

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: JVC

Respondent: Commissioner of Police
(represented by Mr Zachary Clifford of the State Solicitor's Office)

Commission: Sandra Di Bartolomeo (Presiding Member)

Matter: Application seeking review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988*.

Date of lodgement of Application: 20 December 2021

Date of Determination: 15 February 2022

Determination: The Application for review is dismissed and the barring notice is affirmed in accordance with section 115AD(7) of the *Liquor Control Act 1988*.

Authorities considered in the determination:

- *Liquor Control Act 1988 (WA) Sections 5, 115AA(2), 115AB, 115AD(3), 115AD(7), 115AD(7)(a) and (7)(b)*
- *SVS v Commissioner of Police (LC19/2011)*
- *KRB v Commissioner of Police (LC33/2011)*
- *ZUW v Commissioner of Police (LC12/2021)*
- *DJB v Commissioner of Police (LC05/2017)*

Background

- 1 This is an application for the review of a Barring Notice pursuant to section 115AD(3) of the *Liquor Control Act 1988* (WA) ("Act") made by JVC ("Applicant").
- 2 On 13 November 2021 at and in the vicinity of licensed premises, namely [REDACTED] ("Premises"), it is alleged that the Applicant was disorderly on licensed premises ("Incident").
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice on 30 November 2021 ("Barring Notice") under section 115AA(2) of the of the *Liquor Control Act 1988* ("Act") prohibiting the Applicant from entering licensed premises within Western Australia of the following licence classes:
 - 3.1. All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
 - 3.2. All small bar licences issued under section 41A;
 - 3.3. All nightclub licences issued under section 42;
 - 3.4. Casino licence issued under section 44;
 - 3.5. All liquor store licences issued under section 47;
 - 3.6. All club licences issued under section 48;
 - 3.7. All restaurant licences issued under section 50;
 - 3.8. All producer's licences issued under section 55;
 - 3.9. All wholesaler's licences issued under section 58;
 - 3.10. All occasional licences issued under section 59; and
 - 3.11. All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 4 The Barring Notice was served on the Applicant on 3 December 2021 and is for a period of approximately 12 months expiring on 13 November 2022.

Incident

- 5 The following allegations regarding the Incident were considered by the Respondent, as set out in the Detected Incidents Report incident no. [REDACTED]:
 - 5.1. At about 21.30 hours at the [Premises], [REDACTED] ("Victim") ordered a drink at the bar. The Victim spoke to an unknown female in the company of the Applicant. The Applicant and the Victim spoke for a while before the Applicant punched the Victim to the face knocking him to the ground.
 - 5.2. While the Victim was struggling to get up off the ground, another patron ("Patron") entered from the side and punched the Victim to the ribs multiple times.

- 5.3. Police arrived shortly after and witnessed the Patron leaving the Premises in a highly agitated state screaming obscenities towards the Victim who remained near the bar.
 - 5.4. The Patron was asked by police what had occurred and the Patron walked off down [the street] while police went inside to ascertain the welfare of the Victim.
 - 5.5. On 23 November 2021, police spoke to the Applicant over the telephone regarding the Incident and advised him that he would be receiving a Criminal Code infringement notice for disorderly conduct on licensed premises.
- 6 The Incident giving rise to the Barring Notice is referred to in the following documents:
- 6.1. Section 115AD Application for review of Barring Notice dated 20 December 2021.
 - 6.2. The evidential material relied upon by the Commissioner of Police being:
 - 6.2.1. Police Detected Incidents Report incident no. [REDACTED];
 - 6.2.2. Running Sheet, Police Detected Incidents Report incident no. [REDACTED];
 - 6.2.3. Western Australia Police Criminal Code Infringement Notice [REDACTED], dated 22 November 2021;
 - 6.2.4. Incident Report completed by the manager, [REDACTED];
 - 6.2.5. CCTV video filmed in the Premises ("CCTV Footage");
 - 6.2.6. four still images of the CCTV Footage; and
 - 6.2.7. the Criminal and Traffic History of the Applicant.
 - 6.3. The Respondent's Outline of Submissions dated 11 January 2022.

Applicant's Submissions

- 7 On 20 December 2021, the Applicant applied to the Liquor Commission for a review of the Barring Notice.
- 8 The Applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.
- 9 Submissions of the Applicant are contained within the application made by the Applicant on 20 December 2021.
- 10 The submissions of the Applicant are summarised as follows:
 - 10.1. On 13 November 2021, the Applicant entered the Premises with his partner and partner's friends and they walked to the bar and stood next to the Victim who was saying explicit things to the Applicant's fiancé.
 - 10.2. The Applicant asked the Victim to leave his partner alone, and the Victim proceeded to "say abusive things to [the Applicant] and threatened to bash '[his] head in'."

- 10.3. As the Victim was sizeably larger than him and in his personal space, the Applicant felt extremely threatened for not only himself but also for his future baby and fiancé.
- 10.4. The Victim continued with threatening words and invading the Applicant's space with the clear intention in engaging in a physical altercation.
- 10.5. The Applicant felt his life was in danger, and hit the Victim in what he states was self-defence. There was a third person involved in the altercation, whom the Applicant had only met that night and whom he did not ask nor expect to pursue the fight.
- 10.6. The Applicant received a disorderly infringement notice from the police.
- 10.7. The Victim did not pursue the matter any further after the Incident, which the Applicant feels is because the Victim knew he was in the wrong.
- 10.8. On 3 December 2021, the Applicant was issued with the Barring Notice.
- 10.9. The Applicant requests that the Barring Notice be dismissed or the length lessened on the following grounds:
 - 10.9.1. the Applicant lives in a remote, small community of 800 people and believes the Barring Notice to be an extreme outcome;
 - 10.9.2. the Applicant feels he is being pushed out of town, and it is very isolating not being able to even attend the local restaurant for a meal; and
 - 10.9.3. the Applicant is an active member of the community; he volunteers his time for various organisations throughout the year. He is no threat to anyone in the community, has never been in trouble with the police before, nor has he ever been in a physical altercation in his life.

Respondent's Submissions

- 11 The Respondent provided Primary Outline of Submissions dated 11 January 2022.
- 12 The Respondent's submissions are summarised as follows:

Reasonable grounds for believing the Applicant has been violent or disorderly or contravened a provision of any written law on licensed premises

- 12.1. The Respondent submits that the facts establish that the Applicant engaged in disorderly behaviour and that the Applicant was violent.
- 12.2. There is clear evidence that the Applicant punched the Victim to the head in two separate attacks, as captured on the CCTV Footage.
- 12.3. The Applicant asserts that the Victim was threatening and abusive. The Respondent states that there is no independent evidence as to what the Victim said to the Applicant. However, before the Victim was struck he (the Victim) turned away from the Applicant and put his hands on the bar. This is inconsistent with the assertion that the Victim was behaving in a threatening manner. In any event, the Applicant's actions were unreasonable and disproportionate to any abuse that may have occurred.

Further, the Applicant's claim that he felt threatened does not explain (and is arguably inconsistent with) his actions in attacking the Victim a second time after the two had separated.

- 12.4. The Respondent submits that the assertion that the Victim was invading the Applicant's personal space is also inconsistent with the CCTV footage. The Applicant's claimed fear for his life is also entirely inconsistent with his actions in running at the Victim after the pair had been separated.

Nature and circumstances of the incident giving rise to the Barring Notice

- 12.5. The Respondent submits that the violent nature of the Applicant's actions demonstrate a clear need for the Barring Notice in order for the public to be protected. There were two separate instances of particularly violent behaviour in this case.
- 12.6. The first set of punches occurred without warning and were directed at the Victim's head. The Applicant had to be dragged off the Victim by his companions. The second set of punches occurred after the Victim and Applicant had been separated. The second set of punches were also directed at the Victim's head.
- 12.7. The evidence before the Commission does not show the extent of the injuries suffered by the Victim (although the Respondent states that it is the case that the Victim was able to return to the bar after the incident). However, the Respondent states that that is not to the point. The key consideration is that the Applicant's actions had the potential to cause serious harm to the Victim thereby demonstrating a need for the public to be protected from violence perpetrated by the Applicant.

The risk of the Applicant behaving in a similar manner

- 12.8. In this case, the fact that the Applicant attacked the Victim two times supports the view that there is a risk of the Applicant behaving in a similar manner in the future. Even if (contrary to the position of the Respondent) it was not clear from the first attack, the second attack clearly demonstrates that the Applicant wanted a physical confrontation with the Victim.
- 12.9. The Applicant has also failed to take any responsibility for his actions and has not demonstrated any insight into the fact that his behaviour was not acceptable. Among other things, the Applicant blames the Victim for the incident in his letter accompanying the Application. Whatever the Victim may have said or done, the violence perpetrated by the Applicant was unreasonable and disproportionate.
- 12.10. In addition, the Respondent states that antagonistic and inappropriate behaviour is not uncommon in licensed premises. It is not unlikely that the Applicant will encounter similar circumstances in the future and will engage in violent behaviour. This risk is particularly heightened in circumstances where the Applicant has not learnt from the incident and does not accept that his actions were wrong.

█ The Respondent accepts that the Applicant does not have an extensive criminal history. However, it is not the case (as is asserted by the Applicant) that he has "never been in trouble with the police before". The Applicant has a criminal record that consists of traffic offences. █