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Blog: Without Rhyme or Reason

WITHOUT RHYME OR REASON

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Rap music has been the subject of much controversy and criticism for its provocative content and violent lyrics; however, the question still remains as to whether rap lyrics should be admissible as evidence in court. Some scholars and courts believe that rap lyrics should be admissible. One of the earliest uses of rap lyrics as evidence in a criminal proceeding came in 1994 in *People v. Olguin*.¹ In *Olguin*, the court admitted the defendant's song lyrics for the purpose of establishing the defendant's membership in a street gang.² Judge Bedsworth wrote that the lyrics, "[D]emonstrated his membership in Southside, his loyalty to it, his familiarity with gang culture, and, inferentially, his motive and intent on the day of the killing."³

Much controversy has been bred from the admission of rap lyrics as evidence in trials. Some scholars argue that allowing rap lyrics to be admissible in court aids in reinforcing racial biases.⁴ In 1996, Carrie Fried, a social psychologist, conducted a study to demonstrate how lyrics from various genres of music affect individuals' perceptions.⁵ The study made use of the lyrics from a 1960s folk song about a person who murdered a police officer.⁶ One group was told that the lyrics were attributed to the Kingston Trio (folk music); another was told that the lyrics were those of a country singer; and the third group of participants were told that the lyrics were those of a rapper.⁷ When the lyrics were thought to be from a rap song, or from a Black artist, the participants found the lyrics to be offensive. Conversely, when the same lyrics were thought to be lyrics from

a country or folk song, or from a White artist, the participants were far less critical on all dimensions.⁸ These results reveal that a bias exists depending on the type of music being analyzed. In other words, rap lyrics may not be the most reliable form of evidence.

Although some courts have allowed the use of rap lyrics as evidence, other courts have been wary of allowing their use. For instance, a New Jersey appellate court overturned the attempted murder conviction of Vonte Skinner after determining that the allowance of his rap lyrics as evidence had aggravating effects on his conviction.⁹ "Courts must . . . recognize the very real likelihood that rap lyrics will trigger racialized stereotypes when assessing the prejudicial effect of the evidence," Professor David Tanovich urges.¹⁰ Some argue that jurors will believe the violent and drug-referencing lyrics to be autobiographical rather than artistic or fictional.¹¹ Such lyrics may cause jurors to mistakenly consider the stereotype that black individuals are all criminals when making their decisions.¹² Furthermore, many times rappers do not even write their own lyrics; many rappers have co-writers who help them write the lyrics, credited songwriters who author the entirety of the lyrics, or ghostwriters (uncredited songwriters who write all or part of lyrics for the featured artist(s)).¹³ Thus, adding another issue to controversy on the allowance of rap lyrics as evidence; if a rapper didn't author the lyrics, then why should the lyrics be used against the rapper?

Although much debate continues on the admissibility of rap lyrics as evidence, the

current trend seems to favor their admission in court. As defense attorney, Marcus Bornfreund, noted, “. . . rap lyrics are ‘fair game’ . . .”¹⁴ In addition to rap lyrics, rap videos have recently begun to be admitted as evidence in courts.¹⁵ For instance, in *United States v. Pierce*, the appellate court affirmed the district court’s decision to allow the admission of the defendant’s rap videos as evidence, noting that the admission of such evidence did not constitute a violation of the defendant’s First Amendment rights.¹⁶ Defendant argued that his conviction should not be dependent on a form of expression and that the videos were simply puffery.¹⁷ “[O]ne would not presume that Bob Marley, who wrote the well-known song ‘I Shot the Sheriff,’ actually shot a sheriff.”¹⁸ As the trend continues for allowing rap lyrics and videos to be used as evidence to implicate, artists, specifically rappers, must be more cautious of what they release. The songs of today may be the convictions of tomorrow.

¹ See generally *People v. Olguin*, 37 Cal. Rptr. 2d 596 (Cal. Ct. App. 1994).

² See *id.* at 605.

³ See *id.* at 603.

⁴ See Brendan O’Connor, *Why Are Rap Lyrics Being Used As Evidence in Court?*, NOISEY (Nov. 3, 2014), https://noisey.vice.com/en_us/article/rap-lyrics-as-evidence.

⁵ See *id.* See generally Carrie B. Fried, *Bad Rap for Rap: Bias in Reactions to Music Lyrics*, 26 J. APPLIED SOC. PSYCHOL. 2135 (1996).

⁶ See O’Connor, *supra* note 4.

⁷ See *id.*

⁸ See *id.*

⁹ See Stephen S. Davis, *In Canada, prosecutors are using suspects’ own rap lyrics to win convictions*, L.A. TIMES (Sept. 30, 2016), <http://www.latimes.com/world/mexico-americas/la-fg-rap-lyrics-convictions-snap-story.html>.

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ Dominique Zonyee, *10 Hip-Hop Songs You Probably Didn’t Know Were Written by Another Rapper*,

THE BOOM BOX, <http://theboombox.com/10-hip-hop-songs-written-by-another-rapper/> (last visited Oct. 18, 2016).

¹⁴ See Davis, *supra* note 9.

¹⁵ See *id.*

¹⁶ See Eugene Volokh, *Speech as Evidence, Rap Videos, and Tattoos*, THE WASH. POST (May 12, 2015), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/12/speech-as-evidence-rap-videos-and-tattoos/?utm_term=.6a001fb0b79d; see generally *United States v. Pierce*, 785 F.3d 832 (2d Cir. 2015).

¹⁷ See Volokh, *supra* note 16.

¹⁸ See *id.*