



Exercising the Right

Man Sentenced to Seven Years in Prison for Lawfully-owned Guns

The *Philadelphia Daily News* reported on a disturbing story that should horrify every gun owner in this nation. Brian Aitken, a 25-year-old successful media consultant who was going through a separation with his wife, was in the process of selling his home in Colorado and moving to a suburban New Jersey apartment to be closer to his two-year-old son when he was arrested in an odd series of events. On January 2, 2009, Brian was visiting his parents in Mount Laurel while taking a break from moving to nearby Hoboken. After Brian's former wife canceled his scheduled visit with his son, he became distraught and said something to the effect of "life's not worth living anymore" to his mother and drove away. His mother, a trained social worker, became worried about a possible suicide risk and called 9-1-1 but hung up after having second thoughts. Law enforcement traced the call and soon arrived at the scene. The police called Brian, who was on his way to his new residence in Hoboken, and asked him to return to his parents' home because they were worried. When he returned, the cops searched his vehicle and found two handguns, both locked and unloaded as New Jersey law requires, inside the trunk, in a box stuffed into a duffel bag with clothes. Brian was arrested and, according to his attorney, the subsequent trial and conviction were the "perfect storm of injustice."

The guns were lawfully purchased by Aitken when he was a Colorado resident. He had passed an FBI background check to buy the guns from a Bass Pro shop in Denver, and he had even contacted New Jersey State Police to discuss the proper way to transport them into New Jersey. In Colorado, all Brian needed was a background check to own the guns, but in New Jersey, which has some of the strictest laws in the nation, a purchaser's permit is required to own the guns and another carry permit is required to transport them in his car. Aitken's attorney, Evan Nappen, who specializes in gun laws, told the news that Brian had a legal exemption to have the handguns in his car because he was moving from his parents' home to a residence in Hoboken.

New Jersey allows exemptions for gun owners to transport weapons if the move is for hunting purposes or if the person is relocating. Shockingly, the Superior Court judge who heard Brian's case refused to allow this statute exemption to be read to the jury. The Burlington County Prosecutor's Office and the Superior Court judge reasoned that Aitken and his legal team tried to raise the issue during closing arguments, but that it wasn't presented during the trial and therefore couldn't be considered by the jury. Nappen argued that the groundwork for the defense was laid earlier in the trial. During the trial, Aitken's mother testified that her son was moving things out, and his friend in Hoboken testified he was moving things in. A Mount Laurel officer testified that he saw boxes of dishes and clothes in the Honda Civic on the day of the arrest.

The exemption statute, according to the prosecutor's office, specifies that legal guns can be transported "while moving." Despite the testimony about his moving to Hoboken, a spokesman for the prosecutor said the evidence suggested that Aitken had moved months earlier, from Colorado to Mount Laurel. After Nappen raised the moving-exemption issue, the jury even asked the judge for the exemption statute several times, and the judge refused to hand it over to them.

After two and half days of deliberation, the jury returned a guilty verdict and Aitken was convicted and



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sentenced to seven years in prison!

His father was shocked that something like this could happen in America. “For quite some time I was pretty confident as soon as intelligent people with logical minds took a look at what happened they might slap him with a fine or something.... When the prosecutor came down with an indictment, I was dumbfounded.... This is the most normal, everyday, All-American regular kid, and for this to happen to him is a disgrace.... It’s a disgrace of society.”

Thankfully the story didn’t end there. Nappen immediately appealed the decision and the family took to grass-roots methods to raise awareness about their son. They garnered an amazing amount of support using social media with a “Free Brian Aitken” Facebook page, which was quickly embraced by gun-rights advocates. Thousands of gun owners across the nation rallied to the cause and more than 15,000 joined the Facebook group. The family also asked New Jersey Governor Chris Christie for clemency, and ABC News reported that Governor Christie gave them their wish, signing the order in December that commuted Brian’s sentence to time served.

Aitken’s father was grateful. “I am shell shocked.... The commutation is purely the governor saying how ridiculous this sentence is and it ends now.”

Nappen agreed that “this wasn’t just about gun rights, this was about a fair trial. And this really was a gross injustice.” Aitken didn’t receive a full pardon, though, because his attorney actually didn’t ask Christie for a full pardon. Nappen explained to *Reason’s* Radley Balko that a pardon would have been premature while the conviction is still being appealed. A pardon would have been a much more difficult petition to win. Nappen’s primary goal was to get Aitken out of prison and home for the holidays. Now Nappen will work to get the conviction overturned on appeal, which will hopefully have the dual effect of striking down or modifying some of New Jersey’s gun laws to prevent similar travesties of justice in the future. Nappen feels that Aitken’s chances of having the conviction overturned are good, but even if he is not successful, they can always go back and ask Christie to clear his record once he has exhausted his appeals. Nappen’s continuing legal appeal of the conviction could take six to nine months.

Even though this story had a happy ending, it should be a wake-up call to all gun owners how easy it is for local governments to intrude on a citizen’s God-given right to self-defense. Just imagine how this story would have turned out had Aitken’s family not been able to obtain the legal representation they had or utilize social media like they did.

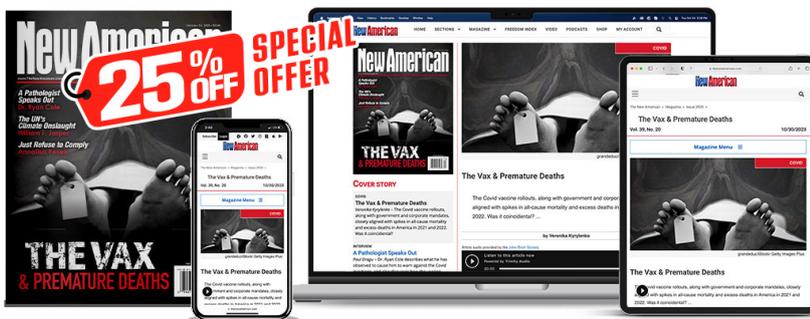


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