



Part 2: Challenging the admissibility of Drill music in criminal trials

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15 September 2020



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Section 34 of the Policing and Crime Act 2009

(1) A court may grant an injunction under this section against a respondent aged 14 or over if the first and second conditions are met.

(2) The first condition is that the court is satisfied on the balance of probabilities that the respondent has engaged in or has encouraged or assisted—

(a) gang-related violence, or

(b) gang-related drug-dealing activity.

(3) The second condition is that the court thinks it is necessary to grant the injunction for either or both of the following purposes—

(a) to prevent the respondent from engaging in, or encouraging or assisting, gang-related violence or gang-related drug-dealing activity;

(b) to protect the respondent from gang-related violence or gang-related drug-dealing activity.



Guess the Group

- **Bro-bro chinged up an opp**
- **Boy, I swear he got chinged already (They told me turn, uh)**
- **That next one thought he was boss**
- **Then he got shot, Nathan Tettey (They told me turn)**



Guess the Group

- **Violent goons stepped around with the violent crew**
- **We ride and ching**
- **We ride and shoot**
- **Look step step and get them yutes**



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Stella Harris, Garden Court Chambers

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Case Study

- R is a 15-year-old boy charged with murder. He is excluded from school because he was found to have hidden a knife on school property.
- His parents are supportive. His father tells you R was being bullied at school, which is why he carried the knife and that he had been receiving threats on social media (Snapchat). His mother tells you that the family have been concerned about older peers waiting for him outside school.
- R accepted possession of the knife in the Youth Court and received a Referral Order. He has no previous findings of guilt.



Case Study

- He is 6' tall and his family encouraged him to train in martial arts to gain confidence.
- R enjoys listening to and making music and via his mentor, has had access to a recording studio to record some drill beats.
- The case involves a stabbing in a park near to where R lives. There were a group of young people involved, all were wearing dark clothing and many had their faces covered.
- The deceased was an older teenager and witnesses describe at least one and possibly more knives within the group, the injuries are consistent with at least one knife.



Case Study

- The Crown's case is that R was present and part of the group attacking the deceased. They cannot say one way or another if he had a weapon. Of note, not all those present participated in the violence and the individual identified as R in CCTV appears to be on the edges of the incident.
- The police have undertaken telephone analysis and place a mobile telephone registered to R's mother at the scene. This phone is in communication with other mobile telephone numbers of interest in the case after the killing and is switched off a few hours later.
- R was arrested some weeks later. No forensic evidence. Items of clothing were seized.



Case Study

- The Crown's case is that this killing is motivated by gang violence. They say that R is associated with Green Gang and that the deceased, albeit not a gang member, was associated with the Red Gang and that there is a history of violence between the two groups.
- R says he knows some members of Green Gang because of where he lives but despite being present, he was not involved in the violence and did not know the others had weapons.
- The Crown make a bad character application to adduce three pieces of evidence:
 - A Memorial Video relating to the young victim of a stabbing in which R appears
 - A Drill video by a relatively prominent local artist in which the Crown say they can identify R in the background and in which there is allegiance pledged to the Green Gang, described as a diss track and making reference to weapons and violence. The Crown relies upon a police expert who has translated and interpreted the lyrics and explained the gang rivalries.
 - Lyrics found during a police search of R's home some of which refer to the Deceased's mother crying.



Case Study

- The Crown seek to use these pieces of evidence to show that R is affiliated with the Green Gang; that he associates with people who have a connection with and habitually carry weapons and therefore, that he would have known others in the group on the night of the killing had weapons and might have used them and that his lyrics demonstrate an association with, and callous attitude towards the deceased and his associates.



Challenging the admissibility of drill music

Shahida Begum, Garden Court Chambers



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Why drill?



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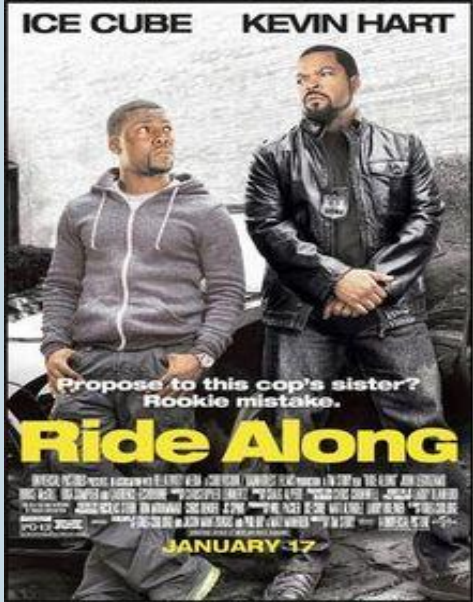


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"Going off on the motherfucker like that/With a gat that's
pointed at your ass/So give it up smooth/Ain't no telling
when I'm down for a jack move/Here's a murder rap to keep
y'all dancing/With a crime record like Charles Manson/AK-
47 is the tool/Don't make me act a motherfucking fool"



Ice Cube



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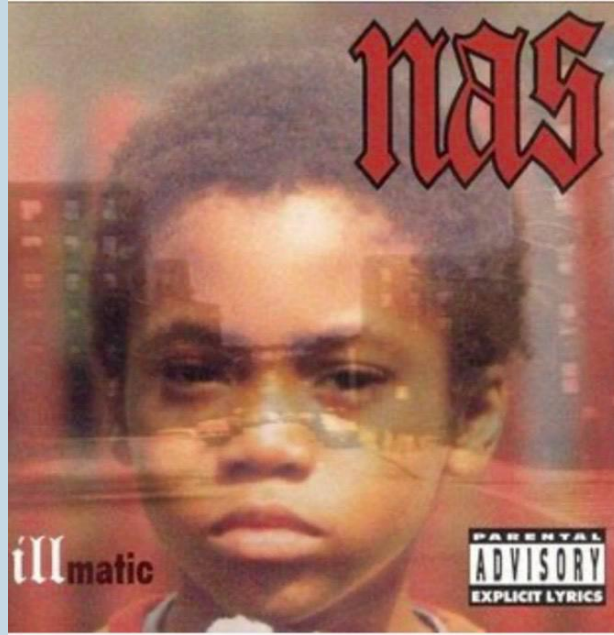


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"One 44, two 45's/Three loaded clips, four niggas roll, one
nigga drives/500 Benz, six reasons why this kid should
die/We shooting every mothafucka outside/Pulled on his
block, jumped out the car/Guns in our hand, at the same
time everybody ran/There that nigga go, hiding in the
crowd/Let the trigger blow, seven shots now he lying on the
ground"



Nas



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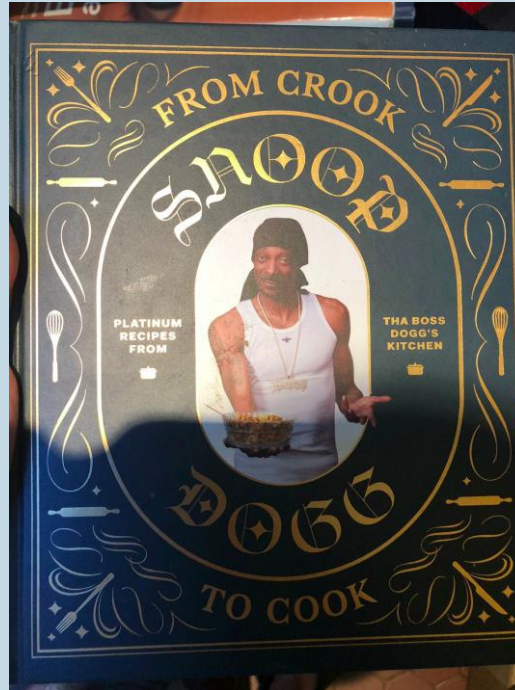


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"Half steppin with your weapon on safety/Now break yourself motherfucker, 'fore you make me/Take this 211 to another level/I come up with your ends, you go down with the devil/Now roam through the depths of hell/Where the rest your busta ass homeboys dwell"



Snoop Dogg



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Case A



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CJA 2003 Section 101(1)

(c) it is important explanatory evidence,

(d) it is relevant to an important matter in issue between the defendant and the prosecution,

[unlikelihood of coincidence]



Challenge

To be admissible: firstly, the evidence must be relevant; secondly, it must come in a permissible form – e.g. opinion only from an expert; not consisting of hearsay etc; thirdly it must satisfy one of the statutory gateways. Finally it must surmount the s.78 exclusionary power. Insufficient notice had been given.



What type of evidence is it?

- Does it contain hearsay?
- Does it require expert evidence?
- Does it meet the requirements of expert evidence?
Myers [2016] 1 Cr. App. R. 11 para. 59
- Does it require instruction of a defence expert?
- Has sufficient notice been given?



CJA 2003 Section 101(3) and s. 78 PACE 1984

(3)The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(4)On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

S.78(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.



Case law

- *Hanson* [2005] 1 W.L.R 3169

4. The starting point should be for judges and practitioners to bear in mind that Parliament's purpose in the legislation, as we divine it from the terms of the Act, was to assist in the evidence based conviction of the guilty, without putting those who are not guilty at risk of conviction by prejudice.

18. ... Evidence of bad character cannot be used simply to bolster a weak case, or to prejudice the minds of a jury against a defendant.

- *Turnbull* [1977] Q.B. 224

- *R v McAllister* [2009] 1 Cr. App. R. 10

- *R v Omotoso* [2018] EWCA Crim 1394



Sentencing - *Robinson* (1969) 53 Cr. App. R. 314

Counsel for the prosecution should see that a police witness giving evidence after conviction is kept in hand and is not allowed to make allegations which are incapable of proof and which he has reason to think will be denied by the prisoner...

...in the view of this Court such evidence should not be admitted unless the officer giving the evidence can speak from first-hand knowledge without reliance on hearsay or records, and unless the evidence is sufficiently particularised to make it possible for the accused to challenge it. The vice in the present case of the allegations made was that in their general terms it was quite impossible for them to be effectively challenged, and the admission of such evidence is a clear and obvious injustice.



Factors

- Does it go to the issue in the case?
- Is it probative?
- What do the prosecution want it for?
- Is there another way of dealing with it? E.g. association can be admitted in agreed facts
- Is there a nexus in time?
- What role does the defendant have in the video: rapping, dancing, 'extra' in the background?
- Was any music even playing when filming took place?
- Outstanding criminal investigation?
- What are the lyrics?



Case B



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CJA 2003 Section 101(1)

- (a) all parties to the proceedings agree to the evidence being admissible,
- (e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,
- (g) the defendant has made an attack on another person's character.



Thank you

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