

No. 25-939

In the Supreme Court of the United States

JAMES GARFIELD BROADNAX,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Criminal Appeals of Texas

***AMICI CURIAE* BRIEF OF ERIK NIELSON,
MICHAEL RENDER (AKA “KILLER MIKE”),
HOWARD LAW CRIMINAL JUSTICE CLINIC,
AND OTHER MUSIC SCHOLARS, ARTISTS, AND
ARTS ORGANIZATIONS IN SUPPORT
OF PETITIONER**

LUCIUS T. OUTLAW III
Professor of Law
CRIMINAL JUSTICE CLINIC
HOWARD UNIVERSITY SCHOOL OF
LAW
2900 Van Ness Street NW
Washington, DC 20008
(202) 997-3452
lucius.outlaw@law.howard.edu

CHARLES “CHAD” BARUCH
Counsel of Record
BRANDON TOBEY
JOHNSTON TOBEY BARUCH PC
12377 Merit Drive, Suite 880
Dallas, Texas 75251
(214) 741-6260
chad@jtlaw.com

Counsel for Amici Curiae

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INTERESTS OF *AMICI CURIAE*¹

Erik Nielson is Professor of Liberal Arts at the University of Richmond. He has published widely on African American literature and music, with a particular emphasis on hip hop. He is co-author of the award-winning book *Rap on Trial: Race, Lyrics, and Guilt in America* and frequently serves as an expert witness in cases involving rap music as evidence.

Michael Render (aka “**Killer Mike**”) is a Grammy-winning rapper, author, and public speaker. His recent album, *Michael*, was the most critically acclaimed record of the year in 2023, and garnered three Grammy awards including Best Rap Album. When he isn’t recording or performing, he can be found in television studios or university lecture halls talking about a wide range of issues, particularly those related to race and social justice.

The Criminal Justice Clinic (CJC), is the experiential legal clinic of the Howard University School of Law where students represent indigent clients charged with misdemeanor offenses in the local court of Washington, D.C. Professor Lucius T. Outlaw III supervises and directs the clinic. In 2023, the CJC launched *Culture Not Evidence*, an advocacy and litigation campaign dedicated to stopping and reversing the criminalization of rap music and hip-

¹ As required by Rule 37.6, *Amici Curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No one besides *Amici Curiae* or their counsel made a monetary contribution to preparation and submission of this brief. Counsel of record received timely notice of the intent to file this brief under Rule 37.2.

hop culture by the criminal legal system. The clinic students who assisted in this brief are Tamiea Burnside, Jazmene McMillan, and Jake Smith IV. The views expressed in this brief are those of the CJC and not of Howard University or Howard University School of Law.

Additional *Amici* are listed in the Appendix.

SUMMARY OF ARGUMENT

James Broadnax, a 19 year-old Black man, was charged with the murder of two White victims. During his trial, the State presented a racially charged case filled with stereotypes and anti-Black rhetoric. It repeatedly described Broadnax as a “predator” with animalistic characteristics like those observed on “Animal Planet.” Cert. Pet. at 5–6. Broadnax was found guilty and sentenced to death by a nearly all-White jury.

But the stereotypes and anti-Black rhetoric did not end in the guilt/innocence phase—the State carried those discriminatory themes into the punishment phase and then heightened it by introducing (and mischaracterizing) over 40 pages of Broadnax’s artistic rap expression. *See ibid.*

This brief focuses on the State’s prejudicial misuse of Broadnax’s rap lyrics during the sentencing phase. The State urged the jury to consider the lyrics as literal rather than metaphoric expressions and to interpret them as self-admissions of Broadnax’s intent to commit future violent crimes. *See ibid.* Indeed, the State described the lyrics as Broadnax’s master plan—and the events leading to trial as his execution of that plan. 53 RR 79.

The State did not use Broadnax’s lyrics in the guilt/innocence phase—an admission they lacked relevancy or nexus to the charged offense, the facts of the offense, or Broadnax’s intent, motive, or plan to commit it. Instead, the State used Broadnax’s artistic expression in the punishment phase to portray him as living and pursuing a “gangster” lifestyle that made him a continuing criminal and violent danger to the community. *See* 53 RR 19, 25, 73.

The State’s use of Broadnax’s artistic expression was racially charged. It used his lyrics to appeal to the jurors’ racial and stereotypical fears of young Black men and rap music. In doing so, it capitalized on the jury’s apparent lack of understanding of rap music and the biases and stereotypes about rap music and artists common in American society. *See* Adam Dunbar, Charis E. Kubrin & Nicholas Scurich, *The Threatening Nature of “Rap” Music*, 22 PSYCHOL. PUB. POL’Y & L. 280 (2016); Adam Dunbar, *Rap Music, Race, and Perceptions of Crime*, SOCIOLOGY COMPASS, July 2019, <https://doi.org/10.1111/soc4.12732>.

Ignoring the lyrics’ artistic form and intent, the State portrayed them as literal expressions of criminal intent to appeal to the stereotype that Black men like Broadnax are violent criminals. The State further compounded biases and fears triggered by Broadnax’s lyrics by comparing him to predatory animals. *Cert. Pet.* at 21–22.

Broadnax’s lyrics made the prejudicial impression intended by the State. During their one-day deliberations, the jury asked to review the lyrics twice—including just hours before sentencing Broadnax to die. *See Cert. Pet.* at 6–7.

The State’s misuse of Broadnax’s artistic expression during the sentencing phase was an unconstitutional appeal to the sentencing jury’s biases, misperceptions, and fears about rap music and artists. This misuse—combined with the State’s portrayal of Broadnax as a super-predator and an animal—blew through the strictures of due process, equal protection, and justice.

ARGUMENT

A. The rise of rap and hip-hop.

It’s 2026, and one thing is undeniable: Hip-hop has transformed from a little-known counterculture that took shape in the South Bronx more than five decades ago into one of the most important forms of cultural expression in American history.

This is particularly true of rap—the musical element of hip-hop culture—whose rise has been described as “the single most important event that has shaped the musical structure of the American charts” since the 1960s. Matthias Mauch, Robert M. MacCallum, Mark Levy & Armand M. Leroi, *The Evolution of Popular Music: USA 1960-2010*, ROYAL SOCIETY OPEN SCIENCE 1, 6-87 (2015), <http://rsos.royalsocietypublishing.org/content/royopensci/2/5/150081.full.pdf>.

For years now, rap has been the most listened-to genre in the United States. *See* Marcus Collins, *How 50 Years Of Hip-Hop Provided 50 Years Of Marketing Game*, FORBES (Aug. 11, 2023). It helped fuel a multi-billion-dollar hip-hop industry that can be seen and heard virtually everywhere—in fashion, film, advertising, politics, and our everyday lexicon.

Ibid. With this success, it has offered countless people—particularly people of color—an opportunity for upward economic mobility in communities where such opportunities often are all too rare. See ERIK NIELSON & ANDREA L. DENNIS, *RAP ON TRIAL: RACE, LYRICS, AND GUILT IN AMERICA* 8 (2019).

One reason for rap’s popularity is that it is known for “shattering taboos, sending up stereotype, and relishing risqué language and subject matter.” Henry Louis Gates Jr., *Foreword* to *THE ANTHOLOGY OF RAP* xxv (Adam Bradley & Andrew DuBois eds., 2010). This is particularly true of the “gangsta” rap subgenre that was first popularized by artists like Ice-T, N.W.A, Tupac Shakur, and Snoop Dogg and still is popular today.

Gangsta rap draws on the established tradition of the “bad man” in African American storytelling—seen in the urban fiction of authors such as Iceberg Slim and Donald Goines, and the “blaxsploitation” films of the 1970s—traceable to the toasts of the 19th century and beyond.

These toasts, which emerged out of Black communities in the Jim Crow South, were orally transmitted stories, often told in rhymed form and from a first-person perspective, that celebrated the exploits of a larger-than-life figure. Replete with profanity, some stories—including the well-known story of Stagolee, versions of which were performed by Bob Dylan, Woody Guthrie, and James Brown among others—reveled in exaggerated depictions of sex and violence. Created during a time when “inappropriate” Black expression could be severely punished, including by lynching, these tales embraced (and even

doubled-down on) stereotypes that many White Americans held about Black men—namely that they were hypersexual and prone to criminality—and transformed them into a form of entertainment and, in flouting White sensibilities, resistance too.

A century later, gangsta rappers began using their rhymes and music to celebrate the outlaw figure and, like the toasts, to reject traditional constructs of “legitimate” American life. Gangsta rap became highly controversial for its graphic depictions of violence, criminal behavior, and sexual conquest, which often were patterned after the pimps, hustlers, and gangsters found elsewhere in Black and mainstream popular culture. These criminal figures became emblematic in gangsta rap music and were “elevated to the status of hero”. Robin D.G. Kelley, *Kickin’ Reality, Kickin’ Ballistics: Gangsta Rap and Postindustrial Los Angeles*, in William Eric Perkins (ed.), *DROPPIN’ SCIENCE: CRITICAL ESSAYS ON RAP MUSIC AND HIP HOP CULTURE* 117–158 (1996).

This elevation happened in part because throughout Black culture, these individuals always have been viewed as a “rare example of black male authority over his domain.” NELSON GEORGE, *HIP HOP AMERICA* 36 (1998). The accompanying sense of power—routinely and systematically denied to Black men—would have been especially elusive during the 1980s and 1990s, the heyday of the War on Drugs and the resulting incarceration crisis that decimated Black communities and saw record numbers of Black men warehoused in prison. Indeed, gangsta rap emerged because of, and in response to, increasingly aggressive policing of communities of color across the nation by law enforcement.

The desire to project a sense of authority, even if fictional, helped explain the rise of gangsta and other subgenres of rap that featured violence and criminal behavior: they allowed young men of color to create a poetic world in which they were masters of their environments. Often perceiving themselves to be social outcasts or targets for policing and institutional discrimination in the real world, they crafted a form that gave voice to the conditions in urban America that many people were not willing to confront, all while reconstructing themselves as figures of power within these urban spaces.

Audiences responded to gangsta rap's dark, sordid, and realistic-sounding tales of urban life—it quickly became the most popular and profitable subgenre of rap, spreading beyond the borders of the U.S. and becoming influential across the globe.

As a result, beginning in the early 1990s, record companies started moving away from the politically conscious music that had once helped define mainstream rap and started pressuring new acts to adopt gangsta-type rhetoric—a trend that continues today. A long line of successful performers began adopting a commercial “gangsterism”—essentially a persona manufactured by artists and music producers who had no meaningful connections to gangs or street life but needed to conform to gangsta conventions to secure recording deals. *See* IMANI PERRY, *PROPHETS OF THE 'HOOD: THE POLITICS AND POETICS IN HIP HOP 94* (2004).

Hence, although “keepin’ it real” (providing authentic accounts of oneself and “the ‘hood”) long has been the mantra of gangsta rap, it often is a “marketing pose” reproduced by performers who have

limited connections to the lives they rap about. *See* S. CRAIG WATKINS, *HIP HOP CULTURE AND THE PRODUCTION OF BLACK CINEMA* 185 (1998). Even rappers who do come from the environments they depict in their music acknowledge their tales are not to be taken literally. For example, Jay Z—well known for dealing drugs on the dangerous streets of New York before becoming an established musician—criticizes people and courts for reading rap as autobiography. He sees this misreading as “the failure, or unwillingness, to treat rap like art, instead of acting like it’s just a bunch of n[---]s reading out of their diaries.” *See* JAY Z, *DECODED* 55–56 (2010).

So, gangsta rap is both an art form and a heavily marketed commodity; as such, it comes with artistic and commercial expectations. Exaggerated tales of violence, sex, and criminal behavior sell to a broad swath of Americans—and any would-be gangsta rapper must learn and practice these conventions of the form.

Equally important, audiences understand rap music is—like gangster films, western movies, horror novels, or even pro wrestling—a type of entertainment. Rap in particular resides within a tradition of Black expression and storytelling going back centuries and a global tradition going back millennia. It frequently is told in the first person and is often advertised as “real,” making it easy to mistake the genre for a kind of musical autobiography, documentary, or journalism.

But its often complex rhyme schemes, rhythmic emphasis, and reliance on figurative language—not to mention artists’ almost universal use of stage names—are the most obvious cues that we should not

read it literally. We certainly don't do so with other genres of popular music.

In *Folsom Prison Blues*, country artist Johnny Cash famously sang, "I shot a man in Reno just to watch him die." JOHNNY CASH, *Folsom Prison Blues*, on AT SAN QUENTIN (Columbia Records 1969). Another first-person account of violence recorded by Cash, *Delia's Gone*, includes lines like, "First time I shot her, I shot her in the side./Hard to watch her suffer but with the second shot she died." JOHNNY CASH, *Delia's Gone*, on THE SOUND OF JOHNNY CASH (Columbia Records 1962).

Cash, of course, was no more guilty of these crimes than Eric Clapton and Bob Marley were of killing police officers when they recorded their respective versions of *I Shot the Sheriff*. ERIC CLAPTON, *I Shot the Sheriff*, on 461 OCEAN BOULEVARD (RSO 1974); BOB MARLEY, *I Shot the Sheriff*, on BURNIN' (Island Records 1973). For that matter, no one ever assumed that Hall & Oates were stalkers; Beyonce stole a Lexus; or the Trammps burned down buildings. See HALL & OATES, *Private Eyes* on PRIVATE EYES (RCA Records 1981); BEYONCE, *Texas Hold 'Em* on COWBOY CARTER (Columbia Records 2024); THE TRAMMPS, *Disco Inferno* on DISCO INFERNO (Atlantic Records 1976)

Harvard University professor Henry Louis Gates, Jr. once described rap as "a new vanguard of American poetry" and noted that it manipulates language to the point that it "complicates or even rejects literal interpretation." Henry Louis Gates Jr., *supra*, at xxvi, xxv. So, a literal reading of rap in any of its subgenres does the artform and its creators an injustice.

And this is precisely the injustice to James Broadnax that occurred here.

B. The absence of Broadnax’s lyrics from the guilt/innocence phase is an admission of their lack of relevance to the facts of the case.

The State did not rely on Broadnax’s rap lyrics to prove he committed the charged crime. It is unclear to *Amici* whether that was by choice or court ruling.

Regardless of the reason, the absence of the lyrics during the guilt/innocence phase is not surprising for two key reasons. First, nothing suggests the lyrics were anything other than fictional artistic expressions. *See Hart v. State*, 688 S.W.3d 883, 896 (Tex. Crim. App. 2024) (explaining that the lack of demonstration that the lyrics were representative of Appellant’s character, applied outside the artistic rendering, or were relevant to the charged offense, weighed heavily in favor of their exclusion). Second, Texas courts frown on the use of rap lyrics as evidence when they fail to make a fact of consequence in a criminal case more or less probable. *See, e.g., ibid* (“[They] don’t convict people for murder simply because they have written lyrics about drinking, drugs, guns, or murder”) (citing *United States v. Stuckey*, 253 F. App’x 468, 483 (6th Cir. 2007)). Accordingly, courts require that the evidence, at a minimum, be relevant to the case. *Ibid* at 891.

Indeed, the absence of the lyrics during the guilt/innocence phase was a tacit admission by the State (or the Court) that they were not relevant to the question of whether Broadnax committed the charged murders—not even to whether he had the motive or intent to commit them. *See* TEX. EVID. R. 401

(relevance); TEX. EVID. R. 404(b)(2) (allowing “other act” evidence to prove motive, intent, preparation, planning); *see also Com. v. Gray*, 978 N.E.2d 543, 559–61 (Mass. 2012) (explaining that a rap video was “minimally if at all probative”).

The State used the lyrics during the sentencing phase purely as bad character evidence—to portray Broadnax as having a violent and criminal nature requiring imposition of death. *See* TEX. EVID. R. 404(a)(1) (prohibiting bad character evidence). As shown herein, this use of rap lyrics was an appeal to racial prejudice (especially the young Black male super-predator trope) and anti-rap bias that violated Broadnax’s constitutional rights and the foundation of fairness that should accompany criminal proceedings—especially death-penalty cases.

C. The State used Broadnax’s artistic expression to stoke racial and anti-rap bias.

“[T]he central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States.” *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964). Over the years, this Court noted that “racial discrimination in the jury system posed a particular threat both to the promise of the [Fourteenth] Amendment and to the integrity of the jury trial.” *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 221 (2017).

As a result “[t]ime and again, this Court has been called upon to enforce the Constitution’s guarantee against state-sponsored racial discrimination in the jury system.” *Ibid.* The Court has answered the call because “[p]ermitting racial prejudice in the jury system damages ‘both the fact

and the perception’ of the jury's role as ‘a vital check against the wrongful exercise of power by the State.’” *Ibid* (citation omitted). In doing so, it has established the “unmistakable principle ... that discrimination on the basis of race, ‘odious in all aspects, is especially pernicious in the administration of justice.’” *Ibid* (citation omitted). The State’s use of Broadnax’s lyrics to obtain a death sentence runs afoul of the Fourteenth Amendment and this Court’s guardrails against racial prejudice infecting juries.

In seeking the death penalty, the State used Broadnax’s rap lyrics to appeal to racial and anti-rap stereotypes and biases. The triggered biases and stereotypes were valuable to the State’s portrayal of Broadnax as a super-predator with a violent nature that necessitated putting him to death. *See* Jasmine B. Gonzales Rose, *Racial Character Evidence in Police Killing Cases*, 2018 WIS. L. REV. 369, 373 (2018) (“Particularly pernicious is reliance on the black ‘brute’ or ‘thug’ stereotype, which casts black youth as ‘super-predators’ and black people of all ages as bigger, stronger, and more aggressive and threatening than people of other races”); Vincent M. Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. CIV. RTS. & ECON. DEV. 765, 775–56 (2015) (discussing the depiction of young Black males who commit violent crimes as “super predators”); Robin Walker Sterling, “*Children Are Different*”: *Implicit Bias, Rehabilitation and the “New” Juvenile Jurisprudence*, 46 LOY. L.A. L. REV. 1019, 1057–58 (2013) (describing how the fear of young Black super predators “spread like a fever”).

Consider these exchanges between the State's Attorney and prosecution witness Barrett Nelson, a Dallas police officer:

Q: All right when you look at those lyrics and from a general perspective, is the general theme of those lyrics robbing, killing, and selling dope?

A: Yes sir, that's all it's about.

Q: Is that all consistent with the Gangster Disciples making money?

A: Yes sir.

49 RR 108.

A: Yes sir. He's – he's writing lyrics to songs that he's coming up with.

Q: Okay. These are things that he would be creating in his mind though?

A: Yes, sir.

49 RR 121

The goal was to use the lyrics to conjure the image of a young Black thug violently preying on the community. If any doubt remains, this preamble to a question posed by the State during the cross-examination of Gary Aaron, a defense witness, removes it:

Q: And your cousin here, who you say is not dangerous, after he murders these two people, he writes a free-style about why he's in jail, okay? And he says ****check the

lyrics***Say look. Fade 'em, Fade'em.
Tape 'em up. I hit 'em later. I am so
high up and cloud proof, like a
skyscraper. Hogtie 'em and body bag
'em. Send them to the mayor. Then
I bombed the whole country. Send
the press. The paper.

51 RR 223.

These lyrics are irrelevant and lack any factual nexus to the case. The State's purpose in highlighting them was to trigger anti-rap biases and Black super-predator fears among the sentencing jurors. *See* Dunbar, Kubrin & Scurich, *supra* (discussing multiple empirical studies showing anti-rap bias and its potential impact on juries); Dunbar, *supra* (surveying studies that empirically examine attitudes concerning race, rap music, and crime); Carrie B. Fried, *Who's Afraid of Rap: Differential Reactions to Rap Music*, 29 J. APPLIED SOCIAL PSYCH. 705 (1999) [hereinafter *Who's Afraid of Rap*]; Carrie B. Fried, *Bad Rap for Rap: Bias in Reactions to Music Lyrics*, 26 J. APPLIED SOCIAL PSYCH. 2135 (1996) [hereinafter *Bad Rap for Rap*] (reporting on two experiments showing that rap lyrics receive more negative criticism than lyrics of other music genres).

In examining witnesses during the sentencing phase, the State asked many questions about "gangster rap" to stoke and reinforce anti-rap bias and fear among jurors:

Q: Is it common in gangster rap music
to talk about murder?

Q: It's something you hear on a regular basis in gangster rap, is murdering other folks?

Q: I mean, you've seen -- you've seen -- the rap, and you know from the gangster rap mentality that you get the money any way you can. The world is a bitch. You never heard -- never heard that?

51 RR 165–166, 182.

The State's misuse of Broadnax's lyrics to characterize him as a super-predator and thug continued during its final arguments to the jury. The State told the jury: "Now, promiscuous sexual behavior. Well, you know, he refers to every woman you've ever heard him talk about on any of those videos or any of his writings as B-I-T-C-H." 53 RR at 72.

Tethering Broadnax's use of "bitch" to sexual promiscuity was a dog-whistle to the nearly all-White jury that Broadnax is a Black sexual predator intent on having sex—consensual or not—with women in the jury's community. This disturbing trope long has been used to imprison Black men—and send them to death when rape was a capital offense. *See* Floyd D. Weatherspoon, *The Devastating Impact of the Justice System on the Status of the African-American Males: An Overview Perspective*, 23 CAP. U. L. REV. 23, 47 (1994); Constance R. LeSage, *The Death Penalty for Rape - Cruel and Unusual Punishment?*, 38 LA. L. REV. 868, 870 n.8 (1978); Lisa Crooms, *Speaking Partial Truths and Preserving Power: Deconstructing White Supremacy, Patriarchy, and the Rap*

Corroboration Rule in the Interest of Black Liberation, 40 HOW. L.J. 459, 475–76 (1997) (discussing how Black male sexual predator stereotype is rooted in the history of American slavery); see also *United States v. Wiley*, 492 F.2d 547, 555 (D.C. Cir. 1973) (“[t]here has been an enormous danger of injustice when a black man accused of raping a white woman is tried before a white jury. Of the 455 men executed for rape since 1930, 405 (89 percent) were black. In the vast majority of these cases the complainant was white.”).

In making the final appeal to the jury that no mitigation existed to warrant a life sentence and that Broadnax was a continuing violent danger worthy of the death penalty, the State’s attorney used Broadnax’s lyrics to trigger the nearly all-White jury’s fears of a Black super-predator:

And when you think about the defendant’s character and his background and the moral blameworthiness, remember who he is. He’s a Gangster Disciple. He told what he was going to do in writings before he even did it. He talked about the murder and robbery of people. And you know what? Maybe if he never got out and did it, maybe he’d just be *another gangster rapper*. But then he went out and did it. Counsel says we want you to kill him because of what he says he’s going to do, but you’ve got evidence right here that told you what he was going to do, and then he went and did it. That’s what

you need to consider folks. And then after he does it and he's in jail, he's freestyling now. "Hold up. Stop and rewind. A little story while I'm in this bitch. Yeah, I hit the lick. I got two murder charges on me. I might just go to the Judge and tell him I'm going to merk him, because I'm J.B." *If that's not the sign of a psychopathic killer, I don't know what is, folks.*

53 RR 79–80 (emphases added).

So, the State stoked and relied on the Black super-predator trope and anti-rap bias to argue that Broadnax's artistic expression proved his propensity to commit future violent acts and the absence of mitigating circumstances warranting life in prison instead of death.

The State achieved its goal with the lyrics because anti-rap bias is prevalent. Multiple studies confirm that people associate rap music and artists with criminality, violence, and other societal harms more closely than they do other music genres (especially those dominated by White artists) and artists of other music genres (especially White artists).

In a ground-breaking 1996 article, psychologist Carrie Fried presented the results of an experiment where two groups were presented with the same lyrics from a song by a White folk group. One group was told the lyrics were rap lyrics, the other that they were country lyrics. Fried questioned each group about the lyrics and explained that:

[E]ven when asked specifically to judge only lyrics, other factors such as the genre of the music or the race of the singer play a significant role in reactions to musical lyrics. The exact same lyrical passage, which is acceptable as a country song or when associated with a White artist, becomes a dangerous, offensive song in need of government regulation when it is a rap song or associated with a Black artist. ... While responses to the White artist or country or folk music tended to be on the favorable side of the scale . . . , responses for the Black artist or rap music tended to cross over to the unfavorable side of the scale.

Fried, *Bad Rap for Rap*, *supra*, at 2141.

The experiment further “demonstrated that the same lyrical passage is rated as significantly more negative when it is identified as a rap song as compared to when the lyrics are identified as either country or folk,” and “that when the lyrics are identified with a Black artist, the lyrics are rated more negatively than when they are identified with a White artist.” *See Who’s Afraid of Rap*, *supra*, at 708. Building on similar studies, Fried concluded that: “Rap music, which is seen as a predominantly Black form of music, may be judged through the tainted lens of a Black stereotype which includes such traits as violence, hostility, and aggression.” *Bad Rap for Rap*, *supra*, at 2136.

More recent studies confirm Fried's findings. One study focused on how anti-rap bias may impact jurors and criminal proceedings. The results were consistent with Fried's results decades earlier:

The findings ... suggest that rap lyrics might influence jurors' decisions independent of their actual content. That is, the mere label of rap is sufficient to induce negative evaluations, even when holding constant the actual lyrics. ... [T]he findings suggest that judges might underappreciate the extent to which the label of lyrics—and not the substantive lyrics themselves—impact jurors' decisions ... [T]he present findings suggest that judges should consider limiting the introduction of rap lyrics to instances in which the lyrics are highly probative of some relevant legal issue, and judges should realize that jurors might make inferences based merely on the genre of the lyrics and the stereotypes that they evoke.

Dunbar, Kubrin & Scurich, *supra*, at 289.

In sum, studies show that rap music is commonly viewed negatively and with an anti-Black taint, and this negative bias is a danger to the fairness of criminal proceedings. In Broadnax's case, the State used his rap lyrics to reinforce and weaponize racial and anti-rap sentiments to argue that he would commit violence in the future, that no mitigation justified a life sentence, and that society

would be better if the State killed him. This appeal stoked and relied on anti-Black and anti-rap biases that are common among jurors to get the result the State wanted—a death sentence.

D. The State weaponized cultural expressions common to rap to improperly portray Broadnax as dangerous and threatening.

Many cultural expressions used by Black artists in rap music carry meanings that differ from their usual associations. Here, the State presented rap lyrics that contain Black vernacular and hip-hop slang commonly used in Black culture—but framed them as confessions of future violent intent. These lyrics were presented to mostly White jurors. The State weaponized culturally expressive language by distorting it into incriminating evidence of Broadnax’s future dangerousness.

For instance, the State presented several lyrics that included slang such as “N-gga” and “Gangsta” to portray Broadnax as violent and aggressive. But while these phrases may be interpreted as slurs, they take on different meanings within Black culture. *See* John Yeldham, *Art as Ammunition: The Weaponization of Rap Lyrics in Court* (2022), Dean James E. McLeod Freshman Writing Prize 15, <https://openscholarship.wustl.edu/mcleod/15>.

The N-word historically has been used as a racial slur. But the word has many meanings in rap, such as to differentiate urban working-class Black people from the “Black bourgeoisie” and as a term of endearment for a close friend. *See generally* Mikah K. Thompson & Sierra Raheem, *Art as the Prosecutor’s Weapon: The Use of Rap Lyrics Evidence at Trial*, 65

SANTA CLARA L. REV 1 (2025) (discussing how prosecutors introduce and weaponize art as evidence).

Using this term against Broadnax without any contextual explanation was highly prejudicial given the deeply rooted negative connotations associated with it. Absent any clarification of its intended meaning in rap lyrics, its use served only to portray Broadnax as vulgar, disrespectful, and even violent—which ultimately weaponized his own cultural expressions against him.

Additionally, the State presented Broadnax’s rap lyrics as literal statements rather than cultural and artistic expression. Violent lyrics in rap genres serve a purpose to express identity. Yeldham, *supra* at 5. Many Black rappers have acted as street ethnographers, portraying experiences from structurally disadvantaged communities by adopting personas like gang members, hustlers, or everyday workers. *Ibid.* at 15. Rap music for Black artists often becomes symbolic or fictional, rooted in storytelling traditions and serving as a form of social and political commentary. *Ibid.* The State never acknowledged the cultural context of Broadnax’s lyrics when presenting them to the jurors. Instead, it weaponized artistic expression by framing his lyrics as confessions of future violence and criminality.

E. There is a judicial and legislative trend toward prohibiting the use of rap lyrics as criminal evidence.

Prosecutors have been using rap artistic expression as criminal evidence to inject both racial bias and unfair prejudice into criminal trials since at least 1991. See Andrea Dennis, *Poetic (In)Justice?*

Rap Music Lyrics as Art, Life, and Criminal Evidence, 31 COLUM. J.L. & ARTS 1, 5 (2007). Courts are increasingly critical of this prosecutorial practice, imposing important limitations on it, and frequently barring prosecutors from admitting rap lyrics into evidence.

While Broadnax's lyrics were not admitted during the guilt/innocence phase, discussion of this trend remains important because the reasons courts are increasingly hostile to rap-lyric evidence have important implications for how the State used Broadnax's lyrics.

With greater frequency, American courts are holding that rap lyrics rarely should be admitted in criminal proceedings because of the prejudicial risk they pose to fairness. *See, e.g., United States v. Pierce*, 785 F.3d 832, 841 (2d Cir. 2015); *United States v. Jordan*, 714 F. Supp. 3d 158, 166 (E.D.N.Y. 2024); *Baker v. State*, 899 S.E.2d 139, 150–52 (Ga. 2024); *State v. Britton*, 710 S.W.3d 177, 220–21 (Tenn. Crim. App. 2025).

In rejecting the use of rap lyrics in this manner, courts consistently raise two critiques: (1) the risk that any minimal probative value of the rap evidence is outweighed by the unfair prejudice that lyrics referencing violence, drugs, and other criminal activity interject into a trial; and (2) the absence of any factual and temporal nexus between the rap lyrics and the charged conduct. *See United States v. Wiley*, 610 F. Supp. 3d 440, 446 (D. Conn. 2022) (“only where the Government can point to lyrics that communicate specific details related to the charged conduct is the Court confident that evidence’s probative value is not substantially outweighed by

the risk of unfair prejudice”); *see also United States v. Gamory*, 635 F.3d 480, 493 (11th Cir. 2011) (holding that a rap video was irrelevant and heavily prejudicial). Courts increasingly are translating their critiques of rap artistic expression evidence into holdings that such evidence cannot be admitted at trial due to its prejudicial effect. *See generally Jordan*, 714 F. Supp. 3d at 165–66 (precluding rap lyrics as evidence in murder trial); *see also United States v. Williams*, 663 F. Supp. 3d 1085, 1095–96 (D. Ariz. 2022) (holding that inflammatory rap lyrics alone could cause a jury to convict).

The growing judicial trend is that rap artistic expression is not admissible evidence unless the government can demonstrate a factual and temporal nexus between the lyrics and the charged and alleged conduct. *See Jordan*, 714 F. Supp. 3d at 164–66; *United States v. Sneed*, No. 3:14 CR 00159, 2016 WL 4191683, at *15–18 (M.D. Tenn. Aug. 9, 2016) (excluding rap video that did not contain references to the charged conduct); *see also State v. Skinner*, 95 A.3d 236 (N.J. 2014) (holding that self-expressive fictional, poetic, lyrical, and like writings about bad acts, wrongful acts, or crimes generally should not be deemed evidential unless the writing bears probative value to the underlying offense).

Finally, courts are not alone in placing barriers that prosecutors must overcome to use rap artistic expression as evidence due to the prejudice—particularly racial prejudice—that rap lyrics interject into criminal proceedings. In 2022, California enacted the Decriminalizing Artistic Expression Act. *See CAL. EVID. CO. § 352.2* (2025).

The DAEA addresses the dangers posed by artistic expression evidence, particularly the racial bias injected into criminal proceedings through rap lyrics, by creating a standard for the admission of such evidence based on probative value and absence of undue prejudice. *See* CAL. EVID. CO. § 352.2(a).

It also sets a presumption that artistic-expression evidence is not admissible unless prosecutors can show it was “created near in time to the charged crime or crimes, bears a sufficient level of similarity to the charged crime or crimes, or includes factual detail not otherwise publicly available.” *Ibid.* This comports with the modern trend of courts requiring a factual and temporal nexus between the expression and the charged conduct. *See Williams*, 663 F. Supp. 3d at 1144–45 (D. Ariz. 2022) (citing *Skinner*, 218 N.J. at 523 (2014)).

In conducting this balancing test, the DAEA requires courts to weigh whether a jury will “treat the [lyrics] as evidence of defendant’s propensity for violence or general criminal disposition as well as the possibility that the evidence will explicitly or implicitly inject racial bias into the proceedings.” CAL. EVID. CO. § 352.2(a). So, a key goal of DAEA is to prevent prosecutors from using rap lyrics to trigger racial biases among juries, and to prevent juries from concluding that a defendant has a propensity for violence or criminality based on rap lyrics.

CONCLUSION

Despite decades of racially criminalizing rap music and linking that criminalization to Black individuals to argue their propensity towards dangerousness and criminality, the use of rap lyrics

during a trial continues to plague the criminal-justice system. This case exemplifies the racial prejudice that infects a criminal proceeding when the State uses a defendant's rap lyrics to capitalize on anti-rap bias, the misinterpretation of rap lyrics, and anti-Black bias triggered by rap music.

The State used Broadnax's artistic expression to portray him as young Black super-predator without redeeming qualities who must be executed to protect the community. The State's use of Broadnax's artistic expression to trigger racial and anti-rap fears and biases was a dangerous circumvention of constitutional guarantees that must not be allowed to stand.

Respectfully submitted,

CHARLES "CHAD" BARUCH
Counsel of Record
BRANDON TOBEY
JOHNSTON TOBEY BARUCH
12377 Merit Drive, Suite 880
Dallas, Texas 75251
(214) 741-6260
chad@jtlaw.com

LUCIUS T. OUTLAW III
Professor of Law
CRIMINAL JUSTICE CLINIC
HOWARD UNIVERSITY SCHOOL OF
LAW
2900 Van Ness Street NW
Washington, DC 20008
(202) 997-3452
lucius.outlaw@law.howard.edu
Counsel for Amici Curiae

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Additional *Amici* 2a

Additional *Amici*

Artists and Industry Professionals

Kevin Liles
Young Thug
T.I.
Fat Joe
McKinley “Mac” Phipps
D-Nice
N.O.R.E.
Mad Skillz
Ebro
Anthony Anderson
Mike Curato
Dina LaPolt
Willie “Prophet” Stiggers
Rayna Bass
Shay Lawson

Arts Organizations

Free Our Art
Artist Rights Alliance
Art Not Evidence
Black Music Action Coalition
Music Artists Coalition
Songwriters of North America

Scholars

Jody Armour, University of Southern California
Lakeyta Bonnette Bailey, Howard University
Anne Barnes, University of Minnesota
Regina N. Bradley, Kennesaw State University

Lambros Fatsis, City St. Georges, University of
London

Murray Forman, Northeastern University
(Emeritus)

Antoine Hardy, Seton Hall University

Anthony Kwame Harrison, Virginia Tech

Robin D.G. Kelley, University of California, Los
Angeles

Charis E. Kubrin, University of California, Irvine

Jack I. Lerner, University of California, Irvine

Corey J. Miles, Tulane University

Abenaa Owusu-Bempah, London School of
Economics

Emmett G. Price, III, Berklee College of Music

Eithne Quinn, University of Manchester

Dorothy Roberts, University of Pennsylvania