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**“Rap Music on Trial”: Examining the Consequences of Rap Lyrics Being Admissible at Trial**

**Malik Stewart\***

In Maryland, an artist was sentenced to fifty years in prison based upon a single witness testimony and a rap verse uploaded to Instagram.<sup>1</sup> Upon appeal, Maryland’s highest court affirmed the conviction and ruled that rap lyrics are admissible as evidence of a defendant’s guilt because the danger of undue prejudice does not outweigh the probative value of the lyrics.<sup>2</sup> The use of rap lyrics as evidence against criminal defendants is problematic in a plethora of ways, but most notably: it is an encroachment on the artist’s creative freedom, it has the potential to activate bias in jurors, and rap is being targeted.

Historically, rap music has had an adversarial relationship with the criminal justice system.<sup>3</sup> The evolution of Gangster Rap in the early 1990s escalated the relationship as rappers demonstrated an active resistance to the powers that be.<sup>4</sup> Groups like N.W.A were loud and abrasive in their criticism of the police and the criminal justice system.<sup>5</sup> One-sided media coverage of the political resistance happening within rap led to fear, prejudice and blame for society’s ills.<sup>6</sup> J.D. Candidate, May 2023, Saint Louis University School of Law

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<sup>1</sup> Dina Lapolt, *Rap Lyrics Now Admissible as Court Evidence: A Dangerous Precedent*, VARIETY (Jan. 5, 2021), <https://variety.com/2021/music/opinion/rap-lyrics-admissible-evidence-dangerous-precedent-1234878315>.

<sup>2</sup> *Id.*

<sup>3</sup> Nicholas Stoia et al., *Rap Lyrics as Evidence: What can Music Theory Tell Us?*, RACE AND JUSTICE 330, 332 (2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Since the 90s, rap music has been targeted and charged with making society more dangerous.<sup>7</sup> The public has blamed rap music for violence and transformed it into a “convenient scapegoat.”<sup>8</sup> Today, rap music is being put on trial as prosecutors attempt to use rap lyrics as evidence against criminal defendants.<sup>9</sup>

Artists such as Jay-Z and Meek Mill are leading the charge to stop prosecutors from using rap lyrics as evidence of crimes by backing two New York senators.<sup>10</sup> New York Senate Bill S752, known as “The Rap on Trial Legislation”, would establish an assumption of inadmissibility of a defendant’s creative expression against the defendant in a criminal trial.<sup>11</sup> The proffering party would be obligated to prove admissibility by clear and convincing evidence.<sup>12</sup>

Courts frequently interpret rap lyrics as literal, and this practice places limits the creative freedom of rap artists.<sup>13</sup> The unique pressure that rap artists endure from consumers to be authentic creates an environment in which rappers are taken literally rather than artists expressing themselves.<sup>14</sup> The literal interpretation of rap lyrics has led some courts to admit rap lyrics as evidence of the defendant’s guilt, and this likely

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<sup>7</sup> Stephanie Smith-Strickland, *Can We Stop Blaming Hip-Hop for Violent Behavior Already?*, HIGH SNOBIETY (May 16, 2017), <https://www.highsnobiety.com/p/hip-hop-violence-music/>.

<sup>8</sup> *Id.*

<sup>9</sup> Kate Samuelson, *Rap on Trial: The Battle to Keep Lyrics Out of Courtrooms*, THE WEEK (Jan. 25, 2022), <https://www.theweek.co.uk/news/crime/955521/rap-on-trial-battle-stop-lyrics-courtrooms>.

<sup>10</sup> *Id.*

<sup>11</sup> Brad Holyman, *Senators Brad Hoylman & Jamaal Bailey Introduce “Rap Music on Trial” Legislation to Prevent Song Lyrics From Being Used As Evidence In Criminal Cases*, N.Y. STATE SENATE (Nov. 17, 2021), <https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/senators-brad-hoylman-jamaal-bailey-introduce-rap-music-trial> (last visited Apr. 21, 2022).

<sup>12</sup> *Id.*

<sup>13</sup> Stoia et al., *supra* note 3, at 333.

<sup>14</sup> *Id.*

violates the First Amendment.<sup>15</sup> Artistic freedom has historically been interpreted very broadly by the Supreme Court to include “whatever the creative impulse produces.”<sup>16</sup> The protection of free speech and artistic expression has not been extended to rap lyrics in certain courts and going forward this will likely impact the way in which rap artists can comfortably express themselves.

The use of rap lyrics in court also impacts jurors.<sup>17</sup> The University of California, Irvine, has found that rap lyrics can bring out anti-Black racism in jurors.<sup>18</sup> Jurors viewed lyrics as more “dangerous, offensive, threatening, and literal” when told they came from rap music than when they were told the lyrics came from country music.<sup>19</sup> Furthermore, a study found that introducing rap lyrics written by the defendant may bias juries toward a guilty verdict even when the lyrics were not particularly relevant to the case.<sup>20</sup> The possibility of creating bias in jurors by allowing for the admission of rap lyrics to prove guilt unduly prejudices defendants and outweighs any probative value the lyrics may possess.

The practice of using lyrics as evidence in court is also unique to rap lyrics.<sup>21</sup> No other genre is being put on trial for their lyrics.<sup>22</sup> Society does not listen to country music or watch movies and consider these admissions of guilt by the musician or director; so why does this happen with rap lyrics?

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<sup>15</sup> Emerson Sykes et al., *Putting Rap Lyrics on Trial is a Violation of Free Speech*, ACLU (Nov. 9, 2020), <https://www.aclu.org/news/free-speech/putting-rap-lyrics-on-trial-is-a-violation-of-free-speech>.

<sup>16</sup> *Freedom of Expression in the Arts and Entertainment*, ACLU, <https://www.aclu.org/other/freedom-expression-arts-and-entertainment> (last visited Apr. 17, 2022).

<sup>17</sup> *UCI Experts Produce Guide for Defense Attorneys Fighting Use of Rap Lyrics in Trials*, UCI NEWS (June 9, 2021), <https://news.uci.edu/2021/06/09/uci-experts-produce-guide-for-defense-attorneys-fighting-use-of-rap-lyrics-in-trials/> (last visited Apr. 19, 2022).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Stoia et al., *supra* note 3, at 333.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

As a former associate justice of the Supreme Court has stated, “One would not presume that Bob Marley, who wrote the well-known song ‘I Shot the Sheriff’, actually shot the sheriff. Or that Edgar Allen Poe buried a man beneath his floorboards, as depicted in ‘The Tell-Tale Heart’ simply because of their respective artistic endeavors on those subjects.”<sup>23</sup> These two examples demonstrate the ways in which rap is being targeted and the amazing creativity that can be generated when it is not stifled by potential criminal consequences.

As Drill music, a sub-genre of rap that often incorporates violent storytelling, becomes more popular, the issue of rap lyrics being used to prove a defendant’s guilt is likely to present itself more frequently.<sup>24</sup> Although relatively young, Drill is already being ridiculed by society.<sup>25</sup> Eric Adams, the Mayor of New York City, recently openly criticized the Drill scene and blamed it for contributing to violence within the city.<sup>26</sup> This criticism from a powerful political figure will likely contribute to the literal interpretation of rap lyrics from the public as well as the criminal justice system.

Courts are impeding upon the creative output of artists by imposing possible criminal consequences for storytelling. Allowing for rap lyrics to be admissible to prove a defendant’s guilt has been proven to activate bias within jurors in some cases. This sets a dangerous precedent moving

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<sup>23</sup> Elahe Izadi, *Bob Marley Didn’t Shoot the Sherriff, a Court has Ruled. Here are Six Other Crimes that were not Committed in Songs*, WASH. POST (Aug. 5, 2014), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2014/08/05/bob-marley-didnt-shoot-the-sheriff-a-court-has-ruled-here-are-six-other-crimes-that-were-not-committed-in-popular-songs/>.

<sup>24</sup> *Guide to Drill Music: History and Characteristics of Drill Music*, MASTERCLASS (Feb. 24, 2022), <https://www.masterclass.com/articles/drill-music-guide#a-brief-history-of-drill-music>.

<sup>25</sup> Simon Vozick-Levinson, *New York City Mayor Eric Adams Declares War on Drill Rap*, ROLLING STONE (Feb. 11, 2022), <https://www.rollingstone.com/music/music-news/mayor-eric-adams-drill-rap-1299108/>.

<sup>26</sup> *Id.*

forward within rap music and for artistic expression in general. If courts are able to admit rap lyrics into evidence to prove a defendant's guilt, where is the line drawn?

Edited by Alex Beezley