

OP-ED CONTRIBUTORS

Rap Lyrics on Trial

By Erik Nielson and Charis E. Kubrin

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SHOULD rap lyrics be used in court as evidence of a crime?

Next week, the Supreme Court of New Jersey will hear a case that could help decide just that. At issue is a prosecutor's extensive use of rap lyrics, composed by a man named Vonte Skinner, as evidence of his involvement in a 2005 shooting.

During Mr. Skinner's trial in 2008, the prosecutor read the jury 13 pages of violent lyrics written by Mr. Skinner, even though all of the lyrics were composed before the shooting (in some cases, years before) and none of them mentioned the victim or specific details about the crime.

In keeping with rap's "gangsta" subgenre, the lyrics read like an ode to violent street life, with lines like "In the hood, I am a threat / It's written on my arm and signed in blood on my Tech" — a reference to a Tec-9 handgun. "I'm in love with you, death."

The other evidence against Mr. Skinner was largely testimony from witnesses who changed their stories multiple times. And yet, the jury found him guilty of attempted murder, and he was sentenced to 30 years in prison.

But in 2012, the conviction was overturned by an appellate court that ruled that the lyrics should never have been admitted as evidence. The majority opinion stated, "We have a significant doubt about whether the jurors would have found defendant guilty if they had not been required to listen to the extended reading of these disturbing and highly prejudicial lyrics." The state appealed the ruling to the Supreme Court.

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Mr. Skinner’s case is far from unique. Rap lyrics and videos are turning up as evidence in courtrooms across the country with alarming regularity. Last year, the American Civil Liberties Union of New Jersey found that in 18 cases in which various courts considered the admissibility of rap as evidence, the lyrics were allowed nearly 80 percent of the time.

As expert witnesses who have testified in such cases, we have observed firsthand how prosecutors misrepresent rap music to judges and juries, who rarely understand the genre conventions of gangsta rap or the industry forces that drive aspiring rappers to adopt this style. One common tactic is to present a defendant’s raps as autobiography. Even when defendants use a stage name to signal their creation of a fictional first-person narrator, rap about exploits that are exaggerated to the point of absurdity, and make use of figurative language, prosecutors will insist that the lyrics are effectively rhymed confessions. No other form of fictional expression is exploited this way in the courts.

Admittedly, the complex and creative manipulation of identity in rap helps account for its treatment in court. Nobody believes that Johnny Cash shot a man in Reno or that Bret Easton Ellis carried out the gory murders described in “American Psycho”; neither artist claimed that he was writing autobiographically. That’s not always the case with rappers. Many remain in character long after they leave the recording studio, trying to establish their authenticity by convincing listeners that they live the lives they rap about. Those familiar with the genre understand that this posturing is often nothing more than a marketing pose.

But for the uninitiated, it is easy to conflate these artists with their art. It becomes easier still when that art reinforces stereotypes about young men of color — who are almost exclusively the defendants in these cases — as violent, hypersexual and dangerous. If that’s what jurors see, what are the chances for a fair trial?

To address this question, Stuart Fischhoff, a psychologist at California State University, Los Angeles, conducted a study in the late 1990s to measure the impact of gangsta rap lyrics on juries. Participants were given basic biographical information about a hypothetical 18-year-old black male, but only some were shown a set of his violent, sexually explicit rap lyrics. Those who read the lyrics were significantly more likely to believe the man was capable of committing a murder than those who did not.

More than a decade later, this bias appears to persist, leaving rap music as vulnerable as ever to judicial abuse. Although appellate courts in Massachusetts and Maryland have recently reversed convictions after citing prosecutors for their improper use of rap lyrics or videos as evidence, most similar appeals are unsuccessful. Just this summer the Supreme Court of Nevada upheld the admissibility of rap lyrics as evidence in a first-degree murder case. A definitive ruling by the Supreme Court of New Jersey rejecting this use of rap music could help turn the tide.

In anticipation of Mr. Skinner's case, the American Civil Liberties Union of New Jersey filed an amicus brief arguing that rap lyrics, however unsavory they might be, are "artistic expressions entitled to constitutional protection." For scholars and fans of hip-hop, this is a statement of the obvious. In today's court system, sadly, it is not.

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