

Gun Lawyer Episode 17 Transcript

SUMMARY KEYWORDS

firearm, gun, ffl, law, lawyer, guns, gun owners, state, shotgun, client, bb gun, folks, gun laws, air, inner circle, criminals, podcast, gun rights, new jersey, protect

SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:00

Hi, I'm Evan Nappen, and welcome to Gun Lawyer. Hey, I want to tell you about one of the absolute creepiest, most gross cases, I ever had. I'm just gonna tell you that straight up front, because some of you may not even want to listen to the grossest part of it. I'll give you a warning before I'm going to talk about it, because it is absolutely insane what I had to do with. Why would something be incredibly gross and insane doing gun law? Well, I'll tell you. As an attorney, I help law-abiding citizens and stop them from becoming law-abiding criminals, and having the government just run rampant with their extreme and draconian gun laws, as New Jersey is infamous for.

Evan Nappen 01:29

That attorney/client relationship that I have there is maintained. Quite often if somebody has another problem, I can help them with other matters. I'm a skilled criminal defense attorney, and if someone is an established client, I don't mind doing that at all. So, anyway, I had this one client, and he was kind of an odd fellow, to say the least. Kind of creepy in a way. He looked like Marilyn Manson, if anyone is familiar with how that guy looks. He looked like a ghoul, to be honest, he kind of did. But you know what, I don't want to judge people by their looks, and I sure hope people don't do that to me. But the deal is, you know, the guy just struck me this way. But hey, you know what? He's in his van, and he's with a girl. They are consensually enjoying themselves. Not a problem. The local police come by and knock on the window because the van's a rocking, okay. They're checking on their welfare and what have you. Everything was fine. There was nothing bad going on with any of that.

Evan Nappen 02:47

But in so checking, the officer sees in plain view somewhere in the van, an air pistol. Okay, so it was my client's air pistol. I have a love for air guns, and I love all guns. Matter of fact, it has to cut or shoot for me to like it, I strictly limit myself. Since air guns shoot, I like it. This particular air gun was nothing. It was one of those little BB marksman guns they sell that are pretty reasonable. They can shoot like a little Dart or they can shoot BB single shot, and they're pretty low-powered stuff, but whatever. That's what he had. But you see in New Jersey, air guns are treated the same as firearms. Your possession of an air gun is essentially the same as if you possess a .44 Magnum loaded, it doesn't matter. Even a broken BB gun qualifies as a firearm. You can be tried, sentenced, and convicted for firearm possession because New Jersey is one of the few states that puts air guns into the same category.

Evan Nappen 04:05

So, I was able to make some very important arguments in this case. Not the least of which is many folks aren't aware that there's actually a Federal pre-emption concerning air guns. Do you know that air guns, BB guns, traditional pellet firing, and traditional BB guns, they're actually more protected under Federal law? I'm not talking about the Second Amendment. I'm talking about Federal statutes. They're actually more protected than actual firearms, believe it or not, because New Jersey takes these air guns and declares them as firearms. But there's a Federal law that is one of the few areas that is preempted. What that means is when a Federal law preempts something, it means they control the law on that given subject. There's a handful of firearm-related laws that are pre-emptive, not many.

Evan Nappen 05:09

One such law is Title 18 926A for interstate transport, and we've talked about that on other shows. It lets you transport your firearm, cased and unloaded, from one state to another through bad states. There the Federal law preempts State law that might otherwise make you a criminal for your possession of it. There's federal pre-emptive law allowing LEOSA (Law Enforcement Officer Safety Net) that allows law enforcement and retired law enforcement to carry in all 50 states. There's actually preemption for armored car personnel crossing state lines, that was actually the first carry preemption before LEOSA. It was armed. armored car personnel that had pre-emptive rights first. These pre-emptive Federal laws are great because they absolutely handle the bad, horrible states like New Jersey that have these god-awful gun laws, that turn law-abiding citizens into criminals. If you can seek the protection of the Federal preemption, then you can get out and away from Jersey's aggressive prosecution.

Evan Nappen 06:25

There is such a law on air guns and what it does is it preempts the sale of BB guns and pellet firing, traditional pellet firing guns so that state law and local law is actually preempted by Federal law when it comes to the sale. I did the case that established that preemption in Coalition v Florio where we took out a piece of New Jersey's Assault Firearm law. Under New Jersey's original Assault Firearm Law, by definition, air guns and BB guns fell under the assault firearm law category. So, now all these folks can be prosecuted for an assault firearm when all they had was an air gun that held over 15 rounds in the magazine or operated semi-automatically, etc, that fell into this category. So, for the first time, we were able to get a Federal injunction against the State based on the air gun preemption.

Evan Nappen 07:32

Well, here in this case, they tried to allege my client was unlawfully in possession. In fact, we put forward the arguments that had been established in that jurisdiction in Coalition v. Florio and showed how it's actually pre-emptive. Using that and other legal techniques, we were able to get the charges knocked out for my client, who otherwise would have been facing a felony level offense. At the time, the firearm possession offense was a crime of the third degree, and he was looking at five years in State Prison for possessing a BB gun in New Jersey. So, that was a good thing to take care of, and he was very happy. And that was fine. That's what gun lawyers do.

Evan Nappen 08:22

But you see a little bit later; I don't know, maybe even a year or so later. I get a call from his mother, and his mother said, Oh, do remember, so and so? Yeah, I remember him. How's he doing? Well, he had a little problem, and the police want to talk to him. I'm like, Well, okay, what's going on? Well, he's in an institution right now, and he's not doing well. And I don't really know, and you represented him? Would you mind helping and calling the police about what's going on here? I'm like, well, sure. Let me find out what's going on. Do you know? I really don't know, but you just call them and see. So, I'm like, Okay, let me call and find out what's going on. I give a call to the local police and say, I represent this client, and I understand that you might be looking for him. I'm calling on his behalf, what's going on? Well, I get this detective and he says, Well, we've had an issue with some graveyard desecration. And I'm like, oh, what exactly?

Evan Nappen 09:40

Let me just take one step back and tell you, of all the different folks I've represented, I now have the ability to save I've represented a grave robber, because that is what this detective was about to tell me. Now, what I'm going to tell you next is the circumstances and what happened in this grave robbery, "desecration" and how being a gun lawyer can lead you down paths you might never have expected. What I'm going to tell you next is very disturbing. If you are easily bothered by these things, please don't listen to what I'm going to tell you next. I mean that sincerely. So, here we go.

Evan Nappen 10:19

I said, Well, what happened? And the detective said, Well, we know that somebody was in this graveyard where there was this ancient mortuary that had been started in the 1920s. The Depression hit, and they couldn't finish building it. It had no roof, and the walls were crumbling and had ivy growing. It looked like something right out of a monster movie - this structure that was still there. But somebody late, late, late at night, dug up this woman who had been buried for 10 days. She had died from cancer, and she was 60 years old, and been in the ground for 10 days. They said someone dug her up, cut off her legs, and cut off at her belly button torso. They removed the one piece that had her buttocks and genitalia, and they took that piece of her and went in this ancient, unfinished mortuary building.

Evan Nappen 11:27

They did all kinds of bizarre ceremonial things at which time my client allegedly performed oral sex on the piece of the body. I kid you not. So, upon trying to get a grip on that story, I said, this is something I've never had to deal with before. The detective's like, well, I'm telling you, I want to talk to him. I told him my client is, frankly, he's in the loony bin right now. That's my understanding. And, you know, he's got issues and he's just gone. The detective said yeah, well, I understand he was walking around the town, talking to himself and looking at totally in another world. I'm like, Well, probably after what he did, I would assume that would be an expected effect. I mean, it was 10 days stewing underground with a formaldehyde filled, processed body. And he said, you know what? There actually isn't any law to charge him with other than maybe the desecration of a grave or something. But it's very minor. There's really no charge, and I'm thinking to myself, yeah, there wasn't a law at least not at that time. You know why there's no law? Because no one ever even thought that someone would ever do this. That's why there is no law. Who would ever think to do that even? So, that's why I'm not surprised he was the first. Now here's a first. Technically, I don't think it was even prohibited. Isn't that nice to know. Just because something's legal, doesn't mean you want to do it. But there you go.

Evan Nappen 13:25

So, this whole story finally ended up with it being resolved and nothing really further came from it. But one thing really interesting is that a number of years later, I mean, 10 years later, I'm talking with a prosecutor in another state. He said he took a course on forensics and man, you should hear this creepy case they told me about. This is the case. I said, Man, that was my case. You know, that was your case. Yeah. Yeah, crazy times.

Evan Nappen 13:57

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 15:12

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

Evan Nappen 15:28

Hey, you know, we do get emails and correspondence, and I read everything people send. I really appreciate the great responses we get and new questions. I read them, and if there's a question that I think is something a lot of folks would like to hear about, I like to answer those questions on the show. Here's a fellow who just sent a real nice thank you. I just want to thank Michael here for saying this: I just want to send you an email. Thank you for all you do for victims of rotten New Jersey gun laws. Your Gun Lawyer podcast is excellent and easy to listen to. (Well, that's good to know.) I especially like the music prior to your short intermission. So, there you go. Again, very relaxing podcast, both educational and entertaining. I've joined your Inner Circle, and I hope that Big Tech never attempts to silence people like you.

Evan Nappen 16:24

I want to say this is exactly why I'm doing this. Because I am very fearful that Big Tech is going to try. They already are silencing so many folks. And this way, by your being a part and a subscriber to our podcast, we're able to keep you informed. Most importantly, if you can join our Inner Circle, that's going to be able to keep me in communication with you. It's free to join the Inner Circle, just go to the website at Gun.Lawyer. That's our website, and you can sign up for the Inner Circle. We're going to keep you in the loop on things that are going on - laws, things you need to know to protect yourself, and it'll be

really updated. That's the purpose of it - to keep our law-abiding gun owners law-abiding. Really think about it. Get a jump on that Inner Circle. You'll be glad you did.

Evan Nappen 17:15

Now, I did get another question. This is a question that I thought I'd read, and this question came from Brian. He recently purchased a shotgun from a private individual in another state, and it was shipped thru an FFL (Federal Firearms License) to his FFL to do the transfer. Now, things went a little sideways. They shipped it via the U.S. Postal Service, and the tracking number stopped getting updated. Let me tell you, man, I've had the worst experiences. I refuse even to use the US Post Office for shipping things anymore. Just Crazy. But anyway, as far as he was concerned it was lost or stolen. He called the seller and talked to his FFL. The FFL marked it as missing. He said the FFL couldn't put it in as stolen because the USPS wouldn't say that it was stolen. So, the FFL, being a good guy here, agreed to a replacement and sent the replacement to Brian's FFL. That's a pretty good dealer to do that, isn't it? He said he had to wait a bit. But he eventually found one and shipped it to my FFL via UPS this time. Tracking was confirmed and it was delivered.

Evan Nappen 18:29

When Brian went to pick it up, the FFL said they had another one there with his name on it, but no contact info. There was some miscommunication there I'd given him when I went to get the first transfer. So anyway, he says now I have both shotguns, and the reason I'm contacting you is I want to make sure I don't have any future issues with the one that went missing. Is there anything I should be concerned with? I didn't notify the seller yet. I'm concerned that if something in the future happens, and someone thinks I bought a stolen gun or something. I mean, it was transferred legally and everything. So, I assume it'd be fine, but I don't like to assume things. And he said, P.S. I love your Gun Lawyer podcast. He had learned about it from Anthony Colandro's podcast, which by the way, is a great podcast. It's called Gun for Hire. Anthony has been a dear friend of mine for many, many years. So, I do appreciate what Anthony does, and we have a great mutual relationship here.

Evan Nappen 19:28

But back to Brian, and here's the bottom line. Brian ended up with two shotguns, but he only paid for one. When you pay for one shotgun, you don't get a windfall of two shotguns. Okay, it's not how it works. The seller being nice enough and kind enough to send you another shotgun because he viewed it as missing or stolen and wants to have good customer relations. Well, look man You now found the missing shotgun. You need to send it back, tell the seller, and get him his other shotgun back. You didn't pay for two shotguns - you paid for one, and you got your one shotgun. The dealer shouldn't be out of shotgun and the value of a shotgun, because he was trying to do really beyond the right thing. He was bending over backwards for you, and sent you another one, so that you were compensated for what you paid. But you don't get more than what you paid for. You don't get double what you paid for. It's not yours, you only paid for one.

Evan Nappen 20:39

So, call the seller, tell him good news, happy day, we found the other shotgun, and we're my FFL is going to ship it back to you. Thank you so much for sending me a second shotgun, which you didn't have to do. But luckily, we recovered and found the missing one. So, now nobody is out of pocket for

anything. The seller got paid for the one shotgun. You've now acquired the one shotgun, and he's gonna get his second shotgun returned as the way the deal should have been in the first place. To do otherwise, could make you subjected to possessing that as stolen property. There are many different legal theories, but number one is, it's an unjust enrichment. It's that simple, an unjust enrichment. So, don't do that. Get it back to the seller. You do the right thing, especially a seller who was doing the right thing for you throughout the whole process.

Evan Nappen 21:46

Hey, you know what - something has really been on my mind, and I have to talk to you about this, because it's really vital here. We're up against many different threats from the new administration. I'm sure you're aware of the many, many threats. But I have to tell you, if there is one threat, one threat, that is the most serious of all the things that they're floating out there, whether it's semi-auto taxation, banned through the NFA (National Firearms Act), or all these other proposals they have, whatever it may be, the absolute, worse threat that they're looking to push is to get rid of the Protection of Lawful Commerce in Arms Act. As gun owners, you need to know just how serious this is. Because they start with a semi-auto ban, and they want to take our guns, or make us pay a \$200 tax on every gun and magazine we already own. Hey, I don't think I have to fire you up about that one, right? It's pretty clear. It's not good, and no one likes it. Right? I get that. That's pretty basic, and you'll need to know what to do. We can fight that.

Evan Nappen 23:06

But if you started hearing about the repeal or removal of the Protection of Lawful Commerce and Arms Act, you may be like, Well, what does that mean to me? That doesn't sound like anything I should really worry about. Well, you really should, folks, because it's crazy serious. You see, what this PLCA does is it provides protection to the firearms industry, from lawsuits that aren't based on actual defective products. You see, a while ago, the anti-gunners came up with an idea and their idea was, let's litigate the firearms and ammunition industry out of business. How do we do that? By bringing civil actions, tort actions, and suing them under claims that the product, even though the product performed exactly as it was supposed to, that the societal harm, you see, makes it a danger and a strict liability and that the companies need to be responsible when their product is misused by a third party. That is the absurdity of it. It would be like suing the car manufacturer when someone commits a wrongdoing with a car or commits a wrongdoing with a baseball bat. Do you sue Louisville Slugger? No, but we need to get rid of these guns and ammunition. It means they can then use the Trial Attorneys, Civil, Personal Injury Attorneys. You can see the ads now. Have you been injured by a gun? Doesn't matter whether there's any intention. They're going to litigate the firearms industry, this includes dealers as well as manufacturers, litigate them right out of business.

Evan Nappen 24:08

So, you will not be able to buy a gun. You will not be able to buy ammunition. You will not be able to find anyone who can sell it or make it because of the liability. And if you do, it'll be so insanely expensive, because of the insurance needed to cover that, that it will be virtually unobtainable because of how expensive they can make it. Of course, as this gets worse and worse, and more and more expensive, who ends up being hurt? The folks that can't readily afford guns, and the folks that readily can afford guns or that have to be careful with their money because they are in the lower middle

classes. Gee, many of them are minorities, aren't they? Yeah. And what you're going to end up doing here with this repeal is hurting not only the firearm industry, but in the process, hurting the very people that you make claims about wanting to help, and instead take away their rights under the Second Amendment to be able to afford a firearm, take away their rights to be able to afford a gun to protect themselves, or to hunt and put food on the table.

Evan Nappen 26:14

This is what their plan is. So, when you hear about this repeal or removal or ending the Protection Act of Lawful Commerce, you have to know this is extremely serious. And the folks in Congress need to hear your voice. They need to know that you oppose this and understand just how serious and a threat and a danger that this poses. It's critical. So, we're going to keep you informed about the progress on these threats, and many other threats.

Evan Nappen 27:21

I'd like to ask you to help me to keep fellow gun owners from becoming law-abiding criminals. Tell them to listen to Gun Lawyer radio and visit our website at Gun.Lawyer. What I really would love, if you take a look at that Inner Circle we were talking about. Go on our website, Gun. lawyer, and sign up for the Inner Circle so you and I can maintain our communication. You'll get the inside from me, Evan Nappen. I'll be giving you tips, tricks, insights, and fun, because we like to have fun. Sign up, it's free. Go to Gun.Lawyer and join our Inner Circle. Remember, this helps me communicate with you, to touch base with you, and let you know what's going on. Because Big Tech doesn't care about our gun rights. They kind of don't like us, and they're trying to shut us down left and right. The Inner Circle is a way we can stay in contact despite their efforts.

Evan Nappen 28:18

We're going to have big issues coming up. Executive Orders of all kinds, nasty things, various legislative proposals, things you're going to want to know what steps you may need to take to protect yourself, your investment, your family, and your love of firearms. Just like I love firearms. I know how you feel. The Inner Circle members are going to hear this before anybody else. You're going to be on the cutting edge. You're going to be aware, and you're going to know before the majority of gun owners even find out. I'm going to fill you in on all that you're going to want to know.

Evan Nappen 28:57

Please subscribe to my podcast here, Gun.Lawyer. You know, I'm not making money from this. That's not what it's about. I want the voice out there. I want to educate the folks that I care about, fellow brothers and sisters, that are gun owners and protectors of the Second Amendment and our rights. So, tell a friend to listen and subscribe. Join the Inner Circle and help me get the word out. I am depending on you. This is Evan Nappen, reminding you that gun laws don't protect the citizens from criminals. They protect criminals from honest citizens.

Speaker 3 29:40

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 broadcast do not constitute legal advice. Consult a licensed attorney in your state.