

**STATE OF NEW HAMPSHIRE
FISH AND GAME COMMISSION**

**In the Matter of
License Revocation of Steven R. Laro**

DECISION ON THE MERITS

This proceeding was commenced in response to a letter of request filed with the New Hampshire Fish and Game Department (Department) on or about December 23, 2004 on behalf of the family of Robert H. Proulx. The letter alleged that the respondent, Steven R. Laro (Mr. Laro or Respondent), carelessly discharged his firearm during a hunting drive on January 3, 2004 in Corbin Park, Croydon, New Hampshire, causing the death of his hunting companion, Robert H. Proulx. A New Hampshire Fish and Game Department (Department) investigation ensued and it was determined that there was probable cause to proceed to hearing.

PROCEDURAL BACKGROUND.

By letter dated February 3, 2005, Mr. Laro was noticed that a hearing would be held before the Fish and Game Commission (Commission) on March 16, 2005. He was asked to notify the Department no later than February 15, 2005 if he intended to appear at the hearing. He was further advised that, if he did not choose to appear, the Commission intended to consider the evidence that it received and might revoke his hunting license on that date.

On March 4, 2005, by letter dated February 28, 2005, Attorney Paul Maggiotto notified the Department that he was representing Mr. Laro and requested a postponement of the hearing and requested a pre-hearing conference. The presiding officer granted Attorney Maggiotto's requests.

A Prehearing Conference was noticed and held on March 15, 2005. At the prehearing conference, the presiding officer heard arguments on pending motions. The parties and Attorney Craven agreed to a procedural schedule that was accordingly ordered by the presiding officer. The hearing on the merits was rescheduled for April 13, 2005. Mr. Laro agreed not to hunt in New Hampshire pending resolution of this matter.

On March 29, 2005, the Commission granted a motion from Attorney Maggiotto for an extension of time for complying with the Prehearing Conference Order from March 29, 2005 to April 7, 2005.

The hearing on the merits of the matter was held on April 13 and 21, 2005, at Fish and Game headquarters, 11 Hazen Drive, Concord, New Hampshire 03301.

As a preliminary matter at the hearing on the merits, the Commission granted Mrs. Proulx's motion for limited intervention and addressed other pending pleadings as follows:

Motion of the Department to Limit Adversary Procedures.

The counsel for the Department filed the motion on March 15, 2005. Mr. Laro objected thereto on April 6, 2005. The Commission denied the Department's motion. The Commission agrees with the Department that the due process rights of recreational licensees are less than those of professional and motor vehicle licensees but feels that live witnesses enable the Commission to better assess their respective credibility and ensure, perhaps to excess, an opportunity for the parties to have a full and fair opportunity to be heard and to cross-examine witnesses. See, e.g., RSA 541-A:33, IV. We note with appreciation that both the respondent and the Department availed themselves of this opportunity fully yet efficiently and professionally.

Application of the Department to Admit Certain Documents.

The Department's application, dated April 4, 2005, requested that the Commission admit or take official notice of documents relating to a prior judicial proceeding involving Mr. Laro entitled *State v. Carl Laurie*, 139 N.H. 325 (1995). The Department contends that those case documents relate to Mr. Laro's credibility and character. The Respondent objected and proposed numerous new rebuttal exhibits should the application be granted. The Commission denied the application for lack of probative value. The events addressed in *Laurie* occurred more than a decade ago and do not necessarily relate to the merits of the case now at hand.

Respondent's Motion to Dismiss the Department's Revocation Proceedings Under RSA 214:18.

The Respondent, by motion dated March 29, 2005, sought dismissal of the proceeding alleging that license revocations for causing death or injury to another person can be brought only pursuant to RSA 207:37-b, the first paragraph of which provides:

207:37-b Hunting License Revoked.

I. Any person, while on a hunting trip or in pursuit of wild animals or wild birds or while target practicing, who is convicted of shooting and wounding or killing a human being shall not be issued a license to hunt or, if the person holds a hunting license, the license shall be revoked and the person shall not be granted a license to hunt for the following period:

(a) If the shooting and wounding of a human being results in death or serious bodily injury, as defined in RSA 625:11, VI, the license revocation shall be for a period of 10 years.

(b) If the shooting and wounding of a human being results in less than serious bodily injury as defined in RSA 625:11, VI, the license revocation shall be for a period of 5 years.

Mr. Laro appears to contend that the amendment of RSA 207:37-b in 1997 (to require revocation of a hunting license on conviction of a hunting related death or wounding of a human being) implicitly repealed RSA 214:18. He also argues that to the extent RSA 214:18 remains in force,

it is invalid as an unconstitutionally vague and overly broad delegation of legislative power to the Department's Executive Director. We agree with the arguments made by the Department in its objection to the motion. Repeal by implication is disfavored. *State v. Perra*, 127 N.H. 533, 535 (1985)(Implied repeal must be rejected "if any reasonable construction of the statutes can avoid it"). The amendment to RSA 207:37-b requires **revocation** after conviction but does not, either expressly or implicitly, require a **conviction** in order to revoke a license. RSA 207:37-b does not purport to preclude suspension or revocation of a hunting license absent a conviction pursuant to other statutory provisions. Had the Legislature wanted to provide otherwise, it would have done so. Rather it amended RSA 207:37-b to provide for summary revocation where the fault rises to the level of criminal behavior. It left intact the agency's other powers under, among other things, RSA 214:18 to sanction other irresponsible and dangerous acts by licensees. If there is a conviction, revocation is automatic pursuant to RSA 207:37-b. In the absence of a conviction, RSA 214:18 requires a pre-revocation hearing and a demonstration that the licensee's actions make him or her "physically or mentally an improper or incompetent person to carry firearms, or is handling firearms improperly, or so as to endanger human life or property". Each of the two statutes, especially when read in the context of the overall statutory scheme, addresses different circumstances and can be readily construed as being consistent.¹

Regarding Mr. Laro's assertion that RSA 214:18 is unconstitutional, the Commission presumes the constitutionality of its enabling statutes. Furthermore, in RSA 214:18, the Legislature clearly and expressly set forth the criteria here applied by the Commission². Accordingly, we denied the motion to dismiss.

FINDINGS AND CONCLUSIONS.

On thorough review of, and only of, the entire record exhibits and testimony, and applying our experience, technical competence and specialized knowledge in evaluating the evidence, we make the following findings and conclusions³. The evidence is uncontroverted that:

Mr. Laro holds a New Hampshire Resident Lifetime Hunting and Fishing Combination License purchased on January 4, 2001.

Blue Mountain Forest Association is a private hunting preserve located in Croydon, Sullivan County, New Hampshire. The area is commonly referred to as Corbin Park after Austin Corbin who founded the Park in the late 1800's. Use of the area is limited to members and their guests. There is no evidence that any person has ever been killed while hunting in the Park since its creation in 1888.

¹ It is noteworthy that the Legislature left intact RSA 207:39-a which requires up to a five year hunting license revocation for killing, injuring or damaging domestic fowl or animals while hunting. If the Respondent's argument is accepted that a conviction is required for shooting humans, it would lead to the absurd result that the Legislature places a higher value on bird and animal life and welfare than on human life and welfare. See *In re Russell C.*, 120 N.H. 260, 264, (1980)(statute should not be interpreted to lead to an absurd, unjust, or illogical result).

² The portion of RSA 214:18 that the Respondent alleges is unconstitutional are the two references allowing the executive director to suspend or revoke a license "for any... cause that he may deem sufficient" This provision does not apply in this case. The Commission and Executive Director only applied the express criteria set forth by the legislature in RSA 214:18 in determining Mr. Laro's qualifications for continued licensure.

³ Pursuant to *inter alia*, RSA 541-A:33, VI and 541-A:31, VIII.

Just before Christmas, 2003, Mr. Laro was invited to hunt in the Park as a guest of Mr. Roger Williams, a Corbin Park member.

On or about 0700 hours on January 3, 2004, Mr. Laro met Robert Barr at the Weathervane Restaurant in Chichester, New Hampshire.

Mr. Laro left his vehicle at that location and together they drove to Corbin Park where they met the other members of the hunting group, Angelo Cacciatore, Robert Proulx, John Twitchell and Roger Williams, at the main lodge at approximately 0830 hours.

The six-member party was assigned to hunt a geographic area of Corbin Park designated as Section A. Deer, elk and boar were the species to be hunted.

The group chose to employ a hunting tactic known as “driving”. Hunters engaged in this activity either walk through a hunting area with the intent of sighting and shooting and/or pushing game or remain stationary waiting for an opportunity to shoot game that has been pushed to their location ahead of the hunters who are moving through the woods. It was agreed that all members could shoot if they saw game.

From the lodge the group traveled to their respective hunting locations.

First, Angelo Cacciatore and Roger Williams, accompanied by the others, were transported by vehicle and dropped off at a point nearer to their hunt location. There Mr. Cacciatore and Mr. Williams boarded ATV’s at the drop off point and drove themselves into the area where they were to hunt. They would be sitting on the northern end of Section A, waiting for passing game and to be joined later by the remainder of the group.

After dropping off Mr. Cacciatore and Mr. Williams, the remaining four members drove back to the Lodge, parked their truck and walked into the woods to their assigned starting points along a woods road. Mr. Twitchell, Mr. Proulx, Mr. Laro and Mr. Barr walked in a westerly direction and positioned themselves in this order along the woods roads.

Each “pusher” was expected to wait until Mr. Barr was in position and advised them by two-way radio message that it was time to start walking toward the sitters; i.e. to begin the drive. It was agreed that the pushers would proceed in a northwesterly direction. Mr. Proulx did not have a compass but indicated he would start along the Red trail. Mr. Laro testified that he set his compass at a bearing that he believed would parallel Mr. Proulx’s path.

Mr. Barr left Mr. Laro at Mr. Laro’s starting position and walked to his position. This was Mr. Laro’s first day hunt and he testified that on his previous overnight hunts the team would review maps and plan routes the night before. They did not do so for this trip. Mr. Laro had been directed to walk uphill toward the sitters’ location. Mr. Laro followed his pre-set compass course of 310° that he believed would parallel Mr. Proulx’s path and lead him to the sitters’ position. He observed a field through which he would travel when he started his hunt. He waited for the signal to start the hunt. He reported that he did not believe that there would be

game in the field; that he was not prepared to shoot a boar; that his rifle was not ready and that his ability to operate his rifle was restricted by the gloves he was wearing.

Mr. Barr radioed that it was time to start.

Mr. Laro proceeded toward the field. Minutes into the hunt Mr. Laro heard a noise and believed he saw a boar. Mr. Laro unshouldered his rifle. Mr. Laro brought his rifle into shooting position but was unable to fire because he had not released the safety that prevents an accidental discharge. Mr. Laro looked at the safety and released it. Mr. Laro looked back through the scope. Mr. Laro saw motion. Mr. Laro shot one shot. Mr. Laro's rifle lifted from the recoil. Mr. Laro repositioned his rifle. Mr. Laro saw what he believed was the hind end of a running boar. Mr. Laro shot a second time. Mr. Laro looked through the scope to prepare for a third shot. Mr. Laro saw nothing - "there is no movement".

Mr. Laro believed he had shot a boar and, when asked, advised other members over the radio that he had shot a boar.

Mr. Laro then tried to find the boar but instead discovered Mr. Proulx's lifeless body. Mr. Proulx died instantly of his wound and, although Mr. Laro argued that Mr. Proulx may have staggered or rolled away from where he was shot, there was no evidence contradicting that his body was found at the site where he was shot⁴.

Mr. Laro radioed that he had shot Mr. Proulx and attempted to run for help. Mr. Barr responded to the scene and discovered Mr. Laro incoherently calling for help for Mr. Proulx. Mr. Laro stated that Mr. Proulx was dead.

Mr. Twitchell first, then Mr. Barr, ran back to the Lodge to summons help.

State Police and the Department were notified at approximately 1000 hours that a fatal hunting related shooting had occurred at Corbin Park.

The Department conducted an investigation of the shooting.

The investigation revealed that, at the time of the shooting, an early morning rain had stopped and the sky was cloudy and overcast. The ground was snow covered and visibility was good. Mr. Laro had shot twice and one of the rounds had struck Mr. Proulx in the back killing him. The area between Mr. Laro and Mr. Proulx consisted of open softwoods and fields. Mr. Laro's rifle was equipped with a variable power scope set on 5x magnification. The rifle and scope were in working order. The distance between Mr. Laro and Mr. Proulx at the time of the shooting was approximately 72 yards. Through the scope, the distance would appear to be approximately 42 feet. The scope would provide a field of view of 16 feet; with eight feet either side of a target

⁴ There were no trail of blood, roll marks or footprints supporting Mr. Laro's argument and the slope of the terrain was inconsistent with Mr. Proulx having rolled significantly. Also, Officer Suttermeir testified that the location of the shell casings was consistent with firing each of the two shots in the same general direction rather than swinging the barrel substantially between shots at a moving target. Accordingly, it is reasonable for us to conclude that Mr. Laro's line of fire was in the general direction of where Mr. Proulx's body was found.

centered in the image. No evidence that a boar was present in the immediate vicinity of Mr. Proulx at the time of the shooting was observed.

The investigator's report indicated that there were no fresh boar tracks in the area between Mr. Laro and Mr. Proulx and that the only boar tracks in the area at issue were from a time period well before the hunting party arrived in the Park and showed no indication of a boar spooked by human proximity or by gunfire. It was concluded that what Mr. Laro thought was a boar was in reality Mr. Proulx.

In considering Mr. Laro's involvement in this matter, the Commission and Executive Director have concluded that Mr. Laro was handling a firearm improperly and, as a result, he caused the death of Mr. Robert Proulx.

Mr. Laro was charged by the Sullivan County Attorney with negligent homicide and felonious use of a firearm. A Sullivan County Superior Court Jury acquitted him of both charges on December 13, 2004.

By letter dated December 23, 2004 to the Department's Executive Director, Lee E. Perry, Attorney Jason M. Craven requested on behalf of Mr. Proulx's family that the Department consider suspension or revocation of Mr. Laro's hunting license pursuant to RSA 214:18. The Department reviewed the matter and determined that there were grounds to conduct a hearing on this matter. **ANALYSIS AND CONCLUSIONS.**

Following the conclusion of the hearing on the merits, the Commission and Executive Director deliberated in public on the matter.

In considering Mr. Laro's involvement in this matter, the Commission and Executive Director concluded that Mr. Laro did not handle a firearm properly and as a result caused the death of Mr. Robert Proulx.

The Commission voted unanimously to revoke Mr. Laro's license. The Executive Director concurred.

Hunters are not alone in the fields and forests of New Hampshire. With increasing land development and the growing presence of people engaged in non-hunting activities, there is a high probability that hunters will encounter non-hunters, as well as other hunters, while in the field.

Mr. Laro suggested that Mr. Proulx contributed to the accident by not wearing "hunter orange". Although the Commission agrees that wearing hunter orange during a hunt is recommended practice, the fact that Mr. Proulx was not wearing hunter orange does not excuse Mr. Laro. Mr. Laro knew that Mr. Proulx was wearing camouflage and that Mr. Proulx did not have a compass. More importantly, Mr. Laro knew that wearing hunter orange is not legally required in New Hampshire and should have known that it is not reasonable or safe to assume that the absence of color makes it safe to shoot. While hunting, a hunter should not shoot without being one hundred percent certain that the target is a wild animal. While hunter orange assists greatly in

making this determination, it does not substitute for proper and safe hunting practices. A safe hunter should never base identification on sound alone or as in this case, sound in combination with what appears to be the hind end of a boar⁵.

While Mr. Laro professes a belief that he was aiming at a running boar and not a human being when he killed Mr. Proulx, there is no evidence to support his assertion that there was a boar in close proximity to Mr. Proulx when he shot. Unfortunately, the fact that he shot and killed Mr. Proulx proves that his belief was incorrect and that he did not take the necessary precautions of being prepared to hunt and positively identify his target before firing.

The testimony of Conservation Officer Sergeant Suttmeier and Assistant Director Lynch conforms to what is taught in this state's hunter safety programs and literature. The proximity of other people in the hunting area must be fully considered before deciding to pull the trigger. A competent hunter adhering to proper hunting and gun handling protocols would assume that every living creature is a human being until proven differently. A safe hunter realizes how easy it is to mistake a person for game and would not shoot until there is a clear and unobstructed view of the intended target. Mr. Laro should have known that he was aiming at a human being and his failure to discern the difference causes us to question his ability to insure that he could avoid another catastrophe in like circumstances.

The fact is that Mr. Laro did not need to kill every animal that he saw as this was a sport hunt, not a self defense situation⁶. No wild animal is worth the life of a human being. Every hunter must be responsible to only take a shot when they are ready, have positively identified their target and background and are sure that their shot placement on the animal will hit a vital area on the animal. Mr. Laro had the choice to pass on what he thought was a boar, as he stated, "I wasn't even prepared to hunt". If indeed it had been a boar, he could have radioed ahead to the others that there was a boar headed their way.

This was the last hunt of the season and there was much game around. Mr. Laro was anticipating the killing of many animals and this led to the poor shot choice and misidentification of his target.

In lieu of presenting testimony before the Commission and Executive Director, Mr. Laro chose to play a tape recording of an interview conducted by State Trooper Jason Alstrom and Conservation Officer Sergeant Brian Suttmeier on January 7, 2005. Mr. Laro left the hearing during the time that the tape was played.

Subsequently Mr. Laro was questioned regarding various details about his background and his behavior during the hunt. When Mr. Laro was asked to draw on paper the route taken by the boar he claims to have shot towards, he claimed that he could not do that since he had forgotten all about it. Mr. Laro was also asked what he meant by "not being ready to hunt" and was also

⁵ In this case, Mr. Proulx was in a depression so Mr. Laro likely could only see his back from the waist up. During the hearing on the merits, we observed Mr. Proulx's camouflage jacket and hat placed next to the mounted boar and observed that unless proper caution is exercised the jacket and hat could be mistaken for the rear of a boar.

⁶ Interestingly, Mr. Laro testified that his firearms instructor training did not include checking the background before shooting because his training was as a combat instructor, not as a range officer, and he was trained to shoot quickly and efficiently in combat situations.

not able to offer a satisfactory explanation. The same is also true of Mr. Laro's responses to Commission queries regarding where on a boar Mr. Laro would aim his rifle to assure a merciful immediate killing shot. It was only after moving the wild boar mount at the hearing to a position in front of Mr. Laro that he reluctantly pointed to the position behind the boar's left shoulder as the best place to shoot a boar. Mr. Laro would not cooperate by standing next to the mounted boar and moving the mount as requested so that the Commission could see the boar's direction relative to Mr. Laro's shooting location. Mr. Laro's behavior, responses and demeanor during his testimony, diminishes the credibility of the mitigating theories and explanations offered by his attorney. Mr. Laro's credibility was further affected by his not being present during the tape presentation so that the Commission could observe his reactions to the taped testimony, by his explanation of why he left his scope on 5 power rather than increasing the field of vision, by his not recalling what was in his crosshairs when he fired and by professing ignorance to questions (such as the alleged boar's location and direction when shots were fired) that he alone could answer as the sole living eye witness.

In his opening statement Attorney Paul Maggiotto stated that this shooting represented a "cluster screw up of great proportions". During his testimony Mr. Laro was asked, "why did it happen?" and "how could it be avoided in the future?" . Mr. Laro stated, "I don't know what could have been done differently⁷." Such a response is not indicative of someone who has acknowledged fault and learned how to avoid the same tragedy in the future. He knew or should have known that a drive is an inherently dangerous hunting technique, especially where all involved, including the sitters, were allowed to shoot, potentially shooting towards each other. Mr. Laro's compass setting was NNW instead of the NW direction the party discussed, potentially leading him closer to others in the party. He knew he was not ready to hunt. He knew Mr. Proulx was without a compass and thus could have wandered off track. He knew Mr. Proulx was starting off on a worn trail, perhaps conducive to faster travel. He knew or should have known there could have been other persons in the Park. He knew he was not ready to hunt (e.g. says he was not set up, his rifle was shouldered, his scope not adjusted, his safety on, his hands in gloves that restricted operation of his rifle). He knew Mr. Proulx was wearing a camouflage jacket and hat, making it easier to mistake him for a boar. He should have known that under these circumstances he should have waited until he was ready to hunt and he should have been certain that he had head to tail identification of his target. Otherwise he should have let the presumed game go and perhaps radioed to the others that a boar might be headed their way. His failure to do this led to the first fatality in Corbin Park history, spanning over a century.

Based on the testimony and materials in evidence at the hearing, including without limitation that cited above, we conclude that Mr. Laro did not act properly when he shot Mr. Proulx, nor has he demonstrated that he has acquired the necessary qualities or skills since the shooting to assure that he can properly handle firearms so as not to further endanger human life or property.

SANCTIONS

⁷ He also seemed to be placing blame on Mr. Proulx for not wearing orange and for allegedly not being where he was supposed to be, and did not assume any of the responsibility himself. Our review of the evidence indicates that Mr. Proulx is where he would be expected to be if he followed the trail he started out on.

In addition to its recreational benefit of hunting to an individual hunter, the General Court finds “that it is in the best interest of the state and its citizens that the fish and game department promote our special heritage of hunting”. RSA 207:58.

It is important that the Department endeavor to keep hunting as safe as possible and maintain the public’s favorable perception and acceptance of hunting. RSA 214:23-a and RSA 214:23-b establish educational requirements for hunters and a program to certify people in the safe and responsible handling of firearms while hunting.

Various laws are in effect that allow hunting privileges to be denied, suspended or revoked in order to keep hunting safe. In addition to RSA 214:18, RSA 214:18-b prohibits any person whose hunting privileges are under suspension or revocation in another jurisdiction from purchasing a license in New Hampshire; RSA 214:17 states that no license shall be issued to a person who is not suitable to carry a firearm; RSA 207:39-a states that any hunter who causes death or injury to domestic animals, ducks or fowl shall be liable to the owner for damages and shall have his license revoked and is not eligible to obtain a license for up to five years; and RSA 207:37-b provides that the license of any person who is convicted of shooting or wounding which results in death or serious bodily injury shall be revoked for 10 years; or which results in less than serious bodily injury shall be revoked for 5 years.

Our decision is made with these responsibilities in mind and after considering and evaluating the testimony and evidence using our collective experience and knowledge relative to firearms, hunting practices and wildlife conservation.

It is ordered by the Commission and the Department’s Executive Director on this 27th day of April, 2005 that Mr. Laro’s license to hunt in the State of New Hampshire be revoked for a period of ten years effective March 29, 2005 (the date that Mr. Laro voluntarily agreed not to hunt in New Hampshire); and that Mr. Laro may apply for a license at any time following the full revocation period and completion of a hunter education program; and a hunting license may be granted or restored following a hearing before the Executive Director and Commission at that time.

Theodore A. Tichy, Chairman, Coos County
and Presiding Officer

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Lee E. Perry
Executive Director