

SUPREME COURT NO. 22-0397
WOODBURY COUNTY CASE NO. FECR112015

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,
Appellee and Applicant for Further Review,

v.

LAWRENCE GEORGE CANADY, III
Defendant-Appellant.

*APPEAL FROM THE IOWA DISTRICT COURT FOR
WOODBURY COUNTY
HONORABLE PATRICK H. TOTT, DISTRICT COURT JUDGE*

***BRIEF OF *AMICI CURIAE*:
AMERICAN CIVIL LIBERTIES UNION
AMERICAN CIVIL LIBERTIES UNION OF IOWA
IN SUPPORT OF DEFENDANT-APPELLANT**

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

When people choose which songs to sing or which films to watch, they should not have to worry that their expressive choices will later be used to convict them of crimes. Yet, at Lawrence Canady’s trial on charges arising from a fatal shooting, the state introduced evidence of a video, recorded several days before the shooting, that depicted Mr. Canady rapping along to a popular “diss track” by a Chicago rap group. The prosecution argued that the song was relevant because it mentioned several people by name, including one name that sounded like the name of the shooting victim in this case. The Court of Appeals held that the video had “little to no probative value,” that “the risk of unfair prejudice from the admission of the video was high,” and that the trial court therefore erred in admitting the video. *State v. Canady*, 996 N.W.2d 432 (Table), 2023 WL 4531668, *4 (Iowa Ct. App. 2023). That ruling is correct.

Song lyrics are rarely probative of anyone’s guilt. That is particularly true where, as here, the prosecution seeks to prove that a defendant sang or rapped along to popular lyrics that *someone else*

wrote. People often quote from and perform violent media written by others, from Shakespeare to Quentin Tarantino to Steven King, without having those words used against them. Songs should be no different. And rap does not reside in some special corner of the artistic universe in which everything said is true. Just as singing along to Johnny Cash's *Folsom Prison Blues* is not evidence that the singer "shot a man in Reno," rapping along to someone else's "diss track" is not evidence that the rapper has criminal intent.

On the other side of the ledger, injecting rap lyrics into a criminal case risks profound and undue prejudice. Decades of research demonstrate that juries are likely to form negative perceptions of defendants when they are associated with rap music. Juries are likely to view rap lyrics more literally than lyrics from other genres, are more likely to associate rap music with criminal activity, and are more likely to believe that rappers have poor moral character. Thus, for good reason, courts across the country have recognized the strong prejudicial impact of admitting rap music and rap lyrics into evidence in criminal trials.

This Court should too. As explained below, this Court should affirm the Court of Appeals and remand the case so that Mr. Canady can have a fair trial based on the facts, not his artistic preferences.

INTEREST OF AMICI CURIAE

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to protecting the principles embodied in the state and federal Constitutions and our nation’s civil rights laws. The ACLU of Iowa (together, “ACLU”), founded in 1935, is its statewide affiliate.¹

This case squarely presents the question of when rap lyrics should be admissible evidence against a criminal defendant—that is, when they are more probative than prejudicial. The State argues that rap lyrics “can be relevant and admissible when they

¹ Pursuant to Appellate Rule 6.906(4)(d), amici and their counsel declare that no party or party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money to fund the preparation or submission of this brief; and no person or entity other than the amici curiae contributed money that was intended to fund preparing or submitting a brief.

incorporate details of a charged offense.” Appellee’s Br. at 22 (hereinafter “State’s Br.”). But, as amici argue below, courts generally find that rap lyrics are not probative of a defendant’s guilt unless the defendant wrote the lyrics *and* the state demonstrates “a strong nexus between specific details of the artistic composition and the circumstances of the offense for which the evidence is being adduced.” *State v. Skinner*, 95 A.3d 236, 251–52 (N.J. 2014).

The ACLU has a longstanding interest in defending the rights of the accused and convicted, as well as the right to be free from racial discrimination and the protection of free expression—intersecting interests implicated by this case. Through direct representation, amicus briefs, and advocacy, the ACLU actively works to advance these principles in Iowa and the nation. Because of its experience and accumulated expertise in the preservation of these rights, the ACLU can materially contribute to the legal dialogue in this case.

ARGUMENT

The Iowa Court of Appeals correctly determined that the district court violated Rule 5.403 of the Iowa Rules of Evidence by

admitting into evidence a video of Mr. Canady rapping along to a popular song. Like its federal counterpart, *see* Fed. R. Evid. 403, Rule 5.403 allows for the exclusion of evidence, “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, [or] misleading the jury[.]” To apply Rule 5.403, courts consider (1) “the need for the evidence in light of the issues and the other evidence available,” (2) “the strength or weakness of the evidence on the relevant issue,” and (3) “the degree to which the fact finder will be prompted to decide the case on an improper basis.” *State v. Taylor*, 689 N.W.2d 116, 124 (Iowa 2004). If the probative value of the evidence “is substantially outweighed by the danger of unfair prejudice,” then “[t]he court *must* exclude the evidence.” *State v. Elliot*, 806 N.W.2d 660, 675 (Iowa 2011) (emphasis added).

Those considerations tilt sharply against allowing evidence that a defendant sang along to someone else’s song, because that kind of evidence is rarely probative and almost always unfairly prejudicial.

I. Evidence that a criminal defendant sang along to a violent rap song is rarely, if ever, probative.

Evidence that an individual defendant enjoys violent media is rarely, if ever, probative in a criminal trial. To understand why that is so, it is important to understand that almost everyone enjoys violent media—in one form or another. Rap is no outlier.

A. Fictional violent imagery is ubiquitous in popular media and culture.

Violent imagery can be found everywhere, from the nursery rhymes we sing to our children² to the popular songs we sing to ourselves:

- In 1955, singer-songwriter Johnny Cash sang “I shot a man in Reno, just to watch him die” in his single *Folsom Prison Blues*.³ The song was inducted into the Grammy

² See *The Twisted Truth Behind 10 Creepy Nursery Rhymes*, The Lineup (Jan. 31, 2018), <https://the-line-up.com/creepy-backstories-nusery-rhymes>.

³ Johnny Cash, *Folsom Prison Blues* (Sun Records 1955).

Hall of Fame⁴ and is ranked number 51 on *Rolling Stone* magazine's list of the 100 greatest country songs of all time.⁵

- In 1975, the rock band Queen released *Bohemian Rhapsody*, written and sung by Freddie Mercury.⁶ Mercury sings “I just killed a man, put a gun against his head, pulled my trigger, now he’s dead.”⁷ The song has been inducted into the Grammy Hall of Fame,⁸ is the most streamed song from the 20th Century,⁹ and is

⁴ *Grammy Hall of Fame Award*, Grammy Awards, <https://www.grammy.com/awards/hall-of-fame-award#f> (last visited Jan. 31, 2024).

⁵ *100 Greatest Country Songs of All Time*, *Rolling Stone* (June 1, 2014), <https://www.rollingstone.com/music/music-lists/100-greatest-country-songs-of-all-time-11200>.

⁶ Queen, *Bohemian Rhapsody*, on *A Night at the Opera* (EMI Records 1975).

⁷ *Id.*

⁸ *Grammy Hall of Fame Award*.

⁹ Simon Thompson, *Queen’s ‘Bohemian Rhapsody’ Is Officially The World’s Most Streamed Song*, *Forbes* (Dec. 10, 2018),

ranked seventeenth on *Rolling Stone's* list of the 500 greatest songs of all time.¹⁰

- More recently, pop music superstar Taylor Swift released *no body, no crime*, where she sings about murdering her friend's husband and cleaning up the "scene."¹¹ The song peaked at 16 on the *Billboard* Global 200 charts,¹² and there are thousands of videos of people singing along to this song on YouTube or using it as background music for TikTok videos or Instagram

<https://www.forbes.com/sites/simonthompson/2018/12/10/queens-bohemian-rhapsody-is-officially-the-worlds-most-streamed-song>.

¹⁰ *The 500 Greatest Songs of All Time*, *Rolling Stone* (Sept. 15, 2021), <https://www.rollingstone.com/music/music-lists/best-songs-of-all-time-1224767>.

¹¹ Taylor Swift feat. HAIM, *no body, no crime*, on *Evermore* (Republic Records 2020).

¹² *Chart History: Taylor Swift*, *Billboard*, <https://www.billboard.com/artist/taylor-swift/chart-history/glo> (last visited Jan. 31, 2024).

reels.¹³ One TikTok user even recreated the murder described in the song with Barbie dolls.¹⁴

As these examples demonstrate, songwriting covers a wide variety of topics, including violence. To be sure, music, like all art, is a matter of taste. Some people might recoil from the violent imagery in genres of music they, personally, do not like. But chances are, those same people themselves like some songs that contain violent imagery.

¹³ See, e.g., Ava Hennessy, *no body, no crime (feat. HAIM) – taylor swift cover*, YouTube (Dec. 17, 2020), <https://www.youtube.com/watch?v=9dgYnaINgNM>; Mickey Santana, *no body, no crime – Taylor Swift ft. HAIM | Mickey Santana Cover*, YouTube (Dec. 14, 2020), <https://www.youtube.com/watch?v=uE-CdTioilE>.

¹⁴ Ashley (Taylor's Version), @youbelongwithme_7, *No Body, No Crime*, TikTok (May 20, 2023), https://www.tiktok.com/@youbelongwithme_7/video/7235447718095637765.

B. Fictional violent imagery in rap and hip hop are no different.

Hip hop is arguably the most popular music genre both in the United States and the world.¹⁵ “Hip hop is a music genre and cultural movement that originated through African Americans in the South Bronx, New York City, in the 1970s.¹⁶ It is inextricably connected to and, just as important, for purposes of this case, widely

¹⁵ See, e.g., Nielsen Music, 2017 Year-End Music Report: U.S. (2018), <https://www.nielsen.com/wp-content/uploads/sites/2/2019/04/2017-year-end-music-report-us.pdf>; Christopher Hooton, *Hip-hop is the most listened to genre in the world, according to Spotify analysis of 20 billion tracks*, Independent (July 14, 2015), <https://www.independent.co.uk/arts-entertainment/music/news/hiphop-is-the-most-listened-to-genre-in-the-world-according-to-spotify-analysis-of-20-billion-tracks-10388091.html>.

¹⁶ See Kimani Krienke, *NYC Celebrates 50 Years of Hip-hop, a Bronx-born Phenomenon That Took Over the World*, Time Out (Aug. 11, 2023), <https://www.timeout.com/newyork/music/nyc-celebrates-50-years-of-hip-hop-a-bronx-born-phenomenon-that-took-over-the-world>; see *Timeline of African American Music: Rap/Hip-Hop*, Carnegie Hall, <https://timeline.carnegiehall.org/genres/rap-hip-hop> (last visited Jan. 31, 2024); *Montague v. State*, 243 A.3d 546, 551 (Md. 2020). For a fuller discussion of the origins and history of hip hop and its significance in popular culture, see generally Erik Nielson & Andrea L. Dennis, *Rap on Trial: Race, Lyrics, and Guilt in America* 26–58 (2019); Henry Louis Gates Jr., *Foreword* to *The Anthology of Rap* (Adam Bradley & Andrew DuBois eds., 2010); *Timeline of African American Music*.

understood to be connected to, Black Americans and Black culture. The NAACP has proclaimed that August is “Hip Hop Recognition Month.”¹⁷ Last summer, to mark hip hop’s 50-year anniversary, the National Museum of African American History and Culture hosted a “block party” in “celebration of the culture and music that originated and has been shaped by Black America for decades.”¹⁸

Rap music, the musical element to hip-hop, is a sophisticated and poetic art form. Literary critic, professor, and historian Henry Louis Gates Jr. describes rap as “a new vanguard of American poetry.” Henry Louis Gates Jr., *Foreword* to *The Anthology of Rap*

¹⁷ NAACP, Resolution, August Hip Hop Recognition (2018), <https://naacp.org/resources/august-hip-hop-recognition> (last visited Jan. 31, 2024).

¹⁸ National Museum of African American History and Culture, Museum News, Passes for the National Museum of African American History and Culture’s 2023 Hip-Hop Block Party To Be Available July 31 (July 26, 2023), <https://nmaahc.si.edu/about/news/passes-national-museum-african-american-history-and-cultures-2023-hip-hop-block-party-be>; see also *Traveling Exhibits*, African American Museum of Iowa, <https://blackiowa.org/education-research/traveling-exhibits> (last visited Jan. 31, 2024) (describing the exhibit “Behind the Beat,” which “[e]xplore[s] the development of African American music from its roots in Africa to modern-day hip-hop”).

xxvi (Adam Bradley & Andrew DuBois eds., 2010). In fact, PBS's *Poetry in America* has called rap “the most popular form of contemporary poetry in the world today.”¹⁹ Rappers—including Jay-Z, The Notorious B.I.G, and 2Pac—have been inducted into the Rock & Roll Hall of Fame.²⁰ In 2018, rapper Kendrick Lamar won the Pulitzer Prize in Music for his album *DAMN*.²¹

Rap famously relies on exaggeration, hyperbole, and clever manipulation of language.²² As scholars have noted, rap lyrics

¹⁹ See Marybeth Reilly-McGreen, Why Hip-Hop Matters, Univ. R.I. Mag. (2018), <https://www.uri.edu/magazine/issues/fall-2018/why-hip-hop-matters>.

²⁰ Starr Bowenbank, *Every Rapper in the Rock and Roll Hall of Fame*, Billboard (Feb. 2, 2022), <https://www.billboard.com/photos/rappers-rock-and-roll-hall-of-fame-1235026443/1-jay-z-2000-billboard-1240>.

²¹ See *DAMN.*, by Kendrick Lamar, Pulitzer (last visited Jan. 31, 2024) <https://www.pulitzer.org/winners/kendrick-lamar>.

²² See, e.g., Henry Louis Gates Jr., *An Anthology of Rap Music Lyrics*, Financial Times (Nov. 5, 2010), <https://www.ft.com/content/87cca6b0-e7a9-11df-8ade-00144feab49a> (“Rap’s signature characteristic is the parody and pastiche of its lyrics”).

typically “consist of constructed images, metaphor, braggadocio, or exaggerated storylines.”²³

When prosecutors attempt to introduce song lyrics in criminal cases, the lyrics are almost always rap.²⁴ But it would be wrong for prosecutors, judges, or juries to assume that rap lyrics “depict real-life events, based on personal knowledge.” Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 Colum. J.L. & Arts 1, 15 (2007). The “conception of rap music lyrics as truth rather than art is consistent with the stock image of gang-members and rappers as criminals,” but it ignores the reality that rap is fundamentally an art form, not an exercise in journalism. Here are just a few examples of the “exaggerated storylines” and “constructed images” in rap and hip hop:

²³ Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 Colum. J.L. & Arts 1, 25 (2007).

²⁴ Despite years of searching, co-authors Erik Nielson and Andrea Dennis found no examples of prosecutors introducing country music lyrics against a defendant and only a handful of cases involving heavy metal lyrics; in contrast, they identified over 500 cases involving rap lyrics. See Nielson & Dennis, at 12–13, 85–92 (2019).

- The hit song *Straight Outta Compton* includes a verse Ice Cube himself refers to as “a murder rap,” in which he raps about using an AK-47 to murder people “daily,” and “squeez[ing] the trigger, and bodies are hauled off.” N.W.A., *Straight Outta Compton* (Ruthless Records & Priority Records 1988). Everything about this is fictionalized; Ice Cube does not murder people “daily”—in fact, he is not even from Compton. Kory Grow, *N.W.A.’s ‘Straight Outta Compton’: 12 Things You Didn’t Know*, *Rolling Stone* (Aug. 8, 2018), <https://www.rollingstone.com/feature/n-w-as-straight-outta-compton-12-things-you-didnt-know-707207>.
- In 1992, Ice-T’s rap group Body Count released *Cop Killer*, with lyrics about murdering police officers alongside lyrics protesting police brutality. Body Count, *Cop Killer* (Sire Records & Warner Bros. Records 1992). Police and politicians at the local and national level were incensed, and they organized to prohibit the song’s distribution. See Erik Nielson & Andrea L. Dennis, *Rap*

on Trial: Race, Lyrics, and Guilt in America 46–47 (2019). Ice-T spoke on the controversy, making clear that “I’m singing in the first person as a character who is fed up with police brutality”; in his own words, “I ain’t never killed no cop. . . . That’s called a poetic license.” Kory Grow, *Ice-T and the Controversial History of Body Count’s ‘Cop Killer’*, Rolling Stone (Nov. 24, 2023), <https://www.rollingstone.com/music/music-news/body-count-cop-killer-ice-t-book-excerpt-1234876409>.

- More recently, SZA’s hit song *Kill Bill* described murdering her ex-boyfriend and his new girlfriend. SZA, *Kill Bill*, on SOS (Top Dawg Entertainment & RCA Records 2022). It was number two on the *Billboard* Hot 100 chart for eight weeks, before a remix with rapper Doja Cat pushed it to number one.²⁵ This remix is even

²⁵ Gary Trust, *SZA Scores Her First Billboard Hot 100 No. 1 With ‘Kill Bill’*, *Billboard: Chart Beat* (Apr. 24, 2023), <https://www.billboard.com/music/chart-beat/sza-kill-bill-number-one-hot-100-ice-spice-nicki-minaj-top-10-1235313955>.

more violent: Doja Cat raps about breaking into the ex's house, shooting the new girlfriend, and watching "her fall to the floor." SZA feat. Doja Cat, *Kill Bill* (Top Dawg Entertainment & RCA Records 2023). Of course, neither SZA nor Doja Cat have murdered anyone; the song's title and lyrics allude to a Quentin Tarantino film.

As these examples highlight, violent narratives may be common in rap music, but that does not make them real. "[T]he intention" of many rap songs "is to tell outrageous stories that stretch and shatter credibility, overblown accounts about characters expressed in superlatives." Dennis, *Poetic (In)Justice?*, at 23. The audience "listen[s] incredulously, not believing a single word." *Id.* These lyrics are no more probative of reality than the lyrics of Johnny Cash, Bob Marley, Freddy Mercury, or Taylor Swift.

Particularly given hip hop's associations with Black people and Black culture, treating rap differently than other genres of music has profound racial justice implications. It would be dismaying, to say the least, if the legal system were to treat music

genres associated with white Americans, such as country and pop, as presumptively fictional, while treating a music genre associated with Black Americans as presumptively factual.

C. Evidence that a criminal defendant sang along to a violent song is rarely probative of any material issue at trial.

Courts from all over the United States have recognized that there is no principled “reason why rap music lyrics, unlike any other musical form, should be singled out and viewed sui generis as literal statements of fact or intent.” *Commonwealth v. Gray*, 978 N.E.2d 543, 561 (Mass. 2012). Instead, as the Court of Appeals correctly concluded in this case, “[c]ommon sense tells us that people often sing and rap along to songs without those songs being autobiographical.” *Canady*, 2023 WL 4531668, at *3. As explained below, that conclusion finds support in case law in other jurisdictions. The State’s contrary claim relies on the argument that rap lyrics “can be relevant and admissible when they incorporate details of a charged offense.” State’s Br. at 22 (citation and quotation marks omitted). But courts generally find that rap lyrics are not probative of a defendant’s guilt unless the defendant

himself wrote the lyrics *and* the state demonstrates “a strong nexus between specific details of the artistic composition and the circumstances of the offense for which the evidence is being adduced.” *State v. Skinner*, 95 A.3d at 251–52.

For instance, in *United States v. Sneed*, the U.S. District Court for the Middle District of Tennessee rejected the Government’s argument that a rap video was relevant because it showed the defendant “rapping about the crimes with which he is charged in the instant case.” *United States v. Sneed*, No. 14-CR-159, 2016 WL 4191683, at *6 (M.D. Tenn. Aug. 9, 2016). “The Government’s argument has a fatal flaw,” the court explained: “rapping about selling drugs does not make it more likely that [the defendant] did, in fact, sell drugs.” *Id.*; *see also, e.g., Hannah v. State*, 23 A.3d 192, 196–97, 201 (Md. 2011) (holding that a defendant’s “violent ‘rap’ lyrics” “were probative of no issue other than the issue of whether he has a propensity for violence”); *State v. Hanson*, 731 P.2d 1140, 1143–44 (Wash. Ct. App. 1987) (holding that a defendant’s fictional writings “were simply not probative,” despite including instances of violence).

The Supreme Court of New Jersey has stated that a defendant’s “graphically violent rap lyrics” have “little to no probative value . . . whatsoever” in a trial for attempted murder and related charges. *Skinner*, 95 A.3d at 251. Citing Bob Marley’s *I Shot the Sheriff* and Edgar Allan Poe’s *The Tell-Tale Heart*, the court explained that it would be wrong to assume that, “simply because an author has chosen to write about certain topics, he or she has acted in accordance with those views.” *Id.*

Similarly, a judge in the Eastern District of Pennsylvania explained that rap lyrics are “artistic expression,” which are “not factual.” *Bey-Cousin v. Powell*, 570 F. Supp. 3d 251, 255 (E.D. Pa. 2021). Consequently, that court adopted “a presumption that artistic expression is not factual.” *Id.* “To overcome that rule, the proponent of evidence must offer some preliminary indicia that the artistic expression is a truthful narrative.” *Id.* But even “seemingly autobiographical details” will not cut it—“a ‘seemingly’ autobiographical work is not necessarily autobiographical,” even if the artist uses the first person, the “artist’s expression bears some resemblance to real life events,” or the “artist wrote in the first

person about events that resemble real life.” *Id.* at 255–56. There must be something more for the lyrics to be admissible.

Typically, that something more is “a strong nexus between specific details of the artistic composition and the circumstances of the offense for which the evidence is being adduced.” *Skinner*, 95 A.3d at 251–52. For example, the Supreme Court of Kentucky affirmed the admission of a rap video in a domestic murder trial when (1) the defendant wrote the lyrics *himself*; (2) he wrote them *after* the crime occurred; and (3) his lyrics *expressly referenced* details of the crime at issue. They included the lines: “B---- made me mad, and I had to take her life. My name is Dennis Greene and I ain’t got no f---ing wife,” and “I cut her motherf---in’ neck with a sword,” which tracked key details of the crime. *Greene v. Commonwealth*, 197 S.W.3d 76, 80, 85 (Ky. 2006).

Those same three elements were present in *Holmes v. State*, 306 P.3d 415 (Nev. 2013), where the Supreme Court of Nevada affirmed the admission of lyrics (1) written by the defendant himself, (2) after the crime occurred, and (3) incorporating key details of the alleged crime. The lyrics stated, “I . . . jack you for

your necklace,” and “I’m parking lot jacking, running through your pockets with uh ski mask on,” and the crime had indeed occurred in a parking lot, where “two men wearing ski masks” turned the victim’s pockets inside out and tore off his necklace. *Id.* at 417–18.

But when the artistic writings in question bear only a slight resemblance to the facts of the crime, courts deem them inadmissible. For example, in *Hannah v. State*, Maryland’s high court held that the trial court erred in allowing the state to cross-examine the defendant with rap lyrics he had written about guns. 23 A.3d at 201. The state argued that the lyrics were relevant because the defendant testified that he did not own guns, have access to a gun, or have any interest in guns. *See id.* at 193–96. The court disagreed, finding that these writings “were probative of no issue other than” an improper attempt to prove the defendant’s “propensity for violence.” *Id.* at 201. And in *State v. Cheeseboro*, the Supreme Court of South Carolina held that lyrics referencing “leaving no prints and bodies left in a pool of blood” were inadmissible where the defendant was charged with “armed robbery and execution-style shooting of three victims,” because the

lyrics were “too vague in context.” 552 S.E.2d 300, 304, 313 (S.C. 2001); *see also Hanson*, 731 P.2d at 1144–45.

The same reasoning should apply in Iowa. Indeed, holding otherwise could raise serious First Amendment concerns. *See generally Dawson v. Delaware*, 503 U.S. 159, 159, 164–65 (1992) (admission of evidence protected by the First Amendment violated the Constitution when evidence was irrelevant to any issue before the court); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995) (noting that music and other forms of artistic expression “unquestionably” fall within the First Amendment’s protection).

II. Evidence that someone sang along to a violent rap song is highly prejudicial.

“Unfair prejudice arises when the evidence would cause the jury to base its decision on something other than the proven facts and applicable law, such as . . . a desire to punish a party.” *Taylor*, 689 N.W.2d at 124. With hip hop and rap, the risk of unfair prejudice abounds: lyrics can contain fictionalized and exaggerated

accounts of violence, and the entire genre can be associated, in the minds of the public (and thus jurors), with a particular racial group.

Thus, unsurprisingly, courts across the country have time and time again recognized the strong prejudicial impact of admitting rap music and rap lyrics into evidence in criminal trials. In *United States v. Gamory*, the Eleventh Circuit held that the district court abused its discretion in admitting a rap video because “the substance of the rap video was heavily prejudicial.” 635 F.3d 480, 493 (11th Cir. 2011). “The lyrics presented a substantial danger of unfair prejudice because they contained violence, profanity, sex, promiscuity, and misogyny and could reasonably be understood as promoting a violent and unlawful lifestyle.” *Id.* In *United States v. Sneed*, a federal district court prohibited the government from admitting a video of the defendant rapping because, “the risk of jury confusion and unfair prejudice substantially outweighs any slight probative value.” 2016 WL 4191683, at *6. And in *Commonwealth v. Gray*, the Supreme Judicial Court of Massachusetts reversed a defendant’s convictions after finding that the “prejudicial effect” of a rap video “was overwhelming.” 978 N.E.2d at 562. *See also, e.g.,*

United States v. Stephenson, 550 F. Supp. 3d 1246, 1253 (M.D. Fla. 2021) (noting the “significant risk that the jury will view [the defendant] as a violent drug dealer and gang member and find him guilty of the charged offenses for improper reasons”); *Cheeseboro*, 552 S.E.2d at 313 (holding that “[t]he minimal probative value of” the defendant’s rap lyrics was “far outweighed by its unfair prejudicial impact as evidence of [the defendant’s] bad character, *i.e.* his propensity for violence in general”); *United States v. Johnson*, 469 F. Supp. 3d 193, 222 (S.D.N.Y. 2019) (rejecting the government’s attempt to introduce lyrics from a rap video because the use of profanity and the references to violence “present[ed] a risk of unfair prejudice”); *People v. Foster*, No. 320136, 2015 WL 2412383, at *5–7 (Mich. Ct. App. May 19, 2015) (holding that the rap video should have been excluded because it was highly prejudicial).

The Iowa Court of Appeals has similarly recognized the likelihood that introducing a rap video will be highly prejudicial. In *State v. Leslie*, the court held that “the presentation of the rap videos” created by the deceased “would have been unduly

prejudicial.” 843 N.W.2d 476 (Table), 2014 WL 70259, at *6 (Iowa Ct. App. 2014). “To the extent that individuals associate rap music with crime and criminal behaviors, they negatively perceive defendants who are involved with rap music.” *Id.* (quoting Dennis, *Poetic (In)Justice?*, at 29–30).

Decades of research support what courts have long recognized: juries are likely to form negative perceptions of defendants when they are associated with rap music. In one study, researchers asked participants to read a set of violent lyrics taken from a 1960 folk song, *Bad Man’s Blunder* by The Kingston Trio. Carrie B. Fried, *Who’s Afraid of Rap: Differential Reactions to Music Lyrics*, 29 J. Applied Soc. Psych. 705, 708–10 (1999). Researchers then falsely told some participants that the lyrics were from a rap song, and other participants that the lyrics were from a country song. *Id.* at 708. As compared to the participants who were told that the lyrics were from a country song, the participants who were told that the lyrics were from a rap song were significantly more likely to say that the song was offensive, dangerous, likely to incite violence, and in need of regulation. *Id.* at 710–11.

In 2016, researchers from the University of California at Irvine replicated Fried’s experiment. Again, participants “who were told the lyrics were from a rap song perceived them to be more negative overall compared with those who were told the lyrics were from a country song.” Adam Dunbar, Charis E. Kubrin, & Nicholas Scurich, *The Threatening Nature of ‘Rap’ Music*, 22 Psychol. Pub. Pol’y & L. 280, 285 (2016). Even when researchers selected different lyrics—this time from *A Boy Named Sue* by Johnny Cash—participants who were told the lyrics were from a rap song considered them to be “more literal and in need of greater regulation” than participants who were told the lyrics were country. *Id.* at 286.

In 2018, two of the same researchers specifically sought to address whether “negative stereotypes about rap music shape jurors’ attitudes about the defendant, unfairly influencing outcomes.” Adam Dunbar & Charis E. Kubrin, *Imagining Violent Criminals: An Experimental Investigation of Music Stereotypes and Character Judgments*, 14 J. Experimental Criminology 507, at *1 (2018), <https://escholarship.org/uc/item/3x71s6rz>. In short, the

answer is yes. Participants were asked to “read music lyrics and then make judgments about the person who wrote the lyrics.” *Id.* at *15. Participants were told the genre of the lyrics was either country, heavy metal, or rap. *Id.* The results were telling. Participants who were told that the lyrics were rap made significantly harsher character judgments about the songwriter. *Id.* at *18. Those participants were also significantly “more likely to assume that the songwriter is a member of a gang, is involved in criminal activity, and has a criminal record.” *Id.* at *18–19 (statistical information omitted).

In short, admission of rap lyrics and videos at trial comes with a virtually-unavoidable risk of unfair prejudice. This prejudice will almost always outweigh the minimal probative value of the evidence.

III. The Court of Appeals correctly held that admitting the rap video into evidence was erroneous.

The Court of Appeals correctly concluded that the rap video’s minimal probative value was substantially outweighed by its prejudicial impact.

A. The rap video had little to no probative value.

The Court of Appeals correctly found that the rap video had “little to no probative value.” *Canady*, 2023 WL 4531668, at *4. As shown above, courts have generally disallowed the admission of rap lyrics unless the defendant (1) wrote them (2) after the crime and (3) included key details of the crime. None of those factors are present here.

First, Mr. Canady did not write the lyrics. The song in question—*63rd to 65th* by a Chicago rap group—was released on YouTube in February 2021, two months before the rap video was recorded. The video has over 750,000 views. See A Mac Film Production, *Nutso X Slide – 63rd to 65th (Official Video) SHOT BY: @SHONMAC071*, YouTube (Feb. 19, 2021), https://www.youtube.com/watch?v=gAAEFpmreZU&list=RDEMGL62_0Gu_1KWjcOwFt_dWg&start_radio=1 (last updated Jan. 31, 2024). It is hardly surprising that two young people would listen to and sing along to a popular song; their rapping tells us nothing about whether they committed the crimes charged.

Second, as the Court of Appeals noted, the timing of the video cuts against its probativeness. The video was recorded on April 26, 2021. *Canady*, 2023 WL 4531668, at *2. “The evidence actually introduced at trial was devoid of anything suggesting [Mr.] Canady had the motive or intent to kill [the victim] before” April 30, 2021. *Id.* at *3; *cf. Foster*, 2015 WL 2412383, at *5–6.

Third, the video does not supply any details about the alleged crime, and its reference to a “Teso” or “Tezzo” does not change that fact. As the Court of Appeals explained, it would be improper to “imbue meaning to [Mr.] Canady’s rapping along to a popular diss track that includes several names, including one that sounds like the name of a decedent.” *Canady*, 2023 WL 4531668, at *3 (footnotes omitted). Rap songs often include names of individuals, especially in so-called “diss tracks,” which one group of experts defines as “recorded songs in which rappers insult, or ‘diss,’ one another.” Brief of Amici Curiae Michael Render (“Killer Mike”), Erik Nielson, and Other Artists and Scholars in Support of Petitioner at 5–7, *Knox v. Pennsylvania*, 139 S. Ct. 1547 (2019) No. 18-949. Almost all rappers have at least one diss track; these tracks

routinely involve calling people out, sometimes by name, and even threatening them with violence.²⁶ Given that these sort of “diss tracks” are common in the genre, the coincidental matching of an alleged nickname is a far cry from cases where the defendant wrote lyrics describing specific alleged crimes in detail. *See, e.g., Greene*, 197 S.W.3d at 80, 86; *Holmes*, 306 P.3d at 417–19.

B. The rap video created a high risk of unfair prejudice to Mr. Canady.

The Court of Appeals correctly concluded that “the risk of unfair prejudice from the admission of the video was high.” *Canady*, 2023 WL 4531668, at *4. The song Mr. Canady was rapping along to had “lyrics describing violence against a number of people.” State’s Br. at 21. In the video, Mr. Canady “pantomimed shooting a

²⁶ *See, e.g., List of diss tracks*, Wikipedia, https://en.wikipedia.org/wiki/List_of_diss_tracks (last accessed Jan. 31, 2024) (cataloging over 120 “diss tracks”); Noah A. McGee, *The Most Unforgettable Diss Tracks in Hip-Hop History*, The Root (Sept. 10, 2023) (a slideshow “revisit[ing] some of the best diss tracks of all time”), <https://www.theroot.com/the-most-unforgettable-diss-tracks-in-hip-hop-history-1850616171>; 2Pac (feat. Outlawz), *Hit ‘Em Up* (Death Row Records 1996); Machine Gun Kelly, *RAP DEVIL*, on Binge (Bad Boy Records & Interscope Records 2018).

gun, and he drew a finger across his neck.” *Id.* It is not hard to see how this can prejudice a jury into believing, either consciously or subconsciously, that Mr. Canady has a propensity for violence and criminality.

In sum, the Court of Appeals was correct to reverse the district court’s admission of the rap video. The video of Mr. Canady rapping along to a typical rap song, with lyrics “consist[ing] of constructed images, metaphor, braggadocio,” and/or “exaggerated storylines”²⁷ is not probative of his motive or intent to engage in any violent or criminal behavior. At most, the video is probative to show that Mr. Canady listens to rap music, which is not only irrelevant to his guilt but also likely prejudiced the jury against him. This Court should affirm the Court of Appeals.

CONCLUSION

For these reasons, the Court should affirm the Court of Appeals.

²⁷ Dennis, *Poetic (In)Justice?*, at 25.

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I hereby certify that on January 31, 2024, a copy of the foregoing was served on all parties, through counsel, by EDMS.

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