

***THE INTERSECTION OF HIP HOP, RACISM AND THE
CRIMINAL JUSTICE SYSTEM***

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Some say that Hip Hop developed in the 1970's as an urban movement in New York City. Since its inception, in state and federal courts, rural and urban areas, around the United States, we have seen law enforcement/prosecutors attempt to use this art form unfairly to investigate/arrest/prosecute individuals. Below we have created a worksheet so that defense attorneys have a reference point for ensuring that Hip Hop remains solely an artistic form of expression and not a symbol of crime.

I. Lyrics as Criminal Evidence: Cases

A. *State v. Skinner*, 95 A.3d 236 (N.J. 2014)

- i. New Jersey rapper, Vonte Skinner was convicted for attempted murder, aggravated assault, and aggravated assault with a deadly weapon with an aggregated 30-year sentence after prosecution read 13 pages of rap lyrics to the jury from Skinner's notebooks as evidence of his violent intention.
- ii. Lyrics: "Yo, look in my eyes. You can see death comin' quick.
Look in my palms, you can see what I'm gunnin' with.
I play no games when it comes to this war shit.
If death was a jacket, you would see how the floor fits.
Crackin' your chest when I show you how the force spits,
Makin' your mother wish she would have had an abortion."
But these people keep testin' my weapons.
I hold my head just to keep from stressin';
Got Beef, I can spit from a distance for instance;
A person wouldn't listen so I hit him with the Smithen;
Hauled off 15 rounds, seven missed him;
Two to the mask and six to the ribs, listed and flipped him.
The safe street squad found him, half his shell missin.
I play my position, fall back and watch people keep my enemies real.
Close to my twin bitches, hollow heads in the back of they throats
mercury drippin'.
They spit sickness, poison a person right when they clip him.
They don't call me Threat for nothin', so pay attention."
- iii. The New Jersey Supreme Court reversed Mr. Skinner's conviction based on the prosecution's introduction of the lyrics, stating that:
 1. "Violent, profane, and disturbing rap lyrics authored by defendant constitute highly prejudicial evidence that bore little or no probative value as to any motive or intent behind the attempted murder offense."
 2. "Probative evidence may not be found in an individual's artistic endeavors absent a strong nexus between specific details of the artistic composition and the circumstances of the offense."

B. *Elonis v. US*, 135 U.S. 2001 (2015)

- i. After Anthony Elonis' wife left him, he posted rap lyrics on Facebook that threatened his ex-wife, coworkers, a kindergarten class, local

police and an FBI agent. Mr. Elonis was charged with five counts of violating 18 U.S.C. §875(c), making it a federal crime to transmit “any communication containing any threat...to injure the person of another.” Federal prosecutors used the aforementioned Facebook posts as evidence. As an aspiring rap artist, Elonis moved to exclude those posts, claiming that they were a form of artistic expression. His motion was denied, and he was convicted.

- ii. Writing for the majority to reverse the conviction, Chief Justice Roberts stated that Prosecution must show that Elonis’ posts were intended to be threats and not merely artistic expressions, which the government failed to prove. Therefore, the government’s efforts were not sufficient to support a conviction.

C. *US v. Moore*, 639 F.3d 443 (2011)

- i. Mr. Moore was charged with conspiracy to distribute crack cocaine and cocaine. Prosecution introduced videos of Moore rapping as evidence, which included lyrics stating “The police all know me and I have narcotics...I brought the rack even though cocaine prices are up.” The state court ruled that the lyrics were admissible under Rule 404(b) because the government showed Defendant’s knowledge of drug distribution (he knew cocaine prices, drug code words, etc.).
- ii. The U.S. Court of Appeals, District of Columbia Circuit, affirmed the conviction, holding that the recordings were appropriate “to prove that he knew cocaine prices, used drug code words, and sold drugs to supplement his income.”

II. Lyrics as Criminal Evidence: Articles

A. Elizabeth Shumejda, *The Use of Rap Music Lyrics as Criminal Evidence*, 25 Ent., Arts, & Sports L.J. 3 (2014)

- i. In this law review article, Elizabeth Shumejda presents a groundbreaking analysis wherein she discusses how rap lyrics have been used in the past for criminal evidence, whether as confessions, proof of motive or intent, character evidence, or past criminal acts. Whichever way lyrics are used in court, Shumejda argues they are seriously problematic in guaranteeing a defendant’s rights in court. First, “negative connotations [are] associated with rap music as a genre in general,” and, therefore, juror bias is likely to occur when prosecutors create a direct link between the defendant and his authoring of rap lyrics. Shumejda also accurately explains that introducing a defendant’s lyrics as evidence is a direct violation of the First Amendment because of rap’s political/social commentaries of inner city life and artistic expression.

B. Lorne Manly, “Legal Debate on Using Boastful Rap Lyrics as a Smoking Gun” *New York Times* (26 March 2014)

<http://www.nytimes.com/2014/03/27/arts/music/using-rap-lyrics-as-damning-evidence-stirs-legaldebate.html>.

- i. In this New York Times article, Manly introduces one example of the many unfair uses of rap lyrics by discussing the case of Antwain Steward, a local Virginia rapper who was charged with murder after detectives found a YouTube video of Mr. Steward rapping violent lyrics. In addition, this article is helpful in listing numerous examples where prosecutors used the tactic of introducing rap lyrics as evidence.
 - C. Alyssa Rosenberg, “How cops and prosecutors are putting rap music on trial” Washington Post (21 May 2014) <https://www.washingtonpost.com/news/act-four/wp/2014/05/21/how-cops-and-prosecutors-are-putting-rapmusic-on-trial/>
 - i. Washington Post writer Rosenberg uses Erik Nielson, a University of Richmond professor studying the relationship between African American culture and law enforcement as a guiding light in this article. While more and more people are growing up listening to Hip Hop, and therefore may understand it better, others do not and, as jurors, will likely misinterpret a rapper’s intentions. Nielson points out that jurors, and listeners alike, should remember that rappers have “real and fictional personas.” Rappers’ lyrics are less of a reflection of their criminal acts and tendencies, and more of pressure to “meet authenticity requirements” and making a “rhymed verse.”
 - D. Nick Wing, “If The Criminal Justice System Treated Other Music The Way It Treats Rap” Huffington Post (4 April 2015) http://www.huffingtonpost.com/2015/04/02/criminal-justice-system-rap-lyrics_n_6978682.html
 - i. Wing raises the million-dollar question in this Huffington Post article by showing music lyrics of pop, to rock, to country artists with equally violent words: “Would we ever have suspected Johnny Cash of actually being a cold-blooded killer?” Wing’s answer is no, arguing that prosecutorial practice is solely being used against rap, and therefore solely being used against young black men.
- III. Linguistics’ effect on access to Constitutional rights
 - A. *Louisiana v. Demesme*, __ So.3d __ (2017)
 - i. After two minor females claimed he sexually assaulted them, Mr. Demesme was interrogated by two New Orleans officers. Demesme told the detectives, “...just give me a lawyer dog.” After not being provided with a lawyer, he later admitted to the crime and was charged with aggravated rape and indecent behavior with a juvenile. Despite the defense arguing that Mr. Demesme’s constitutional rights were denied after asserting his right to counsel, the court ruled that “the defendant’s ambiguous...reference to a ‘lawyer dog’ does not constitute an invocation of counsel that warrants termination of the interview.”
 - ii. The Supreme Court of Louisiana upheld the conviction, stating “if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable police officer in light of the circumstances would

have understood only that the suspect *might* be invoking his right to counsel, the cessation of questioning is not required.”

- iii. ***While this case is not necessarily about Hip Hop, linguistic slang associated with this case is utilized in the previously discussed cases regarding rap lyrics.

IV. Black Speech vs. Freedom of Speech

- A. Andrea Dennis, *Poetic (In)Justice? Rap Lyrics as Art, Life, and Criminal Evidence*, 31 Colum. J.L. & Arts 1 (2007)

- i. Dennis takes a deep analytical dive into both the use and meaning of rap lyrics, warning society that this scrutiny of rap lyrics may only negatively impact the “production and quality of art when individuals must worry that their artistic sensibilities and creative expressions might later be used against them in a criminal prosecution.” Nevertheless, aside from creating an article to forewarn, Dennis discredits “the judicial assumptions” of admitting rap lyrics and suggests a solution to “evaluating the admissibility and credibility of lyrical evidence.