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On 25 March 2015 Andrew I. Urban reported in The Australian “Justice cast to the four winds”



This photograph of Bob Chappell on his yacht was taken a few days before he disappeared. *Source:* News Corp Australia

Sue Neill-Fraser was convicted of murder in 2010, after her partner of 18 years, Bob Chappell, disappeared from their yacht, *Four Winds*, anchored off Sandy Bay in Hobart on Australia Day 2009.

In the afternoon, Neill-Fraser had taken the dinghy ashore while Chappell stayed on board doing maintenance work. At dawn the next morning the yacht was reported sinking slowly, with no sign of Chappell. What appeared to be a clumsy attempt at sabotage had caused the *Four Winds* to take on water. It was a mystery.

Tasmania Police soon fixated on Neill-Fraser, after a shady character with a history of animosity towards the couple accused Neill-Fraser of having invited him to help kill her brother as well as Chappell, some 11 years earlier. Neill-Fraser, who had no criminal record or history of violence, denied it. Not to be deterred, the police stayed focused on Neill-Fraser. In the absence of hard evidence — not to mention the body — they were scratching for circumstantial evidence.

Neill-Fraser was arrested and charged with murder on August 20, 2009, and was denied bail.

Legal academic and author on miscarriages of justice Bob Moles explains how the law stands in circumstantial cases: “In such a case, a person cannot be convicted unless the fact of their guilt is the only rational explanation of the circumstances. The law says that if there is a single rational explanation of the facts, other than the guilt of the accused, then the person cannot be convicted.”

There is the possibility that Chappell was perhaps enticed or forced to leave the yacht by parties unknown, or kidnapped, murdered or held captive — in a yet to be discovered criminal act.

“If there was a reasonable possibility that Mr Chappell just disappeared,” says Moles, “or if he committed suicide or had an accident, or was killed by some other person, then the accused cannot be convicted. Each of those alternative explanations has to be excluded ‘beyond reasonable doubt’; otherwise, any one of them would constitute a reasonable doubt and be inconsistent with a finding of guilt.”

This alone, says Moles, warrants the conviction to be set aside. But there is more, as they say.

The following excerpts from the transcripts show that:

In the absence of the jury, the DPP, Tim Ellis, tells the judge that he “never believed” there was any of Chappell’s blood in the Four Winds dinghy, but talks to the jury about the blood testing anyway.

In the absence of the jury, the DPP admits to the judge that he has no direct evidence to support his speculation that a fire extinguisher was used to weigh down Chappell’s body, but puts it to the jury anyway — and the judge refers to it in his summing up as well as in the sentencing.

In his closing address to the jury, the DPP repeats his speculation about how the murder was committed but admits he doesn’t really know what was the murder weapon he alleges she used.

There are several other perceived problems with the trial, including forensic evidence that was led which is arguably not admissible and the failure to properly investigate the DNA of a stranger that was found on the yacht but not matched until later.

Although at first the police did not see anything on board that would suggest the disappearance was a murder, their investigation eventually focused on Neill-Fraser, a middle-class Hobart woman with two grown-up daughters. She was co-owner of the yacht with Chappell; they had recently taken delivery of it from Queensland.

Within 24 hours of Chappell’s disappearance, a local man, Phillip Triffett, went to the police claiming Neill-Fraser had wanted him to kill her brother Patrick as well as Chappell more than a decade earlier. Neill-Fraser denies this vehemently. (Triffett had not reported these claims to police at the time.)

There was a history of animosity between Triffett and Neill-Fraser; she reported to Bellerive police in 2001 her concerns for her own and Chappell’s safety after a serious falling-out with Triffett.

Neill-Fraser told the court Maria Hanson, then Triffett’s partner, told her “that Phillip 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 (Neill-Fraser’s daughters) Emma and Sarah’.”

The police did not disclose before the trial that Triffett had made an approach to them asking if his evidence against Neill-Fraser would be helpful in his own matters due to go to court.

It only became known during the trial when an anonymous caller alerted defence counsel.

The following are extracts from the trial transcript; legal observers say these are just some of the elements that undermine the safety of the guilty verdict.

EXTRACT 1

*DPP Ellis speculates about the murder weapon/s but does not produce any in court. Prosecution speculation without evidence is generally inadmissible as was stated by the Chief Justice of NSW in the Gordon Wood appeal, but the judge does not intervene.*

CT 1297 DPP ELLIS

It was a wrench, wasn't it, or a similar sort of tool with which you struck Mr Chappell from behind and killed him.

NEILL-FRASER: Mr Ellis, I have never struck anybody, let alone somebody I loved dearly.

EXTRACT 2

*DPP Ellis pursues and embellishes his speculation about the method of the murder and admitting not knowing what the murder weapon in his speculative scenario might have been — but keen to convince the jury there was one.*

CT 1381 DPP ELLIS:

You picked up something and struck him intending to kill him and killing him?

NEILL-FRASER: This is just not true.

CT 1392 DPP ELLIS CLOSING

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 ...

EXTRACT 3

*In the absence of the jury, the DPP tells the judge he has no direct evidence to support his hypothesis that Neill-Fraser weighed down the body with a fire extinguisher before disposing of it in the water.*

P 14 SUBMISSIONS — JURY ABSENT — HIS HONOUR to DPP ELLIS, 21/9/2010

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.

EXTRACT 4

*In his summing up, His Honour the trial judge asserts that Chappell must be dead, ruling out accident, suicide or any other possible explanation. To make such claims without any proper evidential basis is contrary to proper trial practice as was [also] stated by the Chief Justice of NSW in the Gordon Wood appeal, says Moles.*

CT 1507 HIS HONOUR SUMMING UP, 14/10/2010

... 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.

EXTRACT 5

*DPP Ellis talking to the jury about Chappell's blood and DNA found on the dinghy (Chappell's own dinghy, where traces of his DNA would not be unremarkable).*

CT 71 ELLIS — OPENING ADDRESS TO JURY, 21/9/2010

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.

EXTRACT 6

*DPP Ellis explaining to the judge (in the absence of the jury) that he never believed there was any blood in the dinghy.*

CT 1486 HIS HONOUR, COUNSEL, JURY ABSENT — SUBMISSIONS, PRIOR TO SUMMING UP, 13/10/2010

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?

#### EXTRACT 7

*When sentencing Neill-Fraser, His Honour stated that in his view her disposal of the body was an aggravating factor — and increased the sentence he imposed on her — even though no evidence had been put to support any such speculation. He even refers to the fire extinguisher, despite having been told by the DPP that there was no direct evidence of its use, only its absence.*

CT 1565 SENTENCING, HIS HONOUR, 18/10/2010

I am satisfied beyond reasonable doubt that Ms Neill-Fraser used the ropes and winches on the yacht to lift Mr Chappell's body onto the deck; that she manoeuvred his body into the yacht's tender; that she attached an old-fashioned fire extinguisher weighing about 14 kilograms to his body; that she travelled away from the Four Winds in the tender with the body for some distance; and that she dumped the body in deep water somewhere in the river.

As a result of the means that she adopted to kill Mr Chappell and dispose of his body, Ms Neill-Fraser made it necessary for the police to undertake a very time-consuming investigation. It involved a large number of officers making thorough inquiries over a long period. In my view the steps that Ms Neill-Fraser took on the night in question to conceal her crime, and the inconvenience and expense of the investigation that she made necessary, are aggravating factors that I should take into account.

Some may wonder how it is possible that these (and the other errors at trial) went unnoticed by the various lawyers present, two for the defence, two for the prosecution, as well as the judge. It is a pertinent question and one not fully explained by the failure of the appeal that was lodged.

On the fifth and perhaps key ground of the appeal, the Court of Criminal Appeal found that: "Concerning His Honour's use of a wrench in the examples he gave to the jury, it would have been obvious to the jury that examples were being given and that the judge was not endorsing the theory raised by counsel for the Crown.

"No miscarriage of justice has been demonstrated in support of the ground."

But as Bill Rowlings, chief executive of Civil Liberties Australia, points out, "If a judge chooses to give examples of a murder weapon precisely identical to the murder weapon hypothesised by the Crown prosecutor, it is an obvious endorsement of that hypothesis as a clear possibility as a preferential choice over another possibility — the judge did not choose a hammer or frying pan, for example, as a theoretical weapon."

Neill-Fraser's request for leave to appeal (restricted as it is to points of law) to the High Court was refused. The request was based on the fact the prosecution failed to recall Meaghan Vass for fuller cross examination.

Vass was a then homeless 16-year-old whose DNA had been found on the yacht and was only cursorily questioned during the trial, when she claimed she had never been on the boat.

The DPP advised the High Court that her DNA was a secondary or transfer sample, perhaps left there from the bottom of a policeman's shoe. Ellis said: "The core evidence was ... she (the homeless girl) was not on the boat."

But in August last year, a new report from the Victorian Police Forensic Services Department, obtained by Neill-Fraser's current lawyer, Barbara Etter APM, confirms it to be of primary transfer in nature, contradicting the evidence she gave at trial.

Neill-Fraser remains in jail, wheelchair-bound (due to deteriorating mobility symptoms), her only hope resting in new Right of Appeal legislation that is now being finalised. Attorney-General Vanessa Goodwin stated on March 5 that "a draft bill will be released for public consultation" by the end of this month.

Like the South Australian bill passed in 2013, this bill intends to provide a further right to appeal for those who believe their convictions are unsafe. Sue Neill-Fraser is at the front of the queue.

<http://www.theaustralian.com.au/news/features/justice-cast-to-the-four-winds/story-e6frg6z6-1227276945940>