

Gun Lawyer -- Episode 58 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:23

Hello, Evan Nappen here and you're listening to Gun Lawyer. So, I'm sure you watched and paid attention with great interest to the Kyle Rittenhouse case. That case was really quite a blow to the anti-gunners and those that want to go at our right to self-defense and our right to have semi-automatic firearms. I mean, just look at it. No longer can that question be raised? Why does anyone need an AR 15? Or why does anyone need a so-called assault firearm? Because all I have to say is Kyle Rittenhouse, and you see exactly why you need it. To defend yourself against mobs. Mobs that are encouraged by the left to burn and loot and create mayhem everywhere. We have seen that answer that question.

Evan Nappen 01:25

But in the fallout from the trial, and people actually observing the behavior of the prosecutor in that case, a lot of folks became really disgusted, and beside themselves over the games that were played and the unprofessionalism that was exhibited, even in the gun handling itself by this prosecutor. The infamous photographs of him pointing the gun with his finger on the trigger and was not pointed in a safe direction. Other than him trying to do his remake of Alex Baldwin, I think that it was pretty outrageous. I have seen that kind of behavior before, and it's definitely problematic.

Evan Nappen 02:24

And what's happened is that it has inspired, interestingly, some folks to put forward what is being called Kyle's Law. Now, you know, the anti's and others, you often see, they'll take somebody who is "a victim of gun violence". Of course, it is gun violence and their victim. They make some law and give it their name and do whatever. But you know that kind of thing can go both ways and that is what we have here. We have Kyle's Law. Kyle's Law is a very interesting idea was put forward in Oklahoma, and I believe we will see it being proposed in plenty of other states. The Oklahoma (state) senator that put this bill forward is a fellow by the name of Nathan Dahm, and he is a Republican out of Broken Arrow. It is (Oklahoma) Senate Bill 1120, and it is designed to ensure that victims of malicious prosecution are able to receive compensation.

Evan Nappen 03:45

Now, that's an interesting concept because lots of times prosecutors have immunity and are very hard to sue. But in this case, the bill proposes that when a homicide is determined to be justified, and the

accused establishes that they have sustained injury due to malicious prosecution, that person will be awarded fair and just compensation. It further states that to support this claim, the claimant must establish that the prosecution was instituted or instigated by the prosecutor and was without probable cause; that the prosecution had legally and finally been terminated in favor of the claimant; and that as a result of the criminal prosecution, the claimant sustained injury.

Evan Nappen 04:52

Then it says about malice, which is interesting. If you heard Kyle give his interview with Tucker (Carlson), you heard him say that he believed it was with malice by both the statements of Biden and others. Malice may be established if the motive for the prosecution was something other than a desire to bring the offender to justice, or that it was one with ill will or hatred, or willfully done in a wanton or oppressive manner and in a conscious disregard of the claimants' rights. Under the legislation, a prosecutor, get a load of this, folks, may be held personally liable to a claimant if malicious prosecution is established. Now, I want to give credit that I have gleaned a lot of this from an article in Breitbart. Breitbart is a great aggregate news site, and you may want to check them out.

Evan Nappen 05:54

But think about this. The ramifications of Kyle's Law would be to seriously put prosecutors on notice as to whether they would prosecute law-abiding citizens that have exercised their right to self-defense. It seems to be an important check on the abuse of power that takes place when it comes to this self-defense issue that is more and more important. Because look at what Kyle had to go through, even though he was eventually exonerated. I mean, it's just horrible. Now his recourse may, in fact, be the statements made by Biden before he was President and statements made by the media; smearing Kyle and all that. But this law actually focuses on the prosecutor themselves, which is the one who ultimately makes the decision on whether or not to prosecute.

Evan Nappen 07:06

So, it seems to be a well-placed idea. Also, it really should not necessarily be limited to self-defense with firearms. I think any of the gun laws or criminal laws where individuals are prosecuted and win. Why shouldn't individuals who are acquitted, get compensation for the bad charges that were placed against them? It is common in civil suits that if an individual sues and then No Cause of Action, attorney's fees get paid. You see attorney's fees get paid all the time in matrimonial matters, right? Even in domestic violence matters, that are civil in nature. Why aren't attorney's fees paid in the criminal case? Why is it that the individual is completely at risk to have to defend themselves on the charges? Then after successful defense, when the government has unlimited resources, and the citizen has to spend their private resources, and they're acquitted, that there isn't compensation?

Evan Nappen 08:26

I think that alone would discourage a lot of frivolous prosecution and prosecution criminally when the cases are weak. Not just where they want to throw the dice and go to a jury trial because what's the worst case; they lose. But the individual still goes through the shredder of the justice system to get to there. So, I think that compensation idea and if it can be started with a Kyle's Law, should go even further. There are some areas in criminal law. Very few, but there are some where you can actually get compensation if you're wrongfully prosecuted, and one of those areas is actually in the gun laws. There

actually is part of a little known and utilized, but it's there in the Gun Owners Protection Act to protect dealers. If there is a false, malicious or etcetera, where you can show that this prosecution was brought and you are successful in defeating it, there's actually a way to get legal fees paid by the government on criminal charges. That is really the goal and it will have great impact.

Evan Nappen 09:54

Of course, the mere proposal of this in Oklahoma has created quite a stir. So much so, that individuals in the state of New Hampshire have already started decrying it and making it something that they want to scare the constituency about, so that it doesn't happen. One of the folks who wrote something about it is a legislator named Katherine Rogers, and she is a known quantity on the left. In her piece, she claims that "If this proposal were to become law in New Hampshire, it would effectively ensure that anyone claiming self-defense will have a protective barrier around them against anyone questioning whether, in fact, the claim is valid." A protective barrier? Well, I'm all for protective barriers when individuals act in self-defense.

Evan Nappen 11:05

She further states that "Kyle's Law would require the jury instruction on self-defense include a special question to the jury: If you the jury are acquitting this defendant on the grounds of self-defense, do you also find that the prosecution failed to disprove self-defense by a majority of the evidence?" That's interesting. Then "If the jury answers this in a positive, the defendant is entitled to compensation not only from the state but also from the prosecutor personally. Additionally, the charging police officer will be held accountable as well." This is what she claims. These are some interesting claims, and I do not know how true those claims are. But in a way, the turning around of the liabilities here isn't a bad idea, because we're dealing with something that's a Constitutional right. Why shouldn't our Constitutional rights be given that presumption?

Evan Nappen 12:12

We have a Constitutional right to self-defense. It's one of the Constitutional rights in the Heller case that found the individual right to keep and bear arms also discuss the Constitutional right to self-defense. Being that is a Constitutional right, why shouldn't it have a protective barrier? Why shouldn't it have recourse if your rights are violated because you properly exercise self defense and still were prosecuted for it. This makes a lot of sense. Makes a lot of sense. Of course, it's one of the reasons why the left hates it. They don't want to see us empowered with our rights, especially rights concerning firearms; our right to defend ourselves and our right to keep and bear arms being intact and respected. They're at war with our rights. They're at war with us. They want to do everything they can to lessen and remove our ability to have those rights. This is what makes this so vital and important that we stay informed, and that we monitor what they're trying to do to us. Because at every turn, even when things are being promoted that are extremely advantageous to the enforcement of our Second Amendment rights. They are trying to stop it and try to take away what you and I believe in so strongly. When we come back, I have some great listener questions that I think you are really going to enjoy, and we'll see you right after the break.

Speaker 3 14:11

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 15:25

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Evan Nappen 15:41

Folks, I want to thank you all for listening to Gun Lawyer. Please make sure you subscribe and tell your friends. This our voice here. We can help defeat social media that constantly wants to shadow ban and algorithm me to death. I want to make sure we get this information out to you so that you can be protected. I get a lot of great communication coming to me about the show and one of the folks here sent an interesting question. This is from Anthony and his question is whether an antique World War Two pistol with no firing pin and for show only is still considered a worry gun. Now a worry gun itself is an interesting concept. Worry guns are guns that you may worry about.

Evan Nappen 16:45

As gun collectors and gun owners, we may have acquired firearms at different times and said hey, is this potentially a problem for me or not? Those are the guns we call worry guns and I'm able to often relieve folks' fears or worries by knowing all the laws. I can tell you whether a gun is actually a gun that you need to worry about. Now this firearm here that Anthony questions about a worry gun, well I don't have the details. But what it says: number one it's an antique World War II pistol. Now that is somewhat of a contradiction because an antique firearm is going to be something pre-1898. There are also other factors involved. So, I don't know why it would be an antique World War II pistol. Many folks might consider it to be "antique", but technically, it's not antique. Technically, it is a modern firearm from World War II. Handguns from World War II are still considered a modern firearm. Whether it is a Luger, a P-38, a 1911, or a British Webley, they are all considered modern firearms, not antique.

Evan Nappen 18:21

But the removal of a firing pin, generally speaking, particularly in New Jersey, does not really matter because operability is not a key to legality. The key to legality is: are you possessing it under exemptions? The exemptions or exceptions include possession in one's home. So, if you have a World War II handgun and it is in your home in Jersey, you are exempt for the possession of the handgun in your home, even in New Jersey. So, that's really the key. The fact that it's World War II or antique or not antique or has a pin or doesn't have a pin; bottom line is how are you possessing it. If you are

possessing it in your home, then there are specific exemptions regarding possession in one's home. And that's the key to it. That's key to it all. See, there are a lot of things that are counterintuitive in New Jersey and this applies outside New Jersey. You need to actually know the law of the jurisdiction that you are in.

Evan Nappen 19:38

I will tell you some things that may surprise you about New Jersey. Number one: registration is voluntary in Jersey. Yeah, there isn't even a law that an individual can be charged with, "unlawful possession of an unregistered handgun". There's no such thing. You see handgun registration takes place in New Jersey on the acquisition, the purchase or transfer of the handgun in New Jersey on a pistol purchase permit. That's where it takes place. But it is not mandatory that any gun you possess be registered. It's just guns that you acquired on a pistol purchase permit that get registered. So, a gun that's been inherited, like this old World War II pistol from this person's father, there is no registration required. You can possess that unregistered firearm. The only question is, are you possessing it lawfully by being within the exemptions? And you see that's how it works. So one of the ways to not have worry guns is to understand the law and understand whether the gun itself is something to be worried about or not. The way to avert the worry is to know the law and know that your legal and what makes it legal. Here what makes it legal is where you are possessing the firearm. If you are possessing under the exemptions in the home, then you are covered and that's how these things need to be addressed.

Evan Nappen 21:23

Now, I have another letter from a listener who has an interesting question, and this is from William. He says "Evan, if the SCOTUS finds the NY carry law unconstitutional, would that have any impact on prior convictions in New York or New Jersey for simple carry without a permit, or cases like Shaneen Allen case? The answer is it might. It might. Because if someone has a conviction, they may be able to go back on what is called post-conviction relief and get the matter turned around, get it thrown out. Based on Constitutional argument, depending on how the court rules. The court could say it's not retroactive in its application. Then you would not be able to. But assuming they don't do that, and they simply find it unconstitutional, and there was an unconstitutional conviction, then yeah, you should be able to go back and try to get any of these convictions reversed, using post-conviction relief techniques. And you've seen that happen. I've seen it before.

Evan Nappen 22:40

I had a case with an individual whose prior record was that he was a medical doctor, and he had performed abortion when it was illegal. Then the law was changed. It was found constitutional, putting aside whatever your beliefs may be about abortion, the fact is, what he did was constitutionally protected. Therefore, he was able to get his conviction on the abortion turned around. If it's unconstitutional, and it was unconstitutional at the time, then you have good arguments here to get that accomplished. I can well see that as a possibility here, depending on how the court actually rules.

Evan Nappen 23:36

Now, Patrick, sends me a letter, and I think it's a good issue here. He says, listening to your podcast and when our carry permits are struck down as unconstitutional won't our legislators just make quick

work of making new requirements and very, very high permit fees to almost do the same at limiting the number issued? I would not put anything past the legislators trying to make it as difficult as possible to still get a carry and try to create laws to do that. But it's going to depend on what this decision says. Because if the decision is broad enough and clear enough and looks at even these other issues, maybe that may become part of what's covered by a protection that is applied outside our home, that maybe even their attempts at new restrictions will fail. I wouldn't be surprised if they do. They are going to have to tread very lightly and carefully here. Especially once justifiable need is eliminated which has been this court contrived test where you basically have to show self-defense before you need self-defense and use of deadly force before you need deadly force. Once that is shot down, then yeah, they could try to make fees really high. But I know a lot of folks that will spend whatever as long as they can get the license. They could try to create educational requirements or testing or all kinds of hoops and loops to make it as difficult as possible. And they may very well get subjected to serious challenge. But there is one other factor and that is, constitutionally speaking, once it's established as a Constitutional right, and they try to pull these maneuvers, then they can be responsible for legal fees, then they can have to pay fees and costs for the challenge because it became a Constitutional rights violation. So, there may be that there and so they might be less inclined. Because if they try to still pass these unconstitutional laws, they will end up paying through the nose for doing it. There may very well be some great advantages here in terms of its impact.

Evan Nappen 26:13

I have a question here from George regarding the Rittenhouse verdict and the Bruen case. Do you think the outcome of Kyle Rittenhouse case will influence how SCOTUS rules in the Bruen case? I doubt that it will influence because it's not really before the court. But assuming the judges followed it and observed it, there might be some influence just in argument or thinking. But it's not going to be what determines their decision. Their decision is looking at very specific Constitutional tests and factors and that's what's going to go into it. Once they decide it and depending on what they decide, I am confident we will see impact from the court decision itself that will blend in with issues that may have appeared in the Rittenhouse decision.

Evan Nappen 27:16

It may become even more important that we get a Kyle's Law once a court establishes that there is a Second Amendment right that applies outside the home. That may help influence getting even more pro-gun legislation through and stop legislators from wanting to pass anti-gun legislation knowing that there's now this strong force that can go against what they are trying to shove down our throats. So, look, the fight is on. It's a continuing, eternal vigilance and that is what we have to keep focused on. As we do, we are making progress even though there's these forces out there trying to hammer us down, but we are making progress. Keep in mind we are going forward. So, this is Evan Nappen, reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 28:31

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