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Police v Dunn [2025] NZDC 3011 (21 February 2025)

Last Updated: 26 July 2025

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES),
OCCUPATION(S) OR IDENTIFYING PARTICULARS OF
APPELLANT(S)/RESPONDENT(S)/DEFENDANT(S)/ACQUITTEE(S)
PURSUANT TO [S 200](#) OF THE [CRIMINAL PROCEDURE ACT 2011](#). SEE
PARAGRAPH [36]. SEE
<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html>
IN THE DISTRICT COURT AT INVERCARGILL**

I TE KŌTI-Ā-ROHE KI WAIHŌPAI

CRI-2024-025-001837
[\[2025\] NZDC 3011](#)

NEW ZEALAND POLICE
Prosecutor

v

[KEVIN DUNN]
Defendant

Hearing: 21 February 2025
Appearances: Sergeant R Mills for the Prosecutor S
Williamson for the Defendant
Judgment: 21 February 2025

RESERVED JUDGMENT OF JUDGE M S WILLIAMS

Introduction

[1] The defendant, [Kevin Dunn] (Mr [Dunn]) is a naturist. He has only recently started practising naturalism. I was told that Mr [Dunn] was a member of a Naturist Club in [town deleted], although he lives in Invercargill. He is [in his forties] and has no criminal history.

NEW ZEALAND POLICE v [KEVIN DUNN] [\[2025\] NZDC 3011](#) [19 February 2025]

[2] Mr [Dunn] faces two charges of behaving in an offensive manner. They are fineable only. 1 In essence, Mr [Dunn] was seen on 10 and 12 December 2024 running naked (other than running shoes) along a running track known as Hatch's Hill in Daffodil Bay. The police informed me that a naturist club has been, at least in the past, in the Invercargill area.

[3] Relying on the 2012 case of *Pointon v Police*, 2 Mr [Dunn] seeks for both charges to be dismissed.³ This application is made pre-trial. While some people may find the presence of a naked male in public challenging, the issue is whether, as a matter of law, Mr [Dunn]'s actions were criminal.

[4] The law on applications to dismiss is well settled.⁴ Applications to dismiss pre-trial can present difficulties unless the factual basis on which the case against the defendant is to be based is sufficiently identified. Where it is

so sufficiently identified, the charge may be dismissed only if I do not consider that one or more of the essential elements of the offence could be established on the best view of the evidence proposed to be adduced by the Police, leaving aside only evidence that is *not inherently incredible*.⁵ No issue is taken by the Police for the application to be determined at this stage based on the evidence that has been obtained.

[5] I was informed at the hearing that Mr [Dunn] was aware of *Pointon* at the time he went running.

Background

10 December 2024

[6] At 10.30 am on 10 December 2024 the complainant, an off-duty police officer, was in the area. She saw Mr [Dunn], naked, running towards her. The complainant states:

1 Pursuant to [s 4\(1\)\(a\) Summary Offences Act 1981](#) (the **Act**). Maximum penalty \$1,000.

2 *Pointon v Police* [\[2012\] NZHC 3208](#).

3 Pursuant to s 147 [Criminal Procedure Act 2011](#).

4 *Parris v AG* [\[2003\] NZCA 400](#); [\[2004\] 1 NZLR 519](#); and *R v Flyger* [\[2001\] 2 NZLR 721](#).

5 *Haw Tua Tau v Public Prosecutor* [\[1982\] AC 136 \(PC\)](#) at 151.

[10] I was frightened because I was walking the track on my own and had not seen anybody else in the area since I had arrived at approximately

9.30 am.

[11] I did not know what the male's intentions were towards me, he looked like he could have been capable of anything.

[12] My initial thought when I first saw him running towards me was he is going to sexually assault me. This was because of the fast pace he was running towards me naked.

[13] I felt vulnerable as I am a young female, on my own, in an isolated area.

...

[15] I was still frightened and decided to stand to the side of the track in the grass and look away until he had gone past. I did not want to walk towards him.

[16] I watched him out of the corner of my eye to ensure that he was not coming any closer to me.

...

[18] He ran past me towards the track. Once he had passed me I continued walking towards my car in shock.

[7] Other than another car and driver arriving as the complainant left, there is no mention of anyone else being present.

12 December 2024

[8] At 12.30 pm on 12 December 2024 the second complainant was running in the area when she saw Mr [Dunn] running towards her "*in his own world*", naked. The complainant says "*I felt shocked straight away and a little worried for my safety. I didn't know what his intentions were*". The complainant got her keys out of her pocket and placed them between her fingers.

[9] There is no mention of anyone else being present.

Submissions

[10] The police oppose the application. It relies on a Google screenshot which suggests that the area is popular at these times. In my view, such material cannot be relied upon, especially when both complainants do not report seeing other people present. The police also rely on the fact that the final school day was 6 December 2024. It is noted that Mr [Dunn] told the police that he tried to use less frequented areas. Again, at 10.30 am and 12.30 pm, the evidence establishes that the area was all but empty at the time. There is no evidence that Mr [Dunn] knew the schools had finished for the summer.

[11] Relying on *Morse v Police* the police submit that the reactions of both complainants demonstrate that Mr [Dunn]’s behaviour would disrupt public order.⁶ The police further submit that it can be inferred that the complainants’ reactions would be reasonably representative of most females who would use this track. Relying on *Ceramalus v Police* it is submitted that there was a reasonable expectation that Mr [Dunn]’s behaviour would be observed.⁷ The police emphasise that Mr [Dunn] returned to the area to run a second time after being seen by a female on the first occasion.

[12] It is submitted that both complainants no longer feel safe using the area for exercise. I note that neither mention this in their statements.

Analysis

[13] In *Morse*, the Supreme Court unanimously held [s 4\(1\)\(a\)](#) of the Act is concerned with behaviour which, when objectively assessed, disrupts, or disturbs public order. That approach was consistent with that Court’s earlier decision in *Brooker v Police*, a case involving a charge of disorderly behaviour. ⁸

[14] In *Pointon Health J* synthesised the views expressed in the Supreme Court. Mr Pointon was a naturist. At around 8.30 am on 23 August 2011 he went for a run

⁶ *Morse v Police* [\[2011\] NZSC 45](#); [\[2012\] 2 NZLR 1 \(SC\)](#).

⁷ *Ceramalus v Police* [\[1991\] NZHC 1569](#); [\(1991\) 7 CRNZ 678](#).

⁸ *Brooker v Police* [2007] NZLR 91 (SC).

along tracks in a wooded area within the Oropi Bike Park, about 20 kilometres from Tauranga. Apart from running shoes, he was naked. As he was running he encountered a female complainant walking her dog. She made a complaint to the police. As a result, Mr Pointon was charged with offensive behaviour contrary to [s 4\(1\)\(a\)](#) of the Act.

[15] Adopting the views expressed by Heath J, and as they would be applied 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 [Dunn]’s right to express himself by running naked through the area in the circumstances prevailing at the time, would have been offended by the conduct.

(b) For behaviour of the type exhibited by Mr [Dunn] to amount to a criminal offence, it must interfere with use of a public space by causing such unease as to inhibit recourse (or return) to the place. The relevant level of behaviour is fixed by reference to whether it is of such a character as to attract the interest of the criminal law and render a person liable to a conviction and a fine not exceeding \$1,000.

(c) The level of the conduct producing the inhibition is determined by comparing what the (hypothetical) reasonable member of the public of the kind of who was actually affected by the conduct would tolerate as an exercise of Mr [Dunn]’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).

[16] Justice Heath went on to say:

[45] ... Mr Pointon was running on a weekday at an hour when he might reasonably have expected no school-aged children to be present on the tracks. He ran in a relatively secluded area and had a chance encounter with the complainant. While she expressed “shock” and felt, to some extent, a sense of vulnerability, the evidence suggests

that those emotions were stirred more by the unexpected sight of a naked man running in her vicinity than by any sense of fear or trepidation...That view of the evidence is largely consistent with the District Court Judge’s summary on the first appeal.

[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".

...

[48] ...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.

Footnotes omitted.

[17] Justice Heath found that a reasonable person having the characteristics of the particular complainant would not have been offended to such a degree as to warrant invocation of the criminal law. The complainant's decision not to continue to use or return to the park was her choice, rather than something compelled by Mr Pointon's conduct. 9

[18] In *Police v Bonnar* the defendant faced charges of common assault and behaving in an offensive manner. 10 The defendant was a naturist who regularly used the beach in front of his house for nude sunbathing and swimming, which had caused some tension with his neighbours. Police had proposed Mr Bonnar go to and from his house and the beach wearing either shorts or a towel wrapped around himself, then sunbathe out of sight and leave the shorts or towel at the high tide mark to put on when he exited the water.

9 Above n 2 at [53].

10 *Police v Bonnar* [2022] NZDC 10109.

[19] The charge related to an allegation that the defendant had been seen naked on the beach by a group staying with his neighbours. A witness asked him to cover up or move away from the area, but the defendant told him to "bugger off". The witness claimed he had found the defendant's actions offensive, as had the rest of his group. Another witness gave evidence that she had seen the defendant completely naked. When she asked the man to put some shorts on, he told her he had a right to be naked on the beach and that she should "fuck off". He then threw shorts over his penis, although they did not cover his whole crotch area. The witnesses described it as him "flaunting his genitals", which she clarified meant he had made no attempt to hide his genitalia.

[20] Judge Phillips held (I have redacted the names of the witnesses):

[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 [redacted]'s right to use the beach, would not find the behaviour of Mr Bonnar to be offensive to the BORA standards as enunciated in *Morse* and *Pointon*.

(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 had been a concession that the defendant was naked on the beach within the areas allowed for within the NIA minute)...

[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 ... 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 [redacted] 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 [redacted].

(e) Both Mr [redacted] and [Ms] [redacted] had approached the defendant, rather than he having approached them.

(f) The defendant, in robust terms, refuses 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 [redacted] and Ms [redacted], 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 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 [redacted].

(h) Mr [redacted] and Ms [redacted] 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 [h]is Honour McGrath J and [h]er Honour Elias CJ.

[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.

[21] In the 2013 *Pointon v Police* case the defendant unsuccessfully appealed against two charges of offensive behaviour. On two occasions, Mr Pointon had been seen by his neighbours gardening and mowing lawns in the nude at his (then) residential property. The area in which the events occurred was within a community containing two schools and one place of worship. One of the witnesses, who lived in close proximity to Mr Pointon, had two four-year-old twins who had seen the

defendant engaged in this activity while naked. On appeal, Heath J observed that the circumstances were very different from those involving naked jogging. ¹¹

[22] In *Lowe v Police* the defendant was convicted of offensive behaviour under s 4(1)(a) of the Act.¹² The defendant was a committed cyclist and naturist who competed naked in naturist sports events and some ordinary events. He provided evidence that he had been doing so for many years without any complaint. On 15 March 2009, which happened to be "World Nude Bike Day", Mr Lowe was training on his bike in the nude. He was seen by a woman who was driving along the road on which he was cycling, and she complained to the police. His appeal was upheld.

Clifford J note the very different circumstances to *Ceramalus*.¹³

[23] In *Ceramalus*, on 12 December 1990 three teachers took 105 children from a primary school to a beach. The age of the children ranged from 8 to 11. Upon reaching the beach at about 10 am, wood was collected, and twelve fires built between the high and low tide marks towards the northern end of the beach. Eight or nine children gathered around each fire to cook food they had brought with them. At about 11 am the appellant walked from the northern end of the beach. He was naked. He carried his towel under his arm. He walked past the children, then turned, returning in a northerly direction to a position about halfway along the beach. He laid out his towel and lay upon it, face up. Occasionally he rested on his elbows to see what the school group was doing. He was approximately 10 metres from the nearest fire, about eight or nine metres from the children around the fire.

[24] Tompkins J held:

I have little doubt that in this day and age and in that place — a place where it was not uncommon for persons to sunbathe in the nude — adults on the beach would not be offended, in the more restricted meaning of that word as used in the section, by the appearance of the appellant, naked. The real issue in this case is whether the presence of the children results in the behaviour becoming offensive in the sense of arousing anger, resentment, disgust, or outrage. It is no easy task to determine what, in all of these circumstances would have been in the mind of the reasonable person. Certain perhaps more sensitive members of the community would have been deeply offended —

¹¹ *Pointon v Police* [2013] NZHC 2353 at [49].

¹² *Lowe v Police* HC Wellington CRI-2009-484-135, 2 March 2010.

¹³ Above at n 6.

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.

[25] The act of running naked by those who are exercising their freedom of expression while practising naturism, of its own, may not amount to a criminal offence.

[26] Even if Mr [Dunn]’s activities occurred during the school holidays, it does not appear that he was aware children would be in the area (in contrast to the later *Pointon* case, where the defendant practiced naturism in his garden knowing that his neighbours had children). Mr [Dunn]’s situation impresses as more comparable to the earlier *Pointon* case, where the charge was dismissed. In any event, it is clear that only the complainants were present at the time and so it cannot be said that the area was well frequented.

[27] While the complainants were clearly shocked in seeing Mr [Dunn], the test is whether someone in their position, being respectful of Mr [Dunn]’s right to express himself by running naked through the area in the circumstances prevailing at the time, would have been offended by the conduct. In my view, the answer is no.

[28] The Police say that neither complainant wants to return to the area. This cannot be viewed alone. There must be a balance between exercise of freedom of expression and the right of another to enjoy tranquillity and security in a public place. I agree, that in the particular circumstances of this case, the balance favours Mr [Dunn]. This is consistent with *Pointon* and *Bonnar*. I accept that Mr [Dunn]’s behaviour was not sufficiently grave to inhibit the person from remaining in the park to the point of requiring the intervention of the criminal law.

Result

[29] Both charges are dismissed.

Name suppression

[30] Mr [Dunn] has enjoyed interim name suppression. The law in this area is well settled. It was set out in detail in a recent Supreme Court case of *M v R* and *LF v R*. 14

[31] [Section 200](#) of the [Criminal Procedure Act 2011](#) deals with the suppression of the identity of a defendant. Under [s 200\(1\)](#), the Court may make an order for name suppression. Under [s 200\(2\)](#), an order may be made only if the Court is satisfied that publication would be likely to have one of the effects listed in that section. It involves a two-stage inquiry.

[32] In the first stage, the Court must consider whether one of the threshold requirements in [s 200\(2\)](#) has been established. These are often referred to as a threshold or jurisdictional determination. It is clear from the wording of that section that an order for suppression may not be made unless the Court is satisfied that publication is likely to have one of the effects set out in that subsection.

[33] If the Court is satisfied a threshold requirement has been made, the second stage of the inquiry involves consideration of whether the Court should make an order for name suppression. Name suppression does not automatically follow from the establishment of a threshold requirement.

[34] At that second stage, the Court must weigh the competing interests of the applicant and the public, taking into account the charges have been dismissed, the seriousness of the offending, any views of victims and, of course, the public interest in knowing an offender’s name.

[35] The principle of open justice is fundamental to our common law system. It has been described as an almost priceless inheritance. The principle’s underlining rational is that transparency of Court proceedings maintains public confidence in the administration of justice. It means not only should judicial proceedings be held in open court accessible by the public, but also that media representatives should be free to provide a fair and accurate report of what occurs in court. Very few members of the

14 *M* (SC 13/2023) v *R* [\[2024\] NZSC 29](#).

public will be able to attend particular hearings, and the media carry an important responsibility in that respect.

[36] Open justice, accordingly, is the starting point in decisions about name suppression.

[37] Hardship has been treated in the authorities as being the severe suffering or privation. The use of the word “undue” in [s 200\(2\)\(c\)](#) suggests something more than simple hardship is necessary. The word “extreme”, which applies here, indicates something additional again. Of course, the threshold of extreme hardship is not to be considered in a vacuum. It is a contextual exercise that will involve some comparison between the hardship contended for and the usual consequences of publication.

[38] In my view, Mr [Dunn] would suffer extreme hardship if his name was published. There is no public interest in publishing Mr [Dunn]'s name in relation to these proceedings. His name will be permanently suppressed.

Judge MS Williams

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 21/02/2025

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