

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

vs.

Case No: 8:20-cr-00286

PAUL STEPHENSON
_____ /

DEFENDANT'S AMENDED MOTION IN LIMINE #13
REGARDING YOUTUBE VIDEOS

COMES NOW, the Defendant, Paul Stephenson, by and through undersigned counsel, hereby respectfully submits this Amended Motion in Limine #13. The Defense moves this Honorable Court to exclude any reference to the Youtube music videos and accompanying transcripts of the videos. These videos are "Trapalot" which was uploaded to YouTube on January 21, 2019; "Sidewalk N***A" which was uploaded to YouTube on September 8, 2019; and "Top Shottaz" which was uploaded to YouTube on July 6, 2020. The Defendant's charged offense occurred on July 6, 2020 and he was arrested the same day.

The Defense filed its original Motion in Limine #13 on the eve of the previous trial date, in response to its receipt of the YouTube videos on the eve of the trial date. The next day, the Court continued the trial based in part on the Defense's late receipt of this evidence. The Defense, upon reflection, is very appreciative of the Court's continuance which allowed the Defense sufficient time

to research the late discovered evidence. Now, the Defense submits this Amended Motion in Limine #13.

While the Government argues that these videos are admissible evidence, the Defense is concerned that these videos will bring inadmissible bad character propensity evidence or gang association evidence through a back door into the trial. This evidence will inflame the jury and unfairly prejudice the Defendant. The Defense submits that the Government's intended use of the video will suggest to the jury that because Mr. Stephenson has rapped about selling marijuana in the past, he must be guilty of selling marijuana on July 6, 2020 as charged in the indictment. The Defense respectfully submits that this is an improper propensity argument. As argued in further detail below, the Defense submits that these videos and transcripts of the lyrics are neither relevant nor admissible. They are hearsay and do not fall under any exceptions. Furthermore, they are unfairly prejudicial.

1. The videos are inadmissible hearsay evidence.

The Defense submits that the rap songs are out of court statements, offered to prove the truth of the matter asserted. They are inadmissible hearsay pursuant to Federal Rules of Evidence 801 and 802.

Hearsay evidence may be admissible if it falls under an exception to the hearsay rule. The Government argues that the videos are admissible as a statement offered against an opposing party, pursuant to Rule 801(d)(2)(A). The Defense

submits that the songs and videos, which were written, produced, and edited into their final format prior to July 6, 2020, are not admissions to any of the Defendant's future conduct which occurred on July 6, 2020. Furthermore, the videos are fictional and a musical art form. They are not meant to be interpreted literally and certainly are not meant to be interpreted as a prediction into the future as to what the Defendant would be doing on July 6, 2020.

The stronger argument for the Government's position that these videos are admissible as admissions by a party opponent would be if these rap videos were produced shortly *after* July 6, 2020. That would seemingly be more of an admission and fall under an exception to the hearsay prohibition of these lyrics.

Other jurisdictions have considered whether a rap video is admissible as an admission and found the rap video to be admissible under that exception to the hearsay rule where the video was created shortly *after* the charged crime and contained lyrics describing the defendant's actions and emotions towards the charged offense. See Greene v. Commonwealth of Kentucky, 197 S.W.3d 76 (Supreme Court KY May 18, 2006) (emphasis supplied). In Greene, the defendant was tried and convicted for the murder of his wife. Id. at 79. During trial, the prosecution played a rap video in which the defendant was featured rapping alongside his friends shortly after the murder of his wife. Id. at 86. In the video, the defendant can be seen rapping lyrics such as, "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.” Id. at 86. The defendant argued that the admission of the video violated Rule 404(b) because it constituted improper character evidence that was being used to show his propensity for having a criminal disposition. Id. at 86-87. The Supreme Court of Kentucky disagreed, reasoning that the video demonstrated the defendant’s actions and emotions regarding the charged crime, and not a previous offense; shed light on the defendant’s extreme emotional defense, by “illuminating his mental state shortly after the killing”; and established premeditation and motive in the defendant’s own words. Id. at 87. The court concluded that the rap montage was therefore admissible because it was probative of the defendant’s motive for killing his wife. Id.

The Defense submits that the Government is offering these lyrics for the truth of the matter asserted. The evidence will improperly influence the jury to believe that because the Defendant appeared in rap videos in the past, rapping about selling narcotics, he must be more likely to have been selling narcotics on July 6, 2020, as charged in the indictment. The videos are hearsay, not admissible under any exception, and will improperly suggest to the jury that Mr. Stephenson acted in accordance with his actions on a past occasion, which is the definition of prohibited propensity evidence.

2. The videos are inadmissible pursuant to Rule 404.

If this Court rules that the YouTube videos are not hearsay, or that the videos fall under a hearsay exception, the Defense submits the videos are inadmissible pursuant to Rule 404. Rule 404 states that evidence of a person's character, character trait, crime, wrong, or other act is inadmissible to prove that on a particular occasion the person acted in accordance with the character or trait. However, Rule 404(b)(2) states that this type of evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In the Government's "Response in Opposition to Defendant's Motion in Limine #13," there is no citation to Rule 404(b) as an avenue for admitting the rap videos at trial but argues the videos are admissible for the purpose of proving the Defendant's intent on July 6, 2020. *See Document 99*. Specifically, the Government argues at page 2 of its Response that the purpose of introducing the rap videos at trial is "To help prove that the defendant (1) knew the marijuana was in the car; (2) constructively possessed the marijuana; (3) intended to distribute the marijuana; and (4) possessed the gun for the purpose of furthering his narcotics trafficking." *See Document 99*.

The Defense submits that the rap videos are inadmissible as set forth in Rule 404 – the Government cannot use these rap videos as evidence of the Defendant's poor character, or tendency to rap about narcotic sales, as evidence

that on July 6, 2020, the Defendant acted in accordance with his poor character and actually distributed narcotics. Even if the Government had provided proper Notice of its intent to bring in ‘similar fact evidence,’ the Defense submits the Government cannot establish the rap videos are admissible for that purpose¹.

The Government states at page 3 of its Response that the “Trapalot” video is the Defendant bragging about selling narcotics for profit, as charged in Count 1. *See Document 99*. The Defense submits that bragging about something in the past simply shows propensity to do the same activity in the future. This is a prohibited use for this evidence. Furthermore, “Trapalot” was uploaded to YouTube January 21, 2019 – nearly 18 months prior to the charged offense. The statements bragging in general are not admitting to an offense that happened in the past. They are not relevant to the future event, which was the charged offense, some 18 months after the upload to YouTube. The lyrics bragging about selling drugs are relevant only to establish propensity to sell drugs and bad character.

“Sidewalk N***A” was uploaded to YouTube on September 8, 2019, roughly 10 months prior to the charged offense. The Government states at page 4 of its Response that its rationale for introducing this video is because the Defendant is bragging about selling narcotics. *See Document 99*. Again, this

¹ This Honorable Court’s Criminal Scheduling Order, filed on October 9, 2020, required the Government to provide a written disclosure of Rule 404(b) evidence within 14 days of October 9, 2020. *See Document 18 at pg. 4*.

sounds like a propensity argument – the fact that the Defendant has bragged about selling narcotics in the past means that the Defendant is likely to have sold narcotics in the future. This is not an acceptable purpose and the rap videos are inadmissible when utilized for this purpose.

Previously the Government indicated it wished to introduce evidence of a prior sale of marijuana by the Defendant which occurred 14 months prior to the charged offense. This Honorable Court expressed concern about the remoteness of that sale. Similarly, here, the Defense is concerned that the production of these videos is too remote in time to be relevant.

At the very least, the timing of the first two videos is too remote for them to be relevant. Although YouTube reflects when the videos were uploaded, we do not know when the lyrics were written or when the videos were filmed. The videos have multiple actors and seemingly take place at multiple locations. The videos must have taken time to be edited into their final format.

Regarding the date of the uploads, which is the only information that we do have as to their timing, “Trapalot” was uploaded to YouTube on January 21, 2019 – nearly 18 months prior to the charged crime. “Sidewalk N***a” was uploaded to YouTube on September 8, 2019 – nearly 10 months prior to the charged crime. Again, when the video was filmed and edited into its final format is unknown.

“Top Shottaz” was uploaded to YouTube the same day as the charged crime, which is the same day Mr. Stephenson went into custody. Again, we do

not know when the song was written, when the scenes in the video were recorded, or when the video was edited into its final format.

Where two of these videos were created at a bare minimum 10-18 months prior to the charged offense, the Defense submits that the videos are too remote to be relevant. They are inadmissible hearsay. They are not admissions which would be an exception to the exclusion of hearsay evidence. They are offered for the truth of the matter asserted, in one case a minimum of 18 months later. The Government's simple argument is the Defendant is rapping about selling marijuana 18 months before the date of indictment, thus when officers observe him driving and committing traffic infractions on July 6, 2020, he must be selling marijuana.

Various jurisdictions have addressed the issue of the admissibility of rap videos and determined that such videos constitute improper character propensity evidence and are inadmissible under Rule 404. For instance, in U.S. v. Sneed, the U.S. District Court for the Middle District of Tennessee contemplated whether to admit a YouTube rap video entitled "4ThARightPrice," which "appears to depict the Defendant and other individuals performing a rap song containing lyrics about drug sales and gang activity." No. 3:14 CR 00159, 2016 WL 4191683, at *5 (M.D. Tenn. Aug. 9, 2016). The court considered whether rapping about drugs constituted a prior bad act or if it helped demonstrate the defendant's knowledge or intent. Id. at *6. "Instead," the court found, "the video will suggest to the jury

that because Defendant rapped about selling drugs on one occasion, he acted in accordance with the behavior described in the rap on another occasion, the definition of prohibited propensity evidence.” Id. at *6. The court went on to hold that the rap video depicting the defendant rapping about selling drugs had minimal probative value, and that it was substantially outweighed by the risk of jury confusion and unfair prejudice. Id. The court observed that “rapping about selling drugs does not make it more likely that Defendant Sneed did, in fact, sell drugs.” Id. Ultimately, the court excluded the YouTube video from trial. Id.

Rule 404 states that evidence of a person’s character, character trait, crime, wrong, or other act is inadmissible to prove that on a particular occasion the person acted in accordance with the character or trait. For purposes of this rule, “character” has been broadly defined as a “disposition or propensity towards certain behavior,”...or “a person’s tendency to act in a certain way in all varying situations of life.” State v Carr, 725 P.2d 1287, 1290 (Or. 1986).

The United States Supreme Court has described the inherent problem with allowing the jury to hear evidence of a defendant’s bad character, “The State may not show defendant’s prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. *The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general*

record and deny him a fair opportunity to defend against a particular charge.”

Michelson v. U.S., 335 U.S. 469, 475-476 (1948) (emphasis supplied). The United States Supreme Court also noted that “the overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice.” Id. at 476.

The Advisory Committed Note to Rule 404(a) sets forth that “Character evidence is of slight probative value and may be very prejudicial. It tends to distract the trier of fact from the main question of what actually happened on the particular occasion. It subtly permits the trier of fact to reward the good man and to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.”

The Defense submits that these rap videos do not reflect what actually happened on July 6, 2020. The rap videos are fictional as well as inflammatory. They serve no purpose other than to encourage the jury to convict the Defendant based on his character or based on the jury’s perception of his character from these videos.

3. The videos are inadmissible pursuant to Rule 403.

Even if this Honorable Court found these videos were not hearsay or fell under some hearsay exception, or that the videos were relevant under Rule 404(b) for some purpose other than to prove the Defendant has propensity to sell narcotics, an analysis pursuant to Rule 403 is necessary. Rule 403 lays out the balancing test for the Court to determine admissibility of all evidence. That Rule states: “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

Rule 403 has been the basis for exclusion of rap videos in various jurisdictions. For instance, in Brooks v. State, 903 So. 2d 691, 699-700 (Miss. 2005), the Supreme Court of Mississippi held that rap lyrics allegedly written by the defendant that “extolled murder,” along with other evidence, were inadmissible. Id. The court applied a two-part test for determining whether to permit evidence under Mississippi Rule of Evidence 404(b): “[t]he evidence offered must (1) be relevant to prove a material issue other than the defendant’s character; and (2) the probative value of the evidence must outweigh the prejudicial effect.” Id. at 699 (internal citation omitted). The court also explicitly noted that in addition to this analysis, it is “still required by Rule 403 to consider whether [the evidence’s] probative value on the issues of motive, opportunity and

intent was substantially outweighed by the danger of unfair prejudice. In this sense Rule 403 is an ultimate filter through which all otherwise admissible evidence must pass.” Id. at 700 (internal citation omitted). The court held that the rap evidence had been improperly admitted because the trial court had “made no attempt on the record to determine whether the probative value of the evidence outweighed the prejudicial harm,” and the gang-related evidence would not have survived a Rule 403 analysis in any event. Id.

In State v. Skinner, the New Jersey Supreme Court used a four-factor test to establish that the character evidence offered was highly prejudicial and had little to no probative value. 95 A.3d 236 (N.J. 2014). The four-factor test required that: (a) the evidence of the other crime must be admissible as relevant to a material issue; (b) it must be similar in kind and reasonably close in time to the offense charged; (c) the evidence of the other crime must be clear and convincing; and (d) the probative value of the evidence must not be outweighed by its apparent prejudice. Id. at 247. Under the first factor, the court found that the use of other crimes as evidence should not be permitted when it is brought as a strategy to merely bolster the credibility of a testifying witness, which was exactly what the State had attempted to do. Id. at 250. Under the second factor, the court reasoned that because the defendant had asserted that he was not the shooter, and because the State did not bring the rap lyrics as evidence for the purpose of establishing the defendant’s identity, the second factor was not satisfied since the State’s

purpose for bringing the evidence did not pertain to a topic that was at issue in the case. Id. at 250-251. Therefore, the State's evidence was not relevant. Third, there was an absence of clear and convincing evidence showing that the defendant had engaged in any of the events described in his lyrics. Id. at 251. Finally, the court held that the defendant's violent rap lyrics could be fairly regarded as effectively demonstrating the defendant's propensity to be violent. Id. The lyrics were held to be inadmissible.

Finally, in People v. Coneal, the reviewing court held that the trial court abused its discretion in admitting the defendant's rap lyrics and videos because they casually described graphic violence and contained misogynistic lyrics. 254 Cal. Rptr. 3d 653, 668-69 (California Court of Appeal 1st District 2019). The court held that “[w]hile *it may be that this picture is accurate, it poses a significant danger that the jury will use it as evidence of appellant's violent character and criminal propensity.*” Id. at 668 (citing People v. Carter, 135 Cal. Rptr. 2d 553, 573 (2003)) (“[E]vidence of a defendant's gang membership creates a risk the jury will improperly infer the defendant has a criminal disposition and is therefore guilty of the offense charged.”). (emphasis supplied). The Coneal court also cited to the Eleventh Circuit Court of Appeals decision, U.S. v. Gamory, 635 F.3d 480, 493 (11th Cir. 2011) for its holding that “[T]he substance of the rap video was heavily prejudicial. 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. at 668.

The Supreme Court of South Carolina found that rap lyrics should have been excluded at trial under a Rule 403 analysis. State v. Cheeseboro, 552 S.E. 2d 300, 312-13 (S.C. 2001). There, the trial court allowed into evidence rap lyrics that the defendant wrote while awaiting trial for numerous violent charges, which included the passage, “No fingerprints or evidence at your residence. Fools leave clues, all I leave is a blood pool.” Id. at 312. The defense objected to their admission, arguing that they constituted improper character evidence, but the lower court admitted the lyrics as an admission by a party-opponent under South Carolina Rule of Evidence 801(d)(2). Id. at 313. The Supreme Court of South Carolina disagreed, holding that the lyrics were too vague to support their admission, and that the “minimal probative value of this document is far outweighed by its unfair prejudicial impact as evidence of appellant's bad character, i.e. his propensity for violence in general.” Id. at 313. Unlike other evidence that “contain[ed] identifying details of the crimes committed,” the rap lyrics at issue “contain[ed] only general references glorifying violence.” Id. at 313. The court held that the error was harmless, because there was other properly admitted evidence of conduct demonstrating the particular character trait in question. Id.

Even in Cheeseboro, where the lyrics were written while the defendant was in jail after the offense, the probative value of the lyrics was outweighed by the danger of unfair prejudice. See Id. Here, the rap videos the Government is attempting to introduce into evidence were created well before the charged offense. Also, as in Cheeseboro, the lyrics are fairly generic and do not describe any fact unique to the July 6, 2020 offense. See Id.

The Northern District of California has addressed the difficulty with establishing the probative value of rap lyrics in that the lyrics are a “form of artistic expression.” See United States v. Williams, No. 3:13-CR-00764-WHO-1, 2017 WL 4310712, at *7 (N.D. Cal. Sept. 28, 2017). In Williams, the court recognized the challenge of differentiating between reality and fantasy, which can occur with any form of artistic expression. Id. Because the rap videos at issue depicted images of “young African-American men, guns, and drugs atop musical lyrics” that belittled other “African-Americans, women, and cooperating witnesses,” the court found it was irrefutable that some of the videos’ scenes could “arouse an emotional response, evoke a sense of horror, or appeal to an instinct to punish” to the jury. Id. at *7. The court accepted that rap lyrics constitute valid forms of artistic expression, and thereby found that admitting such lyrics into a criminal proceeding would only blur the thin line between fact and fiction and would therefore be unduly prejudicial. Id. at *7-8. The court also found for the defendant on other grounds, including propensity (the court was dubious as to

whether a limiting instruction “would keep the jurors from considering the evidence for an improper purpose,”) and probativeness (the challenge of distinguishing between fact and fiction would only be heightened because the government sought to explain the uncertain lyrics through the “interpretations of cooperators and/or informants, not the individuals that wrote the songs”). Id. at *7.

In U.S. v. Johnson, the U.S. District Court for the Southern District of New York found that the government’s introduction of rap lyrics had “little to no probative value, [but] the references to violence and possible allusions to police misconduct, and the use of profanity, present a risk of unfair prejudice to the Defendants.” 469 F. Supp. 3d 193, 222 (S.D.N.Y. 2019). The rap video excerpts were excluded both as irrelevant and because their probative value was substantially outweighed by the risk of unfair prejudice. Id.

In U.S. v. Bey, the U.S. District Court for the Eastern District of Pennsylvania held that a rap music video and audio clip of a rap song were, in light of the contested trial issues and the other evidence available to the government, unnecessary to prove the defendant’s guilt. No. CR 16-290, 2017 WL 1547006, at *7 (E.D. Pa. Apr. 28, 2017). The court reasoned that this evidence was cumulative because the government already had the testimony of at least one, and potentially two, officers who would swear under oath that they recovered a firearm from the defendant’s waistband on the night of the alleged

crime. Id. Thus, the court found that due to the strong alternative evidence that was available to the government, the rap music video and audio clip were simply cumulative and unnecessary to prove the defendant's guilt. Id.

Likewise, in this case, there is a video of the Defendant fleeing from officers, being removed from his vehicle, and documenting the officers' discovery of the marijuana and firearm in the vehicle. At least two troopers will testify to their observations of the offense. This type of evidence is much stronger evidence for the Government, whereas the rap videos do not provide any meaningful insight into the Defendant's activities on July 6, 2020.

Under the balancing test in Rule 403, the admission of these rap videos would be unfairly prejudicial. The lyrics include gratuitous profanity, refer to women in derogatory terms, and include references to violence. This type of evidence is unfairly prejudicial and should be excluded.

The Eleventh Circuit has addressed this issue in a limited fashion and the Government has cited to several of those cases within its Response. *See Document 99.* The Defense has searched for other Eleventh Circuit opinions but has not found others that are persuasive on the facts presented to this Honorable Court. The Government cites to U.S. v. Gamory, 635 F.3d 480 (11th Cir. 2011), where the defendant was convicted of narcotics and money laundering charges. At trial, the government was permitted to introduce a rap video for the purpose of demonstrating a correlation between a confidential informant, the defendant's

recording studio, and drug money. Id. at 488. However, the defendant was not featured in the video. Id. at 488. The defense objected pursuant to Rule 403. Id. at 492. The Eleventh Circuit noted that the lyrics in the rap video presented a substantial risk of unfair prejudice, as it contained “violence, profanity, sex, promiscuity, and misogyny and could reasonably be understood as promoting a violent and unlawful lifestyle.” Id. at 493. Ultimately, the reviewing court found the video was inadmissible pursuant to Rule 403 and also was inadmissible because it was hearsay. Id. at 494. In light of the other substantial evidence against the defendant at trial, the Eleventh Circuit held that the error was harmless. Id. at 494.

While Gamory is distinguishable because the defendant there did not appear on the video, it still is important to note the Eleventh Circuit’s observation that inflammatory rap lyrics can unfairly prejudice the defense. See Id.

The Government argues in its Response at page 9 that Mr. Stephenson’s case is “far more similar to ones in which the admission of videos has been upheld.” *See Document 99.* The Government cites specifically to U.S. v. Ragland, 434 Fed. Appx. 863 (11th Cir. 2001) where the defendant was prosecuted for Hobbs Act violations arising out of the armed robberies of ten convenience stores. There, the defense did not object to the admission of a ‘partial music video’ taken from the defendant’s MySpace account in which he referred to a separate armed robbery in Pennsylvania. Id. at 870-871. The reviewing court

found no “plain error” under the circumstances in which the defense did not object in the trial court. Id. The Defense disagrees with counsel for the Government that this case is similar to Ragland, in which the defense did not object at trial to the admission of the video, and where the lyric at issue was a reference to a past specific but unrelated offense. See Id.

The Government also cites to U.S. v. Williams, 203 Fed. Appx. 976 (11th Cir. 2006), where the reviewing court found no error in the admission of rap music created by some of the enterprise members in a RICO case. There, multiple co-conspirators were members of the Diablos, an Atlanta, Georgia-based street gang. Id. at 979. According to the evidence at trial, the Diablos had two principal goals: first, to make money via criminal activity, principally drug dealing; and second, to use the money to finance and promote their rap music recordings. Id. Several, but not all, of the Diablos-of whom there were between twenty and fifty-were involved with a “gangster rap” music group that went by the same name. Id. Billy Ladson was an unindicted co-conspirator who testified at trial. Id. at 979, FN 3. Ladson testified that he started Diablos Records and testified that “several of the Diablos’ song lyrics accurately described the Diablos’ actual drug dealings and robberies.” Id. at 981. Certain of the CD’s, along with song lyrics, were introduced into evidence over defense objection. Id. at 980. The lyrics graphically portrayed the Diablos as an Atlanta-based gang that sold drugs and robbed drug dealers. Id. at 980-981.

Two of the co-defendants (Williams and Revere) argued that the district court erred in allowing the government to introduce the Diablos' rap music and lyrics into evidence. Id. at 987. On this point, the Eleventh Circuit stated "After review of the record, as well as the arguments of the parties in both their briefs and at oral argument, we concluded that all of Defendant's claims of error lack merit. Only Defendant's sufficiency of the evidence arguments warrants further discussion." Id. at 987-988. Thus, the opinion does not detail the basis of the defense objection in the trial court, nor does it detail the Eleventh Circuit's reasoning as to why the claim lacked merit. See Id.

Finally, the Government argues at page 9 of its Response that "Moreover, similar rap videos have been admitted during trials in this courthouse to prove defendants' criminal activities, particularly narcotics trafficking, in—at minimum—the November 2019 trial of Reginald Jones, Jr. and Leon Williams, 8:18-cr-573-SDM-AAS, and the September 2016 trial of Nathaniel Harris, et al., 8:12-cr-205-EAK-MAP." *See Document 99.* This citation, without any context, background, or any fact-specific reasoning by the relevant courts has no impact on this Court's determination in this particular case. The fact that rap music was admitted at a trial in 2016 and another trial in 2019 is neither controlling nor persuasive here. The Defense is aware from research that some courts have allowed rap music into evidence and other courts have not. The Defense

respectfully asserts that based on the authorities cited within this Motion, this Court should exclude the YouTube videos from evidence.

4. Alternative argument dependent upon this Court's ruling.

If this Honorable Court finds the YouTube video(s) are admissible, the Defense submits the following portions are irrelevant and prejudicial and must be excluded. These portions either refer to gangs and gang activity, violence, are derogatory to women, contain racial slurs, contain slang terms that are not part of common parlance and thus could be confusing to the jury, and contain profanity which is offensive and serves only to inflame the jury. One portion of these lyrics is rapped by another individual (not Mr. Stephenson).

The Defense requests redaction of the portions below which are **underlined, bolded, and italicized**:

Video 1 – Uploaded to YouTube January 21, 2019**BOC FREDO – “TRAPALOT”**

OMN BOC, yeah, make sure you got your seat belt on, we about to take flight,
ya hear me?

Bout to take off.

Fixin' to take over n***a

...right time, I don't give a fuck, ya know what I'm saying

They count it out on the right time. I don't give a fuck. Y'all keep on sleep on
this motherfucking shit

Know what I'm saying, pussy ass n***a, know what I'm saying

...Tell ya hoes keep sucking our dick, know what I'm saying, huh

Trap-a-lot, trap-a-lot, trap-a-lot, trap-a-lot, trap-a-lot, trap-a-lot, trap-a-lot, trap-a-lot,
a-lot

Catching my place in the parking lot, uhm

I get to working like get it off

Trap-a-lot, trap-a-lot, trap-a-lot, uh

Trap-a-lot, trap-a-lot, trap-a-lot, uh

Trap-a-lot, trap-a-lot, trap-a-lot, uh

Trap-a-lot, trap-a-lot, trap-a-lot, uh

Trap-a-lot, trap-a-lot, trap-a-lot, uh

Catching my plays in the parking lot, uhm

I get to working, I get it up

Watching the neighbors, they talk a lot

Don't give a fuck what they talkin' 'bout

Love the blue undies, they comin' out

What the fuck I'm gonna do with all this money now

Eye off this surfing, N***a ain't coming out
I need more money, I'm taking the risk
Patrol hit the lights and I'm hoppin' the fence
Up out the car, jumpin' the fence, yeah
N***a this is street shit, shit can get tense
Gotta keep the fire on defense
Running your shit like you owe me some rent
Don't throw the money like I'm so off the scent
Yeah
Got to get the Benz
N***a need Benz
Yeah, I need the Benz
I got the grams
Trap out the grams
Trap up my grams
Trap-a lot, trap-a-lot, trap-a-lot, uh
Trap-a lot, trap-a-lot, trap-a-lot, uh
Trap-a lot, trap-a-lot, trap-a-lot, uh
Trap-a lot, trap-a-lot, trap-a-lot, uh
Catching my plays in the parking lot, uhm
I get to working, I get it off
Watching the neighbors, they talk a lot
Don't give a fuck what they talkin' 'bout
Love the blue undies they comin' out
Like what the fuck I'mma do with all this money now
High off the earth
N***a ain't coming out
I need more money

I'm taking the risk
Patrol hit the lights and I'm taking the fence
I parked the car and I'm jumping the fence
N***a this is street shit, shit can get tense
Gotta keep the fire on defense
Running your shit like you owe me some rent
Thumb through the money like I'm so off the scent
I need the Benz
I got the grams
Trap out my grams, trap out my grams
Fuck is he saying
Trap-a-lot, trap-a-lot
Trap-a-lot
Trap-a-lot
Putting in the work till I pass out
I see you're poking that ass out
Don't do no frontin', you gotta cash out
Serena and Venus, I'm bringing the racks out
Fuckin' that bitch, breaking her back out
Way too deep, I cannot back out
You better live what you rap by
Swingin' the bitch like a trap house
Got shot with me, get a little cheaper
If I'mma tell you my price, you gonna fuck with my people
You wasn't there when I called
I do not need you
Now fix your rap, when I come through your speaker
Bitch, I do not need you

If I gotta beat you, n***as ain't workin'
Diggers be leaching
Practice what you preach
Like you practice your speech, yeah
N***a I'm different
I need the coughing
Got the green like a Celtic
Kyrie Irving
Making place for the boss
Y'all n***a drippin', I'm saucy, yeah
Drip shit be cussing
Real up in your closet, yeah
I need that love like Whitney and Bobby
Hoe, don't do no talkin'
When you hang around bosses
Approach me with caution
Got some soldiers, long live my n***as
Those they fallen, yeah
For them I'm balling
I need the endorsement deal by Spaulding
N***as here running shit, they just be walking
They just be talkin', they just be talkin'
Out their ass though.

Video 2 – Uploaded to YouTube September 8, 2019

BOC GOOLIE featuring BOC FREDO – “Sidewalk N*****”

Hey man shoutout my boy Shooters Touch biv, man. Classiest n***a around, I don’t give a *fuck what that n***a* talking’ bout

Trap, trap, trap

BOC, OMN, gang. Bitch.

I get them in and they gone

I got the weed in this drum, bitch

I fuck with bitch; I like that bitch in a thong

All sidewalk *n***a get your ass* up off our street

Real street *n***a* in my face, talk cheap. Get the bowls for the cheap

Better have your cash, you ain’t get this shit for free

Jumping *ass n***a* move the keys every week

Never see it dry, I ain’t never off beat

*Loyal to the sword, like my n***as in the street*

*Loyal to the sword, like my n***as in the street*

*Loyal to the sword, like my n***as in the street*

All sidewalk *n***a get your ass* up off our street

Real street *n***a* in my face, talk cheap. Get the bowls for the cheap

Better have your cash, you ain’t get this shit for free

Trapping *ass n***a* move the keys every week

Never seen it dry, I ain't never off beat

Loyal to the sword, like my n***as in the street

Loyal to the sword, like my n***as in the street

Loyal to the sword, like my n***as in the street

I had to do what I had to do

Facts

I could not make up no excuse

Nah

That's just for suckers to do, I couldn't do it

That's something I couldn't do

Switch on your gang, that's a sucker move, Pussy

You gotta do what you gotta do

Came from the struggle of an average trap

Trap, trap, trap

Run it up, like you postal

Fucking that bitch and I stick and move

Just like the players do, player

I'm making player moves

Trying to catch a player too

They coming in in a day or two. Facts.

Wanna see what that laser do – pew

Blade at your face like a razor tool

Bitch, wanna hook me up like a cable do, yup

I ain't got no cape, I can't save you

All sidewalk *n***a get your ass* up off our street

Real street *n***a* in my face, talk cheap. Get the bowls for the cheap

Better have your cash, you ain't get this shit for free

Trapping *ass n***a* move the piece every week

Never seen it dry, I ain't never off beat

*Loyal to the sword, like my n***as in the street*

*Loyal to the sword, like my n***as in the street*

*Loyal to the sword, like my n***as in the street*

All sidewalk *n***a get your ass* up off our street

Real street *n***a* in my face, talk cheap. Get the bowls for the cheap

Better have your cash, you ain't get this *shit* for free

Trapping *ass n***a* move the keys every week

Never seen it dry, I ain't never off beat

*Loyal to the sword, like my n***as in the street*

*Loyal to the sword, like my n***as in the street*

*Loyal to the sword, like my n***as in the street*

I get the bag on the regular

Loud bagged up like Checkers, bro

I ain't giving in, (U/I) go cat rap

N***a be tipping, (U/I)

We got lasers on sticks

I fell in love with Ruth Chris (love chicken)

I fucked your bitch 'cuz your bitch thick

I got them stacks in my britches

Cause out of my swing, you's the shit

N***as be hating, they ain't new to this (hater)

I can teach the game, I can school a bitch

Don't sort of look look, 'cuz looks can kill

N***as be pistol whippin' now

N***a passed out by their dogs

N***a gonna tell on their dogs

Hundred dollar all behind the wall

All sidewalk n***a get your ass off our street

Real street n***a in my face, talk cheap. Get the bowls for the cheap

Better have your cash, you ain't get this shit for free

Trapping ass n***a move the keys every week

Never seen it dry, I ain't never off beat

Loyal to the sword, like my n***as in the street

Loyal to the sword, like my n***as in the street

*Loyal to the sword, like my n***as in the street*

All sidewalk n***a get your ass off our street

Real street n***a in my face, talk cheap. Get the bowls for the cheap

Better have your cash, you ain't get this shit for free

Trapping ass n***a move the keys every week

Never seen it dry, I ain't never off beat

*Loyal to the sword, like my n***as in the street*

*Loyal to the sword, like my n***as in the street*

*Loyal to the sword, like my n***as in the street*

Video 3 – Uploaded to YouTube July 6, 2020**BOC FREDO featuring B9 – “TOP SHOTTAZ”**

Let me tell you something, man. Police, politicians, me not trust none of them rude boys!

Remember that.

(unintelligible (“U/I”)) just got a brand new FN. He say that bitch will go through a bitch fast or something. Imagine what that bitch supposed to be (U/I) through your chest or something.

Top shotta, top shotta. Head buster, head buster. (U/I).

What time is it? Primetime. It’s primetime. It’s primetime.

Yeah, top shotta, top shotta. Head buster, head buster. (U/I).

All these hoes trying to fuck

I’mma hit ‘em with a party, I’mma hit ‘em with a chopper

Murder game, middle finger, n***a fuck

Drop this thing like he should go, but I call it Black Chyna

Cause the bitch I’m tryna fuck, I done fucking fought n***as

Ain’t no one fucking us

Interception on the play, you fuck, n***as fumble

Same shit that’ll make you laugh and make you cry

A message to myself I just got a main number on the Star of David

We just shook ‘em like some thunder, I’m just tracking like some

lightning, I can make this bitch rumble

Got a *big belly Glock, put a n***a under*

I remember *trapping* with no AC in that under

Bring out the calculators, cuz I'm sure I'm doing numbers

Tell that *bitch* I want some better *shit*

Come up with some bundles, yeah

I'm a young *n***a* started out with nothing

Then before I leave the *bitch*, I got us all a whole lotta *fuckin'* money

Got a *.40* on me now, and I keep the *bitch* a hundred, damn

Got to keep the *bitch* a hundred

Got a plug out in Cali

All you need is some money and *a motherfucking* habit

Busy man, I done stuck it out with Dame

Promoter damn mad I'm performing with my *Glizzy* on the stage

Yeah I got my *Glizzy* when it's time to bass

Keep my *Glizzy* with me, I ain't trying to fade

Split your block, pop it like a fucking parade

You just acting daddy, really I ain't made

Hit 'em with it three times, D-Wade

Now bustin' plays, so you know he getting laid

They got no cape, ain't *no hoes* getting saved

No cereal, but I keep a Special K

(different rapper)

I keep a K for the low a .38

A shell-catcher so I won't leave a trace

I beat his block, yeah I did it bare faced

For .38 yeah first 48

I grew up thuggin' in that south side

You disrespect me on my mama, all my dawgs yeah we down to ride

And hollow tails, yeah they down to fly

And if you talking like you gang, then you might as well motherfucking

die And all that talk of crazy killer, that shit just fly

Low my little n***a Ki, bullets gonna fly

Forever 23 and know that we gonna multiply

Remember digging on the back street, getting by

Sheriff threw the Sprite, then I'm (U/I) tie.

Hit the lights, goddamn, get the third eye

Did a third eye

Fuck them crackers, yeah I'm doing it with a bird eye. Trap.

(inserted clip from movie)

WHEREFORE, the Defense respectfully requests this Honorable Court to grant this motion and exclude the three YouTube videos and transcripts of the lyrics from trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the Clerk of Court for e-filing and service on all interested parties on this 8th day of June, 2021.

Respectfully submitted,



Melissa A. Loesch

Fla. Bar No. 0884251

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