll start playing it now. We'll finish it some time on Monday, probably after lunch. But we'll have about 20 minutes of it now.

<EXHIBIT P58 PLAYED TO COURT

HIS HONOUR: Okay, stop there please. All right, we'll leave it there. At the end of the trial, ladies and gentlemen, you'll be able to play these DVDs in the jury room and fast forward them and so forth if you want to refresh your memories as to what's been said. All right, the jury can make their affirmation and the Court will then adjourn until ten o'clock on Monday.

<JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00AM ON MONDAY THE 4TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

MR GUNSON SC: Your Honour, I have spoken with Mr Ellis on the subject that I'm about to raise with you, and this relates to the time that the jury should be watching the prolonged videos, which are about another eight hours without a break. There seems to be a practice of some judges that when there are lengthy videos, like four hours at a time plus, that reasonable breaks will be give to the jury so that they can refresh themselves after having concentrated on the video. We think somewhere after about forty five minutes there ought to be at least a break, and the jury then taken back to it. But we're in your Honour's hands as to that. Just that if they watch it for an hour and a half and say, until a quarter past, twenty past eleven and then through to lunch time – it's very hard to concentrate on it.

HIS HONOUR: Well if we have two breaks between now and lunch time; one of fifteen minutes so that they can have refreshments and one shorter one.

MR GUNSON SC: Mm, perhaps about ten minutes.

HIS HONOUR: That might be a good idea?

MR GUNSON SC: I think so, your Honour.

HIS HONOUR: Mr Ellis, are you happy with that?

MR ELLIS SC: Yes, thank you, your Honour.

HIS HONOUR: All right. Well the first break had better be after about – better be at about eleven'ish for fifteen minutes and then another one midway somewhere.

MR GUNSON SC: Yes, and perhaps one mid afternoon for ten minutes.

HIS HONOUR: Yes.

MR GUNSON SC: Yes, thank you, your Honour.

HIS HONOUR: All right, well we'll do it that way. All right, bring the jury in.

<JURY RETURN

HIS HONOUR: Ladies and gentlemen, the DVD of the police interview that we started on Friday is a recording of the first two interviews. There's about three hours to go of the first interview and the second interview also went for three to four hours. Counsel have suggested to me that it'd be a good idea if you had more breaks than you ordinarily would in order to refresh yourselves and hopefully maintain your concentration so what I propose to do is to take a fifteen minute morning tea break at about eleven and a shorter break somewhere around midday and also take a mid afternoon break. If you'd like more breaks or fewer breaks then please tell my staff during one of the breaks, but that's how we'll do it. You'll be basically watching DVDs all day today and well into tomorrow.

Now we'd got up to the point where the interviewing officers had been told about the purchase of the Four Winds where the price dropped to two hundred and ten thousand and then got reduced by another seven thousand because of the need for repairs, so we'll pick it up there.

EXHIBIT P68 PLAYED TO THE COURT

<THEN FOLOWED ADJOURNMENTS

EXHIBIT P68 RECOMMENCED

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

<UPON RESUMPTION:

HIS HONOUR: Is this opposed?

MR ELLIS SC: Apparently so, your Honour.

HIS HONOUR: When do you want to recall him?

MR ELLIS SC: As the next witness, if possible, I thought about 2.15 tomorrow would be a close time.

HIS HONOUR: Well, should we keep the jury waiting while we argue about this? Or should we deal with this at four o'clock?

MR ELLIS SC: I'm happy either way, your Honour. Perhaps we shouldn't keep the jury waiting. We can deal; with it at four. I just needed you to know about it.

HIS HONOUR: Yes, it's good that I know about this, but you're content that we leave this until four o'clock Mr Gunson?

MR GUNSON SC; Yes, your Honour.

HIS HONOUR: Yes all right. Get the jury back..

<THE JURY RETURNED

HIS HONOUR: Right. The final disc of the first DVD interview, please.

EXHIBIT DVD PLAYED TO COURT

5

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Mr Ellis I think we're ready for a little more evidence from Sgt Conroy.

MR ELLIS SC; Thank you, your Honour. Yes, back to the box please Sergeant.

<SIMON MATTHEW CONROY RECALLED AND SWORN:

<EXN – MR ELLIS SC: thank you, your Honour. Sergeant, we've seen on the interview we've just watched that that in the course of it, Ms Neill-Fraser indicated that she had apparently prior to the disappearance of Mr Chappell, made an enquiry about putting sniffer dogs on the boat....Yes.

Do you recall that? Did you do anything as a result of that?...Yes, as a result of that comment, the days following I contacted every drug investigation unit in the State, officers directly or through their supervisors and sought information as to whether they had received such a phone call. No drug investigation officer recalled receiving such a phone call and I covered every officer in the State. I also spoke with the State Security Unit officer in charge, Sergeant Richardson. That unit is in actual fact who handled the drug detection dogs and the detection dogs in general. No one at that unit recalled receiving such a phone call, either.

Thank you. Now, on 5th March 2009 did you speak to two people at the Hobart Police Station?...Yes, by arrangement, the accused's daughters, Sarah Bowles and Emma Fraser-Meagher attended the station at around 1 pm. I obtained a statutory declaration from Emma Fraser-Meagher in relation to the disappearance of Mr Chappell. Detective Puurand obtained a statutory declaration from Sarah Bowles. At the conclusion of that we had a general open discussion with both with regards to the investigation, did they have any questions that they wished to ask. I established that they were aware of the accusation that had been made towards the accused. I also pointed out to them that the previous day she had brought forward the fact that in 2001 she had –

Well, never mind those things. I want to ask you in particular about did they question the progress of the investigation concerning closed circuit tv?....Yes, they did, particularly in the Sandy Bay area. I raised the point that we had new footage that we hadn't previously had, that in my mind it raised more questions and to demonstrate that I showed them a photo from a folder that I had in the office at that

time, that depicted a picture taken from a closed circuit camera at the Commonwealth Bank, corner of Sandy Bay Road and King Street. The photograph was – what I had was taken from an actual digital footage. It was frozen at 12.25 am on 27th of the First of 2009. It depicted, in my opinion, in the top corner, a Ford Falcon station wagon similar to that that the accused owned.

And did you show them that photograph?.....Yes. I did.

Let me show you this please. ....This is the actual photograph that I showed them.

In order to identify what you showed them, did you do something with it?.....On the rear of the picture, on the page, I simply wrote "Picture shown to Sarah Bowles and Emma Fraser-Meagher" and placed it in my notes at the time.

Thank you. I tender that your Honour.

EXHIBIT #P69 – PHOTO FROM CCTV FOOTAGE CNR KING ST & SANDY BAY ROAD 27/1/09 – TAKEN IN

MR ELLIS SC; A large version is already in the jury folders, your Honour.

HIS HONOUR: Could I see this please.

MR ELLIS SC; it's in the first – under agreed facts.

HIS HONOUR: Yes, it is the – it is a black and white version of the colour photo that appears in Tab 1 of your smaller folder, exhibit P21.

MR ELLIS SC: Thank you. As officer in charge of the investigation, Sgt Conroy, prior to that day, 5th March 2009, had it ever come to your attention that Ms Neill-Fraser had gone down to Sandy – or said that – sorry, had it ever come to your attention that Ms Neill-Fraser had admitted going down Sandy Bay later in the night, or early in the morning of 27th January.....No, it did not.

Thank you. Was it your understanding that the two daughters to whom you spoke were in constant contact with their mother who was living at Allison Street then, not in custody?.....Yes.

Thank you. On 9th March, did you make a request of Detective Insp Powell?....Yes, I did. I requested a media release be forwarded to all

media outlets with regard to seeking a witness who had contacted us anonymously on 29th of the First, 2009, we were seeking for that person to come forward.

And the next day, did someone come forward?....the next day being 10th March a Mr John Hughes presented himself at the station in the morning, who I was able to establish that he was in fact the person that had called anonymously.

Took a statement from him?.....Detective Puurand took a statement from him – I spoke with him.

The next day, 11th March, did you obtain something?....Yes, I sought a search warrant for the accused's residence at 7 Allison Street, I obtained that from a justice of the peace.

Thank you. And did you then, with other officers, execute a search of the residence?....Yes, at approximately 10.50 am with other officers, we executed that warrant and searched the residence.

Thank you. On 17th March 2009, were you given some information?....Yes.

What was that?.....A member from Forensic Science Services Tasmania contacted me in relation to a red ski jacket which had been located at Marieville Esplanade on the morning of these events, 27th of the First. He advised me that the DNA test from that jacket had returned a high grade match to the accused.

As a result of that, did you request that something be done?...Yes, I requested that a media release be sent out to the media outlets in relation to that jacket, specifically in relation to that jacket.

Now are you aware of any information coming to light which would establish ownership of that jacket, otherwise that in Ms Neill-Fraser?.....No.

Did you go to Queensland then?....Yes, on 20th March to 23rd, Detective Puurand and myself travelled to Queensland to conduct a number of enquiries, speak with witnesses.

We won't detail all those. But on the way back – was it 23rd that you got to Sydney?.....On 23rd yes – we stopped in Sydney and we visited Mrs Anne Sanchez at her residence in Sydney.

And did that happen to coincide with something that she told about?....Yes, she informed us that she'd received a phone call from the accused that morning.

Thank you. And did you there take a statement as to the contents of that call?....Yes, a statement was obtained, again by Det Puurand on this occasion.

Thank you. Now, after that you arranged sonar examination with the Victorian police?.....Yes. On 2nd April I contacted Sergeant Greg Barass of Victoria Water Police to arrange this, and Detective Sinnitt took over those enquiries during April.

And on 5th May did you go again to 7 Allison Street with Detective Inspector Powell and other officers?...Yes, I did. And on this occasion we requested that the accused accompany us to the Hobart station for the purpose of another interview.

And did she agree to do so?.....Yes, she did.

Was that interview recorded on video?....That interview was recorded on DVD, yes.

And at the commencement of it, did you caution her that she need not say anything?....I did caution her, yes.

Will that be shown on one of these – on the first of these discs that I'm about to show you?....Yes.

Thank you.....These are the discs of that video interview conducted at the Hobart station. The number was H1348/09 – these discs bear my signature, the three of them.

Your Honour, I seek to publish those. I tender them.

HIS HONOUR: And are they unedited?

MR ELLIS SC; Unedited, your Honour.

EXHIBIT #P70 – RECORD OF INTERVIEW OF 5TH MAY 2010 – TAKEN IN

MR ELLIS SC; And as before, I'd ask that Detective Sinnitt be allowed to sit somewhere else.

HIS HONOUR: Yes, you may go and sit behind Mr Ellis, Sergeant, and we'll play the first forty minutes or so of the first disc.

EXHIBIT P70 PLAYED TO COURT.

HIS HONOUR: All right. We'll leave it there for the day, ladies and gentlemen. There is something I need to discuss with counsel so I will ask the jury to make their affirmation, get whatever they need from the jury room and leave and come back at ten o'clock tomorrow. I won't leave the Bench.

THE JURY MADE THEIR AFFIRMATION

HIS HONOUR: Right, Mr Ellis, now the man you wanted to recall was Mr Balding.

MR ELLIS SC: That's right, your Honour.

HIS HONOUR: And why do you want to do that?

<SUBMISSIONS - MR ELLIS SC: When Mr Balding was first called he had given a proof of evidence, a statutory declaration actually at page 186, describing the dingy with which there was no issue was the dinghy from the Four Winds, as grey with dark blue trim, had an outboard motor attached to the back.

Now because there was no issue I led nothing from him concerning that colour – it wasn't important and he wasn't cross-examined on it – that's important, in terms of s47. Also relevant to this, your Honour is that soon after he was followed by Mr Howard, who at 368 of the transcript in re-examination, but not at page – sorry, at line 33, but with no great point to it said:

> *Yeah, it was a white tender, just looked like a normal blunt nosed tender.*

No issue. Then straight after him Mr Liaubon was called and at page 370, line 29 said:

> *When I got there I remember seeing the white/light grey Zodiac.*

Jane Powell was called. At 435, line 9 she was asked by Mr Shapiro what sort of dinghy was it – I'm sorry:

> *Do you remember what colour the dinghy was?.....A light grey with a black outboard motor on it.*

So mostly – mostly grey. Then excitement reigned when Mr Conde was called, 426, and he said it was a dark grey rubber dinghy, that's line 34. In cross-examination at 428, line 17, talk about leading:

> *All right, -*

Said Mr Gunson:

- you said there was a large dark grey inflatable dinghy tied next to it, really dark grey, very very dark?.....Battleship grey.

Said Mr Conde. It wouldn't be – darker, then I re-examined and it was a different – it was even then a different shape and it was darker than the shape of the one shown in the photograph and darker, so there's the turning point, Mr Conde. Up to there no issue at all about the interchangeability of greys and blues and so on. Following him Mr Etherington – Constable Etherington, said at 468 in chief, asked to speak about the dingy –

I believe it was a grey and blue dinghy.

This is at line 12 just – sorry –

Like a small skip.

So he was cross-examined and it was put to him then at line 20 page 475 –

And the dinghy is in fact a blue and white dinghy isn't it?.....Correct.

He agreed. Correct was perhaps not good enough but then the photograph – the photograph was shown to him which is a washed out over exposed misleading photograph and that's what he agreed to. Now – so then – so there we have – we have an issue, a different dinghy was tied up and Mr Sinnitt was cross-examined with great vehemence about the investigations that were done to find the owner of the grey dingy which by then was describing – being described as a different dinghy. Quite clearly where there had been no dispute before about there having been two dinghies suddenly there – post Mr Conde there was another dinghy and my learned friend Mr Gunson was scornful of Detective Sinnitt and the efforts of the police in not locating the owner of the other dinghy which had become by then 'another dinghy'. Now had this been an issue when Mr Balding gave evidence it could have been led in accordance with s66 of the Evidence Act by leading evidence that was led and tendering as to consistency of Mr Balding and the jury might find an experienced man on the water tendering his statement and not only that but also leading from him that, which I also wish to lead from him if he's recalled, which is a copy of an email he sent to every member, all apparently fifty nine members, of his rowing club which reads –

Subject, police assistance required. Hi all, most of you –

This is on the 29th January.

Most of you will be aware that a sixty five year old sailor disappeared from his yacht moored southeast of our clubrooms on the afternoon, evening of Monday January 26 in suspicious circumstances. Of particular importance to police is dinghy movement between the beach adjacent to the club rooms, Marieville Esplanade and his yacht moored southeast of our club rooms. If you were about the sheds on the afternoon/evening of Monday January the 26th and saw dinghy movement, and in particular movement of a –

Now what comes next is in bold type:

*- **grey with blue trim inflatable dinghy with a small black outboard motor** could you please contact Detective Senior Constable Shane Sinnitt. Your information would be greatly appreciated.*

Cheers
Daryl

Now that – those circumstances, in my submission fit perfectly within s47; evidence was adduced – I'm sorry, 46 – evidence was adduced by learned friend, Mr Gunson, in particular from Conde and Etherington, about a matter – and adduced, clearly in this section means something different to adduced in the criminal code, because otherwise subs (2) would not there appear. So that evidence was adduced. The evidence concerned – it was a matter on which the witness was not cross-examined, Mr Balding was not cross-examined, and the witness, Mr Balding, could have given evidence about the matter in examination in chief.

So in my submission, the criteria now for – in terms of the statute is fulfilled, and so – also in respect of the interests of justice. An issue has been falsely created which wasn't there before and now it can be redressed.

HIS HONOUR: So the – Mr Balding said nothing at all in his evidence in chief about the colour of the dinghy – is that correct?

MR ELLIS SC: That's so, your Honour, yes.

HIS HONOUR: Yes, anything further you want to say?

MR ELLIS SC: No thank you, your Honour.

HIS HONOUR: Mr Gunson.

<SUBMISSIONS – MR GUNSON SC: It's patently obvious from any reading of the witness statements to which my learned friend has referred that witness after witness, particularly Mr Conde and the witness referred to in the statement, which is P36, and other witnesses have described, particularly Mr Lorraine, a grey dinghy being at the rear of the Four Winds at various times as late as five o'clock. Now if you go to P36 you'll see –

HIS HONOUR: Can I have – just a minute, can I have P36, please. Yes.

MR GUNSON SC: And I direct your Honour's attention to the second page:

> *Attached to the stern at the port side about four or five feet of rope but floating a short distance from it was a grey inflatable dinghy. The dinghy was tightly inflated and it was a large mid-grey dinghy and I did not notice an outboard motor on it.*

Then she makes further comments, and that was about five o'clock. We have the lady who saw a blonde woman, which the accused definitely wasn't at that time, in a grey dinghy in the vicinity of Marieville Esplanade, she couldn't' say where it was going. I think that was about two o'clock.

HIS HONOUR: Now just a minute. A lady sees a blonde woman in a grey dinghy. Now where's that evidence?

MR GUNSON SC: Ms Powell.

HIS HONOUR: I'll give P36 back. Now is –

MR GUNSON SC: Page 435 of the transcript she describes a dinghy as light grey.

HIS HONOUR: Yes.

MR GUNSON SC: - at 435, she said, and I read:

> *Do you remember the colour the dingy was?*

Answer:

A light grey wit a dark – sorry – a black outboard motor on it.

And describes a lady with sort of "light brown hair and a white wet weather jacket on, headed out towards a yacht" but couldn't say where, and she repeated that at 437 and said:

There was no trade name on it at all.

Now – and you have Mr Lorraine, I think it was, who observed the boat from the jetty at the bottom end of Derwent Lane, and he described a tender "somewhat dark in colour and very small".

At page 510 but couldn't see –

HIS HONOUR: Could I have volume 2 of the transcript please? Yes.

MR GUNSON SC: He said it was "somewhat dark in colour and very small" – he said that a couple of times "couldn't see an outboard."

Now it's – for my friend to suggest that because of his brilliant re-examination of Mr Conde, which revealed that the dinghy was large, didn't look anything he'd seen in the photograph and a different bow and a different bow cover, to suddenly say that suddenly there's an issue about a grey dinghy which has never been an issue, with the greatest of respect, it's just not correct – it's always been an issue. All these witnesses have been describing grey dinghies and it matters not what my friend thinks about a washout photograph, as he describes it, because that suits his position. There's other photographs that show the dinghy to be quite white in colour, and by way of example, you have the family dingy photographs, number 16 and 17 – and which exhibit is that – P05, which show a white dinghy.

Now apparently, the decision – all I can say is, the decision must have been made by the Crown that when they led Mr Balding that they weren't going to ask any questions of him about the colour of the dinghy. True it is in his statement he says it's grey, there was no evidence about it, I left it alone. Now the Crown made the decision not to call Mr – sorry, not to ask Mr Balding any questions about this issue and in my respectful submission there should be no basis upon which the Crown should now have the right to recall him. It's been

– always been grey; there was no need for me to ask the question. If it please, your Honour.

HIS HONOUR: I – just a minute. Well, Mr Ellis, are you proposing – are you seeking leave to – just – I'm just concerned as to what you want to do if I grant leave. I suppose there are three things you could do. You could ask Mr Balding as to what he observed as to the colour of the dinghy. You could seek to tender his statutory declaration or part of it. You could seek to tender his email or part of it. I'm unclear as to which of – or how many of those three things you're proposing to do.

<IN REPLY - MR ELLIS SC: I'm sorry, your Honour, I didn't make it clear. I propose to do all three because they were what could have been done in chief.

HIS HONOUR: Right, thank you.

MR ELLIS SC: - had there then been an issue – the two issues I should have said, had there been an issue about the colour of the dinghy and the adequacy of the police investigation concerning the colour of the dinghy, both of which matters were only raised as an issue subsequent to Mr Balding's appearance.

HIS HONOUR: Well, Mr Ellis, s46 applies only if there's a matter raised by evidence adduced by another party.

MR ELLIS SC: Mm hm.

HIS HONOUR: Now your – your argument is that by his cross-examination Mr Gunson has raised a matter on which your witness wasn't cross-examined –

MR ELLIS SC: Yes.

HIS HONOUR: Now that matter, you say, is an issue as to the colour of the Four Winds' dinghy?

MR ELLIS SC: Wider than that – no it's just not the issue of the colour of the Four Winds' dinghy; the issue was raised for the very first time, it never having been raised as an issue – let's not forget that my learned friend opened, he elected to open,

HIS HONOUR: Mm.

MR ELLIS SC: - and he did not then describe, because it had not occurred to him no doubt, that there would be an issue with the

description of the dinghy tied up against or at the back of Four Winds in the afternoon of the 26th being capable of being found to be the one and the same dinghy identified by Ms Neill-Fraser on the morning of the 27th as floating free. Now that's the issue. The issue just isn't the narrow issue of, "Oh what colour can you call the dinghy that was attached to Four Winds", it is whether the dinghy seen to be attached to Four Winds in the late afternoon of the 26th could've been one and the same dinghy as that one operated by Ms Neill-Fraser in the – at the very least in the early afternoon of the 26th. Now the issue that my learned friend, Mr Gunson, raised via Conde is that that was a dark grey one of a different shape and ever since Conde it was – it had become then a different dinghy. Etheringham had to be bullied out of his description of it being a grey dinghy until he agreed that it was a blue and white dinghy. Sergeant Sinnitt was cross-examined to this effect at page 808, line 30 about speaking to Conde:

> *At this stage you knew the Four Winds dinghy was a white one with blue trim?.....That's correct.*
>
> *Did you not say to him something like this, 'Did you see a white dinghy with blue trim at the Four Winds'?*

And on and on it went. So Mr Gunson got Mr Sinnitt by dint of the photographs to say, "Oh yes, there's the Four Winds dinghy, it's white and blue". He said to another witness by dint of the same over-exposed photograph, "It's only white and blue, isn't it, there's no grey", and yet – and yet other witnesses had been and gone describing with no doubt, no argument about it, that the Four Winds dinghy as being grey and we had available to us had we known it was an issue, an issue that a reliable witness who'd seen it in daylight had called it grey and not only had done that, had asked for police assistance in identifying the grey dinghy, the very thing that Sergeant Sinnitt – sorry, Constable Sinnitt was harassed, sneered at, false – well not false, I mean displays of exasperation coming from my learned friends Mr Gunson in front of the jury about his alleged inadequacy of police investigation about that issue. It was never an issue in this case, it was not said in opening to be an issue, it should have been, it wasn't.

<RULING - HIS HONOUR: All right. Well I am going to grant leave. I don't need to say anything about the submissions that counsel have made about one another and how each other has conducted the case. The starting point is s46 of the Evidence Act. Section 46 permits the Court to grant leave or give leave to a party to recall a witness in certain circumstances. First of all there has to be a matter raised by evidence adduced by a party other than the party seeking to recall the witness and that has to be a matter on which the witness wasn't cross-examined. The matter that's being raised by evidence adduced in cross-examination by Mr Gunson is the issue whether the dinghy described by Mr Conde and or other witnesses was the same dinghy as the dinghy from the Four Winds or the dinghy found floating by the witness who took his daughter to rowing and then seen by Mr Balding. Now evidence – Mr Balding wasn't cross-examined about his perception of the colour of that dinghy. If he – he could have given evidence about his perception of the colour of that dinghy. Evidence as to his perception of the colour of that dinghy is relevant to the issue of whether a different dinghy was seen attached to the Four Winds or approaching the Four Winds on the afternoon of Australia Day. So the evidence that he could have given and didn't give and wasn't asked about is evidence about the – the issue of whether the dinghy that's been described, or any dinghy observed by any other witness, was a different dinghy from the Four Winds' dinghy or the one he saw; there's an issue as to whether people see it as grey or in certain conditions it seems grey.

Now – so that means that it's open to me to – to grant leave – the evidence that Mr Darling could give is evidence about a matter raised by the evidence adduced on behalf of the accused in cross-examination. It's a matter – that's a matter on which Mr Darling wasn't cross-examined, and if his evidence about that matter had been admitted he could have given evidence about that matter in examination in chief relevant to his perception of the colour of the dinghy that he saw.

Now in deciding whether I grant leave, I'm obliged to take into account all the matters listed in s192(2); the giving of – the recall of Mr Darling to give this evidence would be likely to add to the length of this trial. I don't think it would add greatly to the length of this trial – I certainly don't think it would add unduly to the length of the trial. It wouldn't be unfair, in my view, to the accused. The evidence as to his perception of the colour was proofed and the – and it can be tested, and it can be contradicted. The – I have to take into account the importance of the evidence; well it's one more piece of circumstantial evidence in a case that consists entirely of

circumstantial evidence. There are many many pieces of circumstantial evidence in this case and this will be one more. I have to take into account the nature of the proceeding. It's a murder trial. It's desirable that the evidence in murder trials be adduced without recalling witnesses or without recalling witnesses too frequently. However, this is the first application that's been made to recall a witness; over fifty witnesses have been called. The – I'm not in a position to say that the Crown ought to have seen the argument coming, certainly the – nothing was said by Mr Gunson in opening as to any issue about different coloured dinghies. Under s192(2)(e) I have take into account the power of the Court to adjourn the hearing, that would be a terrible thing to do, or to make another order or to give a direction in relation to the evidence. It may be that Mr Balding's statutory declaration could be adduced in ways other than through him. I think it's better and fairer that it come through him. I think it's in the interests of justice that the jury hear all the available evidence including evidence which the Crown quite likely didn't realise was likely to be as significant as it now seems so for those reasons I'll grant leave for that witness to be recalled after the present witness. I'll just make this enquiry, Mr Ellis, are there other witnesses that you've got in mind calling or –

MR ELLIS SC: Yes, your Honour, there's – I suppose –

HIS HONOUR: Well when do you think the Crown case might close?

MR ELLIS SC: Wednesday lunchtime at the latest I should think.

HIS HONOUR: All right. Who else have you got apart from the sergeant and the man you want to recall?

MR ELLIS SC: Oh, about three fingerprint people that they insisted on but they shouldn't be long. Of course I don't know how long Sergeant Conroy will be cross-examined, there seems to be about maybe two hours left of his tape, and –

HIS HONOUR: Are you calling Inspector Powell?

MR ELLIS SC: I'm sorry?

HIS HONOUR: Are you calling Inspector Powell?

MR ELLIS SC: No I'm not, your Honour. Well, I'm sorry, -

HIS HONOUR: Not –

MR ELLIS SC: It's too early, depending on –

HIS HONOUR: You'd prefer not to, but you may?

MR ELLIS SC: Depending on what issues arise with Sergeant Conroy, your Honour.

HIS HONOUR: Yes, all right.

MR ELLIS SC: But I have – I will be delivering a late proof, I think. If the State pathologist, Dr Lawrence, approves of the one I drafted following discussion with him at lunchtime. It should be brief though, it's that you can be killed by a blow.

HIS HONOUR: Sorry?

MR ELLIS SC: That a person can be killed by a single or multiple blows without there being blood everywhere.

HIS HONOUR: All right, well I'll adjourn – if there's nothing further I'll adjourn this trial until ten tomorrow and I'll deal with the matter that I had listed for four fifteen.

MR ELLIS SC: If it please the Court.

<THE COURT ADJOURNED

T112/sr

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THE COURT RESUMED AT 10:00AM ON TUESDAY THE 5TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

EXHIBIT P68 PLAYED TO THE COURT

HIS HONOUR: Right, we'll take the morning break, the jury can make their – or the first morning break, the jury can make their affirmation and the Court will adjourn for 15 minutes.

JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

HIS HONOUR: Right, we'll stop here, there's a change of subject coming up so we'll take a five minute break. The jury can go to the jury room and I'll returns.

EXHIBIT P70 RECORD OF INTERVIEW STOPPED

JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

EXHIBIT P70 RECORD OF INTERVIEW CONTINUES

HIS HONOUR: Well just a minute, I'm looking at – counsel, I'm looking at page 641 of the Crown papers now my recollection is that we got to 641 line 22.

MR GUNSON SC: That's correct, your Honour.

MR ELLIS SC: I trusted the note of the foreperson, your Honour.

HIS HONOUR: Sorry?

MR ELLIS SC: I trust and note the foreperson that's –

HIS HONOUR: Yes, but they're looking at times which I've ignored but I think we're a lot further forward than –

MR ELLIS SC: It's 641 certainly, your Honour, on our page numbers but the suggestion has been made, and I think accurately, about what time we were when we – that we got to.

HIS HONOUR: Well what time do you say we were at?

JURY PERSON: The last note I made was 13:57 on the times on the screen.

HIS HONOUR: 13:57 and we're not at 13:03 so it's gone back to the beginning of the disc. All right, well thank you, if we can find 13:57. Perhaps if you press 'play' when we get to the 13:57 we'll take it up from there.

EXHIBIT P70 RECORD OF INTERVIEW CONTINUES.

HIS HONOUR: Right, we'll start – we'll play the next disc.

NEXT DISC OF EXHIBIT PLAYED

HIS HONOUR: Stop there. All right, there's about fifteen more minutes to go. The jury can make their affirmation and the Court will adjourn until 2.15.

THE JURY MADE THEIR AFFIRMATION

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: Right, we'll resume playing the recording.

EXHIBIT P70 RECORD OF INTERVIEW CONTINUES

HIS HONOUR: Ladies and gentlemen, I just want to say a few things about the two interviews that you've just seen. Nothing has been edited out of them but there are a few things I think I should say at this stage. One is that the answers that Ms Neill-Fraser gave are evidence and you – it's open to you to give her answers whatever weight you think fit but questions aren't evidence so if there were things that the interviewing officers told her that she didn't agree with, if there was information that they provided to her that she either disagreed with or simply didn't know about then anything that they've said in the interviews isn't evidence of the truth of what they were saying, for example they gave a lot of information at one point about Mr Chappell's financial records. Now that seems to be information that was not within Ms Neill-Fraser's knowledge. Now unless that information is provided to you in some other way, by way of evidence at this trial, then you must ignore what was said in the question except so far as it helps you understand the answer. I might be making this even more complicated but the point of it is that if there are assertions made in questions that the witness – that Ms Neill-Fraser didn't know about or didn't agree to then you can't take those assertions to be correct and treat them as evidence. The evidence would need to come from another source or else be ignored.

The second point on a couple of occasions the – Ms Neill-Fraser was asked why Mr Triffett might make up something that wasn't true. Now that would ordinarily be regarded as an unfair question because when someone does make up an assertion that isn't true no one else can understand – there's no – no one else knows what other people are thinking and so if a lie has been told about a person that person isn't in a position – isn't always in a position to explain why the lie's being told. So if Ms Neill-Fraser wasn't able to suggest a reason why a lie had been told about her that shouldn't be used against her.

The third point I want to make is that on one or two occasions officers put to Ms Neill-Fraser what they thought she'd done and what they thought of her credibility. What they think doesn't count as evidence against her, you have to decide this case on the basis of what you think and on the basis of the evidence that's presented to you. Now I thought I'd better make those points at this stage as there's been no editing out of the interview of things that sometimes would have been edited out.

Now Mr Ellis, we're in the position where Sergeant Conroy was giving his evidence. He can come back.

MR ELLIS SC: Thank you.

<SIMON MATTHEW CONROY ON OATH AS PREVIOUSLY SWORN

HIS HONOUR: Mr Ellis.

<EXN – MR ELLIS SC (Resuming): Sergeant, I want to go back, please, in your narrative of events to the 12th February. Now on that day did you go to the Four Winds at – where it was moored then at Goodwood?……Yes, we did.

And when you say we, I don't think this is controversial, was it you, Detective Sinnitt, Detective Puurand and Detective Sice?……Yes, that's correct.

Thank you. And when there did you do something?……Yes, we reconstructed the flooring in the boat using – tried to construct the tiles to see whether any were missing –

Was that in the saloon?……That was in the saloon area of the vessel where the square vinyl black tiles area.

Can you tell us how you went about that?……Mainly they're custom fitted so you have – it's a bit like a jigsaw puzzle, you've sort of got to find the right piece to fit. There's a few across the middle which are just the basic square of, I'm not quite sure, maybe 400 mil by 400 mils, so as we found the outer ones it was easier to bring the others into the middle.

And in P9, the second set of photos in the large folder, does photograph 76, right at – right at the end one I think, show the result?……Yes, as we constructed the floor that's what we came up with.

Okay. Now just to orient us there we're at the bottom of some stairs is that right?……Yeah, the photograph is taken from standing in the wheelhouse looking down onto the saloon floor.

Okay. And are they the stairs that would perhaps be in position?……Ordinarily, yes, they were the stairs.

Ordinarily, okay. And to our left what do we have?……To the left is panelling which leads to the – around to the laundry and the electronic switching for the vessel is in that location as well.

Right, thank you. And in the interviews with Ms Neill-Fraser is that indeed the area in which she – in which you understood her to be

saying that Mr Chappell was working on the 26th January?……Yes, directly below is the – below and back under where the person is standing who took the photograph is where the wheelhouse – the engine room is located.

Thank you. Okay. And if we could go please to photograph 70 and those following, 70, 71, 72, 73 and 74, 75……Yes.

Can you tell us what we see there please?……The – this is the – photograph 70 is – it shows the entrance or where the hatch slides over the entrance down into the wheelhouse from the rear cabin of the vessel. There's a winch with a rope wound around it and the rope is leading down into the – done into the wheelhouse.

Okay. Now when you first went on the boat, I think on the 27th January, were those ropes in that position then?……No, they weren't in that position, no, they weren't leading down into the wheelhouse.

And did you and the other detectives cause them to be that way?……For this photograph, yes.

Yes, okay. And 71, can you tell us anything more there?……Photograph 71 is of the same situation, it's demonstrating the rope going over the edge of the hatch where the burn marks that I'd earlier described were in the – in the wooden sliding area – hatch slide.

Right. Now if the rope had been tied directly to the winch that we see in the front of – closest to us in photograph 70 the angle would be the same, would that be right?……That's correct, yes.

Okay. The angle over the burn marks would be the same?……Yes, that is correct.

Thank you. But in fact it was run round there in effect, was it, and then – then up through another – up to another winch on the – that we'll see?……I don't understand that.

No…….The rope's run around – it's a long length of rope –

Yes…….- and then we've run it back – we've just taken a loop down with us, so just a long length of rope, just grabbed the loop and taken it down through the hatch so the rest of it comes back out to the rope, -

Okay…….- as you can see on 72, -

Yep……..- it's quite a long – a long piece, your Honour.

Yep, and the point of doing that was?……Just – we were – just to demonstrate that the rope could lead from the winch – from that side of the winch in a direct line across the burn marks.

Yep, and did it?……Yes, it did.

And 73 and 74 – 74 shows you, I think, doesn't it?……Yes, 74 shows myself just holding the rope on the floor of the saloon –

Yep……..- as it's come down over those burn marks again.

And 75 is similar. Now was something done in relation to those ropes?……With the loose end that was run back – eventually we ran that back to the winch off the mizzen mast.

Mhm…….And we used the heaviest amongst us, which was Detective Sinnitt, -

Yep……..- his body weight. It was more to demonstrate to the others that a winch could easily lift that, it was just to show them that a winch was capable of lifting that sort of a weight.

And which winch was used, what was actually winched?……On the mizzen there's a – photograph 75 you can actually see the winch on the side and that's the – on the – as you look at the photo it's on the right and that was the – it was around that winch and used that winch them out.

Okay. Would it have been possible to have used the winch in photograph 71?……In my opinion, yes, you could have used that winch.

Thank you. Nothing further, thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON SC: Would you try and use the winch in photo 71, you've just given us your opinion it could be used but did you try and use it?……No, we didn't try and use it.

So it may have worked it may not have worked?……That's correct.

Now when you saw Ms Neill-Fraser at about 4:30pm on the 27th January that was in fact the day the yacht was discovered sinking?……Yes.

You saw her at Constitution Dock?……Yes.

And she was with other members of her family?……Yes.

And she told you that she had been medicated?……Her daughters told she'd been medicated.

You previously said –

> *I was informed by the accused and by both of her daughters that she was medicated.*

……Yes, that's –

That's what you've said before isn't it?……That's what I said, yes.

So the answer to my first question was were you told by the accused that she was medicated the answer is, yes, isn't it?……Yes.

And that was repeated by her daughters?……Yes – actually it was –

Go on……- her daughters first and her second, to acknowledge that she had been.

Did you ask her what form of medication she'd taken?……No, I did not.

Did you ask her daughters what form of medication she'd taken?……No, I did not.

Thank you. Wouldn't you think that might have been sensible to find out just what her degree of understanding was about what was going on?……I was just trying to show – be compassionate towards her and accept that she had been medicated.

Answer the question will now will you……Would you repeat the question please.

Didn't you think it might have been sensible to ask her to try and find out what sort of medication she'd had?……No, I did not.

Thank you. Now you explained to Ms Neil-Fraser that you wish to try and determine what may be out of order on the boat……That's correct.

And you asked for her cooperation……Yes.

And she pointed out to you a whole number of things didn't she?……Yes, she did.

And let us just go through the things that she identified that day. A main mast rope that wasn't in order?……Yes.

Did she point that out to you and say something?……The main mast rope?

Yes…….There were two ropes at the main mast. Yes, she pointed out that it was – it had been cut, that it shouldn't have been in the position on the winch that it was on –

Yes…….- and that initially there was – the winch handle shouldn't have been in the winch.

No, just concentrate on the ropes for a moment……That it was round and round the winch and it shouldn't have been.

Thank you. And there were no ropes around the winches at the back, is that right, in the manner that you'd expect in the photographs we just looked at?……Around the winches at the back?

Yes…….There were ropes around the winches at the back.

I'll put it another way…….Yes.

You've just looked – we looked at photographs 70 through to, I think, 75?……Yes, yes.

There were no ropes rigged in that manner?……At the time she came on the vessel?

Yes, we're talking about the 27th.....The 27th there were ropes around the rear winch.

But not in the manner that are depicted in the photographs we've just looked at?.....There's no ropes in the photograph that we just looked at. The rear winch on the mizzen you refer to?

Show the witness, please, photograph 70, 71, 72, 73, 74 and 75 and 76.....That's not the mizzen.

HIS HONOUR: Well he's got them.

MR GUNSON SC (Resuming): Just listen to the questions, look at the photographs, concentrate on the ropes there.....Yes.

There were no ropes on that day set up in the manner that you set them up on sometime later?.....Not in the manner we've set them up, no.

Thank you. Now they can go back, thank you. Now come back to the main mast.....Yes.

She pointed out to you that the ropes were not in order, they in fact were lying on the deck, weren't they?.....That's correct.

And she indicated they should have been tied up?.....Should have been in the rear of vessel is my recollection, rear of the boat.

And she said that there was a black main sheet -.....Yes.

- or rope and a red main sheet rope also cut?.....Yes.

Right. Did you observe the cuts on these ropes?.....I did.

The ropes are quite thick, aren't they?.....They're typical sailing ropes, approximately 10 mil.

Thank you. And are you a sailor yourself?.....A very amateur one.

What experience do you have in sailing?.....I've competed in a number of seasons – well two seasons of twilight racing on Wednesday and Thursday nights, I've competed in some weekend pennant State Championships as a crew member on a twenty four foot yacht, two State Championships and one King of Derwent as a crew member on a thirty five foot yacht.

Thank you. And the winch handle for the winch on the main mast was actually fitted into the winch, wasn't it?……Yes, it was.

And she said it shouldn't have been there, it should have been somewhere else?……Yes.

Where did she tell you it should have been?……Packed at the rear of the vessel.

Thank you. In a container there?……Locker, yes.

Yes. And that locker was readily accessible?……Yes.

And the black rope or sheet should have also been in the locker?……Yes.

So how big was this black rope, how long would it appear to you to be?……I wouldn't – I'd hesitate to guess how long it was, it was a long rope, it was probably – I wouldn't say, I haven't measured it.

You wouldn't say what?……I haven't measured the rope so I can't say how long it was.

Can you give me an estimate?……A typical sailing rope, you'd have to say that's what it had the appearance of, twenty to thirty metres.

Thank you. Now she immediately saw a torch there and said that wasn't from her boat and you subsequently were able to determine that had been left behind by the Marine Police?……Yes.

So she said words to you, "That's not from my boat"?……..That's correct.

Yes, and she also pointed out a juice container that wasn't from her boat, which again you found out had been left behind by the Marine Police?……Yes.

Marine Police leaving things like a juice container and a torch behind does have the potential to possibly contaminate part of a scene, doesn't it?……It does, yes.

Yes. No doubt you weren't particularly pleased about that?……No, I wasn't.

Mm. And would it be fair to say this also, that by the time you got to the scene, that is to the yacht, to your knowledge there'd been a lot

of people tramping through it?.....Yes, I didn't have a figure but I had an idea roughly.

It'd be somewhere in the order of eighteen to twenty odd people?.....Yes, I'd estimate it at more than – above twenty is what my thoughts were.

Right. And really at that stage you had no idea who'd touched portions of the vessel?.....I had no idea at all.

Right. But the reasonable inference was that it was certainly not a pristine scene to investigate?.....I considered it a contaminated -

Very – highly contaminated?.....- crime scene, if it was a crime scene. Yes.

Agree with that?.....Yes.

Mm, I mean the ideal scene is you go to a house where somebody's been shot, no one else has been into the room, you've got a perfect uncontaminated scene, haven't you?.....I don't think you'll ever get a perfect one but, yes.

Well you've got a uncontaminated scene which - .....You can limit the contamination considerably.

- from the point of view of forensic investigation is a far better scene to investigate than this yacht?.....Yes, exactly.

Thank you. Now at the cabin entrance she also pointed out to you a green rope that wasn't in the correct position?.....Yes, that's correct.

Where was that?.....That's the rope, the previous picture, it's on the – around that winch we just mentioned to the right and it was down on the – one the seat, sort of where the sort is.

Seat of the cockpit?.....Seat of the cockpit, yes.

Thank you. And she pointed out to you the scuffing or indents or burn marks, call them what you like, in the framework of the hatch didn't she?.....She did.

Now had you seen those earlier?.....I hadn't noticed those, no.

Right. And how long had you been on the boat before she arrived?……I had a short look with Detective Wilby, got back off the boat and waited for them to arrive , since – and got back on them so –

Now you've answered the question for me - ……Yes, probably –

- how long did you spend on the boat before she arrived?……Less than ten minutes.

Thank you. And presumably in that ten minutes you looked around?……I did look around.

Yes. You were looking for, and I don't wish to sound disparaging, clues weren't you?……I was looking at what Detective Wilby was showing me at that point.

And what was he showing you?……The – where the valve was located that had been opened, where the seacock had been, the pipe had been cut, where the blood was on the steps. The very basics of what he'd discovered.

He didn't show you around the decks of the boat?……I think – oh, we did walk across the top deck, the scuff marks on the deck were – and ropes, yes, walked around the top and down into the bottom and off.

But literally when you got down to the cabin, around that area where the hatch is, she pointed out the rope that was lying in the cockpit?……Yes.

Said it was out of order, shouldn't have been there……Yes.

And she was standing basically right next to the hatchway wasn't she?……When she got on and pointed that rope out?

Yeah……She crossed across there, yes, to go to the other side.

And looked around and then noticed the scuffing or indents into the framework of the hatch?……No.

What did she say?……She said, "That rope's not right", and crossed the vessel and headed down towards the mast.

Yeah. So when did she point out the scuffing or indents in the framework of the hatch?……One of the later findings she made when she was sitting at the back of the vessel just prior to leaving.

Right. And you hadn't noticed it up until then?……No, I hadn't noticed it.

How long had you been on the boat for that stage?……With her we'd probably been on maybe half an hour.

Right. And were you by yourself or did you have somebody else with you?……Had - Detective Milazzo was present.

And she hadn't seen the marks?……No.

And so Ms Neill-Fraser said, "Look at these", or words to that effect?……Yes, "They are not right".

"They are scuff marks caused by a rope", or something like that?……She said, "Those marks weren't – weren't there before".

Weren't there?……Yes.

You looked closely at them?……Yes.

And you detected what you thought were some little tiny threads in there, is that right?……There were some fibres present and hanging over the edge, yes.

Thank you. Those fibres were subsequently taken away by Forensics?……Yes.

Right, thank you. Did you point the fibres out to her?……The Forensics officer?

No, I put that poorly. Did you point out the fibres to Ms Neill-Fraser?……We definitely discussed them. I believe I pointed them out to her, yes, that they were there.

Yes…….Yes.

And did she say anything about that?……I can't recall a comment.

Right. She pointed out some eye glasses inside that belonged to her?……Yes, she did.

And a smoking pipe -……..Yes.

- was in there?……Yes.

Which she said was Mr Chappell's?……Yes.

Thank you. When you went inside the vessel she looked around and pointed out the fact the fire extinguisher from the main saloon was missing?……Yes.

She told you it was very heavy?……Yes.

And she said she couldn't lift it?……That's correct.

Right. And she also pointed out the wooden floor in the main saloon, she said it was unscrewed and it wouldn't have floated up, it had been screwed down properly?……Yes, that's correct.

Thank you. And she's made the comment that Mr Chappell wouldn't have unscrewed the floor?……Yes, "Bob wouldn't have done that".

Right. And she referred to some marks on the deck that were not previously evident, were they the marks that you referred to caused by the pump?……Yes, there were some marks at the front to the left of the mast if you're facing forward on the deck.

Right. And she pointed out that the EPIRB was missing from its bracket?……She did, yes.

Are you familiar with that particular type of EPIRB, given your sailing knowledge?……That's a – it was a 406, it's the latest of EPIRBs, which you register to your vessel.

And the answer to my question - ……Yes.

- I assume is, "Yes, I am familiar with it"?…..Yes, I am familiar.

And to access the EPIRB you simply pull it out of its bracket, you pull it upwards don't you?……That's correct, yes.

And the bracket though appeared to be broken didn't it?……Yes, it did.

As if somebody had pulled the EPIRB out of the bracket contrary to the normal way you lift it out?……Yes, that's correct.

Right. I mean the EPIRB is designed to sit down in its bracket to be easily accessed but it's been pulled up and taken away?……Yes.

But what you had here was violence obviously used on that bracket to extract the EPIRB?……The bracket is designed to break.

But it was a case of violence having being applied to it wasn't it, it was broken?……I wouldn't call it violence.

It was broken?……The tab was broken, yes.

Yeah. It was snapped?……Snapped off.

And part of it was on the floor?……It was on the floor, yes.

And that isn't the normal way of accessing the EPIRB is it?……Well, no, not if you were to examine it, no.

No, no, if you were - …..So, no.

If you were going to activate the EPIRB on leaving a boat that was sinking and the last thing you get is the EPIRB before you jump into your rubber life raft you'd just pull it out of the bracket?……Yes, that's right.

Up?……Yes.

Thank you. All right. And a reasonable inference to draw is that somebody had broken that bracket?……Somebody had broken that bracket, yes.

And it's a reasonable inference to draw that the person who was lacking in knowledge of an EPIRB?……Yes.

Thank you. Now the accused, you said, began changing positions on switches and tried to get the pumps going?……Yes.

And got them going?……Yes.

She made the comment that if the alarms on the boat had gone off when it was sinking that all of Battery Point would have been woken up?……Yes.

Now are you familiar with the sort of bilge alarms that were on that yacht?……I'm not familiar with bilge alarms at all, no.

At all?……No.

All right. Now on a subsequent occasion she told you about other problems – not problems other things on the yacht that she's thought were different to the time she'd last left it?……On other occasions?

Yes…..Yes, yes.

What other things did she talk to you about?……She pointed out that something wasn't right in the front of the vessel.

Yes, what was that?……She never put a finger on it at the time.

Right, did she take -…….She did eventually point out a piece of wood in the bilge pipe that she'd located.

Yes……Other things –

That was a bilge pipe right for'ard in the yacht, wasn't it?……That's correct, yes.

The forward most compartment?……Yes.

It wasn't the one outside the toilet door, was it?……No.

That's the second most forward one?……Yes, yes, bulkhead between the two.

Bulkhead, and there's a number of bulkheads in that boat, aren't there?……Yes. Yes, there are.

And the object of bulkheads is to stop the flooding of various compartments if the hull is breached?……Yes.

You can close off one of the steel doors?……Yes.

And hopefully only that compartment gets filled?……Yes.

Right. Now – so to get to this place where she pointed out the piece of wood to you, you had to go through a steel door, the last steel door?……Yes.

Into a cabin compartment, a number of bunks in there?……The bunk house, yes.

Yep, and if you're going towards that area you've got the toilet on your left?……Yes.

You step over I think it's the combing, is it, down over the bottom little wall?……Into the forward bunk house, yes, part of the bulkhead.

Thank you. And then underneath the floor there is the bilge pump that you're referring to?……Yes.

Now what did she describe of a piece of wood?……The feet off the – one of the feet from the stairs.

And what did she tell you about it exactly?……That she'd located it down inside the bilge pump pipe.

Right, thank you. Did you take possession of that at all?……No, I didn't.

Didn't see it as relevant or weren't interested?……This was on the 3rd March, it was well past the –

And you thought there may not be any forensic benefit by taking possession of it?……Well I believed that it had been either sucked into the bilge pipes or placed – sorry.

Would you answer the question. Did you think it had any forensic benefit?

MR ELLIS SC: This is unfair, your Honour.

WITNESS: No, I didn't.

HIS HONOUR: Well –

MR ELLIS SC: The witness has just been kept artificially to yes/no every time the answer starts to not suit my learned friend. Now it's quite unfair, they haven't been asked entirely in yes/no form.

HIS HONOUR: Go on, Mr Gunson.

MR GUNSON SC: Thank you, your Honour. (Resuming): Now the answer to my question is you didn't believe it had any forensic benefit on the 3rd March?……That's correct.

Thank you. Now on the 31st January you assisted with door knocks of the Sandy Bay waterfront, is that right?……That's correct.

And you attended at the jetty off Derwent Avenue where you met Peter Lorraine.....Yes, that's correct.

Now how did you come to meet him because Derwent Avenue is in Battery Point?.....That's correct. I'd taken a statement from him earlier in the day and I do not believe we made an appointment. I am of the opinion that I walked down there to look myself and he was doing push-ups on the grass by coincidence so while he was there we walked to the end of the jetty and he described his observations to me.

Right. So you went out to the end of the jetty with him and you stood on the very end.....We did.

Could you see the Four Winds from the jetty?.....No.

Because, no, of course it had been taken away.....It wasn't there, it wasn't there.

Yes. Could you see the buoy or the – where it normally moored?.....I believed I was looking at the correct buoy, and I now know I was, but, yes.

Right. And what distance would you say that buoy was out from the jetty?.....It's a long way, from that jetty probably a hundred more metres.

Thank you. A hundred or more?.....Yes. Say a hundred, roughly a hundred.

HIS HONOUR: Well you said a hundred more didn't you?

WITNESS: A hundred or more, it's sort of a hundred –

HIS HONOUR: A hundred or more, thank you.

WITNESS: Sorry.

MR GUNSON SC: (Resuming): Now you'd taken the original statement from Mr Lorraine?.....Earlier that day, yes.

Yes. You no doubt when you spoke with him were anxious to know what his observations were?.....That's correct, yes.

And Mr Lorraine said to you, and I'll just read, "My attention –

MR ELLIS SC: Well I would like to ask where this is going to go; it just seems at the moment to be hearsay.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I'm going to cross-examine about what he said to Mr Lorraine and what Mr Lorraine said to him.

HIS HONOUR: Yes. Mr Ellis?

MR ELLIS SC: So is that an assertion that my learned friend is entitled to cross-examine about what someone else said, I think not with respect.

HIS HONOUR: Well we're going to have – are you persisting with the question, Mr Gunson.

MR GUNSON SC: I'll change the format of it, your Honour.

HIS HONOUR: Yes.

MR GUNSON SC: (Resuming): Did you take a statement from Mr Lorraine?……Yes, I did.

Thank you. And how was that taken?……On computer at the Hobart station.

Thank you. Was it done by question and answer?……Yes.

So you would ask Mr Lorraine a question……Yes.

And he would give you an answer?……Yes.

Right. And did he in his statement tell you that –

MR ELLIS SC: No, your Honour, again perhaps the jury had better go out and my learned friend can be more frank about where this is going, but at the moment it is simply –

HIS HONOUR: All right, ladies and gentlemen, would you go to the jury room, please.

<JURY RETIRE

HIS HONOUR: What page is Mr Lorraine's statement?

MR GUNSON SC: 134, your Honour, and I ask that the witness go outside as well, your Honour.

HIS HONOUR: Yes, Sergeant, would you go and wait in the foyer, please.

<WITNESS LEAVES WITNESS BOX

HIS HONOUR: All right, well Mr Gunson, where's this going?

MR GUNSON SC: I want to ask the witness the methodology by which the statement was taken, what he said to Mr Lorraine and what he questioned Mr Lorraine about and whether Mr Lorraine told him anything extra that doesn't appear in the statement. Perfectly permissible.

HIS HONOUR: Mr Ellis?

MR GUNSON SC: Where it's going to go, I can be quite frank about it, is the question of whether he directed any questions to Mr Lorraine at all about the colour or type of the dinghy. For instance, page 135:

> *I'm unsure what type of tender it was, inflatable,*

He probably said 'of' –

> - *solid construction, appeared very small.*

Well (indistinct words). I'm entitled to explore what it was that Mr Lorraine told him, whether that was the totality of it. I'm equally entitled to explore why perhaps he didn't ask further questions about it.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I ask my learned friend to identify which exception of the hearsay rules he asserts that he's entitled to explore what a witness has said outside the Court.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: It's not a question of the hearsay rule, it's a question of trying to ascertain what this witness said to this – sorry, what this witness said to Mr Lorraine and what Mr Lorraine said to him as opposed to what appears in the statement.

HIS HONOUR: Well just a minute. Well Mr Ellis, Mr Gunson hasn't said this but I'll raise it with you; s66 of the Evidence Act applies in criminal proceedings if the maker of a representation is available. Mr Lorraine is somebody who is available, he's given evidence. The s66(2) provides that:

> *The hearsay rule doesn't apply to evidence of a previous representation given by a person who saw, heard or otherwise perceived the representation being made, if when the representation was made, the occurrence of the asserted fact was fresh in the memory of the person who made the representation.*

So we've got a statement taken on the 31st of January from a witness about observations on the 26th of January. There's an exception to the exception in subs(3) but that only relates to evidence adduced by a prosecutor. So doesn't that entitle Mr Gunson to lead evidence from the sergeant as to what Mr Lorraine told him on the 31st of January about things fresh in his memory?

MR ELLIS SC: Well if that's what's relied on, your Honour, I haven't heard yet, except from your Honour, that –

HIS HONOUR: Well it's not a matter of what's relied on, Mr Gunson could be abysmally ignorant of this but if the law permits the – if the law permits the questions to be asked or the evidence to be adduced I've got to allow the questions haven't I?

MR ELLIS SC: Yes, your Honour, yes.

HIS HONOUR: Well –

MR ELLIS SC: I – look – yes, your Honour, that's right but to be – okay, I won't keep going with it, it's perfectly obvious what happened, I asked the basis of it and it was simply asserted. Now your Honour has come up with the answer for my learned friend so I don't persist.

HIS HONOUR: All right, well we'll have the witness back and we'll have the jury back.

JURY RETURN

WITNESS RETURNS

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Thank you, your Honour. (Resuming): Let's go back to the statement of the 31st January does that contain every word that was uttered between you and Mr Lorraine on that date about Mr Lorraine's observations on the 26th January?……Couldn't possible contain every word, no.

The answer then is - ……No.

- it doesn't contain everything that was said?……No.

Were other things said by Mr Lorraine about what he observed which have not been recorded in that statement?……Having reread through it there is – the colour of the dinghy hasn't been stated in that statement.

Right. And did he tell you what the colour of the dinghy was?……Yes.

What colour did he tell you it was, Sergeant?……Whitish cream to yellow.

Whitish cream to yellow?……Yes.

Now is there a reason why whitish cream to yellow wasn't mentioned in the statement?……I've neglected to put it in there.

And when did you realize that you'd neglected to put that in the statement?……Sometime later on review of the statements for the file.

Well it doesn't appear in any of your proofs of evidence, does it?……No.

No, and did you tell Mr Ellis that you'd forgotten to put 'whitish cream to yellow' in Mr Lorraine's statement for him so that – …….No, I -

- he'd be aware of it when Mr Lorraine gave evidence?……No.

Right. Is there a reason why you didn't tell Mr Ellis that?……It was too late.

Why was it too late?……Because the file was submitted and I've neglected to tell him.

Oh Sergeant, come on, the fact that a file is submitted doesn't make it too late to provide additional information, does it?……No, but I've –

No, and in fact you know full well what a supplementary proof of evidence is, don't you?……Yes. Yes.

And you've in fact provided a number of supplementary proofs of evidence in this case, haven't you?……I've provided two, I think, yes.

There's no magic about providing a supplementary proof, is there?……No.

And right up until the moment Mr Lorraine gave evidence you could have gone and seen Mr Ellis and said to him, "Look, I forgot to put something in Mr Lorraine's statement that Mr Lorraine told me"?……..I could've yes.

And was that a deliberate decision not to tell Mr Ellis that?……No, it was not.

An oversight, was it?……An oversight, complete oversight.

And when did this oversight occur to you?……Only – only recently.

When somebody presumably raised with you that I'd raised the issue of the colour of the dinghy, is that a fair comment?……I think that'd be a fair comment.

Mm, and who was that person?……It's just come up in general discussion in the case.

I asked you who the person was?……I think it was Sice or Sinnitt, I can't recall.

Right, so you've discussed Sinnitt's evidence with him since he gave evidence, have you?……No, I haven't.

Well Sinnitt's discussed my cross-examination of him with you, has he?.....No, he hasn't.

Right. So there was just a chat between you and Sinnitt about the colour of the dinghy?.....Between me and Sinnitt.

Mm.....No.

He told you that the issue had been in raised in Court with him?.....The colour of the dinghy?

Yes.....No.

Right. So you tell me please, help me, when did you have this discussion with Sinnitt when it dawned on you that you hadn't included in Lorraine's statement the dinghy was of a particular colour?.....This – the case is being discussed at great length, it's unavoidable, it's – just – it's in the paper, it's – we were just discussing it in general we've discussed it a number of times.

Mm. Now would you like to answer my question now -.....Yes.

- I asked you when it happened?.....Ah, when did it happen?

Yes.....I can't give you an exact point in time.

Well was it yesterday?.....No.

The day before – on the weekend?.....I wasn't here on the weekend.

All right. The week before?.....I honestly can't recall, it's just –

Right. All right. Now did you ever see the dinghy for Four Winds?.....Not until late in the – no, not during the investigation.

When did you first see it?.....I saw it at the Search and Rescue Depot Marine Police –

And presumably -.....- some time ago.

- by that stage it was covered with fingerprint powder?.....It was flat and covered with fingerprint powder.

Thank you. When you saw Mr Lorraine, did you have an understanding from anybody as to what the colour of the Four Winds dinghy was?.....I believe it to be – it was white.

Thank you. …….With a blue trim on it.

Right. You'd been told by somebody that it was white with blue trim?…….I've seen photos of it.

Yeah……..Yes.

So when you spoke with Mr Lorraine -…….Yes.

- you were aware that it was white with blue trim?…….Yes.

Thank you. …….Yes, yes.

And you were aware that it was a Quicksilver dinghy?…….Ah yes, yes, I am.

Yes, because Quicksilver emblazed on the side, isn't it?…….A brand – yes, that's the brand of a dinghy, yes.

And are you familiar with Quicksilver dinghies?…….Yes, as a brand of dinghy, yes.

Yes……..Yes.

And you've used them as a yachtsman?…….No, I haven't used one.

All right. But you've seen them before?…….Yes, I've used inflatable rubber boats before, but –

Just concentrate on the question I've asked you; did you – had you previously seen Quicksilver rubber dinghies being used?……..I couldn't specifically say I've seen a quicksilver dinghy being used, but –

All right. But you've seen plenty of others….I've seen them around, yeah.

And rubber dinghies are pretty common as the tender for yachts these days?...I wouldn't say – oh, yes – fair enough yes, pretty common.

Far more common now than they were say ten years ago?.....Definitely that, yes.

The original rubber dinghies were put out by I think it was called Zodiac, put out by the French company that made them.....Zodiacs, yes, IRB, ribs, yes,.

And there are plenty of imitators on the market now, aren't there?...That's correct, there are.

And Quicksilver's one of them...quicksilver is a brand, yes.

And these dinghies come from a range of colours – they come from black, grey, white?....I can't say I've seen a black one, but yes, apart from police issue sort of, maybe, but anyway they come in a variety of colours, I'm sure.

Well no, just from your own experience – you've seen white ones...White?

Yes?...Yes.

You've seen grey ones...I've seen grey dinghies.

And you've seen black ones?....I've seen red ones, black ones

Mm. Just concentrate on the question. You've seen black ones.....Black ones.

Good. And they come in various sizes don't they?....They do.

And in fact, they come with flat hulls and they come with rigid hulls, don't they?.....Yes. Yes –

You know the sort of semi-rigid hull I mean....Plastic hulls, semi-rigid – yes, I do, yes.

All right. And you were told by Mr Lorraine that he had seen a dinghy at the back of the boat that he'd identified....Yes, he did, he certainly did.

He said it was a small dinghy – small tender tied up hard to the back.....Yes.

He told you it was, I think you said, whitish cream to yellow?....Yes.

Now that didn't tie in with a white dinghy with a blue trim, did it?....No, it didn't.

No. Is that the reason that was left out of your statement?....No, it's not.

Didn't fit into the theory that was being formulated early?.....No, no.

Sure about that?...I'm positive about that.

It's a pretty big admission, sergeant, isn't it?....That a theory was being formulated early?

No. Pretty big admission to leave out the colour of the dinghy....Yes, it is.

A major omission, isn't it?.....Well, it is in this situation, yes.

Yes. Very major, isn't it?...I would consider it, yes.

Thank you. Now Mr Lorraine said this: "I'm unsure what type of tender it was, inflatable or solid construction".....That's correct.

Now did you test him about that at all?.....Yes, but that's where he had to leave it.

He couldn't take it beyond that?.....No.

Did you try and ascertain from him its length?.....I think – no.

You didn't try at all?.....He called it – referred to it as a cockle boat by memory.

Yes.....And I think – he wasn't sure – given the distance away that it sat low in the water, he wasn't sure of the physical size of it.

And compounded slightly the boat had its bow into the wind?.....Was looking at it back on, yes.

So if the dinghy was at the back of the boat it would to some extent merge in with the back of the person to a person looking from shore?.....Yes, yes.

All right. Now he gave a pretty fulsome description of the occupant of the boat didn't he?.....He did, yes.

I think he said in his evidence words to the effect –

Had the appearance of an old seafarer, he appeared to be elderly due to his stance, posture and the way he moved.

.....Yes.

That's what he told you?.....Yes, in – yes.

Thank you. And you concluded that was in all likelihood Mr Chappell didn't you?.....Well it certainly sounded like it could have been Mr Chappell.

And especially if you could determine there were no other yachts of the size or structure of – as Four Winds in the area?.....Yes. I – there were other large vessels in the area.

Two masters?.....No two masters.

No two masters?.....But – yeah.

And no other catches?.....No.

No. So you concluded that there was a very strong likelihood that what he'd seen was Mr Chappell?.....I didn't conclude that, no.

No, but you thought it was a strong possibility didn't you?.....I thought there was a possibility he was looking in the wrong direction as well, just slightly at another – at another mooring.

Well did you tell him that?.....I did.

And what did he say?.....Well I asked him to point directly where he thought it was and he pointed if – if you point at 12 o'clock he was pointing – if he pointed at 12 o'clock the Four Winds mooring in my opinion then was at, say, 2 o'clock, so, yeah, I thought he may have been off the mark but I accepted what he said.

Right. So did you have some doubts in your mind having spoken to Mr Lorraine that what he was looking at in truth was the Four Winds?.....That was later when we were down at the – at the jetty but we talked it through at that point when he was convinced that he had the – he felt he was looking at the right vessel.

Right. .....Mm.

So he was given every opportunity to recant, as it were?.....Yes, yes.

And he persisted in his account that what he'd seen was the Four Winds?.....Yes.

And what he'd seen was a man, to a large extent, answer the description of Mr Chappell?.....Yes.

Thank you. Now at any stage did anybody take him out and show him Four Winds after it returned to the mooring?.....Well I know that Detective Sice did do that, yes.

Right. And when did Detective Sice do that, do you believe?.....I'm not aware of what that date was, and I think I may have left –

Right. Did you make arrangements for Detective Sice to do that?.....No, I didn't.

All right. Thank you. And presumably he duly reported to you, did he, that that had happened?.....If you could refresh my memory as to the date, I may not have been working in the office at that point in time.

All right. Well at some stage you've learnt that Sice had done that?.....Yes.

Thank you. All right. Now he told you that – I'll go back a step; when you went on the 31st of January and had a look out, Four Winds was out at Goodwood?.....Yes.

The -.....Ah – yes, sorry, yes.

There was no other yacht on that mooring?.....No.

And there were no other large yachts in the immediate vicinity of that mooring?.....Large yachts, no.

And more particular, there were no ketches in the vicinity of that mooring?.....No, I'm not familiar with a ketch but there was no other large yachts –

Two – well -.....- I'd consider a yacht.

- one with two masts?.....Right, no.

A big one at the front and -.....No, no –

- a small one at the back?.....No, no.

All right. Thank you. Now did you interview the witness, Mr Conde?.....No, I didn't interview, Mr Conde.

You didn't interview him?.....No.

And before I move on to Mr Conde, could I just take you back to Mr Lorraine for a moment?.....Yes.

As best you could determine from his statement, given that he was at Salamanca Fruit Market at 5:25, that he was at the wharf, at the bottom end of the lane, at about five o'clock?.....Yes.

All right. Now just take me through the chain of command in this investigation. Inspector Powell was the officer in charge of this investigation or of the CIB at the time?.....He is in charge of the Hobart CIB, oversees all investigations.

Right, then leaving aside his titular position as head of CIB you were basically the officer in charge of this investigation, is that a fair comment?.....Yes, reporting directly to him, yes.

Yes, but you reported but you were for all intents and purposes the officer in charge?.....Yes.

Right. And you were the port of call for all of the detectives and uniform officers who were collating and gathering information, is that right?.....That's correct, yes.

They would bring their statutory declarations they'd taken from witnesses to you?.....Yes.

You'd receive the forensic reports?.....Yes.

Photographers would deliver to you their bundles of photographs and so forth?.....No, they are available almost immediately electronically.

All right, but in any event you'd get all of this stuff?.....Yes.

And basically with assistance you were running the master file, is that right?.....Yes.

Now presumably at some stage on or around the 29th January you received a copy of Mr Conde's statement?……No.

When did you receive that?……I would've read it on the – late on the evening of the 29th January.

You read it on or about the 29th January?……Yes, yes.

It having been taken at 10:00 a.m.?……Yes, that's correct.

Now you say you read it late on the evening, do you remember doing that?……I can't remember doing that, no.

Right. Well why did you say you did it?……I said I would have.

Why did you say that?……Because at the end of the day when you return to the office you review what's been gathered during the day and it'll be in the duty allocation return tray.

Right, so nobody during the course of the day made you aware of Mr Conde's statement?……No.

So, just doing the best you can, when do you believe you first read Mr Conde's statement?…….That evening, I returned to the station.

Are we talking five or six o'clock, midnight?……Could've been last thing I did, later into the evening because I believe that's the day I went to the yacht club.

Right. Do you know Mr Conde?……No, I don't , haven't met him.

You'd never met him through your own yachting experiences?……No, I don't believe so. I may well have – I – no, if he was here now I wouldn't know.

Now is it fair to say this, that you read Mr Conde's statement and at no stage did you ask any detective or police officer to do a follow up on Mr Conde's statement?…….There were other things to be followed up from Mr Conde's statement, and yes.

All right. You asked for some follow up to be done?…….Yes.

When did you ask for that to be done?…….That would have been the next morning.

What in particular did you ask to be done and who did you ask to do it?.....I cannot recall whom I asked but there were at least two statements to be obtained from him as a result of what he had provided in his evidence – in his statement.

You wanted two statements?.....Well he had passengers on his vessel, which needed – who needed to be interviewed as well.

Right. So you wanted some of the passengers from Conde's boat interviewed?.....To be – yes, statements obtained.

Yes. And that was Tom and Anne Clarke?.....I believe so, yes.

Right. Now they were interviewed?.....They were at some stage, yes.

Thank you. Apart from that was there any need to have further discussions with Mr Conde about what he had seen?.....I don't believe so.

So you were perfectly content to leave Mr Conde's statement as it was?.....Whilst we gathered all other statements, at that point in time.

All right. Now, at any stage before the commencement of this trial, was Mr Conde re-interviewed for the purpose of providing additional information?.....I don't recall – I cannot recall if he was or not.

Thank you. Just bear with me for one moment, your Honour? Now presumably at some stage, you read the statements of Thomas Clarke and Anne Margarite Clarke, did you?.....Yes, yes.

Right. And at some stage, did it occur to you there was certain similarity about the description given by Mr Thomas Clarke and the evidence given in the description by Mr Conde –...They're describing an inflatable

Dinghy....Dinghy, yes.

Thank you. ....Tender I think.

Mr Thomas Clark your Honour, and members of the jury, is P29. That's the statement that's gone in by consent. Now you detected from their statements that what they'd seen was a grey inflatable dinghy at the rear of the Four Winds....Tender dinghy, yes.

MR ELLIS SC: Yes. I'd ask my learned friend to reflect on the accuracy of what is described.

MR GUNSON SC: I have put I to him correctly and word perfectly to satisfy my friend, Mr Conde said, and I quote: "There was a grey inflatable dinghy secured hard up alongside midship on the port side." Didn't he?....Yes. You're reading directly – yes.

Just as (indistinct words) he told you didn't he, it says in the statement and Mr Clark in his statement, which is P29 said he noticed the boat had a small grey coloured tender tied to the side of the boat. I think the tender was probably an inflatable dinghy but cannot be sure, and they set the time at 3.55

MR ELLSI SC; Oh well, your Honour, it's just not possible to leave it there because my learned friend has asked a question which suggests that both Mr and Mrs Clark – he used 'they" – aligned with the Conde's statement.

MR GUNSON SC; No, I didn't mention Mrs Clark in the slightest. When I said "they" I was referring to Conde and Mr Clark.

HIS HONOUR: Well, what's the question Mr Gunson?

MR GUNSON SC: Mr Conde's account of what he saw and Mr Thomas Clark's account of what he saw were almost the same, weren't they?....yes, yes.

Thank you. Thank you. Now, did it occur to you that a grey inflatable dinghy is not a white dinghy with Quicksilver written on the side with blue trim……Yes.

Can I ask you this. Why didn't you make further enquiries about that dinghy?....I have to say we made plenty of enquiries to establish whether that dinghy was around.

What enquiries did you make?. When did you go looking for the grey dinghy, Sergeant……We put out, initially, requests at both the Yacht club, where I spoke personally, as I stated in my evidence, a request at the rowing club. We canvassed all the residents that we could find at home over a number of days, and we – I'm satisfied that we got residents at every house that was occupied in Marieville Esplanade and Battery Point. I'd estimate out of the numbers there there's over two hundred people. I looked at enquiries as to whether anyone had reported to police interference with a dinghy, such a grey dinghy or any dinghy that was in the marina. There was no reports of

interferences with dinghies in that area. We examined later footage off the ATM cameras in Sandy Bay the possibility that someone may have towed a boat through the – not just a grey dinghy but a boat in general and we couldn't make any –

So what were you looking for, tell me what you were looking for, just a grey dinghy, were you?……No, any dinghy.

Any dinghy?……Yes.

I suggest to you that at no stage did you specifically ask for any information about a grey dinghy, rather you concentrated on looking for people who may have seen a white dinghy with a blue trim?……I was interested in any vessel whatsoever that may have been moving in that area and I wasn't going to narrow it to a specific.

But one way you could have narrowed this grey dinghy was by going back to Mr Conde, wasn't it?……Could have been, yes.

Yes, and as a detective, I suggest to you, that would have been the most sensible course, wouldn't it?……I don't accept that, no.

You don't think it might have been sensible to ask him for a more thorough or fulsome description of the dinghy?……I felt that what he provided was adequate.

There was a grey inflatable dinghy, let me suggest to you some things that are missing from that. No reference to it having an outboard or not having an outboard, is there?……No.

No reference to its length?……No.

No reference to its width?……No.

No reference to its type of bow?…….No.

No. And rubber dinghies can have blunt bows such as we see in photograph 16 of P15. Show that to the witness please.

HIS HONOUR: This is in the smaller volume of photos Tab 8.

MR GUNSON SC: (Resuming): Now just wait till the jury finds them, Sergeant. Now we see there a very good example of a blunt nosed inflatable dinghy don't we?……Yes, we do.

And other inflatable dinghies have a more pointed nose don't they?……To a degree, yes.

Yes. So all of these things that I've just mentioned to you were questions that you could have asked Mr Conde if you'd thought about it weren't they?……Well, yes, could be.

And you could have asked him, "What sort of grey was it? Was it dark grey or light grey?", couldn't you?……Yes, could have, yes.

Don't you think it might have been sensible to have done just that?……A later review that may have been, yes, that was an enquiry that should have been made, yes.

Enquiries that should have been made. You accept that you should have gone back to Mr Conde and said, "Look, Mr Conde, your description of a grey inflatable dinghy is quite helpful but can you tell us more about it"?…….Yes.

And had you done that you may then have found more information that would be of benefit to you in trying to identify or isolate the ownership of that dinghy?……Yes.

Yes. And you know full well the evidence given by Mr Conde in this court don't you?……No, I'm not familiar with Mr Conde's evidence.

Not at all? No one has discussed it with you?……I've been – I've heard versions that he's described a grey dinghy but that's – and it's caused some issue.

Well come on, come on, Sergeant - …..It's caused a –

MR ELLIS SC: Well I object to that, your Honour.

HIS HONOUR: Well –

MR ELLIS SC: He's not a racehorse.

MR GUNSON SC: (Resuming): What evidence –

HIS HONOUR: Well just – just a minute – he hadn't –

MR GUNSON SC: Sorry, your Honour.

HIS HONOUR: - finished his answer. He was giving an answer as to what he'd heard about the evidence given by Mr Conde. Now that's a proper question, isn't it, Mr Ellis?

MR ELLIS SC: Yes – I wasn't objecting to that. I was objecting to –

HIS HONOUR: You were objecting to the interruption.

MR ELLIS SC: - the interruption. Yes.

HIS HONOUR: Yes, all right. Now, what had you heard about the evidence given by Mr Conde; that's the question that you were trying to answer?

WITNESS: That there was a – an adjournment of the Court, the jury were asked to leave, and there was further legal argument.

MR GUNSON SC: (Resuming): No, just – just - .....That's –

- tell us what you've heard about the evidence that Mr Conde gave in this Court about his recollection of the description of the dinghy?.....I haven't heard that specific evidence.

Did you hear any?.....That he – as a result of what he said –

Yes.....- there had to be a – I can't think of the term, another argument about it – legal argument.

Really? Who told you that?.....I was present in the area when I think he was recalled, was he –

I'm sorry?.....Was he recalled as a witness?

No. You're confusing him with somebody else, are you ?.....Maybe.

Confusing him with Mr Balding, perhaps?.....I've a name – perhaps, yes, recall him.

I'll come back to the question; accept from me there was no legal argument about Mr Conde's evidence.....Okay, then I'm confused.

Now, has anybody told you what evidence Mr Conde gave in this Court about the description of that dinghy?.....He's described a grey dinghy.

Right. Did anybody tell you he said "It was a large dark grey inflatable dinghy that was battleship grey"?.....I've heard the word "battleship grey" mentioned.

Right. Somebody's told you that? And he said that was the sort of colour grey that you might see on a warship at the wharf in Hobart – were you told that?.....No.

Were you told that he estimated it at about twelve feet in length?.....No.

Were you told that he didn't notice an outboard on it?.....No.

And that it was tied to the side?.....No.

All right. Now were you told that he was shown by Mr Ellis a photograph of the dinghy from Four Winds and he said it wasn't that dinghy?.....No, I wasn't told that.

And he said he thought the dinghy he saw was darker in colour and the Four Winds dinghy appeared to be smaller and that the shape was different?.....No, I haven't heard that.

And that he said, 431, your Honour:

> *I believe it was larger and I believe the dinghy I saw had a lee cloth across the bow. This one, -*

Referring to Four Winds –

> *- doesn't have a lee cloth, the bow seems somewhat blunter. The Quicksilver dinghy in the photographs is not the dinghy I saw at five to four on Australia Day.*

And later he said that he had seen the lee cloth. He described the lee cloth as:

> *A cloth which goes across the bow of a dinghy and its purpose is to keep slop and spray and stuff from coming in, it's like a piece of fabric that forms a sort of deck as it were.*

And he saw that stretching twelve to eighteen inches along the deck or over the bow and its colour was dark grey. Now –

HIS HONOUR: Well I think the question is, were you told that he said any of that?

MR GUNSON SC (Resuming): No one's told you that he said any of that?……Absolutely not.

Right. Now it comes as a complete surprise to hear that was Mr Conde's evidence, does it?……Yes, it does.

And would it be fair to say this, that it would've been a simple task for you to go and ask Mr Conde the sort of questions that Mr Ellis and I asked him?……That's fair to say, yes.

Yes. And it's equally fair to say that had you been armed with that detailed information, including information about the lee cloth at the front of the boat, it may have assisted you in enquiries?……Yes.

Because it's a very fulsome description, isn't it?……That is, yes.

Mm. And you would say, having heard that, given his complete disavowal that it was the dinghy from Four Winds you'd have to say that if he's correct –

MR ELLIS SC: Well he's making a conclusion, that's for the jury I think.

MR GUNSON SC: Well I'll put it another way –

MR ELLIS SC: (Indistinct comment).

MR GUNSON SC (Resuming): Had you asked those sort of questions, as you've said you probably would've made further enquiries?……Yes, that's – yes.

Now it's a pretty detailed description, isn't it?……That is, yes.

And is it the sort of description if you'd had it you might have taken back to the yacht club, that is the Royal Yacht Club or the DSS, and asked people if they recognised that particular dinghy?……Yes.

That would have been a very sensible thing to do…..Yes, yes.

Now am I right in thinking you did actually address the combined meeting of the two clubs?……I did, yes.

What date was that?……The 29th.

And there was nothing to stop you going back and having another meeting was there?……No, there wasn't.

Right. So – I withdraw that. Now could the witness be shown P36 please. Just refresh your memory by reading that document please…….I've never seen this document before.

You've never seen it before?……No.

I thought you were the officer in charge of this investigation…..Unless the 9th June or thereabouts I was, yes.

Right, I see. And the – have you read that completely?……Not now, no.

Well take your time to read it please……Okay, thank you.

How long have you been a detective?…….On and off since about 1999.

How long have you been a police officer?…….Since 1994.

And how long have you held the rank of sergeant?…….2004 I was promoted.

And have you been a detective sergeant all that time?…….No.

And do you regard yourself as an experienced detective?…….Yes.

And you were an experienced detective, at least in your opinion, in January 2009?…….Yes.

Would it be fair to say that if you weren't experienced you wouldn't have been placed in charge?…….That would be fair to say.

Of this particular investigation?…….Yes.

Now no doubt you were delighted to be placed in charge of this particular investigation?…….I took it as a great responsibility, yes.

Yeah, a very significant responsibility -…….Yes.

- and if you solved the crime it would be a feather in your cap, wouldn't it?…….I don't think about my work in that regard.

Well it's something that would look good on the CV, wouldn't it?…….I do not think of things in that regard at all.

Well, so it wouldn't look good on your CV, you think?…….Well it probably would, but that's not –

Yeah, it would, wouldn't it - right?…….But that's not my consideration.

I didn't ask you what you thought about it?…….Well then if that's the case, then, yes.

Yeah. Commonsense, isn't it?…….Yes.

Yes. And you were determined to do the best you could to properly investigate this matter?….Yes.

So Mr Conde's not exactly a highlight so far, is he?….No.

No and that cried out for further investigation….Not my words.

Do you accept it though?…..I accept it now.

Yes. Because it paints a picture doesn't it, of possibly somebody else being out on that boat when Mr Conde saw the boat at 3.55 – that's the reasonable conclusion, isn't it?…..That's a conclusion, yes.

That's a reasonable conclusion, isn't it?…..Yes.

Yes. And there's a reasonable conclusion, looking at the statement by P36 that a grey dinghy was there at five o'clock…..Yes, that's – yes.

Now, you would have thought, would you not, that there may be some need to follow up on the statement of the witness – we'll call it P36?…..This witness – yes.

That cried out for further investigation, didn't it?….Ah – depending on what you can offer, but he/she – yes.

Yes, perhaps to get a more fulsome description of the grey dinghy, correct?……Yes.

Yes. But she describes it as a large mid-grey dinghy and says " I did not notice any outboard motor on it"…..Yes.

Now, so you have at five o'clock we have a grey dinghy or more correctly we have Mr Lorraine's description of a dinghy behind the boat?....Yes.

You've got a dinghy, a grey one at 3.55, we've now got another one at about 5.30....Yes.

Right. And we also have Mrs Powell describing a grey dinghy, don't we?...Yes.

The dinghy was small, grey in colour, small black outboard motor looked nearly brand new.....Yes.

And she was describing a woman, late forties, early fifties, wearing a white jacket that looked like a wet weather jacket with no hood. Hair was dark blonde or light brown shoulder length hair, average to small build. Now the accused certainly didn't answer the description of "dark blonde or light brown shoulder length hair" did she?.....Light brown, it could be construed as that potentially.

It wasn't dark blonde?.....Dark blonde, I'm not familiar even with the colour but wouldn't say mouse –

And she described a small grey in colour dinghy?.....Yes.

So the theme continues, doesn't it, grey?.....Yes.

And Mrs Powell, as you know, saw the dinghy at about one – about two o'clock?.....Yes.

Thank you. Now it's patently obvious that had you followed up the ownership or usage of that grey dinghy that you might have got some other results and identified other persons perhaps, or person, onboard that boat?.....I believe we adequately covered it at the time.

But thinking back now you're not as confident, are you?.....Not as confident.

No.....As you've put it.

No, not confident at all, are you, because -.....I'm still confident –

- it shows a glaring gap, doesn't it?.....I'm still confident that we covered it.

Well you tell me when you put out a plea to the newspapers, either you or Inspector Powell who was doing the press releases calling for information about a grey dinghy –when was that done?…….A grey dinghy?

Mm……..We didn't put out a plea for that.

No – never put out, was it?…….No.

But surely at some stage, you and your colleagues must have sat down and had a bit of think tank about all of this?…….Yes.

And compared notes?…….Yes.

Surely at some stage the existence of a grey dinghy as opposed to a white dinghy with blue trim must have come to the fore?…….It did.

It did. And what was the description, we'll just ignore that and hope it goes away?…….No.

Well, Inspector Powell was responsible for a lot of press releases, wasn't he?…….He was, yes.

We saw him on TV night after night telling us about the investigation even though he wasn't running it, you were, didn't we?……Yes.

We had the pleasure of his face on our television sets, correct?……Yes.

We had the pleasure of reading his pithy words in the newspaper of the day didn't we?……Yes.

And not once did Inspector Powell call for anybody knowing anything about a grey dinghy to come forward?……No.

No, because it was just put to one side wasn't it?……No, it wasn't.

It wasn't followed up?……It wasn't put to one side.

It wasn't followed up was it?……Fired up?

Followed up…..Followed up. I believe it adequately was.

Well tell me, maybe I've missed it, when did you go looking for the grey dinghy and where did you look?

MR ELLIS SC: Well I object to this. Now my learned friend has introduced 'the grey dinghy' as if it was –

MR GUNSON SC: All right, a grey dinghy –

MR ELLIS SC: (indistinct words) dinghy than the one that was described by Mr Liaubon for instance as a grey dinghy and clearly owned by the accused. Now to introduce 'the grey dinghy', as if he's established that it's something different is quite misleading in my submission.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I'll frame it another way. (Resuming): Did you look for a grey dinghy that answered the description given by Mr Conde?……No – a grey dinghy?

Mmm……Well, yes.

Did you make enquiries to try and determine whether anybody could identify a grey dinghy such as that identified by Mr Conde?……No.

No…..No.

And when you went down to the yacht club on the 29th you most certainly did not discuss with your fellow yachtsmen down there who were duly assembled the grey – sorry, a grey dinghy as seen by Mr Conde - ……No.

- because you hadn't seen his statement at that stage?……That's correct.

Thank you. Did you ever go to Inspector Powell and say, "Look, Inspector, there is this grey dinghy Mr Conde's described why don't we put out a press release and see what information we can get"?……No, I did not.

Inspector Powell ever suggest it to you?……No, he did not.

Did any of your subordinates suggest it to you?……No.

Right. And with the great gift of hindsight perhaps that should have been done, Sergeant, shouldn't it?……The great gift of hindsight?

Yes…….As you've put it, then yes.

Yes, because I suggest that already by this stage you were directing your attention to Ms Neill-Fraser and to nobody else?……That's not correct.

And today we have no idea who was responsible for that grey dinghy being out at Four Winds at 3:55, do we?

MR ELLIS SC: We've got the same question, but in any event the question's impermissible in my submission, it's a question for the jury, not the witness. But yet again my learned friend is trying to assert that the grey dinghy he has suddenly happened upon is something different to what other witnesses have described without exception as being the grey – the dinghy belonging to Four Winds and operated by the accused.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Well that's a matter of debate, your Honour, we'll come to it. Perhaps I'll phrase the question another way. (Resuming): Assuming that Mr Conde's description is accurate –

MR ELLIS SC: Well again the witness is being now taxed about several things, there's Mr Conde's description given, as I understood it at least and I don't think my learned friend differs, for the first time ever in evidence last week and there's Mr Conde's description of a grey dinghy. Now which is it that my learned friend's now saying that the detective should have followed up?

MR GUNSON SC: Oh I'm more than happy to –

HIS HONOUR: Well what's your question, Mr Gunson?

MR GUNSON SC (Resuming): Based on the description given to police officers by Mr Conde on the 29th January 2009 you don't know who took that dinghy as he described it out to Four Winds, do you?……No.

And based on the description of the female witness referred to as P36 the same proposition is applicable, isn't it?……Look, yes.

Yes. Thank you. Now – Just bear with me, your Honour? Just to move away from the dinghy for one moment; did you at any stage weigh the fire extinguisher you were apparently – you were able to get from Tasmanian Fire Service?…….I did but not on any official scales.

Yes.....Officially –

What did you weigh it on?.....A typical set of fisheries style scales.

Yes. Where did you do that?.....I think that was in the forensics area –

All right. And -.....- up on the fourth level.

- you determined it was fourteen kilograms?.....Yes, I'd say that's an approximate too.

That's what I'm trying to workout because you see, you've said "approximately" -.....Yes.

- if you were weighing it on some sort of weighing device, some sort of scales, presumably it registered?.....It came up at fourteen kilograms, yes.

Right. So it came up exactly on fourteen kilograms?.....I couldn't tell you that the pin –

Give or take a bit?.....Give or take a little bit, yes.

Is there any reason why in your – one of your lengthy records of interview with the accused you said it weighed ten kilograms, or was that just a slip of the tongue?.....That must have been a slip of the tongue at the time.

Thank you. On how many occasions did you actually inspect the Four Winds?.....I couldn't tell you off the top of my head, there was a number of occasions.

Just roughly?.....Oh, well there was twice on the first day, and I visited it on occasions out at the – at the dock at Goodwood before it was handed back, so maybe five, six.

Right. And which of those occasions did you put those ropes across the hatchway down into the saloon that is described in the photographs?.....That would be close – no, that was the 12th, 13th. Perhaps the third or fourth occasion.

Right. Did you try and lift anybody out?.....Yes, Detective Sinnitt.

But that was from the mizzen mast by pulling him directly to the mast, wasn't it?.....That is correct.

You didn't try and replicate putting the rope over the burn marks, as they've been described loosely?……No, we didn't do that.

Or rub marks?……No.

Didn't try that?……No.

Was there a reason for that?……Well the reason was that we even did it wasn't for any specific thing other than to demonstrate to the others that didn't know anything about yachts at all that a winch can lift weight, was just tie it round a winch.

Hardly riveting information, was it?……It was only for their benefit.

Right. It wasn't some controlled experiment or anything?……No, it was not.

Merely to educate the uneducated police officers who knew nothing about yacht winches?……Just to show that it's a possibility, yes.

Well I mean it's blindingly obvious, isn't it?……Yes, to me it is.

They – they're there to lift up heavy sails, aren't they?……And take heavy sails under quite a strain.

Mm, that was the whole purpose of it all?……It was just we were going through a number of scenarios and that was one in our minds, what –

And one of them was if you put a rope round the winch on the mizzen mast and throw the rope down inside you can pull something out of the inside of the yacht?……Yes.

Blindingly obvious, isn't it really?……Yes, to me, yes.

Didn't even require an experiment, did it?……Well it just demonstrated a winch could be used to do it.

Right…….Didn't require one in my mind, no.

But you didn't try and do it by putting a rope over the side, as it were, to try and replicate using the side winch?……No.

And just hung the ropes there?……Just draped them over the – made a line up the burn marks.

Right. Did you put any ropes down through the for'ard hatches?……No.

Right. Didn't do that at all?……No.

Thank you. Your Honour, is that a convenient time?

HIS HONOUR: Yes it is. Now ladies and gentlemen, this isn't a criticism of anybody but it doesn't look like we'll be finishing this case this week. On Friday I don't plan to sit in the afternoon so you can count on having Friday afternoon off, although I may get you to start half an hour earlier in the morning to make up a bit of lost time. The jury can make their affirmation and the Court will adjourn until ten o'clock tomorrow morning.

JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:36AM ON WEDNESAY THE 6TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: - reminded of his oath.

<SIMON MATTHEW CONROY AS PREVIOUSLY SWORN

HIS HONOUR: Yes, take a seat. Mr Gunson?

<XXN - MR GUNSON SC: (Resuming): Thank you, your Honour. Mr Conroy, after Court adjourned last evening you had a discussion with Mr Ellis, didn't you?.....That's correct.

And as a result of a request made by him you went and re-interviewed Mr Conde last night, is that right?.....That is correct.

And you took a further statement from Mr Conde of his observations on the 26th of January 2009, didn't you?.....Yes.

And what was the object of going to see Mr Conde?.....To establish any further lines of inquiry that I might be able to make.

Yes.....Yes.

And was that what you were asked to do by Mr Ellis -.....Yes.

- after Court?.....Yes.

Right.....Suggested.

And were you able to establish any further lines of inquiry that you might make?.....No.

No. Did Mr Conde though, in the course of his discussions with you, expand at all on the description of this grey rubber boat that was seen

behind the Four Winds at 3:55?.....He – he gave me a version of the – what he says – I don't think it was an expansion, he told me what he –

Well he did expand on the earlier description, I suggest -.....- that you – oh he expanded his previous description of a grey dinghy.

Yes. Yes, by telling you it was – or seemed to him it was 'beany'?.....Beamy – yes.

Beamy?.....Yes.

Did you ask him what he meant by 'beamy'?.....I asked him if he could give me an estimation of the width of the vessel and he said he couldn't but it was beamy.

Beamy?.....Yes.

But did you ask him to expand on that?.....Beamy?

Mm.....We drew a comparison would it fit in the tender racks and he said it wouldn't

No.....- as in width of the vessel.

So – .....He couldn't –

- and the tender racks you refer to are the tender racks on the stern of the Four Winds?.....No.

Right. What tender racks are you talking about?.....Racks at the yacht club he's a member where –

Right. .....- the people store their tenders.

Tenders on the wharf where people can put their tenders?.....Yes.

Right. And hoist them out of the water, is that the – what we're talking about?.....Storage racks.

Right. .....Yes.

So he said it wouldn't have fitted in the storage racks at the Royal Yacht Club?.....That was his best – yes –

Right. .....- in regards to the beaminess – width.

Did he give you any further description of the condition, for instance, of the dinghy that he saw?……Yes, he stated that it was older and faded looking.

Older?……A worn and faded or older – older faded – faded –

Did he say something like it was – it didn't appear new and it was scuffed?……Scuffed.

Scuffed, was that the word he used?……That rings a bell, yes.

Right. All right. And did he give you a further description of the lee clothe that he gave to us in court?……Yes.

And what did he say about the lee cloth?……Well he firstly drew me a diagram of the vessel –

I'm interested in what he said to you please……Yes, and that it was grey material.

A grey material?……Yes.

Right. Did he say anything more about the lee cloth?……He – well he described it as he drew it so –

Mmm, just tell me what he said to you?……That it was stretched across the front of the vessel and came back a certain way. That it – described it as I think stopping some water but it was till taking in water, the vessel was still taking –

So he remembers the dinghy taking in water now does he?……It was taking in some water and he used a term I can't recall at the moment which was his –

And did he say anything about the type of bow that he observed on this dinghy?……The front?

Yes…..Yes. Yes, it was a more pointed bow.

Yes. Right……Than the traditional stub nose or flat nosed bow.

Right, a pointed bow?……Yes.

Did he say anything about any impression he had as to the sort of use it might have, it's origin for instance?……Yes, he was trying to

explain that its appearance was more of something that – it's not something you would expect as a pleasure craft or as a – something that would be put on a leisure – on a yacht, it was more of a – had more of a commercial look about it.

More of a commercial - ……Yes.

- type product, did he say that, be more of a commercial type product?……Type product, yes.

Rather than something that might be sold to the leisure boating market?……Yes.

Right, thank you. Now you didn't of course take the statement from Mr Conde did you?……Yes, I did.

You did take –

HIS HONOUR: Well now hang on which statement are we talking about?

MR GUNSON SC: Sorry, I put that poorly. (Resuming): The original statement?……No.

No. Have you had a chance to compare – I'll go back a step. Did Mr Conde provide the interviewing officer with notes, the original interviewing officer?……He did.

And presumably you've read those original handwritten notes provides by Mr Conde?……I cannot recall reading them.

Yes. Would you agree with this – I'll go back a step. Is it an appropriate practice when somebody provides, for instance, notes to an investigating police officer or a draft statement simply to copy out what the witness has given to you without asking any addition questions?……I can't – that would be dependent on what was written out.

Mm. Pretty lazy way to go about your work, isn't it, if you just copy somebody's notes out and adopt that as a statement without asking them some questions?……It would depend on what the quality and contents of the notes were.

All right. I want to ask you some questions about this particular methodology, and do you have the original notes that Mr Conde gave the police officer with you?……No.

No. They're in this courtroom though, aren't they?……Yes.

All right. Can they be produced to the witness, please, to refresh his memory at this stage?

MR ELLIS SC: Well they can't refresh his memory because he didn't – he didn't take them.

MR GUNSON SC: All right, no I won't do it that way.

HIS HONOUR: Have you ever looked at these notes?

WITNESS: I cannot recall, your Honour.

HIS HONOUR: All right. Mr Gunson.

MR GUNSON SC: Can they be produced to the witness so he can determine whether or not he has seen them before.

HIS HONOUR: Mr Ellis.

MR ELLIS SC: My learned friend knows what he's doing.

MR GUNSON SC: Just put them back for one moment, will you. I'll come at it another way. Bear with me for one moment, your Honour. (Resuming): Would you agree with this proposition, that if Mr Conde had brought into the police station effectively a draft statement and had given that to an investigating officer and that investigating officer had asked no questions of Mr Conde about his statement; that that would not be an appropriate way of –

MR ELLIS SC: I object to this, your Honour – there is no evidence of that that took place. It is entirely hypothetical.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I'll approach it a different way. (Resuming): Why has it taken until this trial for there to be such a more detailed description of this dinghy to be given?…….I have no explanation for that.

Well one explanation must surely be that nobody bothered to ask Mr Conde the right questions – it has to be the answer doesn't it?…….It could be an answer, yes.

It is the answer, isn't it?.....Mm.

His previous statement doesn't stay anything about the dinghy being 'beamy' does it?.....No.

No. It doesn't say anything about the bow cloth, does it?.....No.

It doesn't say anything about a 'pointy nose'?.....No.

It doesn't say anything about it's colour, apart from just it was grey?.....Grey.

It doesn't say anything about its width?.....No – beaminess.

It doesn't say anything about the fact that it was thought by Mr Conde to perhaps be a commercial type dinghy?.....No.

And it doesn't say anything about it being, in Mr Conde's opinion, not new and scuffed, does it?.....No.

Now they would have all been sensible questions to ask Mr Conde, wouldn't they?.....Originally.

Yes. .....Well I wasn't there.

Sorry?.....I wasn't there.

I know you weren't, and it's not a criticism of you. Had you been there, I suggest, you would have asked more questions of Mr Conde?.....Yes.

Yes.....Yes.

And you have to accept that those questions should have been asked by the investigation officer who took his statement?.....Yes, I'd accept that.

And you'd accept that if the investigating officer simply adopted Mr Conde's handwritten draft, typed it up and got him to sign it as a statutory declaration, that that is pretty poor, isn't it?.....Yes.

Yes, thank you. Now – so what we now have is a very fulsome description of this dinghy expanded upon as a result of your work last night don't we?.....Yes, we do.

And to put it in lay terms the trail is now somewhat cold to try and track down the owner or operator of that dinghy?……Yes.

Correct?……Yes.

And would you accept that had you had all of that information that you now have back on or around the 29th January 2009 that you would have put in train enquiries to try and identify the owner of that dinghy and/or to locate the dinghy?……I'm not sure that I actually would have at that time.

Well surely you would have been interested to find out who was out there at 3:55 in a grey large rubber dinghy?……When I considered it with all the other statements that were taken I may have –

Are you seriously saying that you wouldn't have been the slightest bit interested in trying to find out who was on the Four Winds at 3:55 who'd taken that dinghy out there?……Yes, we were trying to find that out.

MR ELLIS SC: Oh, that's entirely unfair, it's an entirely unfair characterisation of what has been said, he answered question put.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: A perfectly proper question in my submission given the way in which this investigation has taken.

HIS HONOUR: What precisely did you ask him?

MR GUNSON SC: I want to know whether or not in short terms he would have put in place a method of trying to locate the dinghy had he known about its fulsome description back on the 29th January 2009.

HIS HONOUR: And, Mr Ellis, what do you say?

MR ELLIS SC: I objected to a particular question which the transcript will show was a mis-description of the evidence that had come before, that isn't what my learned friend now puts.

HIS HONOUR: All right. Well you ask your next question – start again, Mr Gunson, we'll see how you go.

MR GUNSON SC: (Resuming): Had you had such a detailed description of this dinghy on the 29th January 2009 would you have

been interested in making enquiries to see who might have been on the yacht at 3:55?……Would have been interested, yes, that's what I was trying to do.

Yes, right. And as a result of the inadequate description of the dinghy an assumption was made that it had to be the accused out there, that was the assumption that was made, wasn't it?……That was not the assumption that was made.

It was certainly what was put to her by the officers at various stages?……Yes.

Yes, and she was emphatically told, and you well know it, that she'd been seen or that her dinghy had been seen there at 3:55.

HIS HONOUR: Mr Ellis.

MR ELLIS SC: As my learned friend knows, unless the witness was there he – well my learned friend can identify the occasion of course and see if it's relevant to this witness.

HIS HONOUR: Well I could be wrong, but my recollection of the interviews is that what was put to her was that a dinghy was seen there, not that her dinghy was seen there.

MR ELLIS SC: That's the recollection, your Honour, yes. What was put could have been of any occasion, it was simply not specific to the witness' knowledge, or the witness' presence more to the point.

HIS HONOUR: Well Mr Gunson, is there a particular passage in the interview –

MR GUNSON SC: I'll deal with it in a slightly different way.

HIS HONOUR: Yes.

MR GUNSON SC (Resuming): You weren't present when Detective Sinnitt went to the accused's home and took a series of notes in an interview with her in the presence of Detective Milazzo, were you?……No.

But you've since read those notes?……Yes.

And you have seen his statement in this case, haven't you?……His statement?

Yes.....In –

Proofs of evidence?.....Yes.

You've read his proofs of evidence and you know full well that it was put by Sinnitt to the accused that she had been seen there on the dinghy – sorry, with her dinghy at 3:55 and then as a result of that Sinnitt went through process of trying to work out times?.....The purpose of him talking to her was to work out times.

No, no, no, you know that Sinnitt put it to her that she had been out at that boat at 3:55 because a dinghy was seen there?.....I don't recall that he put that to her.

MR ELLIS SC: Nor can I recall it being put to Sergeant Sinnitt, your Honour, and the unfairness of this is quite apparent – Constable Sinnitt, I should say.

MR GUNSON SC: Well I'll put it another way.

MR ELLIS SC: No, there's an objection.

MR GUNSON SC: I withdraw the question, we'll move on.

HIS HONOUR: Yes.

MR GUNSON SC (Resuming): Mr Conroy, is it appropriate practice for a police officer when interviewing a person who is suspected, perhaps of having committed a crime, to mis-state the level of the evidence against that person?.....(no audible answer)

Is it appropriate to mis-state a position to a person?.....No.

No, it's not appropriate, is it?.....No.

And in questioning, you're not supposed to be devious, are you?.....No.

You're supposed to conduct yourself with honesty and integrity?.....Yes.

Yes. Now you've satisfied yourself that this grey dinghy was there at 3:55; we have the evidence of Mr Clarke that supports Mr Conde, don't we?.....Mr Clarke, yes.

Yes. …….To a degree.

He describes a large grey dinghy, doesn't he?…….Mr Clarke?

Yes……..Is it a large grey dinghy or a –

Sorry – no, you're quite right. He described a small grey coloured tender tied to the side.

MR ELLIS SC: So indeed – more audibly.

MR GUNSON SC: I beg your pardon?

MR ELLIS SC: Could that be put more audibly, you put –

MR GUNSON SC: No.

MR ELLIS SC: - my learned friend put "large grey dinghy" audibly but the correct description less audibly.

MR GUNSON SC: I'll put to the witness – the question to the witness at the level I think is appropriate until directed otherwise. (Resuming): Now –

MR ELLIS SC: Well I'll ask you to direct my learned friend –

HIS HONOUR: Well look the – let's cut through all this; the jury have got – the jury will have in the jury room, Thomas Clarke's statement; it's exhibit P29. It was read out by Mr Shapiro on the day when a large list of agreed facts was tendered, and Mr Clarke's statutory declaration says:

> *I noticed that the boat had a small gre- coloured tender tied to the side of the boat. I think the tender was probably an inflatable dinghy but cannot be sure.*

So I'll invite you to go on, Mr Gunson.

MR GUNSON SC: Thank you, your Honour. (Resuming): And of course, some considerable time after, and indeed after the accused was charged, the witness who we've just identified – only identified as P36 came forward, and she described a "large mid-grey dinghy" – correct?…….Again, I haven't dealt with her.

But you've seen her statement?…….I have, yes, yeah.

All right

MR ELLIS SC: Well just a second –

MR GUNSON SC: Now you –

MR ELLIS: No, my learned friend continues quite wrongly to – no, I take it back, it is there, I'm looking at the first description.

MR GUNSON SC: Well, thank you very much.

MR ELLIS SC: You're right, a large grey dinghy.

MR GUNSON SC: Thank you.

MR ELLIS SC: You can see why I'm on edge.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: It would be crass of me to say touché but I won't. (Resuming): Now we'll concentrate on my questions to you. The opportunity is hopelessly lost now to try and follow up the ownership of that grey dinghy seen by Mr Conde isn't it?……Yes.

It wasn't, that is the opportunity, wasn't hopelessly lost on the 29th January was it?……No.

Because if the right questions had been asked of Mr Conde we now know, and it's patently obvious, that a fulsome description of the dinghy would have been obtained?……Yes.

Mmm, and I imagine that you would have made a number of enquiries to try and locate that dinghy?……There had been enquiries made considered with the totality of all the witness accounts at the time.

Just answer the question. Had you had that fulsome description in late January would you have made further enquiries?……I can only answer as I did before.

The answer has to be, "Yes, we would have been interested in trying to locate that dinghy to find out who was out there"?……..Interested in trying to establish all the dinghies and consider everyone's descriptions.

You wouldn't have ignored it would you?……No.

And what enquiries – I withdraw that. And I can suggest some enquiries to you and you tell me whether you think they are reasonable enquiries. You would have gone to the two yacht clubs in Sandy Bay and looked for a dinghy like that?……Which we did.

No you didn't go and look - ……Well we went to the yacht clubs looking for inflatable dinghies.

You didn't go and look – just listen to the question. You didn't go and look for a dinghy that answered the full description now given by Mr Conde did you?……No.

No, concentrate on that. You would have gone and looked for a dinghy that answered that fulsome description wouldn't you?……Yes.

Yes. You might have gone to some of the commercial operators along the Battery Point shore who operate slip yards and various things along there?……Yes.

Yes. To see whether they, as people who work in the area, were familiar with the dinghy……Yes.

That would have been sensible?……Yes.

For instance Taylor Bros?……Yes.

And I think Muirs are down there?……Muirs?

Muirs……Yes, there's a number of – not familiar though.

And along that strip there from Taylor Bros along there's probably half a dozen marine type operators working there?……Yes.

Yes. You might have gone to the yacht clubs on the eastern shore?……Yes.

You might have gone there, mightn't you?……Yes.

You might have put out a press release that – Inspector Powell might have put out a press release asking for information about it?……Yes.

Yes, these are all possibilities, aren't they?……Possibilities.

Right. So today we haven't the faintest idea who was out there, have we?……At four o'clock?

Mm.....A reasonable idea.

No, no, we don't know who the operator of that grey dinghy was, do we?.....We don't know that that is in fact an accurate description.

MR ELLIS SC: Your Honour, your Honour warned the jury yesterday that what detectives think is the case they should be careful about, now here's my learned friend asking what the detective thinks is the case.

HIS HONOUR: Mr Gunson.

MR GUNSON SC: I'll address it in a different way. (Resuming): It's a reasonable proposition, isn't it, to think that the dinghy didn't get out there by itself, it didn't just float out there, did it?.....That's a reasonable proposition.

And it's a reasonable proposition to think that somehow or other it was driven out there or rowed out there?.....Yes.

They're the two options?.....Yes.

Right. And it's a reasonable proposition that if a dinghy's tied to the side of a boat and a person isn't on the deck that they're either inside that boat, the Four Winds, or have been taken off it by yet another boat?.....Yes.

And it's a reasonable proposition to say to you that you have no idea whether there was one person who went out in that dinghy or more?.....That's correct.

Thank you. And the same propositions are relevant at 5:00 p.m. when the witness, P36, saw the dinghy?.....Yes.

Yes.....Yes.

And you have no idea at what time that dinghy left the Four Winds?.....No.

Now you are aware that P36 in her statement says that one of the guests onboard the boat with her commented that the Four Winds was sitting low in the water?.....That's in her statement.

Yes.....Yes.

Did anybody ever follow her up about that to find what was meant by "sitting low in the water" as to how low?.....I have no idea, I wasn't part of the investigation team at that time.

Right. And it's something that should have been followed up, isn't it?.....I can't make comment –

Right. Well -.....- it's another –

- why do yachts sit low in the water, sergeant?.....This –

From your yachting experience, tell us?.....I can give you an opinion in relation to this yacht and to other yachts –

No, just -.....- sometimes they're taking on water – yes.

Could be taking on water?.....Or this yacht sits low in the water.

That's right -.....Traditionally.

- either it sits low naturally -.....Yes.

- because of its – the way in which it's been manufactured, or it's taking on water?.....Yes.

Right. And you've seen this yacht on its moorings since then, haven't you – since January?.....On its moorings?

Yes.....Only from a long – a long distance.

Has it on any occasion when you've seen it in recent times appeared to sit low in the water?.....In my opinion it does sit low in the water.

How low – or unnaturally low than other yachts?.....Well it has a low – a low deck, so it's in the design.

It gives that impression?.....Yes.

Right. Would you not have thought it might be reasonable as a trained investigator for the persons who accompanied the witness P36 on that yacht that day to be interviewed?.....Yes.

That would have been a very sensible thing to do, wouldn't it?.....Yes.

It wasn't done, was it?.....I can't say if it was or wasn't.

Well given that I haven't received any statements can you – would you accept with the disclosure policy that if they'd been taken - .....That you would have them.

- I would have got them?.....Yes.

Right. So not having been disclosed in accordance with the disclosure policy, equals no statement, doesn't it?.....Yes.

Yes. Now when the first forensic report came through, a person was identified as "Person E:" – that's correct, yes?.....- There were a number of people yes, identified as –

Just listen to the question. Was a person identified as person E?.....I cannot recall.

Right. You saw the reports as they came through....The reports that came through, yes.

When did you get the first forensic services report?...It was the –had a meeting at Forensic Science Services and they handed us a copy and we went through exhibit lists.

It's not very helpful to me. The question was when?.....I cannot recall the date.

Did you get – well, would your investigation log tell you that?...I have a note of it, yes.

Can you tell me the date that you received your first forensic report from Forensic Services please....May I look at my notes your Honour?

HIS HONOUR: Yes, look at your notes.

WITNESS: The first meeting with them was on the 2nd of the 2nd, but that wasn't when the reports were ready. The 9th of the 2nd is when they had some information available to them.

Right. And what information did that relate to, just tell me the subject?.....The – that day was set – they had – didn't have actual results they had exhibit lists, which we had to set about doing – prioritising, by my recollection, for DNA – further DNA analysis.

So you were not given any results on the 9th of February?.....No.

Right. Thank you. When were you first given results by FSS?.....The next page – the 10th – the 10th they outlined to us results that they had were – yes.

As to what subjects; the yacht or the tender?.....Overall – everything that they had examined at that point, I can't recall what.

Did they at that stage have DNA results available?.....They had some DNA results available, I cannot recall which ones they were, I'm sorry.

Well do your notes record anything about DNA results being available – just tell 'yes' or 'no'?.....No.

Thank you. And can you tell me whether before you got the report of the – June 12th and the report of the 1st July whether you were given any preliminary written reports by Forensic Service Services?.....Before that stage?

Yes.....I'd left by that stage but they had being giving us reports through but they were essentially an evolving document as they completed more tests.

When you say evolving document what do you mean?.....Documents set out with the exhibits listed through it. If they have a batch, I think they call them batches, come through then they had more results on and the document would be re-forwarded.

Just bear with me, your Honour. Could – I can't give you the exhibit number but the FSS report was put before the jury as a consent document do you have that handy, it looks like this, it looks like that –

HIS HONOUR: It's about a fifty page document.

MR GUNSON SC: P61 perhaps. Could that just be shown – could I have a look at it first? (Resuming): P61, just have a look at this document please.....Thank you.

If I understand you correctly what you're saying is that you receive from time to time a document that looks like that but it was an evolving process - .....Yes, it looks like.

- and as tests were continued the document was expanded upon?……That's correct.

Thank you. And you of course wouldn't have copies of the earlier reports as they came through?……No, if I haven't printed them out.

I presume these came through electronically?……Yes.

And you looked at them and as they were expanded upon you continued just to look at them as they -…….That's correct, yes.

Thank you. All right, now when did you finish with this investigation and move on to other duties?……The 9th June, by my recollection, or thereabouts.

So you finished on the 9th June 2009 or 2010?……2009.

Right, and went off to completely different duties?……Yes.

Did you hand over this investigation to somebody else?……At that point I completed a file and submitted it for review and further recommendations.

Right, and to whom did you submit it to for review?……Detective Inspector Powell.

Right, and he would in the normal course of events either make the decision as to what would happen or he'd refer it for further advice, is that the -…….Yes, that would be correct.

Right, and after that report was completed did you have anything further to do with this case?……No.

None whatsoever?……Apart from being here.

Yes……No, I haven't –

But in terms of investigation -……Investigations, no, I haven't.

All right. Was it reported to you by anybody that DNA of Meaghan Vass had been found on board the Four Winds at some stage?……Yes, I'm aware of that.

Who reported that to you?……I had regular contact with Detectives Sinnitt and Sice –

Yes.....And Detective Sinnitt informed me that he was undergoing some enquiries in relation to that side of things.

Thank you. And did he keep you informed of his investigations with that?.....No.

Right, thank you. Well in the interview with the accused that took place on the 4th of March 2009 -.....Yes.

- I'll just go back over that a bit for a moment; that was a completely voluntary interview?.....Yes.

And she didn't have to take part in it?.....No.

And she wasn't warned?.....No.

She was told that if she wanted to go at any stage she could go?.....Yes.

And she stayed for the full three plus hours?.....That's correct.

You put this question to her:

> *We –*

Page 548, your Honour:

> *We – we're dealing with a mystery, we don't know what's happened, and you're the last person to see him.*

Now when you put that to her, was that your genuine belief?.....That she was the last person to see him?

Yes.....Yes.

You didn't turn your mind to the person, whoever it was, or persons, who'd been on that yacht, had gone out there at least 3:55?.....I think we'd established that she had been on the yacht that stage – at that time.

No, no just listen to the question; when you asked her that question did you turn your mind to Mr Conde's evidence?.....No.

No. Now you never at any stage said to her, in any of the interviews, that a large grey dinghy had been seen at 3:55, did you?.....No.

Why not?.....As I believed she told us that she thought she was out there at that time.

Yes. Did you ever – did you ever ask her the rationale behind that?.....As to why she thought she was out there?

Mm.....She sta – yes, we did.

Did she ever tell you that Sinnitt had said to her at home, effectively, she was seen out there at 3:55, or words to that effect?

MR ELLIS SC: Your Honour, my learned friend keeps suggesting something which is not in evidence, nor was it put to Constable Sinnit.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Um, I think it was, your Honour. Is it convenient to take the morning break and I'll check the transcript.

HIS HONOUR: Yes, I'll check it too. The jury can make their affirmation and the Court will adjourn for 15 minutes.

THE JURY MADE THEIR AFFIRMATION

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Mr Gunson.

MR GUNSON SC: The starting point, your Honour, is page 738 of the transcript where Mr Ellis is leading evidence from Detective Sinnitt, starting at line 35.

HIS HONOUR: Yes.

MR GUNSON SC: At this stage he was taking the detective through the detective's notes that your Honour will recall.

HIS HONOUR: Yes.

MR GUNSON SC: And just shortly before that, line 21, Mr Ellis says:

> *Thank you, next entry. Sue's movements (last – after last on yacht -*

Then there's a zero, which I think is a typo.

> *- our timeline. What does that mean?.....Oh it's constructing an investigation timeline – that's the heading for – I was about to ask the accused questions in relation to her movements on the afternoon of Australia Day.*
>
> *Thank you. Clothing; same as photo? 2:00pm to 3:55pm must have been yacht. Stayed longer than I first thought.*

HIS HONOUR: Just a minute – can I have P64 please? Maybe I've got it – so I have. Yes, all right, I see that in the notes now, yes.

MR GUNSON SC: (Resuming): Yes. Mr Ellis said:

> *Can you explain that to us please – the times?*

Answer:

> *The relevance of 2:00pm was, up until that point of the investigation the accused had maintained that that was the – what was approximately the last time she saw Mr*

Chappell alive and onboard Four Winds on the mooring.

Mr Ellis:

Yes.

Mr Sinnitt:

I asked her if she could recall her movements after that time and she said she'd become aware of the observations of a witness relating to a dinghy being at the yacht later that afternoon.

Mr Ellis:

Mm.

The witness:

I then informed her that that witness was confident that the timing was 3:55pm.

Yes.....And her response was "It must have been me on the yacht".

Right. .....She then said "Stayed longer than I first thought" and then gave an account of her movements or actions onboard the yacht.

And I then take your Honour down to line 27:

I asked her if she recalled what time she'd left the yacht and she said she didn't – she didn't – she did not know. I pointed out to her that if it was her onboard at 3:55 –

MR ELLIS SC: Sorry, if it was her.

MR GUNSON SC: (Resuming):

- if it was her onboard at 3:55pm the earliest possible time she could have left was around 4:00pm.

Yes. Did she disagree with – did she agree with that?.....Yes.

Now that was then taken up by me in cross-examination of Detective Sinnitt at page 800 – I'm sorry, 799 –

HIS HONOUR: Yes.

MR GUNSON SC: - where I read to Detective Sinnitt what he had said in the course of evidence in chief, and I don't pause to repeat that to your Honour, but at 800 I said to Detective Sinnitt –

Now that was your evidence yesterday wasn't it?.....Yes.

Who was the witness you were referring to? Who was 'confident the timing was at 3:55'?.....Paul Conde.

Paul Conde, yes.

And I then went on to address the statement and I said –

Now you've read your statement now did Mr Conde, to your recollection, in his statement say anytime he saw Ms Neill-Fraser on Four Winds at 3:55?.....No.

And I then said –

Did you put – did you put this to the accused that the witness we now know as Mr Conde effectively saw it – saw her on the yacht at 3:55?.....No, I didn't put that to her.

And that's where the state of the evidence is and that's how we got to this point. So it really – it was put to Sinnitt, my friend said it wasn't but it was put to Sinnitt, that in fact he had drawn her attention to Mr Conde's statement and had elicited an answer from her on that basis. But we would – go the next step and say without properly disclosing the contents of the statement to her; that is a large grey dinghy.

HIS HONOUR: Well you –

MR GUNSON SC: And that's what I want to explore is the methodology of questioning with this witness as his senior officer and an experienced detective.

HIS HONOUR: But at page 806 at line 1 you suggested to Mr Sinnitt that he'd misled – line 2, that he'd misled your client. Line 4 you said –

> *You set out to mislead the accused, Mr Sinnitt?.....No.*

And at 807 line 1 you asked –

> *Do you accept that you may have misled her by not telling her it was a grey dinghy?.....No.*

MR GUNSON SC: Yes, thank you, your Honour.

HIS HONOUR: All right, so the proposition is that you should be allowed to ask what?

MR GUNSON SC: Ask this witness whether in his opinion the methodology adopted by his subordinate in questioning the accused in this manner was an appropriate methodology without revealing to her the true substance of what Mr Conde had to say about the description of the dinghy, that's the issue. Now whether Sinnitt misled her deliberately or inadvertently is not the issue, the question is whether the methodology adopted was appropriate.

HIS HONOUR: Right, thank you. Mr Ellis.

MR ELLIS SC: Thank you, your Honour. Again that isn't what I objected to and I asked that I have the benefit of a ruling in the presence of the jury about the question that Mr Gunson asked – my learned friend Mr Gunson asked, which was that it was put to her that she was seen on board at 3:55, they are the words, that's what I've objected to as not being evidence, nor having been put to Constable Sinnitt. Now if that's going to be left swinging to the jury without a ruling on its misleading nature in my submission that's not a good place to leave it. My learned friend now looks back over the transcript and finds that the objection's well made and claims that that wasn't what he was asking, it was what he was asking. He asked, he put that to Sinnitt, had put to her that she was seen on board at 3:55.

HIS HONOUR: Is that what your last question was to the witness, Mr Gunson?

MR GUNSON SC: That was the intention behind it but I'm not able to say without seeing the exact words in the transcript, I didn't make a note of my question.

HIS HONOUR: Well it's important, we'd better have the last couple of minutes of the – of what was recorded before the break, if we could play that back, please.

EVIDENCE REPLAYED TO THE COURT

HIS HONOUR: Well we can go a lot further forward, take it forward to about 11.14. All right, stop the recording.

MR GUNSON SC: Well I accept the criticism and I withdraw the question in that form.

MR ELLIS SC: (indistinct comment).

HIS HONOUR: Well it's not a proper – it wasn't a proper question because it wasn't put to Mr Sinnitt, and it wasn't – there was no evidence to that effect given by Mr Sinnitt or Detective Milazzo. Now I'll tell the jury I've disallowed the question. Bring the jury back.

<JURY RETURN

HIS HONOUR: Ladies and gentlemen, when we took the break, Mr Gunson had asked a question that Mr Ellis objected to; the question involved the proposition that Detective Sinnitt had said to Ms Neill-Fraser that effectively she had been seen on the vessel at 3:55pm, or words to that effect. Now the evidence of Detective Sinnitt and Detective Milazzo doesn't include any assertion that – or sorry – well I'm tying myself in knots. When Detective Milazzo and Detective Sinnitt gave evidence neither of them said that it had been put to Ms Neill-Fraser that she had been seen on the yacht at 3:55 or anything to that effect. It wasn't suggested to either of them that Detective Sinnitt had suggested to Ms Neill-Fraser that she had been seen on the yacht at 3:55 p.m. or anything to that effect. The evidence of Detective Sinnitt was to the effect that he had told Ms Neill-Fraser that a witness had said that a dinghy was seen at the yacht at 3:55 and that she had said words to the effect, "It must have been me", or "I must have been on the yacht longer than I thought, or stayed longer than I first thought". Now – and then there was cross-examination of Detective Sinnitt about the fact that he hadn't revealed to Ms Neill-Fraser that the witness who had seen a dinghy at 3:55 had said that it was a grey one.

Well the question that Mr Gunson asked is – was not a proper question because it involved a proposition that something had been said to Ms Neill-Fraser when it hadn't even been suggested that any such thing had been said. Mr Gunson has withdrawn the question, we'll proceed. Mr Gunson.

MR GUNSON SC (Resuming): Timelines are important in interviewing witnesses, aren't they?.....Not every witness, it depends on the case.

Sometimes can be important?.....Yes.

And this was a case where it was important to have a timeline?.....This was a case where that was very important.

And was very important -.....Yes.

- because you wanted to know where Ms Neill-Fraser was on any given part of the day?.....I wanted to know what time she left that boat.

Yes, and Sinnitt was charged with the task of going to the house and finding out?.....Establishing the timeline.

Yes.....Yes.

On your directions?.....Yes.

And you've heard me read a moment ago in the absence of the jury some questions that were put by Mr Sinnitt to the accused?.....Yes.

And the answers that were given?.....Yes.

Now in those questions and answers that you heard there wasn't the slightest reference to a grey dinghy being identified at 3:55, was there?.....No.

No. And the response you heard was to the effect, as his Honour has just pointed out, "Well it must have been me", correct?.....Yes.

Now you knew before Sinnitt went up there that a grey dinghy had been sighted at the boat at 3:55?.....At the boat?

Yes.....Yes.

Sinnitt knew that, he's told us that.....Yes.

Yes. If you'd being interviewing this witness may I suggest to you that the appropriate course you would have adopted to say was, "That a grey dinghy was seen at 3:55 do you know anything about that", or words to that effect?.....No.

No. You would have misled her too would you?.....I wouldn't have misled her.

Well was it telling her the complete truth to say that a dinghy had been sighted at 3:55 without saying the obvious, namely, it was a large grey dinghy?

MR ELLIS SC: No, there's two propositions there. One is that it's obvious and the other one is it's the tenor of the question.

HIS HONOUR: Sorry, I can't hear you?

MR ELLIS SC: There's two propositions there, your Honour, because there's a comment interspersed with the – which one is should it have been said and two is was it obvious.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I'll approach it another way. I withdraw that question. (Resuming): Without providing her with the true facts the timeline that was obtained was quite useless wasn't it?……No, not at all.

Well you didn't get a true starting point did you?……We didn't get a true starting point, no.

No. She'd earlier told you she thought she was going – been off the boat by about 2 o'clock…….Yes.

So what was achieved – you tell me what was achieved by getting a start time of 3:55 by concealing, that's my word, some of the evidence?……We weren't going to put specific evidence to anyone at that point in time because whilst we focused on the fact Mr Conde saw a large dinghy other people had different versions.

Look, by the time this interview took place Mr Lorraine had come forward…..Yes.

And by his account from the statement you'd taken, and left out of course, he said it was whitish yellowish greyish I think – your words from yesterday?……Whitish creamy yellow I think.

In any event you, for whatever reason, didn't include that information in his statement?……No.

Right. And when was Mr Clarke interviewed – it's probably of no relevance. In any event, there was no question at this stage, you knew at 3:55 a grey dinghy was tied up to Four Winds?…….Yes.

Did you tell Sinnitt that he were not to mention the grey dinghy to the accused?…….No, I did not.

Did you expect him to mention the grey dinghy to the accused so she would fairly understand what was being put to her?…….Would I expect that?

Yes……..No.

Why not?…….Again this is on the, by my memory, early February.

Yes……..Yes.

Yes.....We still had conjecture about colours of dinghies, witnesses who saw dinghies, sizes.

But any view, Mr Conde's description, albeit it brief, did not answer the description of the dinghy of Four Winds, did it?.....No.

No.....Well this is my point I make; is that a number of people, including people that actually saw that – the accused's dinghy, called it grey. There was too much confusion surrounding the dinghies that were on the bay that day and witness accounts thereof.

Can you tell me the name of one witness – one witness who said the Four Winds dinghy was grey – identified it – identified that dinghy as grey?.....I believe Mr Liaubon called it grey.

Who else?.....I believe that the witness who – from the rowing club he – he calls it a grey dinghy.

Who was he – Mr?.....Oh, he's that chap that found it and he accompanied the police out to the vessel that morning.

HIS HONOUR: I think that's Farmer, isn't it.

MR ELLIS SC: Balding, I think it was.

WITNESS: Balding – that's him.

MR GUNSON SC: Just bear with me, your Honour. What Mr Liaubon said was:

> *I immediately noticed an inflatable white/grey new looking Zodiac sitting on the sand.*

.....Right. I apologise.

And if I suggest, and I stand to be corrected by my learned friend, that Mr Balding did not give a colour grey in his original statement to the police would you accept that?.....That's – again I can't accept that.

Beg pardon?.....I'd ask to see it again, I'm of the opinion that he did in fact call it grey.

Do you accept –

HIS HONOUR: Mr Gunson, have a look at page 186 of the Crown papers, beginning 'I saw' –

MR GUNSON SC: Yes. That's unfortunately missing from our folder at the moment, that's what's causing a mild little panic, we've had it out for another reason. Thank you. It's just been located by my junior, thank you. I'm sorry, your Honour, yes, thank you, you're correct. (Resuming): He described it as grey with dark blue trim, now -.....Who is that?

Right, any other witnesses?.....Mr who?

Mr Balding.....Balding, okay, thank you.

Grey with dark blue trim.....Right.

Mm, so any others who described it as grey?.....At that point?

Mm.....I can't think of any at the moment, but there was confusion.

Well let's come back to the question. Surely in endeavouring to get a timeline it would have been sensible to instruct Sinnitt to make sure she understood what the starting point was by properly putting to her what Conde had seen?.....I still am of the opinion that what he said was the correct thing to say.

But he – from there on, the timeline was quite useless, wasn't it?.....Well it was, yes.

Yeah. Because you didn't have a true starting point?.....No.

Right. .....Still don't.

You still don't – thank you. And had Sinnitt properly fulfilled his duty and questioned her about the starting time, you may have a got a more fulsome account?.....I doubt that very much.

All right. Now you – you have no criticism of Sinnitt for not doing that?.....No criticism at all, that's what I would have done.

You would have not told her the truth?.....We weren't sure of the facts.

You – what was wrong with reading to her Conde's statement?.....We don't disclose anyone – any statements at an early stage of an investigation.

What was wrong with saying 'a witness at 3:55 said he saw a large grey dinghy' and starting 'could that have been yours' – there would be nothing wrong with that, would there – you're not going to disclose the name of the witness?.....You're not going to disclose it full stop because someone else on his boat saw a small one.

Well just concentrate on the question that I've asked you?.....Well no, I don't agree with you at all on this question.

And so, it's been a complete waste of time on your timeline because of the way in which that question was directed to her?.....No, I disagree.

Yes. Thank you. Now in the course of the second interview, which was conducted in May, on the 5th of May – and 567 is the page to which I'll be referring, your Honour.

HIS HONOUR: Thank you.

MR GUNSON SC: (Resuming): You put this proposition to the witness – sorry, to the accused:

> *You'd be well aware that we ran a plea for a witness to come forward about who had some information for us?*

And she answered –

> *Yep.*

Your question then was –

> *That person rang us anonymously on the third day of this investigation after it basically hit the newspaper stating he had observed a tender dinghy fitting the description of yours being used and taken out of the darkness down in off Marieville Esplanade with an occupant in it.*

.....Yes.

Right?.....Yes.

And then you put to her, bottom of the page, your Honour –

What he saw – what he heard was the sound of an outboard motor and it came – the noise he initially heard was coming from the area of the Royal Hobart Yacht Club. He then observed a large inflatable, he described it as a large inflatable tender, which would be fair description of yours, light coloured leaving that area and it came across in front of where he was sitting in his car and it then headed – turned and headed straight out. He's given us a description of the person that was in – the occupant of it and he described that person as female.

Now when you put that to the accused did you have Mr Hughes' statement in front of you?……Not at that stage, no.

Had you taken Mr Hughes' statement?……No, Detective Puurand took his statement.

I asked you whether you did and the answer is, "No, I didn't", is that right?……No, no, that's correct.

You had read Mr Hughes' statement?……Yes.

And would it be fair to say that before you conducted this record of interview that you refreshed your memory from Hughes' statement?……Fair to say, yes.

Because that is what you're trained to do isn't it, it's part of the technique of interviewing to familiarise yourself with a statement you want to put to the interviewee?……Yes.

Now I ask you again did you have the statement there with you?……I went in with – the second interview I – no, I had a schedule of a list I prepared beside me.

Did you have a schedule of questions you'd written out in advance?……No, I didn't have a schedule of questions.

Right. Well –

HIS HONOUR: Did you have extracts of information taken from people's statements?

WITNESS: Yes, I prepared a sum – we call it a 'summary of evidence document' that we'd prepared at the time.

MR GUNSON SC: (Resuming): Right. And when you put those two questions to this wit – to the accused, did you read those from the summary of evidence you'd prepared?.....I can't recall if I did – I thought I had a good recollection at the time.

Well, it would be logical to do it, wouldn't it?.....Yes, it would, if you're going through –

I mean it's appropriate that you properly and fairly put the material in your possession to the interviewee?.....Yes.

And it's appropriate that you don't mislead them, either deliberately or inadvertently?.....Yes.

And it would be quite wrong to do that, wouldn't it?.....Oh I think it was fair – fairly put.

I didn't ask you that. I asked you whether you accept the proposition that to set out to mislead an interviewee is right or wrong?.....I guess – well wrong.

It's wrong, isn't it?.....Yes.

And if you make a mistake in putting something to an interviewee, then you ought to correct it immediately?.....Yes.

Right. Now do I understand it from what you've just said in answer to his Honour's question, that you prepared some sort of précis of what the various witnesses had said so that you could put that précis to the interviewee?.....Yes.

Do you have that précis there?.....Yes, but at this –

Thank you. Produce it for my inspection please?.....This is again an ongoing document –

I just asked to produce it please?.....If I have it – I do have it –

HIS HONOUR: Well is that the document that you had at the time of the interview?

WITNESS: I can't be a hundred percent sure this is the exact document, your Honour.

MR GUNSON SC: (Resuming): Is it a copy of it?.....It's definitely a document in that format. I cannot recall whether I've altered since or not.

Thank you. Can I have a look at that please -.....I have some pen marks to indicate that.

Thank you. Your Honour, I'd like to have the opportunity to read this – and perhaps you can pass it to his Honour – can see the size of it – and I'd ask for ten minutes so I can read it?

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I don't object, your Honour.

HIS HONOUR: All right. Well, I'll take a break for ten minutes. I'll ask the jury to go to the jury room. I'll retire.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Mr Gunson.

MR GUNSON SC: Thank you, your Honour. Thank you for that indulgence, your Honour. Would you pass that back to the witness, please. (Resuming): Now Mr Conroy, I'm going to refresh your memory. What I read a moment ago to you, what you put to the accused was this:

> *A person stated that he observed a tender dinghy fitting the description of yours.*

And later, within a few lines, you said:

> *He observed a large inflatable dinghy. He described it as a large inflatable tender, which would be a fair description of yours, light coloured, leaving that area, and it came right across in front of where he was sitting in his car and then – sorry, and that it then headed – turned and headed straight out. He's given us a description of the person that was in – the occupant of it and he described that person as a female.*

Now what you put to the accused most certainly did not answer what Mr Hughes had said, it didn't represent what he said, did it?……No.

No. Now did you deliberately misrepresent Mr Hughes' statement to her?……No, I did not deliberately misrepresent that.

You didn't deliberately misrepresent it?……No, I did not.

It was just another accident, was it?……No – yes.

Yes. No, yes, what is it? Yes?……Yes, it was – and I did not deliberately mislead.

But you would accept that you misled her in those passages to which I have referred?……The wording of – yes.

Do you accept that you misled her?……That – yes, that – it appears that it is misleading.

But if I suggested to you that you set out deliberately to mislead her you would deny that?……Yes.

This was reasonably shortly into the record of interview, wasn't it?……I cannot recall at which stage that was.

Towards the beginning……..Right.

Have you seen the typed record of interview?……Yes.

You know it runs for something like a hundred and eighteen pages?……Something like that, yes.

And you wouldn't disagree that what I read to you was recorded in the first 11 – 12 pages?...I won't disagree with that.

No. …I cannot recall.

Well, at any stage during the record of interview which lasted for three hours and forty four minutes, at any stage during the record of interview which lasted for three hours and forty four minutes, did you correct what you'd put to her?.....No. I don't believe I did.

It was just blatantly wrong, wasn't it?……No.

Well, let me ask you this. Did Mr Hughes at any stage tell you in his statement that a dinghy fitting the description of the accused's was being used and taken out into the darkness?....In my opinion it fitted the –

Just listen to the question – did he tell you…..He didn't word –

At any stage - ….. it like that no –

No. Did he at any stage say he had observed a large inflatable – and he described it as a large inflatable….Yes, I believe he did.

I suggest to you he did not. What he said was 'I heard an outboard engine and saw an inflatable dinghy". Do you agree with that?....Right, well I will, if that's in the statement, yes.

Well, do you agree with that or not?....I agree with that, yes.

Thank you. And at no stage did he say it was light coloured, did he?...He definitely said it was light coloured when speaking with him.

Speaking with him! When did you speak with him?....When he came to the station that morning.

It's not in his statement, is it?...It appears it's not.

No, another omission Sergeant, isn't it?.....

MR ELLIS SC: Well -

WITNESS: Well it appears so, yes.

MR GUNSON SC: And he didn't describe the person as a female, did he - ....He def–

He said " I had the feeling that this person was a female, I can't be definite".....Right.

Didn't he?....That's what he said in his statement, yes.

Yes, he also said in his statement "It was dark and I couldn't describe the colour of the dinghy or describe the female in it.....He definitely gave me the impression that he was talking about a light –

Listen...-coloured dinghy.

Did he say in his statement to you, sergeant, just listen "It was dark and I could not describe the colour of the dinghy". Just tell me yes or not – did he say that in his statement?...In his statement?

Yes.....Yes, that's in his statement.....Couldn't describe the female in it?

Yes. ....He couldn't – I don't think that's quite right.

I beg your pardon?.....I don't think that's quite right – yes, he couldn't describe the female in it.

Yes.....When I read that back.

"It was dark and I could not describe the colour of the dingy or describe the female in it" – did he say those words -.....The female in it.

- in – mm?.....Describe the female in it – right, well he's talking about a female in it.

Did he say earlier, "I thought the person had the outline of a female"?.....Yes.

Did he later say, “It was dark and I could not describe the colour of the dinghy or describe the female in it”?…….That’s what he said.

Yes……..The female in it.

So why did you put these things to the accused which are simply wrong?…….He said –

MR ELLIS SC: Well obviously there’s –

WITNESS: - the female in it.

MR ELLIS SC: There’s a series of propositions, as we’ve now heard, and my learned friend now goes back to a general “these things” –

MR GUNSON SC: No, no –

MR ELLIS SC: - and all that’s been established is perhaps large, arguably light coloured but not – not on a witness’ evidence. All we’ve established is ‘large’ wasn’t in his statement – large dinghy – that’s all.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: (Resuming): Why did you tell her that a large inflatable had been sighted?…….Because that is definitely the impression he gave me when I spoke with him.

Right. He gave you an impression?…….Yes, he spoke of a – the larger dinghy.

But it doesn’t appear in his statement?…….It doesn’t appear, no.

No. And he quite definitely said he couldn’t describe the colour of the dinghy in his statement, yet you put to her it was light coloured?…….Because I recall him telling me that it was a light dinghy.

I see, and that’s your excuse, is it?…….It’s not my excuse that’s what the situation is.

Thank you. Now, page 421 I’m going to refer to, your Honour.

HIS HONOUR: Yes.

MR GUNSON SC: (Resuming): You, in the first interview, raised with the accused the statement by Barbara Zochling but without referring to her by name.....Okay, yes.

Do you agree with that?.....Yes.

Do you remember who Barbara Zochling was?.....Yes, I remember who Barbara Zochling is.

Do you remember the substance of her statement?.....The bases of it, yes.

The substance of the statement was to the effect that she had seen a person she called Dr Chappell because she remembered him treating her some years ago and reassuring her or something.....Yes.

And that there was a woman and they appeared to be in some sort of debate and that Doctor – or Mister Chappell had his head down as this woman followed him saying things, remember her saying that?.....Yes.

Now Barbara Zochling most certainly didn't describe the accused did she?.....Initially I believe that she did.

She didn't describe her by name?.....No, no.

And she said – she gave you a general description of the person?.....Yes – the male or the female?

No, the female.....The female, yes.

She said she recognised Mr - .....Chappell, yes.

- Chappell and didn't need a description of him.....Yes.

Now during the course of this first interview you put this question and answer –

> *There – specifically there's a lady there who says she knows Bob, um, because he treated her, he was – or he was a patient – she was a patient.*

You corrected yourself. Her response was –

> *Yep.*

Question –

And she recognised him?

Answer -

Yep.

And then you said this –

I'm just wondering whether he might have seen her and decided he didn't want to be recognised by her or –

And then you added –

She says she saw you walking towards the boat towards the water and Bob was sort of in front of you with his head down and it looked to her as if you might have been having a disagreement or he was sort of head down walking away from you, you don't recall that?

And she responded:

No.

Now Barbara Zochling didn't identify the accused, did she?……No, she didn't.

No, and she didn't tell you that it was Mr Chappell's partner?……No, she didn't say that.

So why did you put this positive assertion to the accused that Ms Zochling said she saw her walking towards the boat?……I think that's a little out of context, I –

It's your question…….Yes, it's my question but I think that was a fair question at the time.

I didn't ask you whether it was fair, I asked you why did you put it to the accused.

MR ELLIS SC: Well before he got interrupted, "Why did you do this". Now can the witness be allowed to answer that without interruption.

MR GUNSON SC: I think he's right, your Honour, I'll let him.

HIS HONOUR: Yes, all right.

WITNESS: I believe that Mrs Zochling had in fact seen Mr Chappell and the accused walking to the vessel that morning.

MR GUNSON SC (Resuming): That was an – what, that was an opinion you formed -.....Yes, and –

- as a result of what Zochling told you?.....Told whoever took the statement, yes.

Right. So based on what you read in the statement you were prepared to elevate that to a status of a positive assertion that Zochling said she saw the accused walking towards the boat in the company of Mr Chappell?.....Yes.

You were prepared to put that, weren't you?.....Yes, I was.

Yet she was never identified and her name, Ms Neill-Fraser, was never used by Zochling?.....No, it wasn't.

And you think that was a fair process to adopt, do you?.....Yes, as I believe we also had footage of them heading down in that area at around that time, that it was a fair assumption to make that that was them going to the boat that morning, and that's what I was tying to do as well as perhaps that was the last chance to establish a timeline, put them at a certain point at a certain time.

It wasn't the last chance to have timeline, was it?.....It possibly was.

This was at the – about a quarter of the way -.....This is the first interview.

- into your record of interview?.....But as opposed – as – if we couldn't establish a direct time when she left the boat we may only be left with a time when she actually went to the boat.

Look, what you were looking for was not only a timeline, because you had the vehicle on CCTV on Sandy Bay Road towing a trailer with the inflatable dinghy, didn't you?.....Yes.

So that set the time that they were on Sandy Bay Road?.....Yes, we felt that was their –

And that was around about -…….- vehicle.

- the Coles' area or something, wasn't it?…….The Shell – or the Shell Service Station, I think it is –

One of the - …….- yes, near the hotel.

- look, it was within a few hundred metres?…….Yes, within a kilometre or so, yeah.

Yeah. And pretty close to Marieville Esplanade?…….Yes.

Now you – what you were trying to do was to establish whether or not there was some level of disagreement or animosity between the accused and Mr Chappell, weren't you?…….Yes, I was.

Right. You weren't interested in a timeline, that's what you were trying to establish, as to whether they were having an argument that morning?…….No, no, I was – the timeline, but if they were having an argument or a tiff or whatever, that was of interest too.

Because Zochling told you that in substance they appeared to be having an argument?…….Well that's what she said.

Yes……..Yeah.

And you thought 'oh beauty here's a chance to ask a question about that and to see whether the argument perhaps continued during the day and escalated' -…….No, that's incorrect.

- to the point where something might have happened?…….That's incorrect.

Well it would have been -…….I didn't think that.

- important to know if they were arguing in the early morning, wouldn't it?…….It would have helped establish that Barbara Zochling actually saw the correct people if they were having some sort of argument.

It would have helped to establish that during the day, the very early part of the day, they were having an argument, and perhaps that escalated during the course of the day?…….That wasn't my train of thought at that time.

But you were prepared to assert positively to her that Barbara Zochling had seen her?…….Because I felt that was a fair assertion.

You didn't put the description to her and say 'do you think that answers your description'?…….What description's that?

MR ELLIS SC: What description?'

MR GUNSON SC: (Resuming): That was set out in Zochling's statement?…….I can't recall what it was.

Right. Did you put to her that – where this incident was supposed to have occurred, as described by Zochling, to make more sense of it?…….Put to the accused?

Yes……..I believe I did.

Well –

MR ELLIS SC: Sorry, your Honour, I'm a bit slow on this uptake; my learned friend has – has im – not implied but asserted that there was a description of the accused or the woman in Ms Zochling's statement that was failed to be put.

MR GUNSON SC: (Resuming): Well, did you at any stage –

MR ELLIS SC: No.

MR GUNSON SC: No I'll withdraw the question in that form. (Resuming): Did you at any stage try and ascertain from the accused whether there – she was the person seen by Zochling having an argument?…….Well I put the whole situation to her and I would have assumed if it wasn't her she would have said.

And she said, "No"?…….She felt it was no.

Yes……..And so we moved on.

And you said, "No?" and she said, "Not at all"?…….That was about an argument.

Yeah……Yes, she was happy with that so we moved on.

Well you didn't, you said –

Well I just thought maybe it was.

And she said –

And it's quite – it's quite but Bob walked in an odd way anyway.

.....She said it's quite possible.

Mmm, and she went on to describe how he walked with his head down.....Shoulder hunched.

Yeah.....So again we were neither here nor there.

But nonetheless you again were prepared to put it to her as a positive assertion that Barbara Zochling had seen her.....Because I believed that it was quite a reasonable assertion to make.

Thank you. During the course of these two lengthy records of interview, which I think total over eight hours, did you ever once discuss with her or raise questions with her about a grey dinghy, as to whether she'd operated one on that day, on the 26th?.....No.

Did you ever disclose to her the information that you had about a grey dinghy?.....No.

No. Is that a suitable time, your Honour?

HIS HONOUR: Yes.

MR ELLIS SC: Could I ask my learned friend how much longer he might be, your Honour, because I've had witnesses come and go and –

HIS HONOUR: Well that – well do you need to do that in front of the jury. You can –

MR ELLIS SC: Well it's simply to – yes, okay, I'm sorry, your Honour, I withdraw that I've asked him but I've got – I thought it might be better – I might get an answer if I asked you –

HIS HONOUR: Well, no, I think that's something you'll have to deal with in private as is usual Mr Ellis.

MR GUNSON SC: If there's a real problem that my friend wants to interpose somebody who is a problem to him on time I'm happy to accommodate him.

HIS HONOUR: All right. Well look I'll leave it to you two to sort it, I'm sure you can, the jury can make their affirmation and the Court will adjourn till 2.15.

JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Ms Webb has told me that one of the jurors was asking her a question about photos or wanted to ask a question about photos; so I'd better get to the bottom of this before we move on. What's the position; was there a question from the jury about photos – not that you know of – any juror want to ask me anything about photos?

JUROR: Yes – yes –

HIS HONOUR: Yes.

JUROR: No, not directly yet, we just – we've just been talking and there are some questions that we do have.

HIS HONOUR: Well you'll have all the photos in the jury room at the end of the trial. Any photos that aren't in the folders that you've got you'll have at the end of the trial in the jury room – so you'll have all the exhibits. But if there are – if there are things that the witnesses haven't said about matters that seem very interesting to you, you may never know what the witnesses have to say because the way the system works is that it's up to counsel what questions are asked and what information is elicited from the witnesses. So you have to decide the case on the basis of the evidence that's presented to you and it's not – it's not part of the system for you to ask for more information. I'll just say that at this stage and we'll move on. Mr Gunson?

MR GUNSON SC: (Resuming): Yes, thank you. Sergeant, I want to take you back to the questions I asked you about Mrs Zochling, and you will remember – page 421 of the Crown papers, your Honour – that I read to you a question you directed to the accused about Mrs Zochling about identifying her by name:

> *She says she saw you walking towards the boat, towards the water, and Bob was sort of in front of you with his head down and it looked to her as if you might have been having a disagreement or he was sort of head down walking away from you.*

Now an issue arose this morning about whether or not there was a description given by Ms Zochling, would you agree that Ms Zochling had said this in her statement:

I didn't take much notice of the woman. I can't recall what she was wearing. The woman was not a young woman. I can't provide any better description.

Would you agree that that's what she told the interviewing officer?……Yes.

Had you interviewed Ms Zochling yourself after that statement was made?……No.

So at no stage before you interviewed the accused on the first occasion had you received any more information from Ms Zochling about the description?……No.

And nonetheless with that description, such as it was, from Ms Zochling nonetheless you were prepared to assert to the accused that it was she who'd been seen walking towards the boat in the passage I just read?……As I stated before, I –

No, no, just answer the question, would you, please. Were you prepared to assert that to her -…….Assert?

- based on Ms Zochling's statement?……I believe if you watch the video it won't come as an assertion.

Excuse me, I'm talking about the interview – I'm sorry, I'm talking about what you put to the accused as to what Ms Zochling had said?……I put it to her as a question, I believe I've answered it.

Well just listen to me again, I'm going to read the question –

MR ELLIS SC: Your Honour, this is obviously going to go on for some time. Can I draw your attention by way of objection to s102 of the Evidence Act, the credibility rule.

HIS HONOUR: What's the objection?

MR ELLIS SC: Given that no evidence of admission of being the person who has produced from Ms Neill-Fraser this evidence can only go to the credibility of Sergeant Conroy, it goes nowhere else, that being so the credibility rule applies unless the evidence suggests in cross-examination has substantial probative value. Probative value of course being defined itself in the Act. This has none.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: My submission is that the credibility rule such as is articulated by my friend does not apply. What we're dealing with here is a question of what this witness put to the accused in the record of interview and whether he put the question to her fairly and properly and whether he did so knowing that Ms Zochling had never said that she had identified the accused, it's just not put and the basis for it not put, the jury could be left with a complete misunderstanding of the basis of the question.

HIS HONOUR: Well what you're suggesting – well the question put during the interview concluded with the words, "You don't recall that", to which your client replied, "No", so what you're suggesting to the witness is that he put an unfair question and the result of him putting an unfair – but the result of him putting the question, even if it was unfair, was that your client gave an answer that did her no harm. Now how does – how does the proposition that this question was unfair have any relevance to the question of whether or not your client murdered Mr Chappell?

MR GUNSON SC: It goes to the question of a motive behind this witness' methodology of questioning and what he had in mind and why he did it and why he was prepared to misrepresent, not only on this occasion but on other occasions during the course of the record of interview with the accused, the evidence as he knew it to be and he clearly on his admission so far he has misrepresented the evidence. Now he has done it deliberately or he has done inadvertently but it goes to his credit, directly to his credit.

HIS HONOUR: It goes to – well –

MR GUNSON SC: Perhaps this debate should take place in the absence of the jury, but –

HIS HONOUR: Yes, the sort of – the sort of discussion that should take place in the absence of the jury. Would you go to the jury room please, ladies and gentlemen? And it should take place in the absence of the witness – would you go to the foyer again, please, sergeant?

<JURY RETIRE

<WITNESS STOOD DOWN

MR GUNSON SC: Now it's – it's my memory, your Honour, that the credibility rule was discussed by this Court, of which I think – the Court of Criminal Appeal of which your Honour was a member, in *W v The State of Tasmania*, about five years ago. There was quite an amount of discussion about the extent of the rule there.

HIS HONOUR: I can certainly remember being in an appeal where we went into the back streets of the credibility rule and the exceptions to.

MR GUNSON SC: Yes. If this objection is to be pursued I'd like to have the opportunity to read that decision and refresh my memory as to what the Court held in that case. I know it was debated at some length over several days. There was – it it's reported under the name of "W" but in fact it –

HIS HONOUR: Was that the case you had about the –

MR GUNSON SC: The rape.

HIS HONOUR: - the man whose partner had made a false report of rape once before in Singapore?

MR GUNSON SC: That's right, your Honour.

HIS HONOUR: Yes.

MR GUNSON SC: I'd certainly like to refresh my memory from that as to what the Court held there.

HIS HONOUR: Well let me just tease out from you before we think about that where you say this goes. The – the evidence that – you say that it – you say that this is relevant to the credibility of the witness. But really what the witness is saying is, "I asked a series of questions and got a series of answers, on occasions in" I think "March and May" –

MR GUNSON SC: Yes.

HIS HONOUR: Really – really what you're concerned with isn't so much the credibility of what the witness says, he's giving answers – he's giving – I mean he's given some answers as to where the particular steps in an investigation ought reasonably to have been taken or not but really this is – this is directed not so much at his credibility as to the – and I'm thinking aloud, as to the weight that

ought to be given to some of the things your client said, that's really where it's going isn't it?

MR GUNSON SC: That's right. And on top of that I'll be putting it to this witness at the end of these various issues that he had made a decision only to concentrate on the accused as the potential perpetrator to the detriment of all others and this is demonstrated by his methodology that he's adopted in questioning and that's the basis I put it. I mean it's plainly obvious that what he has put to this witness, not only in respect of Zochling but the accused, was just blatantly wrong and he did it for a reason. What is the reason? Well that's something the jury will have to –

HIS HONOUR: Well if you're right in that contention then the significance of that has nothing to do with the answer he got to the question about Ms Zochling observations. It's relevant to I suppose the overall fairness of the interview and it's relevant to the thoroughness of the police investigation.

MR GUNSON SC: Indeed, your Honour.

HIS HONOUR: Well I'll ask Mr Ellis what he says about that. Should I let the evidence in on the basis that those are matters relevant to facts in issue or is this really a credibility argument?

MR ELLIS SC: It's really credibility. So far he's got from Sergeant Conroy, and he can spit out blatant misrepresentation as much as he likes, that he attributed to Mr Hughes something, I think, about the size of the dinghy or the colour of it, that isn't in his statement – but that's all he's got so far. Here, perfectly reasonable answers, and where is it going to go? I mean are we going to go through – what – what my learned friend needs to address, in my submission, at this point, to deal with this objection made now to what seems a thoroughly pointless exercise, is to say 'Where else is he going to go?' Now if this fits in with some pattern, that's fine. But if he can't articulate that or won't articulate that, in my submission, it should be dealt on its merits.

Now time and time again this morning, my learned friend has put misleading questions to the witness, and yesterday, time and time again, and so I'm afraid, with respect, I can't take it at face value that this is coming to some master plan without knowing where it's going next, if it's going anywhere. At the moment it goes nowhere because there is no admission produced by whatever was put, and

therefore, it cannot have relevance except as to credibility of Sergeant Conroy.

HIS HONOUR: Thank you. Mr Gunson, do you want to say anything in reply?

MR GUNSON SC: Nothing, your Honour.

HIS HONOUR: Well look, I don't know whether this is going to be the last topic on which Mr Gunson cross-examines in such a way as to suggest misrepresentation of the available information, unfairness or the like. But whether it's the last or whether there are fifteen more such passages in the interviews that are going to be questioned about, I do think that the questions are relevant to matters other than credibility. The – their – the thoroughness or otherwise of the police investigation is a relevant issue. It's open to the jury to regard that as a relevant factor and to conclude that the police investigation has been so thorough that they can't have much doubt as to there being other exculpatory evidence out there that the police didn't find. It's open to the jury to conclude that the police investigation was so far from thorough that there could be lots of evidence favourable to the accused out there that the police didn't find, and – well I think that's probably enough for me to say. Once we get to that point then cross-examination relevant to – well I'll go a bit further. It's open to the jury to, when it assesses the weight to be attached to the answers given by the accused in the interviews, to take into account insofar as it can the accuracy or otherwise of the information that may have led to these answers. Now this particular question contains propositions that might or might not be correct. The jury may have to evaluate incriminating or damaging answers given to other questions that are based on premises that are challenged and so it's relevant to the assessment of the weight to be given to the damage – to the answers given by the accused that might be relied on by the Crown or might be seen by the jury as pieces of circumstantial evidence tending to incriminate her. So the – in my view, this line of cross-examination isn't relevant only to credibility. It's relevant in those other ways. And so it's – it's not appropriate that – well s102 doesn't apply because it isn't evidence that's relevant only to a witness' credibility. So I'll allow the cross-examination to continue. We'll have the witness back and the jury back.

<WITNESS RETURNS

<JURY RETURNS

HIS HONOUR: Thank you, ladies and gentlemen, we'll proceed. Mr Gunson?

MR GUNSON SC: Thank you. (Resuming): Now you accept, do you not, that Barbara Zochling when interviewed by the police said that she didn't take much notice of the woman; she couldn't recall what she was wearing; the woman was not a young woman and she couldn't provide any better description?.....I accept that.

Yes.....Yes.

And you accept that you had no other meetings with Barbara Zochling?.....No.

And no one else reported any other information from Barbara Zochling before you saw the accused and interviewed her in the first interview – is that right?.....No – no.

So the only evidence was Barbara Zochling's statement?.....And timings.

I see. The only evidence concerning the description of the woman at the beach that morning was Barbara Zochling, correct?.....Yes.

Thank you. Now notwithstanding that Barbara Zochling said she couldn't provide any better description than that which she did, which was minimal, but nonetheless you were prepared to assert directly to the accused, quite unashamedly it would seem, that she was seen walking towards the boat and that Bob was sort of in front of her with his head down and looked as though they might have been having a disagreement. You were prepared to put that proposition to her as a positive assertion by an unnamed witness, weren't you?.....I was prepared to put that to her as the conversation was, yes.

Knowing it was untrue?.....Not knowing it was untrue. I've said I made an assumption that it was.

Oh I see, so you assumed from Barbara non-description that it was the accused and Barbara Zochling had identified her?.....I believe that it was a fair assumption to make, I can't go any further than that with it.

Did you say to the accused, "We've had a statement by a witness who says X, Y and Z, and I therefore assume it is you, what do you say about that"?.....I didn't word it like that, no, I worded it as I worded it.

Yes, "She says she saw you walking towards the boat". She didn't say that, did she?.....She didn't say that, but that's how I put it to her and I believe that was a fair way to put it.

She never said it at all, did she?.....She didn't say that.

No.....But I believe it was a fair way to put it.

I didn't ask you what your belief was, I asked you whether she said that. The answer is Barbara Zochling never said that.....She didn't say that.

That's right, and she didn't say that she'd seen – these are my words - effectively Bob Chappell and the accused having a disagreement, did she?.....Having a disagreement?

Yes, that's the words you used.....What – what was in the statement, I'll have to ask again.

What you said to her:

It looked to her as if you –

Which can only mean the accused –

.....I don't believe I put it to her –

- might have been having a disagreement.

.....I didn't put it to her like that, I didn't say you.

Let me read it to you. Listen carefully -.....It's not – it's not the tone that I used.

Listen carefully – listen carefully, Sergeant, this is what you said:

I'm just wondering whether he might have seen her and decided he didn't want to be recognized by her, or –

This is the critical part - listen carefully –

- she says she saw you walking towards the boat, towards the water, and Bob was sort of in front of you with his head down and it looked to her as if you might have being having a disagreement or he was sort of head down walking away from you.

Now the word 'you' appeared there four times in that paragraph didn't it?……I didn't emphasise 'you' to her at all, I put it to her -

No, I emphasised it to you to bring it to your attention……Yes, it's to my attention, I've already stated how I felt at the time and I believe that's how it comes across on the video interview.

Well I didn't ask you how you –

HIS HONOUR: Well what you're saying, Sergeant, is that you accept that you used those words but that you didn't emphasise the word 'you' in the way Mr Gunson's done?

WITNESS: No, and I didn't –

HIS HONOUR: That's what you're saying?

WITNESS: Yes, your Honour, thank you.

HIS HONOUR: Yes, go on.

MR GUNSON SC: (Resuming): But clearly you were trying to tell the accused that somebody had identified her and you wanted her reaction?……I was trying to explore with the accused as to if it was her, did she recall it.

Well why didn't you be honest with her, why didn't you be honest with her?……I was.

Why didn't you honestly say to her, "Look we have a statement from a woman who doesn't seem terribly clear about identifying you let me read this passage to you, or part of it", without identifying the witness and get a reaction to it, why didn't you do that?……I believe as to how I put it to her was fair.

That would have been a much fairer process wouldn't it?……I disagree.

Well why didn't you do it?……Because the context that I put it to her I felt was fair in the conversation.

You felt – you now accept, don't you, that it was not fair?……No, I do not accept that.

Do you think it was fair to put a proposition to somebody that was clearly untrue?……I do not accept that at all and I said that repeatedly.

What do you mean by that, you don't accept - …..I don't accept what you're insinuating.

I'm not insinuating anything I'm saying to you directly –

HIS HONOUR: Well, yes, you are, your question contained a premise; he's disagreeing with the premise. He can't answer your question unless he agrees with the premise; he's disagreed with the premise.

MR GUNSON SC: I shall put it to him straightforwardly. (Resuming): Is it not a fact that you set out to deceive the accused by asserting to her that you had a positive identification of her at Marieville Esplanade when you did not have such a positive identification?……No.

And you don't concede that by doing that you possibly attempted to mislead her?……No.

Thank you.

MR ELLIS SC: Well as your Honour just pointed out, premise - he's just disagreed with premise and then it's put in a different way.

HIS HONOUR: Go on – go on, Mr Gunson.

MR GUNSON SC: (Resuming): I want to return to Mr Hughes for a moment; you were asked – you asked the witness some further questions about Mr Hughes, you might remember he's the gentleman down at the waterfront?…….Yes.

And – 614, your Honour – you asked some questions of her about why she was there, and then you said this:

And what's more so –

Having referred to Mr Hughes.

- he didn't see any of those people you say were there; what he saw was the tender?

Now he never said that, did he, he didn't say he'd seen "the' tender from Four Winds, did he?…….He didn't confirm that, no.

Mr Hughes didn't say that, did he?…….No, no.

So again, we have you asserting to the witness that what Mr Hughes had seen was the tender from Four Winds –

MR ELLIS SC: Oh now, that's utterly unfair – utterly unfair. Words not used to a witness who doesn't have the benefit of the transcript.

HIS HONOUR: Well I'm looking at 614, I can see there's a reference to the tender, and now I'm looking for the context – if I'm – if I need to rule on whether this is fair or not I need to see what led up to that question.

MR ELLIS SC: Yes, your Honour. I think 568 is about where it's leading up to, your Honour, it's probably about an hour before in the interview – a large inflatable tender.

HIS HONOUR: Yes, Mr Gunson, what do you say?

MR GUNSON SC: Well I submit that the – clearly, what the witness was referring to was the tender from Four Winds, the words aren't there, but my question was put to him quite fairly – he wasn't referring to any other tender. Clearly, he was –

HIS HONOUR: Well isn't this the position; at 568 the witness – Sergeant Conroy was describing to your client the observations of Mr Hughes and what he said was, he then observed a large inflatable – he described it as a large inflatable tender which would be a fair description for yours, light coloured, leaving that area and it came right across in front of where he was sitting in his car – and this is the passage you were asking about before lunch –

MR GUNSON SC: That's right.

HIS HONOUR: The – and your client said:

If what he said is accurate it wasn't me, I didn't go near the Royal … … …

Et cetera et cetera.

MR GUNSON SC: Yeah.

HIS HONOUR: Then the topic of Mr Hughes' observation is returned to, much later in the interview, after there's been conversation about Felicity Oglivie's interview, and there's conversation – there are questions about your client's statements to the effect, or comments to the effect that she'd been down there to – to get the car and look out towards the boat. And then your – the sergeant asked some question by reference to the statement, and he says:

> *And what more so, he didn't see any of these people you say were there, what he said was the tender..*"

MR GUNSON SC; What he saw was the tender.

HIS HONOUR: What he saw was the tender. And he said that without specifying that – or suggesting explicitly that Mr Hughes saw the Four Winds tender, the question is quite consistent with him going no further than referring to the information that Mr Hughes saw a vessel that he described as a large inflatable tender. There isn't a – there isn't any sort of express assertion that – around page 164 that it was the Four Winds tender, in the question of Sgt Conroy, is it?

MR GUNSON SC: Well, that's what I want to explore. Was he intending to convey to –

HIS HONOUR: Well, it's not what you've asked. If you want to ask whether he was intending to imply that the tender seen by Hughes was the tender from the Four Winds, you can ask him about what he intended to imply, but you – but the question itself doesn't carry the implication – doesn't expressly suggest that he was asking about the Four Winds tender.

MR GUNSON SC: Well, perhaps I'll explore it a different way.

HIS HONOUR: Yes, go on – in that passage – do you want me to read that passage again to you…Yes, thanks.

It follows some questions that were directed to the accused about what she saw when she went down to Marieville Esplanade that evening. And you have directed some questions to her about the area, the rowing club, the car park, the little beach and so forth and then your question was in this form:

And what more so, he didn't see any of these people you say were there, what he saw was the tender.

Now, when you said what he saw was the tender –

MR ELLIS SC: Your Honour, again a matter of fairness because he was overtalking and clearly the sentence has been interrupted by the accused as he completes it, just below. What he saw was the tender with a female in it.

HIS HONOUR: Mr Gunson.

MR GUNSON SC: All right, well I'll put it that way. (Resuming):

What he saw was the tender –

The accused interrupted and said:

Well I can't –

And you added:

- with a female in it.

And she said:

Well it wasn't me.

And you said:

Are you sure about that, Sue?

Answer:

I'm absolutely sure I was not in the tender that night.

When you referred to the tender were you intending to convey to her that Hughes had seen the tender from the Four Winds, which was blue and – sorry, white and blue dinghy, or the earlier description that you'd erroneously given her?……What I was intending to say was that this happened, this happened and then he saw the tender, that – relaying to her that he saw the tender go past, the tender that he stated that he saw.

The one that you had described to her earlier and mis-described, is that right?……I don't believe so, no.

HIS HONOUR: Well let's take that a bit at a time. Do you accept that earlier in the interview you mis-described the tender described by Mr Hughes?

WITNESS: No I don't, because I believe he described it to me.

HIS HONOUR: Yes, go on, Mr Gunson.

MR GUNSON SC (Resuming): All right, we need to go back there again. Pass me Hughes' statement, will you. All right. Did Mr Hughes, in his statement to the police, say this:

I parked there –

Meaning Marieville Esplanade.

- to relax and I remember that I had a Farmer's Union coffee.

Did he say that?……Yes.

It was at this time that I heard an outboard engine -

Did he say that?……Yes.

- and saw an inflatable dinghy -

Did he say that?……In his statement he said that, yes.

- with a single person on board.

……..Yes.

Did he say that?……Yes.

Did he say to the police:

I thought the person had the outline of a female.

……..Yes.

Did he say:

I had the feeling that this person was a female, I can't be definite.?……

..I can't recall if that's the next part of the statement. Is it, yes.

You know full well what was in Hughes' statement don't you?.....I know what was in his statement, yes, we covered it earlier.

And you know that Hughes' said, "I thought the person had the outline of a female"?.....Yes.

"I had the feeling this person was a female, I can't be definite".....Yes.

Thank you. Did Hughes say, "It was dark - .....He did.

- and I could not describe the colour of the dinghy".....Yes.

And did Hughes' say, "Or describe the female in it".....Yes.

Thank you. Now did you put, 568 your Honour, to the accused –

> *That Hughes' had observed a large inflatable; he described it as a large inflatable tender.*

Did you put that - .....I didn't put that to her, no.

Oh, you didn't?.....I did, sorry, I put to her that –

You did or didn't?.....I put it to her that he had seen a large inflatable tender because that was what he'd said to me.

No, no, just – just – just listen to what I've asked you.....I'm getting confused with going backwards and forwards.

Did you –

HIS HONOUR: No, no, just a minute. Sergeant, Mr Gunson doesn't want to bring out the fact that you were told – or the evidence, that you were told anything by Mr Hughes at some time other than the making of his statement. If he wants to ask about what was said at some time other than the making of his statement he'll ask you.

WITNESS: Yes, your Honour.

HIS HONOUR: So never – so just answer the questions like a robot and we'll get through this a lot more quickly.

WITNESS: Okay.

MR GUNSON SC: (Resuming): You said to her he had observed a large inflatable – he described it as a large inflatable tender?……Yes.

And he hadn't said that in his statement on the 10th March 2009 had he?……No.

You said to her, which would be a fair description of yours, "like coloured", now he didn't say that it was light coloured in his statement of the 10th March 2009 did he?……No.

And you put it to her that he's given us a description of the person that was in – the occupant of it and he describes that person as a female – that's what you put to her?…….Yes.

Now he in fact said on the 10th of March, "I had a feeling that this person was a female. I can't be definite or describe the female in it" – that what he told you in the statement of the 10th of March?…….Yes.

Now – so again, why did you put all these things to her that don't appear in Hughes' statement?…….Because he had told me that he saw a large tender –

Right. And -…….- a light coloured –

Right. And where's the supplementary proof of Mr Hughes about that?…….I don't have that – it hasn't been obtained.

Is there one?…….No.

And he was re-interviewed on the 25th of August, wasn't he?…….Yes.

By you?…….Yes.

Mm, but no supplementary proof from him that say any of these thing such as you've described today -…….No.

- and more correctly, you described in your interview?…….No.

So you tell me when you had this discussion with Mr Hughes?…….The first day I met Mr Hughes was the day that he – he told me that when he arrived at the police station.

Right. On the 10th of March?.....Yes.

When he made his statement?.....Yes.

Right. And did you take his statement from him?.....No, I didn't.

Who did?.....Julian Puurand – Detective.

Right. And you would no doubt of said to the other officer once you viewed Mr Hughes' statement, "Well that's not complete" – surely you said that as the officer in charge, didn't you?.....I – I don't recall saying that to him, no.

Well you read Hughes' statement, surely?.....Yes, I did.

When, the 10th of March?.....I can't recall when I read his statement.

You would have been interested to see what was in it?.....I perhaps wrongly assumed that it was correct.

Just answer the question; you would have been interested to know what was in it, sergeant, wouldn't you?.....Yes.

Yes.....Yes.

And when you read it, did you say to yourself 'Well there's no reference to a large inflatable in here. There's no reference to it being light coloured, and goodness gracious he hasn't described the person as definitely being female, he's now backed off on that' – did nay of those thoughts occur to you?.....No, they didn't.

Did you instruct your junior officer to go and re-interview him?.....No, I didn't.

And when you spoke with Mr Hughes in August of last year, did you raise any of these matters with him?.....I didn't.

Did you make any notes of these conversations – sorry – this conversation you had with Hughes which doesn't appear in his statement?....I don't believe I did, no.

Right. Did you record it anywhere?.....No.

Didn't record it in the investigation log, did you?.....No.

No. And I suggest to you, you are simply making this up as you go along to get yourself out of a corner, sergeant?.....I am not making this up.

And you can't produce a single but of evidence to support that. Is that right?.....I can't –

Who was with you when you spoke to Hughes?....Julian Puurand.

Right. Now in this court, let me tell you now, so you can reflect on this, Mr Hughes said when asked by Mr Ellis as to whether he could say anything about the person, how it appeared to be, he said:

The person had the outline of a female but I can't be definite.

....Okay.

Right? That' his evidence here.....Right.

So did that contradict what he told you?....It does, yes.

That's his evidence on oath in this court.....Yes.

Yes....I accept that.

Yes. And he – would you accept from me that he said nothing about the light – the outboard being a large out – sorry – the inflatable being a large inflatable?...I will accept that.

And he made no comment at all about it being light coloured when he gave his evidence on oath in this court. Do you accept that?.....I accept that, yes.

Did he tell you at any stage where he'd seen the person seated in the dinghy?....I can't exactly recall that.

Yes. Well he certainly didn't give evidence in this court that accords with you – I suggest – very erroneous recollection and I put it to you again – and I put it to you quite strongly, you are lying about this so-called memory.....I am not lying about this, at all.

But you can't produce a single note to back you up?.....No.

No. And you did nothing to correct the contents of the statement -.....No, I didn't –

And you submitted these statements through your chain of command with your report?.....Yes.

Yes, without correcting it one iota – thank you. Now I want to suggest that at a meeting that took place at the Hobart Police Station between yourself and the accused's daughter, Emma, and Tim Chappell -.....Yes.

- that in the course of the conversation you said these words, "This was a career case for you" – you don't deny that, do you?.....I can't recall it but I won't deny it.

You don't deny it?.....No.

And in fact you saw it as a career case, didn't you?.....No, I've never viewed it in that manner.

But you don't deny having said it – and I should in fairness say, it also occurred in the presence of Sarah Bowles, the accused's other daughter?.....Thank you.

All right. Now on the 11th of March 2009, you, with other officers, went to the accused's home at 7 Allison Street in West Hobart, and seized a computer, didn't you?.....Yes, we did.

And there's a fact, an agreed fact in this case, that on the 30th of December, Google searches were conducted for the Galapagos Islands and the Panama Canal and Google Maps of the Marquesas Islands and Galapagos Islands were viewed – you're aware of that, aren't you?.....No, I'm actually not aware of that finding off the computer.

Not – no one ever told you about it?.....No, I don't think that had come through – it hasn't been brought to my attention.

All right. You were in the officer in charge and no one told -.....I was.

- you about that? .....I – I'm not sure on the date in the report but it's not something I've reviewed. I waited a long time for computer analysis.

All right. Thank you. Have you ever sailed outside of Australian waters?.....No.

Ever harboured an ambition to sail outside Australian waters?…….Nope.

All right. You really had quite a closed mind about this investigation, didn't you?…….I absolutely did not have a closed mind about this investigation.

You saw the accused as your, and I say this advisedly, your target very early on, didn't you?…….I did not see her as that.

Didn't see her at all as that?…….No, quite the opposite.

Oh, and you made exhaustive inquiries, didn't you to find out such things as the ownership and usage of the grey tender. We know the answer to that, don't we?……We made enquiries in relation to –

MR ELLIS SC: Well which grey tender.

MR GUNSON SC: All right.

WITNESS: - all movement on the water.

MR GUNSON SC (Resuming): I'm sorry, I didn't hear, you were mumbling…….We made enquiries in relation to all movement on the water that day, not just the grey tender.

You got a lot of statements from a lot of witnesses who – many of whom haven't been called because their evidence is quite irrelevant, didn't you?……We took a lot of statements from a lot of people.

Mm…….Relevant or irrelevant, that wasn't for us to decide.

Yes, but these were mainly people who were watching yachts from the shore or from houses or from moored boats or who were actively using boats, that's a fair comment, isn't it?……A reasonable comment.

Mm. I direct your Honour's attention to page 574, please. You put this question to the accused:

Is it possible that the reason he –

Meaning Bob Chappell.

- was left out there was because he was incapacitated or he was deceased and there was no other option but for you to take that boat back ashore.

When you put that question to her in the interview you never at any stage told her, she having said she'd been ashore about two o'clock, that other people had seen tenders at the yacht and Mr Lorraine believed he'd seen Mr Chappell on the yacht at five o'clock, did you?……Which point of the interview is that, the second interview?

It's in the second interview about eight – I would guess about probably twenty minutes into it…….Twenty minutes into it. I didn't put those – what you suggested to her.

No. Why didn't you? I mean you put this proposition to her that she deliberately left him out there because he was incapacitated or deceased and she had no option but to take the boat back. You put it to her notwithstanding your knowledge that Mr Lorraine had seen what he believed was Mr Chappell at –

MR ELLIS SC: Your Honour, this is simply logically unsustainable unless it's related to the time of Mr Lorraine's sighting. The proposition that now Sergeant Conroy's being – as a detective, being criticised for putting to Ms Neill-Fraser does not contain a proposition as to leaving at any particular time and therefore it can hardly be affected by sightings of the dinghy at any particular time.

HIS HONOUR: Well I'll need to have a look at the transcript and look at the context of the question.

MR GUNSON SC: Well to say time, your Honour, I'm happy to put it a different way.

HIS HONOUR: Well let's see how that goes.

MR GUNSON SC: All right. (Resuming): When you put that question to the accused were you contemplating a particular time at which she had left the boat to go ashore?……I'm sorry, I'll just have to ask you to repeat the statement –

The question?……What was said in –

What you put - …..Yeah, what I put to her.

This is your question, this is your question……Yes.

Is it possible that the reason he was left out there was because he was incapacitated or he was deceased and there was no other option but for you to take that boat back ashore.

The question I direct your attention to is what time were you referring to?……And without further – looking at how the lead up happened I'm afraid I can't make a comment on that.

Right. Well would it save time if I handed several pages to the witness and he can read them rather than me read the whole lot out or –

HIS HONOUR: Well I'm content for you to do that.

MR ELLIS SC: Well, your Honour, I've discussed with my learned friend the interposing of Dr Lawrence, the State Pathologist, who's been in and out waiting to give evidence a lot of the day and I've left him on the basis that if there was no end in sight around 3 o'clock we might seek to interpose him and we seem to be at that – that point with no end in sight and so I do seek to interpose him, it might be convenient.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: No problem about that.

HIS HONOUR: Do you want to give the Sergeant the papers that you wanted him to read and he can do that while Dr Lawrence is interposed?

MR GUNSON SC: Yes. What I'll do is give him the whole folder but I'd ask, Sergeant, you don't remove any of the stickers please.

WITNESS: Certainly.

MR GUNSON SC: You'll find the interview commencing at the orange page and the page you're looking for is 18 pages in and it's marked in orange, thank you……Certainly, sir.

Thank you.

HIS HONOUR: Yes, you can stand down sergeant.

WITNESS: Thank you, your Honour.

<THE WITNESS WAS STOOD DOWN

MR ELLIS SC: Thank you, I call Christopher Lawrence, your Honour.

<CHRISTOPHER HAMILTON LAWRENCE CALLED AND SWORN

HIS HONOUR: Take a seat. Yes?

<EXN - MR ELLIS SC: Thank you, your Honour. Dr Lawrence, you are Christopher Hamilton Lawrence?.....That's correct.

State Pathologist for the State of Tasmania?.....That's correct.

And you hold MBBS degrees – qualifications as a doctor?.....That's right.

But for sometime you've had no living patients?.....In general, yes.

In general. How long have you been practising in pathology?.....I've been practising as a forensic pathologist since 1989 and I've been the State Forensic Pathologist since 2002.

Thank you. And what does a forensic pathologist do?.....A lot of our work involves doing autopsies to establish cause of death; we go to occasional suspicious scenes; we do autopsies on suspicious cases; we give evidence in court; and in inquests; we do examine the occasional live person for injuries and patterns of injury.

Yes. Now, as you would be aware, we don't have a body in this case, and I want to ask you some questions of a general nature but with particular reference to a sixty five year old man described as somewhat frail and a heavy smoker, if that's of relevance?.....Yes.

Now is it your opinion that such a man could be killed or rendered unconscious by a single blow?....Yes.

By multiple blows?...Yes.

And would it matter to the likelihood – not likelihood – would it matter to the prospect of him being killed or rendered unconscious that such blows might come to his head from behind?...I'm not sure – I'm not quite sure that the relevant bit – I believe that he could be hit on the head, on the back of the head, yes.

Yes. Could be killed by a single blow too, to several parts of the body, is that right?....That's right.

Could such a man – logically the answer would probably be yes, be killed or rendered unconscious by a blow or blows with a blunt object?....Yes.

Thank you. In the case of the blows that we've been talking about, such a blow as would render him – or would kill him, or render him unconscious, is it necessary that they would cause much external bleeding before death or unconsciousness, might ensue.....That's depends on a number of things. The head's a fairly vascular area so tends to bleed fairly freely, but it would depend on the nature of the object causing the blow. If it had an edge you would expect more blood than if it was say, a fist – it would depend on the location – injuries to the face tend to bleed either from the skin or from the nose and mouth more readily. Impacts to say the back or the side of the head – for example an injury that might cause a subdural or extradural may well only cause bruising and not cause any external bleeding at all. As a general rule, one impact often causes surprisingly little external bleeding. Obviously the more blows the more likely you are to see external blood.

HIS HONOUR: You used the word ' subdural or extra dural" Some of the jurors might not understand them. What were you referring to?

WITNESS: No. In if in some of the lethal injuries the death is caused by haemorrhage around or – around the brain, either between the thick membrane that surrounds the brain and the brain itself, which is the subdural, or in a particular area where the impact's occurred in the temple one of the blood vessels could tear there and you can get what's called an extradural. Now these are frequently seen as causes of death in murders. They will usually be accompanied by bruising but may not be accompanied by external bleeding.

And it may be accompanied by external bleeding such as would send a fine spray – a fine spray of droplets to objects?.....Look, you'd need to speak to the forensic scientists about the sprays and so forth –

Okay.....- but it's possible.

All right. Now in the case of a fatal stab wound if someone is given just a single wound does blood spurt out like we – like some people might imagine happens, or not?.....In general most of – I'm often asked this question about are you surprised about the lack of blood –

Yes…….- and the fact is that with a stab wound often surprisingly little blood comes out. Again rather like the blunt force injuries a single stab wound may well not bleed very much at all at the time, often a lot of the bleeding occurs when the person collapses and is lying on the ground and the blood comes out. The blood – in particular stab wounds in the chest and abdomen often goes internally and won't be seen until again the person collapses on the ground. But a general principle, a small number of – a single stab wound, for example, may not bleed very much at all.

Just finally, would age and frailty brought on by age, I suppose, have anything to do with a susceptibility to dying or being rendered unconscious?……We're getting pretty – pretty into the hypotheticals here, you'd really have to – I'd really be more comfortable with what sort of frailty and what sort of injuries. Obviously natural disease can accelerate the rate at which you die but, you know, we're getting very speculative here.

Yes, thank you. Thank you, Doctor.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Now just continue this speculation, I suppose Doctor, and if a person was using aspirin as a prophylactic medication would that have any bearing on the amount of blood that might be expected to flow from either a head wound or a body wound sustained as a result of knife blow?……Yes, aspirin – aspirin inhibits the platelet action and will cause the person to bleed more.

So with a person who was using aspirin, was a long time user of aspirin, you would expect if he or she was bashed over the head in the way that the Director has suggested you'd expect a large amount of blood to normally flow?……Well it would depend on the nature – as I explained the nature of the wound. If there was a –

Assuming there was a wound - …..- if there was a skin defect, yes, you would expect more blood.

Right. When you say a skin defect you mean an opening in the skin to cause the flow?……Yeah, an open – yeah, that's right.

So if we had two people, a person who was using aspirin as a blood thinner and one who wasn't and both had exactly the same skin structure and both were struck with exactly the same instrument in exactly the same part of their heads, you would expect the person with the blood thinning agent to bleed more profusely than the other?……Yes.

Thank you. And the same with a knife wound dependent of course - ……Yes, again dependent on the (indistinct words)

And the critical thing with a knife wound, is it not, is the severing of one of the veins or the arteries and if you do that you're going to get more blood aren't you?……Yes.

And if you get an artery you're going to get the pumping affect aren't you?……Yes.

Yes, thank you. I was worried which way's coming in and which way's going out but the artery is pumping it out isn't it?……That's right.

And that's where you get the spray affects and things?……Yes.

Yes, thank you for that. When a person suffers a subdural haemorrhage it's not generally the case that they die instantly the –

it's the affect of the blood welling up under the dural, isn't it, that causes damage, placing the pressure on the brain?……Well unconsciousness can occur pretty quickly but death may take some time, yes.

And death in fact with a subdural haemorrhage can take a long time can't it?……Yes.

Yes, thank you. And during that period the person to all intents and purposes would appear to be alive but unconscious and probably strong snoring sort of sound type noises coming from the body?……Yeah, it can be – I think it can be difficult for people to tell sometimes whether they're unconscious or dead.

Yes. Look, there's – if I could – I'm not in any way seeking to denigrate your evidence but what you're really telling us today is this, that really anybody can die as a result of a single blow to the head?……Yes.

Anybody can die as a result of multiple blows to the head?…..Yes.

And/or be rendered unconscious in that manner?….Yes.

Mm. thank you very much. I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<REXN – MR ELLIS SC: Yes, you were just asked about taking – it may take a long time for someone to die from a subdural haematoma I think. May he equally die quickly from it? All from a single blow.

MR GUNSON SC; That's two questions. That's two questions, your Honour.

MR ELLIS SC: Okay.

HIS HONOUR: Tell, take one at a time Mr Ellis.

MR ELLIS SC: I'll take one at a time. You were asked if death from a subdural haematoma might take a long time....Yes.

Might it also take a short time?...You can have a person who has a subdural who dies very quickly – the same injury that causes subdural may cause other injuries that can cause death.

Yes....More quickly, but subdurals generally take some time to – occasionally a subdural can be very quick because it injures an artery instead of a vein and there death can occur faster but generally subdurals do take some time to die.

Yes. So is it the case then that you're saying death from a single or multiple blows can ensue quickly.....Oh yes.

Almost instantly?....Yes.

Thank you. Nothing else, thank you, your Honour.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS WHO WAS RELIEVED AND WITHDREW

HIS HONOUR: All right. So we're back to Sgt Conroy then Mr Ellis.

MR ELLIS SC; Yes, if your Honour pleases.

HIS HONOUR: Yes, recall Sergeant Conroy.

<SIMON MATTHEW CONROY AS PREVIOUSLY SWORN

<XXN - MR GUNSON SC: (Resuming): Now if I could have my folder back please? Now sergeant, in the break did you read up to the passage to which I have – had referred you?.....Yes, I did.

Now do you want me to read that passage again?.....Yes please?

The question you put to her – at 574, your Honour:

> *Is it possible that the reason he was left out there was because he was incapacitated or he was deceased and there was no other option but for you to take boat back ashore?*

Now you put that question to her -.....Yes.

- you didn't express a timeframe; what time were you intending that the question relate to?.....When she went out during the afternoon –

Thank you. .....- and into the evening.

Sorry?.....And, in my opinion, into the evening.

But you didn't make that clear, did you?.....Well I believe we were –

You asked -.....- talking about when she went back to the boat after lunch.

Thank you. .....And that's –

And that was what you were intending to convey to her, wasn't it?.....Yes.

So why did you have to then add the words "and in my opinion later in the evening" why did you throw those in?.....Well she's down there –

No, no just - …….- by then –

Just - …….Sorry –

Did –

MR ELLIS SC: A question has been asked and as soon a word comes out it's interrupted.

MR GUNSON SC: (Resuming): Did she –

HIS HONOUR: No, just a minute. You've asked the question – do you want an answer or are you withdrawing the question?

MR GUNSON SC: I withdraw the question in that form. (Resuming): Did she ever tell you that she had been out to the boat, other than after lunch?…….No, she didn't.

Thank you. Now given that your question related to the post lunch visit, didn't it?…….Yes, it did.

Thank you. Now at no stage when you asked her that question did you tell her that Mr Lorraine had given a description of a man that appears to answer the description of Mr Chappell, having seen him on the boat at five o'clock or thereabouts?…….No, I didn't.

And at no stage did you tell her about Mr Conde's evidence or Mr Clarke's evidence?…….No, I did not.

Right. And you didn't think it might be appropriate?…….No, I was putting the question to her.

Thank you. Now move away from the boat and come to the car, you managed to obtain a photograph which is now in evidence showing a bit of a vehicle on Sandy Bay Road in the early hours of the 27th January 2009?……That's correct.

And you would agree, would you not, that the picture is inconclusive?……Yes, I agree.

Yes, and you have said that the picture is inconclusive in the past, haven't you?……Yes, I have.

And you formed a belief that it depicted a vehicle similar to a Ford Falcon?……Yes, that's correct.

And would it be fair to say this, that with the resources of Tasmania Police you tried to get somebody who knows something about motor vehicles to identify that vehicle?……No.

No attempt made at all?……No.

Didn't take it to a Ford dealer, for instance, and say, "Is this a picture of a bit of a Ford"?……..No, we didn't.

Any reason for that?……That – I simply left it as it was, as what it appeared to be.

You just weren't prepared to follow it up?……Well initially, no.

Never followed it up?……I didn't follow it up.

No. As at the 5th May you obviously had some forensic evidence - …….Yes.

- but you can't tell me now precisely what forensic evidence you had because it was coming to you, and these are my words, in dribs and drabs through the internet?……That's correct.

Thank you. Now the accused came to see you quite willingly on the 5th May?……She came, yes.

And spent a long time with you?……She did.

And you know that she had an appointment?……That is correct.

And there was a brief discussion about that in the course of the interview and she – if she'd wanted to go to that appointment you certainly wouldn't have prevented her, would you?……No.

And you certainly wouldn't have arrested her to keep her there?……No.

Because you'd have to charge her, wouldn't you?……Yes, that's correct.

Right. And notwithstanding that the appointment was one of a medical nature she just – was quite happy to stay and arrangements were made to change the appointment?…….That is correct.

Yes. And she was free to go at any time, wasn't she?…….Yes, she was.

Mm. Now she wasn't arrested until the 20th of August, nearly three months later, was she?.....The precise date I'm not sure.

Well take it from me, it was around about the 20th of August?.....Yes, I'm happy with that, yes.

Now it wasn't your decision that she be charged with the crime of murder, was it?.....No.

Was that left to Inspector Powell?.....I cannot tell you who made that decision. I – well the last I saw the file was when it went to him.

Right. .....Beyond that I'm not sure where it came from.

And you had, after that date, when it went to – back to Powell, you've had nothing to do with this matter ever again?.....Essentially, yes.

Right. Now did you at any stage become aware – and just answer this please with a 'yes' or a 'no' – that prior to her arrest, some weeks before, the accused had made a complaint to the Commissioner and to Internal Affairs about the way she was being treated?.....I'm aware that a letter was written, yes.

To both the Commissioner and to Internal Affairs?.....I don't know about Internal Affairs, I knew a letter had been written to the Commissioner.

All right. And did somebody make you aware of that?.....Inspector Powell, I believe.

Right. And can you tell me when Inspector Powell made you aware of that?.....No, I can not.

Right. Did he provide you with a copy of the letter?.....No.

Did he read it out to you?.....No.

Did he contact you to tell you that a complaint had been made about the way in which she'd been, as it were, the subject of the investigation?.....No, he didn't contact me, it was –

Thank you. .....No.

Well – so how did you find out, just ran into him in the street and -…….It was in passing.

He just mentioned it in passing?…….There's – a letter of complaint has been lodged.

All right. Thank you. Now you questioned the accused about Mr Triffett, didn't you?…….Yes.

When you questioned the accused, did you have Mr Triffett's statement present in the room with you?….No, I don't believe I did.

Had you read it before you started the questioning about Mr Triffett's statement…Yes, I would have read it.

So you've refreshed your memory before the interview of 5th May….Not before the interview.

When did you last read Triffett's statement?….It would have been some time previously.

I'm sure it was, but you tell me when it was?…I – cannot recall.

Well don't you think it might have been sensible to have read the statement and refreshed your memory before you interviewed the accused……I believe I was adequately prepared.

Yes, well, you put this – 636 your Honour – you put this long question to you and I just want you to listen to it carefully –Triffett- then he changed the story he didn't want to go ahead with that – that's referring to Patrick, but you then put in place a plan some months later that you'd do this to Bob, that you outlined it to him. It was discussed in a trip camping where you and he went together in a car and Maria and Bob went in another car, by the end of that day he'd had enough and he told Maria about what you were planning. She challenged him, told him that he was to, basically, if he was to be believed, then he had to front you about it, and he did it in front of yourself, Robert and her and that your reaction was to kick them out of the house and within a few days you'd phoned Maria and told her that it was either the front – either the friendship was over and it was either him or you. Now were you under the impression that this offer – that's my word – to kill Mr Chappell was made on a camping trip in the circumstances that have just been described?….Yes, on then or abouts on a trip.

All right, and that's what Triffett told you, was it, that it was on a camping trip?……Detective Sinnitt took Triffett's statement.

Right. So if that's wrong it's because you've mis-stated your understanding of Triffett's -…….Yes, that's correct.

Right. I see, that's how the error arose, if it's an error, is it?……If it's an error, yes.

Yes. Now while we're on the subject of Triffett have you become aware that Triffett was charged with offences in early 2009?……Yes. Yes, -

Yes…….- January, yes.

Following a police – I suppose we'll call it raid on his house?……A search.

A search, all right. Did – when did you first become aware that – of Triffett asking anybody whether consideration effectively could be given not to proceeding with those charges?……Some days later.

Some days later?……Yes.

Now you regarded Triffett as an important witness, didn't you?……Initially I would say I regarded Triffett as a very – a person of interest in this enquiry.

Yes, a person of interest?……Yes.

Here you have Triffett suggesting that there may be something in it for him, get the charges dropped?……No.

But he certainly tried to get the charges dropped, didn't he?……I have no knowledge of the conversation.

MR ELLIS SC: Well this is going to –

HIS HONOUR: Well just a minute, just a minute. Mr Ellis.

MR ELLIS SC: - going to be second hand hearsay probably, invited. We've had Mr Triffett here, I don't –

HIS HONOUR: Well I'll ask the Sergeant. Did Mr Triffett say anything to you about getting the charges dropped?

WITNESS: Absolutely not, your Honour.

HIS HONOUR: Did he say anything in your hearing about getting the charges dropped?

WITNESS: No, he did not.

HIS HONOUR: Back to you, Mr Gunson.

MR GUNSON SC (Resuming): But you found out about it?……No, not – not until much later.

When did you find out about it?……There was a meeting some days later, at the conclusion of the meeting Inspector Powell asked for a file to be collected, brought over for his review, and it was a long time later that I ever found out anything about it.

And – but the file was a file where, at Prosecutions?……Prosecution or Eastern District,I can't recall.

Right. And it related to the Triffett charges?……Some charges against Triffett.

When did you find out though that Triffett had asked if something could be done about those charges?

MR ELLIS SC: No –

HIS HONOUR: Well that presumes that that is the information the witness received. The evidence is not that that's what Mr Triffett asked so you're asking about some other utterance from Mr Triffett.

MR GUNSON SC: (Resuming): Did you at any stage learn that Triffett had mentioned his charges to police officers who were investigating this matter?……Had mentioned it to police officers investigating the matter?

This current matter……He had not mentioned it to the investigators of this matter.

Right. Did anybody, any other police officers, raise it with the investigators in this matter?……No.

Right. But you became aware of it at some stage?……Much later, yes.

When?……I cannot recall. It was – as far as I was concerned it was nothing, it was never going to happen and never happened.

But it was never disclosed to Mr Ellis was it? You're the officer in charge of this investigation it wasn't - ……You'd have to ask Inspector Powell about that. I have no knowledge of disclosure of it.

Right. But you didn't disclose it to Mr Ellis did you?……No.

No.

HIS HONOUR: Did you disclose anything to Mr Ellis when you were in charge of the investigation?

WITNESS: About this topic?

HIS HONOUR: Yeah.

WITNESS: No.

HIS HONOUR: Generally were in touch with Mr Ellis?

WITNESS: Yes, we've met at one stage.

HIS HONOUR: All right, well that's all I need to ask. Mr Gunson?

MR GUNSON SC: (Resuming): But at no stage did you disclose that approach to Mr Ellis?……No. No, it was a matter for Inspector Powell.

And you are aware now that it was only disclosed last week?……That?

Yes……Yes, I knew about that.

Thank you. And you are aware of the duty of disclosure aren't you?……Well I don't know when it was actually disclosed to him so I can't say. I can't answer your question, sorry.

Are you aware of the general duty of disclosure?……I'm aware of that, yes.

Thank you…… I have no knowledge of when it was disclosed.

Thank you. Just bear with me, your Honour. I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis, do you re-examine?

<REXN - MR ELLIS SC: Thank you. Sergeant Conroy, you were challenged by Mr Gunson to name one person whose – who had made a statement concerning the tender of Four Winds that it was grey and you named Mr Liaubon and Mr Balding?.....Yes.

From Mr Balding did you have something in addition to his police statement?.....Yes, I had an email that had been forwarded to Detective Sinnitt from him, as a result of a request for him to canvass members of his rowing club.

Yes.....To canvass members of his rowing club with regards to the incident that occurred on the 26th of the 1st.

Thank you. Can I show you this please? .....Thank you. Yes, this is – is that email that I have a copy of.

Thank you. I tender that, your Honour?

EXHIBIT #P71 – EMAIL FROM MR BALDING TO DETECTIVE SINNITT – TAKEN IN

MR ELLIS SC: Can I have it, your Honour when it's marked?

HIS HONOUR: Yes, give that back to Mr Ellis once it's labelled and it can be read out.

MR ELLIS SC: (Resuming):

Shane Sinnitt to Simon Conroy/police/Tas@police –

Sorry, I'm giving away his trade secrets.

- Andrew Sice/police/email address. For info, running sheet forward by –

Sorry –

30th of January 2009, 8:05am. Forwarded by Shane Sinnitt/policetas on 30/1/2009 8:05am.

Below:

Daryl and Wendy Balding to Shane Sinnitt –

I'll leave, if I could the rest – the formal stuff:

Hi Shane,

Sent attached email out to our fifty nine members this evening. Hope you get some info.

Cheers
Daryl.

And the message from Daryl Balding – some technical detail:

To D Balding@westnet –

Attached email out to our 59 members this evening. Hope you get some info, cheers, Darryl.

And message from Darryl Balding, some technical detail to :

D. Balding@Westnet.com.au, police assistance required. Hi all, most of you will be aware that a 65 year old sailor disappeared from his yacht moored south east of our clubrooms on the afternoon/evening of Monday January 26th in suspicious circumstances. Of particular importance to police is dinghy movement between the beach adjacent to the clubrooms, Marieville Esplanade and his yacht, moored south east of our clubrooms. If you were about the sheds on the afternoon/evening of Monday January 26 and saw dinghy movement and in particular movement of a grey with blue trim inflatable dinghy with a small black outboard motor, would you please contact Det Snr Constable Shane Sinnitt. Phone number follows: Your information would be greatly appreciated, Cheers, Darryl"

.....Yep.

Now your Honour, at this point, as I need to ask some questions about it, I tender and this is agreed – the dinghy that is downstairs in the Supreme Court garage.

EXHIBIT #P72 – DINGHY LOCATED IN SUPREME COURT GARAGE – TAKEN IN

HIS HONOUR: Go down and put a label on that please, Miss Webb.

MR ELLIS SC; Now you've been asked about Mr Conde's further recollections Sergeant. Did – obviously you were asked also about

his description of the large tender, large grey tender?...Mr Conde - yes.

Mr Conde's as of – did he gave an estimate of the length of the length of that tender?....Last night?

To you last night?.....Last night. The large grey tender he stated was – initially stated was no less than ten feet, then stated – he drew a plan and he stated it was between ten and 12 feet long.

Right. Did he say that he had seen anything like it since then?....He said he hadn't seen anything like it, but that he hadn't specifically been looking.

Did he say that he had been out many times, particularly over the last 12 months?.....Yes, he did say that.

And did he say he had discussions with members of his yacht club?....Yes, he's had discussions.

Did he contrast the dinghy that he claims to have seen with the one of which pictures were shown to him in the court……Yes, he did.

And what did he say about the length of the dinghy that – the photographs of which were shown to him in court?……He said that that was a dinghy between eight to nine feet.

Did you this morning measure the length of the dinghy downstairs in the garage that I've just tendered?……Yes, I did.

How long was that?……Three thousand five hundred millimeters.

What's that -……..Three and a half metres or eleven and a half feet.

Right, which is apparently the length of the dinghy he claims to have seen?……Yes,

And that's what he calls a large dinghy?……Yes.

Now I think finally you were asked about the timeline that you were doing, whose recollection would have been particularly important in establishing such a timeline?……The last person to see Mr Chappell alive.

Who did you understand that was?……The accused.

And were you thus reliant on what the accused said to establish a timeline?……Very much so.

Thank you. You were asked about the – you were asked about P36, which is the statement from the mature woman of sound mind who saw – oh I'd better get it, Mr Shapiro will help me – and you were asked – and it was pointed out that she was sailing on a yacht with friends and that she said that she saw a large mid-grey dinghy and you were – and it was said to you, "Well why didn't you go and ask the friends", why didn't you do that?……Why didn't I ask the friends –

Yes……..- of that person –

Of that person…….I wasn't working here at that time.

Okay. Could you have a look at P36 – I see, you weren't working?……No, I'd left there.

Can you have a look at P36, please. The identity of the person has been blacked out……..Thank you.

- and could you read please the first sentence of the second paragraph?…….

> *On Australia Day, the 26th of January 2009, I was sailing as a guest on a yacht on the Derwent River in company with friends, I prefer to not to name.*

Thank you. Do police have any way of extracting that information from such a witness?…….No, we don't.

Right. And so in answer to the criticism why weren't the friends interviewed, that would seem to be the complete answer?…….That would be, yes.

Thank you. Just one minute back to Mr Conde; did he say that he had observed the – in the dinghy he saw, the one not less than ten feet, did he say that he observed the engine arrangements in respect of it?…….He had no observations of the engine arrangements of that – that dinghy.

Now you've told us your sailing experience, and – being out on a boat – when a – when the motor is mounted, and particularly on the dinghy we've seen downstairs this morning -…….Yes, yes.

- how low in the water does that sit?.....It sits – it sits low, the pontoon is up the side of it.

Yeah.....Particularly when it's a small outboard, it sit downs quite low in - on the boat.

Okay. And so any sort of a chop might obscure the view of it, is that right?.....Certainly.

Thank you. Thank you, sergeant.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: Thank you, sergeant, you're free to go.

WITNESS: Thank you, your Honour.

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Can you just give me one minute, your Honour?

HIS HONOUR: Yes.

MR ELLIS SC: I call Daryl Balding your Honour; you recall that you gave me leave to recall him?

HIS HONOUR: Yes.

MR ELLIS SC: Thank you.

<**DARYL JOHN BALDING RECALLED AND SWORN**

HIS HONOUR: Yes.

<FUR EXN - MR ELLIS SC: Thank you, your Honour. Mr Balding, you're Daryl John Balding……Yes.

And you're the rowing coach of Sandy Bay Rowing Club?……Yes.

Who has already given in this trial and I'm afraid has had to be recalled. Mr Balding, when you gave evidence you said that you saw a dinghy near the rocks on the morning of the 27th January 2009……Yes.

Did you – do you recall – sorry, did you make a statement to police about that dinghy and those events while it was fresh in your mind?……Yes.

Right. We'll show you this please. Is that your signature on your statement?……It is, yes.

Thank you. I tender that, your Honour.

EXHIBIT #P73 – STATEMENT OF DARLY JOHN BALDING – TAKEN IN

Nothing further, thank you, your Honour.

HIS HONOUR: Are you going to read that out now it's labelled?

MR ELLIS SC: If I could read the first three paragraphs, your Honour, and leave the rest for the jury.

HIS HONOUR: Yes.

MR ELLIS SC: Thank you.

Dated 26th of the 3rd '09. Daryl John Balding. Date of Birth 29th of the 12th '46. Live in Howrah. Retired. Phone number. The above details are true and correct.

I'm the coach of the Sandy Bay Rowing Club which is situated off Marieville Esplanade, Sandy Bay. At about 5:45am on the 27th January '09 I arrived at the rowing club to take training. When I arrived Mr Farmer, who is the father of one of the rowers, told me that when he arrived he had found an inflatable dinghy floating off Errol Flynn Beach which is the beach between the end of Marieville Esplanade and the rowing club. I saw that the dinghy was tied to rocks beside the rowing club, it was grey with dark blue trim and had an outboard motor attached to the back.

HIS HONOUR: And you'll have the document in the jury room if you want to read anymore, ladies and gentlemen. Yes, thank you. Mr Gunson?

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

<XXN – MR GUNSON SC: Mr Balding how long have you observed the dinghy before that day?.....On and off over a period of about 15 minutes.

Right. It was just down by the rocks as you've described earlier....Yes.

And when you came back in from rowing later on about 7 o'clock, did you see the yacht – did you see the dinghy again?....Yes.

Still down by the rocks?...Yep.

You said in your statement to police, given on 26th March, some two months later, that it was grey with dark blue trim – that's right?...Yes.

That was your memory at the time?....Yes.

Have a look at these two photographs. There's P3, photo 70 and 71. Just show him those please. Now have you got those in front of you?...Yes.

That's the dinghy?.....Yes.

The dinghy you saw.....Very glarey photographs, but yes.

It appears to be the dinghy you saw?...Yes.

And you'd agree with this proposition that the dinghy appears to be white and not grey.....Given the quality of the photograph, yes.

Yes, well -....But it was grey.

Oh. I see. Well, would you also have a look at these photographs please. P15, photos 16 and 17.

HIS HONOUR: These are in the smaller volume of photos, at tab 8.

MR GUNSON SC; Have a look at those two photographs, compare the dinghy in those two photographs with the two in front of you that I gave you a moment ago. It appears to be the same dinghy, doesn't it?....Yes.

And in photos 16 and 17 it appears to be a white dinghy, doesn't it?...Yes, well, pale grey - pale grey white, yeah.

Well, I suppose what you're really saying to me is it could be a very light grey but merging on white – is that your - .....Light grey was the boat I saw.

Do you know what's sometimes called warship grey – you know you see these big grey war ships come into port...Yes.

You're not talking about that grey, are we?.....No, it's a – it's a light – a light'ish grey.

A light'ish grey -.....Yeah.

- merging on white?.....Well I stick to light grey.

Right. And you sent out an email to members of your club, is that right?.....Yes.

We've seen that email, it's in evidence, you described it – a dinghy in the email as grey with blue trim, inflatable dinghy with a small black outboard motor. You were asked to do that by Constable Sinnitt, is that right?.....Yes.

Did he dictate to you what should go in that email?.....No, not at all.

Right. What did he ask you to do precisely?.....In fact I – I volunteered to send out an email he did – he did not ask, I volunteered –

Right. .....- he was asking if anybody may have seen anything on the day, and I said, "Well look, I'll send out an email to our members –

Right. .....- and see whether anything comes from that".

Yeah. You certainly didn't describe it as a "light grey" did you – still, it speaks for itself, doesn't it?.....Grey.

Right. Did you get any responses from any of your members?.....None at all.

None at all. And on the morning of the 26th, do you know how many members – sorry, the morning of the 27th, how many members were working out from the rowing clubs premises?.....From our club, probably about eight rowers.

Right. .....And Hutchins would have had a number of crews out as well.

HIS HONOUR: So this is the morning of the 26th not the day the dinghy was found –

MR GUNSON SC: No, the 27th.

HIS HONOUR: - and the boat was sinking – sorry?

MR GUNSON SC: The 27th.

HIS HONOUR: The 27th.

WITNESS: The 27th, yes.

MR GUNSON SC: (Resuming): Yeah, no.

HIS HONOUR: Sorry.

MR GUNSON SC: (Resuming): So there would have been eight rowers from your club?.....Yes.

Plus the coaches?.....Yes.

Presumably a cox as well?.....Yes.

And the Hutchins -.....Hutchins would have had quite a number of boats on the water.

Right. And you didn't send anything out to them?.....I have no contact details –

No.....- for them.

We're clear about that. All right. Thank you. I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis?

<REXN - MR ELLIS SC: Thank you. Mr Balding, your email relates to Monday of January the 26th, Australia Day, yet Mr Gunson just asked you questions about the 27th. Can you say how many members might have been out on the 26th?.....Phew, we would have had about twenty four, twenty five on the water that – that day, it was the Sandy Bay Regatta.

Right. Thank you. .....We – I had a number of crews.

Right. Now you've been shown some photos, P8, and I wonder if you could be shown those again and have a look at the photograph that's marked or numbered 16.

HIS HONOUR: P15, isn't it?

MR ELLIS SC: I'm sorry.

HIS HONOUR: We've had 8, P15.

MR ELLIS SC: Oh it might be, yes, my mistake, I folder over one. It's P15, I'm sorry. (Resuming): Now I want you to look at the handle there on the side of the dinghy closest to us and look now, please, at photograph in P38, the number 14. P38, Mr Williamson's set, tab 3. If they were the same dinghy would you say that the – what colour would you say the handle was and other trim in photograph – in the second of the photographs you're seeing?

HIS HONOUR: Sorry, that's in Mr Williamson's photos, P38.

MR ELLIS SC: P38, photograph 14.

HIS HONOUR: Oh photograph 14, thank you.

MR ELLIS SC: Yes, your Honour.

WITNESS: Photograph 14 the handle is a dark grey.

MR ELLIS SC (Resuming): Thank you. But it doesn't appear so in photograph – in the other photograph, is that right?.....No.

Thank you, Mr Balding.

HIS HONOUR: Yes, are you finished?

MR ELLIS SC: I have no –

HIS HONOUR: Yes, thank you, Mr Balding, you're free to go.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

<THE WITNESS WAS RELIEVED AND WITHDREW

HIS HONOUR: Any more witnesses today, Mr Ellis?

MR ELLIS SC: Not in the two – no, we don't actually, your Honour.

HIS HONOUR: You don't have any here, all right. Right, well we'll stop for the day. The jury can make their affirmation and the Court will then adjourn 'til ten o'clock tomorrow.

<JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00AM ON THURSDAY THE 7TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

MR SHAPIRO: - your Honour, his proof was filed on the 30th of September, it's a supplementary proof.

HIS HONOUR: Thank you.

<ROBIN HENRY JOHN WILSON CALLED AND AFFIRMED

HIS HONOUR: Take a seat.

<EXN - MR SHAPIRO: Your full name is Robin Henry John Wilson?.....That's correct.

And you're a senior constable with Tasmania Police?.....That's correct.

And you're stationed with Forensic Services here in Hobart?.....Yes, I am.

Thank you. And at approximately 4:00pm on Thursday the 29th of January 2009, you attended motor – well the yacht, the Four Winds, at Goodwood?.....Yes, I did.

And what was the purpose of you going to that yacht?.....I was tasked to fingerprint the parts of the outside of the yacht on the deck and around the deck.

Okay. And when you say "fingerprint it" how do you do that?.....It depends on the surface, but in this case, we – it's a light yacht, or a light surface, so we used black powder, and on some of the shiny surfaces like winches and things we used a white powder – so you just use a brush to apply the white powder onto surfaces, and any fingerprint material that is left behind the dust sticks to that material

and so you can then see any ridges from fingerprint impressions that are made on the surface that you're dusting.

Okay. And is it the case that you then took lifts of those areas?.....That's correct.

And how do you take a lift?.....A lift is a piece of transparent plastic, and you peel one part of the lift off, which leaves a sticky residue on the plastic, something like a large piece of sticky-tape but it's thicker than that. You press that onto the dust where your fingerprint impression is and the dust transfers onto the sticky part of the plastic. You take that up, you seal up the lift so that - then it's no longer sticky and then you're able to see the lift.

And so you took six lifts on that day, is that right?.....Yes, I did, yes.

And then you attended the vessel again the next day, on the 30th January, and took a further number of lifts. How many did you take the next day?.....I took six as well and my tasking that day was to fingerprint part of the interior of the vessel.

Okay. Now do you have those lifts with you?.....Yes, I do.

It looks like they're in some envelopes there could you - .....Yes, they're in two envelopes, one for each day.

And so when you – after you've done the lifts what do you do with them?.....Then you go back to the office, you load the information from the lifts and any photographs that you've taken onto a database, our forensic register database, you then print out an envelope with the job details on the front of the envelope. At the time of collecting the lifts you have a lot of sticky labels each with their own unique number on them so each lift has its own unique number and this is a copy of that unique number and so you put the – those sticky on the front of the envelope. So the six stickers that are on the front of the envelope here with the six numbers correlate with the six – the numbers on each lift on the inside.

Okay. And then you file them or give them to forensics - .....They then go to our forensic exhibits office and they basically take them and send them to where they need to go, in this case the fingerprint bureau.

Thank you. Well I tender those two envelopes of lifts as one exhibit, if it please.

EXHIBIT #P74 – TWO ENVELOPES OF LIFTS – TAKEN IN

Thank you. Now you also took some photographs on those two days?……Yes, I did.

Could the witness be shown these please……Yeah, these are my photographs.

Thank you. Well I tender those.

EXHIBIT #P75 – PHOTOGRAPHS OF ROBIN HENRY JOHN WILSON – TAKEN IN

MR SHAPIRO: We have some copies, I don't have any electronic – Sorry, there's nowhere in your folders for those, they're just a last set that you might have to share. Sorry about that. We do have a hole punch, I'm sure we can pass that round eventually.

HIS HONOUR: Look, we can have holes punched in them at morning tea. Okay.

MR SHAPIRO (Resuming): Thank you, your Honour. Now the first photograph, can you explain what that's a photo of?……This shows part of the yacht, Four Winds. It shows the cockpit. There's two hatches visible, there's a hatch on the bottom left part of the photograph, that's what I call the stern, it's on the port side of the vessel, the left side of the vessel, so that's the port stern hatch, and then you'll see another hatch in the top right hand corner of the photograph, I'm calling that the mid port hatch.

Can you see in that photograph where you took some of these lifts?……Yeah, you'll see the two – two blue sticky labels and they're affixed with just a corner of the sticker in the location where the lifts were taken. You'll see two in the stern hatch and there's one on the mid hatch that's not particular visible from that photo.

Thank you. …….And you'll also see one on the winch in the centre of the photograph there's a – sort of a shiny winch there -

Okay……..- with a label sticking on the top of it.

Thank you. And if you go to the second photo?…….The second photo, is a close up of the – you'll see mid hatch port with number 1 on it, so that's a close up of the – where the lift was taken on the mid hatch.

Thank you. And the next photograph has the winch in it?.....Yes, just a location shot of the winch slightly closer than in photograph 1.

Thank you. And the next?.....And in that photograph also you can see where the location of the lift is on the mid hatch.

Yes, thank you for that. And the next photo is a close up of the winch?.....That's correct, with – yeah, any detail that – of the fingerprinting is visible there.

Thank you. And photograph number 5?.....Photograph number 5 shows, again the three – the three lifts on the – the two lifts on the stern hatch and you'll also see the label on the port rail, where another lift was taken.

Thank you. And number 6?.....Photograph number 6 is a close up of the lift taken on the stern hatch.

And is 7 the same thing?.....7 is the second lift on the stern hatch.

I see – thank you. And number 8 is on the rail?.....That's correct.

And what do we see in photograph number 9?.....Photograph number 9 is the winch handle and that was located in the hatch that it's sitting on. So we were dusting the vessel but also any suitable surfaces on the vessel, so the winch handle was one of those and photograph 10 is a close up of that.

Thank you. And then – then we move inside the vessel?.....Yeah, the following day re-attended the vessel was mainly in the saloon area, but also in the bedrooms. So this photograph shows the interior of the vessel, shows a pole in the saloon area with a lift on the location.

And then the – 36 is a close-up of that lift on the pole?.....That's correct. You can sort of see ridge detail above the – above the lift there.

Above the sticker?.....Yep.

Thank you. And photograph 37?.....Photograph 37 shows an area below the barometers in the saloon with two locations of lifts there.

Thank you. And photograph 38 and 39?.....Shows close-ups of those two lifts in photograph 37.

Thank you. And then photograph 40?……Photograph 40 shows part of the wall as you're heading out of the saloon towards the rear bedroom area.

And there's another sticker where you've taken a lift there?……That's correct, yes, you can see the sticker on the wall at about sort of shoulder height.

Yep……And 41 is a close-up of that.

Photograph 42?……Photograph 42 again shows the saloon area with some – what appears to be finger marks on the white part around the windows. There's a sticker there that shows the location of a lift.

And 43 is a close-up of that, is it?……That's correct.

And then 44?……44 is part of a door frame into the front bedroom part of the vessel and there's a – there was some ridge detail on the frame of the door.

Thank you. And 45 is a close-up of that?……That's correct.

Yes, thank you. I submit the witness, if it please.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Thank you. Were you directed by anybody, and if who, to take these series of photographs and to find or look for fingerprints?……I was directed by Constable Michael Maxwell, who was coordinating the forensic –

Yes……..- side of the – the examination.

Right. …….And my photographing, it's just part of my – the process that I regularly do.

I understand that. It's a two-fold process. Now when you say you were directed by this officer, did he actually tell you where you should look for prints or did you use your own knowledge and just look for suitable surfaces?…….On the first day the brief that I was given was to go onto the vessel –

Mm hm……..- and it was on the deck area. It wasn't to go inside the vessel.

Right. …….And not to worry about the – like the outside of the hull or something from the water area.

Right. So that was your brief. Now were you then specifically instructed by the person who was giving you directions to look for fingerprints on, say, the winch handle or the top of the hatches or what?…….No, it was – it was directed from what's a suitable surface, given the techniques we were using.

Right. Do I understand from that, that – bearing in mind that caveat, that you then checked every suitable surface on the deck of the yacht?…….That I believed was suitable, yes.

Right. So for instance, you would have done the front hatches?…….Yes, that's correct.

Did you do the masts?…….The mast wasn't – well what you can reach of the mast –

Yes……..- but we didn't go above, you know, for example –

No, you went about – well I suppose from reasonably shoulder height or thereabouts?…….That's correct, yeah.

So the masts were done. Were the windows around the cabin area done?.....The win – oh up on the wheelhouse, yes, that's correct.

Yeah. All right. And what about the rails?.....Yes, the rails were all done too.

All the rails? Now out of that you only got a number of latent fingerprint impressions that you've identified?.....That's correct.

Did you understand before you went out there that a large number of people had been on that yacht since the time it was found sinking?.....Only from what I'd heard in the news.

Right. And what was your understanding as to the number of people who had been onboard?.....Oh, I didn't have any estimate.

All right. Would it be fair to say this; that it certainly wasn't a pristine scene from which you could take fingerprints, rather it was a contaminated scene?.....I didn't make any determination about that it was just a scene.

Right, thank you. You would normally have expected to find fingerprints there, wouldn't you, because it was a yacht that was in use?.....I wouldn't say that because of the surfaces that are involved. There's a lot of sort of matt plastic which is, you know, like a – it's a non-slip surface of fibreglass; I wouldn't expect to find a lot of things on that sort of surface for example.

And that includes the deck doesn't it?.....Yes, yeah.

Right. So the deck was an unsuitable spot to expect to find fingerprints?.....Parts of the deck.

Yeah. So were you fairly limited in the area that you could test for fingerprints?.....Well as you've identified the windows, anything shiny like the winches, the top rails, things like that, so when we're looking at six lifts they weren't the only lifts that were collected that day because I was working with Constable Williamson and he also collected lifts.

Yes, I appreciate that. But it's fair to say that not a significant number of lifts were taken between the two of you?.....I'm not sure of how many lifts he took but, yeah, the number of lifts that we took were the number of lifts that we found.

Thank you. And the fact that the – I've put that poorly. Would the fact that the boat was open to the elements for a few days cause fingerprints to deteriorate at all?……In a –

In the exposed area…..Yes, to a certain extent but there's a lot of other factors involved in terms of the deterioration of fingerprints from an outside area.

Sunlight, or more correctly radiant heat is one of the problems isn't it?……Yeah, over a long period of time. Not over a period of a few days you wouldn't expect significant deterioration just from sunlight, no.

And insofar as the yacht internal areas were concerned you were aware that the yacht had partly sunk and a lot of water had entered the yacht?……That's right.

Would the fact that possible fingerprints were immersed in water cause any fingerprints to deteriorate or you just don't know?……Again there would be some deterioration but just because they have been immersed in water doesn't mean that you can't then collect fingerprints once it's dried out or – there are certain techniques for collecting fingerprints on wet surfaces.

But it does cause some deterioration?……Yes.

And it's not an ideal methodology to extract fingerprints is it?……In what regard?

Having been underwater?……It's – there's a whole range of ways of getting fingerprints and it's part of – I suppose our job is to determine the best way of getting it considering – you know, no crime scene is pristine.

This certainly was far from that?……It was – it was just a normal crime scene as far as I was concerned.

As far as you were concerned. Yes, thank you, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR SHAPIRO: Your Honour, I call Constable Michael Maxwell. His proof was also filed on the 30th September, your Honour.

HIS HONOUR: Thank you.

<MICHAEL CRAWFORD MAXWELL CALLED AND SWORN

<EXN – MR SHAPIRO: Your full name is Michael Crawford Maxwell?……That's correct.

What's your rank?……First Class Constable.

And you're with Forensic Services here in Hobart?……That's correct.

Thank you. Now on the 31st January 2009 you went to Prince of Wales Bay, which is in Goodwood, where you had a look at the yacht, the Four Winds?……I did.

And what was the purpose of you looking at that yacht?……To complete a fingerprint examination of the inside of the vessel.

And you looked for fingerprints inside the vessel?……I did.

How many lifts were you able to take?……Ten.

Okay. We've heard about how that happens, so if I can ask the witness to be shown P3, please, and photograph 79? Are you able, by using that photograph, to describe where you took some of these lifts from?…….Yes, in photograph 79, your Honour, you'll see the doorway or the hatchway that leads from the saloon into the galley. I took some fingerprint lifts off that doorway, off the back of it.

So when you say "the back of it" you mean the bit that we can't see in the photo?…….That's correct, it's opening around to your right when you're looking at the photograph.

In the sort of kitchen area there?…….That's correct.

And how many did you take from that area?…….I'll just have to look at the lifts themselves, if I may?

HIS HONOUR: No objection, Mr Gunson.

MR GUNSON SC: No, your Honour.

HIS HONOUR: Yes, do that.

WITNESS: Yes, I've taken lifts number 6, 7 and 8 from – sorry - lifts number 6 and lift number 7 from that – the back of that door.

MR SHAPIRO: (Resuming): I see. And – and did you take some lifts from the starboard side of the wall of the saloon?.....That's correct. In photograph number 79 on the top left hand corner, the white surface there, which has a window in it –

Yes.....- on the white surface there I took a series of lifts, numbers 1 to 4 inclusive.

Okay. Thank you. And – and you also took some – two lifts from the toilet, is that right?.....That is correct.

And if you can go to photograph 85 .....Yes, your Honour, in photograph number 85 you can see the toilet seat, lid down on the toilet, and where the scale ruler is is where I have lifted two lifts from, lifts number 9 and 10.

Thank you. I think the only lift you haven't told us about is number 5, where did you get that one from?.....Yes, your Honour, lift number 5 was from the starboard side forward saloon door hatchway itself.

HIS HONOUR: He hasn't told us about number 8, Mr Shapiro.

MR SHAPIRO: Oh thank you, your Honour, thank you for that. (Resuming): And is – did you also get lift number 8 from that same position?.....That's correct.

Thank you. And once you took those lifts you take them back to the police station, you put them inside an envelope with some special numbers and then you file that envelope, is that correct, with the lifts?.....At the Fingerprint Section, yes, that's correct.

Well if you have those lifts there in the envelope. Thank you. Thank you, I tender those and submit the witness, if it please.

EXHIBIT #P76 – FINGERPRINT LIFTS TAKEN BY MICHAEL MAXWELL – TAKEN IN

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<XXN – MR GUNSON SC: Thank you. Mr Maxwell, were you directed by any particular person, and if so, to take these particular – check these particular areas for lifts?……Um – I'll start it again. I was directed to go to the Four Winds on the previous day –

Yes…….- to supply the fingerprint officers with equipment and so forth.

Yes……One of those was the previous constable who was giving evidence and Constable Redburn, -

Yes…….- who was doing the examinations. They completed their examinations on the 30th and I continued the examination on the 31st to complete the examination. My direction to me was Sergeant – Sergeant Watson from the Forensic Bureau to complete –

Right. …….- the fingerprinting examination of the inside of the boat.

And that meant going through or over all reasonable surfaces, is that right?…….That's correct.

And having done that, you were able to lift some ten print impressions?…….That's correct.

Right. Were you specifically told to check the toilet area or that was just part of your normal duties?…….No, I was specifically told to do an examination there.

Right. And is it fair to say that you probably checked the entire compartment in there?…….I did.

Right. And you could only find two lifts on the toilet seat?…….That's correct.

Thank you. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Shapiro?

MR SHAPIRO: Nothing in re-examination, thank you.

HIS HONOUR: Yes, all right, thank you, constable, you're free to go.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR SHAPIRO: Your Honour I call Peter Maczi – page 348 of volume 2, and there's also a supplementary proof that was filed on the 5th of October.

<PETER JOHN MACZI CALLED AND SWORN

HIS HONOUR: Take a seat.

WITNESS: Thank you.

<EXN - MR SHAPIRO: Your full name is Peter John Maczi?.....That's correct.

And you're employed by Tasmanian Police, is that right?.....Yes, that's correct, sir.

But you're not actually a sworn police officer?.....No, I'm not a police officer.

What – what – well, what are you employed to do?.....I'm employed as a fingerprint specialist.

How many years experience do you have?.....I've had approximately twenty five years experience in classification comparison and identification of latent and ink fingerprint impressions.

And what – do you have any qualifications in that?.....Yes, I do. Amongst the qualifications I have is a Certificate of Expertise in fingerprint identification. That was issued by the Central Fingerprint Bureau of Australia. I'm accredited by the Australian Field Forensic Science Accreditation Board. I've successfully completed courses in palm print analysis and in advanced fingerprint development techniques.

Thank you. Now you examined a number of items in relation to the Four Winds?.....Yes, I did.

Items found on the Four Winds.....Yes.

On the 29th January can you remember examining something?.....The 20th January, may I refer to my notes, sir?

HIS HONOUR: Mr Gunson?

MR GUNSON SC: That's all right, your Honour.

HIS HONOUR: Yes, yes, please so.

WITNESS: Thank you.

MR SHAPIRO: Thank you. (Resuming): This is January 2009.....2009. Yes, I did, sir.

What was that item?.....I examined three screwdrivers and a winch handle.

That were – that were from the Four Winds?.....Yes, I believe so.

And on the 20th January again you examined the EPIRB from the Four Winds for fingerprints?.....Yes, that's correct, sir.

And in relation to the screwdrivers and the EPIRB did you take some lifts?.....The screwdrivers I didn't take lifts. I did a fingerprint examination on those screwdrivers with a negative result.

And the EPIRB?.....The EPIRB, yes, I did.

Right, thank you. And did you then attend the vessel at Goodwood?.....Yes, I did, yes.

And did you take some fingerprint lifts there?.....I was basically there more on a consultative basis offering advice to the crime scene investigators, I didn't personally lift fingerprints.

Thank you. And – now you – well what was your main role in terms of examining these fingerprints, how do you do that?.....It depends on the actual item in question. We use different fingerprint development processes depending on the actual surface that we're looking at. In terms of the screwdrivers, the winch and the EPIRB they were placed in a cynoacrylate fuming chamber. In that chamber super glue is heated to a certain temperature where it vaporises; those vapours contain polymers which attach themselves to moisture. A fingerprint is made up of about ninety eight percent water. So if there's any fingerprints on an item these cyanoacrylate vapours will attach themselves to those fingerprints.

I see. Thank you. And did you conduct an examination on an outboard motor and a foot pump and a fuel can and a pair of oars and some latex gloves and wooden stairs, that were all associated with the Four Winds?.....Yes, I did.

Okay. .....And they were at a later date, I think. They were on the 1st of February I did that examination.

Okay. And you also looked at a piece of duct tape and a plastic shopping bag, is that right?.....Yes, a white plastic shopping bag, correct.

All right. Now at a later date you received a number of envelopes that contained lifts that officers had taken from the Four Winds?.....Yes, sir, that's correct.

If the witness can be shown, I think it's P06, P36, P76 and P74?.....Yes, sir, they were six of the envelopes that I received.

Thank you. And so they're all – they all contain lifts that you've examined to try and establish who they belong to – the fingerprints, that is?.....Yes, that's correct.

And how do you do that?.....Basically, I take a – a lift and put it under a magnifying glass, whether there's sufficient ridge detail to establish a positive identification. Now by ridge detail I mean the actual ridges contained on the fingerprint. A fingerprint's made up of ridges and grooves and those ridges contain certain characteristics that are not unique to an individual, everyone has these characteristics, but their placement is unique to an individual and basically when I look at a lift I determine as to whether it is identifiable or not. If it is identifiable then if I have a suspect or a set of prints to compare them to I will make a manual comparison, if I don't and I consider those prints to be of sufficient quality to input into our automated fingerprint identification system I will then do that.

And so did you have some fingerprints to compare the lifts with in this case?.....Yes, I did have a number of fingerprints given to me to make a comparison.

Do you know who those prints were from?.....I believe one was Mr Casson, one was a Mr Stevenson, one was a Mr Chappell and one was Ms – Ms Neill-Fraser and also I received a set of elimination fingerprints from a – may I refer to my notes again?

Your Honour?

HIS HONOUR: No objection?

MR GUNSON SC: No, your Honour.

HIS HONOUR: Yes, have a look.

WITNESS: Thank you. A Mr Page.

MR SHAPIRO (Resuming): When you say Mr Chappell that was Tim Chappell, was it?……Yes, that's correct.

Thank you. Now – so could any of the fingerprints that were lifted from the Four Winds or the other items be identified?……Yes, some were identified, yes.

And who were they identified as belonging to?……The latent fingerprint impressions that were developed on the EPIRB, three of those were identified as that of being Mr Page.

Thank you. And were there any others that were identifiable?……Yes. On the EPIRB, no, I didn't consider the other latent impressions that were developed to be of sufficient quality for identification purposes.

Okay. How about from the Four Winds itself?……From the Four Winds there were numerous lifts that were identified.

Okay, and who were they identified as belonging to?……They were identified as belonging to a Mr Casson, Mr David Casson, and Mr Stevenson.

And do you know where – well the description of where those lifts were taken from?……Yes, if I may refer to my notes again?

HIS HONOUR: If there's no objection, yes, do it.

WITNESS: Would you like me to quote the actual barcode number?

MR SHAPIRO: (Resuming): No, if you can just give us the description please……Right. Mr Stevenson's left palm was located on – inside left hand side window of the yacht and on a wooden board near the radio and wheel handle above –

Does that say 'wheelhouse'?……Oh, wheelhouse, sorry.

Thank you……Wheelhouse above the wheel.

Thank you. And Mr Casson's?……Yes. Mr Casson's prints were identified on a number of items. Mr Casson's left ring finger was identified on the starboard side of the saloon area.

Thank you…….And Mr Casson's left palm impression was identified on a bar graph number 144121826, unfortunately the writing on the graph doesn't seem to be discernible. I believe the pen has run on it.

That's all right, thank you……And his left palm was also identified on bar graph number 144121695. The same thing, the pen has run on there I can't read the details.

All right, but – so there were a number of his fingerprints from inside the vessel?……Yes, there were.

Thank you. Now – so the prints that were identifiable, that is they were of good enough quality that they could be identified but you didn't have a match with any of the reference samples you had you've searched the national database, is that -…….Yes, I conducted a search through the national automated fingerprint identification system. It's a nationwide database that every State is represented in that database and yeah, the search came up with a negative result.

Okay, thank you. Now is it the case that you didn't find any fingerprints that matched Ms Neill-Fraser?……Yes, that's correct.

Now I know Ms Neill-Fraser owned the yacht and had been on the yacht and would've touched lots of things on the yacht, is it unusual for you not to find her fingerprints?……Not really. A fingerprint's – as I said earlier, a fingerprint's made up of about ninety eight to ninety nine percent water and some people perspire more than others, some people leave better fingerprint impressions than others. Because I touch an object like this doesn't necessarily mean I'm going to leave an identifiable fingerprint impression. Mm.

Thank you, your Honour.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN – MR GUNSON: Put simply, some people readily leave fingerprints that can be lifted and matched and some don't?……Yes, that's true.

Mm. It's really as simple as that, isn't it?……Well yes, it –

I mean you just gave a very good example by placing your hand on the side of the witness stand and said, that's as I understand it, it doesn't follow because you did that that you'll leave a fingerprint?……Yes, that's correct. There basically has to be sufficient latent matter deposited on a surface for the – for the fingerprint powder to adhere to.

Yes, all right. Now of course a good way to avoid leaving any fingerprints if you desire to adopt that course is to wear gloves?……Yes.

That's a classic, isn't it?……Well, yes.

And simple latex gloves can achieve that purpose, can't they?……Yes.

Mm, and that's why police and forensic officers when they go through crime scenes wear those sorts of gloves?……In order to avoid leaving their –

Their own fingerprints……..- fingerprints, yes.

That's right……..Yes.

Now just tell me a little bit, please, about this national database system. Am I correct in understanding that all police forces contribute to that system?……Within Australia, yes.

Yes. So if a person has his or her – her fingerprints taken in any state by a police officer, subject to certain restrictions -…….Yes.

- they go onto the national database?…….Generally, yes.

And am I correct in thinking they only go onto the national database after a conviction of a person?…….No, they don't, they get searched on the national database –

Yes……..- and if no conviction is recorded on a person –

Yes.....- generally we received instruction from the Forensic Compliance Unit to have those –

Yes.....- prints deleted from the system.

Deleted – right.....Yes.

So essentially the people whose fingerprints are on the database are those who have been convicted of a crime or have had their fingerprints taken in connection with a crime and are not yet convicted?.....Yes, we also record applicants for gaming licences on the database.

Mm hm. .....Visa applicants.

Thank you. Now you said with respect to the EPIRB that there – you were able to take some, I think you said latent impressions, and these were identified as Mr Page?.....Yes.

Right. And there were other unidentifiable prints on the EPIRB, is that right?.....Yes.

Now were you – when you say "unidentifiable" was there sufficient material left on the EPIRB to enable you to consult the database?.....No, there was insufficient material. I did photograph the unidentifiable latent impressions.

Yes.....However, there – upon the examining the photographs, I considered there was insufficient detail in them.

Right. Now with respect to the EPIRB how many of these prints, that's my word, were on there that you couldn't identify?.....There were two.

Thank you. And whereabouts on the EPIRB were they?.....I do have photographs –

Thank you, that would be very useful.....- depicting – yes.

If you could just remind yourself please by having a look at them?.....Sure.

When you've refreshed your memory just put them aside and tell me please?.....

HIS HONOUR: You've refreshed your memory?

WITNESS: Yes, thank you, your Honour.

MR GUNSON SC: (Resuming): Thank you. Now whereabouts on the EPIRB were these other prints?.....Towards the bottom portion of the EPIRB.

Yes. When you say the bottom portion – would your Honour just bear with me there is a photograph in evidence of the EPIRB and my junior is just trying to find it for me. Could the witness be shown P11 please, photographs – if you could have photographs 2 and 3 in front of you. Do you have those?.....Yes, sir, yes, I do.

All right. Just take –

HIS HONOUR: That's the large volume of photos Tab 4, ladies and gentlemen.

MR GUNSON SC: (Resuming): Just take your time please and if you would then tell us where you found those prints on the EPIRB?.....Towards the bottom portion would you like me to –

It would be useful if you could hold up the print - .....Sure.

- and perhaps first of all point towards – show the jury - .....Just down towards the bottom portion.

Thank you.

HIS HONOUR: So on photo 2 you're showing the – you're indicating the lower part of the front surface of the EPIRB?

WITNESS: Yes, your Honour, that's correct.

MR GUNSON SC: (Resuming): Now there's string obviously wrapped around the base of the EPIRB, do you see that?.....Yes.

But it wasn't on the - .....No, it was on the bottom portion below that area –

Below where the string – below where the string is?.....Yeah, down there.

Yes, thank you. And how many did you find there?.....I believe there were a couple of latents there that I couldn't identify.

Thank you very much. So at the end of the day how many fingerprints were you able to cross-reference against the national database and obtain a nil identification?.....I would have to count them up, sir.

Would you be so kind?.....Certainly. Twenty six latents were searched through the International Automotive Fingerprint Identification System, sir.

Thank you. And how many part prints did you obtain that were unsuitable for submission to that database?.....I'd have to count them up again, sir.

I thought you would – sorry, to do that to you.....I counted fourteen there, sir.

Thank you very much. With the twenty six prints that were submitted to the national database are you able to say whether they came from twenty six individuals or that's impossible to say?.....Oh that would be impossible for me to determine that.

So I suppose at one end of the extreme you could have twenty six individuals or you may have the same individual leaving partial prints?.....Yes.

Thank you. Yes, I've no further questions.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

HIS HONOUR: Yes.

MR ELLIS SC: Thank you, your Honour. I call Craig Shaun Crawford, your Honour.

<CRAIG SHAUN CRAWFORD CALLED AND SWORN

HIS HONOUR: Yes.

<EXN - MR ELLIS SC: You're Craig Shaun Crawford?.....That's correct.

You're a Constable in the Tasmania Police?.....Yes.

You're stationed with Marine Rescue Services?.....Yes, that's correct.

Where you've been for a total of twenty years?.....That's right.

Do you hold any certificates or qualifications?.....Yeah, I hold a Master 5 Certificate and Marine Engine Driver's Ticket 2 and I'm the master of the police vessel Fortescue.

And currently what are you, currently what's your position?.....The skipper of –

Oh, I'm sorry, Fortescue.....- skipper of the police vessel Fortescue, master of the Fortescue.

Okay. I don't know about the jury it might have been a little bit unclear so just try to clear - .....That's all right.

Now this morning did you receive the forensic bag that you've got in front of you?.....Yes, I did.

Was it sealed?.....Yes, it was.

Did you open it?.....Yes.

And what did you find in it?.....A GME classic EPIRB.

Thank you. I understand my learned friend agrees that the EPIRB is the one referred to in the agreed facts, P17, paragraph 6.

HIS HONOUR: You confirm that, Mr Gunson?

MR GUNSON SC: Yes, indeed, your Honour.

HIS HONOUR: Yes, thank you.

MR ELLIS SC: (Resuming): Thank you, could you take it out?

HIS HONOUR: It's the – it's the EPIRB from the Four Winds?

MR ELLIS SC: (Resuming): There it is. Now what can you tell us about its state of activation?.....I can tell you it's never been activated.

Right. And how can you tell that?.....There's a safety tab seal at the rear – at the rear of the EPIRB –

Yeah.....- to activate it – can I demonstrate?

Yes please.....To activate it, you lift the orange tab.

Yeah.....There's al – there's a yellow tab there, which you slide in that direction.

Yes.....Sliding the yellow tab breaks the seal.

Okay. .....So after it's been activated the yellow seal's – the yellow tab's over there and then you shut it down to prevent it being turned off again.

Right. Would you mind leaving the witness box and showing the jury a bit – a bit closer please what the yellow tab – with your Honour's permission?

HIS HONOUR: Yes.

MR ELLIS SC: (Resuming): Thank you. We've got two jurors over too, Mr Crawford, and –

WITNESS DEMONSTRATE EPIRB TO JURY

MR ELLIS SC: (Resuming): Thank you. Does that EPIRB, or any you're aware of, operate automatically on immersion in water?.....No, it doesn't, it has to be manually operated.

But in any event, there was more – I'm sorry – do these usually sit on a bracket?.....Yeah, they do.

Okay. I'd better show you some photographs? Well - have you got a bracket with you?.....Yeah, I have I brought from our office.

Okay. First I'd better tender the EPIRB, please, your Honour –

EXHIBIT #P77 – EPIRB – TAKEN IN

MR ELLIS SC (Resuming): And could you show us the bracket, please? That wasn't in there, this is one you've brought?.....No, no, I put that in there, this is from my office.

Rightio.....That's a broken one from work, it's got a broken section here.

Yep.....Normally that'd be fixed.

Okay. Can you show us how the EPIRB is fixed in such a bracket.....It fits in there so it can't go in or out.

Yes.....To remove it you pull the release down –

Yes.....- and slide it out.

No wonder they break. Okay. I'd better tender the bracket too, your Honour, the jury might be interested.

EXHIBIT #P78 – BRACKET FOR EPIRB – TAKEN IN

MR ELLIS SC (Resuming): Simply taking it out of the bracket won't activate it?.....No, it won't.

And nothing will activate that until it's – until that tab's been – been moved?.....That's correct.

And the seal broken?.....That's right.

Okay. All right, we'll just show you some pictures, if we could please, of P15, the CD sent to Mr Stevenson by Ms Neill-Fraser.

HIS HONOUR: Right, these are in the –

MR ELLIS SC: Blue, sorry, your Honour.

HIS HONOUR: - smaller folder at tab 8.

MR ELLIS SC: And photographs 23 and 24 of those, please.....23 is not the photo.

I'm sorry?.....23 is not the photo.

Sorry, it's probably my mistake, I'd better double check.

HIS HONOUR: Have a look behind the pole above the small girl's hand.

WITNESS: Oh yes.

MR ELLIS SC (Resuming): Do you see something there?.....Yes, I can.

And closer up in 24?.....Yes.

Okay, what does that appear to be?.....It appears to be a bracket of EPIRB.

Bracket of an EPIRB?.....Yes.

Does that appear to be one in it?.....No.

Okay. Now perhaps P48 please which is in the big folder –

HIS HONOUR: P48, it's the smaller folder Tab 2.

MR ELLIS SC: P48, yes, thank you. (Resuming): Could you look at photographs 3 and it's closer up 3A.....Yes.

And what do we see there?.....The GME bracket similar to the one that I've brought along.

Yes, okay. In the close up, it might be an artefact of the photo, it might not be, do you see the bottom of the bracket?.....Yes.

Now could you hold up the bracket again that you've got and it's got some sort of feet on it has it?.....Yeah, it's got – you can see underneath they're obviously strengthenings, there's four pieces of strengthening.

Yeah. And they're – well we see four pieces of such strengthening in photograph 3A closer.....Yes.

And does there appear to be another one?.....There appears to be something else hanging down, yes.

Okay. May be if - .....Between the two middle ones.

No, of course, there seems to be five things rather than four.....Yeah.

All right. Now if we could look please at P3 in the large folder, first set I think, photograph 13 please. It's the same bracket now isn't it we're looking at?.....Yes.

Seem to be only four but it's a matter for the jury of course.....Yes.

Okay. And P9, please, which is the second set of that, photograph 15 and 16. Again Mr Crawford, an EPIRB bracket, is that right?.....Yes, 15's a bracket.

Yep.....16's a release tab.

Now if the release tab came off the bracket that's shown it seems to have one tab broken off and still attached to the bracket?.....Yeah, correct.

Would that be right?.....Yes.

And one tab broken off but still attached to the tab?.....Yep.

And that would leave the impression of – well not the impression, there would be five tabs or feet or whatever you describe it, - .....Yes, that's correct.

- as there seem to be in photograph 15?.....Yes.

Right. Okay. Thank you, I have nothing further.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: The question I want to ask, it may seem obvious, would this EPIRB float?

WITNESS: Yes.

HIS HONOUR: Yes. Mr Gunson.

MR GUNSON SC: Your Honour, could I ask for an indulgence. I know it's a bizarre indulgence but my – the arm of my glasses has just broken off –

HIS HONOUR: Well we'll stop for morning tea in that case.

MR GUNSON SC: If I can get some – I've got to go and scrounge some tape somewhere, your Honour, otherwise I'm going to have difficulties.

HIS HONOUR: Yes, all right. The jury can make their affirmation and the Court will adjourn for fifteen minutes.

JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Mr Gunson.

<XXN - MR GUNSON SC: Yes, thank you, your Honour. Mr Crawford, there are many models and styles of EPIRBS, aren't there?.....Yes.

And it follows that there are many styles of brackets in which EPIRBS sit?.....Yeah, that's correct.

There's no, as it were, standard bracket that's common for every EPIRB, is there?.....No.

And there are some models of EPIRBs where they don't have a release bracket on the bottom such as the one you've shown us here, rather you simply pull the EPIRB out of its housing, lift it straight out?.....Yeah, they don't normally lift up, they normally lift out.

Yes, but there are some, I suggest, some models that lift up?.....Not to my knowledge.

All right. Now you were asked to look at photograph 24 of P15, do you have that in front of you still? Now that photograph appears to show part of the EPIRB housing without the EPIRB in it?.....Yes.

HIS HONOUR: Now this is the small folder, tab 8.

MR GUNSON SC (Resuming): Now it's not unusual for boat owners to remove their EPIRBs from their vessels when they're not underway?.....No, I – no, I don't believe that.

Essentially you have them when you're at sea so that you can use them?.....Yes, correct.

There's no need to keep the EPIRB on any sort of vessel if you're not using the vessel is there?.....Well there's no need, no.

No. And particularly in smaller boats such as runabouts and things normally operators remove them because they attract items?.....Um, well I'd disagree with that.

Personal – it's a personal choice?.....Personal choice. It is a personal choice.

Thank you. Because that photograph is not a particular good photograph of that bracket is it?……No, it shows half.

Sorry?……It shows about half of it.

Half of it. And it's – I withdraw that. Put that away, thank you. Now it's fairly obvious that if you know how to use that particular model EPIRB you can get it out very easy can't you?……Yeah, that's correct.

Now would you just hold it up and do it again for the jury please……Yeah.

Just hold the bracket up - ……Just before you say that this was bolted on the wall by the way so you'd have one hand free so –

You've got it mounted on a wall, right?……Mounted on the wall, yeah.

It fits in like that……Yeah.

And would you just show the jury how easy it is to remove it if you know what you're doing?……Well it's not mounted on the wall so I've got one hand free that's a –

Right, well would you like somebody to hold it for you. I'm sure his Honour's attendant will become the wall for you……Okay, yeah. Are you happy with that?

Yes……Are you happy that –

Sorry……Push that down.

You pull it down pull it out, a very easy task……Yeah.

But if you applied undue pressure to it it's quite possible to smash the base of it isn't it?……Oh, it is.

Yeah, thank you…….What you do find with a lot of these EPIRBs is a lot of people have them and don't know how to actually take them out of the cover.

Yes…….So in a panic to rip it out it's not – would not be unusual.

To actually damage the bracket……Destroy it, to get it out, yeah.

And destroy the base……Yeah.

Right, thank you for that. And do you require any particular force in your opinion to break the base or is it just a simple plastic base that's susceptible to a reasonable amount of force before it breaks?……I reckon it would take some force to break it, yeah.

Thank you. Yes, I've no further questions, your Honour.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Yes, any re-examination?

MR ELLIS SC: No, thank you, your Honour.

HIS HONOUR: Yes, all right, thank you, constable, you're free to go.

<THE WITNESS WAS NOT RE-EXAMINED, WAS RELIEVED AND WITHDREW

MR ELLIS SC: That's the case for the Crown, your Honour.

<THAT CONCLUDED THE CASE FOR THE CROWN

MR GUNSON SC: Just a moment if it please – can I just reflect on this for a moment, your Honour? I was given a proof yesterday and I had anticipated a further witness and I just want to reflect on what I do, whether I require the Crown to produce that witness for cross-examination.

HIS HONOUR: Do you want five minutes?

MR GUNSON SC: I think probably ten, your Honour. But I need to take some instructions about it. Just – well I'm not going to go into it except I got two proofs –

HIS HONOUR: Well no, if you want ten minutes you can have ten minutes. Ladies and gentlemen would you go to the jury room please – I'll retire.

<JURY RETIRE

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Your Honour, I'm going to make a submission that there is no case for the accused to answer, this being a circumstantial case. It is necessary for the purposes of this submission to address your Honour both as to the law and the facts.

HIS HONOUR: Well how long is this submission likely to take?

MR GUNSON SC: That's what I was going to take your Honour to. I would have thought that I will go probably until, well, close to twelve thirty.

HIS HONOUR: Well I think – I think we should send the jury away until two fifteen and see where we get to.

MR GUNSON SC: I think that's sensible, your Honour.

HIS HONOUR: Mr Ellis, are you content with that?

MR ELLIS SC: Happy with that, thank you, your Honour.

HIS HONOUR: Yes, bring the jury out please?

<JURY RETURN

HIS HONOUR: Ladies and gentlemen, there's something that I have to discuss with counsel, this might take an hour, it might take longer. The best thing I think is to send you away until two fifteen. So I'll ask you to make your affirmation, get what you need to get out of the jury room and leave, and come back at two fifteen please?

<JURY AFFIRMED OUT

HIS HONOUR: Yes, Mr Gunson.

<SUBMISSIONS – MR GUNSON: Thank you, your Honour. Perhaps I'll commence my submission by saying this to your Honour, that in our submission the case against the accused is one that's based entirely on suspicion and which in our submission lacks the evidentiary basis for a circumstantial case to go to the jury.

It'll be useful, your Honour, to in the first instance take your Honour to the relevant law that you must address in the decision you will no doubt have to give with respect to this submission in due course. The law is conveniently discussed in a well known South Australian case which is reported under the name of *A Question Reserves on Acquittal Number 2* of [1993], which is reported in [1993] VOL61SASR@1 – and I have a copy of that decision for your Honour and a copy for my learned friend.

Now the principle that emerges from that case is succinctly stated in the head-note and I will take your Honour first to that and then take your Honour to what was said by the court when reaching that conclusion; and it is item 3 in the head-note:

> *Where there is a submission of no case to answer in relation to a case based on circumstantial evidence, the trial judge should decided on the basis of such inferences as are reasonably open on the evidence, as are most favourable to the prosecution, and should not choose between such inferences. The judge is concerned only whether a reasonable jury could reach a conclusion of guilt beyond a reasonable doubt and not whether there are any possible hypotheses consistent with innocence reasonable open on the evidence.*

And as the head-note says, there is a summary of the relevant principles by King, CJ. which I'll take you to in a moment. It's useful in that case to observe what the facts were and these are set out at page 2 of the report, and briefly stated, the accused were husband and wife; they were occupying a house, Federal Police attended and conducted a search and three quantities of heroine wrapped in plastic were found secreted in different parts of the garden. Fingerprints of the male accused were found on one of the packages of heroine. A quantity of cocaine contained in two small plastic bags was found inside the base of a lamp on the exterior of the premises near the front door. Fingerprints of the female accused were found on one of those bags. The female accused's sister gave

evidence that the drugs were not hers and she'd never seen them before they were shown to her by the police. The accused were tried in a district court in South Australia on information charging them jointly with four offences of possession of prohibited imports. The case for the prosecution was the evidence of the finding of the drugs and the fingerprints. At the conclusion of that case there was a no case submission made and the submission was upheld and the learned trial judge directed an acquittal on all counts. And following that acquittal, the Full Court was asked to direct its mind to a number of questions of law and amongst those was the question of the ruling on the no case submission.

Now at the bottom of page 3 in that last paragraph King, CJ commences a length passage that I of necessity need to read to your Honour. His Honour said this:

> *The learned trial judge gave reasons for his ruling that there was no case to answer. After discussing authorities he concluded that 'the evidence on the prosecution case was not capable of producing in the mind of a reasonable person satisfaction beyond reasonable doubt of the guilt of the accused and ruled accordingly there was no case to answer'. His Honour did not explain why he considered the facts were not capable of producing the required degree of satisfaction. The principles upon which a trial judge should rule on a submission of no case to answer were debated before us. In R v Prasad the Court of Criminal Appeal rejected the proposition that the trial judge should uphold such a submission, stopped the case and direct a verdict of not guilty 'if he considers that the evidence for the prosecution is so unsatisfactory that it would be unsafe to convict upon it'. The correct principle was stated as follows:*
>
> *It is fundamental to trail by jury that the law is for the judge and the facts for the jury. If there is no evidence which could justify a conviction then as a matter of law there must be an acquittal. That decision is for the judge and the jury must accept and act on his direction on that question of law. If, however, there is evidence which is capable in law of supporting a conviction a direction to the jury to acquit would be an attempt to take from them part of their function to adjudicate upon the facts. That view of the law was enforced by the High Court in Doney v R.*

His Honour continued. That principle was applied to the particular problem of a prosecution case dependent upon circumstantial evidence in R v Billick. I enunciated the relevant principle with the concurrence of Moore, J at page 335, I said, 'The question of law is whether on the evidence as it stands the defendant could lawfully be convicted. He could lawfully be convicted on that evidence only if it is capable of producing in the minds of a reasonable jury satisfaction beyond reasonable doubt' The application of the basic principle as enunciated in Prasad to a case of circumstantial evidence was dealt with in the following passage.

The same test is to be applied to deciding a no case submission to answer in a case depending upon circumstantial evidence as in a case depending upon direct evidence although the manner of its application will be different. The question to be answered by the trial judge is whether there is evidence with respect to every element of the offence charged which, if accepted, could prove that element beyond reasonable doubt. Where there is direct evidence of the actus reus and that evidence is capable of supporting an inference of mens rea there is a case to answer except in the extreme case as perhaps of testimony which is manifestly self contradictory or the product of a disorderly mind envisaged by the Privy Council in which the direct evidence is so incredible as to amount to no evidence. Where the case is a circumstantial or partly circumstantial case and therefore depends on inferences the question may be expanded so that it becomes on the assumption that all the evidence of primary fact considered at its strongest from the point of view or the case for the prosecution is accurate and on the further assumption that all inferences most favourable to the prosecution which are reasonably open are drawn, is the evidence capable of producing in the mind of a reasonable person satisfaction beyond reasonable doubt of the guilt of the accused.

His Honour continued –

It follows from the principles as formulated in Billich in connection with circumstantial cases that it is not the function of the judge in considering a submission of

> *no case to choose between inferences which are reasonably open to the jury. He must decide upon the basis that the jury will draw such inferences that are reasonably open as are most favourable to the prosecution. It is not his concern that any verdict of guilty might be set aside for the Court of Criminal Appeal is unsafe neither is it any part of his function to decide whether any possible hypothesis consistent with innocence are reasonably open on the evidence.*

Referring to Attorney General's reference number 1 of 1983, a Victorian case, and Thorpe v Oboto which is a Federal Court decision. His Honour continued –

> *He is concerned only whether a reasonable mind could reach a conclusion of guilty beyond reasonable doubt and therefore excluding any competing hypothesis as not reasonably open on the evidence.*

His Honour continued:

> *There was some criticism before us of the concept of reasonableness in the Billic test and a reference was made to R v R. I do not read that case as deciding, there can be a case to answer on circumstantial evidence which is incapable of producing in a reasonable mind a conviction of guilt beyond reasonable doubt. If the evidence if incapable of producing that state of mind it is not capable in law of proving the charge.*

I note that chief justice – I'm sorry – Lee, CJ. at common law speaking the court quoted with approval a passage from the judgment Gordon, CJ. in *R v Crooks*, in which Gordon, CJ. quoted from *Ross v R* as follows:

> *If there be evidence on which reasonable men could find a verdict of guilty the determination of the guilt or innocence of the prisoner is a matter for the jury and them alone.*

His Honour then continued:

> *I would restate the principles in summary form as follows: If there is direct evidence which is capable of proving the charge, there is a case to answer, no matter*

> *how weak or tenuous the judge might consider such evidence to be. But if the case depends upon circumstantial evidence, and that evidence is accepted, is capable of producing a reasonable mind a conclusion of guilty beyond reasonable doubt, and thus, is capable of causing a reasonable mind to exclude any competing hypothesis as unreasonable, there is a case to answer. There is no case to answer only if the evidence is not capable in law of supporting a conviction. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all the inferences most favourable to the prosecution which are reasonably open to be drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt, or to put it another way, could not exclude all hypotheses consistent with innocence as not reasonable open on the evidence.*

Now that decision was addressed by Kaye, J. in the Victorian Supreme Court in a case entitled *R v Debbs* [2007] – this is the neutral citation – [2007] VSC168 – I have a copy for your Honour and a copy for my learned friend.

Now I don't pause to take your Honour through the facts of that case, which are set out on page 2, and they're reasonably straightforward, and the facts are set out – continually set out at page 3. I won't do that unless your Honour specifically wants me to do it, but I relevantly direct your Honour's attention to page 4, paragraph 19, where Kaye J. addressed the law and had this to say:

> *As I've already stated, the Crown case is essentially and indeed entirely a circumstantial case.*

Which indeed it is here.

> *In such a case the question is not whether the Crown has ultimately excluded every reasonable hypothesis consistent with innocence. Such a question is a question of fact for the jury and not the trial judge. The relevant principle was stated by the Full Court of the Supreme Court in Attorney-General's Reference No 1 of 1983, to which I have referred. There the Full Court stated:*
> *The question of whether the Crown has ultimately excluded every reasonable hypothesis consistent with innocence is a question of fact for the jury and*

therefore if the Crown has led evidence upon which the accused could be convicted a trial judge should not rule there is no case to answer or direct a jury to acquit simply because he thinks that there could be formulated a reasonable hypothesis consistent with the innocence of the accused which the Crown has failed to exclude.

Relevantly his Honour continued at para 19:

The corollary of that principle is that a trial judge may only direct an acquittal if on the evidence at the close of the Crown case he were to conclude that a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt. In other words the authorities establish that the test in a circumstantial case is whether a reasonable mind (in other words a reasonable jury) could reach the conclusion that any inference consistent with innocence was not reasonably open on the evidence. Thus in R v Sengers Harper, AJ stated the relevant test as follows:
It sometimes happens in a circumstantial case –

I'm sorry, I'll start again.

It sometimes happens in a circumstantial case that the evidence is not in dispute but the parties disagree about the inference or inferences which should be drawn from the facts. In such a case –

I'm sorry, -

In such cases the judge must take the case away from the jury if and only if an inference consistent with innocence is not only open on the undisputed evidence but is also an inference which cannot rationally exclude it. Similarly, in a case stated by DPP No 2 at 1993, King, CJ. described the role –

And then his Honour goes on to repeat those passages to which I have referred from that case in paragraphs 21 and 22 – and I don't pause to repeat those to your Honour. But Kaye, J. continued at para 23:

In applying that test it is important to bear in mind that the drawing of inferences is essentially the province of the jury as the sole judges of the facts. The rationale of the jury system is that it brings into court as judges

in the trial twelve ordinary persons who, based on their life experiences and on their commonsense, make judgments and draw inferences about the facts which are presented to them in evidence, as the High Court observed in the R v Donnie at 214:

> *It is the purpose and genius of the jury system that allows for the ordinary experiences of ordinary people to be brought to bear on questions of fact, such as whether particular inferences are reasonable open on the evidence adduced in the trial and accepted by the jury.*

In this context his Honour said:

> *The critical question for me is whether the jury on the evidence led by the Crown might reasonably conclude that the only reasonable inference from that evidence is the act of unprotected sexual intercourse between the accused and the deceased took place at or close to the point where the deceased was killed and close to the time at which she was shot at that point.*

Now those facts of relate to that particular case.

Now for the purpose of this submission I say to your Honour immediately, that I don't intend to take your Honour through all of the evidence, but to simply highlight those issues, which we submit to your Honour are relevant.

Now we start by addressing a question of motive and we say that the Crown has not been able to suggest any motive at all. But of course, we accept that it's not necessary for the Crown to have to prove a motive – but it is helpful. The evidence, we say, shows that in the days leading up to the 26th of January 2009, that there appeared to be, to all intents and purposes, a good relationship between the accused and Mr Chappell - and your Honour finds that evidence coming from Ann Sanchez, for instance, Tim Chappell and so forth, and in fact whilst Stevenson has made – given some evidence that the accused made comments about the relationship appearing to have deteriorated nonetheless it would appear on the other hand she expressed great concern about him not being on the trip and expressed a very real interest in the future and where they were sailing and so forth and this flows through from other witnesses including Kate Chappell.

Now the Crown no doubt will say to your Honour, "Well we have the evidence of Mr Hughes". Now it's important to remember exactly what Mr Hughes did say about his trip to Marieville Esplanade that night. Now I stressed yesterday in cross-examination of Sergeant Conroy what had been in his statement at the time and which was accepted by Conroy as being accurate and I start with the statement, whilst not in evidence the contents are, and what he said, and I'll come to his evidence before the jury in a moment, but what Conroy said Hughes had said was this –

> *That he was down at Marieville Esplanade, he'd had his Farmers Union coffee, and it was at the time he heard an outboard engine and he saw an inflatable with a single person on board. He thought the person had an outline of a female. He said I had the feeling this person was a female, I can't be definite, it was dark I could not describe the colour of the dinghy or describe the female in it.*

Now in his evidence to this Court, page 154, your Honour, he basically repeated that and if your Honour's – I'm sorry, I gave your Honour the wrong page reference, it was 376, transcript 376 –

HIS HONOUR: Just a minute. Ms Fletcher, can you get me volume 1 of the transcript from my desk in this building please. Yes?

MR GUNSON SC: Yes, would your Honour prefer to wait?

HIS HONOUR: No, you tell me, Mr Gunson, I've read it all.

MR GUNSON SC: There was – 376 it starts and he was asked by Mr Ellis at 377:

> *Do you know what or can you – do you recall what time you went down there?.....It was between half past eleven and twelve.*

He was able to say that because he had a clock in the car. He said he had his Farmers Union iced coffee. He parked the car at the end of the rowing sheds and he marked an 'X' on the map to show where – or the plan to show where that was, which was tendered in evidence. Now what he then said was this:

> *Did you stay in the car, do you recall?.....I may have got out of the car at some stage to stretch my legs.*

Yep, -

Said Mr Ellis –

- did you notice anything when you were down there?.....I noticed a dinghy.

And where was the dinghy?.....About fifty metres offshore.

And was it going in any particular direction?.....North east towards the eastern shore.

Did there appear to be anyone in the dinghy?.....There was one person in the dinghy.

Can you say anything about the person, how it appeared to you?.....The person had the outline of a female but I can't be definite.

Did you hear anything that was associated with seeing the dinghy?.....There was an outboard on the back. It was reasonably quiet and the boat was only going at slow speed. The boat appeared to have come from (he said) towards the Royal Yacht Club.

Okay, -

Said Mr Ellis –

- it came from the direction of the yacht club?.....That's correct, but I couldn't see it because the rowing sheds were in the way until it got in front of me. And that's – then I noticed it, but that's the direction it came from.

He went on to say that he contacted the police and had he given his name at that stage, no, and he remained anonymous. And the last question Mr Ellis put to the witness at 379 was:

You described seeing a dinghy, can you describe what sort of dinghy it was?.....It was a rubber inflatable.

Now I started my cross-examination at 380 and I said:

With respect to the dinghy are you able to say what colour it was?.....No.

No idea whether it was a black one, a white one or a green one?.....No.

You're not able to give us an estimate of its length, are you?.....Oh it was about – it was about three, to four to five metres.

And I said:

So it was between three to four to five?.....Yes.

It may have been shorter than three or longer than five?.....No.

That's just a guess?.....It's an estimate.

Now I asked:

Did you pay much attention to it?.....Not a great deal.

And I said:

And were – you were there, you saw it, and it was not something particularly unusual as far as you were concerned at that time?.....No.

And the only reason you remembered it was because of what you read in a paper a day or two later?.....Yes.

When you say it was heading in a northeast direction, had it actually passed the end of the reclaimed land where the rowing sheds are built when you first saw it?.....No.

All right. You've shown us in the photograph where your vehicle parked, was the boat – the dinghy directly out in front of you when you first saw it or to your left?.....Slightly to my right.

And at least 50 metres out?.....Yes.

Perhaps it could have been further than?.....Not a great deal.

He was asked did he see it pass between any yachts that were moored out there or motorboats that were moored out there, he said:

To my recollection, it may have passed between a few yachts.

Then he was asked to look at the plan again, or the map, and asked to identify the point where the dinghy was when he saw it, and he said:

In those two yachts out in front.

And he marked that plan with a little circle, which was then shown to the jury. And I said:

Did this dinghy travel into the group of yachts or motorboats that are moored off Marieville Esplanade and disappear from view?

I said:

You probably only watched it for a few seconds, is that a fair comment?.....It couldn't – it wouldn't have been more than a minute, probably less than that, I can't remember.

And did you notice where the person you saw in the dinghy was seated?

He said "they" – that was his word:

- were seated towards the back.

Yes, on the side of the dinghy or seated in the dinghy?.....In the dinghy.

So they weren't on the left hand side or the right hand side, but rather sitting down on what you presume was either a seat or the floor?.....Yes.

I paused to make the observation that your Honour will note when you look at the photographs of the dinghy, it doesn't have a floor. He was unable to describe the clothing worn by the person. It was a dark night. I said:

There was no moon shining over the waters of Marieville Esplanade?.....Not that I can remember.

He said:

Only the lights of Sandy Bay.

I said:

They didn't help you though, did they?

He said:

To a degree.

But at the end of the day you can't describe what the person was wearing even, can you?.....No.

You can't say whether the person was or was not, for instance, wearing a cap?.....No.

Or a beanie or something like that?.....No.

Can't say whether they were wearing a waterproof jacket, for instance?.....No.

And you just formed the impression it was a woman?

He said:

It had the outline of a woman.

And critically –

But you can't be sure about – one hundred percent can you?.....I can't be definite.

And then the question –

So at the end of the day what it comes down to is you thought it was a woman but you can't be sure and you can't tell us what the person was wearing and you don't know the colour of the dinghy?.....That's correct.

He couldn't remember the colour of the outboard, said it was reasonably quiet, and then there were some further questions which

are not relevant to the issue but perhaps relevant to the timeframe. At 384 I directed some questions to him about the timeframe and he – you can see at line 25, he could have been there as little as twenty minutes. Now that's the – I came back to the description of the woman at 385, or the person he described, I said –

> *You've previously said of the description 'I thought the person had an outline of a female, I had the feeling the person was female, I can't be definite, it was dark'?.....Yes.*
>
> *And that's still your position isn't it?.....Yes.*

And he said then he couldn't remember how long he'd been there before the dinghy arrived on the scene. So that's the state of the evidence of Mr Hughes. Now if – you then have the evidence – just bear with me, your Honour. That in substance is the only prosecution evidence of a dinghy being seen operated at night in the area of Marieville Esplanade with possibly the outline of a woman, it's the strongest it gets and nothing beyond that. He didn't see where the dinghy went and he said it went out in amongst, as I understood, the various yachts. Where it went to no one knows and of course there's no evidence directly linking the accused to it, we don't even have the colour of it. We know from the accused's account she left her dinghy from Four Winds, the white dinghy, tied up at plinth with the crane on it at the Royal Yacht Club and it was found next day floating. Now – at Marieville Esplanade. Now – then a whole series of inferences can set in, I suppose, as to how it was found there. Did it become detached, did somebody detach it, and so forth.

We have on the Crown case the accused not saying to the police in the first instance that she had been at Marieville Esplanade on the 26th January 2009, but we do have her subsequent admission to the police that she did go there at the time she said and that she says she didn't go out to the yacht and she didn't go to the dinghy and basically didn't leave her car. Now that's about as strong as it gets.

HIS HONOUR: It's open to the jury, isn't it, to conclude that saying that she was at home all evening when originally spoken to by the police, or when spoken to on the 4th March, was a lie that can be used as evidence against her?

MR GUNSON SC: On the test expounded by –

HIS HONOUR: On the Edwards test.

MR GUNSON SC: - the Edwards test, a consciousness of guilt that would be open to them. No doubt your Honour would give the standard direction –

HIS HONOUR: Yes.

MR GUNSON SC: - about nothing follow automatically.

HIS HONOUR: But in evaluating the strength of the prosecution case and –

MR GUNSON SC: Yes, I –

HIS HONOUR: - at its highest I've got to do so on the basis that her account of being at home all night was a lie that can be used against her in accordance with Edwards.

MR GUNSON SC: Yes, I accept –

HIS HONOUR: Thank you.

MR GUNSON SC: I accept that, I have to accept that for the purpose of this submission.

HIS HONOUR: Yes.

MR GUNSON SC: But it doesn't take it to the next step, which is the critical step, which is on the Crown case at least as I understand it, going down to the Royal Yacht Club, getting into the dinghy and taking it out to the yacht. That's where the gap is, and that's the critical gap in our submission, that's where the jury can't make the quantum leap based on Hughes' evidence. Now we accept what your Honour says about lies and the Edwards' direction – I don't quarrel with that in the slightest. But we say that, of itself, even if the jury were to find that she had lied, not taking it to the next step, as a consciousness of guilt, if they find that she lied, doesn't even get them there. The – it's that quantum leap that has to come, and it's just not there. Had Hughes said it was definitely a woman; had Hughes said it was a white dinghy, I wouldn't be making the submission. But it's just not there, with the greatest of respect. It falls at that point. And that's as strong as the Crown case gets.

And I don't think I can address your Honour beyond that.

HIS HONOUR: Thank you.

MR GUNSON SC: I mean I can take you through other evidence but it's not really relevant. It comes down to that particular time frame.

HIS HONOUR: Thank you. Well Mr Ellis, I think I should call on you – what do you say?

MR ELLIS SC: Really, your Honour?

HIS HONOUR: Well –

MR ELLIS SC: No, I'm serious, I just – I honestly have wondered whether this was simply a way to flush out some more of what the Crown case is and what might be put if the accused elects to give evidence.

HIS HONOUR: Well – well look I'm going to consider whether I should call on you.

MR ELLIS SC: Thank you.

HIS HONOUR: I'll adjourn until one thirty.

MR ELLIS SC: Thank you.

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: I don't – I uphold that there is a case to answer. I'll state my reasons. It may be that I miss out some points that are favourable to the Crown, but I'll do my best having regard to the amount of time that we've had since the Court adjourned.

MR ELLIS SC: Your Honour –

HIS HONOUR: Yes?

MR ELLIS SC: It's not always the practice of the court to give such reasons on such a ruling and I – I'm sorry, I haven't researched this – but it's my understanding that it's been held not to be – not to be desirable to give such reasons at this point of a trial.

HIS HONOUR: Mr Gunson what do you say?

MR GUNSON SC: I submit that the accused is entitled to know what your Honour's reasons are at this point in time – simply would.

HIS HONOUR: Well –

MR GUNSON SC: My friend hasn't referred to any authority, he mentions a practice –

HIS HONOUR: Well I've taken him by surprise. Do you have any authority, Mr Ellis?

MR ELLIS SC: It's just occurred to me, your Honour, I didn't – that's - I understand that the practice has been, that if any reasons are given they are very brief. I have seen reasons given in longer form at the end of the trial but not – as to the no case submission but not during the trial, there is no reason at this stage that the accused would need to know those reasons. She has not a right – and if your Honour was to reserve those reasons until after the trial, in my submission, that would be the appropriate course. But if you do need further persuasion, I'm not quite sure how long it will take but I – as I say, I have a distinct recollection that there have been judicial expressions that the giving of, at least elaborate reasons, for such a ruling at this point of the trial is undesirable.

HIS HONOUR: Well I can see why that would be the case, because in order to – in order to explain my reasons I need to take the most - take what I – I need to consider, or need to approach the case from an

extreme position, assuming that every fact – every piece of evidence favourable to the Crown has been accepted and that every inference favourable to the Crown has been drawn.

MR ELLIS SC: Indeed.

HIS HONOUR: If I do that, it sounds like a very damning – it will sound like a very damning summary, I can tell you now.

MR ELLIS SC: Yes. I'll be interested to hear it from that point of view, but – pick up some ideas, but -

HIS HONOUR: Yes, all right, well look, if you – if you seek to persuade me that I shouldn't give full reasons then – then I'll give you an opportunity. I – looks it's a quarter to two now, I should just adjourn until a quarter past two.

MR ELLIS SC: Yes, your Honour I'll see what I can find.

HIS HONOUR: Yes, all right, Court will adjourn 'til two fifteen.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

MR ELLIS SC: - than that there is evidence to go to the jury. Although cited for another point the Western Australian Court of Criminal Appeal case of Williams v R [1982] WAR 277 is cited in the same paragraph and according to the summary I have of it it is to the same – the Court held to the same effect, namely that:

> *The submission should as a general rule be made in the absence of the jury. When the judge, after hearing the submission, decides to hear the case he should as a general rule say no more than that there is evidence to go to the jury.*

I also found, your Honour, the case of R v Ella [1990] NTSC 20. The interesting thing about that, is the reasons for ruling against a no case submission given by Kearney, J. on, according to the date of the report, the 10th July 1990, and the report ends:

> *These are the reasons for the ruling of the 14th June in which the accused submitted at the end of the case there was no case to answer. All the accused's submissions were rejected.*

So that's just an example of the –

HIS HONOUR: Yes.

MR ELLIS SC: I suppose the practice I suggested might follow should reasons be thought to be desirable, that they can be published at the end of the case.

HIS HONOUR: Yes, thank you. Mr Gunson, do you want to say anything?

MR GUNSON SC: Yes, your Honour. The case to which I referred your Honour this morning of R v Debbs, I've already given your Honour the citation, in that particular case Kaye, J. clearly adopted a different practice and one can reasonably assume that his Honour, having done so, was following a Victorian practice, but of course he doesn't say why he did it, nor would I expect to do so if it's part of the practice of that Court. So it would seem that there is no hard and fast rule and – my friend says in Western Australia there's a decision going back to 1982 which is to the contrary to the proposition that I

articulated to your Honour, the Victorian practices, clearly dissimilar. I can't assist your Honour beyond that.

HIS HONOUR: Thank you. Well I'm grateful to the reference to Williams v R [1982] WAR 277. I've read it for the first time in the last five minutes. What happened in that case was that a judge in Western Australia dealt with a no case submission. He let the jury go for the rest of the day while he dealt with it and some of them sat in the Court and listened to the argument and to the ruling and the learned judge in that case didn't point out that his ruling was based on a hypothetical scenario where the case for the Crown was evaluated at its strongest and didn't point out that his conclusions didn't represent a personal view. So it's clearly distinguishable. The – so there are different practices. The – Olney, J. delivering the judgment of the Western Australian Full Court in Williams, referred to an early edition of Carter's Criminal Law of Queensland, which referred to a practice of a judge in the present – in the situation I'm in this afternoon, not stating reasons and cited no authority for as to why that practice existed. My – as Mr Gunson has pointed out, it would seem from Debb's case that there's a different practice in Victoria.

My inclination or my considered view is that it's only fair that I state my reasons, at least briefly. Normally reasons are stated so – judges state their reasons because there's a right of appeal with a view to parties being able to appeal if there is any error. If – however, if I describe at length my evaluation of the strength of the Crown case taken at its highest, I think that could convey a false impression of me taking a fairly extreme personal view. I think the best course is for me to state my reasons briefly.

Now the law in relation to a submission of no case to answer is clear. It's as stated in the case that Mr Gunson referred to this morning – or earlier today, entitled *Questions of Law Reserved on Acquittal Number 2 of 1993*, reported in [1993] 61SASR@1 there's no point in me repeating everything that Mr Gunson read out this morning, it's an accurate statement of the law, and that view is supported by the reported of a case in the Full Court of the Supreme Court of Victoria, *Attorney General's reference No.1 [1983]* reported at *1983 Vol.2 VR page 401* and in a decision of the Full Court of the Federal Court *Thorpe v. Abotto [1992] 34 FCR 366*. What I've got to do in order to determine whether there is a case to go to the jury is to evaluate the Crown case on the basis that – at its highest; that is assuming that the jury accepts every piece of evidence favourable to the Crown and draws from that evidence every inference reasonably open to it that is

favourable to the Crown. Now the – I think that if I do that I must reach the conclusion that it's open to the jury to be satisfied beyond reasonable doubt that the accused deliberately murdered Mr Chappell. This isn't a personal view it's an analysis of what would be open to conclude if they looked at every piece of evidence and every possible inference and every time reached a conclusion favourable to the Crown and adverse to the accused.

There's an abundance of evidence from which the jury could infer that Mr Chappell is dead, I don't need to refer to all of that I don't think, and that somebody killed him, there's evidence of blood in the boat, sabotage of the boat, the positive luminol test on the dinghy, of the cut rope in photograph 42 particularly and of ropes rigged as if to have lifted something up to the deck . I think it's open to the jury to infer that Mr Chappell was killed, hoisted out of the cabin, or out of the – hoisted up onto the deck, got into the dinghy and dumped in the Derwent, quite likely in a part of it that nobody searched. It's – the - and it's open to the jury to infer that whoever did that used the dinghy from the Four Winds that according to the accused had been tied up at the yacht club and was found abandoned at the beach near Marieville Esplanade.

Now Mr Gunson's submission concentrated on two aspects of the Crown case; motive and the evidence of Mr Hughes. In my view, it would be open to the jury to conclude that the accused had a motive to kill her – Mr Chappell. There's been evidence from Mr Stevenson, Mr Rowe and Mr McKinnon to the effect that the marriage like relationship between the couple was at an end, or at least the accused said so. There's evidence from Mr Casson that the accused said something about buying out Mr Chappell's share in the boat, but that he couldn't remember what. So if the jury look at this from the perspective most favourable to the Crown, they could conclude that despite all the evidence of harmony and politeness and normality that the marriage like relationship was at an end, at least from the accused's point of view.

There's evidence of the – of Mr Chappell's financial position; his will and the accused's knowledge of those things. It's an agreed fact that his net worth was a figure a little over 1.36 million. Mr Kimber gave evidence that that – that the superannuation component of that is about eight hundred thousand dollars. That of course, was Mr Chappell's alone. There's evidence that the house in Allison Street was his alone. The will left the house, the physical possessions and the car to the accused and fifty percent of the residue of the estate to the accused, and it could be inferred that in all probability the eight

hundred thousand dollars in superannuation would be paid to the estate and dealt with as the – as part of the residue. So that the accused would get the house, its contents, the car and a sum in excess of four hundred thousand dollars, there being other assets.

Kate Chappell has given evidence that the – to the effect that the accused in or about 2004 said that – told the accused that – sorry, was told by the accused that Mr Chappell had remade his will and that each of this three children sought to get – stood to get one hundred thousand or two hundred thousand dollars from it. Now that's consistent with Mr Kimber's evidence as to the substance of the will, which he said was made or made in 2004 to replace and earlier will.

So if the jury took the view of all this evidence that is most adverse to the accused, I think it would be open to them to conclude that she wanted the relationship to be at an end and that she knew she was in a position to get the bulk of the financial resources of Mr Chappell, and they could well conclude that she would be much better off if their relationship ended in death rather than separation especially since the house and the superannuation were hers. So when the jury considers all of the circumstantial evidence in my view they could come to the conclusion that the accused had a strong motive to end the relationship with death or by means of Mr Chappell's death in order to get the benefits that would flow under his will.

Now so far as Mr Hughes' evidence is concerned I think that it really adds little to the Crown case. I think that the Crown case without it would be strong enough for the jury to infer that the accused went out to the yacht when she finished talking sometime between the end of the phone conversation with Mr King at 10:30 – which ended at 10:34pm and the use of her home phone to call 'star ten hash' at 3:08am. There's evidence that – I don't think I need to canvas as to the jacket, DNA on the jacket, things said to the police, the manner in which the yacht was sabotaged pointing to someone with an intimate knowledge of that vessel. There are many pieces of circumstantial evidence that were canvassed by Mr Ellis in his opening speech and I don't see a need for me to list all of them.

If Mr Hughes had not gone to Marieville Esplanade or not come forward I think there would have been sufficient evidence for the jury to be satisfied beyond reasonable doubt. If, on every point, they came to a conclusion favourable to the Crown that the accused had gone to the boat and either deliberately killed Mr Chappell in the

middle of the night or if she'd done it earlier, got his body and disposed of it.

Now what Mr Hughes' evidence adds is evidence that a dinghy made a journey from the vicinity where the accused said the Four Winds dinghy was tied up towards the Four Winds and that the person in it, traveling alone, was a person that appeared to Mr Hughes, though he was unsure about this, to have an outline of a woman. It makes the Crown case a little bit stronger if it's accepted, but even without it I think the circumstantial evidence taken together, accepting every piece of evidence favourable to the Crown and drawing every inference favourable to the Crown, would be strong enough for the jury to find the accused guilty of murder.

I stress that what I'm doing is evaluating the evidence artificially and not making any personal findings or expressing any personal view, so it's for these reasons that I hold that there's a case to answer. Now we'll get the jury back.

MR ELLIS SC: Just before we do, your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: When the jury were last here in the court my learned friend, Mr Gunson, indicated in their presence that he intended to make an – that he'd been given a proof of evidence and he intended to make an application to your Honour to compel the Crown to call that witness.

HIS HONOUR: Or was thinking about it.

MR GUNSON SC: Thinking about it.

MR ELLIS SC: Well that's – and in any event –

HIS HONOUR: Yes.

MR ELLIS SC: Fact is he had no proof of evidence, there was something disclosed to him and it was a statutory declaration, but in my submission it's only fair to the Crown to tell the jury that no such application proceeded. If what he did, and I don't recall that, but I don't dispute it either, was say he was thinking about it then they might be told, I suppose, quite accurately that having thought it he didn't do it, because otherwise it looks like the Crown's got something to hide.

HIS HONOUR: What I might tell them is that that was what – that was where we left it but that's not what we've been discussing.

MR ELLIS SC: Yes, your Honour.

MR GUNSON SC: Your Honour, I want to be quite clear about this lest it be thought by anybody that I have attempted to mislead you or the jury yesterday. On entering a robbing room I found two statutory declarations on the table there with a photograph, which related to the statutory declarations – nobody from the Crown told me that these persons weren't to be called, they were people who were apparently interviewed that day or the previous day – yes – and the reasonable assumption that I drew from getting these documents was that they were late proofs and the witness was to be called – witnesses were to be called. When they weren't called, then, naturally, I thought to myself 'Well I need to read them again, I need to speak with my client to see whether I would make any application', given that the only intimation I'd had was that these were left in the room and I assumed they'd be called.

MR ELLIS SC: Oh look –

MR GUNSON SC: Now nobody gave any explanation – my friend didn't discuss them with me.

HIS HONOUR: Well look, I don't want to go into the rights and wrongs of this.

MR ELLIS SC: No, I said that I didn't wish to make any implication –

HIS HONOUR: What I'll tell the jury is that that – that matter was resolved very quickly and we've been discussing something else.

MR ELLIS SC: Thank you.

HIS HONOUR: And that they shouldn't – they shouldn't – and that that doesn't reflect badly or well on either side. All right, get the jury back.

JURY RETURNS

HIS HONOUR: Well, ladies and gentlemen, where we got to before lunch was that Mr Ellis announced that he was closing the Crown case and Mr Gunson said something about expecting some other witness to be called. That question was actually resolved very quickly and ever since then we've being discussing something else and you shouldn't infer – you should draw any conclusion one way or the other about the strength of the Crown case or the weakness of the Crown case or you shouldn't draw any conclusion adverse to either side in relation to what's gone on over the last couple of hours. We're not ready to proceed and the next step is for my associate to put a formal question to Ms Neill-Fraser.

THE FORMAL QUESTION WAS PUT TO THE ACCUSED WHO INDICATED SHE WOULD GIVE BUT NOT ADDUCE EVIDENCE

HIS HONOUR: All right, well she can come to the witness box.

<**SUSAN BLYTH NEILL-FRASER WAS SWORN**

HIS HONOUR: Yes Mr Gunson?

<EXN – MR GUNSON SC: Thank you, your Honour. You are Susan Blyth Neill-Fraser?……I am.

And you're presently fifty six years of age?……I am.

And you normally reside at 7 Allison Street, West Hobart, is that correct?……I do, yes.

And for how long have you resided there?……Since about 1991 I think.

Thank you…….'92.

And with whom did you live there?……With Robert Chappell.

Thank you. Now you were born in the United Kingdom?……Yes, in Edinburgh.

And moved to Australia when you were about three and a half years of age?……Yes, that's right.

You were educated in various schools in Victoria and in Tasmania?……Yes.

Thank you. And on completing your education here, did you subsequently go to the United Kingdom for further education with respect to horses?…….Yes, I did.

What did you do there?…….I did a – did quite a lot of horse riding and also did the –

What course did you do?…….It's called a BHSI – it's the British Horse Society Instructor Certificate.

Thank you. And for how long did that course take?…….Over a period of years when I – probably four years –

Yes……..- I went backwards and forwards.

After that completing that course did you return to Tasmania?…….Yes, I did.

And did you work on a stud in the midlands?…….Yes, I did.

And did you also do other work relating to horses for some time?…….Yes.

All right. …….Yes.

After your return to Tasmania, some time later, did you purchase a property in New Norfolk?…….Yes.

And did you live there for some years?…….Yes, I did.

And did you subsequently purchase a property at Chauncy Vale Road in Bagdad?…….Yes I did.

And did you purchase that property for a particular purpose?…….Yes, to open a riding school.

Thank you. And for how long did you operate that riding school?…….From 1975 to approximately 1989.

Thank you. You have two daughters?…….Yes, Emma and Sarah.

Thank you. And their father is a gentleman by the name of Brett Meeker, is that right?…….Yes, that's right.

Thank you. And were you divorced from Mr Meeker in 1988?.....Yes.

Thank you. Is your mother still alive?.....Yes, she is.

And where does she live?.....In Marieville Esplanade, Sandy Bay.

Thank you. Do you have a brother, Patrick Neill-Fraser?.....Yes, yes.

With whom does he live?.....He lives with my mother.

And your father is deceased?.....Yes.

Thank you. Now your children don't live with you, they are both married?.....Yes, they are.

Thank you. You met Mr Chappell, you said in the record of interview of the police, at a ski lodge called Talaria, is that right?.....Yes, that's right, yes.

Where's Talaria?.....Ben Lomond.

And do you recall when it was that you met him?.....I think it was either 1989 or 1990.

Right. And that stage you were divorced?.....Yes.

With two young children?.....Yes.

And what was his marital status at that stage?.....He'd been divorced from some – for some years.

Right. And you were both skiers, were you?.....He was a skier and I – I was very amateurish.

All right, and did you eventually move in and commence living with him?.....Yes. Yes, we did.

That was at Allison Street?.....Yes.

And when was that?.....I think in '91, '92.

Thank you. Prior to that had you lived together?……He – he would come up to the farm for weekends and then go back to his house through the week, yes.

All right. So a fulltime relationship commenced when you moved in at Allison Street, is that right?……Mm.

Correct?……Yes, sorry, yes.

All right, thank you. When you moved into Allison Street, I think which you said was about 1991, did you continue to operate a farm?……Yes, but not the riding school.

No, but you had a farm at Chauncy Vale Road, did you?……Yes.

What sort of farming were you doing?……We were running sheep and mainly agisting horses.

Right, and were there some houses or accommodation there that were also leased out?……The house that I – there are two houses. The house that I lived in I rented out and my mother still occupied the main house.

Right, and she subsequently moved to Marieville Esplanade?……Yes.

Thank you…….Yes.

Now we've heard that Bob had three children?……Yes.

Kate, Tim and Claire, correct?……Yes.

All right. Do you continue to own the farm at Bagdad as of today?……Yes, yes.

Thank you. And it's how many acres?……Oh two hundred and something, I think.

Yes. And do you know the value of that property?……I don't know the government valuation, I would imagine it would be eight hundred thousand to –

Is it encumbered, that is does it have a mortgage on it?……No.

Right……No, not any longer.

And do you own that by yourself or do you own it with somebody else?……No, I own it outright.

Thank you. And initially you owned it with your mother, is that right?……Yes, yes.

And did you buy her interest out?……Yes. Yes, I did.

All right, thank you. And at the time of Mr Chappell's disappearance did you have any financial problems?……No.

Did you have money in the bank?…….Yes.

How much did you have in the bank then?…….About eighty or ninety thousand, I think.

Thank you. And did you have any debts at all, apart from normal day to day living expense -…….No.

- debts?…….No.

Thank you. Presumably, with the farm you had rates to pay?…….Mm – yes, yes.

How did you fund payments of rates, for instance, on the farm?…….Well from – do you mean how did I find the money to pay them?

Yes……..From rental and –

Right. ……. – agisted income.

From money you earned from the farm?…….Yes.

Thank you. And what about, say, insurance payments on the farm, were they funded the same way?…….Yes, they were.

Thank you. Now how did you and Mr Chappell operate your personal financial circumstances?…….Well we had separate accounts but if –

Just stop there for one moment?…….Yes.

You had separate bank accounts?…….Yes.

Right. …….Yes.

And was that by arrangement?.....We didn't really discuss it, that was just the way it worked.

That's the way it worked?.....Yeah.

Try and keep your voice up so the jury can hear?.....Sorry, yes, no that was – that was our – it wasn't a formal arrangement we just continued as we had been.

Right. At the time of Mr Chappell's disappearance in January 2009, how much were you receiving per week for rent from your property?.....From both houses?

Yes.....Five hundred dollars a week.

Five hundred dollars a week – thank you. And that was always paid, I mean you didn't have problems with your tenants?.....Occasionally, yes, yes.

Yeah, but generally speaking it was paid?.....Generally speaking it was paid, yes.

All right. Now when you moved in with Mr Chappell, were you working full time or part time?.....Part time.

Thank you. And did you have a business associate, a Mr Bob Martyn?.....Yes.

And that's M-A-R-T-Y-N?.....Yes.

Thank you. And in what business did you and Mr Martyn engage?.....Property – property development.

Right. And can you tell his Honour and the jury for about how long you worked with Mr Martyn in property development?.....From about 1990 until 1996 or 7 I think, yes.

Right. And was there any particular area in Tasmania that you developed with Mr Martyn?.....Brighton, in Brighton.

Brighton.....We did a subdivision in Brighton, yes.

And where was that?.....In Brighton.

Yes.....It was –

You mean the Brighton town or the Brighton Municipality as it then was?……The Brighton town.

Thank you……Yes. On the banks of the Jordon River.

Thank you. How big was that subdivision?……Twenty six lots.

And during the time you were developing this property did you also do some part time work?……Yes, I – yes, I was, yes.

Thank you. Now was the property development a success; in other words after those years did you make any money out of it?……We made a bit. We in fact ended up - because of the land tax rules we ended up having to separate the ownership of the land so we each took half – half the land in lieu of selling them and dividing the money.

All right. And did you eventually sell off what you got from the development?……Yes, I did.

All right. And from your point of view given the amount of money that was put into it was it a financial success?……No.

All right, thank you. Now when you moved in with Mr Chappell nigh on twenty years ago how old were your daughters?……Oh, dear –

Roughly, I'm not asking for precise dates – ages, were they young?……Very young, yes.

All right…..Yes, primary school.

Yes. And did Mr Chappell get on well with the children?……Yes, yes.

Thank you. When you moved in with your two daughters did you come to an arrangement with Mr Chappell about who would purchase groceries for the household?……Yes, I did initially.

All right. And did you daughters attend public school or private schools?……Initially they went to Lansdowne Primary and then they went to Collegiate.

Right. And who was responsible for school fees?……I was.

Thank you. And apart from your buying the groceries and paying for your daughters school fees who paid for the majority of the other household expenses?……Bob did.

Right……Robert did.

Yeah. And did you go away on holidays together, that is you and Bob?……Yes, we did.

Either with or without the children?……Both, with and without.

Yes…….Yes.

And who paid for those expenses?……Both of us.

All right, thank you. Did you ever discuss with Bob the prospect of going back to work fulltime?……Well I actually went back to work fulltime and he didn't like it very much.

And did you come to an arrangement?……Yes. Yes, we did.

Yes, and what was that arrangement?……Well he – he didn't want – we were going – going to a conference and he didn't want me to work, he said, "Look, I'll give you an allowance instead".

All right. Now -…….I think that was about mid nineties.

Thank you. And when he gave you the allowance initially how much a fortnight was it?……I think it was about a hundred and eighty to two hundred a week.

Right, and you were also -…….A fortnight, sorry.

Thank you…….A fortnight.

And you were also receiving rental from properties?……Yes.

Thank you. Just pause for one moment. You've told us you operate the property as a farm as well, is it profitable, I mean do you make money out of sheep or were you making money out of sheep?……After all the expenses are taken out not very much, no.

All right, thank you……No.

By the time of Mr Chappell's disappearance how much a fortnight were you being paid by way of allowance?……I think it was five hundred.

Thank you. And did you continue to spend that on groceries and small household expenses?……I did, yes.

Thank you. Now your mother is how old?……Just give me a minute.

That's all right, take your time…….Eighty two.

Thank you. And as you've said, she owns a property in Marieville Esplanade in Sandy Bay?……Yes.

Thank you. And there's only your brother, is that correct, is the other sibling?……Yes.

And your mother also owns land at Old Beach, is that right?……Yes, yes.

Whereabouts?……It's just inside the Baskerville Road, there's six hundred acres there.

Thank you. Have you any idea of the value of the property at Baskerville, or Old Beach?……I think it would be well over a million, I'm not sure.

Thank you. And the property in Marieville Esplanade?…….Oh I don't know, probably about the same, I don't know.

Thank you. And are you aware, generally speaking, of your mother's financial circumstances?…….I don't think she's got a current will.

No, I didn't ask you about a will – no, general financial circumstances?…….She's got – I think she's got three or four hundred thousand.

Thank you. …….In cash and stocks.

Now you've told us – or told the police in your record of interview – records of interview, that you have experience in sailing, is that right?…….Yes.

When did you start sailing – was that something you did as a child?…….Oh yes, yes.

Yes. And where did you learn to sail?.....In Edinborough on my uncle's yacht.

Yes.....And –

When was that before you – obviously not before you came Australia but -.....No, we went backwards and forwards –

All right. .....- for quite a number of years.

And when you went back to the UK and did your course that you described, did you do any sailing there?.....Yes, I did, yes.

Thank you. Now when you were married to Mr Meeker, did you also at that time own, what's called a Roberts 28 foot -.....Yes.

- yacht?.....Yes, yes.

And single mast?.....Yes, it was sloop.

Fibreglass?.....Yes.

Thank you. And did you own that by yourself or with Mr Meeker?.....My mother and my hus – my ex-husband and I owned it jointly.

Thank you. And how extensively did you sail that yacht when you were married to Mr Meeker – was it every weekend or just occasionally?.....Yeah – I think probably every weekend, yes.

All right. And after the divorce did you obtain the yacht as part of the settlement?.....I think we – I think I – I gave him the car, the family car for his share of the yacht.

Thank you. .....Yes.

Now when you met Mr Chappell, did you and he ever sail together on this Roberts 28?.....Mm, many times.

Thank you. Did he appear when you – he first started sailing on the Roberts 28 to have any knowledge as to how to operate a yacht of that size?.....Yes, he did, yes, and he knew a lot more about motors than me so –

Right. And did he to your knowledge have any previous sailing experience?……Yes. Yes, he did.

Thank you. And did you sail that yacht with him on any long distance trips or were they sort of local around the bay type trips?……Local, pottering around Bruny I would say, yes.

Right……Yes, overnight certainly but not – not weeks on end, no.

Thank you. Where did you keep the yacht?……Both at Northwest Bay and the marina at Oyster Cove.

Thank you……Mmm, Kettering.

Now when did you sell that boat?……I can't really remember.

Right. Did you have it for many years after you and Mr Chappell met and started living together?……Four or five years, something like that.

Thank you. Was there a reason why it was sold?……Yes, we were doing quite a lot of travelling and the girls were at school we just –

Keep your voice up……Sorry. We just weren't using it enough at that time.

All right. And is a yacht particularly expensive to maintain if it's not used?……Not particularly, no.

All right, thank you. Anyway you sold it and did you and Mr Chappell subsequently have any discussions over the ensuing years as to whether another yacht would be purchased?……Constantly.

Thank you. Was that a realistic proposition with young children to buy something again?……No, which is why we waited until – till later.

All right. And what did you do instead of going off sailing for family activities?……We went – we travelled, we went skiing, we went camping.

Thank you. Now when did you start, that is the two of you, to start looking for a new yacht?……I think we looked on the internet for a couple of years and then we started looking in – sorry, 2007, and I think that was when my daughters we married –

And both daughters married 2007?……Yes, I think – I think so.

All right….Sorry.

And you started looking for another yacht where did you go looking?……Well we started by going to marinas in – and people who sold – boat brokers in Tasmania and then we went – we took a trip up the coast of Australia and I think we looked at every yacht from here to Cairns.

All right, did you have some particular sort of boat in mind, something the two of you had discussed would be ideal for your purposes?……Yes, we – we thought of buying something about forty feet, forty to forty two feet, and the more we looked the more we realised that we wouldn't be able to get exactly what we wanted, which was a wheelhouse and an aft cabin –

Yes…….- that was comfortable and well designed for under about forty eight feet to fifty feet, so we – we ended up – just before we set off we ended up, you know, pretty much deciding that that's what we'd spend. It was to be our shack, you know, so that was what we did.

Instead of a shack?……Instead of a shack, yes.

Right. And why did you want a wheelhouse?……Because it's Tasmania, it's –

Well tell us – those of us who are uninitiated to the sport?……Well when you're – when you're coming home or going out and you're sitting out in a cold cockpit sailing's not a very pleasant thing to do, so we wanted an enclosed wheelhouse so that we could stay warm and whoever was piloting the yacht would be warm, that was the reason.

Right, and you were looking for something that was comfortable?……Comfortable, mm.

Now did you and Mr Chappell have some ambitions about what you would do with such a yacht when you got it, when you found what you wanted?……Mm, we did. We thought that we'd start off by just pottering around the channel and then perhaps go to Port Davey and then we thought next winter go up – once we'd got used to the yacht we'd – we'd be able to go up to the Whitsundays, so that was our plan.

Right. And in the records of interview we've seen you make reference to getting other people involved in long distance trips, was that something you discussed with Mr Chappell?……Yes, in fact before we bought or even started looking for the boat that's what we thought we'd do and it – it was a long term plan that if we went further afield – we'd met a lot of couples on our boat buying trip who were sailing boats, fifty footers, fifty five footers, and they – if you've got the right equipment you can do that quite easily and that's what we thought we'd do.

What sort of modifications can you do to a large yacht such as the Four Winds to make it easier for two people to sail it, is there something in particular you can do to the sails?…….There's a number of things; good electronics – the Four Winds needed the – the crew explained me to that the rig –

No just tell me -…….Oh –

- what needed – what you could do to modify -…….Well okay –

- a boat to make it easier for two people to sail?…….Sorry. Self furling sails and all of the sheets led back to the cockpit or within reach of the cockpit.

And by self furling sails you mean sails that basically wrap around the -…….They self – they self wrap around the – you know the stays.

Right. Instead of having to winch up the sails you just, what, pull a rope, do you?…….You do, and it's – it's a safety issue as well, because you – you don't have to come out of the cockpit to do it.

All right. Thank you. …….So that's –

Now Four Winds when you purchased it had a self furling genoa, is that right?…….Mm, it had a self furling genoa.

All right. Thank you. Now let's come back to the trips looking for a suitable yacht; and you told us that in 2007 you looked around Tasmanian marinas unsuccessfully. Did you go interstate?…….We – we had a trip in, I think it was 2003 or 4, we went – we went to – we drove to Darwin actually and we looked at a few boats up there –

Yes……..- and came across and down the coast and we looked at boats then as well.

So you came across, what, the top and came down the east coast, is that right?.....We – we cut across to -oh – we cam – we didn't go around the top, no.

No, but where did you end up on the east coast – where did you come back?.....We came out north of Brisbane – I can't remember the town.

It's all right. But you started looking at yachts in marinas?.....Mm, mm, we did.

Did you find a yacht on that trip that was suitable?.....We thought – thought we'd found one but it had os – it was fibreglass and it had osmosis, which is like cancer of fibreglass so –

Unsuitable?.....Yes, not safe.

All right. And did you go back up the coast, well the East Coast of Australia, subsequently and find a yacht?.....Yes, we did.

When was that?.....In 2008.

Right. How long did the trip take?.....I think we were away about six or eight weeks –

All right. .....- all together.

And did you go on the boat to Melbourne?.....Yes, we drove over, we – we caught the ferry over and went up the east coast, yes.

Right. And did you stop at many marinas on the way looking for yachts?.....Yes, we did.

Can you – I don't want you to tell us where you went but just give us some idea as to how many marinas you looked at looking for yachts?.....Thirty, forty, a lot.

Right. Had you retained prior to this trip a yacht or boat broker to look for a suitable yacht for you or you were just relying on going to marinas and seeing what was for sail?.....Both, both.

Right. Where had you retained a broker?.....We actually had – I'd being communicating, and Bob, on the internet with various brokers and they'd given us lists of different boats they though were suitable so we had a plan to go and look at these boats.

Right. So eventually you ended up in Brisbane at Scarborough, is that right?……That's right, yes.

And you saw the Four Winds?……Yes.

And you negotiated a purchase of Four Winds after some little time, is that right?……We signed a contract subject to a full inspection. We could have withdrawn at that point.

Right. And what sort of full inspection had you contemplated?……A full mechanical inspection and survey of the hull and boat.

Right…..The rigging.

Now in the record of interview, one of them, you spoke about purchasing a survey that somebody else already had performed on Four Winds, is that right?……Yes. Yes, we did.

And how did you learned about this survey?……We learnt about the survey through the broker that we bought Four Winds through. We – it was a previous interested party and he had had a full survey done with a very reputable marine surveyor in Sydney. He – and we purchased it because it was still current.

Right. So you purchased that instead of getting a full survey report done yourself?……Yes.

Right. And there was some arrangement that you discussed in the record of interview about the price being reduced to cover the cost of some repairs to the motor, is that right?……Yes. We'd written into the contract that if something very seriously wrong was found with the hull or the motor or something else about the boat we could withdraw from the contract but basically we – we – once we'd had the mechanical inspection done we negotiated the price down to a reasonable sum to – to cover those repairs.

All right. And the purchase price, I think at the end was, what, two hundred and three thousand?……..I can't honestly remember, I think it was, it was about that.

Right. …….Yes.

Now did the boat broker at Scarborough, Mr Rowe, recommend Mr McKinnon to do the work on the engine?…….Yes, yes, he did –

All right. …….- mm.

And did you negotiate with Mr McKinnon to do work on the motor?.....Yes, we did.

And -.....Yes.

- did you and Mr Chappell then return to Hobart?.....Well we – it was the second time up, we – we came home after negotiating the first contract –

Yes.....- and then we flew up – so we came back again, yes.

That's probably my fault. You negotiated the purchase and came home?.....Yes.

There were then steps in relation to the motor -.....Yes.

- so you went back to Queensland?.....And I wanted to ring up all the previous owners and the builder.

All right. .....So I did that in the interim.

All right. Did you in fact contact the original builder?.....I did, I wanted to make sure that the stability – there are two different problems with yachts; there's inshore and offshore stability, and it's very important that you make sure it's fully competent to go offshore with a big boat. So I rang the original builder in New Zealand, basically to verify he hadn't altered the hull design at all from the Roberts 53 design which is what it is.

Right. And – there's been some evidence about a complete rebuild being done internally on the yacht; did you contact the person who did that?.....I spoke to George Partos, he confirmed that he and his wife, who had no sailing experience at all, had sailed the boat on their own –

No just – .....- and –

- answer my question please -.....Oh sorry.

- and that is; did you speak to the person who had done a complete rebuild on the yacht?.....Oh sorry, yes, I did.

And who was that?.....George Partos.

Thank you. And did he tell you the nature of the works that he had done -.....No, no, he didn't –

- on the yacht?.....No.

Thank you. But at the end of the day you made a lot of inquiries and you were satisfied you would be happy to buy the yacht?.....Mm, very happy.

Thank you. And did you make arrangements with Mr McKinnon to do the necessary work on the engine?.....We did, yes –

Thank you. .....- yes, we did.

Now did the amount of time Mr McKinnon had to spend on the motor blow out from what he estimated?.....The time and the cost –

Right. .....- blew out, yes.

How much time had you – it had been indicated to you it would take and how much was involved –

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MR GUNSON SC: - blow out from what was estimated?.....The time and the cost blew out, yes.

Right. How much time had it been indicated to you it would take and how much was involved in the initial quote?.....He told us early November when he – my initial conversations with him were all right, and then gradually the time and the cost went up.

All right. And did that delay the movement of the boat from the Scarborough Marina back to Hobart?.....The boat was moved.

No, well start again.....Sorry.

I'll put it another way. Did it -.....It went to Newport and then it went to Hobart.

Did all of the work Mr McKinnon had to do delay your plans to move the boat back to Hobart?.....Yes, it did, yes.

Thank you.....Yes.

Now by the time you left Newport Marina, which was the second place it was at, how much had you spent on the motor, roughly?……I think it was just under – maybe a whisker under eighteen thousand.

Thank you. And did other work have to be done on the boat apart from the motor before it could be sailed back to Tasmania?……Just – just preparing it to come down.

All right. Now whilst the yacht was at the Scarborough Marina Mr McKinnon reported to you some issues about what he believed were people coming onto the yacht, is that right?……Yes, he did.

All right. You heard his evidence about that?……I did.

Is what he said he reported to you accurate?……I don't believe –

Not to the -…….I don't believe it is.

Right. What do you believe he reported to you as to his observations of people on that yacht?……Well in his first phone call to me he was quite upset, he rang me up to say that the boat broker who lived in the marina where – at Scarborough in Morton Bay, which is the first marina where we found the boat, he said that the – she was giving him a very hard time and running the boat down. He said that he had never felt so nervous working on a boat before. He asked me if I was paying somebody to watch him, he felt there were people watching him, and then he rang back to say that somebody had got onto the boat and I said, "Well was it broken into", and he said "No, it's someone with a key and Geoff Rowe says he hasn't got a key but I know he has" – Geoff Rowe is the broker – it was all very garbled and he said also that he – his radio had been stolen, and yet in his evidence he didn't mention that –

No no, just - …Oh (indistinct word) Sorry.

It's all right. Now, when you mentioned a key, were you talking about a key to the lock on the boat, or a key to the lock on the marina?…Key to the lock on the boat.

Thank you. Now, the boat was eventually moved as a result of Mr McKinnon's experiences, to Newport – is that right?….He moved it the next day.

How far away from Scarborough Marina is the Newport Marina?…I think it took them twenty minutes to go there, yes – by sea.

Thank you. It was reasonably close by?.....Oh, very close, round the bay, in the same bay, yes.

Now, you and Mr Chappell made arrangements for the boat to come back to Hobart being crewed by the two gentlemen who have given evidence?....Yes, that's right.

And did you do any – these are my words – shakedown cruises on the boat before you came back to Hobart, that is you and Mr Chappell?....I think we did – I think we did two with the crew because that Marina was very difficult to get in and out of, so we needed more people anyway, but we wouldn't have taken the boat out on our own at that point, anyway, and also the crew went right through the sails – they hoisted the sales, tested them, we tested all the rigging, we bought new sheets, ropes – we went up the mast to check everything – we did – yes, we prepared it properly.

All right……. To come down.

And did you go up the mast?...I went up the mast, yes. Done it before.

Right. Now was Mr Chappell happy about the purchase of this yacht?.....Very.

You've heard some comments about him being a bit frail around the yacht , what comment, if any, do you make about that....Bob was very careful where he put his feet – I think he was very interested in the internal workings of it, much more so than me, and so we worked well as a team, we were able to –

All right. Now you set out from the Newport Marina, we've heard about that, I think it was on the 7th December, with the intention of the four of you sailing to Hobart, correct?……Yes, that's right, yes. Yes, that's right.

Now after leaving the marina there was an attempt to go through the inside channel I think between the islands off Brisbane down to -.....Southport.

- Southport, and that wasn't particularly successful, is that right?……No, the bar was silted up –

All right. So you couldn't get through the bar?……We couldn't get through, no.

Thank you. And you then had to go around top of Moreton Island, is that right?……That's right, yes.

And that was a pretty unpleasant trip I gather from what we've heard?……Yes, it was, because we'd spent most of the day going down through the inner passage.

Then turned around - …..And had to go out –

- tried to go round the top?……- punched into a nasty slop.

And there was a decent sea running is that right?……Mmm, that's right, yes.

You sheltered overnight?……Yes, we did, in the lee of Moreton Island.

Thank you. Now at some stage on this first leg of the trip from Newport Marina to Southport Mr Chappell had a nose bleed?……Yes, he did.

Where did he first have the nose bleed, whereabouts was the boat positioned?……We were punching into a fairly nasty sea once we've come round the top of Moreton Island and I think about an hour after he – his nose began to just drip and we thought, well it's a nose bleed, and it stopped again. But I was seasick and so we went back and anchored in the lee of the island.

All right. Now that first day out how extensive was the nose bleed? I mean was it prolific bleeding or - ……No, no, no, no.

- just drops?……Yes, and I was on the deck being ill so I don't really know how long it went for. Certainly not more than an hour and then it stopped.

All right. Did it stop spontaneously or did plugs have to be inserted?……No, no, it stopped spontaneously and in fact he got lunch for everybody on that day so, yes, it wasn't an issue.

All right. Now the next day you set off again to go to Southport?……We did and we – we got – we got most of the way down and I think – yes, I think we got most of the way down before we had trouble with the motor.

Right. And this is the 'black death' that's been described?…….Yeah, the 'black death' yes.

Now did Mr Chappell's nose bleed again before you got to Southport?.....Yes, it did, it started bleeding again late – we were almost to Southport and it started to drip again.

All right. And the engine failed before Southport?.....Just as we were entering the slipway, yes.

Now -.....Seaway.

- at that stage, around about the time the engine failed, what was the condition of Mr Chappell's nosebleed, was he still bleeding?.....No – no, he was walking about down below, so –

All right. .....- yes, he was fine.

There was some reference from one of the witnesses who said that he'd bled whilst working on the engine; that is in the cramped compartment of the engine room?.....Mm, well –

Is that correct?.....Not until the second or third day we were in Southport.

Right. All right. So you're in Southport, I think for about three or four days -.....Yes.

- did his nose continue to bleed whilst in Southport?.....It didn't bleed – I'm just trying to remember what we did – we went – we did our laundry the first night – we were towed in, you see, by the – the coastguard –

Yeah.....- and I think they then took us over to a workbench – we had dinner, the four of us, the crew and Bob and I had dinner at the Southport Yacht Club.

Yes. .....And then the next day we interviewed the – the witchdoctor – ah not the witchdoctor the – sorry – the fuel doctor.

Fuel doctor.....Who comes and clean your fuel out –

It sounds like the same thing just about – but anyway.....Yeah –

He came and -.....- he was – he was yes, anyway, yeah he came – he said he had to go to a funeral the next day so it was two days before he could come.

All right. But -…….Yes.

- was Mr Chappell, at some stage, in this period in Southport, working in the engine room?…….Yes, on the second or third day.

Thank you. …….Yes.

And was there a nosebleed?…….Yes, there was.

Thank you. And how prolific was that?…….Well it seemed prolific because he was sneezing everywhere, but I don't think it was more than just a – a quick drip.

Right. …….I – I don't think – I – from – if it had been gushing we'd have called an ambulance –

Look –…….- so it wasn't –

Yeah, and as a result of discussion, I think with Mr Stevenson, were arrangements made for Mr Chappell to go and see a general medical practitioner in Southport?…….That night, yes.

Yes, and did he go?…….Yes.

And as a result of that was he then sent off to a specialist?…….No, we went back to the boat for the night because the doctor didn't seem to think it was that serious and he just put some wadding on it.

The next – well did Mr Chappell end up going and seeing the doctor again?……Yes, the next morning, another doctor.

Why was that?……Because it had dripped through the night, it had started again two or three times, just dripping.

Right. Now in – whilst you were in Southport and notwithstanding his nose bleeds was he working around the boat?……Yes, he was.

And what sort of work did he do?……It's so long ago.

In general terms…….We had to – yes, there was something wrong with the solar panel, it had gone – the – I think the regulator had gone open voltage or something and he was trying to hook some wires up to that.

Now where's the solar panel situated on the yacht?……It's on the davits, at the back, and –

Right, well just wait a moment. Can the witness be shown, please, P3, photographs number 2 and 5, please. Now just take a moment, please. Look at those photographs and can you point out to the jury and his Honour where the solar panel is situated on Four Winds. Can we see it in the photographs?……Well not terribly well. It's right at the back, you see the two pieces of curved iron that go up over the back of the boat up quite high.

Are they the davits?……They're the davits.

Yes……And the solar panel is mounted in between them at the top. You can just see the edge of it, the leading edge of it on this side, on the port side.

Which photograph is the best? Look at the top, you'll see 2 on one and 5 on the other?……5 is best, and you –

Right. What are we looking at?……All right, we're looking at the back of the boat –

Yes…….- and the solar panel is just under the back boom, the mizzen boom.

Right…….So you can see – yes, you can see – and – and the actual thing he was working on – you might be able to see some black, it looks like tape round – wound round something, but that's – that's where he was.

Right, and at that time the tender was attached to the davits, is that right?……Well it was hanging underneath it, yes.

Right, thank you. All right, those photographs can be returned. I think in one of the interviews you mentioned he did some work on a rear light on the boat, is that right?…..That was it. That was it.

That was it?……That was it, yes.

It was solar powered was it?……No, it was running off our main electrical system.

Right. And to access that panel and the light what did he have to do?……He'd have had to lean –

I want you to remember – tell me what you saw him do?……I saw him get up on the top rail of the boat and lean right over and – with a screwdriver and something else.

Could the witness be shown the photographs again? And please if you'd have a look at the photographs that are being shown to you by his Honour's associate and tell me what rail you are referring to when you said he got up onto the rail with a screwdriver?……It was the rail – do you see a board above the portside locker that sits on the deck there's a rail there, he was up on that.

Right. Can you point please to where he was by holding the photograph up? Is there a pen there?……Just there on the back rail.

And if you'd hold it up so the jury can see it please and if you'd turn this way so I can see it and Mr Ellis. Would you have a look please at photograph – look at photograph 5, does that give you a better view?……Yes, much.

All right……Yeah, right, he –

Using – just wait…..Sorry.

Using photo 5 please point to where he was standing. Hold it up, if necessary up.

HIS HONOUR: All right, so you're pointing to the port or left side of the stern to a dark rectangular item?

ACCUSED: Yes.

HIS HONOUR: Was he standing on that item or on the rail?

ACCUSED: No, on the rail.

HIS HONOUR: Thank you.

MR GUNSON SC: (Resuming): And as we look at it that would be to the right of that rectangular item, as we look at it?……A foot each side.

What is that rectangular item?……It's a board.

Thank you…..It's the mounting board for the outboard motor.

Thank you, all right. Now we've heard that he visited the doctor a second time, and is it correct that following the second visit Mr Chappell was admitted to a hospital in Southport?.....Yeah, the – he was put into the Allamanda Hospital, mm.

Yeah. And do you remember the name of the specialist who admitted him there?.....Mr Wilson, yes.

Thank you. Now -.....Or Dr Wilson.

The second visit to the general medical practitioner, did that follow a particular bad nosebleed?.....You mean the second GP or –

Yes.....Yes.

Yes, thank you.....Yes, he'd – it had been dripping all night on and off, yes.

Right. And where did he spend that night?.....Well I don't know where he spent some of the afternoon because I –

Just -.....Yeah.

Did he sleep on the yacht?.....Oh yes.

Thank you. .....Yes.

Where did he sleep?.....Partially on the deck on the cockpit –

Yes.....- and partially downstairs.

Thank you. Did he sleep in the rear cabin or in the saloon?.....On the starboard couch in the saloon and in the cockpit.

Thank you. .....He didn't go into the rear cabin that night, I don't think.

Right. All right. When he was bleeding was it just a flow or drops or did he sneeze or anything like that?.....He certainly sneezed, but I – it never ever – the nose never ever gushed blood.

All right. .....Ever.

All right. Thank you. Now he was admitted to hospital and were discussions had with him about whether you would wait for him to get out of hospital or you'd continue the journey?.....Yes, I went

back to the boat – I think it was three times – I think to get his pipe and books, the first time. The second time, just to see how he was, and the third time, was to discuss whether we'd keep going. He was basically in for observation they weren't anticipating surgery or anything.

All right. How far away from the marina where you were at Southport was this hospital?.....Oh probably four or five blocks.

Thank you. .....I don't know.

And in any event, it was decided he would stay in the hospital and the three of you would sail on?.....To Sydney, yes.

Yes. And did you have any discussions about when he would rejoin the boat?.....In Sydney, yes.

Thank you.....Yes, we did. Yes, several times.

All right. Now did you spend a significant time with him while he was hospitalised and before you left?.....I wouldn't say significant, a couple of hours the first time, probably an hour and a half the second time and forty five minutes the last time, something like that.

When you were with him at the hospital what was his demeanour like?.....Increasingly cheerful. He – once he got into the air conditioning and stopped taking aspirin.

Right. And were arrangements made for him to have a private room?.....Mm. Yes, that's right, yes.

Had that been a problem initially?.....Yes, it had, yes.

Thank you. Now did you then have some discussions with the other two about continuing on to Sydney?.....Yes, they were quite happy with that. They hadn't finished pumping the fuel by the time I got back, so –

That was still a problem with the fuel with the -.....You have to take it out and clean it in a centrifuge and it hadn't been finished by the time I got back, so we finished and then left that day.

This fuel problem is a common problem for boats?.....It is north of Sydney, yes.

All right, thank you. Did Mr Chappell acquiesce with the proposition that you and the other two should sail on to Sydney without him?……No, it was his idea actually, yes. Yes, he did, yep.

All right. Were you paying fees to the two crewmen?……Yes, we were, yes.

And do you remember how much you were paying them a day?……No, I can't remember.

All right, was it particularly high?……It was about average but it's still substantial amounts, yes.

You say it's about average, I haven't a clue and I'm sure no one else has, can you tell us roughly?……It was probably three or four hundred a day, but that was for two, so –

Right…….- that was what we were paying.

All right. And who was responsible for their air fares back to Brisbane?……Oh both of us would've been, yes.

Thank you. Anyway you left Sydney - …….We did.

- sorry, left Brisbane – I'll start again. You left Southport?……Yes.

And went on down the coast towards Sydney, and we've heard there were problems on the way with the boat?…….Yes – yes.

And you eventually got to Sydney?…….Yes.

Now on the way down from Southport to Sydney did you have any telephone contact with Mr Chappell?…….Yes, I – I think we did. It was very much a shake down cruise because the boat hadn't been used for a year or two –

I wonder if you'd concentrate on the question -…….Oh sorry – sorry, yeah.

- which is; did you have any telephone contact with him on the way down the coast?…….Yeah – yes.

Thank you. …….Yes, I did.

Had you made arrangements as to whether you would phone him on your mobile or he would phone from the hospital?.....No, he always phoned me on a mobile, mm.

That is from the hospital to you?.....Yes, yes.

Thank you. To your mobile on the boat?.....Yes.

Thank you. Now was there any indication from him in the course of conversations before you got to Sydney that he didn't want to continue with the trip?.....Not – none at all.

Right. Now were there some discussions between you and the two crew members about Mr Chappell joining the three of you in Sydney and sailing on to Hobart?.....Yes, they had expressed reservations about it because they were concerned that you know if his nose started bleeding again as we were coming across Bass Strait we'd – we'd have all sorts of difficulties, and I suppose in the back of my mind I – I thought, well even if he sail – you see you have the coast all the way down until Eden and then you jump off, and I thought well even if he came to Eden that would be a very good trip and we would be within call of the coastguard.

Right. Now -.....So that was –

- is Eden the point where, if you're sailing to Tasmania, you basically leave the East Australian Coast and head out -.....Yeah, that's right.

- into Bass Strait?.....Yes.

Is that right?.....Yes, that's right.

All right. Well you continued down to Eden without Mr Chappell?.....Yes, we did.

And was he happy about not joining the boat?.....He – he sounded disappointed but he thought it was for the best – he actually had booked the ticket to fly home when he rang me and to tell me.

Right. .....He – he booked it from Bris – from Surfers, from Southport, mm.

Thank you. Those photographs can go back please? Now there were obviously some purchases in Sydney for the boat that were necessary?.....Um, yes, we –

Thank you.....- we bought – we bought a new radio and quite a few sheets and other things, yes.

All right, thank you. Now did you have any problems at all with Mr Stevenson, that is personal problems with him, either on the leg from Southport to Sydney or Sydney to Eden? Start with the first leg, Southport to Sydney.....Um, the – the first leg was from – we had problems with him on the first leg which was from Moreton Bay to Southport and then again in Sydney we had problems.

Problem in – on the first leg from Moreton Bay to Southport did that relate to going through the inside passage - .....Well it did and it was more of a problem for Bob than me. I was disappointed but I thought, oh, well, you know, so –

All right. Now leave aside that part of it on the trip down to Sydney were there interpersonal problems between you and him which resulted in you speaking to David?.....In Sydney, yes.

Yes.....Yes.

All right. And what were the issues that you spoke to David about, just tell me in a nutshell?.....Peter's behaviour after he'd being drinking.

Right. And that was something that troubled you?.....Yes, it was.

Thank you. And you spoke to David about it?.....Yes, I did.

All right. Now did he placate you?.....He did.

Thank you. And the three of you sailed onto Eden?.....Yes.

Now when you got to Eden did you spend a little time there?.....I think we spent two nights, yes.

Right. And was there one night when there was some sort of impromptu function on your boat?.....Yes, the first –

Just stop for a moment.....The first night.

Where did you stop in Eden?.....Opposite the jetty, in the bay opposite the jetty.

Right.....I can't be more specific than that.

All right. And is Eden a particularly big port?……It's quite – quite roomy, yes.

All right. And were there other yachts in the vicinity?……Yes, there were.

All right. And what happened, did some people come on board?……Yes. Yes, Peter invited them via the radio.

Right and was there a barbeque, as we've heard, on board?....Yes. Yes.

And no doubt people drank alcohol?……Oh, yes, yes. Well we all did, not just Peter. Mm.

And was there something said by Peter on that night relevant to you and your relationship with Bob and the boat?...Yes, he – oh, he was always making the odd comment, but what he said to the saloon – we had people in the saloon and what he said was quite loudly – well, Sue's the sailor – Bob's not really interested and – you know – in this vein, and you know – it was a bit irritating, that's all. Mm.

All right Now, on the trip from Eden to Hobart, across Bass Strait and then coming down the east coast of Tasmania, were there further problems with the boat?...Yes, we lost our auto-pilot and the fan belt came loose and so the alter – we had trouble, mm. We did have trouble.]

All right. Now, on the way down the New South Wales Coast, from Southport down to Sydney and from Sydney to Eden, and from Eden across Bass Strait...mm.

And coming down the Tasmanian coast...mm.

What were you doing, were you just sitting around as a passenger? Or were you actually learning to sail the yacht?……Mm. Ah – no, I was learning as much as I could – I – I – we had a number of problems between – that the main – the majority of the problems were between Southport – sorry – between Southport and Sydney because we had – you know, it was a shakedown cruise and we still had a bit of the fungus from the black death in the pipes, so yes, we had problems there.

Right. And did you actually sail the boat yourself?....Yes, I did, mm.

And just to make it perfectly clear, the boat wasn't under sail on the trip down, it was being motored down?....We were under sail for some time.

How often?....Probably, I would think, four or five times.

Right, but the majority of the trip was under motor?.....Under motor.

Thank you.....Motored all the way, mm.

Now when the sails were being put up did you play any role in that?.....Yes.

And when the yacht was either sailing or motoring did you steer it?.....Yes.

Were you under supervision during that time?.....Some of the time, mm.

Right. And -.....She's very easy to steer, she's a very easy boat to sail, mm.

I wonder if the witness could be shown P15, photo 4.

HIS HONOUR: That's the small volume, tab 8.

MR GUNSON SC (Resuming): Now just have a look at that, please, Ms Neill-Fraser.....Yes.

That's a photograph of you, is it?.....I'm a bit fatter. Yes, it's me.

It is you?.....It is me, yes.

Thank you. I just want to know that it's you.....Yes, it's me.

And open on the couch next to you appears to be a volume of material, is that correct?.....It's the – I think it's the electrical circuit, isn't it.

Is – does it appear to you to be a volume of material?.....Yes.

Thank you. Could the witness be shown the brown folder, the exhibit number escapes me, containing all of the yacht information. That's the one. Now I'd like you to have a look, please.

HIS HONOUR: Is that an exhibit or is it an MFI document?

ATTENDANT: It's an MFI.

MR GUNSON SC: Oh I'm sorry, maybe I'll put that back then. Thank you, your Honour. (Resuming): Look at photograph number 5, please, will you. Now have you got photograph 5 in front of you?……Yes.

Do you have that there?……Yes, sorry.

Yes, just concentrate please. It says 'Laundry Electrical Schematic', is that right?……Yep.

And underneath we see 'Main Head', do you see that ?……Yes.

All right. Now what's depicted in the laundry electrical schematic? I suppose it speaks for itself, but tell me?……It's the two electric circuits, the 240 volt and the 12 volt.

Right. And when we look at the one underneath in photograph 5, what's depicted there?…….It's the for'ard head diagrams.

All right. And 'head' in lay talk -…….Toilet.

- being toilet?…….Toilet.

Right. Now we see in that photograph the word "black" and we see the word "grey", both in square boxes?…….Yes.

What does "black" in the square box mean?…….Black means that the – it's the effluent from the toilet only –

Yes……..- and grey is the water from the shower and hand basin.

All right. So the – these days yachts aren't allowed to pump their effluent into the sea, is that right?…….Well in America it's much more strict –

No, no, just worry about in Australia?…….Sorry, yes.

In Australia are they – yachts allowed to pump their effluent into the sea?…….No, they're not meant to do that.

Right. And that account – that means both black and grey water have to stay onboard?…….Yes.

And what do you do, pump it out in port?.....You're supposed to do that, yes.

Thank you. Now on the way down the coast was there some problem with a smell coming from inside the yacht, which was thought to come from either the black or grey tank?.....Yes, dreadful smell.

Thank you. Right, just put those photographs down, if you would, please? And if – I'll go back a step – there was a dreadful smell; how bad was it?.....Well it drove us all into the cockpit.

Right.....And – for one thing.

Well could you use the saloon or the galley?.....Not – look the smell only manifested when we were in a sea, when we hit a wave, and you know the front of the boat would hit a wave and you'd get this –

All right.....- wafting up, very strongly.

Was it a sort of septic smell or something worse?.....Something worse.

Right. All right. Did that cause some concern which in turn translated into work that had to be done?.....Yes, it did, yes.

Well what work was done to try and locate the source of the smell?.....We pulled up the floor. We – we looked in all the – you know various parts of the floor have IO – have inspection openings that are little bits of floor that just lift out with a silver ring attached so that you can pull them out so we pulled all those out. We ended up pulling up the saloon floor.

Right, well just stop there for a moment. Perhaps you can return those photographs please to his Honour's associate and I'll ask you about which floors were pulled up in the attempts to locate the source of the smell. Start at the bow?.....At the bow we pulled up the – we took up the floor in the forepeak, we took up the –

Now the forepeak is the front cabin?.....Yes.

Thank you. And that's where a few bunks are?.....Yes.

Right. Okay, now what else did you take up?.....We took up the entirety of the for'ard passageway, not just the IOs we took up the whole floor, it's just big panels you just lift them out.

Yes, yes, we'll come back to that in a minute. And did you take up the floor in the saloon?……Yes.

And - ……Aft passageway.

- what about the galley?……Yes, galley.

And what about in the rear of the yacht where the rear cabin is?……Yes, you can't – yes, yes, we took up part of that, yes.

All right. And what about on the portside near the engine room and into the laundry?……Yes, it was all up.

All right. Did that expose – that process expose the plumbing or piping underneath the floors?……Most of it, yes.

Right. And was the plumbing underneath connected to seacocks or valves?……There were a lot of valves, yes.

Right. Now valves do you mean connections with handles?……Yes.

Right. Were the seacocks or valves, and/or the valves, for moving fluids around marked with labels?……Most of them were. The ones that were in use were.

Right. And what colour were these labels?……Blue, maybe blue, I really can't remember. I have a feeling they were blue.

All right. But in any event they were labelled?……They were labelled.

Now did you become familiar as a result of this particular work with the plumbing system on the boat?……Yes, I did.

And did Mr Stevenson or Mr Casson explain any of the valves and seacock systems to you?……We worked through it together from the manual that we had.

Right. And that's what we see in the photograph, is it? That plan – that - ….No, well – yes, but it's much more complicated than that, that's only a part of it.

Right, on board the boat were there other plans of the system?…..Yes, there were.

Thank you. And how extensive were they?…..Quite extensive.

Many pages?....Can I explain what they were?

Yes……I think what's in this book is –

Don't worry about the book, just tell us – tell us what was in ....right –

What you looked at on board the boat to - ....Right, the -

- learn about the systems?……Yep, yep. The forehead toilet –w e had two toilets, an aft and a fore toilet – forehead toilet. The aft one was a salt water toilet which means water comes in from the sea straight through the system and goes straight out again, so you don't have a holding tank. Now the front toilet – the forehead toilet had been converted from a salt water toilet to a fresh water toilet, so we had – it was electrical and we had fresh water going through the system.

Right. ....So the other diagrams on the boat were for the upgraded forehead toilet.

Right. And the aft toilet wasn't in use, is that right?....It wasn't.

All right. Now you've heard some evidence about being shown the workings of sea cocks round about the area of the forehead toilet....Yes.

Is that correct?....Yes.

Thank you....Yes.

Now, was the problem with this smell eventually resolved?....Yes, yes – David discovered what the problem was.

What was the problem?....The problem was that the fibreglass black water tank had a seal which hadn't been properly sealed around the top – around the inspection opening and the silicon had given way – somebody had trodden on it – you couldn't see it but every time we hit a wave it would waft up and out.

All right, thank you…..mm. So we just siliconed it up again.

Thank you. Well you had these problems coming down across Bass Strait and you travelled down the coast of Tasmania – is that correct?....We did.

And did you stop somewhere on the way down?.....Yes, we stopped at Triabunna.

Thank you. And once you were inside phone range, did you have any contact with Mr Chappell?.....Yes.

How frequently?.....Oh I think he rang me every day almost.

All right. Did he want to know about your progress?.....Oh yes, yes.

And where you were?.....Yes.

Did you share with him the problems that were experienced coming across Bass Strait, particularly with the fan belt and the auto pilot failing?.....I told him that we'd had a problem with the auto pilot and I told – I didn't – what I – the only thing I didn't tell him about was having to buy extra filters –

Yep.....- in Sydney for the – extra filters for the black death problem.

Was there a reason for that?.....Well only that he'd been in hospital and I thought well I'll tell him about it when he joins the boat in Sydney, that was the reason that I – yeah.

All right. But you told him about the electrical trouble in Bass Strait?.....Yes, yes.

Is an auto pilot a major piece of equipment on a yacht like that?.....It is if you're doing a long distance trip, it's not a problem at all if you're just sailing in the channel area because you can basically relax and let – the boat will steer itself if the auto pilot's working.

All right. And do you – was it a major problem, the failure of the auto pilot?.....No, not at all.

Did anybody – was anybody able to fix it on board the boat?.....I think we fixed it once and then we just – we just steered the boat manually, so it really wasn't a big problem.

All right, thank you. Now you cam eventually into Hobart just before Christmas?.....Yes, yes, that's right.

And you came down inside Tasman Island?……We went around Maria Island.

Yes, but -…….Tasman Island –

It doesn't really matter……Yeah, no.

Eventually you got into Storm Bay and came up to Hobart?……Yes.

Did you have any contact with Mr Chappell when you were in Storm Bay?……Yes, two – I think two phone calls.

And that was a call from him to you?……Yes.

Thank you. And -……..Yeah, I think so.

- were any arrangements made as to you meeting Mr Chappell on arrival in Hobart?……Yes, he was going to come out to the boat and then he – we realised we were going to get there a lot later than we thought so we – we decided once we got into Hobart that he'd come down the next morning.

All right. What was the weather like when you came up the river into Hobart?……Oh horrible, it was raining and it was windy and cold.

All right. And did you go onto the mooring immediately or were there problems finding it?…….No, we – we found – it was very dark, we found it but we had – we got onto the wrong mooring initially and it dragged and so then we got onto the right, mm – yes.

Right. And you'd made arrangements before leaving Hobart to acquire a mooring, had you?…….We'd had – we'd actually put one down, mm.

Right. And when was that put down - roughly?…….Oh just before we left –

All right. …….- just before left to go to get the boat.

So what time did you get onto the mooring?…….I think it was probably about – look, I really don't know, it was late at night, it was late'ish.

All right. …….Maybe ten/eleven.

And you went to bed?…….Yes –

All right. …….- almost immediately.

Now the next morning did Peter Stevenson take the dinghy in and pick up Mr Chappell?…….He did, yes.

From where?…….From Marieville Esplanade Beach.

About what time was that?…….I think it would have been about eight –

Right. …….- eight or eighty thirty.

Had you made arrangements for Mr Chappell to be there at that time?…….Yes.

When was that arrangement made?…….The night before.

All right. Now you've heard Mr Stevenson, particularly, say that when Mr Chappell got onboard there was no warm embrace between the two of you and rather, you stepped back; what do you say about that?…….I don't know what to say, I – I – I had – I know that I had a – something in my arms and I turned away to put it down, and then we went into the saloon and had a hug, I –

Mm…….- I don't – yeah, I –

All right. Now -…….I certainly didn't push him away.

You – you've heard both Mr Chapp – Mr Stevenson -…….Mm.

- and Mr Casson say that on the way down you'd suggested to them that the relationship between you and -…….Mm.

- Mr Chappell was terminal -…….Mm.

- and that you were going to leave him, or words to that effect; what do you say about that?…….Well it's certainly not accurate. I think what's happened is that –

Just tell us what you said that may have, in any way at all, given them that impression, if that is correct?…….I think that – I think it was a discussion in Eden at this barbecue – I think this is where this occurred, and when – this fellow was talking about Bob, you know, not being interested in the boat and the man – one of the other crew members from the other boat said, "Well look if you were landed

with the boat what would you do?", and he said, "Well" – meaning in other words that I was going to leave Bob and be sailing on my own, he said, "Well"- I said, "Well I suppose I'd have to buy him out or something", so I think – I think that's where it's come about.

Okay…….And I also – we were talking on the way into Eden, the three of us sitting in the cockpit – in the pilothouse, about relationships and the other two were sort of giving me a rundown on the problems they had with their current relationships and I did – I do remember saying that Bob and I had a hell of a time the first five years and in fact I'd left him a couple of times and I – that's all I can think of.

All right……I certainly never ever said that I – no.

Okay, thank you. And did David Casson and Peter Stevenson both fly out of Hobart that morning, that is the day Bob came out to the boat?……Christmas Eve, yes, they flew out.

Thank you. All right. I'm about to go onto something completely different, I know we're a couple of minutes early, is that suitable, your Honour?

HIS HONOUR: Yes. Now on tomorrow as I indicated I've got a problem about sitting a full day what I propose is that we resume at 9:30 tomorrow and sit till about twenty past eleven and then adjourn till Monday, would that inconvenience anybody? Would it inconvenience any of the jury? All right, well the jury can make their affirmation and the Court will adjourn till 9:30 tomorrow.

JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 9:30 A.M. ON FRIDAY THE 8TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

<SUSAN BLYTH NEILL-FRASER SWORN

HIS HONOUR: Mr Gunson.

<EXN – MR GUNSON SC (Resuming): Thank you, your Honour. Ms Neill-Fraser, I want to go back a little over some material from yesterday…….Thank you.

You spoke about the financial arrangements between you and Mr Chappell. Some questions were asked of you by the police in the interviews about what was called a viridian line of credit…….Yes.

Now do you remember those questions?……Not terribly well.

All right. Did you – finish that first of all – did you have any knowledge back in January 2009 about this viridian line of credit, had Mr Chappell told you anything about it?……No. No, he hadn't.

Now he paid half the price of the yacht?……Yes, he did, yes.

Thank you. Do you know from where he obtained that money?……He told – he didn't mention a viridian line of credit but he did say that he was – he was doing something called salary sacrificing and he said that he would borrow the money to buy the yacht and then repay it out of his super when he retired.

Thank you. Did he tell you from where he was going to borrow the money for his part payment of the yacht?……No, he didn't.

Thank you. Now he had a credit card at the time, did he?……Gold Mastercard.

All right, thank you. And which bank was that with?……Commonwealth.

Thank you. Now there was some evidence given in this Court about the will made by Mr Chappell in 2004 and questions were directed also in the records of interview to you about that. Were you aware of the terms of his 2004 will?……No, I was not. No, I knew the general outline but not – not the terms.

Not the specific terms?……No, no.

Right. What was your knowledge as to what you would receive if Mr Chappell was to die?……Look, I can't be specific because we're going back many years. He told me that I would have the right originally to live in the house for five years and then he said he'd changed his will and he muttered something about not having to move out of the house.

Right. …….And that – that was to – the – the extent of it.

All right. He told you about the house, did he tell you what would become of his personal property, including his superannuation and so forth?…….He said that it would go to his estate, and I'm pretty sure he told me – I'm sure he told me in about 2004/2005 that his children would – would have some of his super, or – but there was a lot – I think there was much less of it, it came as a complete shock to me –

Did -…….- the amount.

And I didn't ask you about the -…….Sorry – sorry.

- the ultimate figure; I'm interested to know what you knew about the contents of his will. Now did he tell you anything about where the super would go?…….He told me that it was going to go to his estate; he'd make provision for it to go to his estate.

Thank you. And did he tell you how the balance of the estate less the house would be distributed?…….No, he didn't.;

All right. …….No.

Now you've heard evidence from one of the children that you said words to the effect that they would get between a hundred to two hundred thousand dollars in the event of Mr Chappell's death?……..I believe what –

Did you hear that evidence?.....I heard the evidence.

Thank you. .....Yes.

And did you say that?.....I don't believe I said precisely that, no.

Now there were two aspects to what we were told; first of all that you mentioned the money -.....Yes.

- and mentioned an amount?.....Yes.

Now did you mention the money to, I think it was Kate?.....I – I ment – I think I said "hundreds of thousands".

Thank you. Now -.....In super.

Thank you. .....Yes.

Now have you ever –

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I object to this, this wasn't – this wasn't put to Ms Kate Chappell?

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I'd need to check that precisely, your Honour? I'm just looking at my précis of it; I think that's probably right. Line 2 page 209 onwards –

HIS HONOUR: Well the cross-examination covers five pages; 211 to 215.

MR GUNSON SC: Thank you, your Honour, let me just have a look? 209 – perhaps when Mr Ellis raised the issue –

MR ELLIS SC: No, I led the evidence.

MR GUNSON SC: Sorry?

HIS HONOUR: There was cross-examination about a discussion about the will at the top of 211.

MR GUNSON SC: Yes. I think that's as far as it went. I don't pursue it.

HIS HONOUR: Yes, go on.

MR GUNSON SC: (Resuming): Now –

MR ELLIS SC: Well no, there's an objection, it's not a matter of whether my learned friend pursues it.

HIS HONOUR: Well what are you – well are you asking me to tell the jury to disregard the evidence about the conversation – the evidence that's been given about the conversation with Kate Chappell?

MR ELLIS SC: Yes, that's right, your Honour, insofar as it was never put to Kate Chappell, yes.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Well it's a matter entirely for your Honour, it's a very small matter, if anything hangs on it my learned friend is free to recall Ms Chappell and –

MR ELLIS SC: Oh, this is getting –

MR GUNSON SC: - if he wants to do that.

MR ELLIS SC: This is absolutely wrong of my learned friend to say that I'm free to recall anyone in his case.

HIS HONOUR: That's right. The – the Crown isn't free to recall anyone, the Crown can apply to recall anybody to give evidence in rebuttal; it's up to me whether to allow that and all the cases say that that power should be exercised sparingly. Now the position is that there's a rule of practice that requires any evidence that this witness is going to give about a conversation with a prosecution witness to be put to that prosecution witness. These things weren't and the jury aren't therefore in a position to evaluate the word of one against the word of the other or to know what would've been said if this had been put to Kate Chappell. Now I've got a discretion – there are all sorts of ways of dealing with this situation but I think Mr Ellis is right. It is a small point, I think the best course is for me to make the point that it wasn't put to Kate Chappell that the range one hundred to two hundred thousand was not mentioned, and it wasn't put to Kate Chappell that something was said about there being hundreds of thousands of dollars in super, and the jury can do their

best to evaluate the evidence with that in mind. We'll move on. Mr Gunson.

MR ELLIS SC: Thank you, your Honour.

MR GUNSON SC (Resuming): Before you commenced the trip from Brisbane, and I use that loosely, to come down the eastern Australian seaboard did you spend some time with Mr Chappell in a caravan park?……Yes, yes, yes.

For how long?……It was at least a week.

Thank you. And then did you move onto the boat and live on the boat before the trip commenced?……We did, yes.

And for how long did the two of you live on the boat before the trip commenced?……It was either a week and a half or two weeks, I believe.

Thank you. Now when you were at Southport you've told us that Mr Chappell had a nosebleed and you said it was in the engine room, remember saying that?……Yes. It was in the actual marina, yes.

Yes, but in the – on the boat -…….Yes, it was.

- in the engine room?……In the engine room, yes.

Thank you. Now did he have a torch with him whilst he was working there?……In the engine room?

Yes…….Yes, he did.

Are you able to describe that torch?……No, we had two on board, a yellow one and an orange one, it was one o f them.

Thank you. So you don't know what one?……No.

Right. Do you know what's become of the orange one?……No.

Did it survive the trip to Hobart?……It did.

Thank you. And do you remember whether the torch, whether it was orange or yellow, had any blood on it as a result of the incident in the engine room?……It could have, I can't really remember. I know it was left in the engine room for sometime after so I don't know.

All right, thank you. Do you know what caused his nose to bleed, was there any incident that you're aware of in the engine room?……Yes, he lifted a can of oil, yes, extra can of oil.

Thank you. Now we'll return to where we were yesterday at the adjournment and the boat arrived in Hobart and the crew had sailed back – sorry, had flown back to Brisbane, that's correct?……(No answer).

You need to answer because - ……Sorry, yes, yes.

- your responses are being recorded……Yes, yes.

Thank you. Now this was literally a day or so before Christmas wasn't it?……It was the day before the Christmas Eve I think, yes.

Thank you. Now between Christmas and the New Year were you at home?……Yes, we were, yes, yes.

Did Mr Chappell have any holidays during that period?……Yes, he did.

And when did he go back to work?……I – I can't really remember, I think it might have been a few days before Ann arrived – or after Ann arrived I think to stay.

Right. And Ann arrived a few days before the Australia Day holiday?……Yes, yes.

Thank you……Yes.

Now where did you have Christmas that year?……We had it at home at Allison Street.

Right. And who attended?……Ah, family members.

Yes…..I would have to look at the family photographs to be specific.

Just try and – do your best to try and remember who came for Christmas at your house that year?……Emma and Sarah and Bob's friend and my friend Rhoda and my mother. I can't remember if my brother was there.

That's Patrick?……That's Patrick.

And you say Emma and Sarah did their partners attend?……Yes, yes, yes.

Thank you. Now between Christmas Day and the New Year did you go out on the Four Winds – Boxing Day, was there any function on the boat on Boxing Day?…….I think – I think we did go out to the boat on Boxing Day, yes –

Yes……..- and had – had lunch, I think, yes.

Thank you. And do you remember who went out?…….Again, it would have been family members and friends.

I'll ask you please to try and remember who it was as opposed to saying "would have been" just tell me who it was?…….Well Bob – Bob and I –

Yes……..I think my brother –

Yes……..Emma and Sarah.

Yes……..And Mark and Jeremy, their husbands. Apart from that I –

All right. And that was out on the mooring, was it?…….Yes, it was, yes.

Right. Subsequent to that was there a small function, if I can call it that, on board the Four Winds in the marina – did you have the family on the boat in the marina?…….Yes we did, I don't remember when, yes.

Thank you. Now you've heard Ann's evidence that you sailed with Bob down to Adventure Bay on Bruny Island -…….Yes, we did –

- on the 25th of January -…….- yes, yes we did, yes.

You – now who was on the boat then, you and Bob -…….The three of us.

- Ann?…….Ann – Ann and I and Bob, yes.

So just the three of you?…….Just the three of us, yes.

And was that under motor there and under motor back?…….Yes, it was.

And how long did that trip take?.....Well most of the day.

Right. .....Most of the day, mm.

Thank you. And on that particular trip was there some problem with the anchor?.....Ah yes, we – we were going to drop the anchor for lunch in Adventure Bay and the anchor winch motor, which had been playing up anyway, failed and so we – we just hove to, we just turned the boat and had lunch anyway.

Yes.....So –

All right. And -.....We did try to fix it but –

- what was involved by the – in the two of you working on that day to deal with the problem?.....Oh well you – you simply have to free the chain and work the – the – the motor from the main switchboard – from the circuit breaker inside the saloon instead of trying to work it from the deck---

All right.....- electrically from the deck, and it was working from the saloon.

Thank you.....So.

And who did the actual work getting freed in the anchor, just Bob or you or Bob and you?.....Both of us together, both of us together.

All right. And was he unhappy at all about the problem with the anchor?.....He, I think he was grumpy about having to get into the chain locker. He was – it was a question of freeing the chain to run freely round the thing, so we both worked on it and he was cross that it had failed when he wanted to have lunch, anchored to have lunch.

All right. So what time did you get back to Hobart?.....Oh God, late afternoon.

Thank you. By this stage, that is, early 2009, how long had the two of you been together?.....I think we met in about 199 – roughly 1990 and we – or '89. We formed a relationship over eighteen months and so we were together from about 1991.

Had you at any stage in this long relationship discussed marriage?.....Yes, we had.

How often?.....Ah, well we used to joke about it but we also discussed it seriously, so I'm not sure whether you - (remainder inaudible)

Was it a regular discussion?.....It was um – we had a running joke that – at dinners with other people and in front of Bob that I was going to leave him and then he would propose. It was a family joke. But we also discussed getting married on the boat on a twentieth anniversary with the family.

Thank you for that. And when did those discussions take place about getting married on the boat on the twentieth anniversary?.....After, after we, after we, at Allison Street, at Allison Street.

When?.....After the – after we got back.

Right, all right. Did you discuss that with any of the family present?.....I can't remember.

Thank you. Now what were your and Mr Chappell's plans for that boat? You'd brought it back down from Queensland, you had a mooring in Hobart, it was a new boat to you. What were your immediate plans?.....Well I knew more about the boat than Bob only because I'd sailed down on it and learnt a lot, and our idea was to sail it in the Channel area and become more accustomed to it. We needed to get some work done to the rigging and then we were planning to go to Port Davey and then maybe next winter up to the Whitsundays – last winter up to the Whitsundays.

Right. To get down to Port Davey in the south west -.....Mm.

- did you see – first of all, had you been there before?.....No, never.

Right. Did you understand that to be an easy trip or a difficult trip?.....It was a trip where you would need very competent help, yes.

Right. Were you planning before going to Port Davey to do any short trips?.....Yes.

Any overnight trips?.....Yes, yes.

Where?.....Probably anchored off Bruny, you know, round Bruny Island, that area.

Down through the Channel?……Down through the Channel and the outside, yes.

Right, thank you. After – when did you propose that you'd probably do the Port Davey trip?……We had hoped to do it at the end of the month after we had the boat up on the hard, so March.

Thank you. And had you discussed taking the vessel back to Queensland to the Whitsundays?……We had – yes, we had.

And had you formed any firm idea about that or was it just something that was in the future?……It was something we just talked about.

All right…….Yes.

Had you and Mr Chappell discussed going, after his retirement, anywhere else on the boat?……Well we had been talking about going across to New Zealand and then, you know, looking at Vanuatu and places like that, but this was just a - preliminary discussions, it wasn't – there was nothing planned, nothing – nothing at all planned.

Just things that might happen in the years to come?……Yes, yes, yes, and with competent sailors with us, obviously.

Right, thank you. Did you have any view about how easy or difficult Four Sails – sorry, Four Winds was to operate?……Very easy. It was very easy, it was a lovely boat to sail.

Right……It – the rig needed modifying but it was a very easy boat to sail.

When you say the rig you mean the set up for the sails, do you?……Yes, yes.

And you mentioned yesterday you had a self-furling Genoa?……We did, yes.

And would you have put any other self-furling rig on?……Yes, we would have. We would have done away with the boom for the staysail and made that self-furling. We would have made - probably not the main but the mizzen self-furling.

And when you say you would have done away with the boom for the staysail put that into lay terms for me will you. Would you need a photograph to show us?……Probably not. There are four sails on the boat and the front one is already self-furling where it wraps around

the mast – the stay, sorry. And the next sail was actually quite hazardous in certain circumstances because it had a free tracking boom on the piece of wire so the piece of wire ran across the deck and was fastened and the boom ran free on it so if the boat suddenly - or if the wind suddenly changed direction and somebody was on the deck the boom could suddenly come very fast across and basically break your legs or take your overboard so we intended to get rid of that and make that sail self-furling, that was the main thing, and even more importantly take all the sheets, take all the sails operating the rope – the sails back to the cockpit. So it would have meant winches along the top of the pilothouse that we could reach from the cockpit rather than have to go outside the cockpit in – in –

And would that involve new winches being installed or relocating the then current winches?……I think we'd have put four new winches – yes, we'd have put four new winches on.

Right, thank you…….On the coach house roof. Mm.

Thank you. Now in the days before the 26th January 2009, which was Australia Day, and excluding the 25th when you went to Bruny Island, so in that period leading up to the 25th had Mr Chappell been back at work or on holidays?……I – I've got a feeling he'd been back at work for a few days but before that we were out to the boat nearly every day so that was – yeah.

When he wasn't on holidays in that month what sort of things was he doing on the boat?……Well we – we – he just wanted to familiarise himself with it, he'd hardly had any time on it at all. He wanted to check all the – check all the panelling out, what was behind it, where – and also he wanted to check, we had an oil leak in the motor, so he wanted to check that as well, mm.

All right. And did he do any actual work on the boat apart from checking it, for instance, did he replace wiring or anything like that?…….No, not at all, but what we did do, we took off, we checked all the sails again and we found that the mizzen was – the stitching was coming undone, so we took that off and took it ashore – little things like that.

Right. …….We were – we were going backwards and forwards with the dinghy full of various things, mm.

All right. Thank you. Now at some stage you purchased a new outboard for the dinghy?…….We did, and we actually were looking for a smaller tender as well.

Right.....Mm.

Any reason for that?.....The – the dinghy that we had that came with the boat was probably too heavy, we could mange it, but it really belonged on the davits up on the yacht, and we wanted something like a – you know, maybe a ten foot light little dinghy to – that we could both manage easily on and off the trailer, so –

All right. Thank you. .....- that's what we were looking for.

Let's move to the morning of the 26th of January 2009, do you recall what time Mr Chappell got out of bed that day?.....Fairly early, it would have been before me, mm.

Yes. Well was there a practice in your household as to what would happen in the morning when he got up?.....Yes, we – we – he always got up first and went and made a cup of tea and – oh the cats usually came back with him.

Sorry?.....The cats usually came back with him with a cup of tea and got me up.

Right. Thank you. .....So – and then he'd go off and –

Right. .....- potter about.

And I'm not asking you to be accurate, but your best estimate of this time that he got up was what – what's your best estimate now?.....Seven – seven thirty, something like that.

All right. .....Mm, I wouldn't know –

Now after Mr Chappell gave you your cup of tea in bed, did he go somewhere?.....Mm, this is on the 26th?

Yes.....Mm, yes, he did –

Concentrate on the 26th?.....- he went – he went down to his workshop – he went down to the workshop.

Well where was the workshop, at Allison Street?.....At Allison Street under the kitchen, under the house, so downstairs under the house – yes.

All right, and what was he doing down there that you are aware of?……Oh he was carrying – he was getting the tools that he wanted to use on the boat ready for doing the things that he wanted to do so he – but he carried them up around the side path of the house and so I didn't see exactly what he took.

Right. Did he tell you whether he had any particular task in mind on the 26th that he wanted to attend to on Four Winds?……Oh there were – there were a number of things. He – he wanted to – he wanted to have a proper look at the oil leak in the motor. We'd spent a lot of money on this motor and it was beginning to look as if the work had either failed or there was something else not right. He – well he would have had a special mirror for that, he bought a special mirror for that, so he'd have taken that. He – the wiring was the most important thing, he wanted to – he wanted to trace the wiring through to see what – which option the electricians had given us that he'd take up, so that's – that was his main reason.

Now when you speak of the options the electricians had given you, which electricians are you referring to and what options?……It's a very long time ago. Not – I think the name was Makepiece, Norton Makepeace, -

Right…….- and what he had said was that – I can give you a rough outline but I can't really remember. We had a very small alternator on the motor, it really would only charge our starter batteries, our 12 volt system, so we had a big generator as well, a separate motor in the engine room which ran all the electrics, the oven, the two – it ran the 240 volt system, and the – what we'd been told was that we could – I think the electricians gave us two options, one of which involved getting a much bigger alternator with an internal regulator, which would have meant simplifying the whole electrical system, and then the other option – but it also would have meant partially rewiring the motor to take that extra work. Or we could have simply gone right over the boat and fixed up what was already there and – and it had worked very well for twenty years, so there was no reason not – so – so there was a few thousand dollars difference in the price and he was going to – to workout what – which – which option he wanted.

That was Bob?…….That was Bob.

Yeah, thank you……..Mm.

Now you had Ann Sanchez staying with you -…….Yes, we did.

- that day?…….Yes.

Now did you make some arrangements that you would meet with her later in the day?…….No, I – I was going to come back for lunch but she was going to Bruny Island later that day.

Right. …….Mm.

All right. Now did you and Mr Chappell go down to the Four Winds?…….We did –

Yes……..- in the morning, yes.

About what time roughly did you leave home?…….Oh at best – it would be a guess, and it would be about eight thirty or nine –

All right. ……..- I don't know.

And you took the tender with you?…….I – I think we must have – I don't remember, but we must have because if we unloaded at Marieville Esplanade we – we would hardly have gone to Royal where it would have been tied up, so we must have taken it down, mm.

So you took the tender down -…….Mm.

- went out to the Four Winds?…….Mm mm.

Now did you stay out there for long?…….I seem – I think I spent an hour or something, an hour, maybe two –

Do you remember what you did out there?…….- I don't know. I really – I think – what I was doing was pottering around trying to clean up. We still had stuff in our chart table, we had – there was a dreadful washing machine in the laundry – I know I was taking paint tins out of that and trying to you know –

Sorry, paint tins in the washing machine?…….They started flogging about in Bass Strait on the floor, so we put them in the washing machine, which was a dreadful thing and we had to get them out.

Get them out of the way?…….To get them out of the way –

Right……..- stop them – stop them moving about.

Thank you……..Mm.

Now so you just did, what, general clean up work?.....Mm.

What was Mr Chappell doing in your presence?.....Well he was in out of the engine room. He was – he certainly had the electrical – it was only a – you just opened the cupboard, he had the electric circuit thing open, but I know he had the engine room door open because I had to climb up – you had to take the steps off to do that.

Yeah, if you just wait a minute. Could the witness be shown P3 and in particular photos 38, 39, 40, 41. Now just take a moment please and look at those four photographs would you. Do you recognise them?.....Yes.

Right. What are we looking at there?.....We're looking at – in – in 38 we're looking at the switchboard for the electrical system, both the 240 and the 12 volt system.

Right. And are these the panels upon which Mr Chappell was working?.....Well I think he had the bottom left one open which from memory is the regular – where the regulator is.

And what's the regulator do?.....The – look, if I start answering questions like that I'm going to make a mistake.

No, look, if you don't know the answer - .....No, I don't – I really don't, no.

All right. But it's your belief he was working on the bottom left hand panel which is headed 12V or 12 volt regulator?.....Yes, it was regulating the power between the two systems I think.

All right. And when you speak of panels being open that's the panel?.....I think he had them all open from memory.

Right.....Yes.

Thank you. Where was he actually working, did you see, was it in all four panels or just the one?.....I think he had all four open but he was – he was certainly working in the regulator.

Now where was the door to the engine room in relation to those panels?.....It's – it's to the left and down. In 38 if you look at the bottom left – it's just off to the left at the bottom of that.

Thank you. And he, I think you said, was from time to time in the engine room?.....Yes, oh yes.

Thank you. Now and at some stage did you leave the boat?.....Yes, I did.

Thank you. Those photographs can be returned to be entered please. Do you know what time you left the boat?.....Not really, no. It was late morning.

Right. And did you take the tender back to shore?.....I did, yes.

Did you leave it somewhere?.....I tied it up to the – I tied it up at Marieville Esplanade at the beach, I think, yes.

Right. Well there are some poles in the sand which we've seen in other photographs.....Yes, I tied it up to the poles, yes.

Right, thank you. Now where did you go after you arrived at Marieville Esplanade?.....I went to – I went back to Allison Street and Ann and I went down to Royal, to the Yacht Club.

All right, and for what purpose?.....To have lunch.

Thank you. Before you went down to the Royal, did you change out of the clothing you'd previously had on on board the yacht?.....Yes, yes, I would have, yes.

Do you remember doing that?.....No.

Right. But can you remember what you were wearing out on the boat that day?.....Oh, I can only tell you what I normally wore.

Which was?.....Oh, it would have been – oh they're like a Cargo pant and a loose shirt, usually a loose man's shirt.

Could I ask that the witness be shown P.43, photo 10, please.

HIS HONOUR: That's the smaller folder, tab 6.

MR GUNSON SC: Right. Does that show you on the boardwalk at the Royal Yacht Club on the early afternoon of the 26th of January?.....Yes, it does.

All right. Now what you're wearing there -.....Would not have been what I was wearing on the boat.

Thank you.....No.

All right. Now just staying with that photograph for one moment - …….Yes.

- and using you as the direction point; whereabouts roughly was Four Winds from there, was it directly behind you, to the left, to the right, or where?…….It – I think is – you see where the top hole punch is in the photograph –

Yes……..- if you come about, maybe an inch – sorry, a couple of centimetres to the right and down I – I think that's pretty much where it was.

Sort of out in that general direction -…….Yeah –

- behind the -…….Yeah.

- breakwater and beyond?…….Yes.

Thank you. Now - that can be returned please? Now you had lunch at the Royal Yacht Club?…….Yes, we did –

And -…….Well yes.

- did you go somewhere after that?…….I went – we went home, yes.

Right. Do you know what time it was you went home?…….No.

Right. Were you at the yacht club for very long?…….Oh no, I don't think so.

Try and keep your voice up please, the jury need to hear you?…….I don't think so, it would have been perhaps, an hour?

All right. …….Half an hour.

Thank you. …….I don't know.

Now come back for a moment please to the arrival that morning with Mr Chappell at the beach; you put the dinghy into the water?…….Yes.

Was there an incident that you can recall about petrol overflowing?…….Oh, from the – yes, from the outboard engine.

Yes.....He – he was filling the outboard and the spout flicked – flicked out, it's – it's too short and stiff for the job, and it flicked out and petrol went into the – the dinghy, so –

Did you clean that out?.....I think I irrigated it with freshwater – I went back and got a bucket -

Mm.....- and got some freshwater and –

All right. Was there was a reason for that?.....Well I was just – I didn't know the affect that fuel would have on the rubber on the –

Thank you. .....Mm.

All right. Well now you took Ann back to Allison Street?.....Yes, yeah.

And you went back to the boat at some stage?.....Yes.

Where was Ann going?.....She was going to Bruny Island I think with –

Yes.....Yes, she was.

All right. And was she going to go and stay at somebody's shack there?.....Yes, Kate – Kate somebody.

Thank you. Did you wait until she was picked up and left6?.....No, I left – I left earlier than that.

Right. And you went down to the yacht, is that right?.....Yes, yes.

Do you recall what time it was you left Allison Street?.....No, I don't.

Right. How long after lunch was that?.....Oh, almost immediately. I – I, um, I think I had a chat with Ann and then I – no, I was going – I think I was going – I was going somewhere – oh, it was the wind, that's right, that's why I went back to the boat, so it would have been very shortly after lunch, mm.

All right, thank you. Do you have an intention of going somewhere before going back to the yacht, just - .....Yes. Yes, I was going to Bunnings, mm.

You were going to go to Bunnings?.....Mm.

Did you go to Bunnings?……No. No, I didn't.

Was there something in particular you wanted at Bunnings?……Yes, there was. There was some – when you go down into the pilot house it's very slippery if it's wet so we were looking for some non-slip matting for that.

Thank you…….Mm.

Do you actually start the trip to Bunnings?……Yes. Yes, I do.

Right. And did you change your mind and if so why?……Um, Sarah rang me on the mobile and I think I was halfway down – gone up around Hill Street so I was headed down to the hill towards K&D when she rang and I pulled over and talked to her and I looked across and the wind was blowing pretty hard so I – I thought well I'd better go back because I thought of the dinghy getting – driven ashore.

All right…..Mm.

So did you then travel down to Marieville Esplanade?……Yes, I did, yes.

And are you able to say where you parked your vehicle?……Well I – oh, I know I went around the block because it was very congested –

Yes……- ah, I park – I'm sure I parked it on Marieville Esplanade.

Did you have the trailer on at this stage or had you -……No, I think I'd taken it off because I – I think I parked a block back from where mum's house is, which is the last end –

Do you remember when you detached the trailer and where you left the trailer?……Look, it was either before or after lunch.

All right, but you left it at Allison Street?……Oh yes, yes.

Thank you. Now you came down to Marieville, parked the car - …….Mm.

- and you went where?……I went – well I had trouble getting the dinghy out and then I went out to the yacht.

Right, we'll come back to getting troubles with the dinghy, - …….Mm.

- you left the dinghy presumably tied to the little poles?……Yes, that's right.

When you got down there what had happened, had the tide come in or the tide gone out?……It had become rougher and the tide had – the tide was actually on the turn, I think, -

Yes……- and the – the leg for the outboard – for some reason the pin had come loose and I'd elevated the back leg so that I could – you know, it wasn't dragging but it had come loose and had dropped down and got embedded in the sand, mm.

Right. So when you'd first come ashore you hadn't left the outboard in the upright position, rather you'd put it in the, I suppose, rest position, is that right?……Mm. I can't actually remember any of this, I – I – I've sort of pieced it together from what must have been.

Well do you remember today anybody helping you get that dinghy back into the water?……Yes, I do. Yes, yes, it was a young man with a kayak, I think, yes.

Thank you. And what did he have to do to help you get it back in the water?……He had to help lift the dinghy while we freed the leg, mm.

Thank you. And did you go out to Four Winds?……Yes, I did.

Right. What were the weather conditions at that time?……Choppy. Choppy and windy.

Right. Now when you say windy are you able to give an estimate of the strength of the wind by either the number of kilometres an hour or whatever other methodology you might employ?……No – oh there were other boats sailing, there were dinghies out sailing, quite a lot of boats out sailing, and I think – no, sorry, that was another day. Oh dear –

Concentrate on the 26th please……Yes, I – I think it was choppy and there was a wind blowing, hmm.

Thank you. Now can I just ask you, do you feel all right?……Ah yes, I'm fine, thank you very much.

Thank you……..Just very tired.

All right, thank you. If you don't feel all right at any stage, please tell me and we'll – I'll address His Honour on the subject.....Thank you.

All right, now you went out to Four Winds. Was it a difficult trip out in those conditions?.....It was, it was certainly choppy, hmm.

And what was the practice, the boarding of Four Winds, that you adopted and Mr Chappell adopted. This is you tie the dinghy to the back and get onto the little platform at the back, or did you go over the side?.....We – Four Winds has a – a grate at the back which drops down and you can get on to, which makes it much easier instead of having to step up. If the weather was calm, we would tie up temporarily to the back and people would get off from the dinghy onto the grate and then we would go up over the back and through the gate, the rear gate, and then tie the dinghy up at the side, and we – but in bad conditions we would come up to the side always.

Now is there a reason that yachting people tie a dinghy to the side of a boat as opposed to having it out the back?.....Well, I can't give very – other people's reasons, but on that particular boat if you tied the dinghy to the back, the – it didn't matter what length you put the dinghy on, it would surge forward and the front of it would catch under the washboard and become entangled, and it was just a nuisance. The rope also would catch under the grate and so, you know, it was much easier for us to tie it to the side if we were on board.

Now when you – you've mentioned washboard and you've mentioned grate. Are these words interchangeable, same thing?.....Same thing.

Right. Now if you tied it to the side of the yacht, would you tie it fore and aft or just have it on one rope?.....If people were getting on and off, I – I usu. – well we usually would tie it fore and aft, at the back and the front, to reduce the movement, and it would move with the boat then. If – if it was just me or just Bob, probably we'd – we'd – we'd tie it at the – yes, we'd tie it both ends and then we'd – we'd release the – the aft line and just let it ride there.

Thank you. Now can I just ask you something that I think most people know, but nonetheless, with an incoming tide in the Derwent the stern of the boat would be putting towards the shore, is that right?.....Yes.

And -.....Well depending on the wind too, yes.

Right. But put aside the wind for a moment.....Yes.

So if the tide's coming in, the bow of the boat -.....Yeah.

- is pointing down river?.....The bow of the boat would be pointing down, mm.

Outgoing tide, the reverse, the bow would be pointing up river in general terms?.....Usually, I think, yes.

And if there is a strong wind blowing -.....Yes.

- can that counteract the effect of the tide?.....Yes, it can.

Right. And -.....Yeah.

- a sea breeze blows in what direction in Hobart?.....Usually onshore, mm.

And that means in lay talk, what, up the river?.....Mm, yeah, well – yeah it depends, I think in that area it blows onshore, so it would blow straight onto Marieville Esplanade.

Thank you. And with an incoming tide and the wind blowing onto Marieville Esplanade the bow of the boat would be pointing down river?.....Yes.

And if the tide was going out and the wind was stronger than the effect of the current, it would still – could still be pointing down the river?.....It could.

Thank you. .....Mm.

Now do you remember on the 26th when you went out in the afternoon, whether the tide was going out or coming in – I think you said a moment ago you thought it was just on the change?.....Mm, I think so.

That was – what's that, change from high tide to -.....It had – it had come in – I think it had come in higher because there seemed to be less – no, oh look, I really can't remember it's –

Right. But your -.....- too long.

- when you went down to your dinghy -.....Mm.

- the engine or the motor more correctly, the leg of the motor was stuck in the sand?.....Mm, it was.

Right. Does that mean the tide had come in in your absence or the tide had gone out, given where you tied the boat up?.....I think it must have been going out.

Thank you. .....This – this – I'm sorry to be so vague, but this was a fairly common occurrence for us, so it wasn't the first time this had happened.

All right. In any event you went out to the yacht?.....Mm.

And when you got there Mr Chappell was still there?.....Ah, oh, yes, yes.

Where was he working?.....He was – he – look from memory he was in the engine room but he came out and I think I – yes.

Yes. Did you do something?.....I would have – I think I made a cup of tea. I would have made a cup of tea.

All right. And was he still working on these panels that you described him working on when you had left to go ashore to meet Ann?.....Look, I've got a feeling he – he – I know he was fiddling with the –

MR ELLIS SC: Well, your Honour, could I have a word about this evidence.

HIS HONOUR: Sorry?

MR ELLIS SC: Could I have a word about this evidence in the absence of the jury?

HIS HONOUR: Yes. Ladies and gentlemen, would you go to the jury room please.

<THE JURY RETIRED

HIS HONOUR: Mr Ellis?

MR ELLIS SC: The witness has already said in relation to launching the boat on this – launching the dinghy, I'm sorry, on this occasion, I think that's what she was referring to, that she was piecing it together from bits and pieces and had no recollection. Now we've got her on board at the crucial time and it's, "I have a feeling", it's very dangerous in my submission and inadmissible if the witness is giving evidence other than her recollection.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: The criticism is well founded, your Honour, I ask the questions that's the answer I get, I can't – I can't say, "Don't say that" to her, and nor do I intend to do so but the criticism is well founded.

HIS HONOUR: Well it calls for me to – the way in which this evidence or some of it has been given calls for a comment from me. Ms Neill-Fraser, you may give evidence of what you remember, you may give evidence of what you remember to the best of your recollection, that is memories that you have but aren't positive about, what you may not do is to give evidence based entirely on reconstruction. You can't give evidence as to what you now think must have happened –

ACCUSED: Mhm.

HIS HONOUR: - if you don't have a memory of the particular events. Those – those are the rules and they're very important ones. Anything else we need to discuss while the jury's gone?

MR GUNSON SC: No thank you, your Honour. Could I ask for an indulgence just for a few minutes, your Honour, maybe a five minute break?

HIS HONOUR: Yes, all right. I don't want to take a very long break –

MR GUNSON SC: No, no.

HIS HONOUR: - because I can only sit 'til about twenty past eleven this morning.

MR GUNSON SC: Certainly.

HIS HONOUR: Yes, all right, I'll retire for a few minutes.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Mr Gunson.

MR GUNSON SC (Resuming): Now Ms Neill-Fraser, when you returned to the Four Winds in the early afternoon of the 26th January do you have a memory of what, if anything, Mr Chappell was doing on board?……He was working in the engine room and he also worked on the anchor winch motor.

Yes……I remember that distinctly, but I'm piecing it together from bits of memory that – that I have.

Please, tell me what you remember as distinct, please, from trying to, as you were, piece it together. When you got on board do you remember where he was?……I – he was either in the engine room or on the front.

Right. Did he during the course of the afternoon while you were on board work in the engine room?……Yes, he did.

Did he whilst you were on board that afternoon work on the anchor winch?……Yes, he did.

Thank you. When a person is working in the engine room they have to obviously get into it by opening that grey steel door?……Yes, that's right.

Right. To get into the engine room do you have to remove something first?……You have to remove the saloon steps, which are the second set of steps as you go down into the boat.

All right. Do you have any memory on that day as to where the steps down into the saloon were when you went back on board?……No, they – they were not in situ, they were definitely out and the engine room door was open, but –

Right…….- I don't know where they were propped.

So how would you, if you went down into the saloon, get access?……You step down, it's a big step, you just step – step down.

You can get down?……Yes, certainly.

All right…….Yes.

Do you remember where the steps were from the – is it the wheelhouse down into the saloon when you got on board?……They were where they should have been, they were – they were – yes, they were where they should be.

But that doesn't help me. Where – were they situated – were they in place?……They were in place, yes.

Right. And was the engine room door open or not?……It was open.

How can it be open with the steps in place?……The engine room – the engine room door is in the second level behind the steps leading from the wheelhouse to the saloon.

Now that's the question I was directing your attention to. To get down from the wheelhouse into the saloon there are steps……..Yes.

Is the door to the engine room behind those steps?…….Yes.

Thank you. Now can you open the door of the engine room and access the engine room with the steps in place?……..No, you can't.

Thank you. Now I'll ask you to concentrate please. When you got on board the Four Winds in the afternoon, were the steps from the wheelhouse down into the saloon in place or not?……No.

Thank you. Where were they? Were they still in the saloon or had they been taken out onto the deck or what?……They were in the saloon but I can't tell you where.

Thank you. And the door to the engine room was open?…….Yes.

Thank you. Now during the course of the afternoon on board the Four Winds, did you do any work at all?……I was in the forepeak for a little while, in the cupboard there, and I went back into the laundry.

Do you remember what you were doing in the forepeak?……I think I was taking tins out, I was taking tins out and putting them back.

What sort of tins?……Well they were paint tins.

All right. Now you were working in the laundry, what were you doing there?……I wasn't working, I was just removing tins from the laundry.

Thank you. And I asked you what you were doing in the forepeak, which is not the laundry, isn't it?.....Yes, but there were tins of oxalic acid in the forepeak, which looked like paint tins, and shouldn't have been in that position, so I took some of those out.

What's that used for on a yacht?.....You – if you want to stop rust, you paint it on an area and then you can paint over it. It's a sort of a fixer, yes.

All right thank you. Now do you remember what else, if anything, you did that afternoon on board the Four Winds before you left?.....No, I can't.

Right. Now do you remember at any stage whether you had afternoon tea, for instance?.....Yes, I think we did, we had – yes, we did.

Thank you. .....We had some fruit cake and tea.

Do you remember where you took afternoon tea onboard the boat?.....We would have – in the wheelhouse.

Thank you. .....Mm.

Did you have any discussions with Mr Chappell about any aspects of his work that he'd performed that day?.....He'd – he'd had a good look at the motor –

Yes.....- the only thing I absolutely remember him saying to me was that he wasn't – it wasn't at bad as he'd thought and he was quite pleased that it was a tiny leak and he felt that when it was up on the hard he'd – they'd be able to fix it.

Thank you. When you say "up on the hard" you mean -.....Up – up when the boat –

- up the slipway?.....- came up – yes, it was coming up in February.

Thank you. Now did you have any discussion about whether you would stay on the yacht or whether you'd return to shore?.....Yes, and we'd had discussion in the morning as well about it.

Right. But stay with the afternoon conversation; did you have a discussion about whether you'd stay on the yacht or return to shore?.....Yes, yes, we did.

Do you know what, if anything, prompted that conversation?.....Ah I – yeah, Bob was much – he was in a much better frame of mind when I went back. He'd managed to isolate this engine oil leak and he – he said that he wanted to spend the night on the boat to keep going, he didn't – when – he doesn't like getting up tall ladders any longer, so he said that he wanted to try and trace the – the wiring and have a look at things before it actually went up on the hard.

Did he tell you what wiring he wanted to trace?.....No, but it was to do with the two different systems that we – we'd been quoted by Norton Makepeace.

Thank you. .....Mm.

And did you ask him whether he wanted to go ashore with you or stay on the yacht, or did he volunteer to stay?.....Oh, he wanted to stay.

Right. .....Mm.

Did he have any discussion with you as to how long he would stay on the yacht?.....He – look he – he actually said to me, "I may not go to work the next day", so he'd – he wanted to spend the night and perhaps the next day on the boat.

Right. Now he said he mightn't go to work was that unusual for him?.....It wasn't unusual for him to say he mightn't go to work it was unusual for him not to go to work.

Right. All right. Did you make any arrangements whereby he could contact you at home if he wanted to do so?.....Yes, he – there's the two working radios on the boat and so he could have called –

MR ELLIS SC: That –

HIS HONOUR: No, no, the question was –

MR GUNSON SC: Did you – right, your Honour.

HIS HONOUR: Yes.

MR GUNSON SC: (Resuming): Now just listen carefully to the question.....Yes.

I'll address it another way. You own a mobile phone?.....Yes.

Did you have the mobile phone on the yacht?.....Yes, yes.

Did you make any arrangements as to what you would do with that mobile phone when you went ashore?……Oh, yes, I – I left it with him, yes.

Right. And he could use it?……Yes.

Thank you…..He wasn't very good at sending text messages but he could use the phone all right, yes.

Thank you. So you left the phone with him. Do you remember where you put it on the yacht?……Oh, I think I left it on the table, mm.

Now was it common for Mr Chappell to stay on the yacht, at least during the day, whilst you were ashore doing other things?……Yes, it was, and vice versa.

Yeah……Mm.

You've heard the comments that were addressed to you by one of the police officers in the record of interview suggesting that it was dangerous or highly unusual for a yachtsman to be left aboard a yacht on its moorings whilst the tender was away……Mm.

What do you say about that?……I think – I can't comment. I know – well Bob and I both left each other for hours on end on the yacht without – and took the tender but whoever was left on the yacht was left with a mobile phone.

Right. And did the yacht also, as you've said a moment ago, have some radios on it?……It had two working radios, yes.

So if you needed to communicate with anybody you could do that by radio?……Yes you could.

And where would you communicate to in the port of Hobart?…….Oh you – you would get on the radio TasCoast Radio and they would make a phone call. The other thing is, if you wanted to go ashore the water taxi when within metres of us very regularly, so that was another –

All right. Thank you. So it wasn't unusual, from your perspective, to leave Mr Chappell on the yacht?…….No.

But this was the first time that he'd wanted to stay overnight?.....Yes.

Right. Was there food on the yacht?.....Yes, it was fully stocked, mm.

And was he capable of cooking a meal for himself?.....Oh yes, yes.

What sort of cook was he?.....Wonderful.

All right. Thank you. Anyway, you left the yacht -.....Mm.

- and how long do you think you were on it before you left?.....I thought that I was only on there an hour at the most.

Thank you. And do you have a belief – I'll withdraw that. Now you went ashore, where did you take the dinghy to?.....I took it to Royal, I took it – I tied it up in front of the – the yacht club.

Just a moment I'll -.....Mm.

Well we won't waste time with it, but you took it to the Royal Yacht Club?.....Yeah.

We've seen a photograph with you in it taken earlier that day when you were on the boardwalk; was it anywhere near where you're shown in that photograph?.....Yes, it was, it was further along, there's a – an iron crane or something which sticks up and the ladder –

Yes.....- and –

HIS HONOUR: Well that photo, if it helps, is P43, photo 10.

MR GUNSON SC: That's of the plaintiff, sorry, the accused.

HIS HONOUR: Yes, your client.

MR GUNSON SC: Yes, yes indeed. Yes, I've just been handed it. I was having Miss Brooks to find me the other one but we'll have to – we'll deal with that one, so can the witness be shown that photograph please, P43/10. Now somewhere to the left of you as we look at the photograph, is that right?.....Yes.

All right. Now what number's that? Have a look now please at photos P11/4 and 5.

HIS HONOUR: That's the larger folder, tab 4.

MR GUNSON SC: Now do you have those two photographs 4 and 5 in front of you?.....Yes.

Right thank you. Do you first of all see the Royal Yacht Club of Tasmania club building there?.....Yes.

Thank you. Do you see the crane to which you referred?.....Yes.

Right. Now is there a ladder to the left of the crane, a steel ladder, as we look at that photograph?.....I can't see it but there is one there or there was.

Well look very closely.

HIS HONOUR: There's a red car and a blue car, and to the right of them there's a space, and if you come down from that space---

ACCUSED: Oh yes, thank you, your Honour. Yes, I can see it now, yes, yes.

MR GUNSON SC: Right, now is that the area in which you tied up your dinghy?.....Yes. To the left of it facing---

Right. Now when you tied up your dinghy, did you use a special mariner's knot or something like that, or did you just have some knot you used?.....No. I just used the usual knots that I use.

Which are what?.....Dreadful. No, I am not very good about knots. I think – but I would have put quite a few in there I think, yes.

Just try and tell me – don't speculate - .....Right.

- tell me what do you remember doing? Do you remember the style of knot you used?.....No.

Right.....I don't.

All right, now thank you. Now those photographs can go back. Now is there a reason why you took your dinghy into the Royal Yacht Club as opposed to taking it onto Marieville Esplanade Beach?.....Oh, yes. Well Bob had told me he wanted to spend the night on the boat and I thought well I won't come back, you see, if I tie it up there it will be safe. We thought were cameras that were –

You had a belief there were cameras there?……Yes, yes.

And - …..We thought they'd have them on the clubhouse.

Right. Had you told Mr Chappell where you would be tying up the yacht – sorry, the dinghy?……Oh, yes, yes. Yes, we both tied up there on occasion, yes.

Right. But on this occasion when you left on the afternoon of the 26th did you tell him where you would be leaving the dingy?……Yes, I did.

Thank you. Now when you went in there were there other people about?……Yes. Yes, there were.

Were there other boats tied up at the marina?……Yes.

On the 26th January, Australia Day, was there a regatta taking place on the river?……(No answer).

You don't remember?……(No answer).

You'll need to answer please?……No, I – no, I seem to remember quite a few boats sailing but I can't be sure whether it was that day or another.

All right, thank you. Do you remember speaking to anybody when you came ashore?……No.

All right. Did you – you've told us you believed that there were security cameras in the area - ……Yes.

- what was the basis of that belief? Was it something you had seen or something you'd been told, what did you base the belief on?……I based the belief – my belief was that where there were so many valuable boats there would be security cameras as there are in every other marina practically in Australia.

All right, thank you. Now did you have any belief as to whether there were any personnel on duty at the yacht club at night?……Yes, I thought there was a security guard.

Right……As well as cameras.

Is there a reason for that belief?……I had been talking to a friend of mine and – unrelatedly, and he mentioned that there was security at the yacht club, -

All right……- but it went no further than that.

Did it trouble you leaving a tender like that with a new outboard engine on it effectively out in the open?……Not where it was because we thought – well we thought there was – there were cameras there.

Now I'm interested in your thoughts, not anybody else's…….Mm.

Tell me your thoughts?……No, it didn't trouble me at all.

All right, thank you. And was that – where you had it tied up was to the right as we look at the photographs of an area where quite a few large yachts and motorboats are at the marina?……No, there were very tiny yachts tied up in that area.

But in the area generally are there yachts and motorboats?……There – there are, yes, -

Thank you…….- big ones.

To your knowledge are people allowed to, at least for part of the time, live on yachts or motorboats in the marina?……I don't think so, no.

All right, thank you……I don't think they are.

You went – you tied up the yacht – sorry, the dinghy, and where did you go after that?……I went to Allison Street.

Right. Now you have told the police, we've heard it in this Court that you told them you went to Bunnings and you told them you were at Bunnings for quite some time?……Mm.

Was what you told the police correct?……No, it wasn't.

Right. When you told the police that initially on the morning or the 27th January did you have a belief as to where you had been?……Yes, I thought that I had been to Bunnings.

Right. Now is Bunnings – was Bunnings a place that you had been before the 26th January?……Every second day practically.

Why would you go there?……Because you can buy everything that we were looking for there – it would be either there or K&D.

This is for the boat?…….This is for the boat.

And when you said "every second day" you're not suggesting to the jury that as a housewife at home in West Hobart that every second day you'd trip out to Bunnings, are you?…….I – when I was going up and down to the farm, very often, it was every day –

All right. …….- if we had forgotten something that we needed.

Because it's on the way?…….It's on the way, mm,

But in the period of, say, a couple of weeks leading up to the 26th of January, do you recall going out to Bunnings for any specific purposes?…….Yes, I do, I – I went out looking for this slip matting for the pilot house.

All right. …….But it was an earlier day than the 26th.

And on those – that earlier day when you were looking for matting, had you been there for any particular period of time?…….I – I don't remember which day it was, but I – I was there for quite a long time.

Right. Now was there something special about this matting that you just couldn't walk in and I say 'I'll have that one' and walk out?…….Yes, they have different – they have different size webbing and different thicknesses and it had to be a fairly specific kind of – it had to be a fairly specific design -

Right. …….- for it to work. And also the cost was you know a feature as well.

Right. Thank you. Now – so you went back to Allison Street; how did you get back to Allison Street?…….Well I drove – on the day I went to Bunnings I drove.

Yeah, no, no, no, I put the question to you poorly, it's probably my fault. On the 26th of January you came ashore -…….Yeah.

- you tied up the dinghy at the yacht club?…….Yeah.

You've told me a moment ago you returned home to Allison Street; how did you get back to Allison Street?…….I walked.

Thank you. Do you normally walk during the day?.....Yes, and I very often – my mother lives on Marieville Esplanade, so I walk up and down all the time.

Right. .....Mm –

You didn't -.....So I walked, mm.

You didn't regard a walk from Allison Street to Marieville Esplanade as anything unusual?.....Oh no.

Right. Thank you. And it's a walk you've done regularly?.....Yes, all the time, mm.

Thank you. How long has your mother lived at Marieville Esplanade.....About, oh, twenty years.

Right. .....Probably thir – oh, thirty years, I don't know.

Right. And since you've been at Allison Street, have you regularly walked down there?.....Yes.

Thank you. Now where was the car when you left it and walked back to Allison Street?.....I – I – well I left it where I parked it when I went down and I'm pretty sure it was block back – it was Marieville but it was the block back from my mother's house.

Right. And your mother's in -.....So between Quee – is it Queen – not Queen –

Well could the witness be shown please, P01?.....I think King and –

P01 is a very large photograph. Now just have a look please at that photograph?.....Yeah.

It will be turned around for you? Now just take your time, do you see Marieville Esplanade marked?.....Yes.

Do you see the Sandy Bay Rowing Club marked sitting out on that little promontory?.....Yes.

And do you see the Royal Yacht Club of Tasmania marked?.....Yeah.

And do you see Margaret Street marked?.....Yes.

Now running into Marieville Esplanade but not marked we have King and Queen Streets, don't we?.....Yes.

Thank you.

HIS HONOUR: And another little one between them.

WITNESS: That's Nixon, isn't it?

HIS HONOUR: Well I can answer that but I don't think I should.

WITNESS: Is it –

MR GUNSON SC: I don't think it's any mystery it's –

WITNESS: Is it – perhaps Mars – is it Marsden Street?

MR GUNSON SC: (Resuming): Sorry?.....Is it Marsden Street or –

Well I think I -.....Oh – oh –

It's all right, no, it's Marsden Street -.....- mm.

- let's not waste time on it?.....Okay.

No mystery. Now whereabouts on Marieville Esplanade is your mother?.....Right, well you see Margaret Street, -

Yes.....- the next vertical street running parallel to it is what, King?

Go on, yes.....King. It was between King and the smaller street that's running down.

Marsden?.....Yes.

Right.....Yes.

And parked on the other side of the road from the beach, is that right?.....Yes, on the house side.

All right, thank you. So it looks like, if we look at it, you've got three houses there and you were parked somewhere there on the road?.....Yes.

Thank you. Now if that map can be returned, please. You left your car there and you walked back to Allison Street. Do you remember what route you took? Did you have a favourite route, for instance?……No, I – I don't remember which way I walked that day.

All right, thank you. Did you often – I put that poorly. Did Mr Chappell take the car from home to work regularly or did he walk?……No, we both walked. We'd walk down together to the Royal and then I'd walk back.

That was your regular pattern, was it?……Yes, and in the afternoon if I wasn't at the farm I would walk down and meet him after work and walk back.

All right……Mm.

Thank you. Now when you got home in the afternoon do you recall what you did?……No.

Thank you. Did you have some telephone calls in the course of the evening?……Yes.

Right. Do you remember to whom you spoke that night?……I think I spoke to three people, my daughter Emma, my mother and a man called Richard King.

Right. Now -……Yeah, I think that's it.

Thank you. And do you recall what time it was that Mr King telephoned you?……No I don't, but it was quite late. I have been told the time, but –

Well it's an agreed fact in this trial…….Yes.

I'll just tell you what the -……I think it was about five past ten or something.

Just a moment, I'll tell you what time it was. It's an agreed fact in this trial that Mr King phoned you at 10:05 p.m. and the call lasted for approximately twenty-nine minutes……..Mm.

Had you ever heard of Richard King before the night of the 26th of January?……..No, I hadn't.

Thank you. When he telephoned, did he introduce himself?……He did.

And do you recall what it was he said to you, initially?.....He wanted to speak to Bob and then he asked me for Tim's number when I told him Bob wasn't there.

Did you tell him where Bob was?.....Yes, I told him he was on the boat.

Right. Did he tell you why he was phoning you at ten o'clock at night?.....Yes, he did. He – I thought he was Clare's psychiatrist from the way he initially spoke. He didn't say that but that's what I thought. He said that he wanted to speak to Bob but then he wanted to speak to Tim about Tim's visiting Clare.

Right. What did he say about that?.....He said that Clare was very upset at that time and that she couldn't cope with Tim visiting her.

Now you've known Clare for many years.....Yes.

And sadly, Clare suffers from some mental problems, is that right?.....Ah yes, well I believe she does, yes.

For how long has she suffered these problems?.....Many years.

All right. Has she been a regular visitor to your home over the years or not?.....She – oh no, I wouldn't say so. She would turn up for a period of some weeks and visit maybe once every fortnight and then we wouldn't see her for a year or so.

All right thank you.....And she had come and stayed with us as well after – she had come and stayed with us on occasions.

Right. Was, to your knowledge, Mr Chappell in contact with her on a regular basis?.....No, I don't believe so.

Was it Mr Chappell's habit to be in contact with Kate on a regular basis to your knowledge?.....Er – could you define 'regular'?

Well, weekly?.....No, I don't believe so.

Monthly?.....Probably monthly to six-weekly, yes.

Right. And what about with Tim, how frequently would he contact Tim?.....I think – Tim used to visit more regularly, he would drop in to say hello, but it certainly wasn't all that regular.

No. Well if there were to be a family dinner, for instance you wanted to have Tim and his family to dinner, who would issue the invitations, you or Mr Chappell?……Usually me I suppose, yes.

Right. All right, thank you. Let's return to the conversation with Mr King. You've told us that he was concerned about Tim having been there did he tell you anything else about Clare?……Yes, he did. He said that Clare had been speaking about committing suicide, we had about ten minutes conversation about –

MR ELLIS SC: I object to that, your Honour, I don't recall that being put to Mr King.

MR GUNSON SC: I think it was.

MR ELLIS SC: Was it?

HIS HONOUR: Well –

MR GUNSON SC: Just bear with me. Page 4 -

MR ELLIS SC: I'm sorry, yes, I actually asked him.

MR GUNSON SC: Yes.

HIS HONOUR: You withdraw the objection?

MR ELLIS SC: Yes, I've just recalled it, your Honour, I withdraw the objection.

HIS HONOUR: Yes, go on, Mr Gunson.

MR GUNSON SC: (Resuming): Right, we'll continue. He told you that Clare had spoken about suicide?……Yes, and he was very concerned about her. He – I said to him, "Look, I wouldn't be too upset", Clare has repeatedly threatened suicide. In fact the last conversation she had with Bob she – she said that she was going to commit suicide.

Right. But there's never been any history of self harm?……Not that I know of, no, none at all.

All right. Were you unduly troubled about being told that she'd threatened suicide?……Not while I was talking to Richard, no.

Right. Now did he tell you anything else about what was going on with Clare at that time and what she was saying?……Yes. He said that she was having all sorts of fantasies, which was nothing really unusual, and that she had a fantasy that Bob would come to harm on the yacht; that she – she'd even suggested to him that they sail away on the yacht together, he and her. He made it quite clear –

And "he and her" meaning Mr -…….Richard and Claire. He made it very clear there was no attachment other than he was trying to help her. He – he said that she seemed to want to save him some how, and –

Yes……..- yeah.

Did you have any discussion about whether he had any opinion as to whether Claire would go to where the yacht was?…….He said to me, at least three times, "Please understand I would never go out to your yacht without permission" and I said, "Well it's not an issue because the yacht's moored hundreds of metres offshore" and he said to me that – and this is the only thing that – well it didn't alarm me but I thought it was a little odd – he said that he – Claire knew that he actually had had some boating experience and probably would be able to get out to the yacht – so, it was just –

Now – and this conversation went on for about thirty minutes?…….I – it probably did, I would be guided by whatever the records are – I thought it was longer to be honest.

All right. …….It seemed longer.

In any event, what did you do after the termination of that telephone call?…….Oh I think I just sat in the kitchen and read – read my book for awhile. I – it's one of those things that grow on you, the – the phone call actually made me quite nervous after I thought about what he'd said, mm.

All right. Now did you go to bed?…….I did eventually, but I was – I would say I was pretty unnerved – I mean this was the first phone call in twenty years from somebody associated with Claire's mental health that we'd had.

Right. …….And normally you know we weren't – it was – it was a very unusual thing to have happen.

Right. And were you concerned?…….I was concerned for Claire, mm.

Were you concerned about Mr Chappell's safety, he being out on the yacht?.....No –

Thank you. .....- sorry, I wasn't.

No, that's all right. .....Mm.

You weren't concerned about him you were concerned about Claire?.....I was concerned that Claire might try to go out there, but I thought – when I thought about it logically it just didn't seem possible –

Right.....- that she could possibly do anything like that.

Did you go to sleep?.....I don't know.

Right. At some stage did you get up?.....Yes, and I think – I'm pretty sure I just jerked awake and thought – and thought, you know, I – the phone call did make me rather nervous after I thought about it.

And did you go somewhere?.....Yes I did, I walked down to Marieville Esplanade to get the car.

Right. And do you recall the route you took down there?.....I'm pretty – I went down Molle Street. Yes, I did go down Molle Street, straight down, and then down Byron, -

So -.....- but when I – I don't know which street I went down when I got to – what I normally do is go down Molle Street if I'm walking, down Byron, turn right into Sandy Bay Road and then left into Queen Street, -

Right.....- and I think that's what I would have done.

That's your usual route?.....That's my usual route, yes.

Now were you wearing a jacket or anything?.....I think I was wearing my navy blue jacket, yes.

Did you take some keys with you?.....Yes, I – I – I – yes, I actually had to go back because I took the farm keys –

Just listen – answer the question.....Sorry, sorry, yes.

Did you take some keys with you?.....I did.

Right……Mm.

When you got down near Marieville Esplanade did you take out your keys at any stage?……Yes, yes.

And what did you discover?……That they were the wrong ones, they were the farm keys.

Now just so that we understand this, you had, what, a bunch of keys for the farm -…….I have –

- and a bunch of keys for the house and the car, or what?……I have three bunches, all weighing about the same. One is for one farm, one is for another and one is for the car and the boat.

Right, and you'd taken the wrong bunch?……I'd taken the wrong – well I'd patted my pocket and thought, yes, that's the right feel and off I went, so – it's the wrong ones.

And what did you do?……Well I went back and got the right ones and went down, mm.

When you got down there was your car still parked where you'd left it?……Yes.

Did you go to the car?……Yes, I went to the car first, yes.

And what did you do with the car?……Well I got in and drove along and just looked out the window to see what I could see, and then went down towards the beach.

Now when you say you got in your car and drove along, are you able to say where you drove to? Now could the witness be given P01 please. Just orientate the photograph please. Now you've shown us earlier where you parked your car between King Street and Marsden Street in front of those three houses……Yes.

Where did you drive your car to?……Um well, I was going to do a U-turn, but I went along---

Now just tell me where you drove it to……I drove along and turned right into the Sandy Bay Rowing Club shed area and---

Right. So we see a lane, I suppose, running from Marieville Esplanade to the area marked Sandy Bay Road……Yes. Yes, you see

the building on the left, the first building you come to, the little white roof, just opposite that is the beach where, the short beach where we launch our dinghy, and I just put the nose down there, just right there with the headlights shining out.

What, across that little area where you reversed down?.....Yes.

All right. Just so everybody understands that, can you point to that please on your map and can you hold it – perhaps you could just mark where you put – just point please to the spot where you put your car.....Just there.

And you're pointing to where roughly that little building is and you can just see the roof.....Yes, yep just opposite, and you can put – you can drive straight down to this area.

Right. And that's where you normally launch a dinghy or something from, is it?.....What mm – what we normally do is we drive in with the dinghy and trailer, put the nose of the car round to here, and then back, put the tailgate up because you can't see with a station wagon to back the trailer. You back across this road again and down to here and unload the dinghy. That's what we do.

All right. Now I'm not sure whether the members of the jury could see it from that distance - .....Can you see, sorry, I'm not very –

Thank you. All right.....And – and then we usually just drive – once we're unloaded we drive back and park over here again for the day.

And when you're pointing 'over here' where are you pointing to?.....The area between the public loos, just here, and back – the first bit of the rowing shed you come to, there's a gravelled area there.

Thank you. All right, you can return that please to his Honour's attendant. Now you drove down there and you shone – you said you shone your lights out, the car's headlights out?.....Yes.

For what purpose?.....I wanted to see if there was any I suppose activity, I'd hoped to be able to see the yacht, I, you know, it was very still and it was pitch black, I do remember that, and there – and we – I couldn't see anything at all.

Right.....It was absolutely pitch black.

Now you told police officers that you believe there were – I think you described them – are you right there?……Yes, yes.

That there were homeless people around the area?……Yes, I'm sure there were, I saw them. They were standing around some sort of a – either a fire pot or something, I don't know what it was.

Do you have a memory of that?……I have a clear memory of that.

And where were they as far as you can recall?……They were further along and over to where they usually congregated in their – oh, they've got an old 4WD and a yellow car and – didn't see the cars, it was too dark, but I could see the light and I could see the outline of a couple of people.

Right…..They weren't moving about very much they were just standing, looked to be just standing.

Have you seen these people you've described in their cars before down there?……Many times, yes.

Right. And you say – well you describe them as homeless people what makes you say that?……One of the men, Steve, he was – said he was ex navy and he used to help us get our dinghy on and off, he would wander over to us, he had a yellow car and he'd wander over and help us get the dinghy on and off our trailer.

Right…..He was very kind to us. And he – he was nearly always there and I – I'm afraid I assumed that it was him and a friend or something.

Right…..Yeah.

But had you seen these people down there on many other occasions?…….Yes, they were nearly always there.

Right. Okay (indistinct word) – had you seen them, as it were, sleeping in their vehicles there?…….Yes. But I don't know if it was them.

Right. …….But there was certainly somebody there.

Right. Because of their presence, did that deter you from going out further?…….Oh look, it did, I just didn't feel I wanted to drive right out onto the end of the spit – I mean you couldn't see anything anyway it was –

All right. …….- it was pitch – pitch black.

How long do you believe you stayed in the car down there?…….Just a very few minutes.

And then what did you do?…….I drove home.

Right. And when you got home what did you do?…….I went to bed and slept and got up in the morning expecting to go down and – and – well you know I was going to ring Bob, and I think I might have tried –

All right. Now before we go onto the next day, you've heard the evidence of Mr Hughes, he was the man sitting in his car down there -…….Yes, I have.

- who was having his ice-coffee, I think it was, Farmers Union Iced Coffee -…….Yes.

- and he says he saw what he believed was the figure of a woman - …….Mm.

- in a rubber dinghy going out towards the yachts?…….Yes, I heard her (sic) say that, yes.

You heard that?…….Yes.

And was that you?…….It was not, and I did –

Just – I'll ask you another question……..Yes.

Did you at any time stage go back to your dinghy which was tied up at the Royal Yacht Club that night?…….No, I did not, no.

Thank you. Your Honour, I'm about to go on the next day with about minute to – is that suitable?

Yes, yes, it's – yes, I'm sorry we can't continue today. The jury can make their affirmation and the Court will adjourn until 10:00am on Monday.

<JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 10:00 AM ON MONDAY THE 11TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

MR GUNSON SC: - from an exchange between myself and Mr Ellis last week with respect to the passage of evidence by the accused when she gave evidence about her knowledge of or comments about the will of Mr Chappell; and my friend objected on the basis that a – an aspect of that evidence had not been put to the witness, Kate Chappell, in the course of cross-examination. And whilst he did not refer specifically to the rule – the rule of practice is, of course, the rule in Browne and Dunn.

Now your Honour gave a ruling on that, it's with my respectful submission, that the matter was not properly argued before your Honour and that your Honour's ruling, in my submission, and I don't say this disrespectfully, that no further evidence could be given, was an erroneous ruling due to the way in which the matter was argued. The issue is discussed on Cross on Evidence, and I'm referring to the sixth Australian Edition.

HIS HONOUR: Just a minute – I don't think it's here, is it – no, go and get me Cross. Yes, go on.

MR GUNSON SC: The relevant paragraph - and I think the paragraph numbering is consistent throughout the various volumes, is 17435.

HIS HONOUR: Yes.

MR GUNSON SC: And the rule is there simply set out, and if your Honour has an edition that's not dissimilar to mine you'll see that Hunt, J. formulated the rule in a case called *Allied Pastoral Holdings v Commissioner of Taxation* – when I say formulated it, he gave it, I suppose a more modern definition, because the rule was quite old. I don't quarrel with what his Honour has to say about that. But the

relevant paragraph for today's discussion is to be found at 17460, and to the extent that there are any sanctions for non-compliance with the rule in Browne and Dunn are there discussed.

Now the starting point is this; the learned author says this:

> *Where a party fails to cross-examine a witness at all on a particular matter it may be prudent for the trial judge to draw counsel's attention to the effect this may have on the later conduct of the trial. But assuming the matter is not then remedied, what are the sanctions for a breach of the rule in Browne and Dunne.*

And the learned author goes on to say that there are some six ways in which the matter can be dealt with by a trial judge, depending on whether or not it's a civil or a criminal case.

Now nowhere amongst those sanctions will your Honour find any reference to a judge being empowered in the exercise of a discretion to reject the question and to direct the jury in the manner in which your Honour did, namely to ignore it, because it has to be effectively at the end of the trial an argument as to what weight should be given to it and how the Court should address on it. So my submission in a nutshell is that even if there is a rule – a breach of the rule in Browne v Dunne that it does not mean that the evidence is inadmissible rather there are sanctions that can be applied with respect to the breach. For instance, a person may not be permitted to address it, that's one example, or a judge gives directions about it in his final address, but the evidence is still in my submission admissible. Now that's all I wish to say about it, your Honour. I think there's a possibility it may – if it does occur again I'll be directing your Honour's attention to that. If it please, your Honour.

HIS HONOUR: Well are you –

MR GUNSON SC: I'm going to –

HIS HONOUR: Do you propose to go – do you wish to go back to the question of what was said between your client and Mr Chappell or –

MR GUNSON SC: I think it's best to leave it but – and no doubt your Honour will address that in your –

HIS HONOUR: Well after your client's evidence has finished and before addresses we need to come back to the question of whether I'm going to give any further ruling, or different ruling, in relation to the submission made by Mr Ellis, is that the position?

MR GUNSON SC: Correct, your Honour.

HIS HONOUR: All right. Nothing – you don't want to say anything at this stage do you, Mr Ellis?

MR ELLIS SC: I'm taken by surprise but – as I –

HIS HONOUR: Well seems a good reason to get the jury back and go on with the trial and revisit this after the accused has completed her evidence.

MR ELLIS SC: Yes. Could I say though just at this stage that your Honour's – what your Honour said in front of the jury was absolutely correct as to what my learned friend's being putting to you.

HIS HONOUR: Well I remember I said there was quite a range of things I could do, and I'll have to check the transcript as to precisely what I told the jury.

MR ELLIS SC: 11.30, your Honour.

HIS HONOUR: Well I won't hold everything up now. All right, is there anything further we need to discuss?

MR GUNSON SC: No, your Honour, not from our point.

HIS HONOUR: No. All right, I don't know whether the jury comprehended that not adducing evidence means that your client's the last witness, Mr Gunson, so I'll explain that to them when they come back in. Yes, bring them in.

<JURY RETURN

HIS HONOUR: Well, ladies and gentlemen, we might finish this case this week, it's not a certainty. There's something I should have explained on Thursday in case you didn't understand the legal jargon. Mr Gunson announced before Ms Neill-Fraser went into the witness box that she would give evidence but not adduce evidence, that means she'll be the last witness in the trial, so that gives you some indication, perhaps some better indication of where we're up to. Yes would you like to come back to the witness box, Ms Neill-Fraser, please.

<SUSAN BLYTH NEILL-FRASER SWORN

HIS HONOUR: Yes, take a seat. Yes, Mr Gunson.

<EXN – MR GUNSON (Resuming): Thank you, your Honour. Ms Neill-Fraser, I want to take you back, please, to the 30th December 2008. As you are aware it's an agreed fact in this trial that on the 30th of December 2008, Google searches were conducted for the Galapagos Islands, the Panama Canal, and Google maps of the Marquesas and Galapagos Islands were viewed. Who viewed those?.....Ah I'm not sure of the date, but Bob and I actually looked together, I think more than once, at that particular route across the Pacific.

Yes right. Why did you and Mr Chappell look at the site for the Galapagos Islands?.....We were – we thought it might be nice, we probably would not have done it, but we thought it would be nice to look to – we were looking at a route towards Ecuador because Bob's sister and brother-in-law live there and they live there now, so we thought it might be nice to visit eventually.

Right. And any particular reason for wanting to look at the Galapagos Islands?.....Well, they're very beautiful and they're very difficult to get to so we thought that perhaps, you know, one day it would be nice to sail through there. They're actually Ecuadorian - so.

Oh Ecuadorian?.....I believe so.

Yes, thank you. Panama Canal?.....Well, if we got that far we would continue on round the easy, the easy route round, round the globe back to Australia.

And the Marquesas Islands?.....I'm not sure why we were looking at those.

Right. They are in the Pacific?.....It would have been part of the – we would have been looking for dropping off points.

Now on the 31st of December, it's an agreed fact that Google searches again were made. First was the Marquesas and secondly the U.S. site called 'U.S. yachts for sale'.....We---

Just wait please. Did you – who looked at the 'U.S. yachts for sale' site? Was that you by yourself, or Mr Chappell in your presence, or the two of you?.....Ah I – I think we were both there but I'm not sure. Bob very often used to use my log-in and – but we certainly both spoke about it. We were congratulating ourselves about getting a large boat for what we thought was quite a good price so we were looking at other, you know, somebody had said that boats in the US were very cheap so we thought well we'll have a look and see, you know, whether we got value for money basically.

Thank you.....Mm.

Is a Roberts 53 an American design or what is it?.....Bruce – Bruce Roberts I think is American and I think he – I think it is an American design.

All right, thank you.....Yes.

Were either of you – well more correctly were you looking to either sell the Four Winds and buy another yacht?.....No, not at all, no, no.

All right. And similarly on the 5th January Google searches were conducts for yachts for sail in the USA, Catalina sail boats for sale, Moody sail boats for sail and Catalina yachts for sail, again do you remember doing that?.....I think we were doing the same thing, comparing pilothouse yachts for the same – same reason.

Right. Catalina sail boats is that a particular type of boat?.....It's just a brand, it's – yes, it is.

Thank you.....It's – they're fast plastic boats.

And Moody sail boats is that a brand?.....Yes, it is.

All right, thank you. And then on the 5th January also a number of websites were viewed that list yachts for sail, they're the

yachtmarket.com, yachthub.com, marineauctions.com, bookshop24 – sorry, boatshop24, marine source, Asiamarine.net, Catalina sail boats for sail, yacht domain, yacht and cruisers and yachts global.com, do you have any memory of doing that?……I don't but I know why – if it was me I know why we'd be looking for the same reason that we – we – Asia Marine had a yacht very similar to ours and it was much more expensive and we were comparing the prices.

All right, thank you for that……We had no intention whatsoever of selling Four Winds, we were happy with it.

Or buying anything in substitution?……No, no. No, not at all.

Thank you. Now I want to return please to the morning of the 27th January, this was the – obviously the day after you'd last seen Mr Chappell when he stayed on the yacht overnight on the 26th, what time did you get up that morning?……It would've been about seven thirty or eight, I think, yes.

Yes. Was that the normal time you got up?……It depended, if I – if I was going to the farm I got up much earlier.

Now that morning did you try and ring Mr Chappell on the boat?……I think I did.

Yes……Yes.

Right…….Yes, I think I did, I – yes.

All right. And the – was the phone answered?……No.

Right…….No.

Did that trouble you?……Not at all.

Right……No.

And what did you do after that? Did you have breakfast or have a drink of tea or something?……I think I went – I think I – no, I think went for the – headed for the shower. I think I went and had a shower or –

Right. And while you were still at home did you get a call from the police?……Yes, I got a call from the Police Radio Room –

Yes…….- and, yes.

Well we've heard that played in this Court.....Yes.

Yes, and they told you the yacht was sinking and you said you'd go down?.....Yes.

Right. Did you go down to Marieville Esplanade immediately?.....Yes, I did. I didn't – to be honest, I didn't think it was possible, I thought that the yacht was – had got off somehow and was on the rocks, I didn't think it was – it's unsinkable in the normal way, so –

What do you mean it's unsinkable?.....Well it's got six watertight bulkheads and it was just one of the reasons we liked it so much and it – it can't sink because even if you do get a small hole in the hull the bulkheads can be shut off and the pumps – the bilge pumps would work -

Right.....- to empty it.

And -.....And a very loud alarm sounds as well.

Right. Well first of all just tell me about the bilge pumps, do they operate automatically -.....Yes, they do.

- when water gets to a certain level?.....Yes, they do. Yes, they do.

Right. And they turn on?.....They would come on and automatically pump water out of the boat.

Right. What's their source of power?.....They would have been running off the 12 volt system.

Right. And you say there's some sort of bell or warning as well, is there?.....Yes, there's a very loud alarm.

And have you ever heard that activated?.....Yes, I have.

I know it's difficult to describe a sound, but is it a sound like a bell or a sound like a siren?.....It's more like a soft siren and it's – it fluctuates, so it's – it's not like an ambulance –

mm.....- it's more like – more like a fire alarm.

All right. And does that come on when the bilge pumps come on automatically?.....Yes.

Thank you. .....I think the bilge – I'm not sure, I know that if the water gets to a certain level the siren will sound.

Right. .....Mm.

And you've said you've heard it, is it very loud?.....It's very loud. It came on on the trip down, so –

Right. Thank you. Now you drove down to Marieville Esplanade?.....Yes, I did.

Where was your car parked that night on the 26th – after you'd returned home where did you park it, on the street or in the driveway?.....Which night – what –

In the morning when you got up on the 27th and went down to Marieville Esplanade to find the yacht sinking, whereabouts was your car parked, was it in the driveway or outside your house?.....It was outside the house.

Right. .....I think – yeah.

Do you normally park outside the house?.....Yes, we do.

Is there a reason for that?.....Our drive isn't terribly user friendly so we very often just leave it on the street.

All right. Thank you. Well you went down to Marieville Esplanade, could you see Four Winds on its mooring?.....Yes, yes.

And -.....It was still on its mooring and it was –

Right. .....- yeah.

And did it appear to you to have some obvious problem?.....It was very – very low in the water.

Yes.....And I think the bow might have even been dipping under – under the waves.

All right. Did you speak to any uniformed officers at Marieville Esplanade -.....Yes, I did.

- when you first – when you first arrived?.....Yes, I did, yes.

Did you introduce yourself?.....I really can't remember.

Right. Do you remember what you said to any of those uniformed officers?.....Oh I think upper most in my mind – I – I – I think I said to them, "Where's Bob –

Mm.....- where is he?" and they said – I said, "My partner's on the boat", you know and one of them radioed or rang and it's a little bit fuzzy after that.

Do you have a very good memory of that morning?.....No, not at all.

Right. Do you have a memory of at one stage being in the back of a police car, just sitting and waiting?.....I do. I remember a young, young police officer asking me a great many questions, mm.

Did Emma arrive?.....Yes, she did.

And how long after you arrived did Emma arrive?.....I don't really know.

All right. And did her partner, Jeremy, also arrive?.....And Sofia, yes, and my grand-daughter as well.

Right. And did Tim Chappell arrive?.....Yes he did, a little later.

Right. And did you and he have a discussion about something?.....Ah yes. Ah it – I don't remember it awfully well, but I remember that I – I'd had a phone call the night before and I – I think I mentioned that-

That's the ---.....---to him.

---Richard King phone call?.....Yes.

Thank you. And did Tim leave and then later come back?.....Ah he did leave but I can't remember – I think he said 'Oh my God, I got one too', meaning a phone call, and he – well, for Tim he became – he's normally quite calm – became quite agitated and I – I think he did leave but I don't – I think it was late – later – about half an hour and after – I don't really know.

All right. And did Sarah come back – sorry, come for the sake---.....Sarah came down. I know that we went up to a café for a short while.

Right. All right. Do you remember being shown at any stage a red jacket?.....Very vaguely. I – I – I'm pretty sure. The trouble is if you talk about something enough it becomes a memory and I don't – I can't say that I remember it terribly well.

All right. But do you have a vague memory of being shown a red jacket?.....Yes I do, yes I do.

All right. Now the red jacket that's sitting here which is now an exhibit, looking at it today do you recognize it? Would you like it shown to you?.....Yes please. I think it is one of ours, yes.

Thank you. That can be returned. When you say 'one of ours', what do you mean?.....Bob and I have our own personal jackets and we have a supply of jackets that we keep – we have a lot of people going up to the farm and I keep quite a few jackets either on the boat or if we're going out, you know, on the boat we've got – we take jackets. Back of the car, in the office at the farm, because people very often don't take enough warm clothes.

Thank you. Now I think you've said you have a memory of being in a café at some stage that day?.....Yes.

All right. Now when you went back to your home in Allison Street that day do you remember what time it was?.....I thought we went straight to Constitution Dock, the girls have said that we went home to Allison Street for quite some time.

All right. Do you have any memory of going home to Allison Street that -.....None whatsoever.

Right.....No.

In any event you went to Constitution Dock in the late afternoon, is that right?.....I think – it was afternoon, yes.

Right.....I don't know what time it was.

And how long do you believe you were at Constitution Dock for?.....I don't know.

Right. Do you remember going onto the Four Winds?.....Yes, I do.

Right. When you – and is that the first time you'd been on Four Winds that day?.....Yes.

You hadn't been out to see it on its mooring?……No. No. No.

Right, thank you. Now did the police ask you if you could see anything out of place or unusual on the yacht?……They asked me to have a look and see if there was anything missing, I think, -

Yes…….- and anything out of place, yes.

Right…….Yes.

And did you see things on Four Winds that in your opinion were either unusual or out of place?……Yes, I did.

Right, well let's start with the main mast area. Was there anything unusual or out of place in the vicinity of the main mast?……I'm just trying to remember. Yes, there was. The – there were ropes that were – I think one of – one of the – either the mainsheet or another, maybe it was topping lift, but one of them was wrapped around the winch and it was wrapped around the winch the wrong way which I do remember that.

All right. Could the witness be shown P3 please, all of them please. Now what you're about to be shown is some photographs that were taken when Four Winds was still on its mooring on the morning of the 27th. I'd like you to look at photograph 7 please. Do you have photograph 7 there?……Yes.

Now does that show the wheelhouse of Four Winds?……Yes, it does.

And does it show the main mast of Four Winds?……Yes, it does.

Right. Looking at that photograph do you see there anything unusual or out of place?……Yes. Yes, I can.

Right. What do you see?……Well the winch – I remember taking that winch handle out of the – out of the winch but that was – that should not have been there.

Right. So the red winch handle we see in the middle of the picture on the mast shouldn't have been on the winch, is that right?……No, it shouldn't have been.

Where would it normally be kept?……Normally it would be kept in the back locker. There's a port side stern locker and there are two winches in there.

All right. If you look at photo 9 does that give us any idea of where this locker is?……No, we need to come – in photo 11 –

Yes…..If you look to the right of the photograph –

Yes……..- there's a – the board at the back –

Yes……..- with a green round, I'm not quite sure what it is in it.

Mm……..And the locker is directly under it.

All right. So that's where the winch handle was normally kept?…….Both of them, yes.

Right. So this is one of two, is it?…….Well two winch handles, yes.

Thank you. So if you look at the deck, you should see some ropes on the deck, do you have any comment to make about them?…….Oh they're – they're in a hell of mess, you know, they're – they're just flung down and the – they're leading into the – one of the hatches –

Right. ……..- one of the saloon hatches.

Well could I ask you this question; you can see a rope running from one of the hatches, it's the starboard hatch up onto the winch?…….Yes.

Was normally a rope left on the winch when the boat was on its mooring?…….No.

Right. What about – there's two winches there, there's the lower winch with the handle and the upper winch – is that right – it appears to have a red rope around it?…….Yes, I'm not sure what that – what that's there for.

Well normally would there be a rope on that whilst the boat was on the mooring?…….No, I don't think there would.

Right. Now where would these ropes normally be kept when the boat was on its mooring?…….Normally they'd be – they coiled and fastened at the base of the mast.

Right. And how would they be fastened at the base of the mast?…….Well sorry, they would be tied and they would be up off the deck but attached to one of the cleats usually.

Right. So – now anything else there you see that's unusual?.....Actually the way they're normally – if you look way over to the right in photograph 7, you can see that rope tied to the – tied to the rail, that's the sort of way we'd probably use to leave them.

And we see that also on the very left of the photo?.....On the other side, yes, that's –

Yes.....Yeah.

So that's the way they'd normally be, sort of tied up in little bundles?.....Yes.

Right. Do you notice anything else unusual?.....The for'ard hatch is open.

Yes, I don't – we'll leave that for one moment – but you wouldn't expect that to be open?.....No, I wouldn't.

All right. Anything else there you see?.....The – well the side exits and entries are open.

Yes, all right. Have they got the starboard and the port side exit open?.....Mm.

Now once you---

HIS HONOUR: So now those exits are the spaces in the rail, is that it?

ACCUSED: Yes, where the wooden bit ends and the metal bit begins.

HIS HONOUR: Yes, thank you.

MR GUNSON SC: How are they closed?.....They have wire, similar sort of clip, and I'm not quite sure of the name of the clip but it's a clip which actually restrains the wire so that it's quite taut.

All right, thank you for that. Have a look at photograph 8. Looking at photograph 8 we can see to the right of the mast, as we look at it, a rope curled up or coiled up on a cleat or something. Is that the way it would normally be positioned if the yacht was being left?.....Look I think that one was, yes.

So that's the way you'd expect it to be?.....Yes, yes.

Right thank you. Now could I direct your attention please to photograph number 9. Do you have that in front of you?.....Yes.

You see there on the starboard or right side of the yacht a bundle of rope lying there in the cockpit. Was that normal or usual for it to be like that?.....No, no. It – that should have been in the bag, the sail bag, hanging off the vent.

Right, and that's that blue bag is it?.....That's the blue bag, mm.

And that was where it was normally kept?.....That was where it fits in the (inaudible).

Right, and in what condition would it be in there, just a bundle or a pile or what?.....No, it would have been coiled from its end, just laid and sort of laid down and coiled so that if you needed to get it out it would run freely. It wasn't tied up like the others.

Right. And again we see a rope round the winch, that was unusual? See the winch there with a rope coming up from the cockpit?.....Yes. No, we normally – I think that one – I'm just trying to – it's so long ago now. I think that that – I think that that's the – that's the mainsheet, so that one may have been left on the winch –

Right.....- to tension it.

Right.....I think that one might have, and then cleated off.

Right, thank you. And if we look at photograph number 11, does that show a good example of how a rope should be on a cleat?.....I don't know if it's a good example but it's the way we left them.

All right. And we also see a cleat there -.....Mm.

- with a rope going partly round a winch and obviously the rope going down onto the deck of the cockpit?.....Yes.

Was that as it was the day before or was that -.....No, no, no.

That was unusual?.....Yes, it was.

Thank you. Now if you have a look at photograph 12, please, it basically reproduces what you're already seen, is there anything extra

in there that causes you to think it was not like that the day before?……Look, I – I – no, I can't.

All right…….They definitely were tied up properly the day before. Well they were when I left anyway.

Right. Now on or about the 10th January did you and Mr Chappell go onto the boat and find something unusual about it?……We did go out – I don't know about the date but we went out – we found that – we don't normally lock the boat, we leave it just latched.

Just first of all – we'll come back to that in a moment, -……..Yeah.

- in the meantime would you tell me what, if anything, you and Mr Chappell observed?……Sorry, sorry, we – we went out to the boat, the back hatch was open and swinging and we went down inside and it – there were – we thought we'd been burgled initially but then we realised there was nothing missing and there would have been quite a lot for people to take and we, you know, there were all the – well the floor hatches were pulled up, the – but that would have been, you know, if somebody were looking or whatever –

Just tell me what you saw?……Floor hatches up, cupboard doors were open, the cushions were – some of them were unzipped and the – and they were on the floor, they'd been thrown about, there were a number of things. All the mattresses had been flicked up.

Right…..But there was no damage or anything like that and we couldn't find anything missing so –

Did you report that to the police?……We didn't.

Thank you…..Because – no, we didn't.

Now I want you to go back to photograph 12 please. Now to – when you leave the yacht and you want to lock it up what do you do?……On the – if you see the mizzen mast, the back mast, there's a wooden door just to the right of it which has a hinge and that flicks round and you can secure it and the – where the two vents, the white round looking things, two vents are, there's a sagging rope sort of strung almost between them, there's a – there's a – the top hatch just slides back from there and it all –

So we can see the top hatch which slides back?……Yeah, and then you just the door and you can just secure it all together but we normally left the bottom the washboard out.

Right. Now do we see the washboard in that photograph?……I – I think the washboard – I can't be sure but I think it's the piece of wood lying near the pump, the fire fighting pump on the ground, and that slots in before you shut the door -

Right……- if you want to be secured.

So if we look behind the fire fighting pump there appears to be a slot there and if you look closely on the other side you can just pick up the slot……Yes.

So the washboard slips into there?……It slips into there and it stops at that level and then the – the back –

The door we see there -…….Yeah, comes over –

Comes open……..Mm.

Now when you'd left the yacht, you said you'd left it unlocked, you wouldn't have left it with the hatch open, would you?…….We wouldn't have left the hatch open but we would have left that washboard out.

Right. I'm just trying to get this correct -…….Mm.

- when you left before you found the problems, you closed the sliding hatch, you'd closed the door -…….But didn't lock it.

- but the wash – the washboard wasn't in. Now -…….The washboard wasn't in.

- was there a reason why it wasn't in place?…….Yes, when – it's a steel boat and we – you have condensation problems if you leave them on the mooring, or leave them anyway, so we'd crack our front hatches, leave them open maybe an inch or so, and then leave a – you need a airflow through, so that's what it was for.

Right. Now you found some, what have been loosely called 'scuff' or 'burn marks' on the woodwork near the hatchway, is that right?…….Yeah, I think I actually pointed that out to the police that –

Yes. Now can the phot – can you the witness be shown P09 please – just – I'll get some further photographs for you in a moment……..All right.

Just take – hand those back to the attendant, and I want you to look please at this series of photographs -…….Right.

- which are another exhibit, and I'd like you please to look at photo 9 for me – do you have that?…….Yes.

Do you have photo 9 now?…….Yes.

Right. Does that assist you, and also look at photo 10, do either of those two photographs assist you in looking at the point where the burn or scuff marks were?…….Yes, photograph 10 – photograph 10 –

Yes……..- just to the left of the vent, the white round vent, -

Yes…….- there's a – there were – there were some marks on the wood –

Right…….- that –

Have a look at photo 11, does that show the marks that you found?……Yes, but they were much more prominent when I saw them, they were actually as if somebody had scraped a big – big groove out.

Right……Or scraped a groove out anyway.

Have a look at photo 12, does that show one of them?……It looks like it, but it was much more obvious than this is, and I think there was a rope over it, lead going down when I got on the boat.

Right……I think there was a rope going from the – I think the blue rope in photo 9 –

Yes……..- I think that was actually trailing down into the cockpit.

Right, thank you for that. Now had those – were those marks on the boat on the woodwork the previous day?……No.

Right. Now I don't wish to sound deprecating, but it looks like, looking at those photographs, that the woodwork needed a bit of work done it, is that right?……Oh yes, it did. Yes, I – yeah, we'd – we actually – yep, had planned to do that.

Mhm. All right. So you pointed those out to the police?……Yes.

Thank you. Now have a look at photographs – before you do that, do you remember any ropes appearing to be cut?……Yes.

Which ones appeared to have been cut?……Look, it was one of the mainmast ones and I just cannot remember what – which one it was now and I think one – I think either the mizzen – no, I can't remember. I think there were two.

All right. Now let me take you back, please, to around about the 10th Decem – of January when you found this break-in or – we might call it, that people had been on – or a person had been on board the yacht. You didn't report it to the police?……No, we didn't.

All right. If I could just have those photos back. Did you have a discussion with Mr Chappell about what you ought to do about the signs of somebody being on the yacht?…….Yes, we did. We – we – it took us a little while to clean up and we discussed whether we should call the police and then we thought well, we hadn't actually lost anything. We – I mean, it was – it was dishevelled but it wasn't – we hadn't been robbed or – and there was no van - vandalism that was obvious. Bob – we were still a little bit concerned about the business in Queensland or Bob was probably more concerned than me, but we – it was a joint decision. I think he was right not to make a fuss about it because there was absolutely nothing missing and there was nothing we could have done, but he didn't want it discussed, mm.

Did you raise any issue with him about getting some sniffer dogs to have a look at the boat?…….Yes, and in fact we had already discussed that before this incident, because – oh I don't know, whether we were just a bit nervous or paranoid or something, but we never were entirely happy, even though we accepted the explanation in Queensland, we were never completely happy with it. So, you know, that was another thing that we'd.

Right. Now you've seen the videos where you've told the police that there was a bit of a debate between you and Mr Chappell about the dogs…….Yes.

You wanted to do it but he didn't, is that right?……..Yes, yes. That's right, and um but he only thought that it would be an enormous business to get them out to the boat on the mooring. He was quite happy once, once we had it up on the hard, which was only a week or so away, to have them in then. So that was an idea.

Right. Did you make any attempt to contact the police about getting sniffer dogs to go on board?…….Yes, I did. Yes, I did.

What did you do?.....I rang up the – just the main number in Hobart and spoke to whoever was on the desk and I said, you know, I was actually quite interested in what it would cost and that was primary reason for ringing, and they said well, he said, 'just hang on a sec.' or something similar and asked somebody and they said, 'nothing, it wouldn't cost anything'.

Right. .....So I -

So - .....- you know –

- it was an inquiry about cost rather than inquiry about when and if they could do it?.....I asked them if they could do it and they said "No problems, just give us a couple of days notice or so."

Do you know who you spoke to?.....No, but it was somebody on the main desk.

Well, the main switchboard?.....The – the number that – for the Hobart Police Station was the number I rang.

Were you put through from that number to another number?.....No, I don't think I was, but the man –

Well -.....- who answered the phone asked somebody else.

All right. Thank you. Now let's go back to your trip to the boat in Constitution Dock on the 27th -.....Mm.

- you found things array on the decks; did you go down inside the boat?.....I did, yes, I – I walked through – I think we went down through the pilot house and into the saloon.

Did you have difficulty getting down from the pilot house into the saloon – were the steps in place?.....I can't – I think they were and I think Detective Conroy said, "Be careful because there's some blood on the stairs" –

Right. .....- I do remember him telling me that.

All right. .....We – yeah.

Now was there water still in the boat when you got onboard?.....Yes, there was, it was just below the level of the floor.

Right. And -.....By that time.

- was it still coming in?.....Yes, it was still coming in, it was coming through the cut head pipe and I think Tim fixed it – Tim Chappell fixed it.

Yeah.....And Sarah, my daughter, together they fixed it.

All right. Did you try and get the pumps to work?.....Yes, I did, I turned them on and – I can't act – I think they worked but the siren came on as well and –

Thank you. .....- I think the regulator or the transformer began to smoke, mm.

Thank you. Just bear with me. Thank you. And did the police ask you to not operate the switches?.....I asked them – I think I asked – I did ask them in what position – I got a bit of a shock when I saw that they were turned off, which was just so unusual – –

Yes.....- and I asked Detective Conroy what position they were in when the police got on the boat and he made a phone call, I think, and he said they were in the off position.

Right, thank you.....And I – I actually said, "Well look, I need to turn them on", and I did.

Right. Now -.....The circuit breakers, this is the circuit breakers.

Thank you. Now when you went into the saloon did you notice anything unusual, apart from being obviously very wet, but anything unusual about any particular items?.....The – the engine door – sorry, I'm just stepping through it trying to – the engine room door was open and the saloon steps were out, -

Yes.....- but they had been when I left the day before, so – and the floor – I think the floor was up and the – the thing that was very unusual was that the steps – the feet – the – the stair feet, the little pieces of wood are quite difficult to get in and out and they'd been removed -

Right.....- and the –

Let me just stop you there for a moment. To remove the stairs did you have to remove the stair feet or did the stairs just slip

out?……No, no, the stairs had two hooks, one each side, and you just unhook them and lift them out.

Right. And you needed to lift them out to get access to the engine room door, is that right?……Yes, you do, yes.

Right. Did you find anything particularly unusual that the stair feet had been removed?……I'm sorry, could repeat the question?

Yes. Was it unusual for the stair feet to be removed?……Yes, very. I – it was – yes, it was something just –

All right. Now was the carpet in place?……I can't – I think – no, you – in order to get the stair feet out, they're screwed through the carpet so –

Right -…….- the carpet –

All right……..- wasn't there.

All right. When you'd left Mr Chappell the day before he was tracing electrical wiring, is that right?……Yes, he was.

Does any of the electrical wiring run underneath the floors?……Yes, it does.

Right. When you'd left the day before had he removed the floor panels?……No, no he hadn't.

Right. Now these -…….I couldn't understand why they were up.

Sorry?…….Sorry – no, I couldn't understand why they were up.

Right. And when you'd left the day before had he removed the stair feet?…….No.

No……..No.

Thank you. Now the floor panels were removed on the trip down through Bass Strait, weren't they?…….Many times, and in fact we took the whole floor up, mm.

Right. And how well had they been reattached – I mean, was every screw back in place?…….No, we – we – the – the floor screws as opposed to the stair feet screws were quite different. I think we put

in four screws just to hold it in case we – in case we turned over – so that the floor didn't – didn't –

Right. .....- flip up.

Thank you. .....Mm.

Thank you. Now you've said there'd been some ropes cut, did it appear to you that any significant portions of rope were missing; in other words were the – what was left less than what was there the day before?.....Yes, but I can't – I – I don't know how much, I can't be sure.

Right. .....Because – but one of them, the one on the mainmast was a very very long rope and there didn't seem to be very much of that.

Right. And is that the one we looked at earlier, which was lying on the top of the saloon -.....Yeah.

- effectively the saloon roof?.....Yeah, yeah.

Thank you. Now was Mr Chappell's pipe and tobacco still in the boat?.....Yeah, it was.

Right. .....Yes, it was.

Thank you. Were there any items that you could determine were missing from the boat?.....Mm, I – I can't honestly remember. I would have said – I think I just talked as I walked through the boat and I would have said.

Well there was a fire extinguisher near the laundry -.....Yes, yes.

- or had been?.....Yes, that – that was gone, that was a – a big – well fairly big fire extinguisher and I – yes, yes, I – that was gone.

Well that was mounted on a bracket was it?.....It was - again a nice - nice little wooden panel screwed into the floor and the fire extinguisher sat into that to stop it moving and it was bolted at the top. It had a clamp round it.

Right. So to get it out you'd just have to pull the clamp, was that right?.....You pull the clamp and then it just comes out and you have to lift it up out of its foot.

Right. And that was missing?.....That was missing.

Had you ever removed that fire extinguisher from its bracket from the time that you and Mr Chappell bought the boat until it came to Hobart?.....Um, I think – I hadn't actually removed it I don't think but I know that the mechanic at some point had it out and I tried to move it and I found it very heavy. I thought it was very heavy.

Right, thank you. Had you put it back into its bracket or somebody else?.....I think he put it back.

Right, thank you.....And he'd have put it back properly, so.

That was up in Queensland?.....That was in Queensland, and he was working on the motor.

Thank you. Now you had an EPIRB on board the boat?.....Yes, yes.

When had that been purchased?.....Um, we didn't buy it. We inherited it with the boat.

Right.....So the previous owner, Stephen Snowden, would have purchased it.

Right, and that was mounted on a bulkhead?.....It was mounted just inside, on the starboard side I think, just as you enter into the pilot house at, yeah on the bulkhead, the inside of the bulkhead.

Thank you. And it had been registered to the Four Winds, is that right?.....I believe so, but I'm not sure.

Yes. You didn't do it?.....Ah I think – I'm not sure – I can't really remember. I would have. We were – we were still in the process of checking everything through so.

Now was the bracket in which the EPIRB was situated in good condition or broken?.....I can't remember.

All right.....I really just can't remember.

Had you at any stage taken the EPIRB out of its bracket on the trip down or on any other occasion just to see how it worked?.....No, it was in its box for most of the way down. Bob actually only mounted it a week, I think, a week earlier.

Right. .....So.

So it was in its box, it was in a pristine state sitting in the boat somewhere?.....Yes, it was, yes.

Thank you. All right. Had you ever removed it from its bracket in this short period up on the wall?.....Mm I don't think so, no.

Thank you. Were you familiar with EPIRBs?.....Not very. I read the directions but I don't know very much about them.

Right. And the directions explain how to get it out from its position?.....Yes, they do. I think they do anyway, yes.

Yes, thank you. Now you've said that the fire extinguisher was missing were there any other objects that you saw were missing?.....Not that point but – yeah.

All right. Now did the police tell you that the toilet outlet pipe had been cut?.....They did and they also told me that the valve in the for'ard hatch – well the for'ard passageway hatch had been opened.

Right. Now did you go and look at the end toilet pipe?.....I looked at both, yes.

Just concentrate please on the toilet pipe.....Sorry, yes.

Did you look at that?.....I did, yes.

And you saw it had been cut?.....I did.

Right. Were you in anyway at all responsible for that damage?.....No.

Did you do that?.....No, no.

Did you have a look at the seacock or valve that the police told you had been opened?.....Yes, I did.

And did you recognise the valve, was it one that was known to you?.....Oh, yes. I mean you can see it if you open – if you just pull up the floor ring you can actually see it quite clearly.

Right.....But we had tried that on the way. David had opened it and nothing came in so –

Right, all right. Now you didn't open it?.....No, no.

No, thank you. Now did you then leave the boat and go back to Allison Street on the 27th?……I can't remember.

Right, thank you. Some days later, or a couple of days later, the boat was taken, that is Four Winds, was taken out to CleanLIFT Marine at Negara Crescent, Goodwood, is that right?……I think it was taken out on the morning of the 28th.

Right……I think they took it out then.

And was that take – was it taken out there by the representative of the boat's insurer?……I don't know -

Right…..- who took it out.

But in any event did you visit the Four Winds whilst it was out at Negara Street?……I don't think we did until it was handed back to us.

Right, but you went then?……Yes.

Right. And when you got the – possession of the boat back did you and your friend Bob Martyn go out and have a look at it?……Yes, we did.

And was it in the water or up on a slip?…….It was in the water.

Right. And did you find something that concerned you?…….We – yes, well there was some things missing – tools missing, there was some wrenches missing, there were – oh, the Genoa rope disappeared for two days and then came back –

Right. I'm more interested -…….- that was quite peculiar.

- in did you find anything in the bilge?…….Yes, we – we were – there – there was still quite a lot of water in the boat –

Yes……..- and it hadn't been completely pumped out. So I – I siphoned it out actually, I siphoned out most of the water – and – and you can't siphon from a low point you have to siphon each compartment separately – and I also started the – Cleanlift loaned us a battery – well they loaned us a – a thing that we could actually pump electrically –

Yes……..- - hook up our bilge pumps, and they're submersible, so we hooked that up. We – we were pumping and one of them started to

make that very high pitched noise that they make when they're struggling and so we turned it off, had a look, and there was a broken off bit of one of the stair feet in – stuck up in the inlet to the bilge. It was the bilge near the – the bilge pump near the black water tank – in between the black and grey water tank.

And how far forward was this bilge pump?.....It was the first opening in the for'ard passageway. So between – if you're looking down, you've got the black water tank and it was towards the saloon from that.

Well did you re – telephone the police about this?.....Yes, I did.

Why did you phone them, did you think it was some issue?.....Well I phoned them for two reasons; the first thing was that they – they said they were going to search the boat very thoroughly, and we took them at their word, and when Bob an I got onto the boat, we felt that that might not have happened, for a number of reasons. One of the reasons was that – do you want me to?

Yes.....One of the reasons was that the grey water tank which takes the water from the shower and, you know, any – any loose water in the bathroom, the for'ard head, it drains into the grey water tank which is at a lower level and the – all the fittings on that tank were corroded on, the clamps, the entry hoses, everything, and there was still probably three or four centimeters of water in the shower bay. Now that meant that that tank couldn't have been emptied and it couldn't have been searched –

Right.....- because if you'd opened it all the water in the shower would have drained down and out into the bilge, which is in fact – we got a shipwright in and that's in fact exactly what happened.

Thank you. Well did you ring the police and tell them that – .....Yes, I did.

What you'd found?.....Yes, I did, yes.

Right. Who did you speak to?.....I can't remember. I think it may have been Detective Conroy.

Right. Now you've heard the evidence of Detective Sinnitt regarding the wooden feet from the saloon steps that he gave in this Court?.....Yes.

Remember he pointed these out?……I think what he was pointing to were the feet in the for'ard hatch.

Right……..The water level – the reason –

The feet – the feet you're – or the foot you're talking about is a different foot, is it?……No, it – the feet are actually – one of them is broken off but it – when you screw them all together it's so heavily clamped in place it doesn't move, but it's a tiny little piece.

So how big is the piece you're talking about?……It's probably a little bit bigger than that, because the missing bit out of one of the –

Right, what you're holding up is a clamp, a piece of -……Yeah.

- a black clamp?……Yeah.

Thank you……..A little bit bigger than that.

All right, thank you……And it – and it was slotted in so that the – the other bits of feet would hold it secure, so -

Right, thank you for that. All right, now he also described a bilge pump, he held up the photographs, was that the bilge pump that you were referring to -……..No, no.

- when you phoned?……No.

Thank you……..No.

Which bilge pump were you talking about?……I was talking about the bilge pump in the lowest part of the second bulkhead going from the front to the back and it's just after the black water tank in the deepest part of that – deepest part of that, you know, compartment.

Thank you. Now just going back in time a little bit, you remember the visit by Detective Sinnitt and Detective Milazzo to your home on the 5th of February?……..Oh I don't know the date. I remember them coming to the house, yes.

They came and saw you and they took some notes from you……..Yes.

And you were asked a whole series of questions. You were asked particularly about whether or not you could assist the Police in giving them a time line about the time which you'd left Four Winds on the 26th of January…….Yes.

And where you went after that.....Yep.

Now we've heard from Detective Sinnitt that he said words to the effect that a dinghy, they had information that a dinghy had been seen at Four Winds at 3:55, and you said, 'Oh it must have been me then'. Now at any stage when he mentioned a dinghy being at Four Winds at 3:55 did he say to you that it was a large grey dinghy that had been seen at Four Winds?.....Ah, no, he said it was one like mine.

Right thank you.....He---

Thank you. At any stage when the police were interviewing you, either at home or in the formal interview situation, were you ever informed that what had been seen by these witnesses was a large grey dinghy?.....No.

Thank you. Have you – you went to the police station to be interviewed in the first interview which was not under warning. Did you go there voluntarily?.....Yes, absolutely, yeah.

You were happy to be interviewed?.....Yes, oh yes.

And the same on the 5th of May when you were warned under caution you were happy to go there?.....I really wasn't but I wanted to go there, yes.

You say you wanted to go. Was there a reason why you-.....Well yes, there was.

What was that?.....My conscience-

Yes.....-was troubling me and I thought it was a good idea to go, but I-

Why was your conscience troubling you?.....My conscience was troubling me because I had walked down to Marieville Esplanade very late on the night of the 26th and I hadn't told police, and I thought it was a good opportunity, and I felt I had no choice at that time anyway because Detective Inspector Powell turned up with some detectives and said, "Look, we want some answers, we're – we're not going to just go away and leave this" and I actually felt I had no choice. But of course, I did, (indistinct word)

Can I ask you a question; why did you not tell the police early on in the piece that you had been down there on the night of the 26th?.....Mm, it was very silly. Look initially, I remember talking to Tim about the phone call and I thought – and I was very concerned about Claire, I was very concerned about her state of mind, and I thought well if I say something to Tim that I actually walked down here – it was a silly – I wasn't thinking clearly but I – I think in my mind I was thinking, well if I – if I say something it's going to seem as if I think you know, I think she's somehow might have – might have come down, and –

Right. .....- I didn't think that was at all likely. And then about a week after, the attitude of the police changed completely we felt, and things started appearing in the paper which were police press releases, which made me extremely wary of going down.

No – all right. There's been some reference to a small bandage on your left wrist and you answered some questions, I think in one of the records of interview about that -.....I can't really remember, mm.

But have you had a longstanding injury to your left wrist or a problem with it?.....Yes, I – on the previous little boat we had I knocked a bit of bone off my wrist on a winch and it – it – it reattaches and then it comes off again, so –

Right. .....- I usually have a couple of wraps on it.

I mean is this a regular thing that you have a wrap on it?.....Yes, especially at the farm, mm.

Right. How long has this been a problem?.....I think Rod Newton – my doctor would have made a note of it –

No, just tell me how long -.....- but at least –

- you've had it for?.....- eight years – at least eight years, probably longer.

Thank you. All right. Now -.....Ten or twelve years, yeah.

Thank you. And you've heard the evidence about you having a bandaid, I think on your thumb or finger, seen by a police officer on that morning. Do you have any memory of that?.....No.

Or how – if you injured yourself?.....No. I mean I could have had – one of the cats could have scratched me, I have no memory of a cut.

Right, thank you.....Especially of that size that he described.

How big was it, that is - .....I think he described one or two centimetres which – which -

All right. In any event you have no memory of a cut like that?.....No, none at all.

Thank you. Now you've heard the evidence from Mr Triffett as to what he said in this court concerning you, and you've answered a number of questions about Mr Triffett in the records of interview, I need to take you back in time, when did you first meet Mr Triffett?.....I first met Phillip, he started to go out with a friend of mine at the time and it would have been 1990/91.

Right. And who was the friend?.....Maria Hanson.

Yes. And where did you – well first of all do you remember when you first met her?.....Yes, she came to the farm – she lived on the neighbouring property to our farm at Bagdad and she came –

Yes.....- and introduced herself.

Yes. Did she then have a partner in those days?.....Yes, she did.

Who was that?.....A man called Doug Dowling, Douglas Dowling.

All right.....A shearer.

And did Maria Hanson have a daughter called Tammy?.....Yes. I think she calls herself Kate now.

It doesn't matter, she had a daughter called Tammy.....Sorry, yeah,

And did Ms Hanson also do some work for you at the farm from time to time?.....Well she was more a companion in a way. She was a very good horsewoman and she would come and, you know, help with horse riding and things like that.

Right. And when you first met Ms Hanson were you then in the relationship with Mr Chappell or was it before Mr Chappell's time?.....Ah, I think – no, oh, no, I was married to my first husband then.

Brett Meeker?.....Yes. Yes.

Thank you, all right. Now Maria I think you said became involved with Phillip Triffett?……Yes.

And do you remember when that was?……..I think it was about 1990/'91.

Thank you. And was he younger or older than her?……..I think he was 18 or 20 years younger.

Right. And did they appear to enter into some sort of relationship?……..Oh yes, absolutely.

Were they living together?……Yes, they were, yes.

Now were they visitors to the house in West Hobart in Allison Street after you got into your relationship with Mr Chappell?……They were. They were because they'd been coming up to the farm so much.

Right. And were there occasions when the two families would go away camping?……Yes, we went camping and I think we took them out on the boat a couple of times too.

Right. Now you've heard the evidence of Mr Triffett that there was an occasion when just the two of you were out on your first yacht and that he said you'd gone out from Electrona, and he said that you asked him to assist in – these are my words – 'disposing of your brother Patrick because there was some issue that he perceived what you'd said had arisen about your mother's estate'…….Mm.

What do you say as to that?……Predictable. Not a grain of truth in it. But fairly predictable.

Right. You've also heard his evidence that on another occasion, at your house I think it was, you put to him a proposition that he should assist you in disposing of Bob Chappell. What do you say about that?……Ah just – I – it was as no surprise that he should say that.

Did you say that?……..No, no, no. I've never – I've never harmed anyone knowingly or plotted or planned to harm anyone, no.

So what, you say Mr Triffett's evidence is untrue?……..Absolutely untrue.

Right, thank you. Now with respect to the latter proposition, he said that he had raised this issue directly with you in the presence of Mr

Chappell and said basically, you know, this is what she asked me to do. Was that true or untrue?.....Ah no, it was not true at all.

Right. Now the relationship with Mr Triffett and Ms Hanson, did that deteriorate?.....It was a process of deterioration, I think from the time they got together, mm.

Yes. But perhaps I put that to you poorly. The relationship between you and Mr Chappell and Ms Hansen and Mr Triffett, did that deteriorate?.....It ended quite suddenly, yes.

And was there a catalyst for it ending suddenly?.....Yes, there was, they – well they'd been talking about stockpiling weapons, guns, and all sorts of things and we – we really weren't very – it – we felt very uncomfortable and we had a camping trip at Murdunna and I think it was '96 or '97, it was around Christmas time, and Maria – well she told me that Phillip had been – had burnt down her house for the insurance and also that he'd shot a young man when he was very young at the Lakes and hidden the body and followed this up saying, "If you go to the police you've got a very overgrown back garden and Phillip's revengeful and he could hide there with a gun, and you've got to think of Emma and Sarah".

Mm.....So –

I'll just make one thing clear -.....Yes.

- these were conversations with Ms Hansen but not with Mr Triffett?.....No.

Thank you. .....No. And so we went back to Allison Street and – straightaway – and we – it's the only bit of this that bears any relationship to the truth is that I did ask them to leave and they did.

Right. Now at some stage we heard from Mr Triffett he'd been shot in some dispute on the eastern shore; that – after that you took – you and Mr Chappell took him in and nursed him at home for some time, is that right?.....We did, in fact we went straight down to the Royal when we – when we heard what had happened and we – when he was released from hospital we had him at our house, yes.

And this of course, was well before this trip to Murdunna?.....Yes, it was.

Thank you. .....Yes, considerably before.

Is that a convenient time, your Honour?

HIS HONOUR: Yes. Yes, we'll take the morning break, the jury can make their affirmation and the Court will adjourn for fifteen minutes.

<JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

MR GUNSON SC: We've heard some evidence about a letter that you wrote to the Commissioner of Police and to the Officer in Charge of Internal Affairs, -.....Yes.

- did you write two letters?.....Two letters, two documents, yes.

And were they basically in the same terms?.....They were identical.

Right. Why did you write those letters?.....I was becoming very concerned that we – that the police – I mean I was well aware that they had targeted or whatever you – you know, they were very interested in me. I didn't have a problem with that at all, but I was becoming very concerned that we wouldn't find out what had happened to Bob and I just asked for an independent police officer to review the evidence so that we could, you know, perhaps get a different perspective on it. I did ask Detective Conroy with my daughter one day where else had they looked and he said to me, "Well nowhere, we have really only been looking at you all along, you've been our only – our main suspect", so

Right, thank you. Did you ask to meet with the Commissioner?.....I think I may have. I – I did ask for an independent police officer to review the evidence.

All right, thank you. Now just another question, coming back to Bunnings for a moment, were you aware when interviewed early on by the police that Bunnings had CCTV installed throughout the place?.....Yes, oh yes.

Thank you. Now are you responsible in any way at all for the disappearance of Mr Chappell?.....No. No, I'm not.

Thank you, I've no further questions.

<THAT CONCLUDED THE EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Ellis.

<XXN – MR ELLIS SC: Thank you. Ms Neill-Fraser, before I ask you some questions can we just get one, I suppose, ground rule clear. Mr Gunson, my learned friend, has appeared on your instructions throughout this trial, is that right?……I don't quite understand the question.

Okay. He's your lawyer, you instruct him?……Yes.

He puts to witnesses what you want to put?……Again he puts to witnesses what he thinks he should put based on what I've told him, I suppose, yes.

Yes, all those avenues that you want to have followed?……No, not always, no.

No. Okay, tell me what avenue he's followed that you didn't want followed?

MR GUNSON SC: That involves, with the greatest of respect, going into what's passed between my client and myself.

MR GUNSON SC: Well that involves, with the greatest of respect, going into what's passed between my client and myself.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Not at all, it's a want, and even if it did anyway the privilege is the witness' not Mr Gunson, she can assert privilege as to any communication.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Well if there is to be an issue about privilege I need to be able to advise my client as to the existence of the law as to privilege and provide her with advice about it. If my friend wants to trespass into what's passed between a lawyer and his client he knows he cannot do that unless he –

HIS HONOUR: Well he can – he can do it. The position is that Ms Neill-Fraser doesn't have to answer questions as to what's being said by – by her to you or any other lawyer that's been involved in this case with you but may- but my understanding is that so far as what she's wanted is concerned, that it's a question about her thinking not about communications. Now that's what I'm thinking unless – now

if counsel want to make submissions they may. So the first step is do you want to make any further – do either counsel want to make further submissions as to that proposition in the absence of the jury?

MR ELLIS SC: No, thank you, your Honour.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: No.

HIS HONOUR: All right. Mr Gunson, in the light of what I've said do you want an opportunity to advise your client as to – as to legal professional privilege?

MR GUNSON SC: I do, your Honour.

HIS HONOUR: You do?

MR GUNSON SC: I do.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I don't oppose that, your Honour.

HIS HONOUR: All right, ladies and gentlemen, I'll retire for a few minutes and I'll ask you to go the jury room.

<THE JURY RETIRED

UPON RESUMPTION;

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I've taken the opportunity to explain to my client the basis of the privilege, explaining to her that it's her privilege and her decision, your Honour.

HIS HONOUR: Yes. Thank you. We'll get the jury back.

<JURY RETURN

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Thank you. (Resuming): I think my question was, what issues have been pursued by your counsel, Mr Gunson, with which you weren't happy?.....I don't wish to answer any questions which involve legal privilege.

Well that doesn't, I suggest – but it's up to his Honour to rule.

HIS HONOUR: Yes, the – Ms Neill-Fraser you're not being asked what you told Mr Gunson, or what was said between you and him, you're being asked about what you thought as the trial went along, and the question is, "Was there anything that Mr Gunson asked any witnesses about that you thought you were unhappy with him asking about, that's the question and that isn't about any conversation you had with him, it's about your thinking about the line of questioning.

ACCUSED: Thank you, your Honour. Yes, there was – I was very uncomfortable with his questioning of Phillip Triffett.

MR ELLIS SC (Resuming): Mm, what, it didn't go far enough?.....I – I felt – may I say that I am very afraid that Phillip Triffett may harm my family.

Okay. Now I'm asking you what you're –

MR GUNSON SC: No, with the greatest of respect, my friend has asked the question, he's opened up the issue and she should be properly – and able to answer the question. He's asked was there an issue about which she was unhappy about my cross-examination, she has said yes, and the reason is X, and she should be permitted to give it.

HIS HONOUR: Well no, she wasn't asked why she was unhappy about the cross-examination of Phillip Triffett, she was asked whether she was unhappy – she wasn't asked in general terms why she was unhappy, she was asked whether her unhappiness was because that cross-examination didn't go far enough and she began to go beyond yes or no and to talk about her thinking generally, so Mr Ellis was right to interrupt. So the question was a narrow one, I think, so Ms Neill-Fraser, what do you say, did you think that the cross-examination, the questioning of Mr Triffett did not go far enough, was that what you thought?

ACCUSED: I really can't remember what I thought.

HIS HONOUR: Mr Ellis?

MR ELLIS SC (Resuming): Okay. Any other issue with which you weren't happy that it was being pursued or not being pursued, let's leave aside Mr Triffett, any other issue in the trial, in the way witnesses were cross-examined, matters were put to them, issues were pursued?……Not that I can think of at this moment, no.

Right, okay. So – by the way, do you have any reason at all to think that Mr Chappell is still alive and has been so after the 26th January 2009?……No, none.

No. You see, when he opened the case on your behalf Mr Gunson said that he was limited in what he could say but he was – he can say what the issues were and twice he said about Mr Chappell 'if he is still indeed still alive'. So you were happy with that being left as an issue for the jury?……The fact that he – whether or not he's alive you mean?

Mm…….I believe that Bob is---

No, that's not my question. Were you happy with that being left as an issue for the jury in your trial?……I can't answer the question, Mr Ellis, because I don't really understand what you're asking. Would you rephrase it?

Okay, all right I'll try. Do you remember at the start of the trial there was an opening address, mine was rather long but Mr Gunson's was not?……..Yes. Yes, yes.

Okay. And he said that his opportunity was limited, that it was to describe what was in issue, what was not admitted on trial, and twice I suggest to you here gave the - he expressly said, 'if Mr Chappell is indeed dead', okay? So that seemed to have been an issue that was going to be pursued at this trial, whether or not Mr Chappell was dead and has been so since the 26th or 27th of January 2009, right? Now are you happy to have that out there as an issue?……Ah no, I believe that he's dead, deceased.

Mm. So from the very first there has been a live issue announced to this jury with which you weren't happy, namely, whether Mr Chappell was indeed dead……..Would you repeat that?

From the very first---

MR GUNSON SC: I object---

HIS HONOUR: No. That wasn't a question, it was a comment.

MR GUNSON SC: Yes, I object to this line of questioning, your Honour, and the jury should be excluded for the purpose of hearing what I have to say to your Honour in submission.

MR ELLIS SC: I'll take your Honour's point. I'll try to frame it as a question.

MR GUNSON SC: Keep to the line of questioning.

HIS HONOUR: Well, do you wish to pursue this line of questioning, Mr Ellis?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: All right. Ladies and gentlemen, would you go to the jury room please.

<THE JURY RETIRED

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I object to the line of questioning on this basis, your Honour; as my learned friend well knows he has to satisfy the jury beyond reasonable doubt that Mr Chappell is deceased. Your Honour will direct the jury that they have to be so satisfied in a case like this. If any members of the jury are not so satisfied, well that's the decision they make. They may not be satisfied on the state of the evidence. In my submission –

MR ELLIS SC: Well perhaps he ought –

MR GUNSON SC: I'm sorry?

MR ELLIS SC: Are you going to be much longer – perhaps the accused ought to leave.

HIS HONOUR: The accused won't be leaving, Mr Ellis.

MR ELLIS SC: Sorry, your Honour, other witnesses were.

MR GUNSON SC: (Resuming): I'm sorry, I was distracted by my friend's mumblings. Your Honour, will give directions to the jury that are directions of law and one of them has to be that before they could move onto the question as to whether or not the accused was responsible for the death of Mr Chappell is to answer the first question – and it is perfectly permissible to say at any stage to the jury, this is something you need to be satisfied about – it directs their attention to it.

Now in my respectful submission, to cross-examine the accused about what essentially is a direction of law is quite inappropriate. It doesn't matter how many admissions she makes to the effect that she believes he's dead, the question at the day is a jury one.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Of course the question is a jury one, your Honour, but the opportunity was for my learned friend to tell the jury what was in issue on his opening; and on his opening he distinctly made an issue about whether Mr Chappell was indeed dead. He said it twice, "If he is indeed dead".

HIS HONOUR: Well look, the – it's not an agreed fact that the man's dead. How is it relevant – well how is it relevant, how does it strengthen the Crown's case in any way if - if this witness was unhappy with what Mr Gunson said in opening or content with what he said in opening as to the question that the jury has to consider as to whether Mr Chappell's alive or dead.

MR ELLIS SC: Because I'll be submitting to the jury that it's consistent with the pattern that this witness has adopted from the very start with police and in this trial to set off hares and point in the other directions and generally raise red herrings but I can see that there's no point in pursuing it further, your Honour, I'll leave it.

HIS HONOUR: So you're not going to pursue the line of questioning any further?

MR ELLIS SC: I'll ask to reiterate that whether or not, is the next question, Ms Neill-Fraser was happy for that issue to be raised in her trial, as an issue on the trial.

HIS HONOUR: Well I'm just going to have a quick look at Mr Gunson's opening speech and then I'll think a bit further, 74 it starts.

MR ELLIS SC: Yes, your Honour, line 32 and line 35. Got the new Western Australian book, your Honour.

HIS HONOUR: I'm sorry?

MR ELLIS SC: Is that the new Western Australian book?

HIS HONOUR: No, this is Odgers, latest edition of Odgers.

MR ELLIS SC: Oh.

HIS HONOUR: You wanted to say something, Mr Ellis?

MR ELLIS SC: No, I'm sorry, your Honour Just making sure we're same page.

HIS HONOUR: What you're saying, Mr Ellis, essentially is that the – the willingness of this witness to raise red herrings to complicate matters by introducing unimportant questions or non-questions, is an indication of her guilt – is that what you're saying?

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: Mr Gunson, is there anything further you want to say?

MR GUNSON SC: No, your Honour.

HIS HONOUR: Well I think – I think the line of questioning is proper. It may be entirely worthless, it may not, but it's a fact that on two occasions during Mr Gunson's opening he referred to the question of whether or not Mr Chappell was in fact dead. The Crown contends that this witness has tried to make an analysis of the facts difficult by opening up discussions in relation to questions that were unimportant or not questions at all and that consistently with that she was happy for her counsel not to concede in his opening speech that the missing man was dead but in fact to refer to the fact that it was an open question whether he was dead. Technically it is an open question for this jury whether he's dead and in fact whether he was dead at the time – by the time the charge was laid, so I think it's relevant, I think it's an extremely tiny point and a very tenuous one, but the jury might adopt the reasoning suggested by Mr Ellis and if they did that's something that could rationally affect their assessment of the probability of the accused having murdered the missing man, so I'll allow the line of questioning, but I think I should explain to the jury that it's a matter for them, it's a live issue on this trial for them and they need to be satisfied beyond reasonable doubt that Mr Chappell is dead and that what this witness thinks or says she thinks is just one piece of evidence. It's an open question. So bring the jury back.

THE JURY RETURNED

HIS HONOUR: Well, ladies and gentlemen, I am going to allow Mr Ellis to pursue the line of questioning that we've been discussing. I should explain to you that when somebody is charged with murder and pleads not guilty, one of the things that the Crown needs to prove beyond a reasonable doubt is that there has in fact been a death. Now the accused person is not under obligation to concede anything. The accused persons' Counsel is not under any obligation to concede anything. So when we get to the end of this trial and you have to consider your verdict, one of the things you have to consider, will have to consider, is whether you're satisfied beyond reasonable doubt that Mr Chappell's dead. Now you might think the evidence about that is overwhelming or you might not. What Ms Neill-Fraser says about her beliefs and in particular whether she's received any indication that Mr Chappell is in fact still alive is only evidence. No matter what she says you're going to need to consider whether you're satisfied beyond reasonable doubt that the man is dead. Now it's against that background that Mr Ellis is entitled to cross-examine her as to her attitude to things said, and I'll let him do that. Mr Ellis?

MR ELLIS SC: Thank you, your Honour. (Resuming): So Ms Neill-Fraser, is it the case that you were or were not happy that – from the very start, the issue of whether Mr Chappell was still alive would be left explicitly for the jury?.....Even after all the argument I still don't understand the implications. I believe Bob is dead, but I don't know what – I don't really fully understand the implications –

Okay. Well having believed that when the trial started, did you believe that any evidence would be forthcoming that he is not dead?.....No, I did not.

Did you intend to produce such evidence?.....Of what?

That – evidence that he is not dead?.....No.

So I'll you again; were you happy for that to be left as a live issue for the jury's consideration in your defence – that is something that your counsel specifically raised twice in his opening address?.....Well we don't know, we just don't know.

Well we don't know whether you were happy about it or not because you haven't answered me?.....I believe that Bob is dead, so I think that the jury – but I don't know.

Okay, Ms Neill-Fraser, I suggest to you that that sort of setting off a hare for people to go and chase – that sort of laying a red herring has been entirely typical, I suggest, of the way you conducted yourself with police, right from the very start, raised issues that were really non-issues to divert their attention from you. What do you say that?.....No.

The drugs mainly – that was one of those issues, wasn't it?.....Are you asking me?

Yes.....I raised a number of issues and that was amongst them.

'Can't remember where I parked the car', that was another one of yours, wasn't it?.....Yes, that's right, yes.

But now you can remember where you parked the car apparently?.....I – I did become confused.

No, when did you – when did you begin to remember where you parked the car?.....About – oh three or four days later.

Well when did you tell the police that?.....In the interview.

I suggest you didn't. In this Court you've put it to a position which can only be at the front of three – a number – of three houses, is that right? Look at the map.....Yes.

Yeah?.....Yes.

Between – that's right?.....Yes, yes.

Never did you suggest that to the police, did you?.....No.

And because you wanted to let the trail go cold, didn't you?.....No.

You didn't want them to be able to investigate whether any person in those three houses happened to look out and see movement of a grey station wagon at any time, were you. So you say it came back to you three days later, by the 29th?.....I don't think it was three days, I think it was –

I'm sorry, that's what you just said.

HIS HONOUR: No, she said three to four days later.

ACCUSED: Yes. It was within the first week.

MR ELLIS SC (Resuming): Right, so was it by the time you were first interviewed on video then?……Yes.

Well and truly?……Yes.

And what did you say about your parking then, where you parked?……I didn't – are you speaking about the night of the 26th?

Mm……..Morning of the 27th?

That's right…….I didn't tell them I'd gone down at all in the first video.

No, of course not, you wanted them looking somewhere else, didn't you?……No.

You'd made up your mind to lie about that?……That was the only lie I told them, yes.

The only lie?……Yes.

But it was also a lie, it seems, that you couldn't remember where you had parked?……No, I couldn't remember.

That wasn't a lie? When you were interviewed on the 4th March where you had parked had come back to you, hadn't it?……Yes, it had.

So did you tell the police?……I didn't tell them I'd gone down at all.

No, no, no, when you parked in the afternoon and left and on your – on what you were saying then – went to Bunnings?…….I can't remember to be honest.

Can't you?…….No.

You've had these documents, haven't you, for, well since before Christmas, including that interview?…….Yes.

You've poured over them?…….No.

You've marked where you can find a hole to jump through, haven't you?…….No.

Thought about those things? But – well what about going to Bunnings, was that a lie?…….No, it wasn't.

Was that a lie to send them off in another direction?…….No, it wasn't true but it wasn't a lie.

Wasn't true but it wasn't a lie?…….No.

So you had a genuine, what you thought was a genuine memory of going there, did you?…….I did.

So on the 20 – well so you were just all confused – you transposed one day to another -…….It wasn't –

- somehow?…….- a particularly memorable day – yes, yes, that is what – exactly what happened.

Not a very memorable day, the 26th?…….Not memorable at all.

No……..We were just doing the things that we normally do.

Sure. But it was memorable, wasn't it – it had become memorable by the day after, surely, when you reflected, 'Crikey where was I – what was I doing when poor Bob was in whatever trouble he was in – whatever was happening to it' – surely you looked back there?…….No, I couldn't –

Didn't you?…….No, I didn't remember chunks out of the 27th either.

Okay. You didn't look – you didn't look back there?…….No.

Okay. So you were just all confused that day, were you?…….I think what I told police is what I believed at the time, that I'd gone out to Bunnings.

Yeah. Was that the only thing that you were – well no, this was a strong and genuine belief, was it?…….Yes, it was.

That you held? But it was only as to that part of your day?…….I – I could only do it by a process of elimination.

No, that was a belief that you held but it was the only false belief, apparently, about the whole day – is that right?…….No.

There were more false beliefs you have discovered?…….Yes, yes.

What are they?.....I – I thought that I'd collected the rubbish from lunch and taken that home and I don't know whether I told police that. I think I said also that I'd had lunch on board the yacht with Bob and then gone out to Bunnings. There were – there were a number of things.

Oh, right. So collecting the rubbish turns out to be a false memory is it?.....Mm, the police actually helped me to piece it together.

Did they?.....Yes.

They said you didn't collect any rubbish?.....They did – I did –

Because you didn't drive back.....- but not on that day, no. On that – sorry, no, I did but not on that day.

Right. So how did they help you piece that together that you didn't collect rubbish?.....Because they were able to – well not the rubbish it's just the timings, they helped with that.

No, no, no, just let's stay on the rubbish there, Ms Neill-Fraser.....Right.

So you told them, didn't you, that you had a memory of collecting half a tin of ham, that explained what Bob had had for lunch, you took that and some tissues back to your house, didn't you tell them that?.....I think I did, yes.

You know you did don't you?.....I – well I told them at some point, I'm not sure which point.

The same point that you were saying that you'd driven to Bunnings.....Probably.

Yeah. Now that was apparently not true?.....Not on that day, not on the 26th.

No.....No.

So why did you say it?.....Because I – I transposed it with another day.

Was it simply to add some colour, some detail, to the lies you were telling?.....I wasn't aware I was telling lies.

Right. So was that a lie about the can - half a can of ham that Bob had to eat that day and the tissues that you took back, was that a lie or is that some mysterious false memory?.....That was a genuine memory from another day.

Which day?.....It would have been about a week before.

Was it.....Mm.

Why would it have been a week before?.....Because I did go out to Bunnings on that day.

A week before?.....A few days before.

Well you've gone just a couple of days before haven't you?.....I'm not sure.

Was it a week before, was it a couple of days before?.....I don't know.

You've given several versions haven't you?.....I've given about five versions.

Yes, all in order to get the police off your trail, have them off looking at something else, looking at videos from Bunnings, endless videos, about when you might have been there meanwhile it had come back to you exactly where you had parked your car that afternoon.....Mm, later, much later.

Well within – I'm sorry, you said three or four days?.....Yes, it was three or four days.

And you had, I suppose, by then, had you, remembered that you had left the car there and walked home?.....I'd left the car there and walked home that afternoon, yes.

No, it wasn't my question Ms Neill-Fraser. Within 3 or 4 days had you remembered that you had not only where you parked the car but that you had left it there and walked home?.....I couldn't actually – I knew that I'd walked home but I wasn't sure which day that was either.

So you knew that you'd walked home on some day, is that what you're saying?.....On Sunday week?

Some day, some day.....Yes.

There was a day that you walked home from the yacht.....Yes, yes. We spent weeks doing exactly the same sort of thing you see.

And on one of those days you walked home from the yacht.....One of those days I walked home from the yacht.

That wasn't the day that your de facto partner of many years disappeared?.....It – I – I wasn't sure at that point.

You were sure where you parked---.....Yes.

---on the day that your de facto partner disappeared?.....Yes, yes. Yes, because the police had told me that.

Yes, I'm sorry.....Sorry. The police had told me that they'd found the young man who'd helped me get the boat out and I was able to, the dinghy out and I was able to.

What were you able to do?.....Well I was able to sort of work backwards from that where I would have parked.

All right. And that's what you told the police then did you?.....And I had trouble parking on that day too. Look, I can't really remember.

Can't you?.....No, I can't remember.

But you do remember now that by that time you had a clear picture of where you parked and it was in front of no more than three houses?.....It – it was – it was slightly before the – before you turn right towards the rowing sheds.

Mmm. When you worked it out. This is a place you went back down to many times, wasn't it?.....Oh it was. I was parked there all the time.

Yes. No, no, no, after the 27th January you went back down there many times?.....Well I visit my mother, she's there.

Yes.....Yes.

So – 'oh that's where I parked', it came back to you, is that right?.....No, it came back to me when the police told me that Mr Liaubon had helped me get the dinghy out.

Mhm, a dinghy he described as a grey dinghy, I can be more particular……Well I can't remember his description, but that was –

Well you were here when he gave evidence. A light grey Zodiac, a white light grey Zodiac, do you remember that?……I don't, but it's obviously there.

Page 370, line 28…….But I had forgotten about that until the police told me about it.

Yes, I'm sure, because that was just something that happened on the day that your partner disappeared?……Yes, it – well it was.

Yes……Yes.

Yeah. So by the time you were interviewed on the 4th March you knew, didn't you, that this was an investigation in which any clue might be helpful to police?……Yes.

And detail at all might help find what happened to Mr Chappell, is that right?……Yes.

Do you agree?……Yes.

And were you keen to help them?……Yes, I was.

So you would've brought forward anything that you could do to assist. If you'd given them wrong information before you could tell them and correct that, is that right?……I – I was actually very nervous of their attitude.

No, no, just – just tell me this. You could tell them and correct it by that time?……I didn't tell them.

No, I know you didn't tell them…….Mm.

But you could have apparently?……I could have.

But you chose not to?……I did choose not to.

You chose to lie instead?……About going down that night.

No, not that night, about where you parked your car – you said you couldn't remember?…….It wasn't – in that interview I still wasn't completely sure that I hadn't gone out to Bunnings until they told me that the footage at Bunnings showed that I definitely wasn't there,

and I think Detective Conroy actually told me that just before the interview as well.

Did he – before the second interview?.....Before –

I'm sorry -.....Before –

- before the first video interview?.....Before the first video interview.

Right. .....Mm.

But that only, didn't it, changed your recollection of the time you went out there?.....No, I thought I'd come off the boat earlier, originally.

Mm.....The police told me that a dinghy like mine had been seen tied up to the yacht later, so I assumed that I'd made a mistake.

Right. Well let's just have a look, if you would bear with me, at your very first statement to police. Now it's P – yes, P44, your Honour, if the witness could be shown that?.....Thank you.

Now there are – do you have it front of you, Ms Neill-Fraser?.....I have, thank you.

Your name up the top, your address, your age, date of birth, phone numbers, occupation – all correct, aren't they?.....Yes, yes.

> *I have been in a de facto relationship with Robert Adrian Chappell for seventeen to eighteen years. He lives at the same address as me, 7 Allison Street, West Hobart. In my opinion, we have a steady healthy relationship with no major problems. We have no children together but I have two of my own and Robert has three children. We do not have any financial problems, although Robert sometimes believes we do.*

Is that all – that all true?.....Yes.

That's right?.....Yes.

> *We've been searching for a yacht for two years.*

MR GUNSON SC: About two years.

MR ELLIS SC: Obviously, but I'm trying to shorten this, and I will. You said that you'd been searching for a yacht for about two years and you found the one you wanted to buy in Scarborough. Its name was Four Winds and it's a Roberts 53 feet – foot yacht – is that right? Was that true?.....Yes. Yes, I – well not really, we had being looking for a boat for longer than two years but, yes.

"We bought the yacht in September 2008 for two hundred and three thousand dollars from a couple named Steve and Geraldine in Scarborough", was that true?.....That's right.

"Initially the boat was out of commission and so we organised for some mechanical work to be completed before it was sailed down to Tasmania", was that true?.....That's true.

"After approximately two and a half months we decided the yacht was ready to sail and all the mechanical problems had been fixed", is that true?.....No.

No, that's the problem isn't it?.....Ah, well the mechanical problems had – the electrical problems hadn't all been fixed.

Nor had the mechanical problems?.....Mechanical problems had.

Had they really? I thought there was a worrying head gasket leak and perhaps a blown head gasket. I thought the engine failed at Scarborough?.....No, no –

I'm sorry, at Southport.....No, it was – the filter's blocked.

All the mechanical problems had been fixed?.....Yes.

So that's true is it?.....Yes.

"We decided that all mechanical problems had been fixed"?.....Yes.

And it's not true because you shouldn't have said , "except for the electrical problems", is that right, is that what you're saying to us today?.....Well not all the problems with the boat that were identified had been fixed.

But anyway that was true as to what yours and Mr Chappell's state of mind was, all fixed, ready to sail, all fixed?.....Yes.

That's right. "We organised a professional crew to assist us sailing the yacht, the two males that came down with Robert and I were

David Casson and Peter Stevenson", that was right?.....That's right, yes.

"We left on the 7th December", that was right?.....That's right.

"And eventually made it to Hobart on 23rd December 2008", that was right?.....That's right, yes.

We had a number of problems with the yacht including electrical problems and a number of other issues that were not located till we started our journey".....That's right.

Was that right?.....Yes.

"When we arrived in Hobart we moored our boat off Marieville Esplanade, Sandy Bay, where the boat was located today", was that right?.....Yes, that's right.

"We've used the boat a few times and we've had continued problems which we are in the process of fixing

Was that right?.....I think that – I think where the boat was located today, I think they'd already taken it away and this is on the 27th of the first.

Okay.....Sorry, anyway, yeah.

"We've used the boat a few times, but we've had continued problems which we were in the process of fixing".....That's right.

You see, now you've got the Taylor Brothers Shipwrights and Mechanics who have worked on the boat.....They serviced it, yes.

There has also been electricians work on the boat over the last month, is that right?.....No.

They hadn't been?.....No.

But there had been electricians.....Yes, they---

And you'd been sent a bill and you paid it?.....For electricians?

Yes.....No.

Mr Makepeace?.....Oh, um, for a hundred dollars ($100), yes.

Well, why did you pay a bill if there was no work done?.....It was for the quote.

As far as I was aware there was still a number of problems with the yacht which included the fresh water pump tripping, the circuit breaker intermittently, the anchor also had some problems

.....They're all the same problem.

No, is this right, is this right?.....Yes.

The police hadn't just made this up? This has come from you?.....That's right.

That's right?.....Yes.

Yes. So did police make up there have been electricians work on the boat in the last month?.....They weren't working on the boat.

No, did they make that up and put it in your statement which you signed? Or did it come from you?.....I can't remember back to the 27th, but I don't think I would have been saying that they worked on the boat, no.

Right. So they've made that up?.....Well, I don't know. I could have said it. I could easily have said that.

Could you?.....Yes.

As far as I'm aware and to the best of my knowledge, there were no problems with the sea cock or the bilge pump. Robert and I were always checking these areas for problems.

Was that right?.....Where are you?

As far as I am aware and---

.....Are you on the first page?

As far as I am aware and to the best of my knowledge, there were no problems with the sea cock or the bilge pump. Robert and I were always checking these areas for problems.

.....Sorry. Well it's the anchor winch motor, yes.

Mm.

HIS HONOUR: Now there are two paragraphs – there are two consecutive paragraphs that both begin 'As far as I was aware' – sorry, one begins, 'As far as I was aware', the next begins, 'As far as I am aware', so you're looking at the one beginning, 'As far as I am aware', Ms Neill-Fraser?

ACCUSED: I'm looking at the one, 'As far as I was aware there were still a number of problems with the yacht'.

MR ELLIS SC (Resuming): Okay……..'which included the fresh water pump tripping'.

Tripping the circuit breaker intermittently, which it did?……Sorry.

Which included the fresh water pump tripping the circuit breaker intermittently?……Yes.

And the anchor also had some problems?……It's all switchboard, yes.

No, but these things came from you, the police haven't made these up?……Yes. No.

No, good. And as far as you were aware to the best of your knowledge there no problems with the seacock or the bilge pump?……No, none.

> *And Robert and I were always checking these areas for problems.*

……Yes.

> *On Sunday, the 25th January 2009 at approximately 9:00 a.m. Robert, myself and his sister, Anne, used the boat to travel to Adventure Bay.*

Was that correct?……Yes, that's right.

Right, so no trouble there with the time?……No.

Even though it wasn't an unusual day or a stressful day?……It was a very unusual day.

Okay, no problems with the time.

There were still problems with the anchor but nothing we weren't aware of.

Is that right?……Actually no, if we could just go back. I don't think we got away 'til about ten thirty.

Oh, so do you say that the police – that you didn't tell the police it was nine o'clock or do you say that your memory's better now?……I think – I think he wrote it and I don't really – yeah, I don't –

You can remember that now, can you? I thought you couldn't remember anything of this?……On the 27th – it – oh sorry, the 27th – it was on the 29th, I think that – yeah, anyway, sorry.

No, no, let's get to the bottom of this then, it is your first statement to police, and you were aware of course that every little detail might be of help, that's right, in finding you missing partner, finding out what happened?……Is this the statement I gave at the house on the 27th?

Ms Neill-Fraser, this is a statement before Mr Stockdale at West Hobart, it continues, yes, so it probably is at the house…….Right, right. Yes, so far it's – it's accurate.

It's accurate?…….Fairly accurate – yes.

And so far it contains details that must have come from you?…….No, some of this I think I told them in the car –

Yeah -…….- that morning.

- all right, well it's come from you though – it's not something they've plucked out of the air just to put in a statement?…….No.

No.

There were problems with the anchor but nothing we weren't aware of. We returned at approximately 5:00pm and did not go back to the boat until approximately 9:00am the following day, the 26th.

Is that right – is that what you said?…….Well I don't know what time we came home but if I said this then it – I must have said – I don't remember the interview or the statement. But so far it's accurate – fairly accurate.

At 9:00am we went back to the boat to do some work on it. I left the yacht via the rubber dinghy at 11:00am while Robert stayed on the yacht.

Is that what you told police?.....I don't – I would not have said "at 11:00am" because I wasn't sure what – what time I left.

Oh, so they've just put in a time even – Constable Stockdale has just put in a time, just made up a time and put in it?.....I think he went through a whole series of things that – yeah, I think he went through a whole series of things and came up with that time -

I see.....- working backwards from lunch.

That's a memory you've got now of him?.....Oh I don't know.

Oh – why did you say it then?.....Because I was – the man I was talking to at – the police officer I spoke to in the car in the morning was asking me very similar questions to these ones, and I don't remember – I don't remember whether I told him a – told him then or whether I would have told him later. I mean I can't – anyway.

But it was right that at nine o'clock you went back to the boat to do some work on it and it was right that you left the yacht via the rubber dinghy – is that right?.....That's right.

The only thing you quibble with now is the time, is that right?.....Yes, yeah.

While Robert stayed on the yacht?.....That's right.

I returned to Allison Street, had a shower and some lunch.

.....Yes.

Did you say that?.....I don't know.

No.

I then returned to the yacht at approximately 1:00pm.

Was that what you said?.....I don't remember saying this.

You don't remember saying this?.....No.

Why, because it's not right?.....No, the – the first part of it's – the information in it is accurate, but I do not remember giving this information. I only remember talking to him in the car.

Ah ha.....At the –

> *I then returned to the yacht at approximately 1:00pm. Robert was working on the generator as he believed there was some problems.*

Did you say that?.....It was switching to manual – I could have said that.

Could have said that and it would be right?.....It would be right.

Yeah, because he was working on the generator – is that right?

> *I left the boat at approximately 2:00pm as Robert wanted to stay on the boat so he could work through the systems by himself.*

.....Yes.

Is that right?.....Well no, I thought I'd left at two but –

All right. But -.....Yeah.

- it's right that that's what you said?.....Well I don't know whether I did or not.

Well would the police officer have just made up that Robert wanted to work on the systems by himself – is that what you're saying?.....I don't know whether – I – I'm fairly sure that I said this in the morning, when I was sitting in the police car.

Mm hm. Okay. Well you said it – you're fairly sure you said it, is that right?.....I'm fairly sure I said that, yes.

Yeah.

> *It was at that time that I saw Robert last. He did not look acutely unwell and I did not notice anything abnormal.*

Was that said?.....I don't know.

But it's true, isn't it?.....It was true.

Leave aside two o'clock -.....No, no, that's –

- I mean that's obviously false?.....- that's absolutely – it's absolutely true.

Yeah – but two o'clock is false though, isn't it, as things turn out?.....The information is correct, it's just that I don't – don't recall –

But two o'clock is false, isn't it – "I left the yacht at approximately 2:00pm"?.....I don't remember saying that but the police did tell me that's what I said – so it would be right.

Right. But it would also be inaccurate – not that you've said it but that -.....No, I – I remember in the morning saying that I thought I'd left the boat about two.

Right. Okay.

> *The boat was in the same condition as before. I did not notice any blood (indistinct word) firearms on the boat when I left.*

Is that what was said?.....It's accurate.

"The boat was in the same condition as before" – I'm sorry, "the boat had no leaks and was in sound condition".....That's accurate.

"I left the yacht via the rubber dinghy and I left it next to the Royal Yacht Club which is on the opposite side of the rowing club. I believe that I tied the dinghy up adequately and it's never come undone before. I don't believe that it would come undone by itself".....That's accurate.

That's accurate. "Robert was a good swimmer and if he fell in he would have no trouble getting to safety", is that accurate as to what you said?.....Depends on the weather conditions.

No, is that accurate as to what you said?.....I don't know. I don't know whether I said that or not.

Right.....I have no memory of saying it.

No memory, so – okay. "Robert has no enemies that I'm aware of, I don't think anybody would want to hurt him", did you say that?.....Um, it's true but I don't remember saying it.

"The boat is insured with Club Marine and it is owned by both of us", was that true?.....That's true.

Right. It must have come from you mustn't it?.....I would imagine, yes.

Yes.....Yeah, I think – I've told the police this obviously but I don't know when.

"Robert would never sink the boat on purpose".....That's accurate.

"I would also like to add that approximately thirteen days ago Robert and I went to the yacht and discovered that someone had been on it that shouldn't have. I noticed that the chart table had been accessed. The fresh water pump cover had been opened and the electrical switchboard had been opened", is that what you told the police?.....I don't know but there were more things as well that were wrong, yes.

Yes. Well did you tell the police the more things?.....Well I think I did in the morning, yes.

Did you or they just didn't note it, something like that, is that right?.....No, I don't know. I don't know.

You think you told them?.....I thought I had but I don't know.

See you gave quite a list this morning didn't you in evidence, cushions strewn about and so on?.....Yes, and I think I told them on the morning but I can't really remember.

Yeah. But you didn't say this morning, did you, that the chart table had been accessed, the fresh water pump cover had been opened and the electrical switchboard had been opened, that wasn't in your list this morning was it?.....I can't remember.

Well it was just this morning?.....Mm, well I can't remember what I said but that – those things were done.

And you said exactly the same thing happened in Queensland in October where someone had been in the boat?.....Mm, that's – well, no, that's not entirely accurate.

No, I know it's not accurate. Did you say it though?……I don't know. I – I think what I would've – exactly the same thing happened, I mean that somebody had gone on the boat but they hadn't broken into it.

Oh.

> *There had definitely been someone in there. Nothing was stolen. Exactly the same thing happened in Queensland when someone had been in the boat.*

Then the statement continues:

> *There was no sign of forced entry but there was a hatch partially opened, which is where they probably entered from.*

The statement was taken by Constable Stockdale at West Hobart. So it was right about the hatch, was it?……Um the hatch wasn't locked.

No, but was it right that the hatch was partially opened?……The wash board was out, yes.

Right, so again this has come from you, hasn't it? This has come from you -……I don't remember –

- to the police?……- giving a statement at all.

At all?……At all.

Right…….I'm piecing this together from what I said to the police in the morning.

I see, because your memory of that day is a blank?……My memory of the 27th is fairly shaky.

The next day were you more on your game?……More what?

More on the game, more au fait with what happened?……No, not really.

No?……No.

The next day you made a statutory declaration, didn't you?……I don't know, I don't remember giving one – making one.

And in that you said, I suggest:

> *Given the wind I decided not to take the tender to Marieville Esplanade, I decided to take it to the Royal Yacht Club where it would be easily managed.*

That was true, wasn't it?……Which day are we talking about?

This is the 28th, the statutory declaration you made on that day, speaking of the 26th?.....The 26th.

Speaking of the 26th?……Yes.

Speaking of the 26th two days later……..Yes, yes.

So you said on a statutory declaration:

> *Given the wind, I decided not to take the tender to Marieville Esplanade. I decided to take it to the Royal Yacht Club where it would be easily managed. From tying it up, I went to Bunnings Hardware on the Brooker, then came home. Anne was not home by then as it was getting late. Anne had gone to Bruny Island for the night. She was being picked up after 4 a.m. –* sorry *– 4 p.m. I am sure when I got home it was starting to get dark. I'd stayed out at Bunnings for a long time.*

……Mm.

So there's some fact and some fiction in that apparently?……..Hmm, no, that was – I did do that but it was – it was a few days earlier. It was before Anne arrived.

'A few days earlier, before Anne arrived'?…….Mm.

How many days earlier?……Um over a week.

Over a week?…….Mm.

Not two or three days before?…….Oh it would have been um---

No, when was it?……I don't know.

I see, and you told---……..Some days.

---the interview it was very much the same because it was the same circumstance if you'd left Bob on board that day and that's why you got confused?.....That's right.

And is that right?.....Yes.

It was the day the electricians came, is that right?.....That's right.

And that – oh what day was that? The electricians on the 6th of January and on the 16th of January. So what day was it?.....It was the day that the boat was tied up at Royal out on the end of the pontoon.

Oh, on the 16th of January?.....Yes.

And that's when you went to Bunnings, was it?.....I believe so, but it could easily have been a day around it. I can't be more specific.

So that was the day that you got confused with because the circumstances were so different?.....So similar.

Yes, I'm sorry, my mistake.....Yes.

So similar.....So similar, yes.

Yes.....And there were—

And the similarity was again?.....There were probably four or five---

No, no, the similarity was?.....The similarity was that I tied the dinghy up. I didn't leave it um – do you want me to explain why I tied the dinghy up there, at Royal?

No, I want you to tell me what the similarity between the 16th of January and the 26th of January?.....Well I'd left Bob on the boat.

The boat was at mooring at the Yacht Club. It wasn't out on its mooring.....It was on a pontoon at the Yacht Club, that's right.

Yes. So he wasn't in danger of being stuck there that day, was he?.....He wasn't in danger anyway.

He could simply step off.....He wasn't in danger.

Unlike the 26th?.....He wasn't in danger on the 26th.

What's the similarity then?.....The similarity is that I took the dinghy, unhooked it from the back of the yacht at Royal because it was being crushed between the yacht and the pontoon, which was deflating it, and tied it up in the same position and went – went along, and my car was parked – I'm sure it was that day because it was parked over near the children's playground, mm.

Mm. And when have you said in any interview to police that that was a similarity between the days that you took the dinghy off and tied it somewhere?.....I don't know, I don't know, I did tell them at one point, I think –

Did you?.....- but I can't really remember, mm.

It's not on any of the videos we've seen, is it?.....I did – I think I told them at one – I told them that I'd confused the days.

Yes. Because it was a similar day when you'd left Bob onboard, I think you eventually said, didn't you?.....Yes, that's right.

But leaving Bob onboard on – on the mooring with no ways of getting off and leaving Bob onboard when the boat's on the pontoon are two very different things, aren't they?.....Not really, because he could have got off.

How could he have got off the day you left him there?.....He could have got off very easily, he could have – are you talking about in the late afternoon?

I am.....You are?

On the 26th of January?.....Or whenever it was – but the first time or the second time?

Oh well, on the first time it's quite obvious he could have got off, on the 16th of January, because it's on the pontoon - .....Yes.

- you just step off, don't you?.....On – on the 26th –

You just step off, don't you?.....Sorry?

You just step off?.....You step off. On the 26th he could have – the water taxi goes very close to our boat; you can hail it very easily. He had two radios but I didn't leave the phone with him at lunch time, I thought I had, but I didn't.

Mm.....And the second time –

He was on the pontoon?.....- he had the phone – no, the second time he had the phone on the 26th.

Right. Okay. .....So he could have easily called me.

Okay. So – and the similarity between the 16th of January when the boat was on the pontoon and the 26th when it wasn't, was that you tied the dinghy up -.....In the same –

- that's the similarity?.....- place – yes.

In the same place?.....Yeah.

Right. And you can't recall when you told the police that was the similarity?.....I think I just said I'd left Bob onboard – but I had gone off and left him on the mooring on the boat –

Yeah.....- on another occasion too, and he'd left me for about six hours as well.

Did he, yeah. And they conveyed to you that people were critical of you having left him there without a dinghy and means of exit?.....Yes, I felt really badly about it.

Did you. Well - .....Not because he didn't have an exit because he'd have called if –

No, because you were criticised?.....What?

You felt badly because you had been criticised by people - .....Not at all. Not at all.

- at the Royal Hobart Yacht Club?.....No.

And you spat out, "Oh, I bet it's those older males who said that", didn't you, eh?.....Ah, I – what was in my mind when I said that was that –

I didn't ask you that.....Oh, sorry.

You hate criticism of your yachting skills don't you?.....You what?

You hate criticism of your yachting skills don't you?.....No, not at all. I'm fairly hopeless in most –

You hate – you hate it being thought at the Royal Yacht Club that you might be less than an able competent sailor?.....No, no, no. I've told all my friends that I'm really not that able.

Well you didn't tell the police that.....What did I say to the police?

In this court you tried to get – I'm sorry, your counsel Mr Gunson tried to get experienced able sailors, Mr Stevenson and Mr Casson, to agree that you were competent and they wouldn't?.....That's right because I'm not that competent.

HIS HONOUR: I'll stop for lunch whenever it suits you, Mr Ellis, anytime in the next five minutes.

MR ELLIS SC: Just one – just one after this then, your Honour. (Resuming): You told Constable Etheringham on the 26th – I'm sorry, the 27th January that you were an accomplished sailor didn't you?.....I don't remember saying anything of the sort to a police officer.

If it please, your Honour.

HIS HONOUR: Al right, we'll stop for lunch, the jury can make their affirmation and the Court will adjourn till 2.15.

JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

MR ELLIS SC: - concerning your lie about going back down that night. Now am I right to understand that pretty much from the very first day you'd decided to lie about that?.....No, I – I didn't really think about it very hard – I didn't – I didn't consciously lie about it but I certainly did tell police about it.

Well from the very first day you decided not to tell them about it - .....That's right –

- is that right?.....- I did, yes.

Yes, and at least by the time of the first video interview the – in March, on the 4th of March, you had decided to lie about it til it come up, hadn't you?.....Actually it wasn't so – well yes, yes.

Yes. Now – and the reason was that Tim Chappell was going to be upset, is that right?.....Initially, I didn't tell the police in the first few days because of that reason, but it wasn't – it wasn't so much – I was worried – I was more concerned about Claire, and the reaction if I said anything about the phone call and the going down – so I mentioned the phone call to Tim –

Yeah.....- and his reaction was a bit alarmed, so I thought well I won't say anything about going down in case it makes it – makes it even worse.

How could it? You said that you received a phone from Richard King that evening?.....Well it was the contents of the phone call that concerned me.

Right. But he'd also received a phone call and spoken at length to King, or didn't you know that at the time?.....He told me that morning, he – he said, you know he was pretty alarmed and he said, "Oh my God I got one too".

Well, so what?.....Because what Richard King had told me was what – one of Claire's fantasies was to go out to the boat with him –

Mm.....- and sail off on it to – to save Bob, and she was also talking – he – well he said – he told me that she was also – she'd also mentioned suicide.

Something that he denies, of course, as you know?.....I don't remember but I – yes, I remember him saying it definitely.

No, but you remember him giving him evidence in this Court?.....I do.

And he denies any mention of suicide or that it was a prospect, in his view?.....Mm –

But you say -.....He – no, he did ask me whether I thought it was a possibility and I said, "No" because I –

Oh -.....- I knew she'd said it before.

Oh, I see, so he didn't raise that she was suicidal at all?.....Yes, he did.

He just asked you if it was a possibility?.....Yes, but he told me that she was talking about suicide.

Did he, and that's what he's denied in this Court of course, as you know? All right, so was all that said to Tim on the 27th?.....I don't remember, I simply – I remember telling him I had a very strange phone call from Richard King, -

Yes.....- who I'd never met and who had been talking about, you know, Claire wanting to go out to the boat.

Right.....It was quite a long phone call.

No, I'm just trying to talk about the conversation on the 27th with Tim Chappell, which is apparently the reason that you decided to lie - .....Initially.

- to police investigating the disappearance and possible murder of your partner?.....Initially, yes.

Yes. Now let us stick with that then. So you mentioned that he had – that you'd had a call about Claire and then what did he do?.....He – well I think -

Did he come to coffee with you then?.....He became a bit agitated, more than a bit agitated I thought, for Tim, and he said, "Oh my God, I got one too", -

Yes.....- and something about, "I wonder if Claire could be involved", -

Right……- and –

And did he say to you, "You mustn't mention this to anyone"?……..No, definitely not, -

No…….- in fact he went off to visit Claire.

Right, is that – so he went off then and there, as soon as you mentioned the call?……I don't know, Mr Ellis, I'm – it's a long time ago and my memory of that whole day is not very good.

Well some things are apparently?……Some things are – yes, some things are.

And so I'm asking you about your decision to lie to police investigating the disappearance and possible murder of your partner. So you say you had a conversation with Tim -……..Mm.

- and he said, "My God, I received a call too". Now what did he do then?……I can't remember. I know that he went off quite soon after that.

Yeah, sometime that morning?……Sometime that morning, yes.

Was that following or before coffee with you?……I can't remember.

So what did he say exactly?……After I told him about the phone call?

Mm…….He – I'm pretty sure he said, "Oh my God, I got one too".

Right, so you can remember him doing that?……Mm.

Saying that?……Mm.

Now what else did he say?……He said either 'I wonder or I hope Clare's not involved', and he was quite agitated.

Quite agitated. What was he doing, tearing at his clothes or running around in circles or what?……..He was – he was – no, he became quite tense and well just - ah Tim's normally fairly considered and he was sort of – he looked to me to be agitated.

Agitated?…….Mm.

Can you describe the sign for this agitation?.....He became much more nervous and tense.

Right.....Mm.

Nervous and tense.....Mm.

And how did that express itself?.....I've just told you.

Well was he shaking?.....He was – he was um, no, but he was sort of turning quite suddenly one way and then the other.

Yes? Right, so even so you must not say anything about this. That was all your own idea of course.....Absolutely not, no. Absolutely.

And you---.....Time was trying to find out, as I was, what had happened and he went off to see Clare.

Eventually.....He went---

Not at that point you don't assert?.....Ah I don't assert that I'd know when he went at all.

No. You don't assert that he went straight off to see about Clare, do you?.....He went within – within a fairly short time.

Yes.....Mm.

Before or after coffee?.....I can't remember. I think it was – I think it was before.

Do you?.....I think it might have been but I can't be sure.

Mm. Was he crying, howling, shouting?.....Sorry?

Was he crying, howling, shouting?.....Was Tim howling?

Yeah.....Not at all.

Not at all?.....No.

Well why did you say to police he was more upset than you have ever seen him?.....Because I've seen Tim um when he's come back from bushwalking trips and something's happened and you know he's been stoic, and he was not at all stoic that morning.

His father had disappeared……..Sorry?

His father had disappeared……..And my partner had disappeared, Mr Ellis, yes.

Yes. But you're saying that when you told him that he became more upset, that's what you assert……..That I'd got the phone call.

That you had got a phone call……..Yes.

Yeah……Well, the con.---

The same person he'd got a phone call from……..It was the contents of the phone call, and he did ask me – he did ask me if I'd ever met Richard King or spoken to him before, that's right.

Mm……And I hadn't.

Mm, good. Some more things are coming back then?…….Well-

So was that reaction do you say to this thought that put you on a course of telling a lie to the police investigating your partner's disappearance about you having being down there?…..Yes.

Right…..Yes, it was.

Even though that may have provided significant leads to police in the investigation?…..I understand it was a dreadful mistake but that's all it was and –

Even though - ……- I was not thinking very straight that morning.

Oh, well we'll talk about the subsequent days but that morning you decided to lie even though you would be denying them significant leads of what might happened the day before?…..I didn't think of it that way but, yes, it could – it well – could well have been like that.

Well there was not only you down there apparently that evening but a collection of people that you saw?…..I saw – I saw some people over by the rowing sheds.

Yes…..A couple of people.

How many?…..Oh, a couple, a couple. I assumed they were the homeless people.

Well you said homeless people, how many did you see?.....I think two or three.

Two or three?.....Yes.

And you told police they were around a fire?.....I thought they were. It looked like – look it was – it was – they were over – if you're facing the rowing sheds they were sort of tucked in around the corner behind a 4WD that's always there. I definitely saw them, outlines, I couldn't tell who they were.

Yeah, you saw a fire, at least a fire, I think you said 'fires' to police?.....Um, no, it was a – my memory was that it was one of those round firepots.

Yes.....It was on the ground.

Yes. That was something else that you didn't tell police, wasn't it, that it was a firepot?.....I can't remember what I said to police.

Even when you did finally admit going down there you never said – mentioned a firepot did you?.....I don't know what I said to them.

And that was because you knew that there would be no sign of a fire on the ground, wasn't it?.....Mm, they – they often had a firepot there, I think that's what made me say it.

So there are two, three people who were there besides yourself that very evening who may well have provided significant information to police but you decided not to tell the police.....Mm.

And you decided that from day one?.....I decided it – yes, yes, on the –

Yes.....- on the 20 – on the 27th, yes.

Yes. Now even though that day you knew full well that not only had you been there you had actually walked back from your home, walked back, walked down to Marieville Esplanade, walked back to your home and rove down?.....Mm, well I actually –

No -.....Yes.

- just to the question – you decided to not tell them that either, did – I presume about the walking?.....I didn't – I didn't tell them I'd walked down that night.

No. Why though, why though did you leave them with the false impression that you had actually driven away that afternoon in the car not walked?.....Because I thought I had.

You thought you had?.....Yes, I thought I'd gone to Bunnings, mm, at that point.

But surely you didn't think that the car was at home?.....I did.

Because you knew that you'd walked down?.....Mm, I did but I –

No, it's not funny.....There – there were – I can't explain the confusion in my mind about that day, that twenty four hours after we discovered Bob was –

Never mind the twenty four hours after; how about – how about several days after?.....Several days after I began to get some even worse symptoms, which I ultimately went to a psychiatrist about it. So I –

I beg your pardon?.....I began to get some – I don't know what you'd call them, I began to get some actual mental blackouts – that's the only way I can describe it.

How did they come over you?.....I beg your pardon?

How did they come over you?.....Well I'd be walking – we – we spent – well I'd be walking –

Mm.....- we – and the – it was as if everything was receding and then I would basically not know where I was, just for a few seconds or a minute.

When did that start happening?.....Oh two to three days after Bob disappeared.

So you saw a psychiatrist for treatment?.....Mm.

Mm, and was that psychiatrist Dr Ian Sale?.....It was.

And you see in fact a forensic psychiatrist who doesn't treat patients but prepares reports for court proceedings?

MR GUNSON SC: I object to that, your Honour.

ACCUSED: I –

HIS HONOUR: No, just a minute.

MR GUNSON SC: I object to that.

ACCUSED: I –

HIS HONOUR: No, no, just don't answer the question.

ACCUSED: Oh sorry.

HIS HONOUR: What's your objection, Mr Gunson?

MR GUNSON SC: My friend is giving evidence from the bar table as to what Dr Sale does and he knows full well Dr Sale does both, he consults and prepares reports.

HIS HONOUR: Well it didn't sound like evidence from the bar table to me, it sounded like a question about something that may or may not have been within the witness' knowledge, so it's a proper question. Do you want to ask it again, Mr Ellis?

MR ELLIS SC (Resuming): Yes, thank you. Was the psychiatrist that you saw, you say for treatment, Dr Ian Sale?……It was.

And were you referred by a general practitioner?……I was. I went to see Rob Walters – Rob Walters down at – where I go normally and he said that he knew someone who was quite – quite good at this sort of thing, so he sent me to Ian Sale.

Did he?……Mm.

But you know that Dr Ian Sale doesn't treat patients, don't you, he doesn't have a patient list and you weren't on it?……Yes, I think he does have a patient list.

You were seeing him for the purpose of getting a report, weren't you, for these proceedings?……No, I – no. Not at all.

Not at all?……No.

You don't know him to be a forensic psychiatrist?……I know that – I – I communicated my concerns to him about the police and he told me in about the third session that he does police work.

Well so you got these blackouts?……Mm.

Sorry, you've distracted me with this a little bit. And that was explaining, I think, how it came to be that you didn't tell the police that you'd walked home, is that right, am I getting that right?……Oh it wasn't just about that.

No, but is that part of the reason?……Part of the reason. I don't know that I – I don't know – I think I did tell him, yes. I can't remember.

No. All right, we'll go back to where we were……..Mm.

You – let's see, from day one you decided to lie to police about going back down that evening – that's right?…….That's right.

Thank you. But at the same time, it seems, from day one, you had some sort of, I don't know, anyway you had a false memory, a very clear false memory of going to Bunnings the day before?…….I had – I had a memory – it wasn't a false memory it was just the days weren't right.

Well what day was right?…….It was the days – it was about week earlier.

A week?…….A week or ten days, yes.

Yeah, you've said two or three days on other occasions, haven't you?…….Well I can't be certain.

Well when did it first strike you that your memory of going to Bunnings was the memory of a different day?…….I think it was probably – look, it would have been –

Just when?…….Whenever I was told that I wasn't on video tape and I also in my – couldn't make the – I couldn't make – make things add up in my mind.

No. Because one lie got ahead another?…….No, that's not the case.

The Bunnings was just a lie to divert police attention, wasn't it?…….No, I – no.

Well when did you – when did you go – come to believe that you didn't go to Bunnings – when police told you that they couldn't find you on the tape?…….I – I was – well they told my daughter, Sarah,

first and I – I had been concerned, because I knew I'd walked down and what I couldn't work was if I'd taken the car back it should have been at the house. So –

Well when was this in relation to your various interviews and stories to police?.....I think – I think that it was after I had an interview at the house with Detective Milazzo and Sinnitt.

Right. But it didn't occur to you then, did it?.....What didn't?

That you didn't actually go to Bunnings that somehow – somehow your mind has substituted a whole trip to Bunnings from another day from another time?.....Well I – I've given you the only explanation –

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---from another day from another time?.....Um, well I've – I've given you the only explanation I can.

But I don't understand it. I'm just trying to find when and why?.....I don't understand it either, Mr Ellis.

Well, it's because you're lying about it.....No, I'm not.

No. You had an honest belief you went to Bunnings.....I had an honest belief I went to Bunnings.

You honestly believe you drove there and you honestly believed your car was at home having – from having driven there?.....I did, and then I – then later I thought, 'well wait a minute, I walked down'.

Well there's no later about it. You knew from the very first day that you walked down.....Mm.

So there's no later about it, is there?.....No, except that what I was confused about was that I very often go to Bunnings from the boat, from the same place where the rowing sheds are, and then go back again, and then I have walked up the hill before and back. So you know, it's not a – it's not an unusual thing.

When did you first have doubts that you were at Bunnings at all?.....Ah I think it was about the – I think it was after that interview that I've just told you about at home.

After that interview?.....With the two detectives with---

Right, not during it?.....No.

No.....No. It's when I thought about things a bit more clearly, tried to---

You hadn't thought about them before?.....Not clearly.

No.....No.

And having thought about them, you told Ann Sanchez on about the 8th or 10th of March that you had driven down that night and driven back, didn't you?.....I don't believe I did.

That was not put to her by your Counsel that there was anything different about what you said, was it?.....I don't---

So is that something that you were unhappy about?.....I don't think that I said that. I think that what I probably said is that I drove down after lunch.

Well I'm not worried about 'probably'.....Mm.

So she gave that evidence. It was not challenged by your Counsel. That was not an issue that you raised that you were unhappy with when I asked you to start with.....It didn't mean a great deal to me.

To say that you drove down and back. Let's keep going back. So the first day going down is a lie but you knew that you'd walked back twice?.....Yes.

Yes. No mention of that. By about three or four days you said, "I think", that you knew exactly where you had parked the car when you left that afternoon of the 26th, or evening or whenever it was?.....When I went down to go out to the boat.

Yes. When you got off the boat, whenever that was - .....Yes.

- where the car had been parked you knew where it had been parked?.....No, I knew where it had been parked after they told me about the man with the dinghy because I remembered looking back towards the – from the dinghy – from Marieville Esplanade Short Beach.

MR GUNSON SC: Your Honour I have to rise to raise a question about my friend having put a proposition about me not having challenged Ann Sanchez and I can refer your Honour to transcript

248, top of the page, and she was most definitely challenged on that. I'll read it to your Honour, "Can I just come back to the conversation you had with Ms Neill-Fraser on the 23rd March when she told you she'd walked back to West Hobart which means she must have left the car down at the waterfront, correct?", and it goes on down to line 18 –

MR ELLIS SC: This is the 23rd March, I've being asking about the 8th or 10th March, as my learned friend no doubt knows.

HIS HONOUR: Well just a minute.

MR ELLIS SC: Evidence in chief is 245 10.

HIS HONOUR: Yes, I've just found it. Yes. The evidence in chief at 245 related to the 8th or 10th March. Mr Ellis' question is related to the 8th or 10th March. I haven't checked every word of the cross-examination of Mrs Sanchez, but the passage that you've referred to, Mr Gunson, -

MR GUNSON SC: Yes, quite correct.

HIS HONOUR: - did not relate to the 8th or 10th March, so as far as I know there's nothing objectionable in those questions.

MR GUNSON SC: No, your Honour's right.

HIS HONOUR: All right, we'll go back to you, Mr Ellis.

MR ELLIS SC (Resuming): Now we've got it open. Ms Sanchez' evidence was:

> *Do you recall a telephone call from her* (meaning you) *on about the 8th or 10th March?.....Yes, she told me that she'd received a phone call from Richard King, who is a friend of my niece's, Claire's. That was on the evening – it must have been the 26th, that's right, yes. And Sue was home on her own, received a phone call from Richard King. Now she told me in the phone call that she had driven down, she couldn't sleep, that she was disturbed by a phone call, a bit anxious. She drove down to Sandy Bay and looked across at the boat but it was in darkness so she drove back.*

And then you called her later in the – on the 23rd, on the day police happened to be there, and claimed that you had walked. Now as to

the 8th of March, as I was putting to you, Ms Neill-Fraser, that was not challenged, was it?……I don't know, but I definitely did not drive down at night, but I drove down after lunch.

It was not challenged that you telephoned Anne Sanchez and said that you drove down that night after the call from King and drove back again, was it? And you did – that's what you said, wasn't it?……No, no.

No…….I'm sure I wouldn't have.

Really, I'm sure you would have given instructions to your lawyer to challenge that then, wouldn't you?……No, I think – I think what's happened is that I've – I would've said that to her but I'd driven back – I'd driven down, but I would have driven – told her that I'd driven down after lunch.

Well there's no doubt about it, this is – this is after a call from Richard King – I'll read it to you again:

> *She'd received – home on her own received a phone from Richard King. Now she told me in the phone call that she had driven down, she couldn't sleep, she was disturbed by the phone call, a bit anxious, she drove down to Sandy Bay and looked across at the boat but it was in darkness so she drove back.*

…….Well my memory of that phone call is –

Well -…….- not – not that good, but I don't think I'd have said I drove down.

Well why wasn't it challenged then?…….I – I don't know, but I think what's happened – do we have a transcript of it?

I was just reading you the transcript of it?…….This is from the listening device?

No, this is the transcript of what is said in this Court……..Oh right, I see, right. Do – do we have a –

Now this is what you do in the interviews, I suggest, Ms Neill-Fraser, to get yourself a bit of time you habitually ask for more information or in order to conform and to make up another story……..I'm –

Time and time again, in the interviews you asked police for more information before you'd volunteer an answer, wouldn't you?.....I did ask too many questions, I know that.

So where we've got to – oh I don't think there was any mention to Ms Ogilvie either, was there, Felicity Ogilvie, the ABC reporter, about doing anything but driving down that night?.....I do remember that conversation quite well –

No, as to her evidence?.....It – I – we were – we were interrupted in the middle of that conversation and it was – you know –

As to her evidence I asked you?.....Yes.

As you know, as to her evidence?.....I'm not sure what you're asking.

Okay. Well this is what I'll ask you; now we're getting to that you knew from day one that you had walked back – that you'd parked the car – that you knew from day one that you'd parked the car somewhere in Marieville Esplanade?.....No, no, I thought I'd driven away,.

Thought you'd driven away?.....Mm.

Well – and you thought that the Bunnings answer couldn't be right after Constable Sinnitt spoke to you, is that right?.....I thought that

No, no, just the – just the question, please.....Could you ask it again?

After Constable Sinnitt and Detective Milazzo spoke to you did you no longer think that you had driven away from the yacht club or the yacht or -.....No, I think it was after that, it was after someone said that you're – you're – you're not out at Bunnings on the video – on the camera.

After someone had said that, and who said that?.....Oh I don't know, it would've been one of the police officers.

Yeah. And that – that brought you up, that said, 'Oh hang on, I've got a false memory here'?.....Yes.

Straightaway?.....Mm, straightaway.

Straightaway. And it didn't bring you up to think, 'Oh well, hang on, now I remember, I didn't drive the car away that afternoon'?.....I think – yeah, I think I was already realising that I hadn't parked it where I thought I'd parked it.

Where did you think you'd parked it?.....I thought that I'd walked across from the dinghy, from Royal to the rowing sheds and got into the car and gone out to Bunnings from there.

Mhm, yes.....And then when – and then when I was told that somebody had helped me get the dinghy out of the sand I do – I remembered then that I'd looked back and the car was over against – over on the other side, on Marieville Esplanade.

Near some toilets?.....Hm?

Was that near some toilets or not?.....No, it's along – it's along – you know where Fabian Dixon used to live, -

Yeah, right.....- near there.

Oh.....And I remembered thinking, 'Well I can't have been there', so that's – I was very confused for weeks after.

So this was as a result of the information given to you that someone helped you lift the dinghy out?.....Yep, yep.

Something you'd forgotten about, was it?.....I – I – I think I might have – I think the police told me, they'd spoken to somebody who had helped get the dinghy out, and that's where we got our time from to – and I remember looking back.

You said that was at 2 o'clock?.....Yes.

But you didn't say, 'oh my God, I remember where I parked the car now'.....I remember – the image, looking back towards Marieville Esplanade, and I had forgotten about the young man with the dinghy.

Yes, but having been told, did you immediately tell the police, 'oh look, I've been wrong, I've been wrong, I remember now where I parked the car and where I left it that afternoon or evening when I left, and I walked home'.....Well, it didn't seem very important.

What, not important?.....It just didn't seem very important where I'd parked the car.

I see. So you had remembered it but you declined to tell the police about it?.....I – I declined to tell them about walking down that night.

Why?.....But I didn't think of telling them about the car.

No, you didn't want them to find out where the car had been parked, did you?.....It didn't matter.

Because someone might have seen you coming and going, mightn't they?.....I'm sure lots of people did.

They might have been able to say whether a car was parked to a certain time of the day?.....Well that would have been helpful at that time.

To the police?.....And to me.

Not to you.....Yes, to me.

If it was helpful, why didn't you tell them?.....Because I was still trying to piece together the events of that day and the next.

When are we talking about?.....26th and 27th.

No, when we're trying to piece these things together?.....Oh what – I think when I had – when Sam and – er Detective Sinnitt and Milazzo came to the house.

Mm. On that day which was the 5th of February, you gave a very detailed description, didn't you, of your activities at Bunnings where you – a detailed description of: 'you left Bob on board, you were going to stay, dinghy at the ladder at Royal Yacht Club tied up, walked to wagon, parked near toilet block five minutes'.....Mm, mm.

Now when was the wagon parked near the toilet block?.....That – yes, that's right. I thought it was.

No, no, when was it parked near the toilet block?.....Well, it's parked there all the time when we go out to the boat.

When was it parked near the toilet block last before the 26th of January?.....Um . It was parked there on the 26th of January.

Was it?.....In the morning, yes.

The morning.

Walked to wagon parked near toilet block, five minutes. Ladder 1615 car 1620, route to Bunnings Moonah via Brooker along Marieville to Sandy Bay. No trailer on, took it off earlier at lunch.

All these things were false memories or correct memories?.....The car was parked with the trailer on when we went down to get on the boat in the morning.

Mm.....And we'd done that several times just tied the dinghy up and gone off in the car again.

This is:

Left Bob onboard going to stay.

You've tied up the dinghy at the RAC – sorry, RYCT, and then you've walked to the wagon near the public toilet block. Now is that a false memory that you told police?.....That – that was a false memory.

A false memory?.....The car was –

When did you realise it was a false memory?.....It was after the interview with Mil – Detective Milazzo and –

After that day -.....After that –

- after the -..... – day, mm.

After the 5th of February?.....Mm, if that was the date.

Right. And you were a slow – you told how you were a slow driver and where you parked at the Brooker side car park, and what you were wearing, beige cargos, white joggers, maybe a large sunhat -.....Mm.

- folded back with a large brim. Was that a false memory about what you were wearing at Bunnings?.....What do you mean by fal – I wear that all the time, every day we're on the boat that's what I wear.

Turned right past the checkouts toward the paint –

…….Mm.

- went up and down the aisles, left into the timber section, slip mats, past the paints, should be on footage, out the same way.

…….Yes.

Yeah.

No headlights on to drive from Bunnings to home. Didn't stop anywhere on the way back from Bunnings.

…….Mm.

All a completely different day?…….Mm, all a completely different day.

But you thought it was true, did you?…….I did.

And – but after that – after that interview, do you say, on – when was it, the 4th of – the 5th of February, you thought and it wasn't true after all?…….I – I was won – I was seriously wondering, yes.

Yeah. How long did you wonder?…….Oh, up until the first interview.

And that was on the 5th March?…..4th March I think.

4th March, you're right, yes, 5th May was the one after that. So right up till then you'd only – well, no, hang on, so back then you were wondering and on the 5th March were you still wondering?…..On the 5th March I was – I wasn't certain but I was fairly certainly after Detective Conroy said, "Look we can't find you on video footage anywhere".

Mm, but before then you were still – you were uncertain is that right?…..Mm.

Being uncertain, 470 your Honour, you were asked, "So from the yacht club you went to Bunnings?", and you answered, "Yeah, yep, mm". "Do you remember which route?" "I don't". "Right". "I actually drove Sarah and I do remember feeling guilty about this because I thought if Bob's trying to ring me I'm not at home because he had my mobile you see"…….Yes, and – and he did have my –

No, no. You said, "I do remember feeling guilty about this"?.....Yes.

Yes, if Bob was trying to ring you?.....Yes, yes.

So was that a memory that you had, feeling guilty?....I was true but on the day that I did – well one of the days that I did go out to Bunnings.

Well what, you mean the day that the boat was left on the pontoon at the Royal yacht Club?.....Yeah, or it could have been –

But there would be phones in the yacht club wouldn't there if you wanted to ring him?.....Or it could have been the – no, he would – no, because he didn't have the dinghy on that day either.

No, he didn't need it.....And he didn't have the dinghy on the day I left him on the mooring and went out –

But when is it – when is it – you said to the police trying to investigate your partner's disappearance and murder, "I do remember feeling guilty about this because I thought if Bob's trying to ring me I'm not at home because he had my mobile".....Mm.

"So I thought well he wouldn't have one so I thought well I'll go out and come back, right, go out to Bunnings, mm". So here you are telling the police on the 5th – 4th March a distinct recollection of feeling guilty.....Mm, oh I did.

Oh, yes, while driving to Bunnings.....Mm, well – I – no, I – because I was going to be longer than I thought I would be.

When?.....When I went out before then.

Oh, because if Bob's trying to ring me I'm not at home -.....Mm.

- because he had my mobile?.....Mm, I'd left him on the mooring before though too.

Yeah, but no, I thought we'd identify the other part – the other time that you got confused with, this is the time that the electricians came and the yacht went up on the mooring?.....That was one occasion.

Well was there some other one now?.....There were –

Is that one getting too hard for you?……There were about six or seven.

Is that one getting too hard for you to keep track of?……No, not at all. I – if you told me that it was a week before that I would probably agree with you.

I am simply asking what you told me, Ms Neill-Fraser…….Mm.

Right. So do you say that this passage -

> *I do remember feeling guilty about this because I thought if Bob's trying to ring me I'm not at home, because he had my mobile.*

- related to some other time you'd left Bob on board, but not the time the electricians came when he was on the pontoon and could have simply walked into the yacht club and telephoned?……Mm, I was talking to the police as I remembered it.

Yes, so which memory was it that you were telling them?……I don't know.

You don't know?……No.

Right, well we can't get past that then, can we?……..I'm still trying.

Are you?……Mm.

It's like we can't get past what – when you say, 'Bob said this, Bob said that', Bob's not here, as you well know, don't you?……Mm.

And we can't contradict that…….No.

Went down the Brooker, didn't tell them which route you took, and the question was, 472:

> *Now the Bunnings, you're adamant that that's where you went. Are you sure you went to Bunnings that day? This is the only one point of contention is that we have looked at the footage, you said you told me, and we can't find you. You told me, you told me, you told me, he said.*

So you've already been told earlier by them and yet you're still saying on the 4th March you went to Bunnnings?……Yes, I think –

And you tried to colour that by talking about remembering feeling guilty about Bob being left without the mobile?……I – I think I was told a day before the interview for when they came out to the boat, I think they came out to the boat, the two detectives, and I think Detective Conroy told me then that they couldn't find me on the video camera, so it was the day before.

The day before. And in that interview you said:

> *Actually this sounds terrible but I'd been out there two days earlier and I'd looked for similar sort of stuff, and two or three days earlier.*

…….Mm.

So was that a considered answer?…….I probably should have said a few days earlier.

You said:

> *In that case I wasn't there for hours.*

But you never abandoned being there in that interview, did you?…….Mm – no, I didn't.

No……..And it wasn't until really thought about it afterwards that I realised.

Mm. So it was after that interview not after Detective Sinnitt came, it was after the interview of the 4th of March -…….Mm, it would –

- that you -…….- yes –

- that you thought about it?…….Yeah, but I – I –

And is it then that you had the idea that you'd looked over and oh, the car was parked over there?…….No, it was when they said – they reminded me about the young man who helped me get the dinghy out, I – I – at that point I remember thinking, oh that's right, I looked back and the car was over on Marieville Esplanade.

Right. And that's where it stayed all night apparently, until you walked back down twice and got it?…….I walked back down and then back to get the keys and yeah, walked down again.;

And that's where it stayed until then, whatever time that was?.....Mm, I did try to tell them, I think it was much later than the time they say they saw my car on camera – I think it was hours after that.

Oh, well they – now we're coming to the 5th of – the 5th of May.....Mm.

You'd already told Felicity Ogilvie that she wasn't to tell the police what – what it is that you'd said about going back down?.....I don't think did tell her not, I think I said, "It's off the record."

The same thing?.....Well –

So by the 5th of March, obviously you'd remembered well and truly where you'd parked the car that afternoon or evening, whenever it was, that you left the boat – hadn't you?.....No, no I parked there when I went down to the boat I'd – I – and I think they told me that would be about 1:30.

Mm. And that's where it stayed on your recollection.....And that's where it stayed, mm.

A recollection that you had – oh no, sorry, you didn't have that recollection at all because that was all mixed up in going to Bunnings, wasn't it?.....Mm, I'd---

You'd forgotten that you'd walked down?.....I knew that the car – no, no, I was still trying to piece it together.

Yes. Because you'd known all along apparently that you'd walked down after the call from King.....Yes.

You'd known that all along?.....Mm.

And so you'd known all along where the car was until such time as you got it.....I – mm, you see I thought I might have gone back from Bunnings, put the car back down there and then walked up.

Did you?.....I wasn't sure.

Weren't you?.....No.

Then on the 5th of March the jacket seems now to be admitted to be one that may well have been yours that was found or had been found?.....I don't know. It – it---

Size 12 (indistinct).....Oh we've got different jackets, varying sizes.

Yes, but you've never seen that one before you told police?.....I don't know what I said to police. I would have been probably thinking about Bob's---

No, I didn't ask you what you were probably thinking, just simply whether you agree that you told police you'd never seen it before in your life.....I don't think I did.

It wasn't challenged, was it, by Mr Gunson?.....I don't think – I don't know – I can't remember completely what I said. We were only shown it for a few seconds. I think they just held it up outside of the police car boot.

Yes.....And we looked at it.

Oh you do remember then?.....Mm, but vague. – and I think somebody said something about it being from the boat or not being from the boat or something.

Yes. So you remember all these things about it. Well do you remember what you said about it?.....I think---

Do you remember what you said about it?.....I think I just shook my head, I certainly don't –

You can remember that then?.....I wouldn't have said – well it's very unlike me to say 'I've never seen something before in my life' – it's just not something I'd say.

Anyway you denied all knowledge of it, all ownership of it, all familiarity with it – that would be the case, wouldn't it, because that was the point of showing it to you?.....Well I wasn't really sure.

That was the point of showing it to you?.....That was the point of?

Showing it to you, 'what can you say about this jacket?' – 'nothing, never seen it before'?.....I didn't recognise it as one of mine, no.

You didn't know you had your DNA on it, did you?.....It wouldn't have made any difference.

Yes it would, Ms Neill-Fraser, yes it would because then you would have another story about how it got there, wouldn't you?.....It's your words.

On the fence in Margaret Street. And so on the 5th of March when you were asked about the –

HIS HONOUR: The 4th of March – the 4th of March.

MR ELLIS SC: The 4th of March – thank you, your Honour. (Resuming): Oh 5th of May –

HIS HONOUR: 5th of May – righto.

WITNESS: The 5th of April.

MR ELLIS SC: We're both half wrong. (Resuming): On the 5th of May you were spoken to about the jacket and you were asked – at 571, your Honour:

You've got no idea how your jacket ended up on a fence in Margaret Street?

Answer:

No, none at all.

Question:

Is that where you parked your car?

Answer:

I can't remember. I think I parked it on Marieville Esplanade.

Question:

And not around the corner?

Answer:

I don't think so I can't honestly remember.

.....Mm.

Well you had honestly remembered, apparently, where you'd parked the car, it was in front of three – three houses you've identified in this Court?.....Mm –

And you knew that on the 5th – on the – in May?.....My memory was just looking back from the dinghy –

Memories are.....- when we were getting it out – yeah.

Yeah. So you remembered getting it out of the dinghy now, did you?.....Sorry?

You remember getting it out of the dinghy?.....Getting what out of the dinghy?

The jacket?.....No, I remember looking back from the dinghy when we were getting it out of the sand and seeing the car against Marieville Esplanade.

But surely by the 5th of May you've remembered more than that; you've got over the Bunnings' false memory and you'd known that rather than drive home you'd walked home and then later in the night you walked back again, and you walked back home again, and then you walked back again, you knew all those things?.....Mm, are you talking about the 5th of April?

No, the 5th of May – 5th May, video interview under caution.....Sorry, I thought that was April.

Well there we go, you've done it again, Ms Neill-Fraser, you've asked for more information -.....Sorry, no, I'm just –

- while you – while you thought up an answer.....I'm sorry, sorry. What was your question again?

My question was that on the 5th May you knew where you had parked, you knew that the Bunnings memory was some sort of a strange, false retrograde amnesia, so it had transferred memory that was wrong.....Well I wasn't absolutely sure. Look, I should say this now, I'm still not sure, all I can say is that we pieced it together, the police helped piece it together, from the timings and I could – could go from there. I still can't be certain that I did not go to Bunnings that day, but I don't think I did.

But you have demonstrated in this Court that you knew exactly where your car had been parked and where you walked to, having received a

call from Richard King and found as you got out your keys to get into it, oh, I've got the wrong ones, and walked back again?.....Mm, I didn't get that far down, I don't think, but anyway – the – yeah, sorry.

So what's this:

> *I – is that where you parked your car, 5th May?.....I can't remember, I think I parked it on Marieville Esplanade and not around the corner, I don't know – sorry, I don't think so, I can't honestly remember.*

.....Mm.

Well you could honestly remember, couldn't you?.....I was pretty sure that I parked it there, mm.

Where?.....Where I – when – when I looked back from the dinghy, where I saw it, mm.

Yeah, so you're pretty sure on the 5th May?.....Mm.

Well -.....Well I did say –

So it's not, 'I can't honestly remember', that's just a dishonest answer?.....I did say that I thought I'd parked it on Marieville Esplanade.

But never, never did you give the police the opportunity to find out exactly where you parked it so they could make enquiries until, to use Mr Gunson's phrase, the trail had gone cold?.....I don't think I was thinking about it.

When?.....I wasn't thinking of – it didn't occur to me that it was terribly important where I'd parked the car.

How you can be seen, how your story might be verified or not, when and where you left Marieville Esplanade that night and went home, what time you went back, you don't think those are important things?.....I think it's very important to know what time I walked down.

In the course of your interviews, you've not given the police much at all, have you? So many things you couldn't remember, when you left the boat in the afternoon, where the car was parked, couldn't remember, is that right?.....Are you asking me?

I'm asking you this. Is it right that in your interviews, including the one of the 5th of May, these things were claimed not to be remembered by you, where the car was parked.....I – it was on Marieville Esplanade I think. I think I told them that and---

I've just read you your answer, 'I can't be sure whether it was round the corner or not. I think it was Marieville Esplanade'.....Mm. I just think it was Marie---

In this Court you can be particular to within three houses.....Well it – no, it would have been on that block definitely.

What block?.....That block on Marieville Esplanade.

What, the one you pointed out to Mr Gunson?.....Yes.

Sure, sure, you knew that all along.....Well I thought I did.

You knew that all along. You just didn't tell the police. You just hid that from them.....No, I didn't hide it intentionally at all. I---

Why can you remember it in this trial but not then?.....Because I park there all the time.

What, one park's open for you all the time?.....No, I park in that area all the time.

Your partner doesn't disappear all the time and you're not interviewed by police all the time, are you? You couldn't remember. You told them which way you walked home, is that right?.....I don't – I do the walk all the time. I don't remember which way I went.

Couldn't remember when you took off the trailer?.....No, I can't remember.

You couldn't remember what time it was when you got home, could you?.....No, I thought I---

You couldn't remember what you did when you got home?.....No, I thought I left---

You said you couldn't remember whether or not you rang your daughter before or after the call from Mr King?.....Mm. The police helped with that.

Is that right?.....They – they actually told me when I'd rang.

You – you said you couldn't remember how long it was before you left following the call from Mr King?.....No.

You didn't say that?.....I – I – I probably did.

Oh thank you, that's what I'm asking you. You said you couldn't remember whether or not you went to bed and got up. You said – well do you agree?.....I don't know what I said.

You've had transcripts all this year, don't tell me you haven't read them?.....I've read them once through.

You said you couldn't remember whether you got up – whether you got in the kitchen and read a bit, didn't you?.....Mm, I – I did read in the kitchen.

You said you didn't remember whether you undressed for bed, didn't you?.....I can't remember what I said, I'm trying to remember what I did.

You said that you didn't know which way – you couldn't remember which way you walked down – didn't you?.....Well probably.

You said you didn't know where you were when you got the wrong keys out, didn't you?.....I think I was at – most of the way down.

You said you didn't know which way you walked back home?.....To get the keys?

Yes.....Or when I left the car there?

To get the keys?.....I would have walked the same way.

What way was that?.....I would have walked – well I – I – when I'm walking –

No, no, what way was that?.....Up Byron –

Oh -.....- and up Mole.

Right. Well you didn't tell the police that?.....I thought I had.

No. No, you said you couldn't remember which way you walked down?.....Mm, were they asking me about the –

There you go again?.....Oh – right – sorry.

You said you didn't know which way you walked back home or which way you then walked back down. You didn't know whether you got out of the car, having got in the car, and you didn't know which way you drove back and you didn't know what time it was when you drove back?.....I got – I got out of the car.

Mm. So many things you didn't know. And it seems that you knew a fair few of those things all along, right from day one, that you'd gone down, walked back down -.....I knew I'd walked back down.

- got the wrong keys, walked back -.....Mm.

- where you'd parked the car mm?.....I'm not sure what you're asking me.

You've known those things a long time why didn't you tell the police?.....I thought I had. I certainly knew that I'd walked down and I knew that I hadn't told the police but I still wasn't a hundred percent sure that – that I hadn't left the boat much earlier in the afternoon.

Now your story is – well I shouldn't say story, you say that you got a call from Mr King and that unnerved you but I think in this court you said you went to bed and you woke up with a start?.....Mm, I –

Did you say that?.....Oh, I can't remember what I said.

Why?.....I quite accept what you're telling me –

It's in the witness box, it's here in court.....Yes – no, I accept that but I don't remember saying it.

Well do you remember doing it, waking up with a start?.....I remembered – I remembered getting up off the bed but I think I'd lied – I think I lay down on the bed fully clothed.

You think you lay down. You don't recall saying you got up at this stage?.....I would have – I think I dozed off. I was reading and I think I would have dozed off and then just woken up.

Yeah, but that's not my question, it's what you can remember saying……I can't remember what I said.

Why, because you tell so many lies you can't keep track of them?……That's just silly. No, that's not true.

Well it is true isn't it?……No, it's not true.

Well we'll come back to these things. I want to ask you about buying Four Winds. Now you're a member of the Royal Yacht Club of Tasmania?……I am, yes.

How long have you been a member?……Do I dare say I can't remember. I can't remember.

So long you can't remember?……No, it's – my grandmother was a member and my mother so I didn't take out membership myself until probably, I don't know, a couple of years ago, something like that.

A couple of years ago?……Mm.

Okay. When you were really getting serious about getting another yacht, is that - …..Mm.

Is that it?……Mm.

Okay, so you're a third generation member of the Royal - …..Well I only joined because you get much cheaper berths.

If you're a third generation member apparently?……Well my – yeah.

Yeah?……Yep.

Must be a very special place to you?……It's handy for lunch.

Not when they're serving pies?……You don't go there for the food.

What do you go there for?……The view.

Yeah, what about the company?……The what?

What about the company?……Company. We go as a family normally.

Mhm…….Mm, and it's very good because my mother's not very mobile so it's a handy place to go.

Yes. You must have been there hundreds of times, wouldn't you?……Mm.

If not thousands, I suppose?……Oh I don't know.

But one thing's for sure, you've never seen any cameras there, have you?……No, but I haven't looked.

So – now the people down there don't all own yachts, I suppose?……No, no.

But those that do presumably are the envy of those that don't, otherwise they wouldn't join a yacht club?……You certainly don't have trouble getting –

MR GUNSON SC: The witness can't speak as to that, they –

MR ELLIS SC: No, that's right, I withdraw that. I withdraw that. (Resuming): Any one time if you're in a group of people some will own yachts and some won't, is that right?……That's right.

And it was your aim after the last two years at least – I'm sorry, two years before this, to be one of those who did own a yacht?……Yes, we were – we were seriously looking for two years, yes.

Yes. Your aim, let's just talk about you, okay. And you'd previously owned a yacht, Mr Chappell hadn't. You were the person who claimed some familiarity with sailing, quite some familiarity with sailing, he didn't?……Oh no, he certainly knew what he was doing.

Which wasn't very much when it came to sailing a yacht?……He sailed mine.

What, on his own?……Well I was down below, so

When, twenty years ago?……Oh Mr Ellis, um um um, mid nineties, fifteen years ago, sixteen, seventeen years ago.

Would it, is that how long since you'd had a yacht?……Yes, yes.

Right. Well your skills must have been rusty at the very least?…….Oh both of us were.

Well his – his even more so because he'd never owned one – never been his to sail?.....Well he fixed the motor on mine a number of times.

Oh look, I'm quite sure he's good on motors?.....He is.

Speaking of which – speaking of which, you've just reminded me, you say that on the 26th you found an oil leak with a special mirror?.....No, we – we'd found the oil leak before.

Right. .....Before that date.

Okay. .....And he wanted – he wanted to have a look to see exactly where it was coming from and how bad it was.

Right. And that's nothing to do with the blown – suspected blown head gasket, I take it?.....Yes, that's exactly what it was to do with.

Oh. You see, correct me if I'm wrong, but I understood that a blown head gasket doesn't leak oil, what happens is the coolant gets into the oil, the coolant that circulates around the head to keep it cool - .....Mm.

- when the gasket is blown gets into the oil itself and gives it a white'ish appearance?.....Yes, or globulars on the top of it. Yes, but you also can get oil leaks.

But not associated with blown head gaskets?.....Well it leaks out of the rocket cover. And in this case, it had blown where it had been blown when Jim fixed it, it had gone again, or looked like it – tiny tiny leak.

Yeah.....Taylor Brothers identified it as well.

Yeah, told you it was a possible blown head gasket?.....And said that they didn't like the look of it and that's – yes, yeah.

More expense?.....We had spoken to them about it and when it was coming up they were going to have a look and see what it involved.

Mm hm. A blown head gasket can be an awfully expensive thing, can't it?.....They actually spoke about – ah what did they talk about – they – they actually mentioned an amount and they said that it wasn't a big deal but this time they would take up the pilot house floor, which they thought perhaps should have been done originally when it was done.

Right. But surely they couldn't tell whether it was a big deal or not until they could tell that the head needed planning or not as a result of having a blown head gasket?.....They – we – they were going to look at that when it came up.

Okay. .....That was one of the things they were going to look at.

And that makes it a very much more expensive proposition should it turn out to be requiring planning -.....It would have been another –

- if it's buckled in the heat?.....It would have been another, I think – I think it was somewhere between six and seven thousand dollars to refix it.

Oh.....And I did discuss it with Jim McKennon.

Made him pay?.....Um, he wasn't very happy at all to hear that there was an oil leak.

As I say, an oil leak isn't a sign of a blown head gasket.....Sorry?

You'd agree that an oil leak isn't the sign of a blown head gasket.....Ah it can be.

You know---.....I believe.

---it can be the sign of a blown rocket cover. But anyway, it's not your area, it was Bob's.

So he was good on the engine side of it and you were good on the sailing side of it, is that right, or this is going back to the 28-footer.....Well I wouldn't say I was good, but I certainly could sail, yes.

And being a third generation sailor I presume that was a source of some pride to you?.....I wasn't a third generation sailor. A third generation member of the Yacht Club.

Right, a different thing.....A different thing entirely.

Okay. So you look high and low for a yacht you and he, you and Mr Chappell.....We did.

But you were looking in a particular range, aren't you, a price range of up to about a hundred and fifty thousand ($150,000).....Well, Bob said we could go---

A little higher.....---hr because it was going to be our shack, yes.

Only a little higher than a hundred and fifty though wasn't it? Only a little higher than a hundred and fifty wasn't it?.....What do you mean?

That he said you could go higher to?.....No, no. He actually – he actually said we could probably go,'cause we were each paying for half, we could go to more than that.

How much more?.....Oh I think – I think our top limit was two, two fifty, something like that.

Well there's a big difference in two hundred and two-fifty to a person who's paranoid about money as you said he was.....He used to be, much worse than he was, yes.

He always thought, you said to police, 'we didn't have enough money'.....Sorry?

He was always thinking 'we didn't have enough money'.....He worried about money, even buying some – even, yes, he worried about it, but then he'd suddenly spend it and be quite happy about it.

Oh. In fact, when you were friends with Mr Triffett you complained to him about Bob being stingy and drinking too much, didn't you?.....I think that was over the verandah. I think that was over the – Phillip was demolishing our back verandah and he – he um---

Yes, I just said, didn't you complain to Mr Triffett about him being stingy?.....I – think I would, yes, I would've said, oh you know, he – yes, I probably did.

And drinking too much?.....No, I don't think drinking too much.

A lot of people that you meet seem to drink too much?.....No, no.

Mr McKinnon, that's - Mr Stevenson drinks too much?.....Mr Stevenson, Pete certainly drank quite heavily when he – when it was available.

Someone that Mr Chappell fell out with at the Royal Hobart Hospital drank himself to death…….who?

Someone that Mr Chappell fell out with at the Royal Hobart Hospital, an oncologist, drank himself to death?……Oh yes, yes, McMillan, yes. Yes, well Bob told me that.

Yeah……But no reason to disbelieve it.

Anyway so you've got – you've got, I suggest, with Mr Chappell an agreement to go up to at most two hundred thousand?……How much?

Before you see – before you see this wonderful yacht, Four Winds, two hundred thousand?……We – we've – we looked at yachts, yes, but we looked at yachts ranging from eighty thousand to three hundred and fifty thousand, we looked, because sometimes – Mr Ellis, sometimes you can look at a yacht for half a million, offer them two hundred and fifty cash and they take it.

Yep…….You –

But only if you really, really want that yacht would you do that, wouldn't you?……Only if you really wanted it, yes.

And you really wanted this yacht?……It fitted. It fitted everything we – we wanted.

A tremendous yacht?……A beautiful yacht.

No doubt, no doubt. When you finally got it back here people no doubt complimented you on it, people from the yacht club?……Oh I don't think we went to the yacht club in the time that was –

But anyone who saw it and commented to you would have said what a lovely looking yacht it was?……Yes.

You were proud of it?……Oh we were.

You were?……Bob was too.

You were?……I was as well, yes.

Couldn't wait to get it back. Had to have it back by Christmas, didn't you?……We – we didn't have to have it back by Christmas, in fact we talked about leaving it in Sydney and then going back up.

Well it's the case, isn't it, that you were so keen to get it back by Christmas that you told Mr McKinnon that you wanted it and you wanted to come up and get it, and he said, 'No, it's not near ready, you don't know what you're doing'?.....Mr McKinnon – Jim –

Isn't that what he said?.....He said it on the second occasion I rang him to say we were coming up.

Yeah, but you told him, "No, we're coming up we know better, we know better than you, we're coming up, it's ready", but he said, "No, it's not ready", but you knew better?.....Mm. No, that's not accurate at all –

Well it's accurate as to what you said - .....I rang Jim – I rang Jim a week before we were going up and that's when the conversation that you've just mentioned took place and I'd rang him two weeks before that and told him the dates we were coming and he said, "It's fine, the exhaust will be done next week and it will be on", so it was a diametrically opposed conversation –

Was it?.....- the second one. He sound – and he said, you know, it's just – it won't be ready, it won't be ready, and – and we'd sent him quite a lot of money, quite a few thousand dollars, and had no paperwork at all so –

Right, okay. Well let's just go back a bit. So you see this yacht, you saw it in situ you didn't see it advertised, is that right, you just sort of came across it?.....No, no, we were – we called into most of the marinas on the way up the coast and we were on our way back and we were – we went internet cafes for accommodation wherever we were and we looked at boats in that area at the same time and we saw this boat, I think, on the internet and we rang Jeff Rowe's wife, Yvette, and she showed it to us.

Mm, so you saw a picture of it first?.....We saw, um, we saw the description on Yacht Harbour, one of the – it was one of the sites that you can on the internet and then we rang her to see if, you know, we could have a look.

Mm, love at first sight.....You couldn't see very much of it to be honest because it was under pretty heavy duty tarpaulins in Scarborough Marina.

Right.....Mm.

But it was everything you wanted it to be, or so you thought?.....Oh, we both – we both stood back and looked and thought there must be something wrong for the price.

And it turned out there was.....Well I don't think there was.

Okay.....We knew we'd have to do work on it, we knew –

But Mr Chappell this time – now tell me if this is right or wrong, before you'd seen that yacht two hundred thousand between you was his absolute maximum wasn't it?.....No, I don't think it was. I think it was a – it was a figure that we'd sort of – but I do remember him saying we could go – go a little bit more if we had to, because we were both paying half.

A little bit more?.....Mm.

But to a man who is mean with money, twenty five thousand dollars isn't a little bit, is it?.....Well Bob – Bob could be stingy about the very small items but about big items he usually – a new camera, he would buy the best.

Anyway, I think you've told us that you had agreed an upper limit of two hundred and fifty thousand -.....Yes.

- this – as the yacht of your dreams?.....Yes.

Right. And to a large extent you drove the process, didn't you -.....No I –

- you were the one -.....- I was –

- you were the one with the expertise?.....- I did, no I did, but then I sort of flagged a bit and Bob overtook me, he actually became –

Not when it came to chasing up the previous owners and seeing if -.....No, I did all that.

You did all that?.....Yes. He came back and went straight to work.

And your – and you'd seen other couples sailing yachts, just the two of them -.....We'd – we'd been on –

- and you were told that this is such a yacht, that the person who had owned it before had sailed it with his wife, no trouble?.....Yes.

Right. And of course, you were imagining then, you've told us, sort of grand sailing, grand sailing to the Galapagos Island on it, and all sort of things?.....Well that was an idea that we had in the future, mm.

Now – so you paid two hundred and three thousand -.....I think so, yes.

- for it, made up of twenty one thousand dollars deposit and ninety one thousand one hundred and sixty dollars from each of you – is that right – I'm going to put some figures to you, if you want to check them as we go?.....Yes, if you –

Do you want the calculator?.....No, no, no, I'll take your word for it, it sounds right, yeah, we just paid for half of everything.

Ah ha. The insurance cost nineteen hundred and eighty five dollars twenty six – is that right?.....I thought it was a bit over two but it – yeah, that sounds about right.

And this survey that you got from Australia Wide Boat Sales; that's – that's the broker, isn't it, you got the survey from the broker?.....No, we didn't. What happened was, I organised – Jeff told us about it and I rang Robbie Rheiner and the way that we had to do it, because Robbie didn't know us, I mean we could've got – received the survey and made off –

Mm.....- and not paid him, so the idea was that it was sent to Jeff Rowe and then we would fix Jeff up for the money –

Okay.....- and he would fix up the –

How much would your own survey have got – have cost?.....I can't remember, it would've been about a third more or a half more, but it was a valid survey at the time.

So that was four hundred dollars?.....For some reason a figure of fifteen hundred comes to mind, but I'm probably mistaken.

Might be selling yourself down a bit there. You paid, yourself – it all goes into the pot though, for a mechanical survey from Jim McKinnon for four hundred and five dollars, is that right?.....I think that was for the quote. Yes, and –

Might be one and the same thing.....Well what is it, a cheque or a –

It was paid by you, probably – possibly in cash, and reimbursed on the grand scheme of things?……Well I don't remember, Bob – Bob would pay or I would pay and then we would just, when we got round to it, fix each other up.

Okay. Now the payments to Jim McKinnon besides that, the first payment was sixteen hundred and fifty dollars?…….Mm, I think – I think we paid sixteen hundred and then about a thousand and then another three.

Oh no, we'll just – we'll take them as they come…….Right.

One payment of sixteen fifty, is that right?……What's the date on that?

The 14th September……..Well I'll take your word for it, I don't know, can't remember the amounts.

Okay. And a marina payment to Scarborough Harbour of five hundred and ninety five?……Is this from me or Bob?

This is from – from you?……Right. Yes, that would be right.

A mooring payment of sixteen hundred and twenty six dollars thirty five each to West Marine?……To who?

West Marine, 22nd October…….I don't remember that.

Another marina payment to Scarborough Harbour of five ninety five?……That's from me?

No…….Yes.

Another marina payment to Newport Waterways of five fifty-eight?……Yes, I think so.

Second payment to Jim McKinnon of three thousand from you?……..What's the date on that?

Tenth of November?……..Yes. Yes, I think that's the second – um, there should be another thousand there.

Mm, it's a bit more than that I think. There's another two thousand seven hundred and fifty each from you on the nineteenth of November, is that right?……..There should be a thousand between the sixteen hundred and the – there should be a thousand---

Just over near the ones I'm saying to you.....All right, yeah.

Two thou – what was that, third payment, did I say two seven fifty, two seven fifty each. Chris Geddies, you paid nineteen hundred and sixty?.....Probably.

Fourth payment to Jim McKinnon, nineteen hundred and twenty-five dollars ninety each, is that right?.....I don't know.

Payment to Chris Geddies, another payment of two thousand seven hundred and seventy – sorry – two thousand three hundred and seventy-three made by Bob?.....Mm.

Fifth and perhaps final payment to Jim McKinnon of five hundred and thirteen dollars forty-five each, does that sound right?.....I – I don't know. We just kept paying him as he asked for that.

But you kept totting it up, didn't you?.....Sorry?

You did keep totting it up to know where you were getting to?.....Oh, I think – I don't know that we actually kept records. We probably would have added it up at the end.

Fuel cleaning costs fourteen hundred dollars on the 9th of December that Bob had to pay in cash.....Hmm.

Then you bought filters at South Port for three hundred and sixty.....I remember doing that, yes.

Filters and washers at Hollis Marine in Port Macquarie for a hundred and five?.....Yes.

Fuel at South Port Yacht Club four seventy-nine fifty-three?.....I don't know who'd paid for that.

You, I suggest.....Right.

Fuel at Port Macquarie, six hundred and fifty-eight dollars sixteen paid by you, I suggest.....Mm. I'd have paid for all the rest on the way down.

Right, well let's just go through them. Six fifty-eight sixteen if you agree, fuel at Port Macquarie. Four hundred and seventeen fifty fuel at Sydney. Port Macquarie, radios and sheets paid for you at four

hundred and seventeen dollars fifty – stop me if anything sounds wrong?…….No, it all sounds right.

Yeah. Fuel from Eden, five hundred and fifty four dollars twenty?…….Mm.

Fuel from Bennetts at Triabunna, six hundred and seven dollars eighty three?…….Yeah.

Peter Stevenson delivery, three thousand from you, two thousand nine hundred from Bob?…….Mm.

You'd paid by the 28th of December, I take it – I suggest, one hundred and twenty three thousand eight hundred and seventy five dollars and fifty five cents, and Bob had paid, I suggest, one hundred and nineteen thousand five hundred and forty six dollars and eighty three cents?…….Could you repeat that?

Sure. Bob had paid -…….Right.

- one hundred and nineteen thousand five hundred and forty six dollars and eighty three cents……..Right.

And you had paid one hundred and twenty three thousand eight hundred and seventy five dollars fifty five for a grand total of twenty – sorry – two hundred and forty three thousand four hundred and twenty two dollars thirty eight, of which Bob still owed you, as at the 28th of December, two thousand one hundred and sixty four dollars thirty six?…….Mm, that includes the mechanical work, doesn't it?

Yep, some of it, not the one – not the stuff done in Hobart only – only the stuff to get it down on the – by the 28th of December?…….Mm, no that would be – that sounds right.

Okay. So if two fifty thousand was your upper limit, you were pretty close to it by the start of the year in 1909 – 2009?…….It was our upper limit for the purchase.

I suggest to you that you only got Mr Bob Chappell up to an upper limit of two fifty for a whole boat, perfect, ready to do what you thought it could do and your responsibility to get it there?…….I don't understand what you're asking.

What I mean is that you were expert about all this, it was all your baby, and you assured him 'we wouldn't be paying more than two

hundred and fifty thousand – anymore than that'?.....But that it isn't right at all.

Isn't it?.....No, no, no.

He was just happy to keep paying and paying and paying over a two hundred and fifty thousand dollar limit between the two of you?.....No, not at all. We discussed each thing as it came up and made a joint decision on what we'd have done, and – oh no, that's not – that's not accurate at all – we – we did it jointly.

And this was to get a yacht that the two of you could sail.....Um –

Not professional people two of you?.....Two of us with other people and family.

With other people and family.....We hoped that – well I knew my children and their husbands would sail with us and we hoped that Bob's children would sail too.

But little trip down to Bruny Island or something not out on the seas, not the Galapagos Islands surely?.....No, no, but we – you don't have any trouble getting crews, Mr Ellis, you don't –

Oh, you do when you don't like to pay for them, Ms Neill-Fraser, that's when they become hard to find I suggest?.....No, they're not hard to find. You only have to put a –

As long as you pay for them, people aren't going to do it for nothing.....No, no, no. People who want to sail, retired people.

But this was a boat – yacht, I'm sorry, that you and Mr Chappell could not manage on your own, you couldn't do the physical things associated with it. You couldn't winch up the main sail?.....We could have if the sheets were set right but the idea was that we redid the rig.

Yeah, but that didn't include the main sail?.....Well we – you don't have to necessarily put the main up, it sails beautifully on the Genoa and the mizzen.

So you have a yacht that could not be sailed with the mainsail but the two of you it can only be sailed with the Genoa and the mizzen?.....No, you – you – look we could have put up the main without too much trouble but you wouldn't do it in a blow.

You couldn't do it, full stop, I suggest, and that's been the evidence in this trial, you couldn't do it and you were stronger than Bob……I – well I wasn't stronger than Bob. It was actually the Genoa that I was having trouble with not the main.

Well Mr Stevenson said it was the main……Well, mm.

You couldn't get it up, you couldn't get that mainsail up yourself, blowing or not blowing, could you?……I actually put the main up on one occasion.

How much was the new rigging going to cost?……We were looking – I think we were looking about two and a half thousand to change it.

What, to change it to self-furling masts – self – furling sails?……No, no, no, no, no, to change – to get rid of the staysail arrangement and boom and put – put furling – no, you're looking at about five I think to do that.

No, you're looking at about forty I suggest, Ms Neill-Fraser……Well that's not what we were told.

Who by?……By people in Newport and people –

Who, tell me their names?……Oh sailors that came aboard.

Oh……We were talking to –

Which riggers and professional mast people did you speak to, any?……We spoke to one who came aboard. I'd gone up the mast to try and fix the spreader lights and I couldn't do it, I didn't have the right equipment, and so we got a rigger in, Andy somebody, and he lives in the marina and we were asking him – Bob was talking to him about that.

When was that?……That was just before we left Newport.

Mhm…….Mm.

And this is the idea, is it, to put self furling sails and four winches on the roof of the cabin?……Well that was one of the ideas, the other was to just put two winches on –

Yes…….- so that – and not put the main up at all –

Yeah…….- unless you – you know, unless the conditions were right.

Right……We'd have had a bigger look at it here and give us – give us proper advice.

Mm, but the fact is that the winches could not go on that cabin roof unless it was designed for winches and bearing a load of sails, and that one wasn't, isn't that the case?……Mm, well Peter Stevenson and David and I looked at it and they seemed to think that that would be quite a good – in fact they showed me how it would be done.

But you would still need an engineering report, wouldn't you, or it might just take the roof straight off?……Not the steel – not a steel roof like that, I wouldn't imagine for one minute.

You wouldn't imagine. How would you know?……I don't know, I was guided by them.

How much would replacing the mainsail and replacing it with a self furling mainsail be?……You would – I imagine – I don't know, I don't know.

It would be, I suggest -…….It'd be a lot. If you put – if you – are you talking about doing self furling boom or-

Yes……..- main mast?

Yes, certainly, to get rid of the dangerous boom that might knock kids over into the sea?……That's not the –

As well as – as well as older people?……That's not the – that's not the main, that's the –

No, I understand that's the front?……It's the sail for'ard of it.

Mhm…….Yeah. Not very much at all.

Really?……You could have in fact just taken the boom off and put a footed sail on it and it would have sailed.

Had you been able to raise it?……No, you're talking about the main.

Oh I'm sorry, yes…….Yes. No, you –

But we'll just go back to the main sail?……You have the main sail – yep.

Just go back to the mainsail?.....Yeah.

How much – did you get a quote for how much it would cost to change that to a self-furling sail -.....The mainsail?

Yeah.....No. No, Bob had a conversation with Andy about the – the one that worried us was the one that had the self-tracking boom.

Mm hm. .....For obvious reasons – grandchildren the primary – the primary concern.

Now as at the 26th of January you had a boat that the two of you couldn't sail together alone?.....Yes, we could.

I suggest you couldn't, not as a sailing boat?.....Mm, no we could, but we – but we probably wouldn't have.

It needed more mechanical work done to it – is that true?.....We – we thought so.

Which could have been anything, because you didn't know the extent of the blown gasket?.....We – we knew that it would cost around six or seven thousand.

And needed seven thousand dollars worth of electrical gear just to get it on a short trip?.....It needed – are you speaking about what we actually paid out already?

No, what you still had yet to pay?.....Well we had two options; we had one for about two and a half, I think, and one for seven.

Two and a half was just a patch up job to get you to the yacht club – sail to Port Davey, wasn't it?.....The two and a half would been fine for probably quite a long time.

Calm waters, you wouldn't want to rely on it any – any longer than that, would you?.....I wouldn't, no.

No.....But that was Bob's thing, he – he was the one that made the decisions about that sort of thing – I mean he knows about electrical work.

Well he's not an electrician, is he?.....Oh he's –

Or wasn't – I'm sorry?.....He's – he certainly knows – knows what he's doing and –

But he wouldn't – you've told police he wouldn't dream of doing the electrics?.....No, he wouldn't do it because he was working still and – but he was – I believe he was certainly very capable of doing it, but he wouldn't have done it.

A big difference, don't you realise, Ms Neill-Fraser between an electrical engineer and an electrician?.....And there's a difference between 240 – 240 volt electrician and a 12 volt electrician, I've since learned.

Yes.....So –

So there's two kinds of -.....So there's two kinds –

- that Mr Chappell wasn't -.....- and that's why Norton brought his friend's father aboard so – because he was – he was the other –

Mm. So anyway, you'd – you'd gone against Jim Mckinnon's quite vehement advice that the boat wasn't ready to take and you'd taken it nevertheless.....No, Jim Mckinnon told us the boat was fine, it was all good, all good, and then that was two weeks before we were due to fly up, and then a week or less before we were due to fly up I rang him again and I got this tirade so I rang Jeff Rowe. Jeff said that Jim's---

Okay. Jim Mckinnon gave you a tirade.....Mm.

When you spoke to the police you didn't mention the earlier call, did you?.....I can't remember what I told the police, but he – but the fact was that all that had happened, because I rang Jeff Rowe, was that he hadn't finished doing the exhaust and he was a bit worried about us coming up without having faulted on.

That's all? That's all, is that right? He said:

> *It'd only be quite right if you tell the police and take that back. Three to four weeks before we were going to go up, planning to go up so we could organize our delivery people he said 'yep, it's all good'. He gave me the timeframe and said the exhaust should be done next week. I rang him I think one Friday morning and he – or texted him and said, 'look, we're coming up on such and such a date' and the phone rang five minutes later and I got this absolute tirade, that we didn't know what we were doing and the boat would never be ready. It would*

take months to be ready, we couldn't take it, and I said, 'look we're coming up'.

So he said 'no, it's not ready'. You said 'we're coming up', is that right?.....Well, he'd told me just earlier that it was fine, so we booked.

The woman at the marina who's now deceased, Penny, told you it was a dog, you'd wasted your money, or told Mr Mckinnon at least that the boat was a dog, you're wasting your money.....Um, I think I rang – I rang Penny. I wanted to find out what had actually been said. I had formed the opinion that Jim was a very good mechanic but could be a bit prickly, and I wanted to hear what she had to say. And I just – well I agreed with Jim, we needed to move the boat.

Because she ran it down, that's what you said, she ran it down, She said you were stupid.....She did – she did.

Stupid to buy it.....No, she said that we were stupid not to put a new motor in. We were stupid to fix what was there and not put a new motor in.

Yes, so anyway, despite all this, you set off and Bob's on board and you're towed into Southport as the engine fails and that's the last he sees of it?.....Oh, could you repeat that, sorry.

You're towed in Southport - .....Yes.

- because the engine's failed on your first - .....Well, yes, the fuel lines were blocked, the inlet lines, mm.

And that's the last he sees of it until it turns up in Hobart - .....Yes.

- many many problems later.....Yes – well, yes, yes.

So he was of the view that "Susan, you have bought us a pup"?.....No, he wasn't. No, he wasn't.

"I'm not spending another dollar on this".....What?

He said he was not – he was increasingly agitated about spending more money on the pup that you had bought?.....No, that's not right, not right at all. He was – he was – he was delighted with the boat after we went to Adventure Bay to – because he steered it all the way back and he – and there was absolutely no sign when we arrived here

that, you know, we knew that we had various problems but they were all fixable and over a period of time.

And a lot of money.....It would have cost more money.

More money that he wasn't willing to put in.....Well he certainly didn't say that to me.

I suggest he did.....He did not.

And was getting increasingly –

MR GUNSON SC: With the greatest of – greatest of respect, your Honour, it's very difficult to understand where my friend obtains his instructions when he says, "I suggest he did", when clearly he could not have taken instructions from anybody to put that proposition. It's supposition on the part of the Director.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: It's a challenge to my brief, is it, I think. I don't need instructions from a dead client to put what is in this witness' interviews to police about the number of times he complained about the cost.

MR GUNSON SC: My objection was to the specific wording that he put to this witness as if it was verbatim from the deceased, that is the objection.

HIS HONOUR: Well Mr Ellis?

MR ELLIS SC: That's a characterization of a good many things that we'll go over in due course, whether it's appropriate here in cross-examination or not, it's the affect. If my learned friend is objecting to me using direct quotes for the person who is not here then it's a funny objection given the amount of evidence he's led of that very thing but –

HIS HONOUR: Well, no, it's – it's proper for Mr Ellis to cross-examine on the basis of – it's proper for Mr Ellis to reason in this way; that there is material in the interview to suggest that – that Mr Chappell was reluctant to spend much money on the boat. Mr Ellis can sug – is entitled to suggest to the witness that Mr Chappell did indicate unwillingness to spend more money on it, on the basis that that's hypothetical, and he's entitled to – to latitude in the way he puts questions. So he's entitled to put questions using forms of

words, as if he's quoting from a conversation, even though he can't possibly have any information as to words in fact said or even whether they were said. The questioning – the questioning is proper on the basis that the witness can be tested as to whether a certain line was taken by the deceased. Mr Ellis?

MR ELLIS SC: Thank you.

HIS HONOUR: I shouldn't even say deceased – the man who is allegedly deceased.

MR ELLIS SC: Yes.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: (Resuming): Well you've heard what's said there, Ms Neill-Fraser, he was sick of paying, wasn't he?.....No, that's not true. He did say to me when we were at Adventure Bay, he said – oh, we were having, we were struggling with the anchor winch motor, and he said, "Oh, I wonder how much more this is going to cost" or "I wonder what else is going to" – but I mean it was just a comment, it wasn't – I don't remember saying to the police at all that he – he was you know concerned about ongoing cost. I mean we'd done most of it, we'd – we'd already done most of the – the things. We'd had the hydraulics fixed –

> *It had gone through my mind that he might have been, you know, suicided, I thought he would have been – he was more upset than I thought he would have been, but then again –*

.....Oh, yes.

- *we'd just spent a fortune on the boat.*

.....Yes, well that's – then – yeah.

- *we suspected the head gasket was faulty again.*

.....Yes.

- *it was very understandable for him to be upset.*

.....The context you're talking about –

Thank you. Is that what you said – thank you, I didn't ask any other questions?.....Sorry.

Is that what you said?.....Oh look, I – yeah, I can't remember –

Oh well you were just about to give us the context of it -.....Sorry.

- but you can't remember saying it, so don't worry, Ms Neill-Fraser, don't worry. Don't worry, you don't recall saying it.....I'm sure I did.

Yes.....I'm sure I did.

Of course. Now you were the one in charge of the purchase, you drove it, you checked out – you checked out the previous owners - .....I did do that, yes, definitely.

- and you were assured, 'Oh this'll be great, we can sail around the Whitsundays on this, Bob, this'll be just the thing', but it wasn't. It wasn't great, was it?.....I – well I thought it was.

When you had – when you brought it down you had, you've told us, conversations, wide ranging conversations with Mr Stevenson and Mr Casson, is that right?.....We essentially sat in the pilot house and talked.

Yes, and it was very perceptive of Mr Stevenson to have written to you after the voyage that you'll be the envy of Hobart in this fine lady, wasn't it?.....Oh, it – yeah, well I'm sure he did do that.

Because that was a distillation of how you saw yourself, as the envy of Hobart in this fine vessel. That's where he got it from, from you, grand boat, the envy of the yacht club, heading down to Port Davey with all the other boats in the yacht club?.....Mr Ellis, I spend most of my time in the bilges on board my yachts. Other people steer them generally.

That's how you saw it, wasn't it, it had to be here by Christmas and then it had to be ready to go down to Port Davey in March?.....No, we hoped it would be though.

It had to be for you.....Not at all.

And it was humiliating for you that it wouldn't be?.....Well that's silly. No, that's not true at all.

Even after Mr Chappell disappeared you were speaking to Jeff Rowe about other people who might be able to go with you down to Port Davey on the Royal Yacht Club of Tasmania's big day?……I don't think so, I think –

Well I think he gave that evidence and it wasn't challenged, what do you say?……I don't remember saying anything to Jeff Rowe about that.

Well again -…….This was in a telephone call.

That's right. Not the one where you said that you'd separated from Bob and had sometime before, one after the boat had been sunk?……I – I rang – I rang Jeff –

That's – that's what you said, isn't it? Now, I'm not asking for you to go and recreate another conversation or anything I'm just pointing out to you, pointing out to you -…….Mm.

- that he gave that evidence in this Court, you sat here, you had your lawyers in front of you, and that wasn't challenged?…….Well what did – what am I supposed have to said?

Well I'll find it -…….I doubt very much I'd be thinking of going –

Just – just – no, there's no question at the moment, thank you. The 8th of January, do you recall – at 417, your Honour -

HIS HONOUR: Thank you.

MR ELLIS SC: (Resuming):

> *Do you recall speaking to Sue Neill-Fraser by telephone early in January 2009?……Yes.*

This is Jeff Rowe,

> *Do you recall the date?……The 8th of January was one occasion.*

> *Right. And as to that occasion, can you recall what was said?……Sue told me that she and Bob had separated.*

> *Yes. ……At which I expressed disappointment. She also – no, that was the main topic of conversation.*

Okay. Did she offer some reason for the separation or what might have been a reason?.....The comment I remember her making was that she was just tired of having to do everything.

How did she sound?.....A bit disappointed but she seemed to have herself together pretty well.

Did she mention any future plans?.....Oh yes, she was quite keen on taking the boat to Port Davey and participating in the Royal Tasmanian Yacht Club Biannual Tour of Tasmania.

Did you discuss how she would go about doing that?.....I'm just thinking whether it was that conversation I suggested a couple of people that might assist her – sorry – that might help or assist her handle the boat, yeah, on that trip?

Question:

And that was in the context that Mr Chappell wouldn't do so that she would be on her own with the boat?.....I think when I suggested a couple of other people that would have been later after the boat had sunk. I received a call from her after the boat had sunk.

Now that evidence of him – of you still being keen to go the Port Davey Royal Hobart Club and asking him, or him suggesting at least people to sail this grand boat was not challenged, was it?.....I don't think I spoke to Jeff Rowe about going to Port Davey.

That was not challenged, was it?.....I don't know.

A convenient point, your Honour, it's four?

HIS HONOUR: Yes, all right, the jury can make their affirmation and the Court will adjourn until ten o'clock tomorrow.

<JURY AFFIRMED OUT

<THE COURT ADJOURNED

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EXHIBIT #P79 – DIARY 1308

THE COURT RESUMED AT 10:00AM ON TUESDAY THE 12TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: Take a seat – in fact you can come back to the witness box and take a seat there. Just remain standing for a moment.

<SUSAN BLYTH NEILL-FRASER CALLED AND SWORN

HIS HONOUR: Take a seat now. Yes, Mr Ellis?

<XXN - MR ELLIS SC: (Resuming): Thank you, your Honour. Ms Neill-Fraser, you've told us in this trial that you and Mr Chappell had agreed to be married onboard the boat?.....No, we'd discussed it – we just talked about it, we have – it was just a vague plan, it was just a – you know an idea that we thought would be very nice.

For your twentieth anniversary?.....Mm.

When would that have fallen?.....It would have been, I think, this coming year.

Would it?.....Mm.

The ninth of what – 2012?.....2011.

2011?.....2011.

And what was that the anniversary of?.....It was the anniversary of us getting together seriously.

So there was a certain that you could take it to, or was it sometime all year?.....No, it was – it would have been September but we didn't discuss a date.

Right. It would have been September 20 – September 2011, which would have made it September 1991 you got together seriously – is that right?.....I think so, yes, that sounds right.

But you met in, you said, 1990 or 1991?.....We met in – I think we actually met in '89.

Right. Well you said in evidence, "I think we met in roughly 1990 or '89 – so that's at ski lodge?.....Yes.

So September – September, what happened in September?.....In – in 1991?

Yes.....I moved in with Bob.

Is that right? No earlier than that?.....No, I think he was coming up to the farm before that. I'm not quite sure about the dates.

No, you're not. You had been asked of course about your relationship with him by police during the course of many lengthy interviews?.....Yes.

And you never volunteered this discussion before this trial, did you?.....Yes, I think I did.

In the interviews?.....I'm not sure.

Well have a think, did you or didn't you?.....I don't know.

Why did you say you think you did? Why did you say on your oath that you thought you did?.....Because I'm – I'm fairly sure I did.

Right.....It's well over fourteen months ago, I can't – can't be sure.

But the discussion wasn't well over fourteen months ago when you spoke to police, was it?.....No, the discussion was – the discussion was when we got back from Queensland.

Mhm. So was there – what date, do you remember, soon after you got back?.....A week or two.

Week or two?.....Mm.

Two weeks would take you into this terrible row that went over dinner and all night?.....It wasn't a terrible row.

It went over dinner and all night?……I'm sorry?

It went over dinner and you say that when Jeff Rowe spoke to you and you said that you'd been separated that was the day that you'd had the row?……No, that's not correct. When I spoke to Jeff Rowe it was the morning after.

The morning after the row, is that right?……Yes. Oh I don't – I think I've probably used the wrong word. It wasn't a row, lively discussion would be more like it.

About what?……What, the row?

Mm…….Oh – it was – it ended up, we were talking –

No, what was it about?…….I think it started off about a physics issue and then we, Bob said that he wanted to spend much more time on the boat because he needed to become used to all the systems and then he said to me, 'well, look, you know, I feel you've had the trip down and I haven't' and, you know, that's basically what it was.

Was there something stopping him spending more time on the boat looking at the systems?……..Well, no, except that he was going to have to go back to work.

Mm. And is that the usual harangue that he had to do all these things and work at the same time?……Um, he—

Is that what you referred to as 'the usual harangue'?…….Yes. Yes, it was. Yes, he said – he said that he you know how hard it was to work full time and do all these other things.

Mm. And work on this boat that you had been so keen on and got him into and it needed more and more work…….That's not accurate at all.

And immediately before you leaving the boat on the 26th of January whenever that was he launched into the usual harangue about that, didn't he?……..Um, no, not so much. It was because you know he didn't want me walking in front of the laundry area.

Did he launch into the usual harangue?……..No, I think it was – it was about me walking backwards and forwards.

I see. So you wouldn't say the usual harangue?……..No. Look, it's too long ago now to be sure.

Well – but you've just given evidence of what it wasn't.....No. He said that he wanted – what he said was that---

No. What was the usual harangue?.....The usual hara – well, it wasn't a usual harangue, but he'd get a little bit snippety and he would say that it was very – when he didn't want to do something he would say that he – it was hard 'cause he had to work full-time.

Oh, I thought he was enjoying what he was doing?.....He was.

Oh, but he gave you the usual harangue?.....He said that he didn't want to – he didn't want to leave the boat because he wanted to bond with it, which was an unusual word for him.

He wanted to trace it through –

:

455, your Honour:

- so I got the usual harangue about how awful it was to work full time and have to do these things. And he's right, I understand, but I thought well I can't do anything because that's – because what I wanted to do was interfering with what he wanted to do, so I said, 'Well look I'll go back, call me when you want to come back' –

.....Mm.

So you got the usual – well you're familiar with that passage that I read to you?.....No, but I'm sure I said it.

That's what you told police on the 4th of March?.....I'm sure I did.

I'm sure you did too. So you got the usual harangue and that immediately preceded you leaving?.....No, I think I was there for a little – a little bit longer, another ten or fifteen minutes.

So you can remember that okay now?.....Well that –

That's not too long ago?.....That – I remember him saying that but I was walking in a laundry and I thought 'well I'm going to annoy him more'.

Oh right. You were using tools, were you?…….No, I wasn't.

There was an argument about getting to the tools?…….No.

That's what you told Mr Sinnitt, wasn't it?…….No, I don't think so.

was working on the washing machine which was in the way of the tools and they're my tools as well –

You told him……..(laughter)

On the 5th of February?…….Yes, I wasn't working on the washing machine I was taking paint tins out of it.

But you told Mr Sinnitt, didn't you - this wasn't put to him that this was in anyway incorrect –

I was working on the washing machine which was in the way of the tools and they are my tools as well.

…….Yes, I don't know why I said that, there's no – yeah.

And it seem that -…….I think I might –

Oh look, okay you don't know -…….Oh sorry –

- why you said it, apparently. It seems that of those tools you subsequently discovered that some were missing, you've told us in this trial?…….Yes, I think there are some missing.

That's right – well you asserted that –

MR GUNSON SC: Well the witness should be allowed –

WITNESS: Yes.

MR GUNSON SC: - to finish her answer before my learned friend interrupts.

WITNESS: Yes, but – I'm sorry.

HIS HONOUR: Well what were you starting to say, you think there are some tools missing – had you – is there more you were trying to say?

WITNESS: Yes.

HIS HONOUR: Yes, what else do you want to say?

WITNESS: Your Honour, I would like to say that I am very fairly certain they went missing at the Cleanlift.

MR ELLIS SC: Yeah. How do you know that?.....Because we lost quite a lot of other things out there too while the boat was there.

Did you? Did you tell police that?.....Oh I may or may not have. The boat wasn't locked for days so.

I suggest you didn't tell police that you'd been missing tools from out there.....I can't remember whether I did or not.

Including, you said, wrenches.....Yes, the set of wrenches.

That's right. Big wrenches?.....No, they were the little ones for working on the, you know, they come in a plastic wrapped up thing and they're for working on the small nuts on the motor.

Oh really, not big wrenches, no big wrenches missing?.....I think we – I think we had a set of Stillsons on board.

Oh, they're not missing?.....I don't think so.

No? Wrenches have been in your mind through this trial, haven't they? It was a wrench, wasn't it, or a similar sort of tool with which you struck Mr Chappell from behind and killed him.....Mr Ellis, I have never struck anybody, let alone somebody I loved dearly.

Loved dearly, and when you met him – when you met him on board for the first time in Hobart on the day before -.....When we arrived back, yes.

-when you came back.....Yes.

The evidence has been that he came towards you and you moved back.....I turned away to put – I think I was holding some clothes and I put them down.

Yes, when did that come to you Ms Neill-Fraser that you were holding some clothes?.....Well I was.

No. When did it come to you Ms Neill-Fraser that you were holding some clothes?.....I remember it from the time that he came back.

When did it come to you?.....What do you mean?

When did you first remember this, that you were holding some clothes in connection with your behaviour when he came on board?.....It's been in my mind all along.

I'd say you would have – so Mr Gunson would have known about it I take it?.....I don't know if I told him.

Well, you've known since before Christmas that Mr Stevenson would be saying in this trial that when you were reunited after your trip down and he came towards you and you stepped away and appeared to ignore him. You've known that since then, haven't you?.....Well, that's not an accurate statement.

Well, but you've known it.....But Mr Stevenson has told you no doubt what he thinks he saw, but that's not what happened.

But you've known that's been his statement for a long time?.....Yes.

Yes. But you've remembered that, 'Oh no, it wasn't like that, hang on, I was holding something, so couldn't return his hug'?.....I was, and we went down into the saloon.

When did you remember that?.....From the time that he got on board the boat.

You've always known it?.....That's what happened.

You've always known it and yet, apparently, you haven't told Mr Gunson about it, is that right?

HIS HONOUR: Well you –

MR ELLIS SC: You've got a choice to say –

HIS HONOUR: Yes, you don't have to answer questions about what you have or haven't told Mr Gunson if you'd prefer not to. Yes, what do you say?

ACCUSED: I don't remember if I've told Mr Gunson that.

MR ELLIS SC (Resuming): Well you would remember though that he didn't put anything of the kind to Mr Stevenson, wouldn't you, you were hear in this trial, nothing was said about it, that you were

holding something, let alone clothes.....A bag of clothes. I don't remember whether I spoke to Mr Gunson about it or not.

But you know that it wasn't put that that was the reason for what Mr Stevenson thought he saw?.....I can't remember the exact interview with –

That's not my question. In this trial you know, don't you, that that wasn't put as the explanation that Mr Stevenson gave evidence of what he saw?.....Are you asking me what Mr Stevenson said?

I'm asking you what Mr Stevenson said in this Court and how he was cross-examined by your counsel?.....I can't remember.

And – but you now remember too that you went below and had a hug?.....We went down into the pilot house, yes.

No one saw that, I take it?.....Well they were on the front of the deck.

Right.....The crew.

So no one saw it? We only have your word for it, is that right?.....Yes.

And Mr Stevenson said that during the time he was together with you two he saw no sign of affection?.....I can't help what Mr Stevenson says.

But you can help what he saw and it was not put to him that 'Oh yes, there were signs of affection', was it?.....We possibly wouldn't have shown overt – Bob and I possibly would not have shown overt affection in front of the crew.

Right. Nor – okay. Now you've talked about your income and your assets and liabilities, what was your taxable income for the year ending 30th June 2008?.....I have no idea.

Was there one? Is there a return or you – no, the answer's not over there.....I'm trying to find out whether there was, I don't know, Sarah has being doing it.

How much is your taxable income?.....I don't know. It's not very much.

Is it any?.....Mm.

Is it anything, is it taxable?.....Yes.

In which bracket?.....I think it's in – it's either eighteen or twenty three thousand.

Right. So your gross income of five hundred dollars a week is virtually your taxable income, is that right, there's no deductions?.....The five hundred a week from the rental properties you mean?

Yeah.....Ah, I'm sorry, could you repeat the question.

And so is your gross income your taxable income in effect, round about five hundred dollars a week?.....Yes.

Right. So there are no deductions?.....There are deductions.

How much are they?.....Oh, I can't be precise, insurance, rates, partially, things like that.

Yeah, all sorts of things - .....No, not all sorts of –

- to the point that you have virtually no taxable income, isn't that right?.....Ah –

HIS HONOUR: Look there are people in the back of the court shaking their heads. Do not prompt the witness or I'll have you thrown out.

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: (Resuming): Isn't that right, there's virtually no taxable income?.....No, it's taxable. I think it's about – I think I pay between three and five hundred dollars or eight hundred dollars in tax.

Per year?.....After –

After deduction - .....No, it might be more, it might be more, a bit more, but it's not – it's not very much.

No. And are they your sole sources of income?.....No, I have some money from –

Of income?.....- interest, yes.

And they add to your taxable income do they?.....Yes. Yes.

So what is your taxable income?.....You mean gross income?

No, you know what I mean, taxable income.....You mean my gross income?

No, I mean your net, taxable, what you pay tax on after the deductions?.....I think it's about twenty-five thousand.

Now you've told us about these break-ins to the boat. There was one in Queensland, is that right?.....No, I've never said the boat was broken into.

No. You have said that Mr Mckinnon called you and that he was frantic. That's an exaggeration, isn't it?.....It is an exaggeration. He was exceedingly upset though.

It was an exaggeration what you told to police about that.....It was a word which I used.

It was an exaggeration.....It was an exaggeration.

Thank you. Why did you exaggerate what you told to police?.....Because he was um very excited and mumbling and he was quite determined that somebody was watching him.

Yes, but why would you exaggerate what you're telling to police?.....Well, it's just – it's just a word.

Oh, it's all just words what you told police, police who were investigating the disappearance of Mr Chappell. So why did you blow it up to more than it was?.....I think 'frantic' would not be too much of an inflation.

Why did you blow it up more than it was?.....It's just a word I use.

Hmm. A word that you didn't use or a series of words that you didn't use were that before the boat left Queensland both Mr Rowe and Mr McKinnon had told you that the explanation of the panels being opened were that Mr Geddes had been on board.....That's actually not accurate at all.

What, that they didn't tell you that?.....Ah---

That they didn't tell you that?.....No, they didn't.

Well just hold it there.....That's not right.

They didn't tell you that?.....I told them.

You told them?.....Yes.

So when they said that they told you, each of them said that they told you and they weren't challenged by your Counsel, Mr Gunson, that was something that you in the witness box – I'm sorry – in the dock would have thought, 'oh that's wrong, they didn't tell me, I told them'.....I told Jim. We – we only discovered this because---

No.....Oh right, right.

No, I'm asking you, as you sat in the dock -.....Mm.

- and those – that evidence from those two men went unchallenged, did you think, 'Oh that's wrong, I told them'?.....Yes, I did.

You did?.....Yes.

Sat there in the dock and thought that?.....Yes, yes.

Right. After Mr McKinnon?.....Yes.

Yes, and after Mr Rowe?.....Yes.

And yet neither were challenged?.....I didn't think it was terribly important.

Nor did you tell the police that they told you that the movement of the panels was explained by Mr Geddes?.....That that's – they did not tell me. They probably think that now but they didn't, I told them, or I told Jim and I think he told Jeff.

You told them, well how did you know?.....Because when we got up there we had some trouble getting Jim to finish the work and so we decided to call Chris ourselves and he came on board and he seemed to know more about the electrics than – from somebody who I would've thought and I – you know –

And so did you say, 'Have you' -.....And he obviously knew where to look for things and I said, "Look, have you been on here before", and he said, "Yes, I have", and I said, "did you get on in Scarborough", and he said, "Yes, Jim already asked me about that", but that was the first that Bob and I knew that the – you know, it was the electrician and we thought then it was.

So you knew it, you had it from the horse's mouth?.....We did.

You did, you and Bob?.....But Jim had said his radio was missing, so that didn't add up.

Who said that?.....Jim McKinnon.

Did he, was that put to him in this trial?.....No, I don't think so.

No, I don't think it was, was it?.....No.

Do you follow the races? Do you follow – you like horses, do you follow the races at all?.....No. No, I don't.

You haven't heard the phrase 'riding to instructions'?.....Riding?

To instructions?.....No.

No, okay. The missing radio was never put to Mr McKinnon, I suggest?.....No, and –

And you had from Mr Geddes, now you tell us, from the horse's mouth that he had told you that he'd been there?.....He did and I put it to Jim.

Right, thank you, that's all I asked.

And in the police interview you didn't mention that, that Mr Geddes in fact had told you that the mysterious movement of the panels was down to him – did you?.....I –

Did you?.....They had just told me –

Did you – did you?.....No, I didn't.

Thank you. .....No.

Because you wanted to create the impression, did you – didn't you, that this was some unex – still unexplained mystery which linked up

to Mr Chappell's disappearance, even though you knew full -.....No, that –

- well there was no mystery about it at all?.....- is not accurate at all.

Now Ms Neill-Fraser, you were very keen, I suggest, to put to police and set them off in that direction, this theory of smugglers getting on who would have been on the yacht in Southport and then followed its progress down, I suppose, and broke into in Hobart to look for things?.....No, that – that's not accurate.

That's accurate that that's what you hoisted on police as a theory, isn't it?.....No, I –

You pressed that?.....I was asked about that repeatedly by the first young policeman I spoke to on the morning –

The first young policeman was Constable Etheringham?.....Well I don't know who it was.

Well I suggest it was, and you told him there'd been a break-in two or three days earlier, that was his evidence?.....Well I'm sorry, but I wouldn't have used the word "break-in" and I don't believe –

No doubt, you're sorry?.....- I did.

No doubt, but that was his evidence in this trial, wasn't it – wasn't it?.....I wouldn't have used that word.

That was his evidence, was it challenged?.....I don't know whether it was or not.

You don't know. And it was his evidence that you'd said that there'd been a break-in two or three days earlier, that is on the 27th of January?.....Mm, I don't agree to that, I don't believe I said that.

Was that challenged – was that challenged?.....I don't know.

You were here?.....I can't remember.

You were here?.....Yes, I can't remember everything that was said.

You sit there and 'say, oh no, it wasn't two or three days I wouldn't have said that' – you sit there in the dock – Mr Gunson's got that

wrong, you should have challenged that?…….I don't – I don't agree, I don't agree with that.

Two or three days then. Then when you gave an interview later on the 27th you said that this alleged break-in in Hobart was some thirteen days prior, which would put it at the 14th?……I've never said the boat was broken into.

Entered then. The boat was entered some thirteen days previously……..Mm, yes.

Which put it at the fourteenth……Well, whenever it was, yes.

Well, no, whatever you said we're looking at. Do you agree that that's what you said?……..Well I can't remember.

You can't remember?……..No.

Do you agree that the statement that was taken by Constable Stockdale and signed by you on the 27th of January said:

> *I would also like to add that approximately thirteen days ago Robert and I went to the yacht and discovered someone had been on it that shouldn't have.*

…….I don't remember saying it but I probably did.

Right, 'thirteen days ago'. And then later it became the tenth……I think – I think I checked in my diary.

Checked in your diary?……..Well I would have written it down.

Had you?……..I think I did. I can't be sure.

You think -……..I wouldn't be definite about the date unless it was there though.

Well you'd be definite though that it wasn't two or three days earlier, wouldn't you, on the 27th if it was indeed the tenth……Mm. It – I'm not – I mean, I'm doing the best I can. I don't know. I can't remember what I said, but whenever it was written down it would have been that day.

All right. Would you like that to be produced in this trial? Ask Mr Gunson's advice if you like and I will tender it……..Advice about what?

About whether you want me to tender the diary, your diary in 2009. Ask him. Do you want it, and if you wish to ask Mr Gunson about it, by all means.

HIS HONOUR: Well the question is, would you like a short adjournment so that you can have a conversation with Mr Gunson about that proposition?

MR GUNSON SC: Do you propose to tender it?

MR ELLIS SC: Yes, I'll tender it - okay.

MR GUNSON SC: I'd like to speak to my client.

HIS HONOUR: All right. Ladies and gentlemen, I'll ask you to go to the jury room while this happens. I'll retire.

<THE JURY RETIRED

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION:

HIS HONOUR: Yes, Mr Ellis?

MR ELLIS SC: Thank you. (Resuming): Now you'll have the diary in a minute, Ms Neill-Fraser, after you've taken advice, so what's your diary have first please, do you enter it up of a night or - ……I'm sorry, I can't hear you.

What does your diary have at this year – sorry, in 2009, did you enter the diary up each night or - ……Usually, yes, at the end of the day.

At the end of the day?……Mm, and I would put – if I had appointments or something often they'd be, you know, in advance.

Yeah. And – so the day you discovered the boat had been broken into you made an entry that evening?……No idea.

Well that's your usual habit?……It is my usual habit, yes.

So this would be the day that's written there?……If it is written in there that would be the day.

Is that the diary?……Yeah, it – ah –

2009?……I'll just – yes, just give me a second. I gave the police a diary and then they took another one the same year so I just want to make sure this one's – look, I think this is the one.

Well it says 2009 - ……Yes, it does but you see I gave the police my 2009 diary and they took that away but then they came and took away the one that I'd –

The one that you'd started again?……Yes, but I think I wrote in the same things again to try and – so that I knew what I'd being doing, from the 26th on so – but this one stops – this one stops at the right time for the first one so that's –

Yeah, so that's the original diary in which - …..That's the original diary.

And if you turn to the 10th January is that the date that you wrote in that you'd discovered the boat had been entered?……Yes. Yeah, that's it.

That's it. And there are two entries concerning the boat on that day aren't there – one about the break-in and one more mundane?……Well there's three, yeah.

Why is the entry about the so-called break-in in different pen than the other entry?……It's not, it's –

Well that'll be a matter for the jury then. I suggest to you that in order to furnish corroboration, self corroboration of your false claim of a break-in and therefore smugglers being involved you went back and put in the entry about the break-in on the 10th -…….Mr Ellis –

- above an entry that had already been made?……Mr Ellis, there is different pen on almost every page.

But not on the 10th, there are two different pens on the 10th -……..Yes, but –

- for entries about the boat?……Yes, but on most of the other pages there are two different pens and colours too.

Well that'll be a matter for the jury. I tender that.

EXHIBIT #P79 – DIARY – TAKEN IN

HIS HONOUR: Can I see that, please, when it's marked. The entry for the 10th January reads:

> *Bob and I out to fix mizzen. Boat has been accessed, electrical panel unscrewed, floor hatches lifted, water pumps and valve covers taken up !!! = get in sniffer dogs! Took sail off for repair. Might (something) main (something) later. Tied down sail with (something).*

I'll leave it to others if they want to have more thorough explanation of what's written there. Yes, Mr Ellis.

MR ELLIS SC (Resuming): Yes. The entry about the break-in – I'm sorry, entry about the – your boat being accessed and sniffer dogs, it was all done ex post facto, wasn't it, -……I've written -

- by you and squeezed in?……I've written other things straight after it.

And – no, just answer my question; it was all done -…….No –

- to use -.....- of course not.

- by you a different time, in order to produce it to the police, in order to put them off on another false trail? We apparently only have your word for it that the illegal access was discovered –.....Mm.

- is that right?.....Mm, yes, that's right now.

That's right now. It wasn't told to anyone else at the time?.....No.

No. And sniffer dogs were to come, so it was all connected to the – well something that sniffer dogs would sniff, I suppose?.....We had actually discussed earlier.

Did I ask you that?.....No – sorry.

And now – well – and you say – you've said, don't you, that you'd discussed getting sniffer dogs and Bob was opposed to that because Hobart's a small place and there would be gossip, and you agreed with him on that?.....No, Bob wanted –

That isn't what you said?.....Bob wanted –

No, that isn't what you said?.....Bob wanted –

No, is that what you've said?.....I can't remember what I said.

Well I'll try to help you? In your interview of the 5th of March you – you said:

> *He said he was worried about the fact that if we mentioned it to anybody they would think that they we've bought a bad boat. He particularly didn't want his children to know because they would tell Yvonne and Peter and given that Hobart – given the gossip, I'm inclined to agree with his feelings and I supported them so.*

.....Yes.

Right. So given Hobart, and given the gossip also thought the sniffer dogs should not be brought in?.....No, that's not correct.

But that's what you said, isn't it – on the 5th of May –

MR GUNSON SC: 4th of March.

MR ELLIS SC: (Resuming): 4th of May no, 5th of May?.....Well what I said wasn't accurate in that case because we both –

Oh, okay, thank you – that wasn't accurate. So that's another thing that you've told police that wasn't accurate?.....No, that – look – look –

Okay. .....- if I could finish, just finish what I was going to say? We decided not to say anything to anybody but we decided we would get sniffer dogs in once the boat came up on the hard.

Yes, quite inconsistent, isn't it?.....Sorry?

Quite inconsistent to say that you wouldn't do it because there'd be gossip in Hobart and yet you take it to – you say now that you planned to take it to a slip and in full view of everyone there get sniffer dogs onto the boat.....Um, there's no inconsistency there.

And who did you call at the Drug Squad again about the sniffer dogs?.....I didn't call anybody at the Drug Squad. I called the main number that you get out of the phone book here and spoke to somebody.

And who was privy to your discussions about sniffer dogs, only Bob?.....Oh, um---

Because no-one else was to be told, is that right?.....I honestly can't remember if I told anyone else.

No-one else was told about the unlawful access to your boat.....Nobody was told about that, no.

Nobody was told about that. Don't you think that you owed it to other boat owners and fellow club members at Royal to tell them that there's a thief about?.....Ah, there wasn't because we hadn't lost anything. Nothing was missing and we thought well it's probably just kids, you know, that have got on board.

Well, wouldn't you think to tell your fellow club members at Royal that kids have been accessing a boat that's out on the moorings – 'keep an eye out for these little buggers, you're not safe.'.....Mm, well we didn't think of that because---

Why not? Never mind 'we'. What about you?.....Ah, ah, I can't remember exactly what I thought. I didn't think it was terribly important at the time.

Well did it even happen?.....It did certainly happen.

Did it even happen Ms Neill-Fraser?.....It did certainly happen.

And - but no-one was told. But no-one was told.....Nobody else was told.

Until the 27th of January when it was one of the very things you were feeding into police: 'two break-ins, unexplained, very suspicious---'.....Yes, that's just not –

'- get the sniffer dogs, look out, drug smugglers come down the Derwent, they're the killers'.....That isn't accurate at all.

That's the impression you were trying to create, wasn't it?.....No, it wasn't.

You've told us about this dinghy, the dinghy, the tender - .....The tender.

The tender, so I shouldn't call it a dinghy?.....It's a dinghy, tender, whatever.

And you say that Mr Chappell was very reluctant to use it to get in and off the boat from, is that right?.....No, that's not correct.

Okay. Let me just find what was correct as to what you've said, 356, your Honour. This is, Ms Neill-Fraser, from a statutory declaration that you solemnly and sincerely declared on the 28th January 2009 - .....That's two days after Bob went missing isn't it, yes.

That's right, 28th January.....Yes, yes.

> *When I left Bob on the vessel I took the tender dinghy, this was usual practice. Bob did not like to have to get in and out of the dinghy unless totally necessary. It was usual practice for me to take the dinghy. It was simply Bob's preference that this be done. It's safer for me to take the dinghy than for him to operate by himself and try to get aboard the bigger boat. Bob was not nimble about the boat or the tender dinghy.*

Do you remember all that?.....No, I don't.

What, the police made it up?.....I don't – I don't remember saying that. I just don't remember saying that.

I'll read it to you again and see if you remember.

> *When I left Bob on the vessel I took the tender dinghy, this was usual practice. Bob did not like to have to get in and out of the dinghy unless totally necessary. It was usual practice for me to take the dinghy. It was simply Bob's –*

And there's words crossed out on my typed copy that have been initially by you –

> *I always – I also used to drive it most of the time.*

So you're reading through this, I'd suggest carefully, you look –

> *Oh, no, that's not right. Cross out I used to drive it most of the time but leave the rest.*

Isn't that what happened?.....Does it say there anywhere –

There you go, asking for more information.....Well I don't – I don't remember saying that –

I'm just reading to you –

MR GUNSON SC: That's a comment.

ACCUSED: - but if that – if it was very windy or there was a chop that – that would've been accurate.

MR ELLIS SC: No, it didn't say that at all, I'll read it to you again:

> *Bob did not like to have to get in and out of the dinghy unless totally necessary. It was usual practice for me to take the dinghy (crossed out). I used to drive it most of the time. It was simply Bob's preference that this is the way it was done. Bob was not terribly nimble about the boat or the tender dinghy. It was actually safer for me to take the dinghy than for him to operate it by himself and try to get aboard the bigger boat.*

Now is that contained in a statutory declaration, not only signed but that paragraph corrected by you on the 28th January?……That – that's – it must be.

Thank you. And yet – well tell me, on the 6th January – on the 6th January was it totally necessary that Mr Chappell take the dinghy while you remained on board, was that totally necessary that day?……On the 6th?

6th January……..I've no idea what we were doing on the 6th January.

No? Can you think why it would be totally necessary that day for Mr Chappell to stay – sorry, to take the dinghy?……I don't understand your question.

Okay, my question is that that's the day that Mr Makepeace came on board, having been taken on board by Mr Chappell, who picked him up in the dinghy and took him back to the boat where you were?……Yes.

Does that help?……It does, thank you. The – if it was calm Bob drove the dinghy most of the time, all the time in fact, unless you know there was a reason for me to go ashore, and –

So -……..- it was calm on that day, but if it was rough and I had to go ashore rather than Bob take me to shore and then go back, which is normal practice with yachts, -

Yes…….- I would take the dinghy.

Very normal practice with yachts, isn't it?……It is.

Safe practice?……It's – well –

It's appalling to leave someone on board without a dinghy, isn't it?……Well I don't agree in all circumstances.

What, the circumstances where that person's already dead?……Sorry?

In the circumstance where that person's already dead?……Oh I see. Well Bob was very hale and hearty when I saw him last.

Mm. And he was pretty nimble, it seems according to you, when he got up on that top rail of the boat while it was at sea and worked on a screwdriver on a little light?

MR GUNSON SC: That's not the evidence, your Honour.

WITNESS: No he – we were – we were –

HIS HONOUR: No, just a minute, don't answer the question yet.

MR GUNSON SC: To answer the question in that form that evidence was given about Southport when the boat was at a marina in Southport not at sea.

WITNESS: Mm.

MR ELLIS SC: Oh, I see.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: I'll just check that, your Honour.

HIS HONOUR: Can I have volume 2 of the transcript?

MR ELLIS SC: It's probably right.

HIS HONOUR: No, it's volume 3, isn't it?

MR ELLIS SC: It's – I've got it as all ones – one thousand one hundred and eleven. And I don't see it there. Perhaps by some implication –

HIS HONOUR: Now the evidence about the work done above the dinghy was given during this witness' evidence in chief, wasn't it?

MR ELLIS SC: Yes, your Honour – it starts at 1110 –

MR GUNSON SC: I think you'll find it at 1109, your Honour.

MR ELLIS SC: Oh I see, well that's the indication – yes.

HIS HONOUR: All right, so are you withdrawing your last question and asking a new one, is that what's happening?

MR ELLIS SC: Yes, I'll ask a new one.

HIS HONOUR: Yes, all right, go on.

MR ELLIS SC: (Resuming): At Southport, you have said that Mr Chappell worked on the solar panel and –.....It was the marina –

No, no, just - .....Sorry.

- wait, this is a question. Worked on the solar panel under the back boom, the mizzen boom – is that right?.....It wasn't the solar panel.

Oh – well worked on the light?.....It was the tower – yes, it was the light.

The rear light on the boat -.....Yes.

- that's under the solar panel?.....It's attached –

Is that right?.....- to the bracket, yes.

Yeah, yeah, and that involved him getting up on the top rail and leaning over and trying to work on it with a screw driver as seen by you.....A pair of pliers and screwdriver, yes. Yes, that's right.

Two things in his hand.....No. One in one hand holding the rail, and the other one trying to work the.

That's pretty nimble isn't it?.....Mm.

Like tarzan. Did you say, 'Bob, come down, you can't possibly do that'?.....He came down very swiftly.

What, did he fall down?.....No.

No.....Stepped down.

Did you help him?.....No.

Didn't need to, did you?.....No.

And Mr Goodfellow is another person who was taken out to the yacht by Mr Chappell in the dinghy, that's right?.....Yes, yes.

And indeed the photos that we have show Mr Chappell with members of your family, I think. He's obviously gone out there. Do you know what day that was taken?.....No, I don't.

He's left the boat. Well this is a family day. You only had a couple, didn't you, on the boat? Go to photograph P15 on CD6 Mr Stevenson number 16 please.

HIS HONOUR: That's the smaller folder Tab 8.

Do you see 16 there Ms Neill-Fraser?.....I do, yes.

Do you see 17. Do you see 17?.....Yes.

Right. Someone's actually driving the dinghy at that point and Mr Chappell's looking ready to tie it up, is that right?.....Ah he's holding onto the washboard so the children can get out.

Yeah, in 16 he's at the front of the dinghy getting ready to tie it up, is that right?.....Ah no, he's getting ready to grab the washboard.

He's got the painter in his and.....Yes, he'd flung it up to either me or somebody else who was already on board.

All right. Where are you when this was taken?.....On board.

On board?.....Yes.

And so did he – did you get out on board the dinghy?.....Did I get out onboard the dinghy?

Yeah, did you go out – or did you – how did you get out to the boat?.....I went out on the dinghy.

Right. And did Mr Chappell come out with you?.....He did, he drove it.

Right. And then he drove it back to pick up your family members?.....Yes.

And then he came back again?.....Yes.

So what was totally necessary that day about you being – about him taking the dinghy – what was totally necessary?.....When I was speaking –

What was totally necessary that day -.....There was nothing totally necessary.

Nothing totally necessary?.....No.

So when you told police that you – he would only take it when it was totally necessary, that wasn't true, was it?.....Yes, it was, we were talking about rough conditions.

No rough conditions were mentioned, I suggest, Ms Neill-Fraser?.....Well I can't help that, that's what we were speaking about that.

Were – so now you remember it – a minute ago you couldn't even remember the statutory declaration, but now you can remember saying that?.....No, I don't remember saying it.

Well you remember you were talking about rough conditions?.....No, but that –

Well that's what you've just said, Ms Neill-Fraser?.....Oh – right.

You say the first thing that comes into your mind, don't you?.....I think – I think that it's quite clear from the photograph 16 that the conditions are not rough. There would be no photographs –

Thank you. .....- of Bob driving the dinghy in rough conditions.

No. Any of you – any of you driving it in rough conditions?.....No.

No. All right. Thank you. Now speaking of the dinghy, you heard Mr Liaubon describe it as the light grey dinghy -.....I –

- in this trial?.....- don't remember how he described it.

Well you were here when he did?.....Well I'm sure he did, I just can't remember him saying that.

And you had , before I recalled him, I suggest you'd had Mr Balding's statement since before Christmas that it was a grey dinghy, which was found washed up on the morning of the 27th?.....I would not notice his descriptions.

No?.....I would be – oh yeah.

And indeed, there was – it's fair to say, isn't it, that there was no excitement about the description that the dinghy is grey or any of the other colours on it until Mr Conde from the tax office with his firm opinions came here?.....It was the first time that I had heard the dinghy described as grey.

Oh, what about as large?.....I hadn't heard it described as large.

Hadn't you? Would you have described it as a large?.....No, it's not a large dinghy.

Not a large dinghy but you were looking for a smaller one.....We were.

And - .....It's an awkward dinghy.

No, please - .....Sorry.

Did I ask about its awkwardness?.....No.

Okay. You were looking for a smaller one, something under 10 feet.....No, we were looking for one –

That's what you said in your evidence.....No, 10 feet – 10 feet we were looking at; we looked at several.

Well you knew therefore when Mr Conde described the dinghy that he saw as between 10 and 12 feet that his idea of a large dinghy wasn't necessary one shared by you?.....I didn't think about it.

Didn't think about it?.....No.

And you knew didn't you that when he was shown photographs of your dinghy and said, "That dinghy is about 8 or 9 feet", you knew, didn't you, that he was quite wrong in his ability to estimate the length of dinghies?.....I'm not sure how long our dinghy is.

That's not my question.....Well I don't know if he was inaccurate.

But you would have known that, you knew that your dinghy was longer than 10 feet because you were looking for something smaller?.....Mm, we – we were looking for something narrower, much narrower, and lighter.

By crikey, narrower, is that what you said in evidence?

The dinghy that had come with the boat was probably too heavy, we could manage it, but it really belonged up on the davits on the yachts and we wanted something like a, you know, maybe a 10 foot light little dinghy that we could manage off and on the trailer.

.....Mm.

A 10 foot little dinghy. And you knew, didn't you, the length of your dinghy, you've got people that are fascinated with lengths, you didn't know the length of your dinghy?.....No, I didn't.

'What's that dinghy on your boat, Sue? Oh that's eleven and a half foot or three and a half metres.' You wouldn't be able to answer that?.....I would have – if I had to answer I would say it was twelve feet, something like that.

Twelve feet, okay. And so you knew that when Mr Conde asserted that the dinghy he saw was a large one, ten to twelve foot long, that's the description that in fact fitted your dinghy.....(indistinct words) Oh, I didn't---

So were you disappointed in your Counsel when police officers were lambasted for not chasing after a dinghy in conformance with Mr Conde's description?.....Not at all. I –

Thank you. Did you know that when Conde said that, he was wrong?.....Wrong about?

That he was in fact describing the length of your dinghy.....Ah I did notice the colour that he said was grey.

What about the size?.....Didn't even hear him say it.

Didn't hear him say that.....Didn't notice.

Right.....No. But I did hear the – he said---

It will look greyer on an overcast day, won't it, those highlights of grey in the blue will wash over, and on a dark overcast day like the afternoon of the 26th of January it will take on the colour of the water and the sky.....Well, I don't agree, but I've never really thought about it.

He did say it was not new, it looked scuffed.....What was scuffed?

The dinghy that he saw, it was not new, it looked scuffed.....Right.

And that was the case with yours too, wasn't it?.....Our dinghy?

Yeah.....No, it looks fairly new.

But it wasn't new?.....Not brand new, no.

No…….I think it's a year old.

Oh it's longer than that now, isn't it? You didn't buy it. It came with the boat, didn't it?……..It came with the boat, yes.

So how old was it?……..I think it was about a year when we bought it.

What made you think that, that it was bought for the boat while the boat was up on – at the marina for sale for one and a half years?……..Yes, I think it was.

What made you think that?……..I think um – I'm pretty sure Jeff told me that Steve and Geraldine bought a dinghy to go out on Morecambe Bay.

In the marina for sale?……..Ah I think that when they put it on for sale---

You are just making this up, Ms Neill-Fraser, as you go along, aren't you?……..No, not at all.

Thank you. On the morning of the 26th January you and Mr Chappell went down to the boat?……We did.

And on the way – and there were only the two of you, -……Yeah.

- Mrs Sanchez was still back at home?……Yep, that – yeah.

Not due to go until four o'clock, although you picked her up for lunch and took her back and dropped her again, is that right?……That's right.

And of course Mr Chappell, at the time you last saw Mrs Sanchez, hadn't decided, as I understand your evidence, to stay on the boat all night?……Not definitely, but he'd talked about it.

To her?……I don't know.

No. Anyway, the morning you are down around Marieville Esplanade?……mm.

And he had overfilled the outboard motor on the dinghy?……Well the – yes, yes.

And he was not with any other female at that stage, was he?……Well no.

No, and so when Mrs Zochling, his patient, or thought she was his patient, saw him and another woman, they seemed to be arguing, that would most likely be you berating him about overfilling the dinghy, wouldn't – overfilling the motor, wouldn't it?

MR GUNSON SC: With the greatest of respect, Mrs Zochling's evidence related to seeing a couple in an area nowhere near the dinghy, with respect, your Honour, as I recall her evidence, or did she get to the dinghy?

HIS HONOUR: Well she said more than that she saw a couple, the couple consisted of Mr Chappell and a woman and she described – but what – if there is anything wrong with the question it's got to do with the fact that it invites the witness to assess probabilities. Mr Ellis, what do you say?

MR ELLIS SC: I hadn't thought of that objection. There's nothing wrong with assessing probabilities, your Honour, given that the witness was there and so the probability is –

HIS HONOUR: Well what you're really putting to her is that it has to have been her.

MR ELLIS SC: Oh yes. I'd better get there –

HIS HONOUR: Well I'll let – I'll let you ask her a question again.

MR ELLIS SC: Okay. But let's get Mrs Zochling – Now 391, I think, your Honour – came back down to McDonalds – from McDonalds to Marieville Esplanade and "I sat on the doggy beach – at the doggy beach on the seats. It may have been up to forty five minutes, could have been longer, there were people around. I saw a person I recognised as Mrs – sorry – Mr Chappell, there was a woman with him" – okay, we're down at Marieville Esplanade where the yacht was launched – that's right?…….We were down there, yes, definitely.

You were down there, and according to this witness she saw him and she recognise him, and there was a woman with him. Now was there any other woman with Mr Chappell that morning, besides you?…….No, but somebody could have come over to chat – I don't know, I don't know.

Was there any other woman who would have been, in your recollection, mistaken for having been with Mr Chappell that morning?…….Not that I saw.

Thank you. …….I wasn't with him at all times.

When you launched the dinghy?…….When we launched the dinghy I was there.

Mm hm. And you were using a loud voice, I suggest, because you were still berating him for overfilling the outboard motor?…….No, and he wasn't being berated – you don't berate Bob.

Don't you?…….No, you don't.

Really? Well let me – let me suggest this to you; on the very first day that he took his daughter out to the boat on Boxing Day, when you would have thought he might have done without your criticisms, you decided to criticise him in front of her for the way he was handling the dinghy, didn't you?……I think he was getting the children wet.

Didn't you?……Well I really can't remember, but I think that –

Was it put -……..- that was it.

Have you heard the – you heard the evidence?……I heard the evidence.

Was it suggested to the contrary to Kate Chappell that you were not criticising him on the way out to her first look at the boat in her father's dinghy?……I certainly said something to him, I remember that, yes, I did.

Yeah…….“Slow down”, I think I said, or something like that.

Speaking of Kate Chappell, she spoke of – in this Court of a conversation with you about Mr Chappell's will that he had redone. She said that it was in 2004, a year each way of that, that you raised the topic with her, was that right?……No, I don't believe –

Right, thank you……..- that is accurate.

HIS HONOUR: She said one or two years either side of 2004, Mr Ellis.

MR ELLIS SC: Thank you, your Honour. (Resuming): But it was in 2004 that Mr Chappell had redone his will?……Yes, it was.

Yes, and he told you about it?……He told me that he was going to.

And you saw it?……I did not see it.

And you believed that he had a substantial amount of superannuation?……I thought he had between five and six hundred dollars worth.

And you knew that the previous arrangement where you would have to buy out the house had been changed, that you didn't have to live in it for five years or whatever, but it was going to you?……I wasn't certain about that.

Why not?……Because I didn't – it was conversation over dinner and then we went on to other things.

Well why didn't you ask him, "Look, Bob, I'm not certain about this will, what's the go now"?……..It's not something we talked about very much, in fact hardly ever.

Was it or was it not after the remaking of the will your belief that you had to – you had only five years in which to stay in the house, was that your belief or not?……I wasn't certain –

Was it your -……..- whether he'd – whether he'd altered that, but he did say to me one night, "You won't have to move out of the house", and that was all he said.

He muttered it though, you said in evidence, didn't you?……He did.

Muttered it. Well did you say, "What do you mean, Bob, have things changed? I thought I had to go in five years"?……..No, didn't.

No, didn't……..Didn't.

No, not interested. Not interested in what's in his will?……Not very, no.

No. This could be very relevant to your future if he pre-deceased you wouldn't it, what's in his will?……Yes, but –

Right, but not interested you tell us?……Not – not to the point where I'd ask about it, no.

You didn't waste much time in going to see Mr Kimber having received a letter from him shortly after Mr Chappell's disappearance did you?.....I don't know when I went to see Phillip. He sent me a letter saying would I get in touch I think.

He also in that letter said, according to his evidence, not challenged, that he presumed you had a copy of the will.....Mm.

So did you have a copy?.....No, I didn't.

Well when you saw that in the letter why didn't you say to Mr Kimber, "Look your presumption is wrong I don't have a copy of the will, may I have a copy"?.....I didn't say that.

Why not?.....I don't know why not.

Well why did you go in and see him at all?.....I went to see him because I wanted, you know, to get some advice about what we do about going on paying bills and things like that, that's what we discussed for quite a while, what to do.

But the letter you received was concerning the estate not about paying bills?.....The what?

The letter you received was about the will not about paying bills wasn't it?.....I can't remember the letter but we definitely went to see him about –

Yeah, I suggest the reason that you didn't raise with him, that his presumption that you had a copy of the will was wrong, was that it was not wrong?.....What wasn't wrong?

His presumption that you had a copy.....Mm.

You did have a copy.....No.

You knew what was in it?.....No, I did not know what was in it.

And that's why you didn't ask for a copy, you didn't need to be brought up to date to it you knew.....No, I didn't know.

You say you went in to see the lawyer who had the will and didn't ask what the terms of the will were?.....Actually I think Phillip might have got a copy out and shown it to us but I don't think he gave us – I don't think he gave us a copy at that point, I really can't remember.

You told the police that you understood the will required you to leave the house – allowed you to stay in the house for five years but then to leave, didn't you?.....I, I can't remember what I told the police.

Can't remember that?.....I think – I think what I – yeah, I can't remember.

No. Is it time for morning break?

HIS HONOUR: Yes, we'll take the morning break. The jury can make their affirmation and the Court will adjourn for fifteen minutes.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Yes, Mr Ellis?

MR ELLIS SC: Thank you, your Honour. (Resuming): Ms Neill-Fraser, you've told us that you often went to Bunnings?.....Yes, I did.

And you would know, wouldn't you, that its usual closing time was nine o'clock – you would have known that its usual closing time was nine o'clock?.....Oh it varies.

But usually it's nine o'clock?.....It's often nine o'clock, yes.

Yes. And when you had the false memory of going out there you told police that you'd left near closing time, it was getting, is that right?.....I – I think it probably would be, yes.

Yes. Thinking that it was closing time of nine o'clock?.....Where are we – January – look I – I really can't remember.

And in fact you were at the yacht until quite late, weren't you?.....I don't think I was.

And when you got back home you telephoned your daughter and your mother, first your daughter Emma, at 9:17, is that right?.....I don't know what time I rang –

That's an agreed fact in this case?.....Well then I agree to it.

And your mother at nine thirty. How old is your mother?.....Mm, I – well she's eighty two now.

That's rather late to be ringing a lady of her age?.....Oh not really.

No. The reason I suggest that you made those calls when you did was to seek to establish via the phone records that you had left Bunnings at around its closing time, which you believed to be nine o'clock, and were home at nine seventeen when you rang your daughter. What do you say to that?.....I – could you just repeat that?

Yes. You made those phone calls in order to bolster your alibi about having been to Bunnings until nearly closing time?.....No, that's not accurate at all.

Because if Bunnings closed at nine, time to go back, there you go, a phone record, Emma knows that you've called her at that time, your mother knows that you called her later. Well what time did you leave the boat?……The boat?

Yeah, on the 26th January?……I don't know. I thought I left it in the early afternoon.

Well what time did you leave it?……Well according to the police my dinghy was tied up there at three fifty or four, so –

Not according to the policemen, -……It must have been later.

- they didn't see it there, did they?……No, but they said a dinghy like mine, so I said, "Well I could have made a mistake".

Mm, but you were still at Bunnings, you said, but nevertheless you must have left later but you still went to Bunnings, you said?……Well that's when I just couldn't make – you know, it just didn't work out for me.

No. When you went on board with Detective Conroy on the 27th you were asked not to touch things, weren't you?……I don't remember, but I'm quite prepared to accept I was.

And one of the things you undoubtedly touched was the winch handle, or one of the winch handles?……I think I touched both, I picked up both winch handles -

Mhm……- and a number of other things.

I think you did, I think you were making sure that you were picking up things and could be seen to be picking up things?…….I don't quite understand.

And so that when your DNA turns out to be on the winch handle, then that's perfectly explicable because you did pick them up in the presence of the police on the 27th of January?…….Well I was showing them how they worked, how the –

Did they ask you to?…….I think – I think one of the officers –

Who?…….I think it might have been Si – Detective Conroy.

Asked you to show him how the winches worked?…….He asked how it operated and I just – I just picked it up and –

Both of them?.....I know that I took the mainmast winch handle out of its – out of the winch.

Mm. .....And I'm pretty sure that I picked up the one –

Well how does that show him how it works?.....- the aft one – I think it was the aft one.

Yeah, how – how does that show him how it works – I'm sorry, you think now that he asked you to show him how the aft winch worked?.....No, he – I think he simply asked me how – "How does this operate?" – how –

Right. This is a real memory you've got, of course, you're not just making things up - sorry?.....I – I remember being on the boat and I remember touching the winches.

No, no, no, no, you've given us evidence about him asking you to show us how it operates and you did this – now, this is a real memory that you're giving to us, is it, it's not one of your – your funny memories?.....I wouldn't have touched it otherwise.

No, no, is this a real memory you're giving to us, not one of your funny memories?.....I think he asked – I'm pretty sure he asked me.

So it's a memory – it's a memory that he asked you, "Show me how the winch operates"?.....No, he didn't say that, I think he said, "How does this work, how does – how does the setup work" he was asking about –

Oh -.....- we've got a number of winches on the mast.

Right. So that's a real memory?.....Yes.

Right. .....Yeah.

That is a real memory you've got today. So he came to this Court, he said you were asked not to touch things and that wasn't challenged, and it was not -.....And he asked me to put it down –

- put to him that he asked -.....No.

- you in fact to touch things, in effect?.....No, he – he did not, I touched it, and then he said, "Please don't touch it" – I – yeah, he said – he asked me not to.

Was after that the first one you touched or the second?.....Oh, I can't remember.

But it would have to be -.....But he definitely – he definitely told me not to touch it.

Well was it after the first winch are we talking about or the second winch?.....No idea.

So are you saying that he didn't tell not to touch it after you touched the first winch but only told you after the second winch - .....I don't know.

- or he did tell you not to touch it after the first winch but you nevertheless touched the second winch?.....I really wasn't thinking very straight but I'm – I think –

No, I'm just asking what you are telling us.....Ah, I can't remember. I don't remember which winch it was. I just remember going to different parts and –

But if it was the first then it follows that you've touched the second after being asked not to and if it was the second it follows that you weren't asked not to touch the winch after touching the first, isn't that right?.....I cannot remember which one I was touching when he asked me not to.

But that's logical what I've just put to you isn't it?.....Could you put it again.

Okay. If it was after the first winch and then you've touched the second after having being asked not to touch the winch and if it was after the second winch you have not been asked not to touch the winch after you touched the first winch?.....I can't follow what you're saying.

Anyway these winch handles were kept in a back locker.....Yes, normally.

Yeah.....Portside locker.

Portside locker. And does that have a big sign on it 'winch handles look within'?.....Um, no, I – no, it doesn't, no.

You could have marked them anyway – it's not marked in anyway?.....I don't know, I can't remember if it is.

Do you want to look at the photographs again and see if it helps you?.....Well I'll take your word for it. I don't think it is marked but I'm not sure.

It's your yacht, your pride and joy, the thing that you got to learn so well on the voyage down, the thing that you worked on, was the locker for the winch handles marked 'winch handles in here'?.....Mm, but I don't know if there's any marking on the locker.

You know that there wasn't don't you?.....No, I don't.

Picture it in your mind, it's got a marking 'winch handles in here'.....Let me have a look at a photograph.

P3 I suppose, your Honour. Now just to be clear at this stage you're not prepared to say as to the boat that you knew so well that the winch – that the locker for the winch handles was marked?.....I didn't know the boat all that well and I don't remember if it was marked, whether the locker was---

Can I ask that the witness be shown the photographs P03 please. Sing out when you see the locker.....I don't – I don't think we have a photograph of---

Okay, well when you gave your evidence-in-chief, you said you would have to come to photo 11. You said you'd have to come to photo 11. If you look to the right of the photograph, the board at the back with a green thing around it and the locker is directly under it.....Yes, but you can't – you can only see the top. The – any labeling would probably be on the side as it is. I think there's a gas sticker on the other one on the side – other side. I don't know whether it's marked. I don't know whether it's got any stickers on it.

No. And if it's not marked, of course, the unknown person who got the winch handles out and used the winch would have had to have been very lucky to have found them, that person, Ms Neill-Fraser?.....Sorry, sorry, yes.

If they weren't marked the unknown person who got the winches out of the locker where they were kept would have had to have been very lucky to have found them, wouldn't they?.....No, I don't believe that's correct.

Just like they would have had to have been very lucky to have found the seacock that let in water, the one under the hatch?……The floor hatch?

Yes……It's – it's in full view if you lift the hatch.

If you lift the hatch and that you know that it's not connected and that you can see down clearly and see that it's not connected to anything and will let in the sea?……Well we turned it on and nothing came in.

No, you didn't……..On the way down, David and I did.

He was talking about another one, the one under the toilet, the one that you access via the round hole under the toilet, wasn't he?……The –

When he gave evidence that was what he was talking about, wasn't it?……I thought he said that we opened the valve and –

But it turned out that he was talking about the one you accessed by a rear hole – sorry, a round hole under the toilet, or the heaters, I should -……Well we opened all of them to see what happened.

Right, so you opened that one to see if it let in the water, the one that was opened that let in the water?……On the way down we did, yes.

Right, so that one -…….And nothing –

- that's been shown in the photographs that let in the water you've opened and you say that it didn't let in the water?……It – we checked it on the way down to make sure that it was blocked off and David opened it and nothing came through and we assumed it had been properly blanked off.

Did we?……Both of us did.

But that wasn't put to him, that that seacock, the one that was opened, you know perfectly well which one…….The one that was open that I saw on the 27th was under the for'ard passage floor hatch.

Yeah…….Mm.

Yeah. So something's been done to it to make it – to make it let in the sea, is that right?……I have no idea.

Well does it look like anything's been done to it to you, you must have seen it afterwards?……I think – it was turned off when we got – the police had turned it off –

Yeah……..- and I don't think we ever turned it on again.

No……We blocked it off from the outside along with all the others before we took it back on the mooring.

How did you block it off?……We bought proper wooden bungs and sealed them in from the outside.

Right. So the photograph shown in P40 – sorry, the sea cock shown in photograph 17, P47---……..Which one?

Photograph 17, P47 – oh sorry, they're not in that lot you've got. It's P47 itself, yes. I forgot we tendered that……..Um---

HIS HONOUR: So that's in, ladies and gentlemen, that's in Tab 9 of the – under Tab 9 of the smaller folder. It was photo 17, but it was tendered separately as P47.

MR ELLIS SC: And that you say is stop cock that wouldn't let in water when you tried it at sea – sea cock……..Well, it's certainly in the same area because I can see the corner of the black water tank, but it's so long since I've been on the boat I can't be sure.

Do you recognize it immediately by the handle as a sea cock, don't you?……..Absolutely.

And so you were keen to test all the sea cocks?……..Well David and I were because we had black water tank problems.

Yes. And you followed him about doing that?…….Yes.

Yes…….Yeah, he was very good.

Yeah, but that one didn't let in the water, apparently…….We knew there was a blanked-off pipe and I know he opened it and nothing came in. We assumed---

That's the one that you accessed by the round hole under the toilet……..No, this isn't under the toilet.

No it's not…….It's near the black water tank.

Okay, all right, yes that's right. There it is indeed. Thank you. So there's the winch handle, the sea cock, the cutting of the toilet hose letting the water, all those things and the EPIRB. Now you're not so sure that it was mounted I take it now?.....Um I don't remember seeing it, but I know Bob did mount it.

Well, let's take each one at a time. You don't remember seeing it – okay, so are you going to attribute again something to Bob, to Bob's going to have said something, is he?.....No, the only – I'm trying to think if we had any children onboard – I know that he said that he was going to take it out if we had children onboard in case they grabbed at it or something – and he'd have put it in the chart table. But we hadn't had had children onboard, so it should have been where it normally is, sitting just inside the bulkhead.

What did you mean when you said to police that Bob had mounted the EPIRB?.....It came in a box, we inherited it with the boat, so it wasn't mounted, it was in a – in a box but we could still have used it.

Yeah, but what did you mean when you told the police, and I think you said in evidence here, that Bob had mounted the EPIRB?.....Well he'd fastened the bracket onto the bulkhead, so the –

He fastened the bracket, but the bracket was a bracket that can be seen to have been already broken or was it broken again?.....I wasn't aware it was broken at all.

No -.....Until they told me.

- when did he fasten the bracket then?.....Sorry?

When did he fasten the bracket, did you see him do it?.....I was on the boat when he did –

Did you see him do it?.....I think I passed him while he was doing it, yes.

Yeah, you'd remember that okay -.....Yes.

- that's not too long ago – a significant event?.....It was – it was important we get it up.

Why?.....So that if it needed to be used it wasn't sitting loose somewhere in a box.

If it needed to be used?.....Yes.

So that's what you two have discussed, had you?.....Well Bob was very keen to get it up, he's pretty –

Bob was?.....Yeah.

Yeah. But it wasn't even activated, was it?.....I don't know whether it was or not.

Well you know now, don't you?.....It wasn't activated, I think.

And you knew that then?.....No, I didn't.

Because you registered it but you knew that there was a next step when it was activated to notify Austar, didn't you?.....Oh yes, you have to.

Yeah, and you hadn't done that, had you?.....Hadn't done?

Notified Austar?.....That it hadn't been activated.

Mm – no, you hadn't notified them that it had been?.....I'm sorry, you've – I can't – I can't follow.

You knew that there was another step besides registration; you'd taken the registration step but when an EPIRB is to be activated, you knew that the slide would go back and the seal would be broken and you would need to register it with Austar?.....You mean the testing process?

No. Yes, that's right, not just testing, to have it primed, ready for an emergency?.....No, no, I didn't know that.

Didn't you?.....No.

So you thought with your knowledge and experience of yachting and Mr Chappell's electronics that this EPIRB was all ready in all respects to go?.....I thought it was.

Did you?.....Yes.

I suggest to you that that is utterly false?.....Well it's not and

Utterly false, you knew that it wasn't – you knew that it wasn't primed and that's why you could take the risk of throwing it overboard when you did?……What do you mean primed?

Primed, activated, ready to go, that is the seal on it is broken and it is registered with Austar as being ready to go……..But the seal has never been broken.

Exactly, exactly, and so it will not work except on a test where you press the button down, but it will not work as an EPIRB is intended to work……..I'd have to read the directions again, I –

And you knew that, that it will not work, and so you could with impunity throw it overboard, knowing that it would float and knowing that it would not go off and would probably be washed up in order to set yet another false trail?……I don't know what to say to that, it's completely untrue.

What is true, that the bracket was broken or Bob mounted it or that it was, to your mind, activated and ready in all respects?……Bob mounted it and I thought it was usable as it was.

Perhaps, I suggest to you, the fact that it wasn't usable in all respects was a clear indication to you that there'd be no ocean going voyages with that boat in Mr Chappell's – that Mr Chappell wasn't intending to go on any less populated route than the Derwent on that boat?……Could you repeat the question.

Yeah. I suggest that you knew by the fact that it wasn't activated that Mr Chappell never intended to go anywhere more than just up and down the Derwent, maybe to Bruny Island?……That's not accurate at all.

Did it become some sort of symbol between you of a disagreement to which the boat in its condition could be put, that he wouldn't activate the EPIRB until the boat was ready, is that why you threw it over?……I don't think I handled the EPIRB after he mounted it.

And when did he mount it?……Oh, just a week or two – between Christmas and the time that he disappeared.

Between Christmas and the time - …..Mm.

Never suggested any other time for that?……Oh, possibly. We were out there nearly every day, quite a long time.

The burn marks, shown in exhibit 3 photograph 11, that you found on board on the 27th January, now you found them, no one else, that's right isn't it?.....I –

HIS HONOUR: You don't think you mean photo 11 do you?

MR ELLIS SC: Oh, sorry, I thought I said photo 11 – P9, I'm sorry, your Honour, 11 and 12.

WITNESS: Oh, you mean the – yeah, yeah.

MR ELLIS SC: (Resuming): You found those?.....Yes, I saw them as I was walking down.

Yeah. They leapt up at you because they were so vivid, as not shown in the photographs, is that right?.....Um, I think these photographs must have been taken later, they were very obvious. The woodwork was very worn and there was a bright stripe down the side.

Right, a stripe.....You can see it.

It's just been filled in a bit has it somehow by the weather, is that right?.....Sorry?

Is that right, it's somehow been filled in a bit.....Well I don't know. I think what's happened is it's faded a bit but it certainly was quite bright. It was as bright as – in photo 12 –

Really.....- at the bottom, it was as bright as that.

Yeah, but this photo that you're looking at was, according to the evidence, taken on the 27th February – January, I'm sorry.....Mm.

The 27th of January – so it must have weathered up pretty quickly?.....I don't know, I did point it out though, I pointed it out to Si – Detective Conroy and I –

Yeah, because you were able to because you knew where to look?.....No, I was looking –

Because you'd used that winch and that rope arrangement to get Mr Chappell's body out of the saloon, hadn't you?.....That's not true.

You just saw it – you just happened to see them because they were so vivid that day?.....They were –

Vivid in your mind?.....- they were quite obvious.

Vivid in your mind, I suggest -.....They were quite obvious.

- vivid in your guilty mind?.....I can't really respond to that, there's not a grain of – of substance in that at all.

Also gone you noticed was the fire extinguisher which you claimed weighed sixty kilograms that you had claimed on occasion weighed sixty kilograms?.....I don't know what it weighed, it felt very heavy to me.

Well you've conceded at one stage that it weighed sixty kilograms, haven't you?.....I don't remember.

You deny it?.....No, no, if it's in the transcript it must be so, mm.

Nothing like that was it?.....I thought at the time that it was very heavy.

Yes, heavy enough to weigh a body down, didn't you think?.....Well I –

Well didn't you think that – it's what you said?.....I – I don't know what the fire extinguisher weighed.

But it was heavy enough to weigh a body down?.....I don't know.

But you said to police, "I didn't throw him overboard weighed down with the fire extinguisher" before anyone had even suggested that had been the case?.....No, that's not –

Hadn't you?.....That's not true, it had been suggested, when we – when we tallied up everything that was missing off the boat.

Now you've told us in your evidence in chief in this Court that when you went back onboard on the afternoon of the 26th of January, "Bob came out of the engine room and he was quite pleased he was in a much better frame of mind, you said, is that right?.....He – yes.

You said to emphasise that this was a real memory, not a made up one:

> *I absolutely remember him saying to me that the oil leak was tiny and he was quite pleased.*

You absolutely remembered that?……He was pleased that it wasn't more extensive, yes.

Yes, what does absolutely remember indicate, something that you actually remember of something that -……And the memories that you said in your previous sentence about being made up are not made up.

Just one question at a time, please. Absolutely remembered, what does that mean?……It means that I did remember it clearly.

You did remember it, so you wanted to emphasise that this is something that you indeed remember. So when did you first remember it?……Oh look, I don't know.

Did you remember it when you spoke to police for all the time you spoke to them?……I don't know.

Can you say to me at any stage where you told police that Bob came out, he found the oil leak was only tiny, he was happy?……I can't remember. I don't know when I told police that.

But you didn't tell police that…….Oh well in that case I didn't.

But you absolutely remembered it when you gave evidence in this Court. And was that as you first came on – on board in the afternoon that you have this absolute memory?……I – I would have been going down to put the kettle on, so yes, it would've been as I – he would've – he would've heard me coming aboard.

No, no, this is an absolute memory, so we don't need to go on to he would've, he would've this……..Well what he said was an absolute memory, but I – I'm trying to work out what sequence that we were following.

Yeah, well this should be easy because it's an absolute memory of him saying it, so what point of your embarkation was it?……He was very – he was – he was very happy that the oil leak –

Yeah, when?……- wasn't as bad as he thought.

Yeah, when?……Well when I got back to –

When you first got on board?……When I got back to the boat he told me that.

So it's when you first got on board.

MR GUNSON SC: Well the witness is being absolutely heckled and badgered by my learned friend and I draw your Honour's attention to s41 of the Evidence Act. Not only is he acting in contravention in my submission of s41(1)(b), but he's also repeatedly not letting the witness answer the question because it doesn't suit him. Now he should let her answer a question. Section 41 is quite clear in its intent:

> *The Court may disallow a question put to a witness in cross-examination or inform the witness it need not be answered if a question is* – and I refer to sub-para. (b) – *unduly annoying, harassing, intimidating, offensive, oppressive or repetitive and it's made worse by the fact that he refuses to let the witness answer the question.*

HIS HONOUR: Mr Ellis, do you want to say anything?

MR ELLIS SC: I'm simply trying to have the witness answer the question, your Honour, but not in a way the witness thinks that she would make a speech and answer another question which has not been put to her.

HIS HONOUR: Well, I think she should be given a little more of a chance than you are letting her have. I'll let you go – would you ask the question again please?

MR ELLIS SC: Certainly, your Honour. When Mr Chappell emerged and said he was quite pleased that it wasn't as bad as he thought, was that as or was immediately after you came on the boat or was that at some later stage?.....No, it was when I came onto the boat.

It was when you came onto the boat?.....Yes.

Right. And have you told the police that before?.....I've no idea.

Do you assert that you have?.....No.

Have you told them anything different as to his frame of mind?.....I have no idea.

You have no idea. Could I refresh your memory then and see if this rings a bell? From your interview of the 4th of March 2009, this is after the discussion about some ham.

Q: So I assume that's what he would have had -

Was your answer. It was the ham that you took off the board.

Okay.

I didn't ask him. He was in the engine room when I arrived and he emerged crossly---

……Yes, that was when he was – I mistook the days. Could I – could you tell me the date of that?

Fourth of March 2009……Yes, oh, yep, if I mentioned the ham it would have been a previous day.

Ah yes, we're talking about – well, what previous day?…….Well, we were out almost every day and I – we went backwards and forwards. We left each other on the boat quite often. So that was another day.

That you were talking to the police about?……Yes.

And the real day is when he didn't emerge from the engine room crossly and that is when I went back but the real day is, the 26th, he emerged happy. Hurrah, it's not as bad as I thought…….Yes, and – yes.

And - ……Yes.

Right. And that's not something you've told the police, in fact you've not said it until you said it in this court, about how happy he was, and what you told the police was - ……He wasn't happy he was relieved.

- what you told the police was a memory, a false memory - …..It was a false memory –

- from another day entirely?……Yes, but –

Yes, thank you. Did you have a row prior to you leaving the boat in the afternoon or the evening or whenever you did?……No, he – no, no, not a row –

Have you ever said that you did?……Not a row, now.

Have you ever said that you did?……Oh, probably.

Why would you say it?.....Um, because what I call a row is probably not what other people would call a row.

Well why would you say – I'm sorry, I'm – why would you say you had row if you didn't have a row?.....Um, it's my word and –

Thank you.....- it's probably exaggerated.

Oh, I see, so it's another exaggeration that you've given the police who are trying to investigation your partner's disappearance, is that right?.....Of –

Is that right, Ms Neill-Fraser, it's another exaggeration?.....No, no, that's not right it's –

But is that what you've just said?.....Ah, could you repeat that.

It's another exaggeration you have given to the police who were seeking to investigate your partner's disappearance?.....I spoke to the police as I would normally speak, I wasn't being careful about what I said.

And a bit of the truth came out at the edges when you weren't too careful?.....And row would be my word for –

Discussion.....- a snappy exchange.

A snappy exchange. When you gave your evidence to this Court we didn't hear about any snappy exchanges, did we, on that afternoon?.....(No answer).

Did we?.....(No answer).

Ms Neill-Fraser?.....We probably did but it wouldn't have –

But - .....- it wouldn't have been – it wouldn't have registered.

But that's no my question, you know that's not my question.....What is your question?

My question is when you gave evidence in this Court we didn't hear about any snappy exchanges on the afternoon of the 26th January.....Well I can't remember all my evidence.

But if it's the truth it would be easy to remember wouldn't it?.....It – we had – what I do remember about that day was Bob's relief about –

No – okay -.....- about the oil –

- I'm asking you what you said –

HIS HONOUR: No, no, no, let her finish.

WITNESS: And Bob's relief when he came out of the engine room with his little mirror and he said, "This isn't as bad as thought, you know, it's all right," but – but then when I was going around to the laundry he did – he snapped at me and said, "Look, just leave me to get on with this." So you know that's – that's – that's my best – there was no row – I would have remembered it if there was.

MR ELLIS SC: (Resuming): Really, like the row you told Mr Rowe that you'd been having when you somehow gave him the impression that you had been separated from Mr Chappell for some time?.....Well I don't what to answer to that, Mr Ellis –

Was that – was that a row – you've described it as a row, was that not a row?.....It was – it was a snappy exchange and most people would consider a row yelling and shrieking and we just never ever did that.

He was, you were onboard, "snapping at you like a crocodile"?.....Yes, yes.

And that wasn't unusual?.....That's right.

Mm. Now after you claim – you say that the boat was entered unlawfully through a – while it was in Hobart, through a back hatch which had been left opened – is that right?.....That's right, yes.

So after that you would be especially careful, I presume, to make sure the hatches were closed, is that right?.....We – we left our washboard out.

Mm. Is that a hatch?.....No, it's a washboard and it's under the door of the – the closing hinge door.

Right. Well, I'm afraid you've got me there – what's that got to do with leaving the hatches open?

MR GUNSON SC: Because that's exactly what the witness gave evidence about yesterday, when she described in detail, your Honour, the methodology by which the hatch to the –

HIS HONOUR: Well look, well just a minute

MR GUNSON SC: - cabin was closed.

HIS HONOUR: Just a minute? Mr Ellis can be – can ask the witness to explain something that she explained yesterday, if that's what he chooses to do?

MR GUNSON SC: Not in the way he did it, with respect, your Honour, which was by to imply that she'd given no explanation yesterday where she gave a fulsome explanation as to how it operates – and that's when he came out with that comment like "Well you've got me" – well he either wasn't listening to the evidence or he's making – contending that he doesn't understand it.

HIS HONOUR: Well I can't see that there's a proper basis for an objection there. Please continue, Mr Ellis.

MR ELLIS SC: Thank you. (Resuming): Now you were going to say about the washboard and how that was a hatch left open.....It wasn't a hatch.

Thank you, I didn't think it was. The hatches are those things on the deck from which, if they are left open, entry can be gained?.....Yes, that's right.

And you claim that the boat was accessed through such a hatch?.....No.

Don't you?.....No.

How was the boat accessed on the -.....I think they probably got straight in through the washboard entrance.

Through the washboard entrance?.....And I'm not sure that we actually locked it either. They could have got in quite easily, they wouldn't have had to break in. We left our hatches cracked and our washboard out.

And how would you get in through the hatchboard – sorry, the washboard hatch?.....The wash – the washboard?

Yeah.....Well it's a – it's a space which is sort of about that wide and that deep, you could – you could get through.

Yeah, and then where would you be?……You'd be in the pilot house, but you could easily – if we hadn't locked it, we often used to just put the padlock on and make it look as if it was locked, but it actually wasn't.

Is that the hatch that you thought had been accessed through, or did you describe it as a back hatch, one of the back hatches?……The – well I suppose the terms could be interchangeable, but it's actually a washboard, it's a gap under the door that we left open for aeration purposes.

All right, well apart from that you'd have to get in the water and – would you, how would you get in?……Well you go into the cockpit and you would –

Where would you be, you'd be at the – what, the front of the boat?……You'd be at the back if you went in that way.

Back of the boat?……Yes.

Yeah, and is it – is it at water level or somewhere higher or what?……It's in – it's the main access to the pilot house.

The washboard hatch?……The – yes.

Well I told you I know nothing about it……..It's the piece of wood that slides down near the door.

Oh I see, wrong zone then, I'm thinking it's a different entrance, okay. So if someone came in there and you were in the saloon would you see them coming in?……You possibly would hear them but you wouldn't necessarily see them.

Right. And if someone came down the – there's another entrance to the saloon is that right?……No, not unless you clamber into the – in from one of the front hatches.

Right…..Or the front of the boat.

Okay, my mistake I think. So we're basically nearly talking about the same thing there's just one entrance to the saloon and if you were working in front of the panel, the electrical panel, you would see someone coming in that entrance, is that right?……Not necessarily because you'd be around the corner.

All right, but they wouldn't be sneaking up on you would they?.....Um –

You'd see their feet coming down first if you were working there facing a panel?.....Oh, you wouldn't see them – you'd see them – I think you'd see them by the time they got level with the – going down the stairs, yes, you would.

Yeah, you would see them, you'd hear them, you'd turn to face them, is that right?.....I don't know. I would imagine.'

I would imagine too whereas – sorry, I'll withdraw that comment. Whereas if there is someone who is going back behind you who you know to be there then you're not going to turn around every time and look at them, are you?.....I wouldn't imagine, no.

No.....But you can't actually fit –

And when you –

MR GUNSON SC: The witness should be allowed to finish her answer.

HIS HONOUR: Well, no, she had finished her answer. Her answer was, no, and she was starting to argue with Mr Ellis, he was quite right to cut her short. Mr Ellis?

MR ELLIS SC: Thank you. (Resuming): So someone walking back and forth like you were with Mr Chappell he only really turned to you when he – well he didn't always turn to you did he? He didn't say every time you walked back and forth behind him, "Susan, stop that", or whatever?.....Um, no, no.

No. And the tools were in the laundry?.....There were tools in the laundry, that's where they're kept, it's a workshop.

Yeah. And he was giving you the usual harangue about having to work on this and he was, I suggest, also saying that this boat is hopeless, or words to that effect?.....Well that's not accurate.

We're going – I'm not putting another cent into this, I'm not getting the electricians on?.....No, that's not true at all.

And you'd got sick of that because it had been building up since the day – well it had been building up since the day it had to be towed into Southport, hadn't it?.....No, this is just not true, at all.

So you, from behind, struck him with some – one of the tools - …….Oh –

- or some other implement and killed him, isn't that right?…….(no reply)

And that left injuries behind him, didn't it, to the back, which could only have been done by someone he knew was there and therefore would not look – have looked around to?…….Mr Ellis, I have no idea what happened on that boat.

You, having done that, sought to cover up what you had done, you got out some latex gloves and left them on the stove top and put them on – and put the box on the stove top and put out the latex gloves to cover up what you had done?

HIS HONOUR: What do you say to that?

MR ELLIS SC: (Resuming): What do you say to that?…….No, absolutely not.

You – he bled on the carpet and so you removed those, which required you to take up the little feet that held the stairs in place?…….This is not true.

That's what it requires to take up the carpet, doesn't it?…….The – the carpet is screwed down under the – between the floor and the floor steps – floor treads, mm.

And to unscrew you have to unscrew the little feet that hold them?…….You do have to unscrew the little feet.

And that's what you had to do, didn't you?…….No.

When you were trying to clean up?…….This is just not true.

And perhaps it became all too much to try to clean up and perhaps you thought you would leave it there, and you left the boat in time to make calls to establish your alibi of being at Bunnings at nine o'clock?…….This is –

But when Mr King phoned you and asked to speak to Bob, then things had changed because he wasn't able to speak to Bob then, was he – and you had to admit that Bob was on the boat, that's something which you – which no one else knew – is that right?…….I may have

told Ann, I think I told Ann he was going to spend the night on the boat, yeah.

I suggest you didn't, nor was it put to her?.....I would never harm Bob and I didn't harm him.

And that changed it and so you had to go back out to the boat to dispose of the body because you couldn't go through with the plan of suddenly being notified by police that the boat was sinking, is that right?.....It's complete fantasy.

Because, as you say, the boat wasn't entirely sinkable anyway, was it. So long as the hatches at the back remained watertight all that would happen would be that the front when water was let in would go down and let in more water -.....No.

- and cover up the signs of the murder you'd committed?.....No, could I say – could I say something, that if you were going to sink a boat like Four Winds you would open the engine room inlet valves, you wouldn't -

That's right, and if you were going to – and if you were going to simply ensure that enough water came through the saloon to cover up traces, to cover up fingerprints, to wash away DNA then you would only let the water in from the front and you would ensure that it remained watertight and airtight at the back?.....This is madness, it's absolutely not – there's not a grain of truth in this.

And you left the phone on there, didn't you, at the highest point which water might reach, which was on the chart table?.....We always left things like that on the chart table.

So when you rang at seven in the morning, the next morning, if the phone didn't work you would know that the water had come up that high?.....I tried to ring Bob the next morning.

It having rung out what did you do then?.....I got into the shower.

Why not try again, why not ring the police, you were so unnerved by things that you went down there the night before?.....Mm, I did.

So fearful.....It – it wasn't – yes, I wasn't – I wasn't really concerned about Bob, Mr Ellis, I was more concerned about Claire at that point.

Well having gone down the night before you got in the dinghy and went out and completed the job?……I don't even know if the dinghy was there.

You lowered his body into the dinghy and you took it somewhere into the deeper channels of the Derwent, and you well know where they are?……No, I don't.

You've sailed there, you've told us, you've been a yacht club member, you don't know where the deeper parts of the Derwent are?……Well I presume the middle.

You threw the EPIRB overboard in order to lay a false trail, knowing that it wouldn't go off?……There – look, there is not a grain of truth in any of this.

When police came the next day you impressed on them this theory of smugglers having being responsible?……No, the young policeman –

And you knew all along it was you?……No.

You tried to –

HIS HONOUR: No, hang on, just a minute. You started to say something about the young policeman?

ACCUSED: The young police officer who questioned me first I – he said to me something – he said, "Did Bob have any enemies, has anything unusual happened", and when I mentioned it he seemed to think it was very important, he asked me over and over again about the, you know, what had happened.

HIS HONOUR: Mr Ellis?

MR ELLIS SC: Thank you. (Resuming): You knew that you would be financially better off with Mr Chappell dead, better off under his will than if you had separated?……I didn't know that.

And indeed you told people, because it was the case, that you had separated well before the 26th January?……Well that's not true either.

Did it get too much for you to bare that you might be humiliated by having to ask your mother to buy out his share of the yacht that you loved so much?……I would not have done that.

Were you humiliated that the yacht that you had instigated the buying of, that you had thought was going to be so good, turned out to be not so good at all and that he had reached the end of playing with it and it would no longer be yours?.....That is not accurate at all. Bob was especially pleased with the boat especially after we got back from Adventure Bay the night before.

Was he?.....Yes, he was.

When he was furious, enormously upset, that yet another thing on that boat didn't work, the anchor winch?.....The anchor winch –

No, when he we furious, isn't that the case?.....He wasn't furious he was – he was upset and –

Very very upset –

HIS HONOUR: No, no, let her finish.

MR ELLIS SC: Yes, your Honour.

ACCUSED: He was upset for about five minutes when we were – he didn't want to have to get down into the (indistinct word), you know, and he said, "Oh, what else is going to go wrong", you know, and – and that was the extent of it.

MR ELLIS SC: (Resuming): A constant theme which on the afternoon – or perhaps late – late afternoon of the 26th January it got beyond your endurance?.....That's just not true.

You picked up something and struck him intending to kill him and killing him?.....Oh –

If it please, your Honour. .....- this is just not true.

<THAT CONCLUDED THE CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson?

<XXN - MR GUNSON SC: Thank you, your Honour. Mr Ellis put to you a scenario about how Four Winds would sink if water came into the vessel and he made some comment to the effect about "all water tight compartments". Now how many water tight compartments were there on the yacht?.....Could I have five minutes, your Honour, I just feel a bit ill – is that all right?

HIS HONOUR: All right, I'll ask the jury to go to the jury room –

WITNESS: I'm sorry.

HIS HONOUR: - and I'll retire.

<JURY RETIRE

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION

MR ELLIS SC: - points that should have been put to Ms Neill-Fraser.

HIS HONOUR: Yes, all right.

<FUR XXN - MR ELLIS SC: Ms Neill-Fraser, when you drove down, and you did drive down I suggest, that evening Mr King's call to you, you parked near the Yacht Club, I suggest?.....That's not true.

And you got into the dinghy and went out to the boat.....That's not true.

Where you completed the work and disposed of Mr Chappell's body by using winches to haul him out and the fire extinguisher and other things. You wrapped him up in some form of doona or cloth or a sail cloth or something with the carpet pieces which were bloody and which you'd removed.....Look, look, this is not accurate. It's not true.

You left the yacht at the place you usually launched it at Short Beach the yacht – I'm sorry – the dinghy and went back to your car where you left the red jacket on the fence or thereabouts in case you had been seen. Is that right?.....Um there isn't a grain of truth in any of this.

Thank you. And you told the police that when you came back from visiting where the yacht was that evening after Mr King's phone call, you got a good night's sleep?.....Ah probab – well, if I said that I meant that I slept deeply.

But in fact you weren't back until about 3:15, were you?.....I don't know what time I got back, but I walked down---

When you – when you dialed the star 10 hatch number to see if anyone else had rung and found you not at home?.....I don't recall making any calls that night.

It's an agreed fact that one such one was made to check what numbers had been called.....I can't – I don't – I have no explanation for that.

There was no-one else in the house that could have made the call?.....Nobody else was in the house.

Thank you. Thank you, your Honour.

<THAT CONCLUDED THE FURTHER CROSS-EXAMINATION OF THE WITNESS

HIS HONOUR: Mr Gunson.

<REXN - MR GUNSON SC: I was asking you some questions about the number of water-tight compartments on board Four Winds. There were water-tight compartments, that's correct, isn't it?.....Yes, that's correct.

And these compartments were accessed through steel gauze, is that right?.....Yes.

How many compartments would there be on Four Winds if all of the steel waterproof doors were closed?.....There were---

Just take us through the yacht mentally.....You want me to---

Start at the bow.....The forepeak had a bulkhead, a tight bulkhead door –

So that was closed at the – that area was waterproof?.....Yes, water tight. The – the next compartment would be between the for'ard passageway and the saloon that was a watertight door. The toilet and – the toilet – the head on the port side and the cabin opposite just had ordinary little wooden doors. The – the – so that's one, two – then the saloon, three, and we had actually taken off the door to the galley because it was flopping.

Yes.....I think I –

So -.....So we had six water tight – there were seven when the boat was built and there were six, effectively.

All right. Now, when you were onboard Four Winds on the 26th, were those watertight compartments closed by the doors being put in place?.....No, they weren't, they were open, I think.

All right. When you went onboard Four Winds at the Constitution Dock the next day, were all of the watertight doors open?.....I'm sorry, I'm just trying to walk through it.

It's all right.....It –

Take your time?.....I think they were – yes, I think they were.

Thank you. You were asked some questions by Mr Ellis about having to access some screws to remove the carpet tiles near the engine room entrance?.....Yes, yes.

You've earlier given evidence that to access the engine room through the steel hatch shown in the photographs, the steps coming down from the pilothouse into the saloon had to be removed, is that correct?.....Yes, they do, lifted out.

Yes.....Yes.

But you didn't need to remove the little wooden steps holding the steps in?.....No.

No.....No.

Thank you. All right. Now you were asked some questions by Mr Ellis about what he called "a row" –

MR ELLIS SC: I'm sorry, it was a question as to what the accused had described as a row, your Honour.

HIS HONOUR: Well he referred to it as a row. Go on, Mr Gunson.

MR GUNSON SC (Resuming): What is your definition of a row?.....My definition of a row would be shouting at each other, raised voices certainly.

Thank you. Now you were asked a number of questions by Mr Ellis about access to the yacht when it was left out on its mooring and I need to take you back to this issue about the washboard. You gave evidence about it yesterday, do you remember that?.....Not very clearly, no.

Show me those photographs, please. Now look, washboard is a separate piece of timber, is that correct?.....Yes it is, and I think I've confused everybody by calling the grate at the back of the boat a washboard.

Right.....And it's – yes.

All right.....Well call both those pieces of wood washboards –

All right.....- and it's probably the wrong term.

Would you have – would you show the witness P3, photograph 12.....Yes, the piece of wood –

Just wait.....Oh sorry.

Have a look at it, please…….Sorry.

Now on the deck on that grating next to the compressor or pump there is a piece of timber, is that right?……Yes.

What is that?……That is what I would call a washboard.

Right. And where does it normally go?……It goes between the two slots that you can see just sort of above the edge of the pump on the hatch – on the pilothouse entrance.

Right. Now to the left of the pilothouse entrance there is a hinged door, is that correct?……Yes.

So you can close that door but not have the washboard in situ, is that right?……Yes, that's right.

And when you left the yacht normally, that is left it on the mooring unattended, the hatch that we can see above the pilothouse would be pulled forward?……Yes.

The cabin – sorry, the wooden door we see would be closed?……I'm sorry, it wouldn't be pulled forward, it would be pulled back –

Right, well pulled -……..It would be closed, yes.

- it'd be pulled to me, towards me?……Yes, yes.

But you're quite correct, pulled back towards the stern?……Yes. Yes, yes.

And then the wooden door would be closed?……Yes.

But the gap underneath the wooden door would be open?…….Yes.

So if you wanted to completely seal it off you'd put the washboard in?…….And close all the hatches – that's right, yes.

Right. Thank you. And it was the washboard that had been left out around about the 10th when you - …….Yes.

- left the boat?…….And –

Sorry, you found the boat had been entered?…….Yes, I don't think we actually locked the boat on that occasion either.

But in any event, it was the washboard that had been left out on that occasion?.....Yes, that's right.

Could the witness be shown exhibit P79, which is the diary please? Now would you open it up please to the 10th of January – just read it to yourself please? How many entries appear there, Ms Neill-Fraser?.....Just for the 10th?

Yes.....One connected with the boat –

Just tell me how many entries are there please?.....You mean different things?

Yeah, how many entries did you make – how many issues did you address in your diary for the 10th of January?.....How many issues – one –

Your Honour, I notice the time, I'm going to be a little time on this item, is that a convenient time?

HIS HONOUR: Well no, the witness hasn't answered the question. We'll have an answer to the question.

MR GUNSON SC: Thank you. (Resuming): How many -.....Well – well –

- entries are there for the 10th?.....- there's really six that I can see.

All right. Now I propose to take her through those, your Honour, I'm happy to continue -

HIS HONOUR: Well we'll stop now that we've got an answer.

MR GUNSON SC: Thank you.

HIS HONOUR: All right. The jury can make their affirmation and the Court will adjourn until 2:15pm.

<JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Yes, Mr Gunson?

MR GUNSON SC: Thank you, your Honour. (Resuming): Could the diary, which is exhibit P79, be returned to the witness please? Ms Neill-Fraser, would you open that diary please at Saturday the 10th of January 2009? You gave evidence in cross-examination by Mr Ellis that you wrote that entry?.....Yes.

Yes. Would you read that entry out in full please?.....

Bob and I out to fix mizzen – boat has been accessed – electrical panel unscrewed – floor hatches lifted – water pump and valve covers taken up.

And then:

!!! = get in sniffer dogs. Took sail off for repairs – might leave main until later. Tied down sail with straps.

Thank you. Now that was en – excuse me - was that entry made by you on the 10th of January?.....Yes, it would have been, yes.

Yeah. Right.....Yes, it was – yes, it was.

Did you have a practice as to when you would complete your diary each day?.....In the evening, yes.

Right. And it's been suggested to you that two pens were used - .....Yeah.

- what do you say as to that?.....Ah, I would say I was probably walking about –

Just concentrate on the pens please.....Yes, it's quite possible, I use different pens if I was walking about.

Right, thank you. It's been suggested to you that it was put there, as it were – it's been put to you, as it were, that you put that entry in there sometime later to put off the police or to confuse the police.....Yes, I heard that, yes.

What do you say as to that?.....It's not accurate.

Thank you. You can put that to one side please. Do you recall Mr Ellis asking you some questions about Ms Zochling and what she observed and it was suggested to you that you were berating Mr Chappell about spilling the petrol into the dinghy.....Yes, I remember that.

Do you have any memory of berating him over that?.....Again it's my use of words. I snapped at him.

And why did you snap at him?.....Because he was looking elsewhere and pouring the petrol and the spout flipped out of the motor -

Right, thank you.....- sprayed into the dinghy.

You were asked some questions about – there's the event on the 10th January when somebody accessed your vessel and you were asked whether you'd informed the Royal Yacht Club personnel and you said, no, you hadn't, is there any reason why you didn't inform anybody at the Royal Yacht Club?.....Ah, no, I don't – I think we just didn't think it was relevant and I – well, no, I didn't think it was relevant.

Thank you. Now you were also asked some questions about seeing the psychiatrist Mr – or Dr Ian Sale and it was suggested by you – at least as I understood the question, that you might have been sent to Dr Sale by me or by my firm for the purpose of a medico/legal report, you gave evidence that you were sent there by Dr –

HIS HONOUR: Walters.

MR GUNSON SC: Walters, thank you. (Resuming): Robert Walters, is that correct?.....That's right.

Right, and do you remember when it was that Dr Walters referred you to Dr Sale?.....No, I don't.

Thank you. I've no further questions in re-examination.

<THAT CONCLUDED THE RE-EXAMINATION OF THE WITNESS

HIS HONOUR: The accused can return to the dock.

Now, ladies and gentlemen, that's all the evidence that will be led on this trial. I now need to have a discussion with counsel about a number of things before final speeches start and I don't know how

long that might take. Gentlemen, how long do you think we need? Mr Ellis?

MR ELLIS SC: I have nothing to raise on the document that you gave us a couple of days ago, in fact –

HIS HONOUR: Well what I might do is ask the jury to go into the jury room and if we're going to be a very long time I'll get them back out and send them away. All right, ladies and gentlemen, would you go to the jury room, please.

<JURY RETIRE

HIS HONOUR: Well can I just run through a few things in an attempt to set an agenda, if we need to set one. Mr Ellis, you don't want to make any submissions about the draft memorandum?

MR ELLIS SC: No thank you, your Honour.

HIS HONOUR: One of the things that crossed my mind was whether I should tell the jury anything at all about the law concerning instigation, aiding, abetting or anything like that, but the Crown case very simply is that this was a deliberate killing with only one person in – one person breaking the law, is that it?

MR ELLIS SC: That's it, your Honour, yes.

HIS HONOUR: All right. Now are there any submissions that you want to make about Browne v Dunne? You hadn't planned to?

MR ELLIS SC: No, well that's exactly right, I hadn't planned to.

HIS HONOUR: Are there any submissions that you want to make about other aspects of the directions I'll give to the jury?

MR ELLIS SC: No, I don't see that your Honour is going to, for the memorandum, overcomplicate them with Shepherd.

HIS HONOUR: No.

MR ELLIS SC: And it's not that sort of a case, I would have submitted, were it in mind.

HIS HONOUR: Well I don't plan to tell them anything in accordance with Shepherd, but I haven't heard what Mr Gunson wants to say yet.

MR ELLIS SC: No – that's the only matter. There was another matter while I'm on my feet but it's not concerning directions, so I'll wait until it's going to arise.

HIS HONOUR: Well let's – let's have it and – because there are other things that I want to talk about.

MR ELLIS SC: Okay. With respect to my learned friend, he does have an unfortunate tendency to mis-state the evidence.

HIS HONOUR: Well now hang on, if he – if he mis-states the evidence in the course of his final speech, or if you contend that he does, then you'd better tell me about it in the absence of the jury, either during a break or at the end of his submission, and I expect him to do the same in relation to you.

MR ELLIS SC: That's why I raise it, your Honour –

HIS HONOUR: Yes.

MR ELLIS SC: - so that the idea is that I should keep my powder dry until a break or –

HIS HONOUR: Until a break.

MR ELLIS SC: Yes.

HIS HONOUR: Unless – unless you think there's been a gross error or there's some reason to make an exception but it's – I'd expect counsel not to interrupt one another except under – in an extreme situation.

MR ELLIS SC: Thank you, your Honour, I understand.

HIS HONOUR: One of the things that I've got in mind is providing the jury with a transcript with obviously the pages removed that relate to things that went on in their absence. I – this – I think the Judges of this Court are beginning to have different practices about this, but I think this is a case where there are so many little pieces of evidence that could very easily be looked up that it's the sort of case where it might be a good idea for the jury to have a transcript.

MR ELLIS SC: What we've worked, or Mr Shapiro's very adept at; he's – he's got the PDFs of the transcript loaded to a computer and he has been able to search for particular things very quickly – more quickly than a jury might be able to – have you got a separate one – have we got a separate one though – it's just an idea it's – I'm struggling to think who goes where and when was that and so on but we have made a bit of an alphabetical index which would be of use if your Honour's thinking of giving them a paper transcript. They are just suggestions. I object to them having transcripts.

HIS HONOUR: You're proposing to give them your – it's a tentative suggestion that they be given Mr Shapiro's index as well as the transcript, is that it?

MR ELLIS SC: No, no, he's got the pdfs as are available to the Court, and it's not – I don't think it's desirable to give them his. I'm certainly happy to give you the hard copy index which is alphabetical that we've cut and pasted as one---

HIS HONOUR: Well look, if there's something that your thinking the jury ought to have to make it easier for them, then show it to Mr Gunson and my Associate and we'll see what – we'll think about it.

MR ELLIS SC: Hmm.

HIS HONOUR: Another bit of housekeeping is that that's a very claustrophobic jury room and what I would propose to do is evacuate the Court Room and let them expand into it during their deliberations. Now was there anything else you wanted to suggest?

MR ELLIS SC: No thank you, your Honour.

HIS HONOUR: Yes, all right. Thank you. Now Mr Gunson, the memorandum first of all.

MR GUNSON SC: I have no difficulties with the memorandum, your Honour, insofar as the *Shepherd* direction's concerned. I'm perfectly happy with that.

HIS HONOUR: That I not give them a *Shepherd* direction?

MR GUNSON SC: That's right.

HIS HONOUR: Okay. Is there anything that you wanted to say about *Browne v. Dunne* or any other direction?

MR GUNSON SC: Not at this stage. I think the *Browne v. Dunne* issue's faded away at the end, but I certainly at this stage don't want anything said about that. There is one thing I do want your Honour or request your Honour to do and I know that your Honour will do it, because I've seen you do it before, and that is stress to the jury the questioning is not evidence. It's the answer to the question that becomes the evidence, and this is particularly so in this case and there are two specific examples of that. The first is the questioning of the accused this morning about the intricate operation of the IPERB, which I don't think came from anybody else, and secondly repeatedly my learned friend put a methodology to the accused of the way in which he suggested that she'd committed crime; and things

likes "You snuck up behind him and bludgeoned him" and things like this. Now he, of course, was required to put something to her but it needs to be made very very clear to the jury that when faced with negative answers to those propositions that what Mr Ellis put is not evidence – we don't want the jury going away thinking because he's put that therefore it follows automatically that that was her methodology – and there's the great danger.

HIS HONOUR: Well the – the other side of that is that I'll have to direct them that they don't need to be satisfied beyond reasonable doubt of Mr – of the theory as to quite what happened that –

MR GUNSON SC: Oh –

HIS HONOUR: - of the details of what happened that's been advanced by Mr Ellis, they – they could reject that or regard that as speculation and yet, be satisfied beyond reasonable doubt of guilt.

MR GUNSON SC: Oh absolutely, I don't quarrel with that.

HIS HONOUR: Well –

MR GUNSON SC: But what I'm saying is they ought not be left with some impression that because Mr Ellis advanced a theory in cross-examination that in some way it has an imprimatur, that in someway that is how it was done – they're my words – absent any evidence. And the best the jury have got at the end of the day is some blood – and they don't have an instrument, and they have a missing person, presumed dead, and they have some blood – I mean they don't have to make a specific finding as to how death occurred, and I don't want them going away thinking that because a particular scenario was suggested by Mr Ellis that that is the way in which the deceased met his death.

HIS HONOUR: Well I'll ask Mr Ellis about that in a moment. The other – the other area that you're concerned about is the cross-examination about the EPIRB activation and notification of Austar is that –

MR GUNSON SC: Yes, yes.

HIS HONOUR: Yes.

MR GUNSON SC: Because there was no evidence about that.

HIS HONOUR: All right. Well I'll ask Mr Ellis; what do you say about those two aspects, Mr Ellis?

MR ELLIS SC: Well as far as the first is concerned I agree with your Honour that the jury need not be in anyway bound the scenario suggested by me to the accused.

HIS HONOUR: Well this – well what I've got in mind is that I'll tell them that all that you were doing was discussing one theory of what happened, your – the fact that you asked those questions shouldn't be regarded as – shouldn't be regarded as anything more than a series of questions and is not in the same category as evidence that a particular course of events occurred but on the other hand they could conclude that that course of events didn't occur or that they don't know whether that course of events occurred and yet still be satisfied beyond reasonable doubt of guilt.

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: So far as the EPIRB is concerned was there evidence as to those matters you were asking about earlier?

MR ELLIS SC: Not as to notification of Austar there was as to the activation of the EPIRB.

HIS HONOUR: Well let's get to the bottom of that. That was your last witness wasn't it?

MR ELLIS SC: Well I think he was, yes.

HIS HONOUR: Mr Crawford?

MR ELLIS SC: Yes, your Honour.

MR GUNSON SC: 1055, your Honour.

MR ELLIS SC: I think he even demonstrated to the jury in front of – and got him to walk round the jury box from memory to –

HIS HONOUR: He certainly – well 1056 he demonstrated,

> *To activate it you lift the orange tab, can I have the EPIRB please. I've never seen one of these things before but to activate it you lift the orange tab where it says 'lift' and then there's a yellow part marked 'on' with two arrows*

and he said,

There's a yellow tab which you slide in that direction - sliding the yellow tab breaks the seal.

MR ELLIS SC: Yes.

HIS HONOUR:

So after it's been activated the yellow seal's – the yellow tab's over there and you shut it down to prevent it being turned (transcript says) *being turned off again.*

And he gets out and goes over and demonstrates it to the jury. But there's nothing said about having to notify Austar or anybody – it's got written on it:

Emergency activation. Open cover and push yellow slider fully over yellow button. Close cover. Flashing light and beeping confirms activation. Attention, important information on rear.

It says underneath a police label or forensic scientist's label:

Note:

Peeling this back:

The owner must register this EPIRB with their national authority.

So there's the evidence. The item was tendered with that written on the back.

MR GUNSON SC: But the national authority is the Australian Maritime Safety Authority and there's evidence somewhere about it being registered with the Australian Maritime Safety Authority.

MR ELLIS SC: Yes, that's so, your Honour, the witness – sorry, the accused said that she'd attended to that part, what I put to her and which – of which she seemed unaware and so there's no evidence of it, is a further step in the – in that registration once it's activated –

HIS HONOUR: That was in the police interview, wasn't it?

MR ELLIS SC: No. No, I don't think so. As I understand it there are two steps. I put – there is evidence, I think from the accused herself, that she took the first step and registered it.

HIS HONOUR: Someone, sometime in the last three weeks, mentioned AMSA and I thought to myself, 'I know what that stands for and nobody's told the jury', but I don't know when that was.

MR ELLIS SC: We'll see – we'll if Mr Shapiro –

HIS HONOUR: Well look I – the – now what's the point? The point is that the questions are – that answers are evidence and questions aren't.

MR ELLIS SC: Yeah.

HIS HONOUR: Now – all right, I'd like counsel to let me know what – I'd like counsel to get to the bottom of this before I get to my summing up and let me know what the transcript reveals as to what questions and answers there were as to the registration of the EPIRB with an appropriate authority.

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: And when I tell the jury in the early stages of the summing up that the – that – about basing their verdict on the evidence and all that that entails, I can then give them that example, as that's something that counsel have focused on.

Is there anything else that counsel want to discuss – Mr Gunson?

MR GUNSON SC: Yes, I do, your Honour.

HIS HONOUR: Yes – take the EPIRB back.

<SUBMISSIONS - MR GUNSON SC: My learned friend in the course of his cross-examination has put motive fairly in issue by asserting several motives to the accused. Now it's – there's no doubt that a jury can infer guilt from motive, but it's my submission the jury must be instructed that they have to be satisfied beyond reasonable doubt that the motive asserted by the Crown has been proved to that extent. Now the authority for that is to be found in *R v Murphy* which is reported in [1985/86] 63ALR@53, starting at the bottom of page 67, and that of course, was the appeal from the original convictions of Lionel Murphy, J. and a court consisting of Street, CJ. and Hope, Glass, Samuels and Preecely, JA. – and your Honour would appreciate, a court of some senior judges.

HIS HONOUR: Just a minute – Ms Oakes, could you get me from – we've got ALRs in this building, get me 63ALR?

MR GUNSON SC: And it would be helpful if your attendant also obtained 155ALR.

HIS HONOUR: Thank you. Yes, go on.

MR GUNSON SC: Just bear with me, your Honour. I'll move this. Now unfortunately I need to trouble your Honour with a fairly lengthy passage. It might be more convenient if I waited until your Honour's attendant arrives.

HIS HONOUR: Well---

MR GUNSON SC: I'm happy to start.

HIS HONOUR: Well are we going to start addresses this afternoon or are we going to be dealing with submissions of law until there's too little time left to be bothered? Mr Ellis, are you ready to start your address?

MR ELLIS SC: Oh I could your Honour, yes, thank you. We found a reference to AMSA too.

MR GUNSON: We could get rid of that in a moment.

MR ELLIS SC: What is it? It's in the Statutory Declaration of the accused. Sorry, your Honour, but we tendered it.

HIS HONOUR: Well, I'll – well how long do you think the discussion of – how long do you think submissions are likely to take this afternoon, Mr Gunson?

MR GUNSON SC: Well, I don't know what my friend's attitude to this particular issue is. As he said, if there's not an issue that troubles him, then I wouldn't have thought very long.

HIS HONOUR: Is this the last point you want to raise?

MR GUNSON SC: Yes, that's the only point I want to raise.

HIS HONOUR: Oh well we'll keep going and see what happens. At 67, yes.

MR GUNSON SC: 167 to a paragraph commencing '*The essence of the argument put to us appears from one passage in Counsel's address*'

> *Our submission is that in the case where the Crown Case has put to the jury on the footing that motive is evidence of an essential ingredient of the charges is plainly wrong. To direct the jury they need only to find noted according to the balance of probabilities.*

The Court continued:

> *Hence the submission depends upon the proposition that the learned Judge either explicitly directed the jury or from the language he employed may reasonably have given them the impression that they might infer the appellant's guilty intent from the fact that he had a motive or reason for helping Mr Ryan. It is necessary to find that motive or reason, stemming of course from the association between them, proved only on the balance of probabilities.*

Their Honours continued:

> *Instructions in those terms would have been wrong.*

In Chamberlain, Gibbs CJ and Mason J in their joint judgment said:

> *Nevertheless, the jury cannot view fact as a basis for an inference of guilt unless at the end of the day they are satisfied of the existence of that fact beyond a reasonable doubt.*

Here-

HIS HONOUR: But isn't this a different situation? His Honour was charged with attempting to pervert the course of justice. It was therefore necessary for the Crown to prove beyond reasonable not only that he said, I think the words were, "What about my little mate", but also that he intended thereby to try to influence a magistrate and therefore the motive was – well a critical part of the Crown case, something that needed to be proved beyond reasonable doubt in order for the jury to be able to convict.

MR GUNSON SC: In that case, yes, but in this particular case, if I could take your Honour further beyond those passages –

HIS HONOUR: Yes.

MR GUNSON SC: - perhaps to 69 commencing at line 6 and I start with the passage –

> *Evidence is always relevant which tends to show that an accused had a motive for doing the act alleged or for doing it with the intention asserted by the Crown. When such proof is given it constitutes 'a link in the chain of evidence led to establish the matter in connection'.*
>
> *In Mutual Life Insurance of New York v. Moss, a High Court decision, a case in which the principle question was whether the deceased died accidentally or by his own hand Griffith CJ described evidence of motive as in the nature of circumstantial evidence as to the main question in issue.*

He continued a little later –

> *On charges of murder sometimes the question is whether or not the accused caused the death and sometimes whether, if he caused it, he did so intentionally or accidentally. The existence of a motive may tend to show either the person in question did the acts simplicita or that he did it intentionally. Further in Plomb, in a passage cited by Gibbs CJ and Mason*

and Chamberlain JJ the Court observed all the circumstances of the case must be weighed in judging whether there is evidence upon which a jury may reasonably be satisfied beyond reasonable doubt of the condition of the crime charged. There may be many cases where it's extremely dangerous to rely heavily on the existence of a motive where an unexplained death or disappearance of a person is not otherwise proved to be attributable to the accused but all such considerations must be dealt with on the facts of the particular case.

His Honour continued –

I cannot –

Sorry, the Court continued –

I cannot think, however, that in a case where the prosecution is based on circumstantial evidence any part of the circumstances can be put to one side as relating to motive only and therefore not to be weighed as part of the proofs of what was done.

Finally in Plomb, Menzie J. did not accept the argument that a (indistinct word) person who had a motive for doing an act cannot be relied upon to prove he did the act. He quoted with approval the dictum of Atkinson, LJ during the argument in R v Wall, evidence of motive necessary goes to prove the fact that the homicide by the accused as well as his malice aforethought in as much as it is more probable that men are killed by those who have some motive for killing them than by those who have not. In our opinion it is incorrect to direct a jury that an accused's motive is a subsidiary fact or a non essential element in the case which does not require proof beyond reasonable doubt but may be proved to the jury's satisfaction or on the balance of probabilities. Motive is not merely a matter which can explain the accused's conduct, it is rather a fact directed to proof of the accused's guilt, as Chamberlain makes clear. Before a jury can infer guilt from motive they must be satisfied that the motive asserted has been proved beyond reasonable doubt.

Now I think that perhaps answers your Honour's question that your Honour directed to me and we would say that decision is on all fours

with the issue in this case. Now that case was revisited in Penney v R, which was reported [1998] 155 ALR 605, where Callinan, J. gave the decision of the Court, or more correctly Callinan, J. gave a judgment which McHugh, Gummow, Kirby and Hayne JJ agreed, and I simply direct your Honour's attention to page 612 where his Honour said at 25, para 25:

> *The appellants submitted that the passage which is quoted above confused intention with motive. If motive is to be relied on then it must be proved beyond reasonable doubt. The appellant argued that the Trial Judge, having referred to what was in essence motive should have given a direction to that effect.*

His Honour continued:

> *Taken in isolation the passage could have a tendency to confuse motive with intention. The appellant in this connection relied upon a passage from the unanimous judgment of the New South Wales Court of Appeal of five judges in R v Murphy, in which that Court accurately summarised the relevant principles stated in Chamberlain No 2, which applies if motive is to be used as a factual basis for an inference of guilt –*

and the passage that I read a moment ago is cited by Callinan, J. with the approval of the balance of the members of that court.

So my submission is that your Honour, in this case, must instruct the jury that where the Crown relies upon motive that – that that motive has to be proved beyond reasonable doubt. In other words, the elements that go to motive must be proved beyond reasonable doubt if they are going to rely upon a motive. I mean the jury may well say 'we're going to ignore motive' but that's not the point. If your Honour is going to direct them as to motive then it must go that next step.

If it please, your Honour.

HIS HONOUR: Mr Ellis?

<SUBMISSIONS - MR ELLIS SC: The cases that my learned friend refer to, and the point that he seeks to make of them, seem to be at odds with his concession that he doesn't want a Shepherd direction. Shepherd came after Chamberlain No 2.

HIS HONOUR: Well – well if he – if he's right, then he shouldn't have made the concession about Shepherd. Is he right?

MR ELLIS SC: No.

HIS HONOUR: Why not?

MR ELLIS SC: Because when put in context by Shepherd is only when, in a circumstantial case, a fact is relied on by the jury as an essential part of its reasoning that that fact should be proved beyond reasonable doubt. And in my submission, motive, whatever's made of it in the confusion that reigned a little bit after Shepherd and subsequently after, motive is in no different category; there was never, and is never, a special category called 'motive' as to circumstantial evidence. A jury may find murder without motive – that's obvious, and simply because the Crown raises it – raises a motive or speaks of a motive, doesn't affect that. And so my learned friend seeks to say that because of motive being talked of by the Crown or suggested by the Crown then there falls an obligation on the Crown to prove it beyond reasonable doubt – that would be contrary to Shepherd, which sought to explain the Chamberlain comments in terms of indispensable steps in the reasoning. Indeed in Shepherd it was acknowledged that 'Oh there's been a lot of confusion following Chamberlain' and what we really said was, and many commentators of course said "Well we didn't think you said that either", but nevertheless, Shepherd is the later case – I don't know why we've got the earlier case than Shepherd, it's the case –

HIS HONOUR: Well is Shepherd after Penny?

MR ELLIS SC: I'm not sure that it's after Penny, but if it's not cited in Penny then it probably is.

HIS HONOUR: Well I'll soon find references to it. Shepherd is in 1990, Penny is in 1998.

MR ELLIS SC: Yes, but it's a matter of not saying if motive's relied on it's a matter of motive being an essential step in the path to which a jury –

HIS HONOUR: Yes.

MR ELLIS SC: - find a ver – finds guilty on a circumstantial case.

HIS HONOUR: Well the last word on motive would appear to be a High Court case called De Grouchy in 2002. Can I reserve – would you be able to start your closing speech if I reserved my decision as to this point, Mr Ellis, or do I need to dispose of this first.

MR ELLIS SC: I think –

MR GUNSON SC: Can I say something which may assist?

HIS HONOUR: Yes.

MR GUNSON SC: To the extent that I said I was content to your Honour's proposed direction and didn't specifically rely on Shepherd in view of what flows from Penny I have to withdraw that.

HIS HONOUR: Yes.

MR GUNSON SC: But having said that there is so much that comes from Shepherd and from Chamberlain which are consistent and that – I mean there are, as I see it, using the Australian Trial Directions on circumstantial element there are some half a dozen, I suppose, standard directions that flow from those two cases but – so my fallback position I'd have to say in light of Penny is that I want a Shepherd direction. I think your Honour needs to determine that, at least from my point of view, I'm not going to get to my submissions this afternoon, but – and I would like to have the opportunity to read De Grouchy as well which I – again looking at pre-trial directions, as your Honour says was in 2002, but Penny is clear authority for the proposition that I've articulated to your Honour.

HIS HONOUR: All right. Well, Mr Ellis, what's your position, should we send –

MR ELLIS SC: My position is that I'd hoped to say something almost to start with to the jury about a circumstantial case and if it seems that I'm going to be wrong or possibly redirected or overruled by your Honour I'd better be careful.

HIS HONOUR: Yes, all right. Well it seems to me I'd better get the jury back, send them away till 10 o'clock tomorrow and sit at 9.30 to resume this discussion.

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: Yes.

MR ELLIS SC: Your Honour, the AMSA –

HIS HONOUR: Yes.

MR ELLIS SC: - is an acronym used by the accused in her statutory declaration, which is – I think you know now the pattern of them statutory declaration – oh sorry, statement/statutory declaration.

HIS HONOUR: Yes.

MR ELLIS SC: Could I also revisit then the Browne v Dunne, I don't think I quite appreciated what your Honour was asking me; and I do seek a direction along the lines that I think we'd discussed in the absence of the jury, namely – my idea was that you actually told the jury that there was a reason to put things because you don't hear one – what one witness says about another –

HIS HONOUR: What I told the jury was that in relation to the proposition that certain figures were discussed with Kate Chappell that when they're assessing the evidence they should bear in mind that what the accused said wasn't put to Kate Chappell –

MR ELLIS SC: Yes.

HIS HONOUR: - and that there is a rule that requires such things to be put so that a fully – fully informed assessment can be made – something to that effect.

MR ELLIS SC: Indeed.

HIS HONOUR: So that's what I told them in relation to that particular aspect of the evidence of Kate Chappell, and having said it during the trial, I suppose I should say it again in the summing up. But if you wanted me to say anything to the jury about any other Browne v Dunn point you'd better let me know?

MR ELLIS SC: There is, your Honour, and that is –

HIS HONOUR: Yes.

MR ELLIS SC: - it's been quite some feature of my cross-examination that matters were not put to certain witnesses which Ms Neill-Fraser has sought to dispute or otherwise, and that's an aspect that the witness be given an opportunity by counsel for the accused putting to them where they depart from instructions.

HIS HONOUR: Yes, if – if it's proposed to lead evidence in – about something within the witness' knowledge or contradicting the witness.

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: Yes, well I'll – so you're asking me to tell the jury in general terms about the rule in Browne v Dunne?

MR ELLIS SC: Yes, please, your Honour.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Yes, I can't argue with that, your Honour.

HIS HONOUR: Yes, all right. Anything else to discuss? Are you happy for them to have the transcript, Mr Gunson?

MR GUNSON SC: Yes, your Honour, with the – as you said, with the relevant pages about argument removed and my friend's opening address removed and my address removed.

HIS HONOUR: Yes, yes.

MR GUNSON SC: And it would be useful I suppose if we could have our juniors vet that at some stage.

HIS HONOUR: Oh, yes. Well I – that's what juniors and associates are for, yes.

MR GUNSON SC: Yes, absolutely.

HIS HONOUR: All right. Is there anything further before I get the jury back?

MR ELLIS SC: No, thank you.

MR GUNSON SC: No, may I ask the obvious question though, when would the opportunity to vet the transcript occur?

HIS HONOUR: Well we've got until the close of my summing up so we'll – we'd better start – I've got an incomplete list of pages when the jury weren't there and someone needs to – I'll get my associate to have a look at that but if – if one representative of each side and my associate work on that we should get an agreed version of what pages should go out.

MR GUNSON SC: Probably what all it needs, your Honour, is that if your associate emails our juniors with the pages that should go out I'm sure that they will check that.

HIS HONOUR: All right, well I'll ask her to do that.

MR ELLIS SC: Can I suggest that the transcript of the interviews also be provided then, your Honour, if –

HIS HONOUR: Well that's a bit different in that the jury can play them and can – well I suppose the advantage of a transcript is that they might more readily find their way around the interviews.

MR ELLIS SC: Yes. If there are enough copies it can be sometimes more quickly –

HIS HONOUR: Now I've – all right, well it's a fairly easy thing to produce a clean copy of the transcript can you produce clean copies of the interviews?

MR ELLIS SC: I should think so, your Honour, yes.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: The problem with the interviews, your Honour, and probably (indistinct words) watch the interviews is the way in which it's been transcribed doesn't necessary reflect the way in which the question is answered and sometimes how the questions themselves were framed. There were obviously in some answers very lengthy pauses but the – in the middle of, say, a sentence or a paragraph and it's all been together so it's a little artificial when you look at the transcript of the record of interview and I object to the transcript going in.

MR ELLIS SC: I don't press it over objection, your Honour.

HIS HONOUR: Sorry?

MR ELLIS SC: I don't press it over objection, it was simply a suggestion.

HIS HONOUR: All right, thank you. Right, have we said it all?

MR GUNSON SC: Yes.

HIS HONOUR: All right, get the jury back in.

<JURY RETURN

HIS HONOUR: Well ladies and gentlemen, there's a point of law that I need to consider overnight so we're not going to proceed with closing speeches until tomorrow. I'm going to sit at nine thirty tomorrow in order tomorrow in order to finalise the discussion that I've been having with counsel, so in a minute the Court will adjourn 'til nine thirty but we won't need you 'til ten o'clock, so I'll ask you to make your affirmation and come back at ten o'clock in the morning and the Court will then adjourn until nine thirty tomorrow morning.

<JURY AFFIRMED OUT

<THE COURT ADJOURNED

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THE COURT RESUMED AT 9:30 A.M. ON WEDNESDAY THE 13TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: - motive and proof beyond reasonable doubt.

<SUBMISSIONS - MR GUNSON SC: Briefly, your Honour, I had the opportunity to read last night the two decisions to which my friend referred to in the email that he sent late yesterday, that's Coleman and Coxman, the two Victorian cases. In the time available I have to say this, that it seems that those two decisions very much sit on their own and they certainly don't appear to have been followed in other jurisdictions and it's useful to have a look at the text, Australian Criminal Trial Directions by Gillman and others and there's no reference to them there under the question of motive, but of course Kirby, J. in de Grucci at paragraph 85 of the Commonwealth – sorry, at paragraph 57 of Commonwealth Law Reports 211, page 85, paragraph 57, in a long passage which I won't read to your Honour, spoke of the necessary judicial instruction to be given on motive and that would seem perhaps to be the way in which it ought to be approached. If your Honour has Criminal Trial Directions in front of you I just take your Honour to page 2708. Now having –

HIS HONOUR: Oh well it's – yes, I've got both that and the report of de Grucci in front of me –

MR GUNSON SC: Yes.

HIS HONOUR: - so I'll read from the Commonwealth Law Reports rather than –

MR GUNSON SC: I – certainly I was shorthanding it, your Honour, for the moment.

HIS HONOUR: Yes.

MR GUNSON SC: However, having said that it is to be observed of course that Penney, whilst I suppose criticised by the Victorian Court of Appeal, has never been overruled by the High Court it would seem has never been considered again, so to the extent that Callinan, J. was supported completely by the Court in Penney as to his interpretation of what the Court had said in Murphy it still remains in my submission good law, but notwithstanding what the Court of Appeal of Victoria may think of it, and the Court of Appeal of Victoria, as we all know, can't overturn what the High Court has said. If it please your Honour.

<RULING - HIS HONOUR: Yes, thank you, Mr Gunson. I don't need to hear you, Mr Ellis. I'm not going to give the direction sought. The situation is that there's an apparent conflict between what Callinan, J. said in *Penny v R* [1998] 72ALJR@1316 at paragraphs 24 to 29, in a judgment that was simply agreed to by the four other judges that constituted the bench in that case, and the fundamental principles to be applied by circumstantial – in relation to circumstantial evidence that were expounded in the High Court in *Shepherd v R* [1990] 170CLR573. It – in essence the – what the High Court said in Shepherd was that in a case involving circumstantial evidence if a particular asserted fact was an indispensable link in a chain of reasoning upon which the Crown depended, then that – then the jury needed to be satisfied beyond reasonable doubt as to that fact, or as to that link in the chain, otherwise it couldn't return a verdict of guilty. That was a departure from the law as previously understood following Chamberlain.

Now in Penny, a question arose in relation to proof of motive and Callinan, J. quoted with approval what had been said in the NSWCCA in the *R v Murphy* [1985]4NSWR42@59 to 60. That, of course was a case that was decided after *Chamberlain* and before *Shepherd*. What Callinan J said about motive in *Penny* was *obiter*. He essentially said that the situation referred to in *Murphy* didn't apply. *Shepherd* wasn't referred to in *Penny*, and the – one would think that if the High Court intended to depart from *Shepherd* or to depart from *Shepherd* even to a small degree that *Shepherd* would have been referred to. Now what was said by Callinan J in *Penny* has been considered in several cases in the Victorian Court of Appeal and the New South Wales Court of Criminal Appeal. It hasn't been considered by – *Penny* hasn't been considered, as far as I can see, by the Intermediate Appellate Courts of any of the other Australian jurisdictions. The view that's been taken in all of the cases – all of the appeals in New South Wales and Victoria is essentially that in a case like this – a case like the case today that *Shepherd* should be followed, and that unless proof of motive is something that is indispensable, that is, unless proof of motive is essential to the proof of a circumstantial case, then it's not appropriate to give a direction to the effect that motive needs to be proved beyond reasonable doubt before it can be relied upon as part of the reasoning process leading to a conviction. The ---

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HIS HONOUR: - as part of the reasoning process leading to a conviction. The – the authorities in Victoria and New South Wales that lead to, or that – in which that view have been taken are the *R v Pantoja* P-A-N-T-O-J-A [1998] NSWSC565 – that's also Butterworths unreported case 9805883. The – that view was taken by James, J. with whom Wood, J. the chief judge at common law, agreed and in a separate judgment by Adams, J.. Similarly, in the *R v Plevac* P-L-E-V-A-C [1999] NSWCCA351, Grove, J. took that view at paragraphs 22 to 28 and James and Dowd, JJ. agreed. The New South Wales Court of Criminal Appeal took the same view in the *R v Fowler* [2003] 151ACR166 at paragraphs 73 to 77. The point was considered very thoroughly, as were the New South Wales' decisions in the *R v Cottsman* [1999] 2VR123, particularly in the judgment of Phillips, CJ. at paragraphs 1 to 3; the judgment of Calloway, J. at paragraphs 7 to 32 and in a postscript at paragraphs 44 to 47, and in the judgment of Batt, J. at paragraphs 50 to 57. Next came the *R v Koelman* K-O-E-L-M-A-N [2000] 2VR20, in which Tadgell, J., which whom Calloway and Buchanan, JJ. agreed, took the same view at paragraphs 26 to 28. Next came *R v Noyan* [2001] 188ACR@479 – Smith J dealt with the point at paragraphs 104 to 105. Chernov J said that he essentially agreed with Smith J's conclusions or reasons on the relevant – in relation to the ground of appeal at paragraph 24. The other member of the Court didn't deal with the point. And finally *in R. v. Cummings [2004] 10 VR 15* Ormiston J, with whom Warren CJ and President Winneke agreed, dealt with the point at paragraph 31. In my view I should follow the High Court in Shepherd and the seven cases in New South Wales and Victoria that I've just referred to. In my view there's nothing in this case that makes the proof of motive an indispensable link in a chain of reasoning by which the Crown seeks to prove its circumstantial case. To use the other metaphor that was used in Shepherd motive is one of the strands in accord and if the jury are satisfied of there being a motive that is one fact but they may take into account in deciding whether the case is proven beyond reasonable doubt so it's for those reasons that I reject the submission.

MR ELLIS SC: If it please.

HIS HONOUR: Is there anything else that we need to discuss before 10 o'clock, Mr Ellis?

MR ELLIS SC: When your Honour asked about directions I'd overlooked that - the way I have already opened the case would oblige your Honour, in my submission, to make a direction such as that referred to in *Edwards v. R.*

HIS HONOUR: Yes, and I certainly will have to do that and one of the things that I need to do is to identify in that direction every lie relied upon by the Crown as an Edwards lie and the circumstances relied upon by the Crown in relation to that so-called lie.

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: So I'll be listening to your closing speech and making a list.

MR ELLIS SC: So – so I don't strain your Honour's writing hand I think that essentially I'll put that the two lies that the jury can find were told – sorry, not two, but there are – there is a lie about having gone down to Marieville Esplanade on the evening of the 26th January.

HIS HONOUR: Sorry, a lie about having stayed at home?

MR ELLIS SC: Yes.

HIS HONOUR: Yes, yes.

MR ELLIS SC: And there's a convocation of lies around that, there are different stories which do not fit together and so some of those may be found to be lies.

HIS HONOUR: Mhm.

MR ELLIS SC: In my submission also the early, persisted with for a long time, indications by the accused to police that she had gone to Bunnings in the afternoon of the 26th also involve a convocation of lies.

HIS HONOUR: Yes.

MR ELLIS SC: As to other lies that the jury might have found to have been told I can't think that I will be necessarily using those as indications of – from which they can gather a guilty mind except that – well then they go more to credit, I suppose, and those would also I suppose call for a Zoneff type direction.

HIS HONOUR: Yes. Mr Gunson, do you want to say anything about that or any other point?

MR GUNSON SC: No, I think we've fairly confidently identified those two during the trial, your Honour.

HIS HONOUR: Yes, well I'd wondered whether the Crown were seeking to rely on any more, so unless something's said during the closing speech or something else is put to me the Edwards direction will relate only to lies or assertions said to be lies about having gone to Bunnings on Australia Day and about having stayed at home on the night of Australia Day.

MR GUNSON SC: It is important in respect of the latter to distinguish between what can easily become confusion because there's no evidence at any stage she said to the police, "I did not go to Marieville Esplanade that night", rather as your Honour properly says and characterizes its, "I stayed at home" –

HIS HONOUR: Well I'd – I'd –

MR GUNSON SC: Maybe it's – nothing really turns on it to any great extent but it's more a characterization of it, because at the end of the day, she said, you know, on the evidence, "I stayed at home."

HIS HONOUR: Well I'd – I'd need to analyse – I'd need to – I'd hear Mr Ellis saying sotto voce that that might not be the case. I'll need to analyse or trawl through my notes as to what was said, unless my memory is refreshed in the course of closing speeches. But I'll – obviously the jury will be alert to the question of whether things were said as a result of mistake or confusion and whether false statements were made out of motives others than concernment of guilt.

All right. Well if there's nothing further to discuss the Court will adjourn until ten o'clock.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION

HIS HONOUR: Well ladies and gentlemen, we've reached the point where you'll now hear Closing speeches by both Counsel. The Crown have to go first, and after that I'll sum up. I don't know how long it will be before they and I have completed what we have to say, but I certainly don't expect it to be today. So far as the reserve jurors are concerned, I'll require them to keep coming until the day when I expect to finish my summing up, and – or up to and including that day, and then if the other twelve jurors are all here and well and able to continue on that last day, I would – that morning I propose to discharge the reserve jurors. Yes, Mr Ellis.

<CLOSING - MR ELLIS SC: Thank you, your Honour. Madam foreperson, ladies and gentlemen, it's only the second time in a long trial, of course, that I get the chance to address you directly. The first time was when I opened the case on the very first day of the trial, and very soon after it became apparent to me that there was something I should have dealt with, because people would come up to me and say, 'how can you have a murder trial without a body, how does that work, that can't be right', and so it's probably likely the sheer number of people who've said this or said that others have said it to them, that one or two of you might have thought the same thing. I hope you weren't sitting here thinking 'this is a waste of time, there is no body'. Because when you think it through, and as I should have explained to you, murder is the unlawful killing of someone and so, therefore, the Crown's got to prove that someone has been killed, someone is dead. Now in the case where there's a body, it's pretty obvious. There's the body of the person, there's been an autopsy, post-mortem, all that sort of thing, you know. There's no question about it. But where there is no body, then it's got to be proved to you, this part of the crime, just in a different way, that's all. If it was otherwise, people could go round committing murder in front of full view of about forty witnesses and then burn the body up and 'hah, away with it'. So the law's not that easy to get around. And so the proof of the death of Mr Chappell is one of the things that I've tried to prove or Crown's tried to prove in this case by other facts, circumstances, and those circumstances you've heard many of; the searches that have been done and the fact that there has been no contact, the sheer unlikelihood of Mr Chappell, as you've come to know, his character and his dedication to work – swimming ashore and starting a new life in Rio De Janeiro or something, it's just all ridiculous fantasy when you think about it; that there's any doubt that he'd dead. But you've got to be satisfied - it's my job to satisfy you beyond reasonable doubt - that he is dead – just as a starting point.

Now when – I mentioned in my opening address, of course, when my learned friend, Mr Gunson, opened his case to you, necessarily briefer because it was to as what matters were in issue, and he said twice, and "Mr Chappell, if indeed he's dead," as if this was going to be an issue at trial. And of course, we've heard not a scrap of evidence to suggest the contrary, not that there's any onus on the defence. But I will suggest to you now that this is and was typical of the way Ms Neill-Fraser treated the police investigation into the disappearance and death of Mr Chappell, and typical of the way the case has been conducted by raising 'red herrings' by setting off 'hares'.

At the end of the case you'll be asked to consider your verdict on the basis of are you satisfied beyond reasonable doubt of the guilt of the accused? Now raising 'red herrings' and laying false trails and so on, might all give the impression, that 'Oh look, we looked over there – look over there, look over there – well we looked over there, there must be a reasonable doubt' – all those things that are raised, all those 'red herrings' that were raised, I suggest, look at them by all means, but don't think just because you were made to look over there that ultimately your decision has to be, 'Well we looked over there, we must have a reasonable doubt'. In the end it's from your conscious individually, not as a group, are you satisfied beyond reasonable doubt of the guilt of the accused, Ms Neill-Fraser, of the murder of Mr Chappell. Not – sometime during the case did we think, did we think, 'Oh there's a point, beauty' – you know, and you can think of those points again and I invite you to, and you must think of them, but when you do, when you hear them raised perhaps again I'd just ask you to think red herring, red herring or not, just look over there, the same with a lot of the things that will be – or have been suggested to you. I suggest one little caution you might have is well who says it. Is this only coming from Sue Neill-Fraser, is she the only one who gives this evidence, and if so, look at her credit, just look at whether you trust anything she says that isn't – especially anything that she doesn't perceive to be against her interests in this trial or in the investigation. She's erected a wall of lies to knock back the police investigation, to divert it in other ways, and to you, to divert you in other ways. And sometimes even with a wall of lies though the truth will come seeping out through the edges or around the side and will reveal itself sometimes in what she says when she isn't completely on guard, I'll come back to that.

Now when I cross-examined Ms Neill-Fraser I put to her a scenario that Mr Chappell was getting increasingly agitated about the cost of this boat which she, there is no doubt, was the prime mover in choosing, in checking out and so on, and she was getting, I suggest,

increasingly sick of hearing about that. Their marriage was over, there was nothing left. She says in this court in virtually the last day of evidence, "I wouldn't hurt anyone that I loved so dearly", well the 'love' word is one that sprung up for the first time then. You will search in vain through the interviews and statements that she has made to find any expression of love for Mr Chappell. You will search in vain even for a good word for him, an unqualified good word, the best that comes really is that he had a well developed sense of justice, but that's immediately qualified by, to his detriment, 'that it caused us to be ostracised with the doctors at the Royal' – the Royal Hobart Hospital, not Royal, the club, although perhaps them too. And where's the good word to be said for him? Just none.

Mr Stevenson and Mr Rowe have given you evidence that she told them the relationship was over, was strained and over. Whether Mr Chappell knew it or not, that often happens, doesn't it, that someone's left a relationship in their mind but the other party hasn't caught on to it yet, it might come as a surprise. But why would they say such a thing, you know, what axe have they got to grind against her? None were suggested. It's not up to her to suggest a motive but it's up to you, ladies and gentlemen, to look at these witnesses and say, - where – where are they coming from? Mr Rowe, has he got some hatred of her that he'd go and make this up? Mr Stevenson, would he go and make this up? They came to the Court and gave the evidence, as did Mr Casson with a conversation about buying out Bob's share, which is what he can recall. And what was said, "Oh well Mr Rowe got the wrong end of the stick, I'd – I'd – oh look" – if you're going to play the interviews again you'll see this constant technique of Ms Neill-Fraser's, "When – when does he say I rang, when was that. Oh well that was after we'd just had a row, but no, there was nothing and I was – I said, this can't go on much longer and I don't think we'll be together for much longer, or something like that, when was it, when was it", and then she fills in an excuse for it. It's just typical, it's just constant of the way she approached the interviews, the way she approached cross-examination, "Give me some time and I'll fill it in". Why is this entry of the 10th January in your dairy in two pens if you do your diary up of a night and it's all about the yacht? "I was probably walking around" – let – it just came so easily, it seemed to her. She is just a person who can make up things and tell them, perhaps convincingly, when you see the first video interview, if you're going to look at that again, but no doubt you'll remember this part, this part when she was asked, "Did you go anywhere that night, the night of the 26th, were you at home?" and there was not a change in her voice, in her posture, she had her hands on her – head on her hand like that and just answered it exactly the same as any other question, but we know it was a lie, because she's

told us it was a lie. She's had to tell us it was a lie, I suggest, or she thought she had to abandon that lie when there was evidence given by her daughters to her to the contrary – "There's a car that looks like yours. Been caught on camera, late at night, in Sandy Bay Road"– ah, never before had there been any admission that she had gone out, but after that, then a story was developed. First, it was given, it seems, to Mrs Sanchez by telephone, Mr Chappell's sister, that she did drive down there and back. "She drove down there and back" were the words of Mrs Sanchez of the telephone call that she well remembers, and that was not suggested to her to be in anyway untrue.

Now the way we conduct a trial is that people have lawyers to say for them what they would say were they lawyers, I suppose, or to put things to them, this is why it's important what is put to a witness to say "I'm contradicting you" so you can hear what the witness says about that, and so you can assess the evidence in a fair way. That evidence is so much more, which I won't go over it all, you heard it in the last couple of days – and that wasn't all either – but you heard it in the last couple of days that this wasn't put, that wasn't put, this was unchallenged, that was unchallenged. And at the very start I asked Ms Neill-Fraser, 'Is there anything about the way the case was conducted that caused you concern? No.' 'Couldn't you think of anything? Oh, except the cross-examination of Mr Triffett.' 'In what way? Oh, well, I'm in fear for myself.' Of course, it's all very easy to blacken Mr Triffett's name when he's not here. Apparently, the terrible crimes committed and not a word of it to him, of course, except the fifteen or so traffic convictions he had, and the possession of some stairs that the police believe were stolen. That's not a receiving charge by the way. It's a funny old charge where police officers come across property and if they have reasonable grounds to believe it's stolen, then that is the offence. That's the offence for which he was convicted about the stairs and the drill or whatever. It's no wonder it was not proceeded to conviction, despite a plea of guilty. But here and in her interview, 'Oh look it's full, full of it, oh what a bad type, what a terrible man.' And I put to him none of that. Why, why not put it to him fair and square? Well that's, I suggest, the way that the case was conducted.

And when I opened I told you a lot of the things that I would try to put it in a narrative why and how things came about, no, that helped make some sense of what was a long case, a lot of witnesses coming in and out , and wherever they go and they're all out of order. Essentially, I suggest, what I told you we would prove and what the case would be about has been proven. They bought a boat, and they seemed to be very – a couple who were very keen on keeping track of the dollars and cents, especially – especially Mr Chappell. He was

described by – by Ms Neill-Fraser as being paranoid about money, that 'he always thought we were short of it', or something like that. And I put to her a series of – a series of figures with which she agreed by and large, about the cost of the boat up to the 28th December 2008 and generally no disagreement. And even things like fuel on the way down, that was included – that was included in the grand totting up and she never said, did she, 'Oh, well, you know, I had the trip so I paid for the fuel'. No, that was all - they were, I suggest, a couple down to the last dollar and cent and although we only have Ms Neill-Fraser's word for this, although we only have her word for it - she has said that Mr Chappell was agreeable to a upper limit of two hundred and fifty thousand dollars between the two of them for the boat.

Well when you get to two hundred and forty three odd thousand by 28th December or so and there's no end in sight a person like Mr Chappell, who is careful with his money, might well be getting agitated especially when the last he sees of the boat, the last he sees of it at Southport, that's not very far from where they took off, it's being towed into – towed into the mooring, engine failed. And then there's a litany of things that go wrong with it on the way down and what does Ms Neill-Fraser say to the crew, Stevenson and Casson, 'Don't tell Bob, don't tell Bob, I'll deal with it'. Then they get back and there is again a litany, I suggest, of the truth seeping out around the edges about it. In a statement of the – sorry, on the interview of the 4th March there are batteries of a thousand dollars each and the advanced marina fees had been refunded and she said, "So Bob wasn't very happy and I rang up McKinnon and he gave me a tirade. He said the boat wasn't ready, it's not ready to take, my advice to you is not – and I said we'll we're coming up to take it", so Ms Neill-Fraser often knows better than other people. She knew better than him, she knew better than the doctor who treated Mr Chappell in Southport, she knew that the nose ought to have been cauterised. She knows a lot better than people at the yacht club who might have said that it's unforgivable to leave someone out on a dinghy – out on a boat without a dinghy, "Oh phew, what would they know, they're older men". Time and time again she knows better. And would she know better than Mr Chappell about the selection of the yacht and its fitness for what they thought they would be able to do with it? You bet she would, she would know better, and as witnesses have said time and time again, she was the dominant one, she drove the thing. She was the one who checked out the previous owners and she, I suggest, was the one who thought it was okay to buy a second-hand survey, a pre-existing survey. And it's interesting when the boat's in Hobart and Mr Makepeace, the electrician, is asked to come on board, taking the dinghy from the boat. I think he comes out, Mr

Chappell's on it, takes him back. Ms Neill-Fraser's already on board but apparently another – well you can take it as a lie – in her statement that would never happen unless it was totally necessary, totally necessary. I'm getting sidetracked.

So Mr Makepeace comes out and gives some sort of a quote, about seven thousand to do a quick fix job or two odd thousand to do – I'm sorry, seven thousand to do – to fix it a bit more permanently this electrics which someone, it might have been Ms Neill-Fraser, referred to as a nightmare, some octopus looking arrangement, or something like two and a half, she says, to give it a quick fix and Mr Chappell was examining that. But Mr Makepeace wasn't given the job in the end because of – they'd heard, according to Ms Neill-Fraser they'd heard from people that he was too expensive and there was someone else at Kingston. Now we know that they were keen – I'm sorry, she was keen, I keep attributing things to Mr Chappell that we don't have any evidence of except her word – that she was keen to go on some trip to Bruny Island by Royal, the Royal Yacht Club of Tasmania that was to take place in March. And so why isn't the other electrician contacted? Well he's not, and what's Mr Makepeace told, he's told 'Oh look, it's a dud - we're looking at taking legal action against the person who did the survey'. Maybe they were, maybe Mr Chappell had said "Enough is enough you got into this dud survey let's see if we've got some remedies about that".

But Ms Neill-Fraser is always, I suggest, always on guard for that sort of truth of his dissatisfaction leaking around the edges of her lies and never really is it shown more clearly than towards the end of the second video interview on the 5th of May 2009 – 663, your Honour – and she's talking about – and she said:

> *I don't remember how much that we paid for the survey report that was pre-existing from a surveyor in Sydney. Bob would probably, yeah, look, oh look, I'm trying while I'm talking to you, I'm actually trying to go back over the previous month, which was actually –*

So she started "Bob would probably say we shouldn't have done that, that is my fault," but there was a quick u-turn, and as I say, it's towards the end of that interview, which – oh change the subject - I'm trying to think of something else' – she started it, "Bob would probably say, and you know, I suggest, what Bob would probably say, 'Why did we get a secondhand survey, Susan, that was all your idea, now look what's happened, have we got any legal remedies about this – look this boat is no good for what we wanted – a couple of us sailing around'," maybe down to Bruny or whatever, maybe bigger

sailings. And that's before even talking about putting up sails, putting up self-furling sails. Now you've heard, but only when I asked, about the pricing that had been taking place, and oh there was a grand plan you could put four winches on the top of the – top of the wheelhouse apparently, oh, it's all steel, well so is your car but you wouldn't put four big sails on top of it and winch it – held down by winches on the roof, well you'd soon see what happened, the roof would come off, (indistinct words), exerts enormous force.

So what were the options to get this boat to a condition where it could even go down to Bruny Island – I'm sorry, Port Davey, where it could go down to Port Davey, they couldn't even put up the sails themselves, the mainsail, how humiliating would that have been to Ms Neill-Fraser, the third generation member of the Royal Yacht Club. To have been the driving force between – the driving force of buying this boat, it looks nice, oh, yes, there would be lots of admirations for how nice it looked, but a dud, just a dud that needed more and more money and the man who watched the dollars and cents, I suggest, would be in no doubt – no doubt keenly looking at that. And the very day before he was killed, and I suggest he was killed, there's no doubt that he was killed surely, they go down with Ms Sanchez, his sister, to Adventure Bay. Time to drop the anchor, it fails, and the truth comes around the edges, Bob was very very upset, extraordinarily upset, about that. Well it's only a little thing, maybe it is, but how close are you coming to the last straw when he says, 'No more, this boat is useless, you have got me into a lemon, I want my money back, you can do with it what you like, it's no good'. How much more, well on the day he was killed, according to Ms Neill-Fraser in the truth that comes around the edges of her lies, she goes back, according to her, on board having – had lunch with Mrs Sanchez and he emerges from the engine room crossly, he's cross about something. But of course in this trial, it was completely different. When she gives evidence, "Oh very happy, a good frame of mind, found the oil leak (indistinct word) no worries". "Crossly" was what she said in perhaps a more unguarded moment, and then there is at some point that afternoon, what she described Mr – Constable Sinnitt as "a row", it was noted by him as she having said that when he spoke to her with Constable Milazzo on the 5th of February, and his notes – not suggest that they weren't accurate, that I can recall, as to this were that:

> *Bob was going to look at the regulator as I left and in front of that panel made a cup of tea. Bob working in the engine room and on electrical panel. Had row, me in Bob's way. I was working on the washing machine which was in the way of the tools.*

And there was a quote:

My tools as well.

Tools feature, as I said, Ms Neill-Fraser who produce, for the first time, that I can find in any statement or interview, in this Court, the first time that wrenches were missing when their yacht – or wrenches had been found to be missing when the yacht was at Goodwood, and that was quickly said, "Oh, well they disappeared at Goodwood" – it was tools, wrenches, what's the significance of that being on her mind as to the very last time she sees Mr Chappell alive? The significance is as I suggested, those tools, and they weren't just tiny little wrenches, you can guarantee they wouldn't – why would you have tiny little wrenches on a boat, if they were tools? A great big fifty three foot boat, they'd need a bit more than a tiny little wrench and little box. But she corrected that when she knew the wrenches had been out – had got out – from her mouth. Well she's walking backwards and forwards, he's getting increasingly angry. He's giving her what she called in one of the interviews, "the usual harangue" – now that's revealing, isn't it – "the usual harangue about how he had to go to work and do all these things". That isn't a happy person, and calling it the usual harangue is not someone who's happy to listen to it either. She said, "He was snapping at me like a crocodile", she said, "That's not unusual". Not a happy pair. "And you just leave me to get on with it, Susan", she says he said.

And then I suggest with humiliation facing her and also with a dead relationship, she'd left him in her mind, whether she'd left him in fact she'd left him in her mind, that's what she told the men from Queensland and that, I suggest, was the case. And perhaps it was a factor, it's a matter for you, all these things are just matters how – what you think are significant, whether I mention them, Mr Gunson mentions them, his Honour mentions them, it's what's significant to you, but I suggest it might be significant that fairly clearly she would be well off, better off, were he to be dead, financially.

Anger, bang. Maybe once, maybe twice. But here comes the – here is perhaps the significance of there being no body found. Why, if this is a complete stranger to Mr Chappell and a complete stranger to the boat, would there be no body left on board? That doesn't make sense, does it. But if in fact it was someone who was closely connected to the boat, closely connected to Mr Chappell, and who would be able to be behind him without raising his attention because they're known to be in that space, where there's only one way in. She's walking backwards and forwards and delivers blow – a blow or

blows, or maybe stabs him with a screwdriver, I don't know, he doesn't look round, and so the body doesn't have any marks of what you'd expect if someone had come down there, a stranger, intent on doing him harm, the body I suggest would have marks consistent only with being delivered by someone who he knew to be there, who he knew and expected to be behind him.

There was undoubtedly an attempt to clean-up the scene of the killing, undoubtedly an attempt. Again, why would a stranger to Mr Chappell and a stranger to the boat bother doing that? Got on get off, push, away – why would they do that? When you've seen the carpet squares and they were put back by the police after they'd been floated away by the water, and they make a bare patch in front of the electrical panel where he was working – isn't that significant? Doesn't that show something about the killer and doesn't it show something about the killer that to get off the carpet tiles you would have to unscrew those feet from the ladder – from the stairs. The stairs can apparently just be put in place there were little feet there, but to get the carpet squares up a bit of work to be done, and a bit of work to be done – and why did you raise with police, "Well you haven't searched very thoroughly I found a bit of wood from those feet in the bilge pipe – in the bilge pump set in the for'ard forward bilge pump you wouldn't see two pieces of wood floating there but in evidence apparently it's not – that's snot the one, some of bilge pump – but you know, why bring that to the police attention of things floating around everything you think things that can get into the bilge pumps once they're on, or the pipes to the bilge pumps. Why a piece of the – why is a piece of those put in so significant? Well again, I suggest, it's the truth leaking out around the edges. The significance – it's like when she's onboard on the afternoon of the 27th, it goes 'that's out that's out that's out, look at those marks, look at those marks where the rope – where a rope seems to have been' – I suggest that any ropes were in place – why was it so vivid to her where the marks were? Because she knew that she had caused them by getting the body out and maybe other things to weigh it down, but she knew that she had caused them. Why didn't anyone else see them, you can't see them on the boat unless you're close up, but she saw them and pretty quickly, and saw a lot of things very quickly apparently, this that that. So then the next day there are more things that are out of place that she hadn't mentioned to police, according to Sergeant Conroy. Something about the back mizzen ropes and so on, not mentioned to the police but the next day that's something she saw too. Well again is that because she knew very well that in her – getting rid of the body that was involved.

To get rid of the body would have involved some effort and perhaps that wasn't an effort that she needed to make, or thought she needed to make, until Mr Richard King called her that evening. Had he not called that evening, the 26th, no one – and asked to speak to Bob Chappell, well he couldn't because he wasn't there, no one except Susan Neill-Fraser would have known that he was not at home and would have known that he was on the boat. And so is that what unnerved her so much that she had to go down that evening, a thing that she lied about. She said she stayed at home when she knew it wasn't the case, is that what unnerved her, is that what spurred her, maybe there are a lot of things. People don't always act for just one reason, maybe there was some sense of giving him some sort of burial at sea, we don't know, she won't tell us, but maybe, I suggest, the dominant factor was to make things less clear. Very hard she would have thought with her involvement with the disappearing young Mr O'Day and what had happened to him, no one knew, disappeared, no body. To make things harder hide clear evidence on the body of how Mr Chappell was killed and maybe – maybe there are other reasons, maybe it's just this sort of get him away, maybe to preserve his body from the horrors of a post mortem autopsy that she didn't have to think about happening – who knows, it might have been many things. But one thing I suggest doesn't add up, and that is why would a complete stranger go to that trouble? If a complete stranger had got on board and killed Mr Chappell for no reason that we can think of except smuggling, why would they go to the trouble of disposing of the body? It doesn't make any sense.

The whole story about smuggling – the boat had been – perhaps police – from the very first she's telling the police that there'd been two break-ins, one in Queensland and I've head that – one here and I'd heard that smugglers sometimes put things on board and so off she goes, sets this hare running, and she's pretty insistent on it I think you can find, it's a constant theme of her early – of her early talks to police while the trail to her goes cold and it's – when you think of it it's nonsense. It's just nonsense logically, even if there had been two unsettling break-ins is it really the case that a boat that had been for sale for eighteen months in a marina would be selected by smugglers of valuable things to be – to hide things on and then they would follow its progress from eventual sale down the coast to Tasmania, in Hobart, and then keep an eye on it, keep an eye on that boat. 'We'll go out one night'. Oops, they go out on the very night that there's someone on board, the very night. Well coincidental if it's smugglers, and there's no evidence of it of course. The mechanics and the people who worked on the boat took apart panel and panel and looked everywhere, it's just a ridiculous thing when you look at it logically, but it doesn't even explain why the body

would be taken away from the scene of where he was killed to somewhere secret. Why would these smugglers bother? It doesn't make sense. But it was put up very seriously and it was put up very seriously by Ms Neill-Fraser knowing, I suggest, that the whole thing was a fabrication on her part.

Mr Rowe and Mr Mckinnon both gave unchallenged evidence, unchallenged evidence, unchallenged by her lawyer, that they had told her that the removal of the electrical panel it had been apparent that someone had been there was, in fact, the electrician, Mr Geddes. They had told her that. Then we find in this trial for the first time that she had it from the horse's mouth, Geddes himself had told her that, and so the whole thing was easily explained, but what did she tell police? Well, she gave them an account of Mr Mckinnon being frantic, which he denied, and a very suspicious thing and, 'oh look, Bob and I' – here we go – 'Bob and I thought that maybe it was one of the workmen that we had. Then when we had the second break-in, we thought, Bob thought, I thought' – easy to say if Bob thought, isn't it, when he's not here – 'we thought oh, maybe there's something more to it and so we thought we'd better get in the sniffer dogs.' And – 'But Bob didn't want to – no, Hobart gossip being what it is, and it would be very difficult to get them out of there, but I rang' – no-one can remember the call except her – 'I rang and there'd be no cost, and so we decided, me and Bob decided we'd do it when it was on the hard, on the slip, at Taylor Brothers in early February.' So that was going to happen. Look, there's just no consistency about any of these things, none at all. If Hobart's such a small place, why not bring your sniffer dogs on board your boat in full view of the very people who work on boats all the time and know the boat people. How silly (inaudible) - that's as silly as not silly. It's as deliberate a lie as I suggest squeezing in your diary on a date that you can fit it, 'We went on board, sniffer dogs, exclamation mark'. You'll see this diary. It's clearly in two pens. It's clearly in two pens. It wasn't disputed that it was. Laying a false trail. Over there, reasonable doubt, 'oh, it might have been smugglers'. Is that a reasonable doubt? Not when you look at. Might be when you first hear it, you might read it in the paper and say, "Crikey, smugglers coming up the Derwent, taking their valuable cache on board this otherwise nondescript boat - well pretty boat – but on this boat that this couple had bought up in Queensland and they've recovered it here". Obviously there's a big market in Tasmania, bigger than in Queensland for these whatever it is that had been smuggled on board. A lot of trouble to go to, and killed a person too, killed a person in doing it apparently, according to that theory. Mm, it's a long arm of coincidence, isn't it.

Isn't it coincidental that the morning after the night Mr Chappell disappeared the dinghy which had been tied up here – tied up here managed to somehow get itself around this cove, right around here, up here, round there and ended up here all on its own, the very dinghy – the very dinghy that is the Four Winds' dinghy. Well have the drug smugglers selected that from all the other craft that they might have at their disposal, they're an international group, or are we to believe that that's the product of the first knot that ever failed, that Ms Neill-Fraser ever tied that failed since she was a child. In this Court her knots are awful, but it'd be too prideful to say that in the first place, too much pride, "I have never had a knot that failed since I was a child", so there. Well there is a coincidence, isn't it. That's not the dinghy used to go out to Four Winds, that it would come adrift that very night that Mr Chappell was killed and end up where it did, in the very place that it's usually moored – usually, sorry, put into the water and taken out again, what an extraordinary coincidence. And more coincidence of course is the very night, the very night, Mr Hughes, having a quiet cup of iced coffee to himself, looking for a bit of peace after what his life, that none of us would envy of looking after his mother fulltime except got Monday afternoon off, sees a dinghy, an inflatable rubber dinghy, going across from the direction where that one had been tied up to the direction of where the boat Four Winds was. There was one person on board; it appeared to him to be a female. A person with no connection to this case who was reluctant to come forward, (indistinct words) in his duty to come forward, what an amazing coincidence that he should see such a thing on the very night that Mr Chappell was killed.

It does seem to have been doesn't it the killing of Mr Chappell the work of a single person because otherwise why would you have all this complication of getting up a 64 kilogram man – a 65 year old man, according to Ms Neill-Fraser, 64 kilograms. If you've got two people it wouldn't be that hard would it, you wouldn't have this elaborate winching and so on. Was there the fire extinguisher involved, well she said it was 60 kilograms itself, those who have measured similar ones say it was about 14, perhaps she thought it was too heavy for her and again the winching arrangement was used. But what you could be, I suggest, fairly satisfied about is that there wasn't more than one person involved in the killing of Mr Chappell and the disposal of his body, it's the work of one person. One person whereby an unbelievable coincidence, Ms Neill-Fraser would have it, one person on the very night that – one person, one female person, was seen in an inflatable rubber dinghy going out to Four Winds from where that rubber dinghy had been tied up on the very night where the next morning the rubber dinghy from Four Winds was

found adrift. Adrift with, not having coming away from its ropes but adrift with the rope still in the boat, what's called 'the painter' still in the boat. That's the significance of it. So it hasn't tugged itself away somehow and worked its way around those coves and inlets to end up where it was found by Mr Balding and others, and described as a 'grey dinghy' – I'll come to that a little later on – no, someone's untied it. Again, what a sheer coincidence that that would be the one untied that evening – it's just – when you look at these red herrings and 'look over there – look' – you come back to the facts, ladies and gentlemen, you come back to the facts, and they're what you make of them, individually, and you might think some facts are more significant than others individually, because you deliver a verdict as a unanimous jury, it doesn't mean that you all have to get to that verdict in exactly the same way – it doesn't have to work like that sort of committee – 'so do we vote that this fact's significant – well it's not me, well no it's not' – it doesn't work that way, you don't have to all agree on the facts, which are to your mind significant in coming to your verdict. Nor are you asked at the end of it to individually explain, nor in fact by law permitted to be either asked or required to explain what takes place in the jury room. You go in there with your own consciences obedient to the oath that you took and that I know you will fulfill to deliver a true verdict according to the evidence – and you'll look at the evidence, and it will be your true verdict.

So on all the circumstances, some might be to your mind significant and some might less significant, it's how it is to your mind at the end, the verdict that's important is that you all be agreed that guilt has been proved beyond reasonable doubt, that doubts in your process of coming to that have been dismissed as not reasonable because they don't stack up against other facts, because they are inexplicable because of other facts or because you just think that the evidence is overwhelming and it drives you to that conclusion that beyond reasonable doubt you're satisfied of guilt. When you consider it, you must, I suggest, consider the sheer unlikelihood, the sheer ridiculous almost string of coincidences that would have had to have taken place for the killer of Mr Chappell not to have been Susan Neill-Fraser. Who else could it be? How else can anything fit in? One of the bizarre things I thought, you mightn't think so, you might think quite differently, was when she said:

> *It's quite a fond memory. Look, if you annoy me any more, you'll be found dropped overboard.*

It wouldn't have struck me as a particularly fond memory in light of what took place:

If you annoy me any more, you'll be found dropped overboard.

Well, the difference is that he wasn't found. The – also what Ms Neill-Fraser said and I think it's, well I suggest to you, that it's the truth coming out around the edges of the block of lies and is revealing of how the pressure was building up. 623, your Honour, in the view of the 5th of May:

The day before the anchor which was failing and I knew it was failing and I'd told Bob. I'd told Bob. He – and it was this tiny little thing, but he was very, very upset. The motor failed. He got really upset. He said to me, 'I'm beginning to wonder about this boat. What else is going to go wrong with it?

Beginning? I reckon he started wondering when it had to be towed into Southport.

He was more upset than I would have – Bob normally would have been about something so minor.

And this is how upset:

He was very upset. I didn't mention that either.

That means in earlier discussions with police.

I didn't mention that either because I thought well what had gone through my mind was that he might've, you know, suicided.

Well that's pretty upset, isn't it.

It went out of my mind but he was more upset than I thought he would've been. But then again we'd just spent a fortune on the boat. We suspected that the head gasket was faulty again. It was very understandable for him to be – to be upset.

And Bob was worried about the fact that it was costing more than he thought, but not very much more, and we'd already agreed that two hundred and fifty thousand dollars was our upper limit and we hadn't actually reached that.

Well I think we had by that time, with more to come, endlessly more to come. Been stuck with a pre-existing survey which I suggest that Ms Neill-Fraser had checked out and thought was okay, the boat that she – expert sailor, and she said to one of the younger officers, young Constable Etheringham, "I am an accomplished sailor". Now since then she's backed away from that a bit, but you, I suggest, can accept that that's what was said by her to that young man on the very first day, on the 27th January, "I am an accomplished sailor". Great pride, too much pride, too much pride to bear the thought that what she had bought was unsuitable, was a bad boat. She can say, and only she says it, only she says it, "Why didn't we tell Bob's children – or tell anyone about the so-called break-in, the second break-in in Hobart? Oh well, Bob would think that they – Bob thought, Bob thought", only she says this, "Bob thought that they would think we bought a bad boat". Because it had been broken into by – where you thought it was children, you'd bought a bad boat. No. They saw quite clearly I suggest, both Tim and Kate Chappell, on the very first day that they were taken by their father out to this boat, the tensions that were existing about for reasons – well on the trip out in the dinghy, Mr Chappell operating it, Mr Chappell operating it, he was criticised by Ms Neill-Fraser about the way he operated it in front of his daughter, she thought that that was significant, but more than that Tim Chappell observed that they were sniping and he put that – and the nature of the sniping was that her expectations of what the boat would be or what would happen with it were different to her father's. And as Kate said got the impression she – well she said, 'I wanted to keep – keep sailing', she would trouble adjusting to life back in ordinary old Hobart. Much grander plans, I suggest, did Ms Neill-Fraser have then Mr Chappell had, much grander plans indeed, and perhaps it became clear to her that those plans would not include Mr Chappell, he would not be the one to be sailing on that boat in particular to the Galapagos Islands with her, or the Ecuador with her.

She came back, and one thing that may well be contemporaneous in that diary, is she came back from what I would have thought, but it's a matter for you, what you may well think, would be a shocker of a trip. First day out she's seasick, they go round the wrong way, then the motor fails, a litany of things, and the alternator blows up, great fun, great adventure, you see it written in the diary, not deterred by any of that. Mr Chappell had already, I suggest, begun to see the writing on the wall about this boat.

Well I want now to just mention some of the red herrings and so on that have been thrown about. No doubt you'll hear much more about them from Mr Gunson when he speaks to you, after all it's been the way the case has been conducted I suggest, red herring, red herring,

red herring, with the boats, must add up to a doubt, you've got so many red herrings. It's like that interesting program that the man from the Victorian police showed us how you can look at the bottom of the Derwent, there was a school of fish, well it could have been a school of red herrings as far as this case is concerned because that's how many have been strewn about.

The first I've mentioned in the conduct of the case, of "if indeed Mr Chappell is dead". Then why did Ms Neill-Fraser not tell the truth about going down that night? Well she said that it was because when she mentioned that she'd had a call from Richard King, Tim Chappell became very upset, "more upset than I've ever seen him and he rushed off" – it doesn't seem to have happened, at least not according to Mr Tim Chappell, he said, "I was not upset, I had had the call from Mr King, I was not upset." I think he went, as a kind brother should, probably not wasting much time to go and see his sister when this awful event had happened and he should be the one to tell her. But to suggest that on being told by Ms Neill-Fraser of the call from Richard King, the very same man he'd spoken to himself (indistinct word) he became very very upset and didn't want any mention of Claire and rushed off, is, I suggest, a cruel fabrication, a completed red herring, totally untrue, made up to cover up the fact that she's the one lying to police from the very start. I mean these police have come in here and given evidence of what I – well what you might consider to be a very very thorough investigation, only to be lambasted by Ms Neill-Fraser's counsel on her behalf for not having chased up what turns out to be one of many descriptions of a dinghy alongside Four Winds on the afternoon of the 26th of January – absolutely flogged for it. 'Oh why didn't you put out an all points bulletin for a large grey dinghy?' – well in fact a bulletin had gone out for a grey dinghy. But how stupid would they be to rely on the description of a single witness, however cocky and confident he was - how stupid would they have been to have done that and ignored everything else? Then they might have had real reason to be lambasted. Why is it raised about them that I've made a complaint - what does that add to the evidence? So what? What complaint? Someone else should have reviewed it? Well I do. But why raise it? Just a – it's typical. Oh, Stevenson was okay until it was found that he was saying something against her – "oh he's a drunk" – well a lot of people are okay until they've said something against her – "a drunk, liar, shocking, police (indistinct word) – and "Now Simon, now Simon" through interview, "I think this." When Simon wasn't taken in by the lie as well we have a complaint and not only that in this trial, just to make sure it's broadcast through the Mercury and whatever else picks it up, "I've made a complaint about

him" – what a shocking thing to do. What did that add to the – to the evidence in this case?

So there's – to get back to the point; the red herring – the red herring about "I lied, I misled the police even though my lawyer on my behalf" with no qualms when he has been attacking these police, "I misled them from the start because I didn't want to upset Tim Chappell any more by mentioning Claire, I'm only thinking about him and her – I was only thinking about her when I went down that night after all, when I went down – well did I drive I – well sometimes I did. Did I walk back – yes," – got caught in a little tangle of lies there, I suggest. And how odd, isn't it, how odd that on two – "I must go down I'm very unnerved by what Mr King said. I get to my car, I feel my keys, I've got wrong keys apparently and I walk back up again, alone, on the evening of Australia Day" – no shortage of drunks around you'd think, single woman walking back through the streets of Hobart because she's got the wrong keys, but had gone down in order to see something. Well why not walk the extra few yards or whatever it was and see it, and then go back? Never explained, was it. Just a complete, ridiculous lie, made up I suggest because she'd been caught in too many and had to have this other ridiculous lie. But she also, by withholding that, withholding where her car was at very particular times, by claiming 'I can't remember where the car was parked. Simon, it was somewhere on Marieville Esplanade', denied the police the opportunity until the trail was well and truly cold to ask people in all of the three houses outside which she knew it was parked at some stage of the evening – in the afternoon, three hours. "Do you remember a grey station wagon out here? Do you remember when it was moved? Did you come in and out?" You know, things that you could only remember close to the event. I don't know whether there was a car outside my last week or when it moved or what. So it was only when – by crikey, the trail was nice and cold by the time for the first time it was revealed where it had at any stage been parked, and that was – that was in this trial. But that's okay, let's hop into the police for letting the trail go cold, for not – to not immediately leaping on Mr Conde's description of another dinghy, there was another dinghy there, you didn't look that out, you let the trail go cold, you're useless.

Another red herring of course is these so-called break-ins. Now I've mentioned the one in Queensland which turned out to be of no suspicion at all, but nowhere, nowhere do you see in the various interviews and statements of Ms Neill-Fraser the fact she was told by McKinnon the mechanic, Rowe the broker, and Geddes, the man himself, that it was Geddes, nowhere do we have that. Instead we have, "Well Bob and I thought it was maybe – maybe workmen, but

became all the more suspicious when we were broken into here", and we got changing stories about that. To I think Constable Etheringham or one of the other uniform police who were first on the scene it was, "We were broken into two or three days ago", Put them in that order. When she came to do her statutory declaration or written statement, one or the other, they're in fairly short order, so you can follow by statutory declaration:

It was about thirteen days ago on the 20th.

So that would make it the 14th. Then when Constable Sinnitt, Constable Malazzo turn up to get some more background and evidence:

Oh, well it was the 10th, I've got it here in my diary.

It was the diary. It's the diary, two pens, running around looking for break-ins. If there had been a break-in of sufficient – sufficiently troubling, why didn't she tell the other members of the Yacht Club and other boat owners that there seemed to be forced entry to our boat and you need to be careful to keep yours locked up and double check. Why wouldn't you do that? You're third generation Royal Yacht Club of Tasmania member, why wouldn't you, why wouldn't you tell the other members beware, take special caution? Well, what was the reason? The reason is that this break-in if anything happened, if anything happened, and there were electricians again removing panels and Mr Makepeace told you he was one of them at around this time. Mr Makepeace removed panels and left them. He said, left them not fully fixed back because he thought he'd be getting the job until he was sacked from the job, 'because we're going to look at legal action about the survey'. And so around this time, yet again we have electrical panels removed by an electrician and Ms Neill-Fraser says exactly, she says to police, "Exactly the same thing happened in Queensland." Well, yeah, it probably was exactly the same thing. An electrician got on board with her authorization and removed panels. That's what exactly happened again, I suggest. This whole break-in, drug smugglers is all a red herring deliberately vague to put police off her track. And they're there, ooh, another break-in. Never mentioned to anyone, 'oh well Bob and I thought that – Bob and I thought that his kids would think that we bought a dud of a boat'. The screws and the floorboards that seem to have floated away when the boat was partially – partially sunk are they a red herring. She said that Bob would never remove them. Well why wouldn't Bob remove them. Bob's working around trying to trace electrical cables and things that go under the floorboards - why wouldn't he remove them but she knew anyway full

well, because Mr Casson said to us, not disputed, that they had taken those off on board, she was fully aware of it, and they hadn't put the screws back in, another red herring, yet another one.

Then – come to the biggest one. The timber footing I've mentioned, the floorboards were mentioned, what Mr – what was said to her about Clare Chappell's state of mind I suggest was another red herring. She said – she asserted to Felicity Ogilvie, for some reason Ms Ogilvie is the recipient of more information about the disappearance of Mr Chappell than were the police, the very police who were investigating it, said that she'd received this call and King had said that Clare was suicidal. Mr King said no such thing, phoning him, he said, 'No, never said that, how could I say that which wasn't'. Very – again there's this pride I suggest, here's this pride, let's unburden myself to a journalist because what journalists say and think seem to be very important to Ms Neill-Fraser. More than a couple of times she said, 'Oh, well I didn't say things because I didn't want it on the front page of the Mercury'. Well that would be terrible wouldn't it? Having something on the front page of the Mercury – that's a terrible fear. And why did Ms Ogilvie – well when she found that she – Ms Ogilvie had told police what had been told to her, she snapped that it was – "that was all off the record" and therefore Ms Ogilvie was not, and did not then, come forward to the police with the information that she then knew. And what – what changed – what had changed by the time that Ms Neill-Fraser was denying that she'd got out and admitting to a select few, including journalists but not police, that she had indeed left home that evening – why wouldn't she admit it to the police by the way? Because – that in between time, on about the 5th of February, Sergeant Conroy had shown the photograph of the car – it may be her car it may not – to her daughters, and that caused a rethink. Just like the big red herring that she had laid about being – I don't know whether you do lay red herrings maybe you lay trails – red herring that she's raised about going out to Bunnings. Well, you can say that the mind works in mysterious ways, and you would think that if it is genuinely possible that she has substituted a whole afternoon from the very day before and that's genuine, you would think, wouldn't you, that the treating psychiatrist might be called to give evidence about this amazing phenomenon that appears to affect Ms Neill-Fraser. Dr Sale, where was he? Not to be seen in this case. Why? Well you decide for yourself. Maybe he would say that it is a common feature of people who commit murders that they lie, or claim to have no memory of it, or their memory gets patchy around the crucial times, the times of great excitement, great passion, anger, the red mist that descends, it's sometimes said – who knows? I don't know? We didn't hear from him. I'm not speculating I'm just saying, we didn't

hear from him about this amazing phenomenon whereby somehow a whole afternoon is transported in the memory – the whole afternoon yesterday, and it's apparently not realized by a person whose memory's been so transported in this mysterious way that it's a false memory. This is science fiction almost. The reason, I suggest, is that there was another red herring. There was another trail for the police to go on. Go and look at endless tapes at Bunnings and see where she was. Meanwhile, where the car had been parked and when it might have been moved gets colder and colder. Meanwhile, people who might have seen someone in a red jacket down Marieville Esplanade on the night of the 26th of January gets colder and colder. Is it an appropriate time, your Honour?

HIS HONOUR: Yes, we'll take a break for fifteen minutes. The jury can make their affirmation. The court will then adjourn.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION

HIS HONOUR: Yes Mr Ellis.

MR ELLIS SC: Thank you, your Honour. Ladies and gentlemen, you might think there's another red herring or falsehood spoken by the Accused to the police. It might be the knowledge of Mr Chappell's Will. She asserted in the interview to police that she had little or no knowledge of it but understood that she would be able to live in the house for five years, and that seems to be all she was prepared, roughly, all she was prepared to say to them about her knowledge of it. Now you could contrast that with the unchallenged evidence of Kate Chappell that in about 2004, which happens to be the year that Mr Chappell did re-make his Will, Ms Neill-Fraser initiated a conversation with her to say that Bob's remade his Will and it's all very fair and you three children can expect to get about a hundred to two hundred thousand each. She understood, it seems from the interview, that at about the time of his death, Mr Chappell had, she says, five hundred thousand dollars in superannuation. So maybe those figures actually accord. But it's curious, isn't it, that she's in pretty smartly to see Mr Kimber, who had written to her pretty smartly and written her a letter saying:

I presume you have a copy of the Will.

She goes there, she speaks to him, she comes away without a copy She hasn't asked for one it seems or she would have been given one. And yet when she speaks after that appointment to police says 'Oh, I don't know. No, not very sure about that'. Well a lot of these things that you – you can say, well maybe she's vague, maybe she's not that good on the figures and maybe it didn't (indistinct words), so dig a little deeper and think why are these lies being told to police. Why is it that she lied to police about going – about not leaving home that evening? Why, if you reject, as I suggest you must, because it's nonsense, her story about going to Bunnings and being there for hours and up this aisle and down that aisle, did she lie about that? Well of course this was – maybe they're two different things. Bunnings she might have thought was a reasonable enough alibi when she wasn't under investigation, a simple – not simple, a missing person's investigation and off a yacht, suspicious circumstances, but they're not looking at her are they at that stage specifically?

If they were you'd think they'd be breaking down the house, breaking down the door with a warrant looking for the clothes that she was wearing the day before, finding out what happened to them and getting them analysed, you would think, so it's not one focused on

her quite clearly, and if it's not that sort of focus then saying that you're at Bunnings perhaps won't be checked too much, it's a big store, it's a hard – it's a hard job to do to look at all the evidence of basically a whole afternoon was what she was telling you. And when it – even when it became clear and was made clear to her that they had indeed done that the Bunnings alibi still wasn't abandoned it was just shortened. Still at Bunnings, still at Bunnings, at closing time.

Now people tell lies for various reasons, there's no doubt about that, but you can consider these lies, if you find them to be lies, and undoubtedly the lie about going down that night was a lie told to police, you can consider those to be evidence. And just because people tell lies isn't necessarily evidence but if you are satisfied that it is a lie told because she knew the truth would harm her interests, would tend to convict her, then that is certainly a piece of evidence that you can use, along with the other pieces of evidence in this case. The telling of deliberate lies to police investigating the disappearance of your partner, especially to a material thing like having gone down to Marieville Esplanade that night, not only that, but seeing others down there, as she asserts she saw, and the whole complication – the whole constellation of lies that then surrounded that. I mean it can't be the truth to say to Mrs Sanchez that she drove down there and back that night but say that she walked down there because she'd parked the car somewhere she couldn't then remember, but later has, or walked back and then walked down again. They can't exist all together. Something's got to be a lie in there. So it's not just whether she left home, it's what she did having left home, where she was. Where she was the afternoon before – where was she? How do we know reliably where she was? She admits, it seems, once confronted with evidence, that it was she who must have been on board Four Winds about four o'clock.

Now witnesses – I'll come back to the dinghy question – but where was she after that? Why did shed feel inspired to ring her daughter and her mother in rapid succession at about a quarter past, twenty past nine on the 26th, if not to bolster the lie that she was at Bunnings until around about its closing time, which I suggest she expected it to be not six o'clock as told to her by police but nine o'clock, why else would you ring up your mother – your old mother, at that time of night?

So that's – those sorts of lies are, I suggest, evidence that you can use in considering whether they are told because she knew the truth would hurt her, or are they a lie told because oh something about Tim Chappell being more upset.

The – and the will perhaps, her knowledge of the will, that seems to be at odds with her behaviour with the lawyer, to take the financial adviser in to be told that he presumed you have a copy and not to ask for it, that doesn't seem to be completely comfortable. To unprompted reveal to Kate Chappell what she had estimated Kate's and the other children's share of the estate to be doesn't seem to be consistent either with this fuzzy, 'Maybe I had to stay in the house five years or could stay in the house five years' understanding that she told the police about.

The two – two big red herrings that were raised in this trial were firstly the so-called other dinghy that was at Four Winds in the afternoon and the young girl, Meaghan Vass and in both cases when they were raised and pursued very, very energetically by her counsel, Mr Gunson, Ms Neill-Fraser apparently knew things that would undermine that very energetic geeing up of an issue, that energetic, 'Look over there at Meaghan Vass'. Because, it seems, it was never suggested it was said to police, it seems that she now says anyway that the boat when it was at Goodwood was entered and some things were taken, wrenches. Now I've suggested that wrenches have been on her mind as a sort of implement that she used to kill Mr Chappell. It was never suggested that when police came she informed them of this and we've had Meaghan Vass, a sixteen year old homeless girl, bullied and chased around by Mr Gunson all because some of her DNA was found in the one spot on Four Winds, one spot, one spot only, on the top of the deck – a sixteen year old girl. And the idea was to making you think that she could or was – to make a reasonable doubt in your minds that she was connected to this killing – but that gained her what? "Where were you living on the night of the 26th?" "Don't know" – two different stories, oh, homeless girl, two different stories. Treated ferociously, treated ferociously, while all the time it seems that she may have been in the Goodwood area, maybe she had something to do with an entry there, maybe not – probably not, I suggest, but the whole thing is such a red herring because when you realize that the DNA could have been transferred from someone onto Four Winds, and the number of people who were there and where they came from, it's – it was a refinement of that red herring to say, "Were you down at Constitution Dock then?" as if she had necessarily stepped onboard, or even if someone had necessarily acquired some trace of her DNA, some strong sign of her DNA on their footwear before getting on the yacht. They could have got in – they could have acquired that anyway in Hobart, I suggest, anywhere she might have been, and we don't know where she's been, nor can she be expected to remember where she was on the 26th of January. But it could have been put there at any time before the DNA swab was taken by anyone who had acquired some trace on their footwear

at any place and then maybe got in the car, driven down and got out and onto the boat and transferred it. All those things are logically possible, all things go to explain this finding, which of course has been disclosed to Ms Neill-Fraser, it's been thoroughly investigated, which was always on the DNA chart as an unknown person until she got into some sort of trouble with the law and her DNA became on the database and it was matched. But where does that leave us? Where did that red herring take us? Why was that girl pursued? Why was she bullied and argued with so fiercely? Was it because it was wanted for you to seriously entertain a reasonable doubt that she's responsible for this killing? That she, a complete stranger to it all, a sixteen year old homeless girl, has gone down to Marieville Esplanade untied, as it happens, the very dinghy, the very dinghy, which belongs to Four Winds, even though it isn't marked as such, there's no Four Winds dinghy, taken that very dinghy to Four Winds by coincidence, committed an atrocious crime for no reason, taken the body out somewhere in order to cover up that crime and come back. Well that's a long bow but when you're desperate, when you're desperate, anything will do when you're conducting your case on the basis that, well we'll raise anything that comes along and the jury are going to have to have a reasonable doubt about that because, you know, there's her DNA after all, what – CSI, DNA, she's all the same, whatever the theory was, but it was a theory, I suggest, a theory of how to pursue this case which was one and the same with how Ms Neill-Fraser had conducted herself with the police. To suggest false trails of investigation to point away from her anytime you can. Meaghan Vass, a red herring, a red herring, should not have been, I suggest, pursued in this case but when you're addressed next you'll probably hear more of.

Now the other – the other dinghy, so called, not an issue, not an issue until Mr Conde from the tax office comes, oh, yeah, he had a good sight of this dinghy, it was small, nine to ten feet I think he said or maybe eight to ten feet. I showed him the pictures of the dinghy which is the Four Winds dinghy.

> *It's not that, it was much larger. It was something between ten and twelve feet.*

Said Mr Conde. And immediately, look out, drop everything, why haven't the police gone looking for this dinghy? How negligent. It was not Ms Neill-Fraser there at all. They've misled her. It was someone else. She should have never agreed to have been there – must have been there at the time that a witness had seen that dinghy there. Well, he was wrong. He was right on some parts that it wasn't brand new, because we know that it came with the boat, the sale,

that's another story. It came with the boat. It had grey, it had blue, it was scuffed. No doubt, I'd suggest, that the photograph, the washed-out photograph you have there is in several respects misleading us to the colour, but the colour seemed grey to Mr Balding. Mr Balding, the man from the – the rowing coach from the Sandy Bay Rowing Club, who saw it there that very morning in plain, open sunlight and sent out to his members an e-mail that very day, that very day – I'm sorry – but anyway you'll have it in evidence has anyone seen a grey dinghy? But because Mr Conde has said it, off we go. Police are flogged, all things happen because they didn't check out this large dinghy which turns out to be the same size dinghy, as Ms Neill-Fraser well knew. That whole excitement, that whole red herring of which such a large issue was made, she sat there as her lawyer was making this issue knowing full well that Conde, when he had said "The dinghy I saw was much larger than that one in the photograph."knowing that it was all a mistake on his part, confidently expressed makes it no less a mistake. How desperate. As I say, how desperate do you have to get to raise these things to lambaste the police, for not chasing this? It was almost a common theme that the dinghy would be seen by – by others as a different colour, it's got different colours in it. And on the evidence of one witness alone, apparently, everything changed.

Well how long the dinghy was there and how long Ms Neill-Fraser was there, of course, is something that we can't be necessarily sure about from the evidence, because she consistently changed her story to police, consistent – that was the only thing consistent about it, it would change, depending on what evidence was presented. It's like her – the technique of saying, "When was that Simon – when did he say I – when did Jeff Rowe say I rang?" – "Oh well that was – oh we'd had a disagreement – well we had a row, we had a row that night, and I might have said, 'Look Jeff, I can't take any more of this, we won't be together for too much longer,' but I didn't say we were separated, no, Simon" – all the same, isn't it? So that attack, and you will probably hear more of that red herring, the other dinghy. So there are various descriptions, there are light, there are grey, at various times, it just doesn't, it's always a rubber dinghy, it seems, I think, but that's – clear it up in the witnesses' and not – what does this prove? It proves that honest witnesses can be mistaken, descriptions can differ, deceptions can differ. There's Mr Lorraine, who is out on the jetty, the man from the Health Department, out on the jetty quite late in the day, I think, five o'clock'ish, or perhaps later, and sees, he says, a man onboard what seemed – what could be Four Winds, an old man. Well that might be so – he doesn't have to be a liar to have become, perhaps, confused with pictures shown – the usual picture that you've all seen of Mr – Mr Chappell onboard the

boat, you know, that the newspapers run all the time, maybe he saw another boat, maybe not – maybe she was there, sure, maybe he was still alive then, maybe that was him – maybe that was him. Whether there was a dinghy there, he said there was but it was tied along the back and it was a very small one bobbing up and down, he didn't see if – what motor, but you wouldn't because it stays in the – the hull there of the thing and the waves were choppy at that stage.

Honest witnesses can differ, honest witnesses can be mistaken. There was no justification for selecting the evidence, which turned out to be wrong in a very material respect, of Mr Conde upon which to base a complete attack on the investigation. Mr Conde – I shouldn't spend too long with him I suppose, but Mr Conde also said a point of difference was that the – I think he said the dinghy he saw was pointier – pointier nose. Well in terms of colour these pictures, first set, perhaps aren't all that good, but I don't know about you, but I look at that and I think that's got a pointy nose, you follow the blue around and it looks it, it can seem that way, other pictures front on it hasn't. Mr Gunson can laugh, that's what it can seem. The photos taken by the lady of the two dogs, this is two dogs on the beach, thank you, P52, I'll show them to you, you didn't necessarily have to get them – well –

HIS HONOUR: Tab 4, small volume.

MR ELLIS SC: Yes. Sorry, ladies and gentlemen. You have the disc for this, clearly it's late in the afternoon, the shadows are coming, and number 8 in that series shows the Four Winds. Now this I suppose just emphasises that the evidence is for you and you alone, but when I – here's Four Winds up here, when I trace the – what's called the bowline, the darker line, along that photograph I simply see a round object. You can try it on the disc and you turn up the zoom and there's all sorts of – things sort of blend in. There's some rust lines become apparent that you can see better on other photographs, and sometimes you can see it maybe sometimes you can't, it's a matter of what you make of it, but there does seem to be an interruption to the line of another object there late in the day, it's a matter of what you make of it.

How late in the day was it that Mr Chappell was still alive, one person knows and that's the person who killed him. And how late was it that Ms Neill-Fraser was still on board that day, one person knows and she's never given a straight account of it. Not once has there been a consistent account, one that can be verified by other facts, verified by other witnesses, not one such account has come from her. So when you're asked to consider the red herring of the so

called other dinghy there are two things, I suggest, that might help you examine it, the little alarm that goes off, red herring, and who else's word have we got for it, only hers, only hers, and what word have we got as to when she left, almost none. All we can tell, reliably on the evidence, is at 9:17 she was at her house and that's all we can tell. And we can tell that at about a quarter past three in the morning she was in her house, checking to see who might have phoned while she was away.

It's not suggested by her that she was checking to see if Mr Chappell, with whom she'd been concerned – well no, she wasn't, she was concerned about Claire, that's right – checking to see if Mr Chappell had rung – that's no explanation for that star ten hash call. This is a person who said to police that Mr King's call unnerved her so much she did go down and walked a couple of times, came back – quite bold about walking through Hobart apparently, a single woman, after dark on Australia Day, but too concerned with something not to go on foot to the end of the pier "because there are a couple of homeless people there," she said, around what's now called a "firepot" rather than a fire, and what she knew of the homeless people was that they didn't seem to be drunk and one of the homeless people who lives down there, he's a friendly man who helps her out with the dinghy, in the way that Mr Liaubon did, whose evidence, when it was brought to her attention, brought on yet another change to her story. Quite clearly, she was – no reason to doubt him, he was the person who assisted her, eventually, out with the boat at Marieville Esplanade, at Short Beach. Another witness saw a woman in a dinghy with – she had dark blond hair, it might be it might not be Ms Neill-Fraser, but at the same time in an inflatable rubber dinghy going out in that direction to Four Winds. All pieces of evidence, but her initial story of going there at about one o'clock melted away in the face of evidence to the contrary. Then it became later, her story about being at Bunnings melted away in the face of evidence to the contrary. Her story about staying home at night melted away in the face of what might have been evidence of her car being there, or down in Sandy Bay that night.

When you look at the number of lies and look at her credit, look how she seemed in the witness box to you, ladies and gentlemen, I suggest that you would be very hard pressed to believe anything she said unless it was reliably corroborated by someone else. In this case all the corroboration seems to be, 'Bob said this and we thought that and me and Bob did this', and there's not a scrap extra. There's one witness in the defence case and one only, and that's Susan Neill-Fraser. I suggest when you put together the circumstances, take any

out that you like, put together the circumstances it points inevitably to her guilt of murder.

Now I haven't mentioned Mr Triffett because like any of these other pieces of evidence, like Mr Hughes' sighting, you can take that out, you can reject that, you can say he was, I don't know, seeing things. I don't know why you would, he doesn't seem to be a person who sees things. And Mr Triffett, now Mr Phillip Triffett came in here – came in here and said that quite some years ago when she was complaining that Bob was stingy, which she know she complains about, and was drinking too much, which everyone that she doesn't like seems to, she wanted his assistance in killing him, throwing him overboard, sinking the then boat. He's come in here and said that, he's been cross-examined, his fifteen traffic prior convictions, speeding and the like, have been put to him, then he has been brought back because it has come to our attention that he did indeed make a connection between charges he might have been on resulting from the raid on his house we – and that turns out to be not challenged, not challenged ladies and gentlemen, that turns out to be – I don't suppose – or 'Will this help me in those charges', put at the end of the time he'd come into police, he'd rung police voluntarily on the 28th January, he'd come in, he'd given a statement and it was there at that point that that throw-away line has been given. Never has it been a condition of his evidence that anything would happen to that, those charges. Nothing did happen to them except that they proceeded and the interesting thing is that they proceeded in exactly the same form as they had been laid by police on the 27th January before he appeared because you'll have what's called the complaint, the court document, that a police officer has formulated the charges and signed a complaint on the 27th January, those very charges that have proceeded in court. Mr Triffett, but behind his back, behind his back, when he's not in court or when Ms Neill-Fraser is being interviewed, he's the worst in the world, oh, he's a murderer, terrible, stockpiling weapons. Now it might be said how strange it is that Mr Chappell would be told by Mr Triffett that Ms Neill-Fraser planned to kill him.

Now I gather that you'll have the transcript there, you'll see on close study of it that when he was asked questions he said he wanted her to tell – he asked her to tell him what she planned to do and she cut him short and it was Mr Gunson who put words in his mouth, with which he agreed, that – well, 'So you in effect said that Sue wanted to kill you, yes', but – anyway, what was said, what was said, and at what point they were kicked out and they both – they seemed to both agree there was a sudden kicking out at a time where they were there for a dinner at Allison Street will be a matter for you to judge, to make of

what you like. And I'd suggest that you think about this evidence that you regard it as a person who had nothing to gain, nothing to gain coming in here except having his reputation blackened, nothing to gain by going to the police, didn't seek to gain anything by going to the police, who came in because the coincidence was just too great about what had happened to his former friend, Mr Chappell, we presume he was more than friendly, who had been kind to him, and what he had been told by that person she wanted to happen to him some years ago. But the evidence of Mr Triffett, like all the evidence in this case, is for you. One or two of you might say, 'Oh I don't know about Triffett's evidence, it doesn't really help me one way or another', or 'Oh put that to one side', but still find her guilty, still be satisfied beyond reasonable doubt that all the evidence, all considered properly, points to her guilt beyond reasonable doubt and others of you might say, 'That for me is the sealer. I accept him as an honest witness, not a sophisticated man, I accept what he says and that for me is the sealer, I am satisfied beyond reasonable doubt'. Well that's fine, it's for what you each make of it individually.

What you make of that photo I just showed you of the dogs and when you look in the background can you see a dinghy, that's for you. What you make of the descriptions of the dinghy, whether – is it possible that there was some other dinghy there really? I suggest it's not reasonably possible, not reasonably possible that there was someone else other than Ms Neill-Fraser there in the afternoon and in the evening. It's not reasonably possible that someone else, a complete stranger, killed Mr Chappell and disposed of his body and sought to clean up, someone else who of course would have had to have had intimate knowledge of the vessel, someone who knew where the winches were, the same someone I suggest who quite deliberately made sure her mark was on those winches when she inspected the boat with police the next day. She was told not to touch, she touched both of them and in this Court she says, 'Oh I did that because Mr Conroy asked me to show him how winches work'. Mr Conroy's told you of his sailing experience, why would he want to be shown how a winch works, it's just a complete lie. Someone who knew, I suggest, where to cut the pipe to make the water come in. Someone who knew even more intimately where to open the seacock that had no other apparent purpose, and you've heard evidence that most of the time seacocks have a purpose, so someone who knew where there was a seacock with no other purpose could be opened and let in the water. When you see the pictures of the Four Winds sinking, you'll see that it's well down at the front and that's been the description too, but not at the back. Now police have rushed in and looked for Mr Chappell. They've opened doors, maybe left them open. But one is entitled to wonder whether that sinking,

concentrated as it was in the front section, was by someone who knew the boat, who knew that if the back hatches were kept closed it would not sink that way. It would probably not sink at all. It would be unsinkable as she's told you. She knows, so long as the hatches are closed. Someone who sought with a pair of latex gloves which she had forgotten that she'd left on the stove top to clear up as best she could and perhaps abandon that idea. It was all getting too late or getting too hard, and instead started sinking the boat or perhaps she started doing that earlier in the day, earlier in the afternoon at the time that she had done the awful thing that she did, at the time that she killed Mr Chappell. But these, I suggest, ladies and gentlemen, the winches, the sea cock, the manner of sinking, what was cut, are all the work of someone intimately connected with that boat, with intimate knowledge of it, someone who did not want to be connected with the body that had been left, and someone who was none other than Sue Neill-Fraser, the Accused in this Court, and is guilty beyond reasonable doubt of murder, I suggest. Thank you.

<END OF CLOSING ADDRESS

HIS HONOUR: Yes, thank you, Mr Ellis. Mr Gunson.

MR GUNSON SC: Before I commence my address, there are a couple of matters I want to raise with your Honour please (speaking over).

HIS HONOUR: Yes, all right. Ladies and gentlemen, would you go to the jury room please. Mr Gunson?

<THE JURY RETIRED

MR GUNSON SC: Two matters, your Honour. The first relates to what I submit is a factual error that my learned friend put to the jury over an issue relating to the grey dinghy, when he said, when discussing it, there was a criticism of the police for not seeking any information – these are my words – about the grey dinghy, and he said, as I noted him, "In fact a bulletin had gone out for a grey dinghy." That is not the state of the evidence, and the evidence as to this is to be found at pages 933 onwards, and I asked Sergeant Conroy about what inquiries had been made – I started at (indistinct word) and then at 934, the top of the page:

> *Well you tell me when you put out a plea to the newspapers, either you or Inspector Powell, who was doing press releases, calling for information about a grey dinghy, when was that done?*

Question:

> *A grey dinghy?*

> *Mm.....We didn't put out a plea for that.*

> *No, never put out, was it?.....No.*

Then I went on:

> *Surely at some stage the existence of a grey dinghy as opposed to a white dinghy with blue trim must have come to the fore?.....It did.*

And we had some questions about that. And at line 32:

> *Not once did Inspector Powell call for anybody knowing anything about a grey dinghy to come forward?.....No.*

And so that is the evidence of that. And later on at 935"

> *Did you ever go to Inspector Powell and say 'Look Inspector there is this grey dinghy Mr Conde's described why don't we put out a press release and see what information we can get?'?.....No, I didn't.*
>
> *Inspector Powell never suggested it to you?.....No, he did not.*

And he went on to say that with the gift of hindsight that should have been done. So my friend was in error when he said that to the jury, and he should be required to correct that.

But more significantly, was the issue raised by my learned friend about the failure to call Dr Sale, and he submitted to the jury that there was no evidence from Dr Sale and speculated as to what Dr Sale might or might not have said if he was called. Now, in my respectful submission, that was erroneous, the jury must be told by your Honour at this point in the trial in my submission and later reminded of it again to ignore Mr Ellis' submissions about Dr Sale, it is not for them to speculate why Dr Sale was not called and furthermore they must not speculate as to what he might or might not have said if he was called. If it please your Honour.

HIS HONOUR: Just taking you back to enquiries about a grey dinghy, -

MR GUNSON SC: Yes.

HIS HONOUR: - although the police – although the evidence was that the police didn't say anything or didn't put out a plea for information about a grey dinghy there is an exhibit, P71, and the evidence about it is at 1022, it's Mr Balding's email and –

MR GUNSON SC: Yes.

HIS HONOUR: - I took it that that was what Mr Ellis was referring to and that – yes, could I have P71, please. Now that's a copy of an email sent by Mr Balding to – it says it was sent to 59 members this evening.

MR GUNSON SC: Yes.

HIS HONOUR: Now – and that evening would seem to have been the evening of the 29th, I think Mr Ellis might have said the 27th, but there – I didn't notice – apart from the date I didn't notice that anything Mr Ellis said was inconsistent with the proposition that the email had gone out referring to a grey dinghy.

MR GUNSON SC: It refers to, correctly, with a grey and blue trim dinghy, but let's not quarrel about that. My impression of what – how he was submitting was that the police had put out a bulletin other than that one, but if they – he's referring to that then there's no problem.

HIS HONOUR: Well I'll – I'll need to check the transcript; what I've got in mind is that I'll check the transcript and if anything Mr Ellis said about this communication was inaccurate, then I'll correct it at some stage in my summing up.

MR GUNSON SC: As I say, I'm more troubled about the comment about Dr Sale, which, in my submission, should never have been made.

HIS HONOUR: Yes. Mr Ellis, what do you say?

MR ELLIS SC: Well first as to the matter that my learned friend isn't so troubled about; I specifically referred to Mr Balding, it was in the context of his evidence that I said a bulletin had gone out about a grey dinghy to his members, or something – if I got the date wrong, I said to the jury I wasn't confident about the date. I never said that police sent such a bulletin out.

HIS HONOUR: Well I'll have to check the –

MR ELLIS SC: Now –

HIS HONOUR: I'll have to check precisely what was said. So I'll leave that one in mid air and if I need to correct it in my summing up, I will. What about Dr Sale?

MR ELLIS SC: Dr Sale, well I just point out that he has not been called as to psychiatric matters –

HIS HONOUR: But you're not allowed to say that, are you, you're not allowed to invite the jury to draw an inference adverse to the accused as a result of somebody not being called as a defence witness in a criminal trial?

MR ELLIS SC: Well I don't know whether that is entirely the – true, your Honour. I have considered the point, I'm well familiar with it, but I can't comment on the – and neither can your Honour, the accused's failure to give evidence. But when an accused opens a case and has the choice to call evidence or not and decides not to call witnesses that, in my submission, is a fair comment. Witnesses who the might be expected to call had – would those witnesses help them, is a fair comment to make to the jury.

Now I didn't make it as explicitly as that, I did say, we can't – don't know what he would said – would say, I've pointed out that Ms Neill-Fraser claims to have an unusual psychiatric condition leaning itself to retrograde – I didn't say that – retrograde amnesia, but that's the effect of it and has not called her treating psychiatrist. Now in my submission such a submission to the jury is unobjectionable.

HIS HONOUR: Well I don't think so. I think the High Court's said the opposite and I'll just find it. It will take me a while.

MR GUNSON SC: It might also be useful if we could have the passage played back, your Honour, as to what was said by my learned friend so that we are completely sure as to what it was. I just made the notes as I heard it because I was somewhat concerned when he made the comment.

HIS HONOUR: The case that I'm thinking of is *Dyers – Dyers v. R.* 2002, 210 CLR 285. The majority comprised Justices – it's dealt with in Tilmouth's Australian Criminal Trial Directions at paragraph 4-1800-66.

MR GUNSON SC: What's the page number, your Honour?

HIS HONOUR: 5720. The majority were Gaudron, Hume, Kirby and Callinan JJ

> *As a general rule a trial judge should not direct the jury in a criminal trial that the accused would be expected to give evidence personally or call others to give evidence. Exceptions to that general rule will be rare.*

They're referred to in Azapardi.

As a general rule then a trial judge should not direct the jury that they're entitled to infer that evidence which the accused could have given or which others called by the accused could have given would not assist the accused. If it's possible that the jury think that evidence could have been but was not given or called by the accused they should be instructed not to speculate about what might have been said in that evidence.

Further, as a general rule a trial judge should not direct the jury in a criminal trial that the prosecution would be expected to have called persons to give evidence other than those it did call as witnesses. Et cetera.

Now –

MR ELLIS SC: Well the author extends that to paragraph 10, your Honour. I'm sorry, it's a quote from the case.

HIS HONOUR: Yes.

MR ELLIS SC: Page 722.

HIS HONOUR: Yes, at paragraph 10 of Dyer's:

The reasoning which underpinned the decisions in RPS v Azapardi cannot be confined to the accused giving evidence personally, it applies with equal force to the accused calling other persons to give evidence. It cannot be said that it would be expected that the accused would call others to give evidence to form that expectation denies that it is for the prosecution to prove its case beyond reasonable doubt.

Well I think it's quite clear from Dyer's that it's not appropriate for a judge or a prosecutor to suggest that the jury might infer anything from the failure to call a particular witness, nor to invite the jury to speculate about what the absent witness might have said if called. I think I've got to tell the jury to – that they shouldn't reason in that way and –

MR ELLIS SC: Oh I didn't invite them to, I made an observation and I am sure I said, "We can't speculate about what he would've said", but the objection is to me making comment or observation that

Dr Sale has not been called on psychiatric evidence by the defence. Now this is in my submission one of the exceptions referred to by Callinan and Kirby JJ when they specifically mention what the Crown – in Dyers, what the Crown Prosecutor may address or comment on; that is the exceptional case. Now this is, in my submission, such as case because the accused raises as an explanation of what would otherwise be lies an unusual mental condition which she volunteered and was re-examined about that she had been treated by Dr Sale. Dr Sale is not in the Crown's camp, Dr Sale is not available to the Crown even to discuss what treatment he has given, he is only available to the accused and on that issue she has chosen not to call him. Now that's the extent of the comment. It wasn't a comment that – it wasn't inviting speculation on what he would have said and in fact I disallowed that.

HIS HONOUR: Well if he'd been called to give the evidence of the type that you're talking about it would have been evidence solely referable to the accused's credibility wouldn't it?

MR ELLIS SC: Well, no, a matter of her credibility which she has chosen to put in issue, namely her mental condition which causes her to tell lies.

HIS HONOUR: Well her – relevant to her credibility in what she said in evidence and in out of court statements which the jury are entitled to take into account. And the other thing the jury don't know is that if the accused calls a witness then the order of closing addresses gets reversed.

MR ELLIS SC: I've no objection to you telling them that and I certainly believe that your Honour should tell them not to speculate on what he would say but all the comment – the observation that he is not being called an improper one is one that, with respect, I don't accept.

HIS HONOUR: Well I'm going to have to consider very carefully what was said and the scope of the exceptions in – contemplated in Dyers' case. Now what should I do, Mr Gunson, should I –

MR GUNSON SC: Send the jury away until two fifteen, your Honour.

HIS HONOUR: Yes, I think that's – I think that's what I'll do. All right. Get the jury back. Actually before you do that; I'm just

thinking, if we – I'll send the jury away until two fifteen, but I'll adjourn until one forty five. Yes, get the jury back.

<JURY RETURN

HIS HONOUR: Ladies and gentlemen, there's – we're not ready to proceed, there's a point that I'm going to have to consider over the lunchbreak. I – I'm going to adjourn the Court until one forty five so that I can resume then the discussion that I've been having with counsel, but you can make your affirmation and I'll let you go until two fifteen. Administer the affirmation.

<JURY AFFIRMED OUT

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Now Mr Ellis, is there anything more you want to say?

MR ELLIS SC: Well firstly I apologise that I can't give the Court as much assistance as I would have liked, an ongoing contempt of Court matter arose as a result of being able to give that matter and this matter not enough attention.

HIS HONOUR: Yes.

MR ELLIS SC: I would submit that we are in the – well let me go back. No Jones v Dunkell reasoning was invited by me. I cautioned the jury not to speculate on what Dr Sale might have said.

HIS HONOUR: Well what you actually said was, "I'm not speculating, I'm just saying we didn't hear from him about this amazing phenomenon".

MR ELLIS SC: Sorry, I thought – thought I'd done more, apparently not. Now in Carter's Criminal Law, and I haven't gone to these cases, I simply look at the 17th edition, your Honour, as to s620.90 of the Criminal Code of Queensland, and having – this is up-to-date in the *Dyer's* as mentioned in the same passage and dealt with and, really, *Dyer's* is as to the Judge's comment:

> *In an appropriate case* – it says at 873 – *it is permissible for a judge to tell the jury that they're entitled to take into account the fact that a potential witness who might have been called has not, in fact, been called. In particular that is the case where the prosecution had no possible means of knowing that the potential witness has any relevant evidence to give until the accused person himself has come to give evidence at the trial (see Gallagher a 1974 English case, Buckland in 1977 New Zealand case – sorry, New South Wales case, and Lawrence a 1980 New South Wales case.*

In addition to that, it is – it is the case I hand up and my learned friend now has a copy of *R. v. Tran* from the Court of Criminal Appeal in South Australia, and it concerns not prosecutor's comments but comments made by co-accused counsel in what turned out it seemed to have been a cut-throat defence, although that's not so explicit on the part of one counsel it would seem.

In – now I'd draw your attention – your Honour's attention in case it's thought I'm overlooking them – to paragraph 49, I think, yes paragraph 49 of the judgment which mentions – the law says:

> *We are further of the view that comments on the silence of the co-accused when they may be properly be made are not qualified by the somewhat uncertain requirements of restraint that applies to such comments when made by the judge or prosecutor. We agree with the---*

HIS HONOUR: Hang on. Where are you?

MR ELLIS SC: 49, paragraph---

HIS HONOUR: Paragraph 49 of *Tran*.

MR ELLIS SC: Yes, your Honour, is a---

HIS HONOUR: It begins:

> *The Court held that defence counsel –*

MR ELLIS SC: Yes.

HIS HONOUR: Yeah, and whereabouts are you?

MR ELLIS SC: From –

HIS HONOUR: Oh "we are further concluded" –

MR ELLIS SC: Concluded – yeah, at 15, yeah.

HIS HONOUR: Yes. Well that's a quote from something –

MR ELLIS SC: That's a quote from –

HIS HONOUR: That's a quote Chevlin.

MR ELLIS SC: Chevlin – thank you,

HIS HONOUR: A Scotch case.

MR ELLIS SC: Yeah. So there was a contrast made between prosecutor's duties and the – the somewhat uncertain requirement of

restraint and those on co-accused counsel, but those observations don't seem relevant to the way this Court, the Court of Criminal Appeal in South Australia, dealt with a complaint that comment was made by the co-accused counsel on the failure of the co-accused's wife to give evidence – and that appears at page 62 – sorry, paragraph 62, your Honour.

HIS HONOUR: Yes. Yes?

MR ELLIS SC: At paragraph 66 it is said:

> *The point taken with respect to these comments is that they invited the jury to reason in the manner referred to in Jones v Dunkell, counsel relied on Dyers, the High Court held that as a general rule Jones v Dunkell reasoning should not be applied in a criminal trial.*

At 67:

> *A short answer to this argument is that the comments made by Toh's counsel stopped short of inviting Jones v Dunkell reasoning. There was no suggestion that the failure of the appellant to call his wife might lead to an inference that her evidence would not have assisted the appellant. There was simply a comment that his wife could have provided a version on the issues to which reference was made.*

And then there was a reference to the trial judge referring to it and said – and cautioning the jury about speculating about what evidence she may have given had she been called.

So it's – it's my submission that a – an observation that a witness has not been called which does not invite Jones v Dunkell reasoning is not objectionable, and it is with further submission, that in any event in exceptional circumstance where – that applied in this case, that the accused raised for the first time in this trial, and not raised in her police interviews, that she had been having blackouts and sought to explain her alleged memory losses by that. That she had sought treatment from a psychiatrist, that she had been referred by a general practitioner to that psychiatrist and as was led that she had had several sessions with that psychiatrist, I think three was mentioned, all revealed for the first time in her evidence, and never before, in my submission it's an unexceptional observation to make that that psychiatrist has not been called especially coupled with, as I fully

except your Honour to do, caution to the jury to the effect that the psychiatrist has not been called, that is a fact, the accused doesn't have to prove anything and you mustn't speculate on what the psychiatrist will have said.

HIS HONOUR: What you said about Dr Sale was

> *Maybe he would say it's a common feature of people who commit murders that they lie or claim to have no memory of it or their memory gets patchy around the crucial time. In times of great excitement, great passion, anger, the red mist descends, it is sometimes said, who knows, I don't know, we didn't hear from him, I'm just speculating.*

Now you're right, you didn't ask the jury to infer that the reason Dr Sale was not called was that his evidence would not have assisted the accused. What could be said though is that you made comments that might have caused them to reason in that way. I'm inclined to think that I should tell them, at least later and possibly now, that they shouldn't reason in that way and that they shouldn't speculate as to what Dr Sale might have said. Is there anything you want to say about that?

MR ELLIS SC: No, your Honour, thank you.

HIS HONOUR: Thank you. Mr Gunson?

MR GUNSON SC: I invite your Honour to give the direction to the jury now before I commence my address and repeat it in your Honour's closing address to them so it is fresh in their mind. It's most unfortunate my friend did what he did, but it's been done. We don't at this stage make any further application than that.

HIS HONOUR: Yes, thank you. Yes, I do think it's appropriate that I say something that would stop them reasoning in an impermissible way so I will say those things to them at two fifteen and then we'll proceed. All right, the Court will adjourn 'til two fifteen.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Ladies and gentlemen, I just want to say something before we proceed about some comments that Mr Ellis made this morning before the morning break about Dr Sale, the psychiatrist, who of course was not called as a witness. I said at the beginning of the trial that the Crown bears the burden of trying to prove guilt. What that means is that an accused person doesn't have to try to prove that he or she is innocent; and that means that an accused person, in this case Ms Neill-Fraser, isn't under any obligation to call witnesses or to call any particular witness, and it means that if a particular witness isn't called then you shouldn't treat that as a bad sign or somehow draw a conclusion adverse to Ms Neill-Fraser as a result of that witness not having been called. We don't know why Dr Sale wasn't called or what he would have said if he had been called and you shouldn't try to workout why he wasn't called or what he might have said – we just don't know and you must base your verdict on the evidence and not on any sort of speculation.

So I just thought I'd say that at this point in order to make sure that you don't adopt a wrong line of thinking. It's Mr Gunson's turn and I'll call on him to make his closing speech. Mr Gunson?

<CLOSING - MR GUNSON SC: Thank you, your Honour. Madam forewoman and members of the jury, it might be helpful if at this stage I give you an impression, if that's the right word, of my view of my learned friend, Mr Ellis' address to you; it was one based entirely on suspicion and nothing else. In this State nobody can be convicted of a crime that rests – where the evidence rests on suspicion. If that was the lawful base for a conviction for a crime the gaols would be overflowing. The Courts require an exacting standard of proof, which will be discussed with you later today and by his Honour tomorrow, and you must decide this case on the evidence based on that exacting standard of proof without being, and I use the term loosely, suspicious and relying on suspicion.

You hold Ms Neill-Fraser's future in your hands today and you have a solemn duty to discharge in accordance with the oath that you took at the beginning of these proceedings and let me remind you of that in substance. You either swore an oath or affirmed to decide the case according to the evidence. That oath says nothing about suspicion. When I was listening to Mr Ellis' address to you this morning halfway through I wrote myself a note and what I said in it was this: It's an address that was redolent with suspicion and lacking in facts and an address which has conveniently ignored the evidence that clearly shows the accused is not guilty.

Now as that address went on, and I listened with great interest to Mr Ellis, as I'm sure you did too, I added some other adjectives. They were these, and I'll talk to you about each of them, cynicism, sarcasm, fantasy and misleading coupled with an element of hypocrisy. Let me tell you why I say those things. You may think that's a harsh comment to make. Fantasy, the way in which he belittled the DNA evidence relating to Meaghan Vass, pure and absolute fantasy. He would have you accept that somehow, magically, perhaps by the DNA pixies, this DNA arrived on the deck of Four Winds, or was perhaps trampled there in circumstances which he couldn't really explain. He started to suggest that perhaps it had been put there out at Goodwood, conveniently ignoring Ms Vass' evidence she'd never been there and then I thought backed away from that one, and I think at the end of the day it was a situation, 'well, we really don't know how it got there'. But it is pure fantasy to suggest that it was somehow trampled on board. If that was the case, you'd be surprised at – you wouldn't have been surprised to learn that half of Hobart's DNA wasn't found on the deck, having been dragged on there by the feet of various people who went on board. Hypocrisy, the laying of false trails, Mr Ellis was very happy during the course of his submissions to suggest that false trails had been laid by the

accused, false trails had been laid by me, which would lead you to basically reject her case.

Let's think about that. You can probably link in disingenuous here as well, hypocrisy, disingenuous, misleading, false trails and the first false trail to be raised in this address to you was the suggestion that the grey dinghy had suddenly obtained or been elevated to some level of importance during the course of the case that it never had before and, of course, Mr Ellis wants you to believe that grey is white and white is grey and clearly it's not. And the fact that the grey dinghy has always been a factor never appreciated by the police and never appreciated by Mr Ellis I suggest is clear, and you'll find the fact that the grey dinghy has been an open issue in the evidence. You'll find it referred to in P29 which is the statutory declaration by Mr Clark, and you might remember Mr Clark was a passenger on Mr Conde's yacht, and when Mr Conde sailed past at about 3:55, Mr Clark and Mr Conde saw a grey dinghy. So we know Mr Conde saw a grey dinghy. He told everybody. That's no new news – there's nothing new about that – sorry about that – there's – we know Mr Clark saw a grey dinghy, so it's always been there and, more importantly, we know that the young lady or the lady described as P36 also saw a grey dinghy. So when Mr Ellis says to you as he did: 'Look, this really only arose during the trial and it was seized on with great alacrity by the defence" – these are my words – "and you should really reject it because grey means white and white means grey – they're all the same thing' – that's just nonsense.

Now talk about laying false trails; he wants you to believe that before we came to Court that nobody knew anything about a grey dinghy, that it just popped up in this trial and conveniently became an issue – it did not it has always been there. And the same comment about false trails can be made with respect to the DNA evidence; it's there, it's always been there, it didn't arise through my cross-examination. You will remember that when the first forensic report came out – and you will have a copy of it – item 20 in that forensic report refers to a person, a female "E", it's referred to by the letter "E".

Now subsequently, as we know, Ms Vass committed a criminal offence, her DNA was taken, it went into the DNA database and the computer said, "Ah ha we have a match, this is person E" – so it's always been there. So there's no suggestion that the DNA issue was an issue raised by the defence, it was raised by the prosecution. The grey dinghy has been raised by the prosecution.

But you see, it is necessary, and I understand why Mr Ellis has done this, it's necessary for him to describe that grey dinghy as white and

to try and convince you you're all as colour blind as he is, apparently, to believe that grey means white and white means grey, and for him to dismiss Meaghan Vass' DNA evidence as a 'red herring' because he knows full well that these issues have irretrievably damaged his case.

Now if something apparently doesn't suit Mr Ellis' case and he doesn't like it, then it's immediately labelled a 'red herring' – 'it's a red herring or we don't like that – the grey dinghy is a red herring, we don't like that, what a horrible red herring that is – chuck it aside members of the jury, ignore it'. Well if you do that you'd ignore your oath. 'Chuck aside the DNA IT doesn't fit my case and I'm sorry it's here but just ignore it, it's a red herring', and I would suggest to you that Mr Ellis' fascination with red herrings and to describe any evidence that he doesn't like, which doesn't suit the prosecution case, is singularly unhelpful to you as members of the jury, when setting about determining this case.

Now he criticised me in his opening for saying to you in my brief opening words twice, "if indeed he is dead". There was nothing sinister in that, it wasn't a red herring and as his Honour will tell you, and as Mr Ellis knows full well and knew full well when he made that submission to you, one of the things he has to prove in this case is Mr Chappell's dead. Now if you're not satisfied about that that's the end of the matter. I'm not going to suggest to you one way or another what you should find but if you're not satisfied about that that's the end of it so it was perfectly proper for me to say, "if indeed he is dead".

Now in his closing address Mr Ellis said many things to you over a period of about two hours, the total time he devoted to what we say are the critical issues in this case, which are the existence of this grey dinghy and Meaghan Vass' DNA, was about two minutes. Now I'm going to have to take you through those and tell you things about them and I'll do that in due course. Now Mr Ellis also was extremely critical of Ms Neill-Fraser's interview techniques. He said that she prevaricated, I think that's my word, asked questions of the interviewers and according to him tried to extract information from them which would enable her to answer the questions. Well I submit to you that when you look at those interviews, which are about eight and a half hours, that you'll find those sort of comments extremely unfair, unjustified and totally unreasonable. Everyone of us is different, everyone of us when asked questions in interviews like that would approach it a different way. Some of us might sit there and just listen to the questions as they're asked and give answers. Some of us might give short answers, some of us might

give long involved answers that take sometime to give, some of us might ask for more information so we can properly answer the questions. Now all she did was that. You may think that she was a bit garrulous through the interview or interviews, some people are, some people aren't, some people ramble on, some don't. So what the Crown does is says, "Wow, we have to look for something, we have to try and find something to show that she's guilty, so we'll seize on her interview techniques and criticise her about them and we'll criticise her for not being responsive to every question that was put. Look at some of the questions that were asked when you look at those interviews, look how some of them were short, some of them were long, some of them were involved, at no stage did you ever see the police interviewers try and stop her from answering the questions or in many instances they provided additional information.

Now Mr Ellis' submission seems to depend or to be devoted to a word by word analysis that everything she ever said from the 27th January onwards right up until this Court should be dismissed, that you should analyse every sentence and every word and that you should find in some way they be interpreted as evidence of guilt. A sensible and less biased analysis of what she said in my submission will not lead you to the conclusions urged on you by the Crown.

You know, some elements of fantasy came out in Mr Ellis' address and real example I noted was this issue about the four winches on the roof of the wheelhouse. Now when asked how she would remodel the yacht to make it easier for sailing with two people she said, "Well one issue that was discussed and never was a firm plan was to put the four winches on the roof of the wheelhouse", which apparently was steel. There was some discussion about whether it would be strong enough. Now what you get is an effort from Mr Ellis this morning to say, "Well this just would've been absolute nonsense because it's a bit like putting four winches on top of your house and – oh sorry, on top of your car and rigging it with sails and we'd all know where the sails and the car would go to, it'd just lift the roof off", but you know, it's pretty obvious he knows nothing about sailing. I don't pretend anything either but I would've thought before you'd make such a submission like that you might want some evidence about the strength of the wheelhouse roof, what it was – what type of steel it was, whether reinforcing might be needed, – you see it's very easy to make those sort of submissions and throw them to you and let you try and digest them and someway find that's evidence of a guilty mind.

Now while his Honour is going to give you in due course some very clear directions as to the law in this case, which you must follow, nonetheless, it's appropriate that I tell you a little bit about the law

so that you can understand the legal principles that are applicable to this case while I go through the evidence with you. The first is this; that an accused person is deemed to be innocent of the charge preferred against that person until the guilt of the person has been proved. The second is that for an accused person to be found guilty of an offence, a jury must be satisfied beyond reasonable doubt of that person's guilt. And if a jury is not satisfied beyond reasonable doubt, then the jury, true to their oath, must acquit the accused person of that charge. This means that you do not approach the task of deciding the case by regarding certain circumstances as suspicious and being satisfied that they are suspicious and thereby, convicting the accused – that approach would be wrong. It doesn't mean that you say to yourself, 'Oh I reckon he's guilty' or 'she's guilty' it doesn't mean that at all. You are required to analyse the evidence and to look at the competing arguments that are presented to you with respect to that evidence. You are required to draw the appropriate conclusions that are available on that evidence, and it's only when you've done all of those things and discussed them amongst themselves, and when you are satisfied beyond reasonable doubt that you can convict the person. That requirement 'beyond reasonable doubt' is a very onerous one, and beyond reasonable doubt means precisely that. If you are not satisfied beyond reasonable doubt then you are obliged to acquit the accused.

Now there's another principle, and I think his Honour's already touched on that at some stage; throughout this trial process the onus rests upon the Crown to prove the guilt of the accused person beyond reasonable doubt – they carry the onus of proof. At no stage in the proceedings does this onus of proof shift to the accused. Mr – in this case, Ms Neill-Fraser does not have to come to this Court and prove her innocence to you. That's reversing the onus of proof. The onus of proof rests on Mr Ellis and Mr Shapiro who represent the Crown throughout. Now Ms Neill-Fraser was entitled at the end of the Prosecution evidence to remain silent if she wished to do so and not to give any evidence in her defence at all. That is her right. She could have said through me in the course of my address, 'look, she didn't need to give any evidence, her position's been made clear in the lengthy records of interview of about eight and a half hours, she's consistently denied the crime for which she's been charged, she's consistently said to police officers 'I'm not responsible for the death of Mr Chappell, and I've consistently said I wasn't the person in the dinghy seen by Mr Hughes'. And you would have eight and a half hours of video material, you'd have her written statements all of which are to that effect. However, she is entitled if she wishes to do so, and she did in this case, to give evidence on oath. So what's the consequence of giving evidence on oath? Like any other witness, you

get cross-examined. So if she'd remained silent, the Trial Judge would have directed you that you could not draw any inference adverse to her because she remained silent. In other words, he'd say, 'just because she didn't go in the Box, you can't draw an adverse inference about that, she's entitled not to go there'. She made the decision to give evidence and she gave evidence in her own defence.

Now this is a circumstantial case and a circumstantial case is quite different to a case where there is direct evidence. Here, as is clear, there's no direct evidence of the Accused's involvement in the disappearance of Mr Chappell. There's no direct evidence the accused is responsible for the presumed death of Mr Chappell. Simply put, circumstantial evidence is evidence of a basic fact or facts from which the jury is asked to infer a further fact or facts. Circumstantial evidence is evidence which proves or tends to prove a fact or a set of facts from which the fact to be proved may be inferred, in this case the fact to be proved is the death of Mr Chappell and the responsibility of the accused. However, in a circumstantial case, circumstantial evidence can only prove in this case the death of Mr Chappell and the accused's responsibility if and only if all other reasonable hypotheses are excluded. Now what that means is this, simply put, if there are reasonable other hypotheses open the Crown must exclude them and you have to be satisfied beyond reasonable doubt that those hypotheses are not open. Now to be a reasonable hypothesis it must possess some degree of acceptability or credibility, it can't be one that's obviously fanciful, impossible or incredible or too remote or too tenuous, so a reasonable hypothesis.

Now the Crown case, as opened by Mr Ellis, was on the basis that the accused had been out on Four Winds at least as late as 3:55 on the 26th January 2009. As I've said the colour of the dinghy, or the tender, is nothing new in this case, it's something that's been known to the defence since we got the statements and presumably known to the prosecution since they read them, and, as I said, P36's statement taken I think in October of 2009 amplified dinghy issue. Of course the dinghy has taken on importance in the case, it was always going to do so, however you would be forgiven for thinking that that might not have always been the case.

First of all we had Constable Sinnitt on the 5th February 2009 telling the accused at her home that a dinghy had been seen at Four Winds at 3:55 and for reasons that I suspect are quite clear he concealed, and we say deliberately concealed, and we don't shrink from that, telling the accused that the dinghy wasn't hers but it was a grey one and presumably that didn't suit the police scenario at that time. And not

like, of course, Detective Conroy forgetting to put Mr Lorraine's description of the dinghy in his statement.

Now that the dinghy was going to take on importance in this case is clear, Mr Ellis said to you in his opening of the case for the prosecution on the 21st September, he said this –

> *Anyway we're back to the 5th February, so those two detectives visited and they got some further background material, they made notes, she's pretty much as before. She said that when she'd been on board on the 26th she'd got in Bob's way and there was a row, that he was snapping, he wanted her to take off.*

Then he added this:

> *Now by this time some witnesses, Paul Conde and Anne and Thomas Clarke, who you'll hear from.*

I just pause to make the observation, well that was quite incorrect, because when you look at P29,which is the statements of Mr and Mrs Clarke, they weren't even taken until the 31st August 2009, so that part of the opening's wrong.

> *He told police that they'd seen Four Winds on the mooring at four o'clock in the afternoon on the 26th and an inflatable dinghy had been tied up alongside at the port side. As the water was choppy they noticed it, it was moving around a lot. When these detectives on the 5th February put these observations of witnesses to Ms Neill-Fraser her story shifted, and you'll hear this isn't the only time that her story shifts when other evidence inconsistent with it is put to her. She said –*

And he stopped, he didn't tell us what she said, then he went on and said – this is his observation:

> *I mean obviously given that there was a dinghy alongside it she must have still been on board and that she'd stayed there longer than she thought, so –*

What she said was that she'd tied the tender to a ladder at the Royal Hobart Yacht Club, so what Mr Ellis has done, he's put the dinghy in that context immediately by saying to you in his opening, "Well it was obvious, wasn't it, it must have been her alongside". Now that's

the track that has been opened in this case by the DPP and it's similar to the one adopted by the police.

Now let's just analyse Mr Ellis' opening comments I read out to you a moment ago because you'll immediately appreciate that he left out in his opening any reference to the dinghy being large and grey, as observed by Mr Conde, and as I said already, he was quite wrong about suggesting at that stage that Anne and Thomas Clarke had told the police about the dinghy because that's just not right, and I've said look at P29 and you'll see what I mean. They weren't even interviewed until the 31st August. In any event it was only Mr Clarke who described a grey dinghy, and not Mrs Clarke. So to this extent Mr Ellis' opening had the capacity to mislead you, but what is important about his opening is not so much that it had the capacity to mislead you in that paragraph that I read, but because what he said of course is not evidence in this case, he simply in my submission had no real appreciation of the relevance of the grey dinghy or where it was going to fit into this case.

Now obviously, I'm going to have to say much more in due course to you about the grey dinghy issue, but I want to start reflecting on the issue now. You might think it was amazing, if not appalling, that the police consistently ignored the fact that the dinghy sighted at Four Winds at 3:55 by Mr Conde was grey, and as we now know, failed to answer the description of the dinghy for Four Winds and was nothing like it. Whatever Mr Ellis tries to do in this case, you can't convert the white Quicksilver blue trimmed dinghy into a grey one – he's not a magician, but he tried to do it. He criticised the police photographs at one stage when it was pretty obvious that white wasn't going to be grey and grey wasn't going to be white, by saying 'Oh they're washed out, they're washed out' you know 'bad light or something' you know 'not good photographs'. But of course if you go to the family snaps you'll see they're – it's a white dinghy.

Now there's no doubt whatsoever that at 3:55 on the 26th of January another dinghy was alongside the Four Winds. It wasn't the tender from that boat. What we know now and what clearly the police did not know until as late as last week, when they finally got around to doing that which they should have done, was, it was a large one, large in the context of rubber dinghies, it was grey, it was described by Mr Conde in his later interview as a commercial type, pointy nose, beamy, lee-clothed bowed rubber boat.

Now when I said earlier disingenuous, I had a little note to say, 'pointy nosed' – mm, and Mr Ellis got out for you this morning the photograph of the dinghy of Four Winds, which is a very blunt nose

which is about the beam or the width of the dinghy and said, "Ah look at that it's pointy". Well if you're going to fall for the two card trick, he wanted you to do it – it's not pointy – not point at all.

Now – and Mr Clarke, of course, has also described it as a grey dinghy, he said it was a grey – "a small grey coloured tender tied to the side of the boat, I think the tender was probably inflatable, I cannot be sure". Neither Mr Clarke nor Mr Conde at 3:55 saw anybody on the deck. Then we go to the witness who's been called or loosely referred to, probably inaccurately, as P46 because that's the exhibit number, and let me remind you of what that witness had to say in her statement. It was agreed that for reasons that need not trouble you that rather than this witness being called that her statement would be read out in Court and form part of the evidence, and she said this:

On Australia, 26th of January 2009, I was sailing as a guest on a yacht on the Derwent River in company with friends I prefer not to name. We were motoring in a north-easterly direction from the area of Wrest Point at a minimum speed of turning yachts. We were motoring quite close to moorings on the Sandy Bay side of the river and I was keeping an eye out for unattended moorings so that we wouldn't hit any. I had binoculars on the boat with me. As we motored towards the Battery Point direction, I noticed a striking, different sort of boat. It was white in colour and it immediately caught my attention. The boat was attached to a mooring on the outer line of the moored boats. We didn't motor in and around the boats. We passed the outside of them. In doing so, we came to within approximately fifty metres of the Four Winds.

Critically, she said this:

I viewed the boat through my binoculars from the first time I noticed it because it was such a lovely boat. I saw the name of it clearly as Four Winds. I can't be sure but I think that it was written on both sides of the bow of the boat. I didn't see anybody on board. The boat was facing in a general direction down river as we went across its bow, probably pointing towards south south-east. Attached to the stern of the portside by about four or five feet of rope but floating a short distance from it was a grey inflatable dinghy. The dinghy was tightly inflated. It was a large, mid-grey dinghy and I did not notice any outboard motor on it. My view of the dinghy was with the nose of the dinghy pointing slightly towards the bow of the boat. It was pretty much a bow-on view and it had a squarish nose and looked to be in good condition. The front of it was sitting out of the water slightly. We passed the Four Winds because – sorry, I'll start again –

We passed the Four Winds across its bow. I was particularly struck by the beauty of the boat and I didn't take my eyes off it---

MR GUNSON SC: – sorry, I'll start again –

> *We passed the Four Winds across its bow and I was particularly struck by the beauty of the boat and I didn't take my eyes off it from when I initially noticed it. It was different to others in the area in that most of them are modern boats and Four Winds is more a traditional boat. One of the guests on board the boat with me commented that Four Winds was sitting low in the water.*

She goes on then to describe the day and she said observed the Four Winds at about 5:00pm.

Now in addition to that there's the evidence of Mr Lorraine who saw a dark coloured dinghy behind Four Winds at about 5:00pm. He described it in his evidence as somewhat dark in colour and small. Nobody explored with him what was meant by 'small', and I think he said it reminds you of somewhat of a coracle he'd seen somewhere in England or the UK in his youth. Now according to Sergeant Conroy, under re-examination by Mr Ellis, Mr Conde had said to him when he was reinterviewed on the night of the 5th October of this year the dinghy was about 10 to 12 feet that he had seen.

Now one of the things to be noted immediately despite Sergeant Conroy disavowing in this court, as indeed he would, that Ms Neill-Fraser was his only person of interest in the investigation you might quite reasonably wonder why neither he nor Detective Sinnitt, or indeed any other police officer, did not make further enquiries at this stage. You may wonder why they never told the accused it was a grey dinghy there being seen. You may wonder why they led her to believe for the purpose of setting the timelines and so forth that it was her dinghy out there. And they also knew about Mr Lorraine's evidence at this stage and as I said they didn't bother to interview Mr Clark until many many months later who also confirmed the existence of that dinghy. You might think this is a significant omission by the police. We say it is, and we say this to you, that had the appropriate enquiries been made that perhaps the ownership of that dinghy could be identified we would find out, or they would find out, who had operated it, they would find out who was out there on the boat, clearly at 3:55 and clearly at 5 o'clock, you have all of these witnesses saying a grey dinghy was there. If the police were genuinely trying to identify who might have been responsible for the

disappearance of Four Winds, why didn't they take these steps? Why didn't they tell the accused about the grey dinghy and try and get some input from her, if any, into it – bear in mind they're – she's a person who has been there on that water area for some weeks on a daily basis for doing work on the boat and so forth – why didn't they properly question Mr Conde, who was obviously possessed of a significant amount of information? Had they questioned him early and asked him the simple questions that I asked him in this Courtroom, and which Mr Ellis asked him, then we would have had a more fulsome – they would have had a more fulsome description very early on and they may have looked elsewhere. Why didn't they raise the existence of the grey dinghy at the later meeting at the Royal Yacht Club or the Derwent Sailing Squadron? Why didn't they put out a press release seeking information from the public about the grey dinghy? They did it with just about everything else, you might remember, there was evidence about press releases, and it would have been very easy to enlist the assistance of the media by saying 'Look, we have this fulsome description of a grey dinghy given by Mr Conde, if anybody recognises it come forward' – and bear in mind, Mr Conde said he thought it was a commercial type grey dinghy, and he said, "It was a bit faded".

Now under cross-examination Sergeant Conroy made a number of concessions, I submit, which you will find helpful, and were reasonably made and properly made by him in light of these failings. First of all he never recorded in Mr Lorraine's statement Mr Lorraine's account of the dinghy being 'white'ish cream to yellow' and Mr Lorraine, of course, said in this Court it was 'dark' – yeah Mr – Sergeant Conroy's late revelation of this admission precluded me from cross-examining Mr Lorraine about this at all, because he didn't know about it. He tried to say it was too late to correct the admission when he realised he hadn't put the information in the statements because the file had been submitted within the police chain of command, and that was going to be his bland answer, but he was pressed on that, and when pressed he said he knew full well that he could deliver at any stage a supplementary proof, either himself or Mr Lorraine, I suppose, and simply didn't do it. And of course, we know supplementary proofs or statements were taken because we have Mr and Mrs Clarke's statement in August and we have P36's statement, which was made on the 28th November 2009, so it was just a nonsense for Sergeant Conroy to suggest he couldn't have, as it were, submitted a supplementary proof by this Mr Lorraine. He could have, he admitted, gone back to Mr Conde and narrowed down the issue about the grey dinghy and he now accepts in this court room all this time later that he should have done that. Now the detailed information, as you will recall, about the dinghy was elicited by Mr

Ellis in re-examination and what he elicited in re-examination were two important things. You might remember no doubt with a flourish that he used he produced the photograph of the dinghy and said to Mr Conde in the witness box, "Have a look at this, that's the grey dinghy, isn't it", and Mr Conde said, "Oh nothing like it, absolutely not it", and you might have noticed the way Mr Ellis sort of stood back and went, "Oh". Then Mr Conde, I think, added something about it had a lee cloth and I was allowed to ask questions about that and we had the very detailed description then of the lee cloth and its role and the pointy bow and all of those things.

Now remarkably Sergeant Conroy claimed that Mr Conde's evidence initially wasn't a highlight, but you would have thought 'large grey dinghy', let's compute that, how does this fit in with a white, blue trim dinghy, it doesn't. And it would seem that the statement was just taken by somebody, accepted, went on the file, I suggest, and nobody bothered to think through logically what did this all mean. In our submission it cried out for further investigation and it should have been investigated and when I pushed in cross-examination with Sergeant Conroy he accepted that it was a reasonable conclusion as a result of Mr Conde's evidence as given in this Court and expanded upon that it was reasonably possible that somebody else was on the boat when Mr Conde saw it at 3:55. That was the concession made by Sergeant Conroy.

Now remember what I said about reasonable hypotheses. You've got the police officer in charge of this investigation belatedly accepting the proposition that that evidence from Mr Conde could reasonably mean that somebody else was there at 3:55. Now that was a fair concession made by him. He also accepted in light of the other evidence which is P36 that, and of course, Mr Lorraine, that it was a reasonable conclusion that someone else was on the boat at 5 o'clock.

Now I must say I had some difficulty understanding where the Crown was coming from at the end of the day in all of these red herrings that Mr Ellis was talking about, but I got the distinct impression and if I'm wrong then I apologize, but I got the distinct impression the latest theory advanced by the Crown was that some time during the afternoon of the 26th that the Accused had committed murder on board the boat, gone home and when she got the telephone call that night from Richard King that that in some way propelled her to go down to the boat to, as I recall it, take the body away and have a burial at sea. They were the words he used, 'burial at sea'. I really didn't understand that. It seems the case has shifted, but that's a matter for you.

Now Sergeant Conroy made a further comment which I suggest to you is one that you will take on board and think about. He said he believed that he had adequately covered the question of the dinghy at that time. Now the time he was talking about was the time they were investigating. When asked was he so confident now, he said, no, he wasn't and he admitted, to use my words, the trail was cold. Well very cold indeed, and it's very sad indeed that the Accused is facing trial in this Court on a murder charge because the police can't tell the difference between white and grey and did not or would not recognize the possibility that persons other than the accused were on Four Winds late in the afternoon of the 26th of January.

I am glad Mr Ellis actually raised with you the question of that photograph with the little dogs in it. There's no need to look at it now, but I'd also urge you to have a look at it when you're in the jury room – I agree with Mr Ellis, if you look very very closely, and sometimes it's difficult, depending on the light, you can pick up the rust stains coming down the side of the yacht, and you'll see those in other photographs. It does seem that there is something there at the stern, and that's the spot where the other persons saw the grey dinghy, and of course the witness P36, in her little sketch which is attached to the statement she made, looks a bit like that, she has the dinghy right at the very stern, and it's a matter for you whether you can pick up something in that photograph. I don't disagree with Mr Ellis that depending on light and depending on the angle you hold it, and how long you stare at it – and it gets worse the longer you stare at it – there seems to be something there. Well, you may find it's a dinghy, if that's so, then it means that grey dinghy was there later, I think those photographs, on the evidence, were taken between six and seven that evening. But certainly it's around about dusk or shortly before dusk.

So you have those issues. So, grey dinghy, there for hours. Who was there? We don't know. What were they doing? We don't know.

Now I want to come back to the subject of circumstantial evidence, as I've said to you, circumstantial evidence can be used to prove a fact beyond reasonable doubt only if all other reasonable hypotheses are excluded. In this case, the Crown seeks to establish that the accused killed Mr Chappell. So what have you got at this stage already, you've got a reasonable hypothesis, other people out there, other person out there – people, it doesn't matter, we don't know that's speculation – but at least one person drives a dinghy and you've got the description of it.

Now this is a question that I want to put to you – I put to Sergeant Conroy, and I said this:

> *Would you not have thought it might be reasonable as a trained investigator for the persons who accompanied the witness, P36, on that yacht to be interviewed?*

Answer:

> *Yes.*

Because you see, P36, in her statement says she was in the company of friends, she preferred not to name. Now what was wrong with the police going to this lady and saying, "Tell us which boat you were on, tell us who you were with". If she refused to answer their enquiries well that's it, they couldn't beat it out of her or they couldn't get it out of her any other way, but I'm sure if she was such a concerned citizen as on the 25th November, this is after the accused had been arrested, to come forward she probably would have named them. And he admitted that it would have been a reasonable thing for a trained investigator to approach her – to approach those witnesses, and I said:

> *That would have been a very sensible thing to do, wouldn't it?.....Yes.*

Now Ms Neill-Fraser's evidence was that she left the boat in the afternoon after she'd been on it for about an hour. We know that she went out there about two o'clock, we've got the evidence of the gentleman with the kayak, Mr Liaubon, who in his strange ways of discussing his evidence told you he'd got home, he'd washed his kayak, taken his wetsuit booties off and remembered looking at the microwave on the way through the door and it was two thirty, so he set the time at about two o'clock. If she left at about 3:00 p.m., as she said she did, and tied up her dinghy at the Royal Yacht Club then the following questions arise which should have been thought about by the police. To some extent I repeat myself, I make no apologies for it.

- Who was there at 3:55?
- Who was there at five o'clock?
- If you find there's a dinghy tied up to the yacht at about six o'clock to seven o'clock when the dog photographs were taken who was there then?
- Whose grey dinghy was it?
- How long were those persons – that person or persons there?

- What were they doing on board?

We know that on one view, Mr Lorraine, that Mr Chappell was sighted at about five o'clock by him with the grey dinghy behind and whilst Sergeant Conroy didn't seem to be terribly convinced at the beginning that Mr Lorraine had seen Mr Chappell he seemed to come around to the proposition that that was right, given where the boat was situated, and I would suggest to you that it almost certainly was Mr Bob Chappell at five o'clock. Nobody reported seeing him being on the deck after that. That of course depends on a finding that you make as to whether you accept Mr Lorraine that it was Mr Chappell, I submit to you you could.

Now a reasonable hypothesis which has not been excluded by the Crown, nowhere near it, not within a bull's roar, is that whoever was on that boat at that time is responsible by whatever means for the disappearance of Mr Chappell. That is the only reasonable conclusion that is open.

You might ask yourself this question. This Case as we know had widespread publicity. It was on television, it was on the radio, it was in that newspaper The Mercury day after day, front page news. We had the police putting out press releases about the red jacket, and about this and that, the IPERB, and everything was reported. You might think though that if somebody who was perfectly innocent who had no role in Mr Chappell's disappearance had just dropped in to see him on the yacht in the afternoon of the 26th of January by getting out there in a grey dinghy, might you not think with all of that publicity that person or persons would have come forward and said something like this: 'police officers, I was there at four o'clock to five o'clock, I dropped in to see Bob Chappell, I knew him or I didn't him as the case may be, or I went there because it was a nice yacht and I wanted to have a chat to him'. No-one ever came forward. Why not? We say for a very good reason. It's a very sinister reason. That person or persons are the persons responsible. And as I've said to you many times it doesn't matter how many times Mr Ellis tried to twist the grey dinghy scenario you can't get away from the fact that Mr Conde's evidence which he led and which was later amplified by Mr Conroy – sorry, Conde – stressed if not anything or emphasized that it was a commercial-type dinghy, faded, that point he knows.

Well compound the problems for the director. 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. It is equally a plausible and reasonable

hypothesis that she, along with others, went there in the grey dinghy or by some other means, and she and/or her friends are responsible – or associates, I suppose, as to Mr Chappell's disappearance. It was hardly likely she would admit any involvement in such a serious matter when questioned by the police let alone in this court but what we do know is this. She can't account for where she was on the night of the 26th January 2009. She can give and did not give any explanation about that at all. I'll come back to that a little later. What I want to say to you at this point though is something about motive.

In his opening Mr Ellis inferred there was a motive for the accused wanting to kill Mr Chappell because she'd then be able to inherit from him, get his share of the yacht and be free of him. He pursued the theme very vigorously in cross-examination even down to the point of almost auditing the family accounts suggesting that with the increasing cost of the purchase of Four Winds and the repairs to Four Winds that the relationship was deteriorating to the point where he put it to her, one of these imaginary conversations, Mr Chappell saying, 'I'm sick of it, I'm sick of it, you know, it's all costing a fortune, you're bleeding away the family fortune', and with that she responded violently. Well I'm not in the slightest bit surprised Mr Ellis articulated the prosecution case in that way because it's always helpful to have a motive even if it is one that is dredged up out of pure suspicion and speculation and nothing else. As I said to you in opening nobody is convicted on suspicion. So what possible motives could the accused have for wanting to kill Mr Chappell.

Let's go through the evidence about the relationship. They had been in a close relationship for about eighteen years, she told you it's been a bit rocky in the first few years but by all accounts thereafter they were getting on pretty well. She'd being living in the house with him for quite sometime, she raised her children there with him as obviously as de facto father, she was well looked after by Mr Chappell financially, she didn't have to go to work he wanted her to stay home and by the time his disappearance she was getting something like I think five hundred dollars a fortnight or thereabouts to just do with it whatever was necessary. They'd obviously shared a common desire to purchase a yacht for some time, a yacht they could use in his retirement, and she told you about the – and told the police, about how much time they'd spent on trips up the east coast of Australia, I think she said on one trip, dropping into thirty or forty marinas trying to find something with an enclosed pilothouse that would be suitable for use in Tasmania. They'd obviously searched for a number of years. They had in mind what they wanted and obviously expended a reasonable sum looking for that boat – they

knew what they wanted. They expended two hundred and three thousand dollars to buy it and obviously had to spend money repairing the engine in Brisbane and the other bits and pieces, and obviously had to spend some money getting the yacht into Hobart by hiring a crew, and in Hobart they continued to spend money.

Now there's no evidence at all from anybody, anybody at all, that Mr Chappell complained to anybody about having to spend more money than he ever anticipated or that it was getting out of control. Remember the evidence was this was going to be their shack, albeit a floating one. And anybody who ever owned a shack knows you spend money on it, it's one of the facts of life.

Now it is clear on the evidence, and it came out in cross-examination of Stevenson and Casson, that there was a lot of discussion about the accused and Mr Chappell, what they were going to do with the yacht, how they were going to learn to operate it, travel around the Hobart environs in the yacht, go down the Channel and things like that, and indeed, it was even conceded by them that Mr Chappell was going to join the yacht at Sydney after he'd got out of hospital in Southport. And I put my question to them along these lines, "Did she not want him to join the yacht?" and he said, "Yes, she did she wanted him there, he wanted to be there as well." They had discussions about rigging the yacht for the two of them to operate it, to be able to handle it together. As I said, they discussed with Stevenson an ambition to sail the yacht into the Pacific when suitably qualified – and there's no mystery about that, the consensus of opinion seems to be, obviously, if you're going to sail a yacht that size you need a crew, keen yachties who will sail with you – you don't need to pay them, as Mr Ellis suggested, they spoke about using friends and so forth. There were no pressing financial circumstances. Mr Chappell had obviously borrowed the money to put into his share of the yacht through this Viridian line of finance through the bank, which he was going to pay back from his very significant superannuation. The accused had her own independent financial means. It's a reasonable assumption that given the accused's mother's assets that on her death the accused will inherit a significant sum from that source, it's an assumption you can make. If anything the joint financial circumstances of Mr Chappell and the accused would be enhanced on Mr Chappell's retirement as he'd have access to a significant superannuation sum either in a lump sum or a significant pension. And more importantly, there's no evidence from anybody of a bad relationship between them. Mr Ellis dwelt on I think comments that were made that they seemed a bit snappy working on the boat together. Well you might find that, but does that mean there's a bad relationship? Everybody in every

relationship I suppose at some time has exchanged a snappy comment with the other partner, it's a fact of life. And of course more importantly on the 25th January you had the Bruny Island trip where Anne Sanchez went along and they were obviously getting on very well together and you have her evidence about that as to how they worked cooperatively on board, dealt with the anchor problem that arose, albeit not a significant one, but one that was unexpected, and you have her evidence of living in the house for a few days before the 26th January, before she went down to Bruny Island that afternoon, as to the relationship being a perfectly normal relationship. She observed nothing about them whatsoever, nothing untoward.

Now I would say to you this, and I don't shrink from saying it. The motives put by the Crown we say are fanciful, they are created by an imaginative prosecutor who's trying to find motives that are not in keeping with the evidence. The Crown's motives as I understood them were these: There was a cost blow-out on the yacht, that's denied by the accused, and cost blow-out, if you can call it that, is not supported by any evidence produced by Mr Ellis. He added up his figures and got to about two hundred and forty eight thousand. So what? She said the budget was two fifty or thereabouts, a few thousand over is not going to be the end of the day, you don't go and murder your partner for that, you don't get involved in heated debates over that. And you'll remember the fanciful conversation addressed by Mr Ellis to the accused in cross-examination which I've mentioned already, something along the lines of, you know, Bob says: 'I've had it, had it up to here, there's too much money being spent, you know, I'm – you've got me into this, I don't want to be here, it's all your fault these things'. There's not an iota of evidence about this. We don't have the officious neighbour listening next door over the fence hearing all of this. This is coming from his mind. It's made up. He put to her it was her desire to be, and I quote from transcript 1289, your Honour:

> *The envy of Hobart.*

That's what he put to her:

> *That's what you wanted to be, the envy of Hobart and because you couldn't be the envy of Hobart, you were prepared to kill.*

And there's simply no evidence of those matters.

Now when you look at motive, you need to look very carefully at what the true circumstances were. You need to look at the evidence.

When you analyze the evidence, you will not find one iota of evidence that supports the motive theory put forward by Mr Ellis.

Well, let's think about how you would go about killing somebody on a yacht in these circumstances and the problems you might face one person confronting one other. I suppose you could adopt Mr Ellis's theory and use the 'sneak up behind when they're least expecting and bang them on the head', but what would happen if the person fought back if your attempt was inadequate? You didn't kill them or disable them with the first blow and you've got a fight on your hands or you've got problems. The person screams out and yells out. You know, when you think about it, cold-blooded murder in those circumstances is almost impossible to contemplate because of the risks attached to it. You've got – if it happened during the day, we know that it was a public holiday, we know from the evidence other yachts are going past. What would have happened if a blood-battered Mr Chappell crawled up onto the deck, surely somebody would seem him. If it happened at night, then you've got all of those houses in the area, the people looking down from Napoleon Street in Battery Point looking straight down onto the water, all those waterfront houses, you've got all the houses along Marieville Esplanade, sound travels. You'd think – you know, it's a great risk. So you think about somebody planning cold-blooded murder. How are they going to achieve it? How are they going to achieve it perfectly without there being a risk factor at all? On top of that, when you think about it, if you were going to take a dinghy, as has been suggested now by Mr Ellis, out to Four Winds late at night to dispose of a body and to give it a sea burial what are the risks associated with it? Well first of all you've got the chance of being recognised down at Marieville Esplanade or down at the yacht club. Bear in mind her evidence was she thought there was surveillance there. There wasn't, that's not the point, the point is she thought it was there. Now that's a matter you need to consider.

There's another matter to also consider and it is this. If the relationship had broken down to the point that the Crown contends, and there is no evidence of that, then there was no need for the accused to commit any crime to obtain money. You will recall that she'd been previously divorced from Mr Meeker, divorce carries with it an entitlement to a distribution of matrimonial property, this couple weren't married but equally, as with a married couple, in a long term relationship where the parties have been together for in excess of two years there's an entitlement under Tasmanian law, an Act called the Relationships Act, to a property distribution. Basically it applies the same principles as the Family Law Act and the Court makes an order distributing money as between the parties where due. The Court

makes what's called a holistic value judgement in the exercise of their discretionary power to distribute property. So she could have applied to the Court, that is the Supreme Court, for a property adjustment.

Now we'll talk about Mr Triffett for a moment. Ms Neill-Fraser emphatically denies ever having tried to recruit Mr Triffett in the manner in which he alleged; that is that back in I think 1996, and the period before that, that there had been some offer made by her to him to recruit him to kill her brother Patrick and her husband. This was denied by her. We haven't heard from Ms Hanson who was named because she's unwell and can't come to court. Think about this, you might think it would be absurd for a person to try and recruit someone, not once but twice, to carry out the crime of murder, and then many years later in the same community carryout the same type of crime which had been previously suggested – it was patently obvious to anybody that news broadcasts after Mr Chappell's disappearance had been discovered had made it reasonably clear that a fire extinguisher was missing from the Four Winds – you don't have to be particularly clever to workout that by implication it was being suggested that perhaps that was used to weigh down Mr Chappell's body – that evidence was in the public domain.

Now also, you might bear in mind, that notwithstanding the attempt, alleged attempt to recruit him to commit, not one but two murders, Mr Triffett made no attempt to contact the police, notwithstanding he acknowledge in cross-examination that what he was being asked to do was wrong and constituted a crime.

Now as I said, you might think in these circumstances, if that had really happened, the last thing you would do is commit a crime that mirrored that which you'd previously try to get somebody else involved in – it's just not sensible, nor is it something you think would be done. That the Triffetts, the Hansens, Mr Chappell and the accused parted on bad terms is obvious. But what do you make of Triffett's claim that he told Bob Chappell or he told the accused, wherever it might have been, about these threats some years later, what better way would be there to destroy a relationship by such claims – and there's no suggestion that when Mr Chappell and Ms Neill-Fraser and Triffett and Hansen parted company that the relationship between Mr Chappell and Neill-Fraser – Ms Neill-Fraser broke down. Do you think anybody's going to seriously live with another person, having been told that somebody had been recruited, or attempted to be recruited to kill that person.

Now we say that you should totally reject Triffett's evidence, it simply is not something that happened, we say, on the evidence, and even so, even if you make a finding it did happen, it doesn't necessarily make the accused a murderer.

Now, of course the problem with his evidence, you've got word on word, it's a 'he said' 'she said' – I could say to him until he was – I was blue in the face, "I suggest it didn't happen, Mr Triffett?" – "Oh yes, it happened" – "I suggest it didn't happen, Mr Triffett?" – "Oh yes, it happened" – it doesn't achieve very much unless you've got some corroborative evidence to suggest that he wasn't in the place at the time or something you can put to him to demonstrate that he's telling a lie. No doubt the DPP would make the same observation. You could cross-examine Ms Neill-Fraser about it and she denies it, but you know, curiously, I don't know why, I've no idea, curiously Mr Ellis never put it to Ms Neill-Fraser in cross-examination that she'd had this conversation with Mr Triffett, never put it to him – to her. He never tested her about it, not one single question along the lines, "I suggest to you, Ms Neill-Fraser, you had this conversation with Mr Triffett about Patrick", never saw her tested about that, or "I suggest to you, Ms Neill-Fraser, that you tried to recruit Mr Triffett to kill your husband back in – sorry, your partner back in 1996", never even put it to her. So you're denied the opportunity of seeing her reaction under cross-examination on this issue, but nonetheless Mr Ellis says well you can still accept Mr Triffett. Never even tested her, why? I'm sure it wasn't something he forget, he wouldn't forget something like that. Maybe it's an acceptance by him that you can't put any reliance on Triffett. He certainly didn't seem to press too hard at the end, I thought, matter for you, that you should accept Triffett. Didn't even put it. You might think that's a remarkable thing to happen, a remarkable omission and I'm sure it wasn't deliberate. But there you are, you have it, we can't speculate, we don't know.

Well let's look at Mr Triffett to the extent that you think it might be useful to think about him. We say he's got no credibility, he's a man with convictions for an offence that was described in evidence to you. The Crown led no evidence initially about Mr Triffett having put a proposition, and I won't raise it beyond that, to the police about his giving evidence and what might happen to the police charges and so forth, but somehow this bubbled to the surface and the prosecution were required to recall Mr Triffett, and quite properly, because they had a duty of disclosure once they learnt about it, and we had him back here and we learnt that he had committed these offences – well his property had been searched on the 7th of January and a large amount of property removed and he was bailed on the 7th of January

on charges of possession; and when you look at that document, and of course it's in evidence, you'll see it doesn't disclose the amount of property or the amount of charges. It simply said he's charged with possession of certain items and some firearms offences. The formal charge wasn't laid until the 27th of January, and if you look at the document it's there, and the court stamp on it, it wasn't filed until the 29th of January. So on the 28th of January you've got Triffett coming to the police and giving what we say is a completely fraudulent and dishonest account, and at the same time he says, 'Oh did anybody' – these are my words just my words – 'can anybody do anything about these charges that sort of happened three weeks ago, four weeks ago?' Now it would seem that nothing did happen about them, but the plain fact is, it was on the table, at least from his point of view.

Let's now have a bit of think about Meaghan Vass and her involvement? Well, what do we know about her DNA and where it was on Four Winds? Ms McHoul, the forensic scientist, said it was found in area, I think, 11, which was nine and a half metres approximately from the bow of Four Winds, which puts it on the starboard side of the boat right near the entry point – on that side, and that was confirmed by Constable Sinnitt in cross-examination. 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. What it was, the experts could not say, they couldn't say to you, what part of the body it came from, whether it was from her skin, whether it was sweat, whether it was expectorant, you know for instance, she'd spat on the deck, or what it was – or whether in fact it was a bodily fluid that contained a very minute portion of blood – we don't know. 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, and you might remember when the Forensic Scientist was giving evidence, he was very uncomfortable, in my submission, about what he was being asked to do, trying to explore the – that was Mr Grosser – he talked about, 'you know, well I would only exclude it, for instance, by some other means if she was in Canada and I knew that, or something like that.' So we get the, 'oh well, it could have got on her because she was maybe at Constitution Dock'. Well, it wasn't bad. Remember the boat was under video surveillance all night. So if you go on board the boat on the 27th when it was at Constitution Dock, she said she was nowhere near there. She said she'd been nowhere near the Clean-Lift Marina at Negara Crescent, and whilst Mr Ellis this morning tried to suggest that maybe,

notwithstanding her denials that she got on the boat there, he seemed to fade away and say, 'well, it probably didn't really matter'.

Now where was the boat before it was at Constitution Dock and before it was at Negara Crescent Woodwork Clean-Lift? It was on its mooring at Marieville Esplanade. It follows logically if her DNA was on board that boat, if and – it was, there's no doubt about that. If it was there right near the entry, it follows logically that she was on board and you cannot exclude that as a rational hypothesis.

Now after considerable prevarication, I suggest, Mr Grosser who was the DNA expert eventually can see that the likelihood that she was in Hobart as opposed to be skiing in Canada and transference thereby was not really a plausible explanation, now we know it's her DNA, there's no argument about that, no-one suggested it wasn't. I guess in some ways the accused is fortunate because when that first report came through from Forensic Services, it's Item 20, you'll see it there, it's marked as – identified as a person or a woman E, and I suppose it's fortunate that Meaghan Vass committed some sort of offence and had her DNA taken for analysis and if that hadn't occurred we wouldn't know who Female Person E was, but we do know that. So Question: we know – first of all we know Meaghan Vass's DNA is there. How did it get there? Reasonable assumption, only open assumption was she was on the Four Winds. Bear in mind this, she refused to be interviewed by the police about the matter at all. Detective Sinnitt said he tried to interview her, she failed to keep appointments with him. Now she said, in the witness box, "I wasn't on the boat", well what else are you going to say, of course you'd expect that. The scientific evidence plainly points to the contrary. Why was she on the boat? A reasonable conclusion is she was there for no good and more likely was there with some other person or persons. A boat like Four Winds sitting alone out there without a tender would be a prime target for thieves operating amongst yachts. It doesn't matter that no other yachts were reported having been broken into on previous occasions around that area for sometime.

You do have the accused's evidence that somebody in her belief had been on board that yacht and she explained the methodology by which they could get inside. Nothing was taken, she said. If she was gilding the lily about that how easy might it have been to say, 'Yes, this that and the other was taken from the yacht'. How could the police prove otherwise unless there was an inventory of everything on board that Mr Chappell and Ms Neill-Fraser had put on the yacht, how else. So if she was going to gild the lily that's how you would do it. But she said clearly nothing was taken, things were disorganised and so forth. The likely scenario I suggest on the basis

of this evidence that she probably, with others, almost certainly got on board the boat, you can rationalise, I suggest, probably some sort of confrontation with Mr Chappell that, for whatever reason, resulted in his death and we submit that's the only logical conclusion. And that's also when you go through the Forensic Services report you'll find DNA findings with respect to other males who couldn't be identified. True is it that lots of people had been on that boat but nonetheless there are males unidentified.

Now it's hardly likely, as I said, that Ms Vass being brought to this Court would come here and say, 'Look, yes, it's a fair cop, I did it, it's a trial about murder I'm prepared to put my hand up to it', it's just not going to happen. Well (indistinct words) you consider the evidence about the grey rubber boat alongside Four Winds, you'll consider that in conjunction with Meaghan Vass' DNA. We also know that on the 26th January she had said in this court she was living initially at the Annie Kennerly Women's Shelter. She then said she was living at Stainforth Court on that day, a direct contradiction within a few moments, and I said to her in cross-examination when she said she'd been living at Stainforth Court, I said to her words to this effect, "Hadn't you earlier in this court room", when you weren't present, members of the jury, "said you'd lived at Annie Kennerly Women's Shelter? She said, "Yes", so she was conflicted about that. We find out from Detective Sinnitt that all of that was wrong, she was really living at Mara House. We know that he was unable to find out where she spent the night of the 26th January. We know he went to a false address at Mt Nelson which didn't exist, we know that she was nowhere near Constitution Dock or at Goodwood and it stands to reason that in those circumstances you can comfortably make the finding that I have said.

Now we also I suppose to some extent were hampered in being able to cross-examine Ms Vass because some aspects of her evidence only emerged much later and that was when Detective Sinnitt gave evidence about his difficulties in trying to find her residence of the night of the 26th January. Now I suggest to you that you have evidence from the accused of the unlawful entry on the 10th January, it's documented, you can bet your bottom dollar that if Mr Ellis thought that was a late entry or in some way was corrupted we would have had some scientific evidence about that. Remember the diary went into evidence through the prosecution.

Now, as I've said, there are some real issues about problems with the accused committing the crime of murder at least as it was first advanced by the prosecution, that is going out at midnight and doing this terrible crime. Well let me be blunt about this, what a terrible

risk to be taking trying to kill somebody off Marieville Esplanade in Sandy Bay either in broad daylight or at night on a yacht reasonably close to shore, it's only about five hundred metres out, amongst other yachts. You've got yachts and motorboats moored there, you've got the yachts at the marina, you've got houses, as I said, at Napoleon Street, houses in Marieville Esplanade, close by where people can see people's comings and goings. We know that the police doorknocked Marieville Esplanade, because we had evidence about it. We know they doorknocked Napoleon Street, we had evidence about it. Marieville Esplanade, we know, is a place where people frequent at night, you've got all of the activities going on down there, you've got two yacht clubs there, you've got the rowing sheds and so forth. But more importantly, you have the accused's knowledge of what she called 'homeless people' who spent time in the area of the rowing club in their cars. She gave evidence she knew one of them by name; she said he helped them move the dinghy sometimes, she said, "He was called Steve. He was ex-navy and had a yellow car." So he would know the accused. He would know the dinghy. He would know Four Winds and he'd know Mr Chappell. Is it logical that with that knowledge, that background, you would go down to Marieville Esplanade late at night, go around to the Royal Yacht Club, untie the dinghy, hop in it, start the engine and putter out, with all these people around who could possibly identify you? The classic is these people, who apparently lived down there in their cars. What would be more obvious than a tender going out to a yacht, some five hundred or so metres offshore, and then coming back and then the next day the yacht being found sunk and Mr Chappell not there? Outboards make noise, they're loud, night makes sound travel easier across the water than it does during the day.

But let's look at another issue; Mr Ellis has raised part of this issue, when he said, "Well obviously, she" – that's his words – "must have winched the body out of the yacht." Right. That's a scenario that's I suppose is reasonably open, given the marks, which the accused, of course, had pointed out. But what are you going to do though once you get your body out of the yacht? Out of the saloon, it comes up into the cockpit, you've got to move it from the cockpit onto the deck, you've then got to get it from the deck into a dinghy, you've got to then take it away somewhere, you've got to get it out of the dingy – how are you going to do that without rolling the dinghy over – one person, all that weight on one side – what's going to happen to the dinghy, it would probably flip.

Now if a person was bleeding from wounds, even a person wrapped up in something, I think Mr Ellis said a sheet or a sail or something like that – might you not expect to find some bloodstains in the

cockpit on the floor, some bloodstains on the floor of the wheelhouse, some bloodstains on the deck of the yacht, some drag marks, all of those are possibilities. It would be very difficult, I suggest, to do what is being suggested. Mr Ellis only approached the first step, which is to get the body from the cock – from the saloon up into the cockpit. Well one person would have great difficulty all of that, they become – no pun intended – a dead weight once they're on the deck, you can't use the winches then. Now two people would achieve it, not one, and as I said, you'd expect to find some marks consistent with that sort of activity and of course there was none.

Now then there was the evidence of the naval architect, Mr Barrett, about the time that it would take to sink the Four Winds by the influx of water. Bear in mind the police found the boat at about 7:00 a.m. partially submerged. In his evidence in chief Mr Barrett said he thought the timeframe by calculating the amount of water in the boat, by calculating the flow from the two pipes would be nine to twelve hours. Agreed in cross-examination, an approximation it could be between seven and fourteen hours and in the end he said – couldn't say to the jury on any stretch of the imagination that his figure of nine to twelve hours was accurate, it was an approximation, could be less, could be greater, he just didn't know. That's 625, your Honour. Now if you think about it, P36 said they saw – or who said her companion saw the yacht was sitting low in the water at five o'clock. If you go back fourteen hours you're starting to get water in the yacht. This is just speculation, but matters that you will take into account. Mr Ellis says, "Well look, the cut in the pipe in the toilet yacht was obviously made to attempt to sink it, the opening of the seacock was made to sink it, only the accused would know about the seacock, it was a secret seacock or something like that", but Constable Lawler said words to this effect, "Anything – anybody knowing anything about yachts would know that seacocks would be where they were, under the floorboards. Seacocks are generally hidden away under easily accessible panels so they can be got at when there's a need to get to them", I would suggest that anybody with a minimal amount of knowledge of yachts would have known there'd be sea cocks under the floor and would be accessible and, of course, the pipe of the toilet was obviously visible and accessible. And whoever went out in the grey dinghy knew how to operate a grey dinghy so you knew something about the sea, but there's another aspect about the sea cock that's worthy of thinking about. You might remember that there was evidence, I think, from Constable Lawler that he said that he had to use a multi-grip tool because it was such a tight, difficult sea cock to close, and one would assume that if it was

difficult to close it would be equally difficult to open unless you used such an instrument.

Now I want to talk about Detective Sinnitt. We say to you that you will and should be prepared to completely disbelieve his evidence about claims that he did not suggest a time line to Ms Neill-Fraser. His evidence is in complete conflict with that of Constable Milazzo on the subject. Now Constable Sinnitt went about the task of trying to get the time for the time line in this ingenuous and quite dishonest way. I mentioned this earlier, he knew of Conde's evidence, he was quite prepared to make a statement to the Accused that a dinghy had been seen tied up at Four Winds at 3:55 and he set out to and did deceive the Accused by not telling her that it wasn't her dinghy. He misled her and it's little wonder at that point she said words to the effect, 'Oh it must have been later than I thought.' Naturally, because she'd earlier said she'd believed she'd left at 3. Now that was the methodology that he approached. What might the Accused's response have been if Sinnitt had said,' Ms Neill-Fraser, at 3:55 there was a large grey dinghy tied to the Four Winds. What do you know about that if anything?'. And her answer would have been, 'Well, I don't know anything about it. What's its relevance?' or words to that effect.

Now Mr Ellis at some stage, I think it was in his Opening, said to you that there was Mr Chappell's blood found in the dinghy. Now I suggest to you that the evidence did not come to that level at all. Ms McHoul from Forensic Services Tasmania said that whilst there were a couple of Luminol-positive tests, she could not exclude the possibility of them being a false-positive and more importantly you'll remember that Ms McHoul said that she conducted a microscopic examination of the dinghy and could not detect any blood. Yes, surprisingly Mr Chappell's DNA was found on the dinghy and she – that was found on some rope around the side of it and she agreed that where you expect to find the DNA because that rope's there to pull on it and drag it and things like that so of course you'd expect the DNA to be there. There's also the possibility that can't be excluded from the evidence of the accused that maybe a tiny bit of Mr Chappell's blood from his nose could have, if you find it was blood on the dinghy, have got there when it was in Southport when he was fixing the stern light in the manner that's been described.

Now what do you make of the dinghy being found in Marieville Esplanade. Well Mr Ellis in, I suggest, his flamboyant way this morning held up the plan and said, well it must have got itself free and it floated from here and it floated from there and it did this and it did that, well that means nothing. You have no idea of what the tide

or wind conditions were at night. You've got no idea who took it out, it's just simply we know nothing about it and he invites you to speculate about that.

Now I want to raise with you this issue about Ms Neill-Fraser's assistance on site with the police. On any view it is clear that she provided significant assistance to the police in pointing out to them irregularities on board the yacht with the ropes, irregularities with the winch handles and other matters of significance including the burn marks. The police hadn't picked up the burn marks, and this is at about 4 o'clock on the afternoon of the 27th, nobody apparently ever seen them, but she comes along and says, 'Look at this, my yacht, I know these things, they weren't there'. Now if she had committed the crime of murder and if she had done what has been suggested, hauled the body out, you might think the last thing you'd be pointing out to the police who are investigating the murder, or the disappearance of Mr Chappell, is these marks, they may have seen them. They may have but they certainly hadn't seen them by that. And you've got Ms Neill-Fraser saying, 'look at those'. She pointed out problems with the yacht, things the police wouldn't have picked up. You'd think that if she was going to contend, for instance, that the blood found on the steps of the yacht by the police came from a nosebleed in Southport, that she could have been very ease – it would have been very easy for her to say 'Oh yeah that blood got there when we were in Southport'.

Now at this stage, Mr Stevenson and Mr Casson hadn't been interviewed. However, the first time the blood was mentioned to her about coming from Mr – being on the steps, she said, "Look it couldn't have been from the nosebleed because those steps were repeatedly covered by water on the trip down and any blood would have washed away, so it didn't come from the nose." So she's pointing out factors, which, if you think about it, if you've committed the crime, don't assist her one iota.

The EPIRB, not a matter of great significance but worthy of a mention; why would it be thrown over the side of a yacht? Not a lot turns on it but let me raise some issues with you? Sergeant Conroy said in his opinion the EPIRB had been incorrectly pulled out of the bracket causing the bracket to be snapped. He agreed under cross-examination it would be a reasonable inference to draw that the person had broken the bracket getting the EPIRB out when it was lacking in knowledge as to get an EPIRB from its bracket properly. And that issue is confirmed by Detect – by Constable Crawford, one of the marine police on the subject.

Now one scenario you might like to think about is this; a person not having any knowledge of EPIRBs might think that an EPIRB would be activated by water entering into a boat – so if you're going to sink the boat you seize the EPIRB and says 'I'd better get rid of that because as soon as it touches the water it will go off'. We know that's not right because we know, from what we've been told, you have to activate it by lifting up that little tab and sliding something across. But that doesn't necessarily mean that the person who is responsible for Mr Chappell's disappearance had the same knowledge we now have, it may well be that it was taken by that person and tossed somewhere into the river, we don't know where, as a distraction on the basis that once it got into the water it would send off a signal and that would distract people – we don't know, it's all speculation. We don't know where it went to, how long it floated up and down. Well we know it was found on the shore on a certain date, but that doesn't mean that's where it was thrown into the water, it could be carried on the current for some considerable time.

Now let's have a look – a look please at the evidence of Mr Hughes, because this is very important. Mr Hughes was the gentleman who was sitting down at Marieville Esplanade drinking his Farmers Union coffee in the evening between eleven thirty and twelve. Now it's very important to bear in mind what he said. He saw a dinghy about fifty metres offshore:

> *It was going northeast towards the eastern shore.*

So that's towards the eastern shore.

> *The person had the outline of a female but I can't be definite.*

He couldn't identify the colour of the dinghy and he said:

> *It hadn't passed the end of the reclaimed land where the rowing sheds are built –*

When he first saw it. He thought it was about fifty metres out and the dinghy – just bear with me, please – he marked it on the plan and importantly he said this:

> *And did you notice –*

He was asked this question:

Did you notice where the person you saw in the dinghy was seated?.....They were seated.

Whereabouts?.....Towards the back.

Yes. On the side of the dinghy or seated in the dinghy?.....In the dinghy.

So they weren't on the left hand side or the right hand side but rather sitting down on what you presume was either a seat or the floor?.....Yes.

And you formed the impression it was a woman?.....It had the outline of a female.

But you can't be sure about that one hundred percent?.....I can't be definite.

So at the end of the day what it comes down to is:

You thought it was a woman but you can't be sure and you can't tell us what the person was wearing, you don't know the colour of the dinghy?.....That's correct.

Now the importance of the person sitting on the floor or sitting on the seat is this, when you look at that dinghy you'll see that there are no seats in it and when you look at the exhibit, P15, photographs 16 and 17, you'll see how the dinghy is operated, it's operated by a person sitting on the right hand side and operating the handle on the engine with his left in that case, so what Mr Hughes saw was not a dinghy being operated in that sort of manner.

Now the accused told you that her dinghy was tied up at the Royal Yacht Club directly underneath the crane which is situated on the plinth next to a steel ladder. She said she did this because she thought it was safe there overnight, she said there were other yachtsmen in the area. Believed that there was video surveillance and didn't find out until later that there wasn't and she further believed that there were security people, a watchman or something, and she didn't find out that until later. Now if you think about it logically would it be likely for a person in the accused's position to go back to the Royal Yacht Club at night where there's a marina, where her activities could be seen by any yachtsmen, where she could have been observed by the video surveillance she believed existed, where she could have been observed by the night watchmen she believed, or activities could have been observed by persons coming

and going from the yacht club, just ridiculous to suggest that would be the case.

As I've said the accused cooperated with the police, she gave them a compendious list and things on board she observed, about the ropes being in the wrong place, ropes being on the deck, winches and everything else that she mentioned. She gave the police all her diaries for many years and no doubt which Constable Sinnitt assiduously read. He agreed under cross-examination there wasn't a single entry in any of those diaries which indicated any disharmony with Mr Chappell or any dislike of him or giving any indication that the relationship was anything other than a good relationship.

Now Mr Ellis hasn't mentioned this wretched red jacket that sits over here but let me mention it. It's got her DNA on it, there's no argument about it, it's hers. Were it not for the evidence of Mr Hong, the Chinese gentleman who gave evidence, you'd be misled into thinking the jacket was found draped over the fence. Mr Hong said he saw it before anybody else. He said when he saw it on his fence it was rolled up, somebody obviously unrolled it before the police took possession of it and we don't know who that is. What's its relevance, how did it get there, who left it there, no one has come forward and said they put it there. You might think about all the publicity about it, that somebody might have found it in Marieville Esplanade, might have come forward and said, 'look I found it, I put it on the fence because whoever lost it might come looking for it and it will be sticking up there like a red jacket on a brick fence', but we don't know how it got there, we don't know who put it there. I suggest one scenario, a possible one you might like to think about, and that was it was taken off Four Winds by the persons responsible for the death of Mr Chappell and for whatever reason was abandoned. They didn't like it, didn't want it or just got rid of it and left it there. That's speculation, it's my speculation about it, there being no other evidence whatsoever.

Whilst Mr Ellis didn't dwell on this subject in his submissions to you, nonetheless, the Galapagos Islands, the Marquis, the US websites for yacht sales, and as I understood the Crown case, at least at one stage, it seemed to be that because she'd had the unmitigated gall to access these sites on Google, that in someway it pointed to her guilt and that this meant she was about to leave Mr Chappell. But she's given you a cogent explanation about this. I do hope none of you members of the jury ever face the proposition that you look at exotic places on your home computers and then find your partner disappears a few days later because you'll be in a dock somewhere. Look, it's ridiculous to think that because you look at a website that

has exotic places there, yachties want to go, the Galapagos, owned by Ecuador – had a sister-in-law in Ecuador, that in some way it implies guilt. That's just not appropriate.

Now you have heard much criticism by Mr Ellis about the accounts given by the accused about going to Bunnings; her failure to disclose her visit to Marieville Esplanade on the night of the 26th of January. She's given you explanations about these matters – yes, they were lies, she acknowledges that. But they weren't lies from a consciousness of guilt, she gave you the explanation; 27th of January she's faced with her yacht sinking, her partner disappeared and she'd expected to be able to give a blow by blow description of the precise events of the previous day. She said she was in a state of shock, as you'd expect, but she eventually told the police that she had got it wrong and gave an account as to why she got it wrong. It's detailed fully in the records of interviews. She's detailed in this account. She's told you about why she went there on the night of the 26th and why she held back the information. I mean you might think about it, it really was an extraordinary night, unbeknownst to her there were the problems on the yacht, but the same night she gets the call from the gentleman who was looking after – or the companion of Claire, and who engaged her in this conversation for thirty five minutes or so, and as she said, it unnerved her, she described what she did and she eventually went down to Marieville Esplanade, she said she was there for a short period, drove home – not inconsistent with a Ford Falcon on evidence being seen on Sandy Bay Road at 12:25 a.m. Now we would say that you don't draw the conclusions that Mr Ellis wants you to draw from those.

Now there's not an iota of evidence in this Court about the accused's car being parked at home that night or parked anywhere else that night, but you can guarantee from what we know because the police door-knocked the area, they've told us that, that – they certainly would have door-knocked her area to find out what time she got home and we've heard nothing. So we have her evidence about what time she got there.

Now bear in mind during the course of these deliberations that there were many, many questions put to the Accused by Mr Ellis for which he obtained an answer, an answer that perhaps he didn't like, and one of the things his Honour will tell you is this, that questions are not evidence. Questions are not evidence. The answer is the evidence. A good example was the IPERB. Remember when Mr Ellis was addressing Ms Neill-Fraser saying:

Well look, you'd only gone part of the way in getting the IPERB activated. You had to do this and that with Austar.

She just looked at him blankly and said basically *I don't know what you're talking about.*

He pressed a theory of how it operates to her but, of course, you've got no evidence as to how you go about registering the equipment apart from what the accused has told you and what you'll find written on the back of that particular piece of equipment.

The same with the murder methodology that Mr Ellis said. He came out with things like:

You crept up behind him with a wrench and you banged him on the head with a wrench or something like that.

She denied that. There's no evidence about that. So her answer's the evidence:

No, I didn't do it.

Mr Ellis's question:

I suggest you did it this way.

is not evidence.

Now as I said in opening these submissions, the onus of proof in this Case rests entirely on the Crown and throughout the Case. Ms Neill-Fraser's not required to prove anything in her defence, and I've told you about the strong test that must be applied in finding a person guilty on circumstantial evidence. We say that the hypotheses that we have advanced are not fanciful, they're not impossible, they are not incredible, nor are they untenable or too remote or tenuous. They are real possible hypotheses. The Crown of course, as is clear from Mr Ellis' submissions this morning, relies heavily on what he says are lies and his Honour will tell you in due course that you can only use lies as a basis for finding guilt on the part of an accused if you are satisfied that those lies have been told out of a consciousness of guilt. Many people tell lies, many people tell lies about events they're involved in, it doesn't follow that every time a person tells a lie it's out of a consciousness of guilt. Somebody might commit a crime, for instance, and deny ever having been in a particular area at the time or be charged, more correctly, with a crime but deny ever having been in a particular area at a time. They may have any

number of reasons why they don't want somebody to know they were there.

So at the end of the day what are you left with? You're left with suspicion, you're left with a circumstantial case, you're left with a Crown case that has lots of holes in it, you have a total lack of evidence about the ownership, use, etcetera of the dinghy. You've got Meaghan Vass' DNA , you've got the total denials by the accused repeatedly to the police and here in this court room on her oath that she is in no way responsible, you have a complete and total absence of motive. Now I remind you of what the – I said about motives earlier. You have no identification by anybody of the accused being anywhere near the yacht from three o'clock onwards and her comment to Sinnitt, "Well I must have been there later", is based on false information provided by Sinnitt. You have a number of hypotheses that are completely consistent with innocence and on any view show the involvement, not merely the suggestion of involvement but show the involvement of other unnamed persons, you have the total and untested denials relative to Triffett's evidence. As I said, Mr Ellis didn't even put it to her, and to top this off in our submission you have an investigation by Detective Sergeant Conroy and Detective Constable Sinnitt that was less than proper, less than perfect, where they failed to recognise and to follow up glaringly obvious information, particularly the existence of the grey dinghy. And why did they do this - because they were totally fixated upon the accused and failed to even consider the possibility of any other person's possible involvement in the matter, that other persons were on that yacht, in our submission, is patently clear from the evidence before you. As I said, yes, lies were told, she admits that, but they were not told through a consciousness of guilt. They were silly. They were silly lies. They were naïve, or she was naïve, it doesn't mean she committed the crime of murder.

In our submission, ladies and gentlemen, there's only one possible verdict that you can return in this case and that is one of not guilty.

If it please, your Honour.

<END OF CLOSING ADDRESS

HIS HONOUR: Thank you, Mr Gunson. Well ladies and gentlemen, the arrangements from here on are that tomorrow morning I'll start my summing up. I'll probably finish before lunch, and then the twelve jurors who will be considering the verdict won't be able to go home or go their separate ways until the job is done and a verdict has been reached.

Now that will mean that meals will be brought in here at lunch time. If you're still going when it's time for an evening meal, that will be brought into you. At some point, if you haven't reached a verdict, we'll call it a night and you'll be taken somewhere and accommodated at the Court's expense, and brought back on Friday morning. And if necessary, if you're still considering your verdict on Friday night, the same thing could happen again, and we could all be here on Saturday. I'm not meaning to deter you, I'm just – or bring about any particular result, I'm just telling you what the consequences are of me putting out a jury in a murder trial to consider its verdict sometime on a Thursday around the middle of the day.

Now it will be possible for messages to be sent by the Court staff by phone to anybody that you would like the staff to ring. But if you do send a message it's my duty to read every message and I have to offer counsel for both sides the opportunity to read every message so what I'm suggesting is that you make the necessary arrangements and that tomorrow you arrive equipped for an overnight stay.

Now so far as the reserved jurors are concerned the first thing I'll do tomorrow if the twelve jurors in the jury box are all here and they're all well and all seem to be going to continue I'll discharge you both. From that point on you won't have the opportunity to say anything to the other twelve jurors about the case whereas until that time you're free to discuss things with them. So if you want to have a talk to any of them, if you want to give them your notes, if you want to do anything like that, you've got from now until 10 in the morning to do that and then unless you're needed you'll be discharged and free to go tomorrow morning.

Now before the Court adjourns I'll just ask Mr Ellis is there anything you want to discuss in the absence of the jury?

MR ELLIS SC: Yes, please, your Honour.

HIS HONOUR: All right. Well I'll ask the jury to make their affirmation and leave, get whatever you need from the jury room and

leave, so that I can have a discussion with counsel and you're to return by 10 o'clock tomorrow morning.

JURY AFFIRMED OUT

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HIS HONOUR: Yes, Mr Ellis.

MR ELLIS SC: Thank you, your Honour. There are quite a few matters. Firstly, my learned friend told the jury that they had Ms Neill-Fraser's future in their hands. In my submission, diverting the jury's attention from their task to the result of their task is always undesirable and now calls for correction I'm afraid.

HIS HONOUR: Well, what should I tell them? That – if I tell them that they don't – that they're not to – not to have regard to the fact that they've got her future in their hands, then I'm drawing attention to the fact that they've got her future in their hands, then I'm drawing attention to the fact that they've got her future in their hands.

MR ELLIS SC: Well yes, that's right, that shouldn't have been said, in my submission though, it needs to be corrected in some way. Perhaps my learned friend can suggest how he can – this can be corrected? In my submission, your Honour, may well say 'it was said to you in a melodramatic way that you have her future in your hands. However, your task is not to consider her future but your verdict'.

HIS HONOUR: Well what I generally tell juries is that it's their task to reach a verdict in an unbiased and unprejudiced way. I – I could say something to the effect that it's – that it's – that there's – well they shouldn't think about their consequences of their verdict but about whether the evidence establishes guilt beyond a reasonable doubt.

MR ELLIS SC: Mm hm.

HIS HONOUR: Just a minute? Mr Gunson, any –

MR GUNSON SC: Yes, I do, your Honour –

HIS HONOUR: - anything to say about that suggestion about that?

MR GUNSON SC: The – what counsel should not do is say to a jury words to the effect that 'Do you realise that if you convict the accused then the consequences are A, B, C and D, or range through A, B, C' – that is where we're not permitted to do it. But it's blindingly obvious to the jury that they do have the future of the accused in their hands. I wouldn't have said it unless I took the view that it was appropriate to say it, and I reject the submission

made by my friend that it was melodramatic. If I – I would have offended had I said, "Do you realise that if you convict his woman that she faces this sort of sentence" –that was quite wrong I wouldn't do that. But if your Honour – I'm not going to stand on it –

HIS HONOUR: Well look I –

MR GUNSON SC: - and say – and it's blindingly obvious to them, that's as far as we took it.

HIS HONOUR: Well look, I'm not going to get into – get involved in a debate about the rights and wrongs of it, I propose to tell them that they shouldn't think about the consequences of the verdict but whether the evidence establishes guilt beyond reasonable doubt. What's your next point, Mr Ellis?

MR ELLIS SC: My learned friend in a personalised way, which he did, said that the DNA evidence was a fantasy of mine and I had ignored Meaghan Vass' evidence that she had never been to Goodwood. In saying that, he falsely created the impression that there was no such evidence that she had been to Goodwood, whereas in fact in re-examination of Mr Sinnitt at 824 such evidence was produced.

HIS HONOUR: Well now that was hearsay, wasn't it?

MR ELLIS SC: Allowed in, not objected to, therefore before the jury. There have been certain ways gone about Mr Sinnitt's evidence, some of which were completely unsatisfactory, but that – but that was one way which was not objected to.

HIS HONOUR: But it might have been hearsay in one sense, it might have been admitted for the sake of rebutting a suggestion as to lack of thoroughness of the police investigation.

MR ELLIS SC: Certainly, your Honour, and no application was made to you to limit the evidence, so it was admissible in my submission. Being admissible and being admitted it is available for all purposes.

HIS HONOUR: All right, Mr Gunson, what should I tell the jury about that piece of evidence of Mr Sinnitt?

MR GUNSON SC: What you should tell the jury about it is that it was hearsay and at the very best it was this, she believed she may

have been hanging around the Goodwood area, the issue that I raised was Negara Crescent and Cleanlift Marine, and my submission in my – what I said to the jury in my submission was accurate and correct.

HIS HONOUR: Well it seems to me that I'm going to have to – in my summing up I'm going to have review the evidence as to the movements of Meaghan Vass and the – well of course there was evidence from Meaghan Vass to the effect that she'd never been to CleanLIFT at Goodwood. I think what I should do is review the evidence about where she'd been and of course the evidence was – her evidence was that she'd never been on the boat, never been – hadn't been to Constitution Dock at the relevant time and hadn't been to CleanLIFT Marine. Now it – the evidence about CleanLIFT Marine could well be untrue or incorrect, that's something that the jury would have to consider just as it would have to consider the evidence as to the probability of transference of the DNA without her having been on the boat, if they think that the evidence about Meaghan Vass is significant at all, so I won't expressly correct anything but I'll review the evidence of Meaghan Vass and if counsel want me to add anything at the end of my summing up they can make a further submission.

MR ELLIS SC: Your Honour, the next point I wish to raise is my learned friend said to the jury, "At no stage did you see the police interviewers try to stop those answers from the accused", this was to bolster the credit of the accused. Now it's the case the police are not at liberty to cross-examine when interviewing, they are not at liberty to stop answers –

HIS HONOUR: So what answers was Mr Gunson referring to?

MR ELLIS SC: The answers that the accused gave to police in interviews.

HIS HONOUR: Yes, about?

MR ELLIS SC: He was saying how responsive she was and what – about anything. It was about the interviews generally, and he said:

And at no stage did you see the police interviewers try to stop those answers.

Well it misrepresented their ability to do so.

HIS HONOUR: Well, I propose to tell the jury a number of things about the police interviews including the fact that in assessing the weight to be given to answers during the interviews they should take into account or they may take into account the fact that they didn't see her tested by cross-examination by the police. Now I could add that it's not ordinarily the role of police officers to contradict or cross-examine in the way that a prosecutor might in court.

MR ELLIS SC: Yes. The reference to stopping the answers in the way that Ms Neill-Fraser had to be controlled by her own Counsel in this trial though is, in my submission, unfair. I didn't have that ability.

HIS HONOUR: Well the object of police interviews is to give a person an opportunity to provide information or to recount their version of events without impediment.

MR ELLIS SC: Yes, that's right.

HIS HONOUR: Mr Gunson, what do you say?

MR GUNSON SC: One thing I made quite clear to the jury in my submissions to them was this, that the – maybe I expressed it poorly, but at no stage did the police try and stop her when she got – if and when she got off track or wasn't responding to the question by a direct answer and police have got – they're not bound just to sit there and listen, if a person starts to get off track they're entitled to bring them back on track, they're entitled to question as many times as they like, but they're not bound just to sit there like - and be completely mute about – when the answer's given. And we see in the interview time and time again they ask her questions, bring her back to subjects, but they don't ever stop her. That's the point I was making.

HIS HONOUR: Well it seems to me it's a very small point and I will give the direction of – that I just discussed with Mr Ellis, which doesn't imply any criticism of anyone. Mr Ellis.

MR ELLIS SC: Thank you. Next my learned friend put a series of propositions of law, I suppose, but adding them up left in my submission the need to – for a particular direction. He said that the accused could have remained silent. She made the decision to give evidence, she didn't have to do that. If she hadn't given evidence the judge would have said that you can draw no adverse inference from it. The consequence of her giving evidence was that she was

cross-examined. Now all that together might be unexceptional but it creates the position that if as a result of the cross-examination of her her evidence might be discounted then she goes back to a default position that you can draw no adverse inference against her. It calls out in my submission now to be corrected by the – a standard direction your Honour may well have done anyway, which was she wasn't required to give evidence but having chosen to her evidence should be treated as any other witness', she is not in a special category by having chosen to give evidence as the accused.

HIS HONOUR: Mm, well what I generally tell juries is that an accused person doesn't start with some sort of handicap because the person's charged with a crime and their evidence shouldn't be discounted or treated as second rate evidence for that reason, but they should just assess that person's evidence in the same way as they would the evidence of any other person and that – well it's open to them to draw whatever conclusions they think appropriate from that evidence. I don't think it calls for anything other than the usual direction. Yes?

MR ELLIS SC: Next, my learned friend said that the dinghy seen by Mr Conde was nothing like the dinghy from Four Winds. Now that's a grievous misinterpret – well misrepresentation of what the evidence is. It was rubber, it was inflatable, it was between 10 and 12 feet long. In all those respects it was like the one on Four Winds, further it was grey or had grey or appeared grey, or, as the issue has been conflated, not whether this was a different dinghy but whether the dinghy seen was capable of being – is capable of being found by the jury to be the dinghy from Four Winds which Ms Neill-Fraser used and there can be coupled with that of course her admission that it was her there then at that time. But to say the dinghy was nothing like it was, in my submission, a very bad misrepresentation of Mr Conde's evidence. What was nothing like it was his description of the length of the dinghy shown in the photographs which happened to be the dinghy from Four Winds.

HIS HONOUR: Well I propose to review the evidence as to dinghy sightings after Mr Liaubon and I don't think that – well counsel have got to be allowed some latitude but I don't think I should say that the argument advanced, that it was nothing like the evidence seen by – the dinghy, the Four Winds dinghy, calls for correction, it's a matter for the jury to assess it in the light of full information and for them to decide whether – whether in fact – well consider the possibility that the dinghy saw by Mr Conde was the Four Winds – seen by Mr Conde was the Four Winds dinghy. And one very relevant fact there

is that it doesn't seem to have – there doesn't seem to have been any occasion for him to have reflected on what he saw between the time of the initial investigation and the time of this trial, I don't think.

MR ELLIS SC: That's perhaps so. But his description of the length of the dinghy was always---

HIS HONOUR: Yes.

MR ELLIS SC: We've prepared, your Honour, you may find it helpful or you may not, but we did prepare what I think is complete, or my learned friend Mr Shapiro prepared, a good table of where the descriptions of the dinghy fell in the transcript and in admitted statements. If your Honour thinks it might be useful I'm happy to give it to you.

HIS HONOUR: Well, if you give one to Mr Gunson as well, I'll have it. The risk, of course, is that I'll spend twenty minutes in the morning listening to corrections and additions.

MR ELLIS SC: I'm just trying to help. If you do all the work yourself, your Honour, but (speaking over).

HIS HONOUR: No. Well I'll – if you're giving it to me, I'll receive it. It can be marked for identification.

MR ELLIS SC: Yes, good idea, yes.

HIS HONOUR: Or do you have a spare one now (speaking over).

MR ELLIS SC: I haven't got a spare one for Mr Gunson right now. We've got (speaking over).

HIS HONOUR: Well, look, if when we've finished you give it to my associate and give one to Mr Gunson.

MR ELLIS SC: All right.

HIS HONOUR: So dinghy schedule to be provided.

ASSOCIATE: MFI.F

HIS HONOUR: Well, yes, it will be given that label once we have it.

MR ELLIS SC: There it is.

HIS HONOUR: All right. Next point.

MR ELLIS SC: Well, my learned friend's address was offensively personalized and improperly personalized, and one of the highlights or lowlights of that was that he said:

> *As to this dinghy Mr Ellis said it was pointy and got out the photo and played a two-card trick.*

Now what I did was I showed the jury the photo that's in evidence and said:

> *It appears to me on that angle that it may have a pointy end.*

To call that a two-card trick that suggests that I've misled the jury in a dishonest way is not only improper but needs correction in my submission.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I'm happy to withdraw that and I'll make it quite clear about it. Maybe it was in exuberance, but it was meant on that basis and I do apologize to my friend. I'll make that very clear now, it was exuberance, and I accept that.

HIS HONOUR: All right, well you –

MR GUNSON SC: The point I was making –

HIS HONOUR: You'll tell the jury tomorrow that you weren't suggesting any impropriety or dishonesty –

MR GUNSON SC: Absolutely –

HIS HONOUR: - on the part of –

MR GUNSON SC: No, not –

HIS HONOUR: - Mr Ellis?

MR GUNSON SC: No, absolutely. I certainly wasn't doing that.

HIS HONOUR: All right, well we'll –

MR GUNSON SC: But I will say to them that they must look at it themselves and decide whether it is pointy, making the obvious, and the point that I was trying to make, albeit very poorly as it emerged, was that there's no way you could possibly interpret that as being pointy, it's as blunt as blunt.

HIS HONOUR: Well hang on – you get a chance to apologise, you don't get a chance to add to your closing speech.

MR GUNSON SC: No, no, I don't want to do that. But I'm going to make the – I should be entitled to make the point that they should look at it themselves and determine themselves whether it is pointy or blunt – that's their decision.

MR ELLIS SC: Well you could have made it.

HIS HONOUR: Well Mr Ellis?

MR ELLIS SC: Yes, I'm sorry, I'm muttering from the bar table. My learned friend could have made it; instead he went out of his way to be offensively personalised, and described it as 'a trick'. Now to give him another chance, in my submission, simply rubs salt into the wound. If he's not prepared to apologise leave it at that – okay.

MR GUNSON SC: I've done –

MR ELLIS SC: In my submission, your Honour, might well correct it.

MR GUNSON SC: I've done it already and I'm happy to do it in front of the jury.

MR ELLIS SC: Well you've done it after the jury –

HIS HONOUR: Well if you do it in front of the jury that's fine, but what I won't let you do is to say anything more than – than that you – you withdraw any suggestion of dishonesty or impropriety in relation to the comment that when he talked about the photo showing a pointy dinghy, he was performing a 'two card trick'.

MR GUNSON SC: Yeah, I'm happy to do that.

HIS HONOUR: Nothing extra about – no reinforcement of your closing speech please?

MR GUNSON SC: No, I'm happy with that.

HIS HONOUR: All right. Next, Mr Ellis?

MR ELLIS SC: Next my learned friend asked:

> *Why was there no press release about the grey dinghy that done it with about everything else.*

Now that was unsupported in the evidence, in my submission. I think there were two press releases referred to; one was referred to by Ms Ogilvie about –

MR GUNSON SC: Not –

MR ELLIS SC: - where she'd confused it about rowing and there was a release, I think in evidence, about that jacket. To say they'd done it about everything else over represented it.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: I cross-examined Sergeant Conroy about press releases and – I'm just trying to find it, do you have my list there – there was definitely cross-examination of Detective Sergeant Conroy about press releases, there was evidence about the press release for the red jacket. I think there was some evidence about the press release about the EPIRB, calling on people who found it, and I remember cross-examining Conroy about Sergeant Powell – sorry, Inspector Powell.

HIS HONOUR: Can I have volume 2 of the transcript, please.

MR GUNSON SC: The next reference is at 934, I thought there was another reference –

HIS HONOUR: Well look, I'll stop you there. Counsel have got to be allowed a certain amount of latitude in their closing speeches and to characterise a quantity of press releases as press releases about everything else I don't think it is, if it is an exaggeration, is so bad an exaggeration as to warrant correction so I'll let that one go through to the keeper but I'll be reviewing the evidence about late dinghy sightings.

MR ELLIS SC: Thank you. My learned friend said, "I was precluded from cross-examining Mr Lorraine because I didn't know

about it", that is his original description, so evidence from the bar table, a misrepresentation of the position. If there was a late proof he could have asked and of course I would have called Mr Lorraine but to give evidence from the bar table about what was in his possession and then bleat about it – sorry, I withdraw that, and then complain about it to the jury in my submission was unfair representation of the course of the trial. I think your Honour is on the verge of saying, well that's a minor thing anyway, but –

HIS HONOUR: Well I – well what – if I deal with it gives it an importance it doesn't deserve. There's a – what is it, it's the evidence of Sergeant Conroy as to the unrecorded description given by Mr Lorraine isn't it?

MR ELLIS SC: I think so, yes, your Honour.

HIS HONOUR: Yes. Well look – yes, I'm not going to get into the mechanics of supplemental proofs and stuff like that, they've got what they've got and they're just going to have to make an assessment without any trips into the back streets of procedure. Yes?

MR ELLIS SC: Next, I think this is number 9, my learned friend said that Mr Conroy conceded that it was reasonably possible that someone else was on board. Now apart from a series of propositions Mr Conroy may have well said that it's reasonable to think that certain investigations – or it's reasonable to think on those premises that there was a different dinghy or any – if he said exactly what's attributed to him. But now though having being raised with the jury reiterated with the jury, calls for another direction.

HIS HONOUR: But it's not a question of what Mr Conroy conceded it's a question of what they think.

MR ELLIS SC: Exactly, yes.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: That's correct, but in coming to that conclusion they can accept Conroy's opinion on it, if they want to.

HIS HONOUR: Well no, his opinion –

MR GUNSON SC: Well it's their decision –

HIS HONOUR: His opinion is irrelevant, isn't it, it's – that was argument rather than evidence.

MR GUNSON SC: And my question – first of all the question was asked, not once but twice, in respect of two timings, and there was no objection to it. It's before the jury, they can draw their own conclusions.

HIS HONOUR: But it was all in the context of cross-examination as to adequacy of the police investigation.

MR GUNSON SC: That's right.

HIS HONOUR: And that's a different thing, that goes to the question of whether there might be other evidence that wasn't found.

MR GUNSON SC: That's right – it goes to that issue.

HIS HONOUR: But –

MR GUNSON SC: Conroy – sorry, I don't wish to speak across your Honour.

HIS HONOUR: No, go on – go on?

MR GUNSON SC: Conroy conceded under cross-examination, and I can give your Honour the passage if you want it, that had he thought logically, and these are my words, more about the grey dinghy that he would have done more about it and that it now raises the spectre of somebody being onboard at those relevant times, other than the accused.

HIS HONOUR: Well look, I'll – I'll give the jury the – I'll – I'll undertake an analysis of the grey dinghy evidence, I'll review that for the jury. I'll, in the course of that I – I'll mention what Sergeant Conroy conceded and I'll say that it's not a matter of what he conceded it's a matter of what they think, and that's the – that's the direction that I'll – that I'll give. So I'll just make a note that I'm going to do that.

MR ELLIS SC: And going back while we're on the subject of the dinghy –

HIS HONOUR: Yes.

MR ELLIS SC: - it turns out that I can give my learned friend a copy of the table I proposed to give your Honour –

HIS HONOUR: All right.

MR ELLIS SC: - simply as an assistance, nothing else.

HIS HONOUR: All right. Well I'll have that – thanks, and so that's MFI-F, the summary of evidence relating to dinghy sightings.

#MFI-F – SUMMARY OF EVIDENCE RELATING TO DINGHY SIGHTINGS – TAKEN IN

HIS HONOUR: Thanks.

MR ELLIS SC: Now in the same vein about Mr Conroy's concessions under cross-examination my learned friend said:

> *What was wrong with the police going to the other people on board, the unnamed witnesses –*

(indistinct words) said same mind or sound mind.

HIS HONOUR: Mm.

MR ELLIS SC:

> *- going to the unnamed witnesses?*

And Conroy said:

> *Yes, that would have been reasonable.*

Now in re-examination it was elicited that Mr Conroy knew of no power by which a reluctant witness might be forced to spill the names of others. In the cross-examination of –

HIS HONOUR: Well of course there is a power, isn't there. In preliminary proceedings the Crown could require – could obtain an order of this Court –

MR ELLIS SC: Yes.

HIS HONOUR: - to get the witness who has become known as P36 to appear before a magistrate and require her as a compellable witness on oath to name her companions.

MR ELLIS SC: Yes, your Honour, indeed. Mr Conroy knew –

HIS HONOUR: But I don't want to burden the jury with all that.

MR ELLIS SC: No, not at all, not at all. It was just a very unfair thing though, to leave it up there when the evidence in the same cross-examination was, "I wasn't on duty. I wasn't on duty, it wasn't my responsibility", and then to put it on Conroy that it would've been reasonable to get these witnesses when there was no real power to do so.

HIS HONOUR: Well look, I think that would give P36's companions an importance they don't deserve. She didn't come forward until November.

MR ELLIS SC: No.

HIS HONOUR: And heaven only knows what they might have thought they remembered, if anything, in November if they'd paid attention, so it's – that involves a descent into matters that are unworthy of attention in my view.

MR ELLIS SC: Certainly, your Honour. The next point is that it was suggested that now that Meaghan Vass and others were responsible for the murder, the matter not put to Meaghan Vass.

HIS HONOUR: Yes.

MR ELLIS SC: Or not previously suggested either in any way.

HIS HONOUR: Mr Gunson.

MR GUNSON SC: It was impossible at the stage when Meaghan Vass was called and your Honour refused leave to me to recall her, have her recalled to put a proposition to her that I had no reasonable basis to put to her at that time as –

HIS HONOUR: What changed in between her evidence, her evidence and the application to recall?

MR GUNSON SC: Well probably the firming up of other witnesses and I'm just trying to think of the sequence, I'm just trying to think of it, and I can't tell your Honour the sequence – just bear with me, your Honour. "I could not on the basis of the information I had at that time have put that proposition to her", but after that we had Detective Sinnitt come along and tell us that he'd found out she wasn't at those various addresses that night. I couldn't put to her that she was anywhere near Sandy Bay with the lack of evidence, Sinnitt came along and changed the – it was after Sinnitt that I asked for her to be recalled and your Honour refused it.

HIS HONOUR: But all that Sinnitt said is that she could have been anywhere what –

MR GUNSON SC: If I'd been able to put to her, look, you lied about where you were going to be that night why did you give this false address, where were you, I would have had a lot of material to cross-examine her with. It is a reasonable assumption to put to the jury that her DNA being found on that boat, if the jury accepts that it didn't get there by transference, the jury conclude, yes, she was there, why was she there, and it's a reasonable proposition to put to the jury that if not she or – but others with her, she and or others are responsible. But your Honour denied me that opportunity, I don't criticise your Honour, it's not appropriate I do so –

HIS HONOUR: Well the application to recall wasn't put on the basis that you needed to put to her that she was guilty of murder or –

MR GUNSON SC: I would have put to her that she'd been out there and there was firm – we would have seen how we'd got there but I wasn't going to put it to her straight up. When she was there I had no knowledge of that information provided by Sinnitt which made a significant difference to what I would have put to her. I was left with a proposition, she said, "I was at either Stainforth Court or Annie Kenny", and that's the difference. We now then find out that she wasn't at either of those places we find out that she's at Mara House, we find out she wasn't there that night, we find out that Sinnitt went to an address where he believed that she was, that address was false, and he'd never been able to find out where she was that night. Now that would have provided a fertile amount of material to cross-examine her on which is what I wanted to do, and that was why I made the application to your Honour. It made all the difference, but the conclusion was a proper conclusion to put to the jury or submission to make to the jury. If they find that she was on that yacht, then the question they have to ask themselves is why,

what was she doing, what role did she play. And I put it to them directly that they can make those conclusions. It was open on the evidence as it stands.

HIS HONOUR: Well I – frankly it – realistically, it's pretty predictable what she would have said if it was put to her. It's likely she would have said, 'no, I wasn't there'. But in my view, the hypothesis that she or somebody with her was on the boat and responsible for the disappearance of Mr Chappell got no stronger as a result of the evidence as to where she spent the night, becoming less certain or becoming – the evidence emerging as to uncertainty as to where she spent the night especially since she'd given two accounts of where she spent the night when she was here giving evidence. I think it's appropriate that I point out to the jury that it wasn't put to her that she or somebody associated with her was responsible for the disappearance of Mr Chappell. But I don't – well, it's a matter for the jury what importance they attach to that. It seems to me highly likely that they'd consider it very predictable how she would have responded, but I think Mr Ellis is right and I've got to tell the jury that.

MR GUNSON SC: Well I would invite your Honour to also add that at the time she was here to be cross-examined that the defence did not know about her answers being untrue, about her whereabouts that night, and did know information that emerged from Sinnitt. In fairness, that in my submission, should be done.

MR ELLIS SC: Well –

MR GUNSON SC: Because in one hand you say – you'll be saying to them it wasn't to put her – yes, I accept that. Secondly, I make the submission to your Honour; I could not have put that in accordance with my duty at the time, absent that evidence. That other material would have made a difference because I would have explored with her – and your Honour says 'Well predictably she would have said no' – do we know that for sure – we don't. We don't know that's speculation. I'm not going to suggest under riveting cross-examination she would have broken and said, "Yes, it's a fair cop (indistinct word)" or something like that. But we don't know, it's speculation. But we were hampered by the lack of information, had we had seen it before she came, it would have been a different story.

HIS HONOUR: Well look, what I'll do, I'll review the evidence as to Meaghan Vass in my summing up, and if counsel want to make

further submissions at the end, having heard what I say, then they can make further submissions. Next, Mr Ellis?

MR ELLIS SC: My learned friend said that there is no evidence that the relationship had broken down to that extent – it wasn't clear to what extent he meant – but there was indeed evidence, and it was misleading the jury to say there was none, that the relationship had broken down – evidence of direct evidence from what Ms Neill-Fraser herself had said to Mr Rowe and Mr Stevenson. Now what your Honour –

HIS HONOUR: And Mr McKinnon.

MR ELLIS SC: Mr McKinnon, yes.

HIS HONOUR: Well look, once again, I'll – I'll deal with the – the evidence of those three men and of Mr Casson saying that she said something about buying out Mr Chappell's share of the yacht but he now couldn't remember what. I'll have to deal with those when I deal with evidence as to motive, and if counsel want me to say something extra then they can tell me at the end of the summing up. And I hope you'll well through this list of points, Mr Ellis. That was number 12.

MR ELLIS SC: Your Honour, I've got about –

HIS HONOUR: Number 13?

MR ELLIS SC: I've got about twenty three.

HIS HONOUR: All right, well we might be here 'til six o'clock, keep going.

MR ELLIS SC: I'm in your Honour's hands. You understand that I have got a duty to make these.

HIS HONOUR: Yes, oh of course, of course.

MR ELLIS SC: Thank you. Next – my number's 14 – my learned friend said that of course, ladies and gentlemen, there is a property distribution that Ms Neill-Fraser could have applied for at law and made an application to the Court, but there is no evidence that she knew of that and therefore the submission was an irrelevance when it comes to the terms of motive. Now it's been raised, it's a matter of law and I can only submit that it deserves correction.

HIS HONOUR: I think you'll find that by the beginning of last year this Court had lost its jurisdiction for mere separations and the Family Court and the Federal Magistrates' Court have got it pursuant to amendments to the Family Law Act and – well once again I'm going to have to mention that in relation to motive. I may as well mention that there's no evidence as to how much she knew about the law. As a former family lawyer myself I know that it would've counted against her that she had two income producing properties and perhaps an ability to support herself, but I don't think I need to descend into those sorts of details, the fact of the matter is that 7 Allison Street – not 7, the house in Allison Street was Mr Chappell's, the superannuation was Mr Chappell's, the – if she wanted any of those there would need to have been either an application to the Court – to a Court or negotiations with the powers under the Family Law Act in mind.

MR ELLIS SC: Yes, your Honour.

HIS HONOUR: So I'll go there.

MR ELLIS SC: Thank you.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Well first of all I think it was March last year. I'm not being particularly picky about this but I think it was March last year that the jurisdiction went across to the – there had to be a break-up in—

HIS HONOUR: I'll have to check. I know it was March. I don't know what year.

MR GUNSON SC: I'm pretty confident it was last year and the only reason I say that is because I've been invited to swear on affidavit in respect of a matter which is pending in the Court in respect of a client as to whether or not he was separated at the time (speaking over).

HIS HONOUR: I'll – look I'll check. It doesn't---

MR GUNSON SC: ---and that date was told to me by that solicitor, March.

HIS HONOUR: Just – all right, check – I'll get right. It doesn't matter which Court.

MR GUNSON SC: In any event, I predicated it by saying that she'd had the experience of divorcing Mr Meeker and a property settlement at that time. That's how I predicated it.

HIS HONOUR: Well not everybody knows that the legislation – not everybody knows that unmarried couples are in much the same position as married couples these days, but I'll deal with that. Mr Ellis?

MR ELLIS SC: The next is an error of fact or a mis-description of fact. My learned friend said that Mr Triffitt told Mr Chappell about these threats some years later. Now the evidence was at 543, line 35, or it was shortly after he was sought to be recruited in the plot against Mr Chappell when he attempted to disclose it.

HIS HONOUR: 543, line 45, yes, it's my understanding of the evidence. Mr Gunson, is that a---

MR GUNSON SC: I think that's correct, your Honour.

HIS HONOUR: Yes, all right. Well, just a minute. Yes, what's next?

MR ELLIS SC: Next is an unsatisfactory feature of what happens when you over-personalize things again. As to my not cross-examining Ms Neill-Fraser about Triffett, it was said, and I noted both these they're contradictory I'm sure he wouldn't have forgotten and I'm sure it wasn't deliberate.

Now Mr Gunson, having been given, or having taken not been given, the opportunity that he does not have to give evidence from the bar table about his surety of my state of mind and intentions, may I tell the jury why I didn't?

HIS HONOUR: What do you propose to tell them?

MR ELLIS SC: That there was no point it already having been thoroughly canvassed to Mr Triffett's character's detriment in chief and in the interview.

HIS HONOUR: No, I'm not sure that I follow you. Are you saying that you didn't – you want to tell the jury that you didn't cross-

examine the accused about Triffett because he had been thoroughly discredited or –

MR ELLIS SC: No, no, simply – it was simply seen every time he was raised as an opportunity to further reduce his character not in his presence.

HIS HONOUR: I thought Mr Gunson might have not said what he meant to say when he said, "I'm sure it wasn't deliberate", I thought he – it seemed to me that he meant –

MR GUNSON SC: It was deliberate –

HIS HONOUR: Sorry?

MR GUNSON SC: It was deliberate, that he didn't do it.

HIS HONOUR: Mm. Well look what really counts –

MR ELLIS SC: No, look I won't pursue it, your Honour, it –

HIS HONOUR: Yes. Look, what really counts is the assessment of Triffett and what reliance to place on his evidence.

MR ELLIS SC: Indeed.

HIS HONOUR: I don't want to go down this road.

MR ELLIS SC: Indeed. It doesn't happily fit in any other Browne v. Dunne type –

HIS HONOUR: Well it's different from Browne v. Dunne. The whole purpose of Browne v. Dunne is to put the accused on notice of the case that she might have to meet.

MR ELLIS SC: (indistinct comment).

HIS HONOUR: The prosecution doesn't have a duty to cross-examine in the same way but I don't want to draw – I don't want to get – I don't want to unnecessarily burden the jury with information about matters of strategies when the real question is what reliance, if any, they're prepared to place on Mr Triffett. Yes?

MR ELLIS SC: Thank you. Now the next I noted is he told the jury there was a significant – this is back to Meaghan Vass, "there was a

significant amount of DNA, enough to show up on a luminol test" – well that confuses the tests. We don't know how much DNA there was, all we know it was a strong reaction and over a large – a swab taken from a large stain DNA was produced.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: My friend is technically correct; we know that a luminol – there was a luminol positive that some DNA was extracted from the point – I don't think the point's lost on the jury. It was my in my infelicitous description, I think.

HIS HONOUR: Well I'll say what I've said before; I'll sum up about Meaghan Vass and if counsel want to – want me to add or correct something they can do – they can say so at the end of the summing up.

MR ELLIS SC: I've skipped a point because my learned friend came back to that and said, "We know she was nowhere near Goodwood", which again, I submit is, not in accordance with the evidence. But the next point, a discrete point, is that my learned friend said that Mr Grosser said that transference was not a plausible explanation. Well –

HIS HONOUR: Yes, what did he say?

MR ELLIS SC: - in his dreams, with respect. He said, "It was a completely plausible explanation" and wouldn't be drawn into competing probabilities without further facts.

HIS HONOUR: Well I'm going to check Mr Grosser's evidence. I'm going to include comment about it in what I say about Meaghan Vass, and we'll – and if counsel want me to add or correct anything they can tell me tomorrow. Mr Gunson, you want to say something about that?

MR GUNSON SC: Yes, maybe I misread the evidence, but what I said was this that – words to this effect, "After some prevarication Mr Grosser eventually conceded the likelihood that she was in Hobart as opposed to be skiing in Canada," which was the example he used, "and therefore transference was not really a plausible explanation." And what I said was that he took the view unless that there was something to show that she'd been in the areas in question that transference wasn't a plausible explanation. When he dissected what the facts were that's when he came to that point.

HIS HONOUR: Yes, well I'll – I'll sum up in relation to Meaghan Vass and you can come back to this if you think you need to tomorrow. Mr Ellis?

MR ELLIS SC: It was put by my learned friend that it was only in closing that the prosecution, or the prosecutor, or probably the evil DPP, first advanced that Ms Neill-Fraser went out at midnight and committed this crime. It's not a matter of first advancing, I've never advanced it, it's mischaracterising what I have advanced. The crime may well have been committed when Ms Neill-Fraser went out at midnight.

HIS HONOUR: But you've never said whether it was in the afternoon or in the middle of the night.

MR ELLIS SC: No, that's right, I've never advanced that as a theory.

HIS HONOUR: Right. Mr Gunson, what do you say?

MR GUNSON SC: I must say I was left with the impression that the Crown case was predicated on the basis that there'd been this furtive midnight visit and the first time I think it was put on any other basis was in the course of the submissions today that to the effect the possibility was it happened during the course of the afternoon and she had gone out there at midnight to dispose of the body because of the telephone call had in some way – my words – spooked her. I must say I've been always left with the impression that the Crown case was on that basis, that is the first basis that the event in question had occurred at night and I think that was the way it was basically – I just can't –

HIS HONOUR: Well that might have been something that you read into the Crown case that Mr Ellis didn't say. I've certainly understood as the trial progressed that a killing during the afternoon is something consistent with the Crown case.

MR GUNSON SC: I must confess I hadn't picked that up until the very last – well there were mild suggestions of it, particularly in cross-examination, but the final proposition was advanced only today. But I started the case with and have continued through at least until the point of cross-examination on the basis that the crime was committed sometime late at night. But that's probably my error, just as the case unfolded. But he's right, he didn't ever say that.

HIS HONOUR: All right, well at some point then in my summing up I'll have to – at some point I'll have to correct that. I don't know where I'll fit that in but I'll take that on board. Yes?

MR ELLIS SC: The next matter is that my learned friend in speaking of the seacock which had been left open or opened in order to let in the sea he said of that, that anyone – anyone would know where it was, he said, "A multi grip had to be used to close it and therefore it must have been extremely difficult to open". Now the evidence of Mr Lawler at 328 was that the only use of the multi grip that was required was to close the valve that led to the pipe that was severed near the toilet, not the seacock that was opened to let in the sea directly.

MR GUNSON SC: Then if that's the case I'm wrong. I had actually looked at that and I had come to the conclusion that was the –

HIS HONOUR: That's my recollection but I –

MR GUNSON SC: If that's –

HIS HONOUR: I made a note to check that.

MR GUNSON SC: Well if that's, and I don't doubt what my friend says, then I obviously got that wrong and I'm prepared if necessary – I mean I leave it to your Honour, I'm happy to withdraw that if necessary.

HIS HONOUR: Well it's not a matter of apologising it's just a matter of direction.

MR GUNSON SC: No, I don't wish to do that. I'm not going to apologise - I'm going to correct it, I'm happy to correct it, and say I've made the mistake as to which valve it was. Just bear with me – well just a moment – no, my friend's right, "In relation to the seacock", I'm looking at 4 – 328 –

HIS HONOUR: At the bottom.

MR GUNSON SC: Probably the page –

HIS HONOUR: Yes, it was the – it was the seacock to the severed hose in the toilet that –

MR GUNSON SC: Yes, yes, and I had interpreted that to be the other one.

HIS HONOUR: All right. Well you'll correct that tomorrow?

MR GUNSON SC: I'm happy to correct that.

HIS HONOUR: All right. Content with that Mr Ellis?

MR ELLIS SC: Well as long as it's not another speech, your Honour.

HIS HONOUR: Well that's right, it's to be a correction not another speech. Yes, next point, Mr Ellis?

MR ELLIS SC: The next point is, it was attributed to me that I said it was Mr Chappell's blood in the dinghy. Now I don't believe I did.

MR GUNSON SC: Yes, you did.

MR ELLIS SC: Okay – I don't know why I'd say it –

HIS HONOUR: Well –

MR ELLIS SC: - because I've never believed it.

HIS HONOUR: In opening.

MR GUNSON SC: Yeah.

MR ELLIS SC: Oh in opening –

MR GUNSON SC: Yes, in opening.

MR ELLIS SC: Oh okay, I abandon that, if I said it in opening.

HIS HONOUR: All right. Well I'll do nothing about that point. What's the next point?

MR ELLIS SC: Phew, this is getting to the last one now, your Honour. It was put that the police would have certainly doorknocked Ms Neill-Fraser's area to find out when she was home, as evidenced by the car outside. Well, if we're going to say what the police certainly would have done, it needed to be put to them. This was a missing persons inquiry not a – one to fall suspicion on her, and there

was no need, as it would have seemed, one would think – I don't know, I'm – I mean I'm – it's just a no evidence thing, it's a no evidence thing, but to say that they certainly would have doorknocked is not – is not an inference able to be drawn from any evidence and was not something put to any policeman or woman.

HIS HONOUR: Well I think you're right, and the real question is whether it's worthy of – worthy of correction.

MR ELLIS SC: I'll leave that to your Honour.

HIS HONOUR: And I think – I think that the shorter the summing up the better probably, it's probably not – not necessary that I – that I correct that one.

MR ELLIS SC: If it please.

HIS HONOUR: That's all you wanted to raise?

MR ELLIS SC: There's only one – one more thing.

HIS HONOUR: Yes.

MR ELLIS SC: The (indistinct word) I suppose, and my learned friend spoke about the strong test that must be applied when finding someone guilty on circumstantial evidence, as if there's a different degree of satisfaction – there isn't.

HIS HONOUR: Well I can certainly tell the jury that – that it's the – that when I explain circumstantial evidence, that there's – that proof beyond reasonable doubt is proof beyond reasonable doubt whether it's a circumstantial case or otherwise.

MR ELLIS SC: Yes.

HIS HONOUR: I'll just find where that goes. I'll find that later.

MR ELLIS SC: Thank you, I've got nothing further.

MR GUNSON SC: The only issue, your Honour, I've had a quick glance at the description of the dinghy. There seems to be the evidence of Constable – sorry, Sergeant Conroy of his discussions with Mr Conde which he – when he went and talked – spoke with him, I think on the night of the 5th October doesn't appear in here.

MR ELLIS SC: Okay, yep, it's just an indication it was done when it was done.

MR GUNSON SC: Can that be fixed?

MR ELLIS SC: Well it's not my document, I'm just giving it to his Honour to help – to assist.

MR GUNSON SC: Oh well it should be complete, your Honour, if it's not complete.

HIS HONOUR: Yes.

MR GUNSON SC: But if the Crown say they'll add it in I'm happy with that and –

MR ELLIS SC: No, I'm not –

HIS HONOUR: Well I'm not promising that I'll mention every piece of evidence listed in this document, but I do propose to tell the jury something about the evidence about dinghy sightings.

MR GUNSON SC: My point, apparently inelegantly made, your Honour, is that it is incomplete in that there is no evidence in there – no reference in there to the evidence that was elicited by Sergeant Conroy from Mr Conde on the night of the 5th October.

HIS HONOUR: Mm.

MR GUNSON SC: That's my point.

HIS HONOUR: All right, I note it. Now if either of you gentlemen want to say anything more in the absence of the jury please tell my associate and I'll – because it may be possible to start before ten rather than hold them up. The Court will adjourn until ten o'clock in the morning.

<THE COURT ADJOURNED

THE COURT RESUMED AT 10:00AM ON THURSDAY THE 14TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: - foreshadowed yesterday the first thing I'm going to do today is to discharge the reserve jurors. Thank you for your time. Thank you for your attention to this case. We had to have you in case a vacancy arose in the jury box. So you're free to go. If you've got things in the jury room, would you please get them now, because I – I can't let you go back in there after this. If you want to stay where you are and continue to listen, please do, at least for the moment. But you – the seat that you're both in belongs to the press so they should get it at morning tea time, if not before. So if you've got anything in the jury room – have either of you got anything in the jury room – yes, well Mr Martin, would you like to get that – do that now. All right, well I discharge both from service as jurors on this trial; you don't need to come back, the sittings is finished.

<RESERVER JURORS DISCHARGED

HIS HONOUR: Now I – it's now my – oh before we go any further there are a couple of things that arose in a discussion yesterday and there are a couple of things that Mr Gunson wishes to say and which I invite him to say. Mr Gunson?

MR GUNSON SC: Yes, thank you, your Honour. Members of the jury, yesterday in the course of my address to you, perhaps through exuberance, but nonetheless, what I – I said something about Mr Ellis that I should not have said. You might remember I commented on a photograph he had produced of the Four Winds' dinghy and he'd submitted to you that it showed a pointed bow. I said to you, and I commented on that, that that was a 'two card trick'. Now I shouldn't have said that, it was unfortunate, it was inappropriate and I accept that, and I have apologised to Mr Ellis, and I do so again. I accept it was inappropriate.

HIS HONOUR: Was there a second thing in relation to Mr Lawler and the use of the multigrip?

MR GUNSON SC: I thought your Honour was going to cover that.

HIS HONOUR: All right, well I'll – I'll correct that.

MR GUNSON SC: Yes.

HIS HONOUR: Yes. All right. Well I'll –

MR GUNSON SC: I'm happy to do it if your Honour wants me to?

HIS HONOUR: Well – well now that I've mentioned it – oh look, I'll say it.

MR GUNSON SC: All right.

HIS HONOUR: Mr – you'll recall that a police officer named Lawler gave evidence about trying to shut off the water that was flooding the boat. Mr Gunson said yesterday in his closing speech that Mr Lawler had tried to shut off the seacock, the for'ard seacock, that was under the floorboards and that was flooding the boat but it needed to use a multi grip and even then couldn't close it off the whole way. That was inaccurate. Mr Lawler, Constable Lawler, gave that evidence about the seacock that controlled the flow of water to the pipe that had been severed in the toilet so that's something that someone need to correct at some point. I've corrected it now.

<SUMMING UP - HIS HONOUR: Now what I need to do though this morning is to give you a number of directions about the law. Now the directions that I give you about the law are binding on you; you mustn't concern yourselves as to whether I'm right or wrong or as to whether the law's reasonable or unreasonable. It's your duty to apply the law in the way that I've explained it to you. Although I'm the judge of the law the twelve of you are the judges of the facts, as I – I think I said this on day one; it's your role to consider all of the evidence concerning the facts and where possible to reach conclusions or make findings about the facts. That area is yours alone. You need to consider what facts you accept as established and what conclusions or inferences you're prepared to draw from the established facts.

It's also up to you, as the judges of the facts, to make some assessment of the witnesses and of the reliability or otherwise of the different witnesses and the different things that the witnesses have said. It's up to you to decide which witnesses you accept as honest or reliable and which witnesses you think are mistaken, evasive, unreliable or dishonest. And for that matter, it's up to you to decide how much reliance you can place on the exhibits. For example, how much reliance do you place on the photo of the two dogs on the beach with the Four Winds in the background and possibly the faint shape of a dinghy? Well that's the sort of question you need to consider.

Now when you're considering the reliability or unreliability of evidence the sort of assessment that you have to make isn't an all or nothing thing, or isn't necessarily an all or nothing thing. A witness can be honest about one point and dishonest about another. A witness can be reliable about one matter but mistaken or unreliable or vague or confused about another. And so questions, for example, about whether Mr Conde's memories were accurate are questions for you. All these sorts of things about the reliability or unreliability of evidence are matters that you need to consider in your role as the judges of the facts.

Now in reaching your verdict it's very important that you put aside any emotions or any prejudices that you might have about crimes of violence or about particular types of people. For example, if you've got strong emotional feelings about – well people who can afford to buy yachts or about police officers, one way or the other, it's important that you put aside any emotions or any strong personal feelings. They don't have any place in a criminal trial. It's your task to reach your verdict in an unbiased and unprejudiced way. And you mustn't concern yourselves with the possible consequences of

your verdict. You're on a fact finding mission. It's your duty to reach a verdict as to whether guilt has been proven beyond a reasonable doubt or not and to give a true verdict in accordance with the evidence and to reach your verdict in an unbiased and unprejudiced way.

Now when you're considering the evidence you should use your commonsense and your general knowledge and your experience of life and your experience of people; that's why we have juries. Your – you've been chosen as twelve people chosen from the community so that you can use your experience and your understanding about life and people in determining the factual questions that arise in this case about other people.

At the start of the trial each of you either swore an oath or made an affirmation. You promised that you would try the case impartially and faithfully, which means conscientiously and that your verdict would be a true verdict that's in accordance with the evidence.

Now your oath or affirmation is something that binds you as an individual. What I mean by that is that each of you has to arrive at a personal decision as to whether this charge has been proved beyond reasonable doubt or not. You have to decide that in accordance with your individual conscience and in accordance with your individual oath or affirmation.

Now, of course, you should listen to what the other jurors have to say and consider it very – consider very carefully what they have to say and what they're thinking. You should be prepared to discuss your own views and your own thinking with the other jurors and to have your thoughts and your tentative views tested by discussion with the other jurors. So you should consider very carefully one another's points of view. But in the end, each of you must act in accordance with your individual oath or affirmation and your individual conscience. You mustn't, any of you, agree to a verdict that you believe to be incorrect. You must base your verdict solely on the evidence that's been presented to you. Now that evidence consists of the evidence from the – all the witnesses that you saw in the witness box, over fifty of them, and Mr Casson, of course, who gave his evidence by video link from Queensland. The evidence also includes the exhibits, and it includes what you saw when you were taken on the inspection around Marieville Esplanade and all the places that you were taken to.

Now basing your verdict entirely on the evidence means that you must ignore anything that you might have read or heard or been told

or somehow found out outside the Courtroom, except for what you saw when you went on the view, anything – any information that's got anything to do with this case that you might happen to have that's come from anywhere other than the evidence is information that you must ignore, and certainly not discuss with other jurors. Also, basing your verdict on the evidence means that you mustn't use guesswork or speculation in arriving at your verdict. Another important point is that answers are evidence but questions aren't.

Now, from time to time, there have been things – possible facts suggested to witnesses in questions and the witnesses have either said they don't know or said that that's not correct or something like that. A suggestion of a fact in a question isn't evidence. Let me give you two examples. Mr Ellis, in – at the end of his cross-examination of Ms Neill-Fraser, put to her a series of propositions as to, for example, the killing of Mr Chappell with a wrench, and she denied that. Well what he said, the suggested facts contained in his question, aren't evidence. They're a theory; they're a theory that you ought to consider. But when the witness – when Ms Neill-Fraser said, "No, that didn't happen," her evidence is "No, that didn't happen" - it's your role to evaluate that evidence and consider whether you accept it or not. The suggestions put to her aren't evidence but – but they're a theory and you – you, of course, should consider that theory, but at this stage it's no more than a theory.

Another example; there was – there were questions asked about the EPIRB. Now, it – it seems that in order to – in order to use the EPIRB as an emergency device it's necessary to take steps to notify the authorities. You'll find something written on the back of the EPIRB, or printed on the back of the EPIRB itself about notifying your national authority. You'll find that Ms Neill-Fraser said in her second statement to the police that she notified AMSA – A-M-S-A – there's been reference, I think, during the evidence to the Australian Maritime Safety Authority. One of the questions that Mr Ellis asked her at page 1334 is – was:

> *You know you have to it primed ready for an emergency?*

She answered:

> *No, I didn't know that.*

Well that proposition that you need to have it primed ready for an emergency, I don't – I think is something that wasn't said anywhere

in evidence. The proposition contained only in a question is not evidence.

So my point is, that if there's a proposition put in a question, then that's not evidence; maybe there's evidence of that – as to that proposition being true somewhere else, in which case, you act on that evidence but not on the evidence contained in the question.

The speeches made by counsel aren't evidence either. So if – if anything was said in an opening speech or a closing speech that wasn't said in the evidence or that wasn't quite the same as the evidence, it's the evidence that counts. The speeches of counsel are an important part of the trial and you should consider very carefully what counsel have said to you, but at the end of the day, it's a matter for you to give the various things that they've said whatever weight you think fit; as much weight or as little weight as you think fit.

I'm going to be referring to a number of parts of the evidence. It's not practical for me to refer to all of it. If I don't mention some piece of evidence, or if counsel haven't mentioned some piece of evidence, that doesn't mean that that piece of evidence is unimportant. You're the jury, you're the judges of the facts, you decide what's important and what's unimportant. Similarly, if I do mention some piece of evidence, or if counsel have mentioned some piece of evidence, you're quite free to conclude that that piece of evidence is unimportant. If I reveal what I think about the facts or about some aspect of the facts, or if you think I've given some indication of any personal views, well the facts are your department, you're the judges of the facts, and it's up to you to decide quite independently of me what you think about the facts. It's your duty to reach your own independent conclusions, and the most that I can do is make suggestions as – just as one person. But it's your department; you're the judges of the facts. It's your duty to reach your verdict on the basis of your own independent views about the facts.

Now the starting point, of course, as I said at the beginning of the trial, is that an accused person is presumed to be innocent. Ms Neill-Fraser is presumed to be innocent; unless and until, you decide she's guilty. If you're not satisfied that she's guilty then the presumption of innocence remains and she's not guilty. You need to decide whether guilt has been proven. Because the starting point is a presumption of innocence, it follows that the Crown or the State bears the burden of trying to prove guilt. The Crown alleges guilt; the Crown has to try to prove it. An accused person doesn't have to try to prove his or her innocence. An accused person is entitled to

remain completely silent right through the trial – the whole trial, if that's what he or she chooses to do. An accused person doesn't have to have a lawyer, ask questions, give evidence, call witnesses, tender exhibits, or any or of those things.

Now something was said yesterday about the fact that Ms Neill-Fraser's psychiatrist, Dr Sale, hadn't been called as a witness. Well, you – she didn't have – she didn't have to call anybody, and because she is under no obligation to call any witnesses you simply mustn't draw any conclusion adverse to her as a result of Dr Sale or anybody else not having been called. And similarly, you shouldn't speculate as to why Dr Sale wasn't called or what he might have said. She had the right – she had no duty to try to prove her innocence, and therefore, you can't in anyway take into account against her the fact that a particular witness wasn't called.

Now – so the Crown bears the burden of proving guilt; and importantly, the Crown bears the burden of proving guilt beyond reasonable doubt. The fundamental question that you need to consider is; 'Am I satisfied beyond reasonable doubt that the Crown has proven that Ms Neill-Fraser is guilty of the crime of murdering Mr Chappell?' If you're not satisfied beyond reasonable doubt of her guilt, then it's your duty to find her not guilty of murder. It's not a matter of whether you think she might be guilty or whether you suspect she's guilty; the question is whether you – whether guilt has been proven beyond a reasonable doubt. If you have a reasonable doubt then it's your duty to give her the benefit of that reasonable doubt and to find her not guilty. I'm not going to tell you what a reasonable doubt is or what those words mean. The High Court, which is the highest court in this country, has said that trial judges shouldn't try to define the term 'reasonable doubt', they're ordinary words and the question for you is, 'Am I satisfied beyond rea – am I satisfied that the Crown has proved guilt beyond reasonable doubt?'.

Now a verdict of 'not guilty' isn't a verdict that anybody lied or that anybody made up false evidence. Nor, for that matter, is it a verdict that Ms Neill-Fraser told the truth. A verdict of 'not guilty' means just one thing, that you're not satisfied beyond reasonable doubt of guilt.

Now Ms Neill-Fraser gave evidence. She didn't have to but she chose to give evidence. When you evaluate her evidence you should evaluate it in the same way as you would evaluate the evidence of any other witness. You shouldn't treat her as having some sort of handicap as a result of her being charged with a crime. You shouldn't regard her evidence as second rate evidence or suspect or

anything like that, as a result of her being accused of a serious crime. You must evaluate her evidence in the same way that you would evaluate the evidence of any other witness. You – it's open to you to draw whatever conclusions you consider appropriate, favourable or unfavourable, in relation to the various things that she said and the various topics on which she gave evidence.

Now as well as seeing and hearing her give evidence over several days, you've seen the DVDs of the two police interviews. In both of those interviews Ms Neill-Fraser gave evide - gave answers to the police suggesting that she is innocent of this crime of murder that she's charged with. Now you're entitled to consider all of the answers that she gave to the police and to give her various answers whatever weight you think fit, as much weight or as little weight as you think fit. You're entitled to take into account the fact that when the police asked her questions and she gave answers, she wasn't on oath, she hadn't sworn an oath or made an affirmation promising to tell the truth. You're also entitled to take into account the nature of the interviews; it wasn't like – a police interview is a bit different from giving evidence in court. The police asked her plenty of questions, but it – that's a very different situation from being cross-examined by a prosecutor. It's not ordinarily the role of interviewing police officers to contradict a person who's being interviewed or to challenge them or to cut a person short. The objectives of police interviews are to obtain information and if an individual is a suspect in relation to a criminal investigation, to give that individual an opportunity to give his or her version of events in full and without impediment. So it's a matter for you but that – that might tend to explain why at times police officers let Ms Neill-Fraser say a lot without any intervention.

There are a number of points that I want to make in relation to the police interviews. Once again, answers are evidence but questions aren't evidence. So if there was any information contained in a question and the – and Ms Neill-Fraser said she didn't know or said she didn't agree, or didn't in anyway confirm what was suggested to her, then what was suggested to her isn't evidence. For example, in the second interview, one of the officers said something about the results of police inquiries about people who live in cars at Marieville Esplanade. Well, up to – up to that point there – there hadn't been – or I'm sorry – apart from a couple of questions that were asked of Ms Neill-Fraser when she was in the witness box, I don't think there's any evidence at all about people living in cars at Marieville Esplanade. Certainly, there's been no evidence as to results of police inquiries as to somebody being away and – in New Zealand, or something to that effect – so you should disregard any propositions,

factual propositions, that were put in questions that weren't confirmed by the – by Ms Neill-Fraser or – and weren't the subject of any other evidence.

Also, it emerged during the police interviews that after the first recorded interview on the 4th of March, that sometime after that Ms Neill-Fraser had gone and consulted a lawyer. Well you – you shouldn't regard that – you mustn't regard that as any sort of indication of guilt. People – people who think they might be suspected of a crime have a perfect right to go and take legal advice. Seeing a lawyer isn't an indication of guilt; in fact if an innocent personcomes to the conclusion that he might – he or she might be suspected of a crime, that's an excellent reason to go and see a lawyer. So you mustn't hold against her the fact that she went to see a lawyer.

On – it may be – I think that on – on one or two occasions an interviewing officer invited Ms Neill-Fraser to suggest an explanation as to why someone might have said something that she said was incorrect. Well, the trouble with a question like that is that if someone does make an incorrect statement it – it is often the case that no one else could possibly know the reason for that person making a statement that's incorrect or saying something that's incorrect. The – it's not possible to understand another person's – or it's generally impossible to understand another person's thinking when – when they've said something that is inaccurate or even dishonest. And so, if Ms Neill-Fraser was unable to provide an explanation as to what had led someone else to say something that was incorrect, that's something that you shouldn't take into account, and you mustn't take into account against her.

Now it's been suggested that Ms Neill-Fraser told some lies during her police interviews and for that matter that she told some lies in the witness box. Now if you conclude that any particular answer in – during the police questioning or in the witness box was a lie; that is not only incorrect but something that Ms Neill-Fraser knew was incorrect, a deliberate lie rather than a mistake, if you – if you think that she – that any particular answer was a lie, then the general rule is that you may not treat the fact that she told a lie as evidence of guilt. You may use the fact that she told a lie – you may take into account the fact that she told a lie when you're assessing the overall trustworthiness or lack of trustworthiness of the things that she said of her evidence and her answers to the police. But you mustn't jump to the conclusion that telling a lie is an indication of guilt. There are all sorts of reasons why people tell lies. You shouldn't spec – as a general rule you shouldn't speculate as to why particular answers

were given, if you consider them to be incorrect. If something that Ms Neill-Fraser said was false then, as a general rule, you should disregard it, except that you may take it into account in assessing the overall creditworthiness, trustworthiness, reliability or otherwise of what she said.

Now there is though a situation when you may use a lie as evidence of guilt. Now the Crown says that these circumstances apply – the Crown says that Ms Neill-Fraser lied in relation to the trip to Bunnings that she said she made on the afternoon of Australia Day, and that she told lies about staying home on the night, the night of the 26th of January, when in fact she had gone to Marieville Esplanade.

Now in relation to those – in relation to the things Ms Neill-Fraser said on those topics; it's open to you to treat what she said as evidence suggesting guilt, if you're satisfied of certain things. The general – the general rule is that the telling of a lie must not be treated as evidence suggesting guilt. There's an exception in certain circumstances. You may treat a lie as evidence suggesting guilt if you're satisfied that it was a deliberate lie and that it related to a material fact, a significant fact, connected with the alleged killing, and if the telling of the lie, in your view, reveals a knowledge of the – the crime or of some aspect of the crime, and if you're satisfied that the motive of Ms Neill-Fraser in telling the lie was a fear of the truth.

Now you should consider whether there's any other reasonable explanation for the telling of the lie, and if you accept that the lie was told because of a fear of the truth and because of a fear of revealing something relevant to the crime, then you may treat the telling of the lie as evidence indicating guilt.

Now the first question, of course, is 'was it a lie?' If you're not satisfied by the evidence – if you're not satisfied after considering all the relevant evidence that the lie was a lie rather than something said by mistake, then of course, it's not evidence of guilt. Well now, in relation to – Ms Neill-Fraser told the police initially that she – that she was at home and she stayed home on the night of the 26th of January. During her second DVD interview, or the interview of the 5th of May, she told the police that she decided to reveal that she hadn't stayed home after her daughters had told her what they'd been told about the photo of a passing car that had come from the DVD of the Commonwealth Bank on Sandy Bay Road. Her explanation for lying is an innocent one. Her explanation is that she initially didn't want to reveal to Tim Chappell that she had gone to Marieville

Esplanade as a result of the phone call that she'd received about his sister, Claire. She didn't want him thinking that she was so concerned about the information about Claire that she'd gone down to Marieville Esplanade because, as I understand it, that – that would have reflected on her thinking about Claire. And then having said that she stayed home, she – she didn't reveal that she'd lied until she got the information from her daughters about the Commonwealth Bank photograph. After that she revealed to people that in fact she'd gone back down to Marieville Esplanade.

Well, that's one – well the Crown says that explanation is false and that the reason that Ms Neill-Fraser lied was that she had gone to Marieville Esplanade in connection with the killing of Mr Chappell and that she was wanting to conceal that fact because that was information that would tend to incriminate her, and that she lied because of a fear of the truth.

In relation to the trip to Bunnings, Ms Neill-Fraser's case is that although she said on a number of occasions that she'd been to Bunnings on the afternoon of Australia Day, that that was an honest mistake. She'd confused the day an earlier day when she'd been to Bunnings with Australia Day when in fact she hadn't been to Bunnings but that she wasn't lying it was an honest mistake. Now the Crown says that she must have known where she really was on Australia Day. The Crown says that her explanation that she'd made a mistake is implausible. The Crown says that what she said about the trip to Bunnings was not consistent and that she tailored what she was telling people about the trip to Bunnings to fit the known information; for example, about the closing time of Bunnings, and that she – that you can be satisfied, you should be satisfied that she wasn't making a mistake she was lying to give herself an alibi, to put herself at a distance from the Four Winds and to – and Mr Chappell.

Well, you – what you need to consider, therefore, in relation to the – what Ms Neill-Fraser said to the police about the trip to Bunnings and about staying home; first of all is, was it a deliberate lie? Was – were the various things that she said – and you should consider then individually – were they deliberate lies or were they mistakes; in relation to Bunnings, was it a mistake arising from confusion? You must consider whether, if they were lies, the lies related to a material issue, some fact or circumstance connected with the killing of Mr Chappell. You – you must consider whether the – the telling of the lie, if there was a lie, reveals a knowledge of the crime or of some aspect of it, and whether the motive for telling for the lie was a fear of the truth or a realisation of guilt. If your – you should consider whether there's any other reasonable explanation for the telling of the

lie. If you accept that the lie might be explicable on some other basis, then you mustn't treat it as an indication of guilt, and you should consider, of course, that there may be reasons for a person to lie other than a consciousness of guilt. One possibility, of course, is the suggested one, to – to not expose her thoughts about Claire to Claire's brother. Another possibility that you might like to consider is that she was innocent but wanted to improve on the truth in order to avoid being falsely suspected of involvement in the killing.

There are – there are all sorts of reasons other than guilt which may lead people to tell lies and they may be reasons that – that would be unknown to you. The – so those – those are only possibilities. It's – so if you are satisfied Ms Neill-Fraser lied about going to Bunnings or lied about staying home on the night of the 26th out of consciousness of guilt and in order to – in order to avoid – well out of a consciousness of guilt, then you may treat those lies as an indication of guilt. But if you're not satisfied that she lied or if you are not satisfied that there was some explanation – sorry, if you're not satisfied that she lied out of a consciousness of guilt, then you may not treat those lies as an indication of guilt.

Now what I've been doing so far is making some general comments; I want to move on and explain aspects of the law to you in relation to the crime of murder, and I've had a memorandum prepared and you'll be given one each.

Now the criminal law in this State is mostly set out in an Act of Parliament called 'the Criminal Code', it dates from 1924, some of the language is a bit old-fashioned, much of what I've put in this memorandum is based on the Criminal Code, a lot of it is word for word. The starting point – nobody's told you this before, but there are three possible verdicts in this case; guilty, meaning guilty of murder. Not guilty of murder but guilty of manslaughter, and not guilty full stop.

Now I'll get to manslaughter much later in this summing up. There are different types of murder. You might think of – when you think of murder you might think of a deliberate killing, a killing by someone who – who intends to cause death. That's not the only form of murder. But the Crown case in this trial is that there was an intentional killing. The Crown contends that Ms Neill-Fraser killed Mr Chappell and that when she did that she intended to kill him.

So I'll deal first of all with that type of murder, and in paragraph 2 of the memorandum I summarise what you would need to be satisfied of beyond reasonable doubt in order to find Ms Neill-Fraser guilty of

murder on that basis – I'll read it through. You may find Ms Neill-Fraser guilty of murder if you're satisfied beyond reasonable doubt of all the following things:

(a) she killed Mr Chappell;
(b) the physical act or acts by which she killed Mr Chappell were voluntary and intentional;
(c) at the time of the killing she intended to cause Mr Chappell's death;
(d) her physical act or acts were not justified under the provisions of the Criminal Code.

Now let's take those a bit a time. When you're considering whether Ms Neill-Fraser killed Mr Chappell that really involves a number of propositions; first, you'd need to be satisfied beyond reasonable doubt that he's dead. We don't have a body but – or the police haven't found a body, but the – the Crown says you should be satisfied beyond reasonable doubt that he's dead, not that he has disappeared or gone missing. You'd also need to be satisfied beyond reasonable doubt that he was killed; that the death, if he is dead, isn't the result of suicide or accidental drowning or some other sort of accident. And you'd also need to be satisfied beyond reasonable doubt that Ms Neill-Fraser was the person who killed him. Well the Crown says that the evidence produced in this case should lead you to the conclusion that you're satisfied beyond reasonable doubt that Mr Chappell's dead and that the reason he's dead is that he was killed and that the person who killed him was Ms Neil-Fraser.

(b) you'd need to be satisfied beyond reasonable doubt that the physical act or acts by which she killed Mr Chappell were voluntary and intentional acts. So, for example, if she was walking through the boat and tripped and fell and happened to be carrying a terribly heavy wrench which hit him on the back of the head causing death, that wouldn't be a voluntary and intentional act. The law doesn't punish people for physical movements that are involuntary or unintentional, or for the consequences of any such physical movements.

(c) you'd need to be satisfied that at the time of the killing she intended to cause Mr Chappell's death – well that, I think that's – I don't think that needs explanation, it's a question of inferring what she must have been thinking.

(d) you'd need to be satisfied that her physical act or acts were not justified under the provisions of the Criminal Code. What that's all about is that there are situations in which it's lawful to use force;

sometimes people are entitled to use a certain amount of force to defend themselves; sometimes surgeons are entitled to perform operations which involve a risk of death, which in some cases do result in death. There are times when physical acts that cause death are lawful. There's no suggestion that – in this case, that any physical act that caused death was anything other than unlawful. So you – really what I've got there in paragraph 2(d) is something that I have to cover for completeness, but there's no issue in this trial as to any possibility of a lawful killing.

Now I mentioned that there are other types of murder, there are other situations in which a person who doesn't intend to cause death can be guilty of murder. I – I cover the – and that's what I've said in paragraph 3 – I've spelt out the circumstances in which an unintended killing can amount to murder, in paragraph 4. Now when I read through this and if you think about them, it seems to me that there's really no scope for you to make findings – there's really no scope for you to conclude that either of these situations could have applied here – maybe you can't rule them out but maybe you – but it would seem that you can't make positive findings that these were – that one of these situations eventuated, because there's no direct knowledge as to who did what and who thought what at the time of Mr Chappell's death. I'll read through paragraph 4, there are two alternatives, (a) and (b):

If Ms Neill-Fraser killed Mr Chappell by means of one or more voluntary and intentional acts that were not justified under the provisions of the Criminal Code, then the killing amounted to murder if – the first scenario, scenario (a):

(i) she intended to cause Mr Chappell bodily harm; and
(ii) the bodily harm that she intended was likely to cause death in the circumstances; and
(iii) she knew that the bodily harm she intended was likely to cause death in the circumstance, even if she had no wish to cause death.

Well in that hypothetical situation, if someone intends bodily harm, the bodily harm's likely to cause death, and the person knew that the intended bodily harm was likely to cause death and an unlawful killing takes place, that's murder, even if the killer had no wish to cause death.

But here, there's no evidence as to – well you might think there's no evidence as to what went on, if you are satisfied that Ms Neill-Fraser

killed Mr Chappell, then you – I'd suggest you're not really in a position to reach positive conclusions that it was this situation.

Scenario (b); the killing would amount to murder if:

(i) Ms Neill-Fraser's act or acts were likely to cause death in the circumstances; and
(ii) she knew or ought to have known that her act or acts were likely to cause death in the circumstances.

Then that's murder, even though she had no wish to cause death or bodily harm. Well once again, it's a hypothetical situation.

The Crown says that this – that these circumstances don't apply. The Crown says this was an intentional killing, you should infer from all the evidence that's been presented to you, that this must have been an intentional killing by Ms Neill-Fraser. If you're not satisfied beyond reasonable doubt that it was an intentional killing then – but are satisfied beyond doubt that she killed Mr Chappell; well it could still be murder if the circumstances that I've listed here – if the combinations of circumstances that I've listed in 4(a) or 4(b) were the circumstances of the killing. The difficulty though is that because there's no evidence as to what happened to Mr Chappell, I don't see how you could be positively satisfied that the circumstances were as set out in 4(a) or as set out in 4(b). I've covered those types of murder for completeness.

Now this is a case that where the evidence is all circumstantial evidence. No one has come along and given evidence that they saw Ms Neill-Fraser kill Mr Chappell. No one has come along and given evidence that she said that she killed Mr Chappell. The only evidence of – that might tend to suggest that she murdered Mr Chappell is evidence of other facts, and it's what the law calls 'circumstantial evidence', and in paragraph 5 I set out the definition of circumstantial evidence. Circumstantial evidence is evidence of a basic fact or facts from which the jury is asked to infer a further fact or facts.

Now let me give you a very simple example of circumstantial evidence in a situation that's got nothing to do with crime. Suppose you're looking after a child, you're inside the child's outside, you're looking out the window and you see the child ride past on a bicycle – very happy, smiling, but riding with no hands on the handlebars. The child goes out of view. You hear a crash and a scream and the child comes inside crying, bleeding and carrying a bit of broken bicycle. You – there's only one conclusion that you can draw; the

child crashed the bike. You didn't see the child crash the bike but you've got a number of pieces of circumstantial evidence. You saw the child riding on the bike; the child didn't have any hands on the handlebars; you heard a crash; you heard a scream; the child was crying; the child was bleeding; the child was carrying a bit of broken bicycle. Those are all pieces of evidence of basic fact or – of basic facts from which you infer a further fact, the child crashed the bicycle; and importantly, there's only one reasonable explanation for all the known facts, and that is that the child crashed the bicycle. In that situation, where there's only one reasonable explanation, you can be satisfied beyond reasonable doubt that the child crashed the bicycle.

Now in – when circumstantial evidence is used in a criminal trial, the situation is similar, and I've covered this paragraph 6. The commission of a crime may be proved beyond reasonable doubt by circumstantial evidence provided that:

(a) all the facts and circumstances from which the conclusion of guilt is drawn must be established to the satisfaction of the jury; and

(b) the jury must be satisfied beyond reasonable doubt that the conclusion of guilt is the only rational conclusion which is open on the whole of the evidence that the jury accepts.

Or to turn that round; if there is open on the whole of the evidence that the jury accepts any rational hypothesis, big words, any sensible theory, consistent with innocence, then the accused must be found not guilty.

So the Crown says you should consider all the evidence that's been presented; maybe you don't accept all of it, but you should consider all of the evidence, workout what evidence you accept and then, the Crown says, there's only one sensible conclusion that you can come to and that is that Ms Neill-Fraser deliberately murdered Mr Chappell. The defence say, not at all, for one thing she said she's innocent. If you consider the whole of the evidence and workout what evidence you accept, there's another sensible explanation that she didn't do it someone else did.

So that's what this case is really about. The starting point though is that you have to consider what pieces of evidence you accept and what pieces of evidence you don't. For example, Mr Triffett – Mr Triffett's evidence; he says that some twelve years previously he had two conversations with Ms Neill-Fraser in which she revealed a murder plan involving killing someone, first her brother then Mr

Chappell, on a yacht, and getting rid of the body in water – in the water, and sabotaging the vessel. Well maybe you accept Mr Triffett's evidence as truthful, maybe you don't, that's a question that you'll need to consider as the judges of the facts. If you don't accept his evidence then you should disregard it.

So the – it's your – what you need to do is to consider what facts you – you accept in relation to the – what facts you consider have been established by the evidence that's been presented to you, and then you can go on to consider what conclusions you can draw on the basis of the established facts.

There doesn't have to be any one piece of evidence that – that itself establishes – all by itself tends to establish guilt. To put that better I – if you look at paragraph 7, I've said there; a conclusion of guilt may be drawn from a combination of facts and circumstances, none of which would alone be strong enough to support that conclusion. Sometimes judges talk about the – the different strands in a rope; one particular strand in a rope might not be strong enough to support a particular weight but it you take a lot of strands together then they might support a heavy weight – maybe that helps you – helps explain it, maybe it doesn't. But the point is that circumstantial evidence, particularly in this case, involves considering a lot of small pieces of evidence and it involves assessing a lot of pieces of evidence, deciding what reliance you can place on them; deciding what evidence you accept; and deciding whether you can infer guilt from what's established and whether guilt is the only rational inference, the only sensible conclusion that you can draw on the basis of all the evidence that you accept.

If there's another reasonable possibility consistent with Ms Fraser's – Ms Neill-Fraser's innocence, then the Crown hasn't proved anything beyond reasonable doubt, and that reason – that other theory, that other possibility can't be excluded, and you – the guilt – her guilt hasn't been established beyond reasonable doubt and you – you must give her the benefit of the reasonable doubt.

When you come back though to the question of reasonable doubt the test of whether the – or the degree of satisfaction involved in those words, 'prove beyond reasonable doubt', is just the same in a circumstantial case as it is in a non-circumstantial case.

Now it's not essential that you accept every piece of evidence that the Crown has presented to you to be truthful and reliable. For example, you – you could decide that Mr Triffett's evidence should be disregarded, that you either don't believe him or aren't willing to

place any reliance on his evidence. The – that's a matter for you. If you do come to that conclusion it doesn't follow that the Crown case fails, you need to consider all those pieces of evidence that you do accept and are prepared to place some reliance on.

Yesterday, Mr Ellis in – not yesterday the day before, Mr Ellis in cross-examining Ms Neill-Fraser put to her a series of propositions, a scenario about killing Mr Chappell with a wrench, attacking him from behind, and killing him because of a difference of views about the yacht and expenditure and of the future of the yacht. Well it's not essential that you be satisfied beyond reasonable doubt as to the correctness of any or all of those propositions. You – you – it's open to you to be satisfied beyond reasonable doubt of guilt without being satisfied of particular contentions or theories as to precisely what happened or why it happened; and the reasoning of the individual jurors might be different. Some of you might regard some pieces of evidence as reliable when others don't. The question for each of you is, "Am I satisfied beyond reasonable doubt that guilt has been proven? That on the whole of the evidence that I accept the only – the only reasonable possibility, the only rational conclusion is that Ms Neill-Fraser deliberately murdered Mr Chappell, and that there's no other sensible explanation for the evidence that I accept – no other reasonable possibility consistent with her innocence."

Another important point to note is that the Crown hasn't contended that the killing happened at a particular time of the day or night. The Crown – Mr Ellis has never confined the Crown case to a suggestion that Mr Chappell was killed in the middle of the night, nor to a suggestion that he was killed during the afternoon; and it may be that you can't reach a conclusion as to when death occurred. But that's a matter for you.

Now I'm going to give you a break; I'll give you the opportunity to step outside; I'll ask you to make your affirmation and the Court will then adjourn for fifteen minutes. Please don't talk to the reserve juror who has remained, she's no longer one of you.

<JURY AFFIRMED OUT

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Well I've explained to you the principles that you need to apply when you evaluate the circumstantial evidence. I want to attempt a summary of what I see to be the important categories of circumstantial evidence that the Crown's relying on – I won't go into detail in relation to all of them.

First of all there is evidence that tends to establish that Mr Chappell is dead and gone. There's the evidence from the family of not having heard from him. There's the evidence from family members suggesting it's unlikely that he would stage his own disappearance. There are Detective Sinnitt's inquiries as to other police forces and Medibank and so forth – Medicare and so forth, that have revealed no sign of him still being alive, and there some paragraphs in the agreed facts that Mr Shapiro read out, exhibit P17, as to inquiries that were made and revealed no evidence of him still being alive. So it seems to me, it's a matter for you, but it seems to me that you can fairly readily conclude that Mr Chappell has died.

So there's also evidence that tends to suggest that what happened was not an accident. All the evidence that the Four Winds was sabotaged tend to suggest there was no accident. The blood in the yacht tends to suggest that there was – that there was no accident.

There's evidence that tends to suggest that Mr Chappell didn't commit suicide. Tim Chappell, for example at page 119 of the transcript, said that he wasn't depressed or suicidal. He – the evidence was that he was interested in his work, regarded it as important, and if he did commit suicide it's hardly likely that he would have scuttled the yacht and tied the fire extinguisher to himself and disappeared without a trace.

The – there's evidence that tends to suggest that Mr Chappell's body was winched out of the – winched up onto the deck and taken away and dropped in the unsearched deeper waters of the River Derwent. There's the evidence as to the ropes and winches. There's evidence that some of the ropes that were out of place had been cut. In the photos P03, you needn't look at it now, but photograph P42 shows the end of a rope – photograph 42 in P03 shows a rope going down into – or coming through a – one of the hatches. There's evidence of the blood on the steps, and Ms Neill-Fraser has said that that wasn't from the nosebleed. There's evidence of the blood on the torch, and of course, the police

officers who gave evidence about searching the Derwent made it clear that they searched only a section of the Derwent; it's a big river, it's something like twenty three metres deep and fine – with a bottom that's fine silt, very difficult to search. So the evidence – it's a matter for you, but the evidence tends to suggest that the – the body must have been disposed of in some unsearched part, or else travelled to some unsearched part of the Derwent. These – these are all matters for you.

There's evidence that tends to suggest that Claire Chappell had nothing to do with the disappearance. Richard King's evidence and the evidence of family members tends to suggest that she wasn't likely to be violent; that she was concerned for her father not hostile to him. And of course, Tim Chappell suggested that it was – gave evidence suggesting that it was unlikely that she could get out to the boat.

The – there are – there's evidence as to the state of the Four Winds on the morning of the 27th that the Crown says suggests that the saboteur had, or is likely to have had intimate knowledge of the Four Winds. It's a matter for you; maybe a person with knowledge of yachts generally would have found all the things that were found and used and cut and so forth. But the – the saboteur or saboteurs opened a redundant seacock; there was reference – I think Mr Casson gave evidence about there having been a redundant fire-fighting system. There was evidence that the seacock that was opened was under the floor and served no purpose. There was evidence that the pipe that was cut in the toilet was the right one to cut to let water in, not the pipe that went from the toilet but the pipe that brought seawater to the toilet. Somebody apparently unscrewed the stair feet in order to remove the carpet squares that were held in place by the screws that held the feet of the stairs in place.

Somebody, you might infer, used the dinghy from the Four Winds that was tied up at the Royal Yacht Club to go to the Four Winds, and then travelled back in it and got out at the little beach, leaving the painter, the front rope, in the dinghy, where the man who had brought his daughter to rowing found it at 5:45 the next morning. Well, you should, of course, consider the possibility that the knot became untied and that the dinghy floated round the rowing club and ended up on that beach – but it's a matter of you. The Crown contends that somebody got into that dinghy, which happened to be the dinghy of the Four Winds, and went to the Four Winds and then went back to the beach at Marieville, where it happened to often be launched.

The person – somebody got out and used the winch handles. The evidence is that they were kept in the rear port locker. You needn't look at it now but you might get a better view of it if you look at the photograph in P15, photograph 3, the family photos taken by the family – the photos that were sent to Mr Stevenson, tab 8 of your smaller folder. The – somebody made sure that the bilge pumps didn't operate when the water level reached a particular height. Somebody made sure that the alarm didn't sound when the water reached a particular level.

So all of that, you might think, tended to suggest that the sabotage and so forth was done by someone more likely familiar with the Four Winds, and at least very familiar with yachts. There is evidence that Ms Neill-Fraser was familiarised with the plumbing and the fittings under the floorboards. That evidence was given by Mr Stevenson and Mr Casson and also there is a statutory declaration of a Mr Reuter, exhibit P27, and all of them have given evidence, Mr – well when I say given evidence, Mr Reuter said it in his statutory declaration, as to Mr Chappell and Ms Neill-Fraser being shown all the fittings and familiarising themselves with it. There's the evidence from Mr Barrett as to how long he thought it would have taken the vessel to reach the point that it did as it began to sink; his estimate of nine to twelve hours was based on the photograph, exhibit P22, of the vessel low in the water, and it's an agreed fact in exhibit P17, that that photo was taken at 8:08am. And you'll recall the police officer's evidence that it took about an hour once the pumps got going to get to a point where – where the vessel was no longer going down. Mr Barrett's best estimate was nine to twelve hours; in cross-examination he conceded that might have been seven to fourteen hours, and of course, his estimate was based on the proposition that both the seacock – the opening of the seacock and the cutting of the toilet pipe occurred at the same time. Well, if the photo was taken at 8:08am, his evidence is consistent with sabotage sometime around midnight or the early hours of the morning – that's about as far as that gets, I'd suggest.

There's evidence of the bandaging of Ms Neill-Fraser's hand and wrist, given by Mr Stockdale – Constable Stockdale at 261, and Constable Etherington at 471. There are the photos of the Mercury journalist, Mr Eiszele, exhibit P50, tab 5 of your smaller folder, in which I suggest one can see bandages. Of course, Ms Neill-Fraser has said that she had a longstanding problem with her wrist and that she'd just cut herself somehow and doesn't remember how. But the Crown's contention is that the – she was

wearing bandages because she'd injured herself in the course of what she did in killing Mr Chappell and/or disposing of his body. So those are matters that you'll need to consider.

There's evidence of Ms Neill-Fraser's movements and of people's observations on Australia Day and on the night of Australia Day – I'm not going to catalogue all of – all of that, I simply refer to – to all of that evidence. The – the Crown contends, of course, that it was most improbable that Ms Neill-Fraser would have left Mr Chappell on the vessel overnight without a dinghy if he'd been alive, that he would have run her to shore in the dinghy and then gone back to the boat and thus been in a safer position. She gave evidence, or she explained the use of the dinghy - the taking of the dinghy on the basis that Mr Chappell had – had a problem with unsteadiness, at least in rough weather, in getting off the vessel and into the dinghy and it was safer for her to take the dinghy than for him to take the risk of losing his footing getting into or out of the dinghy because of a coordination problem. Well you might like to consider the evidence of Mr Rowe at page 416 to the effect that he seemed quite capable of getting around on the boat and steady on his feet. And of Mr Tim Chappell at 112, that on Boxing Day his father seemed quite capable of boarding the dinghy and getting off the vessel and into the dinghy. At 114, that he seemed – that he was surprised to hear that his father had stayed overnight without a dinghy because his father was very safety conscious; and at 131, of his father making two or three trips to gather people for the trip to Bruny – or no, to gather people, I'm not sure what day that was, but to gather people and operating the dinghy. And on the other hand, on the morning of the 27th when his father was missing, one possibility that occurred to him was that his father had slipped when trying to get into the dinghy and had drowned. Mr Stevenson gave evidence at 1 – page 162, that Mr Chappell wasn't unsteady and that he was quite good at getting around the boat. On the other hand, at 201, he gave evidence that he'd spoken to Ms Neill-Fraser about Mr Chappell's frailty because it concerned him. So those are all aspects of the evidence that you might like to consider.

The – there's – the evidence in the agreed facts, P17, that at 3:08am Ms Neill-Fraser rang star ten hash and that that will give a Telstra subscriber information as to the last unanswered call. She had no explanation for that. If she hadn't been out why did she ring star ten hash at 3:08am, you might like to consider that. The Crown suggests that she had been out; that she'd been out getting rid of Mr Chappell's body, or possibly killing him and getting rid of his body on that – both in the same expedition, and that what

she was doing was seeing whether anyone had tried to ring while she was out to see whether she – anyone had discovered that she didn't answer the phone while she was out.

There's evidence that – to the effect that Ms Neill-Fraser said her relationship with Mr Chappell was over. Mr Stevenson at 1 – page 161, said she told him that their relationship had been strained, that it was over, that it had been for some time, and that she'd like to borrow a hundred thousand dollars and buy him out; that is buy out his share of the boat. Mr Rowe at page 417 gave evidence of a phone call on the 8th of January when, according to him, Ms Neill-Fraser told him that she and Bob had separated. Mr McKinnon gave evidence at page 523 of a conversation in which, according to him, Ms Neill-Fraser said that she and Mr Chappell were not together anymore but that she hadn't told the police that. Originally he said that she told him that on the 29th of January, but at page 524 he agreed that the conversation he'd had with her was on the 4th or 5th of February. Either way, it's a conversation after Mr Chappell had disappeared.

Now Ms Neill-Fraser denies saying these things to these three men; her case is that they've misunderstood or made mistakes as to what she said to them, and that each of them has it wrong. Mr Casson also gave evidence at page 711 that Ms Neill-Fraser said something to him about buying out Bob's share of the yacht but that he now can't remember what – he can't remember what she said.

So there's that evidence, which, if you accept it, might tend to suggest that the relationship was over. There's evidence from which you might conclude that Ms Neill-Fraser had a motive for the killing of Mr Chappell – I'll come back to that. There's – the evidence of – that – of what the Crown says were lies to the police that you can use as indications of guilt – I've said all I need to say about that. And there's the evidence of Mr Triffett.

Now it's a matter of – I'll say a few things about that now. It's a matter for you whether you accept that evidence or not. It's a matter for you to decide – decide what weight, if any, to attach to his evidence. The significance of the evidence is that if – if what he said is true, Ms Neill-Fraser had a plan back in the nineteen nineties for the murder of her brother on a boat and the disposal of his body in the water, weighed down with weights, items from the boat, and the scuttling of the boat. And if it's true, she subsequently discussed with Mr Triffett the application of that

plan to Mr Chappell – the use of that plan for the disposal of Mr Chappell.

Now people sometimes have evil thoughts and don't go ahead with what they have been thinking about. People sometimes make or discuss plans to do evil things but then don't go ahead with them. We don't judge people by their past conduct or their past plans or their past thinking. It would be wrong to use that evidence as evidence of – that – of bad character. It would be wrong to reason that because she discussed these things in the past Ms Neill-Fraser is more likely to have committed a crime in 2009. The significance is – the significance of the evidence and the way in which you may use it is that it's evidence of a plan, it's evidence of a plan that you may conclude bears a similarity to the events that in fact occurred, and the things that in fact happened to Mr Chappell. But, when you're deciding whether to attach any weight at all to Mr Triffett's evidence, you're entitled to take into account the evidence as to his criminal records and the details of it are in the transcript at page 550 and following. The evidence is that in 1995 he committed an assault and he said he was put on a bond. Well, there are various things that can happen to people if – if they're charged with an assault or any other offence and have to be sentenced. The worst is imprisonment. Other alternatives are a suspended sentence of imprisonment; a community service order; a fine; probation; a conviction without other penalty – I'm going down the scale – less serious than a conviction without other penalty are – would be a bond; that is an order that the person is to be of good behaviour and come back for conviction and sentence if called upon. And there's only one more lenient result, and that is the dismissal of the charge; a person can plead guilty or be found guilty of a charge and be told, "In all the circumstances I don't think it appropriate to make any order at all, I dismiss the charge." So for that assault he – he got the second most lenient possible result. He had fifteen to eighteen traffic convictions. Now that doesn't necessarily meant he was taken to court. If you get – if you commit a traffic offence and get an infringement notice from a police officer for speeding or for not wearing your seatbelt or for having a bald tyre or something like that, that counts as a traffic conviction. So he's had fifteen to eighteen traffic convictions over an unknown number of years of driving. We don't know what sort of penalties were imposed; whether he ever lost his licence, but apparently he's – he's somebody who over the years has been caught committing fifteen or eighteen traffic offences. And we know about the police search of his home early in January 2009. We know that he went along to court without a lawyer and pleaded guilty to the charges.

You'll have the complaint with the charges on it amongst the exhibits. He was charged with possession of property believed to have been stolen. He's not charged with stealing it. He's not even charged with knowingly being in possession of stolen property. If a police officer finds a person in possession of property and believes that person – believes that the property is stolen then the person can be charged with being in possession of property believed to have been stolen. It's not necessarily – and that's the appropriate charge when there isn't evidence that the person who had the property believed it to have been stolen, only the policeman who finds it needs to have believed that it was stolen. So he had a router and some stairs that a policeman believed to have been stolen, and he said a bit about the circumstances of – the dodgy circumstances in which he obtained those items when he was in the witness box. He also had possession of ammunition; again, a magistrate imposed the – or the magistrate took the second most lenient possible course; he was not convicted. He – he was dealt with on the basis that he was to be of good behaviour for a period. So those – those are the criminal – those are the offences that you know he's committed in the past.

Now the reason evidence of a witness' prior offences or prior convictions can be introduced is that that evidence may be used by a jury in – for the purpose of evaluating the trustworthiness or otherwise of the evidence that the – that the witness in question has given. So when you're considering whether or not the evidence of Mr Triffett about conversations with Ms Neill-Fraser is true and what weight, if any, to attach to that evidence, you're entitled to take into account the fact that in 1995 he assaulted someone, and the fact that his attitude to the law is such that he's committed fifteen or eighteen traffic offences, and the fact that he had some property that a policeman believed to be stolen, and a large quantity of ammunition that he didn't have a licence for.

Now the – Mr Triffett's version of events is that Ms Neill-Fraser and Mr Chappell were his friends. Ms Neill-Fraser outlined murder plans to him, and he didn't think fit to report her to the police, but that he did think it appropriate to say something in front of Mr Chappell, and the result of this was – was that Ms Neill-Fraser ended the friendship and that the two couples were – weren't friends any longer. Ms Neill-Fraser's version of events is that she – that there were no such murder plans, there were no such conversations, and that she ended the friendship between the two couples because of activities that Mr Triffett was involved in.

Well the difficulty that you've got in assessing that – assessing that evidence is that nothing was put to Mr Triffett on the two occasions that he came to Court and gave evidence about, for example, him having disposed of a body years ago. The – Ms Neill-Fraser said that she was told certain things by – not by Mr Triffett but by Ms Hanson, his partner. There's no evidence that the things said to have been said by Ms Hanson were true. So when you're evaluating the evidence of Mr Triffett you don't know whether the things that have been said about him were true and you don't have the benefit of having heard his reaction – seen and heard his reaction to the things that have subsequently been said about him. It's a matter for you to make your own assessment as to the reliability or otherwise of his evidence.

Of course, one aspect of his evidence is that after having told the police of conversations involving murder plans years previously, he said to the detective he was speaking to, "Will this help me with those charges?" referring to the stolen property and ammunition charges. Well, that's – that's something that when it came to the attention of the Crown had to be disclosed to the defence. I suppose it's worth explaining at this point; the Crown have a duty to ensure that an accused person gets a fair trial. That means that when the Crown have evidence that is helpful to the defence they've got to disclose it. When the Crown have evidence that doesn't fit in very nicely with their – the Crown's theory of what happened, that evidence has got to be disclosed. So evidence as to Mr Triffett asking about the charges had to be disclosed, and for that matter evidence about Meaghan Vass had to be disclosed. The Crown had to bring to Court all the evidence and present it all, even if it didn't fit nicely with the Crown's contentions as to what's happened. So, the Crown disclosed the evidence of Mr Triffett asking about the charges. Well, it's a matter for you to consider what you make of that. You have had an opportunity to see Mr Triffett and assess his level of sophistication. It's a matter for you, but you might like to think about it this way; if his evidence about conversations with Ms Neill-Fraser was true, is he the sort of man that you'd expect to think after going – after contacting the police, 'It would be most improper of me to use this as an opportunity to try to get out of those charges that are pending against me or to use that as an opportunity for some – to try get some sort of leniency', or is he the sort of unsophisticated man or opportunist who – who might say, 'Will this help me with those charges?' or, did he make it all up in the hope that he'd somehow get lenient treatment for possessing a router and a set of stairs and a lot of ammunition?

Those are matters for you to consider. But the Crown contends that his evidence can be relied on and it's open to you rely on it.

If you don't accept his evidence or if you don't think that you can attach any weight to it, then that's, of course, not the end of the Crown case; as with a lot of the pieces of circumstantial evidence, if you don't accept one particular piece you might very well conclude that all of the other evidence that you accept is sufficient to lead to the conclusion of guilt and to exclude any other reasonable possibility consistent with innocence. These are all matters for you.

I think there is one small point while I am on the subject of Mr Triffett that I need to correct; his evidence as to how long after the conversation about killing Mr Chappell it was that he spoke up and, according to him, Ms Neill-Fraser ended the friendship, was that it was not long after. I think it might have been suggested by Mr Gunson yesterday that there was a long interval, but at page 543 he said it was not long after - Mr Triffett said it was not long after.

Well that's all I want to say about Mr Triffett and the use of information about his prior offending to assess his trustworthiness and so forth.

Next I want to talk to you – I want to say a few things about motive. Now, the Crown say that the evidence establishes that Ms Neill-Fraser had a motive or perhaps a number of motives to do away with Mr Chappell. The defence says, Mr Gunson says that once – when you consider the evidence it doesn't provide a motive. Well, first of all, the – if you conclude that the Crown has failed to prove that there is – was a motive, that – that isn't necessarily the end of the case. The prosecution doesn't have to establish a motive. If no motive is proven, that doesn't prevent you from being satisfied beyond reasonable doubt that – that the accused person is guilty of murder.

Now if you conclude that there is a motive, well there are strong motives and there are weak motives. The stronger the motive the more likely it is that you'll give some weight to the existence of the motive. You should look at – you should look at all the circumstances; you should consider whether Ms Neill-Fraser had a motive or a number of motives to murder Mr Chappell. But you – if you conclude that she didn't have – if you conclude that she did have a motive to murder him, you shouldn't jump to the conclusion that she committed the crime of murder. Many people

who have powerful motives to commit crimes never commit those crimes. So if – if Ms Neill-Fraser had a motive, if she said anything that revealed that she had a motive, those facts certainly don't constitute proof of her committing a crime. Evidence that – if you are satisfied that she had a motive then that's just one piece of circumstantial evidence - if you're satisfied that she had no motive, then, of course, that's a factor that you must take into account in her favour. The – I suppose the fundamental point is that the proof of a motive is not indispensable, you can find guilt without being satisfied that there was a motive.

Now the possible motives are, I would suggest, these are matters for you, greed and disagreements over the Four Winds. Now Mr Ellis canvassed yesterday the evidence and the possibilities that because of differences of opinion over the Four Winds and expenditure on it Ms Neill-Fraser had a motive to get rid of Mr Chappell. I've earlier referred to the evidence of Mr Stevenson, Mr Rowe, Mr McKinnon – and Mr McKinnon as to the proposition that the relationship was over, at least in the eyes of Ms Neill-Fraser, something that's disputed, something that you'll need to weigh up.

There's evidence as to financial matters. It's an agreed fact in exhibit P17 that the net worth of Mr Chappell was a figure in excess of 1.3 million dollars. Mr Kimber gave evidence, page 612 of the transcript, that his superannuation entitlements were about eight hundred thousand dollars and that there were also entitlements connected with his employment to a further twenty six or thirty thousand dollars. Mr Kimber gave evidence, at page 612, of the making of a will by Mr Chappell on or about the 20th October 2004 and of the terms of that will. The will didn't become an exhibit but the contents were disclosed in the evidence of Mr Kimber. There was a gift of the house and the car and Mr Chappell's other material possessions to Ms Neill-Fraser together with a provision for the mortgage debt on the house to be paid out so that she got those assets clear of any mortgage debt – free of any mortgage debt. Thereafter she was to get fifty percent of the residue of the estate, Mr Chappell's sister was to get ten percent and the three children between them were to get forty percent, so thirteen and a third percent each. Now – and also the superannuation, so far as Mr Chappell could control the trustees of the super fund, was to be dealt with as if it formed part of the estate. So the arrangement insofar as Mr Chappell could make an arrangement was that the super was to be dealt with as part of the residue of his estate.

Now there's evidence from Kate Chappell that, if it's correct, would tend to suggest that Ms Neill-Fraser knew of the will. She gave evidence at page 209 of a conversation in or about 2004, that is give or take one to two years, where Ms Neill-Fraser told her that Mr Chappell had re-made his will, that he had quite a lot of superannuation and that each of the three siblings was likely to inherit a hundred to two hundred thousand. Now if that's correct you might infer that Ms Neill-Fraser knew the contents of the will. That's a matter for you whether you infer that or not. Also relevant to that question is the evidence that Mr Kimber wrote in his letter of the 6th February:

I presume you have a copy of Robert's will.

He said that at page 618 of the transcript, and there's no evidence that Ms Neill-Fraser got in touch and said, "No I don't, may I have one", or anything of that nature. Again that's not conclusive because Mr Kimber couldn't be positive that he wasn't asked for one or didn't provide one when Ms Neill-Fraser came in and saw him, so it's a matter for you. It's open to you though to infer that Ms Neill-Fraser knew what was in the 2004 will or knew its general effect.

She said in her evidence that she believed she hadn't said to Kate Chappell anything about inheriting a hundred to two hundred thousand but that she had said something about there being hundreds of thousands in super. Now if you remember I pointed out after that evidence was given that that hadn't been put to Kate Chappell. Well it's a complicated trial, it's perhaps quite difficult for counsel to keep track of every piece of evidence that – or every proposition that ought to be put to a prosecution witness, but you're left with this situation, you don't know what Kate Chappell would have said if it had been put to her, "Ms Neill-Fraser didn't really say that to you about a hundred or two hundred thousand, did she", and so you've got that handicap when you evaluate the evidence. There is a rule of practice that if defence counsel are going to lead evidence of something within the knowledge of a prosecution witness then they should put the substance of the evidence that they're going to lead to that prosecution witness, and that rule exists so that the jury can be fully informed when it comes to evaluate the evidence. Anyway that's where we are, you've got that evidence from Kate Chappell, it's a matter for you whether you infer that Ms Neill-Fraser knew of the 2004 will or its contents, but the evidence is that she stood to inherit the house, the car, the material possessions and fifty percent of the residue of Mr Chappell's estate, including the super,

if he died. If their relationship ended in separation the house was his, the car was his, the super was his. As Mr Gunson said yesterday, she could have applied to this Court for an alteration of their property interests under an Act of Parliament called the Relationships Act. We don't have any evidence as to whether she was aware that she had that right or not. The law actually changed on the 1st March last year so that other courts had jurisdiction in relation to couples separating on and after that date, it's the Family Court and the Federal Magistrates Court that have jurisdiction in relation to separations on or after the 1st March 2009, but I don't think I need go into any more details about family law.

It's open to you to conclude that Ms Neill-Fraser had decided that the relationship with Mr Chappell was over and that it was in her financial interests for their relationship to end in death, not separation, and that she therefore had a motive to kill the man. It's open to you to conclude that they disagreed about the Four Winds and the costs of repairs to it and that she therefore had a motive to kill Mr Chappell. It's open to you to conclude that the facts did not provide a sufficient motive for her to kill him. It's open to you to reject the evidence about the relationship being at an end. There's evidence of course from family members, Mrs Sanchez, all sorts of people, that the relationship did not seem to involve any evident hostility, so it's a matter for you what you conclude about the state of the relationship and Ms Neill-Fraser's thinking as to the future of it. So if you conclude that there was a motive you shouldn't jump to a conclusion of guilt, it's just one more piece of circumstantial evidence. If you're not satisfied that there was a motive for murder that's not the end of the case, you should evaluate the other pieces of circumstantial evidence that you accept. If you're satisfied that there was no motive for murder then that's a fact that weighs in Ms Neill-Fraser's favour.

Well I've canvassed some aspects of the circumstantial evidence. It's a matter for you to decide what pieces of circumstantial evidence you accept and, having done that, to decide what inferences you can draw from the established facts and then to consider whether there is a rational theory, a reasonable possibility consistent with innocence. The Crown says you can rule out all other theories, the only reasonable theory, the only reasonable explanation for all of this circumstantial evidence, all of the evidence that you accept is that Ms Neill-Fraser murdered Mr Chappell. The defence say that you simply can't rule out the possibility that someone else did it, that Ms Neill-Fraser is innocent and whatever view you take of the circumstantial

evidence it falls a long way short of excluding the possibility, the reasonable possibility that someone else killed Mr Chappell.

I want to talk next about manslaughter. Now I deal with that in paragraph 8 of the memorandum. If you're satisfied beyond reasonable doubt that Ms Neill-Fraser killed Mr Chappell but you're not satisfied beyond reasonable doubt that she's guilty of murder then you should consider whether you're satisfied beyond reasonable doubt that she's guilty of manslaughter. Now maybe you won't get to a point where you need to consider that question, maybe you'll be satisfied beyond reasonable doubt that she murdered Mr Chappell, maybe you won't be satisfied beyond reasonable doubt that she killed Mr Chappell, but it's a possibility that I have to deal with that you'll be satisfied beyond reasonable doubt that she killed him but not satisfied beyond reasonable doubt that that killing amounted to murder. Now if you get to that situation then you should consider whether you should find her not guilty of murder but guilty of manslaughter.

Now the way in which the Criminal Code deals with murder and manslaughter is that first of all it introduces a concept called culpable homicide, which in plain talk is illegal killing of people. There are two types of culpable homicide, murder and manslaughter. If – so the question that – one way of approaching this is that if it's not murder and it is culpable homicide then it must be manslaughter, and in paragraph 10 I set out the definition of culpable homicide, so of course that includes acts of murder as well as acts amounting to manslaughter.

> *Homicide is culpable*
>
> *(a) when it's caused by an act intended to cause death or bodily harm or which is commonly known to be likely to cause death or bodily harm and which is not justified under the provisions of the Criminal Code, or*
>
> *(b) when it's caused by an unlawful act that's dangerous in the sense that a reasonable person doing that act would realise that he or she is exposing the victim to a risk of really serious injury.*

Well let's look at (a). If Ms Neill-Fraser intended to cause Mr Chappell bodily harm or if she did something that was commonly known to be likely to cause death or bodily harm and it wasn't

done by way of self defence or in some lawful way then that's at least manslaughter. If you're not satisfied beyond reasonable doubt that it's murder, if you're in doubt as to whether it's murder or manslaughter then it's at least manslaughter and the verdict should be not guilty of murder but guilty of manslaughter. And similarly if Ms Neill-Fraser did some dangerous act and a reasonable person in her position should realise that she was exposing Mr Chappell to a risk of really serious injury then that's manslaughter.

Perhaps you might think this way, perhaps you might think, 'I'm satisfied beyond reasonable doubt that she killed him, I'm satisfied beyond reasonable doubt that she disposed of the body, if it had been an accident rather than an unlawful killing she wouldn't have secretly disposed of the body, therefore this was at least manslaughter, but I'm not satisfied beyond reasonable doubt that it was murder', if that's your thinking then that would be a combination of findings that could lead you to find her not guilty of murder but guilty of manslaughter, or if you were in doubt as to whether it was murder or manslaughter then you'd have to give her the benefit of your reasonable doubt in relation to murder, but if you had no reasonable doubt as to the crime at least amounting to manslaughter then it would be appropriate to find her guilty of manslaughter. So what the Criminal Code says is that homicide is culpable, that is it's either murder or manslaughter in the situations that I've covered in paragraph 10. If it's an intentional killing in the circumstances I've outlined in paragraph 2 that's murder, if it's a killing in the circumstances that I've outlined in paragraph 4(a) or paragraph 4(b) then that's murder, otherwise if it's culpable homicide it's manslaughter. Now I don't propose to spend any longer talking about manslaughter, it is a possible verdict that you could reach.

Now I've said a lot about the Crown case, I need to summarise the defence case. I won't repeat everything Mr Gunson said to you yesterday afternoon but it seems to me that the important aspects of the defence case are as follows.

Ms Neill-Fraser says that she did not kill Mr Chappell. She visited the Four Winds after her lunch with Mrs Sanchez on Australia Day. At some point during the afternoon she left Mr Chappell alone on the Four Winds and did not see him alive again, that she left him alone but alive and well on the Four Winds. She took the dinghy, she tied it up at the yacht club and she didn't go back to that vessel that afternoon or that night and that she did return to Marieville Esplanade but didn't go onto the vessel or

even see anything unusual and that the next morning the Four Winds was beginning to sink and Mr Chappell was gone but those things had nothing to do with anything she'd done. She says that someone else was responsible for Mr Chappell's disappearance and that you should accept that. Of course she doesn't have to prove her innocence, it's at least – she says it's at least a reasonable hypothesis that someone else is responsible for Mr Chappell's disappearance and therefore your verdict must be not guilty.

Now Mr Gunson told you yesterday that the critical issues according to the defence case are the existence of a grey dinghy, the grey dinghy seen by Mr Conde, and the finding of Meaghan Vass' DNA on the vessel. Now so far as the dinghy is concerned the defence say that a number of people saw a dinghy that was not the Four Winds' dinghy. Mr Conde gave a description that was inconsistent with the dinghy he saw at 3:55 being the Four Winds' dinghy. His passenger, Mr Clarke, in his statutory declaration which I think is P29, described a dinghy that was a grey dinghy. The witness who signed the statutory declaration, P36, the defence say saw a different dinghy and Mr Lorraine, they say, saw a different dinghy. So the defence say that a different dinghy was seen by those four people that afternoon and that the police didn't adequately investigate the information that they had about a grey dinghy.

Mr Gunson suggested that Mr Sinnitt set out to deliberately deceive Ms Neill-Fraser when he told her of a dinghy having been seen at 3:55 and that he set out to deceive her into thinking that it was the Four Winds' dinghy when he had reason to believe that – or reason to suspect or think that it was not, and the defence contend that the police investigation was inadequate and that if the matter had been properly investigated there might have been other evidence that you – evidence whose nature you can't predict or could only speculate about that would exculpate Ms Neill-Fraser, evidence that would tend to suggest or confirm her innocence.

The hypothesis is someone else was there on a grey dinghy in the afternoon, someone else was responsible for Mr Chappell's disappearance. The person who went there on the grey dinghy, person or persons who went there on the grey dinghy could well be responsible for his disappearance, that can't be ruled out. So that's an aspect of the defence case.

In relation to Meaghan Vass Mr Gunson suggested to you that the only reasonable hypothesis was that Ms Vass and/or associates of

hers were responsible for Mr Chappell's disappearance. Mr Gunson suggested to you that she was on the Four Winds, that that's how her DNA got there, that it's not plausible that it was transferred there on someone's shoe and that she was not a trustworthy witness and that she or someone associated with her, she and/or one or more people associated with her were responsible for Mr Chappell's disappearance.

Mr Gunson suggested that Mr Hughes' evidence – Mr Hughes is the man quietly drinking a coffee between 11:30 and midnight who said he saw a dinghy going out – gave evidence that was inconsistent with the dinghy he saw being the Four Winds' dinghy because he saw someone apparently sitting on a seat or on the floor whereas you can tell from the photos that where a person would sit on the Four Winds' dinghy to operate the outboard is on the side.

Mr Gunson argued that Ms Neill-Fraser had no motive to kill Mr Chappell, that they had an ongoing close relationship and that she was in no financial need and thus there was no motive. He argued that it would have been absurd for her to have killed Mr Chappell on that boat that day or that night because everything she did could have been seen and could have been heard, a lot of people look onto that river by day and by night and the sound travels, especially at night.

Mr Gunson argued that the winching, the theories about winching shouldn't lead you anywhere because it was actually too hard for one person acting alone to move Mr Chappell's body or a weight of that nature once it's up on deck. If the Crown case is correct then – or if the Crown's theories are correct then what Ms Neill-Fraser did was to winch Mr Chappell's body up onto the deck, move it across the deck, get it into the dinghy without capsizing the dinghy and get it out of the dinghy without capsizing the dinghy, and Mr Gunson suggested that that was too improbable, that it was too hard for one person to do all those things alone.

He stressed that Ms Neill-Fraser had assisted the police on the 27th January by pointing out things that were missing, things that were not as she'd left them, and in particular the rope marks on the woodwork.

Mr Gunson stressed that Mr Triffett shouldn't be believed, that if what he said was true it was absurd to think Ms Neill-Fraser would have carried out the very plan that she'd discussed with him in the mid 1990s, but Mr Gunson argued that you should reject Mr

Triffett's evidence as untrue and the evidence of a dishonest man with a criminal record who'd approached the police and tried to gain some advantage in relation to a pending prosecution and he pointed out that so far as Mr Triffett's evidence was concerned you had his word against that of Ms Neill-Fraser.

Mr Gunson spoke to you about the false version of events that Ms Neill-Fraser gave the police about staying home on the night of the 26th. He stressed that she had an innocent explanation that she said she'd stayed home because she hadn't wanted to reveal that her thinking about Claire had led her to go down to Marieville Esplanade in the middle of the night. He conceded that it was silly or naïve of her to have given incorrect information to the police but he stressed that this was an innocent explanation for what she'd said.

In relation to telling the police about going to Bunnings he argued that she'd confused one day with another and that she was in shock, the shock that had resulted from finding that her partner had gone missing and that their yacht had been sabotaged, the shock of learning of facts that suggested that someone had murdered her partner.

Mr Gunson argued that all that the Crown was able to do was to cast suspicion but that sound reasoning couldn't lead to a conclusion that Ms Neill-Fraser was guilty of the crime she's charged with, that she didn't kill Mr Chappell and that all of the evidence was consistent with one or more other people being responsible for Mr Chappell's disappearance, so that your verdict should be not guilty.

Well I just want to review what the evidence was in relation to a couple of aspects of the case. First of all I want to review the evidence about dinghy sightings after about 2:00 p.m. There's no dispute that at about 2:00 p.m. Mr Liaubon assisted Ms Neill-Fraser in getting the dinghy out of the sand at the little beach so that she could go by dinghy out to the Four Winds. There's no dispute that she was on the Four Winds for a time after going out there at about 2:00 p.m. and there was another witness I think on a boat who saw her go out there at about 2:00 p.m., but after 2:00 p.m. there are a number of pieces of evidence about the sighting of a dinghy or dinghies at the Four Winds.

Mr Conde said that he saw a dinghy tied up on the boat and he put that at 3:55 p.m. because he was getting his passengers pack to the yacht club at four. At page 426 he described it as a large dark

grey rubber dinghy. In cross-examination at page 428 he said it was battleship grey. In re-examination, that is when Mr Ellis asked him some final questions at page 431, he looked at the photos of the dinghy in P3, photos 70 and 71, and he said that the dinghy was smaller – the dinghy in those photos was smaller than the one he saw, that the one in the photos looked to be an eight or nine footer but that the dinghy that he saw was larger and it had a lee cloth across its bow and that the Four Winds dinghy's bow was blunter than the pointed bow of the dinghy he saw.

Subsequently Sergeant Conroy gave evidence as to a description that he had been given by Mr Conde of the dinghy he saw. After Mr Conde had given his evidence he'd been re-interviewed by Sergeant Conroy and Sergeant Conroy came here and gave evidence of what Mr Conde had told him, and you'll find that beginning at page 941 of the transcript. Mr Conde apparently said that the dinghy was beamy, that it was so wide that it wouldn't fit into the tender racks in his opinion, that the dinghy he saw was older and faded looking and scuffed and had a more pointed bow than the Four Winds dinghy, that it had a commercial look about it. At page 1024 he estimated that the length of the dinghy he saw was – sorry, page 1024, Sergeant Conroy said that Mr Conde said that the dinghy he saw at 3:55 was no less than ten feet long and that it was ten feet to twelve feet long. However, Sergeant Conroy gave evidence that he measured the Four Winds dinghy and that it's 3.5 metres long and that's about eleven foot six. So Mr Ellis' point is that Mr Conde's evidence as to the length of the Four Winds' dinghy seen in the photographs is wrong and Mr Conde's evidence as to the length of the dinghy he saw is at least in that respect consistent with the dinghy he saw being the Four Winds' dinghy.

Now what do you make of all that? Mr Ellis says that Mr Conde – or suggests that Mr Conde was partly wrong, he was right about the dinghy he saw being rubber and inflatable and being in the range of ten to twelve feet long, but Mr Ellis argues that Mr Conde saw the Four Winds' dinghy and when asked to recollect sometime later gave an inaccurate description of it, that his memory – in other words it's suggested that Mr Conde's memory had become inaccurate. Well that's something you might like to consider. He apparently didn't give a detailed description of the dinghy to the police at the time of the initial investigation, he apparently – he may not have had any occasion to recollect what he saw or the details of the dinghy he saw until he came to court.

Mr Clarke in his statutory declaration, P29, described the dinghy he saw as a small grey coloured tender. He was one of Mr Conde's passengers. Mrs Clarke was another passenger and her statutory declaration is P30, but she doesn't mention the tender.

Then there were two witnesses who – or two people who sighted a dinghy at about five o'clock. One was the witness who signed the statutory declaration, P36, and she described it as a grey inflatable dinghy and as a large medium grey dinghy. And there was Mr Lorraine, he was the man who, out for a walk, went to the end of the jetty at the bottom of Derwent Lane and saw a man on a boat and described that man as an old seafarer. The description of the boat would appear to match the Four Winds, visible from the Derwent Lane jetty, two masts, some woodwork visible. He said at 503 that he saw a very small dinghy, at 510 that it was somewhat dark and very small, at 511 he said he couldn't see an outboard. Sergeant Conroy gave evidence at page 914 that he'd spoken to Mr Lorraine at the time of the initial investigation and that Mr Lorraine had said things to him when he happened to run into him that didn't find their way into Mr Lorraine's statement and that he said to him that the dinghy he saw was whitish cream to yellow.

There was a witness who was in and out of the witness box very quickly called Kim Cartwright. She took the photos of the little dogs on the beach, P53 and the disc P52, and her evidence at page 351 was that those photos were taken in the late afternoon or early evening. And finally there was Mr Hughes, between eleven thirty and midnight and the dinghy he said he saw was a rubber inflatable, he couldn't say what colour, three to five metres long, that tallies with Sergeant Conroy's measurement, and it had an outboard.

So what are the possibilities? Did all of these witnesses see the Four Winds' dinghy and inaccurately describe it, or did all of them see the Four Winds' dinghy and where their descriptions don't tally they just made mistakes? Was there a dinghy not from the Four Winds that tied up to the Four Winds and if so was the visitor that came aboard innocent or someone responsible for the disappearance of Mr Chappell? Was there more than one such visitor? Well these are all matters for you. If Mr Lorraine saw Mr Chappell at about five o'clock his evidence would tend to suggest that Mr Chappell showed no sign of apprehending any danger. Mr Ellis suggests that a number of people who saw the Four Winds' dinghy saw it as grey and he referred to, as one example, Mr Balding's email which is P71, which went out to

members of his club on the 29th January, incidentally not the 27th as someone said yesterday. Mr Balding's email described it as grey. Of course it was Mr Balding, not the police, that asked for people to come forward about the grey – the dinghy described as grey. Sergeant Conroy at one point said that – conceded in cross-examination that someone else could have gone onto the Four Winds. Well of course what he thinks isn't really evidence and it's a question for you if you can reach any conclusion as to whether it was Ms Neill-Fraser or someone else who went to the Four Winds that afternoon. You should consider the whole of the evidence and base your conclusion on the whole of the evidence that you accept.

Now I've been a bit longer than I thought I was going to be. I'm near the end. We've ordered lunch for you. I think what I'd better do is adjourn the Court, let you make your affirmations so that you're free to go away and come back again if that's what you want to do, but we've bought you some lunch and you're welcome to it. The sooner I get you back the sooner we'll be finished this, so would it be convenient if we adjourn 'til 1:45, would that inconvenience anybody? All right, the jury can make their affirmation and the Court will then adjourn 'til 1:45.

<**JURY AFFIRMED OUT**

<THEN FOLLOWED THE LUNCHEON ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Well ladies and gentlemen, next I want to review the evidence relating to Meaghan Vass. She gave evidence, her evidence begins at page 633. She told us that she was born on the 14th October 1993, so in January 2009 she was fifteen years old and apparently homeless. Now you'll remember that she was shown a photo of the Four Winds and asked if she'd ever been on that yacht and she said no. She was asked:

> *At the end of January 2009 or the very beginning of February 2009 do you remember if you went to Constitution Dock area in Hobart?*

She said:

> *I don't remember, no.*

Well that probably doesn't matter much because we had evidence from Detective Sinnitt that he viewed the security footage and saw that nobody had gone on board the boat – or no members of the general public had gone on board the yacht while it was moored there. And she was asked:

> *And at that same time do you remember going to an area in Goodwood, Negara Crescent, where there's some yachts on slips and an industrial estate there?*

She said:

> *No, I don't remember.*

When she was cross-examined by Mr Gunson he asked her about the – those premises and what he said at 636 was:

> *And it would be fair to say that you've never been to the industrial premises that were described a moment ago called Clean Lift Marine at Negara Crescent at Goodwood?*

And she –

> *Yes.*

She said. She agreed with him. In other words that's a bit different from saying, "I don't remember I was there", when it's put to her that she'd never been there. When she was asked:

Would it be fair to say you've never been there?

She said:

Yes.

And Mr Gunson said:

Never been there in your life?.....No.

So she agreed with that. One question that arises in this case is whether that's a reliable answer. Now the evidence was that her DNA was taken later in 2009 after she'd been arrested for something. I don't think we know whether she committed an offence, I think we only know that she got arrested and apparently charged and the DNA taken.

Now later when Detective Sinnitt gave evidence, at about page 778 and following, he gave evidence about his investigations and not – to the effect that he hadn't been able to establish where she spent the night of 26th January and at pages 823 and 824, again when being asked about his investigations, he said that:

Clean Lift had been broken into on several occasions and that there was information that Meaghan Vass had been hanging around the Goodwood area.

The actual evidence about her DNA is in the long report that you've got in relation to the forensic scientists' tests, it's exhibit P61, and the relevant swab is item 20, and what that report reveals is that first of all that it was a swab from area 11. Now Ms McHoul, I think, said that that area was a certain number of metres from the bow of the fifty three foot yacht, but Detective Sinnitt knew where area 11 was he said it's on the deck where the opening is on the starboard side and that in other words it's where someone would get on, onto the deck, if you stepped through the opening boarding the vessel from the opening on the starboard side. Now the description of the area swabbed says:

Luminol positive area 11 (possible drops)

In other words luminol which reacts positively to blood but also gives false positive results did produce a positive reaction in area 11, so maybe there was blood there, maybe the luminol was reacting to something else. The report also says:

> *Negative with HS screening test for blood.*

So the second test that was done in relation to the detection of blood on the deck gave a negative result. The swab taken of the surface said that it was a full DNA profile of a female. At the time of the report it didn't match any individual currently on the Tasmanian DNA database. The individual whose DNA that was was given the name 'Person E', and then the evidence is that months later, following her arrest, the people who look after the database or somehow it came to the attention of the police that the blood – that the DNA of Meaghan Vass matched the DNA from the sample and the statistical figure about the match is one in one hundred million, in other words the chances of another person having matching DNA is one in one hundred million. So it's fair to conclude, I'd suggest, that the DNA found on the deck was the DNA of Meaghan Vass, especially since she gave evidence that she didn't have a twin sister.

Now what Mr Grosser said was that that doesn't necessarily mean she was there, that it is possible for someone's DNA to be transferred from place to place and at page – Mr Ellis asked him at the bottom of page 689:

> *Is it possible that she hasn't been there notwithstanding that a swab has revealed her DNA?.....It's entirely possible. One of the things about DNA it's fairly common in bodily fluids and those sorts of things, blood, saliva, and once that's outside of a person's body or off a person's body there is a potential for that to be transferred in some way. So if, for example, I was to bleed onto a tissue somebody could pick up that tissue and spot it against a wall and then there would be a bloodstain on a wall that I'd never seen but potentially carried my DNA.*

And he was asked about a walkway. He said:

> *It's a possibility. Logically on a walkway you're going to get a lot of people passing over that particular area and potentially the mechanism for that sort of transfer to occur could be on the bottom of someone's shoe or something like that. You could step in something and*

> *transfer DNA that way, that's sort of logically what goes through my head, but again it's speculation, I can't say categorically that that's what's happening in this case.*

Well I'd suggest you think about that. There is evidence that apart – I think it was Detective Sinnitt had counted up the number of people other than forensic scientists who'd been on board the boat – the yacht from the time it was found sinking to the time the swab was taken and he'd counted up twenty one people and these included people getting on board with pumps, policemen, firemen and marine – people in the marine – from marine businesses getting on board with pumps, family members, people at Constitution Dock, people at Goodwood. Now if Meaghan Vass was homeless in the northern suburbs one of the possibilities that I'd suggest you ought to be considering is whether she'd spat – it's not a delicate subject, but had urinated or something like that somewhere where a policeman had trodden and then that officer had walked onto the deck or got into the car and driven to the boat and walked onto the deck, is it possible that that's the mechanism by which her DNA got there and that she wasn't there. Another possibility is that although she said she wasn't there really on the night of the 26th January or sometime thereafter – sorry, on the night of the 26th January or sometimes thereafter she was on that boat, and given – if you accept that she didn't get on at Constitution Dock then you'd need to consider whether it's plausible that she got aboard while it was at its mooring or is it plausible that she got aboard while it was at Goodwood.

Well Mr Grosser was cross-examined about the possibilities of transference and about the relative chances of the DNA coming directly from the girl or the DNA coming indirectly from her and being transferred there, perhaps on someone's shoe. All that he really said was in substance that he couldn't evaluate the possibilities, he couldn't say whether one possibility was more likely than the other. He certainly didn't say that transference - without the girl having got on the boat that transference was not plausible. For example, he said:

> *I can't make any assessment about the possibility of transfer without having some knowledge of where it might have come from, what kind of scenario we're talking about.*

And he said:

> *I think basically what we've got is some suggestion that there's possibility a large amount of DNA that may have originated from Ms Vass present on the boat and as to how that got there I really can't say that any one particular scenario is vastly more likely than another scenario.*

Well he wasn't asked what he considered – how large a quantity he would consider to be a large amount of DNA. Sometimes scientists have different ideas about what's a large amount, especially when the forensic examination of surfaces for DNA sometimes involves minute amounts of DNA being analysed and matched. But – well the evidence is there commencing at 694, if you think you need to you can read it for yourselves from the transcript, but the furthest Mr Grosser went was to say that he wasn't able to say whether transference was more likely or less likely than Meaghan Vass having been present on the boat.

It wasn't put to Meaghan Vass that she or anybody with her had in any way been responsible for the disappearance of Mr Chappell. Now Mr Gunson contends that that's a rational hypothesis, in fact the strongest theory in this case, the most likely explanation of how it came about that Mr Chappell disappeared. The Crown says that when you consider the whole of the evidence you should be satisfied beyond reasonable doubt that the only rational hypothesis is that Ms Neill-Fraser intentionally killed Mr Chappell and that Meaghan Vass had nothing to do with it, that it's improbable or just not plausible that she would in any way have been involved.

Now I've been referring to passages from the transcript and you're going to be given the – what I call the filleted version of the transcript. Now there are a number of things I need to tell you about placing reliance on a transcript. First of all a transcript can be inaccurate. People who type up the transcripts can make mistakes as to what witnesses have said, what counts is what you heard the witness say. There can be mistakes so you should be alert to that. If you think the transcript might be wrong or if you want to listen to what the witness said and hear how the witness said it then you only need to ask and we can arrange for passages from the evidence to be replayed. The Court will have to convene, but we can play parts of the recordings of the proceedings. Another point about the transcript is that if you're looking for what a witness said about a particular point and you find something that might not give you a full picture because the witness might have said something extra or something different later in the evidence, so it's desirable to go through the

whole of a witness' evidence in order not to miss anything that the witness might have added or changed.

Now your verdict – well I explained some time ago, a verdict of guilty of murder must be unanimous. I can only accept a verdict of guilty of murder if all twelve of you agree on it, any other verdict needs to be unanimous if it's brought in within the first six hours after you commence your deliberations. Once we pass the six hour point if ten or eleven of you agree upon a verdict of not guilty or upon a verdict of not guilty or upon a verdict of not guilty of murder but guilty of manslaughter then I'll be able to accept that verdict. That change at the six hour point is the only time that the rules change, it doesn't become more relaxed if you remain here even longer.

When you've reached a verdict let one of the Court staff know. That's all you need to say, that you've reached a verdict, and you'll be put back in the jury room, the Court will reconvene and you'll be brought in and it's the job of the forewoman to announce the verdict. If it's the intermediate verdict, not guilty of murder but guilty of manslaughter, then you need to say all of those words. If you've got a question, if you want me to explain any aspect of the law or if you want assistance as to any aspect of the evidence, if there's anything at all that you want to ask then just let one of the Court staff know, if you're in the jury room sound the buzzer, if you've expanded into the court room knock on one of the external doors and the arrangements will be made for the Court to reconvene and it's the job of the forewoman to ask any questions that need to be asked. If the questions are complicated it's sometimes a good idea to have them written out in case there's any misunderstanding in the jury room about what's going to be asked.

Now what I'll do, I'll send you into the jury room shortly and when the Court's been evacuated you'll be told and you'll be able to move out into it. Before I send you to the jury room there are a couple of things I need to do. First I'll ask counsel, are there any submissions. Mr Ellis?

MR ELLIS SC: Yes, there are a couple of small matters, your Honour.

HIS HONOUR: Yes. Do you want to raise them now or in the absence of the jury?

MR ELLIS SC: I'm in your Honour's hands, I know one of them is not controversial between me and my learned friend.

HIS HONOUR: What's the first one?

MR ELLIS SC: It's concerning the Shepherd direction, your Honour. As you'll recall, I didn't think it called for one and it probably doesn't except with the conjunction – with 'satisfied' being used interchangeably, satisfied beyond reasonable doubt to bring back a verdict and satisfied as to facts. Now if the satisfaction as to facts is not beyond reasonable doubt in the jury's deliberations then I think that might – could only be made plain with a direction.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Endorse that, your Honour.

HIS HONOUR: All right, yes, there's something – all right, well it might have sounded a bit jargonese but I'll explain. I've explained to – I've said to you that when you're evaluating the circumstantial evidence you need to decide what evidence you accept and I've explained also that the ultimate question is whether you're satisfied beyond reasonable doubt of guilt. When you're deciding whether you accept a particular piece of evidence you don't need to consider whether you're satisfied beyond reasonable doubt that that piece of evidence is true, you need only to consider whether you're satisfied that that piece of evidence is true, there is a difference. So, for example, if you're considering whether you accept the evidence of Mr Triffett or not, if you are satisfied that his evidence is true then you may take that into account. You don't need to reach a state where you're satisfied beyond reasonable doubt that his evidence is true before you may take it into account, and that applies to every piece of evidence in this case, every piece of circumstantial evidence. The first question is am I satisfied of the truth or correctness of that evidence, not am I satisfied beyond reasonable doubt of the truth of that piece of evidence.

Next, Mr Ellis?

MR ELLIS SC: Thank you. Next and last, your Honour. Your Honour, as to the pathways to a verdict of murder without an intention to cause death I share your Honour's difficulty in taking a scenario – or exemplifying a scenario, but the facts of course aren't in our hands –

HIS HONOUR: Yes.

MR ELLIS SC: - and your Honour made strong comments, as you're entitled to, about that but you didn't, with respect, leave them with the direction that these are matters for the jury.

HIS HONOUR: Yes. Mr Gunson?

MR GUNSON SC: Well I thought you had, your Honour, but if you think you haven't I'm not going to stand in your Honour's way, I'll suggest –

HIS HONOUR: Well I'll make it clear. In paragraphs 4(a) and 4(b) of my memorandum I outlined a number of circumstances which, if they're proved, would amount to proof of murder beyond a reasonable doubt. I have difficulty seeing how you could reach a conclusion that either the combination of facts listed in 4(a) or the combination of facts listed in 4(b) were the true facts, but it's not up to me, you're the judges of the facts. It doesn't matter if I can't see how you could get there, it's a question for you whether you get – whether you make those findings, whether you reach those conclusions or not. So I'm not saying that you may not find Ms Neill-Fraser guilty of murder on the basis – on some basis other than an intentional killing. It's open to you, if you're satisfied of the combination of facts – if you're satisfied beyond reasonable doubt of the combination of facts that I've listed in 4(a) or of the combination of facts that I've listed in 4(b) then your verdict should be guilty of murder.

MR ELLIS SC: Thank you, your Honour.

HIS HONOUR: Next, Mr Ellis?

MR ELLIS SC: No, no, that was it.

HIS HONOUR: That's all?

MR ELLIS SC: Yes.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: Yes, your Honour, thank you. The first one relates to the comments that your Honour made on the evidence of Mr Conde and your Honour identified all of the evidence that Mr Conde had given as to identification of the dinghy, but your Honour left out in my submission the most important one, which is to be found at 431, and that's when Mr Ellis showed him the photograph and he said:

> *The Quicksilver dinghy in the photograph is not the dinghy I saw at five to four on Australia Day last year.*

And that should have been added to the list.

HIS HONOUR: Well that's – yes, well that's - what Mr Gunson has said about the evidence is accurate, isn't it, Mr Ellis?

MR ELLIS SC: Mr Shapiro has his doubts. What page, please?

HIS HONOUR: 441.

MR ELLIS SC: Thank you.

MR GUNSON SC: I've got it here if you want it.

MR ELLIS SC: 441.

MR GUNSON SC: 431.

MR ELLIS SC: Oh thank you.

MR GUNSON SC: Perhaps I could read the question, it might –

HIS HONOUR: Well no, wait for Mr Ellis to find it.

MR ELLIS SC: Well I don't actually see where he said what my learned friend says he said, or the words he says he said. Have you got 431?

HIS HONOUR: Pass me volume 1 of the transcript, please.

MR ELLIS SC: Well yes, my learned friend's right, but that was preceded by a series of answers that your Honour put, that that one looked like an eight or nine footer and so on.

HIS HONOUR: Well yes, all right, thank you. Well look, ladies and gentlemen, you've heard what Mr Gunson said, what he says about

the evidence is correct, that's a piece of evidence that you should take into account when you're considering the evidence of Mr Conde. Anything else, Mr Gunson?

MR GUNSON SC: Yes, your Honour. Just a matter in relation to Mr Triffett, it relates to the process that was gone through when Mr Triffett was searched on the 7th January. The evidence that came from Mr Triffett was that a large number of items were taken from the property. They were all identified, a number of chainsaws and lots of electrical equipment. He was bailed on the 7th January merely on a charge – and this is P65 – that bailed him in respect of unlawful possession, and he acknowledged in his evidence that he didn't know what it was down to two items until he got the summons, which was not filed until after the 29th January. Your Honour made the comment to the effect, I thought, that he was only on two charges from the 7th January, that's not his belief, and that – your Honour, the relevant page is 831 where the list of items was put to him.

HIS HONOUR: Well Mr Ellis, Mr Gunson's accurate about what he says about the evidence, isn't it?

MR ELLIS SC: Oh I think so, I haven't – your Honour was accurate if you said he was on two charges.

HIS HONOUR: Well it goes back to this, ladies and gentlemen, it's a matter for you how important every piece of evidence is. You've heard what Mr Gunson said, what he said was accurate. When Mr Triffett was bailed on the 7th January he was given a bail document that showed that he'd been arrested and bailed for unlawful possession, it didn't say what items were the subject of the charge, such documents never do, the evidence was that more items had been taken by the police during the search than eventually became the subject of the unlawful possession charge. The evidence was that when the Court proceedings – when the complaint was filed formulating the charges and particularising the property to which the charge related that complaint, which was signed on the 27th January, or dated the 27th January and filed in the Court on the 29th January listed only the grouter and the – the grouter and the stairs. Well Mr Triffett got in touch with the police and I think the evidence was that he made his statement on the 28th January, the complaint was filed in the Court on the 29th January, so it would seem that he came forward before he knew that he was only going to be charged in relation to two items believed to have been stolen, but that that decision had already been made when he came forward. Anything else, Mr Gunson?

MR GUNSON SC: Just one matter. Your Honour addressed the jury on the issue I put to them yesterday, which was the movement of the body from the saloon being winched out, and I made the comment to the jury about how difficult it would be, etcetera, to then move it to a dinghy. Your Honour, in your charge to the jury this morning said words to the effect that the body would come out and then go straight onto the deck. That's not right, if one looks at the photographs it goes into the – would have gone into the cockpit, which I mentioned to the jury yesterday, then it's got to go over the cockpit, which is reasonably large at the side, and down onto the deck, but the photographs make that clear. It's just that I think it ought to be made clear to the jury that there are those intervening steps.

HIS HONOUR: Well Mr Ellis, is that in any way inaccurate?

MR ELLIS SC: I seem to recall that the photographs showed a continuous line from the winch down the rope as to one stage.

HIS HONOUR: Well there are two different categories of photos, -

MR ELLIS SC: Yes.

HIS HONOUR: - there's the police reconstruction, which is really just somebody's attempt to recreate what happened -

MR ELLIS SC: Yes, yes.

HIS HONOUR: - and there's the – but what really counts is the state of the ropes on the morning of the 27th –

MR ELLIS SC: Oh yes, but there's very little evidence as to what the state of those ropes was, I'm afraid.

HIS HONOUR: Well there are the photos, but –

MR ELLIS SC: Yes, but that's after –

HIS HONOUR: Well if the –

MR ELLIS SC: Yeah, I just – given the recreation photos, say 72 in P9, would tend to suggest a continuous winching. I beg to suggest that my learned friend's point, raised for the first time in his closing address after I had addressed, is not necessarily a sound one.

HIS HONOUR: Well look, these are matters for the jury to consider. I don't think – they've heard what Mr Gunson has said, they can look at the photos, they can consider what would have been required to winch the body up and get it onto the deck and so forth. Anything else, Mr Gunson?

MR GUNSON SC: That's it, your Honour.

HIS HONOUR: All right, well next, ladies and gentlemen, because I'm going to have – I'm going to have two keepers sworn in or make affirmations so that if you would like to you can be taken down to the dinghy or up to the roof for some fresh air, so could we do that now, please. Three keepers.

JURY KEEPERS AFFIRMED

HIS HONOUR: All right, well now next, ladies and gentlemen, I'll ask you to go to the jury room and take with you the original indictment, - I think the exhibits could remain there if the jury are coming back out – so just place the indictment with those things. I'll ask you to go to the jury room, we will evacuate the court room and disconnect the computer. That will take some time but when the court room's available for you to spread out there'll be a knock on the door. Please don't be shy or reluctant to ask questions, if there's anything at all that we can do to assist please ask. All right, I ask you to go to the jury room and commence your deliberations.

<THE JURY RETIRED

HIS HONOUR: I'll retire.

<THE COURT ADJOURNED

UPON RESUMPTION;

HIS HONOUR: Bring the jury in. Okay, I understand that (a), the jury would like to ask a question, (b), once that's dealt with the jury would like to call it a night and be taken to their accommodation. The second part's fine by me, what's the question?

JURY FOREPERSON: Actually we don't have a question at this stage.

HIS HONOUR: You don't have a question, all right. Well what I propose is that we'll get you back here at nine o'clock in the morning. What will happen at nine o'clock in the morning may seem a bit silly, you'll be brought into the jury room, brought in here in order for me to tell you to go back into the jury room and resume your deliberations and then when we've evacuated the court room you'll be able to expand into the court room again. That's just how it has to be done.

Okay, now the people that are going to be your keepers overnight are new people, or some or all of them are new people, therefore they have to be sworn in or make affirmations, so we'll deal with that.

KEEPERS SWORN IN

HIS HONOUR: Court will adjourn 'til nine o'clock tomorrow morning.

<THE COURT ADJOURNED

THE COURT RESUMED AT 9:00 A.M. ON WEDNESDAY THE 15TH DAY OF OCTOBER 2010

THE STATE OF TASMANIA

V

SUSAN BLYTH NEILL-FRASER
(Part Heard)

HIS HONOUR: All right, ladies and gentlemen, there's one thing I should apologise for, I should have thought last night about the fact that there are arrangements for the court staff to send messages from the court but there were no such arrangements in place after you left the court, I should have invited you to send messages and I'm sorry that I didn't, I apologise for that. If you want to send messages to anybody during the day about your whereabouts or the fact that you can't make it or anything like that please feel free to write out a message, the name of the person to be phoned and the phone number and, as I said sometime ago, I have to read every message and counsel for both sides have the right to read every message. If I can be of any assistance, if there's any question that you want to ask about the law or the evidence or anything that you need to know then please don't hesitate to tell the court staff and Court will reconvene and the question can be asked. I'll ask you to go to the jury room and resume your deliberations. When the court's been evacuated you'll be given an opportunity to come back in here. Thank you, off to the jury room.

<THE JURY RETIRED

HIS HONOUR: I've been told that after the jury left here last night one juror asked one of the keepers to phone her husband and tell him that she wouldn't be home and that that was done, otherwise there's nothing to report as to anything that happened overnight. Is there anything counsel want to discuss.

MR GUNSON SC: No thank you, your Honour.

MR ELLIS SC: No thank you, your Honour.

HIS HONOUR: All right, I'll retire.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Bring the jury in. I understand there's a question.

JURY FOREPERSON: Yes.

HIS HONOUR: Yes, what would you like to ask?

JURY FOREPERSON: Do I need to stand up?

HIS HONOUR: Well if you'd like to stand up that's probably – that's the proper thing to do, yes.

JURY FOREPERSON: Okay. We'd like you to clarify what is the difference between murder without an intention to cause death and manslaughter and if possible can you give us examples of each of those.

HIS HONOUR: Yes, I can do that. Take a seat. Now what I'll do first of all is find amongst my notes the memorandum. Okay, now – all right, we're talking about really three different categories of unlawful killing. What I mean by that is there's intentional killing, there's two other types of murder and there's manslaughter. Now the two other types of murder are those that I've dealt with in paragraph 4(a) and those that I've dealt with in paragraph 4(b).

Now 4(a) deals with the situation where the killer doesn't intend to cause death but does intend to cause bodily harm and bodily harm means any form of injury to the victim that is more than something trivial or transient or trifling, so more than a slap, something that will actually cause harm. Now the – it's murder if the killer intends to cause bodily harm and the bodily harm that is intended is bodily harm of such a nature that it's likely to cause death in the circumstances. Likely doesn't mean more likely than not, likely means something that could well happen, it's more than a mere possibility, something that could well happen. And it's murder if the type of bodily harm that is intended is likely to cause death in the circumstances and the killer knows that. So let's take the example of hitting a man on the head with a wrench. If an assailant who has no wish to kill the victim hits the victim on the head with a wrench very hard you might think that that's intended – you might be satisfied beyond reasonable doubt that that's intended to cause bodily harm and that that's the sort of bodily harm that's likely to cause death. It's not a matter of what the assailant – it's not just a matter of what the assailant understands, it's a matter of what you think, a matter of what is generally understood. So I think we all know that

if you hit somebody on the head hard enough with a solid object that can cause death. So if an assailant hits someone on the head with a wrench, for example, and if that sort of bodily harm that's intended, a head injury caused with a wrench, is something that could well cause death and the assailant knows that that's the sort of bodily harm that could well cause death then that's murder. For example, if the assailant thinks, 'I don't care whether he dies or not, I'm so angry with him I'm going to hit him on the head with this wrench and that'll really hurt him', then that can amount to murder. That will amount to murder if you're satisfied beyond reasonable doubt of an intention to cause –

1. an intention to cause bodily harm,
2. the objective fact that the intended bodily harm was such that it could well cause death, and
3. that that's something that the person knew, that the assailant knew that that bodily harm could well cause death.

The type of murder without an intention to cause death I deal with in paragraph (2). Now that's a bit different. That's a situation where the person who causes death, the person I'll call the killer, doesn't wish to cause death and doesn't even wish to cause bodily harm. The example that springs to mind is a case that was tried here thirty odd years ago involving a man who, as part of his – as part of sexual activity took pleasure in applying pressure to a sexual partner's neck in order to cause unconsciousness during sex. Now it's a gruesome and nasty example but it's the one that springs to mind. He didn't intend to cause death, he didn't intend to cause bodily harm, he intended to cause unconsciousness, in fact he strangled the woman. Now in that situation, although he had no wish to cause death or to cause bodily harm, first of all the jury came to conclusion that I've got there in (b)(i), his act was likely to cause death. If you apply pressure to somebody's carotid arteries you strangle them, first they become unconscious and if you don't release the pressure they can die. So this man went to gaol for murder and one of the bases upon which the jury could have reached their conclusion was this one, so that can – that was an act that was likely to cause death in the circumstances, death is something that could well happen.

Secondly, this is (b)(ii), the person who caused the death knew or ought to have known that the act or acts were likely to cause death in the circumstances. In that particular case the man who caused the woman's death was a doctor, he'd been taught anatomy, he knew about the carotid artery, and so if he knew that applying pressure where he did was likely to cause death in the circumstances then that was established. Even if he didn't know that, if because of his

medical training he ought to have known that that act was likely to cause death in the circumstances then that was enough. So there are a number of different ways that the jury might have reached its verdict in that case, but one possibility is that they were satisfied beyond reasonable doubt that the man's act in beginning to strangle his partner which was something which, if continued, was likely to cause death in the circumstances and that he either knew or at least ought to have known that his physical act was likely to cause death in the circumstances even though that man had no wish to cause death or bodily harm.

Now it's a bit hard to work out – it's a bit hard to think of another scenario off the top of my head in which someone not intending to cause death or even bodily harm does something that is actually likely to cause death, but it does happen. Perhaps firing a shot dangerously close to somebody, likely to cause death, knew or ought to have known that it was likely to cause death, although the – but I might be wrong about that, that might only amount to manslaughter because it's actually shooting someone that causes the death. So that's an example of that.

So far as manslaughter is concerned the starting point is what I've got in paragraph 10 of the memorandum and there are two sorts of situations dealt with in paragraph 10. 10(a) deals with the situation where the person who causes the death actually intended to cause bodily harm. If there's an act intended to cause death that's murder, if there's an act intended to cause bodily harm or an act commonly known to be likely to cause death but the offender doesn't cause death, or if there's an act that's commonly known to be likely to cause bodily harm then that's enough. So 10(a) applies when there's some sort of hostile intention. 10(b) is concerned with acts that are dangerous in themselves. Someone can do something that's dangerous without intending to cause harm to anybody.

Now if we look at 10(a) there might be, for example, a killing that occurs when someone attacks a victim who is unusually vulnerable. Let's take the example of a person who has a very thin skull and the attacker, not knowing this, hits the victim over the head with something that you wouldn't expect to cause much harm but the person intends to cause some harm. So let's say the man's hit with, I don't know, a carton of eggs or something like that, you wouldn't expect to fracture the skull, but if the – if it's an unlawful act and it's intended to cause bodily harm and by a fluke it causes death then that's culpable homicide. It's not murder, it isn't bodily harm that was likely to cause death in the circumstances, it isn't an act that's likely to cause death in the circumstances, but if it does cause death

it's manslaughter. So a fluke death caused by an illegal act where bodily harm is intended would amount to manslaughter.

10(b) is concerned with dangerous acts. For example, if someone who has no wish to cause anybody any harm decides just for fun to drive at a hundred and sixty kilometres an hour through the streets of a country town and doesn't take a corner and kills a passenger that's manslaughter. It's manslaughter if the act is dangerous in the sense that a reasonable person doing that act would realise that he or she is exposing the victim to a risk of really serious injury.

Now I hope that answers your question, but I'll ask counsel whether there's anything they say I ought to add or correct. Mr Ellis?

MR ELLIS SC: In relation to manslaughter I think your Honour may have unfortunately used the words 'with intention to cause bodily harm' in relation to that, whereas it's not an element in my submission.

HIS HONOUR: No, that's right. It's enough if the act done is commonly known to be likely to cause bodily harm, so someone who without thinking of the consequences, without any specific intention to cause bodily harm, hits someone hard enough for it to be likely to cause bodily harm or hits somebody with an object firm enough to be likely to cause bodily harm that will be sufficient if the victim dies to amount to manslaughter even if the assailant had no intention even to cause bodily harm.

MR ELLIS SC: Now there is a piece of evidence, which I hesitate to mention in case you think I'm making an address to the jury, but which could be relevant and helpful to the jury's consideration of the intention and knowledge of the accused if that's a consideration.

HIS HONOUR: Have you got a page reference?

MR ELLIS SC: Not on me, it's a type of food. I'll go and find the page reference then.

HIS HONOUR: I think that's what we'd better do. Mr Gunson, is there anything –

MR ELLIS SC: You'll remember it when I say it. It might even be quicker to ask the jury to retire for a couple of minutes so I can –

HIS HONOUR: Oh that's what I've got in mind, but I'll just go to Mr Gunson first. Anything – any submissions, Mr Gunson?

MR GUNSON SC: No, your Honour.

HIS HONOUR: Right, well ladies and gentlemen, we'll have a talk about whether there's anything I could or should add. Would you like to go to the jury room.

<THE JURY RETIRED

HIS HONOUR: What's the piece of evidence?

MR ELLIS SC: Where the accused volunteered that she knew of a case where a person had ended up in ICU having been hit by a can – or tin of – no, a jar of Chicken Tonight.

HIS HONOUR: Yes, well I was the trial judge in that case, as you know. Look, there's no suggestion – I won't bring the jury back to talk to them about that. There – what the accused said to the police in her interview of the 4th March was that one of her – or a number of her tenants had been tried after assaulting somebody with a chicken – with a jar of Chicken Tonight, it was actually empty, but –

MR ELLIS SC: A former jar of Chicken Tonight.

HIS HONOUR: Yes, I'd never heard of Chicken Tonight until that trial, but yes, I tried some people named Coles and Smith, I think, in 2004 and I actually – when I heard this in the interview I went to the sentencing database, entered the words 'Chicken Tonight' and got out my comments from six years ago and had them provided to counsel, but no, there's no suggestion that the witness had – that the accused may have done that herself, so I'll leave –

MR ELLIS SC: No, no, it's only as to her awareness of it happening to someone else from such a – on such a thing, it was something volunteered by her.

HIS HONOUR: Everybody knows that if you hit someone on the head with an object you can do harm, I don't think I need to put a gloss on that.

MR ELLIS SC: No, certainly, your Honour, -

HIS HONOUR: Yes, all right.

MR ELLIS SC: - I'm more than happy if the jury was told, rather than come back in, that the discussion wasn't helpful.

HIS HONOUR: We'll evacuate the court room and the jury will be told that I'm not going to add to what I've said and that they may spread out into the court room again.

MR ELLIS SC: If it please.

HIS HONOUR: Yes, all right. Look, while we're here I'll just discuss my thinking about where we go from here. I don't know –

I've got no idea of course how long the jury might be but it seems to me that perhaps if they're still here after their evening meal the time would've come to ask them whether they are still making progress and to give them the option of how long they linger here before they get taken away for the night. Do counsel want to suggest any other timetable?

MR ELLIS SC: No thank you, your Honour.

MR GUNSON SC: No.

HIS HONOUR: Yes, all right, I'll retire.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Bring the jury back.

<JURY RETURN

HIS HONOUR: Right, would you like to ask another question?

JURY FOREPERSON: Yes, your Honour. What are our options if we can't reach a unanimous decision?

HIS HONOUR: Well if – the technical answer – actually while I say this, Ms Fletcher, would you go and get me the volume, 'Australian Criminal Trial Directions'. The starting point is that I may only accept a verdict of guilty of murder if all twelve of you are agreed, also none of you may agree to a verdict that you don't believe to be correct, you've got a duty not to agree to a verdict that you don't believe to be correct. If ten or eleven of you are agreed that the verdict should be not guilty of murder but guilty of manslaughter then I can accept that verdict, but of course you don't get to that unless those ten or eleven are agreed to the first part, that the accused is not guilty of murder, you can't begin to consider whether to bring in a verdict that she's guilty of manslaughter or you can't bring in a verdict that she's guilty of manslaughter unless you are also agreed that she's not guilty of murder, but ten or eleven out of twelve will do if you're agreed that the verdict should be not guilty of murder but guilty of manslaughter. If ten or eleven of you are agreed that the verdict should be not guilty full stop, meaning not guilty of murder and no alternative verdict of guilty of manslaughter then I can accept that verdict, but each of you has sworn an oath or affirmation promising to give a true verdict in accordance with the evidence and therefore you mustn't agree to a verdict that you believe to be incorrect.

Now I'll just ask counsel. Gentlemen, I think I must give the Black direction?

MR GUNSON SC: Yes, your Honour.

HIS HONOUR: Mr Ellis, do you want to say something about that or –

MR ELLIS SC: I don't know whether we're at that point, your Honour. I would've thought – not an exhortation, but something about listening to the views of others and seeking to come to a

verdict would be more appropriate than a Black direction, which goes into consequences a little bit.

HIS HONOUR: Well I'll – Mr Gunson, do you want to discuss this?

MR GUNSON SC: No, I think on reflection perhaps delay a Black direction, your honour.

HIS HONOUR: All right. There's another step that I could go to, but I won't now. If you come to the view that you don't think you're ever going to get anywhere then I'd like to know, if you come to the – if you reach the point where you're thinking that further discussion would be futile I'd like to know, but I don't know that you are at that point so what I think I should say is that you should continue discussing the evidence and trying to reach the point where all of you, or if appropriate, ten or eleven of you can agree upon a verdict that I can accept. You should be prepared to listen to each other's views and consider very carefully the views of other jurors, you should be prepared to reconsider your own views and test your own views by discussing them, test your own thinking by discussing your own thinking with the other jurors, so I don't think at this point I should say anything more than that. Generally further discussion will produce a verdict that is unanimous or has the requisite majority, so I'll ask you to go back and resume your discussions. If you get to the point where you're thinking that you're never going to reach a verdict then I'd like to know. Anything counsel want to say?

MR ELLIS SC: No thank you, your Honour.

HIS HONOUR: Mr Gunson?

MR GUNSON SC: No.

HIS HONOUR: All right, I'll ask you to go back into the jury room and, as before, we'll let you know when you can spread out into the court room. Thank you.

<JURY RETIRE

HIS HONOUR: Anything counsel want to discuss at this point?

MR ELLIS SC: No thank you, your Honour.

HIS HONOUR: No, all right, I'll retire.

<THEN FOLLOWED A SHORT ADJOURNMENT

UPON RESUMPTION;

HIS HONOUR: Bring the jury back. Take the verdict.

THE JURY RETURNED A UNANIMOUS VERDICT OF GUILTY.

HIS HONOUR: Thank you, ladies and gentlemen, for your time over the last four weeks and for your conscientious attention to this case. You've had an enormous responsibility, thank you very much for discharging it so conscientiously. I discharge you from further attendance. If you'd like to take your things and go with the court officer you're now free to go, I certainly won't be dealing with the case any further tonight, so please leave the box and go with the court staff.

Unless counsel need more time I propose to deal with sentencing submissions on Monday. Do either of you ask for more time? Mr Gunson?

MR GUNSON SC: I don't, your Honour.

HIS HONOUR: Now how long do you think it'll take? What I have in mind is that I have the remand list on Monday, I can list the matter for eleven thirty and I can probably give the rest of the day to it if I shift some matters at two fifteen to the other judge.

MR GUNSON SC: What – given it's Monday and today's Friday and very late –

HIS HONOUR: Yes.

MR GUNSON SC: - there's not going to be much chance to speak to Ms Neill-Fraser in the meantime –

HIS HONOUR: Three o'clock?

MR GUNSON SC: I was going to suggest that in the afternoon perhaps with some direction that she be brought across here in the morning at ten o'clock, which would afford us the opportunity to deal – take the final instructions.

HIS HONOUR: Well I – I mean I could adjourn the matter to – well what's convenient for the prison staff? Can you have her here at ten o'clock to see Mr Gunson, is that –

PRISON STAFF: Yes, your Honour.

HIS HONOUR: All right, well I request that. Look, I remand the accused in custody until Monday and I'll – my associate will discuss the timing of the case with counsel. Is that convenient to both counsel?

MR ELLIS SC: Yes, thank you, your Honour.

HIS HONOUR: Yes, all right, thank you. The Court will adjourn until ten o'clock on Monday.

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