

**IN THE DISTRICT COURT  
AT INVERCARGILL**

**CIV-2016-025-000356  
[2017] NZDC 5503**

BETWEEN	BRETT DAVID BAIRD Appellant
AND	NEW ZEALAND POLICE Respondent

Hearing: 14 March 2017

Appearances: K Barker for the Appellant  
Sergeant P Stratford for the Respondent

Judgment: 14 March 2017

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**ORAL JUDGMENT OF JUDGE M J CALLAGHAN  
[APPEAL AGAINST REVOCATION OF FIREARMS LICENCE]**

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[1] Brett David Baird appeals the revocation of his firearms licence which was served on him on 17 August 2016. Mr Baird obtained his firearms licence in 1996.

**Previous charges**

[2] In October 1998 he was convicted of being a minor consuming alcohol in a public place and was fined. In July 1999 he was convicted of driving with excess breath alcohol in the under 20 limit and his breath alcohol reading was 300. In 2001 he was convicted of operating a motor vehicle carelessly. In May 2013 he was convicted of breaching the liquor ban.

[3] All of those offences occurred in the Invercargill area. The Police did not take any action in respect of his firearms licence as a result of those offences.

## **October 2015 matter**

[4] On 11 October 2015 Mr Baird assaulted [the victim] and was charged under the Crimes Act 1961 with common assault. He pleaded guilty to that charge. The factual basis for that charge was that on that particular day he had been consuming alcohol with friends in the Invercargill area. He lives at Dacre.

[5] At about 11.00 pm he arrived home in a taxi and was in an intoxicated state. Present at his address were his wife and [the victim]. Because the defendant did not have the funds on him to pay for the taxi, his intention was to get his chequebook from his house area and pay the taxi driver. He went to do this and as he walked towards that area, [the victim] called out to him. This caught Mr Baird by surprise. He and [the victim] have had a difficult relationship over many years. Mr Baird then pushed [the victim] backwards against a window of the house and shook him by the shoulders. He placed a hand on his throat.

[6] Mr Baird's wife, who was present, intervened and Mr Baird stopped the assault at that stage. He then continued on to get his chequebook when he heard mention that the police were going to be called. At this, Mr Baird ran back to [the victim] and pushed him, causing him to fall to the ground. Mr Baird then straddled [the victim] and hit him several times while on the ground. Mr Baird's wife then intervened which caused the assault to stop.

[7] The police arrived after [the victim] had left in the taxi that had brought Mr Baird to the property. Mr Baird's firearms were kept in a locked cabinet in the garage at the property. There is no suggestion that he attempted to access the firearms or intended to use them to harm [the victim].

[8] The police issued safety orders against Mr Baird, and Mr Baird's wife left the address. The basis on which the police safety order was issued was that the police said that Mrs Baird was scared for her safety. Mr Baird does not necessarily accept that because Mrs Baird arrived back the next morning to the property.

[9] Mr Baird was not charged until 26 November 2016. He pleaded guilty. He apologised to [the victim] shortly after the incident and undertook counselling through his general practitioner. He has also seen a psychologist. He has also been seeing a counsellor and from the information available to me he did not consume alcohol for a period of about five and a half months.

[10] He was under stress at work and he took on a further employee at work to relieve the stress. He underwent a restorative justice meeting with [the victim] and set up an ongoing plan for contact with [the victim] for the purposes of trying to restore the relationship.

[11] In February of 2016 the marriage broke down. Mr and Mrs Baird have two children, one aged, at that stage, 20 months and the other four years. There was what is described in the material as “a difficult separation”, Mr Baird indicating that his wife was making things difficult in respect of the resolution of relationship property. Mr Baird engaged a lawyer to assist with the relationship property division and settled contact with his children as a result of the intervention of his lawyer’s assistance.

[12] In respect of alcohol, the defendant - who stated that he gave up alcohol and drinks now only on rare occasions - acknowledged that he was drinking to excess at the time that the incident occurred and this obviously lead to the breakdown in the relationship, but he has now taken steps to address his drinking.

[13] The firearms licence, which he has held for 20 years, has not been the subject of any adverse comment until such time as this incident occurred.

[14] A second affidavit was filed by Mr Baird on 7 March 2017 because he was, on 11 December 2016, charged with a drink-driving offence where the breath alcohol level was 866.

#### **December 2016 matter**

[15] The facts about that are that at about 2.00 am on 11 December 2016, Mr Baird was driving north on Dee Street, Invercargill. He drove into the side of another car travelling in the same direction, which caused minor panel damage. He did not stop.

[16] The police located him at about 10 minutes after the incident, travelling south back into Invercargill on North Road. The reading taken by evidential breath test was 866 micrograms of alcohol per litre of breath.

[17] In his affidavit, Mr Baird acknowledged that his actions were stupid. He indicated in that affidavit that he had only consumed alcohol occasionally since the earlier incident in 2015. He was also under some stress from employment issues with employees at the farm where he was working. Those employment issues have subsequently been overcome by the fact that the three employees who were causing trouble are no longer working at the farm, that they have been replaced and the atmosphere at work has changed for the better.

[18] There were also further issues in terms of his contact with [the victim] which had caused him some anguish. As a result of those issues, the reconciliation which he had hoped to be put in place with [the victim] had come to an end.

[19] It is also mentioned in the affidavit that was subsequently filed, that he was still keen on shooting but had not been shooting very much because of work pressures.

### **Police position**

[20] The police position is that the revocation was based on the conviction for the Crimes Act assault, and they maintain that the issue of excess consumption of alcohol led to Mr Baird exhibiting violent behaviour.

[21] When he was given the initial notice of the intention to revoke, Mr Baird acknowledged to the police that he had a problem with alcohol, that he was the aggressor on the night of the assault on [the victim], that he was having relationship issues, and that he had been referred to mental health services but was no longer

needing any assistance from them because he was attending counselling. The relationship with [the victim] had been restored.

[22] The police indicated that they thought that a three year period might be appropriate for Mr Baird to have his firearms licence revoked and he make a re-application after that occurred. That was the recommendation that they made or that was made by the police officer that he dealt with.

[23] The police were of the view that the incident on 11 October 2015 was potentially very serious and by the time between that incident and the date of the application being filed, there had not been enough time elapsed for the police to change their minds about Mr Baird being a fit and proper person.

[24] The police position is further that because of the drink-driving conviction which he has now been convicted of, that the police do not believe that Mr Baird has taken the necessary steps to deal appropriately with the issue of his alcohol consumption, which they say was the root cause of the offending in October 2015. They say that the assault was unprovoked (because of the alcohol consumption) and they do not accept that it was at the lower end of the scale.

[25] As to the drink-driving charge, they also maintain that that is not a low-level offence. There was a collision and there was the aspect of Mr Baird driving a significant distance from his home into town, and obviously intending to drive back to his home at Dacre, which is approximately 30 kilometres away. The police maintain that that decision to drive shows a lack of judgment and indicates that Mr Baird cannot be relied upon to make sound decisions. They maintain their opposition on the basis that they say that he is not a fit and proper person to hold a firearms licence.

[26] They are also concerned about the material that is raised about the stress that might have lead to the drinking which then lead to the drink-driving charge, because that was obviously at a time when there was stress occurring at work and resorting to alcohol in stressful situations means that his behaviour is somewhat unpredictable.

### **Mr Baird's position**

[27] For Mr Baird, Ms Barker has submitted that Mr Baird has a flawless record of safety with firearms; that his firearms licence has been held for 20 years; that the minor offending between 1998 and 2003 did not give rise to any concerns about his propensity to be violent and did not cause the police to take any action to revoke his licence; that the incident on 11 October was totally out of character and was a one-off occurrence; that Mr Baird has dealt with matters appropriately including separation from his wife, dealing with contact issues, with relationship property and also employment issues with three employees being replaced at work; that the stressful situations such as those just raised have been dealt with by him appropriately; that there have been further no other instances of violence being resorted to by Mr Baird.

[28] Ms Barker indicated in her submissions that the violence involved in the incident with the [victim] was one at the lower end of the scale. In support, she submits that the fact that he was ordered to come up if called upon indicates that that was the view that the Court took of that offending.

[29] Ms Barker also referred in her submissions to the decision of *O'Loughlin v Police*<sup>1</sup> where it was held that one instance of violence would not indicate that a man was no longer a fit and proper person under the Arms Act 1983.

[30] Ms Barker submits in her written submissions that by weighing up all the factors here, the Court should disregard the drink-driving conviction because it did not come into consideration when the revocation was imposed. He has dealt with stressful and emotional challenges over a lengthy period of time and accordingly would be a fit and proper person to hold a firearms licence.

[31] In the alternative, Ms Barker suggested that I defer making a decision until such time as Mr Baird has undertaken appropriate counselling and/or treatment in respect of the drinking issue, which is obviously of major concern to the police.

[32] It is clear when one looks at Mr Baird's previous convictions, including the recent ones, that alcohol is a major factor in respect of each and every one of those offences, except for the careless use charge.

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<sup>1</sup> *O'Loughlin v Police* [2001] DCR 488

[33] What is of concern here is that the assault appears to be a spur of the moment incident, while there was a background between Mr Baird and [the victim] over the relationship that they have had. There does not appear to have been any instance which caused the reaction that Mr Baird exhibited, other than the fact that [the victim] was present at the house.

[34] Coupled with that is the second offence of drink-driving which has occurred in December 2016. It also appears to be a spur of the moment incident. Both offences have occurred when Mr Baird has been highly or grossly intoxicated. That unpredictable behaviour when affected by alcohol is a major consideration for the Court.

[35] The police suggestion that a three year hiatus be imposed upon the defendant seemed to be a good and sensible approach taken by the police at the time that the revocation was being considered.

[36] That caution appears to be well founded by the fact that the significant drink-driving level occurred during the course of that suggested period of three years. It indicates that, despite counselling and/or treatment which Mr Baird has undertaken, a level has not yet reached where there can be any surety that he is responsible with alcohol. While I accept there is no suggestion that he is not responsible with firearms while sober, his unpredictable actions in those two instances while affected by alcohol, give real rise to concern.

### **Assessment**

[37] I am of the view that the concerns expressed by the police at the time of the revocation were valid. That is enhanced by the fact that they have been proved correct by the drink-driving incident.

[38] Accordingly, I am not of a mind that the police decision is wrong, and I can confirm that in my view Mr Baird is not a fit and proper person at the present time to hold a firearms licence.

[39] While that assessment may change if suitable assurances of treatment were before the Court, that is not the case at the present time.

[40] Accordingly, I am not minded to adjourn the matter because it is not a matter that could be satisfied within a short period of time. It is something that is going to require a period of rehabilitation and confirmation that Mr Baird has addressed the alcohol issues before an assessment of his status as a fit and proper person can be reconsidered.

### **Result**

[41] Accordingly, I confirm the decision of Inspector Lamb.

[42] The appeal is dismissed.

M J Callaghan  
District Court Judge