

Gun Lawyer -- Episode 124 Transcript

SUMMARY KEYWORDS

gun, permit, firearm, exemptions, new jersey, case, defendant, carry, state, gun rights, technique, holstered, court, restrictions, carry permit, lawyer, litigation, judge, law, reeves

SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:15

Hello, I'm Evan Nappen, and welcome to Gun Lawyer. We are proud to be sponsored by the Association of New Jersey Rifle & Pistol Clubs. That's the NRA state affiliate in New Jersey. Every one of my listeners should be a member of their state association. Go to anjrpc.org to find out more. I have been thinking about a number of cases that I've had and issues that have come up, and now I'm seeing more of this. It has to do with, in a way, so many New Jerseyans finally having the right to carry, but not being completely familiar with the tips and tricks and protocols of things that are involved in carry, that aren't often covered or addressed.

Evan Nappen 01:20

I want to deal with one of the key issues when it comes to carrying your gun, and that is how do you poop with your gun? This is important. Because if you're out carrying your gun, and you gotta go, how do you handle that situation while you are carrying your gun? You might say, well, why is this important at all? Is this just being silly? Absolutely not. Because what happens is individuals, I've had many of these cases through the years, accidentally leave their gun in the bathroom. If you leave your gun on the back of the toilet or you leave your gun on the toilet paper dispenser and you forget it, guess what, you're now in a world of well, poop.

Evan Nappen 02:14

And the reason is because the gun ends up being gone from your possession. If you're fortunate, you can retrieve it. But normally what happens there is it ends up with the police, if an honest person finds it first. And that's now going to create a problem for you maintaining your license, you might be charged with criminal charges about being reckless, etc. And if somebody who's unauthorized gets a hold of it and causes a problem, then you can see that it's going to go bad for you. This is definitely a situation where you have to be extra cautious if you're carrying your gun, and you have to go to the bathroom.

Evan Nappen 03:09

So, I want to review with you some important techniques and tips about what to do and not do when you're going to do your business. Number one, and I would emphasize this, the number one thing is keeping your firearm holstered. By keeping it holstered, you are going to have less likelihood of an accidental discharge of dropping your gun, of exposing it, etc. So, keeping it holstered is the general number one rule. Plus, if it's holstered, you're less likely to forget it and that immediately maintains an

advantage by keeping it in the holster. Now I would also suggest that you never put your gun outside of your holster on top of the toilet tank or take it out and put it on the coat hanging ring. Anything like this, in which you may forget it, miss it, and end up leaving your gun.

Evan Nappen 04:42

What do we do, what can we do to help ensure this and do this in a safe way? Well, if you leave your gun in the holster and pull down your pants, well, now that gun is close to the ground, and in theory, could be seen by someone in another stall at an angle. It has been known to have folks grab under the stall and grab somebody's gun and take off. You can imagine if you're in that rather vulnerable position, sitting on the toilet, and somebody grabs your gun in the other stall and takes off, you're going to have a hard time getting your pants up and getting out of that stall and catching that person who just snatched your gun out of the holster. So, we don't want to unholster it, but you have that potential. You want to be careful of the exposure of the firearm on the floor while you're in a public bathroom.

Evan Nappen 05:50

One of the techniques you can do there is you can try to get a corner stall, and a corner stall will help at least block one side of vulnerability. If that's the side, by the way, where your gun is, it's even better. But that's one way to limit the exposure. The other tactic or technique is if you're in any of these facilities these days that have a family restroom. Normally the family restroom has a diaper changing table and as tempted as you might be to put your gun on the diaper table, don't do that. Again, you may forget it, and now it's unholstered again. But the advantage of the family restroom is you can lock that room, and it's only you in the room. Now, your vulnerability to theft of the firearm is limited, and you can maintain your privacy. So that's something to look to do if you're carrying.

Evan Nappen 07:00

Now there's also some physical techniques that can be of great service here. One is, and some folks do this, they don't pull their pants all the way down. So, if you're able to do that and still effectively take care of business, as Elvis would say, then you can use that technique. Of course, be careful that the holster doesn't have the firearm roll so that it's actually pointing upwards. You never want a firearm pointing at you or anybody else. Even if it's in a holster, you don't want it pointing. Make sure you don't have that roll happen. So, be careful with the positioning of the gun when you do this. Make sure it doesn't do that fold over.

Evan Nappen 07:51

I would say that the best technique, best trick, the number one tip for pooping with your gun, is when you pull your pants down, take your underwear on the side where the gun is and pull the underwear up and over the gun, over the butt of the gun, of your holstered gun. Now what that does is number one, it keeps the firearm from rolling and folding and falling on the ground. It stops it from scratching and scraping on the ground. It also secures it so that it is much more difficult for somebody to snatch and grab out of the holster. When the underwear acts as a stretchy cover going over the butt of the gun, that ensures its position and keeps it firmly against your leg and upright. That is actually the preferred technique, if you can believe it, is the old underwear stretch around the gun. So, experiment yourself with that and see how that technique can work for you.

Evan Nappen 09:14

But keep in mind about the dangers of leaving your gun in the bathroom and what can happen by unholstering it in a public place. You want to maintain your control at all times over the gun, even when you're going to the bathroom. You don't want to end up in a case where they're moving to revoke your license because you negligently or recklessly left your gun and some other third party got a hold of it. Then, of course, the trouble can be even more than simply a license loss. So, take that responsibility seriously. We're going to have to keep training ourselves and learning about dealing with these issues as we carry. Here we are, new to carry in New Jersey in a broad sense, and what do we need? What do the gun owners in New Jersey need? Toilet training! Oh my god, but it's still true. So, make sure you adhere to these warnings. I've seen cases where folks don't, and it is extremely regrettable.

Evan Nappen 10:42

You know, I recently got a letter, and I love sharing the letters that come in to Gun Lawyer. This letter is from Rolf, and he says regarding other firearms with a pistol brace. I'm a New Jersey resident, but I own houses in Florida and Vermont. If I register my Other Firearm with ATF, can I legally store and possess them in either my Florida or Vermont homes where registered SBRs are legal? Frankly, in the past that has been legal. I know that back when they did the federal so-called assault weapon ban and then Secretary Benson, as a kind of a warmup to that, arbitrarily declared Street Sweepers and Striker-12 shot guns to be destructive devices. Then they had a "free", free destructive device registration period where you could do basically what they're doing now with the pistol brace firearms as SBRs. It was permitted for individuals, particularly because in New Jersey, possession of a Street Sweeper or Striker-12 had recently become prohibited under the assault firearm ban of New Jersey.

Evan Nappen 12:21

So, if you had one and you had rendered it inoperable, which allowed you to possess it, ATF was still taking a position that they weren't going to register New Jersey "destructive device" shotguns such as the Street Sweeper and Striker-12, because Jersey had a prohibition on those as revolving cylinder shotguns under the assault firearm law in New Jersey, but they did allow individuals to register them and possess them out of state in homes that they had out of state as long as in the out of state home, it was legal to possess them. Many individuals that I know have registered these shotguns in Pennsylvania, in their Pennsylvania homes, even though they were New Jersey residents, because the SBR (Short Barrel Rifle) registration is a federal registration. Federal law prohibits an individual from registering a National Firearms Act prohibited firearm in a state where you can't lawfully have it under state law. But you can have it in states where it isn't prohibited by state law.

Evan Nappen 13:48

New Jersey currently prohibits SBRs. So, ATF is not going to let a New Jersey resident, at least under the law they shouldn't be letting any New Jersey resident, actually register a pistol brace gun as an SBR. Because if it is then deemed an SBR, New Jersey has no lawful way to possess an SBR. So, this idea of registering it, and storing it out of state should be viable, and you're going to need to clear that, of course, with ATF as that is what you want to do. And like I said, there's some precedent for that happening in the past, because it was done with the retroactive destructive device ruling by Secretary Benson on Street Sweepers and Striker-12s. So, that is an idea that's apparently feasible.

Evan Nappen 14:52

Now if you can't do that, you're going to need to take action over those pistol brace guns as far as the feds are concerned. You have those 120 days, and in New Jersey, the options are limited. We've discussed them on other Gun Lawyer episodes. Hopefully the litigation that's ongoing, which is massive against Biden's ban, will be successful. I know there's a number of actions, and one of them involves 25 states joining through their Attorney Generals in opposing Biden's gun ban. Half of the country opposes Biden's gun ban in federal court in this action. That just shows you how outrageous it is. So, we'll see what happens in that litigation. Hopefully, we'll have good news, and we won't have to worry about any of these things. But keep your eye on that time deadline to take action so that you don't get stuck with a problem. When we come back, I have an important case that just a couple of days ago, was decided in New Jersey, and it directly impacts folks with certain permits to carry handguns. I want to discuss this in detail. It is a very interesting case that you need to be aware of. We'll see in a few.

Speaker 3 16:35

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 17:49

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Evan Nappen 18:04

Welcome back to Gun Lawyer. I'm Evan Nappen, and I want to thank you all for being great listeners. I really appreciate it. It gives me a chance to get the word out, to be the shadow bans and algorithms and everything else as they try to suppress our speech in America. It's just amazing that I even have to say such a thing in America, but you know it's true. This is how I'm able to reach out and provide you with important information protecting our rights. Making this possible and helping to give this voice is our state association, a sponsor of this show, the Association of New Jersey Rifle & Pistol Clubs. ANJRPC. Now let me tell you about the state association. They are our lobby group for gun rights. They have a full-time paid lobbyist. But they're more than that.

Evan Nappen 19:01

They're the NRA state affiliate. They're involved in the litigation going on across the board over pistol braces and assault firearms and large capacity magazines all focused on our rights in New Jersey. They have a beautiful range, Cherry Ridge Range, shooting into the side of a mountain. It's gorgeous

up there. If you are a member of association and join with the range privileges, it's just such a beautiful place to shoot. And by being a member, you are going to get the email alerts of action. You're being advised right away as to progress in the courts and what's going on in the legislature. You also get one of the finest gun rights newsletters. The Association newsletter is a hardcopy newsletter that is dedicated to what is going on in New Jersey, directly affecting your rights, our rights and what we need to know. So, make sure you join the Association. It's really important. As a member, that's where we get power in our unity. You'll find it there at anjrpc.org.

Evan Nappen 20:21

We have a case that just came out, just decided on March 6, and it is *State (of New Jersey) v. Reeves*. This is an Appellate Division case in New Jersey. It's the appeals court in New Jersey. The case is a published opinion, but it's not what they call "published" in terms of the legal terminology of published. In other words, you can find it and read it. It's published in that regard. But it's not yet "approved for publication", meaning binding case law. When a case is approved for publication, it means that the case stands as binding law throughout the state. Nonetheless, these cases that are decided are still very important. They are very instructive. They're what we call unpublished decisions, even though they're published. I mean, leave it to the law to have such a thing as unpublished published decisions, but that's what it is. They're still utilized to address various issues that come up when there's nothing else that has dealt with the particular issues, and they are used to be very informative and such. When you argue motions and do things in the court and you want to rely upon an unpublished opinion, you can put it into your brief and into your argument. You supply a copy of it to the court.

Evan Nappen 22:02

These are accessible online through the courts in New Jersey, through the Appellate Division. You can pull this *State of New Jersey versus Shawn Reeves* case. It is Docket No. A-0921-20 if anyone wants to read it, but I want to point out some highlights in this case that show the way the court is interpreting the restrictions on restricted permits. Because we've talked about how the Carry Killer anti-Civil Rights bill is just a horror show and disgusting and an attempt by our politicians to be whining and kicking and screaming and not accepting the Bruen decision and doing anything they can to get in the way of our God given Second Amendment rights by putting this monstrosity forward, and then claiming that it's somehow in our interest. They want to keep you a victim. Make sure you stay a victim of crime and not be able to defend yourself.

Evan Nappen 23:15

But in this horrible, ridiculous law, there are actually a few pieces of gold. One of the best things of all, just the number one best thing about that law, if there is such a thing that you could actually say is good in it, is that judges have been taken out of the picture from being issuing authorities. Judges have always been the bane of our gun rights. Throughout New Jersey's history, you see how the judges have failed to protect our Second Amendment rights, and in fact, have done the opposite. They've ran an aggressive campaign against our gun rights. Under the old law, judges were the issuing authority, but under the new law they no longer are. So, that is the blessing, that is a win right there. As we proceed with our litigation, hopefully, we will cut away with surgical precision, all that bad stuff in this law, which is going quite well now in the litigation. And as we cut away all the rotten, terrible stuff, we

actually will be left with some useful provisions, not the least of which is getting judges out of the picture.

Evan Nappen 24:33

Now this case further illustrates the problem with judges issuing permits. Prior to Bruen, judges issued restricted permits. Now restricted permits no longer exist because permits, from December (2022) onward, since the new Carry Killer law was passed, are only issued by a Chief, and there's no authority or ability produce to put restrictions on. In a post-Bruen world, restrictions cannot be willy nilly and such. There are some limited restrictions that are apparently allowed under Bruen, and New Jersey has just gone nuts with identifying 25 ridiculously broad, sensitive places, and trying to restrict them in every way. And that's playing out in the litigation. But prior, you had judges that would issue restrictions on carry. Currently, you have some judges, particularly Judge Oxley out of Monmouth County right now, that have decided to add restrictions to the permit. We've talked about this restriction that imposes the exemptions of NJS 2C:39-6(g) on a carry permit holder, which is, of course, absurd, because that provision is about the transport of firearms while transporting under exemptions of 39-6. But if you have a carry permit, you're not utilizing exemptions under 39-6. The exemptions under 39-6 are for those that do not have a carry permit.

Evan Nappen 26:22

But it doesn't matter, because the judge has tied the 39-6(g) requirements of the exemptions to that permit and restricted it. What it does is it essentially guts the value of the permit by requiring that when you transport your gun that it's unloaded and either in a case, or in a closed and fastened case, or in a securely tied wrapper, or locked in the trunk of your vehicle, or in a gun box. But it's unloaded and secured in that manner. Well, when you have a carry permit, that's not how it's supposed to be. Yet by putting that on the back of the permit, it now creates this conundrum. Do I carry by way my permit? Or am I restricted by the back of the permit? Do I have to carry by 39-(g) or can I carry by way of the permit that was supposed to exempt me from exemptions? Am I bound by what the judge said and wrote on the permit and its restriction? Or am I free to carry pursuant to the permit and essentially what Bruen laid out?

Evan Nappen 27:41

The court, the Appellate Court, in New Jersey and the Reeves case said as follows. First, it says here, and I'll just read you for a little bit from the case, "Defendant Shawn Reeves appeals from his jury trial conviction for unlawful possession of a handgun and impersonating a police officer. He obtained a permit that allowed him to carry a firearm only while he was performing his duties as a private security guard. During a traffic stop, he waved a badge at the officers and stated, 'I'm an officer just like you.' Defendant was wearing a loaded firearm in a holster. He was arrested for unlawfully carrying the firearm in public beyond the scope is carry permit."

Evan Nappen 28:24

Now this impersonating an officer issue is separate, and it's not what I'm concerned with here. I am concerned with someone who had a carry permit, a carry permit that was allegedly restricted, and the restriction said that he could only have his gun while performing his duties as a private security guard. Now in this trial with these issues here, the court states in the opinion that in August of 2015 Defendant

applied for carry permit. The permitting judge construed the defendant's request as an application for permission to carry a handgun while in the employment of Visual Protection Services, while serving as an armed security guard and assigned to the City of Newark. The permit defendant received was limited to those circumstances. So, here's the limited restricted carry that was issued prior to Bruen.

Evan Nappen 29:41

Of course, now you have a trial, and the defendant was charged accordingly. Here's the part that I want you to pay particular attention to. In this trial, the judge gave the jury, as a jury instruction, the exemptions of NJS 2C:39-6(g). Oh, sound familiar, folks? That's right, the very exemption that's on the Oxley carry permit out of Monmouth County, the same one, 39-6(g). Listen to what it says here. This exemption was not requested at all by the defendant. I'll read to you directly from the case. Defendant also contends that the judge erred, that the judge made a mistake, in instructing the jury regarding the legal requirements for transporting a firearm pursuant to NJS 2C:39-6. Before trial, defendant argued that the court should not charge the jury on exemptions set forth in 39-6. Specifically, defendant argued to the trial court, and this is the court opinion quoting what was said in the trial. The court has already indicated that the court believes that the requirements of NJS 2C:39-6(g) are applicable to the case. Judge, I have yet and the State, in its brief, did not cite to any authority or any indication, any legal indication, that 2C:39-6(g) applies to defendant. As we stated in our brief, Judge, the title of 2C:39-6 is exemptions. It deals specifically -- the entire statute deals with persons that are exempt from the requirement to obtain a permit. Defendant was not such person, that's why he got a permit to carry. He is not an exempt person. That entire statute, the entirety of 39-6 applies to persons that are exempt and it talks about how they become exempt, how they stay exempt and what they have to do while they are exempt. Defendant is not an exempt person and none of that statute applies to him.

Evan Nappen 32:11

That was defense counsel for Reeves arguing to the court not to give the jury the exemptions of 39-6(g) because they did not apply here. This is a carry permit case, not an exemption for possession case. He had the permit. And guess what? The court gave the exemptions. The court said nope, too bad. We're going to make sure the jury has the exemptions as well. And guess what? The Appellate Court upholds it in Reeves, and says yes, they can consider it as the exemptions.

Evan Nappen 32:54

So, folks, think about what this case means. Think about this case and what it means in terms of any of you that have an Oxley permit, that puts 39-6(g) as a judge ordered restriction on your permit. It then becomes something, arguably, that has to be considered by the jury as to whether you were in conformance with it or not. That's right. You can read this opinion for yourself. It bodes very poorly. So, if you have such a permit, you need to take action to either get that requirement struck or to surrender your permit, and reapply and get a chief issued permit without that nonsense on it. Or wait until your permit expires, and then apply for a new permit from your chief or Superintendent. But that restriction is a problem, and the Reeves case indicates that it's even more of a problem. So, beware, folks, 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 34:33

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