

## Lyrics in Evidence: Is it a Crime to Rhyme?

Can a rapper's lyrics, written years earlier, be introduced against him in his criminal trial? Maybe in New Jersey.

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When Ludacris rapped that he's "[so illegal with the pen](#)," we thought he was speaking figuratively to make a point about his way with words. Turns out, he may have been telling the literal truth. In courts around the U.S., criminal defendants in criminal cases are being confronted with rap lyrics they've written, which are being used against them as evidence in a criminal case. Isn't rap an expression entitled to First Amendment protection? What do lyrics prove anyway?

This article is about using rap lyrics as evidence of motive and intent, when the defendant is charged with a particular crime. Lyrics can themselves be criminal, as a threat of violence towards a victim. To read about this interpretation of rap lyrics, see [Online Threats versus The First Amendment](#).

### Rap Lyrics as Evidence

In recent years, courts in several states have allowed prosecutors to introduce rap lyrics written by defendants into criminal trials as evidence of motive and intent. The American Civil Liberties Union ("ACLU") has determined that courts in New Jersey alone admitted defendants' rap lyrics into evidence at trial in almost 80% of cases examined. (See the ACLU's "friend of the court" brief submitted in the case discussed just below.)

In 2014, the New Jersey Supreme Court decided the appeal of a man named Vonte Skinner, in which the defendant's rap lyrics were admitted at his trial for attempted murder and related charges. The defendant wrote the lyrics years before the shooting occurred. After hearing the lyrics, along with the other evidence against the defendant, the jury convicted him. An appellate court ruled that the lyrics were highly prejudicial and should not have been admitted; the State of New Jersey then appealed, but the state supreme court agreed that the verses never should have come into evidence.

### Evidence of what?

In general, evidence of a criminal defendant's past bad actions cannot be introduced to show that he or she had a bad character and acted consistently with that bad character on a particular occasion (such as when the alleged

crime occurred). This “character evidence” is acknowledged by the rules of evidence (such as [Rule 404 of the Federal Rules](#)) as having a unique tendency to prejudice jurors against the defendant.

But, evidence that falls into the category of character evidence may be admitted for purposes other than to show that the defendant acted in accordance with the character trait. For example, the State of New Jersey argued that Defendant Skinner’s rap lyrics showed motive and intent during the shooting for which he was on trial. The prosecutors offered evidence that Skinner acted as “muscle” for a drug dealer and shot the victim in order to enforce “street law.” Some of Defendant Skinner’s lyrics referred to violent street show-downs (“[he] wouldn’t listen, so I hit him with the Smithen”).

### What about the First Amendment?

Some rap lyrics are clearly political speech (such as anything written by The Coup, including [“The Guillotine”](#)), but even if Defendant Skinner’s rhymes did not address political or public issues, they are expressions under the First Amendment. Expression does not have to be political in nature to be protected by the First Amendment. Artistic expression has been deemed protected; indeed, it is the “expressive conduct” itself that is protected. But, political speech is entitled to special protection under First Amendment decisions, one that requires a “heightened scrutiny” of governmental restriction. Where the government uses a person’s political expressions against him in a criminal trial, it may violate his freedom of expression (and likely chill similar expression by other individuals who learn of his fate).

Much of rap, even that which is not overtly political, has political undertones. The ACLU argued that Defendant Skinner’s lyrics fall into this category and are entitled to the special protection afforded political speech. Given this special protection, the ACLU asserted, Defendant Skinner’s lyrics shouldn’t have been admitted. And while the First Amendment wasn’t the basis for the New Jersey Supreme Court’s decision in the Skinner case, the ACLU’s point wasn’t lost on the court.

### Rap But Not Pop?

It seems that rap is being viewed as an especially telling form of expression, unlike the murder ballads of everyone from Dolly Parton to the Grateful Dead. For example, imagine the decidedly non-rapper Paul McCartney in the dock for [mayhem](#), being forced to listen to “Helter Skelter” with the jury. Not likely—is that because he’s merely a singer, not a rapper? This distinction resonated with the New Jersey high court in the Skinner case, as the judge authoring the opinion quipped, “One would not presume that Bob Marley, who wrote the well-known song ‘I Shot the Sheriff,’ actually shot a sheriff . . .