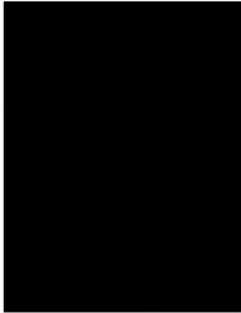
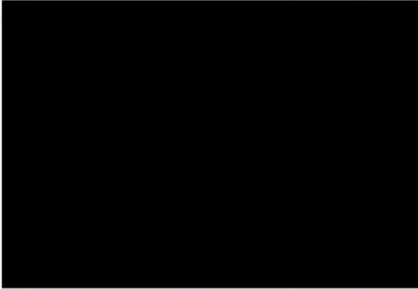
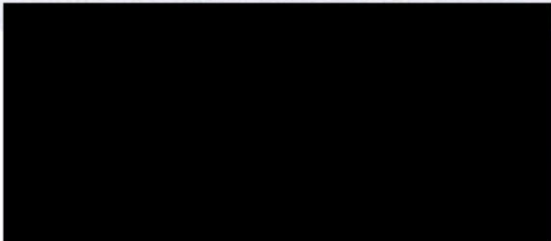


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Summary of Facts

Brian Aitken is a recently divorced 25-year-old father of one infant son and the CEO of a 14 employee internet marketing business. In the December-January 2008-2009 time frame, Brian Aitken was in the process of moving back to New Jersey from Colorado. He resided temporarily at his parents' home in Mount Laurel as he also acquired and began to occupy an apartment in Hoboken, New Jersey. On January 2, 2009, after a discussion with his parents in their Mount Laurel New Jersey home, Mr. Aitken left there, bound for his apartment in Hoboken. Shortly thereafter he was arrested by police for unlawful possession of the two handguns, large capacity ammunition magazines and hollow point ammunition he had lawfully purchased in Colorado and brought back to New Jersey during his move.

The NRA has generously helped to support the defense of his trial, which transpired in May 2010. During that trial, it was shown that Brian had lawfully purchased his firearms in Colorado, and had researched New Jersey law before moving back to this State. He had made a

final trip to Colorado in late December 2008 to retrieve his firearms and move them back to New Jersey before his Colorado house went to settlement in January 2009. Critically, witnesses testified for Brian that his car was packed with his personal possessions and he was moving his possessions between his parents' home and his new apartment in Hoboken when police ordered him to return to his parents' home and searched his car.

New Jersey Statute 2C:39-6e allows a person to possess firearms when moving between one residence and another, as long as the firearms are unloaded and locked in the trunk of the vehicle, as required by N.J.S. 2C:39-6g. Brian complied with this transportation requirement during his move between his parents' house and his new apartment. **However, the judge presiding in the case refused to read this possessory exemption to the jury despite counsel's demands and repeated requests by the jury to learn of the firearm possession exemptions.** For reasons not related to this case, the judge presiding below was not reappointed by the Governor and has since left the bench.

The Firearms Owner's Protection Act, 18 U.S.C. 926A, protects persons traveling with firearms between two locations where their firearms are lawfully possessed, if they comply with the transportation requirements. As with the New Jersey exemptions, the judge of the court below refused to read this exemption to the jury, deciding for himself that this provision did not apply and that Brian was not entitled to its protection.

#### Firearm Civil Rights Issue

#### I. THE HANDGUNS WERE LAWFULLY POSSESSED UNDER THE FIREARMS OWNER'S PROTECTION ACT (18 U.S.C. 926A), AND NEW JERSEY LAW ON TRANSPORTING FIREARMS (N.J.S. 2C:39-6).

New Jersey officers, prosecutors and judges routinely disregard the Federal Firearms Owner's Protection Act (FOPA), as well as New Jersey's own laws on lawful transportation of firearms. Interstate and intrastate travelers are routinely stopped, searched and charged with firearm offenses for otherwise lawfully possessed firearms. Here, Mr. Aitken had his handguns locked in the trunk for transportation, as required by N.J.S. 2C:39-6g, and was transporting them while moving between residences, as permitted by N.J.S. 2C:39-6e. Further, under the FOPA, Mr. Aitken's possession of the firearms were lawful at the site of origin (whether one considers

this as the interim residence at his parents' house or his prior household in Colorado from which he had just relocated the handguns), and his destination (his newly acquired apartment), and were cased and unloaded between the two destinations. Thus, his possession was protected by the FOPA, as well as New Jersey law.

This case presents an even stronger example than average of New Jersey's disregard for federal firearm rights as the judge below steadfastly refused to inform the jury of the laws protecting those traveling or moving their residence with their firearms. The actions of the trial court purposefully left the jury ignorant of the lawful circumstances under which one may possess a handgun and removed from the jury the ability to properly consider whether Brian fit those exemptions. In effect, by denying the existence of the exemptions, the court below guaranteed a conviction.

## II. THE "HOLLOW NOSE" AMMUNITION WAS LAWFULLY POSSESSED UNDER NEW JERSEY STATUTES.

New Jersey is virtually unique in restricting hollow point ammunition. N.J.S.A. 2C:39-3f prohibits the possession of hollow nose ammunition unless a person is engaged in activities such as target shooting and hunting. Further, a person may keep hollow nose ammunition at his dwelling, premises or other land owned or possessed by him and may carry the ammunition from the place of purchase to the above locations.

Arguably, such exemptions include the ability to move the hollow nose ammunition with one's firearms when moving from one residence to another. As argued in counsel's dismissal motion, one is certainly not expected to leave the ammunition in his former dwelling for the next owner to encounter. The ability to lawfully carry the ammunition from place of purchase to one's dwelling logically also encompasses moving the ammunition from one's old dwelling to one's new dwelling. However, like the above exemptions, this exemption was not presented to the jury, thus denying the jury the ability to consider whether Brian fits within the ambit of the exemptions and was in fact, not guilty of the charge.

III. MR. AITKEN WAS WRONGFULLY CONVICTED OF THE UNLAWFUL POSSESSION OF LARGE CAPACITY AMMUNITION MAGAZINES BECAUSE THE STATE FAILED TO MEET ALL THE ELEMENTS OF THE STATUTE.

N.J.S. 2C:39-1y defines a "large capacity ammunition magazine" as a box, drum, tube or other container which is capable of holding more than 15 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm.

The State presented no evidence to the jury that the magazines found in Brian's trunk were capable of continuously and directly feeding more than 15 rounds into a semi-automatic firearm. Although the officer testified that the magazines found could hold more than 15 rounds, no tests were performed on either the magazines or the firearms found with the magazines to prove that the magazines (a) operated (b) in a semi-automatic firearm, or (c) fed more than 15 rounds continuously and directly into such a firearm. The State's case was mere assumption, and no testimony actually proved the magazines properly functioned with the co-located firearms.