



Ban rap and drill lyrics in the courtroom

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Keir Monteith KC has been working in the criminal courts since the last century; he defends in high profile cases, some of which are of constitutional significance and also sits as a part time Crown Court judge. In this Middle Eight, he argues that, in recent years, the state has increased its use of rap and drill to prosecute Black defendants, that music is being used to plug gaping holes in cases with no forensic evidence, and that this regressive and racist practice has to stop.

'You know what, those songs about violence and drugs . . . they caught everyone's attention'. Turn up the volume and listen to [the documentary Terms and Conditions](#).¹ A gateway video to understanding drill – 10 times better than any law report or middle aged KC trying to explain what 'Grind half of the figures. O tight all my drillers' really means.

Terms and Conditions provides an insight into what the drill scene is all about: its history and culture and why the lyrics are shocking, described by the broadsheets as [nihilistic](#), provocative and violent; why there is talk about gangs and that when the *first person* is used it doesn't follow that the rapper or indeed anyone in the background has killed anyone; possessed a firearm; is a member of a criminal gang or has committed any crime. At the documentary premiere Riki Bleau, founder and co-president of [Since '93](#) Records, made the point: 'For 25 years Jay-Z has been rapping about selling drugs but that doesn't mean he's out there right now selling drugs'. However, for the last 25 years the police, prosecution and Courts have turned rap lyrics on their head and have proceeded on a literal interpretation of the words spoken. Their approach has reinforced the stereotyped view that what Black and Brown rappers speak about equates to personal diary entries and confessions of criminal activity they have been involved in.

Summary

In this article I suggest that the establishment approach has created a racist structure within the justice system. After all it is unarguable that the introduction of rap and

¹ *Terms and Conditions: A UK Drill Story* (dir. Brian Hill, 2020), <https://www.youtube.com/watch?v=kno5T4y5SBY>.

drill lyrics into the courtroom only affects Black and Brown defendants. It is a fact that this prosecution tactic has allowed prejudicial and highly inflammatory material to be presented to the jury as evidence of what ‘a criminal looks like’, confessions of violence and gang membership. The time has come to ban these fictional lyrics and to concentrate on investigating and prosecuting cases on the basis of forensics, CCTV, cell site and witness testimony.

Rap is the most popular form of poetry in the world and has become an important and integral part of many people’s lives. In the US R’n’B/hip-hop is the most dominant music genre in the Billboard charts.² Here in the UK rap is not far behind. The reach of drill has extended to philosophical consideration of Plato’s cave by reference to the lyrics of drill artists Skengdo x AM.³ Drill has been adopted by artists all over the world from ONEFOUR in Australia to UK drill artists guesting on Drake tracks in North America. Back in the UK, during May 2021, Tion Wayne and Russ Millions achieved drill’s first number one with their track ‘Body’.⁴

The big brands love rappers and love rap music. Snoop Dogg, aka Calvin Cordozar Broadus Jr, landed a multi-million dollar deal to appear in the ‘Did Somebody Say Just Eat’ adverts, with [17 million views](#) and counting. Travis Scott allegedly made \$20 million for his [McDonalds](#) collaboration. Jay-Z has promoted [Reebok](#), Budweiser, Puma and Nokia. [Drake](#) and [Vince Staples](#) worked with Sprite and [Lil Yachty](#) teamed up with Nautica. The list goes on. The financial figures are eye watering. In 2020 Kanye West was said to be the highest paid rapper with an estimated income of \$170 million.⁵ The global rap market is worth an estimated \$20 billion a year. In the UK it’s a similar story with Skepta creating a new trainer with [Nike](#), Stormzy ‘joining’ Manchester United to feature in an [Adidas](#) commercial and rapper Little Simz heading up a stellar line up of British celebrities to garner [JD Sports](#) 20 million views for its hugely successful Christmas advert.

The financial success is mirrored by the number of gongs and prizes that rappers have won over the years. Multi Grammy winning American rapper, Kendrick Lamar, was awarded the Pulitzer Prize for music. Dave’s debut album [Psychodrama](#) won the [Mercury Prize](#) and [Album of the Year](#) at the [2020 Brit Awards](#). Skepta’s album [Konnichiwa](#) won the [Mercury Prize](#). In 2018, he was nominated for three [Brit Awards](#) and appeared on [Debrett’s](#) 2017 list of the most influential people in the UK. Stormzy won ‘Best Grime Act’ at the 2014 and 2015 [MOBO Awards](#). His debut album, [Gang Signs & Prayer](#) (2017), was the first [grime](#) album to reach number one on the [UK Albums Chart](#) and won [British Album of the Year](#) at the [2018 Brit Awards](#), the year in which he also won the Ivor Novello Album award. In 2019 he was the headline act on the Pyramid stage at [Glastonbury](#). Little Simz was shortlisted for the [Mercury Prize](#) and won the awards for Best Album at both the [Ivor Novello Awards](#) and the [NME Awards](#). Her fourth album won the 2022 [Brit Award for Best New Artist](#).

² Billboard staff (2021, 8 November), ‘Billboard explains: How R&B/hip hop became the biggest genre in the US’, <https://www.billboard.com/music/music-news/billboard-explains-rb-hip-hop-biggest-genre-9613422/>

³ <https://www.theguardian.com/music/2020/may/05/drillosophy-why-uk-rappers-are-teaching-plato-in-lockdown>

⁴ Aamna Mohdin (2021, 7 May), ‘Tion Wayne and Russ Millions’ Body is first drill song to go to US No. 1’, *Guardian*, <https://www.theguardian.com/music/2021/may/07/tion-wayne-and-russ-millions-body-is-first-drill-song-to-go-to-uk-no-1>.

⁵ Uwa Echebiri, ‘The World’s highest paid rappers in 2020’, <https://justrichest.com/top-21-highest-paid-hip-hop-musicians-world-2016/>

I am told that drill like grime and rap resonates with the youth of today. It is certainly produced by creative and talented entertainers, provides an artistic outlet for the next generation and for some it is an escape route out of poverty. Every day amateur rappers upload and circulate their videos to social media platforms all over the world, not realising that anything they do say may be taken down and used in evidence against them.

Knowledge of rap and drill, including its politics and culture, is a prerequisite to properly understanding that the state's deployment of this music as evidence of gang affiliation is racist. A documentary exposé of the American experience is contained in 'The Racist Roots of Rap on Trial' which examines how the US government has used rap lyrics to prosecute children and young Black men from the 1990s onwards. Presenter Sidney Carmichael eloquently sums up the situation: 'It's weak evidence and lazy prosecution and, you know what, it's only happening in hip hop'. Here in the UK Drillminister was commissioned by Channel 4 to use quotes from MPs to create a track entitled 'Political Drillin'. Within 2 minutes the rapper lays bare the hypocrisy of the establishment. Lyrics courtesy of Right Honourable members include: 'The moment is coming when the knife get heated, stuck in her front and twisted'; 'She'll be dead soon'; 'I will not rest until she's chopped up in bags in my freezer'; 'The day that it becomes you are hurting us more than helping us, I won't knife you in the back – I'll knife you in the front'; 'she's a dead woman walking'.⁶

In America the rappers are standing up to the State with a campaign calling for an end of the use of rap lyrics as [criminal evidence](#).⁷ The 'Decriminalizing Artistic Expression Act'⁸ was signed into law by the California governor in September 2022. However, this legislation only requires a court to consider specified factors when balancing the probative value of rap lyrics against the substantial danger of undue prejudice. Meanwhile the New York and Federal bills provide more effective protection. They start with a presumption that evidence of a defendant's creative or artistic expression is inadmissible and require the prosecutor to prove, by clear and convincing evidence, that artistic material such as rap lyrics should go before the jury. In fact there is precedent for excluding rap from criminal trials with the Supreme Court of New Jersey quashing an attempted murder conviction and ruling that rap lyrics that featured in the trial should not have been read to the jury. The Court, in a 6–0, judgement, stated that such lyrics could not be used as evidence unless there was a 'strong nexus' to the crime charged.⁹ It's time for UK lawyers and rappers to follow the American example and demand a change in the law.

In the UK the State's tactical use of rap and drill lyrics as prosecution evidence has become de rigueur and often props up weak gang narratives. The Crown Prosecution Service guidelines state 'Gangs are increasingly using drill music and

⁶ Drillminister - Political Drillin [Music Video] Link Up TV (2018, 25 October), <https://www.youtube.com/watch?v=spJoRLpDLLM>

⁷ Bill Donahue (2022, 22 August), 'California Rap Lyrics Bill Clears Final Vote, Heads to Governor for Signature', <https://www.billboard.com/pro/california-rap-lyrics-bill-final-vote-headed-governor/>; David Renshaw (2022, 18 May), 'New York Senate approves law restricting use of rap lyrics in court' <https://www.thefader.com/2022/05/18/new-york-senate-rap-lyrics-in-court>

⁸ NME (2022, 2 October), 'California bill limiting use of rap lyrics as evidence in court becomes law', <https://www.nme.com/news/music/california-bill-limiting-use-of-rap-lyrics-as-evidence-in-court-becomes-law-3321085>

⁹ *State v Skinner* (A-57/58-12) Unreported 4 August 2014 (Sup Ct (US)).

social media to promote gang culture, glamorise the gang lifestyle and the use of weapons'.¹⁰ The facts and figures for this bold assertion are not provided and there is no reference to the fact that Drill is a mainstream musical genre. Police officers go on courses to become 'experts' to inform juries what the rapper 'really' means, what can be inferred from hand gestures and colours that might be displayed. The guidelines are under review; the use of police officers as experts has been described as 'no more than the prosecution calling itself to give evidence'¹¹ and there have been many calls for greater scrutiny of this so called expert testimony but the practice continues unabated.

Some rappers have even gone so far as placing 'warnings' in their songs that remind the listener that 'It might sound real, but it's fictional',¹² but that hasn't stopped the State from adducing the evidence. For white musicians there is no need for such cautionary labelling as there is no suggestion that the violence they sing about could ever be true. No one thought Mick Jagger meant it when he sang in the *Midnight Rambler* 'I'll stick my knife right down your throat baby and it hurts'. When the Beatles harmonised 'I'd rather see you dead, little girl, than to be with another man', no one cared. Johnny Cash's rousing chorus 'I shot a man in Reno just to watch him die' raised no eyebrows. The White Stripes sang 'Give you a punch through that barbed wire fence ... When I hit you, baby, you know I make no sense' in 'Your Southern Can Is Mine'. In the number one hit 'Delilah' Sir Tom Jones sings 'I felt the knife in my hand and she laughed no more'. To this day the song continues to be sung in many football and rugby stadiums up and down the country.¹³

Once in the courtroom, the rap music is remixed with the police 'expert' evidence and the prosecution's gang narrative. Racist stereotypes abound. Research demonstrates that juries are adversely affected by rap music and are much more likely to convict. In Dunbar and Kubrin's 2018 study the authors concluded 'it appears that those who write violent "rap" lyrics are more easily associated with crime and violence than those who write identical violent lyrics labelled as different genres. In particular, participants are more likely to assume that a rapper is in a gang, has a criminal record, and is involved in criminal activity than are artists from other music genres, and this is based merely on the genre of the lyrics'.¹⁴ The participants

¹⁰ CPS Guidance – Gangs, drill music and social media Gangs are increasingly using drill music and social media to promote gang culture, glamorise the gang lifestyle and the use of weapons. They may post videos online that seek to taunt rivals, incite violence or glamorise criminality. The videos often show the brandishing of weapons, include incendiary remarks about recent incidents of young people being killed or seriously injured, and threats to stab or shoot specific individuals and members of rival groups. The instant nature of social media means that plans develop rapidly, disputes can escalate very quickly and are seen by a large audience, which increases the need to retaliate in order to 'win' the dispute. If such an allegation is referred to the CPS prosecutors should consider whether a substantive offence is disclosed. <https://www.cps.gov.uk/legal-guidance/gang-related-offences-decision-making>

¹¹ JUSTICE, *Tackling Racial Injustice: Children and the Youth Justice System* (London: JUSTICE, 2021), para.2.51.

¹² 'I love that my imagination gets to you ... Man, don't worry 'bout this story 'cause it's fictional' (<https://www.youtube.com/watch?v=eauIglrfPqs> The late Drakeo the Ruler).

¹³ BBC News Online (2014, 11 December), 'Sir Tom Jones on Under-Fire Delilah Song', <https://www.bbc.co.uk/news/av/uk-wales-30441537>.

¹⁴ Dunbar and Kubrin (2018).

had been presented with musical lyrics from a 1960s folk song which included the following:

*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.
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.*

All the participants in the study read the same lyrics but were told they were from a country, heavy metal or rap song. They were randomly provided with the race of the songwriter by way of a photo of a young man. 'Finally, participants were tasked with judging the character of the songwriter, including traits such as his violent nature and criminal disposition'.

The judge's textbook¹⁵ on managing trials contains numerous model directions on how juries should treat certain types of evidence with care and caution. There is nothing about rejecting racist stereotypes that are inextricably linked with the topics of rap and gangs. There is lukewarm guidance about 'gang evidence' from the Court of Appeal but even when judges get this wrong the conviction stands. In *R v Rashid* [2019] the Court of Appeal 'concluded that the only complaint of substance was the direction as to how the gang evidence [videos] could be used. Although the direction did not focus on the correct way in which the evidence could be used, it did make three crucial points. First, the jury had to be sure that the defendant they were considering was a gang member. This was a point specifically raised by Tshoma who said he was not. Secondly, even if they were gang members that did not mean they were violent or that they committed the offences with which they were charged. Thirdly, and linked to the second point, the jury should not in any event be prejudiced against the defendants because they were gang members, but they might give it weight'.¹⁶

But how did the jury determine whether the defendants were gang members? By watching rap videos and listening to the opinion of a police officer who had watched the very same videos. In their appeal the defence submission was that the video and social media evidence was insubstantial.¹⁷ However, there was no complaint about the complete absence of judicial direction to the jury that they should disregard racist stereotypes, myths or confirmation bias. There was clearly a risk that stereotypes, myths and/or confirmation bias formed the basis of the police officer's opinion and/or such views would be used by the jury to convict. After all the judge had directed the jury that the police expert believed all the defendants were in a gang. The officer spoke of (a) the clothing they wore, (b) how they acted and that (c) the lyrics and gestures depicted in the music videos were designed to incite violence.¹⁸ During the run-up to their final conclusion the court of appeal judges reiterated that watching two rap videos was sufficient to prove the

¹⁵ The Crown Court Compendium, <https://www.judiciary.uk/publications/crown-court-compedium-published/>

¹⁶ *R. v Rashid* (2019), Court of Appeal of England and Wales Decisions (Criminal Division) [EWCA (Crim)], paragraph 59.

¹⁷ 'First there is a complaint about the insubstantial nature of the evidence (participation in music videos and knowledge gleaned from social media as well as from unrevealed sources)', *R v Rashid*, para 48.

¹⁸ 'The judge reminded the jury that the prosecution alleged that the three defendants were members of a gang. She continued:

membership of a gang: ‘Proof of gang membership could be inferred from the particular videos in which [Tshoma] appeared and gang membership was celebrated’.¹⁹ At the appellate level and below there is no proper recognition of the racism that is used to mould rap music as evidence or guidelines on how judges or juries should disregard racist stereotypes, myths or confirmation bias.

At sentence these myths and stereotypes are regurgitated as fact. These ‘facts’ are then repeated by the media and the vicious circle continues. Rap and drill are the soundtracks that accompany Black and Brown males as they are disproportionately stopped and searched, prosecuted and then jailed.

The situation is exacerbated because some defence teams don’t object to the prosecution playing rap before the jury²⁰ and/or fail to instruct their own experts to help inform cross examination, educate the courtroom and rebut the prosecution case.²¹ Why do these omissions occur? Why is it different for Black and Brown children and youth? How do first person lyrics become confessions? How does rapping about guns and gangs amount to evidence of a disposition, propensity or an intent to endanger life?²²

The State’s approach to Black youth is often racist and has been heavily criticised by academics, campaign groups, lawyers and human rights organisations. JUSTICE,²³ a registered charity and all-party law reform and human rights organisation, described ‘the misuse of drill music to secure convictions’ as ‘one of the most profound examples’ of systemic racism in the UK.²⁴ Academics Tony Ward and Shahrzad Fouladvand explain ‘rap lyrics and videos are overwhelmingly used against young, black defendants to construct a narrative that resonates with stereotypes about black criminality’.²⁵ Law scholar Dr Abenaa Owusu-Bempah suggests at play may be a ‘racist assumption that [Black arts] cannot reach the same levels of sophistication as their white counterparts’, and, as such, can be taken literally and attributed to one’s character in a way which other genres are not.²⁶

P.C. Saban gave evidence about the Beckton Boys in E6 or ACG, and his knowledge of their activities. He believed all three defendants were, in his opinion, a member of the gang. He spoke of the clothing worn by gang members, how they dressed and act. He accepted that they were involved in making music videos but said in his view these were not simply made for music lovers to enjoy, but because of the nature of the lyrics and the gestures used, in his view they were made to incite violence. (*R v Rashid*, para 28)

¹⁹ *R v Rashid*, para 50.

²⁰ Ward and Fouladvand (2021).

²¹ Ward and Fouladvand assert: ‘Unfortunately, there is nothing in recently reported cases to indicate that police gang expertise is being subjected to any kind of rigorous scrutiny . . . The failure of the defence to challenge this evidence appears to be symptomatic of the failure of the bar to take up the challenge of the “new and more rigorous approach” of *CrimPR PD 19A (Expert Evidence)*’, in Ward and Fouladvand (2021).

²² *R v O* [2010] EWCA Crim 2985.

²³ JUSTICE Report (2021, 25 February), ‘Tackling racial injustice: children and the Youth Justice System’, <https://justice.org.uk/our-work/criminal-justice-system/current-work-criminal-justice/tackling-racial-injustice/>

²⁴ JUSTICE Report, ‘Tackling Racial Injustice: Children and the Youth Justice System’: ‘Systemic racism has left Black culture repeatedly under attack in this country. One of the most profound examples is the misuse of Drill music to secure convictions. We recommend an overhaul in how this is used as evidence to ensure that it is always relevant and deployed with objectivity’, p. 2.

²⁵ Ward and Fouladvand (2021).

²⁶ Owusu-Bempah (2022).

An example of this discrimination is the method the police use to compile their so called 'Gangs Matrix' by reference to racist stereotypes. For example, 'grime music videos featuring gang names or signs [are] considered a key indicator of likely gang affiliation'.²⁷ People who have never been involved in violence are added to the Matrix and the number of Black people that have been included is disproportionate.

In October 2017, 78% of the people on the Matrix were Black, an even more striking statistic in light of the fact that only 28% of those responsible for serious youth violence were Black. Amnesty International called out the Matrix over 4 years ago.²⁸ In the same year, the Information Commissioner's Office found the Gangs Matrix was potentially breaking data protection laws and failed to distinguish between victims of crime and offenders, and issued the MET with formal enforcement notices to improve. A 2018 report for the Mayor of London found the list overly targeted young Black men.²⁹ In the same year it was revealed that more than 40% of young people on a Matrix list from Haringey were scored as posing 'zero' risk of causing harm. Some were assessed as being much more likely to be victims than offenders. In 2021 the police removed hundreds of names from the Gangs Matrix, but the question remains: why were those names on the matrix in the first place? In February of this year Liberty announced they are challenging the lawfulness of the Matrix, arguing that it discriminates against people of colour, particularly Black men and boys, and breaches human rights, data protection requirements and public law principles.³⁰

Over 20 years ago Sir William Macpherson, a retired high court judge, labelled the Met as being institutionally racist. In 2019, when Cressida Dick was asked about such a description she said 'I simply don't see it as a helpful or accurate description. This is an utterly different Metropolitan Police'. In the very same year Black people were 40 times more likely to be stopped and searched in the UK than white people.³¹ These continual stops and searches are unlawful, humiliating and a stark reminder of the powerful steer that these stereotypes provide. Another vicious circle is created by this unlawful detention and public shaming. It reinforces and provides an ongoing example of the racist approach of the State. At the Met's current recruitment rate, it will take about 100 years to have a properly representative police force. In a plan to reform the Met and bring about real change it has been suggested that they will have to accept they are institutionally racist.³² The police have refused to make such an admission.³³

²⁷ Amnesty Features (2020, 18 May), 'What is the Gangs Matrix?', <https://www.amnesty.org.uk/london-trident-gangs-matrix-metropolitan-police>

²⁸ Amnesty International (2018, 9 May), 'Trapped in the Matrix', <https://www.youtube.com/watch?v=dGgFWzAoc5M>

²⁹ Dodd, V. (2018), 'Met gangs matrix may be discriminatory, review finds', *Guardian*, <https://www.theguardian.com/uk-news/2018/dec/21/metropolitan-police-gangs-matrix-review-london-mayor-discriminatory>

³⁰ LIBERTY CHALLENGES MET POLICE'S DISCRIMINATORY GANGS MATRIX Posted on 1 February 2022, <https://www.libertyhumanrights.org.uk/issue/liberty-challenges-met-polices-discriminatory-gangs-matrix/>

³¹ Mark Townsend (2019, 4 May) 'Black people '40 times more likely' to be stopped and searched in UK', *The Guardian*, <https://www.theguardian.com/law/2019/may/04/stop-and-search-new-row-racial-bias>

³² Compare with Boris Johnson's denial that the force is institutionally racist <https://www.independent.co.uk/news/uk/politics/boris-johnson-dawn-butler-met-police-stop-racism-hackney-a9663521.html>

³³ Vikram Dodd (2022, 28 February), 'England and Wales police bosses will not admit to institutional racism in their forces', *The Guardian*, <https://www.theguardian.com/uk-news/2022/feb/28/england-and-wales-police-bosses-will-not-admit-to-institutional-racism-in-their-forces>; Simon Peplow (2022,

The police's approach to the Black community provides part of the narrative, 'justification' and 'evidence' for the subsequent prosecutions. Police officers' assertions that suspects are gang members, known gang members or associated with gangs are often repeated in Court and sometimes met with little or no opposition. The use of the gang stereotype provides the State with the ability to employ the prosecutor's best friend – the joint enterprise doctrine.

When gang evidence including music videos is not opposed, scrutinised, called out or excluded and defence experts aren't instructed, the adversarial system fails the Black and Brown defendants it has in its charge. When the directions to the jury omit the caution that should be employed when considering the prosecution's assertions on rap music, gangs, so-called gang signs and joint enterprise, there are miscarriages of justice. Often the State locks up, for life, numerous Black youths on the back of the actions of a single individual. Black youths end up serving hundreds of years inside for crimes they just didn't commit.

The State's approach to drill music, so-called gangs and joint enterprise and its deliberate focus on Black youth is indefensible. These are racist prosecutions not 'wrong turns'. Amnesty International considered the Gangs Matrix in detail and they concluded 'The Gangs Matrix is based on a vague, racialised concept: 'the gang'. Police officers told Amnesty researchers they were concerned about the conflation of gang crime with serious youth violence, as there is less overlap than commonly presumed. This analysis is backed up by the Mayor of London's Office for Policing and Crime, which found that more than 80% of knife-crime incidents resulting in injury to a victim under 25 in London were deemed to be non-gang-related. 'Gangs are, for the most part, a complete red herring ... fixation with the term is unhelpful at every level', said one officer.

Violent crime is complex, nuanced and requires careful investigation before it is prosecuted. It's not all about gangs, signs and drill music, far from it. In 2017, the London knife crime strategy stated 'Recent data suggests that the majority of knife crime is not gang-related. Gang-flagged crime accounted for 5% of all knife crime with injury during 2016 – down from almost 9% in the preceding year ... focusing exclusively on gangs is not going to solve or adequately impact on our knife crime challenges in London'. Focusing exclusively on drill music in order to prove gang membership is also wrong, counterproductive and will lead to more miscarriages of justice.

The Court of Appeal and rap

The Court of Appeal (COA) has upheld almost every single appeal in cases where a complaint is made about the admission of rap music. The five cases below suggest their lordships' and ladyships' approach to rap is literal rather than metaphorical; that when Black defendants are mimicking the firing of a gun they conclude that means they could have a propensity to kill and they have even decided that a defendant can be part of a criminal gang despite the fact they don't rap on the video. On the topic of pretending to fire a gun all judges need to consider the case of rapper Russ

30 May), 'The police won't acknowledge institutional racism in their race action plan - here's why that matters', <https://theconversation.com/the-police-wont-acknowledge-institutional-racism-in-their-race-action-plan-heres-why-that-matters-183853>

Millions who created the 'gun lean' move.³⁴ This went viral when the drill track 'Body' hit the number one spot last year. The move was later mimicked by premier league footballers to celebrate the scoring of a goal and it reached number 10 in the *Guardian's* list of 'greatest pop music dance crazes'. Please note Mr Millions wasn't really shot. Here's a [tutorial](#) on how to perform it.³⁵

In *R v Lewis*³⁶ the COA ruled that a judge was entitled to admit evidence of a rap video to help prove 'membership of, or association with, a gang or gangs, exhibiting violence or hostility to the police or links with firearms'.³⁷ This was in circumstances where the defendant was silent, did not create the video but mimicked, like all good teenage boys do [my words], the firing of a gun to camera: 'Lewis at that point was standing close to Francis and is shown miming a shooting action' (para 112); 'the video involves significant reference to guns with Gray imitating the firing of a gun at one point' (para 124).

In the appeal of *R v Awoyemi*³⁸ the evidence complained about included hand-written rap lyrics and a YouTube rap video³⁹ where it was alleged that the defendants [they disputed it was them] made 'threatening gestures with their fingers to indicate guns' while rapping about gangs and guns. The COA ruled 'The evidence was prejudicial but inevitably so and not unduly so. It went far beyond simple membership of a gang, the love of RAP music, hyperbole or appearance on a video. It indicated the extent to which the individuals concerned had signed up to gang and gun culture' (para 33).

In *R v Alimi*,⁴⁰ the only successful appeal I have been able to find, a conviction for firearms offences was quashed. The Appellant was an 'extra' in two rap videos.

³⁴ In December 2018, Russ Millions released his single 'Gun Lean' ([Virgin Records](#)) and the dance that he performed in the video became a viral dance trend.

³⁵ 'How to gun lean 'UK Drill' (dance tutorial)' (2018, 20 December), *Chop Daily*, <https://www.youtube.com/watch?v=WO5IZ48SI2E>.

³⁶ *R v Lewis* (Jermaine Nathaniel) [2014] EWCA Crim 48

³⁷ 'The argument mounted by the defence was that these "rap" videos were nothing more than that a demonstration of involvement in a musical genre; they did not signify gang membership and, in particular, the words and gestures should not be taken at face value. At the first trial (but not at the second), evidence was called before the jury by the defence to support that contention. That evidence, however, goes to weight: the issue before the judge was admissibility, and the judge was perfectly entitled to conclude that the evidence was clearly capable of showing membership of, or association with, a gang or gangs, exhibiting violence or hostility to the police or links with firearms', paragraph 100.

³⁸ *R v Awoyemi* (2016), EWCA Crim 668.

³⁹ 9 i) handwritten RAP Lyrics found in Thomas' bedroom relating to violence, drugs, guns, using guns to get drugs and the DAG gang. They contained references that established membership (and leadership) of the DAG gang, threatened retribution for murdered members, offered challenges to other local gangs and showed a link with and attitude to firearms, including a clear threat to shoot dead a rival. Further, they demonstrated the use of a gang 'uniform' in the form of a white bandana. The lyrics were adduced as important explanatory evidence and as evidence of propensity; ii) part of a 'You Tube' video said to feature Thomas and Toto and other DAG members. On the video, both Thomas and Toto make threatening gestures with their fingers to indicate guns. The man thought to be Toto declares 'don't fuck with my family. Why? Cos I'll be eager to let slug fly' followed by a hand gesture to indicate a shooting. The man thought to be Thomas speaks of someone getting 'yacked' or 'bodied', i.e. shot dead. Thomas also refers to having a gun on his waistline and declares himself 'from Aggi DAG Straps family'. The other young men chant 'Aggi DAG Mardi gang'. This was said to establish the existence of the DAG gang, membership of it, the criminal nature of the gang, their attitude to firearms and serious gang violence. The video was adduced as important explanatory evidence and as evidence of propensity.

⁴⁰ *R v Alimi* (2014) EWCA Crim 2412.

He did not rap. However, during the appeal the prosecution persisted in submitting that his presence was evidence of bad character.⁴¹ The judges concluded that the rap video evidence did not prove gang membership in relation to Alimi but had no doubt that the lyrics had been properly admitted against the two co-defendants,⁴² who had rapped about the ‘glorification of violence and guns’.

Even videos produced 2 years prior to the crime have been held to be admissible. In *R v Sode*⁴³ the prosecution stated that the defendant, who was aged just 14 at the time of the video, made a gesture and remarks supportive of a gang [para 18]. Again taking a literal approach, ignoring the fact that the defendant was a child, the Court of Appeal concluded that ‘53 ... The YouTube video provided a clear and direct link between Green and the Anti-Shower Gang, rivals of the Shower Gang, of which the deceased was a member. The fact the video had been made some two years before does not reduce its impact or diminish its relevance’.

The COA in *R v Abdirizak*,⁴⁴ their latest judgment on rap and gangs, endorsed the lower court’s approach in admitting rap music that helped plug gaps in a murder case where there was no forensic evidence against the appellants. The Court of Appeal stated: ‘15 ... there was no scientific evidence linking him with the stabbing. That does not undermine the circumstantial case that was established by the other evidence’. The last sentence turns science and logic on its head. Indeed, in previous cases the COA has accepted the absence of forensics was powerful evidence in favour of the defence.⁴⁵

In *R v Abdi* the COA went on to state that the jury could consider three rap videos from YouTube as evidence of gang **association**. My emphasis is added as it is important to note the watering down of ‘gang member’ to the vague and nebulous concept of ‘gang association’. This approach provides a very low bar for the prosecution to jump and amounts to not much more than prejudicial background evidence.

The judgment continued: ‘In ‘Realist Jo Jo Taking A Trip’ the lyric referred to RB7 [the gang]. The jury had evidence that people identifiable as RB7 members appeared in the video’. Even if the identifications were correct this is guilt by association – a concept which the Supreme Court has confirmed has no place in the

⁴¹ ‘Mr Jones for the prosecution puts his case on this issue very fairly. He candidly accepts in paragraph 3.8 of his respondent’s notice that the gang material against the appellant was significantly less strong than the gang material against the other two defendants. We agree with that proposition. Mr Jones nevertheless submits that there was a proper basis for the judge to admit the evidence as against the appellant as well. Mr Jones relies not only upon gateway (d) in section 101 of the 2003 Act, but also upon gateway (c) as elaborated in section 102. Mr Jones submits that the rap lyrics demonstrate that there was a gang in the Southwold Road area called CSR, that the gang was involved in violence and gun/crime, that there was heightened tension in the period leading up to the offence. He lists a number of other matters which, in his submission, the rap lyrics evidence’ (para 35).

⁴² Paragraph 22 ‘The judge was plainly correct in relation to Miles and Ikumelo. There can be no doubt that the evidence of the rap lyrics was properly admitted as against those two defendants’

⁴³ *R v Sode* (2017), EWCA Crim 705.

⁴⁴ *R v Abdirizak Hussein Abdi* (2022), EWCA Crim 315.

⁴⁵ During a murder appeal *R v Lon Trach Gian Noor Azura Mohd-Yusoff* (2009) EWCA Crim 2553 in 2009 LJ Moses gave judgment: ‘Mr Altman QC, with characteristic frankness, accepted that the absence of blood and bodily tissue such as might be expected despite an attempt to clean the house, was powerful evidence in favour of the defence which the prosecution could not gainsay’. At paragraph 37 the Court agreed ‘Powerful though the evidence of the absence of blood at 54 Knoyle Street is, it must be set against the evidence which demonstrated that Xing Xing Xie’s body had been at 54 Knoyle Street’ (para 35).

Criminal Justice system.⁴⁶ It was then noted that about 2 minutes into the video there was a lyric ‘trying to put a sting in their abs’⁴⁷ and Abdi ‘could be interpreted as performing a stabbing motion towards his chest’. The two remaining videos were summarised in just three sentences: ‘25 ... The other videos were called “Ten Toes Tap Drill” and “Realist Jo Jo Raindrop”. In the latter video there was specific mention of RB7 and references to shooting and shank. Shank is a slang term for knife’. Again what exactly is to be reasonably inferred from these lyrics and possible mimics of stabbing in a drill performance? By definition drill videos mention gangs, shooting and stabbing. The absence of any further detail from which to infer ‘gang association’ and no reference to the contents of ‘Ten Toes Tap Drill’ speaks volumes ... Meanwhile two of the three videos are still available on YouTube and they have had over 500,000 views.⁴⁸

Restrictions on rap artists

The establishment also uses the justice system to censor rappers and threaten them with jail if they don’t obey. Skengdo and AM are internationally renowned drill artists who have incorporated French one liners into their tracks. Their 2017 ‘Mad about Bars’ performance on Mixtape Madness has been watched over 31 million times. They have had sold out UK tours and secured number one hits in the iTunes hip-hop charts. In 2018 the police obtained a ‘gang’ injunction against them which among other things prevented the duo from performing music that incited violence. In 2019 they performed an old song called ‘Attempted 1.0’ and as a result they were taken to court. The judge imposed a 9 month sentence suspended for 2 years. This was a legal first. Prior to this no one had ever received a prison sentence for performing a song.

Digga D has had multiple ‘Top 40’ hits, his single ‘Woi’ was nominated for best song of the year, he was featured in the BBC documentary *Defending Digga D*⁴⁹ and *GQ magazine* described him as ‘the most influential British rapper of our time’. As I complete my final edits, the headlines are ‘Digga D Blasts to U.K. No. 1 with “Noughty By Nature”; UK drill figurehead has a flow for the ages and “the west Londoner’s deepest record yet”’. However, Digga D is also one of the first artists in legal history to be made subject to a criminal behaviour order. This punitive court order means that the state controls the content of his songs. If what he sings is found to have breached the order then he can be sent to prison.

Censorship of rap and drill also continues behind the scenes. Recent figures from a Freedom of Information request demonstrate that the Met asked for 510 music videos to be taken down from YouTube in 2021. Only 3 per cent remain. This represents a year-on-year increase of video censorship of almost 300 per cent. As the police step up their campaign to take down these drill videos it is worth remembering the words of Linton Stephens as he moved a motion on drill music

⁴⁶ *R v Jogee* (2016) UKPC 7: ‘It is important to emphasise that guilt of crime by mere association has no proper part in the common law’ (para 77).

⁴⁷ ‘There was evidence from someone with expertise in rap and drill lyrics that this particular lyric referred to stabbing someone’ (para 25).

⁴⁸ [Realist Jo Jo Taking A Trip](#); [Ten Toes Tap Drill](#) [Realist Jo Jo Raindrop](#).

⁴⁹ <https://www.bbc.co.uk/programmes/p08xkspf>

at the TUC Black Workers' Conference: 'Music and artistic self-expression are a reflection, and not a cause, of the individual socioeconomic experience. The government's diversion tactic to continually blame music of black origin as a contribution to the cause of the rise in outcrops of violent or antisocial behaviour demonises the young black community and suppresses their voice'.⁵⁰

Coda

The deployment of rap and drill music as prosecution evidence only affects Black and Brown defendants. It is collected and presented by a police force that is institutionally racist and processed by an adversarial system that fails to scrutinise this controversial approach. The censorship of rap and drill follows the same pattern. The establishment's starting point with this fictional form of entertainment and creative expression is that if you're Black or Brown and rap, mimic firing a gun or maybe mimic stabbing then you are in a gang, an associate of a gang, espouse violence and have 'signed up to gang and gun culture'. This is a racist approach, reverses the burden of proof and has to stop.

Acknowledgements

A few sections of this Middle Eight previously appeared in <https://www.gardencourtchambers.co.uk/news/debunking-prosecution-myths-gang-stereotypes-joint-enterprise-and-racist-driven-stop-and-searches>

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⁵⁰ <https://musiciansunion.org.uk/news/why-are-drill-rappers-criminalised-for-making-music>