

Gun Lawyer -- Episode 39 Transcript

SUMMARY KEYWORDS

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:20

I'm Evan Nappen and welcome to gun lawyer. I have an interesting announcement that I rarely get to make. New Jersey has actually done something incredibly pro-gun. I mean, it really is startling. New Jersey has just restored gun rights to approximately 88,000 convicted drug dealers. This is really amazing because New Jersey rarely ever does anything pro-gun, but the decriminalization of marijuana law has an automatic expungement in it. The court has announced, "New Jersey Judiciary (This is from their news release) Moves Toward Expungement for Nearly 88,000 Marijuana Cases." (<https://www.njcourts.gov/pressrel/2021/pr071221a.pdf>)

Evan Nappen 01:21

"The New Jersey Judiciary has vacated or dismissed nearly 88,000 cases related to certain marijuana and hashish convictions or pending cases since July 1, following the decriminalization of specific marijuana offenses in New Jersey. The cases are the first of about 360,000 identified by the Judiciary in Superior and Municipal courts..." After vacating convictions or dismissing the cases, the court will automatically expunge those cases in the coming months, and expungement deems the matter not to have occurred. It erases the conviction and removes the felony level disqualifier. So, felony drug dealers convicted under the statutes that are going to be covered will automatically have their gun rights restored by New Jersey. This is a great pro-gun step by New Jersey.

Evan Nappen 02:37

Of course, it is really interesting when you look at what New Jersey does, because here, New Jersey is turning criminals into law-abiding citizens, while normally and simultaneously, making law-abiding citizens into criminals with the gun laws. It is absolutely wonderful news here for drug dealers and anyone who possessed large quantities of marijuana and was convicted of it. Now, there is going to be an automatic expungement of those records. Let me tell you even further from a notice that was given to the Bar explaining this. It is really quite fascinating what they have done here. They have put out a notice making it clear that there are approximately 360,000 cases. These are all past cases and convictions all involving the war on drugs. This decriminalization is having an incredible effect for the pro-gun movement.

Evan Nappen 03:55

Let me tell you, right from the memo, what cases are going to be dismissed and automatically expunged giving full rights restoration to anyone that falls under these categories. Number one, people that have been convicted of distribution of less than one ounce of marijuana or less than five grams of hashish. So, even hashish dealers are benefiting by this. If you have that fourth degree, what you would call a felony level because it carries at the time it had 18 months. So, it is over a year. Now that charge is going to be vacated, dismissed, and/or expunged. If you are someone that was convicted of possession of more than 50 grams of marijuana or more than five grams of hashish (you know, the quantity possessors that are normally not personal users) you too benefit here and will get your gun rights restored by New Jersey by way of automatic expungement built into the law. Not only that, it is something that will apply as well to disorderly persons offenses and a whole array of all the "misdemeanor level" although New Jersey calls them disorderly persons that had anything to do with drug possession, such as the marijuana and/or hashish, you will get the benefit of expungement, which will clear up that at least help along the way for that issue of being a user of marijuana or hashish, controlled, dangerous substance that is often used as a disqualifier.

Evan Nappen 05:47

Again, it is a nice win for gun rights by New Jersey taking place here. It will also expunge automatically convictions for possession of drug paraphernalia as a disorderly persons offense. It will get rid of any prior convictions for use or being under the influence of controlled dangerous substances. You know that other disqualifier on the on the gun application where they check that stuff, if you have been convicted of that. It is going to be expunged, erased, gone. Failure to make a lawful disposition of a controlled drug which you possessed. You were required to surrender it, and you failed to do so. If you were convicted for that, it is going away as well. If you operated a motor vehicle while in possession of a controlled dangerous substance, your transport is covered by this effort here to get rid of 360,000 convictions. It is quite a win for gun rights here by getting all these folks their rights back.

Evan Nappen 07:02

I am really happy to see New Jersey taking such efforts to restore gun rights for folks. In the past, if you had a marijuana conviction and you qualified in terms of the time that you had to wait and all to possibly get it expunged, particularly if you were a seller or distributor of marijuana, and you wanted to get an expungement, there was a path to do it. But it was a discretionary path. You had to go before the judge, and you had to show that you are a good person and rehabilitated in that. You have to convince the judge essentially, of your worthiness, but not anymore. Not anymore. No, this is great. It does not matter what kind of person you are. It does not matter whether you are rehabilitated, none of that, it is just erased, gone. You are going to get expunged, and that whole pain in the neck procedure of having to demonstrate that the individual should get expunged is gone. Isn't that great that we are just going to clear it for these folks. And man, open it up so that more people can buy guns. That is the thing about getting your rights restored.

Evan Nappen 08:18

When your rights are restored, you regain your other Constitutional rights as well. This can include other civil rights that may have been taken away like the right to vote at some point or right to serve on a jury or even to hold public office. Expungements are a great thing. It gives you that second chance

that we all believe in. New Jersey has taken steps to clear it for all these 1000s upon 1000s of people. You and I could discuss the merits of the war on drugs and whether it is effective or not. Of course, we are talking about marijuana that is legal and things like that. Hey, I get it. I understand. But here is my thing. I believe down the road when the Supreme Court invalidates New Jersey's gun control scheme, New Jersey's gun laws that have turned law-abiding citizens into criminals, have given them felony records, and have yanked their gun rights out from under them by way of absurd and draconian gun laws. Well, I sure hope that we have a major expungement that is automatic and will kick into place to help all those folks as well get their gun rights back. Because the idea of someone being a convicted person and losing their rights is something that you often hear the anti-gun folks pushing.

Evan Nappen 10:06

It was Charles Schumer in 1992 that removed the funding for the Federal Relief From Disability Program. If you were convicted of a non-violent Federal offense and you have done your time and you are reformed and a good person, you could ask ATF to restore your rights. But you see, Charles Schumer got that unfunded in 1992. Individuals with Federal convictions have been not able to get their rights restored at all, and New Jersey in a magnificent stroke is restoring rights to hundreds of 1000s of people that are merely convicted drug dealers and possessors of large quantities of drugs. It is really interesting to see this interplay wouldn't you say? And yet federally, the relief is not available. So, if you have a federal conviction for marijuana or a federal problem, and even if you are a good person, and you really are rehabilitated, you cannot do anything if you are burned under the Federal law thanks to Charles Schumer.

Evan Nappen 11:33

What I hear folks talk about and it's very popular today, of course, is the systemic racism that is built into the drug laws and built into the criminal prosecution system. The left really likes to push that. They really like to scream and shout about just how racist our criminal justice system is. The truth is that blacks are disproportionately convicted felons compared to whites at a ratio of six to one, six to one, and Hispanics at a ratio of two to one. So, isn't it interesting that Democrats like Schumer won't allow the funding of a program so that individuals who have proven themselves rehabilitated and to be good, productive members of society can get their rights restored, and that discrimination is at a ratio of six to one of blacks to whites, and that is by the Democrats, of course. So, here at least we have a Democrat administration in New Jersey that has taken some great steps to restoring the rights of hundreds of 1000s of felony level drug dealers, and drug possessors, and those that would otherwise have drug disqualifiers for guns. Assuming they do not have any other issues, they now can exercise their right to keep and bear arms. When we come back, we are going to talk about some other fascinating things. See you then.

Evan Nappen 13:23

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 14:37

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Evan Nappen 14:53

Hey, alright, as I have been watching on the internet and social media, they are just coming after us left and right. It is really important to subscribe to the show and tell your friends to subscribe. This is the only way to get information out where we cannot be stopped by the tech gods. Go to Gun Lawyer as a website, www.gun.lawyer instead of a .com Check us out and tell folks to subscribe. Anywhere you can get your favorite podcast, you can get Gun Lawyer. This makes a big difference, and I am counting on you.

Evan Nappen 15:45

One of the things I really want to get into and is not generally appreciated or understood by gun owners is how the law actually works. When it comes to self-defense and other defenses, I am not going to get into the law of self-defense per se, when you can shoot and when you cannot shoot. That is a whole other topic for another day or days. But what I do want to explain to you (and many of you do know the basics) and what I want to really pound home and to make, really clear, is this. When it comes to self-defense or what is known as justification for the use of force, the burden of proof is on you and me. A lot of folks do not understand just how significant that is. If you use your firearm in self-defense, then the question, the defense at law, literally the affirmative defense, is that you were justified in using force and/or deadly force. The proof that you were justified rests on you and me to prove it. It does not start out with the state having to disprove it. Now, this is extremely significant, and people do not seem to get why it is significant. With the burden of proof being placed on the lawful defender means that if you use your gun, you are guilty until you can prove your innocence. That is legally how it works, factually how it works, because justification for the use of force is an affirmative defense that the defendant has to put forward initially.

Evan Nappen 18:11

So, we are going to allege self-defense in a case or justification for use of force. You have to give notice to the prosecutor that we are going to be arguing this. After giving notice, during the proceeding, the hearing, or the trial, it is going to be up to you and your counsel to present enough evidence to show that you qualify for the use of force, either deadly force or non-deadly force, depending on what type of self-defense actions we are taking here. Only after you put that sufficient level of proof forward, does the state then have the burden to disprove your defense beyond a reasonable doubt. We all live in a society where our understanding is you are innocent until proven guilty. But that is not how it actually works when it comes to using force or deadly force. If you use force or deadly force and you maim, kill,

or injure another person, you are guilty until you prove yourself innocent. The burden of proof on showing the defense of the affirmative defense is on you.

Evan Nappen 19:45

You see how serious this is, and you see the significance of that because normally in order to be convicted of an offense, the burden is on the state. They have to prove each and every element of the offense by proof beyond a reasonable doubt. So, the burden normally in a criminal prosecution is on the state, and they are the ones that have to prove every element, every part of the offense. They have to prove every part or whatever that law says that offense is, and they have to prove it at a standard of beyond a reasonable doubt which is the highest burden of proof or legal standard of proof that there is in our society. When it comes to burdens of proof, we have two important issues. One is, who has the burden of proof, and as I said in justification, self-defense, you and me, we have the burden. Then the question is what is that burden? Burdens of proof, generally, there is levels of proof.

Evan Nappen 21:04

You have levels of proof that begin with the most minor amounts of a standard of "some evidence." There is some evidence and that is the lowest level, some evidence. Then you can jump a little from that to "reasonable suspicion". So, what is reasonable suspicion? Maybe an officer is out on patrol, and he sees a car running in front of the bank. Then he sees a guy get out with a mask, and it looks like he has something in his coat. This is reasonable suspicion that there might be something going down. The next level after reasonable suspicion is what we call "probable cause". Probable cause, you often hear that, and probable cause is a higher standard of proof than just reasonable suspicion. Probable cause is used in determining whether there should be a search warrant issued or whether an arrest is reasonable. Grand juries have to find probable cause whether they issue an indictment, etc. So, probable cause is basically a finding that there is a fair probability that contraband or some other evidence of a crime will be found. And that is where you find the probable cause standard, particularly used often in searches.

Evan Nappen 22:53

Once you get beyond probable cause, we have "preponderance of the evidence" standard. a preponderance of the evidence is what is used in civil cases, civil actions. It basically means a finding of more likely than not. It is almost 50 plus one, so the scale tilts to that side. It is more likely than not. "Clear and convincing evidence" we see that used in equity cases, paternity cases, child custody cases, civil cases, and civil lawsuits etc. This is the standard that we often will see. Then depending on what state you are in, it could be stronger than preponderance. The next level of that is what is called "clear and convincing evidence." Clear and convincing evidence is higher than preponderance of the evidence, but not as high as "beyond a reasonable doubt". It is in between. Often clear and convincing is used for professional licensing, and in states that have greater protection for gun rights, when it comes to revoking licenses. They will require clear and convincing evidence as opposed to the mere preponderance of the evidence.

Evan Nappen 24:24

The highest burden of proof is "proof beyond a reasonable doubt". Proof beyond a reasonable doubt is the burden of proof when it comes to being convicted of a crime where the government can take your

freedom, take your life, even, if it is a capital. That standard is reserved as the highest burden of proof and that is what is required to get a conviction on a criminal charge. The burden of proof is what the state would normally have. Again, to prove each and every element of the offense, each section, each part, by proof beyond a reasonable doubt. So, how do they prove a case? How does anyone prove anything? Proofs are done by evidence. You have to submit evidence. Evidence is what are the proofs are. This is why it is important when it comes down to whether evidence can come in or whether it gets suppressed. Because if the evidence is suppressed because rights were violated, then the ability to prove the element by proof beyond reasonable doubt is removed or lessened by the inability of the evidence to come in.

Evan Nappen 25:41

It is also why knowing the rules of evidence can be very important. If you can stop evidence from coming in or argue to get evidence to come in, it is always a battle over the burden of proof. And of course, who has that burden when fighting it out in court. These are the fundamental vital concerns that you really rarely ever hear discussed. You need to wrap your mind around the idea that if you were to use your firearm, the burden of proof is on you. Normally, you better hope that you are going to be able to show it by at least preponderance of the evidence, more likely than not, preponderance that you were justified in the use of force so that the judge agrees, and the state has to respond and prove beyond a reasonable doubt that you did not have the justification. See, that is how that game works. Now, what New Jersey does, and some other states as well, is they take this idea of reversing the burden of proof when it comes to using deadly force and possibly taking somebody's life. This burden of proof switching, I do not necessarily like it, but I can at least understand it because this is a very serious thing. Before they pull that trigger or use deadly force or non-deadly force, they had better be justified and that is something society would want to see.

Evan Nappen 27:19

But New Jersey has taken this idea of the defense and the individual having to prove the defense and created a gun control scheme, where guns are all prohibited unless you can prove that you fall within an exemption, because the exemptions are defenses. Possession of all guns in New Jersey is actually prohibited, but then the prohibition can be overcome if you are within an exemption. However, the proof that you are within an exemption always rests with you as the potential defendant. For example, Chapter 39, 2C:5b. talks about possession of a handgun. No person shall possess any handgun unless first having obtained a permit to carry such handgun. If you have a handgun and you do not have a permit to carry, then how do you possess your handgun? There are less than 600 carry licenses for the whole state of New Jersey.

Evan Nappen 28:29

So, does anyone legally possess a handgun? Well, it is by way of exemption, and the exemption under another statute says that you are exempt if you are in your home or place of business, or if you are at a target range or while hunting. But the problem is you have to prove that. I have had cases where individuals have been challenged as to whether their home is actually their home and had to prove that their home was their home. You can be forced to these proofs because the burden is actually on you to prove the defense. So, you better make sure whether you are using a firearm in self-defense or whether you are possessing a firearm under a system like Jersey, that you are able to show and you

are able to prove your defenses. Keep that in mind so that you can better protect yourself should you ever be in a situation where you have to defend yourself on either a use of a firearm charge or possession of a firearm in New Jersey type charge. This is Evan Nappen, and I want to remind you that gun laws do not protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 29:56

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