

At a Special Term of the County Court of  
the State of New York held in and for the  
County of Otsego at Cooperstown, NY,  
on March 28, 2017.

PRESENT: HON. RICHARD D. NORTHRUP, JR.  
ACTING COUNTY COURT JUDGE

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In the Matter of a pistol permit of  
ROS DEVLIN,

Index No.

DECISION AND ORDER

Pistol License # CW 17717

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This matter comes before the Court as a result of a report filed with the New York State Police based primarily on a written statement provided by Otsego County Corrections Officer Catherine M. Hubbard describing an incident alleged to have occurred on January 5, 2017 between approximately 9:00 P.M. and 10:00 P.M. at the Otsego County Correctional Facility. An order suspending the pistol permit of Mr. Devlin, who holds the rank of Sergeant at the Otsego County Correctional Facility, was issued by the Court on January 25, 2017, and at his request a hearing to consider whether the Court should permanently revoke his license was scheduled for March 28, 2017 at 1:00 P.M. in Otsego County Court.

A hearing was conducted as scheduled with Sgt. Devlin and his attorney, James Ferarri, being personally present. First to take the stand was CO Hubbard. She testified that on January 5, 2017 she was assigned to the control board at the Otsego County Correctional Facility between the hours of approximately 9:00 P.M. and 10:00 P.M. Sgt. Devlin, CO Justin Proulx and CO Alicia N. Scanlon were present. Sgt. Devlin complained aloud about having been reprimanded by CO Hubbard's husband, First Sergeant Jared Hubbard, for bringing his personal cell phone to work again after having previously being advised not to do so. He further complained that the Undersheriff told him he needed to

move his truck because it was parked in an unauthorized parking space. CO Hubbard stated that she tried to stay out of the conversation, but that Sgt. Devlin continued by stating, in essence, that if the administration wants a fight, he hopes they can concentrate when they get 50 grievances filed. He added that he would bring a duffle bag to work filled with guns and that he was going to walk into the administration office and "blow my head off over First Sgt. Hubbard's desk so that every time he blinks he can see my face explode." He also said that he could "shoot up" the Oneonta Elementary School and the Milford School to create a diversion so that there would be no one to respond.

CO Hubbard further testified that she was not feeling well that evening to begin with, and that Sgt. Devlin's comments caused her distress and anxiety as she continued to work a double shift. When she finished at approximately 7:00 A.M., she spoke to her husband, who was just arriving at work, and he asked what was wrong. She said she did not want to talk about it and later that day called him and asked that he take her for medical treatment. When they met at approximately 12:30 P.M. she informed him what had transpired with Sgt. Devlin. She thereafter reported the incident to Undersheriff Allison, but declined to put anything in writing for fear of reprisal by Sgt. Devlin.

On cross examination she explained that she was fearful because her husband had reprimanded Sgt. Devlin, who is her direct supervisor and she feared him taking it out on her. CO Hubbard further testified that she thought Sgt. Devlin was serious about a "school being taken out," but declined to report it to anyone because she was more afraid of retaliation. She said that she, her husband and Sgt. Devlin were friends at one time, with him even attending their wedding and though she still considers him a friend, she does fear him.

Corrections Officer Alicia N. Scanlon testified next that she was present in the control room on January 5, 2017 at the time in question, but that while she heard Sgt. Devlin complaining that First Sgt. Hubbard had talked to him again for having his personal cell phone in the jail, she knew only that CO Hubbard was talking with him about it because First Sgt. Hubbard is CO Hubbard's husband. She did not hear any comments

made by Sgt. Devlin about shooting up the jail or elementary schools, but also stated that she did not hear the entire conversation.

Sgt. Devlin himself testified last and denied saying any of the things attributed to him by CO Hubbard. He stated that the county, the Sheriff's Office and the State Police had investigated the allegations, and that he had not been charged criminally for anything as a result. However, he did indicate that the county had determined to fire him "with no evidence." He further explained that he has been seeing mental health counselor Deborah W. Lumia, a Psychiatric Nurse Practitioner, once a month since January and testified that she has determined that "she sees no issues" with him. Received in evidence as Respondent's Exhibits "A through C" were written reports from Ms. Lumia, the most recent two of which, dated February 22, 2017 and March 21, 2017, conclude by saying "nothing in this assessment precludes Mr. Devlin from returning to work, the undersigned recommends reinstatement." Ms. Lumia, Sgt. Devlin acknowledged, is privately retained and paid by him.

It is well established that "the state has a substantial and legitimate interest and in deed, a grave responsibility, in ensuring the safety of the general public from individuals who, by their conduct, has shown themselves to be lacking the essential temperament or character which should be present in one entrusted with a dangerous instrument." *Peterson v. Kavanagh*, 21 AD3d 617 (3<sup>rd</sup> Dept 2005).

New York State Penal Law Section 400.00 (11) (a) authorizes the Court to exercise it's discretion to revoke a pistol permit previously issued in its jurisdiction. In making such a determination the Court is "vested with considerable discretion in ruling on a [pistol] permit application and may deny it for any good cause." (*Matter of Vale v. Eidens*, 290 AD2d 612, 613 [3<sup>rd</sup> Dept 2002]). See also *Hassig v. Nicandri*, 2 AD3d 1118 (3<sup>rd</sup> Dept 2003) and *Finley v. Nicandri*, 272 AD2d 831 (3<sup>rd</sup> Dept 2000). However, the Court's decision must be supported by substantial evidence and may be neither arbitrary nor capricious. (See *Matter of Davi v. Cosgrove*, 211 AD2d 788 [2<sup>nd</sup> Dept 1995]).

While "a formal adversarial hearing is not required before a pistol license is revoked" (*Pacicca v. Allesandro*, 19 AD3d 500 [2<sup>nd</sup> Dept 2005], citing *Matter of Gordon v. LaCava*, 203 AD2d 290 [2<sup>nd</sup> Dept 1994]), a full hearing was conducted here, and the licensee was given notice of the charges and had an adequate opportunity to submit proof in response.

The Court fully credits the testimony of Corrections Officer Catherine Hubbard. Her demeanor on the stand, and the substance of her testimony did not reveal any indication that she was not being truthful and despite being cross examined by experienced trial counsel, her testimony was not impeached. Significant in the Court's credibility determination is that there was disclosed no motive for her to have fabricated the initial report or her testimony, and indeed, one might have expected that she not come forward at all given that Sgt. Devlin's father is the Otsego County Sheriff and her highest superior officer. Corrections Officer Scanlon's testimony neither added nor detracted from CO Hubbard's version of what transpired since she testified that she was not particularly paying attention to what was being said, and that she was not present for the entire conversation.

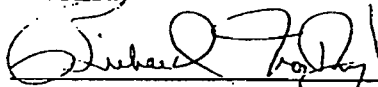
Sgt. Devlin, on the other hand was clearly an interested witness whose testimony is viewed by the Court as suspect since he is the one and only person who may gain or lose, depending upon the Court's decision, something he considers valuable. The reports of the mental health counselor, while no doubt the sincere opinion of Ms. Lumia, are viewed by the Court as having limited value since they are based on a total of three sessions conducted over the course of three months and are entirely grounded on Sgt. Devlin's self-reporting.

It is therefore the conclusion of the Court that substantial evidence was presented constituting good cause for the Court to determine that Sgt. Ros Devlin has shown himself to be lacking the essential temperament or character which should be present in one entrusted with a pistol permit.

The respondent's application to reinstate his New York State Pistol Permit is therefore denied and the same is hereby REVOKED.

Dated: March 31, 2017.  
Delhi, New York.

ENTER:



Hon. Richard D. Northrup, Jr.,  
Acting County Court Judge, County of Otsego

TO: James P. Ferrari, Esq., Attorney for Ros Devlin  
Otsego County Pistol Clerk  
New York State Police