Crime, Culture and Control: Rap Lyrics and Videos as Criminal Evidence
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In recent times, rap music lyrics and videos are increasingly being admitted as evidence in criminal trials. This paper addresses some of the core questions. Are we criminalizing rap music and the rappers? Is the admission of such evidence a way of social control? Should rap lyrics and videos continue to be admitted as evidence of a defendant’s involvement in a crime? Is it a violation of the First Amendment?

Rap lyrics and videos can be used in court to prove motive, intent, and membership of gangs. The major strength of this type of evidence lies in the fact that prosecutors can present the lyrics and videos as the defendant’s autobiography. Prosecutors can also present the lyrics as the defendant’s confession. Furthermore, rap lyrics and videos can be used to authenticate the defendant’s lifestyle. A lifestyle that prosecutors can present as being violent, greedy and full of threats. This can show criminal propensity, even though it is character evidence.

Defense attorneys usually argue that the lyrics and videos should not be admitted because they are fictional accounts, mere artistic expressions, and only for marketing purposes. The question becomes – are all rap lyrics and videos artistic expressions that are entitled to constitutional protection? Defense attorneys can make a strong argument that the lyrics are Free Speech and must be protected under the First Amendment. Admitting rap lyrics and videos as evidence in courts may arguably be seen as another way the courts are using to control certain communities (social control). Assuming arguendo that it is a way of social control, is it justified?

After a critical analysis of several cases involving rap lyrics evidence, this paper makes recommendations on the best way forward when trial courts are faced with the decision of whether to admit or exclude such evidence. There is no doubt that rap music lyrics and videos are highly prejudicial. However, in some cases the prejudicial effect may not substantially outweigh the probative value. Therefore, it is not error to admit such evidence in trials in some situations. Jury instructions are necessary in any case involving rap lyrics and videos. At the moment rap lyrics and videos are admissible if they show a connection to the circumstances of a case and if names of people associated with the case are mentioned.