

Gun Lawyer -- Episode 170 Transcript

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SPEAKERS

Speaker 3, Evan Nappen

Evan Nappen 00:00

Hi. I'm Evan Nappen, and welcome to Gun Lawyer. So, can your dog cost you your gun rights? You better believe it. You better be careful and understand some of these crazy, weird things that I constantly encounter practicing gun law in the DPR, NJ. That's the Democratic People's Republic of New Jersey, of course. I'm going to tell you about some things you need to be aware of. And, of course, we have the great Gun Owner Fuck Up of the week at the end of the show. So, you can learn on the cheap, from others' mistakes, and hopefully not repeat them. Now, one of the things that I've come into contact with, more than once, believe it or not, is the impact of having an emotional support animal, which is normally an emotional support dog. But, of course, it could be other animals. I think they can certify others. I heard someone tried to bring their emotional support horse on a plane but that didn't go well. And there is the classic emotional support alligator, but that's not really what I'm dealing with. Usually, they're emotional support dogs.

Evan Nappen 01:47

I'm sure there are people for which emotional support animals work really well. They're very important, and they seem to be effective. They seem to help greatly with a lot of folks that have various conditions, whether it's PTSD, or anxiety or whatever. I get all that. Hey, I have a dog. I love my dog. I don't have an emotional support dog. But I get a lot of joy and love out of my dog. As a matter of fact, I have an American Pit Bull Terrier, if anyone's interested, a pure breed brindle. Oh, he's just the best, and his name is Zeus. We love Zeus. Zeus is a great name for a pitbull terrier. Except, we did discover that if you're outside calling for him, your neighbors may be wondering why you're yelling for Jesus in Spanish, by saying, hey Zeus, hey Zeus. They may think you're a little crazy. But it works out. And you know, I love dogs. I love my cat. I get it.

Evan Nappen 02:58

But the problem is if you get an emotional support animal, an official, registered emotional support animal. In order to get that official registration or to have it be a medically approved type of animal, then you're going to have to have a mental health professional give you a certification. Now there's a number of folks that like to get an emotional support animal, registered and all, because there are certain protections that one can have under the American with Disabilities Act. To some degree, it is possible for some folks to have an emotional support animal and be able to have an animal in an apartment where they might not otherwise be allowed to have an animal because of the ADA regulations. I'm not

here to discuss the pros, cons or legal ins and outs of that being effective or not. But I know it's out there, and I know a number of people think about it.

Evan Nappen 04:21

The problem is if you get that certification from a mental health professional and it's a doctor or a psychiatrist, or it's emotional support for other psychiatric conditions, then what happens is you now, in New Jersey, end up having to deal with that infamous question about have you ever been treated or observed for any mental condition. An emotional support animal ends up making that a yes. And if that's a yes, now, in New Jersey, that's going to be something that they're going to weigh in whether or not you're going to get your Firearms ID Card, your pistol purchase permit, your carry permit, etc. In order to overcome that, you are going to need another doctor's letter or report or other medical proof that you're not suffering from that particular disease or disability, for which you have that emotional support animal for, in such a way that would make it unsafe for you to handle firearms. Now you've created another hurdle for you to exercise your Second Amendment rights. Some people may absolutely need that emotional support animal, and if you need it, you need it. And if it's a hurdle, then it's a hurdle. You will have to overcome it the way I said. But if it's something that you maybe could do without, safely without a problem, then maybe you should consider its impact.

Evan Nappen 05:57

Because in New Jersey, not only is it going to become something that they can then make you out to be a danger to yourself or others, public health, safety, welfare, etc, or pry further into mental health issues. And, of course, remember, the name of the game in New Jersey is trying to disenfranchise as many people as they can of their Second Amendment rights, steal guns from anyone they can take guns from, and in the general application of the law, be as harsh and unforgiving as possible, and turn law-abiding citizens into criminals. You really don't want to give them any toe in the door there to doing that to you, and creating problems that may, in fact, be unnecessary and created by yourself. So, this is something to consider.

Evan Nappen 07:00

Additionally, by the way, having a dog can cost you your gun rights. If your dog is a bad dog, and in fact, injures a person by biting them, particularly if it's happened more than once or if you've owned dogs that behave badly, then the State can claim, based on the police reports that are in the file about your dog bite incidents, that you are not a good dog owner. That you don't care and train your animal. That you're irresponsible in having a dog that causes injury to others. Therefore, not being responsible for your pet, you're not responsible to have a gun, and then utilize that to try to bar you from your exercise of your Second Amendment rights. We see these things come up. It creates fact patterns that go as far as you can imagine, on various incidents with owners of pets causing problems. So, you want to be very careful in your responsible pet ownership. You want to be careful when you go into areas where you're going to make certain findings about your mental health.

Evan Nappen 08:53

This extends, of course, beyond dogs. Unfortunately, New Jersey's mental health law in the gun laws, really does a disservice to individuals that could use some mental health help. Because of creating this problem and this bar, it creates a discouraging factor for those who might really need and want an

emotional support animal or may need in general, mental health help and want to see a psychiatrist, talk about some problems, etc. But those who know know that if you do that, you've opened yourself up to a problem on exercising your Second Amendment rights in Jersey. So, it creates a deterrence in many to doing that. Then what happens is those people that could actually use the help, they get worse until there's finally a major problem. The same with New Jersey when it comes to voluntary commitment, somebody who voluntarily commits themselves. This is not just seeing a psychiatrist or psychologist. By doing that voluntary commitment, in New Jersey, that's a per se disqualifier. You're the equivalent in New Jersey of being a convicted felon, when it comes to getting a license for a gun, because you went and got a voluntary commitment to get help.

Evan Nappen 10:35

Then the only way to relieve yourself of that voluntary commitment is by getting a mental health expungement, which is a costly legal procedure. We do them in our office, and the reason they're costly is because it takes all this legal time of actually having to litigate it to get the expungement. We do it, and we're happy to help folks to do it. But legal time is legal time and look what happens only because you wanted to get some help. New Jersey treats mental health worse than a crime. It actually makes it so that trying to get your rights restored, when you've had a mental health issue is more difficult than getting a criminal expungement. It's three times as difficult, at least, to get a mental health expungement than to get a criminal expungement. So, this whole area really needs to be examined, because it's having the opposite effect, the opposite impact, at least in terms of if someone is genuinely caring about mental health. As opposed to just wanting to put it forward as an anti-gun agenda, where they try to come up with every conceivable way to create disqualifiers, to disenfranchise as many people as they can in broad strokes, which is, of course, their actual game, and what they really want to do.

Evan Nappen 12:01

So, you know, we don't really think these laws are sincere. I just can't, after over 35 years of dealing with this idiotic garbage of what Jersey places on our rights, think that this is actually well intentioned. If it is well intentioned, well, boy, does it ever meet the famous quote about what the road is paved with. You know, good intentions and that road to hell. Jersey sure illustrates that, if that is actually what is going on, "good intentions". But I'm very skeptical that it's good intentions. When you look at the viciousness that they go after us. Their hatred of gun owners and the Second Amendment. Their absolute bigotry, bigotry, to individuals that want to be a gun owner to protect themselves and not be victims. So, this all wraps around that. As gun owners, as individuals in New Jersey, who want to protect our Second Amendment rights, you have to be aware of the games they play, and the potential downsides when you make these choices. And that's why I'm here. That's what I do. So, keep that in mind when you need to make these choices in your life and have to have these considerations. You're not going to find anybody else warning you about emotional support animals and guns, other than on Gun Lawyer, believe me, but we get those cases. So, be careful.

Evan Nappen 13:55

I've gotten a lot of really great letters, great questions, great things sent to me that I really love from the ask Evan, and some of them that I want to share with you today. Here's one, and this is from, let me find the one I want to start with here, give me one second. This one is from Brad. Brad says, good

morning, Evan, my understanding is that the Supreme Court should be using the Bruen case to determine if state's 2A laws are legitimate, justifiable and can become or remain a law. If this is the case, why is the Supreme Court not hearing and totally striking down all proposed and current so-called assault rifle and magazine bans like we have in New Jersey? In fact, I was very surprised and disappointed that the Supreme Court recently chose to not even hear these cases claiming they were somehow legitimate proposals or legitimate laws. What is your opinion Supreme Court on where the Supreme Court is going with these laws in New Jersey? Do we have hope that they will be overwritten anytime soon?

Evan Nappen 15:10

Well, yes, we do. And, Brad, I'm glad you're writing to me because you've been somewhat misinformed. You see, Brad, the Bruen case is having an amazing effect on many, many gun cases throughout the land. Remember the emergence of our Second Amendment rights and that Amendment being given teeth and power and effect and a test by the Supreme Court to test these laws is relatively new in the area of law. We finally got, after getting the trifecta, the Heller case which found the Second Amendment is an individual right, the McDonald case which applied it to the States, and then the Bruen case, which applied it to outside the home as well as inside the home. The Bruen case with the great Justice Thomas established the test for the various laws as to whether they meet Constitutional muster, whether they qualify. And that test is a form of strict scrutiny. We call it text, history and tradition. It is a burden where the Government has to show that these laws meet that test. And it's a very powerful tool. It's a hammer to smash the gun laws.

Evan Nappen 16:40

As we speak, these challenges are taking place, and they have to make their way through the lower courts to get to the higher court. Already we see the Supreme Court has accepted the bump stock case (Garland v. Cargill, Docket No. 22-915), and the Rahimi case (U.S. v. Zakey Rahimi, Docket No. 22-915). These are both Second Amendment related cases, and more cases are still bubbling up to the court. When you talk about New Jersey, well, the Association of New Jersey Rifle & Pistol Clubs, as we speak, is in Federal court litigating the very laws you asked about - the assault firearm law and the large capacity magazine law. Those are being vigorously fought right now in federal court, and we should be seeing more action and progress very shortly on those very challenges. This is why you need to be a member of the Association of New Jersey Rifle & Pistol Clubs. It's anjrpc.org. They're the group in court fighting and litigating to knock these laws out, that have burdened us in New Jersey, and that have taken rights away that are God given, Constitutional rights. It is the Association of New Jersey Rifle & Pistol Clubs that is there doing it now.

Evan Nappen 18:12

You need to be a part of that. The Association also has a full-time paid lobbyist in Trenton, keeping a watchful eye over the bills that are being proposed. Often ones we discuss here and we're able to send out alerts. The Association does that with their email blasts. They are vigilant, and it's made a difference. New Jersey is the toughest state in the country when it comes to gun laws and having to fight these outrages that they place upon us. You want to be a member of the Association of New Jersey Rifle & Pistol Clubs. Be a part of the solution. Go to their website at anjrpc.org and make sure that you're a member. When I come back, I've got some really great questions and our GOFU.

Speaker 3 19:10

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 bestselling 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, that 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 20:22

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Evan Nappen 20:40

Hey, welcome back to Gun Lawyer. This is Evan Nappen. And if you don't know me, I've been practicing gun law in New Jersey for over 35 years. I wrote that big orange book called New Jersey Gun Law. It is the Bible of New Jersey Gun Law. It's over 500 pages with 120 topics all in a question and answer format, made so that anybody can at least attempt to understand New Jersey gun laws and get a foundation in their bizarre matrix that makes it difficult otherwise to try to get a grip on it. I've tried to simplify that. I wrote this so folks could protect themselves. But it's a book used by lawyers, judges, police, and most importantly, gun owners throughout the state, and you need to have a copy. If you don't have a copy, make sure you get one. You can go to EvanNappen.com and get a copy. You'll have it within days, shipped to you. You will love this book. It is the source. And the coolest thing about my newest 25th Anniversary Edition is that it has a QR code on the front that you scan and get free updates. Email alerts from me of law changes, cases, decisions, attorney general opinions, anything. I let you know. It gives you free access to the archive of the subscriber database. You get to go in there, download the updates, look at old stuff, and make sure you're current. That is all a free resource that comes to you as the book owner. So, make sure you get a book and make sure you get on that database so you can stay on top of it. And have your own copy of New Jersey gun law. As I've warned you, one of the GOFUs with my book is lending it to anybody. Because everyone says they never get it back if you lend it. So, don't do that GOFU. Keep your book. Buy your friend his own book or tell them to buy it. But anyway, check it out. You'll be glad you did.

Evan Nappen 22:58

So, I have another question here. And this one, let me get this one here, which is really interesting, because lots of times I wonder how folks end up getting a lot of this misinformation, frankly. I'm glad they write me with these letters because they get to clear it up and that makes me happy. So, here's a letter from Jim. Jim says Hi, Evan. Thanks for all your ongoing efforts for New Jersey. I watch all your podcasts and I have your 500+ page great book. Well, thank you, Jim. Do I do still have to set up

updates? I recently listened again to the CCARE podcast, and I had a few minor questions. Number one, how big did you say the FBI Q- targets are that are used for CCARE qualification? So, you want to know the size. Okay, they're about 20 inches by 32 inches. They have the shape of the upper torso of a person and a head. And that's their size. Of course, that's a decent size, you know, a quasi-person size target, and let's face it, if you're going to defend yourself, most likely, you're going to be shooting a person, folks.

Evan Nappen 24:28

It is possible that you may have to defend yourself against an animal, and of course, you know, there's always that great debate as to what's better, a nine millimeter or a .45. How many times do we have to read that in a gun magazine? As a matter of fact, I recall that they did the gelatin test on .45 verses 9 mm, and they said that in the gelatin test the 9 mm is actually better. So, when we are attacked by the gelatin monsters from outer space, I highly recommend the 9 mm. But anyway, going back to the size and what a Q target is. That is what we're talking about, and under CCARE, that's the target you're going to be shooting into and qualifying. Then Jim asks, I assume for holster draw you bring your own holster. Well, you can bring your own holster, and you want to have a holster that meets the qualifications of a proper holster in New Jersey, which covers the frame of the firearm and, most importantly, the trigger of the firearm. It must cover it completely so that the holster meets the statutory regulation. You can bring your own holster or ranges can supply you with a holster. You can even go to a range, rent a gun and have them give you a holster that qualifies. You can do your CCARE in even that manner. So, that's not a problem. But yes, you can bring your own.

Evan Nappen 26:11

Then Jim asks, the range that I use does not permit holstered draw and shooting. Is that unusual? What is the WeShoot range policy since I want to practice for the qualification? Well, here's the deal. If your range doesn't allow holstered draw and shooting, then how are you ever going to qualify with CCARE there? You're not. When you go to WeShoot, they have specific training, and they can get you the CCARE qualification. Of course, you will draw and fire from a holster there because that's the only way you can pass CCARE because that is one of the requirements. Now the requirements when you shoot from holster draw, it's not quick draw, far from it. There's no timing with CCARE. You take your time, and you draw from the holster carefully. You put it back in the holster carefully. There is no rushing. There is no time pressure. Don't place that on yourself. This isn't fast draw Western shootout stuff. This is just being able to safely draw and reholster your gun, and you do so with care and deliberation. It's important that you go to a range where you can qualify, and in fact, shoot the CCARE course. WeShoot does that and that's where I qualified. That's where my brother qualified and where my son qualified. That's why I can say, personally, it's a fantastic place. It is a pleasure to shoot there and to belong there. They treat everyone like family. I'm not just saying that. Everyone that goes there raves about it. They love them. They are a great range. They're located in Lakewood, New Jersey, right off the parkway. So convenient. Check out WeShoot. Go to WeShoot. Don't go to some range where you can't get qualified, where you can't get your carry and other training that you need and want. WeShoot will meet your needs, and they'll bend over backwards for you. You can check out at weshootusa.com. That's their website. They have beautiful photography. They pride themselves on their photography. They have all kinds of cool events and neat stuff that they do. You'll see. You'll really love WeShoot.

Evan Nappen 29:08

Finally, the last question is how long is a PTC (permit to carry) good for? Is it re-qual renewal or rubber stamp renewal? It is good for two years. If you put in for (PTC) renewal and your CCARE, your qualification, is less than two years old, it's good for your renewal as well. But it's not "a rubber stamp". Of course, it never is in Jersey. But as far as the qualification and you're original signed off certification, that is good for and can get you at least two permits in a two year cycle. Because you're going to reapply prior to the expiration of your other PTC, the original, you'll be within that two year frame. Then finally, Jim says, thanks and what's a good number for you if I ever need it? I'll tell you what you need. My number is 732.389.8888. That's the law office number. You can call 732-389-8888. You can also go to my website at EvanNappen.com, and you'll see the contact info, the phone number, etc. You can also use the email contact form on the website. That's a popular way to get in touch these days, but whatever works for you. So, Jim, thank you so much for your letter.

Evan Nappen 30:53

I have another question here. That is one I frequently encounter, and it is a good one. And it says, this is from Michael. Michael says, hey there! So, I have a valid PTC in New Jersey, and I'm also a truck driver with a class A CDL. I'm looking to find out if I can carry in my truck while working. I am looking only at carrying in the state of New Jersey, not other states. I can't seem to find solid guidance from the FMCSA, DOT, or State Police. I believe I am okay if I stay in the state. But can you clarify, please? Thank you. Yes, I can clarify.

Evan Nappen 31:43

So, the question is, can truck drivers carry guns? The federal regulations on it, which is the Federal Motor Carrier Safety Administration, the FMCSA, oversee all the regulations that govern commercial drivers. There is no explicit prohibition on truck drivers from carrying guns under the federal rules. So, that is not really the issue at all. The issue is the jurisdiction that you're in and its rules when carrying a gun. Now your question is, what about in New Jersey? Well, in New Jersey, you can carry a gun in a motor vehicle. There was originally a prohibition on that as a "sensitive place", but thanks to the litigation of the Association of New Jersey Rifle & Pistol Clubs, in challenging the carry killer bill, which imposed the ban on carrying in motor vehicles, what we called the "Car Jacker Protection" law, that has been enjoined by the court and is not enforceable. So, you can carry in New Jersey in a motor vehicle with a New Jersey carry permit, concealed, loaded on your person.

Evan Nappen 33:15

The fact that you're a commercial driver, as far as federal law and state law goes, that's not a problem. The vehicle sensitive place is enjoined. So, that's not a problem. But if you do cross state lines, then you're subject to that jurisdiction's laws for carry. And that's important. All other rules apply. So, you can protect yourself. Now, if you are working for someone else, your employer may have rules. And if your employer says part of the job is no carrying guns, well, that's not state law. That's not federal law. That's your agreement, if you will, by working for this employer. If you violate those rules, then you can be fired you see. So, there's no protection or preemption to exercise your Second Amendment rights when it comes to the work environment. They're the company, your boss, etc., and they can have their

rules. If you don't like their rules, then don't work for them. But as far as the law is concerned, you're okay.

Evan Nappen 34:34

And look at this. I have another question here from Ken. And Ken says, I have the 25th Anniversary book, and I'm a subscriber. Well, that's good, Ken. I looked in the book, and it only addresses out-of-state purchases for pistol and rifle ammo. Can I purchase shotgun ammo out of state, like through Midway USA? The answer to that is yes, because New Jersey's law on ammunition purchase only applies to handgun ammo or ammo that can be used in a handgun. Certain rifle ammo can be used in a handgun. Under New Jersey's handgun ammunition, there has to be an electronic registration database that the seller has to do. The online sellers aren't registered through New Jersey to do that process, so that New Jersey law is not being followed by them, and you could be dragged into that mess, which I'm sure you'd like to avoid. But shotgun ammo, with the exception of .410 shotshells, is not handgun ammo. It isn't. It's shotgun ammo, and shotgun ammo is not regulated by the New Jersey statute. So, if the online seller wishes to sell you shotgun ammo and it's not handgun ammo, then that is okay. That's not covered by N.J.S. 2C:58-3.3 which is where we find the heavy regulation on handgun ammo and the handgun ammunition registration law, where you have to be put into a database in New Jersey because you purchased handgun ammunition.

Evan Nappen 36:35

Hey, folks, this week's GOFU is an important one, as they all are, of course. But this one is really clear. Make sure when you transport your firearms in cases that you have those gun cases covered. Plain view of a gun case is probable cause for a search. If there's plain view of your lockbox for your gun, plain view of your long gun transport case, plain view of that gun case if it's not covered, or in the trunk, so it's not in plain view, then you are opening up yourself for problems. I get case after case of individuals who are now having to be defended because their gun case was in plain view. When you transport your firearm, if you have like an SUV, cover your guns with a blanket or with a covering. If you have a vehicle like a sedan with a trunk, carry it in the trunk. And let me just say, even beyond guns, I always have a moving blanket in the back of my vehicle. You can go to any of these hardware stores like Harbor Freight, and they have reasonable moving blankets. They're great. Get a dark color and cover anything you're transporting in the back of your vehicle. You don't want anything there, whether it's guns or not, to be a temptation for a break in or theft. My uncle was Chief of Detectives in Atlantic County, and years ago he taught me that. Always cover your load. Always cover what you're transporting, regardless of what it is. Now, just because I happen to come from a family of bootleggers, I don't know what that means. But hey, cover what you're transporting, folks, especially when it comes to guns. Don't have a GOFU on that. This is Evan Nappen reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 39:04

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