



LICENSE REVOCATION ORDER

NAME AND ADDRESS OF RESPONDENT

Carl A. Chapman
[REDACTED]
[REDACTED]
[REDACTED]

Revocation Period Begins: 12/18/2013

Revocation Period Ends: 12/18/2018

Licenses Revoked: Hunting and Trapping

HEARING DATA

Name of Hearing Officer:

Michael S. Caruso
Environmental Impact Examiner
(Administrative Law Judge)

Date and Time of Hearing:

Thursday, November 14, 2013, at 10:00 a.m.

INCIDENT DATA

Victim:
[REDACTED]

Call For Service #:

12-010977

Date of Incident:

June 24, 2012

In the matter of the revocation of the **hunting and trapping** licenses, and all of the rights and privileges associated therewith of the individual identified above and hereinafter known as Respondent;

On the date, time and location indicated, the entitled matter was decided by the above named Hearing Officer, duly designated by the Commissioner of the Department of Environmental Conservation pursuant to Section 11-0719 of the New York State Environmental Conservation Law.

Further, having been established that a Notice of Hearing and Complaint was served upon the Respondent, with Respondent having **appeared** at the hearing, all other persons having had the opportunity to testify and present evidence and upon submission of the Hearing Record, Report and Recommendation establishing that Respondent did on the date of incident stated above while engaged in **hunting discharge a firearm so as to cause injury to another in violation of ECL § 11-0719(2)(a)(1)(i)**, specifically, on June 24, 2012, while engaged in hunting a red squirrel, Respondent caused injury to another person by discharging a firearm, it is, upon the record of these proceedings:

ORDERED AND DIRECTED, that any **hunting and trapping** licenses, carcass tags, stamps and permits currently held by Respondent are hereby revoked and are now void, and the Respondent is ordered and declared to be ineligible to hold such licenses, carcass tags, stamps and permits and is ineligible to **hunt or trap** without a license until the revocation period in this Order ends and Respondent has fully satisfied all of the provisions of this Order and all other licensing requirements, and it is further,

ORDERED AND DIRECTED, that the revocation and ineligibility herein above set forth, shall be entered in the minutes of the New York State Department of Environmental Conservation, and that a written notice thereof be forthwith served upon the Respondent by certified mail, return receipt requested, or by personal service by a representative of the New York State Department of Environmental Conservation, and it is further,

ORDERED AND DIRECTED, as provided in said Section that within five days after the service of the order and notice upon Respondent, that Respondent deliver to the Department of Environmental Conservation, Albany, New York, any and all **hunting and trapping** licenses, carcass tags and permits issued to Respondent for the current license year, together with any button or stamp associated with **hunting and trapping**, and it is further,

ORDERED AND DIRECTED, that in addition to completing the entire revocation time period Respondent must successfully complete a Department-sponsored course and obtain a certificate of qualification in responsible **hunting and trapping** practices before being issued another **hunting or trapping** license. Therefore, Respondent should successfully complete a Department-sponsored course and submit a certificate of qualification in responsible **hunting and trapping** practices to the Department during the revocation period. The certificate of qualification should be sent to the following address within 10 days from the date the certificate was issued: New York State Department of Environmental Conservation, Division of Law Enforcement, License Revocation Section, 625 Broadway, 3rd Floor, Albany, N.Y. 12233. It is further,

ORDERED AND DIRECTED, that if Respondent fails to comply with any provision of this Revocation Order, Respondent will become subject to the penalties prescribed by law in such cases.

12-18-13

Date

/s/

Col. Walter G. Heinrich
Commissioner's Designee for
Sportsman License Revocation Hearings

Revocation or Suspension of Licenses pursuant to Interstate Wildlife Violator Compact

Effective March 1, 2006, New York State joined the Interstate Wildlife Violator Compact (IWVC). The IWVC is a compact under which member states reciprocate regarding the suspension or revocation of licenses and permits resulting from violations concerning the pursuit, possession or taking of mammals, birds, fish, reptiles, amphibians, mollusks, shellfish and crustaceans.

If a person's license or permit privileges which come under the scope of the IWVC are suspended or revoked in one member state, they are subject to suspension or revocation in all member states. In addition to license and permit suspensions and revocations which result from a conviction for the illegal pursuit, possession or taking of mammals, birds, fish, reptiles, amphibians, mollusks, shellfish and crustaceans, failing to appear in court or to otherwise answer a ticket or summons issued for such violations will also result in license or permit suspension. IWVC member states also agree to recognize convictions and/or civil and administrative settlements for violations within the scope of the IWVC which occur in all other member states and to apply them toward license and permit suspension and revocations in the state in which the person resides. For a complete list of IWVC member states, please call DEC's Division of Law Enforcement at **518-402-8816**.

**New York State Department of Environmental Conservation
Hunting Related Shooting Incident (HRSI) License Revocation Hearing
Hearing Report, Findings & Recommendations, and Final Decision**

**In the Matter of the Alleged Violation of Article 11
of the New York State Environmental Law (ECL) by:**

Name	Carl A. Chapman	Address	[REDACTED]
D.O.B.	[REDACTED]	Sporting License #	[REDACTED]

HRSI General Information

Case Name:	Matter of Carl A. Chapman	Call for Service #	12-010977
Case No.:	12-010977		

On (Date):	June 24, 2012	Victim (Name):	[REDACTED]
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Was (check one):	Injured <input checked="" type="checkbox"/> ;	Killed <input type="checkbox"/> ;	or had Property Damaged <input type="checkbox"/>
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Description of Nature of Injury or Property Damaged:	Victim shot in the top of his right foot by a single .22 caliber hollow point round.
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By (Name of Responsible Party):	Carl A. Chapman
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Location:	Town of	Ellery	County of	Chautauqua
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This incident occurred while the Respondent and/or Victim were engaged in the following hunting activity (specify):

Attempting to take a red squirrel

This hearing was held at the Office of the New York State Department of Environmental Conservation located at (address):

270 Michigan Avenue, Buffalo, NY

at (time):	10:00 a m.	on (date):	November 14, 2013
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Designated Hearing Officer Name and Title:	Michael S. Caruso Environmental Impact Examiner (Administrative Law Judge)
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Petitioning Officer Rank, Name, & Shield	Lt. Donald Pleakis
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Respondent did not waive his right to this hearing.

APPEARANCES:

Respondent did appear for this hearing.

Victim(s)

Victim did appear for this hearing. List name(s) and address(es) of victim:

[REDACTED]

Witness(es)

List name(s) and address(es) of witness(es) present at this hearing:

██
NYS Trooper Aaron Destro, NYSP Troop A, 3081 N. Main Street, Jamestown, New York
ECO Lt. Donald Pleakis, NYSDEC, Region 9

Others Present At Hearing

List name(s) and address(es) of others present at this hearing:

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Carole L. Wasson, Court Reporter, Metschl and Associates 295 Main St., Suite 1098, Buffalo, New York

Firearm/Weapon Pertaining To The Hunting Related Shooting Incident

Make	Kimber	Gauge/Caliber	.22 caliber
Model	82	Owned by:	Carl A. Chapman
Serial #	5068	Possessed by	Carl A. Chapman

Exhibit List

1. DEC Hunting Related Shooting Investigation File (containing a table of contents and contents labeled S-1 through S-18). The following documents from Exhibit 1, already received in evidence, were marked separately for identification:

- 1-A. NYS Police Statement of Carl Chapman (S-3);
- 1-B. NYS Police Supporting Deposition of ██████████ (S-4);
- 1-C. NYS Police Receipt for release of property for firearm (S-5);
- 1-D. NYS Police Receipt for release of other property (S-6);
- 1-E. NYS Police Evidence Record (S-7);
- 1-F. Voluntary Statement of Carl Chapman (S-12);
- 1-G. Voluntary Statement of ██████████ (S-13);
- 1-H. Authorization For Release Of Medical Records (S-14);
- 1-I. Medical Records (S-15);
- 1-J. Hunting Related Shooting Investigation Report (S-2).

2. New York Hunting & Trapping, 2013-14 Official Guide to Laws & Regulations, Volume 6, Issue No. 1, October 2013

- The 10 Commandments of Firearm Safety pages 20-21 (with first four marked with an asterisk by staff).

Office of Hearings Exhibits:

- A. Copy of Hunting Related Shooting Hearing Notice dated September 11, 2013 addressed to respondent;
- B. Copy of Hunting Related Shooting Incident Notice of Hearing and Complaint dated September 30, 2013 addressed to respondent;
- C. Copy of Hearing Notice from OHMS to the parties dated October 22, 2013 with cover letter and copy of OHMS webpage, "Guide to Enforcement Hearings";
- D. Copy of Subpoena of NYS Trooper Aaron Destro dated October 4, 2013;
- E. Copy of Subpoena of NYS Trooper Aaron Destro dated November 5, 2013;
- F. Copy of Delegation of Authority: Chief Administrative Law Judge and Administrative Law Judges; and
- G. Copy of Delegation of Authority 12-15: Division of Law Enforcement Employees to Revoke Licenses, Conduct Hearings, and Execute Orders.

Transcript

The hearing was stenographically recorded.

Synopsis of Incident from Testimony, Documents, and Evidence

The synopsis rendered by me in this matter is based upon my review of the documents and evidence referenced above and the testimony of those present during the hearing held on the above date and time:

At approximately 6:00 pm on June 24, 2012 respondent discharged his Kimber .22 caliber bolt action rifle three times while trying to take a red squirrel that had been getting into the house and causing damage. The first shot wounded the squirrel and it fell from the tree it was in. The second shot missed the squirrel. While reloading the chamber with the bolt action, respondent's rifle discharged the third round which struck the victim in the top of his right foot causing injury that required emergency room medical care.

Findings, Conclusions of Law, and Recommendations of the Hearing Officer

FINDINGS: The findings, including any findings of negligence or negligence and wantonness or lack thereof (as the case may be), on the part of the Respondent, by this Hearing Officer, are based upon the preponderance of the testimony, documents, and evidence presented during the hearing and held on the above date and time (see 6 NYCRR 622.11[c]), unless this report notes a Default Judgment without hearing in which case the findings are based solely on the documents and evidence listed in this Report.

1. Respondent owns a Kimber .22 caliber bolt action rifle equipped with a Leopold scope. (Hearing Exhibits 1, 1-A, 1-C, 1-E, 1-F, 1-J; Hearing Transcript at 21, 31 and 53).
2. At least on one past occasion, the rifle fired as respondent closed the bolt action to insert a new round into the firing chamber. (Hearing Exhibits 1-A, 1-F, 1-J and 1[S-11]; Hearing Transcript at 49-50).
3. About seven years ago, respondent was advised by a gunsmith that the rifle needed a new bolt to prevent accidental discharges. (Hearing Transcript at 49-50).
4. On June 24, 2012 at approximately 6:00 pm, respondent was attempting to shoot and kill a red squirrel with the Kimber .22 caliber rifle at his place of residence, [REDACTED], New York. (Hearing Exhibits 1-A, 1-B, 1-F, 1-G, and 1-J; Hearing Transcript at 19, 21, 31, 33, 47, 48 and 53).
5. Respondent was accompanied and assisted by his uncle, [REDACTED]. (Hearing Exhibits 1-A, 1-B, 1-F, 1-G, and 1-J; Hearing Transcript at 20, 21, 31 and 33).
6. Respondent fired his first shot from his driveway at the squirrel which was situated on a tree branch in the yard. This shot wounded the squirrel causing it to fall from the tree. The squirrel managed to hide in some ground cover. (Hearing Exhibits 1-A, 1-B, 1-F, 1-G, and 1-J; Hearing Transcript at 31).
7. [REDACTED] retrieved the squirrel and tossed it into the mowed yard. (Hearing Exhibits 1-F, 1-G, and 1-J; Hearing Transcript at 31).
8. Respondent then took a second shot at the squirrel but missed. (Hearing Exhibits 1-F, 1-G, and 1-J; Hearing Transcript at 31, 34 and 42).
9. While [REDACTED] and respondent were standing in close proximity to one another, respondent closed the bolt action loading the next round into the firing chamber. In so doing, the firearm discharged striking the victim in the right foot. (Hearing Exhibits 1-A, 1-F, 1-G, and 1-J; Hearing Transcript at 20, 31, 34 and 45).
10. [REDACTED] was treated at the scene by [REDACTED] Fire Department and transported to [REDACTED] Hospital where he was treated and transferred to [REDACTED] hospital in Erie, Pennsylvania. (Hearing Exhibit 1-D).

DISCUSSION: Including a discussion of the standards of negligence, or negligence and wantonness (as the case may be).

In this hunting related shooting case, where a person has been injured, Department staff must prove by a preponderance of the evidence that respondent (i) while hunting or trapping (ii) caused injury to another (iii) by discharging a firearm (ECL 11-0719[2][a][1][i]). Department staff does not need to prove that respondent was negligent. If Department staff satisfies its burden of proof, the respondent must prove at the hearing that there was no negligence on his part in order to avoid revocation of his hunting and trapping licenses (ECL 11-0719[2][c]; see also *Iossa v Marcone*, 281 AD2d 235 [1st Dept 2001]; *Matter of Ratowski v Van Benschoten*, 57 AD2d 1025 [3rd Dept 1977]).

On June 24, 2012 at approximately 6:00 pm, respondent Carl A. Chapman was attempting to shoot and kill a red squirrel that had been getting into the house located at [REDACTED], New York and causing damage. Respondent, using his Kimber .22 caliber rifle, fired his first shot from the driveway at the squirrel,

which was situated on a tree branch in the yard. This shot wounded the squirrel and caused it to fall from the tree. The wounded squirrel sought refuge in some ground cover. ██████████, who was assisting respondent, removed the injured squirrel from the ground cover and tossed it onto an area of mowed lawn. Respondent then fired a second shot at the squirrel but missed. Respondent prepared to fire a third shot at the squirrel, and the rifle discharged as he closed the bolt action, striking ██████████ in the right foot. Both respondent and the victim testify that they were standing next to one another when the third round was fired. At that point, ██████████ said to ██████████ “Dude you just shot me in the foot” (see Hearing Exhibit 1, S-8). A call was immediately made to 911.

Department staff proved by a preponderance of admissible evidence that respondent while hunting caused injury to another by discharging a firearm. First, it is undisputed that respondent was engaged in hunting. “‘Hunting’ means pursuing, shooting, killing or capturing wildlife . . . and includes all lesser acts such as disturbing, harrying or worrying, whether they result in taking or not, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife” (see ECL 11-0103[10]). Respondent was attempting to take, shoot and kill a red squirrel, which is by definition, wildlife (see ECL 11-0103[6][a]).

Second, it is undisputed that respondent caused injury to another, namely ██████████ who was shot in the right foot and required emergency medical attention.

Third, whether respondent discharged his firearm by simply closing the bolt action or by touching what he called a “light trigger” (see Hearing Transcript at 49) or otherwise, the weapon was discharged due to his handling of the firearm. Respondent made statements to the NYS Trooper and the investigating ECO and testified that he was aware of safety problems with his rifle in the past. He admittedly knew that the firearm may accidentally fire when the bolt is being closed. With that knowledge, respondent discharged the firearm, whether due to operator error or mechanical error, resulting in the victim being injured.

Respondent attempted to demonstrate there was no negligence on his part (see Iossa v Marcone, 281 AD2d 235 [1st Dept 2001]). Respondent testified that his finger was not on the trigger when the rifle discharged the round that struck ██████████ in the foot. (See Hearing Transcript at 38 and 44.) Respondent also testified that the rifle had discharged in the past when he was loading a round by closing the bolt action. He went as far as taking the rifle to a gunsmith about seven years ago to have this problem checked out. He was advised at that time that the rifle needed a new bolt to cure the problem. (See Hearing Transcript at 49-50.) There is no evidence that the bolt has been replaced.

Respondent also argues that he did not intend to discharge the rifle or cause the injury to the victim. (See Hearing Transcript at 44 and 55.) Record evidence and testimony from the victim states that he did not believe respondent’s finger was on the trigger, and that he did not believe ██████████ was negligent. (See Hearing Transcript at 22 and 54.) The law, however, does not require intent. In fact, hunting accidents are often just that, an accident involving a failure to take ordinary care that would prevent a foreseeable risk or danger. In order to prove that he was not negligent, respondent needed to demonstrate by a preponderance of the evidence that he exercised the degree of care which a reasonably prudent person would have exercised under the same circumstances (see e.g. Mikula v Duliba, 94 AD2d 503, 505 [4th Dept 1983]). To demonstrate that he exercised the proper degree of care, respondent testified that the rifle was pointed in a safe direction, toward the ground. (See Hearing Transcript at 45 and 51.)

Contrary to respondent’s position, the rifle could not have been pointed in a safe direction since the discharge struck the victim who was less than five feet away. Even though the rifle may have been pointed at the ground, the victim’s foot was also in line with the direction the muzzle was pointed. Due to this fact, respondent’s attempt to demonstrate there was no negligence on his part ultimately fails. A reasonably prudent person would not have pointed the muzzle in the general direction of the victim whether in the act of loading, shooting or otherwise. Here, respondent testified he had prior knowledge of issues with the safety of the rifle. That increases the duty of care to be taken when handling such a weapon; it certainly does not diminish it. Any arguments to the contrary are unpersuasive.

The overwhelming evidence in this case demonstrates that respondent Chapman violated the first commandment of The 10 Commandments of Firearm Safety - “WATCH THAT MUZZLE! Keep it pointed in a safe direction at all times.” (See Exhibit 2 page 21, emphasis added.) At all times includes while loading, ejecting or emptying ammunition, cleaning, walking, talking, target practice, etc. Even an empty firearm is not to be pointed in an unsafe direction because all firearms should be treated as if they are loaded (id. Commandment No. 2).

On this record, I find that Department staff has demonstrated by a preponderance of the evidence that respondent

while hunting caused injury to another by discharging a firearm. I conclude that Respondent failed to demonstrate by a preponderance of the evidence that there was no negligence on his behalf.

Department staff requested that respondent's hunting and trapping licenses be revoked for five years. I am free, however, to apply any mitigating or aggravating factors to recommend a shorter or longer revocation period, as the case may be. The record before me does not provide any mitigating factors. Respondent's knowledge of the safety issues with the rifle prior to the date of this incident, however, does provide an aggravating factor to be considered in determining the revocation period. Based on this record, a five year revocation of respondent's hunting and trapping licenses combined with the completion of a Department-sponsored sportsman education course is appropriate.

CONCLUSIONS OF LAW: The following are the Hearing Officer's conclusions of law concerning the violations established on the record of the hearing.

Respondent while engaged in hunting caused injury to another by discharging a firearm. Respondent failed to establish that he was not negligent.

RECOMMENDATIONS: The following are this Hearing Officer's recommendations concerning the revocation of the respondent's sporting license and are subject to review by the Commissioner or the Commissioner's Designee for Sporting License Revocations.

1. That respondent Carl A. Chapman's hunting and trapping licenses be revoked and that he be denied the privilege of obtaining such licenses and denied the privileges of hunting and trapping with or without a license for a period of five years from the date of a Commissioner's Order; and
2. That the Commissioner order respondent Carl A. Chapman to successfully complete a Department-sponsored sportsman education course and obtain the associated certificate of qualification before being issued another license.

Hearing Officer's Name:	Michael S. Caruso	Title:	Environmental Impact Examiner (Administrative Law Judge)
Signature:	/s/	Date:	12/10/13

Central Office Review and Decision Regarding Sporting License Revocation

I have reviewed the hearing record regarding this matter and adopt the hearing report of the Administrative Law Judge (ALJ) in its entirety.

I agree with the ALJ that in a hunting related shooting case, where a person has been killed or injured, Department staff has the burden of proving by a preponderance of the evidence that respondent (i) while hunting or trapping (ii) caused death or injury to another (iii) by discharging a firearm (ECL 11-0719[2][a][1][i]). Department staff does not have an initial burden of proving that respondent was negligent. If Department staff satisfies its burden proof, respondent has the burden of proving at the hearing that there was no negligence on his or her part in order to avoid revocation of his hunting and trapping licenses (ECL 11-0719[2][c]; see also Iossa v Marcone, 281 AD2d 235, 236 [1st Dept 2001]; Matter of Ratowski v Van Benschoten, 57 AD2d 1025 [3rd Dept 1977]). Only where a respondent has made a showing of no negligence would the burden shift back to Department staff to rebut respondent's showing.

I also agree with the ALJ that Department staff proved by a preponderance of the record evidence that respondent violated ECL 11-0719(2)(a)(1)(i). The record establishes that on June 24, 2012, while hunting a red squirrel, respondent discharged his firearm and caused injury to Ben A. Lutgen.

I further agree that respondent failed to prove no negligence on his part. To prove that he was not negligent, respondent must demonstrate by a preponderance of the evidence that he exercised the degree of care a reasonably prudent person would have exercised under the same circumstances (see e.g. Mikula v Duliba, 94 AD2d 503, 505 [4th Dept 1983]). Respondent's adherence to the 10 Commandments of Hunter Safety, among other things, is relevant on the question of respondent's non-negligence. The record in this case, however, demonstrates that respondent violated the first commandment, that is, keeping the muzzle pointed in a safe direction at all times, even while reloading (see Exhibit 2 at 21). The evidence demonstrates that respondent's muzzle was pointed at Mr. Lutgen while respondent reloaded the firearm. Thus, respondent failed to establish no negligence on his part.

Finally, I concur that a five-year revocation of respondent's hunting and trapping privileges is warranted on this record.

The sporting license privileges of the responsible party should be revoked: Yes No

Sporting licenses subject to revocation: Hunting Trapping

Length and Terms of Revocation:

Five (5) years. Respondent Carl A. Chapman to successfully complete a Department-sponsored sportsman education course and obtain the associated certificate of qualification before being issued another license.

Commissioner or Commissioner's Designee: Col. Walter G. Heinrich

Signature:	/s/	Shield #	193	Date:	12-18-13
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