



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

NAME AND ADDRESS OF RESPONDENT

William D. Squire
[REDACTED]
[REDACTED]
D.O.B. [REDACTED]

Revocation Period Begins: 01/25/2022
Revocation Period Ends: 01/25/2027

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:

Tuesday, October 26, 2021 at 9:10 A.M.

INCIDENT DATA

Victim:

Randolph Central School District (Property Owners)

Call For Service #:

11-020041

Date of Incident:

11/21/2011

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 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, the Hearing Report, Findings & Recommendation, and Final Decision establishing that the Respondent did on the date of incident stated above while engaged in **hunting endangered the life or safety of another by negligently discharging his firearm in violation of ECL § 11-0719(2)(a)(1)(ii) and so negligently and wantonly discharged a firearm as to destroy or damage public property in violation of ECL § 11-0719(2)(a)(1)(iii)**, specifically, on November 21, 2011, respondent did negligently and wantonly discharge a firearm while hunting big game striking a school bus on Route 241, Town of Conewango, Cattaraugus County, New York, it is, upon the record of these proceedings:

ORDERED AND DIRECTED, that any **hunting, bowhunting, and trapping** licenses, carcass tags, stamps and permits currently held by the Respondent are hereby revoked and 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 the Respondent, that the Respondent deliver to the Department of Environmental Conservation, Albany, New York, any and all **hunting, bowhunting, and trapping** licenses, carcass tags and permits issued to the Respondent for the current license year, together with any button or stamp associated with **hunting, bowhunting, and trapping**, and it is further,

ORDERED AND DIRECTED, that in addition to completing the entire revocation time period the Respondent must successfully complete a Department-sponsored course and obtain a certificate of qualification in responsible **hunting, trapping, and bowhunting** practices before being issued another **hunting, bowhunting, or trapping** license. Therefore, the Respondent should successfully complete a Department-sponsored course and submit a certificate of qualification in responsible **hunting, trapping, and bowhunting** 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 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.

01/25/2022

Date

/s/

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 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	William D. Squire	Address	[REDACTED]
D.O.B.	[REDACTED]	Sporting License #	[REDACTED]

HRSI General Information

Case Name:	Matter of William D. Squire	Call for Service #	11-020041
Case No.:	11-020041		
On (Date):	November 21, 2011	Victim (Name):	Randolph Central School

Was (check one): Injured ; Killed ; or had Property Damaged

Description of Nature of Injury or Property Damaged: Randolph Central School bus #169 was struck with a single round approximately 6 inches above the right corner of the side entry door while traveling on Route 241 in the Town of Conewango. The projectile crossed the interior of the school bus and entered the body of the bus above the first row of seats behind the bus driver.

By (Name of Responsible Party): William D. Squire

Location: Town of Conewango County of Cattaraugus

This incident occurred while the Respondent and/or Victim were engaged in the following hunting activity (specify):
Attempting to take a deer from a tree stand.

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

182 East Union Street, Suite 3, Allegany, New York

at (time): 9:10 A.M. **on (date):** October 26, 2021

Designated Hearing Officer Name and Title: Michael S. Caruso
Environmental Impact Examiner (Administrative Law Judge)

Petitioning Officer Rank, Name, & Shield: Teresa J. Mucha, Esq.

Respondent did not waive his 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:			
Randolph Central School District, 18 Main Street, Randolph, NY			
Witness(es)			
List name(s) and address(es) of witness(es) present at this hearing:			
<div style="background-color: black; width: 200px; height: 15px; margin-bottom: 5px;"></div> NYS Police Investigator Joseph Smith, NYSP Troop A, 3081 N. Main Street Ext., Jamestown, NY ECO Lt. Robert O'Connor, Region 9 (retired), NYSDEC, Region 9			
Others Present At Hearing			
List name(s) and address(es) of others present at this hearing:			
Shannon McGlew, Esq. – NYSDEC, Associate Regional Attorney, Region 6, 317 Washington St., Watertown, NY			
Firearm/Weapon Pertaining To The Hunting Related Shooting Incident			
Make	Browning	Gauge/Caliber	.30-06
Model	X Bolt	Owned by:	William D. Squire
Serial #	28911MP354	Possessed by	William D. Squire
Exhibit List			
See attached Exhibit List			
List any other Exhibits			
Transcript			
The hearing was electronically recorded. Recorded at EDIROL Nos. 211026084551, 211026101204, 211026130644. A stenographic transcript was created from the recordings.			
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:			
<p>At approximately 7:30 a.m. on November 21, 2011, respondent William D. Squire discharged his Browning .30-06 caliber bolt action rifle two times from his tree stand while trying to take a deer. While turning to face the deer with the safety off and his finger on the trigger, the tree stand shifted and respondent discharged an errant shot in the direction of the roadway, which struck a school bus traveling on Route 241 in the Town of Conewango, endangering the life or safety of the bus occupants and damaging the school bus, which required repairs.</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. Respondent William D. Squire (respondent) owns a Browning X-Bolt .30-06 bolt action rifle equipped with a Nikon ProStaff scope. (Hearing Exhibits 24, 27, 36, 40, 44, 57.)
2. On November 21, 2011, [REDACTED] and [REDACTED] met respondent at respondent's home located at [REDACTED], to hunt deer on respondent's property and Mr. [REDACTED]'s adjoining parcel of land. (Hearing Exhibits 26, 27, 36, 38, 40.)
3. Respondent was hunting from a chair in his field, but after hearing some shots, he moved to his tree stand in the event deer would be coming through the field. (Hearing Exhibits 27, 36, 38.)
4. At approximately 7:30 a.m., respondent spotted a buck and a doe moving from his right to left behind him, and he turned in his tree stand to take a shot at the buck. (Hearing Exhibits 27, 36, 38.)
5. As respondent turned to get a sight on the buck, he pushed the safety off on his rifle, then as he shifted his weight, his tree stand shifted, and his rifle fired an errant shot in the direction of Route 241. Respondent then fired a second shot at the buck but missed. (Hearing Exhibits 27, 36, 38, 40.)
6. After failing to take the buck, respondent returned to his house. (Hearing Exhibits 27, 36, 38.)
7. Respondent, Mr. [REDACTED] and Mr. [REDACTED] met for breakfast at respondent's house at approximately 9:15 a.m., and respondent explained to his fellow hunters that he had missed the buck, and that his rifle discharged when his tree stand shifted as he turned to get a sight on the buck. (Hearing Exhibits 26, 27, 36, 38, 40.)
8. At approximately 7:35 a.m. on November 21, 2011, [REDACTED] was driving school bus #169 for the Randolph Central School District in a southerly direction on Route 241 between Swamp Road and Van Slyke Road, just north of [REDACTED] Route 241, with approximately 32 students on the bus when he heard a loud bang. (Transcript of Testimony of [REDACTED] at 12, 14; Transcript of Testimony of NYSDEC Lieutenant Robert O'Connor [O'Connor Tr.] at 11; Hearing Exhibits 19, 36.)
9. Mr. [REDACTED] pulled the bus over and discovered a bullet hole above the main door of the bus and saw a hole in the interior of the bus above the first row of seats. ([REDACTED] Tr. at 13, 14; Hearing Exhibits 19, 24.)
10. After verifying that the students on the bus were okay, Mr. [REDACTED] radioed the bus garage to have another bus pick up the students on his bus. ([REDACTED] Tr. at 14; Hearing Exhibits 19, 24.)
11. The projectile caused property damage to the school bus. ([REDACTED] Tr. at 18; Hearing Exhibit 18.)
12. The New York State Police (State Police) were dispatched to the Randolph Central School bus garage and interviewed Mr. [REDACTED]. (Transcript of Testimony of NYS Police Investigator Joseph Smith [Smith Tr.] at 6, 9.)
13. State Police photographed the damage to the school bus and collected bullet fragments from the bus. One of the fragments was collected from the hair of Mr. [REDACTED]. ([REDACTED] Tr. at 20, 32; Smith Tr. at 6-10; Hearing Exhibits, 8 - 15, 19, 20, 22, 23, 24.)
14. The three bullet fragments collected from the bus and Mr. [REDACTED]'s hair consisted of a bullet casing fragment, copper jacket, and lead fragment. (Smith Tr. at 8; Hearing Exhibits 22, 23, 24, 47, 48, 49.)
15. The bullet entered the bus above the right edge of the main door to the bus, crossed the interior of the bus and entered the interior body of the bus above the first row of seats behind the driver. The bullet did not exit the bus but left a dimple in the outer body of the bus. (Smith Tr. at 7-8; Hearing Exhibits 9, 10, 11, 12, 13, 14, 15, 21.)
16. The State Police determined that the projectile that struck the bus came from the direction of respondent's property. (Smith Tr. at 19, 76-77; O'Connor Tr. at 13; Hearing Exhibits 24, 36.)
17. Upon investigation, it was determined that respondent's tree stand was in line with the area where the bus was struck and that the bus was visible from the tree stand. There were two .30-06 spent shell casings on the ground in the area of respondent's tree stand. (Smith Tr. at 18-19; O'Connor Tr. at 13; Hearing Exhibits 24, 28, 29, 34, 35, 36, 39.)
18. When initially questioned by the State Police and New York State Environmental Conservation Officers (ECOs), respondent stated that he did not hunt from the tree stand that morning or during rifle season because the tree stand was unsafe for a person his size and would shift under the weight of hunters. (Smith Tr. at 11; O'Connor Tr. at 12; Hearing Exhibits 24, 30, 36.)
19. Investigator Smith secured a sworn statement from Mr. [REDACTED] that contradicted respondent's statements to the police. (Smith Tr. at 14-16; O'Connor Tr. at 14; Hearing Exhibits 26, 36.)

20. Mr. ██████ affirmed under penalty of perjury that he saw respondent in his tree stand and that respondent fired two shots that morning. Mr. ██████ further affirmed that respondent had told him and Mr. ██████ that a buck and a doe were behind him and that as respondent turned in his tree stand to face the deer the tree stand shifted, and the gun went off. Mr. ██████ also stated that when respondent had turned in his tree stand that he would have been facing Route 241. (Smith Tr. at 15-16; Hearing Exhibit 26.)
21. Mr. ██████ provided a similar but unsworn statement to ECO Investigator David DiPasquale. (O'Connor Tr. at 18-21; Hearing Exhibit 38.)
22. When faced with Mr. ██████'s statement, respondent changed his story to coincide with what he had told his fellow hunter's earlier in the day. (Smith Tr. at 11, 17-18; O'Connor Tr. at 14; Hearing Exhibits 24, 26, 27, 36, 38, 40.)
23. At the time of the incident, Mr. Squire is the only hunter in the area that had discharged a firearm. (O'Connor Tr. at 22, 25, 49, 98-99; Hearing Exhibit 40.)
24. As a result of his investigation, State Police Investigator Smith concluded that the projectile that had struck the school bus originated from respondent's tree stand. (Smith Tr. at 19.)
25. As a result of his investigation, Lt. O'Connor concluded that the projectile that struck the bus was from a rifle, not a shotgun, and that respondent was the only hunter with a line of sight to the area of the road where the bus was struck consistent with the angle of the projectile's impact on the school bus. (O'Connor Tr. at 25-26, 94, 105-106; Hearing Exhibits 10, 40, H.)
26. Respondent was aware of the direction of Route 241 from his tree stand. (Hearing Exhibit 27.)
27. Respondent surrendered his Browning X-Bolt .30-06 to law enforcement for forensic examination. (Smith Tr. at 49, 59; O'Connor Tr. at 87-88, 90; Hearing Exhibit 44.)
28. Respondent's rifle was provided to Erie County Central Police Forensic Laboratory along with the spent cases found at the bottom of respondent's tree stand, the fragments from the school bus, and live rounds provided by respondent. (Hearing Exhibits 57, 59.)
29. Respondent's rifle was test fired using respondent's ammunition. (Hearing Exhibit 61.)
30. The submitted copper jacket fragment was compared against the test fired ammunition. (Hearing Exhibits 61, 62.)
31. The copper jacket fragment collected from the school bus was badly damaged but exhibited rifling characteristics similar to those of respondent's rifle. After comparison with the test fired bullets, the firearms examiner concluded that there were similarities of individual characteristics, but they were insufficient to conclusively identify the fragment as having been fired by respondent's rifle. The spent cases were identified as having been fired by respondent's rifle. (Hearing Exhibits 61, 62.)

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

Department staff alleges that respondent violated ECL 11-0719(2)(a)(1)(ii) and (iii) in that respondent William D. Squire (respondent) while engaged in hunting: endangered the life or safety of another by negligently discharging his firearm and so negligently and wantonly discharged his firearm as to destroy or damage public or private property.

In this matter, where the life or safety of another are endangered, Department staff must prove by a preponderance of the evidence that respondent, while hunting, failed to use such care that a reasonable person would under similar circumstances, discharged his firearm, and endangered the life or safety of another (ECL 11-0719[2][a][1][ii]). Where private or public property has been damaged, Department staff must prove by a preponderance of the evidence that respondent while hunting caused damage to private or public property by negligently and wantonly discharging a firearm (ECL 11-0719[2][a][1][iii]).

“With regard to whether respondent's actions were wanton, the Department applies the ‘reckless disregard for the safety of others’ standard of care (see e.g. Marra v New York Cent. & Hudson R.R. Co., 139 AD 707, 710 [2d Dept 1910]) to determine whether a hunter negligently and wantonly discharged a firearm. In short, the evidence must show that the hunter ‘has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow’ and has done so with conscious indifference to the outcome’ (Saarinen v Kerr, 84 NY2d 494, 501 [1994] [quoting Prosser & Keeton § 34 at 213]; see also Restatement [Second] of Torts § 500).

“The ‘reckless disregard’ standard is an objective one (see Prosser & Keeton § 34 at 213; Restatement [Second] of Torts § 500, Comment a). Thus, a hunter will be found to be reckless

where the hunter, whatever his or her subjective state of mind, has proceeded in disregard of a high and excessive degree of danger, either known to the hunter or apparent to a reasonable person in the hunter's position (see id.). Generally, the principles taught at the Department's Sportsman Education courses are the measure of the appropriate care or judgment a reasonable hunter is responsible to exercise as well as the consequences of failing to exercise such care when discharging a firearm." (*Matter of Drilling*, License Revocation Order, September 23, 2013, at 6.)

Department staff's proof demonstrates that respondent while hunting did knowingly hunt from a tree stand that respondent considered to be unstable and unsafe and that respondent moved about the tree stand with the safety off on his rifle and his finger on the trigger before acquiring his intended target. As a result, respondent fired an errant shot that struck a school bus with students on board. Department staff's proof also demonstrates that respondent's disregard of the risks of hunting from his unstable tree stand and disregard of the 10 Commandments of Firearm Safety caused the discharge of his firearm in the direction of the school bus and thereby caused damage to the school bus. The Department is entitled to judgment upon the facts proven.

The preponderance of the evidence on this record demonstrates that at the time the school bus was struck respondent discharged his Browning .30-06 two times. The first shot was caused by respondent turning in the direction of Route 241 and the school bus with the safety on his rifle disengaged and his finger on or near the trigger. According to respondent's statements to his hunting companions and later statements to the investigating officers, the tree stand shifted as he turned, and the rifle was unintentionally discharged at the approximate time that the bus was struck. Respondent objected to Department staff's reliance on and introduction of the hearsay statements of his fellow hunters. Hearsay evidence is admissible in an administrative adjudicatory proceeding and can be the basis of an administrative enforcement determination, but the hearsay evidence must be sufficiently reliable, relevant, and probative. I noted respondent's objections and explained the business records exception to the hearsay rule and how hearsay was admissible in this administrative proceeding. I further explained the fact that it was hearsay evidence goes to the evidence's weight. In this case, although the statements are hearsay, I find that those statements are sufficiently reliable, relevant, and probative, and are corroborated by the testimony of Investigator Smith and Lt. O'Connor and the statements respondent made to the State Police and ECOs.

The record evidence shows that respondent had a direct line of sight to the location of the school bus from his tree stand at the time of the incident. The record demonstrates that the angle of entry of the projectile in the right side of the school bus was from front to back and coincides with the angle of line of sight from respondent's tree stand to the school bus at the time the bus was shot. The evidence also demonstrates that the projectile was rising as it crossed the school bus. A fact that respondent attempted to exploit as he argued that it would have been physically impossible for his shot to be rising at the distance from his tree stand to the school bus, over 500 yards. Department staff witness Lt. O'Connor explained that the evidence simply demonstrates the angle of trajectory once the projectile entered the school bus and that it does not account for any deflection caused by the steel in the school bus or the mechanisms for opening the bus door.

In this case, respondent was aware of the direction of Route 241 from his tree stand and the fact that his tree stand was unstable. Nonetheless, respondent attempted to move around in his tree stand, turning in the direction of Route 241, to put his sights on a deer with the safety on his rifle disengaged and his finger on the trigger. I conclude, respondent's disregard of the known risks with his unstable tree stand and failure to follow The 10 Commandments of Firearm Safety was an intentional act with a high probability that harm would follow. Here, respondent violated The 10 Commandments of Firearm Safety. First, due to respondent's disregard of the known unsafe condition of the tree stand, respondent failed to keep the muzzle of his rifle pointed in a safe direction at all times in violation of the first of The 10 Commandments of Firearm Safety. Second, the preponderance of the evidence demonstrates that respondent had disengaged the safety on his rifle and had his finger on the trigger before respondent began turning in his unstable tree stand in violation of the fourth of The 10 Commandments of Firearm Safety, which states "Keep your finger outside the trigger guard until ready to shoot. This is the best way to prevent an accidental discharge." I conclude that respondent failed to exercise such care that a reasonable person would under similar circumstances and ignored the known and apparent risks and proceeded in disregard of the high and excessive degree of danger.

As described by respondent to his fellow hunters and later law enforcement officers, the discharge of respondent's rifle was accidental. Nonetheless, the rifle's discharge would not have occurred if respondent did not attempt to hunt from an unstable tree stand and if respondent had followed the 10 Commandments of Firearm Safety. Respondent's decision to hunt from the unstable tree stand, with the safety off and finger on the trigger while he

was moving in the stand, were intentional decisions, totally disregarding the obvious risks known to respondent, with a high probability that harm would follow. Accordingly, respondent's discharge of his firearm was caused by respondent's negligent and wanton actions.

During the hearing, respondent presented several arguments in his defense including the following:

1. The hole in the school bus is too large to have been caused by his .30-06 rifle;
2. The trajectory of the projectile as it crossed the interior of the school bus could not have been caused by a shot from his tree stand;
3. The empty cases at the bottom of his tree stand could not have landed there if he was firing in the direction of the road;
4. The contour of the land would not have allowed a shot from his tree stand to travel through the interior of the school bus as demonstrated in the exhibits;
5. The 150 grain ammo used by respondent could not have travelled the more than 500 yards to the school bus; and
6. The hole in the school bus was caused by a shotgun slug not his rifle.

Based on the preponderance of evidence presented by Department staff, I reject each of respondent's arguments. Regarding the size of the hole in the school bus and it being caused by a shotgun slug, the record evidence and testimony do not support respondent's argument. Although the hole in the bus appears larger than the diameter of a .30-06 projectile, the projectile entered the bus at an angle and caused the metal sheeting to fold in thus causing the hole to appear larger (*see* Exhibits 10, H). The roundest part of the hole in the exterior of the bus is on the right side of the hole, on a metal seam, and the diameter of that round section, or crescent shape as Lt. O'Connor testified, represents the diameter of the projectile not the folded in section to the bottom, left and top. The diameter of the crescent is consistent with a projectile measuring .308 inch. Secondly, the fragments of the projectile retrieved from the bus included a copper jacket with rifling characteristics similar to those of respondent's rifle. During his closing argument, respondent presented a shotgun slug in support of his argument that the bus was shot by a shotgun. Although the slug was not introduced as evidence, I take note of the fact that the slug presented by respondent was a lead slug, and it was not encased in a copper jacket. The one hunter who was hunting with a 12-gauge shotgun in the area on November 21, 2011, stated to the police that he had not shot that day. Lt. O'Connor testified that the shotgun hunter was hunting from a heavily wooded area north north-west of respondent's tree stand and that he had ruled out a shot from that location because it was heavily wooded and because the angle to the bus was wrong. Although ballistics were inconclusive, the copper metal jacket retrieved from the bus exhibited similarities of individual characteristics with the test rounds fired from respondent's rifle. I find that the preponderance of the evidence demonstrates that the projectile that struck the bus was shot from respondent's rifle and tree stand.

Respondent's argument that the angle of trajectory of the projectile across the interior of the bus could not have been caused by a shot from his tree stand is contradicted by the evidence. The bus was traveling in a southerly direction (south south-east). Respondent was situated south and west of the location of the school bus when the bus was struck. A shot from respondent's tree stand in the direction of the bus would have been travelling in a north north-easterly direction and would have struck the bus on the side and travelled in a front to back angle in the bus (*see* Exhibit 39). Inside the bus, the projectile traveled front to back and was rising slightly as it crossed the bus. Respondent argues that it could not be rising if shot from his tree stand. Both the bus driver and Lt. O'Connor testified that the metal body and door mechanisms inside the school bus could have caused the bullet to change direction inside the bus. Respondent's argument that the contour of the land would not have allowed a shot from his tree stand to travel through the bus as demonstrated by the exhibits is also without merit. The record evidence demonstrates that the bus was visible from the tree stand notwithstanding the contour of the land.

Respondent argues that the casings at the bottom of his tree stand could not have landed there if he was firing in the direction of the road. This argument is without merit because the location of the casings has no relation to where the rifle was pointed when it was fired. A bolt action rifle does not eject the shell at the time the gun is fired, it is manually ejected subsequent to firing. There may be a relation between the direction the barrel is pointed when a shell is ejected, ignoring possible deflections off the tree or tree stand, but that is not proof that the barrel was pointed in any specific direction when the rifle was fired.

Respondent argues that the 150 grain .30-06 bullets could not have travelled as far as the bus, which was over 500 yards away. Respondent introduced ballistics evidence demonstrating that his rounds would have dropped approximately 51 inches over 500 yards (*see* Exhibit L). That evidence, however, does not mean that the bullet could not reach the school bus from respondent's tree stand, which was approximately 15 feet off the ground. Add

to that the height of respondent, and there is no evidence that the errant shot respondent claimed to fire by accident could not reach the school bus. Moreover, according to respondent's Exhibit L, at 500 yards the 150 grain .30-06 bullet is still traveling at 1935 feet per second and carrying 1246 foot-pounds of energy. In other words, the projectile does not stop after it has traveled 500 yards and lost 51 inches of elevation from a height of 180 inches. Accordingly, I conclude respondent's arguments are without merit or are otherwise contradicted by a preponderance of the record evidence in this matter.

Respondent objected to Department staff's reliance on and introduction of the hearsay statements of his fellow hunters. Hearsay evidence is admissible in an administrative adjudicatory proceeding and can be the basis of an administrative enforcement determination, but the hearsay evidence must be sufficiently reliable, relevant and probative. I noted respondent's objections for the record and entered the evidence. I explained how hearsay was admissible in this administrative proceeding and that the fact that it was hearsay goes to the evidence's weight. In this case, although the statements are hearsay, they are admissible, and I find that those statements are sufficiently reliable, relevant and probative, and are corroborated by the statements respondent made to the State Police and ECOs and the record in this matter.

The record evidence also demonstrates that: (1) respondent was the only hunter who discharged a firearm at the time the bus was shot; (2) the bus on Route 241 was visible from respondent's tree stand; (3) respondent was the only hunter that had a line of sight in the direction of the school bus and whose line of sight corresponded to the trajectory of the bullet striking the school bus. I conclude that the preponderance of the evidence, both direct and circumstantial, demonstrates that the bullet that struck the school bus was fired by respondent. A reasonably prudent hunter does not hunt from a tree stand the hunter knows is unsafe or shifts under the weight of a hunter and does not move about the unsafe tree stand with the safety off and finger on the trigger knowing the tree stand is unstable due to the substantial risk that an errant shot may endanger the life or safety of another or destroy or damage property down range.

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

1. endangered the life or safety of another by negligently discharging his firearm; and
2. so negligently and wantonly discharged his firearm as to destroy or damage public or private property.

Department staff's requested revocation of respondent's hunting and trapping licenses for a period of five years is consistent with previous decisions and supported by the facts in this case.

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

Respondent William D. Squire endangered the life or safety of the students and driver on the school bus by negligently discharging his firearm in violation of ECL 11-0719(2)(a)(1)(ii) and so negligently and wantonly discharged his firearm as to damage to the school bus in violation of ECL 11-0719(2)(a)(1)(iii).

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 William D. Squire's hunting and trapping license 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 the Commissioner's order; and
2. That the Commissioner order respondent William D. Squire 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:	January 24, 2022

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 that Department staff proved by a preponderance of the record evidence that respondent William D. Squire negligently discharged his firearm while hunting and endangered the life or safety of the students and bus driver in the Randolph Central School District School Bus #169 in violation of ECL 11-0719(2)(a)(1)(ii), and negligently and wantonly discharged his firearm while hunting and caused damage to School Bus #169 in violation of ECL 11-0719(2)(a)(1)(iii). The record demonstrates that on November 21, 2011, while hunting deer, respondent decided to hunt from his tree stand that he knew was unsafe because it could shift under the weight of a hunter. When respondent turned in the direction of Route 241 to get his sight on a buck crossing the field, the tree stand shifted and his Browning X-Bolt .30-06 bolt action rifle discharged because the safety was off and his finger was on the trigger. Each of these actions constituted a violation of basic hunter safety rules (see Exhibits 67, 68). Moreover, the record demonstrates that respondent knew that his tree stand was unsafe and knew the direction of the roadway (see Findings of Fact Nos. 18, 24). Thus, the evidence demonstrates that respondent failed to exercise such care that a reasonable person would under similar circumstances and ignored the known and apparent risks and proceeded in conscious disregard of the known or obvious risk of harm to life or property, and therefore, 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).

Finally, the five year suspension of respondent’s hunting and trapping 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 William D. Squire 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: Karen E. Przyklek, Director, DLE

Signature: /s/	Shield #	381	Date:	01/25/2022
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EXHIBIT CHART – HEARING

Matter of William D. Squire

October 26, 2021

DEC Case No. 11-020041

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	Hunting Related Shooting Hearing Notice dated September 20, 2012	✓	✓	Department Staff	
2	Rescheduled Hunting Related Shooting Hearing Notice dated October 15, 2012	✓	✓	Department Staff	
3	Rescheduled Hunting Related Shooting Hearing Notice dated December 10, 2012	✓	✓	Department Staff	
4	NYSDEC Statement of Readiness, dated June 28, 2013	✓	✓	Department Staff	
5	Letter dated July 10, 2013 from Administrative Law Judge Michael S.Caruso to Barry Covert, Esq. and Captain John Burke	✓	✓	Department Staff	
6	Hunting Related Shooting Incident Amended Notice of Hearing and Complaint, dated January 13, 2020	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
7	NYSDEC Affidavits of Service of the Hunting Related Shooting Incident Amended Notice of Hearing and Complaint, dated January 13, 2020	✓	✓	Department Staff	
8	Photograph Camera Photo ID #702 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	
9	Photograph Camera Photo ID #705 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	
10	Photograph Camera Photo ID #707 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	
11	Photograph Camera Photo ID #716 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	Received as marked by witness
12	Photograph Camera Photo ID #719 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	Received as marked by witness
13	Photograph #042 taken by NYSDEC Investigator Robert E. O'Connor on November 22, 2011	✓	✓	Department Staff	
14	Photograph #039 taken by NYSDEC Investigator Robert E. O'Connor on November 22, 2011	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
15	Photograph #038 taken by NYSDEC Investigator Robert E. O'Connor on November 22, 2011	✓	✓	Department Staff	
16	Fax from Randolph Central School District to NYS Police Investigator Smith, dated November 22, 2011	✓	✓	Department Staff	
17	Photograph Camera Photo ID #713 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	
18	Electronic mail from B. Hinman to NYS Police Investigator Smith, dated February 14, 2012	✓	✓	Department Staff	Read into the record, in part
19	Statement from ██████████, dated November 21, 2011	✓	✓	Department Staff	Read into the record, in part
20	NYS Police photo log, dated November 21, 2011	✓	✓	Department Staff	
21	Photograph Camera Photo ID #725 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	
22	Photograph Camera Photo ID #769 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
23	Photograph Camera Photo ID #770 taken by NYS Police Trooper Lis on November 21, 2011	✓	✓	Department Staff	
24	NYS Police Incident Report, dated November 21, 2011	✓	✓	Department Staff	Read into the record, in part
25	Statement of ██████████, dated November 21, 2011 (unsigned)	✓	✓	Department Staff	
26	Statement of ██████████, dated November 21, 2011	✓	✓	Department Staff	Read into the record, in part
27	Statement of William D. Squire, dated November 21, 2011	✓	✓	Department Staff	Read into the record, in part
28	Photograph #200 taken by NYS Police Investigator Smith on November 22, 2011	✓	✓	Department Staff	
29	Photograph #214 taken by NYS Police Investigator Smith on November 22, 2011	✓	✓	Department Staff	Received as marked by witness
30	NYS 710.30 Statement of NYS Police Investigator Smith, dated December 22, 2011	✓	✓	Department Staff	Read into the record, in part

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
31	NYSDEC Photographic Evidence log, dated November 22, 2011	✓	✓	Department Staff	
32	Photograph #023 taken by NYSDEC Investigator John Burke on November 21, 2011	✓	✓	Department Staff	
33	NYSDEC Photographic Evidence log, dated November 21, 2011	✓	✓	Department Staff	
34	Photograph #020 taken by NYSDEC Investigator John Burke on November 21, 2011	✓	✓	Department Staff	
35	Photograph #021 taken by NYSDEC Investigator John Burke on November 21, 2011	✓	✓	Department Staff	
36	NYSDEC DLE Narrative Report prepared by Investigator Robert E. O'Connor, dated November 26, 2011	✓	✓	Department Staff	Read into the record, in part
37	NYS Police Voluntary Consent to Search Certain Premises, dated November 22, 2011	✓	✓	Department Staff	
38	NYSDEC DLE Narrative Report prepared by Investigator David C. DiPasquale, dated November 23, 2011	✓	✓	Department Staff	Read into the record, in part

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
39	Map	✓	✓	Department Staff	
40	NYSDEC DLE Hunting Related Shooting Investigation Report for Case No. 11-020041	✓	✓	Department Staff	Read into the record, in part
41	NYSDEC DLE Evidence and Chain of Custody Record for bullet fragments	✓	✓	Department Staff	
42	NYSDEC DLE Evidence and Chain of Custody Record for Winchester rifle cartridges located near hunting stand	✓	✓	Department Staff	
43	NYSDEC DLE Evidence and Chain of Custody Record for rifle cartridges of hunting party with Mr. Squire	✓	✓	Department Staff	
44	NYSDEC DLE Voluntary Consent to Search, dated November 21, 2011	✓	✓	Department Staff	
45	Erie County Department of Central Police Services Certification of Michelli A Schmitz, dated January 8, 2020	✓	✓	Department Staff	Read into the record, in part
46	Evidence paper and two fired cartridge cases (30-06 SPRG) in plastic bag recovered below tree stand marked as Items 1 and 2 for LabReport #1	✓	✓	Department Staff	Physical evidence left with OGC/DLE

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
47	Evidence envelope and bullet casing fragment in plastic bag recovered from hair of bus driver marked as Item 3-1 for Lab Report #1	✓	✓	Department Staff	Physical evidence left with OGC/DLE
48	Evidence envelope and copper jacket casing from ammunition in plastic bag recovered from the bus marked as Item 4-2 for Lab Report #1	✓	✓	Department Staff	Physical evidence left with OGC/DLE
49	Evidence envelope and lead fragment recovered from the bus in plastic bag marked as Item 5-3 for Lab Report #1	✓	✓	Department Staff	Physical evidence left with OGC/DLE
50	Evidence envelope and cartridge (30-06 SPRG) recovered from Mr. Squire's residence in plastic bag marked as Item 6 for Lab Report #1	✓	✓	Department Staff	Physical evidence left with OGC/DLE
51	Evidence envelope and cartridge (30-30 WIN) recovered from Mr. Squire's residence in plastic bag marked as Item 7 for Lab Report #1	✓	✓	Department Staff	Physical evidence left with OGC/DLE
52	Evidence envelope and two cartridges (30-06 SPRG) recovered from magazine of Mr. Squire's rifle in plastic bag marked as Item 8 for LabReport #1	✓	✓	Department Staff	Physical evidence left with OGC/DLE
53	Evidence plastic bag with test fired ammunition components (TF3 and TF4) from lab supply ammunition marked as Item 9.2 for Lab Report #1	✓	✓	Department Staff	Physical evidence left with OGC/DLE
54	Evidence plastic bag that previously housed the Savage Arms rifle, model 110, type Bolt Action Rifle, caliber/gauge 243 Winchester, serial number F396510 marked as Item 10 for Lab Report #2	✓	✓	Department Staff	Physical evidence left with OGC/DLE

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
55	Evidence envelope with test fired ammunition components (TF1 and TF2) from lab supply in plastic bag marked as Item 10.1 for Lab Report #2	✓	✓	Department Staff	Physical evidence left with OGC/DLE
56	Plastic envelope bag that housed ammunition (243 WIN cartridges) marked as Item 11 for Lab Report #2	✓	✓	Department Staff	Physical evidence left with OGC/DLE
57	Erie County Central Police Services Forensic Laboratory Request for Laboratory Examination, dated January 4, 2012	✓	✓	Department Staff	Read into the record, in part
58	Erie County Central Police Services Forensic Laboratory Request for Laboratory Examination, dated April 4, 2012	✓	✓	Department Staff	Read into the record, in part
59	Erie County Central Police Services Forensic Laboratory Evidence Receipt, dated January 26, 2012	✓	✓	Department Staff	
60	Erie County Central Police Services Forensic Laboratory Evidence Receipt, dated May 4, 2012	✓	✓	Department Staff	
61	Erie County Central Police Services Forensic Laboratory - Analysis Report, Report Number 1, dated January 24, 2012	✓	✓	Department Staff	Read into the record, in part
62	Erie County Central Police Services Forensic Laboratory Analyst Notes for Case 12-00075, Report 1, dated January 24, 2012	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
63	NYSDEC DLE Evidence and Chain of Custody Record for Savage Rifle of [REDACTED]	✓	✓	Department Staff	
64	Erie County Central Police Services Forensic Laboratory Analyst Notes for Case 12-00075, Report 2, dated April 16, 2012	✓	✓	Department Staff	Read into the record, in part
65	Erie County Central Police Services Forensic Laboratory Analyst Notes for Case 12-00075, Report 2, dated April 16, 2012	✓	✓	Department Staff	Read into the record, in part
66	NY Hunting & Trapping, 2019-2020 Official Guide to Laws & Regulations, Volume 11, Issue No. 1, September 2019 cover page	✓	✓	Department Staff	
67	Page 33 of NY Hunting & Trapping, 2019-2020 Official Guide to Laws & Regulations, Volume 11, Issue No. 1, September 2019	✓	✓	Department Staff	
68	Page 50 of NY Hunting & Trapping, 2011-2012 Official Guide to Laws & Regulations	✓	✓	Department Staff	Read into the record, in part
69	Correspondence from William Squire to Teresa Mucha, dated February 22, 2020	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
A	Unidentified notes from NYS State Trooper records	✓	✓	Respondent	
B	Photo of Tree Stand belonging to William D. Squire (NYSP DSCF 209)	✓	✓	Respondent	
C	Photo of area near the base of tree stand (DEC CB 210022)	✓		Respondent	
D	Photo of field with house in background (NYSP DSCF 208)	✓		Respondent	
E	Photo from base of tree stand (NYSP DSCF 211)	✓		Respondent	
F	Statement of ██████████	✓	✓	Respondent	
G	Copy of Photo of bus interior	✓		Respondent	
H	Photo of hole in Bus with metric square (DEC CB 220035)	✓	✓	Respondent	
I	Drawing of bus with dimensions	✓	✓	Respondent	
J	Photo of hole in Bus with caliper (DEC CB 220036)	✓	✓	Respondent	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
K	Google map of Rt 241 area	✓		Respondent	
L	Winchester Ballistics Calculator	✓	✓	Respondent	
M	Line of Sight graph with elevations	✓	✓	Respondent	
N	Photo of Tree Stand (DEC CB 210023)	✓	✓	Respondent	
O	Photo of Tree Stand (NYSP DSCF 209)	✓	✓	Respondent	Same as Exhibit B
	Notice of Hearing, dated October 15, 2021, issued by ALJ Michael S. Caruso				OHMS File