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Rap Lyrics and Evidence of Guilt: The Racial Impact Of The Weaponization Of Evidence Rules

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Many who study the United States criminal justice system are quick to note that racial discrimination in the specific contexts of policing and incarceration leads to disproportionate outcomes for Black and Hispanic Americans. As these aspects of our justice system are riddled with racially disproportionate impacts, their prominence in the advocacy for criminal justice reform and legislative attention is undeniably warranted.[1] However, there is also an area less prominent in the public conversation that has shown to play a substantial role in contributing to the racial disparity we see within our system today: state and federal rules of evidence.[2] Specifically, certain pieces of evidence, like rap lyrics, are wrongfully deemed admissible against criminal defendants in an attempt to correlate lyrics from their songs to guilt of the crime for which they are charged.[3] The movement towards admitting song lyrics into evidence has primarily been used to target Black artists within the hip-hop industry, instead of artists in other music genres.[4]

One standout issue this type of evidence poses is its inconsistency with Rule 403 of the Federal Rules of Evidence, which calls for the exclusion of relevant evidence if its probative value is “substantially outweighed” by a risk of unfair prejudice.[5] In applying this balancing test by weighing the probative value of rap lyrics as evidence of guilt, versus their prejudicial effect against a defendant, the Supreme Court of New Jersey held that evidence of a defendant’s rap verses should not have been admitted at trial.[6] Rooting its decision in adherence to the balancing test derived from Rule 403, the court reasoned that rap is, “a genre that certain members of society view as art and others view as distasteful and descriptive of a mean-spirited culture.”[7] Based on this extreme division in society’s perception of the hip-hop genre and its risk of “poisoning the jury against a defendant,”[8] the court held that its prejudicial effect substantially outweighed its probative value.[9]

However, not all states have adopted the same approach as New Jersey. Most notably, the Court of Appeals of Maryland upheld a trial court’s admission of rap lyrics into evidence in a murder trial, reasoning that, “because [of] the close nexus between lyrics written and recited by defendant and the details of the victim's murder... [it] made it more probable that defendant was the shooter.”[10] This is one of the most recent state Supreme Court rulings affirming the admissibility of rap lyrics in trials, and its ruling will have a great influence on how state courts may address this issue in the near future.[11]

Rap lyrics have been used as a weapon against Black artists during sentencing as well as during the guilt-or-innocence phase of trial.[12] In 2017, rapper known as Kooda B faced a racketeering charge in association with the attempted shooting of Chief Keef. When released on bond, he produced new music which was later used against him when he was found guilty at trial.[13] During sentencing, the prosecutor used certain lyrics from these songs to argue for a maximum sentence.[14] While the introduction of rap lyrics in this context is distinct from the impact it has when admitted and misused for showing guilt of the crime from the start, it illustrates exactly what prosecutors are thinking or aware of when introducing this evidence at trial: attempting to show the jury a violent portrayal of the defendant, not actual evidence of guilt of the specific crime charged.[15]

With the recent arrest of Fetty Wap, and the upcoming murder trial of YNW Melly, it will be imperative to see if, and how, their abundance of music consisting of lyrics that can easily be interpreted as violent and indicative of their part in the crimes charged, will be used in their cases.[16] As reported by YNW Melly's lawyer, Jason Roger, "when you look at the allegations that somehow rap lyrics are potential evidence or suggestive culpability or real life actions—those similarities are present in this case." [17] The weaponization of evidence rules to admit rap lyrics in trials will lead many artists in the hip-hop industry to refrain from writing and expressing the art they choose in fear that one day it could potentially be used against them in a legal proceeding. These issues will only continue to grow if the movement towards opening the doors in state evidence rules to the admission of rap lyrics is not closed by legislative or higher judicial action.[18]

[1] *Criminal Justice Reform*, EQUAL JUST. INITIATIVE (2021), <https://eji.org/criminal-justice-reform/>.

[2] Chris C. Goodman, *The Color of Our Character: Confronting the Racial Character of Rule 404(b) Evidence*, 25 MINN. J. L. & INEQ. 1 (2007).

[3] Brittany Francis, Anjali Pathmanathan & Arielle Reid, *Putting Rap Music on Trial*, N.Y. L. J. (June 30, 2021), <https://www.law.com/newyorklawjournal/2021/06/30/putting-rap-music-on-trial/?slreturn=2021100817284>.

[4] *Id.*

[5] Fed. R. Evid. 403.

[6] *State v. Skinner*, 218 N.J. 496 (2014).

[7] *Id.* at 11.

[8] *Id.* at 12.

[9] *Id.*

[10] *Montague v. State*, 471 Md. 657,673 (2020).

[11] 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>.

[12] Andre Gee, *Courts are Preying on Rappers and their Lyrics*, COMPLEX (Jan. 15, 2021), <https://www.complex.com/music/2021/01/courts-preying-rappers-lyrics>.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] Gee, *supra* note 12.

[17] *Id.*

[18] LaPolt, *supra* note 11.