



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION ALBANY, NEW YORK 12233  
**LICENSE REVOCATION ORDER**

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**NAME AND ADDRESS OF RESPONDENT**

Nicholas Pacinello

[REDACTED]  
D.O.B. [REDACTED]

**Revocation Period Begins: NA**  
**Revocation Period Ends: NA**

**Licenses Revoked: None**

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**HEARING DATA**

**Name of Hearing Officer:**

Molly T. McBride  
Environmental Impact Examiner  
(Administrative Law Judge)

**Date and Time of Hearing:**

May 11, 2021 10:00a.m.

**INCIDENT DATA**

**Victim:**

NA

**Call For Service #:**

**Date of Incident:**

11/25/2018

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

On the date, time and location indicated, the entitled matter was heard by the above-named Hearing Officer, and decided by the undersigned 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 the 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 finding that Department Staff failed to establish that the Respondent violated ECL 11-0901(4)(b)(7) and ECL 11-0107(1);

**NOW, THEREFORE**, having considered this matter and being duly advised, it is **ORDERED** that:

The charges alleged against respondent Nicholas Pacinello in Department staff's January 26, 2021, amended complaint are dismissed, with prejudice.

2/8/2022

Date

/s/

Karen E. Przyklek, Director, DLE  
Commissioner's Designee for  
Sportsman License Revocation Hearings

**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:**

<b>Name</b>	Nicholas Pacinello	<b>Address</b>	[REDACTED]
<b>D.O.B.</b>	[REDACTED]	<b>Sporting License #</b>	[REDACTED]

**HRSI General Information**

<b>Case Name:</b>	Matter of Pacinello	<b>Call for Service #</b>	
<b>Case No.:</b>	18-028511		

<b>On (Date):</b>	11/25/2018	<b>Victim (Name):</b>	
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<b>Was (check one):</b>	Injured <input type="checkbox"/> ; Killed <input type="checkbox"/> ; or had Property Damaged
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<b>Description of Nature of Injury or Property Damaged:</b>	Allegedly respondent allowed a youth hunter to hunt and kill a spike buck whitetail deer with assistance of a pre-established bait pile.
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<b>By (Name of Responsible Party):</b>	Nicholas Pacinello
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<b>Location: 2992 Fish Brook Rd</b>	<b>Town of</b>	Tompkins	<b>County of</b>	Delaware
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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):**

Via WebEx

<b>at (time):</b>	10:00 a.m.	<b>on (date):</b>	May 11, 2021
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<b>Designated Hearing Officer Name and Title:</b>	Molly T. McBride Environmental Impact Examiner (Administrative Law Judge)
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<b>Petitioning Officer Rank, Name, &amp; Shield</b>	Investigator George Wilbur, ECO
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**Respondent did not waive his/her right to this hearing.**

**APPEARANCES:**

**Respondent, counsel for respondent Michaelangelo Matera, Esq., DEC Inv. George Wilbur, ECO Nathan Doig, Stephen Repsher, Esq. for DEC.**

**Victim(s)**

<b>Witness(es)</b>			
<b>List name(s) and address(es) of witness(es) present at this hearing:</b>			
ECO Nathan Doig, NYSDEC, Region 4 Inv. George Wilbur, NYSDEC, Region 4 [REDACTED]			
<b>Others Present At Hearing</b>			
<b>List name(s) and address(es) of others present at this hearing:</b>			
Stephen Repsher, Esq., Assistant Regional Attorney, NYSDEC Region 4 Office, Schenectady, NY Michaelangelo Matera, Esq., counsel for respondent, 560 Broadhollow Rd, Suite 303, Melville, NY 11747.			
<b>Firearm/Weapon Pertaining To The Hunting Related Shooting Incident</b>			
<b>Make</b>	unknown	<b>Gauge/Caliber</b>	
<b>Model</b>		<b>Owned by:</b>	
<b>Serial #</b>		<b>Possessed by</b>	
<b>Exhibit List</b>			
<ol style="list-style-type: none"> <li>1. NYS Search Warrant issued Nov. 26, 2018 by Tompkins Town Court</li> <li>2. Photo taken 11/26/18 of driveway to [REDACTED] Tompkins, NY</li> <li>3. Photo taken 11/26/18 of camper located at [REDACTED] Tompkins, NY</li> <li>4. Photo taken 11/26/18 of site at [REDACTED] Tompkins, NY (corn in snow)</li> <li>5. Photo taken 11/26/18 of site at [REDACTED] Tompkins, NY (apples in snow)</li> <li>6. Photo taken 11/26/18 of deer remains at [REDACTED] Tompkins, NY</li> <li>7.</li> <li>8. Photo taken 11/26/18 of corn in snow and motion detector at [REDACTED] Tompkins, NY</li> </ol> <ol style="list-style-type: none"> <li>A. Original Complaint 9/1/20</li> <li>B. Amended Complaint 1/26/21</li> <li>C. ECO Eastwood report 11/27/18</li> <li>D. Application for search warrant to Tompkins Town Court 11/26/18</li> <li>G. Google map of [REDACTED]</li> <li>H. Photo of deer tag</li> <li>J. DEC Chain of custody paperwork (SIM card and bait) 11/25/18</li> <li>K. Google Earth Map of [REDACTED]</li> <li>S. Affidavit of George Wilbur 1/20/21</li> <li>T. Photo taken 11/25/18 of DEC Officer on Property</li> <li>U. Photo taken 11/25/18 of DEC Officer on Property</li> <li>V. Photo taken 11/25/18 of DEC Officer on Property</li> <li>X. Photo of signage at driveway [REDACTED]</li> <li>Y. Photo of "Posted" sign</li> <li>CC. Certificate of disposition for Tompkins Town Court, People v. Pacinello</li> </ol>			
<b>Transcript</b>			

The hearing was recorded via WebEx and a transcript was prepared and received by the parties.

### 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 25, 2018 a youth hunter age 14 shot a white tail deer at or near ██████████ Tompkins, NY. DEC staff alleged the youth hunter shot the deer with the assistance of a bait pile. The respondent adult, owner of the property where the incident allegedly occurred, was alleged to be the “mentor”/ adult with the youth hunter at the time of the shooting who allowed the youth to hunt with assistance of a bait pile.

### 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. On 11/25/18 respondent Nicholas Pacinello was operating a vehicle when it was stopped by DEC ECOs George Wilbur and Nathan Doig on ██████████ Tompkins, NY when the ECOs observed a spike buck whitetail deer on the vehicle (Transcript [T] 10).
2. The respondent’s vehicle was driving south on ██████████ and was 1.5-2 miles from ██████████ when it was stopped (T.65).
3. On 11/25/18 respondent was operating the vehicle at the time it was stopped by the ECOs (T.10). A youth hunter and two other adults were also in the vehicle (T. 66).
4. On 11/25/18 a 14 year old youth hunter in the stopped vehicle indicated he shot and killed the spike buck white tail deer (T.10).
5. On 11/25/18 respondent “pointed up the hill” on ██████████ when the youth was asked where he shot the deer (T.10) and responded to the ECO inquiry that the deer was shot “up the hill” (T.10).
6. On 11/25/18 respondent owned ██████████ Tompkins, NY (Exhibit B).
7. On 11/25/18, after stopping the respondent’s vehicle, the DEC ECOs visited the property at ██████████ (T.11).
8. On 11/25/18 the two ECOs observed piles of corn and apples on respondent’s property at ██████████ Tompkins, NY (T.12).
9. On 11/25/18 the ECOs observed deer remains in or near the piles of corn and apples on respondent’s property (T. 12).
10. Respondent never identified himself to ECOs Wilbur and/or Doig as parent, legal guardian or mentor to the youth hunter (T.66).
11. The Department has no documentation showing respondent was appointed mentor of the youth hunter (T.68).

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

Department staff must show by a preponderance of the evidence that respondent failed to properly mentor the youth hunter by arranging for and/or authorizing the unlawful taking of a deer over a pre-established bait pile” in violation of ECL 11-0107(1) & 11-0901(4)(b)(7) (Exh B). The Amended Complaint alleges respondent's actions on 11/25/18 violated the ECL in that respondent failed to properly mentor the youth hunter by arranging for and/or authorizing the youth to unlawfully take a deer over a pre-established bait pile (Exhibit B, paragraph 26). DEC ECO Wilbur testified that the youth hunter acknowledged killing a spike buck whitetail deer observed on respondent’s vehicle on 11/25/18 (T.10). DEC staff questioned respondent as to where the deer at issue was shot. The testimony of ECO Wilbur was that respondent “pointed up the hill” and also stated that the deer was taken up the hill, no property address was given (T.10). The discussion took place approximately 1.5 -2 miles from

respondent's property located at [REDACTED]. No evidence was introduced into the record to establish that the observed spike buck white tailed deer was shot at [REDACTED], respondent's property.

There is nothing in the record that establishes respondent was the parent, guardian or mentor of the youth hunter who took the spike buck whitetail deer on the day of the incident (T.66-68). At the time that ECO Wilbur stopped respondent's vehicle on 11/25/18, two other adults were present in the vehicle with the youth hunter (T.66). Staff advised that the mother of the youth hunter did indicate that her child was hunting with respondent as well as respondent's adult son, but nothing has been introduced in the record that identifies respondent as the adult who was responsible for the actions of the youth hunter on the day of the incident. ECL 11-0929 precludes a youth 14 or 15 years old to hunt with a gun unless accompanied by a parent or legal guardian or licensed hunter 18 years of age or older designated in writing by a parent or legal guardian as the mentor. The mother of the youth hunter advised DEC Staff that she did not file mentor paperwork for her son (Exh.C). The youth did not comply with ECL 11-0929 (b), no parent, designated legal guardian or youth mentor accompanied him when he was hunting wild deer with a gun. Neither the youth nor his parents were charged with violating ECL 11-0929.

Although DEC Staff testified of their findings of a large pile of apples and corn on respondent's property that led them to believe that someone was using a pre-established bait pile to hunt deer (T.12), there is no evidence in the record that establishes that the youth hunter used the identified pre-established bait pile to assist him in hunting the spike buck deer observed on the day of the incident or that the deer was taken on the property in question. DEC Staff testified that they do not know when the bait pile observed on 11/25/18 was placed on respondent's property (T.51). DEC Staff testified that they do not know the date that the deer was taken but ECL Wilbur testified that he "personally" believes it was taken on November 24, 2018 (T. 51).

**On this record, I conclude that DEC staff has not established by a preponderance of the evidence that respondent violated ECL 11-0901(4)(b)(7) and ECL 11-0107(1).**

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

**DEC staff has not established by a preponderance of the evidence that respondent violated ECL 11-0901(4)(b)(7) and ECL 11-0107(1).**

**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.

**I recommend that Department staff's request that respondent's hunting license be revoked for 5 years and that respondent be fined \$300 be denied.**

<b>Hearing Officer's Name:</b>	Molly T. McBride	<b>Title:</b>	Environmental Impact Examiner (Administrative Law Judge)
<b>Signature:</b>	/s/	<b>Date:</b>	12/01/21

## 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) as my decision in this matter, subject to my comments below.

I agree that Department staff failed to prove by a preponderance of the record evidence that respondent Nicholas Pacinello failed to properly mentor the youth hunter by the youth's taking of deer over a pre-established bait pile in violation of ECL 11-0901(4)(b)(7) and 11-0107(1).

Department staff sought the revocation of respondent's hunting license pursuant to ECL 11-0719. ECL 11-0719(3) provides, "A hunting license issued to a person who is at least twelve and less than sixteen years of age or a hunting license with bowhunting privilege issued to a person who is between the ages of twelve and sixteen years may be revoked by the department upon proof satisfactory to the department that such person, while under the age of sixteen, has engaged in hunting with a gun, crossbow or longbow, in circumstances in which a license and/or bowhunting or muzzle-loading privilege is required, while not accompanied by his or her parent, guardian or other adult as provided in section 11-0929 of this article." ECL 11-0929 requires, in part, that the youth hunter hunting deer with a gun must be accompanied by "his or her parent or a legal guardian, or a youth mentor who is twenty-one years of age or older designated in writing by the parent or legal guardian of the licensee on a form prescribed by the department." Accordingly, the "other adult as provided in section 11-0929" referenced in the first sentence of ECL-0719(3), refers to a specific adult, a youth mentor who is twenty-one years of age or older and designated in writing by the youth's parent or guardian.

ECL 11-0719(3) continues, "Additionally, the department may revoke the hunting and/or bowhunting or muzzle-loading privilege of any parent, guardian, youth mentor or other adult upon proof satisfactory to the department that such person allowed the holder of a hunting license, bowhunting privilege or muzzle-loading privilege to hunt with a gun, crossbow or longbow in violation of section 11-0929 of this article." Although "other adult" referenced in the first sentence of section 11-0719(3) is limited to the designated youth mentor, the second sentence identifies "other adult" in addition to the youth mentor and exhibits the legislative intent that any other adult who allows the youth hunter to hunt deer with a gun, crossbow or longbow while not accompanied by a parent, guardian or youth mentor may be held liable for such a violation.

In this matter, where the relief requested is the revocation of respondent's hunting license pursuant to ECL 11-0719(3), Department staff must prove by a preponderance of the evidence that respondent, either as parent, guardian, youth mentor or other adult, allowed the youth to hunt deer with a gun in violation of ECL 11-0929. It is the violation of 11-0929 that must be proven to seek revocation of the license in this instance, not violations of other ECL hunting provisions. Here, Department staff alleges that respondent failed to properly mentor the youth hunter by the youth's taking of deer over a pre-established bait pile in violation of ECL 11-0901(4)(b)(7) and 11-0107(1). ECL 11-0929, however, contains its own prohibitions that must be alleged when seeking revocation of a hunting license pursuant to 11-0719(3). First and foremost, would be an allegation that a parent, guardian, youth mentor or other adult allowed a youth to hunt deer with a gun without being accompanied by a parent, guardian, or designated youth mentor. Other potential violations of ECL 11-0929 would include the parent, guardian or youth mentor who accompanied the youth hunter: 1) failed to maintain physical control over the youth hunter, 2) hunted from a tree stand while accompanying the youth hunter or allowed the youth hunter to hunt from a tree stand, and 3) the parent, guardian, youth mentor or youth hunter failed to display the appropriate amount of orange or pink materials. Department staff did not allege any violations of ECL 11-0929.

As the ALJ concluded, the youth did not comply with ECL 11-0929(b) because his mother did not designate a youth mentor in writing, and there is nothing in the record establishing respondent was the adult responsible for the actions of the youth hunter. Moreover, staff did not allege that the youth hunter violated ECL-0929(b) or prove that respondent facilitated that violation. The record reflects there were two other adults with the respondent and the youth hunter. In short, there is no proof on this record, that respondent was supervising or mentoring the youth hunter. Department staff also failed to plead or prove respondent allowed the youth hunter to hunt in violation of ECL 11-0929. Staff's request for the revocation of respondent's hunting license is not supported on this record and must be denied.

Department staff also alleged that the youth hunter took his deer over a pre-established bait pile. The ALJ found that Department staff failed to produce evidence that the spike horn buck was taken with the aid of a pre-established bait pile or that the buck was shot on respondent's property. Pursuant to ECL 11-0901(4)(b)(7), it is illegal to hunt deer with the aid of a pre-established bait pile. Staff must prove by a preponderance of the evidence that the youth hunter hunted and took the spike horn buck with the aid of a pre-established bait pile. Although there is evidence that there was a bait pile on respondent's property and that a deer was field dressed in the vicinity of the bait pile, there is no evidence that the youth hunted over or took the spike horn buck with the aid of a bait pile.

I also take note of the fact that the alleged violation of hunting with the aid of a pre-established bait pile occurred in 2018, which if proven was a violation, then as it is today. However, it is now illegal for any person to intentionally feed deer or moose at any time (*see* 6 NYCRR 186.3 [a] [effective December 24, 2019]) or for any person to "incidentally or indirectly feed deer or moose or maintain the availability of incidental or indirect food sources for deer or moose after the Department has issued a written warning notice to the person or persons directly responsible for the incidental or indirect feeding of a deer or moose" (*see* 6 NYCRR 186.3 [b]).

For the foregoing reasons, Department staff's amended complaint is dismissed.

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:**

NA

Commissioner or Commissioner's Designee: Karen E. Przyklek, Director, DLE

Signature:	/s/	Shield #	381	Date:	2/8/2022
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