

**IN THE DISTRICT COURT
AT MASTERTON**

**I TE KŌTI-Ā-ROHE
KI WHAKAORIORI**

**CIV-2020-035-000064
[2020] NZDC 18019**

BETWEEN

CHRISTOPHER PAUL VIZOR
Appellant

AND

JOHN SCOTT MILLER
Respondent

Hearing: 2 September 2020

Appearances: V Pearson for the Appellant
T Bain for the Respondent

Judgment: 16 September 2020

RESERVED JUDGMENT OF JUDGE C N TUOHY

Introduction

[1] This is an appeal against the revocation of Mr Vizer's firearms licence by Inspector Miller, Area Commander of Police for Wairarapa, pursuant to s 27(1) of the Arms Act 1983.

[2] Mr Vizer had held a firearms licence since 2005. It was revoked by Inspector Miller by a Notice of Revocation dated 13 February 2020 on the basis that, in his opinion, Mr Vizer was not a fit and proper person to be in possession of a firearm; and that access to firearms in his possession was reasonably likely to be obtained by persons who are not fit and proper.

[3] The reasons cited in the notice were:

- On 23 October 2019, Mr Vizer was convicted in the Masterton District Court on a charge of common assault.
- Mr Vizer had been formally warned on 6 November 2011 by Inspector Register, then Area Commander for Wairarapa, in relation to a firearms incident in which he fired a single shot above a crowd.

Relevant Facts

[4] The evidence on appeal, which was wholly contained in the affidavits of Mr Vizer and Inspector Miller, was focussed on three events:

- The firearms incident which occurred in Martinborough on 21 May 2009, which resulted in Inspector Register's warning.
- An incident which occurred on 3 April 2019 near a school bus stop in Martinborough which resulted in the assault conviction of 23 October 2019.
- The seizure of Mr Vizer's firearms on the revocation of his licence.

The 2009 Incident

[5] The facts relied upon by Inspector Miller were those recorded in the formal Notice of Consideration of Revocation of Firearms Licence dated 8 July 2011 sent to Mr Vizer by Inspector Basham, then Acting Area Commander for Wairarapa. This Notice was preliminary to the official warning given by Inspector Register.

[6] Because this incident is an important aspect of this appeal, the detailed facts, as recorded by Inspector Basham, are reproduced below (but with references to supporting witness statements redacted):

1. You were an active member in a group of people to voluntarily patrol Martinborough at night due to the increase in dishonesty offending that was occurring there.

2. The convenor of the community patrol, Mr Hawkins was advised by Constable Ellims they were not to carry weapons and to contact Police on 111 as soon as they saw anything suspicious. Constable Ellims spoke directly to your patrol partner Mr Sullivan and advised him not to carry weapons as he had been advised that Mr Sullivan had been in possession of a baton when on patrol.
3. Prior to commencing your patrol on the 21st May you placed your pump action shotgun in the boot of your vehicle along with several cartridges of live ammunition in the centre console of the car. Also you had an extendable baton similar to that used by the Police but purchased from a Martial Arts shop.
4. On the 21st May 2009 you and an associate were on patrol in Martinborough in your vehicle.
5. You and your associate came across a number of local youths who had come from a nearby party.
6. You stopped the vehicle you and your associate were travelling in and you spoke to some of the group that had left the party. A verbal confrontation developed into a physical altercation between the parties.
7. When you got out of the vehicle, you took an extendable metal baton (similar to that used by the New Zealand Police) from the back seat area of your vehicle and struck the victim on the head.
8. You then turned your attention to the other complainant who was struck on the forearm as he put it up to protect himself from a blow of your extendable baton.
9. You walked towards the other complainant (Flutey) asking him who his associate was. At that time you grabbed him by the throat with your right hand and pushed him against a fence.
10. Punches were thrown and you saw your associate chase a person along Jellicoe Street towards the Square. When he caught up with the victim, he started hitting him with a baton which was described as metal like those issued to the New Zealand Police.
11. The victim was hit by your associate a number of times, and sustained a large lump and bruising to his head above his left eye as a result of this assault.
12. More people joined in the fight and you became out-numbered.
13. This confrontation ended when you went to the rear of your vehicle where you opened the boot and took a shotgun from it before getting two cartridges of ammunition from the centre console.
14. You then loaded one round of ammunition into the shotgun and fired it into the air.

15. You then placed the shotgun back in your vehicle and called to your associate to return, at which time you both got into the vehicle and drove back to your address.
16. While there you secured your shotgun in your arms cabinet, got in a different vehicle and returned to the area to see Community Patrol member whom you and your associate had been speaking with on portable radios.
17. You and your associate got into the car and left the scene only to return to the Jellicoe/Dublin Street intersection a short time later where your associate has left your vehicle and become separated from you.
18. During that time he has become involved in another physical confrontation with another victim in which he used the baton and struck him over the head a number of times. The victim fell to the ground and was protected by members of the public before being pulled away from the scene.
19. After speaking to other members of the Community Patrol, your associate has then returned to your vehicle and you have both sought assistance from Police at that point.
20. As a result of being grabbed around the throat victim one (Leon Flutey) received soreness to his neck and throat area.
21. Victim two (Nathan Kapene) as a result of being struck by the baton received a large bruise and swelling to his forehead.
22. Victim three (Reuben Flutey) as a result of being struck on the forearm by the baton received a large amount of swelling and soreness.
23. When spoken to you stated that you had the shotgun in case you needed to follow a suspicious vehicle into the rural rear and it was there for your own self defence.

[7] On 10 May 2011, Mr Vizer pleaded guilty to charges of reckless discharge of a firearm (s 53(3) Arms Act) and possession of an offensive weapon (s 202A Crimes Act) arising out of this incident. He was discharged without conviction on those charges.

[8] In his Notice, Inspector Basham acknowledged that Mr Vizer continued to contest some of the circumstances. In his affidavit on this appeal, Mr Vizer gave his version of those events. It is also produced verbatim because, together with Inspector Basham's notice, it constitutes all the information before the Court about the event:

19. The circumstances of that incident on 21 May 2009 was that the baton was something that I had for safety reasons given the concerns that I and other members of the group carrying out patrols in Martinborough

had about safety. There were a number of rumours about who was around and what the dangers were and I believe that virtually all of the group carried something to protect themselves. In addition I was not able to move or walk freely at the time due to sciatica.

20. I am certain the police were aware of what we were doing. We worked with the police a lot and the baton in its holster would have been visible to the police on many occasions.
21. On 21 May 2009, I was driving with my father-in-law carrying out our patrol. We saw a dog running loose and turned across the road to shine the headlight on the dog so that whoever was following it would know where it was.
22. We were not aware at that point that a group of young persons, highly intoxicated, had had to leave a private home and were wandering down the street as a group.
23. They misinterpreted our move and the first physical action was when I was approached by a youth and punched in the head whilst I was standing outside the car behind the driver's door. There were others advancing on me and the baton was used to beat off other youths who I saw as going to strike me.
24. My father-in-law was assaulted and then disappeared in the melee. I got the shotgun and fired it in the air to frighten the attackers away. This was successful. I found my father-in-law on the ground. I believe he was at that moment unconscious. We went home. We then got a phone call from another man who was at the scene. We believed this man was in trouble so went back to where he was.
25. We went in another vehicle. The vehicle we had been in previously was my wife's new car and I did not want to risk it being damaged.
26. When we got to the man who was in trouble he was then in Jellicoe Street. My father-in-law was again attacked and beaten to the ground.

...

The Incident of 3 April 2019

[9] In making his decision to revoke, Inspector Miller read and took into account the notebook statements taken by police officers from witnesses and from Mr Vizer and the victim impact statement of the victim, all of which were attached to his affidavit. Mr Vizer gave his own account in his affidavit. Also before this Court is the summary of facts on the basis of which he entered his plea of guilty and was convicted.

[10] There are differences between these different sources as to exactly what occurred. Although it has been held by the High Court that a District Court Judge sitting on appeal under the Arms Act is entitled to take into account hearsay evidence, in doing so the Judge must act fairly and comply with the rules of natural justice¹.

[11] The background and general course of events are not in dispute. The primary difference relates to the precise nature of the assault. On that aspect, I do not think it is safe to depart from what Mr Vizor has acknowledged in his affidavit and what is in the summary of facts which he has, by his plea of guilty, admitted.

[12] The general background is that Mr Vizor's 13 year old son had told him that he had been subjected to bullying on the school bus by a number of boys. Mr Vizor approached the parents of each boy and was assured that the bullying would not continue.

[13] On 3 April 2019, Mr Vizor received a text from his son advising that he was again being bullied on the bus, naming one boy in particular. When he received this, Mr Vizor left work and travelled to the school where he spoke to a Dean about the matter. In the afternoon he received an email from the school saying that the boys had denied involvement. Mr Vizor then went to the bus stop on Jellicoe Street, Martinborough to await the arrival of the bus. In the morning of that day he had gone to the bus stop and told the boy named in the text to stop bullying his son.

[14] The summary of facts states that when the victim, who was that 17 year old schoolboy, left the bus, he was approached by Mr Vizor. The boy saw him and began to run away in fear. Mr Vizor chased him and the boy fell over on the footpath. Mr Vizor grabbed him by his clothing and shook him and held him down on the footpath while shouting at him and calling him "*names referring to female genitalia*", to use the circuitous language of the summary.

[15] Mr Vizor's account in his affidavit is essentially consistent with the summary of facts, with the addition of an allegation that he actually fell over accidentally on top

¹ *Police v Cottle* [1986] 1 NZLR 268 at 272.

of the boy. In his statement to the police, he said that he was trying to scare the boy. He said that he had been “*stewing about it all day*”.

[16] The boy was not injured other than a graze on the knee when he fell over, but he was very scared by Mr Vizor’s actions.

[17] The Court ordered Mr Vizor to come up for sentence if called upon within 12 months and to pay \$200 emotional harm reparation.

Seizure of the Firearms

[18] On 13 February 2020, Constable Parata served the Notice of Revocation on Mr Vizor. Part of his job was to collect Mr Vizor’s firearms. They were in a locked room, but a .22 Ruger rifle was sitting insecure with ammunition sitting on a bookcase shelf. His other firearm, a 12 gauge shotgun was in a wall-mounted gun safe.

The Law

[19] The statutory provision pursuant to which Mr Vizor’s licence was revoked was s 27(1) of the Arms Act 1983, which is set out below²:

27 Surrender and revocation of firearms licence

(1) Where, in the opinion of a commissioned officer of Police,-

- (a) any person who has been issued with a firearms licence is not a fit and proper person to be in possession of a firearm or airgun; or
- (b) 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—

...

- (iii) whose firearms licence has been revoked on the ground that he is not a fit and proper person to be in possession of a firearm or airgun; or

² The section was replaced on 25 June 2020 pursuant to s 44 of the Arms Legislation Act 2020. The replacement section does not materially change the relevant parts of the former section. This appeal was filed prior to 25 June 2020.

- (iv) 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.

...

[20] There is a right of appeal to a District Court Judge under s 62 of the Act. On the hearing of the appeal, the District Court Judge may confirm, vary or reverse the decision appealed against. It was held by the High Court (Goddard J in *Fewtrell v Police*³) that the District Court Judge ought to consider the issue *de novo*:

The hearing on appeal should have been conducted *de novo*, giving due weight to the opinion of the inspector and to all other evidence adduced but without applying the legal onus of proof which attaches to one party or another in an adversarial situation, and with a full hearing of oral evidence if appropriate. There was no presumption in favour of the inspector's decision and no onus on the appellant to satisfy the Judge that the inspector's decision was wrong.

... [I]t is for the District Court Judge to satisfy him or herself of the matter *de novo* and there is no onus on either appellant or respondent.

Mr Vizer's Submissions

[21] Ms Pearson's argument started with the proposition that until October 2019, Mr Vizer was assessed as a fit and proper person to be the holder of a firearms licence since he first obtained his licence in 2005. She put weight on the fact that he was discharged without conviction in respect of the 2009 charges and that his licence was not then revoked.

[22] The only change since that time is the conviction for assault in 2019. That offence did not relate to firearms and arose from circumstances in which he was acting to protect his adolescent son.

[23] Mr Vizer has otherwise acted as a responsible hunter of game and competitive clay bird shooter, and Vice President of a gun club for many years without incident.

³ [1997] 1 NZLR 444 (HC).

[24] In all the circumstances, including the manner in which the Court sentenced for the 2019 offence, there was insufficient evidence on which Inspector Miller could have determined that he was no longer a fit and proper person to hold a licence.

Mr Miller's Submissions

[25] Mr Bain submitted that Mr Vizer's history demonstrates a propensity to use violence and intimidation against young people and as a vigilante. He submitted there were parallels between the much more serious 2009 incident and the 2019 incident. In particular, he pointed to:

- On both occasions, he took the law into his own hands, physically confronting the person he perceived to be the wrongdoer.
- On both occasions, the confrontation escalated to physical violence.
- The victims on both occasions were youths or young people.

[26] He also submitted that Mr Vizer had not learnt from the official warning he was given in 2009 and that he had minimised his part in both incidents.

[27] As to the safety issue, he relied primarily for his submission that any firearms in Mr Vizer's possession would be at risk of falling into the hands of persons who are not fit and proper, on the unsecured carriage of the shotgun in 2009. That was aggravated by the failure to store the Ruger firearm in a secure gun safe in 2019.

Discussion

[28] I do not accept that Ms Pearson's approach is correct. It is artificial to suggest that Mr Vizer was assessed as a fit and proper person right through until 2019. He was assessed as that twice, first when he obtained his licence in 2005 and again in 2011 when he received an official warning.

[29] The approach that Mr Vizer should be treated as a fit and proper person, but for the 2019 incident, does not accord with the *Fewtrell* approach in that it suggests

that the issue is simply whether that incident alone should overturn an existing assessment that Mr Vizer is fit and proper.

[30] There is no doctrine of precedent in this situation. Mr Miller was forthright in his disagreement with Inspector Register's decision in 2011 to give Mr Vizer a warning rather than revoke his licence. I agree with Inspector Miller: I would have unhesitatingly confirmed a decision to revoke Mr Vizer's licence at that time.

[31] In my view, the proper approach is simply to assess whether or not Mr Vizer is a fit and proper person at this time based on all the evidence available on the appeal. The 2009 incident forms part of that evidence, keeping in mind that that incident took place more than 10 years ago.

[32] I do not consider that there is a proper basis for revoking Mr Vizer's licence under s 27(1)(b). Although the security deficiency noted by Constable Parata after revocation can be taken into account on appeal⁴, it is an isolated breach and not of the worst type, because at least the room in which the firearm was stored was locked. The issue in 2009 was not so much the carriage of the shotgun unsecured, but the fact that it was carried at all in the circumstances. The reference from Mr Church also attests to Mr Vizer's generally prudent handling of firearms.

[33] The real issue is whether or not Mr Vizer is a fit and proper person. Having reviewed all the evidence, I find myself in agreement with Inspector Miller's assessment that at present he is not. The reason for that is that I accept that the two incidents demonstrate two particular propensities: a propensity to take the law into his own hands when faced with a situation which he perceives threatens him or a family member; and a propensity to resort to the use of violence in such a situation. These propensities, shown most dangerously in 2009 but repeated on a much lesser scale in 2019, mean that, in my view, he lacks the temperament and judgment to hold a firearms licence.

[34] Having said that, I am not in entire agreement with Inspector Miller. I do not think the fact that the persons confronted were on both occasions youths or young

⁴ *Fewtrell* (supra) at 453.

people has any real relevance. My assessment would be the same whatever age they happened to be.

[35] Secondly, I do not consider that this assessment is necessarily a permanent one. If in the future, Mr Vizor can demonstrate, perhaps with the help of an appropriate programme and the passage of some time, that he has the necessary self-insight and practical tools to address these aspects of his temperament, there is nothing to prevent him from making a further application for a firearms licence.

Result

[36] The decision of Inspector Miller to revoke Mr Vizor's firearms licence is confirmed.

C N Tuohy
District Court Judge