

Gun Lawyer -- Episode 98 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:22

I'm Evan Nappen, and welcome to Gun Lawyer. I love getting these letters from the listeners. They raise excellent questions, and I always enjoy answering them. I know that it helps to protect you the listener, which is my goal here. I want to make sure you know what the laws are so that you don't become a victim of New Jersey gun laws. And man, they are victimizing people left and right. may get into that later about some of the latest. But I have a letter here, and this is from Tauan. He says regarding Governor Murphy's sweeping gun safety package. Evan, could you talk more about ammo regulation in general, under A1302. Thanks for everything regards, Tauan.

Evan Nappen 01:21

Well, I am happy to do that, Tauan, because ammunition regulation is important here in our right to keep and bear arms. It's one thing to be able to have guns, but they're not much use if you can't have ammunition. So, the antis have not limited their focus to simply regulating guns. They have, of course, taken on ammunition and tried to do their dirty work on ammo as well. Now in New Jersey, just generally speaking about ammunition, there is certain ammunition that is prohibited and then given an exemption. We've talked about it before, how hollow nose, hollow point, ammunition is regulated, and how it's legal but narrowly legal. You can go from place of purchase to your home. You can have it in your home. You can have it at a target range and going between those places. But if you have it outside of that, also while hunting is okay.

Evan Nappen 02:37

But outside of that, you're looking at unlawful possession of hollow nose. It's a fourth-degree felony level offense, and you're looking at 18 months in state prison per bullet. So, it can be a bit tricky, and you want to stay narrowly within exemptions on hollow nose. There's also a prohibition on armor piercing ammunition, but the definition of armor piercing is in conformance with the federal definition now. Essentially, I really don't ever see, I've yet to get, in 35 years of practicing gun law in New Jersey, I've yet to actually have a legitimate charge or case of someone possessing actual armor piercing ammunition because it has to be primarily for handgun.

Evan Nappen 03:33

Armor piercing ammo for handgun has been federally regulated, and NJ law mirrors the federal reg. You would have to have some of that super rare like KTW Teflon-coated stuff from way back that you just happened to buy before the Feds changed their own laws on it. I just haven't encountered it. I'm sure it's out there, but good grief. You would think the way the antis play up armor piercing that every handgun contains it that any bad guy ever possessed, but it's actually pretty rare. So, on armor piercing and hollow nose, that is the law. Essentially, you're banned from possessing armor piercing, and you're not completely banned from hollow nose.

Evan Nappen 04:31

There's also regulation regarding incendiary ammunition, and in New Jersey it's lawful to possess incendiary ammunition, ammunition tracer, ammunition tracer rounds, but it's unlawful to use them. So, if you're firing tracer ammunition, then you could be in for a criminal charge on that. Now there are certain exempted tracer ammo. Tracer ammo that does not use a burning, flaming or flaring that type of ammo, but that's out there for shotgun patterning and such. It's more of a special brightly colored, or somehow otherwise illuminated shot that is not done by anything using heat or fire. That's not prohibited, but tracer that you might find in military surplus, that is prohibited for use. Plus, even if you are wanting to shoot tracer, which is again prohibited, it's not the greatest thing for your barrel by the way. Tracer is known to be somewhat corrosive and destructive of the barrel. So, it's really not the best thing to be shooting anyway.

Evan Nappen 05:58

But now we enter into a new dimension with ammunition. Other than those regulated areas that we just discussed, which New Jersey has been famous for, particularly their hollow nose, where they want to impose that we only have high penetration ammunition on the street. So, make sure it goes through the target to hit innocent bystanders, I guess. They want to make sure it's high penetration. Now with carry licensing, carry licensees do not have an exemption to have hollow nose. There is no exemption for hollow nose. Even if you have a carry license in Jersey, you have got to use higher penetrating ammo while on the street carrying. It's about as dumb as dumb can be, but New Jersey has never been at a shortage for stupidity when it comes to their gun laws. So, there's another example of it.

Evan Nappen 06:59

But the recent law that Tauan is questioning about has now been enhanced. New Jersey has passed a requirement for ammunition registration. I will actually read you what it says in this new subsection. It says: Every person engaged in the retail business of selling, leasing, . . . I didn't know we lease firearms, maybe rent but leasing that should be interesting. How's your lease agreement on your gun? I can just hear that. . . . or otherwise transferring handgun ammunition . . . Wait a minute. This is even funnier. The retail business of selling, leasing, or otherwise transferring handgun ammunition. Does anyone out there have a lease on handgun ammunition? Have you ever done a lease on your handgun ammunition? I mean, the last time I bought a box of .22s, I don't recall having to enter into a lease agreement. And what am I leasing by the way? To return the spent brass? Is that the lease? These people. They write this stuff. Lease? It's like you're leasing handgun ammunition. Nobody does that. But why should that stop it from becoming a law?

Evan Nappen 08:17

. . . as a retail dealer or otherwise, shall keep an electronic record in which shall be entered . . . Here's what the record says, ready, "the name of the manufacturer; the date of the transaction; the type; caliber or gauge of the ammunition; the quantity of the ammunition sold; the name, address, and date of birth of the purchaser; the identification used to establish the identity of the purchaser; and any other information the superintendent shall deem necessary for the proper enforcement of this chapter." And I bet when it comes to leasing ammunition, you're going to have to have a credit check, a credit background check, to make sure you're qualified for that lease. Oh boy. "The electronic records shall be retained by the dealer and shall be made available at all reasonable time", it actually says hours, "for inspection by any law enforcement officer, and additionally shall be electronically reported to the superintendents in accordance with . . . " this law.

Evan Nappen 09:28

Then it further says: "Every retail dealer in the business of selling or otherwise transferring handgun ammunition shall immediately electronically report to the State Police any transaction involving . . . " Are you ready for this, folks? . . . the sale, transfer, assignment or disposition of 2,000 or more rounds of handgun ammunition and information relating to each transaction in accordance with this subsection." In other words, if you purchase over 2,000 rounds of handgun ammo, the retail dealer is required to immediately report you, immediately report you, that's the word, to the State Police over that transaction. So, folks, if you go to the gun shop and you buy four bricks of .22s, you are being immediately reported to the State Police under this law. Keep that in mind.

Evan Nappen 10:34

It further says that they need to establish a system in which the retail dealer shall immediately contact the State Police regarding that sale transfer disposition of 2000 more rounds, etc. It is really something. So, this is apparently the new way of things in New Jersey, and its requirements are placed on every manufacturer and wholesale dealer and retail dealer. This is the new handgun ammunition registration system that New Jerseyans are going to have to live with. And by doing all this, we, the Government, guarantees that we will eliminate crime from the streets. There'll be no more crime whatsoever. It's going to be the most incredibly effective law ever. I'm just kidding, of course. It's a waste of time, money and effort. It will not do a damn thing about crime. Handgun ammunition "registration"? What in the world are they thinking?

Evan Nappen 11:59

Well, they aren't thinking about actually doing something about crime. What they are thinking about is how to make it harder for you and me to acquire ammunition and how to invade our privacy when acquiring ammunition. How to create lists of individuals who have purchased ammunition. It's those kinds of things that the Government will accomplish from this, but it won't have any effect on crime. It never does. It's just focused on infringing on the Second Amendment and seeing what they can get away with. To constantly push infringement after infringement after infringement, and the fight is on. So, beware about this next level when it comes to ammunition. By the way, nothing prevents you from going across the border and buying all the ammunition you want at a gun show in Pennsylvania or from a gun dealer in Pennsylvania. Bring back your personally possessed ammunition to your home. So, it is something that if there's anything going on with this, it simply is going to encourage out of state purchase of ammunition. Well done, New Jersey legislature, well done.

Evan Nappen 13:33

I have another interesting letter, and this one. Well, I'll just read it to you. It's from Mark, and it says, regarding rules for thee and not for me, Murphy. Evan, I look forward to your podcasts every week. They're so informative and interesting. Keep them coming. I took the CCW intro today at RSTP in Union. RSTP is excellent and thorough, as well as the staff. Very friendly, informative and professional. I heard from the instructor today that Governor Murphy has the largest private firearms collection in the state and has a room in his mansion dedicated to it with a vault door. This would make him another rules for thee not for me hypocrite Democrat swine. Have you heard this? Is it true? If so, why is it not more publicly disseminated so we can label him as a complete hypocrite that he is?

Evan Nappen 14:32

Well, I'm going to be honest. I've never heard that. I've never heard that before. I don't know whether the Governor Murphy even owns a gun at all. No less whether he has one of the largest private collections in the state. I don't know. But I do know that the elitism and hypocrisy when it comes to gun ownership is out there for sure. I don't know about Murphy. I couldn't tell you. But I do know that we often see issues where those that are anti-gun, those that are liberal and have espoused anti-gun positions are the ones that have guns and are the ones that make some of the largest, biggest, mistakes, problems or even intentional wrongdoings that we see taking place with firearms. We see this occur all the time. We see individuals that are publicly known for being anti-gun ended up having gun problems.

Evan Nappen 15:41

One that comes to mind right off is Alex Baldwin. There's a guy that was as anti-gun as they come. His gun that he was handling has killed more people than any gun I ever handled. I'll tell you that. And he is the epitome of an anti-gunner. So, the hypocrisy is out there. We know of other folks that are called out on this often. We see it. I mean, it's something that seems to come with the territory and elitism, a bona fide elitism. I had a friend who was an instructor down in some southern states, and I remember him telling me that he actually gave instruction in gun shooting to one of Sarah Brady's, I think it was kids or relatives at the time. She was there and wanted them to learn to shoot. Isn't it great? Well, yeah, shooting is great, but it's astounding when you are, at that time, the symbol of the anti-gun movement, and you are having them enjoying the shooting sports. But they would say, hey, there's no problem with that. There's no issue. This was high end shotgun shooting at a fancy place. So, what's the problem with that? We're not talking about the peons that want to just possess firearms. We're talking about us. We are the elites here and we're able to do it. This is elitism in guns. It's out there. It definitely is. But I don't know. If anyone does know whether there's any documentation or statements or anything that can confirm about Murphy even owning a gun, it would be interesting to know. But there you go. Hey, we come back. I have some other fascinating letters to talk to you about. See you in a bit.

Speaker 3 18:06

For over 30 years, Attorney Evan Nappen has seen what rotten laws 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 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 19:20

You're listening to Gun Lawyer with Attorney Evan Nappen. Available wherever you get your favorite podcast.

Evan Nappen 19:35

Hey, welcome back, and thank you for being a dedicated listener to Gun Lawyer. Make sure you subscribe and tell your friends to listen and subscribe. I really am happy about how big we've grown and how many folks are joining in with Gun Lawyer, listening and sending in questions. And that's why I do it. So, I can get the word out and help protect ourselves here in this treacherous environment. For those that love the Second Amendment.

Evan Nappen 20:09

I have a letter from James and James says, traveling with a carry license. Hi, Evan, thank you for your podcast. I am a weekly listener. Can you answer my question? Assuming I have a New Jersey carry license, and I want to travel to the range. Suppose I have three guns listed /allowed on my carry license. I'm traveling to the range with a newly acquired fourth gun, which is not yet on my license. Am I allowed to make a stop on the way? Does the fourth gun in my possession make any unnecessary travel deviations illegal or does New Jersey license cover me?

Evan Nappen 20:50

Let me just tell you right now. If you go to the to the actual licensing law under NJS2C:58-4.a., it says right there in the first paragraph one permit shall be valid for all guns a person may have. So, the bottom line is your (carry) license covers all guns you may have. Now there is another section that does say that judges can issue a limited type permit for the types of guns you can carry and where you can carry them. But let me just say that part of the law was pre Bruen, and because it's pre Bruen decision, I don't see how a judge constitutionally can limit an individual except to sensitive places that have been fully established. Limiting "the types of handguns" is bizarre language. What does type mean? A "type" is not the same as a model. So, in other words, you can only carry a revolver? You can only carry a semi-automatic pistol? What are we talking about types? He can only carry a Webley-Fosbery? A semi-automatic revolver gun. What are we talking about when it talks about type? It doesn't say model. It doesn't say make. It says type. So, legitimately the only true restriction authorized by law, if it's even there, is "type". Then places? This is all regulated by Bruen. Yet there's right in the statute. One permit is good for all your guns. Right there in the licensing statute. One permit shall be valid for whatever guns you may have.

Evan Nappen 22:55

Now, even if you were charged. Let's say you have your guns, and you're going to the range. But one gun, they're going to try to make some argument that it isn't on your permit. Now, other than the language itself, saying that it covers all guns, and other than saying, well, the judge did not authorize this particular one. But again, one permit covers all guns. What does the statute actually say that you're being charged with? Well, that's the handgun possession statute, and what does it say? It says, no person shall possess any handgun unless having first obtained a permit to carry a handgun. It doesn't say a permit to carry a handgun in conformance with all restrictions that may be unreasonably placed on it by a judge. No, it doesn't say that. It just says that you can't have a handgun in your possession unless you have a carry permit under 58. And guess what you have? You have a carry permit. So, if you have a handgun and you have a carry permit, the elements of the offense right there, boom. You've got the permit. You're within the law. Just what it says. On top of the statute that has the licensing in it that says one permit is good for all guns. The actual criminal charges say you got a gun. Well, do you have a permit? Oh, well, the answer is yes. Well, then you're okay.

Evan Nappen 24:19

Well, wait, there's still another section that talks about transportation of firearms under NJS 2C:39-9. And what does that say? It says, no person shall transport any weapon, and it talks about all the different weapons, and then it says, but in the case of firearms, unless one is licensed pursuant to Chapter 58. Oh, licensed pursuant to 58, meaning 58-4, which is guess what? Your carry license. So, you're exempted there, too. The bottom line is the carry license exempts you from the criminal charge under 39-5.b. It exempts you from the transport charge under 39-9. And the license itself says one permit is good for all guns. I really don't think they're going to get too far trying to prosecute on that.

Evan Nappen 25:15

But if you're still uncomfortable and you're going to the range, then you know what? No one says you can't be within exemptions to. If you want to be within the exemptions as well, then have your guns cased, unloaded, closed and fastened case, unloaded, and you're going to the range. You now have the exemptions that we've talked about on other shows, and you have a carry permit. Your belt and suspenders here. You are protected as you can be. You got exemptions, and you got a license. You're covered. So, that's another way to view it. If you still have that worry or fear in that you're going to run into some officer who does not understand or know the law, and you just want to be as protected as possible to deal with the amount of ignorance over the gun laws that's out there. There sure is a lot of it. So, that is a way to handle it - without a doubt.

Evan Nappen 26:20

Now we have Omer, who asks about non-firearm weapons post Bruen. This is an excellent, excellent question and a super important issue. Hi Evan, I've been listening to your show for the past year. The information you provide is invaluable for any new and existing NJ firearm owner. You previously mentioned that in New Jersey one cannot preemptively arm themselves. I believe it was introduced in caselaw, if I remember correctly. How does that relate to carrying non-firearm "dangerous" instrument (e.g., knife or "large capacity" OC spray) when you have a carry permit, and you may already be preemptively armed with a firearm? Also, lacking a carry permit, does Bruen nullify this because it recognizes self-defense outside the home and arms isn't limited to firearms only? I would very much appreciate your thoughts on this.

Evan Nappen 27:26

Well, Omer has an excellent point, and I believe that is exactly what the case is. Because prior to Bruen, New Jersey tried to preempt the Second Amendment application to preemptively arming oneself outside the home. By creating the false distinction or the legally suspicious and really just shake your head distinction by saying that you could preemptively arm yourself for self-defense in your home, but not outside your home. Like there's some difference with our right when you're in your home versus outside your home. You know, like when the Second Amendment was passed, the Patriots. They all remembered that. The shot fired at Lexington and Concord was fired from a Patriots bedroom. Right? Yeah, remember that? It was fired from his bedroom. He never left his home. Oh, come on. It's ridiculous, and that ridiculousness has been gutted away. Cut away by Bruen where we have a right to have our firearms and other protected means of self-defense in public. The answer is yes.

Evan Nappen 28:51

I believe it does, in fact, absolutely invalidate New Jersey's current case law distinction, which is under a case called Montalvo. (State of New Jersey v. Crisoforo Montalvo. Supreme Court of New Jersey. 2017) It involved an individual coming to the door with a machete, and the court saying that was, at that point, okay, because you just can't go outside your home preemptively armed with a machete. Prior to that it was Kelly that said you couldn't preemptively arm yourself anywhere, even in your home, which was an old case. It has basically evolved into the full recognition of our rights. Now the New Jersey court has yet to say that Montalvo is no longer valid like they said about Kelly. The court in New Jersey has not pronounced that you can preemptively arm yourself for self-defense outside your home.

Evan Nappen 29:46

Bruen has rewritten the rules here and has expanded our right to self-defense. It plainly applies outside the home. We have to wait now for the court in New Jersey. At some point, I'm sure there will be a case challenging it where you'll have case law in Jersey. I don't believe you want to be the test case. But I have a high degree of confidence as to what the Supreme Court said, and the old case law in Jersey, not being able to hold up to it. Now, the other thing is, this applies to preemptively arming yourself for self-defense. But Omer says, what about a knife? Well, a knife that is carried outside the home is not necessarily carried strictly for self-defense. So, if you have a utilitarian purpose for carrying your knife, then that's fine. If you're carrying it to cut rope, open boxes, cut things at work or in your daily life, you're using it in a utilitarian way. It's a knife that is plainly appropriate for such uses is that. Then you can establish that you are within the exemption for having a manifest lawful purpose for your carrying and that was the old law. So, even pre Bruen, but post Montalvo, you could carry a knife if you had a utilitarian use for it. There are plenty of utilitarian uses for knives, as opposed to let's say, a taser or a stun gun or other type weapons like that. Those essentially have only one use, the use is self-defense. Why are you carrying a taser? You're not herding cattle with it, you know, move along doggie? No, you have it for self-defense and that was not permitted under the current case law because it was not deemed to be a manifest lawful purpose. But now, how can a court say that self-defense is not a manifest lawful purpose anymore in light of the Bruen decision? So, that's really where we're going with it, and I believe that is something that we're going to see. Case law has to address and change in Jersey. But until then, you know what the law is, but you still could end up getting charged. If you are charged, you have an excellent defense. But remember, it is New Jersey. So, beware. This is Evan

Nappen reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 33:05

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