

CORONER: Yes, okay.

MR TATE: It looks - it looks to be on the second page of version 9.

CORONER: Okay.

MR TATE: Not 10. We've got an annotation of Dr Mendleson is at 8 a.m. I'd need to confirm with the sergeant who else is scheduled for that time.

CORONER: All right. And is everyone right for Friday at 8 o'clock?

MR ATKINSON: Yes, your Honour.

CORONER: Thank you. And we're going to see what, Craig Haslett and Barton Painter now, are we?

MR TATE: Yes, that's so, your Honour. And what I've asked the detective senior sergeant to do is to firstly extract all of the relevant material that he's received from Oceanic, redo the figures and to provide a report which should be available by 9.30.

CORONER: Thank you.

BARTON JAMES PAINTER, ON AFFIRMATION, EXAMINED:

MR TATE: Barton, are you able to hear me all right?-- Yes. Yes.

All right. My name's John Tate and I'm counsel assisting the Coroner. If at any time you don't hear us or if the questions don't make sense or anything like that, just let us know and I'll re-ask the question, is that all right?-- Yes, thank you.

Now, I think you're over in Western Australia at the moment?-- That's right, I'm in Port Hedland.

All right. Now, what we do with all of our witnesses is, we start by asking them to introduce themselves to us?-- Yep.

Or to the Court. So could I ask you please to let us know your full name?-- Yep. My full name is Barton James Painter.

And, Barton, what - what's your occupation at the moment?-- I'm a professional seaman, mariner.

Right. And I think going back to October of 2003 you were employed as the skipper on the Jaz II?-- That's correct.

And what's your current address?-- My current address is unit 19/31 Wellington Street in Mossman Park in Western Australia.

Thank you. Now, as I understand it after the tragic events that saw Tina passed away, you went in and spoke to police on or about the 26th of October 2003?-- Yes, that's correct. My statement on the 26th.

Yes. Now, do you have a copy of your statement there in front of you?-- Yes, I do.

You've had an opportunity of reading your statement before this afternoon?-- Yes.

Are there any changes that you'd like to make to your statement today, any additions, deletions, alterations?-- No. No.

It's true and correct to the best of your knowledge and belief?-- Yes.

All right. Now, can you just help us understand what your qualifications mean back in October of 2003?-- Okay. I was sailing as a master class 5 MED2 engineer, which means - master class 5 is - can sail as skipper up to 24 metre long vessel, up to 200 miles off the coast around Australia and the engineering side is - let's me say I was the engineer as well. The MED2 is a marine engine driver.

All right?-- Which is the engineering component of the handling of the vessel.

And I think what you tell us in the statement that you provided us is that you were skippering the Yongala - sorry, the Jaz II that day and the ship you were in charge of arrived at the wreck at about 10.10?-- Yes. Just let me - yes, we arrived at Yongala wreck - yep, that's correct. Yep.

At - at 10.10?-- Yes.

Now, would I be right in assuming that these events occurred a long time ago and you're having - or likely to have some trouble remembering the fine detail?-- Yeah. Well, I mean it's - it's - parts of the day are pretty clear in my mind still, but - yeah, of course the finer detail I - I'd obviously be more confident in relying on what I've said in my statement.

All right, that's fine. Now, I think what you tell us - I'll just take you through some of the things. You tell us that the Yongala is a historic ship wreck about 48 nautical miles east of Townsville. And when you arrived, you saw that there was another dive vessel there already?•• That's correct, Spoil Sport was on the dive site.

All right. And we understand that Spoil Sport was on the mooring known as 05 or 905?•• I couldn't confirm the name of the mooring, but it was in - in the southern half of the wreck somewhere towards the stern.

Yes. And we also understand that the Jazz II moored further towards the bow of the wreck at mooring point four or 04 or 904, depending on which set of numbers you look at, does that sound right?•• Yeah, that sounds that correct, yep.

All right. Now, you had on board a trip director that day, Alana McMahon?•• Yep.

Now, can you tell me what was - what were the duties that Alana had and what were the duties that you had at or about the time people were getting ready to go into the water?•• Okay. Well, whilst - whilst the dive team - well, she's a [indistinct] in charge of preparing the divers•••••

Yes?•• ••••and overseeing the - making sure the divers are accommodated for free dive, and then whilst the dive is in progress, she was the designated surface watch on my vessel.

Yes?•• As - as the master of the vessel, I also remain on what as well.

Yes?•• But yeah, she's - she's basically my emergency standby diver and - and - and surface watch.

So•••••?•• But her duties - her duties as a trip director really involves her just be the - the paper work to - to the divers, you know, making sure everyone's paid, have they got certifications, these sorts of things.

Mmm-hmm, all right?•• But I - I couldn't tell you what she did that day.

No, no, I understand that. And what then would your role have been?•• My role?

Is she's looking after the divers, what's the•••••?•• Yeah.

•••••what does the skipper do, just so that we have some understanding?•• Oh okay. Well, as a - a master basically, you - you have ultimate responsibility for all passengers and vessel, so you oversee the whole thing. You - you basically observe the whole thing and you - you're in charge, you•••••

Mmm?•• •••••you're observing the back deck and observing the welfare of the vessel and passengers.

All right. Now, I think you were involved in the process of recording when the divers entered the water?•• Yeah, I've got - I very well could be, yeah, yeah, I was often on the back deck and would help the entry logs for the divers, yeah.

Now, I think the entry logs are headed up "Tropical Diving - Dive Roster", does that•••••?•• Mmm-hmm.

•••••does that ring a bell?•• It does, yeah, yes.

And that is a document that you would've in the - in the normal course, you would sign as would Alana when all of the entries were complete?•• That's correct, yes.

All right. Now, you tell us in paragraph seven of your statement that the divers began to enter the water at 10.25?•• Yes.

On that dive roster, the entry time - and it may even be written in your hand writing, suggests that they were entering at 10.35 with some entering at 10.36?•• Okay, yep.

Now, do you have an independent memory now of whether you were checking off the divers going into the water and recording the time on to the diving roster?•• No, I - I couldn't confirm whether that was me or not.

All right?•• I mean, I - I - I could tell by the hand writing on the document.

Yes. You don't have a copy of it with you in Western Australia?•• No, I don't, sorry, no.

That's all right. Now, in which case, can I ask you this; where did you get the

time 10.25 in terms of your divers entering the water - 10.25?•• At about 10.25 my divers began entering the water; well, I - I mean I have said "At about 10.25" it's certainly not a•••••

All right?•• •••••it's an approximation of time.

That's all right?•• Yeah.

So, if - if we've got entries on the dive roster•••••?•• Yep.

•••••that are suggesting 10.35 and 10.36?•• Yep.

Would - should we be looking to that roster as more accurate time for them entering the water?•• Yes, yeah.

What does entering the water mean, when - when is it that you actually record the time; what physical act occurs?•• It - that is - that is actually when they leave the back of the vessel.

I see?•• Yeah. So when they - when they're no longer on our vessel, that's - that's the point of entry on those dive logs. When they - when they physically leave the back deck of the vessel.

All right. Now, can I take you to paragraph 8 of your statement, can you see there you say "around"•••••?•• Yes.

•••••10.40 a.m. a male diver surfaced obviously in distress?•• Mmm-hmm.

Is that something that you saw yourself or were you told about that?•• No, saw that, I saw him surface.

All right. A couple of questions flow from that; where were you when you saw him surface?•• I was on the back decks of Jazz.

All right?•• I think. Well, I'm pretty sure I was on the back deck.

All right. Do you recall seeing where he surfaced in relation to the Jazz II?•• Yes, it was - it was very close to the - to the vessel. I think in the statement I've - I've said about 10 to 15 metres, I'll just - just let me get you that, yeah, he was - he was about 10 to 15 metres from the stern of my vessel and yeah, I still pretty much agree with that, he was very, very, very close.

Was that in a straight line between the stern of the your vessel and the diver access point?•• I couldn't confirm that, I mean - I mean, if the vessel had swung, you know, due to wind or something it - small boats move around a lot and I couldn't tell you if it was directly in line with the - with the access point or not. But it was sort of in the - in the direction of the wreck.

How would you describe at the Yongala wreck that day the weather conditions and the sea conditions?•• Very good. It was a - it was an excellent day for diving.

What•••••?•• From my memory, I - I think it was very, very calm, very, very, very moderate winds, if - if any. Very little current, it was excellent diving conditions.

Mmm-hmm. Now, can you describe what you saw when this male diver surfaced? In

other words, when he broke water - broke the surface of the water, can you describe in as much detail as you can what you saw?•• Yes, the - the diver surfaced in quite a - quite a hurried fashion, you know, like he sort of like came out of the water with quite a - a force. It wasn't a very calm sort of surfacing. At that point he - as soon as he hit the surface he started to call out in distress, you know, talking about her and that she'd sunk and the dive tender, the Mike Ball tender was in the water and - and very close by and they immediately sort of came over and - and started to assist him.

Yes. Now, you tell us that that occurred around 10.40?•• Yes.

How do you reference that time, is it•••••?•• Well, I•••••

••••• is it that you looked at your watch or•••••?•• No.

••••• is it•••••?•• No. No, I didn't have a watch, I didn't - I didn't look at a watch when I'd say it was 10.40.

All right?•• I - I - I could only be - it - it'd maybe an assumption because my divers had only recently just left and by the time it happened, I mean, events started to move pretty quickly after that•••••

Yes•••••?•• point, so I think I was starting to - my - my active log of the incident, when - when we actually started a log as the incident sort of unravelled, I suppose I would have been working back from that, you know. There would have been sort of - it was very - very close to that point when - when Tina surfaced so it was only sort of minutes later I think, yeah. So, it'd - it'd only be an - an assumption of time. I can't - I can't say that I looked at a watch, I wasn't wearing a watch at the time.

No, that's - that's absolutely fine?•• Yep.

At the time that you saw the diver come out of the water, were you able to see the divers that had gone off the stern of the Jazz II?•• No, they were under - they had - they had left the surface.

All right, thank you?•• Yeah - yeah, I - I'm sure that those divers had left the surface only very recently but they - they were probably ascending.

Ascending did you say?•• Yeah, sorry, yeah - descending, sorry.

Yes. Thank you. Now, can I ask you to go to the next page which is page three?•• Mmm-hmm.

To paragraph 10?•• Yes.

Now, you say two or three minutes later - later than what?•• Later - after - after the male divers surfaced it was a number of minutes later.

All right. Now, again, in your statement you say two or three minutes later, was that by reference to a watch or anything like that or again, are you just doing the best you can to•••••?•• Trying to do the best I could.

.....to indicate how much time had gone by ?.. Yeah, yeah.

All right. Now, whereabouts did they surface? Did you see them?.. Yes, I saw them surface not much further away from the position where he surfaced probably slightly further away and to the right of - sort of to the - how would you describe it, slightly - slightly further away and sort of more out to the - like the port quarter - the port quarter of a vessel.

Is that - by reference to the stern of your boat.....?.. Yes.

Are you telling us that that is on the side that is closer or further away from the wreck?.. It would have been closer to the wreck.

Mmm-hmm, then the side that was furthest away?.. Yes, yes, to the starboard - if you could picture the starboard side would be the side pointing out to the sea and the portside would have been the side pointing towards Australia.

All right. Thank you?.. In the - in the lay of the vessel, yeah.

Yes?.. If that helps.

Yes. So would it have been on the Spoil Sport side or some other side?.. From what I remember the Spoil Sport - her - she was - I was - she - it was looking directly at my stern.

Yes?.. I don't think there would have been a visual side of Spoil Sport looking at it, it would have been that the bridge and foredeck of Spoil Sport looking at - looking at it.

Mmm-hmm. Mmm-hmm, all right. And I take it that the two ships, the Jazz 11 and the Spoil Sport were pointing in the same direction because of the way the - the sea was flowing?.. Yeah, basically, yeah - yeah, give or take, you know.

All right?.. [Indistinct] degrees with each vessel sort of behaves a bit different but yeah, they were both sitting in the same - same direction.

Yes. Now, I think then in your statement you tell us about all of the intense and extended efforts to try and revive Tina?.. Yep.

Did you have any role in securing her dive equipment?.. I believe I asked for the dive equipment to be put aside.

Yes?.. It was isolated, however, I didn't secure it inside Jazz II, it was still on the back deck. But yeah, we took her equipment off on the marlin board.....

Yes.....?.. and then her gear was stowed in the starboard quarter down the stern.....

Yes.....?.. I believe, and - yeah, yeah, yeah. So, apart from that I asked no-one to touch it and it was, as far as I understood, it was left alone.

Yes, all right. And then I think ultimately the word came through that you should return to Townsville?.. That's correct, yes, yes.

And I think you weren't interviewed on the day but all of the passengers who went diving were?.. I believe so, I - I mean I couldn't confirm that but I know a number of passengers went straight through to give a - a statement on the day.

Yes, all right. Now, Barton, is there anything that I haven't asked you about that you feel that the Coroner should know about?•• Not - not really, no, but I mean the only thing I've ever asked for - I mean like one - one thing about this is an opportunity for people to get closer on the incident as well. And I'd just like to - I'd like the family of Tina to know that she was treated with as much dignity as she could have been, you know, when she was on the back deck of our boat. She was treated with the utmost care and looked after and treated with great respect and great dignity and - and she was in the best hands she could have been in•••••

Mr and Mrs•••••?•• after.

•••••Yes, Mr and Mrs Johnson are in Court and those words were a - very, very helpful, thank you. Now, Barton, is there anything else you'd like to say to the Coroner? I just wanted to hop in and let you know that Tina's parents are in Court. Is there anything else you'd like to say?•• No, no, that's - there's - basically my statement has as a - as the best description I can provide to the incident and I - I just think everyone did the best they could on the day, it was a - it was a tremendous effort by everyone on board and it was a really - really professional job. You couldn't have asked for a better team of mariners on the surface.

Mmm. Just on a completely different point, on the Jazz II back in October 2003, did you have a defibrillator?•• No. No, defibrillator's weren't a very common piece of first aid gear in - in the marine circles in those days, no, no.

Are they now?•• I don't know, it's a good question. I know that under an AMSA survey, obviously if you had you move through sort of a greater size vessel, you end up on a - you - you moved out of the state registration and into the AMSA registration which is a part of the international shipping organisation•••••

Mmm•••••?•• and I know that on larger vessels defibrillators are becoming quite common.

Mmm. Mmm•••••?•• I couldn't - I couldn't say if they were mandatory but they are definitely more common.

And just as a matter of interest, what sort of first aid kit and equipment did the Jazz II have back in October 2003?•• It had a - it had quite an extensive first aid kit with a - with a quite extensive OT resuscitation kit as well. Everything you could possibly need to deal with sort of lacerations and you know, cuts and bruises that first aid kits are made for. OT resuscitation gear was all in good order and well kept - that was a - certainly looked after.

Mmm?•• But yeah, pretty standard sort of a dive vessel medical kit, I'd imagine.

All right. Barton, thank you. If you just wait on the line there some other barristers here•••••

CORONER: Mr Walters?

MR TATE: •••••who may wish to ask you some questions•••••

MR TATE: •••••they'll introduce you - they will introduce themselves to you and

then ask you whatever questions they have?•• Okay.

CORONER: Yes, Mr Walters. We'll just pass over the microphone.

MR WALTERS: Mr Painter, my name is Harvey Walters, I'm the barrister representing Tina's parents•••••?•• Yes.

•••••Mr and Mrs Thomas. Look, I - I have no questions for you but they've asked me to express to you their gratitude for everything you did on that day and also your crew and all other persons who assisted to try and resuscitate Tina on that day. They want to thank you very much for it all. That's all I have, thank you?•• Thank you very much, thank you. It certainly helps with the closure for me as well.

CORONER: Mr Zillman?

MR ZILLMAN: I have no questions, thank you, your Honour.

CORONER: Thank you. Thank you very much for your time here today, Mr Painter. We appreciate that you've taken time out of a busy day. At your convenience would you please disconnect the phone?•• Okay, thank you very much.

CORONER: Thank you.

WITNESS EXCUSED

MR TATE: Your Honour, in relation to the order of witnesses, I've just been told that we're having some difficulties getting Mr Haslett. That's because he's on a boat somewhere.

I am able to offer, as the next witness, Kasper Brodersen and I think all my friends should have received a copy of his statement. He's in Switzerland. Does, your Honour, have a copy of that statement?

CORONER: Yes. That was given to me this morning. It was missing from my file. I think it's 115, if memory serves me correctly. I'll just have a look. Yes, it is.