

Gun Lawyer Episode 16 Transcript

SUMMARY KEYWORDS

gun rights, gun, case, client, rights, firearms, Sessler, push, home, police, lawyer, exemptions, second amendment, rick, gun owners, Biden, law, officers, administration, important

SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:19

I'm Evan Nappen, and welcome to Gun Lawyer. I have a really good show planned today, folks, and I can't wait to tell you some stories and some ideas that I have.

Evan Nappen 00:31

One of the cases I'd like to discuss is a case involving unlawful search and seizure. I think there's some very important lessons in this case. We ended up winning this case on an appeal to the Appellate Division in New Jersey, and therefore the case is available online where you can read it. Now, it is known as an unpublished decision. In New Jersey, if a case is a "published decision", it means it's binding case law. An unpublished opinion is still out there as "published" but not in the legal, New Jersey case law, meaning. It means it is an unpublished decision that is still searchable and can be found, but it's not binding case law on other courts. It is something that can be informative, and other courts can read it and glean from it things that were opined in it, but it's not binding on the court. It is still out there as a written decision and a record of the decision in the case. So, as a matter of public record, the case is State of New Jersey v. William Sessler, and we represented Mr. Sessler in this case.

Evan Nappen 02:05

I thought it's a very interesting fact pattern to the case, and you may find it just as fascinating as we did. In this case, Mr. Sessler had a fellow show up from a cleanup service. This fellow claimed that Mr. Sessler owed him some money or there was a dispute. At a certain point, Rick's Cleanup goes over to the Branchburg PD. This is where it took place, and he claimed that my client, Mr. Sessler, made a terroristic threat against him when he went to my client's home to collect money that he felt he was owed. Rick told the police that he had met at my client's home. According to Rick, when he arrived, the client invited him in. Then they sat down on the couch, and my client began cursing at Rick, "using gross profanities, and ethnic slurs, derogatory to Hispanics." He said, "I'm going to kill you, you expletive deleted". That's a direct quote from the case. While saying this, my client removed a rifle from a black case. He did not point it at Rick, and he didn't threaten him with the weapon. But still, Rick thought he was in danger. So, he left my client's home, and went to the Police Department and reported this.

Evan Nappen 04:11

Well, after the police took his statement, the Detective and four other officers from Branchburg PD went to my client's home to investigate. When they got there, they identified themselves as police, and they told my client that they wanted to speak with him. My client was only wearing underwear and socks, and he open the door. But after a brief exchange, he told the officers "Go fuck yourselves. I'm not talking to you." As he attempted to close the door, two officers pushed it in, and they subdued and handcuffed my client.

Evan Nappen 05:09

Well, one of the officers testified in court and said they noticed what appeared to be a butt of a rifle or shotgun leaning against the doorframe. He said it was visible from the porch. There was a gun case that was matching the description given by good old Rick, and the police officers testified that they feared for their safety based upon these observations. It appeared to be the gun that was described and that he had earlier threatened Rick with. These officers entered my client's home, and they observed numerous guns "long rifles and shotguns were laying all over the floor, unsecured". quote. So, my client was charged with possession for unlawful purpose of a firearm, terroristic threats, aggravated assault, resisting arrest, etc.

Evan Nappen 06:15

However, we brought a Motion to Suppress. The Motion to Suppress is that we believe the search and seizure of my client's firearms was unlawful. They did not follow the mandate to the Fourth Amendment. The court granted our motion, and the State appealed our win. The Appellate Court affirmed our win. Why would that be? Well, first of all, we're talking about a warrantless search of a home, and warrantless searches of a home are presumptively unreasonable under our case law. Therefore, they're not allowed unless they come under certain exemptions. These exemptions themselves have been recognized by the Supreme Court. There are two recognized exemptions that, arguably, were claimed to be here. One was what's called exigent circumstances and the other is plain view. But the court did not by the State's argument on those exemptions. They found that under these facts, because my client never threatened the police, and he had not acted in any way, where he meant to harm the police, guess what? There were no exigent circumstances, and the funny thing about it is, there also was no consent to a search. Remember, in this matter, it was pretty clear that he didn't consent to a search, especially when you tell the police to "Get the fuck out."

Evan Nappen 08:15

It's kind of clear about that, you know, so that he really asserted his rights, very plainly. This actually came to his advantage here, believe it or not, and as the trial judge concluded, there's nothing, absolutely nothing, in the testimony of the police to show that they were in immediate danger, direct or indirect from Mr. Sessler. They also found that the plain view exception was no good, because the officer must be lawfully in the area in which he views the evidence, and they must not know in advance where the evidence was located. Finally, it has to be associated with criminal activity. The police were legally on his porch. However, the Court found that there was no contraband in plain view because of the exemption under New Jersey law. Under N.J.S. 2C:39-6e., we are exempt to possess firearms in our home. So, plain view of firearms in one's home is not evidence of a crime. It's exempted, plainly, you see. So, just because there are rifles and shotguns "strewn everywhere", it doesn't matter. You can

have rifles and shotguns strewn everywhere. It's not illegal if it's in your home because of the exemption that says you can possess firearms in your home.

Evan Nappen 09:56

Of course, this is furthered today with the Heller decision, the landmark Second Amendment case, District of Columbia v. Heller. It found that possession in your home of firearms is constitutionally protected right. So, here in this case, the evidence was suppressed. None of it could be used against him, and the assertion of his rights in whatever fashion, proved to be correct. I remember my client was kind of a grumpy old guy. I liked him, but he's kind of a grumpy old guy, that I guess was not going to get pushed around by anybody anymore. He was going to stand on his rights, and it proved out, in effect, because the search was illegal. Lessons to be learned from that.

Evan Nappen 10:56

Sometimes, you know, it's funny how we're trained to always be courteous; how we're trained to believe that the police are your friend and all. But so many times, and I know police have a tough job, and we need the police because I don't want to have a society without police. We would be in a terrible mess. But it is also important that our rights be respected. Unfortunately, our rights are not taught in school. Our rights are not taught in school. You would think something as fundamental as knowing our rights would be a part of our education. But it isn't. It's almost like it's on purpose, isn't it? Kind of interesting.

Evan Nappen 11:44

Imagine a class that every high school student had to take where you understand your rights regarding search and seizure, and how you can have protection under the Fourth Amendment and how you should assert your rights. Imagine the class that actually taught Fifth Amendment and your right not to self-incriminate. Your Miranda rights actually taught to you, including your right to have an attorney and how important that right is; how you assert it, and how it's important that you assert it. Imagine a class that actually taught our rights, so that individuals would know their rights and be able to stand on them. Now, I love our entire constitution, including the Second Amendment and the Fourth Amendment and the Fifth Amendment and the Sixth Amendment, all the amendments, all our rights, are very important, yet the education of those rights doesn't happen. It doesn't happen. Yet, think of all the other things they do teach in school, much of which is nowhere near as important or as useful or a life lessons that you need to know, such as knowing your rights.

Evan Nappen 13:01

When we come back, I'm going to talk to you about opportunities for pro-gun legislation in the Biden administration. How can this be? I'll explain.

Speaker 3 13:19

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 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.

Speaker 3 14:34

You're listening to Gun Lawyer with Attorney Evan Nappen. Available wherever you get your favorite podcast.

Evan Nappen 14:49

Hey, I really, really need you to help me out here. We have to help keep our fellow gun owners from becoming law-abiding criminals. One of the ways you can help do that is if you could tell your friends and fellow gun owners and supporters of the Second Amendment, tell them to listen to Gun Lawyer radio and visit my website at Gun.Lawyer.

Evan Nappen 15:18

I'd really love it, if you would take a look at our Inner Circle. It's on our website at Gun.Lawyer. Sign up for the Inner Circle, and you're going to get the inside from me, Evan Nappen. I'll be giving you tips, tricks, insights, and fun. Sign up, it's free. Go to Gun.Lawyer and join our Inner Circle.

Evan Nappen 15:41

The reason this is so important is this is what's going to let me communicate with you, to touch base directly with you, and to let you know what's going on. Because I'm really, really concerned over what Big Tech is doing. They do not care about our gun rights. They kind of don't like us, and they're trying to shut us down. You have probably seen the platforming of various sites. You see the clamp down on social media, and the various internet attacks on our ability to communicate as supporters of gun rights. This is a way for us to help preempt and avoid any of those problems. The Inner Circle is how to do it. Please sign up so we can stay in touch. It's free.

Evan Nappen 16:42

We're going to have big issues coming up now with the new administration. We're gonna see, right out of the box, all kinds of executive orders, and you're going to want to know how to protect yourself, how to handle these new executive orders, and what loopholes there are. I'm going to fill you in on all that you're going to want to know. So, subscribe to Gun Lawyer, and join the Inner Circle. Help me get the word out. I'm depending on you to get the word out. So, that's my special request. But look, it's in all our best interest here so we can keep the lines of communication open, and you can get good advice about what to do as the threats mount.

Evan Nappen 17:32

Well, one of the things I've been thinking about because yeah, I know, I feel the way many of you do. We had a great president that was standing up for the Second Amendment. Matter of fact, one of the few presidents that would always talk about the Second Amendment. He even affirmatively mentioned his love and support of the Second Amendment, and I always liked that. But, you know, I'm sure more

pro-gun things could have been done, but there were obstacles to seeing that happen. Now with this new administration, the threats against our gun rights are pretty serious.

Evan Nappen 18:12

But does that mean we can't get anything done? I don't believe it does. I believe other than just trying to fight bad stuff, there may be opportunity here. I've been thinking of opportunities that are pro-gun opportunities that might exist under a Biden administration. You may say, how can that be? How can anything be pro-gun under that guy's administration? Well, I think part of this is a technique of cross-trestling where you grab an issue that the other side is concerned about, and you use that issue to help promote our issues. Because what I care about is our gun rights, and the other side has issues that they claim to care about. It may be possible for us to get certain things through.

Evan Nappen 19:00

I'm sure you have heard that the National Carry bill has been pre-filed. Yeah, well, how's that gonna pass? I mean, seriously, national carry? Look, I'd love it. I want it, it would be great. But do I really think it has a chance? I really don't. But maybe they'll sneak it into some must-pass bill and maybe anything could happen. But, boy, and the same with Hearing Protection Act for suppressors. I mean, that's great. I'd love to see that pass. But do I really think we're gonna see that? I think the odds are dramatically against it. But what if we tried to get some pro-gun things passed that could actually get support from the other side? Let me give you a number of ideas and examples that I have.

Evan Nappen 19:47

First, I was thinking about something very important, and that is the Relief From Disabilities on the Federal side. You know, if you have a felony conviction, you cannot get your rights back, even though the law is there to allow you to ask to get your rights back. The program has not been funded since 1992, thanks to Chuck Schumer. But who is this hurting? Who is hurting under this? Well, when it comes to felons, you may have heard me discussed this before, when it comes to convicted felons, blacks are six times more likely to be a convicted felon than whites. Want to talk about institutionalized racism? Well, there it is. Why should blacks, at a ratio of six to one, lose their constitutional gun rights if there was some method to get them restored? Where they can show they're rehabilitated, a productive member of society, and not a danger or a threat. Shouldn't they be able to get the rights back? Yes. But there's no mechanism that allows it under the Federal law.

Evan Nappen 20:59

So, here is something where you have efforts to promote interests in challenging racial issues, and here's something that directly impacts that. Why not try to get the Relief From Disabilities Program running again by emphasizing how much it will help minorities in doing that? Let me tell you about some other Relief From Disabilities. You know, if you have a mental health commitment, there is no Federal Relief From Disabilities. So, you can go to your state, if your state has a mental health expungement. But we treat mental health like crime. If you have had a commitment but now you're fine - you're not a danger to yourself, or others, and it's a known thing that you're okay - why should you still lose your gun rights? How about a Federal Relief From Disabilities that allows you to seek it for mental health purposes? Because right now, under the NICS Improvement Act, you're limited to what you can do on the state side. Where you have to get your state to have a mental health expungement? Why not

have federal relief from disabilities for that as well when you claim to care about mental health? They claim that this is an issue and why it ends up discouraging people from getting help. Because if they know they will become a prohibited person, they don't want to get the help. There are plenty of people that avoid getting help that need it because they don't want a disqualifier. If you had a mechanism, so that wasn't the case. If you're fine and safe and mentally okay, then it would better address the mental health issues that we're all concerned about.

Evan Nappen 22:46

I don't know how you feel about marijuana, and you've heard my shows about marijuana and how it affects gun rights. Well, you know, there's actually an opportunity here in the Biden administration, to finally get marijuana off the Federal list. Whether you ever want to use marijuana or not, you know, let's just face it. So many states have legalized it. Individual states can still decide whether they want to have it legal or not legal, no problem. But take it off the Federal list or at least remove it as a disqualifier for gun ownership. I mean, come on. Why is marijuana in any way more dangerous than alcohol when it comes to firearms? Okay, I'm not talking about any other issues. I'm just talking about the effect on a person with firearms. We do not need that as a Federal disqualifier, and it needs to be addressed. Here's something where an opportunity could present itself in the Biden Administration.

Evan Nappen 23:52

To accomplish that, you hear a lot about a push for firearms to be safely stored, and I believe in safe storage. I don't think it should be mandated that we have to lock up our safety. I think that's wrong. But encouraging safe storage is logical and reasonable. This is something that even the antis talk about. They want to mandate storage. If you really believe in safe storage, and I know I believe in safe storage, then, how about incentives to help getting safe storage possible? For example, how about a tax deduction, a Federal tax deduction, on purchases of gun safes? How about that? Encourage more gun safes, secure guns from theft, secure guns from parties that shouldn't be accessing guns? How about this?

Evan Nappen 24:52

As you may know, there's a push, especially in health care, we see that. There is a kind of a nefarious element in the healthcare industry where they ask about guns, whether you have guns, and they're trying to make guns into a health care issue? Well, if guns are going to be viewed in that manner, shouldn't our health insurance buy us gun safes? I mean, think about it. The health insurance pays for all kinds of different equipment. You want to get your diabetic testing supplies, there's various programs to get all kinds of health equipment, and it's the other side that wants to put it in this category. So, if that's the case, how about at least \$1,000, paid by the health insurance toward your purchase of a gun safe, something along those lines? Do we want to encourage it? Yeah, there's ways to do it, and if this is what the other side is looking to promote, then it's something maybe we could mutually agree on. We could actually get through pro-gun ideas, pro-gun legislation.

Evan Nappen 26:01

Look, we're gonna see a lot on immigration. You know, that's a big thing with Biden - DACA and the dreamers and all. They want to push that as well. What about gun rights for them? What about it? I mean, do you believe in gun rights for the person? Ask yourself now, are you a believer in the Second

Amendment? Do you believe that it's a fundamental, God given right, to have a gun? Then if these folks are given the ability legally to be here, then they legally should be able to have a gun as well. Remember, every gun owner gets a vested interest in our gun rights and being able to protect themselves and their family. If you really believe in that, then you don't want to let other feelings of prejudice or your dislike of immigration for whatever political reasons you might have. But if you step back for a minute and say, Hey, every individual has this right, then they have the rights, too. It floats all boats. So why not? Why not push the cross trestle on the Democrats to say, Hey, give gun rights as well? You see the push on voting rights? Don't you see that? Why are not gun rights pushed the same as voting rights, particularly for minorities and convicted felons, etc.?

Evan Nappen 27:30

It's a right to have a gun. If you really believe in the right, then you want it promoted. You have to break out of this mindset about only "conservative", Republican issues, to allow the gun rights movement and enhancement of our gun rights to proceed. We have to come up with more pro-gun ideas that can mesh and find support with the other side. It's another way of thinking. Look, the NRA is not the National Republican Association. It's not just about that. If you are truly a believer, then you want to expand our gun rights, our ability to enjoy our Second Amendment rights, our ability to have and possess firearms. You want to do this in smart ways. We have got to not just think in the traditional ways where we haven't succeeded. How long have we tried to get National Right to Carry? Well, let me give you a suggestion. How about a National Right to Carry for domestic violence victims and hate crime victims? The left claims to care tremendously about domestic violence victims and hate crime victims. Well, I think they should have a National Right to Carry. It's another step forward, for getting a National Right to Carry. This is how we have to start changing the way we think. Because we have to deal with reality of the political situation. If we're just going to keep doing the same thing over and over again, only being on the defensive, and only pushing what the traditional approach has been, how are we going to succeed? It's almost the definition of insanity, right? Doing the same thing over and over and getting the same result, and it's not a good one.

Evan Nappen 29:43

So, folks, these are just some ideas to think about. Maybe we can make it happen. It's food for thought. This is Evan Nappen. reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 30:02

Gun Lawyer is a CounterThink media production. The music used in this broadcast was managed by Cosmo Music, New York, New York. Reach us by emailing Evan@gun.lawyer. The information and opinions in this podcast do not constitute legal advice. Consult a licensed attorney in your state.