

NZ CRIMINAL LAW

CASE NOTES



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Sample

***Brooker v Police* [2007] NZSC 30**

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Court details: Supreme Court of New Zealand

Facts:

- On Tuesday 18 March 2003 at about 9:20am Allistair Brooker went to the home of a Greymouth Police Constable Fiona Croft, believing that he had been the subject of harassment over a number of years by the police, and by Constable Croft in particular.
- Brooker had decided to stage a protest, and having tried to contact her at work, he went to her home, knowing that she had been on night duty and was likely to be there.
- He parked his car on the grass outside her front fence, walked onto the property and knocked on the front door.
- After about three minutes the constable came to the door.
- He suggested to her that she did not like being woken up, and she told him to “piss off”.
- He withdrew to the street and began his protest outside her front fence.
- He had with him a square metre placard on which was written ‘No more bogus warrants’ which he lent against the fence.
- He then began playing his guitar and singing in what the trial Judge described as a “relatively’ loud voice.
- Constable Croft rang the police station, gave evidence that she was intimidated by the protest and within minutes police officers had arrived at the house.
- The senior police officer told Brooker he had one minute to leave or “he would be arrested for intimidation”.
- Brooker put his guitar and placard in his car, parked it on the opposite side of the road, and returned to the inspector with his hands held out in the form of an invitation to the inspector to arrest and handcuff him.
- He was duly arrested for intimidation.

Procedural history:

- In the District Court, the judge considered that there was insufficient evidence of intent to intimidate and the charge was amended to one of behaving in a disorderly manner contrary to s 4(1)(a) of the *Summary Offences Act 1981*.
- On that count of disorderly behaviour Brooker was found guilty and his appeal to the High Court was dismissed.

- Brookers appeal to the Court of Appeal was also dismissed. Brooker appealed to the Supreme Court.

Issue:

- This case concerned the meaning of "behaves in [a] disorderly manner" under section 4(1)(a) of the *Summary Offences Act 1981* in light of s 14 of the *New Zealand Bill of Rights Act 1990* which protects freedom of expression.

Reasoning / Decision (Commentary):

- The majority of the Supreme Court overturned the previous test for disorderly behaviour which found the offence proven where behaviour was so annoying that right-thinking members of the public could not be expected to tolerate it.
- The Court set aside Allistair Brooker's conviction for disorderly behaviour.
- Justices McGrath and Thomas in the minority argued that the right to freedom of expression should be balanced against a citizen's right to privacy in their own home.

Ratio:

- The judgment of Chief Justice Elias traversed the legal history of section 4(1)(a) of the *Summary Offences Act* and the approach of other Commonwealth jurisdictions to similar crimes, before observing,

"It is clear that behaviour which is disorderly under s 4 need not be likely to lead to violence because behaviour likely to cause that effect is covered by s 3. What is essential however is that the behaviour is disruptive of public order and is not simply a private affront or annoyance to a person present or to whom the behaviour is directed."
- On that assessment Elias CJ held that Brooker's protest was not disorderly.
- Justice Blanchard also held that Brooker's behaviour was not disorderly noting:

"In my view Mr Brooker's question [to a police officer outside Croft's house] "Is it disorderly yet?" was in point. My answer would be in the negative."

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