

**IN THE DISTRICT COURT
AT DUNEDIN**

**I TE KŌTI-Ā-ROHE
KI ŌTEPOTI**

**CRI-2021-012-000014
[2022] NZDC 10109**

NEW ZEALAND POLICE
Prosecutor

v

B
Defendant

Hearing: 8 November 2021 and 8 April 2022

Appearances: J Collins for the Prosecutor
M Bott for the Defendant

Judgment: 1 June 2022

RESERVED JUDGMENT OF JUDGE K J PHILLIPS

[1] Mr B faces charges that allege:

- (a) That on 24 October 2020 he, at Kaka Point in the Clutha District, assaulted Wayne Alan Duncan. That charge has a reference CRN 21012000026.
- (b) That on 23 October 2020, at Kaka Point in the Clutha District, he in a public place, namely Willsher Bay, Kaka Point, behaved in an offensive manner. That charge has a reference CRN 21012000025.

[2] After considering the evidence particularly from the prosecution witnesses, I note that 23 October 2020 was a Friday and 24 October 2020, being the next day, a Saturday, that Saturday being the Saturday of Labour Weekend 2020. The evidence I heard relates to actions and activities on the Saturday not on the previous Friday. Accordingly the Date of the Offence section in Charging Document 21012000025 requires amendment to read the 24th Day of October 2020. I amend the Charging Document accordingly.

[3] Mr B pleaded not guilty to both charges. I heard evidence both from the police complainant s, a police sergeant and from the defendant himself over the above hearing days.

[4] In considering the evidence I also noted evidence relating to past differences and difficulties between the defendant and his wife as against his neighbours, a Mr and Mrs Kreger, who own the adjoining property to his on this beach at Kaka Point. It appeared that the conflict between the B and Kreger families had its origins when the Kreger's were developing their property and removed trees from their property which trees had afforded the Mr B's property some degree of privacy. Those neighbour-to-neighbour difficulties were exacerbated by the defendant's naturist beliefs which he maintained by regularly using the beach in front of his and the Kreger property (Willsher Bay) for nude sunbathing and swimming. His pursuit of this form of naturism occasioned further difficulties between the neighbours.

[5] Exhibit B is a document which appears to be a record from the Police NIA system in relation to actions undertaken by Constable Murray Hewitson, a Police Constable from Owaka Police Station, in relation to issues that came to Police attention after complaints by the Kreger family and a Mr Duncan, who was the main witness for the prosecution, and the defendant and his wife. It appears that the defendant's attitude to the involvement of Wayne Duncan in proposed discussions between himself and the Kreger's was one where Mr Duncan's role was not welcomed and that Mr B had made his position clear to the police on that issue.

[6] Constable Hewitson appears to have proposed a solution in relation to the defendant's wish to be able to follow his naturist wishes to sunbathe on the beach and

swim naked in the ocean adjoining the beach. The Constable proposed that Mr B would go to and from his house and the beach wearing either shorts or a towel wrapped around himself. Then the note records:

‘Sunbathe out of sight (as already done).

Leave shorts or towel at high tide mark to put on when exiting water.

No contact with June and Ian Kreger and if any problem to communicate through a third party.

He asked if June could stop taking photographs in return and if he was in the water and their family came onto the beach they would walk along the beach to allow him to get to his clothing or towel to cover up.’

[7] The NIA diary note of Constable Hewitson records that he had emailed this proposal to Mr Wayne Duncan who had replied that if Mr B complied with those requests they would “..be happy” but that “June” (his mother-in-law) should not be restricted in taking photographs. This proposal was put by the Constable to Mr Duncan who had advised that he was not happy with clothing being left at the high tide mark. But when Mr Bott put to Mr Duncan, in cross-examining him on this record as to whether he was happy or “fine with this” on behalf of the family,¹ the response received was:²

A. Fine, if he sunbathes without people seeing him and not exposing him to us.

Under further questioning from myself he agreed with what was contained within the email.

[8] They are background matters that need to be taken into consideration but, in the end, my job is to consider the evidence that I heard and decide whether the legal ingredients or elements of each of the charges has been made out by the Police evidence as proof of such elements beyond any reasonable doubt.

[9] The first prosecution witness was Wayne Alan Duncan. Mr Duncan’s evidence was that he was spending the weekend at his mother and father-in-law’s property, ie: the Kregers, on Labour Weekend 2020. That on the Saturday, at 9.30, he, together

¹ NOE pg 20, line 15.

² NOE, pg 20, line 20.

with his daughter and an eight year old called Hunter Richmond, went to the beach. They walked down the driveway and across the road to where there is a bench seat. His daughter (Shnece Duncan) and Hunter went down the beach to the water's edge. It was high tide at the time. He and his wife were standing at the bench seat and he said that eight to 10 feet away to his left he saw a man absolutely naked with a book and a pair of shorts lying on a towel. He saw the person was naked facing up, not covering himself nor did he seem to be concerned in any way that they were there. He went to where the man was to ask him to cover up or move away from the area. The person (who was Mr B) told Mr Duncan to '.. bugger off' as it had nothing to do with him. Mr Duncan's evidence was that he personally found it offensive that the man was naked; that he found it offensive for himself, for his daughter, for Hunter (an autistic child) and his wife. Mr B told him that it was his right to be there and that Mr Duncan could "bugger off". The evidence was that Mr Duncan then took his phone out of his pocket and Mr B placed a book over the top of his genitals. Mr Duncan went on to say that he found the defendant's nudity offensive and that he had previously spoken to him about being offended by Mr B's naked behaviour. That he had said as much, both orally and in writing, in the past that nudity was found to be offensive. He had received no response from the defendant in the past. His evidence was that the defendant was lying on the beach, naked, six metres away from the bench seat on the beach frontage. He said that when his daughter and the boy, Hunter, came back that the defendant had stood up, naked, put his shorts on, collected his book and walked up the steps. Mr Duncan's evidence was that he was standing beside the bench and he then told the defendant that he had contacted the police which caused, in Mr Duncan's evidence, "...the defendant to turn and come up to him saying 'I look forward to seeing you in Court'". That the defendant then shoved him. He said the defendant used his right hand on his left shoulder in three pushes to Mr Duncan's shoulder. Mr Duncan said that each push was stronger than the previous one and on the third push, because of difficulties he had with his hip, he stumbled but did not fall.

[10] Mr Duncan said that when they returned to walk up the driveway to the Kreger property they walked past where Mr B's balcony overlooks the driveways. That Mr B was standing on his deck/balcony completely naked, holding up his camera, filming them.

[11] Later on the same day he and his daughter went back to the beach. While they were there he said the defendant came out of the water with no clothes on. That it was only when Mr Duncan took his phone out that the defendant covered his genital area. Various photographs of Mr B naked on the beach were produced to the Court as an Exhibit. Mr Duncan said that the defendant then came over “..again into my personal space in a very aggressive manner..” swearing in an obscene way and abusing both himself and then his daughter. He heard the defendant say that it was not against the law to be naked on the beach. The evidence from Mr Duncan was that he had responded to that comment by saying “No, but it is against the law to offend and have offensive behaviour”, the response from the defendant being that he knew that Mr Duncan had spoken to the police and they had told him to “fuck off”.

[12] Mr Duncan, in cross-examination, had put to him a photograph of Mr B's deck and the bushes surrounding it. He accepted under questioning from Mr Bott that on the days in question the naturist activities of the defendant were confined to the area of the high water mark down to the water's edge and swimming and sunbathing. Mr Duncan's evidence in cross-examination was that the issue for them, ie: Mr Duncan and his wider family group, was that the defendant would not cover up when people were present and then when he does he only covers up to a certain extent when a camera comes out. Mr Duncan's evidence was the nakedness was offensive rather than the defendant swimming naked when they could not see anything.

[13] It was put to Mr Duncan that the 'agreement' and the detail of it was accepted by Mr Duncan. Mr Duncan's evidence was that if Mr B was covering himself up when people were there and when going to the water's edge there was no issue on his part.

[14] Mr Bott then asked the following question:³

Q. So is it your evidence that in your mind Mr B's free to be a naturist on the beach immediately outside his property hiding down amongst the dunes, the bush, but that it's offensive if you see it?

A. That's the law.

Q. Well that's your understanding, isn't it?

³ NOE, pg 22, lines 1 to 12.

- A. That's my understanding of the law is that it is not illegal to be naked but it is illegal to have offensive behaviour, knowingly offend people with your nakedness.
- Q. So is it your evidence that Mr B's free to be a naturist so long as no one else sees him?
- A. So long as nobody else is offended by seeing him. I think that's the law, if nobody's offended.

[15] Further on under cross-examination Mr Duncan's evidence was that he had made known what he and his daughter found offensive and that the choice then for the defendant was either to respect what they said or disrespect it by ignoring it.

[16] In relation to the alleged assault Mr Duncan, under cross-examination, accepted that this occurred when the defendant was walking up the steps from the beach and that he had said he had told the defendant he had complained to the police. He described what then occurred when the defendant, acting aggressively, '..rapped' him three times on his shoulder. He said that it was done with some anger and forcefulness.

[17] Shnece Mary Kreger's evidence was that on 24 October 2020 she had been on the beach in front of the Kreger house and had gone to the water. She said she looked back and had seen a man completely naked. She saw her father approach the man and saw the man put a book over his penis. Her evidence was that she then decided to go to talk to the man and to ask him to put on his shorts or leave the beach. The man's response, ie: the defendant's response, to her was that he had a right to be naked on the beach and that she should "fuck off", ie: to somewhere else. Ms Kreger's evidence was that she refused to do so. The defendant then threw shorts over his penis but that was not covering his whole crotch area and she described it as him "..flaunting his genitals..". Various matters were then recorded by her in her evidence about her father's comments. She described the actions of the defendant to the witness Mr Duncan as "..three good shoves". When she was walking back to the Kreger house she saw the defendant on his balcony and again described him as "flaunting his genitalia".

[18] In her evidence, however, when asked what she meant by her use of the term 'flaunting', Ms Kreger said that it was where there was no attempt to hide the genitalia.

Later on the same day she saw the defendant come out of the water, again, walking back showing off his genitalia.

[19] Under cross-examination Ms Kreger accepted that when they arrived on the beach the defendant was somewhere at the high tide mark minding his own business and that he had attempted to cover himself. Her evidence under cross-examination, however, was that she was offended. She disagreed that a person had a right to lay naked on a beach and that he could only do so when nobody else was present. She felt intimidated by observing his genitalia. These were her own subjective views of the matter.

[20] In relation to the issue of the defendant being naked on his balcony I have reference to the photographs forming the defence Exhibit A, particularly the photograph showing the growth of plants over and above the railing on the deck and also photographs taken from the deck on 24 October 2020 showing the growth of the plants. In my view there would have been considerable difficulty for anyone being able to observe the lower part of any naked person from the driveway, (the defendant accepting that he was standing on his balcony, naked).

[21] In respect of the events occurring later on 24 October 2020 the defendant was swimming when Mr Duncan and Ms Kreger went to the beach. The defendant had to get out of the water and go to his clothing. Photographs that are detailed in the photograph booklet (Exhibit 1) show his pathway from the water to his clothing and show that he had, as he approached the photographer, (who I note was Mr Duncan), a hand cupping and covering his genitalia.

[22] The question for me to decide is whether the defendant being naked on the beach, as is detailed in the evidence, was him acting in an offensive manner.

[23] The police position is that the NIA note of the officer is not an agreement and that the evidence given before the Court contradicts there was any such agreement in existence and that, in the alternative, the defendant was not acting in accordance with the terms of any agreement if it did exist. The prosecution accepts the submissions made by the defendant's solicitor as to the various decisions of the courts relating to

the application of the relevant provisions of the New Zealand Bill of Rights Act 1990 (NZBORA) to this charge.

[24] Accordingly, the prosecution does not take issue with the relevant paragraphs of the defence submissions, particularly as it refers to His Honour Heath J's decision in the case of *Pointon v Police*.⁴ I quote from such submissions at paragraph 42, (as they are accepted):

Heath J addressed the issues in *Morse* by reference to the facts of *Pointon* in a way similar to the issues here;

- (a) The complainant's reaction is no more than evidence of how a particular person did react in the situation under consideration. The test is whether someone in her position, being respectful of Mr Pointon's right to express himself by running naked through the woods in the circumstances prevailing at the time, would have been offended by the conduct.
- (b) For behaviour of the type exhibited by Mr Pointon to amount to a criminal offence, it must interfere with the use of a public space by causing such unease as to inhibit recourse (or return) to the place. The resultant level of behaviour is fixed by reference to whether it is of such a character so as to attract the interest of the criminal law and render a person liable to a conviction and a fine not exceeding \$1000.
- (c) The level of the conduct producing the inhibition is determined by comparing what the (hypothetical) reasonable member of the public of the kind who was actually affected by the conduct would tolerate as an exercise of Mr Pointon's freedom of expression (on the one hand) with the complainant's entitlement to enjoy tranquillity and security when using a public amenity (on the other).

[25] Paragraph 43, continuing the submissions of the defence, is also accepted by the police prosecutor. In terms of the view of the complainant in *Pointon*, Heath J found that while her views were relevant, they were not determinative, paragraph [46]:

While the actual reaction of the complainant is relevant, it is not determinative. The issue is whether a reasonable person in her position would have been offended by Mr Pointon's naked body to such an extent that the criminal law is required to respond to the offence caused. Mr Pointon's behaviour was, no doubt, "unwelcome". But, was it really sufficiently grave to inhibit the person from remaining in the park or returning to it, to the point of requiring the intervention of the criminal law? In my view, the answer is "no".

[26] Following on from that recital Heath J then said at paragraph [48]:

⁴ *Pointon v Police* [2012] NZHC 3208.

As to the first of those, the *extent* to which the behaviour inhibits recourse or return to public areas was something that was emphasised by all members of the Supreme Court in *Morse*. The fact that the complainant felt inhibited from returning to the park until such time as Mr Pointon had been apprehended does not, viewed alone, address the balance between exercise of freedom of expression and the right of another to enjoy tranquillity and security in a public place.

And at paragraph [49]:

This point can be illustrated by taking a hypothetical example of two gang members, innocently strolling along the same track, both wearing gang patches. It would be not surprising for a person in the position of the complainant to be concerned and discomforted by their presence, and even to feel threatened. However, on any view, their conduct could not be regarded as “offensive behaviour”. Should the sight of a naked man, in the circumstances in which the complainant found herself, be treated any differently? I think not.

[27] For the prosecution the question that is requiring an answer by the Court is within what set of facts can nude behaviour be sufficiently offensive to require criminal sanction? Emphasis in the Police submission is placed on the second ruling by Heath J which is the authority of *Police v Pointon*.⁵ This *Pointon (ii)* case related to a charge of offensive behaviour following two incidents where the defendant had been observed gardening in the nude at his residential property following prior warnings to desist from the behaviour and where the Court noted that it was a different situation from the first *Pointon* authority as there was a potential for a physical confrontation because a young girl lived in the property. It is noted that Heath J repeated that:

...behaviour that inhibits others from using or returning to a public place will be offensive, if of a sufficient level to justify intervention of the criminal law.

[28] The Judge noted in *Pointon (ii)* Mr Pointon did what he did knowing it would cause offence to some of his neighbours and continued to do so. He did so whilst being able to be seen by passers-by, which included the complainant, and that his behaviour had been described as exhibitionism. The Judge holding in *Pointon (ii)* that reasonable persons having the characteristics of the particular complainant would have been offended to such a degree as to warrant the invocation of the criminal law. From that the prosecution makes the submission that whether the naked behaviour can be

⁵ *Police v Pointon* [2013] NZHC 2352.

considered offensive is highly fact-specific. It is left by the prosecution on the basis that the Court should consider whether *Pointon (i)* or *Pointon (ii)* are sufficiently in line with the facts in the particular case that is before us. With respect, that clearly overlooks who has to prove the elements of the charge beyond reasonable doubt

[29] The supplementary submissions from the defence relate to arguments put forward by Mr Bott on behalf of the defendant, particularly in line with the NIA minute and the mediated resolution. The cross-examination of the witness, Mr Duncan, is detailed in those supplementary submissions. The evidence in relation to the resolution proposed which Mr Duncan finally accepted that the email had been received by him and that he had agreed with that. Mr Duncan's evidence was that he agreed to the defendant swimming and sunbathing naked from the high water mark if no-one could see him who might take offence.

[30] The submission of the defence is that the true test should be whether someone in the position of Mr Duncan, but being respectful of the defendant's right to express himself by being naked at and on the beach, in the established circumstances would have been offended by the conduct. Secondly, that such behaviour by the defendant on the beach must interfere with the use of the beach by causing such unease as to inhibit use of the beach and, thirdly, the Police needed to prove that his conduct was to a level that the inhibition so caused was of a type that a hypothetical reasonable member of the public would not accept it as an exercise of the defendant's freedom of expression when balanced it against the complainant's entitlement to enjoy the public space of the beach.

[31] The point that needs to be made in regard to the evidence is that on the Saturday morning the evidence of Mr Duncan and Ms Kreger was that they simply found the defendant's nakedness to be offensive. However, it then follows from their own evidence that later on the same day they were again exercising their right to be on the beach and, indeed, were at the water's edge, or thereabouts, when the defendant was in the water, swimming naked. It appears from that evidence the 'offensive conduct', as described by the two witnesses, did not actually interfere with their use of the beach "by causing such unease as to inhibit use of the beach".

[32] The submission by the defence is that Mr Duncan (and I add Ms Kreger to the submission) is offended by the sight of the defendant being naked. The defence puts it that the defendant has a right (as more particularly detailed in the agreed resolution as per the NIA document) to be naked within the context of the high water mark and the beach. The defence submits that sunbathing and swimming while naked is not indulging in exhibitionistic activity. I accept that submission. I do not accept that evidence of him being naked is equivalent to him “flaunting” or “parading” his genitalia.

[33] I note with interest the matters detailed by the defence in the supplementary submissions at paragraph 16 in respect of the prosecution of nudity offences and recent European and United Kingdom case law. In the United Kingdom legislation was designed specifically to avoid impinging on the rights and activities of naturists. The defence here make the submission that the witnesses, Mr Duncan and Ms Kreger, feeling offended is not the evidence of a right-sensitive person, tolerant of the defendant’s right to be naked at the beach, being offended by the conduct.

[34] It is submitted that the authority of *Redmond-Bate v Director of Public Prosecutions* is applicable. Mr Bott: quotes from that decision as follows:⁶

Mr Kealy was prepared to accept that blame should not attach for a breach of the peace to a speaker so long as what she said was inoffensive. This will not do. Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having. What speaker’s corner (where the law applies as fully as anywhere else) demonstrates is the tolerance which is both extended by the law to opinion of every kind and expected by the law in the conduct of those who disagree even strongly, with what they hear. From the condemnation of Socrates to the persecution of modern writers and journalists our world has seen too many examples of state control of unofficial ideas.

Overall, Mr Bott submits that the United Kingdom approach and the recommendation from its Crown Prosecution Service is that there be a distinction between nudity which occurs without the element of sexualised exhibitionism (such as flashing for example) with the cases to be considered on their own facts and merits. Mr Bott’s submission

⁶ *Redmond-Bate v Director of Prosecutions* [1999] EWHCA Admin, 733 (23 July 1999).

is that the defendant was engaged in passive behaviour in public on a remote area of a beach directly opposite his property.

[35] I also note the decision of *Ceramalus v Police* where His Honour Tompkins J found that the reasonable person test was not so much an individual reaction to behaviour but rather how a person whose views are representative of the community would react.⁷ Further, it is submitted by Mr Bott that the Court in applying the test should have regard to current community attitudes. Various authorities are discussed in the supplementary submissions in line with the position that in applying an objective test the Court has to have regard to current community attitudes. Behaviour which may have been regarded as offensive in previous times may, because of changing community attitudes, no longer be so regarded.

[36] At paragraph 28 of the supplementary submissions Mr Bott, quoting from Tompkins J in *Ceramalus*, notes that the learned High Court Judge said the real issue was whether the presence of children results in the behaviour becoming offensive in the sense of arousing anger, resentment, disgust or outrage. He noted that Tompkins J had gone on to say:

Certain perhaps more sensitive members of the community would have been deeply offended - aroused to feelings of anger and disgust. Others more permissively inclined would regard the behaviour as perfectly acceptable. But I have reached the conclusion that the average reasonable person would regard the conduct in much the same way as did the teachers present on this occasion and on the previous year, namely as inappropriate, unnecessary, and in bad taste, but not arousing feelings of anger, disgust, or outrage. That reaction, in my opinion falls somewhat short of the reaction required to be established beyond reasonable doubt, in order to amount to offensive behaviour sufficient to justify the interference of the criminal law.

I note that in *Ceramalus* Tompkins J was dealing with a case where a man was walking and then sunbathing nude on a beach where teachers and children were present.

[37] The submission Mr Bott makes, quite rightly, is that that decision of Tompkins J was before the Bill of Rights approach as detailed in the authority of *Lowe v Police* and the Supreme Court authority in *Morse v Police*.⁸

⁷ *Ceramalus v Police* [1991] 7 CRNZ 678.

⁸ *Lowe v Police* HC Wellington CRI-2009-485-000135, 2 March 2010; *Morse v Police* [2012] 2 NZLR 1.

[38] The defence that is put is:

- (a) First, a reasonable right-sensitive person acknowledging the defendant's right to freedom of expression in terms of his naturism, while also tolerant of Mr Duncan's right to use the beach, would not find the behaviour of Mr B to be offensive to the BORA standards as enunciated in *Morse* and *Pointon (i)*.
- (b) Secondly, that the defendant had no intention to break any law as he was doing what he believed he was entitled to in terms of the agreement mediated by local police (the defence submitting that there has been a concession that the defendant was naked on the beach within the areas allowed for within the NIA minute). The defence noting the evidence of Sergeant Parsons at page 73 of the notes of evidence.

[39] I note the submissions that have been made and I consider all the relevant circumstances:

- (a) We have a man, namely the defendant, who is a committed naturist and has been for a considerable period of time.
- (b) We have him lying naked on a relatively isolated beach which is unpopulated, reading a book.
- (c) I take into account that where he is lying is on the beach is directly in front of his own property.
- (d) I note that as he lay there, first on his front then on his back, he is approached by Mr Duncan who, in no uncertain terms, demands that he cover himself up and/or leave the beach. That is followed by a similar approach from Ms Kreger.
- (e) Both Mr Duncan and Mr Kreger had approached the defendant, rather than he having approached them.

- (f) The defendant, in robust terms, refusing to depart the beach.
- (g) Later, in the same afternoon, he (the defendant) goes to the beach and, naked, enters the water. He is swimming when the witnesses, Mr Duncan and Ms Kreger, arrive on the beach, clearly not inhibited by what had occurred at 9 am on the morning of the same day. The defendant, naked in the water, leaves to go to where his clothing is. He, in the terms of the resolution by the Police Constable, has left his clothing at the high water mark. Whilst he is walking back, naked, he is photographed by the witness, Mr Duncan.
- (h) Mr Duncan and Ms Kreger find the fact that he was naked on the beach in their presence as being offensive.
- (i) There is no evidence that I find available to establish that in any way the defendant was acting in an exhibitionist way or flaunting or being provocative in showing off his genitalia.

[40] I take into account s 14 of the New Zealand Bill of Rights Act 1990. I note the discussions that are contained within the Supreme Court's decision in *Morse v Police* from both His Honour McGrath J and Her Honour Elias CJ.⁹

[41] Overall, accepting the evidence that I have before me and the various issues that have been detailed, I see that the decision in *Morse* is authority requiring me to find on the evidence that the defendant's behaviour on the beach in Willsher Bay, Kaka Point, on 24 October 2020, was of a type that tends to provoke or bring about disorder. On the facts that I have heard and the evidence that is before me I consider that the defendant was doing no more than, in the terms of s 14 of the New Zealand Bill of Rights Act 1990, expressing his belief in naturism by his conduct. I find that he being naked on the beach on the day in question on the two separate occasions that are put as the basis for the prosecution could not be said to be proof of him having acted offensively to the criminal standard and the prosecution fails accordingly. That charge will be dismissed.

⁹ *Morse v Police* [2012] 2 NZLR 1.

[42] In relation to the Charge of assault there is no real denial by the defendant that he applied force to the body of the complainant, Mr Duncan. Whether it was three shoves or three taps I accept the evidence of Mr Duncan, as supported by Ms Kreger, that the defendant applied force to Mr Duncan's shoulder causing him on the third such occasion to slightly stumble. I do not accept Mr Bott's submissions that Mr Duncan's memory of the event is 'inherently' unreliable. I do not see provocation as any real defence to the application of force which, as I find from the evidence of Mr Duncan and Ms Kreger, was carried out by the defendant when he was angry and following him leaving the immediate beach area. On the evidence that I accept I do not find that the contact so made was either minor or trifling. I noted, as I listened to the defendant's version of what had occurred at this time, that he was intent on minimising the contact although he did accept the fact of the contact ("...three light taps") and that he was annoyed and frustrated at the time. I find that the charge of assault is proved beyond reasonable doubt.

Judge K J Phillips

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 03/06/2022