

Gun Lawyer -- Episode 171 Transcript

SUMMARY KEYWORDS

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SPEAKERS

Speaker 3, Evan Nappen

Evan Nappen 00:00

Hi. I'm Evan Nappen, and welcome to Gun Lawyer. So, you know, I get this question a lot. People want to know. Are the Byrna guns legal in New Jersey? BYRNA. (Byrna.com) Are they legal? And some of you might say, well, what's a Byrna gun? A Byrna gun is similar to a paintball marker in effect, but it's a handgun. They do make, I believe, a rifle as well. But basically, it fires by compressed CO2, and it fires a ball that can contain OC (Oleoresin Capsicum), which is essentially the mace or pepper spray type irritant. It's launched and can be used. Basically, we call them pepper ball guns or pepper ball launchers. So, the question is, are Byrna-type pepper ball guns or pepper ball launchers Jersey legal? They're powered by air, but is it an air gun, and you get into all this stuff. And what about carrying it and using it for self-defense, etc?

Evan Nappen 01:58

When we start looking at the Jerseys laws, we see that there's one thing that the Jersey legislature specifically has said is good to go for self-defense. And that is a tear gas spray under three quarters of an ounce. So, if the container is under three quarters of an ounce and it sprays, Mace, pepper spray, tear gas, etc. Sometimes it's called tear gas, but it really isn't tear gas. Really, it's more pepper spray today, capsicum, etc., OC. If it sprays that irritant and it's under three quarters of an ounce, it's legal for you to carry that in New Jersey. Beyond the three quarters of an ounce, it becomes prohibited. The Byrna fires a pepper ball. So, it's kind of like a paintball with the substance in the paintball. So, when it hits the person, it disperses, kind of blowing up with an entire shower of the irritant. And that's the idea behind it.

Evan Nappen 03:22

So, our good friends at WeShoot, the indoor pistol range in Lakewood, wrote to the State Police (Firearms Unit) and asked them whether the Byrna pepper ball gun is in compliance with Jersey law, and they wanted to know if they could sell these devices. And what New Jersey law might have to say about that since they discharge pellets filled with pepper powder. They asked for clarification on the Byrna. The State Police (Firearms Unit) responded through their administrators for New Jersey Firearm Dealers, where you're able to request such questions. The State Police (Firearms Unit) answer is as follows. First, they sent the definition of firearm. (N.J.S. 2C:39-1f.). The definition of firearm in New Jersey is any handgun, rifle, shotgun, machine gun, automatic or semi- automatic rifle, or any gun device or instrument in the nature of a weapon from which may be fired or injected any solid projectable

ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

Evan Nappen 05:31

So, we start with that wonderfully clear definition of a firearm. And it's just so narrow and well defined in Jersey. And what the state said is as follows. The Byrna may not currently meet the definition of a firearm. May not. May not. They actually said that. I'm not kidding. It may not meet the definition of a firearm, and therefore, is not currently regulated in New Jersey. Well, I would think if it doesn't meet the definition, it wouldn't be regulated. And if it does, it would be. But here it may not be. It may not, it may not. And because of that, it's not currently regulated. Okay, well, they have stated positively that it's not currently regulated. Then they say in the affirmative, the Byrna is legal to own in New Jersey with only the OC, and inert projectiles. They are not legal to be used with solid kinetic projectiles. Dealers shall not sell solid projectable training ammo with it. This is in bold from them now. You should use due caution and be aware that it can easily be mistaken for a firearm; therefore, you should not open carry it. If used unlawfully, you may be charged with an imitation firearm. Then they go on to say. Also, keep in mind state and federal gun laws change often. The information provided above is meant to be a general guideline and should not be considered legal advice.

Evan Nappen 07:24

So, there you have the State Police position, and it's somewhat curious. They're claiming it may not meet the definition, which also could mean it might meet the definition. But they do affirmatively say it is legal to own, but the ammo that you use in it is critical. So, the OC or the pepper balls themselves with the substance or an inert projectile, meaning things that don't have the actual irritant in them. But don't use the kinetic ones, meaning the solids. Those they don't want to see. Now with that being said, it's informative to a certain degree, of course, regarding the Byrna.

Evan Nappen 08:08

The question becomes well, can I carry it for self-defense? And this is where it becomes even more tricky and vague, frankly. You know, it's a shame that we can't get absolute clarity on these questions. Well, plainly the State Police say you should not open carry it. Well, that seems to imply you can conceal carry it. At least they don't say you can't conceal carry it. They just claim you shouldn't open carry it, but they only claim you shouldn't open carry it because they don't want it to be mistaken for a firearm. Not because it's illegal to do that, but more of a danger factor for you to do it. So, it seems to imply by them that carry is okay but notice they didn't affirm or really state that individuals can carry these for self-defense. I mean that would have been really nice. A statement that just says law-abiding individual may carry this Byrna pepper ball projector for self-defense. But they didn't say that. It says you shouldn't open carry it. But they're basing that more on safety. They do say you can own it or plainly you can own it.

Evan Nappen 09:25

So, what's the deal with carry? Here's where we run into a problem in New Jersey that is really annoying because it doesn't just apply to the Byrna pistol. It also applies to, even arguably, any weapon, any weapon. Okay, firearms are licensed to carry. We're not talking about if you have a carry permit for your handgun. Basically, not that, but everything else. So, whether it's knives, tasers, stun guns, Byrnas, whatever it is, whatever other weapon of self-defense you may have. The question is, can you carry it? New Jersey's case law on this is, at the moment, clear, but I believe flawed. It's clear. And what it says is essentially, under the current case law, which is State versus Montalvo, {State of New Jersey v. Crisoforo Montalvo, New Jersey Supreme Court (2017)}, preemptively arming oneself with a weapon for use outside the home is not recognized by the court as "lawful use" under N.J.S. 2C:39-5.d.

Evan Nappen 11:08

Why is that important? That's important because N.J.S. 2C:39-5.d. is the weapons prohibition law, other weapons. And what 5.d. says is it prohibits possession of any other weapon, "under circumstances not manifestly appropriate for such lawful uses, as it may have". So, that's Jersey criminal law. And an average person reading that might say, oh, well, that's okay. Because I just want it for self-defense, which is a lawful purpose. But in Montalvo, the New Jersey Supreme Court said, no, no. We don't recognize arming oneself preemptively for going outside the home is a lawful use. Absolutely contradicting what you would intuitively think was true. It's false.

Evan Nappen 12:05

Now, with that being said, under the Bruen decision, the great Supreme Court decision with Justice Thomas's majority opinion, it says we have a Constitutional right self-defense outside the home. So, what we need in New Jersey is a new case that basically overturns Montalvo by making it clear that you can carry outside the home for self-defense and that would have to be a lawful use. Not just a lawful use, but a Constitutionally protected use as per Bruen, and therefore carrying the Byrna and tasers, knives, anything else for self-defense outside the home would be legal in New Jersey.

Evan Nappen 13:12

Now firearms have their own separate regulations. We're not talking about guns here. And also, there's certain knives and other weapons that are per se prohibited in another statute. Those would include switchblade, dagger, Dirk, stiletto, gravity knife, ballistic knife, metal knuckles, etc. Those are under a separate law that bans them, and those may or may not be covered by the Constitution. I think they are, but plainly just other weapons, which is a 39-5.d. section. That's where the Byrna would come in, and this is where we run into the problem with actually carrying it. So, this is what you have to do to beware. You have got to be careful and really not rely on what you would think is common sense to general meaning of a statute when it talks about what lawful uses. And that's where the Byrna comes in.

Evan Nappen 14:12

So, if any of you want to, if you end up being the test case, I'm sure I could defend you on it. But I cannot advise you to carry a Byrna. Because even though I believe the Constitution and Bruen and all absolutely support the position that it's a lawful use, the current status of New Jersey law says it isn't.

So, that's the risk you'd be taking. You would have to be the case that in effect, overturns the Montalvo threshold of outside the home is not a lawful use. It shows you just how screwed up it is in New Jersey. How much it's a struggle to even be able to exercise our Second Amendment rights when the court won't even recognize as a lawful use preemptively arming oneself for self-defense before leaving a home and that's with any weapon. So, that is a story on the Byrna gun.

Evan Nappen 15:36

I want to thank our good friends at WeShoot for sending that question in and getting some answer. It's also good that the State Police responded. They are the official agency empowered with making these official statements and advisories. So, it does give us something, but it doesn't make it crystal clear because of the vague provisions, and this whole body of case law that has developed in Jersey surrounding these things. But it was great that WeShoot got this information.

Evan Nappen 16:19

WeShoot is a great range in Lakewood. You can get your training there, you can get your CCARE, your certifications so you can get your carry. It's a great facility. Beautiful. Really friendly folks that treat everyone like family. I'm not kidding, they really do. Make sure you check out WeShoot. It's so convenient, right off the Parkway. They have a lot of fun events going on there, and they're very much involved with the community. They are an asset. Something that helps strengthen our Second Amendment rights by having a great organization like WeShoot and a great resource for individuals to tap into. So, check out weshootusa.com Go to their website, and you can read all about them and what things are going on there at WeShoot.

Evan Nappen 17:20

Also, I want to mention the state Association, the Association of New Jersey Rifle & Pistol Clubs. They are the defenders of our rights. They're the guys that are there in federal court fighting the assault firearm ban, so called, fighting our so-called large capacity magazine prohibition, fighting the Carry Killer bill. We are making progress, and we should see some results shortly. But they're there. They're not just words. They're not just putting out rah rah. They are there battling for us in the courts, and you need to be a part of this group. Because they're the advocacy group for our rights. It's anjrpc.org. Make sure you're a member. They also have a full time paid lobbyist in Trenton, keeping an eye on the shenanigans going on there. They send out email alerts. So, you can take action, be aware and fight. It's critical that we band together and have a great group like this, and the Association delivers. So, check out the Association of New Jersey Rifle & Pistol Clubs, anjrpc.org. You can join today and be part of the solution. Make sure you are a member.

Evan Nappen 18:46

So, here's where I will now shamelessly promote my book. New Jersey Gun Law. The 25th Anniversary edition. It has over 500 pages in a question and answer format. It explains all these topics. It explains so much, and you will be hard pressed to find this information anywhere else. If you don't have this book, you need to get it. It will save your life and save your freedom. New Jersey is treacherous, my friends. I wrote this book to aid you in navigating these treacherous, perilous waters. And, man, are they ever. If you scan the QR code on the front of the book, you get a free subscription. You get all the

updates, and you will get notices of anything new. The book stays current. Go to EvanNappen.com and get yourself a copy. You'll be glad you did. EvanNappen.com. That's my website, folks.

Evan Nappen 19:56

Now speaking of perilous waters, oh my god, you know, New Jersey is just so off the charts. Just this week I got a case with an individual where there was someone in the household who believed the person might be thinking about hurting themselves, which was not the case. But it didn't matter. They wanted to be safe, rather than sorry. You can almost understand that, right? You care about somebody, but it was just not an issue. But it didn't matter. Because once the police are called, once that person makes the call that they believe you are a danger to yourself or others, it doesn't matter whether it's true or false. The police are going to come. The slightest indication that this could be so, slightest, you are going to be taken away, and your guns are being seized. And that's what happened.

Evan Nappen 21:03

In the seizure of the guns, there were firearms that the person had that they brought from another jurisdiction, not knowing how the law is in Jersey. They're facing a whole host of incredibly serious charges. Possession of assault firearms, possession of so-called ghost guns, which are just privately made firearms, and assault firearms, oh my god, modern sporting rifles. So what? It doesn't matter. Large capacity magazines, sawed-off shotguns, which are what? They're braced pistols, of course, that they put into that category. All these charges, and every charge is just a possessory offense that New Jersey arbitrarily decided to make unlawful. Pure, arbitrary, unconstitutional bans. All these things are being challenged now as we speak, but it doesn't matter. You're still getting charged.

Evan Nappen 22:14

Here's the worst part. This person, because many of them are second degree charges, you know, just blown into extreme levels of severity. I mean, let's face it. Every one of these charges in the majority of America, the overwhelming majority of America, probably 90% of America, for that matter, none of it would be illegal. None of it. None of it. Not prohibited. Now, I know you think, but it's sawed-off, but these aren't sawed off. So, it's not prohibited to brace. We know that ATF is even enjoined from enforcing the Pistol Brace law now by a federal court. So, even on the federal side, unless you have a state that has an assault firearm ban, then that's no problem. You're allowed to make your own guns, but not in Jersey. Federal law doesn't prohibit it. Many states don't prohibit it. They're just privately made firearms. You know, large capacity, one man's large capacity magazine is another man's standard capacity magazine. So, this is just unbelievable crap that they put on people.

Evan Nappen 23:32

But here's the part man, listen to this. It destroys good people. Because you get arrested and now you get hit with the Gun Owner Gulag. Folks, you have to understand the Gun Owner Gulag. You get taken, and you're held in jail for at least 48 hours. That's just what happened here, a 48 hour hold. The prosecutor gets to decide whether to seek to detain you, meaning hold you until your trial, essentially. That's right. They can hold you another up to five business days for that hearing where they will try to argue that you need to be held without bail. Because there is no bail in New Jersey. You're either held or you're going to be let go with some type of release with no bail. And now your freedom is on the line and just think. Let me ask you, folks, can you afford seven, just seven days no less of being in jail?

Have you got nothing to do for the next seven days? While you're locked up, just trying to get out. When you haven't been convicted of a thing yet? Guilty of nothing. Held in jail for at least a week. That's the Gulag right there, and they want to keep you in there, guilty of nothing, holding you. With these gun charges, they're all second degree charges, and they push for it.

Evan Nappen 25:04

I'm going to be arguing to get my client out next week, because they had to schedule this. In the first 48 hours, there is nothing any attorney can do. Nothing. The prosecutor has sole discretion to decide whether to seek pretrial detention or not. If they do, then you're stuck. The only time when your lawyer can argue to get you out is going to be that hearing within five business days. And if your lawyer doesn't succeed in getting you out, you're going to stay in. It's just that bad. That's why it's a Gun Owner Gulag. You hear about these cashless bails in other states and all you hear is, oh, it's a revolving door, with murderers, rapists, etc. The Soros prosecutors are just letting them out, and I'm not saying they aren't. But in Jersey, that's not how it works against gun owners. Oh, no, no, no, no. Here, you're in the Gulag, man. And it takes quite a fight to get out. So, really keep that in mind. If anybody makes that call and that phone call involves your guns, anything that's a problem, you're going to pay the price. Keep it in mind. I see it all the time. It is just devastating to an individual and their family. So, beware.

Evan Nappen 26:28

I have a letter here, and this letter is from Eric. Eric says, I love the podcast. I'm a weekly listener, and somewhat new to concealed carry in Jersey. Is the printing of a firearm through a t-shirt or clothing illegal? No, printing is not illegal. Your gun has to be concealed, and it has to cover the gun. You have to have it fully concealed and carried in a proper holster. Printing is not a problem as long as it is concealed. Because printing may give an indication that you're carrying, but it's not a certainty. It may look like it to the trained eye. They may be able to readily tell whether someone has a gun or not, but printing is not a prohibition in New Jersey. That is not. You can't be charged with your gun printing. There is no such offense. Now you could be charged with open carry if you were open carrying it and shouldn't have been. If your gun was exposed and you were unaware of it for a while, you know a brief exposure, the law addresses that. That's okay. But it's de minimis if it's brief. But if you're carrying openly, that's a problem. With printing, you're still carrying concealed. You're still covered as long as that's what's going on. That's not an offense. So, that is the answer to that question.

Evan Nappen 28:10

Now here's one of our favorite segments, of course. That's the GOFU. It's GOFU time, folks. Gun Owner Fuck Up of the week. What I want to tell you about today is just one of those you gotta be kidding me but I'm not. This is serious. New Jersey has a one gun a month law. Boy, when they passed that I thought great, every one of us has to buy one gun a month. It's like the book a month club, right? No, that wasn't exactly what it was. No. What New Jersey does is prohibit individuals from buying more than one gun every 30 days. Now this, of course, is absurd in a state like New Jersey. I mean it's absurd anywhere, but here it's even more absurd, which is a new level of absurdity. Because in New Jersey, every handgun is acquired on paper with a pistol purchase permit. Many states don't require a permit to purchase, but New Jersey does. So, you're telling me individuals are going to spend all that time and money to get permits so they can get guns papered to them, papered to them, that they can

sell on the street. Yeah, right. Give me a break. One gun a month is just another hurdle placed there. Another infringement on our rights. It's a lousy, stupid law. And idiotic if you're legal to have guns. Who cares if you have more than one? You can't hold more than two. I mean, what is this? It's just silliness.

Evan Nappen 29:55

But it's not so silly when it comes down to how they enforce the law, my friends, because here's the battlefield. This is an actual case, an actual case, that we had in the firm. An individual purchased more than one handgun in a 30 day period. He purchased one handgun and then purchased the second handgun after 30 twenty-four hour periods. So, he went by hours. He went by 24 hours, and then it was more than 30 days. But if you counted the days, actual counting of days, then technically, it landed on the 30th day. You need to wait until day 31, day 31. Unfortunately, he waited only until day 30.

Evan Nappen 31:04

Now, folks, he was criminally charged and convicted of violating the one gun a month law. That's right, he lost his gun rights and became a convicted felon over this insanity. Oh, we are so much safer, that they enforced it at 30 instead of 31, by counting days instead of hours, right? I mean, you got all that. I can't even absorb all that public safety in my head. Just so much public safety because of this law. It's so worth it, right? Oh my god. What kind of stuff do we put up with in Jersey? It's outrageous. So, look, I don't want to see you be the GOFU. Do not buy more than one gun a month until that law is taken out as unconstitutional. I believe it will be, but until then that's how insane New Jersey is. You don't want to be that GOFU. This is Evan Nappen reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 32:28

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