



Written by [James Heiser](#) on December 1, 2010

Man Jailed in New Jersey for Guns He Legally Owned

Advocates of the right to keep and bear arms have long maintained that the text of the Second Amendment to the U.S. Constitution ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.") is not that hard to understand: The right to self-defense is among the chief enumerated rights of all American citizens.



The U.S. Supreme Court took action less than six months ago to reaffirm that right in the *McDonald v. Chicago* case. [As the Washington Post observed at the time:](#)

The Second Amendment provides Americans a fundamental right to bear arms that cannot be violated by state and local governments, the Supreme Court ruled Monday in a long-sought victory for gun rights advocates.

The 5 to 4 decision does not strike down any gun-control laws, nor does it elaborate on what kind of laws would offend the Constitution. One justice predicted that an "avalanche" of lawsuits would be filed across the country asking federal judges to define the boundaries of gun ownership and government regulation.

But Justice Samuel A. Alito Jr., who wrote the opinion for the court's dominant conservatives, said: "It is clear that the Framers ... counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty."

But the case of Brian Aitken calls into question the significance of the *McDonald v. Chicago* decision. Aitken — a graduate student with no prior criminal record — is now in prison in New Jersey serving a seven-year sentence simply for owning firearms that he legally purchased.

According to the *Philadelphia Daily News*, Evan Nappen (Aitken's attorney) summarized the fate of his client as a "perfect storm of injustice" — an assessment that seems quite accurate for anyone familiar with the circumstances. [As the Daily News summarizes Aitken's plight:](#)

EVERYTHING Brian Aitken was or had worked for was wiped away one winter afternoon after his mother called the police on him.

Separated from his wife, the entrepreneur and media consultant, now 27, had moved back home to New Jersey from Colorado toward the end of 2008 to be closer to their young son.

In between jobs, his well-oiled life was running ragged, and on Jan. 2, 2009, when his ex canceled his visit with their son, he became distraught, muttered something to his mother, and left his parents' home in Mount Laurel, N.J.

"He said something that scared her, things that a guy will only say to his mom, like ... 'Life's not worth living anymore,' " said Larry Aitken, Brian's father.



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Sue Aitken, a trained social worker, decided to play it safe and called police, but she hung up before the 9-1-1 dispatcher could answer. Police traced the call and showed up anyway, and found two handguns in the trunk of Brian's car. And now Brian, her middle child, a graduate student with no prior criminal record, is serving a seven-year prison sentence for weapons charges.

What doomed Brian Aitken were differences between the Colorado and New Jersey state law, and the Garden State's anachronistic retention of gun laws similar to some of the more absurd tenets of the Brady Law. Again, in the words of the *Daily News*:

When Mount Laurel police arrived at the Aitkens' home on Jan. 2, 2009, they called Brian — who was driving to Hoboken — and asked him to return to his parents' home because they were worried. When he arrived, the cops checked his Honda Civic and, inside the trunk, in a box stuffed into a duffel bag with clothes, they found two handguns, both locked and unloaded as New Jersey law requires.

Aitken had passed an FBI background check to buy them in Colorado when he lived there, his father said, and had contacted New Jersey State Police and discussed the proper way to transport them.

"He bought them at Bass Pro Shops, for God's sake, not some guy named Tony on the street corner," his father said.

New Jersey and Colorado are on opposite ends of the gun-control spectrum. In Colorado, all he needed was the background check to own the guns.

In the Garden State, Aitken was required to have a purchaser's permit from New Jersey to own the guns and a carry permit to have them in his car.

He also was charged with having "large capacity" magazines and hollow-point bullets, which one state gun-control advocate found troubling.

"What little I can glean about the transportation issue leaves me puzzled, but a person with common sense would not be moving illegal products from one place to another by car," said Bryan Miller, executive director of CeaseFire NJ, an organization devoted to reducing gun violence.

"If Mr. Aitken did the research he said he did, he would not have hollow-point bullets and large-capacity magazines in the vehicle," Miller said. "They are illegal, period."

The restriction on ["high capacity" magazines](#) is a law that only someone ignorant of modern firearms could love. Restricting a magazine to 10 rounds, for example, simply means that to carry the same amount of ammunition one only needs to carry more loaded magazines. Most states do not have such an absurd restriction in their legal code. The state restriction on hollow point bullets also runs counter to logic and the information provided in most gun safety training courses, since the purpose of such hollow point bullets is to reduce the risk of accidental injury to bystanders; full metal jacket bullets are far more likely than hollow points to pass through the intended target and pose a danger to other individuals. In short, Aitken and other residents of Colorado would likely have been taught to carry only hollow point bullets.

According to his [website](#), Aitken had only recently moved to New Jersey, and had taken steps to comply with New Jersey law, as he had been instructed by state police. [As an article at Reason.com summarizes](#) the circumstances leading up to Aitken's arrest:

In December 2008 Aitken made a final trip back to Colorado to collect the last of his possessions,



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including the three handguns he had legally purchased in Colorado — transactions that required him to pass a federal background check. Aitken and his friend Michael Torries had found an apartment in Hoboken, and Torries accompanied Aitken to Colorado to help with the last leg of the move. According to testimony Torries later gave at Aitken's trial, before leaving Colorado Aitken researched and printed out New Jersey and federal gun laws to be sure he moved his firearms legally. Richard Gilbert, Aitken's trial attorney, says Aitken also called the New Jersey State Police to get advice on how to legally transport his guns, although Burlington County Superior Court Judge James Morley didn't allow testimony about that phone call at Aitken's trial.

New Jersey's gun laws are absurd and (in light of *McDonald v. Chicago*) possibly unconstitutional, since motor vehicles are increasingly recognized as an extension of one's home, where gun rights are concerned. However, beyond the issue of the letter of the law, is the matter of the spirit of its interpretation. A man who, by any reasonable standard, was endeavoring to adhere to the law, and was at most guilty of only a technical violation, has now been left to rot in prison for seven years.

Aitken's family has appealed to New Jersey Governor Chris Christie, asking for clemency. Constitutionlists will be watching to see whether Governor Christie will intervene and overturn this manifest injustice.



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