

**IN THE DISTRICT COURT  
AT ROTORUA**

**I TE KŌTI-Ā-ROHE  
KI TE ROTORUA-NUI-A-KAHUMATAMOMOE**

**CIV-2019-063-00066  
[2019] NZDC 11626**

BETWEEN	BENJAMIN JAMES RIES Plaintiff
AND	NEW ZEALAND POLICE Defendant

Hearing: 20 May 2019

Appearances: E Reilly for the Plaintiff  
A Gordon for the Defendant

Judgment: 20 May 2019

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**ORAL JUDGMENT OF JUDGE R L B SPEAR**

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[1] This is an appeal brought under s 62(3)(a) Arms Act 1983 against the decision of a commissioned officer of police to revoke the appellant's firearms licence.

[2] Notice of revocation dated 5 December 2017 under s 27 of the Act was duly issued and served on the defendant. The defendant appeals against that decision on the grounds primarily that the material relied upon by [Inspector A], the commissioned officer who took the decision to revoke the licence, was insufficient to justify that decision.

[3] As counsel accept, this appeal is by way of a hearing *de novo*. While due weight is to be given to the opinion of the decision maker and to the evidence adduced, there is no legal onus of proof of the nature that applies generally to adversarial proceedings.<sup>1</sup>

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<sup>1</sup> *Fewtrell v Police* [1997] 1 NZLR 444.

[4] Essentially, it is necessary here to have regard to the material placed before me which consists primarily of:

- (a) the affidavits of the appellant and Ms Marie Danielle Rogers, both in support,
- (b) the affidavit of [Inspector A] in opposition, and
- (c) the written submissions of counsel.

[5] The determination effectively as to whether a person should hold a firearms licence depends upon whether the person is considered by a commission officer of police to be a fit and proper person to do so. Section 27, the revocation section, expressly provides in this case that:

Where, in the opinion of a commissioned officer of police, access to any firearm or airgun in the possession of the person to whom a firearms licence has been issued is reasonably likely to be obtained by any person and who, in the opinion of a commissioned officer of police, is not a fit and proper person to be in possession of a firearm or airgun, the commissioned officer of police may, by notice in writing under his hand, revoke the firearms licence, and the person to whom that firearms licence has been issued shall upon demand surrender the licence to a member of the police.

[6] That is exactly what has happened here. The circumstances that have given rise to the revocation, and as explained in detail by [Inspector A], do not arise from a single event but, as Ms Gordon has been at pains to point out, arise from a series of events that led to the appellant being warned on more than once occasion that he was at risk of having his firearms licence revoked because of criminal conduct.

[7] Before dealing with the circumstances relied upon by [Inspector A], some consideration needs to be given to what should constitute a fit and proper person and that of course must be read in the context in which it appears in s 27(1)(b)(iiii); that is, a fit and proper person to be in possession of a firearm or airgun.

[8] I have helpful submissions from both Ms Reilly and Ms Gordon. Ms Reilly refers to decisions of Judges in this Court; *McCabe v Police*, Judge Neave,

*Cunningham v Police*, decision of Judge Mill, *John v Police*, Judge Thomas, *Depina v Police*, and finally *O’Loughlin v Police*, Judge O’Ryan.<sup>2</sup>

[9] I consider that the best definition of what constitutes a fit and proper person here is found in para. 2.291 of the New Zealand Police Arms Manual that states, “*A fit and proper person is a person of good character who can be trusted to use firearms responsibly – this essential to arms control in New Zealand,*” and essentially that is really what this is all about. Is the appellant a person of good character who can be trusted to use the firearms responsibly? Or perhaps more pertinently, is [Inspector A] correct in his opinion that the defendant is not a fit and proper person of good character who can be trusted to use firearms responsibly?

[10] There is some history here that needs to be examined. First, the appellant has a number of criminal convictions:

- (a) 17 July 2008, Dargaville District Court, drink-driving, breath count 724, and driving in a dangerous manner,
- (b) 3 October 2013, Dargaville District Court, offensive behaviour likely to cause violence for which he was ordered to come up for sentence if called upon, and finally,
- (c) 18 October 2017, Rotorua District Court, common assault, fined \$400, 75 hours’ community work.

[11] The circumstances surrounding the 2008 convictions are the only ones in which firearms are mentioned. [Inspector A]’s affidavit explains that this 2008 prosecution involved a complaint that an occupant of a particular vehicle was using a firearm from a vehicle on the side of the road. The vehicle was registered to the appellant and he was found to be in possession of an unloaded shotgun and 61 shotgun

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<sup>2</sup> *McCabe v Police* District Court Timaru CIV-2008-076-000345, 31 January 2009; *Cunningham v Police* [2015] NZDC 4334; *John v Police* District Court Opotiki CRI-2010-047-000006; *Depina v Police* District Court Hamilton, CIV-2006-019-000459, 25 August 2006; *O’Loughlin v Police* [2001] DCR 488.

shells. That is the only criminal conviction in respect of which there is a reference, albeit tangential, to some extent, to the use of firearms.

[12] That conviction resulted in an [Inspector B] serving the appellant in July 2008 with a formal notice of consideration to revoke his firearms licence. Submissions were then presented to the inspector on behalf of the defendant and that resulted in a warning being given to the appellant, *“That any further offending would result in the revocation of your firearms licence.”*

[13] The next offence in 2013 of offensive behaviour involved the defendant becoming involved in a crime of violence against [an elderly male — victim 1] at a property in Dargaville. This matter was resolved by way of a guilty plea to an amended charge of disorderly behaviour likely however to cause violence to ensue. A summary of facts has been provided to the Court in respect of that offending.

[14] Following that conviction, [Inspector C] from Hamilton prepared and served on the defendant a formal notice of consideration of revocation of a firearms licence and invited the defendant to make submissions as to why his firearms licence should not be revoked. Reference was made also to the earlier offending in 2008. Submissions were presented and that resulted again in a warning to the appellant in these terms, *“Please be aware that any further breaches of the Arms Act 1983, the Arms Regulations 1992 or any other form of offending will most likely result in the revocation of your firearms licence,”*.

[15] The next and most recent conviction is for common assault committed on 3 November 2016 and dealt with in this Court at Rotorua on 18 October 2017. That charge was initially defended by the defendant albeit unsuccessfully and with the result that he was convicted of a charge of common assault.

[16] The appellant assaulted [victim 2] who was walking along the street at a time when the appellant was driving past. The appellant clearly had difficulties with [victim 2]. The appellant stopped his vehicle, ran towards [victim 2], punched him in the face with such force that [victim 2] was knocked to the ground. The appellant then kicked

[victim 2] a couple of times in the stomach as lay on the ground. It is noted by [Inspector A] that the appellant is a considerably younger man.

[17] That offending occurred on 3 November 2016, but the appellant was not located until 16 August 2017. His conviction gave rise to consideration by [Inspector A] as to whether the appellant should be the holder of a firearms licence.

[18] On 3 November 2017, a preliminary notice was served on the appellant by [Inspector A] inviting reasons as to why the appellant's firearms licence should not be revoked. Reference was made in that notice to the earlier warnings that had been given. That notice was responded to by the appellant through his solicitors in a letter dated 24 November 2017 and matters then progressed through to the decision made by [Inspector A] on 5 December 2017 to revoke the firearms licence.

[19] This appeal was then brought but unfortunately it has not progressed to a hearing until today. The reasons for that are not entirely clear from my perusal of the file but I would have expected a matter such as this to have been dealt with quite some time ago.

[20] The appellant in his affidavit emphasises that he has been a person who has held a steady job for some considerable period of time, that he has held a firearms licence since he was 16 years of age, that he is an avid outdoors person, a keen hunter and particularly keen duck shooter, that he has never breached firearms safety rules, that he keeps his guns in a locked gun safe and that he is extremely careful with firearms. He belongs to a hunting club, he has been in full-time employment since 2018 with his current employer, and prior to that was employed by a company at Rotorua for approximately eight years and then the same employer through the franchise for a previous four years in Whangārei. He lives with his partner and they have a daughter of eight years of age. He has another daughter at Ruawai and he travels to see her occasionally.

[21] He says that the 2016 assault of [victim 2] came about because [victim 2] had made a number of untruthful allegations about him. In particular, that the appellant was abusing his daughter and that had resulted in him not having contact with his

daughter for some eight months. The appellant says that it was established that the allegations were false. He says that when he saw [victim 2] on 3 November 2016, he reacted badly and assaulted him. He has paid his fines and carried out his community work. He says that this behaviour was quite out of character for him.

[22] The concerning feature to this offending is that the two earlier convictions, while obviously at a relatively moderate level of seriousness, given the Court's response to them by the sentences imposed, were followed by warnings to the defendant.

[23] The submissions for the police are that the appellant is a person who is not able to control his violent tendencies when matters reach a certain boiling point, and for that reason and that reason alone, he should not be considered to be a fit and proper person to hold a firearms licence. I see nothing wrong with that conclusion. While the defendant appears otherwise to be a person with some stability in his life, the offending against [victim 2] places a large question mark over his ability to control his temper. That is a matter of real concern even in the face of the provocative accusations by [victim 2].

[24] It may be, in a few years' time, if the appellant is able to demonstrate that he has kept himself free from violent offending that the Court could reconsider the position and he might well then receive favourable consideration from the Court or the police for the restoration of his firearms' licence. However, at this stage I do not consider that he should be entrusted with a firearms licence and the appeal is accordingly dismissed.