

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: [REDACTED]

Respondent: Commissioner of Police
(represented by KT Dias of State Solicitor's Office)

Commission: Ms Elanor Rowe (Presiding Member)

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

Date of Hearing: On the papers

Date of Determination: 14 December 2020

Determination:

1. The Barring Notice issued by the Commissioner of Police to [REDACTED] on 31 July 2020 and served on the Applicant on 9 August 2020 is varied as follows:
 - a. delete the words "*until it expires on 29 March 2021*" and insert in their place "*until it expires on 31 January 2021*"; and
 - b. delete the words "*All restaurant licences issued under section 50*".

Authorities referred to in determination:

- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *AQ v Commissioner of Police* (LC 46/2011)
- *MP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)

Background

1. On 6 June 2020, an incident (“the Incident”) occurred at licensed premises, namely the [REDACTED] (“the Venue”) involving the Applicant (aged 24 at the time).
2. As a result of such Incident, the Applicant was charged with:
 - a. common assault, contrary to section 313(1)(b) of the *Criminal Code Act Compilations Act 1913 (WA)* (“the Code”); and
 - b. unlawful damage, contrary to section 445 of the Code, (together “the Charges”).
3. As a further result of the Incident, the Commissioner of Police (“the Respondent”) issued a barring notice (“Barring Notice”) dated 31 July 2020 pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) prohibiting the Applicant from entering specified licensed premises in Western Australia for a period of approximately eight (8) months, namely:
 - a. all hotel licences issued under section 41;
 - b. all small bar licences issued under section 41A;
 - c. all nightclub licences issued under section 42;
 - d. casino licences issued under section 44;
 - e. all liquor store licences issued under section 47;
 - f. all club licences issued under section 48;
 - g. all restaurant licences issued under section 50;
 - h. all producer’s licences issued under section 55;
 - i. all wholesaler’s licences issued under section 58;
 - j. all occasional licenses issued under section 59; and
 - k. 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 9 August 2020 and will expire on 29 March 2021.
5. On 17 August 2020, the Applicant lodged an Application for Review in respect of the Barring Notice pursuant to section 115AD of the Act. The Applicant has elected to have the review determined on the papers.
6. The Incident which gave rise to the Barring Notice is referred to in the following documents:
 - a. The Application for Review (“Application”);
 - b. The evidential material relied upon by the Respondent’s delegate when the Barring Notice was issued:
 - i. Brief Jacket (Brief No. 2031853-1);
 - ii. Statement of Material Facts;

- iii. WA Police Incident Report;
 - iv. Photographs showing the Victim's injury and damage to iPhone;
 - v. Victim Statement dated 8 June 2020;
 - vi. Venue Incident Report dated 6 June 2020;
 - vii. Disclosure of Court Outcomes for the Applicant – Criminal and Traffic.
- c. Letter from the Applicant dated 24 August 2020 with submissions in support of the Application including footage of the Applicant's interview with Police;
 - d. The Respondent's outline of submissions dated 2 September 2020; and
 - e. Letter from the Applicant dated 4 September 2020 with further submissions in support of the Application.

The Incident

- 7. The circumstances of the Incident are summarised in the Statement of Material Facts as follows:
 - a. At 9.30pm on Saturday 6 June 2020, the Applicant and the Victim were at the Venue. The Applicant approached the Victim inside the Venue and a verbal argument commenced. The Applicant spilt a drink of coke on the Victim and left the Premises.
 - b. The Victim followed the Applicant out to the car park of the premises and confronted the Applicant where the verbal argument continued.
 - c. The Applicant became angry and upset and kicked the Victim once on the leg causing immediate pain to the Victim's thigh. As a result of the kick the Victim received bruising to her left thigh.
 - d. The Applicant then removed the Victim's Apple iPhone 11 Pro Max ("iPhone") from the Victim's back pocket and ran across the car park carrying it. The Victim ran after the Applicant, who in turn threw away the Victim's phone, which landed on the ground of the car park.
 - e. The Victim's iPhone was damaged with the front screen smashed. The iPhone could not be fixed, and a replacement was valued at \$969.00.

- 8. The evidential material is partially consistent with the summary set out above.

Submissions by the Applicant

- 9. The Applicant submits that the Barring Notice should be cancelled or varied as it is overly harsh for her to be banned from every licensed premises in Western Australia until 29 March 2021.

Personal circumstances of the Applicant and background

- a. At the time of the Application, the Applicant was 24 years of age.
- b. The Incident was out of character for her and she has never been in a verbal or physical altercation before. She has no prior criminal record and is of good character.

- c. The Applicant is happy to provide employment references from the hospital where she works as well as other business and former workplace references.
- d. She is remorseful for what happened. As much as she wishes that it did not happen, all she can do now is take responsibility for what she did and move on with her life.
- e. It was a one-off occurrence that only happened due to extenuating circumstances that were occurring in her personal life involving the Victim. She believed that the Victim had been in a sexual relationship with her ex-partner of six (6) years while they were still together. She stated that she had found out that particular information, only two (2) weeks prior to seeing the Victim at the Venue on the day of the Incident.
- f. Following the Incident, the Applicant was charged with common assault and unlawful damage and the Charges were dealt with on 14 August 2020. She took responsibility for her actions at the first instance and pleaded guilty. She was issued a fine, given a spent conviction and ordered to pay the cost of a replacement phone.
- g. She apologised during the court proceedings and accepted responsibility for her actions. She has learned from her mistakes.
- h. She is taking the necessary steps to move on from this which include attending court, paying the court fines, and seeing a counsellor to process her feelings in an emotionally safe environment.
- i. She is not a threat to the public; she feels a more appropriate barring notice would be to bar her from the Venue or any bar / tavern in her local area.

The Incident

- j. In her letter dated 24 August 2020, the Applicant acknowledged that the Incident occurred on licensed premises. However, later in the letter she then submitted that it occurred outside the Venue (in the nearby shopping centre car park) and, therefore, the Incident did not occur on licensed premises.
- k. She had not had anything alcoholic to drink at the Venue and was only there for dinner with her sister. There was no alcohol involved and she was not intoxicated or inebriated in any way.
- l. The Applicant agreed with the summary of events as set out in the Statement of Material Facts.
- m. The Applicant disputed some of the information contained in the Police Incident Report and submitted the following:
 - The Victim confronted the Applicant once the parties were outside the Venue and taunted her by saying things she knew the Applicant would react to.

- She only kicked the Victim once in the leg. Somebody else, that the Applicant was with, grabbed the Victim's hair, but no one punched her.
 - She did remove the iPhone from the Victim's pocket and then ran with it. When the Victim chased after her, she threw away the iPhone. She did not step on it or intentionally break the phone; it smashed when it hit the floor. She threw it because the Victim was running towards her.
 - After she threw the iPhone, she walked away from the car park and left the area.
- n. The Applicant also disputed several of the statements made by the Victim in her Witness Statement in relation to:
- The circumstances of the Victim's relationship with the Applicant's ex-partner. The Applicant submitted that this information was important as it helps explain why she was so emotional and traumatised and that was what led to the Incident happening in the first place.
 - The circumstances of the Victim leaving the Venue and the interaction between the two parties in the car park.
 - The nature of the attack. The Applicant submitted that she only kicked the Victim once and there were no punches to the Victim's head (which is different to what the Victim claims).
 - Her actions in relation to the iPhone. She submitted that she did not "*stomp*" on it.

Submissions by the Respondent

10. The Respondent submits that the circumstances of the case warrant the exercise of the Respondent's discretion to issue a barring notice. The decision of the Respondent should not be quashed or varied, and the Barring Notice should be affirmed.

Why there are reasonable grounds to believe the Applicant has been violent or disorderly or contravened a provision of any written law

11. In the circumstances presented and on the evidence before the Respondent, a reasonable person would have been inclined to assent to, and not reject, the proposition that the Applicant had engaged in violent or disorderly conduct on or in the vicinity of licensed premises (the Venue), or contravened a provision of any written law, being the Criminal Code specifically section 313(1)(b) (common assault) and section 445 (unlawful damage):
- a. The Respondent refers to the materials that were before the Respondent's Delegate when he issued the Barring Notice which demonstrate that:
- the Applicant was involved in an altercation with the Victim in the vicinity of the Venue;
 - the Statement of Material Facts (relied on by the Applicant as evidence) outlines what occurred during the altercation; and