

## 5150 Texting, Drinking & Guns Don't Match

By Joshua C. Gilliland, Esq., D4 LLC

A man was prohibited from owning fire arms and appealed the decision. The road leading up to the gun ban started on November 2, 2008...after fighting and texting with his girlfriend. *People v. Akers*, 2010 Cal. App. Unpub. LEXIS 102 (Cal. App. 4th Dist. Jan. 7, 2010).

The Petitioner, while drinking and having a history of bipolar disorder, sent his girlfriend text messages where he threatened to kill himself.



The girlfriend called the police after getting the text messages. *Akers*, at \*1.

The Police found the Petitioner walking the streets very late at night with a loaded .40-caliber handgun. *Akers*, at \*1-2.

The Petitioner was held over night in a psychiatric hospital pursuant to the California "5150" statute, which allows the police to take

someone into custody who is a danger to himself or others for up to 72 hours at a state approved mental hospital. *Akers*, at \*2. (For the 1980s music fans, the statute inspired the title to the first Van Halen album with Sammy Hagar).

The police confiscated the Petitioner's handgun...along with three other guns in his apartment.

### Johnny Get Your Guns

The Petitioner moved the court to return his guns, six weeks after being detained, claiming he was on his bipolar medication and his text messages were an "error of judgment" to get attention from his girlfriend. *Akers*, at \*4.

The Trial Court did not agree. The Trial Court found the petition to return the Moving Party's guns, being only weeks after the 5150 texting episode, as being premature to determine if it was safe for him to have four guns. *Akers*, at \*5.

The Court of Appeals upheld the Trial Court's findings. The Court of Appeals found that just not enough time had passed since the Petitioner's texts threatening suicide, him walking the streets armed with a load gun while intoxicated and the ending of his stressful relationship. *Akers*, at \*6-8.



To put it bluntly, six weeks was not enough time to give him back four guns.

## **Bow Tie Thoughts**

The key evidence alerting the Petitioner's former girlfriend and police that the Petitioner was possibly a danger to himself were his text messages. While the opinion is silent on how the text messages were collected, it most likely was with a device seizure tool or produced by the cell phone provider.

More importantly, the Court of Appeals did not simply refer to the text messages as text messages, but as "communications." *Akers*, at \*7. Seeing a Court recognize the data not merely as electronically stored information but as a communication continues the judicial recognition of our society's digital evolution.