

COURT REFORMATION: BANNING RAP LYRICS IN CRIMINAL TRIALS

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Abstract

Self-expression has been a human quality since the dawn of time. Yet, some have been persecuted simply for this expression. This article navigates through the cases of the *State of New Jersey v Skinner* and the case of Mac Phipps in order to demonstrate how the admission of rap lyrics into criminal trials is prejudicial. Black music has been criminalized since its origins and rap is no exception. Following the surveillance of rap over the years and the admission of lyrics into evidence when they were not relevant demonstrates that people associated with Rap tend to have fewer fair trials as the prosecution uses the lyrics to portray a negative narrative to the jury. The hope of this article is to provide information that will lead to more laws like the Decriminalizing Artistic Expression Act being passed in the United States, which will prevent prosecutors from submitting lyrical evidence that is not directly relevant to the trial.

Background

As a predominantly black genre, meaning most of the artists are black, skepticism of Hip Hop and rap has been prevalent since its beginnings. Hip Hop was created in the Bronx, New York in the 1970s and reflected the “negative effects of post-industrial decline, political discourse, and a

rapidly changing economy.”¹ After the construction of the Cross Bronx Expressway, most of the White population moved out of the area. This led to worse conditions for the remaining Black and Hispanic communities, causing an increase in crime. Hip Hop was created as a form of self-expression by the “Holy Trinity”: artists, DJ Kool Herc, Afrika Bambaataa, and Grandmaster Flash. However, two of the main components of the genre were criminalized: Graffiti and Breakdancing. Hip Hop artists and their music has been censored and surveilled since its creation, whether it be by the FBI or the Parents Music Resource Center (PMRC). The purpose of this article is to bring awareness to readers to gain more support for the reformation of our court system. Explaining the constant criminalization of Rap will allow us to recognize a trend and find a way to put an end to it.

CENSORSHIP OF RAP IN THE PAST

Graffiti and Breakdancing

Rap is a music genre that is prevalent in most American generations, yet it is also one of the most heavily criticized. Violent and explicit lyrics have been found in the majority of our music genres, from rap to pop to country. However, Hip Hop is the most targeted. Breakdancing and Graffiti were important concepts of Hip Hop; however, some people viewed them as violent and destructive. Emerging in the 1970s, breakdancing was primarily an activity of the Black and Hispanic working-class youth. Break-dancers made crews that would “‘ battle’ in non-violent ways.”² Breakdancing was an activity for youth to enjoy, but “police officers primarily read their movements as fighting and

¹ Rory PQ, *Hip Hop History: From the Streets to the Mainstream: Icon Collective College of Music* (2022), <https://iconcollective.edu/hip-hop-history/>, (last visited Mar 29, 2023).

² Matthew Omare, *I Got Something to Say: Gender, Race, and Social Consciousness in Rap Music* (2018),

rioting,”³ causing many break-dancers to be arrested and the art of breakdancing to be demonized.

A similar stigma was placed on graffiti. People associated it with gangs, violence, and criminal behavior. Some may view graffiti as a form of vandalization, but at the time it was legal and people had viewed it as “a response to the elimination of art and after-school programs in public schools, and the decreasing number of jobs available at the time.”⁴ These issues continue to affect our public schools today as more schools are losing funding for the arts. As breakdancing was the physical representation of Hip Hop, graffiti was a visual representation. The youth needed a way to express themselves and Hip Hop is what they turned to.

Surveillance From The State

Black artists and activists have been under the surveillance of the Federal Bureau of Investigation (FBI) and the state police since as early as the 1950s. COINTELPRO, short for Counterintelligence Program, was an FBI program that ran during the 1950s and 1960s that caused “Black activists, writers, artists, and musicians [to be] routinely surveilled by the FBI and other law enforcement agencies.”⁵ COINTELPRO was discontinued in 1971 but its tactics were still used to surveil rappers.

On March 9, 2004, the Miami Herald published a story titled “Police Secretly Watching Hip Hop Stars.” The article showed that the police were “secretly watching and keeping detailed dossiers, or documents, on Hip Hop celebrities who visited South Florida.”³ According to the

³ *Id.*

⁴ *Id.*

⁵ Erik Nielson, *Can't c me*, *Journal of Black Studies* 40 (6), p. 1254–1274 (2009), <http://nicklolordo.com/testsite/wp-content/uploads/2016/06/Nelson-CantCMe-Journal-of-Black-Studies.pdf>, (last visited April 3, 2023).

Herald Tribune, “police say they are secretly monitoring Hip-Hop stars P. Diddy, DMX, and others in South Florida to protect them, but celebrities and critics see the surveillance as unnecessary and racist.”⁶ This could be true that they simply wanted to protect the artists, but the question is why only surveil Hip Hop artists, why not every celebrity that visits South Florida? The police department's participation in stalking behavior caused them to “photograph rappers and their entourages at Miami International Airport and [to] stake out hotels, video shoots, and nightclubs while consulting 6-inch-thick dossiers of rappers and associates with arrest records in New York state.”⁴ This makes it seem as if the police were more concerned about Hip Hop artists harming others rather than protecting said artists.

The New York Police Department has created a “rap task force”³ to acquire intelligence on rappers and pass it to states around the country. They kept a “‘black binder’ that was a 6-inch compendium of dossiers on well-known rappers and producers... [which included] photos, license plate numbers, and social security numbers.”³ The belief that Hip Hop artists need to be surveilled is harmful because it reinforces the idea that Hip Hop, a predominately black genre, should be criminalized and heavily surveilled. Rappers such as Tupac have written albums about the surveillance of the state, and this surveillance has gone back to the days of slavery. During that time “heavily coded lyrics of the earliest slave spirituals, and centuries later the blues, are a testament to the musicians’ constant awareness of a hostile society watching their every move.”³ The music of the Black community has been monitored and that surveillance has led to the creation of more music. It is a continuous loop that is becoming more destructive as rap lyrics are now being used to convict people of crimes. The fictitious lyrics are now

⁶ The Associated Press, *Police Secretly Monitoring Hip-Hop Stars*, (2004), Herald Tribune, <https://www.heraldtribune.com/story/news/2004/03/10/police-secretly-monitoring-hip-hop-stars/28792858007/>, (last visited Mar 28, 2023).

able to be used to establish the character of a person when in the end it is simply a persona.

Rap Lyrics as Evidence

Currently, a new form of censorship/ interference from the state has emerged in our court systems: criminalizing rap lyrics and using them as evidence in criminal cases. Some rappers such as Mac Phipps have been imprisoned for their rap lyrics, even though there was a lack of separate sufficient evidence. Rap lyrics, similar to lyrics of any other genre, are meant to be a voice of expression. Art is a necessary medium used by artists for expression, therefore it can be exaggerated or completely false. However, these facts were not taken into consideration for either Phipps's or Skinner's cases. Both men had their lyrics used against them in court and both were convicted and sentenced to 30 years as a result.

Mac Phipps was a rapper from New Orleans, Louisiana before he was convicted of manslaughter by a non-unanimous jury and sentenced to 30 years in prison. A case of being in the wrong place at the wrong time, while spending time in a Louisiana club where he was set to perform, gunshots filled the room. According to NPR.org, after Phipps left the club “police arrived to arrest [him] in connection with the shooting death of 19-year-old Barron Victor Jr.”⁷ This led to Phipps being “charged, and in 2001, convicted of manslaughter.”³ However, the trial that led to this ruling does not seem fair. First, the prosecution “leaned heavily on the rapper’s Camouflage Assassin persona, citing lyrics from his songs that described violent acts as indicative of his capacity to commit murder.”³ The prosecution relied on Phipps’s art and used his

⁷ Rodney Carmichael & Sidney Madden, *Rapper MacPhipps, After 20 years in Prison, is One Step Closer to Freedom*, NPR (2021), <https://www.npr.org/2021/02/25/971297642/rapper-mac-hipps-after-20-years-in-prison-is-one-step-closer-to-freedom>, (last visited Mar 29, 2023).

persona in order to make him into a monster, however, there was no physical evidence that linked Phipps to the death of Barron Victor Jr. In fact, “Thomas Williams --- a member of Phipps’ entourage who had been working security at the club that night--- visited local police and confessed that he, not Phipps, had shot Victor.”³ Phipps’ story is just one example of how the demonization of rap music can lead to the persecution of artists in that genre. This case which had no physical evidence linked to Phipps took away 22 years of his life before he was granted clemency, which allows an incarcerated person to be absolved of some or all of the consequences the law places upon them. In Phipps’ case, he was released on good behavior. Yet even during Phipps’ clemency trial, Hip Hop was a topic of interest, as it was described as “a business... [that] has a flair for getting people into trouble or at least getting them put under suspicion”³ Phipps’ case is not alone in the bracket of convictions based off of lyrics, as the same dilemma occurs a few years later.

In 2014, the New Jersey Supreme Court ruled that in the case of the *State of New Jersey v. Skinner*, the admission of Skinner’s rap lyrics was more prejudicial than probative. Lamont Peterson and Vonte Skinner both worked under Brandon Rothwell. Peterson believed that Skinner was ordered to kill him by Rothwell because Peterson was withholding money. Peterson and Skinner had planned a drug deal at Rittenhouse Park at 10 pm, however, Peterson ended up being shot 7 times. Peterson explained to the police that Skinner had shot him, and the police obtained a warrant to search Skinner’s car. In the car, they found “three notebooks filled with rap lyrics that were violent and profane. Many described crimes that were in the first person.”⁸ Similar to the case of Mac Phipps, Skinner’s lyrics were submitted into evidence because they “provided insight into the defendant’s alleged motive and intent.”⁴ In both of these cases, the prosecution failed to find stronger evidence and did not recognize that rap is “a genre that certain members of society

⁸ State v. Skinner, New Jersey Law Journal (2014), <https://www.law.com/njlawjournal/almID/1202666168738/>, (last visited Mar 29, 2023).

view as art and others view as distasteful and descriptive of a mean-spirited culture, [meaning admitting those lyrics into evidence] risked poisoning the jury against the defendant.”⁹

Eventually, the jury convicted Skinner of “attempted murder, aggravated assault, and aggravated assault with a deadly weapon”⁴ and he was sentenced to 30 years in prison. Skinner appealed his case, and it was sent to the New Jersey Supreme Court where they ruled in Skinner’s favor. The court stated that “the lyrics constituted heavily prejudicial evidence against the defendant that had little or no probative value as to any motive or intent behind the offense with which he was charged.”⁴ The prosecution had used a form of expression that is known to be false and exaggerated for entertainment purposes in order to convince the jury that Skinner was capable of committing attempted murder. According to the New Jersey Supreme Court, “fictional forms of inflammatory self-expression, such as poems, musical compositions, and other like writings about bad acts, wrongful acts, or crimes, are not properly evidential unless the writing reveals a strong nexus between the specific details of the artistic composition and the circumstances of the underlying offense for which a person is charged, and the probative value of that evidence outweighs its prejudicial impact.”⁵ If movies cannot be used as evidence against directors, and books cannot be used against authors, then rappers should not be judged based off of their lyrics. Rappers, like authors, use their lyrics to tell a story, and those stories should not be the sole evidence used to convict a person of such wicked crimes. Lives have been ruined due to the prejudice against rap lyrics, and the New Jersey Supreme Court’s ruling was a step in the right direction.

⁹ State v. Skinner (2014), Supreme Court of New Jersey, FindLaw, <https://caselaw.findlaw.com/nj-supreme-court/1674552.html>, (last visited Mar 29, 2023).

Decriminalizing Artistic Expression Act

The state of California has passed a law to prevent the use of song lyrics as evidence. The law in California is a huge success because it “requires judges to balance the value of the evidence with the ‘undue prejudice’ and racial bias possible when that evidence is presented to a jury.”¹⁰ This initially asks judges to weigh whether or not the evidence is more prejudiced than probative before the evidence is entered, which would prevent the events in both the trials of Phipps and Skinner. This is important because it first recognizes that submitting rap lyrics as evidence that is not related to the case to convict people involves prejudicial behavior and also because it is a start to solving that problem. Now the prosecution will have to “hold a pretrial hearing away from the jury to prove that the lyrics or other artistic expression are relevant to the case.”⁶ This will hopefully prevent the reoccurrence of cases like Skinner’s and Phipps’s because both of their rap lyrics were not related to their cases. Assembly bill 2799 was unanimously passed and the state of California was the first to pass a bill of this nature. If more states adapt laws like this rap will be treated as all other means of fictional expression, and more probative and relevant evidence will be used for convictions.

Conclusion

Rap might not be your favorite genre of music. It may come off too aggressive and violent to you. However, rap is a way many Americans enjoy expressing themselves, and that does not mean that they should be negatively stereotyped. Rap is a relatively black genre, meaning most of the artists that create the music are black and speak about the

¹⁰ Natalie Neysa Alund, *California Governor Gavin Newsom Signs Bill Limiting Use of Rap Lyrics as Evidence in Court*, USA Today (2022), <https://www.usatoday.com/story/news/politics/2022/10/03/california-rap-lyrics-court-evidence/8167269001/>, (last visited Mar 29, 2023).

experiences of being black in America. However, being involved with rap has come with prejudice too. Vonte Skinner and Mac Phipps were two separate accounts of citizens being convicted of crimes with no further evidence than their relationship with rap. Because they have a violent persona that they use to create content, the prosecution is able to persuade the jury into thinking both men are immoral. Both men were given 30-year sentences, and although Skinner was able to have his decision reversed, Phipps was not so lucky. Phipps lost over 20 years of his life because he was a rapper in the wrong place at the wrong time. There has been prejudice against Black music since the origins of America. Slave spirituals, Rock, Blues, Hip Hop, and Rap have always been heavily criticized by those outside the Black community. Our court system needs to be reformed and the Decriminalizing Artistic Expression Act is a step in the right direction. If all of the states adopt this law, probative evidence will be used for convictions and the jury will not be persuaded by prejudicial evidence.