



LICENSE REVOCATION ORDER

NAME AND ADDRESS OF RESPONDENT

Michael J. Schiavone
[REDACTED]

Revocation Period Begins: 2/20/2018
Revocation Period Ends: 2/20/2023
Licenses Revoked: Hunting

HEARING DATA

Name of Hearing Officer: ALJ Richard A. Sherman
Date and Time of Hearing: Nov. 21, 2017 at 10:00 a.m.

INCIDENT DATA

Victim: [REDACTED]
Date of Incident: November 24, 2016

In the matter of the revocation of the **hunting** privileges AND licenses currently held and any associated carcass tags, permits and stamps are void and revoked and all 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 property 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,

- so negligently and wantonly discharged a firearm/longbow/crossbow as to destroy or damage private property in violation of ECL § 11-0719(2)(a)(1)(iii), 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.

2/20/2018

Date

/s/ #250

Director Joseph H. Schneider

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.

As of the date New York joined the IWVC, there are 43 states which are members. Other states and Canadian provinces are expected to join the IWVC. 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	Michael J. Schiavone	Address	[REDACTED]
D.O.B.	[REDACTED]	Sporting License #	[REDACTED]

HRSI General Information

Case Name:	Matter of Schiavone	Call for Service #	16-023623
Case No.:	16-023623		

On (Date):	11/24/16	Victim (Name):	[REDACTED]
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Was (check one):	Injured <input type="checkbox"/> ;	Killed <input type="checkbox"/> ;	or had Property Damaged <input checked="" type="checkbox"/>
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Description of Nature of Injury or Property Damaged:	800-pound red angus steer shot and killed
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By (Name of Responsible Party):	Michael J. Schiavone
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Location: Woods behind residence at 354 Wart Rd.	Town of Richland	County of Oswego
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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):

615 Erie Blvd West, Syracuse, NY

at (time):	10:00 a.m.	on (date):	11/21/17 (the hearing had been scheduled for 11/14/17, but was adjourned on that date at the request of respondent)
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Designated Hearing Officer Name and Title:	Richard A. Sherman Environmental Impact Examiner (Administrative Law Judge)
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Petitioning Officer Rank, Name, & Shield	Lt. James Reitmeier
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Respondent did not waive his/her right to this hearing.

APPEARANCES:

Respondent did appear for this hearing.

Victim(s)			
Victim did not appear for this hearing. List name(s) and address(es) of victim:			
Witness(es)			
List name(s) and address(es) of witness(es) present at this hearing:			
ECO Matthew Dorrett, NYSDEC, Region 7 Lt. James Reitmeier, NYSDEC, Region 7 Michael J. Schiavone, [REDACTED]			
Others Present At Hearing			
List name(s) and address(es) of others present at this hearing:			
Margaret Sheen, Esq., Assistant Regional Attorney, NYSDEC Region 7 John F. Drury, Court Reporter, Esquire Deposition Solutions, 800-211-3376			
Firearm/Weapon Pertaining To The Hunting Related Shooting Incident			
Make	Marlin	Gauge/Caliber	30-30
Model	30 AW	Owned by:	Michael J. Schiavone
Serial #	02070733	Possessed by	Michael J. Schiavone
Exhibit List			
<ol style="list-style-type: none"> 1. DEC Hunting Related Shooting Investigation Report 2. DEC Significant Incident Report 3. Aerial photograph (with approximate locations of relevant points noted) 4. Site photographs (taken on 11/26/16) 5. Respondent statement (undated) 6. Victim [REDACTED] statement (undated) 7. DEC Evidence and Chain-of-Custody Record (for 2 lead projectile fragments) 8. Copy of ticket issued to Michael J. Schiavone (violation of ECL 11-0931[4][a][2] [discharge of firearm within 500 feet of a dwelling house, farm building or farm structure occupied or used]) 9. Correspondence, dated 10/10/17, from DEC to Respondent re: Hunting License Revocation (attachments: Statement of Readiness; HRSI Notice of Hearing and Complaint [one signed and one unsigned copy]; Consent Order; and Affidavit of Service) 10. Bullet fragments (recovered from the dead steer) (exhibit was retained by Region 7 Law Enforcement) 			
Transcript			
The hearing was stenographically recorded and the transcript was received on December 6, 2017.			
Synopsis of Incident from Testimony, Documents, and Evidence			
<p>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:</p> <p>At approximately 4:40 p.m. on 11/24/16, respondent discharged his Marlin 30 AW rifle three times in a northerly direction from the back porch of his residence. Respondent fired in the direction of what he thought were deer. One of respondent's bullets hit an 800-pound steer located on property owned by respondent's neighbor. The steer was approximately 180 yards north of where respondent discharged his firearm.</p>			

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 11/24/16, a steer weighing approximately 800 pounds was struck by a bullet, and later died.
2. At the time of the incident, respondent was hunting deer from the back porch of his residence.
3. Bullet fragments recovered from the steer were fired by respondent from his Marlin 30 AW rifle.
4. The steer belonged to, and was located on property owned by, [REDACTED].
5. The steer was located approximately 180 yards north of respondent at the time of the incident.
6. Respondent's target was located beyond a wooded area to the north of his position.
7. Respondent's sight line to the area of his target was approximately 90 percent obstructed by trees.
8. Respondent is familiar with the target environment north of his residence.
9. Respondent was aware that his neighbor immediately to the north pastured cattle on the property.
10. In addition to respondent's residence, two other residences are located within 500 feet of the point of discharge on respondent's porch.

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 "so negligently and wantonly" discharged his firearm while hunting that he caused damage to private property (ECL 11-0719[2][a][1][iii]). As noted in the findings of fact, I have found that respondent discharged his firearm while hunting and caused the death of an 800-pound steer belonging to respondent's neighbor. Further, as discussed below, I conclude that staff established that respondent's actions were negligent and wanton.

New York courts have held that wantonness is "'an aggravated form of negligence' indicating that 'the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow'" (*Metropolitan Life Ins. Co. v Noble Lowndes Intl.*, 192 AD2d 83, 90 [1st Dept 1993] [quoting Prosser, Torts § 34, at 184, 185 (4th ed)], *affd* 84 NY2d 430, *rearg denied* 84 NY2d 1008; *see also* *Master Cars, Inc. v Walters*, 267 AD2d 942, 942-943 [4th Dept 1999] [quoting *Metropolitan Life*], *affd* 95 NY2d 395; *Matter of Jenson v Fletcher*, 277 AD 454, 457-459 [4th Dept 1950], *affd* 303 NY 639).

Department staff testified that respondent's actions on 11/24/16 violated the ECL and the rules of firearm safety taught in New York State hunter safety courses. Specifically, respondent (i) discharged his firearm within 500 feet of a residence and farm buildings in violation of ECL 11-0931(4)(a)(2) (Nov. 21, 2017 transcript [tr] at 14-15, 32); and (ii) did not properly identify the target and what was in front and beyond the target (tr at 25, 34-35; *see* New York Hunting & Trapping, 2016-2017 Official Guide to Laws and Regulations, at 7 [commandment 3 of "The 10 Commandments of Firearm Safety"]). Staff also testified that because of heavy vegetation and trees, visibility between respondent and his target was limited to approximately 10 percent (tr at 17). Staff noted that an 800-pound steer is many times larger than a white tail deer, which typically weighs between 100 and 150 pounds (tr at 19). Staff testified that respondent failed to "positively identif[y]" his target, resulting in the death of the steer (tr at 34).

Respondent testified that, on the date of the incident, he believed that he had targeted a deer that was closer to respondent than the steer that was hit and killed by his bullet (tr at 49). He stated that he may have missed the targeted deer and that "maybe" the bullet continued on and struck the steer (tr at 49-50). He further testified that beyond the location where the steer was struck, there is a rise in the terrain that could act as a backstop (tr at 59). Lastly, respondent testified that [REDACTED] and his son had been hunting and may have shot their own steer (tr at 53-54).

Respondent's view of the target was obscured by thick woods making target identification difficult. I also note that the incident occurred under poor lighting conditions, near sunset (exhibit 1 at 5 [item 6, noting that sunset was at 4:33pm]; exhibit 5 at 1 [respondent statement that the incident occurred between 4:30pm and 4:40pm]). In his supporting deposition, respondent stated that he thought he saw multiple deer north of his position at the time that he discharged his firearm (exhibit 5 at 1). He further stated that when he looked for the targeted deer later that evening he found only cows in the pasture north of his property, including the 800-pound steer that had been struck (*id.*). Respondent was aware that his neighbor raised cows on pasture land immediately north of respondent's property (exhibit 5 at 1; tr 24-25, 60).

On this record, I conclude that respondent mistook the 800-pound steer that was struck for a deer and shot the steer while it was standing in pasture land belonging to respondent's neighbor. The other scenarios offered by respondent are improbable by comparison. The likelihood that the steer that was struck happened to be standing directly in respondent's line of fire beyond a targeted deer is remote, as is the likelihood that [REDACTED] accidentally shot his own 800-pound steer while it happened to be standing in a direct line with the shots fired by respondent.

Respondent knew that his neighbor pastured cows on land north of respondent's property. Despite this knowledge, respondent discharged his firearm in a poor target environment (thick vegetation and low light) in the direction of the pasture. These factors demonstrate that respondent acted unreasonably and disregarded a risk that was known to him, or so obvious that it should have been known to him, and so great as to make it highly probable that harm would follow. Respondent's assessment of the target environment and his decision to discharge his firearm reflect "disregard of a risk . . . so great as to make it highly probable that harm would follow" (*Metropolitan Life Ins. Co.*, 192 AD2d at 90).

On this record, I conclude that staff demonstrated by a preponderance of the evidence that respondent acted "negligently and wantonly" when he discharged his firearm and caused the death of his neighbor's 800-pound steer.

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 hunting, negligently and wantonly discharged his firearm, thereby causing the death of an 800-pound steer belonging to respondent's neighbor.

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 respondent's hunting license be revoked for 5 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:	Richard A. Sherman	Title:	Environmental Impact Examiner (Administrative Law Judge)
Signature:	/s/	Date:	12/20/16

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 in its entirety.

I agree that Department staff proved by a preponderance of the record evidence that respondent Michael J. Schiavone negligently and wantonly discharged his firearm while hunting and caused damage to private property in violation of ECL 11-0719(2)(a)(1)(iii). The record demonstrates that at approximately 4:40 p.m. on November 24, 2016, respondent discharged his Marlin 30 AW rifle three times in a northerly direction from the back porch of his residence at what he thought were deer. The record further demonstrates that one of respondent's bullets hit an 800-pound steer located on property owned by respondent's neighbor. The steer was approximately 180 yards north of where respondent discharged his firearm. The steer later died.

The record also demonstrated that respondent's action in discharging his firearm in the direction of the neighbor's property was in reckless disregard of known risks. Respondent did not properly identify his target, and what was before and beyond his target, in violation of basic hunter safety rules (see New York Hunting & Trapping, 2016-2017 Official Guide to Laws and Regulations, at 7). Moreover, respondent discharged his firearm within 500 feet of residences other than his own in violation of ECL 11-0931(4)(a)(2).

Finally, respondent knew that his neighbor pastured cows on land north of respondent's property. Despite this knowledge, respondent discharged his firearm in a poor target environment (thick vegetation and low light) in the direction of the pasture. These factors demonstrate that respondent acted unreasonably and disregarded a risk that was known to him, or so obvious that it should have been known to him, and so great as to make it highly probable that harm would follow. Accordingly, the evidence demonstrates that respondent intentionally discharged his firearm in conscious disregard of a known or obvious risk of harm to life or property and, thus, acted negligently and wantonly (see Matter of Drilling, License Revocation Decision, Sept. 23, 2013, at 6-7; Saarinen v Kerr, 84 NY2d 494, 501 [1994] [quoting Prosser & Keeton, Torts § 34 at 213 (5th ed 1984)], see also Restatement [Second] of Torts § 500).

The five-year suspension of respondent's hunting privileges is authorized and supported by the record. Respondent shall also be required to successfully complete a Department-sponsored sportsman education course and obtain the associated certificate of qualification before being issued another license.

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 Michael J. Schiavone 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:

Joseph H. Schneider, Director

Signature:

/s/

Shield #

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Date:

2/20/2018