

Gun Lawyer -- Episode 78 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:00

Hi. I'm Evan Nappen, and welcome to Gun Lawyer. On this week's show, we're going to discuss Badge, Bang, and Bong, and why you can't have all three. This has to do with recent announcements, particularly by the Attorney General in New Jersey, that have made it clear that off duty police can smoke weed, not a problem. And I'll tell you what, I think it's a big problem, and I'll tell you why. The fact of the matter is, yeah, New Jersey legalized marijuana. Sure. They did, and dispensaries are now open, selling marijuana. But do you know what hasn't changed one bit? What hasn't changed one bit is the Federal law concerning marijuana. Under federal law, marijuana is a Schedule One controlled, dangerous substance, and it's prohibited under the Controlled Substances Act. It is unlawful to possess, ship, receive, and sell. You name it, and it's banned.

Evan Nappen 01:45

But for some reason, that federal law is being ignored, and the dispensaries are selling marijuana specifically in violation of Federal law. Now, look, I'm not taking a position on the legalization of marijuana. My concern is this. How does this affect guns and gun ownership? Because, as I'm sure you know from the past -- our adage of Bang or Bong, you can't have both, and that's because of the Federal prohibition, if you're a user of marijuana, from being able to possess and/or purchase firearms. Well, that's still in effect, and it is now going to be affecting law enforcement. So let me tell you where this is coming from. The Attorney General put out a memorandum that went out to all the Chiefs of Police in New Jersey, and I happen to have a copy of the actual memorandum.

Evan Nappen 03:01

Now the media has been also publicizing this memorandum, at least the key parts of it. The memorandum from the Attorney General Matthew Platkin went to all law enforcement chief executives, and it is regarding what is called CREMMA. CREMMA is the law in New Jersey that legalized marijuana. It is the Cannabis Regulatory Enforcement Assistance and Marketplace Modernization Act. In other words, legalize weed. It was a vote by New Jersey citizens to amend the Constitution of New Jersey to legalize marijuana. We call it cannabis. This became the enabling legislation, CREMMA for this to happen.

Evan Nappen 04:18

As we speak, you can buy marijuana in New Jersey from dispensaries. Well, the (Attorney General's) memorandum says the CREMMA, again this regulation, further provides that law enforcement agencies may not take any adverse actions against any officers because they do or do not use cannabis off duty. Well, that's nice that they can't take action because you don't use drugs. I'm sure that was a big concern. Right? Identifying police that don't use drugs and then have to take action against them. But of course, the significant section is whether you do use it.

Evan Nappen 05:05

In effect, what the Attorney General is saying is that if an officer is off duty, and he's using marijuana, then that's fine and dandy. The truth of it is, it isn't fine and dandy. Because first of all, the officer is possessing a Schedule One controlled dangerous substance under federal law, and nothing that New Jersey has done makes that okay. Federal law is still in effect, and these dispensaries and this entire business in marijuana, the Federal law is being ignored. It's just being ignored. So, it makes you wonder, why do we have laws that can simply be ignored? Because that's what's going on. Yet it's recognized that it still is a problem. It's even admitted that the Federal law creates an issue.

Evan Nappen 06:11

In this (Attorney General) memorandum it says: While marijuana is a Schedule One Controlled Dangerous Substance under Federal Law 21 USC 812, so they acknowledge it's a federal problem, it says CREMMA makes it clear that no agency in the state may refuse to perform any duty under the CREMMA. Here's the quote, "on the basis that manufacturing, transporting, distributing, dispensing, delivering, possessing, or using any cannabis item, or marijuana is prohibited by Federal law." So, there is explicit acknowledgement in New Jersey to ignore, not enforce, and not take any action regarding that Federal prohibition. Yet, there it is.

Evan Nappen 07:11

To have this memorandum come out, essentially giving the green light to police use of marijuana, now brings out and causes the gun problem that exists under Title 18 U.S.C. 922. Because if you are a user of any Controlled Dangerous Substance, an unlawful user of any Controlled Substance defined in the Controlled Substances Act, which would be the Schedule One and would be marijuana, you are prohibited under Federal law from shipping, transporting, receiving or possessing firearms and ammunition. This is directly by the way from the ATF. When questions were raised about medical marijuana, you could not and still cannot possess or have anything to do with guns under Federal law.

Evan Nappen 08:19

If you are a medical marijuana user, no less a recreational marijuana user, the ATF said it makes it clear here further, the federal law makes it unlawful for any person to sell, or otherwise dispose of any firearm or ammunition to any person knowing or having reason to believe that such person is an unlawful user of controlled dangerous substance. So, if a firearm dealer believes that such a person is a user of marijuana, then the sale is prohibited for that dealer to be made, and that is Federal law. It makes it clear. It couldn't be any more clear. It says: therefore, any person who uses or is addicted to marijuana, regardless of whether his or her state has passed legislation authorizing marijuana use, is an unlawful user of a Controlled Dangerous Substance and is prohibited by Federal law from possessing firearms and ammunition. Then it advises such persons have to answer "yes" when filling

out the ATF Form 4473. And if a dealer has reasonable cause to believe that the person is an unlawful user, then they cannot and are not allowed to transfer firearms. This is directly from the ATF.

Evan Nappen 10:00

So, think about this. New Jersey has essentially announced that law enforcement officers can use marijuana while off duty. That's the essence of that memorandum. And now there are going to be situations in which law enforcement may find themselves really in a bind that they didn't necessarily anticipate. I don't think this was considered at all in making this announcement, but I'll tell you where it's going to come into play. Do I think law enforcement officers in New Jersey will be prosecuted for using marijuana? Of course not. Do you think the Feds will go after them? Well, they're not even going after dispensaries that have a pure cash business in marijuana. I don't think they are going to focus on the lone police officer, but selective enforcement can occur. So, that is a potential risk.

Evan Nappen 11:01

But what I really see happening here is, let's say in a civil action, where an officer has used his firearm, lawfully, lawfully used the firearm to kill or injure a bad guy. And guess what? The bad guy or the bad guy's family sues the police over the use of force causing this injury. At some point in the interrogatories or in the deposition, that officer is asked about using marijuana off duty. Well, he knows the Attorney General said it is perfectly fine. So, he says, Yeah, so what? I use it off duty. What about it? Well, that officer has just admitted to being an unlawful user of marijuana and that makes him a prohibited person to possess his firearm. Therefore, when the trial attorney says, "so in other words, you shot my client with a gun that you were prohibited from possessing under Federal law. That should enhance that civil lawsuit pretty well, I would think.

Evan Nappen 12:22

Look, it's also going to come out on the criminal side, when there's questions about the arrest. Let's say the officer uses his firearm to effect the arrest. I don't even mean fire it. I mean, pointing it or in any other way using it. Well, how can he be using a gun that he is unlawful to possess. These are all kinds of issues that are going to spring from this throughout the system, and it just seems to me that this was not very well thought out. Until such time as the Federal law changes so that marijuana is not prohibited federally, I would advise anyone in law enforcement, anyone that cares about their gun rights, not to in any way, use marijuana, whether it's medicinally or for recreation.

Evan Nappen 13:23

Now, I understand that a lot of people enjoy it. A lot of people may think medically it helps them, and if it does, okay, but don't possess guns. If you want to use marijuana, please stay away from firearms until this law is fixed Federally. As much as they are turning a blind eye to the enormous amounts of marijuana sold illegally by any state that allows the sale of marijuana, when it comes to guns, they often make the exception, folks. Because you know, they hate guns, and the only thing they hate as much as guns is gun owners. So, if they can stick it to a gun owner over their use of marijuana, you can bet they will. That ATF letter that I read your parts of, stands for that very proposition. So, beware and remember that Badge, Bang and Bong, you can't have all three. Don't end up in trouble over this issue. Hey, when we come back, I have some great letters that folks sent, and I want to share them with you.

Speaker 3 14:47

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 15:59

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Evan Nappen 16:11

I want to thank you all for being loyal listeners. Subscribe and tell your friends so we get the word out. It also gives me a chance to get some great letters. I love the emails and questions that I get. I've got a couple here that I'd like to share with you that I think you'll find important and interesting. So, this one is from John, and it's regarding burner guns at work. John says Hi, Evan, thanks for your great work and all of the information you provide for the good of the public. Much appreciated. I read the transcript of your discussion about the Bryna guns. We recently had a safety lecture at our place of work regarding active shooters. Can I keep a Bryna gun at work for security reasons? Is that covered under the Second Amendment? Thanks.

Evan Nappen 17:13

That's a good question, John and Bryna guns come up. Brynas are like, essentially, they're similar to paintball markers, but they fire a pepper ball. They're used for self-defense, less than lethal self-defense. They're essentially pepper ball firing by way of air or other compressed gas to fire the pepper ball. The problem with the Bryna gun is that it is arguably not a firearm, although there can be debate about that because New Jersey does include air guns but not paintball markers. But if we take it outside the definition and say okay, it's not a firearm. In fact, it is a weapon. It's a less than lethal weapon, but it's designed to cause discomfort and pain or whatever that it does to stop an aggressor. And that makes it a weapon. Under New Jersey case law, you cannot preemptively arm yourself with a weapon outside the home. Because that is prohibited under the weapons possession laws in New Jersey. And those specifically come under what is NJS 2C:39-5. That's where the prohibitions are, and the other weapons prohibition is under subsection d. That's where there's a prohibition unless you have that manifests lawful purpose.

Evan Nappen 18:55

Now, some of you, as we talked about in a previous show, will say, well, I want it for self-defense and that is a manifest of lawful purpose. Well, the court says, no. The New Jersey Supreme Court said no,

it's not. You cannot go outside your home where you preemptively arm yourself for self-defense with any weapon. It's prohibited. So, the Bryna gun, it arguably could be legal to possess in your home, etc, but you can't take it outside the home and carry it. Now, this question, though, deals with security at work. Now, interestingly, the exemption for possession in the home does include your place of business as well. But the place of business exemption, which would allow for weapons possession, at your place of business, is narrowly construed and unless you are the owner of that business, it's not considered your place of business.

Evan Nappen 20:06

I get the feeling from John that he works in security and works at this place where he is employed. But that would not fit the bill for being, it sounds it anyway, of being place of business under the exemption. Now if it is his place of business, and he actually owns it -- owns the place or owns the land or owns the building, etc, then he can come under the exemption, and he can have the Bryna gun at his place of business in the same way he could have an actual firearm at his place of business because that's the exemption. But if he is not within the exemption, then no, you can't, because you're not allowed to have it outside the home for self-defense. And of course, that's the reason that you would have a Bryna gun is for self-defense. And that's what creates the problem. So, until New Jersey, comes along and allows for the possession of weapons outside the home for self-defense, we have serious limitations on what we can do to defend ourselves in New Jersey. In effect, what Jersey has stated, even through the courts, is that they would rather see us be victims than defenders. And that's really the message. Be a Victim. Don't be a defender. If you get shot and killed, oh, well, sorry. We don't want you out there trying to defend yourself is basically the message.

Evan Nappen 21:42

Now the good news is, and John had asked here, what about the Second Amendment being covering this? Well, we may see some help in that area. When the New York State Rifle and Pistol case comes down, which we should have the decision by June, we may see that very issue addressed in the application of the Second Amendment outside the home. It might finally break New Jersey's stranglehold on stopping us from having weapons, not just guns, but weapons outside the home for self-defense. And if that comes down, then we may be able to carry Bryna guns or carry tasers, etcetera. All these other weapons, and we may in fact be able to get carry permits, finally, to have our handguns. But until that court decision comes down, do not preemptively arm yourself with any type of weapon leaving your home because New Jersey does not see that as a lawful purpose. So, beware for now, but stay tuned, because I'm expecting good news by June.

Evan Nappen 22:56

I also received another letter from Randolph, and he has questioned regarding towing vehicles with firearms. He says: I'm a US Law Shield member, and I called them last year to get advice on the topic. It feels worth sharing with your fellow listeners. I have this classic car and uses it on weekends. He has other vehicles. He's done different tows, but it started him thinking. His question is what do I do if I'm legally transporting firearms in New Jersey and my vehicle breaks down? Do I let the person who is with me take the firearms in a cab? Or rideshare? Do I leave them in the trunk and let the tow truck take them to the repair garage with the vehicle? Am I obligated to inform the tow truck cab driver that I have firearms? Do I jump in the back of the truck when it's pulling away and hide under my vehicle so I'm still

with a firearm? Do I sit on the side of the road with a firearm hoping that my wife, brother, or friend returns before the state troopers notice me? If the police offer me a ride, am I obligated to inform them of guns in my gym bag?

Evan Nappen 24:17

For those of you who are listening that do not live in New Jersey, this right here is the paranoia that common sense gun laws do to law-abiding citizens. I like that Randolph, and I do agree. That is what it does. But there's a reason it does that, and that's because Jersey turns law-abiding citizens into criminals. This is how we have to live. But Randolph's last line I think is the best and is an award winner. Because what he said "as far as you should just move goes, you never had pork roll and boy I can relate to that. I can relate to that Randolph. Absolutely. I mean, the absolute number one, if there is anything that is redeeming about New Jersey at all, it is absolutely pork roll. And yes, I know in North Jersey, it is called taylor ham. Let's not get into the famous pork roll versus taylor ham debate. Let's just enjoy it, especially on one of those pork roll, egg, and cheese on a hard roll. Put it on that hard kaiser roll - delicious. And if you're not from New Jersey, if you ever come to New Jersey, just experience what I just told you. You'll see what Randolph and I both are talking about.

Evan Nappen 25:42

But let's get to his question, and the question is an important one. What if your car breaks down and you have guns in the car? Well, there is an exemption in the gun law under the subsection g. of NJS 2C:39-6 in New Jersey that does allow for reasonable deviations. And what are the reasonable deviations? And what are these reasonable? Well, looking at the circumstances here, if your car breaks down, and you're just trying to get home, then it's understandable that you would be able to possess your firearms and still remain within the exemption because of it being a reasonable deviation. Particularly since you did not have control over your car breaking down. I would highly advise that you stay with the guns. So, if someone comes to pick you up, have them wait till the tow truck leaves, and you go together with the guns and go home with them. If the tow truck is going to tow, then you need to be with the tow as it goes and stay with your firearms. Letting your firearms go without your control sets you up for potential serious problems. So, you don't want to have your firearms leave your ability to possess and control them. And that's really the rule to look at.

Evan Nappen 27:15

Like I said there are exemptions, though, that can apply. If you have long arms and they are unloaded, and it's only long arms, and they're unloaded and you have a New Jersey Firearms Purchaser ID Card, well that exempts you for the possession of your unloaded long arms anyway. You don't even have to be within an exemption for that. So, that would cover you. But again, you want to stay with them. That's really the key so you can keep tabs and control over your property. This is critical that you always remember to be responsible for your firearms at all times. You do not want somebody to steal them, to misuse them, to cause a problem with you about them, because it could lead to criminal charges. It could lead easily to licensing revocations and seizing the rest of your guns that you may possess. Because that's something Jersey loves to do. So, be careful out there, folks. Always stay vigilant about your firearms. This is Evan Nappen reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 28:41

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