

Forgive Me, Your Honour, For I Have Sinned: An Exploration into the Use of Rap Lyrics in Gang-Related Criminal Court Trials

Jordan Mangelsen

ABSTRACT: This paper explores the use of rap lyrics in criminal trials across the United States and Great Britain. Rap is a multibillion-dollar industry and has soared in popularity since its inception. In recent years, rap lyrics have been used to ascertain guilt or innocence through the perceived meaning of the specific lyrics. However, there have been no advancements toward appreciating the cultural significance of rap or its status as a legitimate art form (Nielson and Dennis, 2019). The criminal justice system has favoured treating lyrics as confessions. Meaning, it fails to consider the nuance of the socio-historical context of the rap industry or the implications of the street code. This paper does not argue that all rap lyrics are either exclusively true or false; it instead argues that the uncritical approach to examining rap lyrics in the context of the criminal justice system has replicated systems of harm that have disproportionately affected young Black men.

KEYWORDS: Gangsta rap, Drill, Gangs, The street code, Rap lyrics

Rap music has become a complex system for self-expression, especially for Black communities in low-income areas (Nielson & Dennis, 2019). Creating rap music can be a healthy form of identity creation and support the growth of emotional intelligence. Listening to rap is an entertaining pastime and has been shown to increase youth involvement in social activism. Rap is a counterculture often involving explicit lyrics detailing violence and political commentary (Owusu-Bempah, 2022). Rap has dominated the mainstream charts and is especially prevalent in many Black communities. Becoming famous through rap also creates an opportunity for upward mobility for those who otherwise do not have access to economic mobility (Nielson & Dennis, 2019). Rap is a complex art form that has received wide critical acclaim, rapper Kendrick Lamar was awarded a Pulitzer Prize in music for his authenticity, vulnerability, and ability to capture societal issue through his music. Nevertheless, rap has a particularly negative reputation for being affiliated with gangs and is viewed as dangerous (Nielson & Dennis, 2019). Other predominantly Black music genres have faced similar treatment in the past. From jazz, blues, and reggae to modern 'gangsta rap' and 'drill', Black music is treated with hesitation, though it continues to be among the most profitable genres in the music industry (Fatsis, 2019).

Rap is a social platform that allows the writer to approach the genre in many ways (Owusu-Bempah, 2022). Some may choose to rap about lived experiences or engage in social commentary; either way, much of the genre is intentionally provocative, relying on figurative speech and hyperbole to create entertainment. The violent characteristics of the genre can often be used as marketing tools for commercial success, and social media has developed as a tool for rappers to self-promote and gain credibility in the rap space (Patton et al., 2015). The emergence of social media has made surveillance of rappers and gang members more accessible to police (Stuart, 2020). Police look for evidence of gang affiliation and the disclosure of criminal behaviours online (Lane, 2018). Authorities are prone to accepting social media posts at face value without understanding the digital street code, even when hyperbolic language is present (Ilan, 2020). The lack of nuance by authorities demonstrates the inability to understand the notion of the street code and how it influences the behaviour of youth embedded in street culture online.

In the United States, the growth of the subgenre of gangsta rap and its explicit lyrics led to using rap lyrics as evidence in court to prove criminal wrongdoings (Nielson & Dennis, 2019). While in Britain, the same thing can be witnessed through the censorship of another rap subgenre, drill music (Owusu-Bempah, 2022). Gangsta rap influenced the emergence of drill, so it is no surprise they share similarities in the content of their lyrics; both subgenres exhibit themes of violence and criminality. With increasing frequency across the USA and the UK, young men are being prosecuted without acknowledging that their rap lyrics are forms of art. (Nielson & Dennis, 2019; Owusu-Bempah, 2022). This paper will examine the United States and Britain to acknowledge how rap is criminalized in a broader context. Nielson and Dennis (2019) found that when examining the use of rap lyrics as evidence in approximately 500 cases, 95% of defendants were Black or Latino. Owusu-Bempah (2022) found similar results in the UK, noting that the practice was almost exclusively reserved for cases with Black defendants. Rap lyrics should not be admissible in criminal trials because of the lack of cultural competency in the criminal justice system. Without confronting the systemic problems of the criminal justice system, there is a disproportionately negative impact on Black men and their artistic expressions in rap music.

Gangsta Rap and The Street Code

Rap music began as a form of Black youth culture, originating in the Bronx, New York, in the 1970s (Owusu-Bempah, 2022). Rap as a genre has been viewed as threatening, dangerous, and violent, posing a danger to society (Stoia et al., 2018). The intertwining of gang culture with rap culture led to the rise of gangsta rap in the late 1980s. The subgenre is a product of gang culture in Southern California (Kubrin, 2005). Gangsta rap involves the images of the violent and dangerous reality of gang life in the inner cities, with an increased value placed on authenticity (Stoia et al., 2018). The role of authenticity requires artists to present violent imagery from a first-person narrative to receive credibility. The increased pressure on authenticity comes from adherence to the street code. Anderson (1994) defines the street code as "a set of informal rules governing interpersonal public behaviour, including violence" (p. 82). Thus, the street code regulates violence in approved ways, with other street-oriented individuals establishing the rules. Existing as an external entity,

the street code garners respect and must be constantly guarded as social identity is a significant factor of the code; one can acquire status for being violent, gaining the respect of peers and deterring future violence against themselves. The street code is a cultural adaptation to the lack of faith in the criminal justice system, specifically policing. Individuals who adhere to the street code must take care of infractions independently, creating a sense of physical and psychological control. Gangsta rap groups like NWA were open about their critical view of police and the criminal justice system, opening them to persistent legal surveillance and an investigation from the FBI (Stoia et al., 2018). Police hyper-surveillance tactics have disproportionately punished rappers for their acts of resistance.

Changing the Street Code

The rise of social media has also fundamentally changed the street code, allowing individuals to grow and consolidate their violent reputations online (Anderson, 1994; Stuart, 2020). Online portrayals of the hyper-masculine gangster are derived from the change in the street code; however, it is important to note that these portrayals are not necessarily false; they are just different from those found in earlier contexts (Urbanik & Haggerty, 2018). False representations of one's reputation online can result in violent assaults on the street. Urbanik and Haggerty (2018) found that the authenticity requirement in rap lyrics and social media posts is prominently displayed by the association with violent criminals, guns, drugs, and neighbourhood affiliations. Being seen online interacting with well-known criminals is a way to build social capital and earn street credit. Rappers will display the people they are aligned with in music videos to send a message to rival gangs; this acts as a protective factor because it may deter future attacks and may increase street credit.

Conversely, Stuart (2020) found that gang members and non-gang-associated youth would routinely exaggerate their violent and criminal behaviours on social media. During his fieldwork, Stuart (2020) observed the gangs posting photos of fake drugs and counterfeit money on various platforms. These manufactured displays have led to the realization that gangs and rival gangs may all be disingenuously 'fronting' (Stuart, 2020; Urbanik & Haggerty, 2018). The discrepancies between Urbanik and Haggerty

(2018) and Stuart (2020) could be due to the ever-changing nature of social media and the rate that trends emerge.

Rap was once the most popular way to earn street credit online, but social media has emerged as an alternative medium to establish street credibility (Patton et al., 2013). Social media has become a universal method of communication for youth, and it should come as no surprise that gang members will use the platforms to bolster their reputations online. Gang behaviours have moved into the digital space with the cultural phenomenon known as 'internet banging.' Internet banging refers to the strategy employed by gang members to trade insults or make threats to rivals over social media platforms. Social media is also an important tool for gangs to conduct business through drug sales, communication and coordination of actions and events relating to the gang. New gang members can employ social media to build their reputation by engaging in internet banging and boasting about criminal behaviours. The internet is the ideal way to form a collective identity; gang-affiliated youth use the collective identity to maintain their masculine identities and internalize the values of the street code while remaining online (Anderson, 1994; Patton et al., 2013). Patton et al. (2013) argue that the collective identities of gangs have formed out of embracing the otherness that is subjected to them. Hence, the cultural significance of rap music claiming radical rebellion:

If the political and social discourses are shaping me into a thug, I will be a super-thug; if they are crafting public opinion that I am dangerous, I will become super dangerous; and if they are creating me to be a criminal, I will create and advocate a criminalized identity. (Patton et al., 2013, para 27)

Rap and social media have intersected as they have both grown to be alternative forms of cultivating a masculine street identity (Patton et al., 2013). Famous rappers are also subject to new variations in online street credibility. Rapper Rick Ross was exposed for fronting a false persona and was threatened by a member of the Gangster Disciples for his hypocrisy. Alternatively, rapper Chief Keef took to Twitter after a rival gang member was murdered to make fun of the victim ending his tweet with #LMAO (laughing my ass off). Chief Keef is an example of how rappers can benefit from

internet banging and the street credit affiliated with social media gang violence.

Understanding the American Perspective of Rap in the Courtroom

Nielson and Dennis (2019) examine three contexts in which prosecutors use rap lyrics as criminal evidence in the United States. The first is the diary, the most common scenario when prosecutors treat a defendant's lyrics as confessions. Prosecutors may claim the violent lyrics as autobiographical journals containing the admissions to crimes. The second scenario is motive and intent. Motive and intent are used when the lyrics are written or performed before the alleged crime. Prosecutors will argue that the lyrics indicate a motive or prior knowledge of the crime. In the criminal trial of *United States v. Foster* (as cited in Nielson & Dennis, 2019), Derek Foster was found with a large quantity of drugs on him but denied knowing they were there. Foster was carrying a notebook with rap lyrics he had written about dealing drugs. Foster's defence argued that the writing was purely fictitious; however, the US Court of Appeals found that "in writing about this 'fiction' character, Foster exhibited knowledge of narcotics trafficking, and in particular drug code words" (Nielson & Dennis, 2019, p. 14). However, the court did not acknowledge that Foster could have learned the code words through popular culture. The courts have also used this same context of motive and intent to illustrate a defendant's gang associations. The third scenario is threats; unlike the previous two instances, the lyrics in the threat cases are the crime themselves. Prosecutors argue that rap lyrics should be understood as literal threats of violence against others. All three cases insinuate that rap lyrics accurately reflect the realities and intentions of the defendants.

Lane (2018) also found that prosecutors in the USA would use photographs posted to social media as evidence of criminal behaviour. Posting photos online served as a way for authorities to connect defendants and label them as gang members. Some states will enhance sentences for people who are believed to be gang members, and the implication is that by simply posting a photo online, individuals could receive longer and harsher sentencing (Esbensen et al., 2001). Nielson and Dennis (2019) point out that while not everyone in prison for their lyrics is innocent, they have been denied a fair trial.

Nielson and Dennis (2019) found that most rappers on trial were amateurs and argue that famous rappers receive the artistic license for their lyrics, while amateurs are believed to be rapping and writing about personal experiences. However, this notion has been challenged with the indictment of rapper Jeffrey Lamar Williams, better known as Young Thug, under the Racketeer Influenced and Corrupt Organizations (RICO) Act in 2022 (Jarvie & Brown, 2022). The RICO act was introduced to convict top organized crime captains; it does not require the person to have committed the crime, but rather that they had knowledge or controlled a network of criminal activity. Atlanta prosecutors believe Williams is the organizer of a criminal street gang known as Young Slime Life (YSL) and has allegedly made music about the gang's crimes. YSL is not only an alleged street gang but also the name of Williams's record label, which prosecutors believe is designed as propaganda to recruit new members. The research into Williams' lyrics and social media posts has also allegedly found documentation of gang symbolism of wearing red and flashing hand signs. Fulton County prosecutors list lyrics from nine of Williams's songs in the indictment. The alleged social media posts and lyrics of Williams and other YSL members are believed to be connected to the 2015 murder of rival gang member Donovan Thomas Jr. The lyric in question comes from the song *Anybody*: "I never killed anybody, but I got something to do with that body" (Young Thug & Nicki Minaj, 2018, as cited in Jarvie & Brown, 2022). Using the lyrics, in this case, is an example of the diary concept, with Williams' lyrics being treated like a confession (Nielson & Dennis, 2019). Morrison (2022) interviewed Erik Nielson on using Williams' lyrics in the RICO indictment. Nielson argues that the shift toward using lyrics in the cases of famous rappers indicates a worrying trend of the expansion of lyrical evidence in the United States. Nielson believes that this case is not necessarily about the guilty verdict, as much as Williams is being used to send a message to other rappers showing they are vulnerable to the same treatment.

The increase in cases like Williams's comes from the bias of hyper-surveillance around rappers, which is a consequence of the broad reach of social media platforms (Nielson & Dennis, 2019). Police and prosecutors have turned to social platforms as a tool to investigate gang members and affiliates (Stuart, 2020). This act is hugely problematic because of the lack of cultural competency in these investigations,

with many officers utilizing their own interpretations. Stuart (2020) argues that the increased inspections of social media lead to the disproportionate surveillance of Black youth and reinforce the myth of Black criminality. Police departments compile lists of gang members based on information found on social media, which can lead to misidentification and wrongful convictions. In 2012 a Harlem youth was wrongfully incarcerated after 'liking' posts of gang activity on Facebook. The opportunities for police to misidentify gang members have grown with social media's rapid expansion.

The Censorship of Drill Music

Drill music is a subgenre of rap that originated in Chicago but has become more broadly associated with the United Kingdom (Ilan, 2020). Drill is an underground genre characterized by moving away from traditional labels and allowing artists freeform publication on sites like YouTube and SoundCloud. Driller's demographics are mainly young Black male artists from underprivileged backgrounds. The London Metropolitan Police have recently been targeting the genre to censor the music by banning live performances and requesting videos be removed from YouTube. Authorities have argued that drill glorifies and commends criminal behaviour and the use of violence. The UK has also followed the US ruling that rap videos, lyrics, and social media posts can be used as evidence in criminal trials and scrutinized by the courts. Black people in the British criminal justice system are already overrepresented, and with this reaction to drill, young Black men are most at risk of having their lyrics used against them in court (Owusu-Bempah, 2022). It is paramount to understand that race is a central component of the topic of prosecution of rap and drill (Ilan, 2020; Nielson & Dennis, 2019; Owusu-Bempah, 2022).

Drill has found itself in the grips of the criminal justice system, with many artists being issued Criminal Behaviour Orders (CBOs), prohibiting them from posting music to YouTube or playing live events without informing the police beforehand (Fatsis, 2019). Members of the Brixton-based group 410 have been classified as a gang. Meaning, they are now prohibited from certain areas of London, as well as banning them from referencing individuals and places that are said to be associated with a rival gang. Drillers and members of 410 AM and Skengdo received a suspended sentence for performing the song

Attempted 1.0, which allegedly contains incitements of gang violence. However, Fatsis (2019) notes that while the lyrics are violent, they do not indicate gang involvement or activity. The absence of cultural competency in policing efforts makes it difficult to appreciate the differences in artistic expression and boasting criminal behaviour (Ilan, 2020; Stuart, 2020). Ilan (2020) maintains that the criminal justice system is 'street illiterate' meaning it is "unable to properly interpret what is being communicated by street-culture communications such as drill" (p. 999). The censorship of drill lacks nuance and fails to understand the functions of drill as a culturally conscious subculture that acknowledges the realities of social life in South London (Fatsis, 2019; Ilan, 2020).

Owusu-Bempah (2022) reviewed 38 criminal cases involving various uses of lyrics and rap videos to investigate how the genre is used in the British legal system. The analysis of criminal trials dates between March 2005 and January 2021. Interestingly, Owusu-Bempah (2022) found that 42% of all cases occurred between 2018 and 2022, indicating an upward trend in using lyrical evidence in the UK. The provocative nature of drill music makes it particularly vulnerable to misinterpretation by legal authorities. Influenced by the gangsta rap subgenre, drillers adopt a 'badman' persona, meaning they will flaunt their violent and criminal behaviours in a first-person narrative. Most cases prosecuting drill artists were related to weapons and murder, both common subject matter of drill music. However, these references should not be taken at face value as it is typical for rappers and drillers to exaggerate their propensity for violence because that is what is increasingly popular with listeners. British courts were particularly resistant to understanding the context of the songs or the wider music industry.

Owusu-Bempah (2022) found that most defendants in these cases were Black youth, indicating that lyrics and music videos are used almost exclusively against Black people. This is not due to a lack of White rappers or drillers; the expansive nature of the popular genre has many famous and amateur White rappers and a huge White fanbase. Nevertheless, Black men are targets of this pointed use of lyrical evidence. Due to the nature of the genre, rap is closely associated with criminality by non-listeners; these labels are then placed on defendants. Furthermore, the interpretation of drill as nothing more than violence dismisses the ability of Black youth to meaningfully participate

in a legitimate form of artistic expression (Ilan, 2020). Black men are also subjected to their status as symbolic assailants, in which negative stereotypes of criminal behaviour translate to over-policing and overrepresentation of Black people in prison (Brunson & Miller, 2005; Owusu-Bempah, 2022). Black men are visibly associated with crime and treated with suspicion because of the idea of a symbolic assailant (Brunson & Miller, 2005). The racialized approach to using rap music as evidence also links rappers to gangs (Owusu-Bempah, 2022). Music videos tie individuals to gang association as evidence of criminal behaviour. The term 'gang' is racialized by the London Metropolitan Police, with many of their indicators simply being relevant parts of youth culture in South London. The London Metropolitan Police's gang index vastly overrepresented Black youth because of how the understanding of Black youth culture has been boiled down to gang culture. By linking defendants to crime via gang association is a way prosecutors can use rap as a racial signifier to build a gang narrative. The British Court of Appeal has held that using rap lyrics to prove gang membership is justified. As a result, the prosecution of rap and drill disproportionately affects Black youth through various means.

Conclusion

Rap has become one of the most popular music genres in the United States and is a multibillion-dollar industry (Nielson & Dennis, 2019). Hip-hop and rap have become ways for Black men to represent their cultural identities. Since the inception of popular media, Black men have been painted as violent predators (Rudrow, 2019). Rap is a way to resist oppression from the reductive stereotypes created and promoted by White supremacy. Despite this, as the genre has grown in popularity, rappers are under increased pressure to push narratives of violence to appeal to young White suburban boys and men. Rappers are constantly fighting between sharing lived realities and enticing listeners through violent rhetoric, further explaining why it is uninformed to include rap lyrics and videos as criminal evidence.

Moreover, rap music has been regarded with suspicion in a way that has historically only affected Black creative art forms (Fatsis, 2019; Nielson & Dennis, 2019). Rap has effectively been denied the status of a legitimate form of artistic expression through its use as criminal evidence (Nielson & Dennis, 2019). The

devastating consequences of this denial have led to many young men in prison for their lyrics. Using rap lyrics in criminal trials reflects society's willingness to incarcerate young men of colour, who make up a significant portion of the rap genre. The incarceration of rappers silences a generation of artists and denies their freedom of expression.

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