

Faxed to
D.a 4/23/04

**Allan Egolf - Fwd: Case cites on Firearm Forfeiture per your Request at NRA
Firearms Law Seminar**

From: Rod Corey
To: Allan Egolf
Date: 4/20/2004 2:45 PM
Subject: Fwd: Case cites on Firearm Forfeiture per your Request at NRA Firearms Law Seminar

Rep. Egolf,

I attended a Continuing Legal Education class at the NRA convention last Friday and mentioned the problem faced by your constituents (PSP failure to return stolen guns). I just received this information from Daniel Zavadil at the NRA Chief Counsel's office. It backs up my warning to Dan McGuire of the PSP (at the meeting in your office). They (PSP) are open for a federal civil rights (Section 1983) lawsuit.

Also, the PSP was going to put together language to "make the crooks pay", restitution, etc. I haven't heard from them since. Should I give them a ring? I'll wait to hear from you, hope this finds you well.

Allan Egolf - Case cites on Firearm Forfeiture per your Request at NRA Firearms Law Seminar

From: "Zavadil, Daniel" <DZavadil@nrahq.org>
To: <rcorey@pahousegop.com>
Date: 4/20/2004 2:13 PM
Subject: Case cites on Firearm Forfeiture per your Request at NRA Firearms Law Seminar

Courts throughout the nation have held that proper notice and an opportunity for a hearing must be afforded when a firearm has been seized. Failure to give proper notice and an opportunity for a hearing is a violation of due process. In such a case, a successful lawsuit may be pursued in state or federal court under 42 U.S.C. §1983. *Ford v. Turner*, 531 A.2d 233 (D.C. 1987). The imposition of a requirement of affirmative action by the property owner, including the preparation of formal pleadings, the payment of a filing fee, and subsequent participation in all the formal procedural devices of a trial court action is deemed to be unreasonable and unconstitutional. A procedure to compel the owner of property to institute an action rather than the state instituting an action is violative of due process. An action may be filed under 42 U.S. C. §1983. The successful party is entitled to attorney's fees under 42 U.S.C. §1988. *Bryte v. City of LaMesa*, 207 Cal.App.3d 687, 255 Cal.Rptr. 64 (1989). *Bryte and Ford* reached favorable results for gun owners by relying on well-established principles of law developed by the United States Supreme Court. I strongly encourage you to do some additional detailed legal research into this area of case law and how the Federal Courts in Pennsylvania have handled it. A message needs to be sent that the Police are not above the law and that constitutional freedoms have to be protected.

Additionally, ***Petition of Maglisco*, 341 Pa.Super. 525, 491 A.2d 1381 (1985)**, held that firearms not used in a crime must be returned. Furthermore, juries are instructed that an adverse inference may not be drawn from the mere possession of a firearm. *State v. Rupe*, 101 Wash.2d 664, 683 P.2d 571, 595 (1984). In addition, Pennsylvania's public policy on firearms is enunciated in its state constitution. Article I, §21 guarantees that "The right of the citizens to bear arms in defense of themselves and the State shall not be questioned." Thus, firearms are constitutionally protected property in Pennsylvania.

I hope you find this information helpful, once again, thank you for your dedication to the preservation of the Second Amendment.

Sincerely,

Daniel M. Zavadil, Esq.
Assistant General Counsel

Allan Egolf - Important - Re: A proposed Question for the PSP Appropriations hearing

From: Rod Corey
To: Craig Dally; Curt Schroder; Michael Schwoyer; Teresa Forcier
Date: 3/2/2004 2:47 PM
Subject: Important - Re: A proposed Question for the PSP Appropriations hearing
CC: Allan Egolf; Lisa Taglang; Maryanne Pelletier; Robert Greenwood

The PSP have provided the relevant portions of their policy to us (including some suggested amendments to the legislation proposed by Rep. Egolf). Therefore, the draft question for use in Appropriations Hearings is no longer needed.

>>> Michael Schwoyer 2/25/2004 3:56:40 PM >>>

This is an issue that arose with a constituent of Rep. Egolf. The constituent was the victim of a burglary in which approx. 15 firearms were stolen. The firearms were located and an arrest was made. 12 or so of the guns were photographed and returned to the victim, but two were kept for "evidentiary" purposes until the conclusion of the criminal prosecution of the guys who burglarized the house. when the victim of the burglary went to the PSP to get the remaining two guns back after the case was concluded, PSP said that the victim had to go through a licensed firearm dealer to get their guns back and that the victim would have to pay all fees associated with the firearm "transfer" The term "transfer" in the law refers to a transfer of ownership. IN this cas the PSP never owned the firearms, the merely had custody and have now ben asked to give the guns back to the rightful owner. I can certainly see checking the PSP criminal history records files to make sure that the person is lawfully permitted to own or possess the firearms, but to make them go through a federal firearm dealer at their expense to get the guns back when they were the victim of a crime amounts to "revictimization" Staff has attempted to get a copy of the PSP police on "transfer" of firearms and staff has been told we can't have it. Rep. Egolf has introduced a proposed legislative fix to this issue, but he feels it is sad that PSP has taken this position without any statutory basis for doing so. Rod Corey on legal staff has prepared the following question for Commissioner Miller on the issue of PSP refusing to give staff a copy of their policy.

Michael S. Schwoyer
 Chief Counsel
 House Judiciary Committee
 (717) 772-6946

>>> Rod Corey 2/25/2004 3:46:58 PM >>>

Okay, here we go. I wasn't sure the appropriate format, so I'll just draft it as a question to Col. Miller and let you guys work from there... Also, this is the long version. I can come up with a more succinct version, or you guys feel free to cut. It's up to you. Oh, and I asked the question, "Why are you unwilling to provide the policy?" Maybe a better question would be, "Will you provide the policy?" or "Under what statutory authority are you refusing to provide the policy?", something like that.

Col. Miller, it is my understanding that the Department has adopted a new internal policy concerning the return of stolen firearms to their lawful owner. In effect, this policy requires a lawful gun owner whose firearms have been stolen to pay both the state police and a local firearms dealer for background checks prior to the return of his firearms. As background for the other members of the committee, I will note that Rep. Egolf had constituents who are currently waiting for the PSP to return guns which were stolen from them. It is my understanding that these lawful gun owners will, under the policy, be forced to pay a combined fee of \$30 per gun to get their property back. While most of this fee is imposed by the firearms dealer, it is the PSP who have decided to implement the particular background check policy requiring the use of licensed

dealers. Rep. Egolf has prepared legislation to ameliorate this problem. It would mandate that law enforcement bear the cost of any background checks prior to returning guns to their lawful owners.

Legislative staff asked for a copy of the State Police policy concerning background checks for returning guns. This request was refused. Staff left a message, wishing to speak with Captain McHale about obtaining a copy of the policy and he never returned the call. Staff asked if the policy was available pursuant to Pennsylvania's Right to Know Law and the State Police never provided an answer. Why are the State Police unwilling to provide a copy of this policy for review by legislative staff?

>>> David Thomas 2/25/2004 3:02:07 PM >>>

Get Mike a question to ask SP about Egolf's issue at the hearing next Wednesday

ALLAN EGOLF, MEMBER

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House of Representatives

COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

To: All House Members

From: Representative Allan Egolf *AE*
Room 401 IOB

Date: February 9, 2004

Re: Amendment to Title 18

I will be introducing legislation to amend 18 Pa. C.S. 6111.1 in order to correct a recently adopted Pennsylvania State Police (PSP) policy which is having a profoundly negative impact on crime victims' rights. Perhaps the easiest explanation would be a narrative about the experience of one of my constituents.

This individual had a number of firearms stolen from his home. The police successfully captured the thieves and recovered the stolen firearms. Most of the guns were immediately returned to the owner, but a few were kept for evidence. After the thieves were convicted, the owner (victim) was notified that he could retrieve the remaining firearms pursuant to the PSP's newly enacted firearms return policy. Under this policy, the victim must go to a local gun dealer and pay a fee for a background check. If cleared, he can then retrieve his property.

The background check is not a requirement in the law, however, the law does state that the return be made if the owner is not otherwise prohibited from possessing a firearm. I understand the PSP's rationale for requiring a check, but I believe that for a victim to have to pay to have rightful property returned is adding insult to injury. Therefore, my legislation would provide that the Pennsylvania State Police or any local law enforcement agency would be responsible for any fees or charges associated with the return of stolen firearms to the rightful owner.

If you wish to co-sponsor please contact Teri Root at Troot@pahousegop.com or at 3-1593.

From: Rod Corey
To: Allan Egolf; Teri Root
Date: 2/10/2004 2:25:33 PM
Subject: Fwd: possible language

Rep. Egolf,

While on the phone with the NRA about your language (which they support fully, by the way), their attorney had some thoughts about an additional sentence, etc. Give me a call if you would like to discuss, I think there may be some merit to the attached, but there might also be a possible problem or two.

On a related note (can't remember if I asked this during our phone conversation), did Col. Miller express any willingness to order an immediate change in the PSP practice concerning return of firearms? Even if so, your legislation is still probably a good idea, but I was curious. Hope this finds you well.