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

IN THE DISTRICT COURT
AT AUCKLAND

CRI-2017-004-006177
[2018] NZDC 3733

THE QUEEN

v

[DYLAN MARKS]

Date of Ruling:	27 February 2018
Appearances:	A Luck for the Crown A Speed for the Defendant
Judgment:	27 February 2018

RULING 1 OF JUDGE K J GLUBB
Name Suppression

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[1] [Dylan Marks] faces a single charge of, with reckless disregard, injured the named complainant. It is offending that dates from [date deleted] June 2017. He has elected trial by jury and he is scheduled for a callover on 10 April 2018. Today, he brings an application for continuation of interim name suppression. It is opposed.

[2] What is alleged is that during a social session at the defendant's address, he lost his temper and either threw a table or a bottle and, thereby, injured the complainant. In consequence, the complainant sustained a gash to her face which required some 10 stitches. He denies the allegation.

[3] What I recognise is that in bringing this application pursuant to s 200(2) Criminal Procedure Act 2011, this Court may make an order under subs (1)

only if the Court is satisfied that the publication would be likely to cause extreme hardship to the person charged with or convicted of or acquitted of the offence or any person connected with that person. What I also note is that subs (3) notes that the fact the defendant is well known does not of itself mean that the publication of his or her name will result in extreme hardship for the purpose of subs (2)(a).

[4] The grounds advanced by the defence are that publication will cause extreme hardship to the defendant, his wife and children. Counsel's characterisation is of a "catastrophic effect" on him in financial terms but also in the effect on the wife and children. Counsel makes the submission that the defendant has resigned his position held up until very recently at a [industry deleted] company and he was, in effect, working out his notice through [date deleted] 2018. He is well known in that industry. Thereafter, he will be looking for work. I am advised that he has an interview very shortly for another position and, in consequence of that, defence submits that were a potential employer to gain knowledge of the fact of these charges and the circumstances, they might well quietly shelve his application or it might, in fact, prejudge the situation against him.

[5] As a secondary aspect, counsel submits that he is also studying to become a real estate agent and is concerned that publication may impact there too, although that is not advanced as a primary issue. The essential submission from defence is that there is a concern that publication would make him unemployable but, additionally, in the written submissions, it is submitted that it might also cause difficulties in traveling to Australia. This counsel submits would have a huge financial impact, where he would struggle meet his financial commitments.

[6] The other point that is raised is that his wife is employed seemingly at [details deleted], and I apprehend from the Crown's submissions as a receptionist there, and the concern is that publication of the defendant's name may impact on her as well. The final point that is advanced by defence is that if this becomes publicly known, his young children, who attend a local public primary school in the general area of where they live, may be forced to move schools.

[7] The defence also in submissions places some weight on the strength of the case which they characterise as being weak.

[8] The defence position is fundamentally that economic issues faced by the defendant, should this be published, make out the test for extreme hardship clearly, and even on the second stage of the test, when weighing the competing interests, he should be entitled to continued name suppression.

[9] The Crown opposes. They submit that whilst there might well be consequences, these are not out of the ordinary and certainly not sufficient to meet the undue hardship test as enunciated in the decision of *Robertson v Police*[1]. There, the Court noted that hardship means severe suffering and privation, "Extreme," meaning something beyond the ordinary associated consequences.

[10] In this case, I recognise as noted in *R v Liddell*[2] that the starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings and the right of the media to report the latter fairly and accurately as surrogates of the public.

[11] In this case, there has been no publicity, nor for that matter does there appear to be any media interest. The concern articulated by defence in submissions is that the complainant is talking to other people and that it may become known. Defence also acknowledges in submissions that there is no risk to fair trial issues associated with publication. The issue for this Court is whether the consequences, real or potential, are sufficient to make out the test. I recognise, as was held in *Proctor v R,*[3] that this Court must guard against creating a special echelon on privileged persons in the community who will gain suppression over the less fortunate.

[12] In this case, the defendant has chosen to leave his job. He is now on the open market. He is also studying, it is acknowledged. In my assessment, there is nothing before this Court which would justify me finding that the potential for employment issues can be considered extreme hardship, nor for that matter can I conclude that the

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[1] *Robertson v Police* [2015] NZCA 7 at [48].
[2] *R v Liddell* [1995] 1 NZLR 538 at 546.
[3] *Proctor v R* [1997] 1 NZLR 295.

possibility of an impact on the defendant's wife or children in the circumstances, as articulated, meet the threshold test. Both are consequences which are ultimately based on speculation should events occur.

[13] The Crown also places some reliance on the decision of *Beig v Police*[4]. The defence seeks to distinguishes that case. They submit in that case there was no particular issue in relation to ongoing employability. That doctor was still supported in his practice and the concern was that the patients may lose confidence in him and, in consequence of that, he may be less able to do the job that he is otherwise engaged to perform. The contrast being this defendant's potential unemployability.

[14] As Justice Venning held in *Beig v Police*[5], the test for extreme hardship is a difficult one to meet. The impact on employment for professional persons facing criminal charges will be significant but will not justify name suppression.

[15] In this case, I conclude that the impact on the defendant and the potential impact on his family are no more than might be expected in such a case and, as such, they do not constitute extreme hardship in my assessment. I am satisfied that it is simply not an arguable case for name suppression. Whilst the strength of evidence is often an issue, there are competing arguments in this case and this Court is not in a position to weigh that with any degree of precision. They, of course, remain matters for another day. Having made that finding, I decline to grant name suppression.

This ruling is withheld until noon on 2 March 2018, unless an appeal is earlier filed.

K J Glubb
District Court Judge

[4] *Beig v Police* [2015] NZHC 40.
[5] At paragraph [22].