

Episode 143-- Kirsten Englund and the Fight Against Straw Pu...

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SPEAKERS

Jon Lowy, Erin Davis, JJ Janflone, Kelly Sampson



JJ Janflone 00:08

This is the legal disclaimer where I tell you that the views thoughts and opinions shared in this podcast belong solely to our guests and hosts and not necessarily Brady or Brady's affiliates. Please note, this podcast contains discussions of violence that some people may find disturbing. It's okay. We find it disturbing too. Hi everybody. It's your host JJ. This week Kelly and I bring you a very special episode from the Red, Blue and Brady vault. We're both on vacation sadly, but gun violence in American never takes a break. To that end. This week, we bring you to a listener favorite, the heartbreaking story Kirsten Englund and her family, along with Brady fought for justice in her honor. In this episode, you're going to hear from two of Brady's amazing legal team members Jon Lowy, Brady's head counsel and vice president of legal and Senior Counsel Erin Davis. Together, they're going to tell you all about Kirsten and the suit Brady's legal team brought against the firearms dealer who via the internet and illegally sold her killer the gun used in her murder. And don't worry, we're gonna be back next week with more Red, Blue and Brady. IN today's cast, we're covering a lot of ground. Everyone wonders about how the legal work of Brady goes, why it works the way it does, and today, we are really getting into it. To do so I'm joined by Jonathan Lowe and Erin Davis ,two great people from the Brady legal team. Would you to introduce yourselves?



Jon Lowy 01:41

Sure. I'm Jon Lowy. I'm Chief Counsel and Vice President of legal here at Brady.



Erin Davis 01:48

Good morning. I am Erin Davis, and I am the Senior Counsel for trial and appellate litigation.



JJ Janflone 01:53

Which means that they are both much smarter than me. So I'm so glad that they're here this morning. We just go right into it then I really want to devote as much time as we have together.



Jon Lowy 02:03

Sure. Well, Kirsten Englund was a wonderful woman. She was the mother of two young adult sons. She loved the outdoors. She loved to hike. And in April of 2013, she was enjoying the outdoors and her family. She was visiting her two sons in college. And she was driving along the Oregon coast to visit them. And she pulled over to a scenic overlook before she was to drive up to see one of them. And she wanted to see a lighthouse, which was off the coast. And it was early morning. It was foggy. And she couldn't see the lighthouse. She saw a man at the overlook. And she went up to him and said I can't see the lighthouse. Where is the lighthouse? Is it here? And he pulled out a gun and killed her and then dragged her body into the woods and burned it. And the question is, how did a clearly deranged, troubled man have the gun that was used to kill Kirsten Englund?



JJ Janflone 03:33

And so this was this man perfect stranger to her. Just wrong place wrong time for her. So was this premeditated? Or impossible to know, just seems like random violence.



Jon Lowy 03:50

It was a man who was deeply troubled, had serious psychiatric issues and actually had been convicted of a felony a few years before for shooting at somebody's car. And then he working with his mother had had his felony expunged from his record. But he clearly was just bent on committing a number of crimes and probably going out with those crimes to his infamous credit.



JJ Janflone 04:36

And if you're if you have I've actually never heard of someone getting a felony expunged. I'm sure it happens. But if I get a felony expunged, can I then if I would have been previously banned from buying a firearm, can I now buy a firearm if my felonies expunged or is that a case by case?



Jon Lowy 04:50

You can i mean if your felony is expunged, then your record becomes clean and you can get a firearm and there are also ways that you can have your firearm rights restored, as it's called, where you've been convicted of a felony and can be able to legally buy a gun that way, in this case, it was illegal as we'll talk about.



JJ Janflone 05:15

So what brought them this case? I mean, this is a horrible case. But what brought this to your attention? What brought this to Brady's attention overall?



Jon Lowy 05:24

Well, I mean, Brady has been representing victims of gun violence for about 30 years now. And we're the only lawyers who really do this as a dedicated part of our work. It's been my privilege to litigate these sorts of cases for about 22 years now, for Brady, and people come to know that when there is a potential claim against a gun company that did something wrong, that contributed to crime, we're the people to go to, to advise them, and if there is a legitimate suit to bring it. And so we were brought into this case, and looked into it, and it certainly was one that we thought was extremely important to bring.



Erin Davis 06:18

And I would add to what Jon was saying, and that is, this is this family in particular, is a family who did not want this type of thing to happen to any other family. And they were very vocal in terms of reaching out to us and finding us and really being an active participant in the case to really make sure that this type of crime, and this type of illegal sale does not affect another family the way it affected them.



JJ Janflone 06:43

In a previous podcast, I had spoken with Kris Brown, who is head at Brady and Cordy, who's head of comms about why it's so important for survivors, families or survivors of gun violence, to be able to come forward and present their case as sort of a way for them to have some agency over the situation that they find themselves in, do you think it's sort of therapeutic for people sometimes? or I could see how it might be a little really hard for people and traumatic to go through a very legal long legal battle.



Jon Lowy 07:12

So in my experience, it's a very positive one. Because, as Aaron said, Kirsten's family is like a number of the families that we've represented and do represent where they want to have something positive come out of this horrific tragedy. And they don't want other families to suffer the way they did. And that's why they're willing and really excited about the possibility of seeking some sort of civil justice in the courts and changing the way gun companies do business. In this family they had some gun owners in them, they were not at all, you know, what some would call anti Second Amendment or anti gun, they just thought guns should be sold responsibly. And the person who killed Kirsten should not have had a gun.



JJ Janflone 08:12

So you mentioned really briefly that people sort of seek out Brady specifically for this, but I know Brady has a lot of partners, right? Was this case brought in conjunction with anyone else or any other firms?



Erin Davis 08:25

So I we had two wonderful sets of law firms who partnered with this on this case. The first was a local law firm in Oregon, where the case was brought and our attorney's, our key attorneys name on that was Tom Demore, who is a fantastic successful trial lawyer in Oregon. And the second firm that worked with us was also a wonderful firm. Their name was Cohen Milstein, and we worked very closely with them. And both of these firms were fantastic partners and really helping us achieve the great result we did in this case.



Jon Lowy 08:54

And the key lawyers at Cohn Milstein were Julie Goldsmith Riser, Grace Arola and Molly Bowen, and there were others as well. But they were all tremendous. And Brady really

relies on partners like that to bring our cases.



JJ Janflone 09:10

Yeah, I think people like me who sort of grew up on law and order don't realize that it's whole teams of people that are absolutely necessary for these cases to go forward. And Brady and its affiliates, that representation was pro bono, right? It's not that you're getting paid to to be there, as it were.



Erin Davis 09:29

That's correct. Both of this, both of these firms worked entirely on a pro bono basis and really devoted incredible amounts of time and resources to the success of this case.



Jon Lowy 09:39

And our work is pro bono as well. Yeah,



JJ Janflone 09:41

Well, I mean, that's part and parcel of being a non profit. But it's I think it's really important that I see our partners doing incredible work in this space that normally they would get paid for but because they're passionate about this issue, they devote immense time and resources to...



Jon Lowy 09:59

Yeah I'll tell you, a lot of our partners in some of their other work are very well paid. But their experience is pretty consistent in that they tend to feel that working on cases like this are they greatest experiences in their professional career or some of them and more satisfying than ones that earn them a lot of money.



JJ Janflone 10:24

So this case eventually reaches a settlement. How is that a little bit different from it may be coming to an end with a judgment is that the correct term? Again, I'm sorry, I only know law and order. I didn't go to school for this.



Jon Lowy 10:37

Well, unlike law and order, in reality, almost all cases are settled. Very few cases go to trial. I don't know the exact percentages now. But it's probably in the 90% or so cases that end up being settled. And we've had some cases that go to trial. And we thought this could well be one of them. And this case was ultimately settled. I think a few days before Erin and I were going to hop on a plane to Oregon to try the case, which we would have done and I think successfully. But it's settled, as they say on the courthouse steps shortly before trial.



JJ Janflone 11:19

And this settlement, if you look up this case, the Englund case online at all, in Oregon, it's labeled as a landmark case, and particularly because it was the first Oregon court case to hold dealers liable for online sales. Can you talk about that a little bit? What what made it a landmark case? How were dealers held liable for online sales? And then I guess and what has to go with along with that, as in how did the shooter get access to a gun if he shouldn't have patted?



Jon Lowy 11:47

So, I'll begin. First, let's talk about how this deeply troubled man who has a say had a felony conviction that had been expunged how he was able to get a gun, he went on the internet. And first he ordered a gun online. And he used his mother's name and his mother's credit card. And that gun was then shipped from the online seller who was JMG sales to a local gun dealer in Oregon. And then, a few weeks later, he ordered another gun from the same online seller. And this time, he used his own name, but he used his mother's credit card. And there are a number of indicators that gun dealers know that something bad is happening. It's an indicator that this is an unusual transaction. And it is probably if not certainly an illegal transaction. And one of those indicators is one person's buying the gun and someone else is paying for the gun that is not legal. That indicates it's a straw purchase, which means one person's buying a gun for someone else. Federal law does not allow it.



Erin Davis 13:18

And I would add to what Jon says is that it is the responsibility of a federally licensed firearms dealer, which everybody who sells guns through a shop has to be, to look for those indicators and recognize when those indicators come out and stop a sale and ask questions if they see signs that maybe indications of a straw sale.



Jon Lowy 13:41

And another thing that that gun dealers are supposed to do is alert law enforcement. If you know that a crime is being attempted and the crime is somebody illegally trying to get a lethal firearm. You're supposed to call up local law enforcement call up ATF and give them a chance to investigate. None of that happened here. What happened is we've see this all too often. These are gun dealers that were happy to take the money and hand over the guns, no questions asked. So what happened is, is with both of these gun sales, the online seller ships the guns to the local dealer in Oregon, who then transfers those guns to the killers mother, who then supplied the killer with the guns that he used.



Erin Davis 14:40

Had law enforcement been called in this case at any point. They would have discovered the fact that this individual had multiple guns and it really would have prevented Kirsten Englund's death.



JJ Janflone 14:53

I just I'd never thought about that. But if I were to say get online with my husband's credit card and buy a gun, and then to go pick it up that that is actually something that should be flagged because I know when I tried to buy groceries, if I use his card, sometimes people were like, no, it's not your name, you can't use it, at the very least, and that should also apply to a gun. I know I can't buy alcohol with it. So why can I buy a firearm? Exactly.



Jon Lowy 15:21

And sometimes you can use someone else's credit card. My kids use my credit card on Amazon all the time. And one thing that was disturbing, we heard this line in this case, we've heard in other cases where gun sellers will say, well, your kid can go on Amazon and use your account and buy books and tennis rackets and, and anything else. And of course, our response is "these people were not selling books, or tennis rackets or groceries, they were selling lethal firearms." And by the way, another gun that this killer had was an AK47 assault rifle, which he did not use to fire at Kirsten, but that was in his arsenal as well.



JJ Janflone 16:09

So a dealer should be able to know and identify a straw purchaser that's part and parcel of them being a legal dealer. But this individual just really quick because we've had this come up a number of podcasts, he could have saved and if it were today, he could have

bought it from a he could have bought a gun from someone who doesn't have to undergo background checks from an individual person to person sale because of the loophole that exists in the law, correct?

 J Jon Lowy 16:37

That's right. I mean, he could have gone to a gun show in Oregon or elsewhere or gone on to armslist.com and gotten a gun that way. But he didn't. And actually, in this case, if you got a sense of who this person was, it's clear that he wouldn't have he, he was a man who lived at home with his mother, all his life, he was not really functioning outside of the home. And he really relied on his mother for all sorts of things. And it's hard to conceive of him actually going out and buying a gun any other way than having his mother buy it for him.

 JJ Janflone 17:25

So then this was a case where it was an exceptionally clear that it was negligence on behalf of the gun dealers.

 J Jon Lowy 17:31

Yes. And and the fact is, and I think it's important to note is that most gun dealers are responsible business people, I mean that, you know, the latest stats that we have, they're old, but they're the most current is that about 5% of crime guns are sold by about or about 90% of crime guns are sold by about 5% of gun dealers, about 90% of gun dealers sell no crime guns, and these are responsible business people. And they do the right thing. You know, my sense is these are people who do call law enforcement who do identify straw sales. You know, you've got some bad actors who just aren't doing the right thing. And those are the ones that are really supplying the crime guns.

 JJ Janflone 18:19

So what then was the outcome of this case?

 J Jon Lowy 18:23

Well it was a very good outcome for the Englund family. We reached settlements with the online seller, the Oregon retail dealer, and the killer's mother, because we brought a suit against her as well. And we ultimately got a substantial financial settlement contributing

from all of those defendants. And perhaps more importantly, we got both dealers, the online dealer and the Oregon retail dealer to change the way they do business in significant ways.



JJ Janflone 19:08

How? What were some of those changes?



Jon Lowy 19:10

Well, for one, and there were some a number of concrete reforms that they that they did in updating their employee manuals, their invoice systems to identify and flag these sorts of purchases. So they changed their procedures, both online and on the ground in ways so if this sort of thing were to happen again, it wouldn't happen again. It would be stopped and the salespeople would be trained, and they would not sell or ship a gun if one person was paying for it and someone else was ordering it. And another thing which I think was of particular significance both to us and to Kirsten's sons was that the Oregon dealer, as part of the settlement put on their Facebook page, a statement, which was a statement not just about their responsibility, but the responsibility to all gun dealers that recognize what happened to Kirsten and if I could read some of it,



JJ Janflone 20:28

We love when people read aloud on the show, it allows me to live my Reading Rainbow fantasies, it's great.



Jon Lowy 20:34

So imagine this is not James Joyce or John Updike. But it but it is a this is a local Oregon gun dealer in by the way, very conservative part of Oregon many gun owners. So that, think of that because this is who they are speaking to. And on their Facebook page they wrote, "World pawn recognizes that with rights come responsibilities. In 2013, a woman named Kirsten Englund was killed with a gun transferred by World pawn. World pawn is instituting measures to do all it can to prevent tragedies like that from ever happening again. World pawn will no longer transfer firearms that have been ordered from online sellers. World pawn recognizes that that as a federally licensed firearms dealer, it has an important role to play in preventing dangerous people from obtaining firearms and keeping its community safe. World pawn recommends and encourages that all gun dealers, including online sellers, go beyond the legal minimum, to implement the safest

business practices to prevent firearms from being obtained by criminals, straw purchasers and other persons who pose a danger to themselves or others when in possession of a firearm. So they could not we could not even say it better ourselves. And



JJ Janflone 22:08

Super powerful.



Jon Lowy 22:09

Yeah. And you know, they are speaking to the gun dealing community. So that was very, very significant.



JJ Janflone 22:18

That's gonna be hard, though, if you're someone who views yourself as a responsible dealer, or views yourself as a responsible gun seller, or whatnot, to know that, in many ways, you were complicit in someone's death, that's got to be sort of very difficult internally to take on too, I would imagine.



Jon Lowy 22:36

It is. And, you know, I certainly give them credit, that they, you know, owned up to their responsibilities, as they stated in this Facebook ad. And they really showed how we can, you know, breach the divide, and the divide between those who guns are extremely important part of their lives, or their livelihood in this case. And Brady, at that divide is not very vast at all. And the fact is, we disagree about some things, but we certainly agree that guns should be sold in a responsible way to prevent dangerous people from getting them.



Erin Davis 23:19

Many responsible gun owners feel the same way they know the dangers and the risks that can come with somebody not being in the right frame of mind to be able to handle a gun. And then as a result of that, they're very on board with companies like this, who make these statements that they're going to be careful and responsible in selling their guns.



JJ Janflone 23:38

So that was obviously a very public way, then for these dealers to get out that they felt responsible. And they're almost apology to the Englund family and to Kristen herself. Why do you think it was so important for this case to be publicized or cases like this to be publicized?



Jon Lowy 23:56

Well, we need to get the message out there to the rest of the gun industry. And there are two ways that cases like this communicate that message. One of them is to the bad actors. When they read that there was a successful lawsuit and significant amount of money that was transferred to the to the victims, they realized that even if all they care about is money, it may not make financial sense for them to do the wrong thing anymore. There's a few dollars profit they're gonna make from any one gun deal. But if they have to face the prospect of a substantial if it's hundreds of 1000s, in some of our cases, millions of dollars in our ultimate settlement or judgment. We had a case that went to trial, it was a \$5.7 million judgment against a gun dealer. All of a sudden, it no longer makes financial sense. So that's one way. And another message is to those gun dealers who want to do the right thing. And that, as I said, is most gun dealers. And, and I know that when they hear about cases like this, they analyze their business practices. And they think, you know, I hadn't thought about how dangerous it is that someone can order a gun online. And I really have no idea who that person is. I just know somebody typed information on a screen somewhere. It could be a five year old, it could be a convicted felon, it could be anyone. And it could be someone who is very different, who ultimately comes into my store to pick the gun up. And so that, you know, this message with some specific reforms really informs those gun dealers and changes those practices of gun dealers all around the country.



JJ Janflone 25:59

What is it like maybe to get personal for a second for both of you? I know, Jon, you mentioned that you're in contact, you have the contact of Kirsten Englund's sons, still, and this case is old. Now it's been completed, it's over? What is it like for you to represent victims of gun violence or the surviving family members of victims of gun violence.



Jon Lowy 26:22

So there's something that I say to a lot of my clients when they bring these cases, and I told it to Kirsten's sons, and that is that every year, about 100,000, people in America are

shot, about 30 to 40,000 of them are killed. And of that 100,000, they have husbands, wives, sons, daughters, friends, co workers. So you can easily come up with over a million people every year affected in some way from a shooting, put that over 10 years, you're well into the millions of victims, and of those millions of victims every 10 years. A very small handful of them take action, to prevent other people from suffering that harm. And I do not hold it against anyone who doesn't take action. They've endured far too much already. But for those like Kirsten's family, who do go the extra mile, bring a lawsuit solely to prevent other people from suffering like they have. To me, those are the greatest American heroes I can think of. So there's, it is an honor to represent them. And, you know, personally, I can say it doesn't, they don't have to be great people, but they are. And certainly Kerstin's sons are just wonderful young men, which, of course, it was one of the consequences of the work that we're in, we never get to meet the Kirsten Englund's of the world, we just hear about them. And they do get a sense of her. Because of the sort of people her sons are. So you know, I do feel a bond with them. But also with Kirsten, in a way from how I've gotten to know her through her family, I have a picture of Kirsten, and her sons on the wall in my office with the with pictures of many of the people who've been killed, who we've represented over the years. And that's a constant reminder of why we do what we do at Brady.



JJ Janflone 28:56

if you're cool with it, and I'm going to ask you on air, so that then you have to be, I would love to take a picture of you in front of your photo wall. Because the first time I came to talk to you in your office, I couldn't help it get distracted. You just look at this giant wall of photos. And then to know that's not even what would you say like half of the people that you've represented or,



Jon Lowy 29:17

That's probably right, yes.



JJ Janflone 29:18

But also then to know that people are on that wall because of tragedy. I mean, I'm sure that you have them up there sort of reminder of what you do and why you do it. But that's, that's rough every day.



Erin Davis 29:31

It's also a reminder that with each of those pictures in each of those stories, the bravery that comes from each of those people associated with them, and also the difference that each of those people have made in making gun dealer safety and changing the landscape and the conversation of this issue. I wish I never had the opportunity to meet any of them. But given that I am in this role, they are incredibly brave, wonderful people. They have a tremendous impact on everything that that this movement stands for. And, you know, for somebody to be able while grieving and sometimes in the most horrible time of their life to come forward and be an example of somebody who can really make a difference for somebody else is really I'm incredibly, I admire them incredibly, and I find it a huge pleasure to be able to engage and work with them. And you know, it's an honor for me to do every day.



Jon Lowy 30:29

Well, whenever a case settles, a trial lawyer wants to give the arguments that they would have given a jury I had a cat for many years, who heard many closing arguments of cases that had settled, I now have a golden doodle who has heard many of them as well, he's less patient than my cat was who tend to, as cats do sit on the couch and listen to the whole thing. And what I was hoping to tell a jury in Coos Bay, Oregon if this case had not settled is that Kirsten Englund, when she asked to see that lighthouse, never saw it. Her life was ended before the fog broke. And what is a lighthouse? Ladies and gentlemen, the lighthouse is a beacon that leads us to safety. To leads us away from rocky shores, members of the jury, and really all of us. We are the lighthouse. We are the ones who will lead this country to safety.



JJ Janflone 31:44

Oh, wow. Now I see why your cat just listened to the attention. That's really good.



Jon Lowy 31:50

I think that's one that even my golden doodle would have remained to listen to.



JJ Janflone 31:57

Golden doodle seal of approval. Hey, want to share with the podcast? Listeners can now get in touch with us here at Red, Blue, and Brady via phone or text message! Simply call or text us at (480) 744-3452 with your thoughts, questions, concerns, ideas, whatever! Kelly and I are standing by.



Kelly Sampson 32:20

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