

Gun Lawyer -- Episode 62 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:19

I am Evan Nappen and welcome to Gun Lawyer. I have a very important issue to talk with you folks today about. Let me tell you, New Jersey never ceases to reach new extremes in their proposals to go after our Second Amendment rights. There is now a New Jersey gun bill that makes gun possession the same as murder. It treats gun possession, simple possession, the same as murder. I need to explain this to you because it is purposely complicated; so that on quick reads, individuals are not going to understand it unless someone has taken the time to actually explain it. And that's what I intend to do. This bill is a Senate Bill, and it is Senate Bill 4290 in the State of New Jersey. What this bill does is it establishes what is known as a rebuttable presumption of pretrial detention for defendants that are charged with committing certain offenses under the Graves Act.

Evan Nappen 02:07

Now, here's the deal. It is very misleading because it says it establishes a rebuttable presumption. Well, that doesn't sound so bad. Who cares if it establishes a rebuttable presumption? Well, that's because of how rebuttable presumptions work, and what it is that you are being rebutted against in terms of who has the burden of proof, what those proofs are, and what the outcomes are of this failure to rebut this particular presumption. In order to understand how this bill actually works, you need to understand that New Jersey has what is called Bail Reform. It passed bail reform. Now, if you listen to the lamestream media, then normally you are going to think, bail reform - oh, that's where they let all these bad guys out, and it is a revolving door. They are just let out with no bail.

Evan Nappen 03:04

In fact, when it comes to guns and gun owners in New Jersey, it is the opposite. They are incarcerating and holding individuals with no bail that have had simple gun charges. This is going on now. The problem is some of you may think, well, look, I'm not going to illegally possess any gun; I'm not going to do anything unlawful; so, this would not apply to me. But that's not how it works. You see, in Jersey, the gun laws are so poorly written and so narrow in what is lawful behavior that individuals, often accidentally or unintentionally, get outside the law because the legal ability to possess your firearm, even just a simple handgun possession is based on the fact that you are within an exemption. If you are not within an exemption, then you are not lawful for your possession. We see this a lot.

Evan Nappen 04:13

For example, in New Jersey, the exemptions on simple handgun possession are very narrow. It includes being in your home, or your place of business or at the target range or if it's legal for hunting. So, if you are outside those exemptions, and I mean, let's say you take your handgun even though it's cased and unloaded over to your friend's house to show him. Well, there is no exemption for handgun possession at a friend's house, and you are now looking at unlawful possession of that handgun. If you get stopped on the way or leaving or over there and caught with that gun, you are looking at a Second Degree crime with up to 10 years in state prison with a minimum mandatory three and a half years.

Evan Nappen 05:01

The same penalty applies for unlawful possession of an assault firearm. This bizarrely-defined thing that has no logic to any of the criteria that is established for it. There is nothing intrinsically evil about this gun versus any other, but it does not matter. There is this matrix of features and landmines essentially that a law-abiding citizen has to navigate to know whether their gun is in factors Jersey compliant or not. If you make a mistake and your gun happens to have one extra offending feature that you did not realize was an offending feature, like a telescoping stock, because it moves two or three inches back and forth. It means nothing in terms of crime, but it can make all the difference as to whether you have an assault firearm or not. Well, now you are looking at a crime of the Second Degree, again, the same problem.

Evan Nappen 06:11

So, this bill says that there is pretrial detention, which now that's what we have, that's what our bail reform is. Prosecutors can move to detain someone so that you are held pending the outcome of your case, until your case gets adjudicated. So, let's say you get arrested on a gun charge because you are an out-of-state resident and you did not realize that your gun license was invalid in New Jersey, like Shaneen Allen, or you get arrested because you picked up your flintlock pistol, an original pistol from the 1600s, a Queen Anne pistol that was unlawfully pawned without your permission, you pick it up, retrieve it, and you are bringing it home, and you get stopped. That is the Van Gilder case that I had. That's just a couple examples of how otherwise 100% law-abiding citizens get wrapped up in these gun laws. Well, if that happens to you, this bill is designed to create a presumption that you are to be held without bail until you are either found guilty or you plead guilty, or you are acquitted after a jury trial, or somehow these charges get dismissed. You sit in jail the whole time.

Evan Nappen 07:54

The way they structure this is they have put it in the same category, that being gun possession, they have put it in the same category as murder. Let me show you what this bill says. It says that the prosecutor can file a motion with the court for pretrial detention, which is in their discretion to do so. They can file it. Right now, you can be held for five business days. It does not count weekends; so, you can actually be held for seven days before you get an adjudication here on whether or not you can even be released on your own recognizance. New Jersey basically wiped out the bail industry. You are either going to get held or you are going to be released. There is really no in between anymore. So, what determines whether you get held or not is this pretrial detention hearing that you get. What this bill does is it puts in a separate rebuttable presumption where there is a presumption that a defendant is to be detained pending trial because no amount of monetary bail or non-monetary condition would

reasonably assure that they will appear, or, here's the kicker, that the protection of the safety of any other person or the community, there it is, and that the eligible defendant will not obstruct or attempt to obstruct criminal justice. The court simply has to find probable cause.

Evan Nappen 10:11

Who are the people or categories that currently exist where this presumption is applied? Where it is presumed that you are going to be pretrial detained? Well, the first one is whether the defendant has committed murder. That is one of them. If you have committed murder, pursuant to N.J.S. 2C:11-3. The other condition is if the individual has committed any crime for which the defendant would be subject to an ordinary or extended term of life imprisonment. In other words, the extended term of imprisonment because you are a repeat offender, and you can get even longer sentences because you are a bona fide bad guy. They want to add the following to those two categories. Any crime for which the eligible defendant would be subject to a mandatory term of imprisonment pursuant to N.J.S. 2C:43-6 for a crime involving the use or possession of a firearm. That is the Graves Act offenses; that's what they are called. Senator Graves put them forward years ago and fall into that category.

Evan Nappen 11:54

When you go to N.J.S. 2C:43-6 of New Jersey law, individuals charged with unlawful possession of a handgun, a rifle or shotgun, or a machine gun or an assault firearm. So, anybody charged there, and that runs the gamut from handguns to machine guns, just charged with unlawful possession, you now are put in the same category as someone who is charged with committing murder. You are presumed to qualify to be detained pretrial, which means you could wait years in jail for your trial with no bail available. None. That is the Bail Reform. It does not end with simple, unlawful possession of those items. Also included under the "extended term", sorry, mandatory minimums are convictions or charges under N.J.S. 2C:39-3, which includes possession of a sawed-off shotgun or possession of a defaced firearm.

Evan Nappen 13:42

You may say, well, I wouldn't possess a sawed-off shotgun. I know that's illegal. Sure, except I just had a client who was charged with possession of a sawed-off shotgun and what she had was essentially a Mossberg Shockwave. But it was the model made by Charles Daly, the Honcho version. She was charged with possession of a sawed-off shotgun. Under this bill, that person will be presumed to be detained in the same fashion as someone who committed murder and would be held pending the court finally making a determination that this in fact was a lawful firearm and not a sawed-off shotgun. Actual case.

Evan Nappen 14:39

Additionally, what falls under this is defaced firearms. Any gun that has had a serial number removed but it's not just the serial number. It's any marking etc. You could have that inadvertently. You are the one presumed to have done it, if you have such a firearm, and there is minimum mandatory on that. They put that as the equivalent of murder, and you are going to be held. They also put in this bill because it comes under the same category of minimum mandatory is possession under N.J.S. 2C:39-9 which has to do with manufacture. That's right manufacture or selling firearms. As you know, the focus on manufacture goes to the builds of guns that are built for private, individual use. Legal under federal

law and legal in the overwhelming majority of states to build your own gun but not in New Jersey. You are a manufacturer, even though you built a black powder firearm for yourself, and I have had that case. If you were a builder of a black powder firearm, now you are looking at extended term for being that manufacturer, extended, excuse me, the mandatory minimum term. Because of that, you are now deemed the same as having committed murder and need to be detained.

Evan Nappen 16:31

This is an extremely serious step by New Jersey. By putting possessory offenses and these malum prohibitum type offenses involving guns into this category of presumption, the equivalent of murder, New Jersey is only one step away from making these offenses, actually the same sentencing equivalent of murder. Don't be surprised when New Jersey has capital punishment, the death penalty, for possession of a gun. You think that's outrageous? I don't. Because although normally those pushing gun laws are on the side of non-capital punishment, I am confident that when it comes to gun owners, they will happily make a make an exception so that death penalty can be applied. We are only one click away from Second Degree charges becoming First Degree, which is what murder is. This bill puts all of these offenses in the same category as committing murder when it comes to the individual being released. It is an outrage. We need to stay vigilant and be prepared to fight this should it come up for a vote.

Speaker 3 18:17

For over 30 years Attorney Evan Nappen has seen with rotten law due 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 propoganda 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 19:31

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Evan Nappen 19:47

Hey, there. We are back here with Gun Lawyer. I want to thank all my listeners for listening. It really is great, and it gives me the opportunity to tell you about all kinds of things that the lamestream media does not want you to know. But I want you to know, and we have to know because we have to fight these things with knowledge and being aware. I have gotten some really interesting letters that have come to me, and I want to share a couple of them with you. Now, this one's from Jeff, and it's an interesting question from Jeff. Jeff says, Dear Evan, Heller says people have a right to a gun in their home. The courts in New Jersey have agreed with this. If a man is homeless and lives in a box, can he

keep a gun in his box? Can a homeless man effectively concealed carry in New Jersey by carrying his box home of guns around? Can someone who lives in his car drive around with guns in his car? Love Jeff. Oh, Jeff, that's a fun hypothetical, that's for sure.

Evan Nappen 21:00

I guess there's a lot of folks that want to carry so badly that they would want to become homeless in order to carry. But unfortunately, I think we are going to have trouble with this. First of all, the person is homeless, which means they do not have a home, and their living in a box does not necessarily make that box, a home. It may be their temporary shelter. But is it actually their dwelling? Are they in search of a dwelling? I think the courts would probably not like that too much. But look, the question is going to be a jury question because juries get to determine the exemption and the exemption for possession in one's home. This is an argument that could be made. But whether or not it would succeed, depends on what those 12 people are going to think about the circumstances of this. So, I would not advise being homeless just so you can carry. It is not a good loophole by any means. Whether or not legally it proves out, I guess it becomes more of a jury question than anything else based on the exemption.

Evan Nappen 22:17

Now, driving around in your car, well, there is in the statute, a talk about businesses being a fixed location. Living in your car, the car is not, again, a residence. It's mobile, and it's not a residence. Looking at that, again, maybe there is an exemption for transporting in your vehicle maybe you can fall under that. But if you are actually living in it, that is going to be another tough one and is really pushing the envelope. Hey, I enjoy the creative thinking. But I think both of those are going to be tough sells in New Jersey, but thanks for the questions, Jeff, and thanks for being a listener to Gun Lawyer.

Evan Nappen 23:06

Now, David sends a letter. And what David says is regarding how can we get involved in the pro-gun movement? I've been listening to your podcasts for the past two weeks, they are really well done. Because of you, I joined U.S. Law Shield. I've learned a lot from your podcasts, and I've made several changes to protect me from becoming, as you say, a law-abiding criminal. So far, I've listened to over 30 of your podcasts, and I plan to listen to them all. So, thank you, and please continue to do the great service you are providing. My question for you is, how can I become more involved in pro-gun rights in New Jersey? I'm a member and I support the NRA. I write letters to my senators and congressmen when requested. Can you advise as to how we can make an even more meaningful contribution to gun rights in New Jersey? I'm retired and would like to become more active in a movement to improve New Jersey's guns and weapons laws. Well, first of all, I want to thank David not only for the letter but for wanting to do something because one of the problems that we as gun owners have is apathy. The apathy that runs through our folks is sad.

Evan Nappen 24:42

Now I know many of you are not apathetic, and I appreciate all that you do. But you know as well as I that there are large amounts that are. Then when the bad thing happens, the apathetic folks are like oh, how did that happen? Why did that happen? Why didn't you do this? Why didn't you do that? And of course, the question is not why did I not do anything, but why didn't they do anything? And so, you don't want to fall into that. You want to do things. I often tell people that there is a minimum every gun owner

should do. Now the minimum means just that, the least of what you should do. There's plenty you can do beyond it, but the least you can do is number one, which Dave already has done, is belong to the NRA. Now, look, I know the NRA has its controversies. I know there are issues, but the NRA is the largest gun owner group in America and if it wasn't for the NRA, we would have lost most of our rights already. The NRA has been an important force, a vital force and a critical force. It's why the antis are going after them to the degree that they are. Whether there are in-house problems or not that need to get resolved, well, it's hoped that those things get straightened out. But the NRA is vital and belonging to the NRA is critical.

Evan Nappen 26:10

But it's not just the NRA, because that's just one of the minimum things you should do. The other is to belong to your state, NRA affiliate. You see every state in America has an affiliate that is the official state affiliate to the NRA. This affiliate group is the state group that focuses on the state actions and activities legislatively. So, in New Jersey, you absolutely want to be a member of the Association of New Jersey Rifle and Pistol Clubs (ANJRPC). I proudly serve on the Board of ANJRPC. Our Executive Director, Scott Bach, is also a Board Member of the NRA. Our president is Kathy Chatterton, and we are blessed to have two great leaders like that in New Jersey with all the other folks that serve on the Board. The Association is critical to preserving the gun rights of New Jerseyans at the state level. They have a full-time paid lobbyist down in Trenton.

Evan Nappen 27:33

By being a member, you can and will get the alerts that will alert you immediately to the threats of what is going on in Trenton. You will have the ability to instantly send emails out to the key legislators on votes. This has already been demonstrated by our ability to fight back against what's going on in the assembly now, with this entire onslaught of anti-gun, Murphy gun grab bills, turning law-abiding citizens into criminals. This new bill that we just talked about, making gun possession the equivalent to commission of murder in terms of pretrial detention. How do we fight these things? By being organized and on guard, and the state association is what makes that possible. So, by being a member and getting those alerts, you can then immediately, very simply, with just a few clicks of the buttons, send emails out through the links so that these legislators get inundated with gun owners who are letting them know that our eyes on them. We are watching them and that we know what they're up to. They are not going to just slide this by without a fight. And that we have had enough already. Even though they are primarily, normally folks that maybe most of us would not be voting for, it does not matter. When they see the groundswell and they see the people and the complaints and the arguments put forward, the anti-gun lies that they thought were great, they suddenly realize the flaws, and they start to see just how bad these things are.

Evan Nappen 29:27

Whether we can succeed or not remains to be seen, but you got to be a player, you got to be involved. The minimum involvement, without a doubt, is to belong to your state association and your national association. Now this is not to say that there are not plenty of other great gun groups, nationally, and stateside. As far as I'm concerned, join every one of them. Not a problem. It's not about not belonging to any of the great pro-gun organizations that exists beyond the NRA and the state affiliate of the NRA. Not about that at all. It's just what's the minimum. The minimum is that you got to at least have that as a

foundation, then you can expand your gun rights activities even more. Maybe you want to be on the board of the state association. Maybe you want to work on committees with the state association. There are things that your state association would love to have manpower. You could come to the meetings of the state association and see what happens in the workings there and get involved that way. This is important.

Evan Nappen 30:48

Sending letters to your legislators is vital. But also send letters to the newspapers, do the op eds. Send out those letters to the editor. Stand up for the Second Amendment in this way. And as an individual, you can absolutely make a difference. The more you do and the more you fight, the more chance we have of winning this great battle that we are fighting. In New Jersey, it is a tough, tough battlefield. It's the frontlines on our Second Amendment rights. This is Evan Nappen reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 31:37

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