

Gun Lawyer Episode 14 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:18

I'm Evan Nappen, and this is Gun Lawyer. Today, we're going to talk about the poison gun case. I deal with a lot of clients that have guns confiscated by the government, particularly in New Jersey. It's very routine to have guns confiscated for a multitude of reasons. Often not even found anywhere in the statute, they just take guns for "safe keeping". They literally pull it out of their ass. They decide, hey, we're gonna take these guns, and then there's no process for the return that's formalized. It's a whole big challenge to actually get into court to getting your property back.

Evan Nappen 01:13

Now, there are other statutory provisions that allow for gun seizure, and these exist in many other states as well. One of the main ways you see lots of guns being seized is anytime there's a domestic violence allegation. So, in New Jersey, it's very easy to claim to be a victim of domestic violence. You simply have to qualify as a "victim" and that means that your spouse or someone there's a dating relationship with or a household member, etc. If you meet that qualification, then you are automatically given the label victim, automatically. All you have to do is claim this predicate act of domestic violence, which is a list of actual crimes, but they're viewed at the civil level. The lowest crime you can allege is harassment. So, if the victim alleges harassment, which by the way, the essence of harassment in Jersey is doing something with the purpose to annoy, to cause annoyance or alarm. So, that's the essence of it. Then they'll issue a restraining order, temporary restraining order (TRO), for that claim of harassment. Built into every restraining order is a seizure of all firearms and permits. This standard is pretty low.

Evan Nappen 02:46

As a matter of fact, since the victim is anyone who is a spouse, and if they can allege harassment, the essence of doing something with purpose to annoy. I know that none of you have ever annoyed your spouse, right? You wouldn't dream of doing such a thing. But, if you have annoyed your spouse, then they could, in theory, say you were harassing them and get a temporary restraining order (TRO) issued. All your firearms will be seized, you'll be kicked out of your house, and then you'll have to appear in court to fight the temporary restraining order becoming a final restraining order (FRO). An FRO would permanently bar you out of the house and built into that is what's called a weapons forfeiture hearing.

So, that's where they decide even after all that, whether you get your guns back or not, or whether they get forfeited to the state.

Evan Nappen 03:37

So, what happened in this case was this really sweet old lady came into my office. She is concerned because her late husband who died 16 years ago, was a major gun collector. He even had an FFL (Federal Firearms License). He was a retired Chief of Police in one of the Northern New Jersey towns. He had a lot of guns when he died, and they were all locked in his gun room. You see, one day his son had been in the upstairs with his girlfriend, and they got into an argument. The police came, and they alleged a domestic violence issue in the home. The police asked the son, "Do you have any guns?". The son told the police, "I don't have any guns, but my dad had a bunch of guns downstairs, but they're not mine." They don't care because they're in the household. So, the police went into the locked room, and they took all of the deceased husband's guns.

Evan Nappen 04:44

The old lady, very nice, she was very concerned. She said, "Look, I really don't want them back. I just want to have them get sold. I could really use the money to help pay for the house, and I just never knew what to do with them or how to dispose of them or anything like that. So, could you help me here on getting the guns sold to a dealer and away from the state?" Oh, sure, I'd be happy to help you do that. While I'm talking to her, I get a call from the County Prosecutor's Office, from the Evidence Room. The guy who's in charge of the Evidence Room is calling me. He wants to know if I'm representing a woman, so and so. Yes, and that happens to be the person who's actually sitting in front of my desk at the moment. Why is he calling me? Normally, I have to push them. So, I take the call, and he's like, "Let me tell you, I need you to get these guns out of here right away." I'm like, really, you've changed your policy a bit because normally we have to go to court and fight to get them back. You want me there to take the guns out of there. ASAP?" "Yes, that's right. As a matter of fact, get a dealer here right away. I need them out of this evidence room, gone!"

Evan Nappen 06:23

"I'm like, okay, what's going on? Why is this?" "Well, I'll tell you what", he says. "Everybody that's come into contact with these guns gets sick." "What do you mean?" "They get a pounding headache. Their breathing is affected. They feel dizzy. The guys that took the guns out of the house had to go to the hospital. They couldn't breathe. They had horrible headaches. Anyone that goes into evidence room gets the same issue." "I'm like, Oh, my God. All right. Well, I don't know what's causing that, but let me get my dealer. So, I call my dealer and told him that I need to get these guns picked up right away from the county Evidence Room. I said wear gloves, bring your wipe downs, and put on your Israeli gas mask. Throw away any of the cardboard or cloth cases because apparently everyone that comes in contact with these guns is getting ill. I don't know what's going on, but we need you to pick them up ASAP. He's like, sure, there's a lot of guns. So, he goes there and picks them up. We get them out of there, and it's all very interesting. The question, of course, is what the hell was going on there? Why did this occur?"

Evan Nappen 07:49

So, a few weeks later, he's got the whole inventory laid out, and he has arrived at a price to buy them straight out. The client was very, very happy about the price. I asked her to come to the office, and I'll give her a trust check. The dealer wrote the money to my trust account, and I can disperse it to her. So, she came in to get the check, and I told her what had happened. This was a little strange - the folks that picked up the guns got very ill and had to be hospitalized. Do you have any idea what was going on there? No, I really don't have any idea. Well, what happened with that room? "Well, when my husband died 16 years ago, I never opened the door again." And I said, "Really? So, it's kind of like when somebody dies, and you leave their room alone." Whatever psychological thing that makes you want to do that. So, she just didn't want to go near that room. She didn't want to deal with it in any way. Well, did you ever do anything down there? Anybody go down there? Then she said, there's one thing maybe she said.

Evan Nappen 09:14

"After my husband died, there was this really sweet man who I met because he was coming to the house to do bug, pest extermination." "Really?" "He was so nice that I bought a plan that anytime he came, it was free. He would treat everything for free. There is no charge, and it was just one plan. He loved to come over because he and I would spend all kinds of hours together. We would talk, and we'd have tea. He was so nice. Every couple of weeks he'd come by, and he would do a treatment. He would do a treatment, and then we'd have some great conversations and all that. This went on for a long time." Oh, years. She's telling me for years, every time he went over, he would go down there with the bug spray and spray the basement, including in that room. The room was sealed, and he never went in. He would shoot the bug spray under the door over and over and over again. Oh, yes, yes. Hmm. So, that basically explained how the police were poisoned by the guns that they took out of the house. This is the true story of the poison gun case, and we're talking about good bug killing stuff in those days. You know, this goes back a ways. It wasn't as politically correct or environmentally safe. No, this was good, good bug killer. It sure did the job. In the next segment, we're gonna talk about something called anti-gun investing. What is that? How do you do that? I'm gonna tell you.

Speaker 3 11:21

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 and 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 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 or follow the link on the Gun Lawyer resource page. Evan Nappen - America's Gun Lawyer.

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Evan Nappen 12:51

Okay, welcome back. I would like to tell you about a great thing at Gun.Lawyer. You can ask questions, and I'm happy to get them and answer them on the air. I have one such question that I want to discuss, and this comes from George in New Jersey. It says, "Regarding New Jersey gun laws, every legal television show loves to quote that people are innocent until proven guilty by a court of law. Even cops made it part of their opening. But isn't New Jersey a bit different regarding firearms? Where any possession or use of a gun is by law illegal unless it's proven in court, that you fall within very narrow exemptions. Doesn't this fly in the face of 'Everyone is innocent until proven guilty in a court of law?'"

Evan Nappen 13:53

The answer to the question is basically "Yes." New Jersey has actually structured their gun control scheme in a very strange way that puts due process and criminal due process rights on its ear. It's just real abuse, and here's what they've engineered it as. They ban everything in New Jersey. I mean, everything gets banned in New Jersey. Handguns, rifles, shotguns, you name it, it's banned. Then the only way that you're legal and not subject to prosecution successfully under the banned items, is only one of two ways to do it. One is if you have a license, which it's an impossibility to get, such as a License to Carry a Handgun. Less than 600 civilians have one in the whole state of New Jersey and that's what's required to possess a handgun. Not just carry, possess a handgun in New Jersey. So, if you don't have a carry license in New Jersey, how else can you possess a handgun even one that you've purchased with the New Jersey Pistol Purchase Permit? Because that permit is not a possession permit. It just allows you to acquire a firearm. The answer is by way of exemptions. But the exemptions, my friends, are what is called an affirmative defense, meaning that you as a defendant have to first prove that you are under the exemptions before the State has to disprove the exemptions. So, in essence, it makes you guilty until you prove yourself innocent by falling within the exemption.

Evan Nappen 15:43

That's right. It is the complete opposite of being presumed innocent. The probable cause for your arrest exists, no matter where you have your handgun, unless you have a Carry Permit. Even then, there's another law that says you're presumed not to be licensed until you prove that you're licensed. Without the Carry Permit, it means you must show that you are within an exemption. That means prove it ultimately to a jury, and that burden is placed on you. I've had many, many, many criminal cases where that is the situation. I've had individuals charged with possession of a handgun in their own home, and we have to prove that this is actually their home, so that it can fall under the exemption. We've got to prove that you're living in your home, which is not seen as a judicially noticed fact. Ultimately, it is up to the jury to believe where you live, and that this was your home so that you were within an exemption. We're talking about a firearm that you lawfully acquired. This is how New Jersey has completely contorted this. Now keep in mind, you may say, Well, thank God, I don't live in New Jersey because of how bad it is. Well, let me tell you, if you believe in self-defense and use of force justification, well guess what? That's an affirmative defense. That's right. If you use your firearm, use deadly force, you could be charged with the assault, homicide, etc. Then you're going to say it was self-defense? Maybe it absolutely was self-defense. But guess what, that's an affirmative defense. You are going to have to prove first, your self-defense normally by preponderance of the evidence. You're going to have to present the evidence to prove your innocence, before the State has the burden to disprove your claim

of self-defense. So, that idea of switching the burden of proof is very serious. It makes a big difference in how a case can proceed with that burden shifting. It's one thing to do that where you're talking about the use of deadly force. Not that I think it should be there, but at least it's slightly more understandable because you're talking about, arguably, ending someone's life or physically maiming them. But New Jersey has taken that and applied it to simple possession of a handgun, rifle, shotgun, etc. So, it's a darn good question there from George. It does highlight how New Jersey switches the burden of proof to the law-abiding gun owner. In New Jersey, all gun owners are essentially guilty, until they prove themselves innocent.

Evan Nappen 19:06

If you're interested in asking questions, by all means, go to Gun.Lawyer. That's our website here for Gun Lawyer, and you can send in questions. We welcome that. Feel free to check it out and join what's called our Inner Circle. Our Inner Circle is special, and it's free. You'll get important updates and various information from me that is not going to be on the show but told to you privately through our Inner Circle communications. So, check that out.

Evan Nappen 19:47

Anti-gun investing. Well, let me tell you, I coined this phrase back in the late 90s, and I wrote an article for the Blue Book of Gun Values - 20th Anniversary Edition (1999). It was on anti-gun investing. What does that mean? Well, it was kind of tongue in cheek, but actually, there's a lot of truth and considerations that go into it. The idea is to invest in certain firearms, that because of anti-gun actions, the value of the firearms rises and in effect, make the market skyrocket because of the actions of the anti-gunners. Now, what's nice about this is at least gun owners end up to some degree getting some financial compensation out of the ridiculous actions by the anti-gunners. This is something that was done successfully by many people.

Evan Nappen 20:52

One great example is the Hughes Amendment in 1996. It was a ban on new manufacture and new registration of machine guns. This meant that the machine guns which were NFA registered became the limited pool of those guns because no new ones have been added or could be added to it. The supply was limited. With a limited supply and a growing demand, the prices skyrocketed. A fully automatic firearm that you could have bought in 1986 for \$600 to \$1,000, you are now talking \$25,000 to \$30,000 for that potential machine gun, full auto weapon, depending on what it is. The prices were dramatic in their rise in value. So, if you were an anti-gun investor in pre 86 and saw the writing on the wall, you could have really made out.

Evan Nappen 22:02

It's not just limited to guns because right now, we're having an ammo shortage. I'm sure if any of you have tried to buy 9mm or just about any other round, any ammo for our ARs or AKs, etc., it's all gone or crazy high prices. I mean, 9mm ammo is insane at the moment. At one time, you could have bought a box for \$10 to \$12. Now, I've seen it as high as \$100 a box because of the shortage and the desire for people to have more ammunition. It is crazy. Well, there again, anti-gun investing. Not really so much anti-gun laws but the environment that has led with the threat of them coming down on our gun

rights combined with civil unrest. What a dynamite combination for the value of firearms and ammunition to skyrocket.

Evan Nappen 23:06

Look at what happened with the 1994 Assault Weapon Ban where they banned new manufacturer of semi-auto firearms. A whole variety of semi-autos that were just arbitrarily picked over their certain features that the antis believe were intrinsically evil and offending. Next thing you know, those guns are no longer able to be manufactured, but they were all grandfathered. The values of those guns skyrocketed because of the actions by the anti-gunners. Same with magazines over 10 rounds. Remember, no new manufacturer, but the old ones were grandfathered. Magazine prices went through the roof. Just incredible. Because only the old mags that were pre the 1994 ban were legal. So, if you wanted a mag that held over 10 rounds, that was another anti-gun investment.

Evan Nappen 24:13

The other thing is that the antis never seem to think about the impact of the laws on the market. I always love how the '94 ban that limited new production of magazines to 10 rounds actually impacted the handgun market. At the time what was really popular were the so-called Wonder 9s and semi-auto pistols with really big magazines. They were really big handguns that held lots of ammunition. When they passed the ban and since you were limited to 10 rounds, what is it that makers switched to? Smaller handguns that were much more concealable, but still had the high-power round of the larger guns. So, the ban of the magazine limit to 10 had the effect of creating smaller, more deadly, more concealable handguns. Now that did make me happy, and so that was a good thing. But that's what it did. So, it's again funny considering that the antis for years and years wanted to fight against small, concealable, deadly handguns. Instead, they get the assault weapon law passed which inspired more and more production of those great guns that became very popular for concealed, self-defense combined with the growth of the shall issue, carry license movement. There you saw the gun laws, having the effect where you could do the anti-gun investing.

Evan Nappen 25:52

If you have ammunition, of any sort, that you don't want, go through it. You can make some really good money right now. Plenty of dealers are buying your ammo because they cannot get ammunition. If you have old ammo that is still good, but you're not looking to shoot, maybe it's a caliber you don't have anymore, or you just have no interest in that particular type of round, then now's the time to sell. The idea is to buy when people are selling and sell when people are buying. This is exactly the philosophy behind anti-gun investing.

Evan Nappen 26:37

What you need to do, folks, is ask yourself, about your guns and your ammunition. I know a lot of you are collectors, a lot of you have put stuff away in case one day it's needed. I get all that. But at some point, it's good to ask yourself, are you an accumulator? Or are you a collector? It's one thing to have your stockpile ready to roll in case there's major civil problems. I get that. What if you've been a collector, and you've been buying lots of guns and ammunition, and you keep buying them? At some point, you may ask yourself why do I have all these? Just because I like them and the question of need? They're taking up lots of room. Yet there's this hot market, right now this crazy hot market for

guns. You need to ask yourself - are you a collector or an accumulator? You see, an accumulator just buys everything and keeps buying more and more. There's no real basis for it - they just want more. But a collector is discerning - a collector wants a better gun, better quality, better condition, more of a collector piece. The idea is to build your collection. You dispose of lesser firearms as you increase your collection and get better, finer, more desirable firearms. If you're a collector, you won't have anywhere near as many guns, as if you are an accumulator. The guns that you have, you'll be a lot more satisfied to own them, because they will be in premiere and improved condition, shape, and variation. So, this is something to think about as we enjoy our collecting of firearms, and to some degree, even our accumulation of firearms. But look at what the picture presents in terms of an investment.

Evan Nappen 28:39

Right now, there is a new President coming in, who is not a friend of guns. As a matter of fact, he was one of the folks that helped push the 1994 gun ban. That's right. Beijing Biden did that. He pushed for the gun ban. He's really never seen a gun control law he didn't like. There are major monies that funded the party that's in control of our government coming from the anti-gunners like Bloomberg and folks. So, they are going to want to get their money's worth. We're gonna see anti-gun laws proposed, and they may even get passed. When those laws get proposed and put forward, the prices of the guns that they're addressing will skyrocket. That's the thing to watch if you're an anti-gun investor. As these things are put forward, you can anticipate such moves, and you can use it to your advantage. Of course, we don't want any new gun laws. We want greater gun freedom, and the idea behind this isn't so that we want gun control, so our guns get more valuable. But there's also a reality to it. Even when they're proposed, whether they pass or not, it affects the markets dramatically.

Evan Nappen 30:10

Let's face it. The number one gun salesman before COVID was President Obama. Why was that? Because of the threat to our gun rights. People were buying guns. If you had seen that, you would have been an anti-gun investor that could have made a lot of money. So, this is what you need to think about. When you go through your collection, think about things that now may be illegal because the laws have changed. Certain things have become prohibited. For example, a bump stock is prohibited now. There are things in many state laws that have changed. In New Jersey, a 15-round magazine used to be legal. Now, it's cut down to 10 rounds. If you possess a 10-round magazine in New Jersey, you're fine. However, if you possess 11 rounds or more in a magazine, that's a felony level offense. You're looking at 18 months in states prison for your possession of the magazine that holds 11 instead of 10.

Evan Nappen 31:13

Now, of course, the magazine ban itself raises a question. How many bullets is your life worth? Well, New Jersey decided your life is only worth 10 bullets, not 11 or more. But look, if you have the mag that's prohibited, it's contraband, and if you're possessing contraband, you can face criminal charges. So, you need to make sure that your firearms aren't prohibited. The assault weapon, which is the actual legal term in New Jersey, is a very hard to understand law. It creates many different firearms that are banned, and yet other firearms that you think might be banned, are not banned. If you're really not familiar with guns, you need to be because you don't want to end up on the wrong side of that very technical issue.

Evan Nappen 32:13

Because in New Jersey, if you possess a prohibited so-called assault firearm, the penalty is insane. It's a second degree crime, and it carries up to 10 years in states prison. It also has a minimum, mandatory three and a half years, no chance of parole. The judge has no discretion. It doesn't matter that you have no priors, and you were a law-abiding citizen. Even if this is only an honest mistake, it doesn't matter. You could get convicted, and the judge has no discretion. You're going to get at least three and a half years minimum mandatory in state prison, and you're going to do every day of three and a half years. Every day -before you can get out on parole. That's how draconian and outrageous New Jersey's law is over an arbitrary definition that is completely confusing and illogical as to what is an assault firearm and what is not. And even more issues can arise out of this. For example, in terms of offending features, you can't have more than one offending feature. So, if you have an AR and you have a pistol grip, it's okay. But, if you have one more offending feature, it's not. Those offending features just for example, on the AR would include a telescoping or folding stock, a bayonet lug, a

Evan Nappen 33:48

threaded muzzle or a flash suppressor. What does that have to do with anything? Why is a bayonet lug an offending feature? What does that have to do with crime? For a long time, it bothered me that it was even a criteria until I found out why. Then once I found out why, it made it all better, because the reason is all the drive by bayonetings. Obviously, that's why. That's not so bad. So, what if you have an AR, and it has a telescoping stock? You think it's no longer telescoping because it's pinned. You've seen advice that if you pin it, it's okay. It removes that offending feature. Like why should the stock, whether it moves two or three inches one way or another, have anything to do with whether it should be a Second Degree crime with minimum, mandatory state prison? I don't know. But I've had cases where the Prosecutor has claimed it wasn't sufficiently pinned. It was pinned to demonstrate the intent. Well, we don't think so. So, you're going to ruin this person, put him in jail for up to 10 years, mandatory minimum three and a half, make him a felon, cost him his family, his dreams, his life, his career. You want to destroy him over whether or not his telescoping stock on a firearm that he lawfully purchased was sufficiently pinned. What a load of garbage. That's what it's like living in the anti-gun states.

Evan Nappen 35:17

Unfortunately, it looks like Federally, they're going to try to jam New Jersey style gun laws on every American in the United States. So, you need to focus, and if you're going to be an anti-gun investor, do it smart. Remember to fight for our rights.

Evan Nappen 35:37

Let me tell you folks. Keep a fellow gun owner from becoming a law-abiding criminal. Tell them to listen to Gun Lawyer radio and visit our website at Gun.Lawyer. What I would really love is for you take a look at our Inner Circle on our website at Gun.Lawyer. Sign up for the Inner Circle, and you're going to get the inside scoop for me, Evan Nappen. I'll be giving you tricks, tips, insight and fun. Sign up - it's free. Go to Gun.Lawyer and join my inner circle.

Evan Nappen 36:11

Remember, this also helps us communicate with you to touch base and let you know what's going on. Because big tech doesn't care about our gun rights. They're shutting down conservatives left and right. Banning them. Making it very hard to communicate. This is an insurance policy for us to be able to communicate. They just don't like us and they're trying to shut us down. In the Inner Circle, we can stay in contact despite their efforts. We're going to have big issues coming up - executive orders, all kinds of nasty things you're going to need to know. What to do to protect yourself and what loopholes there might be. I'm going to fill you in on all that. You're going to want to know. How are you going to deal with the pistol brace regulation if it comes back down again? You know it's gonna, what are you going to do? How are you going to deal with the executive order by Biden on gun transfers? He wants to end private transfers. How are you going to deal with this? Well, I'm gonna fill you in and tell you what to do.

Evan Nappen 37:12

Join our Inner Circle, and you'll be able to protect yourself and your rights. Please subscribe, rate the show, and help me get the word out. I'm depending on you. This is Evan Nappen, reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

37:34

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