'The Road, In Court: How UK Drill Music Became a Criminal Offence'

Lambros Fatsis

University of Brighton

l.fatsis@brighton.ac.uk

Author's Biography:

Lambros Fatsis is a Senior Lecturer in Criminology at the University of Brighton. His research focuses on police racism and the criminalisation of Black music (sub)culture(s), fusing Cultural Criminology with Black radical thought. His writing on the policing of UK drill music won the first-ever Blogger of the Year Award from the British Society of Criminology and an Outstanding Research & Enterprise Impact Award from the University of Brighton. Lambros is also a member of the Prosecuting Rap Expert Network, made up of scholars and experts in rap and Black youth culture who act as defence experts in court cases that involve the use of rap as evidence.

ABSTRACT:

UK Drill music routinely features in the nation's courtrooms as evidence of criminal wrongdoing, owing to the graphic imagery of the genre's lyrical and video content. Such a response may seem justified, due to fatal incidents associated with drill music, but it remains difficult to prove a direct link between drill lyrics or videos and the evidential facts of criminal offences. Beyond speculation and interpretation, relying on drill music to bring criminal charges against individuals not only turns music-making into a criminal offence. It also exposes prosecutorial tactics that fail to uphold high standards of evidence and reproduce racist stereotypes about Black music genres and "criminality". Drawing on my ongoing involvement as an expert witness in court cases that translate drill lyrics and videos into incriminating evidence, this chapter challenges the admissibility of such evidence as factually inaccurate to prove guilt — arguing that putting drill on trial conflates the literary and the literal, risking prejudicial assumptions about an art form, its producers and audiences.

Keywords

Criminal injustice, institutional racism, drill music, rap music as criminal evidence

Urban space has long haunted the penal and criminological imagination; as a site of crime and disorder, where "respectable fears" (Pearson, 1983) about overcrowding, mixing and safety—coexist with political ideologies and government policies that treat urban social life as a spatial, moral and socio-political problem to be monitored, regulated and controlled. In fact, the relationship between crime and the urban realm goes at the heart of criminology, as an academic discipline that is marked by an "urban bias" (Donnermeyer, 2016: 1)—due to its emphasis on studying crime as a quintessentially urban social phenomenon[i]. Perceptions of 'society', 'community', 'deviance' and 'conflict', therefore, cease to exist in the abstract. They become designed into, associated with and represented by urban geography—as metaphors for physical locations and social spaces where hierarchies of power, social relations and social structures take shape.

Nowhere is this more evident than the areas of the city that are imagined, researched, sensationalised, suspected and policed as pockets of 'criminality' where 'incivility', violence and danger are thought to fester uncontrollably. Targeted, surveilled, securitised, walled, barbwired and patrolled as 'no-go areas', 'urban wastelands' or 'crime-infested ghettoes', such 'dangerous' places denote more than physical *space*. They feature as 'symbolic locations'[ii] where what is symbolised is the physical and cultural presence of those who are perceived and policed as socially and politically out of *place*, through processes of state-sanctioned, racial(ised) criminalisation (see, e.g. Fatsis, 2021a; 2021b). The colonial "plantation archipelago" (Wynter, n.d.: 372), the Jewish quarter in medieval and Nazi Europe and the contemporary urban ghetto (Duneier, 2016), stand as symbols of such 'territorial stigmatisation' (Hancock and Mooney, 2013)—as vividly as they illustrate the "multi-racist" (Keith, 1993) ideologies, politics and law enforcement that establish and police the inner city as a "zone of racial enclosure" (Hartman, 2021: 94).

In contemporary Britain, 'the roads', 'road life' and 'road culture' -all referring to a "UK-specific form of street culture" (Bakkali, 2019: 1317)- represent such a spatial and cultural reality, that is lived both as a social cul-de-sac and as an avenue for transgression (Hallsworth and Silverstone, 2009) through musical expression, dress codes and common patterns of speech (Gunter and Watt, 2009; Bakkali, 2021). While road culture should not and cannot be understood in "exclusively racial/ethnic terms" (Gunter and Watt, 2009: 520) -especially in the context of contemporary urban multiculture- the (kin)aesthetic, linguistic and musical codes that define it, are nevertheless informed by and borrow from Black or Afro-diasporic culture[iii]. Indeed, road culture would be -as well as sound- radically different if this was not so. Road culture would also be policed differently, if at all, if its aesthetics and "subterraneally subversive […] counterpoetics" (Wynter, n.d.: 218) were the cultural product of "unpoliced populations" (Fatsis and Lamb, 2022: 17)—

namely, white, affluent people; whose physical and cultural presence is simply not "the prototypical targe[t] of the panoply of police practices and the juridical infrastructure built up around them" (Sexton, 2010: 48).

UK drill music or 'road rap', as it is often (and somewhat problematically) dubbed[iv], has gradually become *the* sonic embodiment of 'the roads'. Signifying Black cultural pathology and danger in the minds of the police, prosecutors and judges, UK drill music is targeted as such and adduced with alarming regularity as 'evidence' of criminal wrongdoing in court proceedings across Britain (Quinn, 2018; Owusu-Bempah, 2020; 2022; Schwarze and Fatsis, forthcoming). Approached here as a cultural space, UK drill music is not understood merely as a rap subgenre. Rather, it is situated *within* and even understood *as* an "urban commons" (Hartman, 2021: 4) where young, working class, often Black, rappers "assemble" to "improvise […] forms of life", "experiment with musical expression", "refuse" and resist the excluded, stigmatised, marginalised, confined and criminalised "existence scripted for them" (Hartman, 2021: 4) by the state and its law enforcement institutions. Spatialising UK drill in such a way, however, does more than situate the music in "a liminal space where [young people]… find a form of authentic sovereignty, freedom from the constraints they experienced at the hands of… a hostile society" (Hallsworth and Silverstone 2009: 365). It also allows us to fully grasp why drill is targeted as a source of danger, whose proper place in public space is denied— in exchange for the defendant's seat inside Britain's courtrooms.

Drawing on the criminalisation of UK drill music by the British legal penal system[v], this chapter argues that what is criminalised is not drill music *per se* but what it symbolises—namely, the physical and cultural presence of Black working class Britons as "permanent suspects" (Ralphs *et al.* 2009: 485), whose forms of creative expression are perceived and policed as "aesthetically 'out of tune', culturally 'out of place' and politically 'out of order'" (Fatsis, 2021b: 38). What is treated as "suspicious, dangerous and inadmissible to the national self-portrait" (Fatsis, 2021a: 144), therefore, is not the discordant sound of drill music but the disorderly presence of young Black working class Britons— whose very "existence" in the social world is "apprehended as [a] crime" (Hartman, 2021: 61-2); through legal penal tactics that blame an entire music genre, its producers and audience for glorifying, glamourising and even engaging in violent crime (Fatsis, 2019b; Ilan, 2020; Lynes, *et al.*, 2020). This is not to deny, justify, downplay or condone any of the violence and misogyny in (some but by no means *all*) drill music (Fatsis, 2021b: 30-1; Fatsis, forthcominga/Peters). Rather, it is to stress that the British state's -or rather the Crown's- case against drill rap(pers), fails to uphold high standards of evidence, ensure procedural fairness or respect civil liberties and human rights that most people expect from and associate with the rule

of law and the ideals, principles and practices that are supposed to underpin modern, liberal democratic politics more broadly[vi].

Contrary to self-congratulatory mythologies about principles of fairness and justice in law enforcement, this chapter tells a different story—demonstrating instead how drill is selectively criminalised in ways that do violence to factual accuracy, Black cultural literacy and social justice. To do so, the following sections of this chapter will offer an overview of recurring prosecutorial tactics used against drill in court— to expose their prejudicial rationale and the discriminatory outcomes they produce; relying as such logics do on racist stereotypes about Black music genres and 'criminality' (Fatsis, 2019a; 2019b; 2021b). Starting with a brief introduction to drill music -to set the scene to its proper artistic and cultural context- a discussion of how drill lyrics and videos are admitted in court as 'evidence' of criminal wrongdoing will ensue, pointing at the flagrant disregard that the police, prosecutors and judges show for upholding high standards of (f)actual evidence and scrutinising the admissibility of what and how evidence is gathered, produced and presented—to say nothing of their failure to adequately evaluate the prejudicial impact that such material can and does have on the fairness of court proceedings. This chapter will therefore challenge the admissibility of such evidence as factually inaccurate to prove guilt, demonstrating instead how putting drill on trial normalises prejudicial assumptions about an art form, its producers and audiences. Much of the argument presented here relies on my existing and ongoing research on the long history of policing against Black or Afro-diasporic music (see, e.g. Fatsis, 2019a; 2019b; 2021b) and, most importantly, on my work as an expert witness for the defence—in murder trial cases that involve the use of drill lyrics and videos as incriminating 'evidence'. Bringing together a commitment to critical scholarship, ethical practice and social justice to challenge intersecting inequalities and marginalisation, this chapter aims at reintroducing drill music— not a source of danger, but a source of suspicion due to racist stereotypes about black criminality (Gilroy, 1987; Young, 2014; Lammy, 2017; Owusu-Bempah, 2017; Williams and Clarke, 2018; Phillips *et al.*, 2020; Fatsis, 2021a; 2021b; Paul, 2021).

What is Drill Music?

UK drill music is the latest rap subgenre or stylistic branch in the hip-hop/rap family tree. It originated in Chicago in the mid-noughties, but travelled across the Atlantic and took root in the UK rap music scene soon after. Unlike other rap music, UK drill is moodier and darker in sound and more graphic in its violent imagery. It is unabashedly edgy and violent in its posture, lyrics, imagery and sonic qualities. Its lyrics depict fictional larger-than-life personas who tell their story in the first person and pose as violent. As such, rap lyrics are often (mis)taken for real-life

descriptions of crimes committed, rather than as first-person narratives that may be partly or purely performative, fictional, hyperbolic or fabricated even, as is the case with many other music lyrics or literary works. Crucially, drill rappers consciously exploit stereotypes of violence, gangsterism and "ghetto life" as a sought-after commodity to be consumed online by followers whose clicks, views, likes and shares can and *do* yield material rewards (Stuart, 2020). Rather than offering a simple 'authentic' voice rappers are highly attuned to the commercial relations of their work. They deploy themes of violence and crime that they know to be very marketable. A central impetus and theme of the music is the desire to become a successful drill rapper to escape poverty and the violence in drill is part of the genre's conventions and part of its commercial appeal too. UK drill enjoys a huge popular following among young listeners of all ethnic backgrounds, as evidenced by chart-topping hits, big festival line-ups, large club events and the proliferation of YouTube and Spotify playlists. What such audiences share -regardless of their ethnicity- is a sophisticated and nuanced understanding of the genre, as an outlet for creative expression that is produced and consumed *as art* that should not be (mis)taken for literal testimony—as is unfortunately the case when drill music enters the courtoom to be (mis)judged by legal penal professionals and jurors, who are rarely conversant with the music's genre norms (Fried, 1999; Dunbar and Kubrin, 2018; Nielson and Dennis, 2019).

Evidence of Things Not Known

Having sketched out what drill is, this section discusses the way it is introduced in criminal proceedings as 'evidence' of criminal wrongdoing—in ways that play, as well as prey, on stereotypes that inform blanket judgements about drill rappers as violent desperadoes on a gang-banging frenzy, rather than artists -amateur and professionals alike- who invent personas that narrate rather than dictate or confess to actual incidents of violence. Given the sensitivity of the matter, the gravity of charges made against drill rap(pers) and the dangers involved when music in turned into a criminal offence, the remainder of this section will demonstrate what is admitted as evidence in court proceedings— in order to challenge the evidential weight of such 'evidence', question the expertise of those who are instructed as such by the prosecution and highlight the problems with interpreting drill lyrics and videos in a courtroom setting and in a law enforcement context.

Drill music enters the nation's courtrooms as a source of criminal evidence in the form of lyrics, music videos and still images obtained from music videos; featuring mostly amateur, but also professional drill rappers— some of whom are very well-known (like Skengdo x AM and Digga D)[vii]. Such material is relied on as evidence of the defendants' "bad character"[viii], involvement in

"joint enterprise"[ix], "serious youth violence"[x] and gang membership, or as confessions to an offence and expressions of intent to commit an offence. To introduce such 'evidence' in court, prosecutors present such material in conjunction with witness statements that are produced by relevant 'experts' (usually police officers, 'gangs experts' and forensic linguists), who may also be instructed to give evidence in court. The arguments that such cases are usually based on, involve a matter-of-factly presentation of drill-related material—without adequately interrogating the artistic, literary or fictional nature of the 'evidence' that is brought before judges and jurors.

This may not seem problematic, especially for the Crown and its law enforcement servants. Alas, such tactics fall short of ethical conduct and evidential scrutiny and can even be challenged by the relevant Criminal Procedure Rules, Criminal Practice Directions and Crown Prosecution Service guidelines that set out the duties of experts and the procedure for admitting expert evidence. What poses as an evidence-led attempt to prosecute those who are suspected of wrongdoing based on the music they produce, therefore, starts to resemble a cautionary tale on the dangers of drawing on drill-related material—without scrutinising the admissibility and relevance of such 'evidence' (Owusu-Bempah, 2020; 2022). The main objections to this alarming trend of what Kubrin and Nielson (2014), Nielson and Dennis (2019) and Lerner and Kubrin (2021) respectively call "rap on trial", revolve around questions about: (a) the nature of drill lyrics and videos, (b) institutionalised procedural injustice in the handling of drill-based material as 'evidence' in court and (c) a profound lack of relevant expertise of those who are instructed by the Crown as 'experts'. These three main criticisms of putting rap on trial are taken up in turn, to set the record straight about how drill music takes the stand without sufficient evidence to prove involvement in criminal wrongdoing.

The artistic nature of drill music, denied

Starting with the nature of drill music lyrics and videos, it is worth stating the obvious: that such material are a form of fictional(ised) narrative, not autobiographical confessions (Bramwell, 2018: 484; Fatsis, 2019b: 1301; Ilan, 2020: 2,3, 6, 13, 16; Stuart, 2020: 195). They are not intended to be taken literally, any more than first-person narratives in literature or poetry are evidence of motive, intent, or identity with respect to a crime. As Stoia *et al.* (2018: 330) argue, "fictionalized accounts of violence form the stock-in-trade of rap and should not be interpreted literally". Treating them as confessions means (mis)interpreting art in a legalistic context that mistakes the literary/fictional for the literal/factual. Writing about or even alluding to a real crime, therefore, cannot be interpreted as equivalent to an admission made by an actual person (rather than a character or persona) made *outside* the artistic context of a musical composition. This is a concern that has also

been voiced by an open letter (*The Guardian*, 2019) endorsed by sixty-five signatories from human rights organisations, as well as musicians, lawyers and academics who argue that "all artists should be afforded the same rights to freedom of speech and creative expression". Material of this kind is produced as (self-)consciously fictive narratives that are typically characterised by extreme exaggerations in the lyrics that cannot be taken at face value. Not only is violent imagery and metaphor common to drill music, but much like various other forms of rap music (e.g. gangsta rap), it tends to follow a number of genre conventions lyrically and visually too.

In other words, drill will often appear to be 'confession like' in that it describes acts of violence that rappers claim to have accomplished. Yet, it is important not to interpret these lyrics literally, but rather to understand them in full context. Such claims and performances are expected as part of the genre–a form of fictional artistic expression whose connections to literal truth are likely to be abstract and rhetorical. Indeed, these claims and performances are part of an economy of authenticity, by which artists compete for relevance and popularity through telling violent stories (Ilan, 2020; Bramwell, 2018). As such, a broader reading of the genre is required to fully understand deeply ambiguous relationships to crime and violence that cannot be trivialised or (over)simplified without sacrificing contextual literacy for prosecutorial expedience (Fatsis, 2019b; Ilan, 2020).

Dispensing justice through procedural injustice

Another worrying feature of the 'rap on trial trend' in the UK concerns the very legal logic, tactics and definitions through which drill music becomes 'evidence'. Taking 'the law' at face value, obscures how legal definitions, assumptions and guidance are arrived at, what evidence they based on and what procedures are followed by those who research and draft such legal guidance. The assumption is therefore made that such guidance must be watertight, that it is thoroughly researched and that any claims made are factually accurate and based on evidence generated by research procedures whose findings substantiate the truth and validity of what is being claimed. Even a cursory look at the relevant legal guidance on the use of drill music as evidence in court, however, reveals a considerable lack of all the above.

The Crown Prosecution Service guidance on decision making in cases that involve gang-related offences provides a telling example. In a section entitled "Gangs, drill music and social media" (CPS, 2021), such guidance readily assumes that there is a close link between drill music and gang membership, despite the dearth of any tangible evidence to suggest any such link (Fatsis, 2019b: 1303-5). In a characteristic passage, the CPS charging guidance states that drill music videos "often show the brandishing of weapons, include incendiary remarks about recent incidents of young

people being killed or seriously injured". While this is true, and understandable though such concerns about violent imagery might be, *reference to* a violent incident in a drill music video is not necessarily *evidence of* involvement in the incident referred to. So, unless such use of 'evidence' is challenged by independent experts with a solid understanding of the artistic conventions of rap, lyrical and visual alike, the police and prosecutors are given licence to make unreliable and baseless claims about links between incidents invoked in rap lyrics and violence. Once admitted, such videos are played in court accompanied by dubious claims that (mis)lead jurors into reaching conclusions that are largely based on presupposition and *police intelligence*, rather than *hard evidence* that can conclusively prove something more concrete than inferring that lyrical references are evidence of involvement in violent incidents. To make matters worse, the assumed and taken for granted links between drill and violence are based on cases that relied on rap material as 'evidence' during a period (2018-9) when the validity of such 'evidence' wasn't contested by rap experts (Fatsis, 2021c). As such, the conclusion of a trial is assumed to be the by-product of rigorous evidence-gathering procedures, or that it *must be*, fair and just. Yet, convictions are secured based on logics and tactics of evidence-gathering and legal argumentation that do not observe the standards of professional conduct that we assume are followed. A successful court verdict, therefore, is simply the outcome of a court ruling which gives us no insight into: how the prosecution's case was made, what evidence it was based on, whether such evidence was relevant or admissible, whether such evidence had sufficient weight to withstand scrutiny, whether such evidence is richer in prejudicial impact than evidential/probative value or whether the success and impact of such evidence depends on making an emotive case to the jury by portraying defendants in a negative light and, finally, whether the drill-related material used was even connected to the charges brought against the defendant (Owusu-Bempah, 2022).

Rather than this being a deviation from professional prosecutorial norms, such practices and the prejudicial rationale they are actually informed and enabled by the law itself. To illustrate this with two indicative examples, legal definitions on gangs and legal justifications of using "bad character" evidence are discussed in turn– to demonstrate how racist stereotypes about young Black Britons and violence stand in for actual evidence-based reasoning. Section 34(5) of the Policing and Crime Act 2009 defines gangs as a group which: (a) "consists of at least three people", (b) "uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group" and (c) "is associated with a particular area". In the context of drill music, this means that anyone who raps on camera with at least three other people, wearing T-shirts with the drill collective's name or logo in their neighbourhood, can be identified as a gang member and

prosecuted as such. Inferring gang association through appearances in drill videos, however, is hardly 'evidence' of anything other than signifying a connection -imaginative, performative, or real- to a violent environment. Such a connection, however, only indicates a connection to people and places. It does not give away incriminating evidence of gang membership, association or affiliation, unless police prosecutors, judges and jurors are left to let their imagination fill in the blanks.

The same discriminatory logic is at play in relation to "bad character" evidence. Section 98 of the Criminal Justice Act, 2003 defines bad character evidence as: "evidence of, or of a *disposition towards*, misconduct" rather than evidence which "has to do with the alleged *facts* of the offence with which the defendant is charged" (emphasis added). Rhetoric of 'bad character' here serves to present a narrative of 'badness', rather than incontrovertible evidence of criminal wrongdoing. It is therefore reasonable to ask why would references to defendants' bad character are needed if real, tangible, concrete evidence existed? What if the material admitted as evidence simply depicts invented, fictionalised personas who rap in the first person and pose as 'bad', rather than actually being bad? Also, who decides what 'bad character' is anyway? What moral, legal, social or cultural standards determine that? Where do they come from? (How) were they agreed upon? Is the 'badness' of one's character even a legal matter that should be decided in court? Upon closer inspection, such vague moralistic allusions to one's alleged (or assumed) bad character are shown to be effective prosecutorial tools for securing convictions, rather than convincing, reliable or conclusive facts. Yet, despite mounting opposition to the use of drill-related material in court -voiced by law reform and human rights organisations (Paul, 2021), leading legal professionals (Garden Court), defence counsels, the expert witnesses they instruct, social scientists, rap experts and legal scholars (Fried, 1999; Dennis, 2007; Kubrin and Nielson, 2014; Nielson and Dennis, 2019; Fatsis, 2019b; Lutes, *et al.*, 2019; Ilan, 2020; Owusu-Bempah, 2020; Lerner and Kubrin, 2021)- such guidance and the damaging outcomes they make possible, remain in place. While the CPS has recently pledged to review its guidance by conducting "listening exercises" with academics, barristers, civil liberties groups and youth organisations, it is nevertheless claimed that they are "not aware of any cases where drill music had been wrongly used as evidence in the past" (Ball and Lowbridge, 2022)- when the very guidance the CPS produces makes the use of such material possible in the first place; in ways that have less to do with whether it is used appropriately, but with the fact that the use of such material is inappropriate. More worryingly still, such public announcements were aired *after* the CPS heard from the author of this chapter and two other academic colleagues about how drill-related material is misused in court, in that same listening exercise that they spoke to the media about.

Rap Experts Needed, But Anyone Will Do

The inclusion, interpretation and use of rap lyrics as admissible evidence in court is mired in similar difficulties especially when rap lyrics are handled by non-experts in rap music or Black culture. Rap is a complex form of expression, characterised by multi-layered messages which leads to the possibility of misinterpretation or translation out of context. Rappers manipulate language to the point that "complicates or even rejects literal interpretation" (Gates, 2010: xxvi, xxv). Like all poets, rappers use figurative language relying on a full range of literary devices such as simile and metaphor. Rappers also invent new words, invert the meaning of others and lace their lyrics with dense slang and coded references that defy easy interpretation, especially among listeners unfamiliar with the genre. Furthermore, rappers famously rely on exaggeration and hyperbole as they craft the larger-than-life characters that have entertained fans (and offended critics) for decades (Dennis, 2007; Stuart; 2020: 195). Listeners unfamiliar with rap culture, therefore, may have difficulty being reasonable or fair when it comes to rap lyrics or videos because it often primes enduring stereotypes about the criminality of young black men, its primary creators. In the legal penal system, the results of this racial bias are evident in the disparate treatment that people of colour face at virtually every phase of the criminal justice process (Phillips *et al*., 2020; HMICFRS, 2021). When it comes to rap, research reveals similar disparities (Fatsis, 2019a; 2019b; Nielson and Dennis, 2019). When rap is routinely introduced as evidence in criminal trials, prosecutors will argue that lyrics should be interpreted literally. They are treated as confessions. As Dennis (2007) notes, however, courts tend to incorrectly assume that no specialised knowledge is required to interpret lyrics and that lyrics should be interpreted literally as reflecting accurate, truthful, and self-referential narratives. This is a dangerous oversimplification which can have profound implications on the judgement of the jury or indeed the standards of ethical conduct and fairness of criminal proceedings.

Despite the caution that is displayed by rap scholars, however, the prosecution routinely seeks the expertise of people who have little knowledge or understanding of the genre– if they seek such expertise at all. Those who serve as experts for the prosecution, therefore, are usually police officers without adequate training, qualifications, or knowledge of drill music, rap or Black youth culture. When it isn't police officers, it's mostly experts on gangs or forensic linguists. *All* lack the necessary expertise to evaluate rap music content. Police officers are unable and unsuitable to offer any authoritative, contextual reading of rap lyrics in an accurate, trustworthy or reliable manner. They are untrained in rigorous procedures of research and evidence gathering and insufficiently knowledgeable to make judgements about drill music without being sensitive to context and the conventions of the genre. This is evident in the striking failure to adhere to high standards of data

collection and evaluation, which compromises the value of the evidence presented, compared to rap scholars who are rigorously trained professionals, educated at doctoral level, with a comprehensive track-record of rigorously peer-reviewed research publications. Similarly, experts on gangs *assume* links between drill music and gang membership, but find it difficult to *prove* them. Forensic linguists *can* translate lyrics word for word, but often out of context; as they are *not* conversant with the artistic conventions of rap. *All* aforementioned experts, therefore, draw inferences because references to gangs are common in rap. But any conclusions based on inference are bound to be weak. Gang association *cannot* be inferred through appearances in videos with known gang members, when there can be many innocent reasons for associating with gang members, including musical collaborations, or kinship and friendship ties. That is why such material have to be interpreted in the context of rap *lore* not as a matter of criminal *law*.

Criminalising Road Culture, One Rhyme at a Time

The state's failure to acknowledge, let alone recognise, such a reality leads to a situation where the use of drill lyrics and videos as 'evidence' of criminal wrongdoing resembles a story of evidence that is no evidence, legal judgements that are based on prejudice and experts that are not experts on anything that guarantees a proper understanding, contextualisation and evaluation of rap culture. This wilful ignorance of and affected innocence about how the state-sanctioned, racialised condemnation of blackness stands in for evidence of criminality, gives us a glimpse into how road culture appears in court as an indictable offence and a moral shortcoming that stems from the corrupting influence of drill rap(pers) on the minds of the young. This could sound like an exaggeration, were it not for the fact that what the law targets as direct or indirect 'evidence' is a Black music genre that is singled out using legal reasoning that fails to question its discriminatory logic and outcomes. Were this not so, the criminalisation of drill music in the UK would not be justified by the evidence-less and culturally-illiterate assumptions about an entire genre, its producers and audiences. Unlike the US, where the ignoble practice of "rap on trial" started (Nielson and Dennis, 2019), in the UK drill lyrics and videos are interpreted with a presumption of guilt in mind –readily assuming that what is depicted in verse or on screen *must* be evidence that *should* be admitted as such in court. Yet, it is entirely possible to *not accept something as true* if it is *not known* and cannot be *proven for certain*. In fact, a newly introduced New York Senate State Bill[xi] (nick)named "Rap on trial" does just that (Dillon, 2021). Unlike the CPS guidance, Senate Bill S7527 "[e]stablishes an assumption of the inadmissibility of evidence of a defendant's creative or artistic expression", unless prosecutors can "affirmatively prove that the evidence is admissible by clear and convincing evidence". Instead of assuming that drill-related material counts as reliable evidence the Crown *could* insist on the inadmissibility of such evidence. Only, it *doesn't*. Even when

"listening exercises" are conducted, the discriminatory–that is to say *racist* logic that shapes the relevant legislation is not called into question, or even referred to by name. As a result, an entire Black music genre is stripped of its artistic nature– so it can function as an audible sign of danger, threat and disorder to a nation's self-portrait where Black Britons do not, could not and should not belong (Fatsis, 2021a; 2021b).

Knowing as we do that "rap is not the only art to trade in outlaw […] narratives" and that it is "not the only art form to draw from real life for its creations", it is perhaps worth pausing to think about why it becomes "the only form of artistic expression to be mischaracterized as pure autobiography" (Nielson and Dennis, 2019: 114). As Nielson and Dennis (2019: 114) insist, "the rules of evidence allow, in theory, for other musical genres and other art such as poetry, films and novels to be used as evidence. But that rarely happens, and not in the same manner and to the same extent as with rap music". Much as the police, prosecutors and judges might insist on denying the racist thinking that writes itself into the legal guidance they go by in their professional practice, the racist logic and outcomes that their actions produce do not go away–without doing away with legal tools that legitimise racist thinking by codifying it in law. To deny that the criminalisation of road culture is not racialised, is to deny its aesthetic and cultural borrowings from Afro-diasporic culture(s). To claim that such evidence of institutionalised racism is new, a mishap or a deviation from the norm is to deny the long history of racial injustice in Britain as a "*default setting*, rather than a *system error*" (Fatsis and Lamb, 2022: 84). To mistake legal penal reasoning and practice for justice is to do injustice to the facts of how blackness is racially criminalised in court through drill music, by dragging people who are suspected of criminal behaviour by association with life on road. Nowhere is this better captured than through the words of writer and interdisciplinary artist Jay Bernard (2021), whose critique of the racialisation in joint enterprise prosecutions takes the form of a monologue about a young woman whose teenage friendship ties become 'evidence' of gang association; as an "accomplice" who is treated as "parasitic" and "culturally complicit" to acts of violence she never committed. Fictional though this story might be, it nevertheless speaks factual truths about how the British legal penal system relies on racist fiction(s) to blame road life for crimes the law creates.

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[i] Such epistemic focus on urbanisation can be historicised in a number of ways. The most commonly taught version, highlights the influence of the sociology of deviance that sprang from the Chicago School; whose affiliated researchers conducted neighbourhood/area studies of crime and delinquency, to explore the spatial patterns and distribution of law-breaking in 19th century Chicago. However, similar conceptualisations of the city -as a spatial organism whose social life can be divided and assigned into zones- can also be traced to the social surveys conducted in Victorian England. Charles Booth's "poverty map" of London (LSE, n.d.) is a characteristic example, identifying the capital's "lowest class" as "vicious" and semi-criminal"— in crude, moralistic taxonomic terms that connect access to wealth

with propensity for 'criminality'. Beyond the white criminological mainstream, the role of 'the urban' in the academic study of 'crime' could also draw on the systematic community social survey method that W.E.B Du Bois (2007) employed in his groundbreaking study of Black communities on 19th century Philadelphia. For a good discussion of the marginalisation of Du Bois' work as a treasure trove of arresting insights into the study of crime and racialised criminalisation (see, e.g. 2007: 166-183, esp. p.75), see: Gabbidon (2007). For a respectfully critical account of Du Bois' pioneering ethnographic work—that also interrogates the class, gender and racial politics of ethnography, see: Hartman (2021: 81-120).

[ii] The term 'symbolic locations' was famously used by Sir Kenneth Newman, in his capacity as the Metropolitan Police Commissioner in the 1980s, to describe what he described in his own words as: "certain parts of ethnic areas which have become a focal point for congregation and association by Black youths" (Keith, 2003: 206).

[iii] The term 'Black' is used here to refer to cultural practices that are rooted in, evolve from and establish a dialogue with cultural traditions of the African diaspora. Although the term 'Black' has come to include "African, African-Caribbean, Asian and other visible minority ethnic communities who are oppressed by racism" (Maylor 2009: 373), it is used here to exclusively refer to "African Diasporic Blackness" (Andrews, 2016: 2063-4). This is not meant to deny the term its coalitional meaning or potential in global anti-racist movements, but to apply it more narrowly to Afro-diasporic culture(s). Much of such usage draws inspiration from Stuart Hall's (1993, 1975) extremely insightful thinking about the 'Black' in Black or Afro-diasporic (popular) culture.

[iv] For a good, sensible and sensitive discussion of road rap, drill music and UK street culture, see: McQuaid (2017)

[v] The neologism 'legal penal system' -not unlike the abolitionist catchphrase 'criminal legal system'- is enlisted here to problematise, refute and refuse the term 'criminal justice system'; insisting that the latter is a system of laws that (literally) *creates* 'crime' -both as a concept and a reality- through turning certain activities into punishable offences. This is not to deny that violence and harm exist, or that there are people who commit violent acts that cause harm. Rather, it is to stress that 'crime' is a political category that condemns, stigmatises, marginalises and racialises violence as the inherent trait, individual anomaly, cultural pathology and personal responsibility of 'deviant' individuals and groups. Notions like 'law' and 'justice', therefore, are not understood here as interchangeable or synonymous. As Ben Quigley (2007: 15) argues, "[w]e must never confuse law and justice. What is legal is often not just. And what is just is often not at all legal". Legal practitioners, therefore, do not (necessarily) observe principles and ideas of 'justice', but enforce 'the law'; the technical and legal(istic) restrictions on the behaviour, actions and activities of 'the public'. While 'justice' denotes and embodies notions and ethical standards of fairness, 'the law' is "the technical embodiment of attempts to order society" (Williams, 1993: 139). What we refer to or think as 'the law', therefore, simply refers to "written law, codes, [and] systems of obedience" (Williams, 1993: 138), *not* that higher, 'just' ethical plane that we think that the law signifies, or stands for. For that reason, the term 'legal penal system' is used throughout this chapter to stress that the state's juridical infrastructure delivers punishments, not justice— using 'the law' as an instrument of political (mis)rule.

[vi] For a critique of facile and perhaps naïve assumptions about the rule of law, equality before the law and modern, liberal, progressive, fair and democratic government, see: Fatsis and Lamb, 2022: 96-100

[vii] For more details on the charges that were brought against Skengdo x AM alongside other famous drill collectives like 410 and 1011, see: Fatsis (2019: esp.: 1302-4). For a full-length documentary on the Digga D case, see Mohamed (2020)

[viii] Section 98 of the Criminal Justice Act, 2003 defines bad character evidence as: 'evidence of, or of a *disposition towards*, misconduct' rather than *evidence* which 'has to do with the alleged facts of the offence with which the defendant is charged' (emphasis added).

[ix] "Joint enterprise" refers to a legal doctrine that allows the court to show a link or association between defendants. Given the broad scope of such legislation, it is possible to convict individuals of crimes *without* committing the criminal act they are charged with, or even being at the scene of the crime. For a good critical discussion of joint enterprise law, see: Clarke and Williams, 2020; Hulley and Young, 2021)

[x] The term 'serious youth violence', sometimes referred to as 'serious violence', has recently become all-pervasive in the criminal justice lexicon, political rhetoric and media coverage. It is used mostly as a shorthand for describing incidents of violence that are associated with "county lines" that are themselves defined as: 'drug networks (both gangs and organised crime groups) who use children and young people and vulnerable adults to carry out illegal activity on their behalf' (HM Government, 2018: 48).

[xi] The full text of the Senate Bill S7527 can be accessed at: https://www.nysenate.gov/legislation/bills/2021/s7527