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Art as Ammunition: The Weaponization of Rap Lyrics in Court

In 2017, data from the *Nielsen Music Report* revealed that for the very first time, R&B/Hip-Hop was the most popular genre in the United States. The genre's popularity has continued to skyrocket, with *Billboard* reporting at the end of 2021 that R&B/Hip-Hop accounted for 27.7 percent of music consumption in America, followed by Rock at 20 percent. However, despite being the most prevalent genre in the United States, hip-hop music is still fundamentally misunderstood by White American society. One example of this lack of understanding is *Billboard's* categories themselves: the company groups Hip-Hop and R&B together, two genres which, while they overlap in some regards, have their own unique histories and elements that distinguish them as separate categories of music. This grouping likely stems from the most striking similarity between these two genres: the fact that they were created, popularized, and are still mostly dominated by Black artists. By failing to learn the histories and intricacies of these two genres and instead grouping them into one category that represents "Black music," *Billboard* exemplifies White American society's refusal to give the same respect to historically Black genres as they do to historically White ones.

This misunderstanding transforms from disrespectful to dangerous when elements of Black culture are weaponized against Black Americans. Specifically, in recent years, there has been an increasing trend in the number of instances where rap (as hip-hop music is also known) lyrics are used as evidence in court, for reasons such as demonstrating gang affiliation, showing that a defendant committed a crime or threatened to commit a crime, or proving a defendant had a motive or intent to commit a crime (Lutes et al. 77). However, given that White American society broadly misunderstands rap music, it is unsurprising that the content from rap music has been misinterpreted and misconstrued to put Black Americans behind bars.

The fatal flaw that juries make when considering rap lyrics is viewing them literally, as opposed to an expression of identity. As Jacob P. Cupps, a graduate music student at Washington University in St. Louis whose research centers on underground hip-hop, explains, "The artist that exists in a song is a performed version of that person's self and may or may not have any relation to who that person is in real life." Personality vs. reality exists on a continuum within the rap sphere. Some rappers tend to perform as a version of themselves that is more based in reality and therefore include autobiographical elements in their music. This was especially prominent in the early days of rap music when artists were performing in close proximity to their listeners (often in the same room as them), so a sense of authenticity was important (Cupps). On the other hand, some rappers perform as completely fictional characters. Examples of rappers who develop detailed personalities within their works include MF DOOM, who is known for pushing out music as supervillain alter egos like Zev Love X, King Geedorah, and Viktor Vaughn, as well as Tyler, the Creator, who becomes a new character with every album that he releases (such as Wolf Haley, Igor, or Tyler Baudelaire). The majority of rappers exist between these two extremes on the continuum and often fluctuate between them on different songs and albums. As a result, when it comes to prosecuting cases against these personas, Cupps remarks that "it seems really hard to make a case legally based on a performed identity. You wouldn't necessarily take something an actor does in a movie and be like this is something that relates to who they are as an individual and something that we can hold up as a moral or legal indication of who they are."

Cupps alludes to the idea that rap as a genre is treated differently by America's legal system than other artistic mediums (such as acting). Andrea Dennis, a law professor at the University of Georgia, agrees with this conclusion, saying that based on her research, "rap is the only fictional art form treated this way. No other musical genre and no other art is used in the

same way or to the same extent" (Dennis qtd in Younger.) And this is not to say that other genres do not share the same themes as rap music. For instance, opera music can be very violent and graphically depict murders, has male protagonists who brag about their physical and sexual prowess as well as challenge other males out of arrogance, and its female characters are often shallow and included for sexual purposes, all of which constitute common criticisms of rap music. But as Nicholas Stoia, Assistant Professor of Music at Duke University, points out, "opera aficionados understand that violent and sexual themes are conventions within the genre and that it would have been bizarre to treat Don Giovanni, Pagliacci, or Rigoletto as somehow representing the literal wishes of their composers or to interpret the lyrics penned by their librettists as auto-biographical admissions of crimes" (2). Even more mainstream genres of music like country and rock often contain violent themes, yet when Johnny Cash claims he "shot a man in Reno just to watch him die" in "Folsom Prison Blues" and Freddy Mercury bemoans to his mother that he "just killed a man" in "Bohemian Rhapsody," listeners do not bat an eye. Time and time again, rap music is not permitted the same creative freedom as other genres.

In cases where rap lyrics are used by prosecutors as evidence, a lack of expert testimony leads to these mistruths going uncorrected. Experts (such as academics, musical artists, or industry experts) have the opportunity to explain the meaning behind lyrics, and their testimony may also result in jurors taking the perspective of the songwriter, rather than the listener, in turn altering their interpretation of the lyrics (Dunbar "Rap Lyrics as Evidence" 103). In many cases, defendants do not have expert witnesses to testify on their behalf, whether that be due to the fact that experts with an understanding of rap music are hard to come by, the costs associated with hiring an expert witness, or because public defenders are unaware of the benefit an expert would provide in their case. In extreme cases (such as *United States v. Wilson*), courts have even denied

defendants the opportunity of expert testimony, implying that rap music is not a subject worthy of expert testimony (Dennis 13). Without the testimony of an expert to guide them through the art that is rap music, juries are forced to take rap lyrics as literal and interpret them at their face value. Andrea Dennis explains that, "essentially, courts fail to treat rap music lyrics as an art form. Courts treat rap music lyrics as every day, conversational-type speech and analyze the admissibility of rap music lyrics without information pertaining to the creation and utility of rap music lyrics" (12).

The harm in the misunderstanding of rap lyrics by courts is compounded by existing bias against Black Americans. Research has shown that people of all races view Black boys as older and more likely to be guilty than their peers (Goff et al. 540) and young Black men as taller, heavier, stronger, more muscular, and more capable of causing physical harm than young White men (Wilson et al. 74). When it comes to rap music, studies have shown that people deem the exact same lyrics to be more offensive, in greater need of regulation, and more literal when told they are rap compared to country (Dunbar et al. "The Threatening Nature of 'Rap' Music" 288). Even more explicitly, studies have shown that negative attitudes toward rap are associated with negative stereotypes against Black Americans such as laziness (Reyna et al. 374). Jacob P. Cupps explains that the, "language being weaponized in court settings is more rooted in anti-Blackness than it is trying to really solve some legal or moral issue. It's used as a thin justification for Black artists being litigated against." In other words, interpreting rap at face value and refusing to acknowledge its artistic elements is especially dangerous because existing prejudice against Black Americans causes juries to see the worst in the lyrics they are being presented.

However, the violence that exists in some types of rap serves a specific purpose, namely as an expression of identity. Cupps explains that:

rap is historically a masculine, particularly a hyper-masculine discourse, and a way for masculinity and music to be performed for other men. So there's probably a little bit of bravado and a little bit of showing how tough you are. People are going to talk about violence because one way that masculinity is performed is through acts of power and violence, but to blame America's issues with violence on hip-hop music or hip-hop culture largely seems wrong to me.

Essentially, violent language is an avenue for rappers to battle one another without resorting to actual violence. This bravado can be traced back to historical elements of Black culture. Dina LaPolt, a veteran entertainment lawyer who has worked to prevent rap lyrics from being used in court, notes that rap "draws on African-American storytelling traditions" such as using rhythm and rhyme to convey complex stories and "often utilizes violent rhetoric as a form of intellectual competition and a vehicle for change." As LaPolt mentions, rap is not only a method for two or more individuals to compete, but it can also be used to bring attention to political and social issues. Notably, Tupac Shakur used rap to celebrate Blackness while simultaneously speaking out about racial, economic and gender inequality. More recently, Kendrick Lamar has used his music as an avenue to discuss his identity as a Black man in White American society, doing so by exposing persistent institutional racism in his song "Institutionalized" and expressing pride in his Black identity while retaliating against White society's rejection of Blackness on "The Blacker The Berry." Examples such as these demonstrate that rap music is often embellished or symbolic, an aspect which has evolved from African-American storytelling traditions and has evolved into a method for disseminating social and political commentary.

Juries, judges, and prosecutors have shown that they are unaware of the history and cultural context of rap music. For instance, one of the most prominent cases of rap lyrics being

held unfairly against their authors is the case of Vonte Skinner. Skinner, a New Jersey resident, was charged with murder after prosecutors alleged he killed a drug dealer named Lamont Peterson in 2008. While Skinner agreed that he was present the night of the murder, he maintained that he did not kill Peterson and did not know who did. The case against him was based on two eyewitness accounts who identified Skinner as the shooter, despite the fact that their stories had changed multiple times. In order to obtain evidence for a conviction, police officers searched Skinner's car, in which they found some notebooks containing rap lyrics written by Skinner. At trial, the prosecution had a police officer take the stand and read thirteen pages of these rap lyrics to the jury. The lyrics spoke of violence, murder, and gang life, with lyrics like: "Two to your helmet and four slugs drillin' your cheek / to blow your face off and leave your brain caved in the street," (Skinner qtd in de Melker and Brangham) and "Two to the mask and six to the ribs, lifted and flipped him / The safe street squad found him, half his shell missing" (Skinner qtd in New Jersey vs. Skinner). However, the issue with these lyrics is that they do not mention the crime that Skinner was accused of or the victim. As a matter of fact, they were largely written months and years before the shooting. Despite this, police officers argued these unrelated lyrics showed Skinner was a criminal and involved in the shooting of Peterson. He was sentenced to serve 16 years (de Melker & Brangham).

Seeing the injustice in Skinner's conviction, groups such as the American Civil Liberties Union fought to overturn his conviction. In an amicus brief, the ACLU of New Jersey pointed out that prosecutors never claimed that the lyrics provided direct evidence of the crime but rather wanted the jury to hear them as evidence of Skinner's general motive and intent. They also highlighted the fact that rap lyrics are artistic expressions that do not necessarily mean their author committed the acts they are describing. Their efforts were successful, and on August 4th,

2014, Skinner's conviction was thrown out. In its ruling, the Supreme Court of New Jersey stated that the lyrics had little connection to the crime Skinner was accused of and that introducing them had potentially biased the jury. The Court wrote, "...the violent, profane, and disturbing rap lyrics authored by defendant constitute highly prejudicial evidence against him that bore little or no probative value as to any motive or intent behind the attempted murder offense with which he was charged" (New Jersey v. Skinner). The issue with this, however, is that Skinner had already wrongly served 6 years in prison. The state of New Jersey had violated Skinner's rights due to a misunderstanding (or intentional misinterpretation) of his artistic craft.

Specifically, Vonte Skinner's First Amendment right to free speech had been violated. The First Amendment of the United States Constitution reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or *abridging the freedom of speech*, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (emphasis added). The free speech clause, as it is known, is what gives Americans protection for artistic expressions such as painting, music, poetry, and literature. There are limitations to this; the Supreme Court ruled that speech can be censored if there is a "clear and present danger," although this is a high standard to meet (Placik). Despite this, these protections have not been applied equally. Consider, for example, the situation involving comedian and actress Kathy Griffin in 2017. In protest of Donald Trump, Griffin posted a video of herself holding a mask that looked like the President's bloody, severed head. Griffin immediately faced backlash for this gruesome demonstration. However, while she did receive widespread criticism, no one interpreted this violent display as an actual threat; American society understood that while perhaps in poor taste, it was a work of art expressing discontent towards Donald Trump. Griffin, a White woman, was shown understanding that

Skinner (who did not even name a specific target in his songs) and many other rappers were not shown for a comparable, if not worse display of violence. While the New Jersey Supreme Court has ruled that rap lyrics must have a direct connection to the crime in question to be admitted as a result of Skinner's case, they can still be admitted in many other states in much broader circumstances, and the injustice of misusing rap lyrics to convict rappers persists.

Rap music has quickly become the most consumed genre in the United States. Despite this, rap music remains fundamentally misunderstood by America's White-majority society. Central to this misunderstanding is ignorance of the rich history from which rap music has evolved, which helped shape rap as an artistic style that incorporates violent imagery as a display of bravado, a form of intellectual competition, and a method to speak out on social and political issues. Rap music is not the only style of music to incorporate this type of imagery; rock, metal, country, and even opera incorporate elements of violence similarly. Creative expressions, including gruesome and graphic works of art, are constitutionally protected under the First Amendment's free speech clause. However, courts across the country have failed to protect Black artists' First Amendment rights when hyperbolized rap lyrics are introduced as evidence in court and read to juries devoid of context. Given existing bias against Black Americans within both American society and the American criminal justice system, as well as societal prejudice against rap music as a genre, the misuse of rap lyrics in courts across the country has led to widespread injustice and iniquitous incarceration. Groups such as the ACLU of New Jersey have shown that it is possible to prevent this unjust practice from occurring in the future. Furthermore, the onset of rap is a relatively recent phenomenon, and using rap in litigation is even more recent, meaning courts may ban the use of rap lyrics as evidence if the issue is given more attention and courts are faced with societal pressure and intense lobbying. As an encouraging example, the New York

Senate passed a bill on May 17th, 2022 that would restrict the use of rap lyrics in court after a push from industry veterans like Jay-Z and Meek Mill. However, years of work from advocates will likely be necessary to eliminate this discriminatory and unjustified practice in all 50 states.

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