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**EMINENT DOMAIN - PENNSYLVANIA**

## Frein v. Pennsylvania State Police

**United States Court of Appeals, Third Circuit - August 30, 2022 - F.4th - 2022 WL 3724097**

Parents of defendant who was convicted in connection with fatal shooting brought action against Pennsylvania State Police, district attorney, and prosecutors under § 1983, alleging that the failure to return gun seized from parents during investigation of shooting, which gun was never used at trial or on appeal, constituted a violation of Fifth Amendment's takings clause and of Second Amendment.

The United States District Court granted motion to dismiss for failure to state a claim. Parents appealed.

The Court of Appeals held that:

- Gun was pressed into public use, as could support takings claim;
- Unfavorable decision by state court on parents' motion seeking return of gun did not result in claim-preclusion bar to takings claim;
- Police and district attorney did not lawfully acquire gun using police powers, as would obviate requirement for compensation of parents pursuant to takings clause; and
- Fact that a citizen can retain or acquire another firearm does not prevent seizure of a firearm from burdening Second Amendment rights; but
- Pprocedure afforded to parents by state court, on parents' motion for return of gun under state criminal procedure rule, was sufficient to comply with due process.

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