[NL] Court of Appeal acquits two rappers of incitement to violence over YouTube music video

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On 25 August 2022, the *Hof Amsterdam* (Amsterdam Court of Appeal) acquitted on appeal two "drill" rappers who had been convicted in 2021 of incitement to violence in relation to a music video. Drill - slang for "shooting music" - is a subgenre of hip-hop that originated in Chicago and is characterised by its focus on anger and violence. It was the first time in the Netherlands that rappers have been prosecuted and convicted purely for violent lyrics.

The video for a song called "Intensive Care" had been uploaded to YouTube in July 2020, two months after a five-second preview had been shared through Instagram, and flagged by the police. In the video, the two rappers talk about violence against their "*opps*" (opponents) while making suggestive gestures, such as the "time-out" and "throat-slitting" gesture, and pointing fake firearms to the camera.

The rappers were charged with (1) possession of fake firearms and (2) incitement to violence, firearms use and/or firearm possession. As to the second indictment, the accused rappers claimed that their criminal prosecution amounted to an unjustifiable interference with their artistic freedom and freedom of expression as protected by Article 10 of the European Convention on Human Rights (ECHR).

In its decision of 11 November 2021, the *Rechtbank Amsterdam* (District Court of Amsterdam) held that through the rap lyrics, considered in combination with the gestures, the use of fake firearms and the title of the video, the rappers explicitly incited viewers to commit criminal offences against other (rival) drill rap groups including abuse, manslaughter and murder. The District Court took special note of the increasing armed violence in bigger cities like Amsterdam, particularly among young people, and the risk that the sharing of videos like this via social media could normalise firearm use and encourage young people to buy firearms themselves.

In contrast to the District Court, however, the Court of Appeal held on appeal that the expressions in the music video were "insufficiently specific" to conclude that they constituted a direct incitement to commit criminal offences. According to the Court, neither the wording nor the meaning of the verses were sufficent to assume that the rappers were trying to convince other people to do something. It noted that the rappers were "rather rapping about their own experiences,

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feelings, wishes and fantasies". Moreover, the Court emphasised that the so-called *opps* did not seem to refer to any specific opponents or targets. Singing or saying that (unspecified) *opps* should be in intensive care did not, in the Court's view, correspond to incitement of the public to actually make that happen by committing crime. The fact that the lyrics contained violent elements and the rappers were waving around fake firearms did not alter that conclusion.

Hof Amsterdam, ECLI:NL:GHAMS:2022:2482, 25 augustus 2022

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Amsterdam Court of Appeal, ECLI:NL:GHAMS:2022:2482, 25 August 2022

Hof Amsterdam, ECLI:GHAMS:2022:2483, 25 augustus 2022

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Amsterdam Court of Appeal, ECLI:NL:GHAMS:2022:2483, 25 August 2022

Rechtbank Amsterdam, ECLI:NL:RBAMS:2021:6432, 11 november 2021

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Amsterdam District Court, ECLI:NL:RBAMS:2021:6432, 11 November 2021

Rechtbank Amsterdam, ECLI:NL:RBAMS:2021:6433, 11 november 2021

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Amsterdam District Court, ECLI:NL:RBAMS:2021:6433, 11 November 2021

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