

# Gun Lawyer S1 Episode 5

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Welcome to Gun Lawyer. I'm Evan Nappen, and I am really happy that you are joining me for today's show, because I have some really interesting things to discuss; things that I've learned throughout my legal career. It gives me some insight into things that are current events, and I want you to have that same insight when you hear about these things.

00:44

You may have noticed recently in the news, there was a report out of Philadelphia regarding Walter Wallace. Mr. Wallace, who had mental health issues, was having some type of a crisis of some sort. When he came out in the street, he was brandishing a knife, and the police shot and killed him. It led to rioting in Philadelphia over this. So, you know, it's an interesting case. One of the things that recently happened in the aftermath of that case is that the family attorney for Walter Wallace's family, who is representing them, announced that he does not want the Philadelphia officers to face murder charges even though there was so much politicization of this. There was so much agita in the community, and riots and claims of the misconduct by the police. This attorney came out on behalf of the family and says, he doesn't want them to face murder charges. He says, instead, he believes that the officers were simply improperly trained and did not have the proper equipment to do their job. The equipment he's referencing is devices like a taser, a less than lethal tool. He publicly made that statement.

02:34

Now when you see that, you might say, wow, that's really gracious, benevolent, for him to want to do that given the racial strife and tension. We've seen these things go political where they prosecute the police. And here's a guy who says, no, no, no, don't charge the police. You might take a step back and say, wow, that's almost refreshing, given the environment surrounding all this. In order to understand what I believe is actually behind that, which may be that they're benevolent and maybe that they're gracious, it may very well be all of that. But I want to tell you a story that illustrates maybe with a little more clarity what often is a case. When it comes down to civil liability, this was a story that was told to me by a fellow attorney many years ago, but I always remembered this story. It's such a great story because it illustrates the distinction between civil and criminal and how it can be very important to fully appreciate that distinction.

03:56

My friend was in his office one day, and a woman comes into his office and says, she's very, very upset. She's very upset because her husband, whose nickname was Tiger, was partying with a number of friends, and one of the friends was an off-duty police officer from a northern New Jersey city. Well, they were partying (it was St. Patrick's Day), and they were bar hopping. It seems that Tiger and this police officer were kind of arguing with each other. They were kind of mad at each other, and they weren't really celebrating St. Patrick's Day in the spirit as it is intended. They got to a point where they pulled into the Friends of Shillelagh Bar. While they're at

the Friends of Shillelagh Bar, the argument kind of went even further, and they both went outside in the alley way. They were about 15 feet apart or so. The off-duty police officer shot Tiger right between the eyes with his off-duty weapon. Tiger's wife was, as you can understand, upset about this, and she was very frustrated because the Prosecutors in the county were not pursuing criminal charges against this police officer. They've been sitting on it. My friend said, Well, why aren't they? What's the deal? Well, believe it or not, what the Prosecutors are saying is that the officer simply fired a warning shot. It just said it was too low. So that having been said, she really thought that was pretty outrageous, and wanted my friend to pursue and push the Prosecutor's office to go after the policeman who did this criminally. Although my friend was willing to help her out here, he wanted to explain something to her. And this is what he said.

06:26

"I can do this, and we can try to push murder charges, criminal charges on the officer, but I want you to understand something. The state is essentially saying that he fired a warning shot, and it was not properly done - that it was fired too low. In other words, there was inadequate training given to him, inadequate instruction, and such in the use of his firearm and if you're going to fire a warning shot, how to do it properly. If that's the case, then we could bring a civil action for negligence and hold the city and the state liable because this is their employee for their inadequate training that occurred here. If we do that, then you could get a substantial settlement, or a judgment, substantial. So, if we pursue the criminal charges, however, and they go after this officer for murder charges, then that would be an intentional act by the officer and would have nothing to do with bad training or improper instruction in the use of his firearm. It would instead be that he purposely set out to kill him and did. The liability would not exist in any way near the liability that would exist on a negligence claim. The intentional act by the police would essentially remove the deep pocket of the government from the case. So, he said, why don't you think about what you want to do? Do you want me to still pursue this criminally? Or do you want me to go at it civilly? So, she thought about it and being a good American, she went for the money. And she said, "Look, let's do the civil." So, in fact, he brought the Civil and ended up settling the matter for seven figures. And ending it there.

08:49

It's a great illustration that shows the difference between in civil actions between intentional acts and negligent acts and the difference of criminal charges or civil charges. And all that's great. She was well compensated for her loss; although, of course, nothing could ever replace Tiger. But there you go. All that's fine and it serves a great purpose to illustrate all this, but it doesn't end there. Because the fact about this story that I always thought was just the best, it just makes it the ultimate story, is that after the settlement was paid, Tiger's wife married the cop who shot him. So, if you think about that, it's really quite a story, and I'm sure you would agree. Nonetheless, the difference here now is clear between intentional and non-intentional.

09:56

So now, let's take a look back at Mr. Wallace's family's attorney who says no, no, we don't want criminal charges here. We believe that this was inadequate training and failure to have less than lethal equipment and how it could have been handled in this whole other way. Maybe now, you see, that there may be another motivation regarding his statements, and the way the family wants to proceed. Now, this is sad that anyone would get killed at all, of course, that's true. It's a shame this man had mental problems, and the police were summoned to the area over his behavior. They didn't go looking for this guy. He's apparently had prior record of problems and issues. So, look at who they're dealing with, and remember, the idea of a knife makes someone armed. You've heard someone say, "Well, except for the knife, he wasn't armed." Yeah, except for the knife, he wasn't armed. Because of the knife, hey, guess what, he was armed.

11:19

If any of you have ever practiced or are aware of defending yourself against someone with a knife, you may have heard of what's called the Tueller Drill. The Tueller Drill is a self-defense training exercise. It actually was Officer Tueller out of Salt Lake, who wondered how quickly someone with a knife could attack another person. What they had was 21 feet, which is the average distance for the close quarter firing of a gun at 21 feet. If someone's at 21 feet, how quickly can someone who has a knife stab their victim. Essentially, in 1.5 seconds, they can do it. One and a half seconds - it's called a Tueller Drills and has been proven. So even someone with a knife 21 feet can successfully attack someone holding a gun before they can fire their gun. So, you've got to keep this in mind. Being "unarmed, except for a knife." - how incredibly dangerous and deadly that can be. You can just see the reference a Tueller drill. I think even in MythBusters, they tested this, and every time the knife attacker could reach the shooter. He could stab them prior to being shot every time. So, that's the Tueller Drill, and the danger that's out there for police. When we come back, I want to tell you what to do when you interact with police and hopefully not get shot by them.

13:11

For over 30 years, Attorney Evan Nappen has seen what rotten laws do to good people. That's why he's dedicated his life to fighting for the rights of America's gun owners. A fearsome courtroom litigator fighting for rights, justice and freedom. An unrelenting gun rights spokesman tearing away at anti-gun propaganda to expose the truth. Author of six best-selling books on gun rights including Nappen on Gun Law, a bright orange gun law Bible that sits atop the desk of virtually every lawyer, police chief, firearms dealer, and savvy gun owner. That's what's made Evan Nappen America's Gun Lawyer. Gun laws are designed to make you a criminal. Don't become the innocent victim of a vicious anti-gun legal system. This is the guy you want on your side. Keep his name and number in your wallet and hope you never have to use it. But, if you live, work, or travel with a firearm, the deck is already stacked against you. You can find him on the web at [EvanNappen.com](http://EvanNappen.com) or follow the link on the Gun Lawyer resource page. Evan Nappen America's Gun Lawyer.

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14:42

Hey, we're back on Gun Lawyer with Evan Nappen. I'm so glad you're here because what I want to tell you about, I want to give you some tips and an understanding of how to deal with the police. We were just talking about the Walter Wallace situation, and this understanding of the Tueller Drill. Even someone 21 feet away with a knife can successfully attack you and stab you before you can even use your gun. When it comes to how we interact with police, here is an incredibly important hot tip on dealing with police. If you don't want to be shot by the police, don't attack police with a knife. Do I need to write that one down for you? Hopefully not, because even though you may think you're unarmed, except for having a knife, you are armed because you have a knife. If you are threatening and coming at police with a knife, they don't like that because they're very aware of the Tueller Drill and its impact. They can be quickly stabbed and killed by a knife, which is why a knife is defined as a deadly weapon because it can cause death. That's another reason, legally, why they're called deadly weapons. It's amazing how sometimes the law actually makes sense in defining something like that. So, this is important to keep in mind.

16:38

If we want to go a little bit deeper here and put away the obvious that we were just talking about, how should you deal with law enforcement? Number one is respectfully; they have a job to do. Police keep us civilized. Police have a job to maintain law and order. I don't want to live in chaos. I don't want that, and I'm not anti-

police. I like that we can have, for the most part, a peaceful society in which police do a great job, and that's important. But when it comes to your interacting with police who you respect, like I respect, what's the best way? Well, number one, be respectful. Number two, actually listen to what the officer is saying. You don't know all the reasons that he may be stopping you. There may be a danger that he needs to warn you about or maybe he's investigating some action that you did. But it doesn't hurt to listen to what the officer is saying - that's not a problem. Listen to everything that he's saying.

17:54

The problem comes in as to whether or not, or to what degree, you answer questions and engage with the officer. You see that is critical. That's where we have your rights come in, versus the ability of the officer to do his job. But you still have your rights. You don't want to end up in a situation where you inadvertently cause legal problems for yourself. Of course, as law-abiding citizens, we're kind of trained the policeman is your friend, and you want to do what they say. I get it. The problem is that there's another side to this, and that is you probably don't want to become charged with something, especially something you didn't do. You'd really rather not get arrested, I'm sure. These are powers that police have.

19:11

You may say to yourself "I'm not gonna get arrested because I didn't do anything wrong." Well, you don't know what they're perceiving, what the officer may be perceiving that you did. You may not even know what you did, or what you didn't do, or what they're misconstruing you as your doing. Look, misunderstandings, they happen. They sure do happen. I've seen it over and over again where one thing is perceived one way, and yet its intention is completely the opposite. You can put yourself into a pretty bad hole if you don't realize it and start saying things that inadvertently enhance the misperception.

20:00

So, how do you handle this with police? Well, let's talk about a typical traffic stop. You're pulled over - I'm sure all of us have experienced this. First thing normally the officer is going to do is ask for your credentials - your license, your registration, your insurance, if you're in a state that requires insurance. You do need to provide your identification and your registration to the officer. Most states have laws that require it - at least identifying yourself. Even the Supreme Court says in the Hubbell case that we have to at least identify ourselves. We have the driver's license and you're going to meet the requirements that your car is registered, you have insurance and that you have your license. You give that to them. Now, I automatically have that out, to hand them right away, because there's never a time where they're not gonna want to see that.

21:02

Well, let me tell you - one time I was driving down the highway in Jersey. I got a call from my paralegal. She didn't realize I was driving, and I said, "Look, I'm driving right now, I can't talk to you, and I put the phone down. Next thing I know there are police lights on behind me. I'm like, ah, geez, he saw me with my phone, and now I'm gonna get pulled over. All right, whatever. So, I pull over, and I immediately take out my driver's license, registration and insurance, and I roll down my window. As soon as the officer walks up, I'm holding out my credentials, and he says, oh, no, no, I don't need any of that. I don't need to see any of that. And I immediately I was like, "What? Is this guy just gonna like assassinate me? Because what cop doesn't want to see my credentials? What is that all about? You know, he doesn't need to see any of that. What? I had no clue, right? And he goes no, no, no. I'm sorry to pull you over, but I gotta just tell you, man. "I was driving, and I saw in the back of your Suburban that you had this great bumper sticker that said Live Free or Die." Yes, it's the moto of New Hampshire. I love New Hampshire. It's live free or die. "I really want one of those stickers, and I don't know where to get them. Could you get me one, you know where I can get them?" And I'm like, so relieved that

I'm all good. I'm like, "give me your card, man. I'll get them for you. I know who has them. I'll be happy to send them, not a problem. No problem. I understand you love freedom and that means something to you. That was fine. So, sure enough, that's why I got pulled over for a "Live Free or Die" sticker, which is kind of ironic, but absolutely true. Immediately I had my credentials out there. And that's one thing.

22:57

Keep your hands in plain view - don't go rummaging through your jacket or stuff because they're trained to look at your hands because you may have a weapon. You don't want to make anybody nervous by doing that. The question, though, becomes to what degree should you engage? The normal next question is something like, "Do you know why I pulled you over?" Let me ask you about that question. You, my friends listening to me now. What's the proper answer to "Do you know why I pulled you over? If somebody says: "No, I don't know." So, you always say "No, I don't know why you pulled me over." I want you to stop for a minute. If you say no to the question, "Do you know why I pulled you over", then that means that the boneheaded thing that the officer believes he just saw you do, that you're so negligent or reckless, you're so clueless, that you have no idea why he pulled you over. You're just on the road doing this stuff, and don't even know it. Don't even know it. Is that a great thing to tell the officer? No, it really isn't.

24:15

So, let's try the other answer. "Yes, I do, Officer." Oh, great. Yes, I do. So now you're admitting that you intentionally did something wrong, which may or may not be what he's thinking, but you're now confessing everything. You're now incriminating yourself. Is that a good idea? No. So, what is the best way? When that question is asked, the thing that I really, strongly suggest you say, is simply "That I don't want to answer any questions", because you don't have to answer any questions like that. You're not required to answer any questions, and you can see why there's no right answer to that question. So, the best answer is, "I don't want to answer questions". You have a right not to answer questions, and you can say that. Now some people get mad at me or "I'm not feeling comfortable with that". I understand, but it's your right, and if you engage, you're now waiving those rights. When you waive those rights, you're now exposing yourself to more problems.

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So, there may be another way to handle it. I've heard and know of some folks where it's the old joke. It goes like this - there was an old Jewish man who was asked, "Why do you always answer a question with a question?", and the old Jewish man said, "Why not? Why not?" I always liked that because you can answer questions with a question. So, there is another answer to the question: "Why are you asking me that question?" In other words, he has a reason for pulling you over; so, why is he asking you that question? Right? "Do you have any guns in the car? any weapons? Why are you asking me that? Why are you asking me that?" He says "Well, I'm the one asking the questions." Well, I'm not going to answer any questions now. If you answer a question with a question, you're really getting at the heart of what the stop may be about. The reason for what ultimately could be a probable cause determination as to whether the stop itself was lawful because it's going more to the heart of the issue. You have to understand that under our rights, particularly our rights against unlawful search, and seizure, and stop, I have people often say, "Hey, you know, if I refuse a search, the Officer's gonna think that I'm hiding something." or "If I refuse to answer questions, they're gonna think I'm hiding something." But you have to understand. That's not how our rights work. It's not up to us to have to defend why we stand on our rights. It's up to the State to have probable cause or reason, legitimate-based reason for why they feel they can overcome our rights. It's not a question of do you consent to a search? You have a Fourth Amendment right against consenting to search. If they have the probable cause for search, they're just gonna search. They're not going to ask if you consent. There's no need to ask. They have

probable cause. If there's a dead hand hanging out of your trunk, they're not going to ask if you consent to a search. They're just gonna search.

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If they don't have probable cause, and you say, yes, you know what you're doing. You are giving up your rights and saying, in so many words, go right ahead, Officer - have a fishing expedition at my expense. Go right ahead. Do you really want to do that? Do you really want to waive your rights? I mean, do you appreciate all those men and women who died for our rights? Do you appreciate their sacrifice at all? Because they died for us to have these rights. You're just gonna waive them? Who cares about those silly, stupid, old rights? That's pretty darn disrespectful to those folks that died to give us these rights. So, you want to stand on your rights. It's important to do that, and let me explain, you never physically resist the police. Never, never. That's never. There's no physical resistance ever. Okay, there's no resistance ever. You don't resist. But, you don't consent, either. That's the difference. You're not consenting, but if the Officer still wants to search, no problem, you're not going to stop them. You've stood on your rights. And if there's something at issue, then we'll see if the search was within your constitutional rights. If it's not, then anything that's found cannot be used against you. That's why we have the system. That's why we have the system.

29:20

So, this is important. We have a system that you need to utilize. To utilize the system, you need to know your rights. You need to stand on your rights. You have no obligation to answer questions. You have no obligation to consent to a search, no obligation for these things. We're talking about your Fifth Amendment right. We're talking about your Fourth Amendment right. Fourth Amendment is about search and seizure. Fifth Amendment is the right against self-incrimination. There's another right and that's your right to an attorney. That's probably the most important right when we're dealing with this. Not just because I'm an attorney, but when you say you want to talk to your attorney, you have a right to talk to your attorney. If you're in a position where you feel for some reason, awkward or intimidated say, "Look, I'm happy to cooperate, but I need to talk to my attorney first." Right? So, you always want to bring in the idea of having counsel, because once you have counsel, then that attorney can deal with the state and be your shield and your filter to the state. So, depending on the circumstances, this is the way you go. I'm not saying just because you get pulled over for a traffic matter, I want my attorney. But it is absolutely where you have the right to say, "I don't want to answer any questions" and nor should you, because you can see the danger in answering questions.

30:47

You need to identify yourself. There are states that require you to do a breathalyzer or the things where they have the "implied consent". Things like that, you still have to do those things. The laws have been structured in such a way to somehow work around what seems like an obvious violation of the Constitution. But they say, well you have an implied consent to waive that. So, if you want a driver's license, your consent is implied so that you've already agreed to take a breathalyzer. I always thought about that argument, interestingly, because of the way consent works. If you're with somebody and you're getting romantic with them, and they say yes, yes, yes. And you're saying great, there is consent. Now you have consent, and you're about to go further, and that person says no, I'm not consenting anymore. You better stop, right? Because once you give consent, implied or even expressed, once that consent is gone, there's no consent.

31:54

But somehow that doesn't make it into implied consent law because even though you've implied your consent to take a breathalyzer or even blood sample, and now you want to revoke your consent, that's not allowed

somehow. Why is that? I thought we were dealing with the law of consent and that's how you got around the Constitutional protection to begin with. Anyway, something to think about.

32:25

The bottom line, folks, is you need to stand on your rights. I want to make sure that you stay protected and that you don't become a victim of gun laws. Help keep a fellow gun owner from becoming a law-abiding criminal, tell them to listen to Gun Lawyer radio. I would really appreciate it. I want to help people understand and know their rights, and you can visit our website at [gun.lawyer](http://gun.lawyer) . You can find me on Facebook as well. Please spread the word. It means a lot to me, and it'll mean a lot to them. Till next time. This is Evan Nappen, reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

33:22

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