

Racist inferences and flawed data: drill rap lyrics as criminal evidence in group prosecutions

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Abstract: Drill rap lyrics are used regularly by police and prosecutors as evidence against young Black working-class defendants in UK criminal cases. Though this practice is of mounting public concern, its discursive mechanisms remain poorly understood, shrouded by the police and courts. This article exposes and explains state interpretations of drill lyrics in the preparation of serious crime cases. It considers how the state uses violent rap lyrics to build secondary liability in group prosecutions by exploiting drill's power to invoke stereotypes and mislead the court. The author focuses on a 2020 joint enterprise murder case in London, in which she served as a rap expert, to give a concrete illustration of how the state tries to use rap lyrics of little or no relevance to incriminate. This article contends that rap-facilitated group prosecutions encapsulate processes of racist carcerality – targeting young Black people through their expressive culture – which are in need of concerted challenge and transformational change.

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Introduction

Rap music is being used regularly as evidence against young Black working-class defendants in serious crime cases in England and Wales. Since the arrival of the UK drill subgenre in the mid-2010s – with its blustering lyrics about dissident youth lifestyles laced with graphic violence, sex and territorial imperative – there has been a surge of cases in which prosecutors seek to rely on verse and videos. The full scale of the practice is unknown. Research that scoped for cases from January 2020 to January 2023 for the Prosecuting Rap project identified seventy UK criminal cases in which prosecutors sought to rely on rap evidence involving some 250 defendants (there are no doubt dozens more during this period).¹ Where serious harm has taken place, the police cast the net widely, mining the digital and cultural lives of potential suspects for material to help mount a case. They then produce reports on the relevance of the rap and serve as the ‘in-field’ rap experts at trial, in cases in which young defendants are often not called on to give evidence.² Drill lyrics sometimes have relevance to specific offences and/or defendants. But powering this legal use of rap is the state’s knowledge that a selection of violent lyrics – when presented to jurors alongside the disturbing details of a violent incident – helps secure pathways to conviction.

Police and prosecuting authorities have been far too unregulated and unaccountable in their evidential use of rap. Given the context of systemic racism in police forces, their charging recommendations need to come under intense scrutiny in cases involving young Black defendants – perhaps nowhere more so than in cases in which investigators are making criminalising claims about Black youth culture.³ Once these police recommendations are submitted to the Crown Prosecution Service (CPS), the latter decides whether to go ahead with proceedings. New research from the University of Leeds reveals that the CPS is upholding, and even exacerbating, the racial disparities of the police’s charging recommendations in England and Wales: it goes ahead with charges of white British suspects at fully 10 per cent *below* the rate of suspects from Black and other racially minoritised communities for similar offences. The CPS says that it doesn’t know what causes the ‘unexplained disproportionality’.⁴ With the CPS, so far, unwilling to acknowledge the causality of racism, work that explores police and prosecutorial processes and discourses, including how rap music can act as an accelerant, is urgently needed.

In this article, I focus on an individual 2020 case that was the subject of public interest and in which I was instructed as a rap expert (a role I had performed in a selection of cases for over a decade previously, long before drill’s emergence).⁵ To look closely at one case is not to fetishise it or to treat its use of rap as egregious – as

something 'going wrong' in an individual instance. Instead, by contrast, it serves to provide a close illustration of poorly understood patterns and practices. By analysing the legal argument and judgement about the admissibility of rap evidence in this case, this article provides rare insight into how rap is sought to be used in what are often veiled first-trial proceedings. What I lay out in this case, typical of many others, is that the lyrics that prosecutors relied on, in fact, had no relevance to the incident; at the same time, they had high prejudicial value, picked and primed to look relevant and confuse jurors. What we also see is that the state's interpolation of the lyrics to build a guilty narrative – though it involved substantial resources to build the case and to charge and then cage a young person for eight months pre-trial – was attempted speculatively. If the misleading rap evidence were to be rejected, resulting in the material being successfully rebutted and/or excluded, the state would simply dust itself off and make similar inflammatory claims about young Black people via their culture in the next case. Procedural unfairness, bad law and the broad stereotype-conjuring symbolism readily furnished by drill lyrics – all explored below – may well be enough to get such cases over the line. If it isn't enough, there is no comeback. Nothing is at stake for the state; everything is at stake for the young person facing a long sentence.

At its core, this article exposes and critiques racialised state discourses about drill rap lyrics mounted as hard evidence in the preparation of criminal cases. While it offers insights into rap-enabled prosecutions in general, it focuses specifically on how the state uses rap in group prosecutions.⁶ The seventy cases in the scoping database cited above involved an average of about 3.5 defendants per case.⁷ Many, including the one I focus on in this article, were 'joint enterprise' cases in which 'secondary parties', who are not themselves suspected of having physically committed the principal offence, are nonetheless charged with that offence.⁸ Spearheaded by the activist organisation JENGbA (Joint Enterprise Not Guilty by Association), families, prisoners, campaigners, youth workers, scholars and lawyers have been raising the alarm and mounting a challenge for many years about the appalling injustice this produces.⁹ As they show, those on the periphery of, and even uninvolved in, incidents of serious harm and those involved in much lesser offences come to be charged and often convicted of the most serious offences. The practice disproportionately targets young, poor and racially minoritised, above all Black, people.¹⁰ What I specifically demonstrate in this article, drawing on work of other scholars, is the ease with which a reliance on rap lyrics in prosecutions opens space for interpretive mistakes and deliberate obfuscations, rooted in racist presuppositions, to infer shared Black youth liability.¹¹

In a *Criminal Law Review* article on expert evidence, scholars Ward and Fouladvand offer a framework that helps to explore rap's dangerous instrumentality in group prosecutions. They set out three flaws in expert evidence, arguing that they all risk being exemplified in police expert interpretations of rap: 'being based on an unjustifiable assumption'; 'being based on flawed data'; and 'relying on an inference or conclusion which has not been properly reached'.¹² This article

gives flesh to these three flaws. The first section introduces the case study and the state's prosecuting rap thesis, exposing how ostensibly incriminating drill lyrics can be. In section two, I turn to the 'unjustifiable assumption' by police and prosecution that violent rap lyrics can be taken at face value and/or offer a window into the 'bad character' of a defendant. Section three reveals the 'flawed data' in the state's handling of rap evidence; and the final section illustrates the 'improper conclusions' that rap helps propagate, focusing on the racialised carceral drive of joint enterprise collective punishment.

Prosecuting rap

The young person in this article's case study was charged with murder, which bears a life sentence (meaning that, if convicted, he would serve a minimum tariff in prison with no early release and, once released, would spend the rest of his life on licence). He was tried at the Old Bailey in early 2020 along with two other young people, one of whom was also charged with murder. A fatal stabbing had occurred during a large brawl in the early hours of the morning at a New Year's Eve house party in 2018 in north London. There was no suggestion that this defendant committed the stabbing; instead, the prosecution sought to prove he intentionally assisted or encouraged the stabbing which would make him liable for the murder under joint enterprise laws. There was a lot of confusion about what had happened. The judge, deciding on the admissibility of the rap evidence at the end of the prosecution's case, described 'a somewhat muddled and confusing picture from all witnesses' about a fight that 'broke out unexpectedly at a party'.¹³ The victim was unknown to the defendants. At trial, our defendant, who was nineteen at the time of the incident and had no previous convictions for violent offending, said he was on the flat's balcony during the fight (the stabbing took place in the kitchen). There was no scientific evidence to dispute this; there was one eye-witness identification (among dozens of people at the packed party) that someone unarmed in a white top who might have been the defendant was involved in the brawl near where the stabbing happened. Aside from this, the Crown sought to rely very heavily on this defendant's rap lyrics.

Investigators had found drill verses saved in the Notes application on the defendant's mobile phone, which they saved in a six-page document served to the court, including translations of some of the more codified language. The prosecution, no doubt with police help, then selected seven short lyrical extracts (notes a. to g.) from the document to help mount its case, stating in its Prosecution Note that 'the Crown intends to rely upon the following notes'. These included note 'b. 05:41pm on 10th October 2017, "*I want exit wounds on n[xxxx]s*"; note 'c. 11:26am on 20th October 2017, "*Confusing the angle cos I'm unpredictable. See this life that I live ain't fictional. Get a cheffed up face by criminal Ima real badboy. . .*"; note 'd. 01:37pm on 1st December 2017 "*Dat bit Rambo [knife] will shake a mans hat / 1 fuckoff blade Will shave a mans plaits*"; and note 'f. 05:09am on 4th January 2018, "*I*

had devilish thoughts when I witnessed a body get chopped. . . He got splashed & he got cheffed. We didn't say shit."¹⁴

These drill lyrics, albeit selected from the wider corpus to ramp up a sense of realist brutality, remain very violent. As the judge remarked in his ruling on their admissibility: 'anyone reading such lyrics as we have in this application . . . unless they shared an interest which has become increasingly popular with some elements of society . . . would be appalled at the nature of the lyrics.'¹⁵ Within the context of a murder case, the verses might well seem appalling; however, outside the courtroom, radically different interpretive frames open up. UK drill, typified by the work of this defendant, had developed a sound and style with immense pop-cultural appeal, extending far beyond 'some elements of society' to win an international fanbase with its tales of aggressive bravado, dissident youth pleasures, social commentary, violence and rebellious subcultural trends. Author Adèle Oliver ably explores this new creative formula in her book *Deeping It: Colonialism, Culture and Criminalisation of UK Drill*, embedding the stark lyrics within a much wider and highly distinctive sound and style:

UK drill is driven by gritty, sliding 808 basslines; dark, atmospheric melodies; syncopated, skippy hi-hats; defiantly playful ad-libs; insouciant dance moves; black ballies; gloved-hands unfurled into gun fingers; and sardonically violent bars about the realities of life on road.¹⁶

In lyrics like those sought to be admitted to this trial, drillers strike a self-villainising, anti-social pose, updating the masculinist 'bad boy' mode of classic youth music subcultures and the 'badman' archetype of Black and subaltern expressive histories. These longstanding expressive repertoires are amplified and accelerated by the new digital media ecologies of drill's production and transmission.¹⁷

The young Londoners who first developed UK drill in the mid-2010s, including the rapper-defendant, grew up in a context of pervasive social policy failure and vast wealth inequality.¹⁸ They were then villainised and victimised for the ensuing social marginalisation they faced: habitually harassed and surveilled by an institutionally racist Metropolitan Police via stop and search and other state power abuses.¹⁹ Adversity and injustice both fed into and warranted the new music's tone of archly callous rebellion. In many ways, the emergence of UK drill following years of devastating racialised austerity – of financial elites looting communities backed by increasingly repressive, racialised policing – echoes the emergence of the gangsta rap genre in carceral Los Angeles, as a 'fuck-tha-police', hyper-violent rejoinder to Ronald Reagan's 1980s neoliberal revolution.²⁰ UK drill, like classic gangsta rap, leaned into society's casting of young Black men as 'thugs', finding the archetype highly marketable and full of unruly, nihilistic pleasures. Having learnt hard-won lessons about capitalist opportunism, some young people converted social abandonment into an asset by marketing racialised notoriety and violence into a creative form.²¹ UK drill, as a new hybrid gangsta

rap iteration, is thus a complex creative mode, cross-germinated by racist stigma, youthful transgression, social alienation, personal trauma, music subcultures, Black expressive histories and digital technologies, all overlaid with capitalist cultural-industry imperatives.

The Prosecution Note containing the violent drill lyric selections in this case ignored all this complexity and ambivalence. It offered two grounds for why the excerpts were 'relevant to an important matter in issue between the defendant and the prosecution' (thus using gateway 101[1][d] of the Criminal Justice Act 2003, which is typical in the submission of rap evidence).²² The first was 'whether he had a propensity to participate in acts of armed violence', with the prosecution contending that 'these notes are capable of demonstrating that the defendant is willing to lend himself to armed violence'. As such, the state contended that the lyrics were 'evidence of bad character'.²³ Legal scholar Abenaa Owusu-Bempah, who has offered powerful legal critiques of rap evidence focusing on a corpus of thirty-eight Court of Appeal cases, found that such 'bad character' claims about rap are very common.²⁴ Bad character, as she explores, is defined in legal terms as 'evidence of, or of a disposition towards, misconduct', where 'misconduct' is defined as 'the commission of an offence or other reprehensible behaviour'.²⁵ In nearly all cases where rap was sought to be adduced as bad character evidence in Owusu-Bempah's corpus, its use related to the latter: violent rap lyrics themselves, the legal reasoning goes, constitute 'reprehensible behaviour' and a 'disposition towards' committing an offence.²⁶

When very violent lyrics are admitted to trial on these bad character grounds, the judge and jurors are encouraged to interpret popular cultural compositions as a window into a dangerous, even depraved, mindset (evidence of a 'propensity to participate in acts of armed violence'). Lyrics like '*I'm cheffing [stabbing] you inside out*' become legally codified evidence of a rapper's inherent brutality. Faced with such lyrics, many jurors (whose average age is about 50 years, equipped with little or no drill music literacy) are unlikely to need much encouragement to come to the conclusion that rap lyrics like these infer bad character. Violent rap lyrics in court proceedings have been consistently found by social psychologists in studies conducted in the US to be highly prejudicial – by encouraging an emotional rather than a rational response from jurors, triggering negative stereotypes of Black youth criminality and threat and being unduly detrimental to the defendant.²⁷ The judge in our case came to recognise this, explaining: the 'glorification of death [and] use of lethal weapons in the way that these lyrics portray' means that 'prejudice can of course have an adverse effect on any juror's approach to a defendant'.²⁸ The use of drill lyrics in the courtroom tends to strip all feelings of empathy for those charged and, in their place, inspire feelings of racially-loaded revulsion at the purported callousness and lack of remorse of murder suspects. Such lyrics can thus easily fill the void opened by a lack of scientific evidence against alleged secondary parties, lending a dangerous sense of clarity to a 'muddled and confusing picture'.

The second ground on which the prosecution contended that the lyrics were relevant had to do with whether they suggested that the defendant had actually participated in the assault on the victim. To forward this contention, the Prosecution Note focused on the final lyric f. above (which begins '*I had devlish thoughts when I witnessed a body get chopped . . . He got splashed & he got cheffed . . .*'). The prosecution stated that 'note f. . . is capable of demonstrating that the defendant had recently seen a fatal stabbing' and 'himself was participating in the attack'.²⁹ With 'note f.' last saved on 4 January 2018, three days after the fatal stabbing, the timing seemed to add weight to this contention. Such a confessional reading of the lyrics would take them into the terrain of direct evidence. But how relevant were these lyrics to this incident?

Unjustifiable assumptions

In early 2020, as the prosecution tried to get rap admitted to this trial, UK drill was taking its dark and compelling new musical formula into the mainstream. UK drill would score its first Number One album on the pop charts later that year when Headie One, himself on license, released *Edna* (Relentless Records), named after his mum. Our rapper-defendant was also, by the time of his arrest in 2019, successfully converting a bad boy drill persona into a lucrative career. In the period between the New Year's Eve party and his murder charge, he had signed with a major label, toured internationally, inspired a new dance routine that had gone viral and won a sponsorship deal with Adidas. He was also critically acclaimed: his hit track from 2018 was one of the *Guardian's* top twenty 'singles of the year' across all pop genres.³⁰ When Ward and Fouladvand suggest that the state's interpretation of rap evidence exemplifies risks of 'unjustifiable assumptions' in serious crime cases, the example they use is the way 'rap lyrics or videos . . . can be treated as literal statements of fact'.³¹ The commercial and creative motivations for composing the drill lyrics in this case should have been especially evident. However, the Prosecution Note called for a simple literal reading. They made selections like '*See this life that I live ain't fictional . . . Ima real badboy . . .*' from note c. – as well as note g. which included the phrase '*real n[. . .] shit*' – to forward their thesis of lyrical veracity. By emphasising authenticity and realism, the state made the unjustifiable assumption that the verse should be taken at face value.

What the state was calling 'notes' were actually lyrics that contained various cues that they were very far from diary entries. The extensive lyrics found on the phone included repeated sections with slight revisions, suggestive of a rapper honing their craft as they went along. Another indicator of artistry, rather than unmediated autobiography, was that the lyrics included vividly suggestive rhyming couplets about violence that were clearly intended for listeners to relish and repeat. This artist has produced some of the most widely circulating and melodic catchphrases in UK drill. Indeed, the state, in its lyrical selection of 'note d.', landed on a couplet that was no doubt admired by drill fans for its skilfully

indirect violent imagery: '*Dat bit Rambo [knife] will shake a mans hat / 1 fuckoff blade Will shave a mans plaits*'. This rhyme, with its stressed final syllables, points to the musician's rhythmic aptitude and linguistic innuendo. In its unjustifiable 'bad character' inferences, the state occludes the artistry and pleasures that music critics clearly recognised when they characterised this musician as 'a reminder that MC culture in the UK remains thrillingly vital and innovative'.³² Despite plaudits from music critics, drill's creativity has been widely neglected in the state's rush to criminalise both culture and community – something that London author, youth worker and creative Franklyn Addo has compellingly explored.³³

Furthermore, the lyrics include an explicit cue that the autobiographical declarations are unstable. As is typical in gangsta rap subgenres like UK drill, the persona abruptly shifts perspective, from claims to be 'walking the walk' to lyrics that explain why he is making such claims. The material the state seized on for 'note c.' had been worked on in the six pages downloaded from his phone, with a revised version reading: '*See the life I lead ain't fictional In the system we labelled as criminals all about money Don't care about beef*' (4 January 2018). In this revision – not selected by the Crown – the claim to violent realism ('*ain't fictional*') is immediately undercut. The persona is not interested in street conflict ('*don't care about beef*') but instead wants to develop a lucrative career in drill music or other illicit enterprise ('*all about the money*'). Further complicating the state's realist frame, the rapper adds another reason for his adoption of a violent rap persona: it is a reactive response to racist stigma ('*in the system we labelled as criminals*'). The rap persona offers an explicit lyrical expression of Ward and Fouladvand's point that taking the verse literally is an unjustifiable assumption. He reflexively comments on competing motivations for composing drill verse (artistry; truth-telling; revenue; social stigma; excitement) and all feed into the music's credibility. Such sudden shifts in perspective – from adopting the 'badman' persona to commenting on the motivation for performing that persona for racially minoritised, precarious youth (as well as for the benefit of far-flung young fans, who grew up with ambivalent, deconstructive and violent modes of pop-cultural address from rap, to gaming, to *Rick and Morty*) – have long been part of gangsta rap's intrigue and complexity as creative expression.³⁴ What emerges is a form that is dialogic, ambivalent, performative and provocative – regularly including reference to the unreliability of its own autobiographical imperative.

None of this is to suggest that UK drill doesn't include material about real incidents of harm that young people have heard about, perhaps witnessed or even sometimes been involved in. As well as drawing many young people away from conflict and into creativity, the music has also been found to sometimes inflame disputes between individuals and groups.³⁵ In digital media culture, tales of and gossip about violence, including those communicated in and through music, can generate excitement and increased click-through rates. As commentator Will Pritchard asserts about UK drill, with a little understatement, 'performers taunting others and referring in verses, often callously, to specific instances of real-world violence is not unheard of'.³⁶ The rise in serious youth violence in London

in recent years – powerfully explored as part of the ‘Beyond the Blade’ year-long project led by sociologist Gary Younge about complex and varied knife violence trends across Britain – is shocking and traumatic.³⁷ The increase in actual youth harm in London (along with the sensational media accounts of it) no doubt lent salience to the violent norms in the music. Nonetheless, however brutal and connected to painful lived experience some of the drill lyrics are, they remain very unreliable as criminal evidence. In popular culture, explicit violence (including ‘true crime’ genres) is highly marketable, and trends across platforms and genres, from pornography to gaming to horror, show a market-driven and digitally-enabled mainstreaming of explicitly violent content. In drill, autobiographical elements are so thoroughly intermingled with grandiose rhetorical claims about truth-telling, combined with its many formulaic and figurative stories of violent action, that, on their own, the lyrics should never be presupposed to be literal. It is therefore not surprising that when a computer scientist and an ex-police doctoral student applied ‘machine learning’ to search for correlations between incidents of violence and the release of violent drill lyrics in London (granted, a flawed methodology), they found no correlation at all.³⁸

Thus, my argument is certainly not that violent drill lyrics are never relevant to an incident. Instead, the point is that it is very hard to ascertain whether any incriminating-sounding truth claims are relevant, and most of them are not. Owusu-Bempah puts this point well in her detailed legal treatise on the general irrelevance of rap evidence, asserting simply: ‘the conventions of the genre can make it impossible to distinguish fact from fiction’.³⁹ In light of this, taking lyrics out of context and inserting them into a prosecution narrative is very dangerous. The form is inherently and, to anyone familiar with its codes, flagrantly unreliable. Crown Court juries are particularly ill-equipped, for reasons given above, to assess the veracity of rap’s realist rhetorical assertions.

What the state further failed to mention in the Prosecution Note was that the ‘notes’ were the lyrics to what had by then become a very successful rap track. Released in early summer 2018 on the online music channel Mixtape Madness in its ‘Mad About Bars’ freestyle series, produced by BBC 1Xtra’s DJ Kenny Allstar, the track that most of these lyrics fed into received 2.7 million views (by the time of the trial).⁴⁰ Yet, in a profound omission, the Prosecution Note about the lyrics, dated 8 October 2019, did not acknowledge that the verse had become a well-known piece of popular culture, nor even that the ‘notes’ were lyrics. The state simply wanted to get the violence-themed material into the courtroom and before a jury, where the dubious legal grounds for its admission would likely be forgotten, overwhelmed by its inflaming effect.

Once we see a fuller picture in this case – including lyrical artistry, social commentary and commercial success – it becomes much easier to grasp the constructed, overdetermined dimensions of the ‘notes’, and how unsafe first impressions can be in assuming the lyrics are evidence of ‘bad character’ or an unmediated autobiographical truth. But most of those on trial in cases that rely on rap as evidence are, of course, not successful and acclaimed. It tends to be even

harder to counter unjustifiable assumptions about rap in more typical cases where the defendants are not up-and-coming rap stars (or, in this case, possessing other 'prospects' like being a university student – until his arrest for murder led to his suspension from the degree programme). This young person, though vulnerable, possessed attributes that helped enable his recuperation by an able defence team with the confidence to confront the stigmatising rap 'evidence' head-on; he could be made to be seen by the judge. By contrast, the dehumanising discourses regularly mounted against young Black defendants, herded into group prosecutions with rap music accompaniment, tend to be very damaging.⁴¹ In the latter more typical cases, in which state claims about the music are often barely contested, it can be easy to convince jurors that the violent lyrics are devoid of art and formula, construed instead as evidence of *who they really are*.

Making an openly racist observation in court would be objectionable; yet having the procedural license to use music that so clearly invokes racialised ideas of criminality and violence is, in today's courtrooms, normalised. The lyrics are wide open to possibilities for misinterpretation – compounded, as we see in the following section, when the state tampers with them.

Flawed data

When conducting investigations, police officers, perhaps inevitably, look for lyrics and videos that best conjure a sense of violence and crime. As Ward and Fouladvand state: 'If [police] only watch [rap] videos made by people they suspect of gang membership, and watch them looking for evidence that will confirm their suspicions, both their selection and their interpretation will be skewed'.⁴² Seeing drill as inherently criminological, police choose lyrics that best confirm their thesis, further incentivised by the music's power to secure convictions. With the police often the only 'in-field' authorities on rap in these cases (which in itself warrants much more investigation), their evidence can go uncontested, encouraging all kinds of unchecked claims about the lyrics. With a huge amount of digital data to mine, including what is collected from mobile phones, they can selectively edit, discard and splice from the online and expressive lives of young people with dangerous efficiency.

Along with the unjustifiable assumption that rap lyrics help prove a propensity to violence, the state often suggests that the lyrics serve as direct evidence. There is a prompt in the CPS guidance on gang-related offences in relation to the admissibility of rap evidence, which asks prosecutors to find a correlation between the lyrics and the incident: 'prosecutors should consider whether a substantive offence is disclosed'.⁴³ This prompt gives the semblance of a state that carefully regulates the admissibility of rap evidence. However, in many cases the prompt is ignored and the lyrics make their way in by other questionable legal mechanisms (like bad character inferences, outlined above). In other cases, including the one explored in this article, the police suggest that there is a link between

lyrics and substantive offence. Youth worker and author Ciaran Thapar, who has served as an independent rap expert in criminal cases, has identified and objected to the state's tendency to misleadingly link a generic violent reference to a specific incident: 'I've seen police officers translate a rapper's taunts about an "opp" [enemy] getting stabbed as first-person admission of having committed the stabbing.'⁴⁴

Our case offers a concrete example. Explaining why the lyrics should be admitted to trial, the Prosecution Note linked the rap to the substantive offence: 'note f. (at 05:09am on 4th January) is capable of demonstrating that the defendant had recently seen a fatal stabbing, consistent with the Crown's case that he was close enough to the deceased to see him being attacked with a machete and/or a knife, because he himself was participating in the attack.' The lyric is therefore 'capable of contradicting the defence case that he did not witness anyone use a knife or machete on 1st January 2018'.⁴⁵ The lines in question – '*I had devlish thoughts when I witnessed a body get chopped . . . He got splashed & he got cheffed. We didn't say shit*' – were saved three days after the stabbing. The decision to charge the young man with murder rested largely on the state's contention that the material in 'note f.' offered a boastful subsequent confession about his participation in the fatal attack.

However, suggesting that this lyric was confessional was highly misleading. The composition of 'note f.' mostly predated the stabbing. Versions of the lyric had already appeared in pre-New Year's Eve rap verses included in the six-page document. The first putatively confessional line, on which a great deal of significance rested, was a rewording of a lyric saved in the rapper-defendant's Notes app on his phone before the incident. The pre-incident '*I've had devlish thoughts since I witnessed a body get dropped*' became the post-incident '*I had devlish thoughts when I witnessed a body get chopped*'. The shift in tense from present-perfect to simple-past is trivial and '*dropped*' (meaning stabbed or shot so that someone drops to the ground or dies) encompasses the narrower '*chopped*' (stabbed) in the 'note f.' iteration. If the lyric basically predated the incident, it can hardly be an account of it. Both versions were included in the Prosecution Note; but, as above, the Crown placed particular emphasis in the post-incident 'note f.' iteration. Immediately following this first dramatic line of verse in 'note f.' were further relevant-sounding references to violence – '*He got splashed [stabbed] & he got cheffed [stabbed]. We didn't say shit*'. This seems to refer to the victim and, damningly, offer a kind of endorsement of the stabbing. However, this was another line that had already been composed and saved, verbatim in this case, prior to the incident. The police knew this because it was in their six-page transcription; this time, the earlier version was not selected for inclusion in the Prosecution Note. The suggestion that these lyrics were luridly confessional, and composed after the incident, was fundamentally misleading.

On close inspection 'note f.' includes an ellipsis. This begs the question: what did the state excise? The unabridged lines are:

*I had devilish thoughts when I witnessed a body get chopped / **Bang the one pop** [fire the gun] / **Infact theirs 12 spots on this spin ting** [a 12-shot revolver] / **Come like an old school clock**/. . . He got splashed and he got cheffed. We didn't say shit. [bold added]*

The line immediately following the first supposedly 'confessional' one has nothing to do with stabbing; instead, completing the rhyming couplet with '*chopped*' is '*Bang the one pop*' meaning gun shot or shoot the gun. There follows a simile about a firearm in which a 12-shot revolver ('*spin ting*') looks like a traditional clock face. There was no firearm or shooting in this incident. The removal of gun references by the state is intentional. The omissions help to make the lyric seem to fit the incident. It turns out that the unedited verse was a shopping list of weaponry and violent actions, many of which were gun-related, consistent with themes not only in gangsta rap subgenres but also in popular violent video games. Further context-specific analysis (conducted for the case) of the lyric '*he got splashed and he got cheffed*' reveals that it actually referred to a friend, not a foe of the persona, offering another layer of non-correlation with the substantive offence. Altogether, the misinformation in this case takes us much further than the argument about implicit bias forwarded by Ward and Fouladvand. The skewed selections used to incriminate this rapper-defendant were no doubt partly spurred by unintentional confirmation bias; but, as we have seen, they were also deliberate.

'Note f.' showcases the ways in which the state can generate flawed data to target young Black men and boys through their art. The lyric was requisitioned to look like it corresponded with the stabbing incident and that the defendant was revelling in his involvement. This is an example of wider practices of cherry-picking, decontextualising and tampering with rap data. It can and does mislead jurors and judges. In this case, it is worth noting that the Prosecution Note did include dates for the lyrics as well as some of the pre-incident versions of lyrics. This made some of the flaws in the data easier to detect. In other cases, the rap material is undated or misdated in the legal documents, opening up new avenues for misinterpretation. If there is lots of forensic evidence against a defendant in a case, there is normally less weight resting on the rap lyrics (leading to the question of why they should be admitted at all) and their misuse is likely to be less consequential. But the ramifications of prosecuting-rap practices tend to be much graver when there is only loose circumstantial evidence against defendants (such as proximity to an incident) as is so often the case in the dragnet group prosecution of young Black people, to which I finally turn.

Improper conclusions

Joint enterprise is a doctrine in common law that enables parties who are not suspected of having carried out the principal offence to be tried for that offence under Secondary Liability rules, on the basis that they have 'assisted or encouraged' it.

Many joint enterprise cases are murder cases in which secondaries, like the young man in this case, are facing a life sentence despite there being no physical evidence of involvement in the principal offence (the stabbing) and quite often (as in this case) where the principal offender remains unknown. As the CPS advises, it is 'not necessary to identify the principal(s)' to mount such cases.⁴⁶

Under joint enterprise, the evidence relied on against secondaries, given that they haven't committed the principal violence, is often weak and circumstantial, resulting in speculation about what it means to assist or encourage. In this speculative space, biases abound. Intersectional stigma along the lines of race, class, gender and age can all feed into the overcharging of secondaries.⁴⁷ Studies show that young Black people continue to be the most victimised by this law: many more Black people are charged and convicted as secondaries and at younger ages than other racial groups.⁴⁸ JENGBA is the leading and longstanding campaign group on joint enterprise injustice, reporting in 2023 that 80 per cent of the people who made contact asking for help are Black or from a minority ethnic background (and almost all of them are working class).⁴⁹ Following a judicial review claim brought by JENGBA and human rights organisation Liberty, the CPS was recently forced to collect some official data on protected characteristics of defendants in joint enterprise cases in selected CPS areas of England (including London North, the locus of our case).⁵⁰ The resulting pilot report corroborated previous studies, finding that young Black men and boys continue to be highly disproportionately subject to joint enterprise charging as secondaries in homicide and attempted homicide cases.⁵¹ As leading sociologist Becky Clarke asserts: 'understanding the structures and processes that cause such inequalities is critical, particularly how continuities in systemic forms of racism can shape these distinct prosecution and punishment strategies'.⁵²

One key aspect of these prosecution strategies is the state's reliance on rap. In the seventy cases that involved rap evidence in the Prosecuting Rap scoping study, almost three-quarters were group prosecutions (joint enterprise or conspiracy).⁵³ Bloated group prosecutions are the norm in music-facilitated cases. Racist tropes fostered by drill lyrics – typically coupled (though not in this case) with charged narratives of 'the gang' as Clarke and co-author Patrick Williams have influentially shown – fill the void opened by the dearth of evidence against secondaries.⁵⁴

Exemplifying the radical tenuousness of both the rap evidence and the shared-liability thesis in our case is the Prosecution Note's conflation of seeing and doing. To reiterate, 'note f.' was deployed to support 'the Crown's case that [this defendant] was close enough to the deceased to see him being attacked with a machete and/or a knife, because he himself was participating in the attack'. Let's leave aside, just for a moment, how the supposedly confessional 'note f.' contained pop-cultural lyrics by a professional artist, largely composed before the incident, which had meanings that didn't correlate with the circumstances of the incident. What would the lyrics infer if they were a diary account of having witnessed the stabbing? The

prosecution's logic here is that, when a fight breaks out unexpectedly in a crowded space, 'because' someone saw the attack they participated in it. This is the kind of contention that emerges under current joint enterprise laws. Being a bystander of an unforeseen attack can come to be equated with encouraging the attack which, in turn, unlocks the possibility of full liability for that attack. Of course, as above, the state is extremely selective in who it targets in this warped way. For a Black working-class teenager who makes and widely disseminates 'reprehensible' drill music, joint enterprise opens the sluice gates for a murder charge.

In this case, once the rap evidence had been fully scrutinised, the judge recognised its lack of relevance and reliability as evidence of shared liability for the attack:

[The defendant] was in the flat and there were lots of people within feet of the stabbing and therefore the opportunity to see it. Whether he recalls it now or wants to recall it now or whatever the position may be or was not looking is an old thing. But, he will undoubtedly have known about it within a short time, if he had not seen it. Therefore, again, it's material for him to use, if he was so minded, and if the lyric had anything to do with this event . . . However distasteful it would be, in these circumstances.⁵⁵

This statement holds far-reaching insights about the unfairness of joint enterprise prosecutions involving rap. The judge explains that first-person accounts of violence in drill lyrics – however unpalatable to many – do not mean that rappers have actually seen the violence that they recount (it is likely to be rich source material that they have heard about second hand, or simply made up). Equally importantly, he explains, even if the musician did see the violence and then revised their lyric in response to it, the assumption should not be that they are culpable of that violence. The judge refuses drill-propelled joint enterprise overreach that pulls in those on the periphery of and/or uninvolved in violence. Such judicial understanding, leading to the exclusion of the lyrics, is sadly rare in cases involving rap.⁵⁶ The CPS needs to ingest the judge's points and feed them into its legal guidance and practice on charging decisions involving rap evidence.

The state's joint enterprise conflation – where lyrical reference to violence is requisitioned as evidence of involvement in that violence – exemplify the final problem identified by Ward and Fouladvand: 'relying on an inference or conclusion which has not been properly reached'.⁵⁷ For this defendant, the police's improper conclusion was to recommend him for a murder charge and the CPS's was to uphold that recommendation, remanding him in jail for many months, which led to his suspension from university while radio DJs were told to 'rest' (not play) his music just as his career was taking off. In the absence of hard evidence against secondaries, joint enterprise laws encourage leaps of logic via music-facilitated racist speculation and evidentiary sleights of hand. Due to their ability to 'appal' jurors, as the judge put it, drill lyrics easily encourage consequential slippages – from witnessing to participating, and from words to deeds.

As law scholar Devon Carbado stresses in his influential 2022 book, *Unreasonable: Black Lives, Police Power, and the Fourth Amendment*, the trigger for racialised state violence is located mainly within the law, rather than in the abuse of it.⁵⁸ The slow, politicised transformation of the joint enterprise doctrine in common law over many years and the growth of Black youth expressive culture as hard evidence in serious crime cases represent two key examples of how state violence takes place *within* current laws of England and Wales. In turn, when very weak forms of evidence come to be legally admissible they serve to muddy the dividing line between the tenuous and the fully confected. The use of rap as evidence exemplifies the way that joint enterprise enables, perhaps even licenses, legal brokers to lose sight of the boundary.

The first of the two-step process in CPS charging decisions is when prosecutors decide if there is enough evidence against a suspect for a realistic prospect of conviction.⁵⁹ With the inordinately low evidential bar set for joint enterprise secondaries in murder cases with rap soundtracks, conviction becomes a realistic prospect in the flimsiest of cases. The CPS thus bears heavy responsibility for greenlighting cases against young Black men and boys on the basis that – with the help of racist tropes about rap and the egregiousness of joint enterprise laws – it simply believes it can win them (in diametric opposition to the impetus for dropping most rape cases). Opportunism by prosecuting authorities spurs charging decisions. As a result, the CPS, along with the police, plays a powerful role in switching on the ‘ethnic hoover’ (a term that I have heard used by the police in a private conversation with regards to rap evidence in joint enterprise cases) that systemically sucks young people into the criminal-legal pipeline and downstream into the brutalising prison system.

Despite the injustice of joint enterprise and the sustained campaigning against it, the public still poorly understands how it plays out in practice. This is partly the fault of the media. When this rapper-defendant was charged with murder, the story was carried in all the mainstream papers with titles such as, ‘Homerton rapper . . . stabbed [the victim] to death at Old Street party, court hears’ and, more typically, ‘Rapper . . . has been charged with murder’.⁶⁰ The accompanying articles tend not to mention, let alone problematise, what a joint enterprise murder charge for a secondary party amounts to. They failed to mention that there was no suggestion from the prosecution that this defendant had himself physically stabbed anyone or even been armed. As a result, such stories likely conjure a racially charged, apocryphal image of defendants themselves wielding the knife, in turn encouraging public support for conviction.

Driving the mission creep of oppressive joint enterprise laws is the tacit assumption that it ‘sends a message’ to youth communities in need of social control. This reasoning serves to bolster the second step of the CPS decision-making process for charging, which asks ‘is it in the public interest to prosecute?’ In this case, the police and the prosecutor presumably knew that the case against the young person lacked substance. It seems likely that they wanted to loop into the murder charge a charismatic young drill rapper whose ‘badboy’ success they felt

was an affront to the police and to public safety – the figure of the drill artist, as Adèle Oliver describes, is an ‘embodiment of disorder, disruption and dissent’.⁶¹ Such a putative public-interest justification may have a populist, scapegoating appeal, especially in London where far too many young people are victims of harm, and real solutions to that harm are closed off by the normalisation of inequality and injustice.⁶² But such a legal rationale clearly contravenes the rule of law. As a previous chair of the Justice Committee, Alan Beith, warns: ‘There is a real danger in justifying the joint enterprise doctrine on the basis that it sends a signal . . . rather than on the basis that it is necessary to ensure people are found guilty of offences in accordance with the law as it stands.’⁶³

The police detective who produced the statement with all the downloaded lyrics and translations in this case had been attached to a London Gangs Unit. Such a job would have routinely exposed him and his colleagues to actual serious youth violence, but also to immersive state discourses of Serious Youth Violence.⁶⁴ The Serious Youth Violence discursive frame legitimates sweeping police powers against young, poor and racially minoritised people.⁶⁵ All kinds of practices can come to be rationalised as ‘in the public interest’. As the latest powerful instalment in a long line of moral panics around Black music, drill works to concretise the Serious Youth Violence frame that requires highly punitive containment strategies.⁶⁶ Sociologists exploring the attitudes of London murder detectives found that ‘entrenched in their discussions are racialised notions of risk’ that provide ‘a clear and consistent narrative to frame multi-handed violence as primarily involving black men’.⁶⁷ The resulting tendency towards skewed arguments and evidence leading to murder charges for a young person, like the rapper-defendant in this case, in order to send a ‘law and order’ message, infringes upon basic human rights and builds the road towards authoritarianism.⁶⁸

When the judge ruled to exclude all the rap material mid-way through the trial following the legal argument, he explained the dangers of rap evidence in such cases: there is ‘a great risk that such evidence will be used to bolster a weak case’. The defendant went on to be acquitted of all charges. Stripped of the prejudicial rap, the judge found the case against him to be insubstantial (‘I do not think anyone can suggest it was a strong case’).⁶⁹ Prosecutors might well suggest that this case demonstrates justice being done with regards to rap evidence: the rap was scrutinised and then excluded. However, there is a double-bind in a criminal-legal discursive landscape largely shaped by the state. In cases where the rap is excluded, the state can suggest that this proves procedural fairness. Yet, in cases where the inflammatory rap is admitted (often going unchallenged or underchallenged) that end in conviction, the state treats this as vindication of the decision to adduce the rap in the first place. The verdict, the logic goes, proves that the rap evidence was relevant and reliable. The large number of guilty verdicts in group prosecutions featuring rap becomes the track record that warrants the further use of this evidence in a frightening and racist self-perpetuating cycle that US law scholar and former prosecutor Paul Butler describes as a state ‘chokehold’ on young Black men and boys.⁷⁰

This discursive grip enables the CPS, having initiated the development of charging guidance on rap evidence in 2020, to continue, so far, to deny that there is any unfairness. Doug Mackay, Deputy Chief Crown Prosecutor, stated in 2022: 'We won't use drill music unless it has some evidential value to a case'.⁷¹ The CPS has repeatedly asserted in public statements that it is 'not aware of any cases where drill music had been wrongly used as evidence'. Claire Lindley, the CPS lead on serious violence, asserted in 2022 that the CPS is apparently 'really, really keen to make sure that our prosecutors don't use any kind of stereotypes or anything of that nature . . . We certainly shouldn't be using the [drill] video if it has simply a prejudicial effect'.⁷² If these words are in good faith, the CPS must heavily restrict the use of rap evidence in its long-overdue new charging guidance on rap material. The artistry and expression of young Black people and their friends continues to be twisted against them in police-driven, CPS-abetted group charging decisions, placing already vulnerable young people at further risk.

Conclusion

This article has shown how easy it is to make rap of little or no relevance look incriminating, and how the state, despite its public assertions to the contrary, engages in this practice. The performative brutality of drill's content is highly susceptible to misreading in criminal proceedings. Far from treating such material with care, the state draws from drill's prejudicial and cryptic nature to make unjustifiable inferences, distort evidence and seek to alarm jurors, spearheaded by police officers who routinely act as rap experts in their own and their colleagues' cases. In turn, prosecutors coat flawed police statements with a veneer of professional-sounding legal arguments about evidential rules that confers unwarranted procedural legitimacy leading into the trial. This process typifies what US civil rights lawyer Alec Karakatsanis explores in his far-reaching book *Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System* as the 'arbitrariness and intellectual vacuousness of the narrow range of standard legal argument' that lures lawyers away from their core professed values and inures them from consideration of the hyper-punitive outcomes of these arguments.⁷³ Behind the legalese, there is often frighteningly little accountability, oversight or even evidential accuracy in prosecuting-rap processes.

Individuals are prosecuted under secondary liability (and conspiracy) laws for the most serious offences when there is very little or no forensic evidence against them, and it is in this evidential vacuum that rap's improper use often wreaks havoc. The high rates of serious youth violence in recent years among young Londoners has resulted not in moves by the government to tackle its root causes by addressing poverty, racism and inequality, nor to address policy failures in housing, health, education and employment that have debilitated young people. As the rapper-defendant in this case said astutely in an interview: 'They're pointing the finger at us but forgetting there's three fingers pointing back'.⁷⁴ Creating

art that is reflective of austerity and abandonment, young people are then at very high risk of dehumanising detention, swept into criminal prosecutions via tenuous evidence of cultural expression and/or proximity to harm. Rather than giving communities the resources they need to flourish, as laid out in the 2023 co-created publication, *Holding Our Own: A Guide to Non-Policing Solutions to Serious Youth Violence*, the government's response is to vest the police and CPS with further powers to operationalise bad law and punish young people, ironically in the name of upholding justice. With the Police, Crime, Sentencing and Courts Act of 2022 having handed the police even broader, ill-defined powers through Serious Violence Reduction Orders that expand guilt-by-association criminalisation, new mechanisms exist that could take us even further into racist carcerality.⁷⁵ As criminal defence lawyer and anti-racist advocate Keir Monteith KC has explored, the combination of legal-procedural inequalities and the racist targeting of young people via rap 'reverse[s] the burden of proof' – young Black people are *guilty until proven innocent*.⁷⁶

However, growing numbers are rejecting the normalisation of systemic injustice and racism in the criminal legal system. The research in this article comes out of and feeds into collective action and advocacy that call for both transformational change and targeted reforms. We demand new CPS charging guidance that restricts the use of rap as evidence; no more cherry-picking cases spurred by the ease of conviction in racist and class-bound Britain; the prohibition of police officers shifting seamlessly from investigators pre-trial to rap authorities at trial; and the adoption of a more rigorous approach to practice directions from judges in relation to expert evidence on rap. More broadly, this article adds to the wide spectrum of voices demanding the dismantling of the current joint enterprise legal doctrine, which, among many other things, would massively rein in rap's evidentiary instrumentality. My findings also intersect with the Art Not Evidence (ANE) legislative initiative, which calls for the restriction of the use of creative expression as evidence in criminal trials in England and Wales.⁷⁷ Following successful campaigns in the US, ANE lawyers and legal scholars have drafted legislation that would make creative expression inadmissible, unless it is proven beyond reasonable doubt that it is actually relevant, reliable and necessary evidence. To make these determinations, judges would be required to have a regard for the culture and conventions of the music and be assisted by a suitably qualified independent expert (not a police officer). Were the legal reforms proposed by ANE and JENGbA enacted, the young person in our case never would have come close to being charged with murder. These campaigns are helping to build the consensus needed to kick out Black youth creative expression from the courtroom, in all but very exceptional circumstances.

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