

[Boom! Lawyered: If You're a Rapper, Your Lyrics Can Send You to Jail](#)

Imani Gandy: Hello, fellow Law nerds. Welcome to another episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that is not going to be discussing the Mueller Report today so you will have some reprieve from the madness.

I'm Imani Gandy.

Jessica Pieklo: and I'm Jess Pieklo. Rewire.News is dedicated to bringing you the best reproductive rights and social justice news, commentary, and analysis on the web and the #TeamLegal podcast is part of that mission. So a big thank you to our subscribers and a welcome to our new listeners.

Imani Gandy: Today we're going to talk about the case of Jamal Knox. He's a young rapper who was sent to jail because a couple of cops in Pennsylvania heard one of his songs and got all nervous about it. He was charged and convicted for making terroristic threats and witness intimidation. The Pennsylvania Supreme Court upheld his conviction by concluding that he had a specific intent to threaten two police officers with his rap lyrics.

Jessica Pieklo: The Supreme Court refused to take up Jamal's case this week, even though it presented a great question for the court to answer. And that is, when are words true threats and when are they protected free speech? And that's exactly what we're going to talk about in this episode. True threats, free speech, and how, weirdly enough, those issues always seem to work out to benefit white Christian patriarchy.

Imani Gandy: Funny how that works.

Jessica Pieklo: Funny.

Okay, Imani, I'm excited to dive into this episode because it's a nice meaty one. But where do we begin? There's a lot to talk about here.

Imani Gandy: Well, I'm going to begin by asking you a question.

Jessica Pieklo: Okay.

Imani Gandy: Did you ever in your entire life think that you'd be reading a Supreme Court brief filed by Chance the Rapper and Killer Mike on the history of hip hop?

Jessica Pieklo: What a time to be alive, Imani, what a time.

Imani Gandy: Indeed. I mean, I have to say I was ... I loved reading that brief and I found the sort of history that they laid out about hip hop to be absolutely fascinating.

Jessica Pieklo: Yes, it was. Absolutely. And we can put a link to the brief up on the episode page because honestly I encourage listeners to take a look at it, not only just because it's so well written, but because this case in this episode is not just about rap and free speech, it's really about more weaponizing of the First Amendment, right?

Imani Gandy: Right. And that's something that we've been hammering for 50 episodes or so now. So, let's get into this. Let's get into this. Why does this ... let's talk about why this case matters to our listeners. Why does it matter to people?

Jessica Pieklo: Okay, so the First Amendment doesn't protect all speech, right? We have exceptions. We have exceptions for things like libel, exceptions for incitement, obscenity, fighting words, and another one for true threats, which is what's at issue in Knox's case.

Imani Gandy: So I think the first issue that we need to address is what exactly is a true threat?

Jessica Pieklo: Yeah, good idea.

Imani Gandy: So let me just break that down a little bit. True threats are not protected by the First Amendment. According to the Supreme Court, the speaker need not actually intend to carry out the threat. Rather, the prohibition on true threats, quote, "Protects individuals from the fear of violence," and quote, "From the disruption that fear engenders." In addition to protecting people from quote, "The possibility that the threatened violence will actually occur." That's what the Supreme Court said in a case called Virginia v. Black. That case was about whether or not a Virginia statute banning cross burning was constitutional or not. The issue was whether or not cross burning in and of itself was evidence of an intent to intimidate or whether it was an expression of shared ideology, and therefore protected under the First Amendment as speech.

So the question is, is cross burning ipso facto a threat or is it an expression of the KKK shared ideology and therefore protected under the First Amendment? Now remarkably, Clarence Thomas sided with Virginia. He actually said that cross burning should not be protected by the First Amendment. He likened it to Rehnquist saying that flag burning shouldn't be protected by the First Amendment.

Jessica Pieklo: I'm a little shocked.

Imani Gandy: Right?

Jessica Pieklo: What's going on here? Can you explain this to me? How? What?

Imani Gandy: The fact that Thomas took the right side on a racial issue is always mind boggling to me because he is routinely on the wrong side when it comes to racial issues. But what he said is, "This statute," this is the Virginia Cross burning

statute. "This statute prohibits only conduct, not expression, and just as one cannot burn down someone's house to make a political point and then seek refuge in the First Amendment, those who hate cannot terrorize and intimidate to make their point."

Jessica Pieklo: He's right.

Imani Gandy: He's absolutely right.

Jessica Pieklo: The thing is with these speech and conduct cases is they're messy and I am not personally comfortable with this idea of super bright lines and, particularly, a court declaring one thing is or is not. But we also have moments in our history and certain things that do just carry weight and that is the context that matters in legal analysis and holy shit, I love to see that.

Imani Gandy: Right.

Jessica Pieklo: That was amazing.

Imani Gandy: Exactly. Exactly.

Jessica Pieklo: And so ... so I just mentioned that the Supreme Court really hasn't given any clear guidance on how to tell when a threat and when conduct and speech like that is a crime. And not surprisingly, when the courts have waded into these issues, they've almost always come down on the side of white folks and evangelicals.

Imani Gandy: I, for one, am shocked, to hear you say that, Jessica.

Jessica Pieklo: I know. It is, it's weird.

Imani Gandy: It's really, really shocking.

Jessica Pieklo: And I think the Knox case is a really excellent example of that. So how about we start talking about that and let's get folks caught up. What's happened? What happened with Knox?

Imani Gandy: Jamal Knox was arrested in 2012 on gun and drug charges. After his arrest, Knox, who performs under the name quote, "Mayhem Mal" wrote and recorded a song with another rapper who calls himself Soulja Beaz. And the song was called Fuck the Police. Now the song, for anyone who has even the basis familiarity with hip hop, was obviously an homage to the 1988 NWA song, that's Niggas With Attitude, for you white folks who don't know ... the NWA song called Fuck tha Police. And so Jess, why don't you give us a little bit of what this song was? Why don't you give us ... drop a hot 16 for our listeners.

Jessica Pieklo: I'm going to give my best Carl Kasell on this right now. These are some of the lyrics that got Knox arrested, folks. Alright? "If y'all want beef, we can beef. I got artillery to shake the motherfucking streets. If y'all want beef, we can beef. I got artillery to shake the motherfucking streets. You dirty bitches won't keep knocking my riches. This ghetto superstar committee ain't wit it. Fuck the police. You dirty bitches won't keep knocking my riches. This ghetto superstar committee ain't wit it. Fuck the police."

Imani Gandy: [laughing] I love you to death, Jess, but that was literally the whitest shit I've ever heard in my entire life.

Jessica Pieklo: I tried really hard.

Imani Gandy: It was really good. It was really good, but also super white and I love you for it.

Jessica Pieklo: I am who I am.

Imani Gandy: So the song, part of which Jess so artfully read, was uploaded to Facebook and YouTube by a third party. It included the names of the two Pittsburgh police officers who arrested them and were scheduled to testify in the drug and gun case against these two rappers. Now those officers became fearful when they heard this song on Facebook. One of the officers actually cited it as one of the reasons he decided to leave the Pittsburgh Police Force and move. The other officer said that the song was quote, "Very upsetting and made him concerned for his safety and the safety of his fellow officers and his family."

Jessica Pieklo: I mean that's some white panic right there, Imani. You move?

Imani Gandy: He heard a rap song, and he fucking moved.

Jessica Pieklo: He fled. He's out. He's out.

Imani Gandy: So absurd.

Jessica Pieklo: After being on the force for how long? And it's a song. You're like, "Nope, that's it. This is it. I'm out."

Imani Gandy: Yeah. But Jess, just to his credit, the song did feature a lot of sirens and gunfire and it had lyrics like quote, "Let's kill these cops because they don't do us no good."

Jessica Pieklo: Okay. So I mean a lot of rap songs include the sounds of sirens and gunfire, right? Those are effects. And I mean, I don't know. I've already established my whiteness here, but I mean ...

Imani Gandy: No, you're not wrong. There are a lot of songs that include sounds of sirens and gunfire. Pew, pew, pew, pew. Pew, pew, pew, pew. That's one, that's just an air

horn. They have police siren. Ra-ta-ta-ta. Ra-ta-ta-ta. That's the sound of gunfire. One can imagine that in a rap song. Yes, that happens.

Jessica Pieklo: So what the hell is going on here?

Imani Gandy: It beats me, really. But it was certainly enough for prosecutors to charge Knox with issuing terroristic threats and intimidating witnesses.

Jessica Pieklo: Oh, good grief.

Imani Gandy: Yeah, exactly. So Knox said, "It's just the song, man. And it's protected by First Amendment free speech." But the cops testified that the song made them very scared and very nervous. So Knox was convicted, and the Pennsylvania Supreme Court affirmed his conviction, largely based on the printed lyrics of the song.

Here's what Chief Justice Thomas G Saylor of the Pennsylvania Supreme Court said. Quote, "The song's lyrics express hatred towards the Pittsburgh Police. As well, they contain descriptions of killing police informants and police officers." He added, "They do not include political, social, or academic commentary, nor are they facially satirical or ironic."

Jessica Pieklo: I'm kind of speechless here.

Imani Gandy: Mm-hmm (affirmative). Just a little bit.

Jessica Pieklo: Sure, the lyrics express hatred to the Pittsburgh Police.

Imani Gandy: Yeah.

Jessica Pieklo: So the fuck what?

Imani Gandy: Right. Exactly.

Jessica Pieklo: That is not particularly helpful. And like we've said, the Supreme Court hasn't really cleared up the question of when something is a true threat and thus not protected speech. And it has offered some guidance and it's suggested that there are two things that are needed to make a statement a threat.

One, the speaker has to have some kind of intent to make a threat. And two, a reasonable listener would have to understand that statement to be a threat. So it's a calculation. We have an intent to threaten, plus a reasonable person feeling threatened. That's the law at issue, right? But Imani, what's this case really about? Since we're talking about rap lyrics and police being scared. That can't be it.

Imani Gandy: No, the case is ... here's what's going on. This case shows us that the developing test about what is or is not a true threat is garbage, and it will always benefit white folks and the religious right.

Jessica Pieklo: I mean, I think that's pretty fair. I am still trying to wrap my head around how anybody could conclude that it was reasonable that veterans of the Pittsburgh Police Force would feel threatened by these lyrics on Facebook by a kid. I mean, Knox was a 19 year old rapper. He's emulating folks, right? This isn't difficult to see, but here we are.

Imani Gandy: Right, and it is difficult to see for a lot of white folks, but we're going to get into that a little later. But first, I know that you have some things to say about what you also think this case is about in terms of white Christian patriarchy. So let's hear it. Give it to our listeners.

Jessica Pieklo: I appreciate you sort of tossing me the mic on this because it's would be impossible for me to talk about true threats and not talk about the Angel Dillard case. And this case is amazing. So let's get folks caught up because it's been a little while.

Do you remember Dr. Mila Means, Imani? She was the Wichita provider who was going to step in and start offering abortions after Dr. George Tiller was murdered by Scott Roeder.

Imani Gandy: I do remember that. I also remember that trying to become an abortion provider in Wichita is fraught with peril and death threats.

Jessica Pieklo: Yeah, so I'll give folks a little sample of what that looks like. In 2011 when this was going on, Dr. Means got a letter from a woman by the name of Angel Dillard, and that letter warned Means that if she started providing abortions in Wichita, thousands of people across the country would be looking into her background to learn her habits and routines. And the letter said that Means would be checking under her car every day for explosives. Nice lady.

Imani Gandy: Yes, she seems like a real peach.

Jessica Pieklo: That letter attracted the attention of the Department of Justice, which sued Dillard under the Freedom of Access to Clinic Entrances Act. That's the FACE Act, the federal law that protects access to abortion and is designed to prevent intimidation of providers and patients. So they filed a civil claim, not a criminal claim. They sued her under that.

Now a couple of notes about Dillard. She was friends with Scott Roeder, the man who murdered Dr. Tiller.

Imani Gandy: Of course she was.

Jessica Pieklo: She sought him out. She visited him in jail and then started sending letters to Means. And the Department of Justice actually tried to get those communications entered into evidence, but the judge had determined that Dillard was acting, and this is one of my favorite parts of this story, as a minister to rotor in jail. So therefore those communications between the two were protected by ministerial privilege. That is, they never came into evidence.

Imani Gandy: Is she even a minister?

Jessica Pieklo: Well, she was for this purposes. Her and her husband, conveniently enough, set up a prison ministry to start doing all of this.

Imani Gandy: Oh, that's nice.

Jessica Pieklo: And, you know who their only client was?

Imani Gandy: Scott Roeder, I'm sure.

Jessica Pieklo: Scot Roeder.

Imani Gandy: Yeah. Yeah.

Jessica Pieklo: So I actually was in Wichita for Dillard's trial and it was, it gets more bananas.

Imani Gandy: I remember that.

Jessica Pieklo: Oh my gosh. It was more bananas. So first the good news, the jury found that that letter technically constituted a threat, that that was a real threat. And in Wichita, hey, that's good, right? That should be good news.

Imani Gandy: Right.

Jessica Pieklo: Except, and this is where I think this case is interesting, really in the context of how First Amendment Law really works. So the jury found that it was a threat, and that there was the intent to threaten. Remember how I said there was this calculation? The jury also found that it was reasonable for Means to feel threatened given the reference that the letter had to Tiller's murder, the car bomb mention, all of that. Okay. So good news, we got the calculation right.

Except the jury then said, "No, those threats weren't actually enough for the Department of Justice to get any damages, to reward anything to Dr. Means for her fear, for her not moving forward with her practice. And that's because they weren't real threats. They were spiritual threats.

Imani Gandy: Oh, for fucks sake. You've got to be kidding me.

Jessica Pieklo: Right?

Imani Gandy: What is a spiritual threat?

Jessica Pieklo: Apparently Dillard's evangelical Christianity includes this big angry, vengeful god. And her attorney told jurors during closing argument that Dillard as a woman with strong beliefs uses strong words to persuade others. So sure she was threatening Means, but she was really threatening her spiritual salvation, not her time here on earth.

Imani Gandy: That is the biggest load of horse shit I've ever heard in my entire life. I mean ...

Jessica Pieklo: Yeah. Yeah. I interviewed one of the jurors afterwards, and this is what he told me. He said the letter was intimidating, but it was more a spiritual threat, a more emotional threat. It was not a threat of physical violence and therefore it didn't violate the law.

Imani Gandy: But she literally said, "You're going to have to have to check under your car for bombs and explosives." How is that ... a spiritual threat would be like, I don't know, "You're going to have to check under your car for holy water," or something, not bombs and explosive things that can actually kill you. What the fuck?

Jessica Pieklo: And that's one of the reasons why I was excited to talk about the Knox case and to talk about true threats and free speech because we have this test that the court has laid out and it sounds like it could be kind of reasonable, except when we start talking about the cases and its sort of application in real life, right?

Imani Gandy: Right. And that's exactly what's my concern about this particular case because as you said, juries and judges are willing to give a pass to essentially domestic terrorists, these anti-choicers who think that murdering doctors and blowing up clinics is some sort of spiritual revolution. But this Knox case is also about the unbearable whiteness of the judiciary and white people essentially refusing to reckon with black culture and the way in which hip hop is actually poetry. The Pennsylvania Supreme Court stripped the meaning and context from the rap lyrics and then presented them as if they were some sort of diary or a manifesto. The court's ruling is rife with these sorts of misunderstandings and the cultural bias that has plagued hip hop as white audiences and critics try to understand and often frequently fail to understand the medium.

The court acknowledges that rap and other art forms frequently depict violence that as they say, quote, "Cannot reasonably be understood as a sincere expression of the singer's intent to engage in real world violence." But then went on to categorize this rap song as quote, "Of a different nature and quality, noting that the words themselves are not the only component of Knox's expressive conduct, which tends to make the song threatening, the soundtrack includes bullhorns, police sirens, and machine gun fire ringing out over the words, quote, 'Bustin' heavy metal.'"

Jessica Pieklo: I mean, this is why it's so interesting to me to take this case with the Dillard case, because here you have a court going out of its way to sort of strip context and meaning and then apply a malicious intent. And in the Dillard case, you have the jury literally coming to the conclusion that she violated the law, but then still find a way to exonerate her. So I mean, this isn't about the actual substance of the content at issue, right? It's about who's speaking and who we feel sympathetic for.

Imani Gandy: Absolutely. And it's also very outcome driven, right? This jury wanted to let Dillard have this sort of benefit of the doubt. "Oh, she wasn't really trying to threaten someone. It was an emotional threat." Just as this Pennsylvania Supreme Court was unwilling to give Knox and Beasley the benefit of the doubt that their rap song was merely an expression of their rage at the police, their rage at racism and white supremacy. And back to this amazing amicus brief that Killer Mike and Chance the Rapper ... well, they didn't write it themselves because that's not usually how it works, but their names are on it and they signed off on it. I think that's pretty a big, huge deal and I think it's fascinating, but here's what was written in there amicus brief.

Quote, "Viewing the lyrics in their proper context is vital. Like all poets, rappers use figurative language, relying on a full range of literary devices such as simile and metaphor. Rappers also, in the tradition of African American vernacular, invent new words, invert the meaning of other words, and lace their lyrics with dense slang and coded references that defy easy interpretation, especially among listeners unfamiliar with the genre," white people. "Furthermore, rappers famously rely on exaggeration and hyperbole as they craft the larger than life characters that have entertained fans and offended critics for decades."

So this is one of a series of cases where rap lyrics and gangster rap lyrics in particular, are being used as evidence of violent intent when they have not necessarily been able to prove that the person spitting those lyrics had any violent intent, right? So the irony is that gangster rap is and has been a way for black people to express their frustration with white supremacy, with racism, with police violence, with all of the sort of forces that converge to essentially keep black people in their place.

And frankly it is hip hop and gangster rap and these sorts of lyrics that prevent black people from just going ham on white people, right? I mean if there is any group of people in this country that has a right to just rise up and fuck shit up, it's black people. And I think part of the reason why we don't do that is because we are able to express ourselves through art. We are able to form a community with one another around this art and to vent our pain through hip hop. And so to have white jurists, white judges ignore all of that context is not ... it's just very frustrating and it's also racist, frankly.

Jessica Pieklo: Yeah.

Imani Gandy: So there was an article that a couple of professors name Charis Kubrin and Erik Nielson wrote. The article is called Rap on Trial, and in this article they point out that this phenomenon is on the rise, this phenomenon of using the lyrics of rappers. Of hip hop artists against them in some sort of court context that happens quite frequently. And they also point out, and this is really rather alarming, that prosecution training manuals actually recommend using rap lyrics as potentially inculpatory evidence, right? So that means they are looking at the art that people are creating and using that as evidence of some sort of violent intent in order to convict them of crimes. And you know what, they don't do this with other kinds of music, do they Jess?

Jessica Pieklo: No, they don't. This is bananas. As I was listening to you and stammering to jump in, all I could think of was I wonder how many of those jurors got in their cars and threw in some Johnny Cash on the way home and listened to, "I shot a man in Reno just to watch him die."

Imani Gandy: Right.

Jessica Pieklo: Listeners know I unironically love country music. I am here for country music. I love it. And there is an entire brand to country music called outlaw country music that is violent as hell. And what? So it is just, it proves this point so completely and you don't have to take my word for it. There was even a study, and this is from the Harvard Law review, printed an article about the Knox case that we grabbed this where participants were asked to read violent lyrics from country and folk music songs and some participants were told that those lyrics were from rap songs. Others were told they were from country and folk songs. Imani, can you guess what happened?

Imani Gandy: I'm going to go with the people who thought the lyrics were from rap songs thought that those lyrics who were super offensive, moreso than if they thought they were from country songs.

Jessica Pieklo: 1000%. Participants who were told the lyrics were rap rated the lyrics as more offensive, literal, and in need of regulation. Amazing.

Imani Gandy: Ah, racism. It's so fun and so innovating.

Jessica Pieklo: So that was a pretty law heavy episode.

Imani Gandy: Just a little bit. Also we got to listen to you read gangster rap lyrics, which is really going to be the highlight of my month.

Jessica Pieklo: We should probably recap, not with me reading gangster rap lyrics though.

Imani Gandy: I mean, I wouldn't mind honestly. We've got the whole song right here. We can just release that as a deep cut.

Jessica Pieklo: True threats law is a mess. It's a mess, right? I think that's what we've established so far. The Supreme Court has given us this muddled test that says the speaker must display an intent to threaten and that a reasonable listener would feel threatened. And from there the courts have only really made it worse in implementing it.

Imani Gandy: Right. And there are dozens of statutes making it a crime to issue various kinds of threats, right? In the decade ending in 2014, some 1500 people were charged with making threatening communications under federal law according to a brief that was filed supporting Jamal Knox filed by the National Association of Criminal Defense Lawyers. Prosecutors have wide discretion in who they charge and under what circumstances and that discretion plus the white supremacy that's already baked into the courts, is a recipe for disaster. And so the United States Supreme Court, by refusing to take up Knox's appeal and to take another look at what the Pennsylvania Supreme Court did in his case, just ensures that the concept of true threat will remain muddled, that it will remain confusing, that judges and juries will be able to bring in their own biases in order to make decisions about who gets charged with terroristic intimidation or witness intimidation and who doesn't. And they missed a real opportunity to clarify the law in this area and to make sure, at least to try to get some of the bias and white supremacists nonsense out of this very important First Amendment issue.

Jessica Pieklo: Absolutely. And I'm rarely like, "Go Supreme Court. Take a case on an issue that I like at this moment in time." But also the fact that Clarence Thomas got it right. One suggests that this isn't totally an area that they could have screwed up so significantly. I mean, look, they can always rise to the occasion, but I'm just saying at this moment in time they didn't ... and I agree with you that it was a missed opportunity for some clarity and in the interim we're going to unfortunately see a lot of folks get caught up in a criminal justice system for some frankly really ridiculous stuff, like a 19 year old kid posting stuff on Facebook. Be careful what you post on Facebook, Christ.

Imani Gandy: Yeah, be careful what you post on Facebook and I guess if you're going to be a gangster rapper, don't commit crime, because it might come back to bite. I mean, I don't know. None of this makes sense and it certainly doesn't seem fair, but here we are.

Jessica Pieklo: No. Well, the good news, listeners, is that it's okay for even folks like us to be confused. So if you're confused by all of it, welcome! It's a mess.

Imani Gandy: Join the party. All of us fellow law nerds, we're all fricking confused. And on that note, we're going to wrap it up. If you want to continue this conversation, if you'd like to hear Jessica read more rap lyrics, you can find her on Twitter @hegemommy, H-E-G-E-M-O-M-M-Y. You can find me @angryblacklady. I also will read you rap lyrics and probably will do about as good a job as Jess, so I probably shouldn't be throwing my blackness around here to be honest. If you want to follow Rewire.News on Twitter, you can follow at @Rewire_News, and

you should also join our Facebook group. We have cracked 1000 members. There are people having really amazing conversations in there.

Jessica Pieklo: It's a community.

Imani Gandy: Join, answer the question why you like us and we will let you write in. Other than that, we're going to go ahead and see you on the tubes.

Jessica Pieklo: See on the tubes.

Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. This episode was produced by Marc Faletti, who is also our executive producer and the Rewire.News Editor in Chief is Jodi Jacobson.