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Bill Number: SB 475

Position: Unfavorable

Dear Honorable Committee Members:

The standards for admitting rap lyrics were discussed extensively in *Montague v. State* 244 Md. App 24 (2019) by the Court of Appeals and then further by the Supreme Court of Maryland in *State v. Montague* 471 Md 467 (2020). This is the current law in Maryland and is a well-reasoned and fair analysis regarding the introduction of evidence that a Defendant may want to characterize as artistic expression. The opinion balances the ability for an individual to express themselves about topics that may glorify violence and even urge others not to snitch about crime, but such expression will not be admitted against them unless the Trial Court makes a specific finding that there is a “strong nexus” to the expression and the specific details of the crime. In fact, the Supreme Court in *Montague* acknowledged that simply admitting rap lyrics at trial against an individual, without a strong nexus to the crime, could unfairly prejudice an individual and serve no other purpose than showing a person’s propensity for violence. Such evidence is expressly prohibited under those circumstances. Defendants continue to have the right to argue to the jury that the expression was not literal or had any connection to the crime. Ultimately, it is up to a jury to determine what, if any weight to give such evidence.

It is important to point out that of the 12 appellate justices who considered the *Montague* case, 11 agreed and 1 dissented in the case. The justice who dissented didn’t oppose the standard her colleagues applied which is the probative value vs. prejudicial effect of the evidence. Rather, she just came to a different conclusion on the facts in that particular criminal case. This is the exact analysis that a jury would go through during their deliberations-what weight they should give the evidence. The admissibility of rap lyrics must be viewed within the context of the requirements that all evidence must go through before it is presented to a jury. First, a judge decides whether the evidence is relevant at all, whether it is specifically connected to the crime and then finally, whether the impact of the evidence’s admission will not unfairly prejudice the defendant. Only then will the

jury have the chance to consider it. The two appellate courts discussed the parameters of relevancy in their opinions. For brevity, I summarize their discussion as follows:

Probative value is the tendency of evidence to prove a fact in dispute  
Relevant evidence is evidence that has “any tendency to make the existence of any fact more probable than less probable.” Citing Md. Rule 5-403, **the standard is that a trial court should exclude even relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice”**

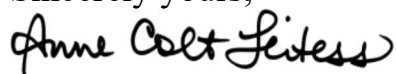
Evidence is unfairly prejudicial “when it tends to have some adverse effect beyond tending to prove the fact or issue that justified its admission.” When evidence is of “a highly incendiary nature,” its admissibility hinges on whether it “greatly aids the jury’s understanding of why the defendant was the person who committed the particular crime charged.” General relevancy issues are reviewed de novo (by the appellate court) and the probative vs. prejudicial determination falls within the discretion of the trial court.

The Supreme Court of Maryland carefully considered this evidence and held:

In sum, when a defendant's rap lyrics are offered as substantive evidence of their guilt, those lyrics should be analyzed on a case-by-case basis using the evidentiary rules that courts routinely use in determining the threshold admissibility of evidence. Although rap lyric evidence carries inherent prejudicial effect, the probative value of a defendant's rap lyrics shares an inverse relationship with unfair prejudice. The closer the nexus between a defendant's rap lyrics and the details of an alleged crime, the lower the danger of admitting the lyrics as unfairly prejudicial propensity evidence of the defendant's bad character.

I urge this committee not to advance the proposed legislation as it is unnecessary under the current legal standards, it seeks to add an additional standard to admitting artistic expression that no other evidence has in this state.

Sincerely yours,



Anne Colt Leitess

State’s Attorney for Anne Arundel County