

# Gun Lawyer -- Episode 43 Transcript

## SUMMARY KEYWORDS

firearms, gun, law, case, great, state, gun rights, atf, charged, ucc, ruining, license, federal law, seized, problem, gun owner, dismissed, arrested, called, lawyer

## SPEAKERS

Evan Nappen, Speaker 3

### **Evan Nappen** 00:20

This is Evan Nappen, and welcome to Gun Lawyer. I want to tell you about how folks got in trouble this week, and it is really never ending in New Jersey. At least from their mistakes, hopefully you can learn more about how to protect yourself. I see this all the time. These folks get in trouble, and I go, man, if they had only known. So, I want you to know so that you are not the ones getting in trouble. These principles really apply universally. But let's start off with the good one in something you need to keep in mind. Beware what you bring to a gun dealer. If you bring something that is contraband to a gun dealer, regardless of what jurisdiction you are in, you put the gun dealer in quite a spot. Now the gun dealer has something that is unlawful. He knows it is unlawful. But it could be that you are just naive, and you did not know that it is unlawful.

### **Evan Nappen** 01:33

I understand that that is out there. But what happens is, the dealer does not know if you are a setup from the ATF or what. You have this piece of contraband, and lots of times, dealers will say, "Hey, look, you can't have that. It is illegal. You need to surrender it to the police, get rid of it, do whatever." They will advise you about it, and that will be that. In a way, they take a chance even doing that. Many times, I have known of that occurring. However, the opposite happens. They end up taking in whatever this may be that is illegal and then contacting the authorities because they do not want to get in trouble themselves. The next thing you know, you are raided, your house is searched, and you are arrested and charged with the unlawful possession of whatever this item is.

### **Evan Nappen** 02:33

Just had one of those this week. Now, it has all come down on this poor guy who thought his item was legal. He did not understand that New Jersey is nothing like other states and is in a lot of trouble. We are going to work to save him, of course, but you have to think about it before you make that move, going to a dealer and bringing that dealer any kind of contraband. Because then it can really blow up and blow back on you and/or the dealer. So, that is one way to get in trouble, and I am sure you would like to know other ways.

### **Evan Nappen** 03:13

We had another person who was stopped by the police, and in showing their driver's license and other documents, guess what is seen? A gun permit from another state, a non-resident carry. The officer sees that now it opens the door. Do you have a gun? Are you carrying a gun? Do you have a gun? Oh, yeah, I am legal and licensed, and here is my gun. Yeah, except New Jersey does not recognize your carry license, and now you are arrested and charged with unlawful possession of a handgun in Jersey. You are facing 10 years in State Prison with a minimum mandatory three and a half years, no chance of parole. Because you had a gun with a license that New Jersey does not honor. New Jersey does not honor any other state's gun license.

**Evan Nappen 04:10**

The problem is when you show your gun license with your other documents, now you have opened the door. I tell folks all the time. Do not carry any kind of gun license, gun card, carry license, anything related to firearms with your driver's license. Keep it separate from your driver's license, vehicle registration and insurance. Keep it separate from that. Even your gun club membership. You do not want to display it. It will end up becoming something for engagement on the topic of firearms, and the next thing you know you are having a search, seizure and arrest because it opened the door. You need to learn from these things. I got another case that started just from that.

**Evan Nappen 04:59**

This is real world experiences here. This is what really happens, and it is a shame. We are proud to be gun owners, and we are proud to exercise our Second Amendment freedoms. It is not something we want to hide or conceal. But in this anti-gun environment, in this anti-gun narrative and agenda that the left is shoving down our throats and dominating the media over, we, as gun owners, have to be discreet. You have to exercise the discretion. If you don't, then you become the subject of an investigation escalation into the investigation on you, and what happens? Often, it ends badly where you are now involved in the system. So, be discreet.

**Evan Nappen 05:54**

It is critical at this time that you are not blatant about your gun ownership, especially when the laws are so slanted against us. There are so many ridiculous prohibitions out there, that you would not even believe or be aware of, particularly when you enter into treacherous anti-gun states like New Jersey. In New Jersey, possession of a slingshot is a felony. Folks would find that hard to believe, but it is. You are looking at 18 months in State Prison. If seeing a gun card lead to an escalation and to a search, and the only thing in your car was a slingshot, you are going to jail. You are getting arrested because of it, and you had no clue, no idea that it was a problem. I see these things all the time.

**Evan Nappen 06:49**

So, you do not want to give them any excuse. When you travel with your firearms and your gun is cased and unloaded, you are like, "Man, I'm feeling good. I'm within the exemptions. I'm doing everything right." The problem is you get pulled over and an officer sees a gun case, do you know that under the case law in the district here, the plain view of a gun case is probable cause for the search? That's right. Plain view of the gun case gives probable cause for the warrantless search. Outrageous, but true. So, you cannot display your gun case. If you do not have it in a trunk and you are driving in

your SUV, you better cover your gun case with a blanket. Do not leave it in plain view or you open yourself up for a search.

**Evan Nappen 07:41**

Yeah, simply because you were being a law-abiding citizen and transporting your gun in a case. You may say, "Well, look, it was done right. It's law-abiding. So, what if the officer finds a gun in the case?" Well, yeah, except for the 11 round magazine you had when you did not realize the cutoff was 10 or you are not aware of how New Jersey law's function. In Jersey, every gun owner is guilty till proven innocent because you have to prove that you are within an exemption. So, you can be arrested, and then it is up to you to prove you were coming and going from the range or your home, etc. The burden gets shifted, and you are not aware of that. It goes on and on about how you can end up arrested even though you believe you were righteous and legal, and maybe ultimately you were. But think of what you are going to go through where if you had just exercised a little discretion and were discreet in how you did it. You would not have this hassle at all, and you would have avoided that situation.

**Evan Nappen 08:53**

Another person just this week got denied on a NICS check. Denied a purchase on NICS even though he had a firearm license issued. It is not that uncommon, because the NICS database says one thing and the licensing authority searched further into it and realized it was okay. Yet here, this guy goes to buy his third gun when he already has a permit and gets denied. The basis for the denial is some out-of-state arrest that they claim he was convicted of, but he wasn't. Those charges were dismissed. The records are obviously in error and not complete. It does not matter. NICS has now denied him. The denied NICS gets reported to his local police that issued the license, and now they want the surrender of all his firearms. Just today with this case on a NICS denial, and this is not the first time. These are all ways to get in trouble.

**Evan Nappen 10:02**

New Jersey and other states are mighty quick to seize your guns. They seize your guns under Red Flag, so-called emergency protection orders. They are also seized under any allegation of domestic violence before you are convicted or proven. No, they take the guns first. The health care confiscations where the doctor calls in because you said something stupid like, "Man, it's such a tough day. I could kill myself" or "I am so pissed at this guy, and I could kill him." Even though it's hyperbole. It does not matter. Under Jersey's law, any threat will be called in. Otherwise, they could lose their license. So, guess what? Better safe than sorry. Now your guns are seized.

**Evan Nappen 10:50**

It is bad enough that your property gets seized through all these methods, all these tactics that are used to take away your guns. But then, if contraband is found with your guns, now you got a double whammy. If you had a magazine that held 11 rounds instead of 10, or you had a slingshot in your possession or whatever. Now you are getting criminally charged too. So, you have to make sure you do not have anything that is a problem. You may think that it could never happen to you. I cannot tell you how many clients say to me, "Man, I never thought I would be calling you." Yet there they are. This stuff happens for real, and it harms good people. It turns law-abiding citizens into criminals.

**Evan Nappen 11:36**

The State does not care that it is ruining your life, your freedom, your hopes and dreams, your careers now, no problem. No problem at all. It is just part of the agenda, part of the narrative. You are just another statistic they tell the public when they want to show what a great job they are doing fighting crime. "Look at all these illegal guns we have seized, taken off the street, and look at these convictions. We are doing a great job." In fact, they are doing a lousy job, and their focus is on the otherwise law abiding, not those committing actual crimes. They sell this to the public like they are doing something useful. When you and I know that they are not doing anything positive. It is all negative and against our Second Amendment rights. It is not focusing on real bad guys. It is not coming down on real bad guys. When it comes to real bad guys doing bad things with guns, even if they get charged with the gun charges, it is the first thing that is plea bargained away. They can make the deal and do the plea.

**Evan Nappen 12:55**

But when it is law-abiding citizens with some kind of technicality, oh, we are going to enforce it to the limit. We can get another gun owner disenfranchised of their Second Amendment rights for the entire country, because they are now a convicted felon. It is all baked into the cake, and it is there by design. You don't believe it? Well, you have not fought these laws and tried to save people for over 30 years like I have. I am telling you what's really going on. And yeah, maybe the lamestream media doesn't want to hear it, and the Tech Lords do not want me to post it. But you are listening to the Gun Lawyer, and I'm telling you how it is. Because I am in the trenches with my team every day fighting for these gun rights, and I see these atrocities take place. This is really going on. When we get back, I want to tell you about some other things that may save your life. As said in the Clint Eastwood classic "Fistful of Dollars", "sometimes a mere scrap of information can save a man's life."

**Speaker 3 14:14**

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, the deck is already stacked against you. You can find him on the web at [EvanNappen.com](http://EvanNappen.com) or follow the link on the Gun Lawyer resource page. Evan Nappen -America's Gun Lawyer.

**Speaker 3 15:28**

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**Evan Nappen 15:36**

I am glad we are here and have this time to talk about things that you otherwise would have a hard time learning about. I read a lot of things about firearms and gun laws, constantly intaking information and sharing it with my great listeners.

**Evan Nappen 16:06**

One of the things that I want to point out is a great article by Eugene Volokh, and it was in Reason Magazine. ( <https://reason.com/volokh/2021/08/11/atf-says-federal-firearms-licensees-must-follow-federal-law-notwithstanding-contrary-state-laws/> ) "ATF Says: Federal Firearm Licensees Must Follow Federal Law, Notwithstanding Contrary State Laws". This is very interesting because it really raises an important topic. A number of states which really mean well, and they are super pro-gun states, like Missouri and Texas, etc. are trying to pass laws so that they can take themselves out of the Federal prohibitions on various firearms and accessories. As the article talks about the Missouri House Bill 85, which is called the "Second Amendment Preservation Act", it was recently signed into law in Missouri in June of 2021.

**Evan Nappen 17:13**

The ATF sent out a letter saying that ". . . has generated questions from industry members and firearm owners as to how this Missouri state law may affect them, while engaged in a firearms business activity . . . that 'federal acts, laws, executive orders, administrative orders, rules, and regulations' falling into five categories of regulations relating to firearms" "shall be considered infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States . . ." Then it quotes the United States Constitution and the Constitution of Missouri. I totally love the sentiment of them declaring that these categories and these things are infringements and a violation. And I can't say I disagree, because I do agree. The problem is that we do not have court decisions, particularly from the Supreme Court where they have said that it is invalid, that it is unconstitutional, etc.

**Evan Nappen 18:19**

We all know in our hearts and minds that it is, but it needs to actually be found that and the law here merely making that declaration by the state does not override Federal law. I wish it did. I think the five categories are kind of interesting that the Missouri law lays out. It says any tax levy for your stamp imposed on firearms. They are talking about the tax stamp. Well, the tax has been on since 1934. That is why Treasury is where you find ATF because it was all about taxation. Are you going to tell me the Federal government cannot tax basically anything it wants to? They can tax, and it has for a long time. Yet ATF is saying no, we find this infringement, which is great, but it does not mean you can ignore it simply because they have stated it. It says firearm accessories, ammunition or common goods and that's great.

**Evan Nappen 19:21**

Then it says any registration or tracking of firearms, firearm accessories. Great, I love that they find that registration is an infringement. In fact, the National Firearms Act is all about registration. The same with registration of or tracking across the board. It is great that they are going after that. I agree. Same with any law forbidding ownership, use, transfer of a firearm, or firearm accessory, ammunition by law-abiding citizens and any act ordering the confiscation of firearms. So, these are great things that I totally support and admire that they are saying they are infringements. I totally get it. But the problem is,

even though that they state this, it does not mean that you can ignore Federal law. Until we get the case that says it is no good, you are out there taking a major, major risk of being prosecuted for violating Federal law. Federal law supersedes State law and in their letter the ATF makes that clear. All provisions of Federal laws, including the Gun Control Act, and the National Firearms Act, and their corresponding regulations continue to apply and remain in full effect in Missouri.

**Evan Nappen 20:51**

I am not a big fan of the ATF, but they are right. They're right, they do. I really do not want to see any law-abiding citizen or law-abiding FFL to see this law and think, I do not have to follow Federal law, and then get in trouble for it. These things have happened before with the so-called Firearm Freedoms Act in Kansas. Individuals got in criminal trouble for thinking they could rely on it, and you just can't. It is a wonderful statement, and I love what is being said there. But I do not want to see any law-abiding person prosecuted because they thought this would cover them. It is dangerous in that regard.

**Evan Nappen 21:45**

So, until such time as we have actual court decisions rendering these federal infringements (I agree. They are infringements). Until we have federal law through the courts, and the case laws saying this, you cannot rely on a state law trying to push this theory. You do not want to end up having that problem. I have seen it in other aspects as well, and a lot of this comes down to, in my view anyway, a lot of us want to believe certain things. We want to have faith in certain things about our gun rights, and so, we tend to go, that's great. They are absolutely right, and we believe it. I love what it has to say and love how they say it, love what it is about, its purpose and principle. I love it. But when you read this great Missouri law, it is not going to protect you. People get kind of sucked into that and believe it, and then they get in trouble. I have seen that occur in other areas, as well.

**Evan Nappen 23:07**

Sometimes I see it put out in terms of theories of how laws work, and how they are applied. As some of you may be aware, there is a thing called the Sovereign Movement. Sovereigns see this whole philosophy of law. If someone says they are a sovereign citizen, and they are not accepting the jurisdiction of whatever jurisdiction they are in, they are claiming sovereignty. Let me just say, it would be great if sovereignty was a real thing that actually worked, and I know that I am going to get hit with all the sovereign arguments. Yeah, I've seen it. Here's the bottom line. I have seen what happens to the people that try to push the sovereign arguments. What happens is they lose, and I do not want to hear about some isolated nonsense. There is so much garbage in the sovereign philosophy that make me laugh.

**Evan Nappen 24:12**

The UCC covers this, and it is all about contract, quoting the UCC left and right to show how our contract with the government and how they are in breach of our contract. UCC this and UCC that. It all sounds great; except if we go to the beginning of the UCC, it says what the UCC applies to. It applies to the sale of goods between merchants. That is what it applies to - the sale of goods between merchants. It has nothing to do with our social contract with the government over our rights. Not a damn thing to do with it. But as long as you ignore where this gets applied, then it's great. It is fantastic arguments. It's wonderful. What brilliance? Except that it has no application whatsoever. Other than that minor thing,

it's great. Then I have seen them saying the fringe on the flag takes out the jurisdiction. The fringe on the flag? No judge is dismissing your case because the flag in his courtroom has frickin fringe on it. Not happening, but I will tell you what I have had happen. I have had individuals that thought this load of nonsense would work in court, and they really, really screwed themselves over it. I do not want you to be that person.

**Evan Nappen 25:42**

Now, if you happen to be someone who believes in all this stuff and I am ruining your little fantasy, hey, it's up to you. You want to believe it? Go right ahead. But I will tell you the story of an actual case. I had a case where this guy was in the National Guard. He was driving in Long Branch, which in an area that was a questionable area. He is dropping off his girlfriend, and I honestly believe that he got profiled because he was white. They figured anyone in this area who is white is buying drugs, but he wasn't. He legitimately just dropping off a girlfriend. But you see he was from another state, and he had his gun under his seat. He did not have anything with drugs or anything to do with it. But when they hit him, they found the gun, and they charged him with the gun charge in New Jersey.

**Evan Nappen 26:33**

Here is this great Guardsman, and he is getting get screwed over on this gun charge. So, I represent him, and I put it all together. I got him into PTI (Pre-Trial Intervention), a diversion program where as long as he behaves himself, the charges get dismissed, and he won't become a convicted felon. He won't do any jail time, and he won't lose his gun rights. Everything's packaged good, and we are ready to go. It took a lot of work, but we are there. Right before I am about to get this officially done in court, he calls me and says that he has run into this guy in the library, who sells them the entire sovereign legal package, so to speak. Unbelievable. And what does he do? He says that he is dropping me as his attorney, and this other guy that has helped him out, paid him a little money, bought him gas and lunch, is helping him with this, and he is filing this gigantic motion so it will all just get dismissed based on all these fantastic sovereign theories.

**Evan Nappen 27:45**

You can have whoever you want as the Attorney. He says that I am doing this myself, and he is dropping me. And I'm like, okay, whatever, your choice. So, this guy decided that he is going to show me how to do it. Even though we no longer represented him, he sent me copies of everything he is filing. He sends me this giant motion about the size of a phone book, even though we don't have phone books anymore. There are all these attachments of UCC and all this nonsense that is not applicable in any way. And his whole thing to dismiss it, and I read it. It is essentially laughable. It is so absurd. The sad part was, he is going in front of a judge, who at that time was one of the toughest judges. He puts up with no nonsense that makes every attorney even be on their toes, and extra careful in front of him. I am thinking, "Oh, my God, this guy is bringing this load of garbage and arguing this to this judge." I am shaking my head saying, well, you'll find out.

**Evan Nappen 28:46**

Sure enough, the judge was not very happy with it, and reamed him out. Everything was denied, and the judge gave him what for up there. Totally woke him up from his little fantasy of sovereignty saving his butt. Next thing I know, I get a call from his father, who is a doctor and says that he is very upset.

His son made a big mistake, and he is begging me to take the case back so that we could resolve it because I had it's so set for a great resolution. And I said, unfortunately, that bridge is burned. Now your son appears to the court to be a wacko, and the judge is not going to be at all interested in our resolution. The prosecutor is not going to keep it on the table. It's all gone. I feel bad for him, and I think your son was very naive. But I can't do anything for him now. It is really too late. He's like, "look, I don't care how much. Tell me how much and I will send you a check." It is not really about the money. I said, it's what he has done. He is telling me how much, and I'm like, well, I'm going to give him a sky-high price and then he will say no, and then he can move on. So, I give this ridiculously high price, and he says, I'm sending you the check. And I'm like, Oh, great. So, yeah, the check comes in.

**Evan Nappen 30:25**

Now I have to really save this guy, and he has really created a road of destruction to try to undo. So, I started thinking about it, and I realized what the problem here is. The problem is the guy that he ran into at the library who sold him all this nonsense. He really is costing him essentially his freedom, his liberties, careers, hopes and dreams. Because he is now looking at going to States Prison for up to 10 years with a three and a half year, minimum mandatory, no chance of parole, when I had it all set for him to end up with no charges, no conviction, no jail, and saving his gun rights. I realized just how destructive and horrible this guy was and ruining this good kid who just was naive. And I said, "You know what, I am going to turn lemons into lemonade." I called the prosecutor and mentioned the case, and he starts laughing. "Oh, man, you took that case back. Oh, man, what's wrong with you?" I'm like, Listen, my client is naive, and he made an honest mistake. I explained the whole thing. Look, it's not right. He ran into this guy who sold him all this BS and ends up ruining things. I told the prosecutor that this guy practiced law without a license, and he interfered in my attorney/client relationship. He ruined it for this guy who is now most likely going to State Prison for three and a half years minimum mandatory. That's wrong.

**Evan Nappen 31:56**

So, the prosecutor said to me, "I'll tell you what. I'll make you a deal." He goes, "I'll put your guy in PTI even. I will put it back to where we were." "Okay, what's the catch?" He goes, "As long as you and your client testify to the Grand Jury about how this individual practiced law without a license, what he did, how he ruined your case, and how he put your client in jeopardy." Is he willing to do that? I said, "You know what? Yes, considering everything that he did, and how it really put this guy in a position of ruining him. Yeah, I will do that." So, sure enough, we did. We testified to the Grand Jury and that other guy was prosecuted for the unauthorized practice of law. And the guardsmen the good guy? We saved his career and his life and in effect, his hopes and dreams. He was able to get out from this gun charge and the mandatory State Prison. So, this is an example of it, and how these things can lead you down bad paths. It can be extremely difficult to fix, even though this one we were able to. So, keep that in mind. This is Evan Nappen, reminding you that gun laws do not protect honest citizens from criminals. They protect criminals from honest citizens.

**Speaker 3 33:21**

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