



LICENSE REVOCATION ORDER

NAME AND ADDRESS OF RESPONDENT

Stephen Millington
[Redacted Address]

DOB: [Redacted]

Revocation Period Begins: 05/10/23
Revocation Period Ends: 05/10/33
Licenses Revoked: Hunting

HEARING DATA

Name of Hearing Officer: ALJ Timothy M. MacPherson
Date / Time of Hearing: February 15, 2023 at 10:31 a.m.

INCIDENT DATA

Victim: [Redacted]
Date of Incident: November 17, 2019

In the matter of the revocation of the **hunting** license currently held and all of the rights and privileges associated therewith of the individual identified above and hereinafter known as the Respondent;

The above matter having come before the above named Hearing Officer, duly designated by the Commissioner of the Department of Environmental Conservation, on the date and time indicated, pursuant to Section 11-0719 of the Environmental Conservation Law of the State of New York, and due proof of the service of the Notice of Hearing and Complaint upon the Respondent having been filed and the Respondent **having appeared** and there having been presented before the Hearing Officer a report of **the shooting of the individual identified above as the victim**, and all persons present having had the opportunity to testify and present evidence, and it further,

Appearing from the foregoing, that the Respondent did, while engaged in **hunting** on the date indicated as the Date of Incident above,

- **cause the death of a person by discharging a firearm in violation of ECL § 11-0719(2)(a)(1)(i)**, it is, upon the record of this hearing:

ORDERED AND DIRECTED, that any **hunting** licenses, privileges, permits, tags, and stamps as noted above now held by the Respondent be hereby revoked, and the Respondent is ordered and declared to be ineligible to hold such licenses, privileges, permits, tags and stamps and ineligible to **hunt** 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 either by registered mail or 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 the Respondent, that the Respondent send to the **New York State Department of Environmental Conservation, Division of Law Enforcement, License Revocation Section, 625 Broadway, 3rd Floor, Albany, New York, 12233** any and all **hunting** licenses, privileges, tags and stamps issued to the Respondent for the current license year, together with any button or permit associated with **hunting**, and it is further,

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

05/10/23
Date


Karen E. Przyklek, Director, DLE
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 copy of the IWVC member states map, 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	Stephen T. Millington	Address	[REDACTED]
D.O.B.	[REDACTED]	Sporting License #	[REDACTED]

HRSI General Information

Case Name:	In the Matter of Stephen Millington	Call for Service #	
Case No.:	OHMS No. R6-20210721-18 / DLE No. 19-030222		

On (Date):	11/17/2019	Victim (Name):	[REDACTED]
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Was (check one):	Injured <input type="checkbox"/> ;	Killed <input checked="" type="checkbox"/> ;	or had Property Damaged <input type="checkbox"/>
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Description of Nature of Injury or Property Damaged:	Gunshot wound of upper right chest causing hemothorax. Perforations of right subclavian artery, right subclavian vein, and right lung.
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By (Name of Responsible Party):	Stephen T. Millington
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Location:	Town of	Frankfort	County of	Herkimer
[REDACTED]				

This incident occurred while the Respondent and/or Victim were engaged in the following hunting activity (specify):

Deer hunting

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

207 Genesee Street, Utica, NY

at (time):	10:31 a.m.	on (date):	2/15/23 (the hearing had been scheduled for 10/13/22, but was adjourned when one of the necessary parties tested positive for COVID-19)
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Designated Hearing Officer Name and Title:	Timothy M. MacPherson Environmental Impact Examiner (Administrative Law Judge)
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Petitioning Officer Rank, Name, & Shield	Lt. Francis D'Angelo
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Respondent did not waive his/her right to this hearing.

APPEARANCES:

Respondent did appear for this hearing and was represented by Hon. Marc R. Pallozzi, Esq.

Victim(s)

Victim did not 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:

Investigator Mark Malone
NYSDEC Region 6.

Stephen Millington

[REDACTED]

[REDACTED]

Others Present At Hearing

List name(s) and address(es) of others present at this hearing:
-Lt. Francis D'Angelo, Investigative Supervisor, NYSDEC Region 6
-Hon. Marc R. Pallozzi, Esq. (Clifton Park)
- [REDACTED] Court Reporter, [REDACTED]

Firearm/Weapon Pertaining To The Hunting Related Shooting Incident

Make	Rugger	Gauge/Caliber	.308 Caliber
Model	M77 Hawkeye	Owned by:	Stephen T. Millington
Serial #	712-20023	Possessed by	Stephen T. Millington

Exhibit List

1. DEC Hunting Related Shooting File (containing table of contents labeled S-1 through S-37). The following documents from Exhibit 1 were marked separately for identification:

DEPT. 1-A: Supporting Deposition of [REDACTED]

DEPT. 1-B: Audio Recording at the Scene, dated 12/14/2019

DEPT. 1-C: Hunting Related Shooting Investigation Report of Inv. Mark Malone

DEPT. 1-D: Narrative Report of Lt. Francis D'Angelo

DEPT. 1-E: Excerpt from Investigation Details, Page 8/13 of Investigative Report

DEPT. 1-F: Excerpt from Investigation Details, Page 9/13 of Investigative Report

Office of Hearings and Mediation Services Exhibits:

OHMS 1: HRSI Notice, dated 9/30/2022

OHMS 2: HRSI Notice, dated 1/24/2023

OHMS 3: Letter of Representation, dated 2/7/2022

OHMS 4: Cover Letter, from Lt. D'Angelo to respondent, dated 7/29/21

OHMS 5: Statement of Readiness, dated 7/29/2021

OHMS 6: HRSI Notice of Hearing and Complaint, dated 7/29/2021

Transcript

The hearing was recorded stenographically and the transcript was received on March 2, 2023.

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:

On November 17, 2019, between the hours of 08:15 a.m. and 08:30 a.m., Stephen Millington (respondent), and [REDACTED] (victim), along with 9 other friends and family members (the hunting party), took part in a deer drive. The hunting party intended to perform the deer drive on property leased from [REDACTED] located just North of route 5S in the Town of Frankfort, however, subsequent investigation revealed that the deer drive actually took place on property owned by [REDACTED] more specifically identified as [REDACTED] (the Site).

The plan was for four of the hunters (the "drivers") consisting of respondent, victim, [REDACTED] and [REDACTED] to drive deer in a Westerly direction towards the remaining seven hunters who sat and watched for approaching deer approximately 250 yards away. The drive began with respondent set up approximately 10 yards North of Route 5S. The victim was next in line of respondent followed by [REDACTED] and [REDACTED]. Each driver was spaced roughly 100 yards North of one another forming a drive line running perpendicular to Route 5S.

Shortly after the commencement of the drive, respondent stated that he saw an antlered deer to his South circling back to the East between his position and route 5S. At approximately 08:30 a.m., respondent spotted the deer behind him running in a Northerly direction and discharged his Ruger M77 Hawkeye bolt action rifle at the deer. Approximately three seconds after discharging his firearm, respondent heard victim shout that he had been shot. Respondent ran to assist the victim and radioed the other members of the Hunting Party to call 911. Respondent, a registered nurse, performed CPR on victim. Upon arriving at the scene, respondent's brother, [REDACTED] who was originally positioned as the Northmost driver, assisted with CPR. Despite the efforts to resuscitate him, the victim succumbed to his injuries from a gunshot wound to the upper right chest causing hemothorax.

The first Environmental Conservation Officer (ECO) arrived on the scene at approximately 9:05 a.m. Emergency Medical Services personnel arrived and provided treatment to the victim at 8:55 a.m. Additional ECOs and law enforcement officers from the New York State Police and the Town of Frankfort arrived throughout the morning to process the scene. Victim was pronounced dead at 8:40 a.m.

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. Investigator Mark Malone has been an ECO for the New York State Department of Environmental Conservation (DEC) for twenty-two years and has served as a DEC investigator for the past ten years. Inv. Malone is a firearms instructor and, along with investigating hunting related shooting incidents himself, instructs new ECO's on DEC procedures and practices regarding the same. (*See* Hearing Transcript [tr] at 16-17.)
2. Stephen Millington (respondent) resides at [REDACTED] and is a registered nurse of over twenty years with forty-five years of experience hunting (*see* exhibit DEPT. 1-C; tr at 84).
3. On November 17, 2019, respondent and 11 other hunters, including the victim, participated in a deer drive. The deer drive was to take place on property leased from [REDACTED] and located North of Route 5S in the Town of Frankfurt, Herkimer County, however, the incident actually took place on property owned by one [REDACTED] more specifically identified as [REDACTED] (the Site). (*See* exhibit DEPT. 1-C; tr at 24, 77.)
4. During the November 17, 2019, deer drive, respondent and victim both played the role of "driver" which called for them to march in a Westward direction pushing deer towards a second, stationary group of hunters (the "watchers") positioned roughly 250 yards West of the drivers starting location (*see* tr at 24, 86-87, 89).
5. Respondent began the drive roughly 10 yards North of Route 5S and was tasked with maintaining that 10 yard distance between himself and Route 5S while driving Westward. Victim began the drive roughly 100 yards North of respondent and was tasked with maintaining a 20 yard distance between himself and a row of hedges North of his position running roughly parallel to Route 5S. (*See* tr at 36, 156.)
6. The drive commenced between 8:15 a.m. and 8:30 a.m. Approximately 10-15 minutes into the drive, respondent observed an antlered deer due South towards Route 5S running in an Eastward direction. Because the deer was between respondent and a roadway, respondent did not take a shot. The deer ran behind respondent and then began running in a Northerly direction. When the deer entered an open area, respondent took the shot. (*See* exhibit DEPT. 1-C; tr at 97-99.)
7. Shortly after taking the shot, respondent heard the victim yell that he was hit, and respondent ran in the direction of the victim to provide assistance (*see* tr at 102).
8. Once respondent reached the victim, he called for help from the other members of the hunting party and began administering C.P.R. until his brother, [REDACTED], arrived and took over C.P.R. (*see* tr at 105-106, 150).
9. Emergency medical technician, [REDACTED], arrived and began treating the victim at 8:55 a.m. (*See* exhibit 1.)
10. ECO Darryl Lucas arrived at 9:05 a.m. Additional law enforcement officers from DEC, New York State and the Town of Frankfurt arrived throughout the morning and advised the hunting party to unload their firearms. (*See* exhibit 1.)
11. Respondent picked up the shell casing from the round that he fired making it impossible for K-9 officer Schoonover and his K-9 partner to track the exact path that respondent took on November 17, 2019. (*See* exhibit 1.)

12. EMT [REDACTED] pronounced the victim, [REDACTED] dead at 8:40 a.m. on November 17, 2019.¹ G.P.S. coordinates of where the victim expired were taken by the officers. (See exhibit 1; tr at 37).

13. On December 14, 2019, Inv. Malone returned to the scene with respondent, who willfully appeared to assist with the investigation. Inv. Malone used the information he obtained during this interview and walk through with respondent to determine respondent's position and included that information in his investigative report (See exhibit 1; tr at 67-68)

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

Standard of Proof

To prove a violation of Environmental Conservation Law (ECL) 11-0719(2)(a)(1)(i), Department staff must show by a preponderance of the evidence that respondent (1) while engaged in hunting (2) caused death to any person (3) by discharging a firearm (see ECL 11-0719[2][a][1][i]). Proof of negligence on the part of respondent is not required under ECL 11-0719(2)(a)(1)(i).

If Department staff satisfies its burden of proof, the respondent may avoid revocation of his hunting and trapping licenses if he proves, by a preponderance of the evidence, that there was no negligence on his part (ECL 11-0719[2][c]; see also *Iossa v Marcone*, 281 AD2d 235 [1st Dept 2001]; *Matter of Ratowski v Van Benschooten*, 57 AD2d 1025 [3rd Dept 1977]).

Department staff proved that respondent violated ECL 11-0719(2)(a)(1)(i) by a preponderance of the evidence

First, both Department staff and respondent agree that respondent, along with his hunting party, were engaged in hunting at the Site on November 17, 2019 (see tr at 85-87). Second, the parties stipulated that "[REDACTED] died because of a gunshot wound" (see tr at 10). Third, respondent does not dispute the fact that he was the shooter as he provided testimony that "[he] took the shot... and then [he heard] somebody yelling over in the woods, 'I've been hit' [before he] took off running in that direction." (see tr at 102). Based upon this record, I find that Department staff met their burden to prove the elements of the offense by a preponderance of the evidence.

Because Department staff have met their burden of proof that the violation occurred, the question turns to whether respondent can prove that he was not negligent. In order to prove that he was not negligent, respondent must 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]).

Respondent's case for no negligence

1. Negligence on the part of the victim:

In making the case that he was not negligent, respondent testified that it was the victim's negligent actions which ultimately led to his own death. First, respondent offered testimony that the victim did not take well to the harsh weather conditions on November 17, 2019, and that those weather conditions contributed to the victim losing focus and veering from his assigned drive line. Specifically, respondent testified that it was very cold on the date of the incident, "like eight degrees" and that "[t]he wind was blowing about twenty-five, thirty miles an hour." (See tr at 95.) Respondent recalled that, because of the oppressive weather conditions,

¹ It is unclear how EMT [REDACTED] arrived at an 8:40 a.m. time of death considering the fact that he began treating the victim at 8:55 a.m.

the victim was eager for the hunt to end and that the victim “made statements like when is this going to get over, I need to get back to the car? How much further do I got to go?” (See tr at 91.)

Second, respondent’s brother, ██████████, testified that he provided clear instruction to the victim regarding the path that he should take during the drive but that the victim struggled to follow that direction. Specifically, ██████████ stated that the victim was instructed to walk a straight line along a row of hedges for approximately two hundred of the two hundred and fifty yards between the driver’s starting position and the point at the end of the drive where the watchers were waiting for them. ██████████ further testified that he observed the victim in the wrong location at one point and needed to contact the victim by radio to get him back on the right path. (See tr at 156-157.)

Finally, while respondent’s memory regarding the specific details of this traumatic event were understandably shaky, he recalled that when he found the victim and began performing CPR, the victim’s orange hunting hat – used to distinguish fellow hunters from wildlife – was covered by the camouflage hood of the victim’s jacket (see tr at 125). ██████████ corroborated this account by offering credible testimony that the victim’s camouflage hood was up and that it was covering his orange hunting hat when he ██████████ arrived on the scene (see tr at 150). ECO Benjamin Tabor’s hand-written notes further corroborate this account as they indicate, among other things, “camo hood up” (see exhibit 1).

2. Poor weather conditions and visibility on November 17, 2019:

A second theory proposed by respondent to show that there was no negligence on his part focused on the poor conditions at the time of the hunt. In addition to testifying about the cold, windy conditions, respondent testified that there was “very thick” brush and goldenrod “not quite as tall as [respondent], but four, four and a half feet” tall and that “you can’t see through it as well” (see tr at 96-97). Respondent also described high briars, thorn apples and one moment in particular when he entered a clearing and observed blizzard like conditions for a period of two to three minutes (see tr at 95).

Respondent’s testimony regarding the harsh conditions at the Site on November 17, 2019, was corroborated by ██████████ who testified that the goldenrod was “about four and a half to five foot tall” and that there was dense foliage from tamarack along with the presence of dense briars. Summing up the state of the Site at the time of the incident, ██████████ stated that “[t]here was not a lot of clear sight.” (See tr at 152-153.)

3. Questions about the location of respondent and victim at the time the shot was fired:

Finally, respondent argued that the fatal shot was fired “directly East” (tr at 101), which necessarily implies that the victim strayed so greatly from his driving lane that he was, in fact, behind respondent and in respondent’s driving lane when he was hit (see tr at 99-101).

Analysis of respondent’s case for no negligence

Inv. Malone testified that one of the rules of safe hunting is to “know your target and what’s beyond your target... [b]ecause you never know if there’s a house, if there’s a person, if there’s something beyond the horizon that you may be shooting at.” (See tr at 20.) Inv. Malone further testified that when hunting with a scope, as respondent was, your field of vision is necessarily limited, however, both respondent and his brother, ██████████ indicated that they have always been trained to hunt with both eyes open even when using firearm with a scope (see tr at 27, 99-100, 154-155).

The parties also offered differing testimony about the degree to which foliage may have obstructed the vision of the hunters or caused them to veer off course on the day of the incident. Inv. Malone testified that there were not a lot of leaves on the trees when he inspected the Site on November 18, 2019, one day after the incident occurred (see tr at 44). On the other hand, respondent and his brother both testified that the presence of foliage, briars, goldenrod and tamarack limited their visibility (see tr at 96-97, 152-153).

Both Department staff and respondent acknowledge that the victim was a novice hunter who only hunted with

this party on one other occasion: the day before (*see tr at 26, 92, 146*). Respondent and [REDACTED] described the Site on the date of the incident as cold and windy with obstructed vision due to dense vegetation. Inv. Malone and [REDACTED] also described gullies, which the drivers would have to navigate through or around, potentially taking them off their intended drive path (*see tr at 25, 157*).

The parties, however, do not agree on where respondent was located relative to the victim at the time that the fatal shot was fired. At the hearing it was established that respondent began the drive roughly 10 yards North of Route 5S. The victim, on the other hand, began the drive positioned roughly 100 yards North of respondent and roughly 20 yards South of a row of hedges which run parallel to Route 5S (*see Finding of Fact No. 5*). The plan required victim to march Westward maintaining his distance 20 yards South of the row of hedges while respondent marched Westward maintaining his 10 yard distance North of Route 5S. (*See finding of fact No. 5; tr at 36, 156*).

[REDACTED] testimony establishes that the victim did in fact deviate from his assigned path on at least one occasion. Because [REDACTED] used the hunting party's radio to get the victim back on the right track, and each member of the party had a radio in their possession, the entire hunting party would have been on notice at that time that the victim was off course (*see tr at 93*). The record also demonstrates that the victim wasn't the only driver who veered off course on the date of the incident. Based on the December 14, 2019, walkthrough conducted by Inv. Malone and respondent, it was concluded that respondent was situated some 35 yards North of where he was supposed to be at the time the shot was fired (*see Finding of Fact No. 11; tr at 69, 73*). Although it is understandably difficult nearly one month after the date of the incident to reenact the exact path that respondent walked, Inv. Malone testified that any time you can bring a shooter back to the scene, it is a powerful investigative tool and respondent himself stated that he "did the best of [his] ability, walking through the woods a month later, and tried to show them where [he] shot" (*see tr at 67, 131*).

Inv. Malone testified that "where [victim] had walked and where [respondent] had walked had been difficult to determine" on the date of the incident (*see tr at 52*), but that G.P.S. coordinates were taken of the spot where the victim died, and the victim's final resting place was roughly the same spot where he was shot (*see tr at 37-39, 54; exhibit DEPT. 1-C*). Respondent, on the other hand, offered testimony that the victim was "standing up, walking" when respondent reached him (*see tr at 104*). On cross examination, Inv. Malone contended that even if the victim was standing when respondent reached him, "[victim] didn't walk ten, fifteen, twenty yards" after being shot. Rather, "he may have took another step or two..." (*See tr at 54.*)

Based upon the location of the victim and the location where respondent stated that he took the shot during the December 14, 2019, walkthrough, Inv. Malone concluded that respondent was shooting North to Northeast "directly into [victim's] lane" (*see Finding of Fact No. 11; tr at 39, 54*). Respondent, however, insists that he fired directly behind him in an Easterly direction (*see tr at 101*). Although Inv. Malone testified that "if [respondent] had fired directly behind him, that would... not have been negligent," respondent's contention that he fired directly East is not supported by the record (*see tr at 59*).

The G.P.S. coordinates of the victim's final resting place are known and the victim would not have been able to travel any more than a few yards after being struck by the fatal bullet. While some doubt was raised by respondent regarding his location at the time of the incident, the evidence on record demonstrates that respondent was positioned Southwest of the victim at the time that the shot was fired. Based on this record, I find that respondent veered some 35 yards North of his intended location at the time that the fatal shot was fired, and that the shot was fired Northeast of the respondent and into the victim's driving lane.

Regarding the victim's alleged contributory negligence, the record demonstrates that the victim was wearing his hood at the time of the incident. This fact is corroborated by the testimony of respondent, [REDACTED] and the notes of ECO Benjamin Tabor. The fact that the victim's hood was up and that it was covering the orange hat which hunters wear to increase their visibility to other hunters is important but not dispositive. The covering of the victim's orange hat, presumably to combat the cold, windy conditions, does not absolve respondent of his responsibility as a hunter to exercise the appropriate degree of care.

The burden is not on respondent to prove that the victim was negligent. The burden is on respondent to prove

that respondent was not negligent. Respondent must show 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]). Moreover, I am unconvinced by respondent's offer of proof that the victim's negligence led to his death. Wearing fluorescent orange, although recommended for big game hunters for years, was not required in New York State until 2021. In a similar case, where a victim left the agreed upon line of hunters and was eventually shot by one of his fellow hunters, the court found the victim was free of contributory negligence (*DiConstanzo v Fiumano*, 17 AD2d 787 [1st Dept 1962], *affd* 13 NY2d 1009 [1963]).

Conclusion

Given the conditions at the time, the topographical obstacles that the party faced and the victim's lack of experience, the veteran hunters in the party knew or should have known that there was a greater than normal risk of an accident occurring. In other words, the veteran hunters owe a duty of care to the inexperienced hunters in their party to ensure everyone enjoys the hunt in a safe manner. The record demonstrates that respondent knew, or should have known, that the victim already veered off his intended course once, that the victim "had never been in the woods before" (*see tr at 152*), and that the victim was cold, uncomfortable, and impatient. The record also demonstrates that respondent himself had veered off of his intended driving course.

It is clear from the record that respondent is a skilled, experienced hunter who had no intention of causing any harm to the victim on the date of the incident. Nonetheless, respondent is responsible for knowing his target and what is beyond his target before taking a shot. On this record, I conclude that staff demonstrated by a preponderance of the evidence that respondent (1) while engaged in hunting, (2) caused death to the victim, (3) by discharging his firearm constituting a violation of ECL 11-0719(2)(a)(1)(i), and that respondent did not establish by a preponderance of the evidence that there was no negligence on his part.

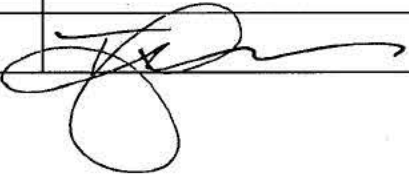
The Environmental Conservation Law provides that any person who violates ECL 11-0719(2)(a)(1)(i) will have their hunting license revoked for a period not exceeding ten years (*see ECL 11-0719[2][c]*). DEC DLE policy further dictates that where, as here, a violation of ECL 11-0719(2)(a)(1)(i) occurs, there are no mitigating factors which may be considered to reduce the ten year revocation period.

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

On November 17, 2019, respondent, while hunting, discharged his firearm, causing the death [REDACTED]. Respondent failed to meet the burden of proving that there was no negligence on his part when he took the shot.

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.

Pursuant to the ECL and DLE policy, I recommend that respondent's hunting license be revoked for 10 years and that respondent be directed to complete a Department-sponsored sportsman education course, and obtain the associated certificate of qualification, before being issued another license.

Hearing Officer's Name:	Timothy M. MacPherson	Title:	Environmental Impact Examiner (Administrative Law Judge)
Signature:		Date:	5/9/2023

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, Department staff has the burden of proving that respondent (1) while engaged in hunting (2) caused death to any person (3) by discharging a firearm (*see* 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 of 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 or her hunting and trapping license (ECL 11-0719[2][c]; *see also Iossa v. Marcone*, 281 AD2d 235, 236 [1st Dept 1977]; *Matter of Ratowski v Van Benschoten*, 57 AD2d 1025 [3rd Dept 1977]). Only where 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 November 17, 2019, respondent was engaged in hunting and caused the death of the victim, [REDACTED] by discharging his firearm.

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 responsibility to know his target and what is beyond his target is relevant on the question of respondent's non-negligence. The record in this case demonstrates that this hunt took place on challenging terrain, during difficult weather and with an inexperienced hunter among those in the party. The evidence further demonstrates that respondent fired directly Northeast from a point 35 yards North of his intended driving lane directly into the victim's lane. On this record I conclude that respondent did not know what was beyond his target when he fired the shot that led to the victim's death and has, therefore, failed to meet his burden of proving no negligence on his part.

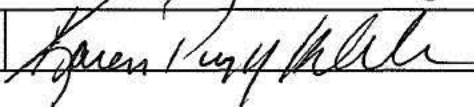
Finally, in accordance with the Environmental Conservation Law and DEC Department of Law Enforcement policy, I concur that a ten-year revocation of respondent's hunting and trapping privilege is warranted on this record.

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:

Ten years. Respondent Stephen Millington 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:	Karen E. Przyklek, Director, DLE		
Signature: 	Shield #	381	Date: 05/18/23