

Gun Lawyer -- Episode 38 Transcript

SUMMARY KEYWORDS

bayonet, firearm, picatinny rail, gun, law, problems, bayonet mount, new jersey, gun rights, gun owners, assault, lawyer, features, opinion, mount, state, pistol grip, folks, ontario knife company, defined

SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:17

I'm Evan Nappen, and welcome to Gun Lawyer. Today I want to talk about something that, frankly, the powers that be did not want me to talk about. They did not want you to know what I am going to tell you next, and I had to weigh that out. But I believe that knowledge is the key to law-abiding, honest gun owners being able to defend themselves. The truth is the truth, and you need to know what you need to know so that you can protect yourself. Let me just make it clear. If I don't tell you what I know and try to keep things quiet and secret, and then it suddenly pops with the state, people are going to say, "How come Nappen never told me about this?" And you know what? You would be right. You have a right to know and keeping knowledge from somebody is not the way to do things. I do not believe in that at all, and I am not going to start with this.

Evan Nappen 01:33

You can dispute what I have to say. You could say, "Nappen does not know what he is talking about, or he is being an alarmist or a fearmonger." I have heard it all. But the problem is that after all those things get said, I end up with actual cases and having to defend people. The fearmonger thing is wonderful to say except when you are the guy facing 10 years in State Prison with a minimum three and a half years, no chance of parole, because you did not know something that could have saved you. So, we are not going to do that today. Instead, I am going to tell all of you about how, in my belief, literally hundreds of 1000s of honest, New Jersey gun owners and for that matter, other states as well, have now been turned into potential felons. This has occurred because of an advance in technological development. It is something where the item that was created (and I like, it's cool, it's great idea), but it impacts the dynamic of the gun laws, and how they are defining "prohibited items".

Evan Nappen 03:09

Suddenly, things become illegal that weren't. I am talking about a brand-new bayonet that has been developed and is being sold to the civilian market. It makes your semi-auto rifle into an Assault Firearm. You do not even have to own the bayonet in order for this to happen. Now, let me explain why this is so and lay out for you what you need to know so that you can hopefully protect yourself from becoming another victim of a gun law. The Ontario Knife Company (OKC) has recently announced a new product called a Retractable Bayonet. (www.ontarioknife.com) I am quoting now from an article by Jim Grant, (Editor, AmmoLand). AmmoLand is a fantastic news source for gun owners.

(www.AmmoLand.com) If you do not subscribe to AmmoLand's News Feed, you are missing out. I highly recommend that you lock into AmmoLand because it is great.

Evan Nappen 04:32

In this AmmoLand article, I'll quote from it here. It says, "The CEO and President of the Ontario Knife Company is quoted as follows." Let me read this quote. "OKC has been making high-quality bayonets for the U.S. military for decades, and this new retractable bayonet design is unlike anything we've ever created before," says Kenneth Trbovich, President and CEO of Ontario Knife Company. With its unique retractable feature, premium materials used and (Pay careful attention to this.) ability to easily mount to your AR, or any Picatinny Rail System, it truly is a multifunctional blade and we're excited to launch it to the civilian market." So, how is that significant? It is significant, not because it is a retractable bayonet, which is a cool feature, but that does not have any impact as far as gun laws are concerned. No, the key is that this bayonet mounts to a Picatinny Rail. We are talking here about a company which is one of the long time, primary bayonet providers to the U.S. military. That is who is making this. This is not even a one off, etc. This is one of the primary bayonet makers to the U.S. military who is now making this bayonet that attaches to the Picatinny Rail.

Evan Nappen 06:34

The significance is that in the definition that is followed for assault firearm, there is a matrix of features that we call the "offending features". These features are determinative as to whether it is an assault firearm or not. Now, I am going to review this with you carefully; so, you can fully understand how this works. For example, possession of an assault firearm in New Jersey is a very serious business. It is draconian beyond your imagination even. It is insanity. It carries a 10-year State Prison sentence with a minimum mandatory three and a half years if you are convicted. So, if you are convicted of possession of an assault firearm in New Jersey, it does not matter that you had no prior convictions, you are a total law-abiding citizen, and you are a wonderful person in your community. It does not matter if you are Mother Teresa. It does not matter. The judge has no discretion whatsoever. If you are convicted, he or she is required to impose a minimum mandatory three and a half years, no chance of parole. So, you will do every day of that three and a half years before you can get out. Now that three and a half years is not your sentence because the sentence is going to be up to 10. But of that up to 10 years, three and a half is a mandatory minimum. That is the lightest sentence that a judge can give you for possession, simple possession, of a so-called, arbitrarily defined, term of assault firearm.

Evan Nappen 08:36

So, how is an assault firearm determined in New Jersey? Well, it is extraordinarily convoluted, contradictory, and ridiculous. It is one of the worst written criminal law definitions of anywhere. It has five parts, and it is extremely complicated. The first part is a list of 67 named guns on a list. If you have any of these named guns on the list, they are an assault firearm by name. It is as simple as that. It is a name ban. But the second part of the five-part definition says that any firearm that is substantially identical to any firearm on the list. What does substantially identical mean? Think about it. Substantial means almost and identical means exact. What the hell does almost exact mean? That is about as vague as it gets. Because of that vagueness I had the law declared unconstitutional in a case called State of New Jersey v. Robert D. Merrill (Monmouth County Superior Court, 1996). If a citizen cannot

understand what the law is, it is unconstitutional for vagueness. You cannot conform your behavior if no one knows what is banned. How are you supposed to know what you can and cannot have?

Evan Nappen 10:08

After winning the Merrill case, a well-intentioned gun group in New Jersey brought a federal lawsuit challenging the definition on the grounds that I had won in state court. In so doing, the Attorney General was brought in, who took it upon himself to put forward an Attorney General opinion (which they are empowered to do to a certain degree) that defined the term substantially identical. The Attorney General defined that term by taking, verbatim, the 1994 Federal Assault Weapon Ban language. They put that language into the opinion to define substantially identical. Now this, of course, is amazing. Somehow, our legislators in 1990, when New Jersey's assault firearm law passed, knew that their undefined, unconstitutionally vague, term would miraculously be defined by the Federal government four years later. That is fascinating. But the judge in the federal case bought it and said, Fine, now you know what substantially identical means and have a nice day. New Jerseyans have suffered under this ever since.

Evan Nappen 11:39

This Attorney General opinion that adopted the 1994 federal crime bill language says, "A semi automatic firearm should be considered as substantially identical, that is identical in all material respects to a named assault weapon, if it meets the below listed criteria." So, right away, a "named assault weapon is in their opinion, and we do not use the term "assault weapon", which shows you just how screwed up the opinion is from the get-go. But then it says, "A semi automatic rifle that has the ability to accept a detachable magazine and has at least two of the following features." So, in New Jersey, if you have a semi automatic rifle that takes a detachable magazine, you are allowed one of these offending features, but not two or more of those features. Here they are. "A folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, a bayonet mount, a flash suppressor or threaded barrel designed to accommodate a flash suppressor, and a grenade launcher." Okay, great. That grenade launcher is hilarious because it is not the grenade launcher, folks. It is the frickin grenades. But anyway, why should logic have any play here? Of course, it doesn't. The problem is there are many hundreds of 1000s of semi-automatic rifles that take a detachable magazine that have been sold as New Jersey compliant that have at least one of the features. The most common would be an AR type semi-auto that has a pistol grip. Just about every Jersey legal AR has a pistol grip, but it does not have any other features. So, they are Jersey legal. Well, if you have a such a firearm, now you are in for some problems, and I am going to explain why when we come back.

Evan Nappen 14:25

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, the 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, that 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 15:40

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Evan Nappen 15:56

Hey, welcome back. So, I want to just mention that I really appreciate folks listening to Gun Lawyer. It is really important that you subscribe to the podcast and tell your friends about it and have them subscribe. This is our way of communication. There is a war on us. I call it the war of woke aggression. But the war of woke aggression is making all kinds of claims including that gun rights are racist, and they're trying to shut us down on that basis. I see more and more of this including so-called academic scholarly writings that claim the Second Amendment is racist. So, this is their angle, and social media and such are trying to shut us down on so many of these ways, gun violence and all this stuff.

Evan Nappen 17:06

Gun lawyer, this podcast, is way to communicate information to you regardless of what the lamestream Media and big tech try to stop us. So, please subscribe to the podcast and tell your friends to do the same. I want to get this information out, like we are talking about today. Information that some do not even think you should know. But I believe you need to know it so you can defend yourself, and you can take precautions and beware because that knowledge is critical. As the line in an old Clint Eastwood movie went, "Sometimes a mere scrap of information can save a man's life." That is true, and I believe in that. So, I want you to have this information. Where were we here?

Evan Nappen 17:52

We were talking about the New Jersey Attorney General opinion that defines substantially identical and goes by offending features includes bayonet mount, not bayonet lug, but bayonet mount. Now, Picatinny Rails are bayonet mounts. Any prosecutor can easily be able to show that an Ontario Knife Company Retractable Bayonet can mount to your Picatinny Rail on your gun. Therefore, your pistol grip and bayonet mount put you in possession of an assault firearm, and you now face the draconian penalties that we discussed earlier. Do you think that's crazy? Do you think that I am fearmongering? Do you think that I am being an alarmist? Well, I'll tell you what, folks. I have file cabinets full of cases of people that would hotly dispute those claims. They wish that they knew information beforehand so they could have done something to save themselves. And that's my job. That's my goal. I defend law-abiding gun owners and make my living as a gun attorney. If I did not tell you these things, and then you got charged I can make more money even, right? Why would I want to tell you how to defend yourself? It is ridiculous. Of course, I want you to know. I don't want any brother in arms or sister in arms to be turned into a felon, to be disenfranchised, and to lose their gun rights. I want you to be protected. This is why you have to know this stuff.

Evan Nappen 19:44

If you have a Picatinny Rail, particularly if it is up front toward the muzzle of your firearm, you have got a problem. Remember, those Picatinny Rails are used for multiple things up front - flashlights, lasers, front grips, or forward grips. You have seen all that. You have seen Picatinny Rails. There are plenty of guns that even have them integral right into the forearm. Then there are the various locking systems on the modular forearms that can take a Picatinny Rail. Do not have a Picatinny Rail installed on your modular forearm, your m lock, key lock, all that stuff. You do not want to have that. If you have a Picatinny Rail on it, now a claim can be made.

Evan Nappen 20:42

It does not have to be right under the barrel up front either. Plenty of bayonets throughout the history of firearms have had side-mounted bayonets. Look at the Mosin Nagant Carbine side mount. This is common, and there is no reason it cannot be on top of it either. There have been all kinds of configurations. Maybe if you have a Picatinny Rail and it is not the forward portion of the gun, we will try to argue, it is not where a traditional bayonet would mount. Therefore, it is not a bayonet mount. But the state might very well still argue if you have a Picatinny anywhere on your gun that a bayonet can be mounted because the Attorney General opinion does not say that it has to be in a traditional bayonet mounting position. It just has to have a bayonet mount. Now, with the introduction of this bayonet, Picatinny Rails have become bayonet mounts. That is the significance of this, and you need to know it.

Evan Nappen 21:57

You need to make sure that at a minimum, the forward position on your semi-automatic firearm that already has one offending feature, that it does not have a Picatinny Rail up front. Because this can be demonstrated. This is important to recognize, and it shows how the evolution of technology can dramatically impact on definitions that have been put into our laws. Sometimes technology creates loopholes where freedom finds a way and that is a good thing. We have seen many times where that occurs. Assisted openers with knives. Switch blades are prohibited, but the assisted opener is not because it does not have a button or other device in the handle. You can still open it with one hand and still has a spring assist, but it is not a switch plate. So, there you see a loophole in action by technology and its evolution, gaining more freedom. But sometimes the opposite can occur, and it is not intentional. As a matter of fact, it is a wonderful product. I love the idea of a retractable bayonet. I like the idea that it can mount and be useful as a knife and that it can easily come off and on and all the advantages that such an edged weapon would have and that is fine.

Evan Nappen 23:33

Unfortunately, there is still the negative impact of opening the door for making an entire class of lawfully possessed firearms into contraband. That is what has happened here. Keep in mind that it is not just a current problem for New Jerseyans and for other states that use bayonet mount as a criterion, but where did bayonet mount come from? Where did that so-called offending feature come from? Well, it came from the 1994 Federal Assault Weapon ban. In other words, that bayonet mount was part of the federal law at one point. Now the federal law on assault weapons sunset in 2004 and went away. It was only a 10-year law, and now they want to bring it back. If they bring it back and it has bayonet mount on it, that is going to cause a whole other world of issues. We need to be aware of this. As new legislation gets proposed and these ridiculous add ons are put in, you need to understand the ramifications of

such under new technologies. We have to fight, of course, the entire ban being proposed, but you have to also focus on these particularly troublesome issues.

Evan Nappen 25:11

Because if something is going to get jammed through with an anti-gun control legislature, sometimes you can still get some amendments, or some things struck out. You may not get the whole prize, but at least you can get some things removed from it. Of course, this does not mean we quit fighting. It does not mean we accept this law. No. But if we can stop a whole class of individuals from becoming felons and possessing contraband, I think that is a good thing to do. So again, knowledge, awareness, and understanding of the law is vital, and that is what we are about. Getting the information to you so that you know and can take the steps to defend yourself. I am sure there will be folks that say, oh, you are giving them ideas. It's all fine and dandy.

Evan Nappen 26:14

The folks investigating and prosecuting often are not the smartest folks, and they do not know guns as well as we know them. I understand that. But other times, they are surprisingly good, and they figure it out. All it takes is some prosecutor who does not know a bayonet mount from a bayonet lug from a bayonet and asks their so-called expert what is this? What is this thing up front, which happens to be a Picatinny Rail? The expert says you can actually mount a bayonet on that and now the person is facing indictment and charges for possession of an assault firearm. I have seen it happen on many different definitions. I have had fights over stocks that are pinned where the state says it is not sufficiently pinned, and they want to pursue assault firearm charges against one of its great citizens. They do not care that it will destroy your life, your career, your family, and your hopes and dreams. That is not a consideration. No, there is an anti-gun narrative and an anti-gun agenda that must be pursued. If you are simply destroyed in the process, what's the cost of pursuing the narrative and the agenda? The attack on our gun rights is multi-level, and they do it to avoid the real problems. They do it all the time as a smoke and mirrors and to divert your attention from real crime and real problems.

Evan Nappen 28:13

What's going on now with all these killings and shootings in Chicago and other places? Defunding the police, hey, maybe that has something to do about it. This entire attitude of the progressive left? No, let's blame guns. See, this is part of it. Blame guns is their narrative. So, they do not have to not blame the actual people committing the problems, which are often their constituents, so you don't want to go there. It is much easier to sell some scary gun thing that, of course, is irrelevant to crime, in order to promote the agenda.

Evan Nappen 29:08

I do not want to see any of you become a victim. I believe in knowledge, and I believe in truth. Take steps now to protect yourself and your loved ones. Facebook is shadow banning me. They are throttling back my posts and even promotion of this show. So, I would really appreciate if you would post and tell folks about the show. I am counting on you to make sure that we get the word out on social media to the degree that we can. They do not want you to know this, and they are trying to hold you back. We have a lot of problems with social media. At the moment, we can work within it to the best we can. Of course, at some point, it is just going to be utterly useless but until then, please promote it on Facebook

and other social media platforms. Let's get folks signed up so that we do not lose our voice. This is Evan Nappen reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 30:24

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