

THE ADMISSIBILITY OF RAP LYRICS IN COURT: A REVIEW OF AS *WE SPEAK*

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I. INTRODUCTION

The use of rap lyrics at trial is a timely issue given the current confluence of events, including the Young Thug trial,¹ the Black Lives Matter movement, a growing “tough on crime” sentiment,² the introduction of the Restoring Artistic Protection (RAP) Act in Congress,³ and societal debate about

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¹ Deena Zaru, *Judge Rules Rap Lyrics Can ‘Conditionally’ Be Used as Evidence in Young Thug Trial*, ABC NEWS (Nov. 9, 2023, 12:19 PM), <https://abcnews.go.com/US/judge-rules-rap-lyrics-conditionally-evidence-young-thug/story?id=104760646>.

² Jeffrey M. Jones, *More Americans See U.S. Crime Problem as Serious*, GALLUP (Nov. 16, 2023), <https://news.gallup.com/poll/544442/americans-crime-problem-serious.aspx>.

³ Restoring Artistic Protection Act of 2023, H.R. 2952, 118th Cong. (2023).

separating the artist from the art.⁴ This review provides a critical analysis of the 2024 documentary *As We Speak: Rap Music on Trial*, a film that advocates against the use of rap lyrics as evidence in criminal trials.⁵ The cinematography is beautiful, creating an aesthetically pleasing experience. And it is engagingly structured as a road movie with the guide, rapper Kemba, taking the viewer to Chicago, Atlanta, Los Angeles, New York City, and London to interview rappers and legal experts. This results in a powerful documentary that has received glowing reviews from both film critics and audiences.⁶ Unfortunately, while the film's subject is certainly a legitimate topic of discussion, the film suffers from significant shortcomings. This review will analyze how the leading study regarding rap on trial is deceptively presented, misrepresentations of the

⁴ For example, recent debates about the acceptability of consuming art from controversial figures such as Michael Jackson, Woody Allen, and Kanye West.

⁵ *AS WE SPEAK: RAP MUSIC ON TRIAL* (Paramount+ 2024).

⁶ The movie currently has an 86% film critic score and 73% audience score on the movie review website Rotten Tomatoes. *As We Speak: Rap Music on Trial*, ROTTEN TOMATOES, https://www.rottentomatoes.com/m/as_we_speak_rap_music_on_trial (last visited Mar. 22, 2024).

topic as a free-speech issue whereby rap lyrics are “criminalized,” ineffective attempts to analogize rappers to Shakespearian actors, and claims regarding race that are contrary to the evidence.

II. 2016 ADAM DUNBAR STUDY

The documentary prominently touts the results of a 2016 study on how rap artists are perceived compared to that of other musical genres.⁷ The study provided participants with a written text of lyrics from a song that participants were told was from a specific genre of music; the song lyrics were:

Well, early one evening I was rollin’
around

I was feelin’ kind of mean, I shot a deputy
down.

Strollin’ on home, and I went to bed.

Well, I laid my pistol up under my head.

⁷ Adam Dunbar, Charis E. Kubrin & Nicholas Scurich, *The Threatening Nature of “Rap” Music*, 22 PSYCH. PUB. POL’Y & L. 280 (2016).

Well, early in the morning 'bout the break
of day,

I figured it was time to make a getaway.

Steppin' right along but I was steppin' too
slow.

Got surrounded by a sheriff down in
Mexico.⁸

Participants who were told the lyrics were from a rap song were more likely to view the artist negatively than those who were told it was from a different musical genre.⁹ The documentary posits that this is the product of racism.¹⁰ However, a more robust understanding of the study not only does not support this conclusion but provides affirmative evidence against it.

The documentary conveniently omits another finding from the 2016 study. When the race of the artist was changed from Black to white, there was no difference in negative perceptions.¹¹ Therefore, the

⁸ *Id.* at 284.

⁹ *Id.* at 284–87.

¹⁰ AS WE SPEAK, *supra* note 5, at 25:00–28:15.

¹¹ Dunbar, Kurbin & Scurich, *supra* note 7, at 287.

different result between rap music and other musical genres lies in the genre, not in race. This is further demonstrated with how the debate is over rap lyrics in court and not other forms of traditionally Black musical genres such as gospel, R&B, jazz, or soul. This will come as no surprise to anyone with even a moderate understanding of different musical genres.

The two songs used in the 2016 study are illustrative of this point. The first is from the song “Bad Man’s Blunder” by The Kingston Trio.¹² While this song narrates a tale of killing a law enforcement officer just as Ice-T’s 1992 song “Cop Killer,”¹³ the differences are far more telling than that one similarity. In the former, the murderer is explicitly referred to as “bad,” and the perpetrator is sentenced to ninety-nine years of hard labor, thus serving as a cautionary tale.¹⁴ Even the murderer himself repents

¹² *Id.* at 284.

¹³ BODY COUNT, *Cop Killer*, on BODY COUNT (Warner Bros. Records 1992). The comparison between “Bad Man’s Blunder” and “Cop Killer” is one sometimes used by those opposing the use of rap lyrics at trial. See, e.g., Carrie B. Fried, *Who’s Afraid of Rap: Differential Reactions to Music Lyrics*, 29 J. APPLIED SOC. PSYCH. 705, 710 (1999).

¹⁴ THE KINGSTON TRIO, *Bad Man’s Blunder*, on STRING ALONG (Capitol Records 1960).

of his crime and concludes that “this whole thing has been a lesson to me.”¹⁵ Conversely, “Cop Killer” is explicitly “dedicated” to the Los Angeles Police Department, Ice-T encourages his audience “Don’t be a pussy . . . sing along, cop killer!” and when he asks the audience what they want to be when they grow up, they enthusiastically answer “cop killer!” to which Ice-T praises their decision by responding “Good choice.”¹⁶

Even the images portrayed on the covers of the two albums point to significant differences. The Kingston Trio’s album cover is borderline comical, with the three members holding banjos and smiling while wearing tucked-in dress shirts.¹⁷ Ice-T’s album cover portrays a menacing, muscular man with his shirt off, “Cop Killer” tattooed across his chest, a gun in his waistband, a chain wrapped around a clinched fist, and blacked-out eye sockets.¹⁸ A study is clearly not needed to conclude that, if you left the songs and

¹⁵ *Id.*

¹⁶ BODY COUNT, *BODY COUNT* (Warner Bros. Records 1992).

¹⁷ THE KINGSTON TRIO, *STRING ALONG* (Capitol Records 1960).

¹⁸ BODY COUNT, *supra* note 16.

the album cover the same while swapping out the races of the artists, the white “Cop Killer” would be viewed more negatively than the Black “Bad Man’s Blunder.”



The other song used in the 2017 study was “A Boy Named Sue” by Johnny Cash.¹⁹ As the name implies, the song is about a man named Sue, not

¹⁹ Dunbar, Kubrin & Scurich, *supra* note 7, at 285. The lyrics used were:

Well, I hit him hard right between the yes
And he went down, but to my surprise,
He come up with a knife and cut off a piece of my ear.
But I busted a chair right across his teeth
And we crashed through the wall and into the street
Kicking and a’ gouging in the mud and the blood and the beer.
Id.

Johnny Cash. Additionally, the song has an unmistakably comical tone, as evidenced by the uproarious laughter it receives when performed.²⁰ This is in contrast to the more reality-driven nature of rap music. Rappers routinely tout how their songs are “keeping it real” and that they are “spitting the truth.”²¹ Rapper KRS One explains that rap is “all about reality.”²² And rapper Chuck D. explains how rap music expresses the truth by saying that it is “the black CNN.”²³ One prosecutor explained in closing arguments, “Just because you write lyrics doesn’t mean they have true meaning. Johnny Cash was never really in Folsom Prison and didn’t shoot his old lady down. But [this rapper defendant] is living his lyrics.”²⁴ The following thought experiment further illustrates the unique nature of rap music. Imagine

²⁰ Johnny Cash, *Johnny Cash - A Boy Named Sue* (Live at San Quentin, 1969), YOUTUBE (Mar. 24, 2011), <https://www.youtube.com/watch?v=WOHPuY88Ry4>.

²¹ ERIK NIELSON & ANDREA L. DENNIS, *RAP ON TRIAL: RACE, LYRICS, AND GUILT IN AMERICA* 55 (2019) (“There’s no shortage of rappers who assure us that their lyrics are, in fact, *real*.”).

²² *Id.*

²³ *Id.*

²⁴ Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 COLUM. J.L. & ARTS 1, 7–8 (2007).

someone telling a rapper, “Your music is full of empty threats. You haven’t actually done any of those things you rap about, and you wouldn’t do any of the things that you say you would do.” It is unlikely that such a comment would be well received.

III. FREE SPEECH

The film attempts to frame the topic of rap music as evidence as a First Amendment, free-speech issue. It refers to the practice as “the police, the state, com[ing] in and polic[ing] imaginations, polic[ing] artistic expressions, . . . crush[ing] political speech.”²⁵ Reviewers of the film are left with the impression that this is a free-speech issue. One reviewer states that the film is about “the boundaries of free speech.”²⁶ And another, “We want to protect the right of everybody to share who they are and

²⁵ AS WE SPEAK, *supra* note 5, at 37:10.

²⁶ Kathia Woods, *Sundance Showcases Exceptional Lineup of Documentaries*, PHILA. TRIB. (Feb. 3, 2024), https://www.phillytrib.com/entertainment/movies/sundance-showcases-exceptional-lineup-of-documentaries/article_19e0cbe9-279e-5710-8b46-1aec05f41175.html.

where they come from.”²⁷ And another still, “[The documentary] makes a powerful case for the necessity of being free to make art”²⁸ And finally, a reviewer opined how the film “leav[es] viewers questioning if the First Amendment actually does protect the freedom of speech for all Americans.”²⁹

However, properly understood, the issue of rap lyric admissibility at trial is not a free-speech issue. To help illustrate why, imagine you gave a speech at a political rally that included the statements, “I have had multiple meetings with Joe Smith,” “Jane Doe is destroying America,” and “We must pass the XYZ Legislation.” Those quotes could certainly be used against you in court to prove that you did in fact meet with Joe Smith, that you had animosity toward Jane Doe, and that you were in favor of the XYZ Legislation. The reality that these statements could

²⁷ AS WE SPEAK, *supra* note 5, at 1:20:10.

²⁸ Ben Kenigsberg, ‘*As We Speak: Rap Music on Trial*’ Review: *Weaponizing Lyrics in Court*, N.Y. TIMES (Feb. 27, 2024), <https://www.nytimes.com/2024/02/27/movies/as-we-speak-review.html>.

²⁹ Louisa Moore, *As We Speak*, SCREEN ZEALOTS (Feb. 28, 2024), <https://screenzealots.com/2024/02/28/as-we-speak/>.

be used against you at trial does not equate to a violation of your constitutionally protected free speech rights to say them.³⁰

Similarly, the film explicitly portrays the issue as if rap music is being criminalized. Examples in the film include: “The criminalization of hip hop,”³¹ “criminalization of rap music and rap lyrics,”³² and “The criminalization of hip hop, it’s not new, it’s an old tactic. It’s just about criminalization of Blackness.”³³ And Mac Phipps, a rapper who was convicted of manslaughter, is described as “[a] rapper [that] spent most of his life in prison for some lyrics he wrote in the 90’s.”³⁴ In the fictional court case that is prominently featured throughout the film, the defendant is convicted based solely on rap lyrics that did not even mention the crime in question.³⁵

³⁰ In the past, there have been legitimate free-speech issues involving rap lyrics, such as 2 Live Crew being arrested for their lyrics. *See Skywalker Records, Inc. v. Navarro*, 739 F. Supp. 578 (S.D. Fla. 1990).

³¹ AS WE SPEAK, *supra* note 5, at 10:35.

³² *Id.* at 8:40.

³³ *Id.* at 10:35.

³⁴ *Id.* at 17:45.

³⁵ As the fictional defense attorney explains, “all the prosecution has offered today is music. Just [defendant’s] creative expression.” *Id.* at 1:23:05.

This language used throughout the film is highly misleading, as the act of allowing rap lyrics as evidence to prove elements of a crime does not equate to criminalizing rap music any more than using social media posts at trial criminalizes that practice.

IV. SHAKESPEARE COMPARISON

Even more disanalogous than “Bad Man’s Blunder” and “A Boy Named Sue,” the film attempts to portray the actors in Shakespearean plays as analogous to rappers.³⁶ The clear implication is that just as we should not allow actors’ lines to be used against them in court, nor should we allow rap lyrics to be used against rappers. The film presents a scene in which rappers reenact a modernized scene from *Romeo and Juliet*.³⁷ While the scene is captivating, and the Shakespearean framework works surprisingly well when modernized, it is counterproductive to the intended purpose, as it only

³⁶ *Id.* at 59:00.

³⁷ *Id.*

serves to further emphasize the unique nature of rap lyrics. The people in the scene are clearly playing the role of a fictional character reading scripts written by someone else. As soon as the scenes ends, they do not continue to portray the fictional characters. If someone asked them the next day, “Are you really a Capulet like you said you were?” they would surely respond in the negative. Conversely, if someone asked them about their rap lyrics, “Are you really from the Queensbridge Projects like you say?” or “Did you really sell drugs like you say?” the answer would likely be in the affirmative.

V. RACE

A through line that is maintained in the movie is that the use of rap lyrics at trial is the result of racism. Not only is this something inferred throughout, but it is also explicitly stated: “Race is central to rap lyrics on trial.”³⁸ As previously explained, the findings of the 2017 study that were omitted from the film

³⁸ *Id.* at 28:40.

explicitly find that it is not the race of the artist that produces negative perceptions of rap music.³⁹ In fact, the most prominent trial involving rap lyrics as evidence was the Supreme Court case of *Elonis v. United States*, in which the rapper was white.⁴⁰ Any mention of this landmark case is peculiarly omitted from the film.

There are two other notable omissions from the film. The first is the case of Cameron Todd Willingham, who is touted by many as the best example of a factually innocent person being executed.⁴¹ He was convicted in part by testimony at trial from a psychologist who never met with Willingham and never published in the area of sociopathic behavior but was nevertheless allowed to testify that Willingham was a sociopath because he had heavy metal music posters displayed at his

³⁹ See *supra* note 11 and accompanying text.

⁴⁰ “The highest-profile case involving rap as evidence.” NIELSON & DENNIS, *supra* note 21, at 15.

⁴¹ Michael Conklin, *White Paper: Innocent or Inconclusive? Analyzing Abolitionists’ Claims About the Death Penalty*, NEB. L. REV.: BULL. (Sept. 4, 2018), at 4, <https://lawreview.unl.edu/downloads/Conklin%20-%20Innocent%20or%20Inconclusive%20PDF.pdf>.

home.⁴² The other omission is that of the Insane Clown Posse, a rap group whose fans—called “Juggalos”—were designated by the Federal Bureau of Investigation as a gang, resulting in some of them being detained as members of a crime syndicate for simply displaying the group’s logo on their automobiles.⁴³ While ultimately unknowable, perhaps the race of Willingham and the Insane Clown Posse, all white, did not fit the narrative for the film. This narrative appears to be highly effective, as many of the critics reviewing the film agree that the issue is ultimately about race. One movie critic describes how “the documentary highlights the glaring disparity in the treatment of Black artists compared to their white

⁴² David Grann, *Trial by Fire: Did Texas Execute an Innocent Man?*, NEW YORKER (Aug. 31, 2009), <https://www.newyorker.com/magazine/2009/09/07/trial-by-fire> (explaining that the “expert” testified that “[m]any times individuals that have a lot of this type of art have interest in satanic-type activities”).

⁴³ Techdirt, *Appeals Court Dismisses Gang Designation Lawsuit Against the FBI Brought by Insane Clown Posse Fans*, ABOVE L. (Jan. 5, 2018), <https://abovethelaw.com/2018/01/appeals-court-dismisses-gang-designation-lawsuit-against-the-fbi-brought-by-insane-clown-posse-fans/>.

counterparts”⁴⁴ While this is insinuated throughout the movie and even expressly stated on multiple occasions, no evidence is provided to support the claim.⁴⁵ Some information provided, properly understood, actually rebuts the claim.⁴⁶ Also inconsistent with this narrative is that some of the staunchest advocates for using rap lyrics at trial are Black prosecutors. For example, Fani Willis, whose office is prosecuting the high-profile Young Thug case stated, “I think if you decide to admit your crimes over a beat, I’m going to use it. I’m not targeting anyone. You do not get to commit crimes in my county, and then get to decide to brag on it.”⁴⁷

VI. THE UNSEEN

As explained in this review, the film contains a lot of misleading information. But perhaps more troubling is the information that was left out of the film. It never addresses any contradictory evidence

⁴⁴ Woods, *supra* note 26.

⁴⁵ See *supra* note 38 and accompanying text.

⁴⁶ See *supra* note 11 and accompanying text.

⁴⁷ Zaru, *supra* note 1.

or counterarguments in favor of using rap lyrics at trial. The documentary is clearly an advocacy piece, which is fine, but opposing views should nevertheless be presented, if for nothing else than to provide the best rebuttals available against these opposing views so that viewers are better equipped to address them.

For a documentary about evidential admissibility, it is a glaring omission to not even introduce the basic legal standard regarding admissibility. The film never mentions the balance between probative value and prejudicial effect.⁴⁸ Likewise, none of the relevant specifics—such as this evidential balance—from the cases they bring up are discussed.

The lack of any meaningful discussion about the rules of evidence or an honest assessment regarding the cases discussed is made even more striking as a missed opportunity when one considers there were numerous experts interviewed in the film, University of Southern California law professor Jody Armour,

⁴⁸ FED. R. EVID. 403.

MSNBC legal news analyst Ari Melber, and criminal defense attorneys John Hamasaki and Alexandra Kazarian. Instead of talking about the law as it pertains to rap lyrics as evidence, they discuss mass incarceration, aggressive prosecutors, underfunded public defender offices, plea bargaining, and the value of rap music to society.⁴⁹

Another unfortunate omission from the film is any specific solution.⁵⁰ The value of criticism is minimal when no preferable alternative is offered. This is because when the problems inherent in potential solutions are examined, the “solution” is often found to be worse than the initial problem. This is illustrated by the proposed solution from other advocates on the topic of a blanket ban on rap music at trial.⁵¹ Such a proposed solution would have

⁴⁹ The only exception is a fifty-one-second discussion regarding the inadmissibility of character evidence. As *WE SPEAK*, *supra* note 5, at 33:10.

⁵⁰ The closest the film comes to offering a concrete solution is a fifty-five second part in which different people state their intent to pass legislation limiting the use of rap music at trial. *Id.* at 1:21:25.

⁵¹ NIELSON & DENNIS, *supra* note 21, at 157 (proposing “rap shield rules” to “completely ban the use of rap lyrics, videos, or promotional materials as evidence in criminal proceedings”).

disastrous consequences.⁵² It would allow defendants to intimidate witnesses and jurors with impunity—such as when Jamal Knox rapped about the names and work schedules of the officers set to testify against him and urged his fans to kill them.⁵³ It would incur the difficulty of defining exactly what rap music is—as opposed to other genres or just spoken-word poetry—as well as explaining why rap artists should receive special protections not afforded to other musicians. It would bar juries from hearing rap lyrics in which the defendant confessed to specifics of the crime, as in *Greene v. Commonwealth*.⁵⁴ And it would even bar defendants

⁵² The Pennsylvania Supreme Court recognized the absurdity of such a rule in the Jamal Knox case:

If this Court were to rule that Appellant’s decision to use a stage persona and couch his threatening speech as “gangsta rap” categorically prevented the song from being construed as an expression of genuine intent to inflict harm, we would in effect be interpreting the Constitution to provide blanket protection for threats, however severe, so long as they are expressed within that musical style.

Commonwealth v. Knox, 190 A.3d 1146, 1161 (Pa. 2018).

⁵³ Recent Case, *First Amendment — True Threat Doctrine — Pennsylvania Supreme Court Finds Rap Song a True Threat.* — *Commonwealth v. Knox*, 190 A.3d 1146 (Pa. 2018), 132 HARV. L. REV. 1558, 1559 (2019).

⁵⁴ In *Greene*, after his wife was murdered by having her throat slit, but before he was charged with the crime, Greene recorded a rap video with the lyrics:

from using their rap lyrics as evidence for the defense.⁵⁵ Finally, this omission denies the viewer exposure to more practical solutions that have been proposed by others such as expert witnesses for the defense to explain the nature of rap music, judge training on the matter, and jury instructions that cover the issue.⁵⁶

VII. CONCLUSION

The extent to which rap music—or any artistic expressions—should be allowed as evidence is an important topic of discussion. Unfortunately, this documentary does little to educate the viewers on the issue. Even worse, mischaracterizing the issue as criminalizing rap lyrics and casting prosecutors as enemies to fight against is likely to stoke extremist

• “B—— made me mad, and I had to take her life. My name is Dennis Greene and I ain’t got no f——ing wife.”

• “I knew I was gonna be givin’ it to her . . . when I got home . . .”

• “I cut her motherf——in’ neck with a sword . . .”

Greene v. Commonwealth, 197 S.W.3d 76, 86 (Ky. 2006) (alterations in original).

⁵⁵ Michael Conklin, *The Extremes of Rap on Trial: An Analysis of the Movement to Ban Rap Lyrics as Evidence*, 95 IND. L.J. 50, 60 (2019).

⁵⁶ *Id.* at 61.

sentiment toward the legal system. These effects are perhaps already manifesting in those who support blanket bans on all rap lyrics at trial⁵⁷ and banning social media posts at trial.⁵⁸

⁵⁷ See *supra* note 51 and accompanying text.

⁵⁸ AS WE SPEAK, *supra* note 5, at 1:06:10 (“It’s not just music videos and lyrics that we see used as evidence in court now, it can be social media posts, captions, comments on social media.”).