

Gun Lawyer -- Episode 88 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:19

Hello, I'm Evan Nappen and welcome to Gun Lawyer. Well, we sure are living in exciting times. The excitement has not died down one bit since the absolutely extraordinary decision that was rendered by the United States Supreme Court in one of the finest opinions ever authored by Justice Thomas. As many of you are aware from my last show, this, of course, has opened up the ability for New Jerseyans to finally get carry permits. So that New Jerseyans, no longer will be victims, but can in fact, be defenders. And that is, of course, extremely exciting, and something we've all dreamed about for years and finally being made a reality. But this case, this New York State Rifle & Pistol (Association) v. Bruen case is so much more. And the more part of it is what you don't hear a lot about, and I want to fill you in on the more part. Then later in the show, I'm going to give you updates on where we're going with the carry licensing and some of the issues that have arisen as the dust settles and the bureaucracy starts to take place about how we go about actually getting this permit.

Evan Nappen 01:56

Let me just say, this decision is, without a doubt, the most significant event in the history of the right to keep and bear arms since 1791, when the Second Amendment was ratified to the U.S. Constitution. I am not exaggerating when I say that because this decision finally gives us a standard of review that allows for the challenge of every gun law. Look, it was super important, and it was landmark when the late great Justice Scalia authored the opinion in the Heller decision, establishing the right to keep and bear arms, a Second Amendment, as an individual right. Something we all knew in our hearts. But finally, we got the Court to say it and to acknowledge it. Of course, equally important, a couple years later, is the McDonald case where Justice Alito, in a fine decision, makes it clear that the Second Amendment is incorporated to the states by the 14th amendment.

Evan Nappen 03:34

So, you may say, well, what is that? Why did that have to happen? Well, you see, our Bill of Rights is a Federal Bill of Rights. The original intent of the Bill of Rights, prior to the 14th Amendment was that it was a restriction on the Federal government, not on state governments. It wasn't rights guaranteed by the states. It was rights guaranteed by this new federal government that was going to be more centralized, and it was replacing the old Articles of Confederation. At the time, the founders were very, very concerned about having a Constitution and a government where you had this centralized power. I

mean, think about it. We just fought a king. We just won a revolution. We didn't want to replace the old king with the new king. We fought for our freedom and our liberty and wanted to maintain that.

Evan Nappen 04:44

Really, the only reason that (Alexander) Hamilton was successful at the Constitutional Convention is because everybody knew that the President was going to be George Washington. There was no man more respected throughout America than George Washington. Nobody questioned George Washington because he not only won the revolution as the General but also, he was known as a great (Lucius Quinctius) Cincinnatus, essentially. Because after the war and winning the revolution, he could have become the king of America. He was a military winner. If you won militarily in those days, you became the power, you became it. The win empowered you. And what did George Washington do? After he was the guy credited with winning the American Revolution? What did he do? He went back home to his farm. That's what he did. He didn't take power. He didn't seize power. No, he served his country and made his country an independent country and went back to his farm. It was unheard of, folks. How could a military great like George Washington, who sacrificed and risked it all, walk away from power? That's the great (Lucius Quinctius) Cincinnatus. That's what it means, and it's what he did.

Evan Nappen 06:23

After the revolution, remember, we had the Articles of Confederation and things just weren't working out well. Because the states had their powers, and the states weren't getting along. They began to see this need for a national government that's much stronger. And that's why the Constitutional Convention was put together. George Washington was known that he would be the guy leading the country, and people could live with that. We now have what we have to this day because of that. After he served two terms, Washington could have stayed on till the day he died. But he said, nope, two terms. That's it. I'm done. He established that tradition, again, walking away from power. The greatness of that man cannot be overstated. It really can't be. We would not have our country. We would not have what we know today if it wasn't for George Washington. So, this is what was laid out.

Evan Nappen 07:37

But in this Convention, there was great concern. What about our rights? What about the Second Amendment? Not only the right to keep and bear arms, but the right to be privacy in our homes against searches? What about all these things that we don't want to have repeated and that we just fought a revolution over and in our young country's days here. So, it was agreed that after the Constitution was ratified, that they would put forward a Bill of Rights. In those days, when men made agreements, they stuck to them. The agreement was for this Bill of Rights, and Madison produced it. In 1791, what we know today as the Bill of Rights was ratified as part of that agreement, and in that is the Second Amendment.

Evan Nappen 08:31

Now, what are our rights? What are our rights, our rights? Our rights are not given to us by a Government. Sometimes people may hear, what rights are you given in the Constitution? We're not given any rights. Those rights preexist. The Constitution guarantees rights. The guarantee of rights in the Bill of Rights included a guarantee of a right to keep and bear arms. That guarantee for a long time had been broken and voided by Government actions. Finally, it's been addressed now, and it's been

addressed in such a way where the Federal Government was, of course, bound by the Bill of Rights. There were other rights as well. We started to see after the Civil War, when the newly freed slaves were being denied their rights, that the Fourth Amendment right via due process was utilized by the courts to impose upon the states the rights that we find in the Bill of Rights that, at first only applied to the Federal Government. That's why it took right by right by right, to get incorporation and to have the Supreme Court find that these rights, each right individually. As they went down, we would have a case that at some point incorporated it, if they chose to.

Evan Nappen 10:17

Let me tell you right now, not every right in the Bill of Rights is incorporated to the states, not every one of them. For example, the right to indictment. Under Federal law, you have a right to an indictment, but not under state law. In many states, you have a right to indictment in their state constitutions. But it's not required and that right has not been incorporated to the states. But the First Amendment had been, and the Fourth Amendment had been. It wasn't until Justice Alito in McDonald incorporated the Second Amendment to the state so that finally the Second Amendment applied even to New Jersey. I know shock of shocks, right? Now with the application of the Second Amendment to New Jersey, you have an enforceable guarantee. Yet the question was, how do we enforce this guarantee? How was it interpreted? How is it applied? And that is what Justice Thomas did.

Evan Nappen 11:30

In New York State Rifle & Pistol (Association) v. Bruen, the Bruen case established what is the test, and that test can be applied to every gun law in America. You see what Judge Thomas said, let me give you some of the greatest quotes out of this case, he said, the Constitutional right to bear arms in public for self-defense is not a second class right subject to an entirely different body of rules than the other Bill of Rights guarantees. Notice, Justice Thomas knows that they are guarantees. He even said in his quote, He further said that we know of no other Constitutional right that an individual may exercise only after demonstrating to government officers, some special need. Boom, nailed it, right there.

Evan Nappen 12:42

So, this ruling makes it clear about the issue in that case, being justifiable need being dead. But you see the Court through Thomas went even further. Because what he did was, he created the standard of review. Since Heller and McDonald, the courts have been so hesitant and reluctant or maybe just have an anti-gun bias, where they're trying to cut down the importance of the Second Amendment. So, what emerged after Heller and McDonald, but before the Bruen case was what the courts were using what was called a two-step framework, a two-step method to uphold gun laws, even after Heller. And what Thomas said was despite the popularity of this two-step approach, it is one step too many. Oh, that's a beautiful thing. The Court made it clear that the Government interests and the test the courts have been using, for example, like the "intermediate scrutiny test", which is the second step of the two-step approach was done really bad. They did not do a good job on this. The courts were just kind of falling back to whatever the legislature wanted to do, and this was no good. Thomas said, If the last decade of Second Amendment litigation has taught this Court anything, it is that Federal courts tasked with making difficult imperial judgments regarding firearm regulations under the banner of intermediate scrutiny, often defer to the determinations of the legislature. Thomas further said that, but while the

judicial deference to legislative interest balancing is understandable and elsewhere appropriate, it is not deference that the Constitution demands here. The Second Amendment is the very product of an interest balancing by the people. And it surely elevates, above all other interests, the rights of law-abiding, responsible citizens to use arms for self-defense. And it is this balance struck by the traditions of the American people that demands our unqualified deference. So, what the Court did was, in effect, adopt what is arguably a strict scrutiny standard, where the government has the burden to prove and Thomas said, the Government must then justify its regulation by demonstrating that is consistent with the nation's historic tradition of firearm regulation. Only then, may a court conclude that the individual conduct falls outside the Second Amendment's unqualified command. In other words, the Supreme Court has made it so that when a Constitutional challenge is made to a gun law, the burden of proof is going to be on the state, not on the individual, in order to save the constitutionality of whatever law is being challenged to demonstrate what is called essentially test history and tradition, and to show that this area of regulation that they're doing, has been part of an American tradition to do this. In other words, basically, you are going to have to show that this was being covered in either 1791, when the Second Amendment was ratified, or arguably, in the 1860s when the 14th Amendment became amended to the Bill of Rights. In so laying this out, the Court rejected the New York carry license, which had been in effect, folks, since 1913, and that still wasn't enough tradition to satisfy the burden that needs to be met here. This is very important, and it lays the groundwork. We're going to see gun laws fall like timber, and it's just going to be great. I can't wait to see it. When we come back, I'm going to talk to you about the developments in New Jersey on getting those, what used to be unicorns carry permits.

Speaker 3 18:00

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 19:13

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Evan Nappen 19:29

Hey, folks, here is the deal. Boy, it is so exciting, and I'm so happy to have this voice to be able to speak to you and tell you these things that the lamestream media never wants to tell you. We have had a tremendous increase in listeners and subscribers, and I'm so proud and happy about that because it's free to subscribe and you get to educate yourself. You get to know about these emerging rights and just how great the Second Amendment is influencing the way things are changing very rapidly. Without

being shadow banned or algorithmed to death fear by some social media company with an agenda that is anti-rights. None of that. This is the place. So, please tell your friends to subscribe to Gun Lawyer. If you haven't subscribed, it's very important to get the word out. Look, it's free. I don't even do advertising here. I don't charge. I just want the word out. I want it out. I want people to know because this is power for you, and power for all of us to have this knowledge.

Evan Nappen 20:49

I love getting letters from listeners, and I had a series of letters here. I'm going to read them to you and give you some good answers here because this is an important topic that has been coming up. This is from Randolph. He says, thank you for keeping your fellow citizens in the know about the New York State Rifle & Pistol (Association) v. Bruen. Does the SCOTUS ruling have any effect on carrying knives, tasers, etc in New Jersey? Now, let me just say on that question. It certainly does. Now, the case law itself hasn't changed yet, but I don't see how it can survive. Because currently New Jersey's case law under Montalvo case, says that you could not preemptively arm yourself with a weapon for self-defense. I'm not talking about guns and handguns and being licensed. But just a blanket prohibition saying, hey, the Second Amendment under Heller and McDonald only applied inside the home. It didn't apply to outside the home.

Evan Nappen 21:57

So, New Jersey says it's not a lawful purpose for you to arm yourself for self-defense when leaving the home. Well, obviously that is dead in the water. Because what do you think the Bruen case stands for? Carrying firearms in public for defending yourself, boop boop boop, outside your home. Right. Like we've said before, the shot heard around the world at Lexington and Concord wasn't fired from a Patriot's bedroom. So, it seems to me that the ability to carry tasers and stun guns and Byrna pistols, the pepper ball shooters and all that stuff. I don't see how that can be now restricted in the way that it was. But we don't have a case yet saying that. Even though it seems crystal clear to me, I don't want any of you to have to be the test case. I don't think any of you want to be. But I'm sure we're going to see activity on this, where the ability to just defend yourself outside the home as a manifest lawful purpose can no longer be denied by the New Jersey Courts. When we see that, then we'll know for a fact that it is what I'm believing it is. But till then you take a risk, if you do carry them. But it's something that I'm confident I could defend you on. But I think you'd rather avoid becoming a defendant until this gets laid down with more clarity and specificity being addressed by the court.

Evan Nappen 23:47

There's another letter that I have received, and it says regarding carry permits. It says, Evan I just finished listening to Episode 87, and I'm as happy as you are. Well, that's hard to do. It's hard to do. I gotta say, but okay, I'll accept that. The questions that I have are number one. I've taken the NRA basic pistol safety course with NRA personal protection inside the home and personal protection outside the home. Are these adequate for CCW in New Jersey? And two, I'm already an NRA certified instructor. Am I qualified? I qualified at, he mentions his club, where I am a member. Will I be able to certify myself as well as others, or will I have to go to another facility?

Evan Nappen 24:36

I have another letter that has similar questions. It says, hi, Evan. Thanks for great commentary as a member of Law Shield and as an attendee of many of your presentations. As well as a fellow Gun Club member, I appreciate your work. I'm excited to apply for my CCW, and I'm asking a question with regard to this in your podcast. PTC type equivalent course, and then you have to submit your recent handgun qualification scores utilizing the handgun you intend to carry. It is by test firing, and there has to be certified instructor. It can even be a certified instructor of the NRA. NRA certified instructors can do the certification.

Evan Nappen 25:20

I have one more letter, and we're going to deal with this topic just so you can see the interest here. This one is from Will, regarding New Jersey carry permits. Evan, love the show. I've taken a few of your classes and they have been very informative. Understanding I still need to shoot qualification with my carry gun, will an NRA basic pistol qualify for educational requirements for a New Jersey Carry Permit. I am an NRA pistol, rifle, shotgun instructor. Thanks for your time. So, these are all about the training requirements. Because in New Jersey "justifiable need" is no longer a factor, as you are well aware. What we're left with is: your background check, character, all that, and you're not subject to any of the disqualifiers. So, you basically are lawful to purchase and possess a firearm in New Jersey. Then the second leg of the remaining requirements is that you are thoroughly familiar with the safe handling and use of handguns.

Evan Nappen 26:26

Now, let me give you the specifics on this, to the degree we know. This is still evolving, and there's still a lot out there as to where this may actually end up. But the absolute point of declaration, where it's listed by the Government and proclaimed can be found in the New Jersey Administrative Code. Because in the statute, in the New Jersey statutes, there is no explanation of what thoroughly familiar with the safe handling and use of handguns means. It has been expanded by way of the administrative agency to define that, by way of promulgating an Administrative Code provision on that very point. This is what it was prior to the Bruen decision, and it's still, at this moment, the current admin code.

Evan Nappen 27:27

You can find it under N.J.A.C. 13:54-2.4, and you can also find reference to this in the article I wrote called "How to Get Your Carry Permit in New Jersey". You can find that article at my website at www.EvanNappen.com. Check out my website for updates. I'm even updating the carry article I wrote as news comes in so you can track it there. By the way, for any of you that have my book, the New Jersey Gun Law, a big orange book that's over 500 pages and explains 120 topics in question-and-answer format. Literally the Bible of New Jersey Gun Law. Free updates to that book are on my website at www.EvanNappen.com. Free. If you buy my book, I am doing free updates to that book till Murphy is out of office. So, get the book and get the updates to stay current. So, check it out on my website. I'll shamelessly plug that on my show. Because you know why? It can help all of you. I want you to be educated, and I want you to be protected.

Evan Nappen 28:49

So, looking at this New Jersey Administrative Code (N.J.A.C. 13:54-2.4), it says thorough familiarity with the safe handling and use of a handgun shall be evidenced by and then it says: 1. Completion of a firearms training course substantially equivalent to the firearms training approved by the Police Training Commission, as described under N.J.S.A. 2C:39-6.j. That is known as PTC training, and that's what law enforcement goes through when they are certified. They are certified by PTC. So, it needs to be PTC or substantially equivalent. That's the end of number 1. There's a colon and then it says: 2. Submission of the applicants most recent handgun qualification scores, utilizing handguns he or she intends to carry, as evidenced by test firings administered by a certified firearm instructor of a police academy, a certified firearm structure of the National Rifle Association, or any other recognized certified firearms instructor. Then it's a semi colon, "or" the word "or" is in there, or 4. Passage of any test in this state's laws governing the use of force administered by a certified instructor of a police academy, a certified instructor of the National Rifle Association, or any other recognized certified instructor.

Evan Nappen 30:46

So, when you see this as 1. . . .; 2. . . .; 3. . . .; that would normally be interpreted as any one of those things should be satisfactory proof. And yet, it's still not crystal clear. Although the way you interpret things is the semicolon separates the different paragraphs as well as the numbers and the word "or" is there. Not the word "and". It's the word "or". So, on its face, it does appear that handgun qualification evidenced by the scores done by an NRA certified instructor should cut it. But it's not crystal clear, and there's much debate and argument. Plainly, if you take a firearms training course that's the equivalent of PTC, shoot the required course of fire and do so with the correct scores. Then you have some type of a test, which is done even in the NRA Personal Protection Outside the Home, but a test that shows you were tested on the state's laws governing the use of force. Then, obviously, what you do is you've met all three. You've qualified for sure on all three. Now, this is what the code says.

Evan Nappen 32:35

Yet, I've had cases where individuals have qualified and still evidenced it by only one or more, or none, but still shown how great a shot they are and rely on. Because if this certification, if what you're submitting is rejected, then you have the ability to appeal it. Then you're going to make the argument that you've met it, and, of course, the state's going to say, well, here's what the code says. And we're going to say, well, here's what the statute says, and we're going to present that you are thoroughly familiar with the safe handling of firearms. Can these arguments be made? Yes, they can. But I don't think you want to get denied, and I don't think you want to have to fight it out. I've had clients that have fought it out, but you would rather just have it go through and all be good. I get that, and it makes sense. So, the more thoroughly you cover what is in the admin code, with the qualifications that you're submitting.

Evan Nappen 33:40

Let me give you a tip. Let me give you a trick. The State Police have put a website. They have a website listing training facilities. They just posted this with training facilities to be able to certify you as required. They are all listed on the NJ State Police website. So, if you go to a state police listed facility and you get the qualifications through the trainers there, then it seems to me to be highly unlikely that you're going to get denied when you submit your application. When they see that you've been qualified

by an authority that has been put on the New Jersey State Police website as a recommendation for a place you can go to get such certifications. So, that's a trick and technique right there. Now, I know, there are a lot of folks that are Certified NRA instructors, and they're not on the State Police list. Well, first of all, wherever you're instructing, you should try to get on that State Police list. Add credibility and credentials to what you do. Individuals that are going to submit here, you want to ensure that you don't have problems. The surest way is to meet what I just laid out for you, instead of trying to get by with something less. With the State Police putting out places that they're viewing as acceptable, that's going to credential it right back to help you on your application.

Evan Nappen 35:24

This is all an evolution. Now, this is all growing. This is all taking shape, and we're starting to see these things. I think it's a real good indication here that the State Police actually listing training facilities. The State Police also added that you get your fingerprints done electronically. You have to go to www.IdentoGo.com to get it done electronically. That's part of it. Currently, you can download the application online, but I understand that you'll soon be able to apply online in the same way that we apply online for a firearms ID card or pistol purchase permit. These are exciting developments. This is where we're at currently. Things still are settling down and settling in, etc. It's still a fluid situation to a certain degree. But here at Gun Lawyer, we're going to keep you as informed and as up to date as we can. This is Evan Nappen, reminding you that gun laws do not protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 36:42

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