

CANADA / JUDGMENT

R. v. Monteith

2025 BCSC 749

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2025 BCSC 749 R. v. Monteith

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Monteith,

2025 BCSC 749

Date: 20250305

Docket: X083817

Registry: New Westminster

Rex

v.

Carlos Nathaniel Monteith

Before: The Honourable Justice Verhoeven

Oral Ruling - Voir Dire 12

Evidence of Dr. J. Evans

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Place and Dates of Voir Dire:

New Westminster, B.C.

February 25, 27, 2025

March 3-4, 2025

Place and Date of Judgment:

New Westminster, B.C.

March 5, 2025

- [1] THE COURT: The defence applies for admission of the expert opinion evidence of Dr. Jabari Evans, who is an Assistant Professor of Race and Media at the University of South Carolina, in the School of Journalism and Mass Communication.
- [2] The proposed areas of opinion evidence are:
1. the origins of hip-hop and rap music, including the process of song writing, promotion and distribution, as well as notable hip-hop and rap musicians;
 2. the origins and history of drill music, including the process of song writing, promotion, and distribution, and its presence in Toronto; and
 3. drill artists, their personas, and formula for entertainment and success, including the phenomenon of "cloutchasing".
- [3] The Crown opposes Dr. Jabari's qualification as an expert in these areas. Accordingly, the onus is on the defence to establish the admissibility of the evidence on a balance of probabilities.

The Crown's Position

- [4] The Crown submits that the evidence should not be admitted. With respect to the first stage of the admissibility inquiry:
- 1) portions of Dr. Evans' evidence are not relevant or necessary; the Crown refers specifically to the evidence regarding "clout chasing";
 - 2) Dr. Evans is not a qualified expert, as he does not have the expertise to opine as to the drill rap scene in Toronto; and
 - 3) Dr. Evans is not able to provide impartial, non-partisan evidence.

- [5] The Crown adds that its argument is focused on the properly qualified expert requirement, and the question of the impartiality of the expert.
- [6] The Crown submits that even if the evidence passes the first stage of the admissibility inquiry, it should not be admitted at the second stage, as the benefit of the evidence does not outweigh the cost to the trial process.

Legal Principles

- [7] The parties agree as to the applicable legal principles. They are summarized in the Crown's submissions, which I adopt:
 - 2. Opinion evidence, including expert evidence, is presumptively inadmissible and the party tendering the witness must establish its admissibility on a balance of probabilities: *R. v. Leclair*, 2021 BCSC 400 at paras 10 and 16 ["Leclair"]; *R. v. Scott*, 2018 BCSC 1739 at paras 52 and 60 ["Scott"], aff'd 2021 BCCA 337. But there are some issues where special knowledge, skill or expertise is required in order to draw reliable inferences from the facts. In those cases, a qualified expert may be permitted to assist the trier of fact in understanding those facts: *R. v. Mills*, 2019 ONCA 940 at para 38 ["Mills"].
 - 3. In *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 at paras 19, 23 ["White Burgess"] the Supreme Court of Canada confirmed that the criteria for admission described in *R. v. Mohan*, 1994 SCC 80 engages a two stage process. At the first stage, an expert's evidence is presumptively inadmissible unless the party tendering the expert can demonstrate:
 - (a) Relevance to an issue at trial;
 - (b) Necessity in assisting the trier of fact;
 - (c) Absence of an exclusionary rule; and
 - (d) The expert is properly qualified.

See also *Leclair* at para 12; *Scott* at para 56.

- 4. At the second stage, the Court acts as a "gatekeeper" and weighs the relevance, necessity and reliability of the expert evidence against the potential deleterious effects of admission. In other words, the Court considers whether the evidence is sufficiently beneficial to the trial process to warrant admission, despite potential harm to the trial process. These harms may include things such as the consumption of time, prejudice, confusion, or abdication of the role of the trier of fact to the inferences or conclusion of the expert: *White Burgess*, at para 24; *Leclair* at paras 12; *Scott* at paras 61-62.
- 5. Additionally, at both stages of the analysis, the expert has a duty to the Court to provide independent assistance by way of an objective, unbiased opinion: *White Burgess*, at paras 53-54; *Leclair* at paras 13-15, 22; *Scott* at para 63.

6. As noted by the Supreme Court of Canada in *White Burgess* at para. 45: "[t]he admissibility of the expert evidence should be scrutinized at the time it is proffered and not allowed too easy an entry on the basis that all of the frailties could go at the end of the day to weight rather than admissibility".
- [8] The defence refers to the previous ruling I made in this case indexed at 2025 BCSC 318, (*Voir Dire #10*), which addressed admissibility of the evidence of the Crown's slang expert, Constable Patrick Duerden, and in particular paras. 38-45 of that decision, where I quoted liberally from the decision in *R. v. Mills*, 2019 ONCA 940 [Mills] referenced above.

Background

- [9] Carlos Monteith is charged with the first degree murder of Kristijan Coric occurring on or about September 28, 2019, at or near Surrey, British Columbia. A trial with judge and jury commenced February 3, 2025.
- [10] This voir dire is taking place midtrial. The proposed witness, Dr. Evans, testified on February 25 and on March 3, 2025. I heard submissions yesterday, March 4, about admission of the evidence. At the conclusion of the submissions, I made an order allowing the evidence to be admitted, with express limitations on its scope and content with reasons to follow. These are those reasons.
- [11] The Crown has closed its case. Dr. Evans will be testifying today. He is expected to be the only defence witness.
- [12] General background information relating to the nature of the Crown's case and the evidence it relies on is set out in some considerable detail in my pretrial ruling in relation to *Voir Dire 7*, which dealt with discreditable conduct evidence ("DCE"), generally. My reasons for judgment in that regard are indexed at 2024 BCSC 1445, (the "DCE reasons"). The DCE reasons will be published after the conclusion of this trial.
- [13] In the DCE reasons, I ruled that various forms of discreditable conduct evidence would be admissible at the trial, for example: (1) jail calls made by the accused while in custody prior to being charged with this offence; (2) rap lyrics that are found within the jail calls; and (3) social media evidence, such as digital evidence obtained from the search of the accused's Nokia phone, and Snapchat and Instagram posts made by the accused. The social media evidence was described in paragraphs 37 to 39 of the DCE reasons.
- [14] The Crown's evidence at trial has been generally very consistent with the proposed evidence as described in the DCE reasons.
- [15] In the DCE reasons, I specifically addressed the rap lyrics and social media evidence to which the proposed evidence of Dr. Evans relates.

Analysis

[16] The scope of the proposed evidence of Dr. Evans has been considerably narrowed during the course of this voir dire. His expert report prepared in response to questions posed by the defence is lengthy. Elements of it could be described as somewhat of an academic treatise and, to some extent, a polemic. I refer here in particular to Dr. Evans' views stated at pages 8 and 9 of his report, in which he argues as follows:

This inequity highlights how society privileges certain forms of creative expression while marginalizing others. Tarantino's privilege as a white filmmaker allows him to explore violence without fear of being labeled a participant in it. Cash's and Eminem's identities similarly afford them artistic license to explore themes of criminality. [D]rill artists, however, face a system that pathologizes their work, treating it as incriminating evidence rather than cultural commentary.

Criminalizing drill lyrics not only undermines the legitimacy of the genre but also stifles the broader potential of art as a tool for social commentary.

Th[e] double standard reveals a fundamental bias: Black artists who depict crime through music are treated as criminals, while those who do so in film or literature are regarded as cultural commentators.

[17] Similar themes are also found in his curriculum vitae, in relation to the focus of his studies.

[18] These themes and opinions, if taken to their conclusion, are contrary to Canadian law. I reviewed that law in the DCE reasons at paragraphs 112 - 114, which I repeat, for convenience:

[112] As I noted in Nguyen [R. v. Nguyen, 2021 BCSC 2174] at para. 38, the mere fact that an artist records a rap song with lyrics that refer to drugs, guns, violence and the like cannot be taken as an admission that the artist was involved in such activities.

[113] However, courts have admitted such evidence where there is a significant nexus between the lyric tendered for admission and the subject matter of the charge: Nguyen at para. 42, R. v. Skeete, 2017 ONCA 926 at para. 187; R. v. Mills, 2019 ONCA 940 [Mills] at para. 122.

[114] In Mills, the Court accepted that courts must be alive to the risk that the admission of rap lyrics may trigger or inflame stereotypical assumptions about race and culture, and that this concern is a factor that must be taken into account in determining the probative value of rap lyrics and any prejudice that may flow as a result of admission.

[19] In R. v. Ali, 2024 ONSC 5208 [Ali], Justice P.A. Schreck of the Ontario Superior Court decided that evidence of Dr. Evans regarding rap music was admissible. At paras. 130 to 141, Justice Schreck reviews the law as to admissibility of rap lyrics as evidence in Canadian courts.

[20] I quote from paragraph 131:

- [131] The concerns about the challenges of distinguishing fact from fiction in forms of artistic expression in the specific context of rap music had been discussed earlier by Nordheimer J. (as he then was) in *R. v. Campbell*, 2015 ONSC 6199 . . .
- [21] Justice Schreck also refers to other decisions, and states:
- [132] However, there is no bright line rule prohibiting the admission of rap music in criminal cases, as was made clear in *Mills*, at para. 122 . . .
- [22] Justice Schreck then goes on to cite from *Mills*, a decision that I also relied on in the DCE reasons.
- [23] In his oral testimony on the voir dire, Dr. Evans conceded that admission of rap lyrics as evidence in criminal trials is appropriate in some cases.
- [24] In any event, the particular themes and opinions of Dr. Evans that I have referred are not relevant to this case.
- [25] If adduced as evidence, they would mislead, distract, and confuse the jury.
- [26] However, the defence does not propose to elicit any such testimony from Dr. Evans. The defence has prepared a will-say statement, which has been entered as Exhibit 7 on the voir dire.
- [27] Based upon the will-say statement, the first area that Dr. Evans is expected to testify about is in relation to common conventions or themes in drill rap music generally. He is expected to explain that drill rap is a subgenre, that stems from the legacy of gangster rap. He describes how drill rap started in Chicago but has spread globally, including to Toronto, Ontario. Most relevant to this case, he describes common conventions in drill rap, such as: (1) lyrics that feature threats, in the first person; (2) lyrics regarding commission of criminal activity; (3) lyrics that make light of criminal activities, and death. Conventions include fabrications, elaborations, and experiences that are cobbled together from other persons, and use of narratives that could be believable but are not actually authentic.
- [28] Dr. Evans describes clout chasing, which he defines as the thirst for attention, which manifests itself in lyrics of drill or gangster rap as self-aggrandizing, [referencing] material gain, and portrayal of the artist as a violent persona. Dr. Evans says that violent personas are created in drill and gangster rap, because there is a need for authenticity, based upon hypermasculinity. The personas created in drill and rap are aggressive, extreme, hypersexual, hyperviolent, and tough. He states that the goals of the artist are to appear authentic as to the persona created, to publicly embarrass any perceived opposition, and are aggrandized to represent the artist's persona as being the toughest.
- [29] Dr. Evans describes the connection between drill rap and social media.
- [30] The Crown's evidence in this case includes some social media evidence that appears to fit within the themes and conventions that Dr. Evans is expected to testify about.

- [31] As a secondary position, the Crown argues that Dr. Evans should not be permitted to attribute meaning to the actual rap lyrics found in the jail calls, as that is the task of the jury. I agree with this submission. Therefore, Dr. Evans will not be permitted to interpret the actual jail calls and rap lyrics in evidence.
- [32] The defence position is that Dr. Evans is aware of the limited nature and scope of his evidence and is prepared to confine his evidence accordingly. The defence assures me that Dr. Evans has reviewed the will-say statement to which I just referred, as well as an earlier iteration of the same document.
- [33] The Crown concedes that some portions of the evidence of Dr. Evans would be relevant. The Crown suggests that a better way to put the essence of the evidence before the jury would be for admissions to be made by the Crown, such as these: (1) drill rap is a subculture that stems from the musical legacy of gangster rap; (2) drill rap originated in Chicago, and has spread to rappers in other countries and cities including Toronto; (3) common conventions in drill rap, include lyrics that feature threats in the first person, as well as criminal activity; (4) the use of the pronoun "I" in rap lyrics lends authenticity to the artist and is part of the artistic tradition of drill and gangster rap; (5) drill rap lyrics are not necessarily confessions or autobiographical; and (6) in some of the jail calls, Mr. Monteith raps, and the raps have some of the characteristics of drill rap.
- [34] The Crown argues that Dr. Evans' field research appears to have been largely concentrated and perhaps limited to the Chicago rap or drill rap scene.
- [35] The Crown argues that Dr. Evans' evidence lacks impartiality, independence, and lack of bias, which are criteria relating to the requirement for a properly qualified expert on the first stage of the admissibility analysis. The Crown refers in particular to the opinions surrounding criminalization of rap lyrics that Dr. Evans refers to in his report and in his CV.
- [36] Citing White Burgess at para. 49 and Mills at para. 45, the Crown properly concedes that the threshold requirement at the first stage to establish that the expert is willing and able of providing fair, objective and non-partisan evidence is not particularly onerous, and that it will be a rare case in which the expert's evidence will be ruled inadmissible on this ground, at the first stage of the inquiry. Exclusion of the evidence on this ground at the first stage should only occur where the proposed expert is clearly unable or unwilling to provide the court with fair, objective, and non-partisan evidence.
- [37] The Crown further argues that an expert who, in their proposed evidence or otherwise, assumes the role of an advocate for a party, is clearly unwilling or unable to carry out the primary duty to the court, referencing White Burgess at para. 49, and R. v. Leclair, 2021 BCSC 400 at para. 20.
- [38] As I said in the ruling I made yesterday, I am satisfied that the evidence should be admitted. However, the evidence should be limited in scope. It should be confined in general to what is set out in the will-say statement.

- [39] In respect of the first stage of the admissibility analysis, I agree and adopt the defence submissions at paras. 13 through 17 of its written outline of submissions, which are as follows:
13. The first stage requires consideration of relevance, necessity, absence of an exclusionary rule, and a properly qualified expert.
 14. Identification is the primary issue on trial. A key piece of evidence the Crown intends to rely on are jail calls. Some of these calls include rap music. Dr. Evans' evidence assists the trier of fact in assessing the meaning and weight of statements made by Mr. Monteith in his rap calls.
 15. Dr. Evans' evidence is necessary as his knowledge of the origins and characteristics of drill rap are outside the experience and knowledge of the trier of fact. Dr. Evans can provide information regarding clout chasing and its interplay with social media. The Crown in this case has tendered evidence in relation to various social media posts made by Mr. Monteith. These posts feature extravagant purchases, weapons, and large sums of cash. Dr. Evan's evidence relating to clout chasing may provide some context or possible motivations behind such posts.
 16. The defence submits there are no exclusionary rules barring the admission of this type of expert evidence.
 17. Dr. Evans is a properly qualified expert. He has specific knowledge in the areas for which he is being tendered, both academically and from his own experience within the industry. He has knowledge beyond that of the trier of fact and can provide tools and knowledge to the jury when it comes to their assessment of Mr. Monteith's rap music, and determining for themselves whether they wish to interpret aspects of those lyrics as autobiographical or not.
- [40] In relation to the question of the expertise of Dr. Evans in relation to Toronto drill rap specifically, in cross-examination Dr. Evans conceded that he did not consider himself an expert in Toronto drill rap, as such. However, I accept his evidence that rap and drill rap is a global cultural phenomenon, and that the genre extends to Toronto, as well as many other parts of the world, including Chicago, Brooklyn, the Caribbean, England, and other places.
- [41] The limited evidence suggests that Mr. Monteith hoped to be a rich and famous rap artist. The evidence that the Crown relies on indicates that Mr. Monteith has himself been influenced by rap and drill rap culture. He is from Toronto. This is some indication of the rap and drill rap scene in Toronto.
- [42] So I accept that Dr. Evans can give expert opinion evidence regarding rap and the drill rap subgenre generally, including relevant evidence concerning the same topics as they might be applied to the Toronto scene.
- [43] Although I recognize that Ali is a very different case than this one, evidence of Dr. Evans similar to that which is proposed here was ruled admissible in that case.

- [44] As noted, the Crown argues that Dr. Evans is an advocate for certain positions and expresses strong opinions regarding the propriety of admission of rap and drill rap lyrics in courts of law generally. However, as I have said, the opinions of Dr. Evans on these matters will form no part of his proposed evidence, narrowed as it is, and as set out in the will-say statement I referred to.
- [45] The Crown argues that the evidence of Dr. Evans regarding clout chasing is unnecessary. I do not accept this argument. It is important for the jury to have evidence regarding why drill rap lyrics, in particular, may not be taken as literally true. The jury needs to understand why rap artists would seemingly brag about violence and criminal activity, including criminal activity in which they have supposedly directly and personally taken part, and why it may be that such statements should not necessarily be taken as autobiographical. This is highly relevant to the jury's task, which is to decide how much weight, if any, to give to the evidence the Crown relies on in this respect, which includes the rap lyrics and the social media posts to which I referred.
- [46] As noted, the Crown argues that Dr. Evans should not interpret the jail calls and the rap lyrics. The Crown also is concerned that Dr. Evans may not stay within the directed confines of his evidence. However, as the defence argues, on the voir dire itself Dr. Evans demonstrated the ability and willingness to abide by a direction from the bench, which in that case was to provide concise answers to the questions put by counsel.
- [47] I also take into account the responses that Dr. Evans made on cross-examination, during which he was prepared to fairly concede points that were put to him.
- [48] There is, of course, as with any witness, a risk that the witness will stray off course, but I am satisfied, in the particular circumstances of this case, that Dr. Evans will be able to confine his evidence appropriately.
- [49] As to the first stage, I conclude that the evidence meets the requirements of relevance, necessity, absence of an exclusionary rule, and qualification of the expert. There is no real question about his qualifications, both as an academic, and from his own experience in the field of rap and drill rap in general.
- [50] As to the second stage, the evidence is important and necessary for the jury to have and will help the jury fulfil its task.
- [51] The potential for prejudice mostly lies in the risk that Dr. Evans may stray into areas that I have said are irrelevant and inappropriate. In particular, it would be dangerous and improper if the jury were to receive a message that if they were to rely on the jail call and rap lyric evidence, they would be engaging in racist or stereotypical thinking that would be or could be unfair to the accused. As I have said, I expect that these concerns can be avoided.

[52] In summary, the evidence of Dr. Evans is admissible, with the qualifications that I have outlined.

"Verhoeven J."

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